

SUNSET COMMISSION DECISIONS



PUBLIC UTILITY COMMISSION OF TEXAS

September 2004

AGENCY INFORMATION

Agency at a Glance

The Public Utility Commission (PUC) oversees electric and telecommunications companies to ensure Texas consumers have access to high-quality, competitive utility services. Established by the Legislature in 1975, PUC was originally created to regulate rates and services of monopoly utility service providers. Significant changes in both industries have shifted PUC's primary focus towards oversight through rulemakings and enforcement, and away from regulation of rates and services. PUC's major functions include:

- overseeing and fostering fair competition in the wholesale and retail electricity and telecommunications markets;
- regulating the rates and services of investor-owned electric utilities in areas of the state not subject to retail competition, transmission and distribution utilities in competitive areas, and incumbent local exchange companies that have not elected incentive regulation;
- helping consumers resolve complaints, and enforcing compliance with statutory requirements, agency rules and policies;
- administering discount electricity and telephone service programs for certain low-income and rural customers; and,
- monitoring and participating in federal activities that affect the regulation of the electricity and telecommunications industries in Texas.

Key Facts

- **Funding.** PUC received a total of \$180.4 million in fiscal year 2003. Of this total, \$12.1 million went to support the operations of the agency. The large majority of the funds, more than \$165 million, passed through the agency to utilities to provide discounts for low-income electricity consumers in areas with competition. These discounts are funded through fees charged to customers in those same areas.
- **Staffing.** The Commission has 210 employees, all based in Austin.
- **Electric Companies.** In the 75 percent of the state open to competition, PUC has registered 105 power generation companies, licensed 80 retail electric providers, and regulates the rates and services of six transmission and distribution utilities. PUC also oversees the Electric Reliability Council of Texas (ERCOT) – the independent system operator that coordinates activities of these participants in the deregulated electric market. In areas of the state not yet open to competition, PUC regulates the rates, services, and service quality of investor-owned electric utilities. In fiscal year 2003, PUC conducted 20 electric rate cases.
- **Telephone Companies.** PUC certifies providers of local telephone service, ensures that competitive companies have equal access to the telephone network, and monitors the quality of telephone services provided by Incumbent Local Exchange Companies, or ILECs. Currently, 63 companies operate as ILECs and 487 operate as Competitive Local Exchange Carriers, or CLECs. PUC also continues to regulate the rates and services of ILECs that have not elected into incentive regulation. However, PUC conducted no telephone rate cases in 2003.

- **Rulemaking, Arbitrations, and Contested Cases.** PUC establishes rules for the electric and telephone markets and settles disputes between companies through arbitrations and contested case proceedings. In fiscal year 2003, PUC adopted 51 new or modified rules, issued final orders for 39 contested cases, and conducted nine arbitration proceedings.
- **Customer Protection and Enforcement.** PUC educates the public about electricity and local telephone services, and assists customers with complaints. In fiscal year 2003, PUC received about 121,000 customer calls, and informally resolved about 31,000 complaints. PUC also takes formal enforcement action against violators of the Public Utility Regulatory Act and PUC rules, including violators of the Texas No Call List. In fiscal year 2003, PUC assessed \$6.5 million in penalties against electric and telecommunications companies in Texas.
- **Assistance Programs.** PUC administers several programs to help ensure access to basic utility services. The Low-Income Discount Program provides discounts for about 700,000 low-income electricity customers in areas open to competition, funded through fees charged to customers in those areas. The Universal Service Fund offsets the high cost of telephone service in rural areas of the state, and is funded through fees on telecommunications providers. Relay Texas provides telecommunications services for people with speech and hearing impairments.

ISSUES / RECOMMENDATIONS

Issue 1 The Electric Reliability Council of Texas Lacks Certain Standard Components for Ensuring Independence and Accountability.

Recommendations

Change in Statute

1.1 Change the Electric Reliability Council of Texas Board to a nine-member independent Board by September 1, 2006.

This recommendation would reduce the Board from 14 to nine members who would all be required to be completely independent and unaffiliated with the ERCOT electric market. Eight members would be chosen by ERCOT stakeholders through the same process used to select the three current, independent Board members, and would serve three-year staggered terms. One member would be appointed by the Governor to represent the interests of residential and small commercial consumers. This member would serve a two-year term, to conform with constitutional requirements for gubernatorial appointment terms. This is discussed in more detail in the Office of Public Utility Counsel report.

As part of this recommendation, members chosen by stakeholders would have to meet specific professional criteria similar to criteria in ERCOT's bylaws used to select current independent members. This recommendation would give the Board one year from the effective date of the legislation to plan for transition to an independent Board, and allow for completion of ongoing changes to the wholesale market. The Board members would be compensated for their time, similar to current independent Board members. The new Board would obtain stakeholder input and technical expertise from electric industry market participants and representatives of consumer groups through the Technical Advisory Committee and its subcommittees.

1.2 Require ERCOT Board members to disclose any conflicts of interest and recuse themselves from any vote related to those interests.

This recommendation would ensure that ERCOT Board members disclose conflicts of interest and are prohibited from voting on any matter in which they or their company would clearly benefit. The disclosure should be entered in the minutes of the meeting. The recusal of a member should not impact the existence of a quorum. This requirement would apply to the current Board, as well as the new independent Board; although the potential for conflicts should be greatly reduced at that point.

1.3 Grant PUC clear authority to require ERCOT to submit detailed financial information needed to scrutinize ERCOT's fee requests.

The statute should be clarified to ensure that PUC may require ERCOT to provide sufficiently detailed information to effectively evaluate the reasonableness of ERCOT's fee requests. PUC should closely scrutinize ERCOT's cost efficiency, salaries and benefits, and use of debt financing. PUC should work with ERCOT to set the level of detail and historical budget information needed to effectively evaluate the fee requests. As part of this recommendation, ERCOT would be required to provide this information in a time frame prescribed by PUC.

1.4 Apply the Open Meetings Act to ERCOT.

This recommendation would apply the Open Meetings Act to meetings of the ERCOT Board and subcommittees of the Board. This would ensure that anyone interested in the activities of ERCOT could find out about the meetings in advance, and have the opportunity to attend. The Board would

be permitted to enter into executive session to address sensitive matters prescribed in the Act, such as confidential personnel information, contracts, and lawsuits. Also, the current practice of requiring an RSVP to attend would be eliminated. This recommendation is not intended to subject ERCOT to the Public Information Act.

Fiscal Implication

These recommendations would not have a fiscal impact to the State. The recommendation to transition the ERCOT Board to a nine-member independent Board would have a fiscal impact to ERCOT. This impact would be dependent upon the level of compensation for the members, as set by the Board. If the Board continues at the current level of compensation of \$75,000 per independent member, the cost to ERCOT of six new, independent members would be \$450,000 per year.

Responses

Public Utility Commission

PUC does not object to these recommendations and offers the following comments.

