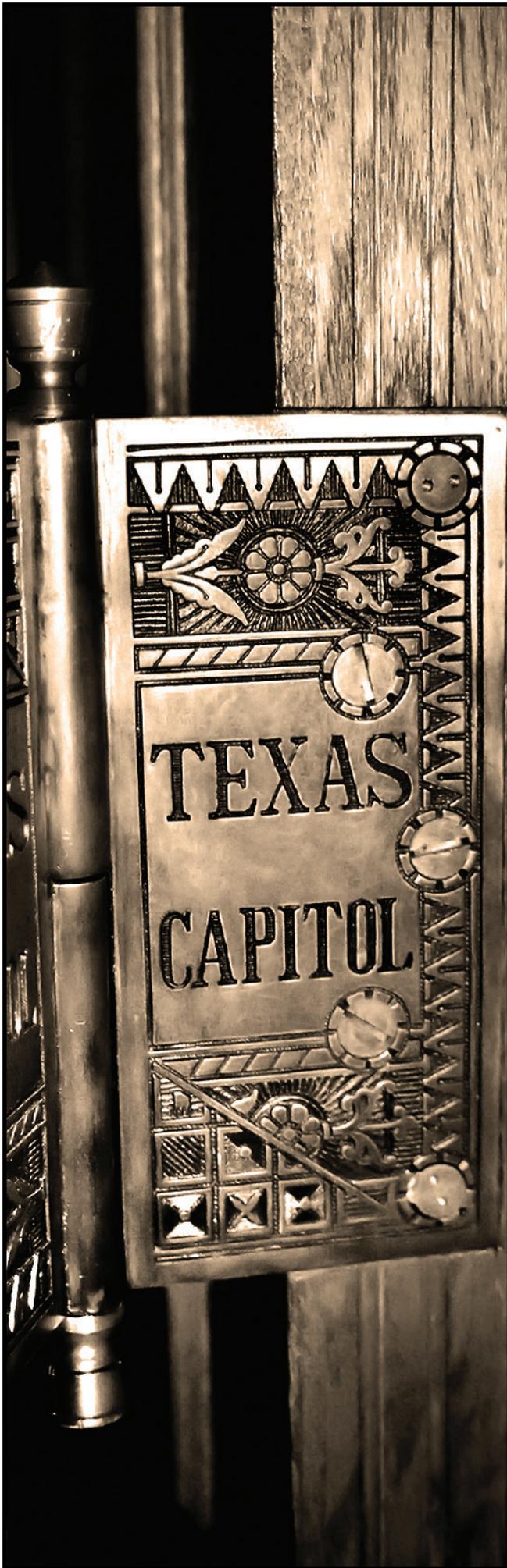


# SUNSET ADVISORY COMMISSION

FINAL REPORT  
WITH LEGISLATIVE ACTION

*Public Utility  
Commission of Texas*

JULY 2013



# *Sunset Advisory Commission*

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*Cover photo: The Texas Capitol is a marvel of craftsmanship down to the smallest details. The beautifully carved wood door frames are emphasized with elaborate, custom-designed bronze hinges and hardware produced especially for the building by Sargent and Co. of New Haven, Connecticut, in the late 1880s. The eight inch by eight inch hinges are inscribed with the words "Texas Capitol", decorated with incised designs of geometric and stylized floral motifs, and weigh over seven pounds each.*

# **PUBLIC UTILITY COMMISSION OF TEXAS**

**SUNSET FINAL REPORT WITH LEGISLATIVE ACTION  
JULY 2013**

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This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, November 2012* – Sunset staff develops a separate report on each individual agency, or on a group of related agencies. Each report contains both statutory and management recommendations developed after the staff’s extensive evaluation of the agency.
  - *Sunset Staff Report with Hearing Material, December 2012* – Adds responses from agency staff and the public to Sunset staff recommendations, as well as new issues raised for consideration by the Sunset Commission at its public hearing.
  - *Sunset Staff Report with Decision Material, January 2013* – Adds additional responses, testimony, or new issues raised during and after the public hearing for consideration by the Sunset Commission at its decision meeting.
  - *Sunset Staff Report with Commission Decisions, January 2013* – Adds the decisions of the Sunset Commission on staff recommendations and new issues. Statutory changes adopted by the Commission are presented to the Legislature in the agency’s Sunset bill.
  - *Sunset Final Report with Legislative Action, July 2013* – Summarizes the final results of an agency’s Sunset review, including action taken by the Legislature on Sunset Commission recommendations and new provisions added by the Legislature to the agency’s Sunset bill.
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# SUMMARY

# SUMMARY

This special purpose review of the Public Utility Commission 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 the Electric Reliability Council of Texas (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 failed on a point of order called on the House floor in the waning days of the 82nd Legislature. In a separate bill, the Legislature continued PUC for two years, and focused this current Sunset staff review on the appropriateness of PUC-related recommendations voted on and adopted by the Sunset Commission in 2010 and 2011.

Sunset staff has concluded that most of the Sunset Commission’s previous recommendations remain appropriate, and that statutory direction to ensure their long-term implementation is still needed. Of the 14 statutory recommendations considered in the scope of this limited review, Sunset staff recommends 11 for reconsideration. The other three recommendations, all related to telecommunications, passed in Senate Bill 980 and do not need to be considered again. The chart, *Status of Sunset Commission Recommendations Included in Senate Bill 661, 82nd Legislature*, shows the status of these and other Sunset Commission recommendations related to PUC, ERCOT, and TCEQ, and indicates those recommendations considered to be within the purview of this limited follow-up review.

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*PUC has made steady progress in implementing Sunset recommendations.*

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Although statutory change is still needed for full and continued implementation of Sunset Commission recommendations, PUC and other agencies and entities affected by Sunset Commission recommendations have made steady progress in implementing major recommendations. PUC and ERCOT have worked together to implement the enhanced oversight mechanisms that the Sunset Commission recommended last session. Acting on the Sunset recommendation and also spurred by an interim charge to the Senate Committee on Natural Resources, PUC, TCEQ, and others have held discussions about the logistics of a transfer of water and sewer rate regulation from TCEQ to PUC.

Going beyond the Sunset Commission’s recommendation to transfer water and sewer regulation to PUC, a workgroup involving the Senate Natural Resources and Business and Commerce committees, staff from the affected agencies, and

water and wastewater utilities has met this interim to consider ways to improve the ratemaking structure of water and sewer regulation. Because statute confines the current Sunset staff review to the continued appropriateness of Sunset Commission recommendations from two years ago, this report does not address ratemaking provisions. Certainly, the Sunset Commission itself does not face this limitation in its recommendations to the Legislature.

The following material summarizes PUC-related recommendations from last biennium that continue to be appropriate for consideration, and adds an additional recommendation to clarify the funding mechanism previously recommended for the transfer of water and sewer rate-related regulation. The report also includes an evaluation of agency reporting requirements that the Legislature now requires of all Sunset reviews.

## Issues and Recommendations

### *Issue 1*

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

##### **Recommendations**

- Increase PUC's administrative penalty authority to \$100,000 per violation per day for electric industry participants' violations of ERCOT's reliability protocols or PUC's wholesale reliability rules.
- In limited circumstances, authorize PUC to issue emergency cease-and-desist orders to electric industry participants.
- Require PUC to provide for the renewal of certificates for Competitive Local Exchange Carriers.

### *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.**

##### **Recommendations**

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

## ***Issue 3***

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

#### **Recommendations**

- Transfer responsibility for regulating water and wastewater rates and services from the Texas Commission on Environmental Quality to PUC.
- 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.
- 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.
- Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority, contingent on any transfers, to determine opportunities for standardization.
- 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.

## ***Issue 4***

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

#### **Recommendation**

- 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.

## ***Issue 5***

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

#### **Recommendations**

- Continue the Public Utility Commission for 10 years.
- Prohibit PUC Commissioners from being employed by the Electric Reliability Council of Texas for two years after leaving PUC.

## Fiscal Implication Summary

Two issues in this report have fiscal implications, as summarized below.

**Issue 1** — Increasing administrative penalties from a maximum of \$25,000 to \$100,000 per violation per day for reliability-related infractions could increase revenues to the General Revenue Fund, but because amounts generated would depend on the number and seriousness of future violations subject to increased enforcement penalties, a fiscal impact could not be estimated.

**Issue 3** — Transferring the regulation of water and sewer utilities from TCEQ to PUC is intended to initially be revenue and cost neutral. 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,
- Office of Public Utility Counsel, one employee and \$81,000, and
- State Office of Administrative Hearings, \$184,000.

## SUMMARY OF FINAL RESULTS

### *H.B. 1600 Cook (Nichols)*

The Public Utility Commission (PUC) is the most reviewed agency in Sunset history. The importance of electric and telephone services and the evolution of electric and telephone industries from monopoly to restructured markets promoting competition underlie the legislative scrutiny PUC receives.

This cycle's review of PUC fits this historic pattern. The agency underwent Sunset review in 2011, but the Sunset bill failed to pass. The Legislature directed the Sunset Commission to immediately review PUC again for the 2013 legislative session, focusing on an assessment of the continuing relevance of Sunset Commission recommendations from the preceding review. This biennium's Sunset review of PUC resulted in the enactment of House Bill 1600, which includes most of the Sunset Commission recommendations from last biennium.

House Bill 1600 features the transfer of rate-related regulation of water and sewer utilities from the Texas Commission on Environmental Quality (TCEQ) to PUC, allowing TCEQ to concentrate on its core environmental mission while taking advantage of PUC's historic ratemaking expertise. The bill also revises water and sewer utility ratemaking from its current one-size-fits-all design to better accommodate differences in size and capacity available in the state's water and sewer utilities and improves services to consumers. The legislation gives the Office of Public Utility Counsel (OPUC) broad authority to advocate for residential and small commercial customers in this revised regulatory system.

The bill also gives PUC more tools to help ensure efficient and accountable operation of the state's electric grid and better protect electric customers. Of particular importance, House Bill 1600 adds provisions to strengthen PUC's oversight of the Electric Reliability Council of Texas (ERCOT). House Bill 1600 also includes provisions to improve PUC's governance. The bill requires commissioners to have specific types of relevant experience to help ensure that agency leadership is qualified to address complicated and critical utility issues.

The following material summarizes results of the Sunset review of PUC.

### **Water and Sewer Utility Economic Regulation**

- Transfers responsibility for regulating water and wastewater rates and services from TCEQ to PUC on September 1, 2014.
- Revises water and sewer utility ratemaking to accommodate the differing regulatory needs and capacities of water and sewer utilities, with rules adopted by September 1, 2015.
- Provides for OPUC to represent residential and small commercial interests relating to water and wastewater utilities, beginning September 1, 2013.

- Requires PUC to make a comparative analysis of statutory ratemaking provisions under its authority to determine opportunities for standardization.
- Requires PUC and OPUC to analyze their staffing requirements and report potential changes in staffing needs to the Legislative Budget Board and the Governor's budget office.
- By rider in Senate Bill 1 (General Appropriations Act), transfers funding and personnel from TCEQ to PUC and appropriates new funding and personnel for OPUC to carry out the agencies' new responsibilities related to the economic regulation of water and sewer utilities. (See the Fiscal Implication section for more detail.)

### **Regulation and Oversight**

- Authorizes PUC to issue emergency cease-and-desist orders to electric industry participants in circumstances such as those that threaten reliable electric service or create an immediate danger to public safety.
- Adds prohibitions related to the use of data from an advanced metering system.
- Requires PUC to provide for the renewal of certificates for Competitive Local Exchange Carriers.
- Requires PUC to exercise additional oversight authority over ERCOT through:
  - 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.
- Requires ERCOT's System Administration Fee to vary when needed to match revenues to the budget approved by PUC.

### **Reports**

- Abolishes PUC's report relating to customer awareness for telecommunications markets and the System Benefit Fund report to the now abolished Electric Utility Restructuring Legislative Oversight Committee.

### **Governance and Continuation**

- Prohibits PUC Commissioners from being employed by ERCOT for two years after leaving PUC, and makes other changes related to Commissioner or executive director conflicts of interest.
- Adds qualifications to help ensure the competence of PUC Commissioners.
- Continues PUC for 10 years.

**Fiscal Implication**

Fiscal implications of the Sunset review result from provisions of House Bill 1600 and related legislation. Senate Bill 1 makes the following rider transfers and expenditures from the Water Resource Management Account:

- transfers from TCEQ to PUC \$1,429,818 and 20 FTEs on September 1, 2014, for costs associated with the current level of TCEQ's regulatory activity;
- transfers from TCEQ to PUC \$184,000 on September 1, 2014 to fund water and utility case hearings at the State Office of Administrative Hearings; and
- appropriates to OPUC an additional \$499,680 annually, beginning September 1, 2013 for five additional employees. This funding is a result of Senate Bill 567, a non-Sunset bill that also expands OPUC's duties related to water and sewer utilities. Although these provisions were also added to House Bill 1600, in a "belts and suspenders" approach to better ensure passage, the costs are attributed to Senate Bill 567 and not the Sunset bill.



—— **STATUS OF SUNSET COMMISSION  
RECOMMENDATIONS**

### **Status of Sunset Commission Recommendations Included in Senate Bill 661, 82nd Legislature**

This chart sets out Sunset Commission recommendations in Senate Bill 661, which included recommendations on PUC, ERCOT, and the transfer of water and sewer regulation from the Texas Commission on Environmental Quality to PUC. Not all of these recommendations are within the scope of the current follow-up review of PUC, and those are indicated in the chart. The numbering system on the left reflects the recommendation numbers found in the Sunset Commission's *Report to the 82nd Legislature*.

2010 Recommendation	Status
<b>Public Utility Commission Sunset Recommendations</b>	
<b>Issue 1 – PUC Lacks Regulatory Tools Needed to Provide Effective Oversight and Prevent Harm to the Public.</b>	
<b>Change in Statute</b>	
1.1 Increase PUC's administrative penalty authority to \$100,000 per violation per day for electric industry participants' violations of Electric Reliability Council of Texas' (ERCOT's) reliability protocols or PUC's wholesale reliability rules.	<b>Not Implemented</b> — See Issue 1 of this report.
1.2 Authorize PUC to issue emergency cease-and-desist orders to electric industry participants.	<b>Not Implemented</b> — See Issue 1 of this report.
1.3 Require PUC to provide for the renewal of certificates for Competitive Local Exchange Carriers and Interexchange Carriers.	<b>In Progress / Statutory Change Still Needed</b> — See Issue 1 of this report.  The purpose of the renewal process was to help PUC identify Competitive Local Exchange Carriers and Interexchange Carriers that are no longer in business or change contact information, thus allowing the agency to have an accurate roster of registrants. PUC has established a process to accomplish that purpose for Interexchange Carriers, but continues to need the statutory change recommended in Issue 1 for Competitive Local Exchange Carriers.
<b>Management Action</b>	
1.4 PUC should publish additional complaint and enforcement data related to the electric industry on its website.	<b>In Progress</b> — PUC provides the number and types of complaints for electric retail providers on its <a href="http://powertochoose.org">powertochoose.org</a> website, but does not currently provide information on the disposition of complaints, as recommended by the Sunset Commission. The agency began collecting this information in September 2012, and anticipates making it publicly available on its website beginning in March 2013. The agency is also conducting surveys of users of its website to develop additional enhancements to address needs and improve usability.

