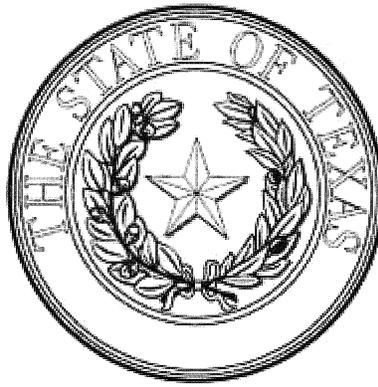


Office of Public Utility Counsel Annual Report for Fiscal Year 2012



For the

Senate Business and Commerce Committee

Senate Finance Committee

Senate Natural Resources

House State Affairs Committee

House Appropriations Committee

January 2013



Office of Public Utility Counsel

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Sheri Givens
Public Counsel

January 17, 2013

Honorable Members:

The Office of Public Utility Counsel (OPUC) is pleased to submit our *2012 Annual Report* as required by the Public Utility Regulatory Act Section 13.063. This report provides you and your staff a look at our agency's representation of residential and small business electric and telephone customers during 2012. Below is a snapshot of our accomplishments this past year:

- OPUC achieved \$101 million in current year bill savings and \$734 million in future bill savings through consumer representation in 32 contested cases and appeals during Fiscal Year 2012;
- OPUC advocated in 20 electric and telephone rulemakings ensuring certain customer protections were in place;
- OPUC conducted twenty-one informational events visiting communities across Texas;
- OPUC conducted ongoing military-specific communication programs and provided informational materials;
- OPUC dialogued with small business stakeholder groups to better represent and assist this constituency;
- OPUC coordinated with other agencies on important issues such as weather events affecting electric customers, energy efficiency, and federal regulations impacting the state;
- OPUC utilized social media and email alerts to timely provide pertinent customer information and produced quarterly e-newsletters, customized for targeted constituencies when requested; and
- OPUC addressed inquiries and complaints from over 300 Texans and continues to assist customers with their utility issues.

OPUC appreciates this opportunity to provide you and your staff with information about our consumer advocacy and representation. If you have any questions about any issues addressed in this report, please contact my office.

Sincerely,

A handwritten signature in cursive script that reads "Sheri Givens".

Sheri Givens
Public Counsel

ACKNOWLEDGEMENTS

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Laurie Barker, Litigation Director and General Counsel
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*In addition, special thanks to other OPUC Staff members who contributed to the preparation of
this report:*

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2012 OPUC Annual Report
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Chapter 1. Overview

In 1983, the Office of Public Utility Counsel (OPUC or agency) was created as part of the 68th 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; therefore, OPUC was created to provide balance to the process.

By statute, OPUC is required to provide an annual report on the agency's activities during the preceding year and submit the report to the standing legislative committees that have jurisdiction over OPUC.¹ The report must include:

- the types of activities conducted by OPUC and time spent by OPUC on each activity;
- the number of hours billed by OPUC representing residential or small commercial customers in proceedings;
- the number of staff positions and type of work performed by each position; and
- OPUC's rate of success in representing residential and small commercial customers in appealing Commission decisions.²

In addition, OPUC is authorized to recommend legislation to the Legislature that the agency determines would positively affect the interests of residential and small commercial customers.³ OPUC has recommendations related to addressing some of the unique needs of Texas military communities as well as representation of water and wastewater ratepayers which are highlighted in Chapter 4, *Legislative Recommendations*.

A. OPUC Activities

The Public Utility Regulatory Act (PURA) 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 and other state and federal regulatory entities, in state and federal courts, at the Electric Reliability Council of Texas (ERCOT), and at the Texas Reliability Entity, Inc. (Texas RE). Following are the types of activities conducted by OPUC in 2012:

- **Contested Cases and Appeals.** In contested cases and appeals, OPUC provides legal and technical comments, testimony, and proposals that benefit residential and small commercial utility customers and promote their interests. OPUC participated in 32 contested proceedings

¹ Public Utility Regulatory Act (PURA), Tex. Util. Code Ann. §13.063 (Vernon 2011).

² See Attachment C, *FY 2012 OPUC Appeals Report*.

³ PURA §13.003(a)(8).

and appeals and helped consumers realize \$100,918,851.37 in current year bill savings and \$734,468,696.64 in future bill savings during Fiscal Year (FY) 2012.⁴ For more information, see Chapter 2A, *Contested Proceedings*.

- **Rulemakings and Projects.** In rulemakings and projects, OPUC also provides legal and technical comments and proposals to benefit and promote its consumers' interests. OPUC participated in 20 projects in FY 2012, consisting of 15 electric and 5 telecommunications projects. For more information, see Chapter 2B, *Rulemaking Activities and Projects*.
- **ERCOT and Texas RE.** Additionally, OPUC is an active participant at ERCOT, which is the Independent System Operator (ISO) for 75 percent of the Texas electric grid, through ERCOT committees and working groups. OPUC likewise participates at the Texas RE, which is responsible for ensuring compliance with the North American Electric Reliability Corporation (NERC) reliability standards within the geographic boundaries of the ERCOT region. Decisions made at regulatory agencies, ERCOT and Texas RE 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. For more information, see Chapter 2C, *ERCOT Participation*.
- **Information and Communications Activities.** OPUC proactively seeks to bring value to its representation of residential and small business consumers by pursuing a variety of informational opportunities to dialogue with customers about their specific needs and concerns. In 2012, OPUC participated in numerous community informational events, received hundreds of phone calls via our agency toll-free telephone number, resolved hundreds of customer inquiries and complaints, created quarterly agency newsletters, and continued utilization of social media, including Facebook and Twitter, to update consumers on relevant information. For more information, see Chapter 3, *OPUC Information and Communications Activities*.

For a more comprehensive listing of all cases and projects OPUC participated in FY 2012, see Attachment B, *FY 2012 Cases and Projects in Which OPUC Participated*.⁵

B. OPUC Hours Billed

OPUC's workload is categorized by electric and telecommunications cases, projects, and appeals. In FY 2012, OPUC staff spent 10,640 hours on electric and telecommunications cases; 6,169.5 hours on electric and telecommunications projects; and 466 hours on appeals. Total OPUC staff hours billed in FY 2012 were 17,275.5.⁶

⁴ Attachment A, OPUC Calculation of Bill Savings.

