



SIERRA CLUB

LONE STAR CHAPTER

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Sunset Advisory Commission

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Initial Comments from the Lone Star Chapter Sierra Club on Sunset Review of PUCT, OPUC and ERCOT

The Lone Star Chapter of the Sierra Club is pleased to submit these brief – and initial – comments on the sunset process for three agencies which are separate but linked in their missions and scope: The Public Utility Commission of Texas, Electric Reliability Council of Texas (ERCOT) and the Office of Public Utility Counsel (OPUC). We supported the legislation that moved the sunset review to the 2021-2022 period for consideration of changes of these three important agencies during the 2023 legislative session. Given the horrific experiences of most Texans during Winter Storm Uri, and the continued challenges faced by all three agencies with increasing prices, extreme weather and continued concerns about the reliability of our grid, there is no better time to review the actions and improvements of these agencies. These are preliminary comments and we will likely continue to present information and ideas in the coming months, particularly as we speak to other community organizations.

Overall Recommendation

As we will make clear we have substantial concerns about the effectiveness and scope of all three agencies, all agencies must be continued for another 12 years. There is no doubt Texas must have an effective PUCT that regulates the electric markets and transmission system, must continue to rely on an independent grid operator (ERCOT) and must provide protections to residential and small business electric (and water) through OPUC. However, it is also true that collectively we and the Legislature have often ignored structural and financial issues that have plagued these agencies for years. They are underfunded, are often isolated from the public, and have failed to adequately assure reliable and affordable electric services. Major reforms are needed.

The PUCT: How do we get the Public back into the PUCT?

The Public Utility Commission of Texas has a big job, from overseeing ERCOT protocols and procedures, participating in discussions involving the other three grids (Western Interconnect, MISO and SPP), ensuring that distribution and transmission rates, base rates for private vertically-integrated utilities and in some cases public rates that are appealed are reasonable and fair, assessing and approving new transmission projects and lines, enforcing market rules, and assuring a reliable grid. The PUCT also has in recent years been charged with the difficult task of overseeing water utilities, including water rates, a significant and growing part of the PUCT's work.

While the PUCT by its mission is required to perform its work in a way that benefits the public and all Texans, the Sierra Club is very concerned that in major decisions and in the process, the public is often left out of the discussion. Below are some ideas and recommendations.

Improving Public Participation Opportunities and Access to Decision-Makers

Open Meetings must be more open.

Currently, Open Meetings are noticed and agendas are available on the agency website. However, in general, all of these meetings are held in Austin in a room on the 7th floor of the Sam Houston Building. It should be noted that the location is difficult to get to, and has a relatively small room which can only hold about 50 people.

To address the Commission during the meeting, one must be physically present and sign up on a sheet of paper generally before 9:30 AM. There is no procedure for registering to speak on-line, and there is currently no procedure for speaking by phone or through zoom, although an exception was made during the height of the COVID crisis, when the Commission met virtually.

In addition, there is no language access and no procedure for a resident who does not feel comfortable speaking in English to address the Commission.

In addition, public participation is only allowed at the beginning of the meeting for items NOT ON THE AGENDA, with participation on items on the agenda subject to the wishes of the Commissioners. One can request to speak on an agenda item but it is up to the Commission.

Recommendation: The PUCT should consider having its public meetings in the TEA/RRC meeting on the first floor which would allow for more members of the public to attend. The PUCT should allow people to register to address the Commission at Open Items online both for general issues, as well as for issues on the agenda. The Commission should have a policy for language access such that if someone requires translation they can obtain it. Finally, the Commission should allow for phone or virtual comments from those unable to attend the meeting in person.

Participation in Rulemaking is Difficult for the Public

Some improvements have been made compared to the past, as the Commission is no longer requiring that 16 copies of comments be brought to the agency offices to make comments in a proposed docket, rulemakings or rate cases, and is allowing comments to be submitted online. Nevertheless, for those that are not commission insiders, understanding how to use the “Interchange” is difficult.

