

State of Arkansas

77th General Assembly

Regular Session, 1989

A Bill

SENATE BILL

417

By: Senator Gordon

For An Act To Be Entitled

"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. 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 2. Unless otherwise agreed, for a period of six (6) months after the certification of annexation (whether voluntary or involuntary according to applicable law), Arkansas Municipal Corporations or Consolidated Municipal Utility Improvement Districts or other entities described in Ark. Code Ann. §14-206-101, (all hereinafter referred to as "municipality") owning and operating electric utility systems shall have the opportunity, subject to the conditions in Sections 3 and 4 of this act, to acquire any or all properties and facilities of electric public utilities serving within newly annexed areas. The municipality shall give a twelve (12) month written notice to the utility of its intent to acquire any or all properties and facilities of the utility within newly annexed areas.

SECTION 3. Unless otherwise agreed, all acquisitions of electric public utility properties and facilities by municipalities shall be governed by the following procedures and valuation formulae:

(A) After the twelve 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;

(ii) plus 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;

(iii) plus an amount equal to 4.75 times the average annual revenues of the electric public utility for the last three years derived from the furnishing of electricity; provided that such amount may, with interest, be paid in as many as five equal annual installments, subject to the credit provided in paragraph (B) (i) of this section;

(iv) and plus an amount equal to the adverse tax effects, if any, of the transfer upon the electric public utility.

(B) (i) In the event that the electric public utility provides wholesale power service to the acquiring municipality during the period of any payments under subsection (A) (iii), amounts paid by the municipality to the utility for such power shall, unless otherwise agreed, be set off against amounts owing under subsection (A) (iii);

(ii) In the event that, at the time of the transfer of the facilities, the electric public utility does not provide wholesale power service to the acquiring municipality, the municipality and the electric public utility shall, for a period of twelve (12) months after the notification required by Section 2 of this act, consistent with laws, rules and regulations of appropriate regulatory authorities, negotiate in good faith for the purchase of wholesale power by the municipality from the electric public utility or a related electric public utility.

SECTION 4. 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 reimburse the public utility for costs of appraisal, engineering, and other fees and expenses associated with establishing valuation.

SECTION 5. The provisions of this act are hereby declared to be separable and, if any provision shall be determined to be invalid, it shall

not affect the validity of the remaining provisions of the act.

SECTION 6. 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 7. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 8. 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 of a profound nature and longterm duration. The existing statutory provisions do not adequately protect customers of regulated electric public utilities and, therefore, an emergency is hereby declared to exist and this act, being immediately necessary for the preservation of the public peace and health, and welfare, shall be in full force and effect from and after its passage and approval.