

Changes to Market Power Procedures

SB 1772 by Sen. Fraser

Proposals

- SB 1772 would grant any affected party the right to intervene in market power cases before the Public Utility Commission of Texas (PUC).
- The bill would allow the PUC to order restitution to those parties affected by market power abuse.

AECT Position

- AECT believes this proposal would serve to interfere with the PUC Staff's ability to prosecute market power proceedings.
- By empowering the PUC to order restitution to affected parties, SB 1772 would effectively give customers the right to intervene in enforcement proceedings, since it seems very likely that administrative law judges would construe the potential right of a customer to get some restitution money as a "justiciable interest" that would support intervention.
 - So, though third party intervention would not be an expressed right, the nature of the system would likely permit all wholesale and retail customers to intervene.
 - As a result, market power abuse enforcement proceedings would become business-versus-business and customer-versus-supplier disputes.
- Allowing third parties to initiate and intervene in PUC enforcement proceedings would complicate those proceedings and allow them to become inter-business disputes instead of retaining their proper focus on whether the law was complied with, thus impairing Commission enforcement.
- AECT supports the existing structure, in which enforcement proceedings are brought by PUC Staff, in the name of, and on behalf of the Commission – similar to a criminal case that is brought on behalf of the State. As with a criminal case where victims of the alleged crime are not allowed to intervene in the proceeding (instead, their interests are essentially represented by the State, in its prosecutorial role).
- The PUC and the Electric Reliability Council of Texas (ERCOT) are armed with several tools to diagnose and punish market power abuses, including the established Independent Market Monitor, and AECT fully supports aggressive policing of potential market power abuse.
- Given the nature of wholesale market generation and the application of wholesale power costs, determining restitution for given third parties would be theoretical at best and impossible at worst.
- The PUC has authority to levy substantial fines for market power abuse, with collected penalties distributed through general revenue. This is appropriate, as it allows for broad use of penalty funds, affecting residents statewide. Since nearly all residents use electricity, all residents receive the benefit of the penalty funds.