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

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

| | Total Electric and Telecom Cases | Total Electric and Telecom Projects | Total Electric and Telecom Appeals | Total Electric and Telecom Hours |
|------------------|----------------------------------|-------------------------------------|------------------------------------|----------------------------------|
| OPUC Staff Hours | 10,640.0 | 6,169.5 | 466.0 | 17,275.5 |

During FY 2012, OPUC was involved in pending appeals relating to 5 PUC decisions.⁷ For a more comprehensive analysis of OPUC’s appeals during FY 2012, see Attachment C, *FY 2012 OPUC Appeals Report*.

C. OPUC Staff Positions and Type of Work Performed

OPUC is headed by the Public Counsel, who is appointed by the Governor and confirmed by the Senate for a two-year term.⁸ The Public Counsel must be licensed to practice law in the state of Texas and must be a Texas resident.⁹ The eighth and current Public Counsel is Sheri Givens, first appointed by Governor Rick Perry on December 21, 2009, and reappointed on February 1, 2011. She was confirmed by the Texas Senate during the 2011 legislative session.

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 15 employees and consists of two main divisions, the Litigation Division and the Market Representation and Communications Division, and also includes a Business Manager, Government Relations Liaison and support staff.¹⁰ 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.

- **Litigation.** 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 and federal courts, FERC, FCC, etc.). Major regulatory matters include, but are not limited to, rate cases, fuel reconciliation and other fuel cases, energy efficiency cases, and advanced metering deployment reconciliation proceedings. In addition to the Director, who is an attorney, the Division also employs two additional attorneys and three regulatory analysts.

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

⁸ PURA §13.021.

⁹ PURA §13.022.

¹⁰ 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.

- **Market Representation and Communications.** 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, ERCOT, and other jurisdictional entities. Market Representation projects include, but are not limited to, customer protection, utility cost recovery, and retail electric provider rules; advanced metering matters; agency annual meetings and reports; customer complaint resolution; legislative bill review and analysis; and public information and communication. In addition to the Director, the division also employs one attorney and one information specialist.
- **Business Manager, Government Relations Liaison, and Support Staff.** OPUC's Business Manager, Government Relations Liaison and 3 administrative support staff complete the 15 filled full-time positions. The Business Manager manages the budget and business activities, the Government Relations Liaison oversees government relations and related communications activities; and the administrative support staff provides professional, legal, and clerical support for the agency.

Chapter 2. Summary of OPUC Activities for 2012

A. Contested Proceedings

For FY 2012, OPUC participated in 22 contested electric cases, 5 contested telecommunications cases, and 5 appeals. The agency reported \$100,918,851.37 of current year bill savings and \$734,468,696.64 in future bill savings for residential and small commercial customers as a result of those proceedings. The agency participated in a variety of cases including traditional rate cases, fuel factors and reconciliation proceedings, and energy efficiency cost recovery. For more information, see Attachment B, *FY 2012 Cases and Projects in Which OPUC Participated*.

1. Electric

The agency continues to experience an increase in participation in rate setting and rate recovery cases. A significant portion of the agency's resources have been devoted to determining reasonable rates for both integrated utilities in regulated areas and transmission and distribution utilities in competitive areas, as well as establishing rates for new transmission providers. 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, cost allocation and rate design 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 lowering costs to residential and small business customers by approximately \$100,918,851.37 million in current year bill savings. In addition to these rate cases, the agency also participated in two of the original stranded cost cases, first filed in 2004 and 2005, which had been remanded from the Supreme Court of Texas back to the PUC. These cases yielded an additional \$734,468,696.64 in future bill savings for customers. Future bill savings are those savings from stranded cost cases not included in current year bill savings that consumers will continue to experience over a 14 year period.

2. Telecommunications

For FY 2012, OPUC participated in five telecommunications cases involving the Texas Universal Service Fund. Four of these cases involved the implementation of changes related to the Texas High Cost Universal Service Plan (THCUSP) as a result of a related settlement proceeding.¹¹ The PUC order, relating to the unanimous settlement agreement, provides that increases in basic residential rates as a result of each telecommunication utility's filing are offset by an additional 25 percent of the increase actually approved by the PUC. In FY 2012, OPUC participated in these telecommunications cases to ensure that all eligible low-income customers received the additional support agreed to by the parties and ordered by the PUC, and reviewed

¹¹ 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*, Final Order (April 25, 2008).

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.¹²

In FY 2012, the PUC opened a new rulemaking project to address additional changes to universal service funding for the largest telecommunications carriers in Texas.¹³ To implement the provisions of this new rulemaking, the agency participated in, and was able to reach a unanimous settlement in, the contested case proceeding involving the state's largest carriers. This case established the reasonable rate for basic local telecommunications service for purposes of calculating support from the THCUSP.¹⁴

B. Rulemaking Activities and Projects

For FY 2012, OPUC participated in 20 projects and rulemakings – 15 electric and 5 telecommunications. The agency participated in and advocated for its consumers in a variety of projects and rulemakings including those related to energy efficiency, demand ratchets, resource adequacy, and telecommunications and universal service reforms. For more information, see Attachment B, *FY 2012 Cases and Projects in Which OPUC Participated*.

1. Electric

a. Energy Efficiency

In August 2011, the Commission opened PUC Project No. 39674¹⁵ to amend its energy efficiency rules to implement legislation passed during the 82nd Legislative Session.¹⁶ The PUC issued a Proposal for Publication in April 2012, and OPUC filed comments and reply comments in May and June 2012 respectively.¹⁷ The rule was adopted in October 2012.¹⁸

¹² PUC Docket No. 39909, *Application of AT&T Texas to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges*, Final Order (December 12, 2011); PUC Docket No. 39930, *Application of GTE Southwest Incorporated, dba Verizon Southwest TXG And TXC to Revise Its Local Residential Rates*, Final Order (December 14, 2011); PUC Docket No. 39956, *Application Of Central Telephone Company of Texas dba Centurylink to Revise Its Local Residential and Business Rates*, Final Order (December 20, 2011); and PUC Docket No. 39957, *Application of United Telephone Company of Texas dba Centurylink to Revise Its Local Residential and Business Rates*, Final Order (December 21, 2011).

¹³ PUC Project No. 39937, *Rulemaking To Consider Amending Substantive Rule §26.403, Relating To The Texas High Cost Universal Service Plan And Substantive Rule §26.412, Relating To The Lifeline Service Program* (June 21, 2011).

