

WEST VIRGINIA CODE: §24-2H-7

§24-2H-7. Commission order for acquisition of failing utility; list of distressed and failing utilities to Legislature.

(a) Following the evidentiary hearing, the commission shall enter a final order stating whether the utility is a distressed or failing utility and identifying the capable proximate utilities, if any, as defined in §24-2H-3 of this code. If the commission determines that a utility is a distressed utility, then the commission may make an order consistent with subsection (b) of this section. If the commission determines that the utility is a failing utility, then the commission may order the acquisition of the failing utility by the most suitable capable proximate water or wastewater utility, if there is more than one.

(b) Before the commission may designate a water or wastewater utility as failing and order acquisition by a capable proximate utility it shall determine whether there are any alternatives to an ordered acquisition. If the commission determines that an alternative to designating a utility as failing and ordering an acquisition is reasonable and cost effective, it may order the distressed utility and, if applicable to the alternative a capable proximate utility, to implement the alternative. Commission staff shall work with the utility to implement the alternative, as necessary. Alternatives that the commission may consider include, but are not limited to, the following:

- (1) Reorganization of the utility under new management or a new board, subject to the approval of the applicable county commission(s) or municipal government;
- (2) Operation of the distressed utility by another public utility or management or service company under a mutually agreed arms-length contract;
- (3) Appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public pursuant to §24-2-7(b) of this code;
- (4) Merger of the water or wastewater utility with one or more other public utilities, subject to the approval of the applicable county commission(s) or municipal government;
- (5) The acquisition of the distressed utility through a mutual agreement made at arms-length; and
- (6) Any viable alternative other than an ordered acquisition by a capable proximate utility.

(c) The commission shall provide a list of utilities designated by a final order of the commission as a distressed or failing utility to the Legislature as part of its annual Management Summary Report beginning in the 2021 reporting period and annually thereafter. The commission shall provide the same list to the Water Development Authority and the Infrastructure and Jobs Development Council on or before January 31 of each year

beginning in 2021.

(d) Notwithstanding any provision of this code to the contrary, the commission shall not order a utility to acquire a distressed or failing utility if the aggregate cost of necessary capital improvements for the distressed or failing utility which will be borne by the acquiring utility exceeds:

- (1) the aggregate required contribution under the commission's extension of mains rules for new customers; or
- (2) grant funds from the Water Development Authority Distressed Utilities Account created under §31-15A-9(i) of this code; or
- (3) other grant funds; or
- (4) any combination of the above.