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# OPEN MEETING COVER SHEET

**MEETING DATE:** December 17, 2020

**DATE DELIVERED:** December 10, 2020

**AGENDA ITEM NO.:** 44

**CAPTION:** Project 50475 – Agency Report to the 87<sup>th</sup> Legislature

**DESCRIPTION:** For approval

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# *Public Utility Commission of Texas*

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## **Memorandum**

**TO:** Chairman DeAnn T. Walker  
Commissioner Arthur C. D'Andrea  
Commissioner Shelly Botkin

**FROM:** Connie Corona, Chief Program Officer  
Pai Liu, Policy Advisor

**DATE:** December 10, 2020

**RE:** **December 17, 2020 Open Meeting, Agenda Item No. 44 — Project No. 50475, Agency Report to the 87th Legislature**

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Attached for your consideration is staff's draft of the biennial Agency Report to the 87th Legislature. This Report is due by January 15, 2021.

The Report will address the Commission's activities related to water utility regulation. Customer protection and enforcement topics related to the electric, telecommunications, and water industries are also included. The completed Report will fulfill the following statutory requirements:

- PURA §31.003, which requires a report on "the scope of competition in electric markets and the effect of competition and industry restructuring on customers in both competitive and noncompetitive markets."
- PURA §52.006, which requires a report on "(1) the scope of competition in regulated telecommunications markets; and (2) the effect of competition on customers in both competitive and noncompetitive markets, with a specific focus on rural markets."

PURA §12.203, which requires a "report that includes suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general that the commission considers appropriate for protecting and furthering the interest of the public."

Staff has prepared the following potential legislative recommendations for inclusion in the Report. The recommendations are presented in the order that the related topics appear in the Report.

## **Legislative Recommendations**

### **Administrative**

- *Authorize Alternative Penalties to Benefit Customer Assistance*

Section 15.023 of the Texas Utilities Code authorizes the PUCT to impose a penalty against a person regulated under the Code who violates the Code or a rule or order adopted under the Code, and further prescribes that the PUCT consider a number of factors in determining the penalty, including “the economic harm to property or the environment” and “the amount necessary to deter future violations”.

Under Section 15.027(a) of the Texas Utilities Code, an administrative penalty assessed by the PUCT must be paid to the comptroller. Such payments may deter future violations but do not directly address economic harm to property or the environment.

For this reason, parties have in recent years reached settlements in which the regulated entity, in addition to paying an administrative penalty, also agrees to make a contribution to a fund that specifically assists the affected class of customers. For example, a retail electric provider that did not properly notice customers of a change in prices might contribute to a third-party agency that provides bill payment assistance to customers.

The PUCT proposes that this tool be formalized by allowing a portion of an administrative penalty to be directed to a third party entity approved by the PUCT. Such a program would operate in a manner similar to Supplemental Environmental Projects (SEPs), as authorized by Texas Water Code Section 7.067.

- *Authorize Fees for Filing Certain Documents at PUCT*

A predominantly electronic system for accepting filings has numerous benefits for both the agency and outside parties. However, there are instances in which paper copies are necessary for PUCT staff and Commissioners to analyze a filing. Many such filings are voluminous, consisting of hundreds and sometimes thousands of pages. Therefore, cost shifting from companies and other parties to the agency is a concern.

To offset this cost, the PUCT recommends that it be granted statutory authority to charge fees to certain parties that make filings with the PUCT. The filing fee would be set at a level not to exceed the costs incurred by the agency.

### **Electricity**

- *Sale of Electricity in a Short-Term Transaction*

The emerging market of electric vehicle charging stations has highlighted a new need for regulatory clarity on the type of sale that is made by the electric vehicle charging station to the customer charging an electric vehicle.

Given the essential nature of electric service, the Utilities Code and PUCT rules prescribe extensive customer protections for service from retail electric providers and electric utilities in the areas outside competition. These protections are premised on the paradigm of the customer selecting a single retail electric provider to supply electricity to a fixed location.

A long-term relationship exists between the retail electric provider and the customer, analogous to a wireless telephone agreement. In contrast, an electric vehicle owner makes a new decision each time a vehicle needs to be charged away from home. The transaction between the charging station and the customer is of short duration and does not obligate the customer to a long-term service contract with the charging station. If the customer does not wish to purchase from a given charging station again, then the customer is under no obligation to do so. The short-term relationship between the customer charging an electric vehicle at a commercial charging station and the charging station itself does not warrant the same treatment as the long-term provision of service to a home or business.

The PUCT proposes that the Legislature clarify that the use of an electric vehicle charging station does not constitute a sale of electric energy to a retail customer and that an electric vehicle charging station is not an electric utility or retail electric provider. These changes will provide regulatory certainty and consistency across the state, in areas inside and outside competition, to facilitate deployment of electric vehicle charging stations for customers.

Similar to the vehicle-charging paradigm is a service in which electric service equipment is brought to a fixed location for temporary use. For example, a generator might be rented for use at a construction site. Market economics would dictate that this transaction be priced on the wear-and-tear to the equipment, rather than a daily or weekly fee. For this reason, the decision by the business to charge by the kilowatt-hour should not dictate that the transaction constitutes a retail sale of electricity. The PUCT proposes that the Legislature clarify that supplying electric service equipment using a kilowatt-hour pricing mechanism does not constitute a sale of electric energy to a retail customer and that such a supplier is not an electric utility or retail electric provider.

### **Telecommunications**

- *Texas Universal Service Fund (TUSF)*

The TUSF is funded through a surcharge based on an estimate of intrastate telecommunications service usage. A surcharge is assessed on the estimated intrastate voice service portion of telecommunication companies' taxable receipts.

In fiscal year 2019, wireless service providers reviewed their service packages and determined that a much smaller part of their packages was devoted to providing voice service than previously estimated. As a result, a smaller amount of taxable receipts is eligible for TUSF surcharge assessment. This has created an unanticipated, marked shortfall of TUSF revenues. Therefore, to maintain the solvency of the TUSF, either TUSF support must be reduced or collections must be increased.

The PUCT requests guidance from the Legislature regarding the State's policy on the continuation of universal service support and funding.

**Water**

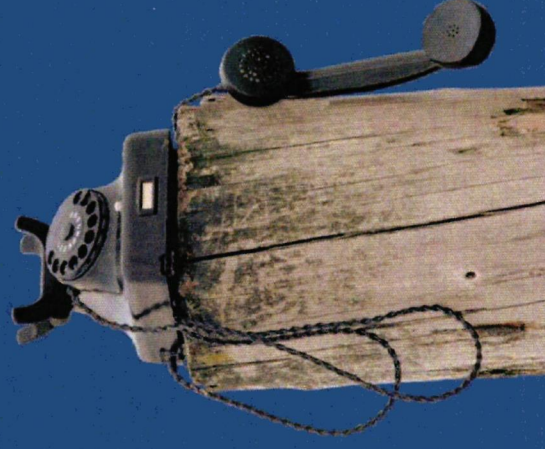
Since the transfer of economic regulation of water and sewer utilities, the PUCT has identified many recommended revisions to the Texas Water Code. These revisions would clarify existing statutory ambiguities and, where appropriate, harmonize the regulation of water and sewer utilities with the PUCT's regulation of the electric industry. The extent of these revisions indicates that comprehensive review of the Texas Water Code, as it relates to economic regulation, is warranted. The PUCT recommends that the Legislature direct the agency to lead this thorough review during the 2012-2022 legislative interim. As noted in the PUCT's Legislative Appropriations Request, such a project is expected to require the addition of two attorneys and a paralegal dedicated full time to this task.



PUBLIC UTILITY COMMISSION  
OF TEXAS

# BIENNIAL AGENCY REPORT

TO THE 87TH TEXAS LEGISLATURE



January 2021

# Table of Contents

<b>Introduction .....</b>	<b>1</b>
<b>Table of Contents .....</b>	<b>2</b>
<b>Guide to this Report .....</b>	<b>5</b>
<b>Acknowledgements .....</b>	<b>6</b>
<b>Agency Highlights.....</b>	<b>7</b>
COVID-19 .....	7
Generation Fleet .....	8
Texas Universal Service Fund (TUSF).....	8
Cybersecurity.....	9
Agency Modernization .....	9
<b>COVID-19 .....</b>	<b>11</b>
Integrated Electric Utilities.....	12
Water and Sewer .....	13
Telecommunications .....	13
<b>ELECTRICITY.....</b>	<b>14</b>
Competitive Retail Market .....	15
Competitive Wholesale Market.....	17
Outside ERCOT: Vertically Integrated Utilities.....	20
Cyber Security .....	23
Electric Vehicles .....	24
Emerging Issues .....	24
Rulemakings .....	27
Additional Agency Actions .....	28
<b>TELECOMMUNICATIONS.....</b>	<b>31</b>
Voice Telecom Service .....	31
Jurisdiction.....	32
Texas Universal Service Fund .....	35
Emerging Issues .....	39

Rulemakings .....	40
Additional Agency Actions .....	40
<b>WATER AND SEWER.....</b>	<b>42</b>
Primary Service Provider Types.....	42
Certificates of Convenience and Necessity .....	43
Ratemaking .....	45
Submetering and Allocation.....	47
Helping Troubled Utilities.....	48
Emerging Issues .....	50
Rulemakings .....	51
<b>ENFORCEMENT.....</b>	<b>55</b>
Investigations.....	55
<b>RESOURCES FOR TEXANS.....</b>	<b>57</b>
Websites.....	57
Customer Assistance .....	58
<b>LEGISLATIVE RECOMMENDATIONS .....</b>	<b>61</b>
<b>Appendix.....</b>	<b>62</b>
puc.texas.gov.....	62
Power to Choose .....	63
PUCT Interchange .....	65
Faucet Facts .....	66
Map Viewers .....	68

**DeAnn T. Walker**  
Chairman

**Arthur C. D'Andrea**  
Commissioner

**Shelly Botkin**  
Commissioner



**Greg Abbott**  
Governor

## *Public Utility Commission of Texas*

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Honorable Members of the 87<sup>th</sup> Texas Legislature:

This Report contains the scope of competition reports for the Texas electric and telecommunications markets, as well as a report on water and wastewater regulation. The Report provides an overview of these three critical industries in Texas that are within the oversight of the Public Utility Commission of Texas (the PUCT) and describes other industry matters for which the PUCT has responsibility under state law. The Report concludes with a discussion of recommendations the Legislature may wish to consider.

We look forward to working with the Legislature to secure affordable and reliable utility services for Texas's residents, businesses, and industries. If you need more information about the issues addressed in the Report or any other PUCT issues, please contact us.

Sincerely,

DeAnn T. Walker  
Chairman

Arthur C. D'Andrea  
Commissioner

Shelly Botkin  
Commissioner

# Guide to this Report

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This Biennial Agency Report to the 87<sup>th</sup> Legislature responds to requirements of the Public Utility Regulatory Act (PURA) and provides additional information regarding the electric, telecommunication, and water and sewer utilities regulated by the PUCT.

**This single Report replaces those previously submitted by the PUCT as the *Scope of Competition in Electric Markets in Texas* and the *Scope of Competition in Telecommunications Markets in Texas*.** The Report also represents the PUCT's inaugural submission to the Legislature on water and sewer utilities. Specifically, this Report fulfills the following requirements:

- Biennial Report, including Legislative recommendations (PURA § 12.203), beginning on page 61;
- Scope of competition in electric markets (PURA § 31.003), beginning on page 14; and
- Scope of competition in telecommunications markets (PURA § 52.006), beginning on page 31.

# Acknowledgements

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## ***Public Utility Commission of Texas***

***DeAnn T. Walker, Chairman***

***Arthur C. D'Andrea, Commissioner***

***Shelly Botkin, Commissioner***

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Connie Corona, Chief Program Officer

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# Agency Highlights

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In fiscal 2019 and 2020, the PUCT faced a number of challenges and achieved many goals in support of our mission to protect customers, foster competition, and promote high-quality and reliable infrastructure. This section describes some milestones, with additional detail found throughout the remainder of the report.

## COVID-19

In March 2020, Governor Abbott issued a proclamation certifying that COVID-19 posed an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. The PUCT enacted several operational changes such as electronic filings, socially distant open meetings, and telecommuting procedures. The PUCT's Customer Protection division call center switched to remote operations. The PUCT also suspended several rules and enacted the COVID-19 Electricity Relief Program to ensure customer protections during this crisis. This program protected over 600,000 electric customers from electric service disconnection provided that they could document their eligibility for unemployment or low-income assistance from electric service disconnection.

## Hurricanes

Hurricane Hanna made landfall in south Texas on July 25, 2020 as a Category 1 hurricane with maximum sustained winds of 90 miles-per-hour (mph). Just under 200,000 customers experienced outages from the evening of July 25 to early morning on July 26. Restoration was achieved relatively quickly compared to similar storms. Hurricane Hanna damaged a two-mile segment of a 138-kV, double-circuit transmission line in Edinburg, Texas. This damage limited the ability to move bulk power within the Rio Grande Valley and required ERCOT to work closely with local transmission and distribution utilities to ensure reliable electric service in the area. On August 10, 2020, American Electric Power (AEP) completed the rebuild of the damaged transmission line, four days ahead of schedule.

Hurricane Laura made landfall in Louisiana on August 20, 2020, as a Category 4 hurricane with maximum sustained winds of 150 mph. Peak outages were approximately 360,000 customers in Texas. Personnel from the PUCT supported the State Operations Center for Hurricane Laura from prior to the storm through September 4, 2020. In addition to outage updates, the PUCT collaborated with Texas Health and Human Services Commission (HHSC) and Texas Division of Emergency

Management (TDEM) to assist in recovery efforts.

Storms Sally and Beta did not require activation of the PUCT's emergency-operations personnel. There were no 2019 storms that required PUCT presence at the State Operations Center.

## Generation Fleet

For most of Texas, electricity demand is highest in the summer due to the persistently high temperatures for the region, which increase the need for air conditioning. In the fall of 2017, expected generation retirements compared to power-use forecasts began to show a lower reserve margin for the coming years within the Electric Reliability Council of Texas (ERCOT) region. To address the lower reserve margin, the PUCT began coordinating summer-preparedness efforts and has continued that work through 2020. The PUCT has facilitated communication among market participants and encouraged completion of maintenance outages well in advance of hot summer months. The ERCOT system performed reliably throughout the calendar years 2018, 2019, and 2020. The PUCT devoted significant attention to monitoring ERCOT's calculated annual reserve margin, operational reliability, and developing wholesale market designs that allow customers to continue to receive low-cost and reliable electricity over the long term. In January 2019, the PUCT ordered gradual changes to the "Operating Reserve Demand Curve" (ORDC) that better

reflect the value of electricity during shortage conditions within the ERCOT region. The ORDC is a pricing mechanism in the wholesale electricity market that incentivizes generators to make their units available when the market has scarcity conditions.

These changes have encouraged ongoing investment in maintenance and additions to the generation fleet to meet the ever-growing demand for electricity within the ERCOT region.

## Texas Universal Service Fund (TUSF)

The TUSF was created by the Legislature in 1987 to "assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high-cost rural areas."<sup>1</sup> The relevant provisions of PURA do not allow the TUSF to support broadband services; instead, it limits the use of the fund for voice services support only. While many companies provide both broadband and voice services, under Texas law, companies cannot subsidize the provision of unregulated broadband services with TUSF funds from the regulated voice services part of the company.

Recent changes to how some telecommunications providers calculate the portion of their revenues that are subject to the TUSF assessment have resulted in a marked decline in TUSF collections. The PUCT now collects approximately \$100 million for the TUSF annually. However, in the last fiscal year, approximately \$198 million was

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<sup>1</sup> <https://www.puc.texas.gov/industry/communications/reports/tusf/Default.aspx>

distributed from the TUSF. Therefore, to maintain the solvency of the TUSF, the PUCT would have to either dramatically reduce TUSF support or increase the TUSF assessment rate to collect an additional \$100 million (for a total of \$200 million) annually. Over the last ten years, the TUSF has paid out more than \$2.7 billion to companies.

## Cybersecurity

The PUCT established the Critical Infrastructure Security and Risk Management division in September 2019. The division utilizes cybersecurity and emergency management practices to facilitate collaboration between utilities and the PUCT. During the COVID-19 pandemic, this division played a vital role in communicating information between government agencies and utilities, including securing personal protective equipment for essential utility workers.

## Agency Modernization

Since 2018, the PUCT has renewed its focus on ensuring optimal effectiveness and efficiency across the enterprise. The leadership team continues to examine agency operations, organization, and budgeting, seeking to answer the question: are we doing our job in the most effective way with the right people leveraging the right resources? The answers revealed themselves in a series of changes that have streamlined the agency and boosted quality of outcomes.

When the Legislature assigned oversight for the business regulation of water

utilities to the PUCT in 2014, several TCEQ employees were transferred to the PUCT. They functioned for five years as a distinct entity within the PUCT, handling functions like rate regulation and infrastructure development, despite the fact those functions already existed at the PUCT in separate divisions. In 2019, water utility responsibilities were distributed to their corresponding PUCT divisions to reduce duplication and enhance collaboration. At the same time, the Department of Utility Outreach was created to educate small to mid-sized water utilities on the applicable regulations to help them attain compliance before they become distressed utilities. It also works with distressed utilities to find ownership solutions to better serve the customers of those utilities.

Similarly, in 2020, the PUCT determined that it would be more efficient and effective for its oversight and enforcement staff to be integrated into the other divisions of the PUCT.

Attorneys from that division were transferred to the Legal division and the other members of the staff were transferred to divisions related to their expertise. The resulting configuration allows for greater flexibility in deploying resources and opportunities to share best practices in the agency's ongoing commitment to industry oversight and enforcement.

The PUCT has continued to refine and improve its approach to contracting with outside parties. Approximately ten to 15 active contracts are required for services that cannot be performed in-house. These tasks require specific expertise, staffing levels, or specialty equipment

not readily available within the agency. For example, the Texas Relay contract provides help for Texans with speech and hearing disabilities to complete telephone calls, as required by PURA §56.101. Call center agents must possess real time typing skills and be fluent in sign language to be an intermediary in completing telephone calls. Other contract-based programs include cybersecurity outreach for utilities and an independent monitor of the wholesale electric market. Throughout the biennium, the PUCT has worked to build relationships with its current vendors to better understand how the programs could be optimized. This work has resulted in increased competition for the agency's business and an overall better work product for Texas.

