

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1326 Session of 2015

INTRODUCED BY GODSHALL, MILLARD, PICKETT, ROZZI, HARHART, KILLION, MURT, DAVIS, EVANKOVICH, SAINATO, P. DALEY, KORTZ, LONGIETTI, QUIGLEY, KAMPF, SNYDER AND TOEPEL, JUNE 11, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 19, 2015

AN ACT

1 Amending Title 66 (Public Utilities) of the Pennsylvania
2 Consolidated Statutes, in rates and distribution systems,
3 providing for valuation of acquired water and wastewater
4 systems for ratemaking purposes.

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 § 1329. Valuation of acquired water and wastewater systems.

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

14 (1) Two utility valuation experts shall perform two
15 separate appraisals of the selling utility for the purpose of
16 establishing its fair market value.

17 (2) Each utility valuation expert shall determine fair
18 market value in compliance with the Uniform Standards of

1 ~~Professional Appraisal Practice, employing the cost, market~~
2 ~~and income approaches.~~

3 ~~(3) Each utility valuation expert shall engage the~~
4 ~~services of a licensed engineer to conduct an assessment of~~
5 ~~the tangible assets of the selling utility. The assessment~~
6 ~~shall be incorporated into the appraisal under the cost~~
7 ~~approach required under paragraph (2).~~

8 ~~(4) Each utility valuation expert shall provide the~~
9 ~~completed appraisal to the acquiring public utility and~~
10 ~~selling utility within 60 days of execution of the service~~
11 ~~contract.~~

12 ~~(b) Utility valuation experts.~~

13 ~~(1) The utility valuation experts required under~~
14 ~~subsection (a) shall be selected as follows:~~

15 ~~(i) one shall be selected by the acquiring public~~
16 ~~utility; and~~

17 ~~(ii) one shall be selected by the selling utility.~~

18 ~~(2) The utility valuation experts shall not:~~

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

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

26 ~~(3) Fees paid to utility valuation experts may be~~
27 ~~included in the transaction and closing costs associated with~~
28 ~~acquisition by the acquiring utility, however, fees may not~~
29 ~~exceed the greater of:~~

30 ~~(i) thirty thousand dollars; or~~

1 ~~(ii) five percent of the fair market value of the~~
2 ~~selling utility.~~

3 ~~(c) Ratemaking rate base. The following apply:~~

4 ~~(1) Upon entry of a commission order approving the~~
5 ~~acquisition, the ratemaking rate base of the selling utility~~
6 ~~shall be incorporated into the rate base of the acquiring~~
7 ~~public utility.~~

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

12 ~~(d) Commission approval. The following apply:~~

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

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

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

24 ~~(iii) The recommended ratemaking rate base.~~

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

28 ~~(v) A tariff containing the new rate or rate~~
29 ~~division of the acquiring public utility that the selling~~
30 ~~public utility will be incorporated into for~~

1 ~~postacquisition ratemaking purposes.~~

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

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

6 ~~(ii) The new rate that will be applicable to the~~
7 ~~service territory acquired by the acquiring public~~
8 ~~utility or the current rate division of the acquiring~~
9 ~~public utility that will be applicable to the acquired~~
10 ~~service territory, as agreed to by the acquiring public~~
11 ~~utility and selling utility.~~

12 ~~(3) Any rate recommended by the commission shall be~~
13 ~~consistent with the rate recommendation provided under~~
14 ~~paragraph (1)(v) unless it can be demonstrated that the~~
15 ~~recommended rate will result in a rate increase to the~~
16 ~~acquiring public utility's customers by 5% or more.~~

17 ~~(4) The rate approved by the commission as part of its~~
18 ~~approval of the application for acquisition shall remain in~~
19 ~~effect until such time as new rates are approved for the~~
20 ~~acquiring public utility as the result of a base rate case~~
21 ~~proceeding before the commission. The acquiring public~~
22 ~~utility may collect a distribution system improvement charge~~
23 ~~during this time, as approved by the commission under this~~
24 ~~chapter.~~

