

**Office of Public Utility Counsel
Annual Report
for
Fiscal Year 2020**



Prepared for

Senate Business and Commerce Committee

Senate Water and Rural Affairs Committee

Senate Finance Committee

House State Affairs Committee

House Natural Resources Committee

House Appropriations Committee



OFFICE OF PUBLIC UTILITY COUNSEL
LORI COBOS, CHIEF EXECUTIVE & PUBLIC COUNSEL

January 13, 2021

Honorable Members:

The Office of Public Utility Counsel (OPUC) is pleased to submit our *Fiscal Year 2020 Annual Report* as required by Section 13.063 of the Public Utility Regulatory Act. This report provides an overview of our agency's representation of residential and small commercial consumers in the electric, water, wastewater, and telecommunications utility industries during Fiscal Year (FY) 2020. Below is a brief summary of our key accomplishments this past year, which include:

- Attainment of approximately \$1.179 billion in current year bill savings through the representation of residential and small commercial consumers, as a class, in 31 contested case proceedings before the Public Utility Commission of Texas (PUCT);
- Participation in two appeals of PUCT decisions in state court; and
- Participation on behalf of residential and small commercial consumers in 26 rulemaking and policy projects at the PUCT.

If you have any questions about this report, please contact me at (512) 936-7500.

Sincerely,

Lori Cobos
Chief Executive & Public Counsel

SECTION 1: OVERVIEW

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

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 the agency, the House Appropriations Committee, and the Senate Finance Committee. The report must include:

- A list of the types of activities conducted by OPUC and time spent by OPUC on each activity;
- The number of hours billed by OPUC in representing residential or small commercial consumers in utility-related proceedings;
- The number of agency staff positions and type of work performed by each staff position; and
- OPUC's rate of success in representing residential or small commercial consumers in appeals of PUCT decisions.

OPUC participates in various activities each year, including utility rate-related contested case proceedings at the PUCT, utility rate and consumer-related rulemaking and policy projects at the PUCT, appeals of PUCT decisions in state court, and the stakeholder and board governance processes at the Electric Reliability Council of Texas (ERCOT) and Texas Reliability Entity (Texas RE).

In contested case proceedings at the PUCT and appeals of PUCT decisions, OPUC provides legal representation and technical expertise to represent, protect, and promote consumer interests. In FY 2020, OPUC participated in 31 contested cases that resulted in consumers realizing approximately \$1.179 billion in current year bill savings. In FY 2020, OPUC participated in two appeals of PUCT decisions. The two appeals did not have any disposition in FY 2020, but OPUC continues to be actively involved in the cases in state court. Importantly, as a result of legislation passed by the Texas Legislature in 2015 and 2017 requiring electric utilities operating in the state to file a rate case at the PUCT every four years, OPUC is litigating more electric utility rate cases, because electric utilities are filing rate cases more frequently at the PUCT. OPUC also continues to be significantly involved in water utility rate cases.

In PUCT rulemaking and policy projects, OPUC provides legal and technical expertise to represent, protect, and promote consumer interests. In FY 2020, OPUC participated in 26 projects, including filing comments, attending PUCT workshops, and attending stakeholder meetings on a variety of policy matters. The policy matters related to cybersecurity, the generation cost recovery

rider mechanism, broker registration, electric vehicles, advanced meters, oversight of wholesale market participants, COVID-19-related matters, fair market valuation of water utility systems, water utility classification and rate filing packages, and the Texas Universal Service Fund (TUSF).

Along with representing consumer interests in PUCT contested case proceedings, rulemaking and policy proceedings and appeals of PUCT decisions, OPUC is also an active participant in the ERCOT stakeholder and board governance processes. ERCOT is the Independent System Operator (ISO) for 90 percent of the Texas electric grid. OPUC's Chief Executive & Public Counsel serves as an *ex-officio* voting member of the ERCOT Board of Directors (ERCOT Board) and a member of the ERCOT Board's Human Resources and Governance (HR&G) Committee and Nominations Committee. OPUC also has dedicated staff that represent residential consumer interests as a voting member in the ERCOT stakeholder process and a representative that is appointed by OPUC's Chief Executive & Public Counsel to represent residential consumer interests on ERCOT's Technical Advisory Committee (TAC).