# COVID-19

On March 13, 2020, Governor Abbott issued a proclamation certifying that COVID-19 posed an imminent threat of disaster in the state and declaring a state of disaster for all counties in Texas. In the same month, the PUCT convened an emergency open meeting in response to the pandemic. The agency minimized all in-person activities and modified various procedures and rules to address the emergency. The PUCT suspended the requirement to file hard copies of documents and required that all documents be submitted online using the agency's E-File application. Some deadlines related to filings were stayed or eased as entities doing business with the PUCT adapted to conducting business exclusively online. The filing deadlines were ultimately reinstated on July 16, 2020.

The agency also made operational changes to ensure staff safety. On March 16, 2020, PUCT employees began working remotely. A limited number of "onsite essential" personnel, including the information technology and Central Records division staff, remained in the office. Staff connected for work through the agency's virtual private network and carried out their regular responsibilities. In addition, staff used email, Skype, Microsoft Teams, and conference calls to meet with supervisors and discuss work planned for each day as well as with other coworkers and outside parties.

The PUCT's Customer Protection Division continued to receive customer

complaints via email, online forms, and telephone with incoming calls routed to their homes.

Due to the importance of continued electric, telecommunications, and water and sewer services in Texas and the safety of PUCT employees and the public, various rules were suspended to provide for the PUCT to continue operations. Under authority found in 16 TAC § 22.5(a), the PUCT found that there existed a public emergency and imperative public necessity that constituted good cause for granting

*In July 2020, the PUCT actively worked with the State Operations Center, the State Medical Operations Center, and the City of Laredo to help with electricity service for an overflow COVID-19 treatment center. Laredo has been significantly affected by COVID-19 and their hospital was over capacity in July 2020. A secondary treatment center opened at the Red Roof Inn in Laredo to relieve some of the pressure on the hospital. Getting the state-mandated requirements for electricity service to the Red Roof Inn required coordination with the transmission and distribution utility (TDU) that provided electric service to the hotel. The TDU disconnected the facility from the transformer while the electrical work was completed. The PUCT identified the electric utility, which was American Electric Power (AEP), then facilitated communication and coordination between AEP and the entity running the temporary medical facility.*

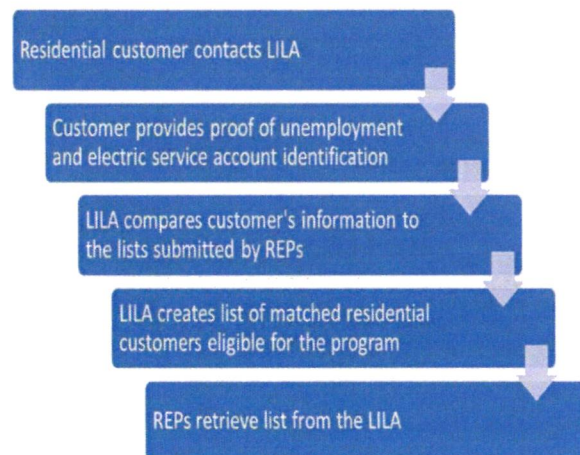
exceptions to certain rules as discussed below. In addition, most of the utilities took onsite precautions such as requiring telecommuting for all employees not essential to onsite operations, providing contactless billing and payment options, and closing their offices to walk-in visitors.

## Integrated Electric Utilities

The PUCT temporarily ordered all integrated electric utilities to suspend disconnection of service for nonpayment and the assessment of late fees for delinquent bills. Electric utilities were authorized to record as a regulatory asset expenses resulting from the effects of COVID-19, including but not limited to non-payment of qualified customer bills. In future proceedings, the PUCT will consider whether each utility's request for recovery of these regulatory assets consists of reasonable and necessary expenses.

### **COVID-19 Electricity Relief Program**

Within the ERCOT region, the PUCT temporarily suspended some rules regarding retail electric providers (REPs). The PUCT ordered REPs to offer a deferred payment plan to a residential customer upon request and suspend late fees for delinquent bills. To prevent disconnection of service for nonpayment to residential customers affected by the pandemic, the PUCT established the COVID-19 Electricity Relief Program to assist with electric bills received by eligible residential customers on or after March 26, 2020. The PUCT's existing contract with the low-income list administrator (LILA) was extended to

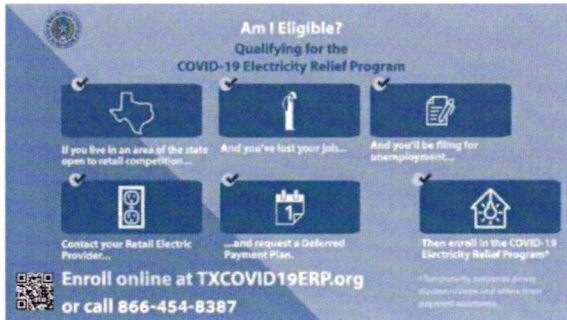


*COVID Electricity Relief Program Process*

apply to the COVID-19 Electricity Relief Program.

The program created a temporary exemption from disconnection for nonpayment for eligible residential customers in areas open to customer choice. To enroll, customers either provided documentation from the Texas Workforce Commission demonstrating qualification for unemployment assistance or were enrolled through low-income assistance programs such as Medicaid. The program covered transmission and distribution utility charges, as well as a portion of the retail electric provider charges. To fund the program, a 33 cent per megawatt hour was billed monthly by transmission and distribution utilities to all customers within the ERCOT region. A Texas household that typically uses 1,000 kilowatt hours of electricity per month paid an additional 33 cents per month. The program protected over 600,000 households from disconnection for nonpayment during the hottest months of the summer when electric bills are often

highest. In addition, over \$81 million of bill payment assistance was provided.



## Water and Sewer

The PUCT temporarily suspended some rules related to water and sewer utilities under its jurisdiction, including residential disconnections for nonpayment, late fees, and interest charges on deferred payment plans. As with integrated electric utilities, the PUCT authorized water and sewer utilities to record as a regulatory asset any expenses resulting from effects of COVID-19, such as nonpayment of customer bills. In future proceedings, the PUCT will consider whether each utility's request for recovery of these regulatory assets consists of reasonable and necessary expenses. Many of these utilities took onsite precautions, such as requiring telecommuting for all employees not essential to onsite operations, providing contactless billing and payment options, and closing their offices to walk-in visitors.

## Telecommunications

In response to the COVID-19 pandemic, the Federal Communications Commission announced the Keep Americans Connected Initiative to ensure that Americans would not lose broadband or telephone connectivity because of the pandemic. The Keep Americans Connected Pledge reads:

*"Given the coronavirus pandemic and its impact on American society, [Company Name] pledges to:*

- 1. not terminate service to any residential or small business customers because of their inability to pay their bills due to the disruptions caused by the coronavirus pandemic*
- 2. waive any late fees that any residential or small business customers incur because of their economic circumstances related to the coronavirus pandemic*
- 3. open its Wi-Fi hotspots to any American who needs them."*

Many Texas telecommunications companies and cooperatives have taken this pledge. Although much of the telecommunications industry is not under PUCT jurisdiction, many of these companies have voluntarily suspended disconnections for nonpayment, waived late fees, granted payment extensions, offered deferred payment plans, and offered free hotspots.

# ELECTRICITY

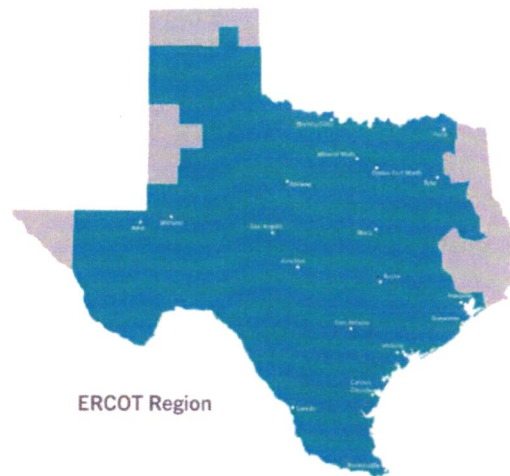
Texas is the only state served by all major electricity interconnections in the United States: the Eastern Interconnection, the Western Interconnection, and the Electric Reliability Council of Texas (ERCOT). Power is generated from fuel sources such as natural gas, coal, nuclear power plants, solar, wind, hydro, and battery resources. In Texas, retail customers receive service from competitive retail electric providers; traditional, investor-owned vertically integrated utilities; electric cooperatives; or municipally owned utilities.

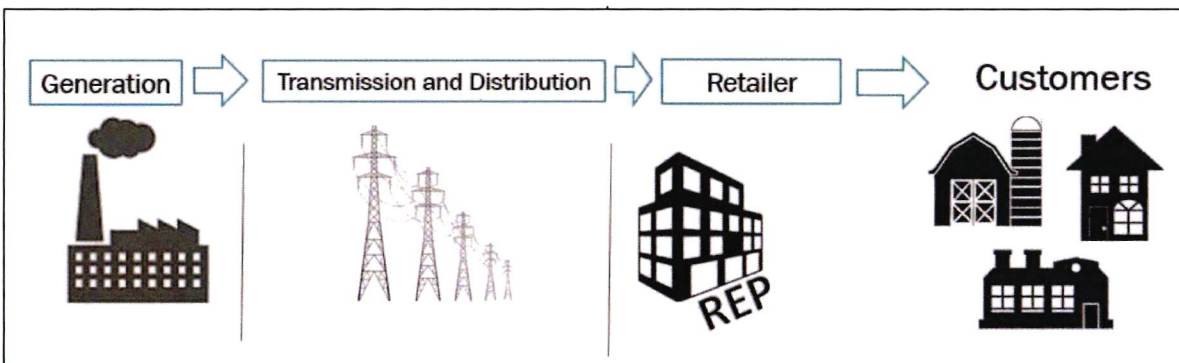
In the El Paso area, the Panhandle, Northeast Texas, and Southeast Texas, more than 1.2 million customers receive their power from one of four investor-owned, vertically integrated electric utilities. They are outside the ERCOT grid and connect to other states. The PUCT regulates the bundled retail rates of these utilities as well as local reliability. The Federal Energy Regulatory Commission (FERC) has regulatory jurisdiction over interstate wholesale power sales and interstate transmission rates for these utilities.

Throughout the state, municipally owned utilities (MOUs) and electric cooperatives serve many Texans. There are 75 member-owned electric cooperatives in Texas, governed by elected boards. Additionally, 72 municipalities own and operate utilities, including Austin Energy and CPS Energy in San Antonio. The PUCT does not

have retail rate-setting jurisdiction over electric cooperatives. However, the PUCT does have limited appellate authority for the retail rates of the MOUs. Additionally, through its authority over wholesale transmission rates, the PUCT sets the wholesale transmission of MOUs and electric cooperatives as well as regulates reliability issues.

The Electric Reliability Council of Texas (ERCOT), Inc. is the regional transmission organization and independent system operator for the ERCOT region, which is fully contained within the state. ERCOT manages the flow of electric power to more than 26 million end users and 90% of the electric load in Texas. ERCOT also performs the financial settlement of the wholesale electric market within its region. ERCOT is governed by a board of directors and subject to the oversight of the PUCT and the Legislature.





## ERCOT Region

The ERCOT region features a competitive retail and wholesale market. Customers within ERCOT that are not served by a municipally owned utility or electric cooperative have customer choice in the retail market. Entities that serve these customers buy power in the competitive wholesale market, in which power generators, municipally owned utilities, electric cooperatives, and traders in the ERCOT region all participate.

## Competitive Retail Market

### **Retail Electric Providers**

Texans in areas open to retail competition choose electricity products from a variety of retail electric providers (REPs). A REP buys power for its customers from power generators and sells it to its customers. A REP also handles the retail relationship with the customer, including billing and customer service. Nearly all eligible customers have exercised the right to choose their electricity provider since

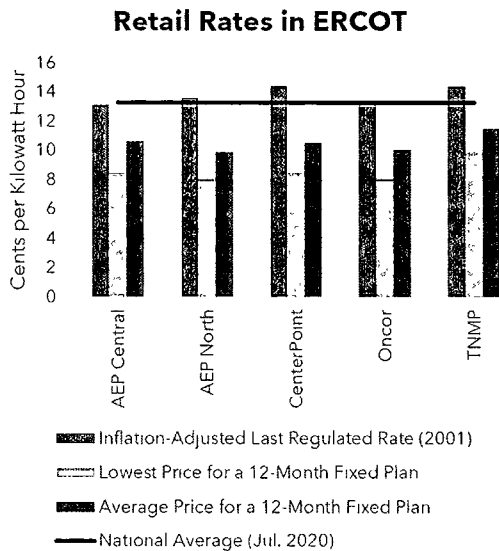
the market opened.<sup>2</sup> The number and diversity of REPs competing for customers provide an indicator of the health and competitiveness of the retail market. Over the 2019 to 2020 biennium, the number of REPs and offers in the competitive market areas of ERCOT has remained stable: four new REPs have been certificated by the PUCT and three REPs have relinquished their certificates to operate in Texas. There are currently 93 REPs authorized by the PUCT to sell electricity to customers in the Texas competitive market.

The wide variety of plans available to customers in the competitive retail market allows customers to choose a plan that best fits their needs and budget. REPs in the competitive market serve 6,587,441 residential premises, 1,114,036 commercial premises, and 4,153 industrial premises.<sup>3</sup> Since 2002, rates in the ERCOT competitive market have decreased by 31% when adjusted for inflation. The average prices available for a 12 month, fixed-rate plan across the TDU service territories in August 2020 ranged from 9.89¢ per kWh to 11.52¢ per kWh.

<sup>2</sup> ERCOT *Provider of Last Resort Counts*, May 1, 2020. Available at: [http://www.ercot.com/content/wcm/key\\_documents/lists/89277/Observed Selection of Electric Providers April 2020.pptx](http://www.ercot.com/content/wcm/key_documents/lists/89277/Observed%20Selection%20of%20Electric%20Providers%20April%202020.pptx).

<sup>3</sup>"POLR Counts Energy 2020 Reporting Final" March 2020 <http://www.ercot.com/mktinfo/retail>

**Comparison of Currently Available Retail Rates in ERCOT to the National Average and Inflation**



This matured competitive market offers a variety of plans to customers. As of September 2020, plans are available that offer 100% renewable electricity, time-of-use pricing such as free electricity on the weekends, and prepaid plans. Contract terms vary from one month up to 60 months.

**Electricity Brokers**

Electricity brokers are relatively new entrants into the competitive market and the services that they offer continue to evolve as the market matures. These electricity brokers do not sell electricity to customers, and a customer does not need to have a relationship with an electricity broker to receive electric service. Most electricity brokers provide shopping services for customers so that they may switch electricity plans among REPs. They also provide supplementary services, such as energy management

services or bill management services, to their customers.

**Transmission and Distribution Utilities (TDUs)**

Within the ERCOT competitive market, an investor-owned TDU is responsible for maintaining the infrastructure that delivers power to the end-use customer. This infrastructure includes high-voltage transmission lines, substations, local distribution lines, and the customer's meter. A TDU's rates are regulated and set by the PUCT. TDUs are responsible for managing the reliability of their transmission and distribution system. A TDU delivers electric power to the end-use customer but does not sell power to the end-use customer. In the ERCOT competitive market, this relationship is managed by a REP.

**Specialized Retail Electric Products available in the Competitive Market (October 2020)**

	Free Weekends or Free Nights	100% Renewable Energy Plans	Renewable Energy Add-On	Bonus items, e.g., free lighting, free thermostats, gift cards, or bill credits	Charity Giveback	Refer-a-Friend Programs
<b>AEP Central</b>	> 15	> 40	> 15	> 20	> 2	> 20
<b>AEP North</b>	> 15	> 40	> 15	> 30	> 2	> 20
<b>CenterPoint</b>	> 15	> 50	> 20	> 30	> 2	> 20
<b>Oncor</b>	> 15	> 50	> 20	> 30	> 2	> 20
<b>TNMP</b>	> 15	> 40	> 15	> 30	> 2	> 20

## Competitive Wholesale Market

Participants in the ERCOT wholesale market own or operate more than 650 generation units producing power for 314 load serving entities. The PUCT does not regulate the entry and exit of power plants within the ERCOT region. Owners and investors in power plants decide to invest in or retire units based on expected costs and profits. A robust stakeholder process at ERCOT implements the policies set by the PUCT for the wholesale market. The ERCOT stakeholder process, with guidance from the PUCT, continues to implement changes to improve wholesale market efficiency.

### Wholesale Market Prices

Wholesale market prices are those paid for electric power that is later sold to retail customers. Electric power is sold in these markets to buyers, who may be load serving entities, like retailer electric providers (REPs) or municipally owned

utilities. Load serving entities then sell the power at a retail rate to their end-use customers. Most end-use customers do not pay wholesale prices. These customers pay retail prices that are determined in advance of the wholesale energy market. In addition, load serving entities and power marketers may also participate in the wholesale market to arbitrage prices.

In addition to fuel costs for power plants, another significant part of the wholesale price of electricity is the cost of transmission congestion. Transmission congestion occurs when transmission lines have reached their capacity limit to deliver power safely from one point to another. If lower cost electricity is available from a given power plant but the transmission lines needed to deliver it to the customer are already at maximum capacity, then electricity must be purchased from a different plant at a higher cost. This difference in the prices is the cost of transmission congestion. The cost of transmission congestion serves as a market signal of where

added generation or transmission might reduce the congestion.

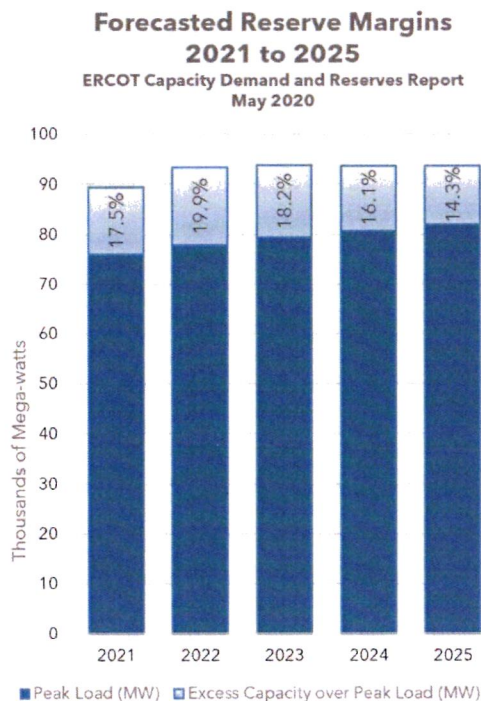
Increases in energy delivered from renewable resources (wind and solar in particular) also have an impact on the average wholesale price of electricity. These renewable resources have a \$0 fuel cost as compared with thermal resources that purchase fossil fuels to generate electricity. The growing prevalence of energy delivered from renewable resources has driven down average wholesale prices because more electricity is being created from zero-cost fuel sources.

