

SENATE COMMITTEE ON BUSINESS & COMMERCE


December 1, 2010

The Honorable David Dewhurst
Lieutenant Governor
P.O. Box 12068
Austin, Texas 78711


Dear Governor Dewhurst:

Thank you for the opportunity to address important issues facing Texas today through your charges for interim study. The Senate Committee on Business & Commerce, having conducted public hearings and received public and invited testimony, is pleased to submit its final report with recommendations for consideration by the 82nd Texas Legislature.

Respectfully submitted,



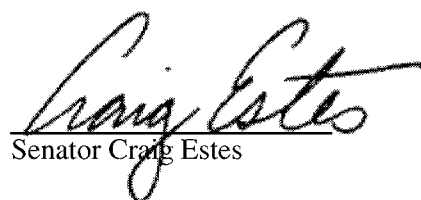
Senator John Carona
Chairman



Senator Chris Harris
Vice-Chairman



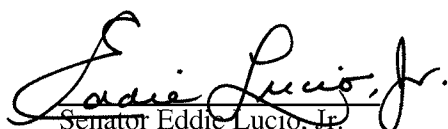
Senator Kevin Eltife



Senator Craig Estes

Senator Troy Fraser

Senator Mike Jackson



Senator Eddie Lucio, Jr.



Senator Leticia Van de Putte



Senator Kirk Watson



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DIAL 711 FOR RELAY CALLS

December 10, 2010

The Honorable John Carona
Senate Committee on Business and Commerce
P.O. Box 12068
Austin, Texas 78711-2068

Dear Chairman Carona

Thank you for your dedication and leadership as Chair of the Senate Committee on Business and Commerce. It is an honor to serve as your Vice Chairman. The committee considered many issues over the interim that are vital to Texas. The 81st interim report clearly displays the hard work of yourself and your staff over a very short time period since you have assumed the Chair. Your diligence and vision is undoubtedly seen in this report.

The report and recommendations proposed continue a positive discussion on topics for the upcoming legislative session. While I support many of the proposals, I am, however, not in agreement with all of the recommendations the committee will publish in this report. I sincerely look forward to working with you on these and many other important issues in the upcoming legislative session.

Thank you again for this opportunity to provide input on the committee's interim report. Please do not hesitate to contact me if you have any question.

Regards,

A handwritten signature in cursive script that reads "Chris Harris".

Chris Harris



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SENATOR
EDDIE LUCIO, JR.

December 6, 2010

The Honorable John Carona
State Senator
Capitol Building, 4E.2
Austin, Texas 78701

Dear Chairman Carona:

Congratulations on your appointment as Chairman of the Senate Business and Commerce Committee. The productivity of the hearings you chaired, as well as this thoughtful, well-written interim report, are impressive examples of the high level of commitment and technical skill you and your staff bring to the Committee.

Although I am proud to sign this comprehensive interim report, I would like to respectfully issue a strong word of caution regarding the report's first and seventh recommendation for Charge 1, and its second recommendation for Charge 5. In Charge 1, Recommendation 1, the report encourages the Legislature to revisit the affordability and coverage of TWIA insurance policies, charging that both are higher than appropriate. To the issue of affordability, I would like to state that it is not economically viable for Coastal residents to pay the cost of increased rates, even if warranted by the risk level.

In 2009, the average TWIA owner-occupied homeowners premium for \$150,000 of coverage in Tier One was \$1,785. This amount is more expensive than the average premium charged by voluntary insurers operating in the Catastrophe Area (\$1,541), and nearly double the statewide average for owner-occupied homeowners premium (\$1,023). It is important to note that residents insured by TWIA must purchase additional flood insurance. Therefore, any significant increases in TWIA rates paid solely by Coastal residents and businesses will be unjust and unsustainable, undermining the vitality of a critical economic engine for Texas.

With regard to Charge 1, Recommendation 7, I strongly agree that the cost impact of a catastrophic event on the state should be clearly outlined during the evaluation of different financing mechanisms for TWIA. However, I would like to emphasize that a robust cost-benefit analysis will also recognize in its calculations the economic value of protecting the financial contribution of the Texas Coast to the rest of the state's economy.

My final reservation pertains to Charge 5, Recommendation 2. I commend the Committee's recommendation for the careful consideration of borrowing options available to the Texas Workforce Commission. However, there is considerable evidence to argue that the current tax structure does *not* prepare the State well for poor economic times. I do not consider it an accomplishment to meet federally required and guaranteed provisions, such as paying unemployment insurance to recipients on time, when



DISTRICT 27: CAMERON ★ HUIDALGO ★ KENNEDY ★ KLEBERG ★ WILLACY
COMMITTEES: INTERNATIONAL RELATIONS & TRADE, CHAIRMAN ★ FINANCE ★ BUSINESS & COMMERCE ★ STATE AFFAIRS ★ GOVERNMENT ORGANIZATIONS

the current system can only achieve these legal requirements by borrowing money – the cost of which is paid by businesses paying higher taxes during difficult economic times.

Chairman Carona, thank you again for your strong leadership of our Committee. I have high expectations for what we can accomplish during the 82nd Legislature on behalf of Texans across our great state.

Sincerely,

A handwritten signature in cursive script that reads "Eddie Lucio, Jr." with a small flourish at the end.

Eddie Lucio, Jr.
State Senator, Senate District 27

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<p>1. Study the implementation of H.B. 4409 enacted by the 81st Legislature pertaining to the financing of insured losses in excess of premium and other revenue of the Texas Windstorm Insurance Association (TWIA). Assess the coverage and affordability of TWIA policies. Review the claims and payments processes and make recommendations to improve the stability of TWIA while enhancing services to clients.....</p> <p style="padding-left: 20px;">BACKGROUND</p> <p style="padding-left: 20px;">RECOMMENDATIONS</p> <p>2. Study options for reducing demand for electricity, including innovative pricing options relating to the use of smart meters, programmable thermostats, and other demand side management and behavioral response strategies. Review current consumer education programs to reduce demand, decrease energy prices, and improve air quality. Consider benefits and costs of alternative energy sources such as geothermal and solar, and current incentives for electric and plug-in hybrid electric vehicles. The study should include recommendations on improving consumer knowledge and usage of these strategies in lowering overall electric usage, promoting energy efficiency, and improving the reliability of the ERCOT grid.</p> <p style="padding-left: 20px;">BACKGROUND</p> <p style="padding-left: 20px;">RECOMMENDATIONS</p> <p>3. Study and make recommendations relating to the development and implementation of wind energy. Assess the total impact of wind energy, including additional costs to consumers, if any, buy-back provisions and pricing, the need for alternative energy sources at times when wind does not generate electricity, impact on the ERCOT grid, development of battery storage and other storage methods, and economic development impacts.....</p> <p style="padding-left: 20px;">BACKGROUND</p> <p style="padding-left: 20px;">RECOMMENDATIONS</p> <p>4. Study the generation costs of municipally owned electric utilities' planned generation portfolios. Consider the impact of planned generation costs on electric rates for residential and commercial customers. Solicit input on the impact of future electric rates on charitable and non-profit organizations, and the impact on such organizations' cash assistance programs to indigent customers. Consider the merits of a justifiable planned generation cost standard, and whether a deviation above the standard should be subject to approval by a vote of all customers of a municipally owned utility's service area.....</p> <p style="padding-left: 20px;">BACKGROUND</p> <p style="padding-left: 20px;">RECOMMENDATIONS</p> <p>5. Study and make recommendations relating to the Texas Unemployment Compensation Insurance system, including, but not limited to, the following: The capacity and efficiency of the claims filing and benefits delivery system as well as the ability of the agency to meet the needs of the clients it serves given the transition to call centers and web based filing; The current financing scheme for the Unemployment Compensation Trust Fund, and any options to improve the long term financial health and stability of the Fund; The use of debit cards for delivery of UI benefits, including ways to limit user fees to access payments; and Improving public access to local and statewide data on current and historical UI claims.....</p> <p style="padding-left: 20px;">BACKGROUND</p> <p style="padding-left: 20px;">RECOMMENDATION</p> <p style="padding-left: 20px;">RECOMMENDATION</p> <p style="padding-left: 20px;">RECOMMENDATIONS</p>	<p>1</p> <p>1</p> <p>3</p> <p>5</p> <p>5</p> <p>11</p> <p>12</p> <p>12</p> <p>15</p> <p>17</p> <p>17</p> <p>20</p> <p>21</p> <p>21</p> <p>23</p> <p>24</p> <p>25</p>
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6. Study and make recommendations regarding career-focused education and workforce training programs in Texas to insure that such programs meet business and worker needs. Specifically, study whether such programs: meet the current and future workforce needs of health care, skilled trades, construction, manufacturing, aerospace, information technology and green jobs; help retain workers in such trades and fields; retrain and update the skills and education of workers in such trades and fields; and foster and encourage collaboration between the State, education, labor and business to provide education and training. 26

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Interim Study Background, Findings, and Recommendations

- 1. Study the implementation of H.B. 4409 enacted by the 81st Legislature pertaining to the financing of insured losses in excess of premium and other revenue of the Texas Windstorm Insurance Association (TWIA). Assess the coverage and affordability of TWIA policies. Review the claims and payments processes and make recommendations to improve the stability of TWIA while enhancing services to clients.**

BACKGROUND

The Texas Windstorm Insurance Association (TWIA) was established in 1971 following Hurricane Celia as an insurer of last resort against hail and wind damage for coastal counties in Texas. TWIA currently provides coverage for properties in the following "Tier One" counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, Willacy, and portions of Harris County east of Highway 146.¹ The Commissioner of Insurance (the "Commissioner") can designate additional areas of the seacoast as a catastrophe area based on a determination that windstorm insurance is not reasonably available. TWIA is governed by a ten member board, of whom 4 members are coastal representatives, 1 member is an inland representative, and 4 members are representatives of the insurance industry. One is a non-voting member who advises the board on issues relating to the inspections process and who must be a licensed engineer residing in a first tier coastal county.

TWIA is funded directly through premium payments by policyholders. Over the past decade, high costs to insurers resulting from natural disasters have led to many private insurers moving away from writing windstorm policies in Tier One counties, and TWIA has become the lead insurer for windstorm in Texas. Currently, TWIA holds approximately 240,000 policies on both residential and commercial properties. In 2008, TWIA's reserve fund, the Catastrophe Reserve Trust Fund (CRTF), held over \$460,000,000, but claims resulting from Hurricanes Dolly and Ike led to a complete depletion of the fund. The CRTF held approximately \$74.8 million as of September 30, 2010.²

House Bill 4409

House Bill (HB) 4409 passed during the final hours of the 81st Legislative Session. The bill restructured TWIA's financing scheme for losses in excess of premiums received. Under the new scheme, losses in excess of premium must be paid first out of the CRTF and then through

¹ Texas Windstorm Insurance Association Overview prepared by the Texas Department of Insurance, August 9, 2010.

² Texas Treasury Safekeeping Trust Company (CRTF) Statement September 2010.

the issuance of public securities in an amount up to \$2.5 billion. TWIA may also purchase reinsurance to cover excess losses. Prior finance structures addressed funding losses through premiums collected by TWIA, funds in the CRTF, the purchase of reinsurance, and assessments against member insurers.

Coverage and Affordability

Coverage

Currently, TWIA is the primary insurer for windstorm and hail coverage in the 14 counties along the Texas Gulf Coast. Coverage includes both commercial and residential properties, with a total estimated exposure of \$74 billion as of September 30, 2010.³

Over time TWIA coverage limits have increased. HB 4409 did not change the law with respect to coverage limits for residential properties. Minimum limits are set by statute with an automatic annual adjustment to reflect inflation. In addition, the TWIA board is permitted to recommend that the Commissioner increase limits above any indexed limits.⁴ Under this authority in 2005, limits for residential property were increased from \$435,000 to \$1.5 million in one year⁵ and for residential property the current maximum liability limit is \$1,773,000.⁶ A comparison between these limits and those available through the federal government's flood insurance program underscore the generous level of coverage TWIA provides. The maximum limit on federal flood insurance is \$250,000 on a dwelling or condo.⁷ Other states' coastal residual market limits range in maximum liability limits for residential property anywhere from \$200,000 to \$1.3 million.⁸

TWIA may provide coverage for contents of apartments, townhouses and condominiums up to \$374,000, and for governmental or commercial properties, up to a maximum of \$4,424,000.⁹

Affordability

In 1992, TWIA rates for residential risks decreased by 54.0 percent and rates for commercial risks decreased by 22.9 percent.¹⁰ Since that time, rates offered by TWIA have steadily increased.¹¹ Industry continues to voice concerns that TWIA rates are competitive with the voluntary market and that TWIA continues to be a market of first resort because the rates it offers are often less than the voluntary market.¹² However, a comparison of TWIA rates to voluntary market rates will vary based on the risk characteristics of the policyholder. Rates may be less in some instances and greater in others.

³ Quarterly Statistical Report as of September 30, 2010 from Texas Windstorm Insurance Association.

⁴ Tex. Ins. Code §2210.502(c).

⁵ Order by the Commissioner of Insurance, No. 05-0117.

⁶ Order by the Commissioner of Insurance, No. 09-0949.

⁷ Testimony of Jay Thompson, Counsel for the Association of Fire & Casualty Companies of Texas before the Senate Committee on Business & Commerce on August 24th, 2010.

⁸ Texas Department of Insurance.

⁹ Texas Windstorm Insurance Association/Texas FAIR Plan prepared by James W. Oliver, July 31, 2010.

¹⁰ TWIA (TDI), August 9, 2010.

¹¹ Ibid.

¹² Testimony of Jay Thompson, Counsel for the Association of Fire & Casualty Companies of Texas before the Senate Committee on Business & Commerce on August 24th, 2010.

HB 4409 amended certain aspects of the TWIA rate filing process that may affect the affordability of rates. Under certain conditions, TWIA may make rate filings that can be put into effect quickly without the Commissioner's prior approval, but such a filing would be limited to a rate increase of 5 percent or less.¹³

For the annual rate filing, there is a 10 percent cap (15 percent for an individual rating class). However, these caps can be removed, subject to notice and hearing, after a catastrophe to ensure rate adequacy in the catastrophe area and availability of insurance outside the catastrophe area. This 10 percent cap does not apply to other-than-annual rate filings.¹⁴

To address the affordability of lump sum premium payments, premium financing is also available to TWIA customers.¹⁵

Claims

TWIA handles its own claims following an event and may contract with independent adjusters. A number of claims-related complaints and a large number of lawsuits were filed against the association following Hurricane Ike in 2008, and a review of the TWIA claims-handling process was subsequently carried out by the Texas Department of Insurance (TDI).

Stability of TWIA & Service to Clients

TWIA's total exposure has increased more than fivefold since 2000, with residential properties being the largest percentage of coverage.¹⁶ This increase is based on a number of factors, the largest of which is the lack of private insurers writing windstorm coverage in Tier One counties. Following Hurricane Ike in 2008, funding from the CRTF, available reinsurance in the amount of \$1.5B and member insurer assessments in the amount of \$430 million were used to pay claims. Under that financing structure, prior to HB 4409, potentially unlimited assessments against member insurers represented a backstop against insolvency of the CRTF.

Events following Hurricane Ike led to the passage of HB 4409 and the new TWIA funding structure, but the stability of TWIA under its new financing structure in the face of a major event is currently unknown.

RECOMMENDATIONS

Coverage and Affordability

1. Coverage for both residential and commercial properties is readily available along the Texas Gulf Coast through TWIA. These policies have coverage limits significantly above average Texas home values and are sold significantly below the level that a rate based on actual risk levels would support. Financing of premiums is also available to customers without a required credit review. The Committee feels that current coverage and affordability limits are higher than appropriate considering the level of risk that exists in the TWIA coverage area and should be revisited.

¹³ Tex. Ins. Code §2210.352(a-1).

¹⁴ Tex. Ins. Code §2210.359.

¹⁵ Tex. Ins. Code §2210.202 and §2210.204.

¹⁶ TWIA/TFPA (James W. Oliver), July 31, 2010.

Claims and Payments Process

2. The Committee continues to have concerns over the handling of claims following Hurricane Ike in 2008, and the underlying reasons for the problems claimants had with TWIA's handling of claims. Certainly one cause was the massive scale of the damage and the large number of adjusters required. However, internal TWIA policies and procedures played a role, as did factors outside the control of TWIA. The Committee recommends consideration of alternative claims handling procedures.
3. The Committee recommends consideration of alternative methods of addressing customer dissatisfaction with policy payments prior to or in lieu of large-scale lawsuit settlements. Such alternatives might include administrative class action suits on claims involving common issues of fact through the State Office of Administrative Hearings (SOAH) and the inclusion of binding arbitration clauses in TWIA contracts.
4. The Committee recommends that the Legislature take appropriate steps to motivate private insurers to write policies along the Gulf Coast, such as the consideration of more storm-resistant building standards.

Stability of TWIA and Service to Clients

5. The stability of TWIA is of great concern to the Committee, even considering the amendments made to its financing structure by HB 4409. The post-event bond program established by the bill is untested and a potential risk to state government and taxpayer dollars in the event of a catastrophic storm. The Committee recommends review of TWIA's short term commercial paper program, particularly with respect to liquidity.
6. The Committee recommends that the purchase of reinsurance by TWIA be seriously and positively considered. That consideration should include coverage for loss in excess of the current TWIA financial structure, and should examine the potential for reducing reinsurance cost through higher deductible levels for such loss.
7. The Committee recommends that the Legislature look into other options for the financing of TWIA losses in excess of premium, with a strong emphasis on bond ratings, liquidity, and the effects of a large event on Texas general revenue and cost spreading throughout the state through insurance assessments. Specifically, the Committee recommends considering similar programs operated in other states like the California Earthquake Authority and the Florida Hurricane Catastrophe Fund and their stability and effectiveness as insurers of last resort against natural disasters.

2. Study options for reducing demand for electricity, including innovative pricing options relating to the use of smart meters, programmable thermostats, and other demand side management and behavioral response strategies. Review current consumer education programs to reduce demand, decrease energy prices, and improve air quality. Consider benefits and costs of alternative energy sources such as geothermal and solar, and current incentives for electric and plug-in hybrid electric vehicles. The study should include recommendations on improving consumer knowledge and usage of these strategies in lowering overall electric usage, promoting energy efficiency, and improving the reliability of the ERCOT grid.

BACKGROUND

Study options for reducing demand for electricity, including innovative pricing options relating to the use of smart meters, programmable thermostats, and other demand side management and behavioral response strategies.

Texas' positive business climate has led to an increase in population and new and expanded businesses. The combination of these factors and record-breaking weather in 2010 resulted in Texas experiencing high demand for energy. In fact, the Electric Reliability Council of Texas (ERCOT), which acts as the state independent system operator and manages the flow of electric power to 22 million Texas customers, representing 85 percent of the state's electric load and 75 percent of the Texas land area, announced that the ERCOT region experienced record-setting peak demands for electricity in 2010. All four of the record demands occurred during the month of August. The last and highest record demand was 65,776 MW on August, 23, 2010, between 4:00 and 5:00 p.m.¹⁷ Furthermore, demand is projected to increase by one to two percent per year. As the demand for energy increases, new ways to reduce demand and provide efficiency to lower costs and consumption must be found. Possible tools or incentives to reduce demand and provide efficiency include advanced (smart) meters, advanced programmable thermostats and progressive consumer education programs. Smart meters, programmable thermostats and other digital tools can also provide great means of consumer education as they are interactive; consequently, helping to reduce demand.

Consumer education programs regarding demand reduction and energy efficiency can vary from non-existent to confusing. Websites like www.powertochoose.com are helpful consumer education tools in the competitive marketplace. Regarding energy efficiency program education,

¹⁷ http://www.ercot.org/news/press_releases/2010/nr-08-23-10, The Electric Reliability Council of Texas, Inc. (ERCOT) website.

www.texasishot.org is the most comprehensive, but only includes information for rebates and incentives from participant entities.

The State of Texas has the most installed wind capacity of any state, with over 9700 MW (9300 MW within ERCOT).¹⁸ Wind is also the most heavily subsidized of the renewable energy sources. In order to promote renewable portfolio diversification, the Public Utility Commission of Texas (PUC) is required by statute to establish a target of 500 MW on non-wind renewable energy.¹⁹ While non-wind alternative energy sources such as solar and geothermal produce little to no emissions in the generation of electricity, intermittency and the need for subsidies to be competitive hinder their increased use.²⁰

TESTIMONY

Overview

Electricity demand is steadily increasing; in fact, the ERCOT region experienced a peak demand increase of 2,376 megawatts (MW) from 63,400 MW, recorded on July 13, 2009 to 65,776 on August 23, 2010. Current installed generation capacity includes natural gas with 62 percent of the total, coal with 21 percent, wind at 10 percent, nuclear with six percent, and hydro with one percent. Installed capacity is different from actual production because fuel cost is a factor in plant dispatch, as well as intermittency of certain resources and other factors. Actual dispatched energy production levels are natural gas with 42 percent, coal with 37 percent, nuclear with 14 percent, wind with six percent and hydro with one percent.²¹ To contribute reliability and ensure adequate electric supply will be available in case of contingency needs, ERCOT has set a reserve margin target of 12.5 percent so that available generating capacity is sufficient to meet peak system load. ERCOT also serves as the independent system operator and helps maintain grid reliability by coordinating the schedules of power by market participants, dispatching generation and relieving congestion in the transmission system.²²

Smart Grid Technology

Smart grid technology represents an array of modern, primarily digital communication and data processing upgrades to the electric system, including such devices as smart meters and advanced programmable thermostats. The goals of smart grid technology are to save energy through peak shaving or shifting, reduce costs and improve reliability.²³ Some customers with smart meters argued the meters' consumption readings were inaccurate -- too high. In addition, the costs of installation and operation for most smart meters were shifted to consumers. Notably, customers have historically paid for meters; the difference with advanced meters is that this charge was itemized on the bill. While smart meters can provide for consumer education through their time-of-use pricing (peak hour consumption is more expensive than off -peak and smart meters allow the consumer to view their hours of consumption), rollouts of smart meters are not done on a

¹⁸ Testimony of John Fainter, President and CEO, Association of Electric Companies of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

¹⁹ Public Utility Regulatory Act 39.904(a).

