S T A T E O F N E W Y O R K

4904

2009-2010 Regular Sessions

I N A S S E M B L Y

February 6, 2009

Introduced by M. of A. JEFFRIES -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to transfer of franchises or stocks

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 70 of the public service law, as amended by chapter 297 of the laws of 1989, is amended to read as follows:

S 70. Transfer of franchises or stocks. 1. No gas corporation or electric corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission. Notwithstanding the foregoing, any transfer or lease with an original cost of (a) less than one hundred thousand dollars proposed by a gas or electric corporation having annual gross revenues in excess of two hundred million dollars or (b) less than twenty-five thousand dollars proposed by a gas or electric corporation having annual gross revenues of less than two hundred million dollars shall be effective without the commission's written consent within ninety days after such corporation notifies the commission that it plans to complete the transfer or lease and submits a description of the transfer or lease[,]; provided, however, that the commission may determine within such ninety days after such notification and submission that the public interest requires its review and written consent.

2. The permission and approval of the commission, to the exercise of a franchise under section sixty-eight of this [chapter] ARTICLE, or to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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3. No [such] GAS CORPORATION OR ELECTRIC corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, in this state or any other state, or proposing to operate or operating under a franchise from the same or any other municipality, neither shall any street railroad corporation acquire the stock or bonds of any electric corporation, unless authorized so to do by the commission.

4. Save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission empowered by this chapter to give such consent, no stock corporation of any description, domestic or foreign, COMPANY, INCLUDING, BUT NOT LIMITED TO, A LIMITED LIABILITY COMPANY, ASSOCIATION, INCLUDING A JOINT STOCK ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED LIABILITY PARTNERSHIP, OR PERSON, other than a gas corporation or electric corporation or street railroad corporation, shall purchase or acquire, take or hold, more than ten per centum of the voting capital stock issued by any gas corporation or electric corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the voting capital stock of any gas corporation or electric corporation may with the consent of the commission acquire and hold the remainder of the voting capital stock of such gas corporation or electric corporation or any portion thereof. Provided, that with the consent of such commission and upon and subject to such terms and conditions as such commission may fix and impose, any such stock corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON may acquire, take and hold more than ten per centum of the voting capital stock of any gas corporation or electric corporation, organized or existing under or by virtue of the laws of this state.

5. No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest. Nothing herein contained shall be construed to prevent the holding of any stock heretofore lawfully acquired, nor to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged; but the proportion of the voting capital stock of the new corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON and acquired by it by any such surrender or exchange of stock shall not without the consent of the commission exceed the proportion of the voting capital stock held by it in the former corporation.

6. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such gas corporation, or electric corporation, or shall be recognized as effective for any purpose.

7. No consent, permission or approval otherwise required under this section shall be necessary for the sale of the franchise, works, system, stocks or bonds by a gas or electric corporation to a duly constituted authority of the state.

S 2. Section 83 of the public service law, as amended by chapter 787 of the laws of 1930, is amended to read as follows:

S 83. Transfer of franchises, property or stocks. 1. No steam corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corporation or contract for the operation of its works and system, without the written consent of the commission.

2. The permission and approval of the commission to the exercise of a franchise under section eighty-one of this [chapter] ARTICLE, or to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture.

3. No [such] STEAM corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality, unless authorized so to do by the commission.

4. Save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission, no stock corporation of any description, domestic or foreign, COMPANY, INCLUDING, BUT NOT LIMITED TO, A LIMITED LIABILITY COMPANY, ASSOCIATION, INCLUDING A JOINT STOCK ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED LIABILITY PARTNERSHIP, OR PERSON, other than a steam corporation, a street railroad corporation, a gas corporation, an electric corporation, or a gas and electric corporation, shall purchase or acquire, take or hold, more than ten per centum of the voting capital stock issued by any steam corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the voting capital stock of any steam corporation may with the consent of the commission acquire and hold the remainder of the voting capital stock of such steam corporation or any portion thereof.

5. No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest. Nothing herein contained shall be construed to prevent the holding of any stock heretofore lawfully acquired, nor to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged; but the proportion of the voting capital stock of the new corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON and acquired by it by any such surrender or exchange of stock shall not without the consent of the commission exceed the proportion of the voting capital stock held by it in the former corporation.

6. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON, in violation of any provision of this chapter, shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such steam-heating corporation, or shall be recognized as effective for any purpose.

S 3. Section 89-h of the public service law, as added by chapter 715 of the laws of 1931, is amended to read as follows:

S 89-h. Transfer of franchises or stocks. 1. No water-works corporation shall transfer or lease its franchise, works or system or any part of such franchise, works or system to any other person or corpo-

ration or contract for the operation of its works and system, without the written consent of the commission.

