

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 27, 2020, 500-CLERK'S OFFICE  
REGISTRATION CONTROL CENTER

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COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. PUR-2020-00116

*Ex Parte:* In the matter of adopting new  
rules of the State Corporation Commission  
governing utility applications  
seeking fair valuation of acquisitions of municipal  
water or wastewater systems

ORDER ADOPTING REGULATIONS

The Virginia General Assembly enacted legislation during its 2020 Session<sup>1</sup> requiring the State Corporation Commission ("Commission") to establish rules governing utility applications seeking fair valuation of acquisitions of municipal water or wastewater systems related to applications filed pursuant to Chapter 5 of Title 56 of the Code of Virginia ("Fair Value Legislation").<sup>2</sup> The new rules are to be effective by January 1, 2021.

On June 16, 2020, the Commission entered an Order for Notice and Comment ("Initial Order") initiating this proceeding to promulgate rules governing water or wastewater utility applications seeking fair valuation of acquisitions of municipal water or wastewater systems. The Commission appended to its Initial Order proposed rules ("Proposed Rules"), which were prepared by the Staff of the Commission ("Staff").

Notice of the proceeding and the Proposed Rules were published in the *Virginia Register of Regulations* on July 6, 2020. An Errata with corrections was printed in the August 3, 2020 issue of the *Virginia Register of Regulations*. Additionally, the Clerk of the Commission

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<sup>1</sup> Chapter 519 of the 2020 Acts of Assembly (SB 831); Chapter 518 of the 2020 Acts of Assembly (HB 835).

<sup>2</sup> Section 56-88 *et seq.*

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provided notice to utilities providing water or sewer service in the Commonwealth of Virginia that are subject to regulation by the Commission. An electronic version of the Proposed Rules was posted on the Commission's website and the Commission's Division of Public Utility Regulation website. Interested persons were directed to file any comments and requests for hearing on the Proposed Rules on or before July 27, 2020.

Virginia-American Water Company, Inc. and Aqua Virginia, Inc. ("Aqua") (collectively the "Commenters") filed comments. No one requested a hearing on the Proposed Rules. On August 17, 2020, the Staff filed its report. On August 20, 2020, Aqua filed comments to the Staff report ("Comments").

The Commenters noted that the Fair Value Legislation did not prohibit the effective date of the Proposed Rules *before* January 1, 2021, since it required such rules to be established *by* January 1, 2021. The Commenters requested that the effective date of the Proposed Rules coincide with the Commission's Final Order adopting the Proposed Rules. In its Report, Staff did not oppose an effective date of the Proposed Rules prior to January 1, 2021. Staff correctly noted that the effective date of new rules cannot precede the date that the final rules are filed with the Registrar's Office. Staff also noted that the Commission may wish to consider whether the regulations should be published prior to an effective date. In its Comments to the Staff Report, Aqua supported the Staff's anticipated timeframe for finalizing the Proposed Rules.

The Fair Value Legislation does not prohibit the new rules from being effective *before* January 1, 2021. In consideration of the Commenters' request that the effective date occur with a final order adopting the regulations, we will adopt the Proposed Rules effective October 1, 2020. This effective date will allow time for the final adopted rules to be filed with the Registrar's

Office and should also allow their publication in the *Virginia Register of Regulations* prior to the effective date.

The Commenters also made suggested edits to Section 20VAC5-210-20 B(3)(c) of the Proposed Rules. This section requires the analysis of an independent professional engineer licensed in Virginia regarding the condition of the system, the in-service date and useful life of each asset, and operating condition. In its report, Staff indicated that the Commenters worked with Staff to reach agreement on revisions proposed in the report. In its Comments, Aqua stated that it accepted Staff's proposed amendment and clarification. We find that these changes are reasonable and incorporate them into the final rules.

NOW THE COMMISSION, upon consideration of this matter, is of the opinion and finds that the revised regulations attached hereto as Appendix A should be adopted as final rules, as discussed herein.

Accordingly, IT IS ORDERED THAT:

(1) The rules governing Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems, as shown in Appendix A to this Order, are hereby adopted and are effective as of October 1, 2020.

(2) The Commission's Division of Information Resources shall forward a copy of this Order, with Appendix A, to the Registrar of Regulations for publication in the *Virginia Register of Regulations*.

(3) An electronic copy of this Order with Appendix A including the rules governing Water or Wastewater Utility Applications Seeking Fair Valuation of Acquisitions of Municipal Water or Wastewater Systems shall be made available on the Division of Public Utility Regulation's section of the Commission's website: <https://scc.virginia.gov/pages/Rulemaking>.

(4) This docket is dismissed.

