

OFFICIAL EXHIBITS

8-1-30-6

UTILITIES AND TRANSPORTATION

Chapter 30.3

Acquisition of Distressed Water or Wastewater Utilities

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- 8-1-30.3-2 Repealed
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8-1-30.3-1 "Cost differential"

Sec. 1. As used in this chapter, "cost differential" means the difference between:

- (1) the cost to a utility company that acquires utility property from an offered utility, including the purchase price, incidental expenses, and other costs of acquisition; minus
- (2) the difference between:

- (A) the cost of the utility property when originally put into service by the offered utility; minus
- (B) contributions or advances in aid of construction plus applicable accrued depreciation.

As added by P.L.189-2015, SEC.1, eff. July 1, 2015. Amended by P.L.229-2019, SEC.2, eff. May 5, 2019.

8-1-30.3-2 Repealed by P.L.229-2019, SEC.3, eff. May 5, 2019

Historical and Statutory Notes

Former IC 8-1-30.3-2 related to the definition of "distressed utility", and was derived from P.L. 189-2015, SEC.1. For disposition of the subject matter of the repealed section, see, now, IC 8-1-30.3-2.6, "Offered utility".

8-1-30.3-2.5 "Not-for-profit utility" defined

Sec. 2.5. As used in this chapter, "not-for-profit utility" has the meaning set forth in IC 8-1-2-125(a). The term includes a utility company owned, operated, or held in trust by a consolidated city.

As added by P.L.98-2016, SEC.2, eff. March 22, 2016.

8-1-30.3-2.6 "Offered utility"

Sec. 2.6. As used in this chapter, "offered utility" means a utility company whose property is the subject of an acquisition described in section 5(a) of this chapter.

As added by P.L.229-2019, SEC.4, eff. May 5, 2019.

Historical and Statutory Notes

Formerly:

- 8-1-30.3-2
- P.L.189-2015, SEC.1

8-1-30.3-3 "Utility company"

Sec. 3. As used in this chapter, "utility company" means:

- (1) a:
 - (A) public utility;

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(B) municipally owned utility; or

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that provides water or wastewater service; or

(2) a regional sewer or water district.

As added by P.L.189-2015, SEC.1, eff. July 1, 2015. Amended by P.L.98-2016, SEC.3, eff. March 22, 2016.

8-1-30.3-4 "Utility property"

Sec. 4. As used in this chapter, "utility property" refers to property of a utility company that is the subject of an acquisition described in section 5(a) of this chapter.

As added by P.L.189-2015, SEC.1, eff. July 1, 2015.

8-1-30.3-5 Application

Sec. 5. (a) This section applies if:

(1) a utility company acquires property from an offered utility in a transaction involving a willing buyer and a willing seller; and

(2) at least one (1) utility company described in subdivision (1) is subject to the jurisdiction of the commission under this article.

(b) Subject to subsection (c), there is a rebuttable presumption that a cost differential is reasonable.

(c) If the acquisition:

(1) is made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under IC 8-1.5-2-5; or

(2) is not made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under section 5.5 of this chapter;

the purchase price is considered reasonable for purposes of subsection (d) and any resulting cost differential is considered reasonable.

(d) Before closing on the acquisition, the utility company that acquires the utility property may petition the commission to include any cost differential as part of its rate base in future rate cases. The commission shall approve the petition if the commission finds the following:

(1) The utility property is used and useful to the offered utility in providing water service, wastewater service, or both water and wastewater service.

(2) The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.

(3) The utility company will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility's plant, the offered utility's operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service.

(4) The acquisition of the utility property is the result of a mutual agreement made at arms length.

(5) The actual purchase price of the utility property is reasonable.

(6) The utility company and the offered utility are not affiliated and share no ownership interests.

(7) The rates charged by the utility company will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility. For purposes of this subdivision, the rates and charges will not increase unreasonably in future general rate cases so long as the net original cost proposed to be recorded under subsection (f) is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case. If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, the commission shall proceed to determine whether the rates charged by the utility company will increase unreasonably in future

general rate cases solely as a result of acquiring the utility property from the offered utility and, in making the determination, may consider evidence of:

(A) the anticipated dollar value increase; and

(B) the increase as a percentage of the average bill.

(8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base.

(e) In connection with its petition under subsection (d), the acquiring utility company shall provide the following:

(1) Notice to customers of the acquiring utility company that a petition has been filed with the commission under this chapter. The notice provided under this subdivision must include the cause number assigned to the petition. Notice under this subdivision may be provided to customers in a billing insert.

(2) Notice to the office of the utility consumer counselor.

(3) A statement of known infrastructure, environmental, or other issues affecting the offered utility, and the process for determining reasonable and prudent improvements upon completing the acquisition.

(f) In a proceeding under subsection (d), the commission shall issue its final order not later than two hundred ten (210) days after the filing of the petitioner's case in chief. If the commission grants the petition, the commission's order shall authorize the acquiring utility company to make accounting entries recording the acquisition and that reflect:

(1) the full purchase price;

(2) incidental expenses; and

(3) other costs of acquisition;

as the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

As added by P.L.189-2015, SEC.1, eff. July 1, 2015; Amended by P.L.98-2016, SEC.4, eff. March 22, 2016; P.L.64-2018, SEC.1, eff. July 1, 2018; P.L.229-2019, SEC.5, eff. May 5, 2019; P.L.160-2020, SEC.5, eff. March 21, 2020.

