Background Materials on Utility Governance

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1. **Governance Models:**

   Governance Alternatives White Paper, Colorado Springs Utilities, 2011

   Managing Public Utilities: The American Way, Public Utility Research Center, University of Florida, 2011

   Chapter 4: Other Governance Models for Municipal Utilities, Governance in a Changing Market: Alternative Governance Structures – The Los Angeles Department of Water and Power, RAND, 2001

   Electric Utility Department Competitive Performance Review, Price Waterhouse, 1996

2. **Surveys**

   Texas and Large Municipally Owned Utilities, Austin Energy, 2012

   Testimony of the Texas Public Power Association, Senate Business & Commerce Committee, 2012

   2010 Governance Survey, American Public Power Association, 2010

   Preliminary Information Regarding Governance and Late Fees from Large Public Power Council (LPPC) Member Utilities, 2008

   General Utility Information (of Municipally Owned Electric Utilities), Navigant, 2011

   Governance Structures of Municipally Owned Electric Utilities, Texas Public Power Association, 2011

3. **Other Utilities: CPS Energy (San Antonio, Texas); Colorado Springs Utilities (Colorado); Jacksonville Energy Authority (Florida)**

   CPS Energy Presentation to the Senate Committee on Business and Commerce, 2012

   CPS Energy Governance Structure presentation to the Electric Utility Commission, Austin Energy, 2008

   Governance Structure of CPS Energy

   CPS Energy Board of Trustees Role & Accountabilities Statement and Invitation to Apply for CPS Trustee, 2012

   Governance Structure Review Assignment, presentation to Colorado Springs Utilities Board by the Utilities Policy Advisory Committee, 2012

   Jacksonville Energy Authority (JEA) Board Policy Manual, Bylaws and Charter, 2010

4. **State Government Code and Austin City Council Resolutions**

   Texas Government Code Section 1502.070. Management and Control of Utility System

   Local Government Code Subchapter G. Management of Certain Encumbered Municipal Electric Utility Systems

   Austin City Council Resolution establishing guidelines and financial targets for enhancing the competitive position of Austin Energy, 1999

   Austin City Council Resolution directing a Study of Governance Models, 2012

5. **Historical and other materials from EUC Member Shudde Fath**

   Memos and Letters from the EUC and Commissioner Fath, including EUC recommendations on governance in 1996 and 2002

   Board Governance of Austin's Electric Utility, Additional Information requested by the EUC Finance Committee, 1996

   Transcripts and Notes from EUC Public Forums on Utility Governance, 1996; including historical City of San Antonio documentation regarding purchase of CPS

   News articles and excerpts

Governance Alternatives

White Paper

COLORADO SPRINGS UTILITIES

January 2011

Governance Alternatives

White Paper

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Executive Summary

Colorado Springs Utilities has evolved from being a small department of the City of Colorado Springs, governed solely by City Council, to being a large multi-service utility governed partially by a Utilities Board and partially by City Council. Since Colorado Springs Utilities became an enterprise of the Municipal Government in 1993, four separate studies have been considered to examine changing the governance structure, each with a recurring recommendation that utilities should have an independent or separate board of directors from City Council. [1]

Under the current structure, City Council has three main roles with respect to Colorado Springs Utilities which include: sitting as the Board of Directors (comprised of all City Council members) to establish policies and operational direction for the organization and monitor performance; meeting as City Council to approve the budget, act in a legislative capacity to establish ordinances regarding utility services via the City Code and to issue bonds; and meeting as City Council, in a regulatory role similar to the Public Utilities Commission, to establish tariffs, rates, extension policies, etc.

Through policy governance, all management responsibilities reside with the Chief Executive Officer. The CEO is bound by executive limitations, developed by the board, that establish specific limits on his or her authority.

In April 2011 Colorado Springs Utilities governance will again evolve with the establishment of a full time mayor who will work with a City Council comprised of a majority of new members, each with roles and responsibilities that have not yet been fully defined. As the municipal government is changing, City Council and our community have indicated a desire to investigate alternative governance structures for Colorado Springs Utilities. This white paper explores forward looking opportunities to create an oversight body that is utility business oriented in order to ensure that Colorado Springs Utilities continues to be successful in an ever changing utility industry.

[1] Recommendations from Consultants and Citizen Commissions - Associated Utility Consultants report 1993, Charter Review Committee 2005, Utilities Policy Advisory Committee Governance assignment 2007, Sustainable Funding Committee 2009.

Section I: Introduction

Colorado Springs Utilities has a rich legacy of being intentionally owned by the citizens of Colorado Springs; a legacy that stretches back to the very founding of the city. The City of Colorado Springs was incorporated under the laws of the Territory of Colorado in September 1872, with the water system going into operation the same year. Citizens established the water service in 1878 by approving an $80,000 bond issue for a water works project to improve the City's water system, and in 1888 the City constructed the first sewer mains for the wastewater system, with bonding for sewer pipe to be laid along streets and alleys.

Like most other places in the nation, electric and natural gas service first came to Colorado Springs in the late 1800s as a result of private companies seeking to establish markets for the then newly useful commodities. In 1879, the Colorado Springs Gas and Coke Company received the first franchise for gas service on July 23 and the El Paso Electric Company received the first electric franchise on July 12, 1886. By 1910, all private gas and electric operations in the City were consolidated under the Colorado Springs Light, Heat and Power Company (CSLHP).

In 1909 Colorado Springs voters approved a Home Rule Charter and a commission form of government was adopted to replace the alderman form of government that the City had utilized from its founding. This new charter established the right of the City to purchase, at fair valuation, such public utilities as the people, through election, deemed it best to acquire. The people of Colorado Springs wasted no time in exercising this new right, and in 1918 over 600 citizens unsuccessfully petitioned the City Council to consider purchasing the assets of CSLHP.

In 1921 Colorado Springs voters approved changing from a commission form of government to a council-manager form of government. This governance change was due in large part to a conflict between the City and the CSLHP over who had priority to use the City's water rights. As a result of this conflict, Colorado Springs voters denied a new electric franchise to CSLHP in 1923 and in 1924 the citizens approved a $1,250,000 bond issue to buy the existing electric and gas operations from that company.

On July 1, 1925, The City of Colorado Springs Light & Power Department was established. That same year, the City took over operation of the Manitou hydro plant, opened a new steam power plant at 700 S. Conejos (now known as Martin Drake Power Plant), completed construction of the Ruxton hydro plant, and acquired and began operating the electric and natural gas distribution systems, thus launching a new era of four-service municipal ownership.

Today, Colorado Springs Utilities provides electricity, natural gas, water and wastewater service to an approximately 500-square-mile service area and employs more than 1,800 men and women. As of December 31, 2009, Colorado Springs Utilities had total net assets of $1.3 billion with total operating revenue of $744 million. The planned capital program will double the organization's net worth in the next five years. Because the utility industry by nature is capital intensive, capital and fuel together make up 63 percent of the total 2011 budget.

Colorado Springs Utilities maintains an 'AA' bond rating (or its equivalent) from the three major bond rating agencies. This is noteworthy because strong bond ratings significantly reduce the cost to finance capital projects. Very few electric utilities in the nation have a higher bond rating.

As Colorado Springs Utilities looks to the future, major business challenges include: environmental and security regulations, aging infrastructure, renewable energy mandates, economic recovery, maintaining customer satisfaction, rising energy costs, attracting and retaining a skilled workforce, safety, a large capital program, electric transmission constraints and ensuring a long term water supply.

Section II: Overview of Colorado Springs Utilities' Services

Electricity

Colorado Springs Utilities **electric system** provides service to 211,331 customers in metropolitan Colorado Springs and Manitou Springs and delivers special contract power to the Air Force Academy, Peterson Air Force Base and Fort Carson. Electric sales totaled 4.6 billion kilowatt hours in 2009.

Electric generation facilities include Martin Drake and Ray Nixon (coal/natural gas), Birdsall (natural gas/oil), four hydroelectric plants and Front Range Power (natural gas). Colorado Springs Utilities also receives hydro-generated power from the Western Area Power Administration through long-term contracts.

The electric system includes 1,083 miles of overhead lines, 55 substations and 2,368 miles of underground lines. An average of 50 miles of line is added each year. Power is available 99.992% of the time, on average, for the customer.

Natural Gas

The **natural gas system** operates a local distribution system supplying natural gas to approximately 187,079 customers. In addition to the City, the service area includes Manitou Springs, the Air Force Academy, the northerly portion of Fort Carson and unincorporated portions of El Paso County. Natural gas is purchased under contracts with a variety of suppliers including nationwide marketing companies as well as national and regional production companies. Colorado Interstate Gas Company transports the purchased natural gas supplies to the gas system's distribution facilities.

Supplementing the purchased natural gas is a propane-air plant (peak-shaving facility) and contract storage services, including the Young Storage field, of which Colorado Springs Utilities is a 5% owner.

There are 2,400 miles of natural gas pipe mains and 165,000 services lines. An average of 49 miles of pipe is added each year. Annual sales total 29.6 billion cubic feet at 12.01 psia.

Water

The **water system** serves 134,581 customers, including inside City residents and businesses and customers living in Ute Pass communities west of the City, military bases and other suburban areas outside the City limits. In 2009, the water system delivered 72,715 acre feet (23.7 billion gallons). Currently, developed potable water supply sources, which consist of surface and ground water resources, provide a dry-year firm yield of roughly 100,000 acre-feet. When fully developed as planned, the City's potable and non-potable water resources will provide a dry-year firm yield of approximately 152,000 acre-feet.

The water system consists of 25 reservoirs, 28 storage tanks, seven water treatment facilities and 2,010 miles of water mains. An average of 50 miles of pipe is added to the system each year.

Wastewater

The **wastewater system** provides wastewater services for 130,657 customers in the City and for those areas approved by the City Council on a long-term, contractual basis, including Peterson Air Force Base,

Manitou Springs and the Stratmoor Hills Water and Sanitation District. An average of nearly 42.7 million gallons per day of wastewater is treated for a per capita treatment of about 116 gallons per day.

Rated treatment capacity is 95 million gallons a day (summer). Colorado Springs Utilities owns and operates approximately 1,650 miles of sewer main and 17 wastewater pump stations. An average of 34 miles of pipe is added to the system each year.

Customer Service, Community Service and Competitive Rates

Excellent customer service has been a hallmark of the organization for a number of years. Colorado Springs Utilities ranked fourth in the West Midsize utility segment, serving between 125,000 and 499,999 customers in the J.D. Power and Associates 2010 Electric Utility Residential Customer Satisfaction Study^{SM}. The organization has consistently been in the top five in this segment. Colorado Springs Utilities also received the 16th highest score in the nation, regardless of utility size, placing us in the top quartile for the eighth consecutive year.

Similarly, Colorado Springs Utilities ranked third in the West Midsize segment for the J.D. Power and Associates 2010 Gas Utility Residential Customer Satisfaction Study^{SM} and received the 12th highest score in the nation, regardless of utility size.

As a member of the community, the organization and its employees are committed to enhancing the quality of life and contributing to the economic vitality of Colorado Springs through volunteer efforts and providing in-kind and financial support to the nonprofit community including economic development.

One measure of organizational performance is keeping rates competitive. The Third Quarter 2010 ACCRA Cost of Living Index reports that a typical combined electric and natural gas bill in Colorado Springs was $124.26 a month compared to an average of $142.78 for all Colorado cities included in the Index. Energy bills averaged $172.60 nationwide in the Index.

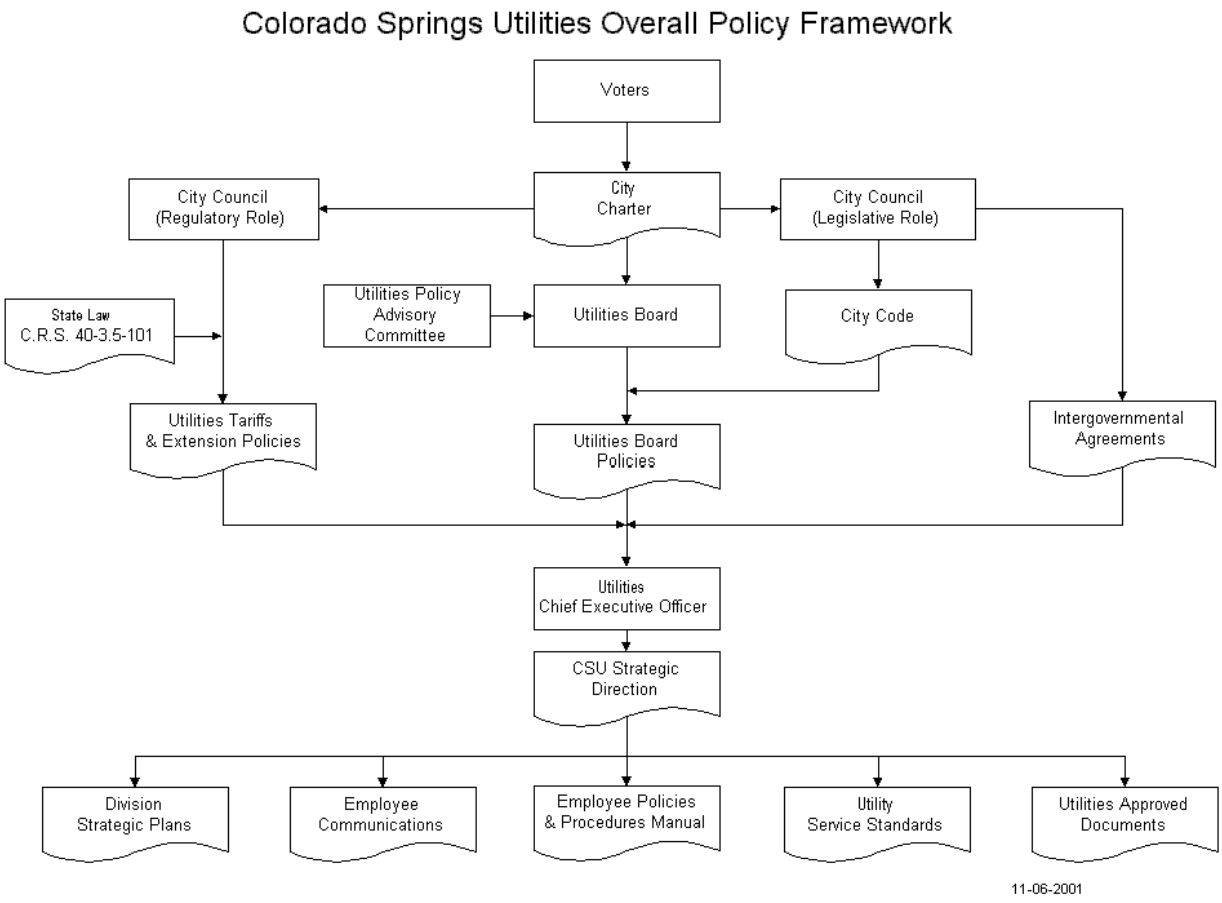
Utility rates are an economic vitality driver. Low utility rates, particularly electric, attract primary employers. Colorado Springs Utilities' electric rates in the third quarter of 2010 were 21 percent lower than the average of regional utilities (Xcel, Mountain View and Black Hills).

Section III: Current Governance Structure

Under the current structure, City Council has three main roles with respect to Colorado Springs Utilities which include:

- sitting as the Board of Directors (comprised of all City Council members) to establish policies and operational direction for the organization and monitor performance;
- meeting as City Council to approve the budget, act in a legislative capacity to establish ordinances regarding utility services via the City Code and to issue bonds; and
- meeting as City Council, in a regulatory role similar to the Public Utilities Commission, to establish tariffs, rates, extension policies, etc.

Through policy governance, all management responsibilities reside with the Chief Executive Officer under executive limitations, developed by the board, that establish specific limits on the CEO's authority.



Section IV: Guiding Assumptions Behind a New Governance Structure

As the City Council considers a new form of governance for Colorado Springs Utilities, they have established assumptions that, along with legal parameters, will help guide their review of alternative structures. They include maintaining municipal (government/not-for-profit) ownership; preserving local control, including maintaining local rate regulation; keeping all four services together in one entity; and providing some form of financial benefit to the municipal government.

The benefits of any governance change must be in the best interest of the customer and citizen-owner to continue to meet expectations of having competitive prices; providing safe and reliable service; encouraging local input; and supporting the local community and region.

As a Colorado home rule city, the City of Colorado Springs has broad latitude to create a new utility enterprise. Maintaining municipal ownership of our utility ensures local leadership, oversight and decision making while providing the opportunity to determine our future together. Local control provides greater responsiveness to customer concerns and assures a strong customer voice in rates, polices and customer service.

Remaining a municipal utility with local rate regulation allows the continuation of electric prices that are, on average, 20 percent below those paid by customers of investor-owned utilities. Lower rates are possible because as a not-for-profit, the community -- not an out-of-state corporation - is the shareholder. Leveraging the operational and financial efficiencies of a four-service utility maximizes infrastructure and savings to the customers.

Additionally, recognizing that citizen-owners should receive benefit from the organization, options exist to provide a franchise fee to the municipal government or to transfer surplus funds as defined by the current Charter.

Section V: Drivers and Benefits of Changing the Governance Structure

Business Drivers

The complexity of running a utility, especially a multi-service utility, has greatly accelerated in the last five years. Resource supply is uncertain, the cost of fuel and purchased power is volatile, environmental compliance is expensive, financial scrutiny is great, potential risks and liabilities have increased, the available work force is shrinking and is more transient, customer expectations have risen and the needs of the community are increasing exponentially.

The organization faces significant capital requirements for the four utility services including construction of the Southern Delivery System, installation of pollution control upgrades for existing power plants and system extensions to support the economic vitality of our community.

Federal and state environmental regulations will place increased compliance burdens on the utility. Current threats include greenhouse gas regulation, increased clean air and water standards and renewable energy mandates. Requirements from the Federal Trade Commission and North American Reliability Corporation place greater oversight on utilities' fuel mitigation policies and electric reliability standards.

Political Drivers

Currently, City Council oversees both the municipal and utilities organizations. They spend the vast majority of their time (four meetings per month) as City Council, changing focus once a month to meet as Utilities Board in a different role and capacity. Council members are limited to two four-year terms providing a narrow window to become experienced in utility industry issues, trends and strategies.

City Council members, as elected officials, necessarily endeavor to be responsive to individual constituent concerns. Council members are traditionally focused on the issues and concerns that were identified by the municipal government as problems or were brought up by constituents, with less time for utilities matters. Current and future business demands require that Utilities Board members have the time to understand the issues and be in the forefront of explaining their decisions to the community, bond rating agencies and regulating agencies.

With passage of the Sarbanes-Oxley Act, Congress requires boards to have qualified, knowledgeable members, who are held accountable, individually, for policy decisions. Although the Act does not apply to municipal utilities as a legal matter, it has become a standard in the eyes of bond rating agencies and the courts. It is unfair to ask City Council members, who rarely have expertise in the utilities industry, to be accountable on utility matters and take on additional risk in their elected roles.

Continuity of leadership is important to the success of significant capital infrastructure investments and deployment of operational systems. Some utilities projects take several years, or even more than a decade, to bring to fruition. Examples include the Southern Delivery System, a major power or wastewater plant, water resource development, or even internal efforts like new customer information system deployment or complex training programs. When several -- up to a majority-- of new board members must be educated and brought up to speed every couple of years, it increases operational and financial risk.

Benefits of Changing the Governance Structure to a Separate, Independent Board

With a separate board, City Council would be relieved from an extensive time commitment and obligation to acquire a high level of experience and utility knowledge. Delegating governing authority would provide more opportunity for City Council to engage in its core role on behalf of the City. Furthermore, focused utility oversight would assure the public that policy decisions are driven by the Utilities Board.

A four-service utility governed by an appointed board would place the long-term interests of the utility above short-term or political goals. Customer advocacy in decision making would be enhanced thereby enabling balanced responsibility of representing ratepayers while furthering community goals. The public would also have greater interaction with the Board because more time would be available for utilities issues compared to the current City Council agendas that include utilities business.

For Colorado Springs Utilities, a dedicated governing body would be able to devote the necessary time and oversight to provide strategic input in light of a rapidly changing utilities industry and regulatory environment, evolving community expectations, major capital spending decisions and tightening financial markets. Separate governance provides clear lines of delineation from the municipal government operation allowing for additional focus on the utilities business.

Rating agencies support strong independent boards with industry expertise as a condition of service on the board membership as the preferred governance structure. The agencies also look favorably on governing boards that minimize political interference in the professional management of utilities operations and establish sound rate policies, risk management programs, strategic plans and general fund transfer policies. Governing boards that are focused on adapting the utility to the continued changes in the industry and market environment represent an important credit factor.

Section VI: Alternative Public Utility Structures Authority and Scope

The Colorado Constitution and Colorado Revised Statute exempt municipally-owned utilities from rate regulation by the Colorado Public Utilities Commission (PUC).[2] To maintain that exemption from PUC rate regulation, any new structure would have to be part of the municipal corporation of the City or be a wholly owned governmental instrumentality of the City.

The Denver Water governance structure is an example of a separate **municipal corporation** of a city, specifically established by the Denver City Charter. That board is separate from the municipal government, and is not governed by the City Council. However, because it is part of the municipal corporation and has no legal existence separate from the City of Denver, the separate board structure qualifies for the PUC exemption.

Accordingly, the only method under *present* law to maintain the PUC exemption from rate regulation is to create a separate board or governmental instrumentality under the City Charter. This maintains the municipal nature of the enterprise and would then qualify for the PUC rate regulation exemption for both the inside city and outside city service territories.

A basic assumption is that all four-services would be transferred to the new governance structure. Other than the municipal utility provision referenced above, Colorado law does not offer a mechanism for other governmental entities to provide all four utility services. A new governmental structure would need to be created by the Colorado legislature, and could take different forms.

Perhaps the most likely candidate structure to be modified for a transfer of all four-services would be a **metropolitan district**. At present, a metropolitan district has the broadest range of powers of any type of special district. Metropolitan districts are established under Colorado Revised Statutes Title 32, Article 1. These districts may be established for fire protection, parks and recreation, safety protection, sanitation, water and wastewater.

However, while a metropolitan district can be established to provide water and wastewater services, a metropolitan district is not authorized to provide electric or natural gas services. A change in the statute would be necessary to allow the creation of a metropolitan district that could provide all four services provided by Colorado Springs Utilities.

One other drawback of this format is that a metropolitan district is created to cover a certain geographic area and is governed by the property owners in that area. If the metropolitan district was not solely controlled by the City, then it is not certain that a metropolitan district would qualify for the PUC exemption from rate regulation.

[2] Article XXV of the Colorado Constitution and Colorado Revised Statute Section 40-1-103 1 (b) (II) exempt municipally owned utilities from rate regulation by the Colorado Public Utilities Commission (PUC).

Another model under the Colorado Revised Statutes is a **special district**. Special districts have been created for variety of specific purposes including water and wastewater services, however, none currently provide electric and natural gas services.[3]

Accordingly, new legislation would need to be passed to permit the creation of a special district that would fit the Colorado Springs Utilities four-service model.

The only energy model that exists in Colorado for a multi-territory municipal-type entity was established under Colorado Revised Statute Section 29-1-204 to provide for electric generation and transmission **authorities**, but not distribution services. Examples of these large generation and transmission authorities are Platte River Power Authority and Arkansas River Power Authority. The Platte River Power Authority provides transmission and electric generation for the cities of Estes Park, Loveland, Longmont and Fort Collins. In a similar manner, the Arkansas River Power Authority was established under the same statute in 1979 for a similar purpose for the cities of Holly, La Junta, Lamar, Las Animas, Raton, Trinidad and Springfield. The Arkansas River Power Authority provides electric generation and transmission services for the seven cities. In both cases the cities provide local distribution of electricity.

As with the metropolitan district structure, changes would need to be made to the existing legislation to allow all four services to be provided by the governmental entity. Rather than adapt an existing legislative structure such as the metropolitan district or the power authority legislation to the four-service model (should City Council decide to move in that multi-district service direction rather than the municipal model) an entirely new state statute could be created and passed that would provide the proper vehicle for four-service model.

One option would be to create a new governmental authority structure formed via an intergovernmental agreement with another city or town which is authorized to provide contemplated services. This is potentially viable if considering the expansion of the service area for water and or wastewater beyond city limits. Electric and gas expansion is restricted by the Colorado Public Utilities Commission (PUC)-certificated service areas and state law governing take-over of another utilities' service areas.

In sum, a new **multi-community entity** could be created. Partners would need to be found. Most probably, the new governmental entity would not receive the municipal utility exemption from PUC regulation. The new entity would not be part of a municipal corporation.

Because electric and gas regulation is with the PUC, the distribution services would be PUC regulated. Water and wastewater rates would be set by the authority, but would need to be guided by general public utility principles. Of course, if a new statute is enacted, then the rate-setting authority could be covered in

[3] Ambulance District, Section 32-1-103, CRS, Fire Protection District, Section 32-1-103, CRS, Forest Improvement District, Section 32-1-103, CRS, Health Assurance District or Health Service District, Section 32-1-103, CRS, Metropolitan Water District, Section 32-4-402, CRS, Metropolitan Sewage Disposal District, Section 32-4-502, CRS, Park and Recreation District, Section 32-1-103, CRS, Sanitation District, Section 32-1-103, CRS, Tunnel District, Section 32-1-103, CRS, Water and Sanitation District, Section 32-1-103, CRS, Water District, Section 32-1-103.

that statute, as is done for the power authorities. Any franchise fee or similar payment would need to be negotiated with the other partners in the new multi-community entity.

A public corporation was not considered based on the guiding assumptions. A cooperative was not considered as well based on the guiding assumptions because it is restricted to providing electric services within a certificated service area under Colorado Revised Statutes §40-9.5-101. Customers must affirmatively join a cooperative before service may be provided.

If Colorado Springs Utilities were to remain under a municipal model, complete control of the utility enterprise could be transferred to a separate board within the municipal corporation as established in the City Charter or by a separate Charter-authorized board. Examples of a single municipal corporation with separate utility-related boards that control all of the assets of the utility are Denver Water and the Pueblo Board of Water Works. The City of Lamar also has a separate electric board. These are independent, Charter-established bodies that have authority over the property and the rates of the utility.

The transfer of the enterprise within the municipal corporation would maintain home-rule authority. Because Colorado Springs Utilities would remain part of the municipal corporation, PERA would continue and existing bonds would not have to be paid off because the entity issuing the bonds—the municipal corporation, would not change. Only the governing body within the municipal corporation that controls the utility assets would shift.

Issue 300 would still apply because Colorado Springs Utilities would remain an enterprise of the total municipal corporation. However, in any Charter change necessary to establish the new board, a franchise-type fee could be included to provide a funding source for the municipal government portion of the municipal corporation.

Pueblo's City Charter provides that title to the properties of the system is in the name of the City of Pueblo, Colorado, but that the entire control, management and operation of the system shall be exercised by the Board of Water Works of Pueblo, over which the City Council shall have no jurisdiction or control. In addition, the Charter provides that the City of Pueblo shall adopt all ordinances requested by the Board of Water works which shall be reasonably necessary in the management of the system. The Denver Water Board has a similar delegation of authority in its Charter.

Under Colorado law, the rate-setting authority of the City Council may be delegated to another body. That body must be politically accountable to an elected official or officials, or is elected itself. Additionally, proper standards for the power delegated must be established. These would be very similar to those standards already within the City Code regarding rate-setting requirements for the City Council. This includes the "just and reasonable, and not unduly discriminatory" language that the City Council uses in each rate proceeding.

A City Charter Change would be needed to accomplish the delegation of the City Council's rate-making authority. In July 2004, the City Attorney provided an opinion to City Charter Advisory Committee on rate setting authority of an independent board.[4] Colorado law does provide authority for a utilities board, appointed by City Council or separately elected, to act as the regulatory authority for utilities, as long as that authorization is granted in the City Charter.

[4] Colorado Springs City Attorney Opinion of Rate Setting Authority

A move to a different municipal enterprise structure is supported through the Colorado Constitution and Colorado Revised Statutes. The municipal exemption from Public Utility Commission regulation flows from the Colorado Constitution, Article 25.[5] That article vests regulatory control of public utilities under the PUC, but the article expressly exempts out municipally-owned utilities.

That exemption then flows into the PUC's enabling statutes. Colorado Revised Statutes, Section 40-1-103 defines public utility to include a municipal corporation. But, that statute then incorporates the Constitutional exemption for municipal utilities. This exemption generally applies to the municipal corporation's inside city services.

Colorado Springs Utilities has service territory outside the city limits that has been granted by the PUC. A separate section of the Colorado Revised Statutes governs rate-setting for those out-side city areas. Colorado Revised Statues Section 40-3.5-102[6] places that rate-setting authority within the governing body of the municipal utility. To maintain these exemptions from PUC rate-setting authority, Colorado Springs Utilities must remain part of a municipal corporation such as the City of Colorado Springs.

Scope of Authority

To be effective in a complex and demanding business environment and to be held accountable by the citizen owners, full authority and oversight for governing the utility needs to be vested in the separate board. (Layering an additional governing body into the current governance structure would set up a largely dysfunctional split authority between City Council and a separate board.)

To align responsibilities with the requisite authority to meet those responsibilities; a separate utilities board would serve as a dedicated Board of Directors establishing policies and operational direction for the organization, monitoring performance, approving the budget, hiring the CEO, issuing bonds, reviewing audits, exercising eminent domain and engaging the public. The board would also serve in a regulatory role similar to the PUC, to establish tariffs, rates and extension policies.

In addition, typical responsibilities of a utilities board described by the American Public Power Association[7] include four roles: trustee, representative, regulator and advocate. As a trustee, the board

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[5] Article XXV – Public Utilities of the Colorado Constitution states that "…Until such time as the General Assembly may otherwise designate, [the authority to regulate public utilities] shall be vested in the Public Utilities Commission of the State of Colorado…and provided, further, that nothing herein shall be construed to apply to **municipally owned utilities**." In the Colorado Revised Statutes, C.R.S. §40-1-103 – Public Utility Defined, "(1) (a) (I) The term "public utility", when used in articles 1 to 7 of this title, includes every common carrier, pipeline corporation, gas corporation, electrical corporation, telephone corporation, water corporation, person, or **municipality**… (b) Nothing in articles 1 to 7 of this title shall be construed to apply to: ...(II) Exemptions provided for in the constitution of the state of Colorado relating to **municipal utilities**…"

[6] Regulation of rates [Outside City Service Territories] state "The power and authority is hereby vested in the governing body of each municipal utility and it is hereby made the duty of each such governing body to adopt all necessary rates, charges, and regulations to govern and regulate all rates, charges, and tariffs of its municipal utility within its authorized electric and natural gas service areas which lie outside the jurisdictional limits of the municipality…"

[7] "Handbook for Public Power Policymakers", 2003, American Public Power Association

acts in the long-term best interest of the utility and its community and exercises reasonable care and due diligence in its decision-making responsibilities. The second role is representative, with the board representing the owners of the utility and acting on their behalf to protect and maximize the value of the utility asset. The third role is that of regulator which includes establishing the annual budget and setting the rates for services along with issuing bonds and exercising eminent domain. The final role is that of advocate where the board actively works to help the utility achieve its goals to successfully implement the strategic direction and vision.

Section VII: Implementation Considerations

Legal

As reviewed previously, Colorado has several examples of a single municipal corporation with separate utility-related boards that exercise complete authority over the utility enterprise. For the City of Colorado Springs, the enterprise could be transferred within the municipal corporation, to a separate board, as established in the City Charter or by a separate Charter-authorized board.

To facilitate the transfer, both the City Charter and the City Code would need to be changed; with the City Charter changes requiring a vote of the citizens and the City Code changes being accomplished by Ordinance. Specifically, legal revisions in Article 6 of the City Charter[8] would include removing the City Council as the Board of Directors for Colorado Springs Utilities and establishing what type of board the City Council determined was appropriate. Article 10 of the City Charter [9] would also be revised to establish a franchise-type fee payable from the new board or entity to the municipal government.

In addition, Article 12 of the City Code[10] would need to be revised to change the rate-setting authority from City Council to the new board and to remove other references to the City Council from the utility-related sections.

Utilities Board Member Selection Options

Once a legal structure for governance has been chosen, three primary options exist to select utilities board members: election, appointment and appointment followed by a retention election.

Election

Board members would stand for election with staggered terms allowing for continuity from year to year, much as occurs on the present City Council. Utility or business background, most probably, would not be able to be mandated for a candidate. The process would be similar to the method by which present City Council members are chosen. Petitions would be filed by each candidate, followed by a campaign and then an election. Board members would then stand for re-election. Existing term limits would not necessarily apply to a new board, but could be included within a Charter establishing a new elected board.

Citizens most likely would not be able to elect utility-qualified board members with industry expertise through the voting process. Although an elected board would appear on the surface to be a direct

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[8] **City Charter Article VI - Utilities, Section 40**, (a) "City Council shall serve as the Board of Directors for Utilities…"

[9] **City Charter Article X – Franchises and Licenses**

[10] **City Code §12.1.107 – Regulation of Electric, Streetlight, Natural Gas, Water and Wastewater Rates, Charges and Regulations,** A. "Determined By City Council: The rates, charges and regulations, including conditions, for all classes of regulated electric, streetlight, natural gas, water and wastewater services shall be determined by the City Council for customers and users inside and outside of the corporate limits of the City…"

connection from the board to the citizens of the City, elected board members are likely to face invariable dilemmas regarding political decisions that could affect their re-election prospects, and performance of their fiduciary responsibility to ensure the operational and financial stability of the utility.

Given the need to seek re-election, board members might not be able to forgo short-term rate issues for longer-term infrastructure needs. Moody's recognizes that too much political intervention in the rate setting process is a credit weakness. They also view rates that are less than sufficient to meet debt service coverage levels a credit weakness as well.[11]

Appointment

Board members would be appointed to staggered terms on the board, providing continuity from year to year. With an appointment, the elected appointing authority may consider the background of the candidate and, accordingly, require a business or utility background. This provides for a professional board with industry expertise centered on the business aspects of the utility.

The elected appointing authority would most probably be City Council. However, with the new full-time Mayor form of City government, the method could be to have the Mayor appoint the board members with the consent of a majority of the City Council. A relevant example is Denver Water Commissioners are appointed by the Mayor with no involvement by the Denver City Council.

At the conclusion of a board member's term, the board member could be re-appointed or the elected appointing authority could choose another person for appointment. The board members could, of course, be immediately removed by the elected appointing authority for improper behavior or malfeasance.

Uncertainty with having an appointed rather than an elected board is the potential loss of direct public influence on decisions. There is a perception that an appointed board would be less likely to obtain public input and could be less responsive to the needs of the community. Concerns over an appointed board's receptiveness could be addressed by having specific Charter language that requires public hearings and due process just as though City Council were conducting business. And, the transparency of an appointed utilities board is certain because it would still be subject to the Open Meetings Act and Open Records Act requirements. The citizens maintain a direct connection to utilities' governance through the elected appointing authority as well.

With an appointed board, a safeguard is created between immediate political opinions and advocating for what is best for the customer. Similar to the Public Utilities Commission, the appointed board is removed from day-to-day political considerations and the need to seek re-election at a popular vote. This would allow the board to concern itself with the business of the utility and long-term goals for the business of the enterprise. However, the board member must still seek re-appointment from an elected body or official, keeping them mindful of political considerations within the community.

Appointment Followed by a Retention Election

A hybrid of the elected and appointment method of board member selection is also utilized in Colorado regarding judges. An elected appointing authority reviews the qualifications of candidates, potentially

[11] As noted by Moody's U.S. Public Finance, Rating Methodology, U.S. Public Power Electric Utilities, April 2008, pages 13-14

including interviews, and makes appointments to the board for a staggered term. At the conclusion of the term, the appointed board member would stand for re-election to the position. If the citizens of the city were unhappy with the board member's performance on the board, the citizens could then vote to remove the board member. If the board member was not re-elected, then the elected appointing authority would appoint a new candidate to the board, who would then stand for a retention election.

Appointments could be made as previously discussed. As with an appointed board, appointment with a retention election provides a method to create a professional board with utilities experience. The result is a board that focuses on a long-term view of the utility and the community's needs instead of day-to-day political issues. However, the retention election aspect allows the Citizens to directly control membership on the board and to express their viewpoint through voting. The retention election provides a direct connection between the board and its constituents.

Board Specifics

At the outset the guidelines for selecting and appointing board members, determining qualifications, length of terms, setting compensation and the authority to remove board members for cause would need to be developed and established in municipal government documents. Adequate compensation for utilities board members is beneficial to help attract and retain qualified candidates. Board terms should be fairly lengthy and staggered, with the opportunity to serve multiple terms to provide continuity in Colorado Springs Utilities policies and strategies.

The composition of boards and the qualifications of its members has been the focus of significant attention in recent years. The Sarbanes-Oxley Act of 2002 increased scrutiny of the boards governing publicly traded companies and has also increased expectations for the boards governing all organizations. Boards are now expected to be composed of professionally competent individuals that are independent of the organization and who judiciously exercise their fiduciary duty to serve in the best interests of the shareholders. This requires robust skill sets and specific industry knowledge or expertise relevant to governing a specific organization. Other qualifications typically address citizenship and residency.

Board Qualifications and Experience

Boards should include diversity of experience and professional backgrounds and be composed of qualified individuals with backgrounds in large businesses, engineering, utilities, customer service, public relations and finance in order to assure seasoned judgment. Typical members are current or former senior executives with significant leadership, management and financial experience; independence from the organization; and individuals who will represent the best interests of the stakeholders. Board member qualifications often address or consider previous board experience; relevant industry experience and commitment to length of board terms.

Single Point of Authority Example

The Rand Corporation published a report[12] highlighting the difficulties of effective organizational leadership in a fairly extreme case of fragmented governance. The report focused on the challenges facing

[12] "Governance in a Changing Market: The Los Angeles Department of Water and Power (LADWP)" , 2001, The Rand Corporation.

Los Angeles Department of Water and Power (LADWP) in a rapidly changing and increasingly competitive electric market. While LADWP has a separate Board of Commissioners, political trends over the years have resulted in a situation where any decision of the Board is subject to review by the Council after the fact or at the request of the Mayor. Seventy-five years ago, the City Charter established a strong commission with primary authority to oversee the department. But through amendments passed over the past two decades, the mayor and council have gained more control at the expense of the commission."

The report noted that: "Governance of the DWP is shared among the Board of Water and Power Commissioners; the office of the mayor; the city council and its staff; and the city attorney. In effect, the DWP general manager must report to all of these entities, which may themselves have conflicting objectives." Decision processes are extended, subject to political whims and sometimes are detrimental to the long term health of the organization. The CEO at the time described the situation as, "There are 31 people who can tell me no, but no one who can tell me yes."

The report noted that this fragmented governance approach has led to a number of issues resulting in an interest in changing the model used. The report's concluding statements noted "Establishing a single governing board, with clear authority and considerable independence from day-to-day political influences, seems a prerequisite for success in a more competitive marketplace."

In a December 14, 2010, Los Angeles Times story[13], Los Angeles Mayor Antonio Villaraigosa selected Ron Nichols to run the Department of Water and Power, offering him up as the sixth general manager to lead the agency since he took office. Councilman Herb Wesson, voiced confidence that Nichols would serve as a "nonpolitical" executive for the DWP, which has been in turmoil as it attempts to meet the mayor's renewable-energy goals. "He won't try to play the politics, and that might be the breath of fresh air the department needs," Wesson said. If Nichols is approved by council members, he will take the post at a time of political tensions between the nation's largest municipally owned utility and ratepayers, business leaders and various elected city officials.

The story states that DWP had a bruising rate fight with the City Council earlier this year, one that nearly took the city to the financial brink. More recently, the utility took steps to back away from Villaraigosa's promise to make renewable energy, such as wind and solar, 40 percent of its energy portfolio by 2020, drawing an outcry from the environmentalists that backed the mayor when he ran for office. The department has had four commission presidents since 2006 and five general managers since 2007.

[13] "Villaraigosa to nominate private energy consultant as his sixth general manager of DWP", Los Angeles Times, December 14, 2010

Section VIII: Rating Agency Perspectives[14]

”This rating methodology report explains Moody’s rating approach for public power electric utility revenue bonds. Moody’s currently rates some 300 public power electric utilities, with an average rating of A2.

Sub-factor III.a: Governance

Moody’s reviews the record and actions of the governing board to assess its effectiveness. Strong independent boards with industry expertise as a condition of service on the board membership are the soundest governance structure. More generally we look for governing boards that minimize political interference in the professional management of utility operations and establish sound rate policies, risk management programs, strategic plans and general fund transfer policies. Governing boards that are focused on adapting the utility to the continued changes in the industry and market environment represent an important credit factor.

Sub-factor III.b: Cost Recovery Process-Rate Setting

Independent and local rate setting is fundamental credit strength of most municipal utilities. When determining the certainty of cost recovery for debt repayment, Moody’s assesses the rate setting process and practices of the governing board. Because retail rates for public power electric utilities are usually not subject to approval by state regulatory boards, consistent, timely rate actions can be taken to ensure costs, including debt service are recovered.

A key factor in our evaluation of the rate setting process is the number of days its takes to implement new rates and to begin collecting additional revenues. A demonstrated willingness to charge rates required to recover current costs and to maintain adequate margins and system liquidity is a credit positive in our opinion. We expect rate-setting independence and willingness to be tested over the next several years as fuel prices continue to rise. We view automatic energy cost and fuel cost adjustment charges as a positive factor as well. Too much political intervention in the rate setting process is a credit weakness. Conversely, Moody’s also views as a credit weakness rates that are less than sufficient to meet debt service coverage levels appropriate for the rating category. State regulation of public power utility rates may be a significant weakness since uncertainty and delay in rate setting may result from such regulation. “

[14] The information is quoted in its entirety from Moody’s U.S. Public Finance, Rating Methodology, U.S. Public Power Electric Utilities, April, 2008 pages 1, 13-14.

U.S. Public Power Electric Utilities

Factor III: Governance and Management

Rating Factors	Sub-Factors	Measurement	Aaa	Aa	A	Baa
III. GOVERNANCE AND MANAGEMENT	a) Governance	Board membership and expertise	Experienced elected or appointed governing board; supportive of professional management; autonomous decision-making		Average experience of elected or appointed governing board supportive of professional management	Elected or appointed governing board with evidence of political interference in decision making
	b) Cost Recovery Process	Rate setting	Unregulated rate setting; sound rate policy and rate increases; timely energy or fuel cost adjustments		Unregulated rate setting; adequate rate policy and increases; timely energy or fuel cost adjustments	Regulation of rates by State; local political risk; record of inadequate rate decisions; no fuel or energy cost adjustments
		Days to implement rate increase	Less than 10 days	10-30 days	31-60 days	61 days or more
	c) Management	Management stability and expertise	Long and stable record of budget and capital management; management succession plan; sound investment policy; strong risk management plan		Stable record of budget and capital management; management succession plan; sound investment policy; average or developing risk management plan	Limited record of budget and capital management; inadequate strategic focus; no succession plan; no risk management plan
	d) Regulatory Compliance	Federal and state regulatory compliance	Strong and established record of federal and state regulatory compliance; regulations do not create unmanageable cost burden		Good record of federal and state regulatory compliance; regulations do not create unmanageable cost burden	Regulatory compliance issues; significant cost burden

Sub-factor III.a: Governance

Moody's reviews the record and actions of the governing board to assess its effectiveness. Strong independent boards with industry expertise as a condition of service on the board membership are the soundest governance structure. More generally we look for governing boards that minimize political interference in the professional management of utility operations and establish sound rate policies, risk management programs, strategic plans and general fund transfer policies. Governing boards that are focused on adapting the utility to the continued changes in the industry and market environment represent an important credit factor.

Section IX: Public Utility Governance Trends

City Council requested a review of peer, not-for-profit utility governance structures to be aware of how other locally-owned utilities and their boards operate. For relevant comparisons, we focused on utilities across the nation, including Large Public Power Council members that have generation capacity, Colorado water utilities that are most similar to Colorado Springs Utilities and multi-service municipal utilities. In total, twenty-seven peer utilities were surveyed. Comparisons were made based on size to include the number of customers and population served, utility services offered and scope of operations.

The research points toward an independent utilities board as the prevailing governance approach for large municipal utilities. The common practice for large municipal utility enterprises is having substantial legislative powers delegated to a separate board of directors, with the majority appointed by elected authorities.[15] Most peer governance structures have been in place for a number of years.

Other findings include the number of board members, which ranges from three to five up to 10 or more, with terms from three to seven years. Some boards are unpaid while some earn stipends for service. In addition, the majority, but not all, of typical independent boards have full authority to govern. This includes setting rates and regulations, approving budgets, issuing bonds, exercising eminent domain, hiring the CEO, establishing strategic direction and directing policies.