25 ~~(5) The selling utility's cost of service shall be~~
26 ~~incorporated into the revenue requirement of the acquiring~~
27 ~~public utility either as part of the commission's order~~
28 ~~approving the acquisition or as part of the acquiring~~
29 ~~utility's next base rate case proceeding. The original source~~
30 ~~of funding for any part of the water or sewer assets of the~~

~~selling public utility shall not be relevant to determining the value of said assets.~~

~~(c) Postacquisition projects. The following apply:~~

~~(1) Any postacquisition improvements made by the acquiring public utility that are not eligible to be collected through a distribution system improvement charge shall be eligible for inclusion in allowance for funds used during construction after the date the expense was incurred.~~

~~(2) An acquiring public utility may collect allowance for funds used during construction, through rates, until the improved 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.~~

~~(3) For ratemaking purposes, any postacquisition improvements made to the selling utility's assets by the acquiring public utility shall not be subject to depreciation from the date the expense was incurred until such time as the improved 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.~~

~~(f) 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." An investor owned water or wastewater public utility subject to regulation under this title for a period of at least five years 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~~

~~1 equity funds that are used to finance the construction costs of
2 an improvement to a selling utility's assets by an acquiring
3 public utility.~~

~~4 "Fair market value." The average of the two utility
5 valuation expert appraisals conducted under subsection (a)(1).~~

~~6 "Rate-making rate base." The dollar value of a selling
7 utility which, for postacquisition rate-making purposes, is
8 incorporated into the rate base of the acquiring public utility.~~

~~9 "Selling utility." A water or wastewater company located in
10 this Commonwealth, owned by a public utility, municipal
11 corporation or authority that is being purchased by an acquiring
12 public utility as the result of a voluntary arm's length
13 transaction between the buyer and seller.~~

~~14 "Utility valuation expert." A person hired by an acquiring
15 public utility and selling utility for the purpose of conducting
16 an economic valuation of the selling utility to determine its
17 fair market value.~~

~~18 Section 2. This act shall take effect in 60 days.~~

19 SECTION 1. TITLE 66 OF THE PENNSYLVANIA CONSOLIDATED
20 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

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21 § 1329. VALUATION OF ACQUIRED WATER AND WASTEWATER SYSTEMS.

22 (A) PROCESS TO ESTABLISH FAIR MARKET VALUE OF SELLING
23 UTILITY.--UPON AGREEMENT BY BOTH THE ACQUIRING PUBLIC UTILITY OR
24 ENTITY AND THE SELLING UTILITY, THE FOLLOWING PROCEDURE SHALL BE
25 USED TO DETERMINE THE FAIR MARKET VALUE OF THE SELLING UTILITY:

26 (1) THE COMMISSION WILL MAINTAIN A LIST OF UTILITY
27 VALUATION EXPERTS FROM WHICH THE ACQUIRING PUBLIC UTILITY OR
28 ENTITY AND SELLING UTILITY WILL CHOOSE.

29 (2) TWO UTILITY VALUATION EXPERTS SHALL PERFORM TWO
30 SEPARATE APPRAISALS OF THE SELLING UTILITY FOR THE PURPOSE OF

1 ESTABLISHING ITS FAIR MARKET VALUE.

2 (3) EACH UTILITY VALUATION EXPERT SHALL DETERMINE FAIR
3 MARKET VALUE IN COMPLIANCE WITH THE UNIFORM STANDARDS OF
4 PROFESSIONAL APPRAISAL PRACTICE, EMPLOYING THE COST, MARKET
5 AND INCOME APPROACHES.

