

NAVIGATING WATER/WASTEWATER UTILITY ACQUISITIONS:



Regulatory, Industry,
and Environmental
Challenges



SCENARIO

Consider the following:

Clearbrook Utility operates a small integrated water and wastewater system that is showing increasing strain. Its decades-old wastewater lagoons are experiencing recurring compliance issues, and recent well testing detected PFAS levels above proposed state limits, raising concerns among residents and regulators. These dual challenges cast doubt on the town's ability to maintain compliance, protect water quality, and manage the financial demands of a small system, prompting stakeholders to consider what future path makes the most sense for the community.

PROBLEMATIC SYSTEMS

Can you spot the problem?

1/5



...one nation under God...
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Fire hydrants To Be Flushed This Week

Aqua PA Continues With Improvements At Emlenton Plant

The residents of Emlenton Borough can finally feel a sense of relief after nearly a year of water problems plagued their community.

Since taking over the troubled Emlenton Water Company, Aqua PA has made tremendous strides in bringing the old antiquated system up to current acceptable operating standards. Gone are the monotonous trips to the water buffalos that once supplied the town with viable drinking water. Gone is the "scarlet letter"-boil advisory that blanketed the community for nearly a year.

To date, Aqua PA has been in the process of changing meters and reconnecting the towns water supply lines with a newer system that will provide its customers with a better flow. One of the first areas that received attention was the Pearl St. and Garden St. areas as its occupants seemed to have very little water pressure.



On Thursday, July 23rd and into Friday, July 24th, Emlenton residents may notice a little discoloration in their water. On Thursday, July 23rd at 10:00 p.m. Aqua PA will start flushing the fire hydrants to clean out the water supply lines.

During the main flushing process, fire hydrants are opened, allowing water pressure to forcefully remove non-harmful sediment from the water mains. Customers may experience

Jack Walter, production manager. Customers can also store water in advance for use during this process, and are cautioned not to wash clothes the days the mains are flushed.

Do not turn on the hot water at first as it may settle into your hot water tank.

The Aqua PA - Emlenton Plant serves approximately 1,200 people in portions of Emlenton Borough and Richland Town-

Local Filmmaker Venango Digital Film Festival

Emlenton, PA (July 15th): Venango Digital Film Association (VDFA) presents its second run-up program to the 2009 Venango Digital Film Festival. This event will host professional filmmaker Daniele Wilmoth.

The screening is open to the public at the Crawford Center Auditorium, Emlenton, PA, from 7 to 9 p.m. on Sunday, August 2nd, 2009.

Daniele Wilmoth is the featured filmmaker for this year's festival run-up program. She is a prolific experimental and documentary filmmaker and a faculty member at The School of the Art Institute of Chicago and Columbia College. Wilmoth will discuss her work and film.



discuss her work and film. One of her shots in Venango Digital Film Festival.



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PROBLEMATIC SYSTEMS

Can you spot the problem? 2/5



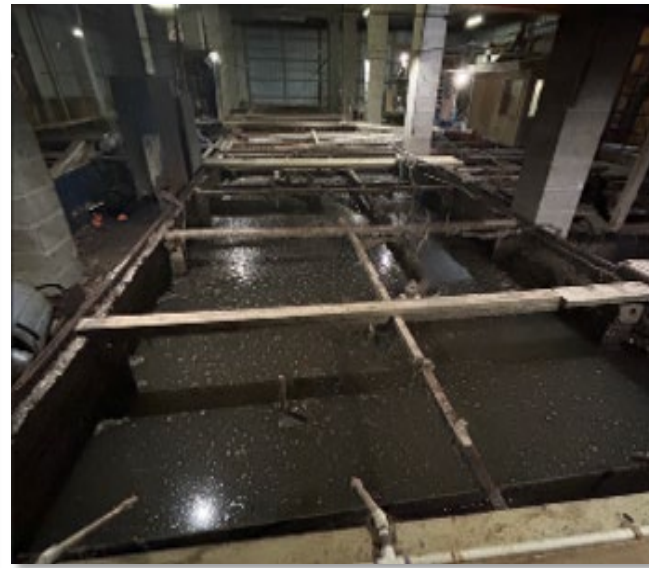
PROBLEMATIC SYSTEMS

Can you spot the problem? ^{3/5}



PROBLEMATIC SYSTEMS

Can you spot the problem? 4/5



PROBLEMATIC SYSTEMS

Can you spot the problem? 5/5



Conceptual Framework: From Compliance to Risk Mitigation

Grounding M&A Review in Risk-Based Regulation Principles

COMPLIANCE REVIEW MODEL

- ✗ Focus on procedural compliance and threshold findings
- ✗ Applicant attempts to prove necessary or proper; affirmative benefit, burden on deal to justify itself
- ✗ Strict compliance analysis can subject agency to significant political and market discipline
- ✗ Static snapshot: review conditions at filing date only
- ✗ Success = procedural completeness of the record



Risk Review Shift

RISK MITIGATION MODEL

- ✓ **Identify the harms:** Define specific public injury types—service failure, rate shock, regulatory evasion, deferred capital.
- ✓ **Prioritize by severity and likelihood:** Concentrate review resources on high-risk-high-probability transactions; don't treat all deals equally.
- ✓ **Compare paths, not just the deal:** Explicitly model what happens under approval (conditioned or not) vs. the no-deal counterfactual.
- ✓ **Shift from procedural compliance to problem-solving:** Craft conditions that neutralize identified harms; monitoring tied to measurable outcomes, not procedural milestones.
- ✓ **Forcing strict compliance assumes rules are the public benefit:** Focus on the reality of the market or territory – strict compliance with general rules may detract from public benefit!

