



# Senate

General Assembly

**File No. 428**

February Session, 2012

Substitute Senate Bill No. 416

*Senate, April 16, 2012*

The Committee on Energy and Technology reported through SEN. FONFARA of the 1st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING MERGERS AND ACQUISITIONS OF THE HOLDING COMPANIES OF CERTAIN PUBLIC UTILITY COMPANIES.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16-47 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) As used in this section and section 16-47a, (1) "holding company"  
4 means any corporation, association, partnership, trust or similar  
5 organization, or person which, either alone or in conjunction and  
6 pursuant to an arrangement or understanding with one or more other  
7 corporations, associations, partnerships, trusts or similar  
8 organizations, or persons, directly or indirectly, controls a gas, electric,  
9 electric distribution, water, telephone or community antenna television  
10 company, and (2) "control" means the possession of the power to direct  
11 or cause the direction of the management and policies of a gas, electric,  
12 electric distribution, water, telephone or community antenna television  
13 company or a holding company, whether through the ownership of its

14 voting securities, the ability to effect a change in the composition of its  
15 board of directors or otherwise, provided, control shall not be deemed  
16 to arise solely from a revocable proxy or consent given to a person in  
17 response to a public proxy or consent solicitation made pursuant to  
18 and in accordance with the applicable rules and regulations of the  
19 Securities Exchange Act of 1934 unless a participant in said solicitation  
20 has announced an intention to effect a merger or consolidation with,  
21 reorganization, or other business combination or extraordinary  
22 transaction involving the gas, electric, electric distribution, water,  
23 telephone or community antenna television company or the holding  
24 company. Control shall be presumed to exist if a person directly or  
25 indirectly owns ten per cent or more of the voting securities of a gas,  
26 electric, electric distribution, water, telephone or community antenna  
27 television company or a holding company, provided the authority may  
28 determine, after conducting a hearing, that said presumption of control  
29 has been rebutted by a showing that such ownership does not in fact  
30 confer control.

31 (b) No gas, electric, electric distribution, water, telephone or  
32 community antenna television company, or holding company, or any  
33 official, board or commission purporting to act under any  
34 governmental authority other than that of this state or of its divisions,  
35 municipal corporations or courts, shall interfere or attempt to interfere  
36 with or, directly or indirectly, exercise or attempt to exercise authority  
37 or control over any gas, electric, electric distribution, water, telephone  
38 or community antenna television company engaged in the business of  
39 supplying service within this state, or with or over any holding  
40 company doing the principal part of its business within this state,  
41 without first making written application to and obtaining the approval  
42 of the Public Utilities Regulatory Authority, except as the United States  
43 may properly regulate actual transactions in interstate commerce.

44 (c) No corporation, association, partnership, trust or similar  
45 organization, or person shall, without first making written application  
46 to and obtaining the approval of the authority (1) take any action that  
47 causes it to become a holding company with control over a gas,

48 electric, electric distribution, water, telephone or community antenna  
49 television company engaged in the business of supplying service  
50 within this state, [or] (2) acquire, directly or indirectly, control over  
51 such a holding company, [or] (3) enter into a merger or acquisition that  
52 would cause its shareholders to own at least ten per cent of the shares  
53 of such a holding company, provided the authority determines that  
54 such merger or acquisition would have a positive or negative  
55 measurable impact on ratepayers within this state, or (4) take any  
56 action that would if successful cause it to become or to acquire control  
57 over such a holding company. [, without first making written  
58 application to and obtaining the approval of the authority.] Any such  
59 corporation, association, partnership, trust or similar organization, or  
60 person applying to the authority for such approval shall pay the  
61 reasonable expenses incurred by the authority in carrying out its duties  
62 under this subsection, and accordingly, shall deposit with the  
63 authority a bond, executed by a surety company authorized to do  
64 business in this state, in the amount of fifty thousand dollars,  
65 conditioned to indemnify the authority for such expenses.

66 (d) The Public Utilities Regulatory Authority shall investigate and  
67 hold a public hearing on the question of granting its approval with  
68 respect to any application made under subsection (b) or (c) of this  
69 section. [and thereafter may approve or disapprove any such  
70 application in whole or in part and upon such terms and conditions as  
71 it deems necessary or appropriate.] In connection with its  
72 investigation, the authority may request the views of the gas, electric,  
73 electric distribution, water, telephone or community antenna television  
74 company or holding company which is the subject of the application  
75 with respect to the proposed acquisition or merger. After the filing of  
76 an application satisfying the requirements of such regulations as the  
77 authority may adopt in accordance with the provisions of chapter 54,  
78 but not later than thirty business days after the filing of such  
79 application, the authority shall give prompt notice of the public  
80 hearing to the person required to file the application and to the subject  
81 company or holding company. Such hearing shall be commenced as  
82 promptly as practicable after the filing of the application, but not later

