February 22, 2024

VIA E-FILING

Pennsylvania Public Utility Commission
Harrisburg, PA

Re: Tentative Supplemental Implementation Order
Valuation of Acquired Municipal Water & Wastewater Systems—Act 12 of 2016 Implementation
Docket number M-2016-2543193

Please find attached my comments on the subject "*Tentative Supplemental Implementation Order*".

Thank you for the opportunity to provide these comments.

Respectfully,

William Ferguson
Co-Founder of Keep Water Affordable

Introduction

On February 1, 2024 the Pennsylvania Public Utility Commission (PUC) published a Tentative Supplemental Implementation Order for Act 12 of 2016 at docket number M-2016-2543193. In it, PUC Chairman DeFrank proposes several changes in how the PUC processes 1329 acquisition applications. This proposal was subsequently published in the 17-February-2024 Pennsylvania Bulletin.

What follows are my comments on Chairman DeFrank's proposal.

Public Hearings

The proposed order mandates public notification and two public hearings. Public meetings are important and requiring them is a positive step. These public meetings need to be an objective review of the proposal – both its pros and cons.

Many past 1329 acquisitions have included public meetings and I have participated in a number of them. The structure of those meetings in no way made an objective presentation of the proposed sale and its alternatives. They were more like a time share sales presentation that is part of a "free" vacation offer. The proponents of the sale had unlimited time to present their case. Any opposition is relegated to short public comment statements. This effectively silences any opposition. The meetings become a sales justification presentation, not a balanced review of options for decision making purposes.

The following standards should be required for public meetings:

1. Two public meetings are a good minimum.
2. At the time the proposed sale is announced, there should be full and complete disclosure of the impacts of the sale and all the analysis that went into making the sale recommendation. Information may not be withheld due to Non Disclosure Agreements. The ratepayers have the right to full disclosure.
3. The first public meeting should not be held until 30 days after the full public disclosure requirements are met. The public and ratepayers need that time to fully understand the pros and cons of the sale. I have participated in public meetings where the first significant disclosure was a chart package you picked up as you entered the meeting room. It was woefully lacking key information, but there was no time to analyze and formulate meaningful questions.

4. The public meetings should allow those opposing the sale to have equal opportunity to present their case as those proposing the sale. Ideally, there should be a vigorous dialog between the two sides.
5. There should be 30 days between the two public meetings to allow the public and ratepayers to fully understand the information they have been given in the first meeting.

Rate Impact Notice

This appears to be a statement requiring rate notifications similar to the "McCloskey" Commonwealth Court decision. The difference being these notifications would occur before the sales contract was signed. That would be a good thing. There are two additional elements that need to be part of the rate impact notice:

1. The rate impact must be a not to be exceeded guarantee. Ratepayers have a right to firm commitments. That guarantee should hold through the first rate case following the acquisition. If the actual "needed" increase is in excess of the guarantee, that excess should be phased in equally over the next three rate cases. Experience has shown that "non binding" estimates are always low, usually substantially low. The public must have reliable information on which to make a decision. If the acquiring companies have the competency they claim, then they have the ability to make reliable forecasts and stand by them.
2. Some acquisitions include expectations of substantial upgrade requirements – usually entailing large investments. The timing and rate impact of those investments need to be fully disclosed.

Default Weights For Appraisals

This apparently is a technical issue on how appraisals should be weighted. However, it is presented without any context. How might the Fair Market Value be impacted? How might such flexibility been applied to past acquisitions? How might it have impacted what went into the rate base for past acquisitions? This is flexibility the PUC should not be given until it is clear how it will be used.

Reasonableness Review Ratio (RRR)

This proposal and its supporting data goes on for several pages. But, it lacks context. There is lots of calculation mechanics, but not a word about how it will be used. What is an acceptable RRR? What would the RRR's have been for past acquisitions? How might they have changed any decisions?

Without appropriate guidance on how it will be used, it is not possible to understand how it might add value to the 1329 acquisition process. It could very easily become just a bureaucratic exercise.

Conclusion

There definitely are improvements needed to Act 12. Outright repeal would be the best improvement. Of course, that is a legislative issue and not within the powers of the PUC.

Public meetings and rate disclosures could be significant improvements if strengthened to provide real ratepayer information and guarantees as noted above. The valuation and RRR proposals need to be framed in a context of how they would be used in order to evaluate them.

I recommend that once all comments are submitted and evaluated, that the PUC revises its proposal to strengthen it in the areas noted. Then it can be presented to the public for a second round of evaluation.

Thank you for the opportunity to submit these comments.

William Ferguson
Co-Founder of Keep Water Affordable