

SUNSET ADVISORY COMMISSION

STAFF REPORT

Public Utility Commission of Texas Electric Reliability Council of Texas Office of Public Utility Counsel

2022-23
88TH LEGISLATURE



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Cover photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the south facade of the Capitol. Photo Credit: Janet Wood

PUBLIC UTILITY COMMISSION OF TEXAS

**ELECTRIC RELIABILITY COUNCIL
OF TEXAS**

OFFICE OF PUBLIC UTILITY COUNSEL

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HOW TO READ SUNSET REPORTS

For each agency that undergoes a Sunset review, the Sunset Advisory Commission publishes three versions of its staff report on the agency. These three versions of the staff report result from the three stages of the Sunset process, explained in more detail at sunset.texas.gov/how-sunset-works. The current version of the Sunset staff report on this agency is noted below and can be found on the Sunset website at sunset.texas.gov.

CURRENT VERSION: Sunset Staff Report

The first version of the report, the Sunset Staff Report, contains Sunset staff's recommendations to the Sunset Commission on the need for, performance of, and improvements to the agency under review.

Sunset Staff Report with Commission Decisions

The second version of the report, the Sunset Staff Report with Commission Decisions, contains the original staff report as well as the commission's decisions on which statutory recommendations to propose to the Legislature and which management recommendations the agency should implement.

Sunset Staff Report with Final Results

The third and final version of the report, the Sunset Staff Report with Final Results, contains the original staff report, the Sunset Commission's decisions, and the Legislature's final actions on the proposed statutory recommendations.

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SUMMARY OF SUNSET STAFF REPORT

In February 2021, Winter Storm Uri exposed unacceptable vulnerabilities in the state's electric grid. Critical electric and water utilities failed, almost 11 million Texas homes and businesses lost power or water for days, and tragically, more than 200 people died. The impact of the storm on the Public Utility Commission of Texas (PUC) and the Electric Reliability Council of Texas (ERCOT) cannot be overstated. In response to the disaster, the Legislature took swift action, completely overhauling PUC's and ERCOT's governance structures and making numerous changes to the electric industry and market designed to prepare for, prevent, and respond to extreme weather and generally enhance the electric grid's reliability. To keep a close watch on the implementation of these significant changes and identify other needed changes to their operations, the Legislature also moved up the Sunset date for these entities, as well as the Office of Public Utility Counsel (OPUC), two years to 2023. Ultimately, evaluating the final outcomes and benefits of ongoing changes — and others sure to come in the upcoming 88th Legislative Session — is a task for the future.

PUC is woefully under-resourced given its critical responsibilities and work that still lies ahead.

Public Utility Commission of Texas

Following deregulation of major portions of the electric market in 1999 up until Winter Storm Uri, Texas' "energy-only" electric market was operating as designed, with lucrative competition keeping electricity prices low. The various market participants — generation companies, utilities, retail electric providers, and others — knew how to navigate the dynamics of the competitive market environment and, to a large extent, PUC and the state relied on them and ERCOT to make sure the grid and market were functioning well. In 2011, an unusually strong winter storm that resulted in blackouts signaled potential underlying problems, but state electric policy remained largely unchanged and business as usual continued. With others generally managing the grid, PUC never had cause to take a step back and consider how things were working, how it might improve operations, or what funding and staff may be needed to do so. In fact, PUC was dealing with budget cuts during this time like most other state agencies.

In 2021, Winter Storm Uri completely changed this dynamic. Needing to respond quickly to this disaster, the Legislature not only overhauled PUC's governance structure but made it clear the agency would be a more active overseer of ERCOT and the market participants, who would no longer be left to their own devices. However, PUC was ill-prepared for the task. Having been under-resourced for more than a decade and struggling to retain institutional knowledge, the agency was now responsible for implementing significant changes to improve the grid's reliability while simultaneously adapting to its new commission structure, navigating a new relationship with ERCOT (that

was also undergoing significant changes discussed below), and managing multiple legal battles. All of this while still conducting its day-to-day regulatory operations for more than just electric utilities.

To say this environment made Sunset staff's review challenging is an understatement. When Sunset staff began its work just 11 months after the legislative reforms, everything was still in flux — PUC's Wholesale Electric Market Design effort was still underway; the agency had just established a new division to focus on its numerous rulemakings, many in various stages of adoption; and agency staff was still figuring out how to adjust its processes to account for four new, very engaged full-time commissioners. PUC did not even have all five commissioners until halfway through Sunset's review.

The multitude of changes resulted in a lot of questions and uncertainty among members of the electric industry and general public, which translated into a lot of input to Sunset staff. However, Sunset staff could not evaluate the outcomes of many of these changes with so much still in progress. Because of the review's timing, complexities of the industries PUC oversees, and the Legislature's stated desire to weigh in further on what is and is not working so far, Sunset staff did not evaluate the electric market's design, whether Texas' utility infrastructure is adequately prepared for another extreme weather event, or otherwise get into the technical aspects of managing the electric grid and market. Additionally, the review did not attempt to make changes to PUC's ratemaking functions, which are highly complex and nuanced. Instead, the review took a holistic approach to evaluating PUC's operational needs and focused on preparing the agency for an uncertain future. Most importantly, the review found PUC is woefully under-resourced given its critical responsibilities and the work that still lies ahead. Sunset staff observed the considerable challenges associated with having fewer than 200 employees to oversee utility industries vital to the wellbeing of Texans, including a lack of needed expertise, cumbersome regulatory processes that can drive up costs to consumers, and a general inability to be more strategic and proactive, particularly in communications and data management.

Although most of the attention on PUC has rightfully been focused on the electric industry since Winter Storm Uri, another focus for Sunset staff was PUC's regulation of water and wastewater utilities because this was the first Sunset review since the Legislature transferred the regulation of rates and services from the Texas Commission on Environmental Quality (TCEQ) in 2013. Sunset staff ultimately concluded another transfer would be unnecessarily disruptive to PUC, water and wastewater utilities, and TCEQ, but identified the need for regulatory improvements.

With a new commission that has indicated the agency's business as usual approach is no longer acceptable, PUC has an opportunity to continue thinking about new, more efficient and effective ways of operating and overseeing the electric, water and wastewater, and telecommunications industries.

Electric Reliability Council of Texas

Before Winter Storm Uri, most Texans had little to no idea what ERCOT was or what functions it performed. Despite considerable attention since the storm, the review found many people still do not fully understand ERCOT's role in the electric industry, which is unsurprising given the complexity of the subject matter. ERCOT is essentially a large, sophisticated IT organization that manages the flow of electricity through the "ERCOT grid," delivering power to more than 26 million Texas customers, representing about 90 percent of the electricity consumed in the state. Like an air traffic controller, ERCOT instructs generation companies, through specialized electronic systems, to produce only enough electricity to meet current consumer demand. But even this description fails to capture the nuance that the ERCOT grid does not cover the entire state or that ERCOT does not own any power generation assets or transmission infrastructure.

Also available as part of the eCourse

[2023 Renewable Energy Law eConference](#)

First appeared as part of the conference materials for the
18th Annual Renewable Energy Law Institute session

"ERCOT Panel Discussion: Market Redesign"