

CS for SB 531

THE STATE SENATE
Tuesday, February 23, 1999

Committee Substitute for
Senate Bill No. 531

COMMITTEE SUBSTITUTE FOR 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

1 or indirect, of the power to direct or cause the direction of the
2 management and policies of a person, whether through the ownership
3 of voting securities, by contract, or otherwise, unless such power
4 is the result of an official position with, or corporate office held
5 in, such person. Control shall be presumed to exist if any person,
6 directly or indirectly, owns, controls, holds with the power to
7 vote, or holds proxies representing ten percent (10%) or more of the
8 aggregate number of the voting securities of any other person. This
9 presumption may be rebutted by a showing that control does not exist
10 in fact. The Commission may determine, after furnishing all persons
11 in interest notice and opportunity to be heard and making specific
12 findings of fact to support such determination, that control exists
13 in fact, notwithstanding the absence of a presumption to that
14 effect;

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

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

1 7. "Party to be acquired" means the party subject to an
2 acquiring party's activities to effectuate a merger or other
3 acquisition of control under Section 191.2 of this title;

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

9 ~~8.~~ 9. "Tender offer" means the acquisition of, or offer to
10 acquire, pursuant to a tender offer or request or invitation for
11 tenders, any voting security of a domestic public utility, if after
12 acquisition thereof the acquiring party would, directly or
13 indirectly, be a record or beneficial owner of more than ten percent
14 (10%) of the aggregate number of the issued and outstanding voting
15 securities of ~~such domestic public utility~~ the party to be acquired.

16 "Tender offer" does not mean:

- 17 a. bids made by a dealer for his or her own account in
18 the ordinary course of his or her business of buying
19 and selling such security, or
20 b. any other offer to acquire a voting security, or the
21 acquisition of such voting security pursuant to such
22 offer, for the sole account of the acquiring party,

1 from not more than fifty persons, in good faith and
2 not for the purpose of avoiding this act;

3 ~~9.~~ 10. "Utility service" means the transmission or
4 distribution of combustible hydrocarbon natural or synthetic natural
5 gas by a person subject to Section 152 of this title for sale to the
6 public or the production, transmission, delivery or furnishing of
7 electric current by a person subject to Section 181 et seq. of this
8 title for sale to the public for light, heat or power; and

9 ~~10.~~ 11. "Voting security" means any stock or indenture of any
10 class presently entitling the owner or holder thereof to vote in the
11 direction or management of the affairs of a company, or any stock or
12 indenture of any class issued under or pursuant to any trust,
13 agreement or arrangement whereby a trustee or trustees or agent or
14 agents for the owner or holder of such stock or indenture are
15 presently entitled to vote in the direction or management of the
16 company.

17 SECTION 2. AMENDATORY 17 O.S. 1991, Section 191.2, is
18 amended to read as follows:

19 Section 191.2 A. No person, other than the issuer of the
20 securities of the ~~domestic public utility~~ party to be acquired or an
21 affiliate of such an issuer, shall make a tender offer for, request
22 or invite tenders of, or enter into any agreement to exchange, seek
23 to acquire, or acquire, in the open market or otherwise, any voting

1 security of a ~~domestic public utility regulated by the Corporation~~
2 ~~Commission~~ the party to be acquired if, after the consummation of
3 such action, such person would, directly or indirectly, or by
4 conversion or by exercise of any right to acquire, be in control of
5 such ~~domestic public utility~~ party to be acquired, and no person
6 shall merge with or otherwise acquire control of a ~~domestic public~~
7 ~~utility~~ such party to be acquired unless the acquiring party is an
8 affiliate of such ~~domestic public utility~~ party to be acquired or
9 unless, at the time any such offer, request or invitation is made or
10 any such merger is consummated, or prior to the acquisition of such
11 securities if no offer or agreement is involved, such person has
12 filed with the Commission and has sent to ~~such domestic public~~
13 ~~utility~~ the party to be acquired, a statement containing the
14 information required by Section ~~3~~ 191.3 of this ~~act~~ title and such
15 offer, request, invitation, merger or acquisition has been approved
16 by the Commission in the manner prescribed in Section ~~5~~ 191.5 of
17 this ~~act~~ title. The Commission may modify the aforementioned
18 procedures to the extent necessary to conform to the requirements of
19 Regulation 14D under the Securities Exchange Act of 1934, 15 U.S.C.
20 Sections 78a-78jj, as amended.

