

1 **SENATE FLOOR VERSION**

2 March 28, 2024

3 ENGROSSED HOUSE
4 BILL NO. 4065

By: Wallace and Munson of the
House

5 and

6 Paxton of the Senate

7
8 An Act relating to utilities; amending 17 O.S. 2021,
9 Sections 151, 158.50, 181, and 250, which relate to
10 definitions of terms; modifying definitions of public
and electric utilities; excluding certain entities
from certain definitions; declaring an emergency.

11
12 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

13 SECTION 1. AMENDATORY 17 O.S. 2021, Section 151, is
14 amended to read as follows:

15 Section 151. A. 1. The term "public utility" as used in
16 Sections 151 through 155 of this title, shall be taken to mean and
17 include every corporation, association, company, individuals, their
18 trustees, lessees, or receivers, successors or assigns, except as
19 hereinafter provided, and except cities, towns, or other bodies
20 politic, that now or hereafter may own, operate, or manage any plant
21 or equipment, or any part thereof, directly or indirectly, for
22 public use, or may supply any commodity to be furnished to the
23 public.

24 (a) For the conveyance of gas by pipeline.

- 1 (b) For the production, transmission, delivery or
2 furnishing of heat or light with gas.
- 3 (c) For the production, transmission, delivery or
4 furnishing electric current for light, heat or power.
- 5 (d) For the transportation, delivery or furnishing of
6 water for domestic purposes or for power. Provided
7 further that a corporation organized and existing not
8 for profit pursuant to Title 18 of the Oklahoma
9 Statutes, Sections 851-863, but for the purpose of
10 developing and providing rural water supply and sewage
11 disposal facilities to serve rural residents shall not
12 be declared a public utility under this act, and shall
13 be exempt in any and all respects from the
14 jurisdiction and control of the Corporation Commission
15 of this state.

16 2. The term "Commission" shall be taken to mean Corporation
17 Commission of Oklahoma.

18 B. Provided, ~~that, in:~~

19 1. In Washington County, where any corporation, association,
20 company, individuals, their trustees, lessees, or receivers,
21 successors or assigns, is engaged in the private business of
22 manufacturing any products other than those hereinbefore defined,
23 and in the manufacture of such products operate and maintain private
24 electric or water plants for its own power and electrical energy or

1 water used in its manufacturing plant, without the right of eminent
2 domain and without the use of streets, highways or public property,
3 it may contract upon terms and prices approved by Corporation
4 Commission the sale of a bona fide surplus of electrical energy or
5 water developed in such private plants to any public utility engaged
6 in manufacturing and distributing electrical energy in Washington
7 County, Oklahoma, without becoming a public utility. Provided
8 further any city or town within a county having a population of over
9 five hundred thousand (500,000) or any county having a population of
10 over five hundred thousand (500,000), according to the 1970 Federal
11 Census, which is a beneficiary of a public trust that has multiple
12 beneficiaries and that includes within any or all of its boundaries
13 a water supply and/or distribution system, or any portion thereof,
14 shall have the authority to condemn all or any portion of any water
15 supply and/or distribution system owned and/or operated and/or
16 leased by a public trust within the limits of the condemning city or
17 town or within the unincorporated areas of the condemning county;
18 provided the power granted hereunder shall not be exercised until
19 the condemning city, town or county shall have made provision to pay
20 off all outstanding bonded indebtedness incurred by the public
21 trust, including interest on the bonds to maturity of the bonds, or
22 first call date, and premium, if any, to which the property to be
23 condemned or the revenues therefrom has been pledged for security.

24

1 2. The term "public utility" shall not include or be taken to
2 mean a corporation, association, company, individuals, their
3 trustees, lessees, receivers, successors, or assigns engaged in the
4 production of green hydrogen, provided that such entity furnishes an
5 electric service or commodity only to itself, an affiliate, or
6 tenants solely engaged in the production of green hydrogen on the
7 premises, so long as that service or commodity is not resold as
8 retail electric service. Nothing herein shall relieve such an
9 entity of its obligation to comply with state and federal grid
10 interconnection and registration requirements and associated costs
11 from the applicable regional transmission organization or public
12 utility in the state, nor shall it limit any party from asserting a
13 right they may otherwise be entitled to under Oklahoma law.

14 SECTION 2. AMENDATORY 17 O.S. 2021, Section 158.50, is
15 amended to read as follows:

16 Section 158.50 1. "Acquiring party" means a person and all
17 affiliates thereof by whom or on whose behalf an acquisition of
18 control referred to in Section ~~2~~ 158.51 of this ~~act~~ title is to be
19 effected;

20 2. "Affiliate" means a person who directly, or indirectly
21 through one or more intermediaries, controls, or is controlled by or
22 is under common control with the person specified including any
23 corporation created at the direction of the person specified for
24 purposes of corporate reorganization;

1 3. "Commission" means the Oklahoma Corporation Commission;

2 4. "Control" (including the terms "controlling", "controlled
3 by", and "under common control with") means the possession, direct
4 or indirect, of the power to direct or cause the direction of the
5 management and policies of a person, whether through the ownership,
6 by contract, purchase of assets, or otherwise, unless such power is
7 the result of an official position with, or corporate office held
8 in, such person. Control shall be presumed to exist if any person,
9 directly or indirectly, owns or controls the assets of such rural
10 electric cooperative. This presumption may be rebutted by showing
11 that control does not exist in fact. The Commission may determine,
12 after furnishing all persons in interest notice and opportunity to
13 be heard and making specific findings of fact to support such
14 determination, that control exists in fact, notwithstanding the
15 absence of a presumption to that effect;