Public Harm Risk vs. Review Intensity

Allocating Regulatory Resources by Transaction Risk Profile

INTENSITY OF REGULATORY REVIEW



POTENTIAL PUBLIC HARM

<p><u>STREAMLINE/ACCELERATED</u> Default - High Regulatory Risk Without Approval Expedite approval; no or few conditions <i>e.g., Small <u>distressed</u> system acquired by creditworthy & competent applicant</i></p>	<p><u>INTENSIVE REVIEW</u> Default - High Regulatory Risk With Approval Full evidentiary hearings; conditions + bonds + ring fencing+ regular compliance monitoring <i>e.g., Leveraged multi-system acquisition; unproven buyer competence; buyer obtaining first CPC in category;</i></p>
<p><u>TYPICAL/MONITOR</u> Default – Low Regulatory Risk with Approval Potential for hearing; no or few conditions <i>e.g., Small well-run system owned/operated by family or retirement age person acquired by creditworthy & competent applicant</i></p>	<p><u>DEFINED INVESTIGATION</u> Default – Low compliance risk/elevated rate or financial risk Scrutinize rationale; counterfactual deep-dive <i>e.g., Franchise roll-up; no infrastructure deficiency; buyer and seller financially healthy and competent</i></p>

[HTTPS://WWW.ECOS.ORG/PFAS/PFAS-RISK-COMMUNICATION-HUB/](https://www.ecos.org/pfas/pfas-risk-communication-hub/)

PFAS Resources and Information

PFAS Risk Communication Hub



Risk communication is a critical step in addressing contaminants of emerging concern, especially [high-profile compounds like per- and polyfluoroalkyl substances \(PFAS\)](#). There are differences in the messaging and methods by which environmental agencies and health departments share information with various audiences. Given the wide breadth of regulatory efforts, sampling strategies, and general involvement with PFAS, ECOS has gathered information that use best practices so states can have guidance on how to effectively and efficiently address contamination.

What is PFAS Risk Communication?

PFAS risk communication is:



Goal-oriented



Transparent



Collaborative



Actionable



Adaptive

If you have questions related to this presentation, please feel free to reach out to our session panelists at their email addresses below:

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CLE Materials/Handout

Session Title:

Navigating Water/Wastewater Utility Acquisitions: Regulatory, Industry, and Environmental Challenges

Case Study

Case Study Scenario

The town of Clearbrook operates a small, integrated water and wastewater system that has begun to show signs of significant strain. Its wastewater treatment lagoons, built decades earlier, are experiencing recurring compliance problems as the aging infrastructure struggles to meet modern regulatory standards. At the same time, routine monitoring of the drinking water system has revealed a detection of a PFAS compound in the town's groundwater wells at levels above the recently proposed state limits, prompting concern among residents and regulators.

These dual challenges have raised questions about the town's ability to maintain long-term compliance, ensure water quality, and sustain the financial and operational demands placed on a small system. As Clearbrook considers its options, the community, regulators, and potential partners are evaluating what the system's future might look like and what factors should be weighed in determining the best path forward.



Breakdown of Scenario (Combined W/WW System with Integrated Ratepayer Communications Component)

A single municipally owned **integrated water and wastewater system** is facing two major issues simultaneously:

- **Wastewater Distress:**

The wastewater division has recurring NPDES compliance gaps tied to aging lagoon infrastructure, effluent exceedances, and limited operator capacity. Years of deferred maintenance and a small rate base prevent the municipality from meeting regulatory requirements.

- **PFAS-Impacted Water Supply:**

The drinking water division's wells recently tested one PFAS compound above the state's proposed PFAS standards, requiring the installation of GAC or resin treatment if the standards are promulgated. The municipality lacks the financial resources, technical expertise, and legal capacity to pursue responsible-party recovery or execute ongoing operational changes.

A regional investor-owned utility (IOU) proposes acquiring the **entire integrated system**. The acquisition is positioned as the most sustainable path to stabilize system operations, achieve environmental compliance, protect public health, and maintain affordability.

Some approaches that could be considered to achieve the benefits described above might include:

- A **36-month capital improvement program** to rehabilitate wastewater treatment facilities and install PFAS removal systems.
- **Phased-in rates** and customer affordability safeguards.
- **Environmental due diligence** to identify PFAS liabilities and determine eligibility for grants and settlements.
- A comprehensive **ratepayer communications plan**, developed jointly with the municipality, ensuring customers understand:
 - Why the acquisition is being considered
 - What improvements and PFAS treatment installations are planned
 - How phased-in rates will work
 - What safeguards are in place for vulnerable customers
 - What to expect during construction and regulatory timelines



**Considerations Related to the Session Segments
Discussed by the Panelists**

1. Current Landscape – Why Acquire This Combined System?

- Distressed wastewater operations
- PFAS treatment costs and compliance pressures
- Consolidation trends and statutory direction
- Affordability challenges for small systems

2. Regulatory Considerations & Risk Allocation

- Fair-value valuation and required evidentiary standards
- Conditions such as capital plans, compliance timelines, and reporting
- Allocation of PFAS liability, NPDES exposure, and long-term risks
- Contract terms on indemnities, responsible-party pursuit, and transparency
- Regulatory expectations for proactive public engagement

3. Environmental & Compliance Standards – PFAS and Beyond

- Required PFAS treatment technologies and compliance deadlines
- Environmental due diligence scope and key findings
- Identification of responsible parties and recovery pathways
- Availability of grants, settlements, and non-ratepayer funding sources
- Need for clear, accurate public water risk and treatment information

4. Ratepayer & Consumer Protection Issues

- Avoiding rate shock via phased-in rate transitions
- Evaluating capital surcharges or multi-year rate plans
- Ensuring affordability safeguards and programs for vulnerable customers
- Public transparency on costs, timelines, and expected benefits
- Communications strategies that provide plain-language explanations of rates, PFAS, and compliance needs

5. Best Practices / Takeaways

- Start environmental due diligence early.
- Well-structured risk allocation and due diligence.
- Build affordability measures into rate design from the outset.
- Use/encourage external funding before turning to rate recovery to reduce rate impacts.
- Clearly documenting benefits and efficiencies to regulators and customers.
- Align communications across the utility, regulators, and local government.



Stakeholder Perspectives on the Various Issues

Utility / IOU Perspective

- **Why acquisition:** Achieve efficiencies, deploy capital, resolve distressed conditions, and stabilize system operations.
- **Regulatory:** Support a structured, evidence-based valuation and workable regulatory conditions.
- **Environmental:** Install PFAS treatment rapidly and pursue responsible-party funds to reduce ratepayer exposure.
- **Ratepayer communications:**
 - Provide clear explanations of treatment upgrades, construction impacts, and phased rates.
 - Offer dedicated customer-outreach tools (mailers, web portal, public meetings).
 - Build trust by sharing timelines, safety information, and funding strategies.

Public Utility Commission (PUC) Perspective

- **Why acquisition:** Aligns with policy goals for assisting distressed systems and ensuring long-term reliability.
- **Regulatory:** Impose enforceable capital plans, compliance milestones, and reporting conditions.
- **Environmental:** Ensure PFAS obligations and related funding strategies are transparent.
- **Ratepayer communications:**
 - Require accessible, accurate information about rate impacts.
 - Ensure the communications plan meets statutory transparency requirements.
 - Confirm that outreach addresses vulnerable populations.

