WEST VIRGINIA CODE: §24-2-4G

§24-2-4g. Establishing the value of utility assets in the context of the acquisition of a utility or utility assets and providing for the combination or allocation of water and wastewater revenue requirements.

(a) The Legislature finds that:

(1) Many West Virginia publicly owned municipal, public service district-owned, and investor-owned water and wastewater utilities face substantial capital investment needs to replace aging utility infrastructure and to maintain compliance with regulatory requirements, and many municipalities that own and operate utility systems are confronted with additional financial challenges arising from diminishing tax bases, the need to repair streets and other municipally owned facilities, and unfunded or underfunded liabilities for pension and other post-employment benefit programs;

(2) Given these challenges, some of these utilities may be unable to continue to provide acceptable levels of utility service at reasonable rates, and may wish to consider the sale of their utility assets, and this decision will require those utilities to consider the expected valuation of their utility assets, the manner in which the post-acquisition rates of their customers will be established and moderated, and the purposes to which the proceeds of any sale of utility assets by a municipality may be devoted under state law;

(3) For utilities considering the sale of their utility assets, a valuation of the utility assets that is primarily based on the original cost of those assets less depreciation and less the value of contributed property will: (A) Understate the actual fair value of those assets to an acquiring party; (B) fail to account for potential income that could be generated from those assets; (C) reduce the financial benefit to utilities considering selling those assets; and (D) thereby disincentivize those utilities from selling those assets;

(4) To assist utilities considering the sale of their utility assets in making informed decisions on whether to sell their utility assets, the commission will permit acquiring and selling parties to negotiate a value for those assets, permit the acquiring party to include the negotiated sale price of the assets in post-acquisition rate base for rate-making purposes, and make its post-acquisition rate-base determination based on the valuation approach specified in this section;

(5) To assist utilities that provide both water and wastewater utility service in moderating the rate impact of wastewater service investment on wastewater system customers, it is appropriate to authorize the combination of water and wastewater revenue requirements or the allocation of a portion of a wastewater revenue requirement to water customers if such a combination or allocation is just and reasonable and results in water and wastewater rates that are based primarily on the cost of providing service;

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(6) Expanding the permissible uses by a municipality of the proceeds of a sale of utility assets as provided for in §8-12-17 of this code will also facilitate and encourage a municipality's ability to sell its utility assets, should it choose to do so; and

(7) The enactment of these regulatory improvements will facilitate the repair and replacement of utility infrastructure by improving access to investment capital and moderating the rate impact to customers of investments in utility infrastructure, and thereby enhancing the state of water and wastewater utility infrastructure assets and the service provided by those assets, all of which are in the best interest of West Virginia and its citizens.

(b) *Value of utility assets; rate-base addition; ancillary approvals*. —

(1) In any case filed pursuant to §24-2-12 of this code seeking the commission's prior consent and approval of the acquisition by an acquiring utility of the utility assets of a selling utility, the applicants may propose a negotiated sale price for the utility assets that is in accordance with utility asset valuation methodologies, such as depreciated original cost, or reproduction cost new less depreciation, or other industry standard utility asset valuation methods, excluding the use of fair market appraisal valuation methods: *Provided,* That the applicants will present evidence of those asset values in the application: *Provided*, *however*, That the utility asset valuation methodologies and definitions referenced in §24-2-4g(d) of this code apply solely to cases filed pursuant to chapter 24 of this code.

(2) If the commission finds that the proposed acquisition, including the negotiated sale price, satisfies the requirements for approval in §24-2-12 of this code, including a finding that the terms and conditions of the acquisition are reasonable and that neither party thereto is given an undue advantage over the other, and does not adversely affect the public in this state, then the commission will establish the rate based addition at the negotiated sale price, as determined and in accordance with subdivision (1) of this subsection.

(3) In its order granting, denying, or modifying the relief requested in an application described in subdivision (1) of this subsection, the commission may also approve any rate stabilization plan, tariff change or provision, or surcharge mechanism proposed by the applicants and that the commission finds reasonable in view of the proposed transaction and the acquiring utility's proposed post-acquisition improvements to the utility assets.

