
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 115 Session of
2007

INTRODUCED BY D. EVANS, CALTAGIRONE, CAPPELLI, JOSEPHS, KENNEY,
KULA, MANDERINO, MELIO AND NICKOL, JANUARY 30, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, JANUARY 30, 2007

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, providing for power of commission to
3 order acquisition of city natural gas distribution
4 operations.

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

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

9 § 529.1. Power of commission to order acquisition of city
10 natural gas distribution operations.

11 (a) General rule.--The commission may order a capable public
12 utility to acquire a city natural gas distribution operation if
13 the commission, after notice and an opportunity to be heard,
14 determines all of the following:

15 (1) That the city natural gas distribution operation
16 cannot reasonably be expected to furnish and maintain
17 adequate, efficient, safe and reasonable service and
18 facilities in the future.

1 (2) That alternatives to acquisition have been
2 considered in accordance with subsection (b) and have been
3 determined by the commission to be impractical, ineffective
4 or economically infeasible.

5 (3) That the acquiring capable public utility is
6 financially, managerially and technically capable of
7 acquiring and operating the city natural gas distribution
8 operation in compliance with applicable statutory and
9 regulatory standards.

10 (4) That the rates charged by the acquiring capable
11 public utility to its preacquisition customers will not
12 increase unreasonably because of the acquisition.

13 (b) Alternatives to acquisition.--Before the commission may
14 order the acquisition of a city natural gas distribution
15 operation in accordance with subsection (a), the commission
16 shall discuss with the city natural gas distribution operation
17 and its municipal government, and shall give the city natural
18 gas distribution operation a reasonable opportunity to
19 investigate alternatives to acquisition, including, but not
20 limited to, all of the following:

21 (1) The reorganization of the city natural gas
22 distribution operation under new management.

23 (2) The entering of a contract with another public
24 utility or a management or service company to operate the
25 city natural gas distribution operation.

26 (3) The appointment of a receiver to assure the
27 provision of adequate, efficient, safe and reasonable service
28 and facilities to the public.

29 (4) The expansion of the city natural gas distribution
30 operation into territories outside its municipal boundaries.

1 (5) The receipt of, or the verifiable commitment to
2 receive, funds from Federal, State or local government, or
3 from private or public entities, sufficient to place the city
4 natural gas distribution operation on a sound financial
5 footing for both operating and capital expenses enabling it
6 to maintain adequate, efficient, safe and reasonable services
7 and facilities.

8 (6) The entering of a contract with the Commonwealth or
9 another entity to purchase and lease back assets of the city
10 natural gas distribution operation.

11 (c) Factors to be considered.--In making a determination
12 pursuant to subsection (a), the commission shall consider all of
13 the following:

14 (1) The financial, managerial and technical ability of
15 the city natural gas distribution operation.

16 (2) The financial, managerial and technical ability of
17 public utilities providing the same type of service.

18 (3) The expenditures that may be necessary to make
19 capital and other improvements to the city natural gas
20 distribution operation to assure the adequacy, efficiency,
21 safety, reasonableness or compliance with applicable
22 statutory and regulatory standards of the utility service.

23 (4) Any other matters that the commission may determine
24 to be relevant.

25 (d) Order of commission.--Subsequent to the determinations
26 required by subsection (a), the commission shall issue an order
27 for the acquisition of a city natural gas distribution operation
28 by a capable public utility. Such order shall provide for the
29 extension of the service area of the acquiring capable public
30 utility to encompass the service area of the city natural gas

1 distribution operation.

2 (e) Acquisition price.--The price for the acquisition of a
3 city natural gas distribution operation shall be determined by
4 agreement between the municipality of the city natural gas
5 distribution operation and the acquiring capable public utility,
6 subject to a determination by the commission that the price is
7 reasonable. If the municipality that owns the city natural gas
8 distribution operation and the acquiring capable public utility
9 are unable to agree on the acquisition price or the commission
10 disapproves the acquisition price on which the utilities have
11 agreed, the commission shall issue an order directing the
12 acquiring capable public utility to acquire the city natural gas
13 distribution operation by following the procedure prescribed for
14 determining fair market value pursuant to 26 Pa.C.S. Ch. 7
15 (relating to just compensation and measure of damages).

16 (f) Separate tariffs.--The commission may, in its discretion
17 and for a reasonable period of time after the date of
18 acquisition, allow the acquiring capable public utility to
19 charge and collect rates from the customers of the acquired city
20 natural gas distribution operation pursuant to a separate
21 tariff.

22 (g) Appointment of receiver.--The commission may, in its
23 discretion, appoint a receiver to protect the interests of the
24 customers of the city natural gas distribution operation. Any
25 such appointment shall be by order of the commission, which
26 order shall specify the duties and responsibilities of the
27 receiver.

28 (h) Notice.--The notice required under subsection (a) or any
29 other provision of this section shall be served upon the city
30 natural gas distribution operation affected, the municipality

1 thereof, the Office of Consumer Advocate, the Office of Small
2 Business Advocate, the Office of Trial Staff and all public
3 utilities providing the same type of service as the city natural
4 gas distribution operation. The commission shall order the
5 affected city natural gas distribution operation to provide
6 notice to its customers of the initiation of proceedings under
7 this section in the same manner in which the utility is required
8 to notify its customers of proposed general rate increases.

9 (i) Burden of proof.--The Law Bureau shall have the burden
10 of establishing a prima facie case that the acquisition of the
11 city natural gas distribution operation would be in the public
12 interest and in compliance with the provisions of this section.
13 Once the commission determines that a prima facie case has been
14 established:

15 (1) the city natural gas distribution operation shall
16 have the burden of proving its ability to render adequate,
17 efficient, safe and reasonable service at just and reasonable
18 rates; and

19 (2) a public utility providing the same type of service
20 as the city natural gas distribution operation shall have the
21 opportunity and burden of proving its financial, managerial
22 or technical inability to acquire and operate the city
23 natural gas distribution operation.

24 (j) Plan for improvements.--Any capable public utility
25 ordered by the commission to acquire a city natural gas
26 distribution operation shall, prior to acquisition, submit to
27 the commission for approval a plan, including a timetable, for
28 capital improvements, financial stability and for maintaining or
29 bringing the city natural gas distribution operation into
30 compliance with applicable statutory and regulatory standards.

1 (k) Definitions.--As used in this section, the following
2 words and phrases shall have the meanings given to them in this
3 subsection:

4 "Capable public utility." A public utility that regularly
5 provides the same type of service as a city natural gas
6 distribution operation and is determined by the commission to
7 have sufficient assets and revenue to undertake an acquisition
8 of another utility.

9 Section 2. This act shall take effect in 30 days.