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**APPLICATION OF CSWR-TEXAS
UTILITY OPERATING COMPANY,
LLC FOR AUTHORITY TO
CHANGE RATES**

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**BEFORE THE STATE OFFICE
OF
ADMINISTRATIVE HEARINGS**

REBUTTAL TESTIMONY AND EXHIBITS

OF

JOSIAH COX

ON BEHALF OF

CSWR-TEXAS UTILITY OPERATING COMPANY, LLC

August 25, 2023

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JOSIAH COX, ON BEHALF OF
CSWR-TEXAS UTILITY OPERATING COMPANY, LLC**

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LIST OF EXHIBITS

Exhibit JC-R-1	Other States’ Agencies Letters to CSWR-Texas’ Affiliates’ Regarding Quality of Service
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REBUTTAL TESTIMONY OF JOSIAH COX

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.

A. My name is Josiah Cox. My business address is 1630 Des Peres Road, Suite 140, St. Louis, Missouri, 63131.

Q. ARE YOU THE SAME JOSIAH COX THAT FILED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes.

Q. WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY IN THIS PROCEEDING?

A. I respond to the testimony of Public Utility Commission of Texas Staff (“Commission Staff”) and the Office of Public Utility Counsel (“OPUC”) related to the Company’s proposed systemwide consolidation of its 62 water and 12 wastewater systems. I also respond to some of the operational concerns raised in testimony and affidavits filed by intervenors.

Q. PLEASE IDENTIFY THE OTHER WITNESSES SPONSORING REBUTTAL TESTIMONY ON BEHALF OF CSWR-TEXAS.

A. Company witness Brent Thies addresses the reasonableness of the Company’s O&M annualizations and other revenue requirements issues. Company witness Chris D. Ekrut provides rebuttal testimony regarding Staff’s and OPUC’s proposed adjustments to the revenue requirement and their positions in relation to the Company’s proposed consolidation. Company witness Dylan D’Ascendis responds to the cost of capital testimony provided by Commission Staff witness Emily Sears.

**II. RESPONSE TO OPUC AND STAFF'S RECOMMENDED
DISALLOWANCES OF RATE CHANGES FOR SYSTEMS OWNED FOR
LESS THAN 12 MONTHS**

Q. WHAT DO YOU ADDRESS IN THIS SECTION OF YOUR TESTIMONY?

A. I address Commission's Staff's proposed disallowance of any rate change for systems CSWR-Texas has owned for less than 12 months at the time it filed this case. As I explain in more detail below, timely cost recovery and consolidation are ultimately necessary to make available quality, compliant water and wastewater service available to smaller, community-based water system at a reasonable cost. Absent that, it will be nearly impossible to attract investment to these communities due to the inherent challenges, the high upfront costs, and the risk of being unable to recover losses within a reasonable time, or at all.

A. The unique needs of Texas's community-based water and wastewater systems require timely cost recovery to attract new investment.

Q. PLEASE DESCRIBE STAFF'S PROPOSED DISALLOWANCES TO THE COMPANY'S REVENUE REQUIREMENT.

A. Staff recommends removing approximately \$2.6 million in requested rate increases for systems whose cost of service, it claims, the Company did not support with 12 months of historical operating expense, including the *entire* proposed revenue requirement increase for 27 of the Company's 62 water systems and 9 of the Company's 12 wastewater systems. Staff also recommends an approximately \$1.1 million reduction related to its proposed reduction to the Company's cost of capital, which is address by Company witness Mr. D'Ascendis.

1 **Q. DID THE COMPANY PROVIDE 12 MONTHS OF HISTORICAL TEST**
2 **YEAR DATA FOR ALL OF ITS SYSTEMS?**

3 A. Yes. As explained in the direct and rebuttal testimonies of Chris Ekrut, the
4 Company provided a full 12 months of historical test year data. In some instances,
5 however, Mr. Ekrut determined it was necessary to make known and measurable
6 adjustments to the test year data in the form of annualizations to capture cost-of-
7 service increases that occurred towards the conclusion of the 12-month period or
8 where there was inadequate historical data, on a system-specific basis, to capture a
9 full 12 months of historical system operating expense. Mr. Ekrut addresses in his
10 direct and rebuttal testimonies the known and measurable adjustments to the
11 historical test year data.

12 **Q. HAS THE COMPANY PROVIDED IN ITS REBUTTAL CASE**
13 **ADDITIONAL DATA TO VALIDATE THE ACCURACY OF ITS KNOWN**
14 **AND MEASURABLE ADJUSTMENTS?**

15 A. Yes. In order to demonstrate the accuracy of its known and measurable
16 adjustments, Brent Thies provides as Exhibit BT-R-1 to his rebuttal testimony six
17 months of additional actual cost data from January 2023 through June 2023. He
18 and Mr. Ekrut explain in detail how these actual costs validate the Company's
19 known and measurable adjustments and comply with the standard for post-test year
20 operating expense adjustments under 16 Texas Administrative Code ("TAC")
21 § 24.41. I address in my rebuttal testimony the implications of Staff's position and
22 the chilling effect it could have on the acquisition and rehabilitation of smaller,
23 distressed water systems in rural Texas.

1 **Q. WHAT IS THE IMPACT TO CSWR-TEXAS IF THE COMMISSION**
2 **ADOPTS STAFF'S POSITION TO REMOVE THESE SYSTEMS FROM**
3 **CONSOLIDATION AND RETAIN EXISTING RATES FOR THE**
4 **SYSTEMS?**

5 A. The approximately \$2.6 million reduction to the combined water and sewer cost of
6 service, when combined with the other approximately \$1.1 million in reductions
7 proposed by Staff, is approximately 40% of the Company's total combined cost of
8 service and 80% of the requested increase to the combined revenue requirement
9 based on the most current test year data. As shown by Mr. Ekrut, removing these
10 costs from the revenue requirement would require CSWR-Texas to operate these
11 water and wastewater systems at a significant loss until it files and litigates another
12 rate case, which it most likely will have to do immediately in order to protect its
13 financial integrity and ability to provide service.

14 **Q. IS THIS A SIGNIFICANT CONCERN TO CSWR-TEXAS?**

15 A. Yes. CSWR-Texas is a new entrant in Texas, and this is its first rate case where
16 the Commission has had the opportunity to not only consider CSWR-Texas's
17 business model and ability to rehabilitate these systems but also to review the cost
18 of service of the numerous distressed systems the Company has acquired and
19 rehabilitated over the last four years. Almost all of these systems were out of
20 compliance at the time of acquisition and required immediate significant
21 investment to improve service quality. The Company has, in fact, expended over
22 \$40.5 million already on these systems since 2019, fulfilling the Texas
23 Legislature's desire to attract more private investment to smaller, community-based

1 water and wastewater systems. Delaying cost recovery for these systems will not
2 only undermine the Company's financial integrity and ability to continue to invest
3 in these or other distressed systems, but also the goals of the Texas Legislature.

4 Again, if Staff's position is accepted, the Company's only alternative would
5 be to file *another* comprehensive rate case immediately after this case concludes
6 using essentially the exact same historical data the Company is providing in its
7 rebuttal case. This will result in customers incurring considerable additional rate
8 case expenses to re-litigate issues that are already part of this proceeding, which
9 will be in addition to the reasonable rate case expenses already incurred to litigate
10 this proceeding. Instead of requiring utilities to invest in filing more rate cases and
11 burdening the Commission with more regulatory proceedings to adjudicate, the
12 Commission should encourage utilities to invest in improving the systems
13 themselves and allow for timely recovery of the reasonable and necessary costs of
14 doing so.

15 **Q. DOES TEXAS NEED UTILITIES LIKE CSWR-TEXAS WITH**
16 **EXPERIENCE REHABILITATING AND OPERATING DISTRESSED,**
17 **COMMUNITY-BASED SYSTEMS?**

18 A. Yes. When CSWR-Texas first entered the Texas market, it is my understanding
19 there were approximately 800 individual water and/or wastewater utilities
20 operating in Texas. CSWR-Texas has acquired, or is in the process of acquiring,
21 over 100 of these systems. That means CSWR-Texas is single-handedly reducing
22 the number of individual water or wastewater systems in Texas by 13% in just four
23 years.

1 However, there are still hundreds of individual water and/or wastewater
2 utilities with compliance issues operating throughout the state. The overwhelming
3 majority of these are smaller, community-based systems, and the overwhelming
4 majority of those smaller community-based systems are distressed, meaning they
5 are experiencing significant compliance issues for which they are not financially or
6 managerially capable of correcting on their own. At the same time, there is a
7 significant lack of available local licensed operators with the experience necessary
8 to rehabilitate and operate small, rural, distressed systems. Because the systems
9 cannot adequately operate or maintain their facilities, they are likely causing a
10 disproportionate administrative burden on the Commission and the Texas
11 Commission on Environmental Quality (“TCEQ”) to regulate them.

12 **Q. HOW ARE THESE SYSTEMS A SIGNIFICANT BURDEN ON THE**
13 **COMMISSION?**

14 A. The Commission estimates that it spends 60% of its time on water and wastewater
15 regulation but only 17% of its budget is dedicated to water and wastewater matters.¹
16 A quick review of the Commission’s interchange reveals why. Through the first
17 seven months of 2023, there have been almost 40 comprehensive water or
18 wastewater utility rate cases pending at the PUCT. Over the same period, there
19 have been approximately 500 STM and/or CCN amendment proceedings pending
20 at the Commission. Adjudicating these proceedings is a tremendous burden on not
21 only Commission Staff but also the Commission’s administrative law judges and

¹ Texas Legislature, 2022 Sunset Report, Issue No. 3, “PUC Needs Additional Resources and Attention Focused on Its Water and Wastewater Regulation to Avoid Overburdening Utilities and Their Customers” at 63 (November 2022).

1 the Commissioners and their staffs as well. Reducing the number of unconsolidated
2 utilities operating in the state will improve compliance at those systems and reduce
3 the number of regulatory filings and proceedings the Commission must review or
4 adjudicate.

5 **Q HAS THE LEGISLATURE ACKNOWLEDGED THIS BURDEN ON THE**
6 **COMMISSION TO REGULATE WATER AND WASTEWATER?**

7 A. Yes. In its 2022 Sunset Report to Public Utility Commission Staff, the Legislature
8 specifically states that the Commission is under-resourced in terms of staff and
9 budget in relation to its water and wastewater regulation and that it will require
10 more resources to more effectively and efficiently regulate this industry.² I mention
11 this not to suggest the need for more staffing but to emphasize the need for the
12 Commission to align with the Legislature in encouraging the acquisition of these
13 small, distressed systems.

14 **Q. DO SMALLER, RURAL SYSTEMS REQUIRE OPERATORS WITH**
15 **UNIQUE AND SPECIFIC EXPERIENCE?**

16 A. Yes. It has been my experience that smaller geographically dispersed systems are
17 typically more difficult to operate than larger, urban-based, more centralized
18 systems. In Texas specifically, these systems are disproportionately located in rural
19 communities and serve very small customer bases. They often do not have access
20 to licensed operators and therefore cannot operate and maintain the system
21 consistently and in compliance with applicable Texas law. They typically require
22 significant repairs and changes to operations immediately upon acquisition,

² *Id.* at 59-68 (Nov. 2022).

1 sometimes before the certificate of convenience and necessity is even transferred
2 by the Commission to CSWR-Texas. The per-meter cost to operate these systems
3 is also typically higher than larger systems in urban areas where there is more
4 density and a higher number of centralized customers and facilities. Compounding
5 the problem, these systems have typically had superficially low rates at the time of
6 acquisition,³ which means that any rate change to reflect the actual cost of service
7 will result in significant rate increases and pushback from the community.

8 In addition, CSWR-Texas has experienced other challenges with these types
9 of systems that make the transfer of operations from the seller to CSWR-Texas
10 more difficult. In addition to water quality compliance issues that require prompt
11 rectification, they (1) typically lack adequate financial records to calculate rates;
12 (2) lack operating records and building plans required by the TCEQ; (3) have a
13 history of significant reporting violations; (4) have significant unpaid penalties or
14 fees from the prior owners' unresolved violations; (5) lack GIS data showing where
15 pipelines are located, resulting in repair issues and confusion over service territory
16 boundaries; and (6) lack current billing and customer records.

17 And yet, despite this reality, these customers deserve access to the same
18 clean, safe drinking water. As such, these systems must be operated and maintained
19 to the same standards required of utilities that serve larger population bases.
20 However, many larger utilities will avoid taking on these kinds of projects because
21 of the challenges the systems face, the cost recovery concerns, and the complexities
22 of running disparate operations far from their primary service areas.

³ The Big Wood Springs Subdivision had not had a rate increase since 1990.

1 **Q. IS CSWR-TEXAS UNIQUELY QUALIFIED TO ADDRESS THESE**
2 **CHALLENGES TO COMMUNITY-BASED SYSTEMS?**

3 A. Yes. Very few utilities, even those with experienced and sophisticated operators,
4 have the unique experience necessary to operate small, rural, community-based
5 water or wastewater systems. Larger utilities are typically more familiar with
6 operating larger systems with larger, more centralized customer bases; those
7 utilities who do have experience with smaller water or sewer systems often do not
8 have the processes and operators in place to efficiently operate geographically
9 dispersed systems. Or, they are simply unwilling to take on the significant upfront
10 capital requirements and cost recovery risks associated with the systems.

11 CSWR-Texas, on the other hand, operates numerous geographically
12 dispersed, rural community-based water and wastewater systems, each with a small
13 customer base, and it has had access to the capital necessary to bring these systems
14 into compliance. In fact, CSWR-Texas believes it and its affiliates are the single
15 largest owner of individual domestic wastewater treatment plants in the United
16 States and has more recent experience rehabilitating failed water and sewer systems
17 than any other entity in the United States. This means CSWR-Texas is one of the
18 best solutions for the challenges facing Texas' smaller, community-based water and
19 sewer utilities.

20 **Q. DO YOU HAVE SPECIFIC EXAMPLES OF THE COMPANY'S UNIQUE**
21 **EXPERIENCE?**

22 A. Yes. The Company has identified and retained a network of licensed operators that
23 can operate and maintain the geographically dispersed systems within its rural

1 service areas. It has developed construction techniques to lower installation costs
2 or extend the service life of existing facilities to delay imminent construction
3 projects. It has pioneered new water and wastewater treatment technologies to treat
4 water more efficiently at lower price points. And, as stated before, it has
5 considerable experience resolving problems unique to smaller systems. In fact, as
6 stated above CSWR likely has more experience working on small water and
7 wastewater utilities than any other utility in the country.

8 **Q. HAVE OTHER STATES' AGENCIES RECOGNIZED CSWR-TEXAS'S**
9 **AFFILIATES' EXPERIENCE REHABILITATING SMALLER, DISTRESSED**
10 **WATER AND WASTEWATER SYSTEMS?**

11 A. Yes. Attached to my testimony as Exhibit JC-R-1 are letters of appreciation we
12 have received from our regulators in other states recognizing the Company
13 willingness to take on the challenges of these systems. For instance, the Missouri
14 Department of Natural Resources stated as follows regarding CSWR-Texas
15 Missouri affiliate

16 In Missouri, Confluence Rivers Utility Operating Company, Inc.
17 (CRUOC) is one of the few utility operating companies who is
18 willing to acquire some of the most difficult failing systems.
19 CRUOC has consistently taken swift actions after taking control of
20 these systems to bring them into compliance by employing qualified
21 operators, effectively administering and managing the systems, and
22 investing in repairs and upgrades.

23 CRUOC's willingness to acquire systems with long-standing
24 compliance issues has proven to be beneficial to human health and
25 the environment by bringing many of these systems into compliance
26 with environmental laws.

1 **Q. YOU MENTIONED THERE ARE COST RECOVERY RISKS**
2 **ASSOCIATED WITH SMALLER, COMMUNITY-BASED SYSTEMS.**
3 **PLEASE EXPLAIN.**

4 A. Yes. Because of compliance issues, the need for more investment, and the
5 existence of outdated rates that do not match the cost of providing service, the cost
6 to operate some of these systems on a standalone basis is simply too high to recover
7 at rates customers in these communities can afford. This can cause customers of
8 these systems to leave the community because they cannot afford these basic
9 services. If too many customers leave, it can cause the system to become too
10 expensive to operate entirely. For instance, the Company's Thousand Oaks
11 Subdivision water system, a system CSWR-Texas was asked by the State to
12 acquire, currently has only 15 connections.⁴ If even a few customers left this
13 community, there would not be enough customers left to pay the rates necessary to
14 operate the system on a standalone system, or at all.

15 **Q. HAS THE TEXAS LEGISLATURE ADDRESSED THE NEED FOR**
16 **INVESTMENT IN COMMUNITY-BASED WATER AND WASTEWATER**
17 **SYSTEMS?**

18 A. Yes. I am aware that the Texas Legislature has passed multiple pieces of legislation
19 specifically intended to incentivize investor-owned utilities to acquire, rehabilitate
20 and operate smaller community-based systems. For instance, in 2019, the
21 Legislature passed Texas Water Code ("TWC") § 13.305, which incentivizes

⁴ *Application of Betty J. Dragoo and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Associated Acreage in Erath County*, Docket No. 51928, Notice of Approval (Jan. 21, 2022).

1 acquisition of smaller systems by allowing utilities to adjust rate base to reflect the
2 fair market value of the system. In addition, in 2023, the Legislature repealed a
3 provision in TWC § 13.145 that would require a utility to show systems must be
4 “substantially similar” in order for them to be consolidated. Mr. Ekrut addresses
5 this legislation in more detail in his testimony. Neither OPUC nor Staff address
6 these policy directives or explain how their recommendations are consistent with
7 these directives.

8 **Q. HAS THE STATE OF TEXAS EVER CONTACTED CSWR-TEXAS TO**
9 **REQUEST THAT THE COMPANY ACQUIRE A DISTRESSED,**
10 **COMMUNITY-BASED SYSTEM?**

11 A. Yes. The Commission, the TCEQ, and the Office of the Attorney General regularly
12 contact the Company to request that it acquire a distressed community-based
13 system in need of new ownership and investment. These systems are typically in
14 very poor condition due to a lack of operators, lack of historical investment, poor
15 maintenance practices, and, generally, a lack of technical, managerial or financial
16 capability. CSWR-Texas has either acquired or is presently seeking to acquire the
17 following systems based on its conversations with the State:

- 18 • Coleto Water Company
- 19 • Casey Homes aka Seven Estates
- 20 • Castlecomb
- 21 • Carroll Water (which includes Grande Casa, Lakeview Ranchettes, Spanish
22 Grant Subdivision, Emerald Forest, and Red Oak)
- 23 • Circle “R” Ranchettes P.O.A., Inc.

- 1 • Farrar WSC
- 2 • John K. Lincecum dba Lincecum Water Well
- 3 • Ranch County of Texas, Inc. (which includes Hillside Estates Water
- 4 System, Meadow b view Estates, Meadowview Estates II, Settlers Estates
- 5 Sec II, Settlers crossing Water System, Settlers Crossing Water System 2,
- 6 and Settlers Meadows Water System)
- 7 • Marion J. Smith dba Smith Management Services
- 8 • Treetops Phase I (formerly known as Treetop Utilities, Inc.)
- 9 • Tri-County Point POA, Inc.
- 10 • TB GP, LLC dba Valley Vista Water Company
- 11 • Waterco
- 12 • Woodlands West Water System
- 13 • 4R Ranch
- 14 • Aero Valley Water Service
- 15 • Franklin Water Systems 1, Franklin Water Systems 3 (formerly known as
- 16 Franklin Water Service Company)
- 17 • North Victoria Utilities
- 18 • Walnut Bend Water System
- 19 • Rocket Water Company, Inc.
- 20 • Hilltop Home Addition, Hilltop Estates (formerly known as Abraxas)
- 21 • Oak Hill Ranch Estates (which includes Forest Oak Unit 1 and 2, and Oak
- 22 Hill Ranchettes)
- 23 • Big Wood Springs Subdivision

- 1 • Quiet Village II
- 2 • Thousand Oaks Subdivision

3 **Q. PLEASE DESCRIBE SOME OF THE COMPLIANCE ISSUES**
 4 **ASSOCIATED WITH THESE SYSTEMS.**

5 A. The Company attached to its original application a photo album demonstrating
 6 some of the typical compliance concerns CSWR-Texas identified upon acquiring
 7 its systems. A video of the conditions at certain systems is also available.⁵

8 **Q. DID THESE SYSTEM PREVIOUSLY POSE A PUBLIC HEALTH RISK?**

9 A. Yes. Based on CSWR-Texas' engineering studies of these systems, each of them
 10 at some point recently posed a public health risk to its customers or residents due
 11 to non-compliance and/or service quality issues. For example, the drinking water
 12 systems routinely lacked proper disinfection or sufficient water pressure to prevent
 13 pathogens from entering into a water system. When CSWR-Texas installs
 14 disinfection or booster pumps to maintain appropriate water pressure at the systems,
 15 CSWR-Texas is protecting customers from being exposed to health risks caused by
 16 harmful pathogens in untreated water.

