



## Business

The PUC will likely order a fine and consumer refunds from TXU.

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## Officials to seek penalty, refunds from TXU

Signs point to a figure in the millions

By TOM FOWLER  
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Enforcement officials with the Texas Public Utility Commission will recommend TXU Energy pay both a stiff penalty and customer refunds as punishment for allegations it manipulated wholesale power markets in 2005.

During a Tuesday hearing of the House Regulated Industries Committee, Jess Totten, director of the commission's electric industry oversight division, said it was too early to say how much the power wholesaler would be told to pay for actions that, according to a report by an independent consulting firm, drove up power prices in Texas by \$70 million in the summer of 2005.

But observers say the commission's renewed emphasis on enforcement under Chairman Paul Hudson, combined with the high-profile nature of the TXU claims, means the dollar figures will likely be significant.

"Everyone's expectation is this would lead to multimillion-dollar fines and/or refunds," said Patricia Dolese, a former senior staffer for the commission who now runs the consulting firm Regulatory Compliance Services. "The commissioners have been vocal about this sort of thing in the past."

TXU Energy, the arm of the Dallas-based company that generates electricity for sale onto Texas' power grid, is accused of controlling such a large percentage of state power markets that it was able to exert undue influence on prices.

More specifically, the report released by the commission's independent market monitor concludes that TXU purposely held back some power from its plants to drive up prices in a market that the state grid operators use to balance the difference between supply and demand on 15-minute intervals throughout the day.

Only 5 to 10 percent of the state's power comes through that balancing market, but the price of power there influences the rest of the power market.

The company has denied the allegations and in a statement said it thoroughly reviewed its conduct at the time and believes " ... it is consistent with the commission's rule and policies. We are eager and open to discussing this matter further with commission staff."

During the committee hearing Tuesday, Bill Moore, chief legal counsel for TXU Energy, said the company has changed its practices on the balancing market since 2005 but not because it believes it was wrong.

"It was in reaction to ongoing dialogue and noise from these investigations," Moore said. "It's been an expensive and distracting thing."

The TXU case is the first major case to come before the commission since it began to shift its priorities to enforcement.

The commission has demanded penalties and refunds related to violations of wholesale power rules in the past, but they have been relatively small. The largest payment was a \$600,000 refund CPS Energy was required to pay in 2005 related to the improper scheduling of wind power.

More recently Constellation Energy was fined \$3,308 and required to pay a \$1,103 refund for failing to comply with protocols in providing so-called ancillary services.

A better gauge of the commission's enforcement goals might be a comment from Commissioner Barry Smitherman at a hearing late last year, however, when the commission discussed penalties for companies that have repeat outages on certain power lines.

Smitherman lamented the paltry size of the penalties, wondering if they were sufficient to persuade companies to fix them.

"I'm looking forward to the day when we hit somebody for \$10 million," Smitherman said.

Commissioners have been telling commission staff they are not interested in negotiating any penalties down after they are announced, Dolese said, but if TXU wants to contest the issue before a judge, the commission will want the process to move quickly, maybe even before the legislative session ends.

"The problem is it can take a lot of time and money to move such a case through a hearing, and TXU has a lot of time and money," Dolese said.

There will no doubt be a number of issues argued about the allegations in the report should it end up before a judge.

During Tuesday's hearing, economist David Sibley, who has been hired by TXU and others to testify on Texas power issues in the past, said he disagreed with the methodology behind the report that levied the allegations against TXU.

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