

The Future of Your Utility

Positioning Your Community to Succeed in a Sellout Evaluation



AMERICAN
**PUBLIC
POWER**
ASSOCIATION™

Powering Strong Communities

The Future of Your Utility

Positioning Your Community to Succeed in a Sellout Evaluation

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The American Public Power Association is the voice of not-for-profit, community-owned utilities that power 2,000 towns and cities nationwide. We represent public power before the federal government to protect the interests of the more than 49 million people that public power utilities serve, and the 93,000 people they employ. Our association advocates and advises on electricity policy, technology, trends, training, and operations. Our members strengthen their communities by providing superior service, engaging citizens, and instilling pride in community-owned power.

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The Future of Your Utility

Positioning Your Community to Succeed in a Sellout Evaluation

Despite the many changes in the electric industry, public power utilities have remained true to their fundamental commitment to their customer-owners: to serve. Public power utilities¹ offer competitive rates, high reliability, local control, public accountability and responsive customer service to the communities they serve.

As the electric industry continues to evolve, utility priorities now include investing in aging infrastructure and new technology; changing or diversifying the utility's power supply portfolio, including using renewable resources and increasing energy efficiency and demand response; protecting the environment; and responding to changing customer expectations. Electric utilities also have obligations to ensure the reliability and security of the transmission grid and other electric infrastructure. As they face these challenges, public power utilities' close relationships with their customers allow them to set a course that best serves their communities' interests.

The public power business model is based on the tenets of local control, not-for-profit operations, low-cost delivery of service, and an ultimate focus on the needs of customers. This model has long been successful. But fiscal pressures on local government, the expansion of traditional competitors, and the existence of new market entrants may lead to debate on whether your community should continue to own and operate its own utility.

The best defense against a sellout attempt is to make sure your utility is well run, and that your customers and stakeholders understand the value they receive from owning a public power utility. Long before the future of your utility comes into question, you should determine the strengths and weaknesses of your utility, identify potential warning signs and develop a communication campaign to build positive goodwill within your community.

If a sellout attempt or buyout offer emerges, you may be called upon to decide if the utility should be sold or leased and, if so, at what price. The sale of such a valuable asset, which reflects the investments of its past and present customer-owners over many years, is a complex issue and deserves careful consideration.

Whether a buyout offer comes from a prospective new owner or the notion of selling your utility is raised by a local policymaker, the reasons for selling a valuable community asset should be clearly understood and carefully examined, and the community needs to be kept fully informed of the formal process for considering such a sale and the citizens' role in the ultimate decision. The sale of a public power utility is a drastic measure and those who propose selling should be required to demonstrate clearly how the community would benefit from the change.

Many public power utilities have been providing reliable, responsive, low-cost service for more than a hundred years. Public power utilities provide value beyond privately owned utilities because they are community-owned, locally controlled and operate on a not-for-profit basis. Because of these long-term, important contributions to customers and the community, there must be compelling reasons—beyond the short-term cash value of the assets—to give up those benefits.

This manual will help you work through the major issues in understanding the value of your community-owned utility, and the importance of running your utility effectively. It will help you identify warning signs that your utility may become a target of a sellout attempt, and provide you with tools to make an informed evaluation on the retention or sale of your utility. However, because of the magnitude of this important decision, this analysis may require a more thorough evaluation by city or utility staff and their accountants, valuation experts, lawyers, engineers or other consultants.

¹ This guide uses the terms “public power utility,” “consumer-owned utility,” “community-owned utility,” “publicly owned utility” and “municipal utility” interchangeably in referring to local government-owned electric utilities of all varieties.



Chapter 1

What is Public Power?

More than 2,000 cities and towns in the United States light up their homes, businesses and streets with public power—electricity that comes from a community-owned and -operated utility.

Public power utilities are like our public schools and libraries: a division of local government, owned by the community, run by boards of local officials accountable to the citizens. Cities and towns own most public power utilities, but many are owned by counties, public utility districts, or states.

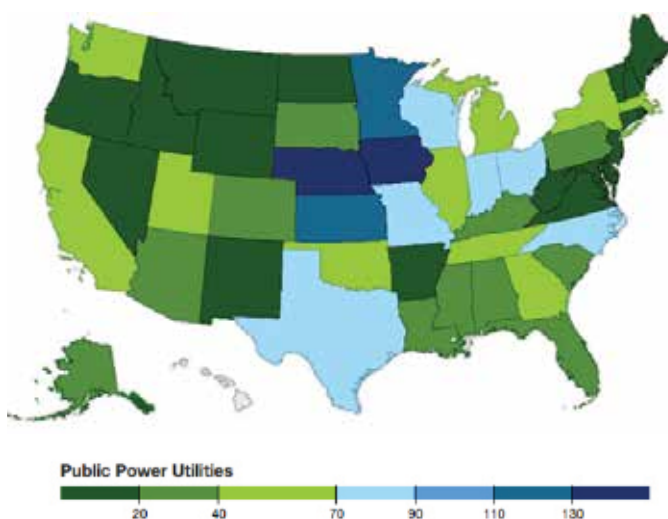
While each public power utility is different, reflecting its hometown characteristics and values, all have a common purpose: providing customers in the community with safe, reliable, not-for-profit electricity at a reasonable price while protecting the environment.

Public power today is an important American institution. From small towns to big cities, wherever public power exists, it is an expression of the American ideal of local people working together to meet local needs. It is a manifestation of local control.



A public power utility:

- Brings **electricity** to homes and businesses
- May **generate** and/or **buy** power
- Is a **not-for-profit** entity
- Is owned by the **community**
- Is usually a division of **local government**
- Is **transparent** (subject to sunshine laws)
- Involves **citizens** in decision-making



Who does public power serve?

- More than 2,000 community-owned electric utilities serve more than 49 million people.²
- Public power utilities serve small communities and large cities, including Los Angeles, San Antonio, Nashville, Orlando and Seattle.
- Public power serves customers in 49 states—all but Hawaii—and five U.S. territories.
- Three million businesses receive their power from a publicly owned electric utility.

²Based on U.S. Census Bureau statistics of 2.54 people per household/meter.

What are the other utility ownership structures?

There are three types of electric utilities: public power, rural electric cooperatives and investor-owned utilities.

Three types of Electric Utilities

| |  PUBLIC POWER UTILITIES |  RURAL ELECTRIC COOPERATIVES |  INVESTOR-OWNED UTILITIES |
|---|--|---|--|
| BUSINESS MODEL | ✓ Not for profit, community-owned | ✓ Not for profit, member-owned | ✓ For profit, share-holder owned |
| FEDERAL ENERGY REGULATORY COMMISSION JURISDICTION | ✓ Only for interstate transmission | ✓ Only for interstate transmission | ✓ For wholesale rates |
| REGULATED BY STATE PUBLIC UTILITY COMMISSION | ✓ Very limited instances | ✓ Some | ✓ All |
| GOVERNED BY | ✓ Elected/appointed boards—mayors, city council members, citizens | ✓ Member-elected boards | ✓ Private boards |
| FINANCIAL CONTRIBUTION TO LOCAL GOVERNMENT | ✓ Exempt from most taxes; instead make payments in lieu of taxes or transfers to the general fund | ✓ May neither pay taxes nor other contributions to local government | ✓ Pay taxes to local government |
| CAN RAISE FUNDS THROUGH | ✓ Tax-exempt municipal bonds | ✓ Loans from the Department of Agriculture’s Rural Utilities Service or cooperative or private lenders | ✓ Stock issue or corporate debt |

Public power utilities are entities of local or state government. The public power business model is based on public ownership and local control, a not-for-profit motive and focus on its customers. Because they are public entities, public power utilities can raise funds for capital improvement projects by issuing tax-exempt bonds. Public power utilities do not pay federal income taxes or most state taxes, but they support the local government through payments in lieu of taxes or transfers to the general fund.

Electric cooperatives are private, not-for-profit businesses. They are owned by their consumer-members, who elect governing board members and are required to return any excess revenue (above what is needed for operating costs) to their members. The local government and broader community generally have no involvement in the governance of the utility. Electric cooperatives can raise funds through loans offered by the Department of Agriculture’s Rural Utilities Service or cooperative and private lenders. Most electric cooperatives are exempt

from federal income tax, and may pay neither taxes nor payments-in-lieu-of-taxes to support the local government.

Investor-owned utilities are private, for-profit enterprises. They are owned by investors or shareholders, who generally are not customers of the utility or members of the community, and their primary motivation is to increase the value to shareholders. As private businesses, they raise capital by issuing stock or corporate debt. Investor-owned utilities pay taxes to local governments, but customers have no voice in the operation of the utility.



1 IN **7** ELECTRICITY CUSTOMERS IN THE U.S. ARE SERVED BY **PUBLIC POWER**

The Public Power Business Model

While each community-owned utility is unique, all public power utilities share five characteristics that define the public power business model:

Public ownership

Public power utilities are owned by and operated for the citizens they serve and are accountable to their local owners.

Local control

Local, independent regulation and governance gives utility policymakers greater agility in decision-making and protects the long-term viability of the utility, while permitting customer involvement in the process. This ensures decisions reflect the community values.

Nonprofit operations

Community-owned electric utilities serve the exclusive interests of their customers, avoiding conflicts between the interests of shareholders and customers because they are one and the same. Surplus revenues stay in the local community and are invested in system improvements and utility reserves, shared with the local government, or returned to the customer in the form of lower rates. They are not distributed among outside shareholders, as they are in the case of for-profit utilities.

Low-cost structure

Public power utilities have access to lower cost tax-exempt financing and generally have stronger credit ratings than privately owned utilities. Publicly owned utilities may have more efficient operations and access to less expensive federal hydro power.

Customer-focused

Community-owned electric utilities are dedicated to the singular mission of delivering the highest level of service and value to their customer-owners for the long term. Public power utilities focus on the specific needs of customers, including high reliability and lower rates, as well as local priorities, which may include investing in new technologies, environmental concerns or supporting local businesses and development initiatives.

5 ELEMENTS OF PUBLIC POWER BUSINESS MODEL



PUBLIC OWNERSHIP



LOCAL CONTROL



NONPROFIT OPERATIONS



LOW-COST STRUCTURE



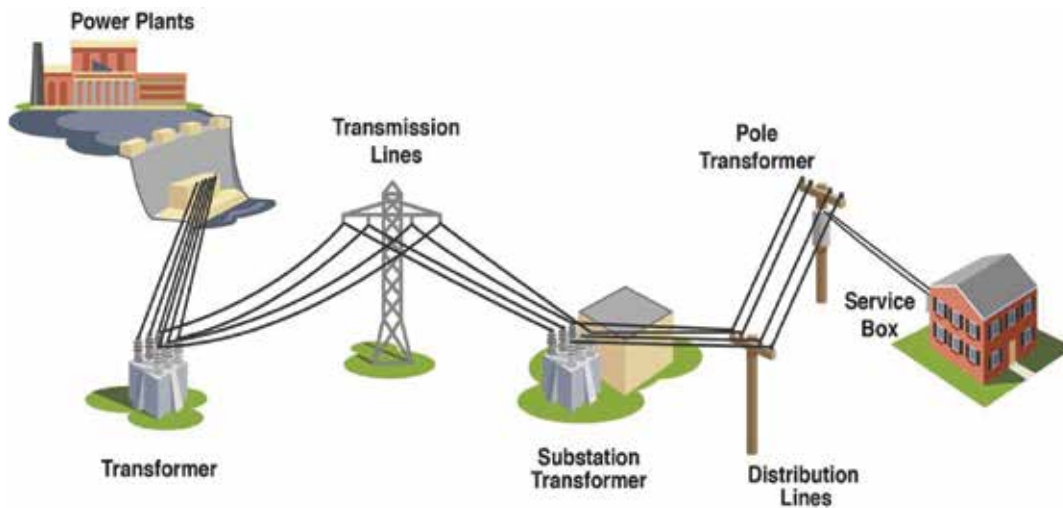
CUSTOMER FOCUSED

Who is in charge of public power utilities?

Public power utilities are owned by and accountable to the people they serve. Citizens have a direct and powerful voice in utility decisions and policies, both at the ballot box and in open meetings where business is conducted.

The governance structure for each utility varies. Some are governed by the city council; others are controlled by an independent utility board whose members may be elected or appointed by the mayor and city council.

Where does the power come from?



Electric utilities have three core functions:

- Generation of electricity;
- Transmission of electricity; and
- Distribution of electricity to customers.

Most public power utilities are distribution-only, meaning they do not own and operate their own power plants and bulk transmission. Instead, these utilities purchase power and transmission services at wholesale to distribute to their customers. Many distribution-only utilities purchase power and transmission from joint action agencies.

Together, public power utilities and joint action agencies generate two-thirds of the electricity they distribute to their customers. The rest of the electricity they distribute is purchased from investor-owned and cooperative utilities, independent generators and federal power agencies.

Overall, public power utilities and joint action agencies own 10 percent of electricity generation and transmission in the United States and 16 percent of all electricity distribution.

Public Power's Share of the U.S. Electricity Market³



10%
OF GENERATION



10%
OF TRANSMISSION



15%
OF DISTRIBUTION

³ Energy Information Administration Form EIA-860, 2017 (2015 data).



What is a Joint Action Agency?

Joint action agencies are membership organizations formed by groups of local community-owned utilities. These agencies, often authorized by state legislation, are governed by boards comprised of member representatives. The agencies buy or generate power and provide other services for their constituent utilities. With the combined leverage and purchasing power they get from representing multiple utilities, these agencies give their members the advantage of economies of scale and allow public power utilities to exercise strength in numbers.

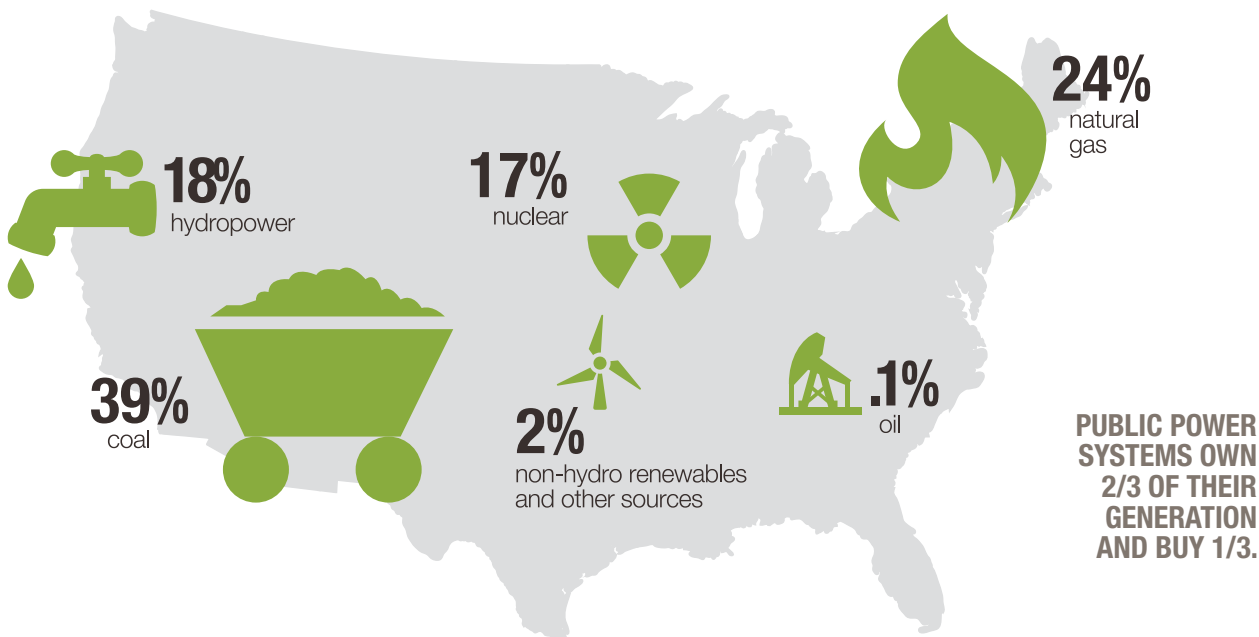
Energy resources

Electricity is created from the conversion of a fuel or other source of energy into electrons. This process occurs on a large scale in a power plant or on a smaller scale through distributed energy resources (e.g., rooftop solar).

The primary electricity generating technologies used in the United States are coal, natural gas, nuclear and hydro power. A small but growing portion of the generation portfolio comes from renewable resources, such as solar, wind, landfill methane gas and geothermal power. Public power utilities around the country rely on all of these energy resources to varying degrees.

Each of the various generating technologies has its advantages and disadvantages, which is why having a diversified portfolio of fuels—particularly generation sources that can be relied on most of the time—is a priority for electric utilities.

Electricity used by public power is generated from⁴



⁴ Energy Information Administration Form EIA-860, 2017 (2015 data).



Chapter 2

The Benefits of Public Power

Public power utilities are community-owned, locally controlled and operated on a not-for-profit basis. Each utility is a little different, depending on population, geography, structure, and the community's values and goals. This ability to tailor operations and services to the local community is the foundation of public power's success.

A public power utility provides long-term value to its community and citizens. The benefits are manifold, including (to name a few) rate stability, support for jobs, policies that are in line with community priorities and financial support for local government functions. To examine these benefits, it is helpful to consider them in broad categories: local control, reliable customer service, affordable rates and economic development.

Why does local control matter?



- Increased transparency and accountability gives customers more say in how the utility is run—and ensures the utility is working for the community's best interest
- Support for local government, through direct financial contributions and in-kind contributions, means lower taxes, more robust community services, and the community is a better place to live
- Efficient operations, through integration with other municipal operations, reinforces the support for local government
- The utility can support local priorities, reflecting the values and choices of the community

Local Control

Public power is distinctly different from the investor-owned utility sector and even rural electric cooperatives because utilities are fully accountable to their customers. Public power is about serving the local community. Local control affords public power communities five distinct advantages: accountability and transparency in governance; financial support for the local government; more efficient municipal operations; the ability to tailor utility policies, programs and practices to serve the priorities of the local community; and the value of ownership.

Accountability and Transparency

Public power utilities are governed and regulated by the city council or county commissioners or an independent utility board whose members may be elected or appointed by local officials. This means customers have more say in the policies and practices of the electric utility.

Citizens participate in the governance of the utility at the ballot box and through participating in city council and utility board meetings, public hearings, citizen advisory committees and other public forums. Utility business is conducted in the open, subject to open meetings, public records laws and local scrutiny. Citizens have access to planning alternatives, cost estimates, performance and other reports. Customers know how and why decisions are made.

When citizens have concerns, they can call their elected officials; in many public power towns, customers can simply speak directly to the utility's general manager. If a citizen disapproves of the way the utility is run, he can vote the elected officials out of office—or she can run for office to take on a more direct role in the utility's future.

In contrast, customers of a private utility have little, if any, influence over or access to the company's CEO or



A rare kind of accountability

“But it surely also helps that Norwich Public Utilities’ general manager, 12 linemen and five commissioners live in the community, drive the local roads, see the overhanging branches and bump into their customers at the Norwichtown Mall. That’s a rare kind of accountability.”

“The Troubling Connecticut Power Failure,”
The New York Times, November 3, 2011.

other top officers or board members. The typical investor-owned utility has a large service territory and will likely have its headquarters located far away; board meetings are conducted in private, and decisions are made behind closed doors. While the boards of rural electric cooperatives are elected by their member-owners, turnout for electric cooperative board elections is low (even compared to off-year and municipal elections), suggesting cooperative members may feel disengaged from their utility or do not understand their rights and responsibilities in its governance.⁵

Public power utilities also face a special kind of accountability, unparalleled in almost any other business: their friends and neighbors. In an era of globalization, public power utilities stand out because every employee is a member of the community. From the lineworkers to the general manager, all utility employees take pride in their work because they know their customers are their family, friends and neighbors.

Supporting Local Government

Public power utilities provide a direct benefit to their communities in the form of payments and contributions to state and local government. The total value of the contributions made by publicly owned utilities often comes in many forms and is not always easily recognized. In addition to payments that resemble property taxes, payments in lieu of taxes and transfers to the general fund, many utilities make in-kind contributions in the form of free or reduced-cost services provided to states and cities.

The level of support and how these benefits are returned to the community is a local decision—another advantage of local control. For example, some public power utilities make transfers to the city’s general fund in an amount equal to the property taxes that would have been paid by an investor-owned utility. Others set the amount as a percentage of electric revenue or as a charge per kilowatt-hour of electricity sold. Some cities take advantage of synergies between municipal departments and use electric employees to install temporary lighting, perform electrical repairs or tree trimming services for other departments, or provide technical expertise.

Quantifying public power’s financial support

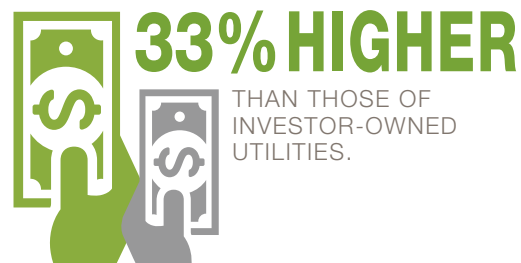
Public power utilities make greater financial contributions to state and local governments than investor-owned utilities.

The American Public Power Association regularly analyzes payments and contributions to state and local government based on surveys of public power utilities and data submitted by investor-owned utilities to the federal government. The results consistently show that, on average, the payments and contributions made by public power utilities are greater.

In the most recent year for which data are available, the median amount contributed by public power utilities was 5.6 percent of electric operating revenues. Over the same period, investor-owned utilities paid a median of 4.2 percent of electric operating revenues in taxes and fees to state and local governments.

When all taxes, tax equivalents and other contributions to state and local government are considered, public power’s contributions, as a percent of electric operating revenues, were 33 percent higher than those of investor-owned utilities.⁶

PUBLIC POWER’S CONTRIBUTIONS TO STATE AND LOCAL GOVERNMENTS ARE



⁵ Institute for Local Self-Reliance, “Just How Demoractic are Rural Electric Cooperatives?” January 13, 2016.

⁶ American Public Power Association, 2017-2018 Directory & Statistical Report, “Public Power Gives Back: Payments and Contributions by Public Power Utilities to State and Local Governments,” 2017 (2014 data). Read the full report in Appendix B.

In-kind contributions

Beyond direct financial contributions, public power utilities may support their local government and community in many ways. These may include:

- Free or discounted electricity or other services to the local government, including streetlights, municipal buildings, water or sewer treatment facilities and traffic signals
- Installing temporary lighting for special events
- Maintaining streetlights, traffic signals or stadium lights
- Electric repair or maintenance for other city departments
- Rewiring municipal buildings
- Tree trimming for other departments
- Reading water meters
- Putting up city signs or banners
- Providing technical expertise (e.g., engineering studies)
- Providing free building space
- Hanging banners and holiday lights
- Sharing electric department vehicles and equipment with other municipal departments

The myth about franchise fees



Private utilities may pay a franchise fees to the local government in exchange for the right to operate exclusively in the community. However, these franchise fees are almost always passed on directly to the customers. Instead of being a new revenue source for the community, it is no different than any other tax or fee on a customer's utility bill:

“Many years ago investor-owned utilities began to add the annual franchise fee they were required to pay the city to the rates they charged their customers in the community. Instead of treating the franchise fee as a legitimate expense, a cost of doing business in the community, the investor-owned utility simply incorporated its franchise fee into its rates and passed the costs along to ratepayers. Consumers ended up paying the investor-owned utility's franchise fee instead of sharing in its profits. This practice of including the franchise fee in rates continues to this day in most communities.”⁷

⁷“Renegotiating a Municipal Franchise,” Paul Hughes, Environmental Services Inc., July 2002.

Efficient Operations

Public power utilities keep costs down through local scrutiny of operations. They use strategic partnerships and joint action with other public power agencies to obtain the advantages of size in wholesale supply matters without taking on the disadvantages of merging into larger, more bureaucratic institutions.

Electricity distribution, unlike large-scale generation and high-voltage transmission, is local, and public power utilities find that their smaller size can be an advantage in electricity distribution. A public power utility's headquarters and operations are located near the utility's customers. Distribution lineworkers are very familiar with the utility's service territory—and thus likely to be more responsive to outages. Utility managers and customer service representatives are fellow citizens. Oversight is provided by a local governing body, which keeps the utility focused on reliability, price and service.

Municipal utilities can also create new efficiencies in local government. Some utility operations may overlap with other services the municipality is already providing; when these can be combined, the result is a leaner, more efficient operation that benefits everyone. For example, a city providing multiple utility services (electric, water, wastewater, natural gas and telecommunications services) may combine billing and metering operations and share a 24-hour emergency call center. Other examples of efficiencies that may be achieved include:

- Integration of municipal operations (e.g., shared office space for multiple city services)
- Shared personnel (e.g., human resources department that serves the city and utility)
- Lower per-person administrative costs for municipal employee benefits
- Town may avoid short-term borrowing costs due to cash flow from electric revenues

Local Priorities

When the community owns the utility, the community controls the utility's priorities. Decisions about pricing electricity, building power plants, purchasing wholesale power and service policies are made locally and reflect the values and choices of the community.

By participating in the utility governance process, citizens exercise their voice on big questions the utility may face, including:

- investments in local infrastructure—system maintenance and upgrades

- energy conservation and energy efficiency
- energy resources—renewable energy, coal, natural gas, or other sources
- environmental stewardship—pollution prevention, investing in cleaner technologies
- customer service policies—assistance to low-income customers, service extension policies
- system aesthetics and design—choosing whether to underground electric lines for community beautification or enhanced reliability
- utility finances—setting electric rates, level of financial support for the local government

Public power utilities emphasize long-term community goals and can direct utility resources accordingly, by implementing programs and timetables to achieve goals. Without local utility ownership, the community is disenfranchised, with no input on these decisions.



CASE STUDY:

Continued public ownership of utility allows community to pursue local priorities

GREENSBURG, KANSAS • 2007

LESSON LEARNED:

- *Local control over the future of the utility is a powerful benefit of owning a municipal electric utility. The utility should work together with the city to promote local priorities.*

In May 2007, an EF-5 tornado struck Greensburg, Kansas—destroying or severely damaging 95 percent of the city, leaving 90 percent of its 1,400 citizens homeless, and wiping out the town’s entire electric system. With the survival of the town very much in question, a neighboring cooperative utility offered to help rebuild the electric system, with the understanding that they would be allowed to purchase the system from the town.

Meanwhile, city leaders began formulating a plan to rebuild the entire town as sustainable, energy-efficient and “green.” The “Green in Greensburg” idea caught on; the community decided it should rebuild its town from the ground up as a model green community, powered by 100 percent renewable energy. However, this would not be possible if the cooperative took over ownership of the utility.

The city hired a consulting firm to assess the advantages, disadvantages and risks associated with selling or keeping the utility. The study recommended that the city retain ownership of its electric system and city leaders agreed.⁸

In the end, the most important factors in Greensburg’s decision were the utility’s contributions to the city and the community’s desire to control its energy destiny. Because it was able to make its own choice about its generation source, the city achieved its goal of 100 percent renewable energy and is not concerned about current and potential future regulations on coal and natural gas.

⁸Thomas A. Wind, Wind Utility Consulting, and Lynn Billman, National Renewable Energy Laboratory, “Greensburg Municipal Electric Utility Business Strategy: Analysis of Greensburg Municipal Utility Business Strategies to Become Green,” January 15, 2008.

Ownership

Public power communities receive another benefit: ownership itself. Ownership of the utility means local management and control over decisions involving investments, operations, maintenance, power supply choices and customer programs.

More than that, though, there are some options and choices available only to an owner—including asset leverage, equity borrowing, ratemaking authority, and control over future streams of income for the utility and the community.



“It has everything to do with the philosophy of whether the city wants to be sharecroppers or landowners. Do you want to own your home or rent?”

Ken Cotton, City Attorney, Wagner, South Dakota,
“Wagner OKs Municipal Power,” *Press & Dakotan*,
December 5, 2007.

Reliable Customer Service

Public power utilities are highly responsive to customers’ needs and concerns, typically getting high marks for customer satisfaction because their first and only purpose is to provide efficient, reliable service to the customers in their communities. Reliable customer service takes three forms for public power utilities: a focus on overall system reliability; quick restoration of power after an outage; and making excellent customer service a priority.

Reliability

Public power utilities have a strong record of focusing on core electric operations and delivering a reliable power supply. Because of their connection to customers, public power utilities are motivated to maintain the community’s assets to keep their local electric system operating continuously and efficiently. Maintaining the highest caliber of electric service is one of the core facets of a public power utility’s business model.




Reliability, from a systems engineering perspective, is the ability of an electric system to perform its functions under normal and extreme circumstances. In the United States, customers expect to have power at all times. But every utility experiences some power outages as a result of severe weather or natural disasters, interference from wildlife or overgrown vegetation, equipment failures, or even a car crashing into a utility pole. Realistically, a utility can make power available between 99.9 and 99.999 percent of the time.

There are many ways that electric utilities measure their reliability. Two of the most common:

- System Average Interruptible Duration Index (SAIDI) – measures the average length of time, in minutes, that each utility customer was without power during a year
- System Average Interruptible Frequency Index (SAIFI) – measures the average number of outages that each customer experiences during a year

Recent data show that public power utilities demonstrate higher reliability than the national average by any standard – frequency or length of outages, with or without major event disruptions (MED).

National Reliability Metrics⁹

| |  RURAL ELECTRIC COOPERATIVES |  INVESTOR-OWNED UTILITIES |  PUBLIC POWER UTILITIES | ALL |
|---------------------------------------|---|--|---|--------------------|
| AVERAGE OF SAIDI - with MED | 430.98 | 282.72 | 117.73 | 314.26 minutes |
| AVERAGE OF SAIDI - without MED | 163.13 | 132.92 | 54.73 | 128.62 minutes |
| AVERAGE OF SAIFI - with MED | 2.00 | 1.43 | 1.26 | 1.66 interruptions |
| AVERAGE OF SAIFI - without MED | 1.54 | 1.15 | 0.97 | 1.30 interruptions |

⁹National reliability metrics (IEEE standard), average of SAIDI and SAIFI, with and without Major Event Disruptions. From Energy Information Administration, form 861, 2017 (2016 data).

The data show that without including “major events” (such as hurricanes or winter ice storms), customers served by investor-owned utilities experienced an average of 2 hours and 12 minutes without power each year. Cooperative utility customers were without power even more: on average, they experienced 2 hours and 43 minutes of outages. Public power customers, on the other hand, experienced less than one hour without power. When major event disruptions are included, these numbers become even more pronounced in favor of public power.

Accountability promotes reliability

Public power utilities make business decisions every day that result in reliable electric service. The elected officials who oversee public power utilities are accountable to voters, who are also the utilities’ ratepayers. In contrast, board

members of an investor-owned utility are accountable to shareholders; they are judged not on their ability to provide low-cost, reliable power or excellent service, but on their ability to maximize profits for the investor-owned utility or its holding company and to pay a quarterly dividend to shareholders.

In pursuit of short-term profits, investor-owned utilities may implement cost-cutting measures that ultimately affect reliability. For example, extensive reductions in the number of employees, maintenance expenses, or tree-trimming programs can result in longer and more frequent outages. This issue was highlighted in 2011 when Connecticut Light & Power experienced extensive outages after two storms. In an article about the outages, *The New York Times* reported that the utility had cut its maintenance spending by 26 percent between 2008 and 2010.¹⁰

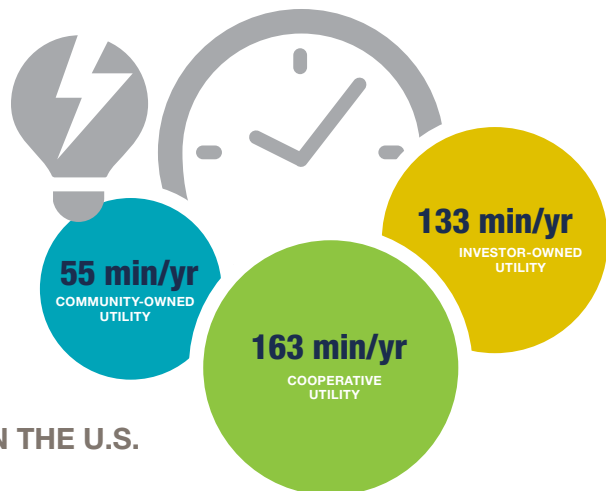


What makes public power so reliable?

- Focus on core utility operations—knowing your purpose and doing it superbly
- Increased accountability to local officials, friends and neighbors
- Accountability to customers, not shareholders, means there is no incentive to implement cost-cutting measures that ultimately affect reliability
- Crews live and work in the community, so they can respond faster to restore power after an outage
- Public power towns always have priority restoration; they don’t have to wait for limited crews to restore power to other parts of the service territory first
- Local crews become more familiar with the power system and can identify reliability issues more quickly
- Mutual aid agreements allow utilities to tap into the national network of public power utilities for assistance in restoring power after a major event

Outage Restoration

Many public power utilities have outage prevention programs, the most common of which are tree-trimming services. Other outage prevention programs include wildlife management (animal/squirrel guards); routine inspection and maintenance of distribution lines; other vegetation maintenance; thermographic circuit inspections; lightning arresters; reviewing poor-performing circuits; and converting overhead wires to underground.



AVERAGE OUTAGE TIME IN THE U.S.

¹⁰ “The Troubling Connecticut Power Failure,” Rob Cox, *The New York Times*, November 3, 2011.



“One big bonus of a city-owned system, Knight said, is that it can focus all its resources—police, emergency teams, tree trimmers and line crews—on making repairs in the city without waiting for a big power company to coordinate all its repair efforts. ‘It was like clockwork during the last hurricane.’”

Randy Knight, Assistant City Manager, Winter Park, Fla., discussing the drop in outages after the city formed its own electric utility. *Energy Central Professional*, December 2006.

When an outage occurs, public power utilities restore power quickly because they are located in the community. Repair crews live in the community and have a vested interest in getting service restored quickly. They are not only accountable to local officials, but to their friends, neighbors and families.

Living in the community also means they can get to the site of the outage faster; they do not have to drive long distances to start repairing damage. And unlike larger electric service territories, like those served by investor-owned and cooperative utilities, the town always receives priority service restoration; customers do not have to wait for limited crews to restore service to other towns and communities before restoring service to their community.

Local crews are intimately familiar with the local electric distribution system and can identify and correct problems quickly. If they know a storm is coming, they can step up preventative measures, such as removing overhanging or loose branches and checking known problem spots.

As an entity of the local government, public power utilities also benefit by coordinating responses with other local emergency services.

Mutual aid

Just as firefighters, police officers and other emergency responders combine forces to help rebuild cities devastated by natural disasters, lineworkers and other electric utility personnel come together in an emergency to turn the lights back on.

In the event of a major outage, public power utilities coordinate with each other for assistance through a broad network of mutual aid programs. Public power crews have responded to calls for assistance in response to all sorts of disasters: hurricanes, tornados, ice storms, severe thunderstorms and high winds.

The mutual aid network among public power utilities is strong. Public power’s commitment to serving communities extends beyond its own community, and utilities take pride in helping one another.

“Sometimes I think [municipal utilities] are worried that because of their size, the investor-owned utilities will suck up all the lineworkers and munis will be in trouble, but we haven’t found that to be the case,” said Mike Hyland, senior vice president of engineering for the American Public Power Association. After Hurricane Katrina, there were so many municipal utility crews volunteering to head down to Louisiana that some had to be turned away. “It’s a really strong network, and I think there’s loyalty there and a kind of brotherhood,” he said.¹¹

And, mutual aid is provided not only to fellow public power utilities. Public power utilities respond to calls for help from investor-owned utilities and electric cooperatives, speeding along the recovery time from disasters all over the country.



“Wellesley and other towns in the electric power business were beacons of light during the outages that left thousands of homes across the western suburbs in the dark last week. While other communities struggled with power failures that dragged on through the week, all the lights were back on in a matter of hours in Wellesley, Belmont, and Concord. The three towns run their own municipal electrical utilities, complete with crews ready to make repairs at a moment’s notice; in contrast to the majority of communities in the western suburbs, whose power is provided by the utility companies NStar and National Grid.”

“Municipal utilities shine in storm,” *Boston Globe*, on boston.com, September 4, 2011.

¹¹ “Mutual Aid Before the Storm,” *Public Power*, March-April 2007.

Customer Service

Since a public power utility's customers are its owners, there is no conflict between the needs of customers and the needs of shareholders. The utility's local accountability ensures it delivers excellent customer service, or unsatisfied customers can make their displeasure known at utility board or city council meetings.

Public power utilities receive high scores in residential and business customer satisfaction in the J.D. Power and Associates annual surveys for electric utilities. In 2017, Salt River Project in Phoenix, Arizona, ranked the highest in the large utility segment in its region for the 16th consecutive year, and both Clark Public Utilities in Vancouver, Washington, and EPB in Chattanooga, Tennessee, ranked the highest in the midsize utility segment in their regions for the 10th and 2nd consecutive years, respectively. Other top finishers in their categories included the Sacramento Municipal Utility District, Colorado Springs Utilities, Seattle City Light, and JEA in Jacksonville, Florida.¹²

Public power utilities also took home top honors for business customer satisfaction in four of the eight categories, with honors going to Omaha Public Power District in Nebraska, JEA in Jacksonville, Florida; Salt River Project and Sacramento Municipal Utility District.¹³

Customers in the driver's seat

In a public power community, customers drive customer service; the utility can tailor its programs and services to the needs and desires of its customers, instead of looking only to make a profit.

For example, most public power utilities have a customer service center located in town, where customers can pay their bills in person, discuss any questions, and learn about other utility programs. Many investor-owned utilities have eliminated their walk-in customer service centers as a cost-saving measure, but when customer service, not making a profit, is the goal, service centers stay open.

Energy-efficiency programs are another example where public power's not-for-profit, customer-focused business model shines. A for-profit utility is in the business of selling electricity to make money; spending utility money to run an energy-efficiency program to help customers use less electricity does not make sense when you are answering to investors and stockholders. But because public power

utilities share their community's values and are accountable to customers, the calculation is different: why would you not want to help your friends and neighbors save money on their monthly utility bill?

Local control and public power's not-for-profit business model promote outstanding customer service. A public power utility and its governing body are part of the community and can easily maintain a close relationship with utility customers. As a result, the utility can tailor its services to meet the needs of its customers and the community.



"Here at MED, we often talk about being your hometown power provider. We live here with you, and of course we want to provide the most reliable service possible because we benefit from that as much as anyone else.

But hometown power means more than that to us. It also means we are always actively working in our community to improve the lives of the people around us and contribute to the traditions that make Murfreesboro such a great place to live."

Steve Sax, former general manager, Murfreesboro Electric Department, "My Hometown Power" newsletter, November 2015.

Affordable Prices

Across the country, publicly owned electric utilities continue to lead the way in providing customers with low-cost energy for homes and businesses. The most recent data from the U.S. Department of Energy show that public power customers pay less, on average, than do customers of investor-owned utilities or electric cooperatives, as they have every year since the federal government began keeping electricity rate statistics more than 70 years ago. Public power's historically lower rates are the result of the low-cost structure central to its business model, supported by its not-for-profit status, access to tax-exempt financing, higher credit ratings, and its ability to contract for low-cost power supplies.

¹² J.D. Power and Associates, 2017 Electric Utility Residential Customer Satisfaction Study, as described in J.D. Power and Associates press release, July 12, 2017.

¹³ J.D. Power and Associates, 2016 Electric Utility Business Customer Satisfaction Study, as described in J.D. Power and Associates press release, January 13, 2016.



Why is public power more affordable?

- Public power utilities typically have lower rates than investor-owned and cooperative utilities
- Low-cost structure due to not-for-profit operations and increased accountability and operational efficiencies
- Access to tax-exempt municipal bonds to finance capital needs
- Credit ratings are higher, on average, for public power than other types of utilities
- In some areas, public power utilities have access to low-cost federal hydro power
- Joint action agencies help public power utilities achieve economies of scale for power supply and other essential services

Lower Rates

Across the country, publicly owned electric utilities continue to provide customers with low-cost energy for homes and businesses. The following chart compares the national average residential, commercial and industrial revenue per kilowatt-hour (kWh) paid by customers of publicly owned, investor-owned and cooperative electric utilities in 2015.

Residential customers in investor-owned utility service territories paid average rates that were **15 percent above** those paid by customers of publicly owned systems during 2015. Public power customers paid an average of 11.5 cents per kWh for residential electric service, compared to 13.2 cents per kWh paid by residential customers of investor-owned utilities, and 11.6 cents per kWh paid by residential customers of electric cooperative utilities.

Commercial customers of investor-owned utilities paid slightly more for electricity than public power customers in 2015, while cooperative commercial customers paid roughly the same. Public power commercial customers paid an average of 10.7 cents per kWh, compared to 10.9 cents per kWh paid by commercial customers of investor-owned utilities and 10.6 cents per kWh paid by commercial customers of cooperatives.

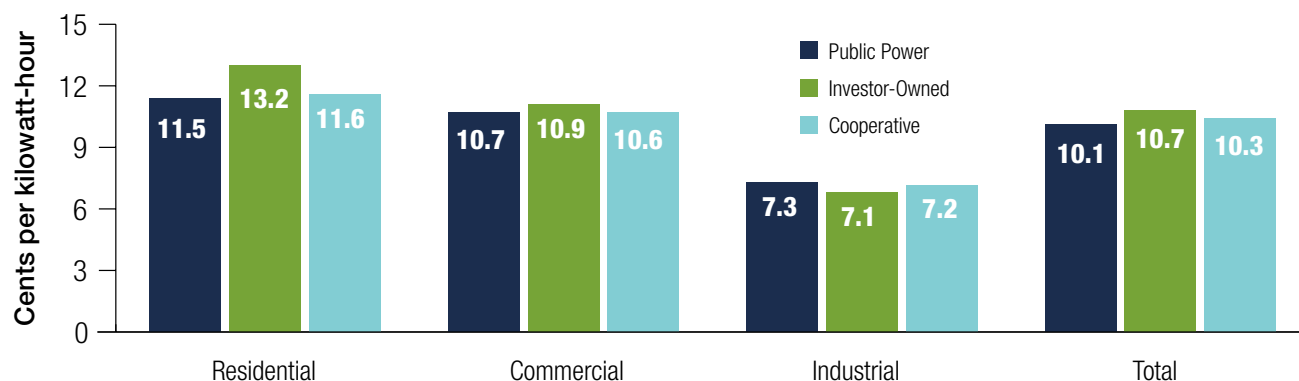
On a national basis, average electricity rates for all investor-owned utility customers in all customer classes are **6 percent higher** than average rates paid by public power customers. Average electricity rates for all cooperative utility customers are **2 percent higher** than those paid by public power customers.¹⁴



RESIDENTIAL CUSTOMERS OF INVESTOR-OWNED UTILITIES PAY 15% MORE FOR THEIR ELECTRICITY THAN PUBLIC POWER CUSTOMERS.

¹⁴ American Public Power Association, 2017-2018 Directory & Statistical Report, “Public Power Costs Less,” 2017 (based on Energy Information Administration Form EIA-860, 2015 data).

Average Retail Electric Rates by Customer Class, 2015



Local regulation

Public power utilities are under more intense scrutiny than investor-owned or cooperative utilities because they are governed and regulated by their customer-owners through locally elected and appointed officials. Governance and regulation happens at city council and utility board meetings, public hearings, citizen advisory committees and other public forums; accountability is ensured at the ballot box. Business is conducted in the open and is subject to local scrutiny.

Public participation in the utility's governance, including decisions on rates, budgets, facility siting, power supply reliability, and customer service, is a core attribute of public power. If citizens feel their rates are unreasonable, they can attend public meetings held in their own town to express their discontent. In a few states, public power utilities' rates are also regulated by the state public service commission.

While public power utilities generally are regulated by a local governing body accountable to its citizens, investor-owned utilities are regulated by state and federal authorities. Investor-owned utility customers have the right to file complaints with the state public service commission, but because they don't own the utility, they have no direct relationship to utility management and cannot participate in board meetings.

Regulation for rural electric cooperatives varies across the country; they are subject to oversight from state regulators in some, but not all, states. Where they are not regulated,

cooperative utility customers may find that making their voice heard is more difficult because the utility is not subject to the same sunshine laws that govern public power utilities.

Compared to customers of investor-owned utilities and rural electric cooperatives, public power customers have significantly more influence on rates, service and policies.

Low-Cost Structure

The biggest determinant in public power's lower rates is its not-for-profit status. Public power works for Main Street, not Wall Street.

In his comprehensive study of factors affecting performance in the U.S. electric industry, Professor John Kwoka concluded that public ownership confers both cost and price benefits. He found that the most likely reason for public power's advantages over their privately owned counterparts "appears to be that retail distribution—of electricity and perhaps other goods and services—may be performed better by enterprises closely rooted to the customer community. Such proximity may yield greater knowledge of local customer needs and a greater sense of responsibility for addressing those needs."¹⁵

¹⁵ John E. Kwoka, Jr., George Washington University, "Power Structure: Ownership, Integration, and Competition in the U.S. Electricity Industry," Kluwer Academic Publishers, 1996, p. 143.



Public power utilities can offer lower rates because:

- The utility does not pay dividends to often-distant shareholders.
- They are accountable to the customer-owners they serve.
- Local cost-consciousness and public scrutiny over expenditures keep the utility's budget in check.
- Administrative costs are lower, due to improved efficiencies through sharing personnel, equipment and supplies with the local government.
- Rates are set locally by citizen-controlled boards or city councils that operate publicly.
- There is no economic bias for high-cost, capital-intensive technologies.
- They can borrow money for capital expenses using tax-exempt bonds, holding borrowing costs down.
- They consistently earn higher credit ratings from the three major credit rating companies.
- In certain parts of the country, they may have access to lower cost hydroelectric power marketed at wholesale by federal and state agencies.
- Joint action agencies give smaller utilities access to economies of scale in generating and purchasing power and other services.

Municipal Bonds

For more than 200 years, state and local governments have relied on municipal bonds as a means of financing. Nearly three-quarters of all core infrastructure built in the United States is financed with municipal bonds. Interest paid on these bonds has been exempt from federal tax since the inception of the federal income tax in 1913, just as federal bonds, bills and notes are exempt from state and local taxes.

State and local governmental entities—including public power utilities—have limited means to raise funds for their communities' capital needs. The municipal bond market gives towns, cities, counties and publicly owned utilities access to investors. Municipal bonds are ideally

suited to finance capital-intensive public infrastructure, such as the assets of a public power utility.

While the median corporate bond issue is \$210 million, the vast majority of municipal bonds, including those for public power investments, are far smaller: the median municipal bond issuance is \$7 million. Only about 5 percent of all municipal bond issuances are for \$200 million or more. The federal tax exemption on bond interest reduces the cost of borrowing for municipal bond issuers. Over the past 20 years, the average yield of Standard & Poor's Corporate Bond (Aaa) Index has been 130 basis points higher than that of Moody's High-Grade Municipal Bond Index. Adjusting for the cost of call provisions common in municipal bonds (but rare in corporate taxable bonds), the spread is closer to 180 basis points. The difference can save municipal bond issuers **25 percent** over the 30-year life of a project. These savings result in more critical investments in infrastructure and essential services by state and local governments and lower costs for the services they provide.

ACCESS TO TAX-EXEMPT
MUNICIPAL BONDS ALLOWS
PUBLIC POWER UTILITIES –
AND ULTIMATELY, THEIR
CUSTOMERS – TO

SAVE 25%

ON THE COST OF INFRASTRUCTURE
PROJECTS OVER A 30 YEAR PERIOD.



Today, there are \$3.7 trillion in municipal bonds outstanding, more than \$200 billion of which finance electric power related investments. These include investments in power generation, distribution, reliability, demand control, efficiency and emissions control—all of which are needed to deliver safe, affordable and reliable electricity.

In addition to infrastructure for public power utilities, tax-exempt bonds finance roads, bridges, sewers, hospitals, libraries, schools, town halls, police stations and every other sort of government-purpose investment made by state and local governments. In fact, nearly three-quarters of the core infrastructure investment in the United States is financed by state and local government bonds.

Credit Ratings

The three largest credit rating companies acknowledge the advantages of public power's business model and assign

much higher ratings, on average, to public power than to investor-owned utilities.

Public power utilities share several fundamental, structural characteristics that contribute to these higher ratings:

- Local, autonomous rate approval authority
- Electricity is an essential service
- Defined service area, with near monopolistic characteristics
- Residential and commercial customer base is highly concentrated
- Public power utilities have a relative cost advantage over investor-owned utilities
- Local regulation is generally faster and more responsive to changing conditions than the lengthy process that investor-owned utilities experience before state commissions
- Customers/ratepayers are the ultimate stakeholders¹⁶

Fitch Ratings' 2016 Outlook for the public power sector assessed public power's strengths in the face of challenges confronting the electric utility industry: "Municipal power utilities... are well positioned to cope with near-term challenges including recently enacted carbon regulations, persistent rate pressures and long-term threats."¹⁷

Access to Federal Hydro Power

Hydro power accounts for 6 percent of the nation's electricity supply and is the most abundant source of renewable energy. Because the fuel (water) that turns the turbines to make electricity in a hydroelectric plant is free, the cost of operating a hydro power facility is low compared to other sources.

The federal power marketing administrations (PMAs) sell federally generated hydro power with a statutory right of first refusal granted to not-for-profit entities, including public power utilities and rural electric cooperatives (called "preference customers"). This hydro power is sold at cost. The hydroelectric power is produced at federal dams operated by the U.S. Army Corps of Engineers and the Bureau of Reclamation.

As one of the few providers of cost-based wholesale power, the PMAs assist in keeping power rates low for millions of electricity customers.

Joint Action Agencies

Being small and focused on local customers is one of the strengths of public power—but survival often hinges on being big. Joint action agencies are the convergence of small and big for public power utilities, banding utilities together to achieve economies of scale.

Joint action agencies are typically formed under an act of the state legislature to provide wholesale power supply and services to their public power members. Like the utilities they serve, these agencies are also not-for-profit organizations.

Joint action agencies have traditionally served as vehicles to consolidate power generation or purchasing, rate negotiation and facilities construction of many smaller utilities into a larger unit, thereby leveraging their combined size to gain added market advantage. This helps keep power rates competitive and provides an avenue for offering enhanced services through the economies of joint purchasing.

The beginning of joint action

Some of the earliest joint action ventures were undertaken to battle high wholesale rates. In Florida, an investor-owned utility was selling bulk power to 10 municipal utility customers at a higher rate than to rural electric cooperatives, ostensibly because the co-op loads were larger. When the cities tried to negotiate a better rate, the company pursued a divide-and-conquer strategy, trying to negotiate separate power sales agreements with each of the 10 cities. But the cities stood firm as a group and negotiated rates that satisfied all. The resultant aggregate savings of \$500,000 for the 10 cities were huge at the time—it was the 1960s.

"We have learned what can be accomplished through a united effort," wrote Wallace Sturgis, the city attorney for Ocala, Florida, in 1968. "But this is just the beginning. We must think big and from such thinking, big results will come." Individually, municipal utilities are small, he said, "but collectively, we are large and growing larger, despite all obstacles."¹⁸

Joint action today

While power supply and the opportunity to capture the benefits of economies of scale drove the creation of many

¹⁶ "Rating Agency Outlook for Public Power," Fitch Ratings, webinar, March 16, 2016.

¹⁷ "2016 Outlook: U.S. Public Power and Electric Cooperative Sector," Fitch Ratings, in a press release, December 9, 2015.

¹⁸ "The Evolution of Joint Action," *Public Power*, January 2014.

joint action agencies, the agencies have evolved to provide a wide range of shared services to help public power utilities keep costs down while providing the highest level of service to their customers.

Today, many joint action agencies plan and implement energy-efficiency and demand-side management programs for their members. Some agencies hire “circuit riders,” individuals who work on-site for member utilities one or two days a week, then spend another part of the week at other member utilities. For example: WPPI Energy in Sun Prairie, Wisconsin, hires energy services specialists who fulfill this role. American Municipal Power in Columbus, Ohio, has tree-trimming crews that support member needs. The arrangement enables the agency and its members to recruit and hire highly qualified personnel whom cities individually may not be able to afford.

In places where significant state-level regulation of publicly owned electric utilities remains in effect, joint action agencies like Vermont Public Power Supply Authority offer significant regulatory and legislative services to support member utilities.

Among other services, many agencies support their members in economic development, rate design, fuel purchasing, training, telecommunications, lobbying, information technology, engineering, project management, finance and equipment testing. Local public power utilities pool their resources, working together to achieve substantial savings for their communities.

Joint action agencies allow public power utilities to join forces to take advantage of economies of scale and shared services to boost efficiency. They are a lifeline for public power utilities that want to retain the benefits of owning and operating their own electric utility while not losing out on the economic advantages of a larger organization. The agencies facilitate the best of both worlds—small and large—for their members and their customers.

Local Economic Development

Public power utilities are an integral part of the economic development of their communities, working closely with new and existing businesses to provide the highest levels of reliability, customer service and development assistance. Public power utilities are local and are invested in the success of the customers and communities they serve.

A public power utility spurs development in the local economy as a local employer operating in the community, and through the benefits that the utility affords the community. In some public power communities, the utility may also directly support the town’s economic development efforts.

Hometown Jobs and Business

Public power utilities benefit their communities by providing employment opportunities for local residents. The local utility is headquartered in town and creates local jobs for customer service representatives, lineworkers, engineers, mechanics and administrators. Kids growing up in public power communities can find a career right in their hometown. Each dollar of a public power employee’s paycheck circulates through the local economy an estimated four to five times.

More than just being a local employer, public power utilities also support the local economy as a business operating in the community. Utilities may implement policies to “buy local” and support local businesses whenever practical, including purchasing materials and services from local companies and using local financial institutions for their business operations.



EVERY DOLLAR PAID TO A PUBLIC POWER EMPLOYEE CIRCULATES THROUGH THE LOCAL ECONOMY **4 TO 5 TIMES.**

Stimulating the Economy

Public power utilities are good for the local economy. Lower electricity prices allow consumers to spend more money

on other goods and services, in addition to attracting business and industry to the community. Local dollars stay at home in public power communities. They are not sent to companies and shareholders out of the city, state, or in some cases, country.

