No. 1992-27

AN ACT

SB 1331

Amending Title 66 (Public Utilities) of the Pennsylvania Consolidated Statutes, providing for the commission to order the acquisition of small water and sewer utilities; providing for approval of utility Clean Air Act implementation plans; and further providing for gas pipeline safety violations.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Title 66 of the Pennsylvania Consolidated Statutes is amended by adding sections to read:

§ 529. Power of commission to order acquisition of small water and sewer utilities.

(a) General rule.—The commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines:

(1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility;

(2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

(b) Alternatives to acquisition.—Before the commission may order the acquisition of a small water or sewer utility in accordance with subsection (a), the commission shall discuss with the small water or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition, including, but not limited to:

(1) The reorganization of the small water or sewer utility under new management.

(2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.

(3) The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.

(4) The merger of the small water or sewer utility with one or more other public utilities.

(5) The acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

(c) Factors to be considered.—In making a determination pursuant to subsection (a), the commission shall consider:

(1) The financial, managerial and technical ability of the small water or sewer utility.

(2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.

(3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.

(5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(6) Any other matters which may be relevant.

(d) Order of the commission.—Subsequent to the determinations required by subsection (a), the commission shall issue an order for the acquisition of the small water or sewer utility by a capable public utility. Such order shall provide for the extension of the service area of the acquiring capable public utility.

(e) Acquisition price.—The price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer utility and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable. If the small water or sewer utility and the acquiring capable public utility are unable to agree on the acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer utility by following the procedure prescribed for exercising the power of eminent

domain pursuant to the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

(f) Separate tariffs.—The commission may, in its discretion and for a reasonable period of time after the date of acquisition, allow the acquiring capable public utility to charge and collect rates from the customers of the acquired small water or sewer utility pursuant to a separate tariff.

(g) Appointment of receiver.—The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

(h) Notice.—The notice required by subsection (a) or any other provision of this section shall be served upon the small water or sewer utility affected, the Office of Consumer Advocate, the Office of Small Business Advocate, the Office of Trial Staff, the Department of Environmental Resources, all proximate public utilities providing the same type of service as the small water or sewer utility, all proximate municipalities and municipal authorities providing the same type of service as the small water or sewer utility and the municipalities served by the small water or sewer utility. The commission shall order the affected small water or sewer utility to provide notice to its customers of the initiation of proceedings under this section in the same manner in which the utility is required to notify its customers of proposed general rate increases.

(i) Burden of proof.—The Law Bureau shall have the burden of establishing a prima facie case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of this section. Once the commission determines that a prima facie case has been established:

(1) the small water or sewer utility shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates; and

(2) a proximate public utility providing the same type of service as the small water or sewer utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water or sewer utility.

(j) Plan for improvements.—Any capable public utility ordered by the commission to acquire a small water or sewer utility shall, prior to acquisition, submit to the commission for approval a plan, including a timetable, for bringing the small water or sewer utility into compliance with applicable statutory and regulatory standards. The capable public utility shall also provide a copy of the plan to the Department of Environmental Resources and such other State or local agency as the commission may direct. The commission shall give the Department of Environmental Resources adequate opportunity to comment on the plan and shall consider any comments submitted by the department in deciding whether or not to approve the plan. The reasonably and prudently incurred costs of each improvement shall be recoverable in rates only after that improvement becomes used and useful in the public service.

(k) Limitations on liability.—Upon approval by the commission of a plan for improvements submitted pursuant to subsection (j) and the acquisition of a small water or sewer utility by a capable public utility, the acquiring capable public utility shall not be liable for any damages beyond the aggregate amount of $50,000, including a maximum amount of $5,000 per incident, if the cause of those damages is proximately related to identified violations of applicable statutes or regulations by the small water or sewer utility. This subsection shall not apply:

(1) beyond the end of the timetable in the plan for improvements;

(2) whenever the acquiring capable public utility is not in compliance with the plan for improvements; or

(3) if, within 60 days of having received notice of the proposed plan for improvements, the Department of Environmental Resources submitted written objections to the commission and those objections have not subsequently been withdrawn.

