

**Texas
Sunset
Advisory
Commission**

STAFF EVALUATION

PUBLIC UTILITY COMMISSION OF TEXAS

OFFICE OF PUBLIC UTILITY COUNSEL

**A Staff Report
to the
Sunset Advisory Commission**



April 1992

PUBLIC UTILITY COMMISSION OF TEXAS

OFFICE OF PUBLIC UTILITY COUNSEL

April 1992

Table of Contents

	<u>PAGE</u>
<i>Summary</i>	1

Background

Public Utility Commission of Texas

Creation and Powers	4
Policymaking Body	5
Funding and Organization	6
Programs and Functions	9

Office of Public Utility Counsel

Creation and Powers	20
Policymaking Body	20
Funding and Organization	21
Programs and Functions	24

Findings and Recommendations

Overall Approach to the Reviews	28
--	-----------

Need for the Agencies

Issue 1 - Continue the Public Utility Commission	30
---	----

Issue 2 - Continue the Office of Public Utility Counsel	34
--	----

Reorganization Alternatives

Issue 3 - Reorganize the Public Utility Commission and the Office of Public Utility Counsel	38
---	----

Table of Contents

Findings and Recommendations (cont.)

Policymaking Body

- Issue 4 - Authorize the governor to designate the chair of the Public Utility Commission 44

Overall Administration

- Issue 5 - Remove the Public Utility Commission from the process for adjusting the utility gross receipts assessment 46
- Issue 6 - Provide the Public Utility Commission with broader authority to assess administrative penalties 49

Evaluation of Programs

- Issue 7 - Transfer the Public Utility Commission's hearings division to the State Office of Administrative Hearings 54
- Issue 8 - Require the Public Utility Commission to develop a comprehensive resource planning process for electric generating utilities 61
- Issue 9 - Authorize the Public Utility Commission to set a schedule for large electric utility rate cases 73
- Issue 10 - Require the Public Utility Commission to develop rules for settling contested cases 79
- Issue 11 - Establish a task force to develop a long-range plan for telecommunications 83
-

Table of Contents

Findings and Recommendations
(cont.)

Issue 12 - Partially deregulate electric distribution cooperatives	89
Issue 13 - Partially deregulate telephone cooperatives	95

Across-the-Board Recommendations

Public Utility Commission	101
Office of Public Utility Counsel	103

Minor Statutory Modifications

Public Utility Commission	105
---------------------------	-----

SUMMARY

SUMMARY

The Public Utility Commission of Texas (PUC) and the Office of Public Utility Counsel (OPUC) are subject to the Sunset Act and will be automatically abolished unless statutorily continued by the 73rd Legislature in 1993. As required by statute, the review of the two agencies included a determination of whether each of the agencies meets a real and continuing need; whether there were benefits to be gained by reorganizing the agencies; and whether current statutory policies should be changed to improve the efficiency and effectiveness of the agencies.

Need for the Agencies

The review concluded that the PUC and the OPUC should be continued for an eight-year period and reviewed again in 2001 instead of the standard 12-year sunset review period. This will allow the agencies to be reviewed along with other agencies that have similar functions.

The review found that the primary functions performed by the PUC in regulating electric and telephone utilities continue to be needed to protect the public from unreasonably escalating utility rates and to ensure reliable and quality service. In addition, the general function of the OPUC in representing consumers in proceedings before the PUC continues to be needed.

Reorganization Alternatives

As a part of the review, various reorganization options were considered to determine if all or part of the PUC's or the OPUC's functions should be combined or transferred to other agencies. The review showed that benefits could be achieved by reorganizing the current regulatory structure and two organizational alternatives are outlined for consideration. The first alternative would transfer the PUC hearings function to the State Office of Administrative Hearings, eliminate the role of the PUC general counsel in presenting a public interest case, transfer a portion of the staff involved in presenting the public interest case from the PUC to the OPUC, and expand the role of the OPUC to represent all consumers. The second alternative would include all of the same changes as the first alternative, but would also increase the size of the commission to six members.

Policymaking Body

- The policymaking body of the PUC should be changed by requiring the governor to designate the chair of the commission.

Overall Administration

- The administrative functions of the PUC should be changed by:

- removing the PUC from the process for adjusting the utility gross receipts assessment; and
- providing the PUC with broader authority to assess administrative penalties.

Evaluation of Programs

- The operation of the PUC's programs should be improved by:
 - transferring the hearings division to the State Office of Administrative Hearings;
 - requiring the PUC to develop a comprehensive resource planning process for electric generating utilities;
 - authorizing the PUC to set a schedule for large electric utility rate cases;
 - requiring the PUC to develop rules for settling contested cases;
 - establishing a task force to develop a long-range plan for telecommunications;
 - partially deregulating electric distribution cooperatives; and
 - partially deregulating telephone cooperatives.

Fiscal Impact

Preliminary estimates indicate that the fiscal impact of recommendations affecting the Public Utility Commission will depend on which of the two organizational alternatives is selected. Most of the recommendations will not have a net fiscal impact. The recommendations to change the organizational structure and to establish a comprehensive resources planning process for electric generating utilities will have the largest fiscal impact. The first organizational alternative would maintain the existing three-member commission, while the second alternative would expand the commission to six members. The fiscal impact of the recommendations affecting the PUC, including both organizational alternatives, is summarized in the table below.

Public Utility Commission		
Fiscal Year	Net Savings/(Cost) to General Revenue	
	Net Savings All Recommendations (Maintain Three-member Commission)	Net Cost All Recommendations (Expand to Six-member Commission)
1994	\$150,045	(\$220,955)
1995	\$171,045	(\$199,955)
1996	\$171,045	(\$199,955)
1997	\$171,045	(\$199,955)
1998	\$171,045	(\$199,955)

Preliminary estimates indicate that the recommendations affecting the Office of Public Utility Counsel will result in a cost to the state of approximately \$6,000 for each of the next five years. These costs are associated with the nine-member advisory committee to provide input to the public counsel. The fiscal impact of recommendations affecting the OPUC are summarized in the table below.

Office of Public Utility Counsel	
Fiscal Year	Net Cost to General Revenue
1994	(\$6,000)
1995	(\$6,000)
1996	(\$6,000)
1997	(\$6,000)
1998	(\$6,000)

BACKGROUND

PUBLIC UTILITY COMMISSION OF TEXAS

CREATION AND POWERS

In 1975, the 64th Legislature created the Public Utility Commission of Texas (PUC) to regulate public utilities in Texas. The legislature found that these utilities operated as monopolies and were not subject to normal competitive forces. Regulation was established as a substitute for competition, with the PUC responsible for maintaining rates and services that are fair both to consumers and to the utilities. Initially, the PUC's jurisdiction included water and sewer utilities in addition to electric and telephone utilities. However, in 1986 the agency's jurisdiction over water and sewer utilities was transferred to the Texas Water Commission. The agency now regulates 10 investor-owned electric utilities, 87 electric cooperatives, four river authorities, 59 local telephone companies, and the dominant carrier of long-distance service in the state, which is AT&T. The agency estimates that the utilities it regulates have a combined annual revenue of approximately \$20 billion.

The initial duties of the PUC focused on establishing each utility's service area, registering all telecommunications providers in the state, and setting just and reasonable service standards for all utilities. The PUC was also charged with holding hearings to determine the propriety of proposed utility rate changes, monitoring the management and affairs of public utilities, bringing court action against utilities that violate the Public Utility Regulatory Act (PURA) or agency rules or orders, and investigating utility mergers and sales of property.

The PUC's functions and responsibilities have undergone several legislative changes since 1975. In 1983, the 68th Legislature made several changes to the PURA including requiring electric utilities to file a notice of intent with the PUC before building new generating plants and to prove to the agency that they had considered other reasonable resource alternatives. In addition, the 68th Legislature encouraged utilities to use alternative fuels, required the agency to develop a long-term statewide energy forecast to be used in certification proceedings for generating plants, and required the agency to conduct management audits of each utility under its jurisdiction at least once every 10 years. In 1987, the legislature required the agency to determine the existence, impact and scope of competition in the state's telecommunications industry to prepare for technological advances that would spur new competition. In 1989, the legislature required the agency to implement the statewide dual-party relay service, known as Relay Texas, which offers a link between persons who are hearing-impaired or speech-impaired and persons with normal hearing and speech abilities. In 1991, the legislature authorized the agency to assess administrative penalties against operators of automatic dial announcing devices (ADADs) for violations of related rules and statutes.

While numerous changes have been made to the PURA, the four basic functions of the agency have not changed substantially since 1975. The first basic function of the agency is certification. Before a regulated utility can operate in the state or construct new facilities, it must

first obtain a certificate of convenience and necessity (CCN) from the PUC, which certifies that the utility's operation is in the public's best interest. The second basic function of the agency is rate-setting. The agency sets rates for all local telephone companies, AT&T as the dominant long-distance service in Texas, investor-owned electric utilities and electric cooperatives operating outside city limits, and the electric operations of river authorities. Cities have retained original ratemaking authority for electric utilities and cooperatives operating within their boundaries. The PUC reviews these rates on an appellate basis. The commission also reviews on an appellate basis the rates of municipal utilities serving customers outside of their city limits. The agency's third basic function is monitoring regulated utilities to ensure compliance with statutory requirements and agency policies, rules, orders, and service standards. The agency's monitoring activities also include monitoring utility earnings and conducting management audits. As its fourth basic function, the agency helps consumers resolve complaints against regulated utilities.

POLICYMAKING BODY

The Public Utility Commission (PUC) consists of three full-time, salaried commissioners who are appointed by the governor with the advice and consent of the senate. The commissioners serve staggered six-year terms and elect one of their members as chair once every two years following the appointment of a new commissioner.

To be eligible for appointment as a commissioner, a person must be a qualified voter, at least 30 years of age, a citizen of the United States and a resident of Texas. A person is not eligible for appointment as a commissioner if at any time during the two years preceding his appointment he served as an officer, director, owner, employee, partner, or legal representative of any public utility or any affiliated interest, or owned or controlled stocks or bonds worth \$10,000 or more in a public utility or affiliated interest. The PURA also imposes post-employment restrictions on the commissioners. For two years after a commissioner's appointment to the commission has ended, he is prohibited from being employed by any public utility that was in the scope of his official responsibility.

The primary role of the three-member commission is to serve in a quasi-judicial capacity on utility rate cases and other proceedings that have gone through the hearings process. Commissioners hold final order meetings once or twice a month to consider the disposition of cases. In addition to issuing final orders, commissioners adopt agency rules, develop long-range agency goals and plans, and set regulatory policy. Each commissioner employs three personal staff, including two aides and an administrative assistant. The commission also hires the agency's executive director, general counsel, director of hearings and special counsel, who serves as legal advisor to the commissioners.

The position of special counsel was created in 1986 in an attempt to address problems of ex parte communications between the commissioners and the agency's general counsel. Because the general counsel is a party to agency proceedings, it is inappropriate for him to serve as advisor to the commissioners. Also, state law prohibits the commissioners from having ex parte communications with staff members, including the general counsel, who have worked on cases

pending before the commission. The special counsel, working apart from legal staff, can answer each commissioner's legal questions without violating ex parte communications restrictions.

In fiscal year 1991, the commissioners issued 235 final orders, an increase of 19 percent over fiscal year 1990, and adopted 16 new rules, an increase of 100 percent when compared to fiscal year 1990. Of the 235 final orders issued by the PUC commissioners, six involved investor-owned electric utilities, 12 involved electric cooperatives, 10 involved investor-owned telephone utilities, and 207 involved other cases such as certification, inquiry, avoided cost, fuel factor, fuel reconciliation, fuel refund, complaint, and sale/transfer/merger cases. Four of the five major investor-owned electric utility cases involved nuclear power plants. These nuclear cases tended to be very complex and lengthy, and encompassed many technical issues that the agency and the commissioners were addressing for the first time in a rate case.

In an effort to assist the commission in handling this heavy workload, the 72nd Legislature in 1991 authorized the commissioners to delegate to an administrative law judge or hearings examiner the authority to make a final decision in a proceeding in which there is no contested issue of law or fact, other than one involving major rate changes. Such a decision by the administrative law judge would have the same effect as a final order of the commissioners unless a commissioner requests to formally review the decision. As of April 1992, the agency had not adopted rules to implement this change in the law.

FUNDING AND ORGANIZATION

In fiscal year 1991, the agency expended about \$10.8 million out of appropriations totaling \$12.4 million. Exhibit A shows these expenditures by the PUC's programs.

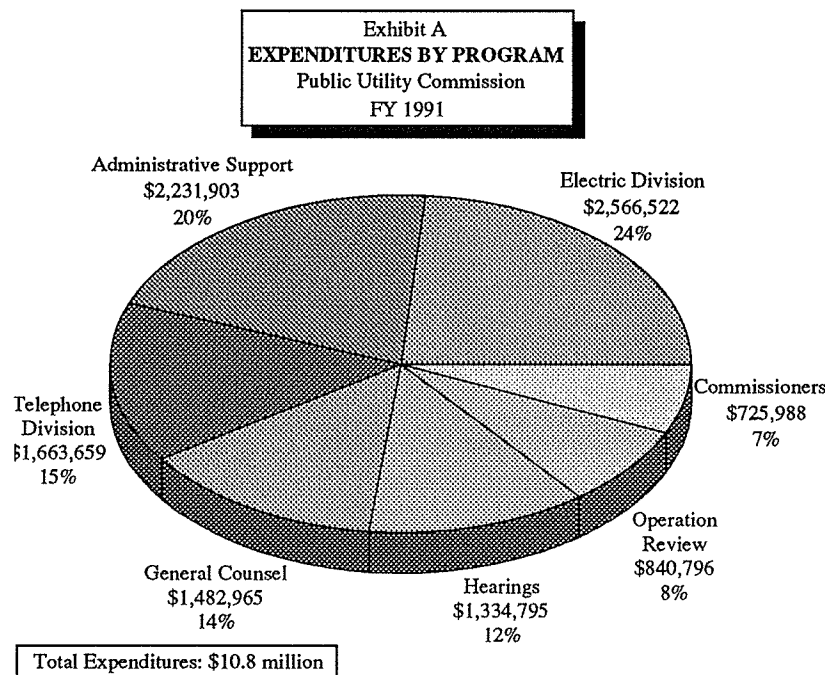
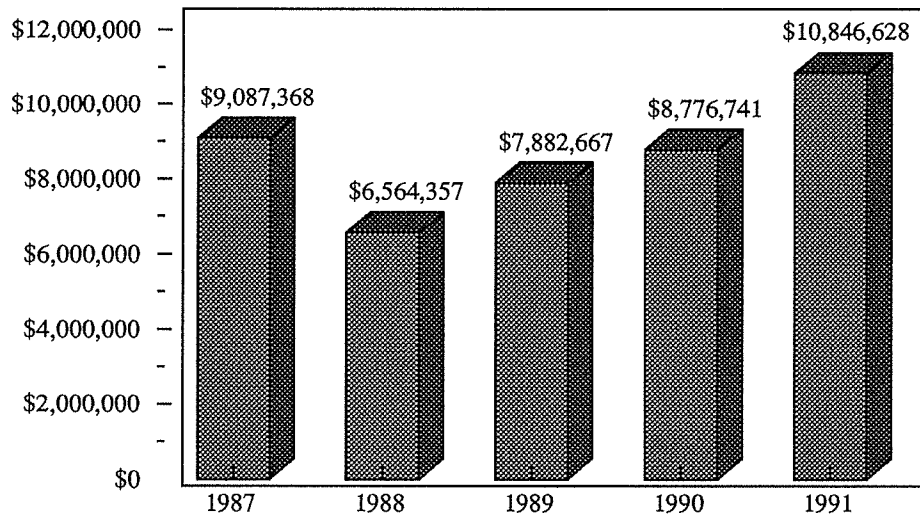


Exhibit B shows how the PUC's expenditures have changed over a five-year period. Expenditures declined by 27 percent in fiscal year 1988 when compared to fiscal year 1987, but have risen steadily since that time.

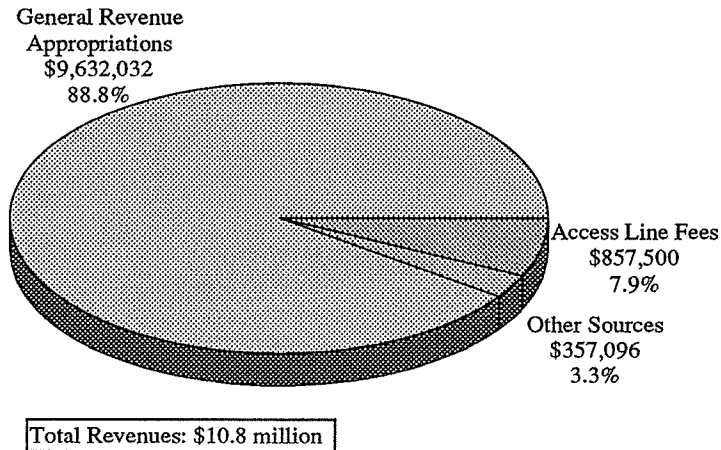
Exhibit B
HISTORY OF EXPENDITURES
Public Utility Commission
FY 1987-1991



Revenues to support these expenditures came from a variety of sources. Looking again at fiscal year 1991, 88.8 percent of the agency's \$10.8 million in expenditures came from general revenue. Another 7.9 percent came from access line fees, which are paid by local exchange telephone companies to recover some of the costs of regulation. The remaining 3.3 percent came from a variety of other sources, including federal funds, interagency contracts, and other funds. Exhibit C illustrates the relative size of these sources of funds.

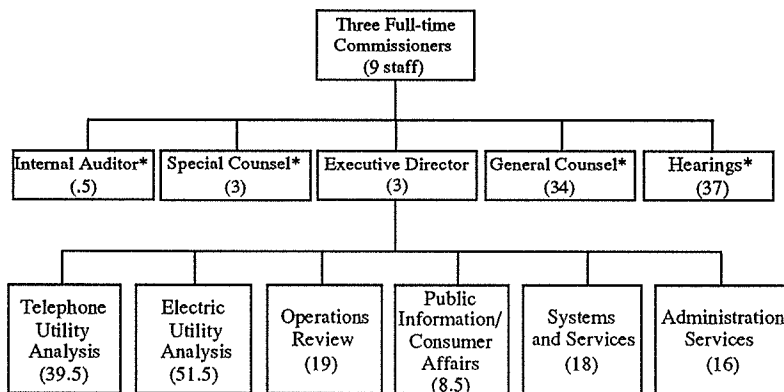
Most of the PUC's funding comes from the state's general revenue fund. In turn, a statutory assessment of one-sixth of one percent imposed on the gross receipts of every utility under the PUC's jurisdiction is paid to general revenue to defray appropriations. Utilities are allowed to recover the assessment from ratepayers through utility rates. The gross receipts tax generated \$29.3 million in fiscal year 1991.

Exhibit C
SOURCES OF REVENUES
Public Utility Commission
FY 1991



The agency had a total of 242 budgeted full-time equivalent employees as of August 31, 1991, all located in the Austin office. The internal auditor, special counsel, general counsel, and director of hearings are hired by and receive their direction from the commissioners but report to the executive director on all administrative matters. Exhibit D gives a detailed breakdown of the agency by division.

Exhibit D
ORGANIZATIONAL CHART
Public Utility Commission
August 31, 1991



Total Full-time Equivalent Employees: 242

* These division directors are hired by the commissioners but report to the executive director on all administrative matters.

Exhibit E depicts how the agency's work force has changed over a five-year period in different categories of employment and how it compares with minority work force goals set in the General Appropriations Act.

Exhibit E
PERCENTAGE OF MINORITIES IN AGENCY'S WORK FORCE
Public Utility Commission

Job Category	1987 Total Work Force 171		1991 Total Work Force 241		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	10	10%	12	0%	14%
Professionals	101	16.8%	142	17.6%	18%
Technicians	7	14.3%	15	13.3%	23%
Protective Service	--	--	--	--	48%
Para-Professional	--	--	--	--	25%
Administrative Support	53	24.5%	72	36.1%	25%
Skilled Craft	--	--	--	--	29%
Service/Maintenance	--	--	--	--	52%

PROGRAMS AND FUNCTIONS

The PURA requires the PUC to set utility rates and develop minimum standards for utility operations and services that are reasonable both to the utilities and to the consumers they serve. The agency carries out these duties through the commissioners' offices and seven divisions: electric, telephone, operations review, general counsel, hearings, information systems and services, and administration. The electric, telephone, and operations review divisions are primarily responsible for the evaluation of utility rates and services. Staff from these divisions testify in cases before the commission and are also involved in a number of other activities including field investigations, compliance and management audits, facility testing, and statistical research. The general counsel's division represents the public interest and coordinates staff testimony in agency hearings. The hearings division conducts public hearings, evaluates the evidence, and prepares examiner's reports with recommendations for final decisions by the commissioners. The hearings division also maintains the agency's central records office, where

all official documents are kept and all filings with the agency are made. The administration and information systems and services divisions provide support to the commissioners' offices and the other divisions.

As explained previously, the basic functions of the agency include certification, setting rates, monitoring, and customer assistance. These functions are summarized in the following material.

Certification

The first basic function of the PUC is certification. Before a utility can provide service to an area or build generation facilities or transmission lines, it must get a certificate of convenience and necessity (CCN) from the agency. The PUC grants a CCN after determining that a utility's services and facilities are necessary and in the public's best interest. The CCN also defines the geographical areas that the utility will serve. Ownership of a certificate legally obligates a utility to serve anyone in the area. If a utility wishes to change its service area, make major modifications to its facilities, build new facilities or engage in the sale, transfer, or merger of the utility, it must apply to the PUC for an amendment to its certificate. Following the passage of the PURA, one of the agency's first tasks was to certify all existing electric and telephone utilities' services, facilities, and geographical areas. Utilities under the agency's certification jurisdiction include electric and telephone investor-owned utilities and cooperatives and municipally-owned electric utilities. Telephone utilities are certified for service and geographical areas. Most electric utilities are certified for service and geographical areas as well as for the construction of new generation facilities and the extension of transmission lines. Municipally-owned electric utilities are subject to service area certification only.

Current certification activity centers around new electrical power generation and the extension of electric transmission lines. Before filing for a CCN for a new generating facility, an electric utility must first file a notice of intent (NOI) and undergo a hearing. The NOI hearing identifies the alternative methods the utility has considered, other than construction of a new plant, to help meet the area's electrical needs and the advantages and disadvantages of the alternatives. In addition, the NOI application must indicate compatibility with the utility's most recent long-term energy forecast, which indicates the utility's forecasted demand for energy and the utility's plans for meeting that demand. In fiscal year 1991, the agency approved three NOI applications for the construction of new power plants.

Once the NOI has been approved, the commission may not grant a CCN until it has considered the adequacy of existing service in the certified area, the need for additional service, and the effect of granting a certificate on the utility and on any other utility serving the same area. The commission must also consider such factors as community values, recreational and park values, historic and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers. In fiscal year 1991, the agency approved 40 CCN applications for the construction of electric transmission lines.

The NOI and CCN proceedings are similar to the agency's rate-setting proceedings in that the hearing examiner sets a prehearing for the parties involved, a hearing is held under the

supervision of the examiner, a report is issued, and the commissioners render a decision in a final order meeting. Parties may file written responses and offer oral argument before the commissioners in a similar fashion to rate proceedings. One key difference between rate cases, NOIs and CCNs is that while both rate cases and NOIs have set statutory time limits for completion, there is no set time limit for addressing a CCN, except for CCN proceedings involving new transmission lines. The statute requires the PUC to approve transmission line CCNs within one year. The NOI has a statutory time limit of 180 days.

