

# **Office of Public Utility Counsel Annual Report for Fiscal Year 2009**



**For the**

**Senate Business and Commerce Committee**

**Senate Finance Committee**

**House State Affairs Committee**

**House Appropriations Committee**

**Sunset Advisory Commission**

**January 2010**



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**Sheri Givens**  
Public Counsel

January 25, 2010

Honorable Members of the Senate Business & Commerce Committee, Senate Finance Committee, House State Affairs Committee, House Appropriations Committee and Sunset Advisory Commission:

We are pleased to submit our Fiscal Year 2009 Annual Report for the Office of Public Utility Counsel (OPUC) 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 consumers 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.

OPUC appreciates this opportunity to provide you and your staff with information about our advocacy for and services to residential and small business consumers of electricity and telecommunications services. If you have any questions about any issues addressed in this report, please contact my office.

Sincerely,

A handwritten signature in black ink that reads "Sheri Givens".

Sheri Givens  
Public Counsel

**ACKNOWLEDGEMENTS**

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## Chapter 1. Overview

### A. History & Organization

In 1983, the Office of Public Utility Counsel (OPUC or agency) was created as part of the 68<sup>th</sup> Legislature's sunset review of the Public Utility Commission (PUC or Commission). The agency was created 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 significant resources to aggressively present their positions. In contrast, residential and small business ratepayers generally did not have representation in matters coming before the 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.<sup>1</sup>

The Public Utility Regulatory Act (PURA)<sup>2</sup> 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 at the Electric Reliability Council of Texas (ERCOT), which is the Independent System Operator for 75 percent 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.

For approximately the first 15 years, OPUC concentrated its efforts primarily on consumer representation in utility proceedings at the PUC, State Office of Administrative Hearings (SOAH), and state and federal courts. During the past ten to 15 years, since the restructuring of both the electric and telecommunications industries, OPUC has continued its consumer representation in contested cases to effectively advocate for its consumers in state and federal projects, rulemakings and other proceedings. OPUC also disseminates information to consumers regarding their available protections and OPUC's functions and efforts ensuring those protections.<sup>3</sup> Over the past 10 years OPUC has consistently advocated for consumers while serving on the ERCOT Board of Directors and various ERCOT committees.<sup>4</sup>

OPUC is headed by the Public Counsel, who is appointed by the Governor and confirmed by the Senate for a two-year term.<sup>5</sup> The Public Counsel must be licensed to practice law in the state of Texas and must be a Texas resident.<sup>6</sup> The eighth and current

Public Counsel is Sheri Givens, first appointed by Governor Rick Perry on December 21, 2009.

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.

OPUC has a total number of 16.5 employees and consists of two main divisions, the Litigation Division and the Market Representation and Communications Division, and also includes a Business Manager and support staff.<sup>7</sup> This two-division structure was initiated in 2008 and has allowed OPUC to better deploy its professional, legal, and technical expertise within the appropriate regulatory or market venue.

- 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.). Major regulatory matters include, but are not limited to, rate and fuel reconciliation cases, energy efficiency cost recovery factor cases, advanced metering applications, surcharges, and hurricane cost recovery proceedings. In addition to the Director, who is an attorney, the Division also employs two additional attorneys and three regulatory analysts.
- The **Market Representation and Communications Division** is responsible for representing the interests of residential and small business consumers in non-litigated matters, rulemakings, and projects, and advocates for residential and small business consumers before the PUC, the Texas Legislature, ERCOT, and other jurisdictional entities. Market Representation projects include, but are not limited to, customer disclosure and retail electric provider rules; advanced metering matters; common terms on utility bills; agency annual meetings and reports; customer complaint resolution; legislative bill review, analysis, and advocacy; and public communication, education and outreach. In addition to the Director, the Division also employs two attorneys and one information specialist.
- OPUC's Business Manager and 3.5 administrative support staff complete the 16.5 filled full-time and part-time positions.<sup>8</sup> 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 comprises 13 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.

OPUC staff believes 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. OPUC also believes 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. This will also help to ensure that services are plentiful, affordable, and reliable for all Texans and that competitive markets are developed that benefit customers.

## **C. Scope of Work**

OPUC is an independent state agency with a team of experienced attorneys, economists, accountants, and regulatory 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. This includes PUC Bulletins, PUC Notices, *Texas Register* updates, *Federal Register* updates, FCC and FERC requests for comments, and 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 an 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 56 contested proceedings and appeals, and 61 projects in Fiscal Year (FY) 2009. 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 2009, see Attachment A.<sup>9</sup>

OPUC’s workload is categorized by electric and telecommunications cases, projects and appeals. In FY 2009, OPUC staff spent 10,133.5 hours on electric and telecommunications cases; 7,699.5 hours on electric and telecommunications projects; and 559.0 hours on appeals. Total OPUC staff hours in FY 2009 were 18,392.0.<sup>10</sup>

	Total Electric and Telecom Cases	Total Electric and Telecom Projects	Total Electric and Telecom Appeals	Total Electric and Telecom Hours
OPUC Staff	56	61	7	18,392.0

During FY 2009, OPUC was involved in pending appeals relating to seven PUC decisions.<sup>11</sup>

	FY 2007	FY 2008	FY 2009
Appeals OPUC participated in	13	11	7

For a more comprehensive analysis of OPUC’s appeals during FY 2009, see Attachment B.

**D. Goals, Objectives and Key Functions**

OPUC’s presence, in both regulated and market proceedings before the aforementioned jurisdictions and entities, brings value and a consumer perspective to all of these processes. Because OPUC is the sole agency 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.

Pursuant to and consistent with its most current legislative appropriation, OPUC has the following goals, objectives, and strategies to accomplish its mission and to bring value to the Texas regulatory and market processes on behalf of residential and small business consumers:

**Goal/Objective/Strategy:**

1. **Goal:** Equitable electric rates for residential and small business consumers.
  - **Objective:** Promote electric customer choices and consumer protection policies.
    - **Strategy:** Participate in major electric rate cases, rules and other proceedings.
2. **Goal:** Provide benefits and protect telephone consumers in competitive market.
  - **Objective:** Promote telephone customer choices and consumer protection policies.
    - **Strategy:** Participate in telecommunications proceedings involving competitive issues.

Accordingly, OPUC notes the following objectives and key functions:

**Objectives**

***Ensure just and reasonable rates and acceptable rules and policies to protect the interests of residential and small business consumers.***

OPUC is authorized by statute to ensure just and reasonable rates and the equitable availability of communications and electric industry services by assessing the effect of utility rate changes and other regulatory actions on residential and small business consumers. Accordingly, OPUC represents residential and small business consumers as a class in litigated proceedings, rulemaking meetings and workshops, market forums, ERCOT, and other venues on matters involving rates, rules, and policy pertaining to the provision of telecommunications and electric utility rates and services.

***Inform, assist, and protect consumers with respect to issues and policies pertaining to and services available from telecommunications and electric utility providers.***

OPUC, as the sole state agency tasked with representing the focused interests of the residential and small business consumer in the Texas utility regulatory and market environments, is singularly positioned to use its responsibility to provide information, assistance, and protection for consumers.

**Key Functions*****Represent residential and small business consumers in rate, rule, and policy proceedings.***

OPUC provides professional, technical, and legal representation on behalf of residential and small business consumers in PUC proceedings. In addition, OPUC is an active consumer advocate in numerous PUC rate, rule, and policy proceedings and the Texas legislative process. OPUC collaborates with other market stakeholders in the electric wholesale and retail market design process in the ERCOT environment. Finally, OPUC is involved in state and federal court proceedings and with matters before the FERC, North American Electric Reliability Corporation (NERC), and the FCC.

***Provide consumers with information to help them make informed choices in the restructured regulatory and market paradigm.***

OPUC believes information is power, and finding new and improved ways to place information in the hands of consumers is essential for them to adequately address the many issues in today's Texas restructured communications and electricity environments. In addition to its statutory requirement to conduct annual customer surveys and an annual meeting for receiving feedback from its representative customer base, OPUC participates in community outreach and partners with Chambers of Commerce, health and social services organizations, legislative offices, consumer organizations, small business associations, and other community associations in various towns and cities to arrange face-to-face outreach. These opportunities establish a two-way dialogue so OPUC can hear consumer concerns and inform them of communications and electric industry services available to them. OPUC updates and maintains its website to ensure a more consumer-relevant and informative resource. The OPUC website is and will continue to be an effective resource to consumers, providing important information regarding communications, electric industry services and contact information, energy-saving guidelines, financial and critical care customer assistance, complaint-filing processes, and updates on regulatory and market developments impacting consumers.

***Provide consumers with assistance in understanding issues related to communications and electric industry rates and services and in helping them resolve those issues.***

Assisting and informing consumers go hand-in-hand. OPUC utilizes its community outreach efforts and website tools to assist, as well as inform consumers. In addition, OPUC regularly receives consumer complaints and inquiries, and works to help them better understand and resolve the relevant issues and concerns they bring to the agency. As of December 2009, OPUC has a new toll-free number for Texas consumers to call with complaints and inquiries, (877) 839-0363.

*Provide consumers with protection against anti-competitive behavior by those who would seek to violate and/or manipulate the regulatory and market rules.*

One primary reason OPUC was created was because residential and small business consumers were not adequately represented or protected, in communications and electric utility regulatory and market proceedings. The need to protect these classes of consumers continues to be relevant. OPUC serves as consumers' eyes, ears, and voice in both regulatory and market proceedings not only to bring a balance to these processes, but also to create value on consumers' behalf and to protect residential and small business customer classes from illegal, inappropriate, and anti-competitive behavior.

## **Chapter 2. Summary of OPUC Activities for 2009**

### **A. Contested Proceedings**

For FY 2009, OPUC participated in 51 contested electric cases, 5 contested telecommunications cases, and 7 appeals. The agency reported \$426,898,846.99 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 continued implementation of advanced metering, and hurricane cost securitization. Attachment B provides a complete listing of all of the contested case proceedings that the agency participated in for FY 2009.

#### **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 2009.

##### **i. Advanced Metering**

In 2005, the Legislature amended PURA to encourage the deployment of advanced metering.<sup>12</sup> As a result of this legislation, the PUC amended its rules to address the requirements for the deployment of advanced metering.<sup>13</sup>

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.

Advanced metering is intended to benefit the end-use customer, the utility, and the retail electric provider in numerous ways. For customers, the benefits may include:

- allowing more control over their electric bills;
- giving customers increased knowledge about their usage through utilizing in-home devices;
- granting quicker remote outage detection and power restoration;
- allowing for faster remote disconnection and reconnection of service;
- providing for reduced discretionary service charges (*i.e.*, move-in, move-out, other fees);
- 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 Transmission and Distribution Utilities (TDUs), the benefits may include:

- potential cost savings based on reduction in meter-reading labor costs and operational savings based on increased automation in meter reading (with these cost savings passed on to customers);
- data collection;
- information management; and
- billing processes.

