

## **BILL ANALYSIS**

C.S.S.B. 1772  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current law, the Public Utility Commission of Texas (PUC) is required to monitor market power associated with the generation, transmission, distribution, and sale of electricity in Texas. Market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition. Upon discovery that a case of market power abuse has occurred, PUC must require mitigation of the market power. There are a number of actions PUC is authorized to take to achieve this.

C.S.S.B. 1772 amends current law relating to the authority of PUC to address market power abuse and requires PUC to contract with an entity to act as its retail electric market monitor.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTIONS 1 and 2 of this bill.

### **ANALYSIS**

C.S.S.B. 1772 amends provisions of the Utilities Code relating to the electric power industry that require the Public Utility Commission of Texas (PUC), on a finding that market power abuses or market power violations are occurring, to pursue reasonable mitigation of the market power by alternative means, to require mitigation also if PUC finds that market power abuses or market power violations have occurred previously. The bill clarifies PUC's responsibility to require one or any combination of the mitigation alternatives, and adds to those mitigation alternatives available under existing law the ordering of refunds to affected parties pursuant to certain consumer protection provisions regarding disputes, and, with regard to the wholesale market, the ordering of refunds to affected parties in a manner established by PUC.

C.S.S.B. 1772 requires PUC to permit the Office of Public Utility Counsel, in exercising its powers to represent residential and small commercial consumers, to participate in enforcement proceedings to seek refunds for alleged market power abuses or manipulation of the wholesale market.

C.S.S.B. 1772 requires PUC to contract with an entity selected by PUC to act as its retail electric market monitor to detect and prevent possible market power abuse or market manipulation strategies, and unfair, misleading, or deceptive practices, and to recommend measures to enhance the efficiency of the retail market. The bill establishes that PUC is responsible for ensuring that its retail market monitor has the resources, expertise, and authority necessary to monitor the retail electric market effectively. The bill requires PUC to adopt rules and perform oversight of the retail market monitor as necessary. The bill requires the retail market monitor to operate under the supervision and oversight of PUC. The bill requires PUC to retain all enforcement authority conferred under the Public Utility Regulatory Act and prohibits provisions relating to PUC's authority to address market power from being construed to confer enforcement authority on the retail market monitor or to authorize PUC to delegate its enforcement authority to the

retail market monitor. The bill requires PUC by rule to define:

- the retail market monitor's monitoring responsibilities, including reporting obligations and limitations;
- the standards for funding the retail market monitor, including staffing requirements;
- qualifications for personnel of the retail market monitor; and
- ethical standards for the retail market monitor and the personnel of the retail market monitor.

C.S.S.B. 1772 requires PUC, in adopting rules governing the standards for funding the retail market monitor, to consult with a subcommittee of the governing body of the certified independent organization to receive information on how money is or should be spent for market monitoring functions. The bill requires rules governing ethical standards to include provisions designed to ensure that the personnel of the retail market monitor are professionally and financially independent from market participants. The bill requires PUC to develop and implement policies that clearly separate the policymaking responsibilities of PUC and the monitoring, analysis, and reporting responsibilities of the retail market monitor.

C.S.S.B. 1772 requires the retail market monitor to immediately report directly to PUC any potential market manipulations and any discovered or potential violations of PUC rules or rules of the independent organization. The bill authorizes the personnel of the retail market monitor to communicate with PUC staff on any matter without restriction. The bill requires the retail market monitor to annually submit to PUC a report that identifies market design flaws and recommends methods to correct the flaws. The bill requires PUC to review the report and evaluate whether changes to rules of PUC should be made.

C.S.S.B. 1772 requires PUC to investigate whether a retail electric provider is abusing market power or engaging in unfair, misleading, or deceptive practices. The bill requires a retail electric provider to cooperate with PUC in any investigation and to provide information requested. The bill authorizes PUC to assess administrative penalties for any violation discovered under provisions relating to the PUC's authority to address market power.

C.S.S.B. 1772 requires PUC to adopt rules to implement the bill's provisions as quickly as practicable.

### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

C.S.S.B. 1772 adds a provision not in the original requiring the Public Utility Commission of Texas (PUC), on a finding that market power abuses or other violations of PUC's authority to address market power have occurred, to require reasonable mitigation of the market power. The substitute adds a provision not in the original establishing that the reasonable mitigation be by one or any combination of certain actions. The substitute omits a provision in the original establishing, as a potential mitigation action, the ordering of a person to cease a practice that PUC finds is a market power abuse. The substitute adds provisions not in the original establishing, as potential mitigation actions, the ordering of refunds to affected parties pursuant to certain consumer protection provisions regarding disputes, and, with regard to the wholesale market, the ordering of refunds to affected parties. The substitute omits a provision in the original authorizing PUC, in lieu of assessing an administrative penalty, to order any person found to have committed market power abuse to refund to entities directly affected by the abuse an amount not to exceed the greater of the administrative penalty that would otherwise be

ordered by PUC or one hundred and fifteen percent of the amount of additional profit that the person received as a result of the market power abuse.

C.S.S.B. 1772 differs from the original by requiring PUC to permit the Office of Public Utility Counsel, in exercising its powers to represent residential and small commercial consumers, to participate in enforcement proceedings to seek refunds for alleged market power abuses or manipulation of the wholesale market, whereas the original requires the office to be permitted to intervene in any proceeding concerning market power abuse or market manipulation.

C.S.S.B. 1772 omits a provision in the original requiring PUC, following a proceeding related to market power abuse in which PUC determines that refunds are appropriate, to conduct a proceeding to determine the proper method of distributing the refunds to entities directly affected by the market power abuse. The substitute omits a provision in the original authorizing any entity directly affected by the abuse to intervene in the proceeding.

C.S.S.B. 1772 adds provisions not in the original requiring PUC to contract with an entity selected by PUC to act as PUC's retail electric market monitor and requiring PUC to adopt certain rules relating to oversight of the retail market monitor. The substitute adds provisions not in the original relating to the relationship between PUC and the retail market monitor and their respective responsibilities and the separation of those responsibilities, and establishing that only PUC has enforcement authority and that PUC is not authorized to delegate the authority to the retail market monitor.

C.S.S.B. 1772 adds provisions not in the original placing certain requirements on PUC rules governing funding standards and ethical standards for the retail market monitor. The substitute adds provisions not in the original regarding reporting by the retail market monitor to PUC of potential market manipulations and any discovered or potential rules violations. The substitute adds provisions not in the original requiring an annual report by the retail market monitor on market design flows and requiring review of the report by PUC.

C.S.S.B. 1772 adds provisions not in the original requiring PUC to investigate whether a retail electric provider is abusing market power or engaging in unfair, misleading, or deceptive practices, requiring a retail electric provider to cooperate with PUC in any investigation and to provide information requested, and authorizing PUC to assess administrative penalties for any violation discovered under provisions relating to the PUC's authority to address market power.

C.S.S.B. 1772 adds a provision not in the original requiring PUC to adopt rules to implement the bill's provisions as quickly as practicable.