

Be cautious about transferring utility revenue to general fund



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Municipal utilities make financial contributions to their local communities in many ways — tax equivalents, payments in lieu of taxes, free or reduced-cost services to local governments, and transfers to the general fund. Indeed, it is one of the cardinal tenets of public power that such contributions compare favorably with those made by investor-owned utilities to the communities they serve.

But too much of a good thing can also be a detriment. With that in mind, it's prudent for municipal utilities to understand the restrictions imposed by state law and Public Service Commission (PSC) regulation on the use of utility funds, particularly when it comes to general fund transfers.

The use of electric utility revenues is governed by state statute. Specifically, Wis. Stat. § 66.0811(2) sets out an order of priority for how municipal utilities can spend their money. The statute expressly states that the income of a municipal public utility must “first be used to make payments to meet operation, maintenance, depreciation,

interest, and debt service fund requirements, local and school tax equivalents, additions and improvements, and other necessary disbursements or indebtedness.”

Next, the statute permits utilities to set aside revenues for additions and improvements, as well as “other necessary disbursements” or indebtedness. Utility revenues in excess of these requirements also may be used to purchase and hold bonds issued for utility acquisition, as well as bonds issued by the United States or Wisconsin municipalities. They may also be used to pay the costs of insuring an officer or manager of the utility.

Last in the order of spending priority, after current operations, necessary system investment and debt service have been provided for, the statute permits payment of excess utility revenues “into the general fund.”

The statute has only rarely been subject to judicial interpretation, but what precedent there is supports the notion that excess utility funds can be legally deposited in the general fund only if the funds really are not needed for the utility.

For example, an Attorney General Opinion dating back to 1922 found that it would be illegal for a City Council to withdraw funds

from a utility depreciation reserve account unless the account had been funded with money from the general fund originally (11 Op. Atty. Gen. 935). Similarly, a 1939 Wisconsin Supreme Court decision held that a city's ability to obtain access to utility funds legally depended on whether the utility had funds in excess of statutory requirements (*Reetz v. Kitch*, 230 Wis. 1, 283 N.W. 348 (1939)).

This notion of utility priority is also consistent with the PSC's treatment of utility revenues in municipal utility rate cases. In recent years, in instances where the Commission has concern about the financial vulnerability of the utility due to over-leveraging or underinvestment in the system, the Commission has expressly restricted the utility from transferring surplus income (except payments in lieu of taxes) to the general fund of the municipality without prior PSC approval (see e.g., PSC Docket Nos. 2950-ER-104 and 360-ER-107).

Conversely, if the Commission approves a rate increase based on a utility's plan to use the funds for planned system improvements, a subsequent transfer of “excess revenues” to the general fund that leaves the utility short of cash to make such improvements would very likely not be viewed sympathetically by

the PSC if the utility returns to seek additional rate increases.

So what can municipal utilities do to properly apply the priority of funds set out in the statute? Funds held in reserve to meet debt service or depreciation requirements should be so designated. Rather than leaving “excess revenues” in unspecified accounts, utility funds intended to be used for rate stabilization purposes or to cover anticipated system projects over several years should be set up in specific accounts, consistent with the language of §66.0811(2), which, as indicated earlier, prioritizes use of utility funds for “additions, improvements, and other necessary disbursements.”

In short, plan carefully and employ appropriate accounting methods that are transparent to utility accountants, auditors and PSC staff. Money may still be available to contribute to the general fund, but only after utility income has been properly allocated to ensure the overall health of the utility. ●



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