

SENATE BILL No. 472

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1; IC 8-1.5-2.

Synopsis: Utility rates and acquisitions. Provides that an order affecting rates of service may be entered by the utility regulatory commission (IURC) without a formal public hearing in the case of any public or municipally owned utility that either: (1) serves less than 5,000 customers; or (2) has initiated a rate case on behalf of a single division of the utility and that division: (A) serves less than 5,000 customers; and (B) has an IURC-approved schedule of rates and charges that is separate and independent from that of any other division of the utility. (Current law permits the IURC to enter a service rate order without a public hearing only in the case of a public or municipally owned utility that itself serves less than 5,000 customers.) Changes the term "distressed utility" to "offered utility" for purposes of provisions regarding acquisition of water or wastewater utilities. Makes the following changes for purposes of provisions under which a utility that acquires property from another utility at a cost differential may petition the Indiana utility regulatory commission (commission) to include the cost differential in the acquiring utility's rate base: (1) Provides conditions for applicability of the rebuttable presumption that the cost differential is reasonable. (2) Amends the findings the commission must make in order to approve the petition. (3) Provides that notice of the filing of the petition may be provided to customers of the acquiring utility company in a billing insert. Provides, for purposes of the requirement that a municipal legislative body or municipal executive that plans to sell or dispose of nonsurplus municipally owned utility property must appoint appraisers in a writing that is a public record, that it is sufficient that the municipal legislative body or
(Continued next page)

Effective: July 1, 2019.

Koch

January 14, 2019, read first time and referred to Committee on Utilities.



Digest Continued

municipal executive provide for the appointment in written contracts with the appraisers or the firms with whom the appraisers are employed. Provides that the legislative body and the municipal executive must hold a public hearing regarding the appraisal and proposed sale not later than 180 days (rather than 90 days, under current law) after the appraisal is complete. Amends the factors the commission must consider in deciding whether the sale or disposition is in the public interest.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 472

A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

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

1 SECTION 1. IC 8-1-2-61.5 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 61.5. (a) An order
 3 affecting rates of service may be entered by the commission without a
 4 formal public hearing in the case of any public or municipally owned
 5 utility that:
 6 (1) **either:**
 7 (A) serves less than five thousand (5,000) customers; **or**
 8 (B) **has initiated a rate case on behalf of a single division of**
 9 **the utility and that division:**
 10 (i) **serves less than five thousand (5,000) customers;**
 11 (ii) **has a commission-approved schedule of rates and**
 12 **charges that is separate and independent from that of**
 13 **any other division of the utility; and**
 14 (iii) **itself satisfies subdivisions (2) and (3);**
 15 (2) primarily provides retail service to customers; and



- 1 (3) does not serve extensively another utility.
- 2 (b) The commission may require a formal public hearing on any
- 3 petition or complaint filed under this section concerning a rate change
- 4 request by a utility upon **its the commission's** own motion or upon
- 5 motion of any of the following:
- 6 (1) The utility consumer counselor.
- 7 (2) A public or municipal corporation.
- 8 (3) Ten (10) individuals, firms, limited liability companies,
- 9 corporations, or associations.
- 10 (4) Ten (10) complainants of any class described in this
- 11 subsection.
- 12 (c) A not-for-profit water utility or a not-for-profit sewer utility must
- 13 include in its petition a statement as to whether it has an outstanding
- 14 indebtedness to the federal government. When an indebtedness is
- 15 shown to exist, the commission shall require a formal hearing, unless
- 16 the utility also has included in its filing written consent from the agency
- 17 of the federal government with which the utility has outstanding
- 18 indebtedness for the utility to obtain an order affecting its rates from
- 19 the commission without a formal hearing.
- 20 (d) Notwithstanding any other provision of this chapter, the
- 21 commission may:
- 22 (1) on **its the commission's** own motion; or
- 23 (2) at the request of:
- 24 (A) the utility consumer counselor;
- 25 (B) a water or sewer utility described in subsection (a);
- 26 (C) ten (10) individuals, firms, limited liability companies,
- 27 corporations, or associations; or
- 28 (D) ten (10) complainants of any class described in this
- 29 subsection;
- 30 adopt a rule under IC 4-22-2, or issue an order in a specific proceeding,
- 31 providing for the development, investigation, testing, and use of
- 32 regulatory procedures or generic standards with respect to water or
- 33 sewer utilities described in subsection (a) or their services.
- 34 (e) The commission may adopt a rule or enter an order under
- 35 subsection (d) only if it finds, after notice and hearing, that the
- 36 proposed regulatory procedures or standards are in the public interest
- 37 and promote at least one (1) of the following:
- 38 (1) Utility cost minimalization to the extent that a utility's quality
- 39 of service or facilities are not diminished.
- 40 (2) A more accurate evaluation by the commission of a utility's
- 41 physical or financial conditions or needs.
- 42 (3) A less costly regulatory procedure for a utility, its consumers,



