

2020

UTILITY-RELATED UPDATE

Jamie Mauldin & Cody Faulk



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- Energy – Utility Principal at Lloyd Gosselink Rochelle and Townsend P.C. in Austin, Texas.
- Represent municipally owned utilities (MOUs), cities, and investor owned water utilities in proceedings at the Public Utility Commission and Railroad Commission of Texas.
 - Rulemakings
 - Rate Cases
 - Interim Cost Recovery Cases
- Represents cities as consumers in the stakeholder process at ERCOT.



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- Energy – Utility Principal at Lloyd Gosselink Rochelle and Townsend, P.C. in Austin, Texas.
- Represent municipally owned utilities (MOUs), cities, and investor owned water utilities in proceedings at the Public Utility Commission.
 - Rulemakings
 - Service Area disputes
 - Integration into ERCOT
 - Transmission Line Routing

TO BE ADDRESSED...

- ✓ Overview of Public Utility Commission and Railroad Commission
- ✓ COVID-19 – Effects and Regulatory Measures at Public Utility Commission and Railroad Commission
- ✓ Recent and Current Electric Proceedings at the Public Utility Commission
- ✓ Recent Water Proceedings at the Public Utility Commission
- ✓ Recent and Current Gas Proceedings at the Railroad Commission
- ✓ Utility Legislative Update
- ✓ Issues Related to Electric Vehicle Charging Stations
- ✓ What's on the horizon for Texas's utility landscape

PUBLIC UTILITY COMMISSION OF TEXAS

PUBLIC UTILITY COMMISSION OF TEXAS

ALL MEMBERS ARE APPOINTED



DEANN T. WALKER
Chairman



**ARTHUR C.
D'ANDREA**
Commissioner



SHELLY BOTKIN
Commissioner

Public Utility Commission of Texas
(PUC)

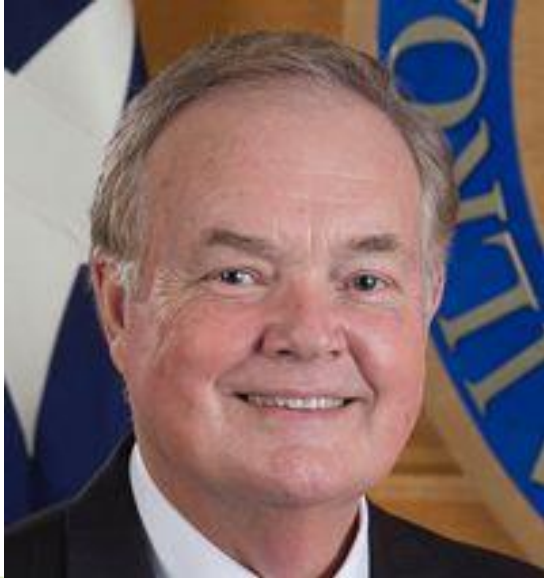
WHAT?

- The Public Utility Commission of Texas regulates the state's electric, telecommunication, and water and sewer utilities, implements respective legislation, and offers customer assistance in resolving consumer complaints.
- After the passage of SB 7 in 1999, the Texas Legislature provided for the restructuring of the electric utility industry, allowing certain customers electric choice. Now the PUC has limited regulatory authority over retail electric providers, electric generators, and broader authority over electric transmission and distribution utilities.
- The PUC has limited jurisdiction over wholesale water utilities and broad ratemaking and business regulation over retail water utilities.

RAILROAD COMMISSION OF TEXAS

RAILROAD COMMISSION OF TEXAS

ALL MEMBERS ELECTED



WAYNE CHRISTIAN
Chairman



RYAN SITTON
Commissioner



Christi Craddick
Commissioner

Railroad Commission of Texas
(RRC)

WHAT?

- The state agency with primary regulatory jurisdiction over the oil and natural gas industry, pipeline transporters, natural gas and hazardous liquid pipeline industry, natural gas utilities, the LP-gas industry, and coal and uranium surface mining operations.
- The RRC exists under provisions of the Texas Constitution and exercises its statutory responsibilities under state and federal laws for regulation and enforcement of the state's energy industries.
- The RRC also has regulatory and enforcement responsibilities under federal law including the Surface Coal Mining Control and Reclamation Act, Safe Drinking Water Act, Pipeline Safety Acts, Resource Conservation Recovery Act, and Clean Water Act.