Unlike ERCOT, most electricity regions in the United States have capacity markets in addition to their wholesale energy markets. This means ratepayers, in addition to buying electricity, are also required to pay generators for electricity capacity that is committed to be made available at a specified time in the future. The purchased capacity is based on the estimated peak demand on the future system plus an extra amount that is intended to serve as a buffer. In contrast, generators in the ERCOT market are not paid for excess capacity beyond that which they reserve for reliability-related services. Most of the year, customers in the ERCOT region see low prices that reflect out-of-market contracts with load-serving entities or energy traders (these contracts are how most energy and capacity is sold in ERCOT) or generators' decisions to bid their units in ERCOT's markets. In addition, the energy prices that generators are paid in ERCOT's real-time energy market are supplemented to reflect the increased value of dwindling, real-time operating reserves.

This supplement or adder, often referred to as the Operating Reserves Demand Curve (ORDC) encourages generation owners to run units efficiently so that they will be available when most needed. The periods in which the ORDC is applied usually add up to a few hours a year. The ORDC acts as another opportunity for generators to recover their costs and realize profits.

Load-serving entities generally do not buy most of their electricity in real time through the ERCOT wholesale market. Instead, they enter into private contracts with generators. The risk of incurring high prices in the wholesale market provides an incentive for LSEs to "hedge" by negotiating with generators to buy power. These advance purchases are a stable source of revenue for the generators. They also help system reliability by encouraging LSEs to request conservation from customers when the system needs it most.

## Meeting Electricity Demand



ERCOT operates an energy-only market, meaning that the PUCT does not set a mandatory reserve margin. Instead, generators in the ERCOT market make decisions on entry and exit based on internal assessments of their financial standing and prospects for revenue recovery. Two key reports published by ERCOT on these factors are the Capacity, Demand, and Reserves Report (CDR Report) and the Seasonal Assessment of Resource Adequacy (SARA). ERCOT publishes the CDR Report twice a year for the summer and winter seasons of the following year. The CDR Report details the generation capacity that is either currently online or has met certain financial commitment milestones and is expected to be online in the coming years. This amount of

total electric capacity is then compared to the expected highest (or peak) demand for electric power by customers. The difference between the amount of expected available capacity and the amount of forecasted peak load is the calculated annual reserve margin (generation in excess of forecasted load).

Similarly, the SARA is published for each season, with a final report on expectations for the upcoming season and a preliminary report on the following season. The SARA is an overview of available generation capacity, demand scenarios, and weather conditions that could cause reliability events on the system.

Electricity demand is highest in the summer, largely due to the increased need to power air conditioning. The PUCT began a summer preparedness effort in 2017, after evaluating potential electricity demand against expected unit retirements and delivery constraints in the coming summers. The PUCT encourages and facilitates communication among market participants and fuel suppliers with the goal of protecting system reliability. ERCOT also hosts an annual summer preparedness communication workshop where load serving entities, generators, utilities, other market participants, and ERCOT discuss potential communication issues. Finally, ERCOT has worked to improve market transparency on any rescheduling of planned outages by the operator and to ensure that the market better understands its forecasting tools. The PUCT continues to monitor these

issues to ensure the health of the market and system reliability.

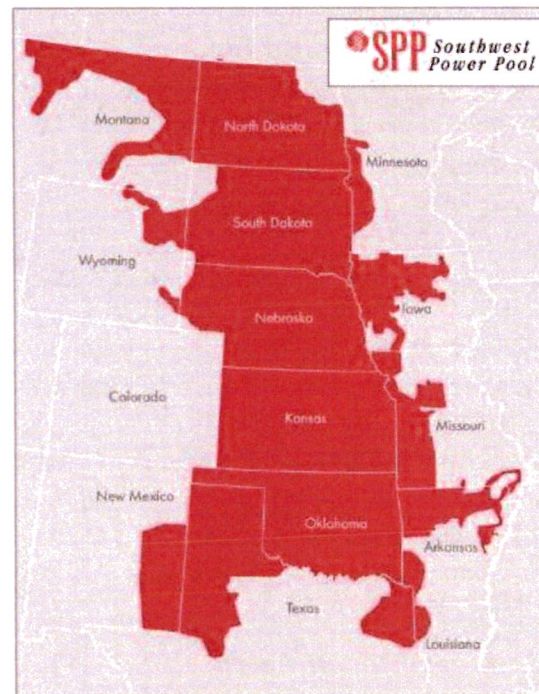
The market continues to evolve, particularly as changes in fuel sources affect the management of the system. For example, renewable resources have grown because of federal tax incentives, as well as growth in consumer demand for renewable energy. The growth of intermittent renewable generation in ERCOT has added to the complexities of ERCOT's market and system operations. Peak net load, which measures customer demand less the contribution from intermittent renewable resources, is becoming an increasingly important metric for ERCOT.

### **Independent Market Monitor**

PURA § 39.1515 requires the PUCT to contract with an independent entity to act as the wholesale electric market monitor.<sup>4</sup> Potomac Economics, a consulting firm, currently serves as the independent market monitor, or IMM. The IMM reports annually on the state of the ERCOT market. This report examines whether market power exists and whether attempts have been made to exercise it. The IMM report identifies market design flaws and recommends changes to correct the flaws. In addition, the IMM recommends changes to ERCOT's protocols and processes to improve market efficiency in the report. In both the 2018 and 2019 *State of the Market Reports* for the ERCOT electricity market, the IMM found that the ERCOT wholesale market performed competitively.

The IMM's 2019 *State of the Market Report* made eight recommendations to improve the efficiency of the wholesale market. These recommendations relate to improvements to either market operation or price formation.

## **Outside ERCOT: Vertically Integrated Utilities**



*SPP Map*

Electric utilities outside of the ERCOT region remain vertically integrated, owning generation, transmission, and distribution assets, as well as selling power to end-use customers. Those utilities are El Paso Electric Company, Southwestern Public Service Company,

<sup>4</sup> Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-58.302 (West 2016 & Supp. 2018), §§ 59.001-66.016 (West 2007 & Supp. 2018) (PURA).

Southwestern Electric Power Company, and Entergy Texas, Inc. The PUCT sets retail rates for the vertically integrated utilities. Customers served by these utilities do not have a choice of provider.

FERC has regulatory jurisdiction over wholesale power transactions and transmission rates for these vertically integrated utilities in the non-ERCOT areas of Texas. The Legislature has granted the PUCT authority to retain outside counsel and consultants to help in protecting the interests of Texas ratepayers and stakeholders. These consultants may participate in a variety of activities before FERC, including rulemakings, contested cases that may affect Texas jurisdictional rights or utilities, and court proceedings where FERC decisions affecting Texas or its utilities are challenged. The PUCT and its counsel monitor those FERC proceedings to decide when Texas's interests call for participation. The PUCT also strives to actively take part in discussions at the stakeholder level and work with other state commissions to address matters before an issue is filed at FERC.

### ***Southwest Power Pool***

The Southwest Power Pool (SPP) is the regional transmission organization and independent system operator for areas of Northeast Texas and the Texas Panhandle and is under the authority of FERC. SPP oversees the bulk electric grid and wholesale power market in the central United States on behalf of a diverse group of utilities and

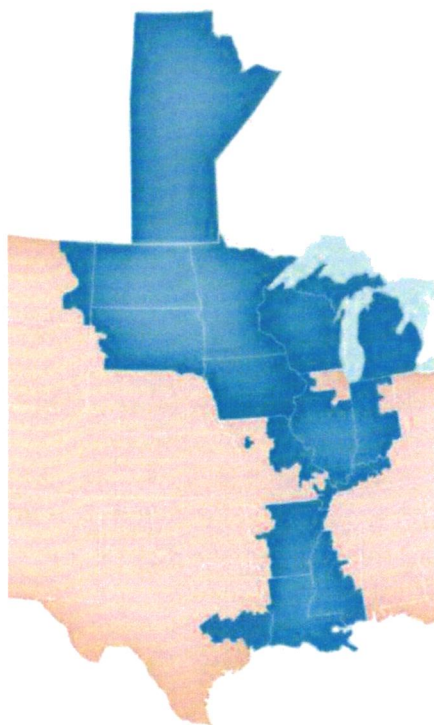
transmission companies. SPP covers 14 states, including parts of Texas, Arkansas, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, South Dakota, Wyoming, and all of Kansas and Oklahoma. Southwestern Electric Power Company (SWEPCO), Southwestern Public Service (SPS/Xcel), several electric cooperatives, and various municipally owned utilities in parts of northeast Texas and the Texas Panhandle are within the SPP footprint.

Chairman DeAnn Walker represents the PUCT as a voting member on SPP's Regional State Committee (RSC), which consists of the state regulatory agencies in the region. The RSC meets quarterly and is the decision making authority at SPP on issues such as allocating costs for transmission upgrades, allocation of Financial Transmission Rights, and generation resource adequacy across the SPP region. The SPP Market Monitoring Unit has reported that SPP market results were competitive overall in 2019.<sup>5</sup>

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<sup>5</sup> *State of the Market 2019*, SPP Marketing Monitoring Unit, at 11, May 2019. Available at: <https://www.spp.org/documents/62150/2019%20annual%20state%20of%20the%20market%20report.pdf> (May 11, 2020).

## **Midcontinent Independent System Operator**



*MISO Map*

The Midcontinent Independent System Operator (MISO) is a regional transmission organization and independent system operator that serves all or part of 15 states in the central United States and the Canadian province of Manitoba. The part of eastern Texas served by the vertically integrated utility, Entergy Texas, Inc., is within the MISO footprint. The PUCT, through outside counsel, has been active in recent FERC proceedings about the MISO tariff. The PUCT advocates for the right to address generation resource adequacy at the state level, increased regulatory certainty, fair transmission cost allocation across MISO states, and

increased market transparency and efficiency. The MISO Independent Market Monitor concluded that the MISO wholesale market was competitive in 2019.<sup>6</sup> Potomac Economics is the independent market monitor for MISO and ERCOT.

Commissioner Arthur C. D'Andrea represents the PUCT as a voting member of the Organization of MISO States (OMS). The OMS meets monthly and coordinates regulatory oversight in the MISO region and makes recommendations to MISO, FERC, and other entities. Commissioner D'Andrea also represents the PUCT as a voting member of the Entergy Regional State Committee (ERSC), which consists of regulators from Arkansas, Louisiana, Mississippi, Texas, and the Council of the City of New Orleans. The ERSC provides collective retail regulator input on the Entergy transmission system, including the cost allocation for certain transmission projects and the addition of transmission projects to the Entergy construction plan. Commissioner D'Andrea also serves as the ERSC representative to MISO's Advisory Committee, a stakeholder body that provides information and advice to the MISO Board of Directors on policy matters of concern.

### **MISO-SPP Seams Issues**

SPP and MISO are electrically interconnected. This connection can cause congestion on one side or the other, as electricity flows across the

<sup>6</sup> 2019 State of the Market Report for the MISO Electricity Markets, Potomac Economics, June 2020. Available at: <https://www.potomaceconomics.com/wp-content/uploads/2020/06/2019-State-of-the-Market-Report.pdf>

lines; thus, there is a need to coordinate power flows between the SPP and MISO grids. This also affects transmission planning. Improved coordination between both organizations means that customers may benefit and avoid the cost of overbuilding transmission on each side. Some states, like Texas, are in both organizations, enhancing the need for coordination.

State utility commissioners in SPP and MISO have recognized that these issues prevent efficient economic transmission planning, market and operational issues, and resource integration along the SPP-MISO seam. In late 2018, the OMS and the SPP RSC jointly formed a Seams Liaison Committee to identify issues and solutions in coordinating seams policies. During 2019, the Seams Liaison Committee engaged the Market Monitoring Units of MISO and SPP to conduct a joint seams analysis and provide recommendations to improve coordination between the two organizations. Chairman Walker is one of the four members representing the SPP and co-chairs the committee.

### ***Western Electric Coordinating Council***

The Western Electricity Coordinating Council (WECC) is a regional entity that includes the area surrounding El Paso and extends from Canada to Mexico, including the provinces of Alberta and British Columbia, the northern part of Baja California, and all or portions of the 14 western states. WECC is the regional entity responsible for bulk electric system reliability in the western interconnection and associated compliance monitoring and enforcement. WECC connects electric utilities in the West to operate at a

common, synchronized frequency, with 38 separate balancing authorities. Unlike ERCOT, SPP, and MISO, WECC does not have a single regional transmission organization or an organized wholesale energy market. El Paso Electric Company is the only electric utility in Texas that is a member of WECC.

## **Cyber Security**

A significant issue in the electric industry, as in others, is cybersecurity. In 2019, SB 475 established the Texas Electric Grid Security Council. Members include the chairman of the PUCT, the chief executive officer of ERCOT, and the governor's designated representative. This council serves as an advisory body to facilitate the creation, coordination, and dissemination of best security practices for the electric industry. The council held its first meeting in September 2019 and continues to meet quarterly.

In response to the significance of the security of the electric infrastructure, the PUCT established the Critical Infrastructure Security and Risk Management division in September 2019. The division utilizes cybersecurity and emergency management practices to facilitate collaboration between utilities and the PUCT. During the COVID-19 pandemic, this division played a vital role in communicating information between government agencies and utilities, including securing personal protective equipment for essential utility workers.

The North American Electric Reliability Corporation (NERC) holds a Grid

Security Exercise, or “GridEx”, which is a simulated operational exercise, every two years for electric utilities, governmental entities, critical infrastructure partners, and supply chain organizations to test responses to cyber and physical security threats. The objectives for GridEx include exercising incident response plans, expanding local and regional response, and improving communication. During the two-day GridEx event, participants respond with simulated internal and external operational activities as they would during an actual event, including sharing information within their organizations and externally according to their established procedures. After GridEx concludes, NERC holds an invitation-only discussion for industry executives and senior government officials. PUCT and ERCOT staff participate in the GridEx exercises.

## Electric Vehicles

As the cost of electric vehicles falls, some experts expect to see accelerated use of such vehicles. Electric vehicles are less than one percent of all vehicle sales in Texas, but adoption rates in the last several years have doubled on a year-over-year basis.<sup>7</sup> Increased adoption of personal use vehicles, medium-duty commercial fleets, and potentially heavy-duty long-haul trucking fleets would shift the paradigm of fuel consumption away from fossil fuel toward electricity. The PUCT provided

an in-depth overview of the effect of electric vehicles on the state’s power grids and electricity market for use by the Texas Department of Motor vehicles in a report to the Legislature as required by SB 604.<sup>8</sup>

Electric vehicles in today’s market run on rechargeable batteries installed in the vehicle. While over 80% of electric vehicle charging takes place at the home, there is growing market for public-use charging stations that may be located off major transit corridors or in places such as large retail shopping centers or garages near office buildings. In Texas, there are 1,383 public charging stations, with 4,136 charging outlets.<sup>9</sup>

## Emerging Issues

### Energy Storage

Energy storage encompasses a variety of technologies, including pumped hydroelectric power, compressed air energy storage, and battery energy storage. To date, ERCOT market processes have generally been designed to accommodate resources that solely inject power onto the grid (like power plants) or solely take power from the grid (like customers). With energy storage, both properties exist – the ability to act as a customer and take electric service and the ability to act as a resource to put power on the grid.

Recently, battery energy storage has begun to proliferate. Battery energy storage technology can provide benefits

<sup>7</sup> <https://evadoption.com/ev-market-share/ev-market-share-state/>

<sup>8</sup> Texas Department of Motor Vehicles, *Study on Imposing Fees on Alternately Fueled Vehicles* (Dec. 1, 2020).

<sup>9</sup> U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy. “Alternative Fuels Data Center.” Available at: <https://afdc.energy.gov/stations/states>.

to customers, but its integration must be thoughtfully managed. ERCOT and its stakeholders are engaged in supporting a more secure and reliable integration of these technologies into the ERCOT market in the newly created Battery Energy Storage Task Force. This task force seeks to integrate energy storage resources into all aspects of ERCOT's operations. Stakeholders continue to work on addressing the unique properties of new integrated battery storage technologies that are entering the market.

The state's other two grid operators have also been incorporating energy storage technologies into their systems. In late 2019, MISO filed changes to its tariff at FERC to allow for selection of an energy storage facility as a transmission-only asset in its annual transmission expansion plan. MISO stated that its proposal is a first step in the evaluation and integration of storage facilities as transmission, and will enable MISO to review and approve storage facilities in its transmission planning process sooner. More complex policy decisions related to energy storage supplying both transmission and energy services are ongoing. FERC has approved the MISO tariff changes referenced here.

In early March 2020, SPP stakeholders asked the Electric Storage Resources Steering Committee to coordinate various working groups in developing policy and procedures to integrate electric storage resources into the SPP grid. The goal of the policies is to integrate electric storage resources and maximize flexibility while supporting reliable and economic operations. New policies are expected to be addressed

by the SPP Board in January 2021. SPP would then make FERC filings to implement the policies.

### ***Distributed Energy Resources***

Electricity markets and grids have seen an increasing number of resources on the utility's distribution system. For example, rooftop solar panels, conventional back-up generators, small scale batteries, and other small-scale resources are becoming more common in ERCOT and are classified as "distributed energy resources." These units are significantly smaller than traditional generation units, typically about 10 MW or less. These resources can produce more electricity than is consumed by the end-users on the same distribution feeder. This electricity in excess of the customer's usage can flow on the utility's distribution system in the opposite direction of traditional power flow from larger, utility-scale generation. This dynamic requires careful management by the interconnecting distribution utility to ensure safety and reliability. The Institute of Electrical and Electronic Engineers (IEEE) recently developed a new standard for electric grid operators to help incorporate these technologies in a way that provides system security and reliability. Discussions are occurring in the ERCOT stakeholder process to help incorporate this standard.

ERCOT stakeholders also continue to discuss other needed changes for incorporating distributed energy resources and advancements in technology. Changes include shortening timelines for interconnection, standardizing interconnection fees, standardizing information required for

studies to ensure clear expectations, and moving to a grid model that accounts for the distributed energy resources that are interconnected. These changes will help ensure a level playing field across the transmission and distribution utilities' service areas and provide clarity to market participants.

### ***Demand Response***

Demand response refers to customers conserving electricity at times of expected high prices. Structured demand response programs are available to electricity customers across the state, including in the competitive choice areas of ERCOT, municipally owned utilities, electric cooperatives, and the vertically integrated investor-owned utilities. These programs encourage customers to reduce electricity usage when called upon by the program provider, often in exchange for a rebate to the customer.

