

No. 1995-7

AN ACT

HB 882

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, further providing for the acquisition of water and sewer utilities.

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

Section 1. Section 1327 of Title 66 of the Pennsylvania Consolidated Statutes is amended to read:

§ 1327. Acquisition of water and sewer utilities.

(a) Acquisition cost greater than depreciated original cost.—If a public utility acquires property from another public utility, a municipal corporation or a person at a cost which is in excess of the original cost of the property when first devoted to the public service less the applicable accrued depreciation, *it shall be a rebuttable presumption that the excess is reasonable and* that excess[, or any portion thereof found by the commission to be reasonable, may] *shall* be included in the rate base of the acquiring public utility, provided that the acquiring public utility proves that:

- (1) the property is used and useful in providing water or sewer service;
- (2) the public utility acquired the property from another public utility, a municipal corporation or a person which had [1,200] 3,300 or fewer customer connections *or which was nonviable in the absence of the acquisition;*

(3) the public utility, municipal corporation or person from which the property was acquired was not, at the time of acquisition, furnishing and maintaining adequate, efficient, safe and reasonable service and facilities, evidence of which shall include, but not be limited to, *any one or more of* the following:

- (i) violation of statutory or regulatory requirements of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service and facilities;
- (ii) a finding by the commission of inadequate financial, managerial or technical ability of the small water or sewer utility;
- (iii) a finding by the commission that there is a present deficiency concerning the availability of water, the palatability of water or the provision of water at adequate volume and pressure; [or]
- (iv) a finding by the commission that the small water or sewer utility, because of necessary improvements to its plant or distribution system, cannot reasonably be expected to furnish and maintain adequate

service to its customers in the future at rates equal to or less than those of the acquiring public utility; *or*

(v) any other facts, as the commission may determine, that evidence the inability of the small water or sewer utility to furnish or maintain adequate, efficient, safe and reasonable service and facilities;

(4) reasonable and prudent investments will be made to assure that the customers served by the property will receive adequate, efficient, safe and reasonable service;

(5) the public utility, municipal corporation or person whose property is being acquired is in agreement with the acquisition and the negotiations which led to the acquisition were conducted at arm's length;

(6) the actual purchase price is reasonable;

(7) neither the acquiring nor the selling public utility, municipal corporation or person is an affiliated interest of the other;

(8) the rates charged by the acquiring public utility to its preacquisition customers will not increase unreasonably because of the acquisition; and

(9) the excess of the acquisition cost over the depreciated original cost will be added to the rate base to be amortized as an addition to expense over a reasonable period of time with corresponding reductions in the rate base.

(b) Procedure.—The commission, upon application by a public utility, person or corporation which has agreed to acquire property from another public utility, municipal corporation or person, may approve an inclusion in rate base in accordance with subsection (a) prior to the acquisition and prior to a proceeding under this chapter to determine just and reasonable rates if:

(1) the applicant has provided notice of the proposed acquisition and any proposed increase in rates to the customers served by the property to be acquired, in such form and manner as the commission, by regulation, shall require;

(2) the applicant has provided notice to its customers, in such form and manner as the commission, by regulation, shall require, if the proposed acquisition would increase rates to the acquiring public utility's customers *by an amount in excess of 1% of the acquiring public utility's base annual revenue;*

(3) the applicant has provided notice of the application to the Director of Trial Staff and the Consumer Advocate; and

(4) in addition to any other information required by the commission, the application includes a full description of the proposed acquisition and a plan for reasonable and prudent investments to assure that the customers served by the property to be acquired will receive adequate, efficient, safe and reasonable service.

(c) Hearings.—The commission may hold such hearings on the application as it deems necessary.

(d) Forfeiture.—Notwithstanding section 1309 (relating to rates fixed on complaint; investigation of costs of production), the commission, by regulation, shall provide for **[a utility to remove the costs of acquisition from its rates]** *the removal of the excess costs of acquisition from its rates, or any portion thereof, found by the commission to be unreasonable* and to refund any *excess* revenues collected as a result of this section, plus interest, which shall be the average rate of interest specified for residential mortgage lending by the Secretary of Banking in accordance with the act of January 30, 1974 (P.L.13, No.6), referred to as the Loan Interest and Protection Law, during the period or periods for which the commission orders refunds, if the commission, after notice and hearings, determines that the reasonable and prudent investments to be made in accordance with this section have not been completed within a reasonable time.

(e) Acquisition cost lower than depreciated original cost.—If a public utility acquires property from another public utility, a municipal corporation or a person at a cost which is lower than the original cost of the property when first devoted to the public service less the applicable accrued depreciation and the property is used and useful in providing water or sewer service, that difference shall, absent matters of a substantial public interest, be amortized as an addition to income over a reasonable period of time or be passed through to the ratepayers by such other methodology as the commission may direct. Notice of the proposed treatment of an acquisition cost lower than depreciated original cost shall be given to the Director of Trial Staff and the Consumer Advocate.

(f) Reports.—The commission shall annually transmit to the Governor and to the General Assembly and shall make available to the public a report on the acquisition activity under this title. Such report shall include, but not be limited to, the number of small water or sewer public utilities, municipal corporations or persons acquired by public utilities, and the amounts of any rate increases or decreases sought and granted due to the acquisition.

[(g) Expiration.—This section shall expire in five years unless extended by statute.]

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

APPROVED—The 1st day of June, A.D. 1995.

THOMAS J. RIDGE