2010 Recommendation	Status
	<p>In compliance with Sunset Commission recommendations, PUC provides agency enforcement activity dating back to 2010 on its <a href="http://puc.texas.gov">puc.texas.gov</a> website, updated quarterly. The activity report lists the company penalized, the violation type, and the amount of the fine ordered.</p> <p>In October 2012, PUC initiated a project on customer complaints and enforcement activities that will allow for public input on that information. PUC staff plan to report summary information from the project to its Commission in an open meeting in December 2012, to satisfy the Sunset Commission recommendation for descriptive statistics and trend information for agency enforcement actions.</p>
<p><b>Issue 2 – Outdated Statutory Provisions Related to the Telecommunications Industry Lead to Unnecessary Regulation or Services that Are No Longer Requested.</b></p>	
<p><b>Change in Statute</b></p>	
<p>2.1 Eliminate the requirement for PUC to approve customer-specific contracts.</p>	<p><b>Implemented</b> — The 82nd Legislature adopted S.B. 980, which eliminated these duties imposed on PUC, accomplishing the same purpose as the Sunset Commission’s recommendations.</p>
<p>2.2 Eliminate the requirement for telecommunications providers to routinely file contracts for private networks with PUC.</p>	
<p>2.3 Eliminate the process for establishing new extended area service.</p>	
<p><b>Issue 3 – The State Has a Continuing Need for the Public Utility Commission.</b></p>	
<p><b>Change in Statute</b></p>	
<p>3.1 Continue the Public Utility Commission for 12 years.</p>	<p><b>Not Implemented</b> — See Issue 5 of this report. These recommendations require changes in statute.</p>
<p>3.2 Prohibit PUC commissioners from being employed by ERCOT for two years after leaving PUC.</p>	

2010 Recommendation	Status
<b><i>Electric Reliability Council of Texas Sunset Recommendations</i></b>	
<b>Issue 1 – The Electric Reliability Council of Texas Needs Better Oversight to Address High Risk in Its Operations.</b>	
<b>Change in Statute</b>	
<p>1.1 Require PUC to exercise additional oversight authority of the Electric Reliability Council of Texas by:</p> <ul style="list-style-type: none"> <li>• annual review and approval of ERCOT's entire budget;</li> <li>• prior review and approval of all uses of debt financing; and</li> <li>• annual review of PUC-approved performance measures tracking ERCOT's operations.</li> </ul>	<p><b>In Progress / Statutory Change Still Needed</b> — See Issue 2 of this report.</p> <p>In March 2011, PUC adopted a new rule that accomplishes the major intent behind Sunset recommendations, but statutory change is still needed to ensure these changes continue in the future.</p>
<p>1.2 Establish that the System Administration Fee vary according to the revenues needed to fund the budget approved by PUC, and require reporting by ERCOT to ensure that budget projections are met.</p>	<p><b>Not implemented</b> — See Issue 2 of this report.</p> <p>Only small adjustments in the ERCOT budget have been necessary since the last session, and ERCOT has made those adjustments without varying the System Administration Fee. Statutory change is still needed to ensure that ERCOT and PUC use the mechanism recommended by the Sunset Commission, as adjusted in Issue 2 of this report, to vary the System Administration Fee when necessary.</p>
<p>1.3 Create a Sunset clause providing for future Sunset reviews of ERCOT, concurrent with reviews of the Public Utility Commission.</p>	<p><b>Implemented</b> — S.B. 652, enacted by the 82nd Legislature, requires Sunset review of ERCOT when PUC is under review, with the exception of the Sunset Commission's current re-review of PUC.</p>
<b>Issue 2 – The Dominance of Electric Market Stakeholders on the ERCOT Board Potentially Reduces Its Objectivity.</b>	
<b>Change in Statute</b>	
<p>2.1 Change the makeup of the ERCOT Board of Directors to promote greater objectivity and financial expertise.</p>	<p><b>Not Implemented</b> — The 82nd Legislature did not adopt these provisions. These recommendations are out of scope for the limited re-review of PUC because they deal primarily with ERCOT.</p>
<p>2.2 Revise ERCOT's protocol process to have the ERCOT Board of Directors drive protocol development and revisions.</p>	

2010 Recommendation	Status
<b><i>Texas Commission on Environmental Quality Sunset Recommendation</i></b>	
<b>Issue 8 – The State Could Benefit From Combining Regulatory Functions Related to Water Utilities in the Public Utility Commission.</b>	
<b>Change in Statute</b>	
8.1 Transfer responsibility for regulating water and wastewater rates and services from TCEQ to PUC.	<b>Not Implemented</b> — See Issue 3 of this report. This recommendation requires changes in statute.
8.2 Eliminate the existing water and wastewater utility application fees and adjust the Water Utility Regulatory Assessment Fee to pay for utility regulation at PUC.	<b>Partially Implemented</b> — While this recommendation was partially implemented, it deals most directly with the Sunset review of TCEQ last session and is therefore considered out of scope for the staff's current Sunset review of PUC. The Legislature eliminated the specified water and wastewater utility application fees in H.B. 2694, the Sunset bill for TCEQ, but did not adopt the portion of this recommendation that would have adjusted the Water Utility Regulatory Assessment Fee.
8.3 Require the Office of Public Utility Counsel to represent residential and small commercial interests relating to water and wastewater utilities.	<b>Not Implemented</b> — See Issue 3 of this report. These recommendations require changes in statute.
8.4 Require PUC to make a comparative analysis of statutory ratemaking provisions under its authority to determine opportunities for standardization.	
8.5 Require PUC to analyze the staffing requirements and report potential changes in staffing needs to the Legislative Budget Board and the Governor's budget office.	
8.6 Require the regulatory agency overseeing water and wastewater utility rates to provide certain information about rate cases to rate payers.	<b>Implemented</b> — The Legislature adopted this recommendation in H.B. 2694, which requires TCEQ to provide, on request and at a reasonable cost, electronic copies of certain information to the extent that the information is available and is not confidential. In addition, H.B. 2694 requires TCEQ to provide copies of all information provided to the agency to the Office of Public Utility Counsel on request, at no cost to OPUC. TCEQ has added a posting to its website regarding the availability of such information, and modified its instruction document for filing a rate/tariff change application informing applicants that they can submit an electronic copy of the application via email.

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**AGENCY AT A GLANCE**  
**NOVEMBER 2012**

# AGENCY AT A GLANCE

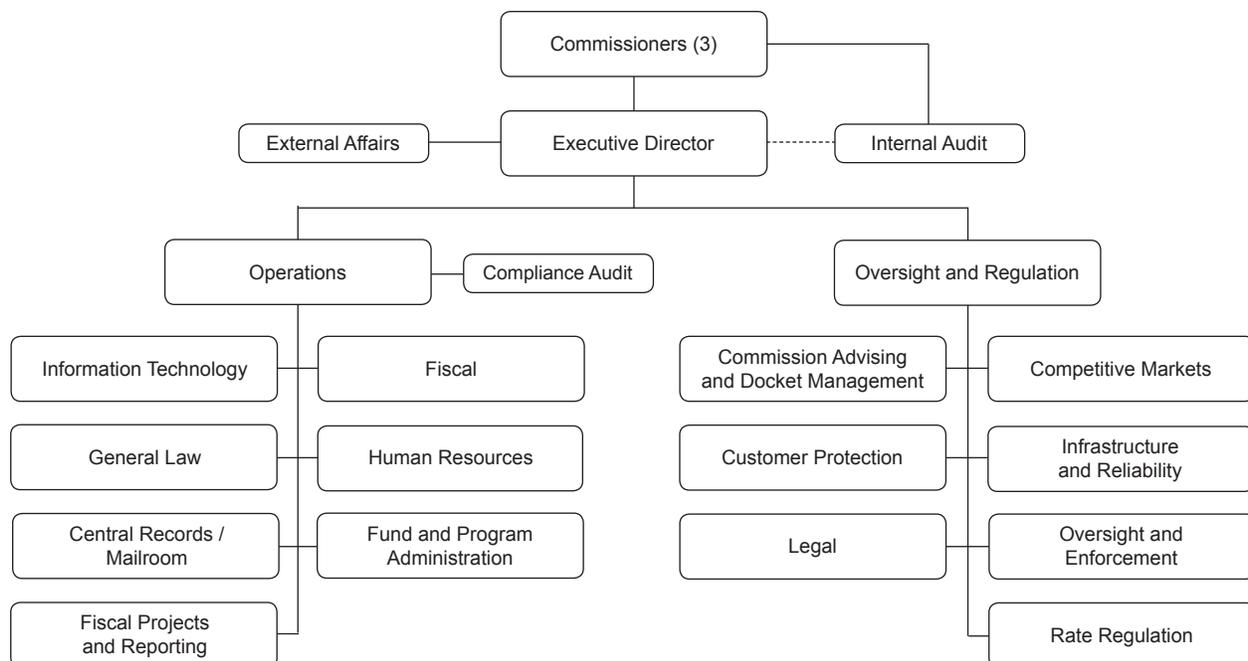
The Public Utility Commission oversees electric and telecommunications companies in Texas. The Legislature created PUC in 1975 to regulate rates and services of monopoly utilities as a substitute for competition. Since then, legislative changes restructuring and deregulating major portions of electric and telecommunications markets have modified PUC's focus to also include fostering competition through functions such as market design, licensing, resolution of disputes among companies, investigation and enforcement, and complaint resolution. PUC also administers programs for assisting low-income consumers with their electric and telephone bills.

Under these restructured markets, PUC spends considerably more time on electric than on telecommunication matters, even after recent legislative enactments adding to the agency's telecommunication workload. Appendix A, *Companies Regulated by PUC*, gives details on PUC's regulatory oversight by type of company.

## Key Facts

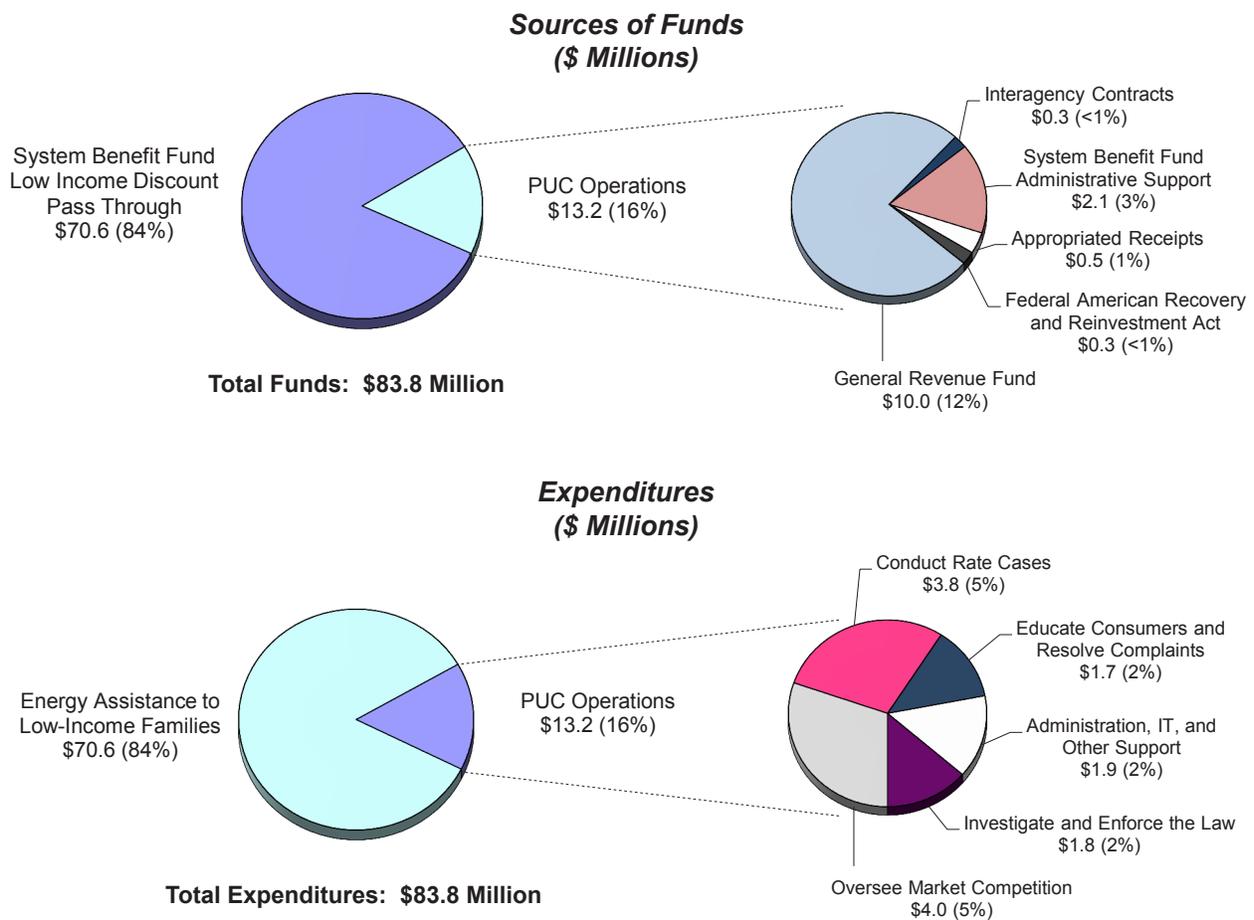
- **Policy Board.** PUC is governed by a three-member, full-time Commission appointed by the Governor to represent the general public: Donna L. Nelson, Chair; Kenneth W. Anderson, Jr.; and Rolando Pablos.
- **Staffing.** PUC had about 189 authorized staff in fiscal year 2011, which has been reduced by 18 positions for fiscal years 2012 and 2013. The following organizational chart displays the agency's divisions as currently constituted.

**Public Utility Commission Organizational Chart**



- Funding.** The pie charts, *Public Utility Commission Sources of Funds and Expenditures*, depict the agency’s funding for fiscal year 2011. PUC expended about \$83.8 million in fiscal year 2011. The agency operated on \$13.2 million, with about 76 percent of that amount from General Revenue and most of the remainder from the System Benefit Fund, which receives revenues from a fee on electric consumers in areas of the state open to competition. PUC passed through remaining appropriations of about \$70.6 million from the System Benefit Fund to reimburse electric companies for providing discounts to low-income electricity consumers in competitive areas.

**Public Utility Commission Sources of Funds and Expenditures  
FY 2011**



For the current biennium, the Legislature reduced PUC’s reliance on General Revenue appropriations, instead increasing appropriations from the System Benefit Fund for agency operations. This funding change reduced PUC’s General Revenue funding from about 76 percent of its operating budget to about 31 percent for fiscal year 2012.

- **Electric Industry Oversight.** PUC oversees the operations and fee requests of the Electric Reliability Council of Texas (ERCOT), a quasi-governmental entity that manages the electric grid and coordinates the activities of electric companies operating in the 75 percent of the state open to competition. The ERCOT region operates through companies that serve uniquely as either generators of electricity, transporters and distributors of electricity, or retail sellers of electricity. In fiscal year 2011, PUC exercised various levels of oversight over 211 power generation companies, six transmission and distribution utilities, and 116 retail electric providers; and adopted or amended 13 rules relating to electric competition. PUC conducted 26 transmission and distribution utility rate cases in fiscal year 2011 since these entities are still regulated monopolies. Additionally, PUC approved 36 electric Certificates of Convenience and Necessity in fiscal year 2011, with 25 of those related to the placement of transmission lines in Competitive Renewable Energy Zones.

In areas of the state not open to competition, PUC regulates the rates, services, and service quality of the four vertically integrated electric utilities that continue to operate as monopolies. In fiscal year 2011, PUC conducted 11 electric rate cases for these utilities.

PUC also administers renewable energy and energy efficiency programs throughout the state. The renewable energy program is carried out by competitive generation companies and retailers, and the energy efficiency program is carried out by electric utilities, both under PUC rules and oversight.

- **Telecommunications Industry Oversight.** PUC has varying degrees of regulatory responsibility over local telephone lines operated by incumbent local exchange carriers (ILECs), such as AT&T and Verizon. About 70 percent of the state's local telephone lines are located in deregulated, mostly urban areas.<sup>1</sup> By contrast, mostly rural areas of the state are under PUC's full rate and quality-of-service regulation. For ILECs in these areas, PUC conducted eight minor telephone rate proceedings in fiscal year 2011. In other areas of the state, ILECs operate under relaxed regulatory requirements called "incentive" regulation, generally with flexibility to change prices without going through a rate case.

PUC also oversees competitive local exchange carriers (CLECs) that may own their own facilities, such as a cable company offering voice service, or may resell services provided by an ILEC. These companies are not rate regulated, although they do have to meet certain service standards. Currently, 321 companies do business as CLECs in Texas. PUC resolves interconnection disputes among telephone companies, such as disputes that arise when a CLEC seeks to connect with the network of an incumbent carrier. PUC also provides some oversight of other telecommunications services, including automatic dial announcing devices, pay phones, and long distance providers. PUC has no jurisdiction over wireless companies, which the federal government oversees.

In 2005, the Legislature added to PUC's responsibilities the issuance of State-issued Certificates of Franchise Authority for video providers, taking the place of franchise agreements for video services that had been negotiated separately with each municipality. By the end of fiscal year 2011, PUC had issued 83 State-issued Certificates of Franchise Authority.

- **Customer Protection.** PUC educates the public about electricity and local telephone services, and assists customers with complaints. In fiscal year 2011, PUC responded to about 95,000 information requests, and concluded 10,000 complaints, with each complaint resolved in an average of 15 days.

