

# **SUNSET COMMISSION DECISIONS**



**OFFICE OF PUBLIC UTILITY COUNSEL**

**September 2004**

## **AGENCY INFORMATION**

## Agency at a Glance

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The Office of Public Utility Counsel (OPUC) represents the interests of residential and small commercial consumers to help ensure just and reasonable rates for electricity and telephone services. The Legislature created OPUC in 1983 in response to concerns that residential and small commercial ratepayers were not being adequately represented in utility rate proceedings that ultimately affected them. To accomplish its mission, the Office of Public Utility Counsel:

- appears in contested cases before the State Office of Administrative Hearings (SOAH) and Public Utility Commission (PUC);
- participates in rulemakings and projects at PUC;
- advocates on behalf of consumers in federal regulatory proceedings;
- intervenes in state and federal court cases; and
- represents consumers at the Electric Reliability Council of Texas (ERCOT), serving as a voting member of the Board of Directors.

### Key Facts

- **Funding.** In fiscal year 2003, OPUC operated on a \$1.6 million budget, with \$1.4 million from the General Revenue Fund and \$200,000 from the System Benefit Fund (SBF). SBF is financed by a fee paid by electricity consumers in competitive areas of the state. OPUC's budget for fiscal year 2004 is \$1.7 million.
- **Staffing.** The Office of Public Utility Counsel has 20 employees, all of whom work in Austin.
- **Rate Cases and Contested Cases.** OPUC's participation in contested cases has increased in recent years. However, OPUC's participation in rate cases at PUC has declined due to the advent of competition in the electric and telecommunications industries. In fiscal year 2003, OPUC appeared in 77 contested cases and five rate cases.
- **Rulemakings.** OPUC participates in rulemakings at PUC. OPUC participated in 38 different rulemakings in fiscal year 2003.
- **Court Cases.** Appeals of PUC rulings are held in district court, while federal appeals occur in various circuit courts across the country. In fiscal year 2003, OPUC participated in 50 court cases, all involving electric issues
- **Federal Proceedings.** OPUC advocates on behalf of telecommunications consumers at the Federal Communications Commission (FCC) and electricity consumers at the Federal Energy Regulatory Commission (FERC). OPUC participated in 22 FCC proceedings and 2 FERC proceedings in fiscal year 2003.
- **ERCOT.** The Public Counsel represents consumers on the ERCOT Board. In fiscal year 2003, OPUC staff spent almost 3,000 hours attending ERCOT meetings and participated in the development of 92 ERCOT protocols.



**ISSUE / RECOMMENDATIONS**

# **Issue 1 Due to Significant Changes in Utility Regulation, Texas No Longer Needs a Stand-Alone Agency to Advocate Solely on Behalf of Residential and Small Commercial Consumers.**

## **Recommendations**

### Change in Statute

#### **1.1 Abolish the Office of Public Utility Counsel.**

This recommendation would abolish the Office of Public Utility Counsel as a separate, stand-alone agency. Additional recommendations below would transfer key functions of OPUC to other existing state agencies. These changes would be effective January 1, 2006, giving the agencies involved four months from the effective date of the bill to complete these transfers. Abolishment of OPUC would also eliminate the gubernatorial appointment of the Public Counsel.

#### **1.2 Transfer the responsibility for independent representation of residential and small commercial consumers in utility rate cases to the Office of the Attorney General.**

This recommendation would maintain the independence necessary to advocate on behalf of residential and small commercial consumers before PUC by moving certain rate case functions to the Office of the Attorney General (OAG). OAG would participate in cases having direct impact on retail rates. These cases would be limited to transmission and distribution utility cases within ERCOT, investor-owned utility rate cases outside of ERCOT, fuel reconciliations, and stranded cost true-up cases. Cases affecting wholesale rates would not be included since other intervenors, including large commercial and industrial consumers, participate in these cases, advocating to keep wholesale rates reasonable. Any cases directly involving retail rates that are currently on appeal would transfer to the OAG as well.

At OAG, utility rate cases would be handled by the Consumer Protection Division, which has the expertise to advocate on behalf of residential and small business consumers. The Office has existing procedures to prevent potential conflicts of interest by creating firewalls between sections or divisions representing different parties in a single case. Any bill savings to residential and small commercial ratepayers should continue to be achieved by OAG. This transfer should occur no later than January 1, 2006.

