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**REPORT OF THE PUBLIC UTILITY COMMISSION OF TEXAS
ON CONFLICTS OF INTEREST IN COMPLIANCE WITH REQUIREMENTS
UNDER SECTION 34 OF SENATE BILL 3 PASSED BY THE 87TH LEGISLATURE**

The Public Utility Commission of Texas (PUCT) hereby provides its *Report on Conflicts of Interest in Compliance with the Requirements of Section 34 of Senate Bill 3*.

Section 34 of Texas Senate Bill 3 (SB 3)¹ enacted by the 87th Legislature, provides:

The Public Utility Commission of Texas and the independent organization certified under Section 39.151, Utilities Code, shall annually review statutes, rules, protocols, and bylaws that apply to conflicts of interest for commissioners and for members of the governing body of the independent organization and submit to the legislature a report on the effects the statutes, rules, protocols, and bylaws have on the ability of the commission and the independent organization to fulfill their duties.

A copy of this report will be submitted to the Texas Legislature as required under SB 3.

The conflict of interest statutes and rules applicable to this report are as follows:

Utilities Code § 12.053(b)(1)—commissioner membership qualification requirements

Utilities Code § 12.055—prohibition of commissioner seeking nomination or election to another state or federal office while serving as a commissioner

Utilities Code § 12.059(b)(8) & (9)—ethics and conflicts of interest training for commissioners

Utilities Code §12.060—restrictions on lobbying by former commissioners

Utilities Code § 12.151—lobbyist may not serve as a commissioner

Utilities Code § 12.152—conflicts of interest for commissioners

Utilities Code § 12.153—commissioner relationship with trade associations

Utilities Code § 12.154—prohibited activities for commissioners

Utilities Code § 12.155—employment restrictions for commissioners

Government Code § 572.001—general conflict of interest provision applicable to all state officers

Government Code §§ 572.051 and 2113.014--general standards of conduct for state officers

Government Code § 572.054—post employment restrictions for state officers

¹ Acts 2021, 87th R.S., ch. 426, General and Special Laws of Texas.

Government Code § 572.069—post employment restrictions for state officers

Penal Code § 36.02—restrictions for public servants on accepting or soliciting benefits in exchange for official action

Penal Code § 36.07—restrictions on honorarium accepted by public servants

Penal Code § 36.08—restrictions on public servants accepting or soliciting benefits from persons with business before the agency for which the public servant works.

Government Code chapters 556, 572, 2152, 2203 are the general ethics and contracting standards applicable to all state employees and Penal Code chapter 36 address additional ethics requirements applicable for all state employees. Utilities Code chapter 12 contains the PUCT-specific restrictions applicable to commissioners. Because many of the restrictions in Utilities Code Chapter 12 are applicable to commissioner interaction with a “public utility” or affiliate of a public utility as those terms are defined in §§ 11.003(2), 11.004, 31.002(6) and 51.002(8) of the Utilities Code, these provisions do not apply to PUCT commissioner interaction with water and sewer utilities and affiliates because the PUCT’s statutory authority over water and sewer utilities is the Water Code not the Utilities Code. Finally, if the PUCT-specific ethics and conflict of interest requirements in the Utilities Code are more restrictive than the general standards applicable to all state employees, the PUCT-specific provisions control.

Government Code § 572.001

This provision sets forth the general state policy that a state officer or employee cannot have a “direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer’s or employee’s duties in the public interest.”

Government Code § 572.051

Government Code § 572.051 prohibits state officers and employees from:

- accepting or soliciting any gift, favor or service that might tend to influence the employee or official in the performance of his or her official responsibilities;

- accepting other employment or engaging in other activity that could induce the official to disclose confidential information acquired as a result of the official’s position;

- making personal investments that could create a conflict of interest between the official’s public and private interests;

- accepting or soliciting any benefits as a result of exercising his or her official responsibilities

Government Code § 572.054

This provision prohibits state officials from communicating to or appearing before an officer or employee in which the official served for two years after the official ceased working for the agency, if the purpose of the communication or appearance is made with the intent to influence and is on behalf of any person seeking official action of the agency in which the former officer served.

Government Code § 572.069

A former state officer who participated in a procurement or contract negotiation with a person may not accept employment by that person before the 2nd anniversary of the date the contract is signed, or the procurement is terminated or withdrawn.

Penal Code § 36.02, 36.07 and 36.08

These provisions all relate to restrictions on the acceptance or solicitation of gifts or benefits by public servants in general, not just PUCT commissioners. These provisions are most relevant to PUCT commissioners' interaction with water and sewer utilities because the Utilities Code ethics provisions do not apply to water and sewer utilities which are regulated under the Water Code.

