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July 1, 2020

Tory Lawless
Dockets Manager
Tennessee Public Utility Commission
502 Deaderick Street, Fourth Floor
Nashville, TN 37242

VIA E-MAIL AND U. S. MAIL

tpuc.docketroom@tn.gov

RE: Comments of Atmos Energy Corporation
Docket No. 20-00025

Dear Ms. Lawless:

Enclosed with this letter are the original and four copies of the following documents to be filed on behalf of Atmos Energy Corporation:

1. Comments of Atmos Energy Corporation with Exhibits 1 through 12;
2. Atmos Energy Corporation's Redlines to Proposed Rules.

Electronic copies of those documents have been provided by email.

Please let me know if you have any questions.

Sincerely,



Erik C. Lybeck

Enclosures

**BEFORE THE TENNESSEE PUBLIC UTILITY COMMISSION
NASHVILLE, TENNESSEE**

RULEMAKING PROCEEDING TO)	
PROMULGATE RULES FOR THE)	
EVALUATION OF UTILITY)	Docket No. 20-00025
ACQUISITIONS)	

COMMENTS OF ATMOS ENERGY CORPORATION

Pursuant to the Notice of Filing Comments issued by the Tennessee Public Utility Commission (the “Commission”) on February 27, 2020, Atmos Energy Corporation (“Atmos Energy” or the “Company”) respectfully submits these Comments on the proposed Rules for the Evaluation of Utility Acquisitions.

The Company welcomes the opportunity to submit the following Comments as part of the Commission’s efforts to establish rules regarding certain utility acquisitions. While these rules are presumably geared more in the direction of the purchase of smaller utility systems, the Company is also mindful that the rules as currently written also affect any potential future sale of larger investor-owned utilities within the state. Atmos Energy does not take a position that it is either for or against the consolidation of utility systems within Tennessee, but rather is motivated in promoting a rulemaking that establishes a transparent process promoting regulatory certainty for utility acquisitions that ensures continued safe and reliable operation of these utility systems.

The proposed rules, as currently written, potentially create a large burden to achieve an acquisition premium into ratemaking and will thus possibly discourage the safety and reliability benefits that can be achieved through utility system consolidation. The proposed rules do this by

putting too heavy a focus on “net book value” and “acquisition premium” in the determination of valuation to be included in ratemaking by the acquiring utility. As currently written, in a utility acquisition the acquiring utility shall incorporate the acquired assets of the selling utility into the acquiring utility’s rate base at the lesser of the purchase price or the net book value of the acquired assets. In most instances, it is likely that the purchase price will be above net book value, and thus the issue of acquisition premium will arise. Utility gas systems that have not regularly invested in their operating system will have relatively little net book value but will be reluctant to reach an agreement to sell their system without a premium attached thus discouraging beneficial transactions in which a willing seller and a willing buyer wish to transfer ownership of a system.

In terms of utility gas systems, with the increase in federal regulations regarding pipeline safety and the impact these regulations are having in terms of (1) increased operating and maintenance costs; (2) finding qualified personnel to operate natural gas distribution systems; and (3) the need to employ experienced and qualified natural gas supply procurement personnel to purchase natural gas supplies in an increasingly complex natural gas transportation, storage and natural gas supply market; Atmos Energy believes that the owning and operating of natural gas distribution systems at a smaller scale has become more burdensome and less desirable. In addition, consolidation of gas utility systems could also result in increased synergies from a safety inspection standpoint, allowing companies such as Atmos Energy to work with the Commission Gas Pipeline Safety Division over more service areas within the state with uniform templates, procedures and personnel.

The increasing complexity of regulations, the degree of changes ongoing in the gas utility industry, and the continued focus of stakeholder groups on ensuring the safety of gas utility systems all support the need for rules encouraging acquisitions for selling utilities that do not wish

to operate their systems in the future. For example, one area of increased regulation and stakeholder outreach has been in increasing integrity management requirements for gas systems. In 2009 PHMSA published the Integrity Management Program for Gas Distribution Pipelines Rules (49 CFR Part 192, Subpart P) (“2009 Final Rule”).¹ In short, the 2009 Final Rule was the end result of recognition by the gas distribution industry, elected officials, and state and federal regulators that the “integrity management” approach, already in place for transmission pipelines, should be extended to distribution pipelines. Federal regulators have also sought increased engagement on efforts with industry stakeholders. As a result of the 2009 Final Rule, the Secretary of Transportation Ray LaHood issued a Call to Action.² That Call to Action sought to engage state partners, technical experts, and pipeline operators in identifying pipeline risks and repairing, rehabilitating, and replacing the highest-risk infrastructure. The Company believes a promulgation of rules supportive of acquisitions for utilities facing increasing challenges helps to support stakeholder outreach efforts such as the Call to Action.

This viewpoint that the rules should encourage, or at least not discourage, consolidation of utility systems facing increasing challenges leads to the Company’s proposed narrowing of the definition of a “selling utility.” To limit the scope of these rules, the Company proposes that a selling utility affected by this rulemaking be limited to a gas, water or waste-water public utility owned by a political subdivision in Tennessee. For gas distribution in Tennessee, outside of investor-owned utilities the Company is aware of only municipally-owned gas systems and utility district gas systems. The Company is not as familiar with the landscape of water and waste-water systems in Tennessee but acknowledges there may be situations where consolidation of private

¹ Pipeline Safety: Integrity Management Program for Gas Distribution Pipelines, 74 Fed. Reg. 63906 at 63906 (Dec. 4, 2009).

² Exhibit 1 is a copy of the Call to Action.

systems could be encouraged and in the public interest. The Company does not wish to comment on the electric regulatory environment and will leave such comments or considerations in this rulemaking for other entities. Many municipal gas systems and utility district gas systems in Tennessee are well run and have no desire or interest to sell. In proposing a negotiated sale price requiring a voluntary and arm's-length transaction, the proposed rules ensure that the owners of these systems who do not wish to sell may remain independent operators. However, the consideration of rule proposals below will allow the systems that have longer-term concerns about remaining in the utility business an opportunity to sell when one may not have existed before due to net book value considerations.

To overcome net book value accounting hurdles with utility acquisitions, the Company's proposed revisions allow the Commission to consider the concepts of "average embedded cost" and "reproduction cost new less depreciation" in determining ratemaking rate base when the negotiated sale price exceeds a selling utility's net book value. These two concepts have been updated for inclusion in the term "net value" in the Company's proposed revisions, replacing net book value. "Average embedded cost" means an acquiring utility's utility plant in service, less associated accumulated reserve as recorded in the Uniform System of Accounting for the type of utility plant being acquired from the selling utility divided by the acquiring utility's existing customers. Under average embedded cost, an acquiring utility would be allowed for accounting and ratemaking purposes to record the purchase of the selling utility's assets at the acquiring utility's current distribution system average per customer embedded cost for meters, services, and mains. Average embedded cost would not harm an acquiring utility's existing customers because this level of investment would not result in an increase in average embedded cost of the acquiring utility. Moreover, by increasing the number of customers in Tennessee served by an acquiring

utility, the per customer cost for service should be less than if the new customers had not been acquired. Finally, average embedded cost allows a straightforward and measurable marker in the ability to gauge prudence of acquisition costs for amounts beyond net book value for older utility systems, and thus allow for potential reduced transaction and regulatory approval costs.

“Reproduction cost new less depreciation” means an estimate of the cost to construct, at current prices, an exact duplicate or replica of the utility assets, without regard to the original sources of funding for those assets, using the same materials, construction standards, design, layout, and quality without adjustment for deficiencies, and obsolescence of those assets, less depreciation. The Company believes this concept along with average embedded cost should be used in determining net value and ratemaking rate base. While average embedded cost is a useful marker as mentioned above, there are potentially several instances where the acquisition is in the public interest and the acquisition price is more reflective of reproduction cost new less depreciation rather than average embedded cost based upon the makeup of the selling utility. Reproduction cost new less depreciation, as a concept similar to fair market valuation, also parallels with recent utility acquisition language that has been passed in several states to encourage consolidation and modernization of utility systems. These states include California, Illinois, Indiana, Maryland, New Jersey, Pennsylvania, Ohio, North Carolina, Texas, Virginia and West Virginia.³ Exhibits 2 through 12 attached to these comments are the codified statutes, many of

³ See, e.g., CAL. PUB. UTIL. CODE § 2720 (2020); 220 ILL. COMP. STAT. § 5/9-210.5 (2020); IND. CODE 8-1-30.3-5 (2020); N.J. STAT. ANN. §§ 58-30-1 to -9 (2020); MD. PUB. UTIL. CODE §§ 6-301 to 308 (2020); W. VA. CODE ANN. § 24-2-4g (2020); VA. CODE ANN. § 56-90.2 (2020); TEX. WATER CODE ANN. § 13.305 (2020); OHIO REV. CODE ANN. §§ 4909.051 to -.059 (2020); N.C. GEN. STAT. § 62-133.1A (2020); 66 PA. CONS. STAT § 1329 (2020).

which have recently been enacted.⁴ Reproduction cost new less depreciation offers a solution for selling utilities to achieve reasonable value in a voluntary transaction while creating a limiting principle for an acquiring utility that still encourages acquisitions. Therefore, the Company proposes both concepts for consideration in the evaluation of net value and ratemaking rate base.

Several of the Company's other proposed revisions involve clarifying redlines to eliminate ratemaking uncertainties beyond acquisition adjustments to streamline the regulatory process and for the maximum benefits of an acquisition to accrue. One proposed rule would grant the Commission discretion to classify the selling utility system as a separate entity for ratemaking purposes if such classification is in the public interest. The Company respectfully proposes that, subject to Commission discretion, the rule should include a presumption that the assets of a selling utility be rolled into an acquiring utility's existing rate structure and ratemaking methodologies, including those that an acquiring utility may already have approved under Tenn. Code. Ann. § 65-5-103(d). Rolling a utility acquisition into existing rates and ratemaking, especially in the acquisition of smaller utility systems, has several benefits including, but not limited to, reduced regulatory filings, lower rate case expenses, and the ability to spread O&M expenses and infrastructure investments over a larger customer base. Acquired customers would not be able to receive several of these benefits if not rolled into an acquiring utility's existing rates and ratemaking.

This concern also overlaps with the Company's comments regarding proposed Rule 1220-04-01-.20. For acquisitions, the Company believes that this proposed rule should not be

⁴ Exhibit 2 is a copy of CAL. PUB. UTIL. CODE § 2720 (2020); Exhibit 3 is a copy of 220 ILL. COMP. STAT. § 5/9-210.5 (2020); Exhibit 4 is a copy of IND. CODE 8-1-30.3-5 (2020); Exhibit 5 is a copy of N.J. STAT. ANN. §§ 58-30-1 to -9 (2020); Exhibit 6 is a copy of MD. PUB. UTIL. CODE §§ 6-301 to 308 (2020); Exhibit 7 is a copy of 66 PA. CONS. STAT § 1329 (2020); Exhibit 8 is a copy of OHIO REV. CODE ANN. §§ 4909.051 to -.059 (2020); Exhibit 9 is a copy of N.C. GEN. STAT. § 62-133.1A (2020); Exhibit 10 is a copy of TEX. WATER CODE ANN. § 13.305 (2020); Exhibit 11 is a copy of VA. CODE ANN. § 56-90.2 (2020); Exhibit 12 is a copy of W. VA. CODE ANN. § 24-2-4g (2020).

applicable, and that these acquisitions should rather be rolled into the acquiring utility's existing ratemaking for reasons discussed above. The proposed rule, as currently written, would allow any acquisition, no matter how small, to trigger ratemaking adjustments that affect settled ratemaking. For instance, proposed Rule 1220-04-01-.20(4)(a) potentially would allow the Commission to adjust an acquiring utility's entire cost of service after even a small acquisition. This risk of regulatory proceedings approaching a general rate case in order to complete a small acquisition would discourage acquisitions otherwise in the public interest, even when it otherwise would be relatively straightforward to bring that selling utility's customers into an acquiring utility's existing rates. Absent a threshold amount, below which this portion of the rule would not apply, this section of the proposed rule should be made inapplicable to utility acquisitions to be incorporated and streamlined into an acquiring utility's existing ratemaking.

