

**Self-Evaluation Report****3. Technical**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2018	9	0%	14.4%	22.22%	29.2%	22.22%	55.2%
2019	9	0%	14.4%	22.22%	29.2%	33.33%	55.2%
2020	8	0%	14.4%	25.0%	29.2%	37.50%	55.2%

**4. Administrative Support**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2018	42	14.28%	14.3%	54.76%	36.4%	83.33%	71.6%
2019	46	13.0%	14.3%	45.7%	36.4%	78.3%	71.6%
2020	42	11.9%	14.3%	47.61%	36.4%	83.33%	71.6%

**5. Service / Maintenance**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2018	0	0%	13.2%	0%	52.4%	0%	52.0%
2019	0	0%	13.2%	0%	52.4%	0%	52.0%
2020	0	0%	13.2%	0%	52.4%	0%	52.0%

**6. Skilled Craft**

Year	Total Number of Positions	Percent African-American	Statewide Civilian Workforce Percent	Percent Hispanic	Statewide Civilian Workforce Percent	Percent Female	Statewide Civilian Workforce Percent
2018	0	0%	10.2%	0%	51.5%	0%	12.0%
2019	0	0%	10.2%	0%	51.5%	0%	12.0%
2020	0	0%	10.2%	0%	51.5%	0%	12.0%

**I. Does your agency have an equal employment opportunity policy? How does your agency address performance shortfalls related to the policy?**

The PUCT has an equal employment opportunity (EEO) policy in its employee handbook. Employees receive EEO training as part of the New Employee Orientation

**Self-Evaluation Report**

and attend refresher training at least once every two years thereafter. Employees are encouraged to meet with their supervisor, an EEO coordinator, Human Resources, or the Director of General Law whenever an employee believes he/she has been subjected to discrimination or harassment whether by another employee or a third party who has contact with an employee because of work. Complaints are investigated and resolved either informally or through the employee complaint process outlined in the Employee Handbook. The Employee Handbook is attached as Attachment 10.

Our agency has and enforces an equal employment opportunity policy. We investigate any allegations of discrimination, retaliation, or harassment that would violate the policy and take disciplinary action when necessary to address violations.

The PUCT developed a Recruitment and Workforce Diversity Equal Employment Opportunity Plan to delineate our commitment to the principle and practice of equal employment opportunity and affirmative action in all aspects of employment. The Plan is designed to assure the implementation of personnel policies and practices to promote equal employment opportunities.

The PUCT analyzes its workforce to determine whether the percentages of African-American, Hispanic American and females in individual job classifications are substantially like the percentages of those groups available in the relevant job market. The comparison is made to the Statewide Civilian Workforce Composition by job category as listed in the EEO and Minority Hiring Practices Report prepared by the Texas Workforce Commission Civil Rights Division. The analysis of EEO categories determine where minorities and females are underrepresented. Accomplishments and shortcomings are noted and reported in the quarterly analysis.

## **XII. AGENCY COMMENTS**

**Provide any additional information needed to gain a preliminary understanding of your agency.**

## **ATTACHMENTS**

### **Attachments Relating to Key Functions, Powers, and Duties**

#### **1. If the agency publishes a version of its enabling statute and/or rules, please include an electronic copy.**

- Utilities Code, Title II (Public Utility Regulatory Act)
- Utilities Code, Title IV
- Local Government Code Chapter 283
- Business & Commerce Code §§ 304.051 – 304.062
- Water Code provisions applicable to the PUCT

**Self-Evaluation Report****2. Annual reports published by the agency from FY 2018-20.**

- Scope of Competition Reports for Electric and Telecommunications Markets in Texas for 2019 and 2017
- 2021 Biennial Agency Report to the 87<sup>th</sup> Legislature
- Enforcement Activity Reports for 2018-2020

**3. Internal or external newsletters published by the agency in FY 20.**

- PUCT Consumer Fact Sheets
- Press releases

**4. List of studies that the agency is required to do by legislation or riders.**

- See Exhibit 17.

**5. List of legislative or interagency studies relating to the agency that are being performed during the current interim.**

- The PUCT is required under the General Appropriations Act of 2022-2023 to study the effects of load shed protocols in ERCOT, as that term is defined by PURA § 31.002 and issue a report on the conclusions of the study to the legislature not later than September 1, 2022.
- The PUCT is also required under the General Appropriations Act of 2022-2023, as part of the PUCT Biennial Report required under PURA § 12.203, to conduct a study regarding whether ERCOT interconnection to Eastern and/or Western Interconnects and/or Mexico would protect and further the interest of the public. The study must include the benefits and costs associated with interconnecting ERCOT to other grids, including Eastern and Western Interconnects, and Mexico. Other issues that must be addressed are whether reliability could be increased; the impact on customers' energy costs; the potential for economic development benefits to the state from exporting energy to other interconnects; and if ERCOT could remain independent of federal regulation if and when larger direct current ties are established than those that currently exist.
- The Commission is required to prepare a Weather Emergency Preparedness Report under Texas Government Code § 418.310. The report must address the reliability and stability of the electricity supply chain. It is due on November 1 of even-numbered years. This is a new requirement created as part of SB3 passed by the 87<sup>th</sup> Legislature.
- The PUCT is required to prepare a mapping report under PURA § 38.204. The report will provide an overview of the Texas Electricity Supply Chain Security and Mapping Committee progress on its mapping of the electricity supply chain and to make communication system recommendations for all agencies involved or affected by this effort. This committee was created as part of SB 3 passed in the 87<sup>th</sup> Legislature. Members of the Committee are the Executive Director of the PUCT, the Executive Director of the Railroad Commission of Texas, the president and CEO of ERCOT and the chief of the Texas Division of Emergency

**Self-Evaluation Report**

Management. The mapping report is due on January 1, 2022. This is a new requirement created as part of SB3 passed by the 87<sup>th</sup> Legislature.

