

By: King of Parker

H.B. No. 1202

A BILL TO BE ENTITLED

AN ACT

relating to a private cause of action for electric market power abuse.

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

SECTION 1. LEGISLATIVE FINDINGS. The legislature finds that:

(1) the "filed rate" doctrine is at odds with the intent of the state legislature to restructure the electric utility industry in this state;

(2) the "filed rate" doctrine in a private right of action for a violation of Section 39.157, Utilities Code, or of Sections 15.01 through 15.26, Business & Commerce Code, is abolished; and

(3) the deregulated wholesale and retail markets in ERCOT are the relevant markets for the purposes of determining standing to sue and the existence of market power abuses under Section 39.157, Utilities Code.

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

(a) To prevent market power abuse or other violations of this section, the [The] commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market power

1 abuses or other violations of this section are occurring, the  
2 commission shall require reasonable mitigation of the market power  
3 by ordering the construction of additional transmission or  
4 distribution facilities, by seeking an injunction or civil  
5 penalties as necessary to eliminate or to remedy the market power  
6 abuse or violation as authorized by Chapter 15, by imposing an  
7 administrative penalty as authorized by Chapter 15, or by  
8 suspending, revoking, or amending a certificate or registration as  
9 authorized by Section 39.356. Section 15.024(c) does not apply to  
10 an administrative penalty imposed under this section. For purposes  
11 of this subchapter, market power abuses are practices by persons  
12 possessing market power that are unreasonably discriminatory or  
13 tend to unreasonably restrict, impair, or reduce the level of  
14 competition, including practices that tie unregulated products or  
15 services to regulated products or services or unreasonably  
16 discriminate in the provision of regulated services. For purposes  
17 of this section, "market power abuses" include predatory pricing,  
18 withholding of production, precluding entry, and collusion. A  
19 violation of the code of conduct provided by Subsection (d) that  
20 materially impairs the ability of a person to compete in a  
21 competitive market shall be deemed to be an abuse of market power.  
22 The possession of a high market share in a market open to  
23 competition may not, of itself, be deemed to be an abuse of market  
24 power; however, this sentence shall not affect the application of  
25 state and federal antitrust laws.

26 (a-1) Notwithstanding any other law, a qualifying person  
27 may pursue a private right of action under Section 39.158(b) or

1 under Sections 15.01 through 15.26, Business & Commerce Code, based  
2 on a violation of this section, for damages or for injunctive  
3 relief, against a power generation company, a power marketer, a  
4 retail electric provider, or any other supplier of wholesale or  
5 retail electricity operating in ERCOT. A qualifying person is not  
6 required to bring an administrative action before pursuing a  
7 private right of action. In this subsection, "qualifying person"  
8 means a retail electric provider that meets the requirements for  
9 standing to sue for market power abuses under Sections 15.01  
10 through 15.26, Business & Commerce Code.

11 SECTION 3. EFFECTIVE DATE. This Act takes effect September  
12 1, 2007.