

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 36

Session of
1991

INTRODUCED BY LLOYD, FARGO, STABACK, TRELLO, BILLOW, GIGLIOTTI,
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JANUARY 15, 1991

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 12, 1991

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, providing for the commission to order
3 the acquisition of small water and sewer utilities.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 66 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 529. Power of commission to order acquisition of small water
9 and sewer utilities.

10 (a) General rule.--The commission may order a capable public
11 utility to acquire a small water or sewer utility if the
12 commission, after notice and an opportunity to be heard,
13 determines:

14 (1) that the small water or sewer utility is in
15 violation of statutory or regulatory standards, including,
16 but not limited to, the act of June 22, 1937 (P.L.1987,
17 No.394), known as The Clean Streams Law, the act of January

1 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania
2 Sewage Facilities Act, and the act of May 1, 1984 (P.L.206,
3 No.43), known as the Pennsylvania Safe Drinking Water Act,
4 and the regulations adopted thereunder, which affect the
5 safety, adequacy, efficiency or reasonableness of the service
6 provided by the small water or sewer utility;

7 (2) that the small water or sewer utility has failed to
8 comply, within a reasonable period of time, with any order of
9 the Department of Environmental Resources or the commission
10 concerning the safety, adequacy, efficiency or reasonableness
11 of service, including, but not limited to, the availability
12 of water, the potability of water, the palatability of water
13 or the provision of water at adequate volume and pressure;

14 (3) that the small water or sewer utility cannot
15 reasonably be expected to furnish and maintain adequate,
16 efficient, safe and reasonable service and facilities in the
17 future;

18 (4) that alternatives to acquisition have been
19 considered in accordance with subsection (b) and have been
20 determined by the commission to be impractical or not
21 economically feasible;

22 (5) that the acquiring capable public utility is
23 financially, managerially and technically capable of
24 acquiring and operating the small water or sewer utility in
25 compliance with applicable statutory and regulatory
26 standards; and

27 (6) that the rates charged by the acquiring capable
28 public utility to its preacquisition customers will not
29 increase unreasonably because of the acquisition.

30 (b) Alternatives to acquisition.--Before the commission may

1 order the acquisition of a small water or sewer utility in
2 accordance with subsection (a), the commission shall discuss
3 with the small water or sewer utility, and shall give such
4 utility a reasonable opportunity to investigate, alternatives to
5 acquisition, including, but not limited to:

6 (1) The reorganization of the small water or sewer
7 utility under new management.

8 (2) The entering of a contract with another public
9 utility or a management or service company to operate the
10 small water or sewer utility.

11 (3) The appointment of a receiver to assure the
12 provision of adequate, efficient, safe and reasonable service
13 and facilities to the public.

14 (4) The merger of the small water or sewer utility with
15 one or more other public utilities.

16 (5) The acquisition of the small water or sewer utility
17 by a municipality, a municipal authority or a cooperative.

18 (c) Factors to be considered.--In making a determination
19 pursuant to subsection (a), the commission shall consider:

20 (1) The financial, managerial and technical ability of
21 the small water or sewer utility.

22 (2) The financial, managerial and technical ability of
23 all proximate public utilities providing the same type of
24 service.

25 (3) The expenditures which may be necessary to make
26 improvements to the small water or sewer utility to assure
27 compliance with applicable statutory and regulatory standards
28 concerning the adequacy, efficiency, safety or reasonableness
29 of utility service.

30 (4) The expansion of the franchise area of the acquiring

1 capable public utility so as to include the service area of
2 the small water or sewer utility to be acquired.

3 (5) The opinion and advice, if any, of the Department of
4 Environmental Resources as to what steps may be necessary to
5 assure compliance with applicable statutory or regulatory
6 standards concerning the adequacy, efficiency, safety or
7 reasonableness of utility service.

8 (6) Any other matters which may be relevant.

9 (d) Order of the commission.--Subsequent to the
10 determinations required by subsection (a), the commission shall
11 issue an order for the acquisition of the small water or sewer
12 utility by a capable public utility. Such order shall provide
13 for the extension of the service area of the acquiring capable
14 public utility.

15 (e) Acquisition price.--The price for the acquisition of the
16 small water or sewer utility shall be determined by agreement
17 between the small water or sewer utility and the acquiring
18 capable public utility, subject to a determination by the
19 commission that the price is reasonable. If the small water or
20 sewer utility and the acquiring capable public utility are
21 unable to agree on the acquisition price or the commission
22 disapproves the acquisition price on which the utilities have
23 agreed, the commission shall issue an order directing the
24 acquiring capable public utility to acquire the small water or
25 sewer utility by following the procedure prescribed for
26 exercising the power of eminent domain pursuant to the act of
27 June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent
28 Domain Code.

29 (f) Separate tariffs.--The commission may, in its discretion
30 and for a reasonable period of time after the date of

1 acquisition, allow the acquiring capable public utility to
2 charge and collect rates from the customers of the acquired
3 small water or sewer utility pursuant to a separate tariff.

