

By: Turner

H.B. No. 553

A BILL TO BE ENTITLED

AN ACT

relating to market power abuse in the wholesale electricity market and pricing safeguards in certain markets; providing administrative and criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Sections 15.023(b) and (d), Utilities Code, are amended to read as follows:

(b) The penalty for a violation, except for a violation under Section 39.157, may be in an amount not to exceed \$25,000. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The penalty for a violation under Section 39.157 may be in an amount not to exceed \$250,000.

(d) Except for a finding of a violation under Section 39.157, the ~~[The]~~ classification system established under Subsection (c) shall provide that a penalty in an amount that exceeds \$5,000 may be assessed only if the violation is included in the highest class of violations in the classification system.

SECTION 2. Section 39.157, Utilities Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) The commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. The commission shall initiate an investigation if the commission receives notice that market abuses

1 or other violations of this section are allegedly occurring or have  
2 allegedly occurred. On the initiation of an investigation of  
3 potential market abuse or a potential violation of this section,  
4 the commission shall make available to the public the name of each  
5 person that is a subject of the investigation unless the disclosure  
6 of a name could significantly impede or jeopardize the  
7 investigation. If the commission does not disclose the name of a  
8 person on the initiation of the investigation, the commission shall  
9 disclose the name not later than the date the commission concludes  
10 the investigation. Not later than the 60th day after learning of a  
11 potential violation under this section, the commission shall  
12 conclude the investigation and make a finding of whether a  
13 violation has occurred. On a finding that market power abuses or  
14 other violations of this section are occurring or have occurred,  
15 the commission shall require reasonable mitigation of the market  
16 power by ordering the construction of additional transmission or  
17 distribution facilities, by seeking an injunction or civil  
18 penalties as necessary to eliminate or to remedy the market power  
19 abuse or violation as authorized by Chapter 15, by imposing an  
20 administrative penalty as authorized by Chapter 15, ~~[or]~~ by  
21 suspending, revoking, or amending a certificate or registration as  
22 authorized by Section 39.356, or by ordering a person to make  
23 restitution as provided by Subsection (a-1) to each person  
24 financially damaged by a person as a result of a violation of this  
25 section. Section 15.024(c) does not apply to an administrative  
26 penalty imposed under this section. The commission shall make  
27 public the penalty imposed by the commission on a person under this

1 section, including any agreement entered into between the  
2 commission and a person regarding the imposition of a penalty. For  
3 purposes of this subchapter, market power abuses are practices by  
4 persons possessing market power that are unreasonably  
5 discriminatory or tend to unreasonably restrict, impair, or reduce  
6 the level of competition, including practices that tie unregulated  
7 products or services to regulated products or services or  
8 unreasonably discriminate in the provision of regulated services.  
9 For purposes of this section, "market power abuses" include  
10 predatory pricing, withholding of production, precluding entry,  
11 and collusion. A violation of the code of conduct provided by  
12 Subsection (d) that materially impairs the ability of a person to  
13 compete in a competitive market shall be deemed to be an abuse of  
14 market power. The possession of a high market share in a market  
15 open to competition may not, of itself, be deemed to be an abuse of  
16 market power; however, this sentence shall not affect the  
17 application of state and federal antitrust laws.

18 (a-1) If the commission orders a person to make restitution  
19 for a violation under this section, the total amount of restitution  
20 ordered may not exceed the actual amount of the economic benefit  
21 gained by a person as a result of a violation. If an administrative  
22 penalty under Section 15.023 is assessed in addition to  
23 restitution, the total amount of restitution ordered under this  
24 section may not exceed the difference between the administrative  
25 penalty and the actual amount of the economic benefit gained by a  
26 person as a result of a violation. The commission by rule shall  
27 adopt procedures for determining the amount of economic benefit

1 gained by a person and the persons entitled to restitution as a  
2 result of a violation under this section.

3 SECTION 3. Subchapter D, Chapter 39, Utilities Code, is  
4 amended by adding Sections 39.159, 39.160, and 39.161 to read as  
5 follows:

6 Sec. 39.159. CRIMINAL PENALTY. (a) A person who knowingly  
7 violates Section 39.157 or a rule adopted or order issued by the  
8 commission under that section commits an offense.

9 (b) An offense under this section is a felony of the second  
10 degree.

11 Sec. 39.160. MAXIMUM SUPPLY OFFER IN MARKETS OPERATED BY  
12 ERCOT. A supply offer in a market operated by ERCOT may not exceed  
13 \$1,000/MWh or \$1,000/MW/h.

14 Sec. 39.161. BIDDING IN ERCOT. The commission by rule shall  
15 adopt methods and procedures for preventing inappropriate bidding  
16 and other forms of gaming within the ERCOT power region, including  
17 the bidding method commonly known as "hockey-stick" bidding.

18 SECTION 4. (a) The change in law made by this Act applies  
19 only to a violation committed on or after September 1, 2007. For  
20 purposes of this section, a violation is committed before September  
21 1, 2007, if any element of the violation occurs before that date.

22 (b) A violation committed before September 1, 2007, is  
23 covered by the law in effect when the violation was committed, and  
24 the former law is continued in effect for that purpose.

25 SECTION 5. An offense committed before September 1, 2007,  
26 is covered by the law in effect when the offense was committed, and  
27 the former law is continued in effect for that purpose. For

1 purposes of this section, an offense was committed before September  
2 1, 2007, if any element of the offense was committed before that  
3 date.

4 SECTION 6. This Act takes effect September 1, 2007.