Investments made in the utility and its infrastructure also support the local economy. By meeting the interrelated needs of residential, business and industrial customers, a public power utility makes the community a more pleasant place to live and allows it to compete more successfully in attracting business and employment. For instance, utility investments to improve power quality and service reliability make the community more attractive to businesses that may locate or expand there.

The contributions utilities make to the local government, whether in the form of payments in lieu of taxes, transfers to the general fund, or other in-kind contributions to the local government, also help the community economically. Because public power utilities typically make greater financial contributions to the local government than investor-owned or cooperative utilities, these benefits may be felt more strongly in a public power town.

Direct financial contributions provide real, tangible benefits to the community, helping to pay for police officers and firefighters, teachers and schools, the municipal library and parks, road repairs and other city services. In-kind contributions—free or discounted services provided to the local government and other operational efficiencies—save money for the local government.

The financial contributions made by public power utilities give the community a choice: to collect less in local tax revenue to support its services; or to increase the number (or improve the quality) of services it provides. The community and local economy benefit either way: from more money staying in citizens' pockets, or from the enhanced municipal services.

Technological Leadership

Many public power utilities take a leadership role in preparing their communities for the future by pursuing new technologies as an integral part of community growth. They serve as information sources in a variety of technology fields such as environmental stewardship, high-speed internet capability, safety and community technology development.

Some public power communities offer telecommunication services because private companies may not offer them to smaller towns at competitive prices. Access to high-speed broadband encourages economic development.

How does public power help the local economy?



- Local employment
- Utility patronizes local businesses
- Lower rates means more money in customers' pockets
- Not-for-profit means money isn't sent to distant shareholders
- Investment in infrastructure and reliability helps other businesses in the community
- Contributions to local government allow more robust public services without raising taxes
- Technological investments can help support community economic growth
- Utility key accounts and economic development programs help business in the community

Economic Development Programs

Public power utilities are logical partners in economic development. A locally controlled utility is part of a public service community team that cooperates on public works projects, downtown renovations, extension policies, business development, industrial parks and energy-efficiency programs. The utility has an inherent interest in promoting the community's well-being and prosperity.

A 2015 survey indicated that the most important thing an electric utility can do to attract business to the community is offer high reliability and competitive prices.¹⁹ While public power excels in both these areas, many public power utilities go beyond, working with city officials to promote economic development.

¹⁹ "Building Community: Economic Development Best Practices," Greenville Utilities Commission and East Carolina University, 2016. Data from APPA Economic Development National Survey, 2015.

Tools that may be offered by public power utilities with their communities include:

- special economic development rates for the first few years of operation
- special connection fees or line extension rates to make extending electric service to a new business site more affordable
- key accounts programs for large commercial, industrial and institutional customers
- additional service redundancy to enhance electric reliability
- backup generation
- rebates
- discounts and fee waivers
- tax credits/abatements
- zoning assistance
- grants
- low- or no-interest loans

Other economic development initiatives include technical consulting, infrastructure improvements, enterprise zones and tax increment finance districts, energy-efficiency programs and account management services.

Many utilities also take advantage of strategic priorities to promote the community to businesses with similar interests. For example, a utility that invests in green energy technology can make the community more attractive to businesses that value sustainability.

Working to bring new businesses to the community is only the first step. Public power utilities work with their larger customers, offering them power quality, demand-response programs, alternative pricing structures, special communication during outages and other customer-defined and customer-focused programs. Businesses enjoy the streamlined, one-stop shopping customer service that public power towns offer through key accounts and other large customer programs.



Chapter 3

Preventing a Sellout Attempt from Emerging

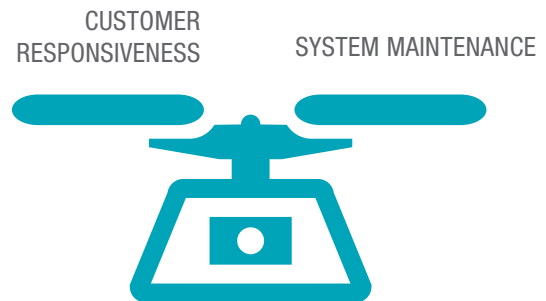
The best defense against a sellout attempt is a well-run utility and customer-owners who understand the value of public power ownership.

One survey examined the history of public power utilities in Minnesota over 100 years, looking at why some public power communities sold their utility, and what happened in other communities that evaluated selling and chose to retain public ownership. The report found:

The overriding conclusion from reading the accounts of these past buyout discussions is that there is no silver bullet or sophisticated public relations effort that prevented the sales of these municipal electric utilities. Municipals that consistently do a good job by responding to their customers and maintaining their systems have very little to fear from the buyout threat.²⁰

Before a buyout offer or the idea of a sellout ever emerges, run your utility as effectively as possible. Identify your utility's strengths and weaknesses and recognize the warning signs that a buyout offer or sellout campaign may emerge. Follow through on plans to mitigate those problems and develop a communication campaign to build knowledge and goodwill in your community. If you face a sellout or buyout attempt, it is vital that citizens understand the value and benefits the community receives from your utility.

Lessening Buyout Threats



Operating a Successful Public Power Utility

Public power utilities offer competitive rates, high reliability, local control, public ownership and accountability, and responsive customer service to the communities they serve.

While public power utilities vary—in size, structure, resources, customer composition, community priorities and more—several key areas are important to public power's success. The relative importance of each of these areas will vary from utility to utility, and will likely evolve over time to meet changing needs, so it is important to reevaluate your utility's operations and strategies regularly to ensure they align with your community's short- and long-term goals.

²⁰ "A Brief History of the Sales of Municipal Electric Utilities in Minnesota," Minnesota Municipal Utilities Association, 2011.

10 Keys to Success



Provide superior customer service.

Use the advantages of local responsiveness and quality service to assure that your service levels lead the industry. Continually communicate with customers to ensure they remain loyal.



Deliver value through power supply management.

Understand power supply options and work to increase supply diversity and limit price volatility, while assuring economic value for customers.



Focus on distribution performance and opportunity.

Make efficient and reliable electric distribution system operations the cornerstone of your operations, and bring new technology services to customers.



Keep the public in public power.

Promote public power's distinct role in the community. Demonstrate the benefits of local ownership and community advocacy, and continually communicate the value of public power to your customer-owners. Beyond keeping the lights on, make sure your customers know about everything else you do to support the community.



Optimize community infrastructure.

Promote public service synergies by integrating utility infrastructure with other community assets to achieve maximum return on public investment, enhance service to customers and serve as a catalyst for technology development in the community.



Lead in environmental stewardship and compliance.

Broaden public power's leadership role in environmental compliance and stewardship, both by complying with regulations and by leading community efforts to make energy goals and environmental objectives compatible.



Build consensus through democratic governance.

Tap the full potential of democratic governance by assuring the process is open, efficient and embraces all stakeholders.



Promote human resource excellence.

Recognize the overriding role that human resources play in the implementation of successful strategies by investing in your human capital and making your utility an employer of choice in your community.



Engage policymakers through legislative advocacy.

Be a strong and consistent voice at every level of local, state and national policymaking to protect and advance public power interests.



Invest in your technology future.

Be a technology leader in the community and an innovator in the industry.

Know Your Value

Have a general understanding of the value your utility provides to the community before a sellout question arises and communicate this value to the community.

The “value” of your utility to the community is much more than the price tag that someone would attach to your poles and wires. It is the cumulative (often intangible) benefits your utility brings.

Refer to Chapter 2 on the Benefits of Public Power; all of these benefits are part of your value. (Even if every item on the list doesn’t apply to your utility—for instance, if your rates are higher than some of your neighboring utilities, or you do not have an economic development program—there are many more benefits that public power utilities provide that should be factored into your overall value).

Determining Your Value

When determining your value, it may help to make a list of all the benefits your utility offers your community. Possible benefits to consider:

- Financial support for local government**
The dollar value of any payments in lieu of taxes or transfers to the general fund
- In-kind contributions**
The dollar value of all the other ways your utility supports the local government and community; e.g., free or discounted services; maintaining streetlights; hanging signs, banners or holiday lights around town, etc.
- Savings through more efficient municipal operations**
The savings you help the city achieve because the utility is a municipal department; e.g., shared (more efficient) metering or billing operations; shared personnel; shared office space, etc.
- Lower rates**
The sum of all the money everyone in your community (residential and business customers) saves on their electric bills because your rates are lower than nearby investor-owned or electric cooperative utilities
- Local employment**
The sum of all the wages, salaries and benefits you pay your employees who live in the community. Take into account the multiplier effect, which shows that each dollar of your employee’s paychecks will circulate through the local economy four to five times.
- Supporting local business**
The dollar value of all the goods and services the utility purchases from local companies, or value of the utility’s business to local financial institutions
- Community sponsorships and engagement**
The value of all your community sponsorships, in-kind contributions (e.g., assistance with stadium or special event lighting) and other community activities
- Energy efficiency and customer programs**
The dollar value of the total amount of energy saved by members of your community through utility energy-efficiency programs; or the value of other utility programs that help your customers
- Economic development**
If your utility helped attract new business to your community or helped existing businesses expand, you can take credit for the economic impact those businesses have on your community.

continued on next page

The Rest of the Equation

Do not forget the intangibles. You may not be able to put a price tag on these benefits, but that doesn't make them any less real.

- Local control**
Your utility has heightened accountability and transparency; supports local priorities; and the benefits of ownership
- Reliability**
The combination of public power's focus on core functions, local operations, and extensive mutual aid networks means public power utilities are more reliable than private utilities
- Customer service**
With their community-focus and greater accountability, public power utilities prioritize customer service in a way that private utilities rarely do
- Community improvements**
Utility participation in community events and investments in reliability, infrastructure and local priorities enhance local quality of life



MORE INFORMATION

Refer to Chapter 2 for more information on the quantitative and intangible benefits of public power that contribute to your overall value.

Communicate Your Value

It is not enough for you to know the value of your utility: your stakeholders need to know as well. Ensuring your stakeholders know the value of your utility can help prevent a sellout/takeover attempt from emerging and can boost the goodwill needed to defend your utility if the situation arises.

Communicating the value of your utility must be an ongoing effort. The individuals making up your stakeholder groups are constantly in flux, and those individuals will not always be paying attention. You need to make the information easily accessible to them—and available when they are ready to hear it—which means constant communication.



Who Are Your Stakeholders?

- Board members & city leadership
- Employees
- Customers (residential and commercial)
- Media



Chapter 4

Communicating the Value of Public Power

Good communication and public relations are vital long before a sellout attempt ever emerges. Many public power utilities have withstood takeover attempts because they enjoyed the strong support of their customer-owners. These utilities laid the groundwork for this customer loyalty long before the privatization attempt. Support comes from positive employee relations, a strong communication program and active involvement with customers and the community.

You should continually present a consistent, cohesive message to customer-owners on the value your utility provides the community. It is important for the community to understand the benefits of owning a public power utility and the non-utility services your utility provides, such as payments-in-lieu of taxes, hanging holiday decorations and participating in community events. In doing so, you develop goodwill before an outage occurs, a rate increase is proposed or the sale of the utility is suggested.

All stakeholders—including city officials, utility management, municipal employees and unions, residential and business customers, and the news media—should be included in the communication process to ensure they understand the benefits of public power and the utility’s contributions to the community.

Most importantly, develop a reputation for presenting information in a clear and straightforward manner, including both good news and bad. If your customers know they can trust the information you provide, then they will listen to your arguments in a sellout discussion.

Crafting Your Message

When communicating your utility’s value, crafting the right message is essential. Effective messages focus on these areas:

- Community values and how the electric utility upholds them

- Utility values and how they benefit your community
- Utility strengths and how they reinforce your values

One at a time

Have you ever noticed that when national brands change their advertising, they change everything at once? They might come out with three or four different commercials at the same time, but they all have the same theme (and usually the same tagline). If you see other ads for the brand—whether in magazines, billboards or over the radio—you will usually find that all those different ads still maintain the same basic look, theme, or tagline. This approach builds brand recognition—getting you to associate certain ideas with their brand. The more they can repeat and reinforce that same idea, the more likely it is to stick.

In building your utility’s brand, you want a message that is clear, concise and memorable. If you put out too much information at once, you will create information overload. When that happens, people will remember only one or two of your messages—or may tune out your communication entirely, absorbing none of it.

In crafting your message, find one that will resonate with your community. You can try different messages over time, but it’s best to keep your messaging simple. Just remember: one at a time.

Keep It Simple

Limit yourself to one message at a time. Don’t overwhelm your audience with too much information at once; a clear and concise message will be more digestible and memorable.



Community Values

What does your community value? And how does your utility uphold and support these values? Focusing on community values is a great way to show that the utility is an integral part of the community and reminds citizens that the utility is a community asset.

A few examples of community values, and how the utility might support these, include:

- **Independence and self-reliance.** Do your citizens pride themselves on being self-reliant? You might want to emphasize local control—your community meets its own energy needs because you have a public power utility.
- **Environmental stewardship and leadership.** Is your community “green”? Talk about ways your utility supports those goals—through conservation, energy efficiency or renewable energy programs, or through efforts to help minimize the impact you have on parks and waterways in your community.
- **Friendly and neighborly.** Does your community take pride in the fact that residents are friendly and always helping each other out? That’s a perfect opening to highlight your customer service and community

engagement activities. Talk about your customer outreach and the community activities you sponsor or participate in. You are not just another nameless corporation; you are a neighbor.

- **Future-looking and forward-thinking.** Is your community up-to-date on current events and fast to adopt new technologies? You could talk about what your utility is doing to prepare for the future—whether through new technologies or other changes to help the utility (and community) succeed over the next 10, 20 or 30 years.



MORE INFORMATION

Refer to the section on “Local Priorities” in Chapter 2 for more ideas on ways your utility may already be supporting your community’s values.



Speak Like a Customer, Not a Bureaucrat (or an Engineer)

Make sure you are using language your customers will understand. Many of the words and phrases we use every day have little meaning to those outside the electric utility industry. For example, customers do not talk about electric rates—they talk about electric bills.

CONFUSING TERMS

CUSTOMER-FRIENDLY ALTERNATIVES

| | |
|--|---|
| Rates | Bills, prices |
| Appropriate | Fair |
| Restructure | Change |
| Reliability | Keeping the lights on |
| Sustainability | Cleaner, safer, healthier |
| Power, kWh, MWh | Electricity, “juice” |
| Payment in lieu of taxes, transfer to the general fund | We invest in our community |
| Shared services, in-kind contributions | We help keep costs down for other city services |
| Local utility vs. private utility | Local government |
| Aesthetics, undergrounding of utility lines | Our beautiful town |

This list is by no means comprehensive, but is intended to help you start thinking about how you can form your messages in a way that speaks to your community and stakeholders in a way that resonates with them.

Utility Values

Tell your utility's story. Define your utility's values and what they mean for the community.

You may think your community already knows who you are and what you do—after all, you have been doing it for years—but you cannot assume your customers know who you are.

The American Public Power Association surveyed 1,600 public power retail customers between December 2015 and January 2016 and found that most customers **do not** know what public power is, or what it means for them. According to the survey:

- Only 1 in 5 public power customers under age 55 knows that the utility is community-owned and not-for profit
- At least 30 percent of public power customers think their utility is profit driven
- Up to 28 percent think their utility is privately owned.

Clearly, public power utilities can and must do better at telling our story—and we have a good story to tell. Themes you may want to emphasize include:

- **Service-oriented** – The utility is owned by its customers and exists solely to serve those customers.
- **Community-owned** – Because it is owned by the community, the utility helps to advance the good of the whole community.
- **Local control and decision-making** – Decisions are made locally, reflecting the community's needs and values.
- **Not-for-profit** – Since it does not have separate shareholders to please, the utility can focus on its core operations of providing safe, reliable electricity to its customers with no divided interests.
- **Responsive** – Because you are part of the community, you react to its needs.

Utility Strengths

Another effective message is to focus on your strengths: let your community know what you do best. This type of messaging is most effective when paired with the values-based messaging discussed above, but even without that, promoting your strengths is a good way to communicate your value to the community.

Strengths-based communication may emphasize:

- **Electric rates** – If your rates are lower than other utilities—particularly compared to your neighboring utilities—let your customers know. Make sure you put the message in terms your customers can easily understand.

Most customers think about their utility bill; they do not think about the rate they pay per kilowatt-hour. Identify the average monthly savings your customers realize because they are served by your public power utility.

- **Reliability** – If your service is more reliable than nearby utilities—you have fewer outages and restore service faster—you have bragging rights. Customers think their electric bill is the most important thing until the lights go out. If you are providing more reliable service, let them know.
- **Customer service** – You pride yourself on your outstanding customer service, but if your customers interact with you only when they pay their monthly bills, they may not appreciate the value of your service. Let your customers know about the high-caliber customer service you offer—including what programs you offer and options for how customers can reach you.
- **Awards** – Winning an award or getting a utility-wide recognition is a perfect opportunity to reach out and let your customers know what you have done to achieve it. Whether it is recognition for your reliability, safety record, customer service, community service activities or for your sound governance or financial management, let your customers know about your achievement.

Communication Strategies

Carefully crafting your message is only part of effective communication; you also need to present your messages to the right audiences, in a way that is more likely to help your message break through.

It may be helpful to figure out who your target audience is and then develop a strategy to meet their needs and interests. Even if your target audience is “everyone,” different segments of your audience will want to receive the message in different ways, so you need to be thoughtful about the ways you build relationships with your various stakeholders.

Continuous Messaging



Sometimes it pays to repeat yourself. Do not assume that if you tell your stakeholders about your value once that they received your message and remember it. Customers move, board members change, and people forget. Commit to making communicating your value a regular part of all your stakeholder communication.

Communicating with Local Officials

It is essential that you communicate the value of your public power utility to your governing board, city council and other local officials.

Educating and communicating with your local officials presents a challenge. You must walk a fine line between overwhelming them with information and providing too

little information that they will struggle to understand key utility policies and the value you bring to your community. Most utility governing board members perform this role in addition to another full-time job. You'll have to compete for their time and attention with all of their other priorities—other city issues, their day jobs and even other utility issues.

Strategies to communicate the value of public power—and your utility in particular—to **local officials**

- Build the information in to the formal orientation process for new utility board/city council members. The board member orientation should include information on the value of the utility (and benefits of public power); information about their duties and responsibilities; the specific tools and resources they need to perform those responsibilities; and information to get them up-to-speed on current utility issues.
- Schedule regular meetings or conversations with local officials and their key staff to discuss utility issues and any concerns. Offer support, special analysis and research, when appropriate. Use the opportunity to ensure they know the value of the utility.
- Participate in city council or utility board meetings. Attend meetings so you understand the other issues they are dealing with and are not caught unaware when other issues impact the utility. Give presentations on the utility's value and any major issues it is facing.
- Involve your board and local officials in utility activities. Give them opportunities to participate in employee events, and help them get to know all the functioning components of your utility.
- Educate your board and local officials to keep them up-to-date on utility issues. Remember, they have other jobs or commitments—it is your job to make sure they understand as much as possible about your utility and the industry. Make sure they attend conferences and receive industry reading material. The American Public Power Association offers many educational opportunities for governing boards—including conferences, webinars and in-house training opportunities—to help your officials better understand their roles, the industry and become more engaged.
- Participate in local legislative events. If your state or national legislators visit your community—or if your local officials go to them each year—make sure you are a part of the activities. Get to know your legislators (and make sure they know who you are, and what you are doing for your community) before you need them.
- Maintain relationships with local, county and state officials and members of Congress.

Communicating with Residential Customers

Getting the word out about your utility's value to your residential customers is important. As a public power utility, your customers are also your owners. While

you cannot expect your customers to have a truly comprehensive understanding of the utility's value, you can make sure they know the basics:

- They are served by a public power utility.

- Because it is public power, your utility is locally owned and operated, not-for-profit, and dedicated to serving the community.
- Your utility makes the town a better place to live because of the many benefits it brings to its customers and the community.

Getting this message out to your customers can be tricky; your customers are diverse and may have little (if any) contact with you outside of getting their monthly bills. You need to try multiple communication strategies to

increase your odds of reaching as many customers as possible.

Keep your message simple. Your customers are already your customers; they do not want or need a sales pitch and your efforts may backfire if they feel you are spending too much time or money on self-promotion.

Often actions speak louder than words: instead of just telling your customers how you support the community, show them. Be a visible part of community events.

Strategies to communicate your utility's value to **residential customers**

- Infuse the public power message using every customer touch-point (telephone, emails, web, etc.). For example, customer service representatives can answer the phone by saying “Thank you for calling ABC, your community-owned utility,” and all employees can add a tagline to their email signatures promoting this message.
- Post information on your website about the value of your utility and answers to frequently asked questions.
- Include a different, quick “did you know” fact about the utility each month on the utility bill.
- If there is no space on the bill, print your message on the bill envelope.
- Use bill stuffers to include a little more information about what it means to be served by public power, your utility's programs or how you are supporting the local community.
- Make use of social media outlets like Facebook and Twitter to promote your value. The American Public Power Association has some communication templates you can use to start promoting your value to your customers over social media.
- Create a video about your utility to post on YouTube and promote via email and social media.
- If the utility or city has a regular customer newsletter, include information about the value of the utility and public power in that space.
- Introduce the utility to new customers. If you already have welcome kits or packets for new customers, be sure to include information on what it means to be served by a public power utility and how the utility helps the community. If not, include information in their first bill, confirmation of new service or other written communication from the utility.
- Make utility personnel available to speak to community groups. Teach schoolchildren about electrical safety, energy efficiency or careers in energy (or STEM careers in general). Speak to adult education classes, senior citizen groups or other community groups about utility programs and priorities or strategies to lower monthly bills.
- Get involved in community events. Community fairs, charity walks, farmers markets or other events may present an opportunity to distribute information about your programs and let people know what you are doing in the community.
- Try to get recognition whenever you are supporting community events. Include your logo on banners and brochures for events you are helping to sponsor or support so customers recognize your role in making those events happen.
- Do not hide your trucks when they are not in use—put them to work. If you are supporting a local parade, perhaps your utility trucks (with your logo on the side) can pull floats. Give children an opportunity to go up in a bucket truck at local festivals or school carnivals. If electric vehicles are part of your fleet, show them off at local car shows or other community events.



CASE STUDY:

Quick action and customer education make the difference

MT. PLEASANT CITY, UTAH • 2016

LESSONS LEARNED:

- *The earlier you can make your case to your customers and stakeholders, the better. Don't wait for sellout proponents to get a foothold in your community.*
- *Public opinion matters. Build goodwill with your customers, and demonstrate your value to them. Local officials are far less likely to proceed if public opinion is for retaining ownership of the utility.*

Mt. Pleasant City, Utah, was facing a budget crisis. Between existing loans and upcoming projects to repair roads and the water and sewer systems, the city needed \$19.5 million for all its infrastructure needs; the city's capital fund had only \$750,000.²¹ The mayor supported selling the electric utility to cover the costs of these needed infrastructure upgrades.

After much pushing from the utility's superintendent, the mayor agreed to hold a city council meeting, where the sole agenda item would be the proposed sale of the utility to Rocky Mountain Power, a neighboring investor-owned utility. The superintendent was influential in getting public support and attendance at the city council meeting; the city chambers were overflowing with standing-room only.

At the meeting, the superintendent emphasized that the utility belonged to the citizens, and focused on the benefits of public power. Key themes were the value of

local control; the utility's high service reliability and quick outage response time; the utility's direct and indirect financial contributions to the municipal government and community; and how the utility supports the local economy.

At the end of the meeting, the mayor took a straw vote of the citizens present to see where public opinion stood. Only four citizens favored continuing to investigate a sale; the rest overwhelmingly voted against any further consideration. So strong was the demonstration of public support for the utility that the issue was set aside and the city continues to own and operate its successful public power utility.

²¹ Ray LaFollette, "Mt. Pleasant considers power department sale," *The Pyramid*, December 15, 2016.

Communicating with Business Customers

Your business customers are a key constituency. Reach out and let them know your value and how you are helping them.

Consider tailoring your message for commercial customers to focus on those things that specifically benefit them. For example, you might focus on your low rates, high reliability, or your programs and services that specifically target business customers.

Strategies to communicate effectively with **business customers**

- Establish a key accounts program to develop strong relationships with large commercial and industrial customers to ensure they receive the best service possible.
- Devote a section on your website to business customers, focusing on programs and services you offer them. Incorporate information on how your utility is good for local businesses.
- Identify and build alliances with community and business organizations, including the Chamber of Commerce, union leaders, and Rotary and Kiwanis clubs.
- Make utility personnel available to speak to local business groups, including the Chamber of Commerce, union leaders, and Rotary and Kiwanis clubs.
- Touch base with key customers regularly to learn about their needs and concerns.
 - Try a mix of group events—like quarterly breakfasts or lunches with your largest customers and local officials—and individual visits or phone calls to get to know your customers, and let them get to know you.
 - Use the opportunity to let them know about new utility programs and services or other developments at the utility that may impact them. Even if the news is not welcome—for instance, a rate increase—your honesty will be, and you can use the opportunity to build your relationship by reminding them of your energy-efficiency programs, or offering to conduct an energy audit, etc.

Communicating with Employees

Communicating the utility's value to your employees is essential. Your employees are also members of the community. More than just customers, they are also ambassadors for your utility, representing the utility both on the job and off. Do not assume that your employees know everything your utility is doing to help the community.

Educating your employees about your utility's value should not stop with your communication department, or your front-line staff. After hours, your employees may go to the grocery store or run errands before changing out of their uniform or other utility-branded attire. Their friends and neighbors may ask them questions about the utility. Be sure your employees are prepared to answer questions.

Strategies to help empower your **employees** to understand (and explain!) the value of your utility

- Train all employees on the value of public power, why you are in business, and how your utility benefits the community. Build this into your employee orientation for new employees, and schedule presentations to reach your current employees. Make sure all employees—not just managers—participate.
- Use employee newsletters, your intranet, bulletin boards in the break room, or other means to remind employees continuously about the value your utility provides. A quick “did you know...” item highlighting one aspect of your value may be enough to remind them about your utility's value—and to make them feel good about working for a utility that makes a difference in the community!
- Build a culture of trust and confidence. This is a necessary foundation for your employees to believe you and want to share your utility's value. It will also be critical to keeping employees motivated and engaged if a sellout is proposed. Your organizational culture should promote accountability and honest, open and transparent communication between employees and leadership.
- Equip employees with easily understandable responses to common questions they might hear while out in the community. Provide fact sheets or wallet-sized cards they can carry when they are off-duty.

Communicating with the Media

Your local media has the ability to shape the opinions of all your key stakeholders—local officials, employees, residential and commercial customers—so it is vital to establish and maintain good relations, and make sure they know the value of the utility, long before your utility enters the news.

Tips to help you establish and maintain a good working relationship with the **media** and to educate them about your utility

- Help news media personnel do their jobs. When they reach out to you, respect their deadlines and be responsive to their questions and requests for quotes. When appropriate, offer to enlist the help of state and national public power advocates (state, regional and national associations or joint action agencies) to provide quotes, data, or other assistance.
- Local media does not just mean newspapers. Maintain contact with print, radio and television media.
- Provide media contacts with press releases to highlight utility programs, achievements, and ways the utility is participating in the greater community. Give your news releases exciting headlines that will get readers' (and media) attention. Provide visuals (photos, charts/graphs, even video) whenever it makes sense.
- Become a news source. Provide robust content on your website, and update it regularly. This will give members of the media (not to mention your customers) reason to visit your site regularly—which can help them learn more about what your utility is doing. For instance, you could provide information on energy information, safety tips, storms and outages, and features to humanize the utility—focusing on your community involvement and human-interest stories involving your employees.
- If not strictly prohibited, support local media by purchasing advertising.



MORE INFORMATION

Refer to Chapter 8 for more strategies for communicating with stakeholders specifically in a sellout evaluation.

Continuous Messaging

Communicating the value of your utility should be an ongoing effort. The media you use to communicate, the message you try to get out, and how often that message goes out will all impact the efficacy of your communication efforts. Consistent, positive messaging delivered through multiple communication channels over a sustained period will be necessary to get your message across.

Building goodwill

Your ongoing campaign to extol the benefits and advantages of public power should go hand-in-hand with an effort to build goodwill with customers. While goodwill is intangible, it is built on concrete practices that cultivate customer loyalty day-by-day.

You build loyalty when you visit your large customers regularly to learn more about how you can help their businesses succeed; when you take time to talk to your customers about why their bill is higher this month, or how they can save on next month's bill; when you set up a booth at the local fair to talk about electric safety or energy efficiency. You foster goodwill when your goal is to ensure that every customer receives a bit more than expected for the money paid, and that each and every customer transaction is a positive one.

Public Power Week

Public Power Week in October is an excellent opportunity for public power utilities to open their doors to customers and community leaders. Through Public Power Week activities, utilities can show their customers how the utility benefits them and that customers have a voice in utility decisions.

The American Public Power Association has materials to assist municipal utilities with Public Power Week and other communication efforts throughout the year. These materials include sample speeches and guest columns, letters to business customers, Public Power Week proclamations, letters to public officials and candidates, salutes to employees, news releases and radio spots. For more information on Public Power Week, visit www.PublicPower.org under "Education & Events."



Chapter 5

Anticipating a Sellout Threat

No matter how well-run your utility is, or how well you have communicated your value to the community, you should view your utility as a possible takeover target. Look at how well your utility measures up in a number of areas. This will help you identify potential threats facing your utility so you can address them effectively.

What Makes Your Utility a Takeover Candidate?

Your utility can become a takeover target for any number of reasons—many of which are outside your control.

Public power utilities may face sellout initiatives due to customer dissatisfaction with rates or service, financial stress on the utility or community, or changes in utility or community leadership, to name a few reasons. Sometimes a public power utility is a takeover target simply because a neighboring utility is in an acquisition mode.

Warning Signs

The reasons a sellout evaluation may arise vary. While the specific combination of factors will be different for each utility, there are several circumstances that can act as warning signs that a utility may become a takeover candidate.

Be aware of these warning signs; if you identify them early, you can take steps to address the issues before your utility is at risk.



The city needs money

A city facing financial pressure may look for a quick infusion of cash by selling public assets to pay off debt, fund a pension liability, pay for a new public works project, or even just to make up for a budget shortfall due to poor economic conditions (such as lower tax revenue due to unemployment, a decline in the housing market or a shrinking population).



Warning Signs Your Utility May Be at Risk

- The city needs money
- Electric rates are too high
- Contributions to the city are too high
- Contributions to the city are too low
- Cash reserves are too low
- Local officials do not understand cash reserves
- Reliability is low
- System is not well maintained
- Local politics shift unfavorably
- Customers lack adequate representation
- High turnover on the city council or governing board
- City council or governing board does not understand the industry
- Changes in utility management
- Poor media relations
- Lack of communication
- Not investing for the future
- Neighboring utilities are in acquisition mode

For a community looking to sell public assets, a public power utility is likely to draw more attention (and a higher price tag) from potential buyers: it is an already an established business, producing a steady revenue with a near-monopolistic service territory. Be prepared to make the case for how long-term value of your public power utility exceeds any short-term windfall from a sale.



Electric rates are too high

If your customers pay higher rates than electric consumers in neighboring communities, find out why. (See Chapter 9.B on Electricity Rates). Consider all your rate classes. Residential customers—that is, potential voters—will complain if they perceive their rates are unfairly high, particularly when compared with those charged by other utilities in the region. Commercial and industrial customers drive the local economy and may have substantial influence in the community. Rates for all customer classes should be non-discriminatory and based on the costs of serving them.



Large, unexpected rate change

Large, unexpected rate increases are a two-fold problem: they create customer dissatisfaction, and they are an indicator that the utility has not been planning sufficiently for its financial future, meaning you could be caught in a vulnerable position. Both scenarios might open the door for a sellout discussion. Make sure you are forecasting your future needs appropriately, and adjusting rates when needed to maintain the financial integrity of the utility. Do not try to absorb a needed rate increase; ignoring cost increases now may only result in a larger increase in the future. It is better for your utility and your customers to increase rates at a slower, more predictable rate when needed.



Payments in lieu of taxes are too high

In lieu of tax payments (also referred to as transfers to the general fund) that are too high contribute to higher electricity rates. (See Chapter 9.B on Financial Contributions to Local Government, and Appendices A and B on Payments and Contributions to Local Governments).



Payments in lieu of taxes are too low

If your payments to the city are lower than average, local officials may think they can get more financial support from another form of utility. (See Chapter 9.B on Financial Contributions to Local Government, and Appendices A and B on Payments and Contributions to Local Governments).



Cash reserves are too low

If cash reserves are too low, the utility may not be able to recover as quickly when faced with a downturn in use, sudden loss of a customer, or catastrophic event; or the utility may need to issue debt or suddenly raise rates to cover regular operating expenses. This may cause local officials or dissatisfied citizens to question whether the utility is managed effectively and may raise the specter of selling the utility.



Local officials do not understand cash reserves

Make sure your local officials understand why the utility needs cash reserves. Even if the utility is maintaining proper cash reserves, it can face the same dangers as one with too-low reserves if local officials raid those reserves to meet other community needs. It is important to educate local officials on your cash reserve policy—including why it exists and what expenses it may need to cover—to ensure officials do not view the reserves as an easy source of funds.



Reliability is low

Service reliability may be just as, if not more, important to some customers as rate levels. If customers are dissatisfied with the frequency of outages or how long it takes to restore power, they may wonder if a change in ownership would improve their service—particularly if they perceive that a neighboring utility is providing more reliable service.



System is not maintained

Regular maintenance and upgrades are necessary to ensure the ongoing reliability of your electric service and the utility capital and operating budgets should address these essential, ongoing investments. Deferring maintenance too long may hurt service reliability, and the cost of making all the necessary repairs and upgrades at once can overwhelm the utility's budget. When this happens, this combination of poor reliability and a high price tag to repair the system may cause the community to evaluate selling the utility.

**Local politics shift unfavorably**

If local politicians are ideologically opposed to government-run operations, your public power utility may become a sellout target. Be on the watch for local politicians and community leaders who favor privatizing public assets, whether in the name of saving money or downsizing government, or overzealous shifts to public-private partnerships (which can be code for privatization).

**Customers lack adequate representation**

If some of your customers live outside your municipal boundaries, you must address their role in contributions to your payments to the local government. Customers who live outside of your political boundaries may feel they should not have to contribute to a local government that does not represent them, especially if they have no say in utility governance. If provisions are not made for these customers through representation on the utility governing board or proportional contributions to the local governments of the communities where they reside, these customers may instigate a sellout discussion.

**High turnover on the city council or governing board**

High turnover of locally elected officials can spur talk of a sellout if new officials do not understand or appreciate the value your utility provides to the community.

**City council or governing board does not understand the industry**

It is important for both new and veteran governing body members to understand the complexities of the industry (including new reliability, environmental and other regulations), as well as the fundamental elements of the industry (how electricity is produced, bought and sold, moved around the power grid, and ultimately delivered to customers). If your governing board does not understand the industry, it may be overwhelmed by the task, or your utility may be caught unprepared by changing regulations, and the utility may face a sellout threat.

**Changes in utility management**

If your utility does not have a succession plan to ensure a smooth transition to new leadership, you may be at risk if key employees depart.

**Poor media relations**

News media may be sympathetic toward sellout initiatives if they have a history of poor relations with your utility's management. Conversely, if your utility has forged good relationships with media, they may be more likely to treat the utility fairly and even support the utility if a sale is proposed. Be cognizant of any negative stories about your utility in the local media; these stories not only help you know what your customers are thinking, but multiple stories may be a red flag that your relationship with the media is deteriorating.

**Lack of communication**

Undertake an organized effort to communicate your utility's value to your customers. Your customers may not realize they are served by a public power utility. Customers cannot be loyal if they do not know who you are. They will be more likely to support a sale if they do not understand the benefits of public power.

**Not investing for the future**

If the utility does not invest in its reliability and service now, future reliability or service levels may be lower, putting the utility at risk. When major investments will be necessary—for example, building a new generation facility—this should be built into your budget and the reasons should be communicated to your community.

**Expanding neighbors**

Even if your utility is doing everything right, you may have to defend your publicly owned utility against a takeover attempt if a nearby investor-owned or cooperative utility is looking to expand and decides to make an offer to purchase your utility.

These threats represent common signs that have preceded sellout evaluations in public power communities, but the list is not all-encompassing. If you can identify problems early—or better still, if you can identify potential problems before they arise—you can take measures to protect your utility and community.

The Threat from Investor-Owned and Cooperative Utilities

In recent years, both investor-owned and cooperative utilities have made aggressive pushes to buy out neighboring public power utilities. While utilities looking to expand may try to portray their motivations as altruistic—looking out for the best interests of your customers—the reasons behind these moves are always economic.

Investor-owned utilities are interested in expanding their customer base to increase profits for shareholders. One investor-owned utility recently proposed a strategy of acquiring municipal utilities at their annual investor conference, as a means of increasing its market share in the state and expanding shareholder earnings.

Electric cooperatives have also been increasingly aggressive in their attempts to buy out public power utilities in recent years. Cooperatives are attracted to public power utilities because they represent a more balanced mix of residential, commercial, and industrial customers and because municipal utility service territories are typically denser.

One cooperative laid out the argument for acquiring municipal utilities: “One of the key disadvantages of electric distribution cooperatives as a whole is that they serve an imbalanced mix of highly rural members, agricultural farm accounts, and limited commercial accounts.”²² The cooperative calculated their load was comprised of 80 percent residential and agricultural customers and 19 percent commercial (including schools, a county wastewater facility, and one small manufacturer), with the balance of their load consisting of security and public streetlighting; the cooperative serves no industrial customers. They conclude that “without the mix of commercial and industrial consumers, and the density of incorporated areas,” it is difficult for the high concentration of residential customers “to generate enough revenue based on kilowatt-hour consumption on a per-capita basis to cover system investments and overhead.”

In terms of customer density, the numbers bear out that, relative to their general market share, electric cooperatives own a significantly higher share of distribution lines in the United States. Public power utilities’ relatively compact service territories mean they typically earn higher revenue per mile of distribution line than other utilities—keeping costs lower for their customers.

Electric Utility Comparisons²³



²² The Evolving Energy Business: Growth by Acquisition, Delaware Electric Cooperative, GC4Q2016 Update.

²³ National Rural Electric Cooperative Association, “America’s Electric Cooperatives: 2017 Fact Sheet,” January 31, 2017 (based on Energy Information Administration 2014 data; density data for IOU and public sector is 2009 data).

Unfortunately, when cooperatives talk about achieving “efficiencies” through acquiring municipal utilities, those efficiencies come at the expense of public power customers, who are effectively asked to help subsidize the cooperative’s customers. Public power customers might see rates go up if they were acquired by an electric cooperative, because they would need to pay for repair and maintenance of many miles of sparsely populated distribution lines outside of their immediate community. In the meantime, reliability—the amount of time it takes to restore service after an outage—could go down. The cooperative may not maintain the same staffing levels for line crews for your town as the current public power utility, or crews may be located

to another area in the cooperative’s service territory, increasing response times.

Many cooperatives may also be disingenuous in touting other benefits of their buyout offer, promising advantages that public power utilities already experience. For instance, a cooperative might try to make the case that if the utility sells to the cooperative, municipal residents will have a voice in utility policies and procedures, and will get the advantage of ownership. However, this ignores the fact that residents already have these benefits by virtue of living in a public power community.



When You Receive a Buyout Offer

Examine any proposal to purchase your utility skeptically. Whether the offer was unsolicited, or in response to a request from within your community, remember the would-be buyer is acting in its own best interest. As you evaluate the proposal, answer these questions:

1. What financial assumptions are they making?

- a. What assumptions are they making about your utility—its current and future value, its condition (and need for investments/repairs), its potential for future load growth, and its ability to provide future benefits to the community?
- b. What assumptions are they making about their own utility—its ability to pay for your utility, its current and future rates, its own potential for future load growth other than through annexation? What does this tell you about their long-term prospects, and what that would mean for your customers if the sale was approved?

2. Are there any technical flaws in the document?

- a. Carefully review the proposals for any errors or omissions. The document should be reviewed by legal, financial and engineering experts. An agreement with underlying technical flaws could have costly repercussions for your community down the road: do not be caught unaware.
- b. What timeframe does their data cover? A fair comparison should look at many years’ worth of data financial, rates, usage, reliability, customer satisfaction and more. Challenge findings that look only at one snapshot in time and do not present the whole picture accurately.

3. What is driving this offer?

- a. Try to identify why the offeror would want to purchase your utility. A proposal that does not address how this would impact the purchaser should be subject to heavy skepticism.
- b. Once you’ve identified the “why,” consider what that means for your community.
 - i. If the other utility is looking to annex you to reinvigorate its stagnant load, what does that mean for your future rates? (Would your customers be subsidizing theirs?)
 - ii. If an investor-owned utility is looking to grow to increase shareholder value, what does that mean for your rates, and the likelihood of keeping money in your local community?
 - iii. If the would-be purchaser focuses on the “efficiencies” of operating a single system, how does that compare to the efficiencies your town would lose from having the electric system as an integrated part of municipal operations? Are there other ways to achieve some of the proposed efficiencies without selling the whole utility? (Are there ways your utilities could partner together, or you could outsource one part of your operations, that would allow you to retain control?) Or could the same efficiencies be achieved by having your utility take over all or part of the other utility?



Chapter 6

Preparing for a Sellout Evaluation

More than just knowing your utility can become a target, utility managers and policymakers should prepare for a sellout threat by establishing the policies and fostering the relationships needed to protect the utility for your community.

Positioning Yourself to Meet a Sellout Challenge

Knowing your utility's strengths and weaknesses is essential. Remember the basic public relations adage: The truth won't hurt, but perception of the truth might. Your community's perception of your community-owned utility is also important.

Identifying Strengths

Your utility's strengths are those attributes that make the utility valuable to its customers and the community, and sometimes make it more difficult to acquire. These strengths may include:

- Satisfied, loyal customers who are willing to defend the utility.
- Support from local political and business leaders.
- Satisfied employees who support the organization.
- A positive, consistent statement of the utility's goals and the benefits of public ownership, which is understood by employees and shared with the public.
- Positive attention from the media.
- Strong charter language/legal basis for the utility that requires multiple city council or utility board votes and a public referendum to approve a sale.

- Debt instruments that are written to preclude—or at a minimum, make difficult—the assumption of debt by a non-public body.
- Strong relationships with state and national associations and/or a joint action agency.

One asset you will not want to underestimate: your customers (and their perception of the utility). Your customers' satisfaction with every facet of their service will either help or haunt you in a takeover attempt. Happy, satisfied customers can kill a sellout attempt before it takes off.

When the sale of Memphis Light, Gas & Water was proposed in 1998, residential customers told the City Council they had no interest in selling the utility—or even being allowed to vote on the issue. Both the media and utility customers were adamant in their praise of the utility's efforts to keep the power on and rates low. This show of support is a cultivated benefit of a long-term, focused effort to identify, meet and exceed customers' needs and expectations.²⁴

Assessing Weaknesses

In looking at your utility's weaknesses, start by asking whether the utility is meeting the needs and expectations of the community and why your customers might want to sell the utility. It is also important to know whether your customers appreciate the value of owning their local utility, among other issues. Is the community satisfied with the utility's performance? Has satisfaction been measured? If citizens and businesses are not satisfied, what is the reason? What have utility management and policymakers done to improve performance?

²⁴ Michael Whitten, *Observations From a Public Power Takeover Target* (Memphis, Tenn.: Memphis Light, Gas & Water), October 1998, p. 1.

If there is dissatisfaction, what actions or conditions have caused it? Have policymakers given management the tools and direction needed to operate efficiently? Has a bump in rates resulted from the need to catch up on maintenance that has been deferred? Have rate increases resulted from higher purchased power costs? Have transfers of utility revenue to the city general fund been reasonable? If the community is considering selling the utility, what are the motives of the prospective buyers and those working toward a sellout?

Addressing these questions will help you understand the utility's problems and determine what can be done to solve them.

Mitigating Risks

Once you have analyzed your utility's competitive position and considered the warning signs, you can develop a strategy to capitalize on strengths and mitigate weaknesses or risks your utility may face.

These steps are advisable even if you identified potential warning signs that are outside of your control (for instance, the city is experiencing financial troubles, or a neighboring utility is looking to expand). It is always a good idea to educate your governing board and your customers about the strengths and value of your publicly owned utility.



Develop a strategy to improve weak areas and capitalize on your strengths

The following are examples of how you might address some of the issues identified in the analysis of the utility's strengths and weaknesses and position yourself to meet a sellout challenge.

- **Electric rates** – Compare your utility's average rates with those of other utilities to assess your competitive position. (See Chapter 9.B on Electricity Rates).
 - If your rates are lower than those of other utilities, make sure your customers know this is one of the benefits of their public power utility.
 - If your rates are higher, find out why. Develop a strategy to mitigate any negative rate issues and communicate your strategy to the community. If you cannot lower your rates, educate customers on the reasons why rates are higher and what you are doing to make the utility more competitive.
 - Conduct a study charting electric rates over time. This will help you determine if your rates are set at a level to cover costs and identify any changes needed in your rate structure, while also demonstrating to the community that rates fluctuate over time.
- **Reliability** – Evaluate your utility's reliability.²⁵
 - If you are providing reliable service—particularly compared with nearby utilities—let your customers know, and educate them on the direct and indirect economic benefits of public power.
 - If your reliability needs improvement, identify the reasons and develop a plan to address the problem.
- **Contributions** – Quantify your utility's support to the local government and community, including direct financial support (through contributions or payments in lieu of taxes or transfers to the general fund), and other contributions to local government, including free or reduced-cost electric services, use of utility employees and vehicles for community services, and other services. (See Chapter 9.B on Financial Contributions to Local Government, and Appendices A and B on Payments and Contributions to Local Governments).
 - Compare your direct financial contributions to the local government to contributions made by other public power utilities, and to taxes paid by investor-owned utilities.
 - Educate your customers on all the ways the utility contributes to your local community.
- **Customer service** – Measure customer satisfaction.
 - If satisfaction is high, make sure customers know that quality service is one of the many benefits of public power, and get the word out about your high level of service.
 - If customers are dissatisfied, identify the reasons and develop a plan to address the problem.

²⁵ Calculating reliability metrics is a part of the pathway to continued exceptional performance. A good place to start is with the IEEE 1366 metrics, which were designed by engineers for internal reliability benchmarking and external utility comparison. To benchmark internally or externally, statistics should be collected and evaluated for at least five years. After reviewing the 1366 document and its metrics, a utility may find that not all of the calculations it recommends would help to make better decisions. Where this occurs, it is important to decide which metrics would be best for your utility's particular circumstances.

To help small utilities with reliability metrics, APPA produces a guide titled "Reliability Statistics for Small Utilities," which provides an introduction to the standard IEEE 1366 metrics and shows their relevance to small utilities. APPA also conducts a biannual "Distribution System Reliability & Operations" survey to supplement traditional metrics to help elucidate general factors used by different utilities in their decision-making processes.



Conduct regular organizational assessments to monitor your progress

You can conduct an assessment in-house or hire an independent consulting firm to help make sure you are doing everything you should to ensure your utility’s future success.



Communicate with stakeholders on a regular basis

Explain utility issues, the benefits of public power and the value your utility provides the community, and the steps you are taking to improve the utility (e.g., to reduce rates, improve reliability, or offer better service). Customers who understand the value your utility provides and know the utility is working to improve its performance will be more likely to defend the utility in a sellout attempt.



Put policies in place that will protect your utility

Ensure your utility has an adequate legal and organizational basis for efficient, reliable and financially sound performance. Policies you may want to review, adopt or update include:

- **City charter language** – Ensure that no hasty action is taken by updating or revising your city charter language

to require a full report on the value and benefits of the utility, multiple votes by the city council or utility board, at least one year apart, as well as a public referendum, before the utility can be sold. (See Appendix D for sample language on the disposition of public utilities).

- **Contributions and cash reserves** – Have a clearly established policy on the utility’s contributions to the city (whether they are formatted as payments in lieu of taxes, transfers to the general fund, or something else), as well as cash reserves. You may want to review your contributions and reserves policies to ensure your reserves are adequate and that contributions to the city are appropriate.

Make sure your governing board and local officials understand these policies (and why the utility needs to maintain certain levels of reserves) to avoid the temptation to view the utility as a piggy bank when budgets get tight.

- **Grow with your city** – When your city grows, and new homes or businesses locate outside of your traditional borders, who is serving those customers? Towns and cities grow over time; your utility should be able to grow with it to keep up with your increasing population. Make sure you have policies in place that allow you to extend service beyond your traditional municipal boundaries as

Serving Customers Outside Your Municipal Boundaries

A 2015 survey of 495 public power utilities showed that while most provide service to customers located outside their municipal boundaries, only 13 percent are making financial contributions to those other customers’ jurisdictions—and only 2 percent are giving those customers representation on the utility’s governing body.

UTILITIES THAT SERVE CUSTOMERS OUTSIDE MUNICIPAL BOUNDARIES²⁶

| Customer Size Class | Number that Serve Outside Boundaries | Governing Body Includes a Representative from Outside Municipality | Utility Makes Payments in Lieu of Taxes to Outside Jurisdictions |
|---------------------------|--------------------------------------|--|--|
| Less than 5,000 customers | 182 | 0% | 4% |
| 5,000 to 20,000 customers | 79 | 4% | 25% |
| 20,000 to 50,000 | 25 | 0% | 40% |
| Greater than 50,000 | 15 | 20% | 20% |
| Total | 301 | 2% | 13% |

²⁶ American Public Power Association, “2015 Governance Survey,” May 2015.

your community grows. This benefits you by giving your utility growth potential and benefits these new customers by giving them the advantages of service from a public power utility. Policies that allow you to grow also prevent a neighboring investor-owned or cooperative utility from getting a dangerous foothold in your town.

If you already serve customers outside of city boundaries, make sure those customers have a voice in utility governance. Consider ways to make sure their interests are represented by your utility governing board—particularly if those customers are not able to vote for the city council or governing board members. This will help your customers feel more connected to the utility and realize the full benefits of being public power customers; and may alleviate discontent over the fact that part of their utility bill is supporting a town that they are not a part of.



Be engaged on the local, state, regional and national levels

Keep up to date on developments and make sure you have connections in place at the state and national levels to assist your utility if a takeover attempt should occur. Get involved in your state, regional and national associations or a joint action agency, all of which have resources to help you in a sellout evaluation.

Foster relationships with elected officials at all levels. Supportive public officials are your allies and can help diffuse a potential threat if a proposed public policy change would have negative consequences for your utility.



MORE INFORMATION

Refer to Chapter 9.B, and Appendices A and B, for more information on financial contributions to local governments.

See Appendix C for information making rate and cost comparisons.

Refer to Appendix D for model city charter language to help protect your utility from a sale that might not be in your community's best interest.

Laying the Groundwork

Do not wait until there is a crisis: start preparing today. The best time to plant a tree is 20 years ago; start laying your foundation now so you can reap the benefits when a crisis hits—whether that means a sellout evaluation or any other time that you will need the goodwill of your stakeholders.

Know Your Worth

If someone asked you today, “Just how good is your utility?” would you be able to answer that question? Most utility leaders think their organization is a good one, but can you quantify that? What is your reliability rate? How much ad valorem or in-lieu-of tax dollars does your utility contribute to the city coffers? What economic impact does the municipal utility have on your city? What businesses have you been instrumental in bringing to (or keeping in) town? What do you contribute to the quality of life beyond providing a reliable source of power?

Worth is much more than the value of your plant and other properties owned. Begin with this question: If your utility disappeared tomorrow, what would the city and its residents lose? The answers will give you a better grasp of your true worth.

Develop Your Own Channels

You may have a great relationship with your local media. However, if you depend on newspapers and radio to take your message to your customers, you will never be fully in control of telling your story.

You need to develop your own channels of communication. Publish a newsletter. Communicate with customers on Facebook, Twitter and on neighborhood social media outlets. Add fresh content to your website on a regular basis, so visitors have a reason to return.

Reach Your Key Audiences

It is easy to lump all communication efforts into one category. You have several audiences, however, and you need to develop channels to reach each. Make sure you are communicating with residential customers, key accounts and business customers, employees, board members, city council members, and elected officials.

Cultivate Advocates

In communicating with these audiences, identify individuals who could serve as advocates for your utility. This could be as simple as giving a testimonial or reaching out to others

in their peer group via letters, email or phone calls. When someone says, “Let me know if I can ever help you,” take them up on the offer and ask them for an endorsement.

Build Media Relationships

Do not overlook local news media. Build good relationships with members of the press. Make sure they know whom on your staff to contact when they need information for a story—and make sure you are responsive when they reach out to you.

Monitor local media outlets to see what they are reporting, and always be willing and ready to offer comments on stories that relate to the utility industry in any way.

Stay Connected

Maintain strong ties with your state, regional and national associations, and your joint action agency. These groups facilitate sharing of ideas and experiences among their members. Many also have resources to help utilities prepare for and weather crises. These associations and agencies, and the relationship you develop by being part of them, will prove invaluable during a sellout evaluation.

Educate Your Board

Your board is vital to your success, but do not assume that your board members understand your utility’s importance in the city. It is your job to make sure they understand as much as possible about this complex industry. Remember, they have other jobs or commitments—the electric utility is not their 24/7 concern. Make sure they attend conferences and receive industry reading material. Give them opportunities to participate in employee events and to get to know all the functioning components of how your public power utility works. Do not assume anything; be intentional about educating them.

Keep a Record of Good Deeds

Start a “Making a Difference” journal. Keep track of everything you do above and beyond providing electricity to help the city, key accounts and customers in general. Examples might include working with city planners to install underground utilities while new road construction is planned. Log dates and details.

Likewise, keep a record of notes, emails and comments from people who thank your utility for doing a great job—these are people you may need to call on later to provide testimonials for a news article or advertisement.