Notes of Decisions

Reasonable purchase price

1. Reasonable purchase price

Sale price of city's water utility to water company was reasonable, as defined under statute governing sale of non-surplus property by distressed

and nondistressed utilities, and therefore transaction did not need to be submitted to a public vote, where sale price of water utility was equal to its appraisal value. *NOW, Inc. v. Indiana-American Water Company, Inc.*, App.2018, 117 N.E.3d 647, rehearing denied, transfer denied 127 N.E.3d 224. Public Utilities 194

8-1-30.3-5.5 Appraisals; three qualified and disinterested appraisers necessary; sufficiency

Sec. 5.5. (a) For purposes of this section, an individual or the company employing the individual, is qualified to perform an appraisal if the individual is:

(1) an engineer registered under IC 25-31; or

(2) an appraiser licensed under IC 25-34.1-8.

(b) For purposes of this section, an individual performing an appraisal, or the company employing the individual, is disinterested if:

(1) the fee for the appraisal services is fixed before the individual performs the appraisal;

(2) the individual is not an employee of one (1) of the parties to the acquisition;

(3) the individual is not a state or municipal employee; and

(4) the:

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(B) company, if applicable;

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do not have affiliated interests (as defined in IC 8-1-2-49) in one (1) of the parties to the acquisition.

(c) An appraisal under section 5(c)(2) of this chapter must be performed by three (3) qualified and disinterested appraisers, including:

- (1) at least one (1) appraiser qualified under subsection (a)(1); and
- (2) at least one (1) appraiser qualified under subsection (a)(2).

(d) If the three (3) appraisers performing an appraisal for purposes of section 5(c)(2) of this chapter cannot agree as to an appraised value, the appraisal is sufficient for purposes of section 5(c)(2) of this chapter if the appraisal is signed by two (2) of the appraisers.
As added by P.L.160-2020, SEC.6, eff. March 21, 2020.

8-1-30.3-6 Inability to furnish or maintain adequate, efficient, safe, and reasonable service and facilities

Sec. 6. For purposes of section 5(d)(2) of this chapter, an offered utility is too small to capture economies of scale or is not furnishing or maintaining adequate, efficient, safe, and reasonable service and facilities if the commission finds one (1) or more of the following:

- (1) The offered utility violated one (1) or more state or federal statutory or regulatory requirements in a manner that the commission determines affects the safety, adequacy, efficiency, or reasonableness of its services or facilities.
- (2) The offered utility has inadequate financial, managerial, or technical ability or expertise.
- (3) The offered utility fails to provide water in sufficient amounts, that is palatable, or at adequate volume or pressure.
- (4) The offered utility, due to necessary improvements to its plant or distribution or collection system or operations, is unable to furnish and maintain adequate service to its customers at rates equal to or less than those of the acquiring utility company.
- (5) The offered utility serves fewer than eight thousand (8,000) customers.
- (6) Any other facts that the commission determines demonstrate the offered utility's inability to capture economies of scale or to furnish or maintain adequate, efficient, safe, or reasonable service or facilities.

As added by P.L.189-2015, SEC.1, eff. July 1, 2015. Amended by P.L.98-2016, SEC.5, eff. March 22, 2016; P.L.85-2017, SEC.37, eff. April 20, 2017; P.L.239-2019, SEC.6, eff. May 5, 2019; P.L.160-2020, SEC.7, eff. March 21, 2020.

Historical and Statutory Notes

2017 Legislation

P.L.85-2017, Secs.129 and 130, eff. April 20, 2017, provided:

"SECTION 129. [EFFECTIVE UPON PASSAGE] (a) This act may be referred to as the technical corrections bill of the 2017 general assembly.

(b) The phrase 'technical corrections bill of the 2017 general assembly' may be used in the lead-in line of an act other than this act to identify provisions added, amended, or repealed by this act that are also amended or repealed in the other act.

(c) This SECTION expires December 31, 2017.

"SECTION 130. [EFFECTIVE UPON PASSAGE] (a) This SECTION applies if a provision of the Indiana Code is:

- (1) added or amended by this act; and
- (2) repealed by another act without recognizing the existence of the amendment made by this act by an appropriate reference in the lead-in line of the SECTION of the other act repealing the same provision of the Indiana Code.

"(b) As used in this SECTION, 'other act' refers to an act enacted in the 2017 session of the general assembly other than this act. 'Another act' has a corresponding meaning.

"(c) Except as provided in subsections (d) and (e), a provision repealed by another act shall be considered repealed, regardless of whether there is a difference in the effective date of the provision added or amended by this act and the provision repealed by the other act. Except as provided in subsection (d), the lawful compilers of the Indiana Code, in publishing the affected Indiana Code provision, shall publish only the version of the Indiana Code provision that is repealed by the other act. The history line for an Indiana Code provision that is repealed by the other act must reference that act.

"(d) This subsection applies if a provision described in subsection (a) that is added or amended by this act takes effect before the corresponding provision repeal in the other act. The lawful compilers of the Indiana Code, in publishing the provision added or amended in this act, shall publish