

Report to the 81st Texas Legislature



**Office of Public Utility Counsel's
Annual Report for
Fiscal Year 2008**

For the

Senate Business and Commerce Committee

Senate Finance Committee

House Regulated Industries Committee

House Appropriations Committee

Sunset Advisory Commission

January 2009



Office of Public Utility Counsel

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Don Ballard
Public Counsel

January 14, 2009

Honorable Members of the Eighty-First Texas Legislature and Sunset Advisory Commission:

We are pleased to submit our Fiscal Year 2008 Annual Report for the Office of Public Utility Counsel as required by Section 13.063 of the Public Utility Regulatory Act (PURA). The report provides a list of the types of activities conducted by our office, the time spent by our office on each activity, the number of hours billed by the office for representing residential and small commercial customers in proceedings, the number of staff positions and type of work performed by each position, and the office's rate of success in representing residential and small commercial consumers in appealing Public Utility Commission (PUC) decisions.

In addition to highlighting some of the contested cases and rulemakings, the report also summarizes the agency's other major activities, including OPUC's contributions to ERCOT, FCC projects, and customer outreach and education. Finally, the report discusses emerging issues, the competitive electric market and legislative recommendations for your consideration.

The State of Texas continues to foster the production of a dynamic economy that allows for critical industries to produce goods, services, and new technologies more efficiently and effectively than its relevant competitors. Texas does this while providing consumers with a greater selection at a better value. We will continue to explore new ways to keep Texas competitive, as well as making improvements, finding solutions, and bringing value to the consumer.

Sincerely,

A handwritten signature in blue ink that reads "Don Ballard".

Don Ballard
Public Counsel

ACKNOWLEDGEMENTS

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Chapter 1. OPUC Overview

A. History & Organization

The Office of Public Utility Counsel (OPUC) was created in 1983 in response to legislative and consumer concerns that residential and small business ratepayers were not being adequately represented in utility proceedings that ultimately affected them. Utility companies and large consumers had resources to aggressively present their positions; however, residential and small business ratepayers generally did not have entities that represented their interests before the Public Utility Commission (PUC) and other agencies, because they were individually unable to afford the cost of presenting full legal cases.

The Legislature determined that this inequity created an imbalance in the regulatory process. OPUC was created in an attempt to provide balance to the process. The Public Utility Regulatory Act (PURA)¹ charges OPUC with representing residential and small business consumers in proceedings affecting electric and telecommunications rates and services. OPUC represents these consumers at the PUC, as well as in both state and federal courts, at the Federal Communications Commission (FCC) and at the Federal Energy Regulatory Commission (FERC). Additionally, OPUC is an active participant in the Electric Reliability Council of Texas (ERCOT), which is the Independent System Operator for 75% of the Texas electric grid. Decisions made at these regulatory agencies and at ERCOT directly impact the price, offering, and reliability of utility services. OPUC represents the interests of residential and small business consumers when those decisions are being formed and made. In rulemakings, projects, contested cases, appeals, and at market-driven forums, such as ERCOT committees and working-groups, OPUC provides legal and technical comments, testimony, and proposals that benefit residential and small commercial customers and promote their interests.

OPUC is headed by the Public Counsel who is appointed by the Governor and confirmed by the Senate for a two-year term.² The Public Counsel must be licensed to practice law in the State of Texas and must be a Texas resident.³ The seventh and current Public Counsel is Don Ballard, first appointed by Governor Rick Perry on January 3, 2008.

The Public Counsel supervises the overall operations of the agency and establishes agency policy. Specifically, the Public Counsel is responsible for the agency budget, staff hiring and termination, agency policy and administration, and the selection of cases in which to intervene.

¹ Texas Utilities Code Annotated §§ 13.001 *et seq.* (PURA).

² PURA §13.021.

³ PURA §13.022.

OPUC has a total number of 16.5 employees and is comprised of two divisions, the Litigation Division and the Market Representation and Communications Division.⁴

- The Litigation Division is responsible for representing the interests of residential and small business consumers in litigated matters before the PUC and other jurisdictional entities as necessary (*i.e.*, State, Federal and District Court, the FERC, the FCC, etc.). In addition to the Director, who is an attorney, the Division also employs two additional attorneys and two regulatory analysts.
- The Market Representation and Communications Division is responsible for representing the interests of residential and small business consumers in non-litigated matters, focusing on consumer market policy representation before the PUC and ERCOT in rulemakings and communications outreach to consumers. In addition to the Director, the Division also employs three attorneys and one government affairs and communications specialist.
- OPUC's Business Manager and 4.5 administrative support staff complete the 16.5 filled full-time and part-time positions. The Business Manager manages the budget and business activities, while the administrative support staff provides professional legal and clerical support for all groups.
- The OPUC staff is comprised of 12 professional positions requiring an advanced degree and extensive experience in utility regulatory and market issues.

B. Mission & Philosophy

The mission of OPUC is to provide quality representation to Texas residential and small business telephone and electric utility consumers in proceedings and matters that come before the PUC, ERCOT, FERC, FCC, and in state and federal courts to ensure that just and reasonable rates and reliable and capable services are available to them in an increasingly competitive environment.

The staff of OPUC believes that a healthy economic climate and the state's prosperity is achieved when companies are allowed to make a fair profit by charging consumers reasonable and affordable prices for telecommunications and electric service. We also believe that consumer protection is necessary to prevent anti-competitive behavior that results in higher prices, unclear or limited service offerings, or violations of regulatory compliance. OPUC is committed to providing the highest quality legal, professional, and technical representation to residential and small business ratepayers to ensure fair solutions in telecommunications and electric rates so that services are plentiful, affordable, and reliable for all Texans and that competitive markets are developed that benefit customers.

⁴ PURA §13.063(b)(3) requires the OPUC Annual Report to include the number of staff positions and the type of work performed by each position. See Attachment D, OPUC Organizational Chart.

C. Scope of Work

OPUC is an independent state agency with a team of attorneys, economists and policy analysts who are experts in the electric and telecommunications industries in Texas. OPUC provides analysis and advocacy to inform decision makers about the effects of utility industry policies and actions on Texas' consumers.

In deciding which proceedings OPUC participates in, OPUC staff reviews all relevant sources of information regarding new electric and telecommunications projects and proceedings, including PUC Bulletins, PUC Notices, *Texas Register* updates, *Federal Register* updates, FCC and FERC requests for comments along with other state and federal notices. When any OPUC staff member believes there is a Texas consumer interest at stake in a proceeding or matter, the Public Counsel, Litigation Director and/or Director of Market Representation is informed of the matter to discuss possible participation. The Public Counsel and OPUC staff consider the following factors when considering participation:

- Is there a demonstrable consumer interest at stake?
- What consumer benefits can be achieved?
- Does OPUC have a reasonable chance of success?
- What are the goals for participation?
- What time and costs will be necessary for the matter?
- What prior law or precedent is relevant to the matter?

Before the Public Counsel approves participation in a contested case matter, the Office of the Attorney General (OAG) is consulted to evaluate the merits of participation (OAG Evaluation). Before initiating any participation in any proceeding, OPUC staff seeks written approval from the Public Counsel. Upon approval, OPUC staff files either a statement of intent to participate or intervention in the approved docket or project with the appropriate regulatory entity, except for FCC proceedings which are deemed open upon Public Counsel approval.

Including OPUC's role in both state and federal cases, projects and appeals, OPUC participated in 57 contested proceedings and appeals, and 45 projects in Fiscal Year (FY) 2008. Chapter 2A, Contested Proceedings, and Chapter 2B, Rulemaking Activities and Projects, provide further discussion of OPUC's participation. For a more comprehensive listing of all cases and projects OPUC participated in FY 2008, see Attachment A.⁵

⁵ PURA §13.063(b)(1) requires the OPUC Annual Report to include a list of the types of activities conducted by the office and the time spent by the office on each activity.

OPUC’s workload is categorized by electric and telecommunications cases, projects and appeals. In FY 2008, OPUC staff spent 9,140.0 hours on electric and telecommunications cases; 2,317.5 hours on electric and telecommunications projects; and 787.0 hours on appeals. Total OPUC staff hours in FY 2008 were 12,244.5.⁶

	Total Electric and Telecom Cases	Total Electric and Telecom Projects	Total Electric and Telecom Appeals	Total Electric and Telecom Hours
OPUC Staff	9,140.0	2,317.5	787.0	12,244.5

During FY 2008, OPUC was involved in pending appeals relating to 11 PUC decisions.⁷

	FY 2006	FY 2007	FY 2008
Appeals OPUC participated in	14	13	11

For a more comprehensive analysis of OPUC’s appeals during FY 2008, see Attachment B.

D. Goals

OPUC’s presence in both regulated and market proceedings before the aforementioned jurisdictions and entities bring value and a consumer perspective to all of these processes. Because OPUC is tasked specifically with representing residential and small business interests, in contrast with the PUC’s broader representation of the “public interest,” it brings a focus on their behalf that no other market participant is able to represent. OPUC provides continuously professional legal and expert services to enhance the regulatory process and to provide solutions in the market place of Texas competition.

⁶ PURA §13.063(b)(2) requires the OPUC Annual Report to include the number of hours billed by the office for representing residential or small commercial customers in proceedings.

⁷ PURA §13.063(b)(4) requires the OPUC Annual Report to include the office’s rate of success in representing residential or small commercial consumers in appealing commission decisions.

Chapter 2. Summary of OPUC Activities for 2008

A. Contested Proceedings

For FY 2008, OPUC participated in 45 electric cases, 1 telecommunications case, and 11 appeals. The agency reported \$113,934,663.08 of current year bill savings for residential and small commercial customers as a result of those proceedings. The agency participated in a wide variety of cases including traditional rate cases, the identification and development of Competitive Renewable Energy Zones (“CREZ”), the implementation of advanced metering, and the review and revisions to the Texas Universal Service Fund. Attachment A provides a complete listing of all of the contested case proceedings that the agency participated in for FY 2008.

a. Electric

As the electric markets evolve and mature, the agency continues to experience a heavy workload in electric contested cases. OPUC has highlighted below a sample of the cases decided in FY 2008.

i. Advanced Metering

In 2005, the Legislature amended PURA to encourage the deployment of advanced metering.⁸ Advanced metering is a new technology that has the potential for significant customer and system benefits by allowing customer access to real-time energy usage information. This access to real-time energy consumption information and pricing signals allows customers to proactively manage their overall electricity usage as well as defer some activities to less costly periods of the day. Reducing overall demand and shifting load to off-peak hours diminishes the need for new capacity which in turn reduces generating and transmission costs. Advanced metering is also a significant first step in the establishment of a smart grid which can increase the operational efficiency of the utility, lowering operational costs. For more information on advanced metering and smart grid, see Chapter 4, Emerging Issues.

