

# PUBLIC UTILITY LAW SECTION

of the State Bar of Texas



## Letter from the Chair

Dear Public Utility Law Section Members,

I'm honored to serve as the new Chair of the Public Utility Law Section (PULS) Council of the State Bar and am grateful to be serving with a dedicated group of lawyers who are passionate about working in this field.

The council met in November where we adopted our calendar for the year, formed three committees – Communications, Social Events, and Nominations, and hired a part-time administrator Lexi Conaway, who is helping us in a variety of ways including with this newsletter.

Our council is busily planning events to increase the value of your membership, adding more opportunities to earn CLE and to meet other lawyers practicing utility law in Texas.

This is the first of our two newsletters where we'll share news and information about our section and our industry. If you would like to contribute to our next newsletter by writing an article, please email our Communications Committee Chair AJ Smullen at [AJ@smullen.net](mailto:AJ@smullen.net). If you are not receiving our communication, please check your settings on the State Bar website.

Finally, I would like to thank all of you who attended this year's Annual Meeting and Seminar on September 22, 2023. For those of you who were unable to attend, the recorded sessions are now available to our section members on our website, and you can still earn CLE through August 31, 2024 (more details provided in this newsletter)!

I hope you had a wonderful holiday season and I look forward to working with you in 2024!

Best regards,

*Lara Zent*

*2023-24, Chair*

## Table of Contents

<b>Annual Meeting &amp; Upcoming Events</b> .....	<b>2</b>
<b>Council Member Bios</b> .....	<b>3</b>
<b>Pub. Util. Comm'n of Tex v. Luminant Energy Co.</b> .....	<b>5</b>

## Annual Meeting & Upcoming Events

We had a successful 2023 Public Utility Law Section (PULS) Annual Meeting and Conference, which took place on Friday, September 22nd at the AT&T Hotel and Conference Center in Austin. Participants earned up to 6.75 hours of MCLE, including 1 hour of ethics (see photos below).

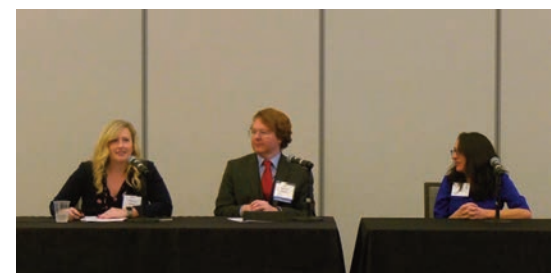
We elected a new slate of officers – Lara Zent as Chair, AJ Smullen as Vice-Chair, Creighton McMurray as Secretary/Treasurer, and Davida Dwyer is our Immediate Past Chair. We extend a warm welcome to the newest additions to our council – Ruben Arrendondo, John Carlton, and Taylor Kilroy. Other council members include Jamie Mauldin, Natalie Dubiel, Evan Johnson, Carsi Mitzner, and Todd Kimbrough. For those interested in serving on the council, we invite you to contact our Nominations Committee Chair, Carsi Mitzner at [Carsi.Mitzner@Brightspeed.com](mailto:Carsi.Mitzner@Brightspeed.com).

If you were unable to attend our 2023 conference or would like a refresher, the CLE Video Library on our website has been updated with recorded sessions. CLE credit will remain available until August 31, 2024. Access to the videos can be obtained using the password: member.puls

Looking ahead, please mark your calendars for the upcoming 2024 PULS Annual Meeting and Conference, scheduled for **Friday, August 23<sup>rd</sup>, 2024**, again at the AT&T Hotel and Conference Center in Austin. Additionally, we are excited to host a networking happy hour on the preceding evening, August 22<sup>nd</sup>.

PULS has an array of other engaging events planned for 2024, including two webinars, a Lunch & Learn session at the State Bar, and two networking Happy Hours. Save the dates and stay tuned for more details:

- Lunch Webinars (will include 1 hour CLE Credit): **March 1<sup>st</sup> and June 26<sup>th</sup>**
- Lunch & Learn at the State Bar offices (will include CLE/Ethics Credits): **May 17<sup>th</sup>**
- Networking Happy Hours: **February 22<sup>nd</sup> and August 22<sup>nd</sup>**



## Council Member Bios

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### CHAIR

**Lara Zent** is the Executive Director and General Counsel of the Texas Rural Water Association, which has over 870 water and wastewater utility members statewide. She leads a team of 39 staff who provide a variety of services including utility operator certification training, management training, on-site technical assistance, a trade magazine, legal counsel, and advocacy before the legislature and regulatory agencies. Before joining TRWA in 2004, Lara was a staff attorney at the Texas Commission on Environmental Quality. She is a graduate of the Texas Tech University School of Law and the University of Texas at Austin.

