

# **Q & A for Communities Considering the Public Power Option**

**Prepared by the American Public Power Association**

## Q & A for Communities Considering the Public Power Option.

### 1. Why should we consider forming a public power utility?

Very simply – for local control. With a public power utility your community has local control over how electricity is provided to your own homes and businesses. Your city sets its own priorities for the most reliable, responsive electric service at the lowest reasonable price.



Having a public power utility has many distinct advantages;

- It is *owned by and accountable to* the people it serves;
- It offers lower electric prices because it is not-for-profit; (U.S. Department of Energy data show that residential customers of investor-owned utilities (IOUs) pay average rates that are 13 percent *higher* than the rates of public power utilities. [link to public power costs less]);
- It measures success by how many dollars are invested in the local community, not how many dollars leave in the form of dividends to stockholders;
- It brings decision-making back to the local community where it carries out the community's goals, such as investing in the local infrastructure, energy conservation, renewable energy, pollution prevention and safety;
- It provides more efficient utility management with local scrutiny over electric operations;
- It provides the local employment and service reliability that comes with using local service personnel; and
- It is generally more able to insulate its customer-owners from the expensive market flaws and abuses that have characterized the electricity and gas industries in recent years.

In fact, all U.S. consumers benefit from cities having the option to create public power utilities because electric service franchise competition between public and private power keeps all utilities on their toes and responsive to their customers.

## **2. Does our community have the right to choose its electricity provider?**

Yes. In most states citizens have the right to determine whether to own and operate their own public power utility or to grant an electric franchise to an investor-owned utility (IOU). This is a local rights issue. A community should not be interfered with in its right to determine which public services it will provide its citizens, whether it's electric, water, wastewater, gas, sewer, cable or Internet services.

An expiring franchise is an opportunity for a municipality to examine the performance of the utility providing electric service. Many would say that it is the *responsibility* of city officials to evaluate viable electric service options for the economic health of the community.

## **3. Will electricity prices be lower if our city forms a public power utility?**

Communities that have formed public power utilities in recent years have been able to offer lower electric prices to local residents and businesses. For some the savings have been substantial.

A feasibility study done by a qualified consultant would help you determine how much your community can save on electric rates. The consultant would examine the factors (wholesale power costs, system acquisition costs and so forth) that determine the short term and long term savings that are possible with public ownership. These savings can be passed along to consumers in the form of lower electric rates. Such savings have long been the norm for established public power utilities.

New public power utilities, like those that have been operating for up to 100 years or more, have lower electric prices because they:

- Are accountable to the consumer-owners they serve;
- Are not-for-profit and do not pay dividends to often distant stockholders;
- Have lower administrative costs and are more efficiently managed;
- Have rates set locally by citizen-controlled boards that operate in the sunshine;
- Do not pay federal income tax because they are entities of state or local government;
- Are eligible to issue revenue bonds that are tax-exempt from federal income tax for capital expenses; and
- May have access to lower cost hydroelectric power marketed at wholesale by federal and state agencies.

#### **4. Could we improve the reliability of service with a public power system?**

When a community forms a public power utility, it decides how the public power “dividend” (savings from having public ownership) will be spent. Savings may be used to upgrade (and/or underground) electric facilities to reduce outages and improve reliability.

Public power utilities have the highest records in terms of power reliability, power quality, safety and efficiency – quite logically because they focus on core operations and take care of their own assets. They take pride in maintaining a local electric system that keeps pace with technology and provides reliable, cost-effective service.

Public power utilities give rapid response to outages because service is provided by crews and equipment located in the community. When a customer’s service is interrupted by a squirrel getting in a substation or when a hot wire is dragging on a sidewalk, customers need immediate service and it must be provided locally. One of the most important benefits of public power is that the utility is owned, operated and staffed locally.

#### **5. Would there be a loss of local tax revenue if the public power utility were to replace the incumbent IOU?**

No. Local tax revenue can be preserved because public power utilities contribute payments in lieu of taxes, transfers to the general fund, and/or free or reduced-cost services for the city. The amount of financial support for other city services would be set by the local governing board of the new public power utility. The board would be comprised of local officials, who would ensure that this essential source of funding for city government continues. Schools and city government offices also benefit from the lower electric prices of a public power utility.

Financial contributions of a public power utility may be greater than those of the incumbent IOU. In fact, when all the financial contributions of both public and investor-owned utilities were taken into account in the most recent comparison survey, the median amount contributed by public power systems was 14 percent *higher* than those of investor-owned utilities.

#### **6. Can we lower electric rates and increase tax revenue with a public power system?**

Yes, this is possible. It depends on the size of the “public power dividend,” the savings to the community from being served by a public power utility instead of an IOU. If the savings are sufficient, the community may lower rates, increase payments to the local treasury, and/or invest money in system improvements – in order to meet local community goals.

### **7. Does public power help with local economic development?**

Absolutely. A public power utility can be extremely valuable in achieving the community’s goals to broaden its tax base, offset the need for increased local taxes, and improve the local economy and jobs situation. A public power utility’s lower rates allow consumers to spend more money on other goods and services. Public power can retain local businesses and attract new ones which helps maintain and create jobs for local residents.

Local businesses like the streamlined “one-stop shopping” customer relationship they can have with a local public power utility. And public power systems are often an integral part of efforts such as downtown renovation, business development and industrial parks and other public works projects in their communities.

