

SUBJECT: Continue PUC and Office of Public Utility Counsel and review ERCOT

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 11 ayes — Cook, Menendez, Craddick, Frullo, Geren, Harless,
Hilderbran, Huberty, Oliveira, Solomons, Turner

0 nays

2 absent — Gallego, Smithee

SENATE VOTE: On final passage, April 19 — 31-0

WITNESSES: For — Cyrus Reed, Lone Star Chapter, Sierra Club; Tom "Smitty" Smith,
Public Citizen; (*Registered, but did not testify*: Karen Hadden, SEED
Coalition)

Against — None

BACKGROUND: **Public Utility Commission.** The Public Utility Commission of Texas (PUC) was established in 1975 to oversee the operations of electric and telecommunications companies in the state and originally had jurisdiction over water utilities. In 1985, responsibility for water utility regulation was moved to the Texas Water Commission, now the Texas Commission on Environmental Quality (TECQ).

Initially, the PUC regulated rates and services of monopoly utilities as a substitute for competition. Since the 1980s, both telecommunications and electric utilities have undergone changes in their market structure. In 1984, the AT&T telephone monopoly divested its Bell System companies, including Southwestern Bell, which served Texas. In both 1995 and 2005, the Legislature enacted major changes in the regulation of telecommunications to introduce competition and free market principles. In 1999, the Legislature enacted SB 7 by Sibley, which restructured the electricity market to provide for retail competition in large portions of the state. The PUC's role has changed to overseeing regulated activities and the operation of free markets in the restructured telecommunications and electric utilities.

The PUC is headed by three commissioners appointed by the governor with the advice and consent of the Senate. They serve six-year, staggered terms.

PUC last underwent Sunset review in 2005, and its authorization will expire on September 1, 2011, unless it is continued.

Office of Public Utility Commission. In 1983, the Legislature created the Office of Public Utility Counsel (OPUC) as an independent agency, separate from PUC, to represent the interests of residential and small commercial telecommunications and electric customers. OPUC can intervene in rate cases before the PUC or before federal regulators. It participates in PUC rulemaking and represents residential and small commercial electric customers as a member of the Electric Reliability Council of Texas (ERCOT) board.

OPUC has no policy board and is headed by a public counsel, appointed by the governor with the advice and consent of the Senate, for a two-year term.

OPUC last underwent Sunset review in 2005, and its authorization will expire on September 1, 2011, unless it is continued.

Electric Reliability Council of Texas. ERCOT is a non-profit corporation that manages the electric grid for most of Texas and accounts for 85 percent of the electricity consumption and 75 percent of the land area of the state. ERCOT consists of three components:

- one of the three interconnected electricity grids in the United States;
- the Independent Service Operator responsible for the delivery of electricity and providing the wholesale marketplace in the restructured electricity system; and
- the reliability region responsible for developing the standards to maintain the integrity of the electric grid and “keep the lights on.”

ERCOT is governed by a 16-member board composed of eight representatives of electric market stakeholders, and five unaffiliated directors. The market sector stakeholders include representatives of:

- electric cooperatives;
- independent generators;
- independent power marketers;
- investor-owned utilities;
- municipally owned utilities;
- retail electric providers;
- industrial customers; and
- large commercial consumers.

The PUC chairman serves as a non-voting ex officio member, and the ERCOT chief executive officer and OPUC counsel serve as voting ex officio members.

Market sector members serve one-year terms, and the unaffiliated directors serve three-year terms. Unaffiliated members are compensated for attending board meetings at up to \$90,000 a year, with the chair receiving an additional \$10,000.

ERCOT has its beginnings in 1941 when several electric utilities banded together as the Texas Interconnected System to support the war effort during World War II. In 1970, the system formed ERCOT to comply with the requirements of the North American Reliability Council (NERC), which was formed after the Northeast Blackout of 1965 to develop voluntary electric reliability standards.

The federal Energy Policy Act of 2005 empowered NERC to develop mandatory electric reliability standards in conjunction with its reliability regions, including ERCOT. The standards, in turn, are enforced by the Federal Energy Regulatory Commission (FERC).

