

**TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN**

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**NO. 03-03-00420-CV**

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**Office of Public Utility Counsel; Steering Committee of Cities Addison, Arlington, Belton, Brownwood, Burleson, Carrollton, Cleburne, Copperas Cove, Dallas, Denison, Flower Mound, Fort Worth, Grand Prairie, Harker Heights, Highland Park, Howe, Irving, North Richland Hills, Pantego, Plano, Richardson, Richland Hills, Rockwall, Snyder, Sulphur Springs, University Park, Waco, Watauga, and Wichita Falls; and State of Texas, Appellants**

**v.**

**Public Utility Commission of Texas and TXU Energy  
Retail Company, Appellees**

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**FROM THE DISTRICT COURT OF TRAVIS COUNTY, 200TH JUDICIAL DISTRICT  
NO. GN203713, HONORABLE JOHN K. DIETZ, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

The Office of Public Utility Counsel, the State of Texas, and the Steering Committee of Cities Addison, Arlington, Belton, Brownwood, Burleson, Carrollton, Cleburne, Copperas Cove, Dallas, Denison, Flower Mound, Fort Worth, Grand Prairie, Harker Heights, Highland Park, Howe, Irving, North Richland Hills, Pantego, Plano, Richardson, Richland Hills, Rockwall, Snyder, Sulphur Springs, University Park, Waco, Watauga, and Wichita Falls appeal from the district court's judgment affirming the decision of the Public Utility Commission in this ratemaking proceeding concerning the adjustment of the fuel-factor portion of the price-to-beat of TXU Energy Retail

Company. Appellants raise several issues that we have discussed and resolved in favor of the district court's affirmance of the Commission's decision in *Cities of Alvin v. Public Utility Commission*, No. 03-03-00386-CV (Tex. App.—Austin Aug. 26, 2004). There are some factual differences between that case and this one due to the differences in the parties involved; for example, the ten-day market period measured differs, the percentage increase in the fuel factor differs, and the appellant cities in this case do not on appeal request reimbursement of expenses. But the issues raised are essentially the same; indeed, some parties have filed identical or nearly identical briefs in the two cases. Accordingly, the discussions and resolutions of the issues raised in *Cities of Alvin* apply to the issues raised in this appeal.

We conclude that the appellants in this case have not shown error. We affirm the district court's affirmance of the Commission's decision.

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Mack Kidd, Justice

Before Justices Kidd, B. A. Smith and Pemberton

Affirmed

Filed: August 26, 2004