



December 12, 2022

Sunset Advisory Commission
PO Box 13066
Austin, TX 78711

**Re: Comments of Texas Association of Water Companies on Sunset Commission Staff
Report on the Public Utility Commission of Texas**

Dear Sunset Advisory Commission Members

The Texas Association of Water Companies (TAWC) appreciates the opportunity to submit comments regarding the Sunset review of the Public Utility Commission of Texas (PUC). TAWC's comments address issues related to communication efforts, resource allocation, and a more stable, frequent review of the agency's rules with an eye toward optimizing regulatory processes and efficiency. Greater regulatory efficiency lowers utility costs and improves customer service.

Founded in 2020 as a chapter of the National Association of Water Companies, TAWC currently has twelve Investor-Owned Utility members located throughout the state. Our member companies are integral parts of their communities and are invested in ensuring that the water is safe when we turn on our taps and that wastewater is properly treated. Combined, TAWC members have invested nearly \$1 billion into developing and maintaining infrastructure critical to providing safe and reliable drinking water and wastewater service for hundreds of thousands of Texans, and it is our goal to continue to invest in Texas for the benefit of all. TAWC works very closely with PUC in conjunction with the Texas Commission on Environmental Quality (TCEQ) to achieve that goal and maintain the highest level of compliance. Strong, efficient regulators lead to an even stronger industry that protects customers, fosters competition,

encourages efficient provision of utility service, and promotes high quality infrastructure. That means better water and wastewater utility service for Texans at a reasonable price.

Comments

While much of the Sunset Commission Staff's report focuses on the electric industry, TAWC appreciates the Sunset Commission report's recognition that it is equally important to review PUC's regulation of water and wastewater utilities. Understandably, the electric industry has received considerable attention since the events of Winter Storm Uri, however TAWC strongly agrees with the report's recommendations to provide PUC with additional resources and staffing needed to fulfill *all* its regulatory mandates; both electric and water/wastewater. As noted in Staff's report, this is the first Sunset review since the Legislature transferred regulation of water and wastewater rates and services from TCEQ to PUC in 2013. The report also noted that 60% of PUC resources are engaged in water and wastewater matters, despite a total headcount level that is below the agency's headcount 20 years earlier. TAWC agrees that PUC needs additional resources in order to efficiently and timely regulate water and wastewater utilities. Aside from recommending the provision of additional resources, TAWC also requests that the Sunset Commission evaluate improvements to PUC's water/wastewater industry regulatory processes as outlined below.

Issue 2 – Improve Public Communication Efforts

Communication with the public, as ever, is key to educating and developing trust with the public and providing an outlet for customer complaints and concerns. Additionally, communication with retail public water and wastewater utilities themselves is extremely important, particularly when addressing the needs of smaller utilities who may not have access to as many resources such as professional legal representation or accounting. TAWC was pleased to see the creation of PUC's Division of Utility Outreach (DUO) come to fruition. However, the service remains widely unknown outside of TAWC's membership, and, therefore, is underutilized. As an example, in 2022 PUC's Twitter account mentioned DUO only twice.

Recommendation 2.1 – TAWC supports Staff’s recommendation to require PUC to develop and regularly update a strategic communication plan. TAWC suggests that plan include enhanced DUO communications with retail public water and wastewater utilities. DUO is an important resource, and a more front-facing effort may be necessary until DUO is more widely known and utilized so as to improve DUO’s effectiveness.

Recommendation 2.3 – TAWC supports Staff’s recommendation to update and consolidate PUC’s online resources. This will make them more user friendly for both regulated industries and the public.

