

STATE OF OKLAHOMA

1st Session of the 47th Legislature (1999)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 531

By: Morgan and Hobson of the
Senate

and

Rice of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public utilities; amending 17 O.S. 1991, Sections 158.52, 158.53, 158.55, 191.3, 191.5, and 191.7, which relate to rural electric cooperatives and domestic public utilities; requiring statements be made under oath or affirmation and be provided to the Attorney General on certain date; requiring inclusion of certain information in statements; modifying statutory references; deleting obsolete language; extending time period for commencement of public hearing; extending time period for Corporation Commission to make determination; making time requirements applicable under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 17 O.S. 1991, Section 158.52, is amended to read as follows:

Section 158.52 A. The statement ~~to~~ required by Section 158.51 of this title shall be made under oath or affirmation and shall be filed with the Corporation Commission as required by Section 2 of this act shall be made under oath or affirmation and a copy shall be provided to the Attorney General on the day of filing. The statement shall contain the following information:

1. The name and address of each acquiring party and all affiliates thereof; and

- a. if such acquiring party is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any

conviction of crimes other than minor traffic violations during the past ten (10) years, or if no such convictions exist, an affirmative statement to that effect shall be included, or

- b. if such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by subparagraph a of paragraph 1 of this subsection;

2. The source, nature and amount of the consideration used or to be used in effecting the acquisition of control, a detailed description of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

3. Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party for the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar

information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the statement;

4. Any plans or proposals which an acquiring party may have to liquidate such rural electric cooperative, to sell its assets or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefor shall be explained in detail. If any changes in the management of the rural electric cooperative are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the rural electric cooperative. If the acquiring party has no such plans, an affirmative statement to that effect shall be included;

5. Copies of all offers for, exchange offers for, and agreements to acquire or exchange any assets and, if distributed, of additional soliciting material relating thereto;

6. Documentation from any and all mortgagors which hold a mortgage on any plant or equipment of such rural electric cooperative setting forth ~~such mortgagors~~ the mortgagor's approval of such proposed acquisition of control; and

7. Such additional information as the Commission may by rule ~~or regulation~~ prescribe as necessary or appropriate for the protection of ratepayers of the rural electric cooperative or in the public interest.

B. If a person required to file the statement referred to in Section ~~2~~ 158.51 of this ~~act~~ title is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in paragraphs 1 through 7 of subsection A of this section shall be given with respect to each

partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the statement referred to in Section ~~2~~ 158.51 of this ~~act~~ title is a corporation, the Commission may require that the information called for by paragraphs 1 through 7 of subsection A of this section be given with respect to such corporation, each officer and director of such corporation.

C. If any material change occurs in the facts set forth in the statement filed with the Commission and sent to such rural electric cooperative pursuant to ~~this act~~ Section 158.50 et seq. of this title, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the statement to the rural electric cooperative within two (2) business days after such person learns of such change.

D. Within fifteen (15) days of any federal filing which pertains to any approval or review subject to Section 158.50 et seq. of this title, the acquiring party shall file a notice of the federal filing, together with a general description of the filing, with the Corporation Commission and the Attorney General.

SECTION 2. AMENDATORY 17 O.S. 1991, Section 158.53, is amended to read as follows:

Section 158.53 A. The Corporation Commission shall approve any acquisition of control referred to in Section ~~2~~ 158.51 of this ~~act~~ title unless, after a public hearing thereon, it finds that one or more of the following conditions will exist if such acquisition of control is consummated, in which event it shall disapprove such acquisition of control and the same shall not be consummated:

1. The acquisition of control would adversely affect the contractual obligations of the rural electric cooperative or its ability or commitment to render the same level of service to its

customers that the rural electric cooperative is currently rendering;

2. The effect of the 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 rural electric cooperative or otherwise prejudice the interest of the rural electric cooperative's customers;

4. The plans or proposals which an acquiring party has to liquidate the rural electric cooperative, 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 rural electric cooperative and not in the public interest; or

5. The competence, experience and integrity of the persons who would control the operation of the rural electric cooperative are such that it would not be in the interest of its customers and the public to permit the acquisition of control.

B. The public hearing referred to in subsection A of this section shall be commenced within ~~thirty (30)~~ one hundred twenty (120) days after the statement required by Section ~~2~~ 158.51 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 rural electric cooperative 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 rural electric cooperative shall give notice to its customers as provided in

Section ~~5~~ 158.54 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)~~ sixty (60) days after the conclusion of such hearing, and any acquisition of control within the purview of this section shall be deemed approved unless the Commission has, within ~~thirty (30)~~ sixty (60) days after the conclusion of such hearing, entered its order disapproving the acquisition of control.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 158.55, is amended to read as follows:

Section 158.55 ~~If the acquiring party is a domestic public utility, and the rural electric cooperative, control of which is sought to be acquired in a transaction described in Section 2 of this act which would require the filing of a statement pursuant to Section 2 of this act, is subject to the jurisdiction of the Commission, an application for approval containing such information as the Commission may prescribe by rule or regulation adopted pursuant to this act, shall be filed with and heard by the Commission after such notice as the Commission may prescribe, and the transaction approved or disapproved based upon the factors enumerated in paragraphs 1 through 5 of subsection A of Section 4 of this act, subject to judicial review as provided in Section 11 of this act, but the other provisions of this act shall not apply to such transaction. This act~~ Section 158.50 et seq. of this title shall not apply to mergers or consolidations of rural electric cooperatives governed by Section 437.13 or 437.14 of Title 18 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 17 O.S. 1991, Section 191.3, is amended to read as follows:

