

2019

UTILITY-RELATED **UPDATE**

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Texas City Attorneys Association Annual Conference

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- Energy – Utility Associate 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



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- Energy – Utility Associate 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.

TO BE ADDRESSED...

- ✓ Overview of 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
- ✓ 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



CHRISTI CRADDICK
Chairman



RYAN SITTON
Commissioner



WAYNE CHRISTIAN
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.

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

CenterPoint Energy Houston Electric (CenterPoint)

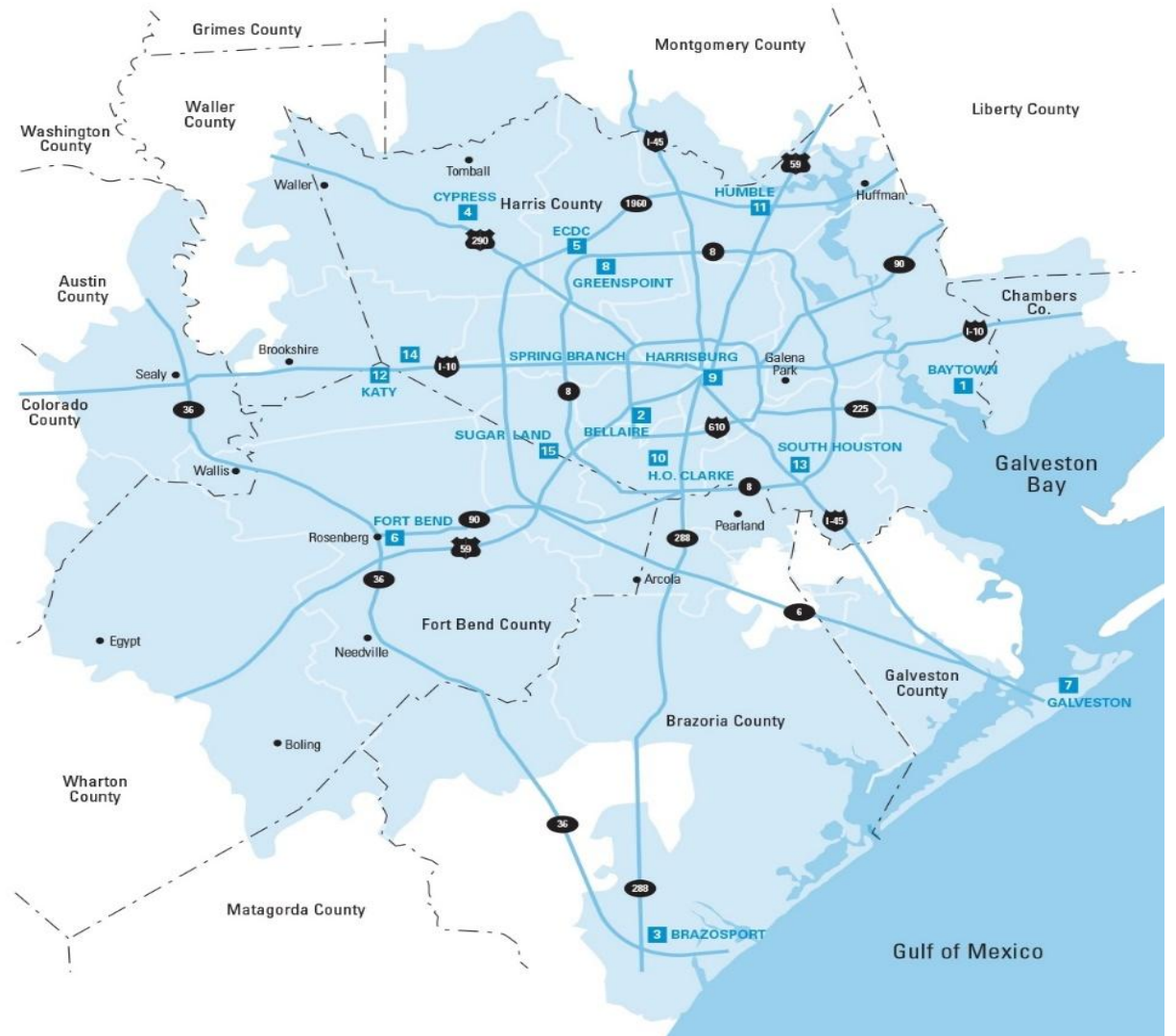
CenterPoint Electric

- Filed on April 5, 2019
- Requesting an increase of \$154 million for retail customers
 - 7.4% increase for average residential customers
 - 1.8% for customer with a retail plan that charges 12.5 cents per kWh
- \$6.8 million for wholesale transmission service

If the Company's case is adopted:

- Monthly average increase for average residential customer would equal \$2.38.