Recommendations 1.1 and 1.2: Independence of the ERCOT Board is an important factor in ensuring that ERCOT is free of undue influence of particular market sectors or participants. Moving to a completely independent ERCOT Board and placing restrictions on Board members' conflicts of interest would offer greater assurance that ERCOT is free of undue influence of particular market sectors or participants, but with that assurance comes a potential loss of expertise.

Recommendation 1.3: Requiring ERCOT to provide more detailed information about its operations and expenses would give greater assurances that its fees are reasonable.

Recommendation 1.4: PUC itself is subject to the Open Meetings Act, and supports the policy objective of allowing the public to observe the deliberations of governmental bodies.

(Paul Hudson, Chair; Julie Parsley, Commissioner; Barry Smitherman, Commissioner; and W. Lane Lanford, Executive Director – Public Utility Commission of Texas)

Electric Reliability Council of Texas

ERCOT opposes these recommendations and offers the following comments.

Recommendation 1.1: ERCOT does not believe that altering the ERCOT Board to a nine-member, independent Board is in the best interest of ERCOT or the role it plays in supporting the electric service industry in the ERCOT Region. The current Board structure offers an effective balance of stakeholder, consumer, and unaffiliated business expertise.

Recommendation 1.2: ERCOT Board members are currently subject to ERCOT Bylaws that require members to disclose any actual or potential conflicts of interest.

Recommendation 1.3: ERCOT sees no reason for the Legislature to address this issue because PUC's authority over the ERCOT fee is clear and ERCOT does not challenge that authority. If the Sunset Commission chooses to pursue this issue, ERCOT suggests adoption of Modification 1.

ERCOT Modification:

1. Require ERCOT to submit information for fee requests similar to how a utility provides information for a rate case.

Recommendation 1.4: Extending the requirements of the Open Meetings Act to ERCOT could stifle ERCOT operations. In addition, ERCOT's processes are already open and in compliance with PUC rules on notice and access, and notices of meetings, agendas, and materials are freely available and posted well in advance.

(Mike Greene, Chair; Miquel Espinosa, Board Member; Sam Jones, Chief Operating Officer; and Mark Walker, Senior Corporate Counsel – Electric Reliability Council of Texas, Austin)

Office of Public Utility Counsel

Recommendation 1.1: OPUC opposes the recommendation to replace the Public Counsel with a residential consumer representative appointed by the Governor because the inclusion of a single consumer representative on the ERCOT Board would result in a material reduction in the percentage consumer voting representation. (Suzi Ray McClellan, Public Counsel – Office of Public Utility Counsel)

For

Carol Biedzycki, 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

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

Rick Drom – TECO Wholesale Generation, Inc.

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

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

Tim Morstad, Policy Analyst – Consumers Union, Austin

Nelson H. Nease – East Texas Cooperatives, Austin

Supports Recommendations 1.2, 1.3, and 1.4: Tom “Smitty” Smith, Executive Director – Public Citizen, Austin

Supports Recommendation 1.3 : Tim Bourcier – TXI and Chaparral Steel, Midlothian; and Jim Fritsch – Commercial Metals Company, Seguin

Supports Recommendations 1.3 and 1.4: Mike Williams – Texas Electric Cooperatives, Austin; and Mark Zion – Texas Public Power Association, Austin

Supports Recommendation 1.4 – Edward A. “Ned” Ross, Director Regulatory Affairs – FPL Energy, Houston

Against

Opposes Recommendations 1.1 – Phillip G. Oldham – Texas Coalition for Competitive Electricity, Austin; and Mark Zion – Texas Public Power Association, Austin

Opposes Recommendations 1.1 and 1.2 – John W. Fainter, Jr., President and CEO – Association of Electric Companies of Texas, Inc., Austin; and Mike Williams – Texas Electric Cooperatives, Austin

Modifications

ERCOT — PUC Oversight and ERCOT's Mission

2. Clarify in statute that PUC has complete oversight authority over all facets of ERCOT's finances, budget, and operations. (Tim Bourcier – TXI and Chaparral Steel, Midlothian; and Jim Fritsch – Commercial Metals Company, Seguin)

Staff Comment: Clarifying PUC's oversight authority over these facets of ERCOT is consistent with these recommendations and would help to ensure greater accountability of ERCOT to PUC.
3. Clearly define in statute the mission of ERCOT in a competitive market and the oversight authority of PUC. (Vanus J. Priestley – Alliance for Retail Markets, Austin)
4. Put ERCOT under direct supervision of PUC. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
5. Fold ERCOT into PUC. (Tom “Smitty” Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin)
6. Require PUC to more frequently review ERCOT policies for compliance with PURA and PUC rules. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
7. Restrict ERCOT's role to its historical focus on operating the electricity grid and coordinating system planning activities for transmission and generation, create a separate independent market operator to provide the platform for the competitive electric marketplace, and provide that both functions report to an independent Board. (Walter D. Fenoglio, Vice President and Executive Director – Texas Energy Association for Marketers, Austin)

Rec. 1.1: Independent ERCOT Board

8. Delay implementation of the independent Board until at least February 1, 2008 to allow for the implementation of the proposed nodal market. (Mark Zion – Texas Public Power Association, Austin)
9. Ensure that all independent Board members have access to stakeholder expertise through clearly defined rules permitting direct contact with stakeholders and the involvement of stakeholder committees. (Edward A. “Ned” Ross, Director Regulatory Affairs - FPL Energy, Houston)
10. Ensure that independent Board members are the most qualified individuals available by permitting service of out-of-state candidates. (Edward A. “Ned” Ross, Director Regulatory Affairs – FPL Energy, Houston)
11. Prohibit or discourage independent Board members from having outside occupational interests. (Vanus J. Priestley – Alliance for Retail Markets, Austin)
12. Provide that at least three members of the ERCOT Board represent residential consumers, one of which should be the Public Utility Counsel. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

13. Create an independent ERCOT Board with at least half of the members representing consumers. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
14. Provide that the majority of the ERCOT Board are consumers. (Tom “Smitty” Smith, Executive Director, Travis Brown, Energy Projects Director – Public Citizen, Austin; and Phillip G. Oldham, Texas Coalition for Competitive Electricity, Austin)

Rec. 1.2: ERCOT Board Member Recusal

15. Define conflict of interest standards for ERCOT employees and independent Board members consistent with the standards applied to PUC employees and Commissioners. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Staff Comment: The conflict of interest standards for PUC Commissioners are much stronger than for most state agencies. For example, among other provisions, Commissioners are forbidden from having served as officers or employees of utilities or owning utility stock valued at \$10,000 or more at any time during the two years preceding appointment.

