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Chairman Charles Schwertner
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Via email to: emily.johnson@sunset.texas.gov

CC: Sen. Charles Schwertner, Lola Fender, Drew Graham, Ginny Hollaway
Sen. Nathan Johnson, Lani Lappinga
Sen. Angela Paxton, Laura Stowe
Sen. Charles Perry, Katherine Thigpen
Sen. Drew Springer, Jr., Jonathan Mathers
Vice Chair Justin Holland, Robert Paulsen, III
Rep. Terry Canales, Curtis Smith
Rep. Keith Bell, Georgeanne Palmer
Rep. Craig Goldman, Jennifer Dewitt
Rep. Travis Clardy, Sloan Byerly

Re: Initial Comments by Community Advocacy Organizations on the Public Utility Commission of Texas (PUCT), Electric Reliability Council of Texas (ERCOT) and the Office of Public Utility Counsel (OPUC)

Dear Chairman Schwertner, Commission Members and Staff:

The undersigned organizations appreciate the opportunity to provide initial comments to the Sunset Commission on three important agencies: the PUCT, ERCOT and OPUC. Given the horrific

experiences of Texans during Winter Storm Uri, and the continued challenges faced by all three agencies, there is no better time to evaluate these organizations' duties, responsibilities, and practices, and discuss crucial changes.

These comments are informed by our collective experience. We are part of a group of organizations continuously engaged in utility issues, electricity, and public transparency and accountability.

Overall Recommendations

While our groups do support continuing these agencies for another 12 years, state leadership has often ignored structural and financial issues that have plagued these three agencies for years. They are underfunded, are often isolated from the public, lack enforcement authority, and have failed to adequately secure reliable and affordable electric and water services. Major reforms are needed.

PUCT

The mandated role of PUCT needs to be restructured with long-term economic backing and resources. Given the close connection between public utilities and Texans' health and wellbeing, lawmakers should include specific references to public health in the PUCT authority, responsibility, and mission establishing strong structures for communication between the PUCT and the public health sector.

Authority, Responsibility, and Mission

Public Input and Engagement

While the PUCT, by its mission, is required to perform its work in a way that benefits the public and all Texans, our collective organizations are concerned that in major decisions and the process, the public and the public good are often left out of the discussion. We are concerned that the PUCT and ERCOT are setting policy, standards, and processes, and making decisions that do not follow sensible and effective processes, do not allow adequate public input or consider that input sufficiently, do not pursue appropriate criteria for the public interest, and do not provide adequate transparency and accountability.

- The commission's meetings need to be made accessible to the public in both virtual and physical capacities. These are held in Austin in a relatively small room, where citizens from the second biggest state in the nation are required to be physically present, which can be a barrier for individuals who have disabilities or are immunocompromised, to address the commission on

items NOT IN THE AGENDA. And on items in the agenda, only at the discretion of the commission. Public hearings should be held across the state to allow public comment on major topics such as power system resilience, weatherization and climate change, electric reliability, and market design; a bigger room should be considered; online registration should be a standard option; agenda items should be open for public comments; phone and virtual comments should be universally accepted as public input; three minutes should not be the standard when complex topics like market design can only be addressed by the public in this manner; PUCT should be required to summarize and respond to public comments and concerns in key decisions or key themes; and language access, translation, interpretation, and supports for those with hearing or visual challenges should be universally provided.

- Commenting and participating in rulemaking is difficult. Creating an Office of Public Engagement and Language Access could facilitate this. For citizens that are not commission insiders, understanding how to use the “Interchange” is difficult. There is no one place to find a list of all dockets or projects open for public input or comments. One place on PUCT’s website where all projects and rulemaking are listed would be helpful. Furthermore, there is a 10-page limit on stakeholder comments, which may not be enough for the full development of the proposal or explanation. Having an Office of Public Engagement and Language Access and an alternative way to submit public comments, and a place where a person could make a general comment, should allow for inclusive, diverse, and significant input. Additionally, non-English meetings should be held for communities where English is not the primary language. Interpretation can be used for monolingual English speakers instead of defaulting for other languages to be translated. This type of action is intentional inclusion in a diverse state such as Texas. These should be considered even outside the creation of an Office of Public Engagement and Language Access.

- PUCT conducts occasional workshops on complex topics, like market design. However, these are exclusive and have no space for brief comments, questions, or submission of reactions. Workshops should also offer basic information and all should be inclusive and open to stakeholder input.