For Retail Electric Providers (REPs), the benefits may include:

- increasing competition in the retail electric market;
- allowing for communication between the REP and the consumer through in-home devices;
- allowing for innovative product offerings not feasible with current, electromechanical meters; and
- providing on-demand connection and disconnection.

At the December 2, 2009 Commission meeting, the Commission approved AEP's advanced meter deployment plan and application (PUC Docket No. 36928).<sup>14</sup> As a result, advanced meters will be ubiquitously deployed throughout both AEP Texas Central and Texas North's service territories. In addition, the deployment will coincide with a comprehensive customer education program and free in-home devices will be made available to eligible low-income customers. OPUC was a strong proponent of these value-added services.

## ii. Securitization of Hurricane Costs

After Hurricanes Ike and Gustav devastated much of Texas' coast line in September 2008, lawmakers passed legislation allowing utilities to quantify and securitize storm restoration costs.<sup>15</sup> Hurricane Ike was the third-most destructive hurricane to ever hit the United States and resulted in catastrophic damage to utility infrastructure that left 90 percent of CenterPoint Energy Houston Electric, LLC's (CenterPoint) customers without power. Likewise, after both Hurricanes Ike and Gustav, 99 percent of Entergy Texas Inc.'s (Entergy's) customers were without power. These storms severely damaged distribution and transmission facilities in Texas and also caused substantial damage to generation supplies. Both CenterPoint and Entergy engaged in extraordinary efforts and expended tremendous resources to restore power as quickly and safely as possible to customers and to rebuild utility infrastructure.

In April 2009, both CenterPoint and Entergy filed cases to determine the amount of hurricane restoration costs (PUC Docket Nos. 36918 and 36931).<sup>16</sup> After the PUC determined the amount of the costs, the utilities requested securitization of the costs (PUC Docket Nos. 37200 and 37247).<sup>17</sup> OPUC participated in settlement of these cases, which resulted in savings to residential ratepayers. The settlements resulted in, among other things, reductions in costs of \$15 million in each case, as well as ratepayers receiving the benefits of reduced financing costs inherent in securitizations. CenterPoint's and Entergy's securitization of hurricane recovery costs will provide a combined savings of \$740 million for Texas electric customers.<sup>18</sup>

## iii. Certificate of Convenience and Necessity

In August 2007, Kelson Transmission Company, LLC (Kelson) filed a certificate of convenience and necessity (CCN) application for approval to provide transmission services in Texas and to construct a transmission line from Newton County, Texas to Chambers County Texas.<sup>19</sup> The application provided for construction of a 95-mile, 345-kilovolt double-circuit transmission line connecting Kelson's generation affiliate, Cottonwood Energy Company LP (Cottonwood), to ERCOT, allowing Cottonwood to disconnect from the Entergy system and to sell its electricity to the ERCOT market.

OPUC and other parties argued against the construction of this line as Kelson had not proven the proposed transmission line was necessary for the service, accommodation, convenience, or safety of the public, as required by PURA §37.056; the proposed project had never been properly reviewed through ERCOT's Regional Planning Group (RPG), though Kelson should have submitted its project to RPG for review; ERCOT never made a recommendation regarding the project; the proper steps for an ERCOT Generation Interconnection Study had never been completed by either Kelson or Cottonwood; the project was not needed to address reserve margins in the Houston Zone; Kelson's projected line capacity of 5,000 megawatts was too speculative; no evidence was provided relating to how Cottonwood's disconnection from the Entergy system would affect consumers in Entergy's area; and the projected costs (which would eventually flow back to ratepayers, including residential and small commercial customers, through a

transmission cost of service proceeding) of \$426 million simply did not outweigh the benefits of the project.

In June 2009, the Commission adopted the proposal for decision, issued by the administrative law judges of the State Office of Administrative Hearings and agreeing with the majority of the parties' arguments against the approval of the CCN application, denying Kelson's amended application for a CCN.

#### **iv. 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 2009, and OPUC participated in rate cases filed by the following utilities: Entergy Texas, Inc.,<sup>20</sup> Oncor Electric Delivery Company, LLC (Oncor),<sup>21</sup> Texas-New Mexico Power (TNMP),<sup>22</sup> and Southwestern Public Service Company (SPS).<sup>23</sup>

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 company's 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. OPUC's efforts in negotiating and litigating these rate cases have resulted in substantial savings to residential ratepayers. OPUC anticipates several new rate cases to be filed in FY 2010.

#### **b. Telecommunications**

For FY 2009, OPUC participated in five telecommunications cases involving the implementation of changes related to the Texas High Cost Universal Service Plan (THCUSP), as a result of a related settlement proceeding. Attachment A provides a complete listing of all of the contested case proceedings that the agency participated in for FY 2009.

One primary goal of OPUC for telecommunications is to ensure that all customers have access to affordable, or universal, telephone service. The Federal Telecommunications Act of 1996 (FTA) identifies the primary goals for universal service.<sup>24</sup> 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 access for every person in the state to high-quality telecommunications services at reasonable rates, regardless of geographic location.<sup>25</sup> The current Texas Universal Service Program (TUSP) 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, which is payable by each telecommunications provider that has access to the customer base.<sup>26</sup>

In PUC Docket No. 34723, OPUC participated in negotiations resulting in the unanimous settlement agreement implementing changes to the THCUSP.<sup>27</sup> The proceeding involved Texas' largest four carriers (AT&T, Embarq, Verizon, and Windstream) 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 serving the high-cost rural areas of the state, other than the study areas of the small and rural incumbent local exchange carriers (ILECs).<sup>28</sup> 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.<sup>29</sup>

As a signatory to the settlement in PUC Docket No. 34723,<sup>30</sup> OPUC participated in five docketed telecommunications' cases, involving the aforementioned four largest Texas carriers, in FY 2009 to ensure that all eligible low-income customers received the additional support agreed to by the parties and ordered by the Commission.<sup>31</sup> Pursuant to the unanimous settlement agreement and order in PUC Docket No. 34723, increases in basic residential rates as a result of each telecommunication utility's filing were offset by an additional 25 percent of the increase actually approved by the PUC. OPUC participated in each case to ensure that all eligible low-income customers received the additional support agreed to by the parties and ordered by the PUC and reviewed each utility's filing to make sure each had limited its requested increase to no more than the maximum amount pursuant to that settlement agreement. Each application to change rates was approved by the Commission in December 2008.

### **c. Appeals**

For FY 2009, OPUC participated in 7 appeals. A description of the procedural history and dispositions related to each of OPUC's appeals, by court, can be found in Attachment B.

#### **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 cease pursuit of the appeal at a higher level. More administrative law

appeals are heard at the district court than the Texas Court of Appeals and Texas Supreme Court combined.

During FY 2009, OPUC was involved in pending appeals related to seven PUC decisions. Of those appeals, two have progressed to the Texas Supreme Court level while three others, including one direct appeal of a new competition rule, progressed as far as the Court of Appeals. The remaining two have not progressed past judicial review in the Travis County District Courts by fiscal year's end. All seven appeals remained pending at fiscal year's end.<sup>32</sup>

## 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 Court of Appeals level, only 8.3 percent of the 11,005 cases disposed of in FY 2008 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 from the lower court 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. Initial review was granted in 112 of the 874 petitions disposed of by the Supreme Court in FY 2008, the lowest percentage (12.8 percent) granted since 2004. The Supreme Court granted initial review in FY 2008 in only 3.8 percent of the Petitions for Review arising from the Third Court of Appeals (Austin). In FY 2008, the Court disposed of 126 causes in which review had been granted, with 91 or approximately 72.2 percent resulting in either a reversal of the intermediate appellate court or a mixed disposition.<sup>33</sup>

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 be more expeditiously addressed in another forum. Because of the complexities that surround the decision to appeal, measuring prevailing dispositions do not always tell the entire story.

## B. Rulemaking Activities and Projects

For FY 2009, OPUC participated in 35 electric projects and 26 telecommunications projects, including four FCC dockets. The majority of the electric projects focused on expanded and heightened customer protections; including assisting customers transitioning from their Retail Electric Provider (REP); requiring REPs to maintain customer deposits and to provide more information to consumers relating to their

products; ensuring critical care customers are extended certain protections from electric disconnection; speeding up the process for customers to switch among REPs; and guaranteeing customers common terms on their electric and telecommunications bills.

**a. Electric**

**i. Provider of Last Resort (POLR)**

In 2009, OPUC participated in PUC Docket No. 35769.<sup>34</sup> In June 2009, the Commission approved a final rule that will make the mass transition process, in which customers are transferred from a REP exiting the market to another REP, less harmful to customers that are subject to the process. Under the new rule, more customers will be served under a market-based product rather than a regulated product with an inflated price structure. OPUC filed comments in this rulemaking project in December 2008, and reply comments in 2009.

**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.<sup>35</sup> OPUC was mainly concerned with ensuring that REPs are required to maintain a sufficient amount of cash reserves to reimburse customers for their deposits they may have paid in the event the REP goes out of business.<sup>36</sup> OPUC filed comments and reply comments to this effect in December 2008 and January 2009 respectively. The rule was finalized in April 2009.

**iii. Customer Disclosures**

OPUC participated in a project initiated by the PUC to amend the REP customer information disclosure rule, PUC Docket No. 35768.<sup>37</sup> The goal of OPUC's participation in this proceeding was to improve the transparency of the products that the REPs offer to consumers. In particular, OPUC was successful in changing the rule to require the REPs to provide customers with notice of price changes, notice of expiration of contract, and additional clarity regarding fees associated with the consumers' electric service. The rule was finalized in February 2009.

**iv. AMS Low-Income In-home Devices**

As part of the Oncor advanced metering system (AMS) deployment plan, PUC Docket No. 35718, 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.<sup>38</sup> The PUC opened a workshop for this purpose, PUC Docket No. 36234.<sup>39</sup> 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 and two AEP

Commission-approved AMS deployment plans, accounting for \$7.5 million for the former and an initial \$1 million to be supplemented as needed for the latter, provide for funding for in-home devices to be distributed to eligible low-income customers with advanced meters in their respective service territories.<sup>40</sup>

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

#### **v. Disconnection of Service**

In September 2008, the Commission initiated PUC Project No. 36131, relating to the disconnection of service and deferred payment plans.<sup>41</sup> The project was inactive until August 2009, at which time the Commission held a workshop to hear market participants' concerns. OPUC attended the workshop and expressed concerns through written comments regarding the availability of deferred and levelized bill payment plans to all customers and the non-uniform standards used by the TDSPs in their critical care designation procedures.<sup>42</sup> OPUC expects to participate in this project to ensure that all residential consumers that need critical care protection are granted such status and to require the REPs to offer deferred and levelized payment plans to any customer that requests such plans.

