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OPEN MEETING COVER SHEET

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AGENDA ITEM NO.: 24

CAPTION: Project No. 38264, Report on the Scope of Competition in Electric Markets in Texas

ACTION REQUESTED: Discussion and possible action with respect to the 2011 report to the Legislature.

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TO: Chairman Barry Smitherman
Commissioner Donna Nelson
Commissioner Kenneth Anderson, Jr.

FROM: Grace Godines, Competitive Markets Division

DATE: December 9, 2010

SUBJECT: **Project No. 38264** - *Report to the Legislature on the Scope of Competition in Electric Markets*, for consideration at the December 16, 2010 Open

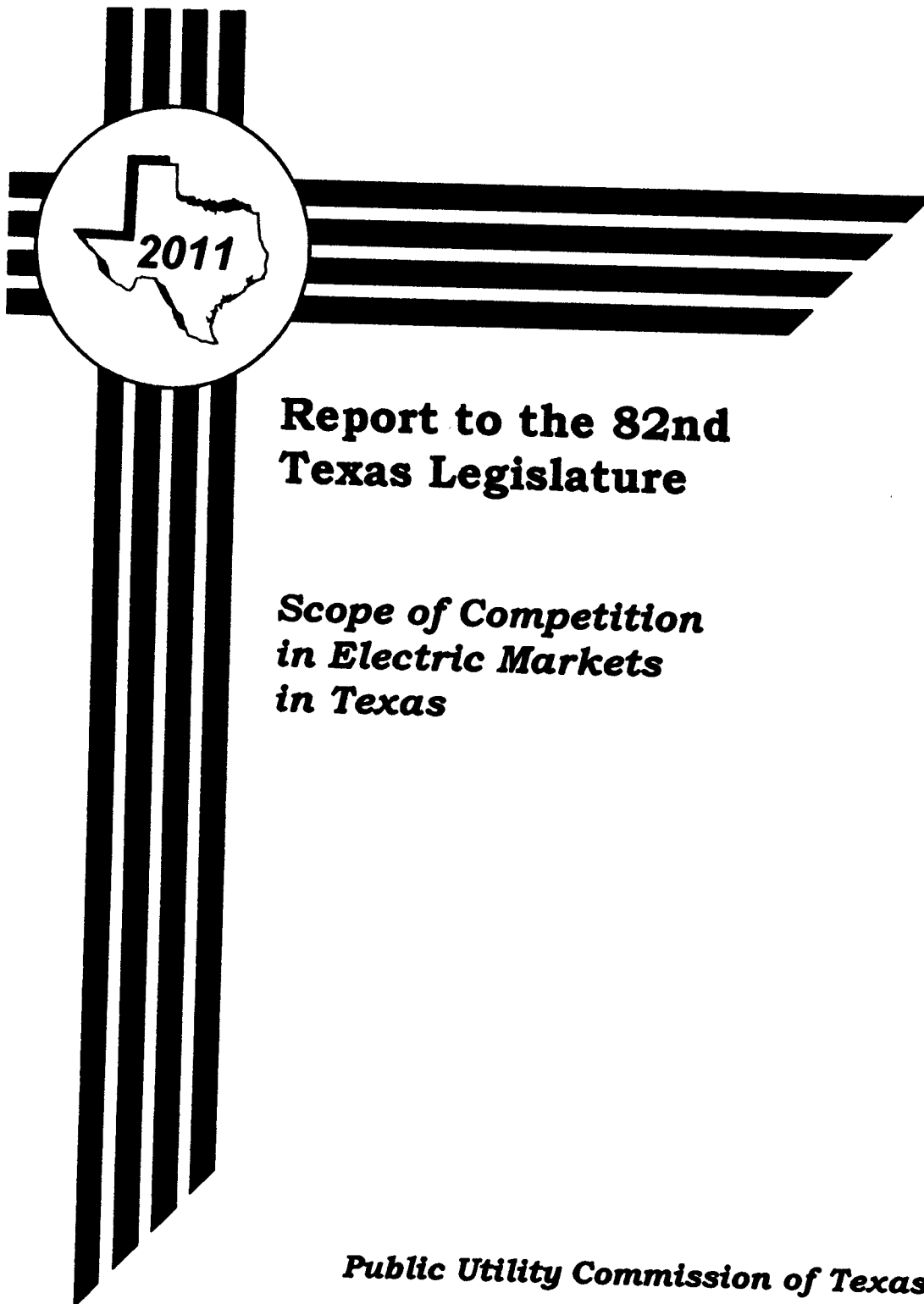
Attached is Commission Staff's (Staff's) draft of the 2011 Report to the 82nd Legislature on the Scope of Competition in Electric Markets of Texas. This draft is submitted for your consideration and discussion at the December 16, 2010, Open Meeting. Staff anticipates making non-substantive edits and formatting changes prior to publication of the report.

Legislative recommendations have not been included with this draft report but will be provided internally under separate cover.

This report is due to the Legislature on Saturday, January 15, 2011. We look forward to discussing this report with you. If you have any questions or would like to discuss the report, please contact Grace Godines at extension 6-7131, Richard Greffe 6-7404 or Evan Rowe at extension 6-7401.



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**Report to the 82nd
Texas Legislature**

***Scope of Competition
in Electric Markets
in Texas***

***Public Utility Commission of Texas
January 2011***

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2011 Scope of Competition in Electric Markets in Texas
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I. Introduction and Executive Summary

The period from January 2009 to December 2010 has been a period of low wholesale electricity prices, which have resulted in prices available to retail customers that are lower than the regulated retail electricity prices during 2001, before the introduction of competition. During 2009 and 2010, the Commission has taken a number of actions that are expected to improve retail customers' experience in buying and using electricity, and it has made substantial progress in the licensing of new transmission facilities that will facilitate a significant increase in the wind generating capacity in the State. A major wholesale market redesign for ERCOT, the nodal market, was initiated on December 1, 2010, which should improve the efficiency and management of congestion within the ERCOT region. By October 2010, two million advanced meters had been deployed in areas that are open to retail competition, and they are providing customers new service options, shortening the time required to switch providers or initiate service, and giving customers ways to obtain information about their consumption more easily and on a more timely basis.

Wholesale and retail prices

The two year period from 2009-2010 has been a period of low and stable prices for natural gas, which has resulted in low wholesale and retail electricity prices. The lowest competitive offers for residential service in the Texas retail electricity market are below the regulated rates that were in effect in 2001. The average 2001 rate was 10.6¢, the average lowest fixed rate as of December 1, 2010 was 7.6¢, and the average variable rate was 7.2¢. In most of the service areas, rates are available at less than eight cents per kilowatt-hour. The lowest residential rates in the market today are well below the national average electric rates.

REP Certification Standards

During May and June 2008, high natural gas prices and transmission congestion drove up wholesale and retail electricity prices, putting financial stress on some of the retail electric providers (REPs), leading several of them to leave the market, transfer their customers to Providers of Last Resort (POLR), and, in some cases, fail to meet financial obligations to the independent system operator or transmission and distribution utilities (TDUs). As a result, the Commission in May 2009 amended its REP certification rules to improve the credit quality and technical and managerial qualifications of REPs. For most REPs, the amended rule requires a REP to demonstrate its financial qualifications by providing the Commission a letter of credit in the amount of \$500,000 and ensuring the protection of customer deposits by putting deposits in an escrow account or covering the customer deposits with a second letter of credit for 100% of the deposit amounts.

Expedited connection and switching

Historically, when a residential customer decided to switch to a different REP, the switch was not accomplished until after the customer's meter was read. Since meters were read on a monthly basis and the processing of a switch request could take a week or more, a customer that decided to switch REPs might have to wait for more than a month for the switch to be processed. If the switch was to a lower rate, the customer would continue to be charged the original higher rate until the switch was accomplished. To shorten the switching process for retail customers, the Commission adopted amendments to the Tariff for Retail Delivery Service and its rule relating to the selection of a REP. The amended tariff requires TDUs to process meter reads for customers who are switching REPs within four business days of receiving a request. The amendments also require REPs to request switches consistent with the customer's requested switch date. These amendments now permit customers to switch providers in about five to seven days.

Enforcement

The Commission has created an Oversight and Enforcement Division (O&E) to promote improved compliance with PURA and other applicable laws. O&E recently has emphasized the Commission's customer protection rules by conducting audits of retail electric providers to evaluate their compliance with these rules. In addition, REPs were required to file information not later than 2010 to demonstrate that they meet the new certification standards that the Commission adopted for REPs in 2009. Commission staff has evaluated this information, and proceedings have been initiated to decertify REPs that did not meet the standards or were not in operation.

Texas Nodal Market

The Electric Reliability Council of Texas (ERCOT), which operates 75% of the electric grid in Texas, implemented a new wholesale market design, the Texas Nodal Market, in December 2010. The new market design required ERCOT to develop a complex system of software and hardware, and required market participants to develop the systems to make bids in the new market and respond to instructions and other communications from ERCOT. The project will improve the management of transmission congestion and provide better information about where it would be desirable to build new generation facilities, resulting in more efficient operation of generation facilities, more reliable grid operations, and better investment decisions by power generation companies. The nodal market opened without incident on December 1, 2010.

CREZ Transmission Plan

In 2008, the Commission designated five areas in west Texas as competitive renewable energy zones (CREZs) and identified the transmission improvements necessary to deliver over 18,000 MW of renewable energy to customers in ERCOT. In 2009 the Commission designated the transmission providers that would construct the CREZ transmission facilities and assigned them specific facilities to construct. Many of the new transmission facilities require the issuance of certificates of convenience and

necessity (CCNs) prior to construction, and the Commission adopted a schedule for the filing of the CCNs for the CREZ facilities. As of the end of 2010, the Commission has approved 16 CREZ CCNs, has denied one and amended the CREZ Transmission Optimization (CTO) study to build more cost effective transmission for Kendall to Newton. Some of these facilities involve transmission lines that span one hundred miles or more, and large numbers of landowners and local officials have participated in the CCN cases. The CREZ schedule calls for the completion of all CREZ transmission construction by the end of 2013.

Advanced Metering Deployment

Texas legislation enacted in 2005 encouraged the adoption of advanced meters, recognizing that “new metering and meter information technologies have the potential to increase the reliability of the regional electrical network, encourage dynamic pricing and demand response, make better use of transmission and generation assets, and provide more choices for consumers.” The Commission adopted a rule in May 2007 that established a framework for TDUs to deploy advanced meters. The three largest TDUs in ERCOT have received Commission approval of plans for the deployment of smart meters and have begun deployment in their service territories. By November 2010, 2.1 million advanced meters had been deployed, and by the end of 2013 approximately 6.1 million smart meters will be installed in ERCOT.

TDUs, REPs and ERCOT are beginning to provide tools that will permit customers to realize the benefits of advanced meters. In early 2010 the TDUs launched Smart Meter Texas, an online tool for customers and REPs to access 15-minute consumption data from smart meters. ERCOT began to use 15-minute consumption data for wholesale settlement in December of 2010, and approximately 1.6 million meters have been settled on a 15-minute basis. REPs are also beginning to offer products that take advantage of the 15-minute smart-meter data, including prepaid services that permit customers to avoid paying a deposit for electric service and to pay for electricity in smaller increments. REPs have initiated pilots with customer information devices, programmable thermostats, smart appliances and other technologies that will permit customers to use the information from smart meters to better manage their consumption.

II. Summary of Commission Activities from 2009 to 2011 to Reflect Changes in the Scope of Competition in the Electric Industry

The Commission develops and modifies rules, policies, rates, and procedures for the competitive electric market in Texas, consistent with law and in response to changes in the industry. It also maintains oversight for programs that were enacted to promote energy efficiency and renewable energy. Certain areas of Texas remain subject to Commission rate regulation, and the Commission continues to set rates and supervise the investor-owned utilities in these areas.

A. Rulemaking Activities

During 2009 and 2010, the Commission modified existing rules to facilitate the successful operation of the competitive market and in particular to improve the experience of retail customers in buying and using electricity.

