



OHIO LEGISLATIVE SERVICE COMMISSION

Final Analysis

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Sub. H.B. 422

132nd General Assembly
(As Passed by the General Assembly)

- Reps.** Ginter and Rogers, Carfagna, Seitz, Sprague, Thompson, Anielski, Antonio, Arndt, Barnes, Celebrezze, Green, Greenspan, Hambley, T. Johnson, Landis, Lepore-Hagan, Miller, Perales, Riedel, Schaffer, Scherer, K. Smith, R. Smith, Stein, M. Sweeney, Wiggam, Young
- Sens.** Eklund, Beagle, Burke, Coley, Hackett, Jordan, Lehner, O'Brien, Schiavoni, Tavares, Yuko

Effective date: April 5, 2019

ACT SUMMARY

- Allows the Public Utilities Commission (PUCO) to approve the purchase of a municipal water-works or sewage disposal system company by a large water-works or sewage disposal system company.
- Requires PUCO to establish a rate base for the company being acquired.
- Requires the acquiring company to recommend whether the company being acquired should be integrated into an existing rate division or given a new rate division.
- Adds requirements for determining the original cost of acquisition of a municipal water-works or sewage disposal system company by a large water-works or sewage disposal system company.
- Requires PUCO to create and maintain a list of utility-valuation experts to be used to appraise the original cost of acquisition.
- Requires the deferral of prudent costs of obtaining utility valuations.

* This version updates the effective date.

- Allows the deferral of post-in-service carrying costs for post-acquisition improvements and any depreciation expenses related to those improvements.
- Releases certain conditions with respect to a 1981 conveyance of state-owned real estate in Kettering to the Miami Valley Research Foundation.

CONTENT AND OPERATION

Introduction

The act allows a large water-works or sewage disposal system company to petition to purchase the property, plant, or business of any municipal water-works or sewage disposal system company with the consent and approval of the Public Utilities Commission (PUCO). A petition may also seek approval of a certificate of public convenience and necessity and the approval of an original cost valuation as provided in the act.¹ The act only applies to voluntary and mutually agreeable acquisitions.²

Under the act, "large water-works or sewage disposal system company" means a water-works or sewage disposal system company that has annual operating revenues of \$250,000 or more. "Municipal water-works or sewage disposal system company" means any water-works or sewage disposal system company owned or operated by a political subdivision or by a municipal corporation. "Political subdivision" includes departments, divisions, authorities, or other units of state governments, watershed districts, soil and water conservation districts, park districts, municipal corporations, counties, townships, and other political subdivisions, special water districts, including county and regional water and sewer districts, conservancy districts, sanitary districts, sewer districts or any other public corporation or agency having the authority to acquire, construct, or operate waste water or water management facilities, and all other governmental agencies now or hereafter granted the power of levying taxes or special assessments, the United States or any agency thereof, and any agency, commission, or authority established pursuant to an interstate compact or agreement.³

Approval of an acquisition

To receive PUCO's consent and approval, the act requires a petition to be signed and verified by the president of the large water-works or sewage disposal system company and filed with PUCO. The petition must set forth the object and purposes

¹ R.C. 4905.481.

² R.C. 4909.059.

³ R.C. 4905.481 and 4909.051; R.C. 6119.011, not in the act.



desired and the terms and conditions of the acquisition. Once the petition is filed, PUCO may set a time and place for a hearing, if necessary.

PUCO must approve any petition for the acquisition, including a petition seeking the approval of a certificate of public necessity and convenience, if the large water-works or sewage disposal system company sufficiently demonstrates and PUCO finds that the petition is just and reasonable. A petition is to be deemed approved if PUCO fails to issue a final order not later than 270 days after the initial petition is filed, unless the petition review is suspended for good cause shown.⁴

In its order approving the acquisition, PUCO must include both:

- PUCO's decision establishing the rate base of the company being acquired; and
- The rate division under which the geographic area of customers from the company being acquired will be served.⁵

Rate division

The act requires a large water-works or sewage disposal system company acquiring a municipal water-works or sewage disposal system company to recommend whether the geographic area of customers from the company being acquired are to be integrated into an existing rate division of the acquiring company or given a new rate division. If integration is the recommendation, the acquiring company must also recommend how the area is to be integrated. The recommendation must be mutually agreed upon by both companies.⁶

Under the act, "rate division" means a separate tariff of a water-works or sewage disposal system company for one or more geographic customer areas.⁷

Original cost determination

The act sets forth additional requirements with respect to the determination of original cost as it relates to the acquisition of a municipal water-works or sewage disposal system company by a large water-works or sewage disposal system company. In evaluating a petition for acquisition, PUCO must accept the original cost of

⁴ R.C. 4905.481.