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

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

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

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

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

19 b. if such acquiring party is not an individual, a report
20 of the nature of its business and its affiliates'
21 operations during the past five (5) years or for such
22 lesser period as such acquiring party and any
23 predecessors thereof shall have been in existence; an

1 informative description of the business intended to be
2 done by such acquiring party and its subsidiaries; and
3 a list of all individuals who are or who have been
4 selected to become directors or officers of such
5 acquiring party, or who perform or will perform
6 functions appropriate or similar to such positions.
7 Such list shall include for each such individual the
8 information required by subparagraph a of paragraph 1
9 of this subsection;

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

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

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

3 4. Any plans or proposals which an acquiring party may have to
4 liquidate ~~such public utility,~~ or to sell ~~its~~ assets, or a
5 substantial part thereof, or merge or consolidate it with any
6 person, or to make any other material change in its investment
7 policy, business or corporate structure, or management. If any
8 change is contemplated in the investment policy, or business or
9 corporate structure, such contemplated changes and the rationale
10 therefor shall be explained in detail. If any changes in the
11 management of ~~the domestic public utility~~ either the party to be
12 acquired or the acquiring party or in the person controlling the
13 domestic public utility either the acquiring party or the party to
14 be acquired are contemplated, the acquiring party shall provide a
15 resume of the qualifications and the names and addresses of the
16 individuals who have been selected or are being considered to
17 replace the then current management ~~personnel of the domestic public~~
18 ~~utility~~ or the person controlling the ~~domestic public utility~~ party
19 to be acquired or the acquiring party. If the acquiring party has
20 no such plans, an affirmative statement to that effect shall be
21 included;

22 5. The number of shares of any voting security which ~~each~~ the
23 acquiring party proposes to acquire, and the terms of the offer,

1 request, invitation, agreement or acquisition referred to in Section
2 ~~2~~ 191.2 of this ~~act~~ title;

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

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

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

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

1 10. Such additional information as the Commission may by rule
2 ~~or regulation~~ prescribe as necessary or appropriate for the
3 protection of ~~ratepayers of the domestic public utility~~ customers of
4 the party to be acquired or the acquiring party or in the public
5 interest.

6 B. ~~If a person required to file the statement referred to in~~
7 ~~Section 2 of this act~~ the acquiring party is a partnership, limited
8 partnership, syndicate or other group, the Commission may require
9 that the information called for in paragraphs 1 through ~~10~~ 11 of
10 subsection A of this section shall be given with respect to each
11 partner of such partnership or limited partnership, each member of
12 such syndicate or group and each person who controls such partner or
13 member. If any such partner, member, person or acquiring party is a
14 corporation ~~or if a person required to file the statement referred~~
15 ~~to in Section 2 of this act is a corporation,~~ the Commission may
16 require that the information called for by paragraphs 1 through ~~10~~
17 11 of subsection A of this section be given with respect to such
18 corporation, each officer and director of such corporation, and each
19 person who is directly or indirectly the beneficial owner of more
20 than ten percent (10%) of the outstanding voting securities of such
21 corporation and each affiliate of such corporation.

22 C. If any material change occurs in the facts set forth in the
23 statement filed with the Commission and sent to ~~such domestic public~~

1 ~~utility~~ the party to be acquired pursuant to this act, an amendment
2 setting forth such change, together with copies of all documents and
3 other material relevant to such change, shall be filed with the
4 Commission and sent by the ~~person filing the statement to the~~
5 ~~domestic public utility~~ acquiring party within two (2) business days
6 after such person learns of such change.

7 D. Within fifteen (15) days of any federal filing which
8 pertains to any approval or review of the merger or other
9 acquisition of control that is subject to Section 191.1 et seq. of
10 this title, the acquiring party shall file a notice of such federal
11 filing with a general description of such filing with the Commission
12 and shall provide a copy to the Attorney General on the date of
13 filing such notice.

