

# **Office of Public Utility Counsel Annual Report for Fiscal Year 2017**



**Prepared for**

**Senate Business and Commerce Committee**

**Senate Natural Resources and Economic Development Committee**

**Senate Finance Committee**

**House Appropriations Committee**

**House Natural Resources Committee**

**House State Affairs Committee**

**Sunset Advisory Commission**



OFFICE OF PUBLIC UTILITY COUNSEL  
PUBLIC COUNSEL, TONYA BAER

January 2, 2018

Honorable Members:

The Office of Public Utility Counsel (OPUC) is pleased to submit our *Fiscal Year 2017 Annual Report* as required by the Public Utility Regulatory Act, Section 13.063. This report provides a look at our agency's representation of residential and small commercial utility consumers during Fiscal Year (FY) 2017. Below is a snapshot of our activities this past year:

- attained over \$69 million in current year bill savings through consumer representation in 39 contested cases and seven appeals; and
- participated on behalf of residential and small commercial consumers in 26 projects and rulemakings;

If you have any questions about this report, please contact me at (512) 936-7549.

Sincerely,

Tonya Baer  
Public Counsel

1701 North Congress Avenue, Suite 9-180 Austin TX 78701

## SECTION 1: OVERVIEW

The Office of Public Utility Counsel (OPUC) was created in 1983 as part of the 68<sup>th</sup> Legislature's Sunset Review of the Public Utility Commission (PUC). The Legislature created OPUC to represent the interests of residential and small commercial utility consumers. While OPUC's responsibilities have varied over the years, OPUC is currently charged with representing residential and small commercial consumers, as a class, in electric, telecommunications, and water and wastewater matters.

Section 13.063 of the Public Utility Regulatory Act (PURA) requires OPUC to provide an annual report on the agency's activities during the preceding year and to submit the report to the standing legislative committees that have jurisdiction over OPUC and to the Sunset Advisory Commission. 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 consumers 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 consumers in appealing Public Utility Commission decisions.

OPUC participates in various activities each year, such as contested cases, appeals, rulemakings, projects, and various Electric Reliability Council of Texas (ERCOT) and Texas Reliability Entity (Texas RE) related events.

In contested cases and appeals, OPUC provides legal representation and technical expertise. In FY 2017, OPUC participated in 39 contested cases and seven appeals and helped consumers realize over \$69 million in current year bill savings. Of these 46 proceedings, seven were appeals of PUC orders. In FY 2017, three of these appeals did not have a disposition, two had a positive disposition and two had a negative disposition.

Likewise, in rulemakings and projects, OPUC provides legal representation and technical expertise to benefit and promote consumer interests. In FY 2017, OPUC participated in 26 projects including rulemakings, workshops, and stakeholder working groups on a variety of substantive and procedural issues.

Along with representing consumer interests in cases and appeals, OPUC is also an active participant at ERCOT, which is the Independent System Operator (ISO) for 90 percent of the Texas electric grid. The Public Counsel is an ex officio voting member of the ERCOT Board of Directors and is Vice Chair of the Human Resources and Governance Committee. OPUC staff also participates at the technical committee level.

In addition to serving on the ERCOT Board, the Public Counsel is also an ex officio member of the Texas Reliability Entity (Texas RE) Board of Directors. Texas RE is responsible for ensuring compliance with the North American Electric Reliability Corporation (NERC) reliability standards within the geographic boundaries of the ERCOT region.

Along with representing residential and small commercial consumers in regulatory matters, OPUC also works with individual consumers and with the PUC and market participants to resolve consumer concerns. In FY 2017, OPUC staff handled 258 consumer complaints.

## **SECTION 2: OPUC ORGANIZATION**

### **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. The Public Counsel must be licensed to practice law in the state of Texas and must be a Texas resident. The Public Counsel supervises the overall operations of the agency and establishes agency policy. Specifically, the Public Counsel is responsible for the agency budget, staffing, selection of cases in which to intervene, and the selection of projects and rulemakings in which to participate.

OPUC currently has sixteen employees including attorneys, technical experts in the fields of finance and economics, and administrative staff. OPUC staff represents residential and small commercial consumers in both litigated and non-litigated matters before state and federal regulatory agencies, courts, ERCOT, and the Texas RE.

