

## Memorandum

To: Honorable Mayor Shetter and members of the Burleson City Council

From: Rhett Clark, Director of Finance

Date: February 16, 2009

Subject: Resolution R-1145-09, endorsing certain legislative changes to enhance the competitive electric market supported by Cities Aggregation Power Project, Inc.

---

### **Council Action Requested:**

Approve Resolution R-1145-09, endorsing certain legislative changes to enhance the competitive electric market supported by Cities Aggregation Power Project, Inc.

### **Background Information:**

#### Purpose

The City of Burleson is a member of Cities Aggregation Power Project, Inc. ("CAPP"). The CAPP Board of Directors has voted to authorize certain legislative efforts on behalf of its members during the 81<sup>st</sup> Texas Legislative Session. CAPP will capitalize on the presence its members established in the last three legislative sessions to apprise legislators of CAPP Cities' perspective on electric issues and to recommend legislative action.

#### Discussion

In 1999, Texas lawmakers adopted Senate Bill 7, the state's electric deregulation law. The legislation expanded competition in the wholesale electricity market and opened the door to competition among electric retailers. Proponents of the legislation promised lower electric prices.

Unfortunately, the reality has been otherwise. Although Texans paid electric prices well below the national average during the decade before Senate Bill 7 was passed, customers in deregulated parts of the state now pay prices above the national average. In fact, residential electric prices have increased by a greater percentage in Texas than

in almost every other state – including every other deregulated state with retail competition.

CAPP believes that many of the current problems that keep the market from achieving the promise of full competition stem from defects in the deregulated electricity market. For example, some generators are able to exercise monopoly-like control in large swaths of Texas. That has hindered healthy competition. Efforts to address market design issues by ERCOT have been misguided, mismanaged, gone over budget and fallen behind schedule.

As an active market participant, CAPP is in the unique position to identify problems that have developed in the deregulated marketplace and provide a consumer's perspective to legislators interested in fixing those problems.

Based upon this point of view, CAPP has created a legislative agenda that aims to transition the electric market from a deregulated market to a truly competitive one by limiting market power, eliminating cost shifting, and creating competitive options for all customers. The CAPP legislative agenda items reflect CAPP's desire for a truly healthy electric market where consumers can save and competition can flourish. Such a market - one where power remains affordable and reliable - will mean more economic development for Texas cities, and a better standard of living for our citizens.

Legislative change is necessary to better protect cities' budgets, enhance cities' ability to protect their citizens, and increase competition among retail providers. The following changes are proposed by the CAPP Board:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power. Current regulations exempt smaller generators from market power prohibitions.
- Entities harmed by wholesale market abuse such as municipalities, commercial customers or retail electric providers should be given explicit

standing to participate in enforcement actions brought by the Public Utility Commission ("PUC"). Affected parties are currently barred from participating in such proceedings.

- Ownership and control of generation capacity should be limited to no more than twenty percent (20%) of total generation capacity within the functional market (ERCOT zone) in order to enhance competition and mitigate market power and the ability of any one generator to affect prices. In the alternative, the PUC should be directed to create a single ERCOT-wide market with uniform congestion pricing.
- Permit cities to create and implement opt-out citizen aggregation programs, or alternatively to become Retail Electric Providers or Municipally Owned Utilities.
- Direct the Electric Reliability Council of Texas ("ERCOT"), the organization that administers the state power grid, to abandon all efforts to transition to a nodal market and direct the PUC to open a proceeding to consider other market design options.

The CAPP Board, made up exclusively of City representatives, requests that the City Council pass the attached resolution endorsing CAPP's legislative agenda.

**Board/Citizen Input:**

N/A

**Financial Considerations:**

N/A

**Attachments:**

Resolution R-1145-09  
CAPP flyer

**Staff Contact:**

Rhett Clark rclark@burlesontx.com  
817-447-5400 Ext. 261

**RESOLUTION NO. R-1145-09**

A RESOLUTION OF THE CITY OF BURLESON, TEXAS, ENDORSING CERTAIN LEGISLATIVE CHANGES TO ENHANCE THE COMPETITIVE ELECTRIC MARKET SUPPORTED BY CITIES AGGREGATION POWER PROJECT, INC.

**WHEREAS**, the City is a member of Cities Aggregation Power Project, Inc. ("CAPP"), a non-profit organization created by cities throughout Texas to secure affordable energy for its members in the deregulated electric market; and

**WHEREAS**, affordable and reliable power means economic development for our cities and a better standard of living for our citizens; and

**WHEREAS**, by deregulating the retail electric market, Senate Bill 7 of 1999 ("SB 7") intended to allow competitive forces to drive down the price of electricity; and

**WHEREAS**, CAPP's seven-year experience with the deregulated market, including negotiating power contracts with several different retail electric providers, indicates that the Texas electric retail market has failed to develop into a truly competitive market as envisioned by the Texas Legislature and that prices are higher, not lower, after deregulation; and