- It is necessary to introduce the public interest in the form of broad considerations that directly address equity so that Texans least able to afford electricity services are considered first

in any decisions. Many states have a specific Public Utility Consumer Advisory Council with dedicated seats for experts who can assist the agency in meeting the particular needs of specific vulnerable constituencies as well as serving the people of Texas. This council considers issues and opportunities in the utility sector from a public benefit perspective, this could include public health issues or advocacy of residential and small commercial (<50kW) customers. Our organizations believe we should consider requiring such a council in Texas.

- We recommend the creation of an Office of Energy Efficiency and Demand Response to help residential consumers save money and participate in the market, including the creation of programs for vulnerable populations. This will also facilitate, after 10 years, the proper implementation of SB 1125, which made several additions to statutes, including expanding the energy efficiency goals and programs that utilities must meet which included the publishing of energy efficiency plans; mandated that more information should be provided to the public about energy efficiency and other consumer programs; and ensure aggregated loads and distributed generation owned by customers, such as rooftop solar or batteries, so that can be integrated into the market.

Enforcement must be expanded at the PUCT. We recommend serious consideration to the enforcement and penalty structure which has been at a maximum of \$25,000.00 for decades. With the 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 per violation per day.

Similarly, the Independent Market Monitor (IMM), could assist in the identification of price gouging, market manipulation, or monopoly in certain nodes. These checks and balances are critical in a state where the retail provider market is open and the wholesale power market, but the middle transmission sector is still a socialized cost born by all.

Moreover, it is worth noting that consumer choice in the competitive market has been reduced as the two largest retail electric providers - Reliant and TXU - and their corporate owners – have purchased multiple smaller companies, meaning that the market is effectively controlled by two companies. In terms of municipal utilities and electric cooperatives that are not part of the competitive market, the PUCT should have an expanded role to assess their rates and public processes to assure that residential consumers are informed, can participate in decision-making and have information about rates.

Unlike many other states, after the elimination of the System Benefit Fund, Texas has no state program to help residents with payment assistance, although many individual utility companies

and retail electric providers offer their own payment assistance programs. The federal government does through the TDHCA provide assistance for certain residential consumers through LIHEAP a similar program for water assistance and the Weatherization Assistance Program. PUC should play a larger role in providing information to consumers on these programs, but also consider the creation of an emergency fund to help customers in times of extreme price volatility or climate emergencies. The source of the funding would need to be established by the Legislature, whether through the use of federal funds or through a small per-kilowatt charge similar to the Systems Benefit Fund.

We support previous Sunset Advisory Commission recommendations that gas utility rates be shifted from the Texas Railroad Commission to the PUCT. It makes more sense for one state agency - the PUCT - to oversee rates related to utilities: electricity, water, and gas service. Part of this should be the establishment or inclusion of gas supply on the Independent Market Monitor (IMM)'s responsibilities, or a separate market monitor specifically for gas supply.

ERCOT

While ERCOT has managed the transition and incorporation of renewable energy, from their interaction with the public to the stakeholder process to governance, there are multiple improvements that could and should be made.

Structure

- ERCOT must remain independent to be able to manage the grid and make decisions without political interference. Not all eleven members should be voting members. Allowing all five commissioners of PUCT to be a voting member, as requested in their self-assessment, would essentially turn ERCOT into a division of the PUCT and much more subject to political interference. We are also concerned by the recent decision of the legislature to completely change the ERCOT board of directors to be appointed by a three-member committee (Governor, Lt. Governor, and Speaker), which does not make the board “completely independent.”
- At the same time, recent changes to the make-up of the board of directors to only be executive-level experts continues to silence the voice of residential electric consumers; it reduces stakeholder input. We believe a mix of representatives of stakeholders plus independent experts, OPUC, the PUCT Chair, and ERCOT CEO would be a better mix.
- 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. 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 should be included. Demand response, larger loads, is a new resource that must be allowed to compete along with generation as long as certain parameters are met. ERCOT 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.

- ERCOT should be provided with the flexibility to ensure that the community is protected first, then property. This requires greater authority and more capacity to implement and respond to new operating scenarios

Recently, ERCOT has been asking the Texas Commission on Environmental Quality to use enforcement discretion on air quality during times of high electric demand. While in times of emergency this may be warranted, it should not be standard practice during times of higher power demand because this also means operations without pollution control equipment or operating more than permits allow. In addition, ERCOT has expanded the use of Emergency Response Services, which increases demand for resources, and includes backup generators which have strict emissions limits. This without question impacts the health of many Texans living near these power plants or even leads to overall increases in ozone in major metropolitan areas.