- The PUCT is required under Texas Government Code §186.007 to prepare a report on the emergency operations plans filed with the PUCT by various electric industry market participants, to analysis the ability of the electric grid to withstand extreme weather events, and make recommendations for improving emergency operations plans. This is a new requirement created as part of SB3 passed by the 87<sup>th</sup> Legislature.
- The Commission is required to prepare a report on the effects of statutes, rules, ERCOT protocols and bylaws related to conflicts of interest and the ability of the PUCT and ERCOT to fulfill their duties. The report is due annually. This is a new requirement created as part of SB3 passed by the 87<sup>th</sup> Legislature.

**6. List of studies from other states, the federal government, or national groups/associations that relate to or affect the agency or agencies with similar duties or functions. Provide links if available.**

- FERC/NERC Joint Investigation of February 2021 Winter Storm Uri–Findings & Recommendations expected to be issued in September 2021; Final Report expected to be issued in November 2021

**7. If applicable, a list describing the type of personal information of license holders the agency publishes on its website. Please also explain if and how license holders can opt out of this publication.**

- The PUCT does not publish personal information of its licensees on its website

**Attachments Relating to Policymaking Structure**

**8. Biographical information (e.g., education, employment, affiliations, and honors) or resumes of all policymaking body members.**

- Biographical information on the PUCT commissioners may be found on the PUCT's public website.

**9. Board training manuals and copies of any policies related to the board's duties and responsibilities.**

- Commissioner training materials

**10. Employee manuals and copies of any policies related to staff's duties and responsibilities.**

- Employee Handbook

**11. Copies of any other significant policies adopted by the board.**

- N/A

## **Attachments Relating to Funding**

### **12. Agency's Legislative Appropriations Request for FY 2022-23.**

- LAR 2022-2023
- Two exceptional items requested by the PUCT and approved by Legislature:
- Restoration of the PUCT's 5% budget cut totaling \$1,693,661
- Additional funding for enhanced ERCOT oversight and external communications totaling \$1,691,000

### **13. Annual financial reports from FY 2018-20**

### **14. Operating budgets from FY 2018-20.**

### **15. If applicable, a list of all contracts above \$1 million. Please include a brief explanation of the contract, as well as the amount and term of the contract. Do not include purchase orders in this list.**

## **Attachments Relating to Organization**

### **16. If applicable, a map to illustrate the regional boundaries, headquarters location, and field or regional office locations.**

- N/A

### **17. Any flowcharts showing the operations of the agency, such as complaint resolution processes, disciplinary or enforcement procedures, etc.**

- N/A

### **18. If applicable, a list and brief explanation of all active memorandums of understanding and information sharing agreements the agency has entered into. Indicate whether these are required by statute, rule, or something else.**

## **Attachments Relating to Agency Performance Evaluation**

### **19. Quarterly performance reports completed by the agency in FY 2019-20.**

### **20. Performance reports presented to the agency's board of directors in FY 2018-20, if different from the reports in Attachment 16.**

- The PUCT has no additional reports other than those referenced in Attachment 19.

**Self-Evaluation Report**

**21. Performance reports submitted to the Legislative Budget Board from FY 2018-20.**

**22. Any recent studies on the agency or any of its functions conducted by outside management consultants or academic institutions.**

- N/A

**23. Agency's current internal audit plan.**

**24. Agency's current strategic plan.**

- 2019-2023 Strategic Plan

**25. List of internal audit reports from FY 2016-20 completed by or in progress at the agency.**

**26. List of State Auditor reports from FY 2016-20 that relate to the agency or any of its functions.**

- Report 16-033, An Audit Report on Financial Processes at the Public Utility Commission of Texas
- Report 17-023, A Report on the Delegation of Authority to State Entities to Contract for External Audit Services
- Report 18-023, A Report on Activities Related to State Agencies' and Higher Education Institutions' Delegated Audit Authority
- Report 19-034, An Audit Report on Complaint Processing at the Public Utility Commission of Texas
- Report 19-027, A Report on the Implementation Status of Prior State Auditor's Office Recommendations

**27. Any customer service surveys conducted by or for your agency in FY 2019-20.**

- N/A

**Self-Evaluation Report**

**28. Any reports created under Texas Government Code, Section 2110.007 regarding the usefulness and costs of the agency's advisory committees.**

- N/A

**29. A description of the agency's review of existing rules as required by Texas Government Code, Section 2001.039, and for the last eight years, a brief description of the rules reviewed by date and the result the review.**

**30. List of PUCT communications regarding Winter Storm Uri.**

**31. PUCT implementation schedule for Winter Storm Uri-related legislation enacted by the 83<sup>rd</sup> Legislature**

**Exhibits Required for SER**

**1. Exhibit 3–Key Datasets**

**2. Exhibit 17.–Evaluation of Agency Reporting Requirements**

- All other required Exhibits are included in the body of the PUCT's SER.

## ISSUE 3

### PUC Needs Additional Resources and Attention Focused on Its Water and Wastewater Regulation to Avoid Overburdening Utilities and Their Customers.

#### Background

When the Legislature created the Public Utility Commission of Texas (PUC) in 1975, the agency was given regulatory authority over water and wastewater utilities.<sup>1</sup> In 1985, the Legislature transferred jurisdiction over water and wastewater utilities to the Texas Water Commission, which was later consolidated into the Texas Commission on Environmental Quality (TCEQ).<sup>2</sup>

In 2013, the Legislature transferred the economic regulation of water and wastewater from TCEQ to PUC.<sup>3</sup> As described in the accompanying table, the Legislature transferred regulation over retail and wholesale utility rates, certificates of convenience and necessity (CCN), and other related functions and services to PUC effective September 1, 2014. TCEQ retained authority over environmental and water quality issues of public water and wastewater systems. Both PUC and TCEQ have authority to appoint temporary managers for troubled water utilities and to refer utilities to the Office of the Attorney General for receivership.

