

Reply Comments – M-2016-2543193

Peter Mrozinski – Keep Water Affordable

The Commission has received comments from many in the public already effected by a sale of their public utility, as well as many facing the potential sale of their utility. These comments should be given serious consideration. They provide real information about the impact of Act 12.

Although we feel repeal of Act 12 is the only way to assure ratepayer rights in municipal utility sales, we support any effort by the PUC to reign in its negative impact on PA residents. To that end, after reading the submitted comments, we have further comments on three issues.

Public Meetings and Input

Comments from the public, as well as the OCA, BCSWA and other organizations focus heavily on the need for transparency and the complete disclosure of the rate impact of a utility sale. However, as the residents of New Garden Township have witnessed, the sale price becomes the driving force of the sale, leaving neither the selling municipality nor the purchasing utility capable of providing clear and unbiased justification of the sale.

Both Aqua and PAWC, along with several municipalities, claim in their comments that they already provide adequate public engagement. However, our experience is that the current communication procedures fall far short of providing the clear and detailed information necessary for meaningful public input. Public meetings after agreement has been reached on the terms of the APA are formatted to “sell” the idea of the sale to the public, not to seek meaningful public input. These meetings are too often not well publicized and provide at best only vague discussions of the rate impact vs. potential benefits.

We feel it is important to restate the level of transparency the public deserves. Public meetings must meet at least the following requirements:

- As the OCA states in its comments, there must be “at least two in-person hearings before the execution of the asset purchase agreement, and the Commission’s notice and substantive requirements for the hearings.”
- The public must have access to an advocate. As Representative John Lawrence states “... the Commission should add a specification that a representative of the Pennsylvania Office of Consumer Advocate (“OCA”) be required to attend and present to the gathered audience. The OCA is uniquely qualified to weigh in on these matters and their viewpoint would be very valuable for consideration by local stakeholders.”
- The selling municipality must actively publicize all public meetings. According to CAUSE PA, the Commission should “require the acquired utility to send its customers a direct, written, plain language notice of any planned public input hearings”.

- The public must be given full disclosure of the rate impact of the full selling price, as well as the rate impact of any promised capital improvements.
- This total rate impact must be compared to all other reasonable options, including a comparison to the rate impact if the selling municipality chose to make the capital investment on its own without a sale.
- A detailed plan for use of the sale proceeds providing a quantitative benefit analysis.

Our experience with past Act 12 acquisitions is that public meetings fall far short of these requirements. The sale of a municipal utility will have a lasting, and often drastic, effect on residents. Any municipality that resists providing this level of information is derelict in its duty to its residents.

Selling Price and Rate Base

As the OSBA states in its submitted comments:

“The current acquisition process is fraught with perverse incentives that are contrary to the public interest. Normally, in a pricing negotiation, the economic incentives for each party to the transaction are opposite one another: the seller is incentivized to attain the highest price possible, whereas the buyer has an incentive to attain the lowest price possible.”

Act 12 incentivizes both the selling municipality and the purchasing utility to seek the highest sale price. In New Garden Township we witnessed how the selling price became the driving force in the sale of our wastewater system to Aqua. The condition of the system and the Township’s ability to support it became secondary at best.

In their comments, several municipalities challenge the PUC’s authority to have any role in setting the sale price of a utility. A utility is an asset which the municipality can sell at any price it can negotiate. However, the role of the PUC is to set rates. As former Commissioner James Cawley clearly states in his submitted comments, “The PUC has the duty to balance the needs of utilities and consumers to ensure just and reasonable rates “. The PUC must determine how much of the sale price is to be added to the rate base based on quantifiable public benefit.

Sale Proceeds for Public Benefit

With the sale price as the driving force, municipalities often justify the sale based on the benefits to the community from the influx of money. If the sale is being justified by the benefits of the influx of money these benefits must be quantified and weighed against the quantitative harm caused by the rate impact. Any claimed benefits must be specific, and funds must be formally committed to these promised benefits prior to the sale.

The selling municipality either does not recognize or ignores the fact that they could borrow money equivalent to the sale price of the utility at terms that would cost residents less than the higher rates they will face after the sale. This loan would also have a term length, while the higher rates become part of the ongoing rate base.

In its submitted comments the PSAB uses the sale of the Steelton Borough water assets as a success story of Act 12. They state that the sale proceeds go “right back into the community to solve real issues facing our residents”. We cannot comment directly on the Steelton case, but our experience in New Garden Township was quite the opposite. Despite promises to use sale proceeds to offset future tax increases, New Garden Township in late 2023 announced its plans for a 127% real estate tax increase. Except for a new regional police station, none of the sale proceeds has been used for any public benefit. Four years after sale closure, over 75% of the \$29.5 million sale price sits stagnant in an interest bearing account.