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

16 Section 191.4 If any offer, request, invitation, merger or
17 acquisition referred to in Section ~~2~~ 191.2 of this ~~act~~ title is
18 proposed to be made by means of a registration statement under the
19 Securities Act of 1933, 15 U.S.C. Sections 77a through 77aa, as
20 amended, including rules and regulations promulgated thereunder, or
21 in circumstances requiring disclosure of similar information under
22 the Securities Exchange Act of 1934, 15 U.S.C. Sections 78a through
23 78jj, as amended, including rules and regulations promulgated

1 thereunder, or under a state law, including rules and regulations
2 promulgated thereunder, requiring similar registration or
3 disclosure, the ~~person required to file the statement referred to in~~
4 ~~Section 2 of this act~~ acquiring party may incorporate information
5 contained in the documents filed under the above-mentioned statutes
6 into said statement by attaching the other documents to the
7 statement filed under ~~this act~~ Section 191.1 et seq. of this title
8 and making specific reference to the information provided by said
9 attached documents.

10 SECTION 5. AMENDATORY 17 O.S. 1991, Section 191.5, is
11 amended to read as follows:

12 Section 191.5. A. The Corporation Commission shall approve any
13 merger or other acquisition of control referred to in Section 2
14 191.2 of this ~~act~~ title unless, after a public hearing thereon, it
15 finds that one or more of the following conditions will exist if
16 such merger or other acquisition of control is consummated, in which
17 event it shall disapprove such merger or acquisition of control and
18 the same shall not be consummated:

19 1. The merger or other acquisition of control would adversely
20 affect the contractual obligations of the domestic public utility or
21 utilities subject to the merger or acquisition of control, or of any
22 person controlling such domestic public utility or utilities, or
23 ~~it's~~ the ability or commitment of such domestic public utility or

1 utilities to continue to render the same level of service to ~~its~~
2 customers that the domestic public utility ~~is~~ or utilities currently
3 ~~rendering~~ render;

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

7 3. The financial condition of ~~any~~ either the party to be
8 acquired or the acquiring party is such as might jeopardize the
9 financial stability of the domestic public utility or utilities
10 subject to the merger or acquisition of control or any person
11 controlling such domestic public utility or utilities or otherwise
12 prejudice the interest of the customers of such domestic public
13 ~~utility's customers~~ utility or utilities;

14 4. The plans or proposals which an acquiring party has to
15 liquidate the domestic public utility or utilities subject to the
16 merger or acquisition of control or any such controlling person,
17 sell its assets, or a substantial part thereof, or consolidate or
18 merge it with any person, or to make any other material change in
19 its investment policy, business or corporate structure or
20 management, would be detrimental to the customers of ~~the~~ such
21 domestic public utility or utilities and not in the public interest;
22 or

1 5. The competence, experience and integrity of those persons
2 who would control the operation of the domestic public utility or
3 utilities subject to the merger or acquisition of control are such
4 that it would not be in the interest of ~~it's~~ the customers of such
5 domestic public utility or utilities and the public to permit the
6 merger or other acquisition of control.

7 B. The public hearing referred to in subsection A of this
8 section shall be commenced within ~~thirty (30)~~ one hundred twenty
9 (120) days after the statement required by Section ~~2~~ 191.2 of this
10 ~~act~~ title is filed. The place, date and time for such public
11 hearing shall be set by the Commission and notice thereof shall be
12 given by the Commission to the ~~person filing the statement~~ acquiring
13 party and to the ~~domestic public utility~~ party to be acquired at
14 least twenty (20) days prior to the date of the public hearing.
15 Notice of the public hearing shall be given by the ~~person filing the~~
16 ~~statement~~ acquiring party to such other persons and in such manner
17 as may be directed by the Commission at least fifteen (15) days
18 prior to such public hearing. ~~The domestic public utility~~ Where the
19 party to be acquired is a domestic public utility, the party to be
20 acquired shall give notice to its customers as provided in Section ~~6~~
21 191.6 of this ~~act~~ title. The public hearing referred to in
22 subsection A of this section shall be concluded within thirty (30)
23 days after the commencement of such hearing. The Commission shall