16. Prohibit ERCOT Board members and employees under investigation for improper conduct or failure to comply with state or federal law or regulation from participating in the decision making process or working at ERCOT while under investigation. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Rec. 1.3: ERCOT Fee Requests

17. Provide that ERCOT fee filings use a rate-filing format similar to that used by utilities. (John W. Fainter, Jr., President and CEO – Association of Electric Companies of Texas, Inc., Austin)

Staff Comment: PUC staff indicate that this provision may result in ERCOT actually filing less information to PUC to evaluate fee requests than is currently provided.

18. Require PUC to review and approve ERCOT’s costs consistent with the standards applied to regulated utilities and, for the next five years, require the review to take place in a public hearing, and prohibit settlement negotiations between ERCOT and PUC staff. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

19. Require ERCOT to adhere to the statutory requirement that its administrative fee be assessed equally to generators and consumers of electricity. (Tim Bourcier – TXI and Chaparral Steel, Midlothian; and Jim Fritsch – Commercial Metals Company, Seguin)

Staff Comment: While state law does require ERCOT’s administrative fee to be assessed equally to wholesale buyers and sellers, ERCOT currently assesses the fee only on consumers. At a recent ERCOT Technical Advisory Committee, some members stated that sharing the costs equally between generators and consumers may have the benefit of bringing greater scrutiny to ERCOT’s spending patterns.

20. Add greater specificity to the statute by requiring that the ERCOT administrative fee not be unreasonably preferential or advantageous to any market participant or market segment, no

market participant be subject to unreasonable prejudice or disadvantage, and no unreasonable difference be established between localities or classes of service. (Tim Bourcier – TXI and Chaparral Steel, Midlothian; and Jim Fritsch – Commercial Metals Company, Seguin)

21. Require ERCOT to undergo, and pay for, a fiscal efficiency audit by the State Auditor or an independent auditor timed to coincide with its annual fee requests. (Tim Bourcier – TXI and Chaparral Steel, Midlothian; and Jim Fritsch – Commercial Metals Company, Seguin)
22. Require ERCOT to carry forward any revenues generated in excess of the budget approved by PUC. (Tim Bourcier – TXI and Chaparral Steel, Midlothian; and Jim Fritsch – Commercial Metals Company, Seguin)
23. Cap ERCOT's administrative fee at 25¢ per MWh by 2007 and require ERCOT to either reduce its costs or recover the revenue from other sources. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; Randall Chapman, Executive Director – Texas Legal Services Center, Austin; and Tom "Smitty" Smith, Executive Director – Public Citizen, Austin)
24. Require ERCOT to eliminate all spending not directly related to the operation of the grid or the retail market. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
25. Prohibit ERCOT from spending administrative fees on penalties and in court proceedings where the court has found in favor of the opposing party. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
26. Apply standardized government competitive bidding standards to ERCOT. (Tom "Smitty" Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin)

Rec. 1.4 Apply Open Meetings Act to ERCOT

27. Create a special section of the Open Meetings Act for ERCOT rather than applying the entirety of the Act. (John W. Fainter, Jr., President and CEO – Association of Electric Companies of Texas, Inc., Austin; and Phillip G. Oldham, Texas Coalition for Competitive Electricity, Austin)
28. Subject ERCOT to the Public Information Act. (Tom "Smitty" Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin; Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Recommended Action: Adopt Recommendations 1.1 through 1.4 with Modification 2.

Commission Decision: The Commission adopted a substitute for Recommendation 1.1 to:

- add two independent Board members to ERCOT to be chosen in the same manner as current independent members;
- require the Chair of ERCOT to be one of the independent members; and
- retain the effective date of September 1, 2006 for the new Board.

The Commission modified Recommendation 1.2 to require ERCOT Board members to disclose any conflicts of interest and recuse themselves from any vote *directly* related to those interests.

The Commission adopted Recommendation 1.3.

The Commission adopted a substitute for Recommendation 1.4 to:

- require ERCOT Board meetings to be open to the public;
- require advance public notice and posting of agendas of ERCOT Board meetings in a manner similar to the Open Meetings Act;
- authorize Executive Sessions of the ERCOT Board to discuss confidential personnel information, contracts, lawsuits, sensitive data and information directly related to the security of the electric grid, and market competition matters of a sensitive nature; and
- authorize emergency meetings of the ERCOT Board in extraordinary circumstances, provided that action taken in emergency meetings must be ratified at the next regular Board meeting.

The Commission also adopted Modification 2.

Issue 2 PUC's Market Oversight Function Cannot Adequately Address Manipulations of the Wholesale Electric Market.

Recommendations

Change in Statute

2.1 Require ERCOT to contract with, fund, and support the operations of a private company to perform market monitoring.

This recommendation would effectively transfer the market monitoring function from PUC's Market Oversight Division to a monitoring unit based at ERCOT. ERCOT should pay for the monitoring unit through its system administrator fee, and should provide the monitoring staff with full access to the main operations center and other support as needed.

2.2 Require PUC to select the monitoring company, define the company's monitoring responsibilities, and set standards for funding, staff qualifications, and ethical conduct.

This recommendation would solidify PUC's oversight of the monitoring function. PUC would ensure that the monitoring unit has the resources, expertise, and authority to effectively monitor the wholesale market. To allow ERCOT to provide input on how monitoring funds are spent, PUC should consult with a subcommittee of independent ERCOT board members when setting budget and staffing requirements. The ethical standards should ensure that monitoring staff maintain professional and financial independence from market participants.

2.3 Require the market monitoring company to report potential violations of PUC or ERCOT rules or other potential market manipulations to PUC.

This recommendation would ensure that PUC receives the information it needs to investigate and prosecute suspected market manipulations. Monitoring staff would have unrestricted authority to communicate with PUC staff.

2.4 Require the market monitoring company to submit an annual report to PUC and ERCOT identifying market design flaws and recommending methods to fix the flaws.

This recommendation would allow PUC and ERCOT to improve the wholesale market design based on the extensive experience gained by monitoring staff. Improvements in market design should help to prevent future market manipulations. PUC and ERCOT should review the report and evaluate the need to adopt changes to PUC and ERCOT rules based on the recommendations in the report.

Fiscal Implication

These recommendations would not have a fiscal impact on the State. The recommendations would maintain PUC's current level of funding for market oversight while removing most of its market monitoring duties, thereby increasing resources for investigation, enforcement, and market design functions. Based on two and a half years of experience of monitoring the ERCOT wholesale market, PUC has estimated adequate market monitoring would cost \$1.4 million per year for six to seven FTEs, analytical software, and other capital expenses. The estimated cost, to be paid by ERCOT through its system administrator fee, is equivalent to about one percent of ERCOT's budget of \$138 million for 2004.

Responses

Public Utility Commission

PUC does not object to these recommendations and believes that the Sunset staff's recommendations on the market monitoring function, including the funding mechanism, are workable and will help ensure effective oversight of the wholesale electric market. (Paul Hudson, Chair; Julie Parsley, Commissioner; Barry Smitherman, Commissioner; and W. Lane Lanford, Executive Director – Public Utility Commission of Texas)

Electric Reliability Council of Texas

While ERCOT is open to a greater monitoring role to ensure market integrity, PUC must retain responsibility for enforcement functions. ERCOT also suggests Modification 1.