- **Enforcement.** PUC takes formal enforcement action against violators of the Public Utility Regulatory Act and PUC rules. The agency conducted 45 enforcement investigations and collected \$1.7 million in penalties against electric and telecommunications companies in fiscal year 2011.
- **Homeland Security and Emergency Response.** PUC assists the Texas Division of Emergency Management on homeland security and critical infrastructure matters involving electric and telecommunications utilities. PUC also has an emergency management response team that tracks outages and coordinates power and communications restoration after extreme weather events.
- **Assistance Programs.** PUC administers several programs to help ensure access to basic utility services. The Low-Income Discount Program provided discounts to about 574,000 low-income electricity customers per month for a five-month period in 2011 in areas open to electric competition. This program was funded by expenditures of \$70.6 million from the System Benefit Fund in fiscal year 2011.

The Universal Service Fund, which is funded through fees on telecommunications providers and maintained outside the State Treasury through a contractual arrangement, provides assistance through several programs. The Fund's principal purpose is to offset the cost of telephone service in high-cost, mostly rural areas of the state, to help keep telephone rates affordable. Expenditures for these high-cost areas totaled \$345.9 million in fiscal year 2011, or about 81 percent of all Universal Service Fund expenditures of \$426.1 million in that fiscal year. The Lifeline program, which offers discounts to low-income telephone customers, served about 727,000 participants per month in fiscal year 2011. Relay Texas, providing telecommunications services for people with speech and hearing impairments, completed about 1.2 million calls in fiscal year 2011.

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<sup>1</sup> Public Utility Commission, *Report to the 82nd Texas Legislature: Scope of Competition in Telecommunications Markets of Texas* (Austin, Texas, January 2011), p. 51.

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# ISSUES

# ISSUE 1

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

### Background

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, the Public Utility Commission (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. For more on PUC's regulatory responsibilities, see Appendix B.

In its 2010 review, the Sunset Commission recommended giving PUC better tools for oversight of the electric and telecommunications markets. Those recommendations were incorporated into Senate Bill 661, but the bill did not become law.

### Findings

#### **The Sunset Commission's 2010 recommendations to improve PUC's oversight and enforcement of electric and telecommunications industries continue to be appropriate.**

The Sunset Commission's proposed changes in law made during the 2010 Sunset review cycle are addressed below.

- **Administrative penalties.** PUC has enforcement authority over its own reliability rules and ERCOT's reliability protocols, among other areas. PUC can assess an administrative penalty of up to \$25,000 per violation per day for violations of state law or PUC rules by electric industry participants.

This level of administrative penalty may not be sufficient for violations that affect grid reliability, which can cause serious grid failures, such as blackouts. By mutual agreement, ERCOT pays various entities to adjust electric production or load at certain times; if late in acting on ERCOT's orders, these entities could profit from the payment without making the adjustments as agreed. These agreements can reach into the millions of dollars annually for these market participants. The failure to live up to the terms of such an agreement can be serious, as seen on February 2, 2011, when extreme cold weather and an inadequate response by several market participants contributed to an energy emergency alert at ERCOT, resulting in rolling blackouts statewide to avert what could have been a major disaster had the entire grid failed.

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*PUC's administrative penalty authority may not be enough to deter violations that affect grid reliability.*

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Further underscoring its importance, reliability of the electric grid is one of the few areas of federal oversight of ERCOT, with federal standards being enforced through the Texas Reliability Entity. This organization has a delegated arrangement with the North American Electric Reliability Corporation (NERC) to conduct reliability assessments and administer a compliance program enforcing federal reliability standards in the ERCOT region.

In comparison to PUC's \$25,000 limit, the Texas Reliability Entity has authority to assess administrative penalties up to \$1 million per violation per day for violations of federal reliability standards. Federal and state reliability standards are different in most respects, so Texas cannot rely on the Texas Reliability Entity's penalty to cover state standards or encourage compliance with them. Federal reliability standards are broad and tend to focus more on ERCOT's role in maintaining electric grid reliability, while ERCOT protocols are more specific and focus on the role of market participants in reliability.

Despite largely differing state and federal oversight focuses, electric industry participants raised concerns during the 2011 legislative session about the potential for an electric participant to be penalized twice for the same offense — once by PUC and once by the Texas Reliability Entity. Later versions of the Sunset bill included language to address this situation should it arise, and this legislative modification still makes sense in this current discussion.

In addition to the penalty amount, assessing penalties on a per violation per day basis is a way to enhance penalties to address serious situations in which a company may commit multiple violations in a single day. Historically, PUC staff interpreted PUC's authority so that certain reliability violations could be seen as multiple violations per day, expressed as timeliness or adequacy of response calculated on a per megawatt basis.

In February 2010, however, the PUC Commissioners ruled that the statute did not allow calculation of penalties in such a manner, despite their recognition of the critical importance of ensuring reliability to the ERCOT grid. Nor was the Commission persuaded that the behavior in the matter under consideration was a mere technical violation.<sup>1</sup> The result of the ruling was that what had been considered multiple reliability violations are now being viewed as single violations. This interpretation limits PUC's ability to assess a meaningful penalty for reliability-related violations to provide more of a deterrent against the economic benefit that market participants enjoy through ERCOT's reliability programs. Given the importance of maintaining the reliability of the electric grid and the need to ensure that market participants meet their reliability obligations, the Sunset Commission's recommendation to raise the penalty maximum to \$100,000 per violation per day continues to be relevant.

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*The crucial importance of grid reliability makes increasing the maximum penalty to \$100,000 still relevant.*

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- **Emergency cease-and-desist orders.** A regulatory agency should be able to stop unlicensed or harmful activity immediately. PUC's current authority relating to electric industry participants does not meet this standard. To stop an action, PUC first must issue a notice to the alleged violator and provide an opportunity for a hearing before issuing a cease-and-desist order. By then the harm may have been done. PUC has issued only one cease-and-desist order using its current authority since fiscal year 2007.

Immediate action may be crucial if the harmful behavior affects electric reliability or causes an immediate harm to consumers, such as disconnecting consumers during a summer disconnect moratorium. Other regulatory agencies such as the Texas Department of Insurance have emergency cease-and-desist authority to quickly address harmful activities. As in 2010, the Sunset Commission's recommendation to give PUC the authority to issue emergency cease-and-desist orders would promote electric reliability and better protect consumers. Further, making violations of these orders subject to additional sanctions, such as administrative penalties, would help make them more enforceable.

- **Renewal process.** PUC does not have a feature in its statute allowing the agency to renew registrations, certifications, or permits. In its 2010 review, the Sunset Commission noted that absence of a renewal process has made it difficult for PUC to know when Competitive Local Exchange Carriers (CLECs) and Interexchange Carriers (IXCs) go out of business or change contact information. Without an accurate roster of regulated businesses, PUC has to use limited resources to figure out whom to send information to, where to send it, or from whom to expect required filings.

The Sunset Commission adopted a recommendation to require PUC to provide for the renewal of registrations for CLECs and IXCs. Although the bill containing the provision failed to pass, PUC modified its substantive rules in 2010 to require IXCs and others, but not CLECs, to submit annually a report to maintain an active registration.<sup>2</sup> Under the rules, PUC revokes the active registration of an IXC that fails to meet its reporting requirement. CLECs are not included in this group because they hold a certificate granted by the Commission, which should require Commission action to revoke, with more extensive due process procedures needed for such action.

PUC began IXC revocations in 2011, and the number of registered IXCs decreased from 937 in 2009 to 284 in 2011. Given the impact of PUC's rulemaking efforts, Sunset staff does not re-recommend renewal of registrations for IXCs. However, PUC continues to need clear rulemaking authority to provide for certification renewals for CLECs. The Sunset Commission recommendation required the renewal of certificates and registrations to be accomplished in about seven months after enactment of legislation. PUC has requested an extra year be added to that time because of the complexity in getting rules passed and putting in place other parts of the certification process.

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*PUC does not have authority to take rapid action when harm to consumers or grid reliability is imminent.*

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## Recommendations

### *Change in Statute*

#### **1.1 Increase PUC's administrative penalty authority to \$100,000 per violation per day for electric industry participants' violations of ERCOT's reliability protocols or PUC's wholesale reliability rules.**

PUC's administrative penalty authority for reliability-related violations by electric industry participants would increase from a maximum of \$25,000 per violation per day to \$100,000 per violation per day under limited circumstances. To ensure that all parties are aware of the potential penalties for reliability-related violations, PUC would pass rules adopting a penalty matrix and specifying which violations are serious enough to warrant higher penalties. New to the recommendation this time, statute would clarify that, if a person pays a federal penalty for violation of a reliability standard that is the same or substantially the same as a standard adopted by ERCOT, PUC could not assess an administrative penalty for the same circumstance. In addition, an administrative penalty paid to the State before the date the person paid the federal penalty for the same or substantially the same violation would be subject to refund.

#### **1.2 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 fraudulent, 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.

#### **1.3 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.

## Fiscal Implication

Increasing administrative penalties could increase revenues to the General Revenue Fund, but because amounts generated would depend on the number and seriousness of future violations subject to increased enforcement penalties, a fiscal impact could not be estimated. Providing for the renewal of the 321 Competitive Local Exchange Carriers would not have a significant fiscal impact to the agency because carriers not satisfying the simple renewal requirements generally are not expected to challenge any subsequent action by the Commission to remove their certification.

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<sup>1</sup> Public Utility Commission, Docket No. 37634, Item Number 13, Order on Certified Issue, February 25, 2010, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/37634\\_13\\_642919.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/37634_13_642919.PDF).

<sup>2</sup> 16 T.A.C. Section 26.107.



# RESPONSES TO ISSUE 1

## Recommendation 1.1

*Increase PUC's administrative penalty authority to \$100,000 per violation per day for electric industry participants' violations of ERCOT's reliability protocols or PUC's wholesale reliability rules.*

### Agency Response to 1.1

The Commission agrees with this recommendation, except for a concern related to the provision that states “an administrative penalty paid to the State before the date a person paid a federal penalty for the same or substantially the same violation would be subject to refund.” While the PUC appreciates the concern that it is inequitable for market participants to be fined by multiple regulators for the same violation, the Commission is concerned about the logistical implications of this provision, given that the PUC has historically acted more quickly than its federal counterpart in assessing reliability related penalties.

Once a penalty is paid to the PUC, the PUC is required to remit these funds to the Comptroller within three business days, at which point the Commission has no control over the funds. Sunset staff has indicated that Article IX, Section 8.05, of the General Appropriations Act provides a mechanism for refunding a previously paid penalty. However, that provision contains a four-year limitation for providing a refund. As a result, the PUC is concerned that an open-ended refund obligation on the PUC may result in agency appropriations being at risk to fulfill a refund obligation.

### Agency Modifications

1. Establish a statutory mechanism requiring the Comptroller to release administrative penalty funds that a company paid to the State if the company also paid a later federal penalty for the same or a similar violation, regardless of how much later that federal penalty was paid.
2. Alternatively, place a four-year limitation on PUC's refund obligation to conform to repayment requirements in the General Appropriations Act.

(Brian H. Lloyd, Executive Director – Public Utility Commission)

### **For 1.1**

Katie Coleman, Energy Counsel – Texas Association of Manufacturers, Austin

Norma Cortez, Member – Citizen.org

Jay Doegey, Board President, and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington, and Steering Committee of Cities Served by Oncor, Austin

Charles Land, Executive Director – TEXALTEL, Austin

Tim Morstad, Associate State Director – AARP, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

### **Against 1.1**

Bill Peacock, Vice President of Research and Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin

John W. Fainter, Jr., President – Association of Electric Companies of Texas, Inc., Austin

### **Modifications**

3. Extend the higher administrative penalty authority to violations relating to market power abuse. (Jay Doegey, Board President, and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington, and Steering Committee of Cities Served by Oncor, Austin)
4. If the legislature decides to increase the penalty authority of PUC, additional due process protections should also be enacted to be commensurate with the new regulatory risk. Such protections might include, but not be limited to, the following:
  - Require that any violation be committed knowingly before the heightened penalty amount is assessed.
  - Provide for de novo review by a state district court of any heightened administrative penalty assessed by PUC.

(John W. Fainter, Jr., President – Association of Electric Companies of Texas, Inc., Austin)

### **Recommendation 1.2**

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

#### **Agency Response to 1.2**

The Public Utility Commission agrees with Recommendation 1.2. (Brian H. Lloyd, Executive Director – Public Utility Commission)

#### **For 1.2**

Katie Coleman, Energy Counsel – Texas Association of Manufacturers, Austin

Norma Cortez, Member – Citizen.org

Jay Doegey, Board President, and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington, and Steering Committee of Cities Served by Oncor, Austin

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

Mark Zion, Executive Director – Texas Public Power Association, Austin

### **Against 1.2**

Bill Peacock, Vice President of Research and Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin

### **Modification**

5. Modify the scope of the recommendation so that the legal standard for exercising cease and desist orders is the same one used by the courts in considering the ex parte issuance of a Temporary Restraining Order, which is based on a clear showing that immediate and irreparable injury, loss, or damage will result to the applicant before notice can be served and a hearing conducted. (John W. Fainter, Jr., President – Association of Electric Companies of Texas, Inc., Austin)

### **Recommendation 1.3**

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

#### **Agency Response to 1.3**

The Public Utility Commission agrees with Recommendation 1.3. (Brian H. Lloyd, Executive Director – Public Utility Commission)

#### **For 1.3**

Katie Coleman, Energy Counsel – Texas Association of Manufacturers, Austin

Norma Cortez, Member – Citizen.org

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

#### **Against 1.3**

Kennard Woods, Counsel – Charter Fiberlink TX-CCO, LLC, Atlanta, Ga.

# COMMISSION DECISION ON ISSUE 1

(JANUARY 2013)

Adopted Recommendation 1.2, with a modification to clarify that PUC's authority to issue an emergency cease-and-desist order does not include activities that could be deemed "fraudulent."

Adopted Recommendation 1.3.

# FINAL RESULTS ON ISSUE 1

(JULY 2013)

## ***Legislative Action — H.B. 1600***

**Recommendation 1.2 with a Sunset Commission modification** — House Bill 1600 authorizes PUC to use cease-and-desist orders 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 bill provides for expedited notice and hearings when issuing cease-and-desist orders. The bill also allows companies to appeal the orders through the normal enforcement process.

**Recommendation 1.3** — House Bill 1600 requires Competitive Local Exchange Carriers to renew their certifications by January 1, 2015, so that PUC can develop an accurate list of carriers that continue to be active and subject to its limited oversight. To satisfy the renewal requirement, the carrier must submit the carrier's name, address, and annual report that are currently required. Statute authorizes 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 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.*

#### **Background**

State law and PUC action have transformed the Electric Reliability Council of Texas (ERCOT) into a much more important participant in the Texas electric marketplace since its conception by Texas' electric utilities to manage transmission of electricity between service areas. ERCOT is the Independent System Operator in Texas' restructured electric market, a role that gives it responsibility to ensure the reliable delivery of electricity, oversee the electric grid, and operate the wholesale marketplace for electricity. Today, the total retail value of Texas' electric marketplace is about \$34 billion annually.<sup>1</sup>

ERCOT has grown rapidly to accomplish its public functions, though with the completion of major initiatives and with recent cutbacks, spending and staffing levels have begun to recede from their 2010 peaks. In 2001, the year the organization began public functions as Texas' Independent System Operator, ERCOT's total spending authorization was \$122.1 million, and was \$177.1 million in its 2012 budget year.<sup>2</sup> Staffing levels were at 267 in 2001 and 622 in 2012.

ERCOT's operating budget is funded primarily through the statutorily authorized System Administration Fee, which is assessed on wholesale electricity transactions and becomes part of the overall cost of electricity.<sup>3</sup> The impact of this fee on a typical residential consumer using 1,000 kilowatt-hours of electricity per month would be \$5.01 per year, up from \$2.64 in 2001.<sup>4</sup>

ERCOT does not have bonding authority and funds capital expenditures with debt financing and revenue payments from qualified scheduling entities. The organization reports that, as of December 31, 2011, it carried accumulated debt of \$192.2 million, a decrease of \$143.9 million from its accumulated debt reported a year earlier. ERCOT expects an additional \$85.4 million net decrease in accumulated debt in 2012 for an ending projected debt balance of \$106.8 million. Cash paid for borrowed funds totaled \$15 million in 2010 and \$12 million in 2011, the last year for which data is available.<sup>5</sup>

In 2003, PUC directed ERCOT to begin developing a revised wholesale market design, called the Texas Nodal Market Implementation Project, to improve the efficiency of many aspects of the electric market. ERCOT pays for this project through debt financing and a special surcharge on electric generation. If it were directly passed through to consumers, the surcharge for the nodal project could add another \$4.50 per year to a typical residential electric bill, up from its 2006 starting point of 80 cents.<sup>6</sup> The nodal surcharge is scheduled to end in late 2012 or early 2013.