Supplementary information from peer utilities provides additional context and is included below.

Orlando Utilities Commission (OUC) has been governed by a separate, appointed board, confirmed by City Council since 1923. OUC is a municipal utility owned by the City of Orlando providing electric and water service. Their five-member governing Board, known as the Commission, is responsible for setting the utility's rates and operating policies. All Commissioners, with the exception of the Mayor of Orlando (an ex officio member), can serve up to two consecutive four-year terms. They serve without compensation.

The City of Orlando Nominating Board submits three names to the Commission, who makes the Board member selection. Except the Mayor, the person selected cannot be an elected official. City Council confirms or denies the selection and cannot make a substitute. The process starts over if they vote to deny the selection. In addition to their role in confirming new Board members, City Council is only involved in property and easement issues, as all OUC property is jointly owned by the City. Therefore, the City must be involved if there is a property sale or easement issue. A portion of OUC's net income is given to the City to cover franchise fees and taxes that would have been received from an investor-owned utility.

Jacksonville Electric Authority (JEA), has been governed by a separate, appointed board, appointed by the Mayor and confirmed by City Council since 1968. JEA is an independent agency of the City of Jacksonville, Florida, providing electric, water and wastewater services to citizens. The JEA seven member Board of Directors is appointed by the Mayor and confirmed by the City Council with staggered

[15] Primary research of 27 peer utilities, using the 23 peers in LPPC and five other similar utilities. Two utilities are governed by city councils and 25 are governed by Independent boards with 11 elected and 14 appointed.

four year terms. Members are business and community leaders that serve in a voluntary role with no compensation to govern the vast majority of JEA operations and functions.

JEA Board meetings are noticed public meetings and the public attends to address the Board on various issues including rates, service levels and purchasing practices. Public meetings are held both to fulfill regulatory requirements and gain public support for large projects such as a new plant construction. City Council members sometimes attend public meetings to provide information or express views on projects or policies. The Council President appoints a City Council member to act as liaison to JEA for the Council. That Council member receives all JEA agendas and is encouraged to attend JEA Board meetings. JEA also makes presentations on specific projects or policies at the request of the City Council or at JEA's request to the City Council to inform and educate.

Denver Water Board has been governed by a separate, appointed board, appointed by the mayor with no involvement from City Council since 1918. Denver Water is a separate entity from the City of Denver, deriving its authority from the Denver City Charter. Denver Water supplies water service to the City and County of Denver and surrounding suburbs. They are responsible for the collection, storage, quality control and distribution of drinking water.

Denver Water is governed by a five-member Board of Water Commissioners, appointed by the Mayor of Denver to staggered six-year terms. Board members are paid $25 per Board meeting. The Board appoints a manager who is chief executive officer of day-to-day operations; the manager also serves as secretary to the Board. Current Board members have expertise in fields that benefit the governance of a water utility: an attorney with an environmental and land use background; a former public works manager with construction experience; a banking and investments expert; a developer; and a former public planner.

Water rates and fees are set by Board of Water Commissioners. Since its inception, the Board has set rates at a level sufficient to service its debt and to meet its expenses of operation and maintenance. With the exception of being appointed by the Mayor, City Council has no role in Water Board business. The public, including elected officials, are invited to attend the Board's meetings each month.

Knoxville Utilities Board (KUB) has been governed by a separate, appointed board, nominated by the Mayor and confirmed by City Council since 1939. KUB was created by an amendment to the Knoxville City Charter in 1939. As an independent agency of the City of Knoxville, KUB provides electric, gas, water and wastewater services. KUB is governed by seven unpaid commissioners who serve seven year terms. Commissioners are nominated by the Mayor and confirmed by City Council. Other than confirming Commission members, City Council has limited involvement with KUB. The Commissioners submit semi-annual reports to City Council and are available for discussion and query as necessary. City Council members do, at times, choose to attend monthly public meetings held by the Commission.

Section X: Conclusion

As a Colorado home rule city, the City of Colorado Springs has broad latitude to create a new utility enterprise. If Colorado Springs Utilities remains under a municipal model, complete control of the four-service utility enterprise could be transferred to a separate board, independent from City Council. The organization would still be a not-for profit entity within the municipal corporation as established in the City Charter or by a separate Charter-authorized board and would maintain home rule authority.

Additionally, in the Charter change necessary to establish a new board, a franchise-type fee could be included to provide a funding source for the municipal government portion of the municipal corporation. Assets would still be owned by the City of Colorado Springs. Because Colorado Springs Utilities would remain part of the municipal corporation, PERA would continue and existing bonds would not have to be paid off because the municipal corporation would not change. Only the governing body within the municipal corporation that controls the utility assets would shift.

City Council would be able to appoint Utilities Board members with specific industry and business expertise that are able to serve with continuity, creating a local oversight body to ensure Colorado Springs Utilities continued success in an ever changing utility industry.

Appendix A: Recommendations from Consultants and Citizen Commissions

Associated Utility Consultants report 1993

Recommendations

Place a Board of Utilities Commissioners between the City Council and CSU. (High priority)

In contemplating a revised organizational arrangement for CSU, we reviewed a number of municipally-operated utilities with characteristics similar to CSU. In addition, research, studies and data collected by utility associations and others relative to the most optimal organizational configuration and working relationship for CSU and its policy body were reviewed.

Alternatives identified include a direct reporting relationship of CSU to the City Council (status quo), an Advisory Board, a Management Board, privatization of the gas and electric utilities, or privatization of all four utilities, with capital recovery of a significant magnitude to the City. Review and analyses were also conducted of the work of the City of Colorado Springs Charter Review Commissions over the years, and of the most recent deliberations of the 1992 Charter Review Commission. Throughout this research and analysis, a business versus political perspective was employed.

Research of 13 municipally owned and operated utilities with similar characteristics to Colorado Springs (e.g., population, form of government, customers, multiple utilities, complex operations, etc.) indicated that a majority utilized a utilities board between the City Council and the utility. The average life of such boards was 56 years, and about half required an initial charter amendment to put them in place. The vast majority of these boards are appointed by the City Council, with the qualifications of individual members being evenly split between those with business experience and those who represent the diverse interests of the community. Residence was required in some instances as well.

On average, board members served four-year terms of office, with some limitations to two terms. In almost all cases, the board chair was elected by board members, and board members received compensation for their service ranging from none to $9,000 annually, with $2,800 annually being the average. The number of board members ranged from 3 to 11, with 5 being the average.

In a majority of cases, the Utility Director or General Manager was selected and appointed by the board. The General Manager most frequently served at the pleasure of the board, but a contractual arrangement was used in some cases.

Advantages of a board are as follows:

- Relieve Council from extensive time commitment and obligation to acquire high level of technical knowledge
- Assist the utilities with strategic direction by having the time and expertise to develop a unique and specialized understanding of issues

- Offer an additional process for public input
- Provide a buffer to Council on sensitive issues
- Act as a forum for public education regarding utility issues
- Provide Council with an additional perspective on utilities

Disadvantages include:

- Removal of direct control of utilities from the overall policy-making body of the City
- Possibly elongate the decision process on rate and debt issues.

The above research results are consistent with our secondary research from various utility associations and like organizations. We also found from our analysis that the present Financial Advisory Committee to CSU does not provide all of the advantages described above.

Charter Review Committee 2005

Recommendations

ARTICLE VI. UTILITIES

6-10. Utilities Governance This section was removed entirely and four new subsections 6-10.(a) thru 6-10.(d) were added. RATIONALE: In an effort to reduce Council members' workload and yet maintain accountability of Colorado Springs Utilities (CSU) to the citizens, we propose that Council appoints a separate Utilities Board but that Council will still have the final say over CSU budget and rates.

(a) Organization of the Utilities Board. "City Council shall appoint a separate Utilities Board consisting of not more than fifteen (15) members who shall be appointed to staggered terms. The initial board shall have its members appointed for varying terms to achieve the staggered succession of members. The board shall serve at the pleasure of City Council. The board shall adopt its own by-laws subject to the approval of City Council." RATIONALE: In response to presentations from CSU and various surveys that we reviewed, we determined the Board should be comprised of approximately 9 members. The Board should contain representatives from the following professional sectors: financial, local business, accounting, engineering and a local attorney with utility experience. In order to promote diversity, the Board should also have citizen ratepayer members. However, we also decided that these specifications should not be written into the Charter. Council should determine the number of Board members, their make-up, length of service and whether they should receive a stipend. Committee Vote: 19 in favor; 2 opposed

(b) Duties of the Utilities Board**.** "Subject to the general supervision and control of City Council, and to the extent provided by law, the supervision and management of Utilities shall be vested in the Utilities Board. The Board's powers and duties shall include but not be limited to the appointment of the Utilities Director who shall serve at the pleasure of the Utilities Board, and the authority to recommend rates, charges and regulations for services provided by Utilities through rate cases and recommend approval of the budget to City Council. The Utilities Board shall be empowered to do all things not in conflict with the City Charter, City Code or other applicable laws, for the operation, maintenance and development of

utilities." RATIONALE: The new Board will have all the powers and duties of the previous Board (City Council) except that it will RECOMMEND rates, charges, regulations for services, and approval of the budget – for City Council's ultimate approval. The new board will appoint the CSU Director.

(c) Duties of City Council. "City Council shall retain jurisdiction for Utilities for all other legislative matters, including the authority to pass ordinances, issue revenue bonds, institute eminent domain proceedings, set rates, charges and regulations for services provided by Utilities, appropriate funds and adopt annual budgets, approve intergovernmental agreements or as otherwise required by the Colorado Constitution, the City Charter or other controlling law." COMMENT: We recommend that City Council retain jurisdiction for all legislative matters and intergovernmental agreements of CSU. Committee Vote for (b) and (c): 17 in favor; 1 opposed;
1 abstention

(d). Duties and Powers of Utilities Director. "Except as otherwise set forth in this Charter, the Utilities Director shall appoint, suspend or remove any City employee subject to the Utilities Directors direction and supervision. The Utilities Director may authorize any administrative officer who is subject to the Utilities Director's direction and supervision to exercise these powers with respect to subordinates in that officer's department, office or agency. Employees of Utilities shall remain City employees." COMMENT: The duties and powers of the Utilities Director are to remain unchanged. Committee Vote: 19 in favor; 2 opposed

6-20. Definitions. The word "Utility" is changed to the word "Utilities". RATIONALE: This is a clean-up item. Committee Vote: 21 in favor; 0 opposed

6-40. (a) Utilities – Accounting – Reserves. The requirement to place revenues and deduct expenses of each Utility System into the Utilities Gross Income Fund remains unchanged; as does the requirement that Utilities funds should be kept separate from other funds of the City. RATIONALE: The substance of this clause was not changed but the language was cleaned up to suit other changes in the article. Committee Vote: 14 in favor; 6 opposed

Utilities Policy Advisory Committee Governance assignment 2007

Recommendations

Elected City Council officials also serve as members of the Utilities Board, governing Colorado Springs Utilities, a municipally-owned enterprise. In the mid-1990s, City Council developed interest in exploring a change in the form of Utilities governance due to:

- increasing challenge of guiding a larger and more complex organization;
- perceived difficulty in managing the many City Council responsibilities and priorities;
- competitive pressures demanding a more focused and responsive Board;
- legal and physical constraints in developing water resources;
- energy restructuring; and
- City Council term limitations.

Today these same pressures exist with the added uncertainty of market conditions for natural gas, coal and electric purchases due to volatility in prices, an aging infrastructure, retention of

qualified employees and an extensive capital project program to meet the demands of our rapidly-growing community. For example: total assets have increased from $1.26 billion in 1993 to $2.85 in 2006, and employee count has grown from 1,610 in 1993 to 2,054 in 2006. Springs Utilities customer base has grown during that same period from 434,859 meters served to 644,583; a 33 percent increase.

At the Board's direction, UPAC has reviewed Utilities current governance model based on Policy Governance (Carver), studied other governance practices, reviewed APPA's 2001 and 2005 governance survey results, attended a presentation on Memorial Hospital's governance, reviewed the City Charter, City Code, Utilities Board bylaws, and the 2007-2011 Strategic Business Plan. Based on the above information and discussions, UPAC unanimously favors modifications to current Utilities governance and RECOMMENDS:

Long-Term (five years):

- Appoint independent expert Board
    - Appointees based on knowledge, experience, and time availability
- Independent Board regularly reports to City Council
- City Council maintains regulatory and rate setting authority

Near-Term (within one year):

- Modify existing governance model
- Facilitate engagement between Utilities Board and CEO to create mutual ownership on:
    - Board-CEO Linkage
    - Governance Process
    - Executive Limitations
- Provide core curriculum education for all Board members
- Utilities Board elects Chair

Sustainable Funding Committee 2009

Recommendations

Governance Model Consideration

The City Assets and Enterprises subcommittee unanimously endorses a recommendation to the full Sustainable Funding Committee that the City Council Take the steps necessary to adopt a change in governance of Colorado Springs Utilities to include replacement of the current Utilities Board with the concurrent appointment of independent individuals with management expertise in the several services fields (electric, natural gas, water and wastewater) and that such transition be made as soon as practical, consistent with the general welfare of Colorado Springs Utilities' organization, its employees and its customers.

The subcommittee's recommendation considers:

- The general welfare of the community and Colorado Springs Utilities' customer base
- The charge to the Sustainable Funding Committee to ensure, as much as practical, a sustainable source of funds to the City entities consistent with the cost of providing quality services
- The increasing size of the organization, its service area and customer base, as well as the complexity of the regulatory and technical environment in which it operates

The subcommittee noted the following factors:

1. A four-service utility governed by elected public officials may place short term goals and reaction to local economic conditions above the long term interest of the entity.
2. For the majority of municipal utilities similar in size to Colorado Springs Utilities, governance is provided by independent boards, either appointed by their city council or independently elected. The establishment of an independent board governing Colorado Springs Utilities may provide the flexibility to optimize revenues consistent with the philosophy of an independently owned utility. City Charter states the City Council by ordinance or resolution establishes the rates.
3. Total assets of Colorado Springs Utilities have increased from $1.26 billion in 1993 to $3.0 billion in 2008; Colorado Springs Utilities forecasts an additional $1.7 billion in construction, including SDS in the next five years. Colorado Springs Utilities' customer base has rapidly risen in that same period from 435,000 meters served in 1993 to 540,000 in 2008.

The subcommittee further notes that this proposal is the third such recommendation made to City Council, which is consistent with, and follows, similar recent study groups recommendations: 2004 Charter Review Committee and 2007 Utilities Policy Advisory Committee. The subcommittee also noted that a recent APPA survey indicates that CSU's governance model is an anomaly as only 1 of 4 municipally-owned utilities with greater than 50,000 customers are governed by a city council.

Appendix B: Charter of The City and County of Denver

ARTICLE X

CHARTER

OF THE

CITY AND COUNTY

OF DENVER

Amended November 5, 2002

§10.1.1 Board of Water Commissioners created. There shall be and hereby is continued and created a non-political Board of Water Commissioners of five members, to have complete charge and control of a water works system and plant for supplying the City and County of Denver and its inhabitants with water for all uses and purposes.

(Charter 1960, C4.14; amended May 19, 1959)

§10.1.2 Appointments to Board. On the second Monday in July of odd-numbered years, the Mayor shall appoint one or two Commissioners, as the case may be, for terms of six years each to succeed those whose terms are expiring. The members of the Board of Water Commissioners shall each continue in office until their successors are appointed and qualified. Any vacancy on the Board shall be filled promptly by appointment by the Mayor. Each appointee shall be a citizen of the United States , a resident of the City and County of Denver , and at least 25 years of age. If a member of the Board shall cease to be a resident of Denver , the individual shall thereupon cease to be a member of the Board.

(Charter 1960, C4.15; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.3 Compensation and bonds. The commissioners shall each receive compensation of $600.00 per annum. Each Commissioner shall give an oath or affirmation and give an official bond in an amount and conditioned and approved as provided by the Board by resolution. The Board may require the Treasurer of the City and County of Denver to give bond conditioned in such manner as shall be determined by the Board. The premiums on all such bonds shall be paid out of the Water Works Fund.

(Charter 1960, C4.16; amended May 19, 1959; amended November 3, 1998; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.4 Board Meetings. The Board shall hold two regular meetings each month on such days as it may by resolution determine, and special meetings at such other times as it may deem necessary. All meetings shall be open and public. If any member of the Board shall be absent for three successive regular meetings, unless excused by vote of the Board, he or she shall cease to be a member and the office shall be deemed vacant.

(Charter 1960, C4.17; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.5 General powers. The Board shall have and exercise all the powers of the City and County of Denver including those granted by the Constitution and by the law of the State of Colorado and by the Charter in regard to purchasing, condemning and purchasing, acquiring, constructing, leasing, extending and adding to, maintaining, conducting and operating a water works system and plant for all uses and purposes, and everything necessary, pertaining or incidental thereto, including authority to dispose of real or personal property not useful for or required in the water works operation. The Board shall have authority to generate and dispose of electric energy for water works purposes or any other purpose of the City and County of Denver . The Board may lease water facilities or the flow of water for generation of electric energy and may sell surplus energy, provided that nothing herein shall be construed as permitting the Board to distribute electric energy to the general public. The Board shall have power in the name of the City and County of Denver to make and execute contracts, take and give instruments of conveyance, and do all other things necessary or incidental to the powers herein granted, and in so doing may make such special designation in such instruments as will indicate the capacity in which the City and County of Denver is acting when such actions are taken by or on behalf of the Board of Water Commissioners. The customary practice of dealing in the name of "City and County of Denver , acting by and through its Board of Water Commissioners" is hereby confirmed and approved. The Board shall institute and defend all litigation affecting its powers and duties, the water works system and plant, and any of the Board's property and rights. In any matter affecting the powers, duties, properties, or trusts of the Board,process shall be served on the Board. The Manager of Denver Water is hereby designated as the officer upon whom process may be served in any matter in which the Board of Water Commissioners has the sole authority for the municipal corporation.

(Charter 1960, C4.18; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02)

§10.1.6 Manager and personnel. The property and personnel under control of the Board shall be referred to generally as Denver Water. The Board shall designate a Manager, who shall cause the Board's policies and orders to be executed and shall bring to the Board's attention matters appropriate for its action. The Board shall have power to employ such personnel, including legal staff, and fix the classifications thereof as it may deem necessary. All such personnel shall be hired and dismissed on the basis of merit. The Board shall define the duties of each of its employees and fix the amount of their compensation. It shall be the duty of the Board to carry out the intent and requirements of Article XX of the Constitution of the State of Colorado with respect to civil service for public utilities and works and to perform the customary functions of a civil service commission with respect to all Board employees. In performing the functions of a civil service commission, the Board or its designee shall have the power to conduct hearings, administer oaths and issue subpoenas enforceable in the County Court of the City and County of Denver . The Board may establish classifications of employment for persons outside the civil service system who serve solely at the pleasure of the Board. Such employees shall include the number of temporary employees the Board deems necessary and not more than 2% of all regular employees of the Board.

(Charter 1960, C4.19; amended May 19, 1959; amended November 3, 1998; Ord. No. 659, § 1, 8-26-02, elec. 11-5-02)

§10.1.7 Water Works Fund. There is hereby created a Water Works Fund into which shall be placed all revenues received from the operation of the Water Works system and plant together with all monies

received by the Board from other sources. The Board shall maintain records in compliance with generally accepted accounting principles sufficient for reliance by the Treasurer and the Auditor in faithfully accounting for the Water Works Fund. The Board shall promptly deposit all receipts into a bank account in the name of the City and County of Denver acting by and through its Board of Water Commissioners. The Board may invest such funds until they are required for operations of the Board. Monies shall be paid out of the account only upon the authority of the Board and evidenced by warrants drawn upon the Treasurer by the Auditor of the City and County of Denver , except as to general obligation bonds and the interest thereon, which the Treasurer shall pay using procedures approved by the Manager of Revenue.

(Charter 1960, C4.20; amended May 19, 1959; amended August 11, 1992; Ord. No. 659, § 1, 8-26-02, elec. 11-5-02)

§10.1.8 City Auditor. The Auditor of the City and County of Denver shall audit the accounts of the Board at least annually and make a report of his or her findings to the Council of the City and County of Denver . The Board shall make all of its accounts and records fully available to the Auditor to enable him to carry forward these duties that shall be performed without interference with the water works function. The Auditor, or some person designated by him or her, shall sign all warrants, countersign and register all bonds and written contracts (with the privilege but without the necessity for keeping copies thereof). The Auditor may authorize the affixing of his or her signature by mechanical means.

(Charter 1960, C4.21; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.9 Water rates. The Board shall fix rates for which water shall be furnished for all purposes within the City and County of Denver , and rates shall be as low as good service will permit. Rates may be sufficient to pay for operation, maintenance, reserves, debt service, additions, extensions, betterments, including those reasonably required for the anticipated growth of the Denver metropolitan area, and to provide for Denver's general welfare. The rates may also be sufficient to provide for the accumulation of reserves for improvements of such magnitude that they cannot be acquired from the surplus revenues of a single year.

(Charter 1960, C4.22; amended May 19, 1959)

§10.1.10 Uniformity of rates. Except as herein otherwise specifically provided, rates charged for water furnished for use inside the city limits of the City and County of Denver shall be uniform as far as practicable and so related to the service furnished or the volume of water used as to bring about a fair and equitable distribution among all water users of the total amount to be realized from revenues derived from the sale of water used within the City and County of Denver. No special rate or discount shall be allowed to any property, entity, person or class of persons except as in this charter specifically provided.

(Charter 1960, C4.23; amended May 19, 1959)

§10.1.11 Enforcement of charges. The Board may enforce the payment of any charge by discontinuing service to the premises at which the charge arose without regard to the ownership or occupancy of such premises.

(Charter 1960, C4.24; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§ 10.1.12 City rates. Commencing January 1, 1960 , the Board shall furnish water to the municipal government of the City and County of Denver at rates which shall approximately equal but not exceed the cost of the water furnished, not including items in such rate for debt service, additions, extensions or betterments. Such rate shall not be applicable to agencies or authorities sponsored by or supported by the City and County. The Board shall own, control and operate all water, water rights, structures and facilities of the City and County of Denver pertaining to the Farmers and Gardeners Ditch and the City Ditch. The Board shall furnish water out of the City Ditch or some equivalent source for the use of Denver in City Park and Washington Park , without any charge whatsoever.

(Charter 1960, C4.25; amended May 19, 1959)

§10.1.13 Water leases. The Board shall have power to lease water and water rights for use outside the territorial limits of the City and County of Denver , but such leases shall provide for limitations of delivery of water to whatever extent may be necessary to enable the Board to provide an adequate supply of water to the people of Denver . Every such lease shall contain terms to secure payment of sufficient money to fully reimburse the people of Denver for the cost of furnishing the water together with an additional amount to be determined by the Board. Sales at amounts less than the above minimum may be made if warranted by economic conditions, but a contract providing for such lesser charge shall not extend for more than one year.

(Charter 1960, C4.26; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.14 Expenses. The entire cost of the operation and maintenance of the water works system and plant under the control of the Board shall be paid from monies of the Water Works Fund. The monies and other assets of the Water Works Fund shall not be used for any purpose except for the management, operation and maintenance of the water works system and plant, including additions, extensions and betterments, for recreational opportunities incidental thereto, and for the payment of interest and principal on bonds and other obligations, the proceeds of which were or shall be used for water works purposes.

(Charter 1960, C4.27; amended May 19, 1959; amended August 11, 1992; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.15 Bonded indebtedness. The board of water commissioners in its sole discretion may issue revenue bonds, the proceeds of which shall be placed in the Water Works Fund and expended for water works purposes, for establishing reserves in connection with such bonds or for refunding the principal of and interest on bonds previously issued by the Board. Revenue bonds shall be payable as to interest and principal solely from the net revenues of the Board. The Board shall pledge to pay the principal and interest on such bonds from revenues of the Board, which pledge shall be irrevocable. The bonds so authorized shall be sold and issued by action of the Board and no other ratification or authorization shall be required. The Board shall have power to refund, pay or discharge the principal of any general obligation bond it issued prior to November 5, 2002, when such bond becomes payable, and may use proceeds of a new revenue bond issuance to refund, pay or discharge the general obligation bonds. Existing or future bonds issued by the Board shall continue to be excluded from the determination of any limit upon the indebtedness of the City and County of Denver .

(Charter 1960, C4.28; amended May 19, 1959; amended May 17, 1983; amended August 11, 1992; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.16 [Reserved]

Editor's note: Ord. No. 659-02, § 1, adopted August 26, 2002 , repealed § 10.1.6, which pertained to bonds of annexed areas and derived from the Charter of 1960, C4.29; amended May 19, 1959 .

§10.1.17 Board organization. The Board shall adopt rules governing its organization, the calling of special meetings and the conduct of its business. A majority of the Board shall constitute a quorum and all action by the Board shall be taken by a majority of the whole Board and not otherwise.

(Charter 1960, C4.30; amended May 19, 1959)

§10.1.18 Rules and regulations. The Board may adopt rules and regulations with respect to any matter within its jurisdiction as defined by Charter. It may provide for enforcement of its rules and regulations by imposing special charges in an amount reasonably calculated to secure compliance or recompense for water loss, to achieve water conservation and to reimburse the Board for expenses arising out of violation. In addition to any other lawful remedy, enforcement procedure may include refusal to supply water to a property involved. The City and County of Denver by ordinance may supplement Board rules and regulations and provide penalties for the violation of such an ordinance in the same manner as penalties are provided for the violation of other ordinances. Rules adopted by the Board and within its authority shall supersede any conflicting ordinance provision.

(Charter 1960, C4.31; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.19 Publication of rules and regulations. Rules and regulations adopted by the Board shall be effective after they shall have remained posted in a conspicuous public place in the principal business office of the Board for a period of fifteen calendar days. Whenever immediate application of a rule or regulation by the Board is necessary for the preservation of the public peace, health or safety, the Board may so declare, and such rule or regulation shall thereupon become effective immediately upon being posted as provided in this section.

(Charter 1960, C4.32; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.20 Continuity of control of water. The Board may make provision for retaining dominion over the water supply under its control through successive uses of such water, such as reuse and exchange. Such dominion shall not be affected by treatment of wastewater produced by use of the water supply.

(Charter 1960, C4.33; amended May 19, 1959; Ord. No. 659-02, § 1, 8-26-02, elec. 11-5-02)

§10.1.21 Reserved.

Editor's note: Ord. No. 659-02, § 1, adopted August 26, 2002 , repealed § 10.1.21, which pertained to public liability and derived from the Charter of 1960, C4.34; amended May 19, 1959 ; and Ord. No. 428-02, adopted June 3, 2002 , and approved by the electorate August 13, 2002 .

§10.1.22 Conflicting Charter provisions. The provisions of this Article X shall supersede any conflicting provision of the charter existing on May 19, 1959 when this article was adopted.

(Charter 1960, C4.35; amended May 19, 1959; Ord. No. 428-02, § 1, 6-3-02, elec. 8-13-02).

Appendix C: Colorado Springs City Attorney Opinion of Rate Setting Authority

Rate Setting Authority for Municipal Utilities – July 8, 2004

City Attorney opinion to City Charter Advisory Committee

Facts: Colorado Springs Utilities (the "Utilities") operates five regulated utility systems and offers several non-regulated products and services. The utility systems offered include electric, natural gas, water, wastewater and streetlight services. Utilities is recognized as a municipal utility under Colorado law as it provides electric and natural gas within service territories that lie, in part, outside the jurisdictional limits of the City of Colorado Springs. See: §40-3.5-1-1, C.R.S. City Council serves as the Board of Director for Utilities. City Charter, Art. VI §6-40(a). City Council also establishes rates, rules and regulations, and extension policies for the services provided by Utilities. City Charter, Art. §VI, 6-70.

Issue: The question has arisen as to whether a separate Utilities Board, either appointed by City Council or separately elected, could act as the regulatory authority for Utilities.

Conclusion: Yes, Colorado law does provide authority for a Utilities Board, wither appointed by City Council or separately elected, to act as the regulatory authority for Utilities, so long as that authorization is granted in the City Charter.

Analysis: Additional analysis supports the conclusion.

Appendix D: Charter of The City of Colorado Springs ARTICLE VI. UTILITIES

Charter of The City of Colorado Springs[1]

ARTICLE VI. UTILITIES

(Ed. note: Article VI, including Sections 30 through 34, as originally adopted in the 1909 Charter, referred only to Water and Water Works. In 1925, the City acquired the electrical generation and transmission systems serving the City. In 1929, the City developed its own gas distribution system. In 1939, the people of the City adopted a Charter provision numbered 79(a) which established a Public Utilities Department consisting of the Division of Water and Water Works, the Division of Electric Light and Power, and the Division of Gas and "any other public utility acquired by the City." In 1948, the Wastewater Division, then known as the Sewer Division, was created as yet another division of the Department of Utilities. The 1977 amendment to the Charter attempted to draw all these divergent provisions together into one location.)

6-10. Utilities Director, Appointment.
The City Council shall by a majority vote of its entire membership employ a Utilities Director who shall serve at the pleasure of Council and who shall be responsible for the operation of Utilities. The Utilities Director shall have the power to appoint and remove all employees of Utilities who shall be City employees. [7] (1993)

[7] At the General Municipal Election in April 1993 and additional Council Appointee was created; "Utilities Director." This removed the control of the Utilities from the City Manager to the Utilities Director.

6-20. Definitions.
For the purposes of this Article, the term "Utility" shall mean the acquisition, erection, construction, operation, or maintenance by the City of water systems, wastewater systems, electric light and power systems, gas systems, and such other systems designated by Council which are necessary for the citizens and owned by the citizens of the City of Colorado Springs. (1977)

6-30. General Powers.
The City shall have and exercise with regard to utilities, all municipal powers, including without limitation, all powers now existing and which may hereafter be provided by the Constitution and laws of the State of Colorado. (1977)

6-40. Utilities--Accounting--Reserves.
(a) City Council shall serve as the Board of Directors for Utilities. Utilities shall include the Departments designated by the Manager of Utilities and approved by Council. Each of said departments shall, as far as practicable, be administered as an entity. All revenues of each department shall be placed in the Utilities Gross Income Fund, from which all operating and maintenance expenses shall be deducted. The funds of Utilities shall be kept separate from the funds of all other departments of the City. (1977; 1985; 1991; 1995)

(b) The net earnings of Utilities shall be appropriated for the necessary requirements of any of its departments, or of Utilities as a whole, and any remaining surplus may be appropriated to the

general revenues of the City by the City Council in its Annual Budget and Appropriation Ordinance. (1977; 1991)

(c) Adequate reserves for the replacement of obsolescent or depreciated property shall be provided annually in the accounts and budgets of several departments of Utilities in accordance with the Uniform Classifications of Accounts as now or hereafter adopted by the Public Utilities Commission of the State of Colorado. All such reserves not utilized for the replacement of obsolescent or depreciated property, or for additions or betterments to the plant or equipment of the several departments of Utilities shall be funded, and such funded reserves shall not be appropriated for any other use than the replacement of obsolescent or depreciated property, for additions or betterments to the physical property of Utilities, or for the payment of principal bonds of Utilities. (1977; 1991)

(d) Nothing herein shall affect the requirements of any existing bond ordinance or the obligations of the City with reference to any outstanding bonds. (1977; 1991)

(e) The Council shall cause to be printed annually for public distribution a report showing all costs of maintenance, extension, and improvements; all operating expenses of every description; the amount set aside for sinking fund purposes; the value of any utility service given without charge; allowance for interest, depreciation, and insurance, and estimates of the amounts of taxes that would be chargeable against such property if owned by a private corporation. (1939; 1977; 1991)

6-50. Water Rights.
The City shall have the authority to buy, exchange, augment, lease, own, and control water and water rights. (1977; 1985)

6-60. Emergency Warrants.
If at any time since the passage of the last annual appropriation ordinance the monies appropriated and available for Utilities shall be insufficient in the judgment of the Council to meet any Utilities emergency, the Council may upon passage of a resolution declaring an emergency cause warrants to be issued payable out of the receipts of Utilities for the ensuing year, including the proceeds from the sales of bonds. Said warrants and monies realized thereon shall be applied only to meeting the emergency so declared. (1909; 1977; 1991)

6-70. Utility Rates.
The Council shall by ordinance or resolution establish rates, rules and regulations, and extension policies for the services provided by Utilities. (1909; 1977; 1991)

6-80. Sale, Conveyance or Leasing of Utilities.
Council shall not sell, convey or lease all or any substantial part of the property of Utilities or any Utilities department without an affirmative vote of the electors of the City; provided that the foregoing shall not apply to the sale, lease, or conveyance of property of Utilities or any Utilities department (i) which occurs in the ordinary course of business, or (ii) which shall cease to be necessary for the efficient operation of the utility, or (iii) which shall have been replaced by other property serving substantially the same function. (1995)

[1] http://www.sterlingcodifiers.com/CO/Colorado%20Springs/index.htm

Appendix E: Moody's U.S. Public Finance Rating Methodology

www.moodys.com

Rating Methodology

Moody's
U.S. Public Finance

April 2008

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U.S. Public Power Electric Utilities

Summary

This rating methodology report explains Moody's rating approach for public power electric utility revenue bonds. Moody's currently rates some 300 public power electric utilities, with an average rating of A2.

The credit quality of the public power sector has historically been very stable. Over the past 40 years there have been only two bond defaults in the public power sector.[1] Both defaults were due to uneconomic power projects that resulted from construction and regulatory risk which created political pressure and an unwillingness of ratepayers to repay bondholders. This methodology incorporates the lessons learned from these events and provides investors with a road map detailing the credit factors that could lead to future public power electric utility credit deterioration or improvement.

It should be noted that public power electric utilities also cannot file for Chapter 11 bankruptcy, but can only file under Chapter 9, which provides relatively favorable treatment for bondholders. This track record and legal framework, as well as the fundamental strength of near monopoly provision of an essential service with unregulated rate-setting, suggests a fundamentally high probability of continued payment of debt service despite possible economic and regulatory changes in the power industry or fiscal distress that an individual utility might suffer.

However, there are numerous political and operating risks that can affect credit quality, given the continued evolution of the electric industry and the possibility of future regulatory reform.

[1] The two public power electric utility bond defaults were the Washington Public Power Supply System default on $ 2.25 billion of revenue bonds for Nuclear Project 4 and 5 in 1983 and the 1987 default by Vanceburg, Kentucky on its electric revenue bonds issued for the Greenup Hydro Project.

Moody's Investors Service

U.S. Public Power Electric Utilities

Overview of U.S. Public Power Electric Utility Sector

Moody's currently maintains published ratings on debt issued by some 300 U.S. public power electric utilities with over $100 billion of debt outstanding. Moody's ratings on public power electric utilities range from Aaa to Ba1, with a median rating of A2. Public power electric utilities serve about 12% of the total U.S. population, while U.S. investor-owned utilities (IOU) serve almost 70% with the remainder served by electric cooperatives. See figure 1 for the key characteristics that distinguish public power electric utilities from IOUs, the dominant provider of electricity services in the U.S.

Figure 1.

Investor-Owned Utilities	Public Power Utilities
• Average rating in Baa range on Moody's global rating scale	• Average Rating of A2 on Moody's US municipal rating scale
• Rate regulated	• Not rate regulated
• Profit seeking; operated for the benefit of shareholders with obligation to serve regulated ratepayers	• Operated for public benefit of the region served with obligation to serve customers
• Most are large and may have multiple subsidiaries	• Most are small relative to IOUs
• Subject to competition in the wholesale market, with some competition in retail market	• Little retail competition although subject to competition in wholesale market
• Some history of defaults, usually as a result of the need for large rate increases that regulators or customers do not approve or accept	• Defaults have been infrequent
• Can file Chapter 11 bankruptcy	• Cannot file Chapter 11 bankruptcy but can file under Chapter 9
• Tend to have higher rates compared to municipal or public power utilities	• Tend to have lower rates due to tax-exempt debt financing; preference power; lower salary structure; and lower earnings requirement
• Private shareholder equity; no government support	• No private equity; may have access to local government fiscal support in times of fiscal stress

In our analysis, we differentiate between two kinds of public power electric utilities: distribution-only and public power electric utilities with distribution and generation assets. Most of the 2,000 public power electric utilities in the US are small municipal electricity distributors with no outstanding direct debt. Some distribution utilities issue a relatively small amount of revenue bond debt to finance distribution facilities such as substations and transformers. In many cases distribution utilities also provide water, sewer, gas or other services such as cable or phone service. Some municipal distributors have a close financial relationship with the city they serve, such as Greenville Utilities Commission, North Carolina, (rated A1). Other utilities are organized as special purpose districts such as Benton County Public Utility District 1, Washington (rated A2).

The primary responsibility of distributor utilities is to purchase energy and to deliver the electricity through local distribution lines to retail customers. These distributors frequently obtain their power requirements from joint power agencies(JPAs), federal power marketing agencies like Tennessee Valley Authority (TVA ,rated Aaa) , or from investor-owned utilities. Although they are not capital intensive and do not directly face the costs of generating power, municipal distributors do face risks relative to power procurement contracts and transmission.

U.S. Public Power Electric Utilities

Most of the electric revenue bond debt outstanding for the public power sector has been issued by distribution-generation utilities, like the Los Angeles Department of Water and Power (rated Aa3) or Seattle Light (rated Aa3), that own both distribution lines and power generating facilities, and have ongoing capital programs. Some public power electric utilities are also organized as autonomous public authorities. These are typically integrated utilities, like Salt River Agricultural Improvement and Power District (Salt River Project)(rated Aa1), which serves a large geographic area and owns and operates generation and transmission facilities as well as local distribution lines. Some public power electric utilities, such as Nebraska Public Power District (rated A1) serve both wholesale and retail customers.

These utilities have strengths and weaknesses related to their generation ownership such as fuel or regulatory risk.

About 30% of the $100 billion outstanding public power electric utility debt has been issued by municipal joint power agencies, which are power generators and wholesalers owned by groups of municipal electric utilities. Moody's evaluated its rating approach on this group of utilities in its recent methodology on U.S. Municipal Joint Power Agencies, published in September 2006.

Our rating assessment of a public power electric utility begins with the recognition of the following characteristics:

- Near monopoly position in providing an essential service
- Unregulated and independent local rate-setting
- Lower cost structure due to the ability to issue tax-exempt debt and for some due to availability of federal preference power
- Lack of profit motive and need to generate a return on equity
- A strong link between the utility and sponsoring local government

In our analysis we distinguish between utilities that are municipal electricity distributors and those that own electric generation, transmission and distribution system assets. Utilities that own generation and transmission assets generally have higher debt levels and are subject to more technological and operational risks than distributors whose sole responsibility is to deliver electricity.

In an effort to make our rating process more transparent, we have outlined our fundamental analytical framework and the key rating drivers as they pertain to the different risks we weigh for municipal electricity distributors and utilities that own generation. We have broken these drivers into six categories, which are outlined in detail and listed in the relative order of importance in the following section.

U.S. Public Power Electric Utilities

Key Rating Drivers for U.S. Public Power Electric Utilities

1. **Market Position**
   - a. Competitiveness
   - b. Service territory credit characteristics and demand
   - c. Scope and reliability of power supply, transmission and distribution
2. **Local Government Credit Characteristics**
   - a. Degree of legal and financial relationship of utility with local government
   - b. General obligation credit quality of local government
   - c. General Fund Transfer
3. **Governance and Management**
   - a. Governance
   - b. Cost recovery process/rate setting
   - c. Management
   - d. Regulatory compliance
4. **Financial Position and Performance**
   - a. Operating performance
   - b. Debt service coverage
   - c. Financial liquidity
   - d. Leverage
   - e. Operating ratios
5. **Debt and Capital plan**
   - a. Power supply and capital plan
   - b. Debt management
   - c. Construction risk
6. **Covenants and Legal Framework**
   - a. Bond security
   - b. Rate covenant
   - c. Additional bonds test
   - d. Debt service reserve and other required reserves

U.S. Public Power Electric Utilities

The Key Rating Drivers For U.S. Public Power Electric Utilities

Factor I: Market Position

Sub-factor I.a: Competitiveness

Rating Factors	Sub-Factors	Measurement	Aaa Aa	A	Baa
I. MARKET POSITION	a)Competitiveness	Degree of competition	Monopoly in service area and retail competition unlikely	Monopoly in service area and possible retail competition	Retail competition in service area
		Retail rates vs. market (cents/kWh)	Retail rates 20% or more below regional average	Retail rates 0-19% below regional average and rates below major competitor	Retail rates 1-10% or more above regional average and rates above major competitor
		Power supply cost vs. market ($/Mwh)	Power supply cost 20% or more below regional market price	Power supply cost 0-19 % below regional market price	Power supply cost1- 10% higher than regional market price

The degree of competition in a utility's operating environment represents an important credit factor. While the U.S. wholesale electricity market is deregulated, retail service areas for public power electric utilities remain closed to competition in most states. In a few states, such as Texas and Massachusetts, and in a few jurisdictions such as Cleveland, Ohio and Lubbock, Texas, there are retail electricity choice programs. However, municipal electric utilities in Texas (except Lubbock) and in Massachusetts, have thus far not elected to enter competitive retail markets. Therefore even in states where retail competition is permitted, most municipal electric utilities have maintained a near monopoly in their service area limiting competitive threats, positioning the sector well for continued strong ratings.

In some states, legislative discussions continue about opening retail electricity markets to competition. A more open retail market would pose greater risks for public power electric utilities particularly during periods of weak market prices for power. The market could determine the rate a utility could charge and it might be insufficient to recover the utility's costs especially if its costs are above market. Also, there would be more competitive pressure on a utility's revenues and debt service coverage, if its rates are above market.

Despite the closed retail market, one of the most important elements of a utility's general competitive position is its price competitiveness for the power it sells to retail customers. We would expect increased risk if the utility is uncompetitive.

We compare a utility's retail rates against the regional market and the rates of major competitors and focus on the utility's competitiveness versus neighboring utilities. A comparison of retail rates is generally expressed as the average revenue per Kilowatt hour (cents/kWh). This unit measure has some limitations since it doesn't distinguish between different load factor customers. Nevertheless, it is a useful benchmark that can allow comparisons within regional markets.

High retail rates could cause pressure to lower rates which in turn could affect the utility's ability to recover costs through rates and weaken debt service coverage margins.

High retail rates may also discourage economic development and contribute to a stagnant or declining revenue base, which could hurt debt service coverage. The primary driver of the competitiveness of a public power electric utility is the cost of power supply. Moody's closely examines a utility's cost structure;

U.S. Public Power Electric Utilities

performance records of its generating units, terms of power purchase contracts and the effect of various industry risks on the forecasted cost of power supply. We compare the utility's power supply cost to the regional market price as well as to the cost of other potential supply opportunities for energy and capacity. This comparison has become more complicated as regional markets have deregulated. We evaluate a utility's cost of power against the median, but also against real time and projected information about the marginal cost of new capacity or energy. A detailed assessment of how we evaluate power supply is reviewed in the methodology sub-factor that follows on Scope and Reliability of Power Supply, Transmission and Distribution.

If a utility has significant wholesale revenues, Moody's will consider not just retail rate competitiveness but also the competitiveness of the rates charged for the wholesale power to be sold. Wholesale rates are expressed in $ per megawatt hour ($/Mwh). For example, the wholesale power rate charged by the Nebraska Public Power District to its wholesale customers during much of the past decade was competitive in the $35/Mwh range. The amount of revenue derived from wholesale sales for a public power electric utility may be an important credit factor if wholesale revenues are used to significantly subsidize retail rates or should a utility experience slower than forecasted growth that results in excess capacity and energy which then must be sold possibly at below cost in an uncertain daily wholesale power market.

Although public power electric utilities typically have a competitive cost structure and have a near monopoly service role in its service territory, we evaluate the dynamics of the regional energy market, state and federal laws regarding the marketplace structure and the importance of evolving federal and state regulations. For example, Moody's is currently evaluating the potential cost impact of greenhouse gas emission laws on electric utilities. (See Moody's report **Regulation of Greenhouse Gases: Substantial Credit Challenges Likely Ahead for U.S. Public Power Utilities**, published June 2007.) Also, the ability of public power electric utilities to manage compliance with renewable energy portfolio standards is an emerging credit issue that requires close assessment given the potential of reliability and cost issues associated with maintaining a large renewable portfolio.