Atmos Energy thanks the Commission for consideration of these Comments and looks forward to further discussion on this rulemaking.

Respectfully submitted,

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Counsel for Atmos Energy Corporation

U.S. Department of Transportation Call to Action To Improve the Safety of the Nation's Energy Pipeline System

Executive Summary

Today, more than 2.5 million miles of pipelines are responsible for delivering oil and gas to communities and businesses across the United States. That's enough pipeline to circle the earth approximately 100 times.

Currently, these liquid and gas pipelines are operated by approximately 3,000 companies and fall under the safety regulations of the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA). PHMSA has engineers and inspectors around the country who oversee the safety of these lines and ensure that companies comply with critical safety rules that protect people and the environment from potential dangers. While PHMSA directly regulates most of the hazardous liquid pipelines in the nation, states take over when it comes to intrastate natural gas pipelines. Every state, except Hawaii and Alaska, is responsible for the inspection and enforcement of state pipeline safety laws for the natural gas pipeline systems within their respective states. Some states – about 20 percent - also regulate the hazardous liquid lines within state borders.

In the wake of several recent serious pipeline incidents, U.S. DOT/PHMSA is taking a hard look at the safety of the nation's pipeline system. Over the last three years, annual fatalities have risen from nine in 2008, to 13 in 2009 to 22 in 2010. Like other aspects of America's transportation infrastructure, the pipeline system is aging and needs a comprehensive evaluation of its fitness for service. Investments that are made now will ensure the safety of the American people and the integrity of the pipeline infrastructure for future generations.

For these reasons, Secretary LaHood has issued "A Call To Action" for all pipeline stakeholders, including the pipeline industry, the utility regulators, and our state and federal partners. Secretary LaHood brought together PHMSA Administrator Quarterman and the senior DOT leadership to design a strategy to achieve that goal. The action plan below is the result of those deliberations.

Background

Much of the nation's pipeline infrastructure was installed many decades ago, and some century-old infrastructure continues to transport energy supplies to residential and commercial customers, particularly in the urban areas across our nation. Older pipeline facilities that are constructed of obsolete materials (e.g., cast iron, copper, bare steel, and certain kinds of welded pipe) may have degraded over time, and some have been exposed to additional threats, such as excavation damage.

On December 4, 2009, PHMSA issued the Distribution Integrity Management Final Rule, which extends the pipeline integrity management principles that were established for hazardous liquid and natural gas transmission pipelines, to the local natural gas distribution pipeline systems. This regulation, which becomes effective in August of 2011, requires operators of local gas distribution

pipelines to evaluate the risks on their pipeline systems to determine their fitness for service and take action to address those risks. For older gas distribution systems, the appropriate mitigation measures could involve major pipe rehabilitation, repair, and replacement programs. At a minimum, these measures are needed to requalify those systems as being fit for service. While these measures may be costly, they are necessary to address the threat to human life, property, and the environment.

In addition to the many pipelines constructed with obsolete materials, there are also early vintage steel pipelines in high consequence areas that may pose risks because of inferior materials, poor construction practices, and lack of maintenance or inadequate risk assessments performed by operators. The lack of basic information or incomplete records about these systems is also a contributing factor. The U.S. DOT is seeking to make sure these risks are identified, the pipelines are assessed accurately, and preventative steps are taken where they are needed.

Action Plan

The U.S. DOT and PHMSA have developed this action plan to accelerate rehabilitation, repair, and replacement programs for high-risk pipeline infrastructure and to requalify that infrastructure as fit for service. The Department will engage pipeline safety stakeholders in the process to systematically address parts of the pipeline infrastructure that need attention, and ensure that Americans remain confident in the safety of their families, their homes, and their communities. The strategy involves:

- **A CALL TO ACTION** – Secretary LaHood is issuing a “Call to Action” to engage state partners, technical experts, and pipeline operators in identifying pipeline risks and repairing, rehabilitating, and replacing the highest risk infrastructure. Secretary LaHood is also asking Congress to expand PHMSA’s ability to oversee pipeline safety.
 - Secretary LaHood and PHMSA Administrator Quarterman have met with the Federal Energy Regulatory Commission (FERC), the National Association of Regulatory and Utility Commissioners (NARUC), state public utility commissions, and industry leaders to ask all parties to step up efforts to identify high-risk pipelines and ensure that they are repaired or replaced.
 - Secretary LaHood is asking Congress to increase the maximum civil penalties for pipeline violations from \$100,000 per day to \$250,000 per day, and from \$1 million for a series of violations to \$2.5 million for a series of violations. He is also asking Congress to help close regulatory loopholes, strengthen risk management requirements, add more inspectors, and improve data reporting to help identify potential pipeline safety risks early. The Senate has passed its version of the pipeline safety reauthorization legislation. The House of Representatives is currently considering two versions of a similar bill that could be passed by end of the year.
 - The U.S. DOT and PHMSA convened a Pipeline Safety Forum in April 2011 that engaged a working session around the actions that DOT/PHMSA, the state regulatory agencies, and the pipeline industry can take to drive more aggressive actions to raise

the bar on pipeline safety. The U.S. DOT and PHMSA is preparing a report based on ideas, opportunities and challenges presented at the Forum and action that will be taken.

- **AGGRESSIVE EFFORTS** – The U.S. DOT and PHMSA are calling on pipeline operators and owners to review their pipelines and quickly repair and replace sections in poor condition.
 - PHMSA has asked technical associations and pipeline safety groups to provide best practices and technologies for repair, rehabilitation and replacement programs, and has asked industry groups for commitments to accelerate needed repairs.
 - PHMSA will review all data received from pipeline operators to identify areas with critical needs.
 - PHMSA's Distribution Integrity Management rule became effective in August, requiring all operators of local gas distribution pipeline systems to evaluate the risks on their pipeline systems and take action to address those risks.
- **TRANSPARENCY** - U.S. DOT and PHMSA will execute this plan in a transparent manner with opportunity for public engagement, including a dedicated website for this initiative, and regular reporting to the public.
 - PHMSA has launched a public website (<http://opsweb.phmsa.dot.gov/pipelineforum>), which describes the ongoing pipeline rehabilitation, replacement and repair initiatives.
 - All materials from the Pipeline Safety Forum will be publicly posted to the web, followed by a Draft Report for Notice and Comment. Once public input has been collected, PHMSA will publish a final Pipeline Safety Report to the Nation.
 - PHMSA will be holding a national forum on emergency preparedness and response to pipeline emergencies. The forum will take place December 9, 2011, and will include the major stakeholders from the emergency response community, industry and government to discuss how best to improve pipeline emergency preparedness and response capabilities.
 - A report from the forum will be prepared and published.

Revised 11/1/11

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West's Annotated California CodesPublic Utilities Code (Refs & Annos)Division 1. Regulation of Public Utilities (Refs & Annos)Part 2. Specific Public UtilitiesChapter 2.5. Public Water System Investment and Consolidation Act of 1997 (Refs & Annos)

West's Ann.Cal.Pub.Util.Code § 2720

§ 2720. Public water system; distribution; rate base value; fair market value

Currentness

(a) The commission shall use the standard of fair market value when establishing the rate base value for the distribution system of a public water system acquired by a water corporation. This standard shall be used for ratesetting.

(1) For purposes of this section, “public water system” shall have the same meaning as set forth in Section 116275 of the Health and Safety Code.

(2) For purposes of this section, “fair market value” shall have the same meaning as set forth in Section 1263.320 of the Code of Civil Procedure.

(b) If the fair market value exceeds reproduction cost, as determined in accordance with Section 820 of the Evidence Code, the commission may include the difference in the rate base for ratesetting purposes if it finds that the additional amounts are fair and reasonable. In determining whether the additional amounts are fair and reasonable the commission shall consider whether the acquisition of the public water system will improve water system reliability, whether the ability of the water system to comply with health and safety regulations is improved, whether the water corporation by acquiring the public water system can achieve efficiencies and economies of scale that would not otherwise be available, and whether the effect on existing customers of the water corporation and the acquired public water system is fair and reasonable.

(c) The provisions of subdivisions (a) and (b) shall also be applicable to the acquisition of a sewer system by any sewer system corporation or water corporation.

(d) Consistent with the provisions of this section, the commission shall retain all powers and responsibilities granted pursuant to Sections 851 and 852.

Credits

(Added by Stats.1997, c. 675 (S.B.1268), § 1.)

West's Ann. Cal. Pub. Util. Code § 2720, CA PUB UTIL § 2720

Current with urgency legislation through Ch. 4 of 2020 Reg.Sess

West's Smith-Hurd Illinois Compiled Statutes AnnotatedChapter 220. Utilities (Refs & Annos)Act 5. Public Utilities Act (Refs & Annos)Article IX. Rates (Refs & Annos)

220 ILCS 5/9-210.5

5/9-210.5. Valuation of water and sewer utilities

Effective: June 1, 2019

Currentness

§ 9-210.5. Valuation of water and sewer utilities.

(a) In this Section:

“Disinterested” means that the person directly involved (1) is not a director, officer, or an employee of the large public utility or the water or sewer utility or its direct affiliates or subsidiaries for at least 12 months before becoming engaged under this Section; (2) shall not derive a material financial benefit from the sale of the water or sewer utility other than fees for services rendered, and (3) shall not have a member of the person's immediate family, including a spouse, parents or spouse's parents, children or spouses of children, or siblings and their spouses or children, be a director, officer, or employee of either the large public utility or water or sewer utility or the water or sewer utility or its direct affiliates or subsidiaries for at least 12 months before becoming engaged under this Section or receive a material financial benefit from the sale of the water or sewer utility other than fees for services rendered.

“District” means a service area of a large public utility whose customers are subject to the same rate tariff.

“Large public utility” means an investor-owned public utility that:

- (1) is subject to regulation by the Illinois Commerce Commission under this Act;
- (2) regularly provides water or sewer service to more than 30,000 customer connections;
- (3) provides safe and adequate service; and
- (4) is not a water or sewer utility as defined in this subsection (a).

“Next rate case” means a large public utility's first general rate case after the date the large public utility acquires the water or sewer utility where the acquired water or sewer utility's cost of service is considered as part of determining the large public utility's resulting rates.

“Prior rate case” means a large public utility's general rate case resulting in the rates in effect for the large public utility at the time it acquires the water or sewer utility.

“Utility service source” means the water or sewer utility or large public utility from which the customer receives its utility service type.

“Utility service type” means water utility service or sewer utility service or water and sewer utility service.

“Water or sewer utility” means any of the following:

- (1) a public utility that regularly provides water or sewer service to 6,000 or fewer customer connections;
- (2) a water district, including, but not limited to, a public water district, water service district, or surface water protection district, or a sewer district of any kind established as a special district under the laws of this State that regularly provides water or sewer service;
- (3) a waterworks system or sewerage system established under the Township Code that regularly provides water or sewer service; or
- (4) a water system or sewer system owned by a municipality that regularly provides water or sewer service; and
- (5) any other entity that is not a public utility that regularly provides water or sewer service.

(b) Notwithstanding any other provision of this Act, a large public utility that acquires a water or sewer utility may request that the Commission use, and, if so requested, the Commission shall use, the procedures set forth under this Section to establish the ratemaking rate base of that water or sewer utility at the time when it is acquired by the large public utility.

(c) If a large public utility elects the procedures under this Section to establish the rate base of a water or sewer utility that it is acquiring, then 3 appraisals shall be performed. The average of these 3 appraisals shall represent the fair market value of the water or sewer utility that is being acquired. The appraisals shall be performed by 3 appraisers approved by the Commission's Executive Director or designee and engaged by either the water or sewer utility being acquired or by the large public utility. Each appraiser shall be engaged on reasonable terms approved by the Commission. Each appraiser shall be a disinterested person licensed as a State certified general real estate appraiser under the Real Estate Appraiser Licensing Act of 2002.

