

Municipalization of Public Utilities

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Iowa statutes authorize municipalities, pursuant to Iowa Code § 6B.46, to purchase the assets of a rate-regulated public utility that are within the municipal corporate limits and to establish a municipal natural gas utility. The municipality may negotiate with the public utility for the purchase of the utility's assets or, if a price cannot be agreed upon, the municipality may take the utility assets by condemnation.

The municipality must first have an election at which the voters must approve the purchase, establishment, erection, maintenance, and operation of a natural gas utility. If the voters approve, then the municipality negotiates with the utility. If a price for the utility assets cannot be agreed upon, the municipality files the notice of the election results with the Iowa Supreme Court and the Court appoints three judges to sit as a condemnation court to determine the price that the municipality will pay.

The Board does not have any authority over the price of the assets or whether the municipality establishes a natural gas utility. The Board does have authority over the service by the rate-regulated utility to customers and, once the municipality has the authority from its voters to purchase the rate-regulated utility's assets, the municipal utility and the rate-regulated utility must file with the Board for approval of the discontinuance of service by the rate-regulated utility. Iowa Code § 476.20(1) states that a public utility shall not discontinue service to a municipality unless and until the permission of the Board is first obtained. The Board has adopted rules requiring the filing of the relevant facts concerning the discontinuance. The rules provide that the Board has 30 days to either approve the discontinuance or docket the request to discontinue for investigation. The Board will grant the discontinuance if service is no longer necessary, or if the Board finds the municipal utility ready, willing, and able to provide comparable service.

For municipalities that want to establish a municipal electric utility, Iowa Code § 476.23 gives the Board significantly greater authority to determine if the municipal utility can acquire the electric utility's assets. The statute requires a vote similar to the vote required if a municipality wants to establish a natural gas utility. In addition, the statute requires the municipal utility to file for a certificate authorizing the municipal utility to provide service within the corporate boundaries. If an objection to the certificate is filed, the Board must hold a hearing and to grant the certificate find that service to customers by the municipal utility is in the public interest, including consideration of any unnecessary duplication of facilities. The Board may grant the certificate in whole or in part, upon such terms, conditions, and restrictions as may be justified. The Board also has the authority to determine the reasonable price to be paid by the municipal utility. The price shall include the cost of the facilities being acquired; any necessary generating capacity and transmission capacity dedicated to the

customer, including but not limited to, electric power generating facilities and alternate energy production facilities not yet in service, but that are authorized by the Board; electric power generating emissions plan budgets approved by the Board; and depreciation, loss of revenue, and the cost of facilities necessary to reintegrate the system to the utility after detaching the portion sold.

As can be seen from the two significantly different statutory schemes for municipalization between natural gas utilities and electric utilities, the Board can prevent a municipality from establishing a municipal electric utility, but the Board has no real authority to prevent a municipality from establishing a natural gas utility. The main difference in the treatment of the two types of utilities is the statutory establishment of assigned service territories for all electric utilities in Iowa and the fact that there are no assigned territories for natural gas utilities in Iowa.