²⁰ Testimony of Barry Smitherman, Chairman, Public Utility Commission of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

²¹ Testimony of H.B. "Trip" Doggett, President, Electric Reliability Council of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

²² Data submitted to Senate Committee on Business & Commerce upon request, Electric Reliability Council of Texas.

²³ Testimony of H.B. "Trip" Doggett, President, Electric Reliability Council of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

voluntary basis. Therefore, customers are charged approximately \$2-\$3 additional for the devices whether or not they were willing to participate in the program. As of July 31, 2010, over 1,700,000 smart meters have been deployed in ERCOT. Over 6 million smart meters will be deployed by the end of 2013.²⁴

The joint web portal, www.smartmetertexas.com, is used by consumers, retail electric providers (REPs), and transmission/distribution utilities (TDUs) to track and manage energy use. Smart grid devices like smart meters help to increase reliability of the grid by allowing utilities to know exactly where and when outages occur. They also promote consumer education. Consumers gain education through the information provided by smart meters to help reduce their energy use and take part in new pricing or demand response programs. Tools like smart meters and other programmable devices are meant to encourage a behavioral response type of demand side management (DSM). DSM is the planning, implementation, and monitoring of utility activities designed to encourage consumers to modify patterns of electricity usage, including the timing and level of electricity demand. Market participation or bidding is another type of DSM, which allows consumers to bid their individually generated or unused electricity back into the grid marketplace.²⁵

Time of Use pricing (TOU) is another demand response pricing program. Time of Use pricing can more accurately reflect scarcity by incorporating cheaper rates during off-peak consumption and higher rates during peak consumption. TOU encourages peak shaving or peak shifting, which is the practice of reserving more electricity consumption for non-peak hours. Using pricing tools such as TOU, smart meter driven demand reduction could result in three to 20 percent reduction in consumption. Additional products like iThermostats are web-enabled and allow behavior modification through remote control. For instance, customers can program or control heating/cooling systems and other devices from outside their residence. Smart grid concepts also include technologies such as energy storage, which would help smooth the variability of renewable resources and provide increased capacity utilization.²⁶

Consumer Education and Energy Efficiency

The PUC recently strengthened energy efficiency requirements in Texas. The approved rule:

- Requires utilities to acquire cost effective energy efficiency for residential and commercial customers equal to 25 percent (up from 20 percent) of the electric utility's annual growth in demand by program year 2012,
- Requires 30 percent of a utility's annual growth in demand by program year 2013 to be met through energy efficiency,
- Updates the cost effectiveness standard by adjusting the avoided cost of capacity and the avoided cost of energy, and
- Implements a cost cap to limit the impact to ratepayers. The cap for residential customers is \$1.30 per month in 2011 and 2012, and \$1.60 in 2013 and later.

²⁴ Testimony of Barry Smitherman, Chairman, Public Utility Commission of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

²⁵ Glossary of Energy Efficiency Terms - definitions taken from American Council for an Energy Efficient Economy, Public Citizen and Environmental Defense Fund.

²⁶ Ibid.

In 2009, the energy efficiency programs offered by the electric utilities in Texas cost \$105 million and resulted in 240 MW of demand reduction and 560 gigawatt-hours (GWh) of energy savings.

Energy efficiency program responsibilities are delegated to at least six state agencies as well as federal authorities. Moreover, many retail electric providers (REPs) and transmission and distribution utilities (TDUs) can provide energy efficiency programs, and therefore, provide information for their individual program. For a consumer in the competitive market, shopping for energy efficiency information can be daunting. The National Academy of Science, in their 2010 study, *Real Prospects for Energy Efficiency in the United States*, stated,

Formidable barriers impede the deployment of energy-efficient technologies, even if their adoption is projected to save money over time. These barriers include potentially high upfront costs; alternative uses for investment capital that are deemed more attractive; volatility of energy prices, leading to uncertainty in the payback time; and the *lack of information available to consumers about the relative performance and costs of technology alternatives.*²⁷

Lack of consumer education is perhaps the most powerful of these market barriers to energy efficiency adoption. When consumers do not know the facts about saving money through efficiency, or the benefits of new technologies that can help reduce their consumption, negative public perceptions ensue, discouraging adoption of such methods or technologies. Moreover, the lack of knowledge and understanding may hamper consumers' adoption of behaviors that are actually beneficial to them. Customers can become frustrated when looking for a comprehensive source for information on energy efficiency, prices and other information about areas in competition. Useful tools like the website TexasIsHot.org serve as an online resource and include online home energy assessment calculators, daily blog posts updating consumers on energy efficiency news and new tips, and short interviews with members of the energy efficiency community.²⁸ But the state has given six separate agencies energy efficiency regulatory duties. This fracturing causes gaps in authority and, simply put, inefficiency. In fact, the Public Utility Commission, State Energy Conservation Office, Department of Housing and Community Affairs, Water Development Board, Department of Rural Affairs, and Railroad Commission all have some interest in energy efficiency. The overlapping structure can cause confusion for consumers trying to gain information about their energy opportunities. Such widespread responsibilities can also affect prices and reliability. More specifically, due to unavailable data, ERCOT is not able to factor energy savings of locally generated power into long term load forecasts. Consequently, it is difficult to compile data in a comprehensive manner.²⁹

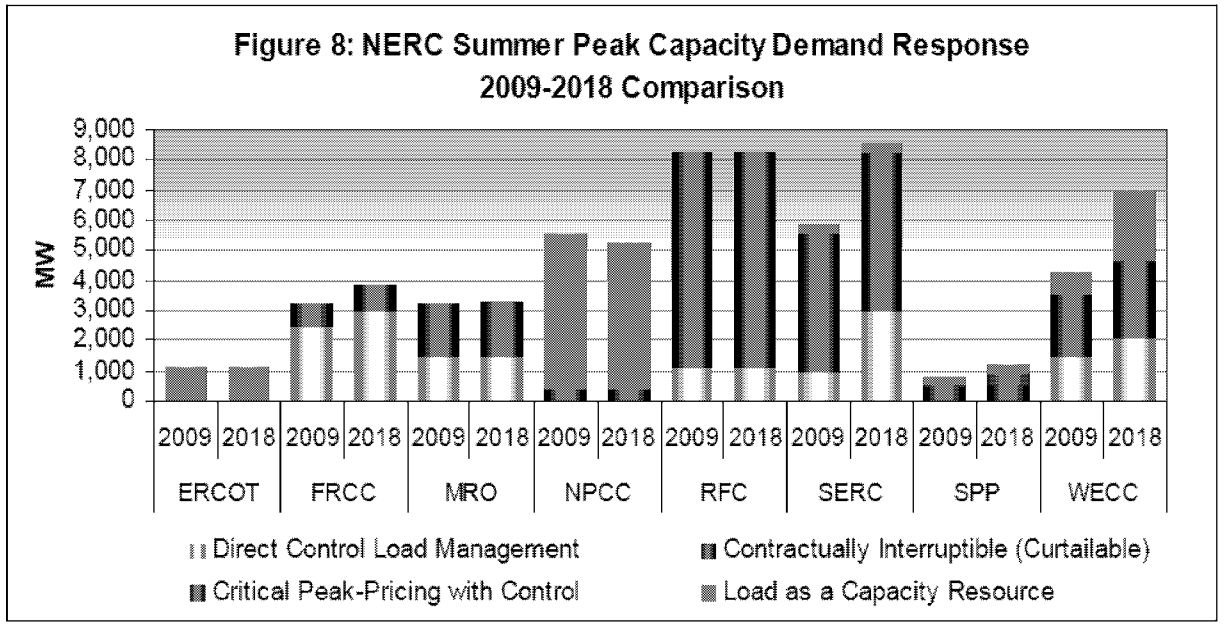
Education is a key factor that contributes to lasting energy efficiency and changes in consumption behavior. If consumers are educated on what the information provided by smart meters means or the purpose of weatherization, this can translate to long-term savings and true efficiency and conservation. In addition to education, behavior tools like demand side management can empower consumers with even greater choices of energy information and

²⁷ Testimony of Curtis Seidlits, Texas is Hot, Before the Senate Committee on Business & Commerce, August 24, 2010.

²⁸ Ibid.

²⁹ Letter submitted to the Honorable John Carona from Public Citizen and Environmental Defense Fund, August 5, 2010.

usage. Options like dynamic pricing, demand response as well as markets bids can translate into greater efficiency and lower market costs. Customers who participate in demand side management can get paid as well as help reduce the costs of system services translating to efficiency. The net benefit is estimated at five to 10 percent of a customer's bill. Furthermore, if economically efficient demand side management is utilized, it should translate to downward pressure on energy market prices in the competitive market. Texas has unrealized potential to deploy grid and market integration for economic demand side management for commercial or residential customers. In comparison to the rest of the country, ERCOT is far behind in demand side management utilization- see chart below.³⁰



Alternative Energy Costs and Benefits

ERCOT currently has 9300 MW of installed capacity of wind energy. If the Competitive Renewable Energy Zone (CREZ) plan is fully realized, this capacity will rise to 18,500 MW. The state has capitalized on wind generation planning, but if given the same level of credit and infrastructure support, other renewables can be viable as well. In fact, the PUC is proceeding with a rulemaking to establish a target of at least 500 MW of non-wind renewable generation. According to "Lazard's Levelized Cost of Energy Analysis, July 2010," levelized costs for non-wind renewable generation range between \$100-\$200 for solar, \$80-\$136 for biomass, and \$75-\$138 for geothermal, as compared to \$67-\$96 for natural gas combined cycle, \$69-\$152 for coal, and \$77-\$124 for nuclear. The costs for renewable generation include tax credits and accelerated depreciation.³¹

Notably, policies that mandate new technology can add costs to the market, which are ultimately passed on to ratepayers; but benefits beyond costs, such as cleaner air and efficiency should be considered in generation planning for the state as well. Of the types of renewable energy, wind

³⁰ The chart is Figure 8: NERC Summer Peak Capacity Demand Response, 2009-2018 Comparison, from NERC Long-Term Reliability Assessment, 2009, Page 19, included in Testimony of Kate Robertson, Energy Efficiency Specialist, Environmental Defense Fund, Before the Senate Committee on Business & Commerce, August 24, 2010.

³¹ Testimony of Barry Smitherman, Chairman, Public Utility Commission of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

has the most installed capacity in Texas. Benefits include no air emissions or fuel costs. But wind supply, which is intermittent, can cause concern for both reliability and grid integration and have limited ability to replace other generation to meet peak demand. In addition, there is a need for transmission infrastructure to run from rural areas suitable for wind generation to metropolitan areas of consumption. Solar power is also intermittent and can affect grid reliability. It can be small in scale (residential generation) or require significant amounts of land (utility scale generation). There are no fuel costs or air emissions, but capacity costs can be 15 to 20 times the capacity cost of natural gas-fired generation. Solar power may also require transmission infrastructure from rural West Texas to metropolitan areas of demand. Biomass power plants can be reliable; however, these plants can have high carbon dioxide emissions and generation can be difficult to permit and site. In addition, sites require high capital and operating costs in comparison to fossil-fired plants or compete with other uses of fuelstocks. Since biomass is often located far from population centers, transmission costs can be extensive.³² Geothermal energy is a reliable, baseload power and, much like wind and solar, it does not have fuel costs. Carbon dioxide emissions are minimal, but typically, large-scale plants have no emissions. Certain kinds of geothermal plants can utilize existing oil and gas drilling infrastructure, and due to the location of some geothermal resources on the Texas gulf coast, transmission concerns are minimal. Additionally, geothermal is cost competitive with new fossil fuel power and can help eliminate fuel price volatility.³³

Electric vehicles (EVs) have performance benefits: they are quieter, easier to control and require less maintenance than traditionally powered vehicles. However, they also have performance drawbacks such as limited range (typical range today is 40 miles, but reportedly increasing to 200 miles in the next two years) and limited payloads. EVs are efficient and can shift energy consumption from liquid fuels (petroleum, ethanol) to electricity (natural gas, coal, nuclear, wind, solar, geothermal, etc.) Furthermore, energy per mile traveled can be lower for EVs compared to gasoline powered light-duty vehicles because of efficient electric motors. However, EVs increase electricity consumption.

EVs offer the potential for important air quality benefits.³⁴ In fact, powering a car on electricity would result in 93 percent fewer smog-forming volatile organic compounds and 31 percent fewer nitrogen oxide emissions than powering a car on gasoline.³⁵ However, EV cars are not zero-emission cars unless the electricity sources are also zero-emission (such as geothermal, solar, wind, etc.) Otherwise, EVs shift pollution from urban tailpipes during the day to rural smokestacks at night. A 2009 University of Texas at Austin published peer-reviewed research report concluded that the air quality benefits in Texas might be even larger than those seen in the Northeast because the night-time charging would likely be with wind or natural gas-fired electricity. Operation costs such as maintenance and travel, per mile, are cheaper; but EVs are more expensive to purchase. EVs can be good for the grid. Some grid managers consider the many batteries inside EVs to be a potential distributed peak dispatching system, whereby

³² Testimony of John Fainter, President and CEO, Association of Electric Companies of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

³³ Testimony of Steve Munson, President, GeoPower Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

³⁴ Testimony of Dr. Michael Webber, Assistant Professor, Department of Mechanical Engineering, Associate Director, Center for International Energy & Environmental Policy, The University of Texas at Austin, Before the Senate Committee on Business & Commerce, August 24, 2010.

³⁵ Testimony of Barry Smitherman, Chairman, Public Utility Commission of Texas, Before the Senate Committee on Business & Commerce, August 24, 2010.

thousands of car batteries could be used to send power to the grid to firm up its stability. Conversely, EVs can be bad for the grid. If EV owners charge their cars right when they get home from work, peak loads will be exacerbated, which can negatively affect grid stability. But using smart pricing and smart switches can avoid or help curtail this problem through incentives for modifying how and when a vehicle is charged. While most of the charging infrastructure is already built, many home circuits might not be appropriate for home-charging; and many neighborhood transformers might not be ready for widespread charging.³⁶

RECOMMENDATIONS

1. The Committee encourages more aggressive demand side management programs within Texas to reduce demand. For example, expand Load Acting as Resource program participation beyond large customers and develop a system to allow customers to bid unused or distributed renewable generation into the market.
2. The Committee encourages adoption of dynamic pricing tools such as time of use pricing since implementation can facilitate peak shifting; consequently, reducing demand during peak hours - when electricity is most expensive.
3. The Committee recommends increasing energy efficiency goals based on demand growth or adjusting goal measurements to peak demand. These adjustments should consider a new cost cap for cost recovery as well.
4. The Committee recommends the creation of an Energy Efficiency Council with the purpose of coordinating efficiency programs, collecting data and helping to implement statewide goals for energy efficiency. This council should include, but is not limited to: PUC, TCEQ, SECO, TWDB, TDHCA, ERCOT, and RRC.

³⁶ Testimony of Dr. Michael Webber, Assistant Professor, Department of Mechanical Engineering, Associate Director, Center for International Energy & Environmental Policy, The University of Texas at Austin, Before the Senate Committee on Business & Commerce, August 24, 2010.

3. Study and make recommendations relating to the development and implementation of wind energy. Assess the total impact of wind energy, including additional costs to consumers, if any, buy-back provisions and pricing, the need for alternative energy sources at times when wind does not generate electricity, impact on the ERCOT grid, development of battery storage and other storage methods, and economic development impacts.

BACKGROUND

The U.S. wind industry has installed 1,240 megawatts (MW) of new generating capacity in 2010. The total installed wind capacity in the U.S. is now over 36,300 MW.³⁷ The integration of wind energy is universally seen as part of the solution to meeting increased growth in energy demand and reducing greenhouse gas emissions. Wind energy lowers overall energy costs. Texas has been the site of much of the new development and now surpasses all other states in terms of total wind capacity with roughly 9700 MW.³⁸ Although wind generation brings the advantage of no air emissions or fuel costs, intermittency and off peak production cause concern for grid reliability.

TESTIMONY

Study and make recommendations relating to the development and implementation of wind energy.

Stimulated by the adoption of a state renewable portfolio standard (RPS) and ERCOT transmission policies, Texas has more wind power than any other state, over 25 percent of the nation's wind capacity. If commitment to build additional power transmission to competitive renewable energy zones remains, wind energy production might double again in the next five to seven years.³⁹ Senate Bill 20, passed by the 79th Legislature in 2005, directed the Public Utility Commission (PUC) to designate the Competitive Renewable Energy Zones (CREZ) and laid the groundwork for the construction of large transmission lines and associated infrastructure in order to connect the remote wind resources to load centers throughout the state. It also established renewable energy requirements of 5,880 megawatts of installed capacity by January 1, 2015 and 10,000 megawatts by January 1, 2025. The PUC established the framework to address this legislative mandate and eventually selected the 18,500 MW Scenario 2 transmission plan, which represents about 2,200 miles of lines and over \$5 billion in new transmission investment. Increased transmission infrastructure connecting CREZ with the ERCOT grid will allow for greater development and utilization of the state's wind capacity as well as conservation of crucial

³⁷ American Wind Energy Association, 2nd Quarter 2010 Market Report, July 2010.

³⁸ Data Submitted by Stan Southers, Director, Governmental Policy, Oncor Electric Delivery, to the Senate Committee on Business & Commerce, August 11, 2010.

³⁹ Data Submitted by Bob King, President, Good Company Associates, to the Senate Committee on Business & Commerce, August 13, 2010.

resources such as water. According to statistics from PUC Docket 3672, Item 1114 and 1423, the build-out of CREZ is predicted to conserve approximately 17 billion gallons of water annually and lead to reductions in emissions including up to 16 percent in carbon dioxide and 13 percent in nitrogen oxide.⁴⁰

Assess the total impact of wind energy, including additional costs to consumers, if any, buy-back provisions and pricing, the need for alternative energy sources at times when wind does not generate electricity, impact on the ERCOT grid, development of battery storage and other storage methods, and economic development impacts.

Pricing

The PUC found that the influx of over 9,000 MW of wind generation has reduced both the wholesale and retail prices of electricity. For each additional 1,000 MW of wind that was produced, the analysis showed that the clearing price in the balancing energy market fell by \$2.38. Overall, prices are lower ERCOT-wide when there are large amounts of wind energy being produced.⁴¹ Conversely, the remote location of wind energy resources also means higher transmission costs to interconnect wind energy resources — higher than historically have been the case for conventional generation resources.⁴² Significantly, transmission infrastructure used for the CREZ project can also serve solar generation transmission as well, since both sources typically generate in the same part of the state.

Intermittency and Reliability

Due to the intermittent nature of wind and the fact that peak wind generation usually coincides with minimum electrical energy usage, wind generation resources alone do not provide the reliable capacity necessary during periods of peak electrical usage. For example, if the ERCOT region requires 75,000 MW of generation capacity in a given year, 25,000 MW of wind generation resources would not reduce the capacity from fossil fuel generation resources to 50,000 MW, because the wind resources cannot be relied upon during periods of peak demand. The ERCOT region could reduce capacity needed from fossil fuel generation by assuming a certain amount of the wind generation would be available during periods of peak demand. More specifically, if ERCOT assumed 10 percent of the wind generation capacity is available during peak demand periods, then the assumed capacity from wind energy resources during peak demand periods in the previous example would be 2,500 MW. Therefore, the capacity required from fossil fuel generation resources would be reduced from 75,000 MW to 72,500 MW. Notably, relying too heavily on an intermittent resource to provide this benefit carries an increased risk of possible generation shortages, over-commitment to fossil fuel generation, and higher rates. More specifically, to compensate for the increased uncertainty resulting from reliance upon intermittent resources, additional capacity from fossil fuel generators can be brought on-line. However, over-commitment of fossil fuel generators cause the fossil fuel generators to operate less efficiently in terms of fossil fuel production required for electrical energy. This scenario could have at least two consequences: increased fuel costs paid by consumers due to over-commitment of fossil fuel generators, and a reduction of the benefit from reduced fossil fuel use that the wind resource otherwise provides. Moreover, because fossil fuel

⁴⁰ Data Submitted by Stan Southers, Director, Governmental Policy, Oncor Electric Delivery, to the Senate Committee on Business & Commerce, August 11, 2010.

⁴¹ Data Submitted by Bob King, President, Good Company Associates, to the Senate Committee on Business & Commerce, August 13, 2010.

⁴² Data Submitted by Jeff Bonham, CenterPoint Energy Inc., to the Senate Committee on Business & Commerce, August 11, 2010.

resources must change dispatch to compensate for changes in wind energy, the fossil fuel units experience more wear and tear resulting in increased outages or reduced availability and higher maintenance costs.⁴³ ERCOT is working to improve wind forecasts, and thus reduce the magnitude of dispatch deviations and the need for additional reserves. It is important to note, wind is not the only factor causing the need for acquisition of additional grid services. Many of the tools that will be needed to deal with wind will be necessary to respond to other challenges to grid stability, such as utility-scale and distributed solar or other generation, electric vehicles, and other disruptive technologies.⁴⁴

In terms of grid integration, the inability of some or all wind resources to provide reactive power could probably be offset by several options including stand-alone reactive power resources provided by the wind resources (either on-site or as a contribution-in-aid-of construction), fossil fuel generation resources subsidies, or through transmission rates paid by consumers. However, while developing the CREZ reactive plan, ERCOT has discovered that the stand-alone provision of certain reactive power devices to off-set the remote location of wind energy units creates another set of network problems due to the electrical characteristics of the wind energy resources, so at this time there is no final determination on the network impacts.⁴⁵

Storage

Storage technology is key in the advancement or proliferation of wind energy. It may be possible to reduce or eliminate the negative effects of the intermittent nature of wind energy by the use of energy storage facilities, but to date, there are limited uses of energy storage devices in the country.⁴⁶ There are a number of barriers to storage at the ERCOT market level. The current ERCOT rules do not consider energy storage as a component of the market. Another challenge to storage is the complication created by the Public Utility Regulatory Act (PURA) in the competitive areas. Storage is neither generation nor load, and trying to fit it into these existing categories creates problem both at the ERCOT level and in terms of defining what is a competitive service and who can own and operate a storage device. This legal ambiguity could discourage utilities from employing storage in Texas. Storage is not mentioned with respect to its use as a grid operation tool or for facilitating the delayed delivery of power; it currently remains undefined. Most textbooks refer to battery storage as a form of generation, and so utility lawyers have taken the cautious stand that utilities in Texas are in fact prohibited from owning storage facilities, under PURA, Section 39.051 - prohibiting utility ownership of generation. Creating a third class of asset of storage outside of generation or transmission, might make it possible for a transmission and distribution utility (TDU) to own storage. Furthermore, since storage provides benefits to a number of stakeholders in this market which are separate entities, it may be difficult to monetize storage benefits such as those to generators (storing wind or nuclear power at night for delivery in the following day), TDUs (relieving congestion and reducing the need for other transmission or distribution asset investments), to retail electric providers (providing flexibility on delivery of power to meet unpredictable loads, and as a hedge against price spikes). Consequently, a storage facility owner may find it difficult to obtain payment for

⁴³ Data Submitted by Jeff Bonham, CenterPoint Energy Inc., to the Senate Committee on Business & Commerce, August 11, 2010.