Center Point Service Area



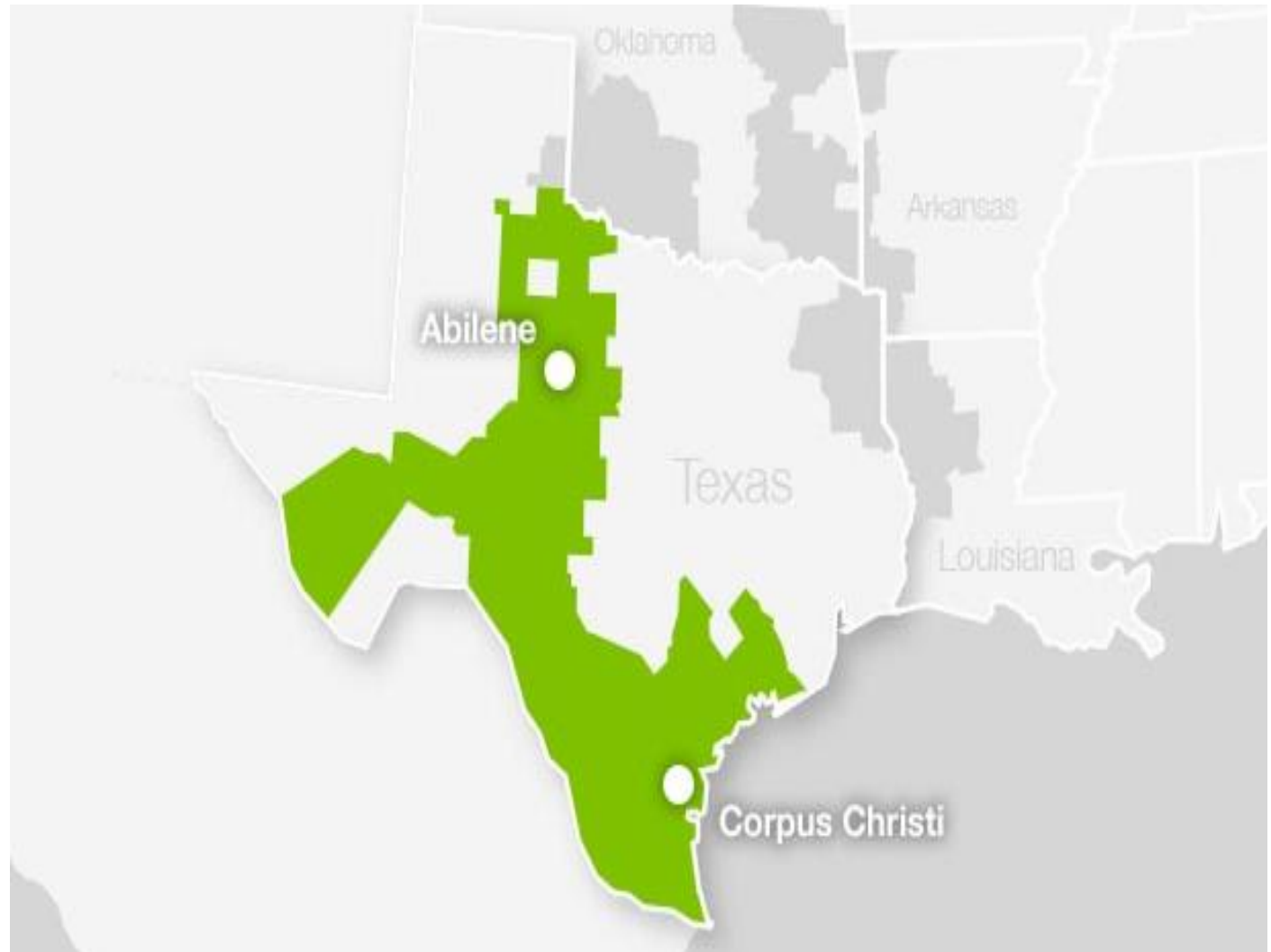
CenterPoint Rate Case

- Last base rate case was in 2010, Docket 38339
- Reason for Increase:
 - CenterPoint serves 400,000 more customers than it did in 38339 (approx 20% increase)
 - Investment of over \$6 billion in transmission and distribution infrastructure
 - Installation of over 2.5 million Advanced Metering System meters, improved grid resiliency and intelligence, and lowered overall cost of debt
- Hearing: June 24-27, 2019
- Effective Date: October 7, 2019

AEP Texas Rate Case

- AEP Texas Inc. (AEP Texas)
 - Filed May 1, 2019
- Last Base Rate Case was also in 2010, Docket Nos. 33309 and 33310
- Formerly two separate utilities: AEP Texas North Company (TNC) and AEP Texas Central Company (TCC)
- Merged in 2015
- Proposing to consolidate service areas, tariffs, and rates

