

By: Fraser

S.B. No. 1772

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Public Utility Commission of Texas to order restitution for violations.

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

SECTION 1. Section 39.003, Utilities Code, is amended to read as follows:

Sec. 39.003. CONTESTED CASES. Unless specifically provided otherwise, each commission proceeding under this chapter, other than a rulemaking proceeding, report, notification, or registration, shall be conducted as a contested case and the burden of proof is on the incumbent electric utility. Any affected party may file a case for restitution under Section 39.157(a). In any proceeding involving market power abuse, any affected party shall be granted the right to intervene.

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

(a) The commission shall monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. On a finding that market power abuses or other violations of this section have occurred or are occurring, the commission shall require reasonable mitigation of the market power by any combination of the following actions: ordering the construction of additional transmission or distribution facilities, ~~by~~ seeking an injunction or civil penalties as

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

23 SECTION 3. The changes in law made by this Act apply only to
24 a violation that occurs or continues to occur on or after the
25 effective date of this Act. A violation that occurred before the
26 effective date of this Act is covered by the law in effect at the
27 time the violation occurred, and the former law is continued in

1 effect for that purpose.

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