I. Major Retail Market Rulemakings

a. REP Certification

The Commission in 2009 amended the REP certification requirements to provide better protection for customers against REP insolvency.¹ The new rule requires that REPs meet higher standards for capitalization and risk management expertise. It also requires additional security of \$500,000 to protect customer deposits in the event of a REP default. The Commission adopted stronger technical and managerial standards for REPs, and the rule now forbids a person who had control of a REP that transferred its customers to a Provider of Last Resort (POLR) from owning or controlling a REP.

The Commission amended its certification rule again in 2010 to allow it to draw on a REP's letter of credit in the event of a REP certificate revocation.² It also defined a REPs failure to remove a switch-hold (prevents a customer from changing REPs without paying a deferred balance owed to a REP under a payment plan.) in a prescribed timeline as a significant violation of the rules and created a new REP certification for the purpose of allowing third-party ownership of distributed generation facilities on the business premises of large customers.

¹ *PUC Rulemaking Relating to Certification of Retail Electric Providers*, Project No. 35767, Order Adopting the Repeal of §25.107 and New §25.107 (May 1, 2009).

² *Rulemaking to Amend Subst. R. 25.107 Regarding Certification of Retail Electric Providers (REPs)*, Project No. 37685, Order Adopting Amendment to §25.107 (November 3, 2010).

b. REP Disclosure of Information

To provide better information to customers shopping for retail electricity service, the Commission amended its customer disclosure requirements to require REPs to clearly identify a service contract as providing fixed, variable or indexed service and to prescribe definitions for each.³ In addition, REPs must send notice of the expiration of fixed-price contracts and must notify each customer of the terms of service that will apply if they do not select another REP or service plan at the end of the contract term. The Commission also modified the Electricity Facts Label, which had previously been adopted to provide a clear “apples to apples” comparison between products, to highlight specific items, such as the type of pricing in the contract and termination penalties that a customer may be charged.

c. Transition to POLR

The Commission amended its POLR rule to better protect customers if they are transferred to a POLR provider.⁴ These revisions included a requirement that REPs entering the market post a \$500,000 letter of credit which may be used to pay the deposits of low-income customers if they are transferred to the POLR. Incentives were added for REPs to volunteer to serve as POLRs at market-based rates. The Commission lowered the approved rates for POLR service (from 130% to 120% of wholesale energy costs), gave more time for residential customers to pay a deposit to a POLR, added additional deposit assistance for low-income customers that are transferred to a POLR, and strengthened the notice to be provided by ERCOT when a customer is transferred to POLR. The voluntary POLR provisions and lower regulated POLR price should lead to lower prices for most customers transferred to a POLR.

d. Disconnection of Service and Deferred Payment Plans

Several rules were amended to expand eligibility requirements for deferred payment plans and level or average payment plans and to provide additional protections for low-income customers and customers with medical conditions.⁵ The amendments will help certain eligible low-income customers and customers with medical conditions, who would not have qualified for these payment plans under prior rules, to avoid disconnection due to failure to timely pay high bills that result from extreme hot or cold weather. The amendments balance the increased risk associated with the expanded eligibility by allowing REPs, under certain circumstances, to prevent a customer from changing REPs without paying the deferred balance the customer owes to the REP under a payment plan. REPs are required, prior to the customer's agreement to the payment

³ *Rulemaking Relating to Retail Electric Provider Disclosures to Customers*, Project No. 35768, Order Adopting Repeal of §25.475, New §25.475, and Amendment of §25.476 (February 24, 2009).

⁴ *Rulemaking Relating to Providers of Last Resort*, Project No. 35769, Order Adopting Amendment of §25.43 (May 15, 2009).

⁵ *Rulemaking Relating to Disconnection of Electric Service and Deferred Payment Plans*, Project No. 36131, Order Adopting Amendments to §§25.454, 25.480, and 25.483 (September 29, 2011).

plan, to fully explain to the customer, using a prescribed script, that the customer may be prevented from switching REPs. This ability to prevent a switch is referred to as a switch-hold, and implementing it should help mitigate the non-payment issues associated with the requirement to offer these payment plans and help protect customers from higher prices that may result from the increased risk of non-payment associated with the extension of additional credit.

The amendments also prohibit REPs from ordering disconnection of a Critical Care Residential Customer⁶ when the customer has established that disconnection of service will cause someone at that residence to become seriously ill or more seriously ill. The prohibition against service disconnection lasts 63 days from the issuance of the electric bill or a shorter period agreed upon by the REP and the customer, secondary contact, or attending physician. As an additional protection for Critical Care Residential Customers, TDUs are required to contact the customer and the secondary contact prior to disconnecting electricity.

e. Expedited Customer Switch Time

The Commission adopted rule amendments to facilitate more rapid transfers from one REP to another when a customer decides to switch REPs.⁷ Under previous rules, switching REPs could take as long as 45 calendar days, but the amendments shorten that time to seven business days or less. The amendments modify the switch notification sent to the customer by ERCOT upon receipt of a switch request from a REP, and require TDUs to process meter reads for customers who are switching REPs within four business days of receiving a request. The amendments also require REPs to request switches consistent with the customer's requested switch date.

REPs are now required to notify customers of the termination of a term contract for electric service at least 14 days before the termination date. The combination of notifying the customer of pending contract term expiration and providing for a significantly shortened process for changing REPs should improve customers' ability to make timely choices, thus making the competitive electricity market more responsive.

f. Common Billing Terms

As required by HB 1822 and HB 1799 passed by the 81st Legislature (2009), the Commission amended its rules to ensure that certain common terms and the definitions of those terms are uniform among electric service providers.⁸ The revised rule also provides that information concerning the Commission's customer information website be

⁶ A residential customer who has a person permanently residing in his or her home who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life.

⁷ *Rulemaking to Expedite Customer Switch Timelines*, Project No. 36536, Order Adopting amendments to §25.214 and §25.474 (July 15, 2009).

⁸ *Rulemaking Proceeding to Adopt Common Terms used in Billing Telecommunications and Electric Customers*, Project No. 37070, Order Adopting Amendments to §25.25 and §25.479 (December 7, 2009).

included on the customer's bill. In addition, a statement of the date a fixed-rate product expires must be included on each residential and small commercial customer bill.

g. REP Requirements and Information Disclosures

Other provisions in House Bill 1822 from the 81st Legislature required changes to the Commission's information disclosure rule.⁹ The changes require that the date of contract expiration appear on each billing statement and that a notice of contract expiration be sent to the customer between 30 and 60 days before the contract expiration date. The rule adopted by the Commission also provides that if the contract expiration is an exact date, then no termination penalties would apply 14 days prior to contract expiration, and if the contract expiration is an estimated date, then the customer would not be charged a termination penalty from date of receipt of the notice.

h. Termination of Electric Service by Landlords

In response to House Bill 882 passed by the 81st Legislature (2009) that amended Property Code §92.008(b), the Commission published proposed amendments to its rules to provide that a landlord of an apartment house or landlord that leases mobile homes in a mobile home park cannot disconnect electric service because of a tenant's nonpayment for that service.¹⁰ Final Commission action is expected at the December 16, 2010 Open Meeting.

i. Texas Prompt Pay Act

The Commission adopted new rules to reflect the Prompt Payment Act¹¹ (PPA) requirements for billing governmental agencies by electric providers.¹² The PPA, relating to payment for goods and services, is the controlling statute for an electric service provider billing state agencies and political subdivisions. The PPA is administered by the Texas Comptroller of Public Accounts, but the Commission has authority over electric service provider billing.

2. Transmission Service Provider / Transmission Distribution Utility Rulemaking

The Commission adopted several rule changes that affect the transmission and distribution service providers. Some of these rules affect customers directly, while others are focused on utility programs and operations.

⁹ *Rulemaking to Implement Changes to Customer Disclosures as Required by HB 1822*, Project No. 37214, Order Adopting Amendment to §25.475 (December 7, 2009).

¹⁰ *Rulemaking Proceeding Relating to Electric Submetering and Master-Metered Apartment Buildings*, Project No. 37684, Proposal for Publication of Amendments to §25.141 and §25.142 (October 15, 2010).

¹¹ TEX. GOV'T CODE § 2251.001 et seq.

¹² *Rulemaking Relating to the Obligations of Electric Service Providers under the Texas Prompt Payment Act*, Project No. 37981, Order Adopting New §25.33 and §25.482 (September 14, 2010).

a. Meter Tampering

The Commission adopted new rules to deter meter tampering. Prior rules permitted the disconnection of electric service where meter-tampering had occurred; to provide an additional deterrent, REPs are now permitted to use the switch-hold mechanism to prevent the customer from switching to another REP to circumvent the disconnection of service. The new rules also require the TDU to provide notice to both the retail customer and the REP if it detects tampering.¹³ The rule also reduces the timeframe that a TDU can backbill for energy charges once a determination of meter tampering is made. The new rules require utilities to set up a customer hotline for the reporting of suspected tampering. The Commission also adopted reporting requirements concerning meter tampering for all utilities in Texas.

b. Critical Care Customers

The Commission adopted a new rule that provides uniform requirements regarding residential customers with certain medical conditions who face disconnection of electric service by a TDU.¹⁴ Previous rules included critical care and ill and disabled categories that were not defined. In the new rule the ill and disabled category is eliminated, and two categories of critical care customers with different protections were adopted. The new rule developed uniform procedures for qualifying customers as critical care customers.

c. Reliability and Continuity of Service

In compliance with HB 2052 passed by the 81st Legislature (2009), the Commission amended its rule related to reliability and continuity of service to delete certain obsolete references and to add an enforcement paragraph that details the factors the Commission will consider in determining an appropriate enforcement action.¹⁵ The rule establishes a standard that the reliability index for each feeder line may be no worse than the system average of all feeder lines by more than 300% during any two consecutive reporting years.

d. Energy Efficiency

In 2010, the Commission amended its energy efficiency rule to raise the electric utilities' energy efficiency goals from 20% of annual growth in the electric utility's demand for electricity of residential and commercial customers to 25% of the growth in demand of

¹³ *Rulemaking Relating to Meter Tampering and Disconnection and Reconnection of Service for Customers with Advanced Meters*, Project No. 37291, Order Adopting the Repeal of §25.125 and §25.126; New §§25.125, 25.126, and 25.132; and Amendments to §25.214 (May 24, 2010).

¹⁴ *Rulemaking to Amend Customer Protection Rules Relating to Designation of Critical Care Customers*, Project No. 37622, Order Adopting the Repeal of §25.497 and New §25.497 (September 29, 2010).

¹⁵ *Rulemaking to Amend P.U.C. Subst. R. §25.52 Related to Reliability and Continuity of Service*, Project No. 37387, Order Adopting Amendments to §25.52 (December 18, 2009).

these customers in 2012, and to 30% of the growth in demand in 2013.¹⁶ The amended rule also includes cost caps to limit the impact of the higher goals on residential customers to \$1.30 per month or 1/10 of a cent per kilowatt-hour of consumption for 2011 and 2012 and to \$1.60 per month or \$0.0012 of a cent per kilowatt-hour of consumption for 2013 and thereafter. Growth in demand has not increased for most utilities in recent years and is not expected to increase in the immediate future; therefore, it is expected that the utility's goals and energy efficiency program costs will not increase until load growth resumes. Legislation enacted during the 80th Legislative session in 2007 permitted the Commission to award performance bonuses, and the amended rule clarifies that any bonus earned by a utility is subject to the cost caps.

e. Transmission Cost of Service

The Commission adopted an amendment to its rule relating to transmission service rates.¹⁷ The amendment increases from once to twice per year the number of times a transmission provider (TSP) may file for an interim update to its transmission rates to reflect changes in the level of investment in transmission facilities. The amendment also provides for administrative processing of interim updates that are uncontested.

f. Distribution Service Provider Transmission Cost Recovery Factor

In September 2010, the Commission adopted an amendment to its rule relating to distribution service provider (DSP) transmission cost recovery factors (TCRF).¹⁸ The amendment addresses the previous inability of DSPs to promptly recover certain increases in wholesale transmission costs passed on to them periodically by TSPs as a result of TSPs' rate cases and interim updates. The amendment addresses this situation by allowing a DSP to reflect in its rates an adjustment that reconciles the difference between 1) the transmission costs that are paid by the DSP but not included in its base rates, and 2) the revenues recovered through the DSP's TCRF.

g. Recovery of Electric Utility Distribution Costs

In June 2010, the Commission approved for publication a proposed rule that would provide for more timely recovery by electric utilities of capital investments in distribution infrastructure.¹⁹ The basic workings of the rule would parallel very closely those of P.U.C. SUBST. R. 25.192, which provides to utilities the opportunity to periodically file

¹⁶ *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Project No. 37623, Order Adopting Amendment to §25.181 (August 9, 2010).

