

SUBJECT: Continuing the PUC and OPUC

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 12 ayes — Hunter, Hernandez, Anchía, Geren, Guillen, Metcalf,
Raymond, Slawson, Smithee, Spiller, S. Thompson, Turner

0 nays

1 absent — Dean

WITNESSES: For — Cyrus Reed, Lone Star Chapter Sierra Club; Michele Richmond, Texas Competitive Power Advocates; Kenneth Flippin, US Green Building Council Texas Chapter (*Registered, but did not testify*: Judd Messer, Advanced Power Alliance; Tracy Morehead, Apex Clean Energy; Mark Bell, Association of Electric Companies of Texas; Jason Ryan, CenterPoint Energy; Scott Hutchinson, Entergy Texas; Jason Sabo, Environment Texas; Shannon Ratliff, Jupiter Power; Sarah Floerke Gouak, Lower Colorado River Authority; Jessica Oney, NRG; Michael D. Lozano, Permian Basin Petroleum Association; Adrian Shelley, Public Citizen; Michael Ruggieri, Southwestern Elec. Power Co.; Ashley Myers, Texas Association of Water Companies; Walt Baum, Texas Cable Association; Julia Harvey, Texas Electric Cooperatives; Joshua Houston, Texas Impact; Shana Joyce, Texas Oil & Gas Association; Shelly Botkin, Texas Public Power Association; John Pitts, Jr, Texas Solar Power Association; Mance Zachary, Vistra Corporation; Damon Withrow, Xcel Energy)

Against — (*Registered, but did not testify*: Henry Bohnert)

On — Emily Johnson, Texas Sunset Advisory Commission (*Registered, but did not testify*: Kristi Hobbs, Electric Reliability Council of Texas; Courtney Hjaltman, OPUC; Thomas Gleeson, Public Utility Commission)

BACKGROUND: The Public Utility Commission of Texas (PUC) oversees the operations of electric, water, and telecommunications utilities. The Commission was

originally established in 1975 for the purpose of regulating rates and services of monopoly utilities, but, since the general deregulation of telecommunications and electric utilities by the Legislature, the PUC's role has shifted to the operation of regulated activities and the oversight of competitive markets in these sectors. As part of Sunset legislation in 2013, the Legislature transferred certain economic aspects of water utility regulation, including ratemaking, from the Texas Commission on Environmental Quality to PUC.

Functions. PUC's established mission is to protect customers, foster competition, and promote high-quality infrastructure. The commission supervises the Electric Reliability Council of Texas (ERCOT) and the competitive electric markets within the ERCOT region. PUC conducts utility rate cases to ensure appropriate prices, licenses utility industry professionals, and investigates customer complaints and violations of the agency's rules. The Texas Universal Service Fund, which supports landline telephone service in rural areas, is administered by PUC.

Governing structure. In 2021, as part of reforms in response to the Winter Storm Uri crisis, the Legislature expanded the number of PUC commissioners from three to five members, who are appointed by the governor in consultation with the Senate. Commissioners serve staggered, six-year terms with the chair designated by the governor.

Funding. In fiscal 2021, the PUC's budget was \$16.1 million, mostly from general revenue. The majority of the commission's expenditures in fiscal 2021 were related to utility regulation and oversight of market competition through contested cases and rulemaking.

Staffing. PUC had 166 employees in fiscal 2021, although it has authority for a staff of 209. Staff are organized by overall function rather than specific industry.

OPUC. The Legislature established the Office of Public Utility Counsel (OPUC) in 1983 as a separate agency from PUC to represent the interests of residential and small commercial consumers in utility matters. OPUC

advocates for consumers in rate cases and contested cases, participates in PUC rulemaking projects, represents consumers as a board member of ERCOT, and addresses consumer inquiries and complaints.

PUC and OPUC will be discontinued on September 1, 2023 if not continued in statute.

DIGEST: CSHB 1500 would continue the Public Utility Commission (PUC) and the Office of Public Utility Counsel (OPUC) until September 1, 2029. Enabling statute for both agencies would no longer be subject to expiration. The bill would:

- specify and limit the ways PUC could give directives to ERCOT;
- add a PUC commissioner other than the chairperson as an ex officio non-voting member of the ERCOT board;
- limit the conditions under which the ERCOT board could enter a closed executive session and authorize the board to exclude PUC commissioners from such sessions;
- require PUC to develop a communications plan;
- require PUC to allow public testimony on all agenda items at regular meetings;
- modify reporting requirements for PUC and ERCOT; and
- limit the duration of temporary manager appointments for certain utilities.