1 or the commission.

2 (4) Increased utility management efficiency that is beneficial to
3 consumers.

4 SECTION 2. IC 8-1-30.3-1, AS ADDED BY P.L.189-2015,
5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2019]: Sec. 1. As used in this chapter, "cost differential"
7 means the difference between:

8 (1) the cost to a utility company that acquires utility property from
9 a ~~distressed an offered~~ utility, including the purchase price,
10 incidental expenses, and other costs of acquisition; minus

11 (2) the difference between:

12 (A) the cost of the utility property when originally put into
13 service by the ~~distressed offered~~ utility; minus

14 (B) contributions or advances in aid of construction plus
15 applicable accrued depreciation.

16 SECTION 3. IC 8-1-30.3-2 IS REPEALED [EFFECTIVE JULY 1,
17 2019]. Sec. 2: As used in this chapter, "distressed utility" refers to a
18 utility company whose property is the subject of an acquisition
19 described in section 5(a) of this chapter.

20 SECTION 4. IC 8-1-30.3-2.6 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2019]: Sec. 2.6. As used in this chapter,
23 "offered utility" means a utility company whose property is the
24 subject of an acquisition described in section 5(a) of this chapter.

25 SECTION 5. IC 8-1-30.3-5, AS AMENDED BY P.L.64-2018,
26 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
27 JULY 1, 2019]: Sec. 5. (a) This section applies if:

28 (1) a utility company acquires property from ~~another an offered~~
29 utility company at a ~~cost differential~~ in a transaction involving a
30 willing buyer and a willing seller; and

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

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

35 (c) **If the acquisition is made under IC 8-1.5-2-6.1, and to the**
36 **extent the purchase price does not exceed the appraised value as**
37 **determined under IC 8-1.5-2-5, the purchase price is considered**
38 **reasonable for purposes of subsection (d) and any resulting cost**
39 **differential is considered reasonable.**

40 (c) (d) **Before closing on the acquisition**, the utility company that
41 acquires the utility property may petition the commission to include ~~the~~
42 **any cost differentials differential** as part of its rate base **in future rate**



1 **cases.** The commission shall approve the petition if the commission
2 finds the following:

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

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

9 (3) The utility company will **improve economies of scale or, if**
10 **otherwise needed,** make reasonable and prudent improvements
11 to ~~ensure the offered utility's plant, the offered utility's~~
12 **operations, or both, so** that customers of the ~~distressed offered~~
13 utility will receive adequate, efficient, safe, and reasonable
14 service.

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

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

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

20 (7) The rates charged by the utility company ~~before acquiring the~~
21 ~~utility property of the distressed utility~~ will not increase
22 unreasonably **in future general rate cases solely** as a result of
23 acquiring the utility property **from the offered utility. For**
24 **purposes of this subdivision, the rates and charges will not**
25 **increase unreasonably in future general rate cases so long as**
26 **the net original cost proposed to be recorded under subsection**
27 **(f) is not greater than one percent (1%) of the acquiring**
28 **utility's net original cost rate base as determined in the**
29 **acquiring utility's most recent general rate case.**

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

33 ~~(d)~~ (e) A utility company may petition the commission in an
34 independent proceeding to approve a petition under subsection (e)
35 before the financial close of the transaction if the utility company
36 provides for **In connection with its petition under subsection (d), the**
37 **acquiring utility company shall provide** the following:

38 ~~(1)~~ Notice of the proposed acquisition and any proposed changes
39 in rates or charges to customers of the distressed utility.