6 (4) THE ACQUIRING PUBLIC UTILITY OR ENTITY AND SELLING
7 UTILITY SHALL ENGAGE THE SERVICES OF THE SAME LICENSED
8 ENGINEER TO CONDUCT AN ASSESSMENT OF THE TANGIBLE ASSETS OF
9 THE SELLING UTILITY. THE ASSESSMENT SHALL BE INCORPORATED
10 INTO THE APPRAISAL UNDER THE COST APPROACH REQUIRED UNDER
11 PARAGRAPH (3).

12 (5) EACH UTILITY VALUATION EXPERT SHALL PROVIDE THE
13 COMPLETED APPRAISAL TO THE ACQUIRING PUBLIC UTILITY OR ENTITY
14 AND SELLING UTILITY WITHIN 90 DAYS OF EXECUTION OF THE
15 SERVICE CONTRACT.

16 (B) UTILITY VALUATION EXPERTS.--

17 (1) THE UTILITY VALUATION EXPERTS REQUIRED UNDER
18 SUBSECTION (A) SHALL BE SELECTED AS FOLLOWS:

19 (I) ONE SHALL BE SELECTED BY THE ACQUIRING PUBLIC
20 UTILITY OR ENTITY; AND

21 (II) ONE SHALL BE SELECTED BY THE SELLING UTILITY.

22 (2) THE UTILITY VALUATION EXPERTS SHALL NOT:

23 (I) DERIVE ANY MATERIAL FINANCIAL BENEFIT FROM THE
24 SALE OF THE SELLING UTILITY OTHER THAN FEES FOR SERVICES
25 RENDERED; OR

26 (II) BE AN IMMEDIATE FAMILY MEMBER OF A DIRECTOR,
27 OFFICER OR EMPLOYEE OF EITHER THE ACQUIRING PUBLIC
28 UTILITY, ENTITY OR SELLING UTILITY WITHIN A 12-MONTH
29 PERIOD OF THE DATE OF HIRE TO PERFORM AN APPRAISAL.

30 (3) FEES PAID TO UTILITY VALUATION EXPERTS MAY BE

1 INCLUDED IN THE TRANSACTION AND CLOSING COSTS ASSOCIATED WITH
2 ACQUISITION BY THE ACQUIRING UTILITY OR ENTITY. FEES ELIGIBLE
3 FOR INCLUSION MAY BE OF AN AMOUNT NOT EXCEEDING 5% OF THE
4 FAIR MARKET VALUE OF THE SELLING UTILITY OR A FEE APPROVED BY
5 THE COMMISSION.

6 (C) RATEMAKING RATE BASE.--THE FOLLOWING APPLY:

7 (1) THE RATEMAKING RATE BASE OF THE SELLING UTILITY
8 SHALL BE INCORPORATED INTO THE RATE BASE OF:

9 (I) THE ACQUIRING PUBLIC UTILITY DURING THE
10 ACQUIRING PUBLIC UTILITY'S NEXT BASE RATE CASE; OR

11 (II) THE ENTITY IN ITS INITIAL TARIFF FILING.

12 (2) THE RATEMAKING RATE BASE OF THE SELLING UTILITY
13 SHALL BE THE LESSER OF THE PURCHASE PRICE NEGOTIATED BY THE
14 ACQUIRING PUBLIC UTILITY OR ENTITY AND SELLING UTILITY OR THE
15 FAIR MARKET VALUE OF THE SELLING UTILITY.

16 (D) ACQUISITIONS BY PUBLIC UTILITY.--THE FOLLOWING APPLY:

17 (1) IF THE ACQUIRING PUBLIC UTILITY AND SELLING UTILITY
18 AGREE TO USE THE PROCESS OUTLINED IN SUBSECTION (A), THE
19 ACQUIRING PUBLIC UTILITY SHALL INCLUDE THE FOLLOWING AS AN
20 ATTACHMENT TO ITS APPLICATION FOR COMMISSION APPROVAL OF THE
21 ACQUISITION FILED PURSUANT TO SECTION 1102 (RELATING TO
22 ENUMERATION OF ACTS REQUIRING CERTIFICATE):

23 (I) COPIES OF THE TWO APPRAISALS PERFORMED BY THE
24 UTILITY VALUATION EXPERTS UNDER SUBSECTION (A).