Unlike some other agencies, there is no one place to find a list of all dockets or projects that are open for public input or comments. As an example, if one were to visit the PUCT website and look under Administrative Rulemakings, Electric Projects and Rulemakings, one would find a list of rulemakings. However, the list is quite random and only includes some rulemakings but not all. <https://www.puc.texas.gov/industry/projects/electric/ElectricProjectIndex.aspx>

Instead, PUC should have one place on their website where all projects and rulemakings are listed so that the Public does not have to search in the PUC Interchange Filer, which is time-consuming and difficult. In addition, rather than relying on the PUC Interchange Filer alone, the Commission should create a drop-down menu for commenting on rulemaking. While we do not object to the PUC Interchange Filer for insiders, it is very difficult for the public to use, and having an alternative way to submit public comments would be useful. In addition, the PUCT could have a place where a person could make a general comment.

Workshops are in general invite-only

The Sierra Club has no objections to the Commission staff or Commissioners on holding workshops to receive input from invited experts and stakeholders. This can be a useful exercise, especially when there is a need for very specific information about complex topics.

Nonetheless, we would note that in these workshops there is no space for those not invited to make brief comments, ask questions, or submit a reaction. We believe that the Commission should be directed to include a chance for other stakeholders or the public to make written or brief oral comments for workshops.

Public Workshops

Beyond the more narrow invite-only workshops, the Commission should be directed to hold public workshops where it presents basic information and receives input from the public. As an example, in the current consideration of market redesign, having general sessions on input would be valuable.

Office of Public Engagement and Language Access

One potential remedy to problems with public participation would be for the Commission to add an Office of Public Engagement, which could also include as mentioned previously a language access component. 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.

The Commission, at least over the last year, has not been following the Administrative Procedures Act

Given the tragedy and circumstances of Winter Storm Uri, the large number of laws passed by the Legislature and signed by Governor Abbott, it is understandable that the Commission has been overwhelmed, with staff frequently working late nights and weekends. But the Sierra Club is very concerned by the process for making decisions at the Commission, which has led to confusion and in some cases, violations of the Administrative Procedures Act.

There are many examples. First, the Commission opened up a wide project on market redesign called Project No. 52373. The Sierra Club has no objection to the Commission opening up a project to discuss widely potential changes to the market to both respond to legislative and gubernatorial direction, and receive input from the stakeholders. What is concerning however

was the confusion that has occurred over how decisions were made in the project, resulting in December of 2021 in the adoption by the four sitting Commissioners of the “Blueprint,” which included a Phase 1 and Phase 2. The Blueprint adopted by the commission included both very specific actions - such as lowering the System Wide Over Cap to \$5,000 – and more general directions like exploring the creation of a load-serving entity obligation. The public, stakeholders, the staff and media have been confused whether the items in the Blueprint are final decisions, a general direction or first steps in a longer process. As an example, there was confusion about decisions around changes to the ORDC and SWOC, when those changes would go into effect and how to change protocols and guidance at ERCOT in a short time frame. Another example is the Commissioners indicated in Phase 1 that they would be looking at improvements in the load management programs run by the Utilities under Utility Code 39.905, and yet there has been no follow-up on that issue - again creating confusion.

Thus, we have been very concerned that many of the decisions related to the Blueprint have failed to conform to the APA. Indeed, in many cases, the Commissioners have declared they have made a decision without a rule being published for comments, and/or a final rule being published.

This is particularly concerning with Phase 2 proposed changes, since those appear to be concepts, without any of the requisite details. Have these changes actually been adopted, or are these potential changes which might never be considered? To say there is confusion in the market is an understatement.