#### **1.3 Transfer OPUC's remaining consumer representation functions to the Public Utility Commission.**

This recommendation would transfer to PUC the remaining consumer representation functions handled by OPUC, including participation in rulemakings, projects, contested cases, federal regulatory proceedings, and ERCOT meetings. Any current appeals by OPUC in this area would be discontinued as of the effective date. This recommendation would require PUC to elevate the consumer representation focus within the agency, in full compliance with its stated mission of protecting customers. This transfer should occur no later than January 1, 2006.

**1.4 Require PUC staff to evaluate and report findings related to the impact on residential and small commercial ratepayers for each decision by the Commission and the Electric Reliability Council of Texas.**

PUC staff would be required to evaluate the impact on residential and small commercial ratepayers for each Commission decision, and report the findings to the Commission. If PUC staff determines that a decision would directly affect residential and small commercial consumers, it would prepare an impact statement for the proposed decision. The statement must describe in detail the probable effect of the decision on residential and small commercial consumers for each of the first five years the decision will be effective. The consumer impact statements would become part of the formal record for each determination, including contested cases, projects, rulemakings, and any federal regulatory proceedings.

In addition, PUC staff would be required to develop and present consumer impact findings for each proposed ERCOT protocol. PUC staff would evaluate and report the impact of each ERCOT protocol that would affect residential and small commercial consumers as a class. The consumer impact statements would be reviewed by the ERCOT Board before adoption of the protocol, and would provide a record for PUC to review in case of appeal.

**1.5 Replace OPUC's role on the Electric Reliability Council of Texas Board with a consumer representative appointed by the Governor.**

This recommendation would maintain a residential and small commercial consumer representative on the ERCOT Board to replace the Public Counsel's role as an ex officio member of the ERCOT Board. This representative would be appointed by the Governor, with the advice and consent of the Senate. The appointee would serve two-year terms, and would be eligible for compensation at the same level ERCOT compensates its independent Board members. This change should occur as soon as possible after the effective date of the legislation, but no later than January 1, 2006.

Management Action

**1.6 Direct PUC to dedicate staff to perform consumer representation functions.**

The Executive Director of PUC should dedicate a high-level staff person, with necessary support, to oversee and coordinate the effective representation of residential and small commercial consumer interests within PUC. Staff would evaluate and report findings related to the impact on residential and small commercial ratepayers, as described in Recommendation 1.3.

**1.7 The Office of Public Utility Counsel, Public Utility Commission, and Office of the Attorney General should formulate a transition plan for the transfer of functions and property.**

A comprehensive transition plan should be developed as soon as legislation involving the transfer has passed and is signed by the Governor. The plan should include:

- a timetable with specific steps and deadlines needed to complete the transfer effectively by January 1, 2006;
- a method for the transfer of relevant rate case records to OAG;
- a method for the transfer of all remaining consumer-related records to PUC; and
- any other steps necessary to complete transfer of the functions.

This recommendation would help ensure that the transfer of certain OPUC functions is done in accordance with state law and has a minimal effect on consumer representation. The intent of this recommendation is that the transfer of these functions would occur as soon as possible after the effective date of the legislation, but no later than January 1, 2006. Because of this timetable, the standard one-year wind-down period in the Sunset Act would not occur.

### **Fiscal Implication**

These recommendations would result in a net annual savings of more than \$1 million, including the reduction of 16 full-time equivalent employees. These savings would not be fully realized until fiscal year 2007, following the transition period outlined in the recommendations.

These recommendations would eliminate OPUC's annual budget of \$1.6 million, and its authorized 23 full-time employees. However, the Office of the Attorney General would incur costs to handle the utility rate cases that directly affect retail rates. Based on historical trends of OPUC's participation in rate cases, Sunset staff estimate a cost to the Office of the Attorney General of \$197,000 and the need for an additional three full-time employees.

PUC would incur an estimated cost of \$365,000 per year as a result of increased consumer representation efforts requiring four additional full-time equivalent employees. The current cost of these functions (rulemakings, contested cases, and ERCOT involvement) would be reduced by various factors such as: current resources at PUC would eliminate the need for outside experts, and consumer impact statements would require less time and money than extensive litigation.

ERCOT would also incur additional costs for the gubernatorial-appointed Board member representing residential and small commercial consumers. This cost would equal the payment made by ERCOT for an independent Board member, which is currently \$75,000, and is assumed in PUC Issue 1.