As a result of this legislation, the PUC amended its rules to address the requirements for the deployment of advanced metering.⁹ In May of 2008, the first applications for the deployment of advanced meters were filed by Oncor Electric Delivery Company, LLC (Oncor) and CenterPoint Energy Houston Electric, LLC (CenterPoint) at the PUC.¹⁰

⁸ Public Utility Regulatory Act (PURA), as amended by HB 2129, 79th Legislature, Regular Session (2005), codified at PURA §39.107(h) and (i).

⁹ PUC SUBST. R. §25.130 (2007).

¹⁰ PUC Docket No. 35620, *Application of CenterPoint Energy Houston Electric, LLC for Approval to Implement Advanced Meter Information Network pursuant to PURA §39.107(i)* (August 29, 2008); PUC Docket No. 35639, *Application of CenterPoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System*; and PUC Docket No. 35718, *Oncor Electric Delivery Company, LLC’s Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for Advanced Metering System (AMS) Surcharge* (August 29, 2008).

On August 29, 2008, the PUC approved Oncor's application (PUC Docket No. 35718) to deploy advanced metering technology. As a result advanced meters will be ubiquitously deployed throughout Oncor's service territory over the next four years. In addition, the deployment will coincide with a comprehensive customer education program and free in-home devices will be made available to all eligible low-income customers. OPUC was a strong proponent of these value-added services.

On December 18, 2008, the PUC approved CenterPoint's application (PUC Docket No. 35639) to deploy advanced metering technology. Like Oncor, advanced meters will be ubiquitously deployed throughout CenterPoint's service territory, enhanced by a comprehensive customer education program and provision of in-home devices targeted to eligible low-income customers.

In anticipation of CenterPoint's request for deployment of advanced meters in PUC Docket No. 35639, the PUC approved a request by CenterPoint to allow early deployment of advanced meters (PUC Docket No. 35620) on a limited scale. That request was granted in August 2008. The early deployment of advanced meters allowed CenterPoint to install up to 125,000 meters with a commitment that the technology would be installed in economically disadvantaged neighborhoods. Additionally, CenterPoint agreed to a meter testing commitment in order to verify the accuracy of electronically obtained meter readings.

ii. Competitive Renewable Energy Zones (CREZ)

Renewable energy issues have also generated a significant amount of legislative and PUC activity. The most recent amendment to PURA required the creation of Competitive Renewable Energy Zones (CREZ). The PUC was required to identify CREZ areas suitable for the development of renewable generating capacity and to develop a plan to construct sufficient transmission to deliver renewable energy to the grid in a manner most cost-effective and beneficial to consumers.¹¹

The CREZ legislative requirements have resulted in numerous projects and contested cases at the PUC.¹² For FY 2008, OPUC was active in the most comprehensive and litigious of these proceedings, PUC Docket No. 33672, *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones (CREZ Docket)*.

On August 15, 2008, the PUC issued its order in the CREZ docket identifying six CREZ zones in the panhandle and western areas of the state and the transmission needed to deliver 18,456 MW of wind generation to the grid. The PUC's order requires 2,334

¹¹ PURA §39.104(g).

¹² See, e.g., PUC. SUBST. R. 25.174 (2006), PUC Project No. 31852, *Rulemaking Related to Renewable Energy Amendments* (2006), PUC Docket No. 33672, *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*; PUC Docket No. 35665 *Commission Staff's Petition for Selection of Entities Responsible for Transmission Improvements Necessary to Delivery Renewable Energy from Competitive Renewable Energy Zones*; PUC Project No. 34108, *Commission Staff's Request for Qualifications Pursuant to PUC Sub. R. §25.174(c)*.

miles of new 345 kV transmission right-of-way and 42 miles of new 138 kV transmission right-of-way at the expected cost of \$4.93 billion. This decision will allow the State of Texas to meet and surpass its renewable energy goals.

iii. Traditional Rate Cases

Economic conditions have spurred many of the regulated integrated and transmission and distribution companies to ask the PUC for a review of their rates. Both choice (unbundled) and non-choice (bundled) utilities filed rate proceedings in FY 2008, and OPUC participated in rate cases filed by the following utilities: AEP Texas Central Company, Southwestern Public Service Company, Oncor Electric Delivery Company, LLC, and Entergy Gulf States, Inc.¹³ A tremendous amount of the agency's resources are devoted to negotiating and litigating these massive rate cases. These rate cases typically involve issues relating to a companies return on equity, costs of service, taxes, affiliate transactions, rate of return, and cost allocation among diverse customer classes. Each issue might involve expert testimony from accountants, engineers, economists or industry experts.

Three of the four rate cases are still pending at the PUC, although the PUC did order a change of rates at a level substantially lower (approximately \$40 million) than originally requested by AEP Texas Central in PUC Docket No. 33309.

b. Telecommunications

A primary goal of telecommunications is to ensure that all customers have access to affordable telephone service (*i.e.* "universal service"). The Federal Telecommunications Act of 1996 (FTA) identifies the primary goals for universal service.¹⁴ The FTA also directs state universal service fund (USF) programs to be specific, predictable, and sufficient without relying on or burdening Federal universal support mechanisms. In Texas, PURA relays this policy of allowing every person in the state access to high-quality telecommunications services at reasonable rates, regardless of geographic location.¹⁵ The current Texas Universal Service Program (TUSF) consists of eleven programs, reimburses state agencies for the cost of administering the fund and its programs, and is funded by a statewide uniform charge payable by each telecommunications provider that has access to the customer base.¹⁶

In PUC Docket No. 34723, OPUC participated in negotiations resulting in the unanimous settlement agreement implementing changes to the Texas High Cost

¹³PUC Docket No. 33309, *AEP Texas Central Company Application for Authority to Change Rates* (Dec 13, 2007); PUC Docket No. *SPS Application for Authority to Change Rates, to Reconcile Fuel and Purchased Power Costs and to Provide a Credit for Fuel Cost Savings*; PUC Docket No. 35717, *Oncor Electric Delivery Company, LLC Application for Authority to Change Rates*; PUC Docket No. 34800, *Entergy Gulf States, Inc. Application for Authority to Change Rates and to Reconcile Fuel Costs*.

¹⁴ 47 U.S.C. §151.

¹⁵ PURA Chapters 51, 52 and 58.

¹⁶ PURA Chapter 56.

Universal Service Plan (THCUSP).¹⁷ The proceeding involved Texas' largest four carriers and significant customer lines. The proceeding was opened to determine and potentially revise the monthly per-line support amounts available to Eligible Telecommunications Providers (ETPs) from the THCUSP. The THCUSP is the TUSF plan that provides financial assistance to ETPs that serve the high-cost rural areas of the state, other than the study areas of the small and rural incumbent local exchange carriers (ILECs).¹⁸ Ultimately, under the agreement, the THCUSP support amounts available to ETPs were reduced by \$250 million annually while still ensuring that high cost and rural areas receive the funding needed to maintain reasonable rates. Additionally, the stipulation required increased Lifeline discounts for eligible low-income customers. The reduction in THCUSP funding resulted in all customers, including Texas wireless customers, being charged less for the TUSF surcharge every month.¹⁹

c. Appeals

i. Appellate Process in the Administrative Law Context

Unlike most civil cases, the appellate process for most cases arising from a decision by the PUC begins with judicial review in the Travis County District Court before going on to the intermediate Court of Appeals or the state's Supreme Court. Direct Appeal and Petition for Writ of Mandamus may allow parties to "skip" one or more appellate levels but such cases are in the minority. The district court serves a valuable function in the administrative appellate process because it is at this level that the multiple issues on appeal are refined before continuing in the process. A funneling effect also occurs in that many cases are resolved in the district court in such a way that parties decide to not further pursue the appeal at a higher level. More administrative law appeals are heard at the district court than the Court of Appeals and Supreme Court combined.

During FY 2008, OPUC was involved in pending appeals related to 11 PUC decisions. Of those appeals, three have progressed to the Supreme Court level while two others, including one direct appeal of a new competition rule, progressed as far as the Court of Appeals. The remaining six have not progressed past judicial review in the Travis County District Courts by fiscal year's end. OPUC closed five appeals during FY 2008; three appeals due to the natural progress of the appellate process, and two volitionally after considering changes in circumstances and recent PUC and court decisions on related issues.²⁰

¹⁷ PUC Docket No. 34723, *Petition for Review of Monthly Per Line Support Amounts from Texas High Cost Universal Support Plan Pursuant to PURA §56.031 and Subst. R. 26.403*.

¹⁸ PURA §56.021(1); PUC SUBST. R. 26.403.

¹⁹ See, PUC Project No. 21208, *Texas Universal Service Fund (TUSF) Administration* (August 8, 2008). The PUC ordered a reduction in the assessment from 4.4% to 3.4% effective January 1, 2009.

²⁰ PURA §13.063(a)(4) requires the OPUC Annual Report to include the office's rate of success in representing residential or small commercial consumers in appealing commission decisions. See Attachment B for further discussion of OPUC appeals.

ii. Appellate Statistics

Determining whether one is successful at the intermediate and high court level requires consideration of many factors. Multiple issues may be presented to the appellate court for review and parties may find themselves simultaneously defending agency action on some issues and appealing agency actions on other issues. However, the statistics regarding appeals filed in Texas demonstrate that it is generally difficult to overturn decisions. On the Courts of Appeals level, only 9.0% of the 11,286 cases disposed of in FY 2007 resulted in either a reversal or a mixed disposition. The remainder of cases on appeal at the intermediate level either had decisions which affirmed the decision below or were dismissed. Likewise, only a small number of cases actually result in reversals or mixed dispositions at the Supreme Court level. Before reviewing a case on its merits, the Supreme Court first decides whether it will even hear the case. The large majority of petitions for review are denied. Review was granted in 138 of the 919 petitions disposed of by the Supreme Court in FY 2007, the highest percentage (15%) granted in the last twenty years. In FY 2007, the Court disposed of 111 causes in which review had been granted, with 88 or approximately 79.3% resulting in either a reversal of the intermediate appellate court or a mixed disposition.²¹

Parties' reasons for appealing are not always simply to have the underlying agency decision overturned. Parties may appeal for strategic reasons such as to counterbalance an opponent's appeal of the same decision or to preserve rights while other cases are on appeal. Parties also file appeals for reasons related to settlement negotiations, or to bring issues to light so that they can more expeditiously be addressed in another forum. Because of the complexities that surround the decision to appeal, measuring prevailing dispositions do not always tell the entire story.