#### **vi. Expedited Switch**

In response to issues brought to light during the customer disclosure rulemaking project, the Commission opened a project to address the amount of time it takes consumers to switch REPs.<sup>43</sup> In this project, OPUC was successful in requiring the continued practice of an ERCOT postcard notification when a customer switches REPs. OPUC was unsuccessful, however, in persuading the Commission to allow the TDSPs to estimate a final meter read rather than requiring the TDSPs to procure additional resources to meet the demand of the increase in meter reads as a result of the rule change. The rule was approved in June 2009, and it decreases the time lag from when a customer requests to switch providers, and when the switch actually occurs, from up to 45 days to not more than seven business days.

#### **vii. Payment History Database**

In April 2009, the Commission initiated a project to explore the possibility of a database regarding customer payment history.<sup>44</sup> The project also considered the authority of the Commission to allow the REPs to employ a "hard disconnect" or prevent a customer in payment arrears from switching to a different REP without paying his or her balance due. OPUC filed a response to the Commission's request for comments in July

2009, which expressed some concern over the protection of customers in the event the Commission did find that it has the authority to allow either practice. During the August 26, 2009 Commission Meeting, the Commission decided that it does have the ability to allow the REPs to use a “hard disconnect,” but it does not have the statutory authority to require the REPs to pay for a database. There has been no activity in the project since the meeting; however, OPUC stands ready to participate if any further activity ensues.

#### **viii. Common Terms**

In response to House Bill 1822, passed during the 81<sup>st</sup> Regular Legislative Session (2009), the Commission opened PUC Project No. 37070 relating to providing common terms in electric and telecommunications bills and notice of contract termination of electric service.<sup>45</sup> OPUC actively participated in this project and filed comments urging the Commission, among other things, to require the REPs to provide the contract expiration date on all bills to all customers. Though the Commission’s bill interpretation was to require contract expiration dates only on residential customers’ bills, it extended this requirement to small commercial customers’ bills as well. The rule now requires the REPs to either provide a contract expiration date or the month, or meter read cycle, in which the contract will expire for all residential and small commercial customers.

#### **ix. Meter Tampering**

In July 2009, a project was opened by the Commission to address a situation that had arisen with the deployment of advanced meters.<sup>46</sup> As several utilities removed the old analog meters and replaced them with the new digital meters, they found that some of the analog meters had been tampered with. The utilities then billed the REPs for past usage that was not recorded due to the tampering. The REPs, in turn, had very little success at recovering those costs from customers that might not have been with the REP at the time the bill came. OPUC’s involvement in this project is to ensure that protection is afforded to customers. OPUC will work to ensure that claims against customers are substantiated and the burden of establishing required facts is on the provider.

### **b. Telecommunications**

#### **i. Public Utility Commission**

In FY 2009, OPUC participated in 26 telecommunications projects. These projects involved activities relating to telecommunications’ tariff filing requirements, service quality, common billing terms, and dialing codes.<sup>47</sup> Below is a sample of projects OPUC participated in during FY 2009.

##### **1. Tariffs**

Relating to tariffs, the Commission opened a rulemaking project to prescribe the package that telecommunication utilities must file in order to amend their tariffs.<sup>48</sup> OPUC participated to ensure that the telecommunication utilities file the appropriate

information in their tariff amendment packages. OPUC did not support incorporation of rates by reference and advocated that tariffs should be easily accessible to the public and revisions transparent. OPUC had numerous customer protection concerns pertaining to these proposed rule amendments, including concerns relating to the FCC's continued Internet practices and any future changes. Should the FCC decide to make network changes that affect the uniform resource locator (URL) for FCC tariff pages incorporated by reference into Texas tariffs, the proposed amendment requires the utility to submit an informational filing that provides the new URL. The Commission has not yet issued a proposed rule in this project.

## **2. Common Terms**

Relating to common telecommunications billing terms, OPUC worked with legislative staff, Commission staff, and market participants to implement House Bill 1822.<sup>49</sup> The new common terms will be used by telecommunications providers for customer communications, so it is essential that the terms are clear, easily understood, and compliant with HB 1822. OPUC agreed with several commenters that pointed out that the 1999 FCC guidance relating to "Truth-in-Billing" previously addressed much confusion relating to customer billing statements. This rule was finalized by the Commission in November 2009, requiring telecommunications providers to be in compliance with the rule by June 1, 2010.

### **ii. Federal Communications Commission**

In FY 2009, OPUC submitted comments in four FCC dockets regarding requests for comments. These dockets related to the FCC's Automated Reporting Management Information System (ARMIS), intercarrier compensation rules, truth-in-billing, and promotion of competitive networks in local telecommunications markets.<sup>50</sup>

## **C. ERCOT Participation**

The Electric Reliability Council of Texas (ERCOT) is one of ten regional reliability councils in the North American Reliability Corporation (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. Pursuant to Texas' deregulation of the wholesale generation market in 1995, and later with the creation of a competitive retail electricity market in 1999, ERCOT's role has 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 (EPAct),<sup>51</sup> 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 EPAct. 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 2009 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.

**a. ERCOT and Texas Regional Entity Board of Directors**

OPUC's Public Counsel statutorily serves as a member of the ERCOT and Texas RE Boards of Directors.<sup>52</sup> The ERCOT Board of Directors 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.

**b. Technical Advisory Committee and Reliability Standards Committee**

An appointee of the Public Counsel and the Director of Market Representation are members of ERCOT's Technical Advisory Committee (TAC). The Director of Market Representation also serves on the Texas RE's Reliability Standards Committee (RSC). TAC is comprised of market 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 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 NERC standards. The RSC, annually elected within the ERCOT region, comprises 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.

**c. Wholesale Market Subcommittee, Retail Market Subcommittee and Protocol Revisions Subcommittee**

OPUC Market Representation personnel also serve as members of the following TAC sub-committees: WMS, RMS, and 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 subcommittees promulgate the need for related working groups or task forces, OPUC members participate in those meetings as well.

**d. OPUC Accomplishments**

Noteworthy ERCOT and Texas RE accomplishments and highlights for FY 2009, having the most impact for OPUC's constituents include the following:

- A Nodal Advisory Task Force (NATF), comprising market stakeholders from all segments, was formed to work with the ERCOT Nodal Project Team (Nodal Team) tasked with bringing nodal market design within budget and on time. Reporting to the TAC, the NATF responds to requests for market participant input from the Nodal Team. The NATF also assists the TAC subcommittees in transitioning to the nodal environment, is responsible for evaluating market participant readiness metrics and scorecards, and assists ERCOT in developing and reviewing its internal business processes and procedures. The NATF is further charged with ensuring consistency between the nodal protocols and system design. It must also ensure that market participants' interface software and ERCOT systems operate within the intent of the nodal protocols. OPUC's Director of Market Representation and a Market Representation alternate serve on this task force, which meets monthly.
- A Special Nodal Program Committee of the ERCOT Board of Directors, which includes OPUC's Public Counsel, was also created in 2009. This Committee assists and advises the Board with respect to oversight of the Nodal Market Implementation Program (Nodal Program); reviews and makes final recommendations to the Board pertaining to the Nodal Program budget, schedule and scope; reviews Nodal Program and ERCOT Staff strategy and policy decisions; reviews the status of and activities undertaken as part of the Nodal Program with the Program Director and/or his subordinate staff; reviews the performance and findings of and confers with the independent Nodal Program Review consultant; in conjunction with the Finance and Audit Committee, the Committee recommends, and reviews the results of internal and external audits of

the Nodal Program; and performs such other duties and responsibilities as necessary.

- PRR 799 was developed and approved to give the ERCOT CEO a first look before nodal protocol revision requests (NPRRs) may be posted to the Market Information System (MIS). PRR 799 also mandates ERCOT CEO approval for System Change Requests (SCRs) that impact system functionality for the nodal market, and it allows for an appeal mechanism for the submitter of the NPRR or SCR if the ERCOT CEO's decision is to reject the NPRR or SCR.
- Led by ERCOT Staff, ERCOT's Regional Planning Group (RPG) provides the primary forum for market participants to discuss, provide input, and comment on issues related to planning the ERCOT system for reliable and efficient operation. The RPG charter was amended in 2009 to remove the exemption from RPG review for generation interconnection projects, and to clarify that ERCOT is responsible for performing economic analyses of direct generation interconnection facilities greater than \$50 million (as a part of the Full Interconnection Study) for info purposes only (no recommendation by ERCOT).
- As discussed further in this report, one of the more significant issues facing ERCOT, the PUC, and market participants is the integration of approximately 18.5 gigawatts of new wind generation into the existing grid to accommodate Texas' growing electricity demand.
  - Reporting to the TAC, the Renewable Technologies Work Group (RTWG) was created to prioritize, coordinate, and track market stakeholder efforts to capture the benefits and address the challenges associated with the introduction of renewable energy generating technologies interconnected to the ERCOT grid. The RTWG is also responsible for developing a Texas Renewable Integration Plan (TRIP) and providing regular updates to the TAC, the ERCOT BOD, and the PUC.
  - Because wind generation is characteristically intermittent, ancillary services need to be deployed to address generation shortfalls, and there are inequities that exist with respect to the entities responsible for paying for these ancillary services. The Wind Cost Allocation Task Force, a WMS Task Force, was formed to address the appropriate allocation of the cost of these ancillary services to wind generation resources.

## D. Customer Outreach

### a. Education and Information

*The office shall prepare information of public interest describing the functions of the office. The office shall make the information available to the public and appropriate state agencies.<sup>53</sup>*

OPUC, as the sole state agency tasked with representing residential and small business consumers, is well-positioned to educate, assist, and inform consumers of issues and policies pertaining to and services available from telecommunications and electric utility providers. OPUC informs consumers with personalized, customer service. The agency's outreach efforts cater to its customer's specific needs and concerns, focusing on issues where informational gaps exist and where consumers are especially vulnerable.

In 2009, OPUC participated in community outreach by partnering with legislative offices and staff, city clubs, non-profit organizations, social service organizations, and market participants to inform and educate consumers and organizations representing consumers. These opportunities established a two-way, in-person dialogue so not only could OPUC educate consumers and their representative organizations but also hear and address their concerns and challenges. In response to the public input at these meetings, as of December 2009, OPUC now has a toll-free phone number for Texas consumers to call the agency with inquiries and complaints, (877) 839-0363.

Also in 2009, OPUC undertook a website redesign to improve navigation, appearance and accessibility to all users, in an effort to improve customer satisfaction and input, making OPUC's operations and information more transparent and available to the public. OPUC continues to update and utilize its website to ensure a more consumer-relevant and informative resource. The OPUC website is and will continue to be an effective resource to consumers, providing important information regarding communications, electric industry services and contact information, energy-saving guidelines, financial and critical care customer assistance, complaint-filing processes, and updates on regulatory and market developments impacting consumers. Information relating to Commission rule changes, legislation, and docketed proceedings affecting consumers are additional resources planned to be incorporated into the agency's website.