1 make a determination on the factors specified in subsection A of
2 this section within ~~thirty (30)~~ sixty (60) days after the conclusion
3 of such hearing, and any merger or other acquisition of control
4 within the purview of this section shall be deemed approved unless
5 the Commission has, within ~~thirty (30)~~ sixty (60) days after the
6 conclusion of such hearing, entered its order disapproving the
7 merger or other acquisition of control.

8 SECTION 6. AMENDATORY 17 O.S. 1991, Section 191.6, is
9 amended to read as follows:

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

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

3 Section 191.8 The courts of this state are hereby vested with
4 jurisdiction over every person not resident, domiciled or authorized
5 to do business in this state who files or is required to file a
6 statement with the Corporation Commission as required by Section ~~2~~
7 191.2 of this ~~act~~ title, and over all actions involving such person
8 arising out of violations of this act. The Commission shall be the
9 agent for service of process for any such person in any action, suit
10 or proceeding arising out of violations of this act. Copies of all
11 such lawful process shall be served on the Commission and
12 transmitted by certified or registered mail, with return receipt
13 requested, by the Commission to such person at his last-known
14 address.

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

17 Section 191.9 The Corporation Commission shall have power to
18 perform any and all acts, and to prescribe, issue, make, amend and
19 rescind such orders, and rules, ~~and regulations~~ as it may find
20 necessary or appropriate to carry out the provisions of this act.
21 The expense of conducting an analysis or investigation by the
22 Commission of the information required to be filed under Section ~~3~~
23 191.3 of this ~~act~~ title shall be paid by the acquiring party within

1 fifteen (15) days of the public hearing required by Section 5 of
2 this act. Expenses of conducting the analysis or investigation may
3 include, but not be limited to, the cost of acquiring expert
4 witnesses, consultants and analytical services.

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

7 Section 191.10 Whenever it shall appear to the Corporation
8 Commission, the Attorney General or a ~~domestic public utility~~ person
9 which reasonably believes itself to be the object of a tender offer
10 or attempt to obtain control as described in Section ~~2~~ 191.2 of this
11 ~~act~~ title, that any person is engaged or about to engage in any acts
12 or practices which constitute or will constitute a violation of the
13 provisions of ~~this act~~ Section 191.1 et seq. of this title, or of
14 any rule, ~~regulation~~ or order thereunder, the Commission, the
15 Attorney General or ~~the domestic public utility~~ such person may
16 bring an action in the district court in and for Oklahoma County,
17 State of Oklahoma, to enjoin such acts or practices and to enforce
18 compliance with this act or any rule, regulation or order
19 thereunder, and upon a proper showing being made a restraining order
20 or temporary or permanent injunction shall be granted without bond.
21 The Commission, the Attorney General and ~~the domestic public utility~~
22 such person shall transmit such evidence as may be available
23 concerning such acts or practices or concerning apparent violations

1 of this act to the District Attorney for Oklahoma County, who, in
2 his or her discretion, may institute appropriate criminal
3 proceedings.

4 SECTION 10. AMENDATORY 17 O.S. 1991, Section 191.11, as
5 amended by Section 139, Chapter 133, O.S.L. 1997 (17 O.S. Supp.
6 1998, Section 191.11), is amended to read as follows:

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

18 B. Any person who willfully and knowingly violates any rule,
19 regulation, restriction, condition or order made or imposed by the
20 Corporation Commission under authority of this act, shall, in
21 addition to any other penalties provided by law, be punished upon
22 conviction thereof by a fine not exceeding Five Hundred Dollars
23 (\$500.00) for each day during which such offense occurs.

1 SECTION 11. This act shall become effective November 1, 1999.
2 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, ENVIRONMENTAL RESOURCES &
3 REGULATORY AFFAIRS, dated 2-18-99 - DO PASS, As Amended and
4 Coauthored.