## **Responses**

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### **Agency**

OPUC disagrees with all of the recommendations of Sunset staff related to abolishing the agency, disagrees that OPUC functions will continue to be performed effectively by other agencies, disagrees with the facts upon which the recommendations are made, and most importantly, disagrees that the recommendations protect or advance the interests of the nine million residential and small business electric and telecommunications customers of Texas. (Suzi Ray McClellan, Public Counsel – Office of Public Utility Counsel)

### **Affected Agency**

The Office of the Attorney General (OAG) states that transferring the independent representation of residential and small commercial consumers in utility rate cases to the OAG would be in line with its mandate to represent and protect consumer interests. OAG sees this as a logical and very positive extension of its role in representing a range of consumer interests of state agencies and institutions of higher education in utility rate cases, and concurs with the effort to maximize limited State funds. OAG cites extensive familiarity with the use of firewalls to avoid any potential conflicts of interest when representing different parties in a case.

Under Recommendation 1.3, OAG wants to ensure that its right to participate in rulemakings and other proceedings not be impeded if PUC is given the responsibility for these other consumer representation functions. (Barry R. McBee, First Assistant Attorney General – Office of the Attorney General)

**For**

Walter D. Fenoglio, Vice President & Executive Director, Regulatory Affairs – Texas Energy Association for Marketers, Austin

**Against**

Representative Kevin Bailey – Texas House of Representatives, Houston

Representative Lon Burnam – Texas House of Representatives, Fort Worth

Representative Sylvester Turner – Texas House of Representatives, Houston

Representative Steven D. Wolens – Texas House of Representatives, Dallas

Charles A. Acquard, Executive Director – National Association of State Utility Consumer Advocates, Silver Spring, Maryland

Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin

Marc H. Burns, Director, Government & Regulatory Affairs – Direct Energy, L.P., CPL Retail Energy, L.P., and WTU Retail Energy, L.P., Austin

Jo Campbell, Waco

P. Gus Cardenas, State President – AARP Texas, Austin

Randall Chapman, Executive Director – Texas Legal Services Center, Austin

Mark Cooper, Director of Research – Consumer Federation of America, Washington, DC

Chuck Courtney, President/CEO – Texas Retailers Association, Austin

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

Geoffrey Gay, Kristen Doyle, and Thomas Brocato – Cities Aggregation Power Project, Inc. and South Texas Aggregation Project, Inc., Austin

Clyde L. Harris

Sandra Haverlah, President – Texas Consumer Association, Austin

Mary J. Healey, Consumer Counsel – Connecticut Office of Consumer Counsel, New Britain, Connecticut

Robert A. Manning, Director of Engineering – H.E. Butt Grocery Company, San Antonio

Luke Metzger – Texas Public Interest Research Group, Austin

Janine L. Migden-Ostrander, Consumers’ Counsel – Office of the Ohio Consumers’ Counsel, Columbus, Ohio

Tim Morstad, Policy Analyst – Consumers Union, Austin  
Nelson H. Nease – East Texas Cooperatives, Austin  
Phillip G. Oldham – Texas Coalition for Competitive Electricity, Austin  
Tom “Smitty” Smith, Executive Director – Public Citizen, Austin  
Mike Williams – Texas Electric Cooperatives, Austin