⁴⁴ Data Submitted by Bob King, President, Good Company Associates, to the Senate Committee on Business & Commerce, August 13, 2010.

⁴⁵ Ibid.

⁴⁶ Ibid.

some of the benefits streams storage creates, and in the absence of this capacity, storage economics are less robust.⁴⁷

Economic Development Impact

According to a report issued by the Perryman Group in May 2010, the combined impact of construction and development of new power transmission facilities as well as wind turbines required to achieve the newly expanded capacity on business activity in Texas is projected to total \$30.6 billion in output (gross product) and some 383,972 person-years of employment. This economic activity leads to notable incremental tax receipts over the development period; with estimated gains to include about \$1.6 billion for the State and \$329.1 million for various local governments.⁴⁸ Outside of manufacturing-related jobs, most wind generation employment involves installation which is temporary in nature.

RECOMMENDATIONS

Wind has dominated the Renewable Portfolio Standard. The RPS provides incentives for the technology that cost the least per MWh, and not technologies that best match load profiles or can provide base load generation. Consequently, a more balanced renewable generation portfolio is not achieved. The legislature has twice adopted language directing the PUC to encourage the development of at least 500 MW of non-wind renewable resources.⁴⁹

1. The Committee encourages diverse energy portfolios to help mitigate intermittency and associated reliability issues through adoption of a non-wind RPS. The non-wind RPS should account for intermittency of solar as well, in comparison to more stable renewable energy sources.

More can be done to stimulate customer load response to market needs and price or other signals, in the form of demand response. Additional opportunities for flexible load to help respond to the variable nature of the wind and other resources would provide ERCOT operators with additional tools to deal with variable generation. Retail demand response could provide additional supplies of ancillary services for ERCOT, while load management could smooth out loads so as to prevent cycling of base load coal.⁵⁰

2. The Committee recommends more aggressive demand side management programs within Texas to help offset the reliability issues associated with intermittent energy sources like wind. For example, expand Load Acting as Resource participation beyond large customers and develop a system to allow customers to bid unused or distributed renewable generation into the market.⁵¹

⁴⁷ Data Submitted by Bob King, President, Good Company Associates, to the Senate Committee on Business & Commerce, August 13, 2010.

⁴⁸ Data Submitted by Stan Southers, Director, Governmental Policy, Oncor Electric Delivery, to the Senate Committee on Business & Commerce, August 11, 2010.

⁴⁹ Data Submitted by Bob King, President, Good Company Associates, to the Senate Committee on Business & Commerce, August 13, 2010.

⁵⁰ Ibid.

3. The Committee recommends creating a third class of assets for storage, outside of generation or transmission classification for the purpose of ownership and operation.

Since most wind generation jobs involve installation and not maintenance and operation, the period of employment can be temporary.

4. The Committee encourages development of wind-related manufacturing entities as well as other related maintenance operations and associated firms to promote more permanent employment for the state.

4. Study the generation costs of municipally owned electric utilities' planned generation portfolios. Consider the impact of planned generation costs on electric rates for residential and commercial customers. Solicit input on the impact of future electric rates on charitable and non-profit organizations, and the impact on such organizations' cash assistance programs to indigent customers. Consider the merits of a justifiable planned generation cost standard, and whether a deviation above the standard should be subject to approval by a vote of all customers of a municipally owned utility's service area.

BACKGROUND

Within the ERCOT region, there are 72 municipally owned utilities (MOUs) serving roughly 15 percent of the state's electrical needs. MOUs and electric cooperatives had the choice to opt in to the deregulated retail electric market in 1999. MOUs currently use a separate model of local control for governance of the utilities. This means the locally elected officials, city councils or citizen boards are accountable to the ratepayers. In turn, MOUs experience limited regulation by the Public Utility Commission of Texas (PUC). PUC oversight is limited to MOUs' wholesale transmission rates and compliance with wholesale market rules.

MOUs own and operate utility infrastructure including power plants and/or electrical lines in addition to retail operations. Furthermore, the MOU is financed by utility revenues, not taxes. Municipally owned utilities are not-for-profits, but do generate profit margins through utility revenues. These revenue proceeds stay with the municipality, and a portion, roughly 8.4 percent, goes to general municipal services like public safety, roads, parks libraries and community services.⁵²

Larger MOUs like Austin Energy and San Antonio's CPS Energy have the ability to invest in more utility scale generation, including renewable generation. For instance, CPS and Austin Energy both have ownership in the South Texas Project, a two-unit, soon to be four-unit, nuclear facility with 2,725 megawatts (MW) of generating capacity in Matagorda County. Investments in generation, particularly renewable generation can affect utility rates. Some argue MOUs make these generation decisions without competitive market forces or consumer protection avenues like PUC regulation or approval.

⁵² Testimony of Mark Zion, Executive Director, Texas Public Power Association, before the Senate Committee on Business & Commerce, May 19, 2010

TESTIMONY

Planned Generation Costs:

Municipally owned utility rates and policies are set by local authorities: rate options are presented to the city council and the mayor, who take a vote in a public hearing setting. MOU generation planning is conducted by staff and consultants and includes projected customer demand, risk assessment, financing options, resource ownership, etc. Timing of generation planning varies depending on size of MOUs. For instance, a large MOU typically plans generation on a regular basis, while mid-sized MOUs plan as needed. Small MOUs typically have long-term arrangements to buy power at wholesale, and consider generation options infrequently. Customer affordability, service reliability and environmental impact all contribute to MOU resource planning and acquisition. While MOUs do participate in the wholesale generation market, larger MOUs such as CPS and Austin Energy generally have more diversified portfolios or a larger proportion of renewable energy, due to their higher renewable energy generation/lower consumption ratio than the deregulated market. MOUs are not directly subject to PUC oversight for generation planning. Public participation exists in the form of city hall meetings, local citizen advisory board reviews and community based organization outreach. The following are two examples of public participation:

Austin Energy

For the years 2009-10, Austin Energy held multiple public meetings throughout the service territory over 11 months for its energy generation plan. Its website included customer surveys, consultant-generation cost scenarios and presentations on existing resources. Austin Energy also held multiple targeted meeting with the business community, commercial customers, homebuilders, environmental stakeholders and monthly meetings with low income consumer advocates. In addition, the city council appointed a special task force to address generation planning concerns.

CPS Energy

In 2009, CPS Energy conducted a community wide effort to educate and obtain feedback from customers about energy efficiency, renewable energy and nuclear expansion options. CPS held public meetings and forums in San Antonio, with bilingual direct mail invitations sent to 650,000 customers. The education effort also included web-based information with provisions for public questions and comments, as well as newspaper inserts with over 200,000 circulations. CPS engaged in meetings with community organizations and business groups. Furthermore, the CPS energy plan and nuclear option was reviewed by the CPS Energy Board of Trustees and the San Antonio City Council.⁵³

Over the past five years, over 2,500 MW of natural gas, wind, coal and nuclear generation have been added to the ERCOT grid from public power generation. Public entities have also been the most aggressive in adoption of renewable energy. Currently, 38 MOUs account for roughly 1,500 MW of wind, solar, landfill and hydro energy - with another 500 MW under development. MOUs have pursued advancements for solar energy, in particular. For example, CPS Energy had a solar rebate program of \$3/W for residences and the "Solartricity" program which provided for commercial incentives. This led to Pearl Brewery producing 200 kW from the largest rooftop solar generation installation in Texas. Austin Energy has an aggressive solar rebate program as well with a residential rate of \$2.5/W. Over 1050 residential, 70 commercial and 58

⁵³ Testimony of Mark Zion, Executive Director, Texas Public Power Association, before the Senate Committee on Business & Commerce, May 19, 2010.

public facility customers take part in the 4 MW distributed solar generation program. In addition, all of the mid-sized and large MOUs utilize net metering and interconnection opportunities. In fact, CPS Energy and Denton Municipal Electric are cited as models in the "Texas REConnect" study.⁵⁴

Impact on charitable and non-profit organizations and the impact on cash assistance programs

Charitable organizations and public facilities have access to discounted rate structures in some MOUs. More specifically, Garland Power and Light offers a special public institution rate which includes no demand charge for schools, churches and non-profits. Regarding bill assistance, municipally owned utilities have policies and practices much like retail electric providers. MOUs partner with or assist charitable and non-profit organizations through rate structures, fee waivers, reduced fuel charges, payment plans and more lenient disconnection policies. Specifically, Austin Energy gives a discount of approximately 45 percent to low income customers through fee waivers and reduced fuel charges. In 2009, these discounts totaled to a discount of three million dollars for 9,000 households. They also include a reduced charge for the first 500 kWh. Denton Municipal Electric was among the first to waive deposits for domestic violence victims. Now similar PUC rules apply to other electric entities as well as telecommunication companies. Much like retail electric providers, MOUs provide deferred payment options; more specifically, Austin Energy offers four deferred monthly payments with a discounted deposit during times of extreme weather.⁵⁵

In September 2009, some businesses and charitable entities voiced concerns regarding assumed rate increases due to renewable generation planning by the City of Austin. The concerns focused on cost rather than the decision to pursue a larger mix of alternative energy. More specifically, the Catholic Diocese of Austin worried associated costs would be too much for the poor and elderly community. The diocese not only worried about the rate increases for those on fixed incomes, but impacts for parishioners who donate to funds that assists the poor as well.⁵⁶

In terms of cash assistance programs by charitable organizations, some utilities use city funds and donations to partner with charitable organizations to provide direct bill assistance to low, moderate or fixed income households. For example, Bryan Texas Utilities and College Station make an annual financial contribution to Brazos Valley Community Action Agency. Some MOUs use trust funds to provide specific assistance such as winter bill payment for low income and elderly customers.⁵⁷

Austin Energy automatically enrolls customers receiving benefits through the state Medicaid program or Travis County Energy Assistance Program in the City of Austin utility discount program. This discount program provides roughly \$45 a month in utility bill discounts and has resulted in an enrollment increase of 82 percent from 2008 to 2009. Total discount savings are around \$3.1 million in 2009 which translates to \$400 per participant.⁵⁸

⁵⁴ Ibid.

⁵⁵ Testimony of Mark Zion, Executive Director, Texas Public Power Association, before the Senate Committee on Business & Commerce, May 19, 2010.

⁵⁶ Jim Bergamo, *Austin Diocese Questions Cost of Utility's Green Energy Plan*, Sept. 23, 2009, KVUE.

⁵⁷ Ibid.

⁵⁸ Austin Energy website,

<http://www.austinenergy.com/aboutpercent20us/newsroom/presspercent20releases/2010/assistLowIncome.htm>.

RECOMMENDATIONS

Reportedly, MOUs used one-third less natural gas than ERCOT as a whole on an energy basis in 2009. In a 2006 study done by the Public Utility Commission, a diverse generation portfolio is the biggest factor affecting lower MOU rates. While diverse energy portfolios bring less dependency on price volatile fuels such as natural gas, it can result in higher rates due to associated higher capital costs of renewable energy. But diversity of MOU energy portfolios also encourages stable rates and continues to remain at the low end of the scale.⁵⁹

Generation planning and associated costs of municipally owned utilities affect rates. Although these costs are not subject to PUC review, the public participation process of local government does allow for public feedback. When concerns were voiced by consumers, including business, charitable organizations and the public at-large concerning investment and expansion in diverse generation portfolio for specifically Austin Energy and CPS Energy, each MOU took these concerns into account and modified their plans accordingly. Consequently, Austin Energy declined participation in the expansion of the South Texas Project (STP). In fact, a detailed risk assessment and financial analysis requested by Austin Energy found that the potential return to the city would not be sufficient given the potential risk. More specifically, Austin, as a minority shareholder in the STP, would have no control over construction costs, schedule delays, and future fuel and energy prices. The analysis indicated that investment in the proposed project could require cash outlays \$2 billion or more over at least the next seven years. This would have required the issuance of significant debt relative to Austin Energy's size that could result in a downgrading of its credit rating, leading to higher future borrowing costs.⁶⁰ Regarding renewable generation planning, Austin Energy approved a modified plan in April 2010 that will not authorize major energy purchases until cost containment measures are developed, as suggested by affected businesses and advocates of the poor.⁶¹

1. The Committee recommends MOU generation planning remain outside PUC review.
2. Since rate increases are not exclusive to generation planning, the Committee recommends that affordability or cost containment studies be conducted in any rate increase situation.
3. Regarding generation planning, the Committee recommends affordability studies be used to determine what acquisition of certain resources would mean for different types of customers' rates.

⁵⁹ Ibid.

⁶⁰ Austin Energy website,

<http://www.austinenergy.com/aboutpercent20us/newsroom/Presspercent20Releases/2009/declinesParticipationSTP.htm>.

⁶¹ Marty Toohey, *Austin renewable energy plan sails easily through council*, "April 23, 2010, Austin American Statesman.

- 5. Study and make recommendations relating to the Texas Unemployment Compensation Insurance system, including, but not limited to, the following: The capacity and efficiency of the claims filing and benefits delivery system as well as the ability of the agency to meet the needs of the clients it serves given the transition to call centers and web based filing; The current financing scheme for the Unemployment Compensation Trust Fund, and any options to improve the long term financial health and stability of the Fund; The use of debit cards for delivery of UI benefits, including ways to limit user fees to access payments; and Improving public access to local and statewide data on current and historical UI claims.**

BACKGROUND

The Texas Unemployment Insurance System provides temporary assistance to workers who have lost a job through no fault of their own. Under the state's system, employers pay a tax (the State Unemployment Tax or SUTA), which is managed by the Texas Workforce Commission (TWC), allowing claimants to receive between 10 and 26 weeks of unemployment insurance (UI) benefits based on prior wages earned. The TWC is overseen by three commissioners, known collectively as the Commission. One commissioner must represent the interests of employers, one the interests of labor, and the third must be a public representative.⁶²

Federal Unemployment Insurance Program

The federal government collects a UI tax as well, though through a structure slightly different from the SUTA. The Federal Unemployment Tax (FUTA) is a tax that all employers pay to the federal government. It is collected by the Internal Revenue Service and deposited into the Federal UI Trust Fund. The current FUTA Tax rate is 6.4 percent. Employers in Texas are currently provided a 5.4 percent FUTA Tax reduction giving them an effective FUTA tax rate of 0.8 percent that is charged on the first \$7,000 of wages an employee earns. This equates to roughly \$56 per employee. Money in the Federal UI Trust Fund is allocated by the Department of Labor, who follows a statutory allocation scheme to disperse those funds to the states. Generally, Texas receives federal UI funds through the following designations:

⁶² Testimony of Larry Temple, Executive Director, Texas Workforce Commission, July 14, 2010.

- (i) Administration of Texas' UI System – The return on FUTA dollars for Texas varies each year. In recent years Texas has received roughly a \$.30 return on FUTA Tax dollars paid by Texas employers.
- (ii) Employment Services Fund Money - These funds must be used to assist people in returning to work through programs like job search assistance and resume writing courses.
- (iii) Reed Act Distributions - These rebates are sent to states when the federal trust fund balance exceeds a designated level. Application of this rule rarely occurs because the federal government historically has raised the cap on the fund before the cap is reached.
- (iv) Trade Adjustment Assistance -The TAA program helps workers who have lost their jobs as a result of foreign trade. The program offers a variety of benefits and services to eligible workers, including job training, income support, job search and relocation allowances, a tax credit to help pay the costs of health insurance, and a wage supplement to certain reemployed trade-affected workers 50 years of age and older.
- (v) Emergency Unemployment Compensation Act - In 2008 Congress extended Unemployment Insurance benefits with the passage of the Emergency Unemployment Compensation Act of 2008. This Act established an extension of up to 20 weeks of additional federally funded UI benefits to UI claimants that had exhausted all state funded benefits. This Act has been amended several times since its initial passage to add additional weeks of federally funded UI benefits as well as to extend the expiration of these provisions. There are now up to 73 weeks of federally funded UI benefits in addition to the maximum of 26 weeks of state funded benefits. Texas is currently only eligible for 67 weeks because Texas' unemployment rate has not reached the threshold to trigger the remaining 6 weeks of extended benefits. The federally funded extended UI benefits expire in November 2010.
- (vi) American Recovery and Reinvestment Act (ARRA) Dollars - In 2009, Texas received \$39.7 million from the federal trust fund. These funds were designated for Texas to fund Unemployment Insurance Administration costs. The ARRA also marked the first time that the original Emergency Unemployment Compensation Act of 2008 was amended to add additional weeks of federally funded UI benefits.

Capacity and Efficiency

To apply for Texas UI benefits, an individual today has the option to use either the telephone or the internet. Internet filing has been available since 2002 and currently, 48-49 percent of claimants file online. TWC is currently working to expand its internet application system to offer internet services for federal, military, combined wage, disaster, and extended UI claims.

RECOMMENDATION

1. The Committee recommends allowing TWC to continue its current expansion of its internet application system, while maintaining telephone service as an option for claimants.

Current Financing Scheme

The current UI taxing structure has been in place since the mid-1980's and relies on an employer's experience rating cycle (based on the previous three years of UI claims against the employer) to determine employer taxes. These taxes are also calculated based on a taxable wage base which is the first \$9,000 per year that an employee earns.

The Texas Effective Tax Rate includes the following components:

- (1) General Tax - This tax is "experience rated" and is capped by statute at 6 percent of the taxable wage base.
- (2) Replenishment Tax - Charged to all employers to cover unemployment claims not charged to a specific employer. For example, if a company goes out of business, it can no longer pay into the fund, so the resulting UI claims costs will be socialized by the fund. The Commission has the authority to adjust this rate.
- (3) Employment Training Investment Assessment (ETIA) - Charged to all employers and is one-tenth of 1 percent of total taxable wages. The Replenishment Tax and New Employer Initial Tax Rate are reduced by the one-tenth of 1 percent so that there is no increase to the total effective tax rate on employers due to this rate.
- (4) Deficit Tax - The fund balance on October 1st determines if there is a Deficit Tax for the following year. If the Trust Fund balance is below the floor on October 1st, the Deficit Tax will be in effect for the following year. If the fund balance is above the floor and below the ceiling on October 1st, there will not be a Deficit Tax in the following year. This tax is capped at 2 percent and the Commission can adjust a ratio that affects its overall rate.
- (5) Obligation Assessment - This tax is assessed to repay a bond issuance and when it is applicable the deficit tax would not be applicable.⁶³

The UI trust fund is structured with a floor and ceiling. The floor is 1 percent of all taxable wages in the state (about \$800 million) and the ceiling is 2 percent of all taxable wages (about \$1.6 billion). The Trust Fund is self-correcting in that when the Trust Fund falls below the statutory floor, the tax structure is designed to bring the fund back above it. This structure allows employers to keep more of their money in the economy working toward job creation and capital investment during good economic times.

⁶³ Ibid.

In times where the Unemployment Insurance Trust Fund balance is zero, the state also has the option to utilize federal advances under Title XII of the Social Security Act in order to pay Unemployment Insurance Benefits. Title XII advances are not lump sum deposits into a state's Unemployment Insurance Trust Fund but rather daily advances to pay UI benefits owed to claimants. These advances traditionally carry with them an interest rate set by the federal government. However, under ARRA these advances are interest free until December 31, 2010. At present any outstanding Title XII advance balances owed by states will accrue interest after that date.

When the trust fund balance falls below zero, the Commission has a second option to replenish the UI Trust Fund. TWC may request that the Texas Public Finance Authority (TPFA) sell bonds on its behalf. Before making this request, the Commission must adopt a resolution containing a finding of fact that the issuance of bonds will result in a savings to the state and Texas employers in comparison to utilizing Title XII Advances. Arbitrage rules must also be considered to determine whether the bonds may be tax exempt.⁶⁴

The increase in UI claims in Texas resulting from the recent recession has brought the UI trust fund balance to zero. As of June 16th, 2010, the trust fund was \$1.6 billion below the floor (\$813 million) and as of July 9th, TWC has an outstanding Title XII loan balance of \$1.37 billion. Federal advances are interest-free through December 31st of 2010. Looking ahead, the Commission will consider several options to address the fund's solvency such as bonds. There may be some movement at the federal level to extend the interest free borrowing, and if so, that option will be part of future Commission deliberations. The last time the agency issued bonds was in 2003, totaling \$1.377 billion.⁶⁵ As the economy recovered following this bond issuance TWC was able to retire the bond debt early.

The tax structure as outlined has maintained the UI Trust Fund over time. Utilizing the current tax structure through good and bad economic periods, TWC has never missed an Unemployment Insurance Benefit payment to any eligible UI claimant, has never missed a loan payment, nor has it ever failed to retire a bond.

RECOMMENDATION

2. The Committee recommends careful consideration of future borrowing options by the Commission, with a particular focus on the stability of the federal government's loan interest rate as well as unanticipated costs resulting from the sale of bonds.

⁶⁴ Ibid.

⁶⁵ Ibid.

