

PRESENTED AT

2021 Gas and Power Institute

October 14, 2021

Houston, TX

State Regulatory and Legislative Update - Electric

Taylor Kilroy

Author Contact Information:

Taylor Kilroy

Texas Public Power Association

Austin, TX

tkilroy@tpa.com

512-472-5965

2021 Texas Legislature After Session Report

The 87th Regular Session of the Texas Legislature adjourned on May 31st. The session began approximately nine months into the COVID-19 pandemic, and early on, much of the attention was devoted to how the state should have responded. During the early days of the session, however, Winter Storm Uri devastated Texas, leaving millions without power for several days and directly contributing to hundreds of deaths. Natural gas prices spiked to the highest levels in recent memory and ERCOT shortpayments reached nearly \$3 billion. Several retail electric providers exited the market and one electric cooperative sought bankruptcy protection. This turmoil re-focused the Legislature on the actions and inaction of the industry and its regulators. For the first time in decades, legislators engaged in serious and substantive discussions about capacity markets and re-regulation.

PUC AND ERCOT REFORM

[SB2](#) by Sen. Hancock, relating to the governance of the Public Utility Commission of Texas, the Office of Public Utility Counsel, and an independent organization certified to manage a power region.

- The bill requires that the Public Utility Commission of Texas (PUC) Chair, Office of Public Utility Counsel (OPUC) Counsellor, and all members of the ERCOT Board be Texas residents. The bill removes the six seats reserved on the Board for market segments, the two for consumer interests, and the five for unaffiliated members, and replaces them with eight members selected by a selection committee, as discussed below. The selection committee will also designate the chair and vice chair for the Board. Board members are required to have executive level experience in finance, business, engineering, trading, risk management, law, or electric market design and cannot have a fiduciary duty to or assets in the electricity market. No more than two Board members may be employed by an institution of higher education in a professorial role, and a former Board member must wait two years after leaving the Board to engage in any lobbying activity. ERCOT is required to comply with this law by September 1, 2021. If ERCOT does not remake its Board in this way by September 1, 2021, PUC has the discretion to decertify ERCOT as the grid operator.
- The selection committee is composed of three members, with the governor, lieutenant governor, and speaker each selecting one member. The selection committee is required to retain an outside consulting firm to assist in selecting Board members. Members of the selection committee are not paid for their service, but they are entitled to reimbursement for expenses.

[SB2154](#) by Sen. Schwertner, relating to the membership of the Public Utility Commission of Texas.

- The bill expands the PUC to five commissioners and requires all five to be Texas residents. Only two are required to be well informed and qualified in the field of utility regulation. It allows a professional engineer to meet the experience criterion to serve on the commission. It reduces the waiting period that certain candidates (including public utility employees) would have to wait until being appointed from two years to one year, and the bill also applies that restriction to members of the legislature and the governor, lieutenant governor, comptroller, General Land Office commissioner, and Attorney General (the bill specifically excludes the secretary of state from this waiting period). The bill also prohibits a commissioner from lobbying before the PUC for one year after they leave the PUC.

[HB2586](#) by Rep. Thierry, relating to an annual audit of the independent organization certified for the ERCOT power region.

- The bill requires the PUC to have an audit performed on ERCOT, examining ERCOT's financial condition and its compliance with PUC rules. The PUC is required to publish the results of the audit on its website and to submit the results to the state auditor and members of the standing legislative committees with primary jurisdiction.

ELECTRIC INDUSTRY REFORM

[SB3](#) by Sen. Schwertner, relating to preparing for, preventing, and responding to weather emergencies and power outages; increasing the amount of administrative and civil penalties. SB3 is the omnibus reform bill that makes wide-ranging changes to the electric, natural gas, and water industries. SB3 makes the following changes:

- The bill requires Texas Department of Emergency Management (TDEM) to implement a statewide power outage alert system and to create a list of suggested actions for state agencies and the public to take to prepare for winter storms.
- The bill statutorily authorizes the Texas Energy Reliability Council (TERC), which was an informal working group at the Railroad Commission between members of the gas and electric industries. TERC, as authorized by SB3, is expanded to include representatives from the Railroad Commission (RRC), PUC, OPUC, Texas Commission on Environmental Quality (TCEQ), the Texas Transportation Commission, ERCOT, TDEM, five persons to represent natural gas appointed by the RRC, five persons to represent the electric industry appointed by the PUC, three persons to represent energy sectors not otherwise represented, and five persons to represent industrial concerns. TERC must meet at least twice yearly and would be responsible for producing a report by November 1 of each even-numbered year on the reliability and stability of the electric supply chain, including methods for improvement. Public utilities, including municipally-owned utilities (MOUs) and co-ops, would be obligated to provide information upon request to TERC, though this information would not be subject to disclosure under the Public Information Act, except for legislative purposes, and the meetings of TERC would not be subject to the Open Meetings Act.
- The bill creates the Texas Electricity Supply Chain Security and Mapping Committee to map the electricity supply chain by September 1, 2022 and identify critical infrastructure sources in the supply chain. The Committee consists of the executive directors of the PUC and the RRC, the ERCOT CEO, and the TDEM Chief. The Committee must meet at least once a quarter and is not subject to the Open Meetings Act or the Public Information Act, except for legislative purposes. The Committee will maintain a database identifying critical infrastructure sources and will be responsible for updating the map and the database yearly. By January 1, 2022, the Committee will submit a report to the governor, lieutenant governor, speaker, legislature, and TERC with an overview of the map and recommendations for a communications system between PUC, RRC, TDEM, ERCOT, and critical infrastructure.
- The bill creates the State Energy Plan Advisory Committee. The Advisory Committee is composed of 12 members, with the governor, lieutenant governor, and speaker each appointing four members. The Advisory Committee is required to prepare a comprehensive state energy plan, evaluating barriers in the electricity and gas markets that prevent sound economic decisions and evaluate methods to improve the reliability, stability, and affordability of electric service. The Advisory Committee's plan is also required to evaluate the electricity market structure and pricing mechanisms, including the ancillary services market and emergency response services.

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: State Regulatory and Legislative Update - Electric

Also available as part of the eCourse

[2021 Gas and Power eConference](#)

First appeared as part of the conference materials for the

2021 Gas and Power Institute session

"State Regulatory and Legislative Update"