

*UNOFFICIAL***TITLE 785. OKLAHOMA WATER RESOURCES BOARD
CHAPTER 11. ACQUISITION OF ASSETS AND CONTROL OF RURAL WATER
DISTRICTS AND CORPORATIONS****Introduction:**

This document contains permanent amendments to Chapter 11 adopted by the Oklahoma Water Resources Board that are effective as of September 14, 2018. Also, this document was prepared by Oklahoma Water Resources Board staff as a convenience to the reader, and is not a copy of the official Title 785 of the Oklahoma Administrative Code. The rules in the official Oklahoma Administrative Code control if there are any discrepancies between the Code and this document.

Subchapter 1. General Provisions

Subchapter 3. Application and Hearing Requirements

SUBCHAPTER 1. GENERAL PROVISIONS**SECTION**

785:11-1-1. Purpose, scope and applicability

785:11-1-2. Definitions

785:11-1-1. Purpose, scope and applicability

Title 82 Oklahoma Statutes, Section 1324.41 and following provides to the effect that no person shall acquire assets and control of a rural water district or corporation unless such person has first obtained the approval of the Board upon written application following notice and a hearing. This Chapter prescribes rules to interpret and implement the provisions of this Act. Wherever the Act is applicable and this Chapter has no rule on point, the provisions of the Act shall be applied.

785:11-1-2. Definitions

In addition to terms defined in 82 O.S. Section 1324.41, the following words or terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Acquiree" means the district or corporation, the assets and control of which are sought to be acquired by an acquiring party.

"Act" means the act codified at 82 O.S. §1324.41 and following, sometimes referred to as the Acquisition of Assets Act.

"Application" means a statement or other written request by an acquiring party for approval of a proposed acquisition of assets and control of a district or corporation.

"Domestic water public utility" means a municipality, public trust, rural water district, or other public entity, organized under the laws of and having its principal place of business in the State of Oklahoma and existing at least in part for the purpose of providing water utility service to domestic, commercial and other consumers.

"Statement" means a written request made under oath or affirmation, containing the information specified in 82 O.S. §1324.43.

SUBCHAPTER 3. APPLICATION AND HEARING REQUIREMENTS

SECTION

785:11-3-1. Application requirements

785:11-3-2. Notice and hearing; disposition of application

785:11-3-1. Application requirements

(a) **General.** Prior to making an offer for, entering into an agreement for, seeking to acquire, merging with, or acquiring the assets and control of a rural water district or corporation, an acquiring party shall file with the Board an application and obtain the Board's approval of the proposed transaction. All applications for approval of acquisitions of assets and control must be made under oath or affirmation and completed by the acquiring party either on written forms as may be provided by the Board or in such other written form as the Board may require.

(b) **Application by a domestic water public utility.** If the acquiring party is a domestic water public utility, the application shall contain the following information and items unless deemed inapplicable and waived by the Board or its staff:

- (1) The full, true and correct legal name, principal office location and mailing address for both the acquiring party and the acquiree;
- (2) The authority of law under which the acquiring party was created and is existing, the independent legal authority under which the application is made, and identification of the acquiring party as a municipality, public trust, rural water district, or other public entity;
- (3) A certified copy of the resolution or other specific authorizing instrument reflecting the acquiring party's authorization for making the subject application to the Board;
- (4) Current and complete maps of the service areas of the acquiring party and acquiree, preferably in a geographic information systems format acceptable to the Board;
- (5) A description of the water system and operation thereof, including but not limited to water sources, treatment facilities, storage capacity, system design, annual average unaccounted-for losses, personnel certifications, customer base, and rate structure for both the acquiring party and the acquiree;
- (6) A statement of the manner and means by which the acquiring party intends to fund and complete the acquisition;
- (7) A certified copy of the acquiring party's previous three (3) years' annual audits, if available, and a statement of the acquiring party's financial condition including a current statement of all outstanding indebtedness of the acquiring party and its related entities, including but not limited to all outstanding general obligation or revenue debt, which might affect the acquiring party's overall financial condition;
- (8) A description of the nature and division of ownership or other legal or equitable interest in the assets to be acquired, if other than complete ownership by the acquiring party;
- (9) A description of all rights to water supply, including water supply contracts, water rights, licenses or permits, whether existing under federal, state or local law or regulation, for both the acquiring party and the acquiree;

