

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 273

AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-2-42, AS AMENDED BY P.L.136-2018, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 42. (a) No change shall be made in any schedule, including schedules of joint rates, except upon thirty (30) days notice to the commission, and approval by the commission, and all such changes shall be plainly indicated upon existing schedules or by filing new schedules in lieu thereof thirty (30) days prior to the time the same are to take effect. The commission may prescribe a shorter time within which a change may be made. A public, municipally owned, or cooperatively owned utility may not file a request for a general increase in its basic rates and charges within fifteen (15) months after the filing date of its most recent request for a general increase in its basic rates and charges, except that the commission may order a more timely increase if:

- (1) the requested increase relates to a different type of utility service;
- (2) the commission finds that the utility's financial integrity or service reliability is threatened; or
- (3) the increase is based on:
 - (A) a rate structure previously approved by the commission; or
 - (B) orders of federal courts or federal regulatory agencies having jurisdiction over the utility.

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The phrase "general increase in basic rates and charges" does not include changes in rates related solely to the cost of fuel or to the cost of purchased gas or purchased electricity or adjustments in accordance with tracking provisions approved by the commission. **In addition to other tracking provisions the commission finds appropriate, the commission may approve periodic tracking mechanisms for water utilities and wastewater utilities to permit recovery of changes in property taxes. The commission may also approve periodic tracking mechanisms calculated to recover from customers located within the geographic boundaries of local units of government the incremental costs of operation and maintenance of water utilities and wastewater utilities resulting from policies or ordinances that are adopted by those local units and that the commission determines to be unusual but not necessarily unreasonable under section 101 of this chapter. The commission shall adopt rules under IC 4-22-2, including emergency rules in the manner provided by IC 4-22-2-37.1, to define what is unreasonable with respect to road cut permits and other specifications or policies established by a local unit that imposes costs on water or wastewater utilities.**

(b) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned utility which includes or authorizes any changes in charges based upon costs is effective without the approval of the commission. Before the commission approves any changes in the schedule of rates, tolls, and charges of an electric utility, which generates and sells electricity, based upon the cost of fuel to generate electricity or upon the cost of fuel included in the cost of purchased electricity, the utility consumer counselor shall examine the books and records of the public, municipally owned, or cooperatively owned generating utility to determine the cost of fuel upon which the proposed charges are based. In addition, before such a fuel cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the fuel charge. The utility consumer counselor shall conduct the utility consumer counselor's review and make a report to the commission within twenty (20) days after the utility's request for the fuel cost charge is filed. The commission shall hold the summary hearing and issue its order within twenty (20) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a fuel cost charge or such a summary hearing.

(c) Regardless of the pendency of any request for a fuel cost charge



by any electric utility, the books and records pertaining to the cost of fuel of all public, municipally owned, or cooperatively owned utilities that generate electricity shall be examined by the utility consumer counselor not less often than quarterly, and the books and records of all electric nongenerating public, municipally owned, or cooperatively owned utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the fuel cost charge. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(d) An electric generating utility may apply for a change in its fuel charge not more often than each three (3) months. When such application is filed the petitioning utility shall show to the commission its cost of fuel to generate electricity and the cost of fuel included in the cost of purchased electricity, for the period between its last order from the commission approving fuel costs in its basic rates and the latest month for which actual fuel costs are available. The petitioning utility shall also estimate its average fuel costs for the three (3) calendar months subsequent to the expiration of the twenty (20) day period allowed the commission in subsection (b). The commission shall conduct a formal hearing solely on the fuel cost charge requested in the petition subject to the notice requirements of IC 8-1-1-8 and shall grant the electric utility the requested fuel cost charge if it finds that:

- (1) the electric utility has made every reasonable effort to acquire fuel and generate or purchase power or both so as to provide electricity to its retail customers at the lowest fuel cost reasonably possible;
- (2) the actual increases in fuel cost through the latest month for which actual fuel costs are available since the last order of the commission approving basic rates and charges of the electric utility have not been offset by actual decreases in other operating expenses;
- (3) the fuel adjustment charge applied for will not result in the electric utility earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the electric utility were approved. However, subject to section 42.3 of this chapter, if the fuel charge applied for will result in the electric utility earning a return in excess of the return authorized by the commission, in the last proceeding in



which basic rates and charges of the electric utility were approved, the fuel charge applied for will be reduced to the point where no such excess of return will be earned; and

(4) the utility's estimate of its prospective average fuel costs for each such three (3) calendar months are reasonable after taking into consideration:

(A) the actual fuel costs experienced by the utility during the latest three (3) calendar months for which actual fuel costs are available; and

(B) the estimated fuel costs for the same latest three (3) calendar months for which actual fuel costs are available.

