
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 41

Special Session No. 1 of
2007-2008

INTRODUCED BY D. EVANS, PRESTON, BRENNAN, DALEY, GODSHALL,
JAMES, JOSEPHS, MCGEEHAN, MYERS, PARKER, WOJNAROSKI AND
KORTZ, NOVEMBER 2, 2007

REFERRED TO COMMITTEE ON CONSUMER AFFAIRS, NOVEMBER 2, 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; and, in rates and ratemaking, further providing
5 for sliding scale of rates and adjustments.

6 The General Assembly finds and declares as follows:

7 (1) Approximately 95% of natural gas leaks in
8 Pennsylvania occur on 5% of the natural gas distribution
9 pipeline.

10 (2) The majority of these leaks occur because of the
11 corrosion of cast-iron and unprotected bare steel pipes.

12 (3) In Pennsylvania there are approximately 13,000 miles
13 of cast-iron and unprotected bare steel pipelines.

14 (4) The cost of replacing this aging infrastructure is
15 estimated to be between \$9 and \$16 billion.

16 (5) Accelerating the replacement of these pipelines will
17 not only help conserve an important energy resource, but will
18 also enhance public safety and service reliability.

19 (6) Importantly, an accelerated pipeline replacement

1 program will protect the environment by reducing the level of
2 natural gas leaked into the atmosphere, which is one of the
3 gases believed to contribute to the greenhouse effect.

4 (7) A natural gas distribution system improvement charge
5 would accelerate the removal of these pipes and thus conserve
6 energy, protect public safety, enhance reliability and reduce
7 the leakage of gases leading to global warming.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

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

12 § 529.1. Power of commission to order acquisition of city
13 natural gas distribution operations.

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

18 (1) That the city natural gas distribution operation
19 cannot reasonably be expected to furnish and maintain
20 adequate, efficient, safe and reasonable services and
21 facilities in the future.

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

26 (3) That the acquiring capable public utility is
27 financially, managerially and technically capable of
28 acquiring and operating the city natural gas distribution
29 operation in compliance with applicable statutory and
30 regulatory standards.

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

4 (b) Alternatives to acquisition.--Before the commission may
5 order the acquisition of a city natural gas distribution
6 operation in accordance with subsection (a), the commission
7 shall discuss with the city natural gas distribution operation
8 and its city government, and shall give the city natural gas
9 distribution operation a reasonable opportunity to investigate
10 alternatives to acquisition, including, but not limited to, all
11 of the following:

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

14 (2) The entering into a contract with another public
15 utility or a management or service company to operate the
16 city natural gas distribution operation.

17 (3) The appointment of a receiver to assure the
18 provision of adequate, efficient, safe and reasonable service
19 and facilities to the public.

20 (4) The expansion of the city natural gas distribution
21 operation into territories outside its city boundaries.

22 (5) The receipt of, or the verifiable commitment to
23 receive, funds from Federal, State or local government, or
24 from private or public entities, sufficient to place the city
25 natural gas distribution operation on a sound financial
26 footing for both operating and capital expenses enabling it
27 to maintain adequate, efficient, safe and reasonable services
28 and facilities.

29 (6) The entering into a contract with the Commonwealth
30 or another entity to purchase and lease back assets of the

1 city natural gas distribution operation.

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

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

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

9 (3) The expenditures that may be necessary to make
10 capital and other improvements to the city natural gas
11 distribution operation to assure the adequacy, efficiency,
12 safety, reasonableness or compliance with applicable
13 statutory and regulatory standards of the utility service.

14 (4) Any other matters that the commission may determine
15 to be relevant.

16 (d) Order of commission.--Subsequent to the determinations
17 required by subsection (a), the commission shall issue an order
18 for the acquisition of a city natural gas distribution operation
19 by a capable public utility. Such order shall provide for the
20 extension of the service area of the acquiring capable public
21 utility to encompass the service area of the city natural gas
22 distribution operation.

23 (e) Acquisition price.--The price for the acquisition of a
24 city natural gas distribution operation shall be determined by
25 agreement between the city that owns the city natural gas
26 distribution operation and the acquiring capable public utility.
27 The acquisition price shall be paid to the city. If the city and
28 the acquiring capable public utility are unable to agree on the
29 acquisition price, the commission shall issue an order directing
30 the acquiring capable public utility to acquire the city natural

1 gas distribution operation pursuant to the valuation procedure
2 and assumption of liabilities prescribed in subsection (f).