Setting Rates

The PUC's second key function is setting rates. The PUC has original jurisdiction to set rates and service standards for all local service telephone companies, as well as AT&T's intra-state long-distance service. Because there is significant competition among the smaller long-distance carriers, the agency does not have jurisdiction to set rates for these companies. However, AT&T is regulated because it remains the dominant long-distance service company in the state. The agency also has original jurisdiction to set rates for investor-owned electric utilities and electric cooperatives operating outside city limits, and the electric operations of river authorities. Cities have always retained original ratemaking authority for electric utilities and cooperatives operating within their boundaries. Electric utilities subject initially to city ratemaking, except for city-owned utilities, may appeal city rate decisions to the PUC. Typically, investor-owned utilities' rate cases are filed with cities at the same time they are filed with the PUC and are later consolidated into a single proceeding before the PUC. The PUC reviews the rates set by cities in a rate case and has the authority to reset the rates as needed. Upon appeal the commission also reviews the rates of municipally-owned utilities that serve customers outside city limits.

The PUC sets a utility's rates by determining the utility's revenue requirement and rate design. First, the PUC sets the revenue requirement, which is the total amount of revenue required by the utility to pay its annual operating costs and earn a reasonable rate of return on invested capital. The allowed rate of return is a percentage figure used to calculate a utility's profit. The percentage is applied to the utility's capital investment. Capital investments include such items as the value of the utility plant after depreciation, the value of land that has been purchased as locations for future power plants, the cost of construction projects that may take several years to complete, cash, working capital, fuel inventories, prepayment of operating expenses, and inventories of materials and supplies. Generally, approved rates of return for investor-owned utilities have ranged from 10.5 percent to 12 percent depending on the utility's cost of capital. Rates of return for cooperatives and river authorities are typically lower and are based on the amount of revenue required to support a utility's financial soundness. In 1983, the legislature authorized the agency to consider quality of management and efficiency of operations in determining a utility's rate of return. A utility may also be granted a higher or lower rate of return as a result of its efforts in conservation and demand-side management programs.

After setting the revenue requirement, the PUC must determine the rate design, which is a breakdown of how the revenue requirement will be divided among the utility's customer classes. Electric customer classes typically include residential, small commercial, large commercial,

industrial, street lighting, and security lighting customers. Telephone customer classes typically include one-party residential, multi-party residential, one-party business, and multi-line business customers. The PUC must allocate each element of the costs that make up the revenue requirement among the customer classes according to each class's share of responsibility in generating the cost. A rate, or set of rates, is then designed for each customer class. In electric utility cases, that allocation is made according to each class's share of responsibility in generating the cost. A rate or set of rates is then designed for each customer class to cover those costs and generate a utility's revenue requirement. In telephone utility rate cases, the cost allocation method is not as well developed as it is for electric services. Many telephone services are priced based on incremental costs, and others are based on allocated costs. Rates for the various classes of telephone service are designed so that the total revenue requirement of the utility is attained. The PUC has four key types of proceedings related to setting rates: rate cases, fuel-related proceedings, avoided cost proceedings, and tariff reviews. Each of these proceedings is described below.

Rate Cases

The PUC's regulatory process for hearing a rate case can be broken down into five phases: reviewing the rate filing package, preparing for the administrative hearing, conducting the administrative hearing, conducting the final order hearing, and responding to appeals of the final order. These phases are described in the following material. Exhibit F shows the current time lines for each phase of the process.

Exhibit F
RATE CASE TIME LINE

<u>DAY</u>	<u>ACTIVITY</u>
1	Case Filed (PURA)
35	Effective Date if Rates are not Suspended (PURA)
100	Hearing Begins (commission order)
120	Hearing Ends (general practice)
150	Examiner Report Issued (general practice)
175	Final Order Meeting (general practice)
185	PUC's Jurisdiction Ends* (PURA)
200	Deadline for Motion for Rehearing (APTRA)
210	Deadline for Replies to Motion for Rehearing (APTRA)
230	Deadline for Appeals (APTRA)

- (PURA) Statutory dates in the Public Utility Regulatory Act
- (Rules) The Public Utility Commission's substantive rules
- (APTRA) Statutory deadlines in the Administrative Procedure and Texas Register Act

* This deadline may be extended if the hearing lasts longer than 15 days.

At any point in the rate case process all or some of the parties to a case can settle the case informally through a stipulated agreement. Such settlements must be approved by the PUC before they are final.

Phase 1: Reviewing the Rate Case Package

A telephone or electric rate case begins in one of two ways. Generally, the utility files a request with the PUC when it has determined that a rate increase is needed. However, the PUC also has authority to initiate an inquiry to adjust a utility's rates if it determines through its earnings monitoring program that the utility is over-earning. In either case, the PURA places the burden of proof on the utility to show that its rate request or current rate structure is reasonable and necessary. The utility must file a rate filing package with the agency's hearings division, where it is assigned a docket number. The rate filing package includes written testimony by the utility's expert witnesses on important issues, along with data and exhibits supporting the testimony. The utility also submits a price and service schedule by type of customer with the proposed rate design and service policies. When the utility files a rate filing package, the agency begins processing the case and must issue a final decision within 185 days according to the PURA. The 185-day statutory deadline can be extended if the hearing in a case takes longer than 15 days. The 185-day deadline is extended by two days for each day that the hearing goes beyond 15 days. The 185-day statutory deadline does not apply to rate inquiries initiated by the PUC. In fiscal year 1991, 40 rate cases were filed by utilities.

Phase 2: Preparing for the Administrative Hearing

Once a rate case has been assigned a docket number, the director of hearings selects a hearings examiner to preside over the case. The examiner sets a date for a prehearing conference where participants in the case will settle issues of procedure, identify intervenors, set deadlines for submitting evidence and testimony, and set a date for the start of the hearing. In fiscal year 1991, the hearings division completed 59 rate cases, an increase of 32 percent over fiscal year 1990.

If the agency staff or other intervenors to the case need additional information from the utility or other parties, they may file formal "requests for information" (RFIs). Many parties, including the general counsel, regularly issue standard RFIs to fill in gaps left in the utility's rate filing package. All parties, including the PUC, are required to respond. The discovery process is time-consuming and often contentious, but it is also a key element in the preparation of the staff's case and other parties' cases. The PUC staff testimony is filed seven days before the rate hearing begins, which allows interested parties a brief period to prepare their cases supporting or attacking the staff's position. Other parties must file their testimony two weeks before the hearing starts.

Depending on whether the case is a telephone or electric rate case, staff experts from either the electric or telephone divisions will file testimony on accounting, engineering and rate design issues pertinent to the case. Staff accountants review company records and may conduct on-site audits to establish the utility's costs of providing service. Staff engineers evaluate the costs and

investigate the quality of the utility's service. Other staff members design an appropriate rate structure, which may or may not differ from that proposed by the utility. In fiscal year 1991, the electric division filed 88 testimonies in rate cases, nearly 46 percent less than in fiscal year 1990. In the same fiscal year, the telephone staff filed two testimonies, 89 percent less than in fiscal year 1990. The decreases in workload are due to a decrease in the complexity of rate cases heard in 1991 in comparison to 1990 and an increase in the number of cases settled.

Financial analysts from the agency's operations review division examine the utility's cost of capital and financial health and recommend a rate of return the utility should be allowed to earn on its invested capital. These analysts also file testimony as needed on rate moderation, interim rates and other financial issues. In fiscal year 1991, this division filed 24 testimonies in rate case proceedings at the agency, a decrease of 20 percent when compared to fiscal year 1990.

The agency's general counsel is charged with representing the "public interest," which is defined in law as "the assurance of rates, operations, and services which are just and reasonable to both consumers and the utilities." The role of the general counsel is to examine all interests affected by a case, including parties not formally represented, and to present a staff case that includes a balanced approach for the hearings examiner and the commissioners to consider when deciding the case. The general counsel's office coordinates the development of the staff case, reviews the staff experts' testimony, and prepares the staff case that will be presented in the hearing. A key workload figure for the general counsel's office is the number of legal documents that it produces. In fiscal year 1991, the general counsel's office filed 3,431 legal documents, which represents a five percent increase over 1990. These documents include concurrence memos, letters, motions for rehearings, replies to motions, requests for information, replies to request for information, briefs, reply briefs, exceptions, replies to exceptions, and pleadings.

Phase 3: Conducting the Administrative Hearing

The administrative hearing usually begins around the 100th day after the rate case filing. The hearing is usually divided into two sections: determining the utility's revenue requirement, which includes operating costs and a return on its investment; and determining the rate design, which allocates the revenue requirement among the utility's customer classes and sets the utility's rate of return for each customer class.

When the hearing is convened, the utility must prove whether a rate increase or decrease is reasonable and necessary. The hearings examiner hears testimony on issues in the case from utility witnesses, agency staff and intervenors such as industrial groups, cities, consumer groups, and the state's Office of Public Utility Counsel (OPUC), which represents the interests of residential ratepayers and small business consumers. During the hearing all parties have an opportunity to present their cases and cross-examine other parties' witnesses. The utility may present rebuttal evidence to refute the positions of other parties. All parties then make closing statements or file legal briefs summarizing their positions.

After the hearing has adjourned, the hearings examiner weighs the evidence and writes a report that makes recommendations to the commissioners, including a proposed revenue requirement

and rate design. This report is distributed to the utility, the intervenors, and agency staff involved with the case. Parties who disagree with the hearings examiner's report may file exceptions. A party may also file replies to exceptions filed by other parties.

Phase 4: Conducting the Final Order Hearing

The agency's three full-time commissioners meet regularly in open meetings to consider the disposition of cases. After reviewing the hearings examiner's recommendations and parties' exceptions to the report and listening to oral arguments, the commissioners may vote to accept the examiner's report as written, accept the examiner's report with modifications, reject the examiner's report and issue a final order with the commissioners' own findings of fact and conclusions of law, or remand the case for further hearing. The decision rendered by the commissioners is called a final order. In fiscal year 1991, the commission issued 28 final orders in rate cases, an increase of 115 percent over fiscal year 1990.

Phase 5: Responding to Appeals of the Final Order

After the commissioners have issued their final order, any intervenor or the utility may file motions for rehearing. Parties may continue to file motions for rehearing every time the commissioners change the final order until all motions for rehearing have been denied. Any intervenor or the utility may then appeal the case to district court if the commissioners' final order is still unacceptable to them. Upon notice of appeal, the director of hearings, who also acts as secretary to the commission, turns over the case records to the state's attorney general, who handles appeals for the PUC. The general counsel also coordinates efforts with the attorney general's office on matters of appeal. In fiscal year 1991, nine rate cases were appealed.

Fuel-Related Proceedings

In addition to the rate case proceedings, the PUC also has established three fuel-related proceedings: fuel factor, fuel reconciliation and fuel refund. In a fuel factor proceeding, the agency takes a forward look at the known or reasonably predictable expenses to be incurred by an electric utility for fuel in a future rate year in order to set a fuel factor. This fuel factor is used to figure the monthly amount charged to customers to allow the utility to recover its fuel costs. Conversely, the fuel reconciliation proceeding takes a backwards look at the utility's fuel procurement practices and actual costs of fuel for a previous period of time. In this proceeding the actual fuel costs are examined to determine their reasonableness and are compared with the fuel factor to determine whether the utility has been over or under-charging its customers for fuel. Generally, these two proceedings are part of a rate case, but can be held separately. Fuel refund proceedings, however, are often handled without a hearing. In such a proceeding, excess fuel revenues are refunded to electric customers. These refunds are subject to later review by the commission in the utility's fuel reconciliation hearing.

Avoided Cost Proceedings

The PUC also conducts individual avoided cost hearings for each utility every two years. In an avoided cost hearing, the PUC establishes the price utilities may pay qualifying facilities for their power. A qualifying facility is usually a company that produces electricity and steam for its own industrial use but has additional power to sell to utilities. The "avoided cost" is simply the cost the utility would have incurred by building a power plant to produce power instead of buying power from the qualifying facility. If a utility can purchase needed power from a qualifying facility below this cost, it has avoided the higher cost of providing the needed power by building new power plants. Utilities are required to buy power from a qualifying facility instead of building a new plant if the qualifying facility can provide power below the utility's avoided cost.

Tariff Reviews

Utilities must request commission approval for changes to their service tariffs, which are documents that describe in detail the components of specific services offered by the utility and the rates that may be charged for those services. Changes in tariffs are reviewed by the staff to ensure that they are just and reasonable. Tariff applications are usually processed administratively, unless a party intervenes or the staff finds the application to be controversial, in which case it becomes a docketed proceeding. Once docketed, the application goes through the formal hearings process and receives final approval from the commission. The staff processes about 400 telephone tariff applications and about 100 electric tariff applications each year.

Monitoring

After the basic framework of a utility's operation is decided through the PUC's certification and rate-making authority, the agency monitors these operations to ensure compliance with agency orders and standards. Monitoring is done in several ways, including review of various reports required of the utilities and on-site inspections of a utility's facilities and equipment.

The agency has also established monitoring programs that include earnings analysis, fuel reports analysis, management auditing, compliance auditing and telephone quality of service surveys for utilities regulated by the agency. The agency's earnings monitoring program reviews earnings reports that are submitted by investor-owned utilities semi-annually and by cooperative utilities annually. These reports are used to determine whether the utility is over-earning by comparing the reasonable rate of return that each utility should be earning with the actual return being earned. If a utility appears to be over-earning, the staff recommends that the general counsel initiate a rate investigation, which may lead to a rate case and a reduction of the utility's rates.

The agency also conducts management audits as part of its monitoring program. In 1983, the legislature required the agency to conduct a management audit of each regulated utility at least once every 10 years. The resulting management audit report helps the agency stay informed

about utility management and provides recommendations to the utilities for improved efficiency, effectiveness and cost savings.

The management audits are conducted by agency staff or by an outside consultant depending on the size and ownership of the utility. Outside auditors are needed for large investor-owned utilities due to limited agency staff and resources. For these outside audits, agency staff coordinate the auditor selection process, act as project manager during the audit, and monitor the utility's implementation of the audit's recommendations. Since the agency has no specific funding for consultants, the utility being audited must agree to pay for the outside consultants and is allowed to recover the cost through utility rates. The number of audits conducted each year depends on the size of the utilities to be studied, the scope of the audits and the complexity of the issues to be addressed. In the eight years the agency has been conducting management audits, 56 out of 161 utilities subject to the management audit requirement have been audited, with three completed in fiscal year 1991. The audits have resulted in annual savings of more than \$110 million, with much of the savings coming from reduced fuel costs for electric utilities.

The agency also conducts compliance audits, which review a utility's compliance with the customer-related sections of the PURA and the agency's substantive rules, such as those covering billing and deposits. Compliance audits ensure that customers are billed in accordance with approved tariffs, are adequately informed through required utility publications, and are allowed adequate time and opportunity to pay their bills. Follow-up audits are conducted to verify that the utility has implemented the staff's recommendations. A total of 36 compliance audits have been completed since the inception of the program in 1989, resulting in a total of \$1,231,285 in over-billing refunds and \$135,652 in deposit and interest refunds.

Customer Assistance

The public information/consumer affairs office handles inquiries and complaints from the general public and assists consumers in resolving their problems with regulated utilities. The office investigates public complaints and attempts to resolve disputes informally between utilities and consumers. Electric and telephone division staff often provide assistance on technical issues related to complaints. The office forwards complaints that it cannot resolve to the general counsel's office for further review and possible action by the agency. In fiscal year 1991, the office handled more than 8,000 consumer complaints, which is one percent more than in fiscal year 1990, and obtained more than \$90,350 in credits and refunds for consumers, which is an increase of 89 percent over fiscal year 1990. In fiscal year 1991, five complaints could not be resolved through the agency's informal complaint process and were referred to the agency's general counsel. The general counsel may review the complaint and initiate a formal agency investigation of the matter if the situation warrants.

The office also handles all news media information requests, print and electronic media interviews, and press releases on utility issues pending before the commission. Other activities include publishing a daily clipping service, developing weekly summaries of docketed case activities, producing the agency's annual report, and publishing informational brochures.

Administration

Administrative support activities of the agency are performed by the executive director, the internal auditor, the fiscal and purchasing section, personnel, the library, and the information systems and services division. The executive director manages the agency's day-to-day operations and advises the commission on management issues. The executive director is hired by and reports to the three commissioners. In addition to managing the agency, the executive director coordinates special projects and programs such as legislative monitoring and agency-wide strategic planning. House Bill 2009, passed last session by the 72nd Legislature, requires the PUC to develop a six-year strategic plan for the agency. The strategic plans are the first step in building a long-term statewide budgeting and planning process. The agency completed the first phase of its strategic plan in April 1992 and submitted it to the governor, lieutenant governor, speaker of the house of representatives and several legislative oversight agencies including the Sunset Advisory Commission.

The internal auditor is responsible for conducting independent reviews and evaluations of agency activities and furnishing the agency staff and the commission with appraisals, recommendations and information on activities reviewed. The PUC is subject to the state's Internal Audit Act and the agency's internal audit function complies with the requirements in the act.

The fiscal and purchasing section's responsibilities include preparing and coordinating the budget, maintaining the agency's accounting system, preparing the annual financial performance and funds management reports, and preparing the biennial legislative appropriations requests. In addition, the fiscal and purchasing section is responsible for payroll processing, payment of goods and services, travel activities, and purchasing activities.

The personnel office handles staff recruiting for the agency, maintains the agency's personnel files, establishes agency-wide personnel procedures, and provides training for staff. The personnel office also developed and implemented a minority recruitment plan in 1991.

The PUC library maintains a large collection of scientific, technical, legal, and management books and periodicals. Librarians help the agency staff and the general public use the 18,000-volume collection and conduct technical research projects. The library prepares several publications, including directories of electric and telephone utilities in Texas and indices to the PUC Bulletin, which is prepared by the hearings division and contains copies of the commission's major decisions. The library staff also prepares and monitors the agency's records retention plan and activities.

Additional support services include the information systems and services division, which provides data processing, word processing and printing services in support of the agency's regulatory and administrative activities. The automated data processing section provides hardware and software support including systems analysis, programming, user training, hardware repair, hardware and software installation, local area network management, and purchasing assistance. The word processing center provides word processing and typesetting services and

handles the agency's fax system. The print shop provides printing and duplicating services, design and layout expertise, mail room services, messenger and delivery services, and recycling services.

OFFICE OF PUBLIC UTILITY COUNSEL

CREATION AND POWERS

The Office of Public Utility Counsel (OPUC) was created in 1983 as part of the 68th Legislature's sunset review of the Public Utility Commission of Texas (PUC). The office was established to represent residential and small business consumers after concerns had been raised that these ratepayers, who share similar concerns and interests, were not adequately represented in utility rate cases at the PUC. No changes have been made to the office's statute since 1983.

The OPUC participates in many types of proceedings at the PUC but concentrates its efforts on telephone and electric utility rate cases because these cases have the greatest financial impact on residential and small business consumers. Other office duties include filing comments on the PUC's proposed rules and participating in other types of proceedings at the PUC, such as hearings on proposed power plant construction.

The OPUC also has limited authority to represent residential consumers as a class in rulemaking proceedings at the Texas Railroad Commission and may become a party to other commission proceedings during the appeals process at the request of an affected municipality. The office has been involved in one gas utility rate proceeding and two non-rate proceedings at the Texas Railroad Commission since 1983.

POLICYMAKING BODY

Unlike most state agencies, the OPUC does not have a policymaking board or commission. Instead, the office is overseen by the public utility counsel, who is appointed by the governor with the advice and consent of the senate to a two-year term. The governor may name an acting public counsel between appointments. To qualify for appointment as public counsel, a candidate must be a Texas resident and hold a license to practice law in Texas. The candidate must also show a "strong commitment and involvement in efforts to safeguard the rights of the public" and must possess "the knowledge and experience necessary to practice effectively in utility proceedings." The office has had three public counsels and two acting public counsels since 1983.

The public counsel is the chief executive of the office and hires staff, directs the office's activities, approves the budget, and sets office policy. The public counsel also selects which proceedings the office will intervene in. The deputy public counsel oversees the office in the temporary absence of the public counsel.

FUNDING AND ORGANIZATION

In fiscal year 1991, the OPUC's expenditures totaled \$1,319,775, which was slightly less than the office's appropriation of \$1,320,633. Exhibit A shows a breakdown of these expenditures.

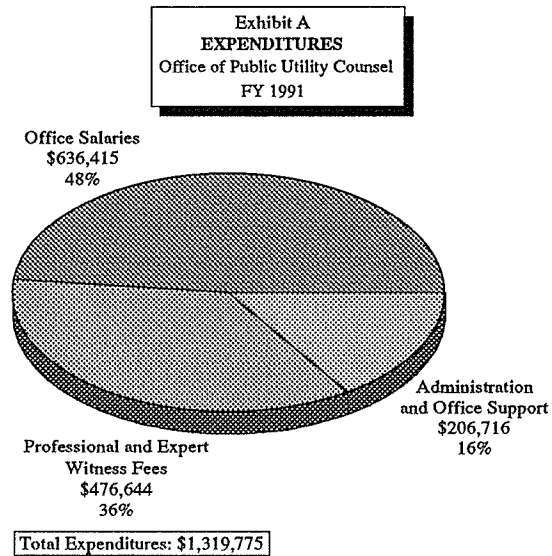
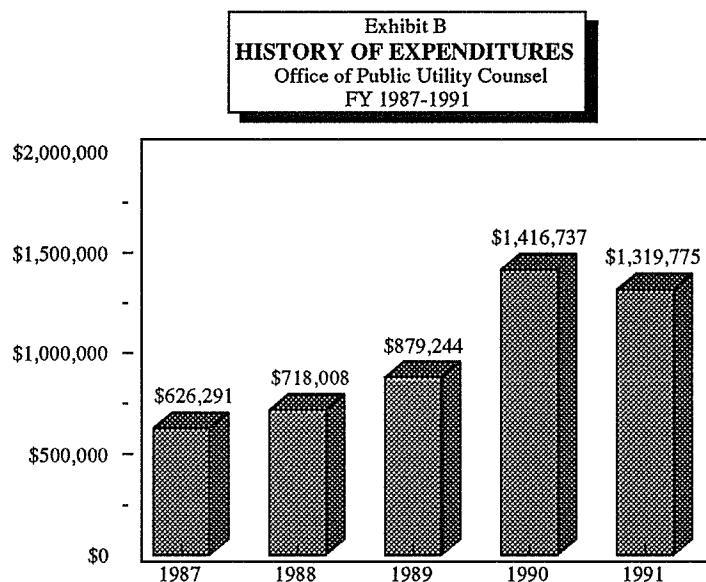
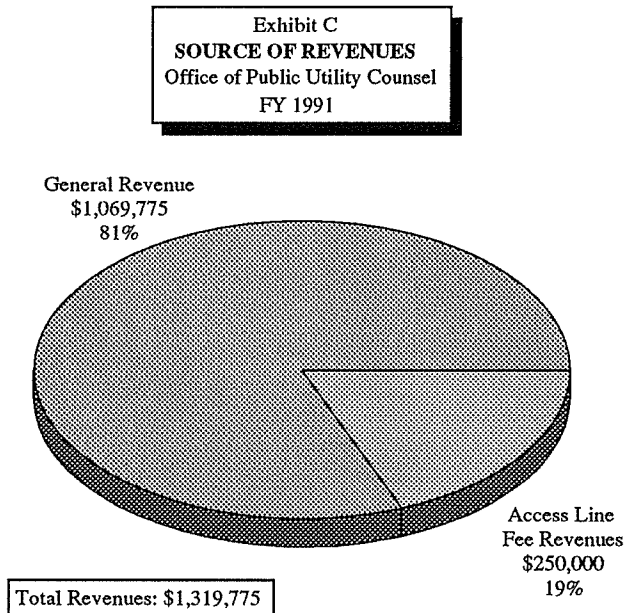


Exhibit B shows how the OPUC's expenditures have changed during a five-year period. The OPUC's expenditures were higher in fiscal year 1990 due to the office's intervention in a rate case involving AT&T as the dominant long-distance carrier in Texas. As provided by law, the office's expenses of \$80,000 in the rate case were reimbursed by AT&T through the general revenue fund. The office also received additional funding of \$250,000 in fiscal years 1990 and 1991 from an access line fee that is paid by local exchange telephone companies to cover part of the costs of regulating these companies.