40 ~~(2)~~ (1) Notice to customers of the **acquiring** utility company that
41 a petition has been filed with the commission under this chapter.
42 The notice provided under this subdivision must include the cause



1 number assigned to the petition. **Notice under this subdivision**
 2 **may be provided to customers in a billing insert.**

3 ~~(3)~~ **(2)** Notice to the office of the utility consumer counselor.

4 ~~(4)~~ **A plan for reasonable and prudent improvements to provide**
 5 **adequate, efficient, safe, and reasonable service to customers of**
 6 **the distressed utility.**

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

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

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

19 SECTION 6. IC 8-1-30.3-6, AS AMENDED BY P.L.85-2017,
 20 SECTION 37, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2019]: Sec. 6. For purposes of section ~~5(e)(2)~~ **5(d)(2)** of this
 22 chapter, a ~~distressed~~ **an offered** utility is **too small to capture**
 23 **economies of scale or is** not furnishing or maintaining adequate,
 24 efficient, safe, and reasonable service and facilities if the commission
 25 finds one (1) or more of the following:

- 26 (1) The ~~distressed offered~~ utility violated one (1) or more state or
 27 federal statutory or regulatory requirements in a manner that the
 28 commission determines affects the safety, adequacy, efficiency,
 29 or reasonableness of its services or facilities.
 30 (2) The ~~distressed offered~~ utility has inadequate financial,
 31 managerial, or technical ability or expertise.
 32 (3) The ~~distressed offered~~ utility fails to provide water in
 33 sufficient amounts, that is palatable, or at adequate volume or
 34 pressure.
 35 (4) The ~~distressed offered~~ utility, due to necessary improvements
 36 to its plant or distribution or collection system or operations, is
 37 unable to furnish and maintain adequate service to its customers
 38 at rates equal to or less than those of the acquiring utility
 39 company.
 40 (5) The ~~distressed offered~~ utility
 41 ~~(A) is municipally owned utility property of a municipally~~
 42 ~~owned utility that serves fewer than five thousand (5,000)~~



1 customers. ~~and~~
 2 ~~(B) is being sold under IC 8-1.5-2-6.1.~~
 3 (6) Any other facts that the commission determines demonstrate
 4 the ~~distressed~~ **offered** utility's inability to **capture economies of**
 5 **scale or to** furnish or maintain adequate, efficient, safe, or
 6 reasonable service or facilities.

7 SECTION 7. IC 8-1.5-2-4, AS AMENDED BY P.L.98-2016,
 8 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2019]: Sec. 4. Whenever the municipal legislative body or the
 10 municipal executive determines to sell or otherwise dispose of
 11 nonsurplus municipally owned utility property, it shall provide for the
 12 following in a ~~written document~~ **writing** that shall be made available,
 13 **upon request**, for inspection and copying at the offices of the
 14 municipality's municipally owned utility in accordance with IC 5-14-3:

- 15 (1) The appointment, as follows, of three (3) residents of Indiana
 16 to serve as appraisers:
 17 (A) One (1) disinterested person who is an engineer licensed
 18 under IC 25-31-1.
 19 (B) One (1) disinterested appraiser licensed under IC 25-34.1.
 20 (C) One disinterested person who is either:
 21 (i) an engineer licensed under IC 25-31-1; or
 22 (ii) an appraiser licensed under IC 25-34.1.
 23 (2) The appraisal of the property.
 24 (3) The time that the appraisal is due.