As a nonprofit corporation, ERCOT is not subject to the oversight afforded to state agencies through the legislative appropriations process. Instead, statute grants PUC broad authority to oversee ERCOT's finances, budget, and operations. The statute authorizes PUC to require ERCOT to provide reports on its revenues, expenses, and other financial matters; conduct or require audits; inspect records and accounts; and assess administrative penalties against ERCOT if it fails to adequately perform its functions or duties.

ERCOT operates entirely within Texas and does not come under the direct oversight of the Federal Energy Regulatory Commission, unlike other independent system operators whose regions cross state lines. The federal government does have a limited oversight role, however, for ensuring ERCOT's compliance with federal reliability standards.

## Findings

### **With minor adjustments, the Sunset Commission's recommendations to improve PUC's oversight of ERCOT continue to be appropriate.**

In 2010, the Sunset Commission found that PUC's oversight of ERCOT needed to be strengthened and recommended several statutory changes to accomplish this end. Although the Sunset bill incorporating these changes failed to pass, PUC and ERCOT have implemented many of the changes recommended by the Sunset Commission. However, statutory enactment of these provisions, with some adjustments, is still needed to ensure continuation of improvements in the future.

- **Budget and debt oversight.** In its review, the Sunset Commission recognized the crucial role that ERCOT plays in ensuring the reliable and efficient delivery of electricity to industry, businesses, and residential consumers. The growth and size of ERCOT's spending, debt, and staffing, even as they have declined from recent peak levels, reflect the organization's status as a major factor in the state's electric market. The Sunset Commission observed that the agency's operations had not always been well managed. The nodal project, an expensive cornerstone to improved efficiency of the electric market, resulted in huge cost overruns and project delays. Estimated at between \$108 million and \$157 million, including ERCOT's and market participants' costs when first proposed, the project's baseline budget was \$263 million when ERCOT filed its application for a final nodal surcharge in January 2007. Total nodal costs are now expected to be \$544.7 million, including costs incurred after the December 2010 go-live date. In addition, the start date was delayed by two years from December 2008 to December 2010.<sup>7</sup>

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*The growth in ERCOT's spending, debt, and staffing reflects its role in the state's electric market.*

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ERCOT had also engaged in questionable management of debt that should be structured according to the life of the asset purchased so that excessive debt does not accumulate over time. The organization's older debt at the opening of the zonal market represented a 14-year payout for some assets that were in use for only three to five years.

Given the magnitude of funds and problems in ERCOT operations, the Sunset Commission found that PUC's oversight of ERCOT's finances and debt was insufficient. Although statute grants PUC clear authority to oversee ERCOT finances and operations, PUC had used this authority sparingly. PUC did not have a process for regularly reviewing ERCOT's

budget and expenditures. Rather, such reviews occurred only when ERCOT filed a contested case requesting an increase in the System Administration Fee.

This reactive approach did not result in regular, systematic assessments of ERCOT's base budget and finances. At the time of the Sunset review in 2010, PUC had not thoroughly examined ERCOT's operations and finances in a contested case since 2006 when ERCOT last requested modification to the System Administration Fee. To address oversight deficiencies, the Sunset Commission recommended specific statutory changes to require PUC's annual review and approval of ERCOT's entire budget, prior review and approval of all uses of debt financing, and annual review of PUC-approved performance measures.

Although the Legislature did not enact these changes, in early 2011 PUC adopted amendments to several of its rules that addressed many of the Sunset Commission's concerns.<sup>8</sup> The amendments require ERCOT to obtain PUC approval of its budget, expenses, capital outlays and the issuance of debt. Under these rules, ERCOT obtained approval of its 2012 and 2013 budgets and a debt restructuring plan.<sup>9</sup>

By rule, ERCOT also reports to PUC on its performance measures and key performance indicators, strategic plan, operations, finances, risk management, emergency communications, audits, and transmission planning. ERCOT submits this information either quarterly or annually, depending on the subject matter.

PUC already has broad authority sufficient to implement most Sunset Commission changes, but the Sunset Commission's specific statutory recommendations are still appropriate to ensure PUC and ERCOT follow them in future years. Experience of the agencies now suggests minor modifications for greater flexibility or clarity in some areas. Specifically, the Sunset Commission recommended annual budget approval for ERCOT, but more flexible authority to implement a biennial process to match the state's system could be more beneficial. In addition, Sunset Commission provisions required prior review and approval of all ERCOT debt financing, but pre-approval for some standard and recurring lines of credit may impose more control than is needed, possibly affecting ERCOT's ability to obtain funds timely and efficiently to sustain its needs. The 2010 recommendations also allowed PUC to determine the most appropriate process for approving ERCOT's budget and debt, but did not specifically provide for changing statute to clearly exempt the processes from being handled as contested cases under the Administrative Procedure Act.

- **System Administration Fee.** The System Administration Fee continues to be a major source of funding for ERCOT's operations. As in 2010, no explicit statute or rule exists to allow ERCOT to flexibly change

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*PUC has adopted rules improving fiscal oversight of ERCOT, but statutory change is still needed to prevent backsliding.*

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the System Administration Fee to match the new budgeting process established above, and to do so without a contested case. Since the fee is assessed on electricity consumption, variations in electricity use mean that fee revenues change with the consumption of electricity. ERCOT has instituted cost savings measures in years that power consumption is lower than budgeted, and has used excess funds for capital projects or to make debt payments in years electric consumption is higher than budgeted.

The Sunset Commission found that certain state agencies have the means to adjust funding streams to ensure adequate funding for the work they must perform. For example, the State's financial regulatory agencies — Department of Banking, Department of Savings and Mortgage Lending, and Credit Union Department — are funded by fees set by each agency's commission to match revenues to expenditures.

The Sunset Commission recommended statutory changes that would require ERCOT to vary the System Administration Fee quarterly, within a range approved by PUC, to meet its PUC-approved annual budget under the improved budget system. Since the original recommendation, ERCOT has determined that minor variations in revenue needs could be met through small new user fees, but larger revenue variations still require modification of the System Administration Fee. ERCOT indicates that adjustments to the System Administration Fee as frequently as quarterly could add uncertainty to market participants' operations without benefitting budget issues greatly. Instead of specifying quarterly adjustments, varying the fee on a schedule that PUC and ERCOT determine works best for consumers and the market would meet the intent of the Sunset Commission and still provide a flexible tool to meet ERCOT's budgetary changes.

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*ERCOT lacks explicit authority to adjust the System Administration Fee to meet its needs.*

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## 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 require PUC to review and approve budgets for ERCOT, providing PUC with the explicit authority to approve, disapprove, or modify each 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 be required to 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, though PUC could still do so as it determines necessary. PUC would be granted rulemaking authority to 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.

While the 2011 rule amendments adopted by PUC accomplished some of these budget, debt, and reporting objectives, explicit recognition of these responsibilities and processes in statute would clarify the nature and extent of PUC's authority over ERCOT and help prevent backsliding on improved oversight.

## **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 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. This recommendation would add additional flexibility for ERCOT to match funds to its PUC-approved budget, as recommended by the Sunset Commission in 2010.

## **Fiscal Implication**

These recommendations would not have a fiscal impact to the State or to ERCOT.

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<sup>1</sup> Electric Reliability Council of Texas, "ERCOT Quick Facts," October 2012, [http://www.ercot.com/content/news/presentations/2012/ERCOT\\_Quick\\_Facts\\_Oct\\_%202012.pdf](http://www.ercot.com/content/news/presentations/2012/ERCOT_Quick_Facts_Oct_%202012.pdf).

<sup>2</sup> Public Utility Commission, Case 23320-1, Exhibit B-3 (spreadsheet), [http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch\\_Results.asp?TXT\\_CNTR\\_NO=23320&TXT\\_ITEM\\_NO=1](http://interchange.puc.state.tx.us/WebApp/Interchange/application/dbapps/filings/pgSearch_Results.asp?TXT_CNTR_NO=23320&TXT_ITEM_NO=1); and Public Utility Commission, Project No. 38533, Item Number 7, PUC Review of ERCOT Budget, order approving the ERCOT 2012 budget, Attachment A, December 2011, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533\\_7\\_713222.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533_7_713222.PDF).

<sup>3</sup> Electric Reliability Council of Texas, *Self-Evaluation Report* (Austin: Electric Reliability Council of Texas, September 2009), p. 21.

<sup>4</sup> Calculated amounts. Sources: Navigant Consulting, *Evaluation of the ERCOT Texas Nodal Market Implementation Project* (Public Utility Commission: Austin, August 2012), p. 44, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600\\_23\\_735571.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600_23_735571.PDF); and Public Utility Commission, Docket 23320, final order, October 2002, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/23320\\_479\\_370654.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/23320_479_370654.PDF).

<sup>5</sup> Public Utility Commission, Project No. 38533, Item Number 7, PUC Review of ERCOT Budget, order approving the ERCOT 2012 budget, December 2011, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533\\_7\\_713222.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533_7_713222.PDF).

<sup>6</sup> Calculated amounts. Source: Navigant Consulting, *Evaluation of the ERCOT Texas Nodal Market Implementation Project* (Public Utility Commission: Austin, August 2012), p. 44, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600\\_23\\_735571.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600_23_735571.PDF).

<sup>7</sup> CRA International, Resero Consulting, *Update on the ERCOT Nodal Market Cost-Benefit Analysis* (Public Utility Commission: Austin, December 2008), p. 5, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600\\_7\\_605899.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600_7_605899.PDF); Navigant Consulting, *Evaluation of the ERCOT Texas Nodal Market Implementation Project* (Public Utility Commission: Austin, August 2012), pp. 29, 19, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600\\_23\\_735571.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/31600_23_735571.PDF); and Public Utility Commission, Docket 40524, ERCOT Accounting of the Costs and Revenues of Implementing the Nodal Market, July 2, 2012, p. 6, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40524\\_1\\_730037.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40524_1_730037.PDF).

<sup>8</sup> 16 T.A.C., Part 2, Section 25.363.

<sup>9</sup> Public Utility Commission, Project No. 38533, Item Number 7, PUC Review of ERCOT Budget, order approving the ERCOT 2012 budget, December 2011, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533\\_7\\_713222.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533_7_713222.PDF); Public Utility Commission, Project No. 38533, Item Number 13, PUC Review of ERCOT Budget, order approving the ERCOT 2013 budget, October 2012, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533\\_13\\_740039.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/38533_13_740039.PDF); and Public Utility Commission, Project No. 40291, Item Number 9, order approving ERCOT debt restructuring plan, May 2012, [http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40291\\_9\\_726230.PDF](http://interchange.puc.state.tx.us/WebApp/Interchange/Documents/40291_9_726230.PDF).

# RESPONSES TO ISSUE 2

## Recommendation 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.*

### Agency Response to 2.1

The Public Utility Commission agrees with Recommendation 2.1. PUC has reviewed and approved ERCOT's budget, including debt financing and performance measures, for the past three years, in accordance with Public Utility Regulatory Act §39.151 and P.U.C. Subst. R. 25.363. However, the Commission believes expressly stating these provisions in statute would be beneficial and provide certainty for the review process. (Brian H. Lloyd, Executive Director – Public Utility Commission)

### Affected Agency Response to 2.1

The Electric Reliability Council of Texas concurs with Recommendation 2.1, as it will further clarify the authority already given to the PUC in existing statute and the specific exercise of the PUC's oversight authority regarding ERCOT's budget, use of debt financing, and performance measures. (Trip Doggett, President and Chief Executive Officer – Electric Reliability Council of Texas)

### For 2.1

Katie Coleman, Energy Counsel – Texas Association of Manufacturers, Austin

Norma Cortez, Member – Citizen.org

Jay Doegey, Board President, and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington, and Steering Committee of Cities Served by Oncor, Austin

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

Mark Zion, Executive Director – Texas Public Power Association, Austin

**Against 2.1**

None received.

**Recommendation 2.2**

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

**Agency Response to 2.2**

The Public Utility Commission agrees with Recommendation 2.2. (Brian H. Lloyd, Executive Director – Public Utility Commission)

**Affected Agency Response to 2.2**

The Electric Reliability Council of Texas concurs with Recommendation 2.2 as it would increase predictability in budgeting. To ease transition to a variable System Administration Fee, ERCOT would anticipate making the change coincident with the next requested change in the System Administration Fee. (Trip Doggett, President and Chief Executive Officer – Electric Reliability Council of Texas)

**For 2.2**

Katie Coleman, Energy Counsel – Texas Association of Manufacturers, Austin

Norma Cortez, Member – Citizen.org

Jay Doegey, Board President, and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington, and Steering Committee of Cities Served by Oncor, Austin

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

Mark Zion, Executive Director – Texas Public Power Association, Austin

**Against 2.2**

John W. Fainter, Jr., President – Association of Electric Companies of Texas, Inc., Austin

# COMMISSION DECISION ON ISSUE 2

(JANUARY 2013)

Adopted Recommendations 2.1 and 2.2.

# FINAL RESULT ON ISSUE 2

(JULY 2013)

## ***Legislative Action — H.B. 1600***

**Recommendation 2.1** — House Bill 1600 provides PUC with the explicit authority to approve, disapprove, or modify each budget item of ERCOT. The bill authorizes PUC to conduct the reviews each year or biennially, but the budgets themselves must be annual, as are the budgets of state agencies. The bill directs PUC to solicit and actively encourage public participation in budget deliberations according to a process it develops. House Bill 1600 exempts the reviews from requirements to conduct proceedings as a contested case under the Administrative Procedure Act, although PUC may still do so as it determines necessary. The bill requires 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.

**Recommendation 2.2** — House Bill 1600 requires that PUC approve the appropriate level of funding for ERCOT's annual budget. The bill gives ERCOT the authority to vary the System Administration Fee to help meet budgeted requirements. The bill establishes that the Commission must require ERCOT to closely match actual revenues generated by the fee and other sources of revenue with revenue necessary to fund the budget, taking into account the effect of a fee change on market participants and consumers, to avoid ending a budget year with surplus or insufficient funds. The bill also specifies that the process for setting the fee range is not considered 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.*

### Background

The Public Utility Commission and the Texas Commission on Environmental Quality (TCEQ) each carry out utility regulation. One of the statutory charges to the Sunset Commission is to review the extent of overlapping programs and their potential for consolidation.<sup>1</sup> During the previous biennium, concurrent Sunset reviews of these two agencies presented a rare opportunity to evaluate utility regulations for their consolidation potential. As pointed out in the PUC Sunset staff report, nearly all states have only one agency that regulates electric, telecommunications, and water utilities.<sup>2</sup> During the last review cycle, the Sunset Commission adopted provisions to transfer the regulation of water and wastewater utilities from TCEQ to PUC, but PUC's Sunset legislation did not pass.

Since the adjournment of the Legislature in 2011, the Senate Committee on Natural Resources received the interim charge to consider moving water rate jurisdiction from TCEQ to PUC, having an office similar to the Office of Public Utility Counsel (OPUC) represent ratepayers in water rate cases, and other water and sewer regulatory issues.<sup>3</sup> The Senate Natural Resources and Business and Commerce committees each formed subcommittees on Water Utilities in Rural and Unincorporated Areas that met jointly in July 2011 to discuss bundling of small water and sewer systems by a single investor-owned utility and rapidly escalating water and sewer utility rates in unincorporated and rural areas of the state. In addition, a workgroup including leadership from the subcommittees; agency staff from PUC, TCEQ, and OPUC; and representatives from various water and wastewater utilities are examining the rate regulation of water and sewer utilities during the interim.

**Public Utility Commission.** PUC regulates the rates and services of electric and telecommunications companies in Texas as a substitute for competition where it does not exist or lacks robustness. Although changes have restructured and deregulated major portions of the electric and telecommunications markets, PUC continues to have significant ratemaking and other responsibilities in areas where competition is lacking. Within the large part of the state that is open to electric competition, PUC still oversees rates of transmission and distribution utilities that operate as monopolies in the deregulated market. Outside of competitive areas, PUC is fully responsible for the retail rates of investor-owned electric utilities that operate as monopolies to generate, transport, and sell electricity to the public. PUC also has varying degrees of regulatory responsibility over local telephone service.

In setting rates for utilities, PUC's basic mission is to determine the utility's reasonable revenue requirement for operation and how that requirement can be turned into rates paid by different customer classes. The typical course for contested rate cases is for a utility to seek a rate change and for PUC staff and intervenors, if any, to prepare their cases. The case and evidence from intervening parties go to the State Office of Administrative Hearings (SOAH) for a neutral determination of findings and conclusions that are proposed to the PUC for final decision. In addition to these rate responsibilities,

PUC approves Certificates of Convenience and Necessity (CCNs), defining areas these utilities must serve; monitors service quality for rate-regulated utilities; and addresses consumer complaints about their utility service.