### **OPUC Hours Billed**

OPUC's workload during FY 2017 consisted of electric, telecommunications, water and wastewater cases, projects, and appeals. In FY 2017, OPUC staff spent 12,307.5 hours litigating cases with an additional 664 hours spent on appeals. In addition, OPUC staff spent 5,612.5 hours developing comments, reply comments, and attending workshops in various projects. Overall in FY 2017, OPUC staff spent 18,584 hours advocating on behalf of residential and small commercial consumers.

### SECTION 3: CONTESTED CASES AND APPEALS

In FY 2017, OPUC participated in 39 contested cases and seven appeals. These contested cases included issues involving setting rates, sale, transfer, and merger, fuel reconciliation, energy efficiency, transmission cost recovery factor, advanced meters, and installation of utility scale batteries. For more information, see Attachment A, *OPUC List of FY 2017 Cases and Projects*.

A major portion of the agency's resources were devoted to determining reasonable rates for utilities in regulated areas. Most of the agency's employees are involved in negotiating and litigating these rate cases. Issues in these proceedings typically include a company's return on equity, cost of service, taxes, affiliate transactions, cost allocation, and rate design. Each issue may involve expert testimony from accountants, engineers, economists, or other industry experts. OPUC's efforts in negotiating and litigating these rate cases have resulted in lowering costs to residential and small commercial consumers by over \$69 million in current year bill savings.

Of significant note, in relation to cases, is the historic agreement between Oncor Electric Delivery Company LLC and Sharyland Utilities L.P. to swap Oncor transmission assets for Sharyland distribution assets, alleviating the high rates that residential consumers were paying in Sharyland's service territory. OPUC staff participated in the negotiation of this transaction which resulted in Sharyland's residential and small commercial consumers becoming Oncor customers, providing them a significant decrease in rates.

### SECTION 4: PROJECTS AND RULEMAKINGS

In FY 2017, OPUC actively participated and advocated for consumers in 26 projects and rulemakings. OPUC analyzed issues, made recommendations, filed comments and reply comments, and participated in workshops, public hearings, and meetings with industry stakeholders. The scope of these projects and rulemakings encompassed issues such as substantive and procedural changes for the regulation of water and wastewater utilities, distributed generation interconnection agreements, use of new technologies in the retail electric customer enrollment process, and improvements to the Power to Choose website.

In addition, OPUC staff worked with Sharyland Utilities and PUC Staff to resolve an issue affecting residential customers with barns and water wells. These customers brought concerns to OPUC regarding the rate tariff under which their barns and water wells were being billed. Through collaboration with the PUC and Sharyland, OPUC successfully assisted these customers in being reclassified into the appropriate rate class and obtained almost \$1 million in refunds for the customers.

**SECTION 5: ERCOT AND TEXAS RE PARTICIPATION**

As noted in Section 1 of the Report, OPUC is an active participant at both ERCOT and the Texas RE. The Public Counsel is an ex officio, voting member of the ERCOT Board of Directors, and an ex officio, non-voting member of the Texas RE Board of Directors. In both capacities, the Public Counsel represents the interests of residential and small commercial consumers.

In addition to the Public Counsel's participation on the ERCOT Board of Directors, OPUC also represents residential consumers on ERCOT's Technical Advisory Committee (TAC) and TAC subcommittees. OPUC's involvement at ERCOT ensures that residential consumers are represented throughout the stakeholder process.

**SECTION 6: LOOK AHEAD**

Looking ahead to FY 18, OPUC is dedicated to continuing to represent residential and small commercial consumers in the ever changing energy market. In FY 17 Texas utilities submitted applications with new and unique issues including filings related to the installation of utility-scale battery facilities, proposed changes to the way residential consumers with distributed generation are billed for their energy use, and large scale wind projects. These cases have not yet been finalized and we expect these new issues to be addressed in the coming year.

