

BILL ANALYSIS

C.S.S.B. 661
By: Nichols
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The *Public Utility Commission* (PUC) oversees electric and telecommunications companies in Texas. The Legislature created PUC in 1975 to regulate rates and services of monopoly utilities as a substitute for competition. Since then, legislative changes have restructured and deregulated major portions of electric and telecommunications markets, and PUC's focus has evolved to oversee aspects of these changes. The *Electric Reliability Council of Texas* (ERCOT) is the independent organization certified under Section 39.151, Utilities Code to manage the electric grid for most of Texas. ERCOT is primarily overseen by PUC and is governed by a 16-member Board of Directors as a nonprofit corporation. The *Office of Public Utility Counsel* (OPUC), created by the Legislature in 1983, is an independent agency established to represent the interests of residential and small commercial customers in state electric and telecommunication utility matters.

PUC and OPUC are subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the Legislature. The 81st Legislature placed ERCOT under Sunset for a one-time, special purpose review. The Sunset Commission found that Texas has a clear and ongoing need to perform the functions of these three entities, but that changes are needed to improve effectiveness, oversight, and objectivity. The Sunset Commission also recommended transferring the regulation of water and wastewater rates and services from the Texas Commission on Environmental Quality (TCEQ) to PUC, and that recommendation is contained in this bill.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 1.04, SECTION 1.07, SECTION 1.09, SECTION 1.12, SECTION 1.18, SECTION 1.19, SECTION 1.21, SECTION 1.23, SECTION 1.25, SECTION 2.06, SECTION 2.21, SECTION 2.55, and SECTION 2.58 of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is modified in SECTION 2.06, SECTION 2.21, SECTION 2.55, and SECTION 2.58 of this bill.

Rulemaking authority previously granted to the Texas Commission on Environmental Quality is transferred to the Public Utility Commission of Texas in SECTION 2.10, SECTION 2.13, SECTION 2.16, SECTION 2.19, SECTION 2.20, SECTION 2.23, SECTION 2.26, SECTION 2.27, SECTION 2.29, SECTION 2.30, SECTION 2.31, SECTION 2.33, SECTION 2.45, SECTION 2.46, SECTION 2.52, SECTION 2.68, SECTION 2.70, and SECTION 2.71 of this bill.

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality and the Public Utility Commission in SECTION 2.76 of this bill.

Rulemaking authority is expressly granted to the Office of Public Interest Counsel of the Texas Commission on Environmental Quality and the Office of Public Utility Counsel in SECTION 2.78 of this bill.

ANALYSIS

Increases PUC's administrative penalty authority for electric reliability violations.

CSSB 661 increases PUC's administrative penalty authority in an amount not to exceed \$100,000 per violation per day for electric industry participants' violations of reliability protocols of the certified independent organization, known as ERCOT, or PUC's wholesale reliability rules. The bill provides that, if a person pays a penalty to a federal authority for violation of a reliability standard that is the same or substantially the same as a standard adopted by ERCOT, PUC may not assess an administrative penalty for the same instance or circumstance. The bill provides that PUC refund the full amount of an administrative penalty that it assessed before the date the person paid the federal penalty, if the penalty was for the same instance or circumstance. The bill requires PUC to pass rules adopting a separate classification system for reliability-related violations subject to an administrative penalty not to exceed \$100,000. The bill clarifies that a limitation in classifying a penalty that exceeds \$5,000 does not apply to reliability-related violations. The bill includes instructional provisions specifying that changes in law related to administrative penalty authority for electric reliability violations only apply to a violation that occurs on or after the effective date of the act.

Requires PUC to order disgorgement for wholesale market violations.

CSSB 661 requires PUC, in addition to assessing a penalty, to order disgorgement of all excess revenue resulting from violations related to market power as referenced in Section 39.157, Utilities Code. The bill authorizes PUC to order disgorgement of all excess revenue resulting from any other violations relating to wholesale electric markets in addition to the assessment of a penalty. The bill allows PUC and the person to enter into a voluntary mitigation plan relating to a violation. The bill specifies that, if a hearing is called related to such a violation, only the person involved and PUC, including the independent market monitor, are parties to the proceeding. The bill adds a disgorgement order to the actions the Commission may take based on the work of the administrative law judge. The bill provides for disgorged revenue to be returned to affected wholesale electric market participants to be used to reduce costs or fees incurred by retail electric customers. The bill specifies that a reference to a penalty is construed to include disgorgement. The bill includes instructional provisions specifying that changes in law related to disgorgement only apply to a violation that occurs on or after the effective date of the act.