17 Similarly, in its wastewater systems, when CSWR-Texas adds disinfection,
 18 or removes sludge from the water to remove harmful pathogens, this also protects
 19 drinking water sources, including groundwater and surface water, from the types of
 20 diseases that centralized sewer systems are intended to remove.

⁵ The video can be found online at the following address: <https://f.io/zftkNmNb>.

1 **Q. CAN YOU PROVIDE MORE SPECIFIC EXAMPLES?**

2 A. Yes. When CSWR-Texas volunteered to take over the temporary manager role at
3 the uncertificated Castlecomb wastewater system, the plant was discharging
4 untreated wastewater into the headwaters of the Guadalupe River, an area with
5 recreational access for people and the source of water for hundreds of thousands of
6 downstream Texas residents. CSWR-Texas has since resolved that concern and is
7 working to acquire the system outright in the near future.

8 As another example, when CSWR-Texas acquired Aero Valley, the
9 community had been under multiple boil water notices that cumulatively lasted *for*
10 *over eight years*. That means residents did not have basic access to clean drinking
11 water for almost a decade. That system is no longer under a boil water notice since
12 CSWR-Texas took it over demonstrating CSWR-Texas' competence and
13 commitment to providing safe, reliable, and environmentally responsible water
14 resources to Texas citizens who have lacked access to even the basic provision of
15 safe drinking water.

16 **Q. HAS CSWR-TEXAS SOUGHT TO INCLUDE THESE SYSTEMS IN THIS**
17 **RATE PROCEEDING?**

18 A. CSWR-Texas included all of the systems acquired at the behest of the state in this
19 rate proceeding, except for Casey Homes aka Seven Estates, Castlecomb, Circle
20 “R” Ranchettes, Farrar WSC, Lincecum Water Well, Smith Management Systems,
21 Valley Vista Water Company, and 4R Ranch.

1 **Q. HAS STAFF RECOMMENDED DISALLOWANCES OF THE COSTS TO**
2 **SERVE ANY OF THESE SYSTEMS?**

3 A. Yes. Staff recommends that the Company's proposed rate changes at nine of the
4 systems acquired at the behest of the state⁶ be denied outright and the Company be
5 required to continue to operate these systems at a loss for the foreseeable future.

6 **Q. HAS THE COMPANY AGREED TO SERVE AS THE MANAGER OR**
7 **OPERATOR OF SYSTEMS IT DOES NOT OWN?**

8 A. Yes. CSWR-Texas has agreed to step in as the temporary manager for Aero Valley,
9 Castlecomb, Farrar WSC, Smith Management Systems, and Channel Oaks Water
10 System, LLC, which were all experiencing severe water quality deficiencies prior
11 to CSWR-Texas taking over temporary management. The Company subsequently
12 acquired Aero Valley,⁷ and intends to acquire Castlecomb, Farrar and Smith as
13 soon as possible.

14 **Q. IS THIS SERVICE CRITICAL TO THE HEALTH AND SAFETY OF**
15 **TEXAS CUSTOMERS LIVING IN RURAL AREAS?**

16 A. Yes. Like I explained in my direct testimony, these systems require new ownership
17 because they are incapable of maintaining basic provisions of service, which can
18 result in public health risks to the communities they serve if not corrected quickly.
19 Furthermore, Texas does not have a formalized procedure for taking over a failed
20 system during a public health emergency to restore service. When a system fails

⁶ These include the five systems that comprise the former Carroll Water utility, three systems that comprise the former Tri-County water systems, and the Franklin Water system.

⁷ *Application of Shawn M. Horvath dba Aero Valley Water Service and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and to Amend CSWR-Texas Utility Operating Company, LLC's Certificate of Convenience and Necessity in Denton County*, Docket No. 51126, Notice of Approval (Oct. 26, 2022).

1 or is abandoned in Texas, the Commission often relies on investor-owned utilities
2 to volunteer to step in on an emergency basis to stabilize the system and protect the
3 water quality and health of customers. Unless utilities are willing to perform this
4 service, the State is significantly handicapped in its ability to address these public
5 health emergencies. CSWR-Texas has proven multiple times it is willing to
6 perform this service at Texas's request.

7 **Q. DOES THE STATE HAVE ALTERNATIVES TO RELYING ON**
8 **INVESTOR-OWNED UTILITIES AS TEMPORARY OPERATORS OR**
9 **NEW OWNERS OF SMALLER, DISTRESSED SYSTEMS?**

10 A. Very few. Often, the State's only recourse to resolve emergency or chronic service
11 deficiencies is to put these systems into receivership. I understand that the process
12 for appointing a receiver can take a long time to complete, which delays repair, and
13 the receivership requires taxpayers to bear the burden and risk of operating and
14 rehabilitating the system indefinitely. Putting a system into receivership also makes
15 it more challenging to sell the system to another utility because the costs and
16 complexities associated with navigating the civil court system to dissolve the
17 receivership are extensive and can take a long time as well.⁸

⁸ For example, it took over a year and thousands of dollars in legal expenses to have the receivership over the Rocket Water Company, Inc. utility dissolved after the Company acquired it in 2021.

1 **Q. WILL THE TIMELY APPROVAL OF REASONABLE RATES FOR ALL**
2 **SYSTEMS INCLUDED IN THIS PROCEEDING HELP CSWR-TEXAS**
3 **CONTINUE TO INVEST IN COMMUNITY-BASED SYSTEMS AS AN**
4 **OWNER AND/OR TEMPORARY MANAGER?**

5 A. Yes. The timely approval of compensatory rates is necessary to allow the Company
6 to fund not only its existing costs. It is also necessary to ensure the financial
7 integrity of CSWR-Texas so that it can continue to invest in distressed systems. In
8 addition, in other states in which CSWR-Texas affiliates operate, the
9 implementation of fully compensatory rates has allowed those affiliates to access
10 debt facilities that are currently not available to CSWR-Texas in Texas—or for that
11 matter to any small, distressed community-based systems in Texas. These debt
12 facilities provide much-needed capital at a lower cost of capital than if funded
13 entirely with equity, allowing the Company devote its capital to more acquisitions
14 and system improvements and spread these costs out over the service life of the
15 facilities and the duration of the debt payments. Investor-owned utilities like
16 CSWR-Texas cannot readily access low-cost debt and fund these improvements if
17 lenders lack confidence in their ability to recover their costs and satisfy their debt
18 obligations.

19 **Q. WHAT IS THE IMPACT TO CSWR-TEXAS OF STAFF’S PROPOSED**
20 **EXCLUSION OF SYSTEMS THAT HAVE BEEN OWNED LESS THAN 12**
21 **MONTHS?**

22 A. Staff’s recommendation to disallow rate increases and consolidation for systems
23 that a utility has owned less than 12 months is a significant disincentive to any

1 investor-owned utility that is willing to step in and absorb the upfront costs and
2 risks of acquiring a system with inadequate existing rates. In fact, CSWR-Texas is
3 currently operating at a loss every system that has been referred to it by the state of
4 Texas. Staff's position means CSWR-Texas will be forced to continue to operate
5 at a loss for two to three years after an acquisition if Staff's position is approved by
6 the Commission.

7 Moreover, as Mr. Thies discusses in his rebuttal, Staff's recommendation to
8 exclude systems from rate relief effectively introduces a lengthy rate moratorium
9 for any acquired system. Mr. Thies calculates that, for a system acquired on
10 January 2, 2024, CSWR-Texas would have to wait until the middle of 2026 before
11 it could receive rate relief. Again, this would have a chilling effect on the
12 acquisition of these systems by any entity.

13 **Q. DOES STAFF'S POSITION DISPROPORTIONATELY AFFECT RURAL**
14 **COMMUNITY-BASED SYSTEMS?**

15 A. Yes. As I explained before, Texas' many small, community-based water systems,
16 predominantly rural systems, require immediate investment to improve water and
17 wastewater service quality. The Legislature has recognized this and tried to create
18 the necessary incentives, but Staff's position on cost recovery negates those efforts
19 by making it even more difficult to attract investment to these communities. While
20 the state can make up for some of that lost investment through funding grants or
21 low-cost loans to smaller systems, shifting the burden of maintaining these systems
22 to Texas taxpayers is not sound policy and does not solve for the lack of competent
23 operators to operate and maintain the systems after they have been rehabilitated.

1 Further, it is unlikely there are enough grants and loans available in Texas to cover
2 the needs of all small community-based utilities, and it is unlikely that many of
3 these systems are capable of making the necessary improvements even if those
4 funds were available. Instead, the Legislature has made clear that it wants to
5 incentivize new private investment in these smaller systems. Staff's position
6 frustrates that purpose by unnecessarily prolonging cost recovery and imposing on
7 customers the administrative costs of filing more rate cases.

8 **Q. WILL THIS RESULT IN HIGHER COSTS TO CUSTOMERS?**

9 A. Yes. As I stated before, if the Commission adopts Staff's position, CSWR-Texas
10 will have to immediately file another rate case to adjust rates for these systems
11 utilizing the exact same data it is providing in rebuttal. Moreover, since Staff would
12 likely exclude any other systems CSWR-Texas acquires in the interim from the
13 next rate case there will be a continual need for cost recovery filings to add systems
14 excluded by Staff in the previous case. Each one of those cases could result in
15 hundreds of thousands of dollars in litigation and regulatory costs that will
16 ultimately be borne by customers. Customers of these distressed systems are much
17 better-served when utilities expend those resources on system improvements, not
18 rate cases.

19 **B. Consolidation is necessary to provide continuous, adequate service**
20 **in rural areas at a reasonable cost.**

21 **Q. PLEASE SUMMARIZE COMMISSION STAFF'S AND OPUC'S**
22 **POSITIONS WITH REGARDS TO CONSOLIDATION.**

23 A. Staff indicates in its direct testimony that, in addition to opposing consolidation for
24 systems without 12 months of historical operating expenses, it opposes

1 consolidation of three additional water systems (Copano Heights, Franklin Water
2 and Quiet Village) and three additional wastewater systems (Laguna, Abraxas, and
3 Quiet Village) because they argue they are not substantially similar in terms of
4 facilities or cost of service. OPUC appears to support consolidation but, as
5 described later, recommends that rates be phased in over as long as eight years to
6 mitigate impacts to customers.

7 **Q. DOES CSWR-TEXAS STILL SEEK TO CONSOLIDATE ITS SYSTEMS IN**
8 **TEXAS ON A SYSTEM-WIDE BASIS?**

9 A. Yes.

10 **Q. WHAT BENEFITS WILL CUSTOMERS AND THE COMMISSION**
11 **APPRECIATE IF CONSOLIDATION OF ALL OF ITS SYSTEMS IS**
12 **APPROVED?**

13 A. First, it is well-established in the industry that consolidation under single tariffs and
14 rates helps to encourage the acquisition of small, troubled water and wastewater
15 systems by allowing for economies of scale to spread costs over a larger customer
16 base. Second, as I mentioned in my direct testimony, the consolidation of systems
17 into a single tariff mitigates rate impacts and promotes affordability. Third, while
18 there may be different technologies utilized at different systems, all systems share
19 many of the same costs of service, generally use the same third-party operations
20 firm, and are managed to the same service quality standards. Fourth, the
21 development of a single set of tariffs provides for a heightened level of regulatory,
22 administrative, and billing efficiency. Specifically, the Commission will not have
23 to maintain familiarity with a multitude of rules and rates. Fifth, because all the

1 acquired systems will eventually require large capital investments over the next few
 2 years, any perceived inequities associated with system subsidization will eventually
 3 balance out. Sixth, because consolidated tariffs provide a more simplified approach
 4 to rates and rules, it is more consumer friendly than having dozens of different rate
 5 sheets.

6 **Q. HAS THE COMMISSION PREVIOUSLY RECOGNIZED THE IMPORTANCE**
 7 **OF CONSOLIDATION AMONG SMALLER, COMMUNITY-BASED**
 8 **SYSTEMS?**

9 A. Yes. In September 2021, the Commission submitted a Self-Evaluation Report to
 10 the Texas Sunset Advisory Commission. In the report, the Commission specifically
 11 recommended that Texas Water Code § 13.145 be repealed to allow for more
 12 consolidation in the industry. It explained as follows:

13 Eliminat[ing] the substantial similarity determination [would] allow a
 14 utility to charge one rate to customers across all its water systems or
 15 sewer systems. This would eliminate confusion customers have when
 16 determining which part of a tariff applies to them. It would also treat
 17 water more like electric rate setting and encourage regionalization and
 18 consolidation. In addition, it would eliminate staff processing time
 19 required to produce multiple rates for one utility with several systems
 20 and would, in turn, eliminate testimony and rate case expenses born by
 21 a Class A utility or additional information and potential testimony
 22 required by a Class B, C or D utility seeking a consolidated tariff.
 23 (Repeal TWC §13.145).⁹

24 In response, the Legislature removed the “substantially similar” consolidation
 25 standard from the Texas Water Code.¹⁰ And yet, despite the clear direction from
 26 this Commission and the Legislature to eliminate this barrier to consolidation,

⁹ PUCT Self-Evaluation Report to Texas Sunset Advisory Commission at 237-238 (September 2021).

¹⁰ House Bill 2373, 88th Leg., 2023 Tex. H.B. 2373, 2023 Tex. Gen. Law ch. 327.

1 Commission Staff and OPUC now argue that the Commission *must* continue to
2 apply the substantial similarity standard until June 2, 2023, when the repeal of
3 TWC § 13.145 took effect. This is an odd position given that the Commission itself
4 lobbied the Legislature to remove this provision and, since this case has now passed
5 the June 2 date, the statute is now officially repealed.

6 **Q. WHAT IS YOUR RESPONSE TO STAFF'S PROPOSAL TO REMOVE**
7 **THESE SYSTEMS FROM CONSOLIDATION?**

8 A. Without consolidation, many of these systems will experience significant rate
9 increases based on the actual cost to serve that system on a stand-alone basis. This
10 is because some systems—typically ones that are out of compliance and
11 recommended by various Texas governmental bodies to CSWR-Texas—have
12 required more recent investments than others, and many of the systems have very
13 few customers. Without consolidation, customers of these systems would be
14 burdened with the entire cost of those improvements in the rates approved in this
15 proceeding. This consequence will only perpetuate the challenges these systems
16 face.

17 **Q. CAN YOU PROVIDE AN EXAMPLE OF A SYSTEM THAT WOULD**
18 **EXPERIENCE SIGNIFICANT RATE IMPACTS WITHOUT**
19 **CONSOLIDATION?**

20 A. Yes. Based on the Company's proposed cost of service, absent consolidation, a
21 household using 10,000 gallons a month in the Walnut Bend Water System service
22 area would have a monthly bill of approximately \$675 for water service alone,

1 while a sewer customer in the Laguna Vista service area would have a monthly bill
2 of approximately \$570 for sewer service alone.

3 **Q. WHAT ARE THE AVERAGE MONTHLY BILLS FOR THESE SYSTEMS**
4 **ON A CONSOLIDATED BASIS?**

5 A. With statewide consolidation, as proposed by CSWR-Texas, a household using
6 10,000 gallons a month in the Walnut Bend Water System service area would have
7 a monthly bill of approximately \$110 per month for water service while a sewer
8 customer in the Laguna Vista service area would have a monthly bill of
9 approximately \$70 per month for sewer service.¹¹ At the same time, with
10 consolidation, the average monthly bills for customers of other systems would not
11 increase significantly because these costs are spread among more customers,
12 similar to how electric utilities spread their costs over larger, geographically
13 disparate customer bases.

14 **Q. ARE THE CUSTOMERS OF LAGUNA VISTA AND WALNUT BEND**
15 **WATER SYSTEM RECEIVING A SIMILAR LEVEL OF SERVICE AS**
16 **CUSTOMERS OF THE SYSTEMS THAT STAFF RECOMMENDS BE**
17 **CONSOLIDATED?**

18 A. Yes. As Mr. Duncan discusses in his direct testimony, even if the types of facilities
19 used to provide the service are technically different, the end product is the exact
20 same thing: safe, continuous, adequate water and wastewater service that complies
21 with Texas law and protects the health of customers, residents and the environment.
22 In fact, Commission Staff even argues in its testimony that the quality of service at

¹¹ Statement of Intent at SOI Exhibit C.

1 all water and wastewater systems is substantially similar. That, in my mind, is a
2 more critical factor in whether to consolidate systems, assuming the Commission
3 continues to apply the substantial similarity standard that was repealed by the
4 Legislature.

5 **Q. SHOULD CUSTOMERS OF A SMALL, DISTRESSED, COMMUNITY-**
6 **BASED SYSTEM BE REQUIRED TO PAY MORE FOR THE SAME**
7 **LEVEL OF SERVICE AS CUSTOMERS OF LARGER SYSTEMS?**

8 A. No. I do not believe that customers of Walnut Bend Water System or Laguna Vista
9 should have to pay seven or eight times what the customers of a consolidated
10 system pay for the same product. Furthermore, Staff's failure to more broadly
11 utilize consolidation ignores the fluctuations in a system's cost of service between
12 rate cases, which consolidation helps to mitigate.

13 **Q. DOES CONSOLIDATION MITIGATE RATE FLUCTUATIONS**
14 **BETWEEN RATE CASES?**

15 A. Yes. As I stated before, the cost of service of each system CSWR-Texas operates
16 will fluctuate between rate cases depending on the timing of improvements made
17 at each system. Systems that require significant immediate improvements would
18 see immediate increases to that system's cost of service in the next rate case while
19 systems that do not require the same immediate improvements will likely initially
20 experience a relatively lower cost of service. But eventually that dynamic will
21 reverse as lower cost systems age and require improvements. The obvious concern
22 under Staff's approach is there is likely *never* a time when each system can be

1 consolidated because there is likely never a moment when every one of a utility's
2 unconsolidated systems is substantially similar in terms of their cost of service.

3 Furthermore, like I said before, this approach will disproportionately
4 disadvantage rural and distressed systems because they are the ones that typically
5 require the most immediate investment, have a higher cost per meter due to their
6 geographical dispersion, and have the fewest customers to share these costs. If the
7 state of Texas wants CSWR-Texas to resolve operational issues and health concerns
8 at these systems, the only way to do that at a reasonable cost to these customers is
9 through consolidation.

10 **Q. ARE YOU CONCERNED THAT CUSTOMERS OF UNCONSOLIDATED**
11 **SYSTEMS WILL BE ABLE TO AFFORD THESE HIGHER BILLS?**

12 A. Yes. I would be very concerned about customers being able to afford almost \$700
13 per month every month of the year. Water rates that high would likely make it
14 impossible for some customers of these systems to afford water or wastewater
15 service and they would be forced to leave the community rather than paying those
16 rates. This would exacerbate the situation for the remaining customers, if any can
17 afford to remain. That is why, the Commission and the Legislature have urged
18 consolidation to promote investment in smaller, community-based systems in
19 Texas.

1 **Q. WILL CONSOLIDATION OF 62 WATER SYSTEMS AND 12**
 2 **WASTEWATER SYSTEMS REDUCE BURDENS ON THE**
 3 **COMMISSION?**

4 A. Yes. As noted before, every consolidation this Commission approves reduces the
 5 number of tariffs it is responsible for administering, the number of service
 6 territories and maps it must maintain, the number of annual reports it is required to
 7 review, the number of rate cases that must be filed, the number of customer
 8 complaint proceedings it must adjudicate, and the number of STM or CCN
 9 amendment proceedings that are filed. The efficiencies of consolidation will reduce
 10 rate impacts on customers and reduce compliance costs for Texas state government.

11 **Q. DOES OPUC WITNESS MR. GARRETT SUPPORT CONSOLIDATION?**

12 A. Yes. Mr. Garrett recognizes that the median proposed stand-alone water rate for a
 13 customer using 5,000 gallons/month is \$93.19/month, which is higher than the
 14 proposed consolidated rate of \$81.73.¹² Mr. Garrett concludes that over half of the
 15 water systems will benefit from consolidation.¹³

16 The median represents that value in which half of the values in a
 17 data series are greater than and half of the values are less than the
 18 median. If the consolidated rate is less than the median value for the
 19 proposed future stand-alone rates, then most of the individual water
 20 systems would be better off under the consolidated rates than under
 21 stand-alone rates.