**PUC and TCEQ Authority Over Water and Wastewater Utilities**

PUC	TCEQ
Oversees and regulates the economic aspects of retail and wholesale water and wastewater rates, including temporary rates, emergency increases, and appeals	Oversees and regulates the environmental aspects of water and wastewater systems, including ensuring systems meet federal and state water quality standards, issuing wastewater permits, and registering public water systems
Issues CCNs, which allow a utility to operate within a defined service area, and approves sales, transfers, and mergers of these utilities	Establishes water and wastewater system design criteria, and ensures compliance
Ensures utilities have certain financial, managerial, and technical capabilities	Collects the regulatory assessment fee levied on certain water and wastewater utilities
Provides consumer assistance and receives and investigates complaints regarding certain utilities' water and wastewater rates and services	Provides consumer assistance and receives and investigates complaints regarding systems' water quality and wastewater system and discharge concerns
Joint Authority	
Appoints a temporary manager to a troubled utility or refers the utility for receivership	
May compel utilities to provide adequate service	
May compel emergency interconnections	

As part of the transfer, the Legislature also created three classes of investor-owned water and wastewater utilities based on the number of connections they serve to better tailor regulatory requirements to different sized utilities, which the Legislature further refined in 2019 by creating a fourth class.<sup>4</sup> The table on the following page summarizes the current number of water and wastewater utilities in the state. Even



though statute generally defines a water “utility” very narrowly to refer to an investor-owned water or wastewater utility, this issue uses the term broadly to include any entity that provides water, wastewater, or both services to retail customers.<sup>5</sup>

#### Number of Water and Wastewater Utilities Statewide by Type

Utility Type	Water Only	Wastewater Only	Water and Wastewater	Total Customers Served
Class A Investor-Owned Utility (10,000+ connections)	1	0	6	182,963
Class B Investor-Owned Utility (2,300-9,999 connections)	5	0	7	43,889
Class C Investor-Owned Utility (500-2,299 connections)	24	0	13	30,645
Class D Investor-Owned Utility (<500 connections)	404	37	56	33,592
Municipally Owned Utility	460	40	490	8,219,784
Water and/or Sewer District	816	36	108	1,560,285
Water Supply Corporation	696	11	51	672,999

PUC’s primary jurisdiction is over investor-owned water and wastewater utilities but, as explained in Appendix G, the agency has varying levels of authority over other types of utilities, including water and sewer districts and water supply corporations. In fiscal year 2021, PUC completed 69 water-related rate reviews and 79 CCN applications.

To fund PUC’s water and wastewater regulatory activities, the Legislature appropriates the agency funds from general revenue and the General Revenue Dedicated Water Resource Management Account.<sup>6</sup> In fiscal year 2021, PUC received \$2.8 million from the Water Resource Management Account. A portion of the account comes from a regulatory assessment fee statute imposes on certain water and wastewater utilities to support state agencies with duties related to water and wastewater utility regulation.<sup>7</sup> The account also includes other fees TCEQ collects, such as application fees, public health service fees, and waste treatment inspection fees. Utilities collect the regulatory assessment fee from their retail customers and TCEQ collects it from the utilities.<sup>8</sup> The *Regulatory Assessment Fee* table summarizes the fee and total revenue TCEQ collected from each utility type in calendar year 2021. Unlike electric utilities and other entities PUC regulates, water and wastewater utilities do not pay the gross receipts assessment described in the textbox on the following page.<sup>9</sup>

#### Regulatory Assessment Fee

Type of Water and Wastewater Utility	Assessment Fee	Revenue CY 2021
Investor-Owned Utility	1%	\$2,915,117
Water Supply Corporation	0.5%	\$2,501,730
District	0.5%	\$6,675,536
Affected County	1%	\$85,425
Municipally Owned Utility	N/A	\$0
Other Counties	N/A	\$0
<b>Total</b>		<b>\$12,177,808</b>

### Gross Receipts Assessment

Statute imposes a gross receipts assessment on each public utility, retail electric provider, and electric cooperative under PUC jurisdiction that serves the ultimate customer, including each interexchange telecommunications carrier. Statute sets the assessment at a rate of one-sixth of 1 percent of gross receipts from the sale of electric and telecommunications services to Texas customers. This assessment, which the Comptroller of Public Accounts collects and deposits into the General Revenue Fund, totaled \$55.4 million in fiscal year 2021.

## Findings

Through its recent reviews of TCEQ, the Texas Water Development Board, and the Texas State Soil and Water Conservation Board, Sunset staff has observed how water oversight, regulation, and funding present numerous challenges for the state. Water and wastewater infrastructure is aging, system needs vastly outweigh available state and federal funding, and the burden of maintaining the systems often falls to small, unsophisticated water utilities and other entities. Sunset staff has identified and attempted to address issues with the way these agencies manage their water-related responsibilities but repeatedly found many of these issues relate to more significant policy decisions that do not lend themselves to objective analysis.

Water regulation presents numerous challenges for the state.

Unsurprisingly, the Sunset review of PUC revealed similar challenges, as the agency navigates a regulatory system the Legislature designed to ensure rates, operations, and services are “just and reasonable” to both retail public utilities and their customers.<sup>10</sup> PUC identified a number of changes in its Self-Evaluation Report, which it is statutorily required to submit to Sunset in preparation for the review, that could streamline water and wastewater rate regulation and promote the Legislature’s stated preference for consolidation and regionalization.<sup>11</sup> However, Sunset staff found many of these changes would entail numerous sensitive policy considerations not appropriate for a Sunset staff review. Instead, Sunset staff focused its review on the most significant challenge facing PUC — being under-resourced for the critical functions it performs, which has also affected the agency’s ability to take the time to step back and ensure its own processes are not creating unnecessary problems for its staff and utilities.