Debit Cards, Fees and Access Payments

TWC pays benefits either through a Chase debit card or through direct deposit. TWC has offered a debit card payment option since 2006. The debit card contract with Chase was signed on January 25, 2006, extended in August 2009, and currently expires in January 2011. Claimants have several ways to access benefits on the card free of charge. Every card comes with a user guide and information is posted on the agency's website.⁶⁶

Fees are not incurred when using the debit card at a merchant point of sale, receiving cash back from a merchant at the time of purchase, or using a Chase ATM for cash withdrawals. One free teller withdrawal is available to customers at a bank that participates with Visa's credit program or credit union per deposit.⁶⁷

The second option claimants have to receive benefits is through direct deposit into a claimant's personal bank account. TWC conducted a pilot project of the direct deposit feature from April 7, 2010 through June 1, 2010. After successful completion, direct deposit was offered statewide to all UI claimants beginning June 2, 2010, including existing customers. At any time, claimants may switch between the debit card and direct deposit. As of July 2nd, there have been 67,141 direct deposit requests with 44,212 of those requests being a switch from the debit card to direct deposit. Since June 2nd, 26.4 percent of new initial claimants have opted to receive benefit payments via direct deposit.⁶⁸

RECOMMENDATIONS

3. The Committee recommends that TWC continue its current policy, offering both a debit card and a direct deposit option. With regard to fees and access payments, the Committee recommends that TWC give special attention to any complaints it receives from claimants and maintain a separate complaint log in the event the Legislature undertakes to review this policy at a future date.
4. The Committee recommends consideration of limiting the items that can be purchased with the debit card, for example, by excluding alcoholic beverages and tobacco products.
5. The Committee recommends consideration of creating set-denomination gift cards that can be placed with similar items in retail outlets. These gift cards could be purchased by the public and donated to unemployed individuals or charitable institutions for further distribution. These gift cards would not be eligible for use to purchase alcoholic beverages or smoking materials.

⁶⁶ Ibid.

⁶⁷ Ibid.

⁶⁸ Ibid.

6. Study and make recommendations regarding career-focused education and workforce training programs in Texas to insure that such programs meet business and worker needs. Specifically, study whether such programs: meet the current and future workforce needs of health care, skilled trades, construction, manufacturing, aerospace, information technology and green jobs; help retain workers in such trades and fields; retrain and update the skills and education of workers in such trades and fields; and foster and encourage collaboration between the State, education, labor and business to provide education and training.

BACKGROUND

Career-focused education and workforce training programs in Texas are primarily administered through the Texas Workforce Commission (TWC). TWC operates a service delivery model comprised of 28 Local Workforce Development Boards, which are organized geographically based on local conferences of government, and a network of 240 workforce centers that work cooperatively with numerous public and private partners to provide employment, training, and job placement services to all customers, including veterans. Board members are appointed by the Workforce Commission. The workforce centers range in size from smaller one or two employee centers to larger offices. The majority of TWC funding is allocated to the local boards which are overseen by TWC. The centers provide the following services:

- job search assistance;
- pre-employment and work readiness;
- education and training;
- assessment and planning;
- case management;
- information and referral to support services; and
- life skills.

The two main programs administered by TWC are the Skills Development Fund and the Workforce Investment Act (WIA).

Skills Development Fund

The Skills Development Fund is the most flexible program administered by TWC. It was created in 1995 and provides employer-driven, customized job training for Texas-based employers. It is a grant program that aids workers in acquiring new skills or upgrading existing skills. A single

business or trade union works with a public community or technical college, or with the Texas Engineering Extension Service (TEEX)⁶⁹ to develop customized training for its workforce to close existing skills gaps. Since its inception the Fund has trained a total of 228,146 workers — 79,758 were created jobs, while 148,388 were incumbent workers whose skills were upgraded.

Workforce Investment Act (WIA)

Under the Workforce Investment Act (WIA), signed into law in August 1998, TWC assists low income adults, dislocated workers, and youth ages 14 to 21 with training to upgrade existing skills or to learn a new set of skills. Local boards determine what occupations the local area has a demand or a high potential of sustained demand or growth for. Boards develop Local Workforce Development Plans to assess the local labor market and to set the local goals and objectives for the delivery of workforce services. Training may focus on meeting a need of an employer or emerging industry. Training can be short-term or take up to two years. The planning process includes identification of targeted growth industries, including those related to the Governor's six industry clusters.

Texas Industry Clusters Initiative - Governor's Six Industry Clusters

In October 2004, Governor Rick Perry announced the Texas Industry Clusters Initiative. This initiative consists of six target industry clusters. The selection of the industry clusters was based on industry linkages and cluster analysis, occupational workforce requirements and availability, support requirements, and an evaluation of future industrial prospects. The industry clusters offer the best promise for economic success. The State can then focus on promoting the competitive advantage in these clusters through programs such as WIA. The Texas Target Industry Clusters are:

- Advanced technologies and manufacturing, including four sub-clusters:
 - nanotechnology and materials;
 - micro-electromechanical systems;
 - semiconductor manufacturing; and
 - automotive manufacturing
- Aerospace and defense
- Biotechnology and life sciences
- Information and computer technology, including three sub-clusters:
 - communications equipment;
 - computing equipment and semiconductors; and
 - information technology
- Petroleum refining and chemical products;
- Energy, including three sub-clusters:
 - oil and gas production;
 - power generation and transmission; and
 - manufactured energy systems.

⁶⁹ The Texas Engineering Extension Service (TEEX) offers a wide range of technical and skills training programs aimed at employed workers and those entering the labor force. It is a member of the Texas A&M University System.

JET Program

The Comptroller of Public Accounts administers the Jobs and Education for Texans Program (JET). An advisory board was established to help the Comptroller administer the JET program. JET Grants may be awarded for the following purposes:

- to develop, support, or expand programs of nonprofit organizations that prepare low-income students for careers in high-demand occupations (\$10 million);
- to defray the startup costs associated with the development of new career and technical education programs at public junior colleges and public technical institutes (\$10 million); and
- to provide scholarships for students in career and technical education programs (\$5 million).

TESTIMONY

Texas Workforce Commission

The Texas Workforce Commission testified about the Skills Development Fund and the Workforce Investment Act before the Senate Business & Commerce Committee. The Skills Development Fund has been beneficial in the areas of aerospace and information technology.

The aerospace industry recently implemented a requirement that all vendors for the original equipment manufacturers (OEMs) must be AS-9100 certified. Many Texas vendors who are seeking to provide services for OEMs are not AS-9100 certified.⁷⁰ A \$712,066 Skills Development Fund grant was awarded to TEEEX to support the manufacturing training needed for 956 existing workers and create 174 new jobs for a consortium of 19 aerospace companies.⁷¹ One example of help in the information technology sector is the collaboration of Austin Community College and National Instruments.

National Instruments produces automated test equipment that tests printed circuits, and other related electronic components in modules. It is expanding in central Texas, but has insufficient budget to meet its expanding training needs. Through the Skills Development Fund, Austin Community College collaborated with the Capital Area Workforce Development Board on a grant totaling \$487,781 for training that will result in nationally recognized certifications. The 302 incumbent workers and 89 new hires will ultimately earn an average wage of \$41.46 per hour. The economic impact for the Capital area region will be nearly \$24 million.⁷² Austin Community College was also awarded a \$391,094 skills grant to upgrade the skills of 339 new and incumbent staff including scientists, production chemists and chemical process technicians for a biosystems company.⁷³

⁷⁰ Texas Workforce Commission 2009 Skills Annual Report.

⁷¹ Testimony of Larry Temple, Executive Director of the Texas Workforce Commission (TWC) before the Senate Committee on Business & Commerce on July 14, 2010.

⁷² Texas Workforce Commission 2009 Skills Annual Report.

⁷³ Testimony of Larry Temple, Executive Director of the Texas Workforce Commission (TWC) before the Senate Committee on Business & Commerce on July 14, 2010.

In 2009, the Skills program served 170 businesses, created 3,567 new jobs, and retrained 15,949 current workers with some grants coming in slightly above and below an average cost of \$1,420 which is the established LBB target. HB 2169, 81st Legislature, made the Skills Development Fund a part of a larger package to attract business to Texas. It allowed TWC to issue a letter outlining the Skills Development Fund program to prospective employers considering relocating all or part of the company's operations to Texas. These grants would potentially fund 23 projects to upgrade skills of 1,129 workers and create 9,268 new jobs. As of June 2010, eight of these projects have announced they will locate in Texas. Combined, these eight projects will upgrade the skills of 814 workers and create 4,388 new jobs.⁷⁴

The Workforce Investment Act has aided in the green job sector. Three years ago there was a growing demand for wind energy technicians. WIA funds helped meet this demand. TWC worked with industry, Texas Tech University, and Texas State Technical College-West Texas to design the Texas Wind Industry Institute, the first program of its kind. The program now offers technician certification and an Associate's degree in wind energy. Texas Tech offers a BS and a Ph.D. in Wind Science. The program also offers a graduate certificate in wind science for degreed mid-career professionals to acquire specialized knowledge needed to move into management of wind energy companies.⁷⁵

WIA funds are also used for youth programs, such as summer youth camps that focus on science, technology, engineering and math (STEM). In 2009, TWC awarded 18 grants totaling nearly \$1 million to Texas universities and community colleges that developed programs focused on STEM-related careers, such as computer programming, renewable energy, biotechnology, robotics, engineering, and aerospace. More than 1,800 students between the ages of 14 and 21 attended the summer camps. Grants totaling nearly \$2 million were also awarded for the Texas Youth in Technology Strategic Workforce Development initiative. This initiative and resulting projects establish programs to increase postsecondary enrollments, retention, and graduates in engineering and computer science.⁷⁶

WIA Adult and Dislocated Worker funding allowed TWC to serve approximately 75,000 customers over a biennium, and WIA youth dollars serve about 12,000 to 13,000 youths annually. TWC received \$170 million in federal stimulus dollars for WIA adult, dislocated worker, and youth programs. The agency received \$34 million for WIA adult and \$53 million for dislocated worker. TWC served about 50,000 WIA adult/dislocated worker customers from June 2009 to May 2010. The agency received \$82 million in WIA youth funds for the primary purpose of funding a summer employment program. Last year TWC helped nearly 22,000 youth by providing subsidized employment. The Legislature also appropriated to TWC \$10 million for the Skills Development Fund.⁷⁷

TWC has always worked with community colleges to ensure that the colleges are aware of local economic trends, and can respond to the needs of businesses. TWC built upon this history and issued an RFP for Regional Cooperation Capacity Building for Targeted Industry Programs in order to ascertain employer needs in targeted occupations to determine the occupations and skill needs of employers; to identify training and curricula needs; and to determine if such curricula

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ Ibid.

⁷⁷ Ibid.

are available or must be developed. TWC awarded five grants, totaling \$1.5 million to support this initiative.⁷⁸

TWC received \$15 million from General Revenue last session to get Texans back to work through the Texas Back to Work program. This program provides employers with a \$2,000 subsidy for employing the individuals who are first time UI claimants and earned less than \$15/hour in their previous job. Employers must retain the employee for a minimum of 120 days in order to keep the full subsidy. There are 1,030 employers who are employing over 7,500 individuals participating in this program to date.⁷⁹

Texas Association of College Technical Educators

The Texas Association of College Technical Educators also testified before the Senate Committee on Business & Commerce on July 14, 2010. The Texas Association of College Technical Educators consists of 50 college districts with departments geared towards technical education. The mission of community colleges is to address the needs of the community they serve, support the community infrastructure for economic development, and to provide accessibility to a quality education. The approach used by the 50 districts varies based on regional needs, rural vs. metropolitan areas, and small vs. large colleges. During the last two year cycle, enrollment in Texas community colleges has doubled due to the downturn in the economy.⁸⁰

The economic downturn has also caused community colleges to change and develop their curriculum in order to meet the new needs. Some curriculum adjustments can include shifting the focus from two-year associate degrees, to career pathways for entry level to advanced skilled workers, as well as programs that would provide transitional skills to help employees retain jobs or get back to work. In most cases the curricula for the workforce is designed to be taught in a face to face environment with instructor led instruction. However, community colleges have to design curriculum that can be taught either fully online with lab simulations or as a hybrid online/lab course to meet the needs of employers, current workers, and dislocated job seekers. Colleges are aware that they must design programs that exceed expectations of 21st century technology, therefore, there are several traditional healthcare programs that are now accessible online (nursing, pediatric cardiology, veterinary technician, and nursing refresher courses) through Texas community colleges.⁸¹

Community colleges also work with TWC in their efforts. The Skills Development Fund administered through TWC funded collaboration between community colleges in the Houston and Dallas areas with area manufacturers and local chambers to design curriculum for current employees and dislocated workers to meet their needs. Several colleges are involved in consortium collaborations to support energy and green initiatives. The Nuclear Power Institute is designed to support statewide recruiting efforts for nuclear power-related programs. This is a partnership among nuclear power plants, Texas A&M University, Texas A&M University-Kingsville, Texas A&M University- Corpus Christi and Prairie View A&M University, as well

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Testimony of Joyce Williams, College Administrator, Texas Association of College Technical Educators before the Senate Committee on Business & Commerce on July 14, 2010.

⁸¹ Ibid.

as several community colleges, the Texas State Technical College, TWC, and civic leaders and high schools. The Nuclear Power Institute is tasked with managing a statewide effort to provide more than 2,000 engineers and technicians needed to staff and operate at least six new nuclear power plants in Texas scheduled to go into operation over the next ten years. Another TWC funded effort is the I-35 Green Consortium, which involves approximately 70 companies, community colleges located along I-35, workforce boards, and Texas State Technical Colleges (TSTC). The I-35 Green Consortium would support the development of a statewide curriculum to address the renewable energy and power management area needs for Texas.⁸²

The Higher Education Coordinating Board funded \$50,000 for community colleges to collaborate with utility companies to build a curriculum for entry level to advanced level workers in power generation.⁸³

Texas Chamber of Commerce Executives

The Texas Chamber of Commerce Executives provided testimony to the Senate Committee on Business & Commerce on July 14, 2010. The Texas Chamber of Commerce Executives are an organization that represents more than 300 local chambers of commerce in Texas. They testified that workforce preparedness is a major issue facing every employer in Texas.⁸⁴

In their testimony they state that although many national magazines continue to describe Texas as one of the major locations for new business development, those at the local level find that they are in constant contact with businesses seeking workforce skills that are in short supply. Some public schools have programs for workforce development, but vocational-technical education is perceived to be in significant decline in our schools. Therefore, Chamber of Commerce Executives are supportive of colleges and programs that develop the basic workforce skills in future employees. They feel that Texas is lacking in an attempt to better educate future college enrollees or future immediate workforce candidates. The Texas State Data Center projects that Texas will double in population in the next 20 years while at the same time decline in the number of college graduates, which makes it more important than ever for workforce training programs to meet specific needs.⁸⁵

Tomball, Texas has some career-focused education and workforce training programs that are a success. For example, the Lone Star College System (LSCS) is recognized as one of the finest community college districts in the country offering a wide range of academic and occupational courses for recent high school graduates and community residents of all ages. Since its opening year of 1973, Lone Star College System has grown from 613 students to more than 45,000 per semester. It is now the second largest community college district in Texas with five campuses, six satellite centers and two university centers where students may obtain a four-year degree through any of LSCS's partner colleges. LSCS fills career-focused education needs and workforce training programs to meet demands in the area, state, and region.

⁸² Ibid.

⁸³ Testimony of Joyce Williams, College Administrator, Texas Association of College Technical Educators before the Senate Committee on Business & Commerce on July 14, 2010.

⁸⁴ Testimony of Bruce Hillegeist, President, Texas Chamber of Commerce Executives before the Senate Committee on Business & Commerce on July 14, 2010.

⁸⁵ Ibid.

LSCS:

- is the primary provider of nurses and health care workers in the Tomball area. (2 out of 3 are prepared at community colleges.)
- is a leading provider of fire fighters and EMTs in the area. (8 out of 10 are trained at community colleges.)
- prepares thousands of new teachers for public schools through Teacher Certification programs at 5 colleges.
- provides opportunities for bachelors and advanced degrees through the University Center.
- is the third largest provider of computer training in the Houston area.⁸⁶

RECOMMENDATION

1. The Committee finds that career-focused education and workforce training programs in Texas are a necessary and desirable method of developing a 21st century workforce, and that demand for these programs exceeds their availability. The Committee recommends that the 82nd Legislature consider continuation and expansion of these programs, should budgetary conditions allow.

⁸⁶ Testimony of Bruce Hillegeist, President, Texas Chamber of Commerce Executives before the Senate Committee on Business & Commerce on July 14, 2010.

7. Study the effectiveness of Chapter 557 of the Insurance Code, relating to insured property subject to a security interest, in setting forth the obligations of a lender and a residential real property insured resulting from an insurer's payment of a claim for damage to the residential real property caused by a natural disaster. Consider the legislation's requirements for release of the insurance proceeds, lienholder's approval of payment of the insurance proceeds, accrual and payment of interest on such proceeds and penalties provided by the statute. Make recommendations for any needed refinements of the legislation.

BACKGROUND

Following Hurricane Ike and other natural disasters, there have been reports that some homeowners have had difficulty receiving the proceeds of their insurance policies. When an insurance company issues a check following this type of disaster, it is written in the names of both the property owner and the lien holder or mortgage company. If the mortgage company does not release the funds, the homeowner could potentially be caught in the difficult situation of being unable to afford necessary repairs on their home, while at the same time having to pay for other housing while waiting to get back into their home.

Rules controlling when and how a lender will release insurance funds under the described scenario depend on:

- (i) the lender's policy regarding the release of insurance funds; or
- (ii) many if not most lenders are mortgage servicers, meaning that they collect payments, hold escrow and otherwise administer the loan. They may or may not own the mortgage loan or have originated and sold the mortgage loan. Mortgage servicers accept borrowers' payments on behalf of the actual owner of the mortgage loan and operate under contract with that entity. These contracts, or "servicing agreements", may control how any money that comes in will be managed, and that applies to escrow accounts as well. It is important to note that Fannie Mae and Freddie Mac hold a large percentage of the loans in the U.S. and will use the same service contract for every mortgagor, so that would likely dictate how these situations would be handled.

Deeds of Trust vary but many include provisions that directly address how a lender must handle insurance proceeds following damage to the collateral property. For example, Fannie Mae and Freddie Mac's Deed of Trust form includes the following provision:

"In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower. Such insurance proceeds shall be applied in the order provided for in Section 2."⁸⁷

The State Bar of Texas' Deed of Trust form contains a provision with similar language.

Many lenders have established policies to protect themselves against misuse of these type of insurance proceeds. Lenders' policies will generally establish a minimum insurance policy payment, under which any amount received is automatically signed over to the property owner. However, where an ongoing risk exists, like future rainfall continuing to decay the unrepaired home, the lender's policy will generally require the borrower to present a plan to protect the asset such as a reconstruction plan. If the lender finds that the reconstruction plan will restore the property to a condition at least as good as before the damage occurred and also agrees to the dispersal terms with the construction contractor, the lender will disperse the funds.

Problems have arisen where a borrower's home owner's insurance policy makes a payment but the borrower is behind on his payments, offers a reconstruction plan that the mortgage company does not approve of, or would like to use the insurance funds for purposes other than those the mortgage company believes are appropriate. Under these circumstances the lender may ask the borrower to adjust its construction plan, and if the two parties cannot come to an agreement the insurance money will not be released to the borrower until an agreement is reached.

Currently, there are a range of state and federal agencies that share jurisdiction over mortgage servicers and therefore provide a fairly inclusive, though potentially confusing, network of places for consumers to go with their complaints. At the federal level, the Office of the Comptroller of Currency (OCC) has jurisdiction over national banks and their subsidiaries. The largest mortgage servicers in the country are all national banks or their subsidiaries, so the OCC could accept consumer complaints on this issue. The Office of Thrift Supervision (OTS) has jurisdiction over federally chartered thrifts until the OTS is absorbed into OCC and the Treasury, so mortgage servicers who are nationally chartered thrifts or their subsidiaries would be overseen by the OTS. The new Consumer Financial Protection Bureau created by the Dodd-Frank bill appear to have jurisdiction to draft rules in this area once the new agency begins to fully operate.

⁸⁷ Deed of Trust, Fannie Mae and Freddie Mac; <http://www.freddie.com/uniform/unifsecurity.html> .

At the state level, regulators have jurisdiction to accept complaints as to those entities that they regulate even if they do not have the authority to intervene and affect a resolution of the problem.

The Texas Department of Savings and Mortgage Lending (SML) has existing complaint jurisdiction over these issues where the lender or servicer is a state chartered thrift or a mortgage bank. That agency may receive complaints about servicers who have voluntarily registered with SML as well as the majority of non-bank servicers operating in Texas. For state chartered banks performing in-house mortgage servicing, the Texas Department of Banking (TDB) would have jurisdiction to receive complaints.

Because payment has already been made by an insurance company, the Office of Public Insurance Counsel (OPIC) and the Texas Department of Insurance (TDI) do not have jurisdiction to regulate the process, though TDI did hear a number of complaints on this issue.

RECOMMENDATION

1. The Committee recommends that this issue continue to be monitored, keeping in mind the current uncertainty with respect to federal consumer protection regulation following the passage of the Dodd-Frank Act.

8. Monitor the implementation of legislation addressed by the Senate Committee on Business & Commerce, 81st Legislature, Regular and Called Sessions, and make recommendations for any legislation needed to improve, enhance, and/or complete implementation.

BACKGROUND

Mortgage loans comprise a complex area of law affecting consumers across the state. In the 81st Legislature, the Committee considered and favorably recommended legislation affecting mortgage loan originators.⁸⁸ The legislation passed and became law. Consumers subsequently raised concerns with mortgage loan servicers, which the Committee explored on October 25, 2010. Written testimony from this hearing is available on the Internet.⁸⁹

Several members of the public testified or submitted information about difficulties they have had with mortgage servicers. These problems include:

- Establishing escrow accounts and increasing mortgage payments even though borrower not behind on taxes
- Failing to credit consumers for payments made
- Using false claims that consumers did not make payments to justify the imposition of late fees and/or an escrow account
- Failing to recognize consumers already had insurance policies and unnecessarily force-placing new policies
- Multiple contacts with mortgage servicer without speaking to the same person
- Offering loan modifications that in many cases increased the monthly mortgage payment
- Denial of borrower over 65 to defer tax payments as allowed under Texas law; servicer paying deferred taxes and then demanding repayment by borrower
- Miscalculations, bogus email addresses, phone number provided for voice assistance goes to a fax machine, automated billing system information disagrees with information on documents
- Lost or doubled payments
- Denied temporary deferral of payments for borrower temporarily disabled

Out of these issues, several themes emerged: mishandling of payments, specific fee permissibility and timing, propriety of lender-imposed insurance, and lack of flexibility with customers.

