

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

SESSION LAW 2018-51  
HOUSE BILL 351

AN ACT AUTHORIZING WATER AND WASTEWATER PUBLIC UTILITIES TO ELECT TO USE A FAIR VALUE DETERMINATION FOR RATE-MAKING PURPOSES WHEN ACQUIRING UTILITIES OWNED BY COUNTIES, MUNICIPALITIES, OR OTHER GOVERNMENTAL ENTITIES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 62-133 reads as rewritten:

"§ 62-133. **How rates fixed.**

...

(b) In fixing such rates, the Commission shall:

(1) Ascertain the reasonable original cost or the fair value under G.S. 62-133.1A of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within the State, less that portion of the cost that has been consumed by previous use recovered by depreciation expense. In addition, construction work in progress may be included in the cost of the public utility's property under any of the following circumstances:

...

(c) The original cost of the public utility's property, including its construction work in progress, shall be determined as of the end of the test period used in the hearing and the probable future revenues and expenses shall be based on the plant and equipment in operation at that time. If the public utility elects to establish rate base using fair value, the fair value determination of the public utility's property shall be made as provided in G.S. 62-133.1A, and the probable future revenues and expenses shall be based on the plant and equipment in operation at the end of the test period. The test period shall consist of 12 months' historical operating experience prior to the date the rates are proposed to become effective, but the Commission shall consider such relevant, material and competent evidence as may be offered by any party to the proceeding tending to show actual changes in costs, revenues or the cost of the public utility's property used and useful, or to be used and useful within a reasonable time after the test period, in providing the service rendered to the public within this State, including its construction work in progress, which is based upon circumstances and events occurring up to the time the hearing is closed.

...."

**SECTION 2.** Article 7 of Chapter 62 of the General Statutes is amended by adding a new section to read as follows:

**§ 62-133.1A. Fair value determination of government-owned water and wastewater systems.**

(a) Election. – A water or wastewater public utility, as defined by G.S. 62-3(23)a.2., may elect to establish rate base by using the fair value of the utility property instead of original cost when acquiring an existing water or wastewater system owned by a municipality or county or an authority or district established under Chapter 162A of the General Statutes.

(b) Determination of Fair Value. –



- (1) The fair value of a system to be acquired shall be based on three separate appraisals conducted by accredited, impartial valuation experts chosen from a list to be established by the Commission. The following shall apply to the valuation:
  - a. One appraiser shall represent the public utility acquiring the system, another appraiser shall represent the utility selling the system, and another appraiser shall represent the Public Staff of the Commission.
  - b. Each appraiser shall determine fair value in compliance with the uniform standards of professional appraisal practice, employing cost, market, and income approaches to assessment of value.
  - c. Fair value, for rate-making purposes under G.S. 62-133, shall be the average of the three appraisals provided for by this subsection.
  - d. The original source of funding for all or any portions of the water and sewer assets being acquired is not relevant to an evaluation of fair value.
- (2) The acquiring public utility and selling utility shall jointly retain a licensed engineer to conduct an assessment of the tangible assets of the system to be acquired, and the assessment shall be used by the three appraisers in determining fair value.
- (3) Reasonable fees, as determined by the Commission, paid to utility valuation experts, may be included in the cost of the acquired system, in addition to reasonable transaction and closing costs incurred by the acquiring public utility.
- (4) The rate base value of the acquired system, which shall be reflected in the acquiring public utility's next general rate case for rate-making purposes, shall be the lesser of the purchase price negotiated between the parties to the sale or the fair value plus the fees and costs authorized in subdivision (3) of this subsection.
- (5) The normal rules of depreciation shall begin to apply against the rate base value upon purchase of the system by the acquiring public utility.
- (c) Application and Procedure. – An application to the Commission for a determination of the rate base value of the system to be acquired shall contain all of the following:
  - (1) Copies of the valuations performed by the appraisers, as provided in subdivision (1) of subsection (b) of this section.
  - (2) Any deficiencies identified by the engineering assessment conducted pursuant to subdivision (2) of subsection (b) of this section and a five-year plan for prudent and necessary infrastructure improvements by the acquiring entity.
  - (3) Projected rate impact for the selling entity's customers for the next five years.
  - (4) The averaging of the appraisers' valuations, which shall constitute fair value for purposes of this section.
  - (5) The assessment of tangible assets performed by a licensed professional engineer, as provided in subdivision (2) of subsection (b) of this section.
  - (6) The contract of sale.
  - (7) The estimated valuation fees and transaction and closing costs incurred by the acquiring public utility.
  - (8) A tariff, including rates equal to the rates of the selling utility. The selling utility's rates shall be the rates charged to the customers of the acquiring public utility until the acquiring public utility's next general rate case, unless otherwise ordered by the Commission for good cause shown.
- (d) Final Order. – If the application meets all the requirements of subsection (c) of this section, the Commission shall issue its final order approving or denying the application within

six months of the date on which the application was filed. An order approving an application shall determine the rate base value of the acquired property for rate-making purposes in a manner consistent with the provisions of this section.

(e) Commission's Authority. – The Commission shall retain its authority under Chapter 62 of the General Statutes to set rates for the acquired system in future rate cases, and shall have the discretion to classify the acquired system as a separate entity for rate-making purposes, consistent with the public interest. If the Commission finds that the average of the appraisals will not result in a reasonable fair value, the Commission may adjust the fair value as it deems appropriate and in the public interest.

(f) The Commission shall adopt rules to implement this section."

**SECTION 3.** This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 14<sup>th</sup> day of June, 2018.

s/ Philip E. Berger  
President Pro Tempore of the Senate

s/ Tim Moore  
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 14<sup>th</sup> day of June, 2018 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 25<sup>th</sup> day of June, 2018.

s/ Karen Jenkins  
Enrolling Clerk