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Sub-factor I.b: Service Territory Credit Characteristics and Demand

Sub-Factors		Measurement	Aaa Aa	A	Baa
	b) Service Territory Credit Characteristics and Demand	Wealth indicators	Very strong well-diversified economic base including strong wealth indices	Average economic factors and average wealth indices	Weak economic factors and weak wealth indices
		Customer concentration	No customer dominance	Top 10 customers between 11-20% of revenues and largest customer not greater than 10%	Top 10 customers greater than 20% of revenues and largest customer greater than 10%
		Customer demand	Manageable strong demand growth	Manageable growth at historical average	Unmanageable demand growth or decline

The characteristics of the utility's service area population and economy are key rating considerations. In particular we evaluate the wealth indicators of the population that a utility serves to gauge the ability of customers to pay their electric bills both currently and in the future should rates rise. Affluent residential customers generally have a higher tolerance for higher overall rates and rate increases since the electric bill is a smaller part of their disposable income. However, this relative strength may be offset somewhat by an increased propensity to use political influence to affect the rate setting process.

Public power electric utilities that serve a primarily residential customer base should benefit from a more stable load pattern and revenue stability given the typical usage trend for that customer class.

Weak economic characteristics and limited economic diversity weigh heavily as credit rating factors. For example, the only below investment grade public power electric utility rating is Guam Power Authority (rated Ba1). The key rating driver has been a limited economy and an electric system financial strength that has been adversely impacted by the costs of natural disasters.

Customer base concentration is also a key credit issue particularly for smaller municipally-owned electric utilities. Utilities that have a few customers who account for a large portion of operating revenues could face financial challenges if a single large customer were to depart. Moody's considers whether there is a positive margin earned on the customer—earnings above the cost of service—and whether the utility has any contractual recourse to offset any loss for capital improvements that were undertaken to connect and serve the large customer that departs from the system.

While economic growth trends are important to consider, the benefits of growth must be weighed against how well the utility manages the growth. Growth that exceeds the utility's capability to procure competitive and reliable energy could be a credit weakness. A stagnant or declining economic trend would likely be a credit weakness since it might lead to higher rates or excess supply, particularly if the excess power supply is expensive or there are transmission constraints that prevent the sale of the excess energy.

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Sub-factor 1c: Scope and Reliability of Power Supply, Transmission and Distribution

Sub-Factors		Measurement	Aaa Aa	A	Baa
	c) Scope and Reliability of Power Supply, Transmission and Distribution	Fuel and power supply diversity	Strong fuel and power supply diversity; resources well matched to load profile	Average fuel and power supply diversity; resources adequately matched to load profile	Limited fuel and power supply diversity; resources poorly matched to load profile
		Reserve margin (supply surplus)	Reserve margin that exceeds regional reliability standard	Reserve margin at regional reliability standard	Inadequate reserve margin; single generating unit risk
		Transmission access	Little or no transmission risk	Some transmission risk	Transmission constraints that limits or prevents transmission in or out of service territory
		ELECTRIC DISTRIBUTORS:			
		Purchased power contract competitiveness and reliability	Long term contracts that are reliable and competitive for all power supply	Shorter-term contracts for competitive power supply; some energy or fuel market risk	Significant exposure to volatile energy market; contract termination risk
		Purchased power contract counterparty credit rating	Purchased power contracts with a diverse group of counterparties with Aaa or Aa credit ratings	Purchased power contract with A-rated counterparty credit rating	Purchased power contract with Baa-rated counterparty credit rating; no diversity
		Customer service and distribution system reliability	Distribution system has low customer outage rate	Distribution system has average customer outage rate	Poor performance including outages above industry standard
		ELECTRIC GENERATORS:			
		Availability and capacity factors and unit efficiency (heat rate)	Strong reliability factors including strong unit availability; capacity factors and heat rate better than industry norm	Average reliability factors including average unit availability; capacity factors and heat rate at industry norm	Weak reliability factors; below average unit availability; capacity factors; high heat rate worse than industry norm
		Generation risk mitigation (see Figure 2)	Strong generation risk mitigation	Average generation risk mitigation	Weak generation risk mitigation

The two major objectives of a public power electric utility are to provide reliable power supply and competitively priced electric service to customers. Public ownership establishes a political framework which is based on how well the utility meets these two objectives. In situations where the objectives are not met, political risk increases and the certainty of timely cost recovery through rates including payment of debt service may be lessened.

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When evaluating the scope and reliability of a utility's power supply, Moody's considers the sources of power supply, and the cost structure and reliability of each source. We review each generation unit's performance record, including availability (% of time a unit is operational); capacity factor (% of rated capacity the generation unit runs); and heat rates (efficiency of a generator to convert fuel into electrical energy). A low average heat rate means the generating unit is more efficient and will use less fuel; it will cost less to operate and is more likely to be dispatched. Moody's will evaluate these performance measurements in the context of the utility's overall cost structure. The all-in cost of the power supply is a key factor which drives the overall retail price charged to the end-use customer. Higher-than market power supply costs typically lead to higher retail charges for customers.

How the regional market is structured and whether changes in transmission regulation and governance will have an impact on power delivery is another key area of our assessment of competitiveness. Regional energy markets in more than one-half the U.S. have been organized by independent system operators (ISO) that have implemented day-ahead and real time energy markets with locational marginal prices. This has changed how power is bought and sold over the interstate transmission lines. Some states and regions have already implemented day-ahead and real-time markets such as the Midwest ISO. But some regions still have implementation risk relative to the introduction of these new energy markets. For example, California has introduced a locational marginal pricing plan that will begin in late 2008. The Electric Reliability Council of Texas (ERCOT) expects to implement a market redesign by 2009 that would include a nodal wholesale energy market to improve price signals and dispatch efficiencies and directly assign the costs of local congestion. Additionally, new market rules may in some cases create new risks which could pose credit challenges.

As a result, managing peak demand is a critical aspect of operating in the new deregulated energy markets. Moody's focuses on the degree of exposure a utility has to market prices including whether it has the flexibility to ramp down peak period purchases particularly during a volatile market period and utilize locally owned peaking generation to cap that exposure.

Another important factor is whether a utility's fuel and resource mix is diverse. Fuel diversity, including the flexibility to manage peak demand, limits the utility's exposure to volatility in global energy market prices or disruptions in the delivery of a single fuel.

Moody's carefully considers the type of power generation used by the utility, since each type introduces its own set of risks which must be properly managed. For example, we evaluate the risks associated with a particular generation asset, as shown in figure 2 on the following page. Particular risks include forecasted fuel price and transportation issues, as well as factors unique to each fuel type including radioactive waste storage issues for nuclear generation facilities or drought conditions for hydroelectric generating units or environmental compliance issues for coal-fired generating units. After we identify the risks associated with the financed project, we then look at the mitigation measures that are in place—or that are anticipated to be used by management to reduce risk. Flexibility to switch fuels, transportation routes or maintenance of fuel storage facilities, for example are mitigation measures to lower exposure to price volatility and potential financial losses. Also, a favorable reserve margin (the amount of power supply capacity that exceeds system peak demand) allows the utility to better manage an unexpected forced outage of a large generating facility. Larger reserve margins also allow the utility to better plan for maintenance outages to ensure system reliability.

Risk exposures that are not adequately mitigated may cause financial stress and ultimately price increases and could result in weaker credit ratings.

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Figure 2

Generation Risk for Major Fuels and Mitigation Table

Generation Risk	Mitigation Measure
COAL-FIRED GENERATION RISKS	
•Clean Air Act compliance	•Proactive and economic approach to meet NOX, SO2 and mercury standards including capital program for environmental compliance
•Clean Water Act compliance	•Proactive approach to water quality issues
•Fuel delivery disruption	•Coal inventory on site of 60 days or appropriate level to manage risk of transportation disruption
•Greenhouse gas emissions regulation	•Strategic planning effort to evaluate CO2 reduction options and future cost mitigation strategies
•Maintenance of strong availability and capacity factors	•Ongoing preventive maintenance program with management objectives to meet optimal levels for plant age and condition
NUCLEAR GENERATION RISKS	
•Safe storage of radioactive waste	•Provide adequate on-site storage of waste to license expiration in the absence of other current alternatives
•Operating record within NRC safety and performance guidelines	•Manage compliance including improving low scores on Nuclear Regulatory Commission (NRC) review
•Decommissioning of retired plant	•Evidence of funding of decommissioning costs pursuant to NRC formula
•Maintenance of high plant capacity factors	•Preventive and ongoing maintenance to avoid forced outages and to minimize refueling outages
HYDRO GENERATION FACILTIES RISKS	
•Drought conditions and low or below average water	•Ensure that power supply and financial margins can withstand low water periods; plan for replacement power and liquidity
•Fish and wildlife protection	•Strong planning and implementation function to mitigate potential impacts on local wildlife so limited regulatory constraints on water flow
•Federal Energy Regulatory Commission relicensing risk	•Prudent management of hydro record; strong relicensing planning including participation from stakeholder groups
NATURAL GAS FIRED GENERATION	
•Fuel availability and deliverability	•Optionality of delivery points, suppliers and contracts
•Natural gas price risk	•Natural gas prepayment bonds; derivative hedging products; storage facilities
•Clean Air Act compliance	•Preparation of engineering assessments and cost estimates of compliance with possible new emissions standards

We look closely at electric distributor power purchase contracts to understand the risk exposures. For example, power purchase contract expiration or "edge risk" is a key credit concern. How a utility manages the transition to a new supply contract after the existing contract term expires is important, particularly given that the utility may have to purchase all replacement energy in a volatile wholesale power market if new contracts are not in place. Another critical factor in contract assessment is the economics of the contract and how it fits into the overall power supply needs of the utility. For example, changes in pricing and allocation of federal preference power by the federal power marketing agencies, like Western Area Power Administration (WAPA) or the Southeast Power Administration (SEPA), have created both supply and competitiveness issues for some public power electric utilities. Also important is the creditworthiness of the counterparty supplying the

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power and collateral requirements under the contract. In addition, we will also evaluate the capability of the utility to assess counterparty risk exposure and legal protections in the power purchase contract.

We will also evaluate the type of power purchase contract based on three broad categories,: take-or-pay, take-and-pay, and all-requirements. We review the contract's specific terms and special conditions, for example if there is a tolling agreement which requires the distributor to pay separately for the fuel costs or if there are any unusual termination provisions.

Take-or-pay contracts require the distribution utility to pay all operating and maintenance expenses and debt service on a generation project from which the utility has contracted for energy and capacity. Typically the distribution utility must pay for such costs regardless of whether or not the project is operating, and even if the project is not constructed.

Take- and -pay contracts are more common, though more variable in their specific terms which are generally based on the needs of the utility. In many cases, the distribution utility will have an all-requirements contract, which is a take-and- pay obligation for energy and capacity from the seller for all of the utility's power requirements. But the buyer has no set annual payment obligation or minimum purchase requirements as with a take-or-pay contract. Traditional take-and-pay contracts are less restrictive and generally only require the distribution utility to pay only for the energy they take.

Factor II: Local Government Credit Characteristics

Rating Factors	Sub-Factors	Measurement	Aaa	Aa	A	Baa
II. LOCAL GOVERNMENT CREDIT CHARACTERISTICS	a) Degree of Legal and Financial Relationship Between Local Government and Utility	Degree of local government fiscal and legal interdependence	Strong statutory provisions linking financial liquidity and sponsorship of local government to health of the utility		Some relationship between local government and financial health of utility	Limited legal linkage of local government to utility; record of political risk in relationship
	b) General Obligation Credit Quality of Utility Sponsor	General obligation credit quality	Aaa	Aa	A	Baa
	c) General Fund Transfer	General Fund transfer policy and amount	General Fund transfer policy based on covenants or statutes ; transfer of less than 4% of gross revenues		Amounts not subject to formula; transfer 4-7% of gross revenues	Subject to frequent negotiation; impacts utility financial flexibility or rate competitiveness; above 7% of gross revenues

Sub-factors II.a, b: Legal and Financial Relationship between the Utility and the Local Government and General Obligation Credit Quality of Local Government

Moody's considers the extent to which the electric utility and the local government that owns it are legally and financially related. If the two entities are closely related, the local government rating will weight heavily as a rating factor. This will not always be a major factor since some utilities have no fiscal relationship with a local

government sponsor. We also consider the extent to which a utility serves customers located in a municipality's jurisdiction and are subject to the same population and economic factors.

We consider who governs the utility and sets its rates and who issues the revenue bonds for the utility, as well as, assess the degree to which the general government is responsible for supporting the utility in times of financial stress. Moody's will review with bond counsel the legal obligation the local government may have to support the utility in order to prevent any default on bond repayments. We recognize that bondholders of electric revenue bonds are typically only provided a pledge of the net revenues of the electric system; but electric service is an essential good which a parent municipality will go to great lengths to protect. Local governments have a strong record of supporting public power utilities in times of fiscal stress. While less common, the relationship also works the other way; in times of general government's fiscal stress, utilities have provided financial support to parent local governments. This support may be in the form of increased revenue transfers or increases in indirect costs or fees. A chronically weak local government with a low credit rating would therefore exert downward pressure on the utility's rating, all else being equal.

Some public power electric utility ratings may be higher than the general obligation rating of the related city because the utility may have demonstrated a stronger financial position and may be governed independently of the city. A rating lower than the municipality's may signal that the utility has a weak competitive position or lack political support by the governing board for setting rates, which ultimately will be reflected in weak debt service coverage.

Sub-factor II.c: General Fund Transfer

The strength of the relationship between a utility and local government can also be measured by the General Fund Transfer (GFT). GFT is the transfer of surplus utility revenues from the utility to the city's General Fund. The transfer can be significant both directly and indirectly. If transfers from the utility represent a large part of the city's overall operating revenues, then there is a greater likelihood that the city will ensure the electric enterprise remains healthy. However, when the transfer represents a substantial portion of the utility's own resources, this could have a negative rating impact. The U.S. median of the GFT as a percentage of utility gross revenues is 7%.

Moody's believes an established GFT transfer policy that is drawn up and accepted by both the utility and local government adds credit strength for both entities. While it is reasonable that some form of financial return be provided by the utility enterprise to the general government, GFT transfers that are set politically on an annual basis are less predictable and more challenging for the utility to budget for and can be a negative credit factor. Furthermore, GFT levels that lead to high or uncompetitive electric retail rates or that drain internal funds from the utility needed for maintenance and repair can also weaken the credit rating

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Factor III: Governance and Management

Rating Factors	Sub-Factors	Measurement	Aaa	Aa	A	Baa
III. GOVERNANCE AND MANAGEMENT	a) Governance	Board membership and expertise	Experienced elected or appointed governing board; supportive of professional management; autonomous decision-making		Average experience of elected or appointed governing board supportive of professional management	Elected or appointed governing board with evidence of political interference in decision making
	b) Cost Recovery Process	Rate setting	Unregulated rate setting; sound rate policy and rate increases; timely energy or fuel cost adjustments		Unregulated rate setting; adequate rate policy and increases; timely energy or fuel cost adjustments	Regulation of rates by State; local political risk; record of inadequate rate decisions; no fuel or energy cost adjustments
		Days to implement rate increase	Less than 10 days	10-30 days	31-60 days	61 days or more
	c) Management	Management stability and expertise	Long and stable record of budget and capital management; management succession plan; sound investment policy; strong risk management plan		Stable record of budget and capital management; management succession plan; sound investment policy; average or developing risk management plan	Limited record of budget and capital management; inadequate strategic focus; no succession plan; no risk management plan
	d) Regulatory Compliance	Federal and state regulatory compliance	Strong and established record of federal and state regulatory compliance; regulations do not create unmanageable cost burden		Good record of federal and state regulatory compliance; regulations do not create unmanageable cost burden	Regulatory compliance issues; significant cost burden

Sub-factor III.a: Governance

Moody's reviews the record and actions of the governing board to assess its effectiveness. Strong independent boards with industry expertise as a condition of service on the board membership are the soundest governance structure. More generally we look for governing boards that minimize political interference in the professional management of utility operations and establish sound rate policies, risk management programs, strategic plans and general fund transfer policies. Governing boards that are focused on adapting the utility to the continued changes in the industry and market environment represent an important credit factor.

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Sub-factor III.b: Cost Recovery Process-Rate Setting

Independent and local rate setting is fundamental credit strength of most municipal utilities. When determining the certainty of cost recovery for debt repayment, Moody's assesses the rate setting process and practices of the governing board. Because retail rates for public power electric utilities are usually not subject to approval by state regulatory boards, consistent, timely rate actions can be taken to ensure costs, including debt service are recovered.

A key factor in our evaluation of the rate setting process is the number of days its takes to implement new rates and to begin collecting additional revenues. A demonstrated willingness to charge rates required to recover current costs and to maintain adequate margins and system liquidity is a credit positive in our opinion. We expect rate-setting independence and willingness to be tested over the next several years as fuel prices continue to rise. We view automatic energy cost and fuel cost adjustment charges as a positive factor as well. Too much political intervention in the rate setting process is a credit weakness. Conversely, Moody's also views as a credit weakness rates that are less than sufficient to meet debt service coverage levels appropriate for the rating category. State regulation of public power utility rates may be a significant weakness since uncertainty and delay in rate setting may result from such regulation.

Sub-factor III.c: Management

Moody's closely evaluates management's current strategies as well as its track record for mitigating the utility's risks as reflected in the ability to meet operational budgets and bring capital projects in on-time and under budget. Enterprise risk management is an increasingly important focus given the uncertainties in the evolving electric industry. Among the larger credit risks public power utilities face are sudden natural gas price increases, forced outages of major generation units and wholesale energy market volatility. Without effective mitigation strategies, these types of risks can have an immediate financial impact affecting debt service coverage and potentially leading to a lower credit rating.

A utility's well-defined risk management strategy, with stated tolerance levels for identified risks, is a noteworthy credit strength. If a utility undertakes appropriate risk mitigation strategies, it may reduce pressure on its financial resources, thus helping to safeguard credit quality. (See figure 2) We review the numerous risk exposures and their potential financial impact relative to the characteristics of the utility to determine the effect on the overall credit rating. The way in which management responds to actual problems and challenges as they arise is equally important.

The following is a list of several fundamental risk areas that Moody's considers when assessing management strength and its risk management plans:

- Commodity market volatility, such as sudden purchased power or natural gas cost increases and collateral posting requirements
- Transmission access and reliability
- Resource adequacy
- Interest rate swap rating triggers
- Changes to environmental regulations, such as the Clean Air Act or those governing water quality, which can impact cost and performance
- Fuel transportation issues, such as a disruption of coal deliveries
- Electric industry structure, including the status of retail deregulation
- Customer dominance, including the impact of losing a large industrial customer

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Sub-factor 3.d: Regulatory Compliance

Public power electric utilities are substantially unregulated in much of their operations and rate setting but face the same level of federal and state regulation as investor-owned utilities when related to environmental issues. For example, public power electric utilities that operate coal-fired generating units face federal clean air and water regulations; utilities that own hydro-electric facilities must get a federal operating license to run hydro-electric production facilities; and utilities that own nuclear generating units are heavily regulated by the Nuclear Regulatory Commission (NRC). Moody's will assess the degree of regulatory compliance and the likely cost of continued compliance relative to other utilities with otherwise similar credit profiles. A utility's relatively high, future regulatory cost burden may result in a lower credit rating, all else being equal.

Management's strategic planning to prepare for industry changes and new regulations is an important credit consideration given that the electric industry is subject to broad public policy changes, such as the deregulation debate in the past decade. A utility's proactive and adaptive management of regulatory risk represents a critical credit strength that can influence a utility's success in achieving strong finances and competitive position in spite of industry changes.

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Factor IV: Financial Position And Performance

Sub-Factors		Measurement	Aaa	Aa	A	Baa
IV. FINANCIAL POSITION AND PERFORMANCE	a) Financial Performance	Debt Service Coverage (x)				
		Electricity Distributor	Strong debt service coverage with stable trend; three-year average debt service coverage ratio in excess of 3.00x; (or 2.00x to 2.50x including GF transfers as O&M)		Sound debt service coverage with stable three-year trend; three-year average debt service ratio between 2.25x to 3.00x-(or 1.50x-2.00x including GF transfers as O&M)	Weak debt service coverage with erratic or declining trend; three-year average debt service coverage ratio less than 2.25x (or less than 1.50x including GF transfers as O&M)
		Electric Generator	Strong debt service coverage with stable trend; three-year average debt service coverage ratio between 2.25-3.00x; (or 2.00x-2.50x including GF transfers as O&M expense)		Sound debt service coverage with stable three-year trend; three-year average debt service ratio between 1.75-2.25 (or 1.50x-to 2.00 x including GF transfers as O&M expense)	Weak debt service coverage with erratic or declining trend; three-year average debt service coverage ratio less than 1.75x (or less than 1.50x including GF transfers as O&M expense)
		Margin after debt service	Greater than 15%		Between 15% and 5%	Less than 5%
		Days cash on hand:				
		Electric Distributor and Generator	Greater than 125 days		Between 125-60 days	Less than 60 days
	c) Leverage	Debt ratio (%)				
		Electricity Distributors	Less than 15% with limited future borrowing		Between 15-40% with modest borrowing plans	Above 40% with significant future borrowing plans
		Electric Generators	Less than 60%; easily manageable capital program		Less than 70%; moderate to significant additional capital needs	Above 70%;
	d) Operating ratios	% Next year's fuel price fixed through hedges	75% or more		Greater than 50% and less than 75%	Between 0-50%
		Wholesale revenues as % total	Less than 10%		10-20%	21-30%

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Sub-factor IV.a: Financial Performance

Moody's evaluates the financial performance and position of public power electric utilities to determine their ability to manage business risks while assuring payment of debt service. Utilities are obligated under their bond documents to meet certain financial parameters, but we take a positive view on financial performance that exceeds minimum requirements. We review several years of financial statements in order to assess whether there is a solid track record over time and also evaluate management's financial forecasts as a tool to assess the utility's capability to meet potential future financial challenges. Well-defined financial projections incorporate expected hedging of fuel costs; debt service costs associated with planned capital projects; and the projected rates needed to support operations to maintain margins along with possible stress scenarios based on potential risks.

We also will evaluate the trend in the utility's various financial and operating performance ratios as well as its standing relative to Moody's public power sector medians. We also review trends in non-fuel (fixed) operating expenses and maintenance costs and capex and reviewed to determine both how well management can control expenditure growth and if it is adequately reinvesting in plant. While this analysis is highly quantitative we always seek to balance quantitative measures with qualitative factors discussed in this report. We have identified the most important core ratios, all of which are listed below and defined in Appendix 2.

Core Financial Ratios

- Debt service coverage ratio (x)
- Margin after debt service (%)
- Days cash on hand
- Net working capital
- Debt ratio (%)
- % next year's fuel price fixed through hedges
- Wholesale revenues as % total revenues

Moody's analyzes short and long-term trends in financial performance to assess the stability of the financial performance. We use the debt service coverage ratio, which is defined as annual net revenue divided by debt service, to measure the ability to repay debt service from operating revenues. We will calculate the debt service coverage ratio as defined in the indenture and also perform a calculation that includes general fund transfers, which are often subordinate to debt service payments, as an O&M expense. Consistently stable debt service coverage ratios are an important indicator of financial stability, whereas, declines in the coverage ratio could be indicative of financial strain or an unwillingness or inability to raise rates to fully recover the cost of service, which in turn could lead to a rating downgrade.

As shown in the rating matrix at the beginning of this section, the debt service coverage ratio for an A-rated municipal electric generator would be in the 1.75 times to 2.25 times range. The debt service coverage ratio would be lower calculating it with General Fund transfers as an operating and maintenance expense. A lower debt service coverage ratio calculated either way at the same rating level would be an outlier that would need to be explained by other rating factors.

We look at the margin after debt service (net revenues less annual debt service divided by gross revenues and income) to evaluate how large a drop in revenues the enterprise can withstand and still pay debt service. For example, the margin after debt service greater than 15% would be consistent with Aa-rated public power electric utilities that own generation, while margins below 5% would typically characterize weaker Baa rated credits. It is worth noting that given public power electric utilities monopoly position as provider of an essential service and the ability to set rates, significant drops in revenues without offsetting decreases in costs are highly unusual.

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Sub-factor IV.b: Financial Liquidity

Moody's uses financial liquidity as a measure of financial flexibility to manage through short term risks. While days cash on hand is a useful ratio for measuring the relative strength of a utility's liquidity, the level of cash must be evaluated in conjunction with identified immediate risks to cash flow as previously discussed in the *Management* section.

We also calculate net working capital, which measures current assets minus current liabilities, in order to assess the overall financial position of a utility.

A key factor in our assessment of liquidity is comparing the days of cash on hand to the number of days it takes for the utility to raise its rates and begin to receive the additional revenues. For example, utilities that have exposure to natural gas pricing may require a greater amount of day's cash on hand given the potential for price spikes. A utility with a significant amount of interest rate swaps with negative mark-to-market exposure, too, may require stronger balance sheet liquidity. If a utility has a pass-through mechanism that permits monthly adjustments to customer's bills for fuel price increases it may mitigate the need for a higher level of available cash on hand.

Questions Moody's May Ask About Issuer Liquidity

- What are management's policies and track record for maintaining reserves and minimum cash position?
- To what extent are sources of external credit available, such as commercial paper and bank lines of credit? What conditions are attached to these? When do they expire?
- What strategies and contingencies does management have in the event the expected sources of liquidity are suddenly not available?
- What is the timing of any significant debt maturities and or payments to suppliers or debt holders?
- What type of investments is held and how liquid and safe from market loss are those investments?

Sub-factor IV.c: Leverage

In general, public power electric utilities that own generating assets are more highly leveraged than electric distributors. Moody's utilizes several ratios to measure leverage including the Moody's debt ratio (the ratio of net funded debt divided by net fixed assets plus net working capital). We compare the absolute level of the utility's current debt ratio to the median for the same type of utility and also evaluate the recent and likely future trend.

It is important to point out that a public power electric utility's capital structure is heavily reliant on debt, which contrasts with the substantial private shareholder equity that IOUs have. As a result, a public power electric utility's debt to equity is usually well above much of the rest of the U.S. electric industry.

Municipal electricity distributors typically borrow capital by issuing debt to construct distribution lines, substations and transformers. The median debt ratio for a municipal electricity distributor has averaged in the 20%-30% range for the past 20 years. Distribution utilities with higher debt ratios will typically require higher retail rates in order to recover the associated costs.

Public power utilities that own generation and transmission assets will be more heavily leveraged against their depreciated assets than distribution systems. For example, utilities that own generation have a median debt ratio of about 50%. The higher amount of debt does not mean that rates will be higher than a distributor's rates. It simply reflects a different cost structure. This is because distributors will pay, as part of their purchased power contract, a capacity charge roughly equivalent to the fixed costs the seller incurred to generate the electricity sold to the distributor. Moody's does not calculate a fixed charge ratio nor imputes the fixed charge in power purchase contracts into the debt ratio, but does closely evaluate the power purchase contract.

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A public power electric utility that owns generation and is leveraged well above the median may have less financial flexibility and rates that are not as competitive as less leveraged utilities with similar amounts of owned-generation relative to their size. High leverage may also prevent or limit the utility's ability to obtain new generation facilities or maintain existing facilities.

Sub-factor IV.d: Operating Ratios

Moody's evaluates several operating ratios to gauge whether specific operating risks may become problematic. For example, we assess the utility's fuel hedging plan to better understand the impact of the commodity markets on cash flow. A public power electric utility with a comprehensive program to manage fuel risk, particularly related to natural gas, through various types of hedges, would typically have relatively stable total operating expenses. Also maintaining an inventory of coal on site could shield a utility from price spikes in the event of a disruption in supply or rail transportation, and thus reduce the need for replacement sources of energy on the spot market.

The level of spot wholesale energy market revenues as a percentage of total revenues is another ratio we use to evaluate cash flow. The ratio is particularly important if the utility is relying on margins earned in the wholesale energy market to meet operating expenses or provide for debt service coverage.

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Factor V: Debt and Capital Plan

Rating Factors	Sub-Factors	Measurement	Aaa	Aa	A	Baa
	a) Power Supply & Capital Plan	Integrated power resource supply planning	Sophisticated long-term integrated power resource plan, incorporating reasonable supply and demand assumptions		Adequate long-term integrated power resource plan that incorporates supply and demand assumptions	Weak long-term planning for future generation, distribution and transmission
		CO_2 reduction and renewable energy standard plan	Well-defined options analysis regarding CO2 control and renewable energy portfolio standard		Adequately defined options analysis regarding CO2 control and renewable energy portfolio standard	No options analysis regarding CO2 control and renewable energy portfolio standard
	b) Debt Management	Debt Policies	Strong debt management including future debt issuance projections closely related to budget and rates		Average debt management including limited assessment of future debt issuance related to budget and rates	Weak debt management including no future debt issuance projections
		Interest Rate Management	Sound management and ongoing monitoring of variable rate exposure and swap portfolio risk, strong swap policy including good disclosure; conservative rating triggers and collateral posting requirements		Average management of variable rate exposure and swap portfolio risk, average swap policy including good disclosure	No stated swap policy; rating trigger risks; weak overall debt management

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Rating Factors	Sub-Factors	Measurement	Aaa	Aa	A	Baa
V. DEBT AND CAPITAL PLAN	c) Construction Risk	Project record	Very strong record of project completion on time and within budget		Good record of project completion on time and within budget	Poor record of project completion-not on time or within budget
		Feasibility of project	Strong well-defined project feasibility study		Satisfactory and well-defined project feasibility study	No feasibility study
		Technology risk	Technology risk is minimal and project is commercially tested		New technology with limited record of commercial operation	New technology with no track record of commercial operation
		Permits	Fully permitted project	Major permits are approved	Major permits approved and preliminary approvals for other permits received	Permits not yet approved and being challenged
		Transmission risk	No transmission risk	No transmission Risk	Some transmission risk	Transmission constraints prevent sale of project power which impacts financial results

Sub-factor V.a: Power Supply & Capital Plan

The electric industry is capital intensive and the need to build new facilities is demand driven. Moody's assesses a utility's capital program and its borrowing plans to evaluate how this will impact its operations and rates. Capital planning to ensure the utility can manage its service area growth is a key analytical consideration. Balancing fixed costs, while ensuring competitive rates, is important, particularly for a utility that operates in an industry dominated by a competitive private sector.

The ability to provide competitively priced and reliable power supply is a key objective of a public power electric utility's capital program. Moody's evaluates a utility's power resource plan to better understand supply and demand trends and how they translate into potential new borrowing requirements. We analyze historical and projected demand trends, load demand curve characteristics and demand-side assumptions and how the utility is planning to address these..

Also, the long-term integrated power resource plan should detail how the utility expects to meet renewable resource portfolio requirements and environmental regulations, including regulations on pollutant removal and greenhouse gas emission regulations for coal-fired generation plants, relicensing requirements for hydroelectric plants and nuclear waste storage for nuclear plants.

Sub-factor V.b: Debt Management

Moody's also evaluates the existing and projected debt service profile of each utility. Level or declining debt service will allow for greater flexibility when integrating new borrowing, and we generally consider such debt structures favorably whereas we see potential credit risks in a backloaded debt structure that defer necessary rate increases and could create potential financial pressures in the future.

Moody's reviews debt management and swap policies, board oversight of interest rate swaps and a utility's disclosure of its risks and exposures. We believe detailed disclosure of the risks and exposures on a frequent basis should be done.

We look at exposure to unhedged variable rate instruments. While Moody's does not place limits on the level of variable rate debt a utility may have for a given rating level, we closely evaluate the debt statement and evaluate the potential financial stress a change in interest rates may cause. A large amount of unhedged variable rate debt exposure could impact the rating if the exposure analysis indicates a greater level of risk to the utility's financial position.

We will also assess the utility's interest rate derivatives. We will focus on the circumstances under which the utility would be required to post collateral and the right of the utility's swap counterparty to terminate the swap should certain events occur, such as a downgrade of the utility below a certain rating level. In some cases, if the swap is insured, these rating triggers may also be tied to the insurer's credit rating. In cases where collateral posting or termination events are assessed to be more likely either because of the utility's rating or an insurer's rating, we will evaluate the impact of changes in interest rates on the mark-to-market of the swaps and the ability of the utility to manage this cost exposure, which could result in a substantial drain on a utility's liquidity. We also evaluate the type of swap and the reasons why the swap was undertaken along with basis risk and counterparty risk.

See Moody's Use **of Interest Rate Swaps by U.S. Public Finance Issuers**, published October 2007, for our perspectives on this particular risk.

Sub-factor V.c: Construction Risk

As with all debt issuers with large capital construction projects, Moody's assesses each utility's construction risks both overall and those associated with a particular project. We look to management to provide an assessment of the risks inherent in a project and how these risks will be mitigated. Moody's believes a well-defined project feasibility study is a critical component of a capital improvement process. Risk mitigation may include fixed-price, date-certain contracts with liquidated damage provisions; performance and payment bonds; strong program oversight and management; adequate reserves and contingency funds; and step-in rights in the event of contractor failure. A new generation project must also have adequate transmission capabilities for the area it will serve.

We also look to contractor experience with similar projects and consider the technology being used. Unproven technologies bring more risk and will likely result in weaker ratings unless very strong performance guarantees are provided from a company with strong ratings. In addition, Moody's will also evaluate whether there is transmission risk in getting the new power plant's electricity into the regional market, a risk that is particular to the electric industry. Lastly, we will also assess permitting issues, including those permits related to environmental laws, transmission siting or in the case of hydroelectric facilities, fish and wildlife regulations.

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Factor VI: Covenants and Legal Framework

Rating Factors	Sub-Factors	Measurement	Aa	A	Baa
		a)Bond security	Gross or net revenue pledge of all assets; closed loop flow of funds	Gross or net revenue pledge of all assets; open loop flow of funds	Open loop flow of funds permits outflow to non-self-supporting enterprises
		b) Rate covenant	Greater than 1.25x coverage of debt service	Greater than 1.10x coverage of debt service	Sum-sufficient to 1.10x coverage of debt service
VI. COVENANTS AND LEGAL FRAMEWORK	a) Covenants	c)Additional bonds test	Greater than 1.25x coverage of debt service	Less than 1.25x and greater than sum-sufficient coverage of debt service	Sum sufficient or rolling coverage of debt service
		d)Debt service reserve	12 months maximum annual debt service	12 months average annual debt service	6 months average annual debt service or no debt service reserve
		e)Operating reserves	Sound level of rate stabilization or contingency reserves	Satisfactory level of rate stabilization or contingency reserves	No rate stabilization or contingency reserves

Sub-factor VI.a: Bond Security

Bond covenants represent the minimum security provisions that bond issuers agree to operate under and abide by. Such covenants represent the financial and legal parameters within which management believes it can operate the enterprise while providing bondholders with adequate protection, though not necessarily the level consistent with the assigned rating. Typically, the assigned rating represents our expectation of performance at levels that are well in excess of some of the covenants, most notably the rate covenant. Weakened covenants in a debt restructuring may be a reflection of a more challenging operating environment. Moody's will look at each bond security provision on a case by case basis, but we note that certain minimum standards apply in our rating methodology.

Sub-factor VI.b: Rate Covenant

The rate covenant is a legal pledge to set rates and charges such that annual recurring revenues cover O&M and debt service at a prescribed level. The rate covenant usually requires that after O&M costs net revenues are some multiple of debt service. If the debt service coverage by net revenues falls below this level, the rate covenant typically will require the utility to increase rates to ensure compliance. We will look at the definition of what constitutes operating revenue for the purposes of ensuring that the test measures only current operating revenues and excludes one-time or non-recurring revenues. Moody's places significant weight on this factor given that this is a minimum test of ability and willingness to repay debt from annual operating revenues. Failure to meet the rate covenant will almost certainly lead to a rating downgrade.

Today, a rate covenant in which net revenues cover debt service by 1.25 times is considered strong particularly for municipal electric utilities that have unregulated rate setting. A sum-sufficient rate covenant leaves almost no margin for error but again represents a minimum legal requirement. Moody's believes that rolling coverage tests that are allowed as part of the rate covenant calculation, while maintaining maximum flexibility for the utility, are ultimately a weak. At a minimum, when rolling coverage is part of the rate covenant, at least sum sufficient coverage should also be provided. Some utilities have established rolling coverage covenants to reflect the potential pressure of deregulation.

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Sub-factor VI.c: Additional Bonds Test

The additional bonds test (ABT) identifies the financial conditions that must be met prior to a future issuance of bonds. The test represents an assessment of the utility's financial capability to afford new debt service, and may include a historic and projected debt service coverage test matching the rate covenant, with projected debt service including the effect of the new bond issuance. The stronger ABTs include an historical coverage test along with a prospective test based on projected revenues based on rate adjustments.

Sub-factor VI.d and e: Debt Service Reserve and Other Required Operating Reserves

The debt service reserve is an important security element in the bond indenture. The debt service reserve is typically funded by bond funded deposits or a surety bond. The fund protects against extreme cash flow shortfalls to prevent a default in the event of a catastrophe or some occurrence leading to a shortfall in pledged revenues and requires specific actions that officials must take for the protection of bondholders.

The most common debt service reserve level is the lesser of 10% of bond principal outstanding, maximum annual debt service (MADS), or 125% of annual debt service; which is set forth by Internal Revenue Service regulations as the maximum that can be funded with tax-exempt bonds.

Operating and contingency reserves are also important elements of bond security. We view indenture required reserves that provide protection against certain identifiable risks as a credit positive. Rate stabilization accounts, decommissioning reserves for plant remediation, or insurance reserves for disaster responses are examples of reserves that help shield the utility's operations from rate volatility and large capital expenses. While we believe that these types of reserves contribute credit strength, they may not result in a rating distinction.

Moody's Related Research

Special Comments:

- Regulation of Greenhouse Gases; Substantial Credit Challenges Likely Ahead for U.S. Public Power Electric Utilities, June 2007 (103356)
- Public Power Enterprise Risk Management-An Important Step in Liquidity Assessment, February 2007 (102231)
- Construction Risk; Mitigation Strategies for U.S. Public Finance, December 2004 (89406)
- Environmental Regulations Increase Capital Costs for Public Power Electric Utilities, June 2007 (103616)
- Credit Risks and Benefits of Public Power Utility Participation in Nuclear Power Generation, June 2007 (103522)

Rating Methodologies:

- U.S. Municipal Joint Power Agencies, September 2006 (99024)
- Evaluating the Use of Interest Rate Swaps by U.S. Public Finance Issuers, October 2007 (104186)
- U.S. Public Power Electric Utilities Credit Outlook Remains Stable Through 2007 (97623)
- The Role of Bond Covenants in Municipal Finance Credit Analysis, June 2005 (93039)
- Global Regulated Electric Utilities ,March 2005 (91730)

To access any of these reports, click on the entry above. Note that these references are current as of the date of publication of this report and that more recent reports may be available. All research may not be available to all clients.

U.S. Public Power Electric Utilities

Appendix 1: Moody's Public Power Financial Definitions

- **Days cash on hand**

  Cash and investments times 365 divided by total operating expenses (not including depreciation and amortization); measures the number of days an enterprise can cover its operating expenses using current unrestricted cash and investments assuming no additional revenue is collected

- **Debt ratio (%)**

  Net funded debt divided by the sum of net fixed assets and net working capital

- **Debt service coverage (x)**

  Net revenues divided by principal and interest requirements for the fiscal year

- **Margin after debt service (%)**

  Net revenues less debt service costs divided by gross revenues and income (not including depreciation and amortization)

- **Net fixed assets ($ 000)**

  Fixed assets less accumulated depreciation

- **Net funded debt ($ 000)**

  Long-term debt plus accrued interest payable less the balance in both the Debt Service Reserve Fund and Debt Service Fund

- **Net working capital ($ 000)**

  Current assets minus current liabilities plus assets not devoted to debt service—measure the funds available for expansion, renewal and improvement to the enterprise. It is also a conservative measurement of liquidity since it measures funds available after deducting fixed obligations

- **Total power supply cost (c/MWh)**

  Sum of fixed, variable and purchased power costs divided by kilowatt hours of power sold

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Appendix 2: Key Rating Documents

Documents that Moody's uses in rating a public power electric utility include:

- Three years of financial statements
- At least five years of financial projections
- Integrated power resource plan
- Risk management plan and policies
- Core bond documents (resolutions and indentures)
- Swap documents and policy, if applicable
- Five-year trend of power generation facility performance
- Power supply cost data

U.S. Public Power Electric Utilities

Appendix 3: Rating Definitions

U.S. Municipal and Tax-Exempt Ratings

Municipal Ratings are opinions of the investment quality of issuers and issues in the U.S. municipal and tax-exempt markets. As such, these ratings incorporate Moody's assessment of the default probability and loss severity of these issuers and issues. The default and loss content for Moody's municipal long-term rating scale differs from Moody's general long-term rating scale.

Municipal Long Term Rating Definitions

Aaa

Issuers or issues rated Aaa demonstrate the strongest creditworthiness relative to other U.S. municipal or tax-exempt issuers or issues.

Aa

Issuers or issues rated Aa demonstrate very strong creditworthiness relative to other U.S. municipal or tax-exempt issuers or issues.

A

Issuers or issues rated A present above-average creditworthiness relative to other U.S. or tax-exempt issuers or issues.

Baa

Issuers or issues rated Baa represent average creditworthiness relative to other U.S. or tax-exempt issuers or issues.

Ba

Issuers or issues rated Ba demonstrate below-average creditworthiness relative to other U.S. tax-exempt issuers or issues.

B

Issuers or issues rated B demonstrate weak creditworthiness relative to other U.S. tax-exempt issuers or issues.

Caa

Issuers or issues rated Caa demonstrate very weak creditworthiness relative to other U.S. tax-exempt issuers or issues.

Ca

Issuers or issues rated Ca demonstrate extremely weak creditworthiness relative to other U.S. tax-exempt issuers or issues.

C

Issuers or issues rated C demonstrate the weakest creditworthiness relative to other U.S. tax-exempt issuers or issues.

Note: Moody's appends numerical modifiers 1, 2 and 3 to each generic rating category from Aa through Caa. The modifier 1 indicates that the issuer or obligation ranks in the higher end of its generic category; the modifier 2 indicates a mid-range ranking; and the modifier 3 indicates a ranking in the lower end of that generic rating category.

