

IC 8-1-17.5

Chapter 17.5. Merger or Consolidation of Rural Electric Membership Corporations and Telephone Cooperative Corporations

IC 8-1-17.5-1

"Commission"

Sec. 1. As used in this chapter, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-2

"Communications service"

Sec. 2. As used in this chapter, "communications service" has the meaning set forth in IC 8-1-32.5-3.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-3

"Patronage capital"

Sec. 3. As used in this chapter, "patronage capital" means revenues and receipts returned to members under section 24(d) of this chapter.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-4

"Retail electric service"

Sec. 4. As used in this chapter, "retail electric service" has the meaning set forth in IC 8-1-2.3-2(c).

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-5

"Successor corporation"

Sec. 5. As used in this chapter, "successor corporation" means a corporation that is formed from a consolidation of two (2) or more corporations under this chapter.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-6

"Surviving corporation"

Sec. 6. As used in this chapter, "surviving corporation" means the corporation that remains after a merger of two (2) or more corporations under this chapter.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-7

Authority to merge or consolidate; status of surviving or successor corporation

Sec. 7. (a) A corporation organized under IC 8-1-13 may merge or consolidate with:

- (1) one (1) or more cooperative corporations organized under

- IC 8-1-17; or
- (2) one (1) or more corporations formed under this chapter; if a plan of merger or consolidation that complies with section 8 of this chapter is approved under section 9 of this chapter.
- (b) A cooperative corporation organized under IC 8-1-17 may merge or consolidate with:
- (1) one (1) or more corporations organized under IC 8-1-13; or
- (2) one (1) or more corporations formed under this chapter; if a plan of merger or consolidation that complies with section 8 of this chapter is approved under section 9 of this chapter.
- (c) A surviving corporation or successor corporation formed under this chapter:
- (1) has all the rights, powers, privileges, immunities, and exemptions of:
- (A) a local district corporation organized under IC 8-1-13; and
- (B) a local cooperative corporation organized under IC 8-1-17; and
- (2) is considered to be both:
- (A) a local district corporation, within the meaning of that term as used in IC 8-1-13; and
- (B) a local cooperative corporation, within the meaning of that term as used in IC 8-1-17.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-8

Plan of merger or consolidation; contents

Sec. 8. A plan of merger or consolidation must include the following:

- (1) The name of each merging or consolidating corporation.
- (2) The name of the surviving corporation or successor corporation.
- (3) The terms and conditions of the merger or consolidation and the mode of carrying the merger or consolidation into effect, including the manner in which members of the merging or consolidating corporations may or shall become members of the surviving corporation or successor corporation.
- (4) A plan for the retirement of patronage capital accrued by members of the merging or consolidating corporations.
- (5) The proposed articles of merger or consolidation or a comprehensive summary of the proposed articles of merger or consolidation.
- (6) The effective date of the merger or consolidation.
- (7) The number of, and length of terms for, directors of the surviving corporation or successor corporation and, if there will be voting districts in the service areas of the surviving corporation or successor corporation, a description of the districts and the number of directors to represent each district.
- (8) The names and addresses of the directors of the surviving corporation or successor corporation.

- (9) Any other provision concerning the planned merger or consolidation considered necessary or appropriate by the boards of directors of the merging or consolidating corporations.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-9

Approval of plan by members; notice of meeting

Sec. 9. The board of directors of each corporation that seeks to merge or consolidate with another corporation, as authorized by section 7 of this chapter, must obtain from the corporation's own membership approval of a plan of merger or consolidation that complies with section 8 of this chapter. A corporation that seeks approval from its membership under this section shall give notice to the corporation's members of the place, date, and time of a meeting at which the members may vote on the plan of merger or consolidation. The notice required by this section:

(1) must be given:

(A) not less than ten (10) days before the date of the meeting, if the notice is given by first class or registered mail; or