¹⁴ PUC Docket No. 40521, *Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant To P.U.C. Subst .R. 26.403*, Final Order (September 28, 2012).

¹⁵ PUC Project No. 39674, *Rulemaking Proceeding to Amend Energy Efficiency Rules*.

¹⁶ Public Utility Regulatory Act (PURA), as amended by SB 1125, codified as PURA §39.905 and §39.9054; by SB 1150, codified as PURA §39.402(a); by SB 1434, as codified as PURA §39.905(f); and by SB 1910, codified as PURA §39.555, 82nd Legislature, Regular Session (2011).

¹⁷ PUC Project No. 39674, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Proposal for Publication (April 5, 2012); Comments of the Office of Public Utility Counsel (May 29, 2012); and Reply Comments of the Office of Public Utility Counsel (June 11, 2012).

¹⁸ PUC Project No. 39674, *Rulemaking Proceeding to Amend Energy Efficiency Rules*, Final Order (October 17, 2012).

The energy efficiency programs in the adopted rule are designed to improve utility customers' energy use through measures that reduce electricity demand and energy consumption. The programs are administered by the utilities and funded through an energy efficiency cost recovery factor paid for by customers. Following are some of the more substantive rule revisions that were beneficial to OPUC's constituents:

- Increased the electric utilities' energy efficiency goals from 20% of annual growth in the utilities' demand for electricity of residential and commercial customers to 25% of the growth in demand of these customers in 2012 and to 30% of the growth of demand in 2013 with no increase in the utilities' cost caps.
- Increased the set-aside for targeted low-income programs to 10% of the utility's budget.
- Added an evaluation, measurement and verification (EM&V) framework and accompanying definitions for the purpose of ensuring cost and program accountability and prudence.
- Included utilities' rate case expenses in the administrative and overall cost caps.

b. Demand Ratchets

In October 2011, the Commission opened PUC Project No. 39829¹⁹ to implement legislation passed by the 82nd Legislature.²⁰ The legislation addressed demand ratchets and billing units for non-residential, secondary voltage service, and directed the PUC to adopt rules that would waive the ratchets for certain secondary customers based on specified criteria. To ensure adequate protections and an appropriate load factor threshold for small commercial class customers, OPUC was actively involved in the stakeholder discussions leading to the bill passage, and continued that involvement at the PUC rule implementation level. Accordingly, the final rule which was adopted in May 2012²¹ established a waiver of the billing demand ratchet for small business customers with a threshold load factor of 25% and instituted an annual verification requirement for the utilities. Of those small business customers who, before the rule's adoption, had been subject to a billing demand ratchet, it is estimated that between one-half and two-thirds of those customers will now be exempt from ratcheted billing demand charges because of the new load factor threshold.

c. Resource Adequacy

As noted in OPUC's *2011 Annual Report*, throughout 2011 and continuing into 2012, the Commission, ERCOT and market stakeholders, including OPUC, have been collaborating to address Texas resource adequacy issues. These resource concerns were precipitated by the confluence of a variety of issues including current and projected low natural gas prices, allegations of insufficient wholesale electricity prices to support new generation development, tight capital markets, declining reserve margins, weather extremes in February and August 2011, federal environmental regulation impacts, and assertions of systematic inefficiencies and

¹⁹ PUC Project No. 39829, *Rulemaking to Establish Billing Demand for Certain Utility Customers Pursuant to PURA §36.009*.

²⁰ Public Utility Regulatory Act (PURA), as amended by HB 1064, 82nd Legislature, Regular Session (2011), codified as PURA §36.009.

²¹ PUC Project No. 39829, *Rulemaking to Establish Billing Demand for Certain Utility Customers Pursuant to PURA §36.009*, Final Order (May 24, 2012).

wholesale market price suppression when reliability measures were invoked in times of generation scarcity. Following are highlights of the resource adequacy activities and measures enacted to date:

- The PUC convened three workshops in 2011 to begin the evaluation of the issue and receive feedback from market stakeholders.²²
- The Commission directed ERCOT stakeholders to make a variety of changes to market Protocols and other reliability-driven administrative initiatives to enhance both the access to those resources for peak generation and the prices for those resources.²³
- The PUC conducted a workshop on February 23, 2012 to evaluate actions to date and potential next steps.
- *The Brattle Group*, commissioned by ERCOT in March 2012 to study and provide recommendations regarding resource adequacy in the ERCOT market, submitted its report on June 1, 2012.
- The PUC raised the high system-wide offer cap (the amount generators would be allowed to bid into the market) from \$3,000 per Megawatt-hour (MWh) to \$4,500 per MWh beginning August 1, 2012.²⁴
- The Commission held three workshops to solicit additional responses regarding the recommendations made by *The Brattle Group* study.²⁵
- The PUC made long-term changes to the resource adequacy rules regarding the high and low system wide offer caps and a pricing mechanism known as the peaker net margin.²⁶

The Commission is continuing to evaluate this issue. OPUC has, and will continue, to actively participate in all the activities related to this issue to develop a variety of market design tools and measures designed to bolster new generation development in Texas, to manage genuine generation shortages during critical times, and to ensure reliable, reasonably priced electricity to Texas consumers.

2. Telecommunications

As noted in OPUC's *2011 Annual Report*, several telecommunications-related bills were passed during the 82nd Legislative Session which required the Commission to establish

²² Workshops were convened by the Commission on June 22, 2011; June 29-30, 2011; and August 22, 2011.

²³ Nodal Protocol Revision Requests (NPRRs) 426, 427, and 428 were approved by the ERCOT Board of Directors in December 2011. NPRRs 432, 434, and 435 were approved by the ERCOT Board of Directors in February 2012.

²⁴ PUC Project No. 37897, *PUC Proceeding Relating to Resource and Reserve Adequacy and Shortage Pricing*, Final Order (July 3, 2012).

²⁵ Workshops were convened by the Commission on July 27, 2012, September 6, 2012, and October 25, 2012.

