PART 2
SERVICE TERRITORIES WITHIN MUNICIPALITIES OWNING AND OPERATING ELECTRIC UTILITIES

40-9.5-201. Legislative declaration.

The general assembly hereby finds and declares that the provisions of article XXV of the Colorado constitution allow the public utilities commission to establish exclusive service territories for utilities as provided in article 5 of this title and that it has been the policy of the state of Colorado to establish exclusive service territories for cooperative electric associations. The general assembly further finds and declares that, if a cooperative electric association has been granted an exclusive service territory that is within a municipality that operates an electric utility or within an area annexed by a municipality that operates an electric utility, the municipality has taken private property and shall pay just compensation for the electric distribution facilities and certificate of public convenience and necessity of the association located within the municipality. Therefore, it is declared to be a matter of statewide concern and to be the purpose of this part 2 to establish a procedure to be followed when the certificated service territory of a cooperative electric association is included within a municipality that operates an electric utility or within an area annexed by a municipality that operates an electric utility.

Source: L. 86: Entire part added, p. 1159, § 1, effective May 27.

40-9.5-202. Definitions.

As used in this part 2, unless the context otherwise requires:

(1) "Cooperative electric association" shall have the same meaning as in section 40-9.5-102.

(2) "Electric distribution facilities" means all or any portion of the electric lines and facilities of a cooperative electric association used or capable of being used in serving ultimate consumers, but the term does not include transmission lines, feeder lines, and substation facilities, or portions thereof, which are necessary for the integration and operation of portions of the association's electric system which are located outside a municipality or the area annexed by a municipality, nor does the term include transformers, meters, and associated metering equipment.

(3) "Municipality" means a statutory or home rule town, city, or city and county.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

40-9.5-203. Service rights and facilities of cooperative electric associations within

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municipalities or within areas to be annexed by municipalities which own and operate electric utilities.

(1) Notwithstanding any provision to the contrary, if a cooperative electric association has certificated service territory within a municipality which after May 27, 1986, commences operation of its own electric utility or has certificated service territory within an area annexed after May 27, 1986, by a municipality which owns and operates an electric utility, the municipality shall pay just compensation for the electric distribution facilities of the cooperative electric association located within the territory, together with the association's certificate of public convenience and necessity constituting its rights to serve such territory.

(2) No later than thirty days prior to final action on each annexation ordinance, the municipality shall notify the affected cooperative electric association in writing of the boundaries of the municipality or the annexed area within which certificated service territory of the association is included and shall indicate such boundaries or area on appropriate maps.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

40-9.5-204. Just compensation for service rights and facilities by municipality.

(1) The just compensation for electric distribution facilities and service rights shall be:

(a) The present-day reproduction cost, new, of the electric distribution facilities being acquired, less depreciation computed on a straight-line basis over thirty-five years with such depreciation being limited to one-half of such cost; and

(b) An amount equal to the cost of constructing any necessary facilities to reintegrate the system of the cooperative electric association located outside the municipality or the area annexed by the municipality after detaching the electric distribution facilities to be sold; and

(c) An annual amount, payable each year for a period of ten years following the date of purchase, equal to twenty-five percent of the revenues received by the municipality from the sale of electric power to the services within such municipality which were previously served by the cooperative electric association; and

(d) An annual amount equal to five percent of the revenues received by the municipality from the sale of electric power to the additional services that come into existence in the affected area, for each year for a period of ten years following the date of acquisition.

(2) If the cooperative electric association and the municipality cannot agree on the amount to be paid pursuant to subsection (1) of this section, either party may bring an action for condemnation or inverse condemnation in the district court for the county in which the property is located to determine the amount to be paid pursuant to the factors stated in subsection (1) of

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this section. During the pendency of any such action, the municipality shall deposit with the court the amount the municipality has offered to be paid the cooperative electric association, and, upon said payment, the municipality shall have the right to serve all electric customers within the annexed area.

Source: L. 86: Entire part added, p. 1160, § 1, effective May 27.

ANNOTATION

Statutory scheme set forth in §§ 40-9.5-201 to 40-9.5-207 is not unconstitutional since such sections do not mandate that a public utility transfer all its customers and facilities to a municipality upon a notice of annexation by the municipality. Thus, there may not be a taking under the statutory scheme which would otherwise preclude regulation by the P.U.C. in such areas. This section, which provides for situations where the municipality can compete with the public utility, does not conflict with section 35 of article V of the state constitution. Nor does the statutory scheme violate section 25 of article V prohibiting special legislation or section 15 of article II governing just compensation for takings of property for public use. Poudre Valley Rural Elec. v. Loveland, 807 P.2d 547 (Colo. 1991).

"Revenues" under paragraph (c) of subsection (1) means both the base charge and usage charge received by the municipality. Poudre Valley Rural Elec. v. Loveland, 807 P.2d 547 (Colo. 1991).

40-9.5-205. Purchase by cooperative electric association of electric distribution facilities and service rights of municipality.

If any municipality changes its boundaries so as to exclude from its corporate limits any territory previously served by a cooperative electric association, such municipality shall give, within thirty days, written notice to the association of such exclusion of territory, and the cooperative electric association, within one hundred twenty days after receipt of such notice, shall purchase the municipality's electric distribution facilities and service rights within the excluded area. Section 40-9.5-204 shall apply to acquisitions by a cooperative electric association pursuant to this section.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

40-9.5-206. Provisions on purchase nonexclusive - no effect on existing contracts.

(1) Nothing contained in this part 2 shall prohibit a municipality and a cooperative electric association from buying, selling, or exchanging electric distribution facilities, service rights, and other rights, property, and assets by mutual agreement.

(2) Nothing in this part 2 shall impair the obligations of existing contracts.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

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ANNOTATION

Statute reflects legislative intent to articulate and affirm state policy that a municipality may purchase the service rights and facilities of cooperative public utilities. City of Colo. Springs v. Mtn. View Elec. Ass'n, Inc., 925 P.2d 1378 (Colo. App. 1995).

40-9.5-207. Applicability.

(1) This part 2 shall apply to all cooperative electric associations which have electric distribution facilities, franchises, certificates of public convenience and necessity, rights-of-way, or appurtenances to facilities which are included in the boundaries of a municipality which after May 27, 1986, commences operation of its own electric utility or are included in an area annexed by a municipality which owns and operates an electric utility.

(2) Notwithstanding any statutory provision to the contrary, the procedures in this part 2 relating to the allocation and conveyance of property and property rights of any cooperative electric association to any municipality or of any municipality to any cooperative electric association shall be exclusively available to such municipality and to such cooperative electric association.

Source: L. 86: Entire part added, p. 1161, § 1, effective May 27.

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