Authorizes PUC to issue emergency cease-and-desist orders to electric industry participants.

CSSB 661 authorizes PUC to issue emergency cease-and-desist orders to electric industry participants and defines notice and hearing requirements for such orders. The bill requires notice of the proposed order not later than the 10th day before a hearing if the Commission requires notice and hearing before issuing an order. The bill requires that, if the Commission issues such an order without a hearing, the person affected by the order may request a hearing not later than 30 days after receiving the order, and the Commission must then set the hearing not later than 10 days after receiving the request or a date agreed to by the person and the Commission. The bill allows the Commission to delegate its authority to issue orders to the executive director. The bill allows PUC to use this authority if an electric industry participant's actions would pose a threat to continuous and adequate electric service; are fraudulent, hazardous, create an immediate danger to public safety; or could reasonably be expected to cause immediate harm to consumers that cannot be rectified by monetary compensation. The bill also authorizes PUC to assess an administrative penalty against a person who violates emergency cease-and-desist orders.

Increases PUC's oversight of ERCOT's budget and use of debt financing.

CSSB 661 requires ERCOT to annually submit its entire proposed budget to PUC for review and approval. The bill requires PUC to adopt rules establishing the type of information ERCOT must provide and timelines for submission. The bill requires PUC to establish a procedure to allow public participation in the budget review process. The bill requires ERCOT to submit for PUC review and approval proposals for obtaining debt financing or for refinancing existing debt. The bill requires ERCOT to develop proposed performance measures to track its operations and

submit the proposed measures to PUC for review and approval with an annual review as part of ERCOT's budget review process. The bill requires PUC to prepare an annual report on the measures and submit the report to the Lt. Governor, Speaker, and House and Senate jurisdictional committees. The bill also specifies that the review and approval of ERCOT's proposed budget is not considered a contested case.

Provides for leveling ERCOT's System Administration Fee.

CSSB 661 establishes that, after approving ERCOT's annual budget, the Commission shall authorize ERCOT to charge a reasonable and competitively neutral System Administration Fee that varies within a Commission-determined range to fund ERCOT's approved budget, instead of a "rate" to cover ERCOT's costs. The bill establishes that the Commission must require ERCOT to closely match actual revenues generated by the fee with revenue necessary to fund the budget and to adjust the fee on a quarterly basis to avoid ending a year with surplus or insufficient funds. The bill requires ERCOT to submit quarterly reports to PUC comparing actual expenditures with budgeted amounts. The bill also specifies that the process for setting the fee is not considered a contested case.

Changes the makeup of the ERCOT Board of Directors.

CSSB 661 changes the governing body of ERCOT from 16 members to 11 members, as follows:

- removes the PUC chair and the Public Utility Counsel;
- changes the market participant representing power marketers to instead represent entities that serve retail customers;
- changes the market participant representing retail electric providers to instead be two participants representing organizations that represent retail customers;
- combines separate market participant positions for municipally owned utilities and electric cooperatives into a single position representing both;
- removes two market participant positions representing industrial and large commercial consumer interests; and
- reduces from five to four the number of unaffiliated members.

CSSB 661 limits the number of terms that unaffiliated members may serve to two.

Revises ERCOT's protocol process.

CSSB 661 requires ERCOT to establish a formal process for adopting new protocols or revising existing protocols to maintain its certification as the independent organization under the law. As part of this process, a majority of the ERCOT Board of Directors must initiate the creation or revision of protocols and ERCOT's staff must develop the protocols and submit them to the Board for adoption. The bill requires ERCOT to create a broadly representative advisory committee to assist the Board and staff in developing or revising protocols, but does not prohibit the appointment of additional committees or subcommittees.

Revises and adds provisions related to "distributed renewable generation".

CSSB 661 requires PUC to provide on its website access to easily comparable information regarding retail electric providers' offers to residential distributed renewable generation owners for their surplus electricity. The bill also requires a summary of this information to be included in PUC's report to the Legislature issued before September 1, 2013 related to the scope of competition in electric markets.