### **PUC remains the appropriate agency to regulate water and wastewater utility rates and services but lacks the resources to do so efficiently.**

As the first Sunset review of PUC since the transfer from TCEQ, Sunset staff planned to evaluate whether the transfer had achieved the anticipated benefits, including standardizing electric and water utility rate regulation for more efficient regulation and improved complaint resolution. However, Sunset staff found a lack of data made determining whether the regulation is better suited at PUC or TCEQ infeasible. As discussed later in this issue, PUC lacks the data necessary to fully analyze and evaluate its performance, such as application processing timelines. However, even if PUC had such information available,

November 2022

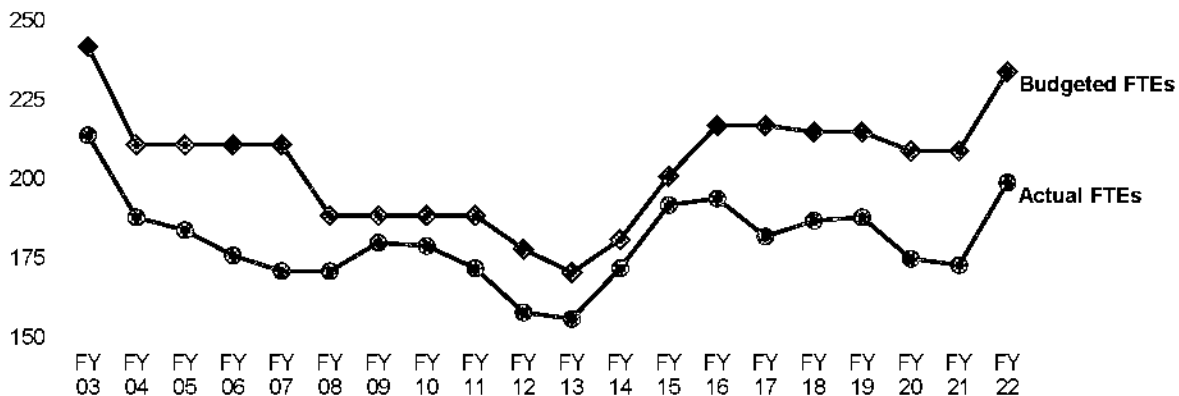
Sunset staff lacked historical data to compare TCEQ's performance to PUC's. The Legislature has also made changes to PUC's ratemaking function since the transfer, making a direct comparison difficult.

The state benefits from PUC's considerable ratemaking expertise.

Despite these challenges, Sunset staff ultimately concluded another transfer would be unnecessarily disruptive to water and wastewater utilities, TCEQ, and especially PUC, which is working on significant changes to electric regulation following Winter Storm Uri. Further, the Sunset review of TCEQ earlier this year identified problems that will need attention. Transferring rate regulation back to TCEQ would likely distract the agency from making those improvements and from its broader environmental mission, which was one of the initial reasons for the transfer — to keep TCEQ focused on its primary environmental protection mission. The state has also benefitted from PUC's considerable ratemaking expertise as the agency has recommended statutory changes to improve regulation, such as allowing streamlined alternative ratemaking processes, which the Legislature authorized in 2019.<sup>12</sup> Additionally, when reviewing state agencies, Sunset staff often looks at other states' organizational structures and found of the 45 states that regulate water rates, only Connecticut combines economic and environmental regulation of water. Finally, although Sunset staff found PUC needs to improve its data collection and analysis and provide better guidance to water and wastewater utilities, the review did not identify problems significant enough to warrant a transfer back to TCEQ.

While PUC remains the appropriate agency to regulate water and wastewater rates and services, it has never been fully resourced to do so efficiently. PUC initially received 20 staff and \$1.4 million per fiscal year as part of the transfer, but these resources followed a decade of reduction in staff, as shown in the chart below. Like many agencies, PUC's staff level declined due to state budget cuts and even though the agency's authorized and actual staffing has increased slightly since taking over water and wastewater rate regulation, it still has fewer staff than it did 20 years ago, despite regulating an additional industry.

**PUC Has Fewer Staff Now Than 20 Years Ago**

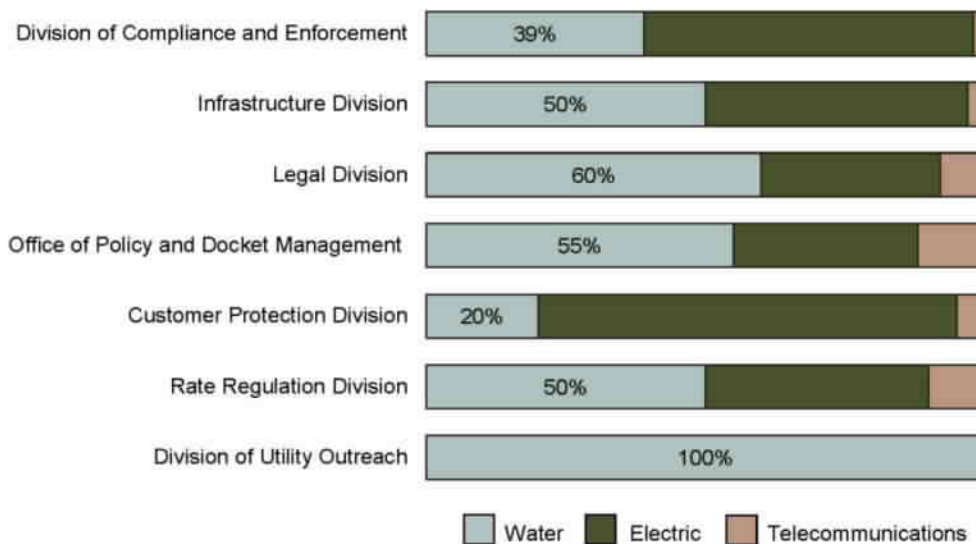




Although much attention is rightfully focused on PUC's regulation of the electric industry following Winter Storm Uri, its water regulation is just as important, as access to reliable, affordable water is vital to the wellbeing of every Texan. However, PUC's staff and associated funding levels do not cover the cost of regulation, as the agency spends a disproportionate amount of time on water and wastewater regulation compared to its funding. PUC estimates the agency spends approximately 60 percent of its time on average on water and wastewater regulation, as depicted in accompanying chart.<sup>13</sup> PUC has eight full-time equivalent staff dedicated to working exclusively on water and wastewater, but at least 105 spend some time on the regulation. However, in fiscal year 2021, PUC received \$2.8 million from the Water Resource Management Account, meaning only about 17 percent of the agency's funding was dedicated to water and wastewater regulation. Recognizing its unmet needs, PUC's exceptional item requests in its 2024-25 Legislative Appropriations Request include approximately \$3.5 million for the biennium to help cover the agency's water-related activities.<sup>14</sup>

PUC estimates it spends 60% of its time on water regulation.

