

Navigating lines of authority in municipal utility governance



By Richard Heinemann

A municipality has several options when deciding how best to manage its municipal electric utility. Under Wisconsin law, a municipal electric utility may be managed by a utility commission, the board of public works, a committee made up of municipal officers, or the village or city administrator. Regardless of which option a municipality has chosen, successful utility governance requires a good understanding of laws governing municipal electric utilities and applicable regulations of the Public Service Commission of Wisconsin (PSC). This is in addition to a fair degree of political dexterity and a commitment to building trust between the city council or village board and the utility.

Wisconsin is one of the few states that fully regulates its municipal electric and water utilities. While Wisconsin municipalities have broad powers to manage and control their property, finances, rights of way, navigable waters and public services, these powers are limited with respect to municipal utilities due to such regulation. Well over a century ago, the Public Utility Act, now encoded in Chapter 196 of the Wisconsin Statutes, gave municipali-

ties monopoly power over their utility service territories in return for ceding regulatory authority to the PSC (formerly known as the “Railroad Commission”). Regulation was intended to create a buffer against the bias inherent in local control and better ensure that municipal utilities would be run more like a business, for the benefit of ratepayers — the residents and businesses of the community.

Unlike their counterparts in many other states, therefore, Wisconsin municipal utilities cannot set their own rates or establish their own tariffs. They must adhere to administrative rules and

regulations set by the PSC, including the requirement to follow uniform accounting rules; to use a formula to set the maximum amount of utility

income that can be used to make local and school tax equivalent (or “PILOT”) payments; to enforce customer service and consumer protection rules; and to obtain authorization before beginning major utility construction projects.

A key feature of PSC regulation is the protection of utility funds and assets from inappropriate use by other departments of the municipality — which is why a bucket truck owned by the electric utility cannot be used by the water utility without reasonable compensation from the water utility to the electric utility or why the electric utility cannot place its SCADA equipment on the municipally-owned water tower without paying rent to the water utility.

The PSC may also impose restrictions on the transfer of excess utility revenues to the municipality’s general fund, particularly when

there are concerns for the utility’s financial integrity or to ensure that ratepayer funds are directed to their intended purposes. In accordance with PSC rules and

state statute (sec. 66.0811, Wis. Statutes), utility account balances are not automatically available for use by the municipality. This oversight function also means that the responsibility of setting adequate and equitable rates resides with an

authority outside the local government, allowing prudent utility practice rather than local politics to be the primary driver.

For utilities governed by a municipal utility commission formed under sec. 66.0805 (1), Wis. Statutes, other restrictions hold. The general authority to contract is retained by the municipal governing body under statutory home rule powers, but sec. 66.0805(1) provides for the “non-partisan” management of the utility by giving local utility commissions responsibility for the “entire charge and management” of the utility under the “general control and supervision” of the governing body. This means that utility commissions are granted semi-independent status and may exercise its own contracting authority as it relates to utility business (e.g., the purchase of utility vehicles and equipment or the sale or rental of utility-related property). Thus, while governing bodies can exercise their supervisory role over the utility commission by establishing general policies and procedures through ordinance, this supervisory role is not intended to intrude into the day-to-day operations of the utility. Approval by the governing body of certain types of contracts may thus be appropriate as long as such approval does not unduly interfere with the commission’s “charge and management” of the utility. It is therefore usually good practice

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Effective governance of municipal electric utilities matters, and it is important to understand the accountabilities and roles of the governing body and those involved in managing the day-to-day operations. In response to member feedback, MEUW is developing a training program that will specifically address the governance challenges and the pros and cons of different models. Please take a minute to complete a [survey](#) to help us structure a program that will most effectively meet members’ needs.

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tice to align city and commission policies and practices over human resources matters, purchasing, contracting, and bidding.

The interplay between the authority of utility commissions and their governing bodies is critical when it comes to personnel issues. In *Schroeder v. City of Clintonville* (90 Wis. 2d 457 (1979)), the Wisconsin Supreme Court held that because sec. 66.0805(3), Wis. Statutes, grants a utility commission the authority to “fix the compensation of subordinates as necessary,” a city council could not override a utility employee wage increase approved by its utility commission. By extension, under *Schroeder*, utility commissions have authority to hire utility employees without being subject to more general

municipal hiring restrictions such as wage caps.

The *Schroeder* case upholds the principle that the specific authority granted to commissions under sec. 66.0805(3), Wis. Statutes, supersedes the authority given to governing bodies under more general statutes that may be in conflict. More generally, the Court’s reasoning suggests that a utility commission has discretion to manage the utility and, so long as it is acting within the bounds of its authority under the statute, the governing body may not revoke the utility commission’s action.

Because it is intended to be run in a non-partisan manner, the utility commission form of governance may facilitate operating the utility as a business enterprise — better able to benefit from continuity and exper-

tise rather than be subject to the dictates of electoral politics. This is why the commission format generally represents the best way of operating a utility. Most successful utility commissions have long-serving commissioners, with knowledge and expertise of the industry that has been cultivated over many years.

This does not mean that commissions are insulated from political considerations—governing bodies retain their authority to abolish a commission, as well as the ability to exercise their appointment authority in accordance with local ordinances. Hence, utility commissioners, general managers, and utility department heads are well advised to maintain open lines of communication with their governing bodies and do everything they can to ensure that both are

working toward a common goal — which is the operation of the utility in a sound, business-like manner for the benefit of the community.

In municipalities that do not have a utility commission and, therefore, have retained more control over utility operations under sec. 66.0805(6), Wis. Statutes, these same principles hold.

Governing bodies should remain well-informed about utility operations and mindful of the regulatory constraints imposed under state law and PSC rules and regulations in all aspects of utility business, including in the use of utility revenues. •



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