(e) Should the commission at any time determine that an emergency exists that could result in an abnormal change in fuel costs, it may, in order to protect the public from the adverse effects of such change suspend the provisions of subsection (d) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.

(f) Any change in the fuel cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a reasonable reference in the amendment that such charge is applicable to all of its filed rate schedules.

(g) No schedule of rates, tolls, and charges of a public, municipally owned, or cooperatively owned gas utility that includes or authorizes any changes in charges based upon gas costs is effective without the approval of the commission except those rates, tolls, and charges contained in schedules that contain specific provisions for changes in gas costs or the cost of gas that have previously been approved by the commission. Gas costs or cost of gas may include the gas utility's costs for gas purchased by it from pipeline suppliers, costs incurred for leased gas storage and related transportation, costs for supplemental and substitute gas supplies, costs incurred for exploration and development of its own sources of gas supplies and other expenses relating to gas costs as shall be approved by the commission. Changes in a gas utility's rates, tolls, and charges based upon changes in its gas costs shall be made in accordance with the following:

(1) Before the commission approves any changes in the schedule



of rates, tolls, and charges of a gas utility based upon the cost of the gas, the utility consumer counselor may examine the books and records of the public, municipally owned, or cooperatively owned gas utility to determine the cost of gas upon which the proposed changes are based. In addition, before such an adjustment to the gas cost charge becomes effective, the commission shall hold a summary hearing on the sole issue of the gas cost adjustment. The utility consumer counselor shall conduct the utility consumer counselor's review and make a report to the commission within thirty (30) days after the utility's request for the gas cost adjustment is filed. The commission shall hold the summary hearing and issue its order within thirty (30) days after it receives the utility consumer counselor's report. The provisions of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning the filing, printing, and changing of rate schedules and the time required for giving notice of hearing and requiring publication of notice do not apply to such a gas cost adjustment or such a summary hearing.

(2) Regardless of the pendency of any request for a gas cost adjustment by any gas utility, the books and records pertaining to cost of gas of all public, municipally owned, or cooperatively owned gas utilities shall be examined by the utility consumer counselor not less often than annually. The utility consumer counselor shall provide the commission with a report as to the examination of said books and records within a reasonable time following said examination. The utility consumer counselor may, if appropriate, request of the commission a reduction or elimination of the gas cost adjustment. Upon such request, the commission shall hold a hearing forthwith in the manner provided in sections 58, 59, and 60 of this chapter.

(3) A gas utility may apply for a change in its gas cost charge not more often than each three (3) months. When such application is filed, the petitioning utility shall show to the commission its cost of gas for the period between its last order from the commission approving gas costs in its basic rates and the latest month for which actual gas costs are available. The petitioning utility shall also estimate its average gas costs for a recovery period of not less than the three (3) calendar months subsequent to the expiration of the thirty (30) day period allowed the commission in subdivision (1). The commission shall conduct a summary hearing solely on the gas cost adjustment requested in the petition subject to the notice requirements of IC 8-1-1-8 and may grant the gas utility the



requested gas cost charge if it finds that:

