

## Chapter 5. Utility Transfers Act

### § 56-88. Definitions

In this chapter the following terms shall have the following meanings:

"Acquire" or "acquisition" includes any purchase or other acquisition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Company" means a corporation, a partnership, an association, a joint-stock company, a business trust or an organized group of persons, whether incorporated or not; or any receiver, trustee or other liquidating agent of any of the foregoing in his capacity as such; but not a municipal corporation or county.

"Dispose of" or "disposition" includes any sale or other disposition, whether by payment, exchange, gift, conveyance, lease, license, merger, consolidation or otherwise.

"Public utility" means any company which owns or operates facilities within the Commonwealth for the generation, transmission or distribution of electric energy for sale; for the production, transmission or distribution, otherwise than in enclosed portable containers, of natural or manufactured gas for sale for heat, light or power, but excluding any company described in subdivision (b)(8) or (b)(10) of § 56-265.1; or for the furnishing of sewerage facilities or water.

"Utility assets" means the facilities in place of any public utility or municipality for the production, transmission or distribution of electric energy or natural or manufactured gas, or for the furnishing of sewerage facilities or water.

"Utility security" means any note, draft, debenture, bond, share of stock, certificate, collateral trust certificate, preorganization certificate or subscription, transferable share, investment contract, receiver's or trustee's certificate or any other instrument or interest commonly known as a security which is issued, assumed or guaranteed by any public utility or any company which would be a public utility if the facilities owned or operated by it were within the Commonwealth, or any company substantially engaged in the ownership of any of the aforesaid securities or in supplying management or advice to any of the aforesaid companies; or any certificate of deposit for, voting trust certificate for, certificate of interest or participation in, temporary or interim certificate for, receipt for, guaranty of, assumption of liability on, or warrant or right to subscribe to or purchase or acquire, any of the aforesaid securities.

1940, p. 425; Michie Code 1942, § 3774l; 1992, c. 376; 2000, cc. 528, 543; 2009, c. 746.

#### § 56-88.1. Acquisition or disposition of control of a public utility

A. No person, whether acting alone or in concert with others, shall, directly or indirectly, acquire or dispose of control of:

1. A public utility within the meaning of this chapter, or all of the assets thereof, without the prior approval of the Commission. Any person proposing an acquisition or disposition for which Commission approval is required by this section shall seek such approval pursuant to the procedure of § 56-90; or

2. A telephone company, or all of the assets thereof, without the prior approval of the

Commission. In determining whether to grant approval, the Commission shall consider only the financial, managerial, and technical resources to render local exchange telecommunications services of the person acquiring control of or all of the assets of the telephone company.

The Commission shall, after the filing of a completed application, approve or disapprove the requested acquisition or disposition within 60 days. The 60-day period may be extended by Commission order for a period not to exceed an additional 120 days. The application shall be deemed approved if the Commission fails to act within 60 days or any extended period ordered by the Commission.

B. Any such acquisition or disposition of control without prior approval shall be voidable by the Commission. In addition, the Commission is authorized to revoke any certificate of public convenience and necessity it has issued, order compliance with this chapter, or take such other action as may be appropriate within the authority of the Commission.

C. For purposes of this section, "control" means (i) the acquisition of 25 percent or more of the voting stock or (ii) the actual exercise of any substantial influence over the policies and actions of any public utility or telephone company.

D. This section shall not apply to any company engaged in the business of generating electricity whose rates and services are not regulated by the State Corporation Commission.

1992, c. 376; 2011, cc. 738, 740.

#### **§ 56-89. Acquisition or disposition of utility assets or utility securities**

It shall be unlawful for any public utility, directly or indirectly, to acquire or dispose of any utility assets situated within the Commonwealth or any utility securities of any other company unless such acquisition or disposition shall have been authorized by the Commission. If and when so authorized by the Commission, any public utility may acquire or dispose of any such utility assets or utility securities; but no such authorization by the Commission shall confer upon any county or municipality authority, other than that otherwise conferred by law, to acquire or to dispose of any utility assets or utility securities.