(4) In any application described in subdivision (1) of this subsection, the commission will issue a final order granting, denying, or granting in part and denying in part the relief requested in the application.

(5) Nothing in this section or §24-2-12 of this code requires an acquiring utility or a selling utility to obtain the prior consent and approval of the commission to enter into agreements or undertake commitments incident to the negotiation, due diligence, or finalization of an agreement to purchase and sell utility assets, including, without limitation, agreements and commitments relating to:

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(A) The exclusivity of negotiations for a defined period;

(B) The confidentiality of negotiations and nondisclosure of facts relevant to the negotiations;

(C) The payment of transaction costs as between the parties, the reimbursement of those costs upon closing of an acquisition of utility assets, or the allocation of costs in the event the acquisition is not consummated;

(D) The acquiring utility's completion of post-acquisition additions or improvements to the utility assets or its commitments as to post-acquisition rates and charges for utility service; or

(E) Any other commercial term reasonably necessary to facilitate the negotiation, due diligence, or finalization of the purchase and sale agreement.

(c) *Request for revenue requirement combination or allocation*. —

(1) A single utility that provides both water and wastewater utility services may request a combination of the revenue requirements of the water and wastewater utility services or an allocation of a portion of the wastewater revenue requirement to water customers. Such a request may be made as a separate filing with the commission or as part of a base rate case, a tariff filing, a statutory consent case under §24-2-12 of this code, or another proceeding before the commission.

(2) If the commission finds that a combination or allocation requested under subdivision (1) of this subsection: (A) Will enable the acquisition and construction of wastewater infrastructure improvements or compliance with regulatory requirements at a more moderate rate impact for wastewater customers; and (B) will result in a combined water and wastewater rate, or separate water and wastewater rates that are just, reasonable, and based primarily on the cost of providing service, then the commission may authorize the utility to implement the combination or allocation, subject to such modifications as the commission may determine to be appropriate.

(d) *Definitions*. — The following words and phrases when used in this section will have the meanings given to them in this section unless the context clearly indicates otherwise: (1) "Acquiring utility" means: (A) A water, sewer, or stormwater utility subject to the provisions of this chapter that has entered into an agreement with a selling utility to acquire utility assets of the selling utility; or (B) any person or business entity that has entered into such an agreement and that, upon commission approval of the acquisition of those utility assets, will become a water, sewer, or stormwater utility subject to the provisions of this chapter.

(2) "Depreciated original cost" means the original cost of utility assets net of accumulated depreciation.

(3) "Negotiated sale price" means the purchase price of utility assets that the acquiring

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utility and the selling utility agree upon through voluntary, arm's-length negotiations.

(4) "Original sources of funding" means all methods used to fund the utility assets, including, but not limited to, loan funding, grant funding, and property otherwise contributed to the utility.

(5) "Rate-base addition" means the dollar amount of utility rate base associated with the utility assets that the acquiring utility may include in the calculation of its post-acquisition rate base for rate-making purposes.

(6) "Reproduction cost new less depreciation" means an estimate of the cost to construct, at current prices, an exact duplicate or replica of the utility assets, without regard to the original sources of funding for those assets, using the same materials, construction standards, design, layout, and quality without adjustment for deficiencies, super-adequacies, and obsolescence of those assets, net of depreciation.

(7) "Selling utility" means a water, sewer, or stormwater utility subject to the provisions of this chapter that has entered into an agreement to sell utility assets to an acquiring utility.

(8) "Utility assets" or "assets" mean all or substantially all of the tangible and intangible assets of a selling utility that: (A) The selling utility has used in the provision of utility service or held for the future provision of such service; and (B) the acquiring utility will reasonably require to provide utility service after the acquisition to facilitate its plans for the provision of utility service after the acquisition.

(9) "Utility asset valuation" means industry standard valuation methods of determining the value of utility assets, regardless of original sources of funding.

(e) This section, together with the amendments to §8-12-17 of this code, made during the 2020 regular session of the West Virginia Legislature, shall be known and referred to as the Water and Wastewater Investment Facilitation Act.

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