Section 191.3 A. The statement ~~to~~ required by Section 191.2 of this title shall be made under oath or affirmation and shall be filed with the Corporation Commission as required by Section 2 of this act shall be made under oath or affirmation and a copy shall be provided to the Attorney General on the day of filing. The statement shall contain the following information:

1. The name and address of each acquiring party and all affiliates thereof; and

a. if such acquiring party is an individual, his or her principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years, or if no such convictions exist, an affirmative statement to that effect shall be included, or

b. if such acquiring party is not an individual, a report of the nature of its business and its affiliates' operations during the past five (5) years or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such acquiring party and its subsidiaries; and a list of all individuals who are or who have been selected to become directors or officers of such acquiring party, or who perform or will perform functions appropriate or similar to such positions. Such list shall include for each such individual the information required by subparagraph a of paragraph 1 of this subsection;

2. The source, nature and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a detailed description of any transaction wherein funds were or are

to be obtained for any such purpose, and the identity of persons furnishing such consideration; provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

3. Audited financial information in a form acceptable to the Commission as to the financial condition of an acquiring party for the preceding three (3) fiscal years of each such acquiring party, or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence, and similar information as of a date not earlier than one hundred thirty-five (135) days prior to the filing of the statement;

4. Any plans or proposals which an acquiring party may have to liquidate such public utility, to sell its assets, or a substantial part thereof, or merge or consolidate it with any person, or to make any other material change in its investment policy, business or corporate structure, or management. If any change is contemplated in the investment policy, or business or corporate structure, such contemplated changes and the rationale therefor shall be explained in detail. If any changes in the management of the domestic public utility or person controlling the domestic public utility are contemplated, the acquiring party shall provide a resume of the qualifications and the names and addresses of the individuals who have been selected or are being considered to replace the then current management personnel of the domestic public utility or the person controlling the domestic public utility. If the acquiring party has no such plans, an affirmative statement to that effect shall be included;

5. The number of shares of any voting security which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement or acquisition referred to in Section ~~2~~ 191.2 of this ~~act~~ title;

6. The amount of each class of any voting security which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

7. A full description of any contracts, arrangements or understandings with respect to any voting security in which any acquiring party is involved, including but not limited to transfer of any securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

8. A description of the purchase of any voting security during the twelve (12) calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

9. Copies of all tender offers for, requests for, advertisements for, invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities and, if distributed, of additional soliciting material relating thereto; and

10. Such additional information as the Commission may by rule or regulation prescribe as necessary or appropriate for the protection of ratepayers of the domestic public utility or in the public interest.

B. If a person required to file the statement referred to in Section ~~2~~ 191.2 of this ~~act~~ title is a partnership, limited partnership, syndicate or other group, the Commission may require that the information called for in paragraphs 1 through 10 of subsection A of this section shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group and each person who controls such partner or

member. If any such partner, member, person or acquiring party is a corporation or if a person required to file the statement referred to in Section 2 191.2 of this ~~act~~ title is a corporation, the Commission may require that the information called for by paragraphs 1 through 10 of subsection A of this section be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than ten percent (10%) of the outstanding voting securities of such corporation and each affiliate of such corporation.

C. If any material change occurs in the facts set forth in the statement filed with the Commission and sent to such domestic public utility pursuant to ~~this act~~ Section 191.1 et seq. of this title, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the Commission and sent by the person filing the statement to the domestic public utility within two (2) business days after such person learns of such change.

D. Within fifteen (15) days of any federal filing which pertains to any approval or review subject to Section 191.1 et seq. of this title, the acquiring party shall file a notice of the federal filing, together with a general description of the filing, with the Corporation Commission and the Attorney General.

SECTION 5. AMENDATORY 17 O.S. 1991, 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 domestic public utility's customers;

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.

B. The public hearing referred to in subsection A of this section shall be commenced within ~~thirty (30)~~ one hundred twenty (120) 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)~~ sixty (60) 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)~~ sixty (60) days after the conclusion of such hearing, entered its order disapproving the merger or other acquisition of control.

SECTION 6. AMENDATORY 17 O.S. 1991, Section 191.7, is amended to read as follows:

Section 191.7 If the acquiring party is a domestic public utility, and the domestic public utility, control of which is sought to be acquired in a transaction described in Section ~~2~~ 191.2 of this ~~act~~ title which would require the filing of a statement pursuant to Section ~~2~~ 191.2 of this ~~act~~ title, is subject to the jurisdiction of the Commission, an application for approval, containing such information as the Commission may prescribe by rule ~~or regulation~~ adopted pursuant to this act, shall be filed with and heard by the Commission after such notice as the Commission may prescribe, and the transaction approved or disapproved based upon the factors enumerated in paragraphs 1 through 5 of subsection A of Section ~~5~~ 191.5 of this ~~act~~ title, subject to judicial review as provided in Section ~~12~~ 191.12 of this ~~act~~ title, but the other provisions of ~~this act~~ Section 191.1 et seq. of this title shall not apply to such transaction; provided, however, the Commission shall comply with the

time requirements of subsection B of Section 191.5 of this title in holding hearings, issuing notice, and making determinations.

SECTION 7. This act shall become effective November 1, 1999.

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