22 Based on this observation, Mr. Garrett recommends the consolidation of rates for
 23 water and sewer “coupled with” a rate phase-in to mitigate bill impacts.

¹² Direct Testimony of Mark E. Garrett at 21 (Table 1).

¹³ *Id.* at 22:18-23:4.

1 **Q. WHAT IS MR. GARRETT’S PHASE-IN RECOMMENDATION?**

2 A. Mr. Garrett proposes a phase-in by which the rate increase at any system is limited
 3 to \$10.00/month each year. He acknowledges, given the differences in existing
 4 rates for the various systems, that his approach would take *eight years* to fully
 5 consolidate all requested systems.¹⁴ Obviously, eight years of phase-in will
 6 disincentivize any utility in the state of Texas to acquire and fix the numerous
 7 failing systems that still operate in the state. In fact, CSWR-Texas estimates that,
 8 under Mr. Garrett’s phase-in proposal, it would forego recovery of approximately
 9 \$5.6 million in water revenues and an additional \$2.2 million in sewer revenues, as
 10 demonstrated in my Exhibit JC-R-2. Mr. Garrett does not even recognize the
 11 carrying costs associated with the eight years of lost revenue.

12 **Q. MR. GARRETT ALSO ARGUES THAT THE COMMISSION SHOULD**
 13 **REQUIRE CSWR-TEXAS TO WAIT SIX YEARS BEFORE IT CAN FILE**
 14 **ITS NEXT RATE CASE.¹⁵ WHAT IS YOUR RESPONSE?**

15 A. Given the level of past operating losses that the Company has already incurred with
 16 these systems, as well as the number of systems that it will be acquiring in the near
 17 future, the Company cannot wait six years before it files another rate case. I do not
 18 believe it is reasonable to ask any investor-owned utility to indefinitely operate at
 19 a loss for six years with no option for increased cost recovery, much less a utility

¹⁴ For instance, under Mr. Garrett’s approach, the Woodlands West water system would take eight years to reach the consolidated rate if the Company can only increase the rate \$10 per year.

¹⁵ Mr. Garrett states at 31:8-11 of his direct testimony, “[u]nder my proposal, a large majority of CSWR-Texas’s customers would be paying the full consolidated rate by the fifth year after implementation. Some systems would take a little longer. The Company could file a rate case after the fifth or sixth year to bring all systems to a uniform rate.”

1 that has been responsive to requests by the state to step in and take over systems
 2 and operate them at a loss. This type of policy will ultimately condemn Texans
 3 residing in communities with failing systems to live without access to basic safe
 4 water resources.

5 **III. RESPONSE TO OPUC’S TESTIMONY REGARDING FUTURE CAPITAL**
 6 **EXPENDITURES**

7 **Q. HAVE YOU REVIEWED MR. GARRETT’S TESTIMONY REGARDING**
 8 **PLANNED CAPITAL EXPENDITURES?**

9 A. Yes. At pages 18-19 of his direct testimony on behalf of OPUC, Mr. Garrett
 10 expresses concerns with the magnitude of the Company’s planned capital
 11 improvements over the next two years. Mr. Garrett suggests that “the Commission
 12 monitor the magnitude of CSWR-Texas’s anticipated future capital expenditures as
 13 the Company acquires, rehabilitates, and maintains its water and sewer utility
 14 systems.”¹⁶

15 **Q. HOW DO YOU RESPOND?**

16 A. As Mr. Garrett recognizes,¹⁷

17 [g]iven the extent to which these individual systems were not
 18 compliant with applicable federal and state regulations due to
 19 abandoned or negligent prior ownership, it is reasonable that there
 20 would be a need for a substantial initial investment to bring these
 21 individual systems back into compliance.

22 However, the capital improvements performed to date do not “bring [many of] these
 23 individual systems back into compliance.”¹⁸ Instead, as Mr. Freeman details in his

¹⁶ Direct Testimony of Mark E. Garrett at 7:3-5.

¹⁷ *Id.* at 18:14-17.

¹⁸ *Id.* at 30:14-17.

1 direct testimony in Exhibit JF-1, while some projects are complete, there are still a
2 great number of projects currently identified as “construction in progress” and
3 “design in progress.” Consistent with Mr. Garrett’s recommendation, Mr. Freeman
4 already identified with great specificity in his direct testimony the planned
5 improvements on a system-by-system basis. Thus, the details necessary for Mr.
6 Garrett, or the Commission, to “monitor” the planned capital improvements have
7 already been provided. Moreover, CSWR-Texas intends to provide similar details
8 in its next rate case to allow the Commission to see the progress that has been made.

9 **IV. RESPONSE TO INTERVENOR COMMENTS REGARDING SERVICE**
10 **QUALITY**

11 **Q. HAVE YOU REVIEWED THE COMMENTS FILED BY INTERVENORS**
12 **RELATED TO SERVICE QUALITY?**

13 A. Yes. Intervenors filed comments or affidavits with regard to seven of the
14 Company’s systems: (1) Emerald Forest, (2) Grande Casa, (3) Spanish Grant, (4)
15 Treetops Phase I, (5) Settlers Estates Section II, (6) Timberlane, and (7) Quiet
16 Village II.

17 **Q. DO YOU HAVE ANY GENERAL COMMENTS IN RESPONSE TO THESE**
18 **CUSTOMERS’ CONCERNS?**

19 A. Yes. First and foremost, I want to make clear that the Company takes customer
20 complaints and service quality concerns very seriously and we encourage our
21 customers to contact our customer service team any time they experience issues.

22 It is also important to note that at the time CSWR-Texas’ acquires a
23 distressed system, the systems typically already have numerous service quality
24 issues that must be corrected. In fact, CSWR-Texas is often blamed for service

1 issues that existed prior to the acquisition. It takes time for Confluence Rivers to
2 help customers forget the past poor water and wastewater service they have
3 received from a poorly operated system, an abandoned system, or a system that
4 languished in a court-appointed receivership. In fact, of the 39 systems that were
5 acquired prior to May 31, 2022, only two affidavits were submitted in this case by
6 representatives of those systems—relating to Settlers Estate Section II and Treetop
7 Estates. Thus, it has been my experience that once CSWR-Texas has had an
8 opportunity to professionally operate and restore a system, service quality concerns
9 will generally be much less frequent.

10 Also, customers understandably often do not realize the extent of the
11 improvements that are made because they are not visible to the customer. For
12 instance, improvements to eliminate leaks in distribution (drinking water) and
13 collection (wastewater) piping typically occur underground so that a customer
14 never actually witnesses the failure or rehabilitation of it. Once CSWR-Texas has
15 had an opportunity to professionally operate and restore a system, service quality
16 concerns are typically far less frequent.

17 **Q. DOES CSWR-TEXAS TAKE STEPS TO EDUCATE CUSTOMERS ABOUT**
18 **IMPROVEMENTS THAT ARE MADE TO A SYSTEM?**

19 **A** Yes. In fact, CSWR-Texas has recently taken steps to make these improvements
20 more visible to customers. For instance, CSWR created a Corporate
21 Communications department to highlight improvements being made to individual
22 systems. In addition, CSWR has recently revamped its webpage to include
23 descriptions of the improvements being made to each Texas community.

1 **Q. DO YOU HAVE AN EXAMPLE OF CUSTOMERS BLAMING CSWR-**
2 **TEXAS FOR SERVICE PROBLEMS THAT EXISTED PRIOR TO THE**
3 **SYSTEM BEING ACQUIRED BY CSWR-TEXAS?**

4 A. Yes. The affidavits of LaDonna Turner and Jennifer Washburn address service
5 concerns associated with two systems formerly operated by Carroll Water, Grand
6 Casa and Emerald Forest respectively. However, it is clear from her affidavit that
7 Ms. Washburn had experienced extremely poor water quality for almost six years
8 prior to CSWR-Texas acquiring the system. Similarly, Ms. Turner states that her
9 water quality has suffered since at least 2013, nine years prior to CSWR-Texas
10 acquiring Carroll Water. CSWR-Texas has barely owned these systems for a full
11 year, and that is simply not enough time to address every deficiency associated at a
12 utility like Carroll Water that has systems that have been failing for over decade
13 and most likely has not experienced significant reinvestment in decades. For
14 instance, the evaluation, system design, and permitting process for the water
15 disinfection system alone typically takes at least a year.

16 **Q. PLEASE DESCRIBE THE CHALLENGES FACED BY THE EMERALD**
17 **FOREST SYSTEM AND WHAT CSWR-TEXAS HAD DONE TO ADDRESS**
18 **THEM.**

19 A. At the time that CSWR-Texas acquired the system in 2022, it had been the subject
20 of six TCEQ administrative orders in two years, ten boil water notices in three
21 years, and ten compliance investigations in five years. The system had received
22 nineteen notices of violation in the five years prior to the engineering memorandum,
23 two of which (total dissolved solids and sulfate) were still active. CSWR-Texas is

1 in the process of making numerous improvements to address these issues. For
2 instance, CSWR-Texas has installed remote monitoring including a chlorine
3 analyzer and converted the chlorine disinfection system from gas to liquid. Sodium
4 hypochlorite. CSWR-Texas has made efforts to complete general site cleanup to
5 improve operations and is in the process of restoring and painting structures.
6 However, the total improvements needed to address all infrastructure issues facing
7 this failing utility will take more time to design, get permits approved by the TCEQ,
8 and rebuild the facilities, which can take well over a year.

9 **Q. PLEASE DESCRIBE THE CHALLENGES FACED BY THE GRANDE**
10 **CASA SYSTEM AND WHAT CSWR-TEXAS HAS DONE TO ADDRESS**
11 **THEM.**

12 A. At the time CSWR-Texas acquired this system in 2022, the system had been the
13 subject of thirty-one boil water notices in four years; twenty-nine compliance
14 investigations in six years; thirty-three enforcement orders in five years – two of
15 which were classified as major; and eighteen notices of violation. Recent
16 improvements include the installation of remote monitoring including a chlorine
17 analyzer as well as the conversion from gaseous to liquid chlorine disinfection. In
18 addition, CSWR-Texas intends to complete a well rehabilitation in the near future
19 including well site yard piping. Again, after decades of neglect, the improvements
20 needed to address all infrastructure issues facing this failing utility will take more
21 time as they are designed, permitted with the state of Texas, and built.

1 **Q. REGARDING THE AFFIDAVIT OF MELISSA ALLRED RELATED TO**
2 **THE SPANISH GRANT SYSTEM, PLEASE DESCRIBE THE**
3 **CHALLENGES FACING THAT SYSTEM AND WHAT THE COMPANY**
4 **HAS DONE TO ADDRESS THEM.**

5 A. In her affidavit, Ms. Allred raised concerns regarding the service quality at Spanish
6 Grant,¹⁹ another Carroll Water system. At the time CSWR-Texas acquired this
7 system in 2022, the system had been the subject of fourteen administrative orders
8 in two years, five of which were classified as major, including: failure to issue a
9 boil water notice and failure to maintain a disinfectant residual; failure to equip the
10 distribution system with flush valves at dead-end mains; failure to provide
11 sufficient valves and blow offs in the distribution system; failure to provide
12 adequate ground storage capacity; and failure to install distribution lines at an
13 adequate depth.

14 To address some of these concerns, CSWR-Texas installed remote
15 monitoring with a chlorine analyzer, new instrumentation on the water wells, five
16 flushing valves to properly flush the distribution system, and base plating for
17 booster pumps to prevent undue damage to pumps. Also, CSWR-Texas is installing
18 flush valves at dead-end mains as well as gate valves to better isolate portions of
19 the system to conduct maintenance on mains and reduce the number of customers
20 impacted by service outages and maintenance activities in the future. CSWR-Texas
21 is also replacing the ground storage tank and sandblasting and recoating other

¹⁹ Interchange Item No. 2378, Affidavit of Melissa Allred in Support of Protesting CSWR-Texas Rate Change State of Texas (Jul. 14, 2023).

1 system tankage. Finally, CSWR-Texas is converting the chlorine disinfection
2 system from gas to liquid.

3 These improvements should address Ms. Allred's concerns that the "water
4 infrastructure" is old and in need of replacement.²⁰ And, once these immediate
5 improvements are complete such that the drinking water meets all water quality and
6 capacity requirements, CSWR-Texas will shift its focus to addressing concerns
7 with main breaks. Again, all of these improvements take time, and during
8 construction sometimes require planned outages. Furthermore, when customers of
9 a system that has failed as badly as Spanish Grant's system they will sometimes
10 initially experience more service disruptions while the Company makes necessary
11 improvements throughout the system.

12 **Q. WHAT IS YOUR RESPONSE TO THE COMMENTS BY CUSTOMERS OF**
13 **THE TREETOP ESTATES SYSTEM REGARDING THEIR SERVICE?**

14 A. Of the systems that are the subject of this proceeding, the Treetop Estates system
15 was the subject of the most customer comments. In addition to the affidavit of the
16 designated representative (Heather Baughman),²¹ affidavits were also filed by Jim

²⁰ *Id.* at 1-2.

²¹ Interchange Item No. 2353, Affidavit of Heather Baughman in Support of Protesting CSWR-Texas Rate Change (Jun. 25, 2023).

1 Rieber,²² Alison Rieber,²³ Kim Hilmer,²⁴ Curtis Quarles,²⁵ Andrew Clogg,²⁶
 2 Heather Thompson,²⁷ and Thuy Howeth.²⁸ The concerns raised in those affidavits
 3 all coalesce around water quality concerns relating to the presence of high sulfur
 4 content in the water and the chlorine used to treat it.

5 **Q. PLEASE DESCRIBE THE CONDITION OF THE TREETOP ESTATES**
 6 **SYSTEM AT THE TIME CSWR-TEXAS ACQUIRED IT.**

7 A. At the time CSWR-Texas acquired the system at the end of 2020, facility had
 8 experienced *50 violations between February 2000 and November 2020*. Various
 9 facilities, but particularly the facility tankage, have issues that must be addressed
 10 to ensure the system can provide safe and reliable service to customers. There were
 11 also issues with the ground storage and hydropneumatic tanks, which will require
 12 permitting to complete repairs and recoating.

²² Interchange Item Nos. 2346 and 2347, Affidavit of Jim Reiber in Support of Protesting CSWR-Texas Rate Change (Jun. 22, 2023).

²³ Interchange Item Nos. 2349, 2350, and 2351, Affidavit of Alison Reiber in Support of Protesting CSWR-Texas Rate Change (Jun. 23, 2023).

²⁴ Interchange Item Nos. 2352 and 2354, Affidavit of Kim Hilmer in Support of Protesting CSWR-Texas Rate Change (Jun. 25, 2023).

²⁵ Interchange Item No. 2355, Affidavit of Curtis Quarles in Support of Protesting CSWR-Texas Rate Change (Jun. 25, 2023).

²⁶ Interchange Item No. 2373, Affidavit of Andrew Clogg in Support of Protesting CSWR-Texas Rate Change (Jul. 10, 2023); *see also* Items Nos. 2370, 2371, and 2372.

²⁷ Interchange Item No. 2376, Affidavit of Heather Thompson in Support of Protesting CSWR-Texas Rate Change (Jul. 13, 2023).

²⁸ Interchange Item No. 2382, Affidavit of Thuy Howeth in Support of Protesting CSWR-Texas Rate Change (Jul. 14, 2023).

1 **Q. WHAT IMPROVEMENTS HAS CSWR-TEXAS MADE AT TREETOP**
 2 **ESTATES?**

3 A. To date, CSWR-Texas has completed the installation of remote monitoring,
 4 converted from gaseous chlorine disinfection to liquid chlorine, recoated the
 5 interior of the chlorine disinfection room, and inspected and recoated the interior
 6 and exterior of the hydropneumatic tank. Most relevant to the concerns of the
 7 Treetop Estates customers, however, CSWR-Texas is in the design phase for the
 8 installation of a hydrogen sulfide removal system. Through this removal system,
 9 CSWR-Texas will be able to better address the sulfur smell in the water without the
 10 potential for excess chlorine in the water. Currently, CSWR-Texas is working with
 11 the TCEQ for the permit and approval of this removal system. Finally, CSWR-
 12 Texas also intends to rehabilitate the aging water well and inspect and recoat the
 13 interior and exterior of the ground storage tank.

14 **Q. WHAT IS YOUR RESPONSE TO BARRY WOLF’S COMMENTS ON**
 15 **BEHALF OF THE SETTLERS ESTATES SECTION II CUSTOMERS?**

16 A. In his affidavit, Mr. Wolf raises concerns about water pressure in the subdivision.²⁹
 17 At the time of acquisition, certain assets were so deteriorated that CSWR-Texas
 18 engaged the TCEQ in conversations on how to resolve problems at the system and
 19 agreed to a schedule for the completion of this remediation.³⁰ For instance, CSWR-
 20 Texas agreed to replace the hydropneumatic tank, which was recently completed
 21 and should result in a resolution of the pressure concerns soon. Again, these

²⁹ Interchange Item No. 2383, Affidavit of Barry Wolf in Support of Protesting CSWR-Texas Rate Change (Jul. 14, 2023).

³⁰ See, Direct Testimony of Jacob Freeman at Schedule JF-2.

1 improvements take time to design, build, and permit. CSWR-Texas certainly
2 appreciates the continued frustrations this causes customers while investments are
3 being rapidly deployed to rehabilitate the system.

4 **Q. DID ANY CUSTOMERS EXPRESS THAT THEY HAD EXPERIENCED**
5 **IMPROVEMENTS TO THEIR SERVICE QUALITY AFTER CSWR-**
6 **TEXAS TOOK OVER OPERATIONS?**

7 A. Yes. For example, Ms. Lauri Moore raised concerns with a high chlorine level
8 starting in April 2023, but she also reported that, starting in June, she started seeing
9 improvements to her water.³¹

10 **Q. PLEASE DESCRIBE THE CONDITION OF THE TIMBERLANE SYSTEM**
11 **AT THE TIME IT WAS ACQUIRED.**

12 A. At the time it was acquired, one of the ground storage tanks at Timberlane was non-
13 functional due to a collapsed tank roof and needed to be removed. Additionally,
14 the first water well was non-functional after it froze in the February 2021 winter
15 storm. Finally, one of the five pressure tanks was offline. As a result, the system
16 could not meet the capacity requirements for its current connection count and
17 improvements were required to bring the facility into compliance.

18 **Q. HAS CSWR-TEXAS ADDRESSED THESE CONCERNS?**

19 A. To date, CSWR-Texas has made numerous improvements to the site including the
20 installation of remote monitoring equipment on relevant components, the clearing
21 of trees and vegetation to provide access to remove the out of service and damaged

³¹ Interchange Item No. 2385, Protest of Lauri Moore (Jul. 17, 2023).

1 ground storage tank, and the removal of the referenced tank. Additional
2 improvements are planned pending approvals from the TCEQ.

3 **Q. CERTAIN INTERVENORS ALLEGE THAT CSWR-TEXAS DID NOT**
4 **OBTAIN PROPER APPROVAL TO PURCHASE THE QUIET VILLAGE II**
5 **UTILITY WATER AND WASTEWATER SYSTEMS. DO YOU HAVE A**
6 **RESPONSE?**

7 A. Yes, although I do not fully understand intervenors Bob Hill's and Robert
8 Eilenberger's concerns regarding whether the Company properly acquired the
9 Quiet Village II System, the approval of the system was addressed by the
10 Commission when it reviewed and approved the Company's proposed acquisition
11 in Docket No. 51089, including the underlying agreement to acquire the system.
12 The Commission amended CSWR-Texas's certificates of convenience and
13 necessity to include the areas previously served by Quiet Village II and,
14 accordingly, since that time, CSWR-Texas has owned and operated the water and
15 sewer systems and has provided service to all customers within the certificated
16 service areas, as required by the Commission in its order approving the transfer of
17 the certificate.³² Whatever these intervenors' concerns are, they would have been
18 reviewed and addressed in the STM proceeding.

³² *Application of Donald E. Wilson dba Quiet Village II dba QV Utility and CSWR-Texas Utility Operating Company, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Hidalgo County*, Docket No. 51089, Notice of Approval (Nov. 18, 2021).