16 5. "Domestic public utility" means a person doing business in
17 the state, including any other person controlling such a domestic
18 public utility, any substantial portion of the revenues of which,
19 either directly or indirectly, are derived from the business of
20 providing utility service in this state, except that such term does
21 not include agencies, authorities or instrumentalities of the United
22 States or a state or political subdivision of a state;

23 6. "Person" means an individual, a corporation, a partnership,
24 an association, a joint stock company, a trust, an unincorporated

1 organization, any similar entity or any combination of the foregoing
2 acting in concert, but shall not include any securities broker
3 performing no more than the usual and customary broker's function;

4 7. "Rural electric cooperative" means a person doing business
5 in the state, pursuant to Section 437.1 et seq. of Title 18 of the
6 Oklahoma Statutes;

7 8. "Utility service" means the distribution, delivery or
8 furnishing of electric current for sale to the public for light,
9 heat or power, provided that such term shall not include entities as
10 described by the provisions of paragraph 2 of subsection B of
11 Section 151 of this title;

12 9. "Assets" in the case of a rural electric cooperative means
13 the physical plant, equipment, accounts receivable, accounts
14 payable, capital credits and all other assets of such rural electric
15 cooperative.

16 SECTION 3. AMENDATORY 17 O.S. 2021, Section 181, is
17 amended to read as follows:

18 Section 181. In this act unless the context otherwise requires:

19 (1) "Public utility" means and embraces every corporation
20 organized or doing business in this state, (except a
21 municipal corporation or other political subdivision
22 of this state), that now owns or hereafter may own,
23 operate or manage any plant or equipment for the
24 manufacture, production, transmission, delivery or of

1 furnishing electric current for light, heat or power
2 for public use in this state, provided that such term
3 shall not include entities as described by the
4 provisions of paragraph 2 of subsection B of Section
5 151 of this title.

6 (2) "Commission" means the Corporation Commission of the
7 State of Oklahoma.

8 (3) "Securities" means capital stock and evidences of
9 indebtedness having the standing of negotiable
10 instruments of a public utility, not including,
11 however, any such obligation falling due twelve (12)
12 months or less after its issuance.

13 SECTION 4. AMENDATORY 17 O.S. 2021, Section 250, is
14 amended to read as follows:

15 Section 250. As used in this act:

16 1. "Affiliated person, subsidiary, firm or corporation" means
17 any person, subsidiary, firm or corporation which:

- 18 a. controls or is controlled by a public utility,
- 19 b. is controlled by an entity that also controls the
20 utility, or
- 21 c. the utility or an entity controlling the utility has
22 directly or indirectly the power to control;

23 2. "Commission" means any state regulatory body which has
24 jurisdiction to regulate public utilities or electric cooperatives;

1 3. "Emergency sales of gas" mean sales of natural gas made by a
2 public utility or subsidiary thereof to one or more interstate
3 pipelines or other out-of-state customer pursuant to federal law
4 which exempts such transactions from the jurisdiction of the Federal
5 Power Commission;

6 4. "Fair field price" means the value attributed to gas
7 produced from wells owned by a public utility, or a subsidiary or
8 affiliate of a public utility, which shall be the going price paid
9 by the utility, subsidiary or affiliate to others in the field where
10 such production is located. If the utility, subsidiary or affiliate
11 is not purchasing gas in such field, then such value shall be the
12 price paid by the utility, subsidiary or affiliate in the nearest
13 field where conditions are similar. The value to be attributed to
14 residue gas owned by a public utility, or a subsidiary or affiliate
15 of a public utility, from gas processing plants shall be the going
16 price paid by the utility, subsidiary or affiliate to others from
17 the same plant. If the utility, subsidiary or affiliate is not
18 purchasing gas from said plant, then the value shall be the price
19 paid by the utility, subsidiary or affiliate at the nearest plant
20 where conditions are similar. However, the Commission may require
21 an adjustment of the fair field price when it deems it proper to do
22 so based on information before it. The fair field price shall not
23 be applicable to gas purchased by a public utility from a subsidiary

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1 or affiliate of a public utility pursuant to a competitive bid
2 process;

3 5. "Fuel adjustment clause" means any mechanism which allows a
4 public utility or electric generating cooperative to automatically
5 adjust its charges above or below the base amount included in its
6 rates, based upon changes in costs of fuel for generation of
7 electricity, purchased power or purchased gas;

8 6. "Heat rate" means a measure of the efficiency of an electric
9 generating station, computed by dividing the total British Thermal
10 Unit content of the fuel burned by the resulting net kilowatt-hours
11 generated;

12 7. "Line loss" means the kilowatt-hours of electricity lost in
13 the operation of an electric transmission or distribution system;

14 8. "Public utility" or "utility" means any individual, firm,
15 association, partnership, corporation, or any combination thereof,
16 other than a municipal corporation or their lessees, trustees and
17 receivers, owning or operating for compensation in this state
18 equipment or facilities for:

19 a. producing, generating, transmitting, distributing,
20 selling or furnishing electricity, or

21 b. transmitting, directly or indirectly, or distributing
22 combustible hydrocarbon natural or synthetic natural
23 gas for sale to the public or for wholesale, unless
24 its wholesale rates are regulated by a federal agency,

1 provided that such term shall not include entities as
2 described by the provisions of paragraph 2 of
3 subsection B of Section 151 of this title; and

4 9. "Purchased power adjustment clause" means any mechanism
5 which allows an electric public utility or electric distribution
6 cooperative to adjust its charges above or below the base amount
7 included in its rates based upon changes in costs of wholesale power
8 purchased from others.

9 SECTION 5. It being immediately necessary for the preservation
10 of the public peace, health or safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON ENERGY AND TELECOMMUNICATIONS
14 March 28, 2024 - DO PASS
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