(B) not less than thirty (30) days or more than sixty (60) days before the date of the meeting, if the notice is given by a method other than that described in clause (A);

(2) must state that a purpose of the meeting is to consider a plan of merger or consolidation; and

(3) must include or be accompanied by a copy or summary of the plan of merger or consolidation prepared in compliance with section 8 of this chapter, including a copy or summary of the proposed articles of merger or consolidation, as required by section 8(5) of this chapter.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-10

Articles of merger or consolidation; contents; filing with secretary of state; articles of incorporation; abandonment of plan before filing

Sec. 10. (a) If at each meeting of members at which a vote is taken on a plan of merger or consolidation, as required by section 9 of this chapter, the plan of merger or consolidation is approved by a resolution adopted and receiving the affirmative vote of at least a majority of the members present and voting at the meeting, the directors of the surviving corporation or successor corporation, as identified in the plan of merger or consolidation, shall subscribe and acknowledge articles entitled and endorsed "Articles of merger (consolidation) of _____" (the blank space being filled in with the names of the corporations being merged or consolidated, as appropriate).

(b) The articles of merger or consolidation required by subsection (a) must include the following:

(1) The names of the corporations being merged or

consolidated.

(2) The name of the surviving corporation or successor corporation.

(3) A statement that each merging or consolidating corporation agrees to the merger or consolidation.

(4) The maximum number of directors for the surviving corporation or successor corporation, which number may not be less than three (3).

(5) The names and addresses of the directors of the surviving corporation or successor corporation.

(6) The terms and conditions of the merger or consolidation and the mode of carrying the merger or consolidation into effect, including the manner in which members of the merging or consolidating corporations may or shall become members of the surviving corporation or successor corporation.

(7) The location of the surviving corporation's or successor corporation's principal office, along with the mailing address for the surviving corporation or successor corporation.

(8) A specified period for the duration of the surviving corporation or successor corporation or a statement that the duration of the surviving corporation or successor corporation is to be perpetual.

(c) In addition to the items required by subsection (b), the articles of merger or consolidation required by subsection (a) may include:

(1) provisions creating, defining, limiting, or regulating the powers of the surviving corporation or successor corporation; and

(2) any other provision that:

(A) is not contrary to law;

(B) is contained in the plan of merger or consolidation approved by the respective memberships of the merging or consolidating corporations; and

(C) concerns the regulation of the business or conduct of the affairs of the surviving corporation or successor corporation.

(d) Subject to subsection (f), the articles of merger or consolidation, or one (1) or more certified copies of the articles of merger or consolidation, shall be filed in the office of the secretary of state. Upon filing with the secretary of state, the surviving corporation or successor corporation, under its designated name, constitutes a body corporate with all the powers of the merging or consolidating corporations as originally formed under:

(1) IC 8-1-13;

(2) IC 8-1-17; or

(3) this chapter;

as applicable.

(e) Upon being filed with the secretary of state under subsection (d), the articles of merger or consolidation are considered the articles of incorporation of the surviving corporation or successor corporation, and the surviving corporation or successor corporation may subsequently amend the articles of incorporation in accordance

with IC 23-17-17.

(f) At any time after a plan of merger or consolidation is approved by the respective memberships of the corporations that seek to merge or consolidate, as described in subsection (a), and before articles of merger or consolidation are filed with the secretary of state under subsection (d), the plan of merger or consolidation may be abandoned without further action by the respective memberships, boards of directors, or other persons who proposed or approved the plan of merger or consolidation for the corporations that sought to merge or consolidate. A plan of merger or consolidation that is abandoned under this subsection must be abandoned:

- (1) in accordance with any procedure set forth for that purpose in the plan of merger or consolidation; or
- (2) in the manner determined by the boards of directors of the corporations that sought to merge or consolidate, if a procedure described in subdivision (1) is not set forth in the plan of merger or consolidation.

As added by P.L.18-2010, SEC.1. Amended by P.L.42-2011, SEC.18.

