

Oppose Government “Slamming” of Retail Customers

HB 2780 by Rep. Jim Keffer
SB 1481 by Sen. Wendy Davis

AECT Position: Oppose

Proposal

- HB 2780/SB 1481 would legalize opt-out municipal aggregation, a negative option marketing program which would allow a municipality to choose an electric provider and pricing plan, then force its citizens to use that provider and plan unless the citizen affirmatively opts out.

AECT Position

- Opt-out municipal aggregation is negative option marketing, which is illegal under current Texas law. It is also listed as an example in the law of a deceptive marketing practice. Essentially, it's government sponsored “slamming.”

Discussion

- Opt-out municipal aggregation is government-sponsored slamming and is inconsistent with current law against slamming:
 - It is a negative option, which the legislature specifically considered and expressly prohibited in §§ 17.102(1) and 17.151(d) of the Public Utility Regulatory Act (PURA), and negative options have generated huge customer outcry in other industries, leading the Federal Trade Commission (FTC) to outlaw such negative options in many instances.
 - It is directly counter to Section 39.101(b)(2) of the Texas Electric Choice Act which entitles a customer to not have its provider “changed without the customer’s informed consent.”
 - If a private company did what this proposal would allow cities to do, it would be a violation of Texas law.
- HB 2780/SB 1481 would violate Texans’ privacy:
 - Retail electric providers (REPs) and transmission and distribution utilities (TDUs) would be required to produce private, personal information about their customers at the request of the city aggregator.
 - The city aggregator would then be able to provide that collected information to a third party for the purpose of “bidding on” the contract, with none of the customer protections outlined in the legislation.
- The policy of opt-out municipal aggregation has been considered and rejected every regular legislative session since 1999.
- Opt-out municipal aggregation would significantly reduce or eliminate the incentives for all REPs to market other competitive products. in all areas of the state.
- Opt-out municipal aggregation has produced disastrous results in other areas of the country. In Ohio, hundreds of thousands of customers have been put back to higher priced default service because aggregators failed to deliver on their proposed benefits and competition was thwarted by failed aggregation promises.
- There is no need for this policy change:
 - Eighty-four percent of customers have observably chosen a new REP or pricing plan.
 - Current law already allows citizens of a municipality to sign up with a municipal aggregator if they believe the aggregator offers better prices and services (i.e., exercise their choice to “opt-in”).