Each appraiser shall:

- (1) be sworn to determine the fair market value of the water or sewer utility by establishing the amount for which the water or sewer utility would be sold in a voluntary transaction between a willing buyer and willing seller under no obligation to buy or sell;
- (2) determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice;
- (3) engage one disinterested engineer who is licensed in this State, and who may be the same engineer that is engaged by the other appraisers, to prepare an assessment of the tangible assets of the water or sewer utility, which is to be incorporated into the appraisal under the cost approach;

(4) request from the manager of the Accounting Department, if the water or sewer utility is a public utility that is regulated by the Commission, a list of investments made by the water or sewer utility that had been disallowed previously and that shall be excluded from the calculation of the large public utility's rate base in its next rate case; and

(5) return their appraisal, in writing, to the water or sewer utility and large public utility in a reasonable and timely manner.

If the appraiser cannot engage an engineer, as described in paragraph (3) of this subsection (c), within 30 days after the appraiser is engaged, then the Commission's Executive Director or designee shall recommend the engineer the appraiser should engage. The Commission's Executive Director or designee shall provide his or her recommendation within 30 days after he or she is officially notified of the appraiser's failure to engage an engineer and the appraiser shall promptly work to engage the recommended engineer. If the appraiser is unable to negotiate reasonable engagement terms with the recommended engineer within 15 days after the recommendation by the Commission's Executive Director or designee, then the appraiser shall notify the Commission's Executive Director or designee and the process shall be repeated until an engineer is successfully engaged.

(d) The lesser of (i) the purchase price or (ii) the fair market value determined under subsection (c) of this Section shall constitute the rate base associated with the water or sewer utility as acquired by and incorporated into the rate base of the district designated by the acquiring large public utility under this Section, subject to any adjustments that the Commission deems necessary to ensure such rate base reflects prudent and useful investments in the provision of public utility service. The reasonable transaction and closing costs incurred by the large public utility shall be treated consistent with the applicable accounting standards under this Act. The total amount of all of the appraisers' fees to be included in the transaction and closing costs shall not exceed the greater of \$15,000 or 5% of the appraised value of the water or sewer utility being acquired. This rate base treatment shall not be deemed to violate this Act, including, but not limited to, any Sections in Articles VIII and IX of this Act that might be affected by this Section. Any acquisition of a water or sewer utility that affects the cumulative base rates of the large public utility's existing ratepayers in the tariff group into which the water or sewer utility is to be combined by less than (1) 2.5% at the time of the acquisition for any single acquisition completed under this Section or (2) 5% for all acquisitions completed under this Section before the Commission's final order in the next rate case shall not be deemed to violate Section 7-204 or any other provision of this Act.

In the Commission's order that approves the large public utility's acquisition of the water or sewer utility, the Commission shall issue its decision establishing (1) the ratemaking rate base of the water or sewer utility; (2) the district or tariff group with which the water or sewer utility shall be combined for ratemaking purposes, if such combination has been proposed by the large public utility; and (3) the rates to be charged to customers in the water or sewer utility.

(e) If the water or sewer utility being acquired is owned by the State or any political subdivision thereof, then the water or sewer utility must inform the public of the terms of its acquisition by the large public utility by (1) holding a public meeting prior to the acquisition and (2) causing to be published, in a newspaper of general circulation in the area that the water or sewer utility operates, a notice setting forth the terms of its acquisition by the large public utility and options that shall be available to assist customers to pay their bills after the acquisition.

(f) The large public utility may recommend the district or tariff group of which the water or sewer utility shall, for ratemaking purposes, become a part after the acquisition, or may recommend a lesser rate for the water or sewer utility. If the large public utility recommends a lesser rate, it shall submit to the Commission its proposed rate schedule and the proposed final tariff group for the acquired water or sewer utility. The Commission's approved district or tariff group or rates shall be consistent with the large public utility's recommendation, unless such recommendation can be shown to be contrary to the public interest.

(g) From the date of acquisition until the date that new rates are effective in the acquiring large public utility's next rate case, the customers of the acquired water or sewer utility shall pay the approved then-existing rates of the district or tariff group as ordered by the Commission, or some lesser rates as recommended by the large public utility and approved by the Commission under subsection (f); provided, that, if the application of such rates of the large public utility to customers of the acquired water or sewer utility using 54,000 gallons annually results in an increase to the total annual bill of customers of the acquired water or sewer utility, exclusive of fire service or related charges, then the large public utility's rates charged to the customers of the acquired water or sewer utility shall be uniformly reduced, if any reduction is required, by the percent that results in the total annual bill, exclusive of fire services or related charges, for the customers of the acquired water or sewer utility using 54,000 gallons being equal to 1.5% of the latest median household income as reported by the United States Census Bureau for the most applicable community or county. For each customer of the water or sewer utility with potable water usage values that cannot be reasonably obtained, a value of 4,500 gallons per month shall be assigned. These rates shall not be deemed to violate this Act including, but not limited to, Section 9-101 and any other applicable Sections in Articles VIII and IX of this Act. The Commission shall issue its decision establishing the rates effective for the water or sewer utility immediately following an acquisition in its order approving the acquisition.

(h) In the acquiring large public utility's next rate case, the water or sewer utility and the district or tariff group ordered by the Commission and their costs of service may be combined under the same rate tariff. This rate tariff shall be based on allocation of costs of service of the acquired water or sewer utility and the large public utility's district or tariff group ordered by the Commission and utilizing a rate design that does not distinguish among customers on the basis of utility service source or type. This rate tariff shall not be deemed to violate this Act including, but not limited to, Section 9-101 of this Act. In the acquiring large public utility's 2 rate cases after an acquisition, but in no subsequent rate case, the large public utility may file a rate tariff for a water or sewer utility acquired under this Section that establishes lesser rates than the district or tariff group into which the water or sewer utility is to be combined. Those lesser rates shall not be deemed to violate Section 7-204 or any other provision of this Act if they affect the cumulative base rates of the large public utility's existing rate payers in the district or tariff by less than 2.5%.

(i) Any post-acquisition improvements made by the large public utility in the water or sewer utility shall accrue a cost for financing set at the large public utility's determined rate for allowance for funds used during construction, inclusive of the debt, equity, and income tax gross up components, after the date on which the expenditure was incurred by the large public utility until the investment has been in service for a 4-year period or, if sooner, until the time the rates are implemented in the large public utility's next rate case.

Any post-acquisition improvements made by the large public utility in the water or sewer utility shall not be depreciated for ratemaking purposes from the date on which the expenditure was incurred by the large public utility until the investment has been in service for a 4-year period or, if sooner, until the time the rates are implemented in the large public utility's next rate case.

(j) This Section shall be exclusively applied to large public utilities in the voluntary and mutually agreeable acquisition of water or sewer utilities. Any petitions filed with the Commission related to the acquisitions described in this Section, including petitions seeking approvals or certificates required by this Act, shall be deemed approved unless the Commission issues its final order within 11 months after the date the large public utility filed its initial petition. This Section shall only apply to utilities providing water or sewer service and shall not be construed in any manner to apply to electric corporations, natural gas corporations, or any other utility subject to this Act.

(k) Nothing in this Section shall prohibit a party from declining to proceed with an acquisition or be deemed as establishing the final purchase price of an acquisition.

(l) In the Commission's order that approves the large utility's acquisition of the water or sewer utility, the Commission shall address each aspect of the acquisition transaction for which approval is required under the Act.

(m) Any contractor or subcontractor that performs work on a water or sewer utility acquired by a large public utility under this Section shall be a responsible bidder as described in Section 30-22 of the Illinois Procurement Code. The contractor or subcontractor shall submit evidence of meeting the requirements to be a responsible bidder as described in Section 30-22 to the water or sewer utility. Any new water or sewer facility built as a result of the acquisition shall require the contractor to enter into a project labor agreement. The large public utility acquiring the water or sewer utility shall offer employee positions to qualified employees of the acquired water or sewer utility.

(n) This Section is repealed on June 1, 2028.

Credits

Laws 1921, p. 702, § 9-210.5, added by P.A. 98-213, § 5, eff. Aug. 9, 2013. Amended by P.A. 100-751, § 5, eff. Aug. 10, 2018. Reenacted by P.A. 100-1151, § 10, eff. June 1, 2019.

220 I.L.C.S. 5/9-210.5, IL ST CH 220 § 5/9-210.5

Current through P.A. 101-636. Some statute sections may be more current, see credits for details.

West's Annotated Indiana CodeTitle 8. Utilities and TransportationArticle 1. Utilities GenerallyChapter 30.3. Acquisition of Distressed Water or Wastewater Utilities

IC 8-1-30.3-5

8-1-30.3-5 Application

Effective: March 21, 2020

Currentness

Sec. 5. (a) This section applies if:

(1) a utility company acquires property from an offered utility in a transaction involving a willing buyer and a willing seller; and

(2) at least one (1) utility company described in subdivision (1) is subject to the jurisdiction of the commission under this article.

(b) Subject to subsection (c), there is a rebuttable presumption that a cost differential is reasonable.

(c) If the acquisition:

(1) is made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under IC 8-1.5-2-5; or

(2) is not made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under section 5.5 of this chapter;

the purchase price is considered reasonable for purposes of subsection (d) and any resulting cost differential is considered reasonable.

(d) Before closing on the acquisition, the utility company that acquires the utility property may petition the commission to include any cost differential as part of its rate base in future rate cases. The commission shall approve the petition if the commission finds the following:

(1) The utility property is used and useful to the offered utility in providing water service, wastewater service, or both water and wastewater service.

- (2) The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.
- (3) The utility company will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility's plant, the offered utility's operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service.
- (4) The acquisition of the utility property is the result of a mutual agreement made at arms length.
- (5) The actual purchase price of the utility property is reasonable.
- (6) The utility company and the offered utility are not affiliated and share no ownership interests.
- (7) The rates charged by the utility company will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility. For purposes of this subdivision, the rates and charges will not increase unreasonably in future general rate cases so long as the net original cost proposed to be recorded under subsection (f) is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case. If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, the commission shall proceed to determine whether the rates charged by the utility company will increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility and, in making the determination, may consider evidence of:
- (A) the anticipated dollar value increase; and
 - (B) the increase as a percentage of the average bill.
- (8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base.
- (e) In connection with its petition under subsection (d), the acquiring utility company shall provide the following:
- (1) Notice to customers of the acquiring utility company that a petition has been filed with the commission under this chapter. The notice provided under this subdivision must include the cause number assigned to the petition. Notice under this subdivision may be provided to customers in a billing insert.
 - (2) Notice to the office of the utility consumer counselor.
 - (3) A statement of known infrastructure, environmental, or other issues affecting the offered utility, and the process for determining reasonable and prudent improvements upon completing the acquisition.

(f) In a proceeding under subsection (d), the commission shall issue its final order not later than two hundred ten (210) days after the filing of the petitioner's case in chief. If the commission grants the petition, the commission's order shall authorize the acquiring utility company to make accounting entries recording the acquisition and that reflect:

- (1) the full purchase price;
- (2) incidental expenses; and
- (3) other costs of acquisition;

as the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

Credits

As added by P.L.189-2015, SEC.1, eff. July 1, 2015. Amended by P.L.98-2016, SEC.4, eff. March 22, 2016; P.L.64-2018, SEC.1, eff. July 1, 2018; P.L.229-2019, SEC.5, eff. May 5, 2019; P.L.160-2020, SEC.5, eff. March 21, 2020.

I.C. 8-1-30.3-5, IN ST 8-1-30.3-5

The statutes and Constitution are current with all legislation of the 2020 Second Regular Session of the 121st General Assembly effective through June 30, 2020.

End of Document

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New Jersey Statutes Annotated

Title 58. Waters and Water Supply (Refs & Annos)

Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-1

58:30-1. Short title; Water Infrastructure Protection Act

Effective: February 5, 2015

Currentness

Sections 1 through 9 of this act shall be known and may be cited as the “Water Infrastructure Protection Act.”

Credits

L.2015, c. 18, § 1, eff. Feb. 5, 2015.