A COPY hereof shall be sent electronically by the Clerk of the Commission to utilities providing water or sewer service in the Commonwealth of Virginia that are subject to regulation by the Commission as identified on the attached list; and C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424, [MBrowder@oag.state.va.us](mailto:MBrowder@oag.state.va.us).

## STATE CORPORATION COMMISSION

Water Or Wastewater Utility Applications Seeking Fair Valuation Of Acquisitions Of  
Municipal Water Or Wastewater Systems

CHAPTER 210

WATER OR WASTEWATER UTILITY APPLICATIONS SEEKING FAIR VALUATION OF  
ACQUISITIONS OF MUNICIPAL WATER OR WASTEWATER SYSTEMS

**20VAC5-210-10. Purpose and applicability.**

This chapter sets forth minimum filing requirements for Virginia's investor-owned water and wastewater utilities related to applications pursuant to Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia when electing to seek use of fair market value (i) in the acquisition of a municipal or other governmental selling entity's water or wastewater system, and (ii) for purposes of determining initial rate base in conjunction with such acquisition. The commission may waive any or all parts of this chapter for good cause shown.

**20VAC5-210-20. General filing instructions.**

A. An applicant shall provide a notice of intent to file an application pursuant to this chapter to the commission at least 30 days prior to the application filing date. Such notice of intent shall identify the parties involved in the proposed transaction and the specific section and subsection of the Code of Virginia pursuant to which the application will be filed.

B. Applications filed pursuant to this chapter shall include, in addition to all other filing requirements in Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia applications:

1. Testimony in support of the proposed acquisition and purchase price. Such testimony shall include a statement from each of the acquiring and selling entities concerning each

entity's agreement and intent to consummate the transaction according to the terms and conditions represented in the application.

2. Complete and unredacted copies, including all supporting documentation and workpapers, of two qualified, independent, and impartial utility valuation experts' appraisals of the system assets to be acquired in compliance with the uniform standards of professional appraisal practices. The appraisals shall be submitted and treated confidentially under 5VAC5-20-170. Such appraisals shall be completed and submitted in accordance with the following requirements:

a. One appraisal shall be sponsored by the water or wastewater public utility acquiring the utility system assets, and one appraisal shall be sponsored by the government entity selling its utility system assets.

b. The qualifications of each utility valuation expert, specifically as they relate to water or wastewater utility systems, shall be clearly identified in the application.

c. The appraisals shall clearly identify whether they are based on a cost, market, income, other methodology, or a combination of such methodologies, and shall state the historical period on which they are based.

d. To the extent any assets are proposed to be acquired apart from those to be currently used and useful in utility service, the appraisals shall (i) separately identify such assets and (ii) describe the acquiring utility's intended use of such assets.

3. A complete and unredacted copy, including all supporting documentation and workpapers, of the assessment performed by an independent professional engineer licensed in Virginia, jointly retained by the acquiring and selling entities, regarding the tangible assets of the utility system to be acquired. For purposes of this section, "jointly retained" means retained collectively by the acquiring and selling entities, retained by the

selling entity and adopted by the acquiring entity, or retained by the acquiring entity and adopted by the selling entity. Such assessment shall be (i) used by the utility valuation experts as a basis for their valuations in determining fair market value and (ii) submitted and treated confidentially under 5VAC5-20-170. Such assessments shall be completed and submitted in accordance with the following:

a. The qualifications of such licensed engineer, specifically as the qualifications relate to water or wastewater utility systems, shall be clearly identified in the application.

b. To the extent assets are to be acquired apart from those to be currently used and useful in utility service, such assessment shall separately quantify the assets that are to be currently used and useful in utility service.

c. An analysis of the condition of the system shall be provided, including the in-service date, if available, and an assessment of the useful life of each asset [or asset class, where information on an individual asset basis is unavailable or would be unduly burdensome to provide,] and its operating condition. [If analysis of each asset is not provided, the analysis shall include other details as available and shall explain the basis for how the engineer determined the in-service date, useful life, and condition of the asset class.]

4. The following market data regarding water or wastewater utility transfers, if available, should be provided as part of the appraisals. To the extent such data is not available from the selling entity, an explanation should be provided.

a. Identification of the acquiring and selling entities.

b. A description of the assets.

c. The geographic footprint of the acquired system.

d. The number of customers.



e. The transaction amount, identification of the recorded cost of the assets, and identification of whether such transaction was based on original cost, fair value, or other basis.

f. Quantification of purchase of equity or debt, if applicable.

g. Date of the transaction.

