

BILL ANALYSIS

C.S.H.B. 2133
By: Solomons
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Public Utility Commission of Texas (PUC) has the authority to impose administrative penalties for abuse of wholesale electricity market power to protect retail electric customers. However, there is concern that the PUC does not have the authority to order the return of ill-gotten gains received from manipulating the market to the affected market participants. Interested parties note that legislation is needed to clarify the PUC's authority to disgorge inappropriately received revenues resulting from violations of the wholesale electricity market statutes, rules, or protocols and to draw a clear distinction between disgorgement and an administrative penalty. C.S.H.B. 2133 seeks to address these matters relating to the PUC's authority to disgorge revenue obtained as a result of certain violations and to provide for an administrative penalty.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Public Utility Commission of Texas in SECTION 5 of this bill.

ANALYSIS

C.S.H.B. 2133 amends the Utilities Code to require the Public Utility Commission of Texas (PUC), in addition to assessing an administrative penalty, to order disgorgement of all excess revenue resulting from a violation of provisions of law relating to PUC authority to address market power. The bill authorizes the PUC, in addition to assessing an administrative penalty, to order disgorgement of all excess revenue resulting from any other violation of the statutes, rules, or protocols relating to wholesale electric markets. The bill authorizes the PUC and a person to develop and enter into a voluntary mitigation plan relating to a violation of provisions of law relating to PUC authority to address market power or rules adopted by the PUC under those provisions. The bill specifies that adherence to such a plan constitutes an absolute defense against an alleged violation with respect to activities covered by the plan. The bill requires the parties to a disgorgement proceeding to be limited to the person and the PUC, including the independent market monitor.

C.S.H.B. 2133 requires any excess revenue ordered disgorged for a violation of the statutes, rules, or protocols relating to wholesale electric markets to be returned to the affected wholesale electric market participants to be used to reduce costs or fees incurred by retail electric customers. The bill requires the PUC to adopt rules to prescribe how revenues shall be returned to the affected wholesale electric market participants. The bill requires a reference to a penalty to be construed to include disgorgement for purposes of provisions of law relating to the payment of an administrative penalty imposed by the PUC and judicial review of such a penalty. The bill defines "excess revenue" and makes conforming changes.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2133, in a provision relating to an order of disgorgement for a violation of a provision of law relating to either wholesale electric markets or PUC's authority to address market power, differs from the original by specifying that disgorgement, if ordered, applies to all excess revenue, whereas the original specifies that disgorgement applies to revenues. The substitute contains a provision not included in the original authorizing the PUC and a person to develop and enter into a voluntary mitigation plan relating to violations under provisions of law governing PUC's authority to address market power and specifying that adherence to such a plan constitutes an absolute defense against an alleged violation with respect to activities covered by the plan. The substitute contains a provision not included in the original defining "excess revenue."

C.S.H.B. 2133 contains a provision not included in the original requiring the parties to a disgorgement proceeding to be limited to the person and the PUC, including the independent market monitor. The substitute, in the provision requiring the PUC to adopt rules to prescribe how certain revenue ordered disgorged shall be returned to the affected wholesale electric market participants, omits a provision included in the original setting a deadline by which the PUC is required to adopt such rules. The substitute differs from the original in nonsubstantive ways by using language reflective of certain bill drafting conventions.