V. CONCLUSION

1
2 **Q. ARE THE RATES PROPOSED BY CSWR-TEXAS FOR WATER AND**
3 **WASTEWATER SERVICE REASONABLE AND NECESSARY TO**
4 **PROVIDE SERVICE AT A REASONABLE COST?**

5 A. Yes.

6 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

7 A. Yes.



MISSOURI
DEPARTMENT OF
NATURAL RESOURCES

Michael L. Parson
Governor

Dru Buntin
Director

June 22, 2023

OFFICIAL COPY VIA EMAIL

Josiah Cox
Confluence Rivers Utility Operating Company, Inc.
1650 Des Peres Road, Suite 303
Des Peres, MO 63131

RE: Confluence Rivers Utility Operating Company

Dear Josiah Cox:

The Missouri Department of Natural Resources regulates approximately 5,000 domestic wastewater treatment systems and approximately 2,700 public water systems in the State that are subject to the Missouri Clean Water Law and the Missouri Safe Drinking Water Law, respectively. The Department's primary goal as the regulatory authority in administering these state laws is to ensure environmental protection and human health and safety against pollution and health risks that may be caused by failing or improperly operating wastewater treatment systems and public water systems. The Department promotes compliance through compliance assistance, education, and, when necessary, enforcement actions. When systems end up in enforcement, it is often a result of limited resources and available solutions, which can sometimes draw cases out over a period of years.

When systems are unable to resolve their technical, managerial, or financial problems, one reliable solution is selling the system to a higher-performing utility operating company. In Missouri, Confluence Rivers Utility Operating Company, Inc. (CRUOC) is one of the few utility operating companies who is willing to acquire some of the most difficult failing systems. CRUOC has consistently taken swift actions after taking control of these systems to bring them into compliance by employing qualified operators, effectively administering and managing the systems, and investing in repairs and upgrades.

CRUOC's willingness to acquire systems with long-standing compliance issues has proven to be beneficial to human health and the environment by bringing many of these systems into compliance with environmental laws. The Department looks forward to continuing to work with CRUOC as it continues to acquire wastewater and public water systems in Missouri, in furtherance of the Department's initiative to encourage regionalization and consolidation of the many private systems in Missouri that are struggling to achieve compliance with laws for the protection of public health and the environment.



If you have any questions regarding this correspondence, you may contact Joe Clayton at Department of Natural Resources, Water Protection Program, Compliance and Enforcement Section, P.O. Box 176, Jefferson City, MO 65102-0176; by phone at 573-522-1120; or by email at cwentf@dnr.mo.gov. Thank you for your cooperation in this matter.

Sincerely,

WATER PROTECTION PROGRAM

A handwritten signature in black ink, appearing to read "Joe Clayton", is written over the printed name.

Joe Clayton
Compliance and Enforcement Section Chief

JC/ehh

c: Lance Dorsey, Chief, PDWB, Compliance and Enforcement



STATE OF MISSISSIPPI
TATE REEVES
GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
CHRIS WELLS, EXECUTIVE DIRECTOR

February 27, 2023

Commissioner Brent Bailey
MPSC-Central District
Woolfolk Building
501 North West Street
Suite 201A
Jackson, MS 39201 P.O. Box

Dear Commissioner Bailey:

The Mississippi Department of Environmental Quality (MDEQ) shares a common desire with you and other members of the Mississippi Public Service Commission (PSC) to provide our citizens with reliable, affordable, and safe utilities statewide. While our role as the State's environmental regulatory agency may differ slightly from the role of the PSC, we appreciate the partnership we have with your organization in accomplishing these shared goals.

As you are aware, our two organizations have worked closely together through the years specifically on wastewater utilities as MDEQ has environmental regulatory oversight for most of these operations. Furthermore, our organizations continue to see a limited number of wastewater utilities around the state dissolve and/or systems abandoned where citizens serviced by those utilities are left with failing, non-compliant systems. Recently, MDEQ and PSC has worked even more closely to find solutions to known problematic systems that were creating imminent environmental impacts and/or potential health impacts to citizens in the vicinity of these failing systems.

A specific example of our successful partnership has been working with Great River Utility in their recent acquisition of several failing/abandoned wastewater utilities across the state. Great River Utility has worked closely with MDEQ technical staff and made binding commitments to bring these systems back into compliance. A viable entity seeking out troubled utilities/wastewater systems and returning reliable, compliant services to citizens is a welcomed concept by MDEQ. We believe our partnership with the PSC to identify problematic systems and finding long term solutions, as in the case of Great River, reflects very clearly shared goals and objectives.

We appreciate Great River Utilities' commitment to regulatory compliance, and MDEQ remains committed to our partnership with PSC to find sensible solutions to shared problems. If we may be of additional service to the PSC, please do not hesitate to contact us.

Sincerely,

Chris Sanders

Chris Sanders, P.E., BCEE
Director, Office of Pollution Control



MISSISSIPPI STATE DEPARTMENT OF HEALTH

March 14, 2023

Commissioner Brent Bailey
MPSC-Central District
Woolfolk Building
501 North West Street
Suite 201A
Jackson, MS 39201

Dear Commissioner Bailey:

The Mississippi State Department of Health's mission is to protect and advance the health, well-being, and safety of everyone in Mississippi. As you are aware, the Bureau of Public Water Supply (Bureau) exists within the Office of Environmental Health to carry out the Department's mission for the safety of the state's drinking water supplies through the implementation and oversight of the federal and state Safe Drinking Water Acts. The Bureau believes, much like the Mississippi Public Service Commission, that citizens of the state should have access to reliable, affordable, and safe drinking water from the state's utilities.

We recognize the PSC's goals in many ways mirror those of the Bureau. We acknowledge the recent coordinated efforts our agencies have taken to improve the service and water quality of a few of the more troubled water systems in the state. We anticipate future opportunities of continued collaboration to assist customers in need with their water systems.

The Bureau sees many emerging opportunities where our agencies could encourage utilities to merge and consolidate management, services and/or physical connection. Through our continued cooperation and funding the Legislature is considering, we hope our partnership can expedite consolidation and regionalization opportunities. These situations would give opportunities for citizens without safe drinking water the ability to get it or may allow citizens with safe drinking water to obtain higher quality drinking water. These consolidation efforts could include utilities/private investors buying poorly performing utilities.

As you may be aware, Great River Utility Company has recently acquired several drinking water systems across the state. Great River Utility has worked closely with the Bureau's compliance and field staff to maintain compliance with the various rules and regulations of the Safe Drinking Water Act. A viable entity such as Great River Utility desiring to help problematic drinking water systems by investing in them for improved services to citizens is very appreciated and supported by the Bureau.

We believe the Bureau's coordination with the PSC to identify problematic drinking water systems and to identify long-term solutions, such as those offered by entities like Great River, is very beneficial to our shared goals and objectives.

The Bureau appreciates Great River Utilities' commitment to improved regulatory compliance, and the Bureau remains committed to our partnership with PSC to find sensible and feasible solutions to shared problems. If we may be of additional service to the PSC, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. F. Moody', is positioned above the printed name.

William F. Moody, P.E., BCEE
Director, Bureau of Public Water Supply

REBUTTAL TESTIMONY EXHIBIT JC-R-2 OF
JOSIAH COX

The Exhibit will be provided in native format.

Public Utility Commission of Texas Self-Evaluation Report

A Report to the Texas Sunset Advisory Commission



September 2021

Peter M. Lake
Chairman

Will McAdams
Commissioner

Lori Cobos
Commissioner

Jimmy Glotfelty
Commissioner



Greg Abbott
Governor

Thomas J. Gleeson
Executive Director

Public Utility Commission of Texas

September 1, 2021

Honorable Members of the Sunset Advisory Commission :

We are pleased to submit our Self Evaluation Report for our upcoming Sunset Review. The Public Utility Commission (PUCT or Commission) was last reviewed by the 83rd Legislature in 2013, and since that time has continued to evolve in response to changes in law and the industries we regulate and oversee.

The legislation enacted in 2013 transferred economic regulation of water and wastewater utilities from the Texas Commission on Environmental Quality to the Commission. Since 2013, the Legislature has passed, and the PUC has implemented legislation to improve the efficiency of water and wastewater regulation.

Winter Storm Uri in February 2021 had a profound effect on all Texans and the electric industry. The 87th Legislature enacted several laws addressing the impacts of this storm. The PUCT has begun implementing this legislation and these efforts are ongoing.

The PUCT's regulatory functions have evolved over the years, but the importance of its overall mission to serve all Texas electric and telecom customers, and more recently, water and wastewater customers, remains unchanged.

We look forward to working with the Sunset Advisory Commission and its staff.

Sincerely,

Handwritten signature of Peter M. Lake.

Peter M. Lake
Chairman

Handwritten signature of Will McAdams.

Will McAdams
Commissioner

Handwritten signature of Lori Cobos.

Lori Cobos
Commissioner

Handwritten signature of Jimmy Glotfelty.

Jimmy Glotfelty
Commissioner



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Public Utility Commission of Texas Self-Evaluation Report

I. AGENCY CONTACT INFORMATION

A. Please fill in the following chart.

Public Utility Commission of Texas
Exhibit 1: Agency Contacts

	Name	Address	Telephone & Fax Numbers	Email Address
Agency Head	Thomas Gleeson Executive Director	P.O. Box 13326, Austin, TX 78711	TEL: (512) 936-7040 FAX: (512) 936-7058	thomas.gleeson@puc.texas.gov
Agency's Sunset Liaison	Thomas S. Hunter Executive Counsel	P.O. Box 13326, Austin, TX 78711	TEL: (512) 936-7116 FAX: (512) 936-7058	tom.hunter@puc.texas.gov

II. KEY FUNCTIONS AND PERFORMANCE

A. Provide an overview of your agency's mission, objectives, and key functions.

The mission of the Public Utility Commission of Texas is to protect customers, foster competition and promote high-quality infrastructure.

The State of Texas created the Public Utility Commission of Texas in 1975 to provide for statewide comprehensive regulation of electric, telecommunications, and water utilities. At the time of its inception, the prevailing regulatory and economic philosophy toward utilities was to consider public utilities as natural monopolies within their service area, with regulation acting in lieu of market forces to provide for reasonable rates and high service quality. Since 1975, this philosophy has changed significantly, and brought significant changes in the regulation of all the utilities with which the PUCT was originally tasked by the Texas Legislature when it adopted the Public Utility Regulatory Act (PURA) and created the PUCT.

Regulation of Electricity

In 1999, the Texas Legislature passed Senate Bill 7, which envisioned an unprecedented reshaping of the Texas electric market, resulting in the Texas market being singular of its kind in the United States and one of the few competitive wholesale and retail markets in the world. The wholesale competitive electric market has produced some of the lowest power prices available in the United States, and retail

Self-Evaluation Report

competition in the areas open to competition has been in place for almost two decades, with 97% of these customers exercising their right to customer choice and switching retail providers, incentivizing these providers to offer new products and low rates to retain customers in a competitive market. Together with the mandate to provide for competition in the wholesale and retail electric markets, the Texas Legislature also tasked the PUCT with the protection of retail customers in the transition to the new marketplace.

One of the PUCT's most important duties is the oversight of the Electric Reliability Council of Texas (ERCOT). ERCOT oversees the reliable and safe transmission of electricity over the ERCOT power grid and operates open and non-discriminatory electric markets that serve approximately 90% of the state's electric load. As outlined in PURA § 39.151, the PUCT has complete authority over ERCOT. Like the PUCT, ERCOT is also subject to Sunset review in 2023. ERCOT will also file a Self-Evaluation Report to the Sunset Advisory Commission. Today, in addition to its oversight of the Texas electric market within ERCOT, the PUCT continues to provide traditional rate-of-return regulation of the investor-owned vertically integrated utilities outside the competitive market regions, such as in El Paso, the Panhandle, Northeast Texas, and Southeast Texas areas. In addition, where the local utility has joined an independent system operator or regional transmission organization, the PUCT remains engaged with those organizations working for the interests of Texas customers. Additionally, as will be discussed in more detail later in this report, the PUCT is currently engaged in the extensive market redesign work and legislative implementation resulting from Winter Storm Uri.

Regulation of Telecommunications

Significant legislation enacted by the Texas Legislature in 1995, together with the Federal Telecommunications Act of 1996, dramatically changed the PUCT's role in its regulation of telecommunications utilities by allowing for competition in telecommunications wholesale and retail services.

New PURA Chapter 65, part of Senate Bill 5 passed by the Legislature in 2005, provided for deregulation of certain markets served by incumbent local exchange companies. Senate Bill 5 also authorized the PUCT to issue statewide certificates of franchise authority to providers of cable and video services, which replaced the then-current system whereby cable providers obtained franchises from municipalities as local franchising authorities. Since 2005, the telecommunications market has continued to evolve. The most significant development over this period has been the continued growth of mobile wireless and broadband carriers. Over the last 10 years, cable providers have greatly expanded their provision of local telephone service and television programming. During this period, there has also been a steady decline in land-line telephone service as many customers have "cut the cord" in favor of wireless service. In tandem with these technological developments, another significant development over the last decade has been the changes in the Texas Universal Service Fund, a program originally designed to provide funding for basic local

Self-Evaluation Report

telecommunications service in rural areas of the state. These changes are discussed in more detail later in this report.

Regulation of Water

The regulation of public water utilities was included in the original mandate from the Texas Legislature in 1975. The PUCT retained regulation of water and sewer service regulation until 1986, at which point these duties were transferred to the Texas Water Commission, now the Texas Commission on Environmental Quality (TCEQ). As discussed in more detail later in this report, in 2013, the 83rd Legislature transferred the economic regulation of water and sewer rates and services from the TCEQ back to the PUCT effective September 1, 2014.

Statutory Duties of the PUCT

The PUCT has statutory duties and authority in the following areas:

Electric Power Activities

- Within the ERCOT area, oversight of competitive wholesale and retail markets
 - “Complete authority to oversee and investigate ERCOT’s finances, budget, and operations as necessary to ensure the organization’s accountability and to ensure the organization adequately performs the organization’s functions and duties.”¹
 - Oversight of ERCOT, includes settling the transactions in competitive markets, including review and approval of the ERCOT budget and system administrative fee, the ERCOT rules and protocols, and extensive engagement with the ERCOT stakeholder process and leadership to ensure the reliability of the ERCOT power grid.
 - Jurisdiction over ratemaking, quality of service and certification of transmission lines of investor-owned transmission and distribution utilities
 - Establishing wholesale transmission rates for investor owned utilities, cooperatives, and municipally owned utilities
 - Licensing of retail electric providers
 - Registration of power generation companies, aggregators, power marketers, and brokers
- Outside ERCOT, continuing the regulation, including rate regulation, of vertically integrated investor owned utilities until retail competition begins, including commissioner and supporting staff assignment to key committees of other independent system operators or regional transmission organizations and energy imbalance markets outside ERCOT, as well as engagement on multi-state supporting committees for these operators and organizations

¹ PURA § 39.151(d)

Self-Evaluation Report

- Outside ERCOT, participate as appropriate in electric proceedings before the Federal Energy Regulatory Commission (FERC) that may impact the quality of service or wholesale transmission rates paid by Texas customers
- Issuance of certificates of convenience and necessity for service areas, facilities, and proposed transmission lines as well as electric generating facilities in non-ERCOT areas.
- Resolution of customer complaints, using informal processes whenever possible

Telecommunications Activities

- Administration of the Texas Universal Service Fund, including the Lifeline program for low-income customers with automatic enrollment of eligible customers
- Administration of the Relay Texas program for deaf and hearing-impaired customers
- Funding of the Specialized Telecommunications Assistance Program
- Resolution of customer complaints, using informal processes whenever possible
- Issuance of State-Issued Certificates of Franchise Authority to cable providers
- Issuance of Service Provider Certificates of Operating Authority and Certificates of Operating Authority to local service providers
- Review of one-day and ten-day informational filings made by incumbent local exchange companies
- Registration of long distance providers, automatic dial announcing devices, and pay phones
- Setting franchise fee rates for municipalities pursuant to Local Government Code Chapter 283
- Monitoring area code exhaustion and working with the national number administrator to conserve numbers and implement new area codes
- Reviewing tariffs for companies subject to rate regulation
- Administration of the Texas No-Call List
- Arbitration of interconnection agreements and post-interconnection disputes pursuant to the Federal Telecommunications Act

Water and Sewer Activities

- Jurisdiction over rates, service areas and financial and managerial review of water and sewer utility retail public utilities
 - Original jurisdiction over investor-owned water and sewer utilities
 - Appellate jurisdiction over wholesale and retail rates, service areas and financial activities of political subdivisions (municipalities, water districts and counties), water supply and sewer service corporations (WSCs).
- Review of the sale, transfer and merger applications involving sale of facilities and/or service areas of water and sewer utilities
- Review of applications to amend service area certificates of convenience and necessity (CCNs), including petitions for expedited and streamlined expedited release of all or a part of a tract of land from an existing CCN holder

Self-Evaluation Report

- Serve as a resource to small and mid-size water and sewer retail public utilities to help them maintain financial, managerial, and technical capabilities
- Administer the contract with Superior Water Management of Texas, LLC which is administered by the PUCT's Division of Utility Outreach to help smaller water and sewer utilities on service area issues, rate studies, tariffs, customer service issues, corporate governance, and consolidation or regionalization of utilities and other regulatory matters
- Registration and complaint resolution authority over entities that submeter or allocate water and wastewater bills to customers.
- Resolution of customer complaints, using informal processes whenever possible
- Coordinate on a regular basis with TCEQ on water and sewer regulatory issues, especially in the appointment of temporary managers for troubled utilities. Broadly speaking the TCEQ regulates the health and safety standards of water and sewer utilities while the PUCT regulates rates and service areas of these utilities. This requires regulation coordination between the two agencies.

B. Do your key functions continue to serve a clear and ongoing objective? Explain why each of these functions is still needed?

The PUCT's activities fall into two broad areas: regulation of monopoly utility providers and oversight of competitive markets. The PUCT's programs are essential to successfully meeting the needs of Texas customers for electricity, telecommunications, water, and sewer services.

As stated in PURA § 11.002 (b), where utility service is provided by monopolies, "... the normal forces of competition that regulate prices in a free enterprise do not operate. Public agencies regulate utility rates, operations, and services as a substitute for competition." The purpose of regulation is to assure rates, operations and services that are just and reasonable to the customers and the utilities. Failure to regulate monopoly providers would allow them to operate without the discipline of a competitive market, which would likely result in higher prices and lower service quality.² This same rationale applies to the regulation of water and sewer utilities.³

Oversight of competitive markets provides minimum standards of service quality, customer service, and fair business practices to ensure high-quality service to customers and a healthy marketplace. Because of the essential character of electricity and telecommunications services, customer protections in addition to those that apply to other competitive markets, e.g., the Deceptive Trade Practices Act, are necessary. Oversight of electric and telecommunications markets requires a level of detail and responsiveness that necessitates the existence of an administrative agency to respond to changes by adopting or amending rules to ensure that markets work as intended.

² In the case of municipally owned utilities and cooperatives, customers have the opportunity to participate in selecting the governing body. Where a municipally owned utility serves customers that are not residents of the municipality that owns the utility, the PUC retains appellate jurisdiction over rate setting in these areas.

³ TEX. WATER CODE, §13.001.

Self-Evaluation Report

In addition, market rules must be enforced. The PUCT's enforcement actions and administrative penalty authority are necessary elements of functioning markets.

C. What, if any, functions does your agency perform that are no longer serving a clear and ongoing purpose? Which agency functions could be eliminated?

The PUCT believes that all of its current functions, as established by the Texas Legislature, continue to serve clear and ongoing purposes.

D. Does your agency's enabling law continue to correctly reflect your mission, objectives, and approach to performing your functions?

The PUCT bases its mission, objectives, and approach to performing its functions on its enabling legislation, and modifies its activities in response to changes in legislation. The dynamic nature of the electric, telecommunications and water and sewer industries requires that state law be amended regularly to enact new policies to keep pace with industry changes.

As a result of Winter Storm Uri and its aftermath, the 87th Legislature passed several bills designed to strengthen the reliability of the electric grid and to protect customers. This legislation is discussed in more detail later in this report. The PUCT has already begun the process of implementing these legislative changes.

E. Have you previously recommended changes to the Legislature to improve your agency's operations? If so, briefly explain the recommended changes, whether or not they were adopted, and if adopted, when.

The following recommendations were proposed to the 87th Legislature as part of the Commission's *Biennial Agency Report to the 87th Legislature* (Biennial Report)⁴ submitted to the Legislature in January 2021.

Authorize Fees for Filing Certain Documents at PUCT

Recommended Change: 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.

Status: This recommendation was not adopted by the 87th Legislature.