ERCOT's operating budget is funded through a statutory authorized fee on electricity, the System Administration Fee, and capital expenditures are funded through a mix of debt financing and revenue payments. ERCOT reported a budget of \$191.1 million in 2009 and had 698 employees.

ERCOT is not subject to the Sunset Act and will not expire. This is the first time it has undergone Sunset review.

Other reliability regions. Portions of Texas are included in other NERC regions besides ERCOT. Northeast Texas and the Panhandle fall within the border of the Southwest Power Pool. Southeast Texas is in the

Southeastern Electric Reliability Council, and the area around El Paso is within the Western Systems Coordinating Council. Unlike in the ERCOT region, the Legislature has delayed restructuring of the electric market to include retail competition in these areas, and the PUC regulates rates and services in these areas in a more traditional manner.

Distributed renewable generation. Distributed Renewable Generation (DRG), or “on-site” generation, is produced from renewable sources, such as solar photovoltaic panels, on-site small wind generators, or biogas. Most DRG systems produce enough energy to meet a portion of a home or business’ energy needs, reducing the amount of electricity purchased from a utility. In some cases, a system can produce surplus electricity and sell it back to the grid.

In 2007, the 80th Legislature enacted HB 3693 by Straus, an omnibus electricity efficiency and conservation incentive program. HB 3693 added Utilities Code, sec. 39.916, which requires that a DRG owner be allowed to connect to the electricity transmission grid.

DIGEST:

CSSB 661 would continue both PUC and OPUC until September 1, 2023, and would require further Sunset Advisory Commission review of ERCOT in conjunction with Sunset review of PUC.

Public Utility Commission (PUC). The bill would:

- grant PUC additional authority to regulate the electricity market, including power to require disgorgement of excess revenue because of violation of reliability standards or market rules and to issue cease-and-desist orders;
- require the PUC to approve ERCOT’s budget;
- allow for sale of DRG power back to utilities in regulated markets;
- define additional DRG technologies;
- transfer regulation of water rates from TCEQ to the PUC;
- limit authority of homeowners associations to regulate placement of solar panels;
- allow telecommunications companies to stop distributing printed telephone directories, and
- make other changes.

Disgorgement. CSSB 661 would allow PUC to assess an administrative penalty, not to exceed \$100,000, for violation of a reliability standard set by ERCOT or by NERC, the national standards-making body, for the wholesale electricity market. However, if the person was penalized by FERC, the federal government regulator enforcing the standard, for essentially the same violation, the PUC would not be able to assess an additional state penalty or would have to refund the state penalty assessed before the federal penalty was assessed.

In cases of violation of market power abuse under the Utilities Code, the PUC would be required, in addition to assessing a penalty, to order disgorgement of all revenue in excess of revenue that would have occurred absent a violation.

For other violations of statutes, rules, or protocols relating to wholesale electric markets, the PUC would be authorized to order disgorgement of all excess revenue resulting from the violation, in addition to the penalty.

Any excess revenue ordered disgorged would be returned to the affected wholesale electric market participants to be used to reduce costs or fees incurred by retail electric customers. The PUC would be required to adopt rules to prescribe how revenue would be returned.

The PUC and an alleged violator could develop and enter into a voluntary mitigation plan relating to a violation. Adherence to the plan would constitute an absolute defense against an alleged violation with respect to activities covered by the plan.

The bill would require that parties to a disgorgement proceeding be limited to the alleged violator and the PUC, including the independent market monitor.

Cease and desist order. CSSB 661 would amend the Utilities Code to require PUC to adopt rules on the procedures for adopting cease and desist orders. PUC would be allowed to issue the order, with or without a hearing, if it determined that an action:

- posed a threat to continuous and adequate electric service;
- was fraudulent;
- was hazardous;
- created an immediate danger to the public safety; or

- could reasonably be expected to cause an immediate injury to an electric customer that was incapable of being repaired or rectified by monetary compensation.

