


LAUBER MUNICIPAL LAW, LLC
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Understanding Municipal Utilities

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What is a municipal utility?

- * A utility that is owned and operated by a city. In most cases, municipal utility rates are set at the city level, either by the municipal administration or by a local utility board or commission. In some limited circumstances, state-level regulation applies.
- * Public utilities are considered "municipal corporations". *Shepherd v. City of Wentzville*, 645 S.W. 2d 130, 133 (E. Dist. 1983).
 - * Municipal corporations operate in the otherwise private sphere. "Proprietary functions" are those actions performed for the special benefit or profit of the municipality acting as a corporate entity. *Junior Coll. Dist. of St. Louis v. City Of St. Louis*, 149 S.W.3d 442 (Mo. 2004).

Type of Municipal Owned Utilities

- * Gas
- * Electric
- * Broadband/Fiber??
- * Water
- * Sewer

Benefits of Municipal Utilities

- * Community Ownership
- * Local Control
- * Local Presence
- * The Public Interest
- * Long-Term Community Goals
- * Local Regulation
- * Reliability

Community Ownership

* A municipal utility is owned by the city it serves. It exists to provide a public service to the citizens, businesses and industries of the community. Service, not profit, is the utility's mission.

Long Term Community Goals

* The emphasis for municipal utilities is helping to achieve the long-term goals of the community. The primary mission of providing the least-cost and most reliable service over maximizing profit ensures that these goals are always in sight.

Local Control

- * Because of local control, Missouri cities with municipal utilities determine how utility services are provided within their community.
- * This includes the design and aesthetics of electric distribution systems, natural gas infrastructure, water treatment plants and water towers, and wastewater treatment plants.
- * Local control means matching local resources to local needs and offering special programs (energy efficiency & conservation, economic development incentives, etc.) to benefit citizens.

Local Regulation

- * For municipal utilities, rates and services are governed by the city itself. Utilities are commonly governed by either a city council or city commission or an appointed or elected utility board. The utility is governed by residents of the community who are customers of the utility and are thoroughly familiar with its operations and services.

Local Presence

- * Municipal utilities are located in the community and are readily available to customers. If a customer has a complaint, he or she doesn't have to take it to a state agency in Jefferson City or corporate headquarters in another city. The customer can discuss the problem locally, with another member of the community, and be assured that the problem will be addressed.

Reliability

- * With electric, gas, water & sewer crews located within the community, citizens benefit from a quick and effective local response to emergency situations and outages.

Public Interest Standard

- * A municipal utility is operated in the **public interest**, for the benefit of the residents of the city.
- * They are not operated for the benefit of stockholders who may live hundreds of miles away and have little interest in the community.
- * With private utility ownership, there is often conflict between the interests of customers and the interests of the stockholders. This disparity of interests has given rise to a complex system of regulation of private utilities that is unnecessary when the utility is publicly owned and operated for the benefit of the community it serves.

Rate Regulation and Public Interest

- * Regulated utilities are governed under the “just and reasonable” rate standard.
- * Municipal utilities are governed under the “clearly, palpably and grossly unreasonable” standard. See *Forest City v. City of Oregon*, 569 S.W.2d 330,333 (1978).
- * Courts give cities wide latitude in setting rates, finding that rate setting is a legislative function. See *Shepard v. City of Wentzville*, 645 S.W.2d 130, 133 (1982).

Rate Regulation and Rate Discrimination

- * A city has the ability to classify its users for the purpose of fixing rates and if the classification is reasonable and if there is no intraclass discrimination, it will be supported. See *Shepard v. City of Wentzville*, 645 S.W.2d 130, 133 (1982).
- * Courts have allowed and the statutes permit, the charging of nonresidents more than residents. See *Forest City v. City of Oregon*, 569 S.W.2d 330, 334 (1978).

Utility Rates

- * Municipal utilities rates are set by either the Board of Aldermen or through the Board of Public Works.
- * Rates have to be sufficient to provide for the cost of providing the service (fixed costs), capture a reserve for maintenance and repair, and overall be considered "fair and reasonable".
 - * The Board of Aldermen has very wide discretion to establish utility rates.

Utility Rates cont.

- * The Edison Institute and the Rural Water Foundation state that utility rates need to be reviewed annually and that a full rate study should be done every 5 years.
 - * On average, utility rates should raise 1-5% per year.
 - * Rate recovery should also account for the PILOTs (payment in lieu of taxes) that are transferred to general revenue.

Managing City Utilities

- * Many city utilities are managed and controlled by the Board of Aldermen or the City Council. The Board of Aldermen or Council is responsible for setting the rates of the various city utilities. This is in contrast to a City Board Of Public Works.
- * Section 91.450 permits the board to create a Board of Public Works.
- * Section 79.110 permits ownership of public utilities by fourth class cities.

Municipal owned Electric Utilities

- * 14% of electric provided in Missouri is from a municipally owned city electric utility.
- * This is in contrast to having electric provided by an Investor Owned Utility (like KCP&L) or an electric Cooperative.
- * Many cities are a member of MPUA (Missouri Public Utility Alliance) and purchases its power through a series of contracts through the MOPEP power purchase group.

MPUA and MOPEP

- * What is MPUA?
 - * MPUA is a not-for-profit service organization representing municipally-owned utilities.
 - * MPUA is the umbrella organization for 2 critical statutory organizations governing electric purchase power agreements
 - * MAMU
 - * MJMEUC
 - * MOPEP is a power pool governed by the MJMEUC board.

MJMEUC

- * Organized in 1979, the MJMEUC is a joint action agency specifically authorized by state law to obtain sufficient and economical electrical power and energy for the benefit of member municipalities and their residents. MJMEUC provides full power purchase requirements to members and arranges purchases for members in need of supplemental power.
- * In 1989, MJMEUC expanded to allow rural electric cooperatives, as well as out-of-state municipalities, to participate in MJMEUC's power supply programs and projects through an advisory membership status.

Utility Liability

- * Primarily falls under two exceptions to qualified sovereign immunity:
 - * Proprietary Function
 - * Common good of all vs. special interest of community
 - * Building and selling is usually proprietary
 - * Health, safe, and sanitation is usually government
 - * Known Dangerous Condition
 - * Physical condition
 - * Not operator error
- * Can be subject to federal/state private rights of action:
 - * Clean Water Act
 - * Clean Air Act

Concluding Thoughts

- * Broadband is also considered a utility for the city and should be approached with the same level of oversight and involvement.
- * Ensuring that rates increase in small increments, every year, helps to mitigate rate shock with larger increases.
- * Pressure on water and sewer utilities will continue for the foreseeable future.