U.S. Public Power Electric Utilities

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Moody's Investors Service

Appendix F: Peer Governance Research

Utility Governance Overview

LPPC Utility - Wholesale and Retail W = Wholesale, R = Retail	Services Provided	Electric Customers	Generation (in millions of MWh)	Governing Board	Elected/ Appointed	Board Term	Compensation	Board Authority: Recommend rates	Approve rates	Approve budget	Hire CEO	Issue bonds	Exercise eminent domain
Austin Energy - W, R	Electric	390,000	11.4	City Council	Elected	4 years	Mayor - $67,981 salary; Council Members - $57,736 salary	City Council	City Council	Yes	No	Yes	Yes
Chelan - W,R	Electric	45,000	9.2	Independent	Elected	4 to 6 years	$1,800/month	Board	Board	Yes	Yes	Yes	Yes
City Public Service Energy - W, R	Electric, Natural Gas	673,000	22.0	Independent	Appointed	5 years	$2,000/yr + expenses	Board	City Council	Yes	Yes	No	No
Clark Public Utilities - W,R	Electric, Water, Wastewater	180,000	1.5	Independent	Elected	6 years	$1,800/month;	Board	Board	Yes	Yes	Yes	Yes
Colorado Springs Utilities - W, R	Electric, Natural Gas, Water, Wastewater	208,000	4.8	City Council	Elected	4 years	$6,250/yr	City Council	City Council	Yes	Yes	Yes	Yes
Imperial Irrigation District - W, R	Electric, Water	142,000	1.0	Independent	Elected	4 years	$3,900/month	Board	Board	Yes	Yes	Yes	Yes
Jacksonville Electric Authority - W, R	Electric, Water, Wastewater	413,000	15.4	Independent	Appointed	4 years	Unpaid	Board	Board	Yes	Yes	Yes	Yes
Long Island Power Authority - R	Electric	1,100,000	1.6	Independent	Appointed	4 years	Unpaid	Board	Board	Yes	No	Yes	No
Los Angeles Dept of Water & Power - W, R	Electric, Water	1,500,000	25.0	Independent	Appointed	5 years	Board mtgs only	Board	City Council	Yes	Unknown	Yes	Yes
Nebraska Public Power District - W, R	Electric	88,000	17.9	Independent	Elected	6 years	President/Chair $15,120/yr Directors $13,440/yr	Board	Board	Yes	Yes	Yes	Yes
Omaha Public Power District - W, R	Electric, Natural Gas	336,000	12.3	Independent	Elected	6 years	President/Chair $15,120/yr Directors $13,440/yr	Board	Board	Yes	Yes	Yes	Yes
Orlando Utilities Commission - W, R	Electric, Water	188,000	7.0	Independent	Appointed	4 years	Unpaid	Yes		Yes	Yes	Yes	Yes
Puerto Rico Electric Power Authority - R	Electric	1,500,000	16.7	Independent	Appointed			Yes		Yes			
Sacramento Municipal Utility District - W, R	Electric	586,000	7.1	Independent	Elected	4 years	$150/day up to 10 days per month	Board	Board	Yes	Yes	Yes	Yes
Salt River Project - W, R	Electric, Water	935,000	25.6	Independent	Elected	4 years	Per diem: $60 for electric board, $240 for water board	Board	Board	Yes	Yes	Yes	Yes
Santee Cooper - W, R	Electric, Water	161,000	27.0	Independent	Appointed	7 years	Chair $24,000/yr Members $12,000/yr	Board	Board	Yes	Yes	Yes	Yes
Seattle City Light - W, R	Electric	383,000	6.5	City Council	Elected	4 years	$100,000 to $115,000/yr	City Council	City Council	Yes	Yes	Yes	Yes
Snohomish County Public Utility District - W, R	Electric, Water	315,000	0.6	Independent	Elected	6 years	$1800/month	Board	Board	Yes	Yes	Yes	Yes
Tacoma Public Utilities - W, R	Electric, Water	163,000	2.5	Independent	Appointed	5 years	Unpaid	Board	City Council	Yes	Yes	Yes	Yes

Utility Governance Overview

LPPC Utility - Electric Wholesale Only	Services Provided	Customers Served	Generation (in millions of MWh)	Board	Elected/ Appointed	Board Term	Compensation	Board Authority: Recommend rates	Approve rates	Approve budget	Hire CEO	Issue bonds	Exercise eminent domain
Lower Colorado River Authority - W	Electric, Water, Wastewater	wholesale only	13.1	Independent	Appointed	6 years	$150/day	No	No	Yes	Yes	Yes	Yes
Municipal Electric Authority of Georgia - W	Electric	wholesale only	13.2	Independent	Elected	3 years	Unpaid	No	No	Yes	Yes	Yes	No
New York Power Authority - W	Electric	wholesale only	26.3	Independent	Appointed	Varies from 1 to 5 years	Chair - $90,800 Other Trustees are unpaid	Board	Board	Yes	Yes	Yes	Yes
Platte River Power Authority - W	Electric	wholesale only	3.6	Independent	Appointed	Varies	Unpaid	Board	Board	Yes	Yes	Yes	Yes

Non-LPPC Utility	Services Provided	Customers Served	Generation (in millions of MWh)	Board	Elected/ Appointed	Board Term	Compensation	Board Authority: Recommend rates	Approve rates	Approve budget	Hire CEO	Issue bonds	Exercise eminent domain
Denver Water - W, R	Water	1,300,000	0.0	Independent	Appointed	6 years	$600/year	Board	Board	Yes	Yes	Yes	Yes
Eugene Water & Electric Board - W, R	Electric, Water	137,000	0.9	Independent	Elected	4 years	Unpaid	Board	Board	Yes	Yes	Yes	Yes
Knoxville Utilities Board - R	Electric, Natural Gas, Water, Wastewater	194,000	0.0	Independent	Appointed	7 years	Unpaid	Board	Board	Yes	Yes	Yes	Yes
Northern Colorado Water Conservancy District - W	Water	wholesale only	0.0	Independent	Appointed	4 years	$100/board meeting, max $2,400/yr	Board	Board	Yes	Yes	Yes	Yes
Pueblo Board of Water Works - W, R	Water	40,000	0.0	Independent	Elected	6 years	President $225/month; members $200/month	Board	Board	Yes	Yes	Yes	Yes

Appendix G: 2010 Governance Survey American Public Power Association

2010 Governance Survey

Published August 2010

American Public Power Association

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Introduction
In April 2010 the American Public Power Association conducted its eighth "Governance Survey." The purpose of the survey is to determine the type of control local governments exercise over publicly owned electric systems. This report summarizes the survey data, presenting information on the type of governing bodies that oversee public power systems, term limits and compensation of governing body members, and the authorities granted to utility governing bodies.

Questionnaires were mailed to almost 1,900 local publicly owned electric systems in the United States, and 658 completed survey forms were returned to APPA. Excluded from the survey are public power systems, such as joint action agencies, that sell power primarily at wholesale. Although 658 utilities completed the survey, not all of the respondents answered every question.

Profile of Respondents
Since the composition of survey respondents is heavily weighted toward utilities with a relatively small number of customers, most survey results are presented by customer size class. As shown in Table 1, 86 percent of respondents serve less than 20,000 customers, and the two largest customer size classes account for the remaining 14 percent of respondents.

Table 1
Number of Respondents by Customer Size Class

Customer Size Class	Number of Responses	Percent of All Respondents
Less than 5,000 Customers	408	62%
5,000 to 20,000 Customers	161	24%
20,000 to 50,000 Customers	55	9%
Greater than 50,000 Customers	34	5%
TOTAL	658	100%

Ninety-three percent of respondents are municipally owned utilities. The other seven percent are state-owned utilities or political subdivisions, for example county-wide utilities, public power districts or public utility districts in Washington, Oregon and Nebraska, and irrigation or utility districts in Arizona and California.

The majority of respondents, or 59 percent, are governed by a city council, while the remaining 41 percent are governed by an independent utility board. (The term "city council" includes similar entities such as a county council, town council, borough council or board of selectmen.) Results vary significantly when summarized by customer size class as the smallest customer size class is the only one in which the majority of utilities are governed by a city council. Seventy-two percent of the respondents with less than 5,000 customers are governed by city councils compared to only 32 percent of respondents with greater than 50,000 customers.

Independent utility boards that are appointed are more than twice as common as utility boards that are elected. However, all public utility districts and public power districts are governed by elected utility boards. Virtually all city councils are elected. Table 2 summarizes survey respondents by customer size class and the by type of governing body which exercises primary control over the utility.

Table 2
Type of Primary Governing Body

Customer Size Class	Number of Responses	Independent Utility Board Elected	Independent Utility Board Appointed	City Council
Less than 5,000 Customers	408	5%	23%	72%
5,000 to 20,000 Customers	161	20%	40%	40%
20,000 to 50,000 Customers	55	33%	34%	33%
Greater than 50,000 Customers	34	24%	44%	32%
TOTAL	658	12%	29%	59%

City councils play a large part in determining the make-up of appointed utility boards as they either appoint or approve the board in most cases. Fifty-nine percent of the boards are appointed by the mayor, but 85 percent of the time, the mayor's choices must be approved by the city council. The city council appoints the board jointly with the mayor for six percent of the utilities and on its own for 27 percent of the utilities.

Eighty-five percent of utilities with independent utility boards have either residency or service territory requirements for board members. These require board members to be a resident of the city or to be a customer of the utility.

Independent utility boards name their own chair in more than 90 percent of the cases, and this is true whether or not the board is elected or appointed. In regard to city councils, the mayor is the chair in 68 percent of the cases, the city council names its own chair in 22 percent of the cases, and in another nine percent of the cases, the chair is elected as chair in the general election. Table 3 summarizes this information.

Table 3
How Governing Body Chair is Named

Type of Governing Body	Mayor Is the Chair	Chair Named in General Election	Governing Body Names Chair	Chair is Appointed
Elected Utility Board	1%	8%	91%	0%
Appointed Utility Board	2%	0%	93%	5%
City Council	68%	9%	22%	1%

Term Length of Governing Body
The average term length for governing bodies is 3.8 years. Term lengths range from one to seven years, and nearly half of respondents report term lengths of four years. Almost all of the utilities reporting governing body term lengths of more than four years are governed by independent utility boards. Table 4 shows, for each type of governing body, the percent of respondents by length of governing body term.

Table 4
Term Length of Primary Governing Body

Type of Governing Body	Number of of Responses	1 to 3 Years	4 Years	5 Years or More
Independent Utility Board	266	29%	27%	44%
City Council	371	37%	63%	0%

Term Limits on Governing Body
Only 11 percent of electric utilities' governing bodies are subject to term limits. Restrictions range from one to five terms, with two terms reported as the limit 67 percent of the time. Responses varied significantly by customer size class, with utilities in the largest classes most likely to have term limits applied to the governing body. Table 5 summarizes term limits by customer size class.

Table 5
Term Limits on Governing Bodies

Customer Size Class	Number of Responses	Percent With Term Limits on Governing Body
Less than 5,000 Customers	408	4%
5,000 to 20,000 Customers	161	19%
20,000 to 50,000 Customers	55	20%
Greater than 50,000 Customers	34	47%
TOTAL	658	11%

Citizens Advisory Committee

Eleven percent of respondents reported that there is a citizens advisory committee or board that serves in an advisory capacity to the governing body. Utilities governed by city councils are more likely than those governed by independent utility boards to have a citizens advisory board: 16 percent of respondents governed by a city council reported having a citizens advisory board, as compared to 4 percent of respondents governed by an independent utility board.

The incidence of electric utilities with a citizens advisory board increases by customer size class, with the percent ranging from 7 percent of respondents in the Less than 5,000 Customers size class to 38 percent of respondents in the Greater than 50,000 Customers size class.

Compensation of Governing Body Members

Overall, 86 percent of utility governing bodies are paid. Approximately 88 percent of city councils are paid, and this result is consistent across all customer size classes. Elected independent utility boards are paid in 83 percent of the cases. There is some variation in results by customer size class; for example, all respondents in the Greater than 50,000 Customers class report that their boards are paid. For appointed utility boards, smaller utilities are more likely to have paid boards than are larger utilities: 89 percent of utilities in the smallest customer size class report that the utility board is paid, compared to 67 percent of utilities in the largest customer class.

Survey respondents reported compensation data on either an annual, monthly or per meeting basis, and all responses were converted to an annual average. Table 6 shows the median compensation for each type of governing body and customer size class. (The median amount represents the middle observation: half of the respondents reported a higher amount, and half reported a lower amount than the median.) Median compensation increases as customer size class increases, with the exception of elected independent utility boards. The highest median compensation in this category is the 20,000 to 50,000 Customers class which is dominated by Washington public utility districts.

Table 6
Median Annual Compensation of Governing Body Members
(Number of Responses in Parentheses)

	Independent Utility Board					
Customer Size Class	Elected		Appointed		City Council	
Less than 5,000 Customers	$ 2,450	(14)	$ 900	(75)	$ 1,500	(224)
5,000 to 20,000 Customers	4,800	(24)	1,800	(54)	5,400	(54)
20,000 to 50,000 Customers	21,600	(14)	2,400	(13)	7,200	(13)
Greater than 50,000 Customers	12,720	(8)	2,400	(10)	20,243	(10)
TOTAL	$ 5,700	(60)	$ 1,200	(152)	$ 2,400	(301)

Survey respondents were asked whether governing board members were eligible for either the city's or utility's medical benefit plans. Twenty-six percent of utilities with independent utility boards and 20 percent of utilities with primary oversight from the city council have governing bodies that are eligible for employee benefit plans. The results differ significantly by customer class, with 11 percent of respondents in the Less than 5,000 Customer class offering medical benefits, rising to 68 percent of respondents in the Greater than 50,000 Customer class.

Survey respondents were also asked whether governing board members were eligible for retirement benefit plans. Fourteen percent of utilities with independent utility boards and 21 percent of utilities governed by a city council have governing bodies that are eligible for retirement benefit plans. Seventeen percent of respondents in the two smaller customer classes have governing bodies that are eligible for retirement benefits; in contrast, 29 percent of respondents in the two larger customer classes have governing bodies that are eligible for these benefits.

Note that the survey asked only about eligibility for either medical or retirement benefits. It did not ask who was responsible for paying for the benefit plans, the city/utility or the governing board member.

Authority of Governing Body

Survey respondents were asked to indicate which governing body or individual has final approval for eight specific actions: setting retail electric rates, approving the utility budget, setting salaries of key utility officials, issuing long-term bonds, making financial investments for the electric utility, approving purchased power contracts, exercising the right of eminent domain, and hiring and firing utility personnel. Except for the last function – hiring and firing – the authority for these functions overwhelmingly resides with the city council for utilities under city council control. However, for utilities under the control of an independent utility board, the results are more mixed. While the independent utility board has authority for a majority of utilities for seven out of the eight functions, the city council – either on its own or jointly with the utility board – retains authority for a significant number of utilities.

The following descriptions and tables summarize the distribution of authority under independent utility boards as the primary governing body and under city councils as the primary governing body.

Independent Utility Board as Primary Governing Body

Approximately 270 utilities report that an independent utility board is their primary governing body. A majority of these utilities list the independent utility board as retaining final authority for all of the eight functions except for issuing long-term bonds. Utility boards are most likely to have final approval over setting salaries of key utility officials, approving utility budgets, approving purchased power contracts and making financial investments. Boards are least likely to have final approval over issuing long-term bonds and exercising the right of eminent domain.

Table 7 summarizes the results by customer size class. For each of the eight functions, the table shows the percent of responses indicating power of final approval for (1) the independent utility board (2) the city council and (3) other entities.

Most of the "Other" responses shown in Table 7 indicate joint authority between the utility board and the city council. Exceptions include the authority to make financial investments for the utility, which often resides with the financial director, city or town treasurer or general manager, and authority to hire and fire, which typically resides with the general manager of the utility or the city manager. In addition, authority to set retail rates can reside with the state public utility commission, or with the Tennessee Valley Authority, in the case of TVA distribution systems. For some small systems (mainly in Massachusetts) a town meeting provides the final authority to issue long-term debt and to exercise eminent domain.

There are differences when comparisons are made by customer size class, but the same general pattern remains. Larger percentages of utilities report that the independent utility board has final approval over salaries, budgets, financial investments and purchased power contracts, and smaller percentages report that the board has approval over issuing long-term bonds and exercising the right of eminent domain.

Table 7
Exercise of Specific Authorities for Utilities with Independent Utility Boards as the Primary Governing Body

Authorities	Number of Responses	Independent Utility Board	City Council	Other
Less than 5,000 Customers				
Set retail electric rates	112	76%	10%	14%
Approve utility budget	112	81%	13%	6%
Set salaries of key utility officials	112	82%	13%	5%
Issue long-term bonds	111	54%	33%	13%
Make financial investments for utility	113	78%	11%	11%
Approve purchased power contracts	113	80%	12%	8%
Exercise right of eminent domain	111	49%	41%	10%
Hire and fire utility personnel	111	77%	9%	14%
5,000 to 20,000 Customers				
Set retail electric rates	97	70%	15%	15%
Approve utility budget	97	87%	12%	1%
Set salaries of key utility officials	97	92%	5%	3%
Issue long-term bonds	95	38%	52%	10 %
Make financial investments for utility	96	78%	8%	14%
Approve purchased power contracts	97	81%	13%	6%
Exercise right of eminent domain	95	52%	37%	11%
Hire and fire utility personnel	97	70%	2%	28%
20,000 to 50,000 Customers				
Set retail electric rates	36	78%	14%	8%
Approve utility budget	36	78%	19%	3%
Set salaries of key utility officials	35	83%	14%	3%
Issue long-term bonds	36	53%	44%	3%
Make financial investments for utility	34	74%	6%	20%
Approve purchased power contracts	36	75%	8%	17%
Exercise right of eminent domain	36	53%	42%	5%
Hire and fire utility personnel	36	61%	6%	33%
Greater than 50,000 Customers				
Set retail electric rates	23	70%	22%	8%
Approve utility budget	23	70%	26%	4%
Set salaries of key utility officials	23	91%	9%	0%
Issue long-term bonds	23	48%	35%	17%
Make financial investments for utility	22	86%	0%	14%
Approve purchased power contracts	21	86%	5%	9%
Exercise right of eminent domain	20	75%	25%	0%
Hire and fire utility personnel	22	77%	0%	23%

City Council as Primary Governing Body

Approximately 380 utilities report that the city council is their primary governing body. For all customer size classes combined, 90 percent or more of these utilities indicate that the city council has final approval for six of the eight functions surveyed. The two exceptions are making financial investments for the electric utility and hiring and firing utility personnel. These two functions are still performed by the city council for the majority of respondents, but an individual controls these decisions in many other cases. The city treasurer, city manager, financial director, or other utility staff are the individuals most often listed as making financial investments, while the utility general manager or the city manager most often have final hiring and firing authority.

The "Other" category is of significant size for two additional functions: setting retail rates and setting salaries. State utility commission authority makes up the largest part of the "Other" category for setting retail rates, and the city manager (or other city administrator) is the "Other" category for setting salaries.

There are differences in the city council's authority when comparisons are made between customer size classes. For example, the smallest customer size class is the only one for which the city council maintains authority for hiring and firing for the majority of systems. In addition, city councils have final approval over salaries and making financial investments for a smaller percentage of utilities in the larger customer size classes.

Table 8 summarizes the results by customer size class. For each of the eight functions the table shows the number of responses and the percent of responses indicating power of final approval for (1) the city council and (2) other entities.

Table 8
Exercise of Specific Authorities for Utilities with City Councils as the Primary Governing Body

Authorities	Number of Responses	City Council	Other
Less than 5,000 Customers			
Set retail electric rates	285	90%	10%
Approve utility budget	286	99%	1%
Set salaries of key utility officials	283	93%	7%
Issue long-term bonds	283	97%	3%
Make financial investments for utility	285	91%	9%
Approve purchased power contracts	286	97%	3%
Exercise right of eminent domain	280	98%	2%
Hire and fire utility personnel	282	73%	27%
5,000 to 20,000 Customers			
Set retail electric rates	60	90%	10%
Approve utility budget	60	97%	3%
Set salaries of key utility officials	60	87%	13%
Issue long-term bonds	60	97%	3%
Make financial investments for utility	59	71%	29%
Approve purchased power contracts	60	90%	10%
Exercise right of eminent domain	59	98%	2%
Hire and fire utility personnel	59	31%	69%
20,000 to 50,000 Customers			
Set retail electric rates	18	100%	0%
Approve utility budget	18	100%	0%
Set salaries of key utility officials	18	67%	33%
Issue long-term bonds	18	100%	0%
Make financial investments for utility	18	61%	39%
Approve purchased power contracts	18	78%	22%
Exercise right of eminent domain	18	94%	6%
Hire and fire utility personnel	17	18%	82%
Greater than 50,000 Customers			
Set retail electric rates	11	100%	0%
Approve utility budget	11	100%	0%
Set salaries of key utility officials	11	73%	27%
Issue long-term bonds	11	91%	9%
Make financial investments for utility	11	45%	55%
Approve purchased power contracts	11	82%	18%
Exercise right of eminent domain	11	100%	0%
Hire and fire utility personnel	11	18%	82%

Referenda
Tables 9 and 10 present information on actions required to issue bonds and to sell the utility system. Seventeen percent of respondent utilities require a voter referendum to issue bonds, and smaller systems are more likely than large utilities to require a referendum.

Table 9
Referendum Required to Issue Revenue Bonds

Customer Size Class	Number of Responses	Voter Referendum
Less than 5,000 Customers	408	23%
5,000 to 20,000 Customers	161	9%
20,000 to 50,000 Customers	55	7%
Greater than 50,000 Customers	34	3%
TOTAL	658	17%

Forty-four percent of utilities require a voter referendum to sell the utility system, and larger utilities are more likely than smaller utilities to require a voter referendum. Of those requiring a referendum, 78 percent need the approval of a simple majority to sell the utility, and 22% require a supermajority.

Fifty-seven percent of utilities require a vote of the governing body to sell the utility, and smaller utilities are more likely to require a vote than larger utilities. Of those requiring a vote by the governing body, 82% require a simple majority of the vote and 18% require a supermajority.

Table 10
Action Required to Sell the Utility

Customer Size Class	Number of Responses	Voter Referendum	Vote of the Governing Body
Less than 5,000 Customers	408	39%	62%
5,000 to 20,000 Customers	161	49%	50%
20,000 to 50,000 Customers	55	56%	51%
Greater than 50,000 Customers	34	59%	38%
TOTAL	658	44%	57%

Aggregation of Demand Response
Utilities were asked if their regulatory body had passed an ordinance concerning the aggregation of demand response for sale to the wholesale power market. Eleven percent of utilities have passed such an ordinance. Most of these utilities are in the two smallest customer size classes.

Payments in Lieu of Taxes

Seventy-four percent of survey respondents make payments in lieu of taxes to their state or local governments. (Payments in lieu of taxes may be called by a different name, such as tax equivalents or transfers to the general fund.) Results differ by customer size class, as only 69 percent of utilities in the smallest customer size class make payments in lieu of taxes, compared to over 75 percent of the utilities in the three largest classes. Eighty-two percent of utilities with independent boards make payments compared to 69 percent of utilities governed by city councils. Table 11 shows, by customer class, the percent of respondents that make payments in lieu of taxes.

Table 11
Utilities that Make Payments in Lieu of Taxes

Customer Size Class	Number of Responses	Percent that Make Payments
Less than 5,000 Customers	408	69%
5,000 to 20,000 Customers	161	86%
20,000 to 50,000 Customers	55	76%
Greater than 50,000 Customers	34	88%
TOTAL	658	74%

Of the utilities that make payments in lieu of taxes, 63 percent use a formula to determine the amount. Utilities in the smallest customer size class are least likely to use a formula, while utilities in the largest classes are the most likely to use a formula. Seventy-six percent of utilities under the control of a utility board use a formula to determine the amount of payments in lieu of taxes, compared to only 53 percent of utilities under the control of a city council. Table 12 shows, by size and governing body type, the percent of utilities that use a formula to determine the amount of payments in lieu of taxes.

Table 12
Percent of Utilities Making Payments in Lieu of Taxes
that Use a Formula to Determine the Amount
(Number of Responses in Parentheses)

	Primary Governing Body					
Customer Size Class	Utility Board		City Council		Total	
Less than 5,000 Customers	63%	(96)	43%	(184)	50%	(280)
5,000 to 20,000 Customers	84%	(83)	69%	(55)	78%	(138)
20,000 to 50,000 Customers	88%	(25)	88%	(17)	88%	(42)
Greater than 50,000 Customers	90%	(20)	80%	(10)	87%	(30)
TOTAL	76%	(224)	53%	(266)	63%	(490)

(More detailed information on payments in lieu of taxes and other payments and contributions is available in APPA's series of reports, *Payments and Contributions By Public Power Distribution Systems To State and Local Government*. The reports include data on the amount and type of payments and contributions, summaries by customer size class and region, and comparisons with investor-owned utilities.)

Utility Service to Customers Outside of Municipal Boundaries
The public power systems that completed APPA's survey include both municipally owned utilities and other political subdivisions – such as state-owned utilities, public power districts, public utility districts, and municipal utility districts – that provide electric service. Of the 658 respondents, 613 or 93 percent are municipally owned utilities, and these utilities are the basis for information provided about service to customers outside of the municipality's boundaries. Sixty-four percent of respondents from municipally owned utilities – or a total of 393 systems – serve at least some customers located outside the municipality's boundaries.

Utilities that served customers outside of the municipality's boundaries were asked to estimate the percent of customers outside of the boundaries. Table 13 shows that 55 percent of these utilities serve a relatively small number of customers – five percent or less – outside of the boundaries. At the other extreme, nearly a quarter of the utilities reported that more than 20 percent of their customers are outside of the municipal boundaries.

Table 13
Percent of Customers Outside Municipal Boundaries
(Some utilities did not respond to this question)

Percent of Customers that are Outside Municipal Boundary	Number of Utilities Reporting	Percent with Customers Outside of Boundaries
One Percent or Less	107	30%
More than One and Up to Five Percent	88	25%
More than Five and Up to Ten Percent	47	13%
More than Ten and Up to Twenty Percent	31	9%
More than Twenty Percent	83	23%
TOTAL	356	100%

The 393 utilities were asked about the relationship between the utility and the customers located outside of the municipality. Two percent of these utilities include on the governing body a representative for customers outside the municipality, and 14 percent make payments in lieu of taxes to jurisdictions outside the municipal boundaries. The pattern is the same for both actions: larger utilities and utilities with independent utility boards are the most likely to have a governing body representative for customers outside the municipality and are most likely to make payments to jurisdictions outside the municipal boundaries. (See tables 14-A and 14-B.)

Table 14-A
Utilities that Serve Customers Outside Municipal Boundaries

Customer Size Class	Number that Serve Outside Boundaries	Governing Body Includes a Representative From Outside Municipality	Utility Makes Payments in Lieu of Taxes to Outside Jurisdictions
Less than 5,000 Customers	245	1%	8%
5,000 to 20,000 Customers	101	4%	16%
20,000 to 50,000 Customers	30	3%	43%
Greater than 50,000 Customers	17	12%	29%
Total	393	2%	14%

Table 14-B

Type of Governing Body	Number that Serve Outside Boundaries	Governing Body Includes a Representative From Outside Municipality	Utility Makes Payments in Lieu of Taxes to Outside Jurisdictions
Independent Utility Board	164	5%	24%
City Council	229	0%	7%
Total	393	2%	14%

Finally, the 613 municipal electric utilities were asked which other utility services are provided by the municipal government. As shown in Table 15 below, water and sewer are the most common utility services provided by the municipal government.

Table 15
Other Utility Services Provided by the Municipal Government

Utility Service	Number that Provide Service	Percent of Municipal Electric Utility Respondents
Gas	97	16%
Water	564	92%
Sewer	518	85%
Wastewater	418	68%
Cable TV	38	6%
Other	125	20%

Respondents included services such as garbage, telecommunications, Internet, sanitation, and storm water in the "other" category.

Appendix H: Comparison of Alternative Governance Structures

COMPARISON OF ALTERNATIVE FORMS FOR COLORADO SPRINGS UTILITIES				
	District	**Cooperative**	**Authority**	**Public Corporation**
Governing Board	Board elected by residents of district.	Board elected by members of cooperative.	Board created under intergovernmental agreement.	Board of directors created by statute.
Authorization	Powers authorized under CRS §§ 32-1-101, *et seq*.	Powers authorized under CRS § 40-9.5-101 to 306 & CRS § 7-55-101 to 121.	Intergovernmental agreement pursuant to CRS §§ 29-1-201 to 204.2 & 31-35-402 to 417.	Organized pursuant to statute.
Powers	Provide water and wastewater services inside district and to property outside of district which is not within the territory of another special district.	Provide electric services inside service territory pursuant to CRS § 40-9.5-101.	Provide electric, water and wastewater services.	Provide services in accordance with statute.
Limitations/ *Restrictions*	➢ Formation requires: Approval of service plan by board of county commissioners of each county which has territory in the district; Petition signed by at least 200 taxpaying residents of district; and Public Election. ➢ Unable to provide electric, natural gas and street light services. ➢ Ability to serve outside of district and within another water/sewer district only upon consent of other district. ➢ Violates existing bond covenants, so must obtain financing to satisfy existing bonds. ➢ Must negotiate and enter into new agreements with vendors, licensors and contractors if not assignable.	➢ Customers must affirmatively join cooperative before service may be provided. ➢ Restricted to providing electric services under CRS § 40-9.5-101. May be able to form cooperative to provide water, wastewater, gas, and street light services under CRS § 7-55-107, however, we are not aware of an instance where this has been done. ➢ Cannot provide service outside of service territory under CRS § 40-9.5-101. ➢ Violates existing bond covenants, so must obtain financing to satisfy existing bonds. ➢ Tax exempt financing unavailable. ➢ Must negotiate and enter into new agreements with vendors, licensors and contractors if not assignable.	➢ Required to partner with another city or town which is authorized to provide contemplated services. ➢ Violates existing bond covenants, so must obtain financing to satisfy existing bonds. ➢ Must negotiate and enter into new agreements with vendors, licensors and contractors if not assignable.	➢ Passage of enabling statute is a pre-requisite. ➢ Corporate form rather than citizen-owned. ➢ Violates existing bond covenants, so must obtain financing to satisfy existing bonds. ➢ Must negotiate and enter into new agreements with vendors, licensors and contractors if not assignable.

Managing Public Utilities:

The American Way

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Managing Public Utilities:

The American Way

Abstract:

This paper examines how local decision makers perceive the governance structures of publicly-owned utilities. The goal is to increase performance through improved public awareness, incentives, and transparency—but it is necessary to understand how managers view threats and opportunities presented by the external environment. Following a review of the theory on local governance, the study describes the current regulatory framework. A state-wide survey of Florida municipal utilities was developed to identify the potential sources of tension between managers and politicians. The responses from the survey were supplemented by interviews with managers, enabling the authors to determine good practices of local governance, including the de-politicization of the decision making processes affecting utility operations and managerial attention to sustainable approaches to funding infrastructure. Nevertheless, it is important that cities decrease their dependency on utilities revenue and that existing regulatory structures begin to play a more proactive role in protecting the public interest.

Keywords: Florida; local governance; public ownership; public utilities.

Introduction

The important role of utility services for social welfare is well acknowledged. To be sure, the concept of "services of general interest" [COM(2004) 374], usually employed within the European Union to refer to essential services subjected to specific public-service obligations, also finds its counterpart in the United States (Defeuilley 1999). In particular, the availability of affordable utility services (services of general economic interest) with an acceptable quality is a legal (and social) requirement in both jurisdictions (Clifton, Comín and Díaz-Fuentes 2005). In Europe, the recent transference of general-interest services to local governments, driven by the subsidiarity principle (taking decisions as closely as possible to the citizens), has been broadly documented (Devas and Delay 2006; Sorens 2009). In the U.S., on the other hand, in addition to providing water, sewage, energy, urban transport and waste services, cities are also responsible for many other types of services. In fact, even the smallest U.S. cities

can provide services to which the majority of municipalities in Europe are traditionally not familiar with (e.g. energy, communications and police services). The broad range of competencies required for technologically sophisticated services and the growing budget restrictions facing local governments pose an important challenge to local decision makers in the U.S. and EU: how to constrain costs while meeting public-service obligations.

Utility services are particularly problematic because they involve large investment outlays in specialized infrastructure; quite often, local governments struggle with the economic sustainability of the systems (Chong 2006). Furthermore, pressures towards resource conservation and environmental awareness represent new challenges to utility managers around the globe. Achieving economic and environmental sustainability in the future will require new thinking and new policy approaches. We know that organizations matter (Menard 1996) and that governance structures "must arise for some reason" (Arrow 1999, vii). Hence, to cope with these requirements it is important that local political leaders make thoughtful choices regarding the appropriate governance models for the utilities—if performance is to be a priority. Several options lay before local decision makers: (1) Whether to keep production entirely in-house (direct provision) or to allocate service-provision to a separate entity (indirect provision); (2) Whether to have public production *or* private production—a classic problem for local governments.
The goal of this paper is to identify trends in utility governance in the U.S. To keep the focus manageable, the study examines Florida utilities, how their managers view performance incentives, oversight processes, funds transfers, and operations of the utilities. These topics present challenges for politicians and managers everywhere, so the cases contribute to the literature on local governance.

Although there are many models for utility service provision, there is little consensus among practitioners and academics on what specific model is optimal for particular situations (and what criteria might be used to evaluate those models). Furthermore, local history matters: each municipality has its own unique way of managing utilities. Nevertheless, it is possible to categorize governance patterns that contribute to good performance (related to containing costs, meeting service quality standards, and promoting access to essential services). To address these issues, this study uses Florida public utilities to illustrate U.S. approaches to the provision of fair and efficient services. To complement the empirical survey (and to improve its design), practitioners were involved throughout the study process.

Analysts understand the importance of "craft[ing] governance structures that are better attuned to their exchange needs" (Williamson 2002, 172). In recognition of this point, the paper begins by surveying the theory that

frames the governance and production of local public services. Of course, if the environment where the utilities operate changes, the optimal governance models might change as well; thus, this paper also outlines the "rules of the game" of U.S. municipal utilities. Utility governance is a highly complex subject, raising issues of law, economics, political science, accounting, finance, and engineering; therefore the topic is best addressed from an interdisciplinary perspective. Ultimately, this paper sheds light on the sources of tension between utility managers and elected city officials and on the structures in place to separate managerial decision-making from political interference.

This study is organized as follows. Section two reviews some theoretical considerations regarding the organization of local governments and surveys several empirical studies whose results have implications our analysis. In section three we present the framework characterizing U.S. local administration, including the regulatory environment facing municipal utilities. Then section four summarizes the analysis of data gathered from a sample of thirty-one Florida utilities. Concluding remarks are provided in section five.

What do we know from Theory?

Utility services can be provided directly by the municipality (in-house production), or indirectly through delegation to other (separate) structures. Typically, the choice is completely at the discretion of local governments. If a municipality chooses to produce the services itself, it can still establish a simple municipal department or it can create a structure with some degree of financial and administrative autonomy; in principle, neither of these two models involve a corporate entity (the municipality is solely liable in the event of a problem), however the latter has separate accounting. If, on the other hand, a municipality chooses to produce the services through an autonomous entity, the array of options deepens. Figure 1 displays the various alternatives of local governments.[1] The two most common models of indirect provision of local infrastructure services are the public (municipal) company and the private (concessionary) company.[2] In the former, the municipality is the owner of the company while the latter is an investor-owned enterprise. Occasionally, another "hybrid" mode of provision has emerged in Europe, mainly in Spain (Bel and Fageda 2010), Italy (Bognetti and Robotti 2007) and Germany (Oelmann et al. 2009), and in several countries in South America (Marin 2009); mixed (municipal) companies are institutionalized public-private partnerships (iPPP) where the public and private partners are equity owners; generally, the municipalities retain the dominant influence over the company.

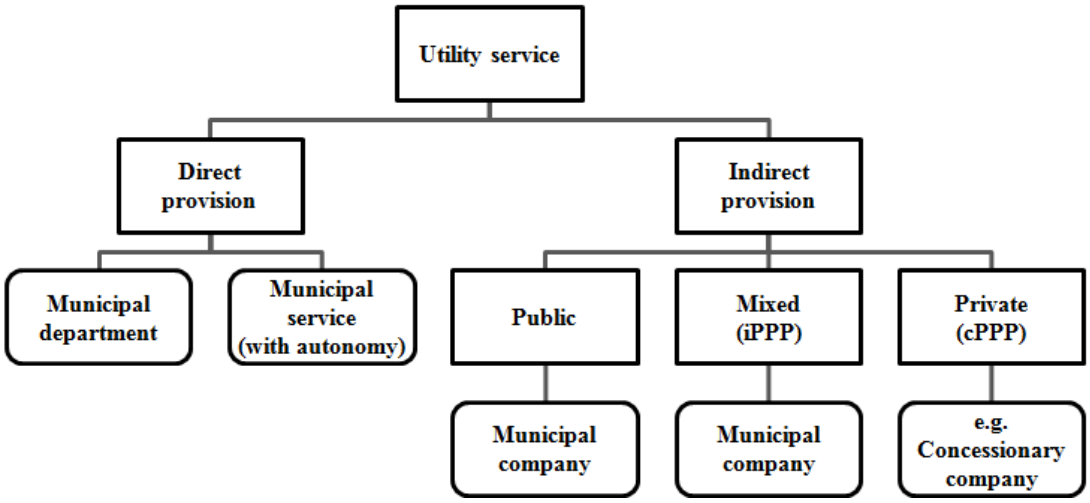

Figure 1 – Menu of governance models

The process of moving from direct provision to public indirect provision is usually labeled corporatization.[3] Moving from public provision (direct or indirect) to indirect private provision is called privatization. While the benefits and drawbacks of privatization continue to be debated, the empirical evidence on the effects of corporatization is also mixed. Indeed, despite some reports stating that the corporatization of services can result in higher cost-efficiency and an increase in output, revenues, and employee productivity (Bilodeau, Laurin and Vining 2007), there is also evidence that moving from municipal services with autonomy to municipal companies may result in a lower productivity (Cruz and Marques 2009).

The corporatization of utility services is also related to municipal interventionism; theoretically, the higher the degree of corporatization (moving from left to right in figure 1), the lower the involvement of local governments in the management of the utilities. At least in formal terms, the governance structures should be crafted in this fashion, since the more entrepreneurial approach towards utility management (higher efficiency, flexibility and accountability) requires a different relationship to elected officials (a notion of a freer market, with more rules). This process is usually associated with several tools that emerged from the (now unfashionable, Christensen and Lægreid 2007) New Public Management ideas, including performance-based contracts, binding the utilities (and/or utility managers) and the municipalities.

From a different standpoint, one can examine the relationship between municipalities and utilities "through the lens of contract" (Williamson 2010, 673). Indeed, the bond linking utilities and municipalities depends on the

sense of trust established between the parties; the relationship can be characterized by a more transactional (un-cooperative) or relational (cooperative) type of contract (Reeves 2008). However, the utilities industry usually reflects uncertainty, a high degree of asset specificity and frequent transactions; and these are the three conditions that might make classical (and even neo-classical) contracting less effective, thus supporting a switch towards more flexible arrangements in line with relational contracting (Macneil 1978, Williamson 1979).

Each mode of governance (bureaus, firms, hybrids and markets) has its strengths and weaknesses (Williamson 2002). In short, one can say that markets are bounded by stronger incentives for efficiency, but hierarchies respond better when there is a need for coordinated adaptations (Williamson 1975). Hence, as asset specificity deepens (and uncertainty increase), vertical integration could become more attractive. Some empirical results demonstrate the presence of "economies of vertical integration" in the utilities industry (e.g., in the electricity sector, see Fetz and Filippini 2010 and, in the water sector, see Urakami 2007). Furthermore, the multi-utility strategy characterizes many U.S. cities. Some studies find economies of scope in the utilities industry (Piacenza and Vannoni 2004); however, other studies find the opposite (Stone & Webster Consultants 2004). In addition, combining several services within the same operating unit poses important challenges to the measurement of the services' performance (Torres and Morrison 2006). Of course, these are severely complex issues where, since scale economies are finite (Marques and Witte 2010), the size of the firms also plays a role. Nevertheless, a case by case approach makes the best sense, given the complex roles played by customer density, income levels, topology, geography, and history.

To craft the optimal governance structure for each particular case is beyond the scope of this study. Nevertheless, it is possible to improve our understanding of the factors allowing for each governance structure to function better. Other legal and institutional contexts can shed light on performance determinants and enhance policy discussions within the EU.

Local Government in the United States

To better appreciate the reasoning of municipal authorities in aligning incentives and creating governance structures that fit their needs, one has to understand the rules of the game (the political economy of local government). In this section we discuss the local administration framework in the U.S. and the features of utility governance, giving special emphasis to the case of Florida (the proxy in our analysis).

Administrative Bodies and Regulatory Agencies

As Thomas and Marando (1981, 51) state, "the right of self-government is important to the very foundation of the American system of government". Indeed, although there is no reference to local governments in the U.S. Constitution, in practice there are three levels of government: national, state and local (counties and cities). In Florida, city or county commissioners or council members are generally selected via non-partisan elections (especially at the city level). Candidates run for each position individually and in different time frames (usually elected local officials serve terms that range from two to four years, sometimes with term limits). Hence, the elected team of officials with the responsibility for regulating the activities of utilities might suffer considerable changes over the years. Furthermore, the Council/Manager form of government is frequently used in municipalities; with this framework, elected officials make policy decisions while the city staff, led by the City Manager, has the responsibility for implementing these decisions.

States include a number of cities and counties. Each state has one regulatory agency for utilities (Littlechild 2009a); in Florida this entity is called the Public Service Commission (PSC) and, as in the majority of the states (37 of them), commissioners are appointed by the governor (in some of those states they are appointed by the legislature and in most cases the legislature at least has to approve a governor's appointment). These commissions have the mission to ensure that every customer has access to safe, reliable and affordable services while allowing the utilities to earn a fair return on investment, promoting the overall public interest. Generally, commissions oversee regulated utilities through certification, regulation of rates and services, dispute resolution, and consumer protection services (FPSC 2010). They carry out quasi-legislative and quasi-judicial functions when performing the duties assigned to them by statute. However, the PSC's regulatory authority is limited, as it only has fully rate base/economic regulation power over investor-owned utilities. Hence, regarding publicly-owned utilities, the PSC's activity mainly encompasses the monitoring of safety and reliability issues.

The responsibilities of the Florida Department of Environmental Protection (DEP) encompass the supervision of all environmental aspects of utility management. Thus, this entity performs "light regulation" over water, wastewater and urban waste services mainly regarding the quality of service (and also safety, environmental sustainability, among others). The DEP also supervises the five Water Management Districts (WMDs) in Florida; these entities are responsible for managing groundwater and surface water resources. They have power to issue

permits for water withdrawals and the responsibility to buy land to preserve or restore water resources. In the energy sector, in addition to the Florida PSC, the main actors are the Federal Energy Regulatory Commission (FERC), the North American Electric Reliability Corporation (NERC) and the Florida Reliability Coordination Council (FRCC) which reports back to NERC. Again, the major concern of these entities is the quality of service and, in the case of FERC, the inter-state transmission. Electricity services receive a great deal of attention by all stakeholders involved and, as shall be seen, the decision to produce these services internally has important ramifications for governance.

At first glance, it seems that cities do not want to risk their monopolistic "gold mine"; so they oppose economic regulation by non-local agencies. Some utilities might not be fully regulated because they are under a revenue threshold or have a statutory right to be exempted (like publicly-owned local utilities and cooperative utilities in Florida). Furthermore, some utilities can avoid economic regulation for public interest reasons (RCA 2009). However, it is unclear why state commissions would not proactively benchmark and publicize the performance results for all utilities operating in the state (including municipal and non-regulated utilities);[4] for instance, in Portugal, the sector-specific regulator for the environment carries a "sunshine regulation" including publicly and investor-owned utilities (ERSAR 2009).

Trends in the Utilities Industry

In the U.S., the governance models of publicly-owned utilities (traditionally called municipal utilities) are not labeled as easily as presented in figure 1. In fact, the utilities observed in Florida often present variations of those "pure models". We identified three different types of utility governance in Florida. In Type I schemes, utility services are provided by a department under the City Manager; however, the utility still has a designated top-manager (usually called Assistant City Manager) and it usually retains some degree of autonomy (being similar with the pure mode of "municipal services with autonomy"). Type II utilities are separate entities that answer directly to the city council or city commission. In this model, the elected officials determine policies and the utility managers implement them; usually there is no difference between utility employees and city employees. Thus, such utilities have a governance structure standing somewhere between the "municipal services with autonomy" and the "municipal company" pure models. Finally, Type III utilities are the ones that resemble the "municipal company" model; the utility top-manager (CEO or General Manager) does not interact directly with city officials but rather with an independent commission (local Utility Authority) composed of specialists or citizens with broad public

experience. Usually, the city mayor chairs this commission although he is not allowed to vote. Figure 2 illustrates these three different governance schemes. Of course, variations might occur; for instance, for the Type I model, sometimes there is a separate department for utilities; other times they are within the public works department or engineering department.

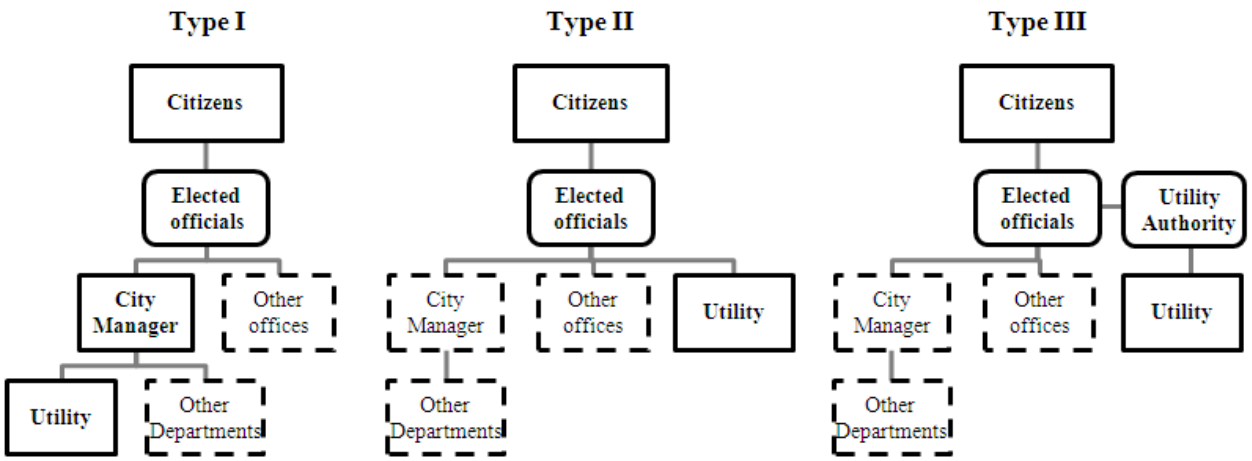

Figure 2 – Governance structures of publicly-owned utilities in Florida

While in continental Europe, electricity services are now mostly relatively centralized (corresponding to a state level in America) in the U.S. local governments are in charge of franchised areas. In Florida, usually Type II and Type III entities are electric utilities or multi-utilities also providing energy services.[5] On the other hand, if energy services are outsourced or provided by single-purpose structure, typically the remaining services (e.g. water and wastewater) are produced by a Type I utility. Florida also has some not-for-profit cooperatives operating in the electricity sector (like Seminole Electric Cooperative) and in the water sector (like Bonita Springs Utilities), however these completely different governance schemes are the exception rather than the rule. Finally, it is also worth mentioning that usually Florida counties are only responsible for providing utility services in non-incorporated areas (and frequently they outsource the task to cities); however there are special cases where a county provides for the whole territory, including cities (as in the case of Miami-Dade County).