The PUC would be allowed to delegate the authority to its executive director to issue the cease and desist order.

If a hearing were required, notice would have to be provided no later than 10 days before the hearing date. The notice would have to include a statement of charges and would require the person to cease and desist from the acts, methods, or practices stated in the order. The notice would be delivered by registered or certified mail, return receipt requested, sent to the person's last known address.

If an order was issued without a hearing, the affected person would be allowed to request a hearing to affirm, modify, or set aside the order. The request would have to be made within 30 days of when the person received the order. The hearing would have to be held no later than 10 days after the PUC received the request or on a date agreed to by both the PUC and the person. The PUC would be allowed to hold a hearing on the cease and desist order or to authorize the State Office of Administrative Hearings to hold the hearing.

CSSB 661 would require that the order stay in force until stayed by the PUC and would allow for assessment of an administrative penalty for violation of the cease and desist order.

ERCOT oversight. CSSB 661 would require ERCOT to submit its annual budget for review and approval by the PUC, which could approve, disapprove, or modify any item in the budget. The PUC would be required to adopt rules on the type of information or documents needed to effectively evaluate the ERCOT budget and to set a deadline for submitting that information. The PUC also would be required to establish a procedure for ensuring public notice of and participation in the budget review process.

ERCOT would also have to submit for PUC review and approval any debt financing or refinancing existing debt. The PUC would be allowed to approve, disapprove, or modify the debt financing proposal.

The PUC would approve performance measures to track ERCOT operations and review those measures as part of the annual budgetary process. The PUC would have to prepare an annual report on ERCOT's performance and submit that information to the lieutenant governor, the House speaker, and the Senate and House standing committees with jurisdiction over electric utility issues.

As part of the approved budget, the PUC would set the range of the system administration fee assessed to wholesale electricity buyers and sellers to fund ERCOT operations. The amount of the fee would be monitored to ensure that the revenue it raised closely matched expenditures for ERCOT, without creating a surplus or deficit at the end of the budget year. ERCOT would be required to submit quarterly reports on actual and budgeted expenditures.

CSSB 661 would specify that PUC approval of the ERCOT budget or setting the administrative fee would not be considered a contested case before the commission.

Distributed renewable generation. CSSB 661 would include gasified waste as a form of renewable energy technology and would further define renewable energy as any process that did not rely solely on energy resources derived from fossil fuels and waste products from fossil fuels or inorganic sources.

CSSB 661 would permit the owner of the distributed renewable generation (DRG) operation in an area within ERCOT that had retail competition to sell any surplus electricity back to the retail electric provider. This would apply whether or not the owner was also the retail electric customer, but the owner's DRG would have to be rated to produce an amount of electricity less than or equal to the amount the customer for whom the generation was installed would reasonably expect to consume in a year.

The price of the surplus electricity would be set at the avoided cost — or the marginal cost of producing electricity — as determined by PUC rules. The electric utility purchasing the surplus electricity would be required to:

- make a quarterly payment to the DRG owner; or
- apply a credit to the seller's electricity account and allow the credit balance be carried forward for up to 12 months.

While this provision would not apply to municipal-owned utilities or electric cooperatives, other sections in CSSB 661 would require these utilities also to provide interconnection of DRG owners to their transmission grids and payment for surplus electricity. The city council or commission governing a municipal utility or directors of an electric cooperative would have to adopt rates, rules, and procedures for DRG interconnections within 120 days of receiving a bona fide request for interconnection. Both municipal utilities and electric cooperatives would have to file their DRG interconnection and surplus electricity purchase rates, rules, and procedures with the State Energy Conservation Office by January 1, 2012, and to make timely updates.

CSSB 661 would require that the PUC website include easily comparable information comparing the price retail electric providers would pay for DRG surplus electricity.

The PUC's report on scope of retail competition published before September 1, 2013, would be required to include information about prices paid for DRG surplus electricity. This provision would expire on September 1, 2013.

CSSB 661 also would repeal Utilities Code, sec. 39.916 (h), which requires that the price for DRG surplus electricity sold back through an interconnection be the net value of the electricity.

