

HB 2133 & HB 2134 Solutions in Search of a Problem

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HB 2133 gives the Texas Public Utility Commission (PUC) the ability to order “disgorgement” of all revenues resulting from an instance of market power abuse or other violations of the Utilities Code in the Texas electricity market.

HB 2134 gives the PUC emergency cease and desist authority and significantly increases the size of its fines in certain instances.

All of these result in a major expansion of the PUC ability to regulate the electricity market, as well as a major reversal of almost two decades of public policy of the state of Texas. Since at least 1995, the Texas Legislature has moved the Texas electricity market towards less—not more—regulation:

“The legislature finds that ... electric services and their prices should be determined by customer choices and the normal forces of competition.” Public Utility Regulatory Act (PURA), Chap. 39

Texas policymakers made the decision to let these markets work and not manipulate prices or access policies—unlike policymakers in other states where the move to full electric competition almost universally failed. Bucking the national trend, Texas did not “design” a market in any meaningful sense; instead we set general rules and allowed market participants to fully compete within those rules.

The results have been nothing less than spectacular. Texas has the most competitive electricity market in the U.S., if not the world. This has brought tremendous economic benefit to the state through billions of dollars of investment and lower electricity prices. For instance, wholesale prices in 2009 were the lowest since 2002, and the average retail price today is 23 percent below the regulated price in 2001. All this has played a big role in making Texas the best state in the country for living in and doing business.

A major shift in policy that puts these advances and the economic health in Texas at risk should be based on evidence that there is a significant problem in the wholesale electricity market. However, that is not the case. There has never been a

single confirmed instance of market power abuse in the Texas wholesale electricity market. And each year the market is becoming more competitive. As the ERCOT market monitor reported recently, “The ERCOT wholesale market performed competitively in 2009, with the competitive performance measures showing a trend of increasing competitiveness over the period 2005 through 2009.”

Since Texas began reducing government regulation of the Texas electricity market, there have been repeated attempts to reverse this course and re-impose price controls on the market. In fact, this has been the trend across the United States. Texas is one of the few states where these attempts been successfully rebuffed.

These measures in HB 2133 and HB 2134 are yet another attempt to re-impose price controls and will cause significant harm to Texas consumers and the Texas economy by disrupting the market and creating regulatory uncertainty, which ultimately increases the cost and the price of electricity in Texas.

Evidence of the Competitiveness of the Texas Wholesale Electricity Market

Competition in Texas’ Wholesale Electricity Market (ERCOT Market Monitor Report)

- **Market Competitive and Improving in 2009:** “The ERCOT wholesale market performed competitively in 2009, with the competitive performance measures showing a trend of increasing competitiveness over the period 2005 through 2009.”
- **Market Competitive and Improving in 2008:** “The competitiveness of supplier offers improved considerably in 2006 compared to 2005, followed by even more substantial improvement in 2007 and 2008. ... The frequency with which at least one supplier was pivotal in the balancing energy auction ... has fallen consistently from 29 percent of the hours in 2005, to 21 percent of the hours in 2006, and to less than 11 percent of the hours in 2007 and 2008.”

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- **Market Competitive and Improving in 2007:** “We find improvements in a number of areas over the results in prior years that can be attributed to changes in the market rules or operation of the markets. Our analysis also indicates that the market performed competitively in 2007.”

Wholesale Electricity Prices in Texas (2009 Market Monitor Report)

- **Wholesale Prices the Lowest Since 2002:** “The average wholesale electricity price was \$34.03 per MWh in 2009, which is 56 percent lower than the 2008 average price of \$77.19 per MWh. This is the lowest annual average price experienced in the ERCOT wholesale market since 2002.”
- **Wholesale Prices Lower than in Many Other Markets:** “All-in wholesale electricity prices for the ERCOT market in 2009 were lower than in the organized wholesale electricity markets in California, New England, the New York ISO, and the PJM Interconnection.”
- **Wholesale Prices Too Low During Peak Demand:** “However, pricing outcomes in 2009 continued to inadequately reflect market conditions during times of operating reserve scarcity.”

Government-created Inefficiencies in Texas’ Electricity Market (Market Monitor Report)

- “Interzonal price disparities were larger in 2008 and 2009 than in prior years, primarily as a result of in-

creased wind capacity in the West Zone and inefficiencies that are inherent to the zonal market design.” (2009)

- “The report generally confirms prior findings that the current market rules and procedures are resulting in systemic inefficiencies.” (2009)
- “Under the current zonal market design, transmission congestion is most frequently resolved through non-transparent, non-market-based procedures.” (2008)

Significant Improvements Underway in 2011 (2009 Market Monitor Report)

- “The nodal market design will fundamentally improve ERCOT’s ability to efficiently manage transmission congestion, which is one of the most important functions in electricity markets.”
- “The wholesale market should function more efficiently under the nodal market design by providing better incentives to market participants, facilitating more efficient commitment and dispatch of generation, and improving ERCOT’s operational control of the system.”
- “The nodal market will produce price signals that better indicate where new generation is most needed (and where it is not) for managing congestion and maintaining reliability.” ★

Resources

Competition in the Texas Electricity Market: A Texas Success Story

A Tale of Two Markets: Telecommunications and Electricity: A Sunset Report on the Texas Public Utility Commission

Regulation of Electricity Markets

2009 State of the Market Report for the ERCOT Wholesale Electricity Market

2008 State of the Market Report for the ERCOT Wholesale Electricity Market

2007 State of the Market Report for the ERCOT Wholesale Electricity Market

2006 State of the Market Report for the ERCOT Wholesale Electricity Market

2005 State of the Market Report for the ERCOT Wholesale Electricity Market

