

IC 8-1-2.7

Chapter 2.7. Local Water Corporations; Indiana Utility Regulatory Commission Jurisdiction

IC 8-1-2.7-1

Repealed

(Repealed by P.L.82-1997, SEC.19 and P.L.80-1997, SEC.24.)

IC 8-1-2.7-1.2

Repealed

(Repealed by P.L.159-1999, SEC.21.)

IC 8-1-2.7-1.3

Applicability of chapter

Sec. 1.3. (a) This chapter applies to the following:

- (1) A public utility established to provide water service that is:
 - (A) privately owned and serves less than three hundred (300) customers;
 - (B) a not-for-profit utility (as defined by IC 8-1-2-125(a));
 - (C) a cooperative corporation exempt from state and federal income taxation; or
 - (D) a conservancy district established under IC 14-33-2 that:
 - (i) has as a purpose of the district the provision of a water supply, including the treatment and distribution of water, for domestic, industrial, and public use; and
 - (ii) provides water service to less than two thousand (2,000) customers.
- (2) A public utility established to provide sewage disposal service (as defined in IC 8-1-2-89(a)(1)) that holds a certificate of territorial authority as required by IC 8-1-2-89, and that is:
 - (A) privately owned and serves less than three hundred (300) customers;
 - (B) a not-for-profit utility (as defined in IC 8-1-2-125(a)); or
 - (C) a cooperative corporation exempt from state and federal income taxation.
- (3) Except as provided in subsection (b), a legal entity providing only sewage treatment service to a not-for-profit sewage disposal company.

(b) Subsection (a)(3) does not include a sewage treatment provider that is otherwise subject to the commission's jurisdiction.
As added by P.L.82-1997, SEC.2 and P.L.80-1997, SEC.2. Amended by P.L.159-1999, SEC.2; P.L.78-2007, SEC.1.

IC 8-1-2.7-1.4

"Members" and "shareholders" defined

Sec. 1.4. As used in this chapter, "members" of a not-for-profit water or sewage disposal company and "shareholders" of a privately owned water or sewage disposal company shall also include the customers of that utility.

As added by P.L.80-1997, SEC.3 and P.L.82-1997, SEC.3. Amended

by P.L.159-1999, SEC.3.

IC 8-1-2.7-1.5

Repealed

(Repealed by P.L.159-1999, SEC.21.)

IC 8-1-2.7-1.6

"Sewage treatment provider" defined

Sec. 1.6. (a) As used in this chapter, "sewage treatment provider" means a legal entity that provides only sewage treatment service to a not-for-profit sewage disposal company.

(b) As used in this chapter, "sewage treatment recipient" means a not-for-profit sewage disposal company that receives sewage treatment service from another legal entity.

As added by P.L.159-1999, SEC.4.

IC 8-1-2.7-1.7

Entity contracting with nonprofit public sewage utility not subject to commission jurisdiction

Sec. 1.7. (a) This section does not apply to a sewage treatment provider that is otherwise subject to the jurisdiction of the commission.

(b) When a sewage treatment provider contracts to provide only sewage treatment service to a sewage treatment recipient, the sewage treatment provider is not subject to the jurisdiction of the commission, regardless of whether the sewage treatment recipient is subject to the jurisdiction of the commission.

As added by P.L.80-1997, SEC.5 and P.L.82-1997, SEC.5. Amended by P.L.159-1999, SEC.5.

IC 8-1-2.7-2

Withdrawal of utility from commission jurisdiction

Sec. 2. (a) This chapter provides the exclusive statutory manner for a utility described in section 1.3(a)(1) or 1.3(a)(2) of this chapter to withdraw from the jurisdiction of the commission for the approval of the following:

- (1) Rates and charges.
- (2) Stocks, bonds, notes, or other evidence of indebtedness.
- (3) Rules.
- (4) The annual report filing requirement.

(b) Notwithstanding any other provision in this article, a sewer disposal company described in section 1.3(a)(2) of this chapter shall not initiate operations or provide service or seek commission authority to do so within a territory for which the commission has granted operating and territorial authority to any other entity, which has not been revoked.

(c) A sewage disposal company described in section 1.3(a)(2) of this chapter that has withdrawn from commission jurisdiction under this chapter shall offer service to all customers within the territory for which the commission has granted the utility territorial authority.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.6; P.L.82-1997, SEC.6; P.L.159-1999, SEC.6.

IC 8-1-2.7-3

Approval for withdrawal

Sec. 3. A utility described in section 1.3(a)(1) or 1.3(a)(2) of this chapter that proposes to withdraw from the jurisdiction of the commission must first obtain approval from its members or shareholders.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.7; P.L.82-1997, SEC.7; P.L.159-1999, SEC.7.

IC 8-1-2.7-4

Referendum on withdrawal

Sec. 4. The board of directors of a utility described in section 1.3(a)(1) or 1.3(a)(2) of this chapter must conduct a referendum among its members or shareholders to determine whether the members or shareholders approve the withdrawal from commission jurisdiction.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.8; P.L.82-1997, SEC.8; P.L.159-1999, SEC.8.

