



## 1997 SENATE BILL 85

February 19, 1997 - Introduced by Senators MOEN, DECKER, SCHULTZ, CLAUSING, WIRCH, CHVALA and RISSER, cosponsored by Representatives MUSSER, LINTON, AINSWORTH, BLACK, NOTESTEIN, R. YOUNG, BOCK, GRONEMUS, PLOUFF, WOOD, BALDWIN, TURNER, LA FAVE, BAUMGART, ROBSON and R. POTTER. Referred to Committee on Utility Regulation.

1     **AN ACT** *to renumber and amend* 196.80 (1g) and 196.80 (3); *to amend* 196.795  
2           (2) (a) and 196.80 (title); and *to create* 196.80 (1g) (a) to (e), 196.80 (1r) and  
3           196.80 (4) of the statutes; **relating to:** mergers, consolidations and acquisitions  
4           of electric or gas public utilities, formation of electric or gas public utility  
5           holding companies, and electric or gas public utility affiliates in a holding  
6           company system.

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### *Analysis by the Legislative Reference Bureau*

#### **PUBLIC UTILITY MERGERS**

#### **CONSOLIDATIONS AND ACQUISITIONS**

Under current law, an electric or gas public utility may not do any of the following transactions unless the public service commission (PSC) first grants its approval: 1) merge or consolidate with another public utility; 2) acquire the stock of another public utility; 3) consolidate or merge with a Wisconsin corporation if substantially all of the assets of the corporation consist of the public utility's stock; or 4) sell, acquire, lease or rent any public utility plant or property that is an operating system or unit. The PSC may determine whether to approve the transaction with or without a public hearing and must grant its approval if it determines that the transaction is consistent with the public interest.

This bill creates different approval requirements for transactions involving an electric or gas public utility and any in-state or out-of-state utility, including the

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electric or public gas utility, that has \$2,500,000 or more in total annual gross operating revenues. For these transactions, the bill requires the PSC to hold a contested case hearing under the state's administrative procedure law. After the hearing, the PSC may not grant its approval unless it finds that the transaction: 1) produces demonstrated, direct and substantial short-term and long-term benefits to ratepayers and ensures that ratepayers will receive the benefits; 2) does not have an adverse impact on competition in electricity or gas markets; and 3) is in the public interest.

In making the finding regarding competition, the PSC must request an advisory opinion from the attorney general. In making the finding regarding the public interest, the PSC must consider the impact of the proposed transaction on all of the following: 1) the financial condition, quality of management, employees and majority security holders of the public utilities involved; 2) the quality of service provided by the public utilities; 3) the statewide and local economies; 4) the communities in the service areas of the public utilities; and 5) the environment. In addition, with respect to the public interest finding, the PSC must consider whether the proposed transaction preserves the PSC's jurisdiction to effectively regulate the public utilities involved, and whether it mitigates any significant adverse impacts on the public interest.

If the PSC grants its approval, it may impose any term, condition or limitation on the merger, consolidation or acquisition that mitigates any adverse impact to competition or the public interest that would otherwise result.

**PUBLIC UTILITY HOLDING COMPANIES**

Under current law, certain requirements apply to the formation of a public utility holding company. Any company that, in any chain of successive ownership, directly or indirectly owns, controls or holds 5% or more of the outstanding voting securities of an electric or gas public utility is a public utility holding company. A person may not form a public utility holding company unless the PSC grants its approval after a hearing that is not subject to the procedures of a contested case hearing. The PSC must grant its approval if it finds that the formation of the public utility holding company does not materially harm the interests of utility consumers or investors. In approving the formation of a public utility holding company, the PSC may only impose terms or limitations that are consistent with specified requirements regarding the relationship between the members of the holding company system, which include the public utility holding company itself and any public utility (other than a telecommunications utility) the voting securities of which the public utility holding company directly or indirectly owns or holds 5% or more in any chain of successive ownership.

This bill requires a person to obtain an additional approval from the PSC before the person may form a public utility holding company in which both of the following will be members of the proposed holding company system: 1) an electric or gas public utility; and 2) an in-state or out-of-state utility that provides the same type of electricity or gas service as the electric or gas public utility provides. The same additional approval is required for a public utility holding company to take, hold or acquire, directly or indirectly, 5% or more of the outstanding voting securities of an

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out-of-state utility that provides the same type of electricity or gas service as the electric or gas public utility provides. The method of granting the additional approval depends on the size of the utilities involved. If no in-state or out-of-state utility involved in the proposed transaction has total annual gross operating revenues of \$2,500,000 or more, the PSC may grant its approval with or without a public hearing, if it finds that the formation of the public utility holding company is consistent with the public interest.

If any of the utilities involved in the proposed transaction has \$2,500,000 or more in total annual gross operating revenues, the PSC must hold a contested case hearing, make the same 3 findings and consider the same impacts, and the same factors regarding jurisdiction and mitigation, that are required under the bill for the PSC's approval of a merger, consolidation or acquisition by an electric or gas public utility in which any of the public utilities involved in the merger, consolidation or acquisition has \$2,500,000 or more in total annual gross operating revenues. If the PSC grants its approval, it may impose any term, condition or limitation on the transaction that mitigates any adverse impact to competition or the public interest that would otherwise result.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** 196.795 (2) (a) of the statutes is amended to read:

2           196.795 (2) (a) No person may form a holding company unless the person has  
3 received a certificate of approval from the commission under this subsection and, if  
4 applicable, the consent and approval of the commission under s. 196.80 (1r) (a).

5           **SECTION 2.** 196.80 (title) of the statutes is amended to read:

6           **196.80** (title) **Consolidation or merger of utilities; holding company**  
7 **systems with electric or gas public utilities.**

8           **SECTION 3.** 196.80 (1g) of the statutes is renumbered 196.80 (1g) (intro.) and  
9 amended to read:

10           196.80 (1g) (intro.) In this section, “public;

11           (f) “Public utility” does not include a telecommunications utility.