In the ERCOT market, demand response also has a key role in supporting the region's resource adequacy. Price signals in the ERCOT market encourage REPs, municipally owned utilities, electric cooperatives, and their customers to reduce power consumption at key times. When electric power is most in demand, saving an additional megawatt of consumption across a load serving entity's customer base is more cost effective than supporting an additional electric power plant to be available to provide power, if

needed. Demand response programs continue to evolve as the market becomes more sophisticated and familiar with the programs. ERCOT staff and stakeholders continue to discuss how to better understand the effect of demand response on the market.

To monitor the growth of demand response providers in the SPP and MISO footprints, in 2019 the PUCT opened a project for SPP and MISO to file a list of new demand response providers registering with those grid operators. The PUCT continues to supervise demand response development in these areas.

### ***West Texas Transmission***

Drilling activity for oil and gas extraction in west Texas has led to record growth in electricity demand in this area. The annual peak electric load growth rate in far west Texas exceeded 10% in the last decade, far above the average 1.5% growth rate for the ERCOT system in that same timeframe.<sup>10</sup> In addition to demand for electricity, west Texas continues to see growth of renewable generation resources. This added power flow must be carefully managed by the ERCOT grid operator. These factors have all contributed to transmission congestion in the west Texas region.

Six of the ten most frequent transmission constraints in 2019 were in the load zone that serves west Texas.<sup>11</sup> The PUCT

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<sup>10</sup> "Emerging Grid and Planning Matters," ERCOT (Aug. 11, 2020). Available at: [http://www.ercot.com/content/wcm/key\\_documents\\_lists/181578/4\\_Emerging\\_Grid\\_and\\_Planning\\_Matters.pdf](http://www.ercot.com/content/wcm/key_documents_lists/181578/4_Emerging_Grid_and_Planning_Matters.pdf)

<sup>11</sup> 2019 *State of the Market Report for the ERCOT Electricity Markets*, Potomac Economics (May 2020) at p. A-41. Available at: <https://www.potomaceconomics.com/wp-content/uploads/2020/06/2019-State-of-the-Market-Report.pdf>

has been engaged with both utilities and customers to ensure that electric service quality remains reliable and to examine options for improved load forecasting and transmission planning. Utilities that serve the west Texas region continue to work with ERCOT and the PUCT to build new infrastructure to serve the demand in the region.

## **Rulemakings**

### **Advanced Metering**

*Project No. 48525, Rulemaking to Review 16 TAC § 25.130, Relating to Advanced Metering*

In April 2020, the PUCT approved amendments to certain electric rules to implement SB 1145 passed by the 85th Legislature and HB 853, 986, and 1595 passed by the 86th Legislature. These bills encourage deployment of advanced metering and meter information networks by allowing the state's four vertically integrated, investor-owned utilities to collect a surcharge to recover the reasonable and necessary deployment costs for these networks. The Legislature had previously passed similar legislation to allow transmission and distribution utilities within ERCOT to seek recovery of advanced meters and related network facilities.

### **Broker Registrations**

*Project No. 49794, Rulemaking for Broker Registrations*

SB 1497 of the 86th Legislature instructed the PUCT to adopt rules as necessary to require electricity brokers in the Texas competitive market to register with the PUCT. The statute requires brokers to follow customer protections, disclosure requirements,

and marketing guidelines set by the PUCT and PURA. Retail electric providers cannot knowingly provide bids or offers to an unregistered broker.

In September 2019, the PUCT began accepting interim registration forms from brokers. In May 2020, the PUCT adopted two new electric rules to establish the broker registration process and create new customer protections for brokerage services. The PUCT also adopted amendments to the general provisions of its customer protection rules in May 2020 to align these provisions with the newly adopted customer protection rules for brokerage services.

### **Cyber Security**

*Project No. 49819, Rulemaking Related to Cybersecurity Monitor*

In May 2020, the PUCT adopted new rule 16 TAC § 25.367, implementing the provisions of SB 64 and SB 936 passed by the 86th Legislature. The rule established a cybersecurity coordination program to monitor cybersecurity efforts among electric utilities, cooperatives, and municipally owned utilities in the state and established a cybersecurity monitor, a cybersecurity monitor program, and the method to fund the cybersecurity monitor. The PUCT selected Securitas Critical Infrastructure Security (SCIS) in February 2020 to act as the cybersecurity monitor for the PUCT.

### **Electric Line Safety**

*Project No. 49827, Line Inspection and Safety Rulemaking to Implement House Bill 4150*

The PUCT adopted new rule 16 TAC § 25.97 to implement HB 4150, which established reporting requirements

about power line inspection and safety, with a focus on vertical clearances of power lines. The rule requires electric utilities, municipally owned utilities, and electric cooperatives to file three new reports: annual reports, five-year reports, and training reports with the PUCT. Transmission utilities must report to the PUCT any vertical clearances on their transmission equipment that are not compliant with safety and reliability standards. Both transmission and distribution utilities must report any injuries and fatalities associated with the non-compliant equipment and the steps the utility has taken to correct the issue. The reports are available via the PUCT's website.

### **Generation Cost Recovery Rider**

**Project No. 50031**, *Rulemaking Related to Generation Cost Recovery Rider*

In July 2020, the PUCT adopted new 16 TAC § 25.248 to implement HB 1397. The rule allows an investor-owned, vertically integrated utility outside of ERCOT to seek rate recovery outside of a comprehensive rate case of capital invested in an electric power generation facility through a rider to reduce regulatory lag.

## **Additional Agency Actions**

### **Real-Time Co-optimization**

**Project No. 48540**, *Implementation of Real-Time Co-optimization in the ERCOT Market*

Ancillary services are required to maintain the stability and security of an electric grid. For example, these services include helping the grid operator keep the voltage and frequency of the system within certain parameters (voltage and

frequency support) and reserving a generation unit so that it is operating at a lower level, but can quickly increase its power output to match a rapid rise in demand (spinning reserves). Currently, in ERCOT, ancillary services are procured the day before they are expected to be needed through ERCOT's day-ahead ancillary services market. Often these services are provided by generation units that could, if not committed to provide an ancillary service, otherwise participate in ERCOT's real-time energy market.

In January 2019, after cost-benefit studies were conducted by ERCOT and its Independent Market Monitor and public comments were solicited and considered, the PUCT instructed ERCOT to implement real-time co-optimization (RTC) of its real-time energy and ancillary services markets. RTC will find the most efficient combination of securing both energy and ancillary services on a real-time basis, instead of keeping these functions siloed from one another. This change in the dispatch will allow for real-time trading of these services that improves market efficiency, increases price transparency, and brings savings to end-use customers.

SPP and MISO have both implemented RTC, and this design will bring ERCOT into step with these markets. Stakeholders at ERCOT continue to be engaged in the implementation of RTC, and the PUCT keeps open lines of communication and dialogue with ERCOT and industry participants about this process. ERCOT anticipates implementing RTC in May 2024.

## Transmission Costs

**Project No. 49199**, *Project to Revise Rate Filing Package for Investor Owned Transmission and Distribution Utilities*

In July 2020, the PUCT adopted a revised rate filing package to obtain more information for the prudence review of the need for and costs of transmission lines and substations. The revisions added a schedule about facility need and costs, required more information on direct-current ties, and provided clarification to other forms and instructions.

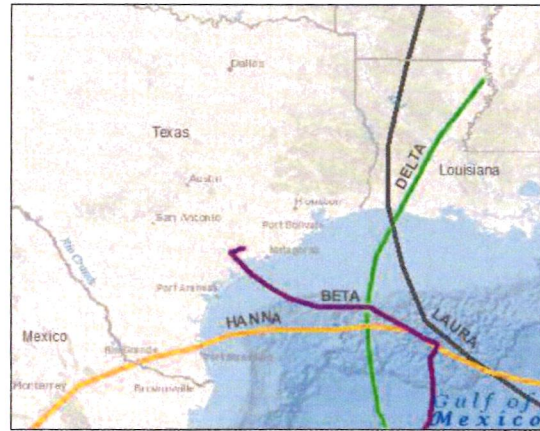
## Acquisition of El Paso Electric

**Docket No. 49849**, *Joint Report and Application of El Paso Electric Company, Sun Jupiter Holdings LLC, and IIF US Holding 2 LP for Regulatory Approvals Under PURA §§ 14.101 39.262, and 39.915*

In August 2019, El Paso Electric Company, Sun Jupiter Holdings LLC (Sun Jupiter), and IIF US Holding 2 LP applied with the PUCT to request approval of Sun Jupiter's acquisition of El Paso Electric. Sun Jupiter is owned by IIF US 2, which is part of the Infrastructure Investments Fund, a long-term private investment fund that invests in infrastructure companies. In January 2020, the PUCT approved the acquisition subject to terms and conditions that are in a settlement agreement among the parties. The conditions include "ring fencing" provisions that help secure the financial and operational independence of El Paso Electric, making sure that the company continues to adequately fund service to its Texas customers. The settlement agreement also includes a \$21 million rate credit for the Texas customers of El Paso Electric to provide

economic development and community-assistance programs in the El Paso area.

## Hurricanes



### Storms Impacting Texas 2020

- HANNA - Category 1 hurricane at landfall in Texas, July 25
- LAURA - Category 4 hurricane at landfall in Southwest Louisiana, Aug. 27
- BETA - Tropical storm at landfall in Texas, Sept. 21
- DELTA - Category 2 hurricane at landfall in Southwest Louisiana, Oct. 9

### Hurricane Hanna

Hurricane Hanna made landfall in south Texas on July 25, 2020 as a Category 1 hurricane. It was the first hurricane to hit Texas since Hurricane Harvey in 2017. AEP Texas outages peaked just under 200,000 late from the evening of July 25 to early morning on July 26. AEP Texas reduced that number to 80,000 by Sunday night July 26. almost all of AEP Texas's restorations were completed by July 31.

On August 10, AEP Texas completed the rebuild of a two-mile segment of a 138-kV - double circuit transmission line in Edinburg, which was four days ahead of schedule. Crews began work on the

transmission line on August 1 with an August 14 estimated completion date. Hurricane Hanna's damage to this segment of line limited the ability to move bulk power within the Rio Grande Valley. The project, which included replacing 35 transmission structures with new 110-foot concrete poles, impacted several neighborhoods in the McAllen-Edinburg area, creating additional challenges.

AEP Texas worked closely with ERCOT to relieve the loading on the grid around the Edinburg-McAllen area and to prevent a potential load shed event. AEP Texas also launched an ongoing appeal for energy conservation across the Rio Grande Valley until the transmission line was returned to service. Throughout the construction period, AEP Texas communicated daily with local city and county leaders and kept in communication with local hospitals and other large-use customers in the impacted area.

At one point, there were over 100 field personnel working on site, not including support employees from community relations, communications, dispatch, and regulatory, assisting with various aspects of the project while adhering to traditional safety as well as COVID-19 guidelines.

#### *Hurricane Laura*

Hurricane Laura made landfall on August 20, 2020 as a Category 4 hurricane with maximum sustained winds of 150 mph. Laura was the 10th hurricane to make landfall in the continental United States with winds of 150 miles per hour or higher since 1851.

The total estimated damage in Texas from Hurricane Laura is approximately \$300 million. Peak outages numbered at approximately 360,000. PUCT staff began supporting the State Operations Center for Hurricane Laura from landfall through September 4, 2020. In addition to outage updates, the PUCT collaborated with Texas Health and Human Services Commission (HHSC) and Texas Division of Emergency Management (TDEM) Recovery to assist in recovery efforts.

#### *Hurricane Delta*

On October 9, 2020, Hurricane Delta made landfall in east Texas and Louisiana as a Category 2 storm, but later weakened to a Category 1. Delta had maximum sustained winds of 150 mph. The hurricane hit the same region that was devastated by Hurricane Laura just six weeks prior. The hardest hit counties were Jefferson, Orange, Hardin, and Chambers. Peak outages were approximately 120,000 customers in Texas. By October 14, 2020, Entergy had just 5,419 outages remaining from Hurricane Delta; 1,497 in Beaumont and 3,922 in Port Arthur. The majority were restored by the end of that day. PUCT staff coordinated with TDEM to assist in recovery efforts.

#### *Other*

Storms Sally and Beta did not require activation of the PUCT's emergency-operations personnel. There were no 2019 storms that required PUCT presence at the State Operations Center.

# TELECOMMUNICATIONS

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The telecommunications market in Texas is comprised of voice, broadband, and video services. Wireless technology now dominates the voice market. With the addition of Voice over Internet Protocol (VoIP) technology, any broadband internet service can now also provide voice service. The PUCT regulates only the intrastate rates and services of some providers of traditional voice service provided through facilities that are largely wired, commonly referred to as landline or wireline service.

## **Voice Telecom Service**

### ***Landline Service***

Intrastate landline service, which includes basic local telephone service, is provided over facilities that were traditionally copper-wired. Today however, intrastate landline service is often provided via a combination of copper-wired, fiber-wired, and fixed wireless facilities. These facilities may be used in the provision of other voice telecommunication services, such as interstate calling, as well as information services. The PUCT regulates some aspects of the companies that provide intrastate landline service through five separate chapters of the Public Utility Regulatory Act (PURA).

### ***VoIP***

VoIP enables voice communications over a broadband connection and allows users to both receive and place calls. Copper, fiber, fixed wireless, coaxial cable, and electric power lines can provide broadband for VoIP services. VoIP is gaining popularity as broadband subscribership increases. If the customer is a broadband subscriber, VoIP can be a less expensive alternative to landline services. The PUCT does not regulate VoIP.

### ***Wireless***

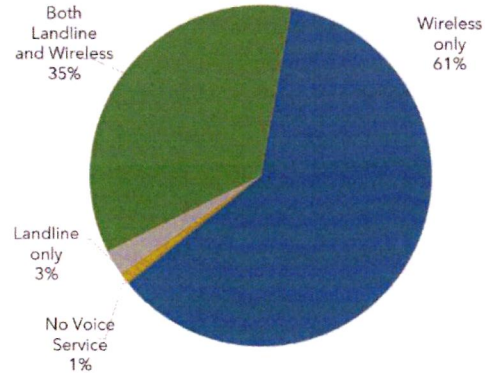
Wireless subscribership continues to grow as more Texans use wireless service as a replacement for landline service. Wireless service is comprised of mobile phone service technologies that include cellular non-smartphones, cellular smartphones, and satellite phones. While calls can be placed and received wirelessly, at some point wireless phone calls travel over wired infrastructure to reach their destination. The PUCT does not have authority over the provision of wireless service.

### Market Share of Voice Services

The competitive landscape in Texas has changed from being dominated by companies using landline infrastructure to competition among diverse companies using various wired and wireless technologies. The trend toward wireless and other technologies and away from landline service has continued. For customers, wireless voice service can be used as a substitute for landline service or VoIP service (collectively considered wireline) or may only be used when out of the home. Some customers may retain wireline service as a backup to the wireless service, for alarm systems, or use with fax machines.

Data shows that 61% of households have “cut the cord” and rely solely on wireless service for voice telecommunications, while only 3% of households rely exclusively on wireline service. For households with children, reliance on wireless service is even more pronounced, with only 1.4% of households relying on wireline only. This suggests that wireline reliance skews to an older demographic segment of the population and that the trend away from wireline toward wireless service can be expected to continue in the future.

**Distribution of Household Telephone Use (December 2019)**



### Jurisdiction

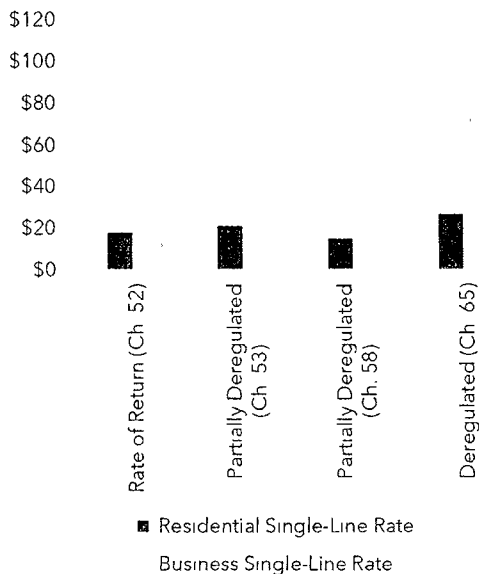
#### ILECs

Incumbent Local Exchange Carriers (ILECs) are entities that held a Certificate of Convenience and Necessity for the provision of landline service as of September 1, 1975. Through multiple chapters, PURA allows for five distinct classifications of the 60 Texas ILECs.

### Summary of PURA ILEC Regulation

PURA Chapter	Type of Regulation	General Description of ILEC	Universal Service Support	Average Residential Single-Line Rate	Number of ILECs
<b>52</b>	<b>Rate-of-return (fully regulated)</b> must maintain tariff with the PUCT; must request PUCT review to change rates.	≤ 31,000 lines  usually serve rural parts of Texas	eligible for support	<b>\$18.06</b>	<b>44</b>  <i>Examples:</i> Big Bend Telephone Company; Hill Country Telephone Cooperative
<b>53</b>	<b>Rate-of-return (partially deregulated; cooperatives only)</b> must maintain tariff with the PUCT; can change rates with formal notice	≤ 31,000 lines  usually serve rural parts of Texas	eligible for support	<b>\$21.48</b>	<b>2</b>  <i>Examples:</i> Valley Telephone Cooperative; Colorado Valley Telephone Cooperative
<b>58</b>	<b>Incentive</b> met multiple infrastructure milestones as of January 1, 2000; pricing flexibility for existing services only; can change rates with informal notice	≥ 31,000 lines  serving off-shoots of urban areas	eligible for support	<b>\$14.79</b>	<b>11</b>  <i>Examples:</i> CenturyTel; Windstream
<b>59</b>	<b>Incentive (new services)</b> met multiple infrastructure milestones as of January 1, 2000; pricing flexibility for new and existing services; can change rates with informal notice.	No ILECs currently choose Ch. 59 regulation	eligible for support	--	<b>0</b>
<b>65</b>	<b>Deregulated</b> do not maintain a tariff with PUCT; can change rates at own discretion  Note: If an entire ILEC territory is not deemed competitive, the ILEC is considered "transitioning."	Large ILECs that serve areas deemed competitive  typically serve populated urban areas	<b>NOT eligible</b> for high-cost support, but <b>are eligible</b> for social service support (transitioning companies can receive high-cost support for areas still regulated)	<b>\$26.74</b>	<b>3</b>  <i>Examples:</i> AT&T; Frontier Communications; CenturyLink (Transitioning)

### Average Telecommunications Rates by Regulation Type



### ILECs and CLEC Affiliates

Many regulated ILECs provide non-regulated services, either through their ILEC designation or through a Competitive Local Exchange Carrier (CLEC) affiliate. CLECs are providers that entered the market after September 1, 1975. There are 292 companies registered with the PUCT as CLECs.