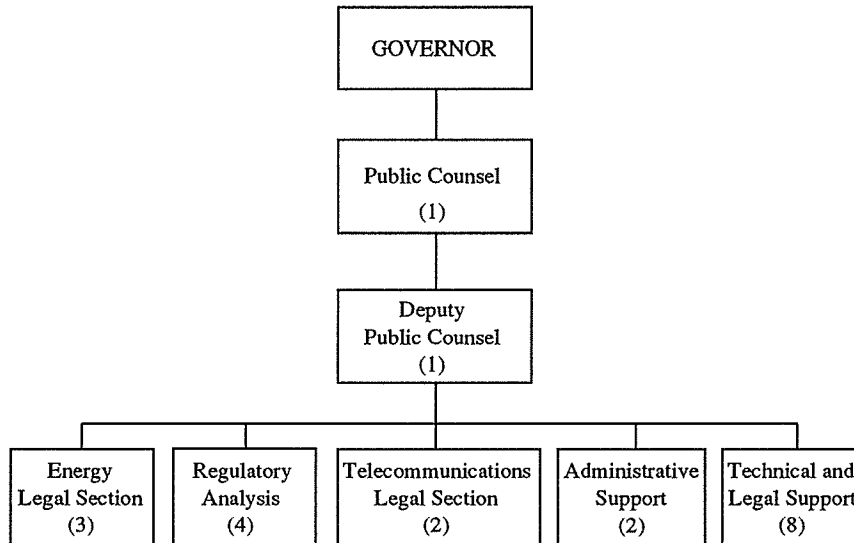
The office's 1991 revenues to support these expenditures came from two sources. As Exhibit C indicates, the state's general revenue fund provided 81 percent of the revenue used to support the agency's expenditures. The access line fee paid by local exchange telephone companies accounted for the remaining 19 percent of the office's revenue.



As noted above, most of the OPUC's funding comes from the state's general revenue fund. Utilities under the Public Utility Commission's jurisdiction pay an annual statutory assessment of one-sixth of one percent on their gross receipts. This assessment is deposited to the general revenue fund to defray the costs of regulation. Utilities are allowed to recover the assessment from ratepayers through utility rates. The gross receipts assessment generated \$29.3 million in fiscal year 1991.

In fiscal year 1992, the office had a full-time staff of 21 employees: the public counsel, a deputy public counsel; five attorneys; four analysts; a research and information specialist; an office business manager; and eight administrative support staff, including one legal assistant, four secretaries, one receptionist, one duplicating machine operator and one file retention clerk. Staff assignments vary depending on the office's workload and the type of cases the office is intervening in at the time. All employees work in the Austin office. Exhibit D contains the office's organization chart.

Exhibit D
ORGANIZATIONAL CHART
Office of Public Utility Counsel
April 1992



Total Full-time Equivalent Employees: 21

A breakdown of the OPUC's work force is provided in Exhibit E. The chart shows how the makeup of the office's small work force has changed over a five-year period in different employment categories. The chart also compares the office's work force composition with minority work force goals included in the General Appropriations Act. In fiscal year 1992, the office increased its minority work force by three positions, so that 33 percent of the office's total work force was made up of minority employees.

Exhibit E
PERCENTAGE OF MINORITIES IN AGENCY'S WORK FORCE
Office of Public Utility Counsel

Job Category	1987 Total Work Force 11		1991 Total Work Force 20		1992-1993 Appropriations Act Statewide Goal for Minority Work Force Representation
	Total Positions	% Minority	Total Positions	% Minority	
Administrators	2	0%	2	50%	14%
Professionals	5	0%	10	0%	18%
Technicians	--	--	--	--	23%
Protective Service	--	--	--	--	48%
Para-Professionals	--	--	--	--	25%
Administrative Support	4	25%	8	38%	25%
Skilled Craft	--	--	--	--	29%
Service/Maintenance	--	--	--	--	52%

PROGRAMS AND FUNCTIONS

The Office of Public Utility Counsel's main purpose is to represent residential consumers and small business consumers in administrative proceedings at the PUC, especially in telephone and electric utility rate cases. The office estimated that in 1991 there were about 5.9 million small business and residential electric ratepayers and about 8.4 million small business and residential telephone consumers in Texas.

The OPUC must carefully choose which cases to intervene in because of its small staff and budget. Since the office was created in 1983, it has intervened in 43 major rate cases, or six percent of all rate cases at the PUC. The office has also participated in 470 other proceedings at the PUC since 1983, which represents about 11 percent of all the non-rate proceedings at the PUC during that time period. The OPUC estimates that its sole intervention in specific rate case issues on behalf of residential and small business consumers has saved those ratepayers nearly \$1.4 billion in rate increases from 1983 through 1990. This savings is based on instances where the OPUC was the only intervenor to challenge a specific issue in a utility's request for a rate increase. The savings shown is based on the OPUC's estimated reduction in the utility's proposed revenue requirement that resulted from the OPUC's position ultimately being adopted by the PUC or the courts. The OPUC also calculates a savings of \$3.7 billion based on instances

where the OPUC joined with other parties to recommend a position that was finally adopted.

Intervention in Rate Cases at the Public Utility Commission

The OPUC's participation in rate cases at the PUC can be broken down into five phases: reviewing the rate case package, preparing for the administrative hearing, participating in the administrative hearing, taking part in the final order meeting, and appealing the final order to the commission and the courts. Once the office decides to intervene in a rate case, it participates in each phase. The office's activities in a typical rate case are described below and are basically the same for electric and telephone rate cases.

Phase 1: Reviewing the Rate Case Package

Rate cases begin in one of two ways. The utility may file a rate change request with the PUC, usually for an increase, or the PUC may initiate a rate case after inquiring into the appropriateness of a utility's rates. In either case, the utility must submit a rate filing package that contains specific information about the utility's operations, expenses and revenues, management, existing rate structure and other pertinent data.

Once a rate case has been initiated, the OPUC analyzes the rate filing package and examines the issues that will be decided in the case, the number of residential and small business consumers that will be affected, and the potential increase in consumers' utility rates. The public counsel weighs these factors against the office's existing and future workload and decides whether to intervene in the case. If the office intervenes in the case, the staff begins to prepare for the administrative hearing.

Phase 2: Preparing for the Administrative Hearing

The OPUC's attorneys and analysts work together to prepare for the hearing by analyzing in detail the utility's rate filing package, preparing testimony, requesting additional information from other parties to the case through a legal discovery process, and participating in pre-hearing procedures at the PUC. The OPUC's staff also responds to requests for information (RFIs) from other parties and takes part in hearings to resolve procedural and discovery disputes between parties. At this point, the OPUC will determine if expert witness consultants are needed to testify on issues requiring expertise or specialized knowledge not available through office staff.

At this stage, the OPUC's staff prepares written testimony to file with the PUC and other parties to the case before the hearing begins. Two key issues that are almost always addressed in the OPUC's testimony are the utility's revenue requirement, which is the amount of revenue required to continue operating at a reasonable profit, and the utility's allocation of its costs to consumer classes, which divides the utility's revenue requirement among the various consumer classes. The staff also examines testimony filed by other parties.

Phase 3: Participating in the Hearing

Once the hearing begins, the OPUC attorney assigned to the case attends the hearing, offers legal objections when considered appropriate, sponsors the office's witnesses, and cross-examines other parties' witnesses. After the hearing is finished, the OPUC and other parties in the case prepare briefs that summarize their position on issues and evidence that were raised during the hearing. The briefs are submitted to the hearings examiner and other parties in the case. After examining the briefs filed by all the parties, each party then prepares a reply brief that addresses the conclusions drawn in other parties' initial briefs.

Next, the hearings examiner issues a report to the PUC commissioners. The report contains findings of fact and conclusions of law, as well as the hearings examiner's rate-related recommendations for the utility. The OPUC files a reply to the examiner's report with the PUC that points out errors in the report and the OPUC's objections to the hearings examiner's findings. After reviewing other parties' replies to the report, the OPUC files another reply addressing other parties' objections to the report.

Phase 4: Taking Part in the Final Order Meeting

After receiving the hearings examiner's report and objections and replies from other parties, the Public Utility Commission holds a final order meeting to set the utility's rate. Usually the commission will hear oral arguments from the parties involved before reaching a decision.

Phase 5: Appealing the Final Order to the Commission and the Courts

After the commission issues a final order, the OPUC may file a motion for rehearing by the commission on points that the office intends to appeal in court. The commission decides whether to rehear the contested issues. The OPUC must file a new motion for rehearing each time the commission changes the final order if the OPUC plans to appeal the modified final order.

Once the commission denies all motions for rehearing, the OPUC and any other party to the administrative case may appeal the commission's final order through the courts. The initial appeal is filed in Travis County district court and may continue to the state court of appeals and the state supreme court. Most major utility rate cases are appealed to the courts by one or more parties in the case. The attorney general's office represents the PUC in court cases, while the OPUC represents itself.

The OPUC has joined in appealing 19 of 38 final orders resulting from major rate cases since 1983. The courts overturned or remanded all or part of seven of these final orders. Another five cases were dismissed or upheld and seven cases are still undecided.

Other Administrative Proceedings

The office also participates in other types of proceedings at the PUC, such as hearings on notices of intent (NOI) and certificates of convenience and necessity (CCN), which utilities must have approved by the PUC before building new power generating facilities; hearings to reconcile a utility's fuel costs with the amount charged to ratepayers for fuel; and hearings on changes to a utility's tariff, which contains the specific rates, terms and conditions a utility must abide by when providing services to customers. A tariff hearing can become a rate case if it is contested by an interested party. The office also comments on proposed rules at the PUC and recommends new rules and changes to existing rules. The OPUC participated in 98 of these types of proceedings in 1991.

The office is authorized by statute to represent individual consumers in unresolved complaint proceedings before the PUC, which rarely happens because of the office's limited resources. However, the office provides advice to complainants on the PUC's hearings procedures. The office also reviews complaints filed with the PUC as part of the office's preparation for a rate case.

Administrative Support

The OPUC's business manager oversees the agency's business activities, including accounting, budgeting, contracts, purchasing, payroll, personnel, and property management. Other support staff include a research and information specialist who follows federal legislation and statutes and coordinates information with other states and interest groups, a legal assistant who assists staff attorneys and technical staff, and four secretaries who type legal and technical documents and maintain records for all rate cases and court cases. The office also has a full-time copying machine operator who makes multiple copies of filed testimony, discovery requests and responses, and other information. The office must provide copies of these and other materials to every intervenor in a regulatory proceeding at the PUC.

In 1991, the legislature passed a bill requiring most state agencies to develop a six-year strategic plan, which is the first step in building a long-term statewide budgeting and planning process. The OPUC's strategic plan was completed on March 31, 1992 and was submitted to the governor, the lieutenant governor, the speaker of the house of representatives and several legislative oversight agencies, including the Sunset Advisory Commission. The OPUC's administrative support staff is coordinating the preparation of the office's plan.

***FINDINGS AND
RECOMMENDATIONS***

OVERALL APPROACH TO REVIEWS

OVERALL APPROACH TO THE REVIEWS

The Sunset Act requires an assessment of several factors as part of an agency's review. The factors include determining if the agency's functions continue to be needed, if those functions could be better performed by another agency, if functions performed by another agency could be better performed by the agency under review, and if changes are needed to the agency's statute.

The Public Utility Commission was reviewed under the Sunset Act in 1983. The Sunset Commission recommended to the legislature that the PUC be abolished. The legislature continued the agency after making several significant changes in the regulatory process. Creation of the Office of Public Utility Counsel was one of those changes. The legislature also added provisions to adjust for the court-ordered split of AT&T and the Bell operating companies. Additionally, the legislature adjusted the time limits for rate cases, required the PUC to conduct management audits of utilities every 10 years, and required additional planning and forecasting procedures to better determine when new electric power plants would be needed.

In accordance with the Sunset Act, the current review of the Public Utility Commission and the Office of Public Utility Counsel included an assessment of the need to continue the agencies; a review of the benefits that would be gained by changing the organizational structure of the agencies; and finally, if the functions performed and the current organizational structure are maintained, whether changes are needed to improve the efficiency and effectiveness of the two agencies.

The need to continue the PUC focused on whether continued state involvement in the regulation of electric and telephone utilities is necessary. The need to continue the OPUC focused on whether representation of residential and small business consumers by an independent agency is necessary. The review also included an examination of whether benefits would result from combining the PUC or OPUC with any other state agency. The review then focused on changes needed if the two agencies were maintained in their current form.

To make determinations in each of these areas the review team was involved in a number of activities during the six-month review period. These included:

- review of agency documents and reports, state statutes, legislative reports, other states' reports and statutes, previous evaluations of agency activities, and literature containing background material;
- interviews with the commissioners, the public counsel, and key agency staff;
- discussions with legislative agencies and committees with responsibility for oversight of the PUC and the OPUC;

- attendance at public meetings of the Public Utility Commission;
- attendance at national conferences in San Antonio for state utility regulators and utility consumer advocates;
- phone and personal interviews with individuals involved in utility regulation in state, local and federal governments in this state and in other states;
- a survey of the employees of the PUC and the OPUC requesting the identification of problems at the agencies as well as potential solutions; and
- interviews and meetings with groups affected by or interested in the activities and policies of the commission and the public counsel, including groups representing residential consumers, industrial consumers, electric and telephone utilities, and others.

Out of these activities the overall focus of the review took shape. The regulatory structure for electric and telephone utilities was developed primarily through the original enactment of the PURA in 1975, with the Office of Public Utility Counsel being added in 1983. The review focused on the following questions: First, does the overall organizational structure of the PUC and the OPUC require adjustment to correct historical concerns in its operation? Second, does the statutory framework for regulation need to be adjusted to make sure the agencies have the flexibility they need to meet changing conditions?

The recommendations included in the report represent only a small percentage of the total number of issues that were raised during the review. Many of the issues raised were issues that could be addressed through the PUC's rulemaking process and do not need to be resolved through statutory changes. The recommendations finally selected were based on their relative importance and represent a good faith effort to balance the competing interests inherent in the issues surrounding the regulation of electric and telephone utilities.

NEED FOR THE AGENCIES

ISSUE 1: The Public Utility Commission should be continued for an eight-year period.

BACKGROUND

The Public Utility Commission was created in 1975 and is responsible for providing a comprehensive regulatory system for telephone and electric utilities under its jurisdiction. The purpose of the regulation is to assure that the rates, operations, and services of these utilities are just and reasonable to both consumers and the utilities. The PUC currently sets rates and service standards for 161 utilities. This includes 59 local telephone companies and cooperatives, AT&T's long-distance service within Texas, 10 investor-owned electric utilities, 87 electric cooperatives, and the electric operations of four river authorities. The agency estimates that the utilities it regulates have a combined annual revenue of about \$20 billion.

To accomplish its objectives, the agency has three full-time commissioners who serve in a quasi-judicial capacity at utility hearings, set regulatory policy, adopt agency rules, and develop long-range agency goals and plans. The agency also has a staff of about 235 full-time employees. The staff carries out its duties through seven divisions: electric, telephone, operations review, general counsel, hearings, information systems and services, and administration. The electric, telephone, and operations review staffs evaluate the rates and services of utilities, testify in hearings, and conduct financial, compliance and management audits of the utilities. The general counsel's staff participates in all agency hearings representing the "public interest," which involves balancing the needs of both consumers and utilities. The hearings staff conducts public hearings and prepares reports with recommendations for final decisions by the commissioners. The staff of the administration and information systems and services divisions provide support to the agency as a whole.

To justify the continuation of an agency, certain conditions should exist. First, a continuing need should exist for the state to provide the functions or services of the agency. Second, the functions should not duplicate those currently provided by any other agency. Third, no significant organizational benefits or cost savings should be achieved from consolidating the functions or services of the agency with another state agency. An evaluation of the need to continue the PUC resulted in the following findings.

FINDINGS

- ▶ **The primary functions of the PUC in regulating electric and telephone utilities continue to be needed to protect the public's interests.**
 - Electric and telephone utilities generally operate as monopolies. As the only provider of a service, a monopoly is theoretically free to charge whatever price

it chooses. Consumers generally have no choice as to which local telephone company or electric company to use and cannot shop for a better service or a lower price if they are dissatisfied. Therefore, electric and telephone utilities continue to require some form of state regulation to protect the public from excessive rates and to ensure reliable and quality services.

- Electric rates set by the PUC for typical residential usage of 500 kilowatt-hours a month averaged \$41.68 statewide in fiscal year 1991, which was below the national average of \$42.58. The amount of rate increases requested by utilities but disallowed by the PUC during that same time for major electric utilities totaled approximately \$60 million. Without regulation, these increases would have been passed on to the consumer.
 - Basic local telephone rates set by the PUC averaged \$9.32 statewide in fiscal year 1991, which was below the national average of \$13.05. Through its earnings monitoring program, the commission has also determined that certain telephone companies were overearning and has called them in for rate reduction proceedings. In fiscal year 1991, this resulted in eight rate reductions totaling about \$252 million. Again, without regulation, these higher rates would have been passed on to the consumer.
 - Three management audits of utilities conducted by the PUC in fiscal year 1991 resulted in one-time cost savings of \$1.7 million and annual cost savings of \$5.5 million. Compliance audits conducted by the agency produced an estimated total of over \$234,000 in overfilling refunds to consumers and \$136,000 in deposit and interest refunds. Without the PUC's oversight of these activities, these savings and customer refunds would not have occurred.
- ▶ **The PUC is the most appropriate agency to regulate electric and telephone utilities.**
- Two other state agencies perform utility regulatory functions. The Texas Railroad Commission regulates gas utilities and the Texas Water Commission regulates water and sewer utilities. While most other states regulate these utilities through a single agency, the size of Texas' electric and gas industries are significantly larger than those in any other state, making consolidation less practical. In addition, consolidation of these functions would not result in any significant cost savings since a similar number of staff and resources would continue to be needed to perform the task.
 - Texas cities also perform similar electric utility regulatory duties, but on a local level. Texas is unique in that cities have retained original jurisdiction for setting rates for electric utilities operating within the city limits. However, the cities are not capable of performing the PUC's statewide regulatory functions.

- ▶ **Two separate functions of the agency have a potential for increased benefits or reduced costs if they are eliminated or transferred to another agency.**
 - The first function is that of the general counsel. An evaluation of the benefits of eliminating the general counsel’s current functions at the PUC is contained in a later section of this report.
 - The second function is that of the hearings division. An evaluation of the benefits of transferring the hearings division to the State Office of Administrative Hearings is also contained in a later section of this report.

- ▶ **All other states regulate electric and telephone utilities, even though the organizational structure and level of regulation varies from state to state. During the review two alternative organizational structures for the PUC were identified, as well as two areas where the level of regulation could be reduced.**
 - Two alternative options for reorganizing the current structure of the PUC are contained in a later section of this report.
 - In addition, two areas of regulation were identified where the level of regulation could be reduced, provided certain safeguards are adopted to protect consumers. An evaluation of the deregulation of electric and telephone cooperatives is contained in a later section of this report.

CONCLUSION

The primary functions of the PUC in regulating electric and telephone utilities continue to be needed to protect the public from unreasonably escalating utility rates and to ensure reliable and quality service. No local or other state agencies were identified that could assume the PUC’s primary functions with increased benefits or reduced costs to the state. The primary functions of the agency appear to be appropriately placed in the agency. However, benefits could be achieved from restructuring the organization and transferring certain functions of the PUC to other state agencies. These options are discussed in later sections of this report. While recommending significant changes to the PUC’s current structure, the review concluded that the agency should be continued.

RECOMMENDATION

- **The statute should be changed to continue the Public Utility Commission for an eight-year period.**

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This change would continue the agency for eight years instead of the standard 12-year review period. The shorter period would allow the agency to be reviewed with the appropriate functional group of agencies. Continuing the PUC would assure the public of continued state oversight of electric and telephone utilities. This oversight protects the public from unreasonably escalating utility rates and helps to ensure customers of reliable and quality services from these utilities.

FISCAL IMPACT

If regulation is continued under the existing structure, the Public Utility Commission's annual appropriation of approximately \$10.8 million would need to be continued. The commission is primarily funded through the general revenue fund, with some funding provided by telephone access line fees and other sources.

ISSUE 2: The Office of Public Utility Counsel should be continued for an eight-year period.

BACKGROUND

The Office of Public Utility Counsel (OPUC) was created by the legislature in 1983 to represent residential and small business consumers in rate cases and other proceedings at the Public Utility Commission (PUC). Creation of the OPUC addressed concerns that the interests of residential and small business consumers were not adequately represented in regulatory proceedings at the PUC, especially when compared to the representation of other groups affected by utility regulation.

The governor appoints the public counsel, who is the chief executive of the office and directs the office's activities in regulatory proceedings at the PUC. The office intervenes in rate cases on behalf of residential and small business consumers and may appeal the PUC's final decisions in court. The office also comments on proposed agency rules and participates in other types of regulatory proceedings at the PUC.

Three factors must be present to justify continuing an agency and its functions. First, the public must have a continuing need for the services or functions being provided by the state. Second, the agency's services or functions should not duplicate those of any other state agency. Third, no significant benefit should result from transferring the agency's functions or services to another state agency. An evaluation of the need to continue the OPUC resulted in the findings set out below.

FINDINGS

- ▶ **The OPUC's services and functions are needed to guarantee that the interests of residential and small business utility consumers are represented in major regulatory proceedings at the PUC.**
 - The OPUC estimates that in 1991 there were about 8.4 million small business and residential telephone ratepayers and about 5.9 million small business and residential electric ratepayers in Texas. The office has intervened on behalf of these consumer classes in 43 out of 87 of the PUC's major rate cases since 1983 and has appealed 26 of the PUC's final orders to the state courts.
 - The office has represented residential and small business consumers in 470 out of 4,212 other types of proceedings at the PUC since 1983. These

proceedings include notice-of-intent hearings, avoided cost hearings, rulemaking and other non-rate proceedings.

- Without the OPUC, most residential and small business utility consumers would not have the time to participate in a rate case at the PUC. A sampling of 18 recent major rate cases showed that the actual hearings alone ranged from two days to 212 days, with an average length of 55 days per hearing.
- Most residential and small business consumers cannot afford to intervene in major rate cases. Rate case expenses reported to the PUC by municipalities in these 18 recent cases ranged from \$55,053 to \$2.7 million. The expenses reported by utilities in these cases ranged from \$116,713 to \$44 million.
- ▶ **No other state agency exclusively represents consumers in regulatory proceedings at the PUC.**
 - The general counsel's office at the PUC represents "the public interest," which includes the combined interests of utilities, cities, industrial consumers, and residential and small business consumers. The role of the general counsel is to balance the interests of these groups when developing a rate case or making recommendations to the commission. The general counsel cannot appeal the commission's decisions.
 - The general counsel's office and the OPUC have taken different approaches to issues affecting residential and small business consumers. For example, the general counsel has argued that consolidated income tax savings should remain with utility shareholders, while the OPUC has argued that these savings should be returned to ratepayers and has appealed the commission's rulings to the courts.
 - The general counsel's office and the OPUC have taken a different approach towards prudence issues as well. For example, in one case concerning the prudence of Gulf States Utilities' expenditures for the River Bend nuclear power plant, the general counsel recommended that \$500 million be disallowed while the OPUC recommended disallowing \$1.4 billion. The commission's subsequent decision to disallow the \$1.4 billion recommended by the OPUC was later upheld by the Texas Supreme Court.
- ▶ **The office's unique role in public utility regulatory proceedings is different from the role assigned to the state's other statutorily-authorized consumer advocates.**
 - The OPUC represents residential and small business consumers in utility proceedings at the PUC. The office's attorneys, analysts, and legal support

and administrative staff have highly specialized knowledge and skills directly related to utility regulation in Texas.

