



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1955

by Rep. Thomas Holbrook

SYNOPSIS AS INTRODUCED:

220 ILCS 5/9-210

from Ch. 111 2/3, par. 9-210

220 ILCS 5/9-210.5 new

Amends the Public Utilities Act. Provides an alternative procedure that a large public utility may choose in establishing the ratemaking rate base of a water or sewer utility that the large public utility is acquiring. Defines "large public utility" and "water or sewer utility". Provides that the Commission's order that approves the large public utility's acquisition of the water or sewer utility shall include the Commission's decision establishing (1) the ratemaking rate base of the water or sewer utility and (2) the district or tariff group with which the water or sewer utility will be combined for ratemaking purposes. Sets forth provisions concerning definitions, appraisers and their duties, ratemaking rate base, and rate cases. Makes other changes. Effective immediately.

LRB097 10530 ASK 50859 b

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing
5 Section 9-210 and by adding Section 9-210.5 as follows:

6 (220 ILCS 5/9-210) (from Ch. 111 2/3, par. 9-210)

7 Sec. 9-210. The Commission shall have power to ascertain
8 the value of the property of every public utility in this State
9 and every fact which in its judgment may or does have any
10 bearing on such value. In all proceedings before the
11 Commission, initiated by the Commission upon its own motion, or
12 initiated by an application of such public utility, in which
13 the value of the property of any public utility or utilities is
14 an issue, the burden of establishing such value shall be upon
15 such public utility or utilities. In making such valuation the
16 Commission may avail itself of any information, books,
17 documents, or records in the possession of any officer,
18 department or board of the State or any subdivision thereof.
19 The Commission shall have power to make revaluation from time
20 to time and also to ascertain the value of all new
21 construction, extensions, and additions to the property of
22 every public utility.

23 For purposes of establishing the value of public utility

1 property, when determining rates or charges, or for any other
2 reason, the Commission may base its determination on the
3 original cost of such property.

4 This Section does not apply to valuations of water or sewer
5 utilities under Section 9-210.5.

6 (Source: P.A. 84-617.)

7 (220 ILCS 5/9-210.5 new)

8 Sec. 9-210.5. Valuation of water and sewer utilities.

9 (a) In this Section:

10 "Water or sewer utility" means any of the following:

11 (1) a public utility that regularly provides water
12 or sewer service to 30,000 or fewer customer
13 connections;

14 (2) a water district, including, but not limited
15 to, a public water district, water service district, or
16 surface water protection district, or a sewer district
17 of any kind established as a special district under the
18 laws of this State that regularly provides water or
19 sewer service to 30,000 or fewer customer connections;

20 (3) a waterworks system or sewerage system
21 established under the Township Code that regularly
22 provides water or sewer service to 30,000 or fewer
23 customer connections; or

24 (4) a water system or sewer system owned by a
25 municipality that regularly provides water or sewer

1 service to 30,000 or fewer customer connections; and

2 (5) any other entity that regularly provides water
3 or sewer service to 30,000 or fewer customer
4 connections.

5 "Large public utility" means an investor-owned public
6 utility that:

7 (1) is subject to regulation by the Illinois
8 Commerce Commission under this Act;

9 (2) regularly provides water or sewer service to
10 more than 30,000 customer connections;

11 (3) provides safe and adequate service; and

12 (4) is not a water or sewer utility as defined in
13 this subsection (a).

14 "District" means a service area of a large public
15 utility whose customers are subject to the same rate
16 tariff.

17 "Utility service source" means the water or sewer
18 utility or large public utility from which the customer
19 receives its utility service type.

20 "Utility service type" means water utility service or
21 wastewater utility service or water and wastewater utility
22 service.

23 "Prior rate case" means a large public utility's
24 general rate case with a statutory effective date occurring
25 immediately prior to the date of the large public utility's
26 acquisition of a water or sewer utility.

1 "Next rate case" means, a large public utility's
2 general rate case with a test-year end date as updated and
3 adjusted in accordance with Commission rules and
4 regulations, occurring immediately after the date of the
5 large public utility's acquisition of a water or sewer
6 utility.

7 "Actual pre-tax earnings" means the average daily sum
8 of the revenues and expenses, exclusive of income taxes, of
9 the water or sewer utility recorded in the large public
10 utility's accounting books over a time period beginning on
11 the date of the large public utility's acquisition of the
12 water or sewer utility and extending through the next rate
13 case's test-year end date as updated and adjusted
14 accordance with Commission rules and regulations,
15 multiplied by the number of days in the time period
16 beginning with the acquisition date and extending through
17 the statutory effective date of new rates in the next rate
18 case.

19 "Authorized pre-tax earnings" means the pre-tax
20 earnings calculated utilizing the following:

21 (1) the average of:

22 (A) the large public utility's rate base in the
23 water or sewer utility, as defined in subsection
24 (d) of this Section, recorded at the date of the
25 large public utility's acquisition of the water or
26 sewer utility; and

1 (B) the large public utility's estimated rate
2 base in the water or sewer utility as of the
3 statutory effective date of new rates in the next
4 rate case. The estimated rate base shall include
5 adjustments for new investments, retirements,
6 depreciation, and deferred taxes;

7 (2) the large public utility's actual regulatory
8 capital structure;

9 (3) the large public utility's actual cost rates
10 for debt and preferred stock;

11 (4) the large public utility's cost of common
12 equity and effective income tax rate, as determined in
13 the prior rate case. In the event that either or both
14 the equity cost or effective income tax rate from the
15 prior rate case is not available, and either cannot
16 otherwise be agreed to by parties to the next rate
17 case, reference shall be made to the testimony
18 submitted during the prior rate case and an average
19 recommended cost of common equity or effective income
20 tax rate based upon the various recommendations
21 contained in such testimony shall be used in lieu
22 thereof;

23 (5) the actual property tax rate for the water or
24 sewer utility acquired by the large public utility; and

25 (6) the actual invested capital tax rate for the
26 water or sewer utility acquired by the large public

1 utility.

