

SUBJECT: Continuing the Office of Public Utility Counsel

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 5 ayes — P. King, Hunter, Baxter, Hartnett, Turner

0 nays

2 absent — R. Cook, Crabb

SENATE VOTE: On final passage, May 3 — 31-0

WITNESSES: No public hearing

BACKGROUND: Created in 1983, the Office of Public Utility Counsel (OPUC) represents the interests of residential and small commercial consumers to help ensure just and reasonable rates for electric and telephone services. The agency appears in contested rate cases, participates in PUC rulemaking proceedings, advocates on behalf of Texas consumers at the federal level, intervenes in court cases, and represents consumers as a voting member of the ERCOT board of directors. The public counsel is appointed by the governor, subject to Senate confirmation, for a two-year term.

The Electric Reliability Council of Texas (ERCOT) is one of 10 regional reliability councils in North America and the Independent System Operator for the ERCOT area. ERCOT is responsible for facilitating wholesale electricity transactions among power generators and retailers, ensuring customer information is provided to retailers, maintaining the reliability of the transmission network, and ensuring open access to the network.

OPUC underwent sunset review in 1999 and was continued by the 76th Legislature. If not continued by the 79th Legislature, the office will be abolished September 1, 2005.

DIGEST: CSSB 409 would continue OPUC for six years, until September 1, 2011.

Representation. The bill would specify that OPUC could represent residential consumers as a class in any proceeding in which the counselor determined consumers needed representation. OPUC could represent consumers individually or as a class in a judicial proceeding and could represent residential and small commercial consumers as a group or class in any federal bankruptcy case in which the counselor determined consumers to be in need of representation.

Management audit. The bill would require the state auditor in coordination with the Legislative Budget Board to evaluate OPUC's performance measures. The audit would include an estimate of consumer savings attributable to OPUC participation in proceedings. The report would have to be sent to the governor, the lieutenant governor, and the speaker of the House by August 1, 2006.

Annual report. OPUC would have to submit an annual report on its activities to the House Appropriations Committee, Senate Finance Committee, other legislative committees with jurisdiction over OPUC, and the Sunset Advisory Commission. The report would have to include:

- the types of activities conducted by the office and the time spent on those activities;
- the number of hours billed for representing residential and small commercial consumers;
- the type of work performed by each staff position; and
- OPUC's rate of success in representing consumers.

Stakeholder meeting. OPUC would conduct an annual hearing to give the public a chance to comment on the office's priorities, functions, and effectiveness. This meeting would not be subject to state open meetings laws, but notice would have to be filed in the Texas Register.

Across the board recommendations. The bill would add standard sunset provisions governing conflicts of interest, grounds for removing a board member, division of responsibilities, negotiation of rulemaking, technology, and complaint procedures.

Effective date. The bill would take effect September 1, 2005. Changes related to eligibility requirements of the OPUC chief executive would apply only after the effective date of the bill.

**SUPPORTERS
SAY:**

OPUC serves an important function by representing Texas consumers in PUC rulemakings, rate cases, ERCOT protocols, and other proceedings, and CSSB 409 would improve the agency's service to this constituency. The bill would improve accountability at the agency by requiring an annual report by the agency to the Legislature and an audit of the agency's performance measures. In addition, the bill would institute an annual stakeholder meeting to solicit input on the agency's mission and activities from the public that it represents. Finally, by continuing OPUC for six years, the bill would allow the Legislature time to evaluate the agency's role as competition in the electric and telecommunications market expands.

**OPPONENTS
SAY:**

While OPUC served an important purpose in the days of rate regulation, changes in the electric and telecommunications markets have rendered this agency superfluous. For this reason, OPUC should be eliminated. The number of PUC rate cases has declined substantially since the late 1990s, reflecting the increased importance of competition in the electric and telecommunications markets in Texas. The Attorney General's Office easily could absorb the duties of representing consumers in the few rate cases that still occur, and the PUC itself adequately could consider consumer interests in its rulemaking process without the need of adversarial and independent legal representation.

NOTES:

As passed by the Senate, SB 409 would have required OPUC to promptly act on complaints and maintain information about the nature of complaints. The House committee substitute would authorize OPUC to represent consumers in a federal bankruptcy case and in any proceeding in which the office determined consumers to be in need of representation.

CSSB 409 contains provisions on OPUC similar to those in CSHB 1779 by P. King, which was considered by the House on May 12 and left pending.