ERCOT Modification:

1. Provide that ERCOT would select the market monitor with input from PUC to avoid allegations of unlawful taxation.

(Mark Walker, Senior Corporate Counsel – Electric Reliability Council of Texas, Austin)

For

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

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

Nelson H. Nease – East Texas Cooperatives, Austin

Phillip G. Oldham – Texas Coalition for Competitive Electricity, Austin

Vanus J. Priestley – Alliance for Retail Markets, Austin

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

Mark Zion – Texas Public Power Association, Austin

Supports Recommendations with Modification 3 – Rick Drom – TECO Wholesale Generation, Inc.

Supports Recommendations with Modification 4 – Walter D. Fenoglio, Vice President and Executive Director – Texas Energy Association for Marketers, Austin

Supports Recommendations with Modifications 6 and 7 – Tim Morstad, Policy Analyst – Consumers Union, Austin

Supports Recommendation 2.1 – Mike Williams – Texas Electric Cooperatives, Austin

Supports Recommendations 2.1 and 2.3 – John W. Fainter, Jr., President and CEO – Association of Electric Companies of Texas, Inc., Austin

Supports Recommendations 2.1 and 2.2 – Edward A. “Ned” Ross, Director Regulatory Affairs - FPL Energy, Houston

Against

Opposes Recommendation 2.3 – Edward A. “Ned” Ross, Director Regulatory Affairs - FPL Energy, Houston

Modifications

2. The market monitor should report directly to the three independent members of the ERCOT Board. (John W. Fainter, Jr., President and CEO – Association of Electric Companies of Texas, Inc., Austin)

Staff Comment: This reporting structure may have the unintended consequence of tying the monitors too closely to the ERCOT Board. Staff suggests an alternative to clarify PUC’s role in market monitoring oversight.

Staff Alternative: The market monitor should report directly to the three PUC Commissioners.

3. The independent market monitor should report to a fully independent ERCOT board. (Rick Drom – TECO Wholesale Generation, Inc)
4. The market monitor should report to the Office of the Attorney General. (Walter D. Fenoglio, Vice President and Executive Director – Texas Energy Association for Marketers, Austin)
5. Adequately fund PUC to perform market monitoring, rather than contracting with an outside vendor. (Tim Morstad, Policy Analyst – Consumers Union, Austin)
6. If a private company performs the market monitoring, the law should set clear anti-conflict of interest standards and the private entity should be subject to the same open meetings and open records laws as PUC. (Tim Morstad, Policy Analyst – Consumers Union, Austin)

Staff Comment: Under Recommendation 2.2, PUC would have the authority to establish ethical standards for the market monitoring contractor that would include conflict of interest prohibitions. Subjecting the private contractor to full open meetings and open records statutes may hamper the operations of the company, require disclosure of proprietary information and limit the pool of companies willing to bid on the project.

7. Prevent market power abuses by requiring PUC to vigilantly monitor and prevent establishment of anti-competitive market power by dominant retail electric providers and their affiliated generation companies. (Geoffrey Gay, Kristen Doyle, and Thomas Brocato – Cities Aggregation Power Project, Inc., and South Texas Aggregation Project, Inc., Austin)
8. Either restrict generation companies from owning more than 20 percent of generation capacity within an ERCOT congestion zone, or preclude the establishment of congestion zones and treat ERCOT as a single market. (Geoffrey Gay, Kristen Doyle, and Thomas Brocato – Cities Aggregation Power Project, Inc., and South Texas Aggregation Project, Inc., Austin)

Recommended Action: Adopt Recommendations 2.1 through 2.4 with Staff Alternative to Modification 2.

Commission Decision: Adopted Recommendations 2.1 through 2.4 with Staff Alternative to Modification 2.

Issue 3 Lack of Clear Authority to Establish and Enforce Wholesale Performance Measures Limits PUC's Ability to Foster Fair Telephone Competition.

Recommendation

Change in Statute

3.1 Grant PUC clear statutory authority to establish and enforce wholesale performance measures for telecommunications service.

This recommendation would clarify PUC's statutory authority to establish wholesale performance measures for ILECs in rule, and to enforce those measures. Within the boundaries of this authority, PUC would have the ability to add, remove, modify wholesale performance measures as necessary to ensure fair access to the network by competitive providers, address acts of noncompliance by ILECs, and respond to the changing telecommunications market by modifying standards as competition progresses. PUC should ensure that any rules adopted do not conflict with federal laws. Further, the recommendation would not affect current exemptions for certain rural telephone companies under state and federal laws. PUC would be able to address violations of wholesale performance measures through its administrative penalty authority and would establish, in rule, a penalty matrix to link violations of wholesale performance measures to appropriate penalties.

Fiscal Implication

Clarifying PUC's authority in statute would not have a fiscal impact to the State. However, since 1999, under terms outlined in the current contract, SBC has paid approximately \$10 million to the State for its failure to meet certain performance measures in the T2A. Because the future compliance of SBC and other ILECs cannot be predicted, the gain or loss to the State from future penalties could not be determined for this report.

Responses

Public Utility Commission

PUC does not object to this recommendation and believes that clarification of PUC's authority to establish and enforce wholesale performance measures would strengthen the ability to promote fair competition in telecommunications markets. (Paul Hudson, Chair; Julie Parsley, Commissioner; Barry Smitherman, Commissioner; and W. Lane Lanford, Executive Director – Public Utility Commission of Texas)

For

Doreen Best, Director of Carrier Management – XO Communications

Kristie Flippo, Regulatory Vice President – Time Warner Telecom, Addison

Kathy Grant, Vice President of Governmental Relations – Texas Cable and Telecommunications Association, Austin

Sheri Hicks, Policy Director – TEXALTEL, Austin

Michael Jewell, Vice President of Government Affairs – AT&T, Austin

Tim Morstad, Policy Analyst – Consumers Union, Austin

Douglas Nelson – KMC Telecom, Lawrenceville, Georgia

Thomas Ratliff – Allegiance Telecom, Birch Telecom, and TEXALTEL, Austin

Howard Siegel, Vice President of External and Regulatory Affairs – Logix Communications, Austin

Supports Recommendation 3.1 with Modification 1 – James R. Hines, Senior Manager – MCI, Austin

Against

Brad Denton, President – Texas Telephone Association, Austin

Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin

Kent Lassman, Research Fellow and Director of the Digital Policy Network – The Progress & Freedom Foundation, Raleigh, North Carolina

James J. Lydon, Area Vice President – SBC, Austin

Jan Newton, President – SBC, Austin

Tina Peyton, Texas Field Director – Citizens for a Sound Economy, Dallas

Modifications

1. Instead of enforcing performance measures with administrative penalties, PUC should use its authority to establish self-executing penalties similar to those in the current T2A agreement. (James R. Hines, Senior Manager – MCI, Austin)
2. Require that state unbundling requirements for Incumbent Local Exchange Companies not be more onerous than federal unbundling requirements. (Carl Erhart – Verizon Southwest, Austin; Jan Newton, President – SBC, Austin)
3. The statutory authority to enforce performance measures should specifically include authority for PUC to enforce standards of interoperability including network interconnection, enhanced 911 service, customer migration and number portability, nondiscriminatory access to directory services and listings, and fair competition rules. (Kristie Flippo, Regulatory Vice President – Time Warner Telecom, Addison; and Kathy Grant, Vice President of Governmental Relations – Texas Cable and Telecommunications Association, Austin)

Recommended Action: Adopt Recommendation 3.1.