- The independent Office of Public Insurance Counsel represents the interests of insurance consumers in regulatory proceedings before the State Board of Insurance, including insurance rate cases and rulemaking proceedings. The staff is specifically qualified to handle insurance-related regulatory matters.
- The Texas Water Commission's in-house Office of Public Interest Counsel promotes the public's interests and responds to environmental and other citizen concerns. The TWC's public counsel is required by law to be a party to all regulatory proceedings before the commission, but is prohibited from appealing commission decisions.
- ▶ **In Washington, D.C., and 38 other states, a statutorily-authorized, separate public counsel represents consumer interests in utility regulatory matters.**
 - In 21 other states and in Washington, D.C., the public counsel's office is independent from the utility regulatory agency and the attorney general's office.
 - In 17 states, the public counsel is separate from the utility regulatory agency but is housed within the state attorney general's office. In some of these states, the attorney general does not represent the utility regulatory agency in court appeals to avoid a potential conflict of interest.
 - In West Virginia, the public advocate is appointed by the utility commission, but has an independent staff hired by the director, is independently funded, gets budgetary approval from the legislature, and may appeal the commission's decisions to court.
 - In the 10 remaining states, the regulatory agency's staff represents consumer interests.
- ▶ **An alternative structure for the OPUC was identified during the review and is presented in a later section of the report. Under this proposed structure, the OPUC's function would be broadened to include representation of all consumers.**

CONCLUSION

The functions currently assigned to the OPUC are needed and are appropriately assigned to the office. Minimal or no benefits would be achieved by transferring the office's functions to another existing state agency. The independent structure of the office in Texas

is common to many of the other states that regulate utilities. However, benefits could be achieved by broadening the OPUC's functions to include representation of all consumers. Based on these factors, the office should be continued but with changes.

RECOMMENDATION

- **The statute should be changed to continue the Office of Public Utility Counsel for an eight-year period.**

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This change would continue the office for eight years instead of the standard 12-year review period. The shorter period would allow the agency to be reviewed with the appropriate functional groups of agencies. Continuing the OPUC would ensure that residential and small business consumers have the same representation available to most other parties directly affected by utility regulation. Without the OPUC, the utility regulatory process in Texas would lack a key component that is common in other states and is found in other Texas agencies.

FISCAL IMPACT

If the OPUC's functions are continued under the existing structure, the current annual funding of \$1,320,633 would be continued. The office is funded by the general revenue fund and by an access line fee paid by local exchange telephone companies.

REORGANIZATION ALTERNATIVES

ISSUE 3: The Public Utility Commission and the Office of Public Utility Counsel should be reorganized.

CURRENT REGULATORY STRUCTURE

The Public Utility Commission was established in 1976 and is responsible for providing a comprehensive regulatory system for telephone and electric utilities under its jurisdiction. The PUC currently sets rates and service standards for 161 utilities. The agency estimates that these utilities have a combined annual revenue of about \$20 billion. The agency is overseen by three full-time commissioners who are appointed by the governor with the advice and consent of the senate for six-year staggered terms. The commissioners serve in a quasi-judicial capacity at utility hearings to establish rates, set statewide public utility regulatory policy, adopt substantive and procedural rules, and develop long-range agency goals and plans.

The commission is assisted by an agency staff of about 235 full-time equivalent employees. This staff is basically organized along the following lines: technical staff, general counsel, hearings and administration. The technical staff evaluate the rates and services of utilities, testify in hearings, and conduct financial and management audits of the utilities. The general counsel participates as a party in all agency hearings. The general counsel, by statute, represents the "public interest," a term typically interpreted to mean a balancing of the needs of both the consumers and the utilities. The general counsel coordinates and directs the agency's technical staff in preparing and presenting the staff's case in the public interest. The hearings staff conducts public hearings and prepares reports with recommendations for final decisions by the commissioners. The administrative staff provides support to the agency as a whole. Currently the general counsel and the head of hearings, as well as the executive director of the agency, are hired and fired by the three commissioners.

The Office of Public Utility Counsel was established by the legislature in 1983 specifically to represent the interests of residential and small business consumers in matters before the PUC. The OPUC is headed by the public counsel who is appointed to a two-year term by the governor with the advice and consent of the senate. About 22 full-time equivalent employees assist the public counsel. The OPUC is completely independent of the PUC.

PROBLEMS RAISED WITH CURRENT STRUCTURE

As part of the sunset review, discussions about the PUC and the OPUC were conducted with a variety of groups representing utility, consumer, and other interests. Several recurring problems were raised through these discussions and are summarized below:

- ***Lack of independence between the hearings staff and the commissioners.*** The hearings staff is responsible for hearing cases and making independent recommendations to the commission for final decisions. Concerns were raised that direct or indirect pressure is exerted on the hearings staff as a result of the employer-employee relationship between the commissioners and the director of the hearings division.
- ***Lack of independence between the general counsel and the commissioners.*** The general counsel is hired by the commissioners and is a party to cases being decided by the commission. It was suggested that it is inappropriate to have a party to the case under the direct authority and influence of the commissioners deciding the case.
- ***Inability of commissioners to use staff expertise in reviewing evidence because a large portion of the staff is involved as a party to cases.*** Concerns were raised that the commissioners need additional assistance in understanding the technical information involved in rate cases, but are hampered from using the expertise of the staff because a large portion of the staff are involved in the cases being decided by the commission.
- ***Current duties of general counsel may be inappropriate.*** The general counsel spends funds to represent, in part, the interest of utilities although utilities also spend substantial funds to present their case. The state's role should be to represent ratepayers, not utilities. Using state funds to represent utilities while some consumers go unrepresented is questionable.
- ***Lack of resources available for consumer representation.*** Consumer groups and others have long expressed the concern that the OPUC is underfunded to do the job required of it, citing the fact that the funding for the OPUC has only allowed it to participate in about six percent of all rate cases since 1983.
- ***Lack of structural means for direct consumer input to the OPUC.*** The OPUC is responsible for representing the interests of residential and small business consumers at the PUC. However, the concern was expressed that the public counsel has no clear "client" or tangible connection to his consumer client.
- ***Political rather than judicial attitude of commissioners.*** The concern was expressed that the political philosophy and orientation of the commissioners play too great a role in the decision of cases and detracts from their role as objective rate regulators. Concerns were also raised about the need for the commissioners to focus more on policy development and long-range planning.

SOLUTIONS TO PROBLEMS

A variety of solutions were identified and considered during the review. The approach outlined below came the closest to addressing the majority of problems raised about the current organizational structure:

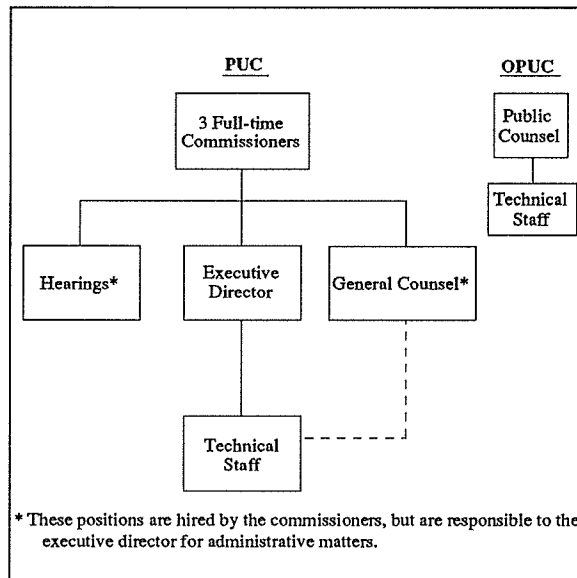
- ***Increase the independence of the PUC's hearings staff.*** In 1991, the legislature established the State Office of Administrative Hearings and expressed its intent to consolidate the hearings functions of state agencies where appropriate. As explained in more detail in Issue 7 of this report, the transfer of the PUC's hearings division to the new central office would provide for increased independence and objectivity over the current structure within the PUC.
- ***Eliminate the role of the PUC's general counsel as a party to the case and expand the role of the Office of Public Utility Counsel.*** Under this proposal, the role of the general counsel in representing the interests of both the utilities and the consumers would be eliminated. Any possible influence of the commissioners over the general counsel as a party representing the public interest would thus be removed. The need for ensuring a balanced case for all consumers in Texas would be satisfied by transferring resources to the Office of Public Utility Counsel and broadening its current role. The OPUC currently represents residential and small commercial consumers, but under this proposal its role would be expanded so that it represents all consumers. Utilities would be responsible for representing their own interests before the PUC.
- ***Establish a consumer advisory committee to advise the Office of Public Utility Counsel in broad policy areas.*** Establishment of an advisory committee for the OPUC would give the public counsel a sounding board for discussing the office's policies and approaches in representing consumers.
- ***Make staff expertise available to the commissioners.*** The PUC's commissioners are constrained in receiving technical assistance from their staff. The constraint arises because staff serve as a party to cases, and ex parte requirements prohibit decision-makers from talking to parties about a case. By eliminating the general counsel as a party, commissioners would then be able to make better use of the staff's expertise.
- ***Increase the emphasis on policy development within the PUC.*** The need for more planning and active policy development outside of rate cases could be addressed by reducing the overall demands on the commission and emphasizing the importance of planning and policy development. This emphasis could be accomplished through a statutory directive telling the PUC to examine and develop policies to guide the commission in its decisions.
- ***Consider expansion of the commission from three to six members.*** Expansion of the commission would make it possible for the commission to be divided into panels to hear cases. This approach would allow for a division of the commission's workload and would allow greater time for consideration of other matters than just contested cases. For example, additional time would be available for rulemaking and planning.

ORGANIZATIONAL ALTERNATIVES

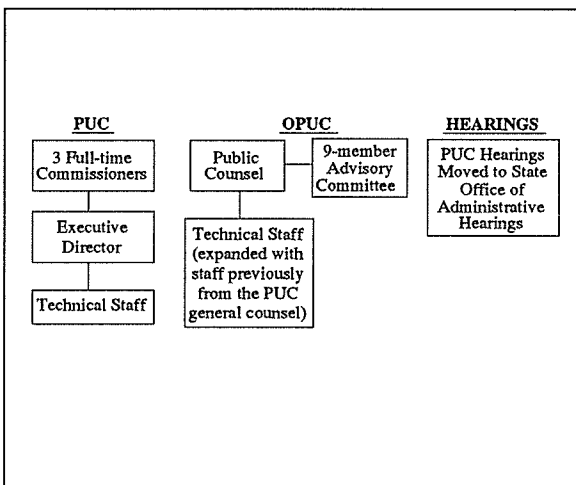
As part of the review, an organizational structure was developed to incorporate changes to the current structure. These changes are designed to eliminate concerns raised during the review.

**Exhibit F
ORGANIZATIONAL STRUCTURES**

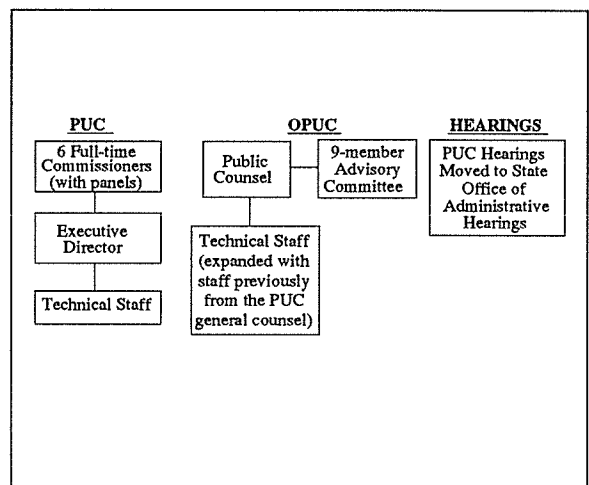
Current Structure



Reorganized Structure with
Three-member Commission



Reorganized Structure with
Six-member Commission



IMPACT OF CHANGES

The impact of implementing the two organizational alternatives is indicated below:

- ***Transfer of the PUC's hearings division to the State Office of Administrative Hearings.*** If the hearings function of the PUC were transferred to the State Office of Administrative Hearings, a group of administrative law judges and hearings examiners at the central office would need to specialize in hearing public utility cases. Dedication of a group to this function is necessary because of the complexity of utility regulation. The current experience requirements in the PURA for an ALJ handling utility matters would also be maintained. Under the statutory provisions for the central hearings office, the commission would only be able to change a finding of fact for policy reasons, and would have to state in writing the reason and legal basis for the change.
- ***Elimination of the general counsel as a party and modification of the role of the Office of Public Utility Counsel.*** Elimination of the general counsel as a party would reduce the need for legal and technical staff at the PUC. The PUC would still maintain a large staff to perform analysis of rate cases and other filings, utility monitoring, auditing, and enforcement. In addition, the PUC would maintain a legal staff to handle the remaining legal functions of the commission. The OPUC would carry out a new role by representing all consumer classes instead of just residential and small commercial consumers. Because of this enlarged role as well as the elimination of the general counsel's role, the OPUC would be required to participate in all proceedings affecting consumers. To assist in carrying out this larger role, a portion of the legal and technical staff currently preparing the general counsel's case at the PUC would be transferred to the OPUC.
- ***Creation of an advisory committee for the Office of Public Utility Counsel.*** This proposed advisory committee would be composed of nine consumer representatives appointed by the governor with the advice and consent of the senate. Six of the members would be charged specifically with representing the interests of residential consumers and would be required to have demonstrated a strong commitment and involvement in efforts to safeguard the rights of consumers. All members would also be subject to strong conflict-of-interest prohibitions. Committee members would serve two-year terms concurrent with the term of the public counsel and could be reappointed by the governor. The committee would have responsibility for advising the public counsel on broad policy matters.

- *Expansion of commission to six members.* If this alternative were implemented, the statute would require that the six members divide into three-member panels for the purposes of hearing contested cases. The commission would be required to develop rules to ensure that panel members be assigned to cases on an alternating, random basis. Each panel would contain at least one of the two most senior members and one of the two least senior members of the commission. This approach is similar to the practice adopted by the district courts of appeal for selecting panel members. The decisions of a panel would be final; however, the commission would be authorized to develop rules to address instances of inconsistent findings by the panels.

FISCAL IMPACT

Two organizational options have been presented above. The only difference between the two is that the second option increases the size of the commission from three to six members. Under the organizational option that maintains the three-member commission, there would be a savings of about \$402,000 annually to the PUC. This savings would result from the elimination of the two aide positions for each of the commissioners. By having greater access to the full agency staff, it is assumed that the commissioners would no longer need the assistance provided by these aides. There would also be additional costs to the OPUC for advisory committee member expenses of about \$6,000 annually. However, no significant net fiscal impact is anticipated from the other structural changes proposed. The changes would involve a significant transfer of staff and resources from the PUC to the OPUC and the State Office of Administrative Hearings. The details of the number of staff and resources involved in the transfer have yet to be determined.

The organizational option that increases the size of the commission to six members would have the same fiscal impact as the previous alternative with one main exception. This second option would have additional expenses of about \$371,000 annually associated with the three new commissioners' salaries, staff support and benefits. It is assumed that each commissioner would be authorized to employ one administrative secretary.

POLICYMAKING BODY

ISSUE 4: The Public Utility Commission's statute should be changed to authorize the governor to designate a member of the commission as its chair.

BACKGROUND

Currently, the PUC commissioners are appointed by the governor for six-year staggered terms. The chair of the commission is elected by the members of the commission.

Over the past decade, the legislature has worked to increase the accountability of state agencies to the governor. Having the governor designate the chair of state agency policymaking bodies is one way to strengthen this accountability. To further this effort, the Sunset Commission routinely recommends that the governor be authorized to designate the chair when the provision is not already in law.

The review included an examination of how the chairs of other states' public utility commissions and of other Texas policymaking bodies are selected. Findings from this review follow.

FINDINGS

- ▶ **The ability to designate the chair of an agency's policymaking body strongly enhances the accountability of a state agency to the governor.**
- ▶ **In 28 of the 37 states that have appointed public utility commissions, the governor is responsible for designating the chair.**
- ▶ **In Texas, the governor designates the chair of 56 state agency boards and commissions, including the Texas Department of Transportation, the Texas Department of Health, and the Texas Department of Human Services, as well as other regulatory agencies such as the State Board of Insurance, the Texas Water Commission, and the Texas Air Control Board.**
- ▶ **Authorizing the governor to designate a board's chair has been a routine change made to agency statutes through the sunset process.**

CONCLUSION

The current approach in the PUC statute for the commission to elect its own chair does not provide the accountability that results from designation of the chair by the governor. This

approach is commonly used in other states and in other state agencies in Texas and has routinely been added to agency statutes through the sunset process. Based on these factors, the review concluded that this approach should also be added to the PUC statute.

RECOMMENDATION

- **The statute should be changed to give the governor the authority to designate a member of the commission as its chair.**

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The person appointed as chair of the commission would serve in that position at the pleasure of the governor. This change would promote accountability of the commission to the governor.

FISCAL IMPACT

No fiscal impact would occur as a result of this recommendation.

OVERALL ADMINISTRATION

ISSUE 5: The statute should be amended to remove the Public Utility Commission from the statutory process for adjusting the gross receipts assessment.

BACKGROUND

The Public Utility Regulatory Act (PURA) imposes on each utility under the commission's jurisdiction an assessment of one-sixth of one percent of the gross receipts from utility rates. The assessment is levied for the purpose of defraying the costs and expenses incurred in the regulation of utilities. The statute further provides that "the commission shall, subject to the approval of the Legislature, adjust the assessment to provide a level of income sufficient to fund the commission and the office of public utility counsel." These funds are collected by the comptroller and deposited in the general revenue fund. All assessments are due on August 15th of each year.

The rate of the assessment has never been changed, either by statute or by commission action, since the PURA was adopted in 1975. Historically, the assessment has generated significantly more revenue than has been appropriated for utility regulation.

Recently, the commission adopted a rule that provides a process for the PUC to enter an order setting the level of the assessment after the legislature sets the budgets for the PUC and the Office of Public Utility Counsel. In effect, the rate of the assessment would be adjusted to track the amount of these appropriations. Subsequently, the commission acted to reduce the rate from one-sixth to one-sixteenth of one percent, effective in August 1992.

The review examined the statutory process for setting the gross receipts assessment and the PUC's role in that process. The examination resulted in the findings below.

FINDINGS

- ▶ **The PURA currently requires collection of an assessment on the gross receipts of utilities and authorizes the PUC to adjust this assessment subject to the approval of the legislature.**
 - The PURA states that an assessment of one-sixth of one percent on utilities' gross receipts is to be collected "for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund the commission and the office of public utility counsel."

- ▶ **This statutory approach for adjusting the assessment was part of the PURA's original language when it was enacted in 1975. This type of approach is reasonable when it is unclear how much money an agency will need for future operations.**
 - When an agency is created, it is difficult to tell how much money will be required to operate the agency since there is no history of expenditures.
 - The future needs of the PUC were particularly unclear. Establishment of the agency was controversial, and the amount of money that the legislature would be willing to appropriate in the future was not clear.
 - In this type of situation it makes sense to set up a system to monitor revenues from the assessment and to warn of imbalances, particularly in the event that revenues do not cover appropriations. The PUC itself was to serve as the monitoring agent by recommending adjustments when necessary.

- ▶ **History has now shown that the gross receipts assessment is sufficient to cover appropriations for both the PUC and the OPUC. As a result, the primary reason for the PUC to monitor and recommend adjustments of the assessment to the legislature no longer exists.**
 - The assessment of one-sixth of one percent has historically generated revenues in excess of the needs of the PUC and OPUC. For example, in fiscal year 1991 the assessment produced \$29.4 million in revenues as compared to combined appropriations of about \$13 million to those agencies. These figures reflect the general relationship between assessment revenues and appropriation levels over the years.
 - Since it is now clear that no reasonable danger exists of the gross receipts assessment falling short of appropriations, no pressing need exists for the legislature to be warned that the assessment is insufficient. The PUC's involvement to carry out this function is no longer needed.

CONCLUSION

The PURA requires the PUC to adjust the gross receipts assessment, subject to the approval of the legislature, to meet the appropriations needs of the PUC and the Office of Public Utility Counsel. This kind of agency involvement is particularly crucial when it is unclear whether an assessment will be sufficient and an upward adjustment may be necessary. In the case of the PUC, history has shown that the current level of the gross receipts assessment is more than sufficient to fund the PUC and OPUC. As a result, no pressing need exists for the PUC to recommend adjustments to the assessment.

RECOMMENDATION

- **The statute should be amended to remove the PUC from the statutory process for adjusting the gross receipts assessment.**

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This change would remove the PUC from any role in adjusting the assessment. No continuing need exists for their involvement. This would leave any adjustment of the assessment up to the legislature.

FISCAL IMPACT

No fiscal impact is anticipated.

ISSUE 6: The Public Utility Commission should have broader statutory authority to assess administrative penalties to ensure utilities' compliance with the agency's statute, rules, requirements and orders.

BACKGROUND

The PUC regulates almost every aspect of a public utility's business activities, from utility rates and quality of service to billing requirements and procedures for handling delinquent customer accounts. The PUC also has regulatory duties that require full cooperation from utilities, such as initiating an inquiry into a utility's rates, requiring utilities to file reports and other specific information with the agency, requiring information from utilities related to the investigation of consumer complaints, and conducting management audits of utilities.

Other utilities, such as long-distance telephone companies that do not dominate the market, are not rate-regulated but are required by law to file certain documents and reports with the PUC. The PUC also makes rules governing other types of activities. For example, the PUC regulates the use of submeters in apartment buildings and at mobile home parks, where the landlord pays a single bill to the electric utility, then measures each tenant's electricity consumption and bills them accordingly.

The PUC has several tools in place for sanctioning utilities that violate the statute or commission rules or orders. The PUC may seek a third-degree felony conviction of anyone who knowingly and willfully violates the statute. The agency may request the attorney general's office to go to court to seek civil penalties of not less than \$1,000 and not more than \$5,000 a day per violation against a regulated public utility that violates the PUC's statutes, rules, requirements or orders. The PUC may also file contempt proceedings in court against anyone who fails to comply with an agency order or subpoena.

The commission has also adopted limited enforcement sanctions through rulemaking that apply to utilities going through a rate case. For example, if a utility in a rate case does not file information requested by the PUC in a timely manner, the PUC may disallow costs related to that activity when setting the utility's rate.

The agency was recently granted the authority to assess administrative penalties in one limited area. In 1991 the legislature authorized the agency to assess administrative penalties of up to \$1,000 a day per violation against operators of automatic dial announcing devices (ADADs) who violate the statute or agency rules or orders. As of April 1992, the PUC had not issued penalties under this provision.

Regulatory agencies should have a full range of enforcement powers to ensure compliance with the agency's statute, rules, requirements and orders. The review included an examination of administrative penalty powers granted to other Texas regulatory agencies and to other states' utility regulatory agencies. The results of that examination follow.