The agency's rate responsibility covers four investor-owned electric utilities, six transmission and distribution utilities, four transmission service providers, and 63 local telephone companies. For these utilities, PUC conducted 50 electric and eight telephone rate proceedings in fiscal year 2011.

A separate agency, OPUC, represents the interests of residential and small commercial consumers in rate and other matters before PUC. OPUC often intervenes as a party in PUC proceedings, but is not required to intervene in each case.

**Texas Commission on Environmental Quality.** In 1975, when the Legislature established PUC to regulate utilities, it included authority to oversee retail public utilities for water and wastewater service. In 1986, the Legislature transferred this authority to the Texas Water Commission, whose responsibilities are now part of TCEQ. At that time, the Legislature considered the Water Commission a better fit for water and wastewater utility regulation because of its familiarity with the special issues of small water and wastewater systems prevalent in the industry compared to PUC's orientation toward complex ratemaking for large electric and telecommunications utilities.

Three types of entities can provide retail water or wastewater utility service in Texas: public utilities, which include investor owned utilities (IOUs); water supply or sewer service corporations, which are non-profit member-owned corporations with elected boards; and political subdivisions, which include cities, water districts, and most counties and are governed by elected bodies. As of July 2012, TCEQ regulated a total of 3,970 retail public utilities, including 716 IOUs; 839 water supply corporations; and 2,415 political subdivisions, most of which were cities. TCEQ also has authority over 5,932 water and wastewater service providers that either use submetering or other means of allocating water and wastewater charges in multiple use facilities such as apartments.

TCEQ has original jurisdiction over the rates, operations, and services of IOUs operating outside of cities and within cities that have surrendered their jurisdiction to TCEQ. TCEQ also regulates water and wastewater utility submetering, and has the authority to grant CCNs and ensure that utilities have the financial, managerial, and technical capability to provide adequate and continuous service within their certificated areas. Appendix C details TCEQ's various jurisdictional responsibilities.

TCEQ initiates a review when an IOU applies for a rate change with the agency. TCEQ staff evaluates the proposed rate change, performing an audit and site visit, and reviews complaints and compliance history. Rate evaluation staff also check the utility's compliance with water and wastewater environmental requirements. This process includes a protest mechanism by which customers may have the case referred to SOAH for a hearing. TCEQ's Executive Director may also set the matter for hearing on a motion within a specified period of time after the effective date of the rate change. Cases not protested or those settled through mediation may be approved administratively by TCEQ's Executive Director. Otherwise, if a case goes to a contested hearing, SOAH makes a proposal for the Commission's final decision.

TCEQ has appellate jurisdiction over the rates of districts, water supply or sewer service corporations, cities providing service outside their city limits, IOUs providing service inside a city, and utilities operated by counties within 50 miles of the Mexico border. TCEQ also has appellate jurisdiction over wholesale water and wastewater rates. Appellate cases work similarly to the protest provision for IOU applications. Customers must file a petition with TCEQ within 90 days after the date of notice of

the final decision by the utility's governing board and must serve copies on all parties to the original rate proceeding to have the case referred to SOAH for hearing. At SOAH, the process for hearing the protest is the same as for IOUs. In all rate cases, both TCEQ's Executive Director and the Office of Public Interest Counsel (OPIC) are parties to rate cases at SOAH and before the Commission. TCEQ also assists consumers and utilities with inquiries and complaints regarding customer service and protection rules.

TCEQ has 21 employees that conduct water and wastewater utility rate and CCN regulation and assist customers, which includes one attorney from OPIC. Funding for these functions totaled about \$1.5 million in fiscal year 2012. In addition, TCEQ expends an estimated \$184,000 annually under its contract with SOAH for costs relating to water and wastewater regulation. In fiscal year 2012, TCEQ completed 158 rate reviews, of which 68 were contested; of these, five had evidentiary hearings. TCEQ also completed 168 CCN applications, referred 46 CCN cases to SOAH, and made seven final Commission decisions.

## Findings

### **The Sunset Commission's recommendations to transfer oversight of water and wastewater regulation from TCEQ to PUC continue to be appropriate.**

Last biennium's Sunset review found that transfer of water and wastewater regulation from TCEQ to PUC would be beneficial. The Sunset Commission's proposed changes in law are still needed to complete this transfer of duties. The review pointed out the following, in summary.

- **PUC's structure and expertise are focused on fair and efficient rate-related regulation.** The Legislature established PUC in 1975 to regulate utilities, and the agency continues to have rate-related regulatory functions, particularly in the electric industry, but also with local telephone service. PUC's staff and its Commission are geared toward overseeing utilities and ensuring that regulated utility rates are just and reasonable. PUC ratemaking staff has expertise in economic regulation and is large enough to specialize on specific areas of responsibility. PUC typically uses SOAH to conduct contested hearings, relying on its independence and expertise in utility issues to obtain objective and high-quality judgments. In addition, PUC now gives much stronger attention than in its early days to complaint resolution. PUC has its own division of about 20 employees to manage complaints, including those involving rates, for the entire agency, helping to ensure agency-wide consistency and focus on customer protection issues.<sup>4</sup> PUC keeps all filings in docketed cases, as well as other information, available to the public online, which contributes to the transparency of PUC operations.
- **Transfer offers potential benefits by aligning most State utility regulation within one agency.** TCEQ conducts the economic regulation of water and wastewater utilities' rates and services. Although this regulation has worked and has benefitted from the environmental

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*PUC is well structured for water utility oversight and ratemaking.*

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regulation of other TCEQ programs, oversight of water and wastewater utilities could benefit from an overall realignment and consolidation of utility regulation.

The economic regulation of utilities is a smaller function when measured against TCEQ's huge environmental mission, but its effects on Texas ratepayers are significant. Transferring these functions to PUC would take advantage of PUC's regulatory focus and processes and allow TCEQ to better focus on its core mission of ensuring environmental quality. In addition, PUC's more established ratemaking and CCN processes offer benefits in regulating an increasing number of larger, more sophisticated water and wastewater utilities and corporations. Finally, transfer would assist consumers, who have limited resources in comparison to utilities, because PUC's consumer protection staff focuses on utility consumer complaints and outreach. OPUC, an independent advocate for residential and small commercial consumers in electric and telecommunications utility matters, also could be charged with water-related responsibilities. Currently, TCEQ's OPIC represents the public interest in water and wastewater proceedings, but, unlike OPUC, does not exist as an independent entity and is not charged specifically with representing residential and small commercial consumers.

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*Transferring water and sewer utility functions to PUC would better focus TCEQ on its core environmental mission.*

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Since the publication of last biennium's report, TCEQ and PUC have been working together to address issues that could be caused by separating environmental and economic regulation of water and wastewater utilities. If a transfer were to occur, TCEQ could easily continue to coordinate with PUC to promote compliance with environmental and drinking water requirements, just as TCEQ's water quality staff currently does with its water utility staff. The transfer would not affect either agency's ability to take enforcement against one of these entities for areas under each agency's separate jurisdictions. The agencies indicated, however, that additional time to implement the transfer beyond the nine months specified in later versions of Senate Bill 661 would help achieve a more orderly transition. Making the transfer complete on the first day of a new fiscal year, 12 months after a September 1 effective date of the bill, would also enable better accounting for agency financial matters and resources, records, and performance measures.

In addition, as noted previously, considerable work has occurred this interim on changing the existing rate regulation process for water and sewer utilities. Last biennium's Sunset Commission recommendations, however, did not entertain changing rate regulations, opting instead to require PUC to assess any ratemaking provisions transferred and report on opportunities for standardizing its rate processes before the next legislative session. In this review of PUC, Sunset staff has adhered to the Sunset Commission recommendations to transfer regulatory authority and does not address changes in the ratemaking process.

## 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; CCNs; 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 IOU Drought Contingency Plans. SOAH would continue to hear cases related to water and sewer regulation as it does now.

Regarding rates, PUC would assume the same original and appellate jurisdiction as currently exists at TCEQ. PUC would have the same reporting requirements as TCEQ for these utilities, including annual service and financial reports and tariff filings, as well as information about affiliate interests.

This recommendation would complete the transfer by September 1, 2014. Both agencies would establish a transition team with high-level employees to develop plans regarding the transfer to PUC of ongoing cases, obligations, property, personnel, powers, and duties for water and wastewater utility functions and sharing of records and information. The recommendation would also require the agencies to develop memoranda of understanding, as needed, to implement the plans developed by the transition team. Statute would require the memoranda to be completed by August 1, 2014.

The transition team would develop ways to coordinate on areas of interrelated responsibilities between the two agencies, especially regarding meeting federal drinking water standards and maintaining adequate supplies of water; meeting established design criteria for water systems and wastewater treatment plants; demonstrating the economic feasibility of regionalization; and serving the needs of economically distressed areas. Ongoing efforts would also be needed to coordinate responsibilities for service standards and the sharing of information and utility data between the two agencies.

PUC would have responsibility for ensuring accuracy of meters, instruments, and equipment for measuring a utility's service. TCEQ would need to maintain responsibility for quantity, quality, pressure and other conditions relating to the supply of the service. TCEQ should also continue to have the authority to appoint temporary managers for abandoned water and wastewater utilities under its responsibility to ensure adequate capacity of public water and wastewater systems, but should coordinate with PUC regarding the financial aspects of these appointments. Both PUC and TCEQ would need to closely coordinate emergency operations to ensure adequate utility oversight and maintenance of drinking water and wastewater discharge requirements, and emergency and temporary rates for nonfunctioning systems.

#### **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 OPUC to represent the interests of residential and small commercial consumers in water and wastewater utility matters, but only if the Legislature transfers regulatory oversight to PUC, as specified in Recommendation 3.1. Under this recommendation, OPUC

would not be involved in water and wastewater utility matters at PUC. If the realignment of utility regulations at PUC does not occur, OPIC would retain its existing authority to represent the public interest in water and wastewater utility matters that remain at TCEQ.

### ***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.**

Under this recommendation, the Legislature would appropriate funds to TCEQ from Water Resource Management Account #153 for the regulation of water and sewer utilities. TCEQ would then be required to 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.

This recommendation would not change the Water Utility Regulatory Assessment currently collected from water and sewer utilities for deposit in the Water Resource Management Account. The Legislature provided the premise for this rider transfer in the TCEQ Sunset bill last session authorizing revenue from the Water Utility Regulatory Assessment to be appropriated by rider to an agency with duties related to water and sewer utility regulation or to an agency with a duty to represent residential and small commercial interests.<sup>5</sup> In addition, the recommendation would not change the existing mechanism for TCEQ to collect the fee from water and wastewater utilities, providing an administrative efficiency that could be jeopardized if another fee or collection process were established.

### ***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.**

This recommendation would require PUC to make a comparative analysis of its own authority and any new ratemaking or other authority transferred to PUC. PUC would report to the Legislature any recommendations about 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 should 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.

## Fiscal Implication

Overall, the recommendations to transfer the regulation of water and sewer utilities from TCEQ to PUC would not immediately result in savings to the State and are intended to initially be revenue and cost neutral. Future savings from regulatory standardization could occur but could not be estimated.

These provisions would require TCEQ, by rider to the General Appropriations Act, to transfer from its control 21 full time equivalent employees (FTEs) and annual appropriations of about \$1,695,000 from the Water Resource Management Account. Of these amounts:

- PUC would receive 20 FTEs and an annual appropriation of about \$1,430,000,
- OPUC would receive one FTE and an annual appropriation of about \$81,000, and
- SOAH would continue to receive transfers of an estimated \$184,000 annually to cover its cost of water and sewer-related duties.

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<sup>1</sup> Section 325.011(6), Texas Government Code.

<sup>2</sup> Sunset Advisory Commission, Commission Decisions — Public Utility Commission, Electric Reliability Council of Texas, and Office of Public Utility Counsel (Austin, Texas, July 2010), p. 28. Online. Available: [www.sunset.state.tx.us/82ndreports/puc/puc\\_dec.pdf](http://www.sunset.state.tx.us/82ndreports/puc/puc_dec.pdf). Accessed: October 09, 2012.

<sup>3</sup> Senate Committee on Natural Resource, “Interim Charges,” <http://www.senate.state.tx.us/75r/senate/commit/c580/c580.htm#InterimCharges>.

<sup>4</sup> Public Utility Commission, *Self-Evaluation Report* (Austin, Texas, September 2009), p. 185. Online. Available: [www.sunset.state.tx.us/82ndreports/puc/ser.pdf](http://www.sunset.state.tx.us/82ndreports/puc/ser.pdf). Accessed: October 09, 2012.

<sup>5</sup> Section 6.03, Chapter 1021 (H.B. 2694), Acts of the 82nd Legislature, Regular Session, 2011.



# RESPONSES TO ISSUE 3

## Recommendation 3.1

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

### Agency Response to 3.1

The Public Utility Commission (PUC) has no position on Recommendation 3.1. Should the responsibility for regulating water and wastewater be transferred to PUC, the Commission would prefer the modifications indicated below. PUC's State-funded budget, not including the Low-Income Discount Program, has been reduced by approximately 42.9 percent since fiscal year 2003. During this same 10-year period, PUC's FTE cap has been reduced by 75.0 FTEs or 31.0 percent. As such, the Commission cannot absorb these functions within current resources and believes ensuring an appropriate level of resources are transferred with this program is critical to the successful regulation of water and wastewater ratemaking at PUC. Should the program be transferred with substantial changes to the ratemaking process that would require significantly more regulatory review of a large number of water utilities, the Commission may require additional regulatory resources.

### Agency Modifications

1. Modify the statute to reflect the processes and procedures PUC utilizes to conduct rate proceedings.
2. Alternatively, statutorily allow PUC to modify existing processes and procedures by rulemaking, rather than mandating that PUC continue to use the existing TCEQ process, with PUC submitting a report to the Legislature that details how the process was amended to conform to the PUC ratemaking process (as recommended in the PUC response under Recommendation 3.4).

(Brian H. Lloyd, Executive Director – Public Utility Commission)

### Affected Agency Response to 3.1

The Texas Commission on Environmental Quality recognizes the efficiency of consolidating rate case issues within one agency. This concept is imbedded in the recommendation to transfer responsibility for the regulation of water and wastewater rates and services from our agency to PUC. If this recommendation is adopted into law, TCEQ will work with PUC to facilitate an efficient and transparent transition, including the development and adoption of the required memorandum of understanding. (Bryan W. Shaw, Ph.D., Carlos Rubinstein, and Toby Baker, Commissioners, and Zak Covar, Executive Director – Texas Commission on Environmental Quality)

**For 3.1**

C.A. Cockrell, Murchison

Norma Cortez, Member – Citizen.org

David Frederick – Texans Against Monopolies Excessive Rates, Austin

Charles Land, Executive Director – TEXALTEL, Austin

Charles W. Profflet, Jr., P.E., Managing Director, Texas Utilities – SouthWest Water Company

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Gene Robinson, Mabank

Tom “Smitty” Smith, Director – Public Citizen, Austin

**Against 3.1**

None received.

**Recommendation 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.*

**Agency Response to 3.2**

The Public Utility Commission has no position on Recommendation 3.2. (Brian H. Lloyd, Executive Director – Public Utility Commission)

**Affected Agencies Response to 3.2**

If Recommendation 3.1 is adopted into law and PUC is given regulatory oversight of water and wastewater utility activities, it would be appropriate for the Office of Public Utility Counsel, rather than Texas Commission on Environmental Quality’s Public Interest Counsel, to represent these interests. (Bryan W. Shaw, Ph.D., Carlos Rubinstein, and Toby Baker, Commissioners, and Zak Covar, Executive Director – Texas Commission on Environmental Quality)

The Office of Public Utility Counsel (OPUC) appreciates Sunset’s recognition of its value in representing residential and small commercial utility consumers, and would be pleased to serve in the capacity envisioned by Recommendation 3.2, or in any other capacity currently being discussed by the Senate subcommittee and workgroup referenced in the report. The Sunset Staff Report depicts OPUC assuming the functions of the Texas Commission on Environmental Quality’s Office of Public Interest Counsel with the transfer of one FTE at an annual appropriation of approximately \$81,000. However, the referenced subcommittee and workgroup have been discussing a distinctly different model wherein OPUC would represent water consumers with the same robust legal representation it currently does on behalf of

electric and telecommunications consumers. Accordingly, if the Sunset Commission prefers for OPUC to represent water consumers in this manner, it would require a different fiscal analysis and implication.