Consumer Advocate Perspective

- **Why acquisition:** Supports system stabilization but remains focused on affordability and equity.
- **Regulatory:** Scrutinize premiums and cost recovery; insist on strong affordability protections.
- **Environmental:** Monitor PFAS-related costs to ensure they are not unfairly shifted to customers.
- **Ratepayer communications:**
 - Demand plain-language materials that clearly explain costs and benefits.
 - Emphasize early engagement with affected customers.
 - Ensure communications reflect realistic expectations, not promotional framing.



Stakeholder Perspectives on the Various Issues

Environmental Attorney Perspective

- **Why acquisition:** Recognizes that well-resourced operators are better positioned to manage PFAS and wastewater compliance; may have experience and existing relationships with vendors to evaluate and implement appropriate treatment technologies.
- **Regulatory:** Focus on risk allocation related to PFAS liabilities and legacy NPDES issues.
- **Environmental:** Oversee due diligence, mitigation requirements, and responsible-party actions; find and evaluate potential grant and loan opportunities.
- **Ratepayer communications:**
 - Ensure accurate, legally compliant messaging about contaminants and health risks.
 - Guard against misleading or incomplete statements on environmental liabilities or timelines.
 - Promote transparency about uncertainty, particularly around PFAS compliance standards and cost recovery.

Executive Summary: TPUC Utility Acquisitions Rules (1220-04-14)

The Tennessee Public Utility Commission (TPUC) has established a comprehensive regulatory framework governing the acquisition of electric, natural gas, water, and wastewater utilities. These rules ensure that utility acquisitions promote the public interest, protect ratepayers, and establish transparent, consistent standards for valuation, cost recovery, and regulatory oversight.

Purpose and Regulatory Objective

The rules require TPUC approval for any utility acquisition and ensure that transactions result in just and reasonable rates, improve service quality where needed, and support the long-term viability of Tennessee's utility infrastructure. TPUC retains full authority to set post-acquisition rates and may classify acquired systems as separate ratemaking entities as appropriate.

Asset Valuation and Acquisition Adjustments

Acquiring utilities must provide robust support for the proposed value of acquired assets, using accepted methodologies such as average embedded cost or reproduction cost new less depreciation. Asset values cannot exceed the negotiated sales price. TPUC may approve an acquisition adjustment—positive or negative—when benefits such as cost savings, system improvements, or remediation of health and safety issues justify it. Any approved adjustment must be amortized over a period of no more than 20 years.

Cost Recovery and Post-Acquisition Investments

Transaction, regulatory, and closing costs are recoverable only if reasonable and prudent. TPUC may allocate these costs between customers and shareholders based on relative benefits and affordability. Post-acquisition capital investments must be used and useful, follow the utility's approved depreciation methods, and earn the rate of return previously authorized by TPUC.

Post-Acquisition Rates and Charges

The Commission has the authority to set rates for both existing and acquired customers. Rates must remain just and reasonable, and TPUC may phase in rate increases to avoid customer rate shock. Cost recovery may be allocated differently among customer groups based on benefits and system needs.

Application and Filing Requirements

To be deemed complete, an acquisition application must include:

- The executed acquisition agreement
- Three years of financials for the selling utility
- Current tariffs, customer counts, and service area maps

Executive Summary: TPUC Utility Acquisitions Rules (1220-04-14)

- Forecasted financial performance and capital plans
- Detailed valuation methodologies and support
- Proposed rates for all customer classes and comparisons to current rates
- Pro-forma accounting entries and supporting testimony

The Commission makes a decision within 120 days of a complete filing, with a 60-day extension as needed.

Challenges and Opportunities

Substantial documentation requirements and valuation uncertainty pose challenges, and the recovery of acquisition-related costs is not guaranteed. However, the rules offer clear pathways for acquiring financially distressed or noncompliant systems, provide flexibility in rate design and phased-in recovery, and support infrastructure modernization through regulatory asset treatment and predictable procedures.

**RULES
OF
THE TENNESSEE PUBLIC UTILITY COMMISSION**

**CHAPTER 1220-04-14
UTILITY ACQUISITIONS**

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1220-04-14-.01 DEFINITIONS.

- (1) "Acquired customers" means all customers of all classes served by the selling utility who will be served by the acquiring utility in the event the Commission approves the application for acquisition.
- (2) "Acquired rate base" means the amount of the selling utility's assets and acquisition adjustment, if any, the Commission determines should be incorporated into the acquiring utility's rate base for ratemaking purposes pursuant to Rule 1220-04-14-.03 and Rule 1220-04-14-.04.
- (3) "Acquiring utility" means a public utility subject to the jurisdiction of the Commission that provides electric, natural gas, water or wastewater public utilities services that is purchasing or acquiring a selling utility or a selling utility's assets as a result of a voluntary arms-length transaction.
- (4) "Acquisition adjustment" means the amount, whether positive or negative, the Commission determines should be incorporated into the acquired rate base under Rule 1220-04-14-.04.
- (5) "Average embedded cost" means an acquiring utility's plant in service, less associated accumulated reserve as recorded in the Uniform System of Accounts for the type of utility plant being acquired from the selling utility, divided by the acquiring utility's existing customers.
- (6) "Existing customers" means all customers of all classes served by the acquiring utility immediately prior to the Commission's hearing and consideration of the application for acquisition.
- (7) "Negotiated sales price" means the purchase price of the utility assets that the acquiring utility and the selling utility agree upon through voluntary, arms-length negotiations.
- (8) "Rate base" means the amount of property, plant and equipment that is used and useful in providing public utilities services and upon which the acquiring utility is permitted to earn an authorized rate of return approved by the Commission.
- (9) "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 material, construction standards, design, layout, and quality without adjustment for deficiencies and obsolescence of those assets, less depreciation.

(Rule 1220-04-14-.01, continued)

- (10) "Selling utility" means any provider of electric, natural gas, water or wastewater public utilities services in Tennessee that is being, or whose assets are being, purchased by an acquiring utility as a result of a voluntary arms-length transaction.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

1220-04-14-.02 POWERS AND STANDARD OF REVIEW.

- (1) The Commission retains its regulatory authority, jurisdiction, and discretion as provided under Title 65, including as follows:
- (a) The Commission has the authority after public notice and hearing to approve an acquiring utility's purchase of a selling utility upon finding the acquisition to be in the public interest.
 - (b) The Commission shall maintain its statutory authority to set rates for the selling utility's system after it is purchased by the acquiring utility.
 - (c) The Commission shall have the discretion to classify the acquired system as a separate entity for ratemaking purposes if such classification is in the public interest and maintains just and reasonable rates for acquired and existing customers.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

1220-04-14-.03 VALUE OF ACQUIRED ASSETS.

