

# State of South Dakota

EIGHTY-SECOND SESSION  
LEGISLATIVE ASSEMBLY, 2007

400N0295

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 25** - 02/02/2007

Introduced by: The Committee on State Affairs at the request of the Public Utilities  
Commission

1 FOR AN ACT ENTITLED, An Act to revise certain requirements regarding the ability of the  
2 Public Utilities Commission to regulate the sale or other disposition of the property, plant,  
3 business, or stock of electric or gas public utilities.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 49-34A-35 be amended to read as follows:

6 49-34A-35. ~~No public utility shall sell, lease or otherwise dispose of its property or business~~  
7 ~~constituting an operating unit or system in this state to another public utility or purchase the~~  
8 ~~property or business constituting an operating unit or system in this state to another public utility~~  
9 ~~or merge or consolidate with another public utility operating in this state, without first being~~  
10 ~~authorized to do so by the Public Utilities Commission; provided, that in the event such sale,~~  
11 ~~lease or other disposition of the property or business of one public utility to another public~~  
12 ~~utility does not involve a sale, lease or disposition wherein the actual consideration exceeds two~~  
13 ~~hundred thousand dollars, such sale, lease or disposition shall not be subject to the provisions~~  
14 ~~of this section~~ No public utility, without first being authorized to do so by the commission, may:

15 (1) Sell, lease, or otherwise dispose of its property or business constituting an operating



1 unit or system in this state to another person;

2 (2) Sell, lease, or otherwise dispose of its operating property or plant used to provide gas  
3 or electric service to its customers in this state to another person;

4 (3) Purchase the property or business constituting an operating unit or system in this state  
5 of another public utility; or

6 (4) Merge or consolidate with another public utility operating in this state.

7 However, if the sale, lease, merger, consolidation, or other disposition of the property or  
8 business of one public utility to another person, as provided in subdivisions (1) to (4), inclusive,  
9 does not involve a sale, lease, merger, consolidation, or disposition wherein the fair market  
10 value exceeds ten million dollars, the sale, lease, merger, consolidation, or disposition is not  
11 subject to the restrictions of this section.

12 No person may acquire or gain control either directly or indirectly of any public utility doing  
13 business in this state that has a fair market value exceeding ten million dollars without the  
14 commission's prior authorization. As used in this section, the term, control, means the right to  
15 direct or cause the direction of the management and policies of the public utility, whether  
16 through the ownership of voting securities, by contract, or otherwise.

17 Section 2. That § 49-34A-36 be amended to read as follows:

18 49-34A-36. Upon the filing of an application for the approval ~~and consent~~ of the ~~Public~~  
19 ~~Utilities Commission~~ commission to an action described in § 49-34A-35, the commission shall  
20 investigate the ~~same~~ application, with or without public hearing, and in case of a public hearing,  
21 upon such notice as the commission may require, ~~and if it shall find that the proposed action is~~  
22 ~~consistent with the public interests it shall give its consent and approval in writing. In reaching~~  
23 ~~its determination, the commission shall take into consideration the reasonable value of the~~  
24 ~~property, plant, equipment or securities to be acquired or disposed of or merged and~~

1 ~~consolidated. The commission shall act on the application within one hundred eighty days and~~  
2 ~~shall approve the proposed action unless the commission finds that there is a likelihood of~~  
3 ~~significant adverse impacts to customers in this state.~~

4 Section 3. That § 49-34A-37 be amended to read as follows:

5 49-34A-37. No public utility subject to the jurisdiction of the ~~Public Utilities Commission~~  
6 commission may purchase voting stock in another public utility doing business in South Dakota  
7 without first having made application to and received the ~~consent~~ approval of the commission  
8 ~~in writing or by order within the time and in the manner provide in section 2 of this Act.~~ An  
9 intentional violation of this section is a petty offense. After the first judgment, each day's  
10 violation is a separate offense.

11 Section 4. That § 49-34A-38 be repealed.

12 ~~—49-34A-38. The provisions of §§ 49-34A-35 to 49-34A-37, inclusive, shall not apply to any~~  
13 ~~transaction which is subject to the jurisdiction of a federal agency or authority.~~

14 Section 5. That § 49-34A-38.1 be repealed.

15 ~~—49-34A-38.1. Notwithstanding the provisions of §§ 49-34A-35 to 49-34A-38, inclusive, no~~  
16 ~~person may acquire or control either directly or indirectly more than ten percent of the total~~  
17 ~~capital stock of any public utility organized and doing business in this state or of any public~~  
18 ~~utility organized under the laws of any other state receiving more than twenty-five percent of~~  
19 ~~its gross revenue in this state without first securing authorization to do so from the Public~~  
20 ~~Utilities Commission. Any such acquisition or control without the commission's prior~~  
21 ~~authorization is void.~~