**WHEREAS**, competition has failed to develop in the deregulated electric market because certain power generation companies own or control enough generation capacity to exercise market power to the detriment of customers and non-affiliated retail electric providers; and

**WHEREAS**, alleged market power abuse inquiries conducted by the Public Utility Commission ("PUC") are hampered by the lack of adequate resources because the parties hurt by the illegal activity, like cities, are not allowed to participate in the investigations; and

**WHEREAS**, residential customers in Texas communities are unable to obtain lower power prices that may be available to them through bulk purchasing because current law makes the creation of citizen aggregation groups unworkable; and

**WHEREAS**, the Electric Reliability Council of Texas ("ERCOT") is expected to spend at least \$660 million to implement a nodal market in Texas, an unproven market design program that is several years behind schedule and several hundred million dollars over budget; and

**WHEREAS**, the City supports all legislative initiatives that promote a truly healthy electric market where competition can flourish and consumers can save money; and

**WHEREAS**, the City endorses efforts proposed by CAPP to modify the electric deregulation legislation to enhance competition, implement the original intent of SB 7 and reduce costs to the City and its residents.

**THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BURLESON, TEXAS, THAT:**

**I.**

The City supports the introduction and adoption of legislation in the 81<sup>st</sup> Session of the Texas State Legislature that promotes affordable power and the transition of the Texas electric market from a deregulated market to a fully competitive one. Specifically, the City supports legislation that will address the following issues:

- All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power.
- Ownership and control of generation capacity should be limited to no more than twenty percent (20%) of total generation capacity within the market in order to enhance competition and mitigate market power and the ability of any one generator to affect prices. This is in accordance with basic anti-trust principles and as originally designed in SB 7, although the "market" should be redefined as the functional market (an ERCOT zone) to reflect real-world conditions. In the alternative, the PUC should be directed to create a single ERCOT-wide market with uniform congestion pricing.
- Entities such as municipalities, commercial customers or retail electric providers harmed by wholesale market abuse should be given explicit standing to participate in market power abuse enforcement actions brought by the PUC.
- Cities should be permitted to create citizen aggregation groups to combine the power needs of residents that have not specifically asked to be excluded in order to facilitate bulk power purchasing and enhance the opportunities for residential customers to benefit from deregulation and benefit the entire state by increasing competition. Citizens who have signed a contract with a retail provider would be excluded, as would those citizens who otherwise opt out.
- All efforts to transition to a nodal market in ERCOT should be abandoned and other market design options that benefit all market participants should be considered.

**II.**

A copy of the resolution shall be sent to the elected lawmakers representing the City's interests in the Texas House and Senate and to the Chairman and legal counsel of CAPP.

PRESENTED AND PASSED on this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by a vote of \_\_\_\_\_ ayes and \_\_\_\_\_ nays at a regular meeting of the City Council of the City of \_\_\_\_\_, Texas.

\_\_\_\_\_  
Ken Shetter, Mayor

ATTEST:

\_\_\_\_\_  
Amanda McCrory, City Secretary

## Overview

In 1999, Texas lawmakers adopted Senate Bill (SB) 7, the state's electric deregulation law. The legislation expanded competition in the wholesale electricity market and opened the door to competition among electric retailers.

Supporters sold the legislation by promising lower rates.

Unfortunately, the reality has been otherwise. During the decade before SB 7, Texans paid electric prices well below the national average. In the years since market restructuring,

Texans paid above the national average. Not only that, but residential electric prices have increased by a greater percentage in Texas than in almost every other state in the union – including every other deregulated state with retail competition.

CAPP believes that many of the current problems stem from defects in the wholesale electricity market.

Generators, for instance, have managed to exercise monopoly-like control in large swaths of Texas.

That has hindered healthy competition. At the same time, efforts to address problems by the Electric Reliability Council of Texas (ERCOT) have been misguided, mismanaged, gone over budget and fallen behind schedule.

## Critical Legislative Issues AT A GLANCE

### MARKET POWER ISSUES

1. All generators, regardless of size, should explicitly be barred from the unlawful exercise of market power. Current regulations exempt smaller generators from market power prohibitions.
2. Entities harmed by wholesale market abuse – such as municipalities, commercial customers or retail electric providers – should be given explicit standing to participate in enforcement actions brought by the Public Utility Commission (PUC). Affected parties are currently barred from participating in such proceedings.
3. Ownership and control of generation capacity should be limited to no more than 20 percent of total generation capacity within the functional market (ERCOT zone) in order to enhance competition and mitigate market power and the ability of any one generator to affect prices. In the alternative, the PUC should be directed to create a single ERCOT-wide market with uniform congestion pricing.

### ERCOT ISSUES

1. Direct ERCOT, the organization that administers the state power grid, to abandon all efforts to transition to a nodal market and direct the PUC to open a proceeding to consider other market design options.

### CITIZEN AGGREGATION

1. Permit cities to create and implement opt-out citizen aggregation programs, or alternatively to become Retail Electric Providers or Municipally Owned Utilities.