

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: 08/30/2022
PUBLIC HEARING DATE: NA

CONTACT PERSON(S) NAME AND PHONE NUMBER: Nicole Ferrini, 915.212.1659

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: Goal 8 - Nurture and Promote a Healthy, Sustainable Community

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

Approve to authorize the City Manager to sign on to joint comments drafted by a group of local governments in Texas. The comments will be filed to in the Sunset Advisory Commission currently reviewing the mission and performance of the Public Utility Commission of Texas (PUC).

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

The Sunset Advisory Commission is reviewing the mission and performance of the Public Utility Commission of Texas (PUC). The Texas Sunset Act requires the Sunset Commission to periodically review PUC and recommend whether to continue the agency and change state law to improve the agency's efficiency and effectiveness. The Legislature ultimately will decide whether to continue PUC and adopt Sunset's other statutory recommendations. The Sunset Commission also may adopt management directives for PUC that do not require statutory change.

The scope of this proceeding directly affects our strategic priority to nurture and promote a healthy and sustainable community. The goal of engaging in this proceeding is to ensure that local governments priorities are considered as part of this review and as the Commission moves forward. The response comments identify key issues such local government involvement in PUCR rulings; enhanced community outreach; and inclusion of resilience in PUC's mission.

This engagement opportunity has been discussed with other Texas local governments including Dallas, El Paso, Lewisville, Mesquite, Plano, Harris County, and Travis County. The Sunset Advisory Commission needs to receive comments by the end of August 2022 in order to be able to review and incorporate those in their report.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?
No.

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?
NA

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

PRIMARY DEPARTMENT: Community and Human Development
SECONDARY DEPARTMENT: Economic Development

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD: 

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

**RESOLUTION AUTHORIZING CITY MANAGER TO SUBMIT COMMENTS TO THE
PUBLIC UTILITY COMMISSION OF TEXAS REGARDING
THE ON-GOING SUNSET REVIEW PROCESS**

WHEREAS, the Public Utility Commission of Texas (PUCT) is the agency that regulates electricity policy and rulemaking in the State of Texas; and

WHEREAS, the Sunset Advisory Commission is reviewing the mission and performance of the Public Utility Commission of Texas (PUC) and welcomes public comments; and

WHEREAS, RMI, a non-profit focused on renewable energy and climate action convened several Texas governmental institutions to promote resilience and better prepare for future events that may impact the electrical grids in the State and may result in increases in energy consumption and costs for Texans; and

WHEREAS, some of these cities and counties worked together to provide comments to the Sunset Advisory Commission about the Public Utilities Commission of Texas (PUCT) regarding how to improve its operations and services; and

WHEREAS, this opportunity could i) Provide local governments a pathway to elevate any concerns they have with how the PUCT operates or makes decisions directly to staff who will recommend changes to a legislative commission for consideration; ii) Allow local governments to suggest specific improvements to how the PUCT operates, such as to enable local governments to more easily and effectively participate in decision-making processes and in other stakeholder processes, including task forces and working groups; and iii) Give local governments the opportunity to elevate community needs to the state to be considered as potential regulatory priorities; and

WHEREAS, the comments by City of El Paso, and other Texas local governments, will focus on i) Expand public involvement in PUCT decision-making processes; ii) Improve the PUCT's governance and resources; and iii) Align the PUCT's statutory mandate with equity and resilience.

WHEREAS, the previously mentioned focus areas of the comments will help enhance communication with the PUCT; and

WHEREAS, the advancement of resilience and equity is key to reduce energy burden for lower income El Pasoans; and

WHEREAS, these comments support the work of the Regional Renewable Energy Advisory Council (RREAC) and its Strategic Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF EL PASO:

That the City of El Paso, represented by the City Manager, will sign these comments to the PUCT, substantially similar to those provided in Attachment A and produced in coordination with a cohort of Texas governmental institutions.

That the City Manager or his designee will provide periodic updates to the City Council regarding this project.

[Signatures begin on the following page]

APPROVED THIS __ DAY OF AUGUST, 2022.

