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Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

November 30, 2022

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

Dear Ms. Jones:

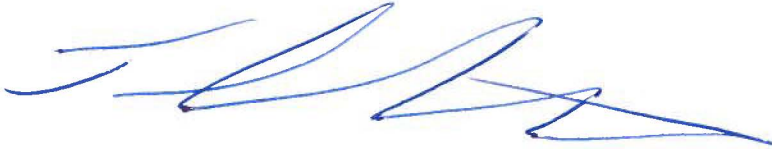
We appreciate the opportunity to provide the response of the Public Utility Commission of Texas (PUCT or Commission) to the Staff Report of the Sunset Advisory Commission. We want to thank the Sunset Staff for their professionalism and hard work during this review. The Sunset Review process is a daunting undertaking for both your staff and the PUCT. Your staff were easy to work with and accommodating throughout this process.

As noted in the Staff Report, the issues facing the PUCT are numerous and often highly complex. As a result of Winter Storm Uri, the Texas Legislature enacted legislation intended to prepare for, prevent and respond to extreme weather emergencies to maintain the reliability of the electric grid. The Legislature also overhauled the composition of the PUCT, expanding to five commissioners, from three commissioners. All of the PUCT's current commissioners were appointed after Winter Storm Uri. The Legislature also converted the board of the Electric Reliability Council of Texas, from a primarily stakeholder board to a fully independent board. In response to this legislation, the PUCT has adopted multiple new rules, which is more than 200% of the usual number of rules typically enacted by the Commission after a legislative session. At the same time, the Commission has also continued to process its existing heavy workload in both the electric and water industries as well as its responsibilities in telecommunications regulation.

The Staff Report includes a number of recommendations intended to improve the PUCT's regulation of the electric and water industries. The PUCT appreciates and agrees with a majority of the recommendations in the Staff Report. However, the Commission has concerns with some of the opinions and recommendations of the Sunset Staff. These disagreements are discussed in more detail below. The PUCT appreciates Sunset Staff's acknowledgement that the PUCT is understaffed to perform its current mission, particularly in its regulation of water and wastewater utilities. However, Sunset Staff also recommends that the PUCT undertake a number of new and significant activities and responsibilities. In most instances, the PUCT agrees with the intent of Sunset Staff's recommendations which is to improve the operation of the PUCT. Given the PUCT's existing responsibilities, workload, and staffing challenges, the PUCT will require substantial additional resources over and above those requested in its 2024-2025 budget request to implement several of Sunset Staff's recommendations.

Thank you again for the opportunity to comment on the Staff Report. We look forward to working with the Sunset Commission and the Legislature to address the issues identified in the Sunset review process.

Sincerely,

A handwritten signature in blue ink, consisting of several fluid, overlapping strokes that form a stylized representation of the name Thomas J. Gleeson.

Thomas J. Gleeson
Executive Director

Response of the Public Utility Commission of Texas to the Texas Sunset Advisory Commission Staff Report

- 1.1 Change in Appropriation—The House Appropriations and Senate Finance committees should consider appropriating PUC its exceptional item request for funding a data analytics team and additional engineering expertise.**

PUCT Response: Agree

The PUCT appreciates Sunset Staff's recognition of the need for the additional resources requested by the PUCT in its exceptional budget item request for a data analytics team. The PUCT's exceptional item request is intended to assist the PUCT in independently analyzing important reports provided by ERCOT, including the Seasonal Assessment of Resource Adequacy (SARA) and the Capacity Demand and Reserve (CDR) reports and to model future potential changes to the ERCOT market. The exceptional item request for additional engineering expertise could fund analysis related to transmission planning, as well as project support for PUCT staff reviewing requests to grant certificates of conveniences and necessity for new utility infrastructure. However, these exceptional item requests would not be sufficient to cover the costs of all of the additional activities and responsibilities recommended in the Staff Report. For example, Sunset Staff states in its report "PUC currently lacks the expertise and staff resources to independently analyze the abundance of electric data and information to make fully informed regulatory decisions, including evaluating their impacts on market participants and the general public."¹ The various activities discussed in Issue 1 in the Sunset Staff Report including those listed in the "Planning for the Future" and "Incomplete Analytics" text boxes on page 38 of the Staff Report are all well beyond the activities envisioned by the PUCT in making its exceptional budget item request. If the PUCT were required to undertake all of these activities, it would need substantial additional resources beyond what it has requested in its budget for 2024-2025. The PUCT will address this resource issue in more detail in its responses below.

