

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2254

By: Covey

AS INTRODUCED

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; deleting certain requirements for mergers or acquisitions; requiring applicant to show certain evidence; requiring the Corporation Commission to make certain assessment; modifying certain conditions for mergers and acquisition; providing certain conditions for mergers and acquisition; modifying time limit for commencement of a public hearing; updating statutory references; authorizing the Commission to make approval of mergers and acquisitions subject to certain conditions; 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%)~~ five percent (5%) 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%)~~ five percent (5%) 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~~ of this act 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~~ 191.2 of this title only after a proper evidentiary showing by the applicant that the proposed merger or acquisition of control is in the public interest. In assessing whether the proposed merger or acquisition of control is in the public interest, the Corporation Commission shall give consideration to the following:

1. ~~The acquisition of control would~~ Does the proposed merger or acquisition of control 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~~ Does the proposed merger or acquisition of control substantially ~~to~~ lessen competition in the furnishing of public utility service in this state;

3. ~~The~~ Could 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~~ Could 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~~ Is the competence, experience and or 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. What is the effect of the proposed merger or acquisition of control on the operating costs and rate levels of the domestic public utility;

7. What is the effect of the proposed merger or acquisition of control on the books and records of the domestic public utility;

8. Is 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, reasonable;

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

10. What is the impact of the merger or acquisition of control on the effectiveness of state regulation; and

11. What is the contemplated accounting treatment to be given to the merger or acquisition of control.

B. ~~The~~ A public hearing referred to in subsection A of this section shall be commenced within ~~thirty (30)~~ ninety (90) 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.

C. The Commission may enter an order approving the merger or acquisition of control subject to the following:

1. If an electric utility purchases, acquires, merges, or consolidates with or acquires fifty percent (50%) or more of the stock of another utility, the Commission shall regulate the successor utility in the same manner that the Commission would regulate the entity that was subject to the stricter regulation before the purchase, acquisition, merger, or consolidation; and

2. The Commission may allocate some or all of the gain or profit from the acquisition or transfer of a public utility to the ratepayers of the utility if the Commission determines that the allocation is in the public interest.

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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