A description of OPUC's prevailing dispositions related to each appeal, by court, may be found in Attachment B. According to the chart, OPUC's appellate results compare favorably to the disposition statistics reported by courts. This is borne out by the numbers. Of the five appeals for which a judgment has been reached in FY 2008, OPUC prevailed upon two appeals, lost none, and had mixed results in three.

B. Rulemaking Activities and Projects

a. Electric

i. Provider of Last Resort (POLR)

In FY 2008, OPUC participated in PUC Docket No. 35769.²² The Proposal for Publication was approved at the November 5, 2008, PUC Open Meeting. OPUC's goal in this ongoing project is to make the mass transition process, in which customers are transferred from a Retail Electric Provider (REP) exiting the market to another REP, less

²¹ *Office of Court Administration's Annual Statistical Report for the Texas Judiciary* (FY 2007). OCA's FY 2008 report had not been released at the completion of this OPUC Annual report section.

²² PUC Project No. 35769, *Rulemaking Relating to Electric Providers of Last Resort*.

harmful to customers that are subject to the process. For example, in the mass transition events during the summer of 2008, in addition to losing any deposit or amounts pre-paid to the exiting REP, consumers may have had to pay a deposit to the POLR that they were sent to and then pay another deposit if they switched away from the POLR (as they were encouraged to do). OPUC filed comments in this rulemaking project on January 9, 2009, to encourage better treatment of residential and small commercial customers in mass transition events. OPUC is aggressively seeking changes to protect customer deposits and provide for switch transition at the request of customers.

ii. REP Certification

Pursuant to a number of REPs' defaulting during the summer of 2008, the PUC initiated a rulemaking project to amend the REP certification rule, PUC Docket No. 35767.²³ PUC Staff's Proposal for Publication was approved at the PUC Open Meeting on October 23, 2008. The rule should increase the financial and other qualifications necessary to become a REP in the Texas market. OPUC provided responses to the questions proposed by PUC Staff on July 23, 2008, and will provide further comments in accordance with the project schedule. OPUC is supportive of the PUC's attempt to strengthen the standards for entry into the REP market. In particular, OPUC supports the notion of tiered or banded certifications based on number of customers or load served in Texas.

iii. Customer Disclosures

OPUC participated in a new project initiated by the PUC to amend the current REP customer information disclosure rule, PUC Docket No. 35768.²⁴ In August 2008, the PUC published a draft of the revised rule, PUC SUBST. R. 25.475. OPUC filed initial and reply comments to the PUC's Proposal for Publication. The goal of OPUC's participation in this proceeding is to improve the transparency of the products that the REPs offer to consumers. In particular, OPUC seeks to have the rule require the REPs to provide customers with notice of price changes, expiration of contract, and additional clarity regarding fees associated with the consumers' electric service. Outside of a truly fixed rate product, customers should be notified of when changes occur to their bill or rates.

iv. AMS Low-Income In-home Devices

As part of the Oncor AMS settlement in PUC Docket No. 35718, that OPUC participated in, Oncor agreed to provide \$10 million for the funding and distribution of in-home devices to eligible low-income customers with advanced meters in Oncor's service territory.²⁵ The PUC opened a workshop for this purpose, PUC Docket No.

²³ PUC Project No. 35767, *Rulemaking Relating to the Certification of Retail Electric Providers*.

²⁴ PUC Project No. 35768, *Rulemaking Relating to Retail Electric Providers Disclosures to Customers*.

²⁵ PUC Docket No. 35718, *Oncor Electric Delivery Company, LLC's Request for Approval of Advance Metering System (AMS) Deployment Plan and Request for AMS Surcharge*, Order at 14 (August 29, 2008).

36234.²⁶ Under the Oncor stipulation in PUC Docket No. 35718, the goal of the workshops and resulting program “is to maximize the comprehensive, cost-effective distribution of the in-home devices, including training and education, to the greatest number of eligible low-income customers.” Similarly, the CenterPoint settlement in PUC Docket No. 35639 also provides funding for in-home devices to be distributed to eligible low-income customers with advanced meters in its service territory.

These in-home devices will provide the customer with information regarding the customer’s electric consumption and price. OPUC believes these devices are a critical component of the advanced metering landscape and that they will enable customers, especially our most income-sensitive customers, to make informed decisions regarding their electricity usage. OPUC has participated in the workshops that Commission Staff has held to design the program. It is OPUC’s goal have a useful in-home monitor device provided to as many eligible low-income homes as possible.

v. Renewable Energy Portfolio Standard

In July 2008, the PUC posed several questions regarding the implementation of a renewable energy portfolio standard (RPS) requirement for renewable energy other than wind.²⁷ OPUC provided comments explaining that the implementation of a non-wind RPS could help stabilize and eventually lower the price of electricity as fuel source diversity is achieved. Having a diverse energy portfolio ensures price stability providing economic benefits to consumers and overall public benefits, including energy independence.

b. Telecommunications

i. Public Utility Commission

In FY 2008, OPUC intervened and/or participated in five telecommunications projects. These projects involved activities relating to telecommunications’ emergency system, certification of telecommunications providers, abbreviated dialing codes, lifeline discount amounts, and the Texas High Cost Universal Service Program.²⁸

ii. Federal Communications Commission

In FY 2008, OPUC submitted comments in four new FCC dockets regarding requests for comments. These dockets related to identical support, reverse auctions, Joint Board Comprehensive Reform, and waivers regarding access charges and “ESP” exemptions.²⁹

²⁶ The workshops to design the program have been held under PUC Project No. 36234, *Oncor Electric Delivery AMS Low-Income Program*.

²⁷ PUC Docket No. 35792, *Rulemaking Relating to Goal for Renewable Energy*.

²⁸ See Attachment A for PUC Project Numbers.

²⁹ See Attachment A for FCC Docket Numbers.

C. ERCOT Participation

The Electric Reliability Council of Texas (ERCOT) is one of ten regional reliability councils in the North American Reliability Council (NERC), and the ERCOT Independent System Operator (ISO) is the independent, not-for-profit organization responsible for the reliable transmission of electricity across Texas' interconnected 37,000 mile power grid. ERCOT's primary role since 1970 has been to ensure the coordination of electricity transmission reliability and electric power transfers among NERC member organizations. However, pursuant to the deregulation of the wholesale generation market in 1995 and later with the creation of a competitive retail electricity market in 1999, ERCOT's role expanded significantly. ERCOT now provides structure and oversight of the market design and activities of the energy market, including power scheduling, power operations, and retail market data transactions between retailers and wires companies.

In addition, pursuant to the Energy Policy Act of 2005 (EPAAct),³⁰ NERC mandated the creation of the Texas Regional Entity (Texas RE) as a functionally independent division of ERCOT to perform the regional entity functions described by EPAAct. Accordingly, the Texas RE is authorized by NERC to develop, monitor, assess, and enforce compliance with NERC reliability standards within the geographic boundaries of the ERCOT region.

OPUC has been an active participant in the market design stakeholder process since the inception of electric restructuring, and continued to do so in 2008 by collaborating with the various market participants within the committee and sub-committee structure to bring value to the process on behalf of its constituents, residential and small commercial customers:

- OPUC's Public Counsel statutorily serves as a member of the ERCOT and Texas RE Boards of Directors.
 - The ERCOT Board has monthly open meetings and consists of fifteen members: independent members (unaffiliated with the power industry), consumers, and representatives from industry market segments.
 - The Texas RE Board oversees the Texas RE's compliance methods and performance for reliability, employment, compensation, financial, financial audit and other administrative matters.
 - The Public Counsel also serves as a member of the Texas RE Standing Advisory Committee.
- A Public Counsel Appointee and the Director of Market Representation are members of ERCOT's Technical Advisory Committee (TAC) and the Texas RE's Reliability Standards Committee (RSC).
 - TAC is comprised of stakeholders and makes recommendations to the ERCOT Board of Directors. It is assisted by five subcommittees: Retail Market Subcommittee (RMS); Wholesale Market Subcommittee (WMS); Reliability and Operations Subcommittee (ROS); Commercial Operations

³⁰ Energy Policy Act of 2005 (EPAAct), Pub.L. No. 109-58, 119 STAT. 594, effective August 8, 2005.

- Subcommittee (COPS); and Protocol Revisions Subcommittee (PRS). Consumers are represented on all committees, which meet monthly. Numerous task forces and working groups reporting to these major subcommittees also meet regularly. TAC makes recommendations to the Board regarding ERCOT policies and procedures and is responsible for prioritizing projects through the protocol revision request, system change request and guide revision processes.
- RSC reviews and recommends action on regional standards and regional variances to North American Electric Reliability Council (NERC) standards. The RSC, annually elected within the ERCOT region, is comprised of 15 standing members from seven ERCOT market segments. The RSC reviews standard authorization requests and subsequent recommendations for the development, revision or deletion of regional standards and variances.
 - OPUC's Director of Litigation served as a member of the TAC and Subcommittees Organizational Review Task Force (TASOR TF), which was discontinued at the close of 2008
 - The TASOR TF was tasked with reviewing the structure, organization, and mission of TAC and its subcommittees, work groups, and task forces, and some of its recommendations are identified below.
 - OPUC Market Representation personnel also serve as members of the following TAC sub-committees: Wholesale Market Subcommittee (WMS), Retail Market Subcommittee (RMS), and the Protocol Revision Subcommittee (PRS).
 - WMS reviews issues related to the operation of the wholesale market in the ERCOT region and makes recommendations for improvement.
 - RMS serves as a forum for issue resolution in regards to retail market matters directly affecting ERCOT and ERCOT protocols. RMS also monitors PUC filings as they apply to the retail markets and participants ensuring the PUC requirements are reflected in the Retail Market Guides, protocols and Texas Standard Electronic Transaction (Texas SET).
 - PRS is responsible for reviewing and recommending action on formally submitted procedures and processes used by ERCOT and market participants, Protocol Revision Requests (PRRs).
 - As these major committees and sub-committees promulgate the need for related work groups or task forces, OPUC members participate in those meetings as well.

Noteworthy ERCOT and Texas RE accomplishments and highlights for FY 2008 having the most impact for OPUC's constituents include the following:

- Approval of a protocol revision request (PRR 764) to address the volatility of wholesale power price spikes and to provide ERCOT with appropriate procedures for effectively managing transmission congestion problems and constraints using both zonal balancing energy as well as local, unit-specific deployment. This protocol was necessary for congestion management in the current zonal market model until the implementation of the nodal market model provides a

simultaneous unit-specific solution for effective and efficient congestion management.

