

EXECUTIVE SUMMARY OF SUNSET STAFF REPORT

Public Utility Commission of
Texas
Electric Reliability Council of
Texas
Office of Public Utility
Counsel

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Full Report Here
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In February 2021, Winter Storm Uri exposed unacceptable vulnerabilities in the state’s electric grid. Critical electric and water utilities failed, almost 11 million Texas homes and businesses lost power or water for days, and tragically, more than 200 people died. The impact of the storm on the Public Utility Commission of Texas (PUC) and the Electric Reliability Council of Texas (ERCOT) cannot be overstated. In response to the disaster, the Legislature took swift action, completely overhauling PUC’s and ERCOT’s governance structures and making numerous changes to the electric industry and market designed to prepare for, prevent, and respond to extreme weather and generally enhance the electric grid’s reliability. To keep a close watch on the implementation of these significant changes and identify other needed changes to their operations, the Legislature also moved up the Sunset date for these entities, as well as the Office of Public Utility Counsel (OPUC), two years to 2023. Ultimately, evaluating the final outcomes and benefits of ongoing changes — and others sure to come in the upcoming 88th Legislative Session — is a task for the future.

PUC is woefully under-resourced given its critical responsibilities and work that still lies ahead.

Public Utility Commission of Texas

Following deregulation of major portions of the electric market in 1999 up until Winter Storm Uri, Texas’ “energy-only” electric market was operating as designed, with lucrative competition keeping electricity prices low. The various market participants — generation companies, utilities, retail electric providers, and others — knew how to navigate the dynamics of the competitive market environment and, to a large extent, PUC and the state relied on them and ERCOT to make sure the grid and market were functioning well. In 2011, an unusually strong winter storm that resulted in blackouts signaled potential underlying problems, but state electric policy remained largely unchanged and business as usual continued. With others generally managing the grid,

PUC never had cause to take a step back and consider how things were working, how it might improve operations, or what funding and staff may be needed to do so. In fact, PUC was dealing with budget cuts during this time like most other state agencies.

In 2021, Winter Storm Uri completely changed this dynamic. Needing to respond quickly to this disaster, the Legislature not only overhauled PUC's governance structure but made it clear the agency would be a more active overseer of ERCOT and the market participants, who would no longer be left to their own devices. However, PUC was ill-prepared for the task. Having been under-resourced for more than a decade and struggling to retain institutional knowledge, the agency was now responsible for implementing significant changes to improve the grid's reliability while simultaneously adapting to its new commission structure, navigating a new relationship with ERCOT (that was also undergoing significant changes discussed below), and managing multiple legal battles. All of this while still conducting its day-to-day regulatory operations for more than just electric utilities.

To say this environment made Sunset staff's review challenging is an understatement. When Sunset staff began its work just 11 months after the legislative reforms, everything was still in flux — PUC's Wholesale Electric Market Design effort was still underway; the agency had just established a new division to focus on its numerous rulemakings, many in various stages of adoption; and agency staff was still figuring out how to adjust its processes to account for four new, very engaged full-time commissioners. PUC did not even have all five commissioners until halfway through Sunset's review.

The multitude of changes resulted in a lot of questions and uncertainty among members of the electric industry and general public, which translated into a lot of input to Sunset staff. However, Sunset staff could not evaluate the outcomes of many of these changes with so much still in progress. Because of the review's timing, complexities of the industries PUC oversees, and the Legislature's stated desire to weigh in further on what is and is not working so far, Sunset staff did not evaluate the electric market's design, whether Texas' utility infrastructure is adequately prepared for another extreme weather event, or otherwise get into the technical aspects of managing the electric grid and market. Additionally, the review did not attempt to make changes to PUC's ratemaking functions, which are highly complex and nuanced. Instead, the review took a holistic approach to evaluating PUC's operational needs and focused on preparing the agency for an uncertain future. Most importantly, the review found PUC is woefully under-resourced given its critical responsibilities and the work that still lies ahead. Sunset staff observed the considerable challenges associated with having fewer than 200 employees to oversee utility industries vital to the wellbeing of Texans, including a lack of needed expertise, cumbersome regulatory processes that can drive up costs to consumers, and a general inability to be more strategic and proactive, particularly in communications and data management.

Although most of the attention on PUC has rightfully been focused on the electric industry since Winter Storm Uri, another focus for Sunset staff was PUC's regulation of water and wastewater utilities because this was the first Sunset review since the Legislature transferred the regulation of rates and services from the Texas Commission on Environmental Quality (TCEQ) in 2013. Sunset staff ultimately concluded another transfer would be unnecessarily disruptive to PUC, water and wastewater utilities, and TCEQ, but identified the need for regulatory improvements.

With a new commission that has indicated the agency's business as usual approach is no longer acceptable, PUC has an opportunity to continue thinking about new, more efficient and effective ways of operating and overseeing the electric, water and wastewater, and telecommunications industries.

