

By: Fraser

S.B. No. 896

A BILL TO BE ENTITLED

AN ACT

relating to administrative procedures and energy policy of the Public Utility Commission of Texas.

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

SECTION 1. Section 14.051, Utilities Code, is amended to read as follows:

Sec. 14.051. PROCEDURAL POWERS. (a) The commission may:

(1) call and hold a hearing;

(2) administer an oath;

(3) receive evidence at a hearing;

(4) issue a subpoena to compel the attendance of a witness or the production of a document; and

(5) make findings of fact and decisions to administer this title or a rule, order, or other action of the commission.

(b) Notwithstanding Chapter 551, Government Code, the commission may conduct a closed meeting to receive information that it determines is excepted from disclosure under Chapter 552, Government Code, and to deliberate concerning the information. A representative of a party to a commission proceeding shall be allowed to attend the closed meeting, provided that the representative complies with the commission's protective order prohibiting public disclosure of the information. The commission may limit the number and types of party representatives that are given access to the information and who are allowed to attend the

1 closed meeting. Only that portion of the hearing during which the
2 information is discussed may be closed to the public. A final
3 action, decision, or vote on the matter deliberated in a closed
4 meeting may only be made in an open meeting held in compliance with
5 Chapter 551, Government Code.

6 SECTION 2. Subchapter B, Chapter 15, Utilities Code, is
7 amended by adding Section 15.034 to read as follows:

8 Sec. 15.034. INVESTIGATIONS AND INVESTIGATORY MATERIALS.

9 (a) In this section:

10 (1) "Executive director" means the executive director
11 of the commission or the executive director's designee.

12 (2) "Investigation" means an inquiry by the executive
13 director or the wholesale electric market monitor into specified
14 acts or alleged acts that a person or other entity subject to the
15 jurisdiction of the commission has engaged in, is engaging in, or is
16 about to engage in that may violate this title, a rule or order
17 adopted under this title, the rules of an independent organization,
18 or reliability standards adopted under federal law. Investigations
19 of complaints made under Sections 15.051 and 15.052 are not
20 considered investigations for purposes of this section.

21 (3) "Wholesale electric market monitor" means the
22 entity established in accordance with Section 39.1515.

23 (b) The executive director shall conduct investigations as
24 the executive director considers necessary to prevent or detect the
25 violation of this title or a rule or order adopted under this title.

26 (c) All information of every kind and nature received in
27 connection with, that formed the basis of, or was created or

1 compiled in the course of an investigation conducted by the
2 executive director, a regional entity, as defined in Section
3 1211(a) of the federal Energy Policy Act of 2005 (16 U.S.C. Section
4 824o), or the wholesale electric market monitor are confidential
5 and shall not be disclosed to the public except under order of the
6 commission or court for good cause shown.

7 (d) At the discretion of the executive director,
8 information may be disclosed to the person or entity that is the
9 subject of the investigation.

10 (e) Nothing in this section shall be interpreted to prohibit
11 or limit the publication of rulings or decisions of the commission,
12 and the limitation on disclosure provided by this section shall not
13 apply if disclosure is made, in the discretion of the executive
14 director, as part of an administrative proceeding or a civil or
15 criminal action to enforce this title, provided, however, that
16 specific trade secrets or other information that is otherwise
17 privileged or confidential by statute or judicial decision remains
18 confidential.

19 (f) A notice and report issued by the executive director in
20 accordance with Section 15.024, the pleadings in an administrative
21 proceeding, and a final decision or order by the commission shall
22 not be considered confidential, provided, however, that specific
23 trade secrets or other information that is otherwise privileged or
24 confidential by statute or judicial decision remains confidential.

25 (g) The executive director may disclose any confidential
26 information in the executive director's possession to another
27 governmental or regulatory authority, the office of attorney

1 general, the state auditor's office, or federal, state, or local
2 law enforcement agencies.

3 SECTION 3. Subsection (c), Section 15.024, Utilities Code,
4 as amended by Chapters 1212 and 1579, Acts of the 76th Legislature,
5 Regular Session, 1999, is reenacted and amended to read as follows:

6 (c) A penalty may not be assessed under this section if the
7 person against whom the penalty may be assessed remedies the
8 violation before the 31st day after the date the person receives the
9 notice under Subsection (b). A person who claims to have remedied
10 an alleged violation has the burden of proving to the commission
11 that the alleged violation was remedied and was accidental or
12 inadvertent. This subsection does not apply to a violation of
13 Chapter 17, 39, 55, or 64.

