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LC03052
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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

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A N A C T

RELATING TO REGULATORY POWERS OF ADMINISTRATION

Introduced By: Representatives Fox, Kennedy, Almeida, Handy, and Slater

Date Introduced: May 17, 2006

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 39-3-25 of the General Laws in Chapter 39-3 entitled "Regulatory
2 Powers of Administration" is hereby amended to read as follows:

3 **39-3-25. Proceedings for approval of transactions between utilities. -- Approval of**
4 **transactions between utilities. --** (a) Legislative Findings. The legislature finds that mergers and
5 acquisitions by and between regulated public utilities have and will become more common,
6 especially with the recent repeal of the "Public Utility Holding Company Act of 1935" and
7 therefore it is necessary to clarify the meaning of the public interest in proceedings for approval
8 of such transactions. The legislature further finds that since dependable and affordable energy is
9 vitaly important to the health, safety and welfare of the people of Rhode Island, regulation of
10 transactions between public utilities is a valid exercise of the state's police power.

11 (b) Factors consistent with public policy. When deciding whether transactions between
12 utilities involving their purchase, sale or lease are consistent with the public interest, the division
13 shall consider the following factors:

14 (1) The effect upon competition;

15 (2) The effect upon rates to be paid by ratepayers affected by the transaction;

16 (3) The effect upon employees of the subject utility or utilities; and

17 (4) The effect on the provision of safe and adequate utility service at just and reasonable
18 rates.

19 (c) Approval requirements. Any approval of mergers and/or acquisitions under this

1 chapter or any other provision of the general laws shall be consistent with the public interest and
2 shall be conditioned on the following requirements:

3 (1) Restrictions on intracorporate and/or intercorporate transactions resulting in direct
4 charges or cost allocations to the local utility;

5 (2) Prohibitions on the local utility bearing merger transaction costs, transition costs or
6 other merger premiums;

7 (3) Imposition of performance standards as a condition in the determination of the local
8 utility's rates and revenues;

9 (4) Prohibitions on the use of utility revenues or assets as collateral for nonutility loans;

10 (5) Provisions to protect customer information;

11 (6) Requiring the return by the acquiring utility of a portion of expected merger or
12 acquisition benefits for public purposes including, but not limited to, low-income heating
13 assistance, energy efficiency and conservation programs, infrastructure improvements and
14 improvements to improve customer service;

15 (7) The imposition of general "ring fencing" measures including, but not limited to:

16 (i) Prohibiting inter-affiliate lending;

17 (ii) Adopting code-of-conduct restrictions to prevent anti-competitive and abusive
18 affiliate preferences and information sharing;

19 (iii) Adopting standards for pricing and personnel transactions between affiliates;

20 (iv) Prohibiting the transfer of skilled personnel to prevent draining the utility's talent
21 pool;

22 (v) Enacting regulatory control over dividends to the parent entity to prevent stripping of
23 value from the regulated utility;

24 (vi) Prohibiting the parent from putting the utility into voluntary bankruptcy;

25 (vii) State approval for any direct or indirect changes in ownership involving stock
26 transfers, bond indenture transfers, asset transfers or any encumbrances;

27 (viii) State approval for any diversification investments;

28 (ix) That the utility's cost of capital, whether debt or equity, would not be increased by
29 any action of the parent corporation or its affiliates;

30 (8) Development and implementation of a "net metering" program for all co-generation
31 facilities and a "smart metering" program to develop time-of-use rates;

32 (9) A requirement that the utility submit to annual financial and performance audits by an
33 independent outside firm or firms chosen by the auditor general;

34 (10) Imposition of any other conditions that the division deems necessary to protect the

1 public interest; and

2 (11) Comprehensive reporting and unrestricted access to any information deemed
3 necessary by the division to grant approval.

4 (d) Proceedings. The proceedings for obtaining the consent and approval of the division
5 for such authority shall be as follows:

6 (1) There shall be filed with the division a petition, joint or otherwise, as the case may be,
7 signed and verified by the president and secretary of the respective companies, clearly setting
8 forth the object and purposes desired, stating whether or not it is for the purchase, sale, lease, or
9 making of contracts or for any other purpose provided in section 39-3-24 ~~provided~~, and also the
10 terms and conditions of the same.

11 (2) The division shall upon the filing of the petition, ~~if it deem a hearing necessary~~, fix a
12 time and place for the hearing thereof. All hearings and any decision resulting therefrom shall be
13 stenographically recorded and all exhibits and other documents submitted shall be made part of
14 the record.

15 (3) If, after the hearing, ~~or, in case no hearing is required~~, the division is satisfied that the
16 prayer of the petition should be granted, that the facilities for furnishing service to the public will
17 not thereby be diminished, and that the purchase, sale, or lease and the terms thereof are
18 consistent with the public interest pursuant to subsections (b) and (c) of this section, it shall make
19 such order in the premises as it may deem proper and the circumstances may require.

20 (4) The division's order shall include findings of fact in relation to the factors listed in
21 subsections (b) and (c) of this section to ensure its consideration of such factors and to facilitate
22 any judicial review.

23 (5) The division shall have the authority to issue witness and document subpoenas
24 reasonably necessary to carry out its duties hereunder.

25 (e) Legislative report. The division shall file a report with the recording clerks of the
26 house of representatives and the senate by January 30th of each year commencing January 30,
27 2007, detailing each petition filed with the division in the previous calendar year. This report
28 shall include copies of each petition and any supporting documentation, as well as the
29 stenographic record, including exhibits and documents required pursuant to subdivision (d)(2),
30 which shall be the basis for review and hearing by the appropriate oversight committees.

1 SECTION 2. This act shall take effect upon passage and shall apply to all pending and
2 future proceedings for consent and approval of the division for transactions between utilities
3 subject to its jurisdiction.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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RELATING TO REGULATORY POWERS OF ADMINISTRATION

1 This act would set forth legislative findings and factors of public interest to be considered
2 by the division in approving the purchasing, sale or lease of public utilities. The division's order
3 would include findings relative to those public interest factors.

4 This act would take effect upon passage and would apply to all pending and future
5 proceedings for consent and approval of the division for transactions between utilities subject to
6 its jurisdiction.

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