

# 2019-20

# LEGISLATOR'S GUIDE to the Issues



## Disgorgement

### The Issue

In 2011, HB 2133 granted the Public Utility Commission (PUC) 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, 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 has also reduced the incentives to invest in new generation in Texas and contributed to the concerns over reliability in Texas’ competitive electricity market.

Texas’ continuing economic success depends on limiting excessive regulation of its energy markets—both the exploration and production of oil and gas and the generation and sale of electricity. Disgorgement threatens the success of Texas’ competitive electricity market 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

[\*A Tale of Two Markets: Telecommunications and Electricity\*](#) by Bill Peacock, Texas Public Policy Foundation (March 2013).

[\*HB 2133: Don't Ruin the Texas Electricity Market\*](#) by Bill Peacock, Texas Public Policy Foundation (May 2011).

[\*HB 2133 and 2134: Solutions in Search of a Problem\*](#) by Bill Peacock, Texas Public Policy Foundation (March 2011).