2. The permission and approval of the commission to the assignment, transfer or lease of a franchise under this section shall not be construed to revive or validate any lapsed or invalid franchise or to enlarge or add to the powers and privileges contained in the grant of any franchise or to waive any forfeiture.

3. No [such] WATER-WORKS corporation shall directly or indirectly acquire the stock or bonds of any other corporation incorporated for, or engaged in, the same or a similar business, or proposing to operate or operating under a franchise from the same or any other municipality, unless authorized so to do by the commission.

4. Save where stock shall be transferred or held for the purpose of collateral security only with the consent of the commission empowered by this chapter to give such consent, no stock corporation of any description, domestic or foreign, COMPANY, INCLUDING, BUT NOT LIMITED TO, A LIMITED LIABILITY COMPANY, ASSOCIATION, INCLUDING A JOINT STOCK ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED LIABILITY PARTNERSHIP, OR PERSON, other than a water-works corporation, shall purchase or acquire, take or hold, more than ten per centum of the voting capital stock issued by any water-works corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the voting capital stock of any water-works corporation may with the consent of the commission acquire and hold the remainder of the voting capital stock of such water-works corporation or any portion thereof. Provided, that with the consent of such commission and upon and subject to such terms and conditions as such commission may fix and impose, any such stock corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON may acquire, take and hold more than ten per centum of the voting capital stock of any water-works corporation, organized or existing under or by virtue of the laws of this state.

[2.] 5. No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest. Nothing contained in this section shall be construed to prevent the holding of any stock heretofore lawfully acquired, nor to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale, the property of any corporation whose stock has been thus surrendered or exchanged; but the proportion of the voting capital stock of the new corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON and acquired by it by any such surrender or exchange of stock shall not without the consent of the commission exceed the proportion of the voting capital stock held by it in the former corporation.

6. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON, in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such water-works corporation, or shall be recognized as effective for any purpose.

S 4. Section 100 of the public service law, as amended by chapter 446 of the laws of 1998, is amended to read as follows:

S 100. Transfer and ownership of stock. 1. No telegraph corporation or telephone corporation, domestic or foreign, shall hereafter purchase or acquire, take or hold any part of the capital stock of any telegraph

corporation or telephone corporation organized or existing under the laws of this state unless authorized so to do by the commission.

2. Save where stock shall be transferred or held for the purpose of collateral security, no stock corporation, domestic or foreign, COMPANY, INCLUDING, BUT NOT LIMITED TO, A LIMITED LIABILITY COMPANY, ASSOCIATION, INCLUDING A JOINT STOCK ASSOCIATION, PARTNERSHIP, INCLUDING A LIMITED LIABILITY PARTNERSHIP, OR PERSON, other than a telegraph corporation or telephone corporation, shall, without the consent of the commission, purchase or acquire, take or hold more than ten per centum of the voting capital stock issued by any telegraph corporation or telephone corporation organized or existing under or by virtue of the laws of this state. Any corporation now lawfully holding a majority of the voting capital stock of any telegraph corporation or telephone corporation may, without the consent of the commission, acquire and hold the remainder of the voting capital stock of such telegraph corporation or telephone corporation, or any portion thereof.

3. No consent shall be given by the commission to the acquisition of any stock in accordance with this section unless it shall have been shown that such acquisition is in the public interest; provided, however, that any such consent shall be deemed to be granted by the commission ninety days after such corporation applies to the commission for its consent, unless the commission, or its designee, determines and informs the applicant in writing within such ninety day period that the public interest requires the commission's review and its written consent. Nothing herein contained shall be construed to prevent the holding of any stock heretofore lawfully acquired, nor to prevent, upon the surrender or exchange of such stock pursuant to a reorganization plan, the purchase, acquisition, taking or holding of a proportionate amount of stock of any new corporation organized to take over, at foreclosure or other sale the property of any corporation whose stock has been thus surrendered or exchanged; but the proportion of the voting capital stock of the new corporation held by a stock corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON and acquired by it by any such surrender or exchange of stock shall not without the consent of the commission exceed the proportion of the voting capital stock held by it in the former corporation.

4. Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation, COMPANY, ASSOCIATION, PARTNERSHIP OR PERSON, in violation of any provision of this chapter shall be void and of no effect, and no such transfer or assignment shall be made upon the books of any such telegraph corporation or telephone corporation, or shall be recognized as effective for any purpose.

S 5. This act shall take effect immediately.