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**SENATE BILL 5807**

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**State of Washington**

**55th Legislature**

**1997 Regular Session**

**By Senator Swanson**

Read first time 02/13/97. Referred to Committee on Energy & Utilities.

1 AN ACT Relating to the regulation of mergers, restructurings, and  
2 acquisitions of certain public utility suppliers by the utilities and  
3 transportation commission; amending RCW 80.04.160 and 80.04.095; adding  
4 new sections to chapter 80.04 RCW; adding a new section to chapter  
5 42.17 RCW; and creating a new section.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the rapid  
8 pace of technological changes and business changes, such as corporate  
9 mergers, restructuring, and acquisitions, in the electricity industry  
10 coupled with the everchanging state, regional, and federal regulatory  
11 constraints and policy issues that affect the electricity industry  
12 require that statutes and regulations be created, revised, or repealed  
13 on an ongoing basis. The legislature declares that all interested  
14 parties, including but not limited to employees, ratepayers, and  
15 shareholders, should be included in this review process.

16 (2) When addressing the evolving electricity industry, it is the  
17 intent of the legislature that:

18 (a) Where electricity service can be made available at affordable  
19 prices established through competition that is both efficient and that

1 treats all customers fairly, competition should be accommodated and  
2 encouraged;

3 (b) The long-term integrity, safety, reliability, and quality of  
4 the bulk electric system and retail electricity service should not be  
5 jeopardized;

6 (c) Consumers should be afforded a broad range of choice in  
7 electricity service and pricing options, but not at the loss of  
8 reasonably priced and reliable service;

9 (d) Creating an advantage or imposing a disadvantage upon any group  
10 of competitors, or inhibiting the organic evolution of efficient  
11 markets, should be avoided; and

12 (e) Protecting consumers by establishing fair prices free from  
13 monopoly abuse should continue to be balanced with the opportunity for  
14 shareholders to earn fair returns. When justified by the public  
15 interest, regulatory policy should seek flexible ways to reduce both  
16 shareholder and ratepayer exposure to potentially stranded costs.  
17 However, regulation cannot and should not be expected to guarantee  
18 utilities will, in all circumstances, be made entirely whole for  
19 generation or other costs that are determined through actual and fair  
20 competition to be stranded or uneconomic.

21 **Sec. 2.** RCW 80.04.160 and 1961 c 14 s 80.04.160 are each amended  
22 to read as follows:

23 The commission is hereby authorized and empowered to adopt(~~(~~  
24 ~~promulgate~~~~—~~~~and~~~~—~~~~issue~~~~))~~ rules (~~(and~~~~—~~~~regulations~~~~))~~) covering the  
25 transmission and delivery of messages and conversations, and the  
26 furnishing and supply of gas, electricity, and water, and any and all  
27 services concerning the same, or connected therewith; and generally  
28 such rules as pertain to the comfort and convenience of the public and  
29 with regard to gas and electricity companies the encouragement of  
30 fairness through business competition, concerning the subjects treated  
31 of in this title. Such rules (~~(and~~~~—~~~~regulations~~~~))~~) shall be  
32 (~~(promulgated~~~~—~~~~and~~~~—~~~~issued~~~~))~~) adopted by the commission on its own motion,  
33 and shall be served on the public service company affected thereby as  
34 other orders of the commission are served. Any public service company  
35 affected thereby, and deeming such rules (~~(and~~~~—~~~~regulations~~~~,~~~~—~~~~or~~~~—~~~~any~~~~—~~~~of~~~~—~~~~them~~~~,~~~~)~~) improper, unjust, unreasonable, or contrary to law, may within  
37 twenty days from the date of service of such order upon it file  
38 objections thereto with the commission, specifying the particular

1 grounds of such objections. The commission shall, upon receipt of such  
2 objections, fix a time and place for hearing the same, and after a full  
3 hearing may make such changes or modifications thereto, if any, as the  
4 evidence may justify. The commission shall have, and it is hereby  
5 given, power to adopt rules to govern its proceedings, and to regulate  
6 the mode and manner of all investigations and hearings: PROVIDED, No  
7 person desiring to be present at such hearing shall be denied  
8 permission. Actions may be instituted to review rules (~~and~~  
9 ~~regulations promulgated~~) adopted under this section as in the case of  
10 orders of the commission.

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 80.04 RCW  
12 to read as follows:

13 (1) For the purposes of this section and section 4 of this act,  
14 "public utility supplier" means electrical companies and gas companies.

15 (2) The commission shall establish, by rule, the definitions of  
16 "merger," "restructuring," and "acquisition" or any change in corporate  
17 status that results in a change of the corporate entity that controls  
18 the business activities of a public utility supplier.