IC 8-1-17.5-11

Legal status of merging or consolidating corporations; property; liabilities and obligations; pending proceedings; terms not included in articles

Sec. 11. After a merger or consolidation takes effect under section 10(d) of this chapter, the following apply:

- (1) If two (2) or more corporations merge into a surviving corporation, the separate existence of each merging corporation ceases upon the effective date of the merger and only the surviving corporation exists.
- (2) If a consolidation of two (2) or more corporations occurs, the separate existence of each consolidating corporation ceases upon the effective date of the consolidation and only the successor corporation exists.
- (3) The title to real property and other property owned by each merging or consolidating corporation is vested in the surviving corporation or successor corporation without reversion or impairment, subject to any conditions or liens to which the property was subject before the merger or consolidation.
- (4) The surviving corporation or successor corporation assumes all liabilities and obligations of each merging or consolidating corporation.
- (5) A proceeding that:
 - (A) is initiated against a merging or consolidating corporation before the merger or consolidation becomes effective under section 10(d) of this chapter; and
 - (B) has not been resolved at the time the merger or consolidation becomes effective under section 10(d) of this chapter;

may be continued as if the merger or consolidation did not occur, or the surviving corporation or successor corporation

may be substituted in the proceeding for the corporation whose existence ceases under subdivision (1) or (2) at the time the merger becomes effective under section 10(d) of this chapter. (6) Any terms of the plan of merger or consolidation that are not included in the articles of merger or consolidation filed with the secretary of state under section 10 of this chapter are considered contract rights only and are not considered part of the governing document of the surviving corporation or successor corporation.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-12

Board of directors; election of directors; terms; districts; remuneration for services; reimbursement; officers

Sec. 12. (a) Each surviving corporation or successor corporation formed under this chapter must have a board of directors that constitutes the governing body of the surviving corporation or successor corporation. Unless otherwise provided in the surviving corporation's or successor corporation's bylaws, or in the surviving corporation's or successor corporation's articles of incorporation, a director of the surviving corporation or successor corporation must be:

- (1) a member of the surviving corporation or successor corporation;
- (2) an officer, a director, or a partner of a member of the surviving corporation or successor corporation; or
- (3) an owner of a member of the surviving corporation or successor corporation, if the member is a sole proprietorship.

(b) Directors, other than those named in the surviving corporation's or successor corporation's bylaws or articles of incorporation, shall be elected by those members entitled to vote for the surviving corporation's or successor corporation's directors. Unless the surviving corporation's or successor corporation's bylaws or articles of incorporation provide otherwise, the directors shall be elected annually.

(c) The surviving corporation's or successor corporation's bylaws or articles of incorporation may provide the following:

- (1) That the directors may hold office for any stated period not exceeding three (3) years.
- (2) That the directors shall be elected so that the terms of one (1) or more directors expire at any specified time.
- (3) That only the number of directors needed to succeed those whose terms are about to expire or to fill vacancies shall be elected in any given year.
- (4) That the areas in which the members of the surviving corporation or successor corporation reside shall be apportioned into districts. If the bylaws or articles of incorporation provide for the creation of districts under this subdivision:
 - (A) the bylaws or articles of incorporation must prescribe the procedure by which the members residing in any one (1) district may nominate a director; and

(B) the bylaws or articles of incorporation may provide that the person receiving the most votes in an election for a director representing a district is the winner of the election, regardless of whether the person receives a majority of the total votes cast by members eligible to vote and voting in the election.

(5) That a fair remuneration may or shall be paid for the time actually spent by the:

(A) officers;

(B) directors; or

(C) members of the executive committee;

of the surviving corporation or successor corporation in the performance of their duties.

(d) The:

(1) officers;

(2) directors; or

(3) members of the executive committee;

of the surviving corporation or successor corporation are entitled to reimbursement for expenses actually incurred in the performance of their duties, regardless of whether the surviving corporation's or successor corporation's bylaws or articles of incorporation provide for remuneration for the performance of those duties under subsection (c)(5).