Transfer water rate regulation. CSSB 661 would move responsibility for ratemaking and other economic regulation for water and wastewater from TCEQ to the PUC, but TCEQ would retain jurisdiction on regulating water and sewer utilities to ensure safe drinking water and environmental protection. CSSB 661 would allow the two entities to consult with each other as part of their joint regulation of water and sewer utilities.

All TCEQ powers, duties, functions, programs, and activities related to the economic regulation of water and sewer utilities would be transferred to the PUC on June 1, 2012. TCEQ also would transfer any property and records to the PUC, and the two agencies would have to sign a memorandum of understanding on transfer of any TCEQ personnel to the PUC by April 1, 2012. The PUC and the TCEQ would be required to adopt rules to implement CSSB 661 by November 1, 2012.

Other provisions would allow a conservation and reclamation district to request that the PUC review rates charged by a supplier of raw or treated surface water or groundwater to determine whether the rates adversely affected the public interest. The bill would establish various factors to evaluate the claims of a supplier's abuse of monopoly power. After an application process and hearing, the PUC could fix a rate deemed to be just and reasonable for the district while preserving the financial integrity of the supplier.

CSSB 661 also would allow an owner of tract of land at least 25 acres and not receiving water or sewer service to petition for expedited release of the area from a certificate of public convenience and necessity if the land was located in a county with a population of at least one million or an adjacent county, or a county with a population of between 200,000 and 220,000 (Smith County). The PUC would be required to grant the petition no later than 60 days after the landowner filed the petition. The PUC could order compensation be paid to the decertified retail public utility.

Solar panel restrictions: CSSB 661 would prevent a property owners' association from including or enforcing a provision in a real estate dedicatory instrument that prohibited a homeowner from installing a solar energy device as defined by the Tax Code. The bill would void any deed restriction against solar energy devices. A property owners' association could require a homeowner to get approval from an association committee created for such purposes before installing a solar energy device.

The property owners' association could prohibit a solar energy device that:

- threatened public health or safety;
- violated a law;
- was located on property owned or maintained by the property owners' association;
- was located on property owned in common by the members of the property owners' association;
- was located anywhere on the individual property owner's premises other than the roof of the home or in a fenced yard or patio;
- if mounted on the roof: was higher than the roofline; did not conform to the slope of the roof and had a top edge not parallel to the roofline; had a frame, support bracket, or visible piping or wiring that was not in a commonly available silver, bronze, or black tone; or was in an area other than the one designated by the

property owners' association unless this area increased its energy production by more than 10 percent as determined by the National Renewable Energy Laboratory;

- if in a fenced yard or patio, was taller than the fence; or
- conflicted with the manufacturer's installation requirements or voided material warranties.

Telecommunications provisions. CSSB 661 would allow a telecommunications provider or utility to cease publishing or distributed printed telephone directories if the provider or utility:

- provided the PUC with written notice that it no longer would publish or distribute a printed telephone directory;
- notified its customers that a printed telephone directory no longer would be printed or distributed; and
- published a telephone directory on its Internet website.

However, a telecommunications provider or utility would be required to provide a print or digital copy to a customer upon request. The provider or utility would have to take the request through its website or a toll-free telephone number. The provider or utility would be required to furnish the first print or digital copy requested by a customer in each calendar year at no charge.

The bill also would require each long distance telecommunications company, local telephone company, or other company with a service provider certificate to file information on its name and address and its annual report with the PUC on a one-time or periodic basis. If the registration or certification were no longer valid, the utility would have to meet the requirements for an original registration or certificate.

Other changes. CSSB 661 would require that a transmission line designed to serve a competitive renewable energy zone, such as one tying wind-generated power from a reliability council region outside ERCOT to users within ERCOT, be placed underground if the transmission line was:

- adjacent and parallel to a highway;
- in the corporate limits or extraterritorial jurisdiction of a city with a population of 25,000 or less; and
- across the Guadalupe River.

