

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1772
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Business & Commerce
4/22/2009
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under current statute, the Public Utility Commission of Texas (PUC) is required to monitor market power associated with the generation, transmission, distribution, and sale of electricity in this state. Market power abuses are practices by persons possessing market power that are unreasonably discriminatory or tend to unreasonably restrict, impair, or reduce the level of competition. Upon discovery that a case of market power abuse has occurred, PUC must require mitigation of the market power. There are a number of actions PUC is authorized to take to achieve this.

C.S.S.B. 1772 amends current law relating to the authority of the Public Utility Commission of Texas to address market power abuse, including the right to order restitution for violations.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 39.157, Utilities Code, by amending Subsection (a) and adding Subsections (a-1) and (a-2), as follows:

(a) Requires the Public Utility Commission of Texas (PUC), on a finding that market power abuses or other violations of this section are occurring, to require reasonable mitigation of the market power by ordering the construction of additional transmission or distribution facilities, by seeking an injunction or civil penalties as necessary to eliminate or to remedy the market power abuse or violation as authorized by Chapter 15 (Judicial Review, Enforcement, and Penalties), by ordering a person to cease a practice that PUC finds is a market power abuse, by imposing an administrative penalty as authorized by Chapter 15, or by suspending, revoking, or amending a certificate or registration as authorized by Section 39.356 (Revocation of Certification). Authorizes PUC, in lieu of assessing an administrative penalty as authorized by Section 15.024 (Administrative Penalty Assessment Procedure) and this section, to order any person found to have committed market power abuse to refund to entities directly affected by the abuse an amount not to exceed the greater of the administrative penalty that would otherwise be ordered by PUC or one hundred and fifteen percent of the amount of additional profit that the person received as a result of the market power abuse.

(a-1) Requires the Office of Public Utility Counsel (office) to be permitted to intervene in any proceeding concerning market power abuse or market manipulation. Authorizes PUC to allow intervention to any party that demonstrates that the party has been directly affected by market power abuse, if PUC finds that participation by the party will not unduly delay the proceeding or prejudice the rights of the party accused of market power abuse. Authorizes PUC to limit the scope of intervention of a party other than the office, including limits on discovery and the number of interrogatories that the party is authorized to issue on the person accused of market power abuse and PUC staff. Requires PUC to take all necessary steps to ensure that trade secrets, proprietary information and business strategies, and any other competitively sensitive information is adequately protected from disclosure to competitors or customers of the person accused of market power abuse.

(a-2) Requires PUC, following a proceeding related to market power abuse in which PUC determines that refunds are appropriate, to conduct a proceeding to determine the proper method of distributing the refunds to entities directly affected by the market power abuse. Authorizes any entity directly affected by the abuse to intervene in the proceeding.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.