E-mail Responses

Frank Aaron, Dallas	Sharm Baker, Houston	Mary Bradshaw, San Antonio
Robert Adams, Austin	Shirley Bandy, Humble	Randall Brady, Driftwood
Geert Aerts, San Antonio	Timmy Baranoff, Austin	Jeanne Brantingham, Tomball
Duane Alexander, Skidmore	Janet Barber, Houston	Sandra Breakfield, Dallas
Ron Allen, North Richland Hills	Lisa Barden, Austin	Angela Brown, Austin
Carole Allen, Houston	John Barnes, Fort Worth	Joanna Brown, Austin
Stephanie Amack, Austin	Jean-Jacques Barrera, Austin	Katherine Buchanan, Houston
Bradley Anderson, Dallas	Herbert Bartling, San Antonio	Denise Bunkley, Carrollton
Dale Anderson, Hallsville	Darlene Bass, Los Fresnos	Scott Burbridge, Dallas
LaNell Anderson, Kingwood	Danae Bateman, Spring	Mary Burmeister, Austin
Sherry Anderson, Katy	Meggin Eleanor Baxter, Austin	Stephen Burton, Houston
Jaya Arekere, College Station	Julie Bazleh, Carrollton	Gary Bush, The Woodlands
David Armendariz, San Antonio	Charlotte Bel, Austin	Bette Buschow, Bedford
J. Aroshan, Waco	Reid Bell, Dallas	Ron Butler, San Marcos
Paula Arsenault, Kingwood	Craig Berry II, Dallas	Eva Cadwallader, Denton
Twyla Arthur, San Antonio	Reed Bilz, Fort Worth	Kathleen Calberson, Flower Mound
Linda Asencio, Pharr	Clara Blair, Arlington	John Calomeni, Austin
Nancy Asencio, Austin	Steven Blaisdell, Austin	Traci Campbell, Austin
Linda Austin, Fort Worth	Robert Blau, Austin	Judith Campbell, Houston
Mary Lou Ayala, El Paso	Donald Blecker, Burleson	Robert Carpenter, Manor
Jill Bacon, San Antonio	Jim Boldin, Austin	Barabara Carr, Dallas
Greg Baer, Austin	Mamie Bondy, Austin	Deborah Carr, Lubbock
Bo Baggs, Port Arthur	Kathleen deLacy Bourke, Austin	Bob Carter, Plano
	Beth Bowling, Pottsboro	

Pierre Catala, College Station	James Crisp, Austin	Chad Ethridge, Dallas
Kathryn Cates, Dallas	Ashlie Crooks, Keller	Jacki Evans, Austin
Mary Cathcart, Arlington	Cynthia Crutcher, Allen	Anthony Feig, El Paso
Julia Cauthorn, Houston	KC Curry, San Angelo	Becky Fisher, Farmers Branch
Pat Cayer, Austin	Lynn Koss Dalby, Allen	Clarence Fisher, Richardson
Rachael Cayton, Austin	Jamie Darr-Hall, Katy	Bennie Fore III, Austin
Ellen Cerda, Austin	Vicki Davis, Canutillo	Sophie Forsythe, Dallas
George Chase, Houston	Dorothy Davis, Dallas	Gary Foster, Alvin
Susan Chidlow, Katy	Jose De La Garza, Austin	Les Fowler, Hutto
Pat Childs, Amarillo	Juan de Moya, Houston	Stacey Francis, Carrollton
Amanda Chism, Houston	Patrick Decker, Austin	Beth Freey, Austin
Michael Chitty, Austin	Hector DeLeon, Corpus Christi	Nancy Freyer, Houston
Rowena Chodorow, Austin	Kris Dennison, Austin	Marian Fricano, San Jose, CA
Gene Chorostecki, Georgetown	Marcus Denton, Kerrville	Amy Fuller, Austin
Evelyn Chorush, Houston	R. Deutsch, Austin	Eric Furbish, Austin
Heidi Clay, Blacksburg, VA	Sue DiCara, El Paso	Dorothy Gaisbauer, Horseshoe Bay
Martin C. Cobb, Fort Worth	Abinadab Dieter, Austin	Jose Gallegos, El Paso
Kirsten Coco, Houston	Sheila Dixon, Dallas	Amanda Garcia, Austin
Katherine Coffee, Canyon	Karyn Dobkins, Santo	Bryan Gerard, San Antonio
Rosalie Coffey, Alamo	Ed Dohn, Houston	Melanie Gibson, Dallas
John Cole, Austin	Bernadette Donahue, Denton	Helen Giles, Plantersville
Kristin Cole, Austin	Christine Dougherty, Katy	Eren Giles, Austin
Waller Collie, Dallas	John Drevicky, Farmers Branch	Roaney Giles, Austin
David Collins, Houston	JC Dufresne, Cibolo	Shirley Gleason, Beaumont
Janet Collinson, Dallas	Shae Ebrahimi, Denton	Donald Gleason, Beaumont
Celeste Cooper, Carrollton	Roy I. Edenson, Richardson	James Glenn, Austin
Loyd Cortez, San Antonio	Gretchen Edmiston, New Caney	Judy Godinez, New Braunfels
Debbie Coughlin, Nashville, TN	Barbara Ellerbeck, Austin	Lisa Goetz, The Woodlands
Linda V. Craig, Austin	Stephanie Ellington, Hutto	Melissa Gonzales, Austin
John Crain, San Antonio	Kevin Ellner, Austin	Ana Gonzalez, Spokane, WA
Harry Cranmer, Killeen	Donna Emery, Stephenville	