PUC COVID-19 MEASURES

March 26 Emergency Orders

- Order 1: Exceptions to existing PUC rules for electric, water, and sewer utilities. Requires electric utilities to provide eligible customers with deferred payment plans. Established moratorium on utilities disconnecting customers or assessing late fees until September, 2020.
- Order 2: Accounting Order authorizing an accounting mechanism and subsequent process through which regulated utilities may seek future recovery of expenses resulting from the effects of COVID-19.
- Order 3: Established COVID-19 Electricity Relief Program (ERP)
 - Customer assistance program for residential customers that meet PUC established criteria proving that they have been affected by the COVID-19 outbreak. ERP establishes a mechanism for TDUs and REPs to recover costs from customers who cannot pay their utility bills.

Emergency Orders, cont'd.

- The suspension of disconnections for non-payment for customers of retail electric providers in areas ends with customer choice will end on July 17, 2020;
- Enrollment in the ERP will now end on July 17, 2020;
- The prohibition of late-payment fees for residential customers of retail electric providers in areas open to customer choice ended on May 15, 2020;
- The suspension of disconnections for non-payment for customers of retail electric providers outside of areas of customer choice ended June 13, 2020; and
- The suspension for disconnections for customers of water and sewer utilities regulated by the PUC ended June 13, 2020

Electric Investor Owned Utility (IOU) Rate Case Schedule

In 2018, the PUC adopted mandatory timelines for IOU rate cases in Docket No. 47545

- Adopted new § 25.247
- ERCOT IOUs must file rate case within 48 months of the last rate case or settlement adopting changed rates
- Commission may extend on a year-to-year basis if the utility shows that it is “earning less than 50 basis points above the average of the most recent commission-approved rate of return on equity for each T & D utility operating in ERCOT with at least 175,000 customers.”
- Established a schedule for initial IOU rate cases

2019 Rate Cases

CenterPoint Energy Houston Electric

- Filed on April 5, 2019
- Requested an increase of \$154 million for retail customers
- Fully litigated, but ended in settlement
- Settlement resulted in \$13 million increase, a 9.4% Return on Equity, 57.5% debt/42.5% equity capital structure

AEP Texas Inc.

- Filed May 1, 2019
- Requested an increase of \$38 million for retail customers
- Fully litigated, but ended in settlement
- Settlement resulted in \$40 million decrease, 9.4% Return on Equity, 57.5% debt/42.5% equity capital structure

Upcoming Rate Cases

2020

- Transmission only cases
 - Wind Energy Transmission Texas, LLC
 - Cross Texas Transmission, LLC
 - Lone Star Transmission, LLC
 - Electric Transmission Texas, LLC
 - Sharyland Utilities, LLC

2021

- Oncor Electric Delivery Company
- Must file by October 1, 2021

Other Electric Utility Issues

- **Distribution Cost Recovery Factors (DCRF)**
 - Filed April 1 - April 8 each year
 - Effective date September 1
 - Municipalities have original jurisdiction over application
- **Energy Efficiency Cost Recovery Filings (EECRF)**
 - Filed May 1 of each year (where no customer choice is offered)
 - Effective date January 1
 - Filed June 1 each year (where customer choice is offered)
 - Effective date March 1

Municipally Owned Electric Utility Issues

- Rate Case Schedule
 - In 2017, the Legislature enacted Senate Bill 735. The Legislature provided the following as basis for the enactment:
 - As part of the 2016 annual Earnings Monitoring Report (EMR), PUC staff noted that within a certain class of utilities, a large percentage had not been subject to a comprehensive or even cursory review by the PUC for many years.
 - Specifically, of the 38 utilities considered in this class, 19 had not had a comprehensive rate proceeding in over 10 years, and of these, eight had not been reviewed in over two decades. In this report, PUC also identified some structural deficiencies with the current cost recovery system.
 - The legislation was intended to address the PUC's recommendations by establishing a requirement for the PUC to periodically and efficiently review all electric utility rates, including a periodic adjustment of transmission rates to reduce rates as certain costs go down.

Municipally Owned Electric Utility Issues

- Each non-IOU must file an interim filing within 48 months of its most recently approved change in rates (PUC can still initiate a rate proceeding at any time).
- Any non-IOU that has not had an approved case within the last 36 months of the effective date of the rule changes must submit a Transmission Cost Of Service TCOS filing based on the following schedule:

If last rate approved in a full case was	Must file a full or interim case
Prior to January 1, 1999	Within one (1) year of the effective date of the rule changes
Between January 1, 1999 and January 1, 2006	Within two (2) year of the effective date of the rule changes
Between January 2, 2006 and March 30, 2011	Within three (3) year of the effective date of the rule changes
Between April 1, 2011 and January 1, 2013	Within four (4) year of the effective date of the rule changes
Between January 2, 2013 and 36 months before the effective date of the rule changes	Within five (5) year of the effective date of the rule changes

