
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 legislature finds that because the NextEra proceedings
5 began with a proposal for takeover under a status quo "no net
6 harm" standard, the public utilities commission proceedings
7 lasted an extended eighteen months as intervenors, the consumer
8 advocate, and commissioners negotiated toward a standard of
9 substantial public benefit. This cost nearly \$700,000 in
10 consultant fees at the public utilities commission, considerable
11 staff time, and significantly delayed other pending dockets,
12 delaying electric bill savings for consumers. Instead,
13 beginning future merger proceedings under a standard of
14 substantial net benefit may help prospective utilities produce a
15 viable deal better in line with consumer interests and save
16 significant time and cost, and will ensure the interests of the
17 people are made a priority.

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



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

3 "§269-19 Merger and consolidation of public utilities.

4 (a) Except as provided in subsection (b), no public utility
5 shall sell, lease, assign, mortgage, or otherwise dispose of or
6 encumber the whole or any part of its road, line, plant, system,
7 or other property necessary or useful in the performance of its
8 duties to the public, or any franchise or permit, or any right
9 thereunder, nor by any means, directly or indirectly, merge or
10 consolidate with any other public utility without first having
11 secured from the public utilities commission an order
12 authorizing it so to do. Every [~~such~~] sale, lease, assignment,
13 mortgage, disposition, encumbrance, merger, or consolidation[7]
14 made other than in accordance with the order of the commission
15 shall be void.

16 (b) A public utility, under circumstances that it deems
17 exigent and in its judgment require a response that rapidly
18 restores one of its customers to normal, or near normal,
19 operating status in order to prevent serious disruption of
20 essential public services, or to avoid serious risk to public
21 safety, or to mitigate severe economic losses to that customer,



1 may transfer, assign, or otherwise dispose of its property
2 without prior approval from the public utilities commission as
3 required in subsection (a); provided that in so doing:

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

7 (2) The public utility is duly compensated for its
8 property; and

9 (3) The public utility reports in detail to the public
10 utilities commission within thirty days of any [~~such~~
11 ~~action~~] transfer, assignment, or other disposal of
12 property, unless otherwise approved by the public
13 utilities commission for good cause shown.

14 For purposes of this subsection, "property" does not
15 include real property.

16 (c) The specific standard for the public utilities
17 commission to consider in the transfer or assignment of an
18 electric utility shall be substantial net benefit. The public
19 utilities commission may establish reasonable criteria for
20 specific mergers.



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

3 (1) The proposed transaction is in the public interest,
4 including whether:

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

8 (B) The proposed transaction, if approved, would
9 provide significant, quantifiable benefits to the
10 public utility's ratepayers in both the short-
11 and long-term beyond those proposed by the public
12 utility in recent regulatory filing;

13 (C) The proposed transaction, if approved, would
14 impact the ability of the public utility
15 company's employees to provide safe, adequate,
16 and reliable service;

17 (D) The financing and corporate restructuring
18 proposed in the application is reasonable;

19 (E) Adequate safeguards exist to prevent cross
20 subsidization of any proposed affiliates and to
21 ensure the public utilities commission's ability



- 1 to audit the books and records of the public
2 utility, including affiliate transactions;
- 3 (F) Adequate safeguards exist to protect the public
4 utility's ratepayers from any business and
5 financial risks associated with the operations of
6 the transferee or assignee;
- 7 (G) The proposed transaction, if approved, would
8 enhance or detrimentally impact the State's clean
9 energy goals; and
- 10 (H) The proposed transaction, if approved, would
11 potentially diminish competition in Hawaii's
12 various energy markets and, if so, what
13 regulatory safeguards are required to mitigate
14 any adverse impacts;
- 15 (2) The applicants are fit, willing, and able to properly
16 provide safe, adequate, reliable electric service at
17 the lowest reasonable cost in both the short- and the
18 long-term, including whether the proposed transaction,
19 if approved, would:
- 20 (A) Result in more affordable electric rates for the
21 public utility's ratepayers;



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- 1 (B) Result in an improvement in service and
2 reliability for the ratepayers of the public
3 utility;
- 4 (C) Improve the public utility's management and
5 performance; and
- 6 (D) Improve the financial soundness of the public
7 utility;
- 8 (3) The proposed transaction, if approved, would in any
9 way diminish the public utilities commission's current
10 regulatory authority over a public utility,
11 particularly if the ultimate control of the public
12 utility would reside outside of the State;
- 13 (4) The financial size of the transferor or assignor
14 relative to the transferee or assignee would result in
15 a diminution of regulatory control by the public
16 utilities commission;
- 17 (5) The transferee or assignee has been subject to
18 compliance or enforcement orders issued by any
19 regulatory agency or court; and
- 20 (6) Any conditions are necessary to ensure that the
21 proposed transaction is not detrimental to the



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1 interests of the public utility's ratepayers or the
 2 State and to avoid any adverse consequences and, if
 3 so, what conditions are necessary."

4 SECTION 3. Statutory material to be repealed is bracketed
 5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect on January 1, 2018.
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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.

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