

# **Office of Public Utility Counsel Annual Report for Fiscal Year 2019**



**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 21, 2020

Honorable Members:

The Office of Public Utility Counsel (OPUC) is pleased to submit our *Fiscal Year 2019 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) 2019. Below is a brief summary of our key accomplishments this past year, which include:

- Attainment of over \$179 million in current year bill savings through the representation of residential and small commercial consumers in 30 contested case proceedings before the Public Utility Commission of Texas (PUCT) and three 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 do not hesitate to 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 68<sup>th</sup> 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 the 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 2019, OPUC participated in 30 contested cases and three appeals of PUCT decisions that resulted in consumers realizing over \$179 million in current year bill savings. Of the three appeals of PUCT decisions, one appeal was dismissed for want of prosecution. The other two appeals did not have any disposition in FY 2019, but OPUC continues to be actively involved in the cases in state court.

In PUCT rulemaking and policy projects, OPUC provides legal and technical expertise to represent, protect, and promote consumer interests. In FY 2019, OPUC participated in 26 projects, including filing comments, attending PUCT workshops, and attending stakeholder meetings on a variety of policy matters.

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 represents 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 at 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) federal 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 made 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 2019, OPUC staff handled 212 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, energy conservation measures that can provide potential savings on consumer utility bills, and grid reliability and outage matters.

## **SECTION 2: OPUC ORGANIZATION**

### **OPUC Staff Positions and Type of Work Performed**

OPUC is headed 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 consumers, including the selection of cases in which to intervene at the PUCT and the selection of rulemaking and policy projects in which to participate at the PUCT. 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 2019 consisted of electric, water, wastewater, and telecommunications contested case proceedings, rulemaking and policy projects, and appeals of PUCT decisions. In FY 2019, OPUC staff spent 7,669.8 hours litigating contested cases, with an additional 165.4 hours spent on appeals of PUCT decisions. In addition, OPUC staff spent 4,077.9 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 2019, OPUC staff spent 11,913 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 2019, OPUC participated in 30 contested case proceedings and three appeals of PUCT decisions. The contested cases included comprehensive utility base rate cases, other utility rate-related cases, sale-transfer-merger (STM) cases, certificate of convenience and necessity (CCN) cases involving generation facilities for non-ERCOT utilities, and advanced meter-related matters. For more information about these contested cases and appeals, please see Attachment A, *OPUC List of FY 2019 Cases, Projects and Appeals*.

A major portion of OPUC's staff resources were devoted to advocating for reasonable rates from utilities operating in and outside of the ERCOT region. 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 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 over \$179 million 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 this new PUCT rate review process, OPUC will be involved in litigating more comprehensive utility base rate cases at the PUCT since both ERCOT and non-ERCOT electric utilities will be 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 2019, 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 projects addressed policy issues involving electric utility rate-related matters, water utility rate-related matters, electric storage, electric vehicles, advanced meters, cybersecurity, broker registration and ERCOT market-related matters regarding the Summer of 2019 and Real-Time Co-Optimization. For more information about these projects, please see Attachment A, *OPUC List of FY 2019 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 both 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 represent residential consumers in ERCOT working groups and taskforces, including the Real-Time Co-Optimization Task Force and Battery Energy Storage Task Force in FY19.

#### **SECTION 6: LOOK AHEAD**

Looking ahead to FY 2020, OPUC is strongly dedicated to continuing to represent our state's millions of residential and small commercial consumers in the rapidly evolving electric, water, wastewater, and telecommunications utility industries in Texas. Our state's strong, growing and robust economy is stimulating 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 ensure that 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 these new technologies on our state's residential and small commercial consumers.