¹⁷ *Rulemaking Proceeding to Amend Subst. R. 25.192(g), Relating to Transmission Service Rates*, Project No. 37519, Order Adopting Amendment to §25.192 (August 5, 2010).

¹⁸ *Rulemaking Proceeding to Amend PUC Subst. R. §25.1932, Relating to Distribution Service Provider Transmission Cost Recovery Factors (TCRF)*, Project No. 37909, Order Adopting Amendment to §25.193 (October 5, 2010).

¹⁹ *Rulemaking Related to Recovery by Electric Utilities of Distribution Costs*, Project No. 38298, Proposal for Publication of New 25.243 (June 11, 2010).

for an increase in rates to reflect capital investment in transmission facilities and includes appropriate depreciation expense, taxes, and the Commission-authorized rate of return. The proposed rule would allow the same treatment for *distribution* facilities—that is, it would allow utilities to file a request once per year for updated rates reflecting the additional depreciation and return related to new distribution plant investments, along with related taxes. The Commission expects to issue a decision on this rulemaking at the December 16, Open Meeting.

3. Other Rulemakings

The remaining rulemakings undertaken by the Commission addressed wholesale market issues and administrative requirements. These rules affect ERCOT, renewable energy development, infrastructure, electric market design, and more.

a. Decertification of an Independent Organization

The Commission has the responsibility under PURA to certify the independent organizations that oversee the operation of the regional electrical networks. Currently, the Electric Reliability Council of Texas (ERCOT) performs the functions of an independent organization in the intrastate network in Texas. In 2009, the Commission adopted a new rule to provide an explicit procedure by which it could decertify an independent organization and transfer its assets to a successor organization.²⁰ The Commission maintained flexibility to take less drastic corrective actions to achieve the desired intent or to undertake decertification if appropriate.

b. CREZ Excess Development

PURA §39.904 directs the Commission to consider the level of financial commitment by renewable generators for each competitive renewable energy zone (CREZ) in determining whether to grant a certificate of convenience and necessity (CCN) for a transmission project serving that zone. The Commission established five CREZs, three in West Texas and two in the Texas Panhandle, and adopted a plan for major transmission improvements necessary to deliver 18,456 MW of renewable resources from the CREZs to customers in other areas of Texas where the major load centers are located. In December 2008, the Commission selected fourteen companies to build and operate the CREZ transmission facilities.

Wind developers expressed a concern that the actual development of wind facilities in the CREZs might exceed the transmission capacity in the plan, which could result in severe transmission congestion.²¹ To address the overbuilding concern, the Commission amended subsection P.U.C. Subst. R. 25.174(e) to specify the conditions under which it

²⁰ Rulemaking to Implement Requirement of PURA § 39.151(d) Concerning Decertification of an Independent Organization, Project No. 33812, Order Adopting Amendment to §25.361 and New §25.364 (Oct. 9, 2009).

²¹ Proceeding to Establish Policy Relating to Excess Development in Competitive Renewable Energy Zones, Project No. 34577, Order Adopting Amendments to §25.174 (October 15, 2009).

might initiate a proceeding to either limit interconnection to the grid, or establish dispatch priorities that would afford preferential access to the transmission system to entities that, among other things, demonstrated financial commitment at an early stage of the proceedings.

To address financial commitment, the rule relies on installed generating capacity, evidence that the construction of new generation has been initiated, and signed interconnection agreements as the best measures of renewable generator financial commitment and adopted a test that included these standards to evaluate the wind generators' financial commitment. Based on this test, the Commission found that, for the three West Texas CREZs the amount of renewable generation already developed, the amount of additional renewable generation under development, and the renewable capacity represented by signed interconnection agreements demonstrated that sufficient financial commitments had been made for those three zones.

For the two Texas Panhandle CREZs, however, sufficient information concerning financial commitments by renewable generators had not yet been demonstrated, principally because these areas are outside the existing ERCOT transmission grid and have very few existing generation facilities or signed interconnection agreements that can satisfy the test. Because the test could not be met with respect to the two Panhandle CREZs, additional commitments had to be made by renewable generators in the form of collateral postings before the Commission could determine that the CCN filings should proceed. Subsequently, in July 2010, the Commission found that there was sufficient evidence of financial commitment by renewable generators to grant CCNs for transmission facilities to serve the two Panhandle CREZs.²²

c. Initial Implementation of the Nodal Market

The nodal market is a large and complex system involving new software to manage the electric system and wholesale market and the interaction of many business entities that participate in the market. To enable ERCOT to address any transition issues that may arise during the startup period of the nodal market, the Commission adopted amendments to its rules relating to pricing safeguards and resource adequacy in ERCOT.²³ These amendments allow ERCOT to adopt temporary safeguards to mitigate potential pricing anomalies that may result from unexpected system performance or bidding behavior by market participants. Specifically, the amendments permit ERCOT, during the first 45 days of the nodal market, to define all transmission network congestion constraints as non-competitive constraints and to impose lower system wide offer caps than those currently imposed by Commission rule.

²² Commission Staff's Petition for Determination of Financial Commitment for the Panhandle A and Panhandle B Competitive Renewable Energy Zones, Project No. 37567, Order (July 30, 2010).

²³ *PUC Rulemaking to Address Initial Implementation of the Nodal Market*, Project No. 35392, Order Adopting Amendments to §25.502 and §25.505 (July 9, 2010).

d. Goal for Renewable Energy

PURA § 39.904(a) provides that the Commission shall establish a target of having at least 500 MW of capacity from a renewable technology other than wind. The Commission's rules currently provide that a non-wind resource may earn both a renewable energy credit (REC) and a compliance premium for each megawatt-hour (MWh) it generates. In 2010, the Commission evaluated the costs and benefits of additional incentives that could be added to its rules for non-wind renewable resources. The incentives could include one or more additional types of RECs that would reflect the higher costs of non-wind renewable resources. They could also include the option for retail providers to make alternative compliance payments in lieu of meeting their REC requirements. Amendments to P.U.C. SUBST. R. 25.173 relating to the Goal for Renewable Energy are still under consideration.²⁴

e. Record Retention and Requirements

Following the adoption of new P.U.C. SUBST. R. 25.107, relating to Certification of Retail Electric Providers (REPs), the Commission adopted amendments to P.U.C. SUBST. R. 25.491,²⁵ relating to Record Retention and Requirements, P.U.C. SUBST. R. 25.475, relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers, and P.U.C. SUBST. R. 25.476, relating to Renewable and Green Energy Verification. These revisions removed a June 1st reporting deadline, instead requiring the REPs to provide the required customer protection data in their Annual REP Reports pursuant to new P.U.C. SUBST. R. 25.107, and conformed the titles of P.U.C. SUBST. R. 25.475 and 25.476 to reflect previous amendments to those rules.

f. Infrastructure Improvement and Maintenance

Through the passage of HB 1831, the Legislature emphasized the importance of transmission and distribution infrastructure risk management and maintenance. The Commission adopted a rule requiring each utility to submit a report to the Commission by May 1 of each year that describes the utility's efforts both to identify areas within its service territory that are particularly susceptible to damage during severe weather and to harden transmission and distribution facilities in those areas.²⁶ The report will also include a summary of the utility's vegetation management practices, distribution pole inspections, and a summary of the utility's activities related to preparing for emergency operations.

²⁴ Rulemaking Proceeding to Amend Rules Related to the Goal for Renewable Energy, Project No. 35792.

²⁵ Rulemaking for Administrative Correction to Subst. R. §25.491, Record Retention and Requirements, Project No. 37007, Order Adopting Amendment to §25.491 (October 16, 2009).

²⁶ Infrastructure Improvement and Maintenance Report Pursuant to House Bill 1831, Project No. 37472, Order Adopting New §25.94 (December 14, 2009).

g. Infrastructure Storm Hardening

Following Hurricane Ike, the Commission determined that storm hardening activities of electric utilities in Texas should be more closely examined. In December 2008, the Commission awarded a contract to Quanta Technology to undertake an evaluation of (1) historical data on infrastructure damage from storms and associated restoration costs, (2) the impact of new technologies such as advanced meters and smart grid on the provision of electric service after a disaster, (3) the cost of annual inspections of overhead facilities, poles, and other support structures versus the longer cycles in current codes and standards, and (4) the costs and benefits of implementing more stringent infrastructure requirements in hurricane-prone areas within 50 miles of the Texas coast.

After examining the Quanta studies and holding several workshops, the Commission adopted a new rule that requires each electric utility to develop a storm hardening plan that implements cost-effective strategies to increase the ability of its transmission and distribution facilities to withstand extreme weather conditions.²⁷ The rule also requires each utility to submit to the Commission forward-looking plans over a five-year period beginning January 1, 2011 and to update its plan at least every five years.

h. Accountability and Performance of ERCOT

The Commission has proposed amendments to its substantive rules relating to the governance and rate setting requirements for ERCOT.²⁸ The amendments would make ERCOT more accountable to the Commission and introduce additional controls over the budget and fees of the organization. Key amendments proposed by the Commission would:

- a) prohibit a person employed by a market participant from serving as an unaffiliated member of the governing board;
- b) require Commission approval of the selection of chief executive officer and other executives of ERCOT;
- c) require ERCOT to provide information to the Commission at the request of the Commission or Executive Director;
- d) require Commission review of the adoption or modification of the ERCOT strategic plan;

²⁷ *Rulemaking for Utility Infrastructure Storm Hardening*, Project No. 37475, Order Adopting New §25.95 (June 24, 2010).

²⁸ *Rulemaking Relating to the Accountability and Performance of the Electric Reliability Council of Texas*, Project No. 38338, Proposal for Publication of Amendments to §§25.361, 26.362, and 25.363 (August 24, 2010).

- e) prohibit ERCOT from exceeding the Commission-approved budget;
- f) establish a staffing limit, to be set by the Commission; and
- g) require annual Commission review of ERCOT's budget and fees, budget strategies, and staffing.

The Commission has requested public comments and will consider them in deciding what action to take in connection with the proposed rule. The Commission is expected to take action in early 2011.

B. Contested Cases

The Commission conducted several cases to address major issues during the past two years. These cases have included several traditional rate cases, hurricane restoration cost recovery cases, mergers and sales, renewable energy infrastructure, and advanced meter deployment.

1. Entergy Rate Case

In September 2007, Entergy Gulf States initiated a rate case with the Commission requesting to recover \$107 million through a combination of base rate increases and various riders.²⁹ In January 2008, Entergy completed its jurisdictional separation plan, dividing Entergy Gulf States into two subsidiaries, Entergy Gulf States Louisiana, which serves customers in Louisiana, and Entergy Texas, which serves customers in Texas.

Entergy reached a non-unanimous settlement (NUS) with some of the parties to the case, including the Office of Public Utility Counsel, that would have allowed Entergy to receive approximately all of its request, but which would have reallocated the revenue requirement among the customer classes so that all classes' rates, including residential, would have increased by about eight percent. Commission Staff, the Texas Industrial Energy Consumers, and the State of Texas agreed to a second NUS that would have resulted in Entergy's rates staying very nearly the same as before the rate case. A hearing was held on both NUSs. Following the issuance of a proposal for decision by administrative law judges of the State Office of Administrative Hearings (SOAH) that accepted the Entergy NUS, the Commission rejected the Entergy NUS for failing to meet the standards for approval of an NUS and remanded the case to SOAH for a hearing on the original application. In March 2009, the Commission approved a unanimous

²⁹ Application of Entergy Gulf States, Inc. for Authority to Change Rates and to Reconcile Fuel Costs, Docket No. 34800 (Sept. 26, 2007).

stipulation reached by the parties, resulting in a base rate increase for Entergy of \$46.7 million.