- 1.2 Statutory—Authorize PUC to issue directives to ERCOT outside formal rulemaking and contested cases and authorize stakeholders to formally provide input on these directives.**

PUCT Response: Defer to the Legislature

The Commission agrees with the intent of this recommendation, which is to allow the PUCT the flexibility to issue directives to ERCOT outside of a contested case or rulemaking proceeding. The PUCT also appreciates Sunset Staff's recognition of the need for the Commission to act in emergencies and other urgent situations that may fall outside of the Commission's existing emergency rulemaking authority under the Administrative Procedure Act. If this recommendation is adopted by the Legislature, it will be important to give the Commission the latitude to balance the need for input from stakeholders and the public with the need of the Commission to respond quickly to address pressing market issues. It may be difficult to define in rule all of the circumstances in which the PUCT may need to act outside of an emergency rule to protect the health, safety, and ERCOT grid reliability and to specifically designate in this rule the process by which it would direct ERCOT in such situations. The PUCT will abide by the Legislature's direction and decisions on this issue. Provided that the recommended statutory amendments to implement this recommendation do not unduly restrict the PUCT ability to act quickly when needed, the PUCT does not object to this recommendation.

The PUCT agrees with the recommendation to update its existing rules to eliminate the formal appeal process for ERCOT protocols.

The PUCT seeks clarification of the portion of recommendation 1.2 associated with PUC directives that go through the ERCOT stakeholder process and then to the PUCT for review. Specifically, the Staff Report states that market participants will be able to provide input to the PUCT “through the normal comment period at the open meeting.” It is unclear to the PUCT whether this portion of the Sunset Staff recommendation mandates the Commission to take stakeholder public comments in open meeting on all matters that went through the ERCOT stakeholder process. If that is the intent of this recommendation, the PUCT disagrees with the recommendation. The Commission should retain its discretion to decide whether to allow public comment in open meetings on matters that have been through the ERCOT stakeholder process. In approving these matters, the commission reviews comments made as a routine part of the stakeholder process. Allowing a second public comment opportunity during the open meeting would be duplicative and an inefficient use of the Commission’s resources. Currently, the PUCT takes up potential approval of ERCOT market rules in a project that is listed on an appropriate open meeting agenda. Stakeholders who wish to file written comments on ERCOT-proposed market rules may submit written comments to the PUCT in the project number associated with the PUCT’s consideration of ERCOT market rules.

1.3 Statutory—Clarify PUC’s authority over ERCOT protocols to include the ability to reject or remand them.

PUCT Response: Agree

The PUCT agrees with this recommendation and recommends that rejection of a protocol should be remanded to the ERCOT Board for further appropriate action. Rejection of a protocol by the Commission should not require ERCOT and stakeholders to start the protocol revision process from the beginning. Instead, the PUCT may provide instruction in conjunction with the rejection of a proposed protocol so that ERCOT may adjust the protocol revision to conform to PUCT direction. The PUCT does not interpret its protocol approval authority as allowing the PUCT to modify ERCOT-adopted protocol language before approval.