N. J. S. A. 58:30-1, NJ ST 58:30-1

Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-2

58:30-2. Legislative findings and declarations regarding water and wastewater assets

Effective: February 5, 2015

Currentness

The Legislature finds and declares that:

- a. The maintenance and operation of water and wastewater treatment and conveyance systems is vital to ensuring the protection of water quality and clean drinking water in New Jersey;
- b. There are public water and wastewater systems in the State that present serious risks to the integrity of drinking water and the environment because of issues such as aging infrastructure systems, the deterioration of the physical assets of the systems, or damage to infrastructure so severe that it is beyond governmental capacity to restore;
- c. Under the appropriate circumstances, the transfer of these threatened water and wastewater assets to a capable private or public entity with the financial resources and expertise to improve management, operation, and continued maintenance of the assets could help ensure the protection of drinking water; and
- d. It is in the public interest that public entities have the option to transfer, lease, or sell water or wastewater assets if there exist emergent conditions that threaten drinking water or the environment.

CreditsL.2015, c. 18, § 2, eff. Feb. 5, 2015.

N. J. S. A. 58:30-2, NJ ST 58:30-2

Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-3

58:30-3. Definitions

Effective: February 5, 2015

Currentness

As used in this act,

“Board” means the Board of Public Utilities.

“Capable private or public entity” means any private or public water system owner who, at the time of submitting a proposal to long-term lease or purchase public water or wastewater assets, currently (1) owns a system serving no less than the number of residential and commercial accounts as the system which the entity is proposing to lease or purchase, and (2) is not a significant noncomplier, as defined pursuant to section 3 of P.L. 1977, c. 7 (C.58:10A-3), is not currently the subject of a formal enforcement action initiated by the New Jersey Department of Environmental Protection to address a material violation by the entity which has not been corrected over a reasonable period of time given the specific situation, or is not substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement or judicial consent order entered into with the department.

“Department” means the Department of Environmental Protection.

“Director” means the Director of the Division of Local Government Services in the Department of Community Affairs.

“Governing body” means a “governing body” as defined in section 3 of the “New Jersey Wastewater Treatment Public-Private Contracting Act,” P.L. 1995, c. 216 (C.58:27-19 through C.58:27-27).

“Licensed engineer” means a professional engineer licensed pursuant to P.L. 1938, c. 342 (C.45:8-27 et seq.).

“Long-term lease” means a lease of longer than 30 years under which the municipal owner seeks to transfer ownership of the system at the end of the lease term.

“Owner” means any municipality, except a municipality that is a city of the first class with a population of 270,000 or more according to the latest federal decennial census, that owns water or wastewater assets. Municipalities constituting a joint meeting, and the joint meeting itself shall not be considered an owner for the purposes of this definition.

“Registered apprenticeship program” means an apprenticeship program registered with and approved by the United States Department of Labor and which provides to each trainee combined classroom and on-the-job training under the direct and close supervision of a highly skilled worker in an occupation recognized as an apprenticeable trade, and which meets the program performance standards of enrollment and graduation under 29 C.F.R. s.29.6.

“System” means the plants, structures, and other real and personal property of an owner that is, or is to be, acquired, constructed, or operated for the purpose of processing water or wastewater, including sewage, for distribution or treatment.

“Water or wastewater assets” means any system along with any other related buildings, equipment, or other infrastructure.

Credits

L.2015, c. 18, § 3, eff. Feb. 5, 2015.

N. J. S. A. 58:30-3, NJ ST 58:30-3

Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-4

58:30-4. Long-term lease or sale of water or wastewater
assets upon determination that emergent conditions exist

Effective: February 5, 2015

Currentness

If an owner determines that emergent conditions exist, the owner may long-term lease or sell its water or wastewater assets to a capable private or public entity pursuant to the provisions of sections 5 through 9 of P.L.2015, c. 18 (C.58:30-5 through C.58:30-9). An owner may so long-term lease or sell its water or wastewater assets without any referendum except as may be required pursuant to subsection g. of section 5 of P.L.2015, c. 18 (C.58:30-5).

Credits

L.2015, c. 18, § 4, eff. Feb. 5, 2015.

N. J. S. A. 58:30-4, NJ ST 58:30-4

Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-5

58:30-5. Determination that emergent conditions exist; analysis and review by independent financial advisor; public hearing; certification; petition protesting lease or sale

Effective: February 5, 2015

Currentness

a. The determination that emergent conditions exist shall be made by certification of the mayor, the mayor's designee of the municipality, and a licensed engineer.

b. Emergent conditions shall exist if at least one of the following conditions is met:

(1) The system is located in an area designated by the Department of Environmental Protection as an Area of Critical Water Supply Concern I or II, or any future designation or newly added area of critical water supply concern;

(2) The owner of the system is a significant noncomplier, as defined pursuant to section 3 of P.L.1977, c. 7 (C.58:10A-3), has been the subject of a formal enforcement action initiated by the department, or is substantially out of compliance with an administrative consent order, settlement agreement, stipulation of settlement, or judicial consent order entered into with the department; or

(3) There is a present deficiency or violation of maximum contaminant levels established pursuant to the "Safe Drinking Water Act," P.L.1977, c. 224 (C.58:12A-1 et seq.), concerning the availability or potability of water, or concerning the provision of water at adequate volume or pressure, or distribution or treatment of wastewater;

(4) There is a demonstrated lack of historical investment, repair, or sustainable maintenance as determined by the department, or material damage to the infrastructure of the system; or

(5) The system owner lacks the financial, technical, or managerial capacity to adequately address any of the foregoing on a sustainable basis or own and operate the system in a way that supports economic activity in the municipality on a sustainable basis.

c. Should the owner determine that one or more emergent conditions contained in subsection b. of this section exists and that it is necessary to take steps to effectuate the sale or long-term lease of its water or wastewater assets to a capable private or public entity pursuant to this act to address these emergent conditions and to operate and maintain the system, the owner shall through the utilization of applicable public procurement laws of the State of New Jersey retain the services of an independent financial advisor to review, analyze and report on the value of the system and the short and long term impacts to rate-payers of the cash-flow structure of the proposed transaction and to provide an estimate as to the financial requirements necessary to address the

emergent conditions and to operate and maintain the system. Upon completion of the analysis and review, the independent financial advisor shall transmit its report to the owner. Within 10 days of the approval of the report by the owner, the owner shall transmit copies to the board, the director, and the department and shall make the report available for public review.

d. After the independent financial advisor has completed its analysis of the financial aspects of the proposed transaction and has presented its report to the owner, a public hearing on the proposed emergent condition certification shall be held. The owner shall provide notice of the public hearing no less than 30 days prior to the date of the hearing. The notice shall prominently state the findings upon which the certification of emergent conditions is based, a summary of the findings by the independent financial advisor and that the certification is in anticipation of a proposed long-term lease or sale of water or wastewater assets to a capable private or public entity. Notice of the public hearing shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. Notice of the public hearing shall be published on the official Internet website of the county and at least once in one or more newspapers circulating in the county. If an applicable official website does not exist, notice of the public hearing shall be published on the official Internet website of the Department of Community Affairs.

e. After the public hearing and after giving due consideration to the findings of the independent financial advisor, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership, certify that one or more emergent conditions exist and that the owner intends to sell or long-term lease its water or wastewater assets to a capable private or public entity to address these emergent conditions and to operate and maintain the system. Within five days of the adoption of the resolution, the governing body of the owner shall transmit a true copy of the resolution, to the department, the board, and the director. Within 30 days of receipt of the resolution by the department, the department shall approve or reject the owner's emergent conditions certification as contained in the resolution.

f. Upon receipt of the approval of the emergent conditions certification by the Department of Environmental Protection, the owner shall publish notice of the approval if the owner chooses to proceed with the sale or long-term lease of its water or wastewater assets to a capable private or public entity. The notice shall prominently state that the certification is in anticipation of a long-term lease or sale of water or wastewater assets to a capable private or public entity. Notice of the approval shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality, and shall prominently state that a petition may be filed within 45 days after the publication of such notice to require a referendum before a resolution authorizing the long-term lease or sale of water or wastewater assets may take effect. If an applicable official website does not exist, notice of the approval shall be published on the official Internet website of the Department of Community Affairs.

g. A petition may be filed with the municipal clerk, no later than 45 days after the notice of the approval of the emergent conditions certification is published, protesting the lease or sale of water or wastewater assets without a public referendum. If the petition is signed by a number of legal voters of the municipality equal to at least 15% of the total votes cast in the municipality at the last election at which members of the General Assembly were elected, a resolution to lease or sell water or wastewater assets shall not take effect unless the lease or sale of such assets is approved pursuant to R.S.40:62-4 and R.S.40:62-5. If a petition is not filed pursuant to this subsection, a resolution to lease or sell water or wastewater assets shall not be subject to a public referendum.

Credits

L.2015, c. 18, § 5, eff. Feb. 5, 2015.

N. J. S. A. 58:30-5, NJ ST 58:30-5

Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-6

58:30-6. Request for qualifications; request for proposals following emergent conditions certification; resolution designating qualified respondent

Effective: February 5, 2015

Currentness

a. A request for qualifications from a capable private or public entity wishing to be considered for the long-term lease or sale of the owner's system shall be advertised after the emergent conditions certification pursuant to subsection e. of section 5 of P.L.2015, c. 18 (C.58:30-5), but no less than 30 days prior to the date on which responses to the request are due. The advertisement of the request for qualifications shall be published on the official Internet website of the municipality and at least once in one or more newspapers circulating in the municipality. An owner shall also publish the advertisement of the request for qualifications at least once in one or more newspapers with Statewide circulation. If an applicable official website does not exist, the advertisement of the request for qualifications shall be published on the official Internet website of the Department of Community Affairs.

b. After an emergent conditions certification is made pursuant to subsection e. of section 5 of P.L.2015, c. 18 (C.58:30-5), the owner shall determine the qualified respondents. The owner shall issue a request for proposals to each qualified respondent no less than 14 days prior to the date established for submission of the proposals. The request for proposals shall include relevant technical submissions, documents, and criteria including but not limited to a description of the facilities and the debt related thereto and the evaluation criteria to be used in the selection of the designated respondent. The proposals shall include and shall be evaluated by, at a minimum, the following:

(1) the documented deficiencies of the owner's system upon which the emergent conditions certification is based and a description of the corrective measures to be undertaken by the respondent to address and correct the identified emergent conditions;

(2) a description of the financial, managerial, and technical capabilities of the respondent to operate and maintain the system in compliance with all applicable State and federal laws and regulations, as well as a description of all the respondent's outstanding and pending violations of the "Pollution Prevention Act," P.L.1991, c. 235 (C.13:1D-35 et seq.); P.L.1942, c. 308 (C.58:11-9.1 et seq.); "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c. 199 (C.58:11-23 et seq.); and the "Safe Drinking Water Act," P.L.1977, c. 224 (C.58:12A-1 et seq.);

(3) an analysis of the relevant expenditures associated with such activities and the projected impact on customer rates;

(4) an analysis of any Internal Revenue Code or other tax code issues that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, as well as any potential short-term or long-term costs arising there from;

(5) a long-term capital improvement or asset management plan; and

(6) any other pertinent information required of or deemed appropriate by the owner.

c. Upon a review of the proposals submitted by qualified respondents, the governing body of an owner shall, by resolution adopted by at least two-thirds of its authorized membership, designate one qualified respondent, whose proposal the governing body finds to be the most advantageous to the public, taking into consideration the evaluation criteria set forth in the request for proposals and as specified under subsection b. of this section. The resolution shall include a detailed summary of the governing body's findings that the proposal of the designated respondent is most advantageous to the public. The summary shall be published in accordance with the notification requirements of section 5 of P.L.2015, c. 18 (C.58:30-5).

Credits

L.2015, c. 18, § 6, eff. Feb. 5, 2015.

N. J. S. A. 58:30-6, NJ ST 58:30-6

Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-7

58:30-7. Contract negotiations; required provisions; submission of proposed contract to board; approval of proposed contract and proposed use of proceeds

Effective: February 5, 2015

Currentness

a. After the designated respondent is selected, negotiations for a contract for the lease or sale of the water or wastewater assets may commence between the owner and the designated respondent.

b. (1) Every proposed contract shall include a clause stating that to the extent it does not violate any existing collective bargaining agreements between the capable private or public entity and its employees, the capable private or public entity shall give first consideration in hiring to any public employees displaced by the long-term lease or sale of the water or waste water assets.