### VICE CHAIR

**AJ Smullen** is an attorney with over 10 years of utilities experience. AJ is currently the Manager of Enforcement at the Texas Reliability Entity and previously was a staff attorney at the PUC.

### SECRETARY/TREASURER

**Creighton McMurray** is a graduate of St. Mary's College of Maryland and Emory Law School. He was employed at the Public Utility Commission since 2018, including as an advisor to Commissioner Will McAdams since 2021. In a former life, he was a sommelier.

### IMMEDIATE PAST CHAIR

**Davida Dwyer** is a Senior Corporate Counsel with the Electric Reliability Council of Texas (ERCOT). Before working at ERCOT, Davida served at the Public Utility Commission of Texas (PUCT) in various roles including as the advisor to one former PUC Chair, two former PUC Commissioners, and as a manager and staff attorney in the Legal and Office of Policy and Docket Management Divisions. Davida has more than 15 years of utility-law experience, including litigating or advising in rate cases, CCNs, change-of-control proceedings, APA rulemakings, and other regulatory matters before the PUCT. Davida's bachelor's degrees (Government and Public Relations) and J.D. are from the University of Texas at Austin.

**Natalie Dubiel** is an Assistant General Counsel in the Railroad Commission's Office of General Counsel. Natalie serves as the commission's primary attorney handling the regulation of gas utilities and pipelines. Over the years, Natalie has represented the commission in gas utility contested rate case proceedings, related gas utility administrative proceedings, pipeline safety dockets, and administrative matters. Additionally, Natalie handles various administrative law matters for the commission, including leading and conducting rulemakings and advising on all matters involving the Public Information Act and the Open Meetings Act. Natalie received her undergraduate degree in political science from Texas A&M University and a law degree from South Texas College of Law. Natalie is a licensed attorney in the state of Texas and joined the commission's Office of General Counsel in 2015.

**Carsi Mitzner** is the Government Affairs and Public Policy Director for Brightspeed in Texas. In this role, she manages the company's state legislative, regulatory, and local government relations, and supports its federal government affairs advocacy. Prior to her current role, she served in various positions in and around state government, including as an advisor to a former Chairman of the Public Utility Commission, as an attorney and lobbyist at a government affairs firm, and as counsel in both houses of the Texas legislature. Carsi received her law degree from the University of Houston and her undergraduate degree from the University of Texas at Austin. In addition to serving on the PULS Board, she volunteers on the Board of the Texas Telephone Association Foundation and as a mentor with the Pink Granite Foundation.

## Council Member Bios *cont'd.*

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**John J. Carlton** is the Managing Member of The Carlton Law Firm, P.L.L.C., in Austin, Texas, which he formed with his partner and wife, Kelli Carlton, in 2011. The firm represents water utilities and other local government entities as general and special counsel, in the legislative process, and in administrative hearings. His current clients include water districts, emergency services districts and other local governments, WSCs and other utility companies, and landowners and developers. He has worked with water utilities since 1991, beginning his practice at the Texas Water Commission, Texas Natural Resource Conservation Commission and Texas Commission on Environment Quality. He entered private practice in 1993. Mr. Carlton has made numerous presentations at conferences around Texas related to local government and utility matters in the state. When he isn't working on utility and local government matters, he enjoys soccer, sailing and traveling with his family.

**Taylor Kilroy** is the executive director for the Texas Public Power Association, a trade association representing the 72 municipally-owned electric utilities (MOUs) in Texas. Prior to joining TPPA, Taylor worked for the Public Utility Commission of Texas, both in the Legal Division and the Oversight & Enforcement Division, where he served as a managing attorney. Taylor's undergraduate and law degrees are both from the University of Houston. In his spare time, Taylor enjoys tiki drinks from the 50s, spy novels from the 60s, and kung fu movies from the 70s. He lives in Austin with his wife, Emily, and their rat-chi mix, Ranger.