For an existing ILEC to provide landline services outside of its service area, it must have a CLEC certification for the new service territory. The CLEC affiliate cannot offer landline service to customers within the ILEC's territory. However, the CLEC can offer broadband and video services within the ILEC's territory, including VoIP service as an alternative to the ILEC's landline services. Many of the facilities that CLECs use (for voice, broadband, and video services) are rented from the ILEC

and are the same facilities being used to serve the ILEC's customers and in direct competition with the ILEC.

### Rates Around the State

Local telephone rates for business customers are typically higher than those charged to residential customers. In most cases, rates in rural areas served by small companies are less than the rates charged by larger ILECs serving customers in more urban areas. For example, Eastex Telephone Cooperative, Inc., an ILEC serving customers in small and rural areas in East Texas, offers residential landline service at a rate of \$22.50. Conversely, AT&T provides service in most large urban areas throughout Texas and offers residential landline service at a rate of \$31.00 per month. AT&T is a fully deregulated company and their rate exchanges, except for certain grandfathered rates, are uniform throughout AT&T Texas' deregulated service territory.

Similarly, the rates for single-line business service by small and rural ILECs are often less than the rates charged by ILECs providing single-line business service in urban areas. For example, Frontier charges a single-line business rate of \$49.99 in its exchanges found in larger urban areas. Conversely, West Plains Telecommunications, Inc. offers single-line business service in small and rural areas, subsidized by the Texas Universal Service Fund, at a rate of \$22.18. Frontier is a deregulated company with pricing flexibility not available to a Chapter 52 companies like West Plains Telecommunications, Inc. The rates for companies that provide multi-line business service are also

generally higher than the rates charged for single-line business service. The general pricing scheme for this service also follows the pattern described above. A deregulated company offering service under Chapter 58 or 65 can offer this service at a higher rate because the company is deregulated (Chapter 65) or has greater pricing flexibility (Chapter 58). Small and rural ILECs remain fully regulated and are thus limited in their ability to offer higher rates.

## **Texas Universal Service Fund**

The Federal Communications Act of 1934 designated landline service as a universal service that all Americans are entitled to access. This act also created the federal Universal Service Fund to offer support to assist companies providing landline service. In 1987, Texas established programs to provide additional support to these companies, called the Texas Universal Service Fund (TUSF). At the time of implementation, the purpose of the TUSF was to assist companies in providing landline service at reasonable rates to customers in expensive-to-serve rural areas, low-income customers, and customers with certain disabilities. The programs currently supported by the TUSF are discussed further below. However, the current revenues are no longer enough to support all TUSF programs.

### **Assessment fee changes**

The TUSF is funded through a surcharge based on an estimate of ILEC and CLEC customers' intrastate telecommunications service usage. Typically, ILECs and CLECs pass through the surcharge costs to customers on their bills. The PUCT reviews the fund requirements and may change the TUSF rate to meet the obligations of the fund. In 2000, the TUSF surcharge was 3.955%.<sup>12</sup> In 2004, the surcharge was at its highest at 5.65%.<sup>13</sup> Occasionally, the PUCT also secures reimbursement in overpayments made to a telecommunications utility from the TUSF. During the 2019 to 2020 biennium, \$2,565,579.12, plus interest was reimbursed to the fund.

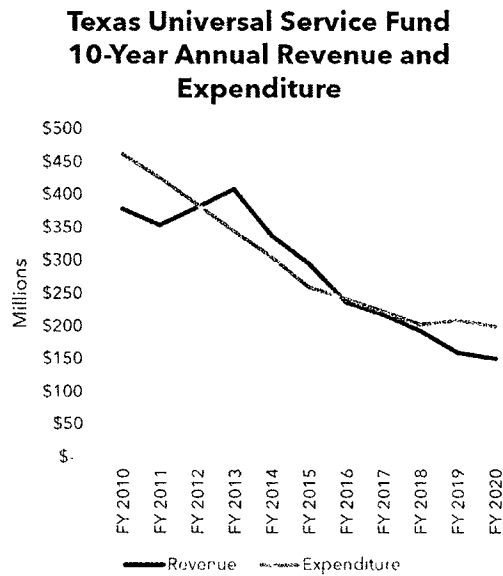
The TUSF surcharge is only assessed on the estimated intrastate voice service portion of Texas ILECs' and CLECs' taxable receipts. Accordingly, it is only collected by ILECs and CLECs on the estimated intrastate voice portion of their customers' bills. In fiscal year 2019, wireless service providers (including Texas ILECs and CLECs) reevaluated their service packages to determine how much of the package was devoted to voice service compared to data services. When those studies were completed, the companies determined that a much smaller part of their packages were devoted to providing voice service than they had been estimating. Since the

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<sup>12</sup> *Staff Activities rates regarding TUSF Administration*, Project No. 21208, Projections of the TUSF Through Fiscal Year 2003 (Oct. 10, 2000).

<sup>13</sup> *Staff Activates regarding TUSF Administration*, Project No. 21208, Order Changing TUSF Assessment (Jul. 28, 2004; Jul. 24, 2006; Apr. 18, 2007; Aug. 8, 2008; Nov. 10, 2011; Jul. 9, 2013; Dec. 18, 2014).

change in accounting for voice and data services by these companies, a smaller amount of taxable receipts is eligible for TUSF surcharge assessment. This has created an unanticipated, marked shortfall of TUSF revenues, as shown below.



### ***Programs funded by TUSF***

The TUSF funds programs to assist telecommunications providers in providing landline service at reasonable rates in high-cost-to-serve rural areas of Texas, to provide financial assistance for voice services for low-income customers, and to support for programs such as relay services for hearing-impaired customers. On the following pages are breakdowns of the programs that fall under high-cost support or social service support.

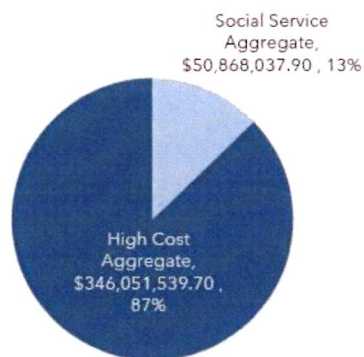
### High Cost Programs-

Program	Description	2019 Payout	FY 2020 Payout
Texas High-cost Universal Service Plan (THCUSP)	Support for <b>large</b> phone companies offering landline service in <b>high-cost-to-serve areas and rural areas</b> .	\$83,915,598.51	\$86,395,290.08
Small and Rural ILEC Universal Service Plan (SRIUSP)	Support for <b>small and rural</b> companies offering landline service in <b>high-cost-to-serve and rural areas</b> .	\$80,806,675.43	\$82,467,710.40
Additional Financial Assistance (AFA)	Additional revenue for ILECs drawing funds from the THCUSP or SRIUSP under certain conditions (see PURA §§ 53 105, 53 151, and 53.406). Has never been used to seek additional support.	\$0.00	\$0.00
PURA § 56.025 Make-Whole Provision	Support for ILECs that serve <b>&lt; 31,000</b> access lines to maintain reasonable rates for landline service. ILECs can request additional support from the <b>TUSF to match projected funding loss from changes to federal or state legislation</b> .	\$8,209,885.12	\$3,546,004.12
IntraLATA Support	Universal Service Fund Reimbursement for Certain IntraLATA Service. Reduces certain rates for <b>schools, libraries, nonprofit telemedicine centers, not-for-profit hospitals, and health center</b> .	\$282,774.22	\$219,997.86
High-cost Uncertified	High-cost Universal Service Plan for Uncertificated Areas where an <b>Eligible Telecommunications Provider (ETP) Volunteers</b> to Provide Basic Local Telecommunications Service. Financial assistance for ILECs that serve uncertificated areas of the state and have volunteered to provide landline service to residential and single-line business premises.	\$207,603.96	\$202,965.69
<b>Total</b>		<b>\$173,422,537.24</b>	<b>\$172,629,002.46</b>

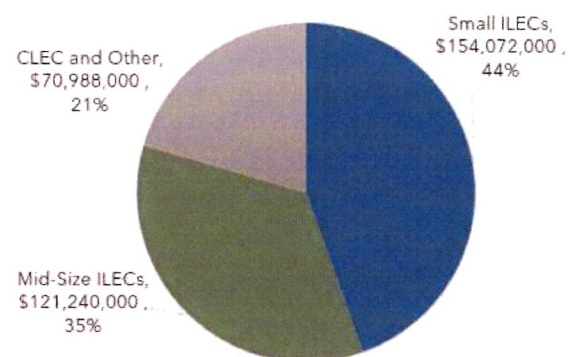
### Social Service Programs

Program	Description	2019 Payout	FY 2020 Payout
Lifeline	Reduces monthly voice rates <b>for low-income customers.</b>	\$9,520,859.65	\$7,814,510.24
Texas Relay Service	Allows Texans with speech or hearing disabilities to communicate using <b>specialized devices and operator translations.</b>	\$2,034,248.12	\$1,511,335.96
Specialized Telecommunications Assistance Program (STAP)	Reduces the costs <b>of telephone equipment</b> for customers with speech or hearing disabilities.	\$12,539,780.84	\$16,506,097.00
Audio Newspaper Program	Free telephone service that allows blind and visually impaired persons access to the text of newspapers by using <b>synthetic speech.</b>	\$469,237.50	\$468,275.04
Tel-Assistance Support	Reduces monthly voice rates <b>for low-income customers.</b> No longer an active program. Only customers who were receiving it prior to its discontinuation and did not want to switch to Lifeline still receive support through Tel-Assistance.	\$2,173.33	\$1,520.22
<b>Total</b>		<b>\$24,566,299.44</b>	<b>\$26,301,738.46</b>

**TUSF Fiscal Payout  
(FY 19-20)**



**TUSF Payout by Company Type  
(FY 19-20)**



## Emerging Issues

### ***Continued need for POLR designation***

A provider of last resort (POLR) is an ILEC or CLEC that is obligated to provide landline service at a reasonable cost to anyone throughout their service territory. This ensures that customers are not denied service and have an opportunity to receive non-discriminatory landline service. Through POLR obligations, ILECs and some CLECs are obligated to provide facilities and services to any customers within their service territories, even if this requires building infrastructure for a single customer to use.

Since POLR requirements were established, the telecommunications market has changed remarkably. The availability of alternative voice services (predominantly wireless) and continued buildout of facilities means customers in competitive areas of Texas may be able to access voice services from a variety of providers at a reasonable cost. Beginning in 2015, companies serving competitive areas could request to be relieved of their POLR obligation.

### ***Definition of "Universal Service"***

When the concept of universal service was created, landline was the primary communications method. As a result, this was the service supported by universal service funds, both federally (the FUSF) and for states (for Texas, the TUSF). Since then, technology and facilities have evolved. In Texas, broadband is now the primary communications method and wireless

voice services are now more prominent than landline.

These trends have also been seen nationally. In 2011, the FCC began amending the FUSF programs to support wireless and broadband service. Changes have included retiring programs that support landline and creating new programs aimed at supporting wireless and broadband.

As standard telecommunications service shifts away from landline to broadband service, the question of what constitutes meaningful "universal service" is evolving.

### ***Sustainability of the Texas Universal Service Fund***

The PUCT collects approximately \$100 million for the TUSF annually. In fiscal 2020, approximately \$198 million was disbursed from the TUSF. Therefore, to maintain the solvency of the TUSF, the PUCT would have to either dramatically reduce TUSF support or collect an additional \$100 million (for a total of \$200 million) annually.

In June 2020, the PUCT considered whether to raise the assessment rate to maintain support for all TUSF programs. Increasing the assessment fee from 3.3% to 6.4% (as was proposed by staff of the PUCT) would not sustain funding for all the programs in the long run, however, and would have required further increases as revenue continued to decline. As a result, the PUCT elected not to increase the TUSF assessment rate during a pandemic and economic crisis, particularly since the increase

would not have guaranteed long-term solvency.

As mentioned above, the FCC reformed the FUSF support. Additionally, the FCC has considered, and continues to consider, a transition from a revenues-based contribution method to a method based on telephone numbers or connections.<sup>14</sup> Several states have changed from a revenue-based contribution to a connections-based contribution mechanism, including Maine, Nebraska, Utah, and New Mexico.<sup>15</sup> Other states apply the assessment on a per-line or per-access trunk basis and some moved to an assessment based on lines or telephone numbers – the so-called “per-connection” structure.<sup>16</sup> Additionally, many states do not just assess the fee on ILECs and CLECs, but also other telecommunication companies, such as VOIP providers.

## Rulemakings

### **Change in TUSF Support**

*Project No. 47668, Rulemaking Regarding Substantive Rule Pursuant to S.B. 1476*

The PUCT adopted new rule 16 TAC § 26.409 to implement SB 1476 of the 85th Legislature. The new rule established the criteria and process for determining whether TUSF support should be eliminated for exchanges where the number of lines served has

decreased by at least 50% since December 31, 2016. The first review took place in December 2019. At that time, no exchanges were identified.

## Additional Agency Actions

### **New Area Code for Dallas Area**

*Project No. 48765, Petition of North American Numbering Plan Administrator on Behalf of the Texas Telecommunications Industry for Relief for the 214, 469, and 972 NPA*

In October 2018, the North American Numbering Plan Administrator (NANPA) filed a petition requesting an additional area code for the Dallas area. NANPA anticipated that there would be a need for a new area code in the Dallas area before the end of 2021, and with the addition of a new area code, there should be enough numbering for the next 13 years. The PUCT approved the petition and use of the new area code, 945, will begin in January of 2021.

### **TUSF Support for Lifeline-Only**

*Docket No. 48502, Application of Virgin Mobile USA, L.P. to Amend Its Designation as an Eligible Telecommunications Carrier (ETC) and its Designation as an Eligible Telecommunications Provider (ETP) for the Limited Purpose of Offering Lifeline Service*

In June 2018, Virgin Mobile USA, L.P. (Virgin Mobile) filed an application to expand the service areas for which it is eligible to collect support from the federal USF and TUSF. Virgin Mobile

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<sup>14</sup> *In the Matter of Universal Service Contribution Methodology, A National Broadband Plan for Our Future*, WC Docket No. 06-122, Further Notice of Proposed Rulemaking, Apr. 27, 2012, 27 FCC Rcd 5357 (6). Available at <https://www.fcc.gov/document/commission-adopts-nprm-reform-and-modernize-contribution-system>.

<sup>15</sup> Lichtenberg, Sherry. *State Universal Service Funds 2018: Updating the Numbers*, at 31. National Regulatory Research Institute, Apr. 2019. Available at: <https://pubs.naruc.org/pub/3EA33142-00AE-EBB0-0F97-C5B0A24F755A>.

<sup>16</sup> *Ibid.*, at 28.

asserted they were only seeking additional support from the FUSF and TUSF for providing Lifeline services and did not intend to collect additional support related to the provision of high-cost service. The PUCT found that, under PURA, companies are not allowed to provide only specific types of service, in Virgin Mobile's case, Lifeline.

### ***Relinquishment of POLR Designation***

*Docket No. 50379, Application of Grande Communications Networks, LLC for an Order Relieving it of its Designation as a Provider of Last Resort*

Grande Communications Networks, LLC (Grande) is a CLEC that provides individual telecommunications services and bundled video, broadband, and telephone service in several regions of Texas. In December 2019, Grande filed an application to be relieved of its designation as a POLR in 84 areas served in the Dallas-Fort Worth area. Grande has had a POLR obligation since 2004 when the obligation was transferred from AT&T to Grande's predecessor AdvanTex Communications (Docket No. 29472). Grande cited technological advances and changes in law as the grounds for being relieved of its POLR obligation. Grande noted that it did not seek to exit the markets it currently served as the POLR and planned to continue providing service to existing customers.

Under PURA § 52.154, the Commission may not impose on a nondominant telecommunications utility a greater regulatory burden than is imposed on a deregulated company. In support of the application, Grande stated that relieving it of its POLR designation would remove

a regulatory burden on Grande that is greater than the regulatory burden imposed on AT&T Texas in the 84 areas that are served by both Grande and AT&T Texas. Grande also stated that continuing to maintain its POLR obligation would require significant infrastructure investment. If a customer requested service, and that customer was significantly distant from Grande's existing facilities, adding new facilities could cost hundreds of thousands of dollars. Grande further claimed there are multiple other landline and wireless companies within their exchange and customers would be able to receive voice service elsewhere. In November 2020, the PUCT relieved Grande of its POLR designation.

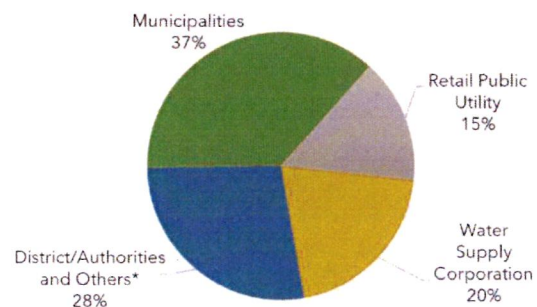
# WATER AND SEWER

The PUCT regulates the retail rates of water and sewer utilities in Texas, and has limited appellate jurisdiction over the wholesale and retail water and sewer rates of certain other entities. It also regulates certificates of convenience and necessity (CCNs) for water and sewer service providers. For water and sewer service in Texas, the PUCT regulates rates, while the Texas Commission on Environmental Quality (TCEQ) regulates health and safety standards.

The PUCT regulates a total of 4,020 providers holding CCNs. These CCNs encompass 10,246,008 water connections to residences and businesses as of the end of fiscal year 2020. Many providers of retail water and sewer services, such as municipalities and districts, are not required to hold a CCN, but many do. Much of Texas is served by large and medium sized retail public utilities including municipalities, districts, authorities, and water supply and sewer service corporations. The remainder of the population is served by small retail public utilities, typically serving 2,300 or fewer connections. The following chart depicts the types of retail water and sewer providers holding a CCN.

## Primary Service Provider Types

**Percentage of Water CCNs by Service Provider Type**



### **Privately Owned Utility**

A private business may provide potable water or sewer service. Such a business may be organized as a sole proprietorship, partnership, corporation, or other form.

### **Water Supply and Sewer Service Corporations (WSCs)**

WSCs are member-owned, nonprofit corporations that provide potable water or sewer service for compensation. WSCs operate in accordance with bylaws and articles of incorporation to ensure member ownership and control. A WSC must hold a CCN to provide retail water and sewer service to the public.

### **Exempt Retail Public Water and Sewer Utility**

A utility or a WSC may be exempt from the requirement to hold a CCN to provide retail water utility service. To be exempt, the utility must serve fewer than 15 service connections and cannot be owned by or affiliated with a retail public water utility or any other entity that provides potable water service. This exemption is not available for privately owned utility that provides sewer service.