- (1) The acquiring utility shall incorporate the acquired assets of the selling utility into the acquired rate base at the value ordered by the Commission after public notice and hearing.
- (2) The applicant(s) shall present proof of the value of the acquired assets, including, but not confined to, evidence of the methodology used to value such assets and the sources of financial data, information and calculations used to derive the proposed value.
- (3) The Commission recognizes the following methodologies may be appropriate to derive the value of the acquired assets:
- (a) Average embedded cost of the acquiring utility;
 - (b) Reproduction cost new less depreciation;
 - (c) Any other reasonable valuation method proposed by a party to the acquisition proceeding and approved by the Commission; and
 - (d) Any other valuation method found by the Commission to be reasonable.
- (4) Nothing herein is intended to limit the Commission from gathering and considering information it deems necessary to determine a just and reasonable value of the acquired assets.
- (5) Notwithstanding the foregoing, the value of the assets added to the acquired rate base shall be just and reasonable and in no event shall exceed the negotiated sales price.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

1220-04-14-.04 ACQUISITION ADJUSTMENT.

- (1) The Commission may order an acquisition adjustment to be incorporated into the acquired rate base if the Commission determines such adjustment is warranted under the circumstances and will not result in unjust or unreasonable rates and charges for the acquiring utility or for customers.
- (2) The Commission may consider the following factors when determining whether any acquisition adjustment should be incorporated into the acquired rate base:
 - (a) Cost savings or increases resulting from consolidation of the selling utility's system into the acquiring utility's operations;
 - (b) Improvements in public utilities services resulting from the acquisition;
 - (c) Remediation of public health, safety and welfare concerns of the selling utility's system resulting from the acquisition;
 - (d) Incentives for acquisition of a financially or operationally troubled system, which may be demonstrated by bankruptcy, receivership, financial distress, notice of violation, order of abatement, or inability to continue as a going concern of the selling utility;
 - (e) Amount of any assets contributed or donated to the selling utility included in the proposed acquisition transaction; and
 - (f) Any other measurable benefits, costs, or service changes affecting acquired and/or existing customers resulting from the acquisition.
- (3) The Commission shall allow the acquiring utility to amortize any acquisition adjustment incorporated into the acquired rate base over a reasonable period of time not to exceed 20 years.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

1220-04-14-.05 POST-ACQUISITION CAPITAL INVESTMENTS.

- (1) Post-acquisition capital investments in property, plant and equipment attributable to the selling utility's system or service area shall be reasonable, prudent and used and useful in the provisioning of public utilities services if such investments are to be recovered from customers.
- (2) Post-acquisition capital investments shall be depreciated in accordance with the acquiring utility's most recently approved depreciation rates and methods unless otherwise ordered by the Commission.
- (3) The acquiring utility's return on post-acquisition capital investments shall be the rate of return approved by the Commission at the acquiring utility's most recent general rate case.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

1220-04-14-.06 REGULATORY, TRANSACTION AND CLOSING COSTS.

- (1) All regulatory, transaction and closing costs related to the acquiring utility's purchase of the selling utility shall be reasonable and prudent in order to be recoverable from customers.

(Rule 1220-04-14-.06, continued)

- (2) For purposes of setting post-acquisition rates and charges, the Commission may in the exercise of its lawful discretion allocate the regulatory, transaction and closing costs between the acquiring utility's owners/shareholders and its customers in recognition of the relative benefits of the acquisition to each and in consideration of the affordability of post-acquisition rates.
- (3) For reasonable and prudent regulatory, transaction and closing costs recoverable from customers, the Commission may allow such costs to be deferred into a regulatory asset account and included as a regulatory asset in the acquiring utility's rate base for future recovery by the acquiring utility unless such costs are to be recovered through another method approved by the Commission.
- (4) The Commission shall allow the acquiring utility to amortize any deferred regulatory, transaction and closing costs included as a regulatory asset in the acquiring utility's rate base over a reasonable period of time not to exceed 20 years.
- (5) Regulatory, transaction and closing costs related to an acquisition application that is withdrawn by the acquiring utility or denied by the Commission shall not be recoverable from the acquiring utility's existing customers.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

1220-04-14-.07 POST-ACQUISITION RATES AND CHARGES.

- (1) The Commission shall have the authority, after public notice and hearing, to fix post-acquisition rates and charges for acquired customers and existing customers.
- (2) Post-acquisition rates and charges shall be just and reasonable.
- (3) In fixing post-acquisition rates and charges, the Commission may in the exercise of its lawful discretion allocate the recovery of costs between the acquired customers and existing customers on a rational basis that may, among other things, consider the relative benefits, costs, and intrinsic value of service.
- (4) The Commission may in the exercise of its lawful discretion require the phase-in of post-acquisition rates and charges over a reasonable period of time in circumstances when post-acquisition rates and charges are substantially higher than pre-acquisition rates and charges or in consideration of affordability concerns.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

1220-04-14-.08 APPLICATION FOR ACQUISITION AND FILING REQUIREMENTS.

- (1) The Commission shall approve or deny an application for acquisition within 120 days of the filing of a complete application by the acquiring utility. For good cause shown, the Commission or Hearing Officer may extend this period up to an additional 60 days either on its own motion or by request of any party to the acquisition proceeding.
- (2) An application for acquisition shall, at a minimum, contain all the following information prior to such application being deemed complete unless a provision is waived by the Commission or Hearing Officer upon request by the applicant(s):
 - (a) A fully executed acquisition agreement, including all attachments, reflecting the terms and provisions of the acquisition transaction;

(Rule 1220-04-14-.08, continued)