### **8. What are some of the other economic benefits of public power?**

In a public power community local dollars stay at home. Whenever feasible, public power systems do business with local financial institutions and make purchases from local businesses. Salaries earned by local utility employees are likely to be spent in the community for housing, groceries and other supplies. Those payroll dollars multiply in value to the community as they are spent locally by businesses and their employees. Calling this the multiplier effect, economists estimate that each payroll dollar circulates through the economy five to ten times.

Public power’s success is measured by how many dollars stay and are invested in the local community, not how many dollars leave in the form of dividends to stockholders.

### **9. Would industrial users be disadvantaged by the new public power utility?**

Large power users are often integral to the community’s economic vitality and their needs would undoubtedly be heard by the new utility’s governing board during the local ratemaking process.

In the context of establishing a public power utility, the city could offer incentives to large power users that could promote the expansion of business or attracting new businesses, while still protecting residential and commercial consumers.

Many public power utilities work with their larger electricity users, offering them power quality, demand-side management, alternative pricing structures, special communications during outages and other customer-focused programs.

#### **10. Would the new public power utility generate power or purchase it wholesale?**

Power supply costs are by far the biggest component of the customer's ultimate electric bill. When the community owns and operates a public power utility it has options and choices in power supply as in other areas of operations. Many public power utilities purchase wholesale electricity at prices that are beneficial to their customers without owning power plants. They purchase the wholesale electricity and transmission services through contracts with other utilities or companies.

Some public power utilities build generating facilities to serve their load. A strategy of both plant ownership and wholesale purchases allows many cities to hedge risks and benchmark one source against another for cost, reliability, and social/environmental benefits.

In addition, hundreds of public power utilities participate in joint action power supply agencies to gain economies of scale in wholesale power supply that small municipal utilities could otherwise find unattainable. A list of the nation's public power joint action agencies is available from APPA.

#### **11. Would local residents have more control over utility operations with public power?**

Public power utilities are governed and regulated by their consumer-owners through locally elected or appointed officials. IOUs are regulated by state and federal regulatory commissions. IOU customers have the right to place complaints with the public service commission, but because customers are not the utility's owners they have no direct relationship to the utility management. In a few states, public power systems are regulated by the local governing body and the state public service commission.

The governing body of a public power utility may be an elected city council, elected utility board or appointed utility board. The common trait of these governance structures is decision-making in open deliberations by citizens who are directly accountable to customers. Public power utilities operate in the sunshine and are subject to local scrutiny. Residents have public notices and access to meetings, planning alternatives, reports, assumptions used, and cost estimates.

Public power governing board members have four primary roles: As regulators they establish the utility's annual budget and sets rates for electric service. As trustees, they act in the long-term best interest of the utility and the community. As representatives, they represent the interests of the owners of the utility, who are the customers. As activists, they participate in state, regional and national public power organizations to protect the interests of consumer-owned utilities.

## **12. How do public power utilities restore service in the event of a major outage?**

Public power utilities use their own local crews. Also they have mutual aid agreements with other public power utilities around the state and the country to assist during major disasters. These programs have been well tested and have proven effective in tornados, ice storms, hurricanes and other disasters. In a major emergency, cooperation among different types of utilities is common and municipal utility crews have even provided assistance to investor-owned utilities and rural electric cooperatives.

Also, in accordance with federal law, the public power community can turn to the Federal Emergency Management Administration (FEMA) to cover a significant portion of the cost of rebuilding in the event of a declared disaster.

## **13. Will the city place power lines underground?**

With public power this is a local decision. Placing power lines underground can not only improve reliability but also greatly enhance the aesthetics of the community. There are installation and maintenance costs to be calculated, but the community would want to weigh the pros and cons of a project to underground lines to make its decisions there.

With an investor-owned utility serving the community, the residents bear the majority of the costs associated with undergrounding power lines, if the company is even willing to do this, but the company takes ownership of the improved lines upon completion of the project. In contrast, if the city owns and operates a public power utility, it could use income from the electric system to underground the lines, and upon completion, the city would own the improved asset.

## **14. How do public power utilities get qualified line workers and other personnel?**

Public power utilities hire from the same pool of talent as IOUs and cooperatives do. As with other utilities, public power systems provide training opportunities for apprentice and journeyman line personnel. Larger municipal utilities often have their own training programs, while smaller systems take advantage of programs at state and regional public power organizations.

Where new municipal utilities have formed, the new utility typically offers employment to qualified personnel of the incumbent IOU at equivalent or better compensation. The community goal is the orderly transition of services and employees to ensure reliability without interruption.

**15. Most public power utilities are smaller than IOUs, so are they large enough to have efficient operations?**

Public power utilities find that their smaller size can be an advantage in electricity distribution. Distribution, as opposed to large scale generation and high voltage transmission is local. They keep costs down through local scrutiny of operations. With their local presence they are more responsive to customers' needs. They use strategic partnerships and joint action with other public power agencies to obtain the advantages of size without taking on the disadvantages of merging into a larger more bureaucratic institution.

Relatively smaller public power utilities have done an outstanding job with reliability, price and service during the recent turbulent times in the electricity industry. They have been able to adjust quickly to changes in the marketplace but keep their focus on their core utility mission. As always, their focus has been on low-cost, reliable service for their consumer-owners.