Electric Reliability Council of Texas

Before Winter Storm Uri, most Texans had little to no idea what ERCOT was or what functions it performed. Despite considerable attention since the storm, the review found many people still do not fully understand ERCOT's role in the electric industry, which is unsurprising given the complexity of the subject matter. ERCOT is essentially a large, sophisticated IT organization that manages the flow of electricity through the "ERCOT grid," delivering power to more than 26 million Texas customers, representing about 90 percent of the electricity consumed in the state. Like an air traffic controller, ERCOT instructs generation companies, through specialized electronic systems, to produce only enough electricity to meet current consumer demand. But even this description fails to capture the nuance that the ERCOT grid does not cover the entire state or that ERCOT does not own any power generation assets or transmission infrastructure.

Sunset staff found these complexities pose challenges for ERCOT's communications efforts with the general public, but ultimately the public is not ERCOT's primary audience, nor should it be. ERCOT's focus is, and should be, on the technical aspects of managing the grid and communicating with the electric industry. Like PUC, the Legislature made numerous changes to ERCOT's structure and procedures following Winter Storm Uri, including removing all market participants from its board of directors and requiring PUC to approve its protocols. Despite the ongoing changes, the review found ERCOT generally has the resources and processes in place to carry out its responsibilities effectively. Also, many of Sunset's standard review criteria do not apply to ERCOT — it is not subject to state contracting standards, the Open Meetings Act, Administrative Procedure Act, or other requirements traditional state agencies must meet. As such, the review focused on ERCOT's evolving relationship with PUC and ensuring ERCOT provides clear and comprehensive information to PUC and the Legislature necessary to evaluate its performance and future needs of the ERCOT grid.

Sunset staff did identify several issues at ERCOT, including questions and litigation surrounding ERCOT's status as a state agency, whether it should be entitled to sovereign immunity, and whether the Legislature's structural changes to ERCOT's board create any conflicts. While Sunset staff does not generally weigh in on such significant policy decisions or items in active litigation, the Legislature should consider these important issues as they could have significant repercussions for the electric industry and eventually consumers.

Office of Public Utility Counsel

The Office of Public Utility Counsel (OPUC) represents the interests of residential and small commercial consumers in electric and water utility proceedings at PUC. Though not impacted by Winter Storm Uri to the same degree as PUC and ERCOT, OPUC's role following the storm is particularly important to help raise concerns when market decisions have a detrimental effect on residential and small commercial consumers. The review found the state has a continuing interest in advocating for these consumers in utility proceedings, and even though OPUC is a small agency, no substantial benefits would result from transferring its functions to another agency.

The following material highlights Sunset staff's key recommendations for the Public Utility Commission of Texas, the Electric Reliability Council of Texas, and the Office of Public Utility Counsel.

Sunset Staff Issues and Recommendations

ISSUE 1

Without Additional Resources and Clear Decision-Making Processes in Place, PUC Cannot Truly Fulfill Expectations for Ensuring a Reliable Electric Grid.

PUC regulates the electric industry and oversees ERCOT and, since Winter Storm Uri, has been making numerous changes to improve the reliability of the ERCOT grid. However, several factors limit PUC's ability to make fully informed decisions to effectively oversee the industry, including a lack of resources to conduct independent analysis of industry data, undefined metrics for market participants and ERCOT, and disjointed reporting requirements that fail to provide a complete picture of the grid's ability to meet the state's evolving needs. Additionally, PUC's use of informal methods to instruct ERCOT means the agency does not always adhere to best practices for openness, inclusiveness, and transparency. Establishing robust decision-making structures and processes would ensure PUC considers all input, independently analyzes its options, and clearly articulates decisions that affect the entire electric industry and millions of Texans.

Key Recommendations

- The House Appropriations and Senate Finance committees should consider appropriating PUC its exceptional item requests for funding a data analytics team and additional engineering expertise.
- Authorize PUC to issue directives to ERCOT outside formal rulemaking and contested cases and authorize stakeholders to formally weigh in on these directives.
- Authorize ERCOT to restrict commissioners' presence at executive sessions.
- Direct PUC to develop, in rule, a state reliability definition.

ISSUE 2

To Restore Trust, PUC Needs to Further Improve Its Public Communication Efforts.

As the state's regulator of utilities vital to serving Texas' increasing population and growing economy, PUC has a duty to communicate well with the public. However, continuing confusion over PUC's jurisdiction and responsibilities compared to other state and federal entities, insufficient information on its antiquated website, and a lack of strategic communications planning prevents the agency from adequately educating and informing consumers. Moreover, as ERCOT's overseer, PUC is responsible for ensuring both entities provide clear, consistent, and easily understandable information the public needs. Though PUC and ERCOT have improved their public communications since Winter Storm Uri, additional coordination would further strengthen the clarity and usefulness of both entities' communications and help restore the public's trust.