(e) The board of directors of the surviving corporation or successor corporation shall annually designate and elect those officers the board considers necessary.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-13

Powers of board

Sec. 13. The board of directors of the surviving corporation or successor corporation has the power to do all things necessary or convenient to conduct the business of the surviving corporation or successor corporation, including the following:

(1) The power to make, alter, amend, or repeal bylaws that:

(A) concern the regulation and management of the affairs of the surviving corporation or successor corporation; and

(B) are not inconsistent with any applicable law or with the articles of incorporation.

(2) The power to appoint agents and employees and to fix their compensation and the compensation of the officers of the surviving corporation or successor corporation.

(3) The power to execute instruments.

(4) The power to delegate to one (1) or more:

(A) directors;

(B) agents; or

(C) employees;

of the surviving corporation or successor corporation the powers and duties the board considers appropriate.

(5) The power to make the board's own rules and regulations

concerning the board's procedures.
As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-14

Certificates of membership; meetings of members; notice; quorum; election of directors from districts

Sec. 14. (a) A surviving corporation or successor corporation may issue to its members certificates of membership and each member is entitled to only one (1) vote on each question or election at any regular or special meeting of the surviving corporation or successor corporation.

(b) Meetings of members may be held at any place provided for in the bylaws. An annual meeting of the members shall be held at the time provided for in the bylaws.

(c) Unless otherwise provided in the bylaws or articles of incorporation of the surviving corporation or successor corporation, the following apply:

(1) Special meetings may be called:

(A) by the board of directors;

(B) upon a petition signed by at least five percent (5%) of all the members; or

(C) by any other officers or persons as may be provided in the articles of incorporation or the bylaws.

(2) Written or printed notice stating the place, date, and time of a meeting of members and, in the case of a special meeting, each purpose for which the meeting is called, shall be delivered not less than ten (10) days or more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the officers or persons calling the meeting, to each member of record entitled to vote at the meeting. If mailed, the notice is considered delivered when deposited in the United States mail in a sealed envelope addressed to the member at the member's address as it appears on the records of the surviving corporation or successor corporation, with postage prepaid. Notice of meetings of members may be waived in writing.

(3) Two percent (2%) of all members present in person at any meeting for which notice has been given as provided in subdivision (2) constitutes a quorum for the transaction of business at the meeting.

(4) A majority vote of those members who are present in person and voting at any regular meeting, or at any special meeting called at least in part for the purpose of the vote, is necessary for the taking of any action, the adoption of any resolution, or the election of any directors or officers, as applicable.

(d) As provided in section 12(c)(4) of this chapter, the bylaws or articles of incorporation of the surviving corporation or successor corporation may provide that if more than two (2) persons run for election as a director from the same district, the person receiving the most votes is elected, regardless of whether that person receives a majority of the total votes cast by those members present in person

and voting at the meeting at which the election occurs.
As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-15

Requirements for membership

Sec. 15. A person may not become or remain a member of a surviving corporation or successor corporation formed under this chapter unless the person:

- (1) uses retail electric service or communications service supplied by the surviving corporation or successor corporation; and
- (2) complies with the terms and conditions:
 - (A) concerning membership; and
 - (B) set forth in the bylaws or articles of incorporation of the surviving corporation or successor corporation.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-16

Members not liable for debts or liabilities of corporation; director acting in good faith not personally liable

Sec. 16. (a) A member of a surviving corporation or successor corporation formed under this chapter is not liable or responsible for the debts or liabilities of the surviving corporation or successor corporation.

