

CHAPTER 191

(HB 465)

AN ACT relating to the acquisition by utilities of assets used to provide water or sewer utility service.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔SECTION 1. A NEW SECTION OF KRS CHAPTER 278 IS CREATED TO READ AS FOLLOWS:

(1) *As used in this section:*

- (a) *"Accumulated depreciation" means the total amount of depreciation of an asset as calculated by the use of generally accepted accounting principles;*
- (b) *"Asset acquisition price" means full and actual costs of a water or sewer utility or its assets;*
- (c) *"Net original cost" means the original cost of a utility asset less its accumulated depreciation; and*
- (d) *"Water or sewer system" means any or all assets of a person, including but not limited to a utility, city, sanitation district, metropolitan sewer district, water commission, or regional wastewater commission, that are used to provide services listed in KRS 278.010(3)(d) or (f).*

(2) *In furtherance of and consistent with the General Assembly's findings and goals stated in KRS 224A.300(1), in any matter in which the commission determines for ratemaking purposes the value of an asset used to provide water or sewer service acquired by a utility from a water or sewer system, the commission shall fix the value of that asset at an amount between its net original cost and its asset acquisition price without regard for the original source of funds used to procure the asset, but only if the acquiring utility demonstrates and the commission finds that:*

- (a) *The asset acquisition price was established by arms-length negotiations;*
- (b) *The asset acquisition price plus the cost of restoring the acquired facilities to required standards will not materially adversely impact the overall costs or rates of the acquiring utility's existing and new customers;*
- (c) *Acquisition of the asset will result in operational economies;*
- (d) *The purchase prices of the utility and non-utility assets are clearly identified, and where practical, separated; and*
- (e) *The acquisition will result in overall financial and service benefits of the acquiring utility's operations.*

(3) (a) *A utility that has entered into an agreement to acquire the assets of a water or sewer system used to provide water or sewer service may apply to the commission for an order declaring the value of the acquired assets for ratemaking purposes. The application shall include:*

1. *The agreement for the acquisition of the assets or facilities at issue;*
2. *The proposed valuation for ratemaking purposes of the acquired assets;*
3. *The net original cost of the acquired assets and the accounting records supporting such cost to the extent such information is available;*
4. *The original source of funds used to procure each asset to the extent such information is available; and*
5. *Any other documents or evidence that the commission may require.*

- (b) *An application made under this subsection shall be made under oath and shall be signed and filed on behalf of the acquiring utility by its president or other executive officer duly designated by the utility as having knowledge of the matters set forth therein. The commission shall issue a decision on the merits of an application filed under this subsection no later than sixty (60) days after the application is accepted for filing, unless the commission extends this period, for good cause, to one hundred fifty (150) days from the date of acceptance. The commission may take any action necessary to ensure a complete record, including conducting a hearing on the application.*

- (4) *In lieu of applying for a declaratory order under subsection (3) of this section on the valuation of assets acquired from a water or sewer system used to provide water or sewer service, an acquiring utility may, as part of its first application for a change in base rates following the acquisition of such assets, seek an order declaring the value of the acquired assets for ratemaking purposes. The commission shall declare the value of the acquired assets using the same factors required to be considered under subsection (2) of this section.*
- (5) *No later than the date of the filing of the application described in subsection (3) of this section, the acquiring utility shall provide notice of the application to the following:*
 - (a) *By certified mail, the local governing body of each city or county wherein any part of the water or sewer system to be acquired is located or provides retail water or sewer service;*
 - (b) *By certified mail, the local governing body of each city or county in whose jurisdiction the acquiring utility provides retail water or sewer service;*
 - (c) *The customers of the water or sewer system being acquired, as provided in the bylaws or other governing corporate documents of the system being acquired, and using the method of notice so required; and*
 - (d) *The wholesale customers or suppliers of the water or sewer system to be acquired by causing the notice to be placed in priority mail.*
- (6) *No later than the date of the filing of the application described in subsection (3) of this section, additional notification designed to educate and inform the public and all affected customers shall be posted on the Web sites or social media of the acquiring entity and of the water or sewer system to be acquired, if such Web sites or social media exist.*
- (7) *The commission shall consider intervention requests made by any person in any matter under this section in accordance with the commission's administrative regulations addressing intervention generally.*
- (8) *The acquiring utility may, as part of any application for a change in base rates following the acquisition of water or sewer utility service assets, propose to unify the rate structure of the acquired system with its remaining customer base. In reviewing an acquiring utility's proposed change in base rates, the commission shall consider whether it is reasonable to require the acquiring utility to maintain separate rate schedules for the customers of the acquired system and for the other customers.*

Signed by Governor April 6, 2021.