Stick to the Facts

Get into the habit of dealing with facts (as in the “Know Your Worth” section above). Only talk about—and publish—what can be proven. This may involve your reliability rating, your financial strength and your impact on the city. When you have facts and use them as the foundation for your communication, your credibility is assured.

Build Coalitions

As a municipal power provider, you have many relationships. Take these one step further and develop coalitions. These can be formal, such as a customer advisory board, or informal, such as an occasional lunch. Be ready to leverage these coalitions if you become the target of a buyout attempt. Build them now and you can leverage them much faster.

This goal can be aided by many initiatives you already pursue, including key accounts management programs and involvement in civic clubs.

Developing Your Response Plan

Treat the prospect of a sellout scenario the same as any other predictable crisis and have a plan for how to respond. You do not want to scramble to prepare a plan when you really need it. As with any good crisis management plan, revisit the plan regularly to make sure it is still up to date and makes sense for your utility and community.

Like major storms and natural disasters, sellout scenarios can occur suddenly, with little or no advance notice; but they are also predictable, and if you are vigilant about monitoring for the warning signs, you can help gird your utility and community against a worst-case scenario. But unlike a storm, sellout scenarios can unfold more slowly—even in the most fast-paced scenarios, the process is still likely to take several weeks, if not months.

When a sellout situation arises, slow down the process as much as possible to give yourself time to respond and to educate all your stakeholders (board members and local officials, employees, customers and the media) so they can make a decision that is in the long-term best interest of the community. Having a response plan ready in advance is essential. The faster you react and the more you prepare in advance, the more effective you will be.

Elements of a Sellout Response Plan



- Identify your response team
- Slow it down
- Enlist help from allies
- Review your utility's competitive position
- Conduct a legal assessment
- Conduct a valuation study
- Communicate with stakeholders

Identify Your Response Team

Whom will you trust to implement your response to a proposed sale of your utility? Who has the knowledge and experience necessary? Your response team's composition may vary, depending on the issues driving a sellout evaluation, but always include your general manager, communication director, and legal counsel as part of the team.

YOUR RESPONSE TEAM SHOULD INCLUDE:



Depending on the nature of your sellout scenario, you may want to include some (or all) of your department heads, vice presidents or other senior advisers who can provide subject matter expertise. For instance:

- Your finance director may help you determine the value of your utility, when it comes time to put a dollar amount on all the contributions you are making (especially if you need to calculate the value of in-kind contributions or other efficiencies).
- If reliability is a concern, your director of operations should certainly be involved in the discussion.
- If the threat is political—or if another utility is promoting legislation that would unfavorably impact the utility—get your government relations director involved.
- Your human resources director may be able to help if a personnel issue is at the root of the sellout attempt, or just with communicating with employees and maintaining morale.
- While your communication department will certainly play a key role, your customer service department will remain your front line with your customers, so make sure they know what is going on and know how to respond appropriately to questions.

You may need to hire outside consultants to supplement your staff as part of your response team. For example, if a utility aiming to buy your electric system wages an aggressive buyout campaign, you may want to hire a public relations or communication firm to help you communicate your message to your customers. And even though your staff may be capable of performing a valuation study, hiring a qualified third party to conduct the evaluation will give your results more credibility than if you do it in-house.

Slow it Down

After you have assembled your team and allies, your first mission in any sellout response is to slow down the process. Investor-owned and cooperative utilities believe they have a better chance of success by putting their buyout proposals on a fast track. Their objective is to move the sale through quickly, thereby avoiding tough back-and-forth negotiations, and a buildup of community resistance. One private utility executive said the single greatest obstacle to his company's attempted takeover of a municipal utility was the community's decision to delay the sale pending further study of the issues.

Common tactics that a prospective buyer will use to speed along the process include putting an expiration date on the offer to try to force a quick decision; or proposing to solve an immediate need with the offer (for instance, if the

town is facing a budget deficit or is struggling to recruit a utility manager), to pressure stakeholders to accept the deal without careful examination or deliberation.

Your public power utility is too great an asset to your community for any decision to sell to be made quickly or lightly. Do not allow the other utility to set the timetable. If your community is going to entertain an offer to purchase the utility, you should set the standards and timeline.

Communicate with your governing board, city council and other local officials why you need time to prepare the reports that will allow them to make a decision that is in the best long-term interest of the community. Set a timeline that will allow the full deliberative process—meaning you have enough time to conduct a legal assessment and prepare a full valuation study, and the board, local officials and other stakeholders have time to consider its full implications before the first vote is cast.

You can also ensure that no hasty action is taken by updating your city charter language to require a comprehensive report on the utility’s value and benefits, and multiple votes by the city council or utility board, at least one year apart, as well as a public referendum, before the utility can be sold. (See Appendix D for sample language).

Proceed with Caution



Slow down any sellout attempts. Hasty decisions rarely benefit the community in the long term. You have the right to set the terms for any discussion and you should never allow a vote to proceed until you have conducted your own valuation study.

Enlist Help from Allies

Reach out for assistance as soon as you hear the first whispers of a possible sellout. Acting quickly can keep an initial question or inquiry from becoming a serious threat, and your allies may have the information, resources and expertise that will make the difference.

Who should you call?

- American Public Power Association – Your national association has a plethora of resources, including
 - o Information on what to do in a sellout evaluation

- o Insight on national data, trends and a national perspective on developments in public power and the electric industry
- o Subject matter experts on utility sellouts, communication, engineering and operations, and much more
- o Recommendations on consultants to help with valuation studies
- o Templates to help you communicate the value of your utility
- o Contact Ursula Schryver, Vice President of Education & Customer Programs, at 202-467-2980 or USchryver@PublicPower.org, or LeAnne Sinclair, Director of Customer Programs, at 202-467-2973 or LSinclair@PublicPower.org for more information and help with a sellout situation.
- State association – Your state or regional association is likely to have many resources as well, including insight on particular data, trends and issues happening in your state or region.
- Joint action agency – Like state associations, your joint action agency is likely to have insights, subject matter experts and other resources to help you in a sellout evaluation. If you have long-term power supply agreements with the agency, those contracts may also impact your community’s ability to sell the utility.
- Local allies – Reach out to local officials or community leaders whom you consider allies. You can find out if they have additional insight into the developing situation. Use the opportunity to let them know about the value of the utility, and thank them for their ongoing support. If the sellout initiative takes off, you will need these allies.

Do Not Wait— Get Help Immediately



Call your local, state and national allies for help when sellout questions arise.

- American Public Power Association
- State/regional association
- Joint action agency
- Local allies

Review Your Utility's Competitive Position

Identify your utility's strengths and weaknesses, look for the warning signs that a sellout evaluation might be coming, and develop a plan to mitigate your risks. Do not wait until a sellout evaluation is on the horizon to do this competitive assessment. Regular organizational health check-ups can help you identify and correct potential issues long before the possible sale of the utility is ever mentioned—and that is worth the extra effort.

Having this information ready allows you to leap into action when a sellout issue arises. Before the issue gains any traction, you can start communicating your strengths to your stakeholders.

If your assessment was honest and complete, you may already be working on a plan to shore up the weaknesses (mitigate the risks) that caused the sellout offer to arise. If so, that can also become part of your communication efforts. Letting your stakeholders know that you are already aware of the perceived problem and working to address it

demonstrates that you are a serious and proactive steward of the community's utility. Your action will let the air out of the sellout initiative and shift the conversation to the long-term best interest of the community.

Make It a Habit



Regularly assessing your competitive position and updating your response plan appropriately, is important. Your competitive situation will obviously change over time—not only because your numbers may change (for instance, your reliability, rates or customer satisfaction may go up or down over time), but so may those of your neighboring utilities, making you look relatively stronger or weaker.

Conduct a Legal Assessment

Assess what would have to happen, legally and legislatively, to change the ownership of your utility. Determine what federal, state and local laws would affect a sale. Know who would have to approve a sale and how required approvals would occur.

Legal issues may affect the possible sale of your utility in several ways. If there are legal difficulties relating to the sale, the sale may be prevented, or in some cases, the proposed sale may be overturned through administrative or court proceedings.

Even if legal issues do not actually stop a sale, they may delay a sale and give the community time for a more complete airing of all the issues. Utilities that are served by joint action agencies may have power supply or other long-term contracts that require the utility, or purchaser, to buy out the contract before the utility can be sold.

You may be able to conduct a legal assessment in advance and include it in your response plan. Doing so before a sellout is on the table can allow you to make policy changes that would help protect your utility and community in the event of a sellout initiative (for example, updating the legal requirements for the sale of the municipal utility in the city charter).

See Appendix D for sample city charter language on the disposition of public utilities that provides strong legal protections against a hasty decision to sell one of your community's most valuable assets.

If you conduct a legal assessment before you are confronted with an attempted buyout, be sure to update it if any pertinent laws, regulations or contracts change.



MORE INFORMATION

See Appendix D: Model City Charter Provisions for a Public Utilities Authority, for sample language on the disposition of a public utility.

Refer to Appendix F for a discussion of legal issues in the takeover of a municipal electric utility, written for the non-lawyer.



Preventing Conflicts of Interest

As stewards of the community-owned resource, utility managers and governing board members have a legal and fiduciary responsibility to ensure that any decision made regarding the possible sale of the utility is in the long-term best interest of the community. One part of this means ensuring that no conflicts of interest exist in the evaluation process.

Conflict of interest may exist between the city and the utility. For example, if the sale is being proposed for political reasons, or to help the city with a short-term budget need, that may conflict with the utility's (and community's) interest in ensuring safe, reliable, low-cost and environmentally responsible electricity supply.

It may be advisable to hire a separate lawyer or valuation firm to represent the utility—particularly in cases where the utility and city attorney is the same person—to ensure that any study and decision on the future of the utility is based on a fair and unbiased accounting of the utility's long-term value.

One utility undergoing a sellout evaluation was told by its insurance company that failure to hire an independent lawyer to represent the utility or to conduct its own valuation study could leave the board liable if the utility were sold—and if the sale amount is greater than the amount of insurance the utility has covering the board, that could leave individual board members on the hook. Consult with an independent adviser to see if you should take this course of action.

Conduct a Valuation Study

You should already have at least a basic understanding the value your utility provides the community, since you want to be communicating this value to your customers regardless of any sellout question. While this is an important first step, it is generally not sufficient in a sellout situation.

In an actual sellout evaluation, how people calculate the utility's value may change. Discussion of valuation shifts to strict economics, similar to the proposed sale of a business. Sellout discussions tend to focus on the value of the utility's assets (e.g., the poles, wires, transformers, substations, power plant, utility trucks, and all the other physical assets of the utility). Some valuation studies may also look at the utility's future earnings potential and the value of other economic benefits the utility provides. Intangible benefits like local control, customer service or high reliability and priority restoration—generally are not considered in a valuation study and must be weighed separately.

Often, an investor-owned or cooperative utility seeking to purchase a public power utility will propose a sale price, which is meant to fuel public interest in the sale. However, that price rarely reflects the utility's actual value. The interested buyer does not have enough information to assess the value of your utility's assets, and these “valuations” do not consider the long-term economic or other benefits that the public power utility provides.

Conducting a full valuation study should be in every utility's sellout response plan. The valuation study will help the utility put an accurate price tag on all of its assets, with consideration for the long-term economic value the utility brings to the community. The utility may conduct this more detailed study in-house or by hiring a reputable firm.

Some utilities may choose to conduct a valuation study, even when there is no apparent offer to purchase the utility. This can help deter lowball buyout offers from neighboring utilities and can help temper speculation about the price the city could get for the electric system that might arise from within your community.

Talk of a sellout without realistic numbers is dangerous to your community's long-term interest. Potential buyers will encourage speculation, as they want the community's attention on the money the city might get from the sale and how it will be spent. The average customer will not be able to estimate the utility's value. Left to their own imaginations, customers may severely underestimate the utility's value, and even a lowball offer may seem like a windfall.

Without the accurate numbers that come from a valuation study, customers and other stakeholders will not fully appreciate the long-term benefits of keeping the utility. Those benefits include lower rates, higher reliability, local employment, faster response times and annual payments in lieu of taxes to the city general fund.

Why Conduct a Valuation Study?



A valuation study helps you put a price tag on the utility and all its assets. The city will want to conduct its own valuation study to ensure that any discussion of a possible sale is based on fair and accurate numbers. The process of going through a study can also help the community understand the full value of the utility, so it can make a more informed decision on whether to sell such a valuable asset.



MORE INFORMATION

Refer back to Chapter 2 for information on the benefits of public power or Chapter 3 for information on knowing your utility's value.

Chapter 9 will explore the value of your utility to stakeholders and the economic benefits of continued public ownership.

See Appendix E to learn how valuation studies are conducted and figuring out the best valuation strategy for your utility.

Communicate with Stakeholders

Communicating with all your utility and community stakeholders is a vital part of any effective sellout response.

Consider who your stakeholders are in your community. You need to be strategic about what and how much information you share and your means of communication. For example, you probably do not want to rely on social media and bill stuffers to reach your city council, any more than you would offer to give a formal presentation to every customer at her dinner table.

For most utilities, you are probably looking at five key stakeholder groups: board members and local officials; residential customers; business customers; the local news media; and your employees.

Depending on your community, you may have other major stakeholder groups to add to this list, or you may need to segment your stakeholders into smaller groups as part of your overall communication strategy. For instance, if you have an independent utility board, you may use different strategies for reaching your utility board and city council. If your utility serves a large population, or if a significant portion of your population fits into certain demographic profiles (for example, senior citizens, low-income, or non-English speaking), you may want to include separate outreach for those groups.



Communicating with Stakeholders

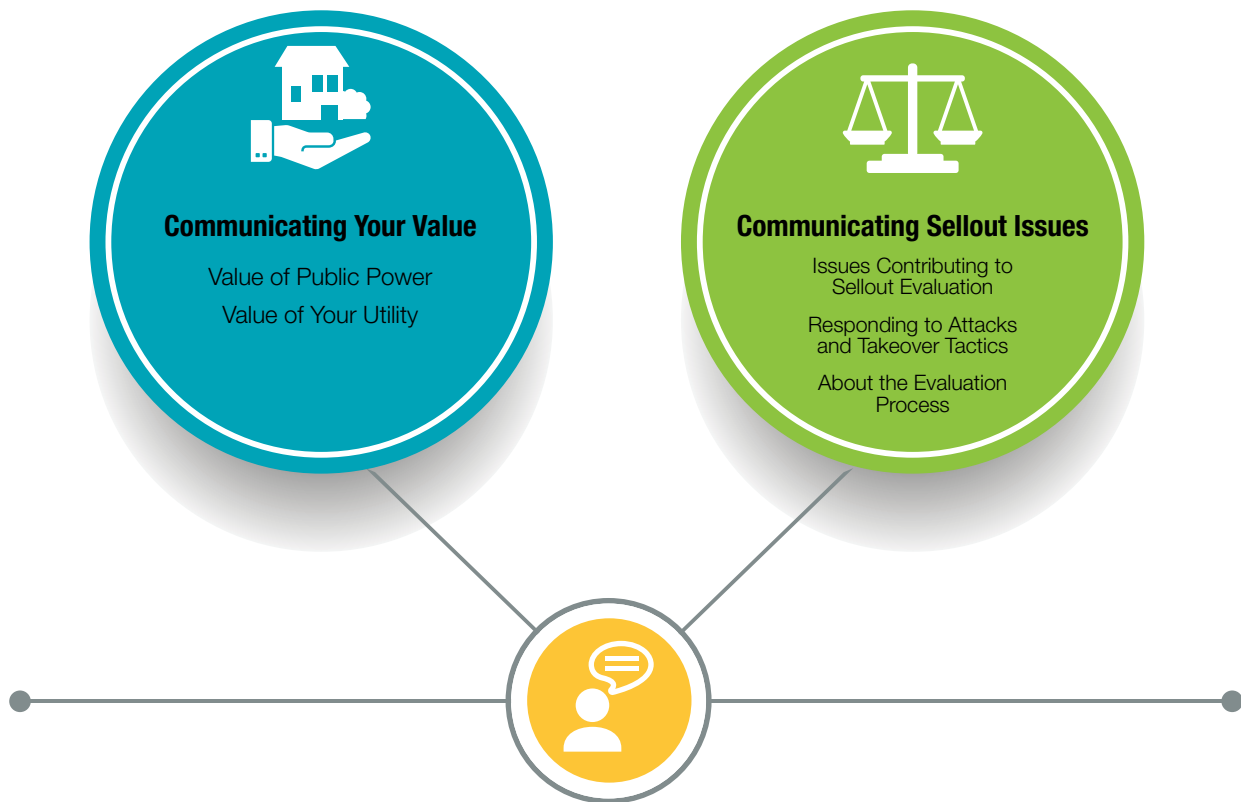
Develop a separate communication plan to reach out to each group of key stakeholders in your community.

- Board members/local officials
- Residential customers
- Business customers (commercial & industrial)
- Local media
- Employees

Communication success: a two-pronged approach

When talk of selling your community's public power utility arises, you need to tackle communication from two directions: first, communicating the broader value of your public power utility; and second, addressing the specific sellout-related issues (including both the issues brought to light as a result of the sellout evaluation, as well as responding to attacks against your utility and communicating about the evaluation process).

Communication in a Sellout Evaluation



Communicating your value

Communicating the value of public power—and your utility in particular—is more important than ever in a sellout evaluation. You want to use every opportunity to remind your stakeholders about everything you are doing for your community, including financial support, reliable customer service, supporting the local economy and all the intangible benefits that local control provides.

The earlier you start communicating your value, the more effective it will be. If you start your communication campaign long before any talk of selling the utility arises, you will be better positioned because your customers and stakeholders will already understand how you benefit the community, and are more likely to trust the utility because your dedication to and support for the community will be known.

If your campaign to communicate your utility's value is already in progress when the sellout question arises, keep it up. If you have not started communicating your value, now is the time to start. The good news is, you can start

immediately—you do not need to wait until the sellout initiative gains enough traction or to see how the debate is starting to shape up first or even until you finish your full valuation study to get started. You already know many of the ways your utility is contributing to your community, so you can start touting those now, and fill in more details later.



MORE INFORMATION

Refer to Chapter 4 for more information on crafting and communicating your message about your utility's value to your stakeholders.

Preparing Stakeholder Messages



As part of your response plan, you should:

- Identify key stakeholders.
- Determine which communication strategies you will use to reach each stakeholder group.
- Ensure your messages on the value of your utility (and public power) are in place (do not wait until the sellout issue arises to start).
- Anticipate what sellout issues and takeover tactics you are most likely to experience, and prepare a communication plan to respond to each.
- Understand the sellout evaluation process so you can guide your community through the process when the time comes.

Communicating sellout issues

The second part of effective communication in a sellout evaluation is addressing the specific issues raised. This can often be broken down into three areas:

- Issues that caused the sellout question to be raised
- Responding to attacks and takeover tactics
- Communicating about the evaluation and sellout process

When the sellout issue arises as a result of one of your utility's weaknesses (for instance, high rates, a change of leadership or customer dissatisfaction with service or reliability), you need a separate communication campaign to address those issues. Acknowledge where there is a problem and let your stakeholders know you are addressing it so they do not feel selling the utility is the only way to resolve the issue.

Explaining your plan for improving the situation is also helpful, but tailor what you say for each stakeholder group. Keep messages simple for residential customers, adding progressively more for your business customers, news media and your employees. Make sure your board members and local officials are fully apprised of your plans.

If a sellout debate is sparked by a buyout offer from another utility, the takeover campaign is likely to involve attacks against your utility and increasingly aggressive takeover

tactics. These attacks may start by focusing on a perceived weakness but could evolve into more aggressive attacks on your service, utility or even public power in general. Be prepared to respond to these charges as they arise.

Finally, in a sellout evaluation, educate your customers and stakeholders about the evaluation and sellout process. Your stakeholders are unlikely to know what is involved in the evaluation or why each step is important. Remember your role as stewards of the community's resources and guide your stakeholders through the process so they can make an informed, thoughtful decision about the future of the community's valuable resource—your public power utility.

Bringing in Extra Help



Communicating with your stakeholders is never more important than in a sellout evaluation. Defending the utility against a takeover will certainly stretch your team to its limits. Consider bringing in outside communication help from experts who can give you an outside perspective and help you tell your story. Your response plan should identify communication consultants you could call on when necessary.



MORE INFORMATION

Chapter 7 will discuss common takeover tactics and how to respond to them.

For more in-depth information on communicating in a sellout evaluation, including preparing your message and communication strategies, refer to Chapter 8.



Chapter 7

Responding to a Sellout Threat

Whether a neighboring utility has approached you with an offer to buy the utility, or if a sellout proposal came from someone within your community, the next steps are the same. As a steward of the utility for your community, you must ensure that all your stakeholders have the best possible information before they decide whether to keep or sell the utility.

The First Steps

Start by putting your sellout response plan into action.

Elements of Your Sellout Response Plan



- Identify your response team
- Slow it down
- Enlist help from allies
- Review your utility's competitive position
- Conduct a legal assessment
- Conduct a valuation study
- Communicate with stakeholders

If you do not have a response plan ready, refer to the section on Developing Your Response Plan in Chapter 6: Preparing for a Sellout Evaluation. Even if you have kept your response plan up to date, make sure it makes sense now that the sellout issue has emerged.

Enacting Your Response Plan



1. Assemble your response team.

Ensure they are fully briefed and up to date on developments related to the sellout initiative.



2. Slow down the initiative.

Talk with your board, city council and other local officials to explain why they should not make hasty decisions regarding a sale of the utility and work with them to develop a realistic timeline for considering the sale. Your utility needs time to conduct legal and valuation studies to inform decision-making.



3. Enlist help.

Reach out to your state and national associations, joint action agency and other local officials and allies for assistance in responding to the sellout initiative.



4. Review your competitive position.

Assess your utility's strengths and weaknesses and how they stack up against the utility making the buyout offer. Communicate your strengths and value to your community. Assure stakeholders that you are moving to correct your weaknesses. Do not wait until the sellout issue goes away before you put your plan into action. You may not have a chance later.



5. Conduct a legal assessment.

Determine what legal steps are required for the community to sell the utility. Identify local, state and federal laws that may impact a sale. Identify all parties who must approve a sale, including customers, local and state regulators, contracted power suppliers and debt holders. Making sure you have a clear understanding of the legal steps will help you understand the process and identify key stakeholders and hurdles.



6. Conduct a valuation study.

A thorough valuation study is the only way to know the true value of your utility. The study should identify how the utility contributes to your community and the dollar value of the utility's assets. Not a single vote should be cast, either by your governing board or by citizens, until a complete, unbiased valuation study is concluded.



7. Communicate with stakeholders.

Throughout the process, maintain open communication with all your key stakeholders—local officials, residential and business customers, employees and the media. Your communication should focus on both the value of your utility (and public power in general), and respond to the specific issues in your sellout evaluation.

What Can You Expect?

A sellout initiative can happen in any public power community. When it arises, it rarely goes away quickly: sellout evaluations can take a year or more. The longer it drags out, the greater toll it will take on you, the utility leadership and your employees. As you mentally prepare for the battle ahead, you can better gird yourself, and help others through the process, if you understand what to expect.

The following lessons were shared from Murfreesboro Electric Department, after the utility survived a year-long sellout attempt from 2015-2016²⁸.

1. It will consume you.

Guiding your utility through a sellout initiative will become a full-time job, leaving you unable to focus on anything else. One manager who survived a buyout attempt offered this advice to managers starting the process: “Go ahead and clear [your] calendar for a year... [a sellout attempt] is all-consuming, leaving little time to focus on other projects.” Steve Sax, former general manager of Murfreesboro Electric Department, agreed as he reflected on his experiences, simply stating: “He was right.”

2. The manager must lead the charge.

The utility's general manager must be prepared to lead the fight against a sellout attempt on all fronts. Employees will need continual reassurances. Opposition will arise from unexpected places. Build coalitions and mobilize stakeholders. All this will require a team effort, but the ultimate responsibility will fall to the general manager.

3. Your team will struggle.

Going through a buyout attempt will take a toll on your leadership team. From marketing and accounting to human resources and engineering, every department will be burdened with extra demands, above and beyond daily responsibilities. These demands will include research,



The Toll on the General Manager

A sellout/buyout initiative is stressful for everyone involved—utility leadership, employees, elected officials—but perhaps no one more so than the utility manager. Not only will the manager be expected to play a leading role in the evaluation process, but the manager may be caught between competing stakeholders—the utility board, city council, mayor, citizens, employees, and even his own opinions on what is best for the future of the utility and the community.

Stay focused on your role as a public steward, entrusted with the care of a valuable community asset. Conflicts in sellout debates are rarely personal. As the custodian of the utility, you must act in your utility's and community's best interest. You are never alone: you have allies in your community, your joint action agency, and your state, regional, and national associations who can help you succeed.

²⁸ “Anatomy of a Buyout Attempt,” Murfreesboro Electric Department, Tennessee, June 2016.

meetings and responding to sudden requests and issues that need immediate attention. To survive, team members must lean on one another and outside consultants for support and direction.

4. Your employees will struggle.

Your employees will find themselves under considerable pressure. They will be asked frequently about the buyout attempt in social and family settings. People will expect them to have answers. They will be worried about their jobs. Even if the would-be purchaser makes assurances that “no one will lose their job” and “all benefits are secure,” employees will naturally be concerned about their futures. Some will not be able to handle that pressure. It is not uncommon for utilities to experience increased turnover during a sellout evaluation, as employees choose to retire or leave to pursue other career opportunities in the face of uncertainty.

5. Enemies will surprise you.

Working for the utility each day, you understand the important role it plays in the community. You grasp the depth and breadth of what it means to the city to operate and control its own electric distribution system. Not everyone else sees things as clearly and you will be surprised at the people who come out in favor of the sellout. Sometimes it will be a matter of misinformation; other times you may discover that the sale is in their best personal or business interest. Be prepared for opposition to pop up when you least expect it and sometimes from people you least expect to see standing against your public power utility.

6. Facts will be distorted.

The utility hoping to purchase your electric system will try to distort facts and sway public opinion in their direction. They will use words like “merger” and “coming together”—even though what they are attempting is clearly a takeover. They may talk about “duplication of services,” and “synergies” and how combining forces would create a better utility. They will also try to frame the purchase as “a done deal.” This will lower the will of your employees and other stakeholders to fight, believing that the political forces behind it have already figured out a way to win.

7. Spies are among us.

During a buyout attempt, there is no such thing as an “internal document.” Know that everything you publish and distribute, for employee use or general information, will likely end up in the hands of your opponents. Every utility has a percentage of employees who are actively disengaged; chances are good that what you disseminate internally will find its way to those working to buy your utility.

8. You cannot do this alone.

You will need outside help to wage a proper campaign. You will have a relatively short amount of time to gather information, develop plans and present your message. Mobilizing your stakeholders will take time. Educating your employees will take time. Arming your leadership team will take time. It is essential that you know your story and how you are going to tell it. Communicating has never been more important for your utility. No matter what resources you have on staff, you cannot do this alone. Find communication partners with industry experience you can depend on. Charge them to bring you an outside perspective and help you tell your story.

9. Gratitude is powerful.

If you face a sellout attempt, the process will touch many lives. Saying “thank you” to these people for their efforts will encourage them, strengthen relationships with your utility and embolden you for the next challenge. Find ways to thank your employees, their family members, your board, local business and community groups and anyone else who helped you through the sellout attempt. There is power in gratitude.

10. People need to celebrate.

In the midst of a sellout attempt, it is easy to become overwhelmed by the uncertainties and what feels like an endless struggle. Celebration is a strong antidote for such a mindset. You will want to celebrate at the end of the process if you succeed in preventing the sellout, of course—but look for reasons to celebrate along the way. The smallest of victories or any piece of good news is reason to reflect on your good fortunes. A note to employees, a luncheon or just an informal gathering of your management team to acknowledge a win can reinvigorate people and help them clear their heads, refuel and get back into the battle.

Understanding Takeover Tactics

If an investor-owned or cooperative utility tries to take over your public power utility, do not underestimate the prospective buyer’s ability to campaign for a sale. Common tactics include hiring a national advertising or public relations firm to develop messages; meeting regularly with the local media and purchasing advertising; and sending their utility employees door-to-door to talk with your customers. Be prepared to see these strategies in play.

In addition to the tactics covered here, a would-be purchaser is likely to make many campaign promises to try to persuade stakeholders to support the sale of your community-owned utility.



Common Takeover Tactics

Understand and expect these common takeover tactics, so you are prepared to counter them if necessary.

1. Put sale on a 'fast track'
2. Present a bad offer
3. Present a buyout offer that addresses specific needs
4. Offer a one-time credit to customers
5. Enlist the help of a local leader
6. Initiate back-channel communication with local leaders
7. Offer a free or low-cost valuation study
8. Rush to a referendum
9. Aggressively campaign to win voter support
10. Employ covert tactics to sway policymakers and public opinion
11. Purchase influence via media ads and political support
12. Mount political challenges and finance pro-sale challengers
13. Discredit and silence public power supporters and staff
14. Use polling and marketing schemes
15. Offer to provide interim operations

1. Put sale on a fast track.

Investor-owned and cooperative utilities know a buyout is less likely to occur when the community conducts a thorough study of the pros and cons of a sale. Therefore, the prospective buyer often gives local policymakers a short timetable to make a decision and warns that if the offer is not accepted within the timeframe, it will be withdrawn. Decision-makers who rush to meet such deadlines may base their decision on a valuation report “conveniently” provided by the prospective buyer.

The regularity with which this strategy is used makes it all the more important that public power utilities communicate their own value to their communities. If a prospective buyer

tries to mount a fast-track buyout campaign, a utility that has been diligent about communicating its value is in a stronger position because its policymakers and customers already appreciate the value that the utility brings to their community and the utility will already have information readily available to counter such offers.



WHAT YOU CAN DO

Do not let a private utility bully you into a fast-track decision or set a timetable for the decision. Your utility is an incredibly valuable asset to your community and an exhaustive deliberation is warranted. If the city is going to consider an offer, set your own standards for the deliberation at the outset and allow yourself time to conduct your own valuation study and ample time to consider its implications before the first vote is cast.

You can also ensure that no hasty action is taken by updating or revising your city charter language to require a thorough valuation study and multiple votes by the city council or utility board, at least one year apart, as well as a public referendum, before the utility can be sold. (See Appendix D for sample city charter language).

2. Present a bad offer

An investor-owned or cooperative utility may often present a bad offer initially. This offer may look good, but upon closer evaluation it becomes clear that it does not come close to covering the full value of the utility and replacing the income it provides for the community.

When a private utility makes a buyout offer that seriously undervalues the public power utility, it is hoping for one of two outcomes: that the town will not realize the true value of the utility and will sell at a bargain price; or that the offer will generate enough initial interest in selling (and a potential windfall) that stakeholders will be predisposed to selling the utility, regardless of the results of an evaluation.



WHAT YOU CAN DO

View any buyout offer skeptically. Have your own financial, legal and technical experts examine the offer (and its underlying assumptions), and identify any flaws. Always insist on conducting your own, independent valuation of the utility. Even if your community ultimately decides to sell the utility, you want to make sure you get the best price possible.

Take as much time as you need to consider your options, collect information and analyze the data. Communicate your findings about the value of your utility to your customers and stakeholders. Do not let the would-be buyer be the only voice in the conversation and set the price of your utility in the public's mind.

3. Present a buyout offer that addresses specific needs

Typically, the investor-owned or cooperative utility promises to improve the economic conditions and quality of life in the local community. It may also promise to solve specific problems that are troubling local officials. For example, if the city has a budget shortfall, the would-be purchaser may promise to increase local tax revenues. If the city wants to create jobs, it may promise an economic development program to attract new business and industry to town. If the city has debt, it may try to influence public opinion by noting that the amount the prospective buyer is offering is “enough to pay off the city’s debt.”

The would-be purchaser may also express the buyout offer in a way that appears to support other community needs; for example, by talking about how the money from the sale could be used to build a new school or community center, or by actually earmarking a part of their offer specifically for a popular community project.

The buyout proposal and its promises usually raise more questions than they answer, but the purpose is to get local officials to open discussions on the sale of the utility and to change the public conversation from whether the municipal utility should be sold to how the revenue from the sale could (and should) be spent. If this happens, defenders of the municipal utility may find themselves cast as opposing the proposed new school or other popular project that the prospective buyer purports to support.



WHAT YOU CAN DO

Keep the focus on the true value of the municipal utility, not the potential revenue from the sale or whatever else the IOU or cooperative utility is offering. If the conversation changes to how the community could benefit from the financial boon the sale would create, refocus the conversation to the long-term value to the community. You would not sell the family car—which you need to get to work each day—to pay for a family vacation. Similarly, you should not sell the municipal utility—which provides long-term benefits to the community—for a one-time financial windfall.

4. Offer a one-time credit to customers

A private utility may present a buyout offer that includes a one-time credit to every customer in the service territory. For instance, when the Southeast Colorado Power Association, an electric cooperative, proposed purchasing the electricity distribution assets from the Town of Springfield in 2016, their proposal included a one-time bill credit of \$100 for each residential customer, \$250 for each small commercial customer, and \$1000 for each large commercial customer. The goal of this strategy is to build

public support for a sale by getting customers to focus on the immediate benefit they would enjoy, instead of the long-term value proposition.



WHAT YOU CAN DO

A one-time bill credit is a very short-term benefit, and a suspicious one at that: the private utility’s current customers or shareholders won’t tolerate subsidizing your customers, so consider how they expect to recoup this money. Review the proposal carefully to assess whether your customers and community would really be better off in the long-term under the proposal, and refocus the discussion back to those long-term benefits your customers and the community as a whole enjoy because they are served by public power.

5. Enlist the help of a local leader

Typically, a prospective buyer seeks out one or two local officials who might support the sale. Enlisting the help of a local leader advances the sale effort in several ways. The local official may introduce the idea of selling the utility and lead a “study committee,” while the prospective buyer keeps a low profile. By creating the appearance that the sale is the idea of local officials, instead of a takeover attempt from outside the community, the investor-owned or cooperative utility can build support for the sale as a homegrown idea, while minimizing scrutiny of its own utility and motives.

The local official may also provide the would-be purchaser with useful information on municipal utility operations and how other local officials view the utility. Finally, the local leader may be instrumental in arranging for the prospective buyer to address businesses and civic groups in the community.



WHAT YOU CAN DO

Develop strong relationships with local officials before a takeover attempt occurs and make sure they are informed about the value of your utility to the community. Be aware of any conflicts of interest your board members, city council members or other local officials may have. For instance, a board member may also serve on the board of a neighboring utility (or a spouse or other close family member does). Bring those conflicts to light, if the public official is not acting in the best interest of your utility and community.

As a preventative measure, ensure that your board policies prohibit individuals with potential conflicts of interest from serving on your utility board—or at least requires those potential conflicts be disclosed, with written agreements in place that the individual recuse him/herself should a



CASE STUDY:

Lack of defense leaves utility vulnerable to bad deal from utility sale

OAKLEY, KANSAS • 2006

LESSONS LEARNED:

- *Always do a thorough valuation study when considering a buyout offer. If you do sell your community-owned electric system, make sure you get the best deal possible for your community.*
- *Ensure your evaluation considers more than economic factors, including service reliability and outage restoration. Don't take campaign promises (like increased reliability) at face value; these promises are easy to break and almost impossible to enforce.*
- *A well-run utility is the best defense against a sale; a utility with good management that regularly invests in and improves the system will be in a much stronger position.*

The municipal electric utility in Oakley, Kansas was already vulnerable. For several years, the city of Oakley lacked a city manager, city administrator or utility manager. Utility revenue was being used for other city projects instead of being reinvested back into the electric utility, and maintenance on the electric distribution system and local power plant had been delayed to the point where the utility needed significant investments.

Oakley was approached by Midwest Energy, a neighboring cooperative utility and the city's incumbent wholesale power provider, to renegotiate its expiring power supply agreement. Facing a large increase in power supply costs, Midwest Energy offered to purchase the utility so citizens could avoid significant rate increases. Led by the mayor, the city council put the question to a public referendum.

Not only did the buyout offer significantly undervalue the system, but the cooperative refused to purchase Oakley's

municipal power plant or provide any remuneration for its existing generating assets—rendering valuable assets worthless from both a practical and financial standpoint.

Midwest Energy deployed a strong marketing campaign to convince voters to sell the utility, including campaigning door-to-door, newspaper advertisements, and promises of fewer outages and faster response time during outages. No local citizens' group or city employees stepped forward to oppose the sale in any public forum, and residents voted to sell the utility to by a vote of 775 to 111.

Ironically, several months after the Oakley utility was sold, a large ice storm hit western Kansas, knocking out power to the city. Unable to power up the generating plant that had been idled after the sale, the city was in the dark for several days as citizens waited for Midwest Energy to repair the transmission wires connecting Oakley to the cooperative's distant generating plant.

conflict arise. Policies should also prohibit board members from accepting gifts (including dinners, entertainment, or other remuneration) from other utilities or entities that could lead to a conflict of interest.

Communicating your value to your customers is also important, as local officials may be less likely to target your utility if you are popular with the community.

6. Initiate back-channel communication with local leaders

Many investor-owned or cooperative utilities will initiate back channel discussions with local leaders about a proposed buyout, with the goal of building support among key decision-makers before the utility or others in the community know of an offer. This strategy allows the would-be purchaser to avoid public scrutiny of the deal. If the public power utility is out of the loop, the only valuation of the utility being discussed is the one provided by the private utility.

One public power community reported that members of its city council had been repeatedly wined and dined—with dinners, golfing, and executive retreats—by a local cooperative that wanted to purchase the utility. Another public power utility learned that the mayor and city manager had been talking with a local cooperative for more than a year without the knowledge of utility staff or board members, and learned of those conversations only after those officials signed a memorandum of understanding with the cooperative to explore selling the public power utility.



WHAT YOU CAN DO

Establish and maintain good relationships with your local officials. Develop a strong rapport with them so they will let you know if a sellout/buyout proposal is raised. Ensure your board members and local officials know the true value of your utility and make sure they understand the electric industry and their responsibilities as custodians of this valuable public asset.

Ensure you have strong ethics policies in place to prevent board members and local officials from having conflicts of interest or accepting gifts that could compromise their ability to act in the utility and community's best interests.

If you discover that local officials have been communicating with another utility about a possible sale, slow down the effort, insist on conducting an independent valuation and devote greater emphasis to your communication on the value of your utility.

7. Offer a free or low-cost valuation study

The investor-owned or cooperative utility may offer to do a study for the city on the value of the public power utility and analyze the impact of selling it on local electric rates, for little or no cost. The prospective buyer offers to bring in its own technical experts (or to hire an outside firm of their choice) to inventory system facilities and estimate the cost of system upgrades.

Any “free” study, conducted or sponsored by entities with a financial interest in executing a sale, or studies paid for by the utility attempting the buyout, will be biased toward selling the utility. A biased study leading to a bad decision is no bargain. The sellout evaluation should be done by the municipal utility or city staff, or an independent third party hired by the municipal utility or city.

In some cases, a private utility has offered to set up a community study committee to work through the sellout issues. A study committee is not necessarily a bad idea, but the utility attempting a takeover or local policymaker already in favor of selling the utility should not be permitted to hand-pick citizens who support the sale to serve on the committee or the result will be a biased report. Nor should it be the financial backer of a study committee.



WHAT YOU CAN DO

Reject offers for free or low-cost valuation studies. If the prospective buyer conducts and publishes a study without your consent, dispute the results and point out the errors or biases in the study.

If a committee is set up to study the issue, do not allow the would-be purchaser or others already biased in favor of the sale, to hand-pick committee members. Any committee members should be qualified and free from bias or conflicts of interest.

The best way to protect your interests and one of your community's greatest assets is by performing your own valuation study, either in-house (using your experts who know the system), or hiring your own qualified, non-biased consultants to perform the studies. If you hire an outside firm, that firm should have no financial interest in the proposed sale or ties to the utility attempting the buyout.

To ensure the valuation study and study committee remain completely unbiased, the private utility should not be allowed to sponsor or financially support the study. Beware of community groups financed by the private utility.

A list of independent consultants who perform studies evaluating the retention or sale of a public power utility is provided in Appendix H.

8. Rush to a referendum

In many jurisdictions, the city's governing body must adopt an ordinance or resolution to propose or approve the sale of the municipal utility. In addition, the local utility board may also be required to consent to the utility sale. The charter or statute may require the sale of the municipal utility to have voter approval. Takeover proponents view each of these steps as hurdles to overcome.

One takeover tactic is to force through the initial approvals as quickly as possible to get to voter referendum. Sellout proponents may even persuade local officials to go directly to a citizen referendum to determine the "will of the people" before further council or board deliberations. This approach serves several purposes:

- It applies public pressure to city and utility governing bodies, compelling them to move quickly through the votes (reducing time for careful deliberation).
- It sets a firm schedule for a voter decision on the sale.
- It kicks off a community-wide campaign in which the sellout proponents may use their financial resources to sway public opinion (often before the city has had a chance to inform citizens on the issues).
- It may allow the city governing body to take itself out of controversial deliberations, at least until the vote is held. (City officials and utility governing board members will ultimately be accountable for the decision on the sale).

Cooperative and investor-owned utilities use a variety of tactics to force a public vote on the sale. After all, who would be against putting the issue to a vote and learning "the will of the people?"

As part of one takeover campaign, the cooperative utility ran an ad in the local newspaper supporting a public vote on the issue:

"Hostile takeover? It's only hostile if you believe the people of Mount Pleasant shouldn't be allowed to vote. Liberty is the positive enjoyment of various social, political and economic rights and privileges, and we are proud to have played a small part in protecting those rights."²⁹

When Memphis Mayor Willie Herenton, who supported the sale of Memphis Light, Gas & Water, suggested that voters might not have a vote on the proposed sale of MLGW, it unleashed a torrent of citizen calls to City Hall. The day he made the statement, more than 40 citizens called before noon to say they favored a referendum. The local union dismissed the mayor's comments as part of a back-door effort to force a referendum. An IBEW manager said, "it's

reverse psychology, that's all it is... It's a political move, a calculated move to have people calling, writing and going to their councilmen, demanding they have a right to vote."

If the prospective buyer is successful in forcing a referendum—particularly if it succeeds in sidestepping board or council deliberations or moving up the timetable for a referendum—it takes a major step closer to closing the deal (and voters are one step closer to losing their real power to make decisions through their local governing body). Citizens should be wary of this takeover tactic.



WHAT YOU CAN DO

Do not allow yourself to be pressured into rushing a referendum on the sale of your utility. Set a timeline that allows local officials plenty of time to study and deliberate on the issue, and that allows the utility sufficient time to respond.

Ensure you have a policy in place establishing when and in what circumstances a public referendum should occur. Such a policy may be found in your city charter and may provide cover for local officials who are being pressured to send the offer to a public vote. (See Appendix D for sample language).

One of the principles of public power is local control—the right of your customer-owners to have a voice in the operation of their utility. Be careful not to make any statements against the right of the public to vote on the issue; citizens do not like to be told that they do not have a right to vote on any issue and these statements can easily backfire.

Remember, your community members already vote on the future of your utility every time they elect their city council or utility board representatives (or, if your utility board is appointed, every time they elect for the officials making those appointments). The real disenfranchisement would be if citizens no longer had the opportunity to make their voices heard on the future of the utility because the utility had been sold.

9. Aggressively campaign to win voter support

Prospective buyers have shown a willingness to put considerable time, effort and money into takeover campaigns. They may spend hundreds of thousands of dollars taking their message directly to citizens to get a municipality to sell its utility.

²⁹ "Advertisement in *Mt. Pleasant News*, September, 24, 1999, by the SE Iowa Cooperative Electric Association.

There are many examples of campaign tactics. One illustration is the takeover campaign mounted by Public Service Co. of Oklahoma (PSO) to purchase the 1,000-meter municipal electric system in Chelsea, Oklahoma. To cover all the bases, PSO:

- Staffed a business office in Chelsea for more than a year;
- Funded a nearly full-time effort by the manager and business development manager of its local area office;
- Had six PSO employees go door-to-door many evenings and spend daylight hours talking to residents in coffee shops and other public locations;
- Rewarded other PSO workers who volunteered for “Chelsea duty;”
- Committed its legal staff to fighting a court challenge to the sale and preparing all documents;
- Spent \$200,000 on a deposit with the city as escrow from the first bid;
- Tracked down high schoolers who had turned 18 to ensure they heard the PSO pitch and were registered to vote;
- Sent every Chelsea customer multiple letters estimating monthly savings on their electric bills, based on city records of customer usage;
- Created mailings on PSO benefits and programs;
- Prepared packets of information to leave on every citizen’s doorstep;
- Prepared door-to-door tabloid newspaper drops; and
- Placed weekly advertisements in the local paper for more than a year.³⁰



WHAT YOU CAN DO

Your ability to respond to these campaigns may be limited by resources or by law, but it is important that you do not let these efforts go unchallenged. Use the means available to you to get your message out.

Post information prominently on your website and issue regular press releases to combat misleading information and tout your utility’s strengths. For more ideas on engaging customers, see Chapter 4: Communicating the Value of Public Power; and Chapter 8: Communicating with Stakeholders in a Sellout Evaluation.

10. Employ covert tactics to sway policymakers and public opinion

In support of their takeover campaigns, an investor-owned or cooperative utility may employ covert methods to influence local officials and public opinion in favor of the sale of the municipal utility. The private utility may pack local meetings with its shareholders and employees.

When it tried to take over the public utilities in Homestead and Vero Beach, Florida Power & Light (FPL) created a vocal band of gadflies to make the argument to the citizens in those communities. These gadflies, who professed no ties to FPL, met regularly at local coffee shops and made organized efforts to support the sale of the community-owned utilities, including writing letters to the editor, posting on blogs and speaking and complaining at city council and utility board meetings. Many times, an IOU or cooperative utility may pack local meetings with their supporters—sometimes including paid employees and their families.

The effect of these efforts is to create the perception that public support of the sale is greater than it is and to drown out the voices of those who support the community-owned utility. If local officials believe the public largely favors selling the utility, they may be more likely to support the sale. Similarly, if citizens constantly hear members of their community arguing in favor of the sale, they may be more likely to support the sale themselves, especially if they are not exposed to arguments in favor of the public power utility.



WHAT YOU CAN DO

Do not allow sellout proponents to hijack your community’s dialogue about the future of your municipal utility; your customers deserve to hear both sides of the discussion.

Ask supporters of your municipal utility—including employees, their families and even retirees—to attend city council hearings and public meetings, and ask them to speak up if sellout supporters try to dominate the conversation. Equip them with information in advance, so they feel prepared and confident to challenge misinformation and answer questions that might arise.

³⁰ “Shane Woolbright, “Diary of a Sellout,” *Public Power*, January-February, 1990.



CASE STUDY:

Customer support and valuation study overcome local political challenges

PLYMOUTH, WISCONSIN • 2008-2010

LESSONS LEARNED:

- *Customers and citizens will be more likely to support the utility if your utility has a demonstrated history of serving the community's needs.*
- *A comprehensive, unbiased valuation study that examines the long-term value of your utility to the community is essential.*

Local politics led Plymouth, Wisconsin, to evaluate the sale of the local electric utility. A mayoral challenger advocated selling the electric utility, suggesting that the sale would bring \$80 million to the city. The issue became the focus of debate throughout the 2008 mayoral campaign. The incumbent mayor was re-elected by a 2-1 margin, and the mayor and utility manager took those results as a sign of local citizen support for continued city ownership of the electric utility. But two years later, the same challenger appeared at a council meeting and again called for the sale of the utility.

The council agreed to study the idea and engaged a consulting firm to analyze the financial and operating stability of the Plymouth electric utility. The consulting firm determined that the utility's assets had a net book value of \$22 million, with \$6.2 million in outstanding debt, meaning the utility, if sold, would be more likely to fetch \$15.9 million—not the \$80 million estimated by the mayor's election rival.

The study also showed how much the city stood to lose if they sold the utility. The electric utility's annual in-lieu-of-tax payment would disappear; the city's water and sewer utilities would have to absorb a larger portion of administrative and overhead expenses now shared by all three utility services; and the city would lose \$10,000 a year in free labor donated by the utility for services such as tree-trimming, streetlight maintenance and hanging holiday decorations.

The report erased any doubts the Plymouth Common Council may have had about the value of owning the electric utility, and the council adopted a resolution in support of continued ownership and operation of the electric utility "for the long term."

11. Purchase influence via media ads and political support

A would-be purchaser may spend money to solicit the support of local politicians and business leaders by contributing to local campaigns and by stepping up “goodwill” appearances before schools, businesses and civic groups in the targeted community.

The prospective purchaser also may try to win favor with the local newspaper, TV and radio stations by spending money advertising with the media, which serves two purposes:

- The prospective buyer gets the direct benefit of the advertising.
- As a large advertiser in a small media market, the prospective buyer may increase its ability to influence local news media coverage.

With local media—particularly newspapers—increasingly facing financial troubles, many utilities are unable to get local coverage for their press releases, let alone get positive editorials or letters to the editor, because the media outlet is afraid of losing the support of another utility that is buying so much advertising.



WHAT YOU CAN DO

Consider forming a political action committee to help support locally elected officials who support the utility. Make utility leaders available to speak at or participate in events for local businesses. Offer whatever support you can to local citizen groups that are supporting your publicly owned utility during the evaluation.

If permitted, support the local media (while communicating your message) by purchasing advertisements. Leverage your positive media relationships to ensure you are not locked out of the conversation.

In the meantime, develop your own channels of communication so you are not reliant on others to tell your story. If you have a newsletter, expand it. Use social media, and add fresh content to your website on a regular basis so visitors will find new things each time they return.

12. Mount political challenges and finance pro-sale challengers

More than just supporting local politicians who may be in favor of selling the public power utility, the private utility may actively recruit and finance political candidates to challenge local officials who do not support the sale to tip the political scales in their favor. When this happens,

the pros and cons of running a public power utility may become the focus of political campaigns.

Private utilities may also try to limit the utility’s ability to mount an effective defense itself by lobbying for state or local laws or sponsoring ballot initiatives designed to prevent the utility from spending any money on advertising, making political donations or statements (e.g., encouraging people to vote a certain way in a referendum), or to prevent utility employees from speaking publicly.



WHAT YOU CAN DO

Foster good relationships with local policymakers and officials, and educate them on the value of your utility. The more support you have from local officials and board members, the more difficult it will be for another utility to effectively challenge enough of them to sway the results of a sellout evaluation.

Make sure your customers know your value long before a sellout proposal comes up. Bake your message—the value of your utility to your community—into all your communication channels before the sale of your utility is ever considered. This will maximize your reach and ensure your communications are viewed as authentic, and not as a self-serving advertising campaign driven only by the sellout initiative.

If the private utility does make a push to limit the utility’s ability to defend itself, don’t concede without a fight. Remember, you aren’t defending your public power utility for its own sake, but for the long-term best interest of your community. As a steward of the utility, you owe it to your community to ensure that all stakeholders are fully informed on the utility’s true value so they can make the best decision possible for the future of the community.

If the utility’s ability to defend itself is diminished, reach out to others who can argue on your utility’s behalf—for instance, supportive officials or a pro-utility community group—and provide them with the information, resources and support you can to help them educate citizens and stakeholders about the utility’s value and what the community may stand to lose if it were sold.

13. Discredit and silence public power supporters and staff

Takeover campaigns by an IOU or cooperative utility are very contentious and may include personal attacks on city officials and civic leaders. To win support for the proposal, the prospective buyer may make untrue and unsubstantiated statements in an attempt to discredit public power and its supporters in the community.

Proponents of selling a municipal utility may also try to prevent that utility's staff from speaking publicly on the issue. They may insist that all communication or information come through the utility governing board or city manager. Often, if utility staff speak out, they are publicly dismissed as just "trying to protect their jobs."



WHAT YOU CAN DO

Your utility employees are a great resource for communicating with the community during a sellout attempt. While they want to protect their jobs, the town also has an interest in keeping those jobs in the community. Utility employees also understand your utility's strengths and the specific issues facing your utility and community.

Keep your utility employees informed on the major issues. Their families, friends and neighbors already know they work for the utility and will expect them to be informed. Every time they step outside with the utility logo on their shirt—whether on the job or running errands before or after work—they will face questions from members of your community. This can be very stressful for them—particularly with the sellout issue raising uncertainty about their future prospects—so do everything you can to make sure employees are kept informed of what is going on and equipped to handle questions they are likely to face.

See Chapter 8: Communicating with Stakeholders in a Sellout Evaluation for ideas on engaging your employees during a sellout evaluation.

14. Use polling and marketing schemes

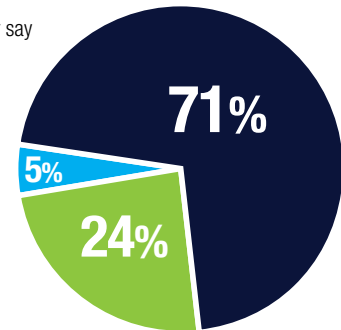
Sellout proponents may use the latest polling techniques to sway public opinion. For example, recent takeover attempts have used "push polling" to persuade the community to sell. Through this survey technique, the prospective buyer pushes information (or misinformation) to customers under the guise of conducting a poll. Survey questions may include false or misleading information, designed to pull the desired response from the customer.

For example, one telephone survey question asked:

The sale of [the municipal electric utility] would have to be approved by the voters in a referendum. Regardless of your own feelings about the sale, should the city negotiate their best deal and then let the voters have their say, or shouldn't the sale be considered at all?

Consumers were asked to select from three options. As shown by the percentages below, most consumers chose "let voters have their say."

- Let the voters have their say
- Not considered at all
- Not sure



This question was used to announce to the community that 71 percent of citizens surveyed favor a vote on the utility sale.

Using the latest methods in public persuasion, the IOU or cooperative utility takes its pro-sale message to the community. Often the centerpiece of these campaigns is the message that public power is no longer a viable option.



WHAT YOU CAN DO

Be aware that such polling techniques may be employed. Ask utility staff, friends and family to let you know if they are asked to participate in any poll or survey about the sale of the utility, and try to reconstruct what questions were asked so you can prepare a response.