1.4 Statutory—Authorize ERCOT to restrict commissioners’ presence at executive sessions.

PUCT Response: Disagree

Under PURA § 39.151(d), the Commission has “complete authority...to ensure [ERCOT’s] accountability and to ensure that [ERCOT] adequately performs [ERCOT’S] functions and duties.”² The PUCT cannot effectively exercise this authority if ERCOT is given the authority to decide if and when commissioners should be excluded from attending executive session discussions. Under current law³, the PUCT Chairman is an ex officio, nonvoting member of the ERCOT Board. Under ERCOT’s existing Bylaws, the PUCT Chair, as a member of the ERCOT Board, is entitled to attend executive sessions of the ERCOT Board.⁴ In its Self-Evaluation Report, the PUCT recommended that all PUCT commissioners be allowed to attend executive sessions so that all commissioners could stay informed of important discussions and actions of the ERCOT Board.⁵ The Sunset Staff not only rejected this recommendation but has instead recommended that the ERCOT Board be permitted to draft a policy setting forth the circumstances under which the PUCT Chairman and other commissioners could be

² TEX. UTIL. CODE. ANN § 39.151(d).

³ *Id.* at § 39.151(g-1)(1).

⁴ See Amended and Restated Bylaws of Electric Reliability Council of Texas, Inc. at Art. 4, §4.6(e) (October 12, 2021).

⁵ PUCT Self Evaluation Report at 235.

excluded from attending executive sessions. The PUCT disagrees with Sunset Staff's assertion that exclusion of commissioners from certain portions of executive session would not inhibit the PUCT from overseeing ERCOT. Many important matters, including discussion of ongoing litigation against ERCOT, are discussed in executive session. If the Legislature continues to expect the PUCT to exercise "complete authority" over ERCOT, the PUCT commissioners must be permitted to attend all portions of ERCOT Board executive sessions.

The PUCT continues to believe that all PUCT commissioners should be allowed to attend ERCOT Board executive sessions. The Commission acknowledges that there are important Open Meetings Act implications if all PUCT commissioners are allowed to attend ERCOT Board executive sessions. The ERCOT Board is not subject to the Open Meetings Act. However, the PUCT is subject to this Act and there are restrictions on the matters that can be discussed by the PUCT members in an executive session.⁶ The PUCT believes these issues can be addressed by appropriate amendments to PURA.

1.5 Statutory—Consolidate three electric-related reporting requirements

PUCT Response: Agree

The Commission agrees with this recommendation and believes the consolidated report would be more informative for both the public and the Legislature.

1.6 Management Action—Direct PUC to develop a state reliability definition

PUCT Response: Agree

Based on the discussion of this issue in the Staff Report, this recommendation is intended to address resource (generation) adequacy in ERCOT. As part of its Electric Wholesale Market Design project mandated by SB 3 adopted by the 87th Legislature, the PUCT has sought public comment to enhance the reliability of generation in ERCOT.⁷ Public comments are due on December 15, 2022. After receiving input from stakeholders, the public, and the Legislature, the Commission expects to adopt a reliability standard in 2023.

1.7 Management Action—Direct ERCOT to re-evaluate its performance measures, with input from PUC.

PUCT Response: Agree

Under PURA §39.151(d-3)⁸, ERCOT is required to adopt performance measures and submit these measures for PUCT review as part of ERCOT's budget approval process.⁹ The Commission first approved ERCOT's performance measures in 2015 as part of ERCOT's 2016/2017 budget. Sunset Staff recommends that ERCOT update its performance measures to provide a more meaningful evaluation of whether ERCOT's system

⁶ See TEX GOV'T CODE ANN. Chapter 551, Subchapter D.

⁷ See PUCT Project No. No. 52373, *Review of Wholesale Electric Market Design*, items 2, 129, 183, 186, 330, and 382. These documents can be reviewed on the PUCT's Interchange at:

<https://interchange.puc.texas.gov/search/filings/?UtilityType=A&ControlNumber=52373&ItemMatch=Equal&DocumentType=ALL&SortOrder=Ascending>

⁸ TEX. UTIL. CODE ANN. §39.151(d-3).

⁹ *Id.* at § 39.151(d-3) and (d-1).

upgrades are meeting any “on-time and on-budget expectations.” Sunset Staff also recommends that ERCOT provide the PUCT with close-out reports on grid and market system upgrades which would help the PUCT evaluate ERCOT’s project management performance. The PUCT agrees that ERCOT’s existing performance measures should be reviewed to determine what changes may be appropriate.