Nanette Gordon, Mesquite	William Heath, Plano	Kathy Ireland, College Station
Rick Gordon, Nashville, TN	Sherry Heiden, Austin	Sam Jackson, Richardson
Evelyn Goss, Austin	Ella Heister, Irving	Sandi James, Dallas
Donna Gossett, Houston	Jacob Helgren, Austin	Tracey Jennings, Bowie
R. Mark Grace, Lancaster	Beth Helm, Amarillo	Ann Jensen, San Marcos
Mary Beth Gradziel, Red Rock	Suzanne Henry, Austin	Mary Johnns, Leander
Keith Graham, Conroe	Tucker Henson, Austin	Helen Johnson, Houston
Ariel Graham, Coronado, CA	Andrew Hernandez, Austin	Bettemae Johnson, Belton
Grace Graham, Conroe	Kim-Marie Hernandez, Austin	Deborah Johnson, Corpus Christi
Susan Graham, Dallas	Carlos Hernandez III, Mission	Rebecca Johnson, Belton
James Grant, Austin	Michael Hershey, Egypt	Christine Johnson, Bastrop
Sandra Green, Sugar Land	Madeleine Hervey, Dallas	JoAnn Jolley, Amarillo
Karen Green, Jonestown	Margaret Hill, Austin	Gary Jones, Dallas
John-Paxton Gremillion, Austin	Rosemary Hofmayer, Round Rock	Sandi Jones, Dallas
Joseph Grinnell, Palmer	Roger Holbo, Keller	Gwen Juarez, Houston
Joanne Groshardt, Richardson	Cheryl Holbo, Keller	Halina Just, San Antonio
Margie Haley, Dallas	Christa Holden, San Antonio	Margie Justice, Houston
Dennis Hamm, Plano	Judith Holmes, Huntsville	Alan Kaltz, Carrollton
Wendi Hammond, McKinney	Frank Holt, Dallas	Ryan Kane, Austin
Linda Hanratty, Fort Worth	Noah Hopkins, San Marcos	Kristin Kavanagh, Austin
Kristin Hansen, Austin	Kristen Hotopp, Austin	Barbara Kazlowski, Cedar Hill
David Hanshaw, Austin	Kelly Hudson, Austin	Gwen Keefer, El Paso
True Hardt, Lockhart	Rex Hughes, Odessa	Carole Keene, Houston
Dorothy Harman, Bedford	Nancy Hurte, Junction	Steven G. Kellman, San Antonio
Michaele Harper, Bedford	Lee Hutchings, Palacios	Pamela Kenney, Fort Worth
Kathy Harrison, Fredericksburg	Wesley Hutchins, Arlington	Gary Kinney, Garland
Val Haskell, Dallas	Stacey Hutchison, Seabrook	Lisa Knaggs, Austin
John Haupt, Greenville	Patti Iles, Austin	Jeff Korte, San Antonio
Kenneth Hayes, Austin	Melinda Iley-Dohn, Houston	Delmar Krehbiel
Paula Haynes, Dallas	Harriet Irby, Arlington	Kelly Kremer, Dallas
James Heater, Dalhart		