If you have the resources, conduct your own poll. Often, support for a sale will dissipate when customers learn what they may lose (e.g., no more holiday lights; what specific services may be cut due to lost revenue to the city; etc.). Be careful to include only factual information in your poll.

15. Offer to provide interim operations

Private utilities may offer something short of a full takeover: providing interim operations (for example, while you conduct your executive search for a new utility manager, or to "ease the burden" of managing the utility while you evaluate their proposal (while allowing you to test out their service and operations).



WHAT YOU CAN DO

Be very careful about allowing an investor-owned utility or electric cooperative to provide interim services: it's a step in the direction of selling and makes it much easier for them to make the case that they should take over the utility, since they are already doing it in practice. Slow down the process and make sure your stakeholders thoroughly understand the value your public power utility brings to the community, and have an unbiased analysis conducted.

Responding to Takeover Campaign Promises

A utility looking to acquire your utility may make many promises about utility rates, service quality and community involvement. These promises are easily made and easily broken. If the purchaser's more distant management decides to increase rates or cut local service costs in a few years, your community may have little or no recourse.

Be skeptical of any promises made by prospective buyers during a takeover campaign. Any promises will be virtually impossible to enforce after the municipal utility is sold, and history has shown these promises are often broken.

Challenge any promises based on misinformation. Make sure your stakeholders understand the true value of your utility—and what they would be giving up—for the chance that these promises *might* be upheld.

Easily Made, Easily Broken: Common Takeover Campaign Promises

1. Local spending and investments
2. Fully employ current utility staff
3. Increase contributions to local government
4. Provide permanent income for the city
5. Increase reliability
6. Upgrade the electric system
7. Relieve officials of the “burden” of utility management
8. Deliver lower rates

Although there have been relatively few municipal utilities sold in recent years, history shows those communities that do sell are frequently disappointed when the acquiring utility does not live up to promises made during the privatization campaign.

The following are examples of campaign promises that have been made in utility takeover campaigns.



Promise to boost the local economy by spending money in the community

The prospective buyer may promise that after the sale, it will locate new facilities, such as a customer service office, within the city limits. It may promise to employ local residents and to purchase equipment and supplies from local merchants. Such promises are often broken. Indiana & Michigan Electric Co. never built the proposed twin towers office complex in Fort Wayne, Indiana, as it had promised to do when the city agreed to lease its municipal utility. I&M took over the municipal utility, but the project that was to be the centerpiece of Fort Wayne's downtown redevelopment project was never constructed.



Promise to hire municipal utility employees after the takeover

The would-be buyer may promise to hire the municipal utility employees (“no utility employees will lose their jobs”) and to maintain benefits at the same level (or give them wage increases, better benefits and full credit for years of service to the city) and may also promise that the municipal utility employees it hires will not be transferred out of the local area without their consent. These promises are not always kept. For example, if the purchasing utility decides it will not operate the municipality's electric generating facility after the buyout, local employees may be let go or transferred to other locations.

Although there has been no formal study of what happens to former municipal utility employees, anecdotal evidence suggests that many do not stay employed by the acquiring company after a takeover. After the municipal utilities in Franklin, Jonesboro and Monroe, Louisiana, were sold, many former employees went to work for the investor-owned utility, but left voluntarily within a year or two. The employees cited many reasons for leaving: the company required the employees to move or commute long distances to work; employees had difficulty fitting into the company's organizational structure; employees believed supervisors and coworkers were biased in their dealings with them; and the employees' seniority did not carry into the larger organization.

Public power employees have good reason to doubt the investor-owned or cooperative utility's promises in a sellout campaign. Unless there is a pre-existing labor contract that requires the purchaser to retain all employees, the new owner may not be bound by its promises after the sale.

The private utility's promises may also conflict with its larger goals in the acquisition effort. Promising full employment to municipal utility employees would seem to be in opposition to claims that the sale of the utility would increase efficiencies or reduce redundancies, thereby reducing costs for customers. In one particularly blatant example of this kind of double-speak, Pacific Gas & Electric Co. offered full employment to Sacramento, California, Municipal Utility District workers as part of its buyout offer, while simultaneously stating publicly its goal of reducing its own current work force by 10 percent, or approximately 3,000 employees.

Promise to contribute more in local property taxes than the municipal utility

The would-be buyer may make blanket statements that it will contribute more money to local coffers through property taxes and franchise fees, which municipal utilities typically do not pay. But most public power utilities make substantial financial contributions to local government. The total value of these contributions may very well be more than the private utility would contribute. It is important to quantify the direct and indirect contributions of your public power utility, compare those contributions with what the acquiring utility would pay, and communicate this information to your stakeholders.



MORE INFORMATION

Refer to Appendices A and B for more in-depth discussion of financial contributions made by public power utilities to state and local governments.

Promise that proceeds from the sale will provide permanent income for the city

Recognizing that the public power utility is a revenue-producing asset for the city, the prospective buyer may suggest a scheme for replacing the asset with an endowment or "permanent" fund. Experience has shown that such interest-bearing funds are not as valuable as the municipal utilities they replace. Either the fund exists only for a certain number of years (annuity fund) or it requires

an incredibly large initial payment, which would likely lead to rate increases (endowment fund). In either scenario, the fund may end up being raided for other municipal purposes. For more information on funds, see Chapter 10: Costs and Risks of Selling Your Public Power Utility.

Promise more reliable electric service because of superior expertise

In most cases, there is no reason to believe that an IOU or cooperative utility would provide more responsive service or be better prepared or equipped for emergencies.

In fact, because public power utilities and their employees are located in the communities they serve, they are likely to respond more quickly in an emergency. Crews are located locally, meaning they can respond faster, and their smaller service territory allows them to become experts in the local distribution system, identifying problems sooner, and even taking preventative measures in known trouble spots before an outage occurs.

Public power communities also get priority outage restoration, since the utility makes its customer-owners its first and only priority. In contrast, communities served by investor-owned or cooperative utilities must wait in a queue with other towns for power to be restored after a storm or major event.

When it comes to power restoration, public power utilities have another advantage over electric cooperatives and investor-owned utilities: the ability to coordinate with other city resources. A municipal utility can focus all its resources—police, emergency teams, tree trimmers and line crews—on making repairs in the city without waiting for a distant power company to coordinate its repair efforts.

Promise to assume responsibility for upgrading the system

In some sellout evaluations, the condition of the public power utility's electric system is a legitimate issue. The city may not have properly maintained its facilities, and considerable investment in the system may be required. Sometimes the electric system needs to be upgraded to serve a growing customer base.

Decisions on how to upgrade the condition of the municipal utility should not be based on the recommendations of the prospective buyer. Instead, the city should have a reputable engineering firm evaluate the public power utility's operations.



CASE STUDY:

Utility improvements and policy changes—not sale—benefits community

GARDNER, KANSAS • 2008-2011

LESSONS LEARNED:

- *A valuation study should examine the full value your utility provides to the community, not just the value to the prospective buyer.*
- *It may be necessary to review utility policies and governance structures to ensure the utility is being run effectively.*

The electric utility in Gardner, Kansas, was losing money and the distribution system needed repairs. The electric manager and several other staff had left, and remaining employees feared for their jobs. Neighboring investor-owned utilities were invited to bid on the utility.

A consulting firm prepared a report on the value of the Gardner electric utility, including the long-term benefits of municipal ownership. The study found that a previous study, which set the market value of the city's electric utility at between \$35 and \$40 million was flawed because it only looked at the replacement cost of the utility's physical assets—the value of the utility to a purchaser, not to the city that owns the utility. The new study showed that if the city were to sell the utility, it would lose valuable services and benefits and risk higher rates and less responsive local service.

With the new, comprehensive study in hand, the Gardner City Council voted 5-0 to keep the electric utility. The arguments that gained the most traction were reliability, response times and rates.³¹ The council also created a new utility board that would act as an advisory board to the

council. The utility board would help the council oversee the utility, with instructions to “run it like a business.” The city council and new electric utility board instituted several key policy changes to help nurse the struggling utility back to good health.

The efforts were successful. “We were losing money when the city operated the utility,” said utility director Bill Krawczyk. “In the first full year of the board, we made money.” Within three years, the utility had operating reserves in excess of \$4 million and a separate reserve fund for urgent capital projects.³²

By 2011, Gardner Energy's turnaround was a point of pride for the city. When the city council was forced to search for ways to fix Gardner's financially struggling water and wastewater utilities, it briefly considered selling the struggling utilities—including the electric utility in the sale, to “sweeten the pot.” But instead, the council looked to the success Gardner Energy had already experienced and used it as a model. The council created a utility board to provide focused oversight and utility planning for the other utilities, allowing Gardner to retain control of all its public utilities.

³¹ Colin Hansen, “What to Do When You Are Approached With a Buyout Offer,” presented at American Public Power Association National Conference, Seattle, Wash., June 18, 2012.

³² Jeanne LaBella, “Growing the Fix,” *Public Power*, June 2012.

Moreover, the cost of repairs and improvements, even if significant, is not sufficient reason to sell the electric system. The cost of repairs must be compared to the long-run cost of selling the utility. Regardless of who owns the utility, the electric system will require infrastructure investment in the future, and customers will pay for these upgrades through their electric bills.

However, public power utilities may take advantage of tax-exempt financing to fund improvements, which results in savings for customers—as much as 25% over the life of a 30-year bond. Under continued public ownership, investments made in the electric system increase the value of an important community asset.

Promise to relieve local officials of the “burden” of managing the municipal utility

Rather than talking about increasing its profits, the electric cooperative or investor-owned utility may say it only wants to relieve local officials of the “headaches” of running the electric system. It may attempt to persuade officials that electric utility operations are too complex to be managed by local city officials and that the utility would be better off in private hands. The company may say that it is just looking out for the community’s best interest.

Such offers must be viewed with skepticism. There is no basis for an assertion that public power utilities cannot be operated as efficiently as investor-owned or cooperative utilities. Although the delivery of all municipal services has become more complex, thousands of local governments meet the challenge every day. More than 2,000 public power utilities across the country provide reliable electric service at competitive rates; more than 700 of these utilities have been operating successfully for 100 years or more. Examples of the most common attacks on public power are rebutted in *Public Power for Your Community*.³³

Promise that the takeover of the municipal utility will help hold down rates for all the private utility’s customers

The prospective buyer may claim that the buyout is a good thing for its own customers because it will be able to spread its costs over a larger number of customers, keeping rates down for both existing and newly acquired customers.

Public power officials and customers should view this promise skeptically. Not only do public power customers lose control over rates and service policies after a takeover, but they also incur the acquiring company’s future obligations and costs. An investor-owned utility may do better financially if it spreads these costs over more customers, but will the benefits go to customers or to stockholders? More importantly, would public power consumers pay lower rates if they stayed with their municipal system, instead of becoming part of the acquiring utility’s customer base?

Other Response Strategies

Some utilities may want to take a slightly more aggressive approach to responding to a sellout threat. Instead of only looking inward, you may choose to do a competitive assessment of the utility that is proposing to take over your public power utility. Examine its strengths and weaknesses and assess how those stack up against your utility.

If you determine that your utility has a competitive advantage over the other utility that makes you better equipped to serve your customers in the long run, make sure you are communicating that to your stakeholders.

³³ Available at www.PublicPower.org, under “Public Power” / “Municipalization.”



Chapter 8

Communicating with Stakeholders in a Sellout Evaluation

Public power community leaders should have an effective communication strategy to keep local officials and citizens fully informed on a range of issues in a proposed sale. They should anticipate and respond to the prospective buyer's propaganda concerning the sale. They should not only provide citizens with the specific facts on the benefits and costs of the sale but also communicate important local control and quality of life issues. Public power's values should be communicated to all the stakeholders, including board members and local city officials; residential, commercial and industrial customers; utility employees; and the news media.

The Importance of Good Communication

Private utilities will use their considerable financial resources to communicate their public relations messages and sway public opinion on the proposed sale.

The battle over the future of the public power utility is often waged on an emotional level, rather than through the careful analysis of financial data and management reports. In many campaigns, issues such as self-determination, local control and the efficiency of small-scale local operations versus huge national or international holding companies are at the forefront.

The importance of a communication effort was highlighted by the "Community Resistance" study of six communities that voted to keep or sell their public power utility in the 1970s. It showed that every time there was a conscious effort to inform the citizenry about public power's benefits, the citizens chose municipal ownership. In contrast, when public power lost the vote, "it lost without a contest because the voters never heard the case for public power."³⁴ The study found that "where local leaders were able to bring forward the issues of **community pride, local control**

and the **unique potential** of a public power utility **as a productive asset**, the voters reaffirmed public ownership."

In these and other sellout campaigns, private utilities have used their financial resources to tell voters that it is in their best interest to sell the utility. These utilities have the staff resources to develop pro-sale arguments and the money to get their messages to everyone in the community. Because you can count on an aggressive, well-funded, pro-sale campaign, you must organize an effective communication strategy to make your case **for** public power.

Preparing Your Message

Although the circumstances differ in each community's sellout evaluation, the informational campaign should focus primarily on the concerns of customers and the community at large. The trust and confidence of customers and employees has proven to be a strong defense against privatization. As one manager said, "If we tell the people what we propose to do, why we propose to do it, when we propose to do it, what effect it will have on them, and give them time to assimilate those facts, they will almost always make the right decision. And, most importantly, they will trust and support us."

Depending on how effectively you have communicated the value of your utility to date, you may have some work to do to educate consumers on public power. Some of your customers may not know whether your electric utility is public or private or, if they do, they may not know what that

³⁴Bethany Weidner, "Why Munis Live or Die," *Public Power*, May-June, 1980.

means. Others may know about public power and support your utility because they believe it offers lower rates, cares about the community and supports economic development, but even these customers may be unsure of the specifics of these benefits. Many customers know relatively little about their municipal utility's financial status or operations, which makes your job of explaining rate or tax issues more difficult.

Your basic task will be to communicate facts and figures about the value of public power to the community—to translate this value into dollars and cents and quality-of-life benefits. In addition, you must inform the community about your ability to deliver reliable, low-cost, responsive service and to protect the environment.

You also will spend time correcting misinformation about the proposed sale and unfounded charges against public power. For example, the private utility may charge that government is inefficient and therefore the electric utility would become more efficient if it were privatized. The truth is that public power serves as a benchmark for efficient utility operations and the evidence shows that municipal utilities are at least as efficient as—and probably more efficient than—their private power counterparts.

Public power defines efficiency in terms of low rates and responsive service, not in terms of profits and dividends to stockholders.

Finding a Message that Works for You

The key to a successful communication campaign is to find a message that resonates with your stakeholders. The messages that work in one town may not be effective in another, so it is important that you determine what is most important to your community, and tailor your message for maximum impact.

Communicate Your Strengths

Focus on the strengths of your utility. Strengths might include high reliability, outstanding customer service, successful economic development, energy-efficiency programs, and community involvement.

Once a sellout attempt begins, you will have to spend time and resources responding to attacks and correcting misinformation. In the midst of this, do not allow your successes to be forgotten.



MORE INFORMATION

Check out Chapter 2 for more information on the benefits of public power; or Chapter 4 for more ideas and information on communicating the value of public power to your community.

The American Public Power Association has sample materials and templates you can use to communicate about your electric utility to a variety of stakeholders. The materials are most effective if you modify them to reflect your utility's local circumstances. Visit www.PublicPower.org under Members > Communication Templates for more information and resources.

See Chapter 7 for more information on the common tactics, false promises and misinformation to which you may need to be prepared to respond in a sellout.

Other common charges made by private utilities against public power and responses to those charges are presented in APPA's publication, *Public Power for Your Community*.³⁵

³⁵ Available at www.PublicPower.org, under Public Power > Municipalization. *Public Power for Your Community* focuses on communities considering forming a new municipal electric utility, but the basic issues about private vs. public ownership are the same.



Messages that Resonate

Public power utilities bring many benefits to their communities—but not all messages will play equally. Focus on the benefits that will resonate best in your community. What do your customers care about?

- Low rates
- Reliability
- Contributions to the community
- Fast storm restoration
- Renewable energy
- Energy efficiency programs
- Aesthetics (e.g., underground wires)
- Environmental responsibility
- Transparent operations and accountability
- Local control
- Local jobs and promoting the local economy
- Fairness (only X% of people pay property tax; the PILOT allows everyone (including nonprofits and renters) to pay their fair share for community benefits)

Be Honest About Your Weaknesses—and How You Are Going to Improve

If your rates are high or your reliability is less than ideal, your customers already know. Do not ignore the problem; develop a strategy to address it and communicate your plan to stakeholders.

Focus on the Value of the Utility

The central focus of any communication campaign in a sellout evaluation should be the long-term value of your utility to the community. Do not let the topic change to the potential windfall your community would receive from the sale (or how the community could spend the money); that path can lead to unrealistic expectations and rash decisions. Help your stakeholders make an informed decision by clearly explaining how your utility benefits the community, and what the community would lose if the utility were sold.



MORE INFORMATION

See Chapter 5: Anticipating a Sellout Threat for more information on identifying your utility's weaknesses, and developing a plan to mitigate risks.



MORE INFORMATION

See Chapters 2 and 3 for more information on the benefits and value of your utility. Chapters 4 and 8 will help you with communicating your value to your stakeholders.

Additional information on the economic and intangible benefits your utility provides is covered in Chapter 9.

Ensure Your Message Is Meaningful and Memorable

Once you determine your utility’s value, communicate that information in a way that resonates with your community. Make the information meaningful to your customers—not just another number—and memorable, so they can help spread your message to their friends and family.

For example, if your utility contributed \$100,000 to the city’s general fund this year, find out how that money helped your community. Quantify your contribution to the

city in terms of police officers, teachers, and firefighters, schools and parks, roads repaired and city services offered. An average citizen may not understand what it means if the city has \$100,000 or \$1 million less next year, but she will understand if you say the city may have to lay off police officers, close the library on weekends or will not be able to fix the potholes. Then go and find out what your utility’s contributions have meant to your community for the last 5, 10 or 20 years: make your stakeholders understand that the utility’s benefits are long term, and your community would be less without your ongoing contributions.



Speak Like a Customer, Not a Bureaucrat (or an Engineer)

Make sure you use language your customers will understand. Many of the words and phrases we use every day have little meaning to those outside the electric utility industry. For example, customers do not talk about electric rates—they talk about electric bills.

| CONFUSING TERMS | CUSTOMER-FRIENDLY ALTERNATIVES |
|--|---|
| Rates | Bills, prices |
| Appropriate | Fair |
| Restructure | Change |
| Reliability | Keeping the lights on |
| Sustainability | Cleaner, safer, healthier |
| Power, kWh, MWh | Electricity, “juice” |
| Payment in lieu of taxes, transfer to the general fund | We invest in our community |
| Shared services, in-kind contributions | We help keep costs down for other city services |
| Local utility vs. private utility | Local government |
| Aesthetics, undergrounding of utility lines | Our beautiful town |

This list is by no means comprehensive, but is intended to help you start thinking about how you can form your messages in a way that speaks to your community and stakeholders in a way that resonates with them.

Strategies for Communicating with Stakeholders

Your utility's governing board and management should present a consistent, cohesive position on the issues as you communicate with all your stakeholders: local government officials, utility employees and unions, residential and commercial customers and the news media.



Take the High Road

Many public power officials who have survived takeover attempts recommend a "high road" approach to all communication. Any study or review of utility operations must stand up to scrutiny to ensure it is not biased, and all legitimate and objective studies should be welcomed.

Inform and Involve Local Government Officials

One key to a successful defense is to involve local officials early in the process, and keep them involved. Elected and appointed officials are crucial to the process, not only because they may end up voting on the sale of the utility, but also because the community looks to these individuals for leadership in making tough decisions. Thus, who carries the message is often as important as the message itself.

The Memphis City Council was very supportive of the utility during Memphis Light, Gas & Water's sellout evaluation. But in the beginning, the City Council was not

well informed on some of the most important issues facing the utility at the time, including major regulatory changes that were coming for the electric utility industry.

Each member of MLGW's executive staff was dispatched to meet regularly with specific members of the City Council to provide information and get input on key issues. Council members were impressed by what they learned about the utility in these meetings, and the utility's efforts went a long way to derail the council's fears about coming industry changes.

Engaging local officials

- Have regular meetings or conversations with local officials and their key staff to discuss utility issues and any concerns. Offer support, special analysis and research, when appropriate.
- Attend city council or utility board meetings so you know what is being discussed (and the tone of those discussions).
- Give presentations at city council or utility board meetings on the value of your utility and major issues facing the utility.
- Ask supportive local officials and board members to represent the utility to community groups and leaders and make public appearances on behalf of the utility.
- If permitted, start a political action committee to support elected officials. Focus on issues, not individuals. Use caution about becoming too political.

Involve Your Customer-Owners

Local citizens and major customers can be the most persuasive in getting the message out about public power's advantages. Citizen groups are headed by community leaders who believe in retaining the municipal utility and

Telling Your Own Story



Sometimes the only way to ensure your story gets out is to tell the story yourself. Whether you use your website, social media, newsletters, direct mailings or public presentations, here are a few tips to help you think like a journalist and maximize your storytelling skills.³⁶

- Answer basic questions – who, what, why, when and where?
- Why should people care?
- Include personal angles and visuals (smartphones take great photos and videos; no need for fancy equipment if your budget does not allow it)
- Source and peer-review your information. Your colleagues may identify errors or opportunities for polishing the message.

³⁶ "Working Effectively with Local Media," American Public Power Association Webinar, December 1, 2016.

are willing to campaign against the sale. In Cornwall, Ontario, the grass roots group was called “Cornwall Ratepayers Against Panic-Selling;” in Mount Pleasant, Iowa, it was called “Citizens to Keep Our City-Owned Utility;” and in Harrisonburg, Va., it was the “Citizens’ Group to Save the Electric System.”

Often, these groups raise money to make it possible to buy newspaper and radio advertisements or to print and distribute literature against the sale. Group members may go door-to-door to talk with residents. Active citizens often write very effective letters to the editor in support of their utility. In short, a citizens group will do what it can to counter an aggressive, well-funded campaign from the other side.

Engaging residential customers

- Infuse your message into every customer touch-point (telephone, emails, website, etc.). For example, customer service representatives can answer the phone by saying “Thank you for calling ABC, your community-owned utility,” and all employees can add a tagline to their email signatures promoting this message.
- Hold public meetings to address concerns and educate the community about the value of the utility.
- Make utility personnel available to speak to community groups.
- Organize informal gatherings where customers can speak to the utility manager or other representatives so they know their concerns are heard. This might be achieved with a weekly coffee klatch or a table at a local supermarket on a Saturday.
- Post information on your website about the value of your utility and answers to frequently asked questions.
- Use social media outlets like Facebook, Twitter and neighborhood online networks. Be sure someone is monitoring your social media accounts so you can respond promptly to questions or comments. A prompt response reduces the chance that others will be influenced by the critical comments. Do not delete negative comments, lest it look like you are censoring.
- Create a video about your utility to post on YouTube and promote it via email and social media.
- Write editorials or letters to the editor for your local newspaper.
- Respond or comment to stories that appear online, in media websites or blogs. Make important points and use facts, but do not engage in “arm wrestling with trolls.” According to Thom Fladung, vice president of Hennes Communications, if someone posts a comment that is factually wrong, state your case simply—but only once. If you need to continue engaging the person, try to move the conversation out of the public forum. (People tend to be more abrasive online, and are often pleasantly surprised when an actual person contacts them directly).³⁷
- If permitted, run advertisements in your local media (newspaper, TV, radio, etc.), and send direct mail to your customers, especially if there will be a referendum on the sale.
- If a citizens group has formed to oppose the sale of the utility, support the group to the extent allowed (financial contributions, meeting space, speakers, assisting with developing and printing brochures and other collateral). If you cannot provide resources, let them know you appreciate their efforts, and provide facts and information.
- Identify and meet with other key community leaders to discuss the value of the utility to the community and to address any concerns.
- Do not forget your traditional communication method: the utility bill. Use extra space on the bill—or bill envelope—to include positive messaging about your utility, or include a bill stuffer with additional information. Keep messages positive, like reminders about how the utility contributes to the community. Including messages on the bill that may be viewed as too political could backfire.
- If the utility or city has a regular newsletter for customers, include information about the value of the utility and public power in that space.
- Maintain (or step up) your involvement in community events. If your utility has always participated in a community fair, charity fundraiser, or other event—now is not the time to pull back. Make sure you are a visible presence in your community.
- Knock on doors—particularly if you have a citizen referendum coming up. There’s a reason that politicians still rely on this tried-and-true technique every election: it works. Recruit volunteers, make sure they have a script (and answers to questions they are likely to get), and go door-to-door in your community making sure people understand the issue and what is at stake. Remind them of the upcoming referendum and ask for their support. (Studies show that actually asking someone for their vote increases the likelihood they will turn out and vote in your favor on Election Day).

³⁷ Marilyn Cavicchia, “The Media Revolution is ‘Iterative’ and Social: Experts Share How Not to Get Left Behind,” *Bar Leader*, a publication of the American Bar Association.

Get Your Business Community Behind You

Business and industrial leaders in your town—your key accounts—have substantial influence in your community and may take a stand for or against the sale. If your utility has provided excellent, reliable customer service, these customers are likely to oppose a sale to an investor-owned or cooperative utility that may have higher rates and less responsive service.

For example, the proposed sale of the municipal electric utility in Hagerstown, Maryland, was opposed by its largest electrical customer, Urban Fiber, which at times accounted for between one-third and one-half of the city's power demand. City resident and Urban Fiber President Bruce Hynes served on the City Light Study Committee, which negotiated with the investor-owned utility on its offer to purchase the city electric utility. Hynes said a lot of emphasis had been put on the five-year rate freeze offered by the private utility, but that after those five years City Light customer rates would rise to meet the private utility's rates. Hynes opposed the sale and encouraged others in the community to do so.

Engaging business customers

- Hold public meetings to address concerns and educate the community about the value of the utility. Plan events around their schedules—for instance, breakfast events they can attend before their businesses open, or short lunch events in a location people can easily get to on their lunch hours.
- Make utility personnel available to speak to local business groups, including the Chamber of Commerce, union leaders, and Rotary and Kiwanis clubs.
- Have information on your website devoted to business customers. Include information about the programs and services you offer them.
- Establish a key accounts program (if you do not have one already) to develop strong relationships with large commercial and industrial customers and to ensure they receive the best service possible. The key accounts program should focus on your customers and their needs—the utility should not be the focus. Showing you care about helping them succeed will go a long way.
- Meet with your key commercial and industrial customers to discuss how the sale of the utility would impact them.

Let Your Employees Carry Your Message

A sellout evaluation is an incredibly stressful time for your employees: not only are they facing uncertainty about the future of their jobs, but they are likely to get questions about the utility and what is going to happen from family, friends and others in the community.

You can help relieve some of this stress by keeping employees informed through all phases of the sellout evaluation. Knowing what is going on is easier than not knowing anything; and it prepares them to answer the questions they are likely to face when they interact with customers and others, both on and off the job.

As a bonus: well-informed employees can help you get your message out to the community. Involved, informed and empowered employees are a powerful force for the municipal utility. They have the most credibility and the most to lose.

Keep your employees informed through all phases of the sellout evaluation. Make sure they understand your utility's value and help them prepare to explain the issues and respond to the questions they are likely to hear.

The employees of Memphis Light, Gas & Water took the lead in communicating the utility's value to the media and customers during the utility's sellout evaluation. The utility gave all employees wallet cards containing key questions and factual answers. Packets with more detailed information were available to individual employees, especially union employees of IBEW, who took lead roles within their neighborhood associations and professional organizations. The IBEW president was a frequent guest on radio talk shows and gave television interviews. He was also an active and vocal member of the Mayor's Utility Evaluation Committee.³⁸

Depending on utility policy (and local politics), utility employees may be prohibited from leading a campaign against the sale. They may have to leave that to other persuasive messengers, such as policy board members and active citizens. However, dedicated employees will find ways to express their loyalty to the utility and their customers.

For example, the executive staff of the Lansing Board of Water & Light in Michigan issued a signed statement pledging their support for public power and their commitment to protecting the interests of customers,

³⁸ Michael Whitten, *Observations From a Public Power Takeover Target* (Memphis, Tenn.: Memphis Light, Gas & Water), October 1998, p. 3.



Gauging Employee Opinion

If a sellout/buyout situation arises, it may be useful to conduct an employee survey, to understand where your employees stand. Multiple utilities and hired consultants have conducted such employee surveys and report similar outcomes. Utilities facing a sellout situation have found:

- **25 percent of employees strongly oppose a sale.** These employees will often be worried primarily about their own job and financial stability and may be well-informed about the value of your utility to the community.
- **25 percent of employees favor the sale.** Their reasons may vary. They may be intrigued by the possibility of new (or better) job opportunities, feel disenfranchised or dissatisfied with their management or utility leadership, or have already bought into the talking points from proponents of the sale.*
- **50 percent of employees are undecided** or do not have strong opinions either way. Focus your efforts on this middle half to convince them of your utility's value and get them to support the continued operation of the utility.

** Because approximately one in four of your employees may favor the sale, you should assume that any internal information or communication may make it into the hands of other sale proponents, possibly including the would-be buyer. That is why you must stick to the truth and never say or print anything you would not want to see on the front page of the newspaper.*

Case Study: A POSITION STATEMENT TO REASSURE AND REFOCUS EMPLOYEES

When Murfreesboro Electric Department faced a buyout attempt, the utility wanted to reassure employees about the process and management's intent. MED developed the following position statement to keep employees focused while keeping them informed throughout the process:

WE WILL STUDY.

We will focus on due diligence, working toward what is in the best interest of the citizens who built this system.

WE WILL NOT RUSH.

We will focus on pacing, because this is a complicated process and should be given the time it deserves.

WE WILL REMAIN FOCUSED.

We will focus on our solid operation during this process and will not let it distract us from our mission.

WE WILL STAY THE COURSE.

We will focus on reliability, responsiveness and safety.³⁹

as well as BWL employees and retirees. "In short," the statement said, "we believe we are all in this together—customers, employees, and pensioners. Let the examination begin. We stand on our record."⁴⁰

The Lansing BWL management pledged to keep employees informed throughout the process. They told employees

they were free to express their own opinions on the issue, with two conditions: their activity had to be conducted on their own time; and they needed to make it clear that they were speaking as concerned employees, not as utility spokespersons. With the ground rules set, the employees were turned loose to "do their thing."

³⁹ "Anatomy of a Buyout Attempt," Murfreesboro Electric Department, Tennessee, June 2016.

⁴⁰ Joseph Pandy, "Facing Privatization: What To Do When the Council Asks for a Private/Public Analysis," *APPA National Conference*, June 14, 1993.

Engaging employees

- Educate employees—at all levels, and in all areas of the utility—on what public power is, why you are in business and how your utility benefits your community. Ideally, this training should begin long before a sellout is ever considered.
- Hold all-employee meetings where utility leadership provides in-depth information on the sellout evaluation process and the value of the utility to the community. Use the opportunity to address concerns about the proposed sellout. Ensure all employees—not just managers—are included.
- Help employees with managing change and uncertainty. One utility undergoing a lengthy sellout evaluation held workshops for all employees on managing change. They found the workshops helped keep the rumor mill under control and helped employees deal with the personal issues and uncertainty raised by the prospect of selling the utility.
- Give employees weekly updates, including any new developments in the buyout process. This ensures that employees get reliable information from the source, not just from the rumor mill, local press or propaganda from the would-be purchaser.
- Provide talking points to employees. Give them printed information on fact sheets or wallet cards to help them address commonly asked questions from friends, family and community members. Provide updated talking points as needed throughout the process.
- Develop a list of questions and issues that family and friends of employees can use when discussing the issue with others in the community. This helps people think through the ramifications of selling the electric system, and makes it easier for customers and stakeholders to be engaged in the conversation.
- Provide front line employees—especially customer service representatives and other uniformed workers—with information. Even if another department is the designated channel for disseminating information, your front-line employees are likely to get questions while on the job. When they are wearing your utility’s uniform, customers will assume they speak for the utility and will expect them to have basic information.
- Use employee newsletters, your company intranet, bulletin boards in the break room, or other means to remind your employees about the value your utility provides and provide updates on the sellout evaluation.
- Help employees act as utility liaisons in their community groups with information and resources. Provide basic communication training to employees who want to help act as representatives for the utility in groups they are a part of, and ensure they have accurate talking points. Help them with presentations, visual aids, and handouts, where appropriate.
- Listen to and acknowledge employee concerns. They have the most to lose if the utility is sold and will be stronger defenders if they know you are working for them.

Put Your Retirees to Work



Retirees are a frequently overlooked but potentially valuable resource in helping you reach out to your community during a sellout evaluation. Your retirees are invested in the utility—after all, they’ve dedicated many years in service to it—and may already understand some of the value it brings to the community.

Make sure you reach out to your retirees with information and occasional updates about the sellout evaluation. You may send letters or you can invite retirees to a meeting where they can learn more. This provides your retirees an opportunity to learn more about the situation so they are better informed when they talk to their friends, family and civic groups in the community.

Even better: ask your retirees to become utility ambassadors and help you spread the word. Provide them with the same fact sheets and resources you give your employees. Retirees are a valuable communication and community relations asset: they have an emotional connection to the people and the utility where they spent their careers, and they can speak to community members as neighbors without sounding corporate.⁴¹

⁴¹ John Egan, Egan Energy Communications, “Retirees: A Utility’s Secret Weapon in the Net Metering Battle,” *Energy Central*, September 2, 2015.

Maintain Open Communication with the Media

Maintaining credibility with the news media is crucial. In a sellout evaluation, media relations become even more important. It is imperative to earn the trust and respect of the media through open and honest communication.

Who Are Your Local Media?



Local media is more than just your local newspaper. Make a list of all the ways people in your town find out about what is happening locally—those sources of information constitute your local media. Once you identify your local media, you can reach out and tailor your message to that particular audience.

Your local media may include:

- Newspapers
- Radio stations
- Local TV stations
- Different neighborhoods may have community newsletters, blogs or list servers

Find out if there are similar outlets organized around particular schools (parent groups), community groups, churches or senior centers

- Student media (newspapers, TV or radio stations) produced by a local college
- Social media accounts—There may be Facebook groups that act as community forums or Facebook or Twitter users who act as influencers and informers in your community.

What other apps and social media networks are popular in your community for getting information out?

Think about how you get your local news. Ask family, friends and employees which news sources they use.

Municipal utilities with good media relations say they maintain an excellent rapport with the news, editorial, business and advertising departments of the local media. The utility reports any news—favorable or unfavorable—to the news media first, and utility management is always available to answer questions.

Engaging the news media

- Help news media personnel do their jobs. Respect their deadlines, and be responsive to their questions and requests for quotes. Make sure news reporters and editors know who on staff they should reach out to, and make subject matter experts available (through your designated point of contact) to provide details and quotes.
- Maintain contact with print, radio and television media.
- Be proactive with media relations. Reach out to local newspapers and radio stations to schedule interviews and help ensure balanced coverage.
- Provide media contacts with press releases, position papers and other facts.
- Schedule editorial board meetings with print media to allow the utility to express its side of the issue.
- Keep the media informed about your day-to-day business operations that provide your customers with exceptional service (for example, being recognized for service reliability or utility employees speaking at a local school about electrical safety).
- Enlist the help of local and national public power advocates (state, regional and national associations or joint action agencies) to provide quotes, letters to the editor, op-ed pieces or other assistance. These supporters may have experience with other communities, can give a statewide or national perspective and may be able to make arguments in a way you cannot.
- If not prohibited, support local media through the purchase of advertising.

Media Relations Do's & Don'ts



- **DO** respond in a sincere, direct and cooperative manner. Keep it short.
- **DO** listen carefully to the question—if it is negative, answer in the positive if possible.
- **DO** stick to the facts.
- **DO** keep it simple and avoid jargon.
- **DO** speak from the viewpoint of the public's interest.
- **DO** say “I don't know, but I'll try to find out for you”—and then follow up.
- **DO** know that everything you say can be quoted—before, during and after your interview, news conference or conversation.
- **DO** give them usable quotes. Repeat part of the question in your answer so they have a complete thought to use in a quote or sound bite.
- **DO NOT** say something you do not want to disclose. “Off the record” does not work.
- **DO NOT** speculate or guess; avoid “what if” questions.
- **DO NOT** argue, get angry, ramble, joke or act superior.
- **DO NOT** use the term “no comment”; instead, offer a brief explanation like “that has not been determined,” or “we cannot disclose that information.”
- **DO NOT** try to fool a reporter or indicate you know something. Be honest.
- **DO NOT** refer to a reporter (or her media outlet) by name in a taped interview—it may keep competing broadcasters from using your answer.⁴²

Crisis Communication

Facing a sellout evaluation may not put you in the same crisis mode as a major outage or natural disaster, but you are still likely to face increased attention, demands for public appearances and media scrutiny. Because your ability to communicate quickly and effectively is so important in a sellout evaluation, many of the same tips and tricks that are used in effective crisis communication can be applied here.

The key to communicating quickly with all community stakeholders is to have a plan in place well before the crisis hits.

A crisis communication plan should identify:

- Who is on the crisis response team;
- What platforms should be used to communicate;
- What messages will be communicated; and
- How frequently messages will be distributed on all platforms.

Other elements of your communication plan may include:

- Hiring a communication or public relations consultant to assist with the sellout evaluation;
- A statement from the general manager or leadership team outlining the utility's position and affirming your commitment to a fair and methodical evaluation to promote the best interests of the community;
- Plans to communicate information to all your stakeholder groups in a timely manner;
- Preparation and distribution of collateral materials, including informational brochures or fact sheets, to aid media and other stakeholders looking to learn more about the utility and the sellout evaluation process; and
- Providing media and speaker tips and training for individuals who will act as public representatives for the utility during the evaluation, including the general manager, designated spokesperson, and others who may be representing the utility to the media and at public events.

Just like no utility is exempt from the possibility of an outage, no utility is exempt from the possibility that the topic of selling the utility will be raised. By having a clear system in place for these situations and understanding the exact processes, utilities can take control of the situation and more effectively guide their communities through this stressful process.

⁴² “Storm Communications Guide for Public Power Utilities,” American Public Power Association, 2015.
Tips courtesy of Kissimmee Utility Authority.



Why do we need a crisis communication plan?

- More coordinated, consistent and authentic communication response
- Improved communication with internal and external stakeholders
- Improved communication with legacy media and social media, resulting in more accurate coverage
- Better coordination among crisis team members, less redundancy and reduced stress
- Enhanced ability to maintain normal operations while simultaneously managing the crisis event
- Increased chances of preserving—or even improving—the utility's reputation and goodwill during the crisis event⁴³

⁴³“Crisis Communications,” American Public Power Association Webinar, January 25, 2017.



Chapter 9

Determining the Value of Your Utility

Public power utilities provide long-term value to their communities, so there must be compelling reasons—beyond the short-term cash value of the assets—to consider giving up those benefits. These utility assets not only reflect the investments of its past and present customer-owners over many years, but they can continue to provide benefits year after year. The proposed sale of such a valuable asset is a complex issue and should be examined carefully.

A community may consider the sale of its public power utility because a local policymaker advocates selling the utility, or because a neighboring utility presents an unsolicited offer to purchase the utility. Either way, supporters of the sale must clearly demonstrate to all the utility’s stakeholders how they would benefit from the change. The public should be kept fully informed on the study process and results.

Proponents of selling the public power utility may say that smaller, locally owned and operated utilities cannot survive in today’s electricity industry. But large size is not always an advantage, particularly in areas where public power utilities excel, such as responsiveness to local concerns and providing quality customer service. Smaller public power utilities often belong to joint action agencies, which allows them to take advantage of economies of scale in meeting power supply needs.

An investor-owned utility (IOU) or cooperative utility seeking to purchase a public power utility typically makes promises of continued quality service and community involvement after privatization. But such promises regarding rates and service are nearly impossible to

enforce for more than a few years at best. Thus, the real risk is in giving up local control over the utility, which is a community asset that will pay dividends continuously.

Value to Stakeholders

The value of a municipal utility to its community is not simply the value of the electric utility infrastructure itself, nor is it the monetary value of the utility to the investor-owned or cooperative utility that seeks to purchase the asset. A city should not consider selling its electric utility unless it is sure that the compensation it would receive for the asset leaves the city, its residents and utility customers at least as well off as they are under municipal ownership of the utility.

If the city is to have an incentive to sell, the compensation must be more than this break-even amount, especially given the risks and uncertainties involved. This section briefly describes the factors that go into calculating a “break-even” payment.

Value to the City

The city should be compensated for its ownership interest in both physical and intangible assets. The physical assets (land, poles, substations, pickup trucks, computers, customer lists, etc.) are commonly valued through the cost approach (original cost, reproduction cost or replacement cost methods) as discussed in Appendix E.

Intangible benefits (including more efficient municipal operations, local economic development, and support for local priorities) are not always included in valuation studies; these benefits should be given separate consideration.



MORE INFORMATION

Refer to Appendix E for more on valuation studies, including different techniques, special considerations for public power utilities and case studies showing how four cities used valuation techniques and set well-defined goals to develop a minimum acceptable price for a sale.

These examples highlight the importance of understanding the financial benefits that public power utilities provide to the city and illustrate the difficulty in making all parties (the city, its residents and its customers) at least as well off as under municipal ownership of the utility.⁴⁴

Value to Citizens

A public power utility provides economic benefits to those who live in or operate businesses in the community. The electric utility may be one of the largest contributors to the general fund in the community and a very important source of revenue for the city.

The utility may make both direct payments and other contributions to the city. Direct payments to local government are payments in lieu of taxes (also called transfers to the general fund), gross receipts, property taxes and other fees.

Contributions may also include free or reduced-cost electricity and other services for municipal government, use of electric department employees, vehicles and equipment and other free services.

The valuation should account for projected growth in the electric system's future direct payments and contributions to the city. Once the utility is sold, residents and businesses will no longer receive the economic benefits of these

payments and contributions, and may be called upon to make the up the difference through higher taxes or cuts to other municipal services.

Given these considerations, the minimum payment necessary from the proposed buyer necessary to leave residents and businesses no worse off is the present value of these payments and contributions over time. The method described here—the “income approach” to valuation—is particularly suitable for calculating both the value to citizens and the value to customers (discussed below).

Value to Customers

If the public power utility's rates are lower than those of the would-be buyer, customers should be compensated in the sale price for this lost benefit. The effect of a sale on future electricity prices concerns all utility customers, including any customers outside of the city limits.

The city should estimate the public power utility's rate levels over the planning horizon and compare those rates with the projected rates of the potential buyer. This is a key consideration.

While a potential buyer may offer to reduce or freeze rates, such promises are difficult to enforce once the utility is sold. Thus, the city should get as much information as possible about the potential buyer's history of rate adjustments and cost trends. (Rate factors are discussed in more detail later in this chapter.)

Break-Even Analysis

The value of the public power utility is the asset value of the physical capital and intangible benefits owned by the municipality, **plus** the capitalized difference between the benefits to city residents with the public power utility compared to what the benefits would be if the utility were acquired, **plus** the capitalized difference between the municipal utility's rates and the rates the acquiring utility would charge.

This is the minimum compensation necessary to ensure the city, its residents and the utility's customers would be at least as well off after a sale as they are under municipal ownership of the utility. In addition to these three elements, the acquiring utility should pay for all transaction costs associated with the sale, as described in Chapter 10.

⁴⁴ For example, if the sales price is sufficient to provide continuing value to the city and its citizens, the price may be above the book value of the assets. To compensate for the above-book-value premium, the buyer is then likely to raise rates, thereby harming utility customers.

Assessing Your Break-Even Value

$$\begin{array}{r}
 \text{Asset value of physical and intangible benefits owned by utility} \\
 + \\
 \text{Capitalized difference in benefits to residents with public power versus under IOU or cooperative} \\
 + \\
 \text{Capitalized difference in customer rates with public power versus under IOU or cooperative} \\
 + \\
 \text{Total of all evaluation and transaction costs} \\
 = \\
 \text{BREAK-EVEN VALUE OF THE PUBLIC POWER UTILITY}
 \end{array}$$

Economic Benefits of Continued Public Ownership

Public power utilities provide many economic benefits to the communities they serve, from the direct benefits of keeping utility jobs in the community, to encouraging businesses to locate and expand in the community.

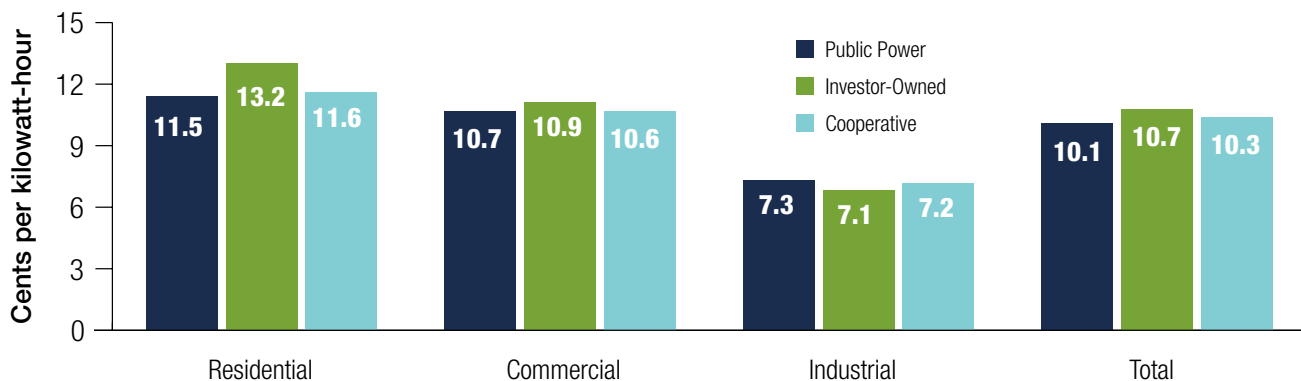
Of all the economic benefits that public power provides, two are most likely to come under focus in a sellout evaluation: electricity rates and the utility's financial contributions to the local government.

Electricity Rates

Electricity rates are often a major focus of sellout evaluations. The most recent data collected by the U.S. Energy Information Administration show that public power customers pay less, on average, than do customers of investor-owned utilities, as they have year after year since the federal government began keeping electricity rate statistics more than 50 years ago.

On a national basis, average electricity rates for residential customers of investor-owned utilities are about 13 percent more than average rates paid by public power customers; the rate differential between residential public power and electric cooperative customers is negligible.⁴⁵

Average Retail Electric Rates by Customer Class, 2015



⁴⁵ American Public Power Association, 2017-2018 Directory & Statistical Report, "Public Power Costs Less," 2017 (based on Energy Information Administration Form EIA-860, 2015 data).

Public power utilities can provide power at lower cost because they:

- Are accountable to the customer-owners they serve;
- Are not-for-profit and do not pay dividends to often-distant stockholders;
- Have local scrutiny over management and operations;
- Have rates set locally by citizen-controlled boards or city councils that operate publicly;
- Do not pay federal income tax because they are entities of state or local governments;
- Are eligible to issue revenue bonds that are exempt from federal income tax for capital expenses, lowering the cost of borrowing; and
- May have access to lower cost hydroelectric power marketed at wholesale by federal and state agencies.

Because of these distinct public power characteristics, a public power utility may well have lower rates than the investor-owned or cooperative utility that proposes to acquire the system.

A public power utility that has higher rates than other utilities in the area is more vulnerable to a buyout offer. The mayor and city council may view selling the public power utility as an opportunity to gain income for the city and customers paying relatively higher rates will be unlikely to question such a sale. A neighboring utility wishing to expand its territory may tout its rate advantage in its offer to purchase the public power utility.

However, even a public power utility that has competitive rates may be targeted by a potential buyer. For example, the buyer may make promises about lowering residential rates further or introducing special economic development rates to attract new industrial customers to the area.

A public power utility must understand its competitive position to respond to promises from potential buyers and its own customers' questions and concerns. In analyzing a buyout offer, a public power utility should:

- Compare rate levels with the potential buyer and other utilities in the area;
- Understand why the public power utility's rates are higher or lower than its competitors; and
- Evaluate trends in rates and estimate how rates may change in the future under continued public power ownership and if the utility is sold.

Compare Rate Levels

The first step is to compare the public power utility's overall rate level with the potential buyer (IOU or cooperative utility) offering to purchase the system and with other utilities in the area. All electric utilities must recover enough revenue through rates to meet the costs of doing business. Thus, a comparison of average rates for all electric sales is a good indicator of relative cost levels.

The public power utility should make similar comparisons for each customer class (residential, commercial or industrial) because buyout offers may feature promises to specific customer classes. A utility's rates may be relatively low for one customer class but higher than the competition for another customer class.

The next step is to analyze the potential buyer's actual tariff provisions to estimate what it is charging individual customers. This is particularly relevant for industrial customers, as the actual rate charged to a specific industrial customer may bear no relationship to the average rate level for all industrial customers. For example, industrial customers are often subject to different tariffs depending on the size and the load profile of the customer. The IOU or cooperative utility's tariffs can provide details showing the kinds of rate structures that the potential buyer might offer your customers.

The public power utility should examine its own rate structure to see if it meets its customers' needs. The traditional method of designing rates is to perform a cost-of-service study that allocates costs between customer classes. The purpose is to ensure that one class of customers is not paying costs that are caused by another customer class. However, there have always been problems with this fully allocated cost method of rate setting because there is no one correct way to allocate common costs (that is, costs that are incurred on behalf of all customer classes).

Some utilities have adopted rate structures that reflect the time-varying cost of electricity. Examples include rates that differ by time of day or by season, providing customers with rate incentives to reduce their consumption during peak periods when energy is most expensive. The goal with these time-of-use rates is a more efficient use of the utility's resources (for example, avoiding additional purchased power costs or delaying investments in new generating facilities) and lower power supply costs.

Examine Rate Trends

When a public power utility is sold to an investor-owned or cooperative utility, the municipality loses all control over rate levels. In the case of an IOU, rates and services will be regulated by the state public utility commission (PUC); in the case of a cooperative utility, rates will be regulated either by the PUC or the utility's board of directors.

The public power utility should look for information on how the proposed buyer's rates may change in the future. For example, is the IOU or cooperative utility undertaking an extensive capital improvement plan in its territory that could significantly raise rates? How does the utility implement rate increases? Does it have an automatic fuel adjustment clause, and has the PUC or board of directors approved rate increases to be phased in? When is the private utility expected to file a new rate case with the PUC (which could result in substantial rate increases)?

Keep in mind that when acquiring a public power utility, the IOU or cooperative utility will have a strong incentive to recover the purchase price—and especially any premium paid for the utility—by raising rates. The purchasing utility may offer to freeze rates for some short period of time in order to reassure the community, while maintaining the right to raise rates in the future.

Because promises regarding rate freezes are difficult to enforce, it is wise to specify limits on rate increases in any sale agreement. For example, the acquiring company might be required to agree to an index of what the public power utility's rates would have been and to keep its rate increases to similar dollar increases over a specified period of time.



MORE INFORMATION

Appendix C offers more detailed information on making rate comparisons, including how to calculate average rate levels and how to use trend analysis in making rate comparisons.

Identify Why Rates Are Higher (or Lower) than the Competition

A public power utility's cost of doing business each year is more than just its cost of operations and maintenance. It also includes debt service payments, additions to any

reserve funds, transfers to the general fund and any contributions of free services made to the city. These areas should all be examined to determine the high-cost elements and to see if there are opportunities to reduce costs.

Even if a specific cost component cannot be reduced, understanding which costs are causing higher rates is useful for planning purposes, especially in a sellout evaluation. If your rates are higher than those of a neighboring IOU or cooperative utility, you need to explain why to your customers and stakeholders. It may be that your customers would still have to pay for the factors driving your rates higher, even if your public power utility were sold.

Analyzing your operating costs

Operations and maintenance costs account for the largest portion of utility expenses, and power supply is by far the largest component of this category. If the utility owns generating assets, it can compare its cost of producing power with other nearby generating plants. If the utility buys all its power, it can compare purchased power costs with neighboring IOUs, cooperative utilities, and other public power utilities.

The American Public Power Association's annual report on *Financial and Operating Ratios* provides comparisons for major cost categories by customer class and region: total operations and maintenance, purchased power, distribution, customer-related activities and administrative and general costs. Appendix C provides examples of some of these ratio summaries.

If the utility finds that its costs are relatively high in one of these areas, it should investigate to find the specific reasons.

For example, distribution costs may be above average because of large line losses, or an intensive maintenance program. If your public power utility were sold, the purchasing utility would still be responsible for any costly upgrades or maintenance the system needs, and these costs would ultimately be paid by your community's electric customers.

Administrative and general costs may be high because the city is allocating a large portion of common or shared costs to the utility. If so, the city would still be responsible for these costs if the utility were sold, meaning the city might have to cut services or raise taxes to cover these costs.

Debt service payments are a utility's annual interest and principal payments on long-term debt. Some utilities do not have long-term debt and prefer to fund all projects out of accumulated savings or current revenues. Issuing



CASE STUDY:

Never take a buyout offer at face value

HOMESTEAD, FLORIDA • 2002

LESSONS LEARNED:

- Analyze all components of a buyout offer. Examine carefully all the assumptions the prospective buyer makes in its offer.
- Conduct your own valuation study to ensure your utility's assets are fully valued in a buyout offer.

