

Second Regular Session of the 123rd General Assembly (2024)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2023 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 247

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-30.3-5, AS AMENDED BY P.L.61-2022, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. (a) **Except as provided in section 6.6 of this chapter**, this section applies if:

- (1) a utility company acquires property from an offered utility in a transaction involving a willing buyer and a willing seller; and
 - (2) at least one (1) utility company described in subdivision (1) is subject to the jurisdiction of the commission under this article.
- (b) Subject to subsection (c), there is a rebuttable presumption that a cost differential is reasonable.
- (c) If the acquisition:
- (1) is made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under IC 8-1.5-2-5; or
 - (2) is not made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under section 5.5 of this chapter;
- the purchase price is considered reasonable for purposes of subsection (d) and any resulting cost differential is considered reasonable.
- (d) Before closing on the acquisition, the utility company that acquires the utility property may petition the commission to include any cost differential as part of its rate base in future rate cases. The

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commission shall approve the petition if the commission finds the following:

- (1) The utility property is used and useful to the offered utility in providing water service, wastewater service, or both water and wastewater service.
- (2) The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.
- (3) The utility company will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility's plant, the offered utility's operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service.
- (4) The acquisition of the utility property is the result of a mutual agreement made at arms length.
- (5) The actual purchase price of the utility property is reasonable.
- (6) The utility company and the offered utility are not affiliated and share no ownership interests.
- (7) The rates charged by the utility company will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility. For purposes of this subdivision, the rates and charges will not increase unreasonably in future general rate cases so long as the net original cost proposed to be recorded under subsection (f) is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate case. If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate case, the commission shall proceed to determine whether the rates charged by the utility company will increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility and, in making the determination, may consider evidence of:
 - (A) the anticipated dollar value increase; and
 - (B) the increase as a percentage of the average bill.
- (8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable



time with corresponding reductions in the rate base.

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

(1) Notice to customers of the acquiring utility company that a petition has been filed with the commission under this chapter.

The notice provided under this subdivision must include the cause number assigned to the petition. Notice under this subdivision may be provided to customers in a billing insert.

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

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

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

(1) the full purchase price;

(2) incidental expenses; and

(3) other costs of acquisition;

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

SECTION 2. IC 8-1-30.3-6.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 6.6. (a) This section does not apply to a petition that is filed with the commission under section 5 of this chapter before July 1, 2024.**

(b) Subject to subsection (d) and notwithstanding any other law or any rule of the commission, including 170 IAC 1-6-1(b), if:

(1) the appraised value of the utility property to be acquired, as determined under:

(A) section 5.5 of this chapter; or

(B) IC 8-1.5-2-5;

as applicable, does not exceed three million dollars (\$3,000,000); and

(2) the purchase price for the utility property is less than the appraised value;

a utility company seeking to acquire the utility property of an offered utility is not required to file a petition under section 5 of this chapter, and may instead submit to the commission a filing to



obtain the relief set forth in section 5 of this chapter under the procedures set forth in 170 IAC 1-6, as modified by this section.

(c) A filing authorized under subsection (b) must include the following:

- (1) A copy of the purchase agreement entered into between the acquiring utility company and the offered utility.
- (2) A copy of the journal entry reflecting the accounting entries recording the acquisition in accordance with section 5(f) of this chapter.
- (3) A copy of the appraisal of the utility property under:
 - (A) section 5.5 of this chapter; or
 - (B) IC 8-1.5-2-5;
 as applicable.
- (4) A statement of known infrastructure, environmental, or other issues affecting the offered utility, and the process for determining reasonable and prudent improvements upon completing the acquisition.
- (5) Any other information required to be submitted under the procedures set forth in 170 IAC 1-6, as modified by this section.

(d) In an order approving a filing submitted under this section, the commission:

- (1) may only authorize the acquiring utility company to make accounting entries recording the acquisition that reflect:
 - (A) the full purchase price, as set forth in section 5(f)(1) of this chapter; and
 - (B) the estimated:
 - (i) incidental expenses, as set forth in section 5(f)(2) of this chapter; and
 - (ii) other costs of acquisition, as set forth in section 5(f)(3) of this chapter;
 as the net original cost of the utility plant in service assets being acquired; and
- (2) shall provide that any:
 - (A) estimated incidental expenses, as set forth in section 5(f)(2) of this chapter; or
 - (B) other estimated costs of acquisition, as set forth in section 5(f)(3) of this chapter;
 are subject to a reasonableness review as part of the acquiring utility company's next base rate case.

SECTION 3. IC 8-1.5-2-2, AS AMENDED BY P.L.120-2021, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: Sec. 2. (a) This chapter does not apply to utilities governed by:

(1) IC 8-1-13; or

(2) IC 8-1-2 except for a municipally owned electric, **natural gas**, water, wastewater, or combined water and wastewater utility.

(b) The law relating to acquisition of electric utility property and to electricity suppliers' service area assignments shall be governed by IC 8-1-2.3 and IC 8-1-2-95.1, and nothing in this chapter modifies or abridges those provisions.

SECTION 4. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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