The most recent example was the confusion around expansion of the Emergency Response Service. To its credit, the PUC opened up a separate project on ERS through 53493. The Commission again largely followed the APA and did publish both an initial draft and a more finalized draft on June 10th and gave the public until July 5th to make comments, a relatively short timeline but perhaps understandable given the need to expand ERS with increased demand. On July 13th, the Commission published a final version of the rule with a response to

comments, and the Commissioners unanimously adopted the rule on July 14th. ERCOT immediately got to work on a new NPRR to implement the changes, which was approved by stakeholders only days later through the PRS committee on July 22nd. However, ERCOT was forced to issue a statement saying that the adopted rule had yet to be published in the Texas Register, meaning technically ERCOT was getting ahead of the APA.

We recommend some basic training for commissioners - and stakeholders - on requirements of the APA, and assuring that no future decisions are made without the requisite requirements for APA. We understand that the four Commissioners are new, and were thrown into a difficult situation, but we have been concerned about the lack of process and seemingly random nature of decision-making over the past year.

The PUC had Failed to take the Demand Side seriously, particularly on the residential side

The PUCT has collectively failed to prioritize energy efficiency, demand response and to a lesser extent “distributed energy resources” including distributed generation. This may be related to a failure in governance or structure, in the sense that residential consumers are seen only as consumers of electricity and not viewed as potential participants in markets.

Energy Efficiency and Demand Response

In 2011, the Legislature passed, and the Commission implemented rules related to an expansion of the required energy efficiency programs through SB 1125. That law made a number of additions to statutes, including the expansion of the energy efficiency goals and programs that utilities must meet.

However, more than 10 years later, the law has not been fully implemented by the PUCT and ERCOT.

First, under the law, the PUCT was supposed to provide basic information to the public about the goals and programs. Under Sec. 39.9054. ENERGY EFFICIENCY PLANS AND REPORTS; PUBLIC INFORMATION, there are two basic requirements. First, all utilities required to meet the goal must submit an annual report on their energy efficiency programs and plans by April 1st. The Commission is meeting this requirement, although we would note there is no way for the public to really comment on these reports, or receive a response from the Utilities or commission. It would be very difficult for a normal member of the public to even find these reports, which are buried in a Docket number.

The Commission has recently begun holding two meetings per year with the utilities on their energy efficiency plans and accomplishments, although comments made here are more for informational purposes, and there is no requirement for utilities or the commission to respond to recommendations.

The second part of this section of law requires the Commission to publish information on its website about the programs, the goals and how to take advantage of them. The PUC's website is very modest and does not meet the letter of the law. Clearly, most members of the public are unaware of the demand response and energy efficiency programs they could take advantage of, at least through the website. Thus, under Consumer Information, there is no information provided about these programs or how to participate.

<https://www.puc.texas.gov/consumer/Default.aspx>

Recently, the Commission did open up a new website called "Power to Save," which does provide the public with useful information about the ERCOT grid, conservation calls, how to save energy, but it lacks information about utility or REP programs to save energy and is very general. The website is available here: <http://www.powertosavetexas.net/Home>

In fact, OPUC has better information about these programs than the Commission does.

A second provision of that bill was a requirement that is perhaps less specific, but important nonetheless. It states in 39(905) (b) (7) that:

(b) The commission shall provide oversight and adopt rules and procedures to ensure that the utilities can achieve the goal of this section, including:

(7) ensuring that an independent organization certified under Section [39.151](#) allows load participation in all energy markets for residential, commercial, and industrial customer classes, either directly or through aggregators of retail customers, to the extent that load participation by each of those customer classes complies with reasonable requirements adopted by the organization relating to the reliability and adequacy of the regional electric network and in a manner that will increase market efficiency, competition, and customer benefits.

Again, 10 years after passage of SB 1125, the Commission and ERCOT have failed to meet this requirement. While there has been progress on getting some load participation into markets and ancillary services, the Commission and ERCOT have failed to assure that aggregated loads and distributed generation owned by customers can be integrated into the market. Attempts at ERCOT to solve this problem have continually run up against opposition or the lack of political will.

It is particularly galling that with multiple studies on the high potential in an energy-only market to take advantage of residential demand response, there has been such limited examples of successful programs. The Sunset Advisory Commission could direct the PUCT to implement low-income and/or multifamily residential demand response pilot projects to identify opportunities for more residential participation in maintaining reliability through the competitive market.

