
A BILL FOR AN ACT

RELATING TO THE PUBLIC UTILITIES COMMISSION.

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

1 SECTION 1. The public utilities commission issued Order
2 No. 32695, at the initiation of the Hawaiian Electric Company,
3 Inc., and NextEra, Inc., merger proceeding (Docket No. 2015-
4 0022), which states: "Since HRS §269-19 does not contain
5 specific criteria or standards for the commission to consider in
6 the transfer or assignment of a franchise, the commission
7 historically, in its review of applications for the sale of
8 public utility assets and the transfers of certificates of
9 public convenience and necessity (CPCN) and franchises, pursuant
10 to HRS §269-19, has utilized the same standards of review found
11 at HRS §269-7.5 for guidance, to wit, that the applicant is
12 "fit, willing, and able properly to 'perform the service
13 proposed.'"

14 The consumer advocate noted that other mergers of major
15 utilities have reached settlement agreements stipulating that a
16 "substantial net benefit" exists for the merger. The
17 legislature finds that there is a need to implement public



1 policy guidelines regarding the "substantial net benefit"
2 standard that are flexible enough to address the unique
3 character of each merger or acquisition transaction.

4 The purpose of this Act is to adopt "substantial net
5 benefit" as the standard for a transfer or assignment of an
6 electric utility and specify certain guidelines to address when
7 examining whether a "substantial net benefit" exists.

8 SECTION 2. Section 269-19, Hawaii Revised Statutes, is
9 amended to read as follows:

10 **"§269-19 Merger and consolidation of public utilities.**

11 (a) Except as provided in subsection (b), no public utility
12 shall sell, lease, assign, mortgage, or otherwise dispose of or
13 encumber the whole or any part of its road, line, plant, system,
14 or other property necessary or useful in the performance of its
15 duties to the public, or any franchise or permit, or any right
16 thereunder, nor by any means, directly or indirectly, merge or
17 consolidate with any other public utility without first having
18 secured from the public utilities commission an order
19 authorizing it so to do. Every such sale, lease, assignment,
20 mortgage, disposition, encumbrance, merger, or consolidation,



1 made other than in accordance with the order of the commission
2 shall be void.

3 (b) A public utility, under circumstances that it deems
4 exigent and in its judgment require a response that rapidly
5 restores one of its customers to normal, or near normal,
6 operating status in order to prevent serious disruption of
7 essential public services, or avoid serious risk to public
8 safety, or to mitigate severe economic losses to that customer,
9 may transfer, assign, or otherwise dispose of its property
10 without prior approval from the public utilities commission as
11 required in subsection (a); provided that in so doing:

12 (1) The public utility does not unduly hinder or degrade
13 the public utility's operation with respect to its
14 services or other customers;

15 (2) The public utility is duly compensated for its
16 property; and

17 (3) The public utility reports in detail to the public
18 utilities commission within thirty days of any such
19 action unless otherwise approved by the public
20 utilities commission for good cause shown.



1 For purposes of this subsection, "property" does not
2 include real property.

3 (c) The specific standard for the public utilities
4 commission to consider in the transfer or assignment of an
5 electric utility shall be substantial net benefit. The public
6 utilities commission may establish reasonable criteria for
7 specific mergers.

8 (d) In determining whether there is a substantial net
9 benefit, the public utilities commission may consider whether:

10 (1) The proposed transaction is in the public interest;
11 including whether:

12 (A) Approval of the proposed transaction would be in
13 the best interests of the State's economy and the
14 communities served by the public utility;

15 (B) The proposed transaction, if approved, provides
16 significant, quantifiable benefits to the public
17 utility's ratepayers in both the short and long
18 term beyond those proposed by the public utility
19 in recent regulatory filing;



- 1 (C) The proposed transaction will impact the ability
2 of the public utility company's employees to
3 provide safe, adequate, and reliable service;
- 4 (D) The financing and corporate restructuring
5 proposed in the application is reasonable;
- 6 (E) Adequate safeguards exist to prevent cross
7 subsidization of any proposed affiliates and to
8 ensure the public utilities commission's ability
9 to audit the books and records of the public
10 utility, including affiliate transactions;
- 11 (F) Adequate safeguards exist to protect the public
12 utility's ratepayers from any business and
13 financial risks associated with the operations of
14 the transferee or assignee;
- 15 (G) The proposed transaction, if approved, will
16 enhance or detrimentally impact the State's clean
17 energy goals; and
- 18 (H) The proposed transaction, if approved, would
19 potentially diminish competition in Hawaii's
20 various energy markets and, if so, what



- 1 regulatory safeguards are required to mitigate
2 such adverse impacts;
- 3 (2) The applicants are fit, willing, and able to properly
4 provide safe, adequate, reliable electric service at
5 the lowest reasonable cost in both the short and the
6 long term; including whether the proposed transaction,
7 if approved, will:
- 8 (A) Result in more affordable electric rates for the
9 public utility's ratepayers;
- 10 (B) Result in an improvement in service and
11 reliability for the ratepayers of the public
12 utility;
- 13 (C) Improve the public utility's management and
14 performance; and
- 15 (D) Improve the financial soundness of the public
16 utility;
- 17 (3) The proposed transaction, if approved, would diminish,
18 in any way, the public utilities commission's current
19 regulatory authority over a public utility,
20 particularly if the ultimate control of the public
21 utility will reside outside of the State;



1 (4) The financial size of the transferor or assignor
2 relative to the transferee or assignee would result in
3 a diminution of regulatory control by the public
4 utilities commission;

5 (5) The transferee or assignee has been subject to
6 compliance or enforcement orders issued by any
7 regulatory agency or court; and

8 (6) Any conditions are necessary to ensure that the
9 proposed transaction is not detrimental to the
10 interests of the public utility's ratepayers or the
11 State and to avoid any adverse consequences and, if
12 so, what conditions are necessary."

13 SECTION 3. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on January 1, 2017.



Report Title:

Public Utilities Commission; Merger

Description:

Establishes "substantial net benefit" as the Public Utilities Commission's standard for a transfer or assignment of an electric utility and specifies certain guidelines to address when examining whether a substantial net benefit exists.
(HB2567 HD1)

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