3 (f) Valuation procedure and assumption of liabilities.--

4 (1) The purchase price shall be the fair market value of
5 the transferred assets, in operation as an enterprise, free
6 and clear of all liens, claims, encumbrances or liabilities,
7 on the transfer date as determined by the valuation procedure
8 established in this subsection.

9 (2) The acquiring capable public utility and the city
10 shall each appoint an independent utility valuation
11 professional with at least five years' valuation experience
12 with natural gas distribution facilities and systems to
13 determine the fair market value of the transferred assets.
14 Each party shall bear the fee of its own valuation
15 professional. If either the acquiring capable public utility
16 or the city does not appoint a valuation professional within
17 20 days after the other has given notice of the name of its
18 valuation professional, the single valuation professional
19 appointed shall be the sole valuation professional. If two
20 valuation professionals are appointed pursuant to this
21 subsection, they shall meet promptly in order to agree on the
22 fair market value of the transferred assets. If the two
23 valuation professionals are unable to agree within 30 days
24 after the second valuation professional has been appointed,
25 then, within ten days thereafter, they mutually shall appoint
26 a third valuation professional meeting the qualifications
27 stated in this subsection. The acquiring capable public
28 utility and the city shall each bear one-half of the third
29 valuation professional's fee. The third valuation
30 professional must be a person who has not previously acted in

1 any capacity for either the acquiring capable public utility
2 or the city. Within 30 days after the selection of the third
3 valuation professional, a majority of the valuation
4 professionals shall fix the fair market value of the
5 transferred assets. If a majority of the valuation
6 professionals are unable to reach a decision within that
7 time, the three valuations shall be averaged, and the average
8 shall constitute the decision of the valuation professionals.

9 (3) Subject to the terms and conditions of this section,
10 and in consideration of the sale, transfer, conveyance,
11 assignment and delivery of the transferred assets by the
12 city, the acquiring capable public utility shall pay the
13 purchase price to the city and shall assume the assumed
14 liabilities and indemnify the city.

15 (4) The acquiring capable public utility shall assume or
16 discharge or perform when due, all of the assumed
17 liabilities, including, but not limited to, the following
18 debts, liabilities or obligations arising out of, relating to
19 or otherwise in respect of the transferred assets, the
20 business or operations of the city natural gas operation or
21 are related to the following and no others:

22 (i) All liabilities and obligations arising out of
23 actions, suits, proceedings, disputes or claims, whether
24 pending or threatened, relating to the transferred
25 assets.

26 (ii) Any liabilities and obligations relating to the
27 employment or termination of employment of the employees
28 of the predecessor city natural gas distribution
29 operation after the transfer date.

30 (iii) Any liabilities, obligations and commitments

1 arising out of the agreements and contracts that are part
2 of the transferred assets.

3 (iv) All liabilities arising out of actions, suits,
4 proceedings, disputes or claims, whether pending or
5 threatened, which arose out of actions or omissions by
6 the city, the predecessor city natural gas distribution
7 operation, or any of their agents occurring prior to the
8 transfer date.

9 (v) All liabilities with respect to the employees,
10 former employees or retirees of the predecessor city
11 natural gas distribution operation, including, without
12 limitation, liabilities relating to any current employee,
13 former employee or retiree health or pension or other
14 benefits, or vacation time, sick leave, personal leave
15 and other compensated time off accrued by such employees
16 prior to the transfer date.

17 (vi) All liabilities arising out of environmental
18 conditions associated with the transferred assets.

19 (vii) All other debts and liabilities of the city
20 with respect to the predecessor city natural gas
21 distribution operation whether secured, unsecured, fixed,
22 contingent, matured or unmatured, choate or inchoate.

23 (5) Except for the assumed liabilities, the acquiring
24 capable public utility shall not assume or become liable for
25 any obligations, liabilities or indebtedness of the city, the
26 city natural gas distribution operation, or its business
27 whatsoever, including, without limitation, any liabilities
28 arising out of bonds that are not approved bonds.

29 (g) 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 city
3 natural gas distribution operation pursuant to a separate
4 tariff.

5 (h) Appointment of receiver.--The commission may, in its
6 discretion, appoint a receiver to protect the interests of the
7 customers of the city natural gas distribution operation. Any
8 such appointment shall be by order of the commission, which
9 order shall specify the duties and responsibilities of the
10 receiver.