In part because of rulemaking that prioritized utilities over the public, efforts to get better access to Smart Meter Texas has also been limited, meaning the potential for third party

aggregators or REPs to utilize the data for expansive demand response and energy management programs has been severely limited despite the billions paid by ratepayers to deploy smart meter technology.

One of the hallmarks in Texas has been the requirement that our market is open access to all technologies. This should include both transmission-level and distribution level generation, but in practice, the PUCT and ERCOT have been slow to adopt rules to allow new technologies like distributed generation to participate. While large generation resources are registered as power generators, until recently there has not been an equivalent mechanism for participation by distributed technologies. Recent improvement through the BEST (Battery Energy Storage Taskforce) at ERCOT, the adoption of new protocols on Settlement Only Distributed Generation and the newly created Distributed Generation Resource are noted improvements. Still, we recommend that the Commission and ERCOT be directed to assure that all distributed energy resources that can meet basic requirements be allowed to participate in the market.

Governance: In general residential consumers have not been represented well at the Commission

The PUCT seems to be set up in a way that stakeholders with monied interests have better access and better outcomes than residential electric consumers. OPUC can represent the public well in rate cases, but even there they are often loath to get involved both because of limited staff time and resources, and the simple fact that at times entering into a rate case can lead to additional costs as utilities than hire lawyers and experts - costs which ultimately they are allowed to recover under Texas law.

We do believe that SB 2154 – which expanded the number of commissioners from 3 to 5 - is a positive step, but recommend that at least one of the five commissioners be specifically

required to have a background in residential consumer issues and be required to represent residential interests.

Need to expand enforcement

SB 3 made a significant change in certain enforcement matters related to weatherization requirements, finally putting requirements on inspections (through ERCOT) and expanded enforcement and penalties for entities that failed to comply with newer, stricter weatherization requirements. However, we would recommend that the Sunset Commission and legislature consider other changes in enforcement and penalty structure at the PUCT. Other fines have been stuck at a maximum of \$25,000 for decades, and with serious potential for market manipulation, shoddy service by water and electric utilities, and the potential for safety violations in transmission, we would call on an expanded penalty for market manipulation, and a general raising of maximum fines to \$100,000.

Is the market truly competitive?

More than 20 years after retail deregulation of the energy market in Texas, choice is limited for consumers. We believe there are two major problems.

First, the largest retail electric providers are connected to companies that also own generation. This allows them an advantage over REPs that are not connected to a company that owns generation, since “GenREPs” can hedge their prices against the revenues they earn from their parent company’s generation. Second, while Texas law currently puts a limit on the amount of power any one company can own – 20% of the total generation – there is no limit on the amount of electric sales that any one company can control. Thus, in Texas, two companies – the REPs connected to NRG and the REPs connected to Vistra – control more than 75 percent of the retail market. This means that consumers are not getting the type of competition in the market to truly drive down prices and create more interesting products.

The PUCT must do more to guard against market manipulation and control and the Legislature should consider a constraint on ownership such as 30% of total REP sales as well as further guardrails to keep REPs separate from generation.

The PUCT Needs more Control over Gas Supply and Gas Utilities

Winter Storm Uri revealed the close relationship between gas supply, gas utilities and the electric power market. The potential that gas suppliers could have been - or do - manipulating gas supplies to drive up prices which impact consumer electric prices is a serious concern. The Sierra Club would support giving the PUCT a role in assessing market manipulation of the gas supply - as it relates to the power sector - and considering the hiring of a market monitor to assess and regulate the gas supply sector.

Moreover, we support previous Sunset Advisory Commission recommendations that gas utility rates should be shifted from the Texas Railroad Commission to the PUCT. It makes more sense for one state agency - the PUCT - to be in charge of overseeing most rates related to electricity, water and gas service. Gas utilities are not producers but distributors of the gas supply and Texas would be better served by having the PUCT take on that responsibility. Similarly, we would suggest that OPUC responsibility, funding and personnel be expanded to represent residential and small business consumers in gas rate proceedings.