1.8 Management Action—Direct PUC, in coordination with ERCOT, to approve assumptions used in electric industry reports.

PUCT Response: Agree

Sunset Staff recommends that the PUCT review more key assumptions in various ERCOT reports such as the Capacity, Demand and Reserves (CDR) Report and the Seasonal Assessment of Resource Adequacy (SARA) Report. While acknowledging the PUCT has already identified ways to improve some of these reports, Sunset Staff concludes that other ERCOT reports could benefit from the Commission’s review and approval of key assumptions. While the PUCT has complete authority over ERCOT, it must also depend on the technical expertise of ERCOT staff to provide various required analyses and reports. Provided the Commission has latitude to determine the types of assumptions it must provide to ERCOT, the PUCT agrees with this recommendation. Additionally, if the PUCT’s exceptional budget item request for data analytics personnel is funded by the Legislature (see Sunset Staff Recommendation 1.1 above), the PUCT would consider using some of these resources to implement Recommendation 1.8.

1.9 Management Action—Direct the commission to develop policies regarding separating commissioner roles and responsibilities.

PUCT Response: Neutral

Sunset Staff recommends that the PUCT adopt two policies under this recommendation. The PUCT agrees with the first recommended policy, which is intended to clarify the roles and responsibilities among PUCT commissioners. The PUCT believes adoption of such a policy would improve the operation of the Commission.

The PUCT is neutral on Sunset Staff’s 2nd policy recommendation that would require adoption of a policy to clearly separate the policymaking responsibilities of the commissioners from the management responsibilities of Commission employees. The PUCT acknowledges that PURA §12.102 requires the Commission to “develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the commission employees.”¹⁰ While the Commission does not have one consolidated policy that accomplishes this directive, the PUCT believes that the organization of the agency already accomplishes this separation. Under PURA § 12.103, the Executive Director is charged with managing the day-to-day operations of the agency. All divisions of the agency with the exception of the Commission’s internal auditor and the Office of Policy and Docket Management (OPDM) report to the Executive Director, not the commissioners. The commissioners have no role in hiring or managing the employees of the agency, other than the internal auditor and the Director of OPDM. OPDM employees provide legal and policy advice to the commissioners. The director of OPDM reports directly to the commissioners, not the Executive Director. In short, the PUCT believes the management and policy functions of the agency are already clearly separated. However, the Commission commits to explaining this separation more explicitly in its commissioner training materials that all commissioners receive when they begin service with the Commission.

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

PUCT Response: Agree

The PUCT agrees that it should have and regularly update a strategic communications plan. The PUCT believes that it has made great strides in this area and is continuing to improve and update its communications plan. As noted by Sunset Staff, since Winter Storm Uri, the PUCT has hired two additional communications staff, coordinates more frequently with ERCOT on grid-related communications, and is updating its website.¹¹ ERCOT has also improved its communications with the PUCT and the public.¹² Both ERCOT and the PUCT have developed written crisis communications plans. The PUCT and ERCOT will continue working together to improve and coordinate their communication with each other and to improve their communications with all of their constituencies—the public, stakeholders, the media, and the Legislature.

Sunset Staff recommends that the PUCT improve its communications with the public about the PUCT's regulatory jurisdiction, how to file complaints, how to provide input on decisions and, how to get information and resolution during water and electric outages. The Commission's website already contains some of this information, but the PUCT is currently redesigning its website to make it more easily accessible and usable for the public and stakeholders. In August 2022, the Commission created the Office of Public Engagement (OPE) to help the public participate in all aspects of the PUCT's work. The OPE serves as a resource for the public to explain PUCT processes and to inform Texans on how they can participate in Commission proceedings including rate cases, rulemakings, and hearings.