This provision would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

OPUC. CSSB 661 would amend Water Code, ch. 13 subch. B, to require OPUC to represent the interests of residential and small commercial consumers regarding water rates and services.

OPUC would:

- have to assess the effect of utility rate changes and other regulatory actions on residential consumers in Texas;
- have to advocate a position determined to be most advantageous to a substantial number of residential consumers;
- be entitled to the same access as a party, other than PUC staff, to records gathered by the PUC; and
- be entitled to discovery of any nonprivileged matter that was relevant to the subject matter of a proceeding or petition before PUC.

OPUC could:

- appear or intervene on behalf of a residential consumer or small business consumer;
- initiate or intervene in a judicial proceeding that involved an action taken by an administrative agency in certain circumstances;
- represent an individual residential or small commercial consumer with respect to the consumer's disputed complaint concerning retail services that were unresolved before the PUC; and
- recommend legislation to the Legislature that OPUC determined would positively affect the interests of residential and small commercial consumers.

This bill would not limit the authority of the PUC to represent residential or small commercial consumers.

The appearance of OPUC in a proceeding would not preclude the appearance of other parties on behalf of residential or small commercial consumers. OPUC could not be grouped with any other party.

ERCOT. CSSB 661 would change the number and qualifications of those serving on ERCOT board. The bill would remove the PUC chairman as an ex officio and non-voting member and the OPUC counsel as ex officio

member and voting member representing residential and small commercial electric consumers. The ERCOT chief executive officer would remain as an ex officio and voting member.

The bill would keep the six market participants elected by their respective market segments for one-year terms, but the new lineup would include one representative from entities serving retail customers rather than power marketers and two, rather than one, from organizations representing retail customers. The municipal utilities and cooperatives would elect one representative for both groups rather than each have their own representative on the board. Four members would be unaffiliated with any market segment and would serve no more than two three-year terms.

ERCOT would be required to establish and implement a formal process for adopting electric reliability protocols. The process would require that a majority of the ERCOT board initiate the creation or revision of the protocols, and the ERCOT staff develop the new or revised protocols and submit them to the board for approval.

CSSB 661 also would prohibit a PUC commissioner from being employed by ERCOT for two years after ceasing to be a PUC commissioner.

The bill would take effect on September 1, 2011.

**SUPPORTERS
SAY:**

PUC. CSSB 661 would continue longstanding efforts to help the Public Utility Commission (PUC) direct the ongoing transition from traditional regulation of monopoly utility to the market-oriented environment that now prevails for both the electric and telecommunications industries. Market forces and technological changes drive rapid change in these industries, and the PUC, along with the Legislature, must be able to lead, not merely cope with, the dynamics of this arena.

CSSB 661 would provide clearer guidance for the roles of both PUC and ERCOT in overseeing the growing competition and technological change in wholesale and retail electric markets. The bill would grant PUC more oversight in ERCOT operations and help make the organization more responsive and accountable to the Legislature, electric customers, and all Texans.

The bill would return PUC to a traditional role in regulating rates and other economic aspects of water and sewage utilities. The agency has the

expertise and experience to determine policies that would be fair and responsive to both utilities and customers.

Disgorgement. A basic premise in law is that if a person is caught stealing or defrauding people of their money, law enforcement officials recover the funds and penalize the criminal with a jail sentence or fine. Although the deregulation of Texas' electricity market has resulted in expanded investment to meet the state's growing demand for electricity, as well as providing consumer choice in the retail market, the PUC does not have all the tools necessary to ensure that all market participants are operating within the law designed to achieve a fair marketplace. Currently, the PUC has the ability only to assess a penalty in instances of market violations. CSSB 661 would grant PUC the authority not only to assess a penalty, but also to get the excess revenue gained from the violation back to the retail electric companies or consumers who paid it.

The PUC, as with any other regulatory and enforcement agency, must be empowered to deal with fraud and violations of the law. CSSB 661 would authorize the PUC to recover inappropriately received revenue resulting from violations of wholesale electricity statutes, rules, and protocols. It would make it clear that market power abuse would not be tolerated. Under CSSB 661, violators would have to return all ill-gotten revenue and be subject to appropriate administrative fines.