Commission Decision: The Commission took no action on this Recommendation.

Issue 4 PUC Requires Telephone Utilities to File Reports That May Not Be Needed in Today's Regulatory Environment.

Recommendations

Change in Statute

4.1 Eliminate the requirement for telecommunications utilities to file the *Report of Certain Expenses*.

This recommendation would eliminate the statutory provision that authorizes PUC to require telecommunications utilities to annually report expenditures relating to business gifts, entertainment, advertising, and public relations. As part of this recommendation, PUC should also repeal any related rules. Eliminating this provision would relieve telecommunications utilities-such as ILECs that have elected into incentive regulation-from the burden of preparing and submitting this report to PUC on an annual basis, but would not prevent PUC from collecting this information from rate regulated companies using the agency's general statutory authority.

4.2 Require PUC to conduct a one-time review of its reporting requirements for telecommunications utilities to determine the ongoing need for the required reports.

This recommendation would require PUC to conduct a one-time, comprehensive review of all reporting requirements in PUC rules and in statute. The review should include an examination of the continuing necessity and use of the information collected, and should be completed by September 2006. During this process, PUC, with the assistance of interested parties, would establish criteria for how and when reports would be used, and would ensure requested information does not duplicate other reports. PUC would be directed to eliminate unnecessary reports that are required in rule and to streamline requirements for reports that continue to be needed. For example, PUC could waive reporting requirements for companies during the years the data would not be used, or allow companies to report some information biennially. PUC would also be charged with identifying reports required in statute that are no longer necessary for regulation of the industry. PUC would make its recommendations on eliminating these outdated requirements to the Legislature in the agency's existing *Scope of Competition Report*.

Management Action

4.3 Direct PUC to consider the burden of new reporting requirements on telecommunications utilities before adopting new rules regarding reporting.

This recommendation would require PUC, when writing new rules, to weigh the need for new reporting requirements against the burden imposed upon the utility. While this recommendation would not prevent PUC from adopting necessary rules, it would require PUC to carefully consider the burden of new reports and would provide utilities with information on the purpose of the new requirements.

Fiscal Implication

These recommendations would have no fiscal impact to the State, as PUC can carry out its review of existing rules using current staff and within the rule review process that the agency already plans to conduct. The recommendation should also have the benefit of slightly decreasing the workload on PUC staff to process the required reports.

Responses

Public Utility Commission

PUC agrees that a comprehensive review of all reporting requirements, including those required by statute, is in order. (Paul Hudson, Chair; Julie Parsley, Commissioner; Barry Smitherman, Commissioner; and W. Lane Lanford, Executive Director – Public Utility Commission of Texas)

For

Brad Denton, President – Texas Telephone Association, Austin

Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin

James J. Lydon, Area Vice President – SBC, Austin

Tina Peyton, Texas Field Director – Citizens for a Sound Economy, Dallas

Supports Recommendations with Modification 2 – Michael Jewell, Vice President of Government Affairs – AT&T, Austin

Supports Recommendations with Modifications 3, 4 and 5 – Jan Newton, President – SBC, Austin

Against

Tim Morstad, Policy Analyst – Consumers Union, Austin

Modifications

1. Discontinue the *Annual Earnings Report* and all other reports required to be filed only by Incumbent Local Exchange Carriers. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin)
2. Require a Sunset review of all current reporting requirements. (Michael Jewell, Vice President of Government Affairs – AT&T, Austin)
3. Provide that all reports remaining after the review apply equally to all providers. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin; James J. Lydon, Area Vice President, and Jan Newton, President – SBC, Austin)
4. Provide that non rate-of-return-regulated service providers, such as SBC, are no longer required to prepare earnings or affiliate-activities reports that are not required by law. (James J. Lydon, Area Vice President, and Jan Newton, President – SBC, Austin)
5. Establish that the legislative intent for Recommendation 4.2 is that the review result in fewer reports and less reporting. (James J. Lydon, Area Vice President, and Jan Newton, President – SBC, Austin)

Staff Comment: The intent of Recommendation 4.2 is to reduce the total number of required reports and to streamline the reporting requirements of the remaining reports.

Recommended Action: Adopt Recommendation 4.1 through 4.3.

Commission Decision: Adopted Recommendation 4.1 through 4.3.

Issue 5 PUC’s Administrative Penalty Authority Is Inadequate to Address Violations of PURA by Wholesale Electricity and Telecommunications Providers.

Recommendation

Change in Statute

5.1 Increase PUC’s maximum administrative penalty from \$5,000 to \$25,000 per day, per violation.

This recommendation to increase the statutory cap on administrative penalties would permit the Commission to take stronger action, but would not mandate these penalties in every case. To ensure that all parties are aware of what violations may merit potential penalties, PUC would need to pass rules adopting a penalty matrix and specifying which violations are serious enough to merit higher penalties.

Fiscal Implication

This recommendation may result in a fiscal gain to the State. However, because the number of violations and the degree of seriousness varies depending on the circumstances in each enforcement situation, an exact fiscal impact could not be estimated for this report.

