

By: Fraser

S.B. No. 1772

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the authority of the Public Utility Commission of Texas
3 to address market power abuse, including the right to order
4 restitution for violations.

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

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

9 (a) The commission shall monitor market power associated
10 with the generation, transmission, distribution, and sale of
11 electricity in this state. On a finding that market power abuses or
12 other violations of this section are occurring, the commission
13 shall require reasonable mitigation of the market power by ordering
14 the construction of additional transmission or distribution
15 facilities, by seeking an injunction or civil penalties as
16 necessary to eliminate or to remedy the market power abuse or
17 violation as authorized by Chapter 15, by ordering a person to cease
18 a practice that the commission finds is a market power abuse, by
19 imposing an administrative penalty as authorized by Chapter 15, or
20 by suspending, revoking, or amending a certificate or registration
21 as authorized by Section 39.356. Section 15.024(c) does not apply
22 to an administrative penalty imposed under this section. In lieu of
23 assessing an administrative penalty as authorized by Section 15.024
24 and this section, the commission may order any person found to have

1 committed market power abuse to refund to entities directly
2 affected by the abuse an amount not to exceed the greater of the
3 administrative penalty that would otherwise be ordered by the
4 commission or one hundred and fifteen percent of the amount of
5 additional profit that the person received as a result of the market
6 power abuse. For purposes of this subchapter, market power abuses
7 are practices by persons possessing market power that are
8 unreasonably discriminatory or tend to unreasonably restrict,
9 impair, or reduce the level of competition, including practices
10 that tie unregulated products or services to regulated products or
11 services or unreasonably discriminate in the provision of regulated
12 services. For purposes of this section, "market power abuses"
13 include predatory pricing, withholding of production, precluding
14 entry, and collusion. A violation of the code of conduct provided
15 by Subsection (d) that materially impairs the ability of a person to
16 compete in a competitive market shall be deemed to be an abuse of
17 market power. The possession of a high market share in a market
18 open to competition may not, of itself, be deemed to be an abuse of
19 market power; however, this sentence shall not affect the
20 application of state and federal antitrust laws.

21 (a-1) The office shall be permitted to intervene in any
22 proceeding concerning market power abuse or market manipulation.

23 (a-2) Following a proceeding related to market power abuse
24 in which the commission determines that refunds are appropriate,
25 the commission shall conduct a proceeding to determine the proper
26 method of distributing the refunds to entities directly affected by
27 the market power abuse. Any entity directly affected by the abuse

1 may intervene in the proceeding.

2 SECTION 2. The changes in law made by this Act apply only to
3 a violation that occurs or continues to occur on or after the
4 effective date of this Act. A violation that occurred before the
5 effective date of this Act is covered by the law in effect at the
6 time the violation occurred, and the former law is continued in
7 effect for that purpose.

8 SECTION 3. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2009.