⁸⁸ HB 10, Solomons/Averitt.

⁸⁹ <http://www.senate.state.tx.us/75r/senate/commit/c510/handouts10/h102510a.htm> .

Representatives of home mortgage servicers described the processes and practices employed to safeguard individuals while providing volume servicers. State regulators outlined their capabilities under current statutes to protect the consumer. Douglas Foster, Commissioner of the Texas Department of Savings and Mortgage Lending, provided information on notable laws in other states.

RECOMMENDATIONS

1. The Committee recommends extending the current state financial regulatory structure to enable consumer protection in home mortgage servicing.
2. The Committee recommends careful consideration of legislation resulting from a working group under way as of this writing.

APPENDIX

Hearing Summaries

Senate Committee on Business and Commerce (May 19, 2010)

The Senate Committee on Business and Commerce (committee) met on Wednesday, May 19, 2010, to hear invited and public testimony on the following interim charge:

Interim Charge 4 - Study the generation costs of municipally owned electric utilities' (MOEUs) planned generation portfolios. Consider the impact of planned generation costs on electric rates for residential and commercial customers. Solicit input on the impact of future electric rates on charitable and non-profit organizations, and the impact on such organizations' cash assistance programs to indigent customers. Consider the merits of a justifiable planned generation cost standard, and whether a deviation above the standard should be subject to approval by a vote of all customers of a municipally owned utility's service area.

Senator Fraser called the meeting to order and called Mark Zion, executive director, Texas Public Power Association (TPPA), to testify. At Senator Fraser's request, Zion stated that San Antonio, Austin, and Garland are the three cities with the largest MOEUs in Texas. Zion said that 72 MOEUs provide power to over 4.1 million Texans, approximately 15 percent of the electric industry in the state. He said that MOEUs operate as full-service electric utilities that own poles, wires, and power plants. Zion said that local authorities set MOEU rates and policies that are responsive to community priorities.

Zion stated that the governance structure of MOEUs is one in which city councils and local citizen boards are accountable to the ratepayers. He stated that MOEUs are consumer-owned systems and that MOEUs have extensive public participation in the utility governance process. He said that MOEUs are subject to limited regulation by the Public Utility Commission (PUC) for matters such as transmission costs, appeals, and statewide market and reliability standards established by the Electric Reliability Council of Texas (ERCOT). He stated that MOEUs have reliable, local, and consumer-friendly service quality. Zion said that utility proceeds stay within the community and that a portion of MOEU revenues support municipal public and community services.

Zion discussed the performance metrics of MOEUs that include high customer satisfaction ratings, reliability, and creditworthy bond ratings. Senator Harris asked what the process for conducting customer surveys was. Zion replied that MOEUs contract with a third party to conduct customer surveys. He said that he did not know the exact number of customers that were polled.

Zion said that generation planning of MOEUs includes a rigorous professional analysis to examine future energy sources and that the frequency of generation planning varies for each MOEU. He said that all MOEUs base their plan on community priorities for service reliability, customer affordability, and environmental sensitivity. He said that positive results of generation planning include significant generation additions, a commitment to renewable energy, and a diverse energy portfolio for the municipal sector. Zion stated that MOEUs were early adopters of renewable energy sources and that MOEUs employ a broad range of energy resources and are

more diversified than the ERCOT market as a whole. He said that MOEUs are less dependent on natural gas that is the dominant fuel in ERCOT. Zion said that the diverse generation portfolio has resulted in low and stable electric rates that will serve MOEU customers well in the future.

Senator Fraser asked whether TPPA has information on how much generation each city owns. Zion said that he would provide that information to the committee. He said that, in general, 15 of the 72 cities in Texas that have an MOEU own significant generation power plants. He said that smaller and rural communities purchase power from investor-owned utilities and river authorities.

Senator Harris asked whether Austin ratepayers receive a dividend from the use of renewable energy sources. Zion replied that ratepayers receive a 9.1 percent dividend. Following an inquiry from Senator Harris, Zion stated that the dividend is transferred to the general revenue to fund government functions through the city budget and is not directly paid to ratepayers. Zion added that the citizens of the municipality that benefit from the general government functions are also the ratepayers of MOEUs.

Zion said that MOEUs partner with charitable and nonprofit organizations to help low-income and at-risk customers. He discussed MOEU assistance to special-needs customers and critical-care customers, including favorable rate structures and discounts, disconnection and deferred payment policies, deposit waivers, and weatherization assistance.

Zion discussed MOEU transmission, stating that larger MOEUs are owners and operators of high-voltage transmission lines that are part of the statewide grid. He said that MOEUs own a small share of transmission in Texas, only about six percent. He said that MOEUs only own about two percent of ERCOT transmission that is outside the MOEUs' own areas.

Senator Fraser asked Zion what the protocol would be for someone outside the transmission area to express concerns. Zion said that, unlike other transmission providers, an MOEU's ratepayers appeal through a local process for the siting and routing of transmissions, but like other transmission providers, MOEUs appeal to PUC for rate cases and cost recovery.

Senator Harris and Zion discussed the process of acquiring land for transmission through easements or fee simple for transmission lines. Zion said that condemnation is used only as a last resort.

Senator Fraser and Zion discussed a hypothetical situation in which an MOEU constructed transmission outside their service territory. Zion said that in that situation, landowners would have to file complaints with the municipality that sited the transmission line. He said that construction of transmission outside service areas by MOEUs is the exception rather than the norm, but that the situation does raise policy concerns and process concerns. He stated that TPPA will work with the committee and PUC to address those issues. Zion said that currently one MOEU is seeking to build a remote Competitive Renewable Energy Zone (CREZ) transmission line.

Zion discussed local and state distribution rates. He said that Texas socializes the costs through a postage-stamp rate on large transmission lines that network statewide. He said that the postage-stamp rate is embedded in some MOEU local distribution rates. Zion said that MOEU customers pay for 15 percent of every transmission line that is built in Texas, and, conversely, customers in the rest of the state pay for a portion of MOEU lines.

Senator Fraser asked whether there are occasions when an MOEU builds a transmission line to ease utility congestion. Zion replied that ERCOT identifies the need for congestion relief and that, although there are occasions when MOEUs build lines to ease congestion, they do not do so out of their own volition. Senator Fraser asked whether there would be any other reason for an MOEU to build a transmission line outside their service area than for investment opportunities. Zion replied that while there is no other reason, MOEUs building lines outside service areas is not the norm. Senator Fraser stated that it was not the legislative intent to allow MOEUs to spend tax dollars on a speculative investment.

Senator Jackson asked what standards and guidelines MOEUs use for determining the percentage rate for late payments and whether there was a maximum penalty fee. Zion replied that MOEUs standardize fees at a local level. He said that fees are set through a local, public process, but that there are no maximum fees set by statute. Zion stated that fees are set to reflect local community priorities. Senator Jackson asked whether each MOEU could set late fees without restrictions. Zion replied that there are no state regulations, but that the city council members act reasonably to set fees at the local level.

At Senator Harris' request, Zion said that TPPA would be available should any members of the committee have further questions.

Senator Fraser and Zion discussed MOEUs that implement variable rates for peak power usage. Senator Fraser stated that it was one of his priorities to offer variable rates to incentivize customers to monitor and adjust their power usage.

Senator Fraser asked, if an MOEU set its own rates, what relief a customer would have if the MOEU was mismanaged and rates were no longer competitive. Zion replied that MOEU rates are solely the decision of the local governing body or city council. He said that a MOEU customer could not switch to a competitive market as a single customer but has the authority as a citizen voter to appeal to the local governing body.

Senator Lucio asked how many MOEU customers are struggling to meet utility costs and what approach MOEUs take to help such customers. Zion replied that a significant number of utility customers are having difficulty paying bills in the current economic situation, but he did not have an exact number. He said that MOEUs assist customers by direct funding to help customers pay bills and by local policies that are oriented toward at-risk customers.

Senator Fraser called Barry Smitherman, chairman, PUC, to testify. Smitherman affirmed Zion's testimony that PUC regulates MOEUs' transmission cost recovery. He said that MOEUs file cost updates and rate-case information with PUC to recover wholesale transmission expenses. Following an inquiry by Senator Fraser, Smitherman said that PUC has the ability to deny an

MOEU's a request to recover transmission costs under the Public Utility Regulatory Act (PURA).

Senator Fraser asked what regulatory authority handles complaints if a city invests in transmission outside its service area. Smitherman replied that when the CREZ process was first considered, PUC did not select MOEUs because of concerns about whether landowners would have a proper forum and due process to object to transmission routing. Following an inquiry from Senator Fraser, Smitherman said that electric cooperatives are required under PURA to obtain a certificate of convenience and necessity (CCN) through PUC, but that MOEUs are not. Smitherman said that citizens within a MOEU service territory have redress at PUC with regard to rates. He said that 10 percent of ratepayers within a municipality, or five percent of ratepayers outside the municipality but within the MOEUs service area, may petition to appeal a rate decision to PUC. Smitherman said that otherwise, PUC is not involved with MOEUs.

Senator Fraser asked Smitherman whether Zion's testimony that MOEU rates are generally competitive was accurate. Smitherman replied that MOEU rates have been historically competitive, but that he is unsure how competitive MOEU rates are currently because prices in the competitive market are extremely low today. He said that the low rates are driven by the low price of natural gas, by the addition of wind energy in West Texas, and by transmission enhancements that relieve congestion in the electric system.

Senator Fraser asked whether it may be problematic for an MOEU to invest in renewable sources of energy, such as biomass, instead of gas. Smitherman said that, although the need for a diversified energy portfolio has been stressed in the past, the low prices of gas and the uncertainty of federal energy policies make it difficult for entities to pursue a diversified energy portfolio. He said that although some MOEUs have been able to keep rates affordable by using renewable sources, there are challenges to implementing renewable sources of energy. Senator Fraser expressed concern for MOEUs using tax funds to invest or speculate money on volatile markets.

Senator Watson said that some MOEUs have implemented a process to evaluate whether to hedge to protect rates or to make decisions whether or not to continue with investments. Smitherman said that large MOEUs have the staff and expertise to engage in hedging activities and manage their portfolio. Smitherman said that a diversified energy portfolio has served customers well.

Smitherman provided the committee with a map detailing approved and potential CREZ projects.

Zion was called back to answer a question posed by Senator Lucio regarding whether TPPA has a uniform set of bylaws and the enforcement capability to enforce those bylaws. Zion said that TPPA is a trade association that has a uniform set of bylaws, but that it is not an enforcement agency for member operations. He said that MOEUs have uniform practices and conform with industry practices. Following an inquiry from Senator Lucio, Zion said that none of the 72 MOEUs have participated in retail competition. Senator Fraser said that earlier legislation allowed MOEUs the right to opt in to retail competition, but that only one has elected to do so.

Senator Fraser called Lee Leffingwell, mayor, City of Austin, to testify on Austin Energy. Leffingwell stated that Austin Energy is owned by the City of Austin and is governed by the Austin city council. He said that Austin Energy is the ninth-largest MOEU in the nation. He said that Austin Energy has a high, stable, and positive bond rating and a diverse portfolio. He stated that it is Austin Energy's mission to provide affordable, reliable, and clean energy to customers.

Leffingwell discussed Austin Energy's generation plan, which includes a two-year public participation process. He said that the city council adopted a plan in April of 2010 to meet carbon reduction goals that includes 35 percent renewable energy usage and 800 megawatts of energy efficiency by 2020. He said that the plan will be evaluated every two years to address changes in the economy or federal law and to ensure that Austin Energy provides competitive prices. Leffingwell said that the adoption of the plan was a public process that included stakeholder input and special task force recommendations and entailed numerous public meetings. He said that the city council delayed implementation of the plan until an affordability matrix, which will define rate impacts and compare them to other utility rates, is completed at the end of the year. Leffingwell said that every future component of the generation plan will be subjected to the affordability matrix and that every new component will be individually approved in a public forum by the city council.

In response to a question by Senator Lucio, Leffingwell stated that Austin Energy rates, currently nine cents per kilowatt hour, are competitive with any public or private utility in Texas.

Senator Watson said that rates in Austin have remained low because of the diversified energy mix. Leffingwell said that there has not been a rate increase since 1994.

Mark Dreyfus, director, Government Relations, Austin Energy, was called to testify on the process of the last rate change for Austin Energy. He said that the last rate change was settled and there was no appeal to PUC.

The committee members and Leffingwell discussed residential and commercial growth of Austin Energy. Leffingwell stated that Austin Energy has been well managed and has been able to pay dividends back to customers. He said that the affordability matrix will address future concerns and challenges. Senator Fraser and Leffingwell discussed the policies that may enable customers the choice to opt out of certain energy services, such as "green" energy. Leffingwell said that Austin Energy offers customers the choice to pay more for green energy.

Jelynn LeBlanc-Burley, acting general manager, CPS Energy, testified that CPS Energy is the nation's largest municipally owned utility providing both natural gas and electricity service. She said that CPS Energy is governed by an independent board of trustees whose members are appointed by the San Antonio City Council. She said that CPS Energy's diversified portfolio has provided low costs to customers, noting that CPS Energy is moving aggressively toward solar energy.

Responding to an inquiry by Senator Harris, LeBlanc-Burley stated that the rate of return for investment in solar energy for residential customers is seven years, compared to 10 years in the past.

Senator Van de Putte asked what the process was for managing excess solar energy that is produced by customers. LeBlanc-Burley replied that currently customers are given credit to offset the cost of solar energy, but she stated that CPS energy currently has a solar electricity pilot program that intends to manage solar energy more effectively. She stated that CPS Energy will also launch a pilot program for advanced metering systems to better understand how customers manage energy use.

Senator Van de Putte and LeBlanc-Burley discussed different programs for residential and commercial solar energy.

LeBlanc-Burley discussed the CPS Energy planning process that integrates conservation and energy efficiency, renewable energy supply, affordable electric power, and environmental commitment. She stated that the plan, which includes pursuing new nuclear energy and the expansion of the South Texas Project, was subject to public input sessions. She said that CPS Energy provided the public with access to resources regarding planning decisions.

LeBlanc-Burley said that CPS Energy offers community assistance such as affordability discounts to low-income citizens. She stated that the approximate nine-dollar discount has been offset by a recent rate increase. Senator Fraser, Senator Van de Putte, and LeBlanc-Burley discussed legislation that provided the funding mechanism for CPS Energy to offer the discount for low-income assistance.

Senator Fraser asked whether CPS Energy has the ability to implement variable rates for peak power usage. LeBlanc-Burley said that CPS has a tiered system that imposes a peak summer rate as well as the option for customers to choose a percentage of their electricity that comes from green energy.

LeBlanc-Burley discussed the Residential Energy Assistance Partnership (REAP) that provides \$150 payments twice per year to eligible participants for payment of utility bills. She discussed CPS Energy's weatherization program, noting that the goal of the program is to weatherize 40,000 homes by 2020.

Senator Van de Putte asked how CPS Energy, which meets peak demand plus 12.5 percent reserve margin through 2030, compares to the rest of the state. Smitherman replied that ERCOT has issued a capacity-demand forecast through 2015 that shows the state will exceed the 12.5 percent reserve margin for the next five years. Smitherman said that ERCOT will update the long-term forecast for meeting peak demand in December 2010, and he said that he will make that report available to the committee. Senator Fraser and Senator Van de Putte discussed the need to consider generation and transmission projections before the next legislative session.

Senator Fraser called Ward Tisdale, chairman, Coalition for Clean Affordable Reliable Energy (CCARE) to testify. Tisdale said that CCARE members are recognized nationally and globally as leaders for environmental stewardship. He discussed Austin Energy's affordability matrix described by Leffingwell. He said that Austin Energy needs to be more transparent, noting past difficulty in obtaining information on Austin Energy business decisions and contracts. He said

that there are some concerns with the Austin Energy business model and that raising utility rates is not always the answer. Tisdale said that CCARE works with Austin Energy to ensure that it is clean, affordable, reliable, and transparent.

Senator Watson asked whether CCARE was opposed to Austin Energy when it was first created. Tisdale replied that CCARE was created because there were significant concerns with Austin Energy. He added that CCARE has open negotiations with Austin Energy and will be a part of the planning process in the future. In response to Senator Watson's question, Tisdale said that although there were concerns in the past, Austin Energy is moving in the right direction.

Senator Van de Putte asked Tisdale to clarify his testimony that Austin Energy lacked transparency and asked for specific examples. Tisdale said that there is a need for more access to information on business decisions, particularly with the decision to invest in biomass energy.

Senator Fraser called Bill Dollar, city manager, City of Garland (Garland), to testify. Dollar stated that Garland Power and Light (GPL) is the third-largest MOEU in the state and the 41st-largest in the nation. He said that GPL owns and operates transmission lines and transmission facilities. Dollar discussed the CREZ project in which GPL will partner with the South Texas Electric Cooperative (STEC) in order to obtain a CCN through PUC to build transmission lines. He said that GPL has a return on investment of approximately 7.4 percent to the Garland's general fund. He said that the GPL service area, unlike the situation in Austin and San Antonio, is essentially built out and that any remaining land has been designated for industrial and commercial projects. He said that GPL has the base load to meet energy needs.

Senator Fraser asked how Garland benefits from GPL bidding on transmission lines outside the community service area and within the CREZ. Senator Fraser asked whether it was a good decision to use tax dollars for an investment in the delivery of services that will have little effect on the delivery of electric service to Garland. Dollar replied that the CREZ project helps divert costs of utilities for the city. He said that the CREZ project that brings wind energy to the market is an investment to mitigate costs and to keep rates low for the future. Dollar said that Garland does not consider the investment risky and would only invest in projects where the risk was minimal. He said that GPL acknowledges the authority of PUC and had always planned to partner with a retail company for the CCN process. Senator Fraser said that it was not good public policy to use tax dollars to speculate with investments.

Senator Van de Putte and Dollar discussed the governmental structure of Garland. Senator Van de Putte asked Dollar to explain the process of approving the CREZ project and whether the citizens of Garland knew that Garland's resources would be used to bid on the CREZ project. Dollar replied that the decision was made by the Garland City Council in executive session and was subsequently announced to the public.

Senator Fraser stated that the activities of GPL in bidding for transmission lines outside its service area were not anticipated and that the committee will consider how MOEUs compete with the regulated market in the next legislative session.

Senator Fraser opened the meeting to public testimony.

Roger Borgelt, co-chair, Austinites for Action (AFA), said that AFA has publicly criticized the recently adopted Austin Energy Climate Protection Plan that is estimated to cost Austin Energy \$5 billion and result in a 57 percent increase in utility bills. He said that AFA recommends that the committee consider establishing an independently appointed and geographically representative board of trustees to manage Austin Energy operations separate from the Austin city council; requiring an annual independent audit of Austin Energy by an outside auditor; directing an independent review of Austin Energy's operations by the Sunset Advisory Commission on a regular cycle; and requiring an independent review of Austin Energy's Climate Protection Plan by PUC.

Dick Brown, resident of West Lake Hills, testified that Austin Energy is a monopoly and that residents do not have a choice of electric providers. He expressed concern over the finances of Austin Energy and the rates that the MOEU will charge in the future. He said that Austin Energy customers who live outside the city are not allowed to vote on the city council members who set rates and determine policies for the MOEU. He asked the committee to consider changing the law to give consumer choice to Austin Energy's outside ratepayers.

Senator Fraser asked how MOEUs have the authority to operate outside city limits. Zion responded that under PURA, PUC drew service area lines that do not always correlate with city limits. He said that customers that reside outside the city limits but within the service area have the right to appeal rates to PUC. Zion said that outside ratepayers are involved in the local process even though they do not vote for city council members.

Senator Watson asked Senator Fraser to call Robert Goode, interim general manager, Austin Energy, to testify on Austin Energy's affordability matrix. Senator Watson asked whether costs described by Brown, such as wood-burning generators, surcharges to pay ERCOT, a shrinking customer base, and the general fund transfer, will be considered as part of the affordability matrix. Goode replied in the affirmative. In answer to a question from Senator Watson, Goode stated that Austin Energy will contract for an independent audit in June.

Tom "Smitty" Smith, director, and Matthew Johnsons, Public Citizen, were called to testify. Smith discussed the comparison between the San Antonio and Austin energy planning processes. He said that while San Antonio has a more diversified portfolio than Austin, it will have a rate increase of 40 percent by 2020, compared to Austin's 20 percent rate increase by 2020. He stated that MOEUs reflect the will of the citizens, but he expressed concern over transparency issues and data that is not available for the public.

Edward Henigin, chief technology officer, Data Foundry, testified that although MOEUs have been well run in the past, they are not set up to continue the good trends of service. He stated that there needs to be a high level of transparency and accountability for MOEUs. He said that the Public Information Act allows Austin Energy to decline to provide public information for competitive matters and that certain provisions of the Act need to be narrowed or removed.

Cyrus Reed, Lone Star Chapter, Sierra Club, testified on the recommendations of the Austin Task Force that was adopted by the Austin City Council. He stated that the public reassesses the

costs and goals of the energy plans every two years; that large investments are approved by two city commissions and the city council at least twice; that costs for residential, commercial, and industrial rates are benchmarked against other utilities' costs; that annual public data on reliability is required; and that studies on coal use, renewable storage, and energy efficiency are conducted. Reed said that the committee should consider statewide goals on renewable portfolio standards when considering the role of electric cooperatives and MOEUs in the retail electric market.

Senator Fraser, Senator Watson, and Reed discussed the need for Texas to have a system to take advantage of the energy efficiency policies already implemented by MOEUs and electric cooperatives in order to reduce potential costs of federal global warming regulations.