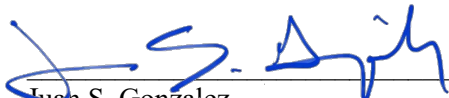
CITY OF EL PASO, TEXAS

Oscar Leeser
Mayor

ATTEST:

Laura Prine
City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT:



Nicole Ferrini
Chief Resilience Officer

Attachment A

Comments to PUCT Sunset Advisory Commission

Attachment A

To: Emily Johnson, Project Manager, PUCT Sunset Advisory Commission
From: City of El Paso, Texas
August 26, 2022

Comments from City of El Paso on Sunset Review of PUCT

The above local governments (“we”) are pleased to submit the following comments as part of the Sunset process for the Public Utility Commission of Texas (“PUCT”). We agree with the decision that moved the sunset review to the 2022-2023 review cycle for consideration of changes to this important agency during the 2023 legislative session. Given Texans’ challenging experiences during Winter Storm Uri and the continued challenges facing the PUCT, such as increasing energy prices, extreme weather and heat, and continued concerns about the reliability and fair competition of the grid and market, there is no better time to review the agency and take action to improve it. For any follow-up questions pertaining to these comments, please reach out to berjanofl@elpasotexas.gov.

Overall Comments

The PUCT provides essential services to the state and must be continued for another 12 years; Texans must have an effective agency regulating statewide utility systems, including the electricity market and transmission system, and providing customers with assistance in resolving consumer complaints. However, there are structural and financial issues that have perennially plagued the PUCT, reducing its efficacy at fulfilling its established mission. The agency is underfunded, often isolated from the public, and has failed to adequately assure reliable electric services that prioritize least-cost options and that are in the public interest. Therefore, we propose the following recommendations to support the PUCT in meeting its legislatively-defined roles:

- Expand public involvement in PUCT decision-making processes
- Improve the PUCT’s governance and resources
- Align the PUCT’s statutory mandate with equitable resilience

Expand Public Involvement in PUCT Decision-making Processes

The PUCT is, at its core, a public-facing agency. Its decisions directly impact the health and livelihoods of Texans that local governments have an obligation to protect and have far-reaching consequences on the economic and social wellbeing of the state. The PUCT’s statutory mandate directs it to “...make and enforce rules necessary to protect customers [receiving]...electric services consistent with the public interest.”¹ However, we are increasingly concerned that the public and their local representatives are often without a voice in the regulatory decision-making process.²

Recommendation: Improve the PUCT’s direct coordination with local governments.

Local governments should be key stakeholders in championing a least-cost, resilient grid and in advancing the distributed infrastructure necessary to meet Texan’s energy needs, yet are left out of decisions. The PUCT needs statutory directives and mechanisms to coordinate directly with local governments, which

¹ PURA, chapter 11 § 11.002.

² There has been a lack of studies on the financial impacts of the PUCT’s conservative market approach despite calls for review. Additionally, solely providing a platform to accept comments does not constitute adequate public engagement, and submitting comments without any indication of whether they were even read cannot be considered adequately participatory. This has left local governments with very little ability to impact important matters such as the market design docket due to the PUCT’s changing timeline for comments and lack of clarity around how public comment will inform its decisions.

are increasingly responsible for responding to local resilience issues and do not have an easy pathway to raise local concerns to the state.

The PUCT should establish opportunities for local governments to participate in task forces, working groups, and other stakeholder processes it convenes. Similar to ERCOT, the PUCT should have a municipal advisory board that solicits feedback from local governments on their energy needs, energy plans, and emergency management for extreme weather.³ Additionally, the PUCT should require utilities to engage with local governments and integrate their energy- and resiliency-specific plans into the utilities' forecasting and resource plans.⁴ This will ensure enhanced grid reliability and better utilize distributed energy resources, while also reducing the potential redundancy of initiatives and/or unnecessary infrastructure upgrades. The ability to avoid these unnecessary upgrades will reduce costs to customers and lead to more reasonable electricity bills for local governments and the residents and businesses in our communities. Further, synchronizing utility and local and grid-scale resiliency planning can establish municipal governments as thought partners in TDU disaster planning and response.

