

Act 639 of the 1989 Regular Session.

Act 639

SB454

By: Senators Bookout, Russ, Hoofman, Watson

"AN ACT DECLARING THE PROPER VALUATION METHOD FOR THE ACQUISITION BY MUNICIPALLY OWNED ELECTRIC UTILITIES OF THE PROPERTIES AND FACILITIES OF PUBLIC UTILITIES UPON ANNEXATIONS."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. As used herein the following terms shall have the following definitions:

(A) 'Municipality' shall mean both Arkansas municipal corporations and consolidated municipal utility improvement districts;

(B) 'Electric public utility' and 'electric public utility system' shall include persons, corporations, and other entities providing electric power to the public at wholesale or retail, but shall not include electric cooperative corporations providing electric power predominantly for resale.

SECTION 2. The right of Arkansas municipal corporations and consolidated municipal utility improvement districts currently owning and operating electric utility systems is hereby ratified and confirmed.

SECTION 3. Unless otherwise agreed, at any time after the certification of annexation (whether voluntary or involuntary according to applicable law), Arkansas municipal corporations or consolidated municipal utility improvement districts (municipality) owning and operating electric utility systems shall have the right to acquire any or all properties and facilities of electric public utilities serving within newly annexed areas. The municipality shall give a six (6) months written notice to the public utility of its intent to acquire any or all properties and facilities of the public utility within newly annexed areas.

SECTION 4. Unless otherwise agreed, all acquisitions of electric public utility properties and facilities by municipalities described in Section 2 shall be governed by the following procedures and valuation formulae.

(A) After the six month notification by the municipality of its election to acquire public utility system properties and facilities the municipality shall pay to the electric public utility an amount equal to the following:

(i) The present-day reproduction cost new of the properties and facilities being acquired, less depreciation computed on a straight-line basis, plus

(ii) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the electric public utility outside the annexed area after detaching the portion to be sold.

(B) In the event that the electric public utility system does not provide wholesale power service to the municipality acquiring its properties and facilities, the municipality and the electric public utility shall, for a period of six (6) months after the notification required by Section 3 of this act, consistent with laws, rules and regulations of appropriate regulatory authorities and existing power supply agreements negotiate, in good faith, for power contracts which would provide for the purchase of power by the

municipality from the electric public utility for an amount of power equivalent to the loss of any sales to customers of the electric public utility acquired by the municipality under this act. In the event that the municipality ceases the receipt of wholesale power service from the electric public utility system consistent with the terms of the wholesale power supply agreement prior to five (5) years after the acquisition of electric public utility system properties and facilities under this act, then the municipality will pay, pro rata for the remainder of such five (5) year period in accordance with subsection (C) (ii) of this section.

(C) In the event that such an agreement pursuant to Section 4 (B) cannot be reached within such six (6) month period, then the municipality will pay the public utility for facilities in addition to amounts required by subsection A (i) and (ii) of this section either:

(i) Two hundred thirty percent (230%) of gross revenues less gross receipts taxes received by the public utility for the twelve (12) month period preceding notification from customers in the annexed area or;

(ii) The amount required by subsection (C) (i) payable over five (5) years with interest at the then prevailing AAA insured tax exempt municipal bond interest rate.

SECTION 5. The public utility shall provide to the municipality all data and information required to establish valuations under this act, provided, however, that the municipality shall, at the time of the transfer under Section 4, reimburse the public utility for reasonable costs of appraisal, engineering, and incidental expenses associated with establishing valuation.

SECTION 6. At the conclusion of the six (6) month notification period, in the event that agreement is not reached pursuant to Section 4(B) of this act, or the municipality and the public utility disagree on the valuations described in Sections 4(A) i or ii or 4(C) i or ii, the municipality or Consolidated Municipal Utility Improvement District may, after paying (or, if applicable, commencing payment of) any amounts not in dispute and depositing into the registry of the Court the amount in dispute, or such lesser amounts as the Court, after hearing, determines to be just, exercise the right and power of eminent domain using the procedures of Arkansas Code Annotated Section 18-15-301, et seq. and may take possession of the facilities and commence service to the customers, as of the date it makes the deposit; provided, however, that any compensation or damages for the facilities and customers taken shall be determined in accord with Section 4(A) and, in the event that the electric public utility system does not provide wholesale power service to the municipality acquiring its properties and facilities, and agreement is not reached pursuant to Section 4(B) of this act, then any compensation or damages for the facilities and customers taken shall also be determined in accord with Section 4(C) of this act. The date of taking for purposes of this act shall be either the date the deposit authorized by this section is made, or in the event no deposit is made, the date of the Court award.

SECTION 7. The provisions of this act are hereby declared to be severable and, if any provision shall be determined to be invalid, it shall not affect the validity of the remaining provisions of the act.

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9 All laws and parts of laws in conflict with this act are

hereby repealed.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that the acquisition or purchase by a municipality of the property of any electric public utility may result in adverse impacts upon the customers of such electric public utility. The existing statutory provisions do not adequately insure a fair and uniform valuation method to protect customers of regulated electric public utilities and the taxpayers of municipalities owning electric utilities. Therefore, an emergency is hereby declared to exist and this Act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: March 17, 1989

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