Climate Change is Real and the Commission and ERCOT must incorporate climate change into their operations

From Hurricane Harvey, to Winter Storm Uri to current summer heat waves, the changing climate is impacting Texas in many ways, including in increased electric demand to cool our homes and businesses in the summer and heat our homes in the winter. Unfortunately, our transmission planning, energy demand and supply forecasting and Long Term System

Assessments have not reflected this reality, a dangerous precedent. Recently, ERCOT has set more than 10 electric demands which have exceeded the expected demand, and in a few cases, even their high demand forecast. Because ERCOT (and the PUCT) have adopted procedures and rules that rely on the past to predict the future - looking for example at the last 12 to 15 years of weather data – their forecasts and sensitivity analysis are frequently wrong.

The PUCT and ERCOT should not only be required to consult with the Office of the State Climatologist (as is currently required for the development of weatherization standards under SB 3), but be required to incorporate climate change into short-term and long-term forecasts and transmission planning.

Expand oversight over Cooperatives and Municipality Ratemaking Procedures and Public Input

The Legislature has been very clear that the PUCT does not have final authority over municipal electric utilities and electric cooperatives. Instead, these local entities have their own boards of directors, who are usually elected officials, that set their own resource decisions, and rates. While the Sierra Club is not calling for major changes to put these entities under more direct PUCT control, we do believe that many Texans live in electric monopoly areas where basic public participation is limited, and procedures for ratemaking are less than ideal. We believe that the PUCT (and OPUC) should play a more expanded role in assuring that all Texans have a say in how their electric provider operates and how rates are set.

The PUCT along with OPUC should be required to publish a best practice manual for public processes on operations and ratemaking, and the Legislature should expand the ability of the Commission to step in when those entities fail to ensure decent rate setting procedures. All public entities should be required to post information about decision-making meetings online, provide meeting minutes and allow for public input into normal decisions. In addition, all public entities should be required to post proposed new rates, provide for public input, and have some

process for entities that disagree with the proposed rates to intervene in some way in an administrative proceeding. Where appeals to the Commission are allowed - such as in municipal utilities that serve areas outside of city boundaries – the Commission should exert its enforcement discretion to assure that as an example these cities hand over information to out-of-city customers to relevant parties.

While Sierra Club supports independent, public Cooperatives and municipal utilities, the Commission needs to play an expanded role in ensuring that all Texans are afforded a process to participate in utility decision-making, especially around rates.

ERCOT - Must Remain Independent and Flexible

Despite recent news, the Electric Reliability Council of Texas (ERCOT) has successfully managed the transition in the 2000 and 2001 to a zonal competitive market, and then from zonal to nodal several years later. To their credit, they were able to incorporate thousands of megawatts of renewable energy resources into the market relatively seamlessly and most recently created an entire task force to also incorporate electric storage. These have involved massive efforts, and the professionals at ERCOT have for the most part done so in a technologically-neutral manner. Still, ERCOT must be improved. From their interaction with the public, to the stakeholder process to governance there are multiple improvements that could and should be made.

ERCOT must remain independent

While it is appropriate for the PUCT to have oversight over ERCOT's decisions, and appropriate for the PUCT to review and approve decisions, ERCOT must be able to manage the grid and make decisions without political interference. The Sierra Club does not believe that all five

commissioners should be voting members of the ERCOT Board. To do so would essentially turn ERCOT into a division of the PUCT and much more subject to political interference.

In addition, we are concerned by the recent decision of the legislature to completely change the ERCOT board of directors to be selected by a committee of three people named by the Governor, Speaker and Lt. Governor. Thus the current board is composed of 8 independent persons, plus the ERCOT CEO, chairman of the PUCT and a representative of OPUC. While we do not have an opinion on the knowledge of these 8 individuals to run an electric grid, we believe a mix of representatives of stakeholders plus independent experts, OPUC, PUCT and ERCOT CEO would be a better mix.