25 **It is sufficient for purposes of this section that the municipal**
 26 **legislative body or municipal executive provides for the**
 27 **appointment in written contracts with the appraisers or the firms**
 28 **with whom the appraisers are employed.**

29 SECTION 8. IC 8-1.5-2-5, AS AMENDED BY P.L.98-2016,
 30 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2019]: Sec. 5. (a) Each appraiser appointed as provided by
 32 section 4 of this chapter must:

- 33 (1) by education and experience, have such expert and technical
 34 knowledge and qualifications as to make a proper appraisal and
 35 valuation of the property of the type and nature involved in the
 36 sale;
 37 (2) be a disinterested person; and
 38 (3) not be a resident or taxpayer of the municipality.
 39 (b) The appraisers shall:
 40 (1) be sworn to make a just and true valuation of the property; and
 41 (2) return their appraisal, in writing, to the:
 42 (A) municipal legislative body; or



- 1 (B) municipal executive;
 2 that appointed them within the time fixed in the ~~written document~~
 3 **writing** appointing them under section 4 of this chapter.
- 4 (c) If all three (3) appraisers cannot agree as to the appraised value,
 5 the appraisal, when signed by two (2) of the appraisers, constitutes a
 6 good and valid appraisal.
- 7 (d) If, after the return of the appraisal by the appraisers, the
 8 legislative body and the municipal executive decide to proceed with the
 9 sale or disposition of the nonsurplus municipally owned utility
 10 property, the legislative body shall, not earlier than the thirty (30) day
 11 period described in subsection (e) and not later than ~~ninety (90) one~~
 12 **hundred eighty (180)** days after the return of the appraisal, hold a
 13 public hearing to do the following:
- 14 (1) Review and explain the appraisal.
 15 (2) Receive public comment on the proposed sale or disposition
 16 of the nonsurplus municipally owned utility property.
- 17 Not less than thirty (30) days or more than sixty (60) days after the date
 18 of a hearing under this section, the legislative body may adopt an
 19 ordinance providing for the sale or disposition of the nonsurplus
 20 municipally owned utility property, subject to subsections (f) and (g)
 21 and, in the case of an ordinance adopted under this subsection after
 22 March 28, 2016, subject to section 6.1 of this chapter. The legislative
 23 body is not required to adopt an ordinance providing for the sale or
 24 disposition of the nonsurplus municipally owned utility property if,
 25 after the hearing, the legislative body determines it is not in the interest
 26 of the municipality to proceed with the sale or disposition. Notice of a
 27 hearing under this section shall be published in the manner prescribed
 28 by IC 5-3-1.
- 29 (e) The hearing on the proposed sale or disposition of the
 30 nonsurplus municipally owned utility property may not be held less
 31 than thirty (30) days after notice of the hearing is given as required by
 32 subsection (d).
- 33 (f) Subject to subsection (j), an ordinance adopted under subsection
 34 (d) does not take effect until the latest of the following:
- 35 (1) The expiration of the thirty (30) day period described in
 36 subsection (g), if the question as to whether the sale or disposition
 37 should be made is not submitted to the voters of the municipality
 38 under subsection (g).
 39 (2) If:
 40 (A) the question as to whether the sale or disposition shall be
 41 made is submitted to the voters of the municipality under
 42 subsection (g); and



