ENGROSSED SENATE
BILL NO. 531

By: Morgan and Hobson of the Senate

and

Rice of the House

[public utilities - acquisition, control or merger of domestic public utilities -

effective date]

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

SECTION 1. AMENDATORY 17 O.S. 1991, 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. "Party to be acquired" means the party subject to an acquiring party's activities to effectuate a merger or other acquisition of control under Section 191.2 of this title;

8. "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.~~ 9. "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~~ the party to be acquired. "Tender offer" does not mean:

a. bids made by a dealer for his or her own account in the ordinary course of his or her 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.~~ 10. "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; and

~~10.~~ 11. "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. 1991, Section 191.2, is amended to read as follows:

Section 191.2 A. No person, other than the issuer of the securities of the ~~domestic public utility~~ party to be acquired or an affiliate of such an issuer, shall make a tender offer for, request or invite tenders of, or enter into any agreement to exchange, seek to acquire, or acquire, in the open market or otherwise, any voting security of ~~a domestic public utility regulated by the Corporation Commission~~ the party to be acquired if, after the consummation of such action, such person would, directly or indirectly, or by

conversion or by exercise of any right to acquire, be in control of such ~~domestic public utility~~ party to be acquired, and no person shall merge with or otherwise acquire control of ~~a domestic public utility~~ such party to be acquired unless the acquiring party is an affiliate of such ~~domestic public utility~~ party to be acquired or unless, at the time any such offer, request or invitation is made or any such merger is consummated, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the Commission and has sent to ~~such domestic public utility~~ the party to be acquired, a statement containing the information required by Section ~~3~~ 191.3 of this ~~act~~ title and such offer, request, invitation, merger or acquisition has been approved by the Commission in the manner prescribed in Section ~~5~~ 191.5 of this ~~act~~ title. The Commission may modify the aforementioned procedures to the extent necessary to conform to the requirements of Regulation 14D under the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a-78jj, as amended.

B. This act, Section 191.1 et seq. of this title, shall not apply where neither the party to be acquired nor the acquiring party has utility service customers in this state.

SECTION 3. AMENDATORY 17 O.S. 1991, Section 191.3, is amended to read as follows:

Section 191.3 A. The statement required by Section 191.2 of this title shall be made under oath or affirmation and shall ~~to~~ be filed by the acquiring party 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,~~ or 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~~ either the party to be acquired or the acquiring party or in the person controlling ~~the domestic public utility~~ either the acquiring party or the party to be acquired 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~~ party to be acquired or the acquiring party. 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~~ the 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~~ the 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~~ customers of the party to be acquired or the acquiring party or in the public interest.

B. If ~~a person required to file the statement referred to in Section 2 of this act~~ the acquiring party 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 of this act 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~~ the party to be acquired pursuant to this act, 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~~ acquiring party 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 of the merger or other acquisition of control that is subject to Section 191.1 et seq. of this title, the acquiring party shall file a notice of such federal filing with a general description of such filing with the Commission and shall provide a copy to the Attorney General on the date of filing such notice.

SECTION 4. AMENDATORY 17 O.S. 1991, Section 191.4, is amended to read as follows:

Section 191.4 If any offer, request, invitation, merger or acquisition referred to in Section ~~2~~ 191.2 of this ~~act~~ title is proposed to be made by means of a registration statement under the Securities Act of 1933, 15 U.S.C. Sections 77a through 77aa, as amended, including rules and regulations promulgated thereunder, or in circumstances requiring disclosure of similar information under the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a through 78jj, as amended, including rules and regulations promulgated thereunder, or under a state law, including rules and regulations promulgated thereunder, requiring similar registration or

disclosure, the ~~person required to file the statement referred to in Section 2 of this act~~ acquiring party may incorporate information contained in the documents filed under the above-mentioned statutes into said statement by attaching the other documents to the statement filed under ~~this act~~ Section 191.1 et seq. of this title and making specific reference to the information provided by said attached documents.

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 merger or other acquisition of control would adversely affect the contractual obligations of the domestic public utility or utilities subject to the merger or acquisition of control, or of any person controlling such domestic public utility or utilities, or ~~it's~~ the ability or commitment of such domestic public utility or utilities to continue to render the same level of service to ~~its~~ customers that the domestic public utility ~~is~~ or utilities currently ~~rendering~~ render;

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~~ either the party to be acquired or the acquiring party is such as might jeopardize the financial stability of the domestic public utility or utilities subject to the merger or acquisition of control or any person controlling such domestic public utility or utilities or otherwise

prejudice the interest of the customers of such domestic public ~~utility's customers~~ utility or utilities;

