

SUBJECT: Public Utility Commission revisions

COMMITTEE: State Affairs — committee substitute recommended

VOTE: 13 ayes — Wolens, S. Turner, Alvarado, Brimer, Carter, Craddick,
Danburg, Hilbert, Hunter, Longoria, McCall, Ramsay, Stiles

2 nays — Counts, D. Jones

0 absent

SENATE VOTE: On final passage, April 11 — 29-0

WITNESSES: *(The witnesses testified on a proposed substitute concerning electric deregulation, which was not included in this bill.)*

BACKGROUND : The Public Utility Commission (PUC) consists of three full-time commissioners, appointed by the governor with the advice and consent of the Senate, serving staggered six-year terms. Commissioners serve in a quasi-judicial capacity in reviewing utility rate cases and other proceedings that have completed the administrative hearings process. Commissioners may not have been employed or had financial ties to a utility for two years prior to appointment and may not be employed by a utility for two years after leaving the commission.

The PUC regulates 158 electric and telecommunications utilities, including 58 local telephone companies, 10 investor-owned utilities, 86 cooperatives and four river authorities. The PUC has limited jurisdiction over municipal electric utilities.

The PUC regulates local exchange carriers, such as Southwestern Bell and GTE, but does not have jurisdiction over long-distance service providers such as AT&T and MCI. It has limited authority over telephone operator service providers, pay phone providers, automatic dialing devices, and telephone solicitors. The PUC helps consumers resolve complaints against regulated utilities.

The Office of Public Utility Counsel (OPUC) represents the interests of residential ratepayers and small business consumers before State Office of Administrative Hearings (SOAH), which handles PUC hearings.

About 80 percent of the state falls under the oversight of the Electric Reliability Council of Texas (ERCOT), one of the nine electric reliability councils set up in North America in the 1960s to prevent massive power failures. The state and the two other reliability councils operating in the state are the Southwest Power Pool (SPP), which covers the Panhandle and part of East Texas and the Western System Coordinating Council (WSCC), which cover the El Paso area. The 75th Legislature created a committee to examine interconnection between ERCOT and SPP.

DIGEST:

CSSB 965 would make a number of changes to the Public Utility Regulatory Act of 1995 (PURA), including authorizing the PUC to protect and educate consumers, making changes to the conflict-of-interest provisions for PUC commissioners and OPUC counsel and staff, authorizing PUC to use dispute resolution proceedings and partial contested case proceedings and establishing electric service reliability standards.

PUC consumer protection. The PUC would be required to ensure adequate customer services and protection, promote public awareness of changes in the electric and telecommunications markets, provide customers with information necessary to make informed choices about available options, and ensure that customers have an adequate understanding of their rights.

PUC commissioners would be given jurisdiction to establish service quality and customer service and protection for electric and telecommunication service. The PUC could educate and provide information to consumers to assist them in making an informed decision regarding electric and telecommunications services and to providers of these services regarding their responsibilities under the law.

The PUC would be required to submit a report to the Legislature by January 15 or each session year on complaints received from consumers during the previous two years. The report would have to include the number of complaints that were not resolved, why they were not resolved, and

recommendations to correct consumer problems that the PUC did not have the authority to address. The bill would require that the PUC scope of competition in electric markets report due the Legislature by January 15 of each session year include the same complaint information from electric customers.

PUC conflict-of-interest. The bill would change a number of conflict-of-interest provisions in PURA, including prohibiting a registered lobbyist from being employed by the PUC, in addition to the current prohibition against lobbyists being a PUC commissioner or the public utility counsel.

In addition, PUC commissioners and employees of the State Office of Administrative Hearings (SOAH) involved in utility cases would be prohibited from having any monetary interest or securities or from accepting gifts from a regulated entity, their direct competitors or affected entities, or request such entities hire a particular person. Violating these prohibitions would be grounds for removing a PUC commissioner from office and a fine of \$500 or \$1,000 for each violation. PUC employees could lose their jobs for violating these provisions.

An "affected entity" would include a business entity or affiliate that furnished goods or service to rate regulated entities, affiliates, or direct competitors if the value of the goods or services totaled \$10,000 or 10 percent of the affiliate's or entity's business, whichever was greater. The term would include representatives, attorneys, employees, officers, owners, directors or partners. A "direct competitor" would be an entity that provided the same or equivalent services in the regulated entity's certificated market.

Regulated entities, their competitors or affected entities would be prohibited from offering gifts, employment or entertainment to PUC commissioners or staff. The penalty for violating this provision would be \$1,000 for each violation.