In addition to serving on the ERCOT Board, OPUC's Chief Executive & Public Counsel also serves as an *ex-officio* member of the Texas Reliability Entity (Texas RE) Board of Directors. The Texas RE is responsible for ensuring compliance with North American Electric Reliability Corporation (NERC) reliability standards in the ERCOT region.

Pursuant to Section 434.153 of the Texas Government Code, OPUC's Chief Executive & Public Counsel serves on the Texas Coordinating Council for Veterans Services (TCCVS). TCCVS is tasked with coordinating outreach efforts to help ensure that veterans, military service members, and their families are aware of services and to facilitate collaborative relationships to identify and address issues affecting veterans and their families. OPUC's Chief Executive & Public Counsel, or a designated representative, attend council meetings throughout the year.

In accordance with its statutory obligations in PURA 13.005, OPUC maintains a process to promptly and efficiently address and resolve utility-related consumer concerns. OPUC collaboratively works with individual consumers, the PUCT's Customer Protection Division and industry stakeholders to address and resolve consumer concerns, including assisting consumers with filing and tracking complaints at the PUCT and directing consumers to bill payment assistance resources. In FY 2020, OPUC staff handled 189 consumer complaints.

Through increased digital outreach and engagement on social media, OPUC strives to provide consumers with important information, including OPUC activities and developments, PUCT and ERCOT activities and developments, COVID-19-related developments, energy conservation measures that can provide potential savings on consumer utility bills, and grid reliability and outage matters.

In response to the COVID-19 pandemic, OPUC created a COVID-19 Consumer Resource Center, a dedicated webpage on the agency's website, to provide consumers with updates on the PUCT's actions to assist residential consumers during the COVID-19 pandemic, bill payment assistance programs and resources, and information on actions being taken by the Governor and other key state agencies. OPUC promoted the COVID-19 Consumer Resource Center on social media in both English and Spanish. In addition, OPUC promoted enrollment in the PUCT's

COVID-19 Electricity Relief Program to eligible residential consumers on social media throughout the duration of the program. OPUC also provided residential consumers with information regarding the PUCT's moratorium on electricity disconnections in non-competitive areas of the state outside of ERCOT, as well as the PUCT's moratorium on water disconnections for residential consumers served by investor-owned water utilities regulated by the PUCT. OPUC engaged with the PUCT, industry stakeholders, the Governor's Office and other key state agencies to stay informed on COVID-19-related developments and share important information with consumers through media outlets and the agency's COVID-19 Consumer Resource Center.

SECTION 2: OPUC ORGANIZATION

OPUC Staff Positions and Type of Work Performed

OPUC is led by the Chief Executive & Public Counsel, who is appointed by the Governor and confirmed by the Senate for a two-year term. The Chief Executive & Public Counsel must be licensed to practice law in the state of Texas, must demonstrate a strong commitment to and involvement in efforts to safeguard the rights of the public, and possess the knowledge and experience necessary to practice effectively in utility proceedings. The Chief Executive & Public Counsel oversees the operation of the agency, including the agency's budget and staffing, and leads the agency's representation of residential and small commercial consumers, as a class, in utility matters before the PUCT, state courts and ERCOT. OPUC's staff consists of up to 20.5 employees. OPUC's current staff consists of attorneys, government affairs and external communications staff, market and regulatory policy staff, and administrative staff.

OPUC Hours Billed

OPUC's workload during FY 2020 consisted of electric, water, wastewater, and telecommunications contested case proceedings, rulemaking and policy projects, and appeals of PUCT decisions. In FY 2020, OPUC staff spent 6,696.8 hours litigating contested cases, with an additional 82.0 hours spent on appeals of PUCT decisions. In addition, OPUC staff spent 5,370.7 hours participating in PUCT rulemaking and policy projects, including developing and filing comments throughout the PUCT's rulemaking and policymaking process, attending PUCT workshops and attending stakeholder meetings. In total, in FY 2020, OPUC staff spent 12,149.5 hours advocating on behalf of our state's residential and small commercial consumers, as a class, in electric, water, wastewater, and telecommunications utility matters.