Responses

Public Utility Commission

PUC agrees that increasing the maximum administrative penalty to \$25,000 per day, per violation, will enable the agency to have a more effective enforcement effort that penalizes and deters illegal activities that harm customers. (Paul Hudson, Chair; Julie Parsley, Commissioner; Barry Smitherman, Commissioner; and W. Lane Lanford, Executive Director – Public Utility Commission of Texas)

For

Carol Biedzycki, 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

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

Kristen Doyle – Cities Aggregation Power Project, Inc., and South Texas Aggregation Project, Inc., Austin

Sheri Hicks, Policy Director – TEXALTEL, Austin

Tim Morstad, Policy Analyst – Consumers Union, Austin

Nelson H. Nease – East Texas Cooperatives, Austin

Vanus J. Priestley – Alliance for Retail Markets, Austin

Thomas Ratliff – Allegiance Telecom, Birch Telecom, and TEXALTEL, Austin

Mike Williams – Texas Electric Cooperatives, Austin

Supports with Modification 8 – Michael Jewell, Vice President of Government Affairs – AT&T, Austin

Against

Brad Denton, President – Texas Telephone Association, Austin

Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin

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

James R. Hines, Senior Manager – MCI, Austin

Kent Lassman, Research Fellow and Director of the Digital Policy Network – The Progress & Freedom Foundation, Raleigh, North Carolina

James J. Lydon, Area Vice President – SBC, Austin

Jan Newton, President – SBC, Austin

Modifications

1. Require PUC to order violators of wholesale rules to provide recourse commensurate with the harm done or gain realized. Also require PUC to demonstrate the connection between punishment and violation. (Marc H. Burns, Director Government & Regulatory Affairs – Direct Energy, L.P., CPL Retail Energy, L.P., and WTU Retail Energy, L.P., Austin)
2. Direct PUC to use measures other than fines or penalties that are designed to remedy the harm caused to market participants or customers. (Marc H. Burns, Director Government & Regulatory Affairs – Direct Energy, L.P., CPL Retail Energy, L.P., and WTU Retail Energy, L.P., Austin)
3. Grant PUC authority to establish performance quality standards for customer service with a menu of billing credits or compensation payments for customers who do not receive services that meet quality standards for disconnection, reconnection, new services connection, and billing. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
4. Establish a system for automatically assessing administrative penalties for violation of customer protection rules. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
5. Combine PUC's enforcement and customer protection divisions with increased staff to place a greater focus on enforcement and administrative penalties. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
6. Require Sunset staff to examine and evaluate in further detail the manner in which PUC currently applies administrative penalties to avoid unfair and unnecessary administrative burdens. (James R. Hines, Senior Manager – MCI, Austin)
7. Establish an expiration date for PUC's administrative penalty authority in the wholesale telecommunications market. (Kent Lassman, Research Fellow and Director of the Digital Policy Network – The Progress & Freedom Foundation, Raleigh, North Carolina)

8. Increase PUC's maximum administrative penalty authority to \$25,000 per day, per violation only for violations of the wholesale telecommunications market. (Michael Jewell, Vice President of Government Affairs – AT&T, Austin)
9. Establish mandatory penalties for violations of ERCOT protocols and PUC rules by market participants. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Recommended Action: Adopt Recommendation 5.1.

Commission Decision: The Commission adopted Recommendation 5.1 with a modification requiring PUC to develop, by rule, a series of classes of violations. The rules shall indicate the ranges of administrative penalty amounts for each class of violations such that only the highest class, consisting of only the most serious violations, provides for penalties exceeding \$5,000 per incident, per day.

Issue 6 Texas Has a Continuing Need for the Public Utility Commission.

Recommendation

Change in Statute

6.1 Continue the Public Utility Commission of Texas for 12 years.

This recommendation would continue PUC as an independent agency, responsible for protecting electricity and telephone consumers and enforcing the rules of competition for these industries. The agency would also continue its effort to bring the benefits of competition in the electric and telecommunications industries to the citizens of Texas.

Fiscal Implication

If the Legislature continues the current functions of the Public Utility Commission, using the existing organizational structure, the agency's current annual appropriation of about \$113 million from the General Revenue Fund would continue to be required for its operation.

Responses

Public Utility Commission

PUC supports the Sunset staff recommendation to continue PUC for 12 years. (Paul Hudson, Chair; Julie Parsley, Commissioner; Barry Smitherman, Commissioner; and W. Lane Lanford, Executive Director – Public Utility Commission of Texas)

For

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

Sheri Hicks, Policy Director – TEXALTEL, Austin

James R. Hines, Senior Manager – MCI, Austin

Tim Morstad, Policy Analyst – Consumers Union, Austin

Nelson H. Nease – East Texas Cooperatives, Austin

Thomas Ratliff – Allegiance Telecom, Birch Telecom, and TEXALTEL, Austin

Mike Williams – Texas Electric Cooperatives, Austin

Mark Zion – Texas Public Power Association, Austin

Supports with Modification 2 – James J. Lydon, Area Vice President – SBC, Austin

Against

William Wilson, Rockwall

Modifications

1. Clarify that PUC's mission is to make policies that provide reasonable prices as well as competition. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; Randall Chapman, Executive Director – Texas Legal Services Center, Austin; and Tim Morstad, Policy Analyst – Consumers Union, Austin)
2. Focus PUC on protection of consumers rather than on regulation of telecommunications markets in which intermodal competition is prevalent and increasing. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin; Kent Lassman, Research Fellow and Director of the Digital Policy Network – The Progress & Freedom Foundation, Raleigh, North Carolina; and James J. Lydon, Area Vice President – SBC, Austin)
3. Expand the mission of PUC to include the fostering of a market system to optimize the usefulness of utility assets and encourage the adoption of cost-effective alternatives to traditional utility plants. (Robert J. King – Good Company Associates, Austin)
4. Require PUC to redirect its resources away from outdated, regulatory oversight functions to other functions, as appropriate. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin)
5. The Legislature should review PUC's mission and structure on a more frequent basis. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin)

Recommended Action: Adopt Recommendation 6.1.

Commission Decision: Adopted Recommendation 6.1 with a modification to continue the Public Utility Commission for six years.

ACROSS-THE-BOARD RECOMMENDATIONS

Public Utility Commission	
Recommendations	Across-the-Board Provisions
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.
Already in Statute	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Modify	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	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.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

NEW ISSUES

New Issues

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

PUC General

7. Require comparative information on rates and service quality of market participants to be publicly available. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; Randall Chapman, Executive Director – Texas Legal Services Center, Austin; and James J. Lydon, Area Vice President – SBC, Austin; Jan Newton, President – SBC, Austin)

Staff Comment: While providing this type of consumer information is currently within PUC’s scope and would be potentially useful to consumers, the agency would need additional funding for this purpose.

8. Define ‘competitively sensitive information’ using standards established under the Open Records Act and require all parties to make a factual showing that disclosure of the information would result in substantial competitive harm. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
9. Establish a date certain for PUC to set forth the parameters and adopt rules necessary to implement the low-income customer access to an affordable rate plan mandated by SB 86 by the Legislature in 1999. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
10. Require PUC Proposals for Decisions, prepared by the State Office of Administrative Hearings, to contain a complete summary of all evidence, both direct and rebuttal, on each contested issue. (Charles Patton, State President – American Electric Power, Austin)