### 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.<sup>54</sup>*

Since 2005, OPUC has been reaching out to residential and small business customers to formulate the goals, priorities, and functions of the office. In 2009, OPUC held its annual meeting in Houston, Texas on December 16, 2009.<sup>55</sup> The office

coordinated the event with One Voice Texas and United Way, and listened to the concerns of local social service organizations and their clients. OPUC provided consumer surveys to the representative organizations seeking additional input on electric and communications priorities and concerns.

In addition, following the annual meeting, OPUC facilitated a meeting between the social service organizations, the local transmission and distribution utility (CenterPoint Energy), and various retail electric providers, including Reliant, TXU, Gexa and Direct. This facilitated meeting was the result of a request by the various social service organizations during a community outreach event between OPUC, Commission Staff and various Houston-area organizations in August 2009.

Also, prior to the annual meeting, OPUC conducted a town hall meeting in Houston's Acres Homes community, at the request of Representative Sylvester Turner, for his constituency hearing from local residential concerns, assisting customers, and educating consumers on their rights, protections, and choices amongst electric and communications providers. The audience included 50 individuals ranging from representatives of consumer groups to residential customers.

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

#### **A. Competition and Customer Choice**

Consistent with what OPUC reported in the *Fiscal Year 2008 Annual Report*, the electric market in the Electric Reliability Council of Texas (ERCOT) region<sup>56</sup> continues its transition from a fully regulated structure to one where the production and sale of electricity is subject to competitive market forces, while the transmission and distribution of electricity remains fully regulated.<sup>57</sup> The Public Utility Commission (PUC) fully regulates the rates and services of transmission and distribution utilities in Texas but has limited authority over generators and sellers of electricity.

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.<sup>58</sup> However, residential and small-commercial customers have multiple retail electric providers (REPs) from which to choose as would be expected in a competitive market. Approximately 44 percent of eligible Texas residents have chosen non-incumbent providers and approximately 70 percent of eligible consumers in the commercial and industrial segments are with non-incumbent REPs.<sup>59</sup>

## **B. Challenges Facing the Competitive Market**

As already noted in Chapter 2B, OPUC has participated in several retail electric market rulemakings to address market challenges and to ensure customer protection in the midst of a growing, more efficient competitive market.

In addition, as new generation sources are planned to accommodate future electricity demand, Texas faces the challenge of integrating more and even newer 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. In a series of projects the PUC established, among other things, competitive renewable energy zones (CREZ) were designed to ensure the electricity produced from wind turbines in west Texas can be delivered to customer load in the east, such as the Dallas-Fort Worth area.<sup>60</sup> Such costs must be included when evaluating new technology, so the balance between cost-effective and environmentally friendly generation can be made to benefit consumers.

Finally, recent weather events in the Gulf Coast region have hastened the need to improve the reliability of the electric transmission and distribution systems. One method for improving reliability currently being investigated by the PUC is 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 duration, must be weighed against the cost of such projects to determine to what degree, if any, the grid should be hardened. The PUC has begun to take an active role in the resolution of these issues. For example, in PUC Project No. 37475<sup>61</sup>, the PUC initiated a rulemaking that would require an electric utility to submit a storm hardening plan that contains a detailed description of the construction standards, policies, procedures, and practices employed to enhance the reliability of overhead and underground electrical transmission and distribution facilities in accordance with the provisions of the rule. The plan must include the utility's storm hardening plans and goals over a five-year period beginning May 1, 2010. This rulemaking is ongoing with participants filing comments on the Commission's proposal.

## **C. Competitive Market Changing 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 these 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.

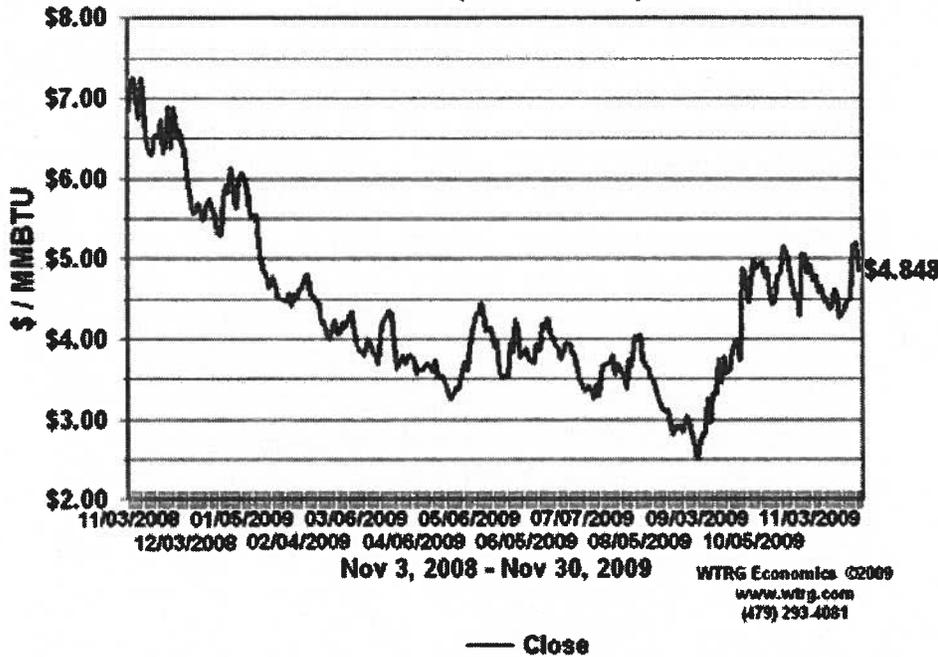
In the long run, nodal is expected to result in lower wholesale prices than zonal. During the transition, however, Texas can expect lower wholesale prices in zones where generation outpaces load, and higher prices where load exceeds generation capacity. As with most markets, the supply and demand of electricity is more sensitive to prices in the long run than in the short run, because there are more supply-side and demand-side opportunities in the long run 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.

The transition to a nodal market has not been a smooth one. Initially the advent of the market was scheduled for the fall of 2006. However, that date could not be met and currently nodal implementation is set for December 1, 2010. Furthermore, the costs of achieving the nodal market redesign have steadily increased as budgets have not been met and new targets have been set.<sup>62</sup>

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

As noted in OPUC's 2008 annual report, 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. Volatility in the underlying cost of generating electricity, however, creates volatility in electric prices, but this is not inconsistent with an efficient market. The mix of generation sources (e.g., 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 from sources fueled 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 percent higher than the 2007 price, and electricity prices increased for customers served by REPs. In the latter part of 2009, natural gas prices fell to under \$6/MMBtu, and REP prices subsequently declined from the peak prices that prevailed during the summer months. The following price data does suggest a relationship between natural gas prices to the ultimate cost of electricity to consumers:

**NYMEX Natural Gas Futures  
Close (Front Month)**



Lowest Fixed-Rate Retail Electricity Prices in the Relevant Service Territory (¢/kWh)				
Wires Co.	2008 Price (¢/kWh) <sup>63</sup> (High Gas Price)	REP	2009 Price (¢/kWh) <sup>64</sup> (Low Gas Price)	REP
AEPC	12.8	Amigo	10.6	Champion
AEPN	10.6	Champion	9.6	Champion
TNMP	12.0	Dynowatt	10.0	Kinetic
CenterPoint	12.6	StarTex	10.5	Southwest P&L
Oncor	11.6	Simple Power	9.6	Champion

As noted in last year’s annual report, one element of the overall national economic climate, the decreasing availability of credit, has also contributed to the retail price volatility seen by retail 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, and retail service provision 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.<sup>65</sup> These increasing costs are ultimately borne by ratepayers.

While Texas has weathered the current economic conditions better than most areas of the country, with unemployment rates and home foreclosure rates lower than the national average, customers in Texas still feel the effects of these economic times. As the availability of credit declines and consumer confidence wanes, customers have reigned in consumption. 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 continue to 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 even more important

#### **Chapter 4. Emerging Issues**

Last year, OPUC pointed out two emerging issues: advanced meters and smart grid. Those two issues are still at the forefront of this year's discussions. In addition, other emerging issues during 2009 include: continued smart meter/grid deployment; wind integration; alternative ratemaking efforts; and switch blocking (or "hard" disconnection).

##### **A. Continued Smart Meter/Grid Deployment**

In August 2008 and December 2009, respectively, Oncor and CenterPoint's applications for advanced meter system deployment were approved by the Commission. Following approval, projects relating to customer education and the low-income in-home device program were begun. In December 2009, AEP TNC and TCC's applications for advanced meter system deployment were also approved.

By the end of 2009, Oncor plans to have installed 700,000 advanced meters, and will have a total of 3.4 million advanced meters installed by the end of its deployment period in 2012. By the end of 2009, CenterPoint plans to have installed 145,000 smart meters with the necessary communications infrastructure and computing systems, and by 2014, CenterPoint anticipates complete deployment with a total of 2.4 million smart meters. Ultimately, by the year 2012, these two companies expect to have full deployment of approximately 5 million meters. Also, AEP TNC and TCC will begin smart meter deployment in January 2010. Numerous municipalities and electric cooperatives throughout Texas have also begun or completed smart meter deployment, including Austin Energy and City Public Service in San Antonio.

The American Recovery and Reinvestment Act of 2009 (ARRA) was signed into law on February 17, 2009.<sup>66</sup> The ARRA made supplemental appropriations for energy efficiency and smart grid technologies, and measures in the act included a grant program

to modernize the nation's electric infrastructure. In October 2009, one hundred projects, selected by the U.S. Department of Energy were named to receive \$3.4 billion in smart grid stimulus grants. Two Texas investor-owned utilities, one REP, and two electric cooperatives received notice of grant awards for varying amounts. CenterPoint received \$200 million in stimulus funds for smart grid advancement and completing the installation of the 2.2 million smart meters in their service territory.<sup>67</sup> The federal funds are also to be used to strengthen the reliability of the self-healing properties of the CenterPoint-area grid by installing more than 550 sensors and automated switches that will help protect against system disturbances that can occur during natural disasters. El Paso Electric received \$1.014 million to install distribution automation to increase monitoring and control of the distribution system and improve power restoration during emergencies. Reliant Energy Retail Services, LLC, received \$19.994 million to install a suite of smart meter products, enabling customers to manage their electricity usage, promote energy efficiency, and lower overall energy costs. Two Texas electric cooperatives, Golden Spread Electric Cooperative, Inc. of Amarillo and Denton County Electric Cooperative d/b/a CoServe Electric based out of Corinth, received \$19.995 million and \$17.205 million respectively for installation of their smart meter networks.

### **B. Wind Integration**

Texas is at the forefront of the development of wind energy as a renewable resource in the Electric Reliability Council of Texas (ERCOT). Texas currently has more wind generation than any state in the country. Currently there are plans to integrate a total of 18,000 MW of wind generation into the ERCOT grid. This integration will present many challenges to the Commission, ERCOT, and wind generators. The ERCOT grid was designed to accommodate thermal generation and must now accommodate significant amounts of renewable energy. Wind energy brings unique operational characteristics to the table. First, wind energy is intermittent and requires traditional generation to serve as "backup" power should wind not be producing. Second, the integration of wind will require additional ancillary services to ensure the appropriate and reliable operation of the grid. Third, the majority of wind generation is located in West Texas and will require significant amounts of new transmission lines to move power from generation to load centers in central and east Texas.