2. Oncor Rate Case

Oncor Electric Delivery Company (Oncor) filed an application requesting an increase in revenues of approximately \$275 million or 10.9%. During the course of the proceeding, Oncor revised its requested increase to \$253 million. Following a hearing, the Commission approved an increase in revenues of approximately \$115 million in November 2009. Among other things, the Commission found that a consolidated tax savings adjustment should not be made because Oncor is not a member of an affiliated group eligible to file a consolidated tax return.

3. SPS Rate Case

In May 2010, Southwestern Public Service Company (SPS) filed an application to change its rates, seeking authority to increase its base rate charges for the Texas retail jurisdiction by \$62 million which represented an overall increase of 7.0% in rates.³⁰ The case is ongoing.

4. SWEPCO Rate Case

In August 2009, Southwestern Electric Power Company (SWEPCO) filed an application and statement of intent to change its rates, seeking an increase in annual Texas retail revenues of nearly \$75 million or 34.56%.³¹ The requested increase included an increase of \$31.6 million to provide a return on SWEPCO's investment in generating plants under construction to be collected through two "Generation Recovery Riders;" and an increase of \$16.3 million collected through a "Reliability Rider" to fund increased vegetation management activities. In March 2010, SWEPCO filed an unopposed settlement agreement. The agreement, which was approved by the Commission, provided for an increase of \$25 million, comprising a \$15 million annual base rate increase and a one year, \$10 million surcharge that will be dedicated to vegetation management.

5. El Paso Rate Case

In December 2009, El Paso Electric (EPE) filed an application seeking authority to increase its base rate charges for the Texas retail jurisdiction by \$51.6 million, an overall increase of 12.9% in rates.³² In June 2010, EPE filed a unanimous settlement agreement

³⁰ Application of Southwestern Public Service Company for Authority to Change Rates and to Reconcile Fuel Costs and Purchased Power costs for 2008 and 2009, Docket No. 38147.

³¹ Application of Southwestern Electric Power Company for Authority to Change Rates, Docket No. 37364.

³² Application of El Paso Electric Company for Authority to Change Rates, to Reconcile Fuel Costs, to Establish Formula-Based Fuel Factors, and to Establish an Energy Efficiency Cost Recovery Factor, Docket No. 37690.

that provided for an overall increase of \$17.15 million. It was approved by the Commission.

6. CenterPoint Hurricane Restoration Costs

In April 2009, CenterPoint Energy Houston Electric, LLC (CenterPoint) filed an application under PURA §§ 36.401-36.406 to recover and securitize system restoration costs related to Hurricane Ike in the amount of \$677.8 million.³³ Enacted in 2009, Senate Bill 769 enables an electric utility to obtain timely recovery of system restoration costs and to use securitization financing to recover these costs. This type of financing has lower carrying costs relative to conventional financing.

On July 8, 2009, CenterPoint filed its application for a financing order to securitize the settlement amount of system restoration costs related to distribution operations, plus carrying costs and upfront qualified costs.³⁴ On August 4, 2009, CenterPoint filed a settlement agreement providing that the total dollar amount eligible for securitization or other recovery would be \$662.8 million, plus carrying costs. On August 14, 2009, the Commission approved the settlement. The Commission issued its financing order on August 26, 2009, approving the securitization requested by CenterPoint and authorizing the issuance of transition bonds. CenterPoint issued the transition bonds in November 2009 for a total amount of \$664.8 million.

7. Entergy Hurricane Restoration Costs

Entergy Texas was similarly affected by hurricanes in 2008. In April 2009, Entergy Texas, Inc. (ETI) filed an application under PURA §§ 36.401-36.406 to recover and securitize system restoration costs related to Hurricanes Ike and Gustav in the amount of \$577.5 million.³⁵ Like CenterPoint, Entergy sought timely recovery of system restoration costs and to use securitization financing to recover these costs.

On August 5, 2009, parties to the proceeding filed a settlement agreement providing that the total dollar amount eligible to be securitized would be \$566.3 million, plus carrying costs and other qualified costs, and less an estimated amount of \$70 million related to insurance payments expected to be made to ETI. On August 18, 2009, the Commission approved the settlement. On July 16, 2009, ETI filed its application for a financing order to securitize the settlement amount.³⁶ The Commission issued its financing order on September 11, 2009, approving the securitization requested by ETI and authorizing the issuance of transition bonds in an aggregate principal amount of \$539.8 million plus

³³ Application of CenterPoint Energy Houston Electric, LLC for Determination of 2008 System Restoration Costs, Docket No. 36918.

³⁴ Application of CenterPoint Energy Houston Electric, LLC for a Financing Order, Docket No. 37200, Financing Order (August 26, 2009).

³⁵ Application of Entergy Texas, Inc. for Determination of 2008 System Restoration Costs, Docket No. 36931, Order (August 18, 2009).

³⁶ Application of Entergy, Texas, Inc. for a Financing Order, Docket No. 37247, Financing Order (September 11, 2009).

estimated up-front qualified costs of issuing, supporting and servicing the transition bonds, and adjustments related to carrying costs. The transition bonds were issued in November, 2009 for a total amount of \$545.9 million.

8. Sharyland Acquisition of Cap Rock

In February 2010, Sharyland Utilities (Sharyland) and Cap Rock Energy Corporation (Cap Rock) filed a request for approval of the proposed acquisition of Cap Rock by Sharyland. Cap Rock's Stanton and Lone Wolf Divisions serve customers located in the Southwest Power Pool (SPP) power region and Cap Rock's McCulloch and Hunt-Collins Divisions serve customers located in the ERCOT power region. In issuing an order approving a unanimous stipulation and concluding that this transaction was in the public interest, the Commission approved a requirement that Sharyland (1) conduct a study of whether it was appropriate to introduce retail competition in the Cap Rock service area, to be completed within one year of the closing of the merger transaction, and (2) initiate a study to evaluate moving the Stanton and Lone Wolf loads into ERCOT.³⁷

9. SPS Sale to the City of Lubbock

In January 2010, SPS filed an application to sell its electric distribution assets within the City of Lubbock and a small adjacent area to Lubbock's municipally owned electric utility, Lubbock Power and Light (LP&L), for \$87 million subject to adjustments at closing. The assets included poles, lines, transformers, meters, and 21 distribution substations. The area was dually certified, with both SPS and LP&L providing retail electric service. SPS requested that this portion of its service area be decertified so that it would no longer provide retail electric service to the area. LP&L served 75% of the retail electric customers in the decertified area (75,000 customers), and the SPS customers in the area would become LP&L customers. LP&L rates at the time of the proceeding were lower than SPS's rates. In June 2010, the parties filed an unopposed stipulation resolving all of the issues in the docket, which was approved by the Commission.

10. AEP Texas Central and AEP Texas North Advanced Meters

In April 2009, AEP Texas Central Company (TCC) and AEP Texas North Company (TNC) (collectively, AEP Texas) filed a request for approval of their advanced metering system (AMS) deployment plan and a request for AMS surcharges. TCC and TNC proposed plans that provided for the deployment of advanced meters by the end of the third quarter of 2013 to all residential and non-residential retail electric customers in the TCC and TNC service areas, except for those customers who are required to have interval data recorder (IDR) meters or who take non-metered service. TCC and TNC also

³⁷ Joint Report and Application of Sharyland Utilities, LP, Sharyland Distribution and Transmission Services, LLC, Hunt Transmission Services, LLC, Cap Rock Energy Corporation, and NewCorp Electric Cooperative, Inc. for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262, and 39.915, Order (July 8, 2010).

requested approval of surcharges to recover costs associated with the deployment of the AMS.

In November 2009, a settlement agreement was reached, and it was approved by the Commission. TCC and TNC were authorized to implement surcharges to support their AMS deployments over a nine-year period. TCC residential customers pay a surcharge of \$3.15 per month that decreases to \$2.89 per month in January 2012 and then to \$2.26 per month in January 2014. TNC residential customers pay a surcharge of \$3.15 per month that decreases to \$2.77 per month in January 2012 and then to \$2.13 per month in January 2014.

The total estimated capital cost for AEP Texas' advanced metering facilities is \$269.7 million (\$211.71 million for TCC and \$58.00 million for TNC) and the total estimated operating and maintenance expenses are \$159.7 million (\$124.27 million for TCC and \$35.50 million for TNC) for the surcharge period. The approved deployment plan includes estimated savings and benefits for the surcharge period of \$121.7 million, consisting of \$114.5 million (\$83.55 million for TCC and \$30.99 million for TNC) in meter reading savings and \$7.2 million (\$5.65 million for TCC and \$1.57 million for TNC) in ad valorem tax savings. These estimated cost savings are reflected in the customer surcharge.

11. TNMP Advanced Meters

In May 2010, Texas-New Mexico Power Company (TNMP) filed a request for approval of its AMS deployment plan and a request for AMS surcharges. TNMP proposed plans that provided for the deployment of advanced meters by the end of 2015 to all residential and non-residential retail electric customers in the TNMP service areas, except for those customers who are required to have interval data recorder (IDR) meters or who take non-metered service. TNMP also requested approval of a surcharge in the amount of \$4.80 for 144 months to recover the costs of deploying the AMS.³⁸

12. Electric Transmission Texas Sodium Battery

In August 2008, Electric Transmission Texas, LLC (ETT) filed an application for regulatory approvals relating to installation of a sodium battery at Presidio, Texas.³⁹ The battery is intended to improve service to Presidio, which has experienced several electrical outages and poor voltage service events. The Commission issued an order holding that the battery was not a generation asset, but a transmission asset and therefore eligible for inclusion in ETT's transmission costs of service.

³⁸ Texas New Mexico Power Company's Request for Approval of Advance Metering System deployment and AMS Surcharge, Docket No. 358306.

³⁹ Application of Electric Transmission Texas, LLC for Regulatory Approvals Related to Installation of Sodium Sulfur Battery at Presidio, Texas, Docket No. 35994.

13. CPS Energy Pole Attachments

In January 2009, CPS Energy⁴⁰ filed a petition against Southwestern Bell Telephone Company, d/b/a AT&T Texas ("AT&T") and Time Warner Cable San Antonio, L.P. ("TWC") concerning the charges that CPS Energy imposes on these companies for their attachment of facilities on CPS Energy's electricity poles.⁴¹ The Commission ruled that it has jurisdiction to determine if CPS Energy's pole attachment rates comply with PURA. This case is one of first impression, because the Commission has not previously addressed the requirements of the 2006 amendments to PURA § 54.204(c). This case is ongoing.

14. Competitive Renewable Energy Zones (CREZ) Cases

Pursuant to the order on rehearing in Docket No. 35665,⁴² Docket Nos. 36801 and 36802 were established to sequence the filing of the CCN applications for the CREZ transmission projects. Docket No. 36801 sequenced the filing dates for the CREZ transmission projects designated by ERCOT as priority projects.⁴³ Docket No. 36802 sequenced the subsequent CREZ projects.⁴⁴

All of the CREZ priority projects were assigned to either Oncor or LCRA Transmission Services Corporation (LCRA TSC). In September and October 2009, Oncor filed seven CREZ priority project CCNs.⁴⁵ Three of the cases were resolved by settlement among

⁴⁰ "CPS Energy" is the trade name of the City of San Antonio acting by and through the City Public Service Board.

⁴¹ Petition of CPS Energy for Enforcement Against AT&T Texas and Time Warner Cable Regarding Pole Attachments, Docket No. 36633 (pending).

⁴² Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Deliver Renewable Energy From Competitive Renewable Energy Zones, Docket No. 35665, Order on Rehearing (May 15, 2009).

⁴³ Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Priority Projects for the Competitive Renewable Energy Zones, Docket No. 36801, Order (July 8, 2009).