- (A) the gas utility has made every reasonable effort to acquire long term gas supplies so as to provide gas to its retail customers at the lowest gas cost reasonably possible;
 - (B) the pipeline supplier or suppliers of the gas utility has requested or has filed for a change in the costs of gas pursuant to the jurisdiction and procedures of a duly constituted regulatory authority;
 - (C) the gas cost adjustment applied for will not result, in the case of a public utility, in its earning a return in excess of the return authorized by the commission in the last proceeding in which the basic rates and charges of the public utility were approved; however, subject to section 42.3 of this chapter, if the gas cost adjustment applied for will result in the public utility earning a return in excess of the return authorized by the commission in the last proceeding in which basic rates and charges of the gas utility were approved, the gas cost adjustment applied for will be reduced to the point where no such excess of return will be earned; and
 - (D) the utility's estimate of its prospective average gas costs for each such future recovery period is reasonable and gives effect to:
 - (i) the actual gas costs experienced by the utility during the latest recovery period for which actual gas costs are available; and
 - (ii) the actual gas costs recovered by the adjustment of the same recovery period.
- (4) Should the commission at any time determine that an emergency exists that could result in an abnormal change in gas costs, it may, in order to protect the public or the utility from the adverse effects of such change suspend the provisions of subdivision (3) as to the utility or utilities affected by such an emergency and initiate such procedures as may be necessary to protect both the public and the utility from harm. The commission shall lift the suspension when it is satisfied the emergency no longer exists.
- (5) Any change in the gas cost charge granted by the commission under the provisions of this section shall be reflected in the rates charged by the utility in the same manner as any other changes in rates granted by the commission in a case approving the basic rates and charges of the utility. However, the utility may file the change as a separate amendment to its rate schedules with a



reasonable reference in the amendment that such charge is applicable to all of its filed rate schedules.

SECTION 2. IC 8-1-2-61.6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 61.6. (a) This section applies to water utilities that serve less than ~~five~~ **eight** thousand ~~(5,000)~~ **(8,000)** customers.

(b) As used in this section, "purchaser" means a water utility that buys water from another water utility on a wholesale basis.

(c) As used in this section, "supplier" means a water utility that provides water to another water utility on a wholesale basis.

(d) As used in this section, "water utility" means:

- (1) an investor owned water utility;
- (2) a municipally owned water utility;
- (3) a conservancy district (as described in IC 14-33); or
- (4) a nonprofit water utility.

(e) Notwithstanding section 42 of this chapter, whenever a supplier petitions the commission for a change in rates or charges that affect its wholesale rates, the supplier shall notify each of its wholesale customers by United States registered mail. The notice must include the cause number assigned to the supplier's petition.

(f) Upon notification by the supplier, the purchaser of a wholesale water supply may notify the secretary of the commission of its intent to monitor its supplier's cause. The commission shall then provide a copy of the supplier's prehearing conference order upon its approval to the purchaser.

(g) If the purchaser requests simultaneous rate relief for its cost of water in conjunction with the relief requested by its supplier, the purchaser shall complete and file forms prescribed by the commission within fourteen (14) days of the supplier's case in chief.

(h) After the purchaser has filed the forms as described in subsection (g), the commission may provide rate relief to the purchaser simultaneously with an order approved for its supplier.

SECTION 3. IC 8-1-30.3-5, AS AMENDED BY P.L.160-2020, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: 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:

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(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, **plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the 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, **plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the 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.

SECTION 4. IC 8-1-31-5, AS AMENDED BY P.L.91-2017, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 5. As used in this chapter, "eligible infrastructure improvements" means **projects that:**

(1) are:

- (A) new ~~used and useful~~ water or wastewater utility distribution or collection plant projects; ~~that: or~~



(B) projects to relocate existing utility plant, including projects to relocate utility plant or equipment to accommodate the construction, reconstruction, or improvement of a highway, street, or road (as defined in IC 8-23-1-23), including projects under IC 8-25;

(+) (2) do not increase revenues by connecting to new customers, even if the projects provide greater available capacity with respect to an eligible utility's distribution or collection plant; and

(-) (3) either:

(A) for a public utility:

(i) are in service and used and useful; and

(ii) were not included in the public utility's rate base in its most recent general rate case; or

(B) for a municipally owned or not-for-profit utility:

(i) are in service; or will be extensions or replacements of projects described in subdivision (1), as described in section 5.5(2)(B) or 5.5(3)(B) of this chapter, as applicable;

(ii) were not included on the utility's balance sheet as plant in service in the utility's most recent general rate case; and

(iii) are not subject to infrastructure improvements that are being recovered or have been recovered through rates or another rate adjustment mechanism.

SECTION 5. IC 8-1-31-5.5, AS AMENDED BY P.L.212-2015, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 5.5. As used in this chapter, "infrastructure improvement costs" means the following:

(1) For a public utility:

(A) depreciation expenses; and

(B) property taxes to be paid by the public utility based upon the first assessment date following placement in service; and

(C) pretax return;

associated with eligible infrastructure improvements.