Cease and desist orders. CSSB 661 would grant authority to the PUC to stop unlicensed or harmful activity immediately to protect the public. Under current rules, the procedure takes so long that the PUC already has issued a final order rather than a cease and desist order. Immediate action may be crucial if the harmful behavior affects electric reliability or causes an immediate harm to consumers, such as disconnecting consumers during a summer disconnect moratorium. Other regulatory agencies, such as the Texas Department of Insurance, have emergency cease and desist authority to address harmful activities. The power is such a routine regulatory tool that the Legislature already has granted agencies such as the State Board of Examiners for Speech-Language Pathology and Audiology authority to issue cease and desist orders.

Allowing private individuals or companies to seek redress through the courts would not be feasible. Litigation is expensive, and these parties lack the resources PUC has to analyze and remedy threats to public safety.

Also, the Legislature has consistently supported a policy of tort reform to keep unnecessary litigation from clogging the court system.

ERCOT oversight. CSSB 661 would provide PUC with greater oversight of ERCOT's budget and would make this powerful non-profit organization more accountable to ratepayers and the public. Questions have persisted about ERCOT's finances and operations for many years. Ultimately, Texas electric customers pay the bill for expensive and wasteful projects. CSSB 661 would provide a meaningful mechanism to match the organization's revenues with its expenditures.

CSSB 661 would require Sunset review of the agency in conjunction with further examination of the PUC. While ERCOT would not be subject to a provision that its authorization automatically expire if not approved for continuance, the organization would be evaluated like other state agencies.

DRG. CSSB 661 would allow for a broader definition of renewable energy sources and would permit the development of technologies such as municipal solid waste gasification. It also would allow for innovative uses of biomass fuels in conjunction with more traditional fossil-based fuels.

Small DRG owners in non-ERCOT areas or where retail competition is not allowed by municipal utilities or electric cooperatives would have the same right to interconnect to the grid and sell power back as do DRG owners in areas with retail competition. It would be only fair to treat those who generate electricity for their own use and provide some limited amount back to the grid the same throughout the state.

Water rate regulation. Moving water and sewer rate regulation to the PUC would be a more logical fit for this function than keeping it at TCEQ. PUC historically has regulated rates and services of electric and telecommunications companies as a substitute for competition where it does not exist or lacks robustness. At one time, PUC also regulated water and sewer rates. Although recent legislative changes have restructured and deregulated major portions of the electric and telecommunications markets, the PUC continues to have a significant ratemaking authority and oversight for these utilities.

CSSB 661 would clearly define the roles of both PUC to regulate rates and economic matters and of TCEQ to regulate for drinking water safety and

environmental protection. The two agencies should be able to coordinate their efforts to benefit Texans.

Solar panels. CSSB 661 would help protect private homeowners' rights by keeping a homeowners association (HOA) from arbitrarily prohibiting solar panels. It also would serve a larger public purpose in promoting energy conservation and efficiency. Homeowners should be encouraged to generate more of the electricity that they use and should be able to sell excess power back to the electricity grid. Solar panels are part of a larger energy program to develop new fuel mixtures, smart metering, and other initiatives. The rolling blackouts this past February demonstrate the need for local electricity generation separate from the central power plants.

Most deed restrictions were written before technologies such as solar panels became readily available. Too many of those covenants on aesthetics represent "dollhouse documents" that reflect the developers' original vision of an ideal neighborhood. CSSB 661 would establish reasonable exceptions that would take into account how modern families actually live.

Telecommunications. CSSB 661 would adopt a Sunset Commission recommendation by asking long distance carriers and local telephone companies to update their filings with the agency. Many of these companies no longer exist, but the PUC does not know their status. The bill also would provide a way for companies to reregister should they not immediately update their information.