Brian Kroeger, Houston	Mitchell Maness, Dallas	TaShumbria Miller, Dallas
Willa Kulhavy, Garland	Pat Maples, Austin	Mara Miller, Plano
John Laing, Austin	Mark Marabeti, Fort Worth	Ray Mills, Farmers Branch
Patricia Lambert, Coppell	Judith Marlowe, Bridge City	Coeta Mills, Dallas
Cheri Lange, Houston	Lorie Marsh, Austin	William Milo, Austin
Frances Lange, San Antonio	Warner Marsh, Houston	Sharlene Miragliotta, Plano
Rachel Langille, Austin	Lisa Marshall, Houston	Kim I. Monroe, San Antonio
David Lawhon, Dallas	Brandi Mathews, The Colony	Tammy Monroe, Katy
Cory Leiser, Denton	Sherry Maxey, San Augustine	Carey Moore, Arlington
Teresa LeNoir, Houston	Ben May, Austin	Edgardo Mora, El Paso
Dorothy Leslie, Humble	Mindy Mayers, The Woodlands	Cheryl Moran, Austin
Deborah Levoy, San Antonio	Patricia McCain, Bryan	Vicki Morrow, Houston
Timothy Lewis, Chandler, AZ	Anna McCall Tanzola, San Antonio	Patricia Moses, Spring
Gerald Lewis, Austin	Michele McCormick, Lyons	Fran Nalley, Haltom
Amy Lindsey, Orange	Courtney McCunney, Austin	M. Needham, Houston
Joanne Little, Magnolia	Fred McCutchon, Corpus Christi	Ervin Nerius, Austin
Jerry Lobdill, Fort Worth	Ken McDonald, Magnolia	Brad Newcomer, Dallas
Mary Jo Locker, Austin	Brian McDonough, Austin	Betty Nichols, Amarillo
Mary Londos, Austin	Matthew McEwen, Lubbock	Angela Nichols, Garland
Skip Londos, Waco	John McLane, Austin	Marvin Niebuhr, Dripping Springs
Jessica Longshore, Plano	Claudia McNeely, Gilmer	Edna Niederman, Austin
Mina Loomis, Austin	Sarah Meador, Luling	Mickey Nierdieck, Plano
Viola Lopez, Houston	Natalie Mendiola, Austin	Jason Norwood, Athens
Robert Losehelder, Dallas	Bennye Meredith, Alpine	Heather Norwood, Austin
Tara Losoff, Austin	Carol Merkel, Arlington	Matthew O'Connor, Houston
Harold Love, San Antonio	Robert Merrill, Austin	Ken Odell, Fort Worth
Graciela Lubertino, Houston	Barbara Mertig, El Paso	Dermot O'Driscoll, Austin
Buckley MacInerney, Mt. Enterprise	Meagan Metcalf, Austin	Dana O'Mara, Austin
Scott Magee, Kingwood	Ida Millar, Forney	Margaret O'Nan, Marion
Hope Malkan, Austin		Claire Onuf, Corpus Christi

Rita Reeves Orndorff, San Marcos	Rick Pratt, San Antonio	Ana Salinas, Austin
Angela Pabon, Houston	Marc Prevost, Austin	Steven Salzman, Austin
Jeanene Paddock, Harlingen	P. Primmer, Fort Worth	S. Sanders, Houston
Jesus Pantel, Austin	Barbara Puett, Austin	Kris Sands, Wylie
Mary Pape, Austin	Carolyn Qualls, Garland	Sonia Santana, Austin
Rodney Parker, Conroe	Richard Quezada, San Antonio	Denise Schneider, San Antonio
Erika Parker, Conroe	James Quinn, Denton	Connie Schneider, Killeen
Traci Patterson, Waller	Billy Rankin, Spicewood	Stacy Schoolfield, Austin
Erin Peavey, Austin	Claire Rawlings, Austin	Joseph Schultz, Austin
Katherine Peavey, Austin	Norma Raymond, San Antonio	Nancy Schumann, Austin
Jennifer Pellow, Austin	John Ribble, Austin	John F. Schwoeble, Austin
Alexander Pellow, Austin	Sandra Rice, Grapevine	Judy Scott, Austin
Bill Penn, Buda	Jo Ann Richmond, Spicewood	Robert O. Scott, Bedford
Susan Penn, Buda	Darryl Rigby, Houston	Michael Scott, Austin
Ashok Perera, Austin	Allen Rindfuss, San Antonio	Doyle Sebesta, Georgetown
Jeanine Perron, San Antonio	Emyre B. Robinson, Dickinson	Maria Selva, Houston
Karen Peterman, Austin	Robert Robinson, DeSoto	Charles Shamel, Rockport
Gene Peters, Livingston	June Rodriguez, Houston	P.A. Sherman, Dallas
Doris Peters, Livingston	Carol A. Rohlman, Frisco	Patrick Shumkaer, Cedar Park
Colleen Peterson, Austin	Kay Rolfes, Austin	John Sieber, Houston
Alexandra Pharmakidis, Austin	John Rose, Austin	Paolo Silvestri, Rowlett
Michael Phillips, The Woodlands	Keith Rowley, Corpus Christi	Doug Simmer, Austin
Paula Pierce, Austin	Leslie Ruby, Dallas	Wolf Sittler, Austin
Stan Pitts, Grapevine	Laura Ruede, Fort Worth	Janice Smith, Kingsville
Anne Pitts, Grapevine	Jeff Rupert, League City	Stuart Smith, Austin
Charles Plassmann, Spring	Wanda Rurak, Whitney	Molly Smith, Nacogdoches
Lawrence Plumlee, Dallas	Bob Russell, Austin	William Smith, Houston
David Pollard, Arlington	Debbie Russell, Austin	Harold Sokolove, Hewitt
Sandra Ponder, Flower Mound	Melissa Russell, Houston	Ed Soph, Denton
Judy Posey, Austin	Elizabeth Ryall, Austin	Sandra Spicher, Lago Vista
	Manon Saakstra, Austin	Sally Stafford, Austin