Issue 3 – Additional Resources and Attention Focused on Its Water and Wastewater Regulation

The number of water systems in Texas far exceeds the number of electric companies; the sheer volume of work required from a regulator that disseminates from those water systems is a challenge in the best of circumstances. The report noted that while 60% of PUC resources are engaged in water and wastewater matters, the total agency headcount level is below the agency’s headcount twenty years earlier before the Legislature transferred water and wastewater regulation from TCEQ to PUC in 2013. During this same twenty-year period, the population of the state has grown significantly, and new requirements for water quality, physical security, and cyber security have complicated the operation and regulation of water and wastewater utilities. Clearly PUC needs additional resources in order to be able to efficiently and timely regulate water and wastewater utilities. According to numbers provided within the report, there are 553 water and wastewater Investor-Owned Utilities (IOU) in Texas and 497 of those are classified as Class D IOUs that operate less than 500 connections each. Class D utilities are more likely to be neighbor-to-neighbor or “mom and pop” systems that typically do not have access to the technical, managerial, or financial resources necessary to assist them in regulatory matters such as applying for a rate increase, improving critical infrastructure, or properly addressing customer complaints. These Class D system operators may often be unaware of PUC’s rulemaking projects unless directly informed.

The concern TAWC hears most often from the regulated community is the considerable time it takes for PUC to move through its regulatory processes. This hinders utility efforts to obtain a fair and reasonable return on investments, timely recover operating expenses, and comply with legislatively mandated or PUC-initiated regulatory requirements, such those associated with CCN applications, the Sale, Transfer or Merger (STM) applications needed for system acquisitions or consolidations, comprehensive rate change applications, or System Improvement Charge (SIC) filings. There is also a perception that PUC administrative processing and timelines lag behind that of other state commissions. Delays cause increased financial burdens on a utility, and by extension, the utility's customer base. TAWC has worked closely with the PUC to address these very issues either during rule-making projects or through legislative efforts.

Because the PUC remains significantly under-resourced for the critical functions it performs, TAWC concurs with Staff that this lack of resources affects the agency's ability to regulate water and wastewater systems as efficiently and properly as our industry needs.

Recommendation 3.1 – As noted above, TAWC strongly supports Staff's recommendation that the House Appropriations and Senate Finance Committees consider increasing PUC's appropriations to ensure it can recover its costs to regulate water and wastewater utilities efficiently. With increased resources and personnel at the PUC, the real winners will be the residents of Texas who, regardless of being in a rural or urban area, will have peace of mind when they turn on their faucets and when they pay their utility bills.

Recommendation 3.3 – TAWC strongly supports Staff's recommendation to review PUC's rules with a focus on optimizing regulatory processes and efficiency. TAWC recently submitted comments on PUC Project No. 54041 regarding its *Review of Chapter 24, Substantive Rules Applicable to Water and Sewer Providers in Accordance with Administrative Procedure Act § 2001.039*, as published in the Texas Register on October 14, 2022¹. These comments

¹ Texas Association of Water Companies, Inc.'s Initial Comments (Nov. 14, 2022) (available on the PUC Interchange at https://interchange.puc.texas.gov/Documents/54041_5_1252157.PDF).

outline some of TAWC's concerns and recommendations that we hope PUC will consider as it begins its review of Chapter 24 rules.

Members of TAWC feel very strongly about maintaining the highest level of regulatory compliance within their individual companies. They also seek to provide the best service to all of their customers. However, despite best efforts to consistently meet these goals, utilities are hampered by inadequate or miscommunication; or lack of clarity surrounding, or inconsistent application of, regulator rules and requirements. These factors greatly hinder the entire regulatory process, adding inefficiency, cost, and time that ultimately affect customers. It would be beneficial for all involved for PUC to clarify and update its rules regulating water and wastewater utilities.

TAWC also supports Staff's comment under 3.3, "Identify additional guidance documents or other materials that could help utilities comply with agency statute, rules, and process."

Issue 4 – PUC's Data Practices

TAWC concurs with Staff's report recommendations for the PUC to improve its data collection and enhance its policies and procedures. These efforts could improve regulatory consistency, efficiency, and accuracy. TAWC also recommends that PUC make these items available to the public on its website in a user friendly manner to enhance transparency and keep PUC regulators, regulated industries, and the public informed about the PUC's practices and procedures.