- (b) Financial statements, including a balance sheet and income statement, of the selling utility's three most recently completed fiscal years or reporting periods at the time the application for acquisition is filed;
- (c) All tariffs, schedules or lists detailing the rates, charges and terms of service in effect for the selling utility at the time the application for acquisition is filed;
- (d) A schedule detailing the number of customers by customer class served by the selling utility at the time the application for acquisition is filed;
- (e) A statement and, if available, maps that comprehensively describe the service area of the selling utility;
- (f) A forecasted income statement detailing the projected operating revenues, expenses, taxes and net income attributable to the selling utility's operations for the twelve-month period following the estimated closing date of the acquisition transaction;
- (g) Anticipated capital budgets based on due diligence detailing by project all projected post-acquisition capital investments in property, plant and equipment attributable to the selling utility's system or service area for the three-year period following the estimated closing date of the acquisition transaction;
- (h) A schedule detailing the computation of regulatory, transaction and closing costs related to the proposed acquisition and the amount of such costs requested for recovery from the acquiring utility's customers;
- (i) A statement fully explaining the proposed methodology for valuing the acquired assets to be incorporated into the acquired rate base under Rule 1220-04-14-.03;
- (j) A schedule and supporting workpapers detailing the computation of the value of the acquired assets requested for inclusion in the acquired rate base under Rule 1220-04-14-.03;
- (k) A schedule and supporting workpapers detailing the computation of any proposed acquisition adjustment requested for inclusion in the acquired rate base under Rule 1220-04-14-.04;
- (l) A statement discussing the factor(s) supporting any proposed acquisition adjustment to be incorporated in the acquired rate base under Rule 1220-04-14-.04, including the particular benefits, costs, or service changes, if any, that affect acquired customers and/or existing customers;
- (m) A schedule identifying any assets that were contributed or donated to the selling utility that are included in the acquisition transaction;
- (n) A statement discussing the proposed methodology and rate design for recovery from customers of any requested (i) acquisition adjustment; (ii) costs of post-acquisition capital investments; or (iii) regulatory, transaction and closing costs;
- (o) A schedule detailing the pro-forma accounting entries for recording the proposed acquisition transaction in accordance with the Uniform System of Accounts;
- (p) A schedule detailing the computation of post-acquisition rates and charges proposed for acquired customers by customer class;

(Rule 1220-04-14-.08, continued)

- (q) A schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for acquired customers by customer class;
 - (r) A schedule detailing the computation of post-acquisition rates and charges proposed for existing customers by customer class;
 - (s) A schedule comparing the pre-acquisition and proposed post-acquisition rates and charges for existing customers by customer class;
 - (t) A statement describing in detail how the proposed public utility acquisition furthers the public interest; and
 - (u) Written testimony supporting the application for acquisition.
- (3) The acquiring utility shall possess a Certificate of Public Convenience and Necessity (CCN) or demonstrate its eligibility for a CCN to operate the selling utility's system in accordance with applicable statutory law and Commission rules and regulations.
 - (4) The acquiring utility shall file a proposed tariff incorporating the acquired customers into the acquiring utility's rates, charges and terms of provisioning public utilities services.
 - (5) The acquiring utility shall provide public notice of the proposed acquisition in accordance with applicable statutory law and Commission rules and regulations, as well as any additional public notice requirements ordered by the Commission or the Hearing Officer.
 - (6) The acquiring utility shall furnish any other pertinent information as determined and requested by the Commission or in accordance with the discovery phase of the acquisition proceeding.
 - (7) The Commission shall approve the acquiring utility's acquisition of the selling utility if, after public notice and hearing, the Commission finds the acquisition to be in the public interest.

Authority: T.C.A. §§ 65-2-102 and 65-5-101, et seq. **Administrative History:** New rules filed August 10, 2021; effective November 8, 2021.

Overview of Pennsylvania Acquisition Adjustments for Small Water and Wastewater Systems Under 66 Pa. C.S. § 1327

Introduction

Section 1327 is one of the Pennsylvania statutes that create financial incentives for investor-owned utilities to absorb troubled water and sewer systems. Like its companion Section 1329 dealing with municipal systems (discussed separately), it provides a distinct mechanism for adjustments to depreciated original cost. Together, they reflect Pennsylvania's policy judgment that consolidation of troubled systems into larger regulated utilities is preferable to allowing those systems to continue in a degraded state.

Section 1327 creates a specialized rate base treatment for acquisitions of small or troubled water and wastewater systems. It encourages investor-owned utilities to acquire and rehabilitate non-viable systems that struggle to deliver safe and adequate long-term service. When a qualifying acquisition is approved, the acquiring utility may include in its rate base the full purchase price. That includes amounts by which the purchase price exceeds the depreciated original cost (DOC) or where DOC exceeds the purchase price of the acquired assets.

The statute departs from general ratemaking principles by overriding the requirement that rate base be capped at DOC. Upon satisfaction of the conditions in § 1327(a), the statute treats the premium as a rebuttable presumption, shifting the burden to parties challenging the acquisition adjustment to demonstrate unreasonableness.

Conditions for Rate Base Inclusion

The acquiring utility claiming the acquisition adjustment bears the burden of establishing:

- Property is used and useful in providing service. § 1327(a)(1).
- Seller had 3,300 or fewer customers; nonviable absent acquisition. § 1327(a)(2).
- Seller not furnishing and maintaining adequate, efficient, safe, and reasonable service. § 1327(a)(3). Statutory evidence of troubled status includes:
 - Violation of Pennsylvania Department of Environmental Protection (DEP) or Commission regs regarding safety, adequacy, efficiency, or reasonableness; § 1327(a)(3)(i).
 - Finding of inadequate financial, managerial, or technical capacity; § 1327(a)(3)(ii).
 - Finding of deficiencies in water availability, palatability, or pressure; § 1327(a)(3)(iii).
 - Finding that needed improvements make it unlikely the seller could maintain adequate service at comparable rates; § 1327(a)(3)(iv).
 - Any other facts the Commission determines evidence the seller's inability to provide adequate service. § 1327(a)(3)(v).
- Acquiring utility will make reasonable and prudent investments to assure adequate service to the acquired customers. § 1327(a)(4).
- Seller agreed to the acquisition and negotiations conducted at arm's length. § 1327(a)(5).
- Purchase price is reasonable. § 1327(a)(6).
- Acquiring and selling entities are not affiliated interests. § 1327(a)(7).
- Preacquisition customers of the acquiring utility will not face unreasonable rate increases. § 1327(a)(8).

Overview of Pennsylvania Acquisition Adjustments for Small Water and Wastewater Systems Under 66 Pa. C.S. § 1327

When Must “Troubled” Status Be Demonstrated?

Acquisitions under Section 1327 are frequently bifurcated for practical purposes. While the acquisition and the rate case addition could be considered jointly, most Section 1327 applicants reserve consideration of rate base additions for a subsequent rate case. This avoids mounting a mini rate case in each acquisition. Thus, an acquisition may be approved some months or years before rate case matters are addressed in the acquirer’s next rate case. This is generally accomplished through the acquisition approval order deferring rate base claims to a later rate case. The acquiring utility then must demonstrate the troubled status at the time it seeks to claim the adjustment as a rate base addition. The practical consequence is that evidence of troubled status must be preserved at the time of acquisition even if rate base treatment will not be litigated for years.