#### Water Regulation Consumes PUC's Time



#### PUC needs to improve its data management and regulatory processes to maximize its already limited resources and ensure it best serves water and wastewater utilities.

The 2011 Sunset review of PUC highlighted how the agency's established ratemaking and CCN processes would benefit the increasingly larger, more sophisticated water and wastewater utilities. While true, many rural areas of the state are still served by small utilities, which have found PUC's regulatory processes difficult to navigate, and this review identified key areas of concern PUC needs to address to ensure more efficient regulation.

- **Limited data collection and use.** As previously mentioned, PUC lacks comprehensive data Sunset staff could use to evaluate how well the agency

### Utilities Struggle with Regulatory Delays

- Statute requires PUC to grant a landowner petition for a streamlined expedited release from a CCN within 60 days of the petition's filing, but in one case PUC failed to grant the petition for 240 days.
- In a wastewater CCN amendment case that lasted 629 days, PUC staff twice did not meet the deadlines established by an internal administrative law judge and failed to request an extension, requiring the utility to write a letter to PUC to get the case moving.
- In an appeal of a special utility district's rate change that lasted 977 days, PUC approved nearly \$410,000 in rate case expenses.

is regulating water and wastewater rates and services. Issue 4 discusses how this lack of data is not only a problem with PUC's water regulation but across the agency. Throughout the review, water and wastewater utilities and stakeholders expressed frustration with PUC's lengthy and difficult regulatory processes, as highlighted in the accompanying textbox.<sup>15</sup> While PUC indicated these cases are outliers, the agency does not collect the data to prove these are highly unique situations. Delays can keep utilities from recovering costs for necessary infrastructure upgrades in a timely manner and increase their legal fees, which ultimately harms retail customers since statute and PUC rule authorize utilities to recover reasonable and necessary rate case and other legal expenses from their ratepayers.<sup>16</sup> Undoubtedly, some delays may be attributed to the resource constraints noted above, incomplete applications utilities submit, or other issues outside PUC's control. However, without proper data or analysis, the agency cannot definitively identify whether delays or other challenges are occurring

and the reasons for them, or make improvements to better allocate resources. Instead, staff generally rely on institutional memory to identify problems. For example, staff anecdotally report the mapping requirements in a water utility's CCN application that determine the service boundaries present challenges for both staff and the utilities, but PUC has never analyzed that phase of the process to know how long it takes, whether the timeline has changed over time, or if delays occur with certain types or classes of utilities.

- **Insufficient direction and assistance.** Meeting statutory requirements that rates be "just and reasonable" to provide continuous and adequate water and wastewater service often requires significant effort by agency staff, as many small utilities lack the sophistication or resources to provide what PUC considers even the most minimal information. Although PUC has made strides to assist water and wastewater utilities, as described in the textbox on the following page, the agency needs to do more to ensure these utilities, especially small ones, understand and comply with the current rules.<sup>17</sup> Without clear rules and guidance, processes take longer, resulting in additional burdens on PUC staff and increased costs for utilities and their customers.

PUC's water rules need updating.

Unclear rules. In recent months, the commissioners have noted some of the agency's water rules need updating to provide more clarity for utilities. For example, during a June 2022 meeting, one commissioner commented that PUC has not yet addressed in rule whether a reconciliation review of temporary rates should be completed before a sale, transfer, or merger is finalized.<sup>18</sup> Additionally, during a September 2022 meeting, the commission noted its rule regarding petitions for rate reviews needs clarification to align it with PUC's expectations.<sup>19</sup> Although the commission has been appropriately focused on other rule changes in response to legislative



directives following Winter Storm Uri, these types of issues would typically be addressed as part of the agency's standard four-year rule review process. However, as discussed in Issue 5, PUC routinely just readopts the entire rule chapter without making any changes, as it did in 2019 with its first review of water and wastewater rules since the transfer.<sup>20</sup>

**Limited guidance materials.** PUC recognizes the smallest utilities often lack the resources and capabilities to adequately comply with its regulatory processes, and although it has taken some steps to help these utilities, the agency could do more to provide better guidance on the front end to ensure it gets what it needs early in the process to limit delays. For example, PUC does not provide easy-to-understand materials for utilities to know what to expect during a typical CCN amendment or rate change process. PUC also has not developed a separate, comprehensive rate adjustment application for Class D utilities, which currently must complete the same lengthy application as the larger Class C utilities if not applying for the standard 5 percent rate increase. While PUC regards this application as the bare minimum needed to justify a rate increase, it does not provide easy-to-follow instructions, frequently asked questions, or tips to help small utilities complete the application. Sunset staff continually heard concerns from smaller utilities that the application process is overly complex and burdensome. Additionally, PUC does not provide clear guidance regarding the timing and process for utilities that need to submit applications to both PUC and TCEQ, which can lead to confusion and delays, and can pose an unnecessary risk to utilities trying to finalize a sale, transfer, or merger. While PUC retains a contractor that provides financial planning, managerial, and technical assistance to utilities, including help filing applications, this does not negate the need for PUC to do everything it can to ensure its documents, instructions, and other guidance are clear and comprehensive.

**Inconsistent communication of decisions.** As discussed further in Issue 4, PUC does not have a method to clearly and consistently communicate with regulated entities when the commission makes a decision that sets precedent as to how it will interpret the law. Similarly, PUC lacks a mechanism for widely sharing commissioner directives that may lengthen the application process or reflect shifting commission expectations of water and wastewater utilities. For example, in 2019 the commission requested staff ensure future CCN applications contain some specific information they believed was necessary to determine the actual need for the CCN.<sup>21</sup>

## PUC Efforts to Help Water Utilities

### 2019

- Creates the Division of Utility Outreach (DUO) to provide outreach and education to water and wastewater utilities to help them understand and comply with agency statutes and rules. The division also retains a contractor that provides managerial and technical assistance to utilities. DUO held one in-person training workshop in 2019 on retail rate setting, CCNs, customer complaints, and cybersecurity.