The committee was recessed subject to call of chair.

—by Endi Silva, Senate Research Center

Senate Committee on Business and Commerce (July 14, 2010)

The Senate Committee on Business and Commerce (committee) met on Wednesday, July 14, 2010, to hear invited and public testimony on the following interim charges:

Interim Charge 5 - Study and make recommendations relating to the Texas Unemployment Compensation Insurance system, including, but not limited to, the following:

- The capacity and efficiency of the claims filing and benefits delivery system as well as the ability of the agency to meet the needs of the clients it serves given the transition to call centers and web-based filing;
- The current financing scheme for the Unemployment Compensation Trust Fund, and any options to improve the long-term financial health and stability of the fund;
- The use of debit cards for delivery of UI benefits, including ways to limit user fees to access payments; and
- Improving public access to local and statewide data on current and historical UI claims; and

Interim Charge 6 - Study and make recommendations regarding career-focused education and workforce training programs in Texas to ensure that such programs meet business and worker needs. Specifically, study whether such programs: meet the current and future workforce needs of health care, skilled trades, construction, manufacturing, aerospace, information technology, and green jobs; help retain workers in such trades and fields; retrain and update the skills and education of workers in such trades and fields; and foster and encourage collaboration between the state, education, labor, and business to provide education and training.

Senator Fraser called the meeting to order and called Larry Temple, executive director, Texas Workforce Commission (TWC), to testify. Temple said that the Texas Unemployment Compensation Insurance system (system) provides 10 to 20 weeks of assistance to eligible claimants based on their wages prior to becoming unemployed. He discussed state and federal extensions for unemployment benefits. He said that as of July 9, 2010, approximately 62,000 claimants had exhausted their state and federal unemployment benefits, but those individuals remain in the system should benefit extensions be granted.

Senator Fraser asked whether a federal decision to extend unemployment benefits would be standardized for all states. Temple replied in the affirmative. Senator Fraser asked whether Texas would be penalized by such a standard policy for recovering more quickly than other states. Temple responded that Texas would not be penalized, but that states that have a stronger economy do not receive benefits for as long a period as states that have weaker economies.

Temple discussed ways for individuals to apply for unemployment insurance benefits, noting that the number of applications submitted via the Internet has increased. He said that TWC is

looking at ways to extend Internet applications to include multistate claimants, military claimants, and ex-federal employee claimants. He said that individuals who apply for unemployment benefits are automatically registered for *WorkinTexas.com*, TWC's job database.

Temple stated that unemployment benefits are issued through direct deposit or through a debit card that is issued to the individual.

Temple discussed caseload estimates, stating that there were 69,000 new claimants in June 2008, 121,000 new claimants in June 2009, and 99,000 new claimants in June 2010. In response to a question from Senator Watson, Temple stated that the 99,000 new claimants did not include any of the 62,000 claimants mentioned earlier who had exhausted their state and federal unemployment benefits.

Temple stated that the Unemployment Compensation Trust Fund (trust fund) is statutorily structured with a "floor" of one percent of all taxable wages in the state and a "ceiling" of two percent of all taxable wages in the state. He said that the system is designed to correct itself if the trust fund runs a deficit or becomes insolvent. He said that the taxing structure includes a general tax that is charged to employers based on their experience rating, a replenishment tax that is charged to all employers to cover claims that are not charged to a specific employer, an employment training investment assessment that is charged to all employers, and a deficit tax that applies only to experience-rated employers. Temple said that the legislature gave TWC the authority to issue bonds in order to mitigate the deficit tax.

Senator Watson asked what standards or guidelines TWC commissioners use to determine the deficit tax and to determine which employers to tax. Temple replied that as long as the trust fund is solvent, TWC uses projections by the Texas Comptroller of Public Accounts (comptroller) on unemployment for October 1 to determine the tax rate for the following year. He said that the experience rating is based on an employer's experience with layoffs. Senator Watson asked what discretion TWC used to issue rebates from the trust fund. Temple replied that if the trust fund is above the ceiling amount, TWC is required by statute to issue a rebate to employers. Senator Watson asked why there would be any debate among TWC commissioners about whether to issue rebates from the trust fund. He expressed concern regarding whether TWC discretion would be used for political purposes rather than to ensure the stability of the trust fund.

Steve Riley, deputy director, Unemployment Insurance Operations, TWC, testified that a surplus rebate is required by statute and that there is no discretion on the part of TWC commissioners when issuing rebates. He said that the commissioners exercise discretion when setting the deficit tax rate in order to avoid a higher rate in the years following a significant downturn in the economy.

Senator Watson asked Temple and Riley for recommendations for ensuring a smoother transition for employers from a trust fund surplus to a trust fund deficit and for ensuring long-term stability. Temple replied that the business community has supported the current structure. He said that the legislature has given TWC the ability to issue bonds in order to mitigate costs to employers and to avoid spikes in taxes.

Senator Fraser opened the hearing for public testimony on Interim Charge 5.

Rick Levy, Texas American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), stated that while Texas did not accept federal stimulus money, lowering the tax burden and extending unemployment benefits to Texans will be issues facing the legislature in the next session.

Senator Van de Putte asked what efforts are being made to address underemployment, a term signifying that individuals are not employed at their capacity, skill, or wage level. Levy expressed concern that the current workforce system pressures individuals to take the first job that is available to them. He said that more investment is needed for training individuals for long-term employment.

Temple said that an integral part of funding from the United States Department of Labor (DOL) is for dislocated workers. He said that TWC has adopted rules to allow individuals who receive unemployment benefits to be in TWC-approved workforce training for in-demand occupations. He said that TWC does not require an individual receiving extended unemployment benefits to take any job as long as it paid minimum wage. Temple discussed the Texas Back to Work program, which is geared toward individuals who are unemployed from jobs that paid less than \$15 per hour.

Senator Van de Putte asked TWC to enhance its effort to address the cycle of unemployment, particularly among veterans. She cited DOL statistics showing that the unemployment rate for veterans from the ages of 18 to 24 within the first year they return from duty is 22 percent. Temple stated that TWC has worked with community colleges to give veterans college credit for their military training and experience. Levy said that the AFL-CIO is working with a program called Helmets to Hardhats to connect veterans with apprenticeship programs and to give them credit for the skills they acquired during military service. Senator Van de Putte said that Texas state agencies need to increase efforts to hire veterans as well.

Don Baylor, Center for Public Policy Priorities, stated that the trust fund benefits both employers and the economy. He said that the ability to draw from the trust fund and minimize tax rates in bad economic times decreases when the trust fund is underfunded in good economic times. Baylor suggested that TWC broaden the definition of approved workforce training to include adult basic education and English as a second language (ESL) classes.

Senator Fraser opened the meeting for discussion on Interim Charge 6.

Temple stated that there is no exclusion for adult basic education or ESL for TWC-approved training as long as those classes are required for the individual to enter an in-demand occupation. Senator Van de Putte asked how the definition of an in-demand occupation is determined. Temple replied that local workforce development boards determine what occupations are most in demand for their region.

Temple discussed TWC programs, stating that TWC oversees 28 local workforce boards through

a network of over 240 workforce centers across the state to provide job search assistance and other support services. He said that there is a preference for veterans in all TWC programs. Temple said that in 2009 the Skills Development Fund served 170 Texas businesses, supported the creation of 3,567 new jobs, and upgraded the skills of 15,949 workers in existing jobs. Temple discussed programs instituted under the Workforce Investment Act, such as a summer youth employment program, a dislocated workers program, and a child-care program.

Senator Van de Putte asked Temple to explain what TWC programs would be cut or would be exempt from being cut in order to meet the state budget cut requirements. Temple said that 90 percent of TWC funding is federal dollars. He said that child-care programs and the Skills Development Fund training program are the TWC programs that use state general revenue funds and that are subject to budget cuts.

Senator Watson asked for the source of TWC's general revenue-dedicated fund and whether there is any general revenue-dedicated fund surplus.

Randy Townsend, chief financial officer, TWC, testified that the agency's general revenue-dedicated fund is approximately \$11 million per year and is primarily funded from penalties and interest collected from employers who do not pay unemployment taxes. He said that currently there is approximately \$18 to \$20 million in the general revenue-dedicated fund that will be used to pay a portion of unemployment benefits to former state employees.

Martin Hubert, deputy comptroller, Office of the Comptroller of Public Accounts, discussed the Jobs and Education for Texas (JET) program administered by the comptroller. He said that JET grants are awarded through three funds: the Launchpad Fund awards grants for developing or expanding programs of nonprofit organizations that prepare low-income students for careers in high-demand occupations; the Job Building Fund provides grants to defray start-up costs for new career and technical programs at public junior colleges and technical institutions; and the Career and Technical Scholarship Fund provides scholarships for students in technical and career education programs. He said that JET seeks geographic diversity when awarding JET grants. Huber stated that JET training programs meet the workforce needs of Texas businesses because the JET advisory board includes business, industry, academic, and TWC representatives. He said that the JET program is an effective tool for training students for jobs that Texas businesses need to fill.

Joyce Williams, president, Texas Association of College Technical Educators, testified that the mission of community colleges, in addition to providing quality education, is to provide a skilled labor workforce that meets the needs of industry. She said that although Texas community colleges are known as innovative entities, the economic crisis has increased the need for community colleges to be more flexible with their programs and curricula. Williams said that community colleges have collaborated with industry partners and governmental funding agencies and have built college partnerships across the state. She discussed examples of such collaborative efforts.

Bruce Hillegeist, chair, Texas Chamber of Commerce Executives (TCCE), said that an educated workforce gives Texas an economic edge and brings more jobs to the state. He stated that the

skills and preparedness of the workforce in communities are becoming major local issues. Hillegeist said that there is a significant decline in vocational and technical education in public schools and that, in addition to dropout rates and failing test scores, public schools are failing to meet future workforce needs. He said that local chambers of commerce in Texas will assist the committee in addressing workforce needs and in creating a healthy business climate.

Following an inquiry by Senator Jackson regarding the decline of technical education, Hillegeist stated that projections show that as the state population grows, fewer individuals are continuing their education beyond high school. Senator Jackson said that the state is not preparing students to enter the job market after high school. Hillegeist said that TCCE is in contact with local school districts for addressing that issue. Senator Jackson and Hillegeist discussed examples of employers being unable to find qualified workers for certain jobs.

There was no public testimony on Interim Charge 6. The committee recessed subject to the call of the chair.

—by Endi Silva, Senate Research Center

Senate Committee on Business and Commerce (August 24, 2010)

The Senate Committee on Business and Commerce (committee) met on Tuesday, August 24, 2010, to receive invited testimony on the following interim charges:

Interim Charge 1 - Study the implementation of H.B. 4409 enacted by the 81st Legislature pertaining to the financing of insured losses in excess of premium and other revenue of the Texas Windstorm Insurance Association (TWIA). Assess the coverage and affordability of TWIA policies. Review the claims and payments processes and make recommendations to improve the stability of TWIA while enhancing services to clients; and

Interim Charge 2 - Study options for reducing demand for electricity, including innovative pricing options relating to the use of smart meters, programmable thermostats, and other demand side management and behavioral response strategies. Review current consumer education programs to reduce demand, decrease energy prices, and improve air quality. Consider benefits and costs of alternative energy sources such as geothermal and solar and current incentives for electric and plug-in hybrid electric vehicles. The study should include recommendations on improving consumer knowledge and usage of these strategies in lowering overall electric usage, promoting energy efficiency, and improving the reliability of the ERCOT grid.

Senator Carona made opening remarks and welcomed the members to the hearing.

Senator Carona called Mike Geeslin, commissioner, Texas Department of Insurance (TDI); Jim Oliver, executive director, Texas Windstorm Insurance Association (TWIA); and Dwight Burns, executive director, Texas Public Finance Authority (TPFA), to testify. Geeslin said that H.B. 4409 has a series of post-event funding mechanisms that kick in once the Catastrophe Reserve Trust Fund is exhausted. He stated that those mechanisms are funded by premiums from TWIA, the issuance of public securities that are later repaid by TWIA coastal area policyholders, and member assessments. Geeslin said that TDI is creating rules regarding H.B. 4409 that include how the state should issue the TWIA public securities, what surcharges will be assessed, and how those funds will be recouped to pay off those funding mechanisms. Geeslin stated that TWIA has a new board and has undergone several reviews since Hurricane Ike. He said that TWIA should not require that a structure be certified to current building codes and should provide some flexibility if a property owner makes attempts to be more insurable.

Senator Carona expressed concern that TWIA coverage is not sufficient to cover all losses. Geeslin stated that the funding mechanisms in H.B. 4409 cannot fund a probable maximum loss or a 100-year loss equal to \$3.75 billion. Geeslin said that under the current funding mechanisms TWIA has enough funds to deal with losses from another Hurricane Ike, but does not have sufficient funds to cover losses from a larger storm. He added that more funding will be needed in the case of a large storm event. Senator Carona recommended that Florida's disaster insurance scheme be reviewed so that Texas can learn from Florida's mistakes. Geeslin said that he would work with the committee to address the members' concerns.

Senator Lucio said that the state's ports need to be protected in order to protect the portion of the economy that is impacted by those ports.

Senator Jackson expressed concern about insurance companies refusing to write wind insurance policies in the Houston area. Senator Jackson said that his constituents need to have the ability to obtain wind insurance. Geeslin said that many of the consumers who are denied wind coverage are commercial businesses that may not be built to code, including churches and schools. Geeslin said that Texas is in better shape than other Gulf Coast states regarding wind insurance. Geeslin said that TDI at times has contested insurance rates. He said that TWIA rates tend to be lower than other insurer rates and become the consumers' first choice rather than the choice of last resort. He added that litigation that occurs from the denial of claims can also deter insurability. Geeslin said that insurability is based on risk and that the economic risk associated with wind insurance along the coast is too high. Geeslin said that there are some companies that are only writing wind insurance policies for a few years and that people are going to need to become accustomed to switching insurance companies on a regular basis. Geeslin said that TDI has implemented some regulatory measures, but that it is not able to stop companies from refusing to write policies.

Senator Jackson said that if there is any risk involved, insurance companies will refuse to write policies in the coastal areas. Senator Jackson said that the issue of companies refusing to write wind policies needs to be addressed.

Senator Jackson clarified that the Catastrophe Reserve Trust Fund had \$74 million at the end of 2009 and that by the end of 2010 the fund will have \$250 million. Oliver said that if there is no activity by the end of 2010, there will be \$324 million in the fund.

Oliver agreed with Senator Jackson that there is a problem with Harris County area residents not being able to receive wind insurance.

Senator Lucio expressed concern that the state is not prepared for the economic impact that a major hurricane could have.

Senator Jackson expressed concern that coastal schools have to pay higher premiums than those paid by schools that are not in high-risk areas. He said that the state should provide funding assistance to school districts in natural disaster-prone risk areas.

Oliver said that because of the extent of property losses related to Hurricane Dolly and Hurricane Ike, it is unlikely that the larger insurance companies will provide wind insurance policies to older residential and commercial businesses. He said that the risk is too high for insurance companies to write wind policies in the coastal areas. Oliver said that the state could increase the rates over a period of time in an affordable manner, but that those rate increases would not cover the costs of events that had occurred in 2008. He stated that the state could consider subsidizing insurance rates to assist insurance companies to provide wind insurance coverage for businesses.

Senator Fraser asked whether TWIA bought any reinsurance in 2009. Oliver said that TWIA has not bought any reinsurance since 2008, but that funding allocated in 2009 did pay for reinsurance

that occurred in 2008.

Oliver said that before Hurricane Dolly and Hurricane Ike there was roughly \$470 million in the Catastrophe Reserve Trust Fund and said that TWIA premiums have increased significantly since that time in order to rebuild the fund. Oliver said that if there is no large storm this year, roughly \$250 million in revenue will be generated from insurance premiums. Oliver said that the Internal Revenue Service (IRS) recently granted TWIA a tax-exempt status and that TWIA is attempting to recoup \$57 million paid to the IRS before TWIA qualified as a tax-exempt entity.

Senator Carona asked whether there is any reason the state would not purchase reinsurance. Senator Fraser said that in 2009, the state was acting like reinsurance by financially backing TWIA in case TWIA could not pay all of its insurance claims in order to try to build the Catastrophe Reserve Trust Fund.

Senator Jackson asked how much wind insurance premiums increased over the past five years. Geeslin responded that since 2003, residential rates have increased by 43.1 percent and commercial rates have increased by 90.7 percent. He said that TDI is considering raising the rates another five percent.

Burns said that TPFAs must be ready to issue bonds once a storm occurs and that newly implemented TDI rules will allow TPFAs to go into the capital markets and obtain that funding once an event occurs.

Senator Fraser asked whether there is adequate funding in the Catastrophe Reserve Trust Fund to issue bonds. Oliver said that there is adequate funding to back the issuance of bonds in an amount ranging from \$600 million to \$700 million. Burns agreed with Oliver that there are adequate funds to back the issuance of bonds.

Senator Carona called Beaman Floyd, director, Texas Coalition for Affordable Insurance Solutions (TCAIS); Jay Thompson, partner, Thompson Coe Law Firm; and Wally Goodman, vice president, Borden Insurance Agency (BIA), to testify. Floyd stated that the bonding option authorized by H.B. 4409 is a good funding source to assist with TWIA insurance coverage. He said that TWIA should be moved from a debt-based structure to a capitalized structure. Floyd recommended that the state increase its up-front funding so that the state can adequately pay for TWIA consumers. He said that the state should review the use of reinsurance each year, and he stated that reinsurance is a good way to protect a large funding surplus. Floyd said that Texas is a tough place to write insurance due to the large number of natural disasters. He recommended that the state find a way to spread out the concentration of ratepayers so that coastal area policyholders are not totally responsible for making up lost insurance revenue.

Senator Jackson stated that low TWIA rates make it difficult for other insurance companies to write competing insurance policies. Floyd stated that if TWIA raises its rates, other companies may be able to compete. Senator Jackson said that it does not matter whether the state increases TWIA insurance rates because the larger insurance companies will find an excuse to avoid providing a competitive rate.

Thompson recommended that the committee members read the book *At War with the Weather*:

Managing Large-Scale Risks in a New Era of Catastrophes by Howard C. Kunreuther and Erwann O. Michel-Kerjanhas, stating that the book contains good ideas on how to develop a plan to provide insurance. He expressed concern that a 250-year event would deplete the Catastrophic Reserve Trust Fund and said that the state needs to decide at what level it should fund TWIA to prevent that from happening. He said that reinsurance should be considered and that reinsurance can be a less expensive alternative than issuing bonds to pay for TWIA insurance claims. Thompson recommended that the state consider spreading out the concentration of insurance rates so that insurance companies can recoup lost funds, subsequently spreading the risk so that insurance companies may be able to write insurance policies in the coastal area.

Senator Fraser stated that the state attempted to build up the Catastrophe Reserve Trust Fund in 2009 by not purchasing reinsurance, but that the state may want to consider purchasing reinsurance rather than issuing bonds to pay off TWIA insurance claims.

Thompson recommended that the state provide flexibility regarding TWIA building code standards and increase TWIA insurance rates. He said that every state has low-income homeowners who are not able to afford high increases in insurance rates and that the state needs to find a way to subsidize rates for those homeowners. He recommended that the state limit the liability coverage and remove the ability to adjust that liability from the commissioner of insurance. Thompson said that the state needs to review where people can build homes. Thompson recommended that the state have a policy that distinguishes wind or water claims in coastal areas. He said that the voluntary insurance market may not be able to write insurance policies for structures that are closest to the storms because there is such a high risk.

Senator Jackson recommended that the state open up the TWIA insurance rate boundaries statewide so that the risk is spread over the state.

Goodman stated that there are some nonadmitted insurance companies writing insurance policies in the coastal area. Goodman said that he believes that TWIA rates allow for some competition. He recommended that the state incentivize admitted insurance companies to write wind insurance policies in the coastal areas. He said that H.B. 4409 authorizes TDI to issue such incentives.

Senator Carona asked whether there are incentive provisions in H.B. 4409. Geeslin said that the TWIA board of directors may have some rate flexibility and the ability to grant tax credits for insurance companies willing to write wind insurance policies. Geeslin said that no matter what incentives are given, insurance companies will not write wind insurance policies because the risk is too high. Senator Carona requested that TDI provide recommendations regarding TWIA and the possibility of incentivizing insurance companies to write wind insurance policies.

Representative Larry Taylor recommended that the state review how to incentivize insurance companies so that insurance companies will write wind insurance policies, specifically whether tax incentives should be given. Geeslin recommended that the state review how to regionalize insurance rates in order to even out the risk over a larger area.

Senator Carona called Deeia Beck, public counsel, Office of Public Insurance Counsel (OPIC), and Lee Otis “Otie” Zapp, Jr., president, Coastal Windstorm Insurance Coalition (CWIC), to testify. Beck stated that the average annual cost to insure a home valued at \$150,000 is \$6,000. Beck said that these types of homes need to be covered, but at reasonable rates.

Zapp stated that H.B. 4409 removed 100 percent of the state treasury’s exposure to TWIA, which limited the amount of funding available to provide TWIA insurance. He said that many commercial businesses rely on TWIA because they are unable to obtain wind insurance from the private sector. He recommended that the state have at least \$1 billion in the Catastrophe Reserve Trust Fund before a storm event occurs. He said that if the state had \$2.5 billion available, that amount would only be sufficient to cover a 50-year storm. He recommended that the state avoid going into debt regarding TWIA insurance and recommended that the state encourage wind insurers to provide long-term policies. Zapp said that over half of TWIA policies are less than five years old, which is not enough time to build reserve funding. He recommended that the state review TWIA rates. He recommended the state review providing tax credits to wind insurers. Zapp said that insurers’ decisions to withdraw from the market have increased the need for TWIA.

Senator Harris said that he has been told by a number of attorneys in Harris County that there are thousands of claims pending from Hurricane Ike and Hurricane Dolly.

Zapp said that the state needs a policy that sets out the procedures for insurance companies to distinguish between flood and wind claims. Zapp said that H.B. 4409 addressed this issue, but that those provisions are inadequate. He noted that H.B. 4409 went into effect after Hurricane Ike and Hurricane Dolly.