Cary Stanford, Houston	Brian Turnwald, Magnolia	William Wilson, Rockwall
Lynne Stanford, Canyon Lake	Sherida Tutor, Austin	Wendy Windham, McKinney
William Stavisky, San Antonio	Guinn Unger, The Woodlands	Adelaide Winston, San Antonio
Robert Stern, Austin	Irvin Uphoff, Dallas	Claire Witter, Houston
Carrie Stewart, Austin	Diana Vandel, Austin	Deborah Wood, Kingwood
Susan Roddy Stewart, Boerne	James Vernon, Houston	Marge Wood, Austin
Charles Stillman, Houston	Susan Vicencio-Garaygay, Houston	Vance Wright, Austin
Kevin Stohlman, Galveston	Valerie C. Virta, Friday Harbor, WA	Edward Wyman, Fort Worth
S. Lee Stone, Bastrop	Carolyn Waid, Garland	John Yarber, Austin
Chris Wayne Strader, Austin	Valerie Ward, Austin	Yvonne Yeh, Houston
Jay Strickler, Woodcreek	Dave Waugh, San Marcos	Joseph Yonke, Austin
Susan Swain, Fort Worth	Mike Webb, Austin	Betty Young, Converse
Marilyn Symonds, Houston	Richard Wehrman, Houston	John Young, San Benito
Jim Tappero, San Antonio	Craig Weiser, Austin	Susan Young, Austin
Chuck Taylor, Houston	Frederick Wen, San Antonio	Ralph E. Ziegler, DVM, San Antonio
Joydene Ternus, Austin	Mark Wensel, Austin	Claire Zivney, Dallas
Joan Ternus, Austin	Rhonda West, Copperas Cove	Loretta Zolda, Dallas
Sharon Terrell, De Soto	Bettye Whipp, Bridge City	
Jacqueline Thomas, Austin	Pat White, El Paso	
Budalur Thyagarajan, San Antonio	Charles Whitehead, Tyler	
Janette Tingle, Houston	Mary Whitworth, Houston	
Jason Tipton, Austin	Lora Wildenthal, Houston	
David Todd, Austin	Richard Wilkinson, Ponder	
Norma Tomlinson, Richardson	Stephen Williams, Fort Worth	
Joseph Traugott, San Antonio	Ellen Willmore, Houston	
Laura Travis, Smithville	CaraLea Willoughby, Bowie	
Barbara Trebino, Houston	Ann Marie Wilson, Garland	
Claude Trice, Fort Worth	Amy Wilson, Austin	
Darrell Tucker, Dacula, GA	John Wilson, Houston	
John E. Turala, Houston		

## Modification

1. Keep OPUC operational until the effects of industry deregulation can be adequately measured. (Paula Pierce, Austin; and Guinn Unger, The Woodlands)

**Recommended Action:** Adopt Recommendations 1.1 through 1.7.

**Commission Decision:** In lieu of Recommendations 1.1 through 1.7, the Commission adopted the following alternative.

- **Continue OPUC for six years. (Statutory Change)**  
A shorter Sunset date would allow the Legislature to re-evaluate the necessity of this agency when competition is more fully implemented. OPUC would have six years in which to operate, improve its accountability to both the Legislature and the consumers it represents, and the Legislature would evaluate the agency's need in the 2011 legislative session. This recommendation would also include application of the appropriate Sunset Commission Across-the-Board Recommendations (ATBs). (The table following this alternative shows the appropriate application of the ATBs.)
- **Require OPUC to annually report its performance to the Legislature. (Statutory Change)**  
OPUC would be required to report the number of hours billed, a breakdown of time spent, the types of activities conducted, the number and type of staff positions, and its success rate on appeals. The report would be sent to the appropriate standing committees, House Appropriations Committee, Senate Finance Committee, and the Sunset Advisory Commission.
- **Direct the State Auditor's Office to audit OPUC's current performance measures. (Statutory Change)**  
OPUC's current performance measures do not accurately depict its impact on residential and small commercial consumers. SAO would evaluate OPUC's current performance measures to determine the accuracy of the calculations, and if the current measures accurately depict the impact of OPUC. The audit would include all measures, especially the reported bill savings.