### 2020

- Establishes FaucetFacts, DUO's dedicated website for communicating with and providing information to water and wastewater utilities. DUO held two virtual training workshops in 2020.
- Implements a simplified process that allows Class D utilities to apply for a flat 5 percent rate increase each year instead of going through the more complex comprehensive rate case process.

PUC must ensure its instructions and guidance are clear and comprehensive.

While the largest water and wastewater utilities have the resources to keep up with the commission's decisions and direction, the same is not true for small water and wastewater utilities. Although PUC's Division of Utility Outreach periodically meets with trade associations or emails important information about commission decisions to them, as the regulator, PUC should consistently communicate these types of changes to ensure utilities can adequately comply with the agency's expectations.

### **PUC's and TCEQ's differing interpretations of the appointment terms for temporary managers cause inefficiencies.**

As a result of the transfer, both PUC and TCEQ have authority to appoint a temporary manager to operate a water and wastewater utility if the utility is abandoned, has been referred to the Office of the Attorney General for the appointment of a receiver, or is a smaller utility in violation of certain water or wastewater system requirements.<sup>22</sup> The agencies have a memorandum of understanding in which they agree to consult with each other on a case-by-case basis to determine which agency will take the lead and which agency will have a supporting role in each area of joint jurisdiction, including temporary managers.

PUC and TCEQ have different statutory interpretations regarding the length of time a temporary manager may be appointed. TCEQ believes an appointment may only be made by emergency order for up to two 180-day terms, or about 12 months, while PUC interprets statute to allow it to also appoint a temporary manager by a regular order, with no time limit. Since a temporary manager appointment typically lasts between 17 and 24 months, the differing interpretations sometimes result in PUC taking over the appointment from TCEQ after 360 days to ensure the utility's customers continue receiving service,

**Temporary Manager  
Appointments PUC Took  
Over From TCEQ**

FY 2019	2 utilities (2 systems)
FY 2020	4 utilities (5 systems)
FY 2021	4 utilities (4 systems)
FY 2022	5 utilities (10 systems)

avoiding the need for the utility to be referred to the Office of the Attorney General for receivership, which can last a decade or more. According to PUC, it took over temporary manager appointments from TCEQ 15 times in the last four fiscal years, as shown in the accompanying table. This inefficient and unnecessary process further strains PUC's limited resources since PUC must coordinate with the temporary manager, draft its own order appointing the manager, hold a preliminary hearing on the appointment, and finally approve the appointment in an open meeting.

## Sunset Staff Recommendations

### *Change in Appropriation*

#### **3.1 The House Appropriations and Senate Finance committees should consider increasing PUC's appropriation to ensure it can recover its costs to regulate water and wastewater utilities efficiently.**

This recommendation would express the will of the Sunset Commission that the Legislature consider appropriating additional funding to PUC to adequately staff water and wastewater regulatory duties, consistent with the agency's 2024-25 Legislative Appropriations Request. To accomplish this goal, the committees could consider the following:

- Consider increasing PUC's appropriation from the Water Resource Management Account to cover the agency's actual costs of its water regulation. This account has not been fully appropriated and according to TCEQ, had an available balance of \$53 million at the end of fiscal year 2021.<sup>23</sup> Increasing this appropriation to PUC would not affect TCEQ's appropriation from the account.
- Consider increasing the amount of general revenue PUC receives to fully cover its actual costs of regulating water utilities.
- Consider using a method of finance swap similar to PUC's suggestion in its Legislative Appropriations Request to the 88th Legislature to have some or all water utilities pay the gross receipts assessment instead of the regulatory assessment fee. Depending on the Legislature's approach, this could result in a revenue loss to the state since the gross receipts assessment is currently lower than the regulatory assessment fee.

### *Change in Statute*

#### **3.2 Amend statute to extend the length of an emergency temporary manager appointment.**

To align statute with realistic needs of troubled water utilities and PUC's and TCEQ's current practices, this recommendation would extend the term of an emergency temporary manager appointment from 180 days to 360 days, with the option for one renewal. This would allow for circumstances when an emergency appointment is needed for more than the current 360 day limit. This recommendation would also allow the appointment to be extended further if the utility is in the process of going through a sale, transfer, or merger at PUC.

### *Management Action*

#### **3.3 Direct PUC to comprehensively review its water and wastewater rules, processes, and guidance documents to identify and address areas for improvement.**

Given the complexities of ratemaking and other water-related statutes PUC enforces, this recommendation would direct PUC to conduct a comprehensive review, with stakeholder input, of its water and wastewater regulations. As part of this recommendation, PUC should create a work group or use a series of workshops, similar to those it has conducted for electric industry projects, to solicit input from a diverse group of stakeholders, including all types and classes of water and wastewater utilities; stakeholder groups, such as the Texas Rural Water Association, Texas Association of Water Companies, and Texas Water Conservation Association; consumer advocates; and other state agencies, as appropriate. The goal of this review would be to identify needed updates, efficiencies for the agency and utilities, and ways to reduce the regulatory burden on small utilities. At a minimum, the agency and stakeholders should:



- Identify rules in need of clarification or updating to reflect the agency's and utilities' experiences and commission expectations.
- Discuss perceived and actual procedural bottlenecks that cause delays in PUC's processes and consider options to address them.
- Identify and consider any opportunities for streamlining PUC's processes and the potential impacts on various utility types and classes.
- Identify additional guidance documents or other materials that could help utilities comply with agency statute, rules, and processes.
- Identify any challenges utilities face in coordinating applications or other areas of regulatory overlap between PUC and TCEQ, and consider options to address those challenges.
- Identify any statutory barriers to improvements in PUC's water and wastewater regulation. PUC could include any necessary statutory recommendations in the *Biennial Agency Report* it submits to the Legislature.