⁴⁴ Proceeding to Sequence Certificate of Convenience and Necessity Applications for the Subsequent Projects for the Competitive Renewable Energy Zones, Docket No. 36801, Order (April 5, 2010).

⁴⁵ Application of Oncor Electric Delivery Company, LLC, to Amend its Certificate of Convenience and Necessity for the Tonkawa – Sweetwater East – Central Bluff CREZ 345 KV Transmission Line in Scurry, Mitchell, Fisher, Nolan, and Taylor Counties, Texas, Docket No. 37407, Order (March 11, 2010); Application of Oncor Electric Delivery Company, LLC, to Amend its Certificate of Convenience and Necessity for the Riley-Bowman CREZ 345 KV Transmission Line (Formerly Oklaunion – Bowman Line) within Archer, Wichita, and Wilbarger Counties, Texas, Docket No. 37408, Order (March 11, 2010); Application of Oncor Electric Delivery Company, LLC, to Amend its Certificate of Convenience and Necessity for the Central B-Central A-Tonkawa 345 KV CREZ Transmission Line in Scurry and Mitchell Counties, Docket No. 37409, Order (March 8, 2010); Application of Oncor Electric Delivery Company, LLC, to Amend its Certificate of Convenience and Necessity for the Newton-Killeen CREZ 345 KV Transmission Line in Bell, Burnet, and Lampasas Counties, Texas, Docket No. 37463, Order (April 5, 2010); Application of Oncor Electric Delivery Company, LLC, to Amend its Certificate of Convenience and Necessity for the Brown-Newton 345 KV CREZ Transmission Line in Brown, Mills, Lampasas, McCulloch, and San Saba Counties, Texas, Docket No. 37464, Order (April 5, 2010);

the parties.¹⁶ The other four CCN applications proceeded to hearing and eventually were approved by the Commission with various routing modifications. LCRA TSC was originally scheduled by Docket No. 36801 to file two CREZ priority CCN applications in 2009, but the company was granted a delay to study more routing options for one of the projects.¹⁷ In October 2009, LCRA TSC filed an application for the Gillespie to Newton CREZ priority project.¹⁸ This application was ultimately denied by the Commission on the grounds that no route in the application met the statutory and regulatory requirements. ERCOT subsequently was asked to review whether the Gillespie to Newton project was still needed or if alternate transmission facility configurations could replace it. A second LCRA TSC CCN application for the CREZ priority project Twin Buttes to McCamey D transmission line was resolved by settlement and approved by the Commission.¹⁹

In February 2010, the order sequencing the filing of the subsequent CREZ CCN applications was suspended in response to the January 2010 ruling of a Travis County District Court reversing and remanding the order in Docket No. 35665, in which the Commission designated the companies that would build and operate the various CREZ facilities. A new order sequencing the subsequent CREZ CCN application filings was issued in April 2010 and was again revised in June 2010. Twenty two CREZ CCN applications were scheduled to be filed in 2010. One CREZ CCN application, for the Odessa to McCamey A to McCamey C project originally assigned to LCRA TSC but subsequently reassigned to the City of Garland and South Texas Electric Cooperative, was scheduled to be filed in March, 2011, as a consequence of the reversal and remand of the Docket No. 35665 order. Two CREZ projects assigned to LCRA TSC, the Kendall to Gillespie and Gillespie to Newton transmission lines, were determined to be no longer needed by ERCOT subject to the completion of alternative upgrades of existing transmission infrastructure. These projects were removed from the CREZ plan and LCRA TSC was relieved of the obligation to complete them in Docket No. 38577. On July 30, 2010, the Commission found that the amount of collateral posted by wind generators to demonstrate financial commitment to wind generation projects in the Texas Panhandle A

Application of Oncor Electric Delivery Company, LLC, to Amend its Certificate of Convenience and Necessity for the Central Bluff-Bluff Creek 345 KV CREZ Transmission Line in Nolan, Taylor, and Runnels Counties, Texas, Docket No. 37529, Order (April 15, 2010); Application of Oncor Electric Delivery Company, LLC, to Amend its Certificate of Convenience and Necessity for the Proposed Bluff Creek to Brown 345 KV CREZ Transmission Line in Taylor, Runnels, Coleman, and Brown Counties, Texas, Docket No. 37530, Order (April 26, 2010).

¹⁶ Docket Nos. 37408, 37409, and 37529.

¹⁷ Comments Concerning LCRA Transmission Services Corporation's Proposed CREZ Priority Transmission Lines, Docket No. 37049, Order Extending Filing Date (October 19, 2009).

¹⁸ Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Gillespie to Newton 345-KV CREZ Transmission Line in Gillespie, Llano, San Saba, Burnet, and Lampasas Counties, Texas, Docket No. 37448, Order (April 28, 2010).

¹⁹ Application of LCRA Transmission Services Corporation to Amend its Certificate of Convenience and Necessity for the Proposed Twin Buttes to McCamey D CREZ 345 kV Transmission Line in Tom Green, Irion, and Schleicher Counties, Texas, Docket No. 37778, Order (July 9, 2010).

and Panhandle B CREZ zones was sufficient to allow the Panhandle CCN proceedings to move forward.⁵⁰

15. Luminant Administrative Penalty

In November 2009, Commission Staff and Luminant Energy Company LLC (Luminant) filed a settlement agreement partially resolving Luminant's violation of PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2) concerning failure to adhere to ERCOT Protocols § 6.10.5.4(1) relating to the deployment of Load acting as Resource (LaaR) following an ERCOT deployment instruction.⁵¹ The settlement stipulated the facts of the violation and Luminant agreed to pay an administrative penalty. Staff and Luminant disagreed on what maximum monetary penalty could be applied pursuant to PURA § 15.023 and certified this issue to the Commission. Staff maintained that a separate violation occurred for each megawatt of LaaR not timely deployed in response to ERCOT's instruction. Luminant maintained that a failure to timely deploy LaaR constituted a single violation with a maximum penalty of \$25,000 in accordance with PURA § 15.023. In February 2010 the Commission issued an order determining that Luminant's failure to timely deploy LaaR constituted a single violation and assessed an administrative penalty of \$25,000.

C. Competitive Market Oversight Activities

The Competitive Markets Division is responsible for evaluating market design issues and analyzing the competitiveness and effectiveness of the market. This division also administers the energy efficiency and renewable energy programs. The Competitive Markets Division consists of two sections: Retail Markets and Wholesale Markets.

1. Retail Market Oversight

The Retail Market section performs oversight of the retail electric market in several ways:

- a) ongoing review of the operation of the market as measured through the number of providers in the market, retail prices in the market, switching rates and other competitive market indicators;
- b) representing the public interest in contested cases, formal complaints and rulemaking proceedings;

⁵⁰ Commission Staff's Petition for Determination of Financial Commitment for the Panhandle A and Panhandle B Competitive Renewable Energy Zones, Docket No. 37567, Order (July 30, 2010).

⁵¹ Agreed Notice of Violation and Settlement Agreement Relating to Luminant Energy Company LLC's Violation of PURA § 39.151(j) and P.U.C. SUBST. R. 25.503(f)(2), Relating to Failure to Adhere to ERCOT Protocol § 6.10.5.4(1) Concerning Load Acting as Resource Service Requirements, Docket No. 37634, Order on Certified Issue (February 25, 2010).

- c) ongoing review of the appropriateness of Commission rules governing the operation of the retail market, including customer protections; and
- d) monitoring retail market issues, participating in ERCOT stakeholder discussions of retail issues, working to find solutions to retail market issues and analyzing trends in the retail market.

Retail Market Staff also communicate with REPs and ERCOT in connection with significant retail market events, such as the exit of REPs from the market where customers may be transferred to a POLR. The staff's objective in these events is to see that the transfers occur efficiently, and that customers' rights under Commission rules such as continued benefits for low-income customers provided by the System Benefit Fund and the return of customers' deposits by the defaulting REP within seven calendar days of the initiation of the transition.

The Commission received a grant from the Department of Energy in 2010 to enhance the Commission's capabilities in a number of areas that are supported by the American Recovery and Reinvestment Act. The Retail Market section hired two new employees as a result of the grant. This enables Retail Market to focus additional effort on smart metering implementation, energy efficiency, distributed renewable generation and electric vehicles.

2 Wholesale Market Oversight

The Commission's wholesale market oversight continues to be supported by the activities of the Independent Market Monitor (IMM). The consulting firm Potomac Economics has served as the IMM since the summer of 2006. Potomac Economics' contract with the Commission was amended in October 2008 to expand the scope of work and extend the term from December 31, 2009 to December 31, 2012. The IMM carries out the following activities:

- a) conducts real time monitoring of the ERCOT market, reviews market operations, analyzes market indicators, and reports to the Commission when abnormal outcomes are detected;
- b) reviews the ERCOT Protocols governing the operations of the wholesale market and analyzes the protocol revision requests (PRRs) submitted by the market participants or ERCOT;
- c) reviews market design and operations in a broad sense and provides an annual report to the market; and
- d) monitors ERCOT's operation of the wholesale market.

Commission Staff attends the ERCOT stakeholder meetings to monitor the development of the nodal market design and participates in discussions of issues related to market efficiency, competitiveness and grid reliability.

a. Wholesale Market Outcomes

Analysis of Competitive Performance

The IMM performed an analysis of market power in 2009 using structural and behavioral indicators that would indicate attempts by one or more market participant to exercise market power. One of the tests that it applied was to measure the frequency with which at least one supplier had the ability to exercise market power because it was pivotal in the market (that is, the load could not be served without this supplier's resources). The frequency of a supplier being pivotal has fallen consistently over the last five years. This means that the market has, from a structural perspective, become more competitive over this period. The IMM also found that the competitiveness of supplier offers improved considerably in 2006 compared to 2005, with even more substantial improvements in the period 2007 through 2009. Overall, based on its analysis, the IMM found that the ERCOT wholesale market performed competitively in 2009.

Transmission and Congestion

One of the most important functions of ERCOT is to manage the flow of power over the transmission network. Under the zonal market design, ERCOT has to manage two types of transmission congestion: zonal congestion, which limits the amount of power that can flow between zones, and local congestion caused by transmission constraints within a zone. ERCOT is divided into four zones and has five transmission interfaces. In 2009, inter-zonal congestion was most frequent on the West to North interface, followed by the North to Houston and the North to South interfaces. In 2009, there was a significant reduction in the congestion on the North to Houston and North to South interfaces, both in the frequency and magnitude of the congestion, a trend that continued in 2010. The decreased congestion is primarily attributable to a revision of the ERCOT Protocols that gave ERCOT better tools to manage certain constraints efficiently.⁵²

North to Houston Interface

Even though congestion has decreased in the North to Houston interface over the last two years, the Houston area continues to be affected by import limitations that translate into somewhat higher wholesale prices in the Houston area. Over the years, these high prices have not attracted additional generation projects in the zone. Since Houston is an air quality non-attainment area, it may be difficult for generation builders to obtain air permits. To relieve the problem, ERCOT Staff developed the "Houston Import Project," a project that would add transmission facilities and improve existing lines to increase transfer capabilities into the area. A cost-benefit analysis showed that the cost of the project would not exceed expected production cost savings. Pursuant to the transmission

⁵² See Protocol Revision Request No. 764, "Zonal Congestion and CSCs/CREs".

planning guidelines, ERCOT Staff conducted an additional test to determine whether the Houston Import Project would benefit customers. The Staff concluded that the project would reduce revenues for generators (thus providing benefits to customers) and that the project will be needed for reliability reasons, possibly as early as 2015-2016. The ERCOT Board found that the project would promote competitiveness and improve reliability, and it approved the project.