Issue 5 – Texas Has a Continuing Need for PUC

TAWC has an enormous amount of respect for PUC. From top down, every individual at the agency works hard to execute the agency's mission of protecting customers, fostering competition, and promoting high quality infrastructure. We are grateful for their leadership, their dedication, and their tireless efforts. It is a job that the public often fails to recognize when things

are going well but it is nevertheless of utmost importance. We have always felt that PUC welcomes our input and ideas, and we sincerely appreciate PUC's efforts to hear from stakeholders at every level.

Recommendation 5.1 – TAWC recognizes that PUC is undergoing rapid change and multiple challenges and that, as a result, PUC may be very different six years from now than it is today. Thus, TAWC supports Staff's recommendation to continue PUC for six years and review its status and processes again at the next applicable Sunset review.

Additional Recommendations from PUC Self Evaluation Report

PUC's self-evaluation report² of February 2022 contains several recommendations regarding water and wastewater utilities not reflected in the Sunset Commission Staff's report that would be extremely beneficial if implemented. TAWC supports the following recommendations.

Allow Consolidation of Multiple Systems Under One Tariff – Currently, there is too much confusion for customers surrounding the determination of which part of a tariff applies to them. The statutory requirement to determine substantial similarity before systems are consolidated on a tariff detracts from regionalization/consolidation efforts and hinders regulatory efficiency.

TAWC Recommendation: PUC recommended eliminating the substantial similarity determination requirement to allow a utility to charge one rate to customers across all its water systems or sewer systems without a substantial similarity determination.

Simplified Sale, Transfer or Merger Process of Non-functioning Utilities – Currently acquisitions of nonfunctioning utilities under a Temporary Manager (TM)/receiver are slowed down by the standard STM process even where a TM/receiver applies to acquire the utility. This

² [Public Utility Commission of Texas Self-Evaluation Report](#)

does not allow for an acquirer serving as TM/receiver to immediately begin making capital improvements to an ailing system.

TAWC Recommendation: Establish a streamlined sale, transfer, or merger process for non-functioning utilities. With this process in place, a TM/receiver could demonstrate financial, managerial, and technical capability to acquire the nonfunctioning utility through its monthly reports and duties.

PUC Staff Assisted Rate Case for Class C and Class D Utilities – Some Class C and Class D utilities are not in a position or do not have the resources to properly file a rate filing packet. This can cause confusion and inefficiency in the entire rate making process. Lag in filing of rate increases for Class C and Class D utilities may ultimately lead to rate shock.

TAWC Recommendation: Allow PUC staff to assist Class C and Class D utilities with preparing and filing rate filing packages. Notice requirements would not change, and customers could still request to intervene.

Modifying the STM Process for Void Sales – PUC needs statutory clarification that it has an ability to use discretion in whether to recognize a utility sale transaction that has occurred without completing the STM process *or* declare it void. Currently, the statute says such a transaction “is void” without allowing PUC discretion to accept such a transaction.

TAWC Recommendation: Amend TWC § 13.301 to clarify that PUC has authority to void these transactions if the utility does not get approval or, alternatively, accept evidence showing a transaction did indeed occur. Changing the statute to “may” would give PUC discretion when a utility has closed a sale on paper without completing the STM process in advance.

Conclusion

TAWC is grateful for the work completed by the Sunset Commission and the PUC. TAWC views the Sunset process as an excellent opportunity for stakeholders to engage in a

process that will enable the PUC to become a stronger, more efficient regulator. Our members recognize and accept the burden of providing a critical service to Texans, and a strong, well-resourced regulator working with our industry will enhance our ability to do so. Together we can ensure that Texas residents will have safe, reliable drinking water and properly treated wastewater for the next hundred years.

TAWC thanks you for your consideration of these comments.

Respectfully,



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President of TAWC



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