The most likely reason for public power's efficient performance, "appears to be that retail distribution may be performed better by enterprises rooted to the customer community," Professor John Kwoka, Jr. concluded in his comprehensive book, *Power Structure: Ownership, Integration and Competition in the U.S. Electric Utility Industry*. "Such proximity may yield greater knowledge of local customer needs and a greater sense of responsibility for addressing those needs."

**16. How do public power utilities integrate with other municipal services?**

Having a public power utility is extremely valuable to a local community in attaining its overall set of goals. The utility is part of the public service community team that deals cooperatively with public works projects, downtown renovation, business development and industrial parks, line extension policies, and energy efficiency programs.

In terms of day-to-day operations, the local electric utility can integrate its operations with the provision of other city services, such as water, gas, sewer, garbage and community broadband. This might include combining or coordinating meter reading, billing, payment process, and call center operations. The electric utility may share some personnel, office space, equipment and

supplies with other government services. The flow of cash from the electric system may be channeled through the local government treasury. As always, cost and revenue allocations are accounted for thoroughly and publicly.

### **17. How would the city manage the new utility?**

Most cities have experience owning and maintaining a water, sewer or gas utility. If the city chooses to own and operate an electric utility, it would recruit a manager from the same pool of qualified electricity industry managers as do the IOUs and rural electric cooperatives. In fact, many public power chief executive officers began their careers working in the distribution or power supply departments of investor-owned utilities.

Some cities outsource the operation of their new public power system in the early years of operation. They contract with an experienced electricity provider to operate and manage the system. The electricity provider is held accountable to city officials for its performance in reliability and responsiveness. Although this is a viable option for the city to consider, it is not essential to outsource operations. Cities have only to look at the existing public power utilities, more than 2,000 of them nationwide, to learn how they manage their operations. Nearly 500 of them have more than 100 years of operating experience that they can share.

### **18. Would a new public power utility do a better job of protecting the environment?**

Public power utilities are more responsive to their customers' needs and concerns, including protection of the environment. Public power and its consumer-owners have longed viewed themselves as more environmentally responsible than investor-owned utilities or rural electric cooperatives. This claim was supported by a recent, broad ranging analysis of comparative data on environmental issues, *Shades of Green: Public Power's Environmental Profile*.

Many public power utilities have demonstrated their commitment through renewable energy projects. There is every reason to believe that a new public power utility would pursue green energy projects, if that were the will of its consumer-owners.

### **19. Would a public power utility be more likely to use renewable energy resources?**

Locally owned and operated public power utilities have the advantage of offering their consumers a direct voice in utility policies, including type of generation used and energy conservation programs offered.

Public power leads the industry in using and promoting renewable energy and there are numerous illustrations of municipal utility green energy projects. For example, the City of Roseville, California, and its municipal electric utility are planning a new energy park that features the latest technology for clean, fuel-efficient power using conventional and renewable systems. Waverly, Iowa, Light & Power's wind generation contributes 5.52 percent of its total generation portfolio annually and is an important element of a program to use environmentally friendly, renewable energy resources. These are but two examples. For more information, contact APPA.

## **20. What is the process and where do we start?**

The process of forming a public power utility typically includes the following elements: a feasibility study, legal analysis, facilities valuation, consumer educational campaign, citizen referendum, price negotiation and/or condemnation proceedings, petition to the public service commission, power supply arrangements, and start up operations.

However, the number of steps and their order may change somewhat based on the city's situation, relationship with the incumbent IOU, state and local law, and public's interest in the issue. Regardless, several of the steps, such as the study and legal analysis are likely to proceed concurrently.

### **The feasibility study**

Typically, one of the first things a city council does is to approve a sum of money for a feasibility study to determine if forming a public power utility is likely to be economically viable. The study looks at capital and operating costs for the proposed new utility, factoring in various alternatives for power supply. The study is usually conducted by a qualified engineering firm, and it identifies fatal flaws (if any), a range of expected savings, other benefits, risks, and recommended next steps.

Often a preliminary study is done and if it shows savings, a more detailed study follows. The second phase might estimate property value (determining the general condition of the facilities to be acquired) and the cost of separating the new system's facilities from the remaining part of the IOU's system. If building a new, alternative distribution system is to be considered as an option, the feasibility study would estimate the cost of new construction of a distribution system with current technology.

### **Community education**

Providing the community with information on the proposed public power utility is important throughout the process, not only to gauge the support of citizens, local officials and business leaders, but also to counter strong opposition from the IOU. The educational process includes disseminating information about possible

benefits of the proposed municipal utility and bringing citizens' needs and recommendations back to local officials. Public hearings may be held to test the level of public support before proceeding to the next step in the municipalization process.

Some communities appoint a "blue ribbon" committee of prominent citizens to guide the public power evaluation. This can be very helpful in the process as long as the task force remains public and unbiased, and is not captured by the incumbent IOU.

Because the local business community plays an important role in the success or failure of a municipalization effort, involving businesses early in the process can help avoid misunderstandings. Similarly, since the media provides an important role in educating citizens, it is important that they understand the issues in a public power evaluation. Municipal officials find it helpful to convene a meeting with the editors of the local newspaper to explain the initiative.