### **C. Alternative Ratemaking Efforts**

In late 2008, the Commission established PUC Project No. 36358, *Consideration of Alternative Ratemaking Methodologies*, and multiple parties, including OPUC, filed responses to the Commission's request for comments in early 2009. The Commission stated two reasons for opening the project:

1. Concern regarding the regulatory lag that can occur between the time utility investments are made and expenses incurred and the recovery of these expenditures through rates; and
2. Concern with the magnitude of the expense associated with rate proceedings, much of which is passed on to customers.<sup>68</sup>

Pursuant to the comments received and concerns raised by multiple parties regarding the Commission's authority to implement alternative ratemaking methodologies, the Commission decided that the project should be abated pending clarification of the PUC's authority by the Legislature. Accordingly, legislation was proposed, but not passed during the 81<sup>st</sup> Legislative Session.<sup>69</sup>

Other efforts to streamline or accelerate transmission and/or distribution investment recovery with limited regulatory oversight surfaced in 2009,<sup>70</sup> but none have been successful to date. OPUC believes regulatory lag is an essential factor in encouraging utilities to act efficiently, and it, along with the costs associated with rate proceedings, provides incentives to utility management to hold down expenses. Streamlined or alternative ratemaking methodologies also have the potential to erode the necessary scrutiny of utility investments and expenses, to the detriment of end-use customers. The alternative ratemaking issue is anticipated to re-emerge in 2010, and OPUC plans to participate in all related proceedings to ensure the protection of residential and small business customers.

#### **D. "Switch Block" / "Hard Disconnect"**

As already noted in Chapter 2B, the issue pertaining to the ability of REPs to employ a "switch block" or "hard disconnect" to prevent a customer in arrears from switching to a different REP without paying their balance due has surfaced in a variety of rulemaking projects and venues, and the Commission has not yet made a decision regarding this issue. OPUC believes that this issue is anti-competitive and "flies in the very face" of the fundamental principle of customer choice, on which the Texas retail electric market was founded, and also believes that a market solution to the issue of REPs' bad debt expense, not a command and control regulatory solution, is more appropriate. One of the great benefits customers have gained from the restructured market is the ability to choose their retail electric provider. If implemented, the switch block will prevent that essential free-market benefit and impede a customer's right to electric choice.

### **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 outcomes from recommendations made in FY 2008 and new recommendations for FY 2009.

#### **A. FY 2008 Recommendations and Outcomes**

Last year, OPUC recommended legislation statutorily requiring 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. Senator Kirk Watson introduced legislation to this effect, S.B. 1761. This legislation would have required REPs to protect customer deposits; however, no committee hearing was held. Representative Sylvester Turner introduced similar legislation, H.B. 2305, which would

have provided for certain REP customer protections, including requirements relating to retaining customer deposit money. The bill was voted out of the House State Affairs committee, but it was not placed on a House Calendar. Though the legislation did not ultimately pass, the Commission undertook a rulemaking, in which OPUC provided comments, which put this requirement into practice (PUC Project No. 35767). New PUC Substantive Rule Section 25.107 requires REPs to maintain a separate account for customer deposits.

In addition, OPUC recommended legislation supporting the restoration of funding through the System Benefit Fund (SBF) to its statutorily-designated appropriations.<sup>71</sup> Representative Turner introduced legislation to this effect, H.B. 1182. This legislation would have restored certain SBF programs. The House of Representatives passed the bill, but it did not advance in the Senate. Similar legislation, H.B.1698, S.B. 123 and S.B. 464, would also have restored the SBF to its original intent. Though none of this legislation ultimately passed, there were lengthy committee and chamber discussions, and dialogue was renewed on this important funding mechanism specified for low-income customer discounts, bill payment assistance, customer education, and energy efficiency programs. OPUC continues to support this legislative recommendation.

OPUC also advocated for a summer moratorium on disconnections for critical care, low-income elderly and low-income customers in its last annual report. Senator Watson introduced S.B. 1762, with companions H.B. 1519 by Representative Vo and H.B. 1718 by Representative Thibaut, that would have protected certain retail electric customers from temporary electric service disconnection during summer months, but no committee hearing was held. Legislation was introduced, and though it did not pass, the PUC undertook a rulemaking to address disconnection of these customer classes (PUC Project No. 36131). OPUC is currently participating in this rulemaking.

In FY 2008, OPUC supported the Governor's Competitiveness Council 2008 *Texas State Energy Plan* (July 2008) recommendation to establish innovation prizes, funded with public-private revenue, for the commercialization of large-scale energy storage solutions; however, no legislation was introduced or passed relating to this recommendation.

## **B. FY 2009 Recommendations**

### **a. System Benefit Fund Restoration**

OPUC again advocates for the restoration of the System Benefit Fund (SBF) to its intended statutory purpose.<sup>72</sup> PURA §39.303 governs 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 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), and OPUC's legislative

recommendations in its *Annual Report for FY 2008* (January 2009), OPUC supports the restoration of funding through the SBF for the PUC and OPUC. While OPUC shares a customer education mandate with the PUC, OPUC 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.<sup>73</sup> 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 in the Texas electric competitive marketplace.<sup>74</sup> The funds could be utilized more fully for education, outreach, and advising customers, allowing OPUC to complement and assist the PUC in these efforts.

#### **b. OPUC as Ombudsman**

There were various discussions during the 79<sup>th</sup> and 81<sup>st</sup> Legislative Sessions about OPUC acting as an ombudsman. Typically, an ombudsman serves as an impartial and confidential resource, assisting individuals in complaint resolution and other issues related to utility services. Discussions centered on OPUC handling residential and small business customer utility complaints, educating utility customers, assisting utility customers in market decisions, and assisting in proceedings before regulatory entities.

The Public Utility Regulatory Act (PURA) could be amended with language similar to that found in other Texas statutes providing for agency ombudsman programs. Texas Labor Code Chapter 404 requires the Office of Injured Employee Counsel (OIEC) to establish an ombudsman program. The OIEC Public Counsel assigns staff attorneys and supervises the work of the ombudsman program in providing assistance to claimants and preparing for informal and formal hearings.<sup>75</sup> The OIEC ombudsman program assists injured employees and persons claiming death benefits and obtaining benefits under the Worker's Compensation Act.<sup>76</sup> The ombudsman must meet with and provide information to injured employees; investigate complaints; communicate with employers, insurance carriers, and health-care providers on behalf of injured employees; assist unrepresented claimants to enable those persons to protect their rights in the workers' compensation system; and meet with unrepresented claimants privately for a minimum of 15 minutes prior to any informal or formal hearing.<sup>77</sup> Employers are required to notify their employees of the OIEC's ombudsman program,<sup>78</sup> and the OIEC is required to disseminate information to the public about its program.<sup>79</sup>

Another example is the Health and Human Services Commission's (HHSC's) ombudsman program, required under Family Code Chapter 231. HHSC's ombudsman tracks complaints against the agency and health-care providers contracted with the agency. The HHSC Executive Commissioner designates a chief ombudsman to manage the program, and an employee in each field office to act as the ombudsman for the office.<sup>80</sup> HHSC is required to implement a uniform process for receiving and resolving complaints throughout the state.<sup>81</sup>

In a similar manner, OPUC's Public Counsel could be granted statutory authority to operate an ombudsman program, to assign staff attorneys as appropriate, to provide assistance to residential and small business utility customers. Such assistance could include the following: preparing for informal and formal hearings before the PUC; providing general information to the public relating to complaints and inquiries in relation to rules, regulations, programs, policies and procedures relating to customers; meeting with customers on various matters; assisting customers in investigating complaints; and communicating with the PUC on behalf of consumers. An OPUC ombudsman program could process, track, and resolve complaints against public utilities and create and promote public awareness of available programs, government assistance, and private sector resources. The ombudsman program could also assist customers selecting the most appropriate electric or telephone plan for their circumstances and understanding their bills.

### **c. OPUC Representation in Water Proceedings before the TCEQ**

Historically, the regulation of water utilities was managed by the PUC, and residential and small business consumer representation was handled by OPUC. In 1985, the 69<sup>th</sup> Legislature removed the regulation of retail water and sewer rates from the PUC under PURA, and placed those provisions in the Water Utility Regulatory Act (WURA), with water and sewer jurisdiction transferred to the Texas Water Commission, now the Texas Commission on Environmental Quality (TCEQ).<sup>82</sup> Thus, advocacy for residential and small commercial customers in water and sewer ratemakings was effectively removed from OPUC.

During the 77<sup>th</sup> Legislative Session, Representative Sylvester Turner filed H.B. 724 to transfer water-related powers and duties (Water Code, Chapter 13) from the Texas Natural Resources Conservation Commission (TNRCC, formerly the Texas Water Commission, and now TCEQ) back to the PUC. Included in the bill was a provision allowing OPUC to initiate or intervene in a judicial proceeding "in which the counselor determines that residential or small commercial consumers of water or sewer utility need representation" and entitling OPUC to the same access to PUC-gathered records as other parties under Water Code Chapter 13. H.B.724 would have transferred TNRCC's powers and duties regarding water rates and services back to the PUC; however, the legislation failed.

During the 81<sup>st</sup> Legislative Session, H.B. 3838, introduced by Representative Harvey Hilderbran, would transfer the powers, duties, functions, programs, activities, obligations, contracts, property, records, and appropriated funds from the Texas Commission on Environmental Quality's (TCEQ's) Office of Public Interest Counsel (OPIC) (or, TCEQ OPIC) to OPUC, granting OPUC the authority to represent the interests of residential and small commercial consumers in water and sewer proceedings prescribed by Chapter 13 of the Water Code. Under the legislation, OPUC would have been granted the same duties, responsibilities, and authority for water and sewer utility proceedings as those currently set forth in the Public Utility Regulatory Act (PURA) for the OPUC's representation in electric and telecommunications proceedings. In addition, OPUC would have been

allowed to represent residential or small commercial consumers with respect to a complaint concerning retail services unresolved before the TCEQ. And, OPUC also would have had the ability to recommend legislation that positively affects the interests of residential and small commercial consumers. The legislation passed the House Chamber, was considered before the Senate Business and Commerce Committee, and was left pending on May 22, 2009. Similar legislation had been introduced by Representative Hilderbran during the prior session.<sup>83</sup>

Language granting authority to OPUC in PURA Chapter 13 could be duplicated in the Texas Water Code as proposed by filed legislation. By reinstating OPUC's authority to represent residential and small business consumers before TCEQ in water and sewer proceedings, those consumers will be provided an advocate in TCEQ proceedings.

