



SIERRA CLUB

LONE STAR CHAPTER

Ms. Emily Johnson
Sunset Advisory Commission
P.O. Box 13066
Austin, Texas 78711

Chairman Charles Schwertner
Sunset Advisory Commission
PO Box 13066
Austin, Texas 78711

December 6th, 2022

Via email to: emily.johnson@sunset.texas.gov

CC: Sen. Charles Schwertner,
Vice Chair Justin Holland

Comments by Sierra Club on the Sunset Staff Report on PUC, PUCT and ERCOT

Dear Chairman Schwertner, Commission Members and Staff:

The Lone Star Chapter of the Sierra Club appreciates the opportunity to provide comments to the Sunset Commission on the Sunset Staff Report of three important agencies: the PUCT, ERCOT and OPUC. Given the horrific experiences of Texans during Winter Storm Uri, and the continued challenges faced by all three agencies, there is no better time to evaluate these organizations' duties, responsibilities, and practices, and discuss crucial changes.

Overall: We Support the Staff Recommendations

We think Sunset staff did an excellent job in identifying six main issues which have impacted the PUCT, OPUC and ERCOT, and recommending that the agencies be continued for another 6 years. Since state leadership has often ignored structural and financial issues that have plagued these three agencies for years, it is

reasonable to only continue them for another six years, especially given the significant legislation (SB 2, SB 3, SB 2154) passed last session. These agencies are underfunded, are often isolated from the public, lack sufficient enforcement authority, and have failed to adequately secure reliable and affordable electric and water services. Major reforms are needed. In addition, given the ongoing discussion over reliability standards and potential changes to our market, it makes sense to only continue the agencies for six years to give the Legislature and the public the ability to revisit whatever changes are enacted during the 2023 session.

Staff Recommendations

The Sierra Club is in support of all six major recommendations.

Issue 1. Without Additional Resources and Clear Decision-Making Processes in Place, PUC Cannot Truly Fulfill Expectations for Ensuring a Reliable Electric Grid.

First, on Issue 1, we agree that the PUCT is in dire need of additional resources, and a clear decision-making process. However, in addition to funding for data analytics and engineering expertise, we also believe more is needed to create a real focus on consumer issues, including public participation, language access and especially the demand side of energy management.

Issue 1. Without Additional Resources and Clear Decision-Making Processes in Place, PUC Cannot Truly Fulfill Expectations for Ensuring a Reliable Electric Grid.

1.1 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.

- ***We agree with this direction, but would note that other needs such as public participation, energy efficiency and language access also require additional resources.***

1.2 Authorize ERCOT to restrict commissioners' presence at executive sessions.
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We fully support this recommendation as ERCOT must remain independent.

1.3 Authorize PUC to issue directives to ERCOT outside formal rulemaking and

contested cases and authorize stakeholders to formally weigh in on these directives.

There is a need to formalize this process, given confusion that has resulted from the lack of clear directives.

1.4 Direct PUC to develop, in rule, a state reliability definition.

We agree that a definition would be helpful, and in fact a real standard is needed, whether that be an hourly or event definition. In addition to reliability, however, the Legislature should also consider requiring definitions of resiliency, which tie into our changing climate and weather extremes.

Issue 2. To Restore Trust, PUC Needs to Further Improve Its Public Communication Efforts.

We are in complete agreement that the PUCT has often failed to consider the public fully in its decision-making process. It is time to put the Public back into the PUCT.

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

We are in agreement.

2. Direct PUC and ERCOT to create a guidance document to better document public communications.

We agree.

3. Direct PUC to provide up-to-date, easily accessible information as part of its current website redesign efforts.

We agree.

More specific direction is needed here as we have outlined below.

Public Input and Engagement

While the PUCT, by its mission, is required to perform its work in a way that benefits the public and all Texans, we have been very concerned that in major decisions and the process, the public and the public good are often left out of the discussion. We are concerned that the PUCT and ERCOT are setting policy, standards, and processes, and making decisions that do not follow sensible and effective processes, do not allow adequate public input or consider that input sufficiently, do not pursue appropriate criteria for the public interest, and do not provide adequate transparency and accountability.