Another important element in considering public power is the local and regional political scene. Any strategy for municipalization must factor in not only the results of the feasibility analysis, but also a sense of the political climate of forming a public power utility.

### **Legal analysis**

Early on there should be a review of state statutes pertaining to the formation of a public power utility. For example, there may be the requirement to hold citizen referendum and/or petition the state public service commission on establishing a public power utility. There should be a review also of the city's franchise with the IOU (if one exists) to determine any specific language pertaining to the city's acquisition of distribution facilities that serve the community.

### **Valuation**

If not included in the preliminary feasibility study, a follow up study should estimate the value of the electric distribution system. As with other types of appraisals, several valuation methodologies may be used. This would include original cost less depreciation and replacement cost less depreciation. On this subject, Dr. Michael Sheehan has an excellent paper, "Valuation and Compensation Issues in Establishing a Public Power Utility," which is available from APPA.

### **Referendum**

If required by law, a referendum would be set to authorize the establishment of the public power utility. If there is a preference to establish an independent board to govern the utility, the ballot issue may be "double-barreled," asking first, "should the city be authorized to establish a municipal utility" and second, "should the utility be governed by an independent utility board." Leading up to the

referendum, city officials would present findings and facts on the issue of forming a public power utility. Separately, a volunteer community group may be organized to push for approval of the ballot issue.

Depending on the local issues and timing, the city council may choose to take the initiative to ballot even if not required by law. The council may follow the will of the people (as expressed in the vote) in deciding whether or not to form a public power utility. A favorable vote for public power may enhance the marketability and value of revenue bonds.

### **Price negotiation/condemnation**

Moving forward beyond the study and the referendum, if one is held, the city would develop a negotiating strategy and make a purchase offer to the IOU for the relevant parts of its facilities. If the IOU refuses to sell or insists on an inflated price, the city may consider condemnation action under its rights of eminent domain.

The IOU often demands an exorbitant price for the facilities, far in excess of the consultant's valuation. Typically, the IOU criticizes the consultant's study as being faulty, overly optimistic, or biased. But consultants who do these feasibility studies have their professional reputations on the line and try to be as accurate as possible with their estimates.

To counter the IOU's demands for an exorbitant price, some cities hire two independent consulting firms to value the facilities and then compare their results. The City of Las Cruces, New Mexico did this because the incumbent IOU was demanding \$176 to \$250 million for the system. Both consulting firms told the city the system was worth about \$38 million.

If the IOU is willing to negotiate, it may be possible to get to a more reasonable, feasible purchase price. In another example, through a negotiation process in the early 1980s, an incumbent IOU agreed to sell its facilities for \$26 million to the newly formed Emerald People's Utility District. Five years earlier a feasibility study had estimated the value of the system at \$23 million.

### **Evaluation of financing alternatives**

As an investment, a new public power utility has tremendous payback potential, but it does take the commitment of considerable funds to begin operations. After estimating the total cost of buying or building the distribution system and other capital and start-up costs, the city should estimate the annual debt service on that amount of debt which would typically be issued as revenue bonds.

The 1987 amendments to the Internal Revenue Code prohibit municipalities from using tax-exempt financing to purchase the output facilities of investor-owned utilities unless they obtain a portion of their state's volume cap for such financing.

However, there is no such limitation on the use of tax-exempt financing for the building of a new system or for improvements to the distribution facilities once they are purchased from the IOU. The public power utility is likely to have a strong investment credit rating, and new capital expenditures may be funded at a much lower cost of capital than if the system were investor-owned.

### **Public service commission proceedings**

In some states, the state public service commission has the authority to determine if the formation of the public power utility is in the public interest, and the price that is to be paid for the incumbent's facilities and for reintegrating the remaining system.

### **Start-Up Operations**

The final steps in forming a public power utility include issuing bonds for the purchase and/or construction of facilities; completing power supply and transmission arrangements; planning for the severance of the system from the incumbent IOU's; developing an organizational plan; setting up the new governing body and recruiting a utility manager; planning for materials, equipment, and supplies; and commencing operations. The city may decide to contract out some of these functions in the short-run, selecting a firm experienced in electricity operations to do the job.

## **21. How much does feasibility study cost and how reliable are the estimates of savings?**

The cost of a preliminary feasibility study or full feasibility study are largely a function of the scope of work defined. Costs will vary with the size of the community, the type and condition of resources needed to serve the community, the consultant's expenses, and the length, scope and formality of the final report presentation.

A few recent examples:

Two communities, populations of 4,000 and 34,000 joined together to commission a preliminary feasibility study of both for a total of \$50,000.

A small village (population 1,900) paid \$5,000 for a preliminary study.

A medium-size city (population 56,000) paid \$25,000 to look at options for providing municipal electric and gas service.

A municipal utility district (population 700,000) spent \$150,000 to study its potential role as an electric provider.

When a study shows that significant savings are possible with public power, the IOU is likely to dismiss the study as “flawed.” Of course it is not that the study is flawed, but that the incumbent IOU does not like the results. Feasibility studies by qualified engineering firms have had an excellent track record of estimating savings and other benefits from forming a public power utility, and of course, the consulting firm is putting its reputation and future business on the line.

To get a list of qualified engineering firms that conduct feasibility studies, sample requests for proposals and sample feasibility studies, please contact Ursula Schryver at APPA ([USchryver@APPAnet.org](mailto:USchryver@APPAnet.org) or 202-467-2956).