19 (3)(a) A public utility supplier, its affiliate or subsidiary, or  
20 a corporation with a controlling interest in a public utility supplier  
21 may not, through merger, restructuring, or acquisition, take or hold  
22 any part of the capital stock of any other public utility supplier  
23 without the authorization of the commission. Before authorizing a  
24 merger, restructuring, or acquisition that includes any public utility  
25 supplier, the commission, based on information provided by the utility  
26 at the time the proposal is submitted, must find that the proposal  
27 meets all of the criteria under this subsection (3)(a) and that the  
28 requirements under (b) of this subsection have been established. The  
29 proposal must do all of the following:

30 (i) Provide short-term and long-term economic benefits to  
31 ratepayers;

32 (ii) Equitably allocate the total short-term and long-term  
33 forecasted economic benefits, as determined by the commission, of the  
34 proposed merger, restructuring, or acquisition between shareholders and  
35 ratepayers. Ratepayers shall receive not less than fifty percent of  
36 those benefits;

37 (iii) Not adversely affect competition;

1 (iv) Maintain or improve the financial condition of the resulting  
2 public utility supplier doing business in the state;

3 (v) Maintain or improve the quality of service to public utility  
4 supplier ratepayers in the state;

5 (vi) Maintain or improve the quality of management of the resulting  
6 public utility supplier doing business in the state;

7 (vii) Be fair and reasonable to affected public utility supplier  
8 employees, including both represented and nonrepresented employees;

9 (viii) Be fair and reasonable to the majority of all affected  
10 public utility supplier shareholders;

11 (ix) Be beneficial on an overall basis to state and local  
12 economies, and to the communities in the area served by the resulting  
13 public utility supplier;

14 (x) Preserve the jurisdiction of the commission and the capacity of  
15 the commission to effectively regulate and audit public utility  
16 supplier operations in the state; and

17 (xi) Provide mitigation measures to prevent significant adverse  
18 consequences which may result.

19 (b) In order to ensure that utility service continues in a safe and  
20 reliable manner, the commission shall establish by rule a means of  
21 determining and evaluating by objective, measurable criteria the  
22 following critical factors:

23 (i) Operations and maintenance budget levels;

24 (ii) System average interruption duration;

25 (iii) System average interruption frequency;

26 (iv) Reportable accident and incident rates under the occupational  
27 safety and health act and Washington industrial safety and health act;

28 (v) Impact on represented and nonrepresented employees; and

29 (vi) Long-term integrity, quality, safety, and reliability  
30 considerations of bulk and retail service.

31 (4) When reviewing a merger, restructuring, or acquisition the  
32 commission shall consider reasonable options to the proposal  
33 recommended by other parties, including no new merger, restructuring,  
34 or acquisition, to determine whether comparable short-term and long-  
35 term economic savings can be achieved through other means while  
36 avoiding the possible adverse consequences of the proposal.

37 (5) The commission may, after considering the criteria under  
38 subsections (3) and (4) of this section, modify or reject all or part  
39 of a proposed merger, restructuring, or acquisition by a public utility

1 supplier based upon a significant adverse impact to the quality of  
2 utility service provided.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 80.04 RCW  
4 to read as follows:

5 (1) Any public utility supplier or corporate entity regulated under  
6 section 3 of this act shall notify the commission at least ninety days  
7 prior to any reduction in work force that is the result of a proposed  
8 merger, restructuring, or acquisition or the result of implementing an  
9 already approved merger, restructuring, or acquisition. The commission  
10 must complete its review and grant its approval or disapproval within  
11 one hundred twenty days of receipt of notice. If approval is granted,  
12 the work force, including employees not subject to the reduction in  
13 work force, must be notified of the planned reduction at least ninety  
14 days prior to implementation.

15 (2) The commission may, after consideration of reduction of work  
16 force proposals, modify or reject all or part of a proposed merger,  
17 restructuring, or acquisition by a public utility supplier based upon  
18 a significant adverse impact to the quality of utility service  
19 provided.

20 **Sec. 5.** RCW 80.04.095 and 1987 c 107 s 1 are each amended to read  
21 as follows:

22 Records, subject to chapter 42.17 RCW, filed with the commission or  
23 the attorney general from any person which contain valuable commercial  
24 information, including trade secrets or confidential marketing, cost,  
25 or financial information(~~(τ or ε)~~); customer-specific usage and network  
26 configuration and design information((τ)); and any information  
27 concerning the merger, restructuring, or acquisition of a public  
28 utility supplier under sections 3 and 4 of this act shall not be  
29 subject to inspection or copying under chapter 42.17 RCW: (1) Until  
30 notice to the person or persons directly affected has been given; and  
31 (2) if, within ten days of the notice, the person has obtained a  
32 superior court order protecting the records as confidential. The court  
33 shall determine that the records are confidential and not subject to  
34 inspection and copying if disclosure would result in private loss,  
35 including an unfair competitive disadvantage. When providing  
36 information to the commission or the attorney general, a person shall  
37 designate which records or portions of records contain valuable

1 commercial information. Nothing in this section shall prevent the use  
2 of protective orders by the commission governing disclosure of  
3 proprietary or confidential information in contested proceedings.

4 NEW SECTION. **Sec. 6.** A new section is added to chapter 42.17 RCW  
5 to read as follows:

6 All records filed under chapter 80.04 RCW which contain valuable  
7 commercial information concerning the merger, restructuring, or  
8 acquisition of a public utility supplier under sections 3 and 4 of this  
9 act are exempt from disclosure under this chapter.

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