⁴ *Biennial Agency Report to the 87th Legislature* at 61-62.

Self-Evaluation Report**Clarify the Regulatory Status of Electric Vehicle Charging Stations**

Recommended Change: The Commission proposed that the Legislature clarify that the use of an electric vehicle charging station is not a transaction to be governed by existing retail electric policies. Such policies are extensive in their protections for lives and livelihood. However, the full reach of these protections may not be appropriate for an electric vehicle charging station. An electric vehicle charging station is not an electric utility or a retail electric provider. These changes will provide regulatory right-sizing and consistency across the state, in areas inside and outside competition, to facilitate deployment and competition of electric vehicle charging stations for customers.

Status: The 87th Legislature passed SB 1202, which made these clarifications consistent with the Commission's recommendation. As the clarification is simply of regulatory status, the Commission will only need to amend certain definitions in its substantive rules to implement this legislation.

Texas Universal Service Fund (TUSF)

Recommended Change: The Commission requested guidance from the from the Legislature regarding the State's policy on the continuation of universal service support and funding of the TUSF. Currently, 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.

Status: The 87th Legislature passed HB 2667 to expand the scope of the TUSF surcharge assessment to include Voice-over-Internet-Providers (VoIP). The Governor vetoed HB 2667.

Water

Recommended Change: 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.

Status: The PUCT withdrew this recommendation from consideration by the Legislature.

Self-Evaluation Report**F. Do any of your agency's functions overlap or duplicate those of another local, state, or federal agency? Explain if, and why, each of your key functions is most appropriately placed within your agency. How do you ensure against duplication with other related agencies?**

While much of the work delegated to the PUCT is conferred exclusively, the agency has identified several points in each major area of focus where it must exercise diligence to avoid duplication of efforts.

Electric

The federal Energy Policy Act of 2005 authorized federal electric reliability standards for the continental United States. The Act created an Electric Reliability Organization (ERO) to be approved and regulated by the Federal Energy Regulatory Commission (FERC). In 2006, FERC approved the North American Electric Reliability Corporation (NERC) as the ERO, and in 2007 FERC approved delegation agreements for eight Regional Entities, including the Texas Reliability Entity (Texas RE). As the ERO, NERC is required to propose, monitor, audit, investigate and enforce compliance with NERC Reliability Standards through the delegation agreements with the Regional Entities. Because the PUCT's rules and ERCOT protocols also address reliability matters, it is crucial that all applicable requirements are consistent. Although the areas overseen by the Texas RE, ERCOT, and the PUCT overlap, each entity has its own focus and areas of primary concern. The PUCT staff carefully monitors proposed changes to the ERCOT protocols, and the activities of FERC, NERC, and the Texas RE to ensure that regulations are consistent. The entities that are subject to the regulations also play a key role in minimizing overlap and ensuring consistency.

Water

Regulation of water and sewer utilities in Texas is shared between the PUCT and TCEQ. The division of authority between these two agencies is generally clear. The PUCT regulates the retail rates of water and sewer utilities, with limited appellate jurisdiction over the wholesale and retail water and sewer rates of certain other entities. The PUCT also regulates the issuance of certificates of convenience and necessity (CCNs). The TCEQ regulates safe drinking water standards, surface water rights and availability, water quality standards for Texas rivers, lakes and estuaries, wastewater and stormwater permitting and registration, and groundwater protection. However, because water and sewer utilities are regulated by both the PUCT and TCEQ, there is also potential duplication of effort in this area. Specifically, there is an overlap in how the two agencies respond to troubled water and sewer utilities. This issue is discussed in more detail in the Major Issues section of this report.

Telecommunications

The Federal Communications Commission (FCC) administers a universal service fund that is similar to the Texas Universal Service Fund⁵; however, the programs

⁵ See descriptions of TUSF programs in Section VII of this report.

Self-Evaluation Report

complement rather than overlap each other. The current challenges to the TUSF are discussed in more detail in Section VII. of this report.

Emergency Management

There is some overlap of responsibility associated with the PUCT's role in emergency management situations.⁶ However, because emergency management activities are, for the most part, focused on specific events, the roles of the various parties related to a specific event are coordinated by the State Operations Center and duplication of effort is avoided.

G. In general, how do other states carry out similar functions?

All other states have regulatory agencies similar to the PUCT that generally focus on the oversight of and development of policies related to utility services, often encompassing electric, telecommunications, and water and sewer services either through rate regulation or oversight of competitive markets.

H. What key obstacles impair your agency's ability to achieve its objectives?**Attracting and retaining qualified employees**

The main challenge the PUCT faces is hiring, developing, and retaining qualified staff. PUCT operations are dependent on knowledgeable individuals who can work effectively with representatives of industry and customers to help shape policy in the areas of the PUCT's competence. The PUCT competes not only with industry for this talent, as well as with other governmental entities.

It has never been easy for the PUCT to recruit and retain the necessary skills and expertise it needs in its workforce. The fact that the PUCT's work is interesting, challenging, and ever-changing has helped in the past to attract and retain talented employees. However, in recent years, the agency has found it increasingly difficult to attract and retain qualified employees in certain key areas, most notably attorneys, engineers, and market oversight specialists. This difficulty has been exacerbated by COVID-19. As a direct result of COVID-19, all state agencies were required to decrease their budgets by 5% in early 2020. The PUCT complied with this mandate by not filling 13 open positions and by laying off 8 employees in April and May 2020. Although the country has begun to recover from the COVID-19 pandemic, hiring qualified employees remains challenging. One of the manifestations of the recovery is the addition of new jobs in all sectors of the economy. Virtually all industries, including state government, are currently having a difficult time filling job vacancies. As part of SB 2, the PUCT is expanding from three to five commissioners. The two new commissioners will require additional staff. Filling these positions may also be challenging.

Because of the salary constraints faced by the PUCT as a state agency, it is exceedingly difficult to hire new employees with experience in electric,

Self-Evaluation Report

telecommunications, water, and sewer matters. Therefore, the agency uses a strategy of hiring professionals with expertise in related fields as well as relatively inexperienced staff with relevant educational background. The PUCT staff includes several long-time, highly experienced professionals who provide advanced expertise and continuity to agency programs, in addition to training less experienced personnel. The agency staff also includes many individuals who are not expected to make a career with the agency, but nonetheless provide valuable expertise and new insight to agency programs during their service with the PUCT.

In addition to loss of valuable employees to private sector opportunities, the PUCT is facing a new challenge. Several key senior employees are either currently eligible to retire from state employment or will become eligible over the next few years. If these employees do, in fact, leave the agency, there could be a serious gap in institutional knowledge as well as loss of program continuity. The agency is placing additional emphasis on succession planning, although such efforts are complicated by the increasing difficulty to hire talented individuals in the first instance. Also, most of the staff turnover occurs with employees who have worked at the PUCT less than five years, such that the proportion of experienced staff to inexperienced staff is decreasing.

Although the PUCT's management team has always devoted attention and effort to this area, it will be necessary to redouble those efforts if the PUCT is to maintain the high quality of work for which it is known. Over the past year, the situation has improved due to overall economic conditions. However, as economic conditions improve, the PUCT expects turnover to return to historic levels.

Adapting agency workforce to changing responsibilities

Beginning in 1995, the Legislature has enacted laws to introduce competition to the electric and telecommunications industries, and concomitantly reduce regulation. However, the staff resources required to accomplish the PUCT's duties and responsibilities have not decreased overall. The ERCOT wholesale and retail markets are open to competition, but there are extensive and significant complexities involved in overseeing a multi-billion dollar market that produces a service critical for the life and safety of Texas residents. In addition, significant portions of Texas continue to be served by vertically integrated investor-owned utilities that are subject to traditional cost of service regulation. Retail electric competition in East Texas, the Panhandle, and the El Paso area has been delayed, and it is not certain whether these parts of the state will ever have retail customer choice. As a result, in addition to developing and maintaining expertise in competitive market issues, the PUCT is required to maintain staff with expertise in regulating electricity prices and service. Finally, the telecommunications industry has changed significantly over the last ten years. The PUCT now needs fewer resources than in the past to meet its telecommunications responsibilities. However, some telecommunications regulation remains which requires the PUCT to maintain some level of staff expertise in these areas.

The PUCT has used a variety of techniques to adapt to its changing staffing needs. For example, the PUCT takes advantage of vacancies created by turnover to

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shift staff positions to areas needing additional resources. Significantly, since 2018, the PUCT has renewed its focus on ensuring optimal effectiveness and efficiency. The leadership team continues to examine agency operations, organization, and budgeting.

When the Legislature assigned oversight for the business regulation of water and sewer utilities to the PUCT in 2014, several TCEQ employees were transferred to the PUCT. As an interim strategy to accommodate the change, the transferred employees were housed within a separate division at the PUCT. These employees handled 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 and those staff were distributed to their corresponding PUCT divisions to reduce duplication and enhance collaboration. At the same time, the Division of Utility Outreach (DUO) was created to educate small to mid-sized water utilities on the applicable regulations to help them attain compliance before they become distressed utilities. DUO also works with distressed utilities to find ownership solutions to better serve the customers of those utilities.

In August 2021, the Commission created the Division of Compliance and Enforcement (DCE) to provide oversight and enforcement in a stand-alone division with dedicated attorneys and subject matter experts. This division is discussed in more detail in Section VII. of this report.

The PUCT continues to refine its approach to contracting with outside parties. Approximately 10 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 last 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.

As discussed in more detail later in this report, Winter Storm Uri has had and will continue to have a profound impact on the PUCT. The 87th Legislature enacted several laws aimed at improving the reliability of the electric market. Some of this legislation requires prompt adoption of rules or initiation of contested cases. The PUCT requested and received an increase in its authorized FTE count to accomplish not only its existing functions, but to handle the additional responsibilities created by the 87th Legislature. Much of the additional funding requested by the PUCT does not become effective until September 1. However, the PUCT has already begun preparing for the addition of new employees and will seek to fill its staffing needs as quickly as possible. One of the other changes adopted by the 87th Legislature was the addition of two

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commissioners. With that addition, the PUCT will expand from its existing three commissioners to a five-member commission. The addition of two new commissioners will necessitate significant changes to the agency's current workspace. Two new commissioner offices must be added, and existing office space must be reconfigured to accommodate this change. The PUCT requested a plan for this work from the Texas Facilities Commission and is currently discussing the timeline for this work.

I. Discuss any changes that could impact your agency's key functions in the near future (e.g., changes in federal law or outstanding court cases).

There are several pending court cases that could impact some key functions of the PUCT.

- ERCOT is currently involved in a lawsuit by Panda Power Generation Infrastructure Funds and its affiliates. Panda's original lawsuit alleged that ERCOT had issued an intentionally misleading electric capacity forecast that induced Panda to build three power plants that proved to be unprofitable for Panda. The merits of Panda's original lawsuit have yet to be addressed. Over the last several years, ERCOT and Panda have been litigating whether ERCOT has sovereign immunity and whether the PUCT has exclusive jurisdiction over this complaint. If ERCOT does have sovereign immunity, this would prevent Panda from suing ERCOT. If the PUCT has exclusive jurisdiction, then Panda's complaint must be filed first with the PUCT. After an initial round, the Dallas Court of appeals ruled that ERCOT is immune from suit but did not address exclusive jurisdiction. In response, the Grayson County district court dismissed Panda's complaint. This dismissal is currently pending in the Dallas Court of Appeals in cause number 05-18-00611-CV. That court recently reset oral argument before the court *en banc* for late October. A decision on this issue is expected early next year. The final decision on whether ERCOT has sovereign immunity is important for purposes of potential future lawsuits. If the Dallas Court of Appeals determines that ERCOT does not have sovereign immunity, this could open ERCOT up for more litigation in the future. The PUCT expects that any decision by the Dallas Court of Appeals on the sovereign immunity issue will be appealed to the Texas Supreme Court.
- There are several pending court cases challenging the Commission's emergency orders issued in response to Winter Storm Uri. These cases are pending in the 3rd Court of Appeals in Austin, or state district courts in either Travis or Bexar counties. Generally, speaking, these court cases challenge the authority of the Commission to issue some or all of these emergency orders and the way they were issued. The substance of the Winter Storm Uri emergency orders is discussed in more detail in the Wholesale Electric Market Oversight portion of Section VII. of this report. The ultimate decisions in these cases could impact the ability of the Commission to issue similar emergency orders in the future.
- There are several federal court cases challenging the PUCT's authority to issue expedited release orders for water utilities that have federally protected loans.

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The PUCT has authority under the Texas Water Code to release the property of certain landowners from a utility's certificated service area by expedited release and streamlined expedited release. Expedited release and streamlined expedited release applications are discussed in more detail in the Water and Sewer Regulation portion of Section VII of this report. The ultimate outcome of these court cases could remove the authority of the PUCT to issue expedited- and streamlined-expedited-release orders for utilities that have federal loans. These cases could also result in the PUCT having to pay court costs and attorney's fees to the plaintiffs in some or all of these federal court proceedings.

- Brazos Electric Cooperative bankruptcy proceeding. As a result of Winter Storm Uri, Brazos Electric Cooperative filed on March 1, 2021, for a Chapter 11 bankruptcy in the United States Bankruptcy Court for the Southern District of Texas Case No. 21-30725 (DRJ)). The bankruptcy court could rule on the PUCT's authority to issue the February 2021 emergency orders, which address the impacts of Winter Storm Uri. This is the same issue currently pending before several state courts discussed in item 2. It is likely that the bankruptcy court will rule on this issue first.
- There are additional bankruptcy cases by certificated retail electric providers that may impact the operations of the PUCT. It is unclear at this time what impact, if any, these bankruptcies may have on the PUCT, but it is possible these entities may, among other things, challenge the authority of the Commission to revoke their certifications that allow them to sell electricity.

J. Aside from additional staff or funding, what are your agency's biggest opportunities for improvement in the future? For example, are there other programs or duties the agency could take on to better carry out its mission?

Implementation of legislation from the 87th Legislature regarding the reliability of the Texas electric grid provides the biggest opportunity for improvement. Significant changes to the structure of both the PUCT and ERCOT were enacted by the 87th Legislature. The PUCT will gain two additional commissioners and the current ERCOT Board of Directors will soon be comprised exclusively of independent members rather than industry segment representatives. Additionally, the Legislature passed laws to address the financial impacts of Winter Storm Uri, to improve the competitive market in ERCOT and to increase the reliability of the Texas electric grid.

Additionally, the PUCT has for some time made effective use of the Internet for providing information to the regulated community, market participants, and customers, and continues to work to make information available in an easily obtainable, easily understood format. The PUCT regularly reviews its Internet site to improve the organization, availability, and timeliness of the information posted to the Website.

The social distancing protocols of the COVID-19 pandemic necessitated that the PUCT waive its rules requiring the filing of physical paper copies of documents with the PUCT's Central Records Division and move to an all-electronic filing system for most of the documents filed with the PUCT. The parties that make frequent filings with the

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PUCT lauded the change, and in July 2021, the PUCT implemented a permanent electronic filing system that will allow participants in PUCT proceedings to make filings electronically, eliminating the requirement to physically file hard copies. As of the time of writing, this process encompasses only non-confidential filings. Given the sensitive nature of the information that is filed confidentially with the PUCT, the agency continues to require physical copies to be filed for confidential information. However, the agency is working expeditiously on a process that will encompass electronic filing of confidential information in a manner that is efficient and secure and plans to have this process in place by the end of calendar year 2021. The PUCT believes the implementation of a permanently available electronic filing process will reduce the burden and cost on parties and the public participating in the PUCT's projects and dockets. The PUCT's procedural rules need to be revised to reflect this new policy.

K. Overall, how does the agency measure its effectiveness in carrying out its objectives?

Like other state agencies, the PUCT has performance measures that provide information about agency activities. Many of the PUCT's performance measures are based to a large degree on factors outside the PUCT's control, such as the number of applications filed in a given period, the behavior of participants in contested cases, and activities in other states. While these performance measures provide useful information about PUCT activities, they do not necessarily reflect the agency's effectiveness and efficiency.

Of the PUCT's non-key performance measures, those highlighted in the chart below probably provide the best reflection of the PUCT's agency's success in meeting its objectives.

Public Utility Commission
Exhibit 2: Non-Key Performance Measures – Fiscal Year 2020

Non-Key Performance Measures	Dataset Reference Number* (if applicable)	Calculation (if applicable)	FY 2020 Target	FY 2020 Actual Performance	FY 2020 % of Annual Target
OUTCOME MEASURES	N/A	N/A	N/A	N/A	N/A
GOAL A	N/A	N/A	N/A	N/A	N/A
OC 1-1.02 % of Residential Customers in Areas Open to Competition Having a Choice of More than Five Providers for Electric Service	N/A	N/A	99.70%	99.69%	99.99%
OC 1-1.04 Avg Price Electricity/kWh for TX Commercial Customers As % Nat'l Avg	N/A	N/A	70.00%	71.18%	101.69%

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Non-Key Performance Measures	Dataset Reference Number* (if applicable)	Calculation (if applicable)	FY 2020 Target	FY 2020 Actual Performance	FY 2020 % of Annual Target
OC 1-1.05 Avg Price Electricity/kWh for TX Industrial Customers As % Nat'l Avg	N/A	N/A	75.00%	82.07%	109.43%
OC 1-2.02 Avg Price Electricity Per kWh for Residential Cust as % of Nat'l Avg	N/A	N/A	80.00%	78.93%	98.66%
OC 1-2.03 Avg Price Electricity Per kWh for Commercial Cust as % of Nat'l Avg	N/A	N/A	70.00%	71.61%	102.30%
OC 1-2.04 Average Annual Res Elec Bill from Reg Suppliers as % of Nat'l Avg	N/A	N/A	97.00%	92.35%	95.21%
OC 1-2.05 % of Subscribers Served by Telephone Exchanges Meeting Service Quality Standards	N/A	N/A	85.00%	83.00%	97.65%
OC 1-2.06 % of Electric Customers Served by TDUs Meeting Service Quality Standards	N/A	N/A	98.00%	96.91%	98.89%
OC 1-3.01 % of Agreements with Specific Provisions for Avoiding Future Violations	N/A	N/A	80.00%	63.00%	78.75%
GOAL B					
OC 2-2.02 Credits & Refunds Obtained for Customers through Complaint Resolution	N/A	N/A	\$300,000.00	\$381,333.62	127.11%
OUTPUT MEASURES	N/A	N/A			
OP 1-1-1.01 Number of Retail Electric Providers Registered	N/A	N/A	112.00	120.00	107.14%
OP 2-1-1.02 Number of Customer Information Products Distributed	N/A		1,250,00.00	929,760.00	74.38%
EXPLANATORY MEASURES					
Ex 1-1-1.01 Number of Elect Coops and Municipal Utilities Reg for Wholesale Trans Rate	N/A	N/A	37.00	37.00	100.00%
Ex 1-1-1.02 Percent of Statewide Electric Generating Capacity Above Peak Demand in ERCOT	N/A	N/A	12.30%	5.50%	44.72%

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Non-Key Performance Measures	Dataset Reference Number* (if applicable)	Calculation (if applicable)	FY 2020 Target	FY 2020 Actual Performance	FY 2020 % of Annual Target
EX 1-1-1.03 Percent of Energy Savings Due to Energy Efficiency Programs	N/A	N/A	150.00%	190.55%	127.03%
EX 1-1-1.04 Percent of Demand Reductions Due to Energy Efficiency Programs	N/A	N/A	200.00%	245.55%	122.78%
EX 1-1-1.05 Number of Power Generation Companies in Texas	N/A	N/A	359.00	464.00	129.25%
EX 1-1-1.06 Number of Aggregators in Texas	N/A	N/A	368.00	174.00	47.28%
EX 1-1-1.07 Number of Applications and Amendments for Cable Franchise Certificates	N/A	N/A	80.00	83.00	103.75%
EX 1-2-1.01 Number of Electric Utilities Regulated	N/A	N/A	14.00	14.00	100.00%
EX 1-2-1.02 Number of Telecommunications Service Providers Regulated	N/A	N/A	63.00	61.00	96.83%
EX 1-2-1.03 Number of Water and Sewer Utilities Regulated	N/A	N/A	680.00	608.00	89.41%
EX 1-3-1.01 Dollar Amount Administrative Penalties Assessed for Violations	N/A	N/A	\$5,000,000.00	\$2,244,100.00	44.88%
EX 2-1-1.01 Number of Website Hits to Customer Protection Home Page	N/A	N/A	390,000.00	230,761.00	59.17%
EX 2-2-1.01 Number Complaints Received for Unauthorized Changes in Service	N/A	N/A	900.00	608.00	67.56%

The PUCT's key performance measures are provided in Exhibit 2 below.