FINDINGS

- ▶ **Most of the PUC's current enforcement powers are intended for major infractions of the agency's statute or rules and are seldom used. The PUC's other less severe enforcement powers have very limited applications.**
 - The PUC has three enforcement tools aimed at major infractions. An analysis of these indicated that the agency has rarely exercised its enforcement authority to pursue civil penalties or felony convictions for violations of the PUC's statute, rules, requirements or orders. The PUC has also rarely filed contempt proceedings with the courts for failure to comply with an agency order or subpoena.
 - The PUC has two less severe sanctions with narrow applicability. First, the agency's existing statutory authority to assess administrative penalties is limited to operators of automatic dial announcing devices who violate the agency's statute, rules or orders. Second, the PUC has adopted enforcement sanctions through rules, but these are limited to utilities going through a rate case.
- ▶ **The PUC's ability to enforce its statute, rules, requirements and orders is hampered by the agency's lack of general enforcement tools for less severe violations and could result in potential harm to ratepayers.**
 - The agency currently has no means for ensuring compliance from rate-regulated utilities in many regulatory areas, such as commission rules, final orders, tariffs and reporting requirements.
 - The agency has no means for ensuring compliance from other types of entities that are under the PUC's jurisdiction, such as municipal utilities, operator service providers, non-dominant long-distance companies, and mobile home park owners and apartment building owners who use submeters to measure electricity use by each tenant.
 - The agency has had difficulty enforcing its statute, rules, requirements and orders under existing sanctions. For example, 19 municipal utilities are required by statute to file a 10-year energy forecast with the PUC every two years. However, only 11 cities filed the report in 1991 and only 10 filed the report in 1989 and 1987.

- A utility's failure to comply with the agency's statute, rules, requirements or orders could be harmful to its ratepayers. For example, the PUC has rules prohibiting utilities from disconnecting electric or telephone services during extreme weather, on holidays or weekends, or to ill or disabled customers. The PUC also has rules that determine the specific grounds under which a utility may refuse to serve an applicant for utility services.
- Ratepayers could also be harmed by a utility's failure to follow the PUC's rules on billing for services. These rules establish a reasonable due date for the bill to be paid before becoming delinquent, set a reasonable penalty for late payment, and require the utility to enter into a deferred payment plan with customers who are unable to pay their utility bill. The rules also require specific information to be included in the bill so customers can identify potential billing errors. The rules also establish procedures for refunding customer deposits.
- ▶ **Most other states' public utility commissions have authority to assess administrative penalties. This authorization may include safeguards to prevent consumers from indirectly paying the penalties and to keep the regulatory agency from abusing its authority.**
 - A survey of other states' statutes showed that utility regulatory agencies in 40 states have the authority to issue administrative penalties against regulated utilities. In 38 of these states, a separate fine may be assessed for each day a violation continues.
 - Two of the 40 states with administrative penalty powers, California and Hawaii, do not set a maximum limit on the amount of the penalty. In the 38 remaining states, maximum penalties range from \$50 to \$100,000. While this range is quite wide, the majority of maximum fines are between \$1,000 and \$10,000. For example, four states have a cap of \$10,000, seven states have maximum penalties of \$5,000 and 13 states have maximum fines of \$1,000.
 - Mississippi and Florida are examples of states with safeguards to prevent abuses of their administrative penalty authority. Mississippi prohibits utilities from recovering their penalties from ratepayers through utility rates. Florida safeguards utilities against overaggressive use of the penalty by requiring fines to be deposited in the state's general revenue fund rather than being paid directly to the agency for its use. This approach keeps the agency from levying fines to increase its own budget.

- ▶ **Other Texas regulatory agencies have authority to assess administrative penalties that generally includes safeguards to prevent abuse of the administrative penalty provisions.**
 - The State Board of Insurance has the authority to assess administrative penalties of up to \$25,000 per violation against anyone regulated by the board who violates the agency's statute, rules or orders. Penalties assessed by the board are deposited in the general revenue fund.
 - The Texas Water Commission may issue administrative penalties of up to \$10,000 a day per violation for violations of the Texas Water Code or a commission rule or order regarding water quality control, injection wells, water wells and shafts, and subsurface excavations. Penalties assessed by the commission are deposited in the general revenue fund.
 - The Texas Railroad Commission has the authority to issue administrative penalties of up to \$10,000 a day per violation for violations of agency laws, rules or orders regarding oil and gas regulations concerning safety or pollution prevention and control. Depending on the type of violation, these penalties are deposited in either the general revenue fund or an oil-field cleanup fund administered by the commission.
 - Many other state licensing agencies have authority to assess administrative penalties for violations of agency statutes or rules, including the Texas State Board of Public Accountancy, the Texas Funeral Services Commission, the Texas Structural Pest Control Board, and the Texas Board of Architectural Examiners. Penalties assessed by licensing agencies are generally deposited in the general revenue fund.

CONCLUSION

The PUC does not have the enforcement powers needed to address less severe violations of the agency's statute, rules, requirements and orders. The PUC's lack of general administrative penalty powers hinders the agency's ability to enforce its statute, rules, requirements and orders. Unlike the PUC, other states' utility regulatory agencies and other Texas regulatory agencies have been authorized to assess administrative penalties for general violations of their statute, rules or orders. Based on these factors, the PUC's authority to assess administrative penalties should be expanded.

RECOMMENDATION

- **The statute should be changed to:**
 - **authorize the commission to assess administrative penalties of up to \$5,000 a day per violation against public utilities and others under the PUC’s jurisdiction for violations of the PUC’s statute, rules, requirements or orders;**
 - **require all penalties to be deposited to the general revenue fund; and**
 - **prohibit utilities from recovering administrative penalties from consumers through their utility rates.**

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Expanding the PUC’s administrative penalty powers to include all regulated utilities and individuals would provide the agency with an additional enforcement tool that could be adjusted to fit the violation. Setting a maximum penalty of \$5,000 a day per violation would be consistent with the maximum range of administrative penalties found in Texas and in other states. Requiring all penalties to be deposited in the general revenue fund would ensure that the agency does not assess penalties to increase its revenues. Prohibiting utilities from recovering administrative penalties from utility consumers would ensure that the fine is paid by the entity that committed the violation.

The process for levying administrative penalties should be set in statute in a manner similar to the process established for the Texas State Board of Public Accountancy during the last regular session as part of sunset legislation. These provisions include specific factors to consider when determining the amount of a penalty and the right of the utility to an appeal.

FISCAL IMPACT

Authorizing the PUC to levy administrative penalties would increase revenue to the state’s general revenue fund. However, the exact amount cannot be determined at this time because the commission’s potential use of administrative penalties cannot be estimated.

EVALUATION OF PROGRAMS

ISSUE 7: The functions of the Public Utility Commission's hearings division should be transferred to the newly-created State Office of Administrative Hearings.

BACKGROUND

The regulation of utility rates and services requires the consideration of complex issues and the balancing of competing interests. The Public Utility Commission (PUC) makes its regulatory decisions through an administrative hearings process. The hearings process establishes a body of evidence from the utilities, staff, and intervenors that the commission uses to determine appropriate rates and services. A separate hearings division hears cases and makes preliminary recommendations because of the large number of cases before the commission and the complexity of issues in those cases. In fiscal year 1991, the hearings division had a staff of 17 hearings examiners and administrative law judges (ALJs) and had expenditures of \$695,000 associated with conducting utility proceedings.

The hearings division seeks to be an independent, impartial arbiter of the facts in each case. Administrative law judges and hearings examiners preside over all contested case proceedings from the time they are filed until they go to the commission for a final order. They are responsible for establishing a schedule leading to a hearing and ultimately to the issuance of the examiner's report and the proposed final order. The hearings staff conducts prehearing conferences; establishes discovery procedures; establishes deadlines for filing testimony; presides at the hearing; sets deadlines for filing briefs; writes examiners' reports, which are recommendations for a decision; drafts the commission's final order; and keeps track of the time for filing motions for rehearing. In fiscal year 1991, the hearings staff presided over 59 rate cases, 40 certifications, three notice-of-intent proceedings, 11 avoided cost proceedings and 21 fuel cases. Generally, rate cases are the largest proceedings, involving questions of how much money the utility needs and what rates the utility should charge to each customer class.

In addition to presiding over contested cases, the hearings division has substantial administrative responsibilities. As secretary of the commission, the director of hearings ensures that commission activities are conducted in accordance with applicable state and federal laws. For example, the hearings director certifies commission orders and handles rulemaking and open meeting notices. Tariff filings are reviewed by the division to determine if they should be handled administratively or docketed as a contested case. The hearings division monitors compliance with commission final orders, such as orders to provide information or to conduct studies. The division is also responsible for maintaining the central records office, where documents and written filings from all PUC proceedings are kept.

As specified in the Public Utility Regulatory Act (PURA), the commissioners are responsible for hiring and firing the director of hearings. The statute requires the director of hearings to have wide experience in utility regulation and rate determination. Administrative law judges must be licensed attorneys with at least five years of general legal experience or three years of experience in utility regulatory law. The statute has no experience requirement for hearings examiners. In practice, however, the agency requires them to be law school graduates, licensed to practice in Texas. Both hearings examiners and ALJs may preside over the same types of hearings, but ALJs generally preside over the more complicated, major rate cases. A hearings examiner may become an ALJ after satisfying the experience requirement and gaining progressive responsibility with major rate cases and tariffs.

In 1991, the legislature created the State Office of Administrative Hearings to conduct hearings in contested cases for agencies under the Administrative Procedure and Texas Register Act (APTRA). The new central hearings office automatically assumed the responsibility for conducting hearings for each agency that does not have a full-time hearings officer. The legislature must make a separate decision on whether hearings held by agencies with full-time hearings officers, like the PUC, should be conducted by the central office. A review of these agencies must consider the independence of the hearings officer as well as the quality and the cost of hearings at the agency. The review of each of these agencies must be completed by September 1, 1993.

As part of the sunset review of the PUC, an analysis was made of the hearings division and its processes. The analysis focused on the appropriateness of transferring the agency's hearings function to the new State Office of Administrative Hearings. As noted above, the statute that created the central hearings office specifies that the decision to transfer an agency's hearings function should be based on the independence, quality, and cost of hearings at the agency. To assess these criteria, several factors were examined, including the hiring, firing, and evaluation of the hearings staff, adherence to agency and court precedents, and experience level of the hearings staff. In addition, information from other states with central hearings offices was also examined. The findings resulting from the analysis follow.

FINDINGS

- ▶ **In 1991, the legislature created an independent hearings agency and has expressed its intent to transfer hearings functions to that agency, where appropriate, to improve the independence, quality, and cost effectiveness of hearings.**
 - The legislature created the State Office of Administrative Hearings in 1991 to centralize hearings of contested cases under the APTRA. Though the enabling legislation did not transfer each state agency's hearings functions to the new office, it clearly states the legislature's intent to do so if the

transfer would improve the independence, quality, and cost effectiveness of hearings.

- The legislature could have excluded the PUC from the provisions regarding the central hearings office, but it did not do so. The only agencies that were exempt from transfer consideration were those agencies exempt from the contested case provisions in APTRA. These agencies include the Texas Workers Compensation Commission, the Texas Department of Human Services on matters regarding financial or medical assistance or benefits, the Texas Employment Commission on matters regarding unemployment claims, the pardons and paroles division of the Department of Criminal Justice regarding the granting or revocation of parole, and the Department of Public Safety on matters regarding driver's licenses.
- ▶ **The current structure of the PUC hearings division does not have the independence required by the PURA and provided by the State Office of Administrative Hearings.**
 - The PURA specifies that the agency's ALJs perform their duties independently from the commissioners. However, under the PURA and current commission practice, the director of hearings is hired and fired directly by the commissioners. Providing for hearings through the central hearings office would assure greater independence of the hearings process by removing the division from the supervisory control of the commissioners and by physically relocating the hearings function to a neutral site.
 - The nature of the employee-employer relationship between the director of hearings and the commissioners necessarily reduces the independence of the hearings function. The meaning of independence is to be free of control by others. Through the employment process, however, the commissioners control who work for them. This arrangement does not provide for structural independence in the hearings process.
 - As a division of the PUC, the hearings staff becomes a part of the culture of the agency. The physical location of the hearings division at the PUC places hearings examiners and ALJs literally alongside the technical staff who testifies in all proceedings at the agency. This situation contributes to a perception by the public that the hearings staff is virtually indistinguishable from the PUC staff as a whole.
- ▶ **The quality of decisions at the PUC can be affected by the lack of independence in the current structure of the hearings division and by the commission's ability to influence the hearings process.**

- Having the director of hearings directly responsible to the commission significantly increases the potential for the commissioners to influence the hearings staff to make specific recommendations favored by the commissioners. This situation could have a chilling effect on the hearings staff and could ultimately deprive the commissioners of an objective analysis of the issues.
- One way that the commissioners may influence their hearings staff is by evaluating the performance of hearings examiners and ALJs. Recently, the commissioners instituted an optional process for evaluating agency personnel that largely focused on the hearings staff. Concerns were raised that the commissioners could use these evaluations to influence the dismissal of hearings examiners. In addition, concerns have been raised that the commissioners may influence the hearings staff through comments made in final order meetings.
- The commissioners may also exert pressure on their hearings staff by placing cases on the agenda for commission consideration before the hearings examiners or ALJs have made a recommendation. This situation may occur when the commissioners wish to know more about the status of a pending case. However, when the commissioners seek to address issues before the hearings staff has made its recommendation, they infringe on the independence of the hearings division. To the extent that the commissioners' intervention influences the hearings staff's recommendation, it affects the quality of the recommendation and contributes to the perception that the commissioners have already made their decision on the issues before the facts of the case have been presented to them.
- The structure of the hearings division may also affect its ability to hire and retain high quality hearings examiners and ALJs. Turnover in the hearings staff not only deprives the division of experienced ALJs but also requires the division to spend more of its time and resources in training less experienced examiners. Although turnover has been low for 1991 and the first three months of 1992, it has been much higher in the last five years.
- Conducting hearings in a central office could improve the quality of hearings by providing a work environment that is more conducive to retaining experienced hearings examiners and ALJs. One of the major aims of the central hearings office is to enhance the status of these hearings officers. By doing so, the central office would encourage the development and retention of highly skilled hearings examiners and ALJs. The central office would also provide greater opportunities for less experienced hearings examiners to develop their skills in less complicated administrative hearings as they develop expertise in utility matters.

- ▶ **Maintaining a separate hearings division at the PUC may not be as cost effective as providing for hearings through the central hearings office. Other states that use a central hearings office to hear utility cases report a cost savings.**
 - Providing for hearings through other approaches such as a central hearings office would make available to other state agencies a considerable pool of experience in conducting administrative hearings. A core staff of hearings examiners and ALJs well trained in utility matters would still have to be available to a central hearings agency. However, consolidating this hearings function with others could improve cost effectiveness by better managing the workloads of the hearings examiners and ALJs. Administrative law judges who specialize in utility matters could be available to preside over other, less complicated matters when there are fewer contested utility cases.
 - Minnesota, New Jersey, and Washington conduct hearings on utility matters through a central hearings office. Because of the complexity of utility regulation, the central hearings offices in Minnesota and Washington assign examiners to hear utility matters on a permanent basis. This arrangement allows hearings examiners to develop the special expertise required to decide utility cases.
 - Other states that have consolidated their hearings functions have reported savings. Minnesota, for example, has reported that it saved \$264,000 in the first two years following the transfer of its utility hearings function to a central hearings office.

CONCLUSION

The legislature has clearly expressed its intent to consolidate the hearings functions of administrative agencies if such a transfer would improve the independence, quality, and cost-effectiveness of hearings. The current structure of the PUC hearings division reduces independence because the commissioners directly hire and fire the division director. This structure also affects the quality of decisions because of the increased potential for the commissioners to affect the recommendations made by hearings examiners and administrative law judges. Centralizing the hearings function could also result in some savings because experienced ALJs would be available to hear other administrative matters. Based on these factors, the review concluded that the functions of the PUC hearings division should be transferred to the new central hearings office.

RECOMMENDATION

- **The statute should be changed to transfer the functions of the PUC’s hearings division to the newly-created State Office of Administrative Hearings.**

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This recommendation would transfer the functions of the PUC’s hearings division to the new State Office of Administrative Hearings. The functions that should be transferred are those responsibilities directly related to conducting the administrative hearings required by the PUC. The administrative functions of the division such as the central records function would remain at the PUC, as would the agency’s technical staff who has helped the division compile numbers regarding the effects of examiners’ recommendations. Because of the complexity of utility regulation, the hearings examiners and ALJs at the central hearings office would specialize in utility matters. However, they could preside over other matters as their workload allows. The existing experience requirement in the PURA for a person to be an ALJ in utility matters should be continued. A utility ALJ should be a licensed attorney with at least five years of general legal experience or three years of experience in utility regulatory law.

In conducting hearings, the central office would consider the applicable substantive rules or policies of the PUC. In this way, the PUC would still determine how broader policy matters or recurring issues will be treated by the ALJs. Under the provisions of the central hearings law, the commission would only be able to change a finding of fact for policy reasons, and it must state in writing the reason and legal basis for the change. This provision would make it clear that the hearings examiner or ALJ who presided over the hearing would be responsible for determining the facts related to the case. It would also make it clear that the commission would have to specify its reasons for modifying the ALJ’s findings. Although it must comply with the PUC’s substantive rules, the central hearings office would conduct hearings under its own procedural rules guiding such things as pre-hearing conferences, discovery, and cross-examination. The central office would also be required to comply with the same statutory time frames under the PURA that currently guide the hearings division. Finally, the examiners and ALJs assigned to the PUC would no longer be housed at the PUC.

These provisions would assure that the hearings officers would maintain a degree of independence from the commission and would reduce the risk of improper contacts with agency employees acting as parties to contested cases. Transferring the hearings function to a central hearings office would also improve public confidence in the administrative process by increasing the structural objectivity of the effort. Consolidating the hearings function would also enhance the status of hearing officers, improving the chances of recruiting and retaining the services of highly skilled professionals. Finally, the central office would provide the opportunity for less experienced hearings examiners to preside

over less complicated administrative hearings as they develop expertise in utility regulatory matters.

FISCAL IMPACT

This recommendation would result in slight savings because of improvements in managing the workload of the hearings examiners and ALJs. The current number of examiners and ALJs would probably not be reduced because examiners and ALJs would still need to specialize in utility regulatory matters. Any savings that would result cannot be estimated.

The transfer would involve a significant transfer from the PUC to the new hearings office. The central hearings office would receive funding from the general revenue fund in an amount to cover its costs for utility proceedings. In fiscal year 1991, the PUC's total expenditures associated with utility hearings was approximately \$695,000.

ISSUE 8: The Public Utility Commission should be required by statute to develop a comprehensive resource planning process for electric generating utilities.

BACKGROUND

Adding electric capacity to meet future electricity needs can be complicated and costly and can take several years to complete. Comprehensive resource planning allows utilities to anticipate how much electricity will be needed to meet future demand, develop a mix of resources to provide reliable electricity at the lowest possible cost to consumers, and still earn a reasonable return on their investments. Resource planning occurs primarily through federal and state regulatory agencies because electric utilities are regulated monopolies, with regulation taking the place of free market forces. Because uncontrolled construction of power plants could lead to higher utility bills and excess electric capacity, utilities must get approval of new power plants from regulators before building them. A comprehensive resource planning process provides regulators with information to assess the need for building power plants and to guide utilities toward using conservation programs and other types of resources instead.

The Public Utility Commission began regulating electric utilities in Texas in 1976. Forecasted demand for electricity rapidly increased during the 1970s as the state's economic and industrial growth boomed, leading to the construction of several new and costly generating plants, including nuclear, coal, lignite and gas-fueled power plants. During the 1983 sunset process, the legislature responded to public concern over increasing utility bills and construction of new power plants by enhancing the statutory planning requirements and directing the PUC to focus more attention on conserving resources and finding other types of resources to replace the need for new power plants.

Today, Texas is the number one state in energy sales and has more electric generating utilities than any other state. Current planning activities at the PUC are based on the original statute as well as the changes made by the 1983 sunset legislation. The main components of the PUC's planning process are described below and include activities to assess future energy demands, determine how those demands should be met, and approve the construction of new power generating facilities.

10-year energy forecast. The PUC's statute requires all generating electric utilities in Texas, including investor-owned utilities, municipally-owned utilities, electric cooperatives and river authorities, to file an individual 10-year forecast with the PUC every two years. The utilities must report estimates of future peak energy demand, existing energy resources, and necessary reserve energy for the following 10 years. They must also provide their plans for meeting increased demand, including proposed construction of new generating facilities and potential energy savings from other activities, such as improving transmission

efficiency and encouraging conservation. The agency reviews individual utility plans, but does not hold hearings on the plans or approve them. The individual plans are then combined into a statewide 10-year forecast. The statute requires the commission to hold a public hearing on the statewide forecast, during which the commission hears comments from the staff, utilities and general public. The commission is not required to adopt or approve the forecast before sending it to the governor.

Energy efficiency plan. By rule, the PUC requires all electric utilities with more than 20,000 customers, including river authorities, cooperatives and investor-owned utilities, to file an energy efficiency plan with the agency every two years. The plan includes the utility's annual energy efficiency goals by program, the objectives and benefits of each program, a cost-benefit analysis of existing and proposed programs, and an analysis of the success of previous programs. The plans do not go through a formal hearings process, but are considered by the PUC in the development of the statewide 10-year energy forecast and during a utility's rate case or application for a certificate of convenience and necessity.

Two-part certification process. Before constructing new power plants, expanding existing power plants, or building new transmission lines, electric utilities must first seek approval from the commission through a statutory two-step certification process. The first step is a notice-of-intent (NOI) hearing on the proposed power plant. The NOI application must evaluate alternative resources for meeting increased demand, including conservation and renewable resources; explain the advantages and disadvantages of each alternative resource; and indicate the proposed plant's compatibility with the utility's latest 10-year energy forecast. The statute requires the commission to either approve or disapprove the NOI within 180 days of filing.

Once the NOI has been approved, the utility must request a certificate of convenience and necessity (CCN) before beginning construction of the proposed plant. The request must be filed at least 12 months before construction begins. The CCN process is used to determine whether the plant is needed, that it is the best and most economical resource, and that the demand for energy cannot be met with conservation measures, renewable resources, and other alternative resources. The commission must consider other factors as well, including the plant's effect on the environment. The CCN process does not have a deadline unless the utility is requesting new transmission lines, in which case the statutory deadline is one year.

Avoided cost proceedings. The PUC holds individual hearings every two years to determine each generating electric utility's "avoided cost," which is the cost a utility would have incurred by building power plants to meet increased demand if cogenerated power were not available. Cogenerated power is produced by

companies that generate their own electricity for industrial use but have excess power to sell to utilities. Under federal and state law, utilities must buy cogenerated power to meet increased demand if the cost of the cogenerated power is below the utility's avoided cost. In Texas, cogenerating companies are not regulated by the PUC but must be "qualifying facilities" under the Federal Energy Regulatory Commission in order to sell power to utilities.

Electric utility rate cases. Before changing their rates, utilities are required by statute to go through a rate case proceeding at the PUC to determine that the proposed rates are justified and reasonable. Based on the energy efficiency plan and the 10-year forecast, the PUC considers the utility's conservation programs when determining a reasonable rate of return for the utility's shareholders. The PUC may adjust the rate of return upward to reward the utility's efforts or downward to penalize the utility's lack of initiative. In addition, utilities are allowed to include their expenses for conservation programs in their total cost of service or may capitalize their expenses.

Because of the impact that electric generation and supply can have on the economy and on the environment, a successful planning process should contain a number of components that allow regulators to make informed decisions. In recent years, much attention has been focused on identifying and including these components in a comprehensive resource planning process that allows regulators and utilities to examine and compare energy-saving and energy-producing options and choose a mix of these options that minimizes total consumer cost, considers environmental impacts, and provides reliable electricity. The resulting process is sometimes called "integrated resource planning," "least-cost planning," or "least-cost integrated resource planning."