CSSB 661 adds to the definition of "distributed renewable generation owner" to include: a retail electric customer with distributed renewable generation installed and operated on the customer's side of the meter, regardless of whether the customer takes ownership of that generation; or a person who by contract owns energy produced from distributed renewable generation located at the premises of the customer on the customer's side of the meter.

The bill defines “surplus electricity” as electricity generated by distributed renewable generation that is not consumed where the generation is installed and that flows onto the electric distribution system. The bill establishes that a distributed renewable generation owner may sell surplus electricity to a retail electric provider or electric utility only if the owner’s distributed renewable generation is rated to produce an amount of electricity that is less than or equal to the amount that the retail electric customer for whom the generation is installed is reasonably expected to consume annually.

The bill clarifies existing law that a distributed renewable generation owner, instead of a customer, may request interconnection by filing an application with the transmission and distribution utility or electric utility and provides for processing the distributed renewable generation owner’s application. The bill also amends current law so that, at the request of a distributed renewable generation owner, a transmission and distribution utility or electric utility shall make available to the owner certain necessary metering.

CSSB 661 amends current law to require a distributed renewable generation owner in an area with customer choice to sell surplus electricity to the retail electric provider serving the load of the retail electric customer for whom the generation is installed at a value agreed to by the owner and the provider. The bill specifies that the value may include a “monetary” credit applied to an account. The bill also makes clarifying changes to the existing provision in law for ERCOT to develop procedures to account for distributed renewable generation in areas of customer choice in settling the total load served by the provider that serves the customer with installed distributed renewable generation.

CSSB 661 adds new language requiring a distributed renewable generation owner that sells surplus electricity in an area without customer choice to sell the electricity to the electric utility serving the customer for whom the generation is installed. The bill requires the electric utility to purchase the surplus electricity at a value that is equal to the avoided cost of the electric utility, as determined by PUC rules. CSSB 661 establishes other requirements about electric utility transactions related to the purchase of surplus electricity. The bill also provides that a distributed renewable generation owner may file a written complaint with PUC about violations of these sale and purchase provisions in areas without customer choice.

CSSB 661 specifies that neither a retail electric customer who uses distributed renewable generation nor the owner of that distributed renewable generation is an electric utility, power generation company, or retail electric provider under the Public Utility Regulatory Act and neither is required to register with or be certified by PUC if, at the time of installation, the estimated annual amount of electricity to be produced is less than or equal to the retail electric customer’s estimated annual electric consumption. The bill provides that this section of law dealing with distributed renewable generation does not apply to a municipally owned utility or electric cooperative.

CSSB 661 adds provisions concerning distributed renewable generation applicable to municipally owned utilities or electric cooperatives. The bill requires municipally owned utilities and electric cooperatives to provide their customers access to interconnection of distributed renewable generation and payment for surplus electricity. The bill requires the governing body of a municipally owned utility or board of directors of an electric cooperative to provide oversight and adopt rates, rules, and procedures to allow interconnection and payment for surplus electricity on or before the 120th day after the governing body or board receives a bona fide interconnection request. The bill establishes requirements for municipally owned utilities or electric cooperatives with retail sales of 500,000 megawatt hours or more in 2010 to file information related to interconnection and their surplus electricity rates, rules, and procedures with the State Energy Conservation Office no later than January 1, 2012 and make timely updates. CSSB 661 requires an electric cooperative to allow interconnection if certain standards for distributed renewable generation are met, and establishes that an electric cooperative may not require a distributed renewable generation owner meeting these standards to

purchase liability insurance that the owner would not have in the absence of the distributed renewable generation.

The bill also repeals an existing provision in law regarding contracts between an electric utility or retail electric provider and a distributed renewable generation owner for the availability of surplus electricity for sale to the transmission grid and the net value of that surplus electricity.

Requires PUC to establish a renewal process for certain telecommunication providers.