The PUCT should consider local government energy goals and challenges in its decision-making process to avoid making decisions that don't support local government priorities and needs. PUCT decisions that are misaligned with local government energy priorities will reduce the state's economic efficiency by ignoring local energy planning, likely at the expense of ratepayers. For example, a robust state energy efficiency and demand response program in conjunction with incentives for distributed energy resources, coordinated weatherization efforts, and support for local resilience hubs would simultaneously support local government energy and equity goals, improve the lives of residents who are vulnerable to increasingly frequent extreme weather events, accelerate energy reliability and affordability, and improve economic development opportunities by making Texas more appealing to large Commercial & Industrial customers. However, the PUCT has not made meaningful efforts in recent years to address any of these needs.

Recommendation: Improve and expand its stakeholder engagement efforts.

Residents and local governments are directly impacted by the outcomes of the PUCT's decision-making processes. However, these decisions often involve complex technical concepts and language that may not be accessible or comprehensible to the average consumer. Customers are described as being at the heart of the PUCT's mission, but they don't have an equal voice within rulemakings. Diverse voices—including marginalized, vulnerable, and low-income residents—should be sought out to foster fair competition, but incumbent interests have an outsized voice that has the potential to stifle competition and the innovative solutions that Texas is renowned for advancing.⁵

The PUCT should take actions to make open meetings more accessible to diverse stakeholders. One way to do this is to establish an intervenor compensation program to support broad participation in rulemaking proceedings.⁶ Another is to stop holding exclusively in-person open meetings; virtual meetings

³ Unlike ERCOT's selection methodology, we believe the PUCT should allow any local government to sit on a municipal advisory board.

⁴ While some municipalities in Texas have municipal utilities through which they can integrate their energy goals, this is not true of all municipalities in the state. Those without municipalities often have a more challenging time ensuring their transmission and distribution is accounting for their energy goals during grid planning.

⁵ The PUCT could also be asked to consider engaging other state agencies on common issues. For example, they could coordinate efforts to accelerate residential weatherization alongside the [Texas Department of Housing and Human Affairs](#).

⁶ Intervenor compensation "is the practice of reimbursing individuals or groups for the costs of their involvement in [state utility] regulatory proceedings... These groups advocate for views and issues that may otherwise not be introduced into the proceedings by the utility, large customers, state utility consumer advocates, attorneys general offices, or others. Programs have been developed in several states to encourage participation in all stages of proceedings before state commissions with the intended goal of having affected customers receive full and fair

are well-tested, highly-effective, and becoming the norm. The PUCT should have a permanent virtual option for its open meetings to allow more members of the public to attend from across of the state.⁷ The PUCT should allow people to register online to attend and speak during open meetings for general issues and issues on the agenda. The Commission should also have a policy for language access to provide interpretation and transcription services for non-English speakers.

Additionally, the PUCT should develop a department modeled after the FERC Office of Public Participation that provides direct support, such as technical assistance and translation of PUCT collateral to non-technical audiences.⁸ Such an office could receive comments and input, assure the public can participate in open meetings, workshops and rulemaking, and, as appropriate, provide language access and justice to the public. This office should also have a regional affairs arm, with a group of regional external affairs staff to act as dedicated points of contact for local governments, residents, and businesses in those regions to better understand the needs of customers including those in non-ERCOT regions that may have different needs than those in ERCOT regions. These dedicated staff are essential to ensuring the PUCT can effectively fulfill its mission to protect customers, and it will also increase the ability of the PUCT to support high-quality infrastructure through enhanced dialogues with local governments. This would be similar to previous “road-show” efforts the PUCT conducted in the past.

Improve the PUCT’s Governance and Resources

The PUCT’s governance structures must be amended to better accommodate the needs of local governments and residents. Further, the PUCT should require new directives to perform holistic analysis of the rate and reliability impacts of regulatory decisions to inform decisions that are least-cost, promote competitive markets, and improve grid reliability.

Recommendation: Improve commissioner awareness of residential and municipal customer needs.

The Public Utility Regulatory Act (PURA) Chapter 12.B §12.053 lists qualifications that a commissioner must meet to be appointed as a commissioner of the PUCT. We support these qualifications and recommend an addition: at least one of the five commissioners should be required to have a background and expertise in residential consumer and municipal issues to represent residential and municipal interests. This would better position the PUCT to take a holistic approach to weighing consumer issues, as opposed to having better-resourced utility, trade, and large C&I interests disproportionately sway decision-making outcomes.