In Europe, the principles of "polluter-payer" and "user-payer" apply to infrastructure (Hrovatin and Bailey 2001); however, it is not unusual to have utility rates lower than the actual unit costs of the services (arguably, for political reasons). In the U.S., subsidies from local governments are not feasible (mainly due to the influence of the

capital markets); in fact, utility services are quite a source of revenue for local governments. Perhaps this is the reason that makes urban transportation and urban waste services (unprofitable) different in the way utility services are organized. Although the multi-utility structure is a common organizational form in Florida and corporatization characterizes larger utilities, these two services are generally operated separately (e.g. waste services are usually a function of the public works department).

Vertical integration is very common in the utilities in Florida; however it is usual to see small cities purchasing electricity from investor-owned wholesale companies, or cities buying more water from other cities during periods of drought. Regarding the electric wholesale market, publicly-owned utilities have developed interesting solutions like being equity owners of "private companies" that are in charge of producing electricity. The utilities then buy and sell energy to these hybrid companies (owned by public and private utilities), enabling the achievement of scale economies and allowing for more efficient risk-management. Furthermore, as we already mentioned, the multi-utility strategy is very common; it is possible to see publicly-owned utilities in Florida provide an incredible range of services. Beyond electricity, gas, water, wastewater and telecommunications (e.g. broadband), some utilities also provide services like chilled water, stormwater systems, reclaimed water distribution, and outdoor lighting solutions. Williamson (2002, 183) defends that "because added bureaucratic costs accrue upon taking a transaction out of the market and organizing it internally," credible contracting should be preferred to hierarchy and internal organization should be utilized as last resort. However, as is seen in the next section, the framework is established in a way that gives a bias towards public production.

The Rules of the Game

It is useful to summarize Florida's treatment of municipal rates (pricing), investments, service quality, and customer protection to see how decentralized governance characterizes the state's municipal utilities.

Rates. If an investor-owned electric, gas, telecommunication, water or wastewater utility seeks to raise its rates, it must first obtain approval from the PSC. Upon an extensive investigation (or through all-party settlements process arranged by the Public Counsel), rates are tested for fairness (providing a reasonable return to equity investors while being affordable for customers); at the conclusion of the process, the PSC determines the new rates. The Florida PSC does not have this kind of regulatory authority over municipal and cooperative utilities (Pfaffenberger and

Sioshansi 2009). Legally, publicly-owned utilities have complete discretion in rate levels. Hence, in Florida, two customers with similar consumption patterns living in different cities can have quite different utility bills. However, PSC does have jurisdiction over the territorial boundaries of gas and electric utilities and the rate structure of electricity services (avoiding rate discrimination over different territories served by the same electric utility) regardless of the governance model. For example, since conservation is viewed as an important social goal, utilities must review their rate designs to ensure that customers are receiving appropriate price signals (resulting in a shift away from declining block rates in electricity).

It is quite common to have city-owned utilities operating outside the cities' limits. As mentioned, gas and electricity boundaries are defined by the PSC. In regard to water and wastewater services, the utilities operate in unincorporated areas upon negotiation with the counties.[6] This jurisdictional arrangement often creates complex systems where the territorial boundaries of a utility depend on the service in question; furthermore, some water utilities operate in more than one WMD. In addition, because the PSC has no control over the rates of these services, the utilities often charge higher rates outside city limits. Of course, these customers do not have the same rights of the ones living within city limits because they do not have the power of "voice" since they have no other option, nor can they vote for city government officials; thus, there are no political repercussions for differential pricing. Occasionally, the city may hold *referendums* in areas adjacent to the city limits to determine whether the citizens wish to be part of the city (annexations). However, areas farther from the city limits (that may contain the poorer households) are unlikely to be given this option. In governance structures Type I and Type II, the utilities' top managers propose the rates of the services to the city council/commission and present the technical justifications for the amounts and structures considered, seeking for their approval.[7] In Type III utilities the procedure is similar but the approval body may not be elected by citizens/customers.

Municipal utilities make payments *in lieu* of taxes to local governments (Beecher 2009). This is beneficial for local elected officials because the funds are not dispersed throughout different levels of government (state, county, school board, etc.) as would happen with taxes paid by a private utility. Instead, the publicly-owned utilities make transfers directly to the city general fund. In Florida, an investor-owned utility pays the city a franchise fee of six percent of the sales, while a municipal utility does not have a fixed threshold. Furthermore, having a municipal utility may have other advantages for local governments, like providing free or discounted service to the cities, leverage for annexation initiatives, and assistance in other city projects.

Investments. The decisions on what and when specific investments on infrastructure should be undertaken go through a process similar to what was described for rate approvals. The major difference between publicly-owned U.S. utilities and the ones operating in Europe resides in the financing method. In the U.S., utilities raise capital in a project-by-project basis using the bond market; traditionally, European utilities use the same general purpose bank loans of local governments. Hence, to be able to sell bonds with low interest rates, U.S. utilities need to be financially healthy; they are scrutinized by the three major national credit rating agencies (Allen and Dudney 2008). This source of finance requires operating cash flows that ensure the economic sustainability of the long-term investments. Budget deficits that affect so many utilities worldwide are unacceptable for U.S. municipal utilities; financial covenants detail the obligations the utility has towards the buyers of the bonds (usually capital intense institutions like pension funds or insurance companies); these requirements force the utilities to raise tariffs if they fall under the required debt to equity indicators or interest coverage ratios. For investor-owned utilities, raising tariffs is not that straightforward. They are required to justify all of their operating expenses; an expense that the PSC determines to be unnecessary is not allowed to be taken into account in the rate calculation.

Note that the system gives a bias towards public ownership of utilities, as capital costs are lower for municipal utilities (whose interest payments to bond-owners are tax exempt for income tax purposes, Cebula 2004). The federal government cannot tax revenue of the cities, however, if a government is partner with a private investor, the bonds are not tax-free (which also makes the mixed company model undesirable). Thus, tax laws affect the mix of private and public activity in infrastructure.

Quality of Service and Consumer Protection. As was pointed out, the PSC regulates the quality of service of utility services. However, municipal utilities do not necessarily have to inform the PSC about consumer complaints. Consumer advocates were appointed on behalf of utility consumers, starting in the 1970s and 1980s in the U.S. (Holburn and Bergh 2006). In Florida, the Office of Public Counsel (OPC) was established in 1974. Among other activities, the main purpose of this entity is to represent and defend the consumers' interests in rate cases. Hence, the scope of action of the OPC mainly coincides with the PSC jurisdiction, which obviously exempts municipal utilities. Nevertheless, in terms of quality of service, publicly-owned utilities perform well in Florida. We also note Florida's

"Sunshine Law" that promotes transparency and access to public records and meetings, thus protecting the public interest.

Customers may bear the negative risks of price fluctuations of raw materials; however, monthly fuel adjustment surcharges are allowed for private and public utilities (Littlechild 2009b). However, the customers of municipal utilities are more exposed to other sources of risks, like bad managerial decisions regarding strategies to overcome drought or low availability of particular capacity investments: investor-owned utilities are unlikely to obtain approval of a rate increase request to be compensated for "poor" decisions. So prices would not go up. The comparable residual (equity) owners of a municipal utility are the customers themselves, so the consequence of a poor decision would be higher prices if otherwise interest payments could not be met. To overcome this potential drawback, devices such as the guaranteed standards schemes (GSS) implemented in Europe and Australia, where the utilities compromise to compensate customers in case of service interruption or other anomalies, could be implemented by U.S. municipal utilities (Holt 2005).

Sources of Tension: Survey Results

Given the context described above, we sought information from municipal utility decision-makers regarding their perceptions of institutions, processes, and performance. To gather data we developed a survey (shown in the appendix) that was distributed to a sample of utility top-managers in Florida. Managers were asked to strongly disagree (1 point), disagree (2 points), agree (3 points) and strongly agree (4 points) with 37 statements. We received input from 31 utilities: 18 of these entities provide electricity services, 21 water, 20 wastewater, five gas and three telecommunications services; sometimes, the utilities provided other services (like chilled water or outdoor lightning). These data were complemented with face-to-face structured interviews with utility managers from Gainesville (GRU), Ocala (OUS) and Orlando (OUC), where follow-up questions were asked; each of these utilities corresponded to one of the basic schemes identified in figure 2 (type II, I and III, respectively). Table 1 shows the number of utilities in each category, population range, year of creation, and number of employees for utilities in the categories.[8] In the following subsections we analyze the results. The appendix reports overall results for each question on the survey.

Table 1 - Main characteristics of the surveyed utilities

	Respondents	Population	Year of creation			Number of employees		
	(n.)	(n.)	Min	Max	Avg.	Min	Max	Avg.
Aggregated	31	4,298,325	1870	2005	1945	4	2200	284
Type I	24	2,861,313	1870	2005	1948	4	850	133
Type II	3	314.023	1904	1923	1913	77	850	509
Type III	4	1.122.989	1923	1985	1955	145	2200	961

Organizational Features

In the beginning of the survey, utility managers were asked to rank the priorities of the utilities and they replied as follows:

1. Improve quality standards;
2. Reduce operations and maintenance costs;
3. Reduce the rates for final users;
4. Exceed legal environmental standards.

This prioritization should come as no surprise; as we have seen, the regulatory framework for municipal utilities in the U.S. emphasizes quality issues (reliability, safety and public health) and this is categorically the primary objective of utility management. For the remaining objectives, there is less consensus. However, it is interesting to note that public ownership is not necessarily a synonym of lower rates for customers (a similar conclusion was obtained in a survey of the literature developed by Bel, Fageda and Warner 2010).

Utility managers tend to agree that they should have effective power over policy objectives and the ability to make investments to meet them. However, this is not a strong feeling and, in fact, one manager stated: “Long-term objectives are the prerogative of the community through elected officials.” Another manager wrote that “as a department of the city, the utility should recommend policy objectives and the governing body should set long-term policy objectives and investments”.

Most managers agree that the multi-utility strategy is beneficial for the community. However, as it was possible to discern in the follow-up interviews, they recognize that the current mix of services is due to

historical/political decisions: there is no technical (economic) evidence that any scope economies are being achieved. Another interesting finding is that managers strongly agree that, regardless of the governance model, utilities have freedom regarding the selection of their workforce. One respondent states that "most of our personnel are contractor employees that are dismissed as appropriate". Nevertheless, there are some mixed feelings regarding whether or not utility employees should have the same status of city employees. This is generally the case, but some managers have the opinion that "general fund tight budgets and salary reductions/layoffs should not apply to enterprise fund personnel" and that in utilities "compensation should reflect failures and successes" although this usually does not happen. However, they strongly disagree that managers and directors should be financially responsible for bad management decisions. In the interviews and referring to other services provided by the city, the managers added that utility services need further differentiation in human resource management because they are required to be operational at all times (including weekends and holidays). Despite the fact that this is a current practice (as with wholesale firms in the electricity sector) they are cautious about whether or not they should be able to participate in the share capital of other firms for strategic reasons.

Governance Features

This section of the survey yields several interesting findings. Respondents disagree that the head of the utility should be appointed by the city commission: "The hiring process for the top manager should be by a selection committee with approval by elected officials." This could mean that they fear political patronage could become a driver of service provision and employee hiring and retention. However, they take a strong stand against the idea that political affiliation plays any role in the tensions between the city and the utility and also disagree that the city exercises excessive monitoring power. When specifically asked whether political interference harms utility overall performance, the managers might have responded that (hypothetically) it would harm performance, but in their specific cases, it did not. This is the most common concern of utility managers (even after corporatization). However, in Florida, this does not seem to be a major problem in utility governance.

In regards to corporatization (moving to Type II or even Type III structures), respondents tend to agree that it is beneficial. The majority think that "public utilities should be separate authorities from the cities and counties reporting to an elected board or a board appointed by their enacting city or county government" and that "a utilities oversight committee with members sitting a minimum of 4 years would be preferable to the current oversight by the

City Manager (who changes every two years or so)" mainly because "being a city department results in a one size fits all policy from city government irrespective of the fact that the electric service is not a governmental function and must compete with other utilities for personnel, customers, etc." On the other hand, some managers have the opinion that "a municipally owned utility does not have to be governed by a board *but* (emphasis in original) should not be held to the same restrictions, requirements and/or policies of general fund departments (city)." All things considered, the following statement illustrates a reasonable stance towards governance:

> "This writer has worked under both governance organizations and both have the same potential for success and failure. The key is the level of understanding and trust. Generally, I have found Authority Boards more knowledgeable, if appointed for their expertise, but that can also lead to more "tinkering." Mutual trust, a shared vision, and shared long-term objectives can be achieved via either governance structure."

We know that organizations matter and, as the respondent pointed out, each structure has its strengths and weaknesses. However, the success of Type I utilities might overly rely on personal relationships and the respective "level of understanding and trust;" risks increase if we take into account the high volatility of the political positions at city level. The slightly less relational (and more professional) transactions established with Type II and Type III structures could improve stability and provide a more transparent framework. Of course, then, one has to discourage "tinkering" and avert its problems.

Despite the fact that, in global terms, utilities do not make transfers corresponding to more than 10 percent of gross revenues and that amount does not exceed 30 percent of the total city budget, a significant number of utilities (one third of them) agreed that these figures apply to their organizations. Furthermore, in some utilities where these transfers are not made explicitly, they do occur: for instance utilities buy land for the city, waive utility services or provide other lateral services. While some managers indicated that the city has a formula to stipulate the amounts, others expressed concerns regarding the variability of these transfers: "payment in lieu of taxes or other revenue sharing back to the enacting city or county should be capped as a specific percentage of the net operating revenue".

Utility managers strongly agree that having a publicly-owned utility has clear advantages over the investor-owned model. However, according to the most recent data from the Florida Municipal Electric Association (FMEA), investor-owned electric utilities present lower rates for final users than municipal utilities (on average and in

$/1,000kWh), and this includes the six percent franchise fee that electric utilities have to pay to the cities (FMEA 2010).

Regarding tariff levels, practically every utility has to present its "rate case" to the city commission or utility authority. Usually they try to "recommend tariffs that meet the balanced long-term objectives of the utility and the governing body without undue risk placed on either the utility or the customer". Elected or appointed city officials have the ultimate power to approve the rates; however, a number of utilities stated that, in practice, they have the final word. In the interviews, all utility managers agreed that the rates must be "steered" according to the commitments made when issuing bonds.

Finally, utility top-managers tend to strongly disagree that external economic regulation enforced by the PSC or any similar entity would have any positive impact over the utilities. This figure is in line with our predictions. Decision-makers prefer having final authority over items of intense interest to local stakeholders.

Financial Features

The surveyed managers confirmed our suspicions by agreeing that bond rating agencies influence the overall behavior of the utilities. More important than the rating agencies are the bond resolutions which guide the financial management of the utilities. Quite interestingly, these documents function as strict regulatory contracts that define the allowed debt to equity ratios for the utilities. To keep the cost of capital low, the utilities must maintain a high level of financial health. Hence, there is no need for additional legal or regulatory limits to debt levels, as "rating agencies and bond resolutions effectively already set limits". Furthermore, utility managers strongly agree that financial statements are being audited by independent entities, safeguarding the investors' confidence.

Contractual Features

Respondents seem to be aware of the benefits and drawbacks of negotiation as a procurement procedure. In general, analysts conclude that, as the complexity of the project increases, competitive tender procedures lose their relative advantages and negotiations tend to promote better outcomes (provided that proper mechanisms to avoid favoritism and/or corruption are put into place, Bajari, McMillan and Tadelis 2009). One manager commented that "generally, a negotiation following a bid or proposal will lead to a better win-win contract and partnership"; the

authors agree that this can be a good practice. Having a potential rival "in the wings" puts pressure on the winning bidder to bargain in a reasonable manner.

It is noteworthy that utility managers do not clearly see the usefulness in settling performance-based management contracts binding the utility and the city. The contracting of the services is usually seen as a crucial tool for the management of publicly-owned entities (Vincent-Jones 2006). Having a document stipulating the rights and duties of the parties, the compensation for specific public service obligations as well as the objectives of the utility could help to prevent political patronage and provide the utility with the means to achieve competitive outcomes.

Operational Features

Utilities in Florida do not outsource a large amount of services, especially those that relate more to their core business. Also, we do not have strong evidence that managers' decisions are founded on substantial input from customers; however, it is vital that practitioners decide to measure subjective performance through citizen surveys (Dalehite 2008). One manager commented as follows: "we currently rely on the level of complaints and thank you communications, but we will conduct surveys at some point in the future". Respondents plainly agree that the utilities impose minimum quality standards more demanding than they are legally required. Furthermore, standard procedures are in place for handling complaints.

Practitioners do not have strong feelings on whether or not utility managers should have long-term contracts; they seem comfortable with being accountable for their performance at all times and prone to be out of job on a weekly basis (whenever the oversight commission holds a meeting). Furthermore, the new public management and new public contracting ideas did not influence the judgment of utility managers, as they do not see the point of having specific performance thresholds in their contracts.

Performance Features

The majority of the surveyed utilities measured their performance by conducting some kind of benchmarking (however, the results are not publicized). In the electricity sector, the association of municipal utilities (FMEA) also provides comparisons of rates and some quality indicators.

Currently, municipal utilities in Florida do not monitor and reward individual personnel performance in a systematic way. This is a big downside of public ownership and, once again, the problems of having the same rules of the city

regarding human resource management come into play. Practitioners agree that their utilities can be regarded as highly innovative, but not strongly. Their responses to this question suggest that they still see some room for improvement in this attribute; especially if they want to remain as a viable option over the private one.

Concluding Remarks

The business of utilities goes far beyond the "ideal transaction in law and economics" (Williamson 2002, 183); this complex setting includes, from the long-term perspective, customer and voters concerns, the environment, public treasury, universality, affordability and sustainability; the range of stakeholders and their objectives raises governance difficulties. Incentives to promote stability and safeguards to specific investments are not easy to devise in infrastructure services. Policy analysts could devote more attention to the strengths and limitations of different governance mechanisms put in place by decision makers around the world. Currently, the U.S. framework seems to push cities towards public production of many utility services; in fact, given the rules of the game (related to taxes, local politics, jurisdictional rivalries, and legal constraints), it seems very reasonable to adopt municipal ownership as a dominant model for water and other infrastructure services. In the authors' opinion, what truly make utility governance in the U.S. different from the trends in continental Europe are the features organized below.

Lessons learned from U.S utilities

(1) Capital markets can be powerful "regulators" in their own right: the economic "private" regulation exerted by bond stipulations and rating agency reports establish demanding debt to equity ratios and force utilities to maintain good levels of financial health;

(2) Infrastructure investments use a whole life-cycle approach: the investment outlays (and the associated debt) are handled with a project-by-project focus, always safeguarding their economic sustainability (with the bond market being a very transparent form of financing);

(3) Separation of management from politics: the current framework succeeds (relatively well) in insulating utility management from political patronage and the professional non-partisan nature of the employment/retention process prevents there being a bias towards people of the same political affiliation;

(4) Accountable management: politicians have disincentives to interfere with management if the services are providing net benefits to the city, but the utility top-managers do not have their positions firmly secured with long-

term contracts and can be replaced if the majority of the city (or utility authority) commissioners are unhappy with outcomes. Furthermore, usually there is only one top manager responsible for the performance, not a board with fuzzy lines of authority;

(5) Profitable services: publicly owned enterprises are allowed (and even encouraged) to create a surplus and not just break-even. The transfers to the city general fund allow the subsidization of other socially relevant activities and ratepayers have a better notion than taxpayers of where is their money going;

(6) Flexibility: the great flexibility that municipal utilities in the U.S. offer local decision makers is overwhelming when compared with some European models. For instance, in continental Europe publicly-owned utilities are not allowed to operate outside the municipal limits; in addition, in most of European countries municipal services (with or without autonomy) are restricted in the hiring and firing of staff (all employees are civil servants);

(7) Transparency: the unique framework provided by Florida laws facilitates public awareness, scrutiny, and participation both by having public hearings (e.g. between the city and utility managers) and allowing unlimited access to almost every document. These are indispensable tools for achieving better governance of public services (Hira, Huxtable and Leger 2005).

Recommendations for U.S. utilities

(1) The regulatory structures devised to oversee investor-owned utilities could be put to a better use. State public service commissions could serve as platforms of continuous improvement and correction of asymmetries. On the one hand, these regulators could have effective power over the rate structure of all the services and not just electricity. This could prevent potential abuses of monopoly power (like technically unjustifiable higher prices for residents of unincorporated areas served by the same utility of city residents); of course, rate differentials based on lower density and other cost of service considerations could not be unfair. Monitoring rate design could help municipal utilities develop pro-conservation rate structures (like inclining blocks or even seasonal rates). In addition, the commissions could use sunshine regulation and name-and-shame techniques (benchmarking all utilities in every sector, regardless of their governance model) with practically no added cost: providing another instrument for enhancing performance (and therefore protecting the public interest);

(2) Cities relying on “excessive” utility transfers to the city general fund should gradually change their situation and reduce their dependence on such sources. The growing concerns with the environment will force the utilities to

pursue strategies for conservation in all sectors. To maintain the current transfers, ratepayers would have to pay substantially more for consuming less, a situation that could potentially have high political and social costs. Furthermore, the rising costs of energy (associated with the diversification of energy sources and the shift towards renewables) and the lack of water resources will only make things more difficult;

(3) Local decision makers should consider the contracting of the services and moving towards more corporatized governance structures (like Type II or Type III, in our classification) that do not rely as much on personal relationships, as the volatility of the political swings could also have negative impacts in terms of organizational stability and inconsistent utility strategies. Furthermore, despite the fact that utilities have flexibility in hiring and dismissing employees, a system of incentives and rewards for good staff performance should be devised (since municipal utilities compete with private firms for human resources);

(4) Practitioners should review the historical/political assumptions made in the past. Issues like vertical integration and the multi-utility approach should be reviewed as well as all the other aspects in current utility management (like the willingness of the customers to subsidize other social investments) that find their justification in tradition rather than current conditions. Critical research on the relevance of these assumptions for today's situation would be very useful for regulators, operators, and ultimately, ratepayers.

Notes

1. We do not include consumer cooperatives in this framework because this organizational form is not well represented within the Florida water industry (although electric cooperatives are important in rural parts of Florida and the U.S.). In addition, the "sources of tension" are of different kind, so this structure is not examined here.

2. This is a simplification; there are several types of contractual public-private partnerships (cPPP). While concessions are the most common models of private production in utility industries, one should also mention other types of regulation by contract such as *affermage* and management contracts. For a discussion see Marques and Berg (2010).

3. Strictly speaking, corporatization corresponds to the process of designing public companies operating under private law, associating corporate management techniques to their administration (Koppell 2007).

4. The Florida PSC publishes a yearly report with the electricity rates of publicly and investor-owned utilities. However this comparison could be performed in a more systematic way and include other dimensions of

performance than rates; furthermore, the rates of water, wastewater, gas and telecommunications of publicly-owned utilities are not presented in this report. Because the PSC does not have jurisdiction over some decision-areas (rate levels) it chooses not to publish information that might be helpful to other constituencies.

5. There are 34 municipal electric utilities in Florida, serving approximately 2.8 million customers, or 25 percent of the population. In addition, 18 cooperatives and five investor-owned electric utilities operate in this state.

6. It is understandable that counties wish to hand over these services to cities. Network services are known for having substantial scale economies. Those citizens in less dense parts of a county might seek cross-subsidization from citizens whose cost of service is lower.

7. In Type I utilities, the policies first need to be submitted to the City Manager who may have some requests and/or recommendations. Usually, he/she will then personally present the case to the city council or commission.

8. The population covered, referred in table 1, corresponds to the inhabitants of the administrative region where the utility is based. Indeed, the number of customers covered by our survey is significantly greater since utilities frequently operate outside city limits.

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Appendix

Organizational features	Score
1. Rank the priorities of this utility:	
a) to reduce operations and maintenance costs;	2.65
b) to reduce the rates for the final users;	2.73
c) to improve quality standards (such as reliability and safety);	1.81
d) to exceed all legal environmental standards.	2.81
2. The utility should have complete autonomy in setting long-term policy objectives.	2.81
3. The utility managers should have full power to decide about proper investments to meet the strategic objectives.	2.87
4. By combining services like water, waste and electricity under the same public company, the City and citizens save money.	3.23
5. This utility has freedom in hiring and dismissing personnel following due process.	**3.39**
6. Utility employees should have the same status as City employees in terms of compensation, treatment and performance evaluation.	2.81
7. From a strategic point of view, the utility should be able to be a shareholder in private companies.	2.71
8. The utility managers and directors should be financially responsible for bad management decisions.	1.90
Governance features	**Score**
9. The top utility manager should be appointed by elected City officials.	1.93
10. It is important that the top utility manager has the same political affiliation of the majority of the elected City officials.	**1.23**
11. The City monitors all the activities of the utility to an excessive degree.	2.13
12. The financial reports of the utility are closely reviewed and need to be approved by the City.	2.84
13. Political interference in this local utility harms utility overall performance.	2.53
14. It is good to have the utilities separate from a City department; such separation could involve a utility authority.	2.87
15. In this utility, the transfer to the City general fund is more than 10% of gross utilities revenues.	2.20
16. Overall, more than 30% of the total City budget comes from this utility.	2.17
17. Having a public utility in charge of the services has significant advantages (when compared with a private utility).	**3.48**
18. Currently, the utility recommends tariff levels and structures to a specific body for approval or revision.	3.20
19. The utility has the final word regarding tariffs.	2.27
20. An external entity such as a Public Utilities Commission should regulate and provide oversight to public utilities.	1.76
Financial features	**Score**
21. Bond Rating Agencies have a strong influence in the behavior of the utility.	2.97
22. Budget deficits should be allowed in order to proceed with important infrastructure investments.	2.20

23. There should be a debt ceiling for the utility.	2.79
24. Utility financial statements are audited by an external organization.	**3.62**
Contractual features	**Score**
25. Regardless of the complexity of the project, the best procurement procedure available for the utility is the bid process.	2.58
26. The use of negotiation to select a contractor leads to higher costs.	1.84
27. Settling (performance-based) management contracts binding the utility and the City can promote improved utility performance.	2.83
Operational features	**Score**
28. The utility uses a high degree of outsourcing.	2.33
29. The utility regularly conducts customer surveys.	2.74
30. The utility has standard procedures for handling customer complaints.	3.23
31. Regarding the quality of service, the utility imposes minimum standards more demanding than current legal obligations.	3.10
32. From a strategic point of view, it is important that utility managers have long-term contracts (at least 4 years).	2.65
33. It is important that the managers' contracts set specific performance thresholds.	2.90
Performance features	**Score**
34. The utility uses up-to-date methodologies for the measurement of the company's performance.	3.10
35. This utility benchmarks its performance against other public utilities.	3.03
36. The utility monitors and rewards individual (personnel) performance in a systematic way.	2.39
37. This utility can be regarded as a highly innovative company.	3.10

1	**2**	**3**	**4**
Strongly disagree	Disagree	Agree	Strongly agree

1.75 2.5 3.25

Chapter 4

Other Governance Models for Municipal Utilities

While DWP and many municipal utilities operate as city departments, others have different organizational and governance structures. This chapter describes and contrasts five such models:

- Municipal utility reporting to city council (e.g., Austin, Texas; Colorado Springs, Colorado).
- Independent city agency (e.g., Jacksonville, Florida; Knoxville, Tennessee).
- City-owned corporation (e.g., Toronto, Ontario; Safford, Arizona).
- Municipal Utility District (e.g., Sacramento Municipal Utility District).
- Joint Powers Agency (e.g., Southern California Public Power Authority).

Municipal Utility Reporting to City Council

A number of cities simplify governance by having the municipal utility report directly to the city council. The Colorado Springs City Charter, for example, designates the city council as the board of directors for the utility. The utility executive director then reports directly to the council. Austin, Texas, as well as a number of California cities—including Burbank, Glendale, and Pasadena—have similar governance structures but include council-appointed citizen advisory commissions.

In 1998 Colorado Springs also adopted a new governance framework "suited to today's business reality in which flexibility, quick responsiveness, and clear long-term direction are essential to success." The framework, largely developed by consultant John Carver,[26] seeks to separate the policy functions of the board from the operational re-

sponsibilities of the executive director. The board sets policies and communicates them in writing solely to the executive director; it "will never give instructions to persons who report directly or indirectly to the Executive Director." (Colorado Springs, 1998.)

Board policies set out the utility's purpose and ends to be achieved. They also designate what actions of the executive director are unacceptable to the board, in both general ("any practice . . . which is either unlawful [or] imprudent . . . ") and specific ("he or she may not change his or her own compensation or benefits") terms (Colorado Springs, 1998, Policy Numbers EL-1 and EL-4). The executive director may then make all decisions and carry out any activities not expressly prohibited by the board, without seeking further approval.

Direct reporting to the council seems to work well in smaller cities with utilities of relatively modest size. The model does not seem appropriate for a utility as large and complex as the DWP or for a city as diverse and fractious as Los Angeles. However, many of the governance principles adopted by Colorado Springs—particularly the limits set on council involvement in utility operations—are worth consideration here as well.

Independent City Agency

Jacksonville, Florida, and Knoxville, Tennessee, have municipal utilities that operate as city agencies with strong, independent governing boards (Table 4.1). Board members are appointed by the mayor and confirmed by the council for fixed, staggered terms. Unlike in Los Angeles, board members are expected to serve their full terms—in Jacksonville, removal requires a two-thirds council vote; in Knoxville, members can be removed for cause only by a four-fifths vote of the board. These arrangements promote board continuity and independence.

The JEA (formerly Jacksonville Energy Authority) and Knoxville Utility Board (KUB) exercise strong authority under their city charters to govern municipal utilities. The boards can hire and fire the CEO without approval from the mayor or council. The boards set rates after holding public hearings. They delegate to the CEO virtually all cus-

tomer contract, procurement, real property management, and personnel matters.[27] Senior management in Knoxville and essentially all managers in Jacksonville are exempt from civil service.[28]

These city councils retain only limited authorities over their utilities. In Jacksonville, the council approves the JEA annual budget and must authorize increases in total utility debt, leaving the approval and details of individual debt issues to the JEA Board. Utility payments to the city, currently set at 5.5 mils per kwh sold, are renegotiated every five years. By contrast, the Knoxville City Council approves individual KUB debt issues, but the board approves the budget. Payments "in lieu of taxes" to the city follow Tennessee state law and are based on net plant value and gross operating revenue. In neither city does the council or mayor exercise control over board agendas, board decisions, utility personnel, or operations.[29]

The Knoxville Charter gives the KUB authority to hire its own legal advisor and staff. In Jacksonville, as in Los Angeles, city attorney staff represents the utility. To hire outside counsel, JEA must obtain approval of the city attorney but not the city council.

The governance systems in Jacksonville and Knoxville were designed to distance utility daily operations from city politics, and they appear to work quite well. JEA and KUB are highly regarded both in their cities and by the U.S. public power community. Although JEA and KUB operate with considerable independence, in each case the board, CEO, and other top managers regularly stay in close touch with the mayor and city council. As one executive told us, "We routinely tell the mayor and council what we're planning and how we're doing, even though we're not legally obliged to do so. . . . That's just good politics and good business."

City-Owned Corporation

A third governance model involves "corporatization," that is, changing the utility's organizational structure from a city department to a city-owned corporation. The motivation is to improve utility operations and simplify governance, usually in response to or in anticipation of competition. While most electric utility corporatization has

Table 4.1
Governance Comparisons: DWP and Independent City Agencies

Governance Structure	DWP Under New Charter	Jacksonville Energy Authority	Knoxville Utilities Board
Utility structure and size (1998 electricity revenue in millions)	City department ($2,163)	Independent city agency ($777)	Independent city agency ($296)
Governing board	Five-member commission; five-year, staggered terms Members appointed by mayor, confirmed by council Mayor may remove without council approval	Seven-member board; four-year, staggered terms; two-term limit Members appointed by mayor, confirmed by council Mayor may remove with two-thirds council approval	Seven-member board; seven-year, staggered terms; two-term limit Members appointed by mayor from list of five names submitted by board, confirmed by council Removal only for cause by four-fifths board vote
Board authority	Hires and fires CEO with mayor and council approval	Hires and fires CEO Rate setting Individual debt issues Entering new businesses	Hires and fires CEO Rate setting KUB budget approval Entering new businesses
Authority delegated to CEO	Hiring up to 16 exempt positions with mayor's approval, unless council vetoes by two-thirds vote Customer contracts within council guidelines; Procurement <$150K	Hiring 150 exempt positions and other personnel matters Customer contracts Real property sales/leases Procurement	Hiring 30 exempt positions and other personnel matters Customer contracts Real property sales/leases Procurement
Authority retained by council	Approval of rates Job classification and compensation Procurement >$150K Real property sales/leases New debt authorization Capital project approval Entering new businesses Customer contract guidelines Veto of any commission decision by two-thirds vote Outside legal counsel approval	JEA budget approval Overall debt limits JEA payments to city (negotiated every five years) JEA Charter amendments by two-thirds vote with mayor's approval, four-fifths without	Individual debt issue approval
Legal staffing	Provided by city attorney Outside legal counsel must be approved by council and city attorney	Provided by city attorney Outside legal counsel must be approved by city attorney	Board hires legal advisor
Payments to city	5% of operating revenue Ratepayers pay utility tax	5.5 mils per kwh with minimum base of $58 million in 1998 Ratepayers pay utility tax	Payments "in lieu of taxes," based on net plant value and gross operating earnings

occurred outside the United States—in Canada, the United Kingdom, Germany, Australia, and New Zealand, among other countries—it is of growing interest to U.S. municipal utilities as they prepare for competitive electricity markets.[30] Corporatization of the small municipal utility in Safford, Arizona, was highlighted at the 1999 annual meeting of the American Public Power Association (Mecham, 1999).

The recent corporatization of Toronto Hydro, the second-largest municipally owned utility in North America (after DWP), seems particularly relevant to this discussion.[31] Toronto Hydro was restructured under the 1996 Ontario Energy Competition Act, which requires all municipal electric utilities in the province to incorporate by November 2000. At that time, customers will be able to purchase electricity from competitive suppliers and have their bills unbundled to show separate charges for generation, transmission, and distribution.[32] The Toronto Hydro restructuring also amalgamates the City of Toronto's utility operations with those of six adjacent municipalities.[33]

Under the Shareholder Agreement adopted by the Toronto City Council in June 1999, the city transferred all "employees, assets, liabilities, rights, and obligations" of its municipal utility to the Toronto Hydro Corporation, a corporation established under the Ontario Business Corporations Act with the city as the sole shareholder (Toronto, 1999b). The corporation's 11-member board of directors is appointed by the city council for fixed, staggered terms (Table 4.2). Currently, three city council members and eight other citizens serve as directors. The council may remove or replace directors at any time.

As sole shareholder, the council has rights to amend the corporation's bylaws, change the board structure or share structure, and control any change of ownership, dissolution of the corporation, or sale of "all or substantially all" of its assets. The council also retains authority under the Shareholder Agreement to approve new debt issues, annual capital outlays above $170 million, and any service expansion beyond Toronto Hydro's current territory. Except for these reserved powers, the board has full authority to "supervise the management of the business and affairs of the Corporation."

The board delegates to the CEO "the management of the business and affairs of the Corporation," including personnel, customer contracts, procurement, property management, and the hiring of legal staff and advisors.

When incorporation took place in June 1999, the city received $100 million in cash and $34 million in surplus assets from the corporation (Toronto Hydro, 2000). The city also stipulated that of the assets it transferred to the corporation, about 60 percent constituted debt on which the city will receive interest payments of more than $60 million per year. The city also expects the corporation to pay regular dividends corresponding to two-thirds of gross operating earnings from electricity distribution.[34]

While the Toronto Hydro restructuring is too recent to evaluate in terms of operating results, it appears to be moving ahead after surmounting a number of initial obstacles. Many Toronto citizens objected to the amalgamation bill as having been forced on them by a politically conservative provincial legislature. Labor leaders objected to a companion bill as limiting their right to strike and other worker rights during the transition (Ontario, 1997). The amalgamation required harmonization of some 55 collective bargaining agreements from seven separate municipalities covering nearly 5,000 job classifications. Much in the way of implementation remains to be done. And some saw corporatization as merely a stalking horse for privatization of Toronto Hydro.

The Toronto City Council, however, has affirmed its commitment to operating Toronto Hydro as a city-owned utility. The council's Strategic Policies and Priorities Committee emphasizes the benefits of continued public ownership: "As a major player in the competitive industry, Toronto Hydro could be influential in ensuring that energy conservation and environmental responsibility are retained as important issues for consumers." The committee further recommends "that Council leave open the option for Toronto Hydro to develop and invest in the nonregulated, competitive businesses permitted by legislation whenever there is a good business case, risks are reasonable, and returns are satisfactory. . . . However, care must be taken by Council to permit the new board to operate on a commercially prudent basis if it

Table 4.2
Governance Comparisons: DWP, City-Owned Corporation, and Municipal Utility District

Governance Structure	DWP Under New Charter	Toronto Hydro Corp.	Sacramento Municipal Utility District
Utility structure and size (1998 electricity revenue in millions)	City department ($2,163)	City-owned corporation $1,246 (U.S.$)	Municipal Utility District ($766)
Governing board	Five-member commission Five-year, staggered terms Members appointed by mayor, confirmed by council Mayor may remove without council approval	11-member board of directors 18-month terms for city councilors, three-year staggered terms for others Members may be replaced at any time by council majority vote	Seven-member board, elected by voters for four-year, staggered terms
Board authority	Hires and fires CEO with mayor and council approval	All powers except those reserved to city council as shareholder	All powers as authorized under the California Municipal District Act of 1921
Authority delegated to CEO	Hiring up to 16 exempt positions with mayor's approval, unless council vetoes by two-thirds vote Customer contracts within council guidelines Procurement <$150K	All personnel matters Customer contracts Procurement Real property sales/leases Hiring legal staff "Management of the business"	Most personnel matters Procurement <$100K Day-to-day management as delegated by board
Authority retained by council	Approval of rates Job classification and compensation Procurement >$150K Real property sales/leases New debt authorization Capital project approval Entering new businesses Customer contract guidelines Veto of any commission decision by two-thirds vote Outside legal counsel approval	Bylaw amendments Board structure Share structure or sales Dissolution or sale of "substantially all" assets New debt issues Approval of annual capital outlays >$170 million Service expansion beyond Toronto Ontario Energy Board must approve rates	Board is legislative body of the district
Legal staffing	Provided by city attorney Outside legal counsel must be approved by council and city attorney	Hired by CEO	Hired by board
Payments to city	5% of operating revenue Ratepayers pay utility tax	Two-thirds of operating cash flow of distribution company Interest on city debt Initial transfer of $134 million on incorporation	The Sacramento Municipal Utility District makes no direct payments, but ratepayers pay utility tax to cities

is to enter the competitive market. The pursuit of a nonprofit agenda could result in a nonviable business." (Toronto, 1999a.)

Municipal Utility District

Under California's Municipal Utility District (MUD) Act, county voters can establish a separate public agency to provide electricity, water, transportation, or other utility services countywide or within a specified district of the county. If approved by the voters, such a MUD has the same powers as other public agencies, including powers "to sue and be sued, contract, eminent domain, purchase, issue bonds under several authorizing acts, own property and provide utility works and services." (Beck, 1996c.) A MUD is governed by an elected board of directors, with each director representing a specific ward as set out by the county board of supervisors.

As an illustration of MUD governance in California (see Table 4.2), the Sacramento Municipal Utility District (SMUD) Board of Directors has seven members elected for staggered, four-year terms. Directors must be residents of the wards from which they are nominated. However, every voter in the district may vote for all the directors to be elected. SMUD is subject to the Brown Act, so that board meetings are open to the public and must be held at least once a month.

The board appoints a general manager who serves at its pleasure, and it can create or abolish other positions and set salaries as it sees fit. The SMUD Board delegates most personnel decisions to the general manager, so long as they are in accordance with the district's own civil service provisions. No more than 2 percent of appointments can be exempt from civil service. The MUD Act explicitly states that the board may appoint an attorney who serves as the legal advisor to the district.

The SMUD Board generally has broad authority over the district, including setting public tariffs (after a public hearing) and approving customer and supplier contracts. In 1997, the board approved an economic development discount for Intel Corp. in Folsom, California, whereby Intel's base electricity rate would drop by 25 percent if the company added another 600 jobs in the next two years. SMUD offers

similar discounts to other companies. For procurement, awards over $50,000 must be offered to the lowest responsible bidder. The general manager may determine the lowest responsible bidder for contracts of less than $100,000.

SMUD has full authority to incur indebtedness and issue general obligation (GO) or revenue bonds. However, voter approval by a two-thirds margin is generally required for new GO bonds, so that municipal utilities rely on bonds backed by their own revenues. The MUD Act requires a municipal utility district to have eight years of operating experience before it can issue revenue bonds.

In 1997, SMUD became California's first municipal electric utility to offer direct access to some of its commercial and industrial customers. It plans to give all its customers direct access to competitive suppliers by 2002. SMUD's strategy to prepare for competition has been to freeze prices for five years through 2002, keep rates 5 percent lower than competitors', and implement a debt-reduction program (SMUD, 1999).

Although SMUD has much more autonomy than a city department and can respond more quickly to competitive changes, converting DWP into a new MUD in Los Angeles would require political approval at several levels. First, the city council would have to pass a resolution calling for the Los Angeles County Board of Supervisors to hold an election to establish the MUD. The supervisors would then submit the proposal to the Local Agency Formation Commission (LAFCO) for analysis and approval. If approved by LAFCO, the proposal would be placed on the ballot at a county election, while the requisite city charter amendments would be submitted to city voters. If both county and city voters passed these measures, the new MUD could be established. For the new entity to be fully functional, however, the California legislature would then have to pass special legislation to permit the MUD to sell revenue bonds prior to its establishing an eight-year operating history. Converting DWP into a MUD thus would require closely coordinated legislation at the city, county, and state levels, as well as approval from city and county voters. Once established with its separately elected board, a MUD would be well insulated from change or control by other local officials.

Joint Powers Agency

Under the California Joint Powers Act, two or more cities, counties, or other public agencies can create a Joint Powers Agency (JPA) to manage electricity generation and transmission facilities or other utility operations. Each participating agency executes a Joint Powers Agreement specifying the JPA's structure, scope, and powers.[35] The JPA is governed by a board of directors whose members represent the participating agencies and are usually appointed by each participant's governing body.

The Joint Powers Act grants broad authorities to a JPA to own property, incur debt and issue revenue bonds, purchase, contract, sue and be sued, provide utility services and set rates for them, and engage in selected other municipal enterprises. It may participate in a member agency's civil service system, although it is not required to do so. One significant restriction is that a JPA cannot issue revenue bonds to acquire or construct electric or water distribution facilities.

One JPA, the Southern California Public Power Authority (SCPPA), comprises DWP, nine other municipal utilities, and the Imperial Irrigation District. It was formed in 1980 to finance the acquisition of generation and transmission facilities for its members. The 11 SCPPA directors are the general managers of its member utilities;[36] each utility gets one vote. However, on issues concerning specific projects, each utility's vote is weighted according to its financial contribution to the project. This means that a majority stakeholder in a project can effectively dictate SCPPA policies and actions for that project.

SCPPA operates on an annual budget of less than $1 million with a staff of three full-time and 10 contract employees. It is a financing rather than an operating organization, unlike its counterpart, the Northern California Power Authority (NCPA), which has 170 employees, operates power plants, and runs power pools.

A JPA has potential advantages of flexibility and, through its appointed board, some independence from local politics. However, the loss of direct control can make local elected officials less than enthusiastic about transferring assets and authorities to a JPA. The restriction against using revenue bonds to acquire distribution facilities also poses a major problem for a utility that intends to offer retail as well as

wholesale services. Although some approaches have been suggested to finesse the distribution facilities issue,[37] restructuring DWP into a JPA might well require new California legislation to amend the Joint Powers Act.

Rogers Reading
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CITY OF AUSTIN
ELECTRIC UTILITY DEPARTMENT
COMPETITIVE PERFORMANCE REVIEW

FEBRUARY 14, 1996

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Governance

Electric Utility Department governance is an issue for the City of Austin as it explores ways to maintain and enhance the competitiveness of its electric utility. The manner in which the utility is governed should not be an impediment to the speed of decision making for the utility or obscure its focus on customer service and meeting financial performance targets. In examining different governance models, we assumed *ownership* would continue to reside with the City. The two core objectives of the analysis of governance options were to identify the options that would best:

- Position the utility to successfully operate in a more highly competitive market.
- Ensure that the utility remains properly accountable to the City and its ratepayers.