CSSB 661 requires PUC by rule to provide for the renewal of registrations or certificates for Interexchange Carriers, holders of a Certificate of Operating Authority, and holders of a Service Provider Certificate of Operating Authority on a one-time or regular basis. The bill establishes that PUC require these companies to file with PUC their name, address, and annual report to renew their registration or certificate. The bill specifies that the rules must require PUC to allow an extension of the filing deadline by the number of days set by the rule; and state that a registration or certificate will no longer be valid after the extension period if a company fails to meet the renewal requirements. The bill allows a company whose registration or certificate is invalidated to reregister or obtain a new certificate only by complying with the requirements for an original registration or for obtaining an original certificate. The bill requires PUC to adopt rules to implement the renewal process as soon as practicable, and requires companies to file information for renewal by January 1, 2012, regardless of the frequency of the filing required.

Prohibits property owners' associations from restricting solar energy devices.

CSSB 661 establishes that a provision in the dedicatory instrument of a property owners' association that prohibits or restricts property owners from installing solar energy devices conflicts with the State's goal for renewable energy and is void. The bill specifies that a provision is not void if it prohibits a solar energy device meeting certain conditions. The bill requires PUC to adopt rules to implement this provision and specifies that the added solar energy device restrictions apply to a dedicatory instrument without regard to whether the dedicatory instrument takes effect or is renewed before, on, or after the effective date of the bill.

Moves water utility regulation from TCEQ to PUC.

CSSB 661 transfers responsibility for regulating water and wastewater rates and services from TCEQ to PUC. The bill adds references to PUC in certain definitions in the Water Code relating to water utility regulations. The bill provides PUC the authority to employ staff to carry out its water utility duties and provides for PUC's executive director and staff to gather information related to water utility matters within PUC's jurisdiction and conforms language to reflect the respective duties of PUC and TCEQ. The bill delineates the respective powers of PUC and TCEQ in regulating water and sewer utilities under each agency's jurisdiction, including ratemaking and other economic regulation for PUC and safe drinking water and environmental protection for TCEQ. The bill provides for PUC to consult with TCEQ as necessary to carry out its duties of regulating water and sewer utilities.

The bill adds references to PUC for overseeing aspects of water and sewer utilities, including powers related to rules, hearings, and emergency orders; jurisdiction over certain water supply or sewer service corporations; original and appellate rate jurisdiction; matters involving rate regulation, including emergency rates and rates for furnishing raw or treated water under water rights statutes; recordkeeping and reporting requirements; matters involving certain utility billing and collection provisions; provisions for ensuring compliance with and enforcement of utility regulations, including judicial review; matters involving certificates of convenience and necessity, including processes for decertification and revocation; oversight of financial, managerial, and technical practices and the sale of property or mergers of water or sewer utilities; matters relating to jurisdiction over affiliated interest; supervision of certain utilities; submetering and nonsubmetering for apartments, manufactured housing, and other multiple use facilities; and matters related to privatization contracts by eligible cities.

The bill provides for shared responsibility between PUC and TCEQ for matters including nonfunctioning systems; certain standards of service, including emergency operations; notice of wholesale water supply contract; filing of a bankruptcy petition, foreclosure report, and receivership; service improvements and interconnecting service; and certain enforcement provisions.

The bill also adds references to PUC in water rights provisions relating to a complaint involving the denial of water and provides for TCEQ to participate in the hearing to present evidence on the availability of water requested by the petitioner. The bill deletes TCEQ's specific authority over water rates under Chapter 13 of the Water Code.

CSSB 661 provides that, on June 1, 2012, the following are transferred from TCEQ to PUC: the powers, duties, functions, programs, and activities of TCEQ relating to the economic regulation of water and sewer utilities; any obligations and contracts of TCEQ that are directly related to the transfer; and all property and records of TCEQ that are related to the transfer and all funds appropriated for transferred responsibilities.

The bill requires the two agencies to enter into a memorandum of understanding by April 1, 2012 to identify the applicable powers and duties to be transferred; establish a plan for the identification and transfer of records, personnel, property, and unspent appropriations; and establish a plan for the transfer of pending applications, hearings, rulemakings, and orders. The bill provides that the memorandum of understanding is not required to be adopted by rule. CSSB 661 provides that the executive directors of TCEQ and PUC may agree in the memorandum of understanding to transfer to PUC any personnel of TCEQ whose functions predominantly involve powers, duties, obligations, functions, and activities related to the regulation of water and sewer utilities.

The bill requires the two agencies to appoint a transition team to establish guidelines on how the agencies will cooperate on certain areas of responsibility in the regulation of water and wastewater utilities. The bill provides that a rule, form, policy, procedure, or decision of TCEQ related to a matter transferred to PUC remains in effect until amended or replaced by that agency. The bill requires the two agencies to adopt rules to implement the changes in law by November 1, 2012.