11 (i) Notice.--Any notice required under this section shall be
12 served upon the city natural gas distribution operation
13 affected, the city that owns the city natural gas distribution
14 operation, the Office of Consumer Advocate, the Office of Small
15 Business Advocate, the Office of Trial Staff and all public
16 utilities providing the same type of service as the city natural
17 gas distribution operation. The commission shall order the
18 affected city natural gas distribution operation to provide
19 notice to its customers of the initiation of proceedings under
20 this section in the same manner in which the utility is required
21 to notify its customers of proposed general rate increases.

22 (j) Burden of proof.--The Law Bureau shall have the burden
23 of establishing a prima facie case that the acquisition of the
24 city natural gas distribution operation would be in the public
25 interest and in compliance with the provisions of this section.
26 Once the commission determines that a prima facie case has been
27 established:

28 (1) the city natural gas distribution operation shall
29 have the burden of proving its ability to render adequate,
30 efficient, safe and reasonable service at just and reasonable

1 rates; and

2 (2) a public utility providing the same type of service
3 as the city natural gas distribution operation shall have the
4 opportunity and burden of proving its financial, managerial
5 or technical inability to acquire and operate the city
6 natural gas distribution operation.

7 (k) Plan for improvements.--Any capable public utility
8 ordered by the commission to acquire a city natural gas
9 distribution operation shall, prior to acquisition, submit to
10 the commission for approval a plan, including a timetable, for
11 capital improvements, financial stability and for maintaining or
12 bringing the city natural gas distribution operation into
13 compliance with applicable statutory and regulatory standards.

14 (l) Definition.--As used in this section the term "capable
15 public utility" means a public utility that regularly provides
16 the same type of service as a city natural gas distribution
17 operation and is determined by the commission to have sufficient
18 assets and revenue to undertake an acquisition of another
19 utility.

20 Section 2. Section 1307 of Title 66 is amended by adding
21 subsections to read:

22 § 1307. Sliding scale of rates; adjustments.

23 * * *

24 (g.2) Recovery of costs for natural gas distribution company
25 related to distribution system improvement projects designed to
26 enhance natural gas distribution reliability and safety.--
27 Natural gas distribution companies may file tariffs establishing
28 a sliding scale of rates or other method for the automatic
29 adjustment of the rates in order to provide for recovery of the
30 fixed costs, including depreciation and pretax return, of

1 certain underground infrastructure distribution projects as
2 approved by the commission, that are designed to enhance
3 distribution system reliability or safety and are completed and
4 placed in service between base rate proceedings. The commission,
5 by regulation or order, shall prescribe the specific procedures
6 to be followed in establishing the sliding scale or other
7 automatic adjustment mechanism.

8 (g.3) Recovery of costs for city natural gas distribution
9 operation related to distribution system improvement projects
10 designed to enhance natural gas distribution reliability and
11 safety.--A city natural gas distribution operation may file
12 tariffs establishing a sliding scale of rates or other method
13 for the automatic adjustment of its rates as shall provide for
14 recovery of the fixed costs, depreciation, costs of issuance,
15 annual debt service, annual debt service coverage requirements
16 and any other related costs, associated with the financing of
17 certain capital projects designed to enhance distribution system
18 reliability or safety, that are completed and placed in service
19 between base rate proceedings. The financing may be by the city
20 natural gas distribution operation or any other qualified entity
21 authorized by it to act on its behalf and may be structured in
22 any manner determined by the city natural gas distribution
23 operation to reduce the cost of such financing. Notwithstanding
24 any other provision of law, the revenues recovered pursuant to a
25 tariff authorized by this section shall not constitute project
26 revenues under the act of October 18, 1972 (P.L.955, No.234),
27 known as The First Class City Revenue Bond Act, or utility
28 revenues under the act of December 7, 1982 (P.L.827, No.231),
29 known as The City of Philadelphia Municipal Utility Inventory
30 and Receivables Financing Act. At the request of the city

1 natural gas distribution operation, and notwithstanding any
2 other provision of law, the commission may issue an order
3 authorizing the assignment, transfer, pledge, sale or other
4 distribution of the revenues received from a tariff approved
5 under this section to the extent necessary to permit the
6 financing of the capital projects at the lowest cost and on
7 terms and conditions most favorable to the city natural gas
8 distribution operation. Any such order shall be irrevocable and
9 neither the order nor the charges authorized to be collected
10 under the order by the city natural gas distribution operation
11 on its behalf or on behalf of any financing entity shall be
12 subject to reduction, postponement, impairment or termination by
13 any subsequent action of the commission, either directly or
14 indirectly.

15 * * *

16 Section 3. This act shall take effect in 30 days.