**22. Would the new public power utility acquire the facilities of the incumbent IOU and, if so, at what price?**

The simplest way to form a public power utility is through a voluntary agreement between the two parties. The city agrees to purchase the incumbent IOU’s distribution facilities and the IOU agrees to sell. A negotiated purchase price is likely be a compromise between the price deemed appropriate by the city and the price desired by the IOU.

Such “voluntary” purchase agreements happen rarely. The city has more leverage if its electric franchise specifies that it may acquire the IOU’s facilities or if similar terms are written in the state or local statutes. Some franchises expressly allow the city to acquire the utility prior to the expiration of the franchise term. The process for valuing the distribution facilities may be specified as well. But even with this specific language, the IOU may exercise self-interest and challenge the validity of the contract it signed.

Sometimes the city has to pursue the formation of a public power system by acquiring the IOU’s facilities through eminent domain or by building an alternative distribution system. Most municipalities have the right of eminent domain which enables them to condemn utility facilities. Some states give municipalities specific statutory authority to condemn utility property. If the utility property is acquired through eminent domain, usually the courts will determine the just compensation in condemnation proceedings. Sometimes state statutes provide for the assessment of compensation by state agencies, such as the public service commission.

To the extent the ability to condemn is restricted and the franchise does not require a sale and the IOU will not voluntarily sell, the municipality may consider the construction of an alternative system rather than the purchase of the existing facilities.

**23. How will the city pay for buying or building an electric distribution system?**

The purchase of a new public power utility's facilities is generally done through the issuance of revenue bonds. These bonds are repaid from electric utility revenues. The proposed electricity debt is evaluated by bond rating services based upon the projected net revenues of the electric system. Revenue bonds, unlike general obligation bonds, are not backed by the city or by the city's ability to impose property taxes. The new electric revenue bonds should have no impact on other city projects and borrowings.

**24. Can the city use tax-exempt bonds to purchase the facilities?**

In 1987 a federal law was enacted that restricts the use of tax-exempt bonds to acquire the existing "output" facilities of investor-owned electric utilities. There are a number of important exceptions to this rule which are described in a paper by Goldman Sachs which is available from APPA.

**25. Isn't this a risky business for cities that have not operated an electric utility before?**

As with any new enterprise there is risk, but electric distribution systems earn a good return for their owners over a long time. The distribution network was described by one IOU executive as a "stable platform for earnings, nearly as sure a thing as having an annuity."

Regarding the new utility's expenses, fluctuations in power supply costs can be lessened with the proper power supply contracts. The risk of devastation from major storms can be mitigated with the proper reserves, insurance and mutual aid agreements. Since these costs are already included in the IOU's distribution costs, customers are already paying for them in their electric rates. However, when the city takes ownership and operation of the utility, it has control over both the revenues and the expenses.

Public power utilities have a well-deserved reputation for being stable and low risk. The very fact that they do not undertake speculative ventures, putting the consumer-owners' dollars at risk, makes public power very attractive.

**26. Is it prohibitively expensive to form a public power utility today, unlike many years ago when things were cheaper?**

Actually, municipal utilities are relatively less expensive to form now than in the early days. Imagine setting up a utility system with no existing infrastructure. Today the facilities, the technology, procedures, and the work force pools are already in place.

It costs money to establish a new municipal utility, but the community is investing in a revenue-producing asset that will serve it for many years. A public power utility provides the city with a return on its investment. Money from utility operation stays in the community instead of going to outside stockholders, and utility operations may help fund other city services. Putting a new electric utility in place is adding a valuable asset to the community, like building a city hall or community center. This new asset grows in value, producing revenue for years to come.

All new enterprises take an initial investment, but a public power utility gives the community options. You can decide what kind of electricity generation is right for your community. You can build or buy that generation. You can decide what to charge and what service policies you will have. You can have a local service center and local crews to restore power quickly in an outage.

### **27. How long does it take to form a public power utility?**

Some public power utilities have been formed in a year or two. A few of the most hard-fought municipalization campaigns took 7 or 8 years to complete. The average appears to be about 3 to 4 years. Because communities that establish public power utilities sometimes have a long history of dissatisfaction with the incumbent IOU's rates or service, they may have spent many years (in many different ways) fighting for electric service that meets their needs.

### **28. What about the employees of the incumbent IOU?**

When new public power utilities are formed, management typically offers employment to qualified personnel of the incumbent IOU at equivalent or better compensation.

### **29. What is the downside of trying to form a municipal utility?**

If a study shows the community that a public power utility is legally and economically feasible, there will be many advantages to pursuing the option. However, if the incumbent IOU is determined to stop the formation of the public power utility, it may take the city to court on various legal issues. Litigation takes time and money. The IOUs tell cities they should not consider municipalization

because the process is too expensive. This advice is disingenuous at best, given that it is the IOU that initiates the litigation in order to drive up the costs.

Another expense for the city is the cost of educating citizens about the public power initiative. The IOU may spend an exorbitant amount of money on newspaper, radio, and television advertising to spread misinformation about public power. However, despite the huge funds spent on these IOU campaigns, cities have been successful in using their communication channels to keep citizens fully informed about the proposed public power utility.