(2) The following for a municipally owned utility:

(A) debt service and Depreciation expenses. associated with eligible infrastructure improvements:

(B) Adequate money for making extensions and replacements of eligible infrastructure improvements to the extent not provided for through depreciation, as provided in IC 8-1.5-3-8(c).



(C) Debt service on funds borrowed to pay for eligible infrastructure improvements.

(D) To the extent applicable, property taxes to be paid by the municipally owned utility based upon the first assessment date following placement in service of eligible infrastructure improvements.

(3) **The following** for a not-for-profit utility:

(A) Debt service associated with on funds borrowed to pay for eligible infrastructure improvements.

(B) Adequate money for making extensions and replacements of eligible infrastructure improvements.

(C) To the extent applicable, property taxes to be paid by the not-for-profit utility based upon the first assessment date following placement in service of eligible infrastructure improvements.

SECTION 6. IC 8-1-31-11.5, AS ADDED BY P.L.212-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 11.5. In determining the amount of allowable recovery of infrastructure improvement costs for a municipally owned utility, the commission may consider the following factors:

(1) Adequate money for making extensions and replacements of eligible infrastructure improvements, to the extent not provided for through depreciation, as provided in IC 8-1.5-3-8(c).

~~(1)~~ **(2)** Debt service on funds borrowed to pay for eligible infrastructure improvements.

~~(2)~~ **(3)** Depreciation expenses on eligible infrastructure improvements based on the same rate or rates of depreciation approved by the commission for the calculation of depreciation in the utility's most recent rate case.

~~(3)~~ **(4)** Other components that the commission considers appropriate.

SECTION 7. IC 8-1-31-11.6, AS ADDED BY P.L.212-2015, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 11.6. In determining the amount of allowable recovery of infrastructure improvement costs for a not-for-profit utility, the commission may consider the following factors:

(1) Adequate money for making extensions and replacements of eligible infrastructure improvements.

~~(1)~~ **(2)** Debt service on funds borrowed to pay for eligible infrastructure improvements.

~~(2)~~ **(3)** Other components that the commission considers



appropriate.

SECTION 8. IC 8-1-31-13, AS AMENDED BY P.L.137-2020, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 13. (a) The commission may not approve a petition filed under section 8 or 10 of this chapter to the extent it would produce total adjustment revenues exceeding ten percent (10%) of the eligible utility's base revenue level approved by the commission in the eligible utility's most recent general rate proceeding.

(b) Subsection (a) does not apply to:

(1) infrastructure improvement costs associated with eligible infrastructure improvements that are placed in service due to the construction, reconstruction, or improvement of a highway, street, or road (as defined in IC 8-23-1-23), **including projects under IC 8-25; or**

(2) **property taxes associated with eligible infrastructure improvements.**

SECTION 9. IC 8-1-31-14, AS AMENDED BY P.L.212-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 14. An adjustment amount proposed under section 8 of this chapter may be calculated based on a reasonable estimate of ~~sales meter size~~ in the period in which the charge will be in effect. At the end of each twelve (12) month period following the date on which the commission initially approves an adjustment amount for an eligible utility following the eligible utility's most recent general rate case, and using procedures approved by the commission, the eligible utility shall reconcile the difference between adjustment revenues and infrastructure improvement costs during that period and recover or refund the difference, as appropriate, through additional adjustments.

SECTION 10. IC 8-1-31-15, AS AMENDED BY P.L.212-2015, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 15. ~~An eligible~~ **A public** utility for which the commission has approved a petition under section 8 or 10 of this chapter shall file revised rate schedules resetting the adjustment amount if new basic rates and charges become effective for the ~~eligible~~ **public** utility following a commission order authorizing a general increase in rates and charges that includes in the **public** utility's rate base eligible infrastructure improvements reflected in the adjustment amount.

SECTION 11. IC 8-1-31-15.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 15.5. (a) This section applies only to an eligible utility that is:**

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(1) a municipally owned utility; or

(2) a not-for-profit utility.

(b) An eligible utility's adjustment amount approved under section 8 or 10 of this chapter shall be reset to zero (0) upon the approval of new basic rates and charges for the eligible utility by the commission in a general rate case that results in the inclusion of eligible infrastructure improvements in the eligible utility's basic rates and charges.