Retail Water Issues

- Decertification Issues - Tex. Water Code § 13.254(a-6)
- Wholesale Rate Appeals - 16 Texas Administrative Code (TAC) § 24.311

7 U.S.C. § 1926(b)

- Protects federally-indebted utilities from curtailment and encroachment into their service area during a loan term to ensure the ability to repay.
- To qualify for protection, a utility must establish:
 - It is an association as defined in § 1926;
 - The association has an outstanding qualifying federal loan; *and*
 - The utility provided or made water service available
- Tex. Water Code § 13.254(a-6) allows the PUC to decertify protected utilities regardless of § 1926.

Cibolo & Schertz Decert Applications

- Cibolo and Schertz filed 13.255 petitions with the PUC to decertify Green Valley SUD's CCN, and the PUC granted both petitions.
- GVSUD then appealed decertification in Travis County district court, but also filed two separate federal suits against Cibolo and Schertz claiming decertification of its sewer CCN was prevented by its Section 1926(b) funding for water infrastructure. The district court appeal has been stayed until the federal cases are decided.
- GVSUD's suit against Cibolo proceeded first. Cibolo filed a motion to dismiss arguing that the water loan didn't protect GVSUD's sewer CCN, which was granted. GVSUD appealed to the Fifth Circuit, which **held that Section 1926(b) protection was not limited to the service directly related to loan.** I.e., if a utility is federally indebted under 1926(b), whether the loan funds water or wastewater, both the utility's water and wastewater systems receive protection.
- Cibolo appealed to the Supreme Court, which denied cert., but before it did so, the Solicitor General of the US prepared a brief recommending that cert be denied because USDA had approved a loan for GVSUD's sewer system, thereby mooting the issue. Because GVSUD now had (or more accurately was about to have) both water and wastewater loans, both of its systems would be protected anyway. At the same time, the Solicitor General stated explicitly that the Fifth Circuit had wrongly decided Cibolo.
- The Cibolo case set a precedent that set Schertz up to lose once that case began, which it did in district court. Schertz then appealed, asking the Fifth Circuit to overrule its decision in Cibolo—i.e., taking the position that a water loan doesn't protect wastewater infrastructure, and a sewer loan doesn't protect water infrastructure.

Clay Road 628 Development Expedited Release Petitions

- A developer filed four expedited release petitions.
- To obtain release under TWC § 13.2541, a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving water service.
 - Petitions for expedited release filed under TWC § 13.2541 and 16 TAC § 24.245 are not contested cases, and no opportunity for a hearing is provided.
- In the first Docket, expedited release was approved in February and the proceeding is currently in the compensation phase.
- In March, Staff recommended that the developer's second and third petitions be approved, but in April the proceedings were remanded to Docket Management, and the developer was required to file statements indicating whether it intends to withdraw, amend, or continue the processing of its petition. In May, the developer indicated he wanted to continue the processing of his petitions, and the ALJ filed a revised proposed final order granting expedited release. Staff filed no exceptions.

Clay Road 628 Development Expedited Release Petitions

- In the final Docket, the to-be-decertified utility was allowed to intervene. Staff also recommended that this petition be approved, but streamlined expedited release was denied at the end of April by the PUC. The petition was denied because Clay Road 628 failed to demonstrate that the land it seeks to decertify is not receiving water service under TWC §§ 13.002(21) and 13.2541 and 16 TAC § 24.245(l), as interpreted in *Texas Gen. Land Office v. Crystal Clear Water Supply Corp.*, 449 S.W.3d 130 (Tex. App.—Austin 2014, pet. denied).
- The developer filed a motion to overturn. As of the date of preparing this presentation, the Commissioners voted to add that motion to the June 12th agenda.

Expedited Release Issues

- To obtain release under TWC § 13.2541, a landowner must demonstrate that the landowner owns a tract of land that is at least 25 acres, that the tract of land is located in a qualifying county, and that the tract of land is not receiving water service.
 - Petitions for expedited release filed under TWC § 13.2541 and 16 TAC § 24.245 are not contested cases, and no opportunity for a hearing is provided.
- On August 16, 2019, the City of Red Oak Industrial Development Corporation filed a petition for streamlined expedited release of approximately 384 acres from Rockett Special Utility District's water certificate of convenience and necessity No. 10099, in Ellis County, under Texas Water Code § 13.254 and 16 TAC § 24.245.
 - On November