**ATTACHMENTS**

**Attachment A**  
**OPUC List of FY 2017 Cases, Projects and Appeals**

**Cases**

- 44361 Sharyland Utilities, L.P. Application for Approval of an Advanced Metering System Deployment Plan, Surcharge, and Non-Standard Metering Service Fees
- 44809 Quadvest, LP Application for a Rate/Tariff Change
- 45084 Entergy Texas, Inc. (ETI) Application for Approval of a Transmission Cost Recovery Factor
- 45414 Sharyland Utility Company Review of the Rates
- 45524 Southwestern Public Service Company (SPS) Application for Authority to Change Rates
- 45570 Monarch Utilities I, L.P. Application to Change Rates for Water and Sewer Service
- 45592 Compliance Docket for Refunds from Docket No. 42862 (Appeal of Water & Sewer Rates Charged by the Town of Woodloch CCN Nos. 12312 & 20141)
- 45691 SWEPCO Application for Approval to Amend Transmission Cost Recovery Factor
- 45916 Southwestern Public Service Company (SPS) Application for Authority to Adjust Its Energy Efficiency Cost Recovery Factor
- 45979 Review of the Rate Case Expenses Incurred in Docket No. 45414 (Sharyland)
- 46024 Sharyland Utilities, L.P. Application to Adjust the Energy Efficiency Cost Recovery Factor (EECRF) and for Related Relief
- 46025 Southwestern Public Service Company (SPS) Application for Authority to Reconcile Fuel and Purchased Power Costs
- 46050 AEP Texas Central Company, AEP Texas North Company, & AEP Utilities, Inc. Application for Approval of Merger
- 46076 Entergy Texas, Inc. (ETI) Application for Authority to Reconcile Fuel and Purchased Power Costs
- 46216 Monarch Utilities I, L.P. Request for Rate Case Expenses Pertaining to Docket No. 45570
- 46238 Oncor Electric Delivery Company LLC and NextEra Energy, Inc. Joint Report and Application for Regulatory Approvals Pursuant to PURA §§ 14.101, 39.262 and 39.915
- 46256 Liberty Utilities (Woodmark Sewer) Corp. & Liberty Utilities (Tall Timbers) Corp. Application to Change Rates for Sewer Service in Smith County, Texas
- 46306 Southwestern Public Service Company (SPS) Application for Authority to Revise Its Fuel Factors Using the Formulae Approved in Docket No. 40133

- 46328 Review of Rate Case Expenses Incurred by SPS & Municipalities in Docket No. 45524
- 46357 Entergy Texas, Inc. (ETI) Application to Revise Its Transmission Cost Recovery Factor
- 46368 AEP Texas North Company Application for Regulatory Approvals Related to the Installation of Utility-Scale Battery Facilities
- 46416 Entergy Texas, Inc. (ETI) Application for a Certificate of Convenience & Necessity to Construct Montgomery County Power Station
- 46449 Southwestern Electric Power Company (SWEPCO) Application for Authority to Change Rates
- 46473 Texas Windstream, LLC Application to Revise Tariff Pages Pursuant to 16 Tex. Admin. Code § 26.208
- 46474 Windstream Sugar Land, LLC Application to Revise Tariff Pages Pursuant to 16 Tex. Admin. Code § 26.208
- 46674 Suburban Utility Company, Inc. Application for Authority to Change Rates
- 46831 El Paso Electric Company Application to Change Rates
- 46877 Southwestern Public Service Company (SPS) Application for Approval of Transmission Cost Recovery Factor
- 46884 Remand of Docket No. 35717 (Oncor Electric Delivery Company, LLC Application for Authority to Change Rates)
- 46901 Southwestern Public Service (SPS) & Southwest Power Pool (SPP) Joint Petition for a Declaratory Order
- 46936 Southwestern Public Service Company (SPS) Application for Approval of Transactions with ESI Energy, LLC & Invenergy Wind Development North America LLC, to Amend a Certificate of Convenience & Necessity for Wind Generation Projects & Associated Facilities in Hale County, Texas and Roosevelt County, New Mexico & for Related Approvals
- 46957 Oncor Electric Delivery Company LLC Application for Authority to Change Rates
- 47032 CenterPoint Energy Houston Electric, LLC Application for Approval to Amend Its Distribution Cost Recovery Factor
- 47228 El Paso Electric Company & Municipalities Review of Rate Case Expenses Incurred in Docket No. 46831
- 47396 Undine Texas, LLC & Suburban Utility Company Application for Sale, Transfer, or Merger of Facilities & Certificate Rights in Harris County, Texas
- 47416 Entergy Texas, Inc. (ETI) Application for Approval of Advanced Metering System (AMS) Deployment Plan, AMS Surcharge, and Non-Standard Metering Service Fees
- 47453 Texas Transmission Holdings Corporation & NextEra Energy, Inc. Joint Report & Application for Regulatory Approvals Pursuant to PURA §§ 14.101, 39.262, & 39.915