SECTION 12. IC 8-1.5-2-6.1, AS AMENDED BY P.L.229-2019, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6.1. (a) This section applies to a municipality that adopts an ordinance under section 5(d) of this chapter after March 28, 2016.

(b) Before a municipality may proceed to sell or otherwise dispose of all or part of its nonsurplus utility property under an ordinance adopted under section 5(d) of this chapter, the municipality and the prospective purchaser must obtain the approval of the commission under this section.

(c) As part of the sale or disposition of the property, the municipality and the prospective purchaser may include terms and conditions that the municipality and the prospective purchaser consider to be equitable to the existing utility customers of:

(1) the municipality's municipally owned utility; and

(2) the prospective purchaser;

as applicable.

(d) The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest. For purposes of this section, the purchase price of the municipality's nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of this chapter.

(e) The following apply to the commission's determination under subsection (d) as to whether the proposed sale or disposition according to the proposed terms and conditions is in the public interest:

(1) If:

(A) the prospective purchaser petitions the commission under IC 8-1-30.3-5(d); and

(B) the commission approves the prospective purchaser's petition;

the proposed sale or disposition is considered to be in the public



interest.

(2) If subdivision (1) does not apply and subject to subsection (h), the commission shall consider the extent to which the proposed terms and conditions of the proposed sale or disposition would require the existing utility customers of either the prospective purchaser or the municipality's municipally owned utility, as applicable, to pay rates that would subsidize utility service to the other party's existing customers. For purposes of this subdivision, the proposed terms and conditions will not result in rates that would subsidize service to other customers if the amount to be recorded as net original cost under subsection (f) is not greater than two percent (2%) of the prospective purchaser's net original cost rate base as determined in the prospective purchaser's most recent general rate case, **plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate case.** If the amount to be recorded is greater than two percent (2%), the commission shall proceed to determine whether:

(A) the proposed terms and conditions would result in a subsidy described in this subdivision; and

(B) the subsidy would cause the proposed terms and conditions of the proposed sale or disposition not to be in the public interest.

The commission shall calculate the amount of the subsidy that would result and shall set forth in an order under this section such changes to the proposed terms and conditions as the commission considers appropriate to address the subsidy. The prospective purchaser and the municipality shall each have thirty (30) days from the date of the commission's order setting forth the commission's changes to either accept or reject the changes. If either party rejects the commission's changes, the proposed sale or disposition is considered not to be in the public interest.

(3) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required after the proposed sale or disposition.

(4) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall accept as reasonable the valuation of the nonsurplus utility property determined through an appraisal and review under section 5 of this chapter.

(f) As part of an order approving a sale or disposition of property



under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:

- (1) the full purchase price;
- (2) incidental expenses; and
- (3) other costs of acquisition;

allocated in a reasonable manner among appropriate utility plant in service accounts.

(g) The commission shall issue a final order under this section not later than two hundred ten (210) days after the filing of the parties' case in chief.

(h) In reviewing a proposed sale or disposition under subsection (e), the commission shall determine whether the factors set forth in IC 8-1-30.3-5(d) are satisfied as applied to the proposed sale or disposition of the municipality's nonsurplus municipally owned utility property for purposes of section 5(m) of this chapter. If the commission determines that the factors set forth in IC 8-1-30.3-5(d):

- (1) are satisfied as applied to the proposed sale or disposition, section 5(g) through 5(k) of this chapter does not apply to the municipality's ordinance adopted under section 5(d) of this chapter; or
- (2) are not satisfied as applied to the proposed sale or disposition:
 - (A) section 5(g) through 5(k) of this chapter applies to the municipality's ordinance adopted under section 5(d) of this chapter; and
 - (B) the question as to whether the sale or disposition should be made must be submitted to the voters of the municipality at a special or general election if at least the number of the registered voters of the municipality set forth in section 5(h) of this chapter sign and present a petition to the legislative body opposing the sale or disposition, in accordance with section 5(g) through 5(k) of this chapter.

However, notwithstanding this subsection, in reviewing a proposed sale or disposition under subsection (e)(2), the commission may not condition its approval of the proposed sale or disposition on whether the factors set forth in IC 8-1-30.3-5(d) are satisfied or on any other factors except those provided for in subsection (e)(2), (e)(3), and (e)(4).



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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