Application of City of Round Rock to Decertify its Certificated Sewer Area

- In November 2019, the City of Round Rock filed an application to decertify their entire Sewer Certificate of Convenience and Necessity, in light of recent state law changes related to annexation. Round Rock asserted that it will continue to serve all of its existing customers and any future customers within its city limits.
- The PUC Staff recommended that the application be approved, because Round Rock is a retail public utility as defined by Texas Water Code § 13.002(19). A retail public utility that is not also a utility operated by an affected county or a water supply or sewer service corporation is not required to hold a CCN to provide water or sewer service.
- The Commissioners, citing to *City of Carrollton v. Texas Commission on Environmental Quality*, concluded that the application was not an amendment, but a revocation or decertification. Therefore, that revocation of a CCN under those circumstances is necessarily a discontinuance, reduction, or impairment of service to a certified service area under TWC § 13.250(b). Relying on the Third Court's explicit statement that TWC § 13.250(b) "does not allow the Commission to cancel [a CCN] unless it determines that neither the present nor future convenience and necessity will be adversely affected."
- Therefore, the Commission must make determinations under TWC §§ 13.250(b) and 13.254(a). The Commission may also impose conditions, restrictions, and limitations under TWC § 13.250(c). The rules set forth requirements for the petition and notice and lists factors for the PUC to consider in making its decision, including the effect on customers and landowners, the availability of alternative sources of service, and the feasibility of customers and landowners obtaining service from alternative sources.

Application of City of Round Rock to Decertify its Certificated Sewer Area

- To conduct a proper analysis under TWC §§ 13.250 and 13.254, the Commission will need information to address at a minimum the factors identified in 16 TAC § 24.249(i). The PUC came up with a list of factors to consider, including:
 - Does the City of Round Rock's certificated sewer service area extend beyond its municipal boundaries? Does it extend beyond the City of Round Rock's extraterritorial jurisdiction?
 - Are there any areas that are currently within the City of Round Rock's certificated sewer service area but outside of its municipal boundaries and that are developed?
 - Does the City of Round Rock intend to continue to serve all its existing customers? Does the City of Round Rock define "customer" as the individual or the facility receiving service?
 - How will future customers receive sewer service, if the application is granted?
 - If the City of Round Rock were allowed to relinquish its sewer CCN, what current retail public utilities could serve existing or future customers within or outside of the City of Round Rock's municipal boundaries?
 - What resolution, ordinance, or other authorization demonstrates that the City of Round Rock has authorized the filing of this application?

Wholesale Water Rate Appeals

- In short, the PUC has appellate jurisdiction over wholesale water rates, and must ensure wholesale water rates charged are not adverse to the public interest as defined in 16 TAC § 24.311.
- To date neither the TCEQ [Texas Commission on Environmental Quality] nor the PUC has ever found a protested contractual wholesale water or sewer service rate to adversely affect the public interest . . . [and] there has never been a cost-of-service wholesale water hearing.
 - That is no longer the case as of 2020 (PUC Docket No. 46662).

North Texas Rate Appeal

- On December 14, 2016, the Cities of Garland, Mesquite, Plano, and Richardson filed a petition with the PUC to appeal the rates charged by the North Texas Municipal Water District (NTMWD) for wholesale water service.
- The Petitioning Cities assert that the 2016-17 wholesale water rates charged by the District are adverse to the public interest, while NTMWD and all but one of the other member cities contend that the rates for the last 30 years have been set pursuant to a contract intended to provide reliable and long-term regional water supplies, and that such contractually-set rates are entitled to deference
- SOAH's recommendations is, "the Public Interest Rule sets a high threshold to find a contract adverse to the public interest, and that the PUC gives deference to contracts negotiated among sophisticated parties. Under the specific facts of this case, however...**the protested rate is adverse to the public interest.** [SOAH] recommend that the [PUC] (1) find the rates charged by [NTMWD] to be adverse to the public interest and (2) order that this case proceed to a cost-of-service inquiry that will assist the [PUC] in subsequently setting rates."
- At the February 27, 2020 open meeting the Commissioners agreed to adopt much of the analysis from the SOAH decision and voted to send the appeal to a cost-of-service proceeding. The next day, the Commission issued an order that states: "On February 27, 2020, the Commission determined that the rates protested [] by petitioners are adverse to the public interest."
- As of the date of this presentation, the PUC has determined that before it issues a preliminary order with issues to be addressed in the cost-of-service proceeding, the parties should attempt to resolve this proceeding by agreement and ordered that the parties mutually agree to a mediator by August 5, 2020 to the extent they are not able to otherwise resolve the proceeding.