(2) After an agreement on a proposed contract is reached between the owner and the designated respondent, the governing body of the owner shall, by resolution adopted by at least two-thirds of its authorized membership, cause the proposed contract to be submitted to the board for approval and cause the proposed use of proceeds of the long-term lease or sale to be submitted to the director for approval.

c. (1) The proposed contract submitted to the board shall include the rent or sale price, any appraisals supporting the rent or sale price, documentation regarding the defeasance of debt, and any other information requested by the board. The board shall approve or reject the proposed contract within 90 days of receipt thereof. If no disposition is made within 90 days, the proposed contract shall be deemed approved.

(2) For the purposes of rate making and recovery, the board shall accept the negotiated sale price between the owner and the designated respondent as the new rate base effective as of the date of the approval of the long-term lease or sale, as may be the case, provided the price is deemed reasonable.

The rent or sale price shall be deemed reasonable if it meets the following conditions:

(a) The rent or sale price is sufficient to defease the debt of the owner; and either

(b)(i) The rent or sale price is within the range of any appraisals obtained with respect to the long-term lease or sale of the water or wastewater assets; or

(ii) If there is little or no established rate base for the water or wastewater assets, the rent or sale price is reasonably comparable to a proxy rate base equivalent to the rate base of the designated respondent.

(3) In valuing the water or wastewater assets, appraisers shall comply with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation.

(4) In valuing the water or wastewater assets and for the purposes of rate making, the original source of funding for any part of the water or wastewater assets shall not be relevant.

(5) Reasonable and prudent transaction, closing, and transition costs incurred by the designated respondent shall be recoverable in rates.

(6) The proposed use of proceeds submitted to the director shall include the rent or sale price, the total amount required to defease debt, any costs associated with compliance with the Internal Revenue Code or other tax code that may arise from the long-term lease or sale of a publicly funded water or wastewater asset, the remaining proceeds after the defeasance of debt and Internal Revenue Service compliance costs, the amount dedicated to the following, in order of priority: compliance with the provisions of the "Pollution Prevention Act," P.L.1991, c. 235 (C.13:1D-35 et seq.); P.L.1942, c. 308 (C.58:11-9.1 et seq.); "The Realty Improvement Sewerage and Facilities Act (1954)," P.L.1954, c. 199 (C.58:11-23 et seq.); and the "Safe Drinking Water Act," P.L.1977, c. 224 (C.58:12A-1 et seq.), any outstanding fees or fines owed by the entity to any federal, State, county or local governmental units, capital improvements, community improvements, and general purposes of the owner. The amount dedicated to capital improvements shall comply with a previously adopted long-term capital improvement plan or asset management plan, and must represent at least 50 percent of the remaining proceeds once the debt is defeased. The director shall approve or reject the proposed use of proceeds within 30 days of receipt thereof. If no disposition is made within 30 days, the proposed use of proceeds shall be deemed approved.

Credits

L.2015, c. 18, § 7, eff. Feb. 5, 2015.

N. J. S. A. 58:30-7, NJ ST 58:30-7
Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-8

58:30-8. Resolution to enter into contract with designated respondent

Effective: February 5, 2015

Currentness

After the proposed contract and proposed use of proceeds have been approved pursuant to subsection c. of section 7 of P.L.2015, c. 18 (C.58:30-7), the governing body of the owner may, by resolution adopted by at least two-thirds of its authorized membership, enter into a contract for the long-term lease or sale of the water or wastewater assets with the designated respondent.

CreditsL.2015, c. 18, § 8, eff. Feb. 5, 2015.

N. J. S. A. 58:30-8, NJ ST 58:30-8

Current with laws through L.2020, c. 37.

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New Jersey Statutes AnnotatedTitle 58. Waters and Water Supply (Refs & Annos)Chapter 30. Water Infrastructure Protection Act (Refs & Annos)

N.J.S.A. 58:30-9

58:30-9. Requirements for contractors or subcontractors hired by designated respondent

Effective: February 5, 2015

Currentness

Any contractor or subcontractor hired by the designated respondent, in the performance of a contract entered into pursuant to section 8 of P.L.2015, c. 18 (C.58:30-8), shall:

a. (1) be paid, or pay any worker employed by the contractor or subcontractor, not less than the wage rate for their craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to the provisions of the “New Jersey Prevailing Wage Act,” P.L.1963, c. 150 (C.34:11-56.25 et seq.) and shall comply with the requirements of section 2 of P.L.2007, c. 343 (C.34:13B-2.1);

b. only employ a worker from an apprenticeable trade who is either an apprentice participating in a registered apprenticeship program or who has completed a registered apprenticeship program, unless the contractor or subcontractor certifies that each such worker shall be paid no less than the journeyman rate established for the apprenticeable trade performed pursuant to P.L.1963, c. 150 (C.34:11-56.25 et seq.); and

c. all contractors and subcontractors shall comply with the provisions of “The Public Works Contractor Registration Act,” P.L.1999, c. 238 (C.34:11-56.48 et seq.).

CreditsL.2015, c. 18, § 9, eff. Feb. 5, 2015.

N. J. S. A. 58:30-9, NJ ST 58:30-9

Current with laws through L.2020, c. 37.

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West's Annotated Code of MarylandPublic Utilities (Refs & Annos)Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)Title 6. Business Structure (Refs & Annos)Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-301

§ 6-301. Definitions

Effective: October 1, 2018

Currentness**In general**

(a) In this subtitle the following words have the meanings indicated.

Acquiring entity

(b) “Acquiring entity” means:

(1) a water company or a sewage company that is acquiring a selling utility as the result of a voluntary arm's length transaction between the buyer and seller; or

(2) another person that:

(i) is acquiring a selling utility as the result of a voluntary arm's length transaction between the buyer and seller; and

(ii) has applied to the Commission, directly or through an affiliate, for authority to operate as a public service company in the State.

Affiliate

(c) “Affiliate” has the meaning stated in § 7-501 of this article.

Construction allowance

(d) “Construction allowance” means an accounting practice that recognizes the capital costs, including debt and equity funds that are used to finance the construction costs of an improvement to a selling utility's assets by an acquiring entity.

Fair market value

(e) “Fair market value” means the average of the two utility valuation expert appraisals conducted under § 6-304 of this subtitle.

Selling utility

(f) “Selling utility” means a water company or a sewage disposal company or any other water service or sewage disposal service provider in the State, including any State, county, or municipal water service provider or sewage disposal service provider that is being purchased by an acquiring entity as the result of a voluntary arm's length transaction between the buyer and seller.

Utility valuation expert

(g) “Utility valuation expert” or “expert” means a person hired by an acquiring public utility and selling utility for the purpose of conducting an economic valuation of the selling utility to determine its fair market value.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-301, MD PUBLIC UTIL § 6-301

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

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West's Annotated Code of Maryland

Public Utilities (Refs & Annos)

Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)

Title 6. Business Structure (Refs & Annos)

Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-302

§ 6-302. Application of subtitle

Effective: October 1, 2018

Currentness

This subtitle applies to the sale and acquisition, including all tangible assets, of public and private water service providers and sewage disposal service providers with fewer than 400,000 customers.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-302, MD PUBLIC UTIL § 6-302

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

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West's Annotated Code of MarylandPublic Utilities (Refs & Annos)Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)Title 6. Business Structure (Refs & Annos)Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-303

§ 6-303. Acquisition of not-for-profit water service or sewage disposal service provider

Effective: October 1, 2018

Currentness**In general**

(a) Without prior authorization of the Commission, a person may not acquire a controlling interest in any State, county, municipal, or similar not-for-profit water service or sewage disposal service provider, for the purpose of converting the provider into a water company or sewage disposal company.

Authorization if consistent with public convenience and necessity

(b) The Commission may authorize an acquisition under subsection (a) of this section if the Commission finds that the acquisition is consistent with the public convenience and necessity.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-303, MD PUBLIC UTIL § 6-303

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

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West's Annotated Code of MarylandPublic Utilities (Refs & Annos)Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)Title 6. Business Structure (Refs & Annos)Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-304

§ 6-304. Fair market value

Effective: October 1, 2018

Currentness**In general**

(a) On agreement by both the acquiring entity and the selling utility, the fair market value of the selling utility shall be determined in accordance with this section.

Hiring utility valuation experts

(b) The acquiring entity and the selling utility shall each be responsible for hiring a utility valuation expert to conduct an appraisal of the selling utility to determine the fair market value of the selling utility.

Uniform Standards of Professional Appraisal Practice

(c) Each utility valuation appraisal shall be completed in accordance with the Uniform Standards of Professional Appraisal Practice.

Assessment of the tangible assets

(d)(1) The acquiring entity and the selling utility shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility.

(2) The assessment shall be incorporated into the appraisals under subsection (c) of this section.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-304, MD PUBLIC UTIL § 6-304

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

West's Annotated Code of Maryland

Public Utilities (Refs & Annos)

Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)

Title 6. Business Structure (Refs & Annos)

Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-305

§ 6-305. Conflicts of interest

Effective: October 1, 2018

Currentness

A utility valuation expert may not:

- (1) derive any material financial benefit from the sale of the selling utility other than fees for services rendered; or
- (2) be an immediate family member of a director, an officer, or an employee of either the acquiring entity or the selling utility within 12 months before the date of hiring to perform an appraisal under this subtitle.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-305, MD PUBLIC UTIL § 6-305

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

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West's Annotated Code of MarylandPublic Utilities (Refs & Annos)Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)Title 6. Business Structure (Refs & Annos)Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-306

§ 6-306. Inclusion of fees in rate making rate base

Effective: October 1, 2018

Currentness**In general**

(a)(1) Reasonable transaction and closing costs incurred by the acquiring entity shall be included in the rate making rate base of the acquiring entity.

(2) Fees paid to utility valuation experts may be included in the transaction and closing costs associated with acquisition by the acquiring entity.

(3) Unless the Commission finds just cause to authorize additional fees, fees eligible for inclusion may not exceed 5% of the fair market value of the selling utility or \$50,000 if the actual fees paid exceed 5% of the fair market value.

Rate making rate base

(b) As of the closing date of the acquisition, the rate making rate base of the selling utility, including additions under subsection (a) of this section, shall be the lesser of:

(1) the purchase price negotiated by the acquiring entity and selling utility; or

(2) the fair market value of the selling utility.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-306, MD PUBLIC UTIL § 6-306

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

West's Annotated Code of MarylandPublic Utilities (Refs & Annos)Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)Title 6. Business Structure (Refs & Annos)Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-307

§ 6-307. Commission approval

Effective: October 1, 2018

Currentness**Application for Commission approval**

(a) If an acquiring entity and the selling utility agree to use the process outlined in § 6-304 of this subtitle, the acquiring entity shall include in its application for Commission approval of the acquisition:

- (1) copies of the two appraisals performed by the utility valuation experts under § 6-304 of this subtitle;
- (2) the purchase price of the selling utility as agreed to by the acquiring entity and the selling utility;
- (3) the rate making rate base of the selling utility determined in accordance with this subtitle;
- (4) the transaction and closing costs incurred by the acquiring entity that will be included in its rate base; and
- (5) a tariff containing a schedule of rates, service charges, and any additional fees to be incurred by the customers of the selling utility at or immediately after the closing date of acquisition.

Timing

(b)(1) Subject to paragraph (2) of this subsection, the Commission shall issue a final order on an application submitted under this subtitle within 180 days after the filing date of a complete application under subsection (a) of this section.

(2) The Commission may extend a proceeding under this subtitle for an additional 30 days if the Commission finds that the proceedings cannot be completed within the initial suspension period.

(3) After the expiration of 180 days under paragraph (1) of this subsection and any extension under paragraph (2) of this subsection, if the Commission has not entered a final order, the application shall be deemed approved.

Order approving application

(c) If the Commission issues an order approving the application for acquisition, the order shall include:

(1) the rate making rate base of the selling utility, as determined under this subtitle; and

(2) any conditions of approval that the Commission requires.

Tariff

(d) The tariff submitted under subsection (a)(5) of this section shall remain in effect until new rates are approved for the acquiring entity in a base rate case proceeding.