1940, p. 426; Michie Code 1942, § 3774m.

#### **§ 56-90. Procedure for authority to acquire or dispose of utility assets or securities**

Application for authority to acquire or dispose of utility assets or utility securities under § 56-89 shall be by petition to the Commission. The petition may be joint or several. It shall be signed and verified by the president or any vice-president and the secretary or any assistant secretary of the petitioner. The petition shall clearly summarize the object in view, the proposed procedure and the terms and conditions thereof. Upon the filing of the petition, if the Commission shall deem a hearing necessary, the Commission shall assign the matter for prompt hearing. If and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order, subject, however, to the exception contained in § 56-89 as to counties and municipalities.

1940, p. 426; Michie Code 1942, § 3774o.

#### **§ 56-90.1. Sale of utility assets or undivided fractional interest therein; taxation**

If the Commission shall have granted a petition filed pursuant to § 56-90 in which a public utility has applied for authority to sell utility assets or associated properties situated within the Commonwealth, or an undivided fractional interest therein, to (i) an association of one or more electric cooperatives or electric membership corporations that are wholesale customers of the electric public utility, (ii) an association of one or more cities or incorporated towns that are wholesale customers of the electric utility, (iii) any combination of such associations, or (iv) another public utility then, notwithstanding any other provisions of law:

(1) A waiver made by any such electric public utility, association of cooperatives, cities or towns of any right it may have to compel partition, whether pursuant to the provisions of Article 9 (§ 8.01-81 et seq.) of Chapter 3 of Title 8.01, or otherwise, shall be effective and enforceable against (i) such public utility, association of cooperatives, cities or towns, and their successors and assigns, and (ii) all creditors of such public utility, association of cooperatives, cities and towns, their successors and assigns, who have notice of record of such waiver, so long as the waiver shall be limited so as not to exceed ninety-nine years;

(2) No state recording tax shall be payable upon the admission to record of any deed, deed of trust, mortgage, bill of sale, contract, agreement or other writing supplemental to any such instrument which conveys or reconveys such utility assets or properties, or an undivided fractional interest therein or secures any bonds or other obligations of such association of cooperatives, cities or towns or combination thereof; provided, however, that any local recording taxes shall be payable as though the state recording taxes had been collected;

(3) No state franchise tax or local license tax shall be payable on the proceeds of any such sale of utility assets or properties, or an undivided fractional interest therein; and

(4) Unless otherwise expressly agreed by the joint owners the joint ownership of such utility assets or properties as approved by the Commission shall not constitute a partnership or joint venture among the owners.

1979, c. 238; 1980, c. 703.

### **§ 56-90.2. Fair market valuations of water and sewer utility asset acquisitions**

The Commission shall establish rules governing petitions by an acquiring public utility that has elected to seek use of the fair market value of a municipal or other governmental selling utility's water or sewer assets to determine the initial rate base for the purpose of post-acquisition rate recovery. Such rules shall identify information to be filed in addition to all other filing requirements in the Utility Transfers Act (§ 56-88 et seq.). Such rules shall:

1. Establish the process for determining the acquired water or sewer utility rate base, taking into consideration the use of the lesser of (i) the agreed-upon purchase price established during a voluntary arm's-length transaction by the selling and acquiring utilities and (ii) the fair market value established using the average of the valuations provided by three qualified and impartial utility valuation experts.

2. Provide for the acquiring utility to submit complete and unredacted copies of two qualified, independent, and impartial utility valuation expert's appraisals of the system assets to be acquired in compliance with the uniform standards of professional appraisal practices. The appraisals shall be treated confidentially. Such appraisals shall be completed and submitted in accordance with the following:

- a. One appraisal shall be sponsored by the public utility acquiring the utility system assets, and one appraisal shall be sponsored by the government entity selling the utility system assets.
  - b. The qualifications of such utility valuation experts, specifically as they relate to water or wastewater utility systems, shall be clearly identified in the application.
  - c. The appraisals shall clearly identify whether they are based on a cost, market, income, or other methodology.
  - d. The appraisals shall quantify only the fair market value associated with assets that are to be currently used and useful in utility service. To the extent assets are acquired beyond those to be currently used and useful in utility service, a narrative shall be provided of the acquiring utility's intended purpose of such assets.
  - e. Commission staff and other intervenors may seek discovery to confirm the reasonableness of such appraisals and may provide testimony and recommendations regarding such.
  - f. When combined with a third appraisal sponsored by the Commission staff, the average of the three appraisals shall be deemed the fair market value for the purposes of this proceeding. The applicant may seek discovery to confirm the reasonableness of such appraisal and may provide testimony and recommendations regarding such.
3. Provide for the submission of a complete and unredacted copy of an assessment performed by a professional engineer licensed in Virginia, jointly retained by the acquiring and selling utilities, regarding tangible assets of the utility system to be acquired. Such assessment shall be used by the utility valuation experts as a basis for their valuations in determining fair market value and shall be treated confidentially. Such assessments shall be completed and submitted in accordance with the following:
- a. The qualifications of such licensed engineer, specifically as they relate to water or wastewater utility systems, shall be clearly identified in the application.
  - b. Commission staff and other intervenors may seek discovery to confirm the reasonableness of the assessment and may provide testimony and recommendations regarding such.
  - c. To the extent assets are to be acquired beyond those to be currently used and useful in utility service, such assessment shall separately quantify only the assets that are to be currently used and useful in utility service.
4. Provide that to the extent the proposed purchase price is different from that provided in the appraisals, the application shall identify such proposed purchase price.
5. Provide for the acquiring utility to submit the proposed journal entries resulting from the proposed acquisition, including tax entries, including account numbers recognized by the National Association of Regulatory Utility Commissioners.
6. Provide for the acquiring utility to submit an analysis identifying the qualitative and quantitative benefits and estimated customer rate impacts for the next five years as a result of the proposed acquisition for each of (i) the customers of the desired system and (ii) the legacy customers of the acquiring utility. Such analysis should clearly identify all assumptions relied upon.
7. Provide that if depreciation rates for the acquired system are not based on a depreciation

study:

- a. The acquiring utility may apply a three percent composite depreciation rate to the fair market value of the utility system assets acquired.
- b. A depreciation study on the acquired system shall be performed within five years of acquisition and provided for review by Commission staff. Upon acceptance of the depreciation rates by Commission staff for booking purposes, such rates shall be utilized for the system effective as of the date of the study.
- c. However, if the acquired system is of a size that would qualify under the Small Water or Sewer Public Utility Act (§ 56-265.13:1 et seq.), such assets may be exempted from the requirement of performing a depreciation study.

8. Establish the ability to evaluate and include reasonable transaction costs and fees of the utility valuation experts in the fair market value determination in addition to reasonable transaction and closing costs when establishing the rate base.

9. Provide that the rate base value of the acquired system assets shall be the fees and costs of the utility valuation experts authorized by the acquiring and selling utilities in addition to reasonable transaction and closing costs, plus the lesser of (i) the purchase price negotiated between the acquiring utility and selling utility as the result of a voluntary arm's-length transaction and (ii) the fair market value for subsequent rate-making purposes in the acquiring utility's next base rate case.

Nothing in the established rules shall be construed to relieve the petitioners from the duty to demonstrate adequate service to the public at just and reasonable rates that will not be impaired or jeopardized by granting the prayer of the petition as provided in § 56-90.

Such rules shall be developed in coordination and consultation with industry experts and stakeholders and established by January 1, 2021.

2020, cc. 518, 519.

#### **§ 56-91. Violations of chapter**

Any company violating any provision of § 56-89 shall upon conviction be fined not more than \$1,000.

1940, p. 426; Michie Code 1942, § 3774n.

#### **§ 56-92. Short title**

This chapter may be cited as the Utility Transfers Act.

1940, p. 426; Michie Code 1942, § 3774q.