The city of Homestead received a bid from Florida Power & Light to purchase the municipal utility. The investor-owned utility campaigned aggressively to win City Council and community support for the sale, but an assessment found the proposal “at best, disingenuous and misleading. At worst, a slap in the face.”⁴⁶

A closer examination of the offer, which FP&L publicly touted was worth \$210 million for the city and its residents, revealed that many of its claims were misleading or erroneous.

| FP&L OFFER/CLAIMS | REALITY |
|---|---|
| \$7-9 million initial cash payment to city | Invested at 6 percent interest, this would only create \$500,000 in annual revenue for the city—less than 10 percent of what the municipal utility was contributing. |
| \$2.6 million annually in franchise fees, municipal taxes and property taxes | At the time, more than half of Homestead’s electric customers were located outside the city limits, so no taxes or franchise fees could be collected from those customers, making the actual revenue from taxes and franchise fees \$1.5 million or less. Combined with interest from the initial cash payment, the city’s annual revenue would only be \$2 million—40 percent of the current general fund transfer. |
| \$58-63 million debt relief | The Homestead utility was debt-free; this “debt relief” actually represents the purchase of Homestead’s current power supply contracts. These contracts are actually assets, not debts. Power purchased through these contracts could be resold, potentially at a profit. |
| \$5-6 million investment in capital improvements | Proposed “improvements” were not necessary; most of Homestead’s distribution system was new, having been rebuilt only 10 years earlier after Hurricane Andrew. |
| Customers would save a total of \$6 million/year in electric bills, a monthly reduction of 10-20 percent | FP&L’s rates would be lower, but the analysis ignored several factors: <ul style="list-style-type: none"> • The public power rates included a generous transfer to the city’s general fund—money the city would need to find somewhere else (possibly through raising taxes). • FP&L’s calculations included a fuel cost surcharge that was set to expire well before FP&L could assume possession of the system. • Homestead customers would be required to pay a premium electric rate—higher than other FP&L customers—to cover the costs of purchasing the municipal electric system, making the rate difference between the IOU and the public power utility even less. |

Case Study continued on next page...

The bad economics of the offer ultimately killed the deal. Although the investor-owned utility slightly increased its final offer for the utility, Homestead Mayor Roscoe Warren assessed his decision succinctly: “The city would be \$3 million poorer [per year] if we took this proposal.”⁴⁷

Homestead’s experience demonstrates the importance of carefully examining any offer to purchase your community-owned electric utility. It is important that policymakers understand the value of the utility, including the ongoing value the utility provides to the city, and to conduct a thorough economic analysis of any offers. The purchasing utility will use favorable comparisons that may not accurately reflect reality. They also may mislabel utility assets as debts, such as power supply or ownership contracts.

⁴⁶ Barry Moline, “To Sell or Not to Sell... What are the Issues?” presented to City Council, Homestead, Fla., August 5, 2002.

⁴⁷ Daphne Duret, “FPL Offer for City Power Plant Rejected,” *Miami Herald*, September 8, 2002.

long-term debt spreads the cost over a longer period, while funding out of current revenue results in higher short-term expenses.

If a utility has invested in a major project, such as building a generating plant, its debt service payments can be significant. A joint action agency member is in a similar situation, as the member is paying off the joint action agency’s debt through purchased power contracts. In either case, the utility should be alert to any opportunities to refinance the utility’s debt at lower interest rates.

Any utility obligations due to contracts or agreements would need to be satisfied prior to the sale of the utility. If the purchasing utility agrees to assume these debts or obligations, there will be a strong incentive for the purchaser to recover these costs by increasing rates or cutting service. This will be further discussed in Chapter 10.

A utility may have established reserve funds for a variety of reasons. When the utility issues bonds, it may also be required to set up a reserve fund for debt repayment. A utility may also have a rate stabilization fund, a capital fund for construction projects, or a contingency fund to handle emergencies.

Some utilities have taken a closer look at reserve funds to determine if they can lower reserve levels and still maintain financial stability. For example, some utilities have changed their bond covenants to lower reserve requirements. Others have combined several funds into one, thereby reducing the total amount of reserves needed.

Public power utilities often make financial contributions to the city government. These are typically in the form of transfers to the city’s general fund or provision of free or reduced cost services. A utility that has relatively high transfers or contributions may need to charge correspondingly higher rates to its customers.



MORE INFORMATION

Chapter 10 will discuss costs and risks of selling a public power utility, including those associated with the recovery or repayment of the current utility’s debt.

Appendix C offers examples of some public power financial and operating ratios; the full annual report is available from the American Public Power Association’s Product Store.

Financial Contributions to Local Government

A proposed sellout focuses attention on the economic benefits the community receives from a public power utility and how these compare with the potential benefits under other forms of ownership. Often the level of financial contributions from the utility to the city becomes a focus of the debate.

If the public power utility provides little or no contribution to the city, sellout proponents may argue that the municipality would be better off if the utility were sold because an IOU or cooperative utility would pay taxes on the utility property. If the public power utility’s rates are inflated due to relatively large payments to the city’s general fund, sellout proponents may argue that a sellout to an IOU or cooperative utility would result in lower rates for customers.

Most public power utilities do make significant financial contributions each year to local government. Municipal utilities make revenue transfers to the city government's general fund or payments in lieu of taxes, provide free or reduced-cost electricity for streetlighting and municipal buildings, and provide the use of electric department employees for non-electric services. In some states, public power utilities are also subject to some of the same state and local taxes as private utilities.

The value of these payments and contributed services are often equal to or greater than the tax revenues the community would receive if the public power utility were sold to a private company. Moreover, public power's payments and contributions go directly to the municipality, whereas an IOU or cooperative utility's property tax payments are typically disbursed to different levels of government (state, county, municipality, school district, etc.).

A municipal utility should focus on four factors in analyzing the financial benefits it provides to the community:

- Quantify the current payments and contributions made by the utility to the city.
- Make sure that utility management, the utility's governing body and city government all understand the relationship between rate levels and financial contribution levels.
- Communicate information to local citizens on the financial contributions provided by the utility.
- Provide policymakers with a clear, formal, written policy regarding utility contributions.

These factors are described briefly below.

Quantify current contributions

The largest payment made by most public power utilities is an annual transfer to the general fund. This is often considered to be a "payment in lieu of tax" to make up for the fact that the utility does not pay taxes on property owned within the city. Other payments made by some public power utilities include property taxes on facilities outside the corporate limits, gross receipts taxes, franchise fees and public utility assessments.

The more difficult items to quantify are contributions of electric service, employees, materials or equipment made by the public power utility. If there is no compensation from the city for these items, the utility is providing a benefit that would disappear and probably need to be replaced at a cost if the utility were sold.

For example, some public power utilities provide free or reduced-cost electric service for various city functions, such as streetlights or lighting for municipal buildings. Many utilities provide employees and equipment to put up city signs and banners, or to install temporary lighting. If the utility were sold, the city would have to pay full cost for its lighting needs and hire contractors to perform the other services.

If you have not compiled a comprehensive list of all the ways your utility financially supports the local government, here is a short list of services that many public power utilities provide, to help you get started.

Your Financial Support for Local Government



- Payments in lieu of taxes (or other transfer to the general fund)
- Free or low-cost services to municipal government, including streetlighting, municipal buildings, water pumping, water or sewer treatment facilities, recreational facilities and traffic signals
- Installing temporary lighting for special events
- Maintaining streetlights, traffic signals, or stadium lights
- Electric repair or maintenance for other city departments
- Rewiring municipal buildings
- Tree trimming for other departments
- Reading water meters
- Putting up city signs or banners
- Providing technical expertise (e.g., engineering studies)
- Provision of free building space
- Non-utility locates for stakes, wires, pipes, etc.
- Hanging banners and holiday lights
- Use of electric department vehicles and equipment by other municipal departments, such as bucket trucks, ditching equipment, computers and copiers
- Use of electric department materials and supplies, such as wood poles, wiring and herbicides

In addition to direct contributions, there may also be areas where your utility helps the city or other municipal departments achieve greater efficiency. If costs are allocated appropriately, these do not represent direct contributions by your utility, but these efficiencies would still be lost if your city-owned utility were sold to an investor-owned or cooperative utility, causing the city's costs to increase. Examples of efficiencies include:

- Integration of municipal operations (e.g., shared billing, office space for electric, gas, water, wastewater, etc.)
- Shared personnel (e.g., metering, billing, call center, human resources, etc.)
- Lower per-person administrative costs for municipal employee benefits
- Avoidance of short-term borrowing costs due to cash flow from electric revenues

The American Public Power Association conducts a biannual survey of payments and contributions made by public power utilities to state and local governments, to help make meaningful comparisons with tax payments made by investor-owned utilities. Year after year, the report shows payments and contributions by public power utilities to state and local governments are as large as or larger than those of the IOU companies.

In 2014, for example, the IOUs in the study paid a median⁴⁸ of 4.2 percent of electric operating revenue in taxes and fees to state and local governments. The public power utilities in the study paid a median of 5.6 percent of

electric operating revenue in payments and contributions to state and local governments.⁴⁹

The survey serves an additional function: to help public power utilities quantify their level of contributions. The direct payments and other contributions that a public power utility provides to local government are commonly under-reported or not reported at all. By listing a wide variety of potential contributions, the survey forces utility management to take a detailed look at its own practices.

The survey form, instructions for completing the survey, comparisons of public power and IOU contribution rates, and information on how to calculate an IOU's tax payments are included in Appendix A.

Understand the Relationship Between Rate Levels and Contribution Levels

For a public power utility to remain viable, its rate levels must be set high enough to recover all of the utility's costs. The utility's payments to the city's general fund and its other contributions to local government (free services, use of employees, etc.) increase the utility's cost of doing business—its revenue requirement—and are included in the rates it charges its customers.

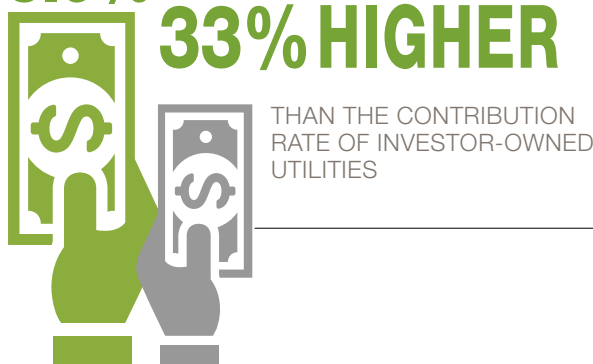
In effect, the city is using money collected from electric customers to pay for other city services. But unlike other taxes, the revenue is collected from all ratepayers—including commercial and industrial customers—in proportion to their energy usage. If the utility's contributions to the city were eliminated, many public power cities would have to reduce services or raise money in other ways, such as through higher local taxes.

An important benefit of public ownership is local control over rate and tax issues. The community decides how it will raise revenues and allocate resources based on the needs and priorities of its local residents. If a community's priority is providing the lowest possible rates for homes and businesses, the electric department may transfer fewer dollars to the city's general fund. Conversely, local officials may be willing to charge slightly higher electric rates to provide certain revenue transfers to the city.

In addition to balancing these rate and tax issues, the utility manager and governing board must consider the effect of the transfer policy on utility operations.

PUBLIC POWER UTILITIES GIVE BACK

5.6% OF ELECTRIC OPERATING REVENUES TO THEIR COMMUNITIES



⁴⁸ The median represents the typical value and is defined as the observation where 50 percent of the observations are higher and 50 percent are lower. When the sample includes entities of very different sizes (such as with public power utilities), the median is often used instead of the average (mean) because the largest entities have a disproportionate effect on the average.

⁴⁹ American Public Power Association, "Public Power Pays Back: Payments and Contributions by Public Power Utilities to State and Local Governments in 2014," April 2016.

Excessive transfer amounts not only lead to higher rates for electric customers, but may force the utility to cut back its operations and maintenance, resulting in a deterioration of the utility's assets and a decline in utility reliability, employee safety and service.

Communicate Economic Benefits to Local Citizens

A public power utility's financial contributions to the local government contribute to important community goals, such as keeping local property and sales taxes relatively low. But often utility payments and contributions are not visible to local officials and customers. Therefore, it is important for utility officials to educate citizens on how, and to what extent, the electric system provides financial support to the local municipality.

Public power officials should be prepared to counter the charge that the utility does not pay its fair share of local government taxes. Conversely, sellout proponents may charge that the utility's high contributions have resulted in high rates. In this case, the city and utility officials must be able to explain how—and why—they set the payment level, how the payments benefit the community, and the alternative measures that would be needed if the payments were eliminated because of a sellout.

When citizens are aware of the municipal utility's financial contributions to the city, they can better understand the effect privatization would have on the city's finances.

Have a Clear Policy on Contributions

The utility and city should adopt a formal, written policy describing how the utility's annual transfers will be determined. A formal policy provides utility policymakers and management with the consistency and predictability necessary for stable, well-planned financial operations, which in turn makes the utility less susceptible to sellout attempts. The policy should include a formula or methodology to determine the amount of the transfer and should be reviewed periodically to ensure that the intended goals are accomplished.

Absent an established methodology, the city may decide the transfer amount based on the needs of the general fund budget. While this allows significant flexibility for the city, year-to-year variations in the transfer amount make it difficult for the utility manager to establish multi-year electric system operating and capital budgets. This can lead to system deterioration, as the utility is unable to effectively plan long-term projects or make consistent investments in infrastructure.



MORE INFORMATION

For a more detailed discussion of financial contributions made by public power utilities to state and local governments, see Appendices A and B.

Appendix A provides information for understanding and evaluating a utility's policies and procedures for making financial contributions, including guidelines for calculating your utility's total contributions, making effective comparisons to other utilities, examining the effects of those transfers on utility operations and establishing and communicating a utility policy on contributions.

Appendix B includes aggregated national and regional data on payments and contributions made by public power utilities to state and local governments, based on survey data.



Chapter 10

Costs and Risks of Selling Your Public Power Utility

Evaluating the sale of your publicly owned electric utility is a stressful affair. There's the increased workload that will come with all the studies, evaluations, communication and outreach. The uncertainty about the utility's and your own future will be stressful. On top of these, you can add the extra costs and risks associated with selling your community-owned electric utility, many of which you will face regardless of whether your community ultimately decides to keep or sell the utility.

Costs Associated with Selling the Utility

The costs associated with selling your public power utility can run into the millions of dollars. These expenses include appraisal fees, contract costs for lawyers and financial consultants, bond payoff penalties and payments to employees who are terminated because of the sale.

If the sale proceeds, the acquiring utility should pay all transaction expenses that the city incurs in connection with the sale of its electric utility.

If the city decides to keep the municipal utility, some of these costs will be avoided—like the costs of terminating contracts—but others (like the costs of consultants and conducting your valuation study) must be borne by the city or utility. In this case, the unrecovered costs of merely evaluating the sale of the utility must be weighed against the many long-term benefits of maintaining the public power utility.

Termination of Contracts, Agreements and Grants

The city should conduct a legal review to determine the effect of terminating the electric utility's contracts and agreements with other businesses. These may include:

- Power purchase and sales agreements with other utilities;
- Fuel purchase agreements;
- Labor contracts; and
- Jointly owned property agreements.

Any evaluation of the sale should include the financial consequences of terminating such agreements or—if contracts cannot be transferred to the prospective buyer—the cost of the continuing obligations.

If the city has federal or state grant money that is contingent on the operation of the utility, it may be liable for immediate repayment once the utility is sold to an IOU or cooperative utility.

Requirements of Bond Resolutions

Public power facilities are often financed with tax-exempt bonds. The terms of the utility's bond resolutions may require the repayment of tax-exempt debt prior to any sale of the utility; these costs can be substantial.

In combined utilities (e.g., electric-water or electric-gas), bond requirements may also prohibit the city from disposing of any portion of the combined utility as long as there are outstanding bonds. Under this scenario, the utility would be required to redeem all outstanding bonds before the electric utility could be sold. The refinancing of a portion of the bonds associated with the water, gas or sewer systems may also result in additional costs to the city.

The Internal Revenue Service regulates tax-exempt debt instruments. If a city wishes to sell its electric utility, it must consult with a bond counsel to ensure that all IRS regulations are satisfied. It is very unlikely that any investor-owned or cooperative utility buyer could retain any of the public power system's tax-exempt bond instruments.

Termination of Municipal Employees

In addition to any severance packages offered, the city may be required to pay cash for vacation and sick leave accrued to municipal employees who will be terminated after the sale.

The city's employee retirement system may be adversely affected by the sale of the public power utility. Because the cost of the retirement fund would be spread over fewer employees, the city may have to increase its contribution. Terminated utility employees may be able to withdraw money from the municipal pension plan, resulting in an underfunded plan, or causing additional costs to the municipality.

Hiring Experts

The city will need to hire attorneys, accountants, engineers and other experts to work through the obligations and contract provisions in the areas described above, as well as to perform at least one valuation study. The cost of this advice depends on the utility's obligations and the complexity of its contracts.

Failure to address the legal, financial and technical issues at this stage of the sale may prove very costly in the long run. Moreover, the legal and technical review may reveal added costs that affect the economic feasibility of the sale itself.

Hidden Costs

In addition to the costs associated with evaluating and selling your utility, there may be other hidden costs associated with the evaluation—costs that you may not be able to recover, even if your community does proceed with the sale.

For instance, if the utility hires a consultant to help with communication during the sellout evaluation, the acquiring utility is unlikely to reimburse for those costs. The same is true if you need to increase your staffing (or bring in consultants or contractors) to help with the day-to-day operation of the utility during the evaluation process, to alleviate the added burden put on your team.

You may also face higher staff turnover during a sellout evaluation, as employees leave or retire early due to the stress and uncertainty that the evaluation process brings. The cost of recruiting, hiring and training replacements—let alone the value of the institutional knowledge lost—is unlikely to be recovered.

Risk of Diminishing Proceeds from the Sale

City leaders may propose selling the utility as a way to raise money for special city projects or to defer local tax increases. Few proposals are so shortsighted as to suggest spending all the proceeds without some means to replace the utility asset with another revenue-producing asset.

Most often, proponents of the sale suggest that some portion of the proceeds be placed in an annuity or endowment fund that will earn interest and provide a steady stream of revenue for the city. However, these funds are often far less valuable than the utilities they replace.

For the city to receive the same level of benefits under investor-owned or cooperative ownership as under municipal ownership, the income provided by the fund, plus any fees and taxes paid to the city by the new owner of the utility, would have to equal or exceed the current projections of payments made by the public power utility.

One way is to create an annuity that would exist for a specified number of years with both principal and interest earnings being spent. However, the payments would stop at the end of the established period when the principal was spent. By comparison, if the city retains the public power utility, the payments from the utility to the city would continue, and the city's equity value in the utility would grow.

Another method is to create a permanent endowment fund—one in which the interest is spent but the principal is never touched. However, the fund would have to be very large compared to the declining principal fund discussed above and might far exceed what a purchaser would be willing to pay. A sale at such a high price would likely result in higher rates for the utility's customers because the purchaser would have a strong incentive to recover the premium paid.

Both types of funds require that principal or interest be withdrawn only in accordance with the rules established for the fund. The funds will not succeed if they are raided by future administrations for other municipal purposes.

Cities that have sold their municipal utilities and set up endowment funds have struggled to find ways to protect the funds from local officials in future generations. Legal documents can stipulate how the fund may be used in the future, but history demonstrates that future city councils

cannot be bound and that these safeguards may not protect the community's fund from invasion. Once the funds have been spent for other purposes, the city is left without a revenue-producing asset.



CASE STUDY:

Promises of financial windfall from utility sale fails to materialize

EAGLE MOUNTAIN, UTAH • 2015

LESSONS LEARNED:

- *Unexpected costs of selling the utility erode much of the anticipated windfall from a sale.*
- *After a sale, customers have little to no recourse when rates increase or service declines—often leading to regrets about the sale.*

While Eagle Mountain's electric distribution system was well maintained and significant investments were made in the utility, in 2014 the mayor and the city council voted to sell the gas and electric systems to remove the potential of misusing those revenues from city officials in the future. (The city was incorporated in 1996; within its first 20 years, it had nine mayors forced out of office due to scandals—a number of which involved the misuse of revenue from those utilities).

The Eagle Mountain electric utility was a participant in forward power purchase agreements and a large wind generation project financed through long-term tax-exempt revenue bonds, which would need to be unwound in the event of a sale.

The city received two purchase offers: one from another public power system, offering \$16 million for the system plus the costs of unwinding the contracts, and lower rates;

and one from investor-owned Rocky Mountain Power for \$21 million that did not include the cost of unwinding the contracts or any rate guarantees.

Eagle Mountain agreed to sell the electric system to Rocky Mountain Power for \$21 million, believing the offer would provide \$5 million cash into the city's coffers. However, the complexities of unwinding the city's contracts proved much more expensive than anticipated: Eagle Mountain ended up incentivizing the unwind by \$3 million and other costs of \$1 million.

In the end, the city pocketed less than one million dollars from the sale. Since then, electric rates have increased significantly for the citizens of Eagle Mountain, and many residents now believe selling the system was a poor decision.

Risks of Leasing the Utility

Acquiring operation of a municipal utility through a lease, rather than a buyout, can be an attractive option for investor-owned or cooperative utilities. Often the lease between the city and the buyer can be executed without the independent evaluation, action by the elected council, public debate, or citizen referendum that would be required in a sale.

Lease agreements may look simple, but the underlying issues are complex. Lease agreements have the potential for hidden costs to the town, lost opportunity for revenue, degradation of service quality and reliability, and loss of control over the system. Often it comes down to the rights and responsibilities of each party and how tightly those responsibilities are drawn in the contract.

The provisions of a typical lease between an investor-owned or cooperative utility (the lessee) and a public power community (the lessor) are described below, along with some of the common problems associated with leases.

1. The lessee makes an annual rental payment to the town

The payment is usually a flat fee and it is more often driven by the investor-owned or cooperative utility's revenue requirement than by the value of the public power utility. The public power community should be sure that the rental payments provide at least as much revenue to the community as would have been earned if the town continued to operate the utility.

2. The lessee makes all capital improvements to the system at no cost to the town, but when the lease expires, the town must purchase all such improvements at net book value or re-lease the system

If annual rental payments are not sufficient, the town may not have the money to pay for these system improvements. Thus the public power community must plan ahead if it wants to maintain the ability to run its own utility once the term of the lease ends. This means the rental payments must be high enough—and sufficient funds must be put aside—to cover the expected value of system improvements.

3. Lease payments to the town may be revised periodically to account for changes in the rate of inflation, size and character of customer population, or in the lessee's load factor

The specific contract wording concerning these adjustments is crucial. If the two parties interpret the contract language differently, the lessee may be able to avoid increasing its payments even though the town believes that the contract requires an increase. Before signing a contract, the public power community should ensure that both parties are interpreting the adjustment language in the same manner and, if possible, include in the lease examples illustrating how any adjustments will be made.

4. The lessee's employees operate and maintain the municipal electric system

The lease may include clauses concerning good utility practices, the transferability and seniority rights of existing personnel, and costs of vehicle and office space. For the most part, the lessee sets the standard for service quality and reliability. Local control over service responsiveness is lost unless the town can include performance measurement standards in the lease.

5. The lease may stipulate how disagreements between the parties will be resolved

Invoking an arbitration clause or otherwise seeking to renegotiate a poor arrangement will cost the town money and may require outside expertise. Similarly, condemning the lease will likely result in a major legal battle with the lessee.

If an investor-owned or cooperative utility proposes a lease with little or no capital investments and with the same or lower rates, this may be an indication that there are significant inefficiencies in how the public power utility is managed. In this case, it would be appropriate to compare the benefits of the city investing in running the system more efficiently versus accepting a lease. The city may consider signing a management agreement, rather than leasing its system.

If an independent evaluation shows that the public power utility is operated efficiently, the investor-owned or cooperative utility's offer is not likely to provide more cost-effective, reliable service to the community in the long run.

Appendix A.

Payments in Lieu of Taxes and Other Contributions to State and Local Government

A Basic Guide for Understanding and Evaluating a Publicly Owned Electric Utility's Policies and Procedures

There are more than 2,000 public power utilities in the United States, and they all strive to provide low-cost, reliable electricity to their local communities.¹ They are integral components of small and large towns and cities, serving customer loads with as few as 20 and as many as 1.5 million residential customers. Whether small or large, many provide transfers to the city's general fund as a payment in lieu of tax. This can constitute a significant annual expense, and some utilities pay substantial sums as a percentage of their overall electric operating revenues.

Due to economic pressures, many local governments have experienced severe budget shortfalls. In some cases, cities look to their local electric utility to help ease the burden of reduced revenues.

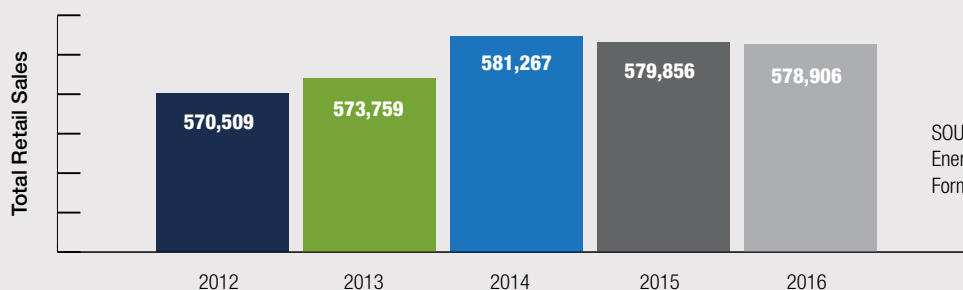
General fund transfers are often viewed as a way to avoid the often-painful political task of raising tax rates. Some utilities, already dealing with flat or reduced sales due to stagnant growth (see table below), have been asked to contribute more money to their local government. Doing so may mean utilities must raise rates to make up for reduced sales and increased fund transfers. This in turn leads to

customer dissatisfaction and may lead to a call to sell the utility to an investor-owned utility or electric cooperative, particularly if the public power utility's rates are higher than those of neighboring utilities.

Public power leaders must be prepared to respond to proposals to increase the electric utility's contribution to the city. They must also be prepared to discuss the pros and cons of high fund transfers with their local government officials and develop a transfer amount that is fair for both the utility and the local government.

To avoid conflict over the level of support for city services, utility officials must first establish a cooperative working relationship with city officials. Second, there must be internal discussion within the utility to understand the impact of these contributions on the utility and to define how these fund transfers fit into the scope of a utility's budget. Finally, developing a clear policy on the level of annual contributions strengthens the public power utility's financial stability and is therefore viewed favorably by credit rating companies.

TABLE A.1 Public Power Utility Sales to Ultimate Consumers (in thousands of MWhs)



SOURCE:
Energy Information Administration
Form EIA-861, 2012-2016

¹This report was created in 2012 by the American Public Power Association, and updated in January 2018 using the most recent data available.

I. Why Utilities Make Payments and Contributions

Public power utilities make a variety of payments and contributions to their state and local governments. Not only do individual utilities vary in terms of type and level of contributions, they also differ in how they view the contributions.

A. What are Payments in Lieu of Taxes?

Public power utility payments to state and local governments come in many forms, and the total value is not always recognized. It is easy to keep track of direct payments, but many utilities do not adequately account for indirect contributions.

Direct Payments

These payments to state and local government have different names in different states and regions but are simple to track since they involve a monetary payment or transfer. The most common payments are “payments in lieu of taxes” or “transfers to the general fund.” In some city government structures, the utility may operate as the “Electric Department” and payments in lieu of taxes may appear as inter-department transfers. In others, a return on investment (ROI) approach is used, particularly when applied to serving customers outside municipal boundaries. Public power utilities may also pay other types of taxes and fees, such as gross receipts taxes and property taxes (generally on property outside the city limits), franchise fees, payments to state public utility commissions, environmental fees and licenses.

Free or Reduced-Cost Services

Indirect contributions are more difficult to track and often require prorating or estimating the cost of services. Typical examples are services such as free or reduced-price electricity, use of electric department employees and use of electric department vehicles and equipment. Indirect contributions are more likely to be underreported, especially if the contribution occurs regularly. Over time, both the utility and the city government may view free services as routine and expected, and they may not realize that these services would not be free if the city were served by an investor-owned or cooperative utility.

Rationale for Making Tax Payments and Contributions

General fund transfers or payments in lieu of taxes are ways for publicly owned electric utilities to contribute to the local community. Here are common rationales for making payments and contributions to the municipalities:

- The payments are considered tax equivalents, based on the amount of money the city would otherwise collect from a taxable entity.
- It is reasonable for the municipality to receive a fair rate of return on its investment in the electric system.
- The utility should help fund general municipal services because, just like other businesses in the community, the utility benefits from police and fire protection, street and highway maintenance and various general and administrative services.

II. Understanding the Full Value of All Contributions

Payments and contributions to the city and state governments can become a substantial portion of a utility’s operating expense. Despite this, many utilities do not fully and accurately account for these expenses. Utilities sometimes underreport direct payments and transfers. More commonly, utilities fail to factor in indirect contributions, such as free or reduced-price service, to the city. The first step in developing a sound policy on contributions is to quantify their value.

Common Problems with Accounting for Contributions

Cities typically use a system of segregated accounts or groupings called “funds.” One of these funds would cover accounting for the electric utility. For each self-balancing fund, the city records cash and revenue, together with related liabilities. The result is a separate balance sheet and operating statement for each fund.

The basic accounting model is self-contained for each fund, but there may be transactions between funds of governmental units that create debtor/creditor relationships. These may be between the utility and the city government or between electric, gas, water and broadband funds within the utility. When these transactions occur, inter-fund receivables and payables are created, and their balances are appropriately reflected in each fund’s balance sheet.

- A “reimbursement” is required when one fund pays for goods and services provided by another fund.
- A “transfer” is the use of money from one fund to another fund, with no services received in return.

Records should be kept of all transfers and reimbursements between funds, and it is important to distinguish between the two.

For a public power utility, problems with fund accounting arise when the electric system is not treated as a separate business enterprise, distinct from other municipal operations.

Common problems with fund accounting for electric system revenues can include:

- Electric revenue transfers are inaccurately recorded or reported in financial statements.
- Electric fund money is transferred to the general fund without retaining enough for electric operations and an adequate level of reserves.
- Electric fund money is mixed with money from other funds in a capital improvement fund, rather than having separate capital improvement reserve funds for each operation.
- Electric fund money pays for activities and services that are unrelated to electric operations.
- Meters are not installed on municipal facilities, so the electric fund does not bill the general fund for streetlighting and electric service to government buildings. (Even if the decision is made not to bill these customers, they should be metered and accounted for).
- The electric fund pays the full cost of reading electric and water or gas meters.
- The electric fund does not reimburse the general fund for administrative services that the city provides.

Treating electric operations as a separate business enterprise helps city officials in decision-making and in communicating to citizens how municipal funds are used. Whether to use electric department resources to support other governmental functions is a local policy decision, but reasoned decisions are easier to make if the accounting system quantifies the payments and contributions.

Reliable accounting information is also useful in addressing cross-subsidy charges—for example, with cost allocation for administrative and general expenses, especially when a significant portion of the city’s administrative and general expense is allocated to the electric department. These charges to the electric department and the cost allocation methodologies on which they are based should be reviewed regularly. If the electric department is allocated more than its justifiable share of administrative and general expenses, the utility is, in effect, making a financial contribution to general government. If the utility and the city government agree to an allocation in excess of the utility’s justifiable share, then the excess amount should be listed as a fund transfer. From a public policy standpoint, this helps citizens and politicians understand the true cost of local government services and leads to more informed decisions.

Account for Payments and Contributions to State and Local Government

The American Public Power Association has developed a survey form to help public power utilities account for all payments and contributions to state and local government. The form, “Survey of Local Publicly Owned Electric Utilities: Tax Payments and Contributions to State and Local Government,” is included in section VII. The following are instructions for completing the form and calculating the utility’s net contributions.

Account for Direct Payments to State and Local Government

In section I of the form, record your utility’s direct payments to state and local government.

Taxes and Fees

Not all localities use the same name for all taxes and fees. The most common names are included on the survey to guide you in identifying all payments. Utilities often pay only one or two (if any) of the taxes or fees on this list. Also, these taxes and fees include only those payments made directly by the utility to the government. Pass-through taxes, i.e., taxes or fees collected by the utility *on behalf of another entity* and then forwarded to the government by the utility, should **not** be included. For example, some state and local jurisdictions impose sales taxes on utility service. In that case, the utility is merely acting as a tax collector for the government. This money is not included on the utility’s financial statement either as operating revenue or as an expense.

The following are the direct taxes and fees included on section I, part A of the form:

- **Gross receipts tax paid by the utility:** These are taxes applied to the utility’s gross receipts or rate revenues for service provided to various customer classes. Typically, the gross receipts tax is treated as an operating expense on the utility’s income statement and therefore should be reported as a tax. Do not include it, however, if it is treated as a sales tax (as described above).
- **Property taxes:** Public power utilities typically do not pay property taxes on property located within the city. Some pay property taxes on facilities located outside city limits.
- **Other taxes:** These include franchise fees paid to local government, assessments paid to the state public utility commission, and any other taxes or fees using the guidelines above.

Do not include sales taxes paid on the utility's purchases, such as gasoline and other fuels. Sales taxes on such purchases are a direct cost and should be charged to the same account as the materials on which the tax is levied. State unemployment, Social Security, and other payroll taxes should also **not** be included because these are standard costs of doing business.

Payments in Lieu of Taxes

In section I of the survey, part B, "Payments in lieu of taxes," report all tax-equivalent payments or transfers to the general fund. Do not include payments in retirement of loans or advances to the utility or payments for services received from the city.

Section I, part C asks for the method used to determine the amount of payments in lieu of taxes. Some utilities use more than one of the listed methods, while others use an alternative arrangement. This information is not part of accounting for payments, but it is important for the utility to have a clear and consistent policy on setting payments.

Account for Contributions of Services to State and Local Government

Section II of the survey form is a list of services that publicly owned electric utilities commonly provide to state and local government. This is not meant to be an exhaustive list of all possible contributions but rather a useful guide in helping utilities determine what contributions they have made. Some managers will initially say "we don't make contributions," however, after reading through the list, many will realize that they do make some of the contributions listed.

If the electric utility provides a service, but the value of the service is not clear, fill in the form with a reasonable estimate. The process of checking into which of the services the utility provides and estimating the value will provide useful information about how these contributions affect the utility's operating costs.

Estimate Value of Free or Reduced-Price Electric Service Provided

In survey section II, part A, record the value of electricity provided by the utility for streetlighting, municipal buildings, water pumping, water or sewer treatment facilities, recreational facilities, traffic signals and security lighting. If the utility receives fair compensation through direct billing, accounting procedures or transfer of funds, then the service should not be included here.

There are two columns for entering the contributions: "Free" (for services provided without charge) and "Reduced Price" (for those billed, but at a below-market rate). For example, if the local government pays only three cents per kilowatt-hour ("kWh") for electricity while typical commercial customers pay six cents, this is considered a reduced-price service.

If the dollar amount of the service is not known, estimate the amount from the kilowatt-hours supplied and an average rate per kilowatt-hour. For example, if the utility provides 50,000 kWh of free service for recreational facilities and the average commercial rate for the utility is eight cents per kWh, the estimate of free service provided would be 50,000 kWh multiplied by \$.08/kWh, or \$4,000 for that time period.

In accounting for reduced-price service, the dollar amount should reflect the difference between what the utility typically charges a customer for the service and what the utility receives from a similar customer for that same service. For example, if the utility charges the city \$2,500 for 50,000 kWh of electric service for recreational facilities, the utility is receiving five cents per kWh for its service. If the average rate that would normally be charged for the service is eight cents per kWh, the utility is providing a reduced price to the city of three cents per kWh multiplied by 50,000 kWh, or \$1,500.

If municipal facilities do not have meters, it will be difficult to estimate the value of free electric service. The utility should install meters to quantify the value of services provided to the city.

Estimate Cost of the Use of Electric Department Employees for Non-Electric Services

In many public power utilities, particularly smaller towns, resources are often shared among departments and not always accounted for completely. Section II of the survey quantifies the value of the services the electric utility provides to other municipal departments. (Conversely, section III measures the value of services the utility receives from other municipal departments.) Sharing services would not be an option if the municipality received its electricity from an investor-owned or cooperative utility.

Section II, part B, records the cost of the use of electric department employees for non-electric services. Include only services for which the utility is not reimbursed by direct billing, through accounting procedures or by transfer of funds. If the dollar amount is not known, estimate by multiplying the number of employee-hours provided

and an average hourly labor rate. Services provided may include:

- Installing temporary lighting for special events
- Maintaining traffic signals
- Electric repair, maintenance or rewiring of municipal buildings
- Tree trimming for other departments
- Reading water meters
- Putting up city signs or event banners
- Providing technical expertise (including resources and staff hours) for engineering, economic or environmental studies
- Non-utility locates for stakes, wires and pipes
- Installing meter bases (for joint utility use)
- Installing or repairing wires, cables or other equipment in connection with broadband services offered by the city or a utility department
- Telephone answering service for city during non-business hours
- Assignment of power plant personnel to other tasks during non-generation periods

In part C, record the estimated value of the use of electric department vehicles and equipment by other municipal departments. For example, other city departments may use utility bucket trucks, ditching equipment, computers and copiers. If the city or a utility department offers broadband services, include pole attachments for which the electric utility charges no fee or a reduced fee.

In part D, record the estimated value of the use of electric department materials and supplies, such as wood poles, wiring and herbicides.

If the electric department does not have the necessary data on non-electric services provided to the city, the value of services will have to be estimated. Make the best possible estimates for the purpose of completing this survey and then consider ways to improve the accuracy of those estimates in future years.

In section III, record the cost of goods and services **provided by the city to the electric utility**. These are goods and services for which the city is not reimbursed by the utility. Examples include free property maintenance, water, office space, and engineering or legal services. Do not include payments in retirement of loans or repayments of advances from the utility to the city.

In sections II and III, be careful not to include any services that are directly or indirectly compensated. If the electric

department meter readers also read the water meters and the cost of providing the service is borne entirely by the electric department, then that service should be included in section II. However, if the full costs are prorated between electric and water departments, then it should not be included. Similarly, if the electric department receives Human Resources or Information Technology support from the city's general government, but provides no reimbursement for the support, then the value of the service should be reported in section III. However, if a transfer or some other form of compensation is made for that service, then it should not be listed.

Report the Results

To determine your utility's Total Net Contribution, add the totals from sections I and II (payments and contributions **to** state and local government) and subtract the totals from section III (contributions **from** the state and local government):

$$\text{(Section I + Section II)} - \text{Section III} = \text{Total Net Contribution}$$

Many public power utilities include information on payments and contributions in their financial statements or annual reports. Two examples are shown in section XIII of this report, and additional methods of communicating this information to the public are described in section VI.

Utility Contributions to Other Local Organizations

The APPA survey form is designed to account for contributions to state and local government only. It does not provide space to record gifts to community organizations.

Public power utilities may contribute money and services to local, nonprofit organizations and community projects. They may provide free or reduced-price electric services to churches, schools, volunteer emergency groups, shelters and recreation centers. Some municipal electric utilities contribute money toward privately funded economic development projects or community centers. Many permit and encourage staff to take time off for local public service projects. As with other contributions, the value of these services is sometimes underreported.

Although the contribution of services may enhance the utility's relationship with local community leaders, failure to account for and control these contributions may adversely affect utility operations and result in higher rates. At a minimum, the value of these contributions should be recorded and reported so citizens learn how the utility contributes to the community, and the governing body has information to help set policy on charitable contributions.

III. Compare Total Contributions

The previous section explained how to calculate a utility's total contribution. This section focuses on the next step, comparing the utility's contribution level with other utilities.

payments and contributions of services to state and local government. The contribution is 8.5 percent of its electric operating revenues, as calculated below:

$$\frac{\$850,000}{\$10,000,000} = .085 \text{ or } 8.5\%$$

Calculate Net Contributions as a Percent of Electric Operating Revenue

The first step is to express total net payments and contributions as a ratio—a percentage of annual electric operating revenue. This ratio allows comparisons with other utilities of varying sizes. To make the calculation, divide the total contribution (as outlined in section II above) by the utility's annual electric operating revenue:

$$\frac{\text{Total Net Payments and Contributions}}{\text{Annual Electric Operating Revenues}}$$

For example, a public power utility with \$10 million in electric operating revenues contributes \$850,000 in direct

Compare Contributions with Industry Data

A utility's contribution ratio may be compared with publicly owned and investor-owned utilities across the country or in geographic regions. This will provide a useful starting point for an evaluation of a utility's policies and practices on contributions.

APPA's most recent survey on payments and contributions shows that for 2014, the median² net payment for public power utilities was 5.6 percent of electric operating revenue. Investor-owned utilities had a median payment of 4.2 percent during the same reporting period. There are significant regional variations in median net payments and contributions, as shown in the following table.

TABLE A.2 2014 Regional Comparison of Median Contributions to State and Local Government

As Percent Of Electric Operating Revenue

| REGION | INVESTOR-OWNED | PUBLIC POWER |
|---|-------------------|-------------------|
| Northeast (CT, ME, MA, NH, NJ, NY, PA, RI, VT) | 6.3% (28) | 34.8% (15) |
| Atlantic (DC, DE, FL, GA, MD, NC, SC, VA, WY) | 4.3% (15) | 7.5% (8) |
| East North Central (IL, IN, MI, OH, WI) | 3.9% (25) | 3.3% (28) |
| East South Central (AL, KY, MS, TN) | 3.7% (10) | 6.1% (28) |
| West North Central (IA, KS, MN, MO, NE, ND, SD) | 4.5% (15) | 4.6% (41) |
| West South Central (AR, LA, OK, TX) | 3.9% (11) | 11.9% (32) |
| Mountain (CO, MT, NM, UT, WY) | NA | NA |
| Pacific Northwest (AK, ID, OR, WA) | 4.8% (6) | 4.7% (13) |
| Pacific Southwest (AZ, CA, NV) | 2.8% (9) | 6.6% (7) |
| TOTAL | 4.2% (123) | 5.6% (176) |

SOURCES:

- Department of Energy, Energy Information Administration, Form EIA-861;
- Federal Energy Regulatory Commission, Form 1 for 2014;
- Tennessee Valley Authority; and
- APPA's 2014 "Survey of Local Publicly Owned Electric Utilities Tax Payments and Contributions to State and Local Government."

Values are medians for utilities primarily engaged in providing retail power. Number of observations is shown in parenthesis.

² The median represents the typical value and is defined as the observation where 50 percent of the observations are higher and 50 percent are lower. When the sample includes entities of very different sizes, such as with public power utilities, the median is often used instead of the average (mean) because the largest entities have a disproportionate effect on the average.

Compare Contributions with Other Utilities

In addition to benchmarking your contributions against regional medians, it is also useful to compare contributions with those of individual utilities in your area. This information will help you evaluate your transfer policies and assist you in answering questions from your local community about how your utility's payments compare with those in neighboring communities.

How to Estimate an Investor-Owned Utility's Local Tax Payments

Investor-owned utilities must report their state and local tax payments to the Federal Energy Regulatory Commission (FERC) annually via FERC Form 1 on the schedule "Taxes Accrued, Prepaid and Charged During the Year" (pages

262-263). State and local taxes are listed in column I, "Distribution of Taxes Charged—Electric" (Account 408.1, 409.1).

In addition, a few utilities do not report franchise fees on this tax schedule. Instead, they report them as part of administrative and general expenses on the schedule "Electric Operation and Maintenance Expenses" (pages 320–323), so this schedule should also be checked. Data are available via the FERC website (www.ferc.gov) or by contacting APPA.

The following table shows the state and local taxes paid by Duke Energy Ohio in 2014. (More recent data on taxes for individual investor-owned utilities are available. The example uses 2014 data to match APPA's most recent report, which is produced every other year.)

TABLE A.3 Duke Energy Ohio, Inc. State and Local Tax Payments, 2014 (in thousands of dollars)

| STATE | |
|--|------------------|
| 1. Income | \$145 |
| 2. Property | \$411 |
| 3. Excise | \$82,887 |
| 4. Commercial | \$4,162 |
| Total State Tax | \$83,605 |
| LOCAL | |
| 5. Property | \$136,946 |
| 6. Municipal Franchise | \$1,276 |
| Total Local Tax | \$138,222 |
| 7. Electric Operating Revenue | \$1,583,255 |
| CALCULATIONS | |
| State Taxes/Electric Operating Revenue | 5.3% |
| Local Taxes/Electric Operating Revenue | 8.8% |

SOURCE:

- Federal Energy Regulatory Commission, Form 1, 2010
 - P. 263; col. (i); line 11
 - P. 263; col. (i); line 14
 - P. 263, col. (i); line 15
 - P. 263, col. (i); line 22
 - P. 263, col. (i); line 20
 - P. 263, col. (i); line 21
 - P. 115, col. (g); line 2

When preparing the list of state and local taxes paid by an investor-owned utility, exclude Social Security taxes, state and local unemployment insurance taxes and other payroll-related taxes. (These taxes were also excluded from the public power calculation).

Note that the calculation of an IOU's taxes may not be as simple and straightforward as adding up a column of numbers on the FERC Form 1. The objective is to come up with a total for taxes and contributions that is comparable to the number calculated for the public power utility. While the Duke Energy Ohio example shows taxes divided into state and local categories, many utilities do not report enough details to make this distinction. The most important point is to be sure to exclude all federal and payroll taxes. The state public service commission or Department of Revenue can help you identify specific taxes if you do not know how they should be categorized. APPA can help you obtain FERC Form 1 information for specific utilities.

The investor-owned utility's total of state and local taxes is divided by its annual electric operating revenue, which is reported on the schedule "Statement of Income for the Year" (page 115) of FERC Form 1. Electric utility revenue is reported on line 2, column e.

There is publicly available information for cooperative utilities that have loans from the Rural Utilities Service (RUS). RUS Form 7, Part A includes tax information from cooperatives that have RUS loans.

Compare Your Contributions to Those of Other Publicly Owned Utilities

Contact other public power utilities in the area to find out what percentage of electric revenues they contribute to local government. In addition to data on transfers, they also may be willing to provide information on the formulae and methodologies used to determine their direct and indirect payments to the city. Some information may also be publicly available on the utility's website or in its annual financial report.

Please note that the data reported by publicly owned electric utilities to the APPA survey discussed in section II is confidential.

IV. Examine the Effects of Transfers on Utility Operations

There is no "right" amount of payments and contributions. The APPA report is meant to be a benchmark used for comparison purposes, but the utility manager and

governing board should consider the effect of current policy on utility operations and determine the appropriate contribution amount for both the utility and the city. All parties involved in setting the contribution amount should keep the following points in mind:

- The amount of financial support provided to the city is a local decision.
- There are no "correct levels."
- There is no single procedure recommended for determining the transfer amount.
- Policymakers should establish the amount of the transfer based on complete information and a thorough understanding of the impacts of higher financial contributions.

A primary benefit of public power is local control to meet community needs and priorities. Payments in lieu of taxes and other contributions enhance local control because, unlike with taxes paid by IOUs, these contributions are not disbursed to different levels of government (state, county, etc.). This local control over the allocation of resources results in a variety of methodologies to establish the level of financial support to the local government.

Local officials and customers should know what the utility contributes as well as the adverse effects of contributions that are clearly excessive. If a community's priority is providing the lowest possible rates for homes and businesses, it may result in the electric department transferring fewer dollars to the city's general fund. Conversely, local officials may be willing to charge slightly higher electric rates to support certain revenue transfers to the city. It is a matter of the utility and the city government working closely together to balance priorities and allocate local financial resources.

Dependable, Readily Available Source of Revenue

Local officials may look at the relatively high revenues of the municipal electric utility as a dependable, readily available source of revenue to compensate for municipal budget shortfalls. In some cases, an increase in the utility's payment is easier to accomplish administratively than an increase in the local property tax rate. This is particularly relevant in areas where volatile real estate values make reliance on property taxes less dependable. Municipal electric utilities with the most flexible policies on transfers (those that negotiate the amount of their contribution each year) are more likely to be under pressure to increase transfers.

A public power utility's payments in lieu of taxes may be based on the amount that an investor-owned utility would

pay the city in local property taxes. Therefore, if the electric system transfers significantly more to the local government than a normal business would pay in local property taxes, the excess may be viewed as an additional tax hidden in electric rates. While not a recommended practice, sometimes local officials prefer to increase utility revenue transfers, even at the expense of higher electric rates, rather than increase the local property taxes on homes and businesses. This is the case with Pasadena, California. When the city faced an \$8 million budget shortfall in 2012, it increased the utility's fund transfer by \$3.2 million more than originally planned.³

In addition to decreasing home values, some states and municipalities have caps on the amount that property taxes can be increased.⁴ Therefore, general fund transfers from the utility can be a more stable source of revenue in municipalities that face property tax limits.

Regressive Tax on Consumers

Communities that keep property taxes artificially low and make up the difference through collecting larger transfer payments from the public power utility are effectively collecting a hidden tax from their customers. This hidden tax is regressive, because the effective tax rate falls as the consumer's income rises. A regressive tax places a greater burden on low-income consumers than those at the median- or high-income levels. In addition, homeowners may deduct property taxes for federal income tax purposes, but the tax hidden in electric rates is not deductible.

High Rates

In most states, the public utility commission does not regulate public power rates. Hence, publicly owned utilities have more discretion in raising their rates than do investor-owned utilities. This rate autonomy can work hand-in-hand with setting transfer policies, as utilities and their local governing bodies can determine appropriate levels of ratepayer support. Both the utility and the local government need to balance rates and contribution levels so electric customers are not unduly burdened.

High transfers can lead to sharp rate increases. According to the *Austin American Statesman*, Austin Energy's fund transfer increased significantly from 2006 to 2011, which was one of the principal reasons the utility asked for a rate increase.⁵ Compounding the issue is the fact that Austin Energy's transfer is based on revenues. Since revenues vary, depending on fuel costs, the utility's transfer payment increases as it pays more for fuel.

Dissatisfied Customers

If a utility's electric rates significantly exceed those of neighboring utilities, customers are likely to become dissatisfied and put pressure on local officials to bring rates down. In some cases, a combination of higher-than-average rates and transfer amounts have led to calls for public power utilities to sell their electric systems. Public power utilities in Florida have been criticized by interest groups within the state, and there is an organized effort to put pressure on many of Florida's municipal electric utilities to sell to local investor-owned utilities.⁶

Customers who live outside the city limits are especially angered by excessive fund transfers that lead to higher rates. These customers may feel they are helping to support the city without receiving benefits in return. One consultant in Florida accused cities of "abus[ing] unprotected outside electric customers for the benefit of inside city residents."⁷ Customers outside the city limits of Austin have organized in opposition to Austin Energy's rate increase, with one customer calling the transfer "unfair and unjust."⁸

Suburban customers are not the only ones who have organized in opposition to higher rates and fund transfers. A group of customers in Redding, California, filed suit against the city's utility, claiming that the payment in lieu of taxes (PILOT) was unlawful under California's Proposition 26, passed in November 2010, which mandates that voters in the state must approve of all tax increases. The customers claimed that a 7.84 percent rate hike was a de facto tax increase because of the utility's PILOT payment.⁹ A similar lawsuit was filed against the city of Hermann, Missouri. A state auditor found that the city had raised

³ Adolfo Flores, "City taps deeper into utility funds," *Pasadena Sun*, January 8, 2012, accessed at http://articles.pasadenasun.com/2012-01-08/news/30605350_1_utility-funds-transfer-city-taps.

⁴ For example, the state of New York approved a cap that limits the growth of local property taxes to 2 percent or the rate of inflation. See Thomas Kaplan, "Upset at Cuomo's Property-Tax Cap, Communities Move to Get Around It," *New York Times*, October 24, 2011. Accessed at <http://www.nytimes.com/2011/10/25/nyregion/cuomo-cap-on-property-taxes-rankles-communities.html>

⁵ Marty Toohey, "Austin Energy transferring more every year into city's general fund," *Austin American Statesman*, January 28, 2012.

⁶ Kenric Ward, "Ratepayers Would Save Millions if 'Munis' Sell Out to FPL: Study," *Sunshine State News*, March 6, 2012. Accessed at <http://www.sunshinestateneews.com/story/ratepayers-would-save-millions-if-munis-sell-out-fpl-study>.

⁷ Ibid.

⁸ Toohey, "Austin Energy transferring more every year into city's general fund."

⁹ Scott Mobley, "REU rate hike sparks lawsuit," February 7, 2011, accessed at <http://www.redding.com/news/2011/feb/07/reu-rate-hike-sparks-lawsuit/>.

electric rates without a vote of the people “to generate millions of dollars in surplus funds, which it was using to pay for ordinary governmental operations in violation of Article X, Section 22(a) of the Missouri Constitution.”¹⁰

Both Redding and Hermann prevailed against these suits, with the courts ruling that the rate increases were not the equivalent of tax increases.¹¹ Though the utilities prevailed here, these examples provide cautionary tales about the potential for ratepayer discontent with high rates, and they emphasize the need for utilities and cities to exercise caution when setting fund transfer rates.

While residential customers may merely express dissatisfaction, industrial and commercial customers have much more flexibility. These customers may employ self-generation or cogeneration, switch to a natural gas supplier or leave the area to obtain utility service at lower rates. Some industrial customers may move production to a facility in another location. The community may lose existing business establishments—and the jobs and tax revenues that come from them—or fail to attract new business and industry.

Lower Credit Rating

Another possible consequence of high transfers is lower credit ratings resulting in potentially higher interest rates on borrowed funds. A report by Moody’s Investors Service noted there may be added pressure for utilities to increase their transfers to the city in order to relieve some of the financial pressures of a weak economy. These higher revenue transfers “are a credit negative because they tend to reduce the public power electric utility’s internal liquidity and capital reserves and increase retail rates that are already pressured.”¹²

Additionally, if utilities take funds from their surplus in order to cover higher transfers, “this leads to reduced liquidity for capital investment or for unexpected impacts on cash flow from things like increased fuel costs.” Ultimately, reduced reserves and cash flow problems can result in lower debt service coverage and lower bond ratings.¹³

Declining Reliability, Safety, Service

Another possible negative consequence of excessive transfers is a decline in the electric utility’s reliability, employee safety and level of service to customers. Municipal electric utilities have few discretionary funds after paying for wholesale power, fuel, debt service, operation and maintenance, system repair and replacement, and administrative and general expenses. The obligation to make a substantial contribution in support of local government will result in either a rate increase or a cutback in one or more areas of operations.

If cutbacks occur, the electric utility may not be able to hire competent employees at competitive wages, purchase up-to-date equipment or retain the financial resources to ensure reliable, high-quality electric service. This in turn could lead to a neglect of system maintenance, longer duration of outages, failure to have adequate reserves for emergencies, reduction of business office hours and less timely installation of service.