Recommendation: Ensure the PUCT has adequate staffing and resources to enable decisions that bolster fair and transparent market competition for all energy resources, and that result in least-cost, reliable outcomes for customers.

The PUCT has made a number of recent decisions without providing their supporting analysis to the public, and some of these decisions risk suppressing competitive markets and causing rate increases for customers.⁹ This puts customer affordability, grid reliability, and fair competition at risk.

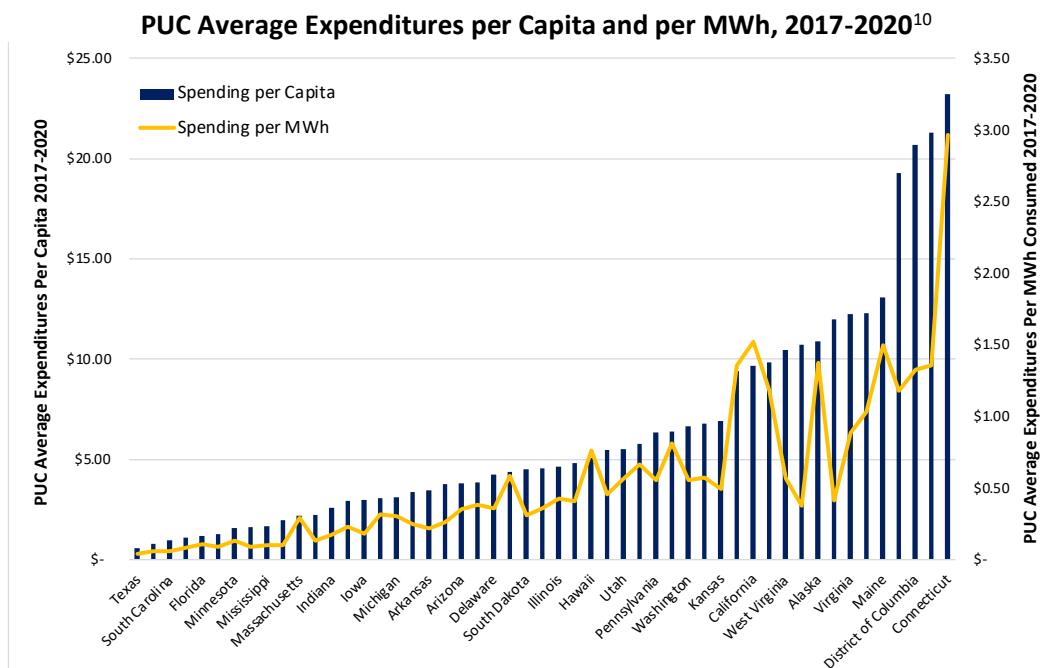
representation where the costs to intervene would otherwise create a financial hardship.” See *State Approaches to Intervenor Compensation*, National Association of Regulatory Utility Commissioners, December 2021, <https://pubs.naruc.org/pub/B0D6B1D8-1866-DAAC-99FB-0923FA35ED1E>.

⁷ The PUCT has offered virtual options throughout the Covid-19 pandemic, which has been helpful to increase accessibility.

⁸ <https://www.ferc.gov/OPP>

⁹ The PUCT’s recent “blueprint” for wholesale market reform in the state [seemed to disregard the Administrative Procedures Act](#). The PUCT’s adjustments to ERCOT’s scarcity pricing mechanism change impacts everybody in ERCOT and there was no notice in the Texas Register, ability to ask for a hearing, etc. The PUCT has also forced changes on how ERCOT procures resources day-to-day in an attempt to ensure that there are

The PUCT would benefit from more full-time employees with expertise in rate design and grid reliability modeling to analyze the impacts of transmission and distribution-level reliability improvements, DER expansion, and energy efficiency expansion on rates. This is insufficient given the breadth of the PUCT's oversight—including ERCOT, retail and transmission and distribution electricity utilities, telecommunications and other utility systems, and increasingly hazardous grid conditions. Currently, the PUCT is the least funded public utility commission in the country on a per megawatt hour (MWh) and per capita basis. The graph below shows each state's public utility commission's average expenditures per capita and per MWh, and illustrates that the PUCT is least funded PUC through both lenses.