West to North Interface

The West to North interface saw increasing congestion in 2008 and 2009. The primary reason for the increasing frequency of congestion on that interface is the significant development of wind generation in the West zone that cannot be absorbed by the load within the zone and the limited transmission export capabilities. The quantity of wind production that can be reliably accommodated in the West zone will continue to be significantly limited for several years until the planned transmission improvements of the CREZ project are completed in the 2013-2014 timeframe. The Commission has identified CREZ projects that would relieve congestion for existing West zone wind generators as priority projects, and these projects were first to have their CCN applications considered by the Commission.

b. Wholesale Market Design

Preparations for Nodal Market

The Commission adopted a rule in 2005 directing ERCOT to implement a nodal market design and in 2006 approved the Protocols for the operations of the nodal market. The rule contemplated that the nodal market would begin operating in January 2009. However, the nodal design implementation date was delayed, and in November 2008, ERCOT established a new date for initiating the nodal market, December 2010. At that time, the estimated budget for completing the nodal market design had increased from \$319.5 million (established in February 2008) to \$505.5 million with an additional \$25 million from the discretionary fund being used for nodal stabilization at the November 2010 ERCOT Board meeting. After extensive market trials conducted throughout 2010 to test the new system, the expected date for ERCOT to launch the nodal market is December 1, 2010. ERCOT had indicated that the nodal market design would start operation only after Market Readiness Criteria had been met. Certification that all Market Readiness Criteria have been met was made by the Technical Advisory Committee (TAC) in October 2010, and the ERCOT Board issued a resolution to that effect at its October 19, 2010 meeting. Following such certification, ERCOT issued two notices alerting Market Participants to the effective date of Nodal Protocol sections and the retirement of Zonal Protocol sections, as applicable. The estimated budget for completion of the nodal market design has been slightly reduced and, as of November 2010, was expected to reach \$526.1 million in December 2012.

New Ancillary Service Methodology

Ancillary Services include short term capacity reserves and balancing energy used by ERCOT to balance load and generation at all times and maintain a stable frequency in the system. In October 2008, ERCOT adopted a new methodology for the procurement of non-spinning reserves (capacity reserves that can come on line within 30 minutes,) and started procuring non-spinning reserves on a 24-hour basis, whereas this service was previously procured during peak hours only. This change was made necessary by an increase in the frequency and size of sudden changes in output by wind generators as the amount of wind generation has increased. Moving into the nodal market, ERCOT is not considering any additional change in the procurement of non-spinning reserves. ERCOT is, however, anticipating a reduced requirement for Regulation Service under the nodal market. Regulation is deployed every four seconds to balance generation and load and maintain a stable frequency. Under the current zonal market, balancing energy is deployed every 15 minutes. Under the nodal market, the balancing energy market will be replaced by a Security Constrained Economic Dispatch model that will execute energy deployments orders every five minutes. The deployment of balancing energy at shorter intervals should result in a reduced requirement for Regulation Service. Once ERCOT acquires experience with regulation deployment needs under nodal, the methodology will be re-evaluated and adjustments in the procurement of these short-term capacity reserves will be adopted as appropriate.

Allocation of Ancillary Services Costs to Wind Generators

In 2008, when ERCOT adopted a new methodology for procuring higher levels of non-spinning reserves due to the increase of wind generation, an ERCOT Board member expressed interest in exploring the assignment of ancillary service costs to wind generators based on a principle of cost causation. The evaluation of this proposal was assigned to the Cost Allocation Task Force (CATF), which examined the function of ancillary services and the possibility of identifying and assigning costs related to incremental amounts of ancillary services. The CATF concluded that ancillary service costs are not directly assignable to individual generation entities, mostly because they are purchased for the system as a whole (ancillary services are currently paid for by load for that reason). However, some Board members insisted that wind impacts on ancillary service costs ought to be quantifiable, and a new task force was established to develop a methodology for assigning ancillary service costs to wind, the Wind Cost Allocation Task Force (WCATF).

The WCATF developed two different allocation methodologies for the Board's consideration, noting that it was not recommending approval of either of its proposals. A vigorous discussion followed among the stakeholders. This debate took a substantial amount of market participant and ERCOT staff time and some market participants and Board members raised questions whether the issue should take the focus away from the preparations for the nodal market. In the end, no clear instructions were issued from the Board on how to proceed, and the WCATF was eventually disbanded. The issue, however, is likely to be brought up again once ERCOT has the opportunity to re-evaluate the ancillary service procurement methodology based on nodal data.

Enabling Load Response through Price Transparency

Demand response to energy prices is an essential part of a competitive market as it provides insurance against the exercise of market power and an additional tool to maintain reliability. In the nodal market design, the timing of the posting of local marginal prices (LMPs) has been an issue for demand resources, as the market design initially provided for posting of LMPs after each interval, making load response to prices difficult or impossible. The market rules were revised so that LMPs will now be posted for market participants to see just before each interval.⁵³ The posting of LMPs for the load zones and hubs will allow all market participants to better assess when demand response is needed and whether the prices are sufficient that market participants may elect to reduce their consumption. ERCOT stakeholders and Commission Staff continue to look for ways to facilitate load participation in the nodal market.

c. Budget Oversight

Under the ERCOT budget proposal, ERCOT's current system administration fee of \$0.4171 per MWh, approved by the Commission in May 2006, will remain in effect in the 2011 budget. The nodal market implementation surcharge of \$0.375 MWh will also remain in effect in 2011. ERCOT will be able to hold the administration fee and nodal surcharge at current levels by using \$25.2 million of the \$113 million ERCOT Board discretionary fund to pay for post go-live charges on the Nodal program, and applying excess funds from 2010 to the 2011 budget. These provisions of the ERCOT budget proposal were approved by the ERCOT Board at its November 16, 2010 meeting. Commission review of the ERCOT budget is pending.

3. Resource Adequacy and Energy Prices

The wholesale market is a competitive market, in which most of the owners and developers of generation facilities respond to their perception of the market opportunities and risks, and deploy capital accordingly. The supply of generation relative to demand can influence energy prices, which in turn can serve to encourage or discourage further development of new generation.

Roughly 7,830 MW of new generating capacity was completed in 2009 and the first half of 2010. This included 3,041 MW of coal-fired capacity, 1,838 MW of wind capacity, and 2,951 MW of natural gas capacity. At present, ERCOT is tracking 208 active new generation interconnection requests totaling about 69,500 MW. Of this amount, about 20% is natural gas, 8.5% is nuclear, 7% is coal, and 60% is wind. How much of this new capacity will eventually be built is not known.

To ensure reliability, ERCOT has established a minimum target planning reserve margin level of 12.5%. In June 2010, ERCOT projected that the reserve margin would exceed

⁵³ Nodal Protocol Revision Request (NPRR) No. 169, "Clarify the Calculation and Posting of LMPs for the Load Zone and LMPs for each Hub."

the target level through 2015. The load forecast, which is based on econometric modeling, shows annual load growth ranging from 1.5% to 2.4% during the period.

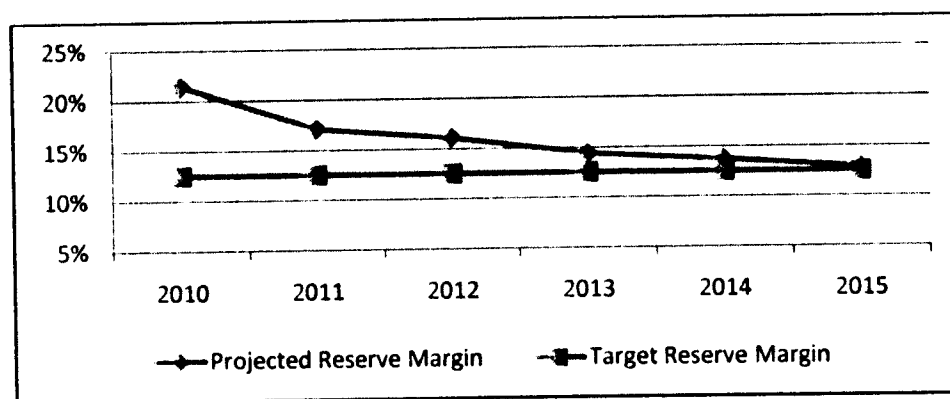
Table 1 - ERCOT Reserve Margin Projection through 2015

	2010	2011	2012	2013	2014	2015
Firm Load (MW)	62,412	63,532	64,947	66,514	67,665	68,672
Resources (MW)	75,755	74,377	75,415	76,117	76,893	77,543
Projected Reserve Margin	21.4%	17.1%	16.1%	14.4%	13.7%	12.9%
Potential Capacity in Full Interconnection Study (MW)	0	8,116	15,677	17,827	20,238	26,182

Source: ERCOT Capacity, Demand, Reserves Report (June 2010)

For purposes of the resource forecast, ERCOT includes only existing capacity, expected new capacity that has a signed interconnection agreement and air permit, if applicable, and mothballed capacity that owners have projected will return to service. Wind generation, which provides energy but comparatively little capacity value, is included in the forecast at 8.7% of its nameplate capacity rating. These are conservative assumptions that do not consider new capacity that may still be in the planning and development stages. The last row of the above table shows additional capacity under study that may be built but which is not included in the reserve margins.

Figure 1 - ERCOT Planning Reserve Margin



During August 2010, ERCOT set a new all-time peak demand record of 65,715 MW. Like all other regions of the country, ERCOT plans to meet "firm" demand which is lower than "peak" demand because some loads act as resources at the time of peak demand. (That is, they are paid to reduce their consumption, when called upon by ERCOT to do so.) Nonetheless, the actual peak demand in 2010 was higher than expected.

D. Oversight and Enforcement

The Commission protects consumers, the electric market, the reliability of the electric grid, and promotes fair competition by enforcing statutes, rules, and orders applicable to entities under its jurisdiction. The Commission's enforcement efforts in the electric

industry focus on violations of PURA, the Commission's Substantive Rules and ERCOT protocols.

1. Commission Enforcement Structure

The Commission's Oversight and Enforcement Division (O&E) was initiated on October 1, 2007. O&E's goal is to promote compliance with PURA and other applicable laws, and PUC Substantive Rules by electric and telecommunication service providers to protect customers and markets, and to ensure reliability. O&E works with the Commission Legal Division, as well as other divisions, in its investigations and enforcement activities. In the electric market, the main areas of oversight and enforcement are:

- Wholesale electric issues
- Retail electric issues
- Service quality
- ERCOT protocol violations
- Market manipulation and market power abuse

The Commission's primary enforcement tool is the imposition of administrative penalties. The Commission's enforcement and administrative penalty authority is outlined in Chapter 15 of PURA, which provides for administrative penalties of up to \$25,000 per violation per day.

2. Enforcement

O&E has set up programs and processes to accomplish oversight of the industries it oversees through coordination with other Commission divisions regarding information on potential violations, and to review or audit formal reports submitted to the Commission. The programs may be categorized as follows:

Retail Electric

- Audit of retail electric providers
- Complaint-based investigations
- Other investigations

Wholesale Electric

- IMM-referred market manipulation and market power abuse investigations
- TRE-referred protocol violations
- ERCOT protocol development and revisions

Telecommunications and Miscellaneous

- Telecom investigations
- No-Call investigations

Service quality

O&E has several sources of information regarding potential violations that might generate an investigation. These sources include the Texas Regional Entity (TRE) and Independent Market Monitor (IMM), other PUC divisions, filed reports, industry stakeholders, ERCOT, and other sources.

Once O&E has received information regarding a potential violation, the information is reviewed to determine if an investigation is warranted. If warranted, an investigation is opened and the provider is notified of the investigation. The investigation is conducted through research, meetings with the provider, and requests for information to the provider. An investigation may be concluded with a recommendation for action, if needed, or no further action, if it is determined that no violation occurred. If a violation is found, the provider may be sent a warning letter for a minor violation. Otherwise, the investigation is closed and the Notice of Violation (NOV) process begins.

The first step in the NOV process is to send a Pre-NOV letter to the provider describing the violation and recommending an administrative penalty. The provider has the opportunity to meet with Commission Staff to resolve the matter. The Staff and the provider may enter into a settlement agreement resolving the issues of the violation, the amount of administrative penalty, and any other appropriate remedies such as a mitigation plan. Settlement documents are filed with the Commission.