We have a number of specific recommendations to improve communication and public participation.

First, the commission's meetings need to be made accessible to the public in both virtual and physical capacities. These are held in Austin in a relatively small room, where citizens from the second biggest state in the nation are required to be physically present, which can be a barrier for individuals who have disabilities or are immunocompromised, to address the commission on items NOT IN THE AGENDA. And on items in the agenda, only at the discretion of the commission. Public hearings should be held across the state to allow public comment on major topics such as power system resilience, weatherization and climate change, electric reliability, and market design; a bigger room should be considered; online registration should be a standard option; agenda items should be open for public comments; phone and virtual comments should be universally accepted as public input; three minutes should not be the standard when complex topics like market design can only be addressed by the public in this manner; PUCT should be required to summarize and respond to public comments and concerns in key decisions or key themes; and language access, translation, interpretation, and supports for those with hearing or visual challenges should be universally provided.

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Second, PUCT conducts occasional workshops on complex topics, like market design. However, these are exclusive and have no space for brief comments, questions, or submission of reactions. Workshops should also offer basic information and all should be inclusive and open to stakeholder input.

Again, while we support the above recommendations on both improving resources and communications at the agency, we would note the need to specifically also put resources into a new Office of Public Engagement and Language Access, as well as an office dedicated to outreach on energy efficiency and other consumer issues.

We acknowledge that the PUCT has already begun this process but urge more attention to this issue. Creating an Office of Public Engagement and Language Access could

facilitate this. For citizens that are not commission insiders, understanding how to use the “Interchange” is difficult. There is no one place to find a list of all dockets or projects open for public input or comments. One place on PUCT’s website where all projects and rulemaking are listed would be helpful. Furthermore, there is a 10-page limit on stakeholder comments, which may not be enough for the full development of the proposal or explanation. Having an Office of Public Engagement and Language Access and an alternative way to submit public comments, and a place where a person could make a general comment, should allow for inclusive, diverse, and significant input. Additionally, non-English meetings should be held for communities where English is not the primary language. Interpretation can be used for monolingual English speakers instead of defaulting for other languages to be translated. This type of action is intentional inclusion in a diverse state such as Texas. These should be considered as part of the creation of an Office of Public Engagement and Language Access.

We recommend the creation of an Office of Energy Efficiency and Demand Response to help residential consumers save money and participate in the market, including the creation of programs for vulnerable populations. This will also facilitate, after 10 years, the proper implementation of SB 1125, which made several additions to statutes, including expanding the energy efficiency goals and programs that utilities must meet which included the publishing of energy efficiency plans; mandated that more information should be provided to the public about energy efficiency and other consumer programs; and ensure aggregated loads and distributed generation owned by customers, such as rooftop solar or batteries, so that can be integrated into the market.

Issue 3. PUC Needs Additional Resources and Attention Focused on Its Water and Wastewater Regulation to Avoid Overburdening Utilities and Their Customers.

Sierra Club is in complete agreement with this issue and does not have specific additional recommendations on PUCT. We would note that we also believe that additional resources are needed for OPUC to better participate in water and wastewater ratemaking as we have highlighted further in these comments.

1. 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.
2. Direct PUC to comprehensively review its water and wastewater rules, processes,

and guidance documents to identify and address areas for improvement.

3. 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.

As a frequent participant in rate cases, the Sierra Club can attest to the need to help the PUC develop plans, practices and procedures to better serve both the regulated community but also the public and ratepayers which have an interest in these issues. We support all of these recommendations.

1. Direct PUC to develop a plan to prioritize improving its case data collection and analysis.
2. Direct PUC's Legal Division and Office of Policy and Docket Management to develop comprehensive policies and procedures.
3. 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

We are in support of these recommendations and agree that the PUC, ERCOT and OPUC should only be continued for another six hours.

1. Continue PUC for six years and remove the Sunset date of the agency's enabling statute.
2. Abolish two and modify four of PUC's reporting requirements.
3. 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.

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

expert witnesses.