- In conjunction with the action taken with respect to PRR 764, and in response to the PUC's directive, the ERCOT Board made necessary system and protocol changes (PRR 772) to ensure that the \$2,250/MWh offer caps for the market clearing price of electricity (MCPE) were not exceeded and that the corresponding shadow price caps were set to align with the offer cap.
- Approval of a Retail Market Guide Revision Request (RMGRR 63) in response to the mass transition events to providers of last resort (POLRs) in June resulting from the default of several retail electric providers (REPs). Changes include the following:
 - A. A revision that ensures that customers with pending switches do not get caught up in a mass transition event and get switched to the REP they chose.
 - B. An amendment that allows low-income discount information to be distributed to all REPs during mass transition events.
 - C. A modification that allows ERCOT to accelerate the mass transition by one day.
- Approval of a protocol revision request (PRR 766) that supports interim settlement of all provisional advanced meters using actual fifteen minute data, the same way interval data recorder meters are settled, until the long-term advanced metering solution is implemented. This benefits customers by allowing them to more effectively respond to price signals by supporting innovating retail product offerings, such as demand response, dynamic pricing, and time-of-use pricing and accelerates the timeline for the market to take advantage of the benefits of advanced metering systems.
- The TASOR TF examined the use of ERCOT resources which support the stakeholder process and evaluated options for increasing opportunities for stakeholder and public participation in TAC and subgroup functions. After reviewing all of the governance issues, including structure, voting, participation and issue identification, the TASOR TF recommended leaving the current subcommittees in place. However, the TASOR TF did recommend that three new work groups be created: (1) the Critical Infrastructure Protection Work Group (securing infrastructure from threats); (2) the Market Credit Work Group (for stakeholder credit issues); and (3) the Wind Integration Work Group (to review all of the issues necessary in integrating wind resources into the grid). TAC voted to approve these three new workgroups.

D. Customer Outreach

a. Education

Customer education is an expansive and critical topic and is a key component to the many issues facing customers today in Texas' electricity market. Given the many new tools in the hands of residential and small business customers that help them mitigate

upward price pressures, only an educated customer base can take advantage of these new tools and use them to make smart, economic choices in their lives.

History tells us when consumers are given information they will respond rationally when differences between peak and off-peak power occur. The information will enable customers to take an active interest to react and maintain more control over both their energy usage and the price signals the information is sending.

Over the past year, OPUC has partnered with Chambers of Commerce, small commercial business organizations, like the National Federation of Independent Businesses, and other community associations in various towns and cities to arrange in-person outreach opportunities to establish a two-way dialogue so we can hear customers' concerns and better represent their interests.

OPUC is also in the process of restyling its website to make it easier to navigate, more customer friendly and informative.

b. Annual Meeting

The office shall conduct a public hearing to assist the office in developing a plan of priorities and to give the public, including residential and small commercial consumers an opportunity to comment on the office's functions and effectiveness.³¹

In FY 2008, OPUC held two annual meetings: November 21 in Nacogdoches, Texas and December 10 in McAllen, Texas.³² The office worked with various local groups including the National Federation of Independent Businesses (NFIB), the American Association of Retired Persons (AARP), and the Nacogdoches Chamber of Commerce to spread the word OPUC would be holding its annual stakeholder meeting.

Given the hardships of this past summer, OPUC focused its message on the educated and informed consumer in the Texas electricity market. It is OPUC's belief that an educated and informed customer will be able to make smart decisions regarding electricity providers, price and usage.

OPUC also identified new tools for consumers to help manage their electricity consumption and mitigate upward price pressures, including energy efficiency and advanced metering technologies.

³¹ PURA §13.064.

³² See Attachment C for *Texas Register* notices and press for Nacogdoches and McAllen meetings.

Chapter 3. Texas' Competitive Electric Market and Effects on Consumers

A. Competition and Customer Choice

The electric market in Texas continues its transition from a market where integrated electric utilities are fully-regulated to one where the generation and sale of electricity is governed by market forces while the transmission and distribution functions remain fully regulated. Competitive markets are generally favored over command-and-control methods of resource allocation because they are expected to expand product choice and keep production costs low in the long-run. The short-term benefits of competition may not always be readily apparent to customers.³³ However, residential and small-commercial customers have multiple retail electric providers (REPs) from which to choose, and the majority of the total electric load in the state is served by a non-incumbent REP. Recent economic and electricity market conditions have placed upward price pressure on Texas ratepayers. Currently, several initiatives are underway to alleviate this pressure and yield the consumer benefits suggested by a competitive market.

B. Challenges Facing the Competitive Market

Several challenges confront the developing competitive electricity market. For example, freedom of entry and exit of firms is a foundation of a competitive market, but as REPs have left the market, the process by which customers are ensured continuity of service through a POLR has sometimes led to higher rates, lost deposits, and consumer confusion. Currently the PUC is considering revisions to the POLR and REP certification rules to ensure that the result of entry and exit in the market benefits customers.

In addition, as new generation sources are planned to accommodate future electricity demand, Texas faces the challenge of integrating new technology into the existing grid. Integration may call for infrastructure upgrades or the need for increased reserve capacity. For example, the addition of wind as a resource in Texas has resulted in the need for additional transmission capacity and ancillary services. Such costs must be included when evaluating new technology so the balance between cost-effective and environmentally-friendly generation can be made to consumers' benefit.

Furthermore, recent weather events in the gulf region have increased calls to improve the reliability of the electric transmission and distribution systems by burying lines or replacing wooden poles with metal or concrete — a process called “hardening.” The benefits of hardening, including the potential for fewer outages or outages of shorter

³³ There is some evidence that customers have benefited from deregulation of electricity markets. For example, as noted in the PUC's *Scope of Competition in Electric Markets in Texas Report* (January 2007), there were between two and three times as many service options in 2007 as compared to 2005. Moreover, in 2007, the average residential customer could find rates from 16% to 31% below the price-to-beat rate, which suggests that customers are paying lower rates than would have been produced in absence of competition.

duration, must be weighed against the cost of such projects to determine to what degree, if any, the grid should be hardened.

C. Competitive Market Design Change from Zonal to Nodal

In a move to increase the transparency of prices and thereby increase market efficiency, the PUC ordered ERCOT to move from a Zonal market design to a Nodal design in the wholesale market for electricity. Currently the electric grid is divided into four Congestion Management Zones. Because grid resources are grouped on a portfolio basis within zones, market prices are zone-based and not resource-based. In the Nodal design, the grid will consist of over 4,000 nodes with market prices available at each node. With this resource-level degree of price transparency, resources can be dispatched more effectively, at lower cost, and prices will reflect the true marginal cost by location. The overall result is a better matching of grid generation resources with electricity load demands.

In the long run Nodal is expected to result in lower wholesale prices than Zonal; during the transition, however, we can expect lower wholesale prices in zones where generation outpaces load and higher prices where load exceeds generation capacity. As with most markets, the supply and demand of electricity is more sensitive to prices in the long-run than in the short-run because in the long-run there are more supply- and demand-side opportunities to respond to price changes with capital investment and conservation. In the short-run, customers have fewer options for dealing with price changes; thus, in areas where Nodal prices rise to signal the need for additional resources, customer education is needed to minimize the impact on customers' electricity bills.

D. Current Economic Climate Effects on the Competitive Market and Consumers

Increased competition moves the market to an efficient outcome by matching electricity demand with the lowest cost producers of electricity. Efficiency occurs when the cost of the last unit supplied just equals the value of that last unit to consumers. Competition should then yield declining electricity prices. Recent volatility in the underlying cost of generating electricity, however, has resulted in some higher electricity prices – but this is not inconsistent with an efficient market. The mix of generation sources (*i.e.*, coal, nuclear, natural gas, wind, etc.) in a REP's total energy portfolio drives its cost of providing electricity to customers. Because REPs generally obtain a larger percentage of their electricity produced by natural gas, in comparison to electric cooperatives and municipalities, customers who purchase electricity through REPs have seen more price volatility as a result of underlying volatility in natural gas prices. In the summer of 2008, natural gas prices exceeded \$15/MMBtu, more than 30% higher than the 2007 price, and electricity prices increased for customers served by REPs. In the latter part of the year natural gas prices fell to under \$6/MMBtu and REP prices subsequently declined from the peak prices that prevailed during the summer months. The recent experience with electricity prices indicates that competition does not always correlate to a guarantee in a reduction in the electricity prices paid by consumers; instead,

competition promises the most efficient market outcome given the current and expected economic environment.

One element of the overall national economic climate, the decreasing availability of credit, has also contributed to the retail price volatility seen by customers. To hedge against wholesale energy price volatility, REPs have used investment banks to provide credit lines and energy price hedging contracts. As these credit lines and hedging contracts dry up with the failure of some investment banks and increased cautiousness of others, the number of fixed-rate retail contracts available to customers are fewer and of shorter duration. In this way wholesale price volatility is transferred to customers.

Credit availability has also affected the providers of electric generation, transmission, and distribution in Texas which has a direct effect on customers. Since new capital and capital improvements are largely funded by debt financing, lack of credit availability has led to construction delays. For those projects that continue to move forward, higher interest payments in the servicing of debt related to these projects is expected. In addition to the cost of financing new projects, construction costs are increasing as well. Taking new generation construction as an example, the Electric Power Supply Association states: "The U.S. Energy Information Administration estimates that up to three-quarters of construction costs are directly related to materials and equipment... According to the Brattle Group, over the past ten years the cost of steel products has increased by 70 percent, copper 300 percent, aluminum 70 percent, cement 40 percent and electric wire nearly 60 percent." These increasing costs are ultimately borne by ratepayers.

While the extent of the current economic turmoil is less severe in Texas than in other areas of the country, with unemployment rates and home foreclosure rates lower than the national average, customers in Texas still feel the effects of the economic times. As the availability of credit declines and consumer confidence wanes, customers have reigned in consumption and the economy's fortunes have worsened. Combined with the lingering effects of weather events in the gulf region, REPs are reporting an increase in the number of delinquent accounts.

Current economic and market conditions provide challenges to the increased product choice and lower prices promised by competition. In light of such challenges, the consumer advocacy role taken by OPUC becomes ever more important.

Chapter 4. Emerging Issues

A. Advanced Meters

Most residential meters in service in the United States are simple electromechanical devices that register the energy consumed by the customer. Customers only see their usage and price for electricity once a month, after the fact, when they receive their bills. These meters must be read by utility personnel. Advanced meters are digital devices that measure consumption and provide real-time feedback to electric customers on their electric usage and may also provide information storage and communications capabilities. With this information, customers can modify their usage in real-time in response to the price. These meters will be the building blocks of a “smart grid” for Texas.

