

News & Developments

Confidential Market Data Scrap Heats up in Texas

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Wholesale electric transaction data that ERCOT market participants consider competitively sensitive has been subpoenaed by TXU in an enforcement proceeding brought against TXU Corporation and its power generation affiliates by the Texas Public Utility Commission. Based on findings by the ERCOT Independent Market Monitor regarding TXU's alleged economic withholding of production in 2005 that raised prices in the balancing energy market by 11.4% and from which TXU profited, the PUC Staff seeks administrative penalties against the TXU companies of \$171 million. Although no interventions were allowed in the case, TXU's subpoenas to nonparties seek information including the nonparty participants' balancing energy bids and strategies. The administrative law judge authorized the subpoenas on grounds that such information would be used against the TXU companies as support for the enforcement action and to calculate the penalty, and that the information should be produced to allow TXU to prepare its defense. The ALJ's order has been appealed to the Commission by Reliant Energy Power Supply LLC and by Texas' three largest municipal electric utilities—CPS Energy of San Antonio, Austin Energy, and the City of Garland, all of whom are active in the wholesale competitive electric market. These parties contend that the information sought is not being used against TXU and could not be determinative of the TXU companies' actions in the market as a pivotal supplier; and that they will be competitively harmed by release of the data and will not be protected under the terms of protective orders. The Commission is scheduled to hear the appeal November 1, but the issue is likely to wind up in state district court.

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