⁵ R.C. 4905.491.

⁶ R.C. 4905.49(B) and (C).

⁷ R.C. 4905.49(A).



acquisition of the company being acquired as reported under the requirements of continuing law, if (1) PUCO finds the cost is just and reasonable and (2) the cost is determined as follows:

- The acquiring company has three appraisals performed on the property of the company being acquired.
- The three appraisals are performed by three independent utility-valuation experts mutually selected by both companies from the list created by PUCO under the act.
- The average of the three appraisals is used as the fair market value of the company being acquired.
- Each utility-valuation expert does all of the following:
 - Determines the company's fair market value by establishing the amount for which it would be sold in a voluntary transaction between a willing buyer and a willing seller under no obligation to buy or sell;
 - Determines the fair market value in compliance with the Uniform Standards of Professional Appraisal Practice;
 - Employs the cost, market, and income approach to independently quantify the company's future benefits;
 - Incorporates the assessment of the company's tangible assets (described next) into the appraisal under the cost, market, and income approach;
 - Engages one licensed engineer to prepare an assessment of the company's tangible assets. The original source of funding for any part of the tangible assets is not relevant to determining their value.
- The lesser of the purchase price or the fair market value is reported as the original cost of the company.⁸

Each expert must return the appraisal, in writing, to both companies in a reasonable and timely manner. All appraisals must be included in any filing associated with the acquisition.

⁸ R.C. 4909.05 and 4909.052.

Utility-valuation expert list

For purposes of determining the original cost of a municipal water-works or sewage disposal system company to be acquired, the act requires PUCO to maintain a list of utility-valuation experts that a water-works or sewage disposal system company may choose. PUCO is also responsible for creating and maintaining reasonable criteria that must be met to be included in the list.⁹

Deferred costs

The act requires the prudent costs of obtaining the three valuations be deferred as an expense for future recovery in a manner determined by PUCO. In determining prudence of costs, PUCO must give due regard to the circumstances of the case, including size and complexity of, and any particular difficulties associated with the valuation.¹⁰

Upon application by the acquiring company, the act allows PUCO to authorize the deferral of post-in-service carrying cost on any improvements made to the company being acquired after acquisition. Those costs must be calculated based at the acquiring company's weighted average cost of debt as determined in its last rate case. The deferrals will begin after the expenditure is incurred and will continue until the first of the following occurs:

- The investment has been in service for three years;
- The acquiring company's next rate case that includes the investment;
- The inclusion of the investment in a charge authorized under an infrastructure improvement surcharge.¹¹

Upon application by the acquiring company, the act allows PUCO to authorize the deferral of any depreciation expense related to post-acquisition improvements to the company being acquired, to be recovered over the life of the assets commencing with the first rate case including the acquisition. The depreciation deferral will continue until the first of the following occurs:

- The investment has been in service for three years;

⁹ R.C. 4909.054.

¹⁰ R.C. 4909.055.

¹¹ R.C. 4909.057(A).



- The acquiring company's next rate case that includes the investment;
- The inclusion of the investment in a charge authorized under an infrastructure improvement surcharge.¹²

Release state conditions on Miami Valley Research Foundation land

The act releases conditions the 114th General Assembly, in 1981, placed on a conveyance of state-owned land in Kettering to the Miami Valley Research Foundation. The conditions included a requirement that the land be used to conduct scientific research in conjunction with educational institutions, governmental entities, and other entities to promote economic development. The conveyance legislation, H.B. 400 of the 114th General Assembly, authorized the Foundation to convey the land, but the limited use condition would continue to apply. If the Foundation or a subsequent owner used the land for another purpose, H.B. 400 provided that the land reverted back to the state or that the Foundation and subsequent owner owed the state a certain monetary amount.

The act releases the restrictions regarding the land's use and releases the state's reversionary interest. Effectively, it allows the Foundation or a subsequent owner to use the land for any purpose without consequence.¹³

HISTORY

ACTION	DATE
Introduced	11-21-17
Reported, H. Energy & Natural Resources	02-14-18
Passed House (94-1)	02-28-18
Reported, S. Public Utilities	12-03-18
Passed Senate (32-0)	12-19-18
House concurred in Senate amendments (86-1)	12-27-18

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¹² R.C. 4909.057(B).

¹³ Sections 3 through 6 of the act.