(l) Limitations on enforcement actions.—Upon approval by the commission of a plan for improvements submitted pursuant to subsection (j) and the acquisition of a small water or sewer utility by a capable public utility, the acquiring capable public utility shall not be subject to any enforcement actions by State or local agencies which had notice of the plan if the basis of such enforcement action is proximately related to identified violations of applicable statutes or regulations by the small water or sewer utility. This subsection shall not apply:

(1) beyond the end of the timetable in the plan for improvements;

(2) whenever the acquiring capable public utility is not in compliance with the plan for improvements;

(3) if, within 60 days of having received notice of the proposed plan for improvements, the Department of Environmental Resources submitted written objections to the commission and those objections have not subsequently been withdrawn; or

(4) to emergency interim actions of the commission or the Department of Environmental Resources, including, but not limited to, the ordering of boil-water advisories or other water supply warnings, of emergency treatment or of temporary, alternate supplies of water.

(m) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Capable public utility." A public utility which regularly provides the same type of service as the small water utility or the small sewer utility to 4,000 or more customer connections, which is not an affiliated interest of the small water utility or the small sewer utility and which provides adequate, efficient, safe and reasonable service. A public utility which would otherwise be a capable public utility except for the fact that it has fewer than 4,000 customer connections may elect to be a capable public utility for the purposes of this section regardless of the number of its customer connections and regardless of whether or not it is proximate to the small sewer utility or small water utility to be acquired.

"Small sewer utility." A public utility which regularly provides sewer service to 1,200 or fewer customer connections.

"Small water utility." A public utility which regularly provides water service to 1,200 or fewer customer connections.

§ 530. Clean Air Act implementation plans.

(a) Phase I compliance.—On or before February 1, 1993, each public utility shall submit to the commission and may request commission approval of a plan to bring its generating units which use coal to generate electricity into compliance with the Phase I requirements of Title IV of the Clean Air Act (Public Law 95-95, 42 U.S.C. § 7651 et seq.).

(b) Phase II compliance.—On or before January 1, 1996, each public utility shall submit to the commission and may request commission approval of a plan to bring its generating units which use coal to generate electricity into compliance with the Phase II requirements of Title IV of the Clean Air Act.

(c) Notice of plan.—At the same time it submits its plan to the commission, the public utility shall provide a copy of the plan to the Department of Environmental Resources, the Consumer Advocate and the Small Business Advocate. For plans submitted after the effective date of this section, the commission shall cause notice of the utility's filing to be published in the Pennsylvania Bulletin. The public utility shall make available, upon request, a copy of the proposed plan to any coal supplier with which it has a supply contract for more than one year and to any collective bargaining representative for the coal supplier.

(d) Review by commission.—

(1) If the utility has requested commission approval of its plan, the commission shall review the proposed plan on an expedited basis to determine if the utility's proposed compliance plan submitted under this section is in the public interest.

(2) After notice and opportunity for a hearing, the commission shall approve or disapprove the compliance plan within nine months after the plan is filed, provided that approval may be in whole or in part and may be subject to such limitations and qualifications as may be deemed necessary and in the public interest. The commission's decision shall establish that the utility's costs of compliance are recoverable costs of service, provided the costs:

(i) are reasonable in amount and prudently incurred as determined in an appropriate rate or other proceeding; and

(ii) represent investment in flue gas desulfurization devices, clean coal technologies or similar facilities designed to maintain or promote the use of coal, including facilities which intermittently or simultaneously burn natural gas with coal.

(3) Costs established as recoverable under paragraph (2) shall qualify as nonrevenue-producing investment to improve environmental conditions under section 1315 (relating to limitation on consideration of certain costs for electric utilities), provided that any benefits to the utility generated by the sale of allowances under the Clean Air Act shall be flowed through to the utility's ratepayers.

(4) The utility shall not be required to refile its plan or to seek additional commission approvals concerning its plan unless the utility's plan is significantly amended or revised.

(e) Definition.—As used in this section, the term "Clean Air Act" means Public Law 95-95, 42 U.S.C. § 7401 et seq. and includes the Clean Air Act Amendments (Public Law 101-549, 104 Stat. 2399) approved November 15, 1990.

Section 2. Section 3301(c) of Title 66 is amended to read:

§ 3301. Civil penalties for violations.

* * *

(c) Gas pipeline safety violations.—Any person or corporation, defined as a public utility in this part, who violates any provisions of this part governing the safety of pipeline or conduit facilities in the transportation of natural gas, flammable gas, or gas which is toxic or corrosive, or of any regulation or order issued thereunder, shall be subject to a civil penalty of not to exceed **[$1,000]** ***$10,000*** for each violation for each day that the violation persists, except that the maximum civil penalty shall not exceed **[$200,000]** ***$500,000*** for any related series of violations.

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Section 3. This act shall take effect in 60 days.

APPROVED—The 16th day of April, A. D. 1992.

ROBERT P. CASEY