

By: Farabee

H.B. No. 2851

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the right of certain entities to intervene in  
3 enforcement actions regarding market power abuse.

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

5 SECTION 1. Section 39.157(a), Utilities Code, is amended to  
6 read as follows:

7 (a) The commission shall monitor market power associated  
8 with the generation, transmission, distribution, and sale of  
9 electricity in this state. On a finding that market power abuses or  
10 other violations of this section are or may be occurring, the  
11 commission shall commence an appropriate enforcement proceeding  
12 with the goal of ending the market power abuse. An enforcement  
13 proceeding under this section is a contested case in which  
14 interested parties, including interested municipalities,  
15 commercial customers, retail electric providers, and other  
16 entities as determined by the commission by rule, have a right to  
17 intervene. On finding that market power abuse has occurred, the  
18 commission shall require reasonable mitigation of the market power  
19 by ordering the construction of additional transmission or  
20 distribution facilities, by seeking an injunction or civil  
21 penalties as necessary to eliminate or to remedy the market power  
22 abuse or violation as authorized by Chapter 15, by imposing an  
23 administrative penalty as authorized by Chapter 15, or by  
24 suspending, revoking, or amending a certificate or registration as

1 authorized by Section 39.356. Section 15.024(c) does not apply to  
2 an administrative penalty imposed under this section. For purposes  
3 of this subchapter, market power abuses are practices by persons  
4 possessing market power that are unreasonably discriminatory or  
5 tend to unreasonably restrict, impair, or reduce the level of  
6 competition, including practices that tie unregulated products or  
7 services to regulated products or services or unreasonably  
8 discriminate in the provision of regulated services. For purposes  
9 of this section, "market power abuses" include predatory pricing,  
10 withholding of production, precluding entry, and collusion. A  
11 violation of the code of conduct provided by Subsection (d) that  
12 materially impairs the ability of a person to compete in a  
13 competitive market shall be deemed to be an abuse of market power.  
14 The possession of a high market share in a market open to  
15 competition may not, of itself, be deemed to be an abuse of market  
16 power; however, this sentence shall not affect the application of  
17 state and federal antitrust laws.

18 SECTION 2. This Act takes effect immediately if it receives  
19 a vote of two-thirds of all the members elected to each house, as  
20 provided by Section 39, Article III, Texas Constitution. If this  
21 Act does not receive the vote necessary for immediate effect, this  
22 Act takes effect September 1, 2009.