PURA provides for a three-level classification system for violations which includes a range of administrative penalties.⁵⁴ The classification system includes the following factors for determining penalty levels:

- The seriousness of the violation;
- The economic harm caused;
- The history of previous violations;
- The amount of penalty necessary to deter future violations;
- The efforts to correct the violation; and
- Any other matter justice may require.

If the issues are not resolved through a settlement agreement, the Executive Director sends a Notice of Violation to the provider. This action initiates a contested case proceeding to resolve the issues of the violation and the administrative penalty. The NOV is referred to SOAH and a hearing is conducted.⁵⁵ The SOAH judge issues a proposal for decision that is subsequently ruled on by the Commissioners to determine whether a violation has occurred and, if so, the appropriate penalty.

⁵⁴ PURA § 15.023.

⁵⁵ While in most contested cases the Commission may conduct the hearing, in the Notice of Violation process the hearing must be conducted by a SOAH judge.

3. Current Penalty Activities

During the period from January 2009 through December 2010, the Commission assessed over \$8.8 million in penalties to electric market participants. The following table provides a summary of completed electric industry Notices of Violation since January of 2009. In total during 2009 and through November 2, 2010, Commission Staff opened 128 investigations for the electric industry and closed 92 investigations. An investigation is considered closed if it has either been closed with no NOV having been issued, or when an NOV has been issued.

Table 2 - Completed Electric Industry Notices of Violations

<u>Company</u>	<u>Violation Type</u>	<u>Violation</u>	<u>Docket No.</u>	<u>Date of Final Order</u>	<u>Penalty Amount</u>
Direct Energy	Retail	Rules on timely issuance of customer bills	37133	7/30/09	\$200,000
Vega Resources dba Amigo Energy	Retail	Billing rules and Electricity Facts Label	37263	8/26/09	\$15,000
Pre-Buy Electric	Retail	Return of customer deposits and balances	36927	1/29/10	\$1,866,000
National Power	Retail	Return of customer deposits and balances	36926	1/29/10	\$1,824,000
EL PASO ELECTRIC COMPANY	Service Quality	Electric service quality violations	36491	1/22/09	\$100,000
ENTERGY GULF STATES, INC.	Service Quality	Electric service quality violations	36787	4/15/09	\$85,000
TEXAS-NEW MEXICO POWER COMPANY	Service Quality	Electric service quality violations	37071	7/8/09	\$49,000
ONCOR ELECTRIC DELIVERY COMPANY	Service Quality	Electric service quality violations	37255	8/27/09	\$420,000
Texas-New Mexico Power Company	Service Quality	Electric service quality violations	37638	12/2/09	\$11,500
CenterPoint Energy	Service Quality	Electric service quality violations	37752	1/14/10	\$84,000
El Paso Electric Company	Service Quality	Electric service quality violations	37740	1/14/10	\$50,000
Cap Rock Energy Corporation	Service Quality	Electric service quality violations	37834	1/28/10	\$25,000
Southwestern Public Service Company	Service Quality	Electric service quality violations	37896	2/12/10	\$55,000
AEP Texas Central Company	Service Quality	Electric service quality violations	37940	3/5/10	\$169,000
AEP Texas North Company	Service Quality	Electric service quality violations	37939	3/5/10	\$80,000
AEP Southwestern Electric Power Company	Service Quality	Electric service quality violations	37938	3/5/10	\$25,000
Entergy Texas Inc.	Service Quality	Electric service quality violations	37918	3/5/10	\$68,500
Oncor Electric Delivery Company LLC	Service Quality	Electric service quality violations	38135	5/14/10	\$197,000
Occidental Energy	Wholesale	ERCOT protocols	36442	1/21/09	\$212,000
Constellation Energy	Wholesale	ERCOT protocols	36546	2/3/09	\$115,000
Eagle Energy	Wholesale	ERCOT protocols	36607	2/27/09	\$103,338
Eagle Energy	Wholesale	ERCOT protocols	36607	2/27/09	\$48,162
Luminant/TXU Power/QSE	Wholesale	ERCOT protocols	36909	6/3/09	\$17,500
Tenaska Power Services	Wholesale	ERCOT protocols	36993	6/19/09	\$325,000
Eagle Energy	Wholesale	ERCOT protocols	37075	7/2/09	\$100,000
American National Power	Wholesale	ERCOT protocols	34738	7/2/09	\$2,500,000
Shell Energy North America (US), LP	Wholesale	ERCOT protocols	37954	3/5/10	\$2,000
Luminant	Wholesale	ERCOT protocols	37634	4/5/10	\$25,000
City of Garland	Wholesale	ERCOT protocols	38104	5/4/10	\$15,000
FPL Energy	Wholesale	ERCOT protocols	38303	7/1/10	\$60,000
TOTAL					\$8,847,000

E. Non-ERCOT Utilities: Market Development Activities

Senate Bill 7, the law that introduced retail competition in electricity in Texas, permitted the Commission to delay retail competition in an area where deregulation in accordance with Chapter 39 of PURA would not result in fair competition and reliable service.⁵⁶ In addition, provisions of PURA that applied to El Paso Electric Company and Southwestern Public Service Company resulted in the delay of competition in the areas served by these companies. Relying on its discretion under Chapter 39, the Commission delayed retail competition for the Entergy Gulf States service area (now Entergy Texas) and for the Southwestern Electric Power Company (SWEPCO) service area. The result was that retail competition was initiated within ERCOT but was delayed outside of ERCOT.

Senate Bill 7 included provisions that reflected recognition that it would be more difficult to implement retail competition in areas outside of ERCOT, based on the lack of an independent organization and the concentration of ownership in the generation sector in some of the non-ERCOT areas. In particular, PURA § 39.152 established competitive criteria that must be met for the Commission to certify a power region:

- a) a sufficient number of interconnected utilities in the power region are under the operational control of an independent organization;
- b) a generally applicable tariff guarantees open and nondiscriminatory access to transmission and distribution facilities in the region; and
- c) no person owns and controls more than 20% of the installed generation capacity located in or capable of delivering electricity to the region.

The Commission has not certified that any area outside of ERCOT meets the criteria in PURA § 39.152.

An important element in the success of a competitive energy market is an independent organization to manage transmission access and operate short-term energy and capacity markets to maintain the reliability of the electric system.⁵⁷ When competition was introduced in ERCOT, a regional transmission organization was operating in the Panhandle and Northeast Texas. This organization, SPP, was providing independent management of the transmission system in these areas, but it was not operating short-term energy and capacity markets to maintain reliability. In Southeast Texas and the far West Texas area in and adjacent to El Paso, there was not an independent organization operating. SPP continues to operate in the Panhandle and Northeast Texas, and today it operates a short-term energy market, the Energy Imbalance Service, and it is planning to expand its market to include short-term capacity products. In Southeast and far West Texas, there is still not an independent organization performing the transmission management and market functions.

⁵⁶ PURA § 39.103. Senate Bill 7 was enacted in 1999, in the 76th Legislative Session.

⁵⁷ PURA addresses the role of an independent organization in § 39.151.

Subsequent to the enactment of Senate Bill 7, legislation was enacted relating to retail competition in some of the areas outside of ERCOT. In addition, the Commission adopted rules addressing retail competition in some of the utility service areas. This section summarizes the history and current status with respect to the possible introduction of retail competition in the non-ERCOT areas of Texas.

I. Entergy Texas

Retail competition was delayed in the Entergy region, pursuant to an order of the Commission.⁵⁸ In 2005 the Legislature enacted Subchapter J of PURA Chapter 39, which addressed the process by which Entergy would be regulated and might transition to retail competition.⁵⁹ A proceeding was initiated in December 2006 to determine the appropriate power region for Entergy, and this proceeding was pending before the Commission when the Legislature met in 2009.⁶⁰ Entergy operates in the SERC Reliability Corporation (SERC) area, and it argued that it should be moved into ERCOT. While moving to SPP appeared to be an option available to the utility, Entergy argued that it should not be required to pursue moving into SPP, because it believed that full customer choice could not reasonably be expected to be implemented in SPP in the foreseeable future. Other participants in that proceeding were concerned about the cost of integrating Entergy into ERCOT. One of the reasons that this case was still pending in 2009 was that the Commission ordered Entergy to request the SPP staff to conduct an analysis of the costs of integrating Entergy into SPP.

The 81st Legislature amended the provisions in Subchapter J relating to Entergy's transition to competition. Key amendments were:

Entergy was directed to cease activities relating to the approval of a plan to transition to retail competition;

The Commission was permitted to conduct a proceeding to determine the appropriate power region for Entergy, when the conditions supporting such a proceeding exist; and

The Commission was prohibited from approving a plan for Entergy to transition to retail competition until four years after it approved the power region.⁶¹

Entergy Texas is a part of a larger Entergy system that includes electric utilities in Arkansas, Mississippi, and Louisiana. Entergy Arkansas and Entergy Mississippi have given notice that they will cease operating under the Entergy System Agreement that currently governs operations and the allocation of costs among the companies in the system. Entergy Arkansas will leave the system agreement in December 2013, and

⁵⁸ Staff's Petition to Determine Readiness for Retail Competition in the Portions of Texas within the Southeastern Electric Reliability Council, Docket No. 24469, Order (Dec. 20, 2001).

⁵⁹ PURA § 39.451 et seq.

⁶⁰ Application of Entergy Gulf States, Inc. for Transition to Competition Plan (TTC Plan), Docket No. 33687.

⁶¹ PURA § 39.452(i).

Entergy Mississippi will leave in November 2015. In addition, the Federal Energy Regulatory Commission (FERC) commissioned a study of the costs and benefits of the Entergy companies joining SPP. The study was completed in September 2010 and it showed a net present value of \$739 million cost savings over a ten year period, although this total included CLECO Power which is a smaller non-Entergy company within the Entergy service area.⁶²

There is some uncertainty about the appropriate power region for Entergy Texas. The FERC study showed that there are benefits associated with the Entergy companies joining the SPP, and such a conclusion could result in pressure from the FERC and state regulators for Entergy to join the SPP. At this point, the Commission has not initiated a proceeding to determine the appropriate power region for Entergy Texas, and it seems prudent to not initiate such a proceeding before the results of the FERC study have been fully analyzed.

2. Southwestern Electric Power Company

Retail competition was also delayed for SWEPCO, pursuant to a Commission order.⁶³ In August 2006, to provide greater certainty about the conditions under which retail competition might be introduced in the SWEPCO area, the Commission adopted a rule to address SWEPCO's transition to competition.⁶⁴ The rule established that retail competition would not begin before January 1, 2011. It also prescribed a set of pre-conditions for retail competition. These conditions would be required to be completed before retail competition begins.

The 81st Legislature adopted Subchapter K of PURA Chapter 39, relating to SWEPCO's transition to competition. Subchapter K includes a set of pre-conditions for retail competition similar to those in the rule described above. Unlike the Commission's rule, Subchapter K does not include a date before which retail competition may not be initiated. One of the first pre-conditions is the approval of a regional transmission organization by the FERC and the commencement of independent operation of the transmission grid.⁶⁵ SWEPCO operates in the SPP, and it appears that the FERC approval of the SPP and its tariff for the Energy Imbalance Service meets this criterion. However, the other pre-conditions have not been accomplished.

⁶² Charles River Associates and Resero Consulting, "Cost-Benefit Analysis of Entergy and CLECO Power Joining the SPP RTO," Prepared for the Federal Energy Regulatory Commission, September 30, 2010.

⁶³ Staff's Petition to Determine Readiness for Retail Competition in the Portions of Texas within the Southwest Power Pool, Docket No. 24468, Order on Rehearing (Feb. 1, 2002).

⁶⁴ Substantive Rule 25.422, Transition to Competition for Certain Areas within the Southwest Power Pool.

⁶⁵ PURA § 39.503(b)(1).