We also support maintaining a stakeholder structure at ERCOT, including the main committees such as TAC, WMS, ROS and PRS which has in general served ERCOT well. That being said, we do believe certain reforms are needed in the process and in the stakeholder groupings.

Residential Consumers – and the Demand Side - are short-changed in ERCOT

Current rules only allow OPUC to represent residential consumers within ERCOT. Thus, those representing electric consumers are represented by OPUC, and then separate categories of commercial and industrial customers. This puts OPUC in the difficult position of trying to represent all residential consumers in the ERCOT stakeholder process. Oftentimes, OPUC, which is short-staffed, has to contract with outside energy consults to represent them on the mult-committee structure.

In addition there is no category of stakeholders to really represent the demand side within ERCOT, such as demand response companies, or to a certain extent distributed energy resource technologies like distributed storage, solar, EVs and even distributed gas.

The Sierra Club would suggest that other participants could join ERCOT as representatives of residential consumers, or alternatively, we could create a new category for companies that work

with residential consumers on issues like energy efficiency, demand response and distributed generation. Perhaps by creating new categories of stakeholders, new issues that do not fit neatly into the traditional consumer, utility, generation and REP model could lead to more participation in ERCOT. In general, as an example, demand response companies have participated through the “Demand Side Working Group,” a subset of WMS.

Still, many efforts led by demand response and distributed energy companies have lacked the support to move forward, meaning efforts such as “Loads in SCED” or multi-interval SCED have not moved forward.

Sierra Club would support expanding the categories of stakeholders that can engage and be given representation on specific committees.

ERCOT must pay attention to the changing climate

Transmission planning, long-term plan, resource adequacy and load forecast must better incorporate climate change and extreme weather. ERCOT has no climate scientists or even meteorologists on staff and always looks backwards when predicting the future. This is untenable given our climate reality, and guidance, transmission planning, forecasting and other components of ERCOT’s operations must be directed to incorporate climate change.

ERCOT must provide for greater transparency and a role for the public

While ERCOT has improved its website and outreach to the public over the last year, finding basic information is still too difficult. In addition, while Board and TAC meetings can be viewed, other meetings are conducted in real-time, and there is no recorded video available of the meetings. While meeting minutes are generally available, it would be very difficult for members of the public to find those meeting minutes. In general, ERCOT must do a better job in allowing

access to meeting minutes, videos and allow any member of the public to participate virtually or in-person to any meeting.

While it is unlikely that most Texans would want to make comments on any proposed changes in protocols or guidelines, any Texan that wants to do should have the opportunity to submit comments.

ERCOT market operation decisions must be made transparently and with opportunity for stakeholder input

Recently, ERCOT has adopted a more conservative operations philosophy, including decisions to increase the amount of ancillary services and to use Reliability Unit Commitment (RUC) more frequently. While these might be good decisions, there has been little transparency about the decisions and no clear decisions made by the Board of Directors. While some of this occurred as a result of the unique nature of 2021 - an interim CEO, a board not yet named and a grid under stress - going forward ERCOT should have clear policies on issues like ancillary services, market operations and emergency response services that are presented to relevant committees and stakeholders, and approved by the Board. There also must be an opportunity for stakeholder to give input on these decisions, and appeal decisions of the board as appropriate. These processes should be spelled out and followed.

New Types of Loads Should Mean More ERCOT authority

Just as generation is changing within ERCOT - not only renewable but battery technology and distributed resources - so too is load. As already mentioned, demand response is a new resource that must be allowed to compete along with generation as long as certain parameters are met. However, in addition, new large loads like BitCoin operations, data centers and continued development of Oil and Gas can have huge implications on adequacy, transmission and market operations. While ERCOT can not and should not be in the business of approving

new loads to be incorporated into the grid, ERCOT can and should be allowed to work with utilities and new loads on requirements so that loads are controllable and when not critical for safety be shifted when demand is high. Priority must be given to residential consumers, critical care, and manufacturing that is integral to our economic development, not more speculative businesses that can require huge increases in transmission investments and overall load. ERCOT should have its authority expanded so that it can require large non-essential flexible loads to shut down or shift use during peak demand periods.

