

Texas Public Policy Foundation

Keeping Texas Competitive

A Legislator's Guide to the Issues 2013-2014



PUC Sunset Review

The Issue

Texas has the most competitive electricity market in the world. Its telecommunications market is equally successful. Both have brought tremendous economic benefit to the state through billions of dollars of investment, lower prices, increased efficiencies, and by making Texas the best state in the country for living and doing business.

It has been almost 15 years since Texas began the process of restructuring its regulatory system of these markets. The direction was laid out in the Texas Utilities Code:

“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

“[T]he policy of this state ... [is] best achieved by ... fostering free market competition in the telecommunications industry.” PURA, Chap. 51

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 electricity competition almost universally failed. Bucking the national trend, they did not “design” a market in any meaningful sense; instead they set general rules for market participants and allowed them to compete as they wished within those rules.

While the details of the transitions to competition for these two markets differ, the timeline and the results are remarkably similar. Both took a little over a decade to reach today’s level of competition and have resulted in exceptional increases in consumer choice and similar decreases in consumer prices.

These similar results are viewed quite differently by some, as seen in the Sunset Advisory Commission’s 2010 Staff Report on the Public Utility Commission of Texas. Yet there are no functional, economic, or political reasons to treat these markets differently. In fact, recent concerns about resource adequacy make it even more important to do so.

Unfortunately, Texas hasn’t stuck to the original plan to allow market participants to compete. Since the market was originally designed, there has been a steady regulatory creep that has harmed competition and reduced investment in the industry, particularly investment in new generation.

The regulatory creep includes price caps and floors in the wholesale market, merger and approval authority by the PUC, disgorgement authority at the PUC, increased use of the non-spin market, and others. When combined with the significantly greater level of wind subsidies in Texas and increased federal environmental regulation, these have created a high level of regulatory uncertainty that has brought about a higher cost of capital and caused some investors to take capital to other states in search of better returns.

Two recommendations contained in the 2010 Sunset Advisory Commission’s PUC Report would exacerbate the problem of resource capacity. They are:

Sunset Recommendation 1.2: Increase PUC’s administrative penalty authority to \$100,000 per violation per day for violations of ERCOT’s reliability protocols or PUC’s wholesale reliability rules.

Sunset Recommendation 1.3: Authorize PUC to issue emergency cease-and-desist orders.

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The report's recommendations are flawed for two primary reasons. First, nowhere does the report identify any violations or problems to justify the recommendations. Second, the recommendations will actually harm competition in the market and further exacerbate the current challenges Texas faces when it comes to resource adequacy. Instead, Texas should continue down the tremendously successful path toward deregulation for both of these markets.

The Facts

- Texas has the most competitive electricity market in the world. Its telecommunications market is equally successful.
- Neither of these markets have shown signs of anticompetitive behavior.
- In 2010, the Sunset Advisory Commission recommended that the PUC have the ability to increase fines and have emergency cease-and-desist authority—even though no examples of violations were cited to justify the recommendations
- This increased enforcement authority, combined with last session's grant of disgorgement authority, could be used as a bludgeon to force businesses to stop activity that is legal but not favored by regulators.
- These recommendations are an example of the regulatory creep that has occurred in Texas since the onset of competition that has harmed competition and led to concerns about resource adequacy.

Recommendation

- The Texas Sunset Commission should not re-adopt its 2010 recommendations to increase PUC fines or give the Commission emergency cease-and-desist authority.

Resources

A Tale of Two Markets: Telecommunications and Electricity, A Sunset Report on the Texas Public Utility Commission by Bill Peacock, Texas Public Policy Foundation (May 2010).

Competition in the Texas Electricity Market: A Texas Success Story by Bill Peacock, Texas Public Policy Foundation (Mar. 2011).

Solutions in Search of a Problem by Bill Peacock, Texas Public Policy Foundation (Mar. 2011).

Comments to the Public Utility Commission of Texas Regarding Rulemaking Proceeding to Amend Energy Efficiency Rules by Bill Peacock, Texas Public Policy Foundation (Mar. 2010).