(b) A director of a surviving corporation or successor corporation formed under this chapter is not personally liable for the acts or omissions of the surviving corporation or successor corporation if the director acts in good faith in performing the director's duties under this chapter or under the bylaws or articles of incorporation of the surviving corporation or successor corporation.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-17

Powers of surviving or successor corporation; authorized services

Sec. 17. (a) A surviving corporation or successor corporation formed under this chapter has all the powers and may provide any of the services that any party to the merger or consolidation had or could provide under:

- (1) IC 8-1-13;
- (2) IC 8-1-17; or
- (3) this chapter;

on the effective date of the merger or consolidation.

(b) A surviving corporation or successor corporation formed under this chapter is vested with all powers necessary for the accomplishment of the surviving corporation's or successor corporation's corporate purpose. An enumeration of particular powers granted by this chapter does not:

- (1) impair any grant of general power by this chapter; or
- (2) limit any grant of a particular power to the same class of powers as the power so enumerated.

(c) As used in this section, "services" shall be interpreted in its broadest sense and includes any services authorized by:

- (1) IC 8-1-13;
- (2) IC 8-1-17; or
- (3) this chapter.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-18

Enumerated powers of surviving or successor corporation

Sec. 18. A surviving corporation or successor corporation formed under this chapter may perform any acts necessary or convenient for carrying out the purpose for which the surviving corporation or successor corporation was formed, including the following:

- (1) To sue and be sued.
- (2) To have a seal and alter the seal as the board considers appropriate.
- (3) To acquire, hold, and dispose of property, real and personal, tangible and intangible, or any interest in property, and to pay for the property or interest in property in cash or on credit, and to secure and procure payment of all or any part of the purchase price on the terms and conditions that the board determines appropriate.
- (4) To acquire, own, exchange, operate, maintain, and improve a system or systems for the delivery of retail electric service or communications service.
- (5) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness and to secure the payment of the notes, bonds, and other evidences of indebtedness by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of the surviving corporation's or successor corporation's then owned or later acquired real or personal property, assets, franchises, or revenues.
- (6) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber electric or communications facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible that is necessary or appropriate to accomplish the purpose for which the surviving corporation or successor corporation was formed.
- (7) To construct, operate, and maintain electric or communications facilities across or along any street or public highway, or over any lands which are now or may be the property of this state or any political subdivision of the state, after obtaining any necessary franchise or permit. Before any electric or communications facilities are constructed across or along a highway in the state highway system, the surviving corporation or successor corporation shall obtain a permit to do

so from the Indiana department of transportation, and the permit from the Indiana department of transportation shall not be unreasonably withheld, delayed, or denied. The location and setting of the facilities shall be approved by the Indiana department of transportation and, upon that approval, shall be subject to the supervision of the Indiana department of transportation. Before any electric or communications facilities are constructed on or across lands belonging to the state, the surviving corporation or successor corporation shall first obtain a permit to do so from the department having charge of the lands, and the permit from that department shall not be unreasonably withheld, delayed, or denied. The location and setting of the facilities shall be approved by the department having jurisdiction and, upon that approval, shall be subject to the supervision of that department. The electric or communications facilities shall be erected and maintained so as not to interfere with the use and maintenance of the streets, highways, and lands, and the facilities or any part of the facilities may not be located so as to interfere with the ingress or egress from any premises on a street or highway. This section does not prohibit the body having charge of the street or highway from requiring the relocation of any facility or part of a facility which may affect the proper use of the street or highway for public travel, for drainage, or for the repair, construction, or reconstruction of the street or highway. The surviving corporation or successor corporation shall restore the street, highway, or lands to their former condition or state to the extent possible and shall not use the street, highway, or lands in a manner that impairs unnecessarily their usefulness or injures the property of others.

(8) To connect and interconnect the surviving corporation's or successor corporation's communications facilities or systems with other communications facilities or systems.

(9) To accept gifts or grants of property, real or personal, from any person, municipality, or federal agency and to accept voluntary and uncompensated services.