12           **SECTION 4.** 196.80 (1g) (a) to (e) of the statutes are created to read:

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1           196.80 **(1g)** (a) “Electric or gas public utility” means a public utility that  
2 provides electricity or gas service.

3           (b) “Holding company” has the meaning given in s. 196.795 (1) (h).

4           (c) “Holding company system” has the meaning given in s. 196.795 (1) (i).

5           (d) “Out-of-state utility” means a utility with a plant or equipment used for  
6 the production, delivery or furnishing of utility services, other than  
7 telecommunications services, that is located outside this state.

8           (e) “Provide electricity or gas service” means to generate, produce, transmit,  
9 deliver, distribute, furnish or provide electricity or gas or both, directly or indirectly,  
10 to the public in this or any other state.

11           **SECTION 5.** 196.80 (1r) of the statutes is created to read:

12           196.80 **(1r)** (a) A person may not form a holding company under s. 196.795 (2)  
13 that results in a holding company system that includes both an electric or gas public  
14 utility and any other public utility, or out-of-state utility, that provides the same  
15 type of electricity or gas service, unless the person obtains the consent and approval  
16 of the commission under this section.

17           (b) A holding company may not take, hold or acquire directly or indirectly 5%  
18 or more of the outstanding voting securities of an out-of-state utility with the  
19 unconditional power to vote the securities if there is an electric or gas public utility  
20 in the holding company system that provides the same type of electricity or gas  
21 service as the out-of-state utility provides, unless the holding company obtains the  
22 consent and approval of the commission under this section.

23           **SECTION 6.** 196.80 (3) of the statutes is renumbered 196.80 (3) (a) and amended  
24 to read:

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1           196.80 (3) (a) ~~The interested~~ A public utility specified in sub. (1m) (intro.), a  
2           person specified in sub. (1r) (a) or a holding company specified in sub. (1r) (b) shall  
3           make an application for the approval and consent of the commission under this  
4           section. The application shall contain a concise statement of the proposed action, the  
5           reasons for the action and any other information required by the commission. If an  
6           application is filed, the commission shall investigate the application. ~~The~~

7           (b) Except as provided in sub. (4), an investigation under par. (a) may be with  
8           or without a public hearing. If the commission conducts a public hearing under this  
9           paragraph, the hearing shall be upon such notice as the commission may require.  
10          If

11          (c) Except as provided in sub. (4), if the commission finds that the proposed  
12          action is consistent with the public interest, it shall give its consent and approval in  
13          writing. In reaching its determination the commission shall take into consideration  
14          the reasonable value of the property and assets of the corporation to be acquired or  
15          merged.

16          **SECTION 7.** 196.80 (4) of the statutes is created to read:

17          196.80 (4) (a) The commission shall hold a contested case hearing under s.  
18          227.44 if an application is filed under sub. (3) (a) by any of the following:

19                1. A public utility specified in sub. (1m) (intro.) that is an electric or gas public  
20                utility, if the proposed action involves any public utility or out-of-state utility that  
21                has total annual gross operating revenues of \$2,500,000 or more.

22                2. A person specified in sub. (1r) (a), if any public utility or out-of-state utility  
23                in the resulting holding company system has total annual gross operating revenues  
24                of \$2,500,000 or more.

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1           3. A holding company specified in sub. (1r) (b), if the out-of-state utility whose  
2 voting securities are taken, held or acquired by the holding company, or any public  
3 utility, or an out-of-state utility, in the holding company system, has total annual  
4 gross operating revenues of \$2,500,000 or more.

5           (b) After a hearing under par. (a), the commission shall give its consent and  
6 approval if the commission finds by a preponderance of the evidence that the  
7 proposed action satisfies all of the following conditions:

8           1. The proposed action produces demonstrated, direct and substantial  
9 short-term and long-term benefits for ratepayers in this state and ensures, to the  
10 fullest extent possible, that ratepayers will receive the short-term and long-term  
11 benefits.

12           2. The proposed action does not have an adverse impact on competition in a  
13 market in this state for any electricity or gas service. In making this finding, the  
14 commission shall request the opinion of the attorney general on the impact of the  
15 proposed action on such competition and whether any terms, limitations or  
16 conditions on the proposed action would mitigate any adverse impacts.

17           3. The proposed action is in the public interest. In making this finding, the  
18 commission shall consider whether the proposed action satisfies each of the  
19 following:

20           a. The proposed action maintains or improves the financial condition and  
21 quality of management of the public utilities involved in the proposed action and the  
22 quality of service provided by the public utilities to ratepayers in this state.

23           b. The proposed action is fair and equitable to union and nonunion employes  
24 of the public utilities involved in the proposed action and to a majority of the holders  
25 of securities issued by each public utility.

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1           c. The proposed action produces benefits to statewide and local economies and  
2 to communities in the service areas of the public utilities involved in the proposed  
3 action.

4           d. The proposed action preserves the jurisdiction of the commission to  
5 effectively regulate and audit the operations of the public utilities involved in the  
6 proposed action.

7           e. The proposed action does not have an adverse impact on the environment of  
8 this state.

9           f. The proposed action mitigates any significant adverse impacts on the public  
10 interest.

11           (c) In giving consent and approval under par. (b), the commission may impose  
12 terms, conditions or limitations on the proposed action that mitigate any adverse  
13 impact on competition or the public interest that would otherwise result from the  
14 proposed action.

15           **SECTION 8. Initial applicability.**

16           (1) This act first applies to applications for consents and approvals that are  
17 pending before or submitted to the public service commission on the effective date  
18 of this subsection.

19

(END)