PUC – Municipal Right of Way

11. Examine PUC’s authority to limit or alter municipal right-of-way management regulations. (Scott Houston – Texas Municipal League, Austin; Don Knight – Texas Coalition of Cities for Utility Issues, Dallas; Monte Akers – Texas Coalition of Cities for Utility Issues, Austin; and Stephen Massey, Community Services Director – City of Allen, Allen)
12. Clarify in state law cities’ authority to control municipal right-of-way to protect the health, safety, and welfare of the public. (Scott Houston, Legal Services Director – Texas Municipal League, Austin)
13. Clarify in state law cities’ authority to require relocation of utility lines and facilities to be paid for by the utility. (Don Knight – Texas Coalition of Cities for Utility Issues, Dallas; and Monte Akers – Texas Coalition of Cities for Utility Issues, Austin)
14. Focus PUC’s jurisdiction in municipal right-of-way cases on the appropriateness of additional costs and how these are recouped. (Steve Massey, Community Services Director – City of Allen, Allen)
15. Provide for an annual escalation of kilowatt hour rates for electric right-of-way compensation

in law and/or change the base year for calculation of the kilowatt hour rate from 1999 to 2001. (Don Knight – Texas Coalition of Cities for Utility Issues, Dallas; and Monte Akers – Texas Coalition of Cities for Utility Issues, Austin)

Electricity – General

16. PUC should strictly comply with all statutory provisions regarding competition when considering the creation of a retail open access competitive market in the electric markets in the Southeast Electric Reliability Council area. (Nelson H. Nease – East Texas Electric Cooperatives, Austin)
17. Grant PUC greater oversight of the generation, transmission, and distribution of power to customers. (Randolph C. Moravec, Finance Director – Town of Addison, Addison)
18. PUC should direct ERCOT to change its approach to procurement of balancing energy services to a pay-as-bid based system instead of its current marginal cost approach. (Bill Starnes – R. J. Covington Consulting, Austin)
19. Direct PUC to allocate sufficient resources and effort to make the electric market more competitive and to ascertain and reduce the potential for market power abuse. (Jay Doegey, Chairman – Cities Aggregation Power Project, Arlington)
20. Require PUC to penalize parties responsible for unreasonable switching or billing delays. (Philip Boyd – City of Lewisville, Lewisville)
21. Grant PUC authority to resolve complaints against municipal and cooperative electric utilities. (Weldon Coldiron, Pleasanton)

Electricity – Generation

22. Require PUC to review the siting of new power plant and generation facilities to certify that the project is beneficial, including its effects on the community, and to assure adequacy of transmission facilities. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
23. Require PUC to adopt power plant siting policies that ensure new plants are located where they do not add to air pollution problems. (Tom “Smitty” Smith, Executive Director - Public Citizen, Austin.)
24. Require currently operating power plants to reduce emissions of Nitric Oxide by 27 percent, Sulfur Dioxide by 75 percent, and Mercury by 90 percent. (Tom “Smitty” Smith, Executive Director – Public Citizen, Austin; and Luke Metzger – Texas Public Interest Research Group)
25. Require currently operating coal-burning power plants to reduce emissions of Mercury by 90 percent. (Karen Hadden – Sustainable Energy and Economic Development Coalition, Austin)
26. Texas should oppose the Environmental Protection Agency’s proposed system of trading Mercury credits among electricity producers. (Karen Hadden – Sustainable Energy and Economic Development Coalition, Austin)

27. Require PUC to support the development of adequate transmission capacity to allow for greater use of wind of wind power. (Anne Marie Johnson, Air Quality Engineer – Environmental Defense, Austin; and Tom “Smitty” Smith, Executive Director – Public Citizen, Austin)
28. Regulate the rates of Reliability Must Run generators and provide that these units should be retired and replaced with other alternative technologies. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
29. Develop a reserve margin standard for electricity generation that ensures adequate power for peak demand periods. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Electricity – Energy Efficiency and Renewable Energy

30. To ensure that energy efficiency goals are met, develop, in statute, a new energy efficiency standard based on kWh of electricity sales using a credit system similar to the Renewable Portfolio Standard. (Anne Marie Johnson, Air Quality Engineer – Environmental Defense, Austin)
31. Require PUC to mandate increased efficiency of power generation to reduce increasing costs of electricity. (Gary Bush, Woodlands)
32. Energy efficiency goals should be based on energy savings and be fixed at 1 percent of kWh sales in 2000. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
33. Increase the existing Renewable Portfolio Standard from 3 percent of electricity consumption by 2009 to 10 percent by 2020. (Anne Marie Johnson, Air Quality Engineer – Environmental Defense, Austin)
34. Increase the Renewable Portfolio Standard. (Steven Shepard – SBT Designs, San Antonio)
35. Require PUC to mandate that 15 percent of all electricity generated in Texas comes from renewable sources by 2015 and 20 percent by 2020. (Tom “Smitty” Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin)
36. Require PUC to mandate that 1 percent of all electricity generated in Texas should come from solar and farm based renewables. (Tom “Smitty” Smith, Executive Director – Public Citizen, Austin)

Electricity – Transmission and Nodal Market Design

37. Require PUC to develop a process for determining the accuracy of Transmission and Distribution Service Provider charges and whether those charges are consistent with current tariffs. (Philip Boyd – City of Lewisville, Lewisville)
38. Require PUC to establish a limit on the time and circumstances for Transmission and Distribution Service Providers to make adjustments to billing. (Philip Boyd – City of Lewisville, Lewisville)
39. Charge ERCOT with responsibility to increase the capacity of the electrical transmission system

to recognize and manage distributed customer demand, present alternatives to building new transmission lines, and keep overall costs low. (Robert J. King – Good Company Associates, Austin)

40. Uniformly allocate all transmission and congestion costs statewide. (Bill Starnes – R. J. Covington Consulting, Austin)
41. Direct PUC to cease work on the development of a nodal pricing system for ERCOT until evidence demonstrates that such a system will create greater benefit for customers at costs less than those that would be incurred to fix existing market problems. (Jay Doegey, Chairman – Cities Aggregation Power Project, Arlington; and Mark Stokes, Mayor – City of Plano, Plano)

Electricity – Retail

42. Require PUC to audit the performance of Retail Electric Providers for customer service and protection, and to make the results publicly available. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
43. Require PUC to develop time limits for service transfers, initiations, and disconnections. (Philip Boyd – City of Lewisville, Lewisville)
44. Statutorily provide that every customer is entitled to an actual meter reading on every metered service at least once every three months. (Philip Boyd – City of Lewisville, Lewisville)
45. Statutorily provide that every retail customer has a right to useful, accurate electric use data. (Philip Boyd – City of Lewisville, Lewisville)
46. Direct PUC to establish standard billing forms for retail electric providers. (Don T. Wilson – City of Grand Prairie, Grand Prairie)
47. Direct PUC to simplify the process for new service requests. (Don T. Wilson – City of Grand Prairie, Grand Prairie; and Pamela Curbow – City of Nacogdoches)
48. Grant PUC additional enforcement authority over retail electric providers who fail to process new service requests in a timely manner. (Pamela Curbow – City of Nacogdoches)

