

1-1 By: Fraser S.B. No. 1772
1-2 (In the Senate - Filed March 11, 2009; March 20, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 24, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 24, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1772 By: Fraser

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the authority of the Public Utility Commission of Texas
1-11 to address market power abuse, including the right to order
1-12 restitution for violations.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 39.157, Utilities Code, is amended by
1-15 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
1-16 read as follows:

1-17 (a) The commission shall monitor market power associated
1-18 with the generation, transmission, distribution, and sale of
1-19 electricity in this state. On a finding that market power abuses or
1-20 other violations of this section are occurring, the commission
1-21 shall require reasonable mitigation of the market power by ordering
1-22 the construction of additional transmission or distribution
1-23 facilities, by seeking an injunction or civil penalties as
1-24 necessary to eliminate or to remedy the market power abuse or
1-25 violation as authorized by Chapter 15, by ordering a person to cease
1-26 a practice that the commission finds is a market power abuse, by
1-27 imposing an administrative penalty as authorized by Chapter 15, or
1-28 by suspending, revoking, or amending a certificate or registration
1-29 as authorized by Section 39.356. Section 15.024(c) does not apply
1-30 to an administrative penalty imposed under this section. In lieu of
1-31 assessing an administrative penalty as authorized by Section 15.024
1-32 and this section, the commission may order any person found to have
1-33 committed market power abuse to refund to entities directly
1-34 affected by the abuse an amount not to exceed the greater of the
1-35 administrative penalty that would otherwise be ordered by the
1-36 commission or one hundred and fifteen percent of the amount of
1-37 additional profit that the person received as a result of the market
1-38 power abuse. For purposes of this subchapter, market power abuses
1-39 are practices by persons possessing market power that are
1-40 unreasonably discriminatory or tend to unreasonably restrict,
1-41 impair, or reduce the level of competition, including practices
1-42 that tie unregulated products or services to regulated products or
1-43 services or unreasonably discriminate in the provision of regulated
1-44 services. For purposes of this section, "market power abuses"
1-45 include predatory pricing, withholding of production, precluding
1-46 entry, and collusion. A violation of the code of conduct provided
1-47 by Subsection (d) that materially impairs the ability of a person to
1-48 compete in a competitive market shall be deemed to be an abuse of
1-49 market power. The possession of a high market share in a market
1-50 open to competition may not, of itself, be deemed to be an abuse of
1-51 market power; however, this sentence shall not affect the
1-52 application of state and federal antitrust laws.

1-53 (a-1) The office shall be permitted to intervene in any
1-54 proceeding concerning market power abuse or market manipulation.
1-55 The commission may allow intervention to any party that
1-56 demonstrates that the party has been directly affected by market
1-57 power abuse, if the commission finds that participation by the
1-58 party will not unduly delay the proceeding or prejudice the rights
1-59 of the party accused of market power abuse. The commission may
1-60 limit the scope of intervention of a party other than the office,
1-61 including limits on discovery and the number of interrogatories
1-62 that the party may issue on the person accused of market power abuse
1-63 and commission staff. The commission shall take all necessary

2-1 steps to ensure that trade secrets, proprietary information and
2-2 business strategies, and any other competitively sensitive
2-3 information is adequately protected from disclosure to competitors
2-4 or customers of the person accused of market power abuse.

2-5 (a-2) Following a proceeding related to market power abuse
2-6 in which the commission determines that refunds are appropriate,
2-7 the commission shall conduct a proceeding to determine the proper
2-8 method of distributing the refunds to entities directly affected by
2-9 the market power abuse. Any entity directly affected by the abuse
2-10 may intervene in the proceeding.

2-11 SECTION 2. The changes in law made by this Act apply only to
2-12 a violation that occurs or continues to occur on or after the
2-13 effective date of this Act. A violation that occurred before the
2-14 effective date of this Act is covered by the law in effect at the
2-15 time the violation occurred, and the former law is continued in
2-16 effect for that purpose.

2-17 SECTION 3. This Act takes effect immediately if it receives
2-18 a vote of two-thirds of all the members elected to each house, as
2-19 provided by Section 39, Article III, Texas Constitution. If this
2-20 Act does not receive the vote necessary for immediate effect, this
2-21 Act takes effect September 1, 2009.

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