Appraisal

(e) An appraisal conducted under this subtitle is presumed to be valid unless substantial evidence demonstrates a failure to adhere to the requirements of § 6-304 or § 6-305 of this subtitle.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-307, MD PUBLIC UTIL § 6-307

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

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West's Annotated Code of MarylandPublic Utilities (Refs & Annos)Division I. Public Services and Utilities [Titles 1-15] (Refs & Annos)Title 6. Business Structure (Refs & Annos)Subtitle 3. Acquisition of Water Companies and Sewage Disposal Companies (Refs & Annos)

MD Code, Public Utilities, § 6-308

§ 6-308. Construction allowances

Effective: October 1, 2018

Currentness**In general**

(a) The cost of an improvement that an acquiring entity places in service after the acquisition shall accrue a construction allowance after the date the cost was incurred until the earlier of:

(1) 3 years after the improvement is placed in service; or

(2) the date the improvement is included in the acquiring entity's next base rate case.

Depreciation

(b) Depreciation on an acquiring entity's improvements after the acquisition shall be deferred for book and rate making purposes.

Credits

Added by Acts 2018, c. 219, § 1, eff. Oct. 1, 2018; Acts 2018, c. 220, § 1, eff. Oct. 1, 2018.

MD Code, Public Utilities, § 6-308, MD PUBLIC UTIL § 6-308

Current through legislation effective June 1, 2020, from the 2020 Regular Session of the General Assembly.

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Purdon's Pennsylvania Statutes and Consolidated Statutes
Title 66 Pa.C.S.A. Public Utilities (Refs & Annos)
Part I. Public Utility Code (Refs & Annos)
Subpart C. Regulation of Public Utilities Generally (Refs & Annos)
Chapter 13. Rates and Distribution Systems (Refs & Annos)
Subchapter A. Rates

66 Pa.C.S.A. § 1329

§ 1329. Valuation of acquired water and wastewater systems

Effective: June 13, 2016

Currentness

(a) Process to establish fair market value of selling utility.--Upon agreement by both the acquiring public utility or entity and the selling utility, the following procedure shall be used to determine the fair market value of the selling utility:

- (1) The commission will maintain a list of utility valuation experts from which the acquiring public utility or entity and selling utility will choose.
- (2) Two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value.
- (3) Each utility valuation expert shall determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.
- (4) The acquiring public utility or entity and selling utility shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility. The assessment shall be incorporated into the appraisal under the cost approach required under paragraph (3).
- (5) Each utility valuation expert shall provide the completed appraisal to the acquiring public utility or entity and selling utility within 90 days of execution of the service contract.

(b) Utility valuation experts.--

- (1) The utility valuation experts required under subsection (a) shall be selected as follows:
 - (i) one shall be selected by the acquiring public utility or entity; and
 - (ii) one shall be selected by the selling utility.

(2) The utility valuation experts shall not:

(i) derive any material financial benefit from the sale of the selling utility other than fees for services rendered; or

(ii) be an immediate family member of a director, officer or employee of either the acquiring public utility, entity or selling utility within a 12-month period of the date of hire to perform an appraisal.

(3) Fees paid to utility valuation experts may be included in the transaction and closing costs associated with acquisition by the acquiring utility or entity. Fees eligible for inclusion may be of an amount not exceeding 5% of the fair market value of the selling utility or a fee approved by the commission.

(c) Ratemaking rate base.--The following apply:

(1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

(i) the acquiring public utility during the acquiring public utility's next base rate case; or

(ii) the entity in its initial tariff filing.

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

(d) Acquisitions by public utility.--The following apply:

(1) If the acquiring public utility and selling utility agree to use the process outlined in subsection (a), the acquiring public utility shall include the following as an attachment to its application for commission approval of the acquisition filed pursuant to section 1102 (relating to enumeration of acts requiring certificate):

(i) Copies of the two appraisals performed by the utility valuation experts under subsection (a).

(ii) The purchase price of the selling utility as agreed to by the acquiring public utility and selling utility.

(iii) The ratemaking rate base determined pursuant to subsection (c)(2).

(iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.

(v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.

(2) The commission shall issue a final order on an application submitted under this section within six months of the filing date of an application meeting the requirements of subsection (d)(1).

(3) If the commission issues an order approving the application for acquisition, the order shall include:

(i) The ratemaking rate base of the selling utility, as determined under subsection (c)(2).

(ii) Additional conditions of approval as may be required by the commission.

(4) The tariff submitted pursuant to subsection (d)(1)(v) shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission. The acquiring public utility may collect a distribution system improvement charge during this time, as approved by the commission under this chapter.

(5) The selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring public utility as part of the acquiring utility's next base rate case proceeding. The original source of funding for any part of the water or sewer assets of the selling utility shall not be relevant to determine the value of said assets.

(e) Acquisitions by entity.--An entity shall provide all the information required by subsection (d)(1) to the commission as an attachment to its application for a certificate of public convenience filed pursuant to section 1102.

(f) Postacquisition projects.--The following apply:

(1) An acquiring public utility's postacquisition improvements that are not included in a distribution improvement charge shall accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier.

(2) Depreciation on an acquiring public utility's postacquisition improvements that have not been included in the calculation of a distribution system improvement charge shall be deferred for book and ratemaking purposes.

(g) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Acquiring public utility.” A water or wastewater public utility subject to regulation under this title that is acquiring a selling utility as the result of a voluntary arm's-length transaction between the buyer and seller.

“Allowance of funds used during construction.” An accounting practice that recognizes the capital costs, including debt and equity funds that are used to finance the construction costs of an improvement to a selling utility's assets by an acquiring public utility.

“Entity.” A person, partnership or corporation that is acquiring a selling utility and has filed or whose affiliate has filed an application with the commission seeking public utility status pursuant to section 1102.

“Fair market value.” The average of the two utility valuation expert appraisals conducted under subsection (a)(2).

“Ratemaking rate base.” The dollar value of a selling utility which, for postacquisition ratemaking purposes, is incorporated into the rate base of the acquiring public utility or entity.

“Rate stabilization plan.” A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.

“Selling utility.” A water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller.

“Utility valuation expert.” A person hired by an acquiring public utility and selling utility for the purpose of conducting an economic valuation of the selling utility to determine its fair market value.

Credits

2016, April 14, P.L. 76, No. 12, § 1, effective in 60 days [June 13, 2016].

66 Pa.C.S.A. § 1329, PA ST 66 Pa.C.S.A. § 1329

Current through 2020 Regular Session Act 34. Some statute sections may be more current, see credits for details.

Baldwin's Ohio Revised Code AnnotatedTitle XLIX. Public Utilities (Refs & Annos)Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)Valuation of Property

R.C. § 4909.051

4909.051 Definitions for RC 4909.052 to 4909.055

Effective: April 5, 2019

CurrentnessAs used in sections 4909.052 to 4909.055 of the Revised Code:

“Large water-works or sewage disposal system company” means a water-works or sewage disposal system company that has annual operating revenues of two hundred fifty thousand dollars or more.

“Municipal water-works or sewage disposal system company” means any water-works or sewage disposal system company owned or operated by a political subdivision defined in section 6119.011 of the Revised Code or by a municipal corporation.

CREDIT(S)

(2018 H 422, eff. 4-5-19)

R.C. § 4909.051, OH ST § 4909.051

Current through File 30 of the 133rd General Assembly (2019-2020).

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Baldwin's Ohio Revised Code AnnotatedTitle XLIX. Public Utilities (Refs & Annos)Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)Valuation of Property

R.C. § 4909.052

4909.052 Original cost determination for acquisition of municipal water-works or sewage disposal system company by large water-works or sewage disposal system company

Effective: April 5, 2019

Currentness

Subject to a finding that such costs are just and reasonable, the public utilities commission in evaluating a petition submitted under section 4905.481 of the Revised Code shall accept the original cost, reported under division (C)(3) of section 4909.05 of the Revised Code, of the acquisition of a municipal water-works or sewage disposal system company that is acquired by a large water-works or sewage disposal system company, provided that the original cost is determined according to all of the following requirements:

- (A) The acquiring company has three appraisals performed on the property of the company being acquired.
- (B) The three appraisals are performed by three independent utility-valuation experts mutually selected by the acquiring company and the company being acquired from the list maintained under section 4909.054 of the Revised Code.
- (C) The average of the three appraisals is used as the fair market value of the company being acquired.
- (D) Each utility-valuation expert does all of the following:
 - (1) Determines the fair market value of the company to be acquired by establishing the amount for which the company would be sold in a voluntary transaction between a willing buyer and a willing seller under no obligation to buy or sell;
 - (2) Determines the fair market value in compliance with the uniform standards of professional appraisal practice;
 - (3) Employs the cost, market, and income approach to independently quantify the future benefits of the company to be acquired;
 - (4) Incorporates the assessment described in division (D)(5) of this section into the appraisal under the cost, market, and income approach;
 - (5) Engages one engineer who is licensed to prepare an assessment of the tangible assets of the company to be acquired. The original source of funding for any part of the tangible assets shall not be relevant to the determination of the value of those assets.

(E) The lesser of the purchase price or the fair market value, described in division (C) of this section, is reported as the original cost under division (C)(3) of section 4909.05 of the Revised Code of the company to be acquired.

CREDIT(S)

(2018 H 422, eff. 4-5-19)

R.C. § 4909.052, OH ST § 4909.052

Current through File 30 of the 133rd General Assembly (2019-2020).

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Baldwin's Ohio Revised Code AnnotatedTitle XLIX. Public Utilities (Refs & Annos)Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)Valuation of Property

R.C. § 4909.053

4909.053 Appraisal reports for acquisition of municipal water-works or sewage disposal system company by large water-works or sewage disposal system company

Effective: April 5, 2019

Currentness

Each utility-valuation expert employed under section 4909.052 of the Revised Code shall return the appraisal required under that section, in writing, to both companies described in that section in a reasonable and timely manner. All appraisals shall be included in any filing associated with the acquisition under section 4905.481 or 4909.052 of the Revised Code.

CREDIT(S)

(2018 H 422, eff. 4-5-19)

R.C. § 4909.053, OH ST § 4909.053

Current through File 30 of the 133rd General Assembly (2019-2020).

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Baldwin's Ohio Revised Code AnnotatedTitle XLIX. Public Utilities (Refs & Annos)Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)Valuation of Property

R.C. § 4909.054

4909.054 List of utility-valuation experts from which water-works or
sewage disposal system company may choose for purposes of RC 4909.052

Effective: April 5, 2019

Currentness

For purposes of section 4909.052 of the Revised Code, the public utilities commission shall maintain a list of utility-valuation experts from which a water-works or sewage disposal system company may choose. The commission shall be responsible for creating and maintaining reasonable criteria that must be met to be included in the list.

CREDIT(S)

(2018 H 422, eff. 4-5-19)

R.C. § 4909.054, OH ST § 4909.054

Current through File 30 of the 133rd General Assembly (2019-2020).

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Baldwin's Ohio Revised Code AnnotatedTitle XLIX. Public Utilities (Refs & Annos)Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)Valuation of Property

R.C. § 4909.055

4909.055 Deferral of prudent costs of obtaining valuations used
to determine market value of system in RC 4909.052 acquisition

Effective: April 5, 2019

Currentness

Prudent costs of obtaining the three valuations used to determine the market value of the system in an acquisition described in section 4909.052 of the Revised Code shall be deferred as an expense for future recovery in a manner as determined by the public utilities commission. In determining the prudence of costs under this section, the commission shall give due regard to the circumstances of the case, including the size and complexity of, and any particular difficulties associated with, the valuation.

CREDIT(S)

(2018 H 422, eff. 4-5-19)

R.C. § 4909.055, OH ST § 4909.055

Current through File 30 of the 133rd General Assembly (2019-2020).