83 than thirty business days after the filing, and the authority shall make  
84 its determination as soon as practicable, but not later than one hundred  
85 twenty days after the filing of the application unless the person  
86 required to file the application agrees to an extension of time. The  
87 authority may, in its discretion, grant the subject company or holding  
88 company the opportunity to participate in the hearing by presenting  
89 evidence and oral and written argument. If the authority fails to give  
90 notice of its determination to hold a hearing, commence the hearing, or  
91 render its determination after the hearing within the time limits  
92 specified in this subdivision, the proposed acquisition or merger shall  
93 be deemed approved. In each proceeding on a written application  
94 submitted under said subsection (b) or (c), the authority shall, in a  
95 manner which treats all parties to the proceeding on an equal basis,  
96 take into consideration (1) the financial, technological and managerial  
97 suitability and responsibility of the applicant, (2) the ability of the gas,  
98 electric, electric distribution, water, telephone or community antenna  
99 television company or holding company which is the subject of the  
100 application to provide safe, adequate and reliable service to the public  
101 through the company's plant, equipment and manner of operation if  
102 the application were to be approved, and (3) for an application  
103 concerning a telephone company, the effect of approval on the location  
104 and accessibility of management and operations and on the proportion  
105 and number of state resident employees. The authority may approve  
106 or disapprove any application made under subsection (b) or (c) of this  
107 section in whole or in part and upon such terms and conditions as it  
108 deems necessary or appropriate, provided the authority shall not  
109 approve any such application unless the applicant sufficiently  
110 demonstrates to the authority that approval of such application will  
111 not (A) negatively impact employment in the state over the next five  
112 years, (B) lead to any rate increase for any customer or ratepayer of  
113 any gas, electric, electric distribution, water, telephone or community  
114 antenna television company or holding company which is the subject  
115 of the application over the next five years, (C) lead to a decrease in  
116 accountability or diminished customer service by such company to any  
117 such customer or ratepayer, (D) negatively impact such company's

118 ability to ensure the reliability of its service, or (E) negatively impact  
119 such company's ability to prevent, minimize or restore any long-term  
120 service outage or disruption caused by any emergency. The authority  
121 shall not approve any such application to enter into any merger or  
122 acquisition made pursuant to subsection (c) of this section before the  
123 authority determines that approval of such application will provide a  
124 benefit to Connecticut ratepayers at least as great as any benefit  
125 conferred on the ratepayers of any other state by any regulatory  
126 approval or agreement concerning such merger or acquisition.

127 (e) During any proceeding under subsection (b) or (c) of this section,  
128 the authority may order any party to such proceeding and the officers,  
129 directors, employees and agents of such party to refrain for a specific  
130 time period from communicating, directly or indirectly, with the  
131 record and beneficial owners of securities of the gas, electric, electric  
132 distribution, water, telephone or community antenna television  
133 company or holding company which is the subject of such  
134 proceedings, in regard to the matters submitted to the authority for its  
135 approval under said subsection (b) or (c). If the authority issues such  
136 an order, it shall also order all other parties to the proceeding and the  
137 officers, directors, employees and agents of such parties to refrain for  
138 the same time period from communicating, directly or indirectly, with  
139 such record and beneficial owners of such securities, in regard to such  
140 matters. No order issued pursuant to this subsection shall prohibit any  
141 party from complying with disclosure and reporting obligations under  
142 any other provision of the general statutes or under federal law.

143 (f) Each holding company shall, not later than three months after the  
144 close of its fiscal year, annually, file with the authority a copy of its  
145 annual report to stockholders for such fiscal year. If the holding  
146 company does not print such an annual report, it shall file instead, not  
147 later than the same date, a comprehensive audit and report of its  
148 accounts and operations prepared by an independent public  
149 accounting firm approved by the authority. The provisions of this  
150 subsection shall not apply to any holding company in the form of a  
151 person.

152 (g) Any action contrary to the provisions of subsections (b) or (c) of  
153 this section shall be voidable on order of the authority.

154 (h) Whenever any corporation, association, partnership, trust or  
155 similar organization, or person takes or engages in any action which  
156 may or would violate subsection (b) or (c) of this section or any order  
157 adopted pursuant to said subsection (b) or (c), the Superior Court,  
158 upon application of the authority or any holding company or gas,  
159 electric, electric distribution, water, telephone or community antenna  
160 television company affected by such action, may enjoin any such  
161 corporation, association, partnership, trust or similar organization, or  
162 person from continuing or doing any act in violation of said subsection  
163 (b) or (c) or may otherwise enforce compliance with said subsection (b)  
164 or (c), including but not limited to, the reinstatement of authority or  
165 control over the holding company or gas, electric, electric distribution,  
166 water, telephone or community antenna television company or  
167 holding company to those persons who exercised authority or control  
168 over such company before such action.

169 (i) The provisions of this section shall not be construed to require  
170 any person to make written application to or obtain the approval of the  
171 authority with respect to any telephone company or holding company  
172 of a telephone company over which such person exercises authority or  
173 control or operates as a holding company on June 30, 1987.