#### **d. OPUC Representation in Natural Gas Proceedings before the RRC**

During the 75<sup>th</sup> Legislative Session, the legislature expanded OPUC's statutory authority, under Subchapter B of the Gas Utility Regulatory Act (GURA), to allow OPUC to intervene on behalf of residential and small commercial customers, as a class, in gas utility appeals before the Texas Railroad Commission, but only at the request of a municipality.<sup>84</sup> OPUC is entitled to the following: to initiate or intervene as a matter of right or otherwise appear in a judicial proceeding that involves an action taken by the Texas Railroad Commission in a proceeding in which OPUC was a party; the same access as a party, other than the Texas Railroad Commission Staff, to records gathered by the Commission; discovery of any nonprivileged matter relevant to the subject matter of a proceeding or petition before the Texas Railroad Commission; representation of an individual residential consumer with respect to the consumer's disputed complaint concerning utility services unresolved before the Commission; and may recommend legislation to the Legislature that the office determines would positively affect the interests of residential consumers.

Language granting authority to OPUC in PURA Chapter 13 could be duplicated in the Gas Utility Regulatory Act (GURA), as proposed by filed legislation. By expanding OPUC's authority, and eliminating the requirement for a municipality's request in natural gas proceedings, OPUC could intervene on behalf of residential and small business consumers before the Texas Railroad Commission.

<sup>1</sup> For additional information relating to OPUC's history, please see OPUC's *Self-Evaluation Report*, September 2009, Section III, pp 16-28, at [http://www.opc.state.tx.us/documents/OPUC\\_SER\\_FINAL.pdf?ID=90](http://www.opc.state.tx.us/documents/OPUC_SER_FINAL.pdf?ID=90).

<sup>2</sup> Texas Utilities Code Annotated §§ 13.001 *et seq.* (PURA).

<sup>3</sup> PURA §13.061.

<sup>4</sup> OPUC's Public Counsel is statutorily designated as an ex officio, voting member of the ERCOT Board of Directors representing residential and small commercial interests (PURA §39.151(g)(2)). OPUC also advocates for residential and small commercial consumers as a member of the Texas Regional Entity Board of Directors, Standard Advisory Committee and Reliability Standards Committee; Technical Advisory Committee; Wholesale Market Subcommittee; Retail Market Subcommittee; Protocol Revision Subcommittee; and Nodal Advisory Task Force.

<sup>5</sup> PURA §13.021.

<sup>6</sup> PURA §13.022.

<sup>7</sup> 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.

<sup>8</sup> The 0.5 employee reference represents a part-time administrative support staff position at OPUC.

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

<sup>12</sup> Public Utility Regulatory Act (PURA), as amended by HB 2129, 79<sup>th</sup> Legislature, Regular Session (2005), codified at PURA §39.107(h) and (i).

<sup>13</sup> PUC SUBST. R. §25.130 (2007).

<sup>14</sup> PUC Docket No. 36928, *AEP Texas Central Company's and AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges*.

<sup>15</sup> SB 769, 81<sup>st</sup> Legislature, Regular Session (2009), codified at PURA §36.401 *et seq.*

<sup>16</sup> PUC Docket No. 36918, *Application of CenterPoint Energy Houston Electric, LLC for Determination of Hurricane Restoration Costs*; PUC Docket No. 36931, *Application of Entergy Texas, Inc. for Determination of 2008 System Restoration Costs*.

<sup>17</sup> PUC Docket No. 37200, *Application of CenterPoint Energy Houston Electric, LLC for a Financing Order*; PUC Docket No. 37247, *Application of Entergy Texas, Inc. for a Financing Order*. TNMP also sought determination and recovery of its hurricane recovery costs in its rate case (PUC Docket No. 36025, *Application of Texas-New Mexico Power Company for Authority to Change Rates*).

<sup>18</sup> See PUC News Release, *Electricity Cost Savings in CenterPoint Area: Hurricane Ike Recovery Costs Reduced Through Securitization* (Nov. 19, 2009) at <http://www.puc.state.tx.us/nrelease/2009/111909.pdf>.

<sup>19</sup> PUC Docket No. 34611, *Application of Kelson Transmission Company, LLC for the Amended Proposed Canal-to-Deweyville 345-kV Transmission Line within Chambers, Hardin, Jasper, Jefferson, Liberty, Newton and Orange Counties*.

<sup>20</sup> PUC Docket No. 34800, *Application of Entergy Gulf States, Inc. for Authority to Change Rates and Reconcile Fuel Costs*.

<sup>21</sup> PUC Docket No. 35717, *Application of Oncor Electric Delivery Company LLC for Authority to Change Rates*.

<sup>22</sup> PUC Docket No. 36025, *Application of Texas-New Mexico Power Company for Authority to Change Rates*.

<sup>23</sup> PUC Docket No. 35763, *Application of Southwestern Public Service Company Authority to Change Rates, to Reconcile Fuel and Purchased Power Costs for 2006 and 2007 and to Provide a Credit for Fuel Cost Savings*.

<sup>24</sup> 47 U.S.C. §151.

<sup>25</sup> PURA Chapters 51, 52 and 58.

<sup>26</sup> PURA Chapter 56.

<sup>27</sup> 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* (April 25, 2008).

<sup>28</sup> PURA §56.021(1); PUC SUBST. R. 26.403.

<sup>29</sup> 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.

<sup>30</sup> PUC Docket No. 34723, *Petition for Review of Monthly per Line Support Amounts from the Texas High Cost Universal Service Plan Pursuant to PURA §56.031 and Subst. R. 26.403* (April 25, 2008).

<sup>31</sup> The five cases included: (1) PUC Docket No. 36360, *Application of AT&T Texas to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges*; (2) PUC Docket No. 36421, *Application of GTE Southwest Inc. dba Verizon Southwest to Revise its Texas General Exchange Tariff TXG and TXC, for local residential rates*; (3) PUC Docket No. 36431, *Administrative Filing of United Telephone Company of Texas, Inc. dba Embarq for Basic Service, Rate Changes for Basic Residence Service*; (4) PUC Docket No. 36432, *Administrative Filing of Central Telephone Company of Texas, Inc. dba Embarq for Basic Service, Rate Changes for Basic Residence Service*; and (5) PUC Docket No. 36402, *Windstream Communications Southwest Tariff Revisions for General Exchange Tariffs #1 & 2; Section 6 & A-1*.

<sup>32</sup> 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.

<sup>33</sup> *Office of Court Administration's Annual Statistical Report for the Texas Judiciary* (FY 2008). OCA's FY 2009 report had not yet been released at the completion of this OPUC Annual Report section.

<sup>34</sup> PUC Project No. 35769, *Rulemaking Relating to Electric Providers of Last Resort*.

<sup>35</sup> PUC Project No. 35767, *Rulemaking Relating to the Certification of Retail Electric Providers*.

<sup>36</sup> This was an OPUC legislative recommendation in the agency's FY 2008 Annual Report. See also Chapter 5, of this report, for further discussion.

<sup>37</sup> PUC Project No. 35768, *Rulemaking Relating to Retail Electric Providers Disclosures to Customers*.

<sup>38</sup> 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).

<sup>39</sup> The workshops to design the program have been held under PUC Project No. 36234, *Oncor Electric Delivery AMS Low-Income Program*. See also <http://www.puc.state.tx.us/electric/projects/36234/36234.cfm>.

<sup>40</sup> PUC Docket No. 36539, *Application of CenterPoint Energy Houston Electric, LLC for Approval of Deployment Plan and Request for Surcharge for an Advanced Metering System*, Final Order (Dec. 22, 2008); PUC Docket No. 36928, *AEP Texas Central Company and AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan and Request for AMS Surcharges*, Final Order (Dec. 17, 2009).

<sup>41</sup> PUC Project No. 36131, *Rulemaking Relating to the Disconnection of Service and Deferred Payment Plans*.

<sup>42</sup> OPUC provided written comments in conjunction with a coalition of consumer advocacy groups and Representative Sylvester Turner. See PUC Project No. 36131, *Rulemaking Relating to the Disconnection of Service and Deferred Payment Plans*, Joint Response of Consumers (Oct. 26, 2009).

<sup>43</sup> PUC Project No. 36536, *Rulemaking to Expedite Customer Switch Timelines*.

<sup>44</sup> PUC Project No. 36860, *Rulemaking Relating to Customer Database of Bill Payment Information*.

<sup>45</sup> PUC Project No. 37070, *Rulemaking Proceeding to Adopt Common Terms Used in Billing Telecommunications and Electric Customers*. On July 10, 2009, the Commission decided to segregate the rulemaking into an electric common terms project (PUC Project No. 37070), an electric customer disclosure project (PUC Project No. 37214, *Rulemaking to Implement Changes to Customer Disclosures as Required by HB 1822*), and a telecommunications common terms project (PUC Project No. 37215, *Rulemaking Proceeding to Adopt Common Terms Related to Billing of Telecommunications Services*).

<sup>46</sup> PUC Project No. 37291, *Rulemaking Proceeding Relating to Electric Meter Tampering Issues*.

<sup>47</sup> See Attachment B for PUC Project Numbers.

<sup>48</sup> PUC Project No. 36622, *Rulemaking to Amend Tariff Filing Requirements for Telecommunications Utilities*.

<sup>49</sup> PUC Project No. 37215, *Rulemaking Proceeding to Adopt Common Terms Related to Billing of Telecommunications Services*.

<sup>50</sup> See Attachment B for FCC Docket Numbers.

<sup>51</sup> Energy Policy Act of 2005 (EPAAct), Pub.L. No. 109-58, 119 STAT. 594, effective August 8, 2005.

<sup>52</sup> PURA §39.151(g)(2).

<sup>53</sup> PURA §13.061.

<sup>54</sup> PURA §13.064.

<sup>55</sup> See Attachment C for *Texas Register* notice and flyers for Houston meetings.

<sup>56</sup> ERCOT encompasses 75% of the Texas land mass and 85% of its electrical load.

<sup>57</sup> There are four fully integrated electric utilities in Texas outside of the ERCOT region: El Paso Electric Company; Southwest Public Service Company; Southwestern Electric Power Company; and Entergy Texas, Inc. The PUC fully regulates these entities' Texas operations.

<sup>58</sup> 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.

<sup>59</sup> Incumbent REPs are those providers that were once vertically integrated with fully regulated electric utilities such as TXU (formerly with Oncor) and Reliant (formerly with CenterPoint). The data is from the presentation of PUC Commissioner Donna Nelson to the Gulf Coast Power Association (October 7, 2009)

<sup>60</sup> For example, OPUC participated in PUC Docket No. 33672, *Commission Staff's Petition for Designation of Competitive Renewable Energy Zones*. In that proceeding OPUC filed testimony and rebuttal testimony regarding how much wind capacity was prudent.

<sup>61</sup> PUC Project No. 37475, *Rulemaking for Utility Infrastructure Storm Hardening*.