14 SECTION 4. Subsection (f), Section 15.024, Utilities Code,
15 is amended to read as follows:

16 (f) If the person requests a hearing or fails to timely
17 respond to the notice, the executive director shall set a hearing
18 and give notice of the hearing to the person. The hearing shall be
19 held in accordance with Subchapter B, Chapter 14 ~~[by an~~
20 ~~administrative law judge of the State Office of Administrative~~
21 ~~Hearings]~~. For hearings conducted by the State Office of
22 Administrative Hearings, the ~~[The]~~ administrative law judge shall
23 make findings of fact and conclusions of law and promptly issue to
24 the commission a proposal for a decision about the occurrence of the
25 violation and the amount of a proposed penalty. Based on the
26 findings of fact, conclusions of law, and proposal for a decision,
27 the commission by order may find that a violation has occurred and

1 impose a penalty or may find that no violation occurred.

2 SECTION 5. Section 39.001, Utilities Code, is amended by
3 adding Subsection (g) to read as follows:

4 (g) For any information required by this subtitle to be
5 provided to the commission, the independent organization, or the
6 independent market monitor, a market participant may assert a claim
7 that the information is competitively sensitive information or is
8 exempt from disclosure under Chapter 552, Government Code. On its
9 own motion or in response to a request for disclosure of the
10 information, the commission may review such claims in a commission
11 proceeding. If the commission determines that such information is
12 not competitively sensitive information and is not exempt from
13 disclosure under Chapter 552, Government Code, and determines that
14 release of the information is in the public interest, the
15 commission may, by rule or order, declassify the information and
16 make it publicly available. The commission may adopt rules
17 establishing the types of information that qualify as competitively
18 sensitive under this subtitle.

19 SECTION 6. Section 39.1515, Utilities Code, is amended by
20 adding Subsections (i) and (j) to read as follows:

21 (i) Any methodologies, tools, indices, screening criteria,
22 measures, forecasts, risk assessments, or formula developed or used
23 by the market monitor for the purposes of carrying out its
24 responsibilities under this section, including conducting
25 investigations, are confidential and are not subject to disclosure
26 under Chapter 552, Government Code.

27 (j) For purposes of this section, "investigation" has the

1 meaning assigned by Section 15.034(a).

2 SECTION 7. Subsection (a), Section 39.157, Utilities Code,
3 is amended to read as follows:

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

1 market power. The possession of a high market share in a market
2 open to competition may not, of itself, be deemed to be an abuse of
3 market power; however, this sentence shall not affect the
4 application of state and federal antitrust laws.

5 SECTION 8. Section 40.004, Utilities Code, is amended to
6 read as follows:

7 Sec. 40.004. JURISDICTION OF COMMISSION. Except as
8 specifically otherwise provided in this chapter, the commission has
9 jurisdiction over municipally owned utilities only for the
10 following purposes:

11 (1) to regulate wholesale transmission rates and
12 service, including terms of access, to the extent provided by
13 Subchapter A, Chapter 35;

14 (2) to regulate certification of retail service areas
15 to the extent provided by Chapter 37;

16 (3) to regulate rates on appeal under Subchapters D
17 and E, Chapter 33, subject to Section 40.051(c);

18 (4) to establish a code of conduct as provided by
19 Section 39.157(e) applicable to anticompetitive activities and to
20 affiliate activities limited to structurally unbundled affiliates
21 of municipally owned utilities, subject to Section 40.054;

22 (5) to establish terms and conditions for open access
23 to transmission and distribution facilities for municipally owned
24 utilities providing customer choice, as provided by Section 39.203;

25 (6) to require collection of the nonbypassable fee
26 established under Section 39.903(b) and to administer the renewable
27 energy credits program under Section 39.904(b) [~~and the natural gas~~]

1 ~~energy credits program under Section 39.9044(b)]~~; and

2 (7) to require reports of municipally owned utility
3 operations only to the extent necessary to:

4 (A) enable the commission to determine the
5 aggregate load and energy requirements of the state and the
6 resources available to serve that load; or

7 (B) enable the commission to determine
8 information relating to market power as provided by Section 39.155.

9 SECTION 9. Sections 39.9044 and 39.9048, Utilities Code,
10 are repealed.

11 SECTION 10. This Act takes effect immediately if it
12 receives a vote of two-thirds of all the members elected to each
13 house, as provided by Section 39, Article III, Texas Constitution.
14 If this Act does not receive the vote necessary for immediate
15 effect, this Act takes effect September 1, 2007.