**Attachment A**  
**OPUC List of FY 2019 Cases, Projects and Appeals**

<b>Cases</b>	
45979	Sharyland Review of the Rate Case Expenses Incurred in Docket No. 45414
46256	Liberty Utilities (Woodmark Sewer) Corp. & Liberty Utilities (Tall Timbers) Corp. Application to Change Rates for Sewer Service in Smith County, Texas
46674	Suburban Utility Company, Inc. Application for Authority to Change Rates
47141	Southwestern Electric Power Company Review of Rate Case Expenses Incurred by SWEPCO & Municipalities in Docket 46449
47396	Undine Texas, LLC & Suburban Utility Company Application for Sale, Transfer, or Merger of Facilities & Certificate Rights in Harris County, Texas
47527	Southwestern Public Service Company Application for Authority to Change Rates
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
48233	Southwestern Electric Power Company Application to Implement Base Rate Decrease in Compliance with Docket No. 46449
48325	Oncor Electric Delivery Company Application for Authority to Decrease Rates Based on the Tax Cuts and Jobs Act of 2017
48371	Entergy Texas, Inc.'s Statement of Intent & Application for Authority to Change Rates
48401	TNMP Application for Authority to Change Rates
48439	Entergy Review of the Rate Case Expenses Incurred in Docket No. 48371
48440	Dispute Between the U.S. Department of Energy & Southwestern Public Service Company (SPS) Concerning the Pantex Facility & Pantex Wind Farm (Severed from D-47527)
48745	48745 Entergy Texas, Inc. Compliance Filing Relating to Participation in Smart Meter Texas and Changes to Its Advanced Metering System
48781	El Paso Electric Company Petition for Authority to Revise Fixed Fuel Factor
48902	Nerro Supply, LLC Application for Authority to Change Rates
48929	Oncor Electric Delivery Company LLC, Sharyland Distribution & Transmission Services LLC, Sharyland Utilities LP, & Sempra Energy Joint Report & Application for Regulatory Approvals Under PURA §§ 14.101, 37.154, 39.262, and 39.915
48973	Southwestern Public Service Company Application for Authority to Reconcile Fuel & Purchased Power Costs

49041	Southwestern Electric Power Company (SWEPCO) Application for Approval of a Distribution Cost Recovery Factor
49042	Southwestern Electric Power Company Application to Amend Its Transmission Cost Recovery Factor
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
49405	Entergy Texas, Inc. Non-Standard Filing Pursuant to the Financing Order in Docket No. 33586
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 Application for Authority to Revise Its Fuel Factor Formulas; Change Its Fuel Factors; & For Related Relief
49737	Southwestern Electric Power Company Application for Certificate of Convenience & Necessity Authorization & Related Relief for the Acquisition of Wind Generation Facilities
49831	Southwestern Public Service Company 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

<b>Projects</b>	
36234-P	Joint TDUs AMS Low-Income Programs Project
45757-P	Simplified Class B Water and Sewer Rate Filing Package Form, Notice and Instructions for Class C and Smaller Class B Utilities
45758-P	Revisions to the Class B Water and Sewer Rate Filing Package
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
47669-P	Rulemaking to Revise 16 Tex. Admin. Code 26.407 Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILECUSP) Support Adjustments Pursuant to S.B. 586
48023-P	Rulemaking to Address the Use of Non-Traditional Technologies in Electric Delivery Service
48251-P	Rulemaking Regarding the Review and Approval of Substations
48377-P	Rulemaking Proceeding to Amend 16 TAC § 25.247 to Establish a Filing Schedule for Non-Investor-Owned Transmission Service Providers Operating Within ERCOT

48540-P	Review of Real-Time Co-Optimization in the ERCOT Market
48525-P	Rulemaking to Review 16 TAC § 25.130, Relating to Advanced Metering
48692-P	Rulemaking Proceeding to Amend 16 TAC § 25.181 and Adopt New 16 TAC § 25.182 Relating to Energy Efficiency Cost Recovery Factors
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 13.1871
49794-P	Rulemaking for Broker Registration
49798-P	Revise Classifications & Reporting Requirements for Water & Sewer Utilities
49819-P	Rulemaking Relating to Cyber Security Monitor
49852-P	Review of Summer 2019 ERCOT Market Performance
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 19-01	OPUC's Project Number for Review of Study for Merged AEP Texas System Pursuant to Order in Docket No. 46050

<b>Appeals</b>	
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]

45188	Oncor Electric Delivery Company, LLC, Ovation Acquisition I, LLC, Ovation Acquisition II, LLC, & Sharyland 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]
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