Sunset Staff also recommends that the PUCT develop various guidelines, goals, objectives, and metrics for measuring the effectiveness of the PUCT's communications plan. As noted above, since Winter Storm Uri, the Commission has hired additional communications staff to assist in this effort. However, the PUCT will need additional resources over and above those requested if all of Sunset Staff recommendations on communications issues are adopted by the Legislature.

2.2 Statutory—Require PUC to allow public testimony at commission meetings on agenda items.

PUCT Response: Neutral

The Commission understands and appreciates the importance of allowing public input on its decisions. Sunset Staff's recommendation would not affect the Commission's ability to limit comments in open meetings on contested cases. Additionally, the PUCT's rules currently provide a formal method for parties to contested cases to request the presentation of oral argument at an open meeting. As such, the PUCT interprets this recommendation to apply only to rulemakings, general postings, general discussions with ERCOT, and other miscellaneous items that are neither contested cases nor rules (e.g., delegating authority to the Executive Director to enter into contracts and setting interest rates on customer deposits discussed in open meetings).

The PUCT conducts all of its open meetings in compliance with the Open Meetings Act. The Open Meetings Act does not require the PUCT to take public comment on any item discussed in open meetings. As noted by Sunset Staff, however, the PUCT provides an opportunity for general public comment at the beginning of every open meeting. There are time limitations placed on general public commenters, but there is no subject matter limitation placed on these comments.

¹¹ Sunset Staff Report at 49.

¹² *Id.* at 51.

The PUCT disagrees with the recommendation that the Commission be required to allow public comment on all rules discussed or considered in open meeting. Under the APA, the PUCT can, but is not required, to allow public comment in open meetings on a proposed rule. The APA also allows interested persons to request a public hearing before the adoption of an agency rule. However, the PUCT rarely receives requests for a public hearing on its proposed rules. The Commission should retain the latitude to decide if and when to allow public comments on rules during its open meetings. By the time a rule reaches the Commission for adoption, the public has had the opportunity to comment in writing on the proposed rule. Written comments are reviewed and considered by Commission staff. Commission staff summarizes and responds to all written comments as required by the Administrative Procedure Act. The staff summary and response to comments are considered by the Commission before it adopts any proposed rule. Many of the Commission's proposed rules are complex and controversial. As such, the PUCT often receives hundreds of pages of comments from a variety of interested stakeholders and the public. Requiring the Commission to allow oral public comment on all proposed rules considered in open meeting could encourage people who have already filed written comments to reiterate those written comments orally at an open meeting—a duplicative and unproductive exercise that would needlessly prolong open meetings. If interested persons wish to require a public hearing before the adoption of a rule, then they are entitled to request that hearing in accordance with rights already established in the APA. Again, the Commission should have the discretion to determine if and when to take public comment on a rule being considered in an open meeting. Sunset Staff's proposed public comment requirement would also apply to the PUCT's general postings for open meetings. Examples of the PUCT's general postings include the following:

"Discussion and possible action regarding implementation of state legislation affecting water and sewer companies, current and projected rulemakings and other projects, comments to other state agencies and Commission priorities."

"Discussion and possible action regarding implementation of state and federal legislation affecting telecommunications markets, current and projected rulemakings and other projects, comments to other state and federal agencies and Commission priorities."

The PUCT typically has similar general postings for electricity matters.

The PUCT does not generally seek public comment on items discussed under its general postings. Open meeting discussions under these general postings are often procedural, but can also be substantive, as in the case of PUCT comments on proposed federal agency rules. Frequently, however, the Commission takes no official action after its discussions under general postings, so the purpose of requiring the PUCT to take public comment in such instances is unclear. While the PUCT generally does not object to allowing public comment on matters discussed under its general postings, these comments, if required, should be at a time and length determined by the Commission.

