

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2865

By Delegate Westfall

[Introduced January 20, 2023; Referred to the
Committee on Technology and Infrastructure]

1 A BILL to amend and reenact §24-2H-8 of the Code of West Virginia, 1931, as amended, related to
 2 clarifying that the Public Service Commission may enter an order in a distressed or failing
 3 utility case requiring corrective measures up to and including an acquisition by an
 4 acquiring utility.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2H. POWER OF COMMISSION TO ORDER MEASURES UP TO AND INCLUDING THE ACQUISITION OF DISTRESSED AND FAILING WATER AND WASTEWATER UTILITIES.

§24-2H-8. Commission approval of operating agreement, acquisition price; rates for distressed and failing utilities; improvement plan; debt obligations; cost recovery.

1 (a) After an order has been entered pursuant to §24-2H-7 of this code, the distressed utility
 2 and acquiring another public utility shall file a petition with the commission under §24-2-12 of this
 3 code to approve the necessary operating agreement if such alternative is directed by the
 4 commission. After an order has been entered pursuant to §24-2H-7 of this code, the failing utility
 5 and acquiring utility shall file a petition with the commission under §24-2-12 of this code, to
 6 approve the purchase price of the acquisition. Where the parties are unable to agree on an
 7 acquisition price, the filing may request that an evidentiary hearing be held so that the commission
 8 may determine the acquisition price and any other issues related to the acquisition. The
 9 acquisition price must, at a minimum, satisfy all outstanding loans, tax obligations, required grant
 10 repayment, liens, and indebtedness owed by the failing utility or the acquiring utility must agree to
 11 assume the indebtednesses if legally permitted. The acquiring utility shall consult with the lenders
 12 or lienholders regarding payment in full or the assumption, to the extent legally permissible, of any
 13 outstanding obligations of the failing utility.

14 (b) The parties to an acquisition may propose to the commission other methods of
 15 determining the acquisition price.

16 (c) As part of the proceeding, the acquiring utility may propose to the commission that it be
17 permitted for a reasonable period of time after the date of acquisition, to charge and collect rates
18 from the customers of the failing utility pursuant to a separate tariff which may be higher or lower
19 than the existing tariff of the distressed or failing utility or may allow a surcharge on both the
20 acquired and existing customers. A separate tariff or rate filing must be made by the acquiring
21 utility before the commission will consider any increase in rates or allow a surcharge to be placed
22 on the acquiring utility's acquired or existing ratepayers.

23 (d) As part of this proceeding, the acquiring utility shall submit to the commission for
24 approval a plan, including a timetable for bringing the failing utility into compliance with applicable
25 statutory and regulatory standards, including, but not limited to, plans for regionalization. The
26 acquiring utility shall have previously obtained the approval of the plan from the Department of
27 Environmental Protection and the Bureau for Public Health, as applicable, and those agencies are
28 directed to use their full discretion in working towards long-term solutions that will support
29 compliance. The failing utility shall cooperate with the acquiring utility in negotiating agreements
30 with state and federal agencies, including, but not limited to, negotiation of hold harmless
31 agreements, consent orders or enforcement moratoria during any period of remediation. In
32 addition, the failing utility shall cooperate with the acquiring utility in obtaining the consent of the
33 failing utility's and the acquiring utility's bondholder(s) to the acquisition. The acquiring utility must
34 present to the commission as part of its financing plan, documentation on how the failing utility's
35 indebtedness will be paid or assumed.

36 (e) A nonprofit acquiring public utility may seek grant funding from the Distressed Utilities
37 Account established pursuant to §31-15A-9(i) of this code to repair, maintain, and replace the
38 distressed water and wastewater utilities facilities as needed. The reasonably and prudently
39 incurred costs of the acquiring utility shall be recoverable in rates as provided in §24-2H-9 of this
40 code.

41 (f) If the distressed or failing utility is a public service district, then the commission shall

42 make a recommendation to the respective county commission(s) with regard to the acquisition of
43 distressed or failing utilities as provided in §16-13A-2(a)(2) of this code. If the distressed or failing
44 utility is a municipal corporation, then the commission shall make a recommendation to the
45 respective municipal council with regard to the acquisition of distressed or failing utilities as
46 provided in §8-12-17 of this code.

47 (g) The capable proximate utility may propose one or more of the cost recovery methods or
48 incentives set forth in §24-2H-9 of this code as part of its petition for approval from the
49 commission.

NOTE: The purpose of this bill is to clarify that the Public Service Commission may enter an order requiring corrective measures up to and including an acquisition of a distressed or failing utility.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.