<sup>62</sup> According to a cost-benefit analysis performed in 2004, the estimated cost of implementing the Texas nodal market was between \$59.7 million and \$76.3 million. A current estimate of the cost of implementing nodal is over \$650 million. See [http://nodal.ercot.com/docs/tntarc/cb/fcb/ercot\\_cba\\_final\\_report.pdf](http://nodal.ercot.com/docs/tntarc/cb/fcb/ercot_cba_final_report.pdf) for the 2004 cost-benefit analysis and [http://www.ercot.com/news/press\\_releases/2009/nr02-19-09](http://www.ercot.com/news/press_releases/2009/nr02-19-09) for a press release from ERCOT regarding the current nodal implementation budget.

<sup>63</sup> Natural gas price of approximately \$7/MMBtu and a fixed price of electricity. The October 2008 price data is from a presentation of PUC Commissioner Donna Nelson to the Texas Electricity Professionals Association, *Making the Texas Electric Market Work* (November 14, 2008).

<sup>64</sup> Natural gas price of approximately \$5/MMBtu and a fixed price of electricity. The September 2009 price data is from a presentation of PUC Commissioner Donna Nelson, *Market Design 2009: The Texas Competitive Electric Market* (September 17, 2009).

<sup>65</sup> *The Rising Cost of New Power Generation Projects Argues for Greater Reliance on Competitive Markets and Procurement*, Electric Power Supply Association (June 17, 2008).

<sup>66</sup> American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. 111-5 (2009).

<sup>67</sup> See U.S. Department of Energy, "Recovery Act Selections for Smart Grid Investment Grant Awards, By State" at [http://www.energy.gov/recovery/smartgrid\\_maps/SGIGSelections\\_State.pdf](http://www.energy.gov/recovery/smartgrid_maps/SGIGSelections_State.pdf).

<sup>68</sup> PUC Project No. 36358, *Consideration of Alternative Ratemaking Methodologies*, Letters from Chairman Barry Smitherman to Representatives Turner, Heflin, and Hopson (January 30, 2009).

<sup>69</sup> HB 4610 (81R), Oliveira, relating to cost recovery by a transmission and distribution utility of distribution system costs.

<sup>70</sup> A recent example of such a proposal is PUC Docket No. 37221, *Petition For Rulemaking To Amend Cost Recovery Rules For Transmission Service Providers in ERCOT*, filed by AEP Texas North Company, AEP Texas Central Company, Electric Transmission Texas, Sharyland Utilities, LCRA Transmission Services Corp., and Texas-New Mexico Power Company (July 10, 2009). The Commission's Order denying the petition was filed on October 22, 2009.

<sup>71</sup> PURA §39.903(e).

<sup>72</sup> PURA §39.903(e).

<sup>73</sup> PURA §§13.001 and 13.003(a)(1).

<sup>74</sup> PURA §§13.061 and 13.064.

<sup>75</sup> Texas Labor Code §404.151(a).

<sup>76</sup> Texas Labor Code §404.151(b).

<sup>77</sup> Texas Labor Code §404.152.

<sup>78</sup> Texas Labor Code §404.154.

<sup>79</sup> Texas Family Code §231.119(a).

<sup>80</sup> Texas Family Code §231.119(a).

<sup>81</sup> Texas Family Code §231.119(b)-(f).

<sup>82</sup> SB 249 (69R).

<sup>83</sup> HB 1695 (80R).

<sup>84</sup> SB 1751 (75R); Texas Utilities Code §§101.051 *et seq.*

## **Attachments**

- A. FY 2009 Cases and Projects in Which OPUC Participated
- B. FY 2009 OPUC Appeals Report
- C. 2009 Texas Register Notice for OPUC Annual Meeting in Houston
- D. OPUC Organizational Chart

## **Attachment A**

### **FY 2009 Cases and Projects in Which OPUC Participated**

#### **Electric Cases**

- 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)
- 33536            Issues Severed from Docket No. 32758 (Application of AEP Texas Central Company for a Competitive Transition Charge Pursuant to PUC Subst. R. §25.263(n))
- 33672            Commission Staff's Petition for Designation of Competitive Renewable Energy Zones
- 33687            Entergy Gulf States, Inc.'s Transition to Competition Plan
- 34467            Complaint of Texas Electric Cooperative, Inc. Against Entergy Gulf States, Inc. for Violation of PUC Proc. Rules §22.144
- 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
- 34800            Entergy Gulf States, Inc. Application for Authority to Change Rates & to Reconcile Fuel Costs
- 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
- 35519            Entergy Texas, Inc. Application for Approval of Certificate of Convenience & Necessity (CCN) Allocation
- 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
- 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
- 36025 TNMP Application for Authority to Change Rates
- 36127 Entergy Texas, Inc. Application to Implement Interim Incremental Purchased Capacity Rider (IPCR) & Fuel Charges
- 36281 SWEPCO Application for Suspension of Purchased Power & Conservation Factor (PPCF) & Revision of True-Up Filing Date
- 36326 AEP Texas Central Company for Non-Standard True-Up Filing Pursuant to the Financing Order In Docket No. 21528
- 36345 ERCOT Request for Interim Relief Regarding Ordering Paragraph No. 2 of the Final Order in Docket No. 31540 Approving Nodal Protocols
- 36412 ERCOT Application for Approval of a Revised Nodal Market Implementation Surcharge & Request for Interim Relief
- 36416 AEP Energy Partners' Appeal of the Decision of the ERCOT Board Assigning Oklaunion Generating Station to the West Zone & Request for Expedited Consideration & Emergency Remand with Instructions
- 36530 Oncor Electric Delivery Company, LLC Application for Rate Case Expenses Pertaining to PUC Docket No. 35717
- 36544 CenterPoint Energy Houston Electric, LLC Compliance Filing for a Standard True-Up of Transition Charges Under Schedule TC3
- 36555 Exelon Corporation, Exelon XChange, & Exelon Generation Company, LLC Application Pursuant to Section §39.158 of the Public Utility Regulatory Act

- 36710 Entergy Gulf States, Inc. Application to Revise Fixed Fuel Factor (Schedule FF) in Compliance with Final Order in Docket No. 32915
- 36712 SPS Application for: Authority to Implement Interim Fuel Facts; Revise Its Fuel Factor Formulas; Change Its Fuel Factors; & Related Relief
- 36780 AEP Texas Central, AEP Texas North Company, CenterPoint Energy Houston Electric, El Paso Electric Company, Entergy Texas, Oncor Electric Delivery Company, Southwestern Electric Power Company, TNMP, & SWEPCO Petition to Revise Existing Commission Approved Deemed Savings Values for Central Air Conditioning & Heat Pump Systems
- 36851 ERCOT Application for Approval of a Revised Nodal Market Implementation Surcharge
- 36864 El Paso Electric Company Petition to Terminate the Interim Fuel Surcharge Tariff Authorized in Docket No. 35856
- 36912 Oncor Electric Delivery Company, LLC Interim True-Up Compliance Filing Concerning Rider TC1 - Transition Charge
- 36918 CenterPoint Energy Houston Electric, LLC Application for Determination of Hurricane Restoration Costs
- 36924 AEP Texas North Company Application to Implement a Mechanism to Address Energy Trading Margins
- 36928 AEP Texas Central Company's & AEP Texas North Company's Request for Approval of Advanced Metering System (AMS) Deployment Plan & Request for AMS Surcharges
- 36931 Entergy Texas, Inc. Application for Determination of 2008 System Restoration Costs
- 36938 AEP Texas Central Company Application to Implement a Mechanism to Address Energy Trading Margins
- 36952 CenterPoint Energy Houston Electric, LLC Application to Defer Energy Efficiency Cost Recovery & For Approval of an Energy Efficiency Cost Recovery Factor
- 36956 Entergy Texas, Inc. Application for Approval to Revise Energy Efficiency Cost Recovery Factor

- 36957 Entergy Texas, Inc. Application to Implement an Interim Fuel Refund
- 36958 Oncor Electric Delivery Company Application for 2010 Energy Efficiency Cost Recovery Factor
- 36959 AEP Texas North Company Application for an Energy Efficiency Cost Recovery Factor & Related Relief
- 36960 AEP Texas Central Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief
- 36961 Southwestern Electric Power Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief
- 37036 Entergy Texas, Inc. Application for Authority to Implement New Rough Production Cost Equalization Adjustment Rate (RPCEA)
- 37060 Southwestern Public Service Company Application for Approval to Modify Its Fuel Cost Allocation Methodology
- 37105 CenterPoint Energy Houston Electric Application to Revise Certain Discretionary Charges
- 37135 Southwestern Public Service Company Application for Approval of a Transmission Cost Recovery Factor
- 37173 Southwestern Public Service Company Petition for Declaratory Order Regarding The Generation Demand Charge as a cap on Compensation for Interruptible Resources
- 37200 CenterPoint Energy Houston Electric Application for a Financing Order
- 37247 Entergy Texas Application for a Financing Order

### **Electric Projects**

- 25721-P Retail Electric Provider Annual Reports
- 27647-P Energy Efficiency Implementation Project
- 34610-P Implementation Project Relating to Advanced Metering
- 34913-P PUC Coordination With State Energy Conservation Office to Develop Standard Formats for Reporting Utility Consumption Under H.B. 3693

- 35533-P PUC Rulemaking Proceeding Relating to Prepaid Service
- 35631-P PUC Project Relating to PUC Report to the 81<sup>st</sup> Texas Legislature on the Scope of Competition in Electric Markets
- 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
- 35855-P Rulemaking Relating to Goal for Renewable Energy
- 35984-P Petition of The Honorable Sylvester Turner, The Honorable Eddie Lucio III, OPUC, 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
- 36131-P Rulemaking Relating to Disconnection of Electric Service & Deferred Payment Plans
- 36150-P Issues Relating to the Disaster Resulting from Hurricane Ike
- 36234-P Oncor Electric Delivery Low-Income AMS Program
- 36358-P Consideration of Alternative Ratemaking Methodologies
- 36536-P Rulemaking to Expedite Customer Switch Timelines
- 36774-P Project to Track Stimulus Bill Efforts for the American Recovery & Reinvestment Act of 2009
- 36860-P Rulemaking Relating to Customer Database of Bill Payment Information
- 37034-P Project to Implement Terms of Service & Notification Documents Pursuant to Subst. R. §25.43
- 37052-P Project to Develop Critical Performance Metrics & Criteria for the ERCOT Nodal Market

- 37070-P Rulemaking Proceeding to Adopt Common Terms Used in Billing Telecommunications & Electric Customers
- 37142-P Petition of State Representative Sylvester Turner, AARP, One Voice Texas, TLSC, Texas ROSE For Adoption of Emergency Disconnection Rule
- 37189-P Improved Customer Information on Distributed Generation
- 37214-P Rulemaking to Implement Changes to Customer Disclosures as Required by H.B. 1822
- 37221-P Petition for Rulemaking to Amend Cost Recovery Rules for Transmission Service Providers in ERCOT
- 37262-P Rulemaking Proceeding Concerning Internet Broadcast of Meetings of the ERCOT
- 37285-P Plan for Implementing S.B. 1492 and H.B. 1831 and Other Legislation Relating to Storm Hardening and Electric Service
- 37291-P Rulemaking Proceeding Relating to Electric Meter Tampering Issues
- 37339-P Commission Review of Market and Operating Issues Related to Wind Generating Capacity in ERCOT
- OPC 02-2 ERCOT Meetings
- OPC 07-1 OPC's Project Number for Customer Complaints
- OPC 09-3 Electric Customer Outreach & External Communications Activities
- OPC 09-5 OPC Project Number for Work on the Regulation of Carbon & Carbon Emissions both at the Federal and State Government Levels
- OPC 09-6 OPC Project Number for Work on Sunset Review