2.3 Management Action—Direct PUC and ERCOT to create a guidance document to better coordinate public communications

PUCT Response: Agree

The PUCT agrees with this recommendation. The PUCT takes its obligation to communicate effectively with the public very seriously. The Commission has worked extremely hard since Winter Storm Uri to improve its communications with the public, stakeholders, ERCOT, the media, and the Legislature. Communications improvements made by the Commission and ERCOT were also discussed above in response to Recommendation 2.1. The Commission will continue to work on improving its coordination with ERCOT related to public communications, especially during emergencies.

2.4 Management Action--Direct PUC to provide up-to-date easily accessible information as part of its current website redesign efforts.

PUCT Response: Agree

The PUCT agrees with this recommendation and is in the process of updating its website.

2.5 Management Action—Direct PUC to prepare minutes of commission meetings and provide them on its website.

PUCT Response: Defer to the Legislature

All PUCT open meetings are broadcast on the internet via Admin Monitor free of charge to the public and interested stakeholders. All open meeting broadcasts are archived through 2014 and available for viewing on Admin Monitor. The PUCT believes this is the best way for interested members of the public to follow and stay up to date on actions taken by the Commission. Transcripts of PUCT open meetings are also available for purchase from Kennedy Reporting.

The Commission questions whether requiring the PUCT to prepare minutes of an open meeting would provide the public with meaningful information on actions of the Commission but will do so if directed by the Legislature.

3.1 Change in Appropriation—The House Appropriations and Senate Finance committees should consider increasing PUC's appropriation to ensure it can recover its costs to regulate water and wastewater utilities efficiently.

PUCT Response: Agree

The PUCT agrees with all of the methods suggested by Sunset Staff to fully fund the PUCT's water and wastewater utility program and appreciates Sunset Staff's support of this critical need. However, the Commission prefers the method of finance swap in which water utilities would begin to pay the gross receipts assessment under PURA § 16.001 rather than the current regulatory assessment fee under the Texas Water Code. The agency would be fully funded under General Revenue, eliminating the need for the PUCT to draw from the General Revenue-Dedicated Fund 153. The PUCT's appropriation would remain the same. This proposal would not result in any loss of revenue to the state because although the Gross Receipts Assessment is lower than what water utilities currently pay (resulting in a lower fee for water utilities and ratepayers), the Gross Receipts Assessment currently produces more than twice what the PUCT would draw down in General Revenue.

The PUCT has further recommended that the agency be designated as Self-Funded and Self-Leveling, similar to other Article XIII agencies, so that the Gross Receipts Assessment can be lowered to match the PUCT's appropriation, producing additional savings to both water and electric ratepayers. This additional measure, while increasing transparency and eliminating overpayment of the regulatory fee, would result in a loss in General Revenue generated from the regulatory fee collection overages that can currently be used to cover other state expenses.

3.2 Statutory—Amend statute to extend the length of an emergency temporary manager appointment.

PUCT Response: Agree

The PUCT agrees with Sunset Staff's recommendation to clarify this issue. The Commission further recommends a statutory change to clarify that TCEQ has the authority to appoint a temporary manager by a regular order (as opposed to strictly by an emergency order) and that the term of the appointment of a temporary manager by a regular order could be determined by the TCEQ so that the PUCT does not have to take over management of a temporary manager for utilities with issues related to TCEQ's areas of jurisdiction.

3.3 Management Action—Direct PUC to comprehensively review its water and wastewater rules, processes, and guidance documents to identify and address areas for improvement.

PUCT Response: Defer to the Legislature

The challenges of administering water and wastewater utility program are considerable. The PUCT has worked very hard to integrate and improve the water and wastewater utility program since it was transferred to the PUCT effective September 1, 2014. Some of these efforts are outlined in the Staff Report.¹³ Sunset Staff correctly observes that the primary difficulty in administering this program is lack of adequate staff resources.¹⁴ The PUCT already struggles with its existing water utility workload and water-related issues take up an inordinate amount of Staff's time compared to its funding.¹⁵

Improvement of the water and wastewater program is an ongoing effort. The PUCT agrees with the intent of management action 3.3 but completing all of the activities in this management action would require substantial additional resources over and above the PUCT's current budget request. The PUCT has not yet estimated the additional costs of these activities.