Industry literature and regulatory studies indicate the key components of a comprehensive resource planning process. These components typically include: 1) a statewide resource plan adopted by the regulatory agency that contains resource goals to be used as a benchmark by utilities; 2) a full hearing on every utility's individual resource plan, including the utility's proposed resource mix, conservation efforts, and forecasted demand; 3) interim monitoring to ensure that the utility's resource plans are viable; 4) public participation in the planning process; 5) consideration and comparison of environmental factors; 6) consideration of financial incentives for utility investments in conservation programs; 7) approval of a proposed power plant in the utility's resource plan before the utility may apply for a construction permit; and 8) a formal competitive solicitation process for resources to replace the need for a new power plant.

Electric utility regulation should be based on a comprehensive resource planning process that allows regulators and utilities to choose the best mix of resources to produce electricity reliably and at the lowest cost to consumers. The review included an examination of the planning components in place at the agency as well as a comparison of the processes in place in other states. Principal findings are indicated below.

FINDINGS

- ▶ **The PUC has many of the components of a comprehensive resource planning process in place through the agency's statute or rules. However, these components were added to the PUC's process over time and are fragmented because they are handled independently, under different circumstances and based on different time frames. This fragmentation results in a piecemeal planning process rather than a comprehensive one.**
 - The PUC recognizes the need for a comprehensive planning process for electric generating utilities in Texas and has initiated a rulemaking process to gather input on developing this type of process in Texas. However, the agency's statute is not organized in a way that would allow the current planning pieces to be pulled together into a comprehensive process.
 - The PUC's current planning components are handled separately, even though they are often related and in some cases duplicative. Electric utilities file a 10-year forecast and an energy efficiency plan every two years, but both plans contain similar information on utility conservation efforts and could easily be combined into one filing. The notice-of-intent and certificate of convenience and necessity hearings are separate, but both address the general need for a proposed power plant and contain an evaluation of whether the plant could be replaced by other resources.
 - Each planning component is considered by the PUC under different circumstances, which impedes the potential for a comprehensive planning process. For example, the 10-year forecast and the energy efficiency plan do not go through a docketed hearings process and are not formally approved by the commission, even though these plans are often used as a basis for setting utility rates and are used to determine the need for a new power plant in the notice-of-intent and certificate of convenience and necessity hearings.
 - The PUC's planning components include information from different years or months, which makes them incompatible even though they are generally supposed to be considered together. For example, the energy efficiency plan is often considered during a utility's notice-of-intent hearing. However, in some cases utilities have claimed that the information originally filed in the plan is outdated, even though the plan may have been filed just a few weeks or months before the NOI application.
- ▶ **Texas' current resource planning process is missing important elements that are necessary components of a comprehensive resource planning process.**

- The PUC does not formally approve or adopt the statewide 10-year forecast in rules. Instead, the commission holds a public hearing to take comments on the forecast from staff, utilities and the general public before releasing it. The commission then votes to send the plan to the governor. This process eliminates some of the formal procedures that come with rulemaking, such as requiring the commission to issue the proposed rule for comment and publish it in the Texas Register, formally consider comments on the rule and give reasons why the comments were accepted or rejected when adopting the rule. In addition, the Administrative Procedures and Texas Register Act contains a provision that allows the public to request a public hearing on the rule.
- The commission does not set statewide resource planning goals, such as goals for using renewable resources, which could be used as a benchmark for utilities' individual resource plans. Without these types of goals, electric utilities often do not have a clear picture of the state's regulatory priorities and can waste time and money in planning for resources that would not be approved by the commission.
- The PUC does not hold hearings on utilities' individual 10-year forecasts and energy efficiency plans and does not approve them. As a result, the PUC does not have the opportunity to thoroughly compare available resources, hear testimony and evidence, and, based on the evaluation and testimony, encourage or direct a utility to adjust its plans in a timely fashion. For example, the PUC does not formally consider a utility's conservation and energy efficiency programs until the utility undergoes a major rate case or applies for permission to construct a new power plant. By that time, it is generally too late for the utility to implement conservation measures to replace the need for a new power plant.
- The PUC does not have a regular review process or reporting mechanism to monitor utilities' individual resource plans and their use of various resources, such as conservation programs. An interim reporting process is a common component that is used to collect data that measures the overall impact of these resources, then to adjust the utility's resource plan accordingly.
- The PUC does not require utilities to gather public input on their resource plans, including construction of new power plants. Public comment could be a valuable source of information for utilities and the PUC and could affect the utility's plans for using conservation programs, building new power plants and using renewable resources such as solar power.
- The PUC does not have a formal solicitation process for resources that could provide enough electricity to replace a utility's need to build a new

power plant. Without this type of solicitation process, it is difficult to accurately determine the availability and cost of other types of resources.

- ▶ **National utility research organizations and others indicate that Texas' current resource planning process could be strengthened.**
 - The Edison Electric Institute, a private research organization that is funded by investor-owned utilities, issued a report in September 1990 on state regulatory comprehensive planning processes. According to the report, Texas is the only state in the country with the statutory authority, rules and detailed requirements for many of the components in a comprehensive planning process that does not have such a process in place. The study concluded that Texas is only in the beginning stages of implementing this type of process in spite of the broad statutory authority for planning that was given to the commission in 1983.
 - "The 1991 Integrated Resource Planning Update" by Cynthia Mitchell, a consultant and former economist for the Nevada utility consumer advocate's office, ranked Texas as being "below average" in the state's efforts to develop a comprehensive resource planning process. The study, which evaluated comprehensive resource planning efforts in the United States, found that Texas had few of the components of an ideal planning process. According to the study, these components include a legal framework for the process, a statewide plan, recurring regulatory analysis and full hearings on utility plans, commission approval of plans, public review and comments on plans and the process, consideration of external costs, financial incentives for conservation programs, and competitive solicitation.
 - According to the Energy Foundation, a national non-profit organization that promotes energy efficiency and renewable energy resources through financial grants and other activities, Texas consumes more electricity, produces more carbon dioxide, and emits more utility-related toxins than any other state, but is 49th in the use of renewable energy resources such as solar or wind. As a result of these findings, the foundation has provided \$25,000 in seed funding to the University of Texas' Center for Energy Studies for a study of the potential for energy efficiency improvements in Texas.
- ▶ **Many other state utility regulatory agencies have a comprehensive resource planning process. In addition, proposed federal legislation would provide additional funding to states that have this type of process in place.**
 - About half of the other states have a comprehensive planning process. Under the Edison Electric Institute study's definition of a comprehensive

resource planning process, 23 states have this type of process in place, including eight of the top 10 states in energy sales. Under the definition of comprehensive resource planning in a previously referenced study by Cynthia Mitchell, 21 states have most or all of the components of a full-fledged comprehensive resource planning process in place, including seven of the top 10 states in energy sales.

- The National Association of Regulatory Utility Commissioners (NARUC) supports the use of comprehensive resource planning in utility regulation and has published a "Least-cost Utility Planning Handbook for Public Utility Commissioners." The NARUC has also sponsored extensive discussions and forums on comprehensive resource planning, including an annual conference devoted exclusively to this type of planning.
- The national energy strategy bill, proposed by President George Bush and currently before the U.S. Congress, would encourage state regulatory agencies to implement a comprehensive resource planning process by providing funding to states that have specific components in place. These planning components include an evaluation of the full range of energy options, including new power supplies, energy conservation, energy efficiency, cogeneration, and renewable resources, that would provide adequate and reliable service to electric customers at the lowest cost. The bill would authorize conservation grants of up to \$500,000 to state utility regulatory agencies for encouraging use of conservation and energy efficiency resources.
- ▶ **Many states with a comprehensive planning process include three specific planning components: a formal solicitation process, quantification of external costs for each resource, and incentives for effective conservation programs.**
 - A formal solicitation process is a common component in states that have comprehensive resource planning. This type of process allows regulators and utilities to determine whether other resources could replace the need for a proposed power plant at or below the same cost as the plant. The 1990 Edison Electric Institute study found that 18 of the 23 states with a comprehensive planning process also had a formal solicitation process. Seven of the top 10 states in electric energy sales either have in place or are developing an active solicitation process. Texas does not currently have this type of process. Instead, the agency's statute and rules require utilities to set out the advantages and disadvantages of alternative resources during the notice-of-intent proceeding. The commission must determine that other resources cannot reasonably be expected to replace the need for a new power plant, but the agency's rules and the statute do not specify what that determination is based on or how it is made.

- When choosing energy resources, many states consider the external costs associated with each resource, such as impact on the environment, amount of pollution, and potential health hazards. According to a study in the July 1990 issue of *The Electricity Journal*, 17 states, including Texas, have adopted rules or policies regarding external costs, particularly the costs of a resource's impact on the environment. In Texas, the statute requires utilities to evaluate a proposed power plant's impact on community values, recreational parks, historical and aesthetic values, and environmental integrity. The PUC's rules require utilities to assess environmental costs and benefits, such as environmental, social and health, for the proposed power plant and each feasible alternative. However, the PUC has not developed criteria for considering or evaluating these external costs.
- Eight of the 17 states, including New York, California, Colorado and Massachusetts, assign a specific monetary or other quantitative value to external costs so that each resource can be compared based on the same criteria. These costs are used for evaluative purposes only and are not included in utility rates. Texas does not quantitatively analyze external costs.
- Many states provide financial incentives to utilities to encourage conservation programs. Conservation programs can lower a utility's profits under traditional regulation because utilities earn a return on their capital investments, especially power plants. This return is included in a utility's rates, so the utility's profits depend on the amount of electricity sold. Conservation programs can lower a utility's electricity sales and reduce its profits. An October 1991 survey by the NARUC showed that 15 states, including five of the top 10 in electric energy sales, allow utilities to recover electricity sales revenue that was "lost" due to the utility's conservation programs. Texas does not provide this type of incentive.
- Another common incentive mechanism found in other states allows utilities to recover their current actual costs for conservation programs. This type of incentive mechanism works much like the fuel cost recovery proceeding in place at the PUC in Texas, which allows utilities to recover their actual fuel costs without going through a rate case. An October 1991 survey by the NARUC showed that 15 states, including seven of the top 10 in electric energy sales, have this type of mechanism. Texas does not.
- Texas does allow utilities to include their costs for conservation programs by capitalizing or expensing those costs during a rate case. In addition, during the rate case the PUC may adjust a utility's rate of return upward or downward to reflect the utility's initiative in encouraging energy conservation. However, rate cases are based upon a utility's expenditures in a single test year. As is the case with fuel expenditures, actual

expenditures for conservation programs vary from one year to the next and may be higher or lower than the expenses shown in the rate case.

- ▶ **The next 10 to 20 years could be a critical time for planning to meet an anticipated increase in demand for electricity. A comprehensive resource planning process would help ensure that the PUC and electric utilities are fully exploring every reasonable option to meet future electricity demand.**
- The PUC and electric utilities in Texas have projected an increase of about 2.5 percent a year in peak demand for electricity during the next 10 years due to population growth, increased use of electric appliances, and increased economic activity and industrial growth. To meet this increased demand, utilities are currently planning to add about 10,000 megawatts of capacity during the next 10 years by building new power plants. This is equivalent to a minimum of six new medium-sized power plants.
- However, a preliminary study by the Center for Energy Studies at the University of Texas shows that increased use of energy efficiency measures could potentially replace the need for all or some of the power plants being proposed by utilities. According to the study, use of these measures could potentially reduce peak demand in Texas by between 11,800 and 17,800 megawatts by the year 2010. These energy efficiency measures include installation of higher efficiency air conditioners and furnaces; purchases of high-efficiency television sets, refrigerators and freezers; and increased use of high-efficiency lamps and solar water heaters.
- According to the PUC and the Energy Foundation, electric utilities in Texas had a combined 33 percent reserve margin of electricity in 1991, compared to a 15 to 20 percent reserve margin for most major utilities in the United States. This extra capacity means that electric utilities and cogenerators in Texas have a high potential for moving excess electricity from one part of the state to another. As part of their comprehensive resource planning process, some states regularly evaluate their transmission systems. This enables regulators to ensure that the transmission system remains reliable, is upgraded as necessary, and is reviewed for potential transmission of excess power from one part of the state to another. The PUC does not currently evaluate or make recommendations for upgrading the state's transmission lines or systems. Better transmission systems could also help reduce the need for building new power plants.

CONCLUSION

Regulatory planning and decision-making should be based on a process that provides a complete picture of the state's current and expected needs, a fair and comprehensive assessment of all available options to meet that demand, and an opportunity for public comments and concerns to be voiced. The PUC's statutory resource planning process is not a comprehensive process because it is incomplete and fragmented. Lack of this type of process interferes with the commission's ability to accurately assess and compare energy resources, set goals for their use, and require utilities to follow commission-approved plans. The review's findings indicated that Texas should have a comprehensive resource planning process in place for electric utility planning and regulation.

RECOMMENDATION

- **The statute should be changed to require the Public Utility Commission to develop a comprehensive resource planning process to provide lowest-cost energy resources that ensure reliability and minimize consumer utility bills. The statute should also specifically require the commission to:**
 - **conduct a full hearing on and formally approve each electric generating utility's new or updated comprehensive resource plan. This would not include plans filed by municipally-owned generating utilities and plans filed by river authorities and generating cooperatives that do not plan to build new power plants;**
 - **adopt in rules a 10-year statewide plan that contains individual generating utilities' resource plans and the commission's goals for the use of various energy resources;**
 - **include in the statewide plan rulemaking process consideration of: 1) criteria for comparing external costs of each resource, including assigning quantitative values to external costs, and 2) additional incentives to utilities for conservation programs that are proven to be successful;**
 - **allow utilities to recover reasonable current costs for conservation programs and purchased power through the existing fuel reconciliation proceeding; and**
 - **review the state's transmission system, require utilities to upgrade power lines and make other improvements and additions as necessary, and determine who will pay the costs of these improvements.**

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Under this recommendation, the commission would be required to adopt in rules a statewide 10-year resource plan every three years. The plan would contain individual generating utilities' resource plans and the commission's goals for the use of various energy resources, including purchased power, renewable resources and conservation measures. The goals would be used as a benchmark for utilities in developing their individual plans. During the rulemaking process, the commission should also consider criteria for comparing external costs of each resource, including assigning quantitative values to external costs, and additional incentives to utilities for conservation programs that are proven to be successful. The commission would be allowed to update the statewide resource plan annually if needed and would be required to file the plan with the governor and the legislature.

The commission would be required to develop a three-year staggered schedule for electric generating utilities to submit an initial individual comprehensive resource plan. All utilities would then be required to file a new or updated plan at least once every three years after the initial filing. Except for plans filed by river authorities and generating cooperatives that do not plan to build new power plants and plans filed by municipally-owned utilities, individual generating utilities' comprehensive resource plans would go through a formal hearing process before being approved by the commission. River authorities and generating cooperatives have a relatively minimal impact on resource planning unless they are planning to build a new power plant. Municipally-owned utilities should be exempt from the hearings process because the PUC does not have original or appellate jurisdiction over these utilities except in limited instances. However, the municipally-owned utilities should continue to be required to file a resource plan with the PUC because of their role in supplying electricity in the state. Because utility plans and the commission's statewide plans would be evolving and regularly updated, the statute should exempt the commission's approval of individual utilities' resource plans from judicial review.

This recommendation would incorporate the PUC's current 10-year forecast, energy efficiency plan, notice-of-intent procedure and avoided cost procedure into one comprehensive resource planning process and would eliminate any statutory duplication within the existing processes and with the certificate of convenience and necessity (CCN). Utilities would have to include proposed power plants in their commission-approved resource plan before obtaining a certificate of convenience and necessity. A statutory deadline of 180 days would be set for the CCN process and the PUC would be prohibited from considering a utility's resource plan and application for a CCN simultaneously. This would prevent the PUC from making potentially conflicting decisions at the same time in separate hearings.

The PUC would have one year to phase in the planning process and would be required to adopt a comprehensive resource planning process through rulemaking by September 1, 1994. This time frame should be reasonable because the PUC has already begun to gather data on comprehensive resource planning in a questionnaire issued by rulemaking. The planning process adopted by the commission should include: deadlines for the individual hearings process; requirements for utilities to hold public meetings in their service area to gather information and hear public comments; procedures for utilities to solicit formal

competitive proposals to determine various resources' feasibility, cost, reliability and other relevant factors when additional capacity is needed; a requirement for utilities to file an implementation plan for their approved comprehensive resource plan; and procedures to allow utilities to file minor updates to their approved plans and petition the commission for an emergency hearing on major changes to the approved plan.

FISCAL IMPACT

This recommendation would require the PUC to develop and implement a new process that would require additional staff research, analysis and planning. To perform these functions, the PUC would require an estimated \$300,000 in additional funding per year. However, the agency could become eligible for federal funding if it implements a comprehensive resource planning process.

Fiscal Year	Cost to the General Revenue Fund
1994	\$300,000
1995	\$300,000
1996	\$300,000
1997	\$300,000
1998	\$300,000

ISSUE 9: The Public Utility Commission should be authorized to establish a schedule for large electric utilities to file for rate changes.

BACKGROUND

Because utilities operate as monopolies, they traditionally have not been subject to competition or many of the other market forces associated with free enterprise. As a result, regulations have been enacted to serve as a substitute for the constraints and controls that competition would provide if utilities operated in a free market. Under these regulations utilities cannot act on their own for activities such as building new facilities or changing prices for the services they provide. Instead, they must first obtain approval from the regulatory agency.

A major result of regulation is that utilities cannot establish prices for the services they provide, but must instead obtain approval from the regulatory agency for the rates they charge. Generally, rates are set at a level that covers all costs plus an amount needed to produce a fair return to the utility on its investments. Utilities file for rate increases whenever they feel that rates are not sufficient to recover costs of operations and provide a reasonable return on invested capital. However, utilities may not begin collecting these new rates until they have completed the regulatory process. The time before new rates become effective, called "regulatory lag," makes it important for utilities to properly plan their rate requests. Such filings may become more frequent as unforeseen circumstances affect utilities' costs or rate of return.

The need for utilities to change their rates should be balanced against the PUC's ability to properly manage its workload and to adequately analyze rate requests. As specified by the Public Utility Regulatory Act (PURA), utilities have the burden of proof to show that proposed rate changes are just and reasonable to both consumers and utilities. The PUC, however, must make a final determination regarding the rate change within 185 days of the rate case filing, as established by the PURA. The commission and the various parties to the case should be able to analyze the information provided by the utilities to assure that requests are reasonable. The review of the PUC's and other agencies' rate filing processes is summarized below.

FINDINGS

- ▶ **Because the agency is unable to schedule the filing of major rate cases by electric utilities, it has difficulty managing its workload and appropriately analyzing cases.**
 - A large part of the PUC's workload is driven by rate cases filed by the state's 10 investor-owned electric utilities and the electric operations of four river authorities. The cases filed by these utilities are generally the largest and most complex matters that come before the commission. These utilities generally file rate cases when their rate of return declines due to pressures such as inflation, which tends to increase their costs. The PUC does not control when these utilities file rate cases.
 - The agency staff's ability to appropriately analyze cases is impaired when utilities file multiple or back-to-back rate cases. The limited size of the staff available to analyze cases requires the PUC to concentrate its efforts basically on a first-come-first-served basis. When utilities file rate cases at near the same time, the PUC staff is not able to give the same level of attention to subsequent cases.
 - Because of the strict time frames specified in the PURA, the PUC cannot defer action on rate cases filed by utilities. The commission must take final action within 185 days of the rate filing, or the requested rates become effective automatically. These time frames make it difficult for the PUC staff and other parties to analyze the large number of issues in rate requests and to make recommendations to the commission.
 - The PUC has not had as much difficulty with telephone rate cases in recent years because they are not as common as electric rate cases. Because technological advances have reduced the cost of providing telephone service, telephone utilities have not had to request higher rates for several years. These declining costs may enable some telephone companies to collect too much money, even though their rates were approved by the PUC during the utility's last rate case. The PUC staff may initiate a rate inquiry to reduce rates when they find that utilities appear to be over-earning. Because the PUC initiates these cases the agency may schedule them according to its current workload, which leads to better management of these cases.

► **The difficulties arising from the PUC's lack of control over the frequency and timing of rate case filings is illustrated by cases at the agency during the last five years.**

-- In the last five years, investor-owned electric utilities and electric operations of river authorities have filed 19 major rate cases. Although only one major rate case has been filed since the end of 1990, the number of cases filed previously has strained the staff's ability to evaluate the various rate requests. In fiscal year 1991, for example, the PUC concluded eight major rate cases and PUC staff worked almost 25,000 hours of overtime. The analysis below shows the frequency of rate case filings by electric utilities in the last five years.

El Paso Electric Company (EPEC) has filed four major rate cases in five years.

The Lower Colorado River Authority (LCRA) and Texas-New Mexico Power Company have each filed three rate cases in the last five years.

In May of 1990, Central Power & Light (CP&L) filed one rate case while it had another rate case pending before the PUC.

In November of 1990, Houston Lighting & Power (HL&P) filed a \$336.5 million rate request less than two months after the PUC had issued a final order allowing the utility a \$255.2 million rate increase.

-- The largest factor contributing to the frequency of rate cases over the last five years has been the completion of several nuclear power plants and the approval of reasonable or prudent construction costs to be included in rates. The issues in these cases were very complicated and involved billions of dollars. For much of 1990, the PUC was simultaneously involved in prudence cases for both the South Texas and the Comanche Peak nuclear projects.

-- The staff's ability to respond to rate requests is also affected when utilities do not seek frequent rate changes. For example, in January of 1990, Texas Utilities Electric Company (TU Electric) sought its first rate change in five and one-half years. The case, which included decisions on the prudence of costs associated with the Comanche Peak nuclear project, seven years of fuel cost reconciliation, and a sale/transfer/merger issue, took one year and eight months to complete, including 203 days of hearings.

-- At the same time the PUC staff and the various parties are participating in rate cases, they must also participate in other proceedings affecting electric utilities. For example, in fiscal year 1991, the PUC approved three notices

of intent for the construction of new power plants and 40 certificates of convenience and necessity for the extension of electric transmission lines. The PUC also completed 11 avoided cost dockets to establish the cost utilities would have incurred by building power plants to meet increased demand if cogenerated power were not available. In addition, other proceedings, such as fuel factor and fuel reconciliation proceedings, are typically combined with rate cases or held at the same time as a rate case.

- ▶ **The frequency of rate case filings may be a problem for the PUC staff in the future.**
 - Several electric utilities are currently under rate freezes that preclude them from seeking rate changes for a specified period. While these rate freezes partially explain why there has been only one major electric rate case since the end of 1990, they also foretell a future round of rate requests. Rate freezes affecting Gulf States Utilities (GSU), HL&P, and LCRA are scheduled to expire in 1993. The freeze affecting CP&L does not expire until 1995. The PUC anticipates five major electric rate case filings in 1993, including filings by two of the largest investor-owned electric utilities, TU Electric and GSU. These rate cases would be in addition to four fuel reconciliation proceedings that are also expected to be filed in 1993.
 - Recent appellate court decisions on issues involving deferred accounting and the treatment of federal income tax issues, if not overturned by the Texas Supreme Court, will likely result in a large number of rate case filings in the next several years in response to these decisions.
- ▶ **The PUC has limited control over the filing of certain docketed proceedings, including rate cases.**
 - As mentioned, the PUC has been able to get some electric utilities to agree to freeze their rates. The PUC does not have the authority to require rate freezes, but it has been able to get utilities to agree to them as part of rate case settlements. The length of these rate freezes depends on the terms of the settlement, but may last as long as four years, as in the CP&L case.
 - The PUC also controls the filing of avoided cost proceedings for determining the price utilities may pay qualifying facilities for their power. These proceedings determine the costs that utilities avoid by purchasing power from a qualifying facility instead of producing their own power. The PUC has established a schedule for electric generating utilities to file an avoided cost calculation every two years.