4 (g) Appointment of receiver.--The commission may, in its
5 discretion, appoint a receiver to protect the interests of the
6 customers of the small water or sewer utility. Any such
7 appointment shall be by order of the commission, which order
8 shall specify the duties and responsibilities of the receiver.

9 (h) Notice.--The notice required by subsection (a) or any
10 other provision of this section shall be served upon the small
11 water or sewer utility affected, the Office of Consumer
12 Advocate, THE OFFICE OF SMALL BUSINESS ADVOCATE, the Office of <—
13 Trial Staff, the Department of Environmental Resources, all
14 proximate public utilities providing the same type of service as
15 the small water or sewer utility, all proximate municipalities
16 and municipal authorities providing the same type of service as
17 the small water or sewer utility, and the municipalities served
18 by the small water or sewer utility. The commission shall order
19 the affected small water or sewer utility to provide notice to
20 its customers of the initiation of proceedings under this
21 section in the same manner in which the utility is required to
22 notify its customers of proposed general rate increases.

23 (i) Burden of proof.--The Law Bureau shall have the burden
24 of establishing a prima facie case that the acquisition of the
25 small water or sewer utility would be in the public interest and
26 in compliance with the provisions of this section. Once the
27 commission determines that a prima facie case has been
28 established:

29 (1) the small water or sewer utility shall have the
30 burden of proving its ability to render adequate, efficient,

1 safe and reasonable service at just and reasonable rates; and

2 (2) a proximate public utility providing the same type
3 of service as the small water or sewer utility shall have the
4 opportunity and burden of proving its financial, managerial
5 or technical inability to acquire and operate the small water
6 or sewer utility.

7 (j) Plan for improvements.--Any capable public utility
8 ordered by the commission to acquire a small water or sewer
9 utility shall, prior to acquisition, submit to the commission
10 for approval a plan, including a timetable, for bringing the
11 small water or sewer utility into compliance with applicable
12 statutory and regulatory standards. The capable public utility
13 shall also provide a copy of the plan to the Department of
14 Environmental Resources and such other State or local agency as
15 the commission may direct. The commission shall give the
16 Department of Environmental Resources adequate opportunity to
17 comment on the plan and shall consider any comments submitted by
18 the department in deciding whether or not to approve the plan.
19 The reasonably and prudently incurred costs of each improvement
20 shall be recoverable in rates only after that improvement
21 becomes used and useful in the public service.

22 (k) Limitations on liability.--Upon approval by the
23 commission of a plan for improvements submitted pursuant to
24 subsection (j) and the acquisition of a small water or sewer
25 utility by a capable public utility, the acquiring capable
26 public utility shall not be liable for any damages beyond the
27 aggregate amount of \$50,000, including a maximum amount of
28 \$5,000 per incident, if the cause of those damages is
29 proximately related to identified violations of applicable
30 statutes or regulations by the small water or sewer utility.

This subsection shall not apply:

(1) beyond the end of the timetable in the plan for improvements;

(2) whenever the acquiring capable public utility is not in compliance with the plan for improvements; or

(3) if, within 60 days of having received notice of the proposed plan for improvements, the Department of Environmental Resources submitted written objections to the commission and those objections have not subsequently been withdrawn.

(1) Limitations on enforcement actions.--Upon approval by the commission of a plan for improvements submitted pursuant to subsection (j) and the acquisition of a small water or sewer utility by a capable public utility, the acquiring capable public utility shall not be subject to any enforcement actions by State or local agencies which had notice of the plan if the basis of such enforcement action is proximately related to identified violations of applicable statutes or regulations by the small water or sewer utility. This subsection shall not apply:

(1) beyond the end of the timetable in the plan for improvements;

(2) whenever the acquiring capable public utility is not in compliance with the plan for improvements;

(3) if, within 60 days of having received notice of the proposed plan for improvements, the Department of Environmental Resources submitted written objections to the commission and those objections have not subsequently been withdrawn; or

(4) to emergency interim actions of the commission or

1 the Department of Environmental Resources, including, but not
2 limited to, the ordering of boil-water advisories or other
3 water supply warnings, of emergency treatment or of
4 temporary, alternate supplies of water.

5 (m) Definitions.--As used in this section, the following
6 words and phrases shall have the meanings given to them in this
7 subsection:

8 "Capable public utility." A public utility which regularly
9 provides the same type of service as the small water utility or
10 the small sewer utility to 4,000 or more customer connections,
11 which is not an affiliated interest of the small water utility
12 or the small sewer utility, and which provides adequate,
13 efficient, safe and reasonable service. A public utility which
14 would otherwise be a capable public utility except for the fact
15 that it has fewer than 4,000 customer connections may elect to
16 be a capable public utility for the purposes of this section
17 regardless of the number of its customer connections and
18 regardless of whether or not it is proximate to the small sewer
19 utility or small water utility to be acquired.

20 "Small sewer utility." A public utility which regularly
21 provides sewer service to 1,200 or fewer customer connections.

22 "Small water utility." A public utility which regularly
23 provides water service to 1,200 or fewer customer connections.

24 Section 2. This act shall take effect in 60 days.