Different governance alternatives were analyzed to assess whether alternative governance and decision making structures might result in a more nimble and focused enterprise in order to compete successfully. Some of the key questions asked in assessing the different models were will the model:

- Enable the utility to better operate in an increasingly competitive and fast paced industry?
- Allow the utility the added flexibility needed to respond quickly to market conditions?
- Free the utility from bureaucratic rules while still ensuring adequate expenditure controls remain?
- Instill confidence in capital markets that the utility is well led?
- Continue to allow the utility to be properly accountable to the needs of voters and ratepayers?
- Allow the utility to maximize the return on the ratepayers' investment while still maintaining competitive rates?
- Allow the utility to position itself to search for new markets and other growth opportunities, consistent with the City's vision for the utility?

A Means to Improve Competitive Performance

The governance structure of the utility should support, not constrain, the competitiveness of the utility. Bondholders, customers and employees should have confidence in the utility's governance.

This analysis examines core decision-making and management processes of different governance structures. There is a continuum of management and decision making options possible under any governance model, depending upon the amount of control and authority the governing body (i.e., the City) wishes to delegate, the make up of a governing board, and the role of the General Manager.

Potential Governance Models

The models used in this analysis have the common characteristic of being derived from existing city-owned utilities. Each of the models selected are currently operating within a municipality. They are each governed and managed differently. This chapter details the analysis performed on each of the five models. The four non-Austin models identified for this assessment ranged from a fully independent, full powers electric utility board, to three models with a range of different board and city council powers and decision making responsibilities. Price Waterhouse also includes Austin's current governance structure in this assessment (as the fifth model) in order to compare and contrast it with other governance options.

1. One model comprises an advisory utility commission to the city council which governs the utility. The City of Austin Electric Utility Department is governed by the city council with advice from the Electric Utility Commission. The Austin electric utility is managed as a city department in Austin's current governance structure.

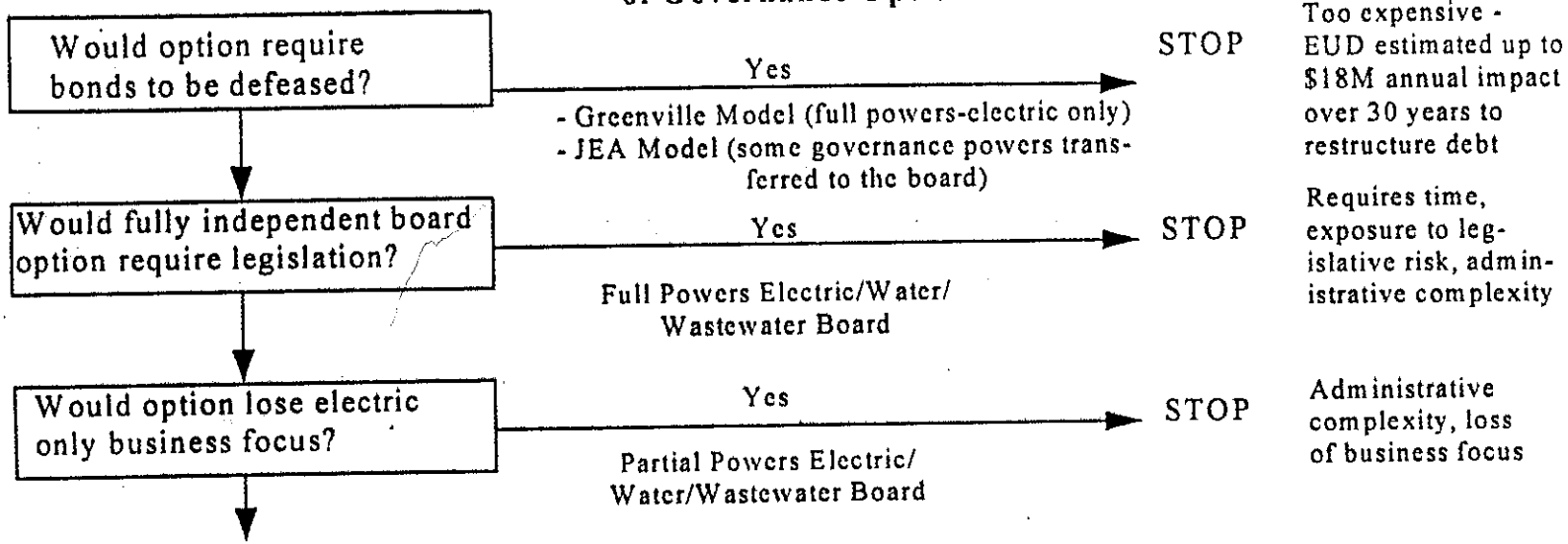
2. Another model comprises a completely independent electric governance board. An example of an independent board is the Greenville (Texas) Electric Utility Board. The electric utility in Greenville is governed and managed by a board independent of the city council. The board makes all decisions on rates, eminent domain and bond issuance. The board also makes all decisions on the operations and management of the utility. The utility is completely independent of the operations of the City -- it is not another department in City government. The authority for this model is based on State statute (Texas Rev. Civil Statutes Ann., Article 1115a, Vernon Supp., 1996).
3. Another model has a governance board that advises the city council on certain major issues but plays a major role in the management and operations of the utility. An example of this type of model is the San Antonio City Public Service Board (CPS). The CPS board oversees management and operations of the electric and gas utilities and advises the city council on issues of rates, eminent domain and the issuance of bonds. The city council makes the final decisions on these three issues. CPS is not a department of city government but operates independently from the City. The authority for this model is Texas Rev. Civil Statutes Ann., Article 1115 of State law and the CPS Indenture of Trust which created this body in the 1940s.
4. Another model has a utility board with responsibility for certain governance issues (i.e., rate setting and powers of eminent domain) and oversight of the operations of the utility. The city council in this model has the authority for issuing debt and for approving operating and capital budgets. An example of this model is the Jacksonville (Florida) Electric Authority (JEA).
5. Another model comprises an independent board that governs and manages the utility under the oversight of the city council. An example of this type of model is the Los Angeles Department of Water and Power (LADWP). LADWP makes decisions on governance and management of the utility. The city council sets rates and can reject the decisions of the board but it is unclear which governing body has ultimate authority over the issuance of debt and eminent domain.

The five models chosen attempt to illustrate a continuum of governance and management options that are possible for Austin's consideration. Refer to Attachment A for a more detailed description of each of these models. Refer to Attachment B for a discussion why another model that was initially considered (a combined water, wastewater, electric board), was eliminated from further consideration.

Exhibit 2-1 presents a "decision tree" that takes the reader through the analysis process. The exhibit shows how potential models were eliminated based on the answers to key questions, culminating in the partial powers electric-only option as the most desirable approach.

Exhibit 2-2 presents the models that were examined and shows the range of decision making powers for each one. The exhibit indicates who makes final decisions on key governance issues and where the decision making power resides in the day to day operations of the utility.

Exhibit 2-1
Decision Tree Assessment of Governance Options



Remaining Option:

Question \ Option	Full Powers Electric Only	Full Powers Joint Board	Partial Powers Electric Only*	Partial Powers Joint Board
Defease bonds?	Yes	No	No	No
Legislation needed?	No	Yes	No	No
Electric business focus?	Yes	No	Yes	No
Admin. complexity?	No	Yes	No	Yes
Charter Amendment?	Yes	Yes	Yes	Yes
Costs to implement	Higher	Higher	Lower	Higher

* i.e., rate setting, debt issuance, power of eminent domain reside with city council

Exhibit 2-2 — Description of Governance Models

Models	Advisory Commission with City Council Governance	Full Powers Independent Board	Independent Board Management/ City Council Approves Rates and Debt	Independent Board Management/ City Council Approves Debt and Budgets	Independent Board with City Council Oversight
Example	*City of Austin Electric Utility Dept.*	*Greenville Electric Utility Board*	*San Antonio City Public Service Board*	*Jacksonville Electric Authority*	*Los Angeles Department of Water and Power*
Final Decisions Approved By:					
– Rate Setting	City Council	Electric Utility Board	City Council	Utility Board	City Council
– Debt Issuance	City Council/ Voters (by tradition)	Electric Utility Board	City Council	City Council	Board/Council Oversight
– Eminent Domain	City Council	Electric Utility Board	City Council	Utility Board	Board/Council Oversight
– Bulk Sales/Wholesale Power Agreements	City Council	Electric Utility Board	CPS Board	Utility Board	City Council
– Operating Budget	City Council	Electric Utility Board	CPS Board	City Council	Board/Council Oversight
– Capital Budget	City Council	Electric Utility Board	CPS Board	City Council	Board/Council Oversight
– Long Range Capital Plan	City Council	Electric Utility Board	CPS Board	City Council	Board/Council Oversight
– Joint Operating Agreements	City Council	Electric Utility Board	CPS Board	Utility Board	Board/Council Oversight
– New Services (e.g., telecom)	City Council	Electric Utility Board	Generally CPS/CC input	City Council	City Council
– Transfers to General Fund	City Council	City Charter	Set in Trust Indenture	City Council	City Council
Services/Programs Provided By:					
– Purchasing/Procurement	City	Contract with City	Utility	City*	Utility/Council Oversight
– Human Resources/Personnel	City	Contract with City	Utility	City*	City
– Legal Services	City	Contract with City	Utility	City*	City
– Fleet Services/Mtce	City	Contract with City	Utility	City*	Utility
– Management Info Systems	City	Utility	Utility	Utility	Utility
– Customer Service/Billing	City	Contract with City	Utility	Utility/City	Utility
– Accounting/Payroll	City	Utility	Utility	Utility	Utility/City
– Conservation programs/spending (incentives, rebates, payments)	City	Utility	Utility	Utility	Utility/Council Oversight
– Integrated Resource Plan	City	Utility	Utility	Utility	Utility/Council Oversight

* JEA recently had a charter change passed allowing the utility to determine how it will provide these services (except legal which will continue to be provided by the city)

Exhibit 2-3 details the characteristics of the governing boards for each model. The exhibit lists the legal authority establishing each board and the qualifications and data about the terms of the board members. The number of members on each board, the length of terms, and any term limits are also noted.

Exhibit 2-3 — Board Characteristics

Examples	City of Austin Electric Utility Commission	Greenville Electric Utility Board	San Antonio City Public Service	Jacksonville Electric Authority	Los Angeles Department of Water and Power
Legal Authority	City Charter/ Ordinance	State Statute/City Ordinance/Resolution (Texas Rev. Civil Statutes Ann., Article 1115a, Vernon Supp., 1996)	State Statute/Trust Trust Indenture (Texas Rev. Civil Statutes Ann., Article 1115)	City Charter	City Charter
Number of Board Members	9	5	5	7	5
Term Length	2 years	3 years	5 years	4 years	5 years
Staggered Terms	Yes	Yes	Yes	Yes	Yes
Term Limits	No	No more than 2 terms in succession	2 term limit	2 term limit	No
Minimum Qualifications	One registered professional engineer One attorney One rate payer residing outside the city limits	Mayor serves as *ex officio* member Qualified city voter, customer of the system, not in default in payment to the city	Mayor serves as *ex officio* voting member Bexar County residents	None	Qualified elector of the City of Los Angeles
Who makes appointments	City council	Utility board makes nomination, approval by city council	CPS board appointment with approval by city council	Mayor with city council confirmation	Mayor with city council approval
Utility Oversight	Electric	Electric	Electric/Gas	Electric	Electric/Water
Compensation	None	None	Board members receive $2,000 annually Chair receives $2,400 annually Mayor is not compensated	None	$50 per meeting attendance not to exceed $250 per month (No member currently accepts compensation)
Current Bond Rating	A	not available	AA+	AA+	AA-

GOVERNANCE IMPLEMENTATION AND EVALUATION CRITERIA

Exhibit 2-4 identifies the major legal, financial, and other implementation issues or impediments to changing the governance structure of the EUD.

Exhibit 2-4 — Key Implementation Issues

Models	Full Powers Independent Electric Utility Board	Independent Board Management/City Council Approves Rates and Debt	Independent Board Management/City Council Approves Debt and Budgets	Independent Board with City Council Oversight
Examples	*Greenville Electric Utility Board*	*San Antonio City Public Service*	*Jacksonville Electric Authority*	*Los Angeles Dept. of Water and Power*
Implementation issues:				
- Defease bonds?	Yes	No	Yes	Undetermined*
- Legislation needed?	No	No	No	Undetermined*
- Charter change needed?	Yes	Yes	Yes	Yes
- Bondholder approval needed?	Yes	Yes	Yes	Yes
- Ordinance needed?	Yes	Yes	Yes	Yes
- Can issue future combined debt?	No	Yes	Yes	Undetermined*
Cost to implement - Bond defeasance - Other costs	- EUD estimated $18 million yearly over life of bonds - Costs of charter change, bondholder vote to amend bond covenants	n/a - Costs of charter change, bondholder vote to amend bond covenants	- EUD estimated $18 million yearly over life of bonds - Costs of charter change, bondholder vote to amend bond covenants	n/a - Costs of charter change, bondholder vote to amend bond covenants

* It is not clear which governing body has ultimate authority over debt issuance and eminent domain. Therefore, not clear if this model falls under Texas Rev. Civil Statutes Ann., Article 1115, or whether new legislation would be required.

Exhibit 2-4 shows that of the four models, the full powers independent electric utility board (Greenville model and the Jacksonville Partial Powers Board) would require restructuring Austin's current combined debt. Debt is currently payable from the combined electric, water, and wastewater systems.

During review of prior analyses that had been conducted on governance, the emphasis had been on creating a full powers independent board. This full powers "mindset" had led to the conclusions that either debt would have to be restructured, or a full powers combined systems board would have to be created (to avoid restructuring the debt). The analysis for this project suggests that a partial powers board would significantly improve the utility's ability to operate in a competitive market without having to restructure the debt or seek legislation.

Exhibit 2-5 describes the core evaluation criteria used in assessing each governance model and in contrasting each model against Austin's current governance structure.

Exhibit 2-5 — Governance Options Evaluation Criteria

Speed of decision making	How quickly can the electric utility respond to short-term or long-term business situations? Would the model reduce steps or inefficiencies in the decision making process, making it a more nimble organization for reacting to market conditions?
Focus/vision for an electric utility	Are the business needs and management of the electric utility the main aim of the governing body? Does the decision making body have a clear view of the electric utility needs unaffected by those of other businesses?
Continuity of electric utility policy	Are the governing board and management of the utility stable, allowing for development of a rational, long-term vision? Do outside pressures or board member turnover create instability?
Coordination with other city programs	Are electric utility policies consistent with and linked to city-wide departments and their policies?
Accountability to city and ratepayers	Would the governance model be more directly or less directly accountable to the city and its ratepayers?
Control of day to day utility operations	Does the model allow the electric utility to directly manage and control the full range of its day to day operations, such as human resources, purchasing, fleet, computer systems, customer services, conservation, etc.?
Impact on credit rating	Would the governance model be more or less favorably viewed by the capital markets in evaluating the overall creditworthiness of the electric utility?

Separate interviews were held with two major national bond rating agencies that evaluate the financial and management integrity of electric utilities in the process of developing bond ratings. Both agencies stated that governance and management is increasingly important in the era of increased competition in evaluating the capability and credit worthiness of a utility. One national bond rating agency, for example, uses six key factors to analyze a utility operation. One of those six factors is governance/management, which is weighted 20 points out of a 100 point scoring system.

These bond rating agencies indicated that board-governed utilities are generally more favorably viewed than city council-governed utilities. These agencies indicated that this is the case because board-governed utilities are viewed to have more of a business focus on the electric utility, be more stable and insulated from politics, and have more continuity in making utility policy. This view seems to be borne out by the AA+ rating given to JEA and CPS (both board-governed utilities) versus the A rating given to the EUD.

Attachment C at the end of this section shows the rankings of 84 electric utilities in the country, ranked by Fitch Investors Service, L.P., a national bond rating company. Two of the utilities identified for this analysis were rated number one and two (JEA and CPS). The EUD was ranked 54th out of 84.

Exhibit 2-6 presents Price Waterhouse's assessment of how each of the four governance models rates against the evaluation criteria. For each option, the response to each criteria is based on how it compares to the current governance structure in Austin.

Exhibit 2-6 — Evaluation Criteria Compared to Current Austin Governance Structure

Models	Independent Electric Utility Board	Independent Board Management/City Council Approves Rates and Debt	Independent Board Management/City Council Approves Debt and Budgets	Independent Board with City Council Oversight
Examples	*Greenville Electric Utility Board*	*San Antonio City Public Service*	*Jacksonville Electric Authority*	*Los Angeles Dept. of Water and Power*
Speed of decision making	Positive	Positive	Positive	Positive
Focus/vision of electric utility	Positive	Positive	Positive	Positive
Continuity of electric utility policy	Positive	Positive	Positive	Positive
Coordination with other city programs/policies	Negative	Negative	Negative	Neutral
Accountability to city government and ratepayers	Less Direct	Less Direct	Less Direct	Less Direct
Control of day to day utility operations	Positive	Positive	Positive	Neutral
Requires debt restructuring?	Yes	No	Yes	No
Impact on credit rating	Positive	Positive	Positive	Positive

The greatest impediment for Austin changing to a fully independent electric utility board is that existing bond covenants are jointly drawn for the electric, water and wastewater utilities. Austin's financial advisors have indicated that separating the combined system bonds could cost between $15-18 million a year over the life of the bonds for defeasance (estimated over 30 years). This effectively eliminates the Greenville (full powers electric only independent board) option for Austin because this model cedes all powers to an independent board and state law requires that debt be paid solely from revenue of the electric system.

Similarly, the JEA model, where final approval authority for two of the three major powers is transferred to the board, effectively eliminates it from further consideration. The EUD counsel have indicated that if final approval authority for *any one* of the three major powers (rate setting, debt issuance, and powers of eminent domain) is transferred to a utility board, then this constitutes an independent board under Texas Rev. Civil Statutes Ann., Article 1115a, Vernon Supp., 1996. This section of State law specifically indicates that debt should be repaid solely from electric system revenue.

The remaining two models offer the benefits of partial independence and delegated authority. These two models are owned by the city but operations and management are controlled by a utility board. Each of the cities in turn has some sort of oversight capacity over either the actions of the utility board or in setting rates, issuing debt or exercising the power of eminent domain. In each example the utilities maintain a communications link with the city by either having the mayor serve on the board or by making periodic reports to the city council.

The three partial powers utilities receive varying degrees of city services, from CPS which receives no city services to LADWP and JEA which receive many city services. In every case the cities are not involved in the day to day operations and management of the utility.

JEA now has the authority, under a recently passed charter amendment, to determine how it will deliver and receive services for day to day operations such as purchasing, human resources, and fleet services. The JEA can elect to no longer use city services if it so chooses. All of the utilities follow their respective state and federal laws regarding personnel, purchasing, contracting, and equal opportunity provisions, etc.

Of the three remaining partial powers electric models -- CPS, JEA, and LADWP -- the "CPS type" model best meets the needs of the City of Austin because:

- The major three powers (rate setting, debt issuance, and powers of eminent domain) remain with the city council. The LADWP governance structure is inherently complex and is not as straightforward as the model which simply assigns approval authority to the city council. The city council does not retain all three major powers in the JEA model. If final approval authority for *any one* of these three powers is transferred to a utility board, this moves into the realm of a fully independent board (Texas Rev. Civil Statutes Ann., Article 1115a, Vernon Supp., 1996). This section of law calls for bonds to be payable <u>solely</u> from electric system revenue. Since Austin's current bonds are based on the combined systems, transferring any one of these major three powers to the board would lead to the bond restructuring problem.
- The day to day operations and management of the utility are completely separate from the city, resulting in a simple, unambiguous enterprise. The CPS model clearly separates the operations and management of the utility from the city. It also provides the utility with the most flexibility to best determine how it will manage itself and deliver services affecting its day to day operations.

CPS is the second highest rated utility out of 84 utilities that were ranked by one national bond rating agency. Although governance and management may not fully explain this rating, it is a key criteria in how utilities are evaluated for stability and creditworthiness.

Recommendation:

1. If it retains ownership, the City of Austin should implement a partial powers electric utility board where the board assumes oversight of the day to day operations and management of the utility, and the City Council retains approval of rates, issuing debt, and the exercise of eminent domain.

The task was to develop a governance structure that will allow the utility to competitively operate its business as an investor-owned utility while meeting the minimum accountability requirements of a government agency. The model recommended here best meets the core evaluation criteria and still meets the two primary objectives raised in the beginning of this chapter. Our analysis indicates the electric utility can be operated more efficiently as a stand alone enterprise, separate from other city departments and operations.

How is the recommended model materially different or better than the current governance structure?

The electric utility board would have direct oversight of the operations of the utility, holding the General Manager directly accountable for the effective and efficient operation of the utility. This means that the utility would no longer be a department of City government, but would operate as an independent business. The utility board and General Manager would have the authority and control to make business decisions on how it will best run the "company". This would include determining how it will deliver and receive services, establish its own policies and procedures, and make decisions on:

- Operating and capital budgets
- Human resources
- Purchasing/procurement
- Management information systems
- Fleet services and maintenance
- Joint operating agreements
- Contract approvals
- Conservation programs
- Customer services and billing
- Accounting/financial management
- Bulk sales/wholesale power agreements
- Long range capital improvement plans
- Other areas covering the day to day aspects of running the business and making operating decisions.

This recommendation would also allow the Board to have a full-time legal counsel report directly to the General Manager. The utility could contract for other legal services from the City law department as needed.

Currently, the EUD is a department of City government, many services are provided by the City for a non-negotiable charge, and purchases and contracts over $37,000 must be reviewed and approved by the City Council. Under the recommended model, the Board can make policy regarding what amount of purchases or contracts it must review and approve, and can choose to delegate authority to the General Manager. In the current structure, the operating budget and capital budget have to be reviewed and approved by the City Council, and the CIP has to be reviewed and approved by three entities (the Electric Utility Commission (EUC), Planning Commission, and City Council). Under the recommended model the budget process can be

focused on the electric utility business with its own requirements and timeframe, and the CIP plan would be reviewed by only one body - the Electric Utility Board.

Under the current governance structure, the EUC is an advisory body only -- all actual powers reside with the city council. Under the recommended model, the Electric Utility Board would be delegated all management powers associated with running the business.

Under the current governance structure, the General Manager is appointed by and reports to the City Manager. In practice the General Manager is also answerable to the City Council and the EUC. Under the recommended model, the General Manager would be appointed by, report to, and would be solely answerable to the Electric Utility Board. The Board, in turn, would answer to the City Council.

Under the current governance structure, as a department of City government, EUD staff are City employees, the EUD has to follow all City guidelines with regard to salary parameters and staff classification systems, and is subject to the City's personnel processing timeframes. Under the new model, the EUD staff would not be City employees, the Board would establish its own personnel policies and procedures, and would establish its own classification and compensation systems specifically oriented to the electric utility industry. For example, CPS staff are not City employees, and do not receive City paychecks.

Under the current governance structure, as a department of City government, the EUD must, for example, receive services from the City's fleet services department. The utility has no choice in the matter and it must pay whatever the City will charge for this function. The same holds for other functions such as human resources, purchasing, and customer billing services, etc. Under the recommended model, the utility would be free to operate its own services in-house, contract back with the City if it offers competitive rates, or contract out to a private vendor.

The recommended governance structure best responds to the day to day operational concerns and operating constraints faced by the utility. These operational issues and lack of control over support services are impediments to an efficiently run business.

Investor-owned utilities that the EUD will compete with have a less complicated governance and operating structure having to answer only to their stockholders and not having to meet all of the requirements of local government and its competing constituencies.

How would such a model be implemented in Austin?

The following provides additional detail on how the recommended model could be applied in Austin.

Powers of the City Council

- Setting rates
- Authorizing debt issuance
- Exercising powers of eminent of domain
- Confirming Board members nominated by the Electric Utility Board
- Determining expansion into new services outside of the electric utility business.

The City Council and Board could negotiate a ceiling on the General Fund Transfer from the utility and place it in the City Charter.

Powers of the Electric Utility Board

- Appointing and evaluating the General Manager
- Nominating new Board members with confirmation by City Council

- Approving the operating and capital budgets
- Reviewing and approving long range capital improvement plans and other long range plans
- Setting all pertinent policies and procedures governing all aspects of the day to day operations of the utility
- Delegating powers to the General Manager as the Board sees fit
- Entering into joint operating agreements, making bulk purchases, and entering into wholesale power sales contracts
- Delegating to General Manager the authority to operate and manage computer systems, accounting/financial/budgeting systems, and to manage the delivery of human services, purchasing, fleet services, and other day to day services and operations
- Managing the conservation program and the customer services and billing function
- Authorizing expansion of electric related businesses and services.

The General Manager of the utility would oversee the day to day operations and would answer to the utility Board. Operations of the utility would be separate from those of the City.

Makeup of the Board	
Number of members	Seven, including Mayor as ex-officio voting member
Term length	Four years
Staggered terms	Yes
Term Limits	Two
Appointment	Board with City Council confirmation
Board qualifications	One ratepayer outside City
Compensation	No

Boards with longer terms allow for more continuity in the utility's policies and vision. The bond rating agencies also note that boards that are outside of the political arena tend to make decisions that have a firmer basis in what is best for the utility and is less subject to external pressure.

The City Charter when amended should explicitly state that the day to day operations of the utility will be delegated to the Board and that accountability will clearly reside with the Board and General Manager. The charter change should also state that the utility will not operate as a City department, but will be free to determine how it will manage its various administrative services, and will develop its own operating policies and procedures. This will give the utility the authority to develop human resources, purchasing, fleet, finance, and other policies and procedures consistent with the requirements of sound management in the utility industry.

How will the City ensure accountability?

The City of Austin can choose to hold the utility accountable based on the key outcomes it wishes the utility to accomplish. It would be up to the utility to determine how to meet those requirements. The City could convey in its Charter amendment any policy requirements that the Electric Utility Board should follow. The City can require the utility to prepare and submit annually a *Report Card* of key financial, operating, compliance, and other measures of interest to the City. This Report Card can be made in a formal presentation by the Board Chair to the City Council once a year.

To ensure continued financial integrity, the City can require that its independent auditor conduct a complete, annual financial audit of the utility (such an audit is already part of the City's annual audit). The City can further require that the utility be subject to an independent compliance, financial, and performance audit every three to five years. Similarly, the City could require that the utility must have this type of review performed by an outside, independent firm and have the results

transmitted to the City. (The City Auditor could also perform this function.)

The utility should also ensure that it has an internal audit capability and that the Internal Audit Manager reports directly to the General Manager.

Need for a Detailed Transition Plan

Utility management would have to develop a detailed, step by step, phased-in transition plan with timeframes specifying how the utility would move from the current to the recommended structure. This plan would have to specifically identify how the current operation will be migrated to the envisioned operation, including, for example, action steps for the utility to withdraw itself from City services. This would also include transition plans to migrate or develop all pertinent computer systems, databases, and transferring programs such as conservation and customer service and billing.

The Electric Utility Board could be created and members appointed in one year. However, the entire migration of all powers, services, programs, and systems will likely be phased in over a two to three year period before the implementation is complete.

Rationale for Change

In analyzing the different governance models, we noted that each model operates within a community that has different values, traditions and cultures. It was important to develop a recommendation that would work within the City of Austin.

The recommended model would allow the EUD to respond quickly and competitively in a fast paced industry. This way the utility would act more like an investor-owned utility, and yet accountability to the citizen owners and the City Council could still be maintained with the Report Card approach and City Council appointment of Board members.

Increasing the length of Board members' terms would allow Board members to develop a long-term vision for the utility and to see that the vision becomes reality. The Board would be insulated from political forces that could cause it to change its direction in response to short-term considerations. The insulation would also allow the Board to make bolder and more innovative decisions than a board that is in the direct line of political fire.

Placing the Mayor on the Board provides a crucial link between the City government and utility management. In the utilities examined, having the mayor as a voting member of the utility board allowed the utility to be mindful of its city's overall vision.

The Mayor also served as the representative of the City Council in its oversight capacity. The oversight authority of the City Council is not eliminated under this model. The Board would be required to make an annual report to the City Council along with annual audit reports. The Council would still be able to influence policy decisions regarding the utility but would not be mired in the day to day operations of the Board.

A Board that makes management decisions rather than only making recommendations to the City Council is more accountable for those decisions. Changing the decision-making authority for the utility from the City Council to the Board would allow greater focus to be placed on the governance of the utility than is currently the case. The Board would have only the needs of the utility to consider rather than the competing issues and constituencies that the City Council has to consider.

Attachment A - Detailed Descriptions of Governance Models Reviewed

Model: Advisory Board with City Council Governance
Example: City of Austin Electric Utility Department

The City of Austin Electric Utility Department is under the direction of City management and is governed by the City Council. The Council receives advice from the EUC. The City Council serves as the governing body of the EUD and makes decisions regarding rates, debt issuance, eminent domain, and operating and capital budgets. As a department of City government, the EUD must follow the City's policy and procedures regarding all aspects of its operations.

The EUC was established through ordinance by the City Council to "review and analyze all policies relating to the electric utility of the City of Austin and to advise the City Council on such policies."

Additionally, the EUC is charged through ordinance to review and analyze the "electric rate structure, fuel costs and charges, customer services, capital investments, new generation facilities, selection of types of fuel, purchase of fuel, transportation of fuel, billing procedures and the transfer of electric utility revenues from the utility to the general fund."

The ordinance also allows the EUC to "review, study, and make recommendations to the Planning Commission on proposed electric utility projects for inclusion in the capital improvements program."

The City of Austin utility system receives revenues from water, wastewater and electric services. While the EUC makes recommendations on the electric utility only, the City utility bond covenants include water, wastewater and electric utilities.

The nine-member EUC is appointed by the City Council to serve two-year staggered terms. The city charter requires that membership on the EUC include one registered professional engineer, one attorney and one ratepayer residing outside of the City limits.

Model: Independent Electric-Only Utility Board
Example: Greenville Electric Utility Board

Authorization for the establishment of an independent electric utility board by home rule cities in the state was passed by the Texas Legislature in 1989 (Texas Rev. Civil Statutes Ann., Article 1115a, Vernon Supp., 1996). The City of Greenville established the first independent electric utility board for a city-owned utility in Texas.

The Greenville Electric Utility System Board makes all decisions regarding the management and operations of the utility independent of the governance and management of the city of Greenville through authorization from state statute and city ordinance. The Greenville board's authority ranges beyond decision-making regarding the operations and management of the city utility to making decisions regarding rates, issuing debt and acquiring property through eminent domain.

The five-member Greenville board is appointed through nomination by the board and approval of the city council. The mayor serves as an *ex officio* member of the board. Board members serve staggered three year terms and may serve no more than two terms in succession. To serve on the board, members must be qualified city voters, a customer of the system and not be in default in payment to the city.

Model: Independent Board Management/Council Approval of Rates, Debt and Eminent Domain

Example: San Antonio City Public Service

State statute (Texas Rev. Civil Statutes Ann., Article 1115) allows for the establishment of a board of trustees to manage a city's utility system(s). The CPS board was established under this statute. The utility's Indenture of Trust details the specifics of the operations of the CPS board.

The CPS board is comprised of five members appointed by the board and approved by the city council. The mayor serves as an ex officio voting member of the board. Board members serve staggered five year terms and are limited to serving two terms.

The CPS board manages and operates the electric utility department. All CPS operations are separate from the policies and procedures of the city. The board makes all management decisions regarding the operations of the utility including staffing and contracts. CPS employees are considered employees of the utility and not the city. The operations of the CPS are so separate from the operations of the city that the CPS even has its own employee retirement system.

The CPS makes a general fund transfer to the city equal to 14% of the gross revenue of the utility. The amount of the general fund transfer is set in the trust indenture.

The only issues regarding the utility that the CPS board does not have absolute authority over are rates, debt and eminent domain. Those issues are decided by the city council with recommendations from the CPS board. Generally, the CPS board recommendations are adopted intact by the city council.

Model: Independent Board/Council Approval of Debt Issuance and Budgets

Example: Jacksonville Electric Authority

The Jacksonville Electric Authority is governed by a seven member board. Board members, appointed on a staggered basis, are appointed for four year terms and have a two term limit. The mayor appoints board members with the concurrence of the city council. The JEA does not have any formal, prescribed qualifications for serving on the board.

In Jacksonville, the city council has final approval authority to issue debt and to approve the JEA's operating budget, capital budget, and long range capital improvement plans. The JEA board has final approval authority over rate setting and powers of eminent domain. The JEA recently increased its general fund transfer from 5 mills per kwh of sales to 5.25 mills.

In the day to day management and operations of the utility, the JEA receives several services from the city. For example, JEA receives legal, human resources, purchasing, and fleet services from the city. However, JEA operates its own management information systems, including its own accounting/payroll systems. In addition, JEA operates its own customer billing operation, while the city actually *collects* the revenue (per city requirement that the city operate as the central revenue collector).

In 1995, the JEA obtained a city charter change that allows it the option of "divesting" itself from receiving city services in all areas except legal services. Based on interviews with JEA personnel, JEA made the argument that in the era of increasing competition, it needed the flexibility to make operational decisions without being tied to only one service provider (the city). JEA staff noted that this came about at a time when the city was attempting to increase the amount of administrative costs JEA paid to the city for receiving city services. JEA made the point that while JEA's portion of administrative costs to the city had gone up, JEA's internal staffing and operating costs had held steady. The language in the charter change provides the JEA the option of continuing to use the city for services if the costs are competitive. JEA staff noted that in 1996 the utility will be examining which services will continue to be provided by the city, which ones will be assumed by the utility, and which ones will be outsourced. Legal services must continue to be provided by the city.

Model: Board Management and Operations with City Council Oversight

Example: Los Angeles Department of Water and Power

The LADWP is headed by the Board of Water and Power Commissioners. According to the Los Angeles city charter "the commission has the power to construct, operate, maintain, extend, manage and control works and property for the purpose of supplying the city with water and electric energy. The commission is the policy-setting body of the department."

Under the requirements of the charter, the LADWP is under the control and management of a board of five commissioners. The commissioners are appointed to five-year terms by the mayor with the approval of the city council. There are no term limits for commissioners but they are subject to reappointment by the mayor who in turn is subject to term limits. In Los Angeles, the mayor is limited to two four-year terms. The only requirement for service on the LADWP board is that commissioners be qualified voters of the city.

The LADWP board makes decisions on all facets of the utility's operations. The city council in turn has oversight over all board actions. LADWP board actions are subject to review by the city council within five council meeting days. If the city council chooses not to review board action, the action becomes final after the five council meeting days have elapsed. The city council generally meets three times a week, in practical terms board decisions are either final or brought up for review within two weeks after being made.

If board action is questioned, any council member can move to take jurisdiction over the action of the board. Generally, following such a move further explanation is given to the council regarding the board action. Ten votes are necessary from the 15 member city council to take jurisdiction over board action. Board action that is overturned by the city council is remanded back to the board for new action.

Los Angeles has an interesting governance strategy for the actions of the city council as well. The mayor in Los Angeles can veto the actions of the city council. It takes 12 council votes to overturn the mayor's veto.

The city council is briefed on decisions (such as bond sales) that are time sensitive as the decisions are being made. As the board makes its decision, concurrent approval is sought from the city council. A council member then offers an amendment to forego the five meeting day rule and approve the board action immediately. This process allows the utility to make decisions expeditiously while still maintaining the spirit of the law and allowing city council review of board decisions.

The only issue that does not follow this procedure is rate setting. Los Angeles city electric rates must be set by ordinance. The LADWP board follows its usual process for decision making and makes recommendations to the city council regarding rates. The city council in turn takes the recommendations and follows its usual process for approving ordinances. Rate setting is the only decision that is made proactively by the city council and is not made in response to board action.

The LADWP is one of three revenue producing city departments operating semi-independently of the city. As an entity of the city, the LADWP is subject to city rules and regulations. While the LADWP operates independently in some areas such as billing and collection, it operates as a city department in other areas such as human resources. Hiring, firing, employee promotion and discipline are all handled through the city personnel department.

The city receives a general fund transfer of about five percent of the audited gross operating revenues for the previous year from the utility. The amount is generated at about a four to one ratio from the proceeds from power and water, with power making the bulk of the revenue. The percentage of the general fund transfer is traditionally set by the city council.

Attachment B - A Combined Electric/Water/Wastewater Board Model was Analyzed and Dropped from Consideration

Another option that was considered early in the review was the concept of a combined electric/water/wastewater utility board. The following section discusses why that option was dropped from final consideration.

Texas Rev. Civil Statutes Ann., Article 1115 allows for the creation of a partially independent electric board (e.g., the CPS model). Texas Rev. Civil Statutes Ann., Article 1115a, Vernon Supp., 1996 allows for the creation of a fully independent electric only board (Greenville). Section 1115b allows for the creation of an independent water/wastewater board. There is currently no city-owned entity in Texas that operates a combined board of all three systems and there is no State law that allows for a fully independent electric/water/wastewater board.

New authorizing State legislation would be needed to create a full powers independent board for the combined systems. Full powers would include granting to the board the final approval of setting rates, issuing debt, and the powers of eminent domain without obtaining city council approval.

A board for the combined systems with partial powers (i.e., leaving authority to set rates, issue debt, or powers of eminent domain with the city council) would not require legislation. However, it would result in the loss of the electric only business focus, which we consider to be a key requirement for a competitive and well managed operation.

A combined electric/water/wastewater board raises the question of who would make decisions on economic development, annexation, and extension of water/wastewater services. Decisions on growth and land use are key powers of the city council. Would creation of a combined systems board dilute the city council's powers over growth decisions and complicate jurisdiction on these matters between the board and city council?

Decisions regarding annexation currently rest with the city council. All electric utilities are charged by the state to provide service to all within their

service area whether the property lies within the city or not. There is no such mandate for providing water or wastewater service to areas outside of the city limits. Cities have generally used the power to provide water and/or wastewater services as a tool to direct or control growth. Giving an independent utilities board power over electric, water and wastewater services would remove key decision making tools from the city council for managing growth. Limiting the board from making decisions regarding annexation and expansion of water and wastewater service would greatly limit its independence from the city.

The concept of a combined systems board had been initially considered because it was believed that was the only approach to avoid restructuring the combined system debt in Austin. However, there are electric only models that avoid restructuring the combined systems debt.

A joint utilities board could also suffer from a lack of focus and expertise on the part of the members. Such a board would have to address three different businesses facing widely different issues. A board whose focus is trained on the management and operations of the electric utility alone is an attractive advantage of an independent board.

Another difficulty would involve finding board members who have expertise in all three functional areas. Establishing a joint utilities board would dilute the knowledge base of an electric utility only board with members who have expertise in other areas. The result of a joint board would be that members with different areas of expertise would be asked to make decisions in areas outside their expertise. Balancing competing factors on a joint board could lead to decisions that would not always be in the best interest of the electric utility.

In summary, the combined electric/water/wastewater model was eliminated from further consideration for the following key reasons:

- There is no existing municipality with a combined systems board in Texas and there is no legislative authority for such a board.
- Complicates the issue of who would make decisions on growth in Austin. Extending water and wastewater services is a major ingredient in managing growth and is a key function of Austin City government.
- Would suffer from a key loss of electric only business focus.
- There are other models where restructuring existing utility debt can be avoided -- effectively eliminating the reason why a joint board had been considered in the first place.

Attachment C - Rating of Electric Utilities

Key rating factors used by one of the national rating agencies to evaluate electric utilities are as follows:

Factor	Relative Weight
Governance/Management	20%
Financial/Legal	20%
Rates	20%
Regulation	15%
Plant	15%

Governance/Management Considerations in Rating

- Are decisions made from a business perspective?
- Are resource allocation and rate decisions based on sound business practices?
- Does the city place undue dependence on the utility general fund transfer? Is the general fund transfer amount unpredictable?
- Is the environment overly political?

Board governed utilities are generally viewed more favorably than City Council utilities; primarily because of their independence they would be more influenced by business practices and more insulated from politics.

Rank By FCI*

Rank	Company	Category	Sr. Debt Rating	Credit Trend	FCI	New/ Change
1	Jacksonville Electric Authority, FL	PP	AA+	Stable	1.58	
2	San Antonio City Public Service, TX	PP	AA+	Stable	1.83	Change
3	Duke Power Co.	IOU	AA	Stable	1.90	Change
4	Lincoln Electric System, NE	PP	AA	Stable	2.05	
5	Northern States Power Co. (MN)	IOU	AA	Stable	2.10	Change
6	South Carolina Public Service Authority	PP	AA–	Stable	2.15	Change
7	Grant County Public Utility District No. 2, WA	PP	AA–	Stable	2.20	New
8	Lower Colorado River Authority, TX	PP	AA–	Stable	2.25	New
9	Orlando Utilities Commission, FL	PP	AA+	Stable	2.28	New
10	Otter Tail Power Co.	IOU	AA	Stable	2.30	New
11	Potomac Edison Co.	IOU	AA–	Stable	2.30	
12	PSI Energy Inc.	IOU	A–	Stable	2.33	
13	Appalachian Power Co.	IOU	A	Stable	2.35	
14	Idaho Power Co.	IOU	A+	Stable	2.35	
15	Modesto Irrigation District, CA	PP	A+	Stable	2.35	Change
16	Central Illinois Public Service Co.	IOU	AA+	Stable	2.38	Change
17	Baltimore Gas & Electric Co.	IOU	A+	Improving	2.40	
18	Chelan County Public Utility District No. 1, WA	PP	A+	Stable	2.40	New
19	Tacoma Electric System, WA	PP	A+	Stable	2.40	
20	West Penn Power Co.	IOU	AA–	Stable	2.40	Change
21	Arkansas Electric Cooperative Corp.	PP	A+	Stable	2.43	New
22	Cincinnati Gas & Electric Co.	IOU	A–	Stable	2.43	
23	Florida Power & Light Co.	IOU	A+	Stable	2.43	
24	Monongahela Power Co.	IOU	AA–	Stable	2.43	Change
25	Snohomish County Public Utility Dist. No. 1, WA	PP	A+	Stable	2.43	
26	Georgia Power Co.	IOU	A+	Stable	2.45	
27	Kansas City Board of Public Utilities, KS	PP	A+	Stable	2.45	
28	Oglethorpe Power Corp., GA	PP	AA–	Declining	2.48	Change
29	Chugach Electric Association, Inc., AK	PP	A+	Stable	2.50	New
30	Ohio Power Co.	IOU	A–	Stable	2.50	
31	Virginia Electric & Power Co.	IOU	A+	Stable	2.50	Change
32	Puget Sound Power & Light Co.	IOU	A–	Stable	2.53	
33	Washington Public Power Supply System/ Bonneville Power Administration	PP	AA–	Stable	2.53	New
34	Columbus Southern Power Co.	IOU	BBB+	Stable	2.55	
35	Minnesota Power & Light Co.	IOU	A–	Stable	2.55	
36	Old Dominion Electric Cooperative, VA	PP	A+	Stable	2.55	New
37	Dayton Power and Light Co.	IOU	A	Improving	2.58	
38	Grand River Dam Authority, OK	PP	A	Stable	2.58	
39	Indiana Michigan Power Co.	IOU	BBB+	Stable	2.65	
40	Nevada Power Co.	IOU	BBB+	Stable	2.65	New
41	Kentucky Power Co.	IOU	BBB+	Stable	2.68	
42	Municipal Electric Authority of Georgia	PP	A	Stable	2.68	
43	Northern Indiana Public Service Co.	IOU	A+	Stable	2.68	New
44	Northwestern Public Service Co.	IOU	A	Stable	2.68	
45	Central Hudson Gas & Electric Corp.	IOU	A	Stable	2.70	

*Where FCI is tied, utilities are listed alphabetically. IOU – Investor-owned utility. PP – Public power utility.