- 1 (B) a majority of the voters voting on the question vote for the
 2 sale or disposition;
 3 at such time that the vote is determined to be final.
 4 (3) The effective date specified by the legislative body in the
 5 ordinance.
 6 (g) Subject to subsection (m) and to section 6.1 of this chapter in the
 7 case of an ordinance adopted under subsection (d) after March 28,
 8 2016, if:
 9 (1) the legislative body adopts an ordinance under subsection (d);
 10 and
 11 (2) not later than thirty (30) days after the date the ordinance is
 12 adopted at least the number of the registered voters of the
 13 municipality set forth in subsection (h) sign and present a petition
 14 to the legislative body opposing the sale or disposition;
 15 the legislative body shall submit the question as to whether the sale or
 16 disposition shall be made to the voters of the municipality at a special
 17 or general election. In submitting the public question to the voters, the
 18 legislative body shall certify within the time set forth in IC 3-10-9-3, if
 19 applicable, the question to the county election board of the county
 20 containing the greatest percentage of population of the municipality.
 21 The county election board shall adopt a resolution setting forth the text
 22 of the public question and shall submit the question as to whether the
 23 sale or disposition shall be made to the voters of the municipality at a
 24 special or general election on a date specified by the municipal
 25 legislative body. Pending the results of an election under this
 26 subsection, the municipality may not take further action to sell or
 27 dispose of the property as provided in the ordinance.
 28 (h) Subject to subsection (m) and to section 6.1 of this chapter in the
 29 case of an ordinance adopted under subsection (d) after March 28,
 30 2016, the number of signatures required on a petition opposing the sale
 31 or disposition under subsection (g) is as follows:
 32 (1) In a municipality with not more than one thousand (1,000)
 33 registered voters, thirty percent (30%) of the registered voters.
 34 (2) In a municipality with at least one thousand one (1,001)
 35 registered voters and not more than five thousand (5,000)
 36 registered voters, fifteen percent (15%) of the registered voters.
 37 (3) In a municipality with at least five thousand one (5,001)
 38 registered voters and not more than twenty-five thousand (25,000)
 39 registered voters, ten percent (10%) of the registered voters.
 40 (4) In a municipality with at least twenty-five thousand one
 41 (25,001) registered voters, five percent (5%) of the registered
 42 voters.



1 (i) If a majority of the voters voting on the question vote for the sale
 2 or disposition, the legislative body shall proceed to sell or dispose of
 3 the property as provided in the ordinance, subject to subsection (m) and
 4 to section 6.1 of this chapter in the case of an ordinance adopted under
 5 subsection (d) after March 28, 2016.

6 (j) If a majority of the voters voting on the question vote against the
 7 sale or disposition, the ordinance adopted under subsection (d) does not
 8 take effect and the sale or disposition may not be made, subject to
 9 subsection (m) and to section 6.1 of this chapter in the case of an
 10 ordinance adopted under subsection (d) after March 28, 2016.

11 (k) If:

12 (1) the legislative body adopts an ordinance under subsection (d);
 13 and

14 (2) after the expiration of the thirty (30) day period described in
 15 subsection (g), a petition is not filed;

16 the municipal legislative body may proceed to sell the property as
 17 provided in the ordinance, subject to subsection (m) and to section 6.1
 18 of this chapter in the case of an ordinance adopted under subsection (d)
 19 after March 28, 2016.

20 (l) Notwithstanding the procedures set forth in this section, if:

21 (1) before July 1, 2015, a municipality adopts an ordinance under
 22 this section for the sale or disposition of nonsurplus municipally
 23 owned utility property in accordance with the procedures set forth
 24 in this section before its amendment on July 1, 2015; and

25 (2) the ordinance adopted takes effect before July 1, 2015, in
 26 accordance with the procedures set forth in this section before its
 27 amendment on July 1, 2015;

28 the ordinance is not subject to challenge under subsection (g) after June
 29 30, 2015, regardless of whether the thirty (30) day period described in
 30 subsection (g) expires after June 30, 2015. An ordinance described in
 31 this subsection is effective for all purposes and is legalized and
 32 validated.

33 (m) Subsections (g) through (k) do not apply to an ordinance
 34 adopted under subsection (d) after March 28, 2016, if the commission
 35 determines, in reviewing the proposed sale or disposition under section
 36 6.1(h) of this chapter, that the factors set forth in ~~IC 8-1-30.3-5(c)~~
 37 **IC 8-1-30.3-5(d)** are satisfied as applied to the proposed sale or
 38 disposition.