### **30. Why “rock the boat,” taking on new responsibilities and costs that could easily be left with the incumbent IOU?**

To do nothing may put the community at greater risk, especially in today’s world.

Consumers pay for the cost of utility operations through their electric bills – whether service is provided by a public power system or an IOU. But with public ownership of the utility the consumer-owners have greater control over prices and service. A public power utility is directly *accountable* to the people it serves. Many communities find it worthwhile to make the change because they determine that public power can deliver responsive, reliable electric service at the most reasonable rates. Also, their own public power utility will not put the customers at risk for ill-conceived diversification ventures or mergers.

For example, Hermiston, Oregon, Energy Services, one of the newest public power utilities in the country, was designed to run at cost. The city is not in business to make a profit. After paying back a line of credit that helped with the system purchase and lawyers’ fees, HES will lower rates or invest in system upgrades. The city will make payments to itself (like the IOU’s franchise fee) so there will not be a loss to the general fund. Hermiston City Manager Ed Brookshier says “We’re now a local service with self-determination—a lot of people believe in the long-term benefits of this system. That’s not to downplay the short-term benefits, but people have a solid understanding of local ownership.”

### **31. What reaction can we expect from the incumbent IOU?**

If your community is able to establish a public power utility and save money for its citizens, then so can other communities. This means a loss of electric load and profits for the investor-owned utility. Not surprisingly, the IOU is likely to do everything it can to stop your community from forming a public power system.

But your community also will enjoy some benefits just by evaluating municipalization. Once you begin to look at alternatives, the IOU will become more alert and visibly active in supporting your community’s projects. Customer

service and reliability may improve. The IOU may offer special deals on streetlighting and municipal electric service in exchange for the city's backing away from a public power initiative.

The IOU may offer special incentive rates to large industries in town, tied to long-term contracts. If enough industries accept these rates, the city may need to re-evaluate the feasibility of forming a utility. The industries, of course, receive a benefit that would not have been made available had it not been for the community's considering public power.

In most cases you should expect the IOU to take the city to court. If the feasibility study has been thorough and actions have been based on legal authority, the city will probably win the law suit, but there will be a cost in time, money and perhaps political will. The IOU's goal is not necessarily to win in court, but to run the city out of money or scare city officials into abandoning the idea.

The IOU will probably engage high-powered public relations firm in the state and give it a big budget to stop the municipalization. They will fill bill stuffers, newspapers and airways with messages aimed at confusing the issues, creating fear, and spreading misinformation. The IOU's favorite strategy is to create doubt about the formation of a public power utility.

The IOU also may use firms like Scientech (formerly Reddy Communications Inc. or RCI) that specialize in helping defeat public power initiatives. Scientech may make presentations before the city council, write articles for the local newspaper, and distribute bill stuffers with the central message that the city cannot succeed in forming a public power utility. For more information on these campaigns, please contact APPA.

### **32. What factors contribute to a successful public power initiative?**

The successful formation of a public power utility generally has the following elements:

- The city has the legal basis to form the public power system.
- An economic feasibility study shows that there would be sufficient savings from the public power operation when compared with continued service from the IOU.
- The community has the political will to see the project through.
- Policymakers and citizens are well informed and understand the benefits of public power.

- The business community or several of its most influential leaders support the effort.
- The city can put together the financial resources for each phase in the process of starting the utility, possibly with the backing of an interested party such as a local industry or a potential attractive wholesale power supplier.
- The cooperation of the incumbent utility, or if there is none, the community resolve to do what it takes to establish the public power utility.

Citizen education is vital throughout the process of establishing a public power utility. Local leaders should start early and should explain why the city is considering public power in a way that has meaning for local residents and businesses.

Although there will be times when it is necessary to respond to the IOU's attacks on the proposal, it is best to stay with positive messages about the formation of the new utility. In other words, do not let the IOU take the fight to its hill. Stay on message. City officials, rather than outside hired guns, have more credibility with citizens because they have the community's best interest at heart. Local elected and appointed officials, as well as local business leaders, should be prepared to respond to false charges against public power. APPA's book, *Straight Answers to False Charges Against Public Power*, [\[link\]](#) is available to help with this educational effort.

Be prepared to keep the media informed on your goals and the process. Sit down with editorial boards of local newspapers to explain what you are trying to do and to answer questions. The IOU is likely to step up its advertising in the local newspaper. If allowed by state and local law, the city would want to counter by placing educational ads in the local newspapers.

Citizen support groups can help. Local citizens may form a committee to help educate the community on the benefits of public power. This committee can actively promote a ballot initiative, if the city is prohibited from doing more than presenting findings and facts. Citizen groups like Las Cruces' "Pull the Plug," San Francisco's "CLUB" (Coalition for Lower Utility Bills) and Casselberry's "Citizens for Power Options," made sure their fellow citizens are well informed about the public power option.

### **33. What are some successful public power initiatives?**

A total of 46 public power utilities were formed in the last 20 years. These include:

Hermiston, Oregon (2001)	4,900 customers
Long Island Power Authority (1998)	1,035,000 customers
Bozrah, Conn. Light & Power (1995)	2,400 customers
Clyde, Ohio, Light and Power (1989)	2,600 customers
Emerald People's Utility District (1983)	17,000 customers

Here is a brief summary of how these five systems were formed.