Long-Run Deterioration of the Electric Utility

Years of neglecting routine maintenance and system improvements will result in the deterioration of the utility’s physical assets as well. As Moody’s noted, added political pressure due to increased rates may force utilities to avoid critical upgrades or needed infrastructure investment. Some of the nation’s largest public power utilities have cut capital programs due to ratepayer reaction to rate hikes. For example, in 2009 a solar capital improvement plan in Los Angeles was voted down by referendum.¹⁴

Ultimately, system repairs will cost far more than if they had been done in a timely manner, and the city may be reluctant to allocate money for this purpose. In many cases, the result is poor service and a crisis for the city and its electric utility. During such a crisis, city officials may suggest that the system be sold to avoid the high cost of continuing its operations or the high cost of infrastructure investments needed.

¹⁰ Dave Marner, “Missouri Supreme Court to hear Hermann utilities rate case,” *Gasconade County Republican*, September 22, 2010. Accessed at <http://www.gasconadecountyrepublican.com/news-mainmenu-45/gasconade-county-mainmenu-27/3683-mo-supreme-court-to-hear-hermann-utilities-rate-case.html>.

¹¹ Sean Langoria, “Judge thwarts REU ratepayers; ruling says rate hike didn’t need approval,” December 22, 2011, Accessed at: <http://www.redding.com/news/2011/dec/22/judge-thwarts-reu-ratepayers/?partner=RSS>; Andrew Denney, “High court rules in favor of Hermann,” *Columbia Daily Tribune*, June 1, 2011. Accessed at: <http://www.columbiatribune.com/news/2011/jun/01/high-court-rules-in-favor-of-hermann/>.

¹² Moody’s Investors Service, U.S. Public Power Electric Utility Outlook – 2010, June 15, 2010, p. 7.

¹³ Bridget Mintz Testa, “Transfer Pressures,” *Public Power*, May 2009, p. 25.

¹⁴ *Ibid.*

V. Establish a Clear Policy on Contributions

After a utility measures the value of its current contributions, compares it to others and examines the effect on utility operations, the next step is to establish a clear and consistent policy for contributions. This should be a written policy statement, with a fixed formula or methodology to determine the amount and should be reviewed periodically to assure the intended goals are accomplished. A written transfer policy will also prove to be valuable in utility planning when there are changes in local elected officials or utility staff.

Contribution policies, like all public power utility policies, should be based on public power’s primary mission: to provide customer-owners with reliable electric service at the lowest reasonable cost. A well-formulated policy may allow modest flexibility to increase or decrease the contribution as long as the primary goals are achieved.

Concerns of “No Set Policy”

The greatest benefit of an established transfer policy is predictability. Predictability serves two primary purposes. First, a well-defined policy with a predictable formula for determining PILOT leaves little room for disagreement and debate between utility and city officials. This allows utility managers and policymakers to focus on key strategic issues and not spend time debating the amount of the transfer during each budget cycle. Second, risk or uncertainty is generally viewed unfavorably by the credit

rating agencies. Volatile or unpredictable transfer amounts can have a negative effect on the utility’s credit rating and thus increase the interest rate available on financing options.

Fitch Ratings lays out the importance of establishing a clear-cut policy:

Payment characteristics that support credit quality are clearly defined and set by charter. In addition, payment characteristics that use a formula tied to less volatile metrics such as net income or retail sales and also contain a hard cap on the transfer are also more supportive of credit quality.¹⁵

Absent an established methodology, the city may decide to base the transfer amount on the needs of the general fund budget. While this allows significant flexibility, year-to-year variations in the transfer amount make it difficult for utility management to establish multi-year electric system operating and capital budgets or plan long-term projects. Establishing a fixed formula provides certainty for both the city and the utility.

Select a Formula or Methodology to Determine Transfer Amount

The most common method used to determine the transfer amount is percent of gross electric operating revenue. According to APPA’s 2014 survey, nearly one-quarter of the respondents used this method. The table below shows other methods used to calculate the transfer.

TABLE A.4 Methods Used to Calculate Payments in Lieu of Taxes

| | |
|---|-----|
| Percentage of Gross Electric Operating Revenue | 22% |
| Assessment of Electric Utility and City Budgets | 18% |
| Property Tax Equivalent | 15% |
| Flat Amount Paid Annually | 12% |
| Charge per Kilowatt-hour Sold | 9% |
| Percentage of Net Utility Plant in Service | 4% |
| Percentage of Income (Net, Operating or Total) | 2% |
| Other (usually a combination of the above) | 18% |

SOURCE: APPA’s 2014 “Survey of Local Publicly Owned Electric Utilities Tax Payments and Contributions to State and Local Government.”

¹⁵ A Fitch Ratings, *Transferring from Power: Transfer and PILOT Payment Characteristics in the Public Power Sector*, Public Power Special Report, April 25, 2011.

The category “assessment of electric utility and city budgets” includes utilities whose payments are set by the city council, the mayor or a utility commission and utilities that make payments on an as-needed basis. According to the 2014 APPA survey, 18 percent of publicly owned electric utilities based their contributions on this non-formula approach.

Fifteen percent of utilities responded that they base their payments on a property tax equivalent. This is important to highlight when communicating with customers about the rationale behind general fund transfers, as it more clearly demonstrates the link between the fund transfer and property taxes. Even if a utility does not use this formula, estimating hypothetical property taxes provides another benchmark for evaluating the level of payments to the city. Demonstrating how much the utility pays compared to a hypothetical property tax also helps to rebut charges that the utility has a special advantage over other entities.

Another consideration when establishing a formula is the variability of transfers based on revenue or sales. In recent years utilities have urged customers to cut back on their energy use through energy-efficiency programs. However, energy-efficiency improvements conflict with maintaining the level of general fund transfers; as customers consume less energy, utility revenues decrease. If the fund transfer is based on revenue or sales, then the fund transfer would in turn decrease. When establishing a formula for the payment in lieu of tax, it will be important to consider what, if any, implications energy-efficiency programs could have for the transfer payment.

Prepare a Written Policy Statement

The utility should develop a written policy statement on contributions to state and local government. The policy will guide future governing boards in decisions on transfers and will give utility management the consistency and predictability necessary for stable, well-planned financial operations. In some cases, transfer policies are legally set in the city charter or by ordinance. In other cases, state agencies have the authority to approve or recommend transfer levels, or set transfer ceilings.

In 2004, local officials in Springfield, Illinois, enacted an ordinance limiting the amount that an enterprise could transfer to the city’s general fund. Transfers were capped at 3.5 percent of revenues received by an enterprise. (The city’s electric revenue fund is an “enterprise,” as is water and sewer).

The Jamestown, New York, public power utility has its rates reviewed and approved by the state Public Service Commission (PSC). Since any transfer payment is part of the utility’s rate structure, transfer levels are approved by the PSC as well. The annual transfer to the city’s general fund is 5 percent of gross electricity sales within the city of Jamestown, plus 1 percent of book value of all real estate holdings.¹⁶

Due to a recently enacted ordinance, Lincoln Electric System in Nebraska pays a “City Dividend” for the city of Lincoln’s ownership of the utility. The dividend supplements the utility’s payment in lieu of tax and is assessed monthly on electric bills. Customers pay the city dividend based on their energy use, “so that no customer or class of customers bears a larger share of the cost.”¹⁷

A statute in Washington state limits the transfer from enterprise activities to a city’s general fund to 6 percent of gross electric operating revenues. That amount can be raised to 8 percent if approved by local referendum.

Implement New Policy: Adjust Level of Support to Local Government

A public power utility’s newly developed policy on contributions may result in a change in the amount of direct and indirect payments to the city. Policymakers who have been involved in developing this new policy are more likely to support an adjustment in contributions and to work with other city officials to implement the change. If there is to be a significant reduction in payments and contributions, the utility and city officials may decide to phase in reductions over a period of years. Other considerations include how the new policy may affect rates and how the city will replace the money it was receiving from the utility.

Reviewing the Policy

Both city and utility officials should periodically review the level of contributions to make sure that city and utility managers understand the level of contributions the utility is making and the reasons for the policy. A successful review will educate any new officials and increase support from the city and utility governing bodies. The review process may result in changes to the policy, but if the city and utility are working together, they should still arrive at a contribution level that will provide benefits to the community while allowing the utility to achieve its goals. As outlined in *Public Power* magazine, the key is to approach these discussions

¹⁶American Public Power Association, “10 Questions: Mayor Sam Teresi, Jamestown, N.Y.,” *Public Power* magazine, May–June 2004.

¹⁷LES Press Release, August 22, 2011, accessed at: https://app.les.com/applications/_news/default.aspx?Article=279.

with a “positive, win-win” attitude. Other recommendations include:

- **Dialogue and negotiation.** Compare your utility’s payments with those of other cities (using, among other things, APPA’s report) so the city better appreciates where you stand.
- **Don’t say no.** Utilities cannot just say no to transfer requests. Instead, make clear to city officials that an increased transfer will mean an increase in rates or a cut in service and therefore a reduction in the city’s competitiveness.
- **Think long-term.** Ratings companies value negotiated transfer levels or multi-year agreements. “This is the type of agreement Moody’s likes to see because it precludes transfers from becoming a political issue.”¹⁸

VI. Tell the Customers

A public power utility’s customers, as well as local officials, may be unaware of the direct and indirect payments and contributions the utility makes to local government. Thus, the utility should take every opportunity to publicize the financial support it provides to the local community. The utility should also emphasize the rationale for the fund transfer, explaining that other taxes (including property taxes) would potentially be higher absent the transfer payment.

This is particularly important if the utility becomes the subject of a buyout offer from an investor-owned or cooperative utility. A common charge levied against public power utilities is that they do not pay their fair share of local government taxes, and therefore the local government would have greater financial strength if it had a tax-paying utility serving the territory. Officials of public power utilities can counter this claim by showing data on the utility’s contributions. As the 2014 APPA report shows, the median amount contributed by public power utilities was 5.6 percent of electric operating revenue, compared to 4.2 percent for investor-owned utilities. Of course, too high a contribution can be used against the utility, so it is important to develop an amount that is fair for both the utility and the local government.

Describe Financial Benefits

The utility’s annual report should tell its customer-owners about direct and indirect payments to state and local governments. (See examples in section VIII.) However, a

utility does not need to wait for the annual report for this communication. Regular communication with customers is important and helps set expectations about the level of annual contributions from the utility. This can be accomplished in many ways, as the following examples show.

Some utilities include payments in lieu of taxes directly on the bill or as an insert with the bill. Two public power utilities in Missouri—Chillicothe and Trenton—began showing transfer payments as a separate line item on customers’ bills several years ago.

The city of Loveland, Colorado, includes in its schedule of rates, fees and charges a separate per kilowatt-hour charge “PILT” and provides the following explanation:

Payment-in-lieu of taxes (PILT) is not a new fee, but is being separated out in preparation for a deregulated electricity marketplace. The PILT funds are paid by the electric utility to the City’s general fund.¹⁹

The Borough of Middletown, Pennsylvania, lists on its main webpage the services that the Electric Department and its employees provide to the city, including:

- Hanging and installing the borough’s many holiday decorations
- Hanging banners over highways
- Inside electrical work in all borough-owned facilities
- Tree trimming²⁰

Omaha Public Power District in Nebraska makes a public presentation of the check to the treasurer of each county it serves and invites the media to cover the event. The utility customizes a news release for each county and, where possible, includes information on where the money will be distributed.

Other ways to communicate about this important contribution to the community include:

- Explaining utility policies and practices on transfers in a customer newsletter, with specific examples of the kinds of services the payment supports
- Discussing the utility’s contributions in a news release, distributed during Public Power Week, to educate the community about the broad range of services the utility makes possible

¹⁸ Testa, “Transfer Pressures,” p. 26.

¹⁹ Rate schedule available at <http://www.ci.loveland.co.us/index.aspx?page=345>, accessed May 16, 2012.

²⁰ See <http://middletownborough.com/electric.php>, accessed May 16, 2012.

- Making a presentation at a city council or utility board meeting describing the contributions and the difference they make to the city budget
- Including information on the utility’s website, and updating the information with every payment the utility makes
- Using social media to communicate to customers on a regular basis to highlight the utility’s contributions to the local community
- Ability to borrow using municipal bonds, which are exempt from federal income taxes

Ownership of the asset:

- Local management control over decisions involving investments, operations, maintenance, power supply choices and customer programs
- Options and choices available only to an owner, including asset leverage, equity borrowing, ratemaking and financial contributions to local government
- Future streams of income to the city general fund

Communicating to Customers Outside City Limits

A particularly sensitive issue concerns payments made by customers who live outside the city limits. These customers may organize to protest their contribution to the general fund for a government that does not directly serve them. While there are no studies that quantify the benefits that accrue to suburban customers of public power utilities, it is beneficial to communicate with these customers and explain some of the ways they may benefit from the city. Potential benefits to suburban customers include:

- The suburban economy is at least partially tied to the health of the city’s economy, and utility fund transfers to the city fund economic development programs that help the city.
- Suburban commuters often use roads and other services funded by the city.
- In certain locations, the city helps cover the costs of public transportation that suburban customers take to commute into the city.²¹
- In some cases, public power utilities make transfers to suburban governments and include suburban residents on their boards.

Describe General Community Benefits of Public Power

In addition to these specific financial benefits, it is important to continue to remind existing customers and educate new customers about the general benefits of public power. The many benefits include:

Lower prices from:

- Not-for-profit status
- Local cost consciousness, including review in a public process of policy decisions, expenses, salaries and management compensation

Local control:

- Community control over management decisions, with success measured by how many dollars stay in the local community, not how many dollars leave in the form of dividends to often-distant stockholders
- Citizen-owners with direct say in policies through elected or appointed officials
- Local citizen participation in meetings and access to information on planning alternatives, cost estimates, performance and other reports
- Responsiveness to customers’ needs and concerns
- Quick response to outages from crews located in the community
- Power reliability, power quality, safety and efficiency that come from being singly focused on local operations
- Emphasis on long-term community goals with control over special programs (conservation and renewable resources, assistance to low-income, service extension policies, industrial parks, etc.)
- Control over electric distribution system aesthetics and design, including undergrounding choices
- Economic development from lower rates that attract businesses
- Local employment with payroll dollars spent in the community
- Utility management for leadership in innovation, community technology development and environmental stewardship
- Improved local government efficiency through integrated utility operations with electric, water, gas, sewer, garbage and community broadband

²¹ Marty Toohey, “Austin Energy suburban rate debate.” For a more detailed discussion of how the economic vibrancy of the suburbs is correlated to the city’s economic health, see Andrew F. Haughwout and Robert P. Inman, Should Suburbs Help Their Central City, April 2002. Accessed at <http://www.fednewyork.org/research/economists/haughwout/citysubbrookings.pdf>.

Customer Service

- Responsive and reliable customer service

Communication with customers about the value of the utility and its contributions is especially important when there is pressure to sell the utility to an investor-owned utility. When a candidate for mayor in the city of Plymouth, Wisconsin, advocated the sale of the local city-owned utility, the city commissioned a study to look at the benefits of the utility to the local community. The results of the study showed that city residents would have paid between \$7 million and \$27 million more for electricity over the preceding decade if they had been served by an investor-owned utility. The study also demonstrated the financial benefits of the utility's payment in lieu of tax as well as the free services provided by the utility's employees. This study helped to ensure that the utility was not sold.²²

VII. Sample Survey: Calculating Your Public Power Utility's Payments and Contributions to State and Local Government

This section reproduces the questions in the American Public Power Association's 2016 Survey of Local Publicly Owned Electric Utilities' Tax Payments and Contributions to State and Local Government, for you to use as a worksheet to help define your payments and contributions.

The actual survey is conducted biannually. If you have any questions about the survey, or how to calculate your contributions, contact Paul Zummo, Director, Policy Research and Analysis, at PZummo@PublicPower.org or 202/467-2969.

²²Jeanne LaBella, "Not for Sale," *Public Power*, July-August, 2011, p. 26.

Payments to State and Local Government

Include dollar amounts for items listed below. Do not include (a) sales taxes collected from ratepayers on behalf of state or local government, remitted to the state and not included in operating revenue; (b) sales taxes paid on purchases; or (c) any payroll-related taxes such as Social Security or state unemployment insurance.

| | | |
|---|------------------------------|-----------------------------|
| 1. Taxes and fees: | Local | State |
| a. Gross Receipts tax (Also known as public utility tax or privilege tax; these taxes are included in utility operating revenue and deducted as an operating expense. Do not include "pass-through" taxes, such as sales taxes, defined in (A) above). | \$ _____ | \$ _____ |
| b. Property taxes (e.g., taxes paid on property outside city limits) | \$ _____ | \$ _____ |
| c. Franchise taxes | \$ _____ | \$ _____ |
| d. State public utility commission assessments | \$ _____ | \$ _____ |
| e. Other Describe: _____ | \$ _____ | \$ _____ |
| | | |
| 2. Payments in lieu of taxes: | Local | State |
| (May also be called transfers to general fund or other tax equivalents) | \$ _____ | \$ _____ |
| | | |
| 3. Indicate the <i>method</i> used to determine the amount of payments in lieu of taxes (check one): | | |
| <input type="checkbox"/> Percentage of Gross Electric Operating Revenue | | |
| <input type="checkbox"/> Charge Based on Kilowatt-hours Sold | | |
| <input type="checkbox"/> Property Tax Equivalent | | |
| <input type="checkbox"/> Percentage of Income (Operating Income or Net Income) | | |
| <input type="checkbox"/> Percentage of Net Utility Plant in Service | | |
| <input type="checkbox"/> Flat Amount Paid Annually/Monthly | | |
| <input type="checkbox"/> Based on an Assessment of Electric Utility and City Budgets (includes payments that are determined each year by the city council, utility commission or mayor, and payments determined on an as-needed basis) | | |
| <input type="checkbox"/> Other (Please explain below): _____ _____ _____ | | |
| | | |
| 4. Has the utility changed its method of calculating the amount of payments in lieu of taxes in the last two years? | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| If yes, describe briefly why the change was made: _____ _____ _____ | | |

Contributions of Services to State and Local Government

Free or reduced price electric service:

Include the price of all services that the utility is not paid for in any way or provides at below the normal price. (If the utility receives compensation through direct billing, accounting transfers or other transfer or funds, then the service is not free or reduced price and should not be included below). If the dollar amount of the free service is not known, estimate the amount from the kilowatt-hours supplied and an average rate per kWh for commercial service. For example, if the utility provided 40,000 kWh

of free service for recreational facilities, and the average commercial rate for the utility is 8 cents per kWh, the estimate of free service provided would be 40,000 kWh x \$.08/kWh, or \$3,200.

The dollar amount of reduced price service should reflect the difference between the amount the utility receives for the service and the amount the utility would typically charge a customer for the service. For example, if the utility charges the city \$2,000 for 40,000 kWh of electric service for recreational facilities, the utility is receiving 5 cents per kWh for its service. If the average rate that would normally be charged for the service is 8 cents per kWh, the utility is providing reduced-price service to the city of 3 cents per kWh x 40,000 kWh, or \$1,200.

| | Free Services | Reduced Price Services |
|---|---------------|------------------------|
| a. Streetlighting | \$ _____ | \$ _____ |
| b. Municipal buildings (offices, public works, garages, etc.) | \$ _____ | \$ _____ |
| c. Water pumping | \$ _____ | \$ _____ |
| d. Water or sewer treatment facilities | \$ _____ | \$ _____ |
| e. Recreational facilities (e.g., parks, baseball fields) | \$ _____ | \$ _____ |
| f. Traffic signals | \$ _____ | \$ _____ |
| g. Other free or reduced-price electric service (specify): _____ | \$ _____ | \$ _____ |

Estimated value of the use of electric department employees for non-electric services:

Include dollar cost of services for which the utility is not reimbursed by direct billing, accounting transfers, or

other transfer of funds. If the dollar amount is not known, estimate an amount using the number of employee-hours provided and an average hourly wage rate (including benefits).

| | |
|---|----------|
| a. Installation of temporary lighting for special events | \$ _____ |
| b. Maintenance of traffic signals | \$ _____ |
| c. Electric repair or maintenance for other departments | \$ _____ |
| d. Rewiring municipal buildings | \$ _____ |
| e. Tree trimming for other departments | \$ _____ |
| f. Reading of water meters | \$ _____ |
| g. Putting up city signs, banners | \$ _____ |
| h. Technical expertise for engineering, economic or environmental studies | \$ _____ |
| i. Non-utility locates for stakes, wires, pipes, etc. | \$ _____ |
| j. Other use of electric department employees (specify): _____ | \$ _____ |

Contributions and Services from the Municipality to the Electric Utility

Include the price of goods and services the electric system receives **from** the city system, for which the city is not paid in any way, or that the city provides below normal price. (Do not include services for which the city has been reimbursed through direct billing or transfer of funds).

| | |
|---|----------|
| 1. Estimated value of free or reduced-price service for: | |
| a. Water | \$ _____ |
| b. Office space | \$ _____ |
| c. Other (specify): _____ | \$ _____ |
| 2. Estimated value of the use of municipal department employees by the electric department for: | |
| a. Operations and maintenance | \$ _____ |
| b. Engineering services | \$ _____ |
| c. Financial services | \$ _____ |
| d. Legal services | \$ _____ |
| e. Information Technology services | \$ _____ |
| f. Human Resources services | \$ _____ |
| g. Other (specify): _____ | \$ _____ |
| 3. Estimated value of the use of municipal department vehicles and equipment by the electric department: | \$ _____ |
| 4. Estimated value of the use of municipal department materials and supplies by the electric department: | \$ _____ |

VIII. Examples of Value Services Provided: A Closer Look at Two Utilities

City Utilities of Springfield, Missouri

TABLE A.5 Payment and Services to the City of Springfield in Lieu of Taxes²³

Fiscal Year Ended September 30, 2011

| | Electric | Gas | Water | Telecommunications | Total |
|---|--------------------|------------------|--------------------|---------------------------|---------------------|
| City Hall | \$216,111 | \$35,572 | \$6,483 | | \$258,166 |
| Health Clinic | 49,557 | 9,490 | 2,733 | | 61,780 |
| Fire Department | 136,998 | 58,934 | 11,606 | | 207,538 |
| Hazelwood Cemetery | 5,585 | 813 | 1,301 | | 7,699 |
| Police Station | 93,950 | 1,926 | 2,532 | | 98,408 |
| Dog Pound | 6,277 | 3,459 | 783 | | 10,519 |
| Municipal Court | 17,390 | 2,081 | 578 | | 20,049 |
| Manpower Human Resources | 41,795 | 7,990 | 571 | | 50,356 |
| Traffic Signal Shops | 7,042 | - | 221 | | 7,263 |
| Service Center | 105,747 | 30,843 | 18,729 | | 155,319 |
| Parking Lots | 5,363 | - | - | | 5,363 |
| Parks | 944,696 | 94,437 | 442 | | 1,039,575 |
| Art Museum | 48,917 | 15,842 | 605 | | 65,364 |
| Airport | 240 | - | - | | 240 |
| Traffic Signals – State | 111,891 | - | - | | 111,891 |
| Traffic Signals – City | 86,532 | - | - | | 86,532 |
| Park Central Square | 4,109 | - | 634 | | 4,743 |
| Storm Warning | 22,069 | - | - | | 22,069 |
| Communications Center | 22,636 | - | - | | 22,636 |
| Street Lighting | 3,278,572 | - | - | | 3,278,572 |
| Fire Hydrant | - | - | 2,517,369 | | 2,517,369 |
| Telecommunications | | | | 645,000 | 645,000 |
| Total Utility Services | \$5,205,477 | \$261,387 | \$2,564,587 | \$645,000 | \$8,676,451 |
| Cash Payments to City in Lieu of Taxes | | | | | \$12,878,226 |
| Electric, Natural Gas & Water Relocations | | | | | \$993,189 |
| Public Transit Services | | | | | \$4,069,126 |
| Other Community Services | | | | | \$274,071 |
| TOTAL | | | | | \$26,891,063 |

²³ Table published in 2011 Annual Report.

Marshall Municipal Utilities, Missouri

TABLE A.6 Total Free Services and Payments in Lieu of Taxes, Fiscal Year 2010/11²⁴

| FREE SERVICES | |
|---|--------------------|
| Water: | |
| Fire Hydrant Maintenance | \$6,750 |
| Depreciation of Fire Hydrants | 5,614 |
| Labor and Material Donated | 14,605 |
| | <u>\$26,969</u> |
| Electric: | |
| Street Lighting Energy | \$145,551 |
| Street Lighting Maintenance | 30,016 |
| Depreciation of Street Lighting | 19,563 |
| Labor and Material Donated | 44,858 |
| Marshall-Saline Development Corp. | 0 |
| | <u>\$239,988</u> |
| TOTAL | \$266,957 |
| PAYMENTS IN LIEU OF TAXES | |
| Water Transfers to City General Fund | \$137,689 |
| Electric Transfers to City General Fund | 1,718,618 |
| TOTAL | <u>\$1,856,307</u> |
| TOTAL PAYMENTS AND FREE SERVICES | <u>\$2,123,264</u> |

IX. Conclusion

This guide has described basic steps to achieve an effective policy on a public power utility's level of payments and contributions to state and local government. Sound business decisions are based on accurate information about the costs of operations, so policy development must start with accounting for all of the utility's direct and indirect payments to the city.

While clearly there is no single correct method or formula for determining the amount of contributions, the utility should have a clear, well-defined policy. The policy should support the basic objective of providing reliable service to consumers at the lowest reasonable cost. Consistency and predictability are critical, and it is important that the policy be a product of the utility and the community working together.

It is useful to compare the utility's contributions with those made by other utilities. Contributions that exceed the norm are a signal to look closely at current practices. A relatively high level of contributions may be a factor in short- or long-term financial and operational problems at the utility. The utility may need to educate local officials on the negative effects of abnormally high contributions as a first step in reducing the community's reliance on high transfer payments.

Finally, customers and local officials may not be fully aware of the benefits their utility provides to the community. Educating the community about the utility's contributions, as well as the other benefits of public power, should be an ongoing mission.

²⁴ Table published in Annual Report, Fiscal Year 2010/11.

Appendix B.

Public Power Pays Back

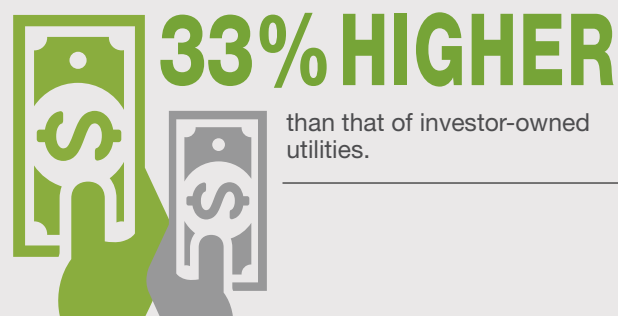
Payments and Contributions by Public Power Utilities to State and Local Governments in 2014

Public power utilities provide affordable, reliable electricity to the customers they serve. These community-owned utilities are not beholden to shareholders and are driven only by the mission to serve customers and the community.

In addition to affordable electricity, public power utilities provide a direct benefit to their communities in the form of payments and contributions to state and local governments. These contributions come in many forms—property-like taxes, payments in lieu of taxes, transfers to the general fund, and free or reduced cost services provided to states and cities. The total value of these contributions is not always recognized.

In 2014, public power utilities contributed **5.6 percent of electric operating revenues** back to the communities they serve, according to an American Public Power Association study of 176 public power utilities.¹

When all 2014 taxes, tax equivalents and other contributions to state and local government are considered, the contribution of public power utilities—as a percentage of electric operating revenues—was



In comparison, investor-owned utilities paid a median of 4.2 percent of electric operating revenues in taxes and fees to state and local governments in 2014.

Many communities are not fully aware of the total value of contributions made by their public power utilities. Some utilities do not quantify all their payments and contributions. APPA conducted a detailed survey of public power utilities to get a more accurate estimate. The results are presented in this report, which focuses on the “rate” and “type” of payments and contributions made by public power distribution utilities.

The report includes:

- Summaries by revenue size, class, and region of the country for public power and investor-owned utilities
- Common types of payments and contributions
- Typical methods used by utilities to calculate the amount of payments in lieu of taxes or transfers to the city general fund.

Caution should be used when making direct comparisons with the previous APPA reports (published once every two years between 1992-2012) as the utilities included in each year’s report are not identical.

I. Payment and Contribution Rates by Revenue Class

Net payments and contributions as a percentage of electric operating revenue are summarized for public power utilities in seven revenue classes. Medians by revenue class range from 5.2 to 14.5 percent, compared to the national median of 5.6 percent.

¹This report was prepared by Paul Zummo, Director, Policy Research and Analysis, American Public Power Association, in April 2016. Data are from 2014; see section IV for more information on methodologies and data sources.

The median is defined as that value where 50 percent of the utilities had payment and contribution rates greater than the median and 50 percent contributed less than the median.

Quartiles are another common tool used in analysis. By definition, one-half of utilities fall between the first and third quartiles. For example, 50 percent of the 176 utilities in this report made payments and contributions between 3.5 and 8.5 percent of electric operating revenue.

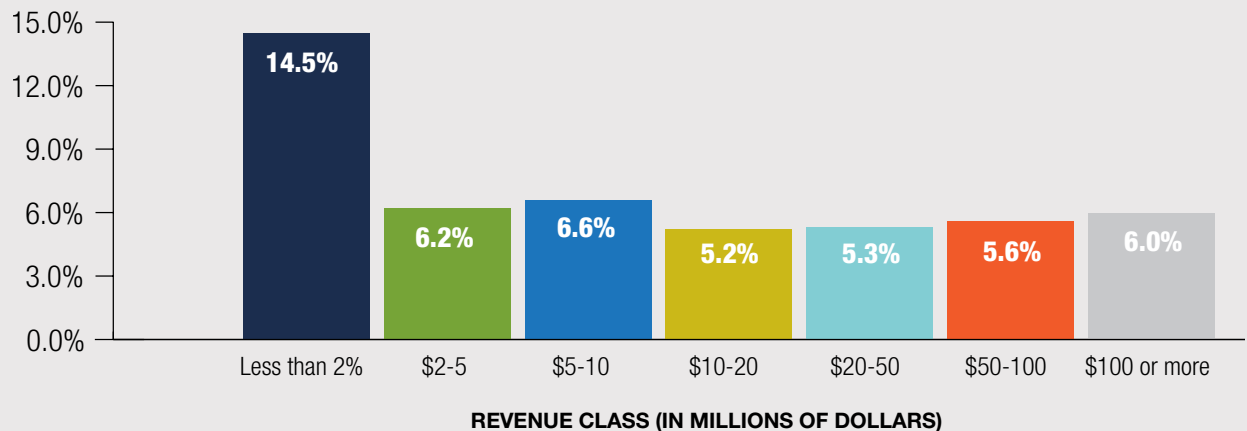
TABLE B.1 Net Payments and Contributions as Percentage of Electric Operating Revenue, 2014

Public Power Utilities by Revenue Class

| REVENUE (IN MILLIONS) | NUMBER OF UTILITIES | MEDIAN | FIRST QUARTILE | THIRD QUARTILE |
|-----------------------|---------------------|------------|----------------|----------------|
| Less than \$2 | 9 | 14.5 | 7.1 | 32.0 |
| \$2 - \$5 | 18 | 6.2 | 3.1 | 21.0 |
| \$5 - \$10 | 19 | 6.6 | 3.0 | 8.0 |
| \$10 - \$20 | 26 | 5.2 | 2.4 | 7.9 |
| \$20 - \$50 | 43 | 5.2 | 4.0 | 7.1 |
| \$50 - \$100 | 27 | 5.6 | 3.4 | 6.6 |
| \$100 or more | 34 | 3.0 | 1.8 | 7.7 |
| TOTAL | 176 | 5.6 | 3.5 | 8.5 |

MEDIAN NET PAYMENTS AND CONTRIBUTIONS AS PERCENTAGE OF ELECTRIC OPERATING REVENUE, 2014

Public Power Utilities by Revenue Size Class



Payment and Contribution Rates by Region

Regional variations in median net payments and contributions range from 3.3 percent in the East North Central to 11.9 percent in the West South Central. Regions are defined in section V.

TABLE B.2 Net Payments and Contributions as Percentage of Electric Operating Revenue, 2014

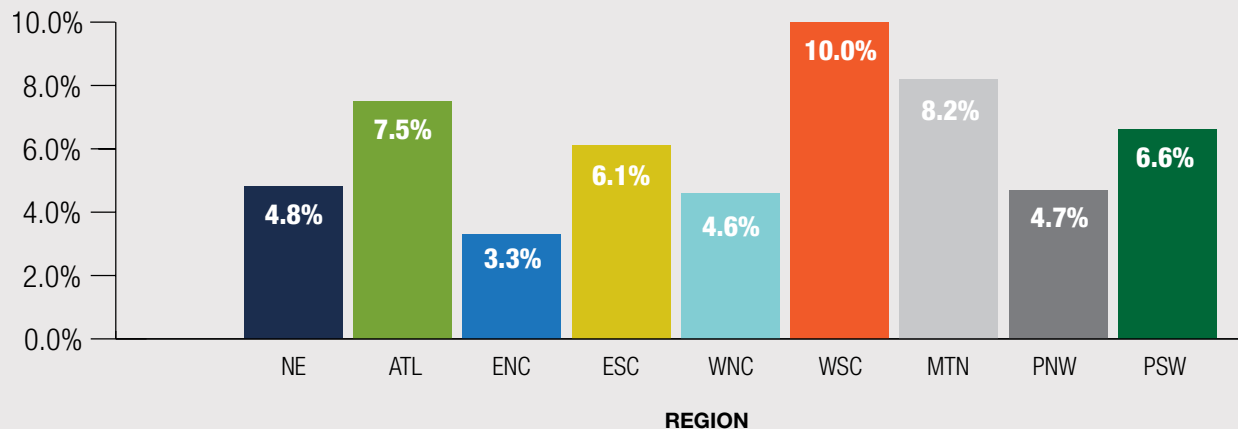
Public Power Utilities by Region

| REVENUE (IN MILLIONS) | NUMBER OF UTILITIES | MEDIAN | FIRST QUARTILE | THIRD QUARTILE |
|-----------------------|---------------------|------------|----------------|----------------|
| Northeast | 15 | 4.8 | 3.3 | 9.7 |
| Atlantic | 8 | 7.5 | * | * |
| East North Central | 28 | 3.3 | 2.5 | 5.4 |
| East South Central | 28 | 6.1 | 5.6 | 6.7 |
| West North Central | 41 | 4.6 | 2.4 | 29.4 |
| West South Central | 32 | 11.9 | 5.6 | 10.7 |
| Mountain | 4 | ** | * | * |
| Pacific Northwest | 13 | 4.7 | 4.1 | 5.6 |
| Pacific Southwest | 7 | 6.6 | * | * |
| TOTAL | 176 | 5.6 | 3.5 | 8.5 |

* Quartiles not provided for fewer than 9 responses.

** Medians not provided for fewer than 5 responses.

MEDIAN NET PAYMENTS AND CONTRIBUTIONS AS PERCENTAGE OF ELECTRIC OPERATING REVENUE, 2014
Public Power Utilities by Region



Comparison with Investor-Owned Utilities

In 2014, investor-owned distribution utilities paid a median of 4.2 percent of electric operating revenues in taxes and fees to state and local governments. The 50 percent of utilities in the middle range made payments ranging from 2.9 to 6.3 percent. In comparison, public power utilities paid a median of 5.6 percent in net payments and contributions as a percent of electric operating revenue, with a middle range of 3.5 to 8.5 percent.

In this study, most investor-owned utilities (94 percent) had more than \$100 million in operating revenues while most of the publicly owned utilities (81 percent) had less than \$100 million.

The median values of taxes paid by investor-owned utilities and tax payments and contributions by publicly owned utilities (as a percentage of electric operating revenue) vary by utility size and are summarized below:

| | INVESTOR-OWNED | PUBLIC POWER |
|---------------------------------------|----------------|--------------|
| Large Utilities (over \$100 million) | 4.3% | 5.5% |
| Small Utilities (under \$100 million) | 3.9% | 6.0% |

The median value for investor-owned utilities was the largest in the Northeast, Pacific Northwest, and West North Central, and smallest in the East South Central and Pacific Southwest. Table 3 presents data grouped by geographic region for investor-owned utilities.

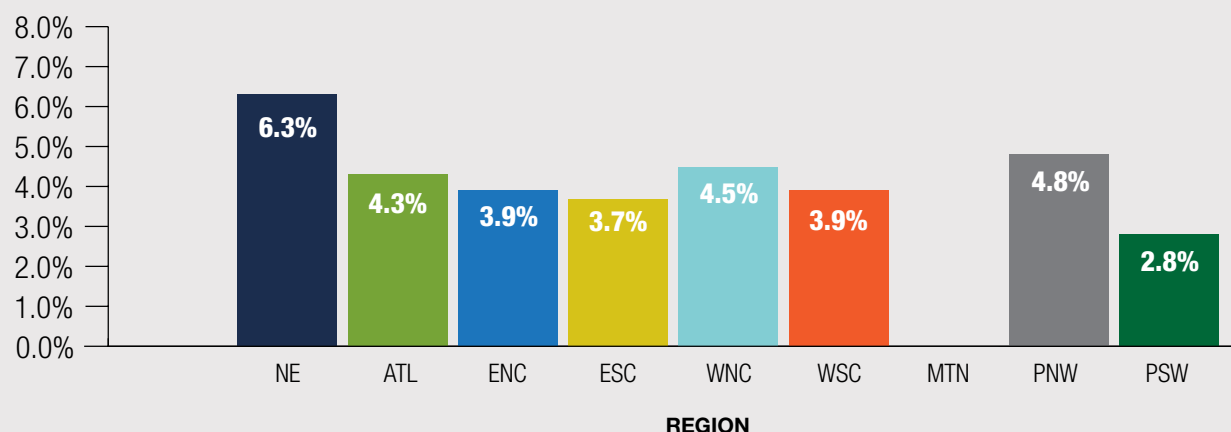
The number of investor-owned utilities fell from 144 in the 2000 study to 123 in the 2014 study. This is primarily the result of mergers and the elimination of several utilities in Maine and Texas that no longer report sales to consumers. Retail choice laws in those two states changed how utilities account for sales.

TABLE B.3 Net Taxes as Percentage of Electric Operating Revenue, 2014

Investor-Owned Utilities, by Region

| REGION | NUMBER OF UTILITIES | MEDIAN | FIRST QUARTILE | THIRD QUARTILE |
|--------------------|---------------------|-------------|----------------|----------------|
| Northeast | 28 | 6.3% | 2.9% | 7.5% |
| Atlantic | 15 | 4.3% | 3.1% | 6.7% |
| East North Central | 25 | 3.9% | 3.0% | 5.6% |
| East South Central | 10 | 3.7% | 3.0% | 5.9% |
| West North Central | 15 | 4.5% | 3.4% | 5.5% |
| West South Central | 11 | 3.9% | 2.8% | 5.1% |
| Mountain | 2 | NA | NA | NA |
| Pacific Northwest | 6 | 4.8% | * | * |
| Pacific Southwest | 9 | 2.8% | 2.7% | 3.2% |
| TOTAL | 123 | 4.2% | 2.9% | 6.3% |

MEDIAN NET PAYMENTS AND CONTRIBUTIONS AS PERCENTAGE OF ELECTRIC OPERATING REVENUE, 2014
Investor-Owned Systems by Region



II. Summary of Payments and Contributions

The study is based on a survey sent by the American Public Power Association to all publicly owned utilities. The next two sections of the report summarize results for 154 public power utilities that completed the survey.

Excluded from the summaries are 22 Tennessee Valley Authority distribution utilities because these utilities'

payments and contributions are limited under the terms of their wholesale power contract with TVA.

The 154 utilities made a total of just under \$1.4 billion in total payments and contributions to state and local government in 2014. The category "Other Taxes and Fees" accounted for the highest percentage, but one large utility was responsible for most of the total. Otherwise, payments in lieu of taxes were the largest share of payments and contributions.

TABLE B.4 Net Payments & Contributions to State & Local Governments

| | AMOUNT IN MILLIONS | PERCENT OF TOTAL |
|--|--------------------|------------------|
| Other Taxes and Fees | \$592.8 | 43.1% |
| Payments in Lieu of Taxes | \$489.8 | 35.6% |
| Gross Receipts Tax | \$222.1 | 16.1% |
| Free or Reduced-Cost Electric Services | \$56.3 | 4.1% |
| Other, including Equipment and Materials | \$8.4 | 0.6% |
| Use of Employees | \$6.6 | 0.5% |
| Total | \$1,375.0 | 100.0% |
| Less: Services & Contributions RECEIVED by the Utility FROM the Municipality | \$8.0 ² | |
| Net Payments & Contributions | \$1,366.8 | |

²The 154 utilities received \$8.2 million in contributions and services from the municipality. This amount does not include any contributions or services for which the city has been reimbursed, either through direct billing or a transfer of funds. Free or reduced cost office space and water are the major services provided, while operations and maintenance, legal service, information technology services, engineering services and financial service employees are the predominant type of employee contributions received by the utility. The \$8.2 million in free or reduced-cost contributions and services provided by the municipality to the utility is subtracted from the \$1,375 million in payments and contributions from the utility to state and local government. **The result is \$1,366.8 million in net payments and contributions by the 154 utilities in 2014.**

The number of utilities making each type of payment or contribution is detailed in Table 5.

TABLE B.5 Types of Payments & Contributions, 2014

| | PERCENTAGE OF UTILITIES | NUMBER OF UTILITIES |
|--|-------------------------|---------------------|
| I. Payments & Contributions Provided | | |
| Payments in Lieu of Taxes | 83.8% | 129 |
| Taxes and Fees | | |
| Gross Receipts Tax | 48.7% | 75 |
| State Public Utility Assessments | 23.4% | 36 |
| Franchise Fees | 17.5% | 27 |
| Property Taxes | 13.0% | 20 |
| Other | 19.5% | 30 |
| Free or Reduced Cost Electric Service | | |
| Streetlighting | 8.4% | 13 |
| Lighting for Municipal Buildings | 44.2% | 68 |
| Traffic Signals | 36.4% | 56 |
| Recreational Facilities | 25.3% | 39 |
| Water or Sewer Treatment Facilities | 17.5% | 27 |
| Water Pumping | 15.6% | 24 |
| Other | 15.6% | 24 |
| Use of Employees | | |
| Installation of Temporary Lighting | 56.5% | 87 |
| Putting Up City Signs & Banners | 37.0% | 57 |
| Electrical Repair for Other Departments | 25.3% | 39 |
| Tree Trimming for Other Departments | 22.1% | 34 |
| Other Services | 21.4% | 33 |
| Non-Utility Locates | 29.2% | 45 |
| Technical Expertise | 5.2% | 8 |
| Rewiring Municipal Buildings | 7.8% | 12 |
| Reading Water Meters | 9.1% | 14 |
| Other Resources | | |
| Use of Vehicles & Equipment | 6.5% | 10 |
| Use of Materials & Supplies | 10.4% | 16 |
| Other | 16.2% | 25 |
| II. Services & Contributions RECEIVED | | |
| Free or Reduced Cost Service | 29.2% | 45 |
| Use of Vehicles & Equipment | 16.9% | 26 |
| Use of Materials & Supplies | 9.7% | 15 |
| Use of Employees | 6.5% | 10 |
| | 20.8% | 32 |

III. Methods Used to Determine Payments in Lieu of Taxes

Payments in lieu of taxes are generally paid to local governments. However, some utilities pay the state government.

Of the 154 utilities defined earlier, more than 83 percent (129 utilities) made payments in lieu of taxes – also called transfers to the general fund – and the median transfer as a percent of electric operating revenue was 3.6 percent.

The most common method used to determine the amount of payments in lieu of taxes was percent of gross electric operating revenue, as shown in Table 6.

The category “assessment of electric utility and city budgets” includes utilities whose payments are set by the city council, the mayor or a utility commission, and utilities that make payments on an as-needed basis. The most common responses in the “other” category are utilities whose payments are based on more than one criterion.

Tennessee Valley Authority distribution utilities are not included in the data above. State law determines the payments in lieu of taxes for utilities in Tennessee. The calculation is composed of two parts – percentage of three-year average operating revenue less power cost, and property tax rate applied to net utility plant.

TABLE B.6 Methods Used to Calculate Payments in Lieu of Taxes

| | PERCENTAGE OF UTILITIES | NUMBER OF UTILITIES |
|---|-------------------------|---------------------|
| Percentage of Gross Electric Operating Revenue | 22% | 29 |
| Assessment of Electric Utility and City Budgets | 18% | 23 |
| Property Tax Equivalent | 15% | 19 |
| Flat Amount Paid Annually | 12% | 16 |
| Charge per Kilowatt-hour Sold | 9% | 11 |
| Percentage of Net Utility Plant in Service | 4% | 5 |
| Percentage of Income (Net, Operating or Total) | 2% | 3 |
| Other/Did not Indicate | 18% | 23 |

IV. Methodology and Data Sources for Study

Study results for publicly owned utilities were calculated from two sources: data collected on APPA’s “2014 Survey of Local Publicly Owned Electric Utilities Tax Payments and Contributions to State and Local Government,” and data submitted by public power utilities to the Department of Energy/Energy Information Administration (EIA) on Form EIA-861, “Annual Electric Utility Report.”

A total of 176 utilities completed the APPA survey. Form EIA-861 provided information on electric operating revenue. Payments and contributions for TVA distributors include an amount equal to 5 percent of the estimated cost of power purchased from TVA (paid by TVA), plus any

payments in lieu of taxes or contributions made by the distribution utility. TVA’s wholesale power contracts with municipalities limit payments in lieu of taxes to an amount not exceeding the state and local taxes that the utility would pay if it were privately owned.

Study results for investor-owned utilities were calculated from data submitted on the 2014 Federal Energy Regulatory Commission (FERC) Form 1, “Annual Report of Major Electric Utilities, Licensees and Others.”

The report includes only distribution utilities, defined here as those with 50 percent or more of their total kilowatt-hour sales going to retail customers. The investor-owned utilities included in the study provide 95 percent of all full-service kilowatt-hour sales to investor-owned utility customers, and the public power utilities included in the study provide 27 percent of all kilowatt-hour sales to public power customers.

Public power’s payments and contributions to state and local governments include taxes and fees such as gross receipts taxes, property taxes (generally on property outside the city limits), franchise fees, payments to state public utility commissions, environmental fees and licenses. Also included are payments in lieu of taxes or transfers to the general fund and the value of services such as free or reduced cost electricity, the use of electric department employees, and the use of electric department materials and equipment. Federal taxes, Social Security taxes, similar contributions to state unemployment insurance, and other payroll taxes are excluded.

The value of free or reduced cost services contributed by the local government to the utility is deducted from total

payments and contributions to arrive at net contributions. The net amount is then divided by electric utility revenue.

Net taxes for investor-owned utilities include state and local taxes and fees, as reported on pages 262-263 of FERC Form 1. Federal taxes, Social Security taxes, similar contributions to state unemployment insurance, and other payroll taxes are excluded.

V. Regions

The regions specified in Table 2 and Table 3 encompass the states shown below. Hawaii is not included in any of the nine regions, but is included in national totals and in summaries by revenue class.

| | |
|---------------------------|--|
| Northeast | Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island and Vermont |
| Atlantic | Washington, D.C., Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, Virginia and West Virginia |
| East North Central | Illinois, Indiana, Michigan, Ohio and Wisconsin |
| East South Central | Alabama, Kentucky, Mississippi and Tennessee |
| West North Central | Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota and South Dakota |
| West South Central | Arkansas, Louisiana, Oklahoma and Texas |
| Mountain | Colorado, Montana, New Mexico, Utah and Wyoming |
| Pacific Northwest | Alaska, Idaho, Oregon and Washington |
| Pacific Southwest | Arizona, California and Nevada |

Appendix C.

Making Rate and Cost Comparisons

Average revenue per kilowatt-hour (kWh) is the most accessible measure of an electric utility's rate level.¹ This measure is calculated by dividing a utility's annual electric revenue from sales to consumers by the total number of kilowatt-hours sold to consumers. The calculation can be made for total sales to all customers and for each customer class: residential, commercial and industrial.

The U.S. Department of Energy's Energy Information Administration (EIA) collects annual data on revenues and sales by customer class from each electric utility and publishes revenue per kilowatt-hour, by customer class, for each utility.² These data can be used to provide the same revenue-per-kilowatt-hour comparisons within a state. These comparisons are available on the American Public Power Association's website, PublicPower.org.³

Rate comparisons by customer class are useful because a sellout campaign may focus on how a specific customer class would fare if the public power utility were sold. Residential customers may be the focus because, in many public power cities, the sale of the utility must be approved in a voter referendum. In other cases, the focus may be on attracting and retaining industrial customers.

The first table below compares average rate levels for two Minnesota utilities. When all rate classes are combined, the public power utility's rates are 28 percent below the cooperative utility's rates. However, this difference in rates is not maintained across all customer classes. The public power utility's average residential rate is about 27 percent below the cooperative utility's rate, and its average commercial rate is 13 percent below the cooperative utility's rate. However, the public power utility's industrial rate is about 5 percent higher than the cooperative's.

TABLE C.1 2016 Average Revenue per Kilowatt-hour by Customer Class (in cents per kWh)

| CUSTOMER CLASS | SAMPLE PUBLIC POWER UTILITY | SAMPLE COOPERATIVE UTILITY |
|---------------------|-----------------------------|----------------------------|
| Residential | 10.29 | 14.06 |
| Commercial | 9.70 | 11.12 |
| Industrial | 7.68 | 7.32 |
| Total – All Classes | 8.62 | 11.99 |

SOURCE: Form EIA-861, Energy Information Administration.

¹This report was created in 2012 by the American Public Power Association, and updated in 2018.

²The EIA website is www.eia.doe.gov; click on "Electricity" under the "Sources & Uses" tab, then click on "Sales" under the "Data" tab (or use this direct link to the "Sales" page: <http://www.eia.gov/electricity/data.php#sales>.) From here scroll down to "Average Retail Price of Electricity to Ultimate Customers."

³APPA's website is www.PublicPower.org. APPA members can access a report of average utility revenue per kWh on the site by clicking on "Public Power," and then "Stats & Facts." Click the link for more reports on industry statistics; and scroll down to the "Average Revenue per kWh" link. You must be logged in to access the report, which is an Excel workbook with separate worksheets for each state. The direct link to the "Industry Statistics & Reports" page is: <https://www.PublicPower.org/public-power/stats-and-facts/industry-statistics-and-reports>.

Trend Analysis

Trend analysis—looking at rate levels over time—can show the evolving competitive position of a utility. The second table shows a five-year comparison of residential revenue per kilowatt-hour for two Kansas utilities. The public power utility’s average rate was higher at the beginning of the

five-year period, but by the end of the period, its rate was significantly below the investor-owned utility’s average rate. From 2012 to 2016, the investor-owned utility’s average rate rose by 22 percent, while the public power utility’s average rate increased by 3 percent.

TABLE C.2 Residential Revenue per Kilowatt-hour Comparison: Five Year Trend (in cents per kWh)

| YEAR | SAMPLE PUBLIC POWER UTILITY | SAMPLE INVESTOR-OWNED UTILITY | DIFFERENCE: PUBLIC POWER UTILITY IS HIGHER (LOWER) BY: |
|-----------|-----------------------------|-------------------------------|--|
| 2012 | 11.29 | 10.70 | 0.59 |
| 2013 | 11.20 | 11.18 | 0.02 |
| 2014 | 11.65 | 12.08 | (0.43) |
| 2015 | 11.66 | 12.11 | (0.45) |
| 2016 | 11.64 | 13.08 | (1.44) |
| % Change: | 3.1% | 22.2% | |

SOURCE: Form EIA-861, Energy Information Administration.

In making rate comparisons, it is also useful to investigate whether rate trends are likely to continue. In this case, such an analysis would focus on reasons for the private utility’s relatively large rate increase in 2009 and how the public power utility achieved a steady decline in the average rate level since 2008. The public power utility should also see if the rate trends are similar for other customer classes.

Comparing Actual Rate Schedules

Annual revenue per kilowatt-hour measurements provide a meaningful comparison of average rate levels over a twelve-month period and are a good indication of relative rate levels. However, they do not represent what is actually charged to any individual customer. Industrial rates in particular may vary substantially between individual customers. By analyzing published rate schedules, a utility can develop a better idea of what individual customers would pay.

Many utilities provide rate information on their websites. Some may post the actual rate tariffs, while others post summaries of their rate schedules. Another source of rate tariff information is the state public utility commissions (PUCs). These commissions regulate investor-owned utility rates and, in some states, cooperative utility rates.

State PUCs require the utilities they regulate to file all applicable retail rate schedules with the commission and this information is available to the general public.

Another source of rate information is the Federal Energy Regulatory Commission (FERC). FERC collects information on investor-owned utility rate schedules on FERC Form 1, which all major IOUs are required to file annually. Page 304 of FERC Form 1, “Sales of Electricity by Rate Schedules,” shows megawatt-hours sold, revenue, and average number of customers. Of particular interest are the types of rates offered to industrial customers, as these customers typically have the most clout in negotiating rates.

Making Cost Comparisons

The American Public Power Association publishes an annual report on *Financial and Operating Ratios* of public power utilities, which is a good place to start in making cost comparisons.⁴ The report presents data for 22 financial and operating ratios and is based on data from 200 public power utilities. It provides summaries by region and by customer size and includes descriptive information on the data sources and how to calculate the ratios. Samples of these ratios, broken out by region, are shown on the tables on the following pages.

⁴The report “Financial Operating Ratios” is available via the APPA Product Store, in the “Bonds and Financing” category. Go to PublicPower.org under “Shop” for more information.

The ratio of total operations and maintenance expense per kilowatt-hour sold is a good place to start because it summarizes the overall level of operations and maintenance costs. If your utility's ratio is out of line with public power averages, the utility should look at the various operations and maintenance cost categories to determine reasons for the difference.