- ▶ **Agencies in Texas and other states have improved the management of their workload by establishing procedures for controlling the filing of rate cases.**
 - The California Public Utilities Commission has by rule established a rate case plan in which the five largest energy utilities may not file general rate requests more often than every three years. The plan establishes a schedule for processing general rate cases and contains components that allow utilities to adjust their rates without commission approval in order to earn their authorized return in the years between rate cases.
 - Two other states limit utility rate requests. In New Hampshire, the Public Utilities Commission is not obligated under state law to investigate any rate matter that was investigated within two years, but may do so at its own discretion. In Indiana, a utility may not file for a general rate increase within 15 months after the date of its most recent request. However, a utility may refile more rapidly if the Utility Regulatory Commission finds that the utility's financial integrity or service reliability is threatened.
 - The Texas Water Commission limits water utilities from filing rate changes more than once in a 12-month period, unless the commission determines that financial hardship exists. In addition, legislation enacted in 1991 authorized the Texas Department of Insurance to establish a rate plan limiting property and casualty insurers from changing rates more than twice in a 12-month period.

- ▶ **By establishing a schedule for electric utilities to seek rate changes, the PUC could better manage its workload. At the same time, utilities could be given the flexibility to petition for filing before the scheduled time if unforeseen needs arise.**
 - Scheduling rate cases would enable the PUC and other parties to know what a large part of their future workloads will be and to manage their staffs accordingly. Improving the management of staff workloads would improve the ability of staff and other parties to analyze the information provided by the utilities and ultimately improve the quality of regulation. Scheduling would also allow the staff to periodically evaluate utility rates and thus maintain a level of experience with these utilities.
 - A rate case schedule could provide greater flexibility for utilities to seek rate changes than is allowed under rate freezes or limits on rate filings. A schedule could also allow utilities to seek rate changes more frequently than scheduled in the event of unforeseen circumstances if certain conditions established by the commission are met. By providing flexibility for utilities to seek rate changes, a schedule would provide adequate due process to utilities to properly manage their affairs. In addition, a schedule

could allow utilities to bypass rate proceedings if they do not want to change their rates and the staff determines that an evaluation is not needed.

CONCLUSION

The PUC has had problems in managing its workload because it is unable to control the filing of major rate cases by electric utilities. The PUC has had limited control of the filing of certain docketed proceedings, including rate cases. Agencies in Texas and other states have established procedures for controlling the filing of rate cases to help manage their workloads. Electric utilities could still have the option of petitioning for a rate case before the scheduled time in the event of unforeseen circumstances. Based on these factors, the PUC should be authorized to establish a schedule for electric utilities to seek rate changes.

RECOMMENDATION

- **The statute should be changed to authorize the Public Utility Commission to establish a schedule for electric utilities to file for rate changes.**

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This recommendation would authorize the PUC to establish a schedule for electric utilities to appear before the commission in general rate case proceedings. This provision would only apply to investor-owned electric utilities and the electric operations of river authorities. The commission would determine the frequency of rate cases under the schedule. In addition, the schedule should be revised and updated every five years. The commission should also determine the conditions under which a utility may request a general rate case before its scheduled time and conditions under which utilities may bypass rate proceedings if a rate change is not needed. The original schedule, updates, and special conditions for filing before the scheduled time should all be established in rule.

Scheduling major electric utilities for rate cases would provide order to rate cases filings, enabling the agency and the various parties to rate proceedings to better manage their workloads. Through the effective management of their workloads, the agency and the parties would be better able to analyze information provided by utilities and thus improve the quality of utility regulation. In addition, by providing flexibility for utilities to seek rate changes more frequently than scheduled, a rate case schedule would also provide for the due process needs of these utilities.

FISCAL IMPACT

The establishment of a rate case schedule for electric utilities would facilitate case processing, but any savings that would result cannot be estimated.

ISSUE 10: The Public Utility Commission should be required to adopt settlement procedures in rules if the agency continues to use unanimous and non-unanimous settlements to resolve contested cases.

BACKGROUND

The Public Utility Commission (PUC) has two main processes for resolving contested case issues or proceedings, such as rate cases. First, contested matters may be resolved through a formal hearings process that is conducted according to the Public Utility Regulatory Act (PURA) and the Administrative Procedure and Texas Register Act (APTRA). These laws provide the commission with a formal hearings process that ensures the due process rights of all participants in a hearing. Second, contested matters may be resolved by an informal settlement reached by all or some of the parties in a contested case.

At the PUC, informal settlements are reached through negotiations that occur outside of the formal hearings process at any time before the commission makes its final decision in a contested case. Proposed settlements must be approved by the commission before they become final and the results of the settlement must still be found by the commission to be in the public's interest. Most rate cases that are settled are done so by unanimous agreement of all parties to the case. In fiscal year 1991, for example, 109 of 115 settlements were achieved by unanimous agreement of the parties. In the other six cases, the PUC adopted non-unanimous settlements, which are settlements that are not fully agreed to by all the parties to a case. In both unanimous and non-unanimous settlements, the commission may make final decisions on contested issues without necessarily going through the commission's formal hearings process. Instead, the commission may hold a hearing to determine the validity of the settlement.

Any process used to reach a decision in a regulatory case should treat all parties fairly. A fair process is particularly important at the PUC where parties often strongly disagree about cases that may involve substantial issues of public policy. Procedures used to reach decisions in these types of cases should be carefully set out to help ensure fair treatment of all parties involved. Procedures have been established through the APTRA and the PURA to ensure due process in the PUC's hearings. The review examined whether the PUC has formal procedures to protect the due process rights of parties if the commission chooses to allow unanimous and non-unanimous settlement negotiations. The findings from this review are summarized below.

FINDINGS

- ▶ **A clearly defined statutory process for decision-making is in place for formal hearings at the PUC. However, the agency does not have clearly defined procedures in statute or rule for reaching settlements.**
 - Formal hearings at the PUC are conducted according to provisions in the PURA and the APTRA, which clearly define the requirements for these types of proceedings. The procedures found in these laws ensure that the due process rights of all parties in a hearing are protected.
 - Unanimous and non-unanimous settlements are generally reached at the PUC through informal negotiations that occur before the commission makes its final decision in a contested case. State law authorizes agencies to use settlements in contested cases but does not provide procedural guidelines for making use of these agreements. In Section 13(e), the APTRA states that "Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default." The PURA does not contain any language on unanimous or non-unanimous settlements.
 - Twice during the past two years, the PUC proposed procedural rules to govern the way it achieves informal settlements but did not adopt them. In 1991, the commission withdrew its settlement rules to allow the legislature to consider the issue during the regular session.
- ▶ **Regulatory agencies generally adopt rules for statutory procedures such as hearings and informal settlements to ensure that all the parties are treated fairly and have the same opportunity to participate in proceedings. In addition, adopting procedures through the rulemaking process gives all parties an opportunity to work together to develop a fair and consistent approach.**
 - State agencies commonly adopt rules specifying procedures for carrying out statutory requirements and other provisions. For example, the Texas Water Commission has adopted an alternative dispute resolution process in rules for negotiating settlements in certain types of cases.
 - The Federal Energy Regulatory Commission (FERC) has adopted rules to establish a formal process for negotiating settlements. The FERC regulates electric utilities that transmit electricity across state lines.
 - Other state utility regulatory agencies generally have adopted procedures in rules for negotiating and approving settlements. Of the nine largest energy-consuming states after Texas, California, New York, Michigan, and Washington have adopted procedural guidelines for achieving settlements.

- The National Association of Regulatory Utility Commissioners (NARUC) staff's Subcommittee on Administrative Law Judges has established detailed procedures to be used as a model by state utility regulatory commissions when adopting a formal process in rules for using unanimous and non-unanimous settlements.
- ▶ **If the commission continues to adopt unanimous and non-unanimous settlements, it should do so through a formally adopted process because of the number of rate cases resolved through settlements and the magnitude of the issues involved.**
- In recent years, the PUC has relied heavily on settlements to resolve contested cases. In fiscal year 1991, the PUC approved settlements in 115 cases. Unanimous settlements were reached in 109 of these cases, while non-unanimous settlements were approved in six cases. Generally, when settlements are reached, they are more likely to be unanimous in rate cases involving small utilities, such as electric cooperatives and small telephone companies. Settlements in rate cases involving the investor-owned electric utilities and the three largest telephone companies are more likely to be non-unanimous.
- Settlements generally include important issues found in every major rate case, such as the rate of return the utility should be allowed to earn and the allocation of rates among different customer classes. These issues affect parties who may or may not be a part of the settlement, including utilities, industrial consumers, cities, and residential and small business consumers. Settlements approved in fiscal year 1991 involved revenue increases of more than \$275 million and a rate reduction of approximately \$250 million resulting from a rate inquiry.
- Consistent and fair procedures for settlements are critical when so much is at stake. The rulemaking process set out in the APTRA is designed to provide this consistency and fairness by codifying agency procedures in rules after receiving public input. The APTRA requires agencies to give notice of the proposed rules, consider all written and oral comments on the proposed rules, hold a public hearing on the proposed rules if requested, and provide a reasoned justification for adopting the proposed rules. These provisions would ensure that interested persons would be aware of the agency's settlement procedures, and the rules would help ensure that these procedures are consistently applied. Because interested parties help develop the procedural guidelines, the rulemaking process also provides for fairness in achieving settlements.

CONCLUSION

A clearly defined process for decision-making is necessary to ensure fair and consistent regulatory treatment of contested cases. Rulemaking is a typical approach used by regulatory agencies to develop this type of process when it is not found in statute. The PUC has not adopted procedures for unanimous and non-unanimous settlements in rule. Adoption of rules for settlements would promote clarity and fairness in how the settlement process operates. Helping to ensure a consistent and fair settlement process is especially important at the PUC because of the major impact that settlements can have on affected parties. Based on these factors, the PUC should adopt procedures in rule for negotiating unanimous and non-unanimous settlements if the agency continues to make use of these agreements.

RECOMMENDATION

- **The statute should be changed to require the Public Utility Commission to adopt a process in rules for unanimous and non-unanimous settlements if the agency continues to use these agreements to resolve contested cases. The PUC should discontinue the practice of adopting settlements until this process has been established in rule.**

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This recommendation would require the PUC to establish a process in rules for resolving contested cases or issues through unanimous and non-unanimous settlements if the commission continues to make use of these types of agreements. Establishing a written, clearly defined process for unanimous and non-unanimous settlements would ensure that parties have guidelines for participating in these types of negotiations if the commission continues to use them. The PUC should be required to establish this process before adopting any more unanimous or non-unanimous settlements. The recommendation would not prohibit or authorize unanimous or non-unanimous settlements, but would leave it to the commission to decide whether to use them and under what conditions.

FISCAL IMPACT

No fiscal impact is anticipated from this recommendation.

ISSUE 11: A special task force should be appointed to develop a plan for telecommunications in the state.

BACKGROUND

The telecommunications industry is undergoing major changes that are leading towards increased competition. Key decisions by the Federal Communications Commission (FCC) and the divestiture of AT&T were instrumental in initiating many of these changes. The FCC's 1968 Carterphone decision allowed users to attach equipment such as telephones to the AT&T network. In 1969, the FCC allowed MCI to construct a microwave tower to transmit long-distance calls between Chicago and St. Louis. Both decisions struck at the heart of the monopolistic nature of the telecommunications industry under AT&T and had the effect of creating competition in some segment of the industry. The divestiture of AT&T in 1984, which broke up the AT&T network into seven separate regional Bell operating companies, has resulted in competition coming to the industry as a whole.

Currently, the PUC sets rates and service standards for all services offered by the state's 59 local telephone companies, as well as intrastate long-distance service provided by AT&T as the dominant long-distance company in the state. These companies continue to see rapid changes in the industry's structure, the type of services offered, the level of technology, and the type of regulation imposed. Competition is found particularly in the areas of long-distance services, customer premises equipment sales, and business services. In these areas the regulated telephone industry is competing more and more with unregulated companies that offer services not regulated by the PUC, including private pay phones, cellular phone service, paging systems, alternate access to long distance companies for large companies and telecommunications management.

At the state level, policymakers have traditionally focused on providing universal service, which ensures that everyone in the state has access to basic phone service at reasonable rates. However, states are now beginning to view the telecommunications industry as a means for economic development and are encouraging increased investment in telecommunications to create new businesses and revitalize traditional ones, increased urban and rural economic development, and improved public services in health and education. To some, the use of telecommunications for economic development is a potential threat to universal service. Increased investment in a more sophisticated telecommunications infrastructure could significantly raise the rates of basic telephone service and reduce the number of households that can afford basic telephone service. Texas is already below the national average of households with basic telephone service. As of December 1991, 93.4 percent of households in the nation had phone service. In Texas, that figure was 91.1 percent, with the majority of Texans without phone service generally residing in rural areas.

The trend toward the increased use of telecommunications as a tool for business, public

services, and state economic development is accompanied by practical concerns about the potential cost to the public, the accessibility of new services to all people and regions of the state, and the general desirability of some services. These concerns are complicated by the ongoing transition of the telecommunications industry from a regulated, monopolistic industry to a competitive, market-driven industry. To adequately address all of these concerns, the state needs to examine and direct the future development of telecommunications in the state. A review of Texas' approach to this situation in comparison to other states resulted in the following findings.

FINDINGS

- ▶ **Changing conditions in the telecommunications industry indicate a need for considering new regulatory policies and goals in Texas. However, Texas does not have a plan to examine and direct the future development of telecommunications in the state.**
 - The PURA was adopted in 1975, when the telecommunications industry operated as a monopoly under AT&T. Since the divestiture of AT&T in 1984, the telecommunications industry has experienced new competitive forces and has created new telecommunications technologies. In 1987, the legislature recognized the changing environment of the telecommunications industry and amended the PURA to make regulation more flexible in certain areas that were deemed competitive. Since that time the trend toward regulatory flexibility and telecommunications planning has continued.
 - Although statewide conferences have been held to discuss the changing conditions of the telecommunications industry, Texas has not yet developed a comprehensive telecommunications plan. These conferences have been attended by government, consumer, university, health, education, and industry representatives. Discussion has centered on the state's need to develop a telecommunications plan that would allow new developments in telecommunications to be put to work in homes, businesses, schools, hospitals, and government organizations in the state.
 - Competition and the availability of new services tend to be concentrated in the state's urban areas. Currently, no plan exists to ensure that all consumers have an opportunity to benefit from competition and new services, to determine if these new services are accessible and desired by most consumers, and to determine if these new services should be considered as part of the basic telephone service ensured to all residents by universal service.
 - Local telephone companies are facing competition in several areas,

including private networks owned by large companies that find it increasingly profitable to provide their own telecommunications services; customer premises equipment markets, like private branch exchanges (PBXs), that compete with telephone company central office-based services that are similar to PBX-type services, and custom calling features such as call forwarding and call waiting; and fiber optic networks, which provide alternate access services that allow users to bypass the local telephone network and connect directly to a long-distance company.

- New telecommunications technologies for use in the home, business, and public services are available and should be considered in the regulatory planning process. New residential telecommunications technologies include television and information services that can be dialed by telephone, lifetime telephone numbers that can move from one location to another, and videophone. New business telecommunications technologies include simultaneous transmission of voice, data, and video; teleconferencing among business offices; and voice and data networks for large company management. New public service telecommunications technologies include distance learning to connect students in rural areas with teachers and programs in urban areas through use of interactive video, and distance medical consultations to connect physician's offices with patients homes' through use of interactive video.
- ▶ **Other states have developed a variety of approaches for addressing the same types of changes in the telecommunications industry that are occurring in Texas.**
 - According to the National Regulatory Research Institute, 27 states are pursuing alternative forms of telecommunications regulation such as incentive sharing under which utility earnings are shared with consumers according to a predetermined formula. Incentive sharing allows companies to keep more earnings than would be the case under traditional regulation. Another 12 states are pursuing regulatory reforms by adding more flexible regulation for particular services within the framework of traditional regulation. Three states are pursuing regulatory reform through the deregulation of particular services or total deregulation.
 - Michigan has taken a task force approach to telecommunications planning. Michigan's governor appointed a telecommunications task force made up of business, education, and government representatives to develop an integrated, flexible, high-tech communications system for Michigan. The task force issued its report in May 1990 and made 53 recommendations to promote awareness of telecommunications as a strategic resource in Michigan.
 - A Missouri task force is considering creating a scaled-down version of a

modern telecommunications network to help stir interest in the industry's advances and to help better understand the potential benefits of a modern network, its capabilities, and the actual cost of delivering some new services.

- Tennessee and New York are approaching the issue through their state regulatory agencies. In 1990, the Tennessee Public Service Commission adopted a detailed master plan for telecommunications expansion to every county in the state over the next 10 years. The New York Public Utility Commission is in the process of developing a comprehensive database of user needs and wants, network modernization alternatives, intermediate and long-range modernization plans, and benefits to society. This database will be open to the public and available to industry and governmental agencies for use in planning and policy development.
- The general emphasis of other states' approaches has been to provide more flexible regulation of local telephone companies, encourage the modernization of the infrastructure, encourage the use of telecommunications in economic development, and ensure that any new services are beneficial to the public in general and not just selected groups or regions.
- ▶ **In Texas, a common approach to addressing areas where there is a need for additional information and new policy direction is to set up a select committee or task force.**
 - In 1987, the legislature statutorily created the Select Committee on Tax Equity to study the state's tax system. In 1989, Governor Bill Clements created the Governor's Task Force on Public Utility Regulation by executive order to evaluate the manner in which public utilities are regulated in the state. In 1991, Governor Ann Richards created the Governor's Task Force on Revenue by executive order to study state and local tax policy.
 - Most recently, the 72nd Legislature recognized the need for telecommunication planning and policy for state agencies. The Department of Information Resources, the State Comptroller of Public Accounts, and the General Services Commission have been charged with developing a statewide telecommunications operating plan for all agencies to implement a statewide network. Another example is the Texas Railroad Commission which has created the "State of Texas Energy Policy Partnership" to set policy goals for the use of the state's natural fuel resources such as oil, gas, coal, and lignite.

- In general, all of these efforts address issues affecting all Texans. Each committee or task force was composed of government officials and public members and was charged with making recommendations to the governor and the legislature.

CONCLUSION

The telecommunications industry is changing rapidly in the state. Technology is making new services available for use in homes, business, and the delivery of public services. Also, competition is emerging where it did not previously exist. However, at the same time that telecommunications is becoming more advanced and useful, basic needs still exist for ensuring universal telephone service for all Texans in all regions of the state. The review concluded that Texas, when compared to other states, is behind the trend toward increased telecommunications planning to respond to these changes. In Texas, a common way to focus attention on a problem such as this is through a task force.

RECOMMENDATION

- **The state should establish a task force to examine questions of telecommunications policy. The task force would consist of 15 members and would be staffed by the PUC. The task force would be composed as follows:**
 - **the chair of the PUC, serving as the chair of the task force;**
 - **the public counsel of the Office of Public Utility Counsel;**
 - **the executive director of the Department of Commerce;**
 - **six members representing segments of the telecommunications industry appointed by the governor with two representing local exchange telephone companies, two representing long-distance telephone companies, and two representing unregulated telecommunications services providers;**
 - **four members representing consumer interests appointed by the governor;**
 - **one member of the senate appointed by the lieutenant governor; and**
 - **one member of the house of representatives appointed by the speaker of the house.**

- **The task force would be charged with developing a plan for telecommunications in the state. The task force would publish this plan in a report to the governor, the legislature and affected agencies. In the plan the task force would specifically:**
 - **identify the state's telecommunications needs and how emerging technologies and competition could best meet these needs; and**
 - **recommend rule changes or statutory changes needed for the regulatory system to respond appropriately.**
- **The PUC would be required to report back to the governor and the legislature on its progress in implementing any recommended rules from the task force.**

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This recommendation would create a special task force that would develop a plan for telecommunications in the state. Appointments to the task force would be made by November 1, 1993. The chair of the PUC would serve as chair of the task force and the PUC would provide staff. Initially, PUC staff would provide the task force with proposals and overall directions for the members of the task force to consider. The task force would meet monthly beginning December 1, 1993, and would issue its report by December 1, 1994, to the governor, the legislature, and affected agencies. The task force would dissolve once it issues the report. The PUC would issue a report to the governor and the legislature on its progress in implementing the task force's recommendations for rule changes by December 1, 1996.

Creation of a special task force on telecommunications would provide an opportunity for state, industry, and consumer leaders to address the broad issues of telecommunications that could have a major effect on the state's economic development, competitive future, and ability to ensure adequate phone service at a reasonable price.

FISCAL IMPACT

This recommendation would require additional funds for travel and per diem for task force members. This amount is estimated at \$21,000 for the year the task force is in existence. No additional staff would be required. Existing PUC staff would serve as staff for the task force. Funds for the task force would be paid from the general revenue fund through the PUC.

ISSUE 12: The agency's statute should be changed to partially deregulate electric distribution cooperatives.

BACKGROUND

Electric cooperatives were initially set up in Texas in the 1930s to provide electricity to people living in rural areas. Cooperatives are consumer-owned but are generally run by a board of directors elected by the consumer-members. Cooperatives are non-profit corporations with any funds over and above operating costs and other expenses such as debt service and system improvements being returned to the members through cash refunds or bill credits.

The PUC regulates 87 electric cooperatives in Texas, 79 of which are distribution cooperatives that purchase power at wholesale and deliver it at cost to their consumer-members. These cooperatives provide electricity to over 1.1 million people in all but nine of Texas' 254 counties. The other eight cooperatives are generation and transmission cooperatives (G&Ts). G&Ts are set up and owned by distribution cooperatives to generate their own power or purchase wholesale power or shares from other electric generating plants.

In general, electric cooperatives are subject to the same rate regulation as investor-owned utilities. The PUC has authority to set and review rates and certify construction and service areas. However, in 1991 the PUC adopted rules to streamline regulation of electric distribution cooperatives. The streamlined process may be used if the distribution cooperative gives notice to its consumer-members, if the rate change does not exceed maximum rate increases set in rules, and if no intervenors contest the rate change.

Several efforts have been made in the past to statutorily deregulate or partially deregulate electric cooperatives. In 1989, the Governor's Task Force on Public Utility Regulation recommended that the legislature consider whether the state needs to continue regulating electric cooperatives. Most recently, in 1991 the Texas Performance Review recommended partial deregulation of electric cooperatives and the 72nd Legislature considered exempting electric cooperatives from regulation by the PUC. To date, however, no legislation regarding the deregulation of electric cooperatives has become law.

Although electric distribution cooperatives are monopolies, they are consumer-owned so the need to protect consumers may be reduced. The review included an examination of the need for continued regulation in this area and whether regulation could be reduced and still provide safeguards from potential harm to consumers. The findings of the review are summarized below.

FINDINGS

- ▶ **Electric distribution cooperatives differ from other regulated electric utilities in that they are consumer-owned, non-profit corporations.**
 - Unlike investor-owned utilities, electric distribution cooperatives are consumer-owned, non-profit corporations. Any funds in excess of operating and other expenses are ultimately refunded to the consumer-members who provided them. There is no incentive to maximize profits for shareholders because the owners and the consumers are the same.
 - The consumers, as members of the cooperative, elect a board of directors who set policy and hire management for the cooperative. In this way cooperative consumers act as a regulating force on the cooperative. Inefficiencies or mismanagement by the board of directors can ultimately result in the consumer-members changing the composition of the board of directors.