Legislation over the past few sessions has encouraged advanced meter system (AMS) deployment throughout the State. In 2005, House Bill (HB) 2129 (79th R.S.) directed the PUC to establish a cost-recovery mechanism for utilities that deploy innovative meters that benefit transmission and distribution utilities (TDUs), retail electric providers (REPs), and customers, and allowed for voluntary AMS deployment by Texas utilities.³⁴ In 2007, HB 3693 (80th R.S.), expressing the intent of the Texas Legislature, encouraged “advanced meter data networks be deployed as rapidly as possible.”³⁵ AMS deployment is still voluntary for TDUs.

In addition, the PUC adopted a rulemaking in support of advanced metering.³⁶ In compliance with PURA §39.107(b), this rule ensures that the customer owns the meter data and thus will be able to view their real-time consumption once a home area network (HAN) or an in-home devices is installed in their homes. In-home devices may be provided by REPs or other third parties, and there is a current workshop underway with the PUC addressing related issues.³⁷

AMS is intended to benefit the end-use customer, the TDU, and REP in numerous ways. For customers, the benefits may include, but not be limited to: allowing more control over their electric bills (*i.e.*, allowing customers to respond to appropriate price signals and incentives by reducing consumption); granting quicker remote outage detection and power restoration; promoting easier customer switching among REPs; providing knowledge as to when to reduce their usage during peak periods and scarcity conditions, thus using less and spending less; promoting operational and environmental savings for the utility (*i.e.*, emitting less carbon dioxide and pollutants) that can be ultimately passed on to the customer; allowing a customer to predetermine their electric bill for the month; and providing customers with complete information, control, choice and customization regarding their electricity and provider. For TDUs, the benefits include potential cost savings based on reduction in meter-reading labor costs and

³⁴ PURA §39.107(h).

³⁵ PURA §39.107(i).

³⁶ PUC SUBST. R. 25.130

³⁷ PUC Docket No. 34610, *Implementation Project Relating to Advanced Metering*.

operational savings based on increased automation in meter reading, data collection, information management, and billing processes. These savings should be passed on to the REPs and end-use customers. For REPs, the benefits include increasing competition in the retail electric market, allowing for innovative product offerings not feasible with current meters, and providing on-demand connection and disconnection.

B. Smart Grid

Deploying the smart grid became the policy of the United States with the passage of the Federal Energy Independence and Security Act of 2007 (EISA).³⁸ Title XIII of the EISA provides that it is the nation's policy to support the modernization of the electricity transmission and distribution system to maintain a reliable and secure electricity infrastructure to achieve a national smart grid. The national policy includes, among other things, promoting smart technologies for metering, grid communications, and distribution automation, giving consumers timely information and control options regarding their electric consumption, developing standards for communication and interoperability of appliances and equipment connected to the grid, including grid infrastructure, and identifying lowering barriers to adoption of smart grid technologies, practices and services.

Section 1306 of the EISA defines smart grid functions to include the ability to store, send and receive digital information (*i.e.*, prices, costs, electricity uses, time of day, nature of use, etc.) through a combination of devices, the ability to do these things from a computer or control device, and the ability to measure and monitor electricity use as a function of time of day, power quality, and source and type of generation. Further, Section 1307 of the EISA directs States to consider requiring electric utilities, prior to undertaking investments in non-advanced grid technologies, to demonstrate to the State that the electric utility first considered an investment in a qualified smart grid system. The deployment of advanced meters in Texas is a crucial first step in deploying smart grid technology.

³⁸ Federal Energy Independence and Security Act of 2007 (EISA), Pub. L. 110-140, 110th Congress.

Chapter 5. Legislative Recommendations

Pursuant to PURA §13.003(a)(8), OPUC “may recommend legislation to the legislature that the office determines would positively affect the interests of residential and small commercial consumers.” Below is a summary of OPUC’s recommendations.

A. Deposits to Retail Electric Providers

Pursuant to the mass transition events that unfolded during the summer of 2008 and the exiting of a number of Retail Electric Providers (REPs), the Texas electric market witnessed the financial hardships of many customers who lost their deposit money, which in some cases may have been as high as \$500. Accordingly, OPUC recommends that the Legislature statutorily require REPs to protect customer deposits through a guaranteed financial mechanism to ensure the customer’s deposit money is returned to the customer in the event a REP exits the market. The PUC is currently addressing this issue in a rulemaking project regarding the certification of REPs.³⁹ In its comments in the rulemaking project, OPUC urged the Commission to require REPs to keep any deposit or pre-paid amounts from their customers in a protected account to ensure the money is returned to the customer upon the REP’s exit from the market.

B. System Benefit Fund

PURA §39.303 governs the System Benefit Fund (SBF) and the manner in which appropriations from this fund are collected and disbursed. OPUC has always supported the SBF and the purposes outlined in the statute therein for assisting low-income customers and educating all consumers.

Consistent with the recent recommendation from the Governor’s Competitiveness Council in the *2008 Texas State Energy Plan* (July 2008), OPUC supports the restoration of funding through the SBF for the PUC and OPUC, for the following reasons:

- While OPUC shares a customer education mandate with the PUC, the agency is unique in that it is also statutorily charged to advocate on behalf of the state’s large constituency of residential and small commercial customers;⁴⁰
- OPUC is tasked with community outreach to residential and small commercial customers, and the SBF funds will allow OPUC to enhance its dialogue with its constituents and assist consumers in their efforts to be informed customers in the Texas electric competitive marketplace;⁴¹ and
- The funds could be utilized more fully for education, outreach and advising customers allowing OPUC to complement and assist the PUC in these efforts.

³⁹ PUC Project No. 35767, *Rulemaking Relating to Certification of Retail Electric Providers*.

⁴⁰ PURA §§13.001 and 13.003(a)(1).

⁴¹ PURA §§13.061 and 13.064.

C. Suspension of Disconnections for Certain Customers

During the 80th Legislative Session, members of both chambers worked to reach common ground on a perennial question and concern over summer electric disconnections. OPUC supports the efforts made last session and hopes that members of the 81st Legislature will continue the same dialogue to enact legislation. Specific OPUC recommendations are as follows:

- OPUC first recommends the Legislature appropriate funds to the SBF bill payment assistance program set forth in PURA §39.903(e)(1)(B). This current statutorily-authorized program provides one-time bill payment assistance to electric customers who are or who have in their households one or more seriously ill or disabled low-income persons and who have been threatened with disconnection for nonpayment. Though this program exists in statute, the Legislature had not yet appropriated funds to it. If funded, this program could provide assistance to and prevent disconnection of those Texas households most in need. In the alternative, OPUC requests the Legislature to consider summer moratoriums and suspension of certain rules as discussed in further detail below.
- OPUC recommends that a summer moratorium on disconnection of service (July-September) should be limited to certain customer classes (*i.e.*, critical care, low-income elderly, and low-income). OPUC also supports REPs assisting these customers through voluntary assistance and deferred payment plans during suspension of disconnection rules. Additionally, the disconnection time period should occur during July through September, months which would also include extreme weather conditions declared by the National Weather Service. And, OPUC would recommend extending the disconnection time period to include any other months during the year in which the National Weather Service declares an extreme weather emergency. The PUC currently has authority to declare moratoriums on disconnections based on weather and market conditions and should be specifically authorized for these customer classes.
- OPUC additionally recommends that suspension of electric services, waiver of deposits, and suspension of certain rules pertaining to electric and telecommunications services, be statutorily triggered whenever an Emergency Proclamation is issued by the President or the Governor, for the affected areas of the State. Residents living in declared affected areas of the State would need to show proof of residency and receipt of benefits offered by the Federal Emergency Management Agency, the Disaster Housing Assistance Program, Disaster Unemployment Insurance, the American Red Cross or other recognized charitable organization, or a state or local jurisdiction or agency. The PUC currently has authority to declare moratoriums on disconnections based on weather and market conditions. The PUC should determine what rules to waive and defer during emergency circumstances.

D. Incentive Prize for Energy Storage

Also, as recommended by the Governor's Competitiveness Council in the *2008 Texas State Energy Plan* (July 2008), OPUC agrees and strongly encourages the state to establish innovation prizes, funded with public-private revenue, for the commercialization of large-scale energy storage solutions. Such progress in storage could revolutionize the electric market – both in generation and end-use customer choice for a range of electric products. This solution will help address intermittency and reliability of renewable energy sources and peak generation.

Attachments

- A. FY 2008 Cases and Projects in Which OPUC Participated
- B. FY 2008 OPUC Appeals Report
- C. FY 2008 *Texas Register* Notices and Press for OPUC Annual Meetings in Nacogdoches and McAllen
- D. OPUC Organizational Chart

Attachment A

FY 2008 Cases and Projects in Which OPUC Participated

Electric Cases

- 32405 Complaint of Public Utilities Brokers of Texas and PUB Clients Against Starlight Electric LP and Triegle Energy LP
- 32710 Entergy Gulf States, Inc. Application for Authority to Reconcile Fuel and Purchased Power Costs
- 32795 Staff's Petition to Initiate a Generic Proceeding to Re-Allocate Stranded Costs Pursuant to PURA § 39.533(f)
- 32902 CenterPoint Energy Houston Electric, LLC's Compliance Filing to Adjust Base Class Allocations Under Schedules TC and TC2 Pursuant to PURA § 39.253(f)
- 33156 Commission Staff's Petition for an Inquiry into the Management & Affairs of TXU Electric Delivery Company & TSAEW's Petition For Declaratory Order
- 33309 AEP Texas Central Company Application for Authority to Change Rates
- 33672 Commission Staff's Petition for Designation of Competitive Renewable Energy Zones
- 33687 Entergy Gulf States, Inc.'s Transition to Competition Plan
- 33734 Electric Transmission Texas, LLC Application for a Certificate of Convenience & Necessity, for Regulatory Approvals, & Initial Rates
- 34040 Commission Staff Petition for a Review of the Rates of TXU Electric Delivery Company
- 34077 Oncor Electric Delivery Company & Texas Energy Future Holdings Limited Partnership Joint Report & Application Pursuant to PURA § 14.101
- 34301 Proceeding to Consider Rate Case Expenses Severed from Docket No. 33310 (Application of AEP Texas North Company for Authority to Change Rates)