The bill would give a reasonable time to PUC commissioners and staff who were recipients of securities or monetary interest in such entities to divest ownership and would allow such entities' securities to be held indirectly, such as in a retirement fund, so long as the commissioners or staff did not control investment of such securities. Nothing in the bill would prevent

PUC commissioners and employees from contracting for a product or service from such entities. The PUC executive director would be responsible to keep the PUC staff and commissioners informed regarding standards of conduct.

The bill would prohibit a PUC commissioner, employee or SOAH employee involved in a "particular" matter of a utility case hearing from ever representing the utility before the PUC, SOAH or a court regarding that particular matter. A particular matter would be defined as a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding.

CSSB 965 would stipulate that a PUC commissioner's position would be vacant if they file to run for an elective state or federal office and would require the governor to appoint a successor. Violating this provision would be grounds for removing a commissioner.

The current prohibition against PUC commissioners and staff from being hired by a public utility — two years after leaving office for a commissioner and one year from a staff member — would apply only to rate-regulated entities.

Office of Public Utility Counsel. The bill would permit the Office of Public Utility Counsel (OPUC) counselor to be hired by a rate-regulated utility one year after leaving state employment, rather than the current prohibition against the OPUC counselor from being hired by a public utility within two years of leaving the position.

The bill would prohibit the OPUC counselor or an OPUC employee involved in a particular matter before the PUC or the SOAH from ever representing an entity before the PUC, SOAH or a court regarding that particular matter.

The bill would allow OPUC to appear or intervene in a proceeding involving an alternative dispute resolution procedure on behalf of residential consumers and small commercial consumers.

PUC staff. The bill would eliminate the specific position and duties of general counsel to the PUC commission and allow the PUC overall authority to hire whatever staff they deemed necessary to perform agency duties. It would eliminate the specific duties of the PUC general counsel and give them to commission staff, including authority to issue orders to resolve all or part of a contested case and staff reports pertaining to a contested case hearing.

PUC contested case hearings. The bill would require PUC commissioners to adopt rules allowing commission staff to issue a proposed order to resolve all or part of a contested case before a hearing. The rules would have to indicate the types of cases for which a proposed order could be issued, including applicable deadlines. The rules would have to ensure that all parties received a full hearing or judicial review on issues that remained in dispute and that PUC consideration would be limited to the portions of the proposed order recommended by the parties for approval. A proposed order to which no party objected would become final with commission approval.

In addition, the commission would be required to adopt procedures allowing staff to prepare reports detailing the information the PUC staff would have presented in a contested case hearing to protect and represent the public interest as outlined in PURA. However, PUC staff would not be required to respond to a request for discovery or for information from a party to a contested case while the staff is preparing was report relating to that case.

Alternative dispute resolution. The PUC would be required to adopt alternative dispute resolution procedures to resolve pending issues or proceedings before the commission. The rules would have to require the PUC to notify each party that it was considering using an alternative dispute resolution procedure and that if a party objected they would have to notify the PUC within 10 days. In addition, the rules would have to ensure that any contested case issues not resolved using the alternative dispute resolution procedures would be resolved in a contested case proceeding.

Consumers who brought a complaint before the PUC with a value of \$10,000 or less would have the option of choosing a contested case proceeding or a dispute resolution proceeding to resolve the issue.

Penalties for violating PURA. The bill would no longer require that a utility be given 30 days after being notified of a violation requiring an administrative penalty to cure the violation before penalties were assessed.

Telecommunications utilities. The PUC authority over telecommunication utilities would be expanded to include ensuring service quality and reliability and customer service and protection and revoking of telecommunications utility's certification.

The bill would allow the PUC to revoke the registration of a pay telephone provider that repeatedly violated the law dealing with pay telephones. It also would allow the PUC to revoke certificates of convenience and necessity, certificates of operating authority, and service provider certificates of operating authority for telecommunications providers for repeated violations of PURA.

All telecommunications utilities would be required to register with the PUC as a condition of doing business in Texas, and the PUC could revoke the registration for repeated violations of PURA.

Electric reliability. The PUC would be required to implement rules for reliability standards for delivering electricity to retail customers based on the system average interruption frequency and availability index, annual average response time for customer calls, or other standards the PUC found appropriate. The rules would have to allow for the differences in customer density, weather conditions, tree growth rates and other unique circumstance by geographic area as well as other factors. The standards would have to assure reliability for all areas of the state, including low-income areas and communities of a 1,000 or less.