Public Utility Commission
Exhibit 2: Performance Measures – Fiscal Year 2020

Key Performance Measures	Dataset Reference Number* (if applicable)	Calculation (if applicable)	FY 2020 Target	FY 2020 Actual Performance	FY 2020 % of Annual Target
OUTCOME MEASURES					

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Key Performance Measures	Dataset Reference Number* (if applicable)	Calculation (if applicable)	FY 2020 Target	FY 2020 Actual Performance	FY 2020 % of Annual Target
GOAL A					
% Tx Cities Served by 3 or More Certificated Telecommunications Provider	N/A	N/A	75.00%	72.19%	96.25%
Average Price of Electricity Per kWh in Texas for Residential Customers from Competitive Suppliers as a Percentage of the National Residential Average	N/A	N/A	85.00%	97.39%	114.58%
Average Annual Residential Electric Bill from Competitive Suppliers as a Percentage of the National Average	N/A	N/A	115.00%	124.72%	108.45%
Average Price of Electricity per kWh for Residential Customers from Competitive Suppliers in Texas Offered on the Power-to-Choose Website as a Percentage of the National Average Cost of Electricity for the Same Class of Service	N/A	N/A	70.00%	87.70%	125.29%
Average Annual Residential Telephone Bill in Texas as a Percentage of the National Average	N/A	N/A	110%	132.85%	120.77%
GOAL B					
Percentage of Customer Complaints Resolved through Informal Complaint Resolution Process	N/A	N/A	99%	99.73%	100.74%
OUTPUT MEASURES					
A.1.1					
Number of Cases Completed Related to Competition Among Providers	N/A	N/A	350	219	62.57%
A.2.1					
Number of Rate Cases Completed for Regulated Electric Utilities	N/A	N/A	65	73	112.31%

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Key Performance Measures	Dataset Reference Number* (if applicable)	Calculation (if applicable)	FY 2020 Target	FY 2020 Actual Performance	FY 2020 % of Annual Target
Number of Rate Cases Completed for Regulated Telecommunications Providers	N/A	N/A	10	26	260.00%
Number of Water Utility Rate Reviews Performed	N/A	N/A	140	83	59.29%
Number of Water Certificate of Convenience Applications Processed	N/A	N/A	235	122	51.91%
A.3.1					
Number of Enforcement Investigations Conducted	N/A	N/A	406	214	52.71%
B.1.1					
Number of Information Requests to Which Responses Were Provided	N/A	N/A	70,000	34,350	49.07%
B.2.1					
Number of Customer Complaints Concluded	N/A	N/A	7,500	7,587	101.16%
EFFICIENCY MEASURES					
A.1.1					
Average Number of Days to Process an Application for a Certificate of Authority and Service Provider Certificate of Authority	N/A	N/A	50	94	188.00%
A.2.1					
Average Number of Days to Process a Major Rate Case for a Transmission and Distribution Utility	N/A	N/A	200	542	271.00%
B.1.1					
Percent of Customer Information Product Distributed Electronically	N/A	N/A	95%	99.32%	104.55%
B.2.1					
Average Number of Days to Conclude Customer Complaints	N/A	N/A	15	15.98	106.53%
EXPLANATORY MEASURES					
B.2.1					

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Key Performance Measures	Dataset Reference Number* (if applicable)	Calculation (if applicable)	FY 2020 Target	FY 2020 Actual Performance	FY 2020 % of Annual Target
Average Number of Days to Process a Major Rate Case for a Transmission and Distribution Utility	N/A	N/A	200	657	271.00%

- L. Please list all key datasets your agency maintains and briefly explain why the agency collects them and what the data is used for. Is the agency required by any other state or federal law to collect or maintain these datasets? Please note any “high-value data” the agency collects as defined by Texas Government Code, Section 2054.1265. In addition, please note whether your agency posts those high-value datasets on publicly available websites as required by statute, and in what format.**

The PUCT uses a number of applications to perform its various regulatory functions. Some of these are internal applications, which are not available to the public; others are available to the public. A list of both public and internal data applications used by the PUCT is included as Exhibit 3-PUCT in House Applications Mapped by Division.

III. HISTORY AND MAJOR EVENTS

- 1975** The 64th Legislature enacted the Public Utility Regulatory Act (PURA) and created the Public Utility Commission of Texas (PUCT or Commission) to regulate the rates and services of telephone utilities statewide, electric utilities in unincorporated areas, radio-telephone statewide, and water and sewer utilities in unincorporated areas. The PUCT was not given authority to regulate municipally owned utilities or political subdivisions such as municipal utility districts or public utility districts. However, the PUCT was given appellate jurisdiction over municipal decisions involving investor-owned electric utilities.
- 1979** The 66th Legislature amended the laws concerning water and sewer utilities to remove PUCT jurisdiction over rates of federally-financed, member-owned, non-profit water supply corporations, although still requiring certificates of convenience and necessity for these entities.
- 1981** The 67th Legislature deregulated radio-telephone common carriers based on a PUCT study that indicated the industry had become so highly competitive that regulation was no longer needed to protect the public interest. The Legislature also transferred collection of utilities' gross receipts assessments to the Comptroller and deregulated small power producers using renewable resources and co-generators.
- 1983** The 68th Legislature conducted the first Sunset review of the PUCT. Changes included abolishing the automatic fuel adjustment clause and establishing new fuel cost review procedures for electric rates; initiating a notice of intent process for

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utilities seeking to build new generation facilities; creating a stricter standard for including construction work in progress (CWIP) in utility rates; transferring responsibility for programs formerly administered by the Texas Energy and Natural Resources Council (TENRAC), which was abolished by the Legislature, to the PUCT; and providing for statewide hearings to identify intrastate telecommunications markets in which dominant carriers would be regulated. The Legislature also created the Office of Public Utility Counsel to represent interests of residential and small commercial customers at the PUCT.

The Federal Communications Commission established a system of access charges that would be paid by long-distance carriers to local exchange carriers for the origination and termination of traffic over local networks.⁷

- 1984** AT&T was required to divest itself of the Bell Operating Companies because of the Modification of Final Judgment (MFJ)⁸ resolving an antitrust action by the United States Department of Justice against AT&T and Western Electric Company. The MFJ ended the existence of the 100-year-old Bell System.
- 1985** The 69th Legislature transferred jurisdiction over water and sewer utilities to the Texas Water Commission (now the Texas Commission on Environmental Quality).
- 1987** The 70th Legislature passed landmark legislation (SB 444) which greatly increased the Commission's responsibilities to determine the existence, impact, and scope of competition in the telecommunications industry, while maintaining customer protections and universal service provisions. The implementation of SB 444 led to the creation of the Universal Service Fund to assist local exchange companies in providing basic local service at reasonable rates in high cost areas, to reimburse local exchange companies for revenues lost because of providing Tel-Assistance Service, and to reimburse the Texas Department of Human Services and the PUCT for certain implementation costs. The Legislature also established a 12 member advisory committee to make recommendations on the way the Commission considers requests for Extended Area (telephone) Service; gave the Commission authority to review and certify contracts between co-generators and utilities; and transferred energy conservation programs funded by the federal government to the Governor's office.
- 1989** The Legislature created Relay Texas, a statewide telephone interpreting service for persons with hearing or speech disabilities.
- 1992** The Energy Policy Act of 1992 amended the Public Utility Holding Company Act (PUHCA) and Public Utility Regulatory Policies Act (PURPA) in ways that created new obligations for state regulators. PUHCA was amended to increase the authority of state commissions over the investment activities of exempt holding companies in foreign or domestic utility projects. The Energy Policy Act also amended the PUHCA to require that certain findings be made by state commissions before a generating unit can be certified to be an exempt wholesale generator. PURPA was amended to require state commissions to consider the adoption of standards in four areas: 1) an

⁷ Third Report and Order, *MTS and WATS Market Structure*, CC Docket No. 78-72, Phase I, 93 FCC 2d 241 (1983).

⁸ Modification of Final Judgment, *United States v. American Telephone & Telegraph Co.*, 552 F. Supp. 131, 226 (D.D.C. 1982), *aff'd sub nom, Maryland v. United States*, 460 U.S. 1001, 103 S.Ct. 1240 (1983).

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integrated resource planning process; 2) investments in conservation and demand management; 3) energy efficiency investments in power generation and supply; and 4) long-term power purchases.

1993 The 73rd Legislature conducted its second Sunset review of the PUCT and continued the agency without changes, subject to further Sunset review in 1995

1995 The 74th Legislature concluded its second Sunset review of the PUCT.

The Legislature enacted SB 373, finding that the wholesale electric market was becoming a more competitive industry that does not lend itself to traditional electric utility regulatory rules and principles, and providing for development of a competitive wholesale market that would allow for increased participation by electric utilities and certain non-utilities. SB 373 also provided for members of electric cooperatives to vote to have rates deregulated.

The Legislature enacted HB 2128, opening local exchange telecommunications markets to competition, providing a framework for competitive local exchange carriers (CLECs) to obtain authority to provide local exchange service, and establishing the duty of telecommunications providers to interconnect their networks with each other. HB 2128 also provided for members of telephone cooperatives to vote to have rates deregulated.

1996 The United States Congress enacted the Federal Telecommunications Act of 1996, fundamentally changing telecommunications markets for the entire country. The following principles were established: opening local markets to competitive entry; promoting increased competition in telecommunications markets that were already open to competition, including the long distance market; and reforming the system of universal service.

The Federal Energy Regulatory Commission issued Orders 888 and 889 to provide non-discriminatory open access to FERC-jurisdictional transmission systems.

1999 The 75th Legislature enacted key legislation for both telecommunications and electric industries.

- SB 7 restructured the electric utility industry and provided for retail customer choice beginning January 1, 2002. The bill also created the System Benefit Fund which provided funding for a discount on electric rates for low income customers.
- SB 560 provided for increased flexibility for incumbent local exchange carriers (ILECs) in pricing and packaging telecommunications services.
- SB 86 provided for significant customer protections in electric and telecommunications markets.

Pursuant to the Federal Telecommunications Act of 1996, Section 271, the Public Utility Commission of Texas found that local telephone markets were open to competition in Texas and recommended to the Federal Communications Commission that Southwestern Bell Telephone be allowed to enter long distance markets.

The Federal Energy Regulatory Commission issued Order 2000 to encourage all transmission owners to voluntarily join regional transmission organizations to help address the engineering and economic inefficiencies in the transmission system.

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2000 The FCC concluded that local telephone markets in Texas were open to competition and allowed Southwestern Bell Telephone to enter inter-LATA long distance markets.

2001 The 77th Legislature enacted legislation for both telecommunications and electric industries:

- HB 1692 delayed the opening of retail electric competition in the Panhandle region until 2007.
- SB 5 provided for several clean air initiatives, including an energy efficiency grant program to be administered by the PUCT.
- HB 472, the Texas Telemarketing Disclosure and Privacy Act, authorizes the PUCT to create the Texas No-Call List.

The PUCT issued orders pursuant to PURA § 39.103 to delay retail competition in East Texas.

The electric retail choice pilot project began in June.

2002 Beginning January 1, electric customers of investor-owned utilities within the Electric Reliability Council of Texas (ERCOT) had a choice of retail electric providers.

2003 The 78th Legislature enacted legislation for both telecommunications and electric industries:

- SB 2548 authorized the PUCT to order the construction of electric transmission capacity.
- SB 1829 authorized the PUCT to name a provider-of-last-resort to provide telecommunications service to customers whose provider has gone out of business.
- HB 147 applied no-call list provisions to calls made to a mobile telephone number.

2005 The 79th Legislature conducted its third Sunset review of the PUCT and continued the agency for six years, strengthening PUCT oversight of ERCOT, improving monitoring of the wholesale electric market, and increasing the maximum administrative penalty to \$25,000. This legislation also authorized the PUCT to select an independent market monitor to detect and prevent market manipulation strategies, market rule violations, and market power abuses in the ERCOT wholesale electric market.

The 79th Legislature enacted legislation for both telecommunications and electric industries:

- SB 5 promoted competition among and investment in advanced telecommunications networks by authorizing broadband over power line systems, reducing regulations on telecommunications providers, and establishing a state-issued franchise to provide cable or video services in the state of Texas.
- SB 20 amended PURA § 39.904 to direct the PUCT to establish Competitive Renewable Energy Zones and provide for construction of transmission lines to

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facilitate delivering to electric customers, in a manner that is most beneficial and cost-effective, the electric output from renewable energy technologies.

The federal Energy Policy Act of 2005 was enacted, authorizing federal electric reliability standards for the continental United States, and creating an Electric Reliability Organization to be approved and regulated by the Federal Energy Regulatory Commission (FERC).

Hurricane Rita made landfall on Saturday, September 24, 2005, on the Texas/Louisiana border as a Category 3 hurricane with 117 mph winds and a 20-foot storm surge. Over 1.5 million electric utility customers were affected.

2006 Pursuant to SB 408, the PUCT's Sunset legislation enacted by the 79th Legislature, the PUCT performed a comprehensive review of telecommunications providers' reporting requirements established by statute or Commission rules.

As required by SB 5, enacted by the 79th Legislature, the PUCT conducted a comprehensive review and evaluation of whether the Texas Universal Service Fund accomplishes the fund's purposes.

FERC approved the North American Electric Reliability Corporation (NERC) as the Electric Reliability Organization.

2007 The 80th Legislature enacted legislation for both telecommunications and electric industries:

- HB 143 added unsolicited text and graphic messages to the coverage under the Texas no-call statute.
- HB 735 discontinued the Telecommunication Infrastructure Fund, which was a grant program to support the deployment and use of advanced telecommunications technologies in Texas public schools, hospitals, libraries, and other public institutions.
- HB 1386 required power generation companies to establish trusts to ensure funding obligations for nuclear decommissioning can be attained.
- HB 3693 instituted new energy efficiency measures for school districts, institutions of higher education and state agencies, and created new energy efficiency standards for certain residences.

The Texas Regional Entity was designated as one of eight regional entities to create and enforce federal electric reliability standards.

The PUCT undertook a comprehensive reorganization to update the agency's structure to implement priorities and changing legislative directives more efficiently and effectively.

2008 Hurricane Ike made landfall on Saturday, September 13, 2008, on Galveston Island as a Category 2 hurricane with 110 mph winds and a 12-foot storm surge. After the storm hit, nearly 2.87 million customers were without power and 366 transmission lines were out throughout Texas. All power was restored by October 1. System restoration costs for this storm were approximately \$675 million.

The PUCT issued an order designating five competitive renewable energy zones (CREZ), a level of wind development in each CREZ, and the transmission improvements necessary to deliver the wind capacity to customers.

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2009 The PUCT assigned \$4.93 billion of CREZ transmission projects to be constructed by seven transmission and distribution utilities. The project was intended to transmit 18,456 MW of wind power from West Texas and the Panhandle to highly populated metropolitan areas of the state.

The PUCT commissioned a cost-benefit analysis to identify cost efficient and effective practices and procedures to improve electric and telecommunications infrastructure to minimize long-term outages and restoration costs associated with hurricanes.

The 81st Legislature enacted legislation for both telecommunications and electric industries:

- SB 1783 required the PUCT and ERCOT to provide free internet video of both entities' public hearings and meetings.
- SB 769 authorized the PUCT to permit an electric utility to obtain timely recovery of system restoration costs incurred following certain weather-related events and natural disasters, without having to file a general rate case and to use securitization financing for that recovery.

2010 ERCOT implemented a major new wholesale market design, the Texas Nodal Market. The nodal market was implemented beginning December 1, 2010. The nodal market is designed to improve the management of transmission congestion, provide better information for the siting of new generation facilities and more reliable grid operations.

By November 2010, approximately 2.5 million advanced electric meters had been deployed in the service areas of the three largest transmission and distribution utilities in ERCOT. The deployment of advanced meters is intended to allow customers to receive faster, more flexible customer service that better accommodates their needs. Advanced meter deployment is discussed in more detail in Section VII. of this report

2011 In February 2011, Texas experienced extreme cold weather throughout the state that resulted in record electricity demand and the failure of numerous electric generating facilities. In the summer of 2011, Texas experienced the driest year since modern recordkeeping began in 1895. Largely because of this drought, ERCOT experienced one of the hottest periods in history with over 90 days of triple digit temperatures in Austin, 71 days in Dallas and a record number of triple digit temperature days in Houston.

Among the bills enacted by the 82nd Legislature was:

HB 2133 required the Commission to adopt rules expanding the remedies available in wholesale market enforcement proceedings by authorizing the PUCT to identify and order disgorgement of excess revenues received by a market participant for violation of PURA, PUCT rules, or ERCOT protocols.

The 82nd Legislature conducted the agency's fourth sunset review. The Legislature continued the PUCT until 2013 and directed the Sunset Commission to assess the appropriateness of its recommendations to the 82nd Legislature and to make any recommendations in considered appropriate to the 83rd Legislature in 2013. As part of its recommendations in 2011, the Sunset Commission had recommended continuing the PUCT for 12 years.

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2012 In an effort to incent the building of new electric generation, the Commission raised the system wide offer cap (the amount generators would be allowed to bid into the market) from \$3,000 to \$4,500/MWh effective August 1, 2012. After significant input from interested parties and stakeholders, the Commission in late 2012 also voted to increase the system wide offer cap to \$9,000/MWh by 2015 and raised the peaker net margin threshold to \$300,000. Peaker net margin is a measure of a standard peaking gas unit's cumulative profits over the course of an annual revenue cycle acting and acts as a guardrail to keep overall generator profits in check.

The Commission adopted amendments to its rules to implement distributed generation (DG) required by legislation adopted by the 82nd Legislature in 2011. Distribution generation refers to smaller power generation facilities that are at or close to the end users of power, such as roof top solar or back up diesel units.

In October 2012, the PUCT approved Entergy, Texas, Inc.'s application to join the Midcontinent Independent System Operator (MISO). The PUCT is a voting member of the Entergy Regional State Committee (E-RSC) which was founded in 2009 to provide collective state regulatory input into the operation of and upgrades to the Entergy transmission system.

2013 The 83rd Legislature conducted its fifth Sunset review of the PUCT and continued the agency for 10 years. The Legislature transferred economic regulation of water and wastewater rates and services from the TCEQ to the PUCT effective on September 1, 2014, allowing the PUCT until September 1, 2015 to revise its rules to accommodate the differing regulatory needs and capacities of water and sewer utilities, and required the PUCT to prepare a comparative analysis of ratemaking provisions to assess any opportunities for rate standardization.

Additional legislation passed by the 83rd Legislature included:

- authorization for the PUCT to issue emergency cease and desist orders to related to electric industry market participant conduct threatening the reliability of the electric grid or creating an imminent danger to the public;
- requiring the PUCT to exercise additional oversight over ERCOT including review and approval of annual budgets for ERCOT;
- prior review and approval for debt financing by ERCOT; and
- annual review of PUCT-approved performance measures tracking ERCOT operations.

The System Benefit Fund (SBF) was originally established in 1999 to fund discounts to low-income customers, customer education activities, energy-efficiency and weatherization, and electric market oversight, through a nonbypassable surcharge on retail electric bills. In 2013, HB 7 set the fee that funds the SBF at zero and provided for the payout of the remaining balance of the fund by September 2016. By 2015 it was clear that there would still be a remaining balance in the fund after September 2016, so HB 1101 extended the program one more year. HB 1101 required that all remaining funds in the System Benefit Fund (SBF) be expended, that the fee that funded the program be set at zero, and that the SBF be sunset on September 1, 2017.

The PUCT, TCEQ and the Railroad Commission of Texas (RRC) jointly filed comments on the Environmental Protection Agency's proposed Clean Power Plan (CPP). The CPP was intended to enforce a seldom-used provision of the Clean Air Act, §111(d), to regulate and reduce carbon emissions from existing generating units. The PUCT,

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TCEQ and RRC raised a number of concerns, both practical and legal, in their comments including the stringency of the proposed emission reductions and EPA's aggressive timeline for implementation of the CPP which the agencies asserted would adversely affect electric reliability.

2014 As part of its ongoing efforts to ensure generation resource adequacy within ERCOT, in June 2014 the PUCT implemented the Operating Reserves Demand Curve (ORDC). The ORDC improves wholesale price formation by allowing prices to more fully reflect the value of operating reserves. The ORDC assigns an economic value to operating reserves, or the amount of extra generating capacity online and available to maintain system reliability.