Rate Case Proceedings at the RRC

- GUD 10920, CenterPoint Energy Entex and CenterPoint Energy Texas Gas--Beaumont/East Texas Division
 - Filed November 2019
 - Requested \$6.8 million increase
 - Proceeding Settled
 - \$4.0 million rate increase, 9.65% ROE, 56.95% equity/43.05% debt capital structure
- GUD 10928, Texas Gas Service
 - Filed December 2019
 - Requested \$15.7 million rate increase and consolidation of Gulf Coast, Beaumont, and Central Texas Service Areas
 - Proceeding Settled on all but one issue
 - \$10.3 million rate increase, 9.5% ROE, 59% equity/41% debt capital structure
 - Parties briefed issue of consolidation-decision pending

Interim Filings at the RRC

- Rate Review Mechanisms (RRM)
 - Atmos Mid-Tex
 - Atmos West Tex
- Cost of Service Adjustment (COSA)
- Gas Reliability Infrastructure Program (GRIP)

COVID-19 Measures at the RRC

- No longer accepting in-person filings
- Skeleton Crew at the Agency
- Established a process for operators, utilities, and other licensed companies and individuals to request a waiver from regulatory requirements. Entities may request waivers of RRC regulations by providing justifications as to why the regulatory requirements cannot be met. The RRC will review the waiver requests on a case-by-case basis and determine whether to accept or deny the request.

Utility Legislative Update

Preparation for 2021 Regular Session

- Significantly altered as legislative leaders attempt to deal with COVID-19 pandemic
- Texas Senate and Texas House Stopped holding committee hearings in the short term to hear testimony and receive information on the various subjects, issues, and charges that the committees were assigned by Lt. Governor Patrick and Speaker Bonnen as part of the Legislature's social distancing effort.
- 2020 US Census: Legislators were anticipating addressing redistricting matters during Regular Session

Utility Legislative Update, cont'd.

- Legislature is usually holding hearings and working on the state budget in preparation for Regular Session, but that work has been reduced due to the pandemic
- State budget work should be challenging with economic ramifications of pandemic, coupled with drop in oil and gas prices in 2020
- No utility-specific update due to these changes in normal procedures

Issues Related to Electric Vehicle Charging

- We have been seeing more and more requests from entities, such as Tesla, seeking to place electric vehicle charging stations within city limits.
- In recent filings with the PUC, Tesla has acknowledged the regulatory framework associated with such stations in Texas is not clear.
 - “[o]ne area that the [PUC] should evaluate further and that can help facilitate a more seamless charging experience for commercial EV stations is determining that third-party owners of EV charging infrastructure are not public utilities or retail energy providers and should not be regulated as such.”
- This is a question that remains unresolved by the PUC today, but based on the clear language of PURA §§ 37.051 and 39.105(b), a person cannot provide, furnish, or make available electric service at retail without a CCN to provide that service.
- A private corporation, such as Tesla, is a “person,” and “service” is broad enough to encompass the supply of electricity. Therefore, Tesla would be required to obtain a CCN from the PUC under PURA § 37.051(a). Requiring money for the use of a device that sells electricity to be ultimately consumed by an individual would constitute “retail electric service.”
- In short, a person must obtain a certificate from the PUC to provide charging stations services, unless they contract with a certificated utility and provide such services through the certificated utility.

How to allow charging stations

- So long as they are not charging for the service then there is no issue. Certain retail and hotel facilities have provided charging stations as a perk of shopping or staying at the facility.
- In MOU areas, the provider can partner with the utility and develop a special rate for charging for the electric vehicle charging, and have an agreement to sell power on behalf of the MOU.

What's on the Horizon in the Utility World

- Post-COVID Landscape
 - Adjustments to customer service and service calls.
 - Financial burdens on MOUs
 - Utilities may want to record regulatory assets associated with non-shut offs in attempt to recover lost revenue.
 - Post-COVID PUC and RRC Proceedings
 - Major investor owned utilities will be seeking cost recovery associated with under recovery during COVID.
- Electric MOUs
 - Senate Bill 776, passed in 2015, requires that prior to construction, installation or extension of a transmission facility beyond the boundaries of a municipality, a MOU must seek approval from the PUC for a CCN. After September 1, 2021, construction and operation of a transmission project within municipal limits remains under local government decision making, but transmission projects outside of the city limits must be approved by the PUC.
 - Electric MOUs should spend the next two years reviewing planned transmission projects to determine if a CCN will be necessary, and consulting with their experts on preparing applications.



QUESTIONS?



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