As a result of this effort, PUC would have a comprehensive list of potential improvements to its rules, processes, and guidance materials and should seek to make changes as soon as practicable. PUC should also use any information gleaned from this effort to inform its plan for improving its data collection and analysis in accordance with Recommendation 4.1. For example, if the water and wastewater stakeholder discussions uncover problems that seem unique to only a certain utility class, PUC could ensure it considers how that data could be easily captured and analyzed.

## Fiscal Implication

These recommendations are designed to improve PUC's water and wastewater regulation. If the Legislature were to appropriate PUC its exceptional item request, Recommendation 3.1 would result in an annual cost of approximately \$1.7 million. However, the Legislature would determine the amount through the appropriations process. Although the recommendation for PUC to review its water and wastewater rules, processes, and guidance documents should improve efficiency in the long term, given the agency's resource constraints, additional funding may not cover the costs associated with implementing the recommendation. However, the exact fiscal impact cannot be estimated at this time.

- <sup>1</sup> Chapter 721 (HB 819), Acts of the 64th Legislature, Regular Session, 1975.
- <sup>2</sup> Chapter 795 (SB 249), Acts of the 69th Legislature, Regular Session, 1985.
- <sup>3</sup> Chapter 170 (ITB 1600), Acts of the 83rd Legislature, Regular Session, 2013.
- <sup>4</sup> ITB 1600, 2013; Chapter 967 (SB 700), Acts of the 86th Legislature, Regular Session, 2019; All citations to Texas statutes are as they appear on <http://www.statutes.legis.texas.gov/>. Section 13.002 (4 a through 4 d), Texas Water Code.
- <sup>5</sup> Section 13.002(23), Texas Water Code.
- <sup>6</sup> When the Legislature created the Public Utility Commission of Texas (PUC), statute imposed a gross receipts assessment on electric, telecommunications, and water utilities to defray the costs of regulation. When regulation over water and wastewater utilities was transferred to the Texas Water Commission, water and wastewater utilities no longer paid this assessment as they were no longer under PUC's jurisdiction. When water regulation was transferred back to PUC in 2014, water utilities were again not required to pay the gross receipts assessment.
- <sup>7</sup> Section 5.701(n), Texas Water Code.
- <sup>8</sup> Ibid.
- <sup>9</sup> Section 16.001, Texas Utilities Code; Texas Comptroller of Public Accounts, State Revenue and Expenditure Dashboard, "Comptroller Object 3230 – Public Utility Gross Receipts Assessment", 2021, accessed online October 25, 2022, [https://bivisual.cpa.texas.gov/CPA/opendocnotoolbar.htm?document=documents%5CCTR\\_Master\\_UL.qvw](https://bivisual.cpa.texas.gov/CPA/opendocnotoolbar.htm?document=documents%5CCTR_Master_UL.qvw).
- <sup>10</sup> Section 13.001(c), Texas Water Code.
- <sup>11</sup> Sections 13.182(d), 13.241(d), 13.245(c 4)(2)(b), and 26.081, Texas Water Code.
- <sup>12</sup> PUC, *Agency Strategic Plan for the Fiscal Years 2019 to 2023*, p. 15, accessed online October 26, 2022, [https://puc.texas.gov/agency/resources/reports/stratplan/strategic\\_plan\\_2018.pdf](https://puc.texas.gov/agency/resources/reports/stratplan/strategic_plan_2018.pdf); SB 700, 2019.
- <sup>13</sup> PUC, "Administrator's Statement", *Legislative Appropriations Request for Fiscal Years 2024 and 2025*, August 5, 2022, p. 2, accessed online November 11, 2022, <https://www.puc.texas.gov/agency/resources/reports/approp/legappreq24-25.pdf>.
- <sup>14</sup> Ibid.
- <sup>15</sup> Section 13.2541(c), Texas Water Code; PUC, "Petition of 2021 FTI Walnut Springs, I.L.C. to Amend Springs Hill Water Supply Corporation's Certificate of Convenience and Necessity in Guadalupe County by Streamlined Expedited Release," Docket Number 53201, accessed online October 26, 2022, <https://interchange.puc.texas.gov/search/filings/?UtilityType=A&ControlNumber=53201&ItemMatch=Equal&DocumentType=AIL&SortOrder=Ascending>; PUC, Application of Monarch Utilities I.L.P. to Amend its Sewer Certificate of Convenience and Necessity in Chambers County, Docket Number 51578, accessed online October 26, 2022, <https://interchange.puc.texas.gov/search/filings/?UtilityType=A&ControlNumber=51578&ItemMatch=Equal&DocumentType=AIL&SortOrder=Ascending>; PUC, "Ratepayers Appeal of the Decision by Bear Creek Special Utility District to Change Rates", Docket Number 49351, accessed online October 26, 2022, <https://interchange.puc.texas.gov/search/filings/?UtilityType=A&ControlNumber=49351&ItemMatch=Equal&DocumentType=AIL&SortOrder=Ascending>.
- <sup>16</sup> 16 Texas Administrative Code, Part 2, Chapter 24, Subchapter B, Section 24.44 (2019)(PUC, *Rate case Expenses*); 16 T.A.C., Part 2, Chapter 24, Subchapter D, Section 24.101(e)(1) (2018)(PUC, *Appeal of Rate making Decision, Pursuant to the Texas Water Code Section 13.043*); Sections 13.043(e), 13.084, and 13.183, Texas Water Code.
- <sup>17</sup> PUC, *Self-Evaluation Report*, September 2021, p.169; 16 T.A.C., Part 2, Chapter 24, Subchapter B, Section 24.49 (2020)(PUC, *Application for a Rate Adjustment by a Class D Utility Under Texas Water Code §13.1872*).
- <sup>18</sup> PUC, open meeting on Docket Number 52341, June 16, 2022, archival video, time stamp 0:05:00, accessed online October 26, 2022, [https://www.adminmonitor.com/tx/puct/open\\_meeting/20220616/](https://www.adminmonitor.com/tx/puct/open_meeting/20220616/); PUC, Commissioner McAdams Memo, Docket Number 52341 Item Number 38 (June 15, 2022), accessed online October 26, 2022, [https://interchange.puc.texas.gov/Documents/52341\\_38\\_1224108.PDF](https://interchange.puc.texas.gov/Documents/52341_38_1224108.PDF).
- <sup>19</sup> PUC, open meeting on Docket Number 53063, September 15, 2022, archival video, time stamp 0:09:40, accessed online October 26, 2022, [https://www.adminmonitor.com/tx/puct/open\\_meeting/20220915/](https://www.adminmonitor.com/tx/puct/open_meeting/20220915/).
- <sup>20</sup> PUC, Adopted Rule Review, 44 *Texas Register*, p.2,622 (2019).
- <sup>21</sup> PUC, "Order Requiring Additional Information Regarding the Need for Service," Docket Number 48746 Item Number 17 (August 29, 2019), accessed online November 10, 2022, [https://interchange.puc.texas.gov/Documents/48746\\_17\\_1031813.PDF](https://interchange.puc.texas.gov/Documents/48746_17_1031813.PDF).
- <sup>22</sup> Section 13.4132, Texas Water Code.
- <sup>23</sup> Texas Commission on Environmental Quality, *Annual Financial Report Fiscal Year Ended August 31, 2021*, p. 20, accessed online November 11, 2022, [https://www.tceq.texas.gov/downloads/agency/administrative/legislatively\\_mandated\\_reports/sfr\\_045\\_21.pdf](https://www.tceq.texas.gov/downloads/agency/administrative/legislatively_mandated_reports/sfr_045_21.pdf).