4.1 Management Action—Direct PUC to develop a plan to prioritize improving its case data collection and analysis.

PUCT Response: Defer to the Legislature

The PUCT does not have sufficient resources to timely complete all of its current work. The activities included in management action 4.1 would require substantial additional resources over and above the PUCT's current budget request. However, the PUCT defers to the Legislature on this recommendation.

The PUCT is concerned that the significant additional resources required to fulfill this management action could be more productively deployed in managing the PUCT's existing heavy workload. The ostensible purpose of collecting and analyzing case data is to help the PUCT use its scarce resources more efficiently. The primary reason the PUCT cannot accomplish all of its current workload more efficiently is due to lack of resources. Therefore, if the Sunset Commission is inclined to adopt this recommendation, the PUCT requests that it be given sufficient additional resources to accomplish this work. The PUCT has high staff turnover, especially in critical divisions such as the Legal division and the Office of Policy and Docket Management. It is difficult to hire and even more difficult to retain experienced personnel to timely complete existing work. The PUCT believes

¹³ *Id.* at 65.

¹⁴ *Id.* at 61.

¹⁵ *Id.* at 63.

that adding data collection and analysis to its current duties would exacerbate rather than alleviate the PUCT's difficulties in completing all of its work. If the PUCT were not given sufficient additional resources to complete the recommended data collection and analysis, existing personnel would have to be used for this work which would obviously place additional strains on PUCT Staff's already insufficient resources.

An additional concern with accomplishing the tasks in management action 4.1 is the Interchange, the PUCT's existing document repository system. Sunset Staff correctly outlined some of the problems and limitations of the Interchange in the Staff Report.¹⁶ The difficulties the public has in navigating and accessing documents on the Interchange are also problematic for the PUCT. The Interchange is a document repository and was never designed to be a search engine for the public. Sunset Staff outlined additional problems with the Interchange and the PUCT's capability to provide certain case data analysis in its discussion of management action 4.2.¹⁷ The PUCT does not dispute these data problems and limitations. However, correcting these problems would not only require additional personnel, but new data management software. The PUCT has not estimated the cost of a new data management system.

Finally, some of the data analytics recommended by the Sunset Staff, including the reliability impact analysis and cost benefit impact analysis¹⁸ would be duplicative of analyses already conducted by ERCOT.

In short, if this recommendation is adopted by the Sunset Commission, it cannot be accomplished without substantial additional resources. The PUCT has not yet estimated the fiscal impact of this recommendation.

4.2 Management Action—Direct PUC's Legal Division and Office of Policy and Docket Management to develop comprehensive policies and procedures.

PUCT Response: Neutral

The Commission agrees with the intent of this management action—to require the adoption of more comprehensive policies and procedures to assist Legal and the Office of Policy and Docket Management attorneys in performing their work. Such procedures would be especially helpful for new and inexperienced attorneys. Sunset Staff notes that while the Legal Division has document templates and some documented procedures, they are not comprehensive.¹⁹ However, there have been prior efforts at the Commission to implement these type of recommendations and they have generally been unsuccessful because it is extremely time consuming to draft and keep updated policies and procedures for all of the many types of cases processed by the Legal Division, because the types of cases change over time and the manner in which various types of cases are processed changes frequently, making the procedures almost always outdated, such that no one relies on them. The other challenge in drafting comprehensive procedural policies is high staff turnover and lack of sufficient resources. Not only are many attorneys in Legal and OPDM inexperienced in PUCT matters, but they also carry heavy caseloads that leave little time to devote to work on a policy and procedures manual. Again, the Commission agrees that creation of appropriate internal policies and procedures could be useful for both Legal and OPDM but must point out the very real difficulties in accomplishing this task with its current resources. Additional staff resources, over and above the PUCT's current budget request, would be needed to complete this management action.

¹⁶ *Id.* at 53.

¹⁷ *Id.* at 72.