CSSB 661 requires PUC to make a comparative analysis of its existing statutory ratemaking authority and its ratemaking authority after the transition to determine opportunities for procedural standardization. The bill requires PUC to report to the Legislature any recommendations to standardize ratemaking requirements in time for consideration in the 2013 legislative session.

CSSB 661 requires PUC to prepare a report detailing any staffing changes, including reductions, that the agency recommends related to the consolidation of water and wastewater utility regulation with PUC's existing ratemaking functions. The bill requires PUC to submit a report to the Legislative Budget Board and the Governor with its Legislative Appropriations Request for the 2014-2015 biennium.

Authorizes OPUC to represent consumers in water utility cases.

CSSB 661 deletes a reference to the TCEQ public interest advocate in working together with the TCEQ executive director and staff for the protection and representation of the public interest in water utility matters. The bill expands the role of the Office of Public Utility Counsel to represent the interests of residential and small commercial consumers in water and wastewater utility matters. The bill provides for OPUC to assess the effect of utility rate changes and other regulatory actions on residential consumers; advocate on behalf of residential consumers; appear or intervene in proceedings on behalf of residential and small commercial consumers; initiate or intervene in judicial proceedings; have the same access as a party other than PUC, to records gathered by PUC; be entitled to discovery of a nonprivileged matter relevant to a proceeding or

petition before PUC; represent individual residential or small commercial consumers in disputed complaints before PUC; and recommend legislation that would positively affect the interests of residential and small commercial consumers.

The bill specifies that provisions relating to OPUC do not limit PUC's authority to represent residential or small commercial consumers and that the counsel's appearance in a proceeding does not preclude the appearance of other parties representing residential and small commercial consumers. The bill specifies that the counsel may not be grouped with any other party. The bill also includes OPUC in requirements to be notified regarding public hearings on the sale or merger of a water or sewer utility and regarding certain emergency rate increases.

CSSB 661 provides that, on June 1, 2012, the following are transferred from TCEQ's Office of Public Interest Counsel to OPUC: the powers, duties, functions, programs, and activities of the Office of Public Interest Counsel relating to the representation of the public interest in matters related to the regulation of water and sewer utilities; any obligations and contracts of the Office of Public Interest Counsel that are directly related to the transfer; and all property and records of the Office of Public Interest Counsel that are related to the transfer and all funds appropriated for transferred responsibilities.

The bill requires the two agencies to enter into a memorandum of understanding (MOU) by April 1, 2012 to identify the applicable powers and duties to be transferred; and establish a plan for the identification and transfer of records, personnel, property, and unspent appropriations. The bill provides that the MOU is not required to be adopted by rule. CSSB 661 provides that the Office of Public Interest Counsel of TCEQ and OPUC may agree in the MOU to transfer to OPUC any personnel of the Office of Public Interest Counsel whose functions predominantly involve powers, duties, obligations, functions, and activities related to the representation of the public interest in matters related to the regulation of water and sewer utilities.

The bill requires TCEQ and OPUC to appoint a transition team to accomplish the purposes of the transfer. The bill provides that a rule, form, policy, procedure, or decision of the office of public interest counsel of TCEQ related to a matter transferred to OPUC remains in effect until amended or replaced by that agency. The bill requires the two agencies to adopt rules to implement the changes in law by November 1, 2012.

Allows certain landowners to be released from a certificate of convenience and necessity.

CSSB 661 allows a land owner of at least 25 acres who is not receiving water or sewer service to petition PUC for an expedited release from a certificate of convenience and necessity if the property is located in a county with a population of at least one million, a county adjacent to such a county, or a county with a population of more than 200,000 and less than 220,000. The bill requires PUC to grant the petition within 60 days and prohibits PUC from denying a petition based on the fact that a certificate holder is a borrower under a federal loan program. The bill allows PUC to require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition.

Provides for PUC review for certain wholesale water rates.