## **BILL ANALYSIS**

H.B. 2373  
By: Harris, Cody  
Natural Resources  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

In its self-evaluation report submitted to the Sunset Advisory Commission, the Public Utility Commission of Texas (PUC) listed "allow consolidation of multiple systems under one tariff" as one of its major issues in the regulation of water. According to the PUC, there is currently too much confusion for customers surrounding the determination of which part of a tariff applies to them. H.B. 2373 seeks to allow water and wastewater utilities to be treated more like electric utilities for rate-setting purposes and encourage regionalization and consolidation by removing certain conditions on the authority of a water or wastewater utility to consolidate more than one system under a single tariff. This change would also eliminate staff processing time required to produce multiple rates for one utility with several systems and would eliminate testimony and rate case expenses.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 2373 repeals Section 13.145, Water Code, which conditions a water or wastewater utility's authority to consolidate more than one system under a single tariff on the systems being substantially similar in terms of facilities, quality of service, and cost of service and on the tariff providing for rates that promote water conservation for single-family residences and landscape irrigation.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

## **BILL ANALYSIS**

Senate Research Center  
88R8542 JXC-D

H.B. 2373  
By: Harris, Cody (Nichols)  
Water, Agriculture & Rural Affairs  
5/5/2023  
Engrossed

## **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

In its self-evaluation report to the Sunset Advisory Commission, the Public Utility Commission (PUC) identified improvements to statute to facilitate consolidation of water systems under a single tariff as an issue meriting of consideration by the legislature. Currently, Section 13.145, Water Code, requires that in order to approve such a consolidation, the PUC must find that the systems under the tariff are "substantially similar." In practice, this requirement precludes most water utilities from consolidating systems within a tariff. The PUC noted in its report that "[eliminating] the substantial similarity determination to allow a utility to charge one rate to customers across all its water systems or sewer systems [would] eliminate confusion customers have when determining which part of a tariff applies to them. It would also treat water more like electric rate setting and encourage regionalization and consolidation. In addition, it would eliminate staff processing time required to produce multiple rates for one utility with several systems and would, in turn, eliminate testimony and rate case expenses." H.B. 2373 repeals the substantial similarity requirement found in Section 13.145, Water Code, in order to streamline ratemaking and facilitate regionalization and improvements to investor-owned water systems.

H.B. 2373 amends current law relating to the authority of a water or sewer utility to consolidate more than one system under a single tariff.

## **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Repealer: Section 13.145 (Multiple Systems Consolidated Under Tariff), Water Code.

SECTION 2. Effective date: upon passage or September 1, 2023.

STATE OF MISSOURI  
COUNTY OF ST. LOUIS

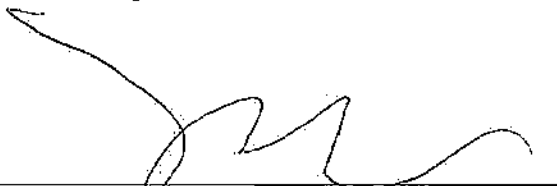
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**AFFIDAVIT OF JOSIAH COX**

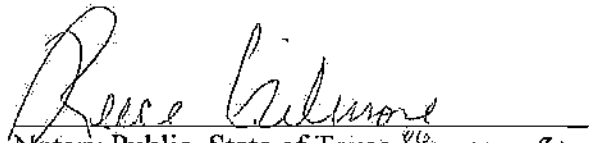
BEFORE ME, the undersigned authority, on this day personally appeared Josiah Cox, who having been placed under oath by me did depose as follows:

1. "My name is Josiah Cox. I am of sound mind and capable of making this affidavit. The facts stated herein are true and correct based on my personal knowledge. My current position is President/Manager of CSWR-Texas Utility Operating Company, LLC.
2. I have prepared the foregoing rebuttal testimony and the information contained in this document is true and correct to the best of my knowledge."

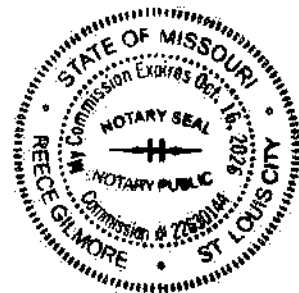
Further affiant sayeth not.

  
\_\_\_\_\_  
Josiah Cox

SUBSCRIBED AND SWORN TO BEFORE ME by the Josiah Cox on this 24th day of August, 2023.

  
\_\_\_\_\_  
Notary Public, State of Texas - <sup>Mo</sup>Missouri

My commission expires: OCT 16, 2026



The following files are not convertible:

JC-R-2.xlsx	54565 Cox Rebuttal Testimony Exhibit
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