



Proposals for Legislative Change
June 8, 2010

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Cities Aggregation Power Project, Inc. Proposals for Legislative Change

Texas has a deregulated electricity market, but not a truly competitive one. Average residential rates remain higher than the national average, despite a long history prior to deregulation of below-average rates. Contract fine print, hidden fees and penalties have increased confusion in the marketplace. For the promise of electric deregulation to be fulfilled, Texas must enhance the competitive market, preclude and penalize market power abuse, and improve customer protections.

1) Make the PUC more accountable to consumers.

The Commissioners of the Public Utility Commission of Texas rarely miss an opportunity to promote the concept of deregulation, in general, and the Texas experience, in particular. But in its zeal to promote deregulation, the agency sometimes loses sight of the higher electric prices that Texans have suffered relative to the rest of the nation. In addition, the PUC has failed to embrace important reforms that would simultaneously enhance the competitive system while also improving customer protections.

Recommendations:

- The Legislature should modify the Public Utility Commission's core mission (as stated in the Public Utility Regulatory Act) in such a way as to direct the agency to harmonize its promotion of competition with the protection of electric consumers.
- The PUC should be directed to pursue policies intended to bring Texas rates back in line with their historic, pre-deregulation levels below the national average.

2) A new choice in the market: create standardized "Rate is True Price" deals.

Currently, consumers are confronted with a bewildering array of electricity offers on the power-to-choose website. The fine print included in electricity contracts makes apples-to-apples comparisons next to impossible. To improve competition, Texans should have additional choices that would allow them to compare electricity deals based solely on price — regardless of the fine print.

Recommendation:

- As a condition of doing business in Texas, retail electric providers ("REPs") should be required to offer among their regular selection of products one standardized "Rate is True Price" deal with terms and conditions set by the Public Utility Commission. REPs would be free to set the price of these standardized deals in any way they see fit. REPs also would continue to enjoy the full freedom to set terms, conditions and prices for all their other electricity products.



3) Close legal loopholes that can allow companies to engage in anti-competitive activities.

Loopholes in rules that govern the wholesale electricity market have given some relatively small generation companies the ability to engage in anti-competitive activities without fear of reprisal.

Recommendations:

- Market rules should be changed such that market abuse is prohibited in all instances, regardless of the generator size. This would modify current rules under which generators with less than five percent of the market can legally engage in anti-competitive behavior.
- So-called "hockey stick" bidding (which contributed to the market meltdown in California) and any activity defined as anti-competitive by the Federal Energy Regulatory Commission should be expressly prohibited in Texas.

4) Diminish the profit incentives for engaging in anti-competitive activities by enhancing penalties.

Electric competition cannot work as long as companies that abuse the market can expect to profit from their improper activities. However, a current defect in the law has allowed one of the state's largest electric companies to reap nearly \$4 million in profits by engaging in practices that were deemed anti-competitive. The company netted these profits despite paying a penalty for its improper actions. Neither did the alleged market abuser ever repay those who lost tens of millions of dollars because of its anti-competitive activity.

Recommendations:

The PUC should be given new authority to assess larger fines against companies that engage in anti-competitive practices.

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- The PUC should be granted new authority to order restitution for parties harmed by anti-competitive behavior.

5) Prohibit streamlined ratemaking.

Representatives of that part of the electric industry that remains under regulation have pushed for streamlined or "one-way" ratemaking, which is a regulatory practice under which the PUC could order rate hikes without first considering the totality of a utility's savings and revenues. This practice rewards utilities for over-spending and leads to higher rates. No legitimate consumer group supports such ratemaking procedures.

Recommendation:

- The Legislature should prohibit the use of streamlined ratemaking in the future.



6) Improve consumer representation at ERCOT.

The organization that manages the Texas power grid is the Electric Reliability Council of Texas, or ERCOT. The board of directors at ERCOT also sets policies that directly impact the operations of the state's wholesale electricity market. But while consumers ultimately must pay all costs associated with this market, their representatives control only a minority of seats on the ERCOT board. Industry representatives on the ERCOT board have an incentive to craft market rules and policies that favor their economic interests.

Recommendations:

- Direct the PUC to appoint directors for the ERCOT board that are independent of the electric industry.
- Consumer groups should retain at least three seats on the ERCOT board.
- All ERCOT board appointees should be subject to approval by the Texas Senate.

7) Increase oversight of ERCOT spending.

ERCOT has done a poor job of managing its expenses and operations. ERCOT's implementation of the so-called "nodal" market is the most obvious example. Initially projected to cost less than \$100 million and to be complete by 2006, this project is now four years behind schedule and budgeted to cost more than \$600 million. Operating expenses at ERCOT have increased by more than 600 percent since 2000. Debt has increased by more than 800 percent.

Recommendations:

- ERCOT should obtain PUC approval for its annual budget.
- ERCOT should obtain PUC approval for all uses of debt financing.
- ERCOT should be subject to review by the legislative Sunset Advisory Commission, concurrent with the Commission's review of the PUC.