Procedures

Pre-Acquisition Approval

A utility may seek Commission approval of the rate base inclusion before the acquisition closes — and before a formal rate proceeding. § 1327(b). This pre-acquisition approval requires:

- Notice of the proposed acquisition and any proposed rate increase to affected customers, in the form and manner required by Commission regulation; § 1327(b)(1).
- Separate notice to the acquiring utility’s existing customers if the acquisition would increase their rates by more than 1% of base annual revenue; § 1327(b)(2).
- Notice to the Bureau of Investigation and Enforcement and the Consumer Advocate; § 1327(b)(3).
- A full description of the proposed acquisition and a plan for reasonable and prudent investments. § 1327(b)(4).

The Commission may hold hearings as it deems necessary under § 1327(c). In the case of a joint acquisition and rate base claim it likely would.

Below-Cost Acquisitions

Where the purchase price is below depreciated original cost, the acquiring utility may claim the DOC as in its rate base, the difference being amortized as an addition to income over a reasonable period or passed through to ratepayers by another methodology the Commission directs, absent matters of substantial public interest. § 1327(e). Notice of proposed treatment is required to the Bureau of Investigation and Enforcement and the Consumer Advocate. § 1327(e).

Forfeiture

If the Commission finds, after notice and hearings, that the acquiring utility has not completed the promised reasonable and prudent investments within a reasonable time, the Commission may remove the excess acquisition costs from rates and order refunds of any excess revenues collected with interest. § 1327(d).

§ 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 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 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;

(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 subchapter 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 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. (Apr. 4, 1990, P.L.107, No.24, eff. 60 days; June 1, 1995, P.L.49, No.7, eff. 60 days; Feb. 14, 2012, P.L.72, No.11, eff. 60 days)

2012 Amendment. Act 11 amended subsec. (b) intro. par.

References in Text. The Department of Environmental Resources, referred to in subsec. (a), was abolished by the act of June 28,

1995 (P.L.89, No.18). Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

The Secretary of Banking, referred to in subsec. (d), was renamed the Secretary of Banking and Securities by the act of July 2, 2012 (P.L.814, No.86).

Overview of Pennsylvania Water and Wastewater Fair Market Value Municipal Acquisitions Under 66 Pa. C.S. § 1329

Introduction

Section 1329 governs acquisitions of water and wastewater systems owned by municipal corporations or authorities — as distinct from the small or troubled private system acquisitions under Section 1327. The statute creates a voluntary (i.e., no receiverships) structured fair market value (FMV) appraisal process that, when elected by the parties, establishes a pre-determined ratemaking rate base for the acquired system. Since enactment, the Commission has issued a series of implementation orders refining procedural requirements, the most recent being the 2024 Final Supplemental Implementation Order (2024 FSIO) which added mandatory pre-application public hearing requirements, rate impact disclosure obligations, standardized appraisal weights, and a non-binding Reasonableness Review Ratio. The Commission has received approximately 27 applications since enactment.

A Section 1329 acquisition does not stand alone as a separate statutory proceeding. At core, it is a subset of a certificate of public convenience (CPC) transaction governed by Section 1102 of the Public Utility Code, 66 Pa. C.S. § 1102, which governs public utility transfers, acquisitions, or efforts to operate public utility facilities. A Section 1329 application is effectively filed as an attachment to the Section 1102 application, and the Commission’s authority to approve or deny the transaction derives from its general authority under Section 1102.

The standard Section 1102 public interest inquiry therefore applies to every Section 1329 proceeding: the fair market value (FMV) valuation mechanism addresses rate base treatment but does not displace or modify the Commission’s obligation to find affirmative public benefit before approving the acquisition. What Section 1329 adds is a specialized valuation overlay that, when elected, pre-determines the ratemaking rate base and subjects the proceeding to an accelerated six-month decision deadline in place of the standard open-ended Section 1102 suspension period.

Who Section 1329 Covers

Section 1329 applies to acquisitions of a *selling utility* — defined as a water or wastewater company located in Pennsylvania and owned by a municipal corporation or authority — by either an *acquiring public utility* (a regulated water or wastewater utility acquiring through a voluntary arm’s-length transaction) or an *entity* (a person, partnership, or corporation filing for public utility status in connection with the acquisition, e.g., private equity). (§ 1329(g).) The statute applies only to voluntary transactions and does not govern involuntary takeovers or receiverships.

The Fair Market Value Appraisal Process

The Section 1329 FMV process is consensual. It applies “[u]pon agreement by both the acquiring public utility or entity and the selling utility.” (§ 1329(a).) If the parties do not elect it, the acquisition proceeds under standard Section 1102 practice without the benefit of pre-determined rate base treatment. When elected, the process requires two separate appraisals by two utility valuation experts (UVEs). One selected by the acquiring party; one by the selling utility. Each must comply with the current biennial edition of the Uniform Standards of Professional Appraisal Practice (USPAP) and employ all three valuation approaches: cost, market, and income. (§ 1329(a)(2), (a)(3), (b)(1).)

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Each UVE must deliver the completed appraisal within 90 days of execution of the service contract, and both UVEs must support their appraisals with written direct testimony filed concurrently with the application. (§ 1329(a)(5).)

“Fair market value” under the statute is the average of the two UVE appraisals — not a value determined by the Commission. (§ 1329(g).) Each of the three valuation approaches is weighted equally (one-third) as a default; deviation requires a showing of good cause in the acquisition application, with full explanation of the alternative weights chosen.

The three valuation approaches.

The statute requires each UVE to employ all three of the following approaches:

- **Cost approach** — estimates value based on the investment required to replace or reproduce the system’s future service capability, or by determining original cost less accrued depreciation. The parties must engage the same licensed engineer to assess the selling utility’s tangible assets, and that assessment must be incorporated into each UVE’s cost-approach analysis. (§ 1329(a)(4).) Going concern value, overhead add-ons, and future capital improvements may not be included.
- **Market approach** — estimates value by reference to comparable sales of similarly situated water or wastewater systems and market-based financial metrics of comparable publicly traded utilities, using the selling utility’s current customer count. Speculative growth adjustments, net book financials multipliers, and goodwill-type adders are excluded.
- **Income approach** — estimates value by capitalizing earnings or cash flow, or by discounted cash flow analysis, using the Commission’s quarterly earnings report for capital structure and cost of capital inputs. Going concern value, future capital improvements, and erosion-of-return adjustments are excluded.

UVE Eligibility and Fee Limits

To perform appraisals under Section 1329, a firm or individual must register with the Commission as a UVE by filing an Application for Registration and paying a \$125 filing fee; upon approval, the UVE is listed on the Commission's publicly available UVE Registry. Registration is at the firm or individual level; the conflict-of-interest and independence requirements that must be satisfied in each individual proceeding are separate from, and in addition to, baseline registry status.