IC 8-1-2.7-5

Notice of special meeting for referendum

Sec. 5. The referendum must be conducted at a special meeting called by the board. Written notice of the meeting must be sent to every member or shareholder of the withdrawing utility and to the secretary of the commission not less than thirty (30) days before the date of the meeting. The notice must contain the following information:

- (1) The place, date, and hour of the meeting.
- (2) The purpose of the meeting, including an explanation of what the withdrawal from commission jurisdiction entails.
- (3) The fact that no proxies will be permitted.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.9; P.L.82-1999, SEC.9; P.L.159-1999, SEC.9.

IC 8-1-2.7-6

Quorum

Sec. 6. A quorum consisting of not less than five percent (5%) of the members must be present at the meeting to transact business and to take official action regarding the jurisdiction question.

As added by P.L.108-1989, SEC.1.

IC 8-1-2.7-7

Ballots; form; eligible voters; results

Sec. 7. The board shall distribute secret written ballots to the members or shareholders present at the meeting. The form of the ballots must be as follows:

- YES, I want to withdraw from the jurisdiction of the

commission.

NO, I want to remain under the jurisdiction of the commission.

Only those members or shareholders present at the meeting are eligible to vote, and proxy votes are not permitted. Each member or shareholder present is entitled to one (1) vote on the question of withdrawal from commission jurisdiction. If a majority of members or shareholders present vote in favor of the utility withdrawing from commission jurisdiction, the withdrawal becomes effective thirty (30) days after the date of the vote. If less than a majority of the members or shareholders present vote in favor of withdrawal from commission jurisdiction, the utility is prohibited from seeking withdrawal for two (2) years following the date of the vote.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.10; P.L.82-1997, SEC.10; P.L.159-1999, SEC.10.

IC 8-1-2.7-8

Repealed

(Repealed by P.L.159-1999, SEC.21.)

IC 8-1-2.7-9

Effect of withdrawal

Sec. 9. (a) Except as provided under subsection (c) or section 15 of this chapter, when a utility successfully withdraws from commission jurisdiction, the commission does not have authority to regulate the following:

- (1) Rates and charges.
- (2) Stocks, bonds, notes, or other evidence of indebtedness.
- (3) Rules.
- (4) The annual report filing requirement.

(b) When the number of patrons served by a withdrawn utility described in section 1.3(a)(1)(A) or 1.3(a)(2)(A) of this chapter reaches five thousand (5,000), the utility:

- (1) becomes subject to the annual report filing requirement described in IC 8-1-2-16; and
- (2) shall immediately notify the commission of the number of patrons served by the utility.

Upon receiving notice under subdivision (2), the commission may reassert jurisdiction over the utility, in whole or in part, after notice and hearing if the commission finds that the public interest so requires.

(c) As used in this subsection, "utility" refers to a utility described in section 1.3(a)(1)(B) of this chapter that is located in a county having a population of more than sixteen thousand (16,000) but less than seventeen thousand (17,000). When one (1) utility has successfully withdrawn from commission jurisdiction under this chapter, upon the filing of a complaint by another utility that has not withdrawn from commission jurisdiction under this chapter, the commission shall reassert jurisdiction over the withdrawn utility with respect to the withdrawn utility's:

- (1) rates and charges;
- (2) rules; and
- (3) operating and territorial authority;

that have been or may be established concerning the purchase of water for resale by the complaining utility from the withdrawn utility. The rates and charges described in subdivision (1) are subject to the requirements of IC 8-1-2-125. The burden of proof that the rates and charges described in subdivision (1) comply with IC 8-1-2-125 is on the withdrawn utility.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.12; P.L.82-1997, SEC.12; P.L.159-1999, SEC.11; P.L.226-2001, SEC.2; P.L.170-2002, SEC.58; P.L.119-2012, SEC.83.

IC 8-1-2.7-10

Confirmation of withdrawal

Sec. 10. (a) If a utility successfully withdraws from commission jurisdiction, the board of directors shall, within five (5) days of the meeting, send written confirmation to the secretary of the commission containing the following information:

- (1) The total membership or number of shareholders of the utility.
- (2) The total number present at the meeting.
- (3) The vote totals both for and against withdrawal.
- (4) Written verification of notice of the meeting.
- (5) An affidavit, signed by all of the members of the board of directors, stating that all of the requirements of this chapter have been met.

(b) If a utility successfully withdraws from commission jurisdiction, the utility is not required to pay the public utility fee imposed under IC 8-1-6.

(c) Notwithstanding any other provision of this chapter, a utility described in section 1.3(a)(2) of this chapter that has withdrawn from commission jurisdiction remains subject to commission jurisdiction with regard to the requirements of IC 8-1-2-89(f).

