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ELECTRICITY WATCHDOG LACKS POWER

Deregulation has led to more complaints than state commission is able to handle

By **PURVA PATEL**
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Consumers who switched electric providers in the 31 months since deregulation have had a rocky start.

And they let the Public Utility Commission know it by filing almost 35,000 complaints.

But the state agency charged with monitoring the market sent just 38 notices to companies for violating commission rules and levied only seven fines in that time — not a strong record by anyone's account.

It's even more galling to customers who complained they were unwittingly switched to another company, charged for energy they didn't use or billed for services they didn't request.

"What's the point of having laws and someone found in violation, and then them not having any kind of penalty for violating the rules?" said Darlene Wilcox, a Houston resident whose account was illegally switched.

Even the chairman of the PUC recognizes the problem.

"Can we be more forceful? Yes. Can we be better at customer protection? Yes," said Paul Hudson. "But this commission is in something of a new role as an enforcement agency after (deregulation)."

Hit with roughly 500 complaints a month, armed with an enforcement staff that consists of three lawyers and one investigator and with weak penalty authority, it's no surprise the PUC struggles to keep up with its overloaded hopper of slamming, cramming and billing complaints.

Hudson said he plans to beef up his enforcement staff. And the state Sunset Advisory Commission, which periodically reviews the effectiveness of state agencies, has recommended giving the agency bigger penalty power than it had when retail electric providers in Texas began to

HOW TO FILE A COMPLAINT

Can't resolve a dispute with your electric provider?

- **Call:** 1-888-782-8477

- **Online:** File a complaint at www.puc.state.tx.us

- **Write:** Send a written complaint to:

PUC, Customer Protection P.O.

Box 13326 Austin, TX 78711-

3326 The complaint should

include: Your name, address,

and telephone number

Company's name, address, and

telephone number Account

number, if any What happened

and the resolution you seek Any

supporting documentation, such

as a copy of the bill **GLOSSARY**

- **Slamming:** When your electric service is switched without your permission

- **Cramming:** Unauthorized, misleading or deceptive charges placed on your electric bill

- **Discontinuance:** Disputes over loss of service

- **Billing:** Late or inaccurate billing

- **Provision of service:** Disputes about establishing service

- **Quality of service:** Complaints about outages or customer service

- **Nonjurisdictional/Other:** Complaints the PUC has no jurisdiction over, such as rates established by municipal electric utilities or electric cooperatives

compete for customers on price and customer service.

The record

If anyone doubts the need to give the PUC a bigger stick, consumer advocates say, consider the agency's record and the slow and daunting process of bringing enforcement actions against a company with a history of violations.

The Houston Chronicle's review of consumer complaints indicates that those complaints the PUC finds justified may get consumers their money back — \$2.9 million since deregulation — but they rarely result in penalties.

Without penalties for repeatedly violating the rules, companies have no incentive to change their behavior, consumer advocates say.

The PUC has filed 38 notices of violation, some dealing with dozens of the complaints against electric companies since deregulation began. About 70 percent of the notices pointed to technical violations, such as not responding to PUC inquiries within three weeks. Only seven led to actual penalties.

The rest were withdrawn, pending or otherwise not pursued.

Slow and weak enforcement is no surprise to Patricia Dolece, a former head of consumer protection at the PUC.

"They drag their feet, and they're not doing any investigative work to find the real issues. They're doing the easy stuff," said Dolece, who now works as a consultant for utility providers. "Companies learn to play the game real quick."

Companies learn they can get away with violations because they know the commission has focused on issues easy to prove, she said.

To its credit, the commission did assess its largest penalty in January — a \$750,000 fine against Direct Energy for slamming customers and allegedly retaliating against them when they complained about being switched without their knowledge.

But consumer groups worry such actions are rare because individual complaints mean little.

Enforcement

The system makes it easy for companies to think they can get away with deceptive practices or pay minimal fines they can write off as a cost of doing business, said Randy Chapman, executive director of the Texas Legal Services Center.

