

By: Fraser

S.B. No. 1772

Substitute the following for S.B. No. 1772:

By: Solomons

C.S.S.B. No. 1772

A BILL TO BE ENTITLED

AN ACT

1  
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), (j), (k),  
8 (l), (m), (n), (o), and (p) to 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 have occurred or are occurring,  
13 the commission shall require reasonable mitigation of the market  
14 power by one or any combination of the following:

15 (1) ordering the construction of additional  
16 transmission or distribution facilities;

17 (2) [~~7~~-by] seeking an injunction or civil penalties as  
18 necessary to eliminate or to remedy the market power abuse or  
19 violation as authorized by Chapter 15;

20 (3) [~~7~~-by] imposing an administrative penalty as  
21 authorized by Chapter 15;

22 (4) ordering refunds to affected parties pursuant to  
23 Section 17.157;

24 (5) with regard to the wholesale market, ordering

1 refunds to affected parties in a manner established by the  
2 commission; or

3 (6) [~~, or by~~] suspending, revoking, or amending a  
4 certificate or registration as authorized by Section 39.356.

5 (a-1) The commission shall permit the office, in exercising  
6 its powers to represent residential and small commercial consumers,  
7 to participate in enforcement proceedings to seek refunds for  
8 alleged market power abuses or manipulation of the wholesale  
9 market. Section 15.024(c) does not apply to an administrative  
10 penalty imposed under this section. For purposes of this  
11 subchapter, market power abuses are practices by persons possessing  
12 market power that are unreasonably discriminatory or tend to  
13 unreasonably restrict, impair, or reduce the level of competition,  
14 including practices that tie unregulated products or services to  
15 regulated products or services or unreasonably discriminate in the  
16 provision of regulated services. For purposes of this section,  
17 "market power abuses" include predatory pricing, withholding of  
18 production, precluding entry, and collusion. A violation of the  
19 code of conduct provided by Subsection (d) that materially impairs  
20 the ability of a person to compete in a competitive market shall be  
21 deemed to be an abuse of market power. The possession of a high  
22 market share in a market open to competition may not, of itself, be  
23 deemed to be an abuse of market power; however, this sentence shall  
24 not affect the application of state and federal antitrust laws.

25 (j) The commission shall contract with an entity selected by  
26 the commission to act as the commission's retail electric market  
27 monitor to:

1           (1) detect and prevent:

2                   (A) possible market power abuse or market  
3 manipulation strategies; and

4                   (B) unfair, misleading, or deceptive practices;  
5 and

6           (2) recommend measures to enhance the efficiency of  
7 the retail market.

8           (k) The commission is responsible for ensuring that the  
9 commission's retail market monitor has the resources, expertise,  
10 and authority necessary to monitor the retail electric market  
11 effectively and shall adopt rules and perform oversight of the  
12 retail market monitor as necessary. The retail market monitor  
13 shall operate under the supervision and oversight of the  
14 commission. The commission shall retain all enforcement authority  
15 conferred under this title, and this section may not be construed to  
16 confer enforcement authority on the retail market monitor or to  
17 authorize the commission to delegate the commission's enforcement  
18 authority to the retail market monitor. The commission by rule  
19 shall define:

20                   (1) the retail market monitor's monitoring  
21 responsibilities, including reporting obligations and limitations;

22                   (2) the standards for funding the retail market  
23 monitor, including staffing requirements;

24                   (3) qualifications for personnel of the retail market  
25 monitor; and

26                   (4) ethical standards for the retail market monitor  
27 and the personnel of the retail market monitor.

1       (l) In adopting rules governing the standards for funding  
2 the retail market monitor, the commission shall consult with a  
3 subcommittee of the governing body of the independent organization  
4 certified under Section 39.151 to receive information on how money  
5 is or should be spent for market monitoring functions. Rules  
6 governing ethical standards must include provisions designed to  
7 ensure that the personnel of the retail market monitor are  
8 professionally and financially independent from market  
9 participants. The commission shall develop and implement policies  
10 that clearly separate the policymaking responsibilities of the  
11 commission and the monitoring, analysis, and reporting  
12 responsibilities of the retail market monitor.

13       (m) The retail market monitor immediately shall report  
14 directly to the commission any potential market manipulations and  
15 any discovered or potential violations of commission rules or rules  
16 of the independent organization.

17       (n) The personnel of the retail market monitor may  
18 communicate with commission staff on any matter without  
19 restriction.

20       (o) The retail market monitor annually shall submit to the  
21 commission a report that identifies market design flaws and  
22 recommends methods to correct the flaws. The commission shall  
23 review the report and evaluate whether changes to rules of the  
24 commission should be made.

25       (p) The commission shall investigate whether a retail  
26 electric provider is abusing market power or engaging in unfair,  
27 misleading, or deceptive practices. Retail electric providers

1 shall cooperate with the commission in any investigation and shall  
2 provide information requested. The commission may assess  
3 administrative penalties under Section 15.023 for any violation  
4 discovered under this section.

5 SECTION 2. The Public Utility Commission of Texas shall  
6 adopt rules to implement the changes in law made by this Act as  
7 quickly as practicable.

8 SECTION 3. The changes in law made by this Act apply only to  
9 a violation that occurs or continues to occur on or after the  
10 effective date of this Act. A violation that occurs before the  
11 effective date of this Act is covered by the law in effect on the  
12 date the violation occurred, and that law is continued in effect for  
13 that purpose.

14 SECTION 4. This Act takes effect immediately if it receives  
15 a vote of two-thirds of all the members elected to each house, as  
16 provided by Section 39, Article III, Texas Constitution. If this  
17 Act does not receive the vote necessary for immediate effect, this  
18 Act takes effect September 1, 2009.