In April 2014, Energy Future Holdings (EFH), filed for Chapter 11 bankruptcy protection. EFH was created in 2007 when private equity funds acquired TXU Energy, the largest retail electric provider in ERCOT, Oncor Electric Delivery Company (Oncor), ERCOT's largest transmission and distribution company, and Luminant Energy, the largest generation owner in ERCOT, for \$42 billion in the largest leveraged buyout in U.S. history.

2015 Legislation passed by the 84th Legislature included the following laws pertaining to the PUCT:

- HB 7 The bill removed the May through September restriction on the System Benefit Fund, allowing a year-round discount in Fiscal Year 2016 and removes the cap on the amount of the discount.
- HB 1101 The bill extended the System Benefit Fund by one year to end on September 1, 2017. The bill removed the cap on the amount of the discount. The bill allowed a discount in every month, rather than just May through September.
- SB 776 - The bill required municipally-owned utilities to obtain a CCN before building transmission outside their municipal boundaries.
- SB 1148 - The bill made several changes to the Water Code relating to the transfer of the water program from the TCEQ to the PUCT. The bill consolidated the PUCT's water emergency order provisions into Chapter 13 of the Water Code.

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2017 Laws enacted by the 85th Legislature pertaining to the PUCT included:

- HB 294 This bill allowed for the appointment of a receiver for a utility that has violated a final judgement of a district court.
- SB 586 Replaced the funding mechanism for the Universal Service Fund for certain small and rural incumbent local exchange companies.
- SB 1003 - Allowed AT&T to opt out of the Lifeline program.
- SB 1476 - Allowed certain competitive phone companies, such as AMA TechTel, to continue receiving USF support until the end of 2023 in an exchange where the incumbent phone company, such as AT&T, was no longer receiving support.
- SB 1976 - Allowed REPs to continue to offer additional benefits to low-income customers using a list of eligible customers identified by the Health and Human Services Commission and the PUCT.

Hurricane Harvey, one of the costliest natural disasters in United States history, made landfall near Rockport, Texas on August 25, 2017, as a Category 4 storm. This storm caused widespread and severe flooding in southeast Texas, including Houston. Harvey resulted in 3,232,320 customer outages and caused \$700 million in damages to electric infrastructure. Four electric utilities requested recovery of storm costs through rate applications: AEP Texas, Entergy Texas, Texas New-Mexico Power Company, and CenterPoint. Under PURA §§36-401-.405, electric utilities are allowed to obtain timely recovery of storm reconstruction costs by use of securitization financing which lowers carrying costs related to conventional financing.

2019 Laws enacted by the 86th Legislature pertaining to the PUCT included:

- SB 64 Required the Commission to create a program to coordinate cybersecurity monitoring of electric utilities, municipally owned utilities, electric cooperatives, and transmission distributions utilities. The bill also required ERCOT to conduct internal cybersecurity risk assessments and training as well as report annually to the Commission on their compliance with cybersecurity laws.
- SB 475 Established the Texas Electric Grid Security Council. Members include the chairman of the PUCT, the CEO of ERCOT, and the governor's designated representative. This council serves as an advisory board to facilitate the creation, coordination, and dissemination of the best security practices for the electric industry.
 - SB 700 Made significant changes to the water ratemaking program by:
 - Separating the B Classification of utilities into two groups;
 - Authorizing the commission to streamline ratemaking through a system improvement charge.
 - Extending temporary rates for troubled systems.
 - Increasing the cost of living adjustment for the smallest class of utilities.
 - The bill made other minor changes to public notice of new rates and clarifies the respective emergency authorities of the TCEQ and PUCT.

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- SB 936 Created a cybersecurity monitor program to manage a comprehensive cybersecurity outreach program for utilities.
- SB 1211 Raised the threshold for PUCT review of power generation mergers and acquisitions in PURA § 39.158 from 1% to 10% of the total installed generation capacity in ERCOT.
- SB 1497 Required the registration of electricity brokers similar to the existing registration for electricity aggregators.
- HB 1595 HB 853, and HB 986 Authorized SWEPCO, El Paso Electric, and SPS to recover in rates for the deployment of advanced metering infrastructure. The status of deployment of advanced meters for these companies is discussed in more detail in Section VII. of this report.
- HB 1397 Created a generation rider ratemaking mechanism for non-ERCOT utilities.
- HB 3542 Created a mechanism to determine the "fair market value" of a utility that is being acquired by a Class A utility. The bill incorporated this value into rate base of the acquiring utility. The bill also required increased reporting from water and sewer utilities that have violated certain final orders of the TCEQ.
- HB 4150 Required electric utilities, municipally owned utilities, and electric cooperatives to meet minimum clearance requirement for transmission or distribution lines over recreational lakes. The bill also required electric utilities, municipally owned utilities, and electric cooperatives to report to the PUCT on hazard recognition and safety code construction training. The bill also required electric utilities, municipally owned utilities, and electric cooperatives that own or operate overhead transmission lines to report to the PUCT regarding their inspections of their facilities, hazards identified, and injuries from overhead transmission lines.
- SB 619 Moved the date of the PUCT's next Sunset review from 2023 to 2025.

2020

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 to facilitate operations during the pandemic. 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 and provide financial relief during this crisis. This program protected over 600,000 electric customers from electric service disconnection if they could document their eligibility for unemployment or low-income assistance from electric service disconnection. The PUCT's response to COVID-19 is outlined in more detail in its Biennial Agency Report to the 87th Legislature.

Hurricane Hanna made landfall in south Texas on July 25, 2020 as a Category 1 hurricane. Approximately 200,000 customer experienced outages because of this storm. Hurricane Laura made landfall in Louisiana on August 20 as a Category 4 hurricane. Peak outages in Texas were approximately 360,000 customers. On October 9, 2020, Hurricane Delta made landfall in east Texas and Louisiana as a

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Category 2 hurricane. This hurricane hit the same region affected six weeks earlier by Hurricane Laura. Peak outages for Hurricane Delta were 120,000 customers in Texas.

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 collects approximately \$100 million for the TUSF annually. However, in the last fiscal year, approximately \$198 million was distributed from the TUSF. Therefore, to maintain the solvency of the TUSF, the PUCT will 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.

2021

The PUCT issued its Biennial Agency Report to the 87th Legislature. This report contained the statutorily-required Scope of Competition reports for the electric and telecommunications industries as well as a report on water and wastewater regulation. This report fulfilled the statutory reporting requirements of PURA §§ 12.203, 31.003 and 52.006. This report provided a summary of significant commission activities over the last two years related to the electric, telecom, and water and sewer industries.

Winter Storm Uri hit Texas in February 2021, resulting in widespread, extended disruptions in electricity and natural gas service throughout Texas. A more detailed discussion of the impacts of this storm is provided in Section VII. of this report.

In June, approximately 70% of Lubbock Power & Light customers were transitioned from the Southwest Power Pool into the ERCOT region.

The 87th Legislature enacted the following laws pertaining to the PUCT:

- HB 16 prohibited wholesale indexed retail electric plans for residential and small commercial customers and adds requirements for the end of retail contracts
- HB 837 Regarding expedited release from water CCNs, if the PUCT requires an award of compensation, the petitioner must file a report with the PUCT that the compensation has been paid to the decertified retail public utility.
- HB 1484 Utility Filed rate doctrine
- HB 1510 permitted securitization of storm recovery costs for non-ERCOT TDUs
- HB 1572 exempted mobile generators (e.g., at a construction site or oil well) from definitions of REP and utility
- HB 3717 Fair Market Value of a city's water system that is financially or technically unable to restore the system to compliance with applicable laws or regulations
- HB 2483 permitted TDUs to lease or own and operate temporary or long-lead time facilities to restore service and provide energy to distribution customers after a natural disaster
- HB 2586 required PUCT to have an independent audit made of ERCOT each year, to be published on PUCT website and submitted to the Legislature
- HB 3476 Water CCNs inside ETJs
- HB 3648 required PUCT and RRC to designate certain gas entities and facilities as critical during an energy emergency

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- HB 3689 Water Rate appeals
- HB 3853 authorized electric utilities to own or operate facilities providing middle-mile broadband services and removes references to broadband over power lines in PURA and allowed rate recovery for middle-mile infrastructure.
- HB 4492 directed an investment from the Economic Stabilization Fund to cover ERCOT short pay amounts and repay that investment with interest; also provided a mechanism for financing reliability deployment price adder charges and high ancillary services charges.
- SB 2 changed ERCOT Board from segment membership to eight unaffiliated members selected by the selection committee appointed by the Governor, Lt. Governor, and Speaker of the House, required PUCT approval of ERCOT rules and enforcement measures
- SB 3 was an omnibus bill addressing market and reliability failures identified during Winter Storm Uri.
- SB 387 Water Rate appeals of certain municipal customers - allows for appeals when a municipality takes over an area and there is a rate change to the customers being taken over by the municipality
- SB 398 authorized distributed generation for grocery stores inside municipally owned utilities and electric cooperatives in ERCOT
- SB 415 clarified ownership or operation of energy storage by a Transmission and Distribution Utility allowing for contractual arrangements between a power generating company and a TDU.
- SB 713 Moves the PUCT Sunset review from 2025 to 2023
- SB 997 Raw water and contractual wholesale appeals
- SB 1202 clarified that EV charging stations can provide charging services to their customers without incurring the regulatory jurisdiction imposed on electric utilities and retail electric providers
- SB 1281 required a cost-benefit analysis of consumer benefits as a consideration for granting a CCN for a transmission line in ERCOT proposed for economic reasons, as well as a biennial grid reliability assessment from ERCOT.
- SB 1876 added "end stage renal disease facility" to the list of health facilities prioritized in system restoration
- SB 2154 Increased the number of PUCT Commissioners from three to five

A detailed account of Winter Storm Uri's effects on the electricity and natural gas markets, partially funded by the PUCT, was released by the University of Texas Energy Institute.

The PUCT has begun implementing this legislation. The PUCT's response to Uri-related legislation is discussed in more detail in the Wholesale Electric Market Oversight section of Section VII of this report.

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The PUCT has begun implementing this legislation. The PUCT's response to Uri-related legislation is discussed in more detail in the Wholesale Electric Market Oversight section of Section VII of this report.

IV. POLICYMAKING STRUCTURE

A. Complete the following chart providing information on your policymaking body members.

**Public Utility Commission
Exhibit 4: Policymaking Body**

Member Name	Term / Appointment Dates / Appointed by (e.g., Governor, Lt. Governor, Speaker)	Qualification (e.g., public member, industry representative)	City
Peter Lake	Appointed by Governor Greg Abbott as Chairman on April 12, 2021. Term expires September 1, 2023	PURA § 12.053 provides that commissioner appointees must be representatives of the general public.	Austin
Will McAdams	Appointed by Governor Greg Abbott April 1, 2021; term expires September 1, 2025	PURA § 12.053 provides that commissioner appointees must be representatives of the general public.	Cedar Park
Lori Cobos	Appointed by Governor Greg Abbott June 17, 2021; term expires September 1, 2021	PURA § 12.053 provides that commissioner appointees must be representatives of the general public.	Austin
Jimmy Glotfelty	Appointed by Governor Greg Abbott August 6, 2021; term expires September 1, 2025	PURA § 12.053 provides that commissioner appointees must be representatives of the general public.	Houston
Vacant			

Since its creation in 1975, the PUCT has been comprised of three commissioners who served staggered six year terms. In 2021, the 87th Legislature enacted SB 2154 to expand the Commission to five members who will serve staggered six year terms. As of the date of this report, there is currently one vacancy on the Commission.

⁹ The UT Energy Institute's Report on Winter Storm Uri is available on the PUC's website at: [https://www.puc.texas.gov/agency/resources/reports/UTAustin_\(2021\)_EventsFebruary2021TexasBlackout_\(002\)FINAL_07_12_21.pdf](https://www.puc.texas.gov/agency/resources/reports/UTAustin_(2021)_EventsFebruary2021TexasBlackout_(002)FINAL_07_12_21.pdf) (July 12, 2021).

Self-Evaluation Report**B. Describe the primary role and responsibilities of your policymaking body.**

The PUCT's policymaking body is composed of five full-time, salaried commissioners serving staggered six year staggered terms. The commissioners are appointed by the Governor with the advice and consent of the Senate.¹⁰ The commissioners' role is to implement legislation, primarily PURA, through the issuance of orders in contested cases and the adoption of rules, and to establish goals and policies of the agency.

C. How is the chair selected?

The Chair is appointed by the Governor.¹¹

D. List any special circumstances or unique features about your policymaking body or its responsibilities.

In addition to the ethical requirements that apply to most state officials and employees, PURA contains some provisions that are specific to the PUCT. The PUCT has strict conflict of interest rules in Chapter 12 of PURA. Generally, these place restrictions on PUCT commissioners and employees regarding interactions with specific entities, regardless of whether the interaction would in fact create a conflict of interest. For example, even an employee who has no job duties that could impact regulation of electric utilities is prohibited from holding stock in a public utility.¹² Additionally, recent employment by a public utility or a spouse's employment in the management of an organization that is regulated by or receives funds from the PUCT disqualifies a person from serving as a commissioner.¹³ Furthermore, PURA imposes on PUCT employees post-employment restrictions that are more stringent than those applying generally to state employees and officials, with an absolute bar to employment by certain entities for one year post employment for employees and two years after a commissioner's service ends.

PURA § 12.060, added by SB 2154, and effective May 30, 2021, prohibits a former commissioner from lobbying the commission for one year after ceasing to be a commissioner. This section has some overlap with PURA § 12.154, which prohibits a former commissioner from being employed by a public utility, within the definition in PURA § 11.004, for two years after ceasing to be a commissioner. (The Texas Attorney General has interpreted "employment" to encompass work for a utility as a lawyer or outside consultant, which would presumably include a lobbyist. See Texas Attorney General Opinion JM-280 (1984)). However, section 11.004 defines utilities fairly narrowly and section 12.154 does not address "employment" with all types of entities that appear before the commission, so section 12.154 would allow lobbying on behalf of certain entities, which is now prohibited under section 12.060.

¹⁰ PURA § 12.051.

¹¹ PURA §12.052.

¹² PURA § 12.154.

¹³ PURA § 12.053(b) and 12.152(a)(2).

Self-Evaluation Report**E. In general, how often does your policymaking body meet? How many times did it meet in FY 2019? In FY 2020? Explain if the policymaking body met in-person or virtually during this time.**

Generally, the Commission convenes an Open Meeting approximately twice per month to consider contested cases, rulemakings, and other matters. The PUCT also holds workshops associated with rulemakings and oversight activities. When the Commissioners plan to attend the workshops are posted as open meetings. The Commission also holds regular work sessions to receive comment on and discuss important policy issues. Work sessions are posted as public meetings.

During FY 2020, the PUCT held approximately 21 open meetings. During FY 2019, the PUCT held 19 open meetings. The Commissioners also serve as presiding officers for contested case hearings involving significant policy issues. In FY 2019, 13 such hearings were held. In FY 2020 through August 31, 2021, three Commissioner-held hearings were conducted.

During the COVID-19 pandemic, the Commission continued to conduct open meetings with only key staff in attendance. Commission open meetings are broadcast online by Texas Admin Monitor. The public was also allowed to comment in open meetings via teleconference. The Commissioners have recently begun holding work sessions to discuss significant policy issues. Decisions are rarely made at these work sessions. Work sessions are posted and broadcast online as open meetings.

The Commission allowed the public to begin attending Open Meetings in person again on July 15, 2021.

F. Please list or discuss all the training the members of the agency's policymaking body receive. How often do members receive this training?

The PUCT provides the training required by PURA § 12.059, which states that before a commissioner may assume the commissioner's duties and before the commissioner may be confirmed by the Senate, the commissioner must complete a training program which provides the following information:

- (1) The enabling legislation that created the Commission and its policymaking body to which the commissioner is appointed to serve;
- (2) The programs operated by the commission;
- (3) The role and functions of the commission;
- (4) The rules of the commission with an emphasis on the rules that relate to disciplinary and investigatory authority;
- (5) The current budget of the commission;
- (6) The results of the most recent formal audit of the commission;
- (7) The requirements of Government Code, Chapters 551, 552, and 2001;
- (8) The requirements of the conflict of interest laws and other laws relating to public officials; and

Self-Evaluation Report

(9) Any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

The Commissioners are required to receive training on the Open Meetings Act pursuant to Government Code § 551.012 and on open records pursuant to Government Code § 552.012. The training is provided by the Office of the Attorney General. PUCT staff ensures that the Commissioners are aware of the Government Code provisions and assists them in fulfilling the training requirements.

In addition to the statutorily required training, the Commissioners receive training through attendance at workshops held in conjunction with rulemakings and are briefed by PUCT staff on legal and technical matters. The PUCT's Agency Counsel is available to respond to specific questions Commissioners may have about ethics issues. Commissioners may also attend professional and industry conferences and seminars.

G. What information is regularly presented to your policymaking body to keep them informed about the agency's operations and performance?

The Commissioners serve full-time, and as such have daily access to all information resources that are available to agency employees. The PUCT uses a combination of the PUCT Website and an agency intranet to make information available. Databases relating to agency programs, reports prepared for the legislature, performance measure reports, articles appearing in print media, and a variety of other information is available.

The Executive Director and PUCT staff meet with the Commissioners and their staff on an as needed basis to inform them of ongoing activities and events. Because the Commissioners serve fulltime, they are generally available for meetings. For example, when the PUCT is audited by the State Auditor's Office, the Executive Director ensures that the Commissioners are informed of the progress and outcome of the audit. During emergency events such as hurricanes, the Emergency Management Response Team regularly briefs the Commissioners via email and in person. When the Legislature is in session, the Executive Director and Governmental Relations staff stay in close communication with the Commissioners. Throughout the year, the Commission's Office of Policy and Docket Management provides legal advice to the Commissioners on ongoing contested cases and rulemakings. Additionally, other divisions provide expertise and information to the Commissioners to help the Commissioners make key policy decisions.

If there is a need, or if one or more Commissioners desire to discuss anything, the matter is scheduled for open meeting discussion and possible action. The PUCT's open meeting agendas always include postings that allow for discussion of matters under the PUCT's jurisdiction.¹⁴

¹⁴ Discussions associated with specific cases or rulemaking projects are posted separately.

Self-Evaluation Report**H. How does your policymaking body obtain input from the public regarding issues under the agency's jurisdiction? How is this input incorporated into the operations of your agency?**

The PUCT obtains input from the public in the following ways:

Contested Cases. The PUCT allows the public to participate in contested cases in accordance with the Administrative Procedures Act (APA), Government Code Chapter 2001. The PUCT's Procedural Rules (16 TAC Chapter 22) also provide for public comment in contested cases. Due to *ex parte* restrictions contained in the APA, the Commissioners may not communicate directly or indirectly with any persons concerning an issue of fact or law in a pending contested case without notice and opportunity for all parties to participate. Because of this restriction, communications with the Commissioners about contested cases must be in writing and served on all parties or must take place at a hearing or in an open meeting for which the case is posted. The PUCT bases its decisions in contested cases on the evidence in the record.

Rulemakings. The PUCT seeks comments from interested persons in accordance with the APA. Although it is not required for all rulemakings, the PUCT routinely schedules public hearings on almost all proposed rules to allow an opportunity for oral comments from persons who may not wish to file written comments. In addition to observing the requirements of the APA, the PUCT holds workshops and public meetings to obtain input from interested persons. Notice of all workshops and public meetings is published in the Texas Register whenever possible, posted on the PUCT's website. The PUCT considers all comments submitted orally or in writing when adopting a rule.

Customer Satisfaction Survey. The PUCT conducts a customer satisfaction survey every two years in connection with the agency's strategic planning effort in accordance with Government Code § 2114.002(b). This survey is conducted online. The surveys are designed to provide meaningful customer service data for strategic planning and organizational initiatives, to accurately portray and represent the perceptions of agency customers, and to provide a forum in which the persons receiving service from the agency can evaluate the agency, recognize outstanding service, or offer insights into how the agency delivers service and where the agency needs to improve.

The agency uses the information from the customer satisfaction survey to identify areas needing improvement.

Agency Call Center. The PUCT maintains a bilingual agency call center with a toll-free number (1- 888-782-8477), which the public may call to obtain information about electric or telecommunications service, to file a complaint against an electric or telecommunications service provider, or to obtain information about or complain about the PUCT. The call center number is listed in local telephone directories, on the PUCT's Website, and on many service providers' bills. The PUCT's Customer Protection Division responds to all complaints, investigates complaints against entities over which the PUCT has jurisdiction, and provides information in response to inquiries.

