

JOINT ELECTRICAL UTILITIES

390.1 Definitions.

As used in this chapter, unless the context otherwise requires:

1. *"Acquisition"* of a joint facility includes the purchase, lease, construction, reconstruction, extension, remodeling, improvement, repair, and equipping of the joint facility.
2. *"City"* means a municipal corporation, but not including a county, township, school district or special purpose district or authority.
3. *"City utility"* has the same meaning provided in section 362.2, subsection 6, and includes a *"combined utility system"*, as defined in section 384.80, which operates facilities for the generation or transmission of electric energy.
4. *"Electric co-operative"* means a co-operative association which owns and operates property for generating, purchasing, obtaining by exchange or otherwise acquiring, or transmitting electric power and energy.
5. *"Governing body"* means the public body which by law is charged with the management and control of a city utility as defined in section 384.80, subsection 5.
6. *"Joint agreement"* means an agreement of participants pursuant to the provisions of this chapter. A joint agreement may be one or more documents, and may be entitled joint agreement, agreement, contract or otherwise.
7. *"Joint facility"* means all property necessary or useful for generating, purchasing, obtaining by exchange or otherwise acquiring, or transmitting electric power and energy, which is owned and operated pursuant to a joint agreement.
8. *"Or"* includes the conjunctive *"and"* and *"and"* includes the disjunctive *"or"*, unless the context clearly indicates otherwise.
9. *"Own"* and *"ownership"* in the case of transmission facilities, including substations and associated facilities, which are located in whole or in part in Iowa, may include the right to the use of an amount of the capacity of the facilities, if the joint agreement so provides. *"Own"* and *"ownership"* in the case of transmission facilities, including substations and associated facilities, does not include those which are located in states which are not contiguous to Iowa.
10. *"Participant"* means a city, electric co-operative or privately owned utility company which is a party to a joint agreement.

[C75, 77, 79, 81, § 390.1]

84 Acts, ch 1251, § 1

390.2 Additional power.

In addition to other powers conferred by the Constitution and laws of this state, any city having established a utility which operates an existing electric generating facility or distribution system may enter into and carry out joint agreements with other participants for the acquisition of ownership of an undivided interest in a joint facility and for the planning, financing, operation and maintenance of the joint facility.

[C75, 77, 79, 81, § 390.2]

390.3 Hearing exception to general statutes.

Before a city may enter into or amend a joint agreement, the governing body shall adopt a proposed form of agreement and give notice and conduct a public hearing on the agreement in the manner provided by sections 73A.1 to 73A.11, which action shall be subject to appeal as provided in chapter 73A.

However, in the performance of a joint agreement, the governing body is not subject to statutes generally applicable to public contracts, including hearings on plans, specifications, form of contracts, costs, notice and competitive bidding required under sections 384.95 through 384.103, unless all parties to the joint agreement are cities located within the state of Iowa.

[C75, 77, 79, 81, § 390.3]

84 Acts, ch 1067, § 36

390.4 Undivided joint interest.

In substance, a joint agreement shall:

1. Provide that each participant shall own an undivided interest in the joint facility, the interest being equal to the percentage of the money furnished, value of property furnished, or services rendered by each participant toward the total cost of the joint facility, and that each participant shall own and control a like percentage of the output of the joint facility.
2. Provide that each participant shall undertake to finance its portion of the cost of planning, acquisition, operation, and maintenance of the joint facility.
3. Provide that each participant in the ownership of the joint facility shall bear all taxes, if any, chargeable to its ownership of the joint facility under statutes now or hereafter in effect.
4. Provide for the planning, financing, acquisition, operation and maintenance of the joint facility, or for any one or more of said purposes, including the cost to be contributed by each participant.
5. Provide for a uniform method of determining and allocating operation and maintenance expenses of the joint facility.
6. Provide that a participant may be liable only for its own acts with regard to the joint facility, or as principal for the acts of the manager in proportion to its percentage of ownership, and shall not be jointly or severally liable for the acts, omissions or obligations of other participants.
7. Provide that the undivided interest of a participant in the joint facility may not be charged directly or indirectly with a debt or obligation of another participant or be subject to any lien as a result thereof.
8. Provide for the management and operation of the affairs of the joint facility, and the indemnification of the manager, which may include a provision that the joint facility shall be managed and operated by one or more of the participants.
9. Provide that no participant may withdraw from the joint agreement during its duration so long as obligations payable in whole or in part from revenues derived from the operation of the joint facility, and issued by a city, are outstanding, unless prior consent is first granted by each of the other participants either in the joint agreement or otherwise.

10. Provide for the method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property and assets upon partial or complete termination. The provisions of the joint agreement for disposition of the joint facilities shall not be subject to the statutes limiting or prescribing procedure for the sale of city-owned properties.

11. Provide for the duration of the agreement. An agreement authorized by this chapter shall not be limited as to period of existence, except as may be limited by the terms of the agreement itself.

12. Include other provisions as the parties may deem necessary or appropriate with respect to the conduct of the participants, the operation or ownership of the joint facility, or the settlement of disputes.

[C75, 77, 79, 81, § 390.4]

390.5 Financing.

A city may finance its share of the cost of a joint facility by the use of any method of financing available for city utilities under the statutes of this state, for the financing of electric generation or transmission facilities to be owned by a city in their entirety, including but not limited to the provisions of chapters 397 and 407, Code 1973, and sections 384.23 to 384.36 and sections 384.80 to 384.94 as applicable. Revenues derived by a city utility from its share of ownership or operation of a joint facility shall be deemed to be revenues of the city utility for all purposes including the issuance and payment of bonds secured by or payable from the revenues of a city utility. A joint agreement shall be deemed payable from revenues or revenue bonds of a city utility in the absence of provision to the contrary or a referendum approving the issuance of general obligation bonds.

[C75, 77, 79, 81, § 390.5]

390.6 Construction.

This chapter being necessary for the public health, public safety and general welfare, shall be liberally construed to effectuate its purposes. This chapter shall be construed as providing a separate and independent method for accomplishing its purposes, and except as provided or necessarily implied shall not be construed as subject to or an amendment of any other law. In particular, without limiting the generality of the foregoing, no restrictions or requirements contained in this chapter shall be construed as applying to bonds issued pursuant to the provisions of chapter 419. Nothing contained in this chapter shall be construed to limit the powers and authority of privately owned utility companies or electric co-operatives under any other law.

[C75, 77, 79, 81, § 390.6]

390.7 Construction of amendments.

The provisions of 1975 Iowa Acts, chapter 199, are retroactive in application to all joint agreements entered into and executed prior to July 1, 1975, under this chapter, on behalf of cities which, on the date of executing the agreements, operated existing electric generating or distribution facilities. However, all such joint agreements which complied with the provisions of this chapter prior to amendment by 1975 Iowa Acts, chapter 199, are also in full force and effect according to their terms, and are not rendered invalid in any respect by any provision of 1975 Iowa Acts, chapter 199.

[C77, 79, 81, § 390.7]

390.8 Equity investment in independent transmission company.

In addition to the powers conferred upon a city elsewhere in this chapter, any city operating a city electric

utility on January 1, 2003, may enter into agreements with and acquire equity interests in independent transmission companies or similar independent transmission entities in which they are participating that are approved by the federal energy regulatory commission. The purpose of such equity investments shall be to mitigate expenses incurred by the city electric utility due to its procurement of electric transmission service or to otherwise facilitate investment in transmission facilities and shall not be for general city or city utility investment purposes.

2003 Acts, ch 116, §1