5. The following cost data for the assets to be acquired, if available, should be included as part of the appraisals. To the extent such data is not available from the selling entity, an explanation should be provided.

a. A detail of historical cost of assets by plant account, or categories of assets if not available by account, including plant additions and retirements by vintage year.

b. A detail of the recorded reserve for depreciation by plant account or categories of assets if not available by account.

c. Existing depreciation rates by account, or categories of assets, for the system to be acquired.

6. The following income data, if available, should be included as part of the appraisals. To the extent such data is not available from the selling entity, an explanation should be provided.

a. Any impairment tests performed for the system to be acquired as performed internally by the selling entity or its external auditors for the five prior years.

b. Annual financial forecasts prepared by management of the selling entity for the three prior years.

c. An analysis of the following for the acquired system by rate class and meter or service line size for the three most recent years:

(1) Number of customers.

(2) Usage data.

(3) Billed revenues.

(4) Net charge-offs.

7. Other required information pertaining to the acquired system to include:

a. An unredacted copy of the purchase agreement.

b. A map of the service area of the acquired system.

c. A detailed description of all assets of the acquired system, with identification of any assets that were not used and useful at the time of the appraisals.

d. A statement of any obsolescence considered (e.g., physical, functional, and economic) and supporting documentation and calculations for any obsolescence quantified.

e. The comprehensive annual financial report for the municipality or other selling governmental entity for the three prior years.

f. Any presentations made by investment advisors or senior management of either the acquiring or selling entity regarding the potential sale.

g. A detailed analysis of any rehabilitations or improvements the acquiring utility plans to make to the acquired system to address any known deficiencies of the acquired system.

8. To the extent the proposed purchase price is different than that provided in the filed appraisals, the application shall identify the proposed purchase price.

9. The acquiring utility's proposed journal entries anticipated to result from the proposed acquisition, including tax entries and account numbers recognized by the National Association of Regulatory Utility Commissioners.

10. An analysis identifying the qualitative and quantitative benefits and estimated customer rate impacts for the next five years as a result of the proposed acquisition for each of (i) the customers of the acquired system and (ii) the legacy customers of the acquiring utility. Such analysis shall clearly identify all assumptions relied upon.

11. Documentation of (i) incurred and additional estimated costs and fees of the utility valuation experts in the fair market value determination and (ii) incurred and additional estimated transaction and closing costs.

C. An application filed pursuant to this chapter shall not be deemed filed pursuant to Chapter 5 (§ 56-88 et seq.) of Title 56 of the Code of Virginia unless it is in full compliance with this chapter.

**20VAC5-210-30. Commission determination of rate base.**

A. An average of the three appraisals, which includes one sponsored by commission staff, shall be deemed the fair market value for purposes of the proceeding.

B. The rate base value of the acquired system for purposes of subsequent rate filings made pursuant to Chapter 10 (§ 56-232 et seq.) of Title 56 of the Code of Virginia shall be the following: the fees and costs of the utility valuation experts authorized by the acquiring and selling entities, transaction costs, and other closing costs found by the commission to be reasonable and prudently incurred, plus the lesser of (i) the purchase price negotiated between the acquiring utility and selling entity as the result of a voluntary arm's-length transaction and (ii) the fair market value. The rate base value shall incorporate the provisions for depreciation as identified in this chapter.

**20VAC5-210-40. Miscellaneous general provisions.**

A. Nothing in this chapter shall be construed to relieve the applicant from its duty to demonstrate that "...adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition..." as provided in § 56-90 of the Code of Virginia.

B. Any information deemed confidential by the applicant may be submitted and treated confidentially under 5VAC5-20-170.

C. This chapter does not limit the commission staff or parties from raising issues related to the proposed acquisition for commission consideration that have not been addressed in the applicant's filing before the commission.

D. Commission staff and parties may seek discovery to confirm the reasonableness of, and provide testimony and recommendations regarding, the appraisals and engineering assessment sponsored by the acquiring and selling entities. The applicant may seek discovery as permitted of commission staff pursuant to 5VAC5-20-260 to confirm the reasonableness of the appraisal sponsored by commission staff and may provide rebuttal testimony or response and recommendations regarding such.

E. If the depreciation rates for the acquired system are not based on a depreciation study:

1. The acquiring utility may apply a 3.0% composite depreciation rate to the fair market value of the utility system assets acquired; and

2. A depreciation study on the acquired system shall be performed within five years of acquisition and provided for review by the commission staff. Upon acceptance of the depreciation rates by commission staff for booking purposes, such rates shall be utilized for the system effective as of the date of the study. However, if the acquired system is of a size that would qualify under the Small Water or Sewer Public Utility Act (Chapter 10.2:1

(§ 56-265.13:1 et seq.) of Title 56 of the Code of Virginia), such assets may be exempted from the requirement of performing a depreciation study.

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