AEP Service Area



AEP Texas Rate Case

- AEP Texas is asking for an increase of \$38.3 million in Distribution
- Decrease of \$3.16 million in Transmission

If the Company's case is adopted:

- TCC (Central) customers will see a \$4.75 increase
- TNC (North) customers will see a \$5.01 decrease

AEP Texas Rate Case

Drivers for increase:

- Economic growth
- Investment in storm hardening
- Grid modernization program
- Vegetation management

Hearing: August 20-23

Effective Date: December 20, 2019 (Company agreed to extend)

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
- **Sale, Transfer and Mergers (STM)**
 - Docket No. 48929
 - Docket No. 49402

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

Effects of Tax Cut and Jobs Act (TCJA)

- PUC opened Project No. 47945, *Proceeding to Investigate and Address the Effects of Tax Cuts and Jobs Act of 2017 on the Rates of Texas Investor-Owned Utility Companies*
 - Addresses TCJA as it relates to both electric and water IOUs.
 - PUC filed a deferred accounting order, mandating utilities record as a regulatory liability the difference in their tax expense, with ultimate plans to refund that difference to customers.
 - Through meetings with PUC Staff, electric utilities, Class A water utilities, and a handful of Class B water utilities have filed Tax Credit Riders.

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.

Crystal Clear Spec. Util. Dist. V. Walker

- The PUC granted a petition to decertify property federally-indebted to a utility under § 1926(b).
- The Federal District Court found Section 1926 preempts the portion of Tex. Water Code § 13.254(a-6) that instructs the PUC to not deny a petition based on the fact that a Certificate of Convenience and Necessity (CCN) holder is a borrower under the federal loan program.
- The utility was protected despite the term of the loan beginning eleven days after the petition was filed by the property owner.
- District Court granted injunctive relief against the PUC, but denied it against the owner of the property as moot.
- Since the Court's decision in March 2019, parties have timely filed motions for attorney's fees and motion to amend the judgment, however, none have been granted.

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 2018.

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
- This administrative appeal has been lengthy, as of the date of this presentation, a proposal for decision has been rendered by State Office of Administrative Hearings (SOAH), that is being considered by the PUC.
- 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."

Austin Wholesale Water Rate Case

- The PUC established Austin Water's (AW) wholesale water and wastewater rates for four wholesale customers after they appealed AW's rates in 2016. Pursuant to that order, the PUC also ordered AW not to increase wholesale water and wastewater rates applicable to those petitioners without prior Commission approval.
 - After determining an increase was necessary, AW prepared and submitted a wholesale rate increase petition, the first of its kind at the PUC.
- This case is unique...
 - The PUC's jurisdiction over AW is limited to appellate review of rates and services charged to customers residing outside the City and certain special districts.
 - This case is the first instance where a utility has filed for approval of rates following the filing of a challenge to its rates.
 - This case addresses wholesale water rates to just four customers.
 - The law provides no procedural requirements directing the processing of this case.
- As of the date of this presentation, AW is in the early stages of its application and is having to provide additional information to the PUC outside of its original application.

Gas Proceedings at the RRC

- Rate Review Mechanisms (RRM)
 - Atmos Mid-Tex
 - Atmos West Tex
- Cost of Service Adjustment (COSA)
- Gas Reliability Infrastructure Program (GRIP)
- GUD 10884: Texas Gas Service Hurricane Harvey Cost Recovery Proceeding

Utility Legislative Update

WINS

More than 100 bills related to gas and electricity service filed

- Wins!
 - HB 864 and 866 adopted: related to gas pipeline safety
 - SB 1497 adopted: requires registration of energy brokers
 - HB 1767: relating to employee compensation for gas utilities
 - Addition of a pro-consumer amendment that softens the effect
 - HB 1766 and 1768 failed: would have loosened regulatory oversight of electric utility employee compensation

Utility Legislative Update

LOSSES

- Losses
 - HB 2011 failed:
 - would have exempted cities from paying miscellaneous gross receipts taxes on purchase of electricity
 - HB 795 failed:
 - would have provided clarity for cities attempting to enforce zoning laws if they conflict with PUC decisions
 - SB 1152 adopted:
 - Undermines ability of cities to collect reasonable right-of-way rental fees from cable and telecom providers

What's on the Horizon in the Utility World

- Electric MOUs
 - Recent reports by the Texas Coalition for Affordable Power, indicate customers in the deregulated parts of Texas paid only \$18.88 more a year than those who live in regulated areas, the smallest amount on record.
 - This indicates MOUs will be facing political and competitive forces in the future.
 - 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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