### Office of Public Utility Counsel Modifications

3. Clarify that OPUC would need significantly more resources than one FTE if it is to represent residential and small commercial water and wastewater customers as it currently does in electric and telecom matters.
4. Provide for OPUC to receive funding for these additional responsibilities through direct appropriations rather than by rider appropriation.

(Sheri Givens, Public Counsel – Office of Public Utility Counsel. Essentially the same modification as Modification 3 was suggested by David Frederick – Texans Against Monopolies Excessive Rates, Austin; and Tom “Smitty” Smith, Director – Public Citizen, Austin)

#### **For 3.2**

Norma Cortez, Member – Citizen.org

Charles Land, Executive Director – TEXALTEL, Austin

Charles W. Profflet, Jr., P.E., Managing Director, Texas Utilities – SouthWest Water Company

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

#### **Against 3.2**

None received.

#### **Modification**

5. Provide the Office of Public Utility Counsel with at least seven, rather than one, additional full time equivalent employees if the agency is to take on major rate cases for water and wastewater, and potentially money for consultants. (Jim Boyle – Texas Ratepayers United, Austin)

### **Recommendation 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.*

#### **Agency Response to 3.3**

The Public Utility Commission agrees in part with this recommendation, as it relates to PUC and has no position on the transfer to the Office of Public Utility Counsel. The Commission agrees that all resources associated with these functions currently residing at the Texas Commission

on Environmental Quality should be transferred to PUC, including funding for State Office of Administrative Hearings. However, PUC prefers a direct appropriation from the Water Resource Management Account No. 153, rather than a rider appropriation. The Commission believes an above-the-line direct appropriation would allow the Commission more flexibility in requesting the resources needed to provide regulatory oversight of these functions and provide greater transparency regarding program funding and PUC performance.

#### Agency Modification

6. Provide for PUC to receive appropriations directly from Water Resource Management Account No. 153 rather than a rider appropriation.

(Brian H. Lloyd, Executive Director – Public Utility Commission)

#### **Affected Agencies Response to 3.3**

The Texas Commission on Environmental Quality agrees that the initial support for any programs transferred to PUC should be addressed through a rider requiring TCEQ to transfer funds to the three agencies affected by Recommendations 3.1 and 3.2. TCEQ suggests that the rider, contingent on the recommendations being adopted into law, include the specific amounts TCEQ is to transfer to PUC, OPUC, and SOAH. The amounts listed should be consistent with current TCEQ costs related to the activities associated with the transferred programs. As a reminder, an amount equivalent to the amount transferred to SOAH under the Contingency Rider should be reduced in the TCEQ's rider entitled, "Contract with the State Office of Administrative Hearings." In addition, TCEQ agrees with the amounts to be transferred to PUC, OPUC, and SOAH that are provided on page 31 of the Staff Report, under the "Fiscal Implication" section. (Bryan W. Shaw, Ph.D., Carlos Rubinstein, and Toby Baker, Commissioners, and Zak Covar, Executive Director – Texas Commission on Environmental Quality)

The State Office of Administrative Hearings currently hears cases referred from both PUC and TCEQ. In addition, SOAH has excellent working relationships with both agencies. SOAH does not envision any difficulties from either an administrative or a subject matter perspective if the transfer is adopted and implemented. In the aspects of the transfer that implicate SOAH, the agency will be pleased to work with PUC and TCEQ to make the transition a seamless one.

Insofar as the funding for the work goes, SOAH's understanding of the recommendation is that SOAH's current appropriations rider providing funding for all of the TCEQ work will be reduced by a specified amount associated with the water and wastewater utility work, and that a second, separate rider will be added to our bill pattern in that amount to fund the water and wastewater utility work. We also understand the recommendation to provide for a second interagency contract between SOAH and PUC to specifically cover the water and wastewater utility work.

SOAH respectfully notes that the approximately \$184,000 mentioned in the report as TCEQ's costs relating to the water and wastewater hearings at SOAH is based on SOAH's \$100 approved hourly rate for work performed under interagency contract. In an audit conducted in 2012, the State Auditor's Office calculated SOAH's actual cost as \$125 per hour.

SOAH also notes that the \$184,000 was based on a three-year average of the water and wastewater work, with many fewer referrals and many fewer hours of the work in the third year (fiscal year 2012). (Cathleen Parsley, Chief Administrative Law Judge – State Office of Administrative Hearings)

### **For 3.3**

Norma Cortez, Member – Citizen.org

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

### **Against 3.3**

None received.

## **Recommendation 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.*

### **Agency Response to 3.4**

The Public Utility Commission (PUC) agrees with Recommendation 3.4. However, should the responsibility for regulating water and wastewater be transferred to PUC, the Commission would prefer the statute reflect the processes and procedures PUC utilizes to conduct rate proceedings, or permit PUC to modify existing processes and procedures by rulemaking, rather than mandating that PUC continue to use the existing TCEQ process. The Commission would then submit a report that details how the process was amended to conform to the PUC ratemaking process. (Brian H. Lloyd, Executive Director – Public Utility Commission)

*Staff Comment:* Please note that modifications in this agency response are summarized under the agency’s response in Recommendation 3.1, which contains similar modifications.

### **For 3.4**

Norma Cortez, Member – Citizen.org

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

### **Against 3.4**

None received.

### **Recommendation 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.*

#### **Agency Response to 3.5**

The Public Utility Commission (PUC) agrees with Recommendation 3.5. However, the Commission would recommend delaying the required report on staffing for two years. As recommended by Sunset staff, this one-time staffing report would be submitted to the Legislative Budget Board and the Governor's Office of Budget, Planning, and Policy in August 2014, the same time that PUC's Legislative Appropriations Request (LAR) is submitted to those offices. The Sunset staff recommends transferring the program in September 2014. Therefore, the staffing report would be submitted prior the functions being transferred. The Commission believes delaying this report until August of 2016 would allow the agencies involved in the transfer to gain a better understanding of prospective staffing needs required to ensure water and wastewater rates and service regulation is both efficient and effective. Any resource needs identified during the transition process and prior to this report being submitted could be discussed and requested in PUC's LAR for the 2016–17 biennium.

#### Agency Modification

7. Require that the report on staffing be completed by August 2016 rather than August 2014.

(Brian H. Lloyd, Executive Director – Public Utility Commission)

#### **For 3.5**

Norma Cortez, Member – Citizen.org

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

#### **Against 3.5**

None received.

# COMMISSION DECISION ON ISSUE 3

(JANUARY 2013)

Adopted Recommendations 3.1 through 3.5.

## FINAL RESULTS ON ISSUE 3

(JULY 2013)

### **Legislative Action — H.B. 1600**

**Recommendation 3.1** — The Legislature adopted and added to the Sunset recommendation related to water and sewer utilities. As recommended by the Sunset Commission, House Bill 1600 transfers the economic regulation of water and sewer utilities from TCEQ to PUC. Responsibilities transferred include water and wastewater utility retail and wholesale ratemaking; wastewater utility submetering; certificates of convenience and necessity; certain financial, managerial, and technical practices; reporting requirements; and consumer assistance and complaints. TCEQ maintains 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) continues to hear cases related to water and sewer regulation as it does now.

The Legislature added to these Sunset provisions by revising the ratesetting process for investor owned water and sewer utilities. The bill ends the one-size-fits-all treatment for these utilities, establishing three utility classifications based on connection count. As set out in House Bill 1600, Class A utilities have 10,000 connections or more and follow a ratesetting process similar to the process used for electric rate increases. Class B utilities have 500 to 9,999 connections and will file an abbreviated rate filing package. Class C utilities have fewer than 500 connections and will be allowed the option to request an annual rate adjustment based on a predetermined index.

The bill requires PUC and TCEQ to complete the transfer by September 1, 2014. The agencies must adopt rules to implement the regulatory changes by September 1, 2015.

**Recommendation 3.2** — The Legislature modified the Sunset provision for OPUC to represent the interests of residential and small commercial consumers in water and wastewater utility matters transferred to PUC. House Bill 1600 gives OPUC similar authority in water and sewer rate-related cases that the agency has for electric and telecommunications matters. Beginning September 1, 2013, OPUC may use this authority for cases at TCEQ, before the transfer to PUC has occurred. The bill removes the Office of Public Interest Counsel at TCEQ from involvement in water and wastewater utility matters transferred to PUC.

**Recommendation 3.3** — Senate Bill 1 (General Appropriations Act) makes rider transfers of funds and personnel from TCEQ to PUC related to the current level of regulatory effort at TCEQ and to fund water and sewer rate cases at SOAH, beginning September 1, 2014. Senate Bill 1 also appropriates by rider additional funding and personnel to OPUC to support that agency's new advocacy responsibilities, but in higher amounts reflected in Senate Bill 567, which also transferred water and sewer utility rate regulation and was added to HB 1600.

**Recommendation 3.4** — House Bill 1600 requires PUC to report to the Legislature any opportunities the agency identifies to standardize ratemaking requirements over which it has responsibility. The bill requires that PUC submit the report in time for consideration in the 2015 legislative session.

**Recommendation 3.5** — House Bill 1600 requires PUC and OPUC to submit a one-time report to the Legislative Budget Board and the Governor's budget office detailing any staffing changes, including reductions or increases, the agencies recommend. The report is due at the same time PUC and OPUC submit their Legislative Appropriations Requests for the 2016–2017 biennium.

# ISSUE 4

## *PUC Statutes Contain Unnecessary Reporting Requirements.*

### Background

Sunset reviews have come to encompass an increasing number of standard elements over time, either from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions typically imposed on state agencies. The following material summarizes Sunset staff's analysis of applicable standard elements for the Public Utility Commission.

- **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 Commission, in conducting reviews of state agencies, to consider if each reporting requirement needs to be continued or abolished.<sup>1</sup> The Sunset staff has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. The provisions include reports required by rider to the General Appropriations Act, but Sunset staff has made no recommendations to discontinue these reports under a presumption that the appropriations committees have vetted these requirements each biennium. The review has not included reporting requirements with deadlines or expiration dates, routine notifications or notices, posting requirements, or federally mandated reports.

### Findings

#### **PUC has two reporting requirements that are no longer necessary.**

State law requires PUC to produce 12 reports that are specific to the agency and meet the parameters described above. Appendix D, *PUC Reporting Requirements*, lists the agency's reporting requirements, and Sunset staff's analysis of their need. Many of these reporting requirements continue to be useful, but two reports are no longer needed, as described below.

- **Customer awareness report for telecommunications markets.** PUC is required to compile two reports relating to customer awareness for telecommunications markets. The first report focuses exclusively on telecommunications markets, while a second report applies more broadly to both electric and telecommunications utilities.<sup>2,3</sup> The first report for telecommunications markets is unnecessary because the broader second report covers the same information.
- **System Benefit Fund report.** Statute requires PUC to report to the Electric Utility Restructuring Legislative Oversight Committee if the System Benefit Fund fee is insufficient to fund specified purposes.<sup>4</sup> PUC has a duty to report only if the fee generates insufficient funds,

a situation that has never occurred. In 2011, the Legislature abolished the Electric Utility Restructuring Legislative Oversight Committee in Senate Bill 781, making the reporting requirement moot. Also, other reporting requirements provide information to determine the sufficiency of funds generated by the System Benefit Fund fee. By appropriations rider, PUC submits a separate quarterly report to the Legislative Budget Board and the Governor on revenues and expenditures made from the System Benefit Fund, with documentation as specified by the Legislative Budget Board and the Governor.<sup>5</sup>

## 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 eliminate these two unnecessary reporting requirements from law. PUC’s remaining 10 reporting requirements would continue because they provide information useful to both the agency and the public. This recommendation would not affect PUC’s separate reporting requirement for customer awareness that relates to both telecommunications and electric markets. Appendix D summarizes the agency’s reporting requirements and shows which reports would be continued and abolished under this recommendation. To comply with a recent change in law, the Commission should provide any reports to the Legislature in an electronic format only.

## Fiscal Implication

This recommendation would not have a fiscal impact to the State.

<sup>1</sup> Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

<sup>2</sup> Section 64.003(b), Texas Utilities Code.

<sup>3</sup> Section 17.003(b), Texas Utilities Code.

<sup>4</sup> Section 39.903(d), Texas Utilities Code.

<sup>5</sup> Rider 4, page VIII–62, Article VIII (H.B. 1), Acts of the 82nd Texas Legislature, Regular Session, 2011 (the General Appropriations Act).

# RESPONSES TO ISSUE 4

## Recommendation 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.*

### Agency Response to 4.1

The Public Utility Commission agrees with Recommendation 4.1. (Brian H. Lloyd, Executive Director – Public Utility Commission)

### For 4.1

Norma Cortez, Member – Citizen.org

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

### Against 4.1

None received.

# COMMISSION DECISION ON ISSUE 4

(JANUARY 2013)

Adopted Recommendation 4.1.

# FINAL RESULTS ON ISSUE 4

(JULY 2013)

## **Legislative Action — H.B. 1600**

**Recommendation 4.1** — House Bill 1600 abolishes PUC's report relating to customer awareness for telecommunications markets, as well as the System Benefit Fund report to the now abolished Electric Utility Restructuring Legislative Oversight Committee. Eliminating these unneeded

reports does 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.*

### Background

The Public Utility Commission oversees electric and telecommunications companies in Texas. The Legislature created PUC in 1975 to regulate rates and services of monopoly utility service providers in place of the patchwork of municipal regulations that had existed previously. This regulation was intended as a substitute for competition. Since that time, legislative changes restructuring and deregulating major portions of electric and telecommunications markets have modified PUC's focus to also include fostering competition through functions such as market design, licensing, investigations and enforcement, and complaint resolution. Three full-time Commissioners oversee PUC, which operated with an authorized staff of 189 and a budget of \$83.8 million in fiscal year 2011. These Commissioners also have an important oversight role over the Electric Reliability Council of Texas, an independent entity that manages the electric grid for most of Texas.

### Findings

#### **No significant changes have occurred to affect the 2011 Sunset Commission recommendation to continue the Public Utility Commission.**

In 2011, the Sunset Commission recommended that the Legislature continue PUC for 12 years. The recommendation to continue the agency is still appropriate, but now for a 10-year period to coincide with the 2023 Sunset review of the Office of Public Utility Council as established by the Legislature last biennium. Keeping these reviews together, as has occurred historically, makes sense because of the close connection in their responsibilities. This timing is necessary to provide the comprehensive assessment of the agencies responsible for utility regulation and representation that is an important ingredient in the Sunset process.

In recommending PUC's continuation, the Sunset Commission determined that the original need to substitute regulation for competition in monopoly electric and telephone markets continues today. The electric industry continues to have monopoly providers, including investor-owned utilities outside the parts of Texas restructured for electric competition and transmission and distribution companies inside those competitive areas. Incumbent local exchange telephone companies also still operate in areas of Texas whose telephone markets have not been deregulated. In fiscal year 2011, PUC conducted 50 electric and eight telephone rate proceedings. Oversight also is necessary in areas of the state restructured to promote competition. These areas feature complex markets with many service providers, and oversight is geared to prevent fraud and abuse.

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*PUC is still needed to regulate monopoly providers and oversee competitive markets.*

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PUC's oversight has addressed problems that otherwise would go unattended. In fiscal year 2011, PUC received about 95,000 information requests and informally resolved about 10,000 complaints. Also in that year, PUC conducted 45 enforcement investigations, resulting in the assessment of \$1.7 million in penalties.

The Sunset Commission determined that PUC is the logical place to carry out electric and telephone regulation. The agency has a long track record and expert staff dedicated to this regulation. In part because of PUC's expertise in ratemaking and utility oversight, in its 2011 review the Sunset Commission also recommended the transfer of water and sewer rate-related regulation from the Texas Commission on Environmental Quality to PUC, a recommendation presented again in Issue 3 of this report.

### **The Sunset Commission's decision to extend post-employment restrictions on PUC's Commissioners is still appropriate.**

In its prior review, the Sunset Commission noted that various post-employment restrictions apply to PUC Commissioners that are more stringent than general law provisions. Among other prohibitions, a Commissioner may not be employed by a public utility in the scope of the Commissioner's official responsibility for two years following departure from PUC.<sup>1</sup> This provision, limited to public utilities, has not been updated to reflect the close oversight role that the Commission has come to play over ERCOT. Such an update continues to be appropriate.