While the Sierra Club agrees with the two recommendations but believes that several other important issues on OPUC were not addressed. OPUC is supposed to represent the interests of residential and small commercial consumers in utility proceedings (in the electric, water, wastewater, and telecommunications cases) in Texas, as a class. Thus, with currently less than 20 employees, it is a small organization with a very important job.

The duties of OPUC include engagement in rate making, rulemaking, and hearing on behalf of the public. However, OPUC frequently forgoes participating in rate making, because of fear of consequences on price, and hearings on behalf of the public because electric and water utilities are allowed to hire lawyers and experts, and eventually recover those costs through the rate-making process. Limits should be placed on the amount of money or the time of experts and lawyers that can be charged to ratepayers, and water and electric utility appeals of PUCT decisions on rates should not be subject to recovery through ratepayers.

In addition, we would support expanding the Office of Public Counsel's authority to include representation of consumers in gas rate cases and broadband, and individual ratepayers. We recognize that this would require additional resources for the agency.

What's Missing in the Sunset Report?

Mission of the PUCT needs to be expanded

The mandated role of PUCT needs to be restructured with long-term economic backing and resources. Given the close connection between public utilities and Texans' health and wellbeing, lawmakers ***should include specific references to public health in the PUCT authority, responsibility, and mission establishing strong structures for communication between the PUCT and the public health sector.***

Enforcement and Monitoring of the Gas Supply and Markets Should Be Expanded

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Enforcement must be expanded at the PUCT. We recommend serious consideration to the enforcement and penalty structure which has been at a maximum of \$25,000.00 for decades. With the serious potential for market manipulation, shoddy service by water and electric utilities, and the potential for safety violations in transmission, we would call on an expanded penalty for market manipulation and a general raising of maximum fines to \$100,000 per violation per day.

Similarly, the Independent Market Monitor (IMM), could assist in the identification of price gouging, market manipulation, or monopoly in certain nodes. These checks and balances are critical in a state where the retail provider market is open and the wholesale power market, but the middle transmission sector is still a socialized cost born by all.

Moreover, it is worth noting that consumer choice in the competitive market has been reduced as the two largest retail electric providers - Reliant and TXU - and their corporate owners – have purchased multiple smaller companies, meaning that the market is effectively controlled by two companies. In terms of municipal utilities and electric cooperatives that are not part of the competitive market, the PUCT should have an expanded role to assess their rates and public processes to assure that residential consumers are informed, can participate in decision-making and have information about rates.

Forecasting, Planning, and Weatherization: Climate Change Must be Acknowledged

Climate change should be included in forecasting, planning, and weatherization requirements at ERCOT and PUCT. Climate change impacts Texas in many ways, including electric demand. The reality of the changing climate provides direct evidence that temperature extremes and stronger storms are more likely. Supply forecasting and Long-Term System Assessments have not reflected this reality. Looking, for example, at their last 12 to 15 years of weather data, their forecasts and sensitivity analysis are frequently wrong.

Texas Must Take Better Care of its Residential Customers

Unlike many other states, after the elimination of the System Benefit Fund, Texas has no state program to help residents with payment assistance, although many individual utility companies and retail electric providers offer their own payment assistance programs. The federal government does through the TDHCA provide assistance for certain residential consumers through LIHEAP a similar program for water assistance and the Weatherization Assistance Program. PUC should play a larger role in providing information to consumers on these programs, but also consider the creation of an emergency fund to help customers in times of extreme price volatility or climate emergencies. The source of the funding would need to be established by the Legislature, whether through the use of federal funds or through a small per-kilowatt charge similar to the Systems Benefit Fund.

We support previous Sunset Advisory Commission recommendations that gas utility rates be shifted from the Texas Railroad Commission to the PUCT. It makes more sense for one state agency - the PUCT - to oversee rates related to utilities: electricity, water, and gas service. Part of this should be the establishment or inclusion of gas supply on the Independent Market Monitor (IMM)'s responsibilities, or a separate market monitor specifically for gas supply.

ERCOT

While ERCOT has managed the transition and incorporation of renewable energy, from their interaction with the public to the stakeholder process to governance, there are multiple improvements that could and should be made.