CSSB 661 would allow PUC rules and state statutes to recognize current telephone companies' policies of not distributing printed directories. AT&T stopped delivering white pages in large cities several years ago. Printing and distributing telephone directories is expensive and wastes energy to produce paper and to deliver them. The bill would require that the information be available online or to customers who requested a printed copy.

Other changes. Hill Country residents should not have their view of this scenic area of the state marred by high-voltage power lines carrying electricity from wind farms that they will not use. The electric customers who enjoy use of that energy should pay for putting those transmission lines underground.

OPUC. The Sunset Advisory Commission recognized that the Office of Public Utility Counsel's (OPUC) independence enables it to effectively represent electric and telephone ratepayers in cases before the Public Utility Commission (PUC) and the courts. OPUC has demonstrated that it represents the interests of residential and small business ratepayers by providing evidence and expert witnesses, cost allocation, and rate design for its represented ratepayers. It should be able to continue its current work and also represent residential and small business ratepayers in an expanded role in water and sewage rate cases.

Moving OPUC to within the PUC could compromise its impartiality and effectiveness. The change also would save only an insignificant amount of money.

ERCOT. CSSB 661 would change the composition of the ERCOT board to provide more representation to groups representing retail customers and the public. The bill would help reduce the influence of electric market stakeholders that can be seen as impairing the impartiality of the board.

CSSB 661 would help provide a balance on how to reorganize the board. Limits exist on providing stakeholder representation and creating a board that would be too unwieldy.

Protocol development. CSSB 661 would provide a more streamlined method for developing protocols and other rules for ensuring reliability of the electricity transmission grid. The current "ground up" process in which any ERCOT member can suggest new or revised standards has become cumbersome and does not lead to timely decisions on the proposed changes. The bill would require that the ERCOT board initiate any new or revised standards and delegate the details to the ERCOT staff.

Even with a revamped membership, the ERCOT board should be given the responsibility to guide the standards making process because it is difficult to separate the technical aspects from the larger financial and public policy decisions. That has been particularly true since the Energy Policy Act of 2005 delegated development of electricity reliability standards to NERC, and its component associations, including ERCOT. Other policy boards with a mix of experts and laymen, including the Legislature, routinely make decisions on complex topics.

OPPONENTS
SAY:

PUC. *Disgorgement.* The PUC already has considerable authority to assess penalties, with some administrative penalties being as high as \$25,000 per violation per day. These penalties are enough of a deterrent to prevent market abuse. With instances of penalties reaching more than \$200 million, administrative penalties are nothing to take lightly. Disgorgement should not be required in addition to administrative penalties.

CSSB 661 is a solution in search of a problem. Market manipulation has happened on an historically limited basis, with only one alleged instance in nine years of competition. The problem with electric marketers compromising the reliability of the grid to manipulate the market remains little more than a memory of Enron's misdeeds in the newly-restructured California markets. The PUC investigation into the February 2 rolling blackouts showed no deliberate attempt to violate reliability protocols to raise prices. In many cases, the companies that lost generation capacity lost, rather than reaped, large sums of money. Further, a market monitor is continuously monitoring the market to detect manipulation and serve as a deterrent. CSSB 661 could create an incentive for people seeking damages and liability.

Cease and desist. The PUC should not be granted this extensive and often dangerous level of power. Problems should be solved by the marketplace, and failing that, in the courts.

DRG. CSSB 661 would potentially undermine current rules and policies designed to encourage use of renewable energy sources. The bill would make no distinction between energy derived from the organic matter or "sustainable biomass" components of municipal solid waste, which may plausibly be considered "renewable," versus the inorganic matter, such as plastics, waste tires, lead paint, mercury, and waste fuel, which is not. Also, allowing renewable energy technologies that do not rely solely on fossil fuels could lead to a situation where using a small amount of biomass, even a single wood chip, with fossil fuel was considered "renewable." The standard would undermine current PUC rules for what is considered renewal.

Water rate regulation. CSSB 661 could complicate regulating water and sewage service in the state by splitting the functions between the PUC and TCEQ. The economic aspects of regulation cannot be clearly separated from the environmental aspects. Also, the Legislature has shown it does

not support placing all utility regulation in one agency as in other states when it declined to move natural gas regulation from the Railroad Commission to the PUC.