3. Southwestern Public Service Company

Senate Bill 7 from the 1999 legislative session included Subchapter I of PURA Chapter 39, which governs the transition to retail competition for SPS.⁶⁶ This subchapter established distinct rules for the SPS region to transition to competition and required SPS to file a transition plan with the Commission not later than December 1, 2000.⁶⁷ A number of amendments to sections of Subchapter I were enacted in the 2001 legislative session, and the current provisions of Subchapter I permit SPS to “choose to participate in customer choice.” If SPS makes such a choice, it must file a transition plan for Commission review. Subchapter I also includes provisions concerning market concentration. The Commission is prohibited from certifying a power region if any utility has more than 20% of the generation capacity in or capable of delivering power to the area, and SPS currently owns a significant share of the generation capacity in or capable of delivering power to the region.⁶⁸ SPS, like SWEPCO, operates within SPP.

4. El Paso Electric Company

Retail competition was delayed for EPE by statute, until a rate freeze adopted in the mid-1990’s expired.⁶⁹ In October 2004, to provide greater certainty about the conditions under which retail competition might be introduced in the EPE area, the Commission adopted a rule to address its transition to competition.⁷⁰ The rule prescribes a set of pre-conditions for retail competition. These conditions would be required to be completed before retail competition begins. One of the pre-conditions is the approval of a regional transmission organization by the FERC and the commencement of independent operation of the transmission grid.⁷¹ EPE operates in the Western Electricity Coordinating Council (WECC), which is a reliability organization, not a regional transmission organization. The California Independent System Operator is the only organization in the Western region that has obtained FERC approval as a regional transmission organization, and it does not operate EPE’s transmission systems.

5. Cap Rock Energy Corporation

Prior to the start of retail competition in ERCOT, Cap Rock was an electric cooperative owned by its members. In 1998, the members of the cooperative approved a plan to convert it to an investor-owned utility. Senate Bill 7 from the 1999 legislative session amended the definition of “electric cooperative” in PURA to include the successor organization of a cooperative that converted to a corporation in accordance with a plan

⁶⁶ PURA § 39.401 *et seq.*

⁶⁷ PURA § 39.502(c).

⁶⁸ PURA § 39.407(a).

⁶⁹ PURA § 39.102(c).

⁷⁰ Substantive Rule 25.421, Transition to Competition for a Certain Area Outside the Electric Reliability Council of Texas Region.

⁷¹ Substantive Rule 25.421(e)(1).

approved by the members of the cooperative.⁷² This amendment meant that Cap Rock Energy Corporation, the successor to the cooperative, was not required to introduce retail competition and, like other cooperatives, could decide whether to do so. In the 2003 legislative session, Senate Bill 1280 was enacted, which restored the original definition of “electric cooperative” and made it clear that a company that had previously not been subject to Chapter 39 was now subject to it. This section also established criteria for the Commission to consider in deciding how Chapter 39 would apply to such a company.⁷³ In February 2010 Sharyland Utilities and Cap Rock Energy Corporation filed a notice that they planned to merge, with Sharyland the surviving entity, and Cap Rock Energy becoming the Cap Rock Division of Sharyland Utilities. In issuing an order concluding that this transaction was in the public interest, the Commission approved a requirement that Sharyland conduct a study of whether it was appropriate to introduce competition in the Cap Rock service area, to be completed within one year of the closing of the merger transaction.⁷⁴ The Cap Rock Division of Sharyland has customers both in ERCOT and in the SPP.

F. Customer Education Activities

Since its inception in February 2001, the goal for the “Texas Electric Choice” campaign has been to educate Texans about the changes and choices in the retail electric market. The eighth and ninth years of the campaign (September 1, 2008 through August 30, 2010) continued to educate Texans about electric choice, Retail Electric Providers, and plan options. The education campaign uses a number of means, in both English and Spanish, to reach and educate the public. A summary of each of these methods is included below.

I. Outreach and Public Service Announcements

The Commission conducted a number of activities to improve the public visibility of retail choice, largely designed to let electric customers know that the campaign website, www.PowerToChoose.org, and call center were neutral, credible sources of information about retail choice.

Lone Star Radio Network – This series of public service announcements about Electric Choice, Energy Star Tax Holiday, and Lite-Up Texas on a statewide network of radio stations reached an estimated cumulative audience of more than three million listeners per year in FY 2009 and FY 2010.

⁷² PURA § 11.003(9) (2001).

⁷³ PURA § 39.102(d), (e).

⁷⁴ Joint Report and Application of Sharyland Utilities, LP, Sharyland Distribution and Transmission Services, LLC, Hunt Transmission Services, LLC, Cap Rock Energy Corporation, and NewCorp Electric Cooperative, Inc. for Regulatory Approvals Pursuant to PURA §§ 14.101, 37.154, 39.262, and 39.915, Docket No. 37990, Order (July 8, 2010).

Education Partners – The Commission continued its partnership with local police departments and community groups around the state of Texas during the 2009-2010 biennium.

For FY 2009, Sherry Matthews Advocacy Marketing continued to coordinate all National Night Out (NNO) efforts by contacting previous participants and distributing Texas Electric Choice campaign materials. Over 129,800 pieces of campaign materials were distributed by forty-one groups. For FY 2010, the Information & Education Department (I&E) of the Commission took on this task when the Sherry Matthews contract lapsed on February 28, 2010. In May 2010, I&E sent a letter to all past participants letting them know that the campaign had been moved in-house. The letter included I&E staff's contact information. A follow-up letter was mailed July 2010 to remind past participants that materials were available for distribution. For FY 2010 eighty-five groups participated and 234,350 pieces of campaign materials were distributed. These events have reached over a million people during the 2009-2010 biennium.

I&E attended and supplied various educational materials to numerous community events/venues and civic "town hall" events for FY 2009/FY 2010, including Primrose at Highland Meadows Senior Apartments, Hurst-Euless-Bedford School District's Back2School day, Houston's Sheltering Arms, IBM's Earth Day, and the City of Hutto's "How to Shop for a Retail Electric Provider" workshop. In addition, I&E staff frequently teamed up with Office of Public Utility Council staff or passed out educational materials on their behalf. In FY 2009, 252,244 pieces of educational materials were distributed to customers. In FY 2010 258,040 pieces of educational materials were distributed to customers.

TAB NCSA Program – In FY 2009, the Commission participated in the Texas Association of Broadcasters' Non-Commercial Sustaining Announcement program, which allowed the Commission's public service announcements on Electric Choice to be aired throughout competitive retail electric markets in Texas at about 20-25% of the cost of buying commercial airtime with the same reach.

Energy Star Tax-Free Weekend Video News Release – During Memorial Day Weekend 2009, the Commission distributed a video news release statewide that alerted consumers to the Comptroller's tax-free weekend for energy-efficient appliances and related products. The releases were picked up by television stations across the state and reached 7.3 million Texans with a total cost of about \$13,000.

Websites

The Texas Electric Choice campaign website, www.PowerToChoose.org, and its Spanish-language counterpart www.PoderDeEscoger.org, are vital parts of the customer education process. During FY 2010, the website was updated to include information on Smart Meters, Distributed Renewable Generation, and Renewable Energy Credits. Key statistics for these websites during the 2009-2010 biennium include:

Table 3 - PowerToChoose Website Statistics

Unique Visitors	1,904,615
Visits	3,974,979
Downloads – (PUC Website Publications only – not PTC or PDE)	517,217

Table 4 - PoderDeEscoger Website Statistics

Unique Visitors	26,920
Visits	63,513

Note: No statistics for PoderDeEscoger were collected before March, 2009.

2. Internet Search Engine Marketing

The campaign initiated a targeted Internet search engine marketing program in the summer of 2007. The goal of the program was to drive Internet users to the PowerToChoose website to shop for a retail electric provider. Internet users who did Google and Yahoo! searches on terms relating to electric service in Texas would see banner ads on the right column of the search engine results page linking the user to the PowerToChoose website. When a user clicked on the link to the site, the Commission paid a small fee to the search engine provider. During the summer of 2007, more than 16,000 people followed the link to the PowerToChoose website and clicked through to the site's retail offers page. During the summer of 2008, 63,996 people followed the link to PowerToChoose website and clicked through to the site's retail offers page. During summer 2010, 25,778 people compared offers on the PowerToChoose website.

3. Call Center

For FY 2007/FY 2008, the Texas Electric Choice campaign provided a Texas-based, toll-free, bilingual, independently contracted call center (1-866-PWR-4-TEX (1-866-797-4839)) as a way to give customers another point of contact with the campaign. Customer service representatives were available five days-a-week, and an automated system served customers seven days-a-week. Customers could ask questions, learn which REPs serve their area, and request educational materials (fulfillment packets). This call center was maintained during FY 2009 and FY 2010 through February 28th, 2010. Beginning March 1, 2010, Customer Protection Division (CPD) brought this service in house and trained Intake Center staff to answer these calls. I&E staff were tasked with putting together and mailing out all fulfillment packets that were requested by customers. The fulfillment packets include a cover letter, the award-winning "Official Guide to Electric Choice" brochure, the "How to Choose a Retail Electric Provider" brochure, and a list of REPs and their phone numbers. Currently, all CPD Intake Center staff are trained and available to answer Texas Electric Choice calls.

Table 5 - Contracted Call Center Activity September 1, 2008 - February 28, 2010

Total Calls	187,787
Total Representative-assisted calls	136,078
Total Spanish-Language Calls	19,857

Table 6 - CPD Call Center Activity March 1, 2010 - August 30, 2010

Total Calls	19,528
Total Representative Calls	16,539
Total Spanish – Language Calls	2,071

Table 7 - Number of Fulfillment Packets March 1, 2010 - August 30, 2010

March 2010	172
April 2010	167
May 2010	181
June 2010	167
July 2010	153
August 2010	170
Total	1010

4 Educational Literature

Brochures, fact sheets, and other educational materials are distributed via mail, e-mail, at campaign events, through a network of community-based organizations, and via the campaign's Websites and Call Center. Fact sheets, which can be found on the Commission's website as well as through both PowerToChoose.org and PoderDeEscoger.org, are routinely created and updated for distribution as part of the Commission's outreach efforts. The fact sheets provide information on a number of current industry and consumer topics. The Commission distributed nearly 2 million pieces of information products during 2009 and 2010. In the Spring of 2010, I&E created a new brochure (How to Shop for a Retail Electric Provider) that is a step-by-step guide for navigating the PowerToChoose.org website when shopping for a REP. This brochure has been included in the Texas Electric Choice fulfillment packets and, along with all of the Commission's other informational pieces, can be accessed on all three websites.

5. AMI Deployment

The I&E Division collaborated with the Competitive Markets Division to assist the TDU's with their Advanced Meter consumer education campaigns—Oncor's "Smart Texas – rethinking energy" campaign, CenterPoint Energy's "energy InSight" campaign, and AEP's gridSMART campaign. Their marketing efforts included door hangers, billboards, brochures, website ads, and movie theatre ads. Additionally, I&E created a Smart Meter fact sheet for visitors to the Commission's website and added a Smart Meter benefits and FAQ section on the PowerToChoose.org website.

G. Low Income Discount: System Benefit Fund

The 81st Legislature made no changes to PURA § 39.903, which governs the System Benefit Fund and the electric rate reduction program. The Legislature did appropriate \$119,570,603 for FY 2010, from which low-income discounts were provided in September 2009 and May through August 2010. It also appropriated \$132,291,594 for the FY 2011, for low-income discounts in September 2010 and May through August 2011. In January 2010, a memo requesting a 5% budget savings plan was sent to State agencies for FY 2010 and FY 2011. The savings associated with the low-income discount program are \$6,126,254 for FY 2010 and \$6,762,303 for FY 2011. The new appropriated amounts for the low-income discount program are \$113,444,349 for FY 2010 and \$125,529,291 for FY 2011. Of the funds for FY 2009, 2,219,480 discounts were distributed to 699,549 separate households equating to \$93,203,704 in discounts given. Each household that is deemed eligible may receive up to five months of discounts depending on when they submit their application. For FY 2010, figures show 2,525,086 discounts distributed to 807,797 households which equate to \$81,413,764 in total discounts given.

The SBF discount is based on the POLR rate in effect, the FY 2009 POLR rate was \$.191 per kWh and the FY 2010 was \$.141 per kWh.