²⁶ PUC Project No. 40268, *PUC Rulemaking to Amend PUC Subst. R. §25.505, Relating to Resource Adequacy in the Electric Reliability of Texas (ERCOT) Power Region*, Final Order (October 30, 2012). The high system-wide offer cap was set at \$5,000 per MWh effective 6/1/13, \$7,000 per MWh effective 6/1/14, and \$9,000 per MWh effective 6/1/15. The peaker net margin, which is a measure of a standard peaking gas unit's cumulative profits over the course of an annual revenue cycle, was set at \$300,000. Once the peaker net margin is reached it triggers the setting of the low system-wide offer cap which the rule adopted at \$2,000 per MWh.

rulemaking projects to implement the legislation. OPUC has been engaged in the process with other interested parties to represent residential and small business concerns related to the rulemakings. A brief summary of the rulemakings follows:

- PUC Project No. 39585, *Rulemaking Proceeding to Amend Subst. Rules Relating to Telecommunications Service to Conform to 2011 Legislation*. The 82nd Legislature passed legislation to eliminate outdated or unnecessary filing requirements, such as customer specific contracts, earnings reports, tariffs, and extended area services.²⁷ Commission Staff termed this rulemaking a telecom “cleanup” project for conforming Commission rules to the law, and the PUC finalized the rule in March 2012.²⁸
- Rulemakings and proceedings related to the review and evaluation of the Universal Service Fund (USF) and the possibility of extending USF assessments to Voice Over Internet Protocol (VoIP) providers pursuant to SB 980:²⁹
 - PUC Project No. 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan and Substantive Rule §26.412, Relating to the Lifeline Service Program*. This rulemaking proceeding was established to determine the support for local exchange carriers from the Texas High Cost Universal Service Plan (THCUSP) based on the difference between current rates for basic local exchange service and a reasonable rate determined by the Commission. The PUC finalized the rule in June 2012.³⁰
 - PUC Project No. 39938, *Rulemaking to Consider Amending Substantive Rule §26.404, Relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan*. This rulemaking project was initiated to determine the amount of Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) support provided to companies. The PUC finalized the rule in November 2012.³¹
 - PUC Project No. 39717, *PUC Rulemaking Proceeding Related to Voice Over Internet Protocol (VoIP) Services and Texas Universal Service Fund (TUSF)*. The scope of this rulemaking proceeding is focused on clarifying the Commission’s rules regarding whether the TUSF assessment is applied to VoIP services. The PUC Staff has developed a draft Proposal for Adoption, but the Commission has not yet finalized the rule.³²

²⁷ Public Utility Regulatory Act (PURA), as amended by SB 980, SB 983, HB 2293, and HB 2680, 82nd Legislature, Regular Session (2011).

²⁸ PUC Project No. 39585, *Rulemaking Proceeding to Amend Subst. Rules Relating to Telecommunications Service to Conform to 2011 Legislation*, Final Order (March 22, 2012).

²⁹ Public Utility Regulatory Act (PURA), as amended by SB 980, 82nd Legislature, Regular Session (2011).

³⁰ PUC Project No. 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Plan and Substantive Rule §26.412, Relating to the Lifeline Service Program*. Final Order (June 21, 2012).

³¹ PUC Project No. 39938, *Rulemaking to Consider Amending Substantive Rule §26.404, Relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan*, Final Order (November 21, 2012).

³² PUC Project No. 39717, *PUC Rulemaking Proceeding Related to Voice Over Internet Protocol (VoIP) Services and Texas Universal Service Fund (TUSF)*, Proposal for Adoption (August 9, 2012).

C. ERCOT Participation

ERCOT is one of ten regional reliability councils in NERC, and the ERCOT 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), NERC mandated the creation of a regional entity to perform the functions described by EPAct.³³ 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 2012 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. As noted in Chapter 2B of this report, the majority of the activities at the Commission and at ERCOT, and the unique value OPUC has brought to these efforts, has been directly related to the resource adequacy issue.

1. ERCOT and Texas RE Board of Directors

The agency's Public Counsel statutorily serves as an *ex-officio*, voting member of the ERCOT Board of Directors representing residential and small commercial consumers.³⁴ The ERCOT Board of Directors has regular open meetings and consists of 16 members: 5 independent members (unaffiliated with the power industry); 3 consumers; 6 representatives from industry market segments; the PUC Chairman and the ERCOT CEO.

The Public Counsel also serves as an *ex-officio*, non-voting member of the Texas RE Board which oversees the Texas RE's compliance and reliability oversight. The Texas RE's functions and protocol compliance were previously performed by the Texas *Regional* Entity, as a functionally independent division of ERCOT. The Texas *Reliability* Entity took over all responsibilities of the Texas *Regional* Entity on July 1, 2010 as the successor regional entity for the ERCOT region. The Texas RE is completely independent from ERCOT.

³³ Energy Policy Act of 2005 (EPAct), Pub.L. No. 109-58, 119 STAT. 594, effective August 8, 2005.

³⁴ PURA §39.151(g)(2).

2. ERCOT Technical Advisory Committee

The Director of Market Representation serves as an *ex-officio*, voting member of ERCOT's Technical Advisory Committee (TAC). The Public Counsel also appoints an additional residential consumer representative to serve on TAC and appoints residential consumer representatives to the ERCOT Subcommittees. TAC comprises 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 various stakeholder processes.

Chapter 3. OPUC Information and Communications Activities

OPUC's enabling statute requires that "the office shall prepare information of public interest describing the functions of the office and shall make the information available to the public and appropriate state agencies."³⁵ As the sole state agency tasked specifically with representing residential and small business utility consumers, OPUC is well positioned to inform and assist consumers regarding issues and policies pertaining to and services available from telecommunications and electric utility providers. OPUC utilizes the following venues for providing consumers with personalized, customer service that caters to their specific needs and concerns, and focuses on issues where informational gaps exist and where consumers are especially vulnerable:

- **Monthly Consumer Meetings.** OPUC hosts monthly meetings with consumer stakeholder groups and the PUC's Customer Protection Division to collaborate with interested parties regarding issues and projects in which the agency sees potential ratepayer impacts.
- **Website and Social Media.** OPUC continues to improve its website, redesigned in 2010, to make OPUC's operations and information more transparent, consumer-relevant, and available to the public. Customers can also subscribe to "Consumer Alerts" via e-mail so they can be notified about relevant issues. OPUC's website had 19,452 visitors in 2012, of which 16,001 were unique or new visitors, and had 34,531 page views. In 2010, OPUC also began utilizing social media, including Facebook and Twitter, to update consumers on important information and continues to use these forums to keep ratepayers informed.
- **Newsletter.** Beginning in June 2010, OPUC launched a new education and information tool, an agency e-newsletter. Electric and telecommunications customers can sign up through the OPUC website to receive the quarterly letter via email. Each newsletter includes timely, consumer-relevant information relating to telecommunications and electric utility issues and services. OPUC also customizes e-newsletters for constituencies interested in providing information to a target group of customers or a targeted geographic area.
- **Complaints and Inquiries.** OPUC receives numerous complaints and inquiries each year, and 2012 was no exception. OPUC's professional staff members worked with customers to assist them to better understand and resolve the relevant issues and concerns they brought to the agency. Customer issues and inquiries included the following: billing and customer service; provision of service; disconnection and payment assistance; utility bill charges and unauthorized charges (cramming); and switching providers and unauthorized switching of providers (slamming). OPUC received and resolved a total of 327 complaints/inquiries in FY 2012. Of the complaints received, 91% came from residential ratepayers and 9% came from small business ratepayers.
- **Community Informational Meetings.** Pursuant to its continued commitment to better inform and assist both residential and small business utility customers, OPUC participated in 21 informational meetings and forums in FY 2012.³⁶ Partnering with legislative offices and

³⁵ PURA §13.061.

³⁶ See Attachment D, *OPUC Informational Activities and Materials*.

staff, city clubs, non-profit organizations, social service organizations, interfaith community groups, small business and trade associations, and market participants, the agency provided information in these venues regarding the agency's functions, current regulatory issues, step-by-step tips for shopping the Texas retail electric market, low-income and bill payment assistance, and energy efficiency improvements and assistance. OPUC believes the two-way dialogue with consumers established at these meetings is an effective way to stay current with issues most affecting its constituents and communicate the ways the agency can best assist consumers.

- **OPUC Invited Speaking Opportunities.** During FY 2012, the Public Counsel was invited to present OPUC's customer perspective on a variety of issues impacting Texas consumers. Presentations were made before groups like the Critical Consumer Issues Forum (CCIF), the Gulf Coast Power Association (GCPA), the Texas Energy Professionals Association (TEPA), and the General Land Office's Border Energy Forum. The Public Counsel is also a member of the National Association of State Utility Consumers' (NASUCA) Executive Committee and the New Mexico State University's Center for Public Utilities Advisory Council, and she formally presented to both groups at their annual meetings.
- **Informational Meetings for Texas Military Communities.** As noted in OPUC's *2011 Annual Report*, OPUC first became aware of the unique informational needs of Texas military personnel at its 2010 Annual Meeting in Killeen. The inherent transient nature of military personnel and their families presents a distinctive need for targeted communications to assist them in navigating the Texas competitive electricity market and increasing their awareness of potential benefits and issues. Accordingly, in FY 2012, OPUC addressed numerous forums and developed targeted informational materials specific to Texas military communities.³⁷ In addition to its successful partnership with the Fort Hood Army Base in Killeen, OPUC also collaborated with the Texas Veterans Commission, Texas Veterans Land Board, the Army Reserve and Army National Guard through Camp Mabry in Austin, Goodfellow Air Force Base in San Angelo, Dyess Air Force Base in Abilene, the Naval Air Station Corpus Christi, and the Association of the United States Army (AUSA). OPUC is committed to Texas military personnel and their families with their informational needs, and as such, proposes legislative recommendations in Chapter 4, *Legislative Recommendations*.
- **Annual Meeting.** OPUC's enabling statute requires that "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."³⁸ Since 2005, OPUC has held an annual meeting to engage residential and small business customers in formulating the goals, priorities, and functions of the agency. OPUC held its 2012 annual meeting in Lufkin, Texas on November 27, 2012.³⁹ The agency coordinated the event with State Senator Robert Nichols. In addition to contacting local resources and media to reach residential utility consumers, the agency outreached statewide business associations to inform small business utility customers of the

³⁷ See Attachment D, *OPUC Informational Activities and Materials*.

³⁸ PURA §13.064.

³⁹ *Texas Register Notice*, 37 Tex Reg 9046, *Office of Public Utility Counsel Notice of Annual Public Hearing*, (November 9, 2012).

meeting. The agency presented information on the issues affecting electric and telecommunications utility customers and dialogued with those present to receive feedback on additional ways OPUC can better represent them.

- **Coordination With Other Agencies and Stakeholders.** OPUC, as a small independent agency with limited resources, has found that coordination with other agencies and industry and market stakeholders adds value to representing the interests of its constituents. In addition to the PUC, ERCOT, and the Texas RE, in FY 2012 the office continued its working relationships with the following entities to cooperatively address relevant issues related to energy efficiency, advanced meters, resource adequacy, energy conservation messaging, weather event impacts, and regulations affecting Texas utility consumers: Texas Commission on Environmental Quality, Texas General Land Office, Texas Railroad Commission, Comptroller's State Energy Conservation Office, Texas Department of Housing and Community Affairs, Texas Workforce Commission, Association of American Retired Persons-Texas, Public Citizen Texas, Sierra Club Lone Star Chapter, Texas Legal Services Center, Texas Ratepayers Organization to Save Energy, United Way of Texas, Texas Energy Professional's Association, the Texas Silver-Haired Legislature, Texas Impact, and Texas Christian Life Commission.

Chapter 4. Legislative Recommendations

Pursuant to PURA Section 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.”

A. Review of Military Needs in the Competitive Electric Market

During the past two years, OPUC has been actively working with military communities across the state, and the Office has noticed some common needs and themes for military personnel and their families as they navigate the competitive electric market. While OPUC is able to identify some of these issues through its in-person meetings, the agency recommends the Legislature consider authorizing or requiring a review the particular challenges Texas service members face in the competitive electric market and provide a report of recommendations for detailed programs or legislation to assist them. The reviewing body might include legislative committees or subcommittees, state agencies, or other organizations which have a military or veteran-specific interest or program. Some of the issues OPUC has identified relate to deployments and change of station, general information for service members new to Texas, and discounted electric service.

1. Deployments and Change of Station Options

During OPUC military information meetings, attendees highlight the challenges service members and their families have encountered in the competitive electric market when receiving deployment orders. In some circumstances the military service member may have issues when transferring their electric account into a spouse’s name, or another person charged with handling the account, while they are deployed. Determining whether this is a widespread issue that needs a statewide solution could be addressed during the review.