25 (II) THE PURCHASE PRICE OF THE SELLING UTILITY AS
26 AGREED TO BY THE ACQUIRING PUBLIC UTILITY AND SELLING
27 UTILITY.

28 (III) THE RATEMAKING RATE BASE DETERMINED PURSUANT
29 TO SUBSECTION (C) (2).

30 (IV) THE TRANSACTION AND CLOSING COSTS INCURRED BY

1 THE ACQUIRING PUBLIC UTILITY THAT WILL BE INCLUDED IN ITS
2 RATE BASE.

3 (V) A TARIFF CONTAINING A RATE EQUAL TO THE EXISTING
4 RATES OF THE SELLING UTILITY AT THE TIME OF THE
5 ACQUISITION AND A RATE STABILIZATION PLAN, IF APPLICABLE
6 TO THE ACQUISITION.

7 (2) THE COMMISSION SHALL ISSUE A FINAL ORDER ON AN
8 APPLICATION SUBMITTED UNDER THIS SECTION WITHIN SIX MONTHS OF
9 THE FILING DATE OF AN APPLICATION MEETING THE REQUIREMENTS OF
10 SUBSECTION (D) (1).

11 (3) IF THE COMMISSION ISSUES AN ORDER APPROVING THE
12 APPLICATION FOR ACQUISITION, THE ORDER SHALL INCLUDE:

13 (I) THE RATEMAKING RATE BASE OF THE SELLING UTILITY,
14 AS DETERMINED UNDER SUBSECTION (C) (2).

15 (II) ADDITIONAL CONDITIONS OF APPROVAL AS MAY BE
16 REQUIRED BY THE COMMISSION.

17 (4) THE TARIFF SUBMITTED PURSUANT TO SUBSECTION (D) (1)
18 (V) SHALL REMAIN IN EFFECT UNTIL SUCH TIME AS NEW RATES ARE
19 APPROVED FOR THE ACQUIRING PUBLIC UTILITY AS THE RESULT OF A
20 BASE RATE CASE PROCEEDING BEFORE THE COMMISSION. THE
21 ACQUIRING PUBLIC UTILITY MAY COLLECT A DISTRIBUTION SYSTEM
22 IMPROVEMENT CHARGE DURING THIS TIME, AS APPROVED BY THE
23 COMMISSION UNDER THIS CHAPTER.

24 (5) THE SELLING UTILITY'S COST OF SERVICE SHALL BE
25 INCORPORATED INTO THE REVENUE REQUIREMENT OF THE ACQUIRING
26 PUBLIC UTILITY AS PART OF THE ACQUIRING UTILITY'S NEXT BASE
27 RATE CASE PROCEEDING. THE ORIGINAL SOURCE OF FUNDING FOR ANY
28 PART OF THE WATER OR SEWER ASSETS OF THE SELLING UTILITY
29 SHALL NOT BE RELEVANT TO DETERMINE THE VALUE OF SAID ASSETS.

30 (E) ACQUISITIONS BY ENTITY.--AN ENTITY SHALL PROVIDE ALL THE

1 INFORMATION REQUIRED BY SUBSECTION (D) (1) TO THE COMMISSION AS
2 AN ATTACHMENT TO ITS APPLICATION FOR A CERTIFICATE OF PUBLIC
3 CONVENIENCE FILED PURSUANT TO SECTION 1102.

