

Steffy: Utility commission forgets the public

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Power Lines near Clear Lake. ([Photo: BFS Man](#))

We need a better name for the Public Utility Commission.

Some suggestions: “The Big Generator Support Commission” or “The Utilities’ Legion of Lapdogs” or, perhaps, with apologies to the Muppets, “Electric Mayhem.”

Whatever name is given to this motley band, the word “public” should be removed from its title because it’s become increasingly ironic if not insulting. The PUC is doing far more to support the industry it purports to regulate than to champion the interests of the public.

Last month, it voted to raise the wholesale price caps for electricity by 50 percent and advanced a plan to double them again next year. It did this without assessing the public impact, ignoring requests from lawmakers, consumer groups and a coalition of commercial electricity users.

This month, it approved a plan by NRG, one of the state’s biggest generators, that outlines formulas for the prices at which NRG sells electricity in the wholesale market.

Experts say the plans could let the company manipulate the market by driving up wholesale prices. The PUC will determine in advance whether the bids would constitute market manipulation. Two other companies have submitted similar plans.

The Legislature adopted a provision for these “voluntary mitigation plans” last year. Consumer advocates say the plans were only supposed to be used once a generator has been found in violation of market rules, but the PUC and the generators interpreted the language in the law differently.

As a result, the PUC is essentially granting pre-emptive approval, meaning generators can use the plans to determine what they can get away with.

“They’re basically a license to steal,” said Robert McCullough, a Portland, Ore.-based energy analyst who follows deregulation issues. “They essentially give advanced permission for market behavior that under any other conditions would be outrageous.”

Hurting consumers?

As with the PUC’s decision to hike the wholesale caps, the mitigation plans could lead to higher prices for consumers. The details are complex, but after reviewing the formulas that NRG filed, McCullough said it could let the company drive up wholesale prices during times of average demand, given the market power of the big generating companies.

“It reflects market manipulation of a different nature,” said Austin attorney Geoffrey Gay, who represents the Texas Coalition for Affordable Power, which comprises 160 smaller cities around the state, including Sugar Land, Clute and Lake Jackson in the Houston area. “Rather than manipulating the market, these companies have gotten what they want by manipulating the regulator.”

Absolute defense

Lawmakers allowed for the mitigation plans under a provision adopted last year that says if the generator follows such a plan, it serves as “an absolute defense against an alleged violation.”

PUC spokesman Terry Hadley rejected the idea that the mitigation plans would reduce capacity or exempt generators from enforcement actions. Those that don’t follow their own plans still could face fines, he said, arguing the voluntary plans simply “provide some certainty.”

NRG spokesman Dave Knox said the company disagrees with claims the plans would enable it to manipulate the market or drive up prices. All it does, he said, is clarify the language in the law.

“It gives us a far greater understanding of what the rules are,” Knox said. “Right now, we’re driving down the highway and we don’t know what the speed limit is.”

And rather than read the signs, they’re asking the cops how fast they can go without getting a ticket.

The discussion of NRG’s plan was done privately among the PUC’s staff, the independent market monitor and the state’s grid operator.

‘Fundamental concern’

“We’ve got a fundamental concern about the openness and trans-parency in enforcing the rules of the market,” said Tom Morstad, associate director for AARP Texas, one of several consumer groups that oppose the plans. “These types of things shouldn’t be done behind closed doors. It goes to the core of accountability and enforcement and letting the sunshine in.”

The sun may shine a little brighter on a pending plan by Calpine. Last week, the PUC staff recommended it go before an administrative hearing.

Even so, the mitigation plans are cozy and convenient for generators. For those who ultimately pay for all this – and have paid some of the highest rates in the country during the past decade – it raises the question whether the utility commission deserves its “P.”

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