Forecasting, Planning, and Weatherization

- Climate change should be included in forecasting, planning, and weatherization requirements at ERCOT and PUCT. Climate change impacts Texas in many ways, including electric demand. The reality of the changing climate provides direct evidence that temperature extremes and stronger storms are more likely. Supply forecasting and Long-Term System Assessments have not reflected this reality. Looking, for example, at their last 12 to 15 years of weather data, their forecasts and sensitivity analysis are frequently wrong.

Transparent and Equitable Market Place

- Non-sensitive discussions, including workgroup meetings, at ERCOT should be made available to the public. PUCT and ERCOT need to be accountable for current electric system conditions and costs; how those conditions and costs could change; and the consequences of their decisions, operations, and market policy on these conditions. All market operation decisions must be made openly and transparently and with the opportunity for stakeholder input.

- PUCT and ERCOT should be required to provide quarterly public reporting in publicly intelligible terms and metrics on factors such as Texans' electricity use, cost elements in electric bills, the cost components and quantities paid for energy and ancillary services, ERCOT's load forecast accuracy, generation, and fuel components, prices paid, congestion costs, securitization costs, generator performance, and how these metrics (e.g., costs and quantities in the day-ahead, real-time and ancillary services markets) have changed due to Commission decisions and ERCOT policies. These reports should have clear details, explanations, and backup data with time and locational granularity. Such reports will allow the public, Legislature, and stakeholders to understand whether PUCT and ERCOT decisions have the impacts that were intended and help identify when additional caution or corrective actions are needed.

- ERCOT continues to ignore the profound economic impact its role has on the Texas energy market. ERCOT must be more transparent and aggressive when ensuring that huge transfers of risk do not get laid onto consumers but instead are born by the market participants that create these windfalls or losses. In the meantime, average residential consumers and small business owners continue to hold the risk when another weather emergency, be it a hurricane or a deep freeze, hits our state.

- 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.

- There is a failure in governance or structure when residential consumers are seen only as electricity consumers and not as potential market participants. Only by including consumers as market participants can we ensure ERCOT meets the function of providing non-discriminatory access to markets and accurate accounting for all market participants ensuring more transparent and equitable marketplace.

- Major decisions on market reform must be subject to a review process that includes costs and consequences analysis. Such analysis should cover what the preferred solution is supposed to accomplish, compare it to other options, by what date, at what cost, and what are the consequences for Texans if this solution doesn't work.

OPUC

OPUC represents the interests of residential and small commercial consumers in utility proceedings (in the electric, water, wastewater, and telecommunications cases) in Texas, as a class. It is a small organization with a very important job.

- The duties of OPUC include engagement in rate making, rulemaking, and hearing on behalf of the public. OPUC frequently forgoes participating in rate making, because of fear of consequences on price, and hearings on behalf of the public because electric and water utilities are allowed to hire lawyers and experts, and eventually recover those costs through the rate-making process. Limits should be placed on the amount of money or the time of experts and lawyers that can be charged to ratepayers, and water and electric utility appeals of PUCT decisions on rates should not be subject to recovery through ratepayers.
- The Office of Public Counsel's authority should be extended to include representation of consumers in gas rate cases and broadband, and individual ratepayers.

The undersigned groups appreciate the opportunity to offer these initial comments to Sunset staff on OPUC, ERCOT, and the PUCT.

Sincerely,

Cyrus Reed, Conservation Director, Lone Star Chapter, Sierra Club

Annalisa Peace, Executive Director, Greater Edwards Aquifer Alliance

Jennifer Hadayia, Executive Director, Air Alliance Houston

Stefania Tomaskovic, Director, Coalition for Environment, Equity, and Resilience

John Beard, executive director of the Port Arthur Community Action Network
("PA-CAN")

Adrian Shelley, Texas Director, Public Citizen

Rev. James Caldwell, Coalition of Community Organizations, Houston

Michael Lewis, Clean Air and Water Advocate, Environment Texas

Joshua Simmons, Secretary/Board Member, Eco El Paso

Kristen Schlemmer, Legal Director and Waterkeeper, Bayou City Waterkeeper

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