2 (b) Notwithstanding any other provision of this Act, a
3 large public utility that acquires a water or sewer utility may
4 request that the Commission use the procedures set forth under
5 this Section to establish the ratemaking rate base of that
6 water or sewer utility at the time when it is acquired by the
7 large public utility.

8 (c) If a large public utility elects the procedures under
9 this Section to establish the ratemaking rate base of a water
10 or sewer utility that it is acquiring, then an appraisal shall
11 be performed by 3 appraisers. The water or sewer utility being
12 acquired and the large public utility shall each appoint one
13 appraiser individually and shall together appoint an
14 agreed-upon third appraiser. Each appraiser shall be a
15 disinterested person licensed as a State certified general real
16 estate appraiser under the Real Estate Appraiser Licensing Act
17 of 2002.

18 The appraisers shall:

19 (1) be sworn to determine the fair market value of the
20 water or sewer utility, by establishing the amount for
21 which the water or sewer utility would be sold in a
22 voluntary transaction between a willing buyer and willing
23 seller under no obligation to buy or sell;

24 (2) determine fair market value in compliance with the
25 Uniform Standards of Professional Appraisal Practice;

26 (3) engage one disinterested engineer who is licensed

1 in this State to prepare a reproduction cost new less
2 depreciation assessment of the tangible assets of the water
3 or sewer utility, which is to be incorporated into the
4 appraisal under the cost approach;

5 (4) return their appraisal, in writing, to the water or
6 sewer utility and large public utility in a reasonable and
7 timely manner; and

8 (5) if the appraisers cannot agree on the engineer, as
9 described in paragraph (3) of this subsection (c), within
10 30 days after the appraisers are appointed, then the large
11 public utility shall select the engineer.

12 If all 3 appointed appraisers cannot agree as to the
13 appraised value of the water or sewer utility, then an
14 appraisal signed by 2 of the appointed appraisers shall
15 constitute a good and valid appraisal.

16 (d) The lesser of the purchase price and the appraised
17 value, together with the transaction, closing, and transition
18 costs incurred by the large public utility, shall constitute
19 the ratemaking rate base associated with the water or sewer
20 utility as acquired by and incorporated into the ratemaking
21 rate base of the district designated by the acquiring large
22 public utility under this Section. This rate base treatment
23 shall not be deemed to violate this Act, including, but not
24 limited to, any Sections in Articles VIII and IX of this Act.

25 In the Commission's order that approves the large public
26 utility's acquisition of the water or sewer utility, the

1 Commission shall issue its decision establishing (1) the
2 ratemaking rate base of the water or sewer utility and (2) the
3 district or tariff group with which the water or sewer utility
4 will be combined for ratemaking purposes.

5 (e) If the water or sewer utility being acquired is owned
6 by the State or any political subdivision thereof, then the
7 water or sewer utility must hold a public meeting prior to the
8 acquisition to inform the public of the terms of its
9 acquisition by the large public utility.

10 (f) Upon the date of acquisition, the water or sewer
11 utility shall, for ratemaking purposes, become part of the
12 district or tariff group designated by the acquiring large
13 public utility.

14 (g) From the date of acquisition until the date that new
15 rates are effective in the acquiring large public utility's
16 next rate case, the customers of the acquired water or sewer
17 utility shall pay the then-existing rates of the district or
18 tariff group designated by the acquiring large public utility.
19 For each customer of the water or sewer utility with potable
20 water usage values that cannot be reasonably obtained, a value
21 of 5,000 gallons per month shall be assigned. These rates shall
22 not be deemed to violate this Act including, but not limited
23 to, Section 9-101 and any other applicable Sections in Articles
24 VIII and IX of this Act. The Commission shall issue its
25 decision establishing the rates effective for the water or
26 sewer utility immediately following an acquisition in its order

1 approving the acquisition.

2 (h) In the acquiring large public utility's next rate case,
3 the water or sewer utility and the district or tariff group
4 designated by the acquiring large public utility and their
5 costs of service shall be combined under the same rate tariff.
6 This rate tariff shall be based on allocation of the large
7 public utility's and water or sewer utility's combined costs of
8 service and rate design without distinction among customers on
9 the basis of utility service source or type. This rate tariff
10 shall not be deemed to violate this Act including, but not
11 limited to, Section 9-101 of this Act.

12 (i) The actual pre-tax earnings and authorized pre-tax
13 earnings difference shall be recorded as a regulatory asset or
14 liability, included in the rate base of the large public
15 utility, and amortized over a period not to exceed 3 years.

16 (j) This Section shall be exclusively applied to large
17 public utilities providing water or sewer service in the
18 voluntary and mutually agreeable acquisition of water or sewer
19 utilities providing water or sewer service. Any petitions filed
20 with the Commission related to the acquisitions described in
21 this Section, including petitions seeking approvals or
22 certificates required by this Act, will be deemed approved
23 unless the Commission issues its final order within 6 months
24 after the date the large public utility filed its initial
25 petition. This Section shall not be construed in any manner to
26 apply to electric corporations, natural gas corporations, or

1 any other utility subject to this Act.

2 (k) Nothing in this Section shall prohibit a party from
3 declining to proceed with an acquisition or be deemed as
4 establishing the final purchase price of an acquisition.

5 Section 99. Effective date. This Act takes effect upon
6 becoming law.