

By: Solomons

H.B. No. 2133

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the Public Utility Commission of Texas' authority to  
3 disgorge revenue obtained as a result of certain violations;  
4 providing an administrative penalty.

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

6 SECTION 1. The heading to Section 15.023, Utilities Code,  
7 is amended to read as follows:

8 Sec. 15.023. ADMINISTRATIVE PENALTY OR DISGORGEMENT ORDER.

9 SECTION 2. Section 15.023, Utilities Code, is amended by  
10 adding Subsection (e) to read as follows:

11 (e) For a violation of Section 39.157, the commission shall,  
12 in addition to the assessment of a penalty, order disgorgement of  
13 all revenues resulting from the violation. For any other violation  
14 of the statutes, rules, or protocols relating to wholesale electric  
15 markets, the commission may, in addition to the assessment of a  
16 penalty, order disgorgement of all revenues resulting from the  
17 violation.

18 SECTION 3. Section 15.025, Utilities Code, is amended by  
19 adding Subsections (e) and (f) to read as follows:

20 (e) Any revenues ordered disgorged under this section for a  
21 violation of the statutes, rules, or protocols relating to  
22 wholesale electric markets shall be returned to the affected  
23 wholesale electric market participants to be used to reduce costs  
24 or fees incurred by retail electric customers. The commission

1 shall adopt rules not later than March 1, 2012, to prescribe how  
2 revenues shall be returned to the affected wholesale electric  
3 market participants under this subsection.

4 (f) For purposes of this section and Section 15.026, a  
5 reference to a penalty shall be construed to include disgorgement.

6 SECTION 4. Sections 15.026(a) and (b), Utilities Code, are  
7 amended to read as follows:

8 (a) Judicial review of a commission order imposing an  
9 administrative penalty or disgorgement is:

10 (1) instituted by filing a petition as provided by  
11 Subchapter G, Chapter 2001, Government Code; and

12 (2) under the substantial evidence rule.

13 (b) If the court sustains the occurrence of the violation,  
14 the court may uphold or reduce the amount of the penalty or  
15 disgorgement and order the person to pay the full or reduced amount  
16 of the penalty or disgorgement. If the court does not sustain the  
17 occurrence of the violation, the court shall order that no penalty  
18 or disgorgement is owed.

19 SECTION 5. Section 39.157(a), Utilities Code, is amended to  
20 read as follows:

21 (a) The commission shall monitor market power associated  
22 with the generation, transmission, distribution, and sale of  
23 electricity in this state. On a finding that market power abuses or  
24 other violations of this section are occurring, the commission  
25 shall require reasonable mitigation of the market power by ordering  
26 the construction of additional transmission or distribution  
27 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, by ordering the  
4 disgorgement of revenues as authorized by Chapter 15, or by  
5 suspending, revoking, or amending a certificate or registration as  
6 authorized by Section 39.356. Section 15.024(c) does not apply to  
7 an administrative penalty imposed under this section. For purposes  
8 of this subchapter, market power abuses are practices by persons  
9 possessing market power that are unreasonably discriminatory or  
10 tend to unreasonably restrict, impair, or reduce the level of  
11 competition, including practices that tie unregulated products or  
12 services to regulated products or services or unreasonably  
13 discriminate in the provision of regulated services. For purposes  
14 of this section, "market power abuses" include predatory pricing,  
15 withholding of production, precluding entry, and collusion. A  
16 violation of the code of conduct provided by Subsection (d) that  
17 materially impairs the ability of a person to compete in a  
18 competitive market shall be deemed to be an abuse of market power.  
19 The possession of a high market share in a market open to  
20 competition may not, of itself, be deemed to be an abuse of market  
21 power; however, this sentence shall not affect the application of  
22 state and federal antitrust laws.

23 SECTION 6. The changes in law made by this Act apply only to  
24 a violation that occurs on or after the effective date of this Act.  
25 A violation that occurs before the effective date of this Act is  
26 covered by the law in effect at the time the violation occurred, and  
27 the former law is continued in effect for that purpose.

1 SECTION 7. This Act takes effect September 1, 2011.