- 34362 Lone Star Transmission, LLC Application for a Certificate of Convenience & Necessity & Certain Regulatory Clarifications
- 34446 ITC Panhandle Transmission, LLC Application for a Certificate of Convenience & Necessity Regarding Transmission Service in the Texas Panhandle Portion of the Reliability Region of the Southwest Power Pool
- 34448 CenterPoint Energy Houston Electric, LLC Application for a Financing Order
- 34449 Texas Legal Services Center Organization to Save Energy of Texas (TLSC) & Texas Ratepayers' (Texas Rose) Request for Investigation into Bill Assistance Funds Payment & Security Deposit
- 34467 Complaint of Texas Electric Cooperative, Inc. Against Entergy Gulf States, Inc. for Violation of PUC Proc. Rules §22.144
- 34470 Southwestern Public Service Company Application for: (1) Approval of Line Loss Factors; and (2) Authority to Implement Revised Fuel Factors
- 34494 El Paso Electric Company Application for a Certificate of Convenience & Necessity
- 34522 CenterPoint Energy Houston Electric, LLC Compliance Filing to Reduce Its Base Rates in Accordance with Docket No. 32093 Stipulation & Agreement
- 34564 Southwestern Electric Power Company & Mutual Energy SWEPCO, LP Compliance Filing Regarding Transition Costs Pursuant to Docket No. 32672 Final Order
- 34611 Kelson Transmission Company, LLC Application for a Certificate of Convenience & Necessity for the Amended Proposed Canal to Deweyville 345 KV Transmission Line Within Chambers, Hardin, Jasper, Jefferson, Liberty, Newton, & Orange Counties
- 34630 Texas Legal Services Center & Texas ROSE Petition to Modify the Commission's Final Order in Docket No. 32103 & to Reform the Agreement to Implement Weatherization Programs
- 34642 Entergy Gulf States, Inc. Application to Revise Its Fixed Fuel Factor (Schedule FF) in Compliance With Final Order in Docket No. 32195

- 34695 El Paso Electric Company Petition to Reconcile Fuel Costs & Revenues & Requests to Recover Mine Closing Costs
- 34724 Entergy Gulf States, Inc. Application to Revise Rider IPCR Rates & Implement an Interim Surcharge
- 34800 Entergy Gulf States, Inc. Application for Authority to Change Rates & to Reconcile Fuel Costs
- 34953 Entergy Gulf States, Inc. Application to Implement an Interim Fuel Refund
- 35105 AEP Texas Central Company Compliance Tariff Filing Pursuant to the Final Order in Docket No. 32795
- 35038 TNMP Tariff Filing in Compliance with the Final Order in Docket No. 33106
- 35287 Sharyland Utilities, L.P. & Sharyland Distribution & Transmission Services, L.P. Application for Regulatory Approvals Pursuant to PURA §14.101, §39.262, and §39.915
- 35428 ERCOT Application for Approval of a Revised Nodal Market Implementation Surcharge
- 35519 Entergy Texas, Inc. Application for Approval of Certificate of Convenience & Necessity (CCN) Allocation
- 35542 Sharyland Utilities, L.P. Application for Modification Of Orders Regarding Rates (Formerly OPC 08-2)
- 35608 SWEPCO Compliance Tariff Filing Pursuant to Final Order in Docket No. 19265 (Application of CSW & AEP Re: Proposed Business Combination)
- 35620 CenterPoint Energy Houston Electric Application for Approval to Implement Advanced Meter Information Network Pursuant to PURA §39.107(i)
- 35639 CenterPoint Energy Houston Electric Application for Approval of Deployment Plan & Request for Surcharge for An Advanced Metering System
- 35668 SPS Application for Authority to (1) Revise Its Interruptible Credit Option Tariff; (2) Implement a New Saver's Switch Tariff; and

Related Relief

- 35717 Oncor Electric Delivery Company, LLC Application for Authority to Change Rates
- 35718 Oncor Electric Delivery Company LLC's Request for Approval of Advanced Metering System (AMS) Deployment Plan & Request for Advanced Metering System (AMS) Surcharge
- 35738 Southwestern Public Service Company Application for Approval of Energy Efficiency Cost Recovery Factor Rider & Related Exception
- 35763 SPS Application for Authority to Change Rates, to Reconcile Fuel & Purchased Power Costs for 2006 and 2007, & To Provide a Credit for Fuel Cost Savings
- 35785 ERCOT Application for Approval of the ERCOT System Administration Fee
- 35890 AEP Texas North Company Petition for Administrative Approval of Transmission Cost Recovery Factor
- 35891 AEP Texas Central Company Petition for Administrative Approval of Transmission Cost Recovery Factor

Electric Projects

- 25721-P Retail Electric Provider Annual Reports
- 27750-P Implementation of Market Readiness in the Southwest Power Pool Market Area of Texas
- 31093-P Rulemaking on Market Power in the ERCOT Up Balancing Energy Service Market
- 31194-P Rulemaking to Implement Targeted Low-Income Energy Efficiency Weatherization Programs
- 33253-P Rulemaking Relating to Transmission Cost-Recovery Factor for Non-ERCOT Utilities
- 33487-P Rulemaking Regarding Amendments to Energy Efficiency Rules & Templates
- 33811-P Rulemaking to Implement Requirement of PURA § 39.903(E)(1)(B) Concerning a One-Time Bill Payment

34610-P	Implementation Project Relating to Advanced Metering
34887-P	Rulemaking to Amend Method for Calculation of Electric Low-Income Discount
34889-P	PUC Rulemaking Relating to Allocation of the Administrative Fee of ERCOT
34913-P	PUC Coordination With State Energy Conservation Office to Develop Standard Formats for Reporting Utility Consumption Under HB 3693
35533-P	PUC Rulemaking Proceeding Relating to Prepaid Service
35630-P	Designation of Electric Providers of Last Resort for 2009-2010
35767-P	Rulemaking Relating to Certification of Retail Electric Providers
35768-P	Rulemaking Relating to Retail Electric Providers Disclosures to Customers
35769-P	Rulemaking Relating to Electric Providers of Last Resort
35792-P	Rulemaking Relating to Goal for Renewable Energy
35868-P	Emergency Rulemaking to Waive Deposit Requirements & Switching Fees Under PUC Subst. R. 25.43, 25.478, and 25.493 for Low-Income Customers of Defaulting Retail Electric Providers
35855-P	Request for Comments on the Use of Demand Ratchets
35984-P	Petition of The Honorable Sylvester Turner, The Honorable Eddie Lucio III, OPC, Texas ROSE, TLSC to Adopt An Emergency Rule to Suspend Disconnection of Electric Utility Services Due to extreme & Persistent Heat Conditions & Record High Electricity Prices
OPC 02-2	ERCOT Meetings
OPC 07-1	OPC's Project Number for Customer Complaints
OPC 07-2	OPC's Project Number for Annual Report
OPC 08-1	OPC's Project Number for Investigation into the impact of the demand ratchet on small commercial customers, and possible action

OPC 08-2 OPC's Project Number for Sharyland's rates & deferred costs

Telephone Cases

34723 Petition for Review of Monthly Per Line Support Amounts from the Texas High Cost Universal Support Plan Pursuant to PURA §56.031 & Sub Rule §26.403

Telephone Projects

24522-P Rulemaking to Development of Quality of Service Standards Applicable to Wireless Carriers with Eligible Telecommunications Provider Status to Receive Universal Service Funds

31958-P Rulemaking Project For Establishing Telecom Service Quality Standards For Alternate Technologies Used By A POLR

32229-P Plan for Implementing SB5

34037-P Activities Related To Oversight Of The 9-1-1 Emergency System

34293-P Project for Staff Study of Substantive Rule 26.403 Cost Models in Connection With Texas High Cost Universal Service Plan (THCUSP)

35246-P Rulemaking regarding PUC Subst. Rules, Chapter 26, Subchapter E (Certification, Licensing and Registration §§26.101, 26.102, 26.103, 26.107, 26.109, 26.111, 26.113 and 26.114) and § 26.89

35495-P PUC Rulemaking Proceeding to Amend Subst. R. §26.127 Regarding 811 Abbreviated Dialing Code

35576-P Rule Review of Chapter 22, Procedural Rules, Pursuant to Texas Government Code §2001.039

35629-P Rulemaking to Increase the Lifeline Discount Amount

35632-P Rulemaking to Modify Texas High-Cost Universal Service program Reporting Requirements

FCC 05-33 Unified Intercarrier Compensation Regime
CC 01-92
DA 06-1510

FCC 05-55 CC 98-170 CC 04-208	Truth-In-Billing
FCC 05-78 WC 03-251	BellSouth Telecommunications Request for Declaratory Ruling Regarding Broadband Internet Access Services
FCC CG 02-278 DA 05-1346	FCC's Jurisdiction Over Interstate Telemarketing
FCC WC 07-21	AT&T Petition for Forbearance Under 47 USC § 160 from Enforcement of Certain Rules
FCC 07-164 WT 07-195	Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band
FCC 08-4 WC 05-337 CC 96-45	Identical Support/High-Cost Universal Service Support & Federal State Joint Board on Universal Service
FCC 08-5 WC 05-337 CC 96-45	Reverse Auctions/High-Cost Universal Service Support & Federal State Joint Board on Universal Service
FCC 08-22 WC 05-337 CC 96-45	Joint Board Comprehensive Reform/High-Cost Universal Service Support & Federal State Joint Board on Universal Service
FCC 08-152 DA 08-1725	AT&T Petition for Interim Declaratory Ruling & Limited Waivers Regarding Access Charges and the "ESP" Exemption

Attachment B

FY 2008 APPEALS REPORT GLOSSARY OF TERMS & REFERENCE SYMBOLS

TERMS

COA	The Third Court of Appeals, Austin, Texas
SCT	The Supreme Court of Texas
STRANDED COSTS	The portion of the book value of a utility's generation assets that is projected to be unrecovered through rates that are based on market prices that the utility had made with the expectation of recovering under the prior rate-regulated regime.
UCOS	Unbundled Cost of Service- a rate requirement set pursuant to PURA § 39.201

SYMBOLS

+	Denotes consolidated cause number
*	Denotes cause originated by OPUC
‡	Denotes a separate appellate track, such as a mandamus proceeding before the Supreme Court of Texas

**OFFICE OF PUBLIC UTILITY COUNSEL
FY 2008 APPEALS REPORT
AT-A-GLANCE**

PUC NUMBER	SUBJECT	COURT CAUSE NUMBERS	DISPOSITION	STATUS (AS OF 8/31/08)	COMMENTS
22352	UCOS-CPL	GN1-04048* GN1-04182+ COA: 03-03-00428 SCT: 05-0941	Dist. Ct.: Prevail COA: Prevail SCT: Prevail	Closed 1 st Quarter	
26000	Final Fuel Reconciliation-WTU	GN4-04175 COA: 03-05-00644	Dist. Ct.: Prevail	Pending at COA	
26194	Fuel Reconciliation (Regular)-EPE	D-1-GN-04-002244; D-1-GV-04-002026*	Dist. Ct.: Prevail 1 issue, Not Prevail two others	Closed 4 th Quarter	
29526	True-Up-CenterPoint	GN5-00439+; GV5-00066* GV5-00297* COA: 03-05-00557 ~ SCT: 08-0421 05-0043‡	Dist. Ct.: Defensive Prevail on 5 issues; Not Prevail all others. COA: Prevail on 1 issue; Not prevail one other. ~ SCT: Prevail‡	Pending at SCT	Supreme Court Cause No. 05-0043 is an original mandamus action not associated with the traditional appellate track represented by the other causes filed related to this PUC docket. This mandamus action ended FY 2006 when the SCT dismissed the petition without prejudice.