**Hermiston, Oregon, Energy Services (HES) negotiated a purchase price with the IOU.** Hermiston, Oregon formed a municipal utility in 2001 following a four-year effort. The municipalization effort began because the IOU closed its local customer service office and citizens determined that the company's service level was declining. Citizens approved a plan to take over the IOU's distribution system. The IOU fought Hermiston's condemnation proceeding in court, but the court ruled in favor of the city. After the decision, the IOU agreed to sell the system to the city for \$8 million, about twice book value.

Since HES took over, residential rates are slightly lower and commercial rates have remained about the same. The switchover on Oct. 1, 2001 went smoothly for customers. Electric rates are expected to be even lower in a few years when the utility has paid back a line of credit that funded the system purchase and the legal fees.

Hermiston City Manager Ed Brookshier says the city now controls its own destiny and is committed to the concept of cost-based rates. The local newspaper *East Oregonian*, which had opposed the formation of the city-owned utility, reversed its stance after the new utility started operations.

**Long Power Authority Island (LIPA) is the largest of the new public power utilities.** LIPA replaced the investor-owned Long Island Lighting Company in Nassau and Suffolk counties in New York. In May, 1998, after LIPA purchased the IOU's transmission and distribution system, it reduced electric rates across the board by an average of 20 percent. Since then LIPA's customers have saved nearly \$2 billion.

In addition, LIPA put special attention on the distribution system's safety and reliability. Employee morale improved dramatically with LIPA's fresh start, its nonprofit, public-service outlook, and its new emphasis on safety.

LIPA has a special relationship with its business and industrial customers, taking an active role in business and civic organizations. LIPA provides qualified businesses with the opportunity to obtain rate incentives and energy efficiency

audits. More than 300 companies have taken advantage of LIPA's economic development program, creating nearly 50,000 jobs.

**Bozrah, Conn. Light & Power, was established when the IOU's facilities were purchased by a neighboring public power system.** Bozrah, Connecticut formed a municipal electric utility in 1995, buying the system from a small IOU. The electric system was actually purchased by the public power utility in nearby Groton, Connecticut. Groton helped Bozrah set up the new Bozrah Utility Commission, a board that includes representatives from Bozrah and Lebanon, the two towns that make up the service area. A utility manager from Groton is in the Bozrah office one day a week. Bozrah Light & Power takes power from the Connecticut Municipal Electric Energy Cooperative, a municipal joint action agency.

The citizens of Bozrah have a small utility that serves as a benchmark against which the rates and service of the Connecticut's large IOU can be compared. Bozrah Light & Power's rates were the about the same as IOU's rates after takeover, but about a year ago the IOU announced that its rates were going up. Customer service has definitely improved with the new utility.

Bozrah now has a customer service center with three employees. "You get a person, not a machine" when you call Bozrah Light & Power. According to the Bozrah utility, the IOU is so large it can take a week to get all the lights back on in all of its communities after a storm. But Bozrah's line crew has the town's power back on in a matter of hours.

**Clyde, Ohio, Light & Power constructed its own distribution system.** When Clyde, Ohio, a town of 6,000 people, decided to pursue formation of a municipal utility, the initiative was entirely supported by the Whirlpool, the town's largest industrial employer. Citizens voted "yes" in a referendum and the town borrowed \$11 million to install its own poles, wires, transformers and electric meters to compete head-on with the IOU in the community, as is allowed by Ohio law.

Five years after the municipal utility began operations, its electric rates were 30% lower than those of the IOU and most people in town (except the IOU's employees) had switched to public power. A fully functioning public power utility with significantly lower rates was just what the IOUs had told citizens they could never succeed in creating. The second set of poles in town appears to be the only drawback, but some duplication already existed because of other utilities that serve the community.

**Emerald People's Utility District, Eugene, Oregon was established through a grassroots effort in 1983.** Customers were tired of the IOU's high rates, its lackluster service and nonexistent maintenance that made it routine to have to fill

bathtubs with water at the slightest blink of the lights. They joined together to displace the IOU with a public power utility to serve about 17,000 customers.

Citizens approved a bond issue of \$72 million to purchase the system and cover start up costs. The community bought the distribution system and all customer accounts from the IOU, which fought municipalization all the way. The formation of Emerald PUD took 13 years from beginning to end and included 14 separate legal actions. But the benefits to be had were very clear to those who spearheaded the effort.

Once the new utility began operating the first challenge was to rebuild the local distribution system which was in poor condition. A few years after Emerald PUD started operations, its consumer-owners could proudly point to system improvements that provided better reliability. Electric rates were lowered by five percent. The pledge of providing the lowest possible electric rates continues today, and the total savings to residential customers from the public power utility now exceed \$10 million.

Emerald PUD's exemplary customer service operation has been featured in two best-selling management books. Its employees, the utility's ambassadors, are treated well. For five consecutive years, Emerald PUD has been among the top 100 best places to work in Oregon, and last year was number one.

Most important, Emerald PUD is a utility with a fierce devotion to its customer-owners and the bedrock principle of customer involvement. The utility set out from the beginning to have its customers involved in decision making. A customer advisory committee helps the utility with budgeting, rate design, and resource planning issues.