Solar panels. HOAs also have property rights and a vested interest in preserving the quality of life and property values in their neighborhoods. While some associations have made what appear to be arbitrary decisions, most are willing to allow property owners to install solar energy devices as long as they meet standards set in the deed restrictions. Such choices are more properly made at the local level, and the Legislature should not interfere in these matters.

Other changes. Burying transmission lines in the Hill Country, even on a limited basis, would be prohibitively expensive and could compromise reliability of the electricity transmission grid. Transmission of electric remains regulated, and those expenses would be paid by all Texas ratepayers.

OPUC. The Legislature should abolish OPUC as an independent agency and move it into the PUC administrative structure. The benefit of keeping an independent agency is unclear as changes in the electricity and telecommunications markets mean more restructuring and fewer contested rate cases.

ERCOT governance. Neither the OPUC counsel nor one of the representatives from the municipal utilities or the electric cooperatives should have been removed from the board. The OPUC counsel has an institutional role in being an advocate for residential and small business electric customers who largely are unorganized and lack the resources to make their voices heard.

While the ERCOT market may be dominated by investor-owned electric utilities, large numbers of customers are still served by municipal utilities and electric cooperatives. Electric cooperatives traditionally serve rural areas of the state. There is no reason to deny representation to both cities who own electric utilities and rural areas with electric cooperatives.

Protocol development. Even with the changes in the process because of the Energy Policy Act of 2005, development of electric reliability standards remains a technical exercise. While new members may be able to meet the obligations of most of ERCOT's tasks, they may lack the

expertise needed when the group functions as the regional electric reliability council.

OTHER
OPPONENTS
SAY:

PUC. DRG. CSSB 661 should be revised to eliminate the reference to “solely” for energy resources derived from fossil fuels or waste products from inorganic matters. The bill should allow facilities that gasify waste to count as renewable energy technology and exclude the designation for a coal plant that uses fossil fuels with a couple of wood chips thrown in.

ERCOT. Governance. CSSB 661 should expand, rather than reduce, the groups represented on the board. ERCOT serves the vast majority of electric customers in the state, including large institutions such as hospitals, schools, and universities.

Protocol development. ERCOT should adopt the process NERC uses for developing electric reliability standards that includes approval from a larger portion of stakeholder representatives. The changes and revisions proposed by members are vetted by the NERC staff and various advisory committees before being submitted to the board. However, the NERC process includes a balloting of a large number of stakeholder representatives and new and revised standards must receive a super-majority of two-thirds from each stakeholder category to be approved.

NOTES:

Rep. Solomons has pre-filed two amendments to revise the renewable energy section and the provisions on ERCOT governance.

The renewable energy section would remove the reference to energy technologies that rely solely on fossil fuels or waste products from inorganic matters.

The second amendment would include 21 members on the ERCOT governing board, including the CEO of ERCOT and nine market participants including a representative of:

- independent generators;
- investor-owned utilities;
- power marketers;
- retail electric providers; ;
- municipally owned utilities;
- electric cooperatives;

- industrial customers;
- large commercial consumers; and
- municipalities.

The amendment would call for five unaffiliated members, including one with financial expertise.

Other members would be:

- one representative of small commercial and residential customers appointed by OPUC;
- one unaffiliated member appointed by the PUC;
- one appointed by the governor with advice and consent of the Senate to serve a one-year term to represent hospitals;
- one appointed by the governor with advice and consent of the Senate to serve a one-year term to represent independent school districts; and
- one appointed by the governor upon recommendation by the Texas Higher Education Coordinating Board and confirmed by the Senate, to serve a one-year term to represent colleges and universities; and
- one member from the General Land Office.

The PUC and OPUC would be allowed to replace the members they appoint. The ERCOT board could remove the ERCOT CEO. The PUC would be allowed to remove an ERCOT member, other than the CEO, for violation of law or PUC rules.