					The issues on the traditional appellate track are now pending before the Supreme Court and are awaiting the Court's decision as to whether Review will be granted.
31056	True-Up-AEP TCC	D-1-GN-06-002081* D-1-GV-06-000827+ COA: 03-07-00196 SCT: 08-0634	Dist. Ct.: Not Prevail COA: Prevail on 1 issue; Not Prevail 1 issue.	Pending at SCT	
31540	Protocols for ERCOT Nodal Market	D-1-GV-06-002166 D-1-GV-06-002131 D-1-GV-06-001243	n/a	Closed 4 th Quarter	OPUC opted to withdraw its interventions in these appeals due to consideration of events currently surrounding the Texas Nodal Market development.
31972	Rulemaking Concerning Resource Adequacy and Market Power in ERCOT	COA: 03-06-00552-CV 03-06-00571-CV	n/a	Closed 1 st Quarter	This was a direct appeal of a competition Rule and therefore originated at the COA. These causes were dismissed for mootness at the request of the appellants.
32758	Competition	D-1-GN-		Pending	

	Transition Charge – AEP TCC	07-001153		at Dist. Ct.	
32795	Stranded Cost Reallocation	D-1-GN-08-000476		Pending at Dist. Ct.	
33309	Rate Case – AEP TCC	D-1-GN-08-001689		Pending at Dist. Ct.	
34480	Voluntary Mitigation Plan – TXU Wholesale	D-1-GN-07-002494	Dist. Ct.: Prevail	Closed 1 st Quarter	Declaratory Judgment

KEY:

+ denotes consolidated cause number

* denotes cause originated by OPUC

‡ denotes a separate appellate track, such as a mandamus

FY 2008 APPEALS REPORT

Appeal from:

PUC Docket No. 22352,
*Application of Central Power & Light Company
for Approval of Unbundled Cost of Service Rate
Pursuant to PURA § 39.201 and Public Utility
Commission Substantive Rule 25.344*

Status as of 8/31/08:

Closed 1st Quarter

Cause Nos.

District Court: GN1-04048*
GN1-04182+
COA: 03-03-00428
SCT: 05-0941

Disposition:

District Court: Prevail
COA: Prevail
SCT: Prevail

Details:

The Supreme Court of Texas denied the Commission's petition for review of the Third Court of Appeal's finding on the issue of excess mitigation that the Commission did not have the statutory authority to order refunds based on interim estimates of "over-mitigated" stranded costs determined before the 2004 true-ups and its reversal of the PUC's final order. OPUC's position was that the PUC's implementation of the excess mitigation credit was discriminatory against residential and small commercial customers. The Austin court's decision was consistent with OPUC's position. At the Supreme Court, OPUC responded to the Commission's petition for review and took the position in briefing that the petition for review should be denied.

FY 2008 APPEALS REPORT

Appeal from:

PUC Docket No. 26000,
*Application of West Texas Utilities Company for
Authority to Reconcile Fuel Costs*

Status as of 8/31/08:

Pending at Court of Appeals

Cause Nos.

District Court: GN4-04175
COA: 03-05-00644

Disposition:

District Court: Prevail
COA: n/a

Details:

This appeal was pending before the Third Court of Appeals all four quarters of FY 2008.

FY 2008 APPEALS REPORT

Appeal from:

PUC Docket No. 26194,
*Petition of El Paso Electric Company to
Reconcile
Fuel Costs*

Status as of 8/31/08:

Closed 4th Quarter

Cause Nos.

District Court: GN4-02244
GV4-02026*

Disposition:

Prevail 1, Not Prevail on all
others

Details:

In the District Court, El Paso Electric Company sought to reverse the Commission's decision pertaining to the imputation of capacity costs in the Company's SPS 2000 contract. OPUC and the City of El Paso sought a reversal of the PUC's decision on the questions of the amount and quantification of capacity charges in the El Paso Electric Company's fuel costs. The City also appealed the calculation and allocation of off-system sales in the Commission's Order. The Court denied all appeals by affirming the Commission's Final Order in all respects. OPUC is not pursuing this appeal at the Court of Appeals.

FY 2008 APPEALS REPORT

Appeal from:

PUC Docket No. 29526,
*Application of CenterPoint Energy Houston
Electric for a True-Up Filing*

Status as of 8/31/08:

Pending at SCT
Mandamus Closed‡

Cause Nos.

District Court: GN5-00439+
GV5-00066*
GN5-00297*

Disposition:

District Court:
Defensive Prevail on
5 issues, Not Prevail
on all other issues

COA: 03-05-00557

COA:

Prevail 1 issue,
Not Prevail 1 issue

SCT: 08-0421

SCT: n/a

~

~

SCT: 05-0042‡

SCT: Prevail

Details:

The COA upheld the Commission's decision except on two points. First, the Court reversed the PUC's decision, as advocated by OPUC, that CenterPoint's stranded cost amount should not be reduced by the amount of EMCs credited to the AREP for PTB customers. Second, the Court reversed the PUC's decision that CNP was prohibited from recovering interest on EMCs paid to REPs other than the Affiliated REP (affirming the District Court's reversal on this point). This appeal was pending before the Supreme Court of Texas in the 4th Quarter of FY 2008.

FY 2008 APPEALS REPORT

Appeal from:

PUC Docket No. 31056,
*Application of AEP Texas Central Company and CPL
Retail Energy, LP to Determine True-Up Balances
Pursuant to PURA §39.262 and Petition to Determine
Amount of Excess Mitigation Credits to be Refunded
and Recovered*

Status as of 8/31/08:

Pending at SCT

Cause Nos.

District Court: D-1-GN-06-02081*

D-1-GV-06-00827+

COA: 03-07-00196-CV

SCT: 08-0634

Disposition:

District Court: Not Prevail

COA:

Prevail on 1 issue,
Not Prevail on 1
issue.

Details:

Regarding the Court of Appeals' decision in the appeal of the AEP-TCC true-up case (COA case # 03-07-00196; PUC Dkt # 31056), the COA ruled as follows:

- (1) Reversed the district court and Commission, upholding OPC's argument that TCC's stranded cost amount should be reduced by the amount of EMCs credited to the AREP for PTB customers. 1 prevail for OPC; OPC point of error #3.
- (2) Upheld the district court and Commission, overruling OPC's arguments that the Commission should have used the ECOM model to calculate TCC's stranded cost. 1 not prevail for OPC; OPC points of error #s 1 & 2.

In affirming in part the final order of the Commission in PUC Docket No. 31056, the District Court dismissed each of OPUC's claims of error. The court also reversed in part the Commission's final order and found in the Company's favor that: 1) the PUC erred in making an adjustment to net book value of the South Texas Project and Coletto Creek coal plant because adjustments to market valuation established through a third party transaction are prohibited by PURA § 39.252(d); the PUC erred in applying Rule 25.263 to determine the interest rate on stranded costs because the Supreme Court invalidated the rule; and the Commission abused its discretion in excluding TCC Exhibit No. 28.

FY 2008 APPEALS REPORT

Appeal from:

PUC Docket No. 31540,
*Proceeding to Consider Protocols to Implement
a Nodal Market in the Electric Reliability
Council of Texas
Pursuant to Subst. R. § 25.501*

Status as of 8/31/08:

Closed 4th Quarter

Cause Nos.

District Court: D-1-GV-06-002166
D-1-GV-06-002131
D-1-GV-06-001243

Disposition:

n/a

Details:

OPUC opted to withdraw its intervention in these appeals due to consideration of the events currently facing the Texas Nodal Market implementation.

FY 2008 APPEALS REPORT

Appeal from:

PUC Project No. 31972,
*Rulemaking Concerning Resource Adequacy and
Market Power in the Electric Reliability Council
Of Texas Power Region.*

Status as of 8/31/08:

Closed 1st Quarter

Cause Nos.

COA: 03-06-00552-CV
03-06-00571-CV

Disposition:

COA: n/a

Details:

These direct appeals of a competition rule were dismissed by the Court for mootness at the request of appellants.

FY 2008 APPEALS REPORT

Appeal from:

PUC Docket No. 32758,
*Application of AEP Texas Central Company for a
Competitive Transition Charge Pursuant to P.U.C.
Subst. R. 25.263(n)*

Status as of 8/31/08:

Pending at District Court

Cause Nos.

District Court: D-1-GN-07-001153

Disposition:

n/a

Details:

n/a

FY 2008 APPEALS REPORT

Appeal from:

PUC Project No. 32795,
Staff's Petition for Reallocation of Stranded Costs
Pursuant to PURA § 39.253(f)

Status as of 8/31/08:

Pending at District Court

Cause Nos.

District Court: D-1-GN-08-000476

Disposition:

n/a

Details:

n/a

FY 2008 APPEALS REPORT

Appeal from:

PUC Project No. 33309,
*Application of AEP Texas Central Company
for Authority to Change Rates*

Status as of 8/31/08:

Pending at District Court

Cause Nos.

District Court: D-1-GN-08-001689

Disposition:

n/a

Details:

n/a

FY 2008 APPEALS REPORT

Appeal from:

PUC Project No. 34480,
*TXU Wholesale Companies' Request for Approval of a
Voluntary Mitigation Plan Pursuant to Subst. R. 25.504(e)*

Status as of 8/31/08

Closed 1st Quarter

Cause Nos.

District Court: D-1-GN-07-002494

Disposition:

Prevail

Details:

This cause was a declaratory judgment action in which Reliant Energy sought a determination as to whether PURA § 39.003 required the Commission conduct a contested case proceeding when approving or determining a voluntary mitigation plan. OPUC intervened and advocated for the same relief sought by Reliant Energy. The Court found that the Commission is statutorily required to conduct a contested case proceeding, and granted Reliant Energy its requested declarative and injunctive relief.