Similarly, a deployed service member’s retail electric contract might expire while deployed. Options to assist these members might include: allowing early renewal of the current electric contract prior to the expiration; providing an option to the deployed member to receive a temporary extension (i.e., 3, 6, 9 months) on the current electric contract until return; or, granting a penalty-free early contract termination to allow the service member to shop the market prior to deployment to avoid the account expiring and defaulting into a potentially higher cost variable rate plan.

2. Information

Several competitive market informational issues have been brought to the agency’s attention through its military community meetings. A majority of service members newly stationed in Texas have not experienced a competitive electric market. They are wholly unaware of the ability to choose from multiple retail electric providers (REPs) offering numerous electric price plan options.

One issue raised at an OPUC annual meeting related to rental properties providing renters limited options on REPs available in the service area. In one instance, a multi-family unit identified two to three REP choices for the renter, though the competitive area offered nearly 50 REPs for customers to choose. Similarly, new home developments providing information on utilities in the area may provide information for a single REP, rather than the numerous available REPs.

In addition, at several military meetings, many of the military personnel and family members communicate a lack of understanding on how to evaluate the numerous electricity plan options, and some express confusion over the fees charged by REPs with certain plans (*i.e.*, minimum usage fee, customer service fee, service processing fee, meter charge, base charge, etc.). Commonly, a minimum usage fee is charged by a REP for its electricity plan, and the fee may substantially increase the military customer's monthly electricity cost if the customer does not understand how much the fee is and the associated minimum level of kilowatt hour (kWh) usage necessary to avoid paying the monthly fee.

Further, through these meetings, it has been made clear that many military attendees may not realize that when their current REP contract expires, they will default into a variable rate plan which might be much costlier than their original contracted amount. For these and other reasons, a greater level and detail of information may be needed for these military communities, and a greater understanding of their specific needs, along with any perceived information gap, would be helpful in assisting them to be more educated Texas electric consumers.

OPUC has been working with the Texas Veterans Commission, Texas Veterans Land Board, Texas National Guard and a variety of other military installations and organizations statewide to better assist service members and their families. These existing groups help in evaluating the needs and potential legislative changes to better assist and protect this community.

B. Water and Wastewater Representation

In 2010, the Sunset Advisory Commission recommended that water and wastewater regulation be transferred from the Texas Commission on Environmental Quality (TCEQ) to the PUC, and representation of residential and small business water and wastewater utility customers be transferred to OPUC.⁴⁰

In 2012, a similar recommendation was made by the Sunset Advisory Commission Staff relating to the PUC and OPUC. The report acknowledges that both the Senate Natural Resources Committee and the Senate Business and Commerce Committee each formed subcommittees on Water Utilities in Rural and Unincorporated Areas that met jointly in July 2011.⁴¹ The subcommittees met again in November 2012.

⁴⁰ Sunset Advisory Commission, *Supplemental Staff Report on the Public Utility Commission of Texas*, Hearing Material, p. 10 (Dec. 2010); See http://www.sunset.state.tx.us/82ndreports/puc/puc_HMsup.pdf.

⁴¹ Sunset Advisory Commission, *Staff Report with Hearing Material, Public Utility Commission of Texas*, p. 25 (Dec. 2012); See http://www.sunset.state.tx.us/83rd/PUC/PUC_HM.pdf.

The report also notes that a workgroup comprised of members of the subcommittees, agency staff from the PUC, TCEQ, and OPUC, and water and wastewater utility participants have met to examine water regulation during the interim.⁴²

The interim subcommittees and workgroup have indicated an interest in having OPUC represent water and wastewater customers with the same robust legal representation the agency currently provides to residential and small business electric and telecommunications customers; however, the Sunset Staff Report recommends OPUC provide residential and small commercial interest representation of water and wastewater utility customers, as currently provided by TCEQ's Office of Public Interest Council (OPIC) for the public interest, with accompanying recommended staffing, one attorney, that would be insufficient to provide the full legal representation in any water or wastewater proceeding as envisioned by the subcommittees and workgroup.⁴³

OPUC participation on behalf of residential and small business water ratepayers would provide a more level playing field for these utility customers who currently must hire their own legal representation and professional experts at a cost that may pose a barrier to most water utility customers in retaining and sustaining counsel. OPUC looks forward to working with the Legislature to determine the appropriate level of involvement for our agency.

⁴² Id.

⁴³ Sunset Advisory Commission, *Staff Report with Hearing Material, Public Utility Commission of Texas*, p. 31 (Dec. 2012); See http://www.sunset.state.tx.us/83rd/PUC/PUC_HM.pdf.

Attachments

- A. OPUC Calculation of Bill Savings
- B. FY 2012 Cases and Projects in Which OPUC Participated
- C. FY 2012 OPUC Appeals Report
- D. OPUC Informational Activities and Materials

Attachment A**OPUC Calculation of Bill Savings**

The methodology that OPUC uses to determine *current* year bill savings and *future* bill savings was developed by the agency in conjunction with the State Auditor's Office and approved by the Legislative Budget Board (LBB). It is reported as part of OPUC's performance measures.

Current Year Bill Savings are calculated as the difference between a requested amount for a rate adjustment and the amount actually approved multiplied by a percentage representing residential and commercial customers' contribution to the revenues generated by the rates. Because some of the bill savings go to classes other than the residential and commercial classes, OPUC takes only a percentage of the difference between the requested rates and the rates actually received. The percentage is calculated by determining the percentage of revenue that residential and commercial customers provide in Texas to all electric utilities based upon a 3 year rolling average (using Department of Energy publicly available data). Although bill savings typically exist year after year (for example, until the next rate case is filed), OPUC calculates and report only one year's worth of savings. OPUC's current year bill savings for FY 2011 was \$366,997,243.68.

OPUC has an additional performance measure for *future* bill savings that only applies to savings realized in stranded costs cases (unbundling cases prior to entering competition). This calculation captures the future years of stranded costs savings and does not include any savings in the current fiscal year. OPUC had no future bill savings in FY 2011.

Outcome Measure: Current Year Bill Savings for Residential and Small Commercial Electric Customers (in Millions).

Short Definition: Bill savings measure the impact on residential and small commercial customer’s bills. Different types of proceedings result in rate adjustments on customers’ bills such as rate increases/decreases, surcharges, refunds, incentives, mark-ups, transition charges, and fuel charges.

