

HOUSE BILL 2187

By Floyd

AN ACT to amend Tennessee Code Annotated, Title 65, Chapter 4, Part 1 and Title 65, Chapter 5, Part 1, relative to the regulation of water utilities by the Tennessee regulatory authority.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-5-103, is amended by adding the following as a new subsection (d):

(d)

(1) The general assembly finds that:

(A) Affordable water utility service is essential to the welfare of the residents and businesses of this state and to the promotion of economic development;

(B) The expenses of public utilities that treat and distribute water obtained primarily from navigable waters of this state are significantly different than the expenses of utilities that must generate or purchase the utility commodities that they provide to their customers; and

(C) It is appropriate to prescribe a standard to be used by the authority to determine whether the rates of public utilities that treat and distribute water obtained primarily from navigable waters of this state are just and reasonable.

(2) As used in this subsection (d):

(A) "Affiliate" means any entity:

(i)

(a) That is controlled or managed, directly or indirectly, by the publicly traded parent or the covered public utility; or

(b) That is controlled or managed, directly or indirectly, by any other entity described in subdivision (d)(2)(A)(i)(a); or

(ii)

(a) Of which more than five percent (5%) of the equity of the entity is owned, directly or indirectly, by the publicly traded parent or the covered public utility; or

(b) Of which any other entity described in subdivision (d)(2)(A)(ii)(a), directly or indirectly, owns more than five percent (5%) of the equity of the entity;

(B) “Average return on equity” means the average return on equity during the latest two (2) fiscal years for which annual earnings have been reported to the securities and exchange commission and shall be calculated by dividing the average daily closing price per share during each of the two (2) fiscal years by the average earnings per share for each of the two (2) fiscal years;

(C) “Covered public utility” means a public utility as defined in § 65-4-101, that primarily obtains water from a navigable water or waters of this state for treatment and distribution to its customers; and

(D) "Publicly traded parent" means a company, the stock of which is publicly traded and which directly or indirectly owns a majority of the equity interest of a covered public utility.

(3)

(A) In determining whether the rates charged or proposed to be charged by a covered public utility are just and reasonable, the authority shall apply the standard set forth in subdivision (d)(3)(B) in addition to standards otherwise provided by applicable state law or regulation. Nothing in subdivision (d)(3)(B) shall in any way modify the covered public utility's burden of proving that its rates and proposed rates are just and reasonable. The standard in subdivision (d)(3)(B) shall prevail in the event of a conflict between the standard and any other state law or regulation.

(B) It shall not be just and reasonable for the rates or proposed rates of any covered public utility to include, and no rate approved by the authority or filed under bond by the public utility shall include:

(i) Any amount of attorneys' fees incurred by the covered public utility in connection with the preparation for, or participation in, any contested case before the authority, consistent with § 4-5-305(b) and the rules of the authority, which specify that any party to a contested case before the authority may be advised and represented by attorneys at the party's own expense;

(ii) Recovery of a return on equity in excess of the publicly traded parent's average return on equity;

(iii) Payment for services provided by any employee of an affiliate at an hourly rate in excess of the average hourly rate of employees of the covered public utility employed at facilities in the covered public utility's service area; or

(iv) Expenses associated with any capital expense, unless the covered public utility has proven by a preponderance of evidence presented to the authority that:

(a) The capital expense has been actually incurred by the covered public utility;

(b) The capital expense was reasonable in amount; and

(c) The facility or equipment for which the capital expense was incurred:

(1) Is necessary to serve current or future customers within the service area of the covered public utility existing as of the date of the capital expense; and

(2) Is used and useful for service to such customers.

SECTION 2. Tennessee Code Annotated, Section 65-4-117(a)(2), is amended by adding the following language at the end of the subdivision:

Such books, documents or records in regard to a privately owned public utility that supplies water to municipal governments shall be considered a public record and shall be open for inspection;

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect July 1, 2012, the public welfare requiring it.