- 47461 Southwestern Electric Power Company (SWEPCO) Application for Certificate of Convenience & Necessity (CCN) Authorization & Related Relief for the Wind Catcher Energy Connection Project
- 47469 Sharyland Utilities, L.P., Sharyland Distribution & Transmission Services, L.L.C. & Oncor Electric Delivery Company LLC Joint Report & Application for Transfer of Facilities, Transfer of Rights Under & Amendment of Certificates of Convenience & Necessity, & for Other Regulatory Approvals

### Projects

- 36234-P Joint TDUs AMS Low-Income Programs Project
- 44592-P PUC Project Regarding Sharyland Utility Complaints
- 45078-P Rulemaking Related to Distributed Generation Interconnection Agreements
- 45111-P PUC Rulemaking Proceeding to Amend Chapter 24 for Non-Rate Related Water/Sewer Rules
- 45113-P PUC Rulemaking Proceeding to Amend Chapter 24 for Water/Sewer Rules for Rate Appeals
- 45116-P Project to Amend Chapters 22 Procedural Rules – Phase II – Water/Sewer Utilities
- 45572-P Review of the Parameters of the Operating Reserve Demand Curve
- 45625-P Rulemaking Relating to the Use of Hand-Held Devices for Retail Electric Customer Enrollment
- 45730-P Project to Evaluate the Power to Choose Website
- 45757-P Simplified Class B Water and Sewer Rate Filing Package Form, Notice and Instructions for Class C and Smaller Class B Utilities
- 45780-P Rulemaking Proceeding Related to the Recovery of Federal Income Tax Expense
- 46046-P Report on Alternative Ratemaking Mechanisms (PURA § 36.210(h-1))
- 46204-P Rulemaking Regarding Third Party Authorization to Access Smart Meter Texas Data
- 46206-P Rulemaking Regarding Governance, Performance, and Funding of Smart Meter Texas
- 46393-P Rulemaking Proceeding to Amend 16 TAC § 25.192, Relating to Transmission Service Rates
- 46394-P Rulemaking Proceeding to Amend 16 TAC § 25.239, Relating to Transmission Cost Recovery Factor for Certain Electric Utilities
- 47334-P Amendments to 16 TAC Section 24.34, Alternative Rate Methods
- 47343-P Rulemaking to Amend Chapter 25 Substantive Rules Relating to the Elimination of the System Benefit Fund
- FCC WC 17-84 In the Matter of Accelerating Broadband Deployment by Removing Barriers to Infrastructure Investment – Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment
- 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 11-3 OPUC's Project Number for Military Communications & Assistance
- OPUC 14-2 EFH Bankruptcy
- OPUC 15-1 OPUC Response to Sharyland Utilities, L.P. Issues

### Appeals

- 35717 Application of Oncor Electric Delivery Company LLC for Authority to Change Rates  
[D-1-GN-10-000448]  
[(03-11-00072-CV]  
[15-0005]
- 38951 Application of Entergy Texas, Inc. for Approval of Competitive Generation Service Tariff (Issues Severed from Docket No. 37744)  
[D-1-GN-13-003434]  
[03-14-00709-CV]  
[16-0282]
- 39896 Application of Entergy Texas, Inc. for Authority To Change Rates, Reconcile Fuel Costs, and Obtain Deferred Accounting Treatment  
[D-1-GN-13-000179]  
[D-1-GN-13-000121]  
[D-1-GN-12-003721]  
[D-1-GV-13-000045]  
[D-1-GN-13-000221]  
[03-14-00735-CV]  
[16-0385]
- 40443 Application of Southwestern Electric Power Company For Authority to Change Rates and Reconcile Fuel Costs  
[D-1-GV-14-000612]  
[D-1-GV-14-000536]  
[D-1-GN-14-001378]  
[D-1-GN-14-001373]
- 43695 Application of Southwestern Public Service Company for Authority to Change Rates  
[D-1-GN-16-001675]  
[07-17-00146-CV]
- 45084 Entergy Texas, Inc. (ETI) Application for Approval of a Transmission Cost Recovery Factor  
[D-1-GN-16-006058]
- 45188 Oncor Electric Delivery Company, LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, & Shary Holdings, LLC Joint Report & Application for Regulatory Approvals Pursuant to PURA §§14.101, 37.154, 39.262(I)-(m), & 39.915  
[D-1-GN-16-002619]