Purpose/Importance: OPUC will participate in proceedings to ensure the maximum bill savings on residential and small commercial customers’ bills. This measure will quantify the impact in the current year for participation in the current year’s proceedings on a state-wide basis.

Source/Collection of Data: OPUC records.

Method of Calculation: OPUC calculates the bill savings as the difference between a requested amount for a rate adjustment and the amount actually approved, for the current fiscal year. Bill savings should include only residential and small commercial, Industrial and transportation customers will be removed using information from the U.S. Department of Energy.

Impact on industrial and transportation customers will be separated out using the most recently available information from the U.S. Department of Energy. The calculation is based on using one of the following: national retail sales of kilowatt hours, state retail sales of kilowatt hours, or state retail revenue earned by all electric companies that sell electricity in Texas. In addition, information from the U.S. Department of Energy should be used to calculate a three year average moving for residential and small commercial market sector to minimize the fluctuation in the market.

Calculation Type: Cumulative.

New Measure: No.

Desired Performance: Higher than target.

Attachment B

FY 2012 Cases and Projects in Which OPUC Participated

Electric Cases

| | |
|-------|--|
| 37817 | Iberdrola Renewables, Inc.'s Appeal & Complaint of ERCOT Decision to Approve PRR 830 |
| 38951 | Entergy Texas Application for Approval of Competitive Generation Service Tariff (Issues Severed from Docket No. 37744) |
| 39239 | Oncor Electric Delivery Company, LLC Application for Rate Cases Expenses Severed from PUC Docket No. 38929, SOAH Docket No. 473-11-2330 |
| 39360 | AEP Texas Central Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief |
| 39361 | AEP Texas North Company Application to Adjust Energy Efficiency Cost Recovery Factor & Related Relief |
| 39363 | CenterPoint Energy Houston Electric, LLC Application for Approval of an Adjustment to its Energy Efficiency Cost Recovery Factor |
| 39366 | Entergy Texas, Inc. Application for Authority to Redetermine Rates for the Energy Efficiency Cost Recovery Factor and Request to Establish a Revised Energy Efficiency Goal and Cost Caps |
| 39504 | Remand of Docket No. 29526 (Application of CenterPoint Energy Houston Electric LLC, Reliant Energy Retail Services, LLC & Texas Genco, LP to Determine Stranded Costs & other True-Up Balances Pursuant to PURA §39.262) |
| 39552 | Oncor Electric Delivery Company, LLC Application for Reconciliation of Advanced Metering System (AMS) Surcharge |
| 39681 | Southwestern Public Service Company Application to Establish a Depreciation Rate for Jones Station Unit 3 |
| 39708 | Southwestern Electric Power Company Application for Approval of Turk Rate Plan, Associated Rate Increase, and Deferred Accounting Order |
| 39722 | Remand of Docket No. 31056 (Application of AEP Texas Central Company and CPL Retail Energy, LP to Determine True-Up Balances Pursuant to PURA § 39.262) |
| 39891 | LCRA Transmission Services Corporation Application to Change Rates |
| 39896 | Entergy Texas Inc. Application for Authority to Change Rates & Reconcile Fuel Costs |
| 39925 | SWEPSCO Application for Authority to Revise Its Fuel Factors Formulas; Change Its Fuel Factors; and for Related Relief |
| 40020 | Lone Star Transmission, LLC Application for Authority to Establish Interim & Final Rates & Tariffs |
| 40094 | El Paso Electric Company Application to Change Rates & to Reconcile Fuel Costs |
| 40123 | Oncor Electric Delivery Company Petition for a Good Cause Exception Order |
| 40133 | Southwestern Public Service Company Application for: Authority to Revise Its Fuel Factor Formulas; Change its Fuel Factors; and For Related Relief |

- 40443 SWEPCO Application for Authority to Change Rates & Reconcile Fuel Costs
- 40599 Lone Star Transmission Application for Rate Case Expenses Pertaining to D-40020
- 40627 Petition by Homeowners United for Rate Fairness to Review Austin Rate Ordinance No. 20120607-055

Electric Projects

- 37897-P PUC Proceeding Relating to Resource and Reserve Adequacy and Shortage Pricing
- 38578-P Energy Efficiency Implementation Project Under Subst. R. §25.181(q)
- 38674-P Amendments to Customer Protection Rules Relating to Advanced Meters
- 38675-P Amendments to Customer Protection Rules Relating to Prepaid Service
- 39040-P Project to Revise Earnings Monitoring Report Forms for Electric Utilities
- 39465-P Rulemaking Relating to Periodic Rate Adjustments
- 39466-P Project to Develop Filing Package for Periodic Rate Adjustments
- 39518-P Rulemaking Related to Implementation of SB 855, Amending Proc. R. 22.52, Relating to Notice in Licensing Proceedings
- 39674-P Rulemaking Proceeding to Amend Energy Efficiency Rules
- OPUC 02-2 ERCOT Activities
- OPUC 07-1 OPUC’s Project Number for Customer Complaints
- OPUC 09-3 Customer & External Communications Activities
- OPUC 10-5 Texas Reliability Entity (Texas RE) Activities
- OPUC 11-2 OPUC’s Project Number for Participation in Various CCN Proceedings
- OPUC 11-3 OPUC’s Project Number for Military Communications & Assistance

Telephone Cases

- 39909 AT&T Texas Application to Change Rates for Residential Local Exchange Telephone Service in PURA Chapter 58 Regulated Exchanges
- 39930 GTE Southwest Incorporated, dba Verizon Southwest TXG and TXC, Application to Revise Its Local Residential Rates
- 39956 Central Telephone Company of Texas dba CenturyLink Application to Revise Its Local Residential & Business Rates
- 39957 United Telephone Company of Texas dba CenturyLink Application to Revise Its Local Residential & Business Rates
- 40521 Commission Staff's Petition to Establish a Reasonable Rate for Basic Local Telecommunications Service Pursuant to PUC Subst. R. 26.403

Telephone Projects

- 39585-P Rulemaking Proceeding to Amend Subst. Rules Relating to Telecommunications Service to Conform to 2011 Legislation, Particularly Senate Bills 980 and 983 and House Bill 3395
- 39586-P Rulemaking Proceeding to Amend Subst. Rules Relating to the Texas High Cost Universal Service Plan, and Subst. Rule §26.404, Relating to the Small and Rural Incumbent Local Exchange Company Universal Service Plan
- 39717-P PUC Rulemaking Proceeding Related to Voice Over Internet Protocol (VOIP) Services and Texas Universal Service Fund (TUSF)
- 39937-P PUC Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan
- 39938-P PUC Rulemaking to Consider Amending Substantive Rule §26.404, Relating to the Small & Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan

Attachment C

FY 2012 Appeals Report

For FY 2012, OPUC participated in 5 appeals. The procedural history and dispositions related to each of OPUC's appeals, by court, are described later in this Attachment.