CSSB 661 allows a conservation and reclamation district that provides potable water to customers to request PUC to review the rates of the district's supplier of raw or treated surface water or groundwater to determine whether the rate adversely affects the public interest. The bill establishes a presumption that a rate adversely affects the public interest if it is shown on a hearing that it is at least 50 percent higher than the rate charged at any time in the preceding 36 months. The bill defines several criteria for PUC in determining whether a rate adversely affects the public interest, including if the rate impairs the district's ability to continue to provide service; if the rate evidences an abuse of monopoly power; or if the rate is unreasonably preferential, prejudicial, or discriminatory. CSSB 661 requires PUC to fix a just and reasonable

rate if it finds the rate in question to adversely affect the public interest. The bill requires PUC to use a methodology that preserves the financial integrity of the supplier.

Prohibits PUC commissioners from going to work for ERCOT for a specific period of time.

CSSB 661 prohibits PUC commissioners from being employed by ERCOT for two years after leaving PUC.

Amends the definition of “renewable energy technology”.

CSSB 661 amends the definition of “renewable energy technology” to include the term “gasified waste” and to specify that the technology does not rely *solely* on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources.

Changes requirements for publishing an electronic telephone directory.

CSSB 661 provides that a telecommunications provider or telecommunications utility is not required to publish or distribute to the public a printed telephone directory listing, provided that the provider or utility gives written notice to PUC and notifies its customers of this action and publishes a telephone directory listing on its website. The bill establishes that a provider or utility that publishes a telephone directory listing on its website must provide a print or digital copy of its directory listing to a customer on request, with that request being made on the website or by calling a toll-free telephone number. CSSB 661 requires that a provider or utility must provide the first print or digital copy requested by a customer in each calendar year at no charge.

Underground placement of certain Competitive Renewable Energy Zone transmission lines.

CSSB 661 establishes that a segment of a transmission line intended to serve a Competitive Renewable Energy Zone must be placed underground if the segment is placed or to be placed adjacent and parallel to a highway and in the corporate limits or extraterritorial jurisdiction of a municipality with a population of 25,000 or less, and across the Guadalupe River. The bill provides that this provision applies only to a transmission line placed in service on or after the effective date of this provision. The bill provides for the provision to take effect immediately upon receiving the necessary vote, or taking effect September 1, 2011, if it does not.

Sunset Provisions.

CSSB 661 continues the Public Utility Commission and the Office of Public Utility Counsel for 12 years. The bill also subjects ERCOT to review, but not abolishment, under the Sunset Act. The reviews of ERCOT would occur concurrently with reviews of PUC.

Repeals the following statutory provision.

Utilities Code, Section 39.916(h)

EFFECTIVE DATE

Except as otherwise provided, September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSSB 661 modifies the engrossed version as follows.

CSSB 661 requires PUC, in addition to assessing a penalty, to order disgorgement of all excess revenue resulting from violations related to market power as referenced in Section 39.157, Utilities Code. The substitute authorizes PUC to order disgorgement of all excess revenue resulting from any other violations relating to wholesale electric markets in addition to the assessment of a penalty. The substitute allows PUC and the violator to enter into a voluntary mitigation plan. The substitute specifies that, if a hearing is called related to such a violation, only the violator and PUC, including the independent market monitor, are parties to the proceeding. The substitute provides for disgorged revenue to be used to reduce costs or fees incurred by retail electric customers. No similar provisions were included in the engrossed version of the bill.

CSSB 661 removes the chairman of the Public Utility Commission and the Public Utility Counsel from the ERCOT Board. The substitute replaces one board member representing power marketers with one representing entities that serve retail customers. The substitute replaces one board member representing retail electric providers with two representing organizations that represent retail customers. The substitute replaces one board member representing municipally owned utilities and one representing electric cooperatives with one representing both types of utilities. The substitute removes one board member representing industrial consumer interests and one member representing large commercial consumer interests. The substitute reduces the number of unaffiliated board members from five to four and limits the number of terms they may serve to two.

In comparison, the engrossed version replaced the PUC Chairman with an unaffiliated member selected by PUC, who could be a former commissioner, to serve a three-year term on the ERCOT Board. The engrossed version replaced the Public Utility Counsel with a member selected by the Public Utility Counsel to represent residential and small commercial consumer interests, with that member serving a one-year term on the ERCOT Board. The engrossed version also added one unaffiliated member with financial expertise to serve a three-year term on the ERCOT Board.