TABLE C.3 2016 Total Operations and Maintenance Expense per kWh Sold (in cents per kWh)

| REGION ⁵ | NUMBER OF UTILITIES | FIRST QUARTILE | MEDIAN | THIRD QUARTILE |
|----------------------|---------------------|----------------|--------|----------------|
| Northeast | 12 | 9.6 | 11.1 | 12.1 |
| Southeast | 56 | 7.5 | 8.7 | 9.0 |
| North Central/Plains | 51 | 6.6 | 8.2 | 9.7 |
| Southwest | 25 | 6.0 | 7.1 | 8.9 |
| West | 47 | 5.5 | 7.2 | 8.5 |

By definition, 25 percent of the observations fall below the first quartile value, half of the observations fall below the median and three quarters of the observations fall below the third quartile value. Thus, for example, a public power utility in the Southwest with total O&M expense per kilowatt-hour sold of 9.0 cents compares poorly with other public power utilities in the Southwest, as this is higher than the third quartile value of 8.9 cents per kilowatt-hour.

Power supply makes up the largest portion of a utility's operations and maintenance costs, making purchased power cost per kilowatt-hour another key ratio, particularly for distribution-only utilities. (Those utilities that generate would also want to look at the ratio of total power supply expense per kilowatt-hour.)

TABLE C.4 2016 Purchased Power Cost per kWh (in cents per kWh)

| REGION ⁵ | NUMBER OF UTILITIES | FIRST QUARTILE | MEDIAN | THIRD QUARTILE |
|----------------------|---------------------|----------------|--------|----------------|
| Northeast | 12 | 5.1 | 6.8 | 8.6 |
| Southeast | 55 | 6.3 | 7.0 | 7.3 |
| North Central/Plains | 51 | 4.7 | 6.0 | 7.5 |
| Southwest | 25 | 4.4 | 5.0 | 6.5 |
| West | 47 | 3.7 | 4.3 | 5.7 |

⁵ Regions are combinations of NERC regions. Northeast = NPCC; Southeast = SERC and FRCC; North Central/Plains = MRO and RFC; Southwest = SPP and TRE (ERCOT); and West = WECC and Alaska.

Non-power supply costs, including transmission, distribution, customer services and administrative and general costs, make up the remainder of O&M costs. These costs are measured on a per-customer basis.

A public power utility can calculate these same ratios for investor-owned utilities in the region using data filed from FERC Form 1. Cooperative utilities that have loans from the U.S. Rural Utilities Service (RUS) file similar cost information with the RUS. APPA can help in making these comparisons.

TABLE C.5 2016 Distribution O&M Expense Per Retail Customer

| REGION | NUMBER OF UTILITIES | FIRST QUARTILE | MEDIAN | THIRD QUARTILE |
|----------------------|---------------------|----------------|--------|----------------|
| Northeast | 12 | \$125 | \$163 | \$1252 |
| Southeast | 49 | 122 | 165 | 191 |
| North Central/Plains | 45 | 110 | 151 | 197 |
| Southwest | 23 | 110 | 175 | 233 |
| West | 42 | 174 | 206 | 297 |

TABLE C.6 2016 Customer Accounting, Customer Service & Sales Expense Per Retail Customer

| REGION | NUMBER OF UTILITIES | FIRST QUARTILE | MEDIAN | THIRD QUARTILE |
|----------------------|---------------------|----------------|--------|----------------|
| Northeast | 12 | \$59 | \$110 | \$165 |
| Southeast | 49 | 43 | 54 | 67 |
| North Central/Plains | 45 | 41 | 56 | 80 |
| Southwest | 23 | 40 | 52 | 74 |
| West | 42 | 61 | 94 | 146 |

TABLE C.7 2016 Administrative and General Expense Per Retail Customer

| REGION | NUMBER OF UTILITIES | FIRST QUARTILE | MEDIAN | THIRD QUARTILE |
|----------------------|---------------------|----------------|--------|----------------|
| Northeast | 12 | \$173 | \$213 | \$317 |
| Southeast | 49 | 125 | 150 | 197 |
| North Central/Plains | 45 | 140 | 207 | 355 |
| Southwest | 23 | 112 | 170 | 296 |
| West | 42 | 123 | 185 | 269 |

Appendix D.

Model City Charter Provisions for a Public Utilities Authority

Foreword

These Model City Charter Provisions are designed to assure an adequate legal and organizational basis for efficient, reliable and financially sound performance by municipally owned utilities. Model provisions can serve as useful guides, but city officials (including the law director or city attorney) and citizens concerned with a charter revision will need to review and adapt these suggestions to conform with local and state circumstances. Provisions such as those calling for appointment of utility commissioners by the mayor may not meet local conditions, since utility commissioners are elected in many cities. In some cities, the city council oversees the operations of the municipal utility. The term “city” in this document also refers to any other type of local government organization or political subdivision, such as towns or villages.

The document provides a general guideline, based on the experience of a number of municipal electric utility utilities in the United States. It is imperative that bond counsel and local counsel review these model provisions for their applicability and suitability to local conditions.

These Model City Charter Provisions for a Public Utilities Authority were first prepared in 1952. Revisions were made in 1962, 1977, 1986, 1996, 2012 and 2018.

The 2018 review and revisions were made by the associates and partners of Duncan & Allen, Washington, D.C. and American Public Power Association staff Ursula Schryver, Vice President of Education & Customer Programs, and LeAnne Sinclair, Director of Customer Programs.

Authority



Public Utilities Authority

There is hereby created a Public Utilities Authority for the City of _____ (the “Authority”), which shall be responsible for the planning, development, production, purchase, transmission and distribution of all electricity, gas, water, telecommunications, cable television and other utility-related services by the city.

Board, Its Organization & General Provisions



Board of Public Utilities Commissioners

There is hereby created the Board of Public Utilities Commissioners of the city (the “Board”), which shall have exclusive jurisdiction, control and policymaking responsibility of the Authority and all its operations and facilities. The Board shall have all powers and duties possessed by the city to construct, acquire, expand and operate municipal utility services, and to do any and all acts or things that are necessary, convenient or desirable in order to operate, maintain, enlarge, extend, preserve and promote an orderly, reliable, economic and prudent administration and provision of such utility services.

The Authority, under the supervision and control of the Board, shall operate as a separate unit of city government, except as otherwise provided in this charter. Both the Board and the Authority shall be free from the jurisdiction, direction and control of other city officers and of the city council, except as otherwise provided herein. The Authority may sue or be sued in its own name. All damage claims arising from the operations of the Board and the Authority shall be paid by the Board, acting on behalf of the Authority, from the appropriate funds of the respective utility systems of the Authority. The Board may, from time to time, make, establish, alter or amend bylaws, rules and regulations not in conflict with law or this charter for the transaction of its business.



Organization of the Board

(a) Number of commissioners.

The Board shall consist of five commissioners, to whom may be added, at the discretion of the city council, either the mayor, or the city manager, or a representative of the council, as an ex officio member without vote.

(b) Appointment and tenure.

The commissioners shall be nominated by the mayor and confirmed by the council. The first commissioners shall be appointed to serve initial terms of one, two, three or four years, from the first Monday of the month following the effective date of this charter. The initial term of each commissioner will be designated by the mayor, provided that no more than two commissioners may serve a coterminous term. Subsequent appointments shall be for terms of four years, unless the commissioners shall be removed from office as provided in subsection (d) of this section. No commissioner shall serve for more than two consecutive terms. Members shall continue to hold office after the expiration of their respective terms until such time as the nominated replacement is confirmed by the council.

(c) Vacancies.

Vacancies shall be filled by the mayor, with the approval of the council, for the balance of any unexpired term. No vacancy on the Board shall impair the right of the remaining commissioners to exercise all the powers of the Board.

(d) Qualifications.

All commissioners must be residents of the municipality and customers of the Authority at the time of their appointment and during their terms of office. No voting commissioner may hold any city office or be an employee of the city government or conduct any business with the Authority. A commissioner convicted of a felony shall be removed from office. In addition, commissioners may be suspended or removed from office by the mayor, for cause and with the approval of the council. The council will review any suspension or removal within 30 days.

(e) Compensation.

Commissioners serve on a volunteer basis and shall not be compensated for their services. Commissioners may be reimbursed for expenses (including any training expenses) incurred in carrying out their official duties, to the extent reasonably related thereto.

(f) Officers.

The Board by majority vote shall elect from among its members a chairman who shall preside over the meetings of the Board and a vice-chairman who shall act for the chairman during absences. The general manager or other staff member(s) of the utility shall be responsible for maintenance of records. Election of officers shall be held at the first regular meeting at which all members are present following the appointment of a new commissioner for a full term, but not later than the second meeting following the appointment.

(g) Meetings.

(i) The Board shall establish a schedule of meetings. Special meetings can be held as required following appropriate notice. The Board shall adopt rules for the conduct of its meetings. No action shall be taken by the Board except by the affirmative vote of at least three commissioners, who shall constitute a quorum.

(ii) Meetings and documents of the Board are open and available to the public, as required by and subject to open meetings and open records laws of the State. Subject to the foregoing, where materials and/or discussions pertain to such issues as utility personnel, property acquisition or disposal, potential or actual litigation, or to power supply proposals, negotiations, trade secrets, competitive confidential business information, or contracts, executive sessions or privacy exclusions may be employed.

(iii) The regular meeting of the Board shall be the _____ day(s) of each month at _____ p.m. All meetings of the Board shall be held in (name of room) of the City Hall, unless otherwise announced. The agenda for each meeting of the Board, and the announcement of an alternate meeting location, shall be posted in a public place, at least 72 hours in advance of the proposed meeting.

(h) Errors and omissions.

The Authority shall hold harmless and indemnify its commissioners, general manager, agents and employees to the full extent permitted by law, including, but not limited to, all liabilities, expenses and losses incurred by such persons in connection with acts or failures to act, other than those constituting gross negligence or willful violations of laws (as determined by a final decision of a court of competent jurisdiction), committed within the scope of their duties, and shall defend, at the Authority's expense (including by advancing legal expenses where necessary and appropriate), all related claims and suits.



Organization of the Authority

(a) Divisions.

Within the Authority there shall be separate divisions for the electricity, gas, water, telecommunications, cable television and any other utility operations. Separate funds and accounts shall be kept for each division as required by the uniform systems of accounts for each such utility, as promulgated by the Public Utilities Commission of the state or the Federal Energy Regulatory Commission. Each division shall be operated independently of the others, except insofar as the Board determines joint operations to be advisable and economical. Expenses incurred in joint operations shall be equitably prorated among the divisions of the Authority.

(b) Policy.

The Board shall establish an annual budget and written policies governing utility operations to cover such areas as employees' duties, customer rates, service rules and termination procedures, expenditures of funds, long-range planning and other appropriate activities.

(c) General manager.

The Board shall appoint and employ a general manager who shall be qualified by training and experience for the overall management of the Authority. The general manager shall serve at the pleasure of the Board, which shall determine his/her salary and shall have such authority as delegated by the Board. The general manager shall determine the number of employees and, if appropriate, contractors, necessary for the operation of the utility, and establish their duties and compensation. The general manager shall have control of all actual construction and repairs, the immediate management and operation of the Authority and the enforcement and execution of all rules and regulations, programs, plans, policies and decisions made or adopted by the Board. The general manager shall maintain suitable permanent records regarding actions taken. The general manager shall prepare (or oversee the preparation of) plans and specifications, take bids and execute contracts, subject to the direction and approval of the Board. The general manager shall prepare and submit to the Board periodic reports on the Authority's financial condition, reliability of service and compliance with local, state and federal laws.

(d) Other employees.

There shall be such other officers and employees of the Authority as may be provided by the Board. The officers and employees shall be appointed and removed by the general manager subject to the provisions of applicable local, state and federal laws or binding contracts entered into between employees and the Authority.

(e) Surety bonds.

The Board may require surety bonds for any of the officers and employees of the Authority in such amounts as the Board deems necessary. The premiums for the bonds shall be paid by the Authority in the same manner as any other operating expense.



Powers and Duties of the Board

(a) Real estate and contracts.

The Board, in the efficient and economical operation of the Authority, both inside and outside city limits as state law permits, may: (1) sell the Authority's products and services to public and private corporations and to other consumers; (2) construct, operate and maintain generating plants, distribution systems, transmission lines and other facilities, including analogous facilities to produce, distribute and transmit other utility services; (3) purchase real estate and franchises; and (4) enter into all contracts, leases and agreements in furtherance thereof.

(b) Extensions of services.

The Board may adopt regulations governing extensions of service of the Authority both inside and outside city limits in accordance with state law. The regulations shall provide the conditions under which the extensions shall be made to render them compensatory and shall provide that each extension project shall, when completed, become the property of the city whether on public or private property. The Board may provide for refunds where advances by the person benefited are necessary to make extensions compensatory.

(c) Joint operations with others.

Subject to applicable state law, the Board may, on behalf of the Authority, enter into contracts and agreements with any public or private corporation(s) or any person(s) or individual(s), both inside and outside the boundaries of the city and state: (1) for the joint use of property belonging either to the Authority or to the other contracting party(ies) or jointly to both/all parties; and (2) for the joint acquisition of real and personal property, rights and franchises, and the joint financing, construction, and operation of plants, buildings, transmission lines, and other utility-related facilities.

(d) Eminent domain.

The Authority may enter upon any land or water for the purpose of making surveys and may exercise the right of eminent domain in like manner as the city, and to the same extent as the city, when the Board determines that public necessity or convenience requires such action.

(e) Use of thoroughfares for utility installations.

The Authority may use the ground or space over, under or along any public way (including any road, railway, highway, street, sidewalk, thoroughfare, alley or waterway) in its operations, but shall in all cases, and subject to the applicable general regulations of the city and state, cause the surface of the public way to be restored to its usual and prior condition.

(f) Rates.

The Board shall determine rates to be charged for gas, electricity, water, communications and other utility services rendered by the Authority. Rates shall be just, reasonable, compensatory and with no undue preference or discrimination, provided that the Board may set special rates, by contract or by rate schedule, if reasonably justified by economic development or other community and municipal goals, provided that such special rates shall not place undue hardships or jeopardize reliable service to other customers or customer classes. The Board may require reasonable deposits as security for the payment of charges for utility services and may provide for the return of the deposits when satisfactory consumer credit has been established or upon the cessation of utility service after payment of all amounts owing, at the discretion of the Board.

(g) Authorization for expenditures.

No money shall be drawn from the funds of the Authority nor shall any obligation for the expenditure of money be incurred except in conformity with authorization by the Board. Without prejudice to the generality of the foregoing, payments in the general course of business shall be made to the extent evidenced by documentation approved by the general manager or by some other employee to be designated by the general manager.

(h) Use of utility funds.

All utility revenues shall be directed to the provision of utility services and not applied to the general fund of the city, unless the transfer of revenues constitutes a payment in lieu of taxes. A formula shall be established for these transfers to the general fund of the city that does not place an unreasonable financial burden on the electric utility or its consumers. Any shared utility/city funds or services (e.g., support of such city departments as human resources, legal, information technology or others) or services supplied gratis or at a discount to the city (e.g., streetlighting, holiday lighting, lighting for municipal buildings) shall be accounted for directly and explicitly to assure that the totality of value transferred from the utility to the city is consensual, appropriate, transparent and recognized.

(i) Bond issues and other indebtedness.

Subject to applicable state laws, the Board may authorize the issuance and sale of revenue bonds or other types of indebtedness necessary to finance the acquisition, construction, improvement, and extension of the utility facilities owned by the city or Authority, including facilities owned or operated jointly with others. Use or issuance of general obligation bonds may entail approval by the city council.

(j) Short-term indebtedness.

The Board may borrow money up to and not exceeding \$ _____ for periods not to exceed ____ years and may issue negotiable notes, payable from the revenues of the Authority or a division thereof, as evidence of the indebtedness. The action of the Board may be by resolution, which may be adopted at the same meeting at which the resolution is introduced and shall take effect immediately upon adoption. The Board will limit short-term borrowing to capital expenditures that have a measurable life/schedule of depreciation. The Board will not engage in short-term borrowing to fund utility operational expenses, except to address very brief and minor cash flow considerations.

(k) Public information expenditures.

The Board may authorize reasonable expenditures to acquaint the public with the policies, operations, programs and plans of the Authority or to protect the integrity, reliability, public ownership, competitiveness and ability to extend service of the utility(ies).

(l) Investment of surplus funds.

The Board may invest surplus funds of the Authority in securities that are safe and authorized by bond resolution, by state investment regulations or other specific action by the Board.

(m) Accounting, finance, budget and planning reports.

The Board, in addition to the reports and accounting it may otherwise be required by law to make, shall furnish to the city council its annual financial report, which shall include a balance sheet and a statement of operations showing the financial condition of the Authority and each separate division, prepared according to the uniform system of accounts or generally accepted public utility accounting principles

required by the Public Utilities Commission of the state or the Federal Energy Regulatory Commission. The funds and accounts of the Authority shall be audited annually by a certified public accountant, and shall be open to public inspection. The Board shall also annually prepare a budget forecast for the ensuing year and furnish a copy to the mayor and the city council. If the budget requires payments to or from the general fund of the city, it shall be submitted to the mayor and the council in a manner prescribed by the charter for the use of such funds. The Board may also submit to the city council information concerning long-term power supply arrangements, capital improvement projects and other programs that may have an impact on the city.

(n) Delegation of powers.

While the Board must retain certain powers to itself, *i.e.*, budget approval, rate-setting and issuance of long-term indebtedness, it may from time to time delegate in writing other powers to officers or employees responsible to it, as necessary.



General Provisions

(a) Disposition of public utilities.

The city shall have no authority to cease to operate, or to sell, lease, abandon or in any other way dispose of any public utility owned by it, without first holding a public hearing during which the city's financial adviser shall present a report to the city council concerning all relevant revenues and savings associated with the Authority throughout the city's ownership, and an analysis of all revenues, benefits (such as, but not limited to, reduced rates for municipal services, economic development, employment, local control, etc.) and savings to be lost by the city through the proposed sale of the Authority.

There shall be two council votes of at least four out of five Board members, with such two votes at least 12 months apart, to call a referendum election concerning sale of the Authority. The city will hold a referendum election, which must be passed by a supermajority of two-thirds (66 2/3 percent) of the voters, voting at the election, to approve such sale.

(b) Existing obligations.

Contracts and obligations relating to the utility systems of the city entered into or incurred prior to the effective date of this charter shall not be impaired and shall be binding upon the Board and the Authority, insofar as they apply to the Authority.

(c) Repeal of prior statutes.

All statutes and parts of statutes inconsistent with any provision of this charter are hereby repealed.

(d) Separability of provisions.

The sections and subsections of this charter are declared to be separable, and in the event any one or more sections, subsections or parts thereof be declared unconstitutional, illegal or unenforceable, such determination shall not affect the validity of other provisions of this charter.

(e) Effective date of charter.

This charter shall take effect ____ days from and after its adoption by ordinance passed by the city council.

Appendix E.

Valuation Techniques

There are three primary techniques used to value public power utilities that are considering selling their systems to a non-municipal buyer: the cost approach, the income approach and the market approach¹. Very simply, the “cost approach” is a cost-based valuation that quantifies what would be required to replace the utility property. The “income approach” valuation analyzes the enterprise’s earning potential over time. The “market approach” or “comparable sales” is the present value of future benefits, as indicated by obtaining a consensus of what independent third-parties in the marketplace judge it to be.

The cost approach is the most widely used in approximating the value of the public power utility to its **customer-owners**. This approach is a common benchmark in utility valuation studies. However, it may be useful to conduct an analysis using all three methodologies in reaching a thorough and accurate valuation of a public power utility. An analysis can weigh the different approaches as required to reflect local conditions and circumstances.

1 The Cost Approach

The cost approach is a common method for valuing utility property. There are three ways to implement the cost approach:

1. **Replacement cost approach** – the cost of obtaining a property of equivalent use, *i.e.*, reflecting the age and conditions of the facilities
2. **Original cost method** – the cost recorded on the books of an enterprise at some previous time for the purchase, construction or creation of the asset
3. **Reproduction cost approach** – the cost of constructing identical facilities

1

Cost Approach

quantifies what would be required to replace the utility property

2

Income Approach

analyses the utility’s earning potential and other economic benefits over time

3

Market Approach

is the present value of future benefits, determined by a consensus of what independent third parties in the marketplace judge it to be

¹This document was updated and revised in 2017 by attorneys at Duncan & Allen in Washington, D.C.

This overview will not review the reproduction cost approach in depth as few utility evaluations have ultimately used that methodology. One reason for this is that, in many cases, it is not possible to physically reproduce the system using the same assets, much as one could not “reproduce” a 1950s vacuum-tube television set today.

Replacement Cost New Less Depreciation

The replacement cost approach is also referred to as “Replacement Cost New Less Depreciation” (RCNLD). The approach is based upon the theory that no investor would pay more than the cost to replace the same system of the same characteristics. This method seeks to measure the future benefits of ownership by estimating the cost of replacing the current capability of the utility property.² The RCNLD method is an accepted methodology and, in some states, may be required to be used by statutory formula if the buyer and seller are unable to agree on a negotiated value of an electric utility.³ Most utilities are comprised of complex generation, transmission, and distribution networks, all of which have various service lives and different years of installation. Constantly changing technology means the cost to replace a facility today may be entirely unrelated to cost to replace it in the future. This helps explain why the reproduction cost methodology is rarely employed.

The following assumptions form the basis of the RCNLD analysis:

- The most economical sequence of construction is utilized. All physical utility assets are designed, permitted and constructed in one continuous effort, i.e., only one start up and shut down cost is included.
- The construction activities follow the same historical sequence as that followed in the service area.
- General contractors would act for the utility and under its supervision, using current construction practices and procedures to replace property in a manner that achieves all efficiencies.
- The replacement unit prices from recent sources are used or are adjusted based on an appropriate index.
- The replacement unit prices include the costs of all labor, material and equipment directly related to specific items. Any premiums, overtime costs, or special procurement mobilization/demobilization costs are not included.

- The replacement cost includes the costs associated with overhead and engineering fees incurred throughout the course of the project. These costs are presented as a percentage of the total construction costs of the reproduced facilities and are depreciated in the replacement cost analysis.

Original Cost Less Depreciation

Original cost less depreciation, also referred to as “book value” or “net book value,” is the original cost of a fixed asset reduced by accounting depreciation. It is the amount at which an item is carried in accounting records and on financial statements. For investor-owned utilities, this methodology is also typically the “rate base” on which the IOU is allowed the opportunity to earn a return.

This “book value” usually sets the floor for utility valuations, assuming no contingent liabilities. Although original cost less depreciation may seem appropriate for many reasons, it does not represent the value of a public power utility to its customer-owners because it fails to consider indirect benefits (discussed below in Section A.4).

Even if the original cost starting point were representative of value at some previous moment, depreciated original cost is unlikely to equal current value. Property accounting practices vary widely, and in some cases, property that is disposed of is not removed from the books. Other property is fully depreciated and written off, disappearing from accounting records, even though it is still in use. Moreover, it is unlikely that accounting depreciation matches the decline in value of the property over time.

Nevertheless, private evaluators and potential purchasers of public power utilities often use original cost less depreciation to estimate the value of utility property because it is a simple, easy method that does not require an inventory of property, estimates of price trends, or the investigations required by other methods, assuming the utility has used accurate and generally accepted accounting methods. Data needed for the calculations are relatively easy to obtain from accounting records. More importantly, because original cost less depreciation is the method used for valuing an investor-owned utility’s rate base for ratemaking purposes, private evaluators and potential purchasers incorrectly assume that it is appropriate for

²Gordon V. Smith, *Corporate Valuation* (New York: John Wiley & Sons, Inc. 1988), p. 73-77. The difference between reproduction cost and replacement cost may be illustrated through an example. The reproduction cost of a steam-driven pump would be the cost of obtaining an identical pump, while the replacement cost of a steam-driven pump may be the price of an electric pump of the same capacity, capable of doing the same amount of work.

³K.S.A. §§ 66-1,176(c); Utah Code Ann. § 10-2-421.

valuing a public power utility.⁴ In addition, of course, this method also yields the lowest value, which is most attractive to a potential purchaser.

There are three components to the overall depreciation taken in this approach. The first component of depreciation, and the first to be applied, is the physical depreciation of the asset. The second level is the functional obsolescence of the existing asset and is deducted from the replacement cost new less physical depreciation. Functional obsolescence is associated with the facilities themselves and is inherent to the system itself being derived from construction, configuration, operations, management and administration. The final component in the method is external obsolescence. External obsolescence accrues from all factors impacting the system, including the impact of regulation, customer acceptance, historical rate and charge regulation or lack thereof, the ability to generate excess revenues sufficient to support the physical asset value, market conditions, development conditions and many other factors external to the system itself.

Reproduction Cost Less Depreciation

Reproduction cost is the value of an asset if it were built today using the same specifications as when originally constructed. To estimate reproduction cost, the original cost of the property is used as a starting point and increased or decreased by applying price index numbers that are designed to account for changes in construction costs.⁵ The cost index used in this valuation technique should be specific to the purpose, time period and geographical area. The cost of reproduction is then reduced by accumulated depreciation, an amount that reflects the loss in value due to physical deterioration and obsolescence over time.⁶ In some appraisals, there is an investigation to estimate the physical and functional depreciation of the subject properties. The result of this calculation is reproduction cost less depreciation, a type of cost-based estimate of the value of the municipal electric utility's property.

The advantage of the reproduction cost less depreciation method is that it takes into account construction cost increases over time, and is therefore much more

ORIGINAL COST LESS DEPRECIATION: COMPONENTS OF DEPRECIATION



⁴Original cost less depreciation is the proper method for the valuation of investor-owned utility property because the majority of state and federal commissions use the original cost method to determine the amount of the company's rate base. The rate base is the accumulated capital cost of facilities purchased or installed to serve the utility's customers on which the utility is allowed to earn a return. The financial commitment of a private utility's investors is reflected in the rate base. They have invested capital and are entitled to a "return of" capital (through depreciation) and "return on" capital (through a return on rate base) their investment. Over time, an investor-owned utility's stockholders routinely recover capital invested through depreciation charges and annual profits allowed by state regulatory commissions. When the property is sold and removed from the company's accounts and rate base prior to full depreciation, compensation equal to the property's remaining net book value will make the company and its stockholders whole. Anything more than this would be a windfall profit to the investors. As a franchised monopoly (with condemnation powers) with an obligation to provide service under conditions of regulation, the investor-owned utility gives up its right to charge a market-based price or to profit from the sale of its assets (beyond the return allowed by regulators).

⁵For example, the *Handy-Whitman Index of Public Utility Construction Costs*, published by Whitman, Reardon Associates, is often used.

⁶Depreciation is the loss in usefulness, expired utility or diminution of service yield from a fixed asset or fixed asset group that cannot or will not be restored by repairs or replacement of parts.

representative of value than original cost. However, there are several problems with reproduction cost less depreciation. As it relies on property records for estimates of value, the form and content of those records should be assessed to determine their thoroughness and suitability to the valuation process. Further, the methodology does not take into account what type of facility would be installed today due to changes in technology. For this reason, the reproduction cost less depreciation methodology yields a lower number as an approximation of the value of a public power utility to its customer-owners. Accordingly, this method is not often used.

Cost Approach: Other Issues to Consider

In the valuation of an entire business, courts and appraisers commonly recognize values in excess of the reproduction or replacement cost of the physical assets. The cost approach may not account for these indirect benefits, i.e., “those that do not have physical substance, but grant rights and privileges to the owner, make a business go, and contribute to its earning power.”⁷ The cost-approach methodology does not include values such as franchise, goodwill, service area considerations, potential growth or values attributable to an ongoing business.

These are important considerations when a private utility buyout of a municipal utility is proposed. In most cases, the private utility would buy out the entire public power utility, including all indirect benefits of the enterprise. In contrast, when a city buys assets of an investor-owned utility (for example, after an annexation), it usually takes over only a portion of the private company’s distribution system.

Indirect benefits that contribute to a publicly owned utility’s value include:

- The franchise or right to serve a geographical area and to collect revenues for services rendered
- The right to provide for a margin above cost as a surplus to be used for lawful purposes, such as transfer to the general fund (in lieu of taxes)

- The right to issue tax-exempt bonds for capital expansion
- Bulk power supply contracts with federal power agencies and other wholesale suppliers that take advantage of statutes granting preferential access to low-cost electric supplies, such as from federally operated hydroelectric facilities
- Contracts to provide special energy services to residential, commercial and industrial customers in the service area
- Positive relations with customers, developed through years of providing quality service and competitive rates
- Rate and service policies that match local resources with local needs
- Priority in obtaining Federal Energy Regulatory Commission preliminary permits and licenses for hydroelectric projects
- The ability to design rates, terms and conditions to be used for economic development, to attract new customers and for other uses beneficial to the community.

2 The Income Approach

The income approach measures the value of a public power utility based on its earnings potential and other economic benefits it provides the citizen-owners over time.

The income approach begins with a projection of the income-producing capability. The enterprise’s economic value of a municipal utility is determined by calculating the net present value of the income stream expected to flow from operations during a given period.⁸ Using the income approach, one usually makes an assumption about the duration of the income stream from the asset and calculates the total benefit to the owner for that time period.⁹ The net present value of the electric system is

⁷ Gordon V. Smith, *Corporate Valuation* (New York: John Wiley & Sons, Inc. 1988), p. 130.

⁸ “Income stream” is the estimated level of earnings of a business enterprise during normal operations. Because public power utilities are nonprofit, “earnings” (as reflected in net income) may not be an appropriate measure. Net cash flow or some other measure of income stream may be used, but it should account for all economic benefits that flow from the utility to the customer-owners.

⁹ “Duration of the income stream” is the period during which economic benefits will be derived from the asset. An engineer or estimator usually establishes the duration of income stream, sometimes called “study period,” based on judgments about the characteristics and condition of the utility property. Recent valuation studies have used 20, 25 and 27 years as the study period. However, if the net income stream (net income = total income - costs) includes depreciation costs, then the renewal of the system is incorporated in the calculation of net income and there is no reason why the benefits of the system should be assumed to end at a particular point 20, 25 or 27 years in the future. The calculation of benefits-to-perpetuity is not difficult in this age of computers. Depending on the interest rate and the number of years the value in perpetuity is being compared to, the result might not be much different since discounting reduces the present values of amounts in the very distant future to insignificant levels relatively quickly.

determined by applying a discount rate to the amount of the total benefits.¹⁰

The income approach is well suited to the valuation of a public power utility because it accounts for the utility's payments in lieu of taxes, free or low-cost services to municipal government and other economic contributions to the local community. Accounting for financial contributions to local government is essential in an economic assessment because the public power utility is often the largest single taxpayer in the community and an important source of revenue for local government.¹¹

In addition, the income approach may account for the economic benefit that nonprofit municipal utilities provide their customer-owners in the form of lower rates. Lower rates for homes and businesses provide a return on investment to the customer-owners. Because the public power community may have opted for the lowest possible rates in accordance with sound business principles, foregoing higher net revenues to transfer to the city, the rate benefit should be included in the calculation.¹²

The income approach does not account for the public power utility's debt. A public power utility with a low net income due to high debt-service costs would be greatly undervalued by a methodology that does not account for outstanding debt. Accordingly, a sale price calculated on the income approach is acceptable only if the buyer also takes over the public power utility's debt or compensates the city by an additional amount so it can pay off the debt.¹³

In general, the development of the income approach will include the following steps and decisions:

- Determine the appropriate term to use for the projection period. Based on the individual circumstances, this period may change from acquisition to acquisition. For example, the anticipated remaining useful life of the

physical assets may be used if adequate information exists for this determination.

- Review relevant past and present financial and operating data available for the utility as it exists today. This will include sources of operating and capital revenues and expenses; transfers; depreciation (if appropriate); personnel and associated costs; historical customer growth and usage patterns; known and anticipated changes in future customer statistics; and similar factors.
- Develop a customer and usage forecast corresponding to the projection period chosen based on the review of past and present actual financial data and any known or anticipated changes in the future.
- Develop a schedule of revenues and expenses for the projection period based on the customer forecast and current financial statistics of the system while reflecting applicable adjustment thereto pursuant to the ownership assumed in the analysis. In projecting the revenues and expenses, other adjustments may be necessary based on the assumptions inherent in the particular analysis.
- Determine any appropriate capital contributions and/or capital expenditures that may be necessary as a result of new customer growth or capital improvement needs in the future. This facet of the cash flow analysis will depend on factors such as the assumed customer forecast. Based on such assumptions, the inclusion of capital revenues and/or capital expenditures in the present value analysis may be appropriate.
- Determine the applicable present value discount factor to be utilized in the analysis. This factor will vary depending on the ownership assumed in the future. For example, under a public ownership scenario, the current interest rate on long-term municipal utility revenue bonds may serve as the basis for the discount rate.
- Apply the present value discount factor to the anticipated cash flows for the projection period.

¹⁰ "Discount rate" is the rate applied to the total net benefits (income stream) over a given period to determine the net present value of the system. For a discount rate, public power valuation studies often use the current interest rate on revenue bonds for the city as a reasonable cost of money. Valuation studies often use a range of interest rates to calculate a range of present values.

¹¹ This appendix presents the income approach as it would be used to measure value of a municipal utility to its owner (the city and the customers), not to some potential buyer. Some public power valuation studies have presented two initial base cases: one based upon continued ownership and the other based on private utility ownership. For example, the municipal base case valuation might be based on net present values of current cash flow generated for the city. The private utility base case is a recast of the utility's revenue requirements assuming ownership by a private company. The differences in operation, structure, taxable status for franchise fees, property and ad valorem taxes, increased debt cost, federal income taxes are all reflected in the private utility income statement, which becomes the basis for developing a value under this other type of ownership.

¹² One way to measure this economic benefit would be to calculate the public power utility's approximate net revenues to the city if it were to use an alternative rate structure, *e.g.*, the investor-owned utility's rate structure.

¹³ As discussed further in Appendix F, in some cases, the public power utility's bond resolution requires the payment of tax-exempt debt prior to the sale of the utility. If the municipal electric system has joint debt with another entity (*e.g.*, joint action agency, municipal water system, municipal gas system), other restrictions on paying off tax-exempt debt may apply.

- Allow consideration of the reversion value of the assets in the last year of the analysis, if remaining service life exists or such reversion is limited to the continuing normal operating life of the assets. If the project uses a 30-year period for analysis, the reversion value would be highly speculative considering the age of the system.
- Make any other appropriate adjustments which may be necessary.

Special Public Power Issues in Applying the Income Approach

An income approach valuation should consider the peculiarities of a public power utility's accounting system in order to account fully for its capacity to generate benefits to the city. For example, if a municipal electric utility's revenue transfers to the city's general fund are normally deducted as a utility operating expense, this will be reflected in lower net income. Thus, an income approach valuation based on the net income amount would most likely undervalue the public power utility.

An income approach valuation of a public power utility should identify improper record-keeping and other problems that result in inaccurate data on revenue and expenses; otherwise the study may overlook some of the utility's direct and indirect contributions to the city. Some municipal electric utilities, especially smaller ones, do not report all of the free electric and non-electric services they provide to the city. Also, it may be difficult to account for indirect payments when utility operations are consolidated and reported in combined utility financial statements. If the municipal electric utility has been improperly charged for capital improvements to other municipal entities, the electric utility's income-producing capability will be understated.

Finally, valuation studies are typically conservative in anticipating growth in the electric utility's earnings, basing revenue projections on historical data. Revenue projections, however, should reflect a sufficient rate of economic growth in the community or the planned annexation of new service territory. The study may identify ways the electric utility can improve operating efficiencies, increasing revenues to the city and the value of the asset to the local community.

Additionally, the income approach generally produces higher asset values than the cost approach because it is more comprehensive in accounting for additional benefits. For example, based on a 1989 study, the San Antonio municipal utility would have to have been sold for

\$8.7 billion in order to match the utility's projected payments to the city. This was substantially more than the book value of \$4.3 billion and the depreciated reproduction cost of \$5.1 billion. It seemed unlikely that any utility would pay \$8.7 billion for the public power utility unless it were allowed by the state public service commission to recover this premium over book value in its electric rates. But if the investor-owned utility were allowed to recover the premium in rates, the customers would not get the full benefit of the \$8.7 billion because they would be paying for some or all of it themselves through the higher rates charged by the IOU.

Other Income-Producing Assets May Fail to Replace the Municipal Utility

If the municipal utility is an important source of revenue for local government, policymakers may consider the sale only if the asset can be replaced with another revenue-producing asset that will continue to deliver economic benefits to the community. Although the potential buyer may suggest that its franchise fees and property taxes will replace the municipal utility's financial contribution to the city, such fees and taxes are often far less than the contributions made by the municipal utility. Moreover, they are often flowed through directly to local ratepayers, thus negating any claimed benefits.

Proponents of the sale may suggest replacing the municipal utility's contributions with a permanent trust fund that will provide income to the city.¹⁴ The proposed endowment, set up with proceeds from the sale, must be large enough to provide income equal to or more than the municipal utility's financial contributions to the city. As demonstrated in the San Antonio example later in this appendix, the income approach to valuation may be used to analyze endowment fund proposals and to estimate the minimum acceptable sale price needed to create a sufficient fund.

3 The Market Approach/Comparable Sales

The market approach seeks to measure the present value of future benefits by looking at what others in the marketplace have judged it to be. There are two requisites: an active public market and an exchange of comparable properties. The residential real estate market is an example of conditions that are suitable to the market approach to valuation.¹⁵

¹⁴Research shows that such trust funds are rarely permanent. See Chapter 10.B: Risks with Diminishing Proceeds from the Sale.

¹⁵Gordon V. Smith, *Corporate Valuation* (New York: John Wiley & Sons, Inc. 1988), p. 83.

These conditions are not present in the market for publicly owned utilities. At most, only a few public power utilities are sold each year (and a like number of new utilities are formed), and these sales clearly do not constitute an “active public market.”

Even if a neighboring municipal electric utility were sold recently, that utility is unlikely to have characteristics similar to the public power utility being valued. The age and condition of the generating plant and distribution system, wholesale power contracts, customer base and local economic conditions vary with each utility, and these elements affect the value. These factors affect the electric utility’s competitive position, its earning potential and its value to the local community.

When two or more neighboring public power utilities receive buyout offers from an investor-owned utility, there is a tendency to compare the offers on the basis of “dollars per meter.” This oversimplified shortcut to valuation can be very misleading. Dollars-per-meter comparisons mistakenly assume that the two or more utilities are comparable and an active market for public power utilities exists. The market approach and its variations are not recommended for the valuation of a public power utility. A thorough evaluation of the individual utility and its benefits to customer-owners is the preferred method of valuation.

Utility Valuation Examples



City of Delano, Minnesota

2011 STUDY—2,300 CUSTOMERS

Valuation methods applied

In 2011, the Delano Water, Light and Power Commission (DEU) requested a valuation of its electric assets. The resultant report estimated the value of DEU from the view of a prospective buyer using the following methodologies: (1) original cost less booked depreciation, (2) replacement cost new less depreciation, and (3) market approach/comparable sales. The municipal utility’s valuation process is summarized below.

| | Valuation (in Millions) |
|--|-------------------------|
| Net Book Value | \$11.6 |
| RCNLD | \$13.7 |
| Comparable Sales (1.38 times book value) | \$16.0 |

The DEU study applied the comparable sales approach as a comparison to net book value as a way to normalize the size differences in transactions to create an expected range in price to net book value. The valuation showed a total system valuation ranging from \$11.6 million to \$16.0 million.

The DEU study also looked at the valuation of generation assets only. That analysis showed DEU’s generation assets plant in service balance was \$8,305,458 at year end December 31, 2010. The corresponding accumulated depreciation balance was \$3,219,510, yielding a net plant balance of \$5,085,948. The installed capacity of DEU’s generation facilities was approximately 25 MW. Thus, the installed capacity cost of generation was \$348/kW and the net investment was \$215/kW. The report noted that capacity was very inexpensive at the time of the study and selling the generating facilities would not be economically feasible. Further, the generation was all diesel-fueled, making it very expensive to operate.

continued on next page...

TABLE E.1 Delano Electric Utility / Electric Generation Plant Investment

| | 2006 | 2007 | 2008 | 2009 | 2010 |
|------------------------------------|---------------|---------------|---------------|---------------|-------------|
| Generation | | | | | |
| Plant | \$7,378,537 | \$7,967,160 | \$7,967,160 | \$8,208,211 | \$8,395,458 |
| CWIP | \$324,866 | - | \$76,523 | \$7,167 | - |
| Total Generation Plant | \$7,703,403 | \$7,967,160 | \$8,043,683 | \$8,215,378 | \$8,305,458 |
| Accumulated Gen. Depreciation | (\$2,276,821) | (\$2,502,814) | (\$2,738,730) | (\$2,974,299) | \$3,219,510 |
| Net Generation Plant | \$5,426,582 | \$5,464,346 | \$5,304,953 | \$5,241,079 | \$5,085,948 |
| Gen. Related Inventory | - | - | - | - | \$41,755 |
| Net Generation Assets | \$5,426,582 | \$5,464,346 | \$5,304,953 | \$5,241,079 | \$5,127,703 |
| Installed Generation Capacity (kW) | 23,856 | 23,856 | 23,856 | 23,856 | 23,856 |
| Gross Investment/kW | \$323 | \$334 | \$337 | \$344 | \$348 |
| Net Investment/kW | \$227 | \$229 | \$222 | \$220 | \$215 |

Net Proceeds of Potential Sale

In determining the net proceeds of the sale, the DEU study subtracted the following from the total value of the facilities: (1) electric utility debt refunding, (2) liquidation of other book assets and liabilities, (3) costs to the buyer to retrofit generation facilities to meet RICE (Reciprocating Internal Combustion Engine) standards. Further, the report noted DEU's contracts with the Central Minnesota Municipal Power Agency would likely incur additional costs associated with unwinding those agreements.

Increase in Franchise Fees and Property Taxes

The DEU study analyzed the revenues that would be generated from franchise fees and property taxes if a private utility were to purchase the municipal facilities. The study noted the franchise fee would be charged back to customers served in DEU as a franchise fee in the rate tariffs of a purchasing entity. The DEU study found the city's effective franchise fee as a percentage of revenue was 3.3 percent, based on 2010 annual electric revenue of \$4,744,361. Further, if the assets were sold for book value of \$11.6 million with an effective tax rate of 1.5 percent for the first \$150,000 and 2 percent for the balance, the sale would yield \$231,000 of additional property taxes. However, the city's share would be approximately 46 percent of the total tax, or \$106,000. As the municipal utility donated \$70,000 to the city in lieu of taxes in 2011, the net gain to the city would be only \$36,000 per year.

Delano retains its municipal electric system today.



City of Vero Beach, Florida

2011 STUDY—33,893 CUSTOMERS

Valuation methods applied

The Vero Beach study consisted of a reconciliation of the cost approach, the income approach and the comparable sales approach. The cost approach was weighted at 45 percent, as this methodology had been used in many of the transactions of this type in Florida and was included in the buyout provisions of many franchise agreements. The income approach was weighted at 40 percent, due to the importance of net revenues to service loan requirements. The comparable sales approach was given a 15 percent weight, due to the limited number of sales transactions of this type both within the state and nationwide.

The results of the analyses were as follows:

| Valuation Approach | Value |
|--|---------------|
| Replacement Cost New Less Depreciation | \$197,500,000 |
| Income Approach | \$192,900,000 |
| Comparable Sales Approach | \$168,400,000 |

When the weighting was applied, the total estimated value was \$191,300,000.

Other factors considered

The Vero Beach study analyzed several intangible factors unique to Vero Beach which affected the utility's value. Vero Beach's agreement with the Florida Municipal Power Agency required that, in the event of an acquisition, the city find an appropriate and suitable replacement entity to assume its contract obligations. The Vero Beach study concluded this could cost the city roughly \$140,000. Further, the city's contract with Orlando Utilities Commission allowed the city to terminate the agreement in the event of an acquisition but also required it to pay certain damages as a result. The Vero Beach study estimated that the range of damages for the city related to the Orlando Utilities Commission agreement would be between \$20 million and \$26 million.

Further, the Vero Beach report noted the average contribution to the city of Vero Beach's general fund over the last five years had been 6.16 percent of operating revenues, less cash carryovers. The contribution had historically varied based on economic conditions and the financial health of both the general fund and the electric fund. If the utility were sold, these transfers would no longer occur. Projected out thirty years, the present value of the electric utility to the city was \$141,177,900, after accounting for revenue from hypothetical franchise fees, taxes and administrative fund credits.



San Antonio City Public Service, Texas

1989 STUDY—536,000 CUSTOMERS

A 1989 study used the income approach to evaluate the proposed sale of San Antonio City Public Service. The study stated three criteria against which the proposed sale would be judged: private ownership must benefit the city more than continued municipal ownership; the ratepayers must not be adversely impacted; and there must be no adverse impact on the local economy.

The San Antonio study analyzed the proposed use of proceeds from the sale to establish an endowment fund that would provide long-term income to the city. Given the stated criteria, the study made it clear that the income from the endowment fund, plus taxes and fees paid by the private company, would have to equal or exceed the public power utility's projected payments to the city. It also established that the sale price would have to be sufficient to pay off the public power utility's debt and create a sizable endowment fund. The process the city of San Antonio used in analyzing the proposal is summarized below.

Step 1: Estimate utility's future payments to the city

Payments to the city under municipal ownership were projected to total approximately \$7.6 billion over the next 25 years.¹⁶

Step 2: Estimate the income required from the endowment fund

The taxes and fees paid under private ownership were projected to be about \$1.5 billion. Thus, the endowment fund would have to generate another \$6.1 billion to match the projected payments to the city under municipal ownership.

Step 3: Estimate the sale price required to fully fund the endowment

A declining principal endowment fund, one in which both principal and interest earnings are spent, may be established for a specified number of years. Approximately \$1.8 billion would be needed to establish a declining principal fund that would pay \$6.1 billion over 25 years. To pay off the utility's debt and establish the fund, a sales price of \$4.5 billion would be required, but because the declining principal fund called for all principal and interest to be spent, payments to the city would stop at the end of the twenty-five-year period.

In contrast, continued municipal ownership would increase the city's equity in the utility to \$6.5 billion and direct payments to local government would continue.

As an alternative to the declining principal fund, the city could establish a permanent fund in which the principal is never touched. But the initial size of the fund would have to be very large compared with the declining principal fund. At 1988 interest rates, a fund of \$6.0 billion would be required to provide an endowment fund that matched the projected public power utility payments. Thus, a sale price of \$8.7 billion would be required to pay off the utility's debt and establish the large endowment fund.

Step 4: Estimate the impact on electric rates

To evaluate the impact on electric rates, two issues were considered: local control over rates and the overall level of rates. Under private ownership, cities served by the utility had original ratemaking authority, but appellate jurisdiction resided with the state commission. This meant that if all or part of a rate case were contested by the city, it would be appealed to the state commission. Local control over rates, and the resulting allowance of costs, would pass from the municipality to the state utility commission.

The study noted the impact on ratepayers of the sale of City Public Service. A private utility could support a 23 percent increase in rates over current levels in the first year, based on the normal regulated allowed rate of return on a utility plant.

If the utility were sold far more than book value, higher rates might be justified. If the public power utility were sold at a price sufficient to generate the required income from the endowment fund, \$8.7 billion, and the state utility commission allowed return on the full purchase price, rates could rise by \$14.1 billion over the next 15 years the study estimated.

Step 5: Assess the impact on the local economy

The study considered the financial impact of the proposed sale on the local economy. Under private ownership, up to \$6.5 billion could be paid by gas and electric ratepayers to entities outside the county over 15 years. These expenses would include higher financing costs, state and federal taxes, county ad valorem taxes and other fees and equity returns.

Employment practices also could be affected by the sale. If the purchaser sought to reduce costs by combining functions within its existing organization, many positions could be transferred out of the local economy and consolidated at the private utility's control headquarters or regional operations outside the city.

The city also would lose its ability to offer economic development incentives to existing or prospective local employers. City Public Service was an active partner in the San Antonio's economic development efforts.

The San Antonio study concluded, "proceeds from the sale cannot yield a better return than is currently being earned, except for a sale price which far exceeds what the purchaser would be willing to pay. A sale would most likely result in rates higher than under municipal ownership. In addition, loss of local control over a valuable asset and the resulting dollar outflow would adversely affect the local economy."

San Antonio continues to operate its city-owned electric utility.

¹⁶ Since the renewal of the public power system is accounted for in depreciation expenses, it may be more appropriate to calculate the value of benefits in perpetuity.



Town of Culpeper Electric System, Virginia

1983 STUDY—2,500 CUSTOMERS

A 1983 study of the Culpeper Electric System defined the utility's worth as the present value of all benefits to the town and the future flow of benefits to the town. Using the income approach, the study established a range of values and a minimum acceptable sale price for the electric system. The municipal utility's valuation process is summarized below.

Step 1: Identify and quantify net benefits to the community for FY 82¹⁷

As shown in the table below, the value of benefits to the Town of Culpeper's customer-owners for fiscal year 1982 was estimated at \$538,491.

TABLE E.2 Net Benefits for the Citizens of the Town of Culpeper, Fiscal Year 82

| | |
|--|------------------|
| Net operating income for FY 82 | \$106,426 |
| Utility's transfer to the city's general fund | \$15,000 |
| Depreciation | \$52,567 |
| Estimated value of other benefits to the city | \$57,868 |
| Estimated value of lower town [residential] rates on power sales <i>(Source: investor-owned utility's rate schedules)</i> | \$224,845 |
| Estimated benefit of streetlights, traffic signals | \$33,847 |
| Traffic signal personnel expenses (for maintenance and repair) | \$7,188 |
| Streetlight personnel expenses (for maintenance and repair) | \$5,750 |
| Streetlight supplies | \$9,300 |
| Streetlight replacement | \$25,700 |
| Total Net benefit during FY 82 for citizens of the Town of Culpeper | \$538,491 |

Step 2: Calculate projected benefit stream if town continues to operate the utility

The projected benefit stream was calculated for a twenty-seven-year period, the estimated useful life of the existing electric system. It assumed that the net benefit to citizens would grow at the annual rate of 2 percent, the same growth rate the electric utility experienced over the previous five years. As shown in Table E.3, the net benefit to citizens was calculated for each year from 1982 to 2008 using a 2 percent annual growth rate.

The value of projected benefits to the town for the study period was estimated at about \$19 million. But simply adding up these undiscounted numbers does not account for an important consideration—the time value of money. For example, if a private utility promised to pay \$5 million 20 years hence, it is not the same thing as paying \$5 million today.

The time value of money equates the \$5 million 20 years hence to its present value. This calculation considered the future cash item (the \$5 million), the appropriate interest rate, and the length of time between today and the future cash payment.¹⁸ In an income approach to valuation, the present value of the utility is calculated using a discount rate.

TABLE E.3 Projected Benefit Stream if Town Continues to Operate the Utility

| FISCAL YEAR | NET BENEFIT TO CITIZENRY WITH 2% ANNUAL GROWTH |
|---------------------------|--|
| 1982 | \$538,491 |
| 1983 | 549,260 |
| 1984 | 560,246 |
| 1985 | 571,451 |
| 1986 | 582,880 |
| 1987 | 594,538 |
| 1988 | 606,428 |
| 1989 | 618,557 |
| 1990 | 630,928 |
| 1991 | 643,547 |
| 1992 | 656,418 |
| 1993 | 669,546 |
| 1994 | 682,937 |
| 1995 | 696,596 |
| 1996 | 710,527 |
| 1997 | 724,738 |
| 1998 | 739,233 |
| 1999 | 754,017 |
| 2000 | 769,098 |
| 2001 | 784,480 |
| 2002 | 800,169 |
| 2003 | 816,173 |
| 2004 | 832,496 |
| 2005 | 849,146 |
| 2006 | 866,129 |
| 2007 | 883,452 |
| 2008 | - |
| Total \$19,032,602 | |

Step 3: Calculate a range of present values for the system using various discount rates

The present value of the annual net benefit to the citizens was calculated for each fiscal year in the study period. Several discount rates were used, including a high of 8.5 percent and a low of 6.5 percent. Table E.4 shows the net present value of the Culpeper system calculated at an interest rate of 7 percent.

The net present value using the 7 percent discount rate is approximately \$7.8 million. The Culpeper study, using a range of discount rates, estimated the net present value of the system in the range of \$6.7 to \$7.9 million.¹⁹

Step 4: Analyze the financial impact of selling the utility at various sale prices and interest rates and determine minimum sale price for the utility

The Culpeper study included six scenarios in which proceeds from the sale would be invested at the going interest rate and the annual transfer to the city's general fund would be maintained. This showed the effect of investing the principal (from sale proceeds) at various interest rates and demonstrated the income streams necessary to avoid fiscal upheaval on or cost-shifting to other city departments.

For example, if the public power utility were sold for \$6.7 million and the proceeds invested at 8.5 percent, the town would lose \$197,359 in benefits. A sale price of \$7.9 million with funds invested at 7 percent would result in \$550,172 in increased benefits.

continued on next page...

¹⁷ Data on the system's physical facilities and the estimated value of benefits to the community were provided by R.W. Beck and Associates in the report, *Cost-Benefit Analysis and Evaluation of Municipal Ownership Versus Alternative Ownership of Electric System, Town of Culpeper, Virginia*.

¹⁸ It is clear that a \$5 million deposit made today is worth more than a \$5 million deposit made one year from today. The deposit made today will earn interest for one year and the interest, plus the initial deposit of \$5 million, will exceed the \$5 million deposited one year hence. The present value of any amount, for any period of time, at any interest rate, can be found by multiplying the amount by the factor $[1/(1+i)^n]$. The value i represents the interest rate per period. The value n is the number of periods. Present value tables have been prepared as an aid in calculating present values. The factor used in Table E.4 was taken from a present value table.

¹⁹ Culpeper Electric System had no debt at the time of this study, so this element was not considered in the discussion on minimum sale price.