The application requires:

- Prior registration as a business entity with the Pennsylvania Department of State.
- Organizational and contact information.
- Identification of parent, subsidiary, and affiliate relationships.
- Documentation of any prior business relationships with water or wastewater companies or other UVEs.
- Professional licenses and relevant experience demonstrating technical fitness.

Overview of Pennsylvania Water and Wastewater Fair Market Value Municipal Acquisitions Under 66 Pa. C.S. § 1329

- A sworn affidavit executed by an authorized principal confirming the absence of any compromise, or appearance of compromise, of the UVE's professional judgment on the valuation.

Regarding conflict of interest, a UVE may not derive any material financial benefit from the sale other than service fees and may not be an immediate family member of a director, officer, or employee of either party within 12 months of hire. (§ 1329(b)(2).) UVE fees may be included in transaction and closing costs, capped at the lesser of 5% of FMV or a Commission-approved amount under the statute (§ 1329(b)(3)); The Commission interprets this to mean each individual UVE fee is limited to 2.5% of FMV.

Ratemaking Rate Base

The ratemaking rate base incorporated into the acquiror rate base is the lesser of: (i) the negotiated purchase price; or (ii) the FMV as determined by the two-appraisal average. (§ 1329(c)(2).) This is the statute's central consumer-protection mechanism. An acquirer cannot recover any excess through rates. The Commission's acquisition approval order establishes the ratemaking rate base figure, which is then incorporated during the acquirer's next base rate case for a public utility acquirer, or in an entity's initial tariff filing for a CPC. (§ 1329(c)(1), (d)(3)(i).) The statute expressly provides that the original source of funding for any part of the water or sewer assets like federal or state grants is not relevant to determining asset value, eliminating what had been a contested issue in prior municipal acquisitions. (§ 1329(d)(5).)

The Reasonableness Review Ratio

Adopted in 2024, the Commission annually publishes a Reasonableness Review Ratio (RRR) as a non-binding reference point for evaluating the prudence of Section 1329 acquisition prices. The RRR is calculated as Enterprise Value (EV) divided by Net Property, Plant & Equipment (Net PP&E), using a barometer group of publicly traded investor-owned water utilities, with EV and Net PP&E data collected quarterly. The data set begins in Q1 2017 and grows to a rolling ten-year average. The Commission compares a proposed transaction's Market Value Ratio (MVR) against its published RRR as one factor in its review. The MVR is the rate base addition — the lesser of the negotiated purchase price or FMV under § 1329(c)(2) — divided by the depreciated original cost (DOC) of the acquired system.

To illustrate how the RRR operates, consider two scenarios involving a municipal water system with a DOC of \$10 million and two UVE appraisals averaging to an FMV of \$16 million.

Scenario A — purchase price below FMV. The parties negotiate a purchase price of \$15 million. Because \$15 million is less than the \$16 million FMV, the ratemaking rate base is set at \$15 million. The MVR is $\$15\text{M} \div \$10\text{M} = 1.50$. Compared to the current RRR of 1.59 (year ended 12/31/2025), the MVR falls below the benchmark, which would tend to support the reasonableness of the acquisition price.

Scenario B — purchase price above FMV. The parties negotiate a purchase price of \$18 million. Because \$18 million exceeds the \$16 million FMV, the ratemaking rate base is capped at \$16 million; the acquirer absorbs the \$2 million excess

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without rate recovery. The rate base addition is \$16 million — not \$18 million — and the MVR is $\$16\text{M} \div \$10\text{M} = 1.60$. That ratio modestly exceeds the RRR of 1.59 and would ostensibly invite closer scrutiny, even though ratepayers are fully protected from the \$2 million premium.

The RRR is not a ceiling and establishes no legal obligation on the parties. A ratio modestly above the benchmark does not foreclose approval. Practitioners should also note that the RRR is not among the factors enumerated in Section 1329; reliance on it as a dispositive basis for approving or rejecting a rate base claim would present significant appellate risk.

Procedure and the Six-Month Rule

A Section 1329 application is filed with the Commission and reviewed by the Bureau of Technical Utility Services (TUS) against the Application Checklist. The review process involves two stages — conditional acceptance, in which staff identifies deficiencies and the applicant has an opportunity to cure, and final acceptance — and a Section 1329 docket remains inactive until final acceptance is issued; filings in an inactive docket are not considered formally filed with the Commission. The timeline to reach final acceptance depends on the conditions imposed, the applicant’s responsiveness, and the scope of TUS review, and may be deliberately extended to ensure a consideration period of at least 170 days from the date of final acceptance to the scheduled Commission public meeting.

Section 1329(d)(2) requires the Commission to issue a final order within six months of the filing date of “an application meeting the requirements of subsection (d)(1).” The six-month clock does not begin to run until the application is both complete under the Checklist and finally accepted by the Commission; a filing that is conditionally accepted but not yet finally accepted has not started the clock. Critical practical point: applicants who submit incomplete filings or are slow to cure deficiencies may find months pass before the statutory period even begins. Once the docket becomes active and is assigned to the Office of Administrative Law Judge, the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and the Bureau of Investigation and Enforcement (I&E) are automatic participants and must be served at the time of filing; other parties may intervene. Given the compressed six-month window, the Commission front-loaded public participation through the mandatory pre-asset purchase agreement (APA) public hearing requirement.

Application Requirements

When the Section 1329 process is elected, the acquiring public utility must attach the following to its Section 1102 acquisition application (§ 1329(d)(1)):

- Copies of both UVE appraisals. (§ 1329(d)(1)(i).)
- The agreed purchase price. (§ 1329(d)(1)(ii).)
- The ratemaking rate base as determined under § 1329(c)(2). (§ 1329(d)(1)(iii).)
- Transaction and closing costs to be included in rate base. (§ 1329(d)(1)(iv).)
- A proposed tariff at the seller’s existing rates, and a rate stabilization plan if applicable. (§ 1329(d)(1)(v).)

An entity must provide the same information as an attachment to its Section 1102 application for a certificate of public convenience. (§ 1329(e).) The 2024 FSIO and Application

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Checklist add further requirements: at least two in-person public hearings conducted before execution of the APA, held within the proximate municipal boundaries of the selling utility with notice to the Commission; rate impact notifications to customers of both seller and buyer showing bill impacts at the full gross revenue requirement without proposed subsidy shifts; buyer, seller, and UVE verification statements; a 5-year Department of Environmental Protection (DEP) compliance history for both parties; and an executed, signed copy of the APA.