Electric utilities would not have to count power outages caused by the supplier in measuring their standard of reliability. The PUC would be required to compute each electric utility's reliability score based on a three-year rolling average, taking into consideration planned outages and those caused by natural events.

If a utility's reliability score was five percent below the standard, then the PUC would be required to issue an order, and within 90 days the utility

would have to inform the PUC that there is no need for corrective action or present a plan to correct the problems or information showing the problem had been corrected.

If the utility had not corrected a problem cited by the PUC in its previous report, or the PUC found that a service interruption affecting more than 10,000 customers was caused by inadequate preventive maintenance, then the PUC could require the utility to increase its transmission or distribution expenditures by up to five percent, but could not assess administrative penalties of up to \$5,000 for each day the utility was in violation or \$5,000 for each violation unless the utility failed to increase its expenditures as requested by the PUC. In the case of an outage affecting 10,000 customers, the increase in expenditures would have to be made to rectify the specific problem in that area, and the expenditure could not become part of the cost-of-service if it lengthened the life of the utility's facilities by less than one year.

All electric generation providers would be required to comply with any operational criteria set out the PUC or the independent system operator (ISO).

Utilities would be required to have trained and experienced personnel throughout their service area to comply with set reliability standards.

Electric provider registration. Exempt wholesale generators (EWGs), qualifying facilities, power merchants, and power marketers would be required to register with the PUC as a condition of doing business in Texas and the PUC could revoke the registration for repeated violations of PURA.

ERCOT interconnection. The interstate connection committee examining ways to connect ERCOT with the Southwest Power Pool reliability area would have until May 1, 1998, instead of September 1, 1997, to submit their report to the Legislature.

Public utility gross receipts tax report. The bill would require the PUC and the state comptroller to conduct a joint study of the structure of the one-sixth of one percent gross receipts tax imposed on all electric and telecommunications providers under the PUC's jurisdiction and submit its

recommendations to the 76th Legislature by January 15, 1999. The study would have to examine the potential effect of deregulation on revenue collections from the gross receipts tax during the next 10 years.

Effective date. The bill would take effect September 1, 1997, except for the provision relating to the ERCOT interconnection report, which would take immediate effect if finally approved by a two-thirds record vote of the membership of each house.

SUPPORTERS
SAY:

The bill would implement some of the recommendations in the Texas Performance Review report *Light Years, The Future of the Public Utility Commission in Texas*, including those pertaining to consumer education and consumer complaints, alternative dispute resolutions, streamlining the PUC process for handling contested cases and allowing partially contested cases, the impact of deregulation on the state's gross receipts tax, strengthening PUC enforcement powers by revoking certificates to operate for utilities that repeatedly violate the law, and flexibility in the staffing the PUC.

The bill would outline specific electric reliability standards for the PUC to help assure that all Texans, including those in small rural communities and low income areas, are not without electricity.

The bill would essentially restate current law regarding PUC conflicts of interest provisions, but make them more clear by defining terms so there is no ambiguity as to their meaning. The bill would also allow the OPUC counselor to be hired by a rate-regulated utility within one year, instead of two years, making the revolving-door provision equal to those of other regulatory agencies like the Texas Railroad Commission.

Although briefly considered as a vehicle for a proposal for phased deregulation of the electric utility industry, the committee substitute for SB 965 that ultimately was reported would not affect that issue.

OPPONENTS
SAY:

The revolving-door prohibition for the OPUC counselor should remain at two years and not be lowered to just one year. The PUC commissioners revolving-door prohibition is two years, and the OPUC counselor should be under the same conflict-of-interest provisions.

**OTHER
OPPONENTS
SAY:**

The Legislature, not the PUC, an appointed body, should be deciding whether Texas should be moving toward deregulating the electric industry in this state. The PUC's scope of competition report to the Legislature on electric utility markets was not an objective report and encouraged deregulation, and the comments by the PUC commissioners regarding deregulation, including those made regarding the Central Power and Light rate case this spring that caused Texas electric utility stocks to fall, make it clear that some PUC commissioners are in favor of electric industry deregulation.

NOTES:

The committee substitute differs from the Senate-passed version by adding the provisions on electric reliability, adding definitions for conflict-of-interest provisions, prohibiting a PUC employee from being a registered lobbyist, and reinstating post-employment prohibitions on PUC commissioners, staff, SOAH employees with regard to rate-regulated utilities.