

66-1,176b. Termination of service rights during period when a valid franchise is in effect; facilities to be acquired; compensation; formula. (a) When the service rights of a retail electric supplier are terminated by a city during the period in which a valid franchise is in effect and the service rights are assumed by the terminating city, the governing body of the city shall acquire from the terminated supplier the parts of the local electric distribution system necessary to serve all customers within the previously franchised area and the terminated supplier shall sell the system to the governing body of such city for which it shall be fairly compensated. Such compensation shall be an amount mutually agreed upon by the affected parties or an amount determined by the following formula:

(1) The depreciated replacement cost for the electric utility facilities in the territory in which the service rights have been terminated. As used in this paragraph, "depreciated replacement cost" means the original installed cost of the facilities, adjusted to present value by utilizing a nationally recognized index of utility construction costs, less accumulated depreciation based on the book depreciation rates of the selling utility, as filed with and approved by the state corporation commission, which are in effect at the time of acquisition;

(2) the depreciated replacement costs of the remaining proportion of any take or pay power contracts or participation power agreements;

(3) the depreciated replacement cost for the electric utility facilities outside the affected territory used in providing service to the formerly franchised area. Such facilities shall include all generation facilities and all transmission facilities throughout the terminated utility's integrated system, the value of which shall be determined by the depreciated replacement cost formula in paragraph (1) multiplied by the percentage of the terminated utility's total retail kilowatt-hour sales to customers in the affected area during the 12 months next preceding the effective date of the sale;

(4) all reasonable and prudent costs of detaching the electric system facilities to be sold, including the reasonable costs of studies and inventories made to determine the facility's value and all reasonable and prudent costs of reintegrating the remaining electric system facilities of the retail electric supplier whose service rights are terminated;

(5) an amount equal to two times the net revenues received during the 12 months next preceding the date of termination of the service rights from the customers within the affected area of the retail electric supplier whose service rights are terminated. As used in this paragraph, "net revenues" means the total revenues received by the terminated utility for electric service within the affected area less franchise and sales taxes collected; the cost of fuel or purchased power recovered in the revenues; and labor, maintenance, administration and insurance. This number shall be multiplied by the number of years remaining in any franchise contract; and

(6) an amount equal to the state and federal tax liability created by the taxable income pursuant to the provisions of this paragraph and paragraphs (1), (2), (3), (4) and (5) by the retail electric supplier whose service rights are terminated, calculated without regard to any tax deductions or benefits not related to the sale of assets covered herein.

(b) If the parties are unable to agree upon the amount of compensation to be paid pursuant to this act after 60 days following the date of termination of service rights, either party may apply to the district court having jurisdiction where any portion of the facilities is located for determination of compensation. Such determination shall be made by the court sitting without a jury.

History: L. 1987, ch. 255, § 1; L. 2002, ch. 27, § 2; July 1.