### **Districts**

Districts also provide retail water and sewer services to Texans. A district is a local, governmental entity that provides specific services to its customers and residents. A district is not a utility and is not required to hold a CCN to provide retail water or sewer service to its customers unless it wants to serve in an area already served by a retail public utility. The most common types of districts are: Municipal Utility Districts (MUDs), Water Control and Improvement Districts (WCIDs), and Special Utility Districts (SUDs).

River authorities are a type of district, created by law, that operate major reservoirs and sell water on a wholesale and retail basis. River authorities may also provide other services, such as sewer service, water conservation, irrigation, flood control, firefighting, garbage collection, and recreation facilities.

### **Municipalities**

Many Texans receive their water and sewer service from a municipality. Like districts and authorities, municipalities are not utilities and are not required to

hold a CCN to provide retail water or sewer service either inside or outside their corporate boundaries, in most situations. If a municipality wants to serve in an area already served by a retail public utility, the municipality must obtain a CCN to serve those customers. As is true for other CCN holders, if a municipality obtains a CCN, it must provide continuous and adequate service to any customer requesting service in the CCN service area and comply with other requirements applicable to certificate holders.

## **Certificates of Convenience and Necessity**

When the PUCT issues a CCN, the holder acquires an obligation to provide retail water or sewer service within the specified service area. A public utility that has received a request to provide service to an area not already receiving service must amend its CCN to lawfully provide service to the area. The PUCT ensures that an applicant has the financial, managerial, and technical capabilities to operate a utility and that any overlaps of the proposed area with neighboring utilities, cities or districts are resolved. If the service area will require the construction of a new water or sewer system, the applicant must also obtain TCEQ approval to construct the needed facilities.

### **Utility Acquisitions**

The sale or acquisition of a water or sewer system that is owned by a holder of a CCN must give notice and obtain the approval of the PUCT. The sale may also require the transfer of the CCN to the purchaser. The transfer and related

sale of facilities is commonly known as a sale, transfer, or merger, or STM. The acquiring entity may be either an existing utility or a new market entrant. Like the process for granting the CCN, the PUCT ensures that the acquiring entity has the financial, managerial, and technical capabilities to provide continuous and adequate service to the requested area. The applicant's financial health, compliance history with TCEQ's health and safety standards, and customer complaints, if any, are also considered. To obtain PUCT approval, the applicant must also demonstrate that the proposed STM is in the public interest.

Since 2016, there has been a gradual increase in acquisitions of smaller water and sewer utilities. Several retail public utilities, including utilities based in other states, are actively pursuing the acquisition of smaller utilities and consolidating those utilities within their operations.

Decertification is a process by which all or a portion of a certificated service area is removed from a CCN, other than expedited release or streamlined expedited release.

### ***Expedited Release***

The owner of a tract of land of at least 50 acres can petition the PUCT for the expedited release of all or a portion of that tract from a CCN service area so that it may receive service from another retail public utility. Such a petition may be initiated by the landowner if the CCN holder is either not providing service or if the cost of service is so prohibitively expensive as to constitute denial of service. Petitions for expedited release

must identify an alternate service provider that is capable of providing service in the manner requested by the landowner. The CCN holder has the option to oppose the expedited release and refute any information submitted by the petitioner. The landowner requesting expedited release must provide adequate and just compensation to the CCN holder for release. Expedited release can occur statewide, except within large cities or platted subdivisions.

### ***Streamlined Expedited Release (SER)***

As an alternative to decertification or expedited release, the owner of a tract of land of at least 25 acres that is not receiving water or sewer service may petition for streamlined expedited release from their current CCN holder. The landowner must provide adequate and just compensation to the CCN holder for release. Streamlined expedited release is only available in thirty-three counties based on population requirements in statute.

### ***CCN Revocations***

Revocation of a CCN is necessary when the CCN holder is not providing service. This may be because the CCN was held by someone who is now deceased, the utility is abandoned, or the CCN was held by to a defunct corporation. Because a CCN grants an exclusive obligation to provide utility service, failure to resolve a CCN revocation prevents another retail water or sewer provider from providing the service. Ultimately, this issue harms customers seeking a quality provider of a necessary service.

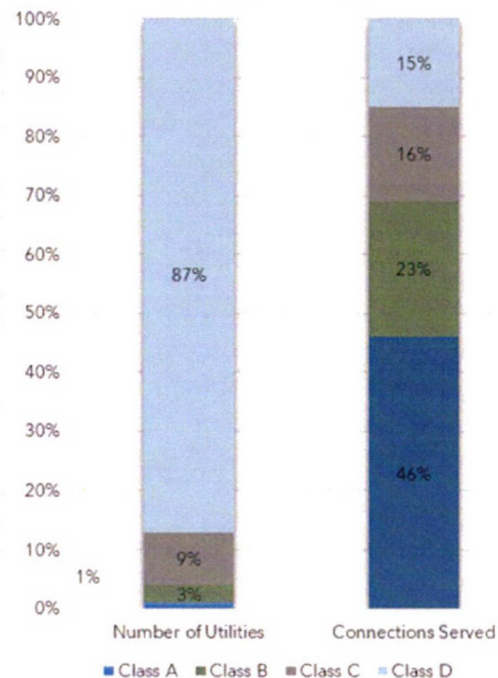
## Ratemaking

Like any business, a water and sewer utility must have sufficient revenues to cover its daily operations, repair and replace equipment, and repay its debts. To raise funds needed to invest in their capital-intensive systems and to generate sufficient annual cash flows to repay that debt plus normal operating costs, a utility must have a strong balance sheet and adequate cash flows to get investors or lenders to provide funds.

The primary source of a utility's revenue is generated from the bills paid by its customers. The rates used to create those bills must be set to recover the utility's costs of production, treatment, storage, collection and distribution. Rates must also be fair to the customers. A just and reasonable rate must be based on accurate financial information and customer records.

Rates must be periodically reviewed and reset, if necessary, for changes in costs. Stagnant rates can result in insufficient revenues over time and prevent smaller utilities from investing in system repairs or improvements to maintain service or increase efficiency. This is particularly true for smaller utilities with little access to capital markets. Stagnant rates also diminish financial attractiveness of systems and reduce the financial attractiveness of utilities looking to sell their businesses.

Utilities by Utility Class



## ***Jurisdiction***

Jurisdiction over the rates of water and sewer providers is spread among a number of entities.

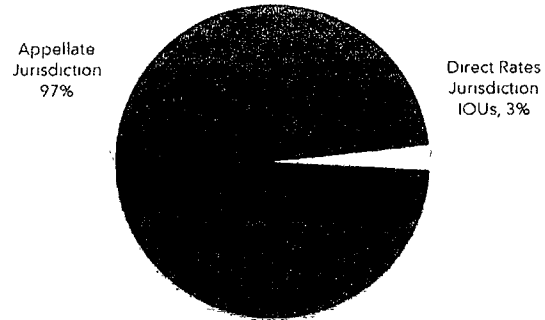
The PUCT has original jurisdiction over the retail water and sewer rates of utilities. Where a utility's service area is within the corporate boundaries of a municipality, the municipality has original jurisdiction over the retail rates. The PUCT has appellate jurisdiction over the rates set for the utility by the municipality.

The PUCT has limited appellate jurisdiction over certain retail rates. This includes the rates of WSCs, affected counties, and districts. It also includes the rates of a municipally-owned utility, but only for customers located outside of the city.

The governing board of a WSC or a district sets the retail water and sewer rates for its customers. After the board approves a rate change, customers may appeal that decision to the PUCT.

For municipally-owned utilities, rates may be set by the city council or by an independent board for customers located both inside and outside the municipal limits. However, only customers that live outside of the city limits may appeal these ratemaking decisions to the PUCT.

**PUCT Jurisdiction by Connection Count**



### **Formal Ratemaking Proceedings**

The Texas Water Code classifies water or sewer utilities by the number of active connections served. Sewer utility service connections are not counted for classification unless the utility only provides sewer service. Although homeowner associations (HOA), property owners' associations (POA), and cooperatives are nonprofit entities, they are treated as utilities for ratemaking purposes under the Texas Water Code.

A utility must apply to the regulatory authority with original jurisdiction to change its water or sewer rates. Utilities under PUCT jurisdiction have rate-filing requirements that vary depending on the utility's classification as either a Class A, B, C or D utility. Utilities can file for a rate change no more than once in a 12-month period.

A Class A utility must show all appropriate cost information, provide rate schedules, and include written testimony supporting the requested rates. The rate application must also include a notice to affected ratepayers and the regulatory authority having jurisdiction over its rates.

Class B and Class C utilities have simpler filing requirements. These applications require fewer rate schedules and less detailed financial information. Written testimony is not required unless a formal hearing is requested.

Class D utilities have the simplest rate filing requirements. A Class D utility can receive an annual rate adjustment of up to five percent without a hearing. The Class D utility must provide notice to its customers at least 30 days before the

effective date of the proposed change. This type of rate adjustment may be made up to four times before a regular rate application is required. After four times, or for a rate increase that is more than five percent, the utility must file the more detailed Class C utility application.

### **Pass-Through Adjustments**

A pass-through adjustment allows a utility to obtain a rate increase or decrease for changes in costs imposed by governmental entities and wholesale water providers. These costs are typically outside the utility's control. Pass-through rate adjustments can provide for more timely recovery of a retail public water or sewer utility's costs because they are normally processed within 60 days. A utility can apply multiple times in a year for such adjustments

### **Submetering and Allocation**

The owners of certain businesses may purchase water and sewer services from a utility and provide and bill for those service to its tenants. This action is allowed by owners of apartment houses, condominiums, and manufactured home rental communities, as well as some commercial or industrial parks, office complexes, and marinas.

These owners may bill their tenant on a submetered or allocated basis. The owner is responsible for correctly passing through the charges from the utility. The owner must ensure that meters are working correctly and, if allocating charges, equitably allocate the utility charges among the tenants.

The PUCT enforces the rules regarding allocation and billing of tenants.

Owners that submeter or allocate utility charges must register with the PUCT. There are currently 9,446 entities registered to submeter or allocate water or sewer utility service to tenants. The sheer number of entities submetering and allocating service presents challenges for ensuring customers are properly informed and properly billed.

Many owners are unaware of the legal requirements for submetering or allocating utility charges. There are frequent changes in ownership and owners change billing procedures without approval.

Customers tend to file complaints when a new owner buys a facility and changes the method for allocated billing. Complaints involving submetered and allocated billings have generally increased since 2014. Typically, these complaints involve disputes about billing or allocation methods and lack of communication from the owner. These customers get little advance notice of billing changes, which are often made with no alteration to the lease agreement.

In many cases, the property owners were not following the methodologies required by PUCT rules. The property owners in some instances do not remove charges for common areas, add extra fees, or combine methodologies in consumer bills. Some owners charged for services other than for water and sewer utilities such as storm water drainage fees, or other fees required by municipal ordinances. Many of the underlying issues of noncompliance

appear to stem from ignorance of the rules, rather than malfeasance.

## **Helping Troubled Utilities**

Troubled water utilities are generally characterized by frequent interruptions to service or delivery of non-potable water or water of questionable quality. Frequent outages may result from a loss or impairment of supply or major breakage in distribution systems. Less severe problems may result in loss of pressure that requires customers to boil water before consuming it.

Many troubled sewer utilities have improperly treated discharges. These discharges may result from breaks in the collection system or because a treatment plant is not properly operating.

While many of these issues fall within TCEQ's purview, the PUCT is responsible for ensuring that utilities comply with their statutory obligation to provide continuous and adequate service to their customers. Further, the PUCT is responsible for ensuring that utilities have rates that can provide the revenues necessary to correct these problems and avoid them in the future.

Typically, troubled utilities have inadequate revenues and little access to capital to improve their deficient systems. While a utility must demonstrate it has the financial, managerial, and technical capability to provide continuous and adequate service to obtain a certificate of

convenience and necessity, over time these capabilities can diminish.

Where a utility is an individual, these diminished capabilities can result from the person aging, or, if the individual dies, service problems can quickly happen. The same problems occur with closely-held businesses. Additionally, lack of access to financial resources is also a major challenge for smaller utilities. With a small number of customers, adequate revenues cannot be achieved simply by raising rates.

In addition to inadequate finances, some troubled utilities exhibit poor management, which is often manifested by neglecting to answer customer calls, not reading customer meters, charging rates not in the utility tariff, failing to maintain water quality, failing to maintain adequate records, and failing to pay electricity and wholesale water supply bills. The tools in the Texas Water Code to help troubled utilities focus on new management include temporary management, supervision, or receivership. The goal in using these tools is to provide qualified management for troubled utilities focused upon providing continuous and adequate service and achieving and maintaining compliance with PUCT and TCEQ rules. In addition, the PUCT can assist these troubled utilities in finding new owners to run the utility.

### **Temporary Management**

A temporary manager may be appointed to operate a nonfunctioning water or sewer utility that has discontinued or abandoned operations or the provision of services. Only utilities may be placed into temporary

management. A temporary manager has the power and duty to ensure continued operation of the utility and the provision of continuous and adequate water or sewer service to customers. At the time that the PUCT appoints the temporary manager, it also sets the compensation for the temporary manager.

Once appointed, the temporary manager can charge a temporary rate for the temporary manager's provision of service, which may include reasonable compensation to the temporary manager approved by the PUCT or TCEQ. This rate may cover the cost the temporary manager incurs to make service available or to bring the nonfunctioning system into compliance with PUCT and TCEQ requirements. The PUCT must approve or adjust the temporary rates within 90 days of implementation. Temporary rates may continue in effect after a nonfunctioning utility is acquired by another utility for a period determined by the PUCT. Both the TCEQ and PUCT have authority to appoint a temporary manager to a utility, but only the PUCT can approve a temporary rate.

Since 2015, the PUCT has appointed or re-appointed temporary managers to abandoned water and sewer utilities on 23 occasions. In many cases, the owner of the utility was either deceased or had moved to another state, abandoning all operations of the utility. In other instances, abandonment occurred because the current owner had severely mismanaged utility operations.

## ***Supervision***

The PUCT may place a utility under supervision when the utility has exhibited gross or continued mismanagement, gross or continued noncompliance with chapter 13 of the Texas Water Code, or has exhibited noncompliance with PUCT orders.

When a utility is placed into supervision, the PUCT may require the utility to abide by conditions and requirements including placing restrictions on hiring, salary or benefit increases, capital investments, borrowing money or issuing stock, use of funds, and priority of payments and obligations. Currently, the PUCT does not have the resources to utilize this tool.

## ***Receivership***

Both TCEQ and the PUCT have the authority to refer a water or sewer utility to the Office of the Attorney General to seek appointment of a receiver to non-functioning water or sewer utility. The Office of the Attorney General may seek a court-ordered appointment of a receiver to manage and operate a non-functioning water or sewer utility. A receiver has more power over a utility than a temporary manager, including the ability to seek court approval to sell the utility. A receiver is also authorized to charge temporary rates; however, the PUCT must set those rates.

## ***PUCT Resources***

Working with a utility that is in temporary management or receivership requires significant agency resources. The PUCT staff spends a considerable amount of time helping temporary managers through the process of applying for a temporary rate and obtaining or

amending a CCN, if needed. The PUCT staff often holds customer meetings and contacts neighboring utilities and other entities to facilitate acquisition of the non-functioning utility. The PUCT staff also helps the temporary manager or receiver with coordination between local, state, and federal agencies and explains reporting requirements.

Customers of non-functioning utilities are often confused with the status and role of a temporary manager or receiver and have many questions that need to be thoughtfully addressed. The average time a non-functioning utility remains in temporary management, supervision, or receivership is between two to four years.

In some cases, the period of temporary management must be extended or a new temporary manager must be found because the existing temporary manager has lost interest in continuing or are no longer interested in buying the troubled utility.

## ***Emerging Issues***

### ***Consolidation and Regionalization of Retail Public Utilities***

As federal health and safety regulations increase on public water and sewer systems, many retail public utilities are needing large capital investment in their systems to stay in compliance. In lieu of investing the time and costs associated with increasing their rates, many of these retail public utilities have contacted the PUCT to express an interest in selling their systems. Some entities have already found a potential buyer, while others need help searching for a

purchaser. In some instances, the retail public utility has already been sold; however, it was sold without going through the sale, transfer and merger process as required by Texas Water Code § 13.301. Such sales are considered void by Texas Water Code § 13.301(h). The PUCT's Department of Utility Outreach division works with retail public utilities seeking to find a viable entity to either acquire, purchase, or consolidate their systems with another retail public utility. The department also works with entities that have bought or sold systems without going through the regulatory process to bring them into compliance by helping them through the regulatory process.

## Rulemakings

### ***Classification of Water and Sewer Utilities***

**Project No. 49798**, *Revise Classifications and Reporting Requirements for Water and Sewer Utilities*

In April 2020, the PUCT adopted amendments relating to classifications for retail public water and sewer utilities as required by SB 700. This legislation added a fourth class for water and sewer utilities. SB 700 also required the PUCT to adopt rules that allow a Class B utility to file a less burdensome application than a Class A utility, and a Class C or D utility to file a less burdensome application than a Class A or B utility. In addition, it granted the PUCT the authority to extend the duration of a temporary rate that is in effect at the time the PUCT approves the acquisition of a non-functioning retail water or sewer service provider under Texas Water Code § 13.301. The table below

details the changes in utility classification.

**Project No. 49704**, *Revisions of Rate Filing Packages for Water Utilities*

In January 2020, the PUCT adopted new rate filing packages and notice forms for Classes A through D utilities as required by SB 700. New forms were created, and existing ones were revised to reflect the changes in the classification of utilities as required by SB 700.

### ***Fair Market Valuation***

**Project No. 49813**, *Revision of Rules and Forms Relevant to Fair Market Value*

In July 2020, the PUCT adopted revised rules and forms related to implementing a fair market valuation process as required by HB 3542, enacted in 2019. Fair market value is an alternate method for determining the appropriate value of a retail public utility at the time of an acquisition. This method uses appraisals from utility valuation experts as the basis for determining the sales price for a retail public utility. This facilitates the sale of retail public utilities that might otherwise be difficult to determine an appropriate value, such as the sale of a municipally owned utility. The fair market value method is voluntary and is available to larger Class A and Class B utilities seeking to acquire other retail public utilities.

In addition to creating rule 16 TAC §24.238 addressing the fair market valuation process, the PUCT made changes to existing rules to incorporate relevant aspects of the fair market valuation process.