Rank By FCI*

Rank	Company	Category	Sr. Debt Rating	Credit Trend	FCI	New/ Change
46	Potomac Electric Power Co.	IOU	A+	Stable	2.70	
47	Texas Municipal Power Authority	PP	A+	Declining	2.70	New
48	MDU Resources Group Inc.	IOU	A	Stable	2.73	
49	Montana Power Co.	IOU	A–	Stable	2.73	Change
50	Sacramento Municipal Utility District, CA	PP	A–	Stable	2.73	
51	Tri-State Generation & Transmission Assn., CO	PP	A	Stable	2.73	
52	Texas Utilities Electric Co.	IOU	BBB	Stable	2.75	
53	Houston Lighting & Power Co.	IOU	A	Stable	2.78	
54	Austin Combined Utilities System, TX	PP	A	Stable	2.83	Change
55	Consolidated Edison Co. of New York, Inc.	IOU	AA–	Declining	2.83	
56	Pennsylvania Power & Light Co.	IOU	A	Alert	2.83	
57	San Diego Gas & Electric Co.	IOU	A+	Declining	2.83	
58	Brownsville Public Utilities Board, TX	PP	A	Stable	2.85	Change
59	Massachusetts Municipal Wholesale Electric Co.	PP	A–	Stable	2.85	
60	Western Resources Inc.	IOU	A–	Stable	2.85	
61	Duquesne Light Co.	IOU	A–	Stable	2.85	Change
62	Detroit Edison Co.	IOU	A–	Stable	2.93	Change
63	New York State Electric & Gas Corp.	IOU	A–	Declining	2.93	
64	Pacific Gas & Electric Co.	IOU	A	Declining	3.00	
65	Southern California Edison Co.	IOU	A+	Declining	3.03	
66	Atlantic City Electric Co.	IOU	A	Declining	3.05	
67	PECO Energy Co.	IOU	A–	Alert	3.05	Change
68	North Carolina Municipal Power Agency No. 1	PP	A	Declining	3.08	Change
69	Boston Edison Co.	IOU	BBB	Stable	3.10	
70	Public Service Electric & Gas Co.	IOU	A–	Stable	3.10	
71	Consumers Power Co.	IOU	BBB+	Stable	3.13	
72	Orange & Rockland Utilities, Inc.	IOU	A–	Stable	3.15	
73	Illinois Power Co.	IOU	BBB+	Declining	3.28	
74	Ohio Edison Co.	IOU	BBB	Declining	3.30	
75	North Carolina Eastern Municipal Power Agency	PP	BBB+	Stable	3.33	Change
76	Commonwealth Edison Co.	IOU	BBB	Stable	3.40	
77	Public Service Co. of New Mexico	IOU	BB+	Stable	3.40	New
78	Tucson Electric Power Co.	IOU	BB–	Improving	3.43	New
79	Gulf States Utilities Co.	IOU	BBB–	Stable	3.45	
80	Los Alamos County Utility System, NM	PP	BBB	Stable	3.48	
81	Cleveland Electric Illuminating Co.	IOU	BB+	Stable	3.50	
82	Toledo Edison Co.	IOU	BB+	Stable	3.50	
83	Long Island Lighting Co.	IOU	BBB–	Alert	3.60	
84	Sam Rayburn Municipal Power Agency, TX	PP	BB	Declining	3.70	

*Where FCI is tied, utilities are listed alphabetically. IOU – Investor-owned utility. PP – Public power utility.

Texas Municipally Owned Utilities (MOUs)

Location	Annual Electric Revenues	# of Electric Customers (Meters)	Pop Served	# of Employees	Annual MWH Sales	Mi of Transmission Lines	Form of City Government	Electric Utility Governance Structure	Utility Board	Body/Individuals that Approves (B=Board, C=Council, B/C= Both, M=Mayor, CM=City Manager)					
	<---------- Size ---------->						<---------- Governance ---------->			Rates	Bonds	Budget	Investing	PPAs	CM/CEO Reports To:
San Antonio CPS Energy	$1.7 billion	707,509	2,100,000	3,617	23,000,000	1,459	City Manager	Independent Utility Board	Five members, four appointed by board from separate geographic quadrants of city and confirmed by Council plus mayor ex officio voting member.	C	C	B	B	B/C	B
Austin AE	$1.3 billion	388,000	880,000	1,382	11,372,000	633	City Manager	Mayor/Council	EUC	C	C	C	C	C	CM
Garland	$232,723,827	68,001	228,858	252	2,049,114	126	City Manager	Mayor/Council	No board.	C	C	C	C	C	CM
Bryan BTU	$135,269,134	48,014	74,656	192	1,522,006	122	City Manager	Mayor/Council	Various levels of expertise	C	C	C	C	C	CM
Lubbock Power & Light LPL	$130,000,000	75,975	219,643	249	1,729,000	88	City Manager	Independent Utility Board	Nine members appointed by Council. The Mayor (or represenative) serves in a non-voting ex-officio capacity. Resident/customer, not indebted to City. City Council shall consider "extensive business and/or financial experience.	C	C	C	B	B	B
Brownsville	$121,518,108	46,697	172,825	147	1,279,525	48	City Manager	Independent Utility Board	Seven member Board (Mayor ex officio and voting, the other six appointed by Counci)l. Resident of Brownsville, Not related to city officials.	C	C	B	B	B	B
Denton Municipal Electric DME	$110,757,452	46,767	119,454	129	1,358,405	26	City Manager	Mayor/Council	No board.	C	C	C	C	C	CM
College Station	$89,454,291	35,132	94,642	69	770,000	18	City Manager	Mayor/Council	No board.	C	C	C	CM	C	CM
New Braunfels NBU	$85,801,531	28,754	47,300	218	1,014,276	16.10	City Manager	Independent Utility Board	Five members (Mayor ex officio and voting, other four are appointed by Council).	C	C	B	B	C	B
Georgetown	$59,058,745	21,125	50,907	42	533,922	0.20	City Manager	Mayor/Council	No board.	C	C	C	C	C	CM
Greenville GEUS	$41,671,643	13,285	26,600	124	545,834	32	City Manager	Independent Utility Board	Five members appointed by Council. Mayor is ex-officio-non-voting. Resident, qualified voter, GEUS customer.	B	B	B	B	B	B
Kerrville KPUB	$41,043,390	21,371	22,361	56	471,573	0	City Manager	Independent Utility Board	Five members (Mayor ex officio and voting, other four are appointed by Council).	B/C	C	B	B	B	B

Large Municipally Owned Utilities (MOUs)

Location	Annual Electric Revenues	# of Electric Customers (Meters)	Pop Served	# of Employees	Annual MWH Sales	Mi of Transmission Lines	Form of City Government	Electric Utility Governance Structure	Utility Board	Body/Individuals that Approves (B=Board, C=Council, B/C= Both, M=Mayor, CM=City Manager)					
	<---------- Size ---------->						<---------- Governance ---------->			Rates	Bonds	Budget	Investing	PPAs	CM/CEO Report To:
Los Angeles, CA LADWP	$2.9 billion	1,450,410	4.1 million	8,139	24,790,041	3,650	Strong Mayor	Mayor/Council & Independent Utility Board	Five members appointed by mayor and approved by Council. Mayor may remove commissioners	B/C	C	B/C	B	B/C	M
San Antonio, TX CPS Energy	$1.7 billion	707,509	2,100,000	3,617	23,000,000	1,459	City Manager	Independent Utility Board	Five members, four appointed by board from separate geographic quadrants of city and confirmed by Council. Mayor also on Board	C	C	B	B	B/C	B
Jacksonville, FL JEA	$1.6 billion	418,944	820,000	1,875	15,843,244	728	Strong Mayor	Independent Utility Board	Seven members, appointed by Mayor, confirmed by Council	B	C	C	C	B	B
Austin, TX AE	$1.3 billion	388,000	1.6 million	1,706	11,372,000	633	City Manager	Mayor/Council	Advisory Electric Utility Commission	C	C	C	C	C	CM
Memphis, TN Memphis LG&W	$1.3 billion	405,906		<1,000	14,750,036		City Manager	Independent Utility Board	Five member Board of Commissioners appointed by Mayor	C	C	C	C	C	B
Nashville, TN NES	$1.1 billion	361,134		988	12,413,126		Strong Mayor	Independent Utility Board	Five members appointed by Mayor, Confirmed by Council, five year staggered terms without pay	B	B	B	B	B	B
Seattle, WA Seattle City Light	$789 million	398,858	1.3 million	1,800	14,637,077	656	Strong Mayor	Semi Board Mayor/Council	Nine member board appointed by Mayor approved by Council	C	C	C	C	C	M
Orlando, FL OUC	$724 million	220,306	382,500	1,035	7,941,801	339	Strong Mayor	Independent Utility Board	Five members and the Mayor who is ex-officio, Four year terms, no compensation,	B	B	B	B	B	B
Knoxville, TN KUB	$494 million	196,453		129	5,777,313		Strong Mayor	Independent Utility Board	Seven member board appointee by mayor and confirmed by Council. 7 year terms.	B	B	B	B	B	B
Huntsville, AL Huntsville Utilities	$455 million	162,793		348	5,548,651		Strong Mayor	Independent Utility Board	Appointed by City Council	C	C	C	C	C	B
Colorado Springs, CO Colorado Springs Utilities	$381 million	211,508	472,000	501 to 1,000	4,818,688	232	Strong Mayor	Independent Utility Board	City council is also utility board. Mayor is ex officio.	C	C	C	C	C	B
Tacoma, WA Tacoma PU	$343 million	169,407	352,000	900	6,781,944	417	City Manager	Independent Utility Board	Appoiinted by Mayor and approved by Council	C	C	B	B	B	B
Santa Clara, CA Silicon Valley Power	$284 million	51,868		130	3,692,599		City Manager	Mayor/Council	None	C	C	C	C	C	CM
Riverside, CA Riverside PU	$275 million	106,062		306	1,998,737		City Manager	Independent Utility Board	Nine member board of public utilities appointed by City Council.	C	C	C	C	C	B
Gainesville, FL GRU	$262 million	92,340		448	2,164,616		City Manager	Mayor/Council	Mayor and commissioners	C	C	C	C	C	C
Eugene, OR EWEB	$35 million	87,087		80	444,171		City Manager	Independent Utility Board	Utility Board established by City Charter is independently elected	C	C	B	B	B	B

Source: APPA "Public Power Annual Directory and Statistical Report 2012-2013 (2010 Statistics) and Utility Interviews

Texas Public Power Association

Testimony of the Texas Public Power Association (TPPA)

Senate Business & Commerce Committee
July 10, 2012

Mark Zion, Executive Director, TPPA

Texas Public Power Association

Interim Charge: Senate Business and Commerce Committee

- *"Study the relationship between city governments and municipally-owned utilities, including any duplicative or redundant functions, the amounts and justifications required for transfer payments between the entities, and the benefits and disadvantages of alternative governance structures."*

Texas Public Power Association

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Municipally Owned Electric Utilities (MOUs) in Texas:

Overview

Texas Public Power Association

SERVICE, STABILITY, SUCCESS.

72 MOUs provide power to 4.1 million Texans. Many have been serving their communities for over 50 years.

MOUs are “full service” electric utilities that own poles and wires and often power plants.

Local authorities set MOU rates and policies that are responsive to community priorities.

To date, MOUs have taken a “wait and see” approach to electric deregulation.

Municipally Owned Electric Utilities (MOUs)

Texas Public Power Association

72 MOUs in Texas

Municipally Owned Electric Utilities	Floydada	Lubbock
Bartlett	Fredericksburg	Luling
Bastrop	Garland	Mason
Bellville	Georgetown	Moulton
Boerne	Giddings	New Braunfels Utilities
Bowie	Goldsmith	Newton
Brady	Goldthwaite	Robstown
Brenham	Gonzales	San Antonio CPS
Bridgeport	Granbury	San Augustine
Brownfield	Greenville (GEUS)	San Marcos
Brownsville PUB	Hallettsville	San Saba
Bryan Texas Utilities	Hearne	Sanger
Burnet	Hemphill	Schulenburg
City of Austin Energy	Hempstead	Seguin
Caldwell	Hondo	Seymour
Castroville	Jasper	Shiner
Coleman	Kerrville PUB	Smithville
College Station	Kirbyville	Timpson
Cuero	La Grange	Tulia
Denton	Lampasas	Waelder
Electra	Lexington	Weatherford
Farmersville	Liberty	Weimar
Flatonia	Livingston	Whitesboro
Floresville	Llano	Yoakum
	Lockhart	

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Local Control and Community Value

The "separate model" of local control is key to the success of MOUs, whose mission is providing community value.

- OWNERSHIP: Community ownership.
- MISSION: Reasonable rates and community value. Utility policies that are responsive to community priorities.
- GOVERNANCE:
  - **Local governance by elected city councils and also citizen boards, both accountable to citizen/ratepayers.**
  - **Extensive public participation in the local utility governance process.**
  - **Limited PUC regulation (for transmission costs, appeals, statewide market and reliability matters via ERCOT).**
- INFRASTRUCTURE-BASED: MOUs own and operate utility infrastructure, including power plants and/or electric lines (unlike city "aggregators" who are just purchasing agents in deregulated areas).
- RATES: Set locally. Good value – stable & at the low end of the scale.
- SERVICE QUALITY: Reliable, local, and consumer-friendly.
- FINANCE: Funded by utility revenues, not taxes.
- UTILITY PROCEEDS: Proceeds stay in the community. A portion of MOU revenues support general municipal services like public safety, roads, parks, and libraries community services.

Texas Public Power Association

MOU Performance

- **Customer satisfaction - high for fundamental reasons**.
  - MOUs are consumer owned and thus have a consumer orientation. Local employees, not remote call centers, interface with customers. Customers can participate – local processes, public meetings, etc.
- **Reliability**.
  - System Average Interruption Frequency Index (SAIFI): 0.696 average of MOUs (per TPPA), 1.071 average statewide (per PUC).*
  - Creditworthy MOUs help deploy generation to support resource adequacy.
- **Jobs and Economic Development**:
  - MOUs - significant employers in their communities – 7,044 employees.
  - MOUs are well situated to support local economic development activities – a consolidated local approach with infrastructure deployment and rate policies that help retain and attract businesses.
- **Bond ratings are among the best in the industry**.
  - Among the industry's most creditworthy. Rating agencies cite: focus on core mission, stable service areas, affordable rates, local control. "Positive" or "stable" outlooks for MOUs despite the economy. May, 2012 S&P ratings:

Austin Energy	A+	Garland (GP&L)	AA-
Bryan (BTU)	A+	Greenville (GEUS)	A+
Brownsville PUB	A+	Lubbock (LP&L)	AA-
CPS Energy	AA	New Braunfels	AA
College Station	A+	Seguin	A
Denton	AA-		

**Reliability information: PUC Project 40078, TPPA. While comparisons may be indicative, the purpose of SAIFI and other indices is to measure individual utility performance.*

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Payments and Contributions by MOUs to Local Government

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The Financial Relationship Between MOUs and Local Governments

- Municipally owned electric utilities (MOUs) provide benefit to their communities in the form of payments and contributions to local governments.
- Payments come in several forms, variously calculated and referred to as: general fund transfers, returns on investment, and/or franchise fees.
- Contributions can also be “in kind” – reduced cost or free services to the city, such as streetlighting, and electric service/maintenance at city buildings.
- Other contributions can take the form of direct MOU funding of specific community activities, for example economic development.

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Part of MOUs' Value Proposition

- Financial support for local government is a key component of MOUs' value proposition.
  - A long-standing, stable, well-established practice – common among the nation's 2000+ MOUs.
  - Viewed positively by the financial community (which rates MOUs among the industry's most creditworthy).
  - Helps to fund local services like police, parks, and libraries.
  - Helps to keep local taxes low.
  - Helps the local economy and jobs. MOU proceeds always stay local (unlike the proceeds of private utilities which can go to out-of-state stockholders).

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NOTE ON TPPA SURVEY:

- *Conducted during April/May, 2012.*
- *Information reported for the most recent fiscal year of each MOU.*
- *All MOUs in Texas were solicited. Those responding to the TPPA survey represent over 92% of the municipal sector (number of customers, peak load).*
- *For the survey, MOUs are sometimes classified by size.*
  - *Large MOUs. Greater than 10 million MWh/year in retail sales. Two systems: Austin Energy and CPS Energy of San Antonio.*
  - *Mid-sized MOUs. Less than 3 million MWh/year and greater than 500,000 MWh/year. Eight systems, examples include Brownsville PUB, Denton Municipal Electric, Garland Power & Light, Lubbock, and New Braunfels Utilities (NBU).*
  - *Small MOUs. Less than 500,000 MWh/year. 60 systems, examples include: Boerne, Floresville, Floydada, Seguin, and Weimar.*

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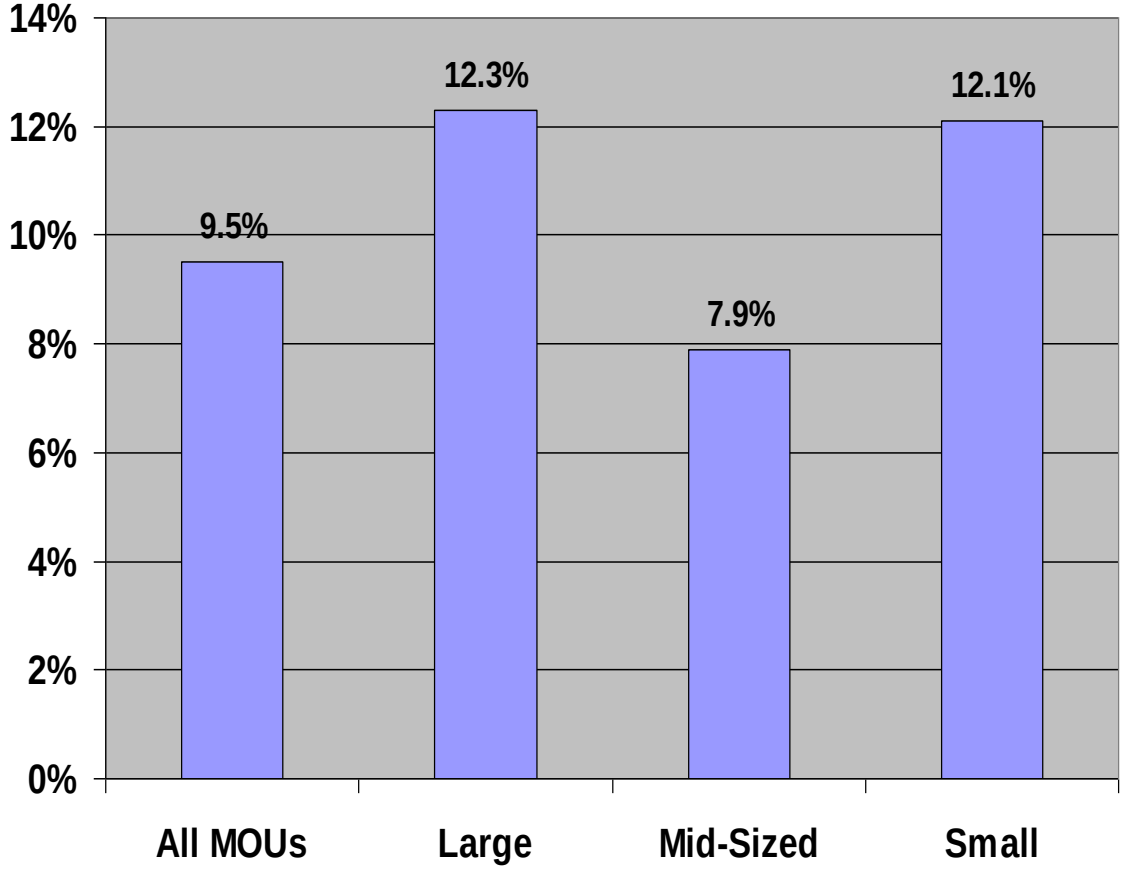
All MOU Payments and Contributions – Percent of Gross Utility Revenue



Each surveyed MOU makes structured payments to local government, and many also make in-kind or other contributions.

SURVEY MEDIAN:

- 9.5% - all MOUs.
- 12.3% - large.
- 7.9% - mid-sized.
- 12.1% - small.

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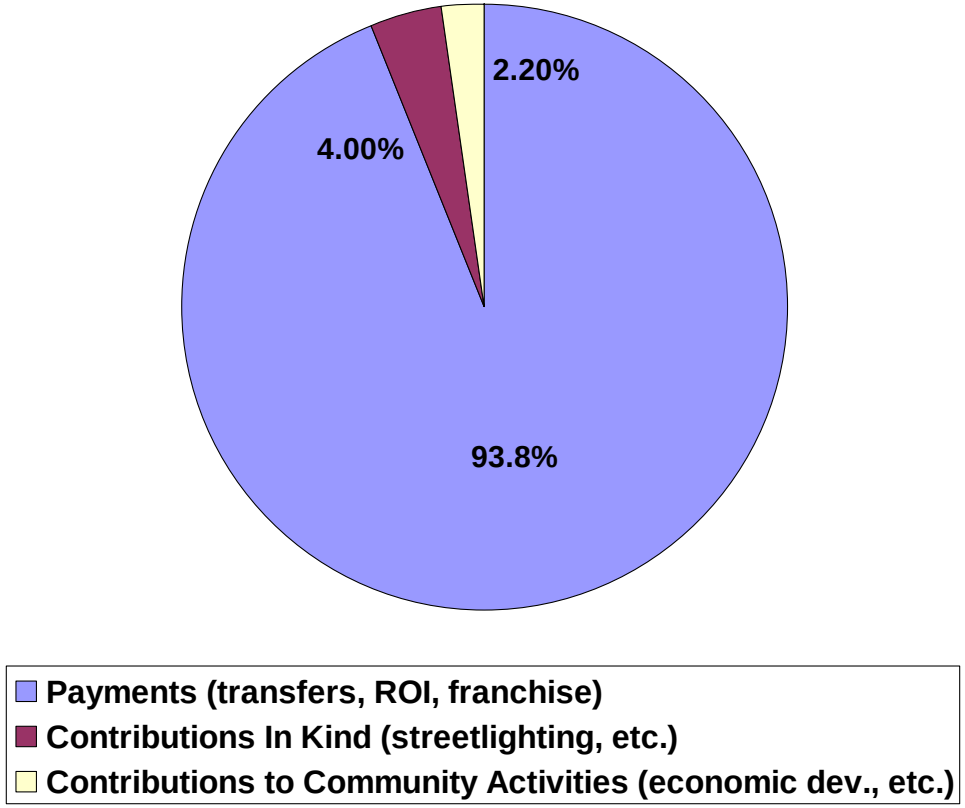
Types and Size of Payments & Contributions



Most of the value stream is in the form of "payments". In kind and other contributions are small in comparison.

TYPES:

- Payments – reported by all surveyed – transfer to general fund, return on investment, franchise, or a combination.
- In Kind Services – about half those surveyed - free or reduced cost streetlighting, electricity / maintenance for city buildings.
- Contributions to Community Activities: reported by one-in-six systems surveyed, includes economic development, youth and elderly programs, and other civic endeavors.

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Payments: Policy and Method

- Formal local policies specifying how payments are calculated are more common in large and mid-sized systems.
- A significant majority of large and mid-sized systems calculate payments based on some percentage of revenue.
- Other methods, like flat amounts and year to year determinations are more common with smaller systems.
- Some use a combination of methods.

Formal policies are common in large and mid-sized municipal systems.

Method of Payment by System Size			
	Large	Mid	Small
% of revenue or adj. revenue	100%	69%	25%
KWh basis		8%	7%
Return on investment		15%	
Franchise fee basis		8%	7%
Year to year			50%
Flat amount			11%

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Transparency

- MOU payments and contributions to local government are set and regularly reviewed via a public and transparent local process.
- Surveyed MOUs variously report the following transparency methods:
  - Annual city budget process and utility budget process, including public notice, public hearings, governing body consideration, and web/media information.
  - Public presentations to council, utility boards, and or advisory boards.
  - Annual utility audits, financial statements, monthly financial reports.
  - Utility communications including utility newsletter, bill stuffers, and utility website.
  - Other city and community reports.
  - Coverage by the local media.

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Overlapping Functions

- MOU and general city functions – overlapping and allocated.
  - For example: administration, fleet, finance, personnel, etc.
  - Surveyed MOUs report that shared functions are allocated on a cost basis, with apportioned costs paid for on a relative basis by the MOU and general government departments respectively.
- MOU and general city functions – separate, analogous, but not redundant. Larger MOUs, including those with board governance, are more likely to have in-house utility-specific functions, for example utility-specific billing, accounting, and information technology. These in-house MOU functions may be analogous to, but are not duplicative of certain general city functions.

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MOU Governance

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The Form of MOU Governance is a Local Decision

Three MOU Governance Models in Texas:

- City Council Governance by local elected officials.
- "Legacy" MOU Governing Board. As authorized in Sec. 1502 of the Government Code. Board of Trustees has 5-7 members, including the Mayor Ex-Officio. Examples include: Brownsville PUB, CPS Energy, Kerrville PUB, New Braunfels Utilities, etc.
- "Contemporary" MOU Governing Board. As authorized on Sec. 552 of the Local Government Code. Board may be created and its composition and powers specified by ordinance (or charter). Empowered to varying degrees to manage and control the MOU, sometimes sharing authority with city council. Examples include: Greenville - GEUS, Lubbock - LP&L.

Non-Governing Citizen Advisory Bodies:

- Advisory Bodies: For some MOUs with each type of governance, citizen advisory boards supplement the governing body but have no authority and only offer advice. Examples include: Austin's Electric Utility Commission (EUC), Denton's Public Utilities Board, and CPS Energy's Citizens Advisory Committee.

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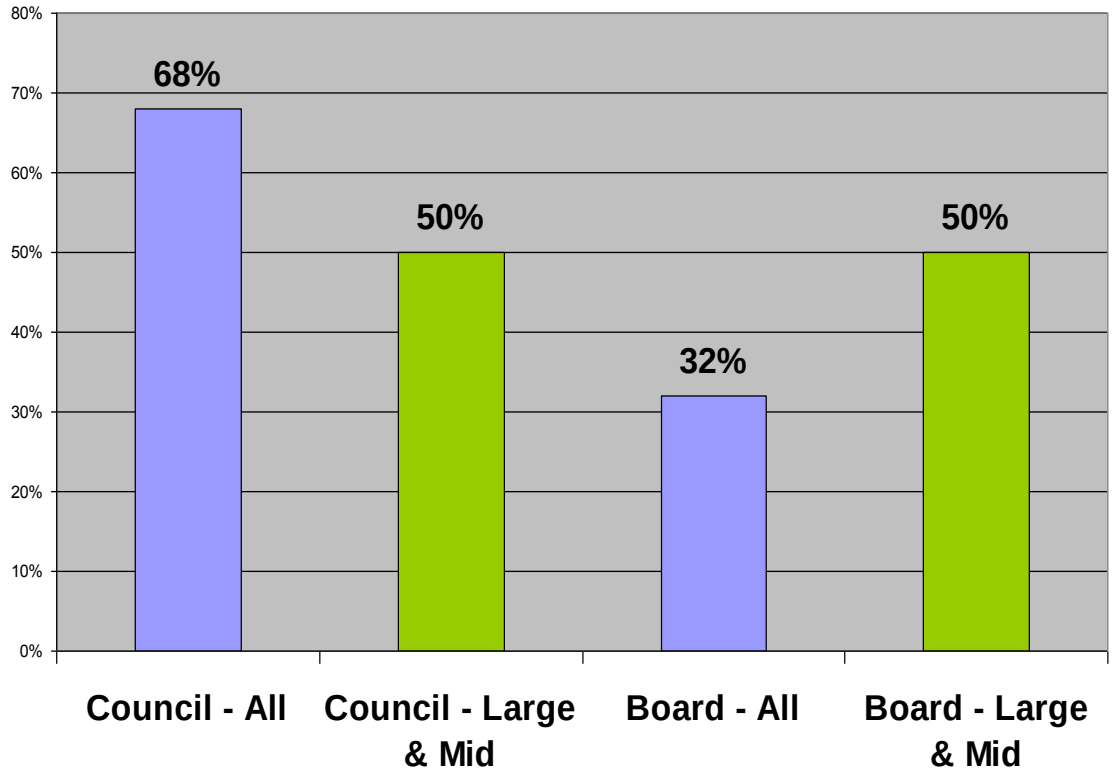
Governance Types



City Council Governance:

- 68% of surveyed MOUs – the rule among small systems.

Board Governance:

- 32% of surveyed MOUs.
- 50% of the large and mid-sized systems.
- Most Board members are council appointed. Mayors (and rarely council members) can serve as voting ex-officio members.

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Governing Body Terms and Compensation

- MOU Board members have a longer term of service and are more likely to be subject to term limits than Council members.
- Whether on a Board of Council, members of a MOU governing body are just about as likely to get paid.
- The median compensation for MOU council members or board members is $1,025 and $300 per year respectively.

	MOUs with City Councils	MOUs with Boards
Average term of office.	2.4 years	3.6 years
Subject to term limits?	32%	66%
Paid?	63%	56%
Median annual compensation.	$1,025	$300

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Authority: Council-Governed MOUs

- For MOUs that are governed by City Councils, almost all of the authority is with the Council.
  - Rate setting.
  - Bond issuance (exception – one by voters).
  - Eminent domain.
  - Set utility budget.
  - Enter into purchased power agreements.
  - Authorize utility investments.
- The authority to hire and set the salaries of key MOU executives can be with the Council (58% of respondents) or with the city manager (42%).

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Authority: Board-Governed MOUs

- Even in the systems that have a governing board, 88% of the time, the city council retains the three major authorities.
  - Rate setting, bond issuance, and eminent domain by Council.
  - Only the GEUS does all three at the Board level. The KPUB Board sets commercial but not residential rates.
- Essentially all MOU boards exercise the following authorities:
  - Set utility budget (exception – one MOU gets council approval).
  - Determine salaries of key MOU executives.
  - Enter into purchased power agreements (PPAs).
  - Authorize utility investments (exception – one MOU does this via the city investment office and council policy).

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Outside-City MOU Ratepayers

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Outside City Ratepayers

- The vast majority of MOUs have some outside city ratepayers. The reason: MOU electric service territory boundaries were drawn by the PUC in the 1970s based mainly on where utility infrastructure was located at the time – city limits, county lines, and other demarcations were minor considerations in that PUC process.
- Only the PUC, not MOU cities, can change service territory boundaries. This occurs rarely, only under certain circumstances, and usually by mutual agreement between two adjacent utilities.
- The vast majority of the MOUs surveyed by TPPA serve customers outside their city limits.
  - For those MOUs, an average of about 12.8% of their customer base is outside the city.
  - Some of those MOUs serve within other suburban cities. Of those who do, 88% pay a franchise fee to suburban cities averaging 3.4%. All but one fund suburban franchise fees on a system-wide basis.

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Outside City Ratepayers – Fair Treatment

- Rates: Virtually all MOUs with outside city customers charge them the same rates as customers within the city.
- Payment to MOU Local Government: All report that a payment to the MOU's local government (transfer, ROI, etc.) is included in both outside and inside city rates.
- Process:
  - In all cases, outside city MOU ratepayers (just like in-city ratepayers) have access to local public processes regarding utility policies and rates.
  - 3 MOUs have a board structure which can include outside city ratepayers – two do so currently.
  - 5 MOUs have outside city ratepayers in an advisory role, for example on utility advisory commissions (Austin Energy, CPS Energy, FELPS, Georgetown, and GEUS).
  - State law provides that outside city ratepayers can petition the PUC to set their rates instead of the MOU on appeal.

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2010 Governance Survey

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Introduction
In April 2010 the American Public Power Association conducted its eighth "Governance Survey." The purpose of the survey is to determine the type of control local governments exercise over publicly owned electric systems. This report summarizes the survey data, presenting information on the type of governing bodies that oversee public power systems, term limits and compensation of governing body members, and the authorities granted to utility governing bodies.

Questionnaires were mailed to almost 1,900 local publicly owned electric systems in the United States, and 658 completed survey forms were returned to APPA. Excluded from the survey are public power systems, such as joint action agencies, that sell power primarily at wholesale. Although 658 utilities completed the survey, not all of the respondents answered every question.

Profile of Respondents
Since the composition of survey respondents is heavily weighted toward utilities with a relatively small number of customers, most survey results are presented by customer size class. As shown in Table 1, 86 percent of respondents serve less than 20,000 customers, and the two largest customer size classes account for the remaining 14 percent of respondents.

Table 1
Number of Respondents by Customer Size Class

Customer Size Class	Number of Responses	Percent of All Respondents
Less than 5,000 Customers	408	62%
5,000 to 20,000 Customers	161	24%
20,000 to 50,000 Customers	55	9%
Greater than 50,000 Customers	34	5%
TOTAL	658	100%

Ninety-three percent of respondents are municipally owned utilities. The other seven percent are state-owned utilities or political subdivisions, for example county-wide utilities, public power districts or public utility districts in Washington, Oregon and Nebraska, and irrigation or utility districts in Arizona and California.

The majority of respondents, or 59 percent, are governed by a city council, while the remaining 41 percent are governed by an independent utility board. (The term "city council" includes similar entities such as a county council, town council, borough council or board of selectmen.) Results vary significantly when summarized by customer size class as the smallest customer size class is the only one in which the majority of utilities are governed by a city council. Seventy-two percent of the respondents with less than 5,000 customers are governed by city councils compared to only 32 percent of respondents with greater than 50,000 customers.

Independent utility boards that are appointed are more than twice as common as utility boards that are elected. However, all public utility districts and public power districts are governed by elected utility boards. Virtually all city councils are elected. Table 2 summarizes survey respondents by customer size class and the by type of governing body which exercises primary control over the utility.

Table 2
Type of Primary Governing Body

Customer Size Class	Number of Responses	Independent Utility Board Elected	Independent Utility Board Appointed	City Council
Less than 5,000 Customers	408	5%	23%	72%
5,000 to 20,000 Customers	161	20%	40%	40%
20,000 to 50,000 Customers	55	33%	34%	33%
Greater than 50,000 Customers	34	24%	44%	32%
TOTAL	658	12%	29%	59%

City councils play a large part in determining the make-up of appointed utility boards as they either appoint or approve the board in most cases. Fifty-nine percent of the boards are appointed by the mayor, but 85 percent of the time, the mayor's choices must be approved by the city council. The city council appoints the board jointly with the mayor for six percent of the utilities and on its own for 27 percent of the utilities.

Eighty-five percent of utilities with independent utility boards have either residency or service territory requirements for board members. These require board members to be a resident of the city or to be a customer of the utility.

Independent utility boards name their own chair in more than 90 percent of the cases, and this is true whether or not the board is elected or appointed. In regard to city councils, the mayor is the chair in 68 percent of the cases, the city council names its own chair in 22 percent of the cases, and in another nine percent of the cases, the chair is elected as chair in the general election. Table 3 summarizes this information.

Table 3
How Governing Body Chair is Named

Type of Governing Body	Mayor Is the Chair	Chair Named in General Election	Governing Body Names Chair	Chair is Appointed
Elected Utility Board	1%	8%	91%	0%
Appointed Utility Board	2%	0%	93%	5%
City Council	68%	9%	22%	1%

Term Length of Governing Body

The average term length for governing bodies is 3.8 years. Term lengths range from one to seven years, and nearly half of respondents report term lengths of four years. Almost all of the utilities reporting governing body term lengths of more than four years are governed by independent utility boards. Table 4 shows, for each type of governing body, the percent of respondents by length of governing body term.

Table 4
Term Length of Primary Governing Body

Type of Governing Body	Number of of Responses	1 to 3 Years	4 Years	5 Years or More
Independent Utility Board	266	29%	27%	44%
City Council	371	37%	63%	0%

Term Limits on Governing Body

Only 11 percent of electric utilities' governing bodies are subject to term limits. Restrictions range from one to five terms, with two terms reported as the limit 67 percent of the time. Responses varied significantly by customer size class, with utilities in the largest classes most likely to have term limits applied to the governing body. Table 5 summarizes term limits by customer size class.

Table 5
Term Limits on Governing Bodies

Customer Size Class	Number of Responses	Percent With Term Limits on Governing Body
Less than 5,000 Customers	408	4%
5,000 to 20,000 Customers	161	19%
20,000 to 50,000 Customers	55	20%
Greater than 50,000 Customers	34	47%
TOTAL	658	11%

Citizens Advisory Committee

Eleven percent of respondents reported that there is a citizens advisory committee or board that serves in an advisory capacity to the governing body. Utilities governed by city councils are more likely than those governed by independent utility boards to have a citizens advisory board: 16 percent of respondents governed by a city council reported having a citizens advisory board, as compared to 4 percent of respondents governed by an independent utility board.

The incidence of electric utilities with a citizens advisory board increases by customer size class, with the percent ranging from 7 percent of respondents in the Less than 5,000 Customers size class to 38 percent of respondents in the Greater than 50,000 Customers size class.

Compensation of Governing Body Members

Overall, 86 percent of utility governing bodies are paid. Approximately 88 percent of city councils are paid, and this result is consistent across all customer size classes. Elected independent utility boards are paid in 83 percent of the cases. There is some variation in results by customer size class; for example, all respondents in the Greater than 50,000 Customers class report that their boards are paid. For appointed utility boards, smaller utilities are more likely to have paid boards than are larger utilities: 89 percent of utilities in the smallest customer size class report that the utility board is paid, compared to 67 percent of utilities in the largest customer class.

Survey respondents reported compensation data on either an annual, monthly or per meeting basis, and all responses were converted to an annual average. Table 6 shows the median compensation for each type of governing body and customer size class. (The median amount represents the middle observation: half of the respondents reported a higher amount, and half reported a lower amount than the median.) Median compensation increases as customer size class increases, with the exception of elected independent utility boards. The highest median compensation in this category is the 20,000 to 50,000 Customers class which is dominated by Washington public utility districts.

Table 6
Median Annual Compensation of Governing Body Members
(Number of Responses in Parentheses)

	Independent Utility Board					
Customer Size Class	Elected		Appointed		City Council	
Less than 5,000 Customers	$ 2,450	(14)	$ 900	(75)	$ 1,500	(224)
5,000 to 20,000 Customers	4,800	(24)	1,800	(54)	5,400	(54)
20,000 to 50,000 Customers	21,600	(14)	2,400	(13)	7,200	(13)
Greater than 50,000 Customers	12,720	(8)	2,400	(10)	20,243	(10)
TOTAL	$ 5,700	(60)	$ 1,200	(152)	$ 2,400	(301)

Survey respondents were asked whether governing board members were eligible for either the city's or utility's medical benefit plans. Twenty-six percent of utilities with independent utility boards and 20 percent of utilities with primary oversight from the city council have governing bodies that are eligible for employee benefit plans. The results differ significantly by customer class, with 11 percent of respondents in the Less than 5,000 Customer class offering medical benefits, rising to 68 percent of respondents in the Greater than 50,000 Customer class.

Survey respondents were also asked whether governing board members were eligible for retirement benefit plans. Fourteen percent of utilities with independent utility boards and 21 percent of utilities governed by a city council have governing bodies that are eligible for retirement benefit plans. Seventeen percent of respondents in the two smaller customer classes have governing bodies that are eligible for retirement benefits; in contrast, 29 percent of respondents in the two larger customer classes have governing bodies that are eligible for these benefits.

Note that the survey asked only about eligibility for either medical or retirement benefits. It did not ask who was responsible for paying for the benefit plans, the city/utility or the governing board member.

Authority of Governing Body

Survey respondents were asked to indicate which governing body or individual has final approval for eight specific actions: setting retail electric rates, approving the utility budget, setting salaries of key utility officials, issuing long-term bonds, making financial investments for the electric utility, approving purchased power contracts, exercising the right of eminent domain, and hiring and firing utility personnel. Except for the last function – hiring and firing – the authority for these functions overwhelmingly resides with the city council for utilities under city council control. However, for utilities under the control of an independent utility board, the results are more mixed. While the independent utility board has authority for a majority of utilities for seven out of the eight functions, the city council – either on its own or jointly with the utility board – retains authority for a significant number of utilities.

The following descriptions and tables summarize the distribution of authority under independent utility boards as the primary governing body and under city councils as the primary governing body.

Independent Utility Board as Primary Governing Body

Approximately 270 utilities report that an independent utility board is their primary governing body. A majority of these utilities list the independent utility board as retaining final authority for all of the eight functions except for issuing long-term bonds. Utility boards are most likely to have final approval over setting salaries of key utility officials, approving utility budgets, approving purchased power contracts and making financial investments. Boards are least likely to have final approval over issuing long-term bonds and exercising the right of eminent domain.

Table 7 summarizes the results by customer size class. For each of the eight functions, the table shows the percent of responses indicating power of final approval for (1) the independent utility board (2) the city council and (3) other entities.

Most of the "Other" responses shown in Table 7 indicate joint authority between the utility board and the city council. Exceptions include the authority to make financial investments for the utility, which often resides with the financial director, city or town treasurer or general manager, and authority to hire and fire, which typically resides with the general manager of the utility or the city manager. In addition, authority to set retail rates can reside with the state public utility commission, or with the Tennessee Valley Authority, in the case of TVA distribution systems. For some small systems (mainly in Massachusetts) a town meeting provides the final authority to issue long-term debt and to exercise eminent domain.

There are differences when comparisons are made by customer size class, but the same general pattern remains. Larger percentages of utilities report that the independent utility board has final approval over salaries, budgets, financial investments and purchased power contracts, and smaller percentages report that the board has approval over issuing long-term bonds and exercising the right of eminent domain.

Table 7
Exercise of Specific Authorities for Utilities with Independent Utility Boards as the Primary Governing Body

Authorities	Number of Responses	Independent Utility Board	City Council	Other
Less than 5,000 Customers				
Set retail electric rates	112	76%	10%	14%
Approve utility budget	112	81%	13%	6%
Set salaries of key utility officials	112	82%	13%	5%
Issue long-term bonds	111	54%	33%	13%
Make financial investments for utility	113	78%	11%	11%
Approve purchased power contracts	113	80%	12%	8%
Exercise right of eminent domain	111	49%	41%	10%
Hire and fire utility personnel	111	77%	9%	14%
5,000 to 20,000 Customers				
Set retail electric rates	97	70%	15%	15%
Approve utility budget	97	87%	12%	1%
Set salaries of key utility officials	97	92%	5%	3%
Issue long-term bonds	95	38%	52%	10 %
Make financial investments for utility	96	78%	8%	14%
Approve purchased power contracts	97	81%	13%	6%
Exercise right of eminent domain	95	52%	37%	11%
Hire and fire utility personnel	97	70%	2%	28%
20,000 to 50,000 Customers				
Set retail electric rates	36	78%	14%	8%
Approve utility budget	36	78%	19%	3%
Set salaries of key utility officials	35	83%	14%	3%
Issue long-term bonds	36	53%	44%	3%
Make financial investments for utility	34	74%	6%	20%
Approve purchased power contracts	36	75%	8%	17%
Exercise right of eminent domain	36	53%	42%	5%
Hire and fire utility personnel	36	61%	6%	33%
Greater than 50,000 Customers				
Set retail electric rates	23	70%	22%	8%
Approve utility budget	23	70%	26%	4%
Set salaries of key utility officials	23	91%	9%	0%
Issue long-term bonds	23	48%	35%	17%
Make financial investments for utility	22	86%	0%	14%
Approve purchased power contracts	21	86%	5%	9%
Exercise right of eminent domain	20	75%	25%	0%
Hire and fire utility personnel	22	77%	0%	23%

City Council as Primary Governing Body

Approximately 380 utilities report that the city council is their primary governing body. For all customer size classes combined, 90 percent or more of these utilities indicate that the city council has final approval for six of the eight functions surveyed. The two exceptions are making financial investments for the electric utility and hiring and firing utility personnel. These two functions are still performed by the city council for the majority of respondents, but an individual controls these decisions in many other cases. The city treasurer, city manager, financial director, or other utility staff are the individuals most often listed as making financial investments, while the utility general manager or the city manager most often have final hiring and firing authority.

The "Other" category is of significant size for two additional functions: setting retail rates and setting salaries. State utility commission authority makes up the largest part of the "Other" category for setting retail rates, and the city manager (or other city administrator) is the "Other" category for setting salaries.

There are differences in the city council's authority when comparisons are made between customer size classes. For example, the smallest customer size class is the only one for which the city council maintains authority for hiring and firing for the majority of systems. In addition, city councils have final approval over salaries and making financial investments for a smaller percentage of utilities in the larger customer size classes.

Table 8 summarizes the results by customer size class. For each of the eight functions the table shows the number of responses and the percent of responses indicating power of final approval for (1) the city council and (2) other entities.

Table 8
Exercise of Specific Authorities for Utilities with City Councils as the Primary Governing Body

Authorities	Number of Responses	City Council	Other
Less than 5,000 Customers			
Set retail electric rates	285	90%	10%
Approve utility budget	286	99%	1%
Set salaries of key utility officials	283	93%	7%
Issue long-term bonds	283	97%	3%
Make financial investments for utility	285	91%	9%
Approve purchased power contracts	286	97%	3%
Exercise right of eminent domain	280	98%	2%
Hire and fire utility personnel	282	73%	27%
5,000 to 20,000 Customers			
Set retail electric rates	60	90%	10%
Approve utility budget	60	97%	3%
Set salaries of key utility officials	60	87%	13%
Issue long-term bonds	60	97%	3%
Make financial investments for utility	59	71%	29%
Approve purchased power contracts	60	90%	10%
Exercise right of eminent domain	59	98%	2%
Hire and fire utility personnel	59	31%	69%
20,000 to 50,000 Customers			
Set retail electric rates	18	100%	0%
Approve utility budget	18	100%	0%
Set salaries of key utility officials	18	67%	33%
Issue long-term bonds	18	100%	0%
Make financial investments for utility	18	61%	39%
Approve purchased power contracts	18	78%	22%
Exercise right of eminent domain	18	94%	6%
Hire and fire utility personnel	17	18%	82%
Greater than 50,000 Customers			
Set retail electric rates	11	100%	0%
Approve utility budget	11	100%	0%
Set salaries of key utility officials	11	73%	27%
Issue long-term bonds	11	91%	9%
Make financial investments for utility	11	45%	55%
Approve purchased power contracts	11	82%	18%
Exercise right of eminent domain	11	100%	0%
Hire and fire utility personnel	11	18%	82%

Referenda

Tables 9 and 10 present information on actions required to issue bonds and to sell the utility system. Seventeen percent of respondent utilities require a voter referendum to issue bonds, and smaller systems are more likely than large utilities to require a referendum.