¹⁸ See Sunset Staff Report, "Planning for the Future" textbox at 38.

¹⁹ Sunset Staff Report at 74.

4.3 Management Action—Direct PUC to create and maintain a precedent manual, prioritizing rulings related to water and wastewater regulation

PUCT Response: Disagree

The PUCT agrees that a properly compiled precedent manual would be a useful tool not only for PUCT attorneys, but also for interested stakeholders. The PUCT has maintained precedent manuals in the past, most recently in the 1990s. This manual was maintained by what is now OPDM. The precedent manual was eventually discontinued because of the lack of staff resources. Creation and maintenance of a precedent manual is an extremely time-intensive endeavor. OPDM and Legal have neither the time nor enough experienced attorneys to create and maintain a precedent manual. Creating a precedent manual, even of the limited scope recommended by Sunset Staff, would require additional staff resources over and above the PUCT's current budget request. The PUCT has not yet estimated the full fiscal impact of this management action.

The PUCT could explore the cost and feasibility of outsourcing this task to a third-party legal publisher. However, the Commission anticipates that even if it were able find a third party willing to create and maintain a precedent manual, it would be extremely expensive.

4.4 Management Action—Direct PUC to update its contract manager guide and handbook.

PUCT Response: Agree

The PUCT agrees with this recommendation and is already working on an updated contract manager guide.

5.1 Statutory—Continue PUC for six years and remove the Sunset date of the agency's enabling statute.

PUCT Response: Agree

The PUCT agrees with this recommendation.

5.2 Statutory—Update the standard across-the-board requirement related to commission member training

PUCT Response: Defer to the Legislature

The PUCT Staff already provides a training manual to all Commissioners when they begin service with the Commission. The PUCT does not currently provide this training manual to commissioners on an annual basis or require an annual certification but can do so if necessary.

5.3 Statutory—Abolish two and modify four of PUC’s reporting requirements.

PUCT Response: Agree

The PUCT agrees with this recommendation.

5.4 Management Action—Direct PUC to update its policy guiding the agency’s rule review process to ensure identified deficiencies in the rules are addressed.

PUCT Response: Defer to the Legislature

The PUCT reviews its rules every four years as required by the Administrative Procedure Act. The PUCT receives public comments on its rules during these periodic reviews. As resources allow, the PUCT amends its rules in response to public comments received during these periodic reviews or on its own initiative. The PUCT acknowledges that a number of its rules are outdated and need to be amended. Some of the PUCT’s outdated rules, however, are simply obsolete and need to be repealed. This is much different than having outdated rules that are contrary to existing law or current Commission practice. The primary reason the Commission has not updated all of its rules is lack of staff resources. The vast majority of the PUCT’s considerable rulemaking activity is directed toward implementing legislation. Virtually every legislative session, the Commission is tasked with amending its existing rules or adopting new rules to implement new legislation. Most PUCT rules are complex and highly contested. Most PUCT rules take a minimum of 6 months to complete. Complex and controversial rules generally take even longer to complete because the Commission Staff frequently engages in informal information gathering (e.g., issuing preliminary questions or publishing a discussion draft rule) before beginning the formal Administrative Procedure Act rulemaking process. The Commission will amend its existing rules as time and resources permit, but it does not currently have the resources to implement new legislation and to complete the comprehensive review and amendment of all of its existing rules as recommended by Sunset Staff. Implementing this recommendation would require significant additional resources over and above the resources requested in PUCT’s current budget. For example, Chapter 25 of the Commission’s rules are the substantive rules for the electric industry. The Chapter 25 rules are approximately 700 pages long. Many of these rules are highly complex. Opening this entire chapter of rules for review would be extremely time consuming and likely could not be accomplished within the requisite 6 month period under the APA. Finally, if the PUCT reviewed all of the Chapter 25 rules simultaneously, it would be prohibited under requirements from amending any rules in Chapter 25 until the Chapter 25 review was completed.²⁰ The PUCT has not yet estimated the exact fiscal impact of this recommendation.