

By: Turner

H.B. No. 2715

A BILL TO BE ENTITLED

AN ACT

relating to the continuation of and powers and duties of the Office of Public Utility Counsel to represent residential and small commercial utility consumers.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 5.273(a), Water Code, is amended to read as follows:

(a) The counsel shall represent the public interest and be a party to all proceedings before the commission, other than a proceeding under Chapter 13.

SECTION 2. Subchapter B, Chapter 13, Water Code, is amended by adding Section 13.017 to read as follows:

Sec. 13.017. OFFICE OF PUBLIC UTILITY COUNSEL; POWERS AND DUTIES. (a) In this section, "counsellor" and "office" have the meanings assigned by Section 11.003, Utilities Code.

(b) The office represents the interests of residential and small commercial consumers under this chapter. The office:

(1) shall assess the effect of utility rate changes and other regulatory actions on residential consumers in this state;

(2) shall advocate in the office's own name a position determined by the counsellor to be most advantageous to a substantial number of residential consumers;

(3) may appear or intervene, as a party or otherwise,

1 as a matter of right on behalf of:

2 (A) residential consumers, as a class, in any
3 proceeding before the commission, including an alternative dispute
4 resolution proceeding; and

5 (B) small commercial consumers, as a class, in
6 any proceeding in which the counsellor determines that small
7 commercial consumers are in need of representation, including an
8 alternative dispute resolution proceeding;

9 (4) may initiate or intervene as a matter of right or
10 otherwise appear in a judicial proceeding:

11 (A) that involves an action taken by an
12 administrative agency in a proceeding, including an alternative
13 dispute resolution proceeding, in which the counsellor is
14 authorized to appear; or

15 (B) in which the counsellor determines that
16 residential consumers or small commercial consumers are in need of
17 representation;

18 (5) is entitled to the same access as a party, other
19 than commission staff, to records gathered by the commission under
20 Section 13.133;

21 (6) is entitled to discovery of any nonprivileged
22 matter that is relevant to the subject matter of a proceeding or
23 petition before the commission;

24 (7) may represent an individual residential or small
25 commercial consumer with respect to the consumer's disputed
26 complaint concerning retail utility services that is unresolved
27 before the commission; and

1 (8) may recommend legislation to the legislature that
2 the office determines would positively affect the interests of
3 residential and small commercial consumers.

4 (c) This section does not limit the authority of the
5 commission to represent residential or small commercial consumers.

6 (d) The appearance of the counsellor in a proceeding does
7 not preclude the appearance of other parties on behalf of
8 residential or small commercial consumers. The counsellor may not
9 be grouped with any other party.

10 SECTION 3. Section 13.002, Utilities Code, is amended to
11 read as follows:

12 Sec. 13.002. APPLICATION OF SUNSET ACT. The Office of
13 Public Utility Counsel is subject to Chapter 325, Government Code
14 (Texas Sunset Act). Unless continued in existence as provided by
15 that chapter, the office is abolished and this chapter expires
16 September 1, 2023 [~~2011~~].

17 SECTION 4. Section 15.033, Utilities Code, is amended to
18 read as follows:

19 Sec. 15.033. DISPOSITION OF FINES AND PENALTIES. (a) A fine
20 or penalty collected under this title, other than a fine or penalty
21 collected in a criminal proceeding or a penalty collected under
22 Section 15.027(a), shall be paid to the commission.

23 (b) One-half of the first \$10 million in administrative
24 penalties paid to the commission under this subchapter during a
25 state fiscal biennium may be appropriated only to fund the Office of
26 Public Utility Counsel.

27 SECTION 5. Section 101.051, Utilities Code, is amended to

1 read as follows:

2 Sec. 101.051. OFFICE OF PUBLIC UTILITY COUNSEL. The
3 independent office of public utility counsel represents the
4 interests of residential and small commercial consumers.

