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To: Public Service Commission Staff
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: October 12, 2012
Re: Comments on Draft Report on Municipal Utility PILOTs; **Docket 5-GF-215**

Thank you for the opportunity to provide feedback on the draft report on the investigation into municipal utility payment in lieu of taxes (PILOTs). I've reviewed the draft report and, on behalf of the League of Wisconsin Municipalities' 583 member city and villages, offer the following comments:

1. Municipal utility PILOT levels are primarily a matter of local control. Under the current and long standing law in this state, the governing body of a municipality that owns a public utility has discretion to determine the appropriate level of PILOTs paid by municipal utilities, subject to PSC regulations determining the maximum PILOT. If a municipality believes the PILOT is too high, it has the ability to establish a lower amount. Indeed, according to the draft report, in 2010 and 2011 approximately 23 percent of municipal water utilities had a lower PILOT authorized. There is no need for the state to micro-manage this issue.

2. PILOTs serve numerous policy goals unacknowledged by the draft report. The staff's report states that the original purpose of PILOTs was to ensure that municipal utilities were treated on par with privately owned utilities that paid a property tax. That may have been an important consideration for originally allowing municipal electric utilities to make PILOTs, however, with one exception there has not been any private water utilities in Wisconsin for some time. Regardless, the Legislature severed the link to that objective in 1995 Wis. Act 27, by creating a statutory minimum PILOT to protect a vital source of revenue to municipalities and providing to the municipality's governing body the discretion to determine the appropriate level of PILOT.

Municipal utilities make PILOTs to their municipalities for many compelling reasons, including:

- a) Municipalities, as the owners of the utilities, should receive a dividend in return for the considerable investment they make and risk they incur in establishing the utilities.
- b) Municipal utility facilities directly benefit from public services provided by municipalities, such as police, fire, and snow plowing.

- c) Municipal utility facilities are located on land within the municipality that could otherwise be privately developed with the owners paying property taxes.
- d) PILOTs provide historically stable and essential revenue that can be used to improve key public services, lower property taxes rates, or to pursue other policy goals.
- e) PILOTs are a way for municipalities to more fairly spread the cost of public services to tax exempt entities, and thereby provide some relief to property tax payers.

3. Broader perspective needed. Municipal utility PILOTs should not be analyzed exclusively from the narrow perspective of their impact on utility rates. It would be irresponsible to dramatically reduce PILOTs at this point in time. The impact on municipalities and property taxpayers would be devastating. Nearly all Wisconsin municipalities are under tremendous budget pressure.

Municipalities took a \$100 million hit in the 2011-2013 state budget to help resolve the state's fiscal difficulties. The shared revenue program alone was cut by \$48 million in 2012. This marked the third time in ten years that shared revenue was cut. The program was cut by \$57.6 million in 2004 and \$23 million in 2010.

Other cuts to municipal revenues in the current state budget include:

- 41 percent cut to the Recycling Grant Program (\$13 million).
- 6 percent cut in funding for general transportation aids (applied to cities and villages only, not towns) (\$30 million).
- 10 percent cut in mass transit aids (\$11.8 million).
- 10 percent cut in payments for municipal services program (\$2 million).

Most municipalities would be unable to make-up any loss of municipal utility PILOTs by increasing property taxes because of state imposed levy limits. In an era of strict property tax levy limits, any further attempt to cut non-property tax revenue sources will have direct service impacts on most communities.

Finally, even if a municipality were able to make-up the loss of PILOT revenue by increasing property taxes, such a result would further exacerbate a worrying trend in Wisconsin, which is residential property owners shouldering more of the burden the cost of public services.

Currently, 70 percent of the statewide property tax levy is paid by residential property owners due to state created property tax exemptions and other causes. Dramatically reducing municipal utility PILOTs will certainly increase the already huge property tax burden on homeowners.

4. Municipal utilities and private utilities are very different. It appears that there is a desire by PSC staff to treat municipal utilities in the same manner as investor owned utilities and to equate the gross receipts taxes paid to the state by private utilities with PILOTs paid to municipalities by municipal utilities. Municipal utilities are not like private utilities in many important ways, including the fact that they are not for profit, do not have highly compensated executives, and do not pay annual bonuses to executives and managers. Why then should these two different types of utilities be treated the same with respect to tax matters?

5. Other Points

- a. As far as we can tell, municipalities have never shared PILOTs with other taxing jurisdictions such as the school district. We have a 1954 legal opinion from the League's legal counsel to one of our members concluding that state law does not require a municipality to share tax equivalencies with the school district.
- b. The draft report compares what a municipally owned utility would pay if it were assessed a gross receipts tax against the amount of PILOT it pays. Yet, the gross receipts tax is not the only "tax" a private utility might have to pay. To be fair and comprehensive, the analysis should also consider, in addition to the 3.19% gross receipts tax that private utilities pay the state, the impact fees that the owners of high voltage transmission lines must pay to local governments under Wis. Stats. § 16.969. The annual impact fees equal .3% of the cost of the lines and a one-time environmental fee equals 5% of the cost of the lines.
- c. The concern expressed on page 6 that \$15 of every \$100 billed to a municipal water utility customer is transferred to the municipality's general fund seems overstated. Why is it bad public policy if PILOTs act to hold down property taxes? In cases where the water utility serves the entire municipality, this is a non-issue, other than the potential benefit to the taxpayer of tax-exempt entities indirectly paying for municipal services from which they benefit.
- d. On page 12, the draft report includes an argument that the current method for calculating PILOTs may act as a disincentive for water utilities to replace aging infrastructure and make other improvements since such investments would add to gross plant in service and result in a higher tax equivalent. According to comments I've received from my members, this concern is not even on their radar screen. The top concern for all municipal governing bodies and their utilities is public safety. No community will compromise water utility infrastructure replacement and upgrades because they fear that such public improvements will cause the PILOT to increase. We categorically reject the notion that increasing a PILOT weighs in a community's decision about whether to make necessary utility infrastructure improvements. Even if it was a concern, the municipal governing body can address the issue by choosing to reduce the PILOT.

Conclusion. The League of Wisconsin Municipalities supports current law governing municipal utility PILOTs and urges the PSC to not interfere in what is essentially a matter of local control. Thank you for considering our comments and concerns.