

**The suite of Senate bills introduced on Thursday would unravel the competitive wholesale and retail electric markets that have thrived since their creation in 1999 by SB7. Texas’ competitive electric market has been the envy of electricity markets around the world, but these bills would scuttle that prized market in favor of a distorted hybrid that attempts to layer the worst of regulated markets over our existing market, resulting in maximum regulatory uncertainty. These Senate bills, in combination, would scare away investment dollars in ERCOT, pushing Texas closer to other regulated markets but without the same accountability that other states require. These bills do the opposite of what Texans want and need, which is to retain existing dispatchable generation in the market as long as needed and to incentivize private capital to build the lowest-cost new dispatchable generation possible.**

**For these reasons, TCPA, ARM and their members oppose this legislation.**

**SB6**

*Texas Energy Insurance Program*

* Does not provide insurance for the State; rather, it signals the end of the competitive market and sends the ERCOT market structure toward full re-regulation.
* Will hasten retirements rather than helping to retain existing dispatchable resources.
* Puts the ERCOT market on an impossible treadmill to grow to backfill lost generation. The “insurance program” will grow to be an increasingly significant part of the “market” because investors will refuse to invest in Texas once Texas has favored state-backed generation over private capital.
* Copies the choice California made for state intervention to try to solve its resource adequacy issues, which has proven unsuccessful.
* Worst form of capacity market with the highest cost for consumers of any market design option currently under consideration.
	+ Customers guaranteed full cost of capacity of new generation with guaranteed rate of return for the generation entity.
	+ Stranded costs borne by consumers for poor investment decisions or poor project execution.
	+ No benefit of lower energy costs for consumers from utilization of the new generation.
* Not a competitive procurement of qualified providers.
	+ Qualification criteria set to target a single provider or an extremely limited number of providers.

*Generating Facility Funding*

* Government intervention in the competitive market to subsidize maintenance or modernization costs (undefined terms).
	+ Discourages private investment by favoring generators that already are the most economic (e.g., “highest ratio of dispatchable megawatts maintained to project costs”).
	+ Meanwhile, the loan acceleration for resources that cease operations within 5 years would discourage economically marginal resources from applying in the first place.
* Disadvantages anyone who has made recent investments in new or existing generation utilizing market rates.
* Government picking winners and losers to determine who gets low interest loans and who does not, using highly subjective criteria. These concepts will send a signal to private investors to stay out of the Texas market and invest their capital elsewhere.

**SB7**

* A new ancillary service for system uncertainty does not solve the ultimate problem in ERCOT, which is resource or supply adequacy. This bill is more likely to retire thermal resources than attract them.
* Cost allocation to existing generation punishes resources that did not earn sufficient revenues for maintenance in the prior market structure likely to encourage retirements of needed generation resources and discourage private investment in Texas.
* Cost allocation framework will also shift costs to residential consumers and small businesses while making reliability worse.
	+ Proposed framework would shift costs from industrial consumers to residential and small commercial consumers, while incentivizing retirements of thermal assets in exchange for limited duration resources that provide less reliability value. This is the exact reason that the PUCT did not select the DECs proposal. These short-duration resources cannot get Texas through an extended extreme weather event.
* Cost allocation framework would shift ancillary service costs from daily settlement to annual settlement – which raises liquidity and collateral costs, ultimately increasing the cost of providing service to customers.
* The bill would mandate purchases of the new ancillary service but does not address how it would be priced.
* New service is partially duplicative of ECRS, which will be implemented in June.

**SB2012**

* The proposed “PCM guardrails” are anti-market in nature and would undercut the PCM.
	+ Net cost limits on a competitive market would not allow the market to send investment signals or to self-correct. When energy revenues are high, PCM revenues should be lower; when energy revenues are low, PCM revenues should be higher.
	+ Allocating PCM costs to generators would nullify the benefit and incentives of the mechanism. Adding costs is similar to reducing revenues for generators.
	+ Generators that sell PCs forward and do not produce them will have to buy those PCs back from the PCM. The PCM as proposed by the PUCT already includes penalties for instances of non-performance.
	+ The proposed modification to increase the administrative penalty cap from $25,000 to $1 million represents a massive expansion of regulatory risk. While having effective enforcement authority is important for the PUCT, it must be balanced to avoid discouraging businesses from participating in the market.
	+ A retail market share cap is anti-market, hurts consumers, and is antithetical to the legislative purpose of the original SB7.
		- The retail market is highly competitive with constant new entry. A market share limit tries to solve a problem that does not exist.
			* Capping retail market share would create perverse outcomes by reducing competitive incentives – for example, by disincentivizing investment in improved customer service or innovation to meet emerging customer needs. This ultimately hurts customers in addition to signaling that Texas is anti-business and anti-consumer choice.
		- Additionally, a market share cap could compromise the provider of last resort (POLR) safety net, which ensures customers of REPs exiting the market do not experience a disruption in service.
		- A retail market share cap directly undermines the public interest of consumer choices driving competitive outcomes.
		- A retail market share limit is not needed because there are ample legal protections already in place to protect against market share abuses (e.g., Texas Business and Commerce Code §§ 15.05, 15.20; PURA §§ 39.157 and 39.356; Hart-Scott Rodino review for sizable customer acquisitions).
	+ Allowing TDUs to build, own, or operate generation in the competitive market fundamentally jeopardizes the deregulation that underlies the competitive market. Specifically, permitting regulated resources to compete with deregulated assets creates an impossibly unfair playing field. State intervention will dry up private investment and create an unfixable distortion that upends market forces. TDU participation in competitive markets has done permanent damage in every other competitive market

that has allowed it. This proposal follows California’s example and is foreign to the Texas deregulated market.

* + Negotiating a Voluntary Mitigation Plan (VMP) is a time- and resource-intensive process for market participants, the PUCT, and the IMM. Mandating biennial revisions pre-supposes the need for a revision and would result in material costs to all parties involved. Removing the absolute defense of a VMP eliminates the value of the VMP so there would be no benefit to justify the effort.
		- The PUCT already has ample leverage to negotiate new terms to a VMP if they believe the market has warranted changes, because the Executive Director can revoke a VMP in whole or in part with 3 business days’ notice.
* In sum, this bill would mark an inflection point, shifting to a market that claims to be “de-regulated” but contains only the worst features of a fully regulated market without the accountability that States with fully regulated markets require. These reforms would make Texas the least attractive investment choice for private capital, undoing two decades of striving to attract the best investors in the world to Texas.