(10) To make any contracts necessary or convenient for the full exercise of the powers granted by this chapter, including contracts with any person, federal agency, or municipality for the purchase of energy needed by the surviving corporation or successor corporation to supply its members; for the management and conduct of the business of the surviving corporation or successor corporation; and for the fixing of the rates, fees, or charges for service rendered or to be rendered by the surviving corporation or successor corporation.

(11) To sell, lease, mortgage, or otherwise encumber or dispose of all or any part of the surviving corporation's or successor corporation's property as provided in this chapter.

(12) To levy and collect reasonable fees, rents, tolls, and other charges for services rendered.

(13) To exercise the right of eminent domain in the manner provided by law.

(14) To recover, after a period of two (2) years, any unclaimed stocks, dividends, capital credits, patronage capital, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found and that are the result of distributable savings of the surviving corporation or successor corporation being returned to the members on a pro rata basis under section 24(d) of this chapter.

(15) To cease doing business and to dissolve and surrender the surviving corporation's or successor corporation's corporate franchise.

(16) To issue membership certificates.

(17) To adopt, amend, and repeal bylaws.

(18) To perform any of the acts set forth in this section under, through, or by means of the surviving corporation's or successor corporation's own officers, agents, or employees, or by contracts with any person, federal agency, or municipality.

As added by P.L.18-2010, SEC.1. Amended by P.L.42-2011, SEC.19.

IC 8-1-17.5-19

Disposal of all of the corporation's property; authorization of members and directors required

Sec. 19. A surviving corporation or successor corporation formed under this chapter may not sell, lease, exchange, mortgage, pledge, or otherwise sell all, or substantially all, of the surviving corporation's or successor corporation's property unless the transaction is authorized by a resolution adopted at a meeting of the surviving corporation's or successor corporation's members duly called and held as provided in section 14 of this chapter. Unless otherwise provided in the surviving corporation's or successor corporation's bylaws or articles of incorporation, the resolution must receive the affirmative vote of:

(1) at least a majority of the surviving corporation's or successor corporation's members who are present at the meeting held under this section; and

(2) at least a majority of the corporation's directors who are present at a meeting of the board of directors called and held as provided in the surviving corporation's or successor corporation's bylaws or articles of incorporation.

As added by P.L.18-2010, SEC.1. Amended by P.L.42-2011, SEC.20.

IC 8-1-17.5-20

Authority to issue obligations; sale of obligations

Sec. 20. (a) A surviving corporation or successor corporation formed under this chapter has the power and is authorized, from time to time, to issue the surviving corporation's or successor corporation's obligations for any corporate purpose. The obligations may be authorized by one (1) or more resolutions of the board and may bear the date or dates, mature at the time or times, not exceeding forty

(40) years from their respective dates, bear interest at any rate, payable semiannually, be in the denominations, be in the form, either coupon or registered, carry the registration privileges, be executed in the manner, be payable in the medium of payment, at the place or places, and be subject to the terms of redemption, not exceeding the principal amount of the obligations plus accrued interest, as the board's resolution or resolutions may provide.

(b) The obligations may be sold in the manner and upon the terms as the board may determine at not less than the principal amount of the obligations plus accrued interest.

(c) Notwithstanding any provision of law to the contrary, any obligations and related interest coupons, if any, issued under this chapter must possess all the qualities of negotiable instruments.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-21

Issuing of obligations; right to make covenants and agreements

Sec. 21. In connection with the issuance of any obligations, a surviving corporation or successor corporation formed under this chapter may make any covenants or agreements and do any acts and things that may be necessary, convenient, or desirable in order to secure the surviving corporation's or successor corporation's obligations or which, in the absolute discretion of the board, tend to make the obligations more marketable, notwithstanding that the covenants, agreements, acts, or things may constitute a limitation on the exercise of the powers granted by this chapter.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-22

Right of corporation to purchase its own obligations; cancellation upon purchase

Sec. 22. A surviving corporation or successor corporation formed under this chapter may, out of any funds available for that purpose, purchase:

