

# PUBLIC UTILITY COMMISSION OF TEXAS

*Karl Spock, Project Manager*

## Agency at a Glance

The Public Utility Commission (PUC) oversees electric and telecommunications companies in Texas. The Legislature created PUC in 1975 to regulate rates and services of monopoly utilities as a substitute for competition. Since then, legislative changes restructuring and deregulating major portions of electric and telecommunications markets have modified PUC's focus. PUC carries out the following key duties.

- Oversees the rates and services of transmission and distribution utilities, certification of retail electric providers, and registration of power generation companies in areas of the state open to electric competition.
- Oversees the operations of the Electric Reliability Council of Texas (ERCOT).
- Regulates the rates, services, and service quality of electric utilities that continue to operate as monopolies in areas of the state not open to electric competition.
- Administers renewable energy and energy efficiency programs.
- Regulates or oversees in varying degrees telecommunications providers.
- Administers several assistance programs for low-income electric or telephone customers.

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## Summary

This special purpose review of PUC follows up on the full Sunset review of the agency conducted in the 2010–2011 biennium. At that time, the Sunset Commission adopted and forwarded recommendations related to PUC to the 82nd Legislature that would have provided the agency with additional tools to oversee an increasingly competitive electric market to better protect consumers; required additional PUC oversight of ERCOT to promote grid reliability; and transferred water and sewer rate-related regulation from the Texas Commission on Environmental Quality (TCEQ) to PUC to take advantage of PUC's ratemaking expertise and better focus TCEQ on its complex environmental mission.

Senate Bill 661 included these Sunset Commission recommendations, but the bill did not pass. The Legislature continued PUC for two years in a separate

bill and focused this current Sunset review on the appropriateness of PUC-related recommendations adopted by the Sunset Commission last biennium.

Based on this reevaluation, the Sunset Commission concluded that most of its previous recommendations remain appropriate, and that statutory direction to ensure their implementation is still needed. The following material summarizes PUC-related recommendations from last biennium that continue to be appropriate for consideration, and adds an evaluation of agency reporting requirements that the Legislature now requires of all Sunset reviews.

## ***Issue 1***

### **PUC Lacks Regulatory Tools Needed to Provide Effective Oversight and Prevent Harm to the Public.**

Since 1995, the Legislature has enacted laws restructuring electric and telecommunications industries from traditional rate regulated monopoly markets to markets open to competition. In these restructured markets, PUC relies on licensing-related functions to achieve oversight instead of rate regulation. These functions include granting businesses operating authority, resolving consumer complaints, and taking enforcement actions against violators.

PUC still lacks a degree of regulatory authority necessary for effective oversight in these restructured markets. Unlike various major regulatory agencies such as the Texas Department of Insurance, PUC lacks authority to immediately halt actions that are of imminent danger to the public. Also, the effectiveness of PUC's limited oversight of Competitive Local Exchange Carriers is reduced because the agency's list of these providers is inaccurate, primarily because no renewal process exists to ensure timely tracking and updates of their active status.

## **Recommendations**

### ***Change in Statute***

#### **1.1 In limited circumstances, authorize PUC to issue emergency cease-and-desist orders to electric industry participants.**

PUC could use this authority when an electric industry participant's actions would harm the reliability of the electric grid; are hazardous or create an immediate danger to public safety; or could reasonably be expected to cause immediate harm to consumers in situations in which monetary compensation would be inadequate. The recommendation would provide for expedited notice and hearings when issuing cease-and-desist orders. This recommendation also would authorize PUC to assess administrative penalties against companies that violate an emergency cease-and-desist order, and allow companies to appeal the orders and penalties through the normal enforcement process.

#### **1.2 Require PUC to provide for the renewal of certificates for Competitive Local Exchange Carriers.**

Statute would require Competitive Local Exchange Carriers to renew their certifications by January 1, 2015, so that PUC could develop an accurate list of carriers that continue to be active and subject to its limited oversight. To satisfy the renewal requirement, the carrier would submit the carrier's name, address, and annual report that are currently required. Statute would authorize PUC to adopt rules establishing the process, including determining the time periods for the renewal of registrations and

providing a grace period for active carriers who fail to timely file the required information. Carriers that fail to meet the filing requirement and grace period would need to satisfy all requirements of the original authorization issued by PUC to be reinstated.

