

By: Phelan

H.B. No. 3542

A BILL TO BE ENTITLED

AN ACT

relating to the valuation of a retail public utility or its facilities as part of a voluntary acquisition.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter H, Chapter 13, Water Code, is amended by adding Section 13.305 to read as follows:

Sec. 13.305. VOLUNTARY VALUATION OF ACQUIRED UTILITY OR FACILITIES. (a) In this section:

(1) "Acquiring utility" means a Class A utility that is acquiring a selling utility, or facilities of a selling utility, as the result of a voluntary arm's-length transaction.

(2) "Ratemaking rate base" means the dollar value of a selling utility that is incorporated into the rate base of the acquiring utility for postacquisition ratemaking purposes.

(3) "Selling utility" means a retail public utility that is being purchased by an acquiring utility, or is selling facilities to an acquiring utility, as the result of a voluntary arm's-length transaction.

(b) The utility commission shall maintain a list of experts qualified to conduct economic valuations of utilities for the purposes of this section.

(c) An acquiring utility and a selling utility may agree to determine by the following process the fair market value of the selling utility or the facilities to be sold, as applicable:

1 (1) the acquiring utility and the selling utility
2 shall notify the utility commission of their intent to determine
3 the fair market value under this section;

4 (2) not later than the 30th day after the date the
5 utility commission receives notice under Subdivision (1), the
6 utility commission shall select three utility valuation experts
7 from the list maintained under Subsection (b);

8 (3) each utility valuation expert shall perform an
9 appraisal in compliance with Uniform Standards of Professional
10 Appraisal Practice, employing the cost, market, and income
11 approaches, to determine the fair market value; and

12 (4) the three utility valuation experts selected under
13 Subdivision (2) jointly shall retain a licensed engineer to conduct
14 an assessment of the tangible assets of the selling utility, or the
15 facilities to be sold, as applicable, and each utility valuation
16 expert shall:

17 (A) incorporate the assessment into the
18 appraisal under the cost approach required under Subdivision (3);
19 and

20 (B) provide the completed appraisal to the
21 acquiring utility and the selling utility in a reasonable and
22 timely manner.

23 (d) A utility valuation expert described by Subsection (b)
24 may not:

25 (1) derive any material financial benefit from the
26 sale other than fees for services rendered; or

27 (2) be or have been within the year preceding the date

1 the service contract is executed an immediate family member of a
2 director, officer, or employee of the acquiring utility or the
3 selling utility.

4 (e) A fee paid to a utility valuation expert may be included
5 in the transaction and closing costs associated with the
6 acquisition by the acquiring utility. A fee may not exceed the
7 lesser of:

8 (1) five percent of the fair market value; or

9 (2) a fee amount approved by the utility commission.

10 (f) For the purposes of the acquisition, the fair market
11 value is the average of the three utility valuation expert
12 appraisals conducted under Subsection (c).

13 (g) For an acquisition of a selling utility, the ratemaking
14 rate base of the selling utility is the lesser of the purchase price
15 negotiated by the acquiring utility and the selling utility or the
16 fair market value. The ratemaking rate base of the selling utility
17 shall be incorporated into the rate base of the acquiring utility
18 during the utility's next rate base case under Subchapter F.

19 (h) If the acquiring utility and the selling utility use the
20 process for establishing fair market value in Subsection (c), the
21 acquiring utility shall submit as attachments to an application
22 required under Section 13.301:

23 (1) copies of the three appraisals performed by the
24 utility valuation experts under Subsection (c);

25 (2) the purchase price agreed to by the acquiring
26 utility and the selling utility;

27 (3) if applicable, the ratemaking rate base determined

1 under Subsection (g);

2 (4) if applicable, the transaction and closing costs
3 incurred by the acquiring utility that will be included in the
4 utility's rate base; and

5 (5) if applicable, a tariff containing a rate equal to
6 the existing rates of the selling utility at the time of the
7 acquisition.

8 (i) If the utility commission approves the application for
9 acquisition under Section 13.301, the utility commission shall
10 issue an order that includes:

11 (1) the ratemaking rate base of the selling utility as
12 determined under Subsection (g); and

13 (2) any additional conditions for the acquisition the
14 utility commission requires.

15 (j) A tariff submitted under Subsection (h)(5) shall remain
16 in effect until the utility commission approves new rates as part of
17 a rate base case proceeding.

18 (k) The original sources of funding for any part of the
19 water or sewer assets of the selling utility are not relevant to
20 determine the value of the selling utility's assets. The selling
21 utility's cost of service shall be incorporated into the revenue
22 requirement of the acquiring utility's next rate base case
23 proceeding.

24 (l) In this subsection, "allowance of funds used during
25 construction" means an accounting practice that recognizes the
26 capital costs, including debt and equity funds, that are used to
27 finance the construction costs of an improvement to a selling

1 utility's assets by an acquiring utility. An acquiring utility's
2 postacquisition improvements shall accrue an allowance of funds
3 used during construction after the date the cost was incurred until
4 the earlier of:

5 (1) the fourth anniversary of the date the asset
6 entered into service; or

7 (2) the inclusion of the asset in the acquiring
8 utility's next rate base case.

9 (m) Depreciation on an acquiring utility's postacquisition
10 improvements shall be deferred for book and ratemaking purposes.

11 SECTION 2. This Act takes effect September 1, 2019.