4 (F) POSTACQUISITION PROJECTS.--THE FOLLOWING APPLY:

5 (1) AN ACQUIRING PUBLIC UTILITY'S POSTACQUISITION
6 IMPROVEMENTS THAT ARE NOT INCLUDED IN A DISTRIBUTION
7 IMPROVEMENT CHARGE SHALL ACCRUE ALLOWANCE FOR FUNDS USED
8 DURING CONSTRUCTION AFTER THE DATE THE COST WAS INCURRED
9 UNTIL THE ASSET HAS BEEN IN SERVICE FOR A PERIOD OF FOUR
10 YEARS OR UNTIL THE ASSET IS INCLUDED IN THE ACQUIRING PUBLIC
11 UTILITY'S NEXT BASE RATE CASE, WHICHEVER IS EARLIER.

12 (2) DEPRECIATION ON AN ACQUIRING PUBLIC UTILITY'S
13 POSTACQUISITION IMPROVEMENTS THAT HAVE NOT BEEN INCLUDED IN
14 THE CALCULATION OF A DISTRIBUTION SYSTEM IMPROVEMENT CHARGE
15 SHALL BE DEFERRED FOR BOOK AND RATEMAKING PURPOSES.

16 (G) DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES WHEN USED
17 IN THIS SECTION SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
18 SECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

19 "ACQUIRING PUBLIC UTILITY." A WATER OR WASTEWATER PUBLIC
20 UTILITY SUBJECT TO REGULATION UNDER THIS TITLE THAT IS ACQUIRING
21 A SELLING UTILITY AS THE RESULT OF A VOLUNTARY ARM'S-LENGTH
22 TRANSACTION BETWEEN THE BUYER AND SELLER.

23 "ALLOWANCE OF FUNDS USED DURING CONSTRUCTION." AN ACCOUNTING
24 PRACTICE THAT RECOGNIZES THE CAPITAL COSTS, INCLUDING DEBT AND
25 EQUITY FUNDS THAT ARE USED TO FINANCE THE CONSTRUCTION COSTS OF
26 AN IMPROVEMENT TO A SELLING UTILITY'S ASSETS BY AN ACQUIRING
27 PUBLIC UTILITY.

28 "ENTITY." A PERSON, PARTNERSHIP OR CORPORATION THAT IS
29 ACQUIRING A SELLING UTILITY AND HAS FILED OR WHOSE AFFILIATE HAS
30 FILED AN APPLICATION WITH THE COMMISSION SEEKING PUBLIC UTILITY

1 STATUS PURSUANT TO SECTION 1102.

2 "FAIR MARKET VALUE." THE AVERAGE OF THE TWO UTILITY
3 VALUATION EXPERT APPRAISALS CONDUCTED UNDER SUBSECTION (A) (2).

4 "RATEMAKING RATE BASE." THE DOLLAR VALUE OF A SELLING
5 UTILITY WHICH, FOR POSTACQUISITION RATEMAKING PURPOSES, IS
6 INCORPORATED INTO THE RATE BASE OF THE ACQUIRING PUBLIC UTILITY
7 OR ENTITY.

8 "RATE STABILIZATION PLAN." A PLAN THAT WILL HOLD RATES
9 CONSTANT OR PHASE RATES IN OVER A PERIOD OF TIME AFTER THE NEXT
10 BASE RATE CASE.

11 "SELLING UTILITY." A WATER OR WASTEWATER COMPANY LOCATED IN
12 THIS COMMONWEALTH, OWNED BY A MUNICIPAL CORPORATION OR AUTHORITY
13 THAT IS BEING PURCHASED BY AN ACQUIRING PUBLIC UTILITY OR ENTITY
14 AS THE RESULT OF A VOLUNTARY ARM'S-LENGTH TRANSACTION BETWEEN
15 THE BUYER AND SELLER.

16 "UTILITY VALUATION EXPERT." A PERSON HIRED BY AN ACQUIRING
17 PUBLIC UTILITY AND SELLING UTILITY FOR THE PURPOSE OF CONDUCTING
18 AN ECONOMIC VALUATION OF THE SELLING UTILITY TO DETERMINE ITS
19 FAIR MARKET VALUE.

20 SECTION 2. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.