Interim Rates and DSIC

The seller's existing tariff rates remain in effect from closing until the acquirer's next base rate case, providing rate continuity for customers during the transition period. (§ 1329(d)(4).) During that interim period, the acquirer may collect a distribution system improvement charge (DSIC) if it has one approved by the Commission. (§ 1329(d)(4).)

Post-Acquisition Improvements

Two ratemaking protections apply to post-acquisition capital investment not included in a DSIC. First, allowance for funds used during construction (AFUDC) accrues from the date cost is incurred until the earlier of four years of in-service status or inclusion in the acquirer's next base rate case. (§ 1329(f)(1).) Second, depreciation on post-acquisition improvements not included in a DSIC is deferred for both book and ratemaking purposes until those improvements are incorporated in the next rate case. (§ 1329(f)(2).) Both provisions are designed to reduce the carrying cost of improvements made between closing and rate case filing.

§ 1329. Valuation of acquired water and wastewater systems.

(a) Process to establish fair market value of selling utility.--Upon agreement by both the acquiring public utility or entity and the selling utility, the following procedure shall be used to determine the fair market value of the selling utility:

(1) The commission will maintain a list of utility valuation experts from which the acquiring public utility or entity and selling utility will choose.

(2) Two utility valuation experts shall perform two separate appraisals of the selling utility for the purpose of establishing its fair market value.

(3) Each utility valuation expert shall determine fair market value in compliance with the Uniform Standards of Professional Appraisal Practice, employing the cost, market and income approaches.

(4) The acquiring public utility or entity and selling utility shall engage the services of the same licensed engineer to conduct an assessment of the tangible assets of the selling utility. The assessment shall be incorporated into the appraisal under the cost approach required under paragraph (3).

(5) Each utility valuation expert shall provide the completed appraisal to the acquiring public utility or entity and selling utility within 90 days of execution of the service contract.

(b) Utility valuation experts.--

(1) The utility valuation experts required under subsection (a) shall be selected as follows:

(i) one shall be selected by the acquiring public utility or entity; and

(ii) one shall be selected by the selling utility.

(2) The utility valuation experts shall not:

(i) derive any material financial benefit from the sale of the selling utility other than fees for services rendered; or

(ii) be an immediate family member of a director, officer or employee of either the acquiring public utility, entity or selling utility within a 12-month period of the date of hire to perform an appraisal.

(3) Fees paid to utility valuation experts may be included in the transaction and closing costs associated with acquisition by the acquiring utility or entity. Fees eligible for inclusion may be of an amount not exceeding 5% of the fair market value of the selling utility or a fee approved by the commission.

(c) Ratemaking rate base.--The following apply:

(1) The ratemaking rate base of the selling utility shall be incorporated into the rate base of:

(i) the acquiring public utility during the acquiring public utility's next base rate case; or

(ii) the entity in its initial tariff filing.

(2) The ratemaking rate base of the selling utility shall be the lesser of the purchase price negotiated by the acquiring public utility or entity and selling utility or the fair market value of the selling utility.

(d) Acquisitions by public utility.--The following apply:

(1) If the acquiring public utility and selling utility agree to use the process outlined in subsection (a), the acquiring public utility shall include the following as an attachment to its application for commission approval of the acquisition filed pursuant to section 1102 (relating to enumeration of acts requiring certificate):

(i) Copies of the two appraisals performed by the utility valuation experts under subsection (a).

(ii) The purchase price of the selling utility as agreed to by the acquiring public utility and selling utility.

(iii) The ratemaking rate base determined pursuant to subsection (c)(2).

(iv) The transaction and closing costs incurred by the acquiring public utility that will be included in its rate base.

(v) A tariff containing a rate equal to the existing rates of the selling utility at the time of the acquisition and a rate stabilization plan, if applicable to the acquisition.

(2) The commission shall issue a final order on an application submitted under this section within six months of the filing date of an application meeting the requirements of subsection (d)(1).

(3) If the commission issues an order approving the application for acquisition, the order shall include:

(i) The ratemaking rate base of the selling utility, as determined under subsection (c)(2).

(ii) Additional conditions of approval as may be required by the commission.

(4) The tariff submitted pursuant to subsection (d)(1)(v) shall remain in effect until such time as new rates are approved for the acquiring public utility as the result of a base rate case proceeding before the commission. The acquiring public utility may collect a distribution system improvement charge during this time, as approved by the commission under this chapter.

(5) The selling utility's cost of service shall be incorporated into the revenue requirement of the acquiring public utility as part of the acquiring utility's next base rate case proceeding. The original source of funding for any part of the water or sewer assets of the selling utility shall not be relevant to determine the value of said assets.

(e) Acquisitions by entity.--An entity shall provide all the information required by subsection (d)(1) to the commission as an attachment to its application for a certificate of public convenience filed pursuant to section 1102.

(f) Postacquisition projects.--The following apply:

(1) An acquiring public utility's postacquisition improvements that are not included in a distribution improvement charge shall accrue allowance for funds used during construction after the date the cost was incurred until the asset has been in service for a period of four years or until the asset is included in the acquiring public utility's next base rate case, whichever is earlier.

(2) Depreciation on an acquiring public utility's postacquisition improvements that have not been included in the calculation of a distribution system improvement charge shall be deferred for book and ratemaking purposes.

(g) Definitions.--The following words and phrases when used in this section shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Acquiring public utility." A water or wastewater public utility subject to regulation under this title that is acquiring a selling utility as the result of a voluntary arm's-length transaction between the buyer and seller.

"Allowance of funds used during construction." An accounting practice that recognizes the capital costs, including debt and equity funds that are used to finance the construction costs of an

improvement to a selling utility's assets by an acquiring public utility.

"Entity." A person, partnership or corporation that is acquiring a selling utility and has filed or whose affiliate has filed an application with the commission seeking public utility status pursuant to section 1102.

"Fair market value." The average of the two utility valuation expert appraisals conducted under subsection (a)(2).

"Ratemaking rate base." The dollar value of a selling utility which, for postacquisition ratemaking purposes, is incorporated into the rate base of the acquiring public utility or entity.

"Rate stabilization plan." A plan that will hold rates constant or phase rates in over a period of time after the next base rate case.

"Selling utility." A water or wastewater company located in this Commonwealth, owned by a municipal corporation or authority that is being purchased by an acquiring public utility or entity as the result of a voluntary arm's-length transaction between the buyer and seller.

"Utility valuation expert." A person hired by an acquiring public utility and selling utility for the purpose of conducting an economic valuation of the selling utility to determine its fair market value.

(Apr. 14, 2016, P.L.76, No.12, eff. 60 days)

2016 Amendment. Act 12 added section 1329.