Key Recommendations

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

- Direct PUC and ERCOT to create a guidance document to better coordinate public communications.
- Direct PUC to provide up-to-date, easily accessible information as part of its current website redesign efforts.

ISSUE 3

PUC Needs Additional Resources and Attention Focused on Its Water and Wastewater Regulation to Avoid Overburdening Utilities and Their Customers.

Following the transfer from TCEQ in 2013, the review concluded PUC remains the appropriate agency to regulate water and wastewater utility rates and services. However, PUC lacks the resources to do so efficiently since the agency spends a disproportionate amount of its time on water and wastewater regulation compared to the funding it receives for this core responsibility. To maximize its already limited resources and ensure it best serves water and wastewater utilities, PUC also needs to improve its data management and analysis, regulatory rules and processes, and guidance to these utilities. Additionally, PUC and TCEQ share responsibility over the appointment of temporary managers for troubled water utilities, but the agencies' differing interpretations of appointment terms cause inefficiencies that further strain PUC's resources.

Key Recommendations

- 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.
- Direct PUC to comprehensively review its water and wastewater rules, processes, and guidance documents to identify and address areas for improvement.
- Amend statute to extend the length of an emergency temporary manager appointment.

ISSUE 4

PUC's Poor Data Practices and Lack of Policies and Procedures Limit Its Ability to Best Allocate Resources and Serve the Regulated Community.

One of PUC's primary responsibilities is processing cases, which are matters requiring the agency's review and decision, such as approving a utility's requested rate change. PUC relies on unwieldy and outdated data management tools that prevent it from collecting adequate data related to this function, like how long various types of rate cases take to complete. Without access to and analysis of the data, PUC cannot gain a full understanding of problem areas and inefficiencies in its regulatory processes and thus cannot make needed improvements. Developing and implementing a plan to improve its data collection and use would help PUC develop long-term strategies related to its case processing functions and create efficiencies by allowing the agency to identify, document, and correct procedural bottlenecks. Additionally, PUC needs to develop comprehensive policies and procedures for certain core divisions to minimize the effects of turnover and ensure staff have the necessary information to carry out their duties consistently.

Key Recommendations

- Direct PUC to develop a plan to prioritize improving its case data collection and analysis.
- Direct PUC's Legal Division and Office of Policy and Docket Management to develop comprehensive policies and procedures.
- Direct PUC to create and maintain a precedent manual, prioritizing rulings related to water and wastewater regulation.

ISSUE 5

Texas Has a Continuing Need for PUC.

Electricity, water and wastewater, and basic telecommunications services are vital to Texans' everyday lives, and the state has a continuing interest in overseeing these important industries. While PUC has made progress implementing legislative reforms following Winter Storm Uri, the agency's efforts are still in progress, and it is too soon to fully evaluate the ultimate outcomes and benefits of these and other changes, necessitating a shorter continue date. Additionally, PUC would benefit from a more meaningful process for updating its rules every four years and having several of its statutory reports be eliminated or consolidated.

Key Recommendations

- Continue PUC for six years and remove the Sunset date of the agency's enabling statute.
- Abolish two and modify four of PUC's reporting requirements.
- Direct PUC to update its policy guiding the agency's rule review process to ensure identified deficiencies in the rules are addressed

ISSUE 6

The State Has a Continuing Need for OPUC, but the Agency Should Strengthen Its Processes for Contracting With Legal Expert Witnesses.

Texas has a continuing interest in representing residential and small commercial consumers in utility proceedings and OPUC's independence allows it, as an advocate, to focus exclusively on the needs of the consumers it represents. However, the agency could benefit from formalizing its expert witness contracting processes by analyzing the need to use outside experts, using a formal contract solicitation, requiring conflict of interest disclosures from experts, and evaluating experts' performance.

Key Recommendations

- Continue OPUC for six years and remove the Sunset date of the agency's enabling statute.
- Direct OPUC to formalize and document certain contracting processes for legal expert witnesses.

Fiscal Implication Summary

The recommendations in this report would have a fiscal impact to the state, but the exact costs cannot be estimated at this time. In Issues 1 and 3, the recommendations for the House Appropriations and Senate Finance committees to consider increasing PUC's appropriation aim to improve the agency's oversight of the electric and water industries and cover the costs of regulation. However, the Legislature must determine the level of funding needed and available to implement improvements. Some other PUC recommendations, such as directing the agency to develop a plan to improve its case data collection and analysis, should increase efficiency in the long term by allowing the agency to identify and eliminate procedural bottlenecks and better allocate staff resources. However, given the agency's resource constraints, additional funding recommended in this report may not cover the costs associated with implementing the recommendations. Recommendations related to ERCOT and OPUC would require staff time to complete but could be implemented with existing resources.