5 SECTION 6. Section 101.052, Utilities Code, is amended to
6 read as follows:

7 Sec. 101.052. OFFICE POWERS AND DUTIES. (a) The office:

8 (1) shall assess the effect of utility rate changes
9 and other regulatory actions on residential consumers in this
10 state;

11 (2) shall advocate in the office's own name a position
12 determined by the counsellor to be most advantageous to a
13 substantial number of residential consumers;

14 (3) may appear or intervene, as a party or otherwise,
15 as a matter of right on behalf of:

16 (A) [represent] residential consumers, as a
17 class, in any proceeding before [appeals to] the railroad
18 commission, including an alternative dispute resolution
19 proceeding; or

20 (B) small commercial consumers, as a class, in
21 any proceeding in which the counsellor determines that small
22 commercial consumers are in need of representation, including an
23 alternative dispute resolution proceeding [only at the written
24 request of an affected municipality's governing body];

25 (4) [+2+] may initiate or intervene as a matter of
26 right or otherwise appear in a judicial proceeding:

27 (A) that involves an action taken by an

1 administrative agency [~~the railroad commission~~] in a proceeding,
2 including an alternative dispute resolution proceeding, in which
3 the office is authorized to appear; or

4 (B) in which the counsellor determines that
5 residential consumers or small commercial consumers are in need of
6 representation [~~was a party~~];

7 (5) [~~(3)~~] is entitled to the same access as a party,
8 other than railroad commission staff, to records gathered by the
9 railroad commission under Section 102.203;

10 (6) [~~(4)~~] is entitled to discovery of any
11 nonprivileged matter that is relevant to the subject matter of a
12 proceeding or petition before the railroad commission;

13 (7) [~~(5)~~] may represent an individual residential or
14 small commercial consumer with respect to the consumer's disputed
15 complaint concerning utility services that is unresolved before the
16 railroad commission; and

17 (8) [~~(6)~~] may recommend legislation to the
18 legislature that the office determines would positively affect the
19 interests of residential and small commercial consumers.

20 (b) [~~The office may represent only as a class the~~
21 ~~residential consumers of a municipality that makes a request under~~
22 ~~Subsection (a)(1).~~

23 [~~(c)~~] This section does not limit the authority of the
24 railroad commission to represent residential or small commercial
25 consumers.

26 (c) [~~(d)~~] The appearance of the counsellor in a proceeding
27 does not preclude the appearance of other parties on behalf of

1 residential or small commercial consumers. The counsellor may not
2 be grouped with any other party.

3 SECTION 7. Not later than January 1, 2012, the following are
4 transferred from the Office of Public Interest Counsel to the
5 Office of Public Utility Counsel:

6 (1) the powers, duties, functions, programs, and
7 activities of the Office of Public Interest Counsel relating to
8 water and sewer services regulated under Chapter 13, Water Code;

9 (2) all obligations and contracts of the Office of
10 Public Interest Counsel that are related to a power, duty,
11 function, program, or activity transferred under this section; and

12 (3) all property and records in the custody of the
13 Office of Public Interest Counsel that are related to a power, duty,
14 function, program, or activity transferred under this section.

15 SECTION 8. Amounts appropriated to the Texas Commission on
16 Environmental Quality by the 82nd Legislature, Regular Session,
17 2011, that may be used in relation to a power, duty, function,
18 program, or activity transferred under this Act are transferred to
19 the Office of Public Utility Counsel.

20 SECTION 9. A rule or form adopted by the Office of Public
21 Interest Counsel that relates to a power, duty, function, program,
22 or activity transferred under this Act is a rule or form of the
23 Office of Public Utility Counsel and remains in effect until
24 altered by the Office of Public Utility Counsel.

25 SECTION 10. A reference in law to the Office of Public
26 Interest Counsel that relates to a power, duty, function, program,
27 or activity transferred under this Act means the Office of Public

H.B. No. 2715

1 Utility Counsel.

2 SECTION 11. This Act takes effect September 1, 2011.