## **Telephone Cases**

- 36360 AT&T Texas Application to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges
- 36402 Windstream Communications Southwest Tariff Revisions for General Exchange Tariffs #1 & #2; Section 6, & A-1
- 36421 GTE Southwest Incorporated dba Verizon Southwest Application to Revise Its Texas General Exchange Tariff TXG & TXC, for Local Residential Rates
- 36431 United Telephone Company of Texas, Inc. dba Embarq Informational Notice for Basic Service; Rate Changes for Basic Residence Services
- 36432 Central Telephone Company of Texas, Inc. dba Embarq for Basic Service Informational Notice; Rate Changes for Basic Residence Services

## **Telephone Projects**

- 31958-P Rulemaking Project For Establishing Telecom Service Quality Standards For Alternate Technologies Used By A POLR
- 34037-P Activities Related To Oversight Of The 9-1-1 Emergency System
- 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
36622-P	PUC Rulemaking to Amend Tariff Filing Requirements for Telecommunications Utilities
36683-P	Rulemaking Related to the Revision of PUC Subst. R. §§ 26.417, 26.418 & 26.419 Relating to ETPs, Resale ETPs, & ETCs
36899-P	Numbering Plan Area Code Relief Planning for the 512 Area Code
36900-P	Implementation of Area Code Relief for the 512 Area Code
37215-P	Rulemaking Proceeding to Adopt Common Terms Related to Billing of Telecommunications Services
OPC 09-1	OPC's Annual Meeting – FY09
OPC 09-2	OPC's Annual Report – FY09
OPC 09-4	Telephone Customer Outreach & External Communications Activities
FCC WT 99-217	Promotion of Competitive Markets in Local Telecommunications Markets
FCC 05-33 CC 01-92 DA 06-1510	Unified Intercarrier Compensation Regime
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 07-164 WT 07-195	Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band

<b>FCC 08-4 WC 05-337 CC 96-45</b>	<b>Identical Support/High-Cost Universal Service Support &amp; Federal State Joint Board on Universal Service</b>
<b>FCC 08-5 WC 05-337 CC 96-45</b>	<b>Reverse Auctions/High-Cost Universal Service Support &amp; Federal State Joint Board on Universal Service</b>
<b>FCC 08-22 WC 05-337 CC 96-45</b>	<b>Joint Board Comprehensive Reform/High-Cost Universal Service Support &amp; Federal State Joint Board on Universal Service</b>
<b>FCC 08-152 DA 08-1725</b>	<b>AT&amp;T Petition for Interim Declaratory Ruling &amp; Limited Waivers Regarding Access Charges and the "ESP" Exemption</b>
<b>FCC 08-203</b>	<b>In the Matter of Service Quality, Customer Satisfaction, Infrastructure &amp; Operating Data Gathering</b>
<b>FCC 08-262</b>	<b>FCC Order on Remand &amp; Report &amp; Order &amp; Further Notice of Proposed Rulemaking Requesting Comments on Three Proposals to Reform Intercarrier Compensation &amp; High-Cost Universal Service Support</b>

## **Attachment B**

### **FY 2009 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.

#### **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 2009 APPEALS REPORT  
AT-A-GLANCE**

<b>PUC NUMBER</b>	<b>SUBJECT</b>	<b>COURT CAUSE NUMBERS</b>	<b>DISPOSITION</b>	<b>STATUS (AS OF 8/31/08)</b>	<b>COMMENTS</b>
26000	Final Fuel Reconciliation-WTU	GN4-04175 COA: 03-05-00644	Dist. Ct.: Prevail	Pending at COA	
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 (Review Granted) and awaiting the Court's decision.
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	
32758	Competition Transition Charge – AEP TCC	D-1-GN-07-001153		Pending at Dist. Ct.	
32795	Stranded Cost Reallocation	D-1-GN-08-000476 COA: 03-08-00698	Dist. Ct.: Prevail on 3 issues; Not Prevail 4 issues	Pending at COA	
33309	Rate Case – AEP TCC	D-1-GN-08-001689 D-1-GN-08-001522+ COA: 03-09-00116	Dist. Ct.: Not Prevail	Pending at COA	
35038	TNMP Compliance Tariff	D-1-GN-09-000071		Pending at Dist. Ct.	

**KEY:**

+ denotes consolidated cause number

\* denotes cause originated by OPUC

‡ denotes a separate appellate track, such as a mandamus

## FY 2009 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

**Disposition:**

District Court: Prevail

COA: 03-05-00644-CV

COA: n/a

**Details:**

This appeal was pending before the Third Court of Appeals all four quarters of FY 2009.

## FY 2009 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-CV

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 4<sup>th</sup> Quarter of FY 2009.

## FY 2009 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+

### Disposition:

District Court: Not Prevail

COA: 03-07-00196-CV

COA:

Prevail on 1 issue,  
Not Prevail on 1  
issue.

SCT: 08-0634

SCT: n/a

### Details:

Regarding the Court of Appeals' decision in the appeal of the AEP-TCC true-up case, the COA ruled as follows:

- (1) Reversed the district court and Commission, upholding OPUC'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 OPUC; OPUC point of error no. 3.
- (2) Upheld the district court and Commission, overruling OPUC's arguments that the Commission should have used the ECOM model to calculate TCC's stranded cost. 1 not prevail for OPUC; OPUC points of error nos. 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 2009 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 2009 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 Court of Appeals

**Cause Nos.**

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

**Disposition:**

Prevail on 3 issues;  
Not Prevail on 4 issues

COA: 03-08-00698-CV

COA: n/a

**Details:**

The District Court affirmed the PUC's decision but sustained OPUC's second point of error that the Commission, in calculating the statewide total of retail stranded costs, should have deducted the CenterPoint refund to customers of \$34.6 million in unexpended environmental retrofit costs. The court's affirmance of the PUC's decision also dismissed two claims by another party that were counter to OPUC's positions and on which OPUC was defending the Commission's Order.

## FY 2009 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 Court of Appeals

**Cause Nos.**

District Court: D-1-GN-08-001689  
D-1-GN-08-001522+

**Disposition:**

Not Prevail

COA: 03-09-00116-CV

COA: n/a

**Details:**

In affirming in part the Commission's Final Order in PUC Docket No. 33309, the District Court dismissed each of OPUC's claims of error. OPUC advanced one issue to the Third Court of Appeals where the case remained pending at the end of the 4<sup>th</sup> Quarter of FY 2009.

## FY 2009 APPEALS REPORT

**Appeal from:**

PUC Project No. 35038  
*Texas-New Mexico Power Company Tariff  
Filing in Compliance with the Final Order  
in Docket No. 33106*

**Status as of 8/31/08**

Pending at District Court

**Cause Nos.**

District Court: D-1-GN-09-000071

**Disposition:**

n/a

**Details:**

n/a

**Attachment C**

*Texas Register* Notice for Annual Meeting in Houston

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# TEXAS REGISTER

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Pages 8581 - 8902

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Kimberly Ryan

Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 20, 2009

◆ ◆ ◆  
**Notice of Intent to Implement Minor Rate Changes Pursuant to P.U.C. Substantive Rule §26.171**

Notice is given to the public of Border to Border Telecommunications, Inc. (Border to Border) application filed with the Public Utility Commission of Texas (commission) on November 13, 2009, for approval of a minor rate change pursuant to P.U.C. Subst. R. §26.171.

**Tariff Control Title and Number:** Application of Border to Border Telecommunications, Inc. for Approval of a Minor Rate Change Pursuant to Subst. R. §26.171; Tariff Control Number 37666.

**The Application:** Border to Border filed an application to implement minor rate changes to revise its monthly Residential, Business rates, certain non-recurring service charges, Directory Assistance rates, Operator Service rates and to eliminate monthly charges for its Custom Calling services. The proposed effective date for the proposed rate changes is March 1, 2010. The estimated annual revenue increase recognized by Border to Border is \$6,027 or less than 5% of Border to Border's gross annual intrastate revenues. Border to Border has 86 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by January 28, 2010, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by January 28, 2010. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Tariff Control Number 37666.

TRD-200905396  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 20, 2009

◆ ◆ ◆  
**Notice of Petition for Rulemaking**

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition for rulemaking filed on November 16, 2009.

**Project Style and Number:** Petition of Rulemaking Regarding 811 Abbreviated Dialing Code; Project Number 37688.

**Summary of Petition:** The Texas Statewide Telephone Cooperative, Inc. (TSTCI) representing 38 individual local exchange carriers serving mostly small and rural service areas, filed a petition for rulemaking to clarify the rights and responsibilities of local exchange carriers to provide 811 service pursuant to P.U.C. Subst. R. 26.127, relating to Abbreviated Dialing Codes. Specifically, the petition seeks a rulemaking to address the relationship between local exchange carriers and

the One-Call Board of Texas, which oversees the 811 service centers where 811 calls are routed. TSTCI asserts that the One-Call Board has refused to enter into an agreement for provision of 811 service, and has specifically disclaimed "customer" status as the term would apply for the purposes of the provision of Commission-approved tariff services. These tariffs include limitations of liability on the part of local exchange carriers for provision of 811 service, for claims or actions arising from such provision, arising from cause other than their own negligence. According to TSTCI, if the One-Call Board is not considered a customer under these Commission-approved tariffs, it exposes the local exchange carriers to unreasonable risk of liability or lawsuit for acts or omissions of others associated with the provision of 811 service other than those caused by their negligence.

The deadline to file comments in this project is Tuesday, December 29, 2009. Comments shall be filed at the Public Utility Commission of Texas, 1701 N. Congress, Austin, Texas 78701. Interested persons may contact the commission at (512) 936-7120 or (toll-free) 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Project Number 37688.

TRD-200905394  
Adriana A. Gonzales  
Rules Coordinator  
Public Utility Commission of Texas  
Filed: November 20, 2009

◆ ◆ ◆  
**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.

Wednesday, December 16, from 1:00 - 2:30 p.m.

Ripley House  
4410 Navigation, Room 144  
Houston, Texas 77011

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

TRD-200905421  
Don Ballard  
Public Counsel  
Office of Public Utility Counsel  
Filed: November 23, 2009

◆ ◆ ◆  
**Texas Department of Transportation**

**Attachment D**

**OPUC Organizational Chart**

# Office of Public Utility Counsel