TABLE E.4 Present Value Calculated at 7 Percent Interest Rate

| YEAR | BENEFITS | FACTOR FROM PRESENT VALUE TABLE | NET PRESENT VALUE |
|-------------|---------------------|--|--------------------------|
| 1982 | \$538,491 | .934 | \$502,951 |
| 1983 | 549,260 | .873 | 479,504 |
| 1984 | 560,246 | .816 | 457,161 |
| 1985 | 571,451 | .762 | 435,446 |
| 1986 | 582,880 | .712 | 415,011 |
| 1987 | 594,538 | .666 | 395,962 |
| 1988 | 606,428 | .622 | 377,198 |
| 1989 | 618,557 | .582 | 360,000 |
| 1990 | 630,928 | .543 | 342,594 |
| 1991 | 643,547 | .508 | 326,922 |
| 1992 | 656,418 | .475 | 311,799 |
| 1993 | 669,546 | .444 | 297,278 |
| 1994 | 682,937 | .414 | 282,736 |
| 1995 | 696,596 | .387 | 269,583 |
| 1996 | 710,527 | .362 | 257,211 |
| 1997 | 724,738 | .338 | 244,961 |
| 1998 | 739,233 | .316 | 233,598 |
| 1999 | 754,017 | .295 | 222,435 |
| 2000 | 769,098 | .276 | 212,271 |
| 2001 | 784,480 | .258 | 202,396 |
| 2002 | 800,169 | .241 | 192,841 |
| 2003 | 816,173 | .225 | 183,639 |
| 2004 | 832,496 | .210 | 174,824 |
| 2005 | 849,146 | .197 | 167,282 |
| 2006 | 866,129 | .184 | 159,368 |
| 2007 | 883,452 | .172 | 144,179 |
| 2008 | 901,121 | .160 | |
| | \$19,032,602 | | \$7,801,104 |

The scenarios showed that investing \$7.1 million at 8 percent would result in \$342,623 in increased benefits, which was an acceptable financial position for the town. Thus, the Culpeper study established \$7.1 million as a minimum acceptable sales price for the electric utility.

Step 5: Identify other benefits that would be lost under private ownership

Culpeper’s electric system also provided many benefits that were not easily quantified. The study said “it is important to note that other benefits accrued to our community have not been included in the above calculations: The issues of community control of a basic life support system, the provision of jobs both direct and indirect within our community, the benefits to town government through increased purchasing power, and the avoidance of routine short-term borrowing [due to cash flow from electric revenues]. In addition, the community services provided by department equipment and personnel includes assisting our school system (by repairing stadium lights), our fire department, combating tree fires, making structures safe for firefighters to enter, hanging signs and banners for charitable and civic organizations and many other uncounted small acts performed by our department for the benefit of individual citizens, groups and organizations and the community at large.”

Culpeper retains its municipal electric utility today.

Appendix F.

Legal Issues in a Takeover of a Municipal Electric Utility

Many legal issues may arise in the proposed sale of a municipally owned electric utility.¹ This chapter examines these issues and their potential impact on a utility sellout. This is not a legal treatise on the subject. This appendix, like the rest of this manual, is aimed at the non-lawyer. The section is written with the idea of preventing, not facilitating, a sale of a municipal utility.

Legal issues could affect a sale in several ways. First, legal obstacles could lead to an administrative or court invalidation of a sale. Second, local policymakers or citizens may reject a sellout in light of potential legal problems. Third, many legal requirements are technical or procedural. These could delay a sale and result in a more complete airing of all the issues related to a sale. In some cases, delay may lead to a change of opinion regarding the sale, preventing completion of what once seemed a “done deal.”

For all of these reasons, the consideration of legal issues is important in any potential sale of a municipal utility. Because this review is an overview of legal issues, the city should retain knowledgeable legal counsel on any questions that may arise in the sale of the municipal utility. Your municipal attorney or other utility counsel should be closely involved because legal issues may not be easily resolvable.

This appendix does not review the law in each state. Statutes, regulations and (to the extent available) case law in several states were considered in developing this document.² The section is organized into local municipal law issues, state law issues, and federal law issues. There is some overlap between these areas.

Finally, because of the nature of this analysis, this document raises more legal questions than it answers. The answers to some of these questions may be determined on a general basis, but there are possibilities of local nuances in each jurisdiction. There will be factual and legal differences in each locality.

A. Local Municipal Law Issues

Local municipal law issues may find their source in a number of places. State constitutions, state laws, municipal charters and ordinances (including bond ordinances and indentures) all could affect the sale of the municipal electric utility. We do not distinguish here between the source of the legal duty imposed on the municipality. Similarly, we do not distinguish between Dillon’s Rule states (where municipal governments may enact valid ordinances only on matters for which they have been granted explicit authority by the state legislature) and Home Rule states (where chartered

¹The original version of this document was prepared in 1999. It has been updated and revised by attorneys at Duncan & Allen in Washington, D.C., in 2012, and most recently in 2017. The original author, Michael May, wishes to express his gratitude to his partners Paul Norman and Anita Gallucci, and to their law clerk Jeff Petersen, for their assistance in preparing this appendix. The attorneys at Duncan & Allen, who subsequently reviewed and updated this appendix, add their gratitude to Mr. May and his colleagues, for their outstanding work in researching and drafting the original document.

²The authors do not cite to the appropriate statutes or case law in each instance where a rule is stated. Rather, at the end of each section, general legal reference citations are provided. For purposes of the 2012 update of this chapter, the statutes of the following states were examined and have been cited: California, Florida, Kentucky, Massachusetts, Missouri, Tennessee, Texas and Wisconsin.

municipal governments have authority to enact valid ordinances on any matter except those restricted by the state constitution). It is important to examine more than your local ordinances or the state code on municipal and utility law. Even state enactments that otherwise might seem inapplicable to utilities—such as the Uniform Commercial Code—might be applied in an attempt to halt a sale of a municipal electric utility.



1. Authority of the Governing Body³

A municipality's governing body (*e.g.*, common council, town board, village board, etc.) may be required to adopt an ordinance or resolution that proposes or approves the sale of a municipal utility. In addition, a local utility board may also be required to consent to the sale of a utility. A decision to sell a municipal utility may be challenged on a basis unrelated to utility law. For example, a decision to sell a municipal utility may be challenged on the basis that the decision-making bodies were improperly constituted or acted in violation of an open meeting requirement and, therefore, the sale decision is void. Similarly, a decision to sell a municipal utility may be challenged on the basis that the elected officials purporting to authorize the sale of the utility indeed lacked the authority to do so.

If the members of a governing body or utility board are unqualified to hold their offices according to law, then acts by that governing body may be illegal. This includes the concept of “inconsistent” or “incompatible” offices, a

doctrine of constitutional, charter or common law, which in some states precludes members of a municipal legislative body from concurrently holding appointed office controlled by that legislative body. The vote of an officer who is ineligible to hold office in a governing body may be valid, however, if the officer had been elected and sworn into office.

The acts of an officer ineligible to hold office may be deemed valid if the person was a “de facto” officer. A de facto officer is an officer with imperfections. For example: holding over beyond the term of an office, elected on a day not designated by law, failing to take the oath of office, failing to give a bond, failing to have the bond approved, lacking residency, or becoming disqualified while in office but continuing to exercise the duties of office. As long as the public acquiesces to a de facto officer, however, the officer's actions may be held valid and binding.

If an officer holds a position that is not a true office according to law, that officer's acts are invalid. Acts by an officer whose office was created by an invalid legislative act may also be invalid. It may be necessary to have the office declared invalid before the officer's acts can be challenged.

If charter or statute provides that meetings of a governing body must be held at specific times of the year and makes no provision for special meetings, then an ordinance passed at a time not specified may be invalid. In Wisconsin, for example, the resolution or ordinance authorizing the sale of a municipal utility may be adopted only at a regular meeting.

³ Legal References:

- California Government Code §§ 1000 et seq., 3000-3209, 34000-41805 (LexisNexis 2012).
 - California Public Utility Code §§ 10051, 10052 (LexisNexis 2012).
 - Florida Statutes Annual §§ 166.011 et seq. (LexisNexis 2012).
 - Kentucky Revised Statutes Annual § 83A.040 (LexisNexis 2012).
 - Massachusetts General Laws Chapter 39, § 8 (LexisNexis 2012).
 - Missouri Revised Statutes §§ 77.010 et seq., 78.080 (LexisNexis 2012).
- Tennessee Code Annual §§ 6-2-201, 6-3-101 to -110, 6-19-101, 6-20-101 to -110, 6-31-101 to -307, 6-33-101, 6-54-109 (LexisNexis 2012).
 - Texas Local Government Code Annual §§ 21.001-26.047, 51.001-54.044 (LexisNexis 2017).
 - Wisconsin Statutes Annual §§ 60.001-62.73, 64.01-64.40, 66.0101 et seq. (LexisNexis 2012) generally.
- McQuillin Municipal Corporations §§ 12.102, 12.104 (third edition, revised volume 2012); *id.* at § 13.32 (third edition, revised volume 2011); *id.* at § 16.32 (third edition, revised volume 2004).



2. Open Meeting Laws⁴

Open meeting laws, which provide for public access to meetings by governmental bodies, may be found in statutes, ordinances or charters. Open meeting laws typically restrict the location, time and date of meetings by governmental bodies. Open meeting laws also require prior notice of meetings, including the agenda, and any ordinances or resolutions to be voted on. There may be requirements for the publication and posting of the minutes and any official actions taken. Violations of state or local open meeting laws may provide grounds for invalidating the actions of a governing body.

Although open meeting laws may provide for closed meetings under specified circumstances, a meeting to adopt an ordinance that approves the sale of a municipal utility probably would not be appropriate for a closed meeting.

Courts may have the power to invalidate an action by a governmental body in violation of an open meeting law. However, it may be necessary that the court's authority is conferred explicitly by statutory law. Any violation of the mandatory provisions of an open meeting law may be grounds for invalidation of the action taken. A lack of wrongful intent on the part of officers responsible for the open meeting law violations may be immaterial. On the other hand, technical violations and minor deviations may be insufficient grounds for invalidation of any action, as long as there was substantial compliance.



3. Technical Procedures of Legal Authorization⁵

An ordinance authorizing the sale of a municipal utility must substantially comply with any formal requirements and must be precise, definite and clear in its terms. If an ordinance is required to have a title, then an ordinance passed without a title may be invalid. If the title of an ordinance is misleading or does not embrace the subject of the body of the ordinance, the ordinance may be invalid.

State or local laws may require that an ordinance embrace only a single topic. Failure to comply may be grounds to invalidate an ordinance. In California, the resolution and ordinance may provide for the sale of more than one utility as long as the question of selling each utility is separately stated in the ordinance and on election ballots.

The contents of an ordinance approving the sale of a utility may be subject to specific requirements. In California, an ordinance submitted to voters must include the reason for the election, how proceeds will be spent, the manner of holding the election, and the manner of voting for or against the sale of the utility. In Wisconsin, a resolution or ordinance authorizing the sale of a municipal utility must contain a summary of the terms proposed, the disposition of sale proceeds, and the provisions for the protection of holders of obligations of the utility or municipality.

There may be mandatory requirements indicating the minimum time interval between introduction and the

⁴ Legal References:

- California Government Code §§ 54950-54963 (LexisNexis 2012).
 - Florida Statutes Annual § 286.011 (LexisNexis 2012).
- Kentucky Revised Statutes Annual §§ 61.800 - .850 (LexisNexis 2012).
- Massachusetts Government Laws Chapter 30A, §§ 18-25 (LexisNexis 2012).
 - Missouri Revised Statutes §§ 610.010 - .035 (LexisNexis 2012).
 - Tennessee Code Annual §§ 8-44-101 to -111 (LexisNexis 2012).
- Texas Government Code Annual §§ 551.001-551.146 (LexisNexis 2017) (Texas recently amended its open meeting laws regarding web-based applications)
 - Wisconsin Statutes Annual §§ 19.81-19.98 (LexisNexis 2012).
- McQuillin Municipal Corporations §§ 13:9-13:20 (third edition, revised volume 2011).

⁵ Legal References:

- California Public Utility Code §§ 10051-10061 (LexisNexis 2012).
- California Government Code §§ 1000 et seq., 3000-3209, 34000-41805 (LexisNexis 2012).
 - Florida Statutes Annual § 166.041 (LexisNexis 2012).
 - Kentucky Revised Statutes Annual §§ 83A.060-.065 (LexisNexis 2014).
 - Massachusetts General Laws Chapter 164 §§ 35, 36 and 68 (LexisNexis 2012).
 - Missouri Revised Statutes §§ 71.010, 77.080, 79.130 (LexisNexis 2014).
- Tennessee Code Annual §§ 6-2-101 et seq., 6-20-214 to -217, 6-20-219, 6-32-201 et seq. (LexisNexis 2012).
 - Texas Government Code Annual §§ 21.001-26.045, 51.001-54.042 (LexisNexis 2012).
 - Texas Local Government Code §§ 552.001 et seq. (LexisNexis 2012).
 - Wis. Stat. Ann. §§ 60.001-62.73, 64.01-64.40, 66.0817 (LexisNexis 2012).
- McQuillin Municipal Corporations §§ 13:34-13:50 (3d ed., rev. vol. 2011), 15:1-15:24, 16:1-16:46, 16:88-16:95 (third edition, revised volume 2004).

passage of an ordinance. In such instances, the passage of an ordinance on the day it was introduced would be invalid. In California, the ordinance to be submitted to the voters proposing the sale of a municipal utility must be passed at a meeting after approval of a resolution declaring the sale of the utility was in the municipality's best interest.

There may be requirements that specify whether all members of a governing body or only a quorum must vote on an ordinance approving the sale of a utility. In California, two-thirds of the governing body must approve the sale of a utility. In Wisconsin, a resolution or ordinance authorizing the sale of a municipal utility may be adopted only at a regular meeting and by a majority of the governing body.

A governing body may be required by charter, statute, ordinance or council rules to multiple readings of proposed ordinances on different days prior to enactment. If separate readings are required, the provisions may be held to be mandatory. If, however, the requirement comes from ordinance or council rule, then violation may not invalidate the ordinance. While the same bill or ordinance must be read each time, the courts will probably not interfere if no harm resulted from an irregularity in the readings as long as there was substantial compliance with the requirement. It may also be possible for the governing body to suspend or dispense with the requirement for readings of an ordinance at different sessions.

When a governing body votes on the adoption of an ordinance, it may be required that the yeas and nays be taken and recorded. Failure to do so may be sufficient grounds for invalidating the ordinance. If it is required that there be a separate vote for each municipal act, an ordinance to sell a utility passed at the same time as another ordinance may be invalid.

Publication of ordinances proposed or adopted by a governing body may be required. Requirements as to duration and frequency of publication or notice may be mandatory, and if the requirements are not substantially complied with, any ordinances passed may be invalid. In Wisconsin, a resolution or ordinance authorizing a sale of a municipal utility must be published at least one week before adoption. It may be mandatory that notice of ordinances be published in the English language. However, a municipality may usually correct any defects in the publication of an ordinance by reenactment and republication.

A municipality required by law to propose the sale of a utility by adoption of an ordinance may not do so through resolution, order or motion. If an improper legislative action is used to propose the sale of a utility, then it may be enjoined in a taxpayers' lawsuit. In California, the

governing body must first pass a resolution declaring that a municipal utility should be sold, then it must pass an ordinance at a subsequent meeting proposing to submit the issue to the voters.

There may be mandatory procedural requirements for municipal contracts, such as a requirement that all contracts be in writing, approved by the governing body and/or local utility board, signed by the chief executive officer, countersigned by a municipal clerk, and drafted or approved by a municipal attorney. Failure to comply with mandatory procedural requirements may be grounds for enjoining or invalidating a contract. Other procedural requirements may only be directed, such as filing a duplicate of the contract. In California, after voters have approved the sale of a municipal utility and a bid is accepted, the governing body may authorize the mayor or other officer to execute, acknowledge, and deliver on behalf of the municipality, in its name and under its corporate seal, a deed conveying the utility to the purchaser upon receiving payment and the promise to operate the utility.

A municipal governing body may have established parliamentary procedures for passing ordinances. Failure of a governing body to comply with its own rules of parliamentary procedure probably would be an insufficient basis for invalidating adoption of an ordinance or resolution, unless the procedure was a mandatory charter or statutory provision. A governing body may vote to adopt, suspend or alter its parliamentary rules unless forbidden by statute (in a Dillon Rule state) or charter (in a Home Rule state).

Mandatory provisions requiring that official actions be recorded in a journal or minutes may be grounds for invalidation of the ordinance. However, any unrecorded acts of the governing body may be valid if clearly proved. When the record does not indicate the procedure in which a legislative act was performed, courts may presume that the governing body acted according to law. If the record indicates mandatory legal requirements were not met, an adopted ordinance may be invalidated.

Terms of an ordinance must be clear, precise, definite and certain. Vague language may render an ordinance invalid, even if it was adopted according to required procedures. However, if an ordinance proposing to sell a municipal utility is merely complex on account of its provisions, it probably will not be invalid.

Ordinarily, courts will not interfere with passage of an ordinance. Courts presume that ordinances are valid. Even if the validity of an ordinance is fairly debatable, courts may uphold it. Furthermore, an ordinance that is invalid on account of defectively or irregularly exercised municipal

power, may be ratified by the subsequent passage of a valid ordinance by the governing body. Therefore, raising an issue of violations of technical requirements of passing an ordinance may do little but delay proceedings to sell a utility.



4. Bona Fides of the Transaction⁶

A contract that is invalid due to fraud, corruption or other bad faith action by a municipal officer may be challenged in a taxpayers' lawsuit or possibly in a criminal proceeding. Fraud in connection with any aspect of a municipal contract may render it invalid, regardless of which party perpetrated the fraud. A contract may also be invalidated on the grounds of bribery, conspiracy, mutual agreement between prospective bidders to prevent competition between them, or mutual mistake as to material facts. An ordinance must be passed in good faith.

If an officer of a governing body votes on a city contract that individually affects the officer, the officer's immediate family, or the officer's employer, then the action probably will not be sustained. Either a direct or indirect, present, pecuniary interest on the part of an officer may be sufficient to invalidate an action. Private interest in a corporation may be found if a municipal officer is an officer, director, or stockholder of the private utility purchasing the municipal. It may not be necessary that the officer acted in bad faith, but only that the officer was placed in a position of temptation. Municipal officers who vote on the sale of a utility may be required to disclose their pecuniary interests in the purchasing utility; failure to do so may provide further basis for challenging the sale.

An ordinance may be invalid whether or not the vote of an officer with a conflict of interest was necessary to pass it. A contract to sell a utility may be invalid if an officer with a conflict of interest in the contract was involved in any stage of the contract, including preliminary discussions, negotiations, compromises, reasoning, planning,

specifications or bid solicitation. Whether an officer has a sufficient interest in the municipal contract will depend on the circumstances. The action of a governing body might not be invalidated if the interest was of a general, minor or remote nature.

A contract in violation of laws requiring competitive bidding may be grounds for invalidating or restraining a contract for the sale of a utility. One basis for invalidating a sale of a utility may be a failure to comply with requirements for the advertisement of a sale, such as the required date, duration and frequency of advertisement, publication and posting requirements, proof of publication, the description of the utility, and official signature. In California, notice of the sale of a municipal utility must be published at least two weeks prior to the date fixed for receiving bids. Publication must occur once a day for at least 12 days in a newspaper published at least six days a week in the municipality or at least once a week for two weeks in a newspaper published less than six days a week. If there is no newspaper published in the municipality, then the ordinance must be posted in three places for two weeks prior to the date fixed for receiving bids.

Minor deviations from advertising requirements may not invalidate a sale if the requirements were substantially met. In addition, if a utility is sold for its full value and there is no indication of bad faith, a sale might be upheld in spite of failure to comply with notice requirements.

Other bidding requirements that may be grounds for challenging a sale include: providing insufficient specifications to potential bidders; having a contract differing in terms from the advertisement inviting bids; failing to allow public comments; failing to use sealed bids; or failing to open bids in accordance with the required time, place and procedure. In California, on the date fixed for receiving bids, the legislative body opens and examines all bids received and may sell a municipal utility to the highest and best bidder. If the legislative body believes the bids are inadequate, it may reject all bids and give new notice of the sale of the utility.

⁶ Legal References:

- California Public Utility Code §§ 10057, 10058 (LexisNexis 2012).
- California Government Code §§ 3000-3209, 87100-87500 (LexisNexis 2012).
 - Florida Statutes Annual §§ 112.311 et seq. (LexisNexis 2012).
 - Kentucky Revised Statutes Annual § 61.252 (LexisNexis 2012).
 - Missouri Revised Statutes §§ 105.450 et seq. (LexisNexis 2016).
 - Tennessee Code Annual §§ 12-4-101 et seq., 6-20-205 (LexisNexis 2016).
- Texas Government Code Annual §§ 553.001-553.023, 572.001-572.061 (LexisNexis 2012).
 - Texas Penal Code Annual §§ 36.01-36.10 (LexisNexis 2015).
- Wisconsin Statutes Annual §§ 19.41-19.59, 946.10-946.18 (LexisNexis 2012).
- McQuillin Municipal Corporations §§ 28.35-28:42, 29:6-29:8, 29:14 (third edition, revised volume 2009), 52.24, 52.25 (third edition, revised volume 2003).



5. Municipal Voter Approval⁷

If an ordinance, charter or statute requires voters to approve sale of a municipal utility, lack of such consent may invalidate a sale. In California, two-thirds of all voters must authorize a sale of a municipal utility. In Wisconsin, the sale of a municipal utility must be approved by a majority of the voters of a municipality.

It may be possible to challenge the sale by contesting the validity of the election. The challenger must demonstrate that the election involved fraud. Challengers cannot contest an election based on suspicion in an effort to find evidence of irregularities. A requirement for voter approval may be waived in certain situations.

Elections are subject to extensive state regulation, and may also be subject to local regulations. Some regulations are mandatory; failure to comply may invalidate an election. Failure to comply with procedural regulations governing the manner of conducting an election ordinarily will not invalidate an election unless such actions affected election results or the regulations are mandatory. Whether a regulation is mandatory or advisory, the will of the voters generally will be upheld.

Corrupt practices, such as fraud, bribery, intimidation and coercion, will render an election invalid, even if the result of the election would not have been different.

Contesting voter eligibility is another means of challenging an election. To qualify to vote, a person must meet citizenship, residency and age requirements. Voters may be disqualified due to incompetence or having committed treason, felony or bribery. Voters also must be registered. Voter eligibility may be ascertained by examining the registration lists. It will be necessary to present evidence in order to challenge voter qualification.⁸

It may be possible to challenge the form of the referendum question put before the voters if wording was deceptive, misleading, ambiguous or incomplete. There may be specific requirements for the contents of the notice of the referendum. In Wisconsin, notice of a referendum proposing sale of a municipal utility must include a description of the plant, a summary of the preliminary agreement with the purchaser, and the price and terms as fixed by the Public Service Commission.

It may be possible to challenge the referendum on the basis of improper notice or timing. As previously mentioned, in California, an ordinance proposing the sale of a municipal utility must be published once a day for at least 12 days in a newspaper that is published at least six days a week in the municipality, or at least once a week for two weeks in a newspaper that is published less than six days a week. The first publication of the ordinance must be at least two weeks prior to the election date. If there is no newspaper published in the municipality, then the ordinance must be posted in three places for two weeks prior to the election date.

In California, the voters approve the sale of a utility after approval by the governing body, and prior to solicitation for bids from potential buyers. In Wisconsin, voter approval is preceded by a preliminary agreement with a purchaser and approval by both the municipal governing body and the Public Service Commission.

There may be a time limit on a proposed utility sale after voters have approved it. In Wisconsin, proceedings are invalid if the sale or lease of a municipal utility is not completed within one year of the referendum ballot (or more if an extension is granted by the state Public Service Commission). The procedure for contesting the validity of an election may be prescribed by either local or state law. It may be necessary to file a complaint with an election official, an election board, or a civil court. If election fraud

⁷ Legal References:

- California Public Utility Code §§ 10052, 10054, 10055, 10057 (LexisNexis 2012).
 - California Election Code §§ 1-21606, 21620 (LexisNexis 2012), generally.
 - Kentucky Revised Statutes Annual § 96.860 (LexisNexis 2012).
 - Missouri Revised Statutes § 91.550 (LexisNexis 2012), for example.
- Tennessee Code Annual §§ 2-1-101 to 2-20-106, 6-35-102 (LexisNexis 2012).
 - Texas Election Code Annual § 1.001-277.004 (LexisNexis 2012), generally.
 - Texas Government Code § 1502.055 (LexisNexis 2012).
- Wisconsin Statutes Annual §§ 5.01-12.60 generally, 66.0817 (LexisNexis 2015).
- McQuillin Municipal Corporations § 35.54 (third edition, revised volume 2006).

⁸ For a sale halted due to election irregularities, see reports on the sale of the Chelsea, Oklahoma, municipal utility. *Public Power Weekly*, August 29, 1988.

or other corrupt practices are involved, the prosecuting attorney may need to act on behalf of the municipality. An election contest may involve a vote recount. To invalidate an election due to illegal votes, it may be necessary to demonstrate that there were enough illegal votes to change the result.



6. Financial Issues and Other Municipal Law Requirements⁹

In most circumstances, a too low sale price probably will be insufficient grounds for challenging a utility sale unless there is evidence of fraud or a clear abuse of discretion. This may be true even in the face of evidence proving that it would be more profitable for the city to operate the utility itself. Bad judgment, a mistake of judgment or even gross incompetence may not be sufficient grounds for challenging a utility sale of a utility. Courts will probably not inquire into the expediency, wisdom, motives or justice of a legislative determination to sell a municipal utility. There is a judicial presumption that the governing body acted in the best interests of the municipality. However, there may be administrative or judicial precedent on the proper range of a sales price. If approval of the state public utility commission is required, an appeal to court based on testimony as to value might have a greater chance of success. See Section B.1 below.

The terms of municipal bonds relating to a municipal utility may hinder, if not prohibit, the sale of a utility. If the municipal utility has outstanding bonds, it may be necessary to make provisions for paying off the bonds prior to the sale of the utility. In Wisconsin, if there are any outstanding bonds that, by their terms, may not be paid off at the time of a sale or lease of a utility, the municipality must set up a trust fund to cover debt service. In addition, the municipality should examine what property is pledged for the bonds. If both electric utility assets or revenues and other assets or revenues stand behind the bonds, sale of the utility could constitute a default under the bonds.

Municipal tax-exempt bonds, or similar bonds of a joint action agency of which the municipality is a member, could be affected by a sale. The issue of Internal Revenue Service

regulations is discussed below, in Section C.4. Adverse tax impacts could influence a sale decision.

Preexisting labor contracts may impact a sale. The purchaser might be required to retain all employees or make severance or other payments to terminated employees.

A sale of a municipal utility may impact a municipal retirement plan. If terminated utility employees can withdraw money from the municipal pension plan, the plan may be underfunded or it may become more costly to remaining municipal employees if utility employees are no longer in the plan.

Municipal power supply contracts may also impact a proposed sale. Contracts might require the municipality to purchase power for a period extending beyond the potential sale date. Such a provision could destroy the feasibility of the sale, if the new purchaser does not wish to honor the contracts. Municipal utilities that are members of joint action agencies may be required to ensure that the agency and its remaining members are protected from any loss due to the sale.

If the municipality received state or federal grants contingent on the operation of a utility, a portion of these grants may need to be repaid. This could impact overall municipal finances, which, in turn, would affect the desirability of a sale.

If the sale of a municipal electric utility would result in the separation of a joint utility (e.g., electric/water, electric/sewer, etc.), utility assets would have to be separated. Depending on accounting practices, it may be difficult, if not impossible, to determine the value of each portion of the utility. In addition, there may be hidden costs to the municipality if one utility was providing services to the other at no cost. If the municipal water utility used the electric utility's truck, for example, the municipality may need to buy a new truck once the electric utility is sold.

An important financial issue in any purchase of a municipal utility is treatment of any acquisition adjustment. A private utility purchasing a municipal utility may pay more than the original cost depreciated (or net book) value of the

⁹ Legal References:

- Wisconsin Statutes Annual § 66.0817 (LexisNexis 2012).
- McQuillin Municipal Corporations §§ 20.02-20:07 ((third edition, revised volume 2007).
- Acquisition Adjustment Cases: Duke Energy Moss Landing, LLC, 83 Federal Energy Regulatory Commission ¶ 61,318 at pp. 62,303-62,305 (1998); Minnesota Power & Light Co. and Northern States Power Co., 43 FERC ¶ 61,104 at p. 61,342, rehearing denied, 43 FERC ¶ 61,502 (1988); Montana Power Co. v. FERC, 599 F.2d 295, 300 (9th Cir. 1979); Narragansett Electric Co. v. Kenedy, 88 R.I. 56, 143 A.2d 709, 25 PUR 3d 54 (1958); Pennsylvania Electric Co. v. Federal Power Commission 188 F.2d 763 (3d Cir. 1951).

municipal utility's assets. In many states, regulators will allow only the net book value of the asset purchased to be placed into rate base. This means the private utility's shareholders will be required to cover the cost of the "acquisition adjustment" or the bonus paid to the municipality to acquire its utility. There are some exceptions to the general rule that an acquisition adjustment will be charged to shareholders. Those opposing the sale of a municipal utility might argue that any sale agreement should require that the private utility not seek to collect the acquisition adjustment from ratepayers. This would protect municipal citizens from paying a second time for depreciation, which they had paid already through their electric bills. In addition, any state precedent regarding treatment of the acquisition adjustment might affect the amount bid on a municipal utility and whether the municipality decides that a sale is in the municipality's best interests.

State contract law could impact a proposed utility sale. Some states require that bids be let on all municipal contracts. These requirements might mean the utility cannot be sold absent multiple bids.

If state law requires a referendum on the sale, there may be limitations on a municipality's ability to advertise for or against the referendum; there may also be limitations on whether such advertising may be charged to utility customers through their electric bills.



7. Method of Challenge: Taxpayers' Suit¹⁰

Legal challenges to the sale of a municipal utility will ordinarily be brought in a taxpayers' suit, in which one

or more citizens, voters or taxpayers seek a court remedy for illegal or unauthorized acts that injure their interests through the unlawful disposal or potential disposal of municipal property. An injunction could stop an illegal sale through cancellation of contracts, deeds, leases and other instruments.

Necessary prerequisites for a taxpayers' suit are (1) an illegal action by a municipality, and (2) an injury to the complaining taxpayer(s). If municipal officers act honestly and within their authority, a taxpayers' suit will not be allowed, even if the officers act unwisely, improvidently or extravagantly.

As noted elsewhere, a challenge might also be made before the appropriate regulatory agencies or a federal court.

B. State Law Issues



1. Approval by the Public Utility Commission of the State¹¹

The state public utility commission may play a role in ensuring that the sale of a municipal utility is in the best interest of the municipality. The California, Texas and other state utility commissions do not approve sales of municipal utilities. In Wisconsin, the Public Service Commission determines whether the interests of the municipality and its residents will be best served by the sale. If it approves a sale, the PSC fixes the price and other terms. If the price set by the PSC exceeds that set in the preliminary agreement between the municipality and purchaser, the PSC price prevails.

If the utility commission must approve the sale, it will be important to determine the commission's policy on such approval. If the commission takes a rather light regulatory approach, it may examine only whether the sale price is sufficient. In Wisconsin, for example, the PSC is required to determine that the interests of the municipality and its residents are "best served" by the sale of the utility. Nevertheless, the PSC traditionally has examined only whether the sale price is sufficient. If the commission takes a more involved regulatory role, it might examine a number of other questions, such as whether the long-term costs to the municipality are greater without a municipal utility.

If the state utility commission has authority to examine the sale price, it may be necessary to present expert testimony on the value of the utility and the necessity of the sale. Because decisions by administrative agencies are normally reviewable in court, a group challenging the sale of the municipal utility may be able to appeal to court solely on the ground that the sale price was insufficient. It would be necessary to determine any judicial or administrative precedent on the sale price. There may be precedents that the sale price must exceed net book value, reproduction costs, reproduction costs less depreciation, or some other measure.

¹⁰ Legal References:

• McQuillin Municipal Corporations § 52.02, 52.03, 52.04, 52.16, 52.20 (3d ed., rev. vol. 2003).

¹¹ Legal References:

• Wisconsin Statutes Annual § 66.0817 (LexisNexis 2012).

Assuming a sale is to proceed, another question involving the public utility commission is its role in subsequent operations of the utility. In states where municipal utilities are not state-regulated, the commission likely will regulate retail sales within the municipality if a private utility buys the municipal utility. State regulators might place limitations on the private utility's authority to increase rates to cover the costs of the acquisition.

Territorial agreements are another issue. Many utilities enter into agreements or have specific franchises granted by political bodies that set their territorial boundaries. A public utility commission might determine that a purchaser of a municipal utility is bound by such previous agreements.



2. Restrictions on Purchaser

Other state laws or regulations may affect the private utility's operation in the municipality following a purchase.

These might affect the amount the private utility is willing to bid for the municipal utility and could be effective in convincing municipal authorities not to sell.

One issue is whether the purchaser would be allowed to recover any of the costs of obtaining approval of the sale from municipal electric customers. These are costs separate from the acquisition adjustment discussed above. A municipality might provide in its agreement of sale that none of such costs are to be borne by municipal ratepayers. There also may be state law restrictions on the ability of the private utility to finance its acquisition of a large municipal electric utility.

Additionally, the private utility will normally be required to obtain a franchise from the municipality to operate following the purchase. In negotiating its purchase

agreement with the private utility, the municipality may wish to place certain restrictions and conditions and impose a franchise fee, if allowed by state law. Some franchises provide that the municipality has the right to acquire the electric facilities upon expiration of the franchise. It is desirable to spell out the procedures that will apply in such cases.



3. State Antitrust Laws¹²

Many states have statutes that are parallel to the federal antitrust laws, such as the Sherman Antitrust Act or the Clayton Antitrust Act. These issues are briefly discussed in the section on federal law that follows. In considering challenges to the purchase of a municipal electric utility, it may be appropriate to examine state law for parallels to any federal law issues. State law precedent may be more favorable or may provide certain remedies that might not be available under the federal laws.



4. Method of Challenge¹³

The state's consumer counsel may challenge the sale of the municipal utility at the public utility commission if the consumer counsel determines the interests of the private utility's ratepayers need protection. Similarly, an individual may seek to intervene in the proceedings before the public utility commission.

State antitrust laws may allow any citizen of the state to ask the courts for injunctive relief. Additionally, the state's attorney general may investigate or try a criminal prosecution under the applicable state or federal antitrust laws, if the attorney general determines that those laws would be violated by the takeover of the municipal utility. For example, the sale of a municipal utility could

¹² Legal References:

- California Business and Professional Code §§ 16600, 16722, 17000-17209 (LexisNexis 2012).
 - Florida Statutes Annual §§ 542.15 et seq. (LexisNexis 2012).
- Kentucky Revised Statutes Annual §§ 365.020 et seq., 367.110 et seq. (LexisNexis 2012).
 - Missouri Revised Statutes Annual §§ 416.011 et seq. (LexisNexis 2012).
 - Tennessee Code Annual §§ 47-25-101 et seq. (LexisNexis 2012).
- Texas Business & Commerce Code Annual §§ 15.01-15.05 (LexisNexis 2012).
 - Wisconsin Statutes Annual. §§ 133.01-133.18 (LexisNexis 2012).

¹³ Legal References:

- California Business and Professional Code §§ 17070, 17204 (LexisNexis 2012).
 - Kentucky Revised Statutes Annual § 365.070 (LexisNexis 2012).
 - Florida Statutes Annual § 542.27 (LexisNexis 2012).
 - Missouri Revised Statutes § 416.051 (LexisNexis 2012).
 - Tennessee Code Annual §§ 47-25-103, -106 (LexisNexis 2012).
- Texas Business & Commercial Code Annual §§ 15.20-15.22 (LexisNexis 2012).
 - Wisconsin Statutes Annual §§ 133.16-133.17 (LexisNexis 2012).

substantially diminish competition in a relevant market. However, since in most cases the acquiring utility would be subject to retail rate regulation by the state public utility commission, it would take an unusual set of circumstances for the state attorney general to challenge the acquisition of a municipal electric utility.

C. Federal Law

Most legal issues related to purchase of a municipal utility will arise under state law. There are a few possible avenues for challenge to a takeover under federal law, but these approaches probably are less likely to succeed and much more complex to analyze.



1. Application of the Federal Power Act¹⁴

Under the Federal Power Act, the Federal Energy Regulatory Commission (FERC) regulates wholesale sales of electric energy and transmission of electricity in interstate commerce. FERC reviews rates and charges for the transmission or sale of electric energy to ensure they are just and reasonable, and to approve the sale, disposition or acquisition of facilities subject to its jurisdiction.

Under FERC's rule implementing Section 203(a)(2) of the Federal Power Act, as in effect since February 8, 2006, a company (other than a rural electric cooperative) seeking to acquire the facilities of a municipal electric utility must obtain a FERC order authorizing it to do so if all of the following three conditions apply:

- The potential acquiring company is a “holding company in a holding company system that includes a transmitting utility or an electric utility”
- The value of the municipal facilities to be sold exceeds \$10 million
- The municipal electric utility owns either: (1) facilities used in interstate transmission, (2) facilities used for wholesale power sales in interstate commerce, or (3) generating facilities that total more than 100 MW.

If these three conditions apply, the acquiring company must file an application with FERC for an order authorizing the proposed acquisition.

In that case, parties with a direct interest in the outcome of FERC proceeding on the company's application (which might include, for example, a state consumer counsel) can intervene and raise objections. FERC must find that the transaction (a) will be consistent with the public interest, and (b) will not result in either cross-subsidization of a non-utility associate company of the holding company or the pledge or encumbrance of utility assets for the benefit of an associate company of the holding company, unless FERC determines that the cross-subsidization, pledge or encumbrance will be consistent with the public interest. Because the public interest standard looks to the effect of a transaction on third parties, it would be necessary to demonstrate to FERC that the acquisition of the municipal electric utility by the holding company would likely result in some harm to other ratepayers (for example, ratepayers of the acquiring company or one of its affiliated companies). Otherwise, FERC will ordinarily authorize the transaction.

FERC authority over changes in rates and other wholesale contracts might come into play in the purchase of a municipal electric utility if the municipal utility's wholesale power contract must be canceled or modified. However, even in these circumstances, it is unlikely that FERC would go beyond the question of the reasonableness of the rate schedule and inquire into the actual acquisition of the municipal utility. FERC has specifically held it will not consider the process a municipal utility employs to effectuate the sale of its property in determining whether the sale meets requirements under Section 203 of the Federal Power Act.

Since the enactment of the Energy Policy Act of 2005 (“EPA 2005”), FERC also reviews and approves the mandatory reliability standards that apply to all electric utilities—including municipal utilities—and their enforcement. EPA 2005 added Section 215 to the Federal Power Act, which, among other things, empowered FERC to certify an electric reliability organization to establish and enforce various types of reliability standards. FERC has certified the North American Electric Reliability Corp. (NERC) to serve this purpose. NERC, in turn, has delegated certain powers to establish and enforce reliability standards to eight regional entities: Florida Reliability Coordinating Council; Midwest Reliability Organization; Northeast Power Coordinating Council; ReliabilityFirst Corp.; SERC Reliability Corp.; Southwest Power Pool

¹⁴ Legal References:

- Federal Power Act, 16 U.S.C. §§ 791a, et seq., 824b(a)(2) (LexisNexis 2012).
- Energy Policy Act of 2005 §§ 1261 et seq., 42 U.S.C. §§ 16451 et seq. (LexisNexis 2012).
 - 18 C.F.R. Part 33 (2012).
- Transactions Subject to FPA Section 203 (Order No. 669), FERC Stats. & Regs. ¶ 31,200 at P 58 (LexisNexis 2012).
 - NERC Compliance Process Bulletin #2011-005, Version 1.0 (Sept. 15, 2011).
- Appendix 5B of the NERC Rules of Procedure (Statement of Compliance Registry Criteria).
 - Florida Power & Light Co., 145 FERC ¶ 61,018 (2013).

Regional Entity; Texas Reliability Entity; and Western Electricity Coordinating Council. FERC, NERC and these regional entities have the ability to levy fines (up to \$1 million per day per violation) for violation of applicable reliability standards.

NERC maintains a registry of utilities that must comply with various NERC reliability standards. Listings on the Compliance Registry, and the associated reliability standards that will apply, are based on the functions and types of activities undertaken by a utility. In general, a utility (including a municipal utility) must be registered and must comply with reliability standards to the extent that it is an owner, operator or user of facilities that constitute any part of the bulk electric system, which generally includes generation resources, transmission lines, interconnections with neighboring systems, and associated equipment operated at voltages of 100 kV or higher. The definition does not typically include radial transmission facilities that serve only load with one transmission source. Many municipal utilities are listed on the Compliance Registry, and are therefore subject to reliability standards and to penalties for failure to comply. The categories under which a municipal utility may be registered include (but are not limited to) Balancing Authority, Distribution Provider, Generator Operator, Generator Owner, Load-Serving Entity, Purchasing-Selling Entity, Transmission Owner, Transmission Operator, and Transmission Service Provider. Some municipal utilities have entered into Delegation Agreements, under which they delegate authority to comply with reliability standards to another entity, often a joint action agency or investor-owned utility wholesale power supplier. However, the municipality retains the ultimate responsibility for compliance and must pay any penalties, unless the other entity has agreed to take on that responsibility.

If there is a Delegation Agreement in effect, it must be terminated, assigned or modified to reflect the new ownership of the utility.

With or without a Delegation Agreement, if a municipal utility is on NERC's Compliance Registry, the seller or purchaser of the utility must notify the regional entity of the transfer of ownership and modify the registration to reflect the new ownership and any new functions. The municipality will remain responsible for compliance with

relevant reliability standards until the NERC Compliance Registry has been changed to reflect new ownership and operation. The municipality will also remain on the Compliance Registry until any outstanding settlement and enforcement issues associated with the transferred assets are resolved.

If there are alleged violations of reliability standards pending or an audit period that has not been closed, then under NERC procedures, the municipal utility may not be deactivated from the Compliance Registry until all pending noncompliance issues are fully processed. Therefore, an agreement with the new owner should be negotiated to determine who bears what responsibilities with regard to any subsequent fines or penalties for violations that may have occurred, and who will design and implement any mitigation plans required by NERC or the Regional Entity. Similarly, the municipality must obtain the agreement of the new owner to hold the municipality harmless and indemnify it against any future violations, fines or penalties that occur (or that are discovered) after the sale (or after a negotiated date). Although NERC and the Regional Entity will try to implement changes to the Compliance Registry that reflect the parties' desired allocation of post-transfer responsibilities, both NERC and the regional entity may continue to monitor compliance and enforce standards with respect to both parties.



2. Public Utility Holding Company Act of 2005¹⁵

The Public Utility Holding Act of 2005 (PUHCA 2005), enacted as part of the Energy Policy Act of 2005, repealed the Public Utility Holding Company Act of 1935, which had been administered by the Securities and Exchange Commission (SEC). PUHCA 2005 gave FERC limited authority over the accounting, reporting and recordkeeping of companies in holding company systems that include electric utility companies. As a result of the enactment of PUHCA 2005, SEC approval of utility acquisitions by holding companies is no longer required. The FERC now reviews holding company acquisitions of utility assets in the cases described above in Section C.1, pursuant to the authority granted by amended Section 203 of the Federal Power Act.

¹⁵ Legal References:

• Energy Policy Act of 2005 §§ 1261 et seq., 42 U.S.C. §§ 16451 et seq. (LexisNexis 2012).



3. Application of the Federal Antitrust Laws¹⁶

There are a number of federal laws designed to ensure competition. These include the Sherman Antitrust Act and the Clayton Antitrust Act. Utilities regulated by FERC and state public utility commissions may find themselves subject to attack under antitrust laws in certain circumstances.

Federal antitrust laws require that certain acquisitions of another person's assets or stock be preceded by notification to the Federal Trade Commission (FTC). However, "transfers to or from... a state or political subdivision thereof" are exempt from this requirement. Even though prior notification of a municipal takeover is not required, the takeover may be subject to challenge under the antitrust laws if its effect "may be substantially to lessen competition..." It does not appear that a challenge under this law has been made in the case of municipal takeovers. While there may be some lessening of competition when the acquiring utility takes over the municipal system, there still remains a monopoly within the municipality. The fundamental issues under a challenge to an acquisition under Section 7 of the Clayton Act, or Section 5 of the Federal Trade Commission Act, remain: (1) the delineation of relevant product and geographic markets, and (2) proof that the acquisition would increase the concentration of control in a relevant product and geographic market so as to enhance the ability of the acquiring party to control price or foreclose competition, or facilitate the exercise of that ability. The relatively small size of a municipal utility compared to what most economists (and FERC and most courts) consider a "relevant" geographic market is likely to complicate efforts to challenge the acquisition of a municipal utility on Clayton Act Section 7 or FTCA Section 5 grounds.

Although the acquisition itself may not violate the antitrust laws, there may be allegations that the acquiring utility engaged in anticompetitive conduct to force the municipal utility to agree to the takeover. This conduct might be

challenged under the Sherman Act. The range of theories litigable under Section 2 of the Sherman Act narrowed considerably between 1992 and 2012. The Supreme Court has largely, if not entirely, rejected the related theories of "monopoly leverage" and "price squeeze" (under which a monopolist in an upstream market tries to use that monopoly to gain market share in a downstream market), and "predatory pricing" claims involving regulated rates have become extremely difficult to sustain. Refusals to deal and certain other types of exclusionary, anticompetitive conduct remain actionable. The "essential facilities" doctrine, although still theoretically sound, has little real-world applicability in a regime of open access transmission service.

If the acquiring utility's illegal abuse of its monopoly power is shown to have caused the takeover, there is still the question of whether any person has standing to block the takeover under the antitrust laws. Plaintiffs seeking injunctive relief under the antitrust laws must show that the injunction is necessary to avoid threatened loss or damage of the type the antitrust laws were designed to prevent and which flows from the defendant's unlawful acts.

A municipality itself may sue to enjoin a violation of the antitrust laws. Since the municipal utility competes with the acquiring utility for the right to serve within the municipal borders, it sustains injury of the type that the antitrust laws were designed to prevent if a threatened takeover has been caused by the acquiring utility's illegal acts. Therefore, the municipality would have standing to block the takeover on antitrust grounds, assuming antitrust violations and their causal effect in producing the threatened takeover can be shown. Customers of the municipal utility are less likely to be able to show the antitrust injury necessary to obtain an injunction against a takeover under the antitrust laws.

In summary, while antitrust challenges to a takeover may be asserted, they are generally not likely to succeed. The one exception is where the municipality itself seeks to stop the takeover and can show that it was caused by the acquiring utility's illegal abuse of its monopoly power.

¹⁶ Legal References:

- Sherman Antitrust Act, 15 U.S.C. §§ 1, et seq. (LexisNexis 2012).
- Clayton Act, 15 U.S.C. §§ 12, et seq. (LexisNexis 2012).
- FERC Use of "Presumptive" Geographic Markets: Central Vermont Public Service Corp., 138 FERC ¶ 61,161 at P 29 (2012); FirstEnergy Corp. and Allegheny Energy, Inc., 133 FERC ¶ 61,222 at P 52 (2010).
- "Price Squeeze": Pacific Bell Tel. Co. v. LinkLine Communications, Inc., 555 U.S. 438, 448-455 (2009) (summarizing case law); Town of Concord v. Boston Edison Co., 915 F.2d 17 (1st Cir. 1990); cert. denied, 499 U.S. 931 (1991).
- Refusals to Deal: Aspen Skiing Co. v. Aspen Highlands Skiing Corp., 472 U.S. 585, 601 (1985); Verizon Communications, Inc. v. Law Offices of Curtis V. Trinko, LLP, 540 U.S. 398, 408-412 (2004).
- Injunctions: Tri-State Generation & Transmission Association, Inc. v. Shoshone River Power, Inc., 805 F.2d 351, 355-356 (10th Cir. 1986) (threat to business viability may constitute irreparable harm sufficient to support issuance of preliminary injunction); City of Chanute v. Kansas Gas & Electric Co., 754 F.2d 310, 312-314 (10th Cir. 1985), affirming in part, 564 F. Supp. 1416 (D. Kan. 1983) (two of three plaintiff municipal utilities made sufficient showing of irreparable harm from denial of transmission service to warrant preliminary injunction).

D. Federal Tax Laws¹⁷

Under the Internal Revenue Code, bonds issued by municipalities and joint action agencies generally enjoy tax-exempt status. See 26 U.S.C. §§ 103, 141-150. However, Internal Revenue Code Section 141 limits the permissible amount of private business use of the bond-financed facilities (i.e., use on terms other than generally available to the public). If the private business use exceeds the permitted threshold, the bonds may be taxable “private activity bonds.”

If a municipality or a joint action agency has issued tax-exempt bonds to finance costs of the municipal utility, the existence of the bonds may cause difficulty for any private entity to purchase the municipal utility. The change in ownership would constitute a change to private business use and could cause the bonds to lose their tax-exempt status. IRS regulations set forth standards and remedial actions pursuant to which such a change in use would not cause the bonds to become taxable. If the change in use would cause the bonds to become taxable, this might require the private utility to cover the difference in cost incurred by the joint action agency or the municipality due to the loss of tax-exempt status. Those additional costs may very well make the proposed purchase uneconomic.

In circumstances in which there are outstanding bonds issued by either the municipality or the joint action agency, issuers should consult with tax counsel to examine the potential effect on the bonds if the municipal electric utility were to be sold.

¹⁷ **Legal References:**

• 26 U.S.C. §§ 103, 141-150 (LexisNexis 2012), and related regulations.

Appendix G.

Publicly Owned Electric Utilities Sold, 2008-2017

Over the past decade, ten public power utilities were sold; three to investor-owned utilities and seven to rural electric cooperatives. Over that same period, a comparable number of new public power utilities were formed. Overall, there is no significant trend toward either municipalization or privatization.

| UTILITY SOLD | STATE | YEAR SOLD | SOLD TO |
|--|------------|-----------|--|
| City of Kandiyohi (274 customers) | Minnesota | 2017 | Kandiyohi Power Cooperative |
| City of Seward (42 customers) | Kansas | 2015 | Midwest Energy |
| Eagle Mountain, Utah (10,000 customers) | Utah | 2015 | Rocky Mountain Power* for \$21.6 million |
| Hercules Municipal Utility, California (800 customers) | California | 2014 | PG&E* for \$9,500,000 |
| Owensville, Missouri (1,402 customers) | Missouri | 2012 | Ameren Missouri* for \$1,385,000 |
| Readsboro Electric (319 customers) | Vermont | 2011 | Central Vermont Public Service Corp. |
| City of Campbell (962 customers) | Missouri | 2010 | Ozark Border Electric Cooperative |
| Somerville Electric Department, Tennessee (1,867 customers) | Tennessee | 2010 | Chickasaw Electric Cooperative |
| Kotlik, Alaska (185 customers) | Alaska | 2008 | Alaska Village Electric Cooperative |
| Monticello Electric Plant Board (3,500 customers) | Kentucky | 2008 | South Kentucky Electric Cooperative for \$4,686,000 |

* Investor-owned utility

"Customers" refers to the number of customer-meters served. The population served would be some multiple of this number.

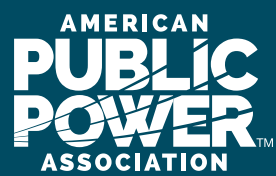
SOURCE: American Public Power Association (2018)

Appendix H.

A Selected List of Consultants for Evaluation of Public Power Utility for Retention or Sale

| NAME/FIRM | ADDRESS | PHONE NUMBER/EMAIL | EXPERTISE |
|---|---|--|---|
| James C. Turley, PE <i>Booth & Associates, LLC</i> | 5811 Glenwood Avenue Suite 109 Raleigh, NC 27612 | Phone: 919/851-8770 Email: TurleyJC@Booth- Assoc.com | Engineering/Management/ Operations |
| Ted Kelly <i>Burns & McDonnell</i> | 9400 Ward Parkway Kansas City, MO 64114-3319 | Phone: 816/822-3208 Email: tkelly@burnsmcd.com | Engineering/Management/ Operations/Valuation |
| Kreg McCollum Leidos | 1801 California Street Suite 2800 | Phone: 916/979-3777 Email: kreg.mccollum@ leidos.com | Engineering/Management/ Operations |
| Donald E Gruenemeye <i>Sawvel and Associates, Inc.</i> | Denver, CO 80202 100 East Main Cross Suite 300 Findlay, OH 45839 | Phone: 419/422-4812 ext. 104 Email: Degruen@sawvel.com | Engineering/Management/ Operations |
| John Gartner <i>Navigant Consulting, Inc.</i> | 1375 Walnut Street Suite 100 Boulder, CO 80302 | Phone: 303/493-0364 Email: John.Gartner@ navigant.com | Engineering/Management |
| Mike Mace <i>Public Financial Management, Inc.</i> | 11325 N. Community House Road, Suite 275 Charlotte, NC 28277 | Phone: 704/541-8339 Email: macem@pfm.com | Accounting/Management |
| Russell A. Hissom <i>Baker Tilly Virchow, Krause & Company, LLP</i> | P.O. Box 7398 Madison, WI 53707 | Phone: 608/249-6622 Email: russ.hissom@ bakertilly.com | Accounting/Management |
| Mark Beauchamp <i>Utility Financial Solutions</i> | 185 Sun Meadow Ct Holland, MI 49424-6650 | Phone: 616/393-9722 Email: mbeauchamp@ ufsweb.com | Accounting/Management |
| Gregg Ottinger <i>Duncan & Allen</i> | 1575 I Street, N.W. Suite 300 Washington, D. C. 20005-1175 | Phone: 202/289-8400 Fax: 202/289-8450 Email: gdo@duncanallen.com | Legal Issues |
| Stephen Smith <i>WordSouth</i> | P.O. Box 1575 Rainsville, AL 35986 | Email: ssmith@wordsouth. com | Communications Issues |

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