(d) Whenever two (2) or more utilities described in section 1.3(a)(1) or 1.3(a)(2) of this chapter propose to consolidate, and at least one (1), but not all of the utilities have withdrawn from commission jurisdiction, then the following apply:

- (1) For purposes of the consolidation, all of the utilities are under the commission's jurisdiction.
- (2) The new corporation that is formed as a result of the consolidation is under the commission's jurisdiction for all purposes and must fully comply with this chapter in order to withdraw from commission jurisdiction.

(e) If two (2) or more utilities described in section 1.3(a)(1)(C) or 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the cooperatives have withdrawn from commission jurisdiction, the new utility continues to operate outside the commission's jurisdiction under the terms of this section.

(f) The commission's approval is not required for consolidation of two (2) or more utilities that have all withdrawn from commission jurisdiction.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.13; P.L.82-1997, SEC.13; P.L.159-1999, SEC.12.

IC 8-1-2.7-11

Petition to return to commission jurisdiction; referendum; ballot form

Sec. 11. (a) Whenever the members or shareholders of a utility desire to return to commission jurisdiction, they must petition the commission. A petition signed by:

- (1) at least fifteen percent (15%) of the members or shareholders; or
- (2) the board of directors of the utility;

must first be submitted to the commission, informing that body of the utility's intent to conduct a referendum concerning the return to commission jurisdiction. The procedures outlined in sections 2 through 7 of this chapter must be followed when conducting a referendum under this section, except that the form of the ballots must be as follows:

- YES, I want to return to the jurisdiction of the commission.
- NO, I want to remain outside of the jurisdiction of the commission.

(b) The question of returning to commission jurisdiction may not be submitted to the members or shareholders within four (4) years after the date the utility withdrew from commission jurisdiction.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.14; P.L.82-1997, SEC.14; P.L.159-1999, SEC.13.

IC 8-1-2.7-12

Return to commission jurisdiction

Sec. 12. If a utility returns to commission jurisdiction, the commission assumes jurisdiction thirty (30) days after the date of the vote over the following:

- (1) Rates and charges.
- (2) Stocks, bonds, notes, or other evidence of indebtedness.
- (3) Rules.
- (4) The annual report filing requirement.

If less than a majority of the members or shareholders present vote in favor of returning to commission jurisdiction, a referendum on the question may not be conducted for four (4) years following the date of the vote.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.15; P.L.82-1997, SEC.15; P.L.159-1999, SEC.14.

IC 8-1-2.7-13

Confirmation of return to commission jurisdiction

Sec. 13. If a utility attempts to return to commission jurisdiction, the board of directors shall, within five (5) days following the

meeting, send written confirmation to the secretary of the commission containing the following information:

- (1) The total membership or number of shareholders of the utility.
- (2) The total number present at the meeting.
- (3) The vote totals both for and against the return.
- (4) Written verification of notice of the meeting.
- (5) An affidavit, signed by all the members of the board of directors, stating that all of the requirements of this chapter have been met.

As added by P.L.108-1989, SEC.1. Amended by P.L.82-1997, SEC.16; P.L.80-1997, SEC.16; P.L.159-1999, SEC.15.

IC 8-1-2.7-14

Annual reports of utility before return to commission jurisdiction

Sec. 14. When a utility returns to commission jurisdiction, the commission may order the utility to file an annual report of the operation of its plant for each of the three (3) calendar years immediately preceding its return to commission jurisdiction on a form prescribed by the commission.

As added by P.L.108-1989, SEC.1. Amended by P.L.80-1997, SEC.17; P.L.82-1997, SEC.17; P.L.159-1999, SEC.16.

IC 8-1-2.7-14.5

Failure to follow procedures for withdrawal from or return to commission's jurisdiction

Sec. 14.5. (a) This section applies when a utility fails to follow the procedures provided in this chapter for withdrawal from or return to the commission's jurisdiction.

(b) To contest compliance with this chapter:

- (1) parties aggrieved by the decision to withdraw from commission jurisdiction; or
- (2) other interested parties;

must file an action in the circuit or superior court with jurisdiction in the county where the utility has its principal office.

(c) An action filed under this section must be filed not later than thirty (30) days after the date of the vote regarding commission jurisdiction over the utility.

As added by P.L.159-1999, SEC.17.

IC 8-1-2.7-15

Revocation or limitation of withdrawal from commission jurisdiction

Sec. 15. (a) This section applies after a utility has properly withdrawn from commission jurisdiction under this chapter.

(b) The commission shall revoke or limit the withdrawal from the jurisdiction of the commission of a utility if the lesser of:

- (1) one hundred (100); or
- (2) more than fifty percent (50%);

of the utility's customers file, individually or collectively, a verified

petition with the commission and prove that the public interest requires the commission to revoke or limit the withdrawal from the jurisdiction of the commission.

(c) A petition may be filed with the commission under this section at any time following the withdrawal of the utility.

As added by P.L.82-1997, SEC.18. Amended by P.L.159-1999, SEC.18.