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 2012, OPUC was involved in pending appeals related to five PUC decisions. Of those appeals, one had progressed to the Texas Supreme Court level while two others, including one direct appeal of a competition rule, had progressed as far as the Court of Appeals. The remaining two did not progress past judicial review in the Travis County District Courts by fiscal year's end. Two of the five appeals remained pending at fiscal year's end, one in the Third Court of Appeals and one in the Travis County District Court.¹

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, 39.3 percent of the 11,936 cases disposed of by all fourteen Courts of Appeals in FY 2011 affirmed the decision from the lower court. The remainder of cases on appeal at the intermediate level had decisions which resulted in either a reversal or a mixed disposition, or were dismissed or otherwise disposed. At the Supreme Court level, before reviewing a case on its merits, the Court first decides whether it will even hear the case. The large majority of petitions for review are denied. Initial review was granted in just 101 of the 778 petitions disposed of by the Supreme Court in FY 2011. In FY 2011, the Court disposed of 115 causes in which initial review had been granted, with 12.2 percent of those dispositions affirming the court below.²

¹PURA § 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.

² *Office of Court Administration's Annual Report for the Texas Judiciary Fiscal Year 2011*, published March 2012.

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.

**Office of Public Utility Counsel
FY 2012 Appeals Report**

| PUC Number | Subject | Court Cause Numbers | Disposition | Status (as of 8/31/12) | Comments |
|-------------------|---|--|--|-------------------------------|---|
| 32758 | Competition Transition Charge – AEP TCC | D-1-GN-07-001153 | Dist. Ct. n/a | Closed | Non-suit was filed by AEP TCC |
| 35038 | TNMP Compliance Tariff | D-1-GN-09-000071 COA: 03-10-00526 SCT: 11-0449 | Dist. Ct.: Not Prevail COA: Prevail SCT: Prevail | Closed | Supreme Court Denied TNMP’s Motion for Rehearing on 8/31/12 |
| 35717 | Rate Case – Oncor | D-1-GN-10-000448* COA: 03-11-00072 | Dist. Ct.: Not Prevail | Pending at COA | |
| 37623 | Energy Efficiency Rule Amendment | COA: 03-10-00633 | COA: Prevail | Closed | This is a direct appeal initiated in the COA pursuant to PURA § 39.001(e) & (f) |
| 38213 | Energy Efficiency Cost Recovery Factor Adjustment – CenterPoint | D-1-GN-11-000251 | | Pending at Dist. Ct. | |

KEY:

* denotes cause originated by OPUC

TERMS:

COA The Third Court of Appeals, Austin, Texas

SCT The Supreme Court of Texas

Attachment D

OPUC Informational Activities

| OPUC Information Meetings FY 2012 | | |
|-----------------------------------|--------------------|---|
| 9/6/2011 | Pearland, TX | Community Information Meeting |
| 9/8/2011 | Fort Hood, TX | Military Community Information Meeting--(3-82 FA Family Night) |
| 9/28/2011 | Fort Hood, TX | Military Community Information Meeting--(115BSB, 1BCT, 1CD Battalion FRG Meeting) |
| 9/29/2011 | Fort Hood, TX | Military Community Information Meeting--(FRG Steering Committee) |
| 10/27/11 | El Paso, TX | Border Energy Forum |
| 11/3/11 | Dallas, TX | Texas Energy Professionals Association |
| 11/9/2011 | San Angelo, TX | OPUC Annual Meeting |
| 11/12/11 | St. Louis, MO | National Association of State Utility Consumer Advocates & National Association of Regulatory Utility Commissioners |
| 1/27/2012 | Round Rock, TX | Community Information Meeting |
| 2/22/2012 | Fort Hood, TX | Military Community Information Meeting--(Ft. Hood Military Saves Event) |
| 3/1/12 | Austin, TX | Smart Energy Summit 2012 |
| 3/11/12 | Albuquerque, NM | New Mexico State University Current Issues 2012 |
| 3/21/2012 | Fort Hood, TX | Military Community Information Meeting--(Soldier Financial Fitness Workshop) |
| 3/26/12 | Irwindale, CA | Electric Power Research Institute Public Advisory Group |
| 3/29/12 | Dallas, TX | Critical Consumer Issues Forum 2012 Summit |
| 4/2/2012 | Austin, TX | Community Information Meeting w/ Silver-Haired Legislature |
| 4/3/12 | Houston, TX | Gulf Coast Power Association Spring Conference |
| 4/26/2012 | Corpus Christi, TX | Community Information Meeting |
| 4/27/2012 | Corpus Christi, TX | Military Community Information Meeting w/ Naval Air Station |
| 5/7/2012 | Waxahachie, TX | Community Information Meeting |

| OPUC Information Meetings FY 2012 | | |
|-----------------------------------|---------------|--|
| 5/14/2012 | Fort Hood, TX | Military Community Information Meeting-- Soldier Financial Fitness Workshop |
| 5/17/2012 | Taylor, TX | Community Information Meeting |
| 5/19/2012 | Houston, TX | Military Community Information Meeting w/ AUSA |
| 6/6/2012 | Austin, TX | Military Community Information Meeting w/ Camp Mabry |
| 6/27/2012 | Austin, TX | Community Information Meeting w/ AARP Town Hall |
| 7/21/2012 | Austin, TX | Military Community Information Meeting w/ Veterans Benefit Fair |
| 7/26/2012 | Austin, TX | Military Community Information Meeting-- Yellow Ribbon Military Event |
| 8/4/2012 | Austin, TX | Military Community Information Meeting-- Yellow Ribbon Military Event |
| 8/28/2012 | Fort Hood, TX | Military Information Meeting--Soldier Financial Fitness Workshop |