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Baldwin's Ohio Revised Code AnnotatedTitle XLIX. Public Utilities (Refs & Annos)Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)Valuation of Property

R.C. § 4909.057

4909.057 Deferral of post-in-service carrying costs on improvements made to company acquired after RC 4909.052 acquisition; deferral of depreciation expense related to post-acquisition improvements to be recovered over life of assets commencing with first rate case including acquisition

Effective: April 5, 2019

Currentness

(A) Upon application of the acquiring company, the public utilities commission may authorize the acquiring company to defer post-in-service carrying costs on any improvements made to the company that is acquired after an acquisition described in section 4909.052 of the Revised Code. Such costs shall be calculated at the acquiring company's weighted average cost of debt as determined in its last rate case. Such deferrals shall commence after the date on which the expenditure was incurred and shall continue until the investment has been in service for a three-year period, until the acquiring company's next rate case that includes the investment, or until the inclusion of the investment in a charge authorized under section 4909.172 of the Revised Code, whichever occurs first.

(B) Upon application of the acquiring company, the public utilities commission may authorize the acquiring company to defer any depreciation expense related to the post-acquisition improvements described in division (A) of this section to be recovered over the life of the assets commencing with the first rate case including the acquisition. This depreciation deferral shall continue until the associated investment has been in service for a three-year period, until the acquiring company's next rate case that includes the investment, or until the inclusion of the investment in a charge authorized under section 4909.172 of the Revised Code, whichever occurs first.

CREDIT(S)

(2018 H 422, eff. 4-5-19)

R.C. § 4909.057, OH ST § 4909.057

Current through File 30 of the 133rd General Assembly (2019-2020).

Baldwin's Ohio Revised Code Annotated

Title XLIX. Public Utilities (Refs & Annos)

Chapter 4909. Public Utilities Commission--Fixation of Rates (Refs & Annos)

Valuation of Property

R.C. § 4909.059

4909.059 Applicability of RC 4905.481, 4905.49, 4905.491, and 4909.051 to 4909.057

Effective: April 5, 2019

Currentness

Sections 4905.481, 4905.49, 4905.491, and 4909.051 to 4909.057 of the Revised Code shall be exclusively applied to voluntary and mutually agreeable acquisitions.

CREDIT(S)

(2018 H 422, eff. 4-5-19)

R.C. § 4909.059, OH ST § 4909.059

Current through File 30 of the 133rd General Assembly (2019-2020).

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West's North Carolina General Statutes Annotated
Chapter 62. Public Utilities (Refs & Annos)
Article 7. Rates of Public Utilities

N.C.G.S.A. § 62-133.1A

§ 62-133.1A. Fair value determination of government-owned water and wastewater systems

Effective: June 25, 2018

Currentness

(a) Election.--A water or wastewater public utility, as defined by G.S. 62-3(23)a.2., may elect to establish rate base by using the fair value of the utility property instead of original cost when acquiring an existing water or wastewater system owned by a municipality or county or an authority or district established under Chapter 162A of the General Statutes.

(b) Determination of Fair Value.--

(1) The fair value of a system to be acquired shall be based on three separate appraisals conducted by accredited, impartial valuation experts chosen from a list to be established by the Commission. The following shall apply to the valuation:

a. One appraiser shall represent the public utility acquiring the system, another appraiser shall represent the utility selling the system, and another appraiser shall represent the Public Staff of the Commission.

b. Each appraiser shall determine fair value in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value.

c. Fair value, for rate-making purposes under G.S. 62-133, shall be the average of the three appraisals provided for by this subsection.

d. The original source of funding for all or any portions of the water and sewer assets being acquired is not relevant to an evaluation of fair value.

(2) The acquiring public utility and selling utility shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the system to be acquired, and the assessment shall be used by the three appraisers in determining fair value.

(3) Reasonable fees, as determined by the Commission, paid to utility valuation experts, may be included in the cost of the acquired system, in addition to reasonable transaction and closing costs incurred by the acquiring public utility.

(4) The rate base value of the acquired system, which shall be reflected in the acquiring public utility's next general rate case for rate-making purposes, shall be the lesser of the purchase price negotiated between the parties to the sale or the fair value plus the fees and costs authorized in subdivision (3) of this subsection.

(5) The normal rules of depreciation shall begin to apply against the rate base value upon purchase of the system by the acquiring public utility.

(c) Application and Procedure.--An application to the Commission for a determination of the rate base value of the system to be acquired shall contain all of the following:

(1) Copies of the valuations performed by the appraisers, as provided in subdivision (1) of subsection (b) of this section.

(2) Any deficiencies identified by the engineering assessment conducted pursuant to subdivision (2) of subsection (b) of this section and a five-year plan for prudent and necessary infrastructure improvements by the acquiring entity.

(3) Projected rate impact for the selling entity's customers for the next five years.

(4) The averaging of the appraisers' valuations, which shall constitute fair value for purposes of this section.

(5) The assessment of tangible assets performed by a licensed professional engineer, as provided in subdivision (2) of subsection (b) of this section.

(6) The contract of sale.

(7) The estimated valuation fees and transaction and closing costs incurred by the acquiring public utility.

(8) A tariff, including rates equal to the rates of the selling utility. The selling utility's rates shall be the rates charged to the customers of the acquiring public utility until the acquiring public utility's next general rate case, unless otherwise ordered by the Commission for good cause shown.

(d) Final Order.--If the application meets all the requirements of subsection (c) of this section, the Commission shall issue its final order approving or denying the application within six months of the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired property for rate-making purposes in a manner consistent with the provisions of this section.

(e) Commission's Authority.--The Commission shall retain its authority under Chapter 62 of the General Statutes to set rates for the acquired system in future rate cases, and shall have the discretion to classify the acquired system as a separate entity for rate-making purposes, consistent with the public interest. If the Commission finds that the average of the appraisals will not result in a reasonable fair value, the Commission may adjust the fair value as it deems appropriate and in the public interest.

(f) The Commission shall adopt rules to implement this section.

Credits

Added by S.L. 2018-51, § 2, eff. June 25, 2018.

N.C.G.S.A. § 62-133.1A, NC ST § 62-133.1A

The statutes and Constitution are current through 2020-4 of the 2020 Regular Session of the General Assembly, subject to changes made pursuant to direction of the Revisor of Statutes.

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Vernon's Texas Statutes and Codes Annotated
Water Code (Refs & Annos)
Title 2. Water Administration (Refs & Annos)
Subtitle B. Water Rights
Chapter 13. Water Rates and Services (Refs & Annos)
Subchapter H. Sale of Property and Mergers

V.T.C.A., Water Code § 13.305

§ 13.305. Voluntary Valuation of Acquired Utility or Facilities

Effective: September 1, 2019
Currentness

(a) In this section:

- (1) "Acquiring utility" means a Class A or Class B utility that is acquiring a selling utility, or facilities of a selling utility, as the result of a voluntary arm's-length transaction.
- (2) "Ratemaking rate base" means the dollar value of a selling utility that is incorporated into the rate base of the acquiring utility for postacquisition ratemaking purposes.
- (3) "Selling utility" means a retail public utility that is being purchased by an acquiring utility, or is selling facilities to an acquiring utility, as the result of a voluntary arm's-length transaction.

(b) The utility commission shall maintain a list of experts qualified to conduct economic valuations of utilities for the purposes of this section.

(c) An acquiring utility and a selling utility may agree to determine by the following process the fair market value of the selling utility or the facilities to be sold, as applicable:

- (1) the acquiring utility and the selling utility shall notify the utility commission of their intent to determine the fair market value under this section;
- (2) not later than the 30th day after the date the utility commission receives notice under Subdivision (1), the utility commission shall select three utility valuation experts from the list maintained under Subsection (b);
- (3) each utility valuation expert shall perform an appraisal in compliance with Uniform Standards of Professional Appraisal Practice, employing the cost, market, and income approaches, to determine the fair market value; and

(4) the three utility valuation experts selected under Subdivision (2) jointly shall retain a licensed engineer to conduct an assessment of the tangible assets of the selling utility, or the facilities to be sold, as applicable, and each utility valuation expert shall:

(A) incorporate the assessment into the appraisal under the cost approach required under Subdivision (3); and

(B) provide the completed appraisal to the acquiring utility and the selling utility in a reasonable and timely manner.

(d) A utility valuation expert described by Subsection (b) may not:

(1) derive any material financial benefit from the sale other than fees for services rendered; or

(2) be or have been within the year preceding the date the service contract is executed an immediate family member of a director, officer, or employee of the acquiring utility or the selling utility.

(e) A fee paid to a utility valuation expert may be included in the transaction and closing costs associated with the acquisition by the acquiring utility. A fee may not exceed the lesser of:

(1) five percent of the fair market value; or

(2) a fee amount approved by the utility commission.

(f) For the purposes of the acquisition, the fair market value is the average of the three utility valuation expert appraisals conducted under Subsection (c).

(g) For an acquisition of a selling utility, the ratemaking rate base of the selling utility is the lesser of the purchase price negotiated by the acquiring utility and the selling utility or the fair market value. The ratemaking rate base of the selling utility shall be incorporated into the rate base of the acquiring utility during the utility's next rate base case under Subchapter F.

(h) If the acquiring utility and the selling utility use the process for establishing fair market value in Subsection (c), the acquiring utility shall submit as attachments to an application required under Section 13.301:

(1) copies of the three appraisals performed by the utility valuation experts under Subsection (c);

(2) the purchase price agreed to by the acquiring utility and the selling utility;

(3) if applicable, the ratemaking rate base determined under Subsection (g);

- (4) if applicable, the transaction and closing costs incurred by the acquiring utility that will be included in the utility's rate base; and
- (5) if applicable, a tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition.
- (i) If the utility commission approves the application for acquisition under Section 13.301, the utility commission shall issue an order that includes:
- (1) the ratemaking rate base of the selling utility as determined under Subsection (g); and
- (2) any additional conditions for the acquisition the utility commission requires.
- (j) A tariff submitted under Subsection (h)(5) shall remain in effect until the utility commission approves new rates as part of a rate base case proceeding.
- (k) The original sources of funding for any part of the water or sewer assets of the selling utility are not relevant to determine the value of the selling utility's assets. The selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring utility's next rate base case proceeding.
- (l) In this subsection, "allowance of funds used during construction" means an accounting practice that recognizes the capital costs, including debt and equity funds, that are used to finance the construction costs of an improvement to a selling utility's assets by an acquiring utility. An acquiring utility's postacquisition improvements shall accrue an allowance of funds used during construction after the date the cost was incurred until the earlier of:
- (1) the fourth anniversary of the date the asset entered into service; or
- (2) the inclusion of the asset in the acquiring utility's next rate base case.
- (m) Depreciation on an acquiring utility's postacquisition improvements shall be deferred for book and ratemaking purposes.

Credits

Added by Acts 2019, 86th Leg., ch. 545 (H.B. 3542), § 2, eff. Sept. 1, 2019.

V. T. C. A., Water Code § 13.305, TX WATER § 13.305

Current through the end of the 2019 Regular Session of the 86th Legislature

West's Annotated Code of Virginia
Title 56. Public Service Companies (Refs & Annos)
Chapter 5. Utility Transfers Act

VA Code Ann. § 56-90.2

§ 56-90.2. Fair market valuations of water and sewer utility asset acquisitions

Effective: July 1, 2020

Currentness

The Commission shall establish rules governing petitions by an acquiring public utility that has elected to seek use of the fair market value of a municipal or other governmental selling utility's water or sewer assets to determine the initial rate base for the purpose of post-acquisition rate recovery. Such rules shall identify information to be filed in addition to all other filing requirements in the Utility Transfers Act (§ 56-88 et seq.). Such rules shall:

1. Establish the process for determining the acquired water or sewer utility rate base, taking into consideration the use of the lesser of (i) the agreed-upon purchase price established during a voluntary arm's-length transaction by the selling and acquiring utilities and (ii) the fair market value established using the average of the valuations provided by three qualified and impartial utility valuation experts.
2. Provide for the acquiring utility to submit complete and unredacted copies of two qualified, independent, and impartial utility valuation expert's appraisals of the system assets to be acquired in compliance with the uniform standards of professional appraisal practices. The appraisals shall be treated confidentially. Such appraisals shall be completed and submitted in accordance with the following:
 - a. One appraisal shall be sponsored by the public utility acquiring the utility system assets, and one appraisal shall be sponsored by the government entity selling the utility system assets.
 - b. The qualifications of such utility valuation experts, specifically as they relate to water or wastewater utility systems, shall be clearly identified in the application.
 - c. The appraisals shall clearly identify whether they are based on a cost, market, income, or other methodology.
 - d. The appraisals shall quantify only the fair market value associated with assets that are to be currently used and useful in utility service. To the extent assets are acquired beyond those to be currently used and useful in utility service, a narrative shall be provided of the acquiring utility's intended purpose of such assets.
 - e. Commission staff and other intervenors may seek discovery to confirm the reasonableness of such appraisals and may provide testimony and recommendations regarding such.

f. When combined with a third appraisal sponsored by the Commission staff, the average of the three appraisals shall be deemed the fair market value for the purposes of this proceeding. The applicant may seek discovery to confirm the reasonableness of such appraisal and may provide testimony and recommendations regarding such.

