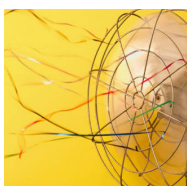


Texas Public Policy Foundation

Keeping Texas Competitive

A Legislator's Guide to the Issues 2013-2014



Disgorgement

The Issue

Last session, HB 2133 granted the Public Utility Commission of Texas the power to disgorge revenue from electric companies if the revenue in question is determined to have been derived from “market power abuse” or other violations of the Utilities Code.

However, no evidence exists that market power abuse or similar anticompetitive behaviors has taken place in the Texas electricity market; in fact, the competitive nature of Texas’ energy market is one of the features that makes it work so well, and ultimately has kept power affordable and reliable for Texans.

Texas’ electrical market helps keep Texas going, both in terms of energy provision and in terms of economic benefits. The investment that deregulation brings not only keeps our energy secure, but also generates new jobs for Texans. In addition, the rates are affordable—far more so than when government regulation controlled the price at the turn of the century.

The threat of disgorgement, however, should a company somehow attract the PUC’s ire, threatens to stifle the advantages of competition. Rather than allowing the market to self-correct, the changes brought by HB 2133 increase the type of regulation that keep electricity prices high in New York, California, and other regulation-heavy states. This regulatory risk also may contribute to the flight of capital from Texas which is limiting new investment in generation in Texas.

Texas’ continuing economic success depends on deregulation of the energy markets; disgorgement threatens the success of those markets, and threatens the success of Texas as a result.

The Facts

- Texas’ electric markets have helped to lower overall prices without government intervention, and have led to increased investment in our electrical infrastructure.
- Disgorgement powers granted by HB 2133, passed in 2011, threaten the health of Texas’ electrical markets.
- No evidence exists of the existence of any market power abuse or similar anti-competitive behavior in the Texas power market.
- Disgorgement is a solution in search of a problem.

Recommendation

- Repeal the provisions added by HB 2133 that allow for the PUC to exercise disgorgement authority.

Resources

HB 2133 and 2134: Solutions in Search of a Problem by Bill Peacock, Texas Public Policy Foundation (Mar. 2011).

Don’t Ruin the Texas Electricity Market by Bill Peacock, Texas Public Policy Foundation (May 2011).