## ***Issue 2***

### **Statutory Changes Are Needed to Ensure the Public Utility Commission's Improved Processes of Overseeing the Electric Reliability Council of Texas Continue in the Future.**

ERCOT total spending authorization for 2012 was \$177.1 million from statutorily permitted charges on electricity. With PUC's oversight, the organization uses its funds to ensure the reliable distribution of electricity and coordinate the operation of Texas' competitive electric market. In 2011, the Sunset Commission found that PUC's oversight of ERCOT needed to be strengthened, given the magnitude of funds expended and past issues, including management of debt. Although the Sunset bill failed to pass, PUC and ERCOT have worked together to implement many of the recommended changes, including PUC approval of ERCOT's annual budget and debt financing. However, these recommendations need statutory action to provide needed safeguards and to prevent backsliding.

## **Recommendations**

### ***Change in Statute***

#### **2.1 Require PUC to exercise additional oversight authority of the Electric Reliability Council of Texas by:**

- review and approval of annual budgets for ERCOT on a timeframe determined by PUC;
- prior review and approval of all debt financing, except as negotiated by PUC and ERCOT; and
- annual review of PUC-approved performance measures tracking ERCOT's operations.

Statute would provide PUC with the explicit authority to approve, disapprove, or modify each budget item. The reviews could occur each year or biennially, but the budgets themselves would be annual, as are the budgets of state agencies. PUC would solicit and actively encourage public participation in budget deliberations according to a process it develops. These reviews would be exempt by statute from requirements to conduct proceedings as a contested case under the Administrative Procedure Act, although PUC could still do so as it determines necessary.

By rule, PUC could establish reasonable dates for submission of all necessary budget-related documents, and the necessary level of detail contained within the documents. Statute also would require PUC to review and approve each request for use of debt funding or refinancing of existing debt, except as mutually agreed by PUC and ERCOT.

#### **2.2 Require the System Administration Fee to vary when needed to match revenues to the budget approved by PUC.**

PUC would approve the appropriate level of funding for ERCOT's annual budget, instead of the current procedure of approving the fee needed to raise a particular amount of funding. ERCOT would have the authority to vary the System Administration Fee to help meet budgeted requirements. ERCOT would be expected to closely match funding sources to the budget so that budgetary years

would not end with extra or inadequate funds, and would report to PUC as that agency requires on the matchup between funding and budget. PUC would provide guidelines on the range of variation that would be allowed, and would approve the request for a fee change, taking into account the timing of the change and its effect on market participants and consumers. The fee setting process would not require a contested case under the Administrative Procedure Act.

## ***Issue 3***

### **The State Could Benefit From Transferring Regulatory Functions Related to Water and Wastewater Utilities to the Public Utility Commission.**

In 2011, the Sunset Commission recommended transferring the regulation of water and wastewater utilities from TCEQ to PUC, but Sunset legislation implementing this transfer did not pass. The Sunset Commission's core recommendations on this issue are still appropriate, allowing TCEQ to focus on its basic mission of environmental regulation, taking advantage of PUC's expertise in utility ratemaking and providing consumer assistance.

## **Recommendations**

### ***Change in Statute***

#### **3.1 Transfer responsibility for regulating water and wastewater rates and services from the Texas Commission on Environmental Quality to PUC.**

This recommendation would transfer TCEQ's existing authority for water and wastewater utilities regarding retail and wholesale rates; water and wastewater utility submetering; certificates of convenience and necessity; certain financial, managerial, and technical practices; reporting requirements; and consumer assistance and complaints to PUC. TCEQ would continue to have responsibility for ensuring that utilities meet drinking water standards, sewage treatment requirements, and review of investor owned utility drought contingency plans. The State Office of Administrative Hearings (SOAH) would continue to hear cases related to water and sewer regulation as it does now.

This recommendation requires the agencies to complete the transfer by September 1, 2014. Both agencies would establish a transition team with high-level employees to plan for the sharing of information and the transfer of ongoing cases, property, personnel, powers, and duties. The recommendation would also require the agencies to develop a memorandum of understanding by August 1, 2014 to implement these plans.

#### **3.2 Provide for the Office of Public Utility Counsel to represent residential and small commercial interests relating to water and wastewater utilities, contingent on the transfer to PUC.**

This recommendation would provide for the Office of Public Utility Counsel (OPUC) to represent the interests of residential and small commercial consumers in water and wastewater utility matters under the same authority OPUC has for electric and telecommunications matters. The Office of Public Interest Counsel at TCEQ would not be involved in water and wastewater utility matters at PUC. This recommendation is contingent on the transfer of water and wastewater regulation from TCEQ to PUC.