ERCOT oversight. CSHB 1500 would prohibit PUC from using verbal directives to direct ERCOT to take an official action, except in certain emergencies. PUC could direct ERCOT to take an official action only through:

- a contested case;
- rulemaking;
- a memorandum; or
- a written order.

PUC would be required to adopt rules that:

- specified the types of directives that could be issued through the non-verbal means listed above;
- established PUC voting requirements for issuing a directive;
- required opportunity for public comment on proposed directives at commission meetings; and
- established a reasonable timeline for the release of discussion materials on proposed directives before commission meetings.

The bill would authorize PUC to use a verbal directive to direct ERCOT to take an official action in an emergency that posed an imminent threat to public health, safety, or grid reliability. PUC would be required to provide written documentation of the directive within 72 hours after the emergency ended.

The bill would authorize PUC to approve, reject, or remand with suggested changes ERCOT protocols, including rules. ERCOT protocols and enforcement actions would be subject to PUC review and could not take effect without PUC approval.

CSHB 1500 would require two PUC members, one of whom must be the PUC presiding officer, to be included in ERCOT's governing body as an ex officio non-voting member. The additional member would be designated by the PUC presiding officer to serve a one-year term, successively and in order of seniority.

ERCOT closed meetings. CSHB 1500 would revise statute related to ERCOT board meetings to specify that the board or a subcommittee could enter into an executive session closed to the public only to address contracts, competitively sensitive information, the security of the regional electrical network, or a matter which PUC would be authorized to consider in a closed meeting under the Open Meetings Act. For purposes of entering into an executive session to address these matters, the bill would authorize ERCOT's board or a subcommittee to adopt a policy allowing them to exclude the public and PUC commissioners in specific circumstances. This policy would not be subject to PUC approval.

Communications plan. CSHB 1500 would require PUC to develop a plan for improving communications with the public, market participants, and other relevant audiences while also responding to changing communications needs. The plan would be required to include goals, objectives, and metrics to assess PUC efforts, and be updated at least once every two years.

Public testimony at PUC meetings. CSHB 1500 would require PUC's policies to include public testimony as an agenda item for each regular commission meeting and allow the public to comment on each agenda item unrelated to a contested case and on any other matters under PUC jurisdiction. PUC would be authorized to prohibit public comment on a agenda item related to a contested case.

Reports. CSHB 1500 would require PUC, in consultation with ERCOT to prepare and submit to the Legislature an electric industry report by January 15th of each odd-numbered year. The report would be required to:

- identify existing and potential transmission and distribution constraints and system needs within the ERCOT region, and alternatives and recommendations for meeting system needs;
- summarize key findings from the Grid Reliability Assessment and the Long Term System Assessment Report;
- outline basic information on the electric grid and market in the state; and
- be presented in plain language readily understandable by a general audience.

CSHB 1500 also would require PUC and ERCOT to review annually any statutes, rules, protocols, and bylaws that applied to conflicts of interest for commissioners and board members and submit to the Legislature a report on the effects of those regulations on the ability of PUC and ERCOT to fulfill their duties.

The bill would consolidate certain currently required reports by including

them in the requirements for PUC's biennial report on suggested improvements of the commission's statutory authority and for utility regulation in general. Certain other required reports would be repealed.

Water utility temporary manager appointments. CSHB 1500 would limit the term of a person appointed by emergency order to temporarily manage a water or sewer utility to 360 days. The emergency order could be renewed for a single 360-day period, or, for a utility undergoing a sale, transfer, merger, consolidation, or acquisition, for a reasonable time until the transaction was complete.

The bill would include standard Sunset across-the-board provisions related to commission member training.

The bill would take effect September 1, 2023.

SUPPORTERS
SAY:

CSHB 1500 would improve transparency and clarity in PUC's direction of ERCOT and augment the commission's public communications efforts, while ensuring that ERCOT retained appropriate independence by allowing the board to restrict PUC commissioner presence at closed executive sessions for specific sensitive purposes.