SECTION 3: CONTESTED CASES AND APPEALS

In FY 2020, OPUC participated in 31 contested case proceedings and two appeals of PUCT decisions. The contested cases included comprehensive electric and water utility base rate cases, other utility rate-related cases, electric sale/transfer/merger (STM) cases, and certificate of convenience and necessity (CCN) cases involving generation facilities for non-ERCOT utilities. For more information about these contested cases and appeals, please see Attachment A, *OPUC List of FY 2020 Cases, Projects and Appeals*.

A major portion of OPUC's staff resources were devoted to advocating for reasonable rates from electric and water utilities operating in Texas. Most of the agency's employees consist of attorneys who are involved in representing residential and small commercial consumers, as a class, in the litigation of comprehensive electric and water utility base rate cases and other utility rate-related cases. The main issues in comprehensive utility base rate cases typically include the utility's return on equity, capital structure, rate of return, revenue requirement, cost allocation and rate design. OPUC relies on expert testimony from regulatory accountants, financial analysts, engineers, economists, and other industry experts to litigate these important issues. In total, OPUC's litigation efforts in contested case proceedings at the PUCT resulted in lowering costs for residential and small commercial consumers by approximately \$1.179 billion in current year bill savings.

In 2015 and 2017, the Texas Legislature passed legislation requiring electric utilities operating outside and inside of the ERCOT region to file a rate case at the PUCT every four years. As a result of this legislation, the PUCT established 16 Texas Administrative Code (TAC) § 25.246 and § 25.247 in 2016 and 2018 to implement a rate review schedule for non-ERCOT and ERCOT electric utilities. As a result of the PUCT's rate review process, OPUC is litigating more comprehensive utility base rate cases at the PUCT, because both ERCOT and non-ERCOT electric utilities are now filing base rate cases more frequently at the PUCT.

In 2013, the Texas Legislature passed legislation that transferred regulation of water utility rates from the Texas Commission on Environmental Quality (TCEQ) to the PUCT and consumer advocacy in water utility rate proceedings to OPUC. Since then, OPUC's attorneys have advocated for reasonable rates from water utilities in comprehensive utility base rate cases at the PUCT. The main issues in comprehensive water utility base rate cases typically include the utility's return on equity, capital structure, rate of return, revenue requirement, cost allocation and rate design. OPUC relies on expert testimony from regulatory accountants, financial analysts, engineers, economists, and other industry experts to litigate these important issues.

SECTION 4: RULEMAKING AND POLICY PROJECTS

In FY 2020, OPUC actively participated and advocated for residential and small commercial consumer interests in 26 rulemaking and policy projects at the PUCT. OPUC staff analyzed policy issues and PUCT staff rule proposals, developed and filed comments throughout the PUCT rulemaking and policymaking process, participated in PUCT workshops, and attended stakeholder meetings. The policy matters related to cybersecurity, the generation cost recovery rider mechanism, broker registration, electric vehicles, advanced meters, oversight of wholesale market participants, COVID-19-related matters, fair market valuation of water utility systems, water utility classification and rate filing packages, and the Texas Universal Service Fund (TUSF). For more information about these projects, please see Attachment A, *OPUC List of FY 2020 Cases, Projects and Appeals*.

SECTION 5: ERCOT AND TEXAS RE PARTICIPATION

As noted in Section 1 of the report, OPUC is an active participant at ERCOT and the Texas RE. OPUC's Chief Executive & 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, OPUC's Chief Executive & Public Counsel represents consumer interests.

In addition to these board positions, OPUC staff represent residential consumers on ERCOT's Technical Advisory Committee (TAC) and TAC subcommittees, including the Protocol Revisions Subcommittee (PRS), Wholesale Market Subcommittee (WMS), Reliability Operations Subcommittee (ROS), and Retail Market Subcommittee (RMS). OPUC staff also represented residential consumers in ERCOT working groups and taskforces, including the Real-Time Co-Optimization Task Force and Battery Energy Storage Task Force in FY20.