(1) any obligations issued by the surviving corporation or successor corporation; and

(2) any accrued interest on the obligations;

at a price determined by resolution of the board. Any obligation described in this section shall be cancelled upon its purchase by the surviving corporation or successor corporation.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-23

Articles of dissolution; filing with secretary of state; contents; winding up of business; remaining assets

Sec. 23. (a) A surviving corporation or successor corporation formed under this chapter may be dissolved by filing in the office of the secretary of state articles of dissolution that must be entitled and endorsed "Articles of dissolution of _____" (the blank space being filled in with the name of the surviving corporation or

successor corporation) and must include the following:

(1) The name of the surviving corporation or successor corporation and the names of the original corporations that were merged or consolidated to form the surviving corporation or successor corporation.

(2) The date of filing the following in the office of the secretary of state:

(A) the surviving corporation's or successor corporation's articles of incorporation, as most recently amended; and

(B) the articles of incorporation of the original corporations that were merged or consolidated to form the surviving corporation or successor corporation.

(3) A statement that the corporation elects to dissolve.

(4) The name and post office address of each of the directors of the surviving corporation or successor corporation, and the name, title, and post office address of each of the officers of the surviving corporation or successor corporation.

(b) The articles of dissolution shall be subscribed and acknowledged by the surviving corporation's or successor corporation's president or a vice president, and by the secretary or an assistant secretary, who shall make and annex an affidavit stating that they have been authorized to execute and file the articles by a resolution adopted by the members of the surviving corporation or successor corporation at a meeting called and held as provided in section 14 of this chapter.

(c) The articles of dissolution, or one (1) or more certified copies of the articles, shall be filed in the office of the secretary of state and upon that filing, the corporation shall be considered dissolved.

(d) A surviving corporation or successor corporation dissolved under subsection (c) shall continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business and affairs, and may sue and be sued in its corporate name.

(e) Any assets remaining after all liabilities or obligations of the surviving corporation or successor corporation have been satisfied or discharged pass to and become the property of the state.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-24

Corporation to provide reasonably adequate service; reasonable and just charges; return of excess revenues to members; Rural Utility Service borrowers

Sec. 24. (a) A surviving corporation or successor corporation formed under this chapter shall be required to furnish reasonably adequate:

(1) retail electric service or communications service, or both; and

(2) facilities for furnishing any service described in subdivision

(1) that is provided by the surviving corporation or successor

corporation.

The charge made by a surviving corporation or successor corporation for any service rendered or to be rendered, either directly or in connection with the service, must be nondiscriminatory, reasonable, and just, and every discriminatory, unjust, or unreasonable charge for a service provided under this section is prohibited and declared unlawful.

(b) Reasonable and just charges for service within the meaning of this section are charges that produce sufficient revenue:

- (1) to pay all legal and other necessary expense incident to the operation of the surviving corporation's or successor corporation's systems, including maintenance costs, operating charges, upkeep, repairs, depreciation and amortization, and interest charges on bonds or other obligations;
- (2) to provide a sinking fund for the liquidation of bonds or other evidences of indebtedness;
- (3) to provide adequate funds to be used as working capital, as well as funds for making extensions and replacements; and
- (4) for the payment of any taxes that may be assessed against the corporation or its property.

(c) Charges made under this section must produce an income sufficient to maintain the surviving corporation's or successor corporation's property in a sound physical and financial condition to render adequate and efficient service. Any rate too low to meet the requirements of this section is unlawful.

(d) Revenues and receipts not needed for the purposes described in this section, or not needed as reserves for those purposes, shall be returned to the members on a pro rata basis according to the amounts paid by members for:

- (1) retail electric service; or
- (2) communications service;

as appropriate. Amounts returned under this subsection may be either in cash or in abatement of current charges for the services described in this subsection, as the board may decide.