ERCOT oversight. CSHB 1500 would ensure that PUC's direction of ERCOT adhered to best practices for openness and transparency by prohibiting the commission from using verbal directives except in emergencies, requiring opportunity for public input on all PUC directives to ERCOT, and prescribing the allowed forms for those directives to take place. The bill would clarify PUC's authority over ERCOT by specifying that the commission could not only approve but also reject or remand ERCOT protocols, bringing protocol oversight in line with PUC authority in other areas.

CSHB 1500 would ensure that PUC communication with and oversight of ERCOT did not depend solely on the commission chairperson by adding another commissioner as a non-voting member of the ERCOT board. Because the additional member would rotate in order of seniority, each

commissioner would gain the experience of serving on the board. However, the bill also would ensure proper ERCOT independence by allowing the board to exclude both PUC commissioners from a closed meeting, particularly a meeting about a situation in which PUC potentially would have to pass judgment on ERCOT. The bill would make it clear that such closed meetings could only be held on specified, sensitive topics.

Because they cannot vote, PUC commissioners on ERCOT'S board do not unduly infringe on the organization's independence; instead, PUC presence on the ERCOT board facilitates communication and efficient coordination between PUC and ERCOT.

Public communications, participation. In the wake of the 2021 winter storm crisis, it is especially important for PUC to improve public communication in order to restore the trust of the public and state officials. CSHB 1500 would support such efforts by requiring the agency to develop and regularly update a comprehensive and strategic communications plan. The plan would help the agency make the best use of its limited resources and make agency operations more transparent.

The bill also would enhance meaningful public participation in PUC processes by requiring opportunity for public comment on all agenda items at each regular commission meeting. Public input is especially important for assessing the potential impacts of the significant changes PUC continues to make to ensure grid reliability following Winter Storm Uri. This requirement would not affect PUC's ability to limit the length of testimony to ensure meetings would not be unnecessarily prolonged.

CSHB 1500 also would help legislators and other audiences gain insight into the state's electricity market by requiring PUC and ERCOT to prepare a report that summarized in accessible language the information contained in other, more technical reports intended for an industry audience. The report would enable the Legislature to holistically consider any needed policy changes.

Water utility temporary manager appointments. CSHB 1500 would relieve strain on PUC's limited resources by clearly establishing the length of time allowed for temporary manager appointments for certain dysfunctional water and wastewater utilities. Currently the authority for such appointments is shared by PUC and TCEQ, but the agencies have differing interpretations of how long the appointments may last. Because TCEQ believes an appointment cannot last longer than a maximum of 360 days, there are cases in which PUC takes responsibility for the appointment in order to ensure that the utility's customer's continue to receive service. Establishing that an initial 360 day appointment could be renewed for an additional 360 days would allow more affected utilities to be restored to functionality before being transferred to PUC, freeing agency resources for other purposes.

This change would not be intended to delay the process of restoring utilities to normal operations, but to ensure continued service to customers without unnecessarily burdening PUC and allowing sufficient time to find suitable operators to take over dysfunctional utilities.

CRITICS
SAY:

ERCOT oversight. CSHB 1500 would inhibit PUC's authority over ERCOT by allowing the ERCOT board to exclude the PUC chairperson and commissioner members from certain board meetings. All PUC commissioners should be able to attend ERCOT board executive sessions in order to provide effective oversight.

Public communications, participation. PUC should not be required to allow public comment on all rules discussed in a regular commission meeting. Interested parties have ample opportunity to provide written comments on proposed rule changes when they appear as meeting agenda items; allowing these comments to be repeated verbally would be duplicative and could unnecessarily prolong meetings.

Water utility temporary manager appointments. The Legislature has taken specific actions in recent years to make it more feasible to return dysfunctional water and wastewater utilities to normal operations. By extending the duration of a temporary manager appointment, CSHB 1500

could allow unreasonable delays in this process.

OTHER
CRITICS
SAY:

CSHB 1500 should ensure the independence of ERCOT influence by removing all PUC commissioners from the ERCOT board, which would eliminate the need for the commissioners to be excused from ERCOT executive sessions and avoid the possibility of the commission having to recuse itself in an appeal. Having only one or some of the PUC commissioners serve on the board also could raise questions of preferential access and undue influence.