

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2254

By: Covey

COMMITTEE SUBSTITUTE

An Act relating to Corporation Commission; amending 17 O.S. 2001, Section 191.1 and 191.5, which relate to the acquisition, control, or merger of domestic public utilities; modifying definitions; providing certain conditions for mergers and acquisition; modifying time limit for commencement of a public hearing; updating statutory references; clarifying statutory language; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 17 O.S. 2001, Section 191.1, is amended to read as follows:

Section 191.1 As used in this act:

1. "Acquiring party" means a person and all affiliates thereof by whom or on whose behalf a merger or other acquisition of control referred to in Section 191.2 of this title is to be effected;

2. "Affiliate" means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified, including any corporation created at the direction of the person specified for purposes of corporate reorganization;

3. "Commission" means the Oklahoma Corporation Commission;

4. "Control" (including the terms "controlling", "controlled by", and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise, unless such power

is the result of an official position with, or corporate office held in, such person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the aggregate number of the voting securities of any other person. This presumption may be rebutted by a showing that control does not exist in fact. The Commission may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

5. "Domestic public utility" means a person doing business in the state, including any other person controlling such a domestic public utility, any substantial portion of the revenues of which, either directly or indirectly, are derived from the business of providing utility service in this state, except that such term does not include agencies, authorities or instrumentalities of the United States or a state or political subdivision of a state;

6. "Issuer" means any person who issues or proposes to issue any security;

7. "Person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function;

8. "Tender offer" means the acquisition of, or offer to acquire, pursuant to a tender offer or request or invitation for tenders, any voting security of a domestic public utility, if after acquisition thereof the acquiring party would, directly or indirectly, be a record or beneficial owner of more than ten percent (10%) of the aggregate number of the issued and outstanding voting

securities of such domestic public utility. "Tender offer" does not mean:

- a. bids made by a dealer for his own account in the ordinary course of his business of buying and selling such security, or
- b. any other offer to acquire a voting security, or the acquisition of such voting security pursuant to such offer, for the sole account of the acquiring party, from not more than fifty persons, in good faith and not for the purpose of avoiding this act;

9. "Utility service" means the transmission or distribution of combustible hydrocarbon natural or synthetic natural gas by a person subject to Section 152 of this title for sale to the public or the production, transmission, delivery or furnishing of electric current by a person subject to Section 181 et seq. of this title for sale to the public for light, heat or power, or the provisioning of local exchange telecommunications service as defined in Section 139.102 of this title; and

10. "Voting security" means any stock or indenture of any class presently entitling the owner or holder thereof to vote in the direction or management of the affairs of a company, or any stock or indenture of any class issued under or pursuant to any trust, agreement or arrangement whereby a trustee or trustees or agent or agents for the owner or holder of such stock or indenture are presently entitled to vote in the direction or management of the company.

SECTION 2. AMENDATORY 17 O.S. 2001, Section 191.5, is amended to read as follows:

Section 191.5 A. The Corporation Commission shall approve any merger or other acquisition of control referred to in Section ~~2~~ 191.2 of this ~~act~~ title unless, after a public hearing thereon, it finds that one or more of the following conditions will exist if

such merger or other acquisition of control is consummated, in which event it shall disapprove such merger or acquisition of control and the same shall not be consummated:

1. The acquisition of control would adversely affect the contractual obligations of the domestic public utility or of any person controlling such domestic public utility, or its ability or commitment to continue to render the same level of service to its customers that the domestic public utility is currently rendering;

2. The effect of the merger or other acquisition of control would be substantially to lessen competition in the furnishing of public utility service in this state;

3. The financial condition of any acquiring party is such as might jeopardize the financial stability of the domestic public utility or any person controlling such domestic public utility or otherwise prejudice the interest of the customers of the domestic public utility's customers utility;

4. The plans or proposals which an acquiring party has to liquidate the public utility or any such controlling person, sell its assets, or a substantial part thereof, or consolidate or merge it with any person, or to make any other material change in its investment policy, business or corporate structure or management, would be detrimental to the customers of the domestic public utility and not in the public interest; ~~or~~

5. The competence, experience and integrity of those persons who would control the operation of the domestic public utility ~~are~~ such that it would not be in the interest of its customers and the public to permit the merger or other acquisition of control;

6. The effect of the proposed merger or acquisition of control increases the operating costs and rate levels of the domestic public utility;

7. The effect of the proposed merger or acquisition of control limits the ability of the Corporation Commission to review the books and records of the domestic public utility;

8. The purchase price, the source of funding to be utilized to consummate the merger or acquisition of control, and the corresponding treatment of the acquisition premium, if any, is not just and reasonable;

9. The acquiring utility has been coerced by the to-be-acquired utility into acceptance of the merger or control change;

10. The impact of the merger or acquisition of control changes the effectiveness of state regulation; and

11. The contemplated accounting treatment to be given to the merger or acquisition of control is not just and reasonable.

B. ~~The A~~ public hearing ~~referred to in subsection A of this section~~ shall be commenced within ~~thirty (30)~~ sixty (60) days after the statement required by Section ~~2~~ 191.2 of this ~~act~~ title is filed. The place, date and time for such public hearing shall be set by the Commission and notice thereof shall be given by the Commission to the person filing the statement and to the domestic public utility at least twenty (20) days prior to the date of the public hearing. Notice of the public hearing shall be given by the person filing the statement to such other persons and in such manner as may be directed by the Commission at least fifteen (15) days prior to such public hearing. The domestic public utility shall give notice to its customers as provided in Section ~~6~~ 191.6 of this ~~act~~ title. The public hearing ~~referred to in subsection A of this section~~ shall be concluded within thirty (30) days after the commencement of such hearing. The Commission shall make a determination on the factors specified in subsection A of this section within thirty (30) days after the conclusion of such hearing, and any merger or other acquisition of control within the purview of this section shall be deemed approved unless the

Commission has, within thirty (30) days after the conclusion of such hearing, entered its order disapproving the merger or other acquisition of control.

SECTION 3. This act shall become effective July 1, 2002.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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