174 (j) Not later than one year after the authority approves any  
175 application made under subsection (b) or (c) of this section, and  
176 annually thereafter for five years, the applicant of such application  
177 shall report to the authority on matters concerning the impact of the  
178 approval of such application on the operations of any gas, electric,  
179 electric distribution, water, telephone or community antenna television  
180 company or holding company which was the subject of the application  
181 including, but not limited to, the employment statistics of such  
182 company, service rates for any customer or ratepayer of such company  
183 and issues concerning customer service, the ability of such company to  
184 ensure the reliability of its service and the ability of such company to

185 prevent, minimize or restore any long-term service outage or  
186 disruption caused by any emergency.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	16-47

**ET**      *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note******State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill has no fiscal impact on the state or municipalities as it requires Public Utilities Regulatory Authority approval for certain private entities' mergers and acquisitions.

***The Out Years******State Impact:*** None***Municipal Impact:*** None



**OLR Bill Analysis****sSB 416****AN ACT CONCERNING MERGERS AND ACQUISITIONS OF THE HOLDING COMPANIES OF CERTAIN PUBLIC UTILITY COMPANIES.****SUMMARY:**

This bill broadens the circumstances under which a merger or acquisition involving a utility holding company requires the Public Utilities Regulatory Authority's (PURA) review and approval. (Northeast Utilities, the parent of Connecticut Light & Power, is an example of a utility holding company). It imposes additional conditions for PURA approval of such mergers or acquisitions and other transactions involving Connecticut utility companies and holding companies.

EFFECTIVE DATE: Upon passage

**TRANSACTIONS SUBJECT TO PURA REVIEW AND APPROVAL**

The law requires PURA review and approval when:

1. a utility company, holding company, or out-of-state agency (a) interferes with, (b) seeks to interfere with, or (c) exercises or seeks to exercise control over a Connecticut electric, gas, water, telephone, or cable TV company or holding company; or
2. any entity (a) takes actions that make it a holding company that controls a Connecticut utility; (b) acquires control over such a holding company; or (c) takes any action that, if successful, would make it a holding company or give it control over a holding company.

The bill additionally requires PURA review and approval if an entity enters into a merger or acquisition that PURA determines would

(1) have any measurable impact on the state's ratepayers and (2) cause the entity's shareholders to own at least 10% of the shares of a holding company that controls a Connecticut utility. The bill allows PURA to approve any of these transactions in whole or in part, and to impose any terms and conditions it deems necessary or appropriate.

### **TERMS AND CONDITIONS OF PURA APPROVAL**

The bill adds new conditions for PURA approval of any of the above transactions. It bars PURA from approving a transaction unless the applicant sufficiently demonstrates that approval will not

1. negatively impact employment in the state over the next five years,
2. lead to any rate increases over the next five years for any customer or ratepayer of any utility or holding company subject to the application (see COMMENT),
3. lead to a decrease in accountability or diminished customer service to any of the company's Connecticut customers or ratepayers,
4. harm the company's ability to ensure its service reliability, or
5. harm the company's ability to prevent, minimize, or restore any long-term service outage or disruption caused by an emergency.

Prior to approving mergers or acquisitions, the bill also requires PURA to determine that the transaction will provide a benefit to the state's ratepayers at least as great as any benefit conferred on the ratepayers of any other state by any other regulatory approval or agreement concerning the merger or acquisition.

### **REPORTING REQUIREMENT**

Within one year after PURA approves any of the above transactions, and annually thereafter for five years, the bill requires applicants to report to PURA on how the approval impacted any utility company or holding company that was the subject of the application. The report

must include the company's employment statistics; customer or ratepayer service rates; customer service issues; service reliability; and ability to prevent, minimize, or restore any long-term service outages or disruptions caused by emergencies.

## **COMMENT**

### ***Potential Rate Freeze***

As noted above, the bill bars PURA from approving a merger or other transaction unless the applicant demonstrates that the approval will not lead to any rate increase for any customer or ratepayer of any utility or holding company that is the subject of the application over the next five years. It is unclear how or if PURA can make this determination conclusively without imposing a rate freeze on the applying entity. State and federal law appear to preclude such rate freezes in several instances.

Federal law (47 U.S.C. § 521 et seq.) significantly restricts the ability of "franchising authorities" (PURA in Connecticut) to regulate cable TV rates. They can only regulate rates for basic service, i.e., the service tier that only includes over-the-air broadcasters and access channels. Even this authority ends once a cable company shows that it is subject to effective competition, as defined in federal law, as several Connecticut companies have. Moreover, PA 07-253 effectively deregulated the cable industry in Connecticut and ended PURA's ability to regulate rates altogether.

Federal law also:

1. bars states from regulating rates for telecommunications provided by voice over internet protocol (VOIP), e.g., AT&T's U-Verse service; and
2. requires states to allow electric companies to pass on transmission costs that have been approved by the Federal Energy Regulatory Commission.

Finally, under CGS § 16-19e and related federal law, utilities are

entitled to charge rates that allow them to recover costs that the relevant regulatory authority has determined were prudently incurred. To the extent that a company is unable to recover its costs for a time, the deferred amount becomes a “regulatory asset” (an IOU). The company is allowed to recover this amount later, plus interest.

**COMMITTEE ACTION**

Energy and Technology Committee

Joint Favorable Substitute

Yea 14 Nay 7 (03/28/2012)