Senator Carona opened the hearing to public testimony.

Senator Carona called Fred Bosse, regional vice president, American Insurance Association, to testify. Bosse expressed concern about the state’s ability to supply insurance on commercial structures and its ability to provide a reliable, predictable source of income to pay back issued bonds to cover insurance policies.

Senator Carona called Barry Smitherman, chairman, Public Utility Commission (PUC), and “Trip” Doggett, president, Electric Reliability Council of Texas (ERCOT), to testify on Interim Charge 2. Doggett discussed the state’s electricity capacity and said that the state has diverse types of electric generation. He noted that natural gas provides for 62 percent of electric generation. He said that the state’s electricity reserve target is 12.5 percent of the total amount produced and that he expects that reserve to be met through 2015. He added that there are new types of electric generation, such as wind power, that will likely be available and that will help to cover that 12.5 percent. He discussed the state’s electric transmission lines and said that the state has recently invested \$8.2 billion in such lines that are currently under development. He stated that wind is a very predictable power source, but that wind is often not blowing at peak load times.

Senator Carona asked why the state encourages wind generation when it is an inefficient source

of power. Smitherman responded that the state did not build enough transmission lines, which are needed to deliver wind electricity to consumers, and that lack of transmission lines contributed to the inefficiency of wind-generated electricity. Senator Carona asked whether there is adequate storage for wind power. Smitherman said that he is optimistic about storing the wind-generated electricity and said that ERCOT has developed an electricity storage working group to address that issue.

Senator Fraser stated that natural gas dictates the electricity market because of the large amounts of natural gas in the state.

Doggett stated that wind accounts for only about half of the amount of future planned electricity generation. He said that California provides efficient solar power to its residents and that the state is reviewing California's solar power generation so that Texas may be able to provide the same level of efficiency to its residents regarding solar power. He added that some of that projected wind generation may not come online due to stable natural gas prices. He discussed ERCOT's transition from a four-zoned market to a multi-nodal market, which would provide ERCOT with a more precise market-based pricing for electric generation and provide for a more accurate management of electricity.

Senator Jackson asked questions regarding ERCOT's transition to a multi-nodal market. Doggett said that the transition would be implemented by December 1, 2010, and will cost \$650 million. Senator Jackson asked why the cost has increased over the projected \$55 million. Doggett said that the cost estimation regarding the transition was poor and that ratepayers all over the state are paying for that. Smitherman said that a new team of specialists has been put in place regarding the transition.

Senator Jackson asked what the original implementation date for the multi-nodal market was. Smitherman responded that the original date was January 2009. Senator Jackson expressed concern that ratepayers are having to pay for ERCOT's poor estimation.

Doggett discussed variable rating plans that move electricity consumers off the grid during peak times and the use of smart technologies such as advanced meters that assist with those types of plans. He said that the state needs to review how electric vehicles will affect demand for electricity.

Smitherman provided an overview of ERCOT functions. He stated that there are inadequate numbers of electric transmission lines in the San Antonio, Austin, West Texas, and Panhandle areas. He said that ERCOT is attempting to provide that infrastructure and stated that currently there are transmission congestion concerns. He added that ERCOT is attempting to bypass bottlenecks in those areas.

Senator Lucio asked how long it will take to establish wind power on the coast. Doggett said that at this time wind power is of low interest to residents in that area and that it would be some time before that interest increases. Smitherman said that the transmission lines are available if wind power is established in that area.

Smitherman recommended that the state encourage electricity consumers to curtail their energy consumption by using advanced or smart meters to assist them with monitoring their energy consumption. Smitherman explained that smart meters allow a utility company to send text messages to a consumer's cellular device regarding how much energy is being consumed. He added that a smart meter has the ability to tell consumers when demand and cost are high due to peak usage.

Senator Fraser recommended that the state provide incentives to consumers and utility companies to use smart meters. Smitherman said that using variable rating plans and prepayment plans in coordination with smart meters can lower electricity usage. Senator Fraser recommended that the state review whether to incentivize consumers to use power during off-peak hours rather than during peak hours.

Smitherman said that smart meters can identify who has power and who does not have power. He said that ERCOT has installed a four-megawatt battery in Presidio County in an attempt to relieve electricity reliability issues and that he believes that this type of battery could be used to relieve electricity transmission congestion in other areas. Smitherman said that this type of battery can also store power to be used in the event that a natural disaster cuts the power lines.

Smitherman requested that the legislature provide instruction on how to properly run ERCOT's energy efficiency program.

Senator Jackson asked what permits are needed to create a wind power company. Smitherman responded that the company would need to enter into an interconnection agreement with ERCOT for the needed infrastructure. Senator Jackson discussed a Fort Hood runway that is interfering with the installation of electricity transmission lines. Smitherman said that ERCOT is working with surrounding property owners to use their land rather than Fort Hood land.

Senator Carona called Danny Bivens, Office of Public Utility Counsel (OPUC); Kate Robertson, Environmental Defense Fund (EDF); Carl Richie, vice president of government affairs, TXU; Alan Ahrens, CenterPoint Energy; and Curt Seidlits, Texas Is Hot, to testify. Bivens stated that OPUC is reaching out to consumers via customer surveys and traveling the state informing consumers about customer choice and what energy efficiency programs are available. He said that OPUC is attempting to improve its website regarding public outreach for energy efficiency programs and low-income energy assistance programs and is working to improve customer service complaint inquiries. He said that consumers need electric choice, low-income assistance, energy efficiency programs, and access to smart meters. Bivens recommended that the state assist persons who are considered in critical care status to obtain payment assistance. He explained that persons in a critical care status need to have power to run medical equipment.

Robertson explained that "energy conservation" is reducing electricity waste and "energy efficiency" is attaining the same results by using less energy. She said that the public is not aware of the differences between the two terms. She stated that most people are not aware of how much energy they are using every day and that smart meters may be a good way to help inform them of that usage. Robertson said that ERCOT is not adequately promoting or incentivizing the use of energy demand management programs such as time-of-use plans. She

said that that these types of plans can make consumers aware of their energy consumption. Robertson stated that EDF partnered with the City of Houston and Rice University to develop a survey to understand why low-income families were not taking advantage of the City of Houston's free weatherization program. Robertson said that many of the respondents did not know that the weatherization program existed. She added that many Texans are not aware of the new technologies and energy consumption efficiencies that are available.

Ahrens said that CenterPoint Energy offers 13 commercial and residential programs, including energy efficiency programs, lighting programs, and a low-income weatherization program. He said that CenterPoint Energy's energy efficiency programs have exceeded their goals since 2002; that 250,000 customers are currently participating in those programs; that system peak demand has been reduced by 382 megawatts since 2002; and that CenterPoint received the Energy Star award from the United States Environmental Protection Agency (EPA) and United States Department of Energy (DOE). He recommended that the state remove any financial disincentives regarding energy efficiency programs. He said that energy efficiency programs result in lost revenue to energy companies.

Richie discussed TXU's energy efficiency programs, including providing a wireless power monitor, offering chimney balloons, and providing online information for its energy consumers on the company's energy efficiency rebate program and low-income assistance programs.

Seidlits discussed the Texas Is Hot program and website and said that Texas Is Hot is a public outreach program regarding energy efficiency and conservation. He stated that there is a need to educate the public on energy efficiency statewide and recommended that the state review previous programs such as "Click it or Ticket" or "Don't Mess with Texas" when considering the state's methodology on educating the public on energy efficiency. He recommended that a statewide public and private campaign be launched regarding energy efficiency. He added that California has a good energy efficiency program.

Senator Carona called Steve Wiese, president of the board of directors, Texas Renewable Energy Industries Association (TREIA); John Fainter, president and chief executive officer (CEO), Association of Electric Companies of Texas (AECT); Rick Gilliam, vice president, government affairs, SunEdison; Steve Munson, president, GeoPower Texas; Danny Vines, president, Aspen Power LLC; and Dr. Michael Webber, assistant professor, Cockrell School of Engineering, The University of Texas at Austin, to testify. Fainter stated that there is not just one solution to address the energy needs of the state. He said that the population and the business section are growing and that there needs to be diverse use of different types of energy to meet those demands. He added that the state should review whether to encourage companies to increase their electricity capacity through nuclear, gas, and coal energy means.

Gilliam discussed solar energy, stating that solar energy is a long-term source of energy for Texas. He said that solar costs are declining. Gilliam stated that the high demand for solar energy in Europe has kept the cost high, but he said that that cost is now stabilizing. Gilliam said that there are two components to a solar project: hardware and installation. He said that using solar power over a long period of time could reduce its overall cost due to low maintenance costs. He recommended that the state provide temporary solar energy incentives, that such incentives be performance-based, and that

the incentives be declining in order to drive solar costs down.

Senator Harris asked whether solar energy is cheaper than other forms of energy. Gilliam said that the cost to generate solar is higher than current types of electric generation. Senator Harris said that he would have a difficult time supporting the use of solar energy if it is significantly higher in cost than current types of generation.

Gilliam stated that solar power is more stable than other sources, such as natural gas, that tend to fluctuate in price. He recommended that the state implement a temporary five-year solar energy program to reduce the costs associated with building a solar facility.

Senator Jackson asked whether a large solar energy facility needs to be close to where the energy it produces is consumed. Gilliam answered in the affirmative and said that it is better to locate solar facilities closer to consumers to reduce lost energy. Senator Jackson clarified that not many long-term jobs are created when a solar energy facility is built.

Munson provided an overview of geothermal power. He said that GeoPower Texas Corporation (GeoPower Texas) supports a PUC rule that recognizes geothermal power as a non-wind renewable portfolio standard. He said that there is a large amount of steam under Texas and that companies like GeoPower Texas could turn that steam into power. He said that geothermal power is the cheapest source of power in California. He stated that geothermal power is a good fit for Texas because of the available resources.

Senator Harris asked what is the drill depth to reach the steam. Munson responded that in Texas companies would have to drill at least 8,000 feet.

Munson said that Texas and Louisiana have a combined 20,000 megawatts of unused steam power. He said that GeoPower Texas has nearly 130,000 acres of leased property from which to capture steam and needs a PUC rule to allow public utilities to contract with GeoPower Texas.

Senator Fraser asked the cost of geothermal power. Munson said that the cost is below 10 cents per kilowatt hour.

Senator Lucio asked why there are no plans to expand in South Texas. Munson said that it would not be cost effective because the steam is not easily accessible in South Texas.

Senator Harris asked whether GeoPower Texas needs to be subsidized. Munson answered in the negative.

Webber discussed the benefits of electric vehicles, including the need for less maintenance. He said that an electric vehicle has a range of about 40 miles and also has a limited payload. He added that an electric vehicle shifts energy consumption from oil to electricity. He said that an electric vehicle offers air quality benefits but is not pollution-free because the energy it stores may be produced by sources such as coal. Webber stated that electric vehicles operate at a lower cost per mile but are more expensive to purchase. He noted that electric vehicles consume electricity at nonpeak hours. He said that electric vehicles could negatively affect petroleum

companies and may require strengthening the residential infrastructure to handle the electric load needed to charge the vehicles.

Senator Harris asked how the federal and state governments would be able to tax electric vehicles so that the state can maintain roads. Webber responded by saying that state and federal governments would need a mechanism to tax them.

Webber said that the demand for electric vehicles will rapidly increase as the cost of motor fuel increases.

Senator Carona discussed the batteries that are used in electric vehicles. Webber said that such batteries are proving to last longer than had been expected and said that he is unaware of how companies will address battery swap-outs.

Weis said that renewable energy can reduce energy costs and that the presence of wind energy has reduced the cost for ratepayers because low operating costs offset up-front funding. He recommended that the state diversify its energy generating sources and not rely solely on certain sources of energy, such as gas and coal. He said that small solar and wind systems, such as residential systems that generate energy at the point of use, can free up congested transmission lines.

Vines discussed biomass energy and said that East Texas has an estimated 22 billion pounds of waste, which includes logging waste wood as well as urban biomass that has the potential to generate over 100 trillion British thermal units (BTUs) of heat energy annually. He added that East Texas generates an estimated 8.6 billion pounds of logging waste annually. He stated that biomass is usually generated near the source of consumption. Vines said that biomass provides a competitive energy cost to other energy sources. He said that Texas needs to diversify its energy portfolio and to include biomass in its energy portfolio. Vines said that biomass is a clean energy that is 60 to 70 times cleaner than the current air standards. He stated that a 50-megawatt biomass facility creates 350 to 400 jobs per facility.

Senator Jackson asked who is financing the Aspen Power biomass facility. Vines responded that the facility is being funded through tax-free revenue bonds issued through the Oppenheimer Champion Income Fund. Vines said that it takes \$120 million to get a biomass facility up and running. He said that natural gas drives electric rates. He said that biomass should be eligible to obtain the state's \$500 million non-wind renewable energy credit. He stated that biomass power is a dependable power source that is generated close to the consumer.

Senator Fraser asked what is the cost to the consumer of biomass power. Vines said that the Aspen Power biomass facility would compete at a six cents per kilowatt hour level with no subsidy, but that it would be difficult to compete with natural gas rates at current prices. Vines said that a government subsidy would allow more biomass facilities to be developed.

Senator Lucio asked whether there has been an estimate of the amount of natural gas available in Texas. Vines said that the state could export natural gas energy to other states and Mexico. Vines said that if Texas were a country it would rank second or third in the world in regard to

natural gas reserves.

Senator Carona called Brewster McCracken, Pecan Street Project; Jim Greer, senior vice president, asset management, Oncor; Patrick James, TXU; Brent Hodges, Reliant Energy; and Kenny Mercado, CenterPoint Energy, to testify. Greer discussed electric smart metering and said that Oncor has installed approximately 1.2 million smart meters to date and will have installed 3.4 million by 2012. He said that smart meters allow people to better monitor their energy use. He said that Oncor utilizes the Smart Meter Texas web portal that allows energy consumers to view their energy consumption. He added that that information is updated every 15 minutes. He stated that Oncor is attempting to educate the public by going to areas around the state with a mobile classroom and demonstrating how smart meters work. He stated that Oncor has established an "Ask Oncor" program in which Oncor employees answer questions from the company's energy consumers online regarding energy efficiency programs.

Senator Jackson asked who pays for the smart meters and what is the cost. Greer said that the total cost is just over \$200 per customer and that that is charged through a \$2.19 surcharge fee per month over an 11-year period. Greer said that smart meters have a 20-year life span and can be upgraded through firmware. He said that customers do not have a choice and are required to use smart metering.

Mercado stated that CenterPoint Energy plans to swap out 2.2 million meters by 2014 and has installed 550,000 meters to date. He said that CenterPoint Energy received a \$200 million grant from DOE to accelerate its smart metering deployment, which may enable the company to complete the exchange by 2012. He stated that DOE allocated \$50 million to upgrade CenterPoint's intelligent grid, which will utilize smart meters and other technologies. He said that meter accuracy is increased compared to the old meters and said that the smart meters can remotely connect and disconnect. He said that CenterPoint Energy utilizes the Smart Meter Texas website portal, which allows its energy consumers to access their energy consumption data.

Hodges said that Texas is ahead of other states regarding smart metering technology due to strong progressive work by the legislature and state policymakers. He said that Reliant Energy has deployed 1.7 million smart meters. He said that Reliant Energy has received a \$20 million DOE grant to assist the company with deploying the smart metering technology. He discussed various Reliant Energy efficiency programs, including the Smart Meter Texas website portal, the time-of-use rate plan, and in-home displays. Hodges stated that Reliant Energy provides a free in-home energy audit and a website that provides energy efficiency tips.

Senator Harris asked how much of the \$200 million grant CenterPoint Energy obtained from DOE was used to reduce the cost of the smart meter. Mercado responded that \$150 million was used to reduce the cost of smart meters.

McCracken discussed the Pecan Street Project (PSP), which does research and development regarding smart grid and smart metering technology. He said that PSP has received a grant to conduct a study at the Mueller housing development in Austin. He stated that many states are not modernizing the electric grid, but that Texas is moving forward on that modernization.

McCracken said that it is important to monitor energy use because of the need to conserve energy. He said that the use of electric vehicles can double the energy consumption in one home. He discussed a University of Central Florida study that found that people's energy consumption grows throughout the day and peaks between 3:00 p.m. and 4:00 p.m. He added that during that time energy costs the consumers 42 cents per kilowatt hour compared to the average cost of 11 cents per kilowatt hour. McCracken said that if consumers could reduce their consumption during this peak time, it could have a significant impact on their utility bills. He said that smart metering allows consumers to measure and manage their energy usage. He stated that people charge their cars at night when they get home, which doubles their electric usage. McCracken said that smart metering can identify individuals who use an electric vehicle by monitoring the amount of electricity consumed. He stated that smart meters can also notify the electric company or law enforcement if someone is stealing electricity.

James said that TXU offers an iThermostat that allows consumers to program their thermostats remotely through a website. He said that this provides a convenience to customers so that they can quickly and easily make changes to their air conditioning thermostat from remote locations. He stated that TXU has a time-of-use plan that enables customers to save money on their utility bills by adhering to requirements of the plan that reduce energy consumption during peak usage.

Senator Carona opened public testimony.

Senator Carona called Luke Bellsnyder, Texas Manufacturers Association; William Peacock III, Texas Public Policy Foundation; Tim Morstad, AARP; Karen Haden, The Sustainable Energy and Economic Development (SEED) Coalition; and Luke Metzger, director, Environment Texas, to testify. Bellsnyder said that among TMA's members are some of the largest energy consumers in the state. He said that energy usage is the largest cost driver. He encouraged legislators to be aware of the cost drivers when implementing energy policies. He said that any cost drivers could decrease the state's ability to attract new businesses and could reduce businesses' ability to do research and development. He requested that the committee work with TMA regarding energy efficiency policies.

Peacock stated that since 2002, Texas consumers have paid \$591 million to support the state's energy efficiency program. He discussed flaws with the state's energy efficiency program, stating that the state measures savings from the program incorrectly and that consumers tend to use more energy when the costs are reduced. He stated that the marketplace can handle the increased demand for electricity and that Texans are interested in more "less expensive energy" not less "more expensive energy."

Morstad said that the impact of dynamic pricing has not been adequately studied, specifically regarding older citizens who are unable to move their use to night time. He said that the state needs to ensure that people who are on time-of-use plans actually benefit from such plans. He said that if a person does not benefit from a time-of-use plan, the person should have an affordable alternative to such a plan.

Haden stated that one-third of municipal utility companies and electric cooperatives (co-ops) are not doing much regarding energy conservation. She discussed various municipal utility and

electric co-op energy conservation programs, including efforts by the Pedernales Electric Co-op, Bluebonnet Electric Co-op, the City of Austin, and San Antonio's Public Utilities to reduce customers' energy consumption. She said that San Antonio's utility company, CPS Energy, is interested in reducing its energy consumption by 771 megawatts by 2020 through efficiency in an attempt to prevent the need to build an additional coal power plant. She stated that CPS energy has reduced its energy usage by 140 megawatts in two years by using weatherization programs and lighting retrofits.

Senator Fraser asked whether Austin and San Antonio offer variable pricing plans. Haden stated that the City of Austin offers a Power Partners program that offers variable pricing. Senator Fraser said that no electric co-op offers variable pricing. Senator Fraser said that municipal utility companies and electric co-ops, which do not have competition, need to offer variable pricing to incentivize people to use smart metering and to encourage people to stop consuming electricity during peak hours. Senator Fraser said that such companies do not have price pressures from a competitor, so they have no incentive to offer variable pricing.

Haden said that United Cooperative Services has an energy efficiency store that uses collective buying power to obtain more affordable prices on energy efficiency hardware and software that provides a 20 percent discount to its consumers for such hardware and software.

Metzger said that in the next 20 years, 2.2 million homes will be built in Texas, placing a considerable strain on the electric grid. He stated that Texans can reduce their energy consumption from Texas' electric grid if they use rooftop solar. He added that rooftop solar has the potential to create jobs in Texas because of its silicone-producing companies. Metzger recommended that the state incentivize the use of solar energy.

Senator Carona called Lanetta Cooper, Texas Legal Services Center; Russ Keen, Plug-in Texas; and Carol Biedrycki, Texas Ratepayers' Organization to Save Energy, Inc., to testify.

Cooper recommended that the state encourage utility companies to have demand savings goals for low-income programs that equal the percentage of poverty within the economic area served by that plan. She said that PUC has recently decreased utility incentives for low-income energy efficiency programs. She stated that the best energy efficiency option for low-income families is weatherization. Cooper recommended that the state require that weatherization be a part of any energy efficiency plan addressing demand savings. She said that pricing options do not provide certainty of demand savings, especially to the elderly. She recommended that the legislature consolidate all efficiency programs into a stand-alone agency to ensure equitable program access and public participation in the planning and implementation of energy efficiency plans.

Keen said that a majority of the major automobile makers have invested money in developing electric vehicles. He recommended that the state use Texas Emissions Reduction Plan (TERP) funds to incentivize car purchasers to purchase electric vehicles. He said that most electric vehicles take eight hours to charge, but that there is a three-hour rapid charge available. Keen said that the City of Houston has purchased electric vehicles for its fleet. He said that electric vehicles align up with wind energy peak production.

Senator Lucio asked whether there is technology available inside a vehicle that would regulate speed so that if a driver chooses to have such technology, insurers could offer a reduction in premiums. Senator Carona said that such technology exists, but the state would need to authorize its use in order for insurance companies to retrieve that type of information.

Keen stated that there are concerns that electric vehicles are too quiet, which can make them dangerous to pedestrians and bicyclists who do not hear them approaching.

Senator Fraser said that peak wind energy production is in the middle of the night and recommended the development of the necessary transmission lines and technology to get that energy to homes that use electric vehicles.

Biedrycki recommended that the state regulate energy so that low-income families are able to obtain affordable energy. She discussed recent PUC rules that are negatively affecting low-income families and said that PUC has taken away the incentive to provide benefits to low-income families. She expressed concern that PUC is not placing a priority on providing assistance to low-income families. She stated that PUC is reducing its budget by five percent by reducing the System Benefit Fund that serves low-income families. Biedrycki said that there is energy savings potential in low-income homes through weatherization because those homes tend to be more open to the elements. She recommended that the committee consider low-income families in regard to energy reform.