## **Reporting Requirements for Utilities Violating TCEQ Orders**

**Project No. 50089**, *Rulemaking Relating to Reporting Requirement for Water and Sewer Utilities*

In May 2020, the PUCT adopted new reporting requirements for Class B, C, and D utilities that have violated a TCEQ final order relating to water quality and availability, as required by section 1 of HB 3542. The PUCT is notified by the TCEQ about those utilities that failed to provide adequate system capacity or a minimum pressure throughout the distribution system, or maintain testing equipment to monitor effectiveness of a chemical treatment or pathogen removal process.

New rule 16 TAC § 24.134 creates a process where the PUCT provides written notice of the reporting requirement to the utility. Once notified, the utility must file a report related to the utility's financial, managerial, and technical ability to provide continuous and adequate service no later than three years after the date of the violation of the TCEQ order. The PUCT is required to deliver a copy of the report to each state representative and senator of the district that contains a portion of the service area being served by the utility that is submitting the report. If the utility fails to provide such a report, the PUCT must report such failure to the local state legislators and the TCEQ.

## **Alternative Rate-making Mechanisms**

**Project No. 50322**, *Alternative Ratemaking Mechanisms for Water and Sewer Utilities*

SB 700 lists the following appropriate alternative rate-making methodologies: the introduction of new customer

classes, the cash needs method, and phased and multi-step rate changes. The PUCT may also adopt system improvement charges that may be periodically adjusted to ensure timely recovery of infrastructure investment. The bill required the PUCT, by rule, to establish a schedule that requires all utilities that have implemented a system improvement charge approved by the PUCT to make periodic filings with the PUCT to modify or review base rates charged by the utility. In this project, the PUCT is considering modifications to 16 TAC §24.75 to update the current cash needs and phased and multi-step rules. The rule will also define the method by which utilities can add new customer classes and implement system improvement charge rules.

## **Streamlined Expedited Release**

**Project No. 50028**, *Revision of Rules and Forms Relevant to Expedited Release*

In June 2020, the PUCT adopted revised rules and forms relevant to streamlined expedited release, as required by SB 2272. The bill restructured the statutory framework for expedited release and streamlined expedited release and made significant changes in how compensation to a former CCN holder is determined. The new rule incorporates those changes and adds new definitions and procedural requirements. The PUCT repealed 16 TAC § 24.245 and replaced it with new rule 16 TAC § 24.245, revocation of CCN or amendment of a CCN by decertification, expedited release, or streamlined expedited release.

## **Water Rate Case Expenses**

**Project No. 48937**, *Rulemaking to Amend 16 TAC § 24.44 Rate-Case Expenses*

In October 2019, the PUCT adopted amendments to 16 TAC § 24.44 relating to rate case expenses. These amendments removed a provision that prohibited a utility from recovering rate case expenses when the PUCT approved a rate following a contested case hearing generated less than 51% of the utility's requested revenue requirement. The revisions also removed the provision that limited the recovery of rate case expenses following a written settlement offer. The revised rule establishes requirements for recovery or reimbursement of rate case expenses.

## **Appeal of Wholesale Water Rates**

**Docket. No. 46662**, *Petition of the Cities of Garland, Mesquite, Plano, and Richardson Appealing the Decision by North Texas Municipal Water District Affecting Wholesale Water Rates*

In December 2016, the cities of Garland, Mesquite, Plano, and Richardson filed a petition to appeal the rates charged by the North Texas Municipal Water District for wholesale water service.<sup>17</sup> The District was created by the Texas Legislature in 1951 and is a conservation and reclamation district under Article XVI, section 59 of the Texas Constitution. The Petitioners along with the cities of Allen, Farmersville, Forney, Frisco, McKinney, Princeton, Rockwall, Royse City, and Wylie, constitute the thirteen Member Cities of the District.

The rate the Member Cities paid for wholesale water service was determined using a methodology set forth in a contract that could not be modified without the unanimous consent of the Member Cities and the District, and the term of the contract was tied to the District's outstanding bond debt and the service life of the plant used to provide wholesale water service. The contract methodology allocated the District's annual revenue requirement among the Member Cities based on each Member City's highest historical water usage, and each Member City was required to pay for that amount of water even if it did not use the full amount. Because the rate appealed by the Petitioners was set via contract, the PUCT rules and existing case law required that the PUCT find that the rate appealed by the Petitioners adversely affected the public interest before the PUCT could initiate a proceeding to determine the appropriate rate for the District.

A hearing on the merits to determine whether the rate adversely affected the public interest ("Phase One") was held in October 2018. In February 2020, the PUCT announced its decision that the rate appealed by the Petitioners adversely affected the public interest. In April 2020 before beginning "Phase Two" of the rate review, the Commissioners directed the parties to retain a mediator to attempt to come to an agreement on the case. In October 2020, the parties filed a joint report to the PUCT stating that the District and the Member Cities had come to an

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<sup>17</sup> *Petition of the Proposal for Decision at Cities of Garland, Mesquite, Plano and Richardson Appealing the Decision by North Texas Municipal Water District Affecting Wholesale Water Rates*, Docket No. 46662, Proposal for Decision at 000010 (Mar. 15, 2019).

agreement and requested leave to withdraw the rate appeal. The request was granted, and the case was formally dismissed with prejudice in November 2020.

During the pendency of the case, several legislators, including the chairmen for the Texas House of Representatives Committee on Natural Resources and the Senate Committee on Water and Rural Affairs, requested that the PUCT allow the legislature to address the issues in the 2021 legislative session. One of the key issues involved in the case is tension between private contract rights and the critical need for water infrastructure in our state. In addition, the development of a robust statutory framework under which the PUCT can adjudicate wholesale rate appeals would likely provide more regulatory clarity to the affected parties in these types of appeals.

# ENFORCEMENT

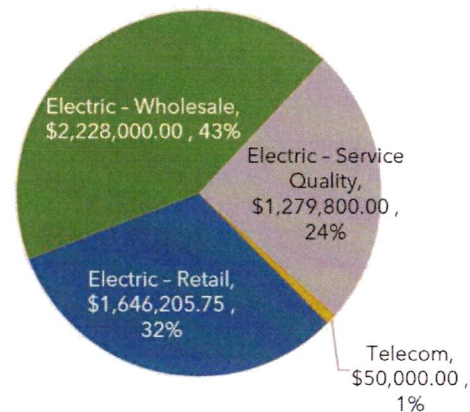
The PUCT enforces statutes, rules, and orders. Ensuring compliance protects customers, the electric markets, and the reliability of the grid, and promotes quality of service to all Texans who rely on regulated electric, water, sewer, or telecommunications services. The PUCT's enforcement efforts focus on violations of statutes, such as PURA and the Texas Water Code, and the PUCT's rules. In investigations involving the wholesale electric market as well as the reliability of the electric grid, enforcement efforts also involve the ERCOT protocols, operating guides, and other documents.

PUCT staff monitors customer complaints and open investigations when an issue appears to be a systematic problem as opposed to a one-off issue. In addition, PUCT staff regularly receives investigative reports from the Independent Market Monitor. PUCT staff also opens investigations based on self-reports from entities, newspaper articles, and legislative inquiries. Investigations often involve at least one round of pre-litigation discovery and multiple meetings with the relevant entity. Most investigations are resolved through settlement rather than litigation of contested cases.

## Investigations

During the 2019 to 2020 biennium, PUCT staff closed 106 investigations into the electric industry, 74 investigations into the telecommunications industry, and 38 investigations into the retail water and sewer industries. An investigation may be closed in a variety of ways, including a finding of no violation, a warning letter, the recommendation of monetary penalties, or the revocation of a license or certificate.

## Penalty Distribution



## Penalties, Refunds, and Donations

During the same time period, the PUCT assessed \$5,204,005.75 in penalties against regulated entities. These penalties are remitted to the state's general revenue fund. In addition, the PUCT secured \$314,884.56 in refunds to

customers and donations to customer assistance agencies.

### ***Loss of Certificates***

The PUCT has other enforcement mechanisms such as revoking a company's certificate to operate. Furthermore, some companies may be required to relinquish a certificate as part of a settlement after enforcement action has concluded. During the 2019 to 2020 biennium, a total of 33 certificates were revoked as part of enforcement actions.

### ***Warning Letters***

PUCT staff also issues warning letters to companies when it determines that a violation occurred, but given the circumstances surrounding the violation and other mitigating concerns, no administrative penalty is necessary. During the 2019 to 2020 biennium, the PUCT staff issued 55 warning letters.

### ***Voluntary Mitigation Plans***

In addition to its enforcement activities, the PUCT also enters voluntary mitigation plans with electric generation companies. A voluntary mitigation plan is a safe harbor against allegations of market manipulation. Under PURA, electric generators with less than five percent of total installed capacity cannot exercise market power. The electric generators with installed generation capacity above the threshold may request that the PUCT approve certain bidding practices. Currently, Calpine and NRG have voluntary mitigation plans, dating back to 2013 and 2014, respectively. Luminant's voluntary mitigation plan was terminated in April 2018 during a merger proceeding. After negotiations, the PUCT entered into a

revised voluntary mitigation plan with Luminant in December 2019. Exelon terminated its voluntary mitigation plan in May 2018.

# RESOURCES FOR TEXANS

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The PUCT's wide array of public resources exists to achieve our mission of protecting customers, fostering competition, and promoting high-quality infrastructure.

## Websites

Images of our websites can be found in the Appendix.

### ***Puc.texas.gov***

Our external website provides several tools to assist Texas customers, utility providers, and industry leaders and had over 360,700 external visits during the 2019 to 2020 biennium. Resources and tools include:

- Online informal complaint filing for electric, telecommunications, water, and wastewater issues
- *Utili-Facts* publication, answering frequently asked questions about utility service
- Access to information about electric, telecommunications, water, and wastewater providers
- Links to live internet broadcasts and calendar for open meetings

News releases and updates from the PUCT

### ***PUCT Interchange***

The Interchange is a web-based application for submitting and accessing documents in PUCT dockets and projects. The public can use the Interchange to locate information that is officially filed with the PUCT in Central Records, including projects, dockets, and tariff applications. Documents can be searched for by Case Style (the Docket Description), as well as Utility Type, Utility Name, Filing Party, Item Type, and the date range. While the actual tariffs are not available on the Interchange, the public may request for a hard copy to be mailed by emailing [centralrecords@puc.texas.gov](mailto:centralrecords@puc.texas.gov).

### ***Power to Choose***

PowerToChoose.org is the PUCT's customer education website for the competitive retail electric market. Power to Choose and its Spanish language counterpart, Poder De Escoger, provide a portal for Texans who live in an area open to retail electric choice to browse plans offered by the retail electric providers. Shoppers can customize their search to narrow the number of plans to those that serve their area and best suit their needs. Retail electric providers are not required to share their products on this website. In addition, the PUCT promotes smart energy usage through the Power to Save Texas and Poder de

Ahorrar program, which educates Texans about conserving energy.

### **Faucet Facts**

Faucet Facts is a digital hub for the PUCT's water and sewer utility outreach efforts. The website helps users find information on applicable rules and regulations.

It provides guidance to retail public utilities that are under the purview of the PUCT. Further, the website provides directed assistance to utilities that may need guidance on business operations. This assistance could include guiding utilities with rate applications, financial record keeping, customer service agreements, and other areas. The PUCT has used its social media presence to further these efforts.

### **Map viewers**

The PUCT's Water and Sewer Certificate of Convenience and Necessity (CCN) Viewer (viewer) allows users access to retail public water and sewer CCNs. The viewer may be used to search by address to find a water or sewer service provider. Utilities can use this tool to prepare map filings for applications to obtain a CCN and amend or transfer a CCN. The viewer has empowered the public with direct access to this information, while reducing call volume at the PUCT.

The PUCT's Electric Service Area Boundaries Viewer allows users to access information on unofficial service area boundaries of investor owned electric utilities, municipally owned utilities, and electric cooperatives. The viewer may be used to search by address to find the name and contact information of a utility. The viewer also

links to the utilities' electric outage maps. This feature is highlighted on the PUCT's Storm Resources page and is used by the PUCT's Emergency Management Response Team during storm events.

## **Customer Assistance**

The PUCT's Intake Center, housed in the Customer Protection Division, answers a variety of questions from customers received via phone, mail, email, and the PUCT website. During the 2019 to 2020 biennium, PUCT's Customer Protection Division answered over 72,000 calls. The Intake Center educates customers, answers questions, and takes complaints from customers about issues or concerns they may have with electric, telephone, or water and sewer services. Common inquiries include how to read one's bill, what to do if service is disconnected, information on outages, and how to file a complaint. The Intake Center also answers questions about the PUCT's Power to Choose website and educates customers with information to help them select a retail electric provider. Additionally, the Intake Center responds to inquiries and takes complaints regarding the Texas No Call list.

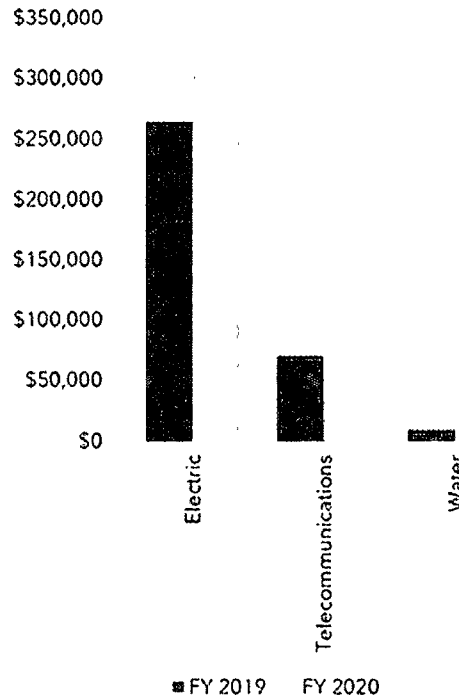
A Texan who has a dispute with a provider of electric, telecommunications, or water and wastewater services can make an informal complaint to the PUCT's Customer Protection Division. Once an informal complaint is filed, the utility provider is notified and asked to show compliance with PURA or the Texas Water Code and with PUCT rules. Water and sewer providers must respond

within 15 days. Electric and telecommunications providers must respond within 21 days. A Customer Protection Division investigator then reviews all information received from both the customer and the utility provider to determine whether the utility provider's actions are consistent with applicable regulations. The investigator's conclusion regarding the complaint is sent to both the customer and the utility provider. The investigator identifies any potential compliance issues and may recommend corrective action. A customer who is dissatisfied with the results of the investigation may choose to file a formal, docketed complaint with the PUCT.

If a customer submits a complaint concerning an entity not regulated by the PUCT, the customer is sent an explanation of the PUCT's jurisdiction. If an informal complaint does not allege, or contain information of, a violation of PURA, PUCT rules, or the Texas Water Code, it is treated as an inquiry. Customer Protection Division investigators review inquiries and provide customers information that best answers the subject matter.

During the 2019 to 2020 biennium, informal complaints filed with the Customer Protection Division yielded \$363,417 in credits directly to customers. The credits account for billing calculation errors or incorrect charges, along with credits issued as a customer service.

### Credits Resulting From Complaints 2019-2020 Biennium



### Utility Outreach

In September 2019, the PUCT created a new division, the Department of Utility Outreach. This new division is part of the PUCT's directed efforts to support smaller water and sewer utilities. A key function of the Department of Utility Outreach is to assist utilities and customers in need of help through tele-assistance or on-site meetings.

The Department of Utility Outreach's mission is to help and educate retail public utilities with an emphasis on small and distressed retail water and sewer utilities and service providers. Priorities include promoting regulatory compliance and developing financial, managerial, and technical capacity. This

division assists retail public utilities with training on utility management, bookkeeping basics, records management, rate studies, utility ratemaking concepts, regulatory compliance, and filings. Service area matters like CCN amendments and sale, transfer, merger applications are also addressed. The Department of Utility Outreach aids distressed and non-functioning utilities with transforming into viable retail public utilities. The Department of Utility Outreach also educates and raises awareness about the role of the PUCT.

# LEGISLATIVE RECOMMENDATIONS

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# Appendix

puc.texas.gov

The screenshot shows the homepage of the Public Utility Commission of Texas. The header includes the PUC logo, navigation links (Home, Consumer, Industry, Rules & Laws, Filings, Agency), and language options (Español, Contact, Login). A large banner in the center reads: "THE PUC IS OPERATING IN AN ONLINE-ONLY CAPACITY. Essential deliveries will be accepted in Central Records on the 8th floor between 9am-1pm." Below the banner are sections for "PUC Spotlight" (listing storm resources, complaint forms, and open meetings), "Meeting Calendar" (showing an open meeting on Sep 24), and "Commissioners" (listing DeAnn T. Walker, Arthur C. D'Andrea, and Shelly Botkin). A "Quick Links" section on the right includes "Open Meetings Agendas" and "Open Meeting Broadcasts", which are highlighted with a red box and a callout "Open meeting information". The footer contains contact information, a "PUC Websites" section (highlighted with a red box and a callout "Links to additional PUCT-managed sites"), and social media links. A red line connects the "PUC Websites" section to a callout box at the bottom left labeled "Filing and complaint forms".

Public Utility Commission of Texas

Home Consumer Industry Rules & Laws Filings Agency

THE PUC IS OPERATING IN AN ONLINE-ONLY CAPACITY. Essential deliveries will be accepted in Central Records on the 8th floor between 9am-1pm.

Commissioners

- DeAnn T. Walker, Chairman
- Arthur C. D'Andrea, Commissioner
- Shelly Botkin, Commissioner

Electric Grid Status

Normal Conditions

Quick Links

- Open Meetings Agendas
- Open Meeting Broadcasts
- PUC News Releases
- File an Informal Complaint
- Assistance Paying Your Bill
- PTC Industry Scorecard

PUC Spotlight

- PUC Storm Resources
- HB 4150 - Power Line Inspection and Safety Reports
- File An Informal Complaint
- Electric Complaint Form - Online
- Telephone Complaint Form - Online
- Water Complaint Form - Online
- PUC Interchange E-File Instructions
- PUC Interchange E-File System
- Enjoy the PUC Open Meetings - Online

Meeting Calendar

Thu, Sep 24 — Open Meeting

Dial In Info: The public may participate in the above open meeting remotely by calling in to this toll-free number: 844-291-5490 and using the access code 5537259#.

View scheduled PUC Meetings.

- Texas COVID-19 Test Collection Sites

In accordance with the Commission order in Docket 50664 issued March 16, 2020, service of pleadings in all PUC dockets will only be by e-file.