SECTION 6: LOOK AHEAD

Looking ahead to FY 2021, OPUC is strongly committed to representing our state's millions of residential and small commercial consumers in the rapidly evolving electric, water, wastewater, and telecommunications utility industries in Texas. Despite the economic impacts of the COVID-19 pandemic, our state's robust economy continues to stimulate significant population and business growth. As a result of this continued economic expansion and growth, our state will need more electric, water, wastewater, and telecommunications infrastructure in the coming years. Pursuant to our statutory mission, OPUC will continue to participate in the PUCT regulatory process and work with industry stakeholders to help ensure our state's residential and small commercial consumers pay just and reasonable utility rates and have access to adequate, affordable and reliable electric, water, wastewater, and telecommunications infrastructure and services.

As technology continues to rapidly evolve, new and emerging technologies, including electric vehicles, battery storage, and new distributed generation and demand response advancements, will continue to proliferate in our state. Pursuant to our statutory mission, OPUC will continue to evaluate our state's evolving electric, water, wastewater and telecommunications utility industries, monitor and participate in the regulatory and stakeholder processes at the PUCT and ERCOT, and work with industry stakeholders to assess the impact of new and emerging technologies on our state's residential and small commercial consumers.

As residential and small commercial consumers continue to be impacted by the COVID-19 pandemic, OPUC will continue to monitor and provide important information to consumers about key COVID-19-related developments and bill payment assistance programs and resources through the agency's COVID-19 Consumer Resource Center and social media. OPUC will also continue to stay engaged with the PUCT, industry stakeholders, the Governor's Office and other key state agencies to obtain important COVID-19-related information for consumers.

Attachment A
OPUC List of FY 2020 Cases, Projects and Appeals

CASES	
47141	Southwestern Electric Power Company (SWEPCO) Review of Rate Case Expenses Incurred by SWEPCO & Municipalities in Docket 46449
47736	SWWC Utilities, Inc. DBA Water Services, Inc. Application for Authority to Change Rates
47976	Liberty Utilities (Silverleaf Water) LLC Application for Authority to Change Water and Sewer Rates
48439	Review of the Rate Case Expenses Incurred in Docket No. 48371 (Entergy)
48591	Review of the Rate Case Expenses Incurred by Texas-New Mexico Power Company (TNMP) and Municipalities in Docket Nos. 48401, 35038, and 41901
48745	Entergy Texas, Inc. Compliance Filing Relating to Participation in Smart Meter Texas and Changes to Its Advanced Metering System
48902	Nerro Supply, LLC Application for Authority to Change Rates
48973	Southwestern Public Service Company Application for Authority to Reconcile Fuel & Purchased Power Costs
49402	AEP Texas, Inc. & Oncor Electric Delivery Company LLC Joint Report & Application for Approval of Transfer of Facilities, Transfer of Rights Under & Amendment of Certificate of Convenience & Necessity, & for Other Approvals
49421	CenterPoint Energy Houston Electric, LLC Application for Authority to Change Rates
49494	AEP Texas Inc. Application for Authority to Change Rates
49595	CenterPoint Energy Houston Electric, LLC Review of Rate Case Expenses Incurred in Docket Nos. 38339, 45747, 47032, 47364, 48226, & 49421
49616	Southwestern Public Service Company (SPS) Application for Authority to Revise Its Fuel Factor Formulas; Change Its Fuel Factors; & for Related Relief