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Meetings. Individual Commissioners meet in person with stakeholders, the public and staff, subject to the *ex parte* restrictions of Government Code § 2001.061.

Written Communications. The PUCT receives written communications from the public by e-mail and regular mail. The agency Website provides information about contacting the PUCT. Where such written communications directly reference docketed proceedings or projects, the Commissioner's staff ensure that such communications are filed in the appropriate docket.

- I. If your policymaking body uses subcommittees or advisory committees to carry out its duties, fill in the following chart. For advisory committees, please note the date of creation for the committee, as well as the abolishment date as required by Texas Government Code, Section 2110.008.**

N/A

V. FUNDING

- A. Provide a brief description of your agency's funding, including information about the most recent five percent budget reduction and any funding related to disaster relief or COVID-19, if applicable.**

The tables below depict the major funding sources appropriated to the PUCT for the 2020-2021 biennia.

FY 2020-2021 Appropriations

Method of Finance	Amount Appropriated	Percent of Total Funding
General Revenue Fund	\$27,642,417	79.4%
GR Dedicated - Water Resource Management Account No. 153	\$6,230,796	17.9%
Appropriated Receipts	\$950,000	2.7%
Total, Method of Financing	\$34,823,213	100%

PURA § 16.001 imposes a gross receipts assessment on each public utility, retail electric provider, and electric cooperative within the jurisdiction of the PUCT that serves the ultimate customer, including each interexchange telecommunications carrier. The revenues generated by this assessment are deposited into the General Revenue Fund. The assessment is set in statute at a rate of one-sixth of one percent of gross receipts from the sale of electric and telecommunications services to Texas customers. This assessment, which is collected by the Comptroller of Public Accounts, totaled \$59.5 million in fiscal year 2020. However, the PUCT's General Revenue appropriation is not tied to this assessment. The level of General Revenue funding is based on historical appropriations necessary to accomplish the PUCT's mandates.

Self-Evaluation Report

Finally, the Legislature in the General Appropriations Act appropriates approximately \$475,000 each fiscal year in the biennia to cover work on telecommunications issues.

B. List all riders that significantly impact your agency's budget.

The following riders contained in the 2020-2021 General Appropriations Act impact the PUCT's Budget:

Capital Budget. None of the funds appropriated above may be expended for capital budget items except as listed below. The amounts shown below must be expended only for the purposes shown and are not available for other purposes. Amounts appropriated above and identified in this provision as appropriations either for "Lease Payments to the Master Lease Purchase Program" or for items with a "(MLPP)" notation shall be expended only for the purpose of making lease-purchase payments to the Texas Public Finance Authority pursuant to the provisions of Government Code §1232.103.

	2020	2021
a. Acquisition of Information Resource Technologies		
(1) Desktop Computer Lease	\$ 98,000	\$ 98,000
b. Data Center Consolidation		
(1) Data Center Consolidation	\$ 310,027	\$ 328,138
Total, Capital Budget	<u>\$ 408,027</u>	<u>\$ 426,138</u>
Method of Financing (Capital Budget):		
General Revenue Fund	\$ 408,027	\$ 426,138
Total, Method of Financing	<u>\$ 408,027</u>	<u>\$ 426,138</u>

Unexpended Balances Within the Biennium. Any unexpended balances as of August 31, 2020 in appropriations made to the Public Utility Commission of Texas are hereby appropriated for the same purposes for the fiscal year beginning September 1, 2020.

Self-Evaluation Report

C. Show your agency's expenditures by strategy.

Public Utility Commission of Texas

Exhibit 6: Expenditures by Strategy – Fiscal Year 2020 (Actual)

Goal / Strategy	Amount Spent	Percent of Total	Contract Expenditures Included in Total Amount
Goal A. Ensure Competition, Choice, Just Rates, and Reliable Quality Service	\$13,590,377		
Strategy A.1.1 Market Competition	\$4,182,954	25.6%	
Strategy A.2.1 Utility Regulation	\$7,006,626	42.8%	\$149,300
Strategy A.3.1 Investigation and Enforcement	\$2,400,797	14.7%	\$132,555
Goal B. Education and Customer Assistance	\$1,876,283		
Strategy B.1.1 Customer Education	\$992,724	6.1%	
Strategy B.2.1 Assist Customers	\$883,559	5.4%	
Goal C. Indirect Administration	\$920,731		
Strategy C.1.1 Central Administration	\$620,211	3.8%	
Strategy C.2.1 Information Resources	\$251,810	1.6%	
Strategy C.3.1 Other Support Services	\$48,710	0.0%	
GRAND TOTAL:	\$16,387,391	100%	\$281,500

- D. Show your agency's sources of revenue. Include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency, including taxes and fines.**

**Public Utility Commission of Texas
Exhibit 7: Sources of Revenue – Fiscal Year 2020 (Actual)**

Source	Amount
General Revenue Fund	\$12,731,771
GR Dedicated – Water Fund Transfer No. 0153	\$3,112,845
Appropriated Receipts	\$542,775
TOTAL	\$16,387,391

- E. If you receive funds from multiple federal programs, show the types of federal funding sources.**

N/A

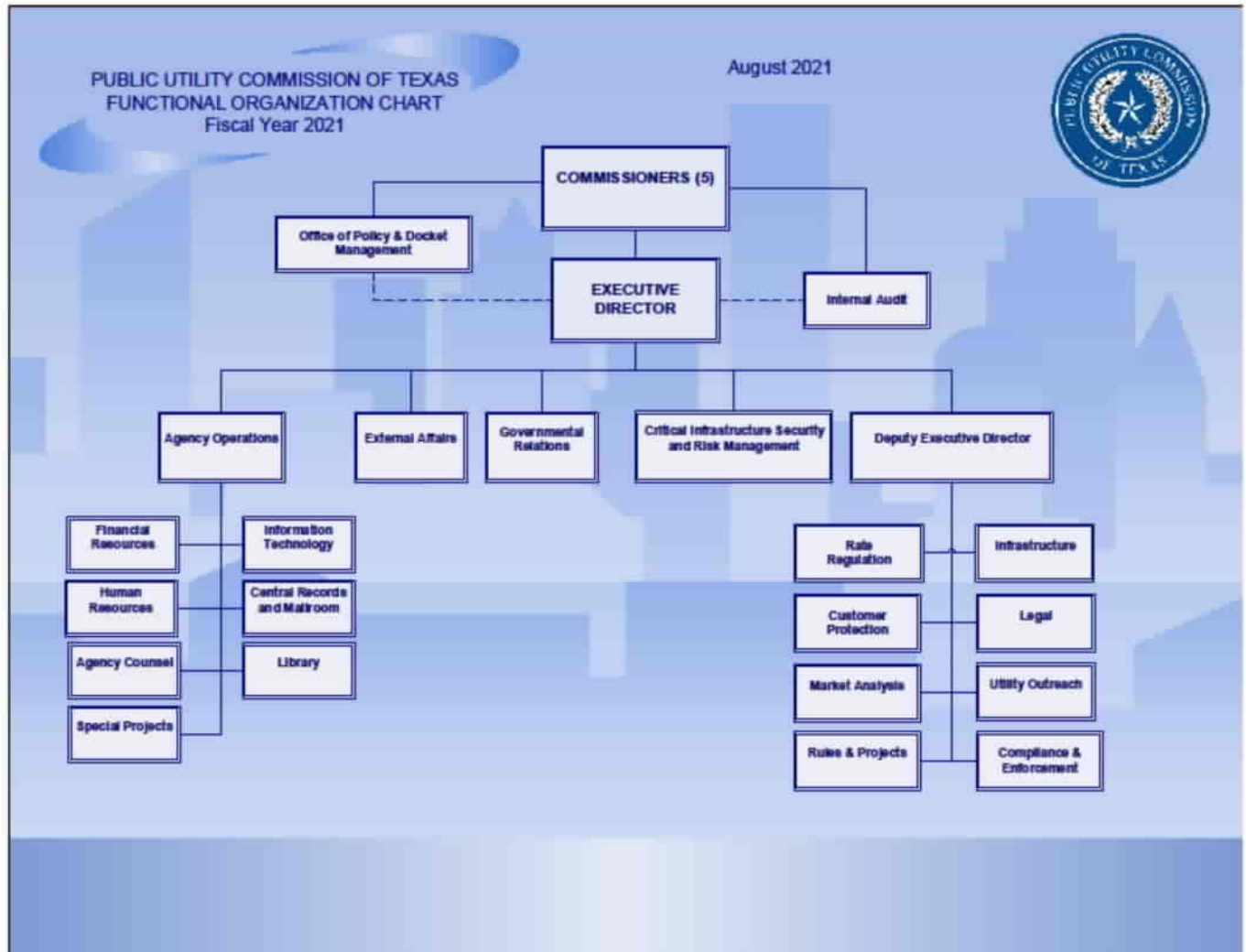
- F. If applicable, provide detailed information on fees collected by your agency. Please explain how much fee revenue is deposited/returned to the General Revenue Fund and why, if applicable.**

N/A

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VI. ORGANIZATION

- A. Provide an organizational chart that includes major programs and divisions, and shows the number of FTEs in each program or division. Detail should include, if possible, department heads with subordinates, and actual FTEs with budgeted FTEs in parenthesis.



- B. If applicable, fill in the chart below listing field or regional offices.

N/A

- C. What are your agency's FTE caps for fiscal years 2019-22?

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FISCAL YEAR	FTE CAP
2019	215
2020	209
2021	209
2022	234

D. How many temporary or contract employees did your agency have in fiscal year 2020? Please provide a short summary of the purpose of each position, the amount of expenditures per contract employee, and the procurement method of each position.

The commission had three contract employees in FY 2020. These contract employees worked as data entry clerks in the Central Records Division. They were paid a total of \$9,985.00.

In Fiscal Year 2020, the PUCT employed one full-time and one part-time temporary employee interns and both were no longer employed by the end of the fiscal year. The PUCT employs both paid and unpaid interns as law clerks and communication interns for either course credit or through programs that offer a stipend. In Fiscal Year 2020, the PUCT had two paid interns and five unpaid interns.

E. List each of your agency's key programs or functions, along with expenditures and FTEs by program.

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Exhibit 11: List of Program FTEs and Expenditures – Fiscal Year 2020

Program	Actual FTEs FY 2020	Budgeted FTEs FY 2021	Actual Expenditures FY 2020	Budgeted Expenditures FY 2021
Market Competition	44.4	54.1	\$4,182,954	\$4,496,244
Utility Regulation	80.1	86.2	\$7,006,626	\$7,316,393
Investigation and Enforcement	26.2	30.1	\$2,400,797	\$2,580,825
Information and Education	10.7	15.3	\$992,724	\$1,074,593
Assist Customers	9.5	13.2	\$883,559	\$956,441
Administration	9.3	10.1	\$920,731	\$996,166
TOTAL	180.2	209	\$16,387,391	\$17,420,662

VII. GUIDE TO AGENCY PROGRAMS

Strategy 1-1-1:

Foster and monitor market competition by evaluating the relevant electric and telecommunications markets, and develop policies to enhance effectiveness of competition and benefits for

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customers, and register and license competitive service providers. Develop rules, conduct studies, resolve disputes among market participants and prepare reports responsive to changes in electric and telecom markets.	
Actual Expenditures, FY 2020	\$4,182,954
Number of FTEs as of August 31, 2020	44.4

Complete this section for each agency program (or each agency function, activity, or service if more appropriate). Copy and paste questions A through P as many times as needed to discuss each program, activity, or function. Contact Sunset staff with any questions about applying this section to your agency.

Wholesale Electric Market Oversight**A. Provide the following information at the beginning of each program description.**

Name of Program or Function:	Wholesale Electric Market Oversight
Location/Division:	Market Analysis Division
Contact Name and Division:	Rebecca Zerwas, Director, Market Analysis
Statutory Citation for Program:	PURA §§ 39.151, 39.1515, 39.157

B. What is the objective of this program or function? Describe the major activities performed under this program.

The objective of this function is to implement PURA § 39.151 which requires the PUCT to certify an independent organization to perform the following functions:

Ensure access to the transmission and distribution system for all buyers and sellers of electricity on a nondiscriminatory basis;

Ensure the reliability and adequacy of the regional electric network; and

Ensure that electricity production and delivery are accurately accounted for among the generators and wholesale buyers and sellers in the region.

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). The Texas Legislature has delegated to the PUCT the authority to oversee the vertically integrated electric utilities that are housed within the Eastern and Western Interconnections, but the delegation of authority to the PUCT to oversee the activities of ERCOT is unique in nature among the continental United States.

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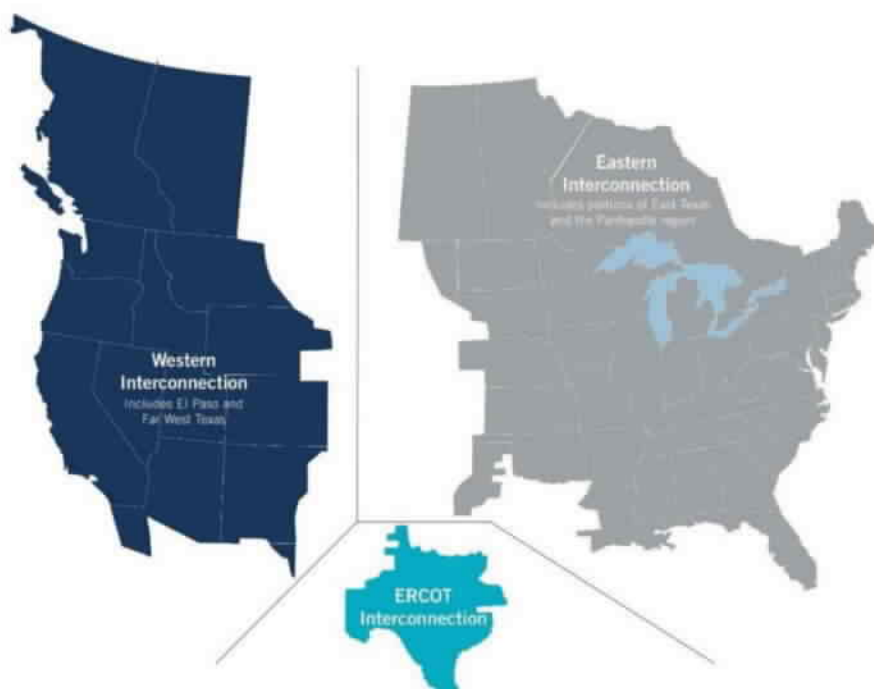


Figure 1. Interconnections in the United States

Oversight of ERCOT

ERCOT, Inc. is the designated independent organization under PURA § 39.151 for over 90% of the electric load in Texas and over 26 million customers. As the independent organization, ERCOT is directly responsible and accountable to the PUCT. The PUCT's authority includes review and investigation of ERCOT's finances, budget, and operations as necessary to ensure ERCOT's accountability and to ensure that the organization adequately performs its functions and duties. The PUCT must approve all rules and protocols enacted by ERCOT.

A sizable portion of the PUCT's efforts and resources are directed toward the activities of ERCOT. ERCOT is both a regional transmission organization and independent system operator for the ERCOT region, which is fully contained within the state. ERCOT operates and settles a day-ahead and real-time market. The details of these operations are explained in ERCOT's own Self-Evaluation Report. As discussed earlier in this section, the PUCT's oversight of the ERCOT wholesale market is unique because the ERCOT market is fully contained within the state's borders, giving the State of Texas full authority and jurisdiction over ERCOT. In most states, electric utilities are members of independent system operators or regional transmission organizations that cross state borders, making all the wholesale activities that the electric utilities engage in as part of their membership subject to federal jurisdiction, in particular, the oversight of the FERC. The State of Texas has delegated to the PUCT oversight of the ERCOT wholesale market. The PUCT's jurisdiction over ERCOT is similar to FERC's jurisdiction over wholesale markets that cross state boundaries. As noted previously, ERCOT is also undergoing Sunset review in 2023 and will be submitting a Self-Evaluation Report

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(SER). For a more detailed discussion of ERCOT's responsibilities please see ERCOT's SER.

To effectuate its responsibilities, ERCOT is required to establish and enforce procedures relating to non-discriminatory access to the transmission and distribution network, the reliability of the regional electric network, and accounting for the production and delivery of electricity among generators and all other market participants. These procedures include the protocols, operating guides, and other binding documents.

In response to Winter Storm Uri, the 87th Legislature adopted a number of laws which will significantly change the operation of both ERCOT and the PUCT. These new laws include changing the ERCOT board from a majority stakeholder board to a majority independent board, requiring all ERCOT rules (including protocols) to be approved by the PUCT before going into effect and expanding the PUCT from three to five commissioners. Legislation related to Winter Storm Uri will be discussed in more detail in Section C. below.

PURA § 39.157 mandates that the PUCT monitor market power associated with the generation, transmission, distribution, and retail sale of electricity in ERCOT and gives the PUCT the authority to require mitigation of market power. In addition, PURA § 39.155(a) gives the PUCT authority to request any information it needs from market participants to assess market power and evaluate the development of a competitive retail market in the state. Market power abuses can lead to higher prices for customers and dysfunction in the operation of the competitive electricity market.

The PUCT's authority over the ERCOT wholesale market involves the following key functions:

- Complete authority over ERCOT as the independent organization under PURA § 39.151;¹⁵
- Approval of all ERCOT rules (including the protocols);
- Review and approval ERCOT's budget and setting the level of the ERCOT administrative fee which is charged to all wholesale buyers and sellers to cover ERCOT's operating costs.
- Oversight of the Independent Market Monitor authorized by PURA § 39.1515;
- Active engagement with the ERCOT stakeholder process and with ERCOT leadership to ensure reliability of the ERCOT power grid;
- Participating in market design and implementation activities at ERCOT to proactively eliminate market design flaws as they are recognized;
- Determination of the share of installed capacity for power generation companies; and
- Providing for registration of power generation companies and power marketers.

¹⁵ This function is described as a separate program.

Oversight of Wholesale Markets Outside ERCOT

The PUCT is also engaged in wholesale market activities with respect to areas outside of ERCOT. While the regulatory authority for wholesale market and reliability issues lies with the FERC, the PUCT may participate in FERC proceedings to represent the interests of Texas on wholesale market issues that develop in the independent system operators and regional transmission organizations of which the vertically integrated utilities are members.

The Southwestern Public Service Company (SPS) and Golden Spread Electric Cooperative (GSEC), which both serve the Panhandle of Texas, the Southwestern Electric Power Company (SWEPCO) in Northeast Texas are members of the Southwest Power Pool (SPP). GSEC is a generation and transmission cooperative with assets in both ERCOT and SPP, as such, the PUCT has original jurisdiction only over its wholesale transmission rates in ERCOT. As SPS and SWEPCO are vertically integrated, investor-owned utilities, the PUCT has full jurisdiction over their activities in Texas, and thus remains extensively engaged in their activities in SPP.

SPP is a regional transmission organization that covers 14 states, including portions of Texas, Arkansas, Iowa, Louisiana, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming, and all of Kansas and Oklahoma. SPP both coordinates the flow of electricity across the region and has a wholesale, real-time market. The PUCT has an assigned commissioner who votes on the SPP's Regional State Committee, 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 PUCT also has staff who regularly support the dedicated commissioner in these matters and follow the working groups to ensure that the interests of Texas customers are protected in these complex, multi-state processes. The assigned commissioner and support staff also monitor any ongoing proceedings from SPP that may be taken to the FERC for further consideration to ensure that Texas customers have representation before that governing body.

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Figure 2. Southwest Power Pool Region

The vertically integrated investor-owned utility Entergy Texas, Inc., which serves Southeast Texas, joined the Midcontinent Independent System Operator (MISO) in 2013. 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 Organization of MISO States (OMS), represents the collective interests of state and local utility regulators on the MISO region. OMS coordinates regulatory oversight in the region and makes recommendations to MISO and FERC on developing and enhancing the wholesale MISO markets. One commissioner is designated to represent the PUCT on the OMS Board. PUCT staff provides subject matter expertise to the designated commissioner and closely monitor the working group and stakeholder meetings. This same commissioner also votes on the Entergy Regional State Committee, which was formed to coordinate activities related to enhancing the reliability of electric service in the four states in which Entergy, Inc. operates.

The electrical interconnection of MISO and SPP has resulted in the need to coordinate power flows between SPP and MISO, which affects transmission planning and subsequently cost sharing. These interconnection points are often referred to as "seams" between the two systems. State utility commissioners and SPP and MISO have