**Todd Kimbrough** is Office Managing Partner of Balch & Bingham's Austin, Texas office. His practice focuses on regulatory and transactional issues in electricity and natural gas markets throughout the U.S. and internationally. He has been involved in the approval or development of more than \$35 billion in electricity infrastructure improvements. He has counseled utilities in rate cases, certificate of convenience and necessity (CCN) proceedings, and integrated resource plan (IRP) approvals in Texas, Georgia, New Mexico, North Carolina, Arizona, and Alaska as well as before the Federal Energy Regulatory Commission (FERC). He also regularly represents market participants before the Texas Reliability Entity (RE) and other North American Electric Reliability Corporation (NERC) regional entities. In addition to providing transactional and regulatory counsel, Todd actively participates in Regional Transmission Organization (RTO) stakeholder processes at the Electric Reliability Council of Texas (ERCOT) and the Southwest Power Pool (SPP). At various points, he has been elected market participants to serve on ERCOT's Wholesale Market Subcommittee (WMS), Technical Advisory Committee (TAC) and its Protocol Revisions Subcommittee (PRS).

**Jamie Mauldin** is a Principal with the Austin firm of Lloyd Gosselink Rochelle & Townsend, PC, focusing on electric, gas, water, and telecom regulation. She represents municipalities and utilities before the Public Utility Commission of Texas, Railroad Commission of Texas, Texas Commission on Environmental Quality, and the State Office of Administrative Hearings. Before working at Lloyd Gosselink, Jamie practiced utility regulatory law in San Francisco, California. Jamie graduated from the University of Houston Law Center and received her undergraduate degree from Vanderbilt University.

**Evan Johnson** represents water, gas and electric utilities in regulatory proceedings before the Public Utility Commission of Texas and the Railroad Commission of Texas. He has served as lead counsel in rate cases, certification applications, sale-transfer-merger proceedings, and rulemaking projects. He has extensive experience advising water and wastewater utilities on acquisitions, having first-chaired over 100 STM proceedings in the last three years. He is also proficient in all aspects of utility cost-of-service ratemaking. He advises investor-owned utilities, districts, and cooperatives. He also advises gas utilities on pipeline safety issues.

**Ruben Arredondo** is a native Texan licensed in Utah and Texas. He is an energy and energy infrastructure lawyer with over 20 years of experience in the electrical utilities field, first as an attorney working for a state public utility commission, then as an enforcement attorney for federal electrical energy infrastructure regulators. He helped co-found an energy development company developing microgrids and utility scale generation. He currently serves as an energy consultant and energy infrastructure lawyer with Regime Energy Partners, advising developers of electrical generation, storage and transmission infrastructure across North America.

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**Oral Argument Date Set in *Pub. Util. Comm'n of Tex v. Luminant Energy Co.***

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by AJ Smullen

On January 30, 2024, the Supreme Court of Texas will hear oral arguments in *Pub. Util. Comm'n of Tex v. Luminant Energy Co.* According to the Court, this case presents two questions: The first issue is whether the Public Utility Commission of Texas (Commission) exceeded its statutory authority by twice directing the Electric Reliability Council of Texas, Inc. (ERCOT) to affix electricity prices at \$9,000/MWh. The second issue is whether the court of appeals had the power to unwind transactions that had already been finally settled with prices based on the Commission's directives.

During Winter Storm Uri, in February 2021, severe winter weather led to ERCOT ordering load shed, including shedding residential load. According to the Commission, ERCOT's system for balancing electricity supply and demand and setting prices failed to account for demand that had been eliminated via load shedding, resulting in a pricing "anomaly" and clearing prices that the Commission determined were too low to reflect the existing demand for electricity. The Commission issued orders for ERCOT to raise electricity prices to \$9,000/MWh, the maximum price—or "system-wide offer cap"—that would have been permitted under the Commission's rules at the time.

During March 2021, Luminant Energy Company LLC, along with several other companies, filed a direct appeal of the Commission's orders to the Third Court of Appeals and have challenged the validity of invoices for electricity transactions that have been finally settled using the Commission-ordered prices. In March 2023, the Third Court of Appeals held (1) that the appeal of the Commission's orders was not moot even though the orders have now expired, (2) retrospective relief is available even though the orders are merely voidable and not void *ab initio*, (3) the appeals' claims are redressable by the court, and (4) the Commission's orders are rules under the Texas Administrative Procedure Act that exceeded the Commission's statutory authority under Tex. Util. Code § 39.001(d) to use "competitive rather than regulatory methods" to implement the electricity market. Accordingly, the court overturned the Commission's orders and remanded the case to the Commission for further proceedings consistent with the court's ruling.

During March and April 2023, the Commission, Calpine Corporation, Talen Energy Corporation, and TexGen Power, LLC appealed the decision of the Third Court of Appeals to the Supreme Court of Texas. On September 29, 2023, the Supreme Court of Texas granted the petitions for review and set the case for oral argument to be held on January 30, 2024.