Home Consumer Industry Rules & Laws Filings Agency

Public Utility Commission of Texas

PO Box 15326  
Austin, TX 78711-3326

512-936-7000  
Contact Web Support

PUC Websites:

- Power to Choose
- Power to Save
- PUC Interchange

Procurement  
Employment  
Site Policies  
Accessibility  
Email Subscriptions  
Sitemap

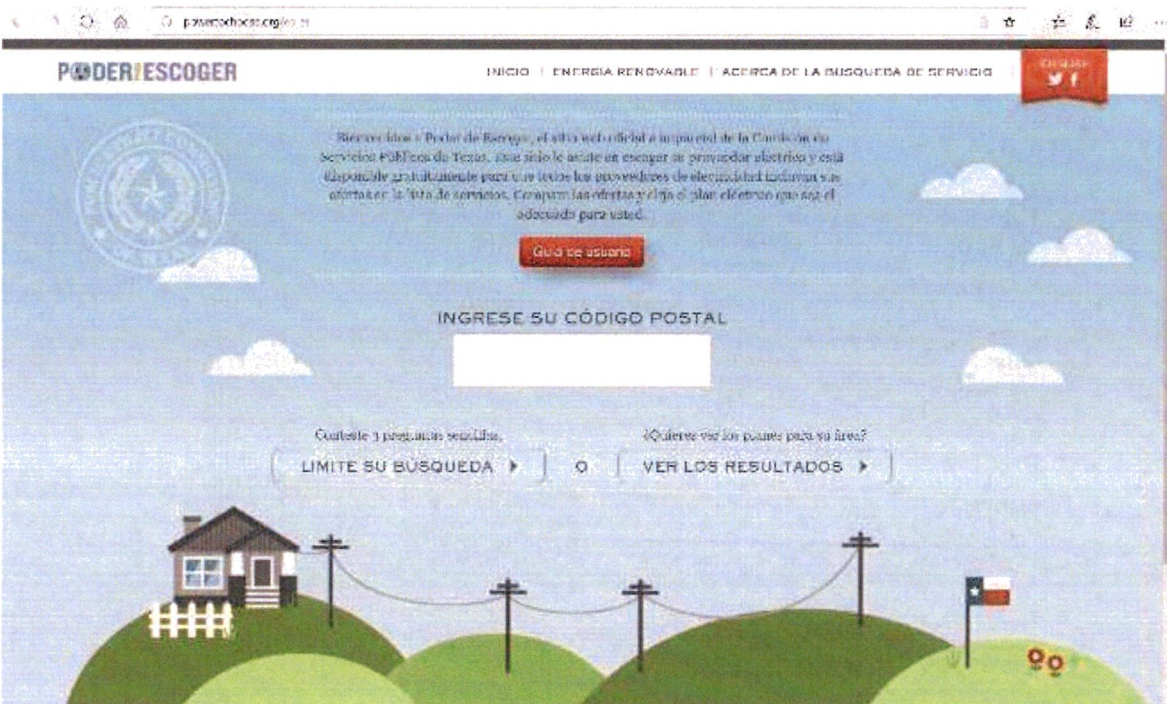
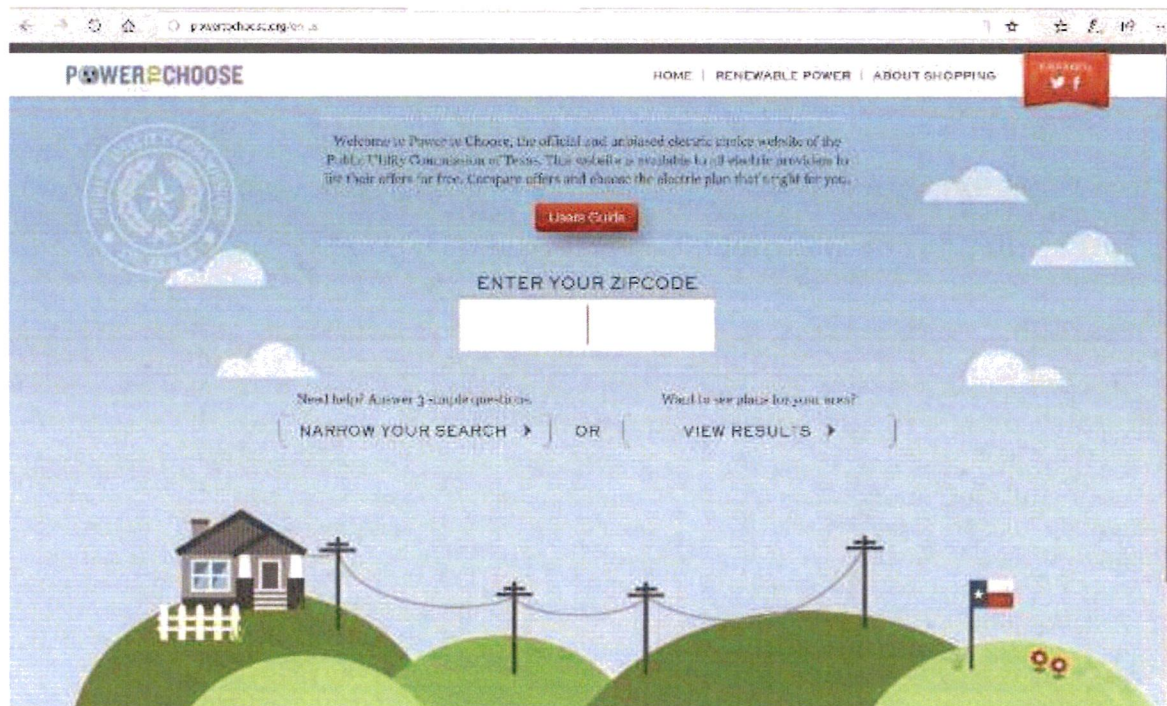
Customer Satisfaction Survey  
Where the Money Goes  
TRAIL Search  
Texas Veterans  
Texas.gov  
Report Fraud

Filing and complaint forms

Links to additional PUCT-managed sites

Open meeting information

## Power to Choose



## Searching for a plan:

POWER2CHOOSE

HOME | RENEWABLE POWER | ABOUT SHOPPING

ESPAÑOL

Welcome to Power to Choose, the official and unbiased electric choice website of the Public Utility Commission of Texas. This website is available to all electric providers to list their offers for free. Compare offers and choose the electric plan that's right for you.

Users Guide

ENTER YOUR ZIP CODE

77493 X

194 PLANS FOUND

Need help? Answer 3 simple questions. Want to see plans for your area?

NARROW YOUR SEARCH OR VIEW RESULTS

POWER2CHOOSE

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ESPAÑOL

### Shop. Compare. Choose.

77493

REFRESH RESULTS

TDU Area: CENTERPOINT

Estimated Use: 1,000 kWh

Price/kWh: \$0.00 to \$0.00


Contract Length: 1 to 120

Pricing and Billing: Show All Plans, Plans without a minimum usage fee/credit and plans without tiered pricing

1-10 OF 164

COMPARE	Company	Plan Details	Price/kWh	Pricing Details	Ordering Info
<input type="checkbox"/>	COMPANY RATING: 4.5/5	Autopay PTC Plan Fixed Rate 3 Months 12% Renewable NEW CUSTOMERS	1,000 kWh: 7.1¢ 500 kWh: 7.5¢ 2,000 kWh: 6.9¢	Cancellation Fee: \$175.00 per ESID Fact Sheet Terms of Service	Special Terms: (866) 326-5132 OR SIGN UP
<input type="checkbox"/>	COMPANY RATING: 4.5/5	Basics Fixed Rate 3 Months 12% Renewable NEW CUSTOMERS	1,000 kWh: 7.2¢ 500 kWh: 7.6¢ 2,000 kWh: 7¢	Cancellation Fee: \$175.00 per ESID Fact Sheet Terms of Service	Special Terms: (866) 857-8229 OR SIGN UP
<input type="checkbox"/>	COMPANY RATING: 4.5/5	Basics Fixed Rate 3 Months 12% Renewable NEW CUSTOMERS	1,000 kWh: 7.2¢ 500 kWh: 7.6¢ 2,000 kWh: 7¢	Cancellation Fee: \$175.00 per ESID Fact Sheet Terms of Service	Special Terms: (866) 879-8154 OR SIGN UP

## PUCT Interchange



### Public Utility Commission of Texas

#### Interchange Filing Search

[Q Filing Search](#)[Daily Filing Search](#)[Learn More](#)

**Utility Type**

All

**Control Number**

Control Number

**Item Number**

Equal to ( = )

Item Number

**Date Filed From**

mm/dd/yyyy

**Case Style**

Case Style

**Filing Description**

Filing Description

**Utility Name**

Utility Name

**Filing Party**

Filing Party

**Item Type**

All

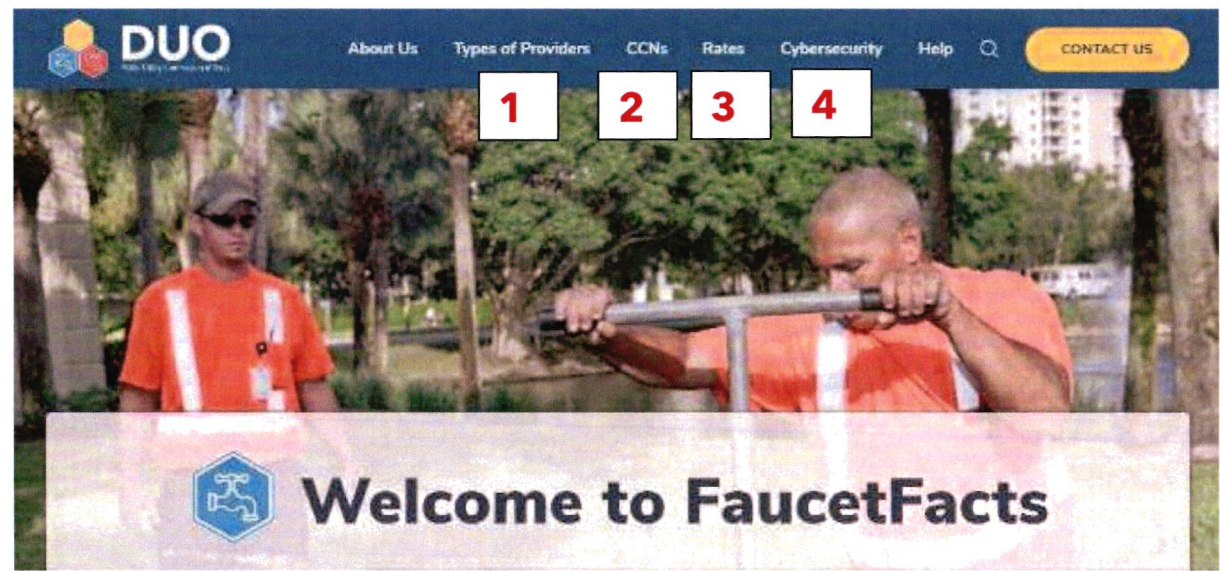
**Date Filed To**

mm/dd/yyyy

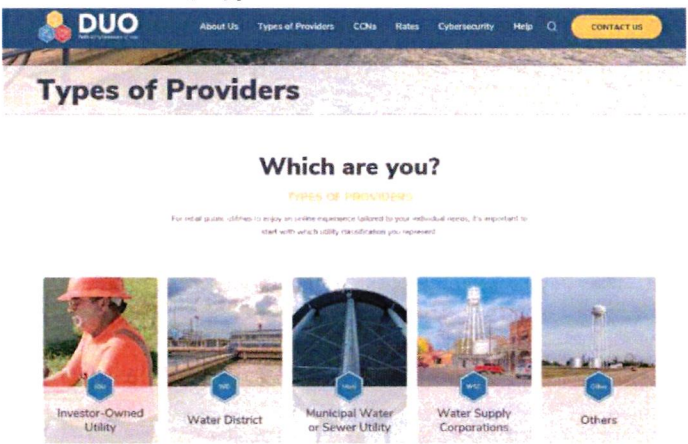
Search

# Faucet Facts


Faucetfacts.org



## 1 - Information by Types of Providers



## 2 - Resources for CCNs



About UsTypes of ProvidersCCNsRatesCybersecurityHelpCONTACT US

### Criteria

The Texas Water Code, Chapter 13, and the Public Utility Commission's rules in 16 Texas Administrative Code, Chapter 24, specify the following nine criteria that the PUC must consider when granting or amending a CCN:

1. The adequacy of service currently provided to the requested area.
2. The need for additional service in the requested area.
3. The effect of the granting of a certificate or an amendment.
4. The ability of the applicant to provide adequate service.
5. The feasibility of obtaining service from an adjacent retail public utility.
6. The financial ability of the applicant to pay for the facilities necessary to provide continuous and adequate service.
7. Environmental integrity.
8. The probable improvement of service or lowering of cost to consumers, and
9. The effect on the land to be included in the certificated area.

### Opting Out


Landowners with at least 25 acres that are wholly or partially located within the proposed CCN area may elect to exclude (opt out) some or all of their property from the requested area. If, providing written notice to the Commission before the 30th day after the date the landowner receives notice of an application for a CCN or for a CCN amendment:

### Expedited Releases

A landowner may file a petition for streamlined expedited release of the subject property from an existing CCN if:

1. The subject property is owned by the same property owner(s) whether through one deed or multiple deeds;
2. The deed or deeds total at least 25 contiguous acres; not all property needs to be within the CCN as long as the total acreage is at least 25 acres; and
3. The subject property is not receiving water or sewer service; and
4. The subject property is located in the following counties: Atascosa, Bandera, Bexar, Blanco, Brazoria, Burnet, Cadwell, Chambers, Collin, Comal, Dallas, Denton, Ellis, Fort Bend, Galveston, Guadalupe, Harris, Hays, Johnson, Kaufman, Kendall, Liberty, Montgomery, Parker, Rockwall, Smith, Tarrant, Travis, Waller, Williamson, Wilbom, or Wise County.

## 3 - Information and Forms for Rates



About UsTypes of ProvidersCCNsRatesCybersecurityHelpCONTACT US

### Applications

**CLASS A UTILITY:**

- 1. Class A Utility Service of Unimproved Water Charges
- 2. Class A, Water-Sewer Utility Rate-Filing Package

**CLASS B UTILITY:**

- 1. Class B and C Utility Service of Unimproved Water Charges
- 2. Class B Rate/Filing Charges Schedules Table
- 3. Class B Rate/Filing Charges Schedules Table

**CLASS C UTILITY:**

- 1. Class B and C Utility Service of Unimproved Water Charges
- 2. Class C Rate/Filing Charges Schedules Table
- 3. Class C Rate/Filing Charges Schedules Table

**CLASS D UTILITY:**

- 1. Class D Utility Service of Unimproved Water, Sewer, Gas, and Heating Loads
- 2. Class D, Water-Sewer Utility Rate-Filing Package Table and Charges Table

## 4 - Cybersecurity News and Resources



About UsTypes of ProvidersCCNsRatesCybersecurityHelpCONTACT US

### Cybersecurity

#### Welcome to the PUC's Critical Infrastructure Security and Risk Management Division (CISRM)

CISRM Statement for the Team: Critical Infrastructure Security and Risk Management (CISRM) organizes and assists the state of Texas and its utilities in establishing security posture and recovery. Through tools and technical communication, the CISRM provides support to utilities and our state during weather emergencies and cyber attacks. The mission of this division is to increase the preparedness of the state through outreach and assisting in recovery in the event of a disaster for utility companies across the state. This is done by connecting utilities to information and resources to help better prepare for events or by directly assisting in coordination during an emergency.

#### Contact Us

If you are a Texas utility owner or operator who wants to notify us of an incident or has a question about your cybersecurity posture, please contact us.

CONTACT US

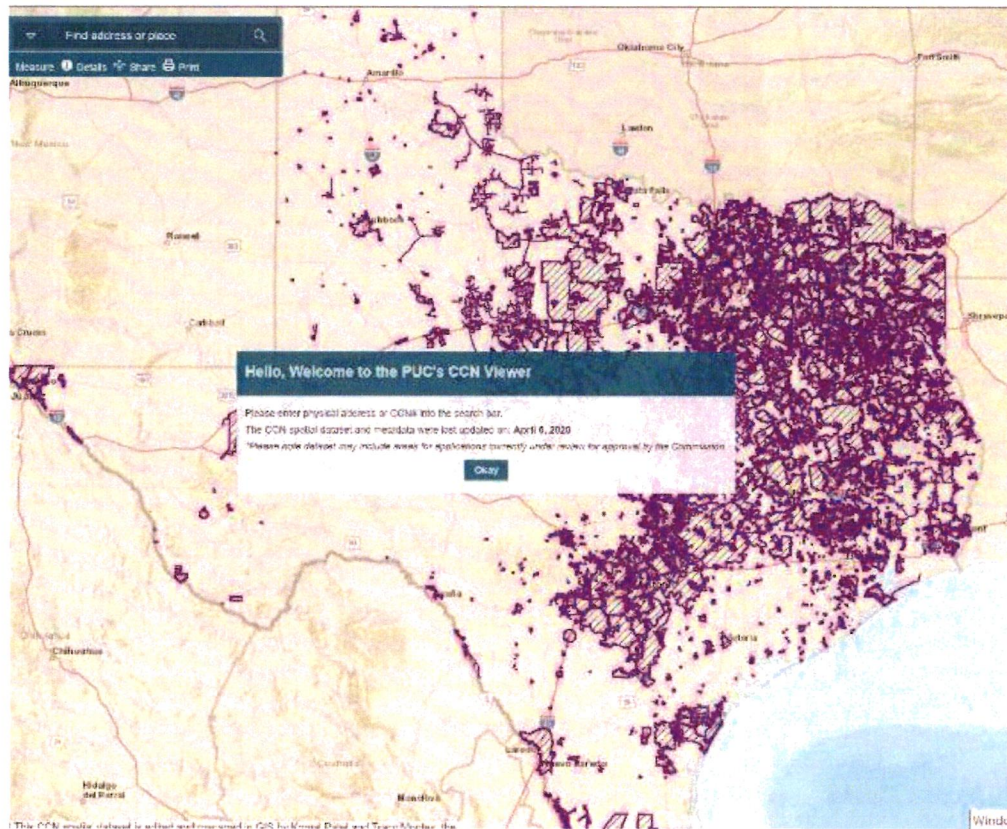
### Cybersecurity News

The world of cybersecurity is a constantly shifting landscape of bad actors attempting to steal critical information or disable critical infrastructure as a way to tip the balance of power, and most often to extort money. The following stories are cautionary tales of incidents that need your attention:

- [Dallas Metropolitan Region Announces an Ransomware Attack](#)
- [Utilities are at most vulnerable to cyberattacks as cybersecurity \(CISRM\) threats emerge, survey finds](#)
- [The security consequences of executive decisions to close user access](#)

## Map Viewers

### Water and Sewer Certificate of Convenience and Necessity (CCN) Viewer



### Electric Service Area Boundaries Viewer

