

By: Fraser, West

S.B. No. 896

A BILL TO BE ENTITLED

AN ACT

relating to procedures of the Public Utility Commission of Texas with regard to certain transactions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 14.101, Utilities Code, is amended to read as follows:

Sec. 14.101. REPORT OF CERTAIN TRANSACTIONS; COMMISSION CONSIDERATION. (a) Unless a public utility, holding company, or affiliate reports the transaction to the commission within a reasonable time, and the commission approves the transaction, the public utility, holding company, or affiliate may not:

(1) sell, acquire, or lease a plant as an operating unit or system in this state for a total consideration of more than \$100,000; or

(2) merge or consolidate with another public utility operating in this state.

(b) Prior to the close of each transaction, and prior to the receipt of all necessary regulatory approvals, a [A] public utility, holding company, or affiliate shall report to the commission [~~within a reasonable time~~] each transaction that involves the sale of at least 50 percent of the stock of the utility, holding company, or affiliate. On the filing of a report with the commission, the commission shall investigate the transaction, with or without a public hearing, to determine whether

1 the action is consistent with the public interest. In reaching its  
2 determination, the commission shall consider:

3 (1) the reasonable value of the property, facilities,  
4 or securities to be acquired, disposed of, merged, transferred, or  
5 consolidated;

6 (2) whether the transaction will:

7 (A) adversely affect the health or safety of  
8 customers or employees;

9 (B) result in the transfer of jobs of citizens of  
10 this state to workers domiciled outside this state; or

11 (C) result in the decline of service;

12 (3) whether the public utility, holding company, or  
13 affiliate will receive consideration equal to the reasonable value  
14 of the assets when it sells, leases, or transfers assets; and

15 (4) whether the transaction is consistent with the  
16 public interest.

17 (c) If the commission finds that a transaction is not in the  
18 public interest, the commission shall take appropriate action,  
19 which may include:

20 (1) disapproving the transaction; or

21 (2) if appropriate, taking the effect of the  
22 transaction into consideration in ratemaking proceedings and  
23 disallowing [~~disallow~~] the effect of the transaction if the  
24 transaction will unreasonably affect rates or service.

25 (d) This section does not apply to:

26 (1) the purchase of a unit of property for  
27 replacement; or

1           (2) an addition to the facilities of a public utility  
2 by construction~~[, or~~

3           ~~[(3) transactions that facilitate unbundling, asset~~  
4 ~~valuation, minimization of ownership or control of generation~~  
5 ~~assets, or other purposes consistent with Chapter 39].~~

6           (e) In conducting the analysis under this section, the  
7 commission shall consider the extent to which the transaction  
8 facilitates the development of the competitive market, the extent  
9 to which the transaction mitigates market power in either the  
10 retail or wholesale electricity market, or other purposes  
11 consistent with Chapter 39.

12           (f) Before approving a transaction under this section, the  
13 commission shall require the public utility, holding company, or  
14 affiliate reporting the transaction to provide any and all  
15 information necessary for the commission to carry out its duties  
16 under this section, including but not limited to:

17           (1) identification of all costs, both short-term and  
18 long-term, of the transaction;

19           (2) specification of each promise, pledge,  
20 concession, or agreement made by the public utility or other  
21 entity;

22           (3) identification of any potential rate and service  
23 impacts that may occur as a result of the transaction; and

24           (4) identification of any and all benefits of the  
25 transaction.

26           (g) Notwithstanding Subsection (b), at the request of any  
27 party to the proceeding, the commission shall conduct a public

1 hearing on the transaction.

2 (h) The commission may impose conditions that it deems  
3 necessary before granting approval of any transaction under this  
4 section.

5 (i) The commission shall adopt rules to enforce the  
6 requirements of this section. Such rules shall include periodic  
7 reports by the public utility, holding company, or affiliate as  
8 necessary to determine whether the public utility, holding company,  
9 or affiliate has satisfied the requirements of this section and any  
10 requirements established by the commission in any order issued  
11 under this section.

12 (j) On the dates specified in Section 31.003, the commission  
13 shall report to the legislature the status of any transactions  
14 approved, denied, or under review pursuant to this section and any  
15 utility, holding company, or affiliate that has failed to satisfy  
16 the requirements of any order issued under this section.

17 SECTION 2. Section 37.154, Utilities Code, is amended by  
18 adding Subsection (c) to read as follows:

19 (c) Notwithstanding Subsection (a), the commission shall  
20 not approve the sale, assignment, or lease of a certificate or a  
21 right obtained under a certificate if the commission determines  
22 that the purchaser, assignee, or lessee has debts or is capitalized  
23 in a manner that would adversely affect the rates or services of the  
24 purchaser, assignee, or lessee.

25 SECTION 3. This Act takes effect immediately if it receives  
26 a vote of two-thirds of all the members elected to each house, as  
27 provided by Section 39, Article III, Texas Constitution. If this

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- 1 Act does not receive the vote necessary for immediate effect, this
- 2 Act takes effect September 1, 2007.