

Oppose New Regulations on the Wholesale Electric Market

HB 2782 by Rep. Keffer

AECT Position: Oppose

Proposals

- HB 2782 would limit ownership, control and any combination of generation capacity to no more than 20 percent of total generation capacity within designated and shifting zonal boundaries. The bill requires divestiture of assets beyond this standard by September 30, 2010, and allows the Public Utility Commission of Texas (PUC) to establish a capacity auction to meet that goal.

AECT Position

- The PUC has the authority to monitor, investigate and enforce against market power abuses, applying scrutiny over and above the 20 percent ownership-and-control limitation. For example, the PUC has implemented rules that provide for strict market behavior requirements for wholesale market participants against adversely affecting competition, including predatory pricing, withholding of production, precluding entry and collusion.
- Additionally, in 2005 the Legislature created the independent market monitor (IMM) as a watchdog entity to augment the PUC's oversight of the Electric Reliability Council of Texas (ERCOT) market to identify market flaws and to identify and report to the PUC any improper behavior by market participants.
- HB 2782 would ultimately require divestiture of some assets or the sale of entitlements to capacity by some companies. This would discourage investment in new generation, as potential investors would need to assess the possibility of changes to the rules that would affect their long-term ownership of generation assets. As a practical matter, such limits would limit generator entities to being "small players" unlikely to be able to support larger projects, such as new nuclear plants.
- It would require the generation ownership to be dependent on certain congestion zones, which, until the advent of the nodal market, can change on an annual basis. Thus, it creates regulatory uncertainty, as generation owners would not know from year to year whether they would be in violation – and thus curtail investment in new generation.
- HB 2782 would change the way in which capacity is measured to include capacity over which the owner of the generation has no control. This results in both over-counting and double counting and would frustrate current market mechanisms that effectively result in the divestiture of assets. Bidding practices on all contracts are subject to ongoing review by the market monitor.
- While there will be "zones" under nodal market rules, those will relate to how certain costs are allocated among electric loads; however, they will not have relevance to how generators are paid for service.
 - Generators will be paid based on the price at their specific "node." Thus, the concentration of generation becomes irrelevant in the Nodal market design.
 - In addition, the PUC required the integration of market mitigation measures in the Nodal market rules to mitigate potential local market power issues, such as mitigated offer caps to generators deployed to address transmission congestion (the circumstance where price differentials occur) in cases where there is not a competitive solution to the congestion problem – to ensure a single generator cannot control that price.