Senator Watson said that if PUC does reduce its budget using the System Benefit Fund, then the agency is using those funds in a manner that was not intended. He said that the System Benefits Fund is a good example of why budget reform is needed.

The committee recessed subject to the call of the chair.

—by Austin Valentine, Senate Research Center

Senate Committee on Business and Commerce (October 25, 2010)

The Senate Committee on Business and Commerce (committee) met on Monday, October 25, 2010, to hear invited and public testimony regarding home mortgage servicers (servicers) and competition in the electric retail markets, including the impact of the nodal transition on electric customers.

Senator Carona called the meeting to order and called the first panel of witnesses that included Kevin and Connie Christopher; Greg and Marta Guzman; Tim Bothe; Charlotte Richards; and Robert Doggett, team manager, Foreclosure Defense and Predatory Lending, Texas Rio Grande Legal Aid, to testify on their experiences with servicers.

Kevin Christopher discussed issues that he and his wife encountered with American Home Mortgage Savings, Inc. (AHMSI), stating that the company redirected the Christophers' mortgage payments to pay for windstorm insurance even though the family had already obtained such insurance. He said that they received a notice of foreclosure from AHMSI and that they filed a complaint with the Texas Department of Insurance. Christopher stated that their problems with AHMSI were alleviated when the Office of the Attorney General (OAG) filed suit against AHMSI in August 2010.

Marta Guzman discussed problems she faced with OCWEN Financial Corporation (OCWEN), stating that OCWEN had foreclosed on her home of 24 years. She stated that she had difficulty contacting OCWEN representatives and that her phone calls were often routed to call centers in India. She discussed personal difficulties leading up to the foreclosure and discussed contradictory conversations she and her realtor had with OCWEN representatives. Guzman stated that she could not believe such actions were occurring in the United States.

Bothe provided the committee with written testimony outlining contractual issues with AHMSI. He stated that AHMSI is not under regulation.

Richards testified that she is homeless because OCWEN foreclosed on her home. She said that she had been living in her house for 24 years, but that OCWEN sent notices to another address. She discussed the events leading up to her eviction, stating that she has documentation proving dishonest practices by OCWEN. Senator Carona stated that the committee will help correct the wrongs that led to her eviction.

Doggett stated that the federal Home Affordable Modification Program has failed to help citizens modify their mortgage loans and avoid foreclosure. He said that the foreclosure process works efficiently, making it easy for servicers to foreclose. Doggett said that loan modification is a more complicated process than foreclosure and that there are more incentives for servicers to foreclose on a property than to modify a loan. He stated that servicers have different motives than loan holders and that servicers make money from late fees and other charges to homeowners. Doggett said that servicers do not make money by helping people keep their homes.

Senator Carona asked Doggett for recommended statutory changes. Doggett replied that

servicers in Texas are not regulated and that some regulation and oversight would be helpful. He said that a regulatory system could be funded through a system by which the violators are assessed fees and penalties.

Senator Estes asked Doggett for the number of entities that provide legal aid to customers facing mortgage problems. Doggett said that approximately 10 legal aid lawyers in the state (one for every 10,000 clients) deal with mortgage foreclosure problems. He said that people often fall victim to lawyers who are unable to provide assistance.

Senator Estes asked Doggett whether there were fewer problems with community banks than with large servicers because community bank representatives are easier to contact. Doggett replied that telephone operators with larger servicers have no authority to modify loans. He said that community banks have more incentive to modify loans that are provided through their bank. Doggett stated that it would be beneficial to have an agency in Texas that customers could call for assistance. Following an inquiry from Senator Estes, Doggett stated that he is not advocating the creation of a new regulatory agency, but suggested that additional oversight authority be given to an existing agency, such as the Department of Savings and Mortgage Lending (SML).

Senator Carona called a panel comprised of Janice K. Huey, senior vice president, Wells Fargo Home Mortgage (Wells Fargo); Tom Tallent, vice president, Mortgage and Records Services, Colonial Savings; and Larry Hartman, vice president, Customer Experience, JP Morgan Chase (Chase), to testify on the home mortgage service process. It was brought to the committee's attention that OCWEN and AHMSI were invited to testify, but that OCWEN declined the invitation and that a representative of AHMSI was not available.

Huey said that Wells Fargo helps customers and creates opportunities for customers to own homes and has a long history of responsible lending. She said that the majority of loans at Wells Fargo are owned by investors who provide guidelines the bank must follow. She said that Wells Fargo continuously collaborates with investors to introduce helpful solutions for customers to satisfy the obligations of homeownership. She said that Wells Fargo is the loan servicer for approximately 775,000 customers in Texas. Huey discussed Wells Fargo's responsible servicing principles.

Senator Estes asked Huey how customers can contact Wells Fargo representatives and obtain the information they need to save their home. Huey replied that Wells Fargo has no offshore call centers and that each customer is given a 1-800 number with their statements. She stated that Wells Fargo has a practice whereby one representative works with a customer throughout the entire course of the loan modification process.

Senator Carona asked how a large servicer such as Wells Fargo is incentivized to help customers avoid foreclosures. Huey replied that servicers are given incentives through investors to prevent foreclosures and to work on loan modifications. She said that no one wins with foreclosures. Huey said that Wells Fargo takes pride in treating customers as people rather than as loan numbers. Following an inquiry from Senator Carona, Huey stated that Wells Fargo is the second-largest home mortgage service lender in the nation.

Tallent testified that Colonial Savings is a local, mid-sized home mortgage servicer. He discussed national lending laws that apply to all servicers, including the Truth in Lending Act, the Real Estate Settlement Procedures Act, and the Mortgage Reform and Anti-Predatory Lending Act, which established the Bureau of Consumer Financial Protection. He said that federal regulation provides avenues for customer complaints and that federal legislation that affects consumer issues will be effective within the next few years.

Hartman said that Chase has over seven million consumer customers in Texas. He said that Chase strives to provide a high level of customer service for all customers, including those who seek loan modifications or those who are in default. He stated that Chase has numerous employees who help customers stay in their homes, including relationship managers who personally work with customers on loan modification. Hartman said that Chase has regional homeownership centers in Houston and Dallas that enable homeowners to meet with trained advisors to discuss their situations.

Following an inquiry by Senator Carona, Hartman stated that Chase fluctuated as the fourth-largest and fifth-largest mortgage servicer in the nation. Senator Carona said that the committee intends to solve problems relating to home mortgage servicers with as little regulation and damage to the industry as possible. Senator Estes stated that the entire mortgage lending industry will benefit from identifying those servicers that abuse citizens with careless business practices.

Senator Carona called Leslie Pettijohn, commissioner, Office of Consumer Credit Commissioner (CCC); Doug Foster, commissioner, SML; and Daniel Hodge, first assistant attorney general and chief of staff, OAG, to discuss the regulation of the home mortgage service industry.

Pettijohn stated that the CCC has primary jurisdiction over Title 4 (Regulation of Interest, Loans, and Financed Transactions), Finance Code, but that in regard to mortgage lending, the CCC has jurisdiction over servicers that engage in the transaction of secondary loans and loans with more than 10 percent interest. She said that CCC conducts examinations of secondary loan servicers. She discussed the enforcement activity of CCC that includes, in some cases, restitution in response to servicer violations. Pettijohn provided the committee with complaint data on secondary loan servicers. She said that the largest category of complaints is related to customers trying to obtain loan modifications and that the second-largest category of complaints is related to charges and fees. Pettijohn said that the majority of the complaints are related to a first-lien mortgage, over which the CCC has limited jurisdiction.

Senator Carona asked whether SML would be the ideal agency to regulate primary loan servicers. Pettijohn responded that some agency within the Finance Commission would be appropriate.

Foster testified that SML regulates state savings banks and savings and loans, mortgage companies or brokers, and mortgage bankers. He discussed mortgage originators that are also servicers and are registered with SML and mortgage servicers who voluntarily registered with SML to assist with customer complaints. Foster said that more than 49 percent of all mortgage complaints received by SML relate to mortgage loan servicing. He said that the most common

loan-serving inquiries and complaints received by SML involve failure of servicers to approve loan modifications. Foster said that the top four residential mortgage servicers in the country control 60 percent of the market and that the top 20 servicers control 80 percent of the market. He said that of that 80 percent, 71 percent are depository institutions that would not be subject to state oversight. Foster discussed mortgage servicing statutory powers in other states, noting that the majority of states have consumer complaint authority. He said that the states that have examination authority are currently not conducting examinations.

Senator Carona called John Heasley, Texas Bankers Association (TBA), to testify and asked whether TBA members objected to oversight of servicers. Heasley replied that TBA does not have an official stance on the issue, but that larger members would prefer a simplified regulatory system with some degree of accountability. Senator Carona, referring to Foster's testimony on policies in other states, asked Heasley to provide the committee with information on what other states have done that would be helpful or detrimental for the regulation of servicers in Texas.

Senator Lucio asked what remedies are provided to consumers in other states that have stronger regulatory structures. Foster said that most states offer exemptions to depository institutions and that most state regulatory structures are not proactive, but rather are reactive to customer complaints. Senator Lucio asked whether customers would be better protected against abusive lending practices if Texas had more statutory safeguards. Foster replied in the affirmative, stating that customers do not have the ability to appeal to a regulatory agency.

Hodge stated that mortgage-related complaints filed with OAG have increased. He said that the types of complaints against servicers include the misapplication of payments or failure of credits rendered; failure to timely credit payments; misplacement of information; payment of fees and late charges before payments toward loans; and failure to communicate with service centers. He said that although OAG is not a regulatory agency, the Deceptive Trade Practices Act gives the Consumer Protection Agency within OAG subpoena power to investigate claims and seek civil penalties against violators. Hodge said that servicers are also subject to the Texas Debt Collection Act. He stated that OAG has made great efforts to protect consumers and has filed suit against violators, including AHMSI.

Senator Carona asked how slow the process of prosecuting servicer violations is and whether a regulatory agency with clear oversight would give a more timely response. Hodge replied that litigation takes a longer period of time to resolve issues. He stated that a regulatory agency can adopt and enforce rules to address violations in a more timely manner.

Senator Carona commended Attorney General Abbott for his assistance to the committee.

Senator Carona opened the hearing to public testimony relating to servicers.

Karen Neeley, general counsel, Independent Bankers Association of Texas (IBAT), stated that depository institutions, particularly community banks, provide a significant number of residential mortgage loans and keep a number of those loans in their own portfolio. She stated that her written testimony provides a wide array of state and federal laws that currently exist with regard to servicing mortgage loans.

Senator Carona, Senator Lucio, and Neeley discussed the percentage of home mortgage loans that are made through community banks compared to large secondary banks. Neeley said that she was unaware of the specific percentage, but that community banks can provide loans in areas that secondary banks cannot.

Senator Carona called Donna L. Nelson, commissioner, Public Utility Commission (PUC), and Trip Doggett, president and chief executive officer, Electric Reliability Council of Texas (ERCOT), to discuss the state perspective regarding competition in electric retail markets.

Nelson discussed the history of the electric market in Texas. She said that ERCOT covers 75 percent of the land mass and 85 percent of the electric load in Texas. She said that ERCOT is unlike any structure in other states. She said that because ERCOT is contained entirely within the geographic boundaries of Texas, the Texas Legislature has more authority over electric issues than do legislative bodies in other states. Nelson said that the deregulated market has worked for residential and industrial customers. She said that ERCOT has a heavier reliance on natural gas than any other electric market in the United States and that retail electric rates depend on the price of natural gas. Nelson discussed wholesale natural gas rates and price volatility since 2004.

Nelson stated that cost savings are passed on to retail customers. She said that the lowest variable price product for each of the electric service territories is lower than the last regulated rate in 2001. She stated that rates in the competitive market are lower than the rates of municipally owned electric utilities (MOEU) and electric cooperatives. Nelson said that evidence shows that rates in Texas are lower than rates in other large states like California and New York and neighboring states like Oklahoma, Louisiana, and New Mexico.

Senator Watson asked Nelson how electric prices in Texas compared to prices in other states in 2008. Nelson replied that Texas rates were higher than those in neighboring states due to the price of natural gas. Senator Watson stated that the volatility of natural gas prices should be considered in the context of electric prices.

Nelson discussed the transition to the nodal market that will occur on December 1, 2010. She stated that the current zonal wholesale market that divides the state into four zones is inefficient because price signals are not transparent and congestion costs are uplifted to all within the zone. She said that the nodal market, which divides the electric grid into 4,000 nodes, would reduce local congestion costs and improve ERCOT's operational control of the electric grid. She said that a cost-benefit analysis determined that the transition to the nodal market would have a \$520 million system-wide benefit and \$5.6 billion in savings to customers over a 10-year period.

Senator Carona and Senator Fraser discussed concerns relating to the transition to the nodal market, including the notion that costs will be passed on to customers and the opportunities for market manipulation. Nelson replied that costs relating to the transition to the nodal market have already been charged as a fee to transmitters. Senator Fraser stated that an independent market monitor will prevent market manipulation. Nelson said that after the transition to the nodal market, a cap on prices will be placed for 45 days to help mitigate any unforeseen consequences. Senator Fraser expressed cautious optimism about the project.

Doggett testified that the competitive retail market is one of four responsibilities given to ERCOT under the Public Utility Regulatory Act (PURA). He said that ERCOT is the only entity of its type in the United States; no other entity performs a similar range of grid, wholesale market, and retail market operations. He said that ERCOT maintains a centralized registration database and serves as the transaction clearinghouse for all retail transactions.

Senator Fraser asked for the average time it takes for a customer to switch providers. Doggett replied that the average time is five days. Nelson added that in the past the timeline for customers to switch providers was 45 days. She said that PUC recently implemented rules to shorten that timeline.

Senator Jackson asked whether the cost to convert to the nodal system has been absorbed since the process began in 2003, and whether generation, distribution, and infrastructure costs are included in rates. Nelson said that costs for the nodal transition have been absorbed by fees to generators that have been charged since 2005 or 2006 and will continue to be charged through 2010. She said that retail customers have not been charged for transition costs.

Doggett said that ERCOT can track residential customers who switch electric providers, stating that ERCOT processes approximately 60,000 switches per month. He stated that ERCOT has spent a great deal of time and effort toward training market participants and retail electric providers in preparation for the transition to the nodal market.

Senator Lucio asked Doggett what he considers the definition of success for the nodal market. Doggett said that the nodal market will be a success if it provides a reliable electric market with a more accurate management of congestion areas and system frequency. Senator Lucio asked for the amount of savings customers will see once the nodal market is fully operational. Doggett said that the cost-benefit savings analysis indicated \$5.6 billion in savings to customers over the first 10 years. He said that the nodal system will provide ERCOT with better tools for frequency control.

Senator Fraser said that savings will be seen through the reduction of electric load congestion, particularly as the Texas population continues to grow.

Senator Jackson asked whether the shift to a nodal market will affect the number of employees needed at ERCOT. Doggett replied in the negative, stating that the savings are not directly transferable to the operational costs of ERCOT. He said that the savings will be seen in ERCOT's ability to operate generation units more efficiently.

Senator Carona called Phillip Oldham, Texas Association of Manufacturers (TAM); Jake Dyer, policy analyst, Cities Aggregation Power Project (CAPP); Chris Brewster, attorney, Steering Committee of Cities Served by Oncor; and Bee Moorhead, executive director, Texas Impact, to testify.

Oldham said that energy costs are the largest costs of doing business for manufacturers. He said that TAM supports the electric market in ERCOT, and he stated that the hallmark of a successful

market is its ability to lower prices when costs of production are lowered. Oldham said that manufacturing plants were able to stay open as a result of lower energy prices provided by ERCOT, and he said that TAM is pleased with the independent market monitor that ensures appropriate bidding and market behavior. Oldham said that TAM is also cautiously optimistic about the transition to the nodal market system. He said that ERCOT affords its customers an array of risk management tools and allows customers to determine the risks they want to undertake. Oldham expressed hope that those risk management tools will continue to be provided to customers after the transition to the nodal market.

Dyer testified that despite the decline in electric prices, the electric market is not operating as a competitive market should. He said that residential electric rates remain above the national average and are higher than rates in neighboring states. Dyer said that Texans have suffered greater price increases than residents in all but six states since the market was deregulated in 1999. He said that a PUC report confirmed that costs were decreasing before deregulation.

Senator Harris asked whether Dyer is suggesting that Texas should return to a regulated electric market. Dyer said that CAPP is not in favor of regulation but has proposed legislative changes for the electric market. At Senator Lucio's request, Dyer discussed the difference in his methodology in reaching conclusions opposite to those of previous witnesses regarding how deregulation has affected citizens.

Brewster stated that a highly unrealistic set of expectations has been placed on the transition to the nodal market. He stated that the nodal market will produce a new set of charges and that a number of retail electric providers may default or direct unexpected costs of the transition to consumers. He said that he anticipates that a large number of disputes will arise from the transition. Senator Carona said that he has heard similar fears from other sources suggesting that retail providers will default.

Moorhead expressed concern that the competitive market serves low-income and vulnerable customers. She said that the System Benefit Fund should be set aside to protect those who need service rather than to balance the state budget as part of general revenue. She stated that consumers do not have adequate information regarding the electric market. She discussed issues with the PUC website *PowertoChoose.org*, which is intended to enable customers to shop for electricity providers and to learn about electric competition in the state. Moorhead expressed concern that deregulation has not resulted in lower electric rates. She said that lower wholesale prices cannot be attributed to deregulation and that natural gas rates are likely to rise. Moorhead stated that deregulation has, however, created opportunities for environmental stewardship by allowing customers the option to use renewable energy sources.

Senator Carona called John Fainter, president and chief executive officer, Association of Electric Companies in Texas (AECT); Marci Zlotnik, chairman, StarTex Power; and Brad Jones, vice president, government relations, Luminant, to testify.

Fainter testified that competitive electricity prices are directly related to natural gas prices, but enable customer choice and lower prices. Fainter discussed fixed-price products.

Senator Carona asked why there is a difference in price calculations among other witnesses. Fainter said that he used information from PowertoChoose.org and the Edison Electric Institute (EEI) to calculate prices for his testimony.

Fainter discussed other factors that affect electricity costs. He said that Texas has experienced tremendous population growth and that there is a need to build electric generation and transmission capacity to meet that growth. He said that generators have dedicated a great amount of funds to updating and retrofitting their infrastructure in order to comply with environmental standards.

Zlotnik testified that StarTex Power has been successful in the competitive market by focusing on customer service and corporate culture. She said that StarTex Power was the first company to implement contract expiration prices on residential bills after 2008. Zlotnik said that StarTex Power has mitigated any risk associated with the transition to the nodal market by buying price insurance from its wholesaler. She said that retail electric providers may fail, but that there are many mechanisms companies can use to hedge transmission costs. Zlotnik stated that no one will go without power. She discussed changes to be implemented in June 2011 relating to switch-holds. She said that switch-holds expand the population of customers who will be offered deferred payment plans. Zlotnik stated that switch-holds will keep prices low.

Jones testified that Luminant has partnered with ERCOT for the design and testing of the nodal market and that corrections and improvements have been implemented as needed. He said that a great deal of training has been provided by ERCOT. Jones stated that the nodal market provides transparencies that enable all market participants to identify problems and determine resolutions. He said that the nodal market will be more efficient and transparent and will yield a reduction of congestion costs and more investment in new generation.

Senator Carona opened the meeting to public testimony relating to competition in the electric market.

Andrew McFarlane, Data Foundry, stated that businesses need certainty of costs and reasonable power costs. He discussed issues relating to Austin Energy. He recommended that the legislature allow retail competition for MOEUs or require more transparency from MOEUs. He suggested that PUC oversight of MOEUs should be expanded.

Carol Biedrzycki, executive director, Texas Ratepayers Organization to Save Energy (ROSE), testified that Texas ROSE does not support prepaid services provided by retail electric providers for the installment of advanced meters. She said that prepaid services set up a second-tier class of customers whose protections are not the same as those of other customers with standard service. Senator Carona asked Biedrzycki to provide the committee with information on the lack of such protections for customers.

Cyrus Reed, Lone Star Chapter, Sierra Club, discussed opportunities to reduce prices in the nodal market. He said that rates may be more volatile due to local generation and congestion issues after the transition to the nodal market. He stated that electric bills may be reduced through consumer programs on energy efficiency, demand-side management, and renewable energy.

Roger Borgelt, Austinites for Action, discussed Austin Energy's Climate Protection Plan. He stated that the Austin city council's affordability matrix, which is intended to provide consumer protections against excessive rates, is questionable. He said that there is no dependable guideline on how Austin Energy will make purchasing decisions. Borgelt recommended that the legislature establish an independently appointed and geographically representative board to monitor MOEU operations in Austin; require an annual audit of Austin Energy; direct an independent review of Austin Energy operations; and require an independent review of Austin Energy's Climate Protection Plan.

Tim Morstad, AARP, expressed concern that choosing retail electric providers may be challenging for customers. He stated that the legislature should provide for clear electricity contracts. Morstad said that PUC requires that contracts be in plain language, but confusing contracts still exist.

Bill Peacock, Texas Public Policy Foundation (TPPF), discussed the problem with calculating electric prices. He said that TPPF used information from *Powertochoose.org* and the United States Energy Information Administration (EIA). Peacock said that current electric prices in Texas are lower than the national average, according to the EIA. He stated that deregulation has led to lower consumer prices, greater reliability, and highly competitive markets.

Marcus Pridgeon, CMC Steel America, testified that the nodal market will be superior to the zonal market with the exception of advanced notice of prices in real time. He said that the ability to control power costs by responding to high energy prices is essential to industries with demand-responsive loads, such as steel mills. He said that he is able to determine whether he can make steel profitably with the price of electricity every 15 minutes under the zonal system. Pridgeon said that advanced notice of real-time electric prices should be incorporated into the nodal market.

The committee recessed subject to the call of the chair.

—by *Endi Silva*, Senate Research Center