## **Recommendations**

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

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

This recommendation would continue PUC until 2023, a date that coincides with the next Sunset review of the Office of Public Utility Counsel. Keeping the reviews of PUC and the Office of Public Utility Counsel aligned promotes an efficient review of these two agencies, whose functions are intertwined.

#### **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**

If the Legislature continues the current functions of PUC using the existing organizational structure, the agency would continue to need annual appropriations, totaling about \$83.8 million in fiscal year 2011.

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<sup>1</sup> Sections 12.155(a)(1) and 12.155(b)(1), Texas Utilities Code.



# RESPONSES TO ISSUE 5

## Recommendation 5.1

*Continue the Public Utility Commission for 10 years.*

### Agency Response to 5.1

The Public Utility Commission (PUC) agrees with this recommendation to continue the Commission. However, the PUC believes a full 12-year extension is appropriate, as the Commission has been reviewed during the 79th, 82nd, and now the 83rd Legislature. In all three instances, the Sunset staff recommendation was to continue the agency for between 10 and 12 years.

### Agency Modification

1. Continue the Public Utility Commission for 12 years instead of 10.

(Brian H. Lloyd, Executive Director – Public Utility Commission)

### **For 5.1**

Katie Coleman, Energy Counsel – Texas Association of Manufacturers, Austin

Norma Cortez, Member – Citizen.org

Jay Doegey, Board President, and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington, and Steering Committee of Cities Served by Oncor, Austin

John W. Fainter, Jr., President – Association of Electric Companies of Texas, Inc., Austin

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

Mark Zion, Executive Director – Texas Public Power Association, Austin

### **Against 5.1**

None received.

### **Modification**

2. Make the continuation of PUC contingent on the reforms offered by Mr. Mikus in the New Issues regarding a more complete analysis and consideration of internal and external costs associated with electric utility regulation. (John W. Mikus, Houston)

**Recommendation 5.2**

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

**Agency Response to 5.2**

The Public Utility Commission agrees with Recommendation 5.2. (Brian H. Lloyd, Executive Director – Public Utility Commission)

**For 5.2**

Norma Cortez, Member – Citizen.org

Jay Doegey, Board President, and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington, and Steering Committee of Cities Served by Oncor, Austin

Charles Land, Executive Director – TEXALTEL, Austin

Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin

Tom “Smitty” Smith, Director – Public Citizen, Austin

Mark Zion, Executive Director – Texas Public Power Association, Austin

**Against 5.2**

None received.

# COMMISSION DECISION ON ISSUE 5

(JANUARY 2013)

Adopted Recommendations 5.1 and 5.2.

## FINAL RESULTS ON ISSUE 5

(JULY 2013)

### ***Legislative Action — H.B. 1600***

**Recommendation 5.1** — House Bill 1600 continues PUC for 10 years until 2023, a date that keeps the reviews of PUC and OPUC aligned.

**Recommendation 5.2** — The Legislature added several employment-related qualifications and restrictions for PUC Commissioners beyond those recommended by the Sunset Commission. As recommended by the Sunset Commission, House Bill 1600 prohibits PUC Commissioners from being employed by ERCOT for two years after leaving PUC.

In addition, the bill adds language requiring that a Commissioner be a competent and experienced administrator; be well informed and qualified in the field of public utilities and utility regulation; and have at least five years of experience in the administration of business or government or as a practicing attorney or CPA.

House Bill 1600 removes a provision prohibiting owning or controlling more than \$10,000 in stock or bonds in a utility-related entity for two years before appointment as a commissioner and instead prohibits owning or controlling more than a 10 percent interest in such an entity regulated by PUC. The bill makes a comparable change to remove language about having a pecuniary interest of more than \$10,000 in a utility-related entity at the time of appointment as either a Commissioner or as executive director of the agency, to prohibit such a person from having solely more than a 10 percent interest in such a utility-related entity. House Bill 1600 also strikes conflicting language elsewhere in statute that would prohibit any ownership interest in utility-related businesses.



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**NEW ISSUES**

# NEW ISSUES

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

## **PUC Budget and Operations**

6. Make the System Benefit Fund a trust fund that can be budgeted for its intended purposes annually through PUC and that is not subject to the appropriations process. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; and Norma Cortez, Member – Citizen.org)
7. Improve transparency when organizational entities file comments with PUC by:
  - Requiring that PUC Commissioners or staff identify the constituent entities of these organizations to ensure proper consideration of these comments used in PUC’s analysis, findings, or rulings; and
  - Requiring that the public be allowed to know the constituent entities in these situations or, alternatively, requiring that public information is available and referenced before using these comments.

(Richard Howe, Plano)
8. Place the burden of proof on for profit private interest holders such as private utilities to prove by clear and convincing evidence that proposed actions do not involve hidden or external costs to the public. (John W. Mikus, Houston)
9. Require public, quasi-public, and private entities to prepare and substantiate an in-depth economic and environmental analysis of the consequences of any actions the entity proposes or needs, including external costs and benefits of having PUC authorize such actions or address such needs, and require such external costs to be fully internalized by these entities before the Commission can grant such authority or needs. (John W. Mikus, Houston)
10. Provide public interest groups with the opportunity to provide economic and environmental analysis of the internal and external costs and benefits of proposed requests for action or authorization by PUC and the right to appeal PUC’s decisions to the courts. (John W. Mikus, Houston)
11. Transfer rate regulation of gas utilities from the Railroad Commission to PUC. (Tom “Smitty” Smith, Director – Public Citizen, Austin)

## **Electric Regulatory and Market Framework**

12. Reform the use of voluntary mitigation plans, as follows:
  - Parties that could be impacted by the VMP should be permitted to intervene in VMP proceedings and present testimony and data regarding the reasonableness of the proposed VMP.

- If the PUC staff and applicant file a settlement VMP, the filing should include sufficient data and testimony to support the settlement; outside parties should have standing to intervene and object to the settlement.
- A Commission order adopting a VMP shall make findings that the VMP will not permit the applicant to engage in market power abuse on either a statewide or a local basis and shall address specific objections raised by other parties to the proceeding.
- A party other than the PUC staff, independent market monitor, or the applicant may petition the Commission to dissolve a VMP on the basis that the VMP has harmed the competitiveness of the ERCOT market.
- A VMP may have a term no longer than three years; the Commission shall conduct a hearing at least three months prior to the expiration of the VMP to determine whether the VMP should be dissolved, renewed, or modified.

(Jay Doegey, Board President; and R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington; and Steering Committee of Cities Served by Oncor, Austin)

13. Create standard offer products in Texas according to uniform terms and conditions set by PUC and offered by all retail electric providers. (R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington; and Tim Morstad, Associate State Director – AARP)
14. Look for ways to stimulate growth in generation resources other than through price supports and subsidies that are inconsistent with the principles of competition and a free market. Reject all proposals for “capacity markets” in which generators get paid even when they do not operate. (R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington)
15. Outlaw “hockey stick bids” and anti-competitive practices prohibited in other states by the Federal Energy Regulatory Commission. (R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington)
16. Give market participants harmed by anti-competitive activities the right to participate in investigations and enforcement actions by regulators when market power abuses occur. (R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington)
17. Make the PowertoChoose website more complete by including complaint data for retail electric providers in Texas on the Energy Facts Label and providing for sorting electricity offers based on company complaint data. Require retail electric providers to promote PowertoChoose.com through a printed notice on home electricity bills. (R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington)
18. Require retail electric providers to provide uniform information in bills, approved by PUC, explaining benefits of reducing demand during peak periods and including a link to PUC’s PowertoSaveTexas.org website. (R.A. Dyer, Policy Analyst – Texas Coalition for Affordable Power, Arlington)
19. Take the following actions related to government intervention in the Texas electricity market:
  - The Texas Legislature and the PUC should reject recommendations for increased market intervention through a capacity market.

- The PUC should not mandate a hard reserve margin target.
- The PUC should eliminate the high system-wide offer cap; in the short-term, the PUC should take action this week to raise the cap to \$9,000.
- The PUC should pursue innovative, market driven demand response to meet future needs.
- Redefine the concept of market power abuse to eliminate the bias against pricing electricity above marginal cost.
- Determine whether the price distortions caused by the deployment of Non-Spinning Reserve Services could be best addressed by eliminating the service.
- Eliminate certain existing PUC authority, such as:
  - Ability to approve mergers and acquisitions
  - Ability to disgorge revenue

(Bill Peacock, Vice President of Research and Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

20. Take the following actions relating to rate regulation of electricity:

- Eliminate original jurisdiction for municipalities and shift original jurisdiction to the PUC.
- Eliminate the mandated reimbursement of legal fees for municipalities in rate cases before the PUC.

(Bill Peacock, Vice President of Research and Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

21. Ensure that any push to encourage new supplies of electricity include robust analysis to determine the effect on consumers. (Tim Morstad, Associate State Director – AARP, Austin)

### **Energy Efficiency**

22. Amend Section 39.905(b) of the Utilities Code to clearly require PUC to update the statewide goal for energy efficiency on a periodic basis. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; and Norma Cortez, Member – Citizen.org)

23. Amend Section 39.905(a)(3), Utilities Code, to increase the energy efficiency goal from 0.4 percent to 1 percent of peak demand in the state of Texas by 2016. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; and Norma Cortez, Member – Citizen.org)

24. Create an energy efficiency coordinating council composed of presiding officers from PUC, TCEQ, ERCOT, SECO, TDHCA, plus ORCA, public members, including ratepayers and representatives of the environmental community, TAMU Energy Systems Laboratory, and the utility efficiency managers. The council would review required reports and submissions, ensure no duplication of effort, hold hearings open to the public to increase transparency of programs,

establish a portal of information on efficiency programs for the public, set an annual goal for statewide energy savings and ensure all programs meet their portions of the goal and adjust accordingly, and compile comprehensive data from all efficiency programs and report them to ERCOT to be used in future demand projections. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; and Norma Cortez, Member – Citizen.org)

25. Allow transmission and distribution utilities to fund either directly or through a third party rebates for equipment to allow for air conditioning and other load controls in residential and commercial entities. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; and Norma Cortez, Member – Citizen.org)

### **Renewables and Demand Response**

26. Clarify in statute that PUC and ERCOT must move forward with changes to allow demand response to bid into the energy market. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; and Norma Cortez, Member – Citizen.org)
27. Restrict participation in the renewable portfolio standard market to projects located in Texas. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; and Norma Cortez, Member – Citizen.org)
28. Ensure the 500 megawatt non-wind renewable portfolio standard is mandated. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; Norma Cortez, Member – Citizen.org; Kaiba White, Board Member – Solar Austin, Austin; Bob Fusinato, Richardson; Al Braden, Austin; Ron Van Dell, President/CEO – SolarBridge Technologies, Austin; and Carey Ibrahimbegovic, President – Greenbelt Solar, LLC)
29. Extend the mandate for a non-wind renewable portfolio standard to 3,000 megawatts of use of such energy sources by 2020. (Bob Fusinato, Richardson; Al Braden, Austin; Ron Van Dell, President/CEO – SolarBridge Technologies, Austin; and Carey Ibrahimbegovic, President – Greenbelt Solar, LLC)
30. Establish in statute a 3,000 megawatt non-wind 2025 goal to further the adoption of alternative energy resources in the state of Texas. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; Norma Cortez, Member – Citizen.org; Kaiba White, Board Member – Solar Austin, Austin; and Phillip Martin, Political Director – Progress Texas, Austin)
31. Require the following related to a fair market price for electricity generated and transmitted to the grid by small renewable technologies:
- Require retail electric providers to pay a fair market buy-back rate based on the time it is produced for electricity generated by onsite solar and other renewable resources placed on the customer side of the meter, so long as they are below 2 megawatts and do not generate

more power in a year than the customer consumes. The home or business owners would only be paid market price for excess electricity that actually goes out on the grid.

- Require PUC to post the buy-back rate of various retail electric providers.
- Establish in statute similar minimum provisions for investor owned utilities, electric cooperatives, and municipal utilities, based on fair market value.

(Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin; Tom “Smitty” Smith, Director – Public Citizen, Austin; Norma Cortez, Member – Citizen.org. Similar new issues were suggested by Bob Fusinato, Richardson; Al Braden, Austin; Ron Van Dell, President/CEO – SolarBridge Technologies, Austin; Carey Ibrahimbegovic, President – Greenbelt Solar, LLC; and Bruce Melton, PE, Austin)

32. Change statute to permit anyone living in the service area of an electric cooperative, municipality, or river authority to get a meter that runs forwards and backwards, and provide for consumer fraud protections because PUC has no authority. (Weldon Coldiron – Individual Qualifying Facility (QF) Holder, Pleasanton)
33. Examine ways to establish neighborhood generation and storage zones. (Bob Fusinato, Richardson)
34. Modify the Public Utility Regulatory Act to clearly state that non opt-in entities (those in municipal and cooperative areas) that voluntarily want to offer third party models for electric vehicle charging station (EVCS) owners, EVCS service companies, EVCS service providers, and renewable distributed generation like onsite solar electric vehicle (EV) and solar/distributed generation (DG) would not be opening themselves up to full retail competition, and state that third parties offering EV and DG leasing services are not considered competitive retailers or utilities in Texas. (Cyrus Reed, Acting Chapter Director – Lone Star Chapter Sierra Club, Austin)
35. Take the following actions related to renewable energy subsidies, fuel mandates, and the State’s energy efficiency program:
  - Eliminate these renewable energy subsidies:
    - the Texas Renewable Portfolio Standard
    - the federal Production Tax Credit
  - Require wind, solar, and other renewable generators to meet the same standards as other generators.
  - Eliminate the state energy efficiency program.
    - If the state’s energy efficiency program remains in existence, change the way the state evaluates it to encompass all the costs (including those to the program, consumers, and the Texas economy) involved with energy efficiency.

- Any future increases to the program’s goals should be closely examined to ensure that they will reduce the cost of energy use.
- Eliminate the statutory requirement that 50 percent of new generation be generated by natural gas.

(Bill Peacock, Vice President of Research and Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

### **Telecom**

36. Related to Lifeline service, amend Texas law and PUC rules so that neither requires a certificated competitive local telephone provider that is not an Eligible Telecommunications Carrier or an Eligible Telecommunications Provider to offer Lifeline service on an unsubsidized basis; or, if such provider is required to offer Lifeline service, treat it the same as these eligible entities, including receiving subsidies for providing the service. (Kennard Woods, Counsel – Charter Fiberlink TX-CCO, LLC, Atlanta, Ga.)
37. Ensure that statute continues to require Incumbent Local Exchange Carriers to notify competitive local providers when they expand their local calling areas, to the extent that such notification may have been eliminated by S.B. 980. (Kennard Woods, Counsel – Charter Fiberlink TX-CCO, LLC, Atlanta, Ga.)
38. Give PUC authority to regulate wireless telecommunications to reduce electromagnetic emissions, especially in populated areas. (Charles Morgan, Executive Director – Citizens for Environmental Clean-up, Freestone County)

### **Water and Sewer Regulation**

39. Authorize county commissioners courts to intervene on behalf of ratepayers in water and wastewater rate cases. (Gene Robinson, Mabank)

#### **Against New Issue 39**

Charles W. Profflet, Jr., P.E., Managing Director, Texas Utilities – SouthWest Water Company

40. Clarify that water and sewer utilities can only recover taxes they actually pay and not some hypothetical taxes that they might have been required to pay. (David Frederick – Texans Against Monopolies Excessive Rates, Austin)
41. Give explicit and clear direction in statute that water rates should be designed to maximize conservation. (Tom “Smitty” Smith, Director – Public Citizen, Austin)

### **Miscellaneous**

42. Take the following actions related to high and/or inequitable taxes and fees assessed in the electricity and telecommunications markets:
  - Reduce local franchise fees by levying them on the basis of the marginal costs of managing the public right-of-way.

- Eliminate taxes on production goods that are used to deliver consumer telecommunications services.
- Eliminate the “tax on a tax” application of the sales tax to taxes and fees on a telephone bill.

(Bill Peacock, Vice President of Research and Director, Center for Economic Freedom – Texas Public Policy Foundation, Austin)

## COMMISSION DECISION ON NEW ISSUES (JANUARY 2013)

The Commission did not adopt any new issues.

## FINAL RESULTS ON NEW ISSUES (JULY 2013)

### ***Legislative Action***

No action needed. (No new issues adopted by the Commission.)



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**PROVISIONS ADDED BY THE  
LEGISLATURE**

# PROVISIONS ADDED BY THE LEGISLATURE

## ***Legislative Action — H.B. 1600***

- **Adds prohibitions related to the use of data from an advanced metering system.**

House Bill 1600 requires PUC to prohibit an electric utility or transmission and distribution utility from selling, sharing, or disclosing information collected from an advanced metering system, including information used to calculate charges, historical load data, and any other customer information. PUC must allow a utility to share information with an affiliated corporation or other third party entity if used to provide electric utility service to the customer or other customer approved services.