Attachment C

***Texas Register* and Press Notices for Annual Meetings in McAllen and Nacogdoches
Annual Meetings**

TEXAS REGISTER

Volume 33 Number 45

November 7, 2008

Pages 9007 - 9148



Figure 2: GAME NO. 1159 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$2	643,200	12.50
\$4	739,680	10.87
\$5	96,480	83.33
\$10	112,560	71.43
\$20	48,240	166.67
\$50	41,875	192.00
\$200	6,499	1,237.11
\$2,000	40	201,000.00
\$20,000	8	1,005,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1159 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1159, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200805708
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: October 29, 2008

◆ ◆ ◆
Office of Public Utility Counsel

Notice of Annual Public Hearing

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §13.064 (Vernon 2007) (PURA), the Office of Public Utility Counsel (Office) is conducting its annual public hearing.

The public hearing will be held on the date and time, and at the location indicated below.

Friday, November 21, 2008, from 2:30 - 3:30 p.m.

City Hall

City Commission Chamber

202 E. Pilar (Corner of E. Pilar & S. Pecan)

Nacogdoches, Texas 75961

Located in the Downtown Square, 1st Floor

All interested persons are invited to attend and provide input.

The Office represents the interest of residential and small commercial consumers in electric and telecommunications proceedings before the Public Utility Commission, Electric Reliability Council of Texas, courts, and other federal regulatory bodies. The Office seeks public input to assist the office in developing a plan of priorities, and in receiving comments on the office's functions and effectiveness.

Contact Carin Nersesian, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 for further information.

TRD-200805640
 Don Ballard
 Public Counsel
 Office of Public Utility Counsel
 Filed: October 27, 2008

◆ ◆ ◆
Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on October 21, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Cequel III Communications I, LLC dba Suddenlink Communications for State-Issued Certificate of Franchise Authority; Project Number 36295 before the Public Utility Commission of Texas.

The requested amended CFA service area expands the service area footprint to include the city limits of Onalaska, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text tele-



Office of Public Utility Counsel

The Office of Public Utility Counsel (OPC) is holding a public meeting in Nacogdoches, TX on Friday November 21, 2008. Don Ballard, the Public Counsel, will be available to help answer questions you may have regarding the Texas electricity and telecommunications markets, what it means to you as a customer, and how the agency can be of help to you and your family.

Friday, November 21, 2008, 2:30 – 3:30 p.m.

**City Hall, City Commission Chamber
202 E. Pilar (Corner of E. Pilar & S. Pecan)
Nacogdoches, Texas 75961**

Located in the Downtown Square, 1st Floor

All interested persons are invited to attend and provide input to assist OPC in developing a plan of priorities and in receiving comment on OPC's functions and effectiveness.

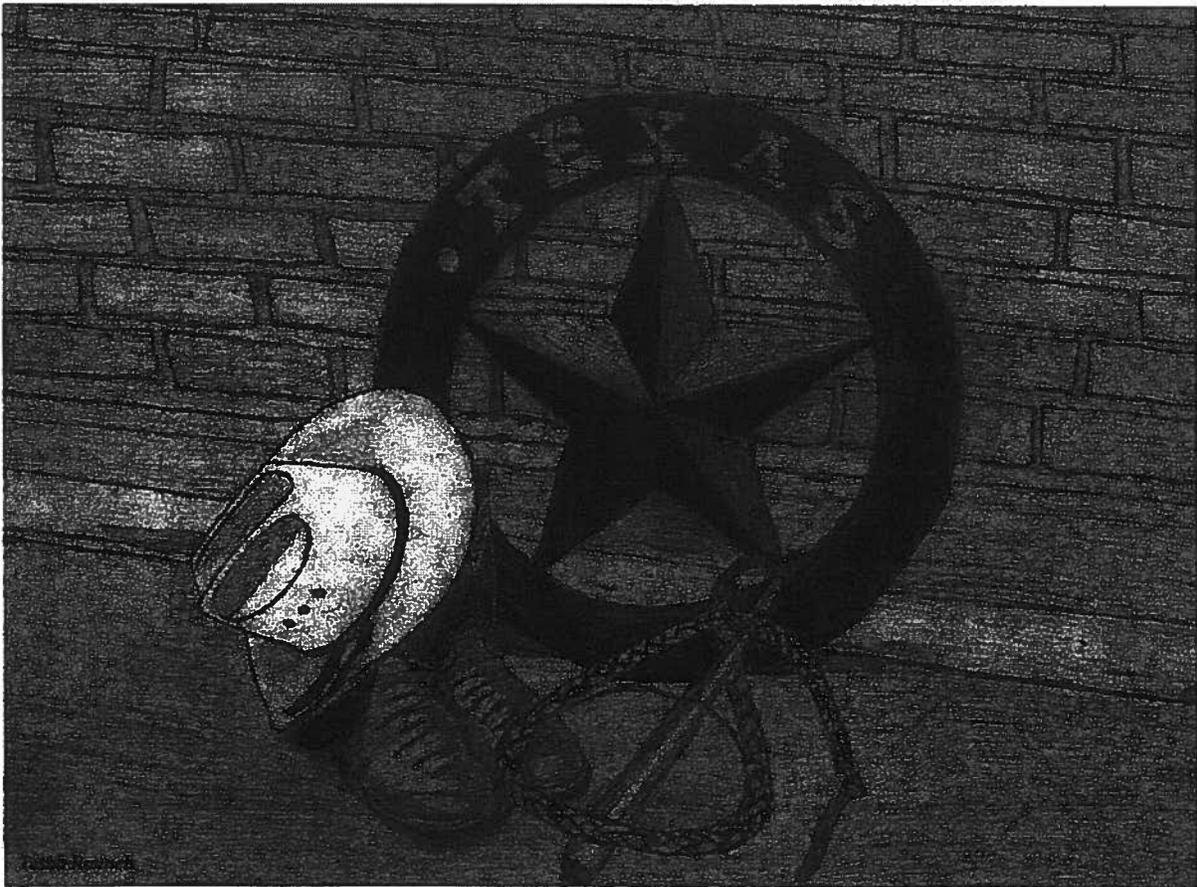
Contact Carin Nersesian, P.O. Box 12397, Austin, TX 78711-2397 or (512) 936-7500 for further information.

TEXAS REGISTER

Volume 33 Number 48

November 28, 2008

Pages 9585 - 9820



2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment

to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 1167. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1167 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
\$3	480,000	12.50
\$6	720,000	8.33
\$9	108,000	55.56
\$15	36,000	166.67
\$18	60,000	100.00
\$30	40,000	150.00
\$60	20,000	300.00
\$90	6,000	1,000.00
\$300	1,200	5,000.00
\$3,000	16	375,000.00
\$30,000	6	1,000,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.08. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1167 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1167, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200806016
 Kimberly L. Kiplin
 General Counsel
 Texas Lottery Commission
 Filed: November 18, 2008

◆ ◆ ◆
Office of Public Utility Counsel

Notice of Public Hearing

Pursuant to the Public Utility Regulatory Act, Texas Utilities Code Annotated §13.064 (Vernon 2007) (PURA), the Office of Public Utility Counsel (Office) is conducting its annual public hearing.

The public hearing will be held on the date and time, and at the location indicated below.

Wednesday, December 10, 2008, from 2:00 p.m. - 3:00 p.m.

Workforce Solutions

3406 West Alberta

Edinburg, Texas 78539

All interested persons are invited to attend and provide input.

The Office represents the interest of residential and small commercial consumers in electric and telecommunications proceedings before the Public Utility Commission, Electric Reliability Council of Texas, courts, and other federal regulatory bodies. The Office seeks public input to assist the office in developing a plan of priorities, and in receiving comments on the office's functions and effectiveness.

Contact Carin Nersesian, P.O. Box 12397, Austin, Texas 78711-2397 or (512) 936-7500 for further information.

TRD-200805923
Don Ballard
Public Counsel
Office of Public Utility Counsel
Filed: November 13, 2008

Texas Public Finance Authority

Notice of Request for Proposals

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Texas Public Finance Authority announces its Request for Proposal to obtain executive search services to assist the Board of Directors in selecting an Executive Director. A copy of the RFP is available on the Authority's website, at www.tpfa.state.tx.us/RFPs and on the Electronic State Bulletin Board at: <http://esbd.cpa.state.tx.us>. Interested firms may also contact the agency directly by email at: judith.poras@tpfa.state.tx.us.

The Board will base its selection on a firm's demonstrated competence, knowledge, and qualifications and the reasonableness of its proposed fee.

Proposals must be submitted by 5:00 p.m., December 1, 2008.

TRD-200805943
Kimberly Edwards
Executive Director
Texas Public Finance Authority
Filed: November 14, 2008

Public Utility Commission of Texas

Announcement of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on November 12, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Comcast of Houston, LLC to Amend a State-Issued Certificate of Franchise Authority, Project Number 36388 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipality of Clear Lake Shores, Texas, including any future annexations.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36388.

TRD-200806021

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On November 14, 2008, Qwest Communications Corporation filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60367. Applicant intends to reflect a change in corporate restructuring and a name change.

The Application: Application of Qwest Communications Corporation for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 36397.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 3, 2008. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 36397.

TRD-200806024
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

Notice of Application for an Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on November 13, 2008, for an amendment to a state-issued certificate of franchise authority (CFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Northland Cable Ventures LLC to Amend a State-Issued Certificate of Franchise Authority, Project Number 36391 before the Public Utility Commission of Texas.

The requested amended CFA service area includes the municipal boundaries of the City of Kaufman, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All inquiries should reference Project Number 36391.

TRD-200806025
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 18, 2008

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority



Office of Public Utility Counsel

The Office of Public Utility Counsel (OPC) is holding a public meeting in McAllen, TX on Wednesday, December 10, 2008. Don Ballard, the Public Counsel, will be available to help answer questions you may have regarding the Texas electricity and telecommunications markets, what it means to you as a customer, and how the agency can be of help to you and your family.

Wednesday, December 10, 2008, 2:00 – 3:00 p.m.

**Workforce Solutions
3406 West Alberta
Edinburg, TX 78539**

RESERVE YOUR COMPLIMENTARY SEAT TODAY!!!
RSVP TO customer@opc.state.tx.us. All interested persons are invited to attend and provide input to assist OPC in developing a plan of priorities and in receiving comment on OPC's functions and effectiveness.

For more information, contact Carin Nersesian at (512) 936-7500 or P.O. Box 12397, Austin, TX 78711-2397.

Attachment D



Office of Public Utility Counsel