CSSB 661 removes provisions in the engrossed version requiring ERCOT to consult with PUC regarding the selection of ERCOT's CEO and unaffiliated board members. The substitute removes provisions in the engrossed version allowing PUC and OPUC to remove, for any reason, the ERCOT board members they appoint. The substitute also removes language in the engrossed version clarifying that only the ERCOT Board of Directors may select or remove ERCOT's CEO and unaffiliated board members.

CSSB 661 amends the definition of "renewable energy technology" to include the term "gasified waste" and to specify that the technology does not rely *solely* on energy resources derived from fossil fuels, waste products from fossil fuels, or waste products from inorganic sources. No similar provision was included in the engrossed version of the bill.

CSSB 661 requires PUC to provide access on its website and in a report to information regarding retail electric providers' offers to residential distributed renewable generation owners for their surplus electricity. CSSB 661 adds to the definition of "distributed renewable generation owner". The substitute defines "surplus electricity" as it relates to distributed renewable generation and establishes provisions concerning the sale and purchase of such electricity in areas with customer choice and areas without customer choice. The substitute amends statute dealing with interconnection with the transmission and distribution utility or electric utility. The substitute clarifies existing language in law regarding the sale of surplus electricity by the distributed renewable generation owner in areas of customer choice, with the value agreed to by the owner and the retail electric provider. The substitute also provides detail regarding the sale of surplus electricity by the distributed renewable generation owner in areas without customer choice with the value being equal to the avoided cost of the electric utility, as determined in accordance with PUC rules. The substitute specifies that neither a customer who uses distributed renewable generation nor the owner of that distributed renewable generation is an electric utility, power generation company, or retail electric provider under the Public Utility Regulatory Act and neither is required to register with PUC if at the time the generation is installed, the estimated amount of energy produced is less than or equal to the retail electric customer's estimated annual electric consumption. CSSB 661 adds provisions concerning distributed renewable generation with municipally owned utilities or electric cooperatives. No similar provisions were included in the engrossed version of the bill.

CSSB 661 voids provisions in the dedicatory instruments of property owners' associations that prohibit or restrict property owners from installing solar energy devices, except in certain

circumstances. The bill requires PUC to adopt rules to implement this provision. No similar provisions were included in the engrossed version of the bill.

CSSB 661 allows a land owner of at least 25 acres who is not receiving water or sewer service to petition PUC for an expedited release from a certificate of convenience and necessity if the property is located in a county with a population of at least one million, a county adjacent to such a county, or a county with a population of more than 200,000 and less than 220,000. The substitute requires PUC to grant the petition within 60 days and prohibits PUC from denying a petition based on the fact that a certificate holder is a borrower under a federal loan program. The substitute allows PUC to require an award of compensation by the petitioner to a decertified retail public utility that is the subject of a petition. No similar provisions were included in the engrossed version of the bill.

CSSB 661 allows a conservation and reclamation district that provides potable water to customers to request PUC to review the rates of the district's supplier of raw or treated surface water or groundwater to determine whether the rate adversely affects the public interest. The substitute establishes a presumption that a rate adversely affects the public interest if it is at least 50 percent higher than the rate charged at any time in the preceding 36 months. The substitute defines several criteria for determining whether a rate adversely affects the public interest. CSSB 661 requires PUC to fix a just and reasonable rate if it finds the rate in question to adversely affect the public interest. No similar provisions were included in the engrossed version of the bill.

CSSB 661 provides that a telecommunications provider or telecommunications utility is not required to publish or distribute to the public a printed telephone directory listing, provided that the provider or utility notifies PUC and its customers of this action and publishes a telephone directory listing on its website. The substitute establishes that a provider or utility that publishes a telephone directory listing on its website must provide a print or digital copy of its directory listing to a customer on request, with that request being made on the website or by calling a toll-free telephone number. CSSB 661 requires that a provider or utility must provide the first print or digital copy requested by a customer in each calendar year at no charge. No similar provisions were included in the engrossed version of the bill.

CSSB 661 establishes that a segment of a transmission line intended to serve a Competitive Renewable Energy Zone must be placed underground if the segment is placed or to be placed adjacent and parallel to a highway and in the corporate limits or extraterritorial jurisdiction of a municipality with a population of 25,000 or less, and across the Guadalupe River. No similar provisions were included in the engrossed version of the bill.