Utilities Code § 12.053(b)(1)

Utilities Code § 12.053 lists the eligibility requirements to serve as a PUCT commissioner. A person is not eligible to serve as a commissioner if within one year preceding appointment as a commissioner the person served as an officer, director, owner, employee, partner or legal representative of a public utility or owned or controlled, directly or indirectly, more than a 10% interest in a public utility, a public utility affiliate or a director competitor of a public utility regulated by the PUCT. A person is also ineligible to serve as a commissioner if he or she served as an Executive Officer listed under Section 1, Article IV of the Texas Constitution, other than secretary of state or a member of the legislature. Finally, a person may not serve as a commissioner if he or she is otherwise disqualified under Utilities Code §§ 12.151, 12.152 or 12.153 (discussed below).

Utilities Code § 12.055

Under Utilities Code § 12.055 a commissioner may not seek nomination or election to another civil office in Texas or the United States while serving as a commissioner.

Utilities Code § 12.059(b)(8) & (9)

These provisions outline the requirements of a training program that all commissioners must complete before beginning their service as a commissioner. The portions of the training program relevant to this report are that commissioners must receive information on the requirements of the conflict of interest laws and other laws relating to public officials and any applicable ethics policies adopted by the PUCT or the Texas Ethics Commission.

Utilities Code § 12.151

A person required to register as a lobbyist under Government Code Chapter 305 because of the person's activities for compensation on behalf of a profession related to PUCT activities may not serve as a commissioner.

Utilities Code § 12.152

A person is not eligible to be a commissioner if that person serves on the board of a company that supplies fuel, utility-related services or utility-related products to regulated or unregulated electric or telecommunications utilities or if the person or the person's spouse is employed by or participates in managing a business entity or other entity that is regulated or receives funds from the commission or directly or indirectly owns or controls more than a 10 percent interest in certain specified types of businesses.

Utilities Code § 12.154

Utilities Code § 12.154 prohibits a PUCT employee, including a commissioner, from having a pecuniary interest in a public utility, a public utility affiliate or a person a significant portion of whose business consists of furnishing goods or services to a public utility or affiliate. Exceptions to this requirement are that if a commissioner involuntarily becomes an owner of a pecuniary interest as defined in this section, a commissioner must inform the attorney general of this interest and divest this ownership interest within a reasonable period of time. Commissioners are also allowed to own indirect pecuniary interests in utilities or affiliates through mutual funds.

Utilities Code § 12.155

This provision prohibits a commissioner from being employed by a public utility that was within the scope of the commissioner's official responsibility while serving as a commissioner. This is a two year prohibition from the date the commissioner ceases to serve as a commissioner. Commissioners are prohibited from representing any person before the PUCT, the State Office of Administrative Hearings or a court in a matter in which the commissioner was personally involved or was within the employee's responsibility. This prohibition has no time limit.

PUCT ethics policies reiterate the applicable statutes discussed above. However, the financial statements that must be filed with the Texas Ethics Commission by all state officers, including PUCT commissioners, provide a way to monitor commissioner compliance with both the financial disclosure requirements in Texas Government Code Chapter 572 and the investment restrictions in Utilities Code § 12.154.

Effects of statutes and rules on ability of PUCT commissioners to perform their statutory duties

The PUCT commissioner eligibility and conflict of interest provisions in the Utilities Code and Government Code that are discussed in this report do not impair the ability of commissioners to fulfill their duties as commissioners. Most of these provisions have been in place for quite some time. These statutory provisions enable the Commission (and the Legislature) to ensure that commissioners are qualified to serve in their positions and that during their service will remain in compliance with eligibility requirements, disclosure obligations, and conflict of interest requirements of Texas law. The post-employment restrictions in the Utilities Code and Government Code also help to ensure that commissioners do not use their position as a commissioner for their personal benefit after their term of service ends.

The PUCT's General Counsel is responsible for training incoming commissioners on the statutes listed above. She also is available to answer commissioners' questions on compliance with these statutes. Finally, Utilities Code § 12.154(f) provides a process for divestment of an involuntary acquisition of a prohibited pecuniary interest. This section states that:

[i]t is not a violation of this section if a commissioner or commission employee, on becoming the owner of stocks, bonds, or another pecuniary interest in a public utility, affiliate, or direct competitor of a public utility otherwise than voluntarily, informs the commission and the attorney general of the ownership and divests the ownership or interest within a reasonable time.