ERCOT should not be adding to our air pollution burden

In recent years, ERCOT has been asking the Texas Commission on Environmental Quality to use enforcement discretion on air quality during times of high electric demand. The Sierra Club understands that there are times of emergency when some enforcement discretion is warranted, but is concerned by a growing trend to ask for TCEQ discretion whenever electric demand is high. In recent weeks, ERCOT has been asking TCEQ to issue a statement on enforcement discretion that covers nearly the entire day. In essence, this means that hundreds of generation resources could be operating without pollution control equipment or operating more than their permits allow. This could be impacting individuals health of Texans living near these power plants or even leading to overall increases in ozone in major metropolitan areas, impacting tens of thousands of Texans.

In addition, the PUCT and ERCOT has also recently expanded the use of Emergency Response Services, which includes back-up generators and demand response resources. Some of these generators have strict emission limits, but it does not appear in its contracts that ERCOT is paying attention to when these resources are allowed to operate.

The Sierra Club believes that we must develop a more rigorous policy on the use of these enforcement discretion requests and contracts for ERS. We would suggest that ERCOT be directed to work with TCEQ and the EPA on an established policy on enforcement discretion.

We do not think it is appropriate to ask for enforcement discretion simply because demand is high.

The Office of Public Counsel (OPUC): Too Small for Our Collective Good

OPUC is too small to do its job effectively. OPUC has a big job representing all electric and water residential and small business consumers in the state, responding to complaints and providing basic information to consumers. In recent years, they have operated with a handful of employees (13 to 17) and are clearly not able to participate in hearings, ratemaking, rulemaking and respond to public complaints.

Thus, our first recommendation is that the budget for this small but important agencies be expanded significantly.

OPUC is too timid to engage in ratemaking

OPUC is wary to engage in ratemaking small and large because .. it can cause rate hikes. It might seem counterintuitive, but OPUC frequently forgoes participating in hearings on behalf of the public. The reason? If they do, then those entities – be they electric or water utilities – are allowed to hire lawyers and experts, and eventually recover those costs through the ratemaking process. As an example, if a small rural water utility has a proposal to increase rates in an area by 20 percent, OPUC might choose not to oppose the rate because they are concerned that the entity would then end up hiring very expensive lawyers and experts. Even if OPUC participation were to lower the proposed rate from 20 percent to 10 percent, their presence might cause the overall costs to go up higher because of cost recovery.

Even in relatively small cases - such as in an Energy Efficiency Cost Recovery Fee at the TDUs – OPUC does not tend to get involved as a party because it is likely to increase the hours that both the utility - and other parties – are involved, thus ultimately increasing the cost to consumers.

The Sierra Club recommends that limits be placed on the amount of money or the time that can be charged to ratepayers. At the very least, water and electric utility appeals of PUCT decisions on rates should not be subject to recovery through ratepayers.

OPUC’s role should be expanded to also represent consumers on broadband and gas utility rate cases.

OPUC currently plays a role in protecting over 29 million consumers on electric and water rates. However, with recent legislation on broadband, it is apparent that OPUC is already spending significant time and resources on broadband. We recommend that this new role be formalized through the sunset process and that OPUC help represent residential and small business consumers on broadband programs and rates.

In addition, currently no entity properly represents the public on gas utility rates. While we are advocating that gas utility ratemaking be transferred from the Texas Railroad Commission to the PUCT, wherever that ratemaking authority lie, we believe that OPUC needs to be given a role in representing residential and small business consumers. Currently, the public interest is not being represented in Texas.

The Sierra Club appreciates the opportunity to offer these brief initial comments to Sunset staff on OPUC, ERCOT and the PUCT.