Electricity – Price to Beat

49. Extend the statutory expiration of the Price to Beat beyond 2007. (Tim Morstad, Policy Analyst – Consumers Union, Austin; Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin; and Tom “Smitty” Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin)
50. Require PUC to base increases in the Price to Beat on actual, verifiable increases in the cost of electricity. (Tim Morstad, Policy Analyst – Consumers Union, Austin)
51. Require PUC to base Price to Beat fuel adjustments on all fuel prices (including nuclear, coal and renewables), not just natural gas. (Tom “Smitty” Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin)

52. Require PUC to base Price to Beat fuel adjustments on average energy prices over six months or actual contract prices. (Tom “Smitty” Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin)
53. Require PUC to rigorously review fuel factor increases to the Price to Beat, and provide that any affected party and OPUC has the right to request a review of the Price to Beat. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
54. Require automatic decreases in the Price to Beat when energy prices fall. (Tim Morstad, Policy Analyst – Consumers Union, Austin; Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; Randall Chapman, Executive Director – Texas Legal Services Center, Austin; and Tom “Smitty” Smith, Executive Director, and Travis Brown, Energy Projects Director – Public Citizen, Austin)

Electricity – System Benefit Fund

55. Provide that the low-income weatherization, customer education, and low-income rate discount programs gutted by the appropriations process in the last session reflect the same funding pattern as energy efficiency programs by making the regulated transmission and distribution companies responsible for collecting and spending the funds under PUC oversight. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
56. Restore full funding for the System Benefit Fund. (John W. Fainter, Jr., President and CEO – Association of Electric Companies of Texas, Inc., Austin)
57. Restore funding for the System Benefit Fund low-income weatherization program. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
58. Guarantee that the System Benefit Fund may only be used for its originally intended purpose of providing rate discounts for low-income customers and a targeted energy efficiency program coordinated with the low-income weatherization program. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Staff Comment: Such a guarantee may limit the Legislature’s flexibility to fund other programs as it deems appropriate.

59. Create a reserve fund within the System Benefit Fund or provide the Fund with flexibility above the 65¢ cap in order to cope with seasonal costs of utilities, economic downturns, and unexpected increases in utility costs occurring between legislative sessions. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
60. Clarify eligibility requirements for the System Benefit Fund low-income rate discount to include a household with any member receiving food stamps or medical assistance regardless of whether the named electric customer meets the eligibility requirement. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Staff Comment: This change would expand the number of households receiving discounts, but, without additional funding, would reduce the average discount to all beneficiaries.

61. Provide that the System Benefit Fund may be used to assist in the payment of electricity bills for needy patients on life support or with serious health problems when threatened with disconnection for nonpayment. (Carol Biedzycki, Executive Director – Texas Ratepayers’ Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)

Staff Comment: This change is consistent with the original purpose of the System Benefit Fund and would provide a needed protection to seriously ill consumers who are in danger of being disconnected at no cost to the General Revenue Fund and at a small cost to the System Benefit Fund.

Telephone – General

62. Replace multiple types of statutory certificates issued to local service providers with one certificate. (James J. Lydon, Area Vice President – SBC, Austin; Jan Newton, President – SBC, Austin)
63. Require PUC to treat all providers of the same service equally. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin)
64. Require PUC to regulate services, not providers. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin)
65. Require PUC to adopt policies to encourage competitive network investment. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin)
66. Eliminate any specific service or infrastructure requirements currently placed on any local service provider in PURA or in PUC rules, other than Carrier of Last Resort requirements. (James J. Lydon, Area Vice President – SBC, Austin)
67. Clarify state law to allow Carriers of Last Resort the flexibility to use the technology most appropriate to the area being served. (Jan Newton, President – SBC, Austin)
68. Reform federal and state statutes establishing universal service policies. (Kent Lassman, Research Fellow and Director of the Digital Policy Network – The Progress & Freedom Foundation, Raleigh, North Carolina)

Telephone – Wholesale

69. Require long-distance and other providers that use local exchange carrier networks to terminate calls to provide accurate information on the place of origin for the call. (James J. Lydon, Area Vice President – SBC, Austin; Jan Newton, President – SBC, Austin)
70. Eliminate PUC’s involvement in billing and collection service agreements. (Jan Newton, President – SBC, Austin)
71. Consider whether Utilities Code, sec. 52.202, should be amended or repealed to allow cities and municipal electric utilities to provide telecommunications services. (Don Knight – Texas Coalition of Cities for Utility Issues, Dallas; and Monte Akers – Texas Coalition of Cities for Utility Issues, Austin)

Telephone – Retail

72. Eliminate PUC's oversight of retail rates for telephone companies that have elected into incentive regulation. (Carl Erhart, Vice President of Regulatory Affairs – Verizon Southwest, Austin)
73. Eliminate statutory price caps on retail rates for basic local telephone service. (James R. Hines, Senior Manager - MCI, Austin)
74. Eliminate regulation of retail telecommunications services, except for basic services. (Kent Lassman, Research Fellow and Director of the Digital Policy Network – The Progress & Freedom Foundation, Raleigh, North Carolina)
75. Eliminate statutory restrictions on retail prices offered by any service provider, either on individual services or service bundles, while maintaining safety net or transition provisions for certain customers, including those with low income or low usage patterns. (James J. Lydon, Area Vice President – SBC, Austin; Jan Newton, President – SBC, Austin)
76. Require PUC to maintain service quality measures for all local service providers while eliminating the imposition of specific standards and associated penalties. (James J. Lydon, Area Vice President – SBC, Austin; Jan Newton, President – SBC, Austin)
77. Clarify in statute that PUC's consumer complaint handling role applies equally to the services of all local telephone providers, and require PUC to clearly communicate this responsibility to Texas customers. (Jan Newton, President – SBC, Austin)

Telephone – Broadband, Wireless, and New Generation Technologies

78. Require PUC to make available complaint information on broadband providers. (Carol Biedzycki, Executive Director – Texas Ratepayers' Organization to Save Energy, Austin; and Randall Chapman, Executive Director – Texas Legal Services Center, Austin)
79. Grant PUC clear jurisdiction over consumer protections related to wireless phone service, consistent with federal law. (Tim Morstad, Policy Analyst – Consumers Union, Austin)
80. Restrict PUC from regulating new generation technologies. (Jan Newton, President – SBC, Austin)
81. Eliminate unnecessary regulation of broadband. (Tina Peyton, Texas Field Director – Citizens for a Sound Economy, Dallas)
82. Require all certificated local exchange providers to share the obligation of providing 911 emergency service to Texans, regardless of the technology used; however, any requirements relating to Voice Over Internet Protocol should be established at the federal level. (Jan Newton, President – SBC, Austin)

Recommended Action: Staff recommends adoption of New Issue 61.

Commission Decision: Adopted New Issue 20, as modified to be a management action directing PUC to devote greater resources towards determining and penalizing parties responsible for unreasonable switching or billing delays.

Adopted New Issue 43, as modified to be a management action directing PUC to establish a rulemaking proceeding to develop reasonable time limits for service transfers, initiations, and disconnections.

Adopted New Issue 61.