- **Direct OPUC to develop a litigation strategy before intervention in contested cases, including appeals. (Management Action)**

OPUC currently has no formal method for determining the most effective use of its resources in pursuing intervention. Prior to intervening, OPUC would develop a litigation strategy that takes into consideration the following information: (1) overall chance of success; (2) time OPUC anticipates spending on the case; (3) all projected costs; (4) whether a demonstrable consumer interest is at stake; (5) consumer benefits OPUC expects to achieve; (6) an evaluation of any prior case law; and (7) existence of any precedent. The strategy would contain information relating to reasonably anticipated litigation involving a governmental body, and therefore would be protected from disclosure under section 552.103 of the Public Information Act.

- **Require OPUC to obtain consumer input through an annual stakeholder meeting. (Statutory Change)**

Although OPUC is designed to represent consumers, it has no formal method to solicit input. Under this recommendation, OPUC would be required to have an annual stakeholder meeting to obtain input directly from the consumers it represents. OPUC would receive public comment on its functions and effectiveness, and input to assist the Office in developing a plan outlining its priorities. To provide sufficient notice, the meeting would be posted in the Texas Register.

- **Direct OPUC to use the Office of the Attorney General as a resource for evaluating the potential costs and benefits of participating in various proceedings. (Management Action)**

Though OPUC currently already has the ability to consult with the Office of the Attorney General (the Office), this recommendation would encourage OPUC to take greater advantage of the Office's expertise in determining whether to pursue intervention.

## **ACROSS-THE-BOARD RECOMMENDATIONS**

**Office of Public Utility Counsel**

<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Not Applicable	4. Provide that the Governor designate the presiding officer of the policymaking body.
Modify	5. Specify grounds for removal of a member of the policymaking body.
Not Applicable	6. Require training for members of the policymaking body.
Not Applicable	7. Require separation of policymaking and agency staff functions.
Not Applicable	8. Provide for public testimony at meetings of the policymaking body.
Modify	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Modify	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.



**NEW ISSUES**

## New Issues

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

### Mission

2. Expand the statutory mission and functions of OPUC to specifically include representing residential consumers at ERCOT and in administrative hearings at PUC. (Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
3. Clarify that OPUC’s mission should be to advocate for policies and outcomes that are consistent with the development of a robust retail electric market from the perspective of residential and small commercial customers. (Marc H. Burns, Director, Government & Regulatory Affairs – Direct Energy, L.P., CPL Retail Energy, L.P., and WTU Retail Energy, L.P., Austin)
4. Expand OPUC’s charge of keeping rates low to include driving down the long-run cost of services by encouraging investments in efficiency and energy management by industry and consumers. (Robert J. King, President – Good Company Associates, Austin)

### Authority

5. Give OPUC standing in any proceeding or project before the PUC, including market oversight. (Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
6. Give OPUC authority to initiate enforcement actions. (Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
7. Give OPUC the authority to initiate complaints similar to that of a District Attorney. (Tom “Smitty” Smith, Executive Director – Public Citizen, Austin)
8. Give OPUC authority to request a review of price to beat rates. (Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
9. Give OPUC greater access to information held by PUC. (Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; Randall Chapman, Executive Director – Texas Legal Services Center, Austin; and Luke Metzger, Texas Public Interest Research Group, Austin)

Staff Comment: Legislation from last session that did not pass, HB 1974 and SB 1197, would have granted OPUC access to PUC records. Granting OPUC this authority could jeopardize proprietary information held by PUC.

10. Give OPUC the authority to act on market power abuse. (Luke Metzger, Texas Public Interest Research Group, Austin)

## **Funding**

11. Provide OPUC with a more stable level of funding by giving OPUC its unexpended balances for ongoing projects at PUC and ERCOT. (Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
12. Fund OPUC with dollars generated by the assessments made on telephone and electric bills to pay the costs of regulation. (Carol Biedrzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
13. Give OPUC the resources to advocate for consumers in PUC’s complaint process. (Tom “Smitty” Smith, Executive Director – Public Citizen, Austin)

**Recommended Action:** Staff makes no recommendations on any of the New Issues.

**Commission Decision:** The Commission did not adopt any of the New Issues.