4. The plans or proposals which an acquiring party has to liquidate the domestic public utility or utilities subject to the merger or acquisition of control 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~~ such domestic public utility or utilities 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 or utilities subject to the merger or acquisition of control are such that it would not be in the interest of ~~it's~~ the customers of such domestic public utility or utilities 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~~ acquiring party and to the ~~domestic public utility~~ party to be acquired 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~~ acquiring party 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~~ Where the party to be acquired is a domestic public utility, the party to be acquired 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 191.6, is amended to read as follows:

Section 191.6. ~~Notice~~ Where the party to be acquired is a domestic public utility, notice, in a form to be specified by the Corporation Commission, of the public hearing to be held pursuant to Section ~~5~~ 191.5 of this ~~act~~ title shall be mailed, or shall be given in such other manner as may be determined by the Commission, by the ~~domestic public utility~~ party to be acquired to its customers within ten (10) business days after it has received notice of the hearing from the Commission. The expenses of preparation and mailing and giving of such notice shall be borne by the ~~person filing the statement required by Section 2 of this act~~ acquiring party. As security for the payment of such expenses, the Commission may require ~~such person~~ the acquiring party to file with the Commission an acceptable bond or other deposit in an amount to be determined by the Commission.

SECTION 7. AMENDATORY 17 O.S. 1991, Section 191.8, is amended to read as follows:

Section 191.8 The courts of this state are hereby vested with jurisdiction over every person not resident, domiciled or authorized to do business in this state who files or is required to file a statement with the Corporation Commission as required by Section ~~2~~ 191.2 of this ~~act~~ title, and over all actions involving such person

arising out of violations of this act. The Commission shall be the agent for service of process for any such person in any action, suit or proceeding arising out of violations of this act. Copies of all such lawful process shall be served on the Commission and transmitted by certified or registered mail, with return receipt requested, by the Commission to such person at his last-known address.

SECTION 8. AMENDATORY 17 O.S. 1991, Section 191.9, is amended to read as follows:

Section 191.9 The Corporation Commission shall have power to perform any and all acts, and to prescribe, issue, make, amend and rescind such orders~~,~~ and rules~~, and regulations~~ as it may find necessary or appropriate to carry out the provisions of this act. The expense of conducting an analysis or investigation by the Commission of the information required to be filed under Section ~~3~~ 191.3 of this ~~act~~ title shall be paid by the acquiring party within fifteen (15) days of the public hearing required by Section 5 of this act. Expenses of conducting the analysis or investigation may include, but not be limited to, the cost of acquiring expert witnesses, consultants and analytical services.

SECTION 9. AMENDATORY 17 O.S. 1991, Section 191.10, is amended to read as follows:

Section 191.10 Whenever it shall appear to the Corporation Commission, the Attorney General or a ~~domestic public utility~~ person which reasonably believes itself to be the object of a tender offer or attempt to obtain control as described in Section ~~2~~ 191.2 of this ~~act~~ title, that any person is engaged or about to engage in any acts or practices which constitute or will constitute a violation of the provisions of ~~this act~~ Section 191.1 et seq. of this title, or of any rule~~, regulation~~ or order thereunder, the Commission, the Attorney General or ~~the domestic public utility~~ such person may bring an action in the district court in and for Oklahoma County,

State of Oklahoma, to enjoin such acts or practices and to enforce compliance with this act or any rule, regulation or order thereunder, and upon a proper showing being made a restraining order or temporary or permanent injunction shall be granted without bond. The Commission, the Attorney General and ~~the domestic public utility~~ such person shall transmit such evidence as may be available concerning such acts or practices or concerning apparent violations of this act to the District Attorney for Oklahoma County, who, in his or her discretion, may institute appropriate criminal proceedings.

SECTION 10. AMENDATORY 17 O.S. 1991, Section 191.11, as amended by Section 139, Chapter 133, O.S.L. 1997 (17 O.S. Supp. 1998, Section 191.11), is amended to read as follows:

Section 191.11 A. Any person who willfully and knowingly does or causes to be done any act, matter or thing prohibited or declared to be unlawful by ~~this act~~ Section 191.1 et seq. of this title, or who willfully and knowingly omits or fails to do any act, matter or thing required by this act to be done, or willfully and knowingly causes such omission or failure, shall, upon conviction thereof, be guilty of a felony. The fine for a violation of this subsection shall not exceed Five Thousand Dollars ($5,000.00). In addition, such violation shall be punished upon conviction thereof by a fine not exceeding Five Hundred Dollars ($500.00) for each day during which such offense occurs.

B. Any person who willfully and knowingly violates any rule, regulation, restriction, condition or order made or imposed by the Corporation Commission under authority of this act, shall, in addition to any other penalties provided by law, be punished upon conviction thereof by a fine not exceeding Five Hundred Dollars ($500.00) for each day during which such offense occurs.

SECTION 11. This act shall become effective November 1, 1999.

Passed the Senate the 8th day of March, 1999.

_____
President of the Senate

Passed the House of Representatives the ____ day of _____ , 1999.

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Speaker of the House of Representatives