(10) A description of any plans the acquiring party may have to make any material change in the acquiree's assets, system or operations which would affect the service provided to the acquiree's customers, including but not limited to the acquiring party's future capital improvement plans, if any, for both the acquiring party and the assets to be acquired;

(11) A copy of the offer or draft agreement for the proposed acquisition, together with any information whether the acquiree has indicated it will object to or consent to the proposed acquisition;

(12) If the acquiree has creditors, the application shall include the written approval of the proposed acquisition by all creditors of the acquiree, or otherwise shall describe how the creditors will be protected and paid; and

(13) Such additional information as may be deemed necessary by the Board or its staff for proper application review under the particular facts and circumstances of the acquisition proposal.

(c) **Application by a person other than a domestic water public utility.** If the acquiring party is not a domestic water public utility, the acquiring party shall file with the Board an application containing all of the information and items set forth in (b) of this Section, plus the information and items stated in 82 O.S. § 1324.43. Additional information shall be provided on a case-by-case basis if deemed by the Board or its staff to be *necessary or appropriate for the protection of ratepayers* [82:1324.43(A)(7)] or customers of the acquiree.

785:11-3-2. Notice and hearing; disposition of application

(a) **Notice.** An application for approval of a proposed acquisition shall be deemed filed as of the date the Board staff complete their review thereof and determine it to be ready for the notice and hearing process. Thereafter, the staff shall schedule a hearing and shall notify the acquiring party and the acquiree of the date, time and place of the hearing at least twenty (20) days prior to the date thereof. If so directed by the Board, the acquiring party shall give notice of the hearing at least fifteen (15) days prior to the date thereof to additional persons in the manner directed. Staff may also require that acquiree give notice of the hearing to its customers in the form, manner and time specified by the Board. Any expenses incurred by the acquiree in preparing and giving such notice to the acquiree's customers shall be paid by the acquiring party no later than thirty (30) days following submission of an invoice therefor to the acquiring party. If the acquiring party is a domestic water public utility, and the acquiree consents to the acquisition and timely files a written waiver of the hearing, and if no customer of the acquiree files an objection to the proposed acquisition prior to the hearing date, then the hearing may be cancelled and the Board may proceed to make its final determination on the application.

(b) **Hearing.** Unless cancelled as provided in (a) of this Section, the Board shall hold a hearing on the application and proposed acquisition. Following the hearing, if any, the Board shall review the available evidence and application information to determine whether any of the following conditions will exist if the proposed acquisition is consummated:

(1) The acquisition of assets and control would adversely affect the contractual obligations of the acquiree or adversely affect the level of service currently being rendered to the acquiree's customers;

(2) The financial condition of the acquiring party might adversely affect the financial stability of the acquiree or otherwise adversely affect the interests of the acquiree's customers;

- (3) The acquiring party's plans to make any material change in the acquiree's assets, system or operations would be detrimental to the acquiree's customers and not in the public interest; or
- (4) The competence, experience and integrity of the persons who would control the operation of the acquiree or its assets are such that it would not be in the interest of the acquiree's customers and the public to permit the acquisition of control.
- (c) **Decision on application.** As soon as practical after the conclusion of the hearing, the Board staff shall prepare a proposed order with proposed findings of fact and conclusions of law and serve the same on the acquiring party, the acquiree, and any other interested persons as necessary. The proposed order shall be presented to the Board for its consideration and action. Upon consideration of the case, the Board shall approve the application and acquisition unless the Board finds that one or more of the conditions listed in (b) of this Section will exist if the acquisition is consummated. In the latter event, the Board shall disapprove the proposed acquisition and it shall not be consummated. In either case, the Board shall issue its final order within the time frame specified in 82 O.S. §1324.44(B).