49737	Southwestern Electric Power Company (SWEPCO) Application for Certificate of Convenience & Necessity Authorization & Related Relief for the Acquisition of Wind Generation Facilities
49831	Southwestern Public Service Company (SPS) Application for Authority to Change Rates
49849	El Paso Electric Company, Sun Jupiter Holdings LLC, & IIF US Holding 2 LP Joint Report & Application for Regulatory Approvals Under PURA §§ 14.101, 39.262, and 39.915
49887	Kendall West Utility, LLC Application for Authority to Change Rates
49916	Entergy Texas, Inc. Application for Approval to Reconcile Fuel and Purchased Power Costs
50058	El Paso Electric Company Application to Reconcile Fuel Costs
50200	Undine Texas, LLC Application for Authority to Change Rates
50277	El Paso Electric Company Application to Amend Its Certificate of Convenience & Necessity for an Additional Generating Unit at the Newman Generating Station in El Paso County & the City of El Paso
50477	El Paso Electric Company Application to Implement the Merger Rate Credit in Compliance with Settlement and Order in Docket No. 49849
50540	Entergy Texas, Inc. Application for an Accounting Order Related to a Tax Accounting Method Change
50556	Southwestern Public Service Company (SPS) Application for Authority to Implement a Net Refund for Over-Collected Fuel Costs
50557	Corix Utilities (Texas), Inc. Application for Authority to Change Rates
50584	Wind Energy Transmission Texas, LLC, Axinfra US LP; Hotspur Holdco 1 LLC, Hotspur Holdco 2 LLC, & 730 Hotspur, LLC Joint Report and Application for Regulatory Approvals Under PURA §§ 14.101, 39.262, and 39.915
50790	Entergy Texas, Inc. and East Texas Electric Cooperative, Inc. Joint Report and Application for Regulatory Approvals Related to Transfer of the Hardin County Peaking Facility and a Partial Interest in Montgomery County Power Station
50944	Monarch Utilities I L.P. Application for Authority to Change Rates
50997	Southwestern Electric Power Company (SWEPCO) Application for Authority to Reconcile Fuel Costs

51037	Entergy Texas, Inc. (ETI) Application to Implement an Interim Fuel Refund
51095	Entergy Texas, Inc. (ETI) Application for Approval of Tariff Consistent with the Commission’s Accounting Order in D-50540
PROJECTS	
36234-P	Joint TDUs AMS Low-Income Programs Project
46394-P	Rulemaking Proceeding to Amend 16 TAC § 25.239, Relating to Transmission Cost Recovery Factor for Certain Electric Utilities
48023-P	Rulemaking to Address the Use of Non-Traditional Technologies in Electric Delivery Service
48525-P	Rulemaking to Review 16 TAC § 25.130, Relating to Advanced Metering
48540-P	Review of Real-Time Co-Optimization in the ERCOT Market
48937-P	Rulemaking to Amend 24.44 Rate-Case Expenses Pursuant to Texas Water Code 13.187 and 13.1871
49125-P	Review of Issues Related to Electric Vehicles
49199-P	Project to Revise Rate Filing Package for Investor-Owned Transmission & Distribution Utilities
49480-P	Request for Comments on Revisions to Notice of Proposed Rate Change to Be Provided to Customers Pursuant to Tex Water Code 13.187 and Notice of Proposed Rate Change to be Provided to Customers Pursuant to Tex Water Code
49704-P	Revisions of Rate Filing Packages for Water Utilities
49794-P	Rulemaking for Broker Registration
49798-P	Revise Classifications & Reporting Requirements for Water & Sewer Utilities
49813-P	Revision of Rules and Forms Relevant to Fair Market Value
49819-P	Rulemaking Relating to Cyber Security Monitor
49852-P	Review of Summer 2019 ERCOT Market Performance
50031-P	Rulemaking Related to Generation Cost Recovery Factor (GCRF)

50406-P	Rulemaking to Amend 16 TAC §25.471 (Customer Protection Rules for Retail Electric Service)
50322-P	Alternative Ratemaking Mechanisms for Water and Sewer Utilities
50602-P	Review of 16 TAC §25.503, Oversight of Wholesale Market Participants
50664-P	Issues Related to the State of Disaster for Coronavirus Disease 2019
50796-P	Review of TUSF Rate
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 20-1	OPUC Activities related to COVID-19
APPEALS	
40443	Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs [D-1-GV-14-000612-OPUC] [CONSOLIDATED: D-1-GV-14-000536-State Agencies] [D-1-GN-14-001378-TIEC] [D-1-GN-14-001373-CARD] [03-17-00490-CV]
45084	Entergy Texas, Inc. Application for Approval of a Transmission Cost Recovery Factor [D-1-GN-16-006058] [03-18-00395-CV] [01-18-00556-CV]