Align the PUCT's statutory mandate with equitable resilience

The PUCT's current statutory mandate, as found in PURA Chapter 11 §11.002, grants the PUCT the authority to:

- Protect the public interest inherent in the rates and services of public utilities.
- Establish a comprehensive and adequate regulatory system for public utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.
- Regulate utility rates, operations, and services as a substitute for competition.
- Make and enforce rules necessary to protect customers of telecommunications and electric services consistent with the public interest.

plenty of resources available to meet peak demand. Procuring these resources, known as “reserves”, is standard practices, but the PUCT has required ERCOT to take an extreme procurement position. Using a process known as “Reliability Unit Commitment” or RUC, ERCOT now must call on large power plants to turn on and remain on as a contingency—even when they aren't needed and aren't operating economically. These power plants are mostly gas and coal steam units, and this process distorts the market, suppressing signals for cheaper renewable generators. But [the PUCT hasn't offered any analysis](#) that indicates the lights wouldn't have stayed on under the old system. This conservative operating approach has cost consumers an additional \$210-\$385 million so far this year, according to a [recent analysis by the Independent Market Monitor](#). Changes to the ERCOT operating reserve demand curve have added another \$475 million through May 2022, the report said.

¹⁰ RMI analysis of PUC budget and staff data from review of each PUC in the United States' legislative budget from 2017 to 2020, state population data, and state energy consumption data. This data includes all PUC advisory staff and advocacy staff in those states that house advocacy staff within their PUC. Some states seat their advisory staff in a different agency, and in those cases budgets for those staff were not included, unless the budget allocation for advisory staff was clearly delineated.

However, there is no reference to creating a resilient and/or reliable grid, which has been underscored as a fundamental component of the PUCT's function in the past year, given a historical amount of extreme heat and cold weather events.

Recommendation: Update the PUCT's statutory authority to include equitable resilience.

The PUCT should protect all customers, including the most vulnerable. Low-income households face disproportionately higher energy burdens and unplanned outages than affluent neighborhoods and large customers. As seen during Winter Storm Uri and subsequent extreme heat conditions, the PUCT's mismanagement of the electricity market has placed undue burdens—including death—on the public. Winter Storm Uri and ongoing reliability issues across Texas due to extreme weather continue to threaten lives and economic stability.

The PUCT must be mandated to align its decisions to increase resilience in a least-cost, equitable manner as part of its statutory mandate to protect customers and promote effective infrastructure relative to current needs. Further, we hope they are required to open an investigation in the next 18 months into how they will incorporate equitable resilience in their decision-making, so that both commission staff and the public clearly understand what it means for the PUCT to co-optimize for equitable resilience alongside its existing mandates. The investigation should include stakeholder working groups and should conclude in a rulemaking that establishes guidelines for how the Commission will incorporate equitable resilience in their decision-making.

In conclusion, we would like to thank the PUCT Sunset staff for its diligent review of this and all other comments, and its hard work both during this and previous PUCT Sunset Review processes. Texas' commitment to energy innovation and competition will only be enhanced by continuous improvements to the PUCT's processes, authority, and operation to meet changing needs. Thank you for your consideration of these comments.

El Paso's addendum to the comments

PUCT when looking into environmental impacts in any of their proceedings should consider positive impacts due to Renewable energy projects. Expand the definition and scope of environmental assessment in the context of PURA and PUCT Substantive Rules to include climate impact as part of the environmental assessment process.

Paula Blackmon
Chair, Environment & Sustainability City Council
Committee, City of Dallas

Tommy Gonzalez
City Manager, City of El Paso

[Signatory Name]
[Signatory Position], Harris County

Sylvester Turner
Mayor, City of Houston

Donna Barron
City Manager, City of Lewisville

[Signatory Name]
[Signatory Position], City of Mesquite

Mark Israelson
City Manager, City of Plano