### ***Change in Appropriations***

**3.3 By rider to the General Appropriations Act, transfer funds from the Texas Commission on Environmental Quality to PUC, the Office of Public Utility Counsel, and the State Office of Administrative Hearings for the regulation of water and sewer utilities.**

The Legislature would appropriate funds to TCEQ from Water Resource Management Account #153 for the regulation of water and sewer utilities. TCEQ would then remit funding for utility regulation to PUC, OPUC, and SOAH based on the level of the legislative appropriation required by rider in the General Appropriations Act. TCEQ's existing rider transferring funds to SOAH for its contract for all hearings would be reduced by the same amount as the transfer for water utility matters to properly account for SOAH costs. The transfer of funds could occur by interagency contract, and TCEQ would not be responsible for the use of the funds.

### ***Change in Statute***

**3.4 Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority, contingent on any transfers, to determine opportunities for standardization.**

PUC would report to the Legislature any recommendations about any identified opportunities to standardize these ratemaking requirements in time for consideration in the 2015 legislative session.

**3.5 Require PUC and the Office of Public Utility Counsel to analyze their staffing requirements, contingent on any transfers, and report potential changes in staffing needs to the Legislative Budget Board and the Governor's budget office.**

This recommendation would require a one-time report to the Legislative Budget Board and the Governor's budget office at the same time PUC and OPUC submit their Legislative Appropriations Requests for the 2016–2017 biennium. The report would detail any staffing changes, including reductions or increases that the agencies recommend. This recommendation gives PUC and OPUC the opportunity during the transition planning process to gain more knowledge about the programs to be transferred and the staffing required to meet program needs.

## ***Issue 4***

### **PUC Statutes Contain Unnecessary Reporting Requirements.**

The Sunset Act establishes a process for state agencies to provide information to the Sunset Commission about reporting requirements imposed on them by law and requires the Sunset Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.

The Sunset Commission found that statute requires PUC to compile separate reports relating to customer awareness for telecommunications markets. One report focuses exclusively on telecommunications markets, while the other applies more broadly to both electric and telecommunications utilities, rendering the first report unnecessary.

In addition, statute requires PUC to report on the sufficiency of funds in the System Benefit Fund to the Electric Utility Restructuring Legislative Oversight Committee. This committee was abolished in 2011, and other provisions requiring PUC to report quarterly on the System Benefit Fund to the Governor and the Legislative Budget Board more appropriately serve the intended purpose of this report, rendering it unnecessary.

## **Recommendation**

### ***Change in Statute***

#### **4.1 Abolish PUC's report relating to customer awareness for telecommunications markets and the System Benefit Fund report to the Electric Utility Restructuring Legislative Oversight Committee.**

This recommendation would not affect PUC's separate reporting requirement for customer awareness that relates to both telecommunications and electric markets, or for quarterly reports to the Governor and LBB regarding the System Benefit Fund.

## ***Issue 5***

### **The State Has a Continuing Need for the Public Utility Commission.**

Regulatory oversight is still needed for Texas' essential electric and telecommunications industries. The State needs to regulate remaining electric and telecommunications monopoly utilities to ensure just and reasonable rates and high quality service. In addition, the State still needs to oversee the competitive aspects of the electric and telecommunications markets because of their complexity and the potential for abuse. PUC continues to be the proper agency to carry out this regulation. As in the past, continuation of PUC should be aligned with the review of the OPUC because of the two agencies' interconnected missions.

In the last decade, PUC Commissioners have come to play an increasingly significant role in overseeing the operations of ERCOT. Statutory conflict-of-interest provisions applied to Commissioners have not been updated to reflect this close oversight.

## **Recommendations**

### ***Change in Statute***

#### **5.1 Continue the Public Utility Commission for 10 years.**

This recommendation would continue PUC until 2023, a date that keeps the reviews of PUC and OPUC aligned.

#### **5.2 Prohibit PUC Commissioners from being employed by the Electric Reliability Council of Texas for two years after leaving PUC.**

Current post-employment restrictions prohibit a PUC Commissioner from employment with a public utility in the Commissioner's responsibility for two years after leaving the agency. This recommendation extends the provision to also prohibit employment with ERCOT for two years.



## Fiscal Implication Summary

These recommendations would not have a net fiscal impact to the State, but one issue would have cost-neutral implications, as summarized below.

*Issue 3* — Transferring the regulation of water and sewer utilities from TCEQ to PUC is intended to be revenue and cost neutral initially. Future savings from regulatory standardization could occur, but could not be estimated. Provisions would require TCEQ to transfer 21 full time equivalent employees and annual appropriations of about \$1,695,000 from the Water Resource Management Account as follows:

- PUC, 20 employees and \$1,430,000;
- OPUC, one employee and \$81,000; and
- SOAH, \$184,000.