(e) As used in subsection (f), "financial assistance" means:

- (1) a loan or loan guarantee; or
- (2) a lien accommodation provided to secure a loan made by another lender;

that is made by the Rural Utility Service of the United States Department of Agriculture (RUS) or by the Rural Telephone Bank.

(f) As used in subsections (g) and (h), "RUS borrower" means a surviving corporation or successor corporation formed under this chapter that is the recipient of financial assistance from the Rural Utility Service of the United States Department of Agriculture (RUS).

(g) In determining rates under this section, an RUS borrower must charge rates sufficient to enable the RUS borrower to:

- (1) satisfy the RUS borrower's reasonable expenses and obligations; and
- (2) repay the full amount of any financial assistance and the

interest on the financial assistance.

(h) As long as there remains any unpaid part of any financial assistance associated with the property of an RUS borrower, the rates of the RUS borrower must be set at a level sufficient to repay the financial assistance, regardless of the full or partial retirement of the property or any other change in the status of the property.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-25

Jurisdiction of commission

Sec. 25. Notwithstanding any other law, the commission may exercise jurisdiction over a surviving corporation or successor corporation formed under this chapter only to do the following:

(1) Ensure compliance with IC 8-1-2.8 concerning the provision of dual party relay services to deaf, hard of hearing, and speech impaired persons in Indiana.

(2) Perform the commission's duties under IC 8-1-19.5 concerning the administration of the 211 dialing code for communications service used to provide access to human services information and referrals.

(3) Enforce rules adopted under IC 8-1-29 to ensure that a customer of a telecommunications provider is not:

(A) switched to another telecommunications provider unless the customer authorizes the switch; or

(B) billed for services by a telecommunications provider that without the customer's authorization added the services to the customer's service order.

(4) Conduct proceedings under:

(A) the federal Telecommunications Act of 1996 (47 U.S.C. 151 et seq.); and

(B) IC 20-20-16;

concerning universal service and access to telecommunications service and equipment, including the designation of eligible telecommunications carriers under 47 U.S.C. 214.

(5) Perform the commission's duties under IC 8-1-2.6-1.5 or IC 8-1-2-5.

(6) Issue or maintain certificates of territorial authority for communications service providers under IC 8-1-32.5.

(7) Perform the commission's duties under IC 8-1-34 to issue and maintain certificates of franchise authority to multichannel video programming distributors offering video service to Indiana customers.

(8) Perform the commission's duties under IC 8-1-2.6-13(c)(9) concerning the reporting of information by communications service providers.

(9) Fulfill the commission's duties under any state or federal law concerning the administration of any universally applicable dialing code for any communications service.

(10) Perform the commission's duties under IC 8-1-2.3 with respect to assigned service areas for electricity suppliers.

(11) Issue:

(A) certificates of public convenience and necessity, certificates of territorial authority, and indeterminate permits under IC 8-1-2;

(B) certificates of public convenience and necessity under IC 8-1-8.5; or

(C) certificates of public convenience and necessity under IC 8-1-8.7.

(12) Determine territorial disputes between water utilities under IC 8-1-2-86.5.

As added by P.L.18-2010, SEC.1. Amended by P.L.219-2011, SEC.2; P.L.109-2012, SEC.11; P.L.256-2013, SEC.13.

IC 8-1-17.5-26

Right to appeal

Sec. 26. Any person adversely affected by any final decision, ruling, or order of:

(1) the commission; or

(2) a court with jurisdiction;

under this chapter may appeal the decision, ruling, or order under the same appeal procedures set forth in IC 8-1-3.

As added by P.L.18-2010, SEC.1.

IC 8-1-17.5-27

Applicability of nonprofit corporation law

Sec. 27. IC 23-17 and all rights and powers under IC 23-17 apply to a surviving corporation or successor corporation formed under this chapter, unless the provisions of IC 23-17 are in conflict or inconsistent with the express provisions of this chapter.

As added by P.L.18-2010, SEC.1.