3. Provide for the submission of a complete and unredacted copy of an assessment performed by a professional engineer licensed in Virginia, jointly retained by the acquiring and selling utilities, regarding tangible assets of the utility system to be acquired. Such assessment shall be used by the utility valuation experts as a basis for their valuations in determining fair market value and shall be treated confidentially. Such assessments shall be completed and submitted in accordance with the following:

a. The qualifications of such licensed engineer, specifically as they relate to water or wastewater utility systems, shall be clearly identified in the application.

b. Commission staff and other intervenors may seek discovery to confirm the reasonableness of the assessment and may provide testimony and recommendations regarding such.

c. To the extent assets are to be acquired beyond those to be currently used and useful in utility service, such assessment shall separately quantify only the assets that are to be currently used and useful in utility service.

4. Provide that to the extent the proposed purchase price is different from that provided in the appraisals, the application shall identify such proposed purchase price.

5. Provide for the acquiring utility to submit the proposed journal entries resulting from the proposed acquisition, including tax entries, including account numbers recognized by the National Association of Regulatory Utility Commissioners.

6. Provide for the acquiring utility to submit an analysis identifying the qualitative and quantitative benefits and estimated customer rate impacts for the next five years as a result of the proposed acquisition for each of (i) the customers of the desired system and (ii) the legacy customers of the acquiring utility. Such analysis should clearly identify all assumptions relied upon.

7. Provide that if depreciation rates for the acquired system are not based on a depreciation study:

a. The acquiring utility may apply a three percent composite depreciation rate to the fair market value of the utility system assets acquired.

b. A depreciation study on the acquired system shall be performed within five years of acquisition and provided for review by Commission staff. Upon acceptance of the depreciation rates by Commission staff for booking purposes, such rates shall be utilized for the system effective as of the date of the study.

c. However, if the acquired system is of a size that would qualify under the Small Water or Sewer Public Utility Act (§ 56-265.13:1 et seq.), such assets may be exempted from the requirement of performing a depreciation study.

8. Establish the ability to evaluate and include reasonable transaction costs and fees of the utility valuation experts in the fair market value determination in addition to reasonable transaction and closing costs when establishing the rate base.

9. Provide that the rate base value of the acquired system assets shall be the fees and costs of the utility valuation experts authorized by the acquiring and selling utilities in addition to reasonable transaction and closing costs, plus the lesser of (i) the purchase price negotiated between the acquiring utility and selling utility as the result of a voluntary arm's-length transaction and (ii) the fair market value for subsequent rate-making purposes in the acquiring utility's next base rate case.

Nothing in the established rules shall be construed to relieve the petitioners from the duty to demonstrate adequate service to the public at just and reasonable rates that will not be impaired or jeopardized by granting the prayer of the petition as provided in § 56-90.

Such rules shall be developed in coordination and consultation with industry experts and stakeholders and established by January 1, 2021.

Credits

Added by Acts 2020, c. 518; Acts 2020, c. 519.

VA Code Ann. § 56-90.2, VA ST § 56-90.2

Current through End of the 2020 Reg. Sess.

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West's Annotated Code of West VirginiaChapter 24. Public Service CommissionArticle 2. Powers and Duties of Public Service Commission (Refs & Annos)

W. Va. Code, § 24-2-4g

§ 24-2-4g. Establishing the value of utility assets in the context of the acquisition of a utility or utility assets and providing for the combination or allocation of water and wastewater revenue requirements

Effective: June 5, 2020

Currentness

(a) The Legislature finds that:

(1) Many West Virginia publicly owned municipal, public service district-owned, and investor-owned water and wastewater utilities face substantial capital investment needs to replace aging utility infrastructure and to maintain compliance with regulatory requirements, and many municipalities that own and operate utility systems are confronted with additional financial challenges arising from diminishing tax bases, the need to repair streets and other municipally owned facilities, and unfunded or underfunded liabilities for pension and other post-employment benefit programs;

(2) Given these challenges, some of these utilities may be unable to continue to provide acceptable levels of utility service at reasonable rates, and may wish to consider the sale of their utility assets, and this decision will require those utilities to consider the expected valuation of their utility assets, the manner in which the post-acquisition rates of their customers will be established and moderated, and the purposes to which the proceeds of any sale of utility assets by a municipality may be devoted under state law;

(3) For utilities considering the sale of their utility assets, a valuation of the utility assets that is primarily based on the original cost of those assets less depreciation and less the value of contributed property will: (A) Understate the actual fair value of those assets to an acquiring party; (B) fail to account for potential income that could be generated from those assets; (C) reduce the financial benefit to utilities considering selling those assets; and (D) thereby disincentivize those utilities from selling those assets;

(4) To assist utilities considering the sale of their utility assets in making informed decisions on whether to sell their utility assets, the commission will permit acquiring and selling parties to negotiate a value for those assets, permit the acquiring party to include the negotiated sale price of the assets in post-acquisition rate base for rate-making purposes, and make its post-acquisition rate-base determination based on the valuation approach specified in this section;

(5) To assist utilities that provide both water and wastewater utility service in moderating the rate impact of wastewater service investment on wastewater system customers, it is appropriate to authorize the combination of water and wastewater revenue requirements or the allocation of a portion of a wastewater revenue requirement to water customers if such a combination or allocation is just and reasonable and results in water and wastewater rates that are based primarily on the cost of providing service;

(6) Expanding the permissible uses by a municipality of the proceeds of a sale of utility assets as provided for in § 8-12-17 of this code will also facilitate and encourage a municipality's ability to sell its utility assets, should it choose to do so; and

(7) The enactment of these regulatory improvements will facilitate the repair and replacement of utility infrastructure by improving access to investment capital and moderating the rate impact to customers of investments in utility infrastructure, and thereby enhancing the state of water and wastewater utility infrastructure assets and the service provided by those assets, all of which are in the best interest of West Virginia and its citizens.

(b) *Value of utility assets; rate-base addition; ancillary approvals.* --

(1) In any case filed pursuant to § 24-2-12 of this code seeking the commission's prior consent and approval of the acquisition by an acquiring utility of the utility assets of a selling utility, the applicants may propose a negotiated sale price for the utility assets that is in accordance with utility asset valuation methodologies, such as depreciated original cost, or reproduction cost new less depreciation, or other industry standard utility asset valuation methods, excluding the use of fair market appraisal valuation methods: *Provided*, That the applicants will present evidence of those asset values in the application: *Provided, however*, That the utility asset valuation methodologies and definitions referenced in § 24-2-4g(d) of this code apply solely to cases filed pursuant to chapter 24 of this code.

(2) If the commission finds that the proposed acquisition, including the negotiated sale price, satisfies the requirements for approval in § 24-2-12 of this code, including a finding that the terms and conditions of the acquisition are reasonable and that neither party thereto is given an undue advantage over the other, and does not adversely affect the public in this state, then the commission will establish the rate based addition at the negotiated sale price, as determined and in accordance with subdivision (1) of this subsection.

(3) In its order granting, denying, or modifying the relief requested in an application described in subdivision (1) of this subsection, the commission may also approve any rate stabilization plan, tariff change or provision, or surcharge mechanism proposed by the applicants and that the commission finds reasonable in view of the proposed transaction and the acquiring utility's proposed post-acquisition improvements to the utility assets.

(4) In any application described in subdivision (1) of this subsection, the commission will issue a final order granting, denying, or granting in part and denying in part the relief requested in the application.

(5) Nothing in this section or § 24-2-12 of this code requires an acquiring utility or a selling utility to obtain the prior consent and approval of the commission to enter into agreements or undertake commitments incident to the negotiation, due diligence, or finalization of an agreement to purchase and sell utility assets, including, without limitation, agreements and commitments relating to:

(A) The exclusivity of negotiations for a defined period;

(B) The confidentiality of negotiations and nondisclosure of facts relevant to the negotiations;

(C) The payment of transaction costs as between the parties, the reimbursement of those costs upon closing of an acquisition of utility assets, or the allocation of costs in the event the acquisition is not consummated;

(D) The acquiring utility's completion of post-acquisition additions or improvements to the utility assets or its commitments as to post-acquisition rates and charges for utility service; or

(E) Any other commercial term reasonably necessary to facilitate the negotiation, due diligence, or finalization of the purchase and sale agreement.

(c) *Request for revenue requirement combination or allocation.* --

(1) A single utility that provides both water and wastewater utility services may request a combination of the revenue requirements of the water and wastewater utility services or an allocation of a portion of the wastewater revenue requirement to water customers. Such a request may be made as a separate filing with the commission or as part of a base rate case, a tariff filing, a statutory consent case under § 24-2-12 of this code, or another proceeding before the commission.

(2) If the commission finds that a combination or allocation requested under subdivision (1) of this subsection: (A) Will enable the acquisition and construction of wastewater infrastructure improvements or compliance with regulatory requirements at a more moderate rate impact for wastewater customers; and (B) will result in a combined water and wastewater rate, or separate water and wastewater rates that are just, reasonable, and based primarily on the cost of providing service, then the commission may authorize the utility to implement the combination or allocation, subject to such modifications as the commission may determine to be appropriate.

(d) *Definitions.* -- The following words and phrases when used in this section will have the meanings given to them in this section unless the context clearly indicates otherwise:

(1) "Acquiring utility" means: (A) A water, sewer, or stormwater utility subject to the provisions of this chapter that has entered into an agreement with a selling utility to acquire utility assets of the selling utility; or (B) any person or business entity that has entered into such an agreement and that, upon commission approval of the acquisition of those utility assets, will become a water, sewer, or stormwater utility subject to the provisions of this chapter.

(2) "Depreciated original cost" means the original cost of utility assets net of accumulated depreciation.

(3) "Negotiated sale price" means the purchase price of utility assets that the acquiring utility and the selling utility agree upon through voluntary, arm's-length negotiations.

(4) "Original sources of funding" means all methods used to fund the utility assets, including, but not limited to, loan funding, grant funding, and property otherwise contributed to the utility.

(5) "Rate-base addition" means the dollar amount of utility rate base associated with the utility assets that the acquiring utility may include in the calculation of its post-acquisition rate base for rate-making purposes.

(6) “Reproduction cost new less depreciation” means an estimate of the cost to construct, at current prices, an exact duplicate or replica of the utility assets, without regard to the original sources of funding for those assets, using the same materials, construction standards, design, layout, and quality without adjustment for deficiencies, super-adequacies, and obsolescence of those assets, net of depreciation.

(7) “Selling utility” means a water, sewer, or stormwater utility subject to the provisions of this chapter that has entered into an agreement to sell utility assets to an acquiring utility.

(8) “Utility assets” or “assets” mean all or substantially all of the tangible and intangible assets of a selling utility that: (A) The selling utility has used in the provision of utility service or held for the future provision of such service; and (B) the acquiring utility will reasonably require to provide utility service after the acquisition to facilitate its plans for the provision of utility service after the acquisition.

(9) “Utility asset valuation” means industry standard valuation methods of determining the value of utility assets, regardless of original sources of funding.

(e) This section, together with the amendments to § 8-12-17 of this code, made during the 2020 regular session of the West Virginia Legislature, shall be known and referred to as the Water and Wastewater Investment Facilitation Act.

Credits

Acts 2020, S.B. 551, eff. June 5, 2020.

W. Va. Code, § 24-2-4g, WV ST § 24-2-4g
Current with legislation of the 2020 Regular Session.

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