"It's a slap on the wrist, if anything," he said.

That may be because of the extensive formal enforcement process.

Large cases can tie up resources for months, says Charles Johnston, head of the PUC's legal and enforcement division.

An investigator must sift through thousands of complaints, and then customers must testify against the company.

Because most consumers won't travel to Austin to testify and resources limit the commission's ability to travel for depositions, investigators focus on what they can prove without the testimony.

"We had to find technical violations, minor violations, and leverage those things," Johnston said. "That's one of the difficulties of doing consumer complaints — where the rules aren't designed for the kind of complaints consumers bring."

The commission is trying to change some rules to make it easier to bring cases, he said. For example, a rule adopted this month requires telemarketers to buy "no call" lists. Thus if an electric company calls a consumer on the list, the commission can move quickly.

The PUC also hopes lawmakers will increase the cap on penalties it can assess from \$5,000 per violation per day, to \$25,000 — something the Sunset Commission will consider at a meeting in September.

Resources

Between monitoring the transmission and distribution utilities, wholesale electric market and retail electric providers, the commission makes the most of the resources it has, including a \$13.5 million operating budget for fiscal year 2004, said Hudson.

But the PUC chairman also notes the need for more resources, especially with the four-person enforcement staff handling both electric and telecom cases.

"The PUC needs to be better at enforcement. It intends to be better at enforcement," he said. "But for us it will take getting enough people and the right rules in place."

The commission's legal and enforcement division has a generally high turnover rate because its lawyers often go to the private sector after obtaining experience, according to a strategic plan released last month by the commission.

So far, the agency has indicated plans to reallocate money to create four more enforcement positions by fiscal 2006.

"Then we'll be able to send the message that violations of rules will not be tolerated," Hudson said.

The industry also acknowledges the PUC's lack of resources and supports vigorous enforcement as long it protects the industry's legal rights, said John Fainter, president of the Association of Electric Companies of Texas.

"These are matters in which I think a lot of people would like to accelerate and speed up the process, but it's a difficult process to do and still preserve the due process of law," he said. "It's also a question of staff at the PUC and making sure they have the resources they need. I think they certainly should make the case to have adequate resources."

Consumer advocates see those as positive steps but want to see more.

Other states have set strong consumer standards for electricity providers to meet, said Barbara

Alexander, a consumer affairs consultant in Winthrop, Maine.

California, for example, requires utilities to compensate consumers \$25 to \$100 for missed appointments, service investigations, complaint resolution, service restoration and other service disruptions. A handful of other states have also set up similar rebate or credit requirements.

State Rep. Sylvester Turner, D-Houston, introduced legislation late last year that would impose a \$50 penalty in Texas, but the bill never left committee.

"I wanted to give them more power, more authority with a greater bite," Turner said. He added that he'd consider reintroducing the bill if the complaint figures remain high.

Complaints falling?

PUC data indicate complaints are dropping this year — something the agency has attributed to the effective resolution of billing issues that initially plagued deregulation, meetings with companies and the use of executive phone numbers.

The PUC staff calls or directs consumers to the executive phone number at an electric company when trying to resolve a dispute. If the consumer's satisfied after the call, the "complaint" may not get logged in the PUC's database.

The commission's director of consumer protection, Mike Renfro, says the numbers haven't been used enough to significantly affect complaint numbers.

But consumer groups worry that such a system could artificially deflate complaint tallies by diverting complaints.

"This is worrisome if it changes their accounting system," said Tim Morstad of Consumers Union.

The fewer complaints recorded, the lower the chances of a formal enforcement action since the commission relies on complaint trends to point out problem areas.

Whether complaints are dropping or not, consumer advocates say the PUC should have the tools it needs to be a powerful agency.

"It's not fair," said Carol Biedrzycki, head of the Texas Ratepayers' Organization to Save Energy.

"Customers are being inconvenienced, rules are violated, and nothing happens to the company."

purva.patel@chron.com

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