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# APPENDICES

# APPENDIX A

## ***Companies Regulated by PUC Fiscal Year 2011***

<b>Type of Company</b>	<b>Explanation</b>	<b>PUC's Function</b>	<b>Number</b>
<b><i>Electric Companies</i></b>			
Integrated Investor-Owned Utilities	Traditional monopoly electric utilities that exist in parts of Texas that have not been deregulated by the Legislature.	Fully regulates rates and services.	4
Transmission and Distribution Utilities (TDUs)	Monopoly investor-owned utilities that provide transmission and distribution services in otherwise deregulated parts of Texas.	Fully regulates rates and services.	6
Transmission Service Providers (TSPs)	Entities that only provide wholesale transmission services in deregulated parts of Texas.	Fully regulates rates and services.	4
Retail Electric Providers (REPs)	Competitive electric companies that purchase wholesale electricity from generators and directly bill consumers.	Regulates through licensing, customer protection rules, and enforcement actions.	116
Power Generation Companies (PGCs)	Competitive generators that sell electricity to retail electric providers.	Registers, but otherwise has limited regulatory authority. PGCs must comply with ERCOT protocols and are subject to PUC enforcement actions for violations.	211
Electric Cooperatives	Nonprofit, integrated utilities owned by customers. May opt in to customer choice if located in the part of the state that has been deregulated.	Authority to issue certificates of convenience and necessity for transmission lines and to regulate transmission services provided to other utilities but no authority over retail rates and services. For co-ops that opt into competition, PUC has jurisdiction over open access to distribution facilities.	75
Municipal Utilities	City-owned, integrated utilities. May opt in to customer choice if located in part of the state that has been deregulated.	Authority to regulate certification of retail service areas and transmission services provided to other utilities. No authority over retail rates and services, except to review rates charged to customers outside the municipality. For municipal utilities that opt into competition, PUC has jurisdiction over open access to distribution facilities.	77
Power Aggregators	Companies that contract with multiple customers to form a single purchasing unit to negotiate the purchase of electricity from retail electric providers.	Registers but otherwise has limited regulatory authority.	247

## Appendix A

Type of Company	Explanation	PUC's Function	Number
Power Marketers	Companies that purchase and resell wholesale electricity.	Registers but otherwise has limited regulatory authority.	221
<b>Telephone Companies</b>			
Incumbent Local Exchange Carriers (ILECs)	Traditional phone companies that provide local service to businesses and residences, and wholesale services to competitive local exchange carriers.	Statute requires ILECs to offer telecommunications services for resale at wholesale rates and provide for the interconnection of telephone networks. ILECs are subject to traditional regulation, but may elect incentive regulation with pricing flexibility. Some ILEC exchanges are deregulated.	63
Competitive Local Exchange Carriers (CLECs)	Competitive companies that provide local service to businesses and residences in competition with ILECs.	CLECs must obtain a Certificate of Operating Authority or Service Provider Certificate of Operating Authority from PUC. Retail rates are not regulated.	321
Interexchange Carriers	Long distance service providers that do business in Texas.	Registers companies to facilitate enforcement.	284
Pay Phone Providers	Pay telephone providers.	Registers companies that are not local exchange companies.	56
Automatic Dial Announcing Devices	Companies that operate computerized telephones that play taped messages to consumers.	Registers companies to facilitate enforcement of statutory provisions on hours of operation, and content and length of messages.	276
<b>Cable and Video Service</b>			
Cable Service Providers and Video Service Providers	Companies that provide cable service or that distribute video programming service through wireline facilities located at least in part in the public right of way.	Issues State-issued Certificates of Franchise Authority. May enforce anti-discrimination requirements.	83

# APPENDIX B

## *PUC Regulatory Responsibilities*

The following chart summarizes PUC's varied regulatory responsibilities over electric and telecommunications-related companies. Oversight categories shown across the top of the chart represent general areas of oversight. The specific requirements for oversight performed in a category can vary among different types of providers.

	Type of Company	License Type	Number of Entities (9-1-2011)	Rate Regulations	Oversight of Service or Customer Protection Requirements	Informal Complaints	Investigation and Enforcement
<b>Electric Companies</b>	Integrated Investor-Owned Utilities	CCN <sup>a</sup>	4	✓	✓	✓	✓
	Transmission and Distribution Utilities	CCN <sup>a</sup>	6	✓	✓	✓	✓
	Transmission Service Providers	CCN <sup>a</sup>	4	✓	✓	✓	✓
	Retail Electric Providers	Certification	116		✓	✓	✓
	Power Generation Companies	Registration	211		✓		✓
	Electric Cooperatives <sup>f</sup>	CCN <sup>a</sup>	75				
	Municipal Utilities <sup>g</sup>	CCN <sup>b</sup>	77				
	Power Aggregators	Registration	247		✓	✓	✓
	Power Marketers	Registration	221		✓		✓
	Qualified Scheduling Entities	None	490		✓		✓
<b>Telephone Companies</b>	Incumbent Local Exchange Carriers (including telephone cooperatives)	CCN <sup>a</sup>	63 <sup>h</sup>	✓ <sup>i</sup>	✓	✓	✓
	Competitive Local Exchange Carriers	COA <sup>c</sup> SPCOA <sup>d</sup>	321		✓	✓	✓
	Interexchange Carriers	Registration	284		✓	✓	✓
	Pay Phone Providers	Registration	56	✓ <sup>j</sup>	✓	✓	✓
	Automatic Dial Announcing Devices	Permit	276		✓	✓	✓

## Appendix B

	Type of Company	License Type	Number of Entities (9-1-2011)	Rate Regulations	Oversight of Service or Customer Protection Requirements	Informal Complaints	Investigation and Enforcement
Cable and Video Service	Cable and Video Service Providers	SICFA <sup>e</sup>	83			✓ <sup>k</sup>	✓

<sup>a</sup> Certificate of Convenience and Necessity

<sup>b</sup> Certificate of Convenience and Necessity for retail service areas

<sup>c</sup> Certificate of Operating Authority

<sup>d</sup> Service Provider Certificate of Operating Authority

<sup>e</sup> State-issued Certificate of Franchise Authority

<sup>f</sup> Subject to PUC regulation of wholesale transmission services

<sup>g</sup> Subject to PUC regulation of wholesale transmission services

<sup>h</sup> Includes five partially deregulated telephone cooperatives, whose rates are subject to PUC review if they are challenged by at least 5 percent of affected customers

<sup>i</sup> Subject to traditional regulation in many exchanges, but may elect incentive regulation with pricing flexibility or petition PUC for deregulation in certain exchanges under certain conditions

<sup>j</sup> Subject to regulation of rate caps

<sup>k</sup> Subject to limited oversight requirements prohibiting discrimination in providing services

# APPENDIX C

## TCEQ Utility Rate, CCN, and Service Policy Jurisdiction\*



### TCEQ REGULATORY GUIDANCE

Water Supply Division  
 RG-245  
 Revised October 2004

## TCEQ Jurisdiction over Utility Rates and Service Policies

The tables in this publication summarize the Texas Commission on Environmental Quality’s (TCEQ) jurisdiction over the rates charged, areas served, and customer service policies followed by retail public utilities owned by cities, counties, districts, water supply or sewer service corporations, and investors. For definitions of the terms and abbreviations used in this publication, look below the table on page 2.

### What jurisdiction does TCEQ have over retail rates charged by a water or sewer utility?

If the utility is owned by a(n) ...		What type of jurisdiction does the TCEQ have over its retail rates? (Note: the TCEQ has appellate jurisdiction over wholesale rates charged by one utility to another.)		Is customer notice of a retail rate change required?
		Original	Appellate	
<b>City</b>	with customers inside city limits	No	No	No
	with customers outside city limits	No	Yes, if 10% of customers outside the city limits protest	Yes*
<b>County</b> (other than an “affected county”)		No	No	No
<b>Affected County</b> (within 50 miles of the US-Mexico border)		No	Yes, if 10% of customers protest	Yes*
<b>District</b>	with customers inside district	No	Yes, if 10% of customers protest	No
	with customers outside district	No	Yes, if 10% of customers protest	Yes*
<b>Water Supply Corporation (WSC)</b> (if not exempt)		No	Yes, if 10% of customers protest	No
<b>Exempt WSC</b>		No	No	No
<b>Investor-Owned Utility (IOU)</b> (if not exempt)	Inside a city	No, <i>unless</i> the city surrenders its jurisdiction to the TCEQ	Yes, if 10% of customers protest <i>or</i> if a party to a rate case before the city files an appeal to the city’s ruling	Yes
	Outside a city	Yes	Not applicable.	Yes
<b>Exempt IOU</b>		No	Yes, if 50% of customers protest	No

\* This notice must tell the old rates, the new rates, and the date the new rates take effect. The TCEQ recommends that customers be told of their right to appeal.

### On page 2, find information on these topics:

- When must utilities obtain a CCN and observe TCEQ tariff and service policies?
- Terms used in this publication
- How to learn more

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\* The Texas Commission on Environmental Quality provided this appendix.

## Appendix C

### **When must utilities obtain a CCN and observe TCEQ tariff and service policies?**

If the utility is owned by a(n) ...	Is a CCN Required?	Do TCEQ Tariff and Customer Service Policies Apply?
<b>City</b>	No*	No
<b>County</b>	within 50 miles of the US-Mexico border	Yes
	elsewhere in Texas	No*
<b>District</b>	No*	No
<b>WSC</b> (if not exempt)	Yes	No, but must file tariff with TCEQ
<b>Exempt WSC</b>	Water, No*; Sewer, Yes	No, but must file tariff with TCEQ
<b>IOU</b> (if not exempt)	Inside a city	Yes, if city does not adopt its own
	Outside a city	Yes
<b>Exempt IOU</b>	Water, No*; Sewer, Yes	Yes

\* Yes, if retail service is provided within another retail public utility's lawful service area.

#### **Terms used in this publication:**

**Affected County.** Counties within 50 miles of the US-Mexico border. Chapter 13 of the Texas Water Code gives these counties specific authority to provide water or sewer utility service.

**Appellate Jurisdiction.** Circumstances where the TCEQ has the authority to review and either approve or modify the decision of another authority after receiving an appeal from affected customers or parties.

**CCN—Certificate of Convenience and Necessity.** Issued by the TCEQ, authorizes a utility to provide water or sewer utility service to a specific area and obligates the utility to provide continuous and adequate service to every customer who requests service in that area.

**District.** A “district” created by the Legislature or under the Texas Water Code. There are various types, such as MUD (municipal utility district), FWSD (fresh water supply district), WCID (water control and improvement district), or SUD (special utility district).

**Exempt IOU or Exempt WSC.** A water utility or water supply corporation with fewer than 15 potential service connections. The exemption (from the requirement to obtain a CCN) does not apply to sewer utilities.

**IOU, Investor-Owned Utility.** A retail public utility owned by an individual, partnership, corporation or homeowners association.

**Original Jurisdiction.** Circumstances where the TCEQ has the authority to review and approve or modify the rates charged by an individual or corporation for water or sewer services.

**Potable Water.** Water that meets state standards for drinking water, whether consumed or not.

**Retail Public Utility.** Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision, or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

**Retail water or sewer utility service.** Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

**Tariff.** A document listing the rates charged by and related service policies practiced by a utility providing retail service.

**WSC—Water Supply Corporation.** A nonprofit water supply or sewer service corporation owned and controlled by its members.

**Wholesale Utility.** A utility that sells potable water service or sewer service to a retail public utility that is not the ultimate consumer of the service.

#### **How to learn more:**

- See Chapter 13 of the Texas Water Code, titled *Water Rates and Services*
- Call our Utilities & Districts Section at 512/239-4691
- Send us a fax at 512/239-6972
- Or visit our Web site at [www.tceq.state.tx.us](http://www.tceq.state.tx.us)

# APPENDIX D

## *PUC Reporting Requirements*

<b>Report Title</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipient</b>	<b>Sunset Evaluation</b>
1. System Benefit Fund Report	Section 39.903(d), Texas Utilities Code	Requires PUC to report if the system benefit fund fee is insufficient to fund specified regulatory purposes.	Electric Utility Restructuring Legislative Oversight Committee	Abolish
2. Customer Awareness Report	Section 64.003(b), Texas Utilities Code	Focuses on promoting customer awareness of changes in telecommunications markets. Requires PUC to compile a report on customer service at least once each year showing comparative customer information from reports PUC deems necessary.	Unspecified	Abolish
3. System Benefit Account Reporting	Rider 4, page VIII-62, Acts of the 82nd Legislature, Regular Session, 2011 (the General Appropriations Act)	Requires PUC to submit a quarterly report on revenues and expenditures made from the GR Dedicated - System Benefit Account No. 5100. Requires the report to be submitted with documentation as specified by the Legislative Budget Board and the Governor.	Governor and Legislative Budget Board	Continue
4. Customer Awareness Report	Section 17.003(b), Texas Utilities Code	Focuses on promoting public awareness of changes in the electric and telecommunications markets. Requires PUC to compile a report on customer service at least once each year showing the comparative customer information from reports PUC deems necessary.	Unspecified	Continue
5. Scope of Competition in Electric Markets in Texas Report	Section 31.003, Texas Utilities Code	Requires PUC to report on the scope of competition in electric markets and the effect of competition and industry restructuring on customers in both competitive and noncompetitive markets.	Legislature	Continue

## Appendix D

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
6. Competitive Renewable Energy Zones Report	Section 39.904(j), Texas Utilities Code	Requires PUC, after consultation with each appropriate independent organization, electric reliability council, or regional transmission organization, to file a report that evaluates the Commission's implementation of competitive renewable energy zones; the estimated cost of transmission service improvements needed for each competitive renewable energy zone; and an evaluation of the effects that additional renewable generation has on system reliability and on the cost of alternatives to mitigate the effects.	Legislature	Continue
7. Need for Increased Transmission and Generation Capacity Report	Section 39.904(k), Texas Utilities Code	Requires PUC and ERCOT to study the need for increased transmission and generation capacity throughout the state and report the results of the study and any recommendations for legislation.	Legislature	Continue
8. Customer Service Information Report	Section 41.060, Texas Utilities Code	Requires PUC to keep information submitted to the agency by customers and retail electric providers pertaining to the provision of electric service by electric cooperatives. Requires PUC to notify the electric cooperative, which must respond to the customer or retail electric provider. Requires PUC to prepare a report summarizing these exchanges for the Sunset Commission when PUC is under Sunset review.	Sunset Advisory Commission	Continue
9. Scope of Competition in Telecommunications Markets in Texas Report	Section 52.006, Texas Utilities Code	Requires PUC to report the scope of competition in regulated telecommunications markets, and report the effect of competition on customers in both competitive and noncompetitive markets, with a specific focus on rural markets.	Legislature	Continue
10. Texas No-Call List Report	Section 304.201, Texas Business and Commerce Code	Requires PUC to report the number of telephone numbers included on the Texas no-call list; the number of no-call lists distributed; the amount collected for requests to place telephone numbers and renew entries on the list and for distribution of the list; a list of complaints received concerning regulated activities; a summary of any enforcement actions; and PUC's recommendations for changes.	Lieutenant Governor and Speaker of the House	Continue

## **Appendix D**

<b>Report Title</b>	<b>Legal Authority</b>	<b>Description</b>	<b>Recipient</b>	<b>Sunset Evaluation</b>
11. Evaluation of State Energy Efficiency Programs Report	Section 386.205, Texas Health and Safety Code	Requires PUC, in cooperation with the Energy Systems Laboratory at the Texas Engineering Experiment Station of the Texas A&M University System, to submit a report that, by county, quantifies the reductions of energy demand, peak loads, and associated emissions of air contaminants achieved from the programs implemented under the energy efficiency grant program and under the goal for energy efficiency.	Texas Commission on Environmental Quality	Continue
12. 9-1-1 Service Fee Comments	Section 771.0725(c), Texas Health and Safety Code	Requires PUC to review documentation provided by the Commission on State Emergency Communications (CSEC) as well as allocations identified by CSEC for the emergency services fee and the equalization surcharge. Requires PUC, if the agency determines that a recommended rate or allocation is not appropriate, to provide comments regarding appropriate rates and the basis for that determination.	Governor, Legislative Budget Board, and CSEC	Continue



# Sunset Staff Review of the *Public Utility Commission of Texas*

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