- ▶ **Electric distribution cooperative rate cases generally are not contested and requested rate increases are granted by the PUC with little or no changes. This suggests a reduced need for regulation. In addition, the costs associated with a rate case can be relatively expensive, particularly for small cooperatives.**
 - A review of 18 electric distribution cooperative rate cases over a two-year period showed that only four cases were contested and required a full hearing. On average, the cooperatives received almost 90 percent of their requested rate increases. Additionally, the rate designs requested by the cooperatives were not significantly altered in most cases.
 - The staffs of electric distribution cooperatives are generally small with no special staff to prepare materials for a rate case. Often a cooperative must hire outside consultants and attorneys to prepare the documents for a rate case.
 - The cost to these cooperatives of preparing a rate filing package, participating in a rate case hearing, and hiring consultants and an attorney is about \$40,000 to \$50,000.

- ▶ **Current PUC streamlining rules for electric distribution cooperatives go part way towards easing the regulatory burden but still require a large commitment of time and money from the distribution cooperatives.**
 - The streamlined process allows rate changes by electric distribution cooperatives only under limited circumstances. First, the streamlined process may be used only if the distribution cooperative has not changed

rates using this approach within the previous 12 months, and if the requested increase in base revenues is not more than five percent of total revenues. Second, the streamlined process may be used only if the percentage change in base revenues collected from any customer class would be no more than 1.5 times the percentage change in the base revenues for the entire system. Third, the streamlined process may be used only if no intervenors contest the rate change.

- Only seven of the state's 79 electric distribution cooperatives have requested rate increases under the streamlined process since the process was adopted in February 1991. During the same time eight distribution cooperatives requested full rate cases seeking rate increases greater than the rule allowed.
- The average cost of a rate case under the PUC's streamlining rules could still reach \$30,000 to \$40,000 depending on whether or not the cooperative has to conduct a cost of service study as currently required by the streamlined process.
- Even with the minimal filing requirements of the streamlined process, an electric distribution cooperative still has to hire consultants and attorneys to prepare the necessary documents.
- ▶ **A majority of other states with electrical distribution cooperatives have either rate deregulated them or have adopted a streamlined form of regulation to minimize the cost and time of traditional regulation with little or no significant impact to rates.**
 - A total of 46 states have electric distribution cooperatives. Of these, only eight states have full-rate regulation of electric distribution cooperatives.
 - Of the remaining 38 states, nine have adopted a streamlined approach to regulation, including Texas. The remaining 29 states have no rate regulation of electric distribution cooperatives.
 - A review of 910 electric cooperatives across the country showed only a slight difference in the rates of regulated cooperatives versus non-regulated cooperatives. For regulated cooperatives, the average base rate per kilowatt hour sold was 2.5 cents. For non-regulated cooperatives, the average base rate per kilowatt hour sold was 2.8 cents.

- ▶ **Concerns have been expressed that deregulated electric distribution cooperatives could take advantage of consumers and other electric utilities in certain situations. Other states have adopted safeguards to address similar concerns.**
 - One concern is that residential consumer-members generally are not actively involved or knowledgeable about the rate setting and business practices of their electric cooperative. These members may not be aware of questionable cooperative decisions.
 - A second concern is that large industrial consumers may be at risk of having to bear a disproportionate share of rate increases if a cooperative is deregulated since the majority of the consumer-members of cooperatives are generally residential consumers.
 - A third concern is that investor-owned utilities that operate in areas that are also served by a deregulated cooperative may be subject to unfair pricing practices by the cooperative. Investor-owned utilities have expressed the concern that in such areas a deregulated cooperative would be able to substantially lower its rates to certain large users to attract that business away from the investor-owned utility.
 - Several states have safeguards that allow consumer-members to vote on whether to become deregulated or to remain regulated. This means that a cooperative would not be deregulated unless the members voted to approve such a move. Rate-deregulated cooperatives generally must provide notice of impending rate changes to their consumer-members.
 - A number of states also provide appeal mechanisms for consumers to petition for a rate case if a percentage of the members are dissatisfied. For example, in Oklahoma, five percent of a cooperative's consumer-members can petition the state's public utility commission and automatically trigger a rate case.
 - New Mexico has safeguards that prohibit predatory or discriminatory pricing by cooperatives in areas served by both a cooperative and an investor-owned utility.

CONCLUSION

The purpose of regulating electric utilities is primarily to protect consumers from unreasonable prices that could be charged since utilities are monopolies. While electric distribution cooperatives are monopolies, their structure does not require the same level of regulation needed for other utilities. Cooperatives are owned by the same consumers

receiving services and are not in business for a profit. Rate case expenses could be saved by rate deregulating cooperatives while still providing safeguards against possible abuses.

RECOMMENDATION

- **The statute should be changed to:**
 - **allow for the deregulation of rates charged by electric distribution cooperatives upon a vote of the cooperative's consumer-members, and**
 - **provide for the following safeguards against potential abuses by deregulated electric distribution cooperatives:**
 - an appeal mechanism where five percent of all consumer-members could petition the PUC and automatically trigger a rate case;**
 - an appeal mechanism where one or more consumer-members purchasing at least 10 percent of the annual energy sales to any customer class could petition the PUC and automatically trigger a rate case;**
 - a requirement that prior to changing a rate an electric distribution cooperative must have a cost of service study that is not more than five years old and is available for review by any interested parties including all consumer-members, the PUC, and the OPUC;**
 - a prohibition against predatory or discriminatory pricing by electric distribution cooperatives in areas served by both an electric distribution cooperative and an investor-owned utility; and**
 - authority for the PUC to investigate and review an electric distribution cooperative's rates on the agency's motion or upon complaint of an affected party.**

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Rate deregulation of electric distribution cooperatives would give cooperatives the flexibility to change rates without the PUC's review while still protecting consumers. Cooperatives would continue to be subject to the gross receipts assessment, certification requirements, management and compliance audits, accounting and recordkeeping requirements, reporting requirements, service quality requirements, and all the PUC's substantive rules not directly related to rate-making. Initially, each distribution cooperative's consumer-members would have to vote on the deregulation of their cooperative. Consumer-members would be asked to return a ballot that would be included in their bills, registering their approval or

disapproval of deregulation. A simple majority of the ballots returned for or against deregulation would decide the issue.

If a cooperative's consumer-members vote for deregulation, the board of directors could then change rates by adopting a resolution approving a rate change and providing notice to all consumer-members, affected cities, the PUC, and the OPUC. The new rates would not be effective for at least 60 days. The distribution cooperative would file tariffs incorporating the new rates with the PUC. The PUC would review the rate change if an appeal is filed within 30 days after notice of the change had been given. An appeal may be made by one or more consumers with a combined purchase of at least 10 percent of the cooperative's annual energy sales, measured in kilowatt hours.

Rate deregulation of electric distribution cooperatives would reduce the regulatory burdens and costs for the cooperative and therefore for its consumer-members. A cooperative and its members adopting rate deregulation would have greater control over rates. Concurrently, a cooperative's consumers would continue to be protected from possible abuses that could occur.

FISCAL IMPACT

Partial deregulation of electric cooperatives would reduce the PUC's current expenditures by about \$69,045 a year, depending on how many electric cooperatives elect to be rate-deregulated.

Fiscal Year	Savings to the General Revenue Fund
1993	\$69,045
1994	\$69,045
1995	\$69,045
1996	\$69,045
1997	\$69,045

ISSUE 13: The Public Utility Commission's statute should be changed to partially deregulate telephone cooperatives.

BACKGROUND

Telephone cooperatives were initially set up in Texas in the 1950s to provide telephone service to people living in rural areas. Cooperatives are consumer-owned but are generally run by a board of directors elected by the consumer-members. Cooperatives are non-profit corporations, so funds over and above investments, operating costs and expenses such as debt service and system improvements, are returned to the members through cash refunds. The PUC regulates all 24 telephone cooperatives in the state, which range in size from 37 access lines to more than 20,000 access lines. These cooperatives provide telephone service to more than 100,000 people in the state, primarily in rural areas. The PUC also regulates rates cooperatives charge long-distance companies for access to their local network. In this respect long-distance companies are consumers of a cooperative's services, but are not actually members of the cooperative.

In 1978, the legislature recognized the uniqueness of telephone cooperatives as well as small telephone companies with fewer than 5,000 in-state access lines by allowing them to change rates without regulatory review under a streamlined process. Although small telephone companies are not consumer-owned, their small size often provides for consumer access to the companies' management in a manner similar to telephone cooperatives. The streamlined process may be used if the telephone cooperative or small company gives notice of the rate change to its consumers, if the rate change does not exceed maximum rate increases set in statute, and if the consumers do not file a petition with the PUC protesting the rate change.

There have been several efforts made in the past to statutorily deregulate or partially deregulate telephone cooperatives. In 1989 the Governor's Task Force on Public Utility Regulation recommended that the legislature consider whether the state needs to continue regulating telephone cooperatives. Most recently, in 1991 the Texas Performance Review recommended partial deregulation of telephone cooperatives and the 72nd Legislature considered exempting telephone cooperatives from regulation by the PUC. Other legislation that same session attempted to provide for more flexible regulation under the current statute. To date, however, no legislation regarding the deregulation of telephone cooperatives has become law.

Although telephone cooperatives are monopolies, they are consumer-owned so the need to protect consumers may be reduced. The review included an examination of the need for continued regulation in this area and whether regulation could be reduced and still provide a safeguard from potential harm to consumers. The findings of the review are summarized below.

FINDINGS

- ▶ **Telephone cooperatives differ from other regulated telephone utilities in that they are consumer-owned, non-profit corporations.**
 - Unlike investor-owned telephone utilities, telephone cooperatives are consumer-owned, non-profit corporations. Any funds in excess of operating expenses are ultimately refunded to the consumer-members who provided them. There is no incentive to maximize profits for shareholders because the owners and the consumers are the same.
 - The consumers, as members of the cooperative, elect the board of directors who set policy and hire management for the cooperative. In this way cooperative consumers act as a regulating force on the cooperative. Inefficiencies or mismanagement by the board of directors can ultimately result in the consumer-members changing the composition of the board.

- ▶ **The potential cost to a telephone cooperative to prepare a rate filing package and participate in a rate case hearing could be relatively expensive for small organizations.**
 - The staffs of telephone cooperatives are generally small with no special staff to prepare materials for a rate case. A cooperative would have to hire outside consultants and attorneys to prepare the documents.
 - Although there have been no cooperative rate cases in recent years, the estimated cost to these utilities of preparing a rate filing package, participating in a rate case hearing, and hiring consultants and an attorney is about \$75,000 to \$100,000.

- ▶ **Current statutory streamlining procedures for telephone cooperatives go part way toward easing the regulatory burden but are restricted to a limited set of circumstances. In addition, they still require a substantial commitment of time and money in comparison to the relatively small rate increases or decreases that can be requested.**
 - The streamlined process allows rate changes by telephone cooperatives only under limited circumstances. First, the streamlined process may only be used if the cooperative's requested rate change, together with any local rate change that went into effect during the previous 12 months, will not increase the cooperative's total gross annual local revenues by more than 2.5 percent. Second, the streamlined process may only be used if the requested rate change does not increase the rate of any service category by more than 25 percent, except for basic local service, which would be limited to a maximum of 2.5 percent of total gross annual local revenue.

- A telephone cooperative simultaneously seeking a maximum increase in basic local service as well as increases in other service categories is unable to achieve both under the streamlined process. A maximum increase of 2.5 percent on basic local service would meet the overall rate increase limit of 2.5 percent of total gross annual local revenues, even before increases on other services were considered. In order for a telephone cooperative to obtain its full revenue increase, the telephone cooperative would have to file a full rate case or wait another 12 months before the streamlined process could be used again.
 - The 25 percent cap on individual services other than basic local service further restricts increases on rates that already tend to be low. A 10-cent coin pay phone could only be increased to 12.5 cents, instead of the standard 25 cents; custom calling features such as call forwarding and call waiting, which range in price from \$2.00 to \$4.00 a month, would only be able to be raised 50 cents to \$1.00; and a \$1.00 return check charge could only be raised to \$1.25, instead of the standard \$25.00. In order for a telephone cooperative to raise these rates to standard levels, the cooperative would have to file a full rate case.
 - Since the current streamlining measures were added to the PURA in 1987, only one out of the state's 24 telephone cooperatives has changed its rates under the streamlined process, and that was for a reduction. The costs to reduce rates even under the streamlined process was about \$3,500. The actual amount of the reduction was \$1,128 annually. Therefore, the cooperative had to spend more to use the streamlined process than the amount of the actual reduction. The costs were then passed on to the consumer-members who the rate reduction was intended to benefit.
- ▶ **A majority of the other states with telephone cooperatives do not regulate the rates of telephone cooperatives.**
- A total of 30 states have telephone cooperatives. Sixteen of these have no rate regulation of telephone cooperatives. Four states, including Texas, have adopted a streamlined approach to regulation of telephone cooperatives. Only 10 states continue to regulate the rates of telephone cooperatives.

- ▶ **Concerns have been expressed that deregulated telephone cooperatives could take advantage of consumers and long-distance companies in certain situations. Other states have adopted safeguards to address similar concerns.**
 - One concern is that residential consumer-members generally are not actively involved or knowledgeable about the rate-setting and business practices of their telephone cooperative. These members are less likely to be aware of questionable cooperative decisions.
 - A second concern is that long-distance companies would be forced to pay higher access charges. Currently, long-distance telephone companies pay fees to local investor-owned and cooperative telephone companies for access to the local telephone network in order to complete a long-distance call. These fees are called access charges. Over the past several years, long-distance companies have stated that access charges in Texas are too high. A concern exists among long-distance companies that a deregulated telephone cooperative would be able to push access rates even higher without the PUC's review.
 - Several states have safeguards that allow consumer-members to vote on whether to become deregulated or to remain regulated. This means that a cooperative would not be deregulated unless the members voted to approve such a move. Rate-deregulated cooperatives generally must provide a notice of impending rate changes to their consumer-members.
 - A number of states also provide appeal mechanisms for consumers to petition for a rate case if a percentage of the members are dissatisfied. In Arkansas and Indiana, 10 percent of a cooperative's consumer-members can petition the state's public utility commission and automatically trigger a rate case. In Virginia, twenty members of a cooperative can petition the state's public utility commission and automatically trigger a rate case. In Minnesota and Ohio, just one of a cooperative's consumer-members can petition the state's public utility commission and automatically trigger a rate case.

CONCLUSION

The purpose of regulating telephone utilities is primarily to protect consumers from unreasonable prices that could be charged since utilities are monopolies. While telephone cooperatives are monopolies, their structure does not require the same level of regulation needed for other utilities. Cooperatives are owned by the same consumers receiving services and are not in business for a profit. The review concluded that regulatory expenses could be saved deregulating rates of cooperatives while still providing safeguards against possible abuses.

RECOMMENDATION

- **The statute should be changed to:**
 - **allow for the deregulation of the rates charged by telephone cooperatives upon a vote of the cooperative's consumer-members; and**
 - **provide for the following safeguards against potential abuses by deregulated telephone cooperatives:**

an appeal mechanism where five percent of all consumer-members could petition the PUC and automatically trigger a rate case;

an appeal mechanism where one or more long-distance companies providing 10 percent of the cooperative's annual access charge revenues could petition the PUC and automatically trigger a rate case; and

authority for the PUC to investigate and review a telephone cooperative's rates on the agency's motion or upon complaint of an affected party.

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Rate deregulation of telephone cooperatives would give cooperatives the flexibility to change rates without the PUC's review while still protecting consumers. This recommendation does not affect small telephone companies, which will continue to be regulated under the streamlined provisions of Section 43B of the PURA. Cooperatives would continue to be subject to the gross receipts assessment, access line assessment, certification requirements, management and compliance audits, accounting and recordkeeping requirements, reporting requirement by the PUC, service quality requirements, and all the PUC's rules not directly related to rate-making. Initially, each telephone cooperative's consumer-members would have to vote on deregulation of their cooperative. Consumer-members would be asked to return a ballot that would be included in their bills, registering their approval or disapproval of deregulation. A simple majority of the votes returned for or against deregulation would decide the issue.

If a cooperative's consumer-members vote for deregulation, the board of directors could then change rates by adopting a resolution approving a rate change and providing notice to all consumer-members, the PUC, and the OPUC. The new rates would not be effective for at least 60 days. The telephone cooperative would file tariffs incorporating the new rates with the PUC. The PUC would review the rate change if an appeal is filed within 30 days after notice of the change has been given.

Rate deregulation of telephone cooperatives would reduce the regulatory burdens and costs for the cooperative and therefore for its consumer-members. A cooperative and its members adopting rate deregulation would have greater control over its rates. Concurrently, a cooperative's consumers would continue to be protected from possible abuses that could occur.

FISCAL IMPACT

No fiscal impact to the state is anticipated from this recommendation. There have been no telephone cooperative rate cases filed in recent years.

*ACROSS-THE-BOARD
RECOMMENDATIONS*

From its inception, the Sunset Commission identified common agency problems. These problems have been addressed through standard statutory provisions incorporated into the legislation developed for agencies undergoing sunset review. Since these provisions are routinely applied to all agencies under review, the specific language is not repeated throughout the reports. The application to particular agencies is denoted in abbreviated chart form.

Public Utility Commission			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			A. GENERAL
	X		1. Require public membership on boards and commissions.
X			2. Require specific provisions relating to conflicts of interest.
	**		3. Provide that a person registered as a lobbyist under Article 6252-9c, V.T.C.S., may not act as general counsel to the board or serve as a member of the board.
**			4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
**			5. Specify grounds for removal of a board member.
**			6. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
**			7. Require the board to establish skill-oriented career ladders.
**			8. Require a system of merit pay based on documented employee performance.
**			9. Provide for notification and information to the public concerning board activities.
X			10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
**			11. Require files to be maintained on complaints.
**			12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
**			13. Require development of an E.E.O. policy.
**			14. Require the agency to provide information on standards of conduct to board members and employees.
X			15. Provide for public testimony at agency meetings.
X			16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
X			17. Require development of accessibility plan.
X			18. Place agency under the state's competitive cost review program.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

Public Utility Commission (cont.)			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) related to currently existing conditions.
		X X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

Office of Public Utility Counsel			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			A. GENERAL
	X		1. Require public membership on boards and commissions.
	X		2. Require specific provisions relating to conflicts of interest.
	X		3. Provide that a person registered as a lobbyist under Article 6252-9c, V.A.C.S., may not act as general counsel to the board or serve as a member of the board.
	X		4. Require that appointment to the board shall be made without regard to race, color, handicap, sex, religion, age, or national origin of the appointee.
	X		5. Specify grounds for removal of a board member.
	X		6. Require the board to make annual written reports to the governor and the legislature accounting for all receipts and disbursements made under its statute.
X			7. Require the board to establish skill-oriented career ladders.
X			8. Require a system of merit pay based on documented employee performance.
	X		9. Provide for notification and information to the public concerning board activities.
X			10. Place agency funds in the treasury to ensure legislative review of agency expenditures through the appropriation process.
		X	11. Require files to be maintained on complaints.
		X	12. Require that all parties to formal complaints be periodically informed in writing as to the status of the complaint.
X			13. Require development of an E.E.O. policy.
	X		14. Require the agency to provide information on standards of conduct to board members and employees.
		X	15. Provide for public testimony at agency meetings.
		X	16. Require that the policy body of an agency develop and implement policies which clearly separate board and staff functions.
X			17. Require development of accessibility plan.
X			18. Place agency under the state's competitive cost review program.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

Office of Public Utility Counsel (cont.)			
APPLIED	MODIFIED	NOT APPLIED	ACROSS-THE-BOARD RECOMMENDATIONS
			B. LICENSING
		X	1. Require standard time frames for licensees who are delinquent in renewal of licenses.
		X	2. Provide for notice to a person taking an examination of the results of the exam within a reasonable time of the testing date.
		X	3. Provide an analysis, on request, to individuals failing the examination.
		X	4. Require licensing disqualifications to be: 1) easily determined, and 2) related to currently existing conditions.
		X X	5. (a) Provide for licensing by endorsement rather than reciprocity. (b) Provide for licensing by reciprocity rather than endorsement.
		X	6. Authorize the staggered renewal of licenses.
		X	7. Authorize agencies to use a full range of penalties.
		X	8. Specify board hearing requirements.
		X	9. Revise restrictive rules or statutes to allow advertising and competitive bidding practices which are not deceptive or misleading.
		X	10. Authorize the board to adopt a system of voluntary continuing education.

* Already in law -- no statutory change needed.

** Already in law -- requires updating to reflect standard ATB language.

MINOR MODIFICATIONS

Discussions with agency personnel concerning the agency and its statute indicated a need to make minor statutory changes. The changes are non-substantive in nature and are made to comply with federal requirements or to remove out-dated references. The following material provides a description of the needed changes and the rationale for each.

MINOR MODIFICATIONS TO THE PUBLIC UTILITY COMMISSION		
CHANGE	REASON	LOCATION IN STATUTE
1. Remove language specifically referring to regulation of water and sewer utilities, which was transferred from the PUC to the Texas Water Commission in 1986.	Remove obsolete language.	Section 3(a), (c), (u) Section 17(a), (e) Section 43(c), (h) Section 49(a), (b) Section 71A Section 71B Section 72(a), (b) Section 87A(b)
2. Remove language specifying initial dates or deadlines that have already passed and are no longer necessary.	Remove obsolete language.	Section 3(c)(2)(B) Section 16(c) Section 18A(f) Section 87(a), (b) Section 87B Section 96A(b), (b)(2), (e), (g) Section 100(b), (c), (e), (f)
3. Remove language that allowed the PUC's rules regarding gas utilities to temporarily remain in effect until the Texas Railroad Commission assumed its jurisdiction over those utilities in 1983.	Remove obsolete language.	Section 90(b)
4. Change the subsection reference in Section 16(f) from (b) to (c) and change the section reference in Section 74 from 87B to 116 and 117.	Correct section references.	Section 16(f) Section 74
5. Renumber three sections that have the same number as other sections that were already in the statute.	Remove duplicate numbering.	Section 26(c) Section 41B Section 87B
6. Remove Section 18(p), which is identical to Section 18(k) except for the word "that" instead of "which." Both sections require a biennial report on the status of competition in the telecommunications industry.	Remove duplicate provision.	Section 18(p)

MINOR MODIFICATIONS TO THE PUBLIC UTILITY COMMISSION (CONT)		
CHANGE	REASON	LOCATION IN STATUTE
7. Renumber sections in the statute to remove gaps left by provisions that have been repealed.	Renumber sections.	Section 3(f) Section 6(g) Section 19 Section 66 Section 86 Section 87B Section 88
8. Move Sections 100 and 101 from Article XIV, which covers unrelated topics, to Article III, which contains provisions on the PUC's jurisdiction.	Correct misplaced sections.	Section 100 Section 101
9. Move Sections 119 and 120 from Article XV, which covers unrelated topics, to Article XIII, which contains miscellaneous provisions.	Correct misplaced sections.	Section 119 Section 120
10. Update references to the Department of Human Services (renamed the Health and Human Services Commission) and the State Purchasing and General Services Commission (renamed the General Services Commission).	Update references to other state agencies to reflect their new names.	Section 87B Section 95(a) Section 98(a), (c)(4)3

MINOR MODIFICATIONS TO THE PUBLIC UTILITY COMMISSION (CONT)		
CHANGE	REASON	LOCATION IN STATUTE
<p>11. Incorporate into the PURA provisions that fall only under the PUC's jurisdiction but were placed in statutes other than the PURA.</p>	<p>Incorporate independent statutes that affect only the PUC into the PURA.</p>	<p>Article 1440a (Deposit for Installing Service)</p> <p>Article 1446c-1 (Standards for Rating Solar Devices)</p> <p>Article 1446d (Electric Metering in Apartments and Condominiums)</p> <p>Article 1446d-2 (Metered Sale of Electricity by Recreational Vehicle Park)</p> <p>Article 1446f (Central Systems Utilities)</p> <p>Article 1446g (Penalties: Submetering or Allocation of Central System Costs)</p> <p>Article 4413(55) (State Cogeneration Council)</p>

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