Structure

ERCOT must remain independent to be able to manage the grid and make decisions without political interference. Not all eleven members should be voting members. Allowing all five commissioners of PUCT to be a voting member, as requested in their self-assessment, would essentially turn ERCOT into a division of the PUCT and much more subject to political interference. We are also concerned by the recent decision of the legislature to completely change the ERCOT board of directors to be appointed by a three-member committee (Governor, Lt. Governor, and Speaker), which does not make the board "completely independent."

- At the same time, recent changes to the make-up of the board of directors to only be executive-level experts continues to silence the voice of residential electric consumers; it reduces stakeholder input. We believe a mix of representatives of stakeholders plus independent experts, OPUC, the PUCT Chair, and ERCOT CEO would be a better mix.

- ERCOT should have its authority expanded so that it can require large non-essential flexible loads to shut down or shift use during peak demand periods. New large loads like BitCoin operations, data centers, and continued development of Oil and Gas can have huge implications on adequacy, transmission, and market operations should be included. Demand response, larger loads, is a new resource that must be allowed to compete along with generation as long as certain parameters are met. ERCOT should be allowed to work with utilities and new loads on requirements so that loads are controllable and when not critical for safety be shifted when demand is high.

Recently, ERCOT has been asking the Texas Commission on Environmental Quality to use enforcement discretion on air quality during times of high electric demand. While in

times of emergency this may be warranted, it should not be standard practice during times of higher power demand because this also means operations without pollution control equipment or operating more than permits allow. In addition, ERCOT has expanded the use of Emergency Response Services, which increases demand for resources, and includes backup generators which have strict emissions limits. This without question impacts the health of many Texans living near these power plants or even leads to overall increases in ozone in major metropolitan areas.

Transparent and Equitable Market Place: ERCOT must also be made more accessible to the public and truly represent residential consumers

- Non-sensitive discussions, including workgroup meetings, at ERCOT should be made available to the public. PUCT and ERCOT need to be accountable for current electric system conditions and costs; how those conditions and costs could change; and the consequences of their decisions, operations, and market policy on these conditions. All market operation decisions must be made openly and transparently and with the opportunity for stakeholder input.
- PUCT and ERCOT should be required to provide quarterly public reporting in publicly intelligible terms and metrics on factors such as Texans' electricity use, cost elements in electric bills, the cost components and quantities paid for energy and ancillary services, ERCOT's load forecast accuracy, generation, and fuel components, prices paid, congestion costs, securitization costs, generator performance, and how these metrics (e.g., costs and quantities in the day-ahead, real-time and ancillary services markets) have changed due to Commission decisions and ERCOT policies. These reports should have clear details, explanations, and backup data with time and locational granularity. Such reports will allow the public, Legislature, and stakeholders to understand whether PUCT and ERCOT decisions have the impacts that were intended and help identify when additional caution or corrective actions are needed.
- ERCOT continues to ignore the profound economic impact its role has on the Texas energy market. ERCOT must be more transparent and aggressive when ensuring that huge transfers of risk do not get laid onto consumers but instead are born by the market participants that create these windfalls or losses. In the meantime, average residential consumers and small business owners continue to hold the risk when another weather emergency, be it a hurricane or a deep freeze, hits our state.
- There is no category of stakeholders to really represent the demand side within ERCOT, such as demand response companies, or to a certain extent distributed energy resource technologies like distributed storage, solar, EVs, and even distributed gas.

- There is a failure in governance or structure when residential consumers are seen only as electricity consumers and not as potential market participants. Only by including consumers as market participants can we ensure ERCOT meets the function of providing non-discriminatory access to markets and accurate accounting for all market participants ensuring more transparent and equitable marketplace.

The Sierra Club appreciates the opportunity to support the staff recommendations but also call for additional reforms to these important entities and looks forward to working with the Senate and House on additional reforms.

Sincerely,

Cyrus Reed, cyrus.reed@sierraclub.org

512-888-9411 (office)

Conservation Director

Lone Star Chapter Sierra Club