Table 9
Referendum Required to Issue Revenue Bonds

Customer Size Class	Number of Responses	Voter Referendum
Less than 5,000 Customers	408	23%
5,000 to 20,000 Customers	161	9%
20,000 to 50,000 Customers	55	7%
Greater than 50,000 Customers	34	3%
TOTAL	658	17%

Forty-four percent of utilities require a voter referendum to sell the utility system, and larger utilities are more likely than smaller utilities to require a voter referendum. Of those requiring a referendum, 78 percent need the approval of a simple majority to sell the utility, and 22% require a supermajority.

Fifty-seven percent of utilities require a vote of the governing body to sell the utility, and smaller utilities are more likely to require a vote than larger utilities. Of those requiring a vote by the governing body, 82% require a simple majority of the vote and 18% require a supermajority.

Table 10
Action Required to Sell the Utility

Customer Size Class	Number of Responses	Voter Referendum	Vote of the Governing Body
Less than 5,000 Customers	408	39%	62%
5,000 to 20,000 Customers	161	49%	50%
20,000 to 50,000 Customers	55	56%	51%
Greater than 50,000 Customers	34	59%	38%
TOTAL	658	44%	57%

Aggregation of Demand Response

Utilities were asked if their regulatory body had passed an ordinance concerning the aggregation of demand response for sale to the wholesale power market. Eleven percent of utilities have passed such an ordinance. Most of these utilities are in the two smallest customer size classes.

Payments in Lieu of Taxes

Seventy-four percent of survey respondents make payments in lieu of taxes to their state or local governments. (Payments in lieu of taxes may be called by a different name, such as tax equivalents or transfers to the general fund.) Results differ by customer size class, as only 69 percent of utilities in the smallest customer size class make payments in lieu of taxes, compared to over 75 percent of the utilities in the three largest classes. Eighty-two percent of utilities with independent boards make payments compared to 69 percent of utilities governed by city councils. Table 11 shows, by customer class, the percent of respondents that make payments in lieu of taxes.

Table 11
Utilities that Make Payments in Lieu of Taxes

Customer Size Class	Number of Responses	Percent that Make Payments
Less than 5,000 Customers	408	69%
5,000 to 20,000 Customers	161	86%
20,000 to 50,000 Customers	55	76%
Greater than 50,000 Customers	34	88%
TOTAL	658	74%

Of the utilities that make payments in lieu of taxes, 63 percent use a formula to determine the amount. Utilities in the smallest customer size class are least likely to use a formula, while utilities in the largest classes are the most likely to use a formula. Seventy-six percent of utilities under the control of a utility board use a formula to determine the amount of payments in lieu of taxes, compared to only 53 percent of utilities under the control of a city council. Table 12 shows, by size and governing body type, the percent of utilities that use a formula to determine the amount of payments in lieu of taxes.

Table 12
Percent of Utilities Making Payments in Lieu of Taxes
that Use a Formula to Determine the Amount
(Number of Responses in Parentheses)

	Primary Governing Body					
Customer Size Class	Utility Board		City Council		Total	
Less than 5,000 Customers	63%	(96)	43%	(184)	50%	(280)
5,000 to 20,000 Customers	84%	(83)	69%	(55)	78%	(138)
20,000 to 50,000 Customers	88%	(25)	88%	(17)	88%	(42)
Greater than 50,000 Customers	90%	(20)	80%	(10)	87%	(30)
TOTAL	76%	(224)	53%	(266)	63%	(490)

(More detailed information on payments in lieu of taxes and other payments and contributions is available in APPA's series of reports, *Payments and Contributions By Public Power Distribution Systems To State and Local Government*. The reports include data on the amount and type of payments and contributions, summaries by customer size class and region, and comparisons with investor-owned utilities.)

Utility Service to Customers Outside of Municipal Boundaries

The public power systems that completed APPA's survey include both municipally owned utilities and other political subdivisions – such as state-owned utilities, public power districts, public utility districts, and municipal utility districts – that provide electric service. Of the 658 respondents, 613 or 93 percent are municipally owned utilities, and these utilities are the basis for information provided about service to customers outside of the municipality's boundaries. Sixty-four percent of respondents from municipally owned utilities – or a total of 393 systems – serve at least some customers located outside the municipality's boundaries.

Utilities that served customers outside of the municipality's boundaries were asked to estimate the percent of customers outside of the boundaries. Table 13 shows that 55 percent of these utilities serve a relatively small number of customers – five percent or less – outside of the boundaries. At the other extreme, nearly a quarter of the utilities reported that more than 20 percent of their customers are outside of the municipal boundaries.

Table 13
Percent of Customers Outside Municipal Boundaries
(Some utilities did not respond to this question)

Percent of Customers that are Outside Municipal Boundary	Number of Utilities Reporting	Percent with Customers Outside of Boundaries
One Percent or Less	107	30%
More than One and Up to Five Percent	88	25%
More than Five and Up to Ten Percent	47	13%
More than Ten and Up to Twenty Percent	31	9%
More than Twenty Percent	83	23%
TOTAL	356	100%

The 393 utilities were asked about the relationship between the utility and the customers located outside of the municipality. Two percent of these utilities include on the governing body a representative for customers outside the municipality, and 14 percent make payments in lieu of taxes to jurisdictions outside the municipal boundaries. The pattern is the same for both actions: larger utilities and utilities with independent utility boards are the most likely to have a governing body representative for customers outside the municipality and are most likely to make payments to jurisdictions outside the municipal boundaries. (See tables 14-A and 14-B.)

Table 14-A
Utilities that Serve Customers Outside Municipal Boundaries

Customer Size Class	Number that Serve Outside Boundaries	Governing Body Includes a Representative From Outside Municipality	Utility Makes Payments in Lieu of Taxes to Outside Jurisdictions
Less than 5,000 Customers	245	1%	8%
5,000 to 20,000 Customers	101	4%	16%
20,000 to 50,000 Customers	30	3%	43%
Greater than 50,000 Customers	17	12%	29%
Total	393	2%	14%

Table 14-B

Type of Governing Body	Number that Serve Outside Boundaries	Governing Body Includes a Representative From Outside Municipality	Utility Makes Payments in Lieu of Taxes to Outside Jurisdictions
Independent Utility Board	164	5%	24%
City Council	229	0%	7%
Total	393	2%	14%

Finally, the 613 municipal electric utilities were asked which other utility services are provided by the municipal government. As shown in Table 15 below, water and sewer are the most common utility services provided by the municipal government.

Table 15
Other Utility Services Provided by the Municipal Government

Utility Service	Number that Provide Service	Percent of Municipal Electric Utility Respondents
Gas	97	16%
Water	564	92%
Sewer	518	85%
Wastewater	418	68%
Cable TV	38	6%
Other	125	20%

Respondents included services such as garbage, telecommunications, Internet, sanitation, and storm water in the “other” category.

PRELIMINARY INFORMATION RE: GOVERNANCE AND LATE FEES FROM LPPC MEMBER UTILITIES

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? If yes, how are they elected or appointed (and if appointed, are they confirmed)? How many members are on these boards/commissions?

IID:
We have an elected Board of Directors consisting of five members. They represent the division they live in, but are elected at large.

JEA:
Yes, we have a seven member board/commission appointed by the Mayor and approved by Jacksonville City Council.

Platte River:
Yes, we have an eight member board appointed by their city councils.

OPPD:
Yes , we have an eight member Board of Directors elected by subdivision.

NYPA:
NYPA has six trustees nominated by the governor and confirmed by the state Senate. They have staggered terms. We presently have trustees nominated by 3 different governors. Currently NYPA has six trustees but the statute allows for (7) seven. There is one vacancy.

CPS Energy:
We have a five member Board, including Mayor, appointed by City Council.

Austin Energy:
Seven member Austin City Council, consisting of the Mayor and six council members elected at large, have oversight of our utility. Each member serves a staggered three-year term. Three of the members are voted on one year, with the remaining members, including the Mayor, elected the following year. Term limits require that the Mayor and Council Members serve in their respective seat for a maximum of nine years, or three consecutive terms.

LADWP:
Yes, we have a five member Board of Commissioners appointed by the Mayor and confirmed by the City Council.

Chelan County PUD:
We have a five member Board of Commissioners which are elected.

Santee Cooper:
Santee Cooper has an 11-member Board of Directors that has complete oversight of the utility. The members are appointed by the Governor, screened by a committee appointed by the State Legislature, and confirmed by the full Senate of South Carolina

Snohomish PUD:
Snohomish has a 3-member elected board.

LCRA:
LCRA is governed by a Board of Directors which is the policymaking body for LCRA. In addition, LCRA and LCRA Transmission Services Corporation (LCRA TSC) are regulated by the Public Utility Commission of Texas. The LCRA Board of Directors are appointed by the Governor and confirmed by the Texas Senate. The Governor also designates the chair of the LCRA Board of Directors, who serves at the pleasure of the governor, as opposed to a specific term. The LCRA Board of Directors has fifteen members. They serve six-year staggered terms so that every two years, one-third of the board is either replaced or reappointed.

Clark PUD:
Clark PUD has a three-member Board of Commissioners elected by the voters. Commissioners serve six-year terms with one position open every two years.

Tacoma Public Utilities:
TPU has a five member Public Utility Board. Board. Members are appointed to staggered five-year terms by the Tacoma City Council.

SRP:
We have a President, Vice President and 14 member Board. All members are elected to 4 year terms and serve staggered terms.

Colorado Springs Utilities:
Colorado Springs Utilities' 9 member governing board is called the Utilities Board . They are the elected members of city council and the same members serve as our Utilities Board. The Mayor serves as Chair of the Utilities Board, Vice Mayor serves as Vice Chair of the Board

SMUD:
SMUD has an elected seven member Board.

LIPA:

15 member Board of Trustees – 9 appointed by the Governor (1 of whom the Governor designates as Chairperson), 3 appointed by the Senate Majority Leader and 3 by the speaker of the Assembly.

2. Who sets/approves your rates...for transmission, generation, fuels?

IID:
Board.

JEA:
Board.

Platte River:
Board.

OPPD:
The OPPD Board of Directors.

NYPA:
NYISO sets our rates : NYPA is a wholesaler; we are not a distribution utility.

CPS Energy:
City Council approves rates.

Austin Energy:
Mayor and City Council.

LADWP:
Board, City Council and Mayor.

Chelan County PUD:
Board.

Santee Cooper:
Rates for all types of Santee Cooper services are analyzed, reviewed and recommended by Santee Cooper staff and Executive Management, and approved by the Board of Directors.

Snohomish:
Board.

LCRA:
The LCRA Board of Directors has rate-setting authority for electric generation rates and fuel charges to its wholesale electric customers. It should be noted that LCRA does not engage in retail electric sales. The Public Utility Commission of Texas approves transmission rates charged and recovered by LCRA TSC.

Clark PUD:

The board of commissioners is responsible for setting policy for the utility and appointing the CEO/general manager who is responsible for day-to-day operations. Among the commission's duties are approval of rates, power supply contracts, transmission and distribution projects and budgets. PUD rates and operations are not subject to review or oversight by the state's Utilities and Transportation Commission.

Tacoma Public Utilities:
The Board has broad authority to govern TPU, with the exceptions that (i) the setting of rates, (ii) the incurrence of debt, and (iii) 'system expansions' must be approved by the Council. (In practice, the provision relating to 'system expansions' has not been interpreted to relate to normal build-out of the utility infrastructure.) Since Tacoma Power and Tacoma Water are vertically integrated distribution utilities, there are not individual Transmission, Generation and Fuels rates. Composite retail rates setting is initiated by the Board and approved by the Council. For its wholesale sales of Power and Water, TPU has been granted authority to set short-term market bases rates. Contracts for longer term wholesale sales are approved by the Board.

SRP:
Board.

Colorado Springs Utilities:
City Council for rates and ordinances; Utilities Board for resolutions and other.

SMUD:
Seven Member Board.

LIPA:
Board of Trustees.

3. Who approves transmission lines?

IID:
Board approves our Transmission lines.

JEA:
For 230 kV, over 25 miles and crossing a county line the FPSC has approval through the Transmission Line Siting Act.

Platte River:
Board.

OPPD:
The Nebraska Power Review Board approves projects based upon need. The Nebraska Public Service Commission also has approval authority for transmission projects that cross another utilities service territory or cross rail lines or highways.

NYPA:

Various state agencies have input regarding approval for transmission. The legislature is also involved, especially with regard to siting power plants.

CPS Energy:
Board approves siting; Council provides condemnation authority.

Austin Energy:
Texas PUC approves siting of transmission lines in Texas with input from ERCOT. Mayor and City Council generally have authority within Austin Energy territory.

LADWP:
Board.

Chelan County PUD:
Board approves through capital budgeting process. Not sure what else you may mean. We obviously need to obtain permits from the entities/persons when crossing their lands.

Santee Cooper:
Construction and operation requirements for Santee Cooper transmission line services are analyzed, reviewed and recommended by Santee Cooper staff and Executive Management, and approved by the Board of Directors.

Snohomish:
Board.

LCRA:
The Public Utility Commission of Texas approves the routes for electric transmission lines through the granting and amending of certificates of convenience and necessity (CCNs).

Clark PUD:
The board of commissioners is responsible for setting policy for the utility and appointing the CEO/general manager who is responsible for day-to-day operations. Among the commission's duties are approval of rates, power supply contracts, transmission and distribution projects and budgets. PUD rates and operations are not subject to review or oversight by the state's Utilities and Transportation Commission.

Tacoma Public Utilities:
New transmission line construction would be approved by the Board, and for significant facilities also by the Washington State Energy Facility Siting Council (EFSEC).

SRP:
Board.

Colorado Springs Utilities:
Transmission lines are determined through an electric planning process. Based on the need date projects are managed as part of the financial planning/budget process. The budget is approved by City Council.

SMUD:
Seven member board.

LIPA:
Board of Trustees.

4. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?

IID:
No oversight on rates, but they do have limited oversight on operations.

JEA:
No.

Platte River:
No.

OPPD:
N/A. This is the responsibility of the OPPD Board of Directors.

NYPA:
PSC does not set our rates.

CPS Energy:
Only for wholesale power market and limited transmission.

Austin Energy:
No, however, the Texas PUC does have authority to review Austin Energy rates that are appealed from customers in our territory who are not located within the City of Austin boundary. And the PUC has authority over wholesale transmission rates and the wholesale market.

LADWP:
No, but it is gaining authority over a number of programs and activities.

Chelan County PUD:
Not our electric operations. There is limited "oversight" with respect to our fiber operation (wholesale fiber optics), the service providers could request the State Utility and Transportation Commission to review whether our wholesale rates are discriminatory. No such challenge made to date.

Santee Cooper:
Santee Cooper's Board has absolute authority on all facets of operations and rates. The SC Public Service Commission has no oversight authority.

Snohomish:
No.

LCRA:
The Public utility Commission of Texas has oversight of LCRA TSC's rates and certain LCRA and LCRA TSC operations. Areas include transmission rates, transformation rates, metering rates, transmission line CCNs, reliability, power quality and emergency operations plans.

Clark PUD:
PUD rates and operations are not subject to review or oversight by the state's Utilities and Transportation Commission.

Tacoma Public Utilities:
The Washington State Utilities and Transportation Commission (WUTC) has no jurisdiction over the Power or Water utilities. WUTC does have some jurisdiction over Tacoma Rail with respect to rail safety.

SRP:
Arizona Corporation Council does not have oversight over most operations.

Colorado Springs Utilities:
PUC only has jurisdiction over our rates for customers outside of city limits and only if those rates are different than customers within the city limits. In addition, we do voluntarily self-certify renewable portfolio certification to the State PUC.

SMUD:
No, SMUD is an independent Special District.

LIPA:
No.

B. Re: Late Charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? Who should we contact at your utility to get more information on this?

IID:
We do not charge a late payment.
Ms. Cheryl McDonald, head of customer accounting, 760-339-9318

JEA:
Yes.
Bud Para, Director, Government Relations
21 West Church Street T-9
Jacksonville, FL 32202-3139
9043-665-6208 (voice)
904-665-7950 (fax)

parapg@jea.com

Platte River:
N/A .
Dave Lock,
1000 E. Horsetooth Road
Fort Collins, CO 80525
970-229-5340 (work)
970-217-8900 (cell)
lockd@prpa.org

OPPD:
Yes, it is a 4% charge after 30 days.
Cynthia Buettner, Division Manager - Customer Service Operations.
Phone: (402) 636- 3746 Email: clbuettner@oppd.com

NYPA:
We do not have late charges similar to a distribution utility.
Paul Finnegan can direct further requests to the appropriate respondents.

CPS Energy:
Yes.
Sylvia Arnold 210-353-3033

Austin Energy;
Yes.
Peggy Miller (512) 505-3583

LADWP:
Yes.
Randy Howard Randy.Howard@ladwp.com

Chelan CountyPUD:
We charge 5% on the unpaid balance.
John Stoll, Customer Service Director. 509-661-4539

Santee Cooper:
Santee Cooper charges a late payment fee to retail, wholesale and industrial customers on bills past due more than 30 days.
Contact: Mr. Ed Bodie, Manager, Retail Services – 843-234-7161 or
esbodie@santeecooper.com

Snohomish:
We do not charge late fees on our bills. There are a number of fees that get charged during the collection and/or disconnect of service for non-payment. Deposits are also charged to customers who do not have established service with us or have a poor history.
Marsha Roetcisoender, Sr. Manager, Customer Accounting & Meter Reading
425-783-8529

LCRA:

LCRA is wholesale only.

Clark PUD:
Clark PUD does charge a late fee on balances that are past due by more than 30 days. The charge is 1% of the past-due amount each month, with a minimum monthly charge of $2.50 .
Mick Shutt, Corporate Communications Manager, Clark PUD, PO Box 8900, Vancouver, WA 98668 – Phone: 360-992-3238 – mshutt@clarkpud.com

Tacoma Public Utilities:
TPU does charge late fees on overdue bills.
For the particulars on these fees, contact Mr. Steve Hatcher, Customer Service Manager, at (253) 502-8691.

SRP:
Yes.
Lane Dickson – 202-898-8089 or Lane.Dickson@srpnet.com

Colorado Springs Utilities:
No.
Kelly Means, Chief Customer and Corporate Services Officer
719-668-3824
kmeans@csu.org
Monica Whiting, General Customer Revenue and Service Department
719-668-3824
mwhiting@csu.org

SMUD:
No, not for residential or commercial.
Rob Landon, Rates Administrator, 916-732-6302

LIPA:
For non-residential customers – Bruce Germano is contact person.

IID

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? We have an elected Board of Directors consisting of five members.
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? They represent the division they live in, but are elected at large.
3. How many members are on these boards/commissions? There are five on our Board.
4. Who sets/approves your rates...for transmission, generation, fuels? Our Board sets our rates.
5. Who approves transmission lines? Our Board approves our Transmission lines.
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas? No on rates but limited on operations

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? We do not charge a late payment.
2. Who should we contact at your utility to get more information on this? Ms. Cheryl McDonald, head of customer accounting, 760-339-9318

JEA

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? YES
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? Appointed by Mayor and approved by Jacksonville City Council
3. How many members are on these boards/commissions? seven
4. Who sets/approves your rates...for transmission, generation, fuels? Board
5. Who approves transmission lines? Board. For 230 kV, over 25 miles and crossing a county line the FPSC has approval through the Transmission Line Siting Act
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas? No.

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? Yes
2. Who should we contact at your utility to get more information on this? Ask me (Bud Para) and I'll find out for you.

PLATTE RIVER POWER AUTHORITY

We are trying to gather some info at the request of our members. It would be very helpful if you would send the answers to the questions below ASAP. We will share the information that we receive to all members who reply.

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? Yes
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? Appointed by their city councils
3. How many members are on these boards/commissions? 8
4. Who sets/approves your rates...for transmission, generation, fuels? The Board
5. Who approves transmission lines? The Board
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas? No

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? N/A
2. Who should we contact at your utility to get more information on this? Dave Lock

OPPD

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? Yes.
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? Elected by subdivision.
3. How many members are on these boards/commissions? Eight
4. Who sets/approves your rates...for transmission, generation, fuels? The OPPD Board of Directors.
5. Who approves transmission lines? The Nebraska Power Review Board approves projects based upon need. The Nebraska Public Service Commission also has approval authority for transmission projects that cross another utilities service territory or cross rail lines or highways.
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas? N/A. This is the responsibility of the OPPD Board of Directors.

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? Yes, it is a 4% charge after 30 days.
2. Who should we contact at your utility to get more information on this? Cynthia Buettner, Division Manager - Customer Service Operations. Phone: (402) 636-3746 Email:clbuettner@oppd.com

NYPA

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility?
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?
3. How many members are on these boards/commissions?
4. Who sets/approves your rates...for transmission, generation, fuels?
5. Who approves transmission lines?
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears?
2. Who should we contact at your utility to get more information on this?

1 -3 . NYPA has six trustees nominated by the governor and confirmed by the state Senate. They have staggered terms. We presently have trustees nominated by 3 different governors

4. NYISO sets our rates : NYPA is a wholesaler; we are not a distribution utility

5 various state agencies have input regarding approval for transmission.The legislature is also involved - especially with regard to siting power plants

6. PSC does not set our rates

B. 1. We do not have late charges similar to a distribution utility

2. Paul Finnegan can direct further requests to the appropriate respondents

Please correct previous response RE: NYPA. Currently NYPA has six trustees but the statute allows for (7) seven. There is one vacancy

CPS Energy

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility Board
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? ***Appointed by City Council***
3. How many members are on these boards/commissions? ***5 member Board including Mayor***
4. Who sets/approves your rates...for transmission, generation, fuels? ***City Council approves rates***
5. Who approves transmission lines? ***Board approves siting; Council provides condemnation authority***
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas? ***Only for wholesale power market and limited transmission***

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? ***Yes***
2. Who should we contact at your utility to get more information on this? ***Sylvia Arnold 210-353-3033***

AUSTIN ENERGY

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility?

Austin City Council -- Mayor and six council members elected at large

2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?

Each member serves a staggered three-year term. Three of the members are voted on one year, with the remaining members, including the Mayor, elected the following year. Term limits require that the Mayor and Council Members serve in their respective seat for a maximum of nine years, or three consecutive terms.

3. How many members are on these boards/commissions?

Seven

4. Who sets/approves your rates...for transmission, generation, fuels?

Mayor and city Council

5. Who approves transmission lines? Texas PUC approves siting of transmission lines in Texas with input from ERCOT. Mayor and City Council generally have authority within Austin Energy territory.

6. Does your state utility commission have oversight over your operations and rates? No, however, the Texas PUC does have authority to review Austin Energy rates that are appealed from customers in our territory who are not located within the City of Austin boundary. And the PUC has authority over wholesale transmission rates and the wholesale market.

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears?

yes

2. Who should we contact at your utility to get more information on this?

Peggy Miller (512) 505-3583

LADWP

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility?

yes, Board of Commissioners

2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?

appointed by the Mayor and confirmed by the City Council

3. How many members are on these boards/commissions?

five

4. Who sets/approves your rates...for transmission, generation, fuels?

rates - Board, City Council and Mayor

5. Who approves transmission lines?

Board

6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?

No, but it is gaining authority over a number of programs and activities

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears?

yes

2. Who should we contact at your utility to get more information on this?

I can get the information

Chelan County PUD

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? Board of Commissioners
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? elected
3. How many members are on these boards/commissions?5
4. Who sets/approves your rates...for transmission, generation, fuels? Our Board
5. Who approves transmission lines? Board approves through capital budgeting process. Not sure what else you may mean. We obviously need to obtain permits from the entities/persons when crossing their lands.
6. Does your state utility commission have oversight over your operations and rates? Not our electric operations. There is limited “oversight” with respect to our fiber operation (wholesale fiber optics), the service providers could request the State Utility and Transportation Commission to review whether our wholesale rates are discriminatory. No such challenge made to date. If yes, in what areas? See prior answer

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? We charge 5% on the unpaid balance.
2. Who should we contact at your utility to get more information on this? John Stoll, Customer Service Director. 509-661-4539

SANTEE COOPER

1. Do you have a board and or electric utility commission that has oversight of your utility?

Santee Cooper has an 11-member Board of Directors that has complete oversight of the utility.

2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?

The members are appointed by the Governor, screened by a committee appointed by the State Legislature, and confirmed by the full Senate of South Carolina.

3. How many members are on these boards/commissions?

There are 11 members on our Board.

4. Who sets/approves your rates...for transmission, generation, fuels?

Rates for all types of Santee Cooper services are analyzed, reviewed, and recommended by Santee Cooper staff and Executive Management, and approved by the Board of Directors.

5. Who approves transmission lines?

Construction and operation requirements for Santee Cooper transmission line services are analyzed, reviewed, and recommended by Santee Cooper staff and Executive Management, and approved by the Board of Directors.

6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?

Santee Cooper's Board has absolute authority on all facets of operations and rates. The SC Public Service Commission has no oversight authority.

7. Late charges:

a. Do you charge a "late payment" or penalty on bills 30 days+ in arrears?

Santee Cooper charges a late payment fee to retail, wholesale, and industrial customers on bills past due more than 30 days.

b. Who should we contact at your utility to get more information on this?

Contact: Mr. Ed Bodie, Manager, Retail Services, (843) 234-7161.
esbodie@santeecooper.com.

Snohomish

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility?

We have a 3-member elected board.

2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?

They are elected.

3. How many members are on these boards/commissions?

Three

4. Who sets/approves your rates...for transmission, generation, fuels?

board

5. Who approves transmission lines?

board

6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?

No

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears?

We do not charge late fees on our bills. There are a number of fees that get charged during the collection and/or disconnect of service for non-payment. Deposits are also charged to customers who do not have established service with us or have a poor history.

2. Who should we contact at your utility to get more information on this?

Marsha Roetcisoender

Sr. Mgr, CustomeR Accounting & Meter Reading

(425) 783-8529

LCRA

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility?

LCRA is governed by a Board of Directors which is the policymaking body for LCRA. In addition, LCRA and LCRA Transmission Services Corporation (LCRA TSC) are regulated by the Public Utility Commission of Texas.

2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?

The LCRA Board of Directors are appointed by the Governor and confirmed by the Texas Senate. The Governor also designates the chair of the LCRA Board of Directors, who serves at the pleasure of the governor, as opposed to a specific term.

3. How many members are on these boards/commissions?

The LCRA Board of Directors has fifteen members. They serve six-year, staggered terms so that every two years, one-third of the board is either replaced or reappointed.

The Public Utility Commission of Texas has three commissioners, each of whom is appointed by the Governor and confirmed by the Texas Senate. The Governor also designates the chair of the Public Utility Commission of Texas. Each Public Utility Commissioner serves a six-year, staggered term, so that a commissioner is either replaced or reappointed.

4. Who sets/approves your rates...for transmission, generation, fuels?

The LCRA Board of Directors has rate-setting authority for electric generation rates and fuels charges to its wholesale electric customers. It should be noted that LCRA does not engage in retail electric sales.

The Public Utility Commission of Texas approves transmission rates charged and recovered by LCRA TSC.

5. Who approves transmission lines?

The Public Utility Commission of Texas approves the routes for electric transmission lines through the granting and amending of certificates of convenience and necessity (CCNs).

6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?

The Public Utility Commission of Texas has oversight of LCRA TSC's rates and certain LCRA and LCRA TSC operations. Areas include transmission rates, transformation rates, metering rates, transmission line CCNs, reliability, power quality and emergency operations plans.

CLARK PUD

Missy,

Wayne Nelson asked me to respond to your e-mail. Here's our info.

Clark Public Utilities is a public utility district formed under the laws of the state of Washington. The utility is governed by a three-member board of commissioners elected by the voters. Commissioners serve six-year terms, with one position open every two years. The board of commissioners is responsible for setting policy for the utility and appointing the CEO/general manager who is responsible for day-to-day operations. Among the commission's duties are approval of rates, power supply contracts, transmission and distribution projects, and budgets. PUD rates and operations are not subject to review or oversight by the state's Utilities and Transportation Commission.

Clark Public Utilities charges a late fee on balances that are past due by more than 30 days. The charge is 1 percent of the past-due amount each month, with a minimum monthly charge of $2.50

Let me know if you need anything else.

Mick

Mick Shutt
Corporate Communications Manager
Clark Public Utilities
P.O. Box 8900
Vancouver, Washington 98668
360-992-3238

Tacoma Public Utilities

Missy, I am happy to respond to these questions. It would be tremendously helpful if I could also obtain all of the responses that you receive to the governance questions.

The governance structure for Tacoma Public Utilities (TPU) is set forth in Article IV of the Tacoma City Charter of 1953, as amended (http://www.cityoftacoma.org/Page.aspx?nid=259). TPU is composed of three operating divisions (Power, Water, Rail), which are operated as independent utilities, each with cost-of- service based rates. TPU is governed by a five member Public Utility Board. Board members are appointed to staggered five-year terms by the Tacoma City Council. Although TPU's service areas extend well beyond the Tacoma city limits, Board members must be citizens of the City. TPU is managed by a Director of Utilities (presently William (Bill) A. Gaines), who serves as the chief executive officer for the enterprise and who is answerable to the Public Utility Board. The Board has broad authority to govern TPU, with the exceptions that (i) the setting of rates, (ii) the incurrence of debt, and (iii) 'system expansions' must be approved by the Council. (In practice, the provision relating to 'system expansions' has not been interpreted to relate to normal build-out of the utility infrastructure.) Since Tacoma Power and Tacoma Water are vertically integrated distribution utilities, there are not individual Transmission, Generation and Fuels rates. Composite retail rates setting is initiated by the Board and approved by the Council. For its wholesale sales of Power and Water, TPU has been granted authority to set short-term market bases rates. Contracts for longer term wholesale sales are approved by the Board. New transmission line construction would be approved by the Board, and for significant facilities also by the Washington State Energy Facility Siting Council (EFSEC). The Washington State Utilities and Transportation Commission (WUTC) has no jurisdiction over the Power or Water utilities. WUTC does have some jurisdiction over Tacoma Rail with respect to rail safety.

TPU does charge late fees on overdue bills. For the particulars on these fees, contact Mr. Steve Hatcher, Customer Service Manager, at (253) 502-8691.

William (Bill) A. Gaines
Director / CEO
Tacoma Public Utilities
253-502-8203
bgaines@cityoftacoma.org

SRP

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? **We have a President, Vice President and Board**
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? **Elected to 4 year terms**
3. How many members are on these boards/commissions? **14 member Board + President and Vice President**
4. Who sets/approves your rates...for transmission, generation, fuels? **Board**
5. Who approves transmission lines? **Board**
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas? **Arizona Corporation Council does not have oversight over most operations.**

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? **Yes.**
2. Who should we contact at your utility to get more information on this? **Lane Dickson can put in touch with the best person.**

COLORADO SPRINGS UTILITIES

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility?
A Colorado Springs Utilities' governing board is called the Utilities Board
What are the roles of City Council/Utilities Board? The City Council plays several roles relative to Colorado Springs Utilities, including:
· Legislative Role - Includes property zoning, land use approvals, eminent domain, and ordinances.
· Regulatory Role - Includes ratemaking. If rates are the same inside and outside city limits, then City Council has jurisdiction. If differ, then the Colorado Public Utilities Commission (PUC) has jurisdiction outside of City limits for gas and electric.
· Managerial Role - City Council serves as the Board of Directors for the Utilities. City Council delegated all of its authority over management and operation of the Utilities to the Utilities Board.
- The Utilities Board has fiduciary responsibilities to protect and enhance the value of the Utilities for the benefit of the citizen owners. It must assure the operation of the Utilities in accord with sound business principles and in a manner which adds to the quality of life in the City and in its service territory.

How does the Utilities Board manage Colorado Springs Utilities?
· Policy Governance: The Utilities Board manages the Utilities using the Policy Governance model.
· Board Policies: The Utilities Board governs the management and operation of the Utilities by adopting board policies in four (4) categories:
- Utilities Board ends (e.g., customers benefit from quality utility services because . . .).
- Board-CEO linkage (e.g., The Board will instruct the CEO through written policies . . .).
- Executive limitations (e.g. The CEO shall not cause or allow any practice, activity, decision, or organizational circumstance which is either unlawful, imprudent, or in violation of commonly accepted business practices).
- Governance process policies (e.g., The Board will govern with an emphasis on (a) outward vision rather than an internal preoccupation, (b) encouragement of diversity in view points, (c) strategic leadership more than administrative detail, (d) clear distinction of Board and CEO roles, (e) collective rather than individual decisions, (f) future rather than past or present and (g) proactive rather than reactive).
· Delegation to CEO: To the maximum extent legally possible, the Utilities Board is empowered to delegate its authority for the management and operation of the Utilities as an enterprise to the CEO through written policies.

2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?
A They are the elected members of city council and the same members serve as our Utilities Board

3. How many members are on these boards/commissions?
A 9. The Mayor serves as Chair of the Utilities Board, Vice Mayor serves as Vice Chair of the Board

4. Who sets/approves your rates...for transmission, generation, fuels?
A City Council for rates and ordinances, Utilities Board for resolutions and other

5. Who approves transmission lines?
A Transmission lines are determined through an electric planning process. Based on the need date projects are managed as part of the financial planning/budget process. The budget is approved by City Council.

6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?
A PUC only has jurisdiction over our rates for customers outside of city limits and only if those rates are different than customers within the city limits. In addition, we do voluntarily self-certify renewable portfolio certification to the State PUC.

B. Re: late charges:
1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears?
A. No

2. Who should we contact at your utility to get more information on this?

Kelly Means
Chief Customer and Corporate Services Officer
719-668-8301
kmeans@csu.org

Monica Whiting
General Manager Customer Revenue and Service Department
719-668-3824
mwhiting@csu.org

SMUD:

1. Do you have a board and or electric utility commission that has oversight of your utility?

Yes, SMUD has an elected seven member Board.

2. If yes, how are they elected or appointed (and if appointed, are they confirmed)?

Elected

3. How many members are on these boards/commissions?

Seven

4. Who sets/approves your rates...for transmission, generation, fuels?

Seven Member Board

5. Who approves transmission lines?

Seven Member Board.

6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas?

No, SMUD is an independent Special District

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears?

No, not for residential or commercial

2. Who should we contact at your utility to get more information on this?

Rob Landon, Rates Administrator, 916-732-6302

LIPA

A. Please send a few sentences answering these questions and describing how your utility is governed:

1. Do you have a board and or electric utility commission that has oversight of your utility? Yes, a Board of Trustees
2. If yes, how are they elected or appointed (and if appointed, are they confirmed)? 9 appointed by the Governor (1 of whom the Governor designates as Chairperson), 3 appointed by the Senate Majority Leader, and 3 by the Speaker of the Assembly
3. How many members are on these boards/commissions? 15
4. Who sets/approves your rates...for transmission, generation, fuels? The Board of Trustees
5. Who approves transmission lines? The Board of Trustees
6. Does your state utility commission have oversight over your operations and rates? If yes, in what areas? No

B. Re: late charges:

1. Do you charge a "late payment" or penalty on bills 30 days+ in arrears? For nonresidential customers
2. Who should we contact at your utility to get more information on this? Bruce Germano

Entity	Electric Revenue last FY	Fiscal Year End	Credit Rating--Fitch 2009 *	City Dept or Separate Agency	Governance	Other Services Provided	Most recent base rate change	% System-wide increase	Next Rate Change Expected	Fuel Cost Recovery	State Law Governing Recovery of Gen Fund Transfer
Austin Energy	2009--$1,162,286,000	30-Sep	AA-	City Department	City Council/City Management	Customer services for Austin Water Utility, Drainage Utility, and Transportation	1994	10.90%	2011	Fuel Rate, no fuel in base rates	PURA upon appeal
Georgetown Utility Services	$ 59,058,745	30-Sep	AA-	City Department	City Council/City Management	Water, wastewater, gas, sanitation/recycling, effluent irrigation	1998	NA	Currently reviewing	Fuel Adjustment Clause to recover amounts in addition to amounts in base rates.	PURA upon appeal
Denton Municipal Electric	2009- $128.511,236	29-Sep	Moody's A1	City Department	City Council/City Management	Water, Wastewater, Solid Waste	2005	NA	NA	Energy cost recovery factor - Fuel rate - $0.0300/kWh	PURA upon appeal
College Station Utility	2009 -- $82,904,777	30-Sep	Moody's Aa3	City Department	City Council/City Management	Water, Wastewater	10/1/2010	6.00%	Possible Oct. 2011	Base rates	PURA upon appeal
CPS Energy	FY 2010--$1,717,077,000 ** Total Gross Revenue $1,975,204,000	City - 9/30 Utility - 1/31	AA+	Separate Agency	Independent Board appointed by City Council	Gas Service/Other	3/1/2010	Electric - 7.5% Gas - 8.5%	Spring of 2012	Fuel Adjustment Clause to recover amounts in addition to amounts in base	PURA upon appeal
Lubbock Power & Light	$ 143,222,344	30-Sep	A-	City Department	Governing Baord reports to City Council, Not City Management	Contracts electric facilites for contractors & customer service for other utilities	10/29/2010	0%, adj. for purchase of Xcel distribution system	N/A	Fuel Adjustment Clause to recover amounts in addition to amounts in base rates.	PURA upon appeal
Orlando Utility Commission	2009--$704,483,000	30-Sep	AA+	Seperate Agency	Separate Board	Lighting service, Water & Chilled Water	3/1/2009	18.20%	N/A	Fuel Rate, no fuel in base rates	None
City Utilities of Springfield	2010- $226,091,993	City - 6/30 Utility - 9/30	AA	Seperate Agency	Separate Board appointed by City Council	Water, gas, transit, broadband	10/1/2010	16%	Oct-11	Fuel Adjustment Clause	None
Gainesville Regional Utilites	2009--$369,874,275	30-Sep	S&P AA	City Department	Separate Board appointed by City Council	Water, wastewater, gas, telecom	10/1/2010	2.25%	10/1/2011	Fuel Adjustment Clause plus a small portion in the fixed rates	None

Entity	*Electric Revenue last FY*	*Fiscal Year End*	*Credit Rating--Fitch 2009 **	*City Dept or Separate Agency*	*Governance*	*Other Services Provided*	*Most recent base rate change*	*% System-wide increase*	*Next Rate Change Expected*	*Fuel Cost Recovery*	*State Law Governing Recovery of Gen Fund Transfer*
Seattle City Light	2009--$723,128,041	31-Dec	Moody's Aa2	City Depart-ment	City Council/City Management	None	1/1/2010	13.80%	NA	In Base Rates, not an issue because of hydro and purchased power	Yes, state law limits the gross revenue tax on electric utilities to no more tha 6%. Cost allocation trasfers are also subject to a state law that prohibits City departments from providing anything of value unless compensated.
Los Angeles Department of Water and Power		Did Not Respond									
Memphis Light , Gas and Water Division		Did Not Respond									
Nashville Electric Service		Did Not Respond									

*** Bond Ratings reflect Fitch except where otherwise noted**

**** CPS Energy fiscal year ends in January 2010 (Electric Revenue only)**

Governance Structures Municipally Owned Electric Utilities (MOUs)

Texas Public Power Association

April, 2011

Two Primary MOU Governance Models

- City Council governance:
  - Sometimes with the advice of a citizens' commission that itself has no governance authority.
- Board governance:
  - Empowered local governing boards, generally appointed by city councils.

Nationwide

- All public power systems:
  - 59% city council governed.
  - 41% board governed.
- Larger public power systems:
  - 32% city council governed.
  - 68% board governed.
- Large systems – authorities granted to the Board.
  - Set retail electric rates: 70% of systems grant this authority to the Board, others reserve this authority for Council.
  - Approve utility budget: 70%.
  - Set salaries of key utility officials: 91%.
  - Issue long-term bonds: 48%.
  - Make financial investments for utility: 86%.
  - Approve purchased power contracts: 86%.
  - Exercise right of eminent domain: 75%.

See: http://www.publicpower.org/files/PDFs/2010GovernanceSurvey.pdf.

Texas

- Council governed – 64 MOUs.
  - Several have citizens' advisory commissions: Austin, Denton, Garland, Weatherford, etc.
- Board governed – 8 MOUs:
  - 6 of the largest 10 Texas MOUs representing nearly 60% of the customers served in the state: Brownsville PUB, Bryan Texas Utilities (BTU), Kerrville PUB, Lubbock Power & Light, New Braunfels Utilities (NBU), and CPS Energy of San Antonio.
  - Also Greenville and Floresville.

Policy Considerations: City Council Governance

- Potential advantages:
  - Direct accountability to citizen ratepayers.
  - Integrated policy setting for both the MOU and general government can yield synergies.
  - Enhanced ability for MOU to reflect community values.
- Potential disadvantages.
  - May be perceived as introducing a higher level of politics into utility planning and operations.
  - Councils must focus on other city priorities and may not give sufficient consideration to MOU matters.
  - Councils may focus on the city's overall financial needs, possibly with less focus on utility affordability and competitiveness.
  - Council members may not have technical or business expertise and may face a steep learning curve on utility matters.
  - Outside city ratepayers may feel under-represented.

Policy Considerations: Board Governance

- Potential advantages:
  - Can enhance the business orientation of MOU governance. However, many decisions, like rate setting are inherently political.
  - Allows appointment of board members with appropriate technical or business qualifications.
  - May improve long range stability with board members serving longer than council members.
  - Allows explicit or implicit representation of various segments (consumers, outside city ratepayers, business community, etc.).
- Potential disadvantages:
  - Structurally not as accountable to voter/ratepayers as council.
  - If accompanied by organizational separation from other city functions, synergies can be lost.
  - Does not in itself impact the cost or quality of electric service.
  - Creation of a board can carry significant time and cost considerations – processing through Council and potentially the electorate, legal and advisory costs, potential costs associated with restructuring utility debt or organization, etc.

Establishment of MOU Governing Boards in Texas

- Legacy MOU Boards:
  - CPS Energy, KPUB, NBU, Brownsville PUB, Floresville.
  - Pursuant to the original “Indenture of Trust” which funded the creation of the MOU decades ago.
  - Model is not practically available to existing MOUs today.
- Modern MOU Boards:
  - Greenville (GEUS), Bryan Texas Utilities (BTU), Lubbock Power & Light.
  - Pursuant to Local Government Code Sec. 552.121.
  - Model generally available to existing MOUs today.
    - MOUs should examine local charter provisions and bond covenants for compatibility.

"Modern" MOU Boards 552.121 Basics

- Enacted in 1989, amended in 1999.
- MOU boards can be established by council ordinance or charter.
- Authority which council <u>may</u> transfer to board (all or some of the following):
  - Management and control of the MOU.
  - Rate setting.
  - Eminent domain.
  - Debt issuance.
- Discretion on governing board structure. Council may determine:
  - Number of board members, per statute.
  - Board member qualifications, per statute.
  - Other items per local authority, for example: board member terms, term limits, etc.

Texas 552.121 Boards

Based on survey and anecdotal information – may be incomplete.

	GEUS	BTU	LP&L
Membership	-5 members + Mayor -Nominated by Board Chair & Mayor, confirmed by Council.	-7 members -Council appointed. -Specific experience: accountant, attorney, engineer, etc.	-9 council appointed members + Mayor. -2 year terms, three term limit.
Rate setting	Board	Board	Council
Eminent domain	Board	Board if pre-approved by council.	Council
Debt issuance	Board	Shared	Shared
General fund transfer	Set percentage of gross utility revenues as PILOT	Recommendation by Board, final determination by Council.	Based on gross revenue or net income.
Contracting	Board with legacy exceptions.	Board	Board

References

- National statistics: APPA 2010 Governance Survey.
- Policy considerations – advantages and disadvantages: 1995 Price-Waterhouse "Strategic Assessment", City of Austin Electric Utility Department.
- Number and characteristics of Texas MOU Boards: TPPA survey and anecdotal information, informal survey by GP&L.

- *Note: this information is not intended as policy or legal advice, may not be complete or accurate in all respects, is subject to revision, and should be used for discussion purposes only.*