39 SECTION 9. IC 8-1.5-2-6.1, AS AMENDED BY P.L.64-2018,
 40 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2019]: Sec. 6.1. (a) This section applies to a municipality that
 42 adopts an ordinance under section 5(d) of this chapter after March 28,



- 1 2016.
- 2 (b) Before a municipality may proceed to sell or otherwise dispose
- 3 of all or part of its nonsurplus utility property under an ordinance
- 4 adopted under section 5(d) of this chapter, the municipality and the
- 5 prospective purchaser must obtain the approval of the commission
- 6 under this section.
- 7 (c) As part of the sale or disposition of the property, the
- 8 municipality and the prospective purchaser may include terms and
- 9 conditions that the municipality and the prospective purchaser consider
- 10 to be equitable to the existing utility customers of:
- 11 (1) the municipality's municipally owned utility; and
- 12 (2) the prospective purchaser;
- 13 as applicable.
- 14 (d) The commission shall approve the sale or disposition of the
- 15 property according to the terms and conditions proposed by the
- 16 municipality and the prospective purchaser if the commission finds that
- 17 the sale or disposition according to the terms and conditions proposed
- 18 is in the public interest. For purposes of this section, the purchase price
- 19 of the municipality's nonsurplus utility property shall be considered
- 20 reasonable if it does not exceed the appraised value set forth in the
- 21 appraisal required under section 5 of this chapter.
- 22 (e) The following apply to the commission's determination under
- 23 subsection (d) as to whether the proposed sale or disposition according
- 24 to the proposed terms and conditions is in the public interest:
- 25 (1) If:
- 26 (A) the ~~municipality's municipally owned utility~~ **prospective**
- 27 **purchaser** petitions the commission under IC 8-1-30.3-5(d);
- 28 and
- 29 (B) the commission approves the ~~municipality's municipally~~
- 30 ~~owned utility's~~ **prospective purchaser's** petition; ~~under~~
- 31 ~~IC 8-1-30.3-5(c);~~
- 32 the proposed sale or disposition is considered to be in the public
- 33 interest.
- 34 (2) If subdivision (1) does not apply and subject to subsection (h),
- 35 the commission shall consider the extent to which the proposed
- 36 terms and conditions of the proposed sale or disposition would
- 37 require the existing utility customers of either the prospective
- 38 purchaser or the municipality's municipally owned utility, as
- 39 applicable, to pay rates that would subsidize utility service to the
- 40 other party's existing customers. **For purposes of this**
- 41 **subdivision, the proposed terms and conditions will not result**
- 42 **in rates that would subsidize service to other customers if the**



1 **amount to be recorded as net original cost under subsection**
 2 **(f) is not greater than one percent (1%) of the prospective**
 3 **purchaser's net original cost rate base as determined in the**
 4 **prospective purchaser's most recent general rate case. If the**
 5 **amount to be recorded is greater than one percent (1%), the**
 6 **commission ~~determines that:~~ shall proceed to determine**
 7 **whether:**

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

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

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

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

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

32 (f) As part of an order approving a sale or disposition of property
 33 under this section, the commission shall, without regard to amounts
 34 that may be recorded on the books and records of the municipality and
 35 without regard to any grants or contributions previously received by the
 36 municipality, provide that for ratemaking purposes, the prospective
 37 purchaser shall record as the net original cost rate base an amount
 38 equal to:

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

42 allocated in a reasonable manner among appropriate utility plant in



1 service accounts.

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

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

12 (1) are satisfied as applied to the proposed sale or disposition,
 13 section 5(g) through 5(k) of this chapter does not apply to the
 14 municipality's ordinance adopted under section 5(d) of this
 15 chapter; or

16 (2) are not satisfied as applied to the proposed sale or disposition:
 17 (A) section 5(g) through 5(k) of this chapter applies to the
 18 municipality's ordinance adopted under section 5(d) of this
 19 chapter; and

20 (B) the question as to whether the sale or disposition should be
 21 made must be submitted to the voters of the municipality at a
 22 special or general election if at least the number of the
 23 registered voters of the municipality set forth in section 5(h) of
 24 this chapter sign and present a petition to the legislative body
 25 opposing the sale or disposition, in accordance with section
 26 5(g) through 5(k) of this chapter.

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