#### **34. What about communities that do not succeed in forming public power utilities? Is the effort wasted?**

No. In almost every case, the community and its residents receive valuable concessions from the incumbent utility because they pursued the public power option. The city learns the true value of its electric franchise, and that the company that gets the franchise should meet the citizens' requirements for electricity price and service. Most important, the citizens learn that they have alternatives to the incumbent utility.

There are many examples of public power initiatives that did not fully succeed, but brought important benefits to the community. Here are two.

In the 1980s **Brook Park, Ohio**, a suburb of Cleveland, looked at forming a municipal utility to achieve lower rates for its citizens and its major employer, the

Ford Motor Co. The IOU could not cut its rate for Brook Park residents (without doing so for all of its towns in its service area), but it did agree to give Ford a considerable rate cut because of the municipalization initiative. Ford agreed to turn over a portion of its savings to the city each year (\$1.6 million), the city agreed to drop its public power initiative for the time being. The city of Brook Park planned to distribute the money from Ford directly to its citizens.

A seven-year effort by the City of **Las Cruces, New Mexico** to form a public power utility has been called a failure by the IOUs. But a closer look reveals that the citizens of Las Cruces took control of their electricity future and gained some real benefits in the process.

The City of Las Cruces City Council unanimously passed an ordinance to set up a municipal electric utility and their action was supported by a 2 to 1 vote of the citizens. The community wanted lower electric rates and better reliability to encourage local economic development.

For five years, the IOU fought the formation of the municipal electric system in courts. But the city met every legal challenge the IOU presented. The New Mexico Supreme Court gave the city the go ahead to spend \$72.5 in revenue bonds to launch a municipal utility and the city prepared to take the IOU's distribution system in the community through condemnation. When it looked like the city was going to succeed after all, the IOU offered to pay a \$21 million "settlement" to stop formation of the municipal utility. The settlement offered was the amount of money the city had spent in litigation with the IOU. The Las Cruces City Council, apprehensive about still more litigation with the IOU before utility operations could begin, accepted the settlement offer, along with several very valuable concessions.

Often overlooked are these concessions that the City of Las Cruces obtained along with the large cash payment:

- The IOU agreed to a relatively short, seven-year franchise rather than the decades long ones usually demanded. This franchise gives the city the option to purchase the system for book value plus 30 percent at the end of the seven-year franchise period. If the city decides not to purchase the system in 2007, the franchise will remain in effect for another two years.
- The city may take possession of the system no later than one year from the date of its notice to exercise this option.
- The city will not have to deal with any stranded cost issue or payment if it buys the IOU's system at the end of the 7-year franchise.

A year or so before the settlement, the citizens of Las Cruces and other customers of the IOU got a rate decrease, most likely due in part to the city's pursuit of public power. Unfortunately, since then the IOU increased its rates again. And once again the citizens of Las Cruces are complaining to city officials about the IOU's prices and its failure to deliver consistently reliable, responsive service.

**35. What are some options other than the taking over of the IOU's distribution system?**

There are other options. However, feasibility studies show that the city's full ownership and operation of the distribution system brings the greatest economic benefits to the community.

Some cities have chosen to defer the acquisition of the incumbent utility's distribution facilities (poles, lines, transformers, etc.) for a later time. Depending on state law, the city may go into the electricity business by setting up a municipal utility without local wires, but with the authority to purchase electricity in the wholesale market for its own utility uses, such as water, and wastewater operations. Sometimes called "muni lite," this partial municipalization is likely to bring some savings to city residents through lower utility operating costs. In some states the municipal utility also may buy generation to serve specific business customers or to serve customers in new industrial parks or in new residential subdivisions.

In states that have approved retail choice legislation, the city may create a municipal utility in order to become a load aggregator for the community and to secure less expensive energy supplies for local homes and businesses.

One reason to consider "muni lite" is that the city gains experience in the electricity business and demonstrates the savings that are possible. Savings might be used to help fund a feasibility study for acquiring the local distribution facilities from the IOU, to conduct energy efficiency programs, invest in renewable energy facilities, or simply to reduce water and wastewater operating costs. Another reason is that a municipal utility operation positions the city to acquire the IOU's distribution facilities in the event of a voluntary sale. (Some IOUs are now privately held companies, and if the owners are not satisfied with the regulated returns on their distribution assets, they might decide to sell).

**36. How large is the public power sector of the electricity industry?**

More than 2,000 communities across the U.S. have chosen to provide for their own electricity services. Public power provides for the electric power needs of about 40 million Americans – about 14 percent of electricity customers.

The network of public power utilities is committed to sharing information on utility operations, including best practices, and lessons learned. They work together to strengthen their grassroots political clout as well as share operations ideas.

**37. Is the trend toward publicly owned or privately owned power?**

Electric utility ownership changes are relatively rare. During the last decade 19 new public power utilities were formed. Eleven communities sold their public power systems, most of these to neighboring rural electric cooperatives. With more than 3,100 electric utilities operating nationwide, these sales do not represent a statistical trend in either direction. But most important, these changes do not indicate that there is a trend toward privatization, as the IOUs so often suggest.

While industry ownership and sector shares are relatively stable, municipalities across the country are showing more interest in public power now than they have for decades. Today dozens of cities and towns are evaluating the option of forming a public power utility. The local officials who are spearheading these efforts know that it will take considerable money, time and effort, but they are aware of the net long-lasting benefits of public power for communities that succeed.