

Comments on Sunset Staff Recommendations

Sunset Commission Hearing, May 25, 2010

AECT supports the market structure in Texas

- AECT believes Texas leaders should support policies that maintain the competitive power market.
 - This competitive market has spurred investment of over \$36.5 billion to place 40 GW of new generation online over the past 11 years.
 - Intense competition has brought greater efficiency to the wholesale market, with power plants that produce more electricity per unit of fuel and that employ modern environmental emissions controls, while reducing wholesale prices through operational efficiencies.
- AECT believes the market is benefiting consumers.
 - The competitive electric market has benefited customers by offering fair prices, multiple offers and continued reliability.
 - In competitive areas of the state, residential customers have at least 100 different electric plans from which to choose, including variable, fixed and indexed pricing at many plan lengths.
 - The retail market has been effective at promoting use of renewable energy.
- AECT believes the competitive market has comprehensive controls and oversight.
 - The Independent Market Monitor and the PUC vigilantly oversee the market.
 - The PUC already has the authority to seek injunctions, impose substantial administrative penalties, to seek civil penalties and even revoke a business' right to do business in the market.

AECT supports many of the Sunset Staff's recommendations

- AECT supports the continuation of the PUC for 12 years, and hopes it will utilize policies that will lead to needed investment in the most cost effective manner possible.
 - The PUC should also exercise its authority to further improve and increase the efficiency of the ratemaking process that will allow for increased investment and improvement to the electric energy infrastructure for the benefit of all Texas consumers.
- AECT supports giving the PUC the authority to issue emergency cease-and-desist orders, but would seek clarification that there is, in fact, an emergency (e.g., a hurricane or other imminent threat to reliability) and there is clear and convincing evidence of a violation of an existing statute or regulation.
- AECT supports the setting of reasonable fees by the PUC for filing registrations, certifications and permits, but we believe additional clarification is required to ensure the process is predictable and fees are tied to the cost of processing by the PUC.

- AECT supports regular reporting of complaint and enforcement data on the PUC Web site, much of which is often included in other reports, such as the biannual PUC Scope of Competition Report. However, if such information is to be posted, a full analysis of the data should be provided, including the ultimate resolution of each complaint and/or enforcement action.
- AECT supports the continuation of OPUC for 12 years in its present statutory role.

Sunset Staff recommendations of concern

- AECT believes that the Sunset Staff's recommendation to provide the PUC with "restitution" authority (i.e. the authority to return the alleged "harm" to the market) would compromise the efficiency of the PUC and would harm the ERCOT market.
 - Given the complexities of the current balancing energy auction and the settlement of all wholesale energy across thousands of nodes in a nodal market, determining a price for restitution purposes would be theoretical at best and arbitrary at worst.
 - Under this recommendation, no transaction would ever truly be "final" because restitution proceedings could re-evaluate what the "right" price or prices should have been.
 - Thus, the recommendation would lead to a lawyer-driven proliferation of legal battles at the PUC, creating enormous uncertainty in the ERCOT market.
 - In addition to this expansive restitution authority, the Sunset staff proposes that the PUC could impose administrative penalties for the violation. Threatening cumulative penalties (total restitution plus administrative penalties) could cripple ERCOT market participants, going well beyond reasonable efforts to deter violations.
- AECT disagrees with the Sunset Staff's recommendation that administrative penalties be increased to \$100,000 per day per violation for violations of ERCOT's reliability rules or PUC's wholesale reliability rules.
 - The PUC may already assess administrative penalties of up to \$25,000 per day per violation against market participants that do not comply with PUC rules or the ERCOT Protocols
 - Because the penalty structure contains a "per violation per day" provision, the potential for large fines is sufficiently high to ensure compliance.
 - In addition, this recommendation could be interpreted to affect any violation of ERCOT's protocols and many of the PUC's rules, as many of them impact reliability in some way. This exceptionally broad provision exponentially increases the risks for companies operating within ERCOT, likely harming future investment in needed electric energy infrastructure.

Regarding ERCOT

- While AECT agrees that the PUC should have jurisdiction over ERCOT's fees, AECT is concerned that the scope of PUC oversight of the ERCOT budget described in the Sunset Staff's report would be wasteful of PUC and ERCOT resources.
 - Today, ERCOT must seek approval for any changes in fees; and the PUC can require ERCOT to submit to formal review of expenses or fees in its discretion.
 - The PUC is also empowered to investigate ERCOT's cost efficiencies, salaries and benefits and use of debt financing for "reasonableness and neutrality," and may act under current authority to combat wastefulness.
 - Given the technical nature of ERCOT, an onerous budget review process of this nature could hinder ERCOT's ability to attract talent for technical positions needed to operate the grid reliably and efficiently.
- AECT believes the current structure of the ERCOT board has benefited the transition to competitive retail and wholesale electric markets.
 - Were the structural change considered, AECT would recommend that the current rigorous and balanced process used for the selection of ERCOT independent board members be retained.
 - AECT strongly supports the statutory retention of the Technical Advisory Committee (TAC) as described in Recommendation 2-3.

Conclusion

- AECT believes Texas leaders should support policies that maintain the competitive power market.
- AECT favors the most efficient, least costly regulation tailored to the business environment of today. Regulation of the electric market should be consistent and predictable, promoting investment in generation, transmission and distribution infrastructure to ensure an economically strong and environmentally healthy future for Texas.
- AECT believes the PURA statutory structure is a solid framework. We look forward to working with legislators, the Sunset Staff, the PUC, and others on these issues.