



MEMORANDUM

September 7, 2012

TO: PETER GINDER, DEPUTY CITY ATTORNEY
COREY CONOVER, ASSISTANT CITY ATTORNEY

FROM: KEVIN JOHNSON
SARAH JOHNSON PHILLIPS
SARA BERGAN

RE: City of Minneapolis Utility Franchise Agreements

I. Summary

- **Utility Franchise Agreements.** The City of Minneapolis (the “City”) currently has electricity and gas utility franchise agreements with the operating subsidiaries of Xcel Energy (“Xcel”) and CenterPoint Energy (“CenterPoint”), respectively. These agreements will both expire at the end of 2014, presenting an opportunity for the City to consider its options and priorities for negotiating new agreements.
- **Scope of the City’s Authority.** Under its utility franchise agreements, the City imposes a fee on a utility in exchange for the use of public rights-of-way. By statute, the City’s authority to regulate electric and gas utilities is generally limited to imposing franchise fees and conditions related to the use of the right-of-way. However, the City has wide latitude to determine the amount, structure, and use of franchise fees.
- **Rate and Service Regulatory Authority Reserved to the State.** Regulatory authority over public utility rates and services is reserved to the state via the Minnesota Public Utilities Commission (the “Commission”). As a result, the City does not currently have authority to directly impose renewable energy or conservation targets because such action would be akin to regulating rates and services. New legislation would be required to broaden the scope of the City’s authority to regulate utilities.
- **Use of Franchise Fees.** The City has discretion to determine the amount charged and the formula for collecting franchise fees and how funds collected from such fees are used. Therefore, the City may increase or reformulate its utility franchise fees and/or designate some portion of the collected funds for new initiatives. Franchise fees are currently directed to the City’s general fund, which means that any new programs would require either an increase in franchise fees or that funds be redirected from another part of the City’s budget.

- **Franchise Fees Passed Through to Ratepayers.** The Commission will allow utilities to recover franchise fees from ratepayers without the scrutiny applied to changes in utility rates, to the extent such fees benefit a city. As a result, Minneapolis residents, businesses, and institutions ultimately bear the burden of paying franchise fees.

- **Municipalization.** An alternative to negotiating franchise agreements with the incumbent utilities is municipalization, which would require a referendum, raising a large amount of money to buy out existing utility infrastructure, and, ultimately, ongoing operation of a municipal utility. This process would require substantial investment of time and resources and would be very controversial.

II. General Background

A. Minnesota Public Utilities Act of 1974. In the Minnesota Public Utilities Act of 1974, the Minnesota Legislature deemed it in the public interest to avoid the duplication of services by regulating and coordinating natural gas and electric service within the state.¹ Electric utilities are allowed to serve designated areas on an exclusive basis as regulated monopolies.²

It also reserved to the state the right to regulate the rates utilities charge.³ “Rate” is defined to include “every compensation, charge, fare, toll, tariff, rental, and classification, or any of them, demanded, observed, charged, or collected by any public utility for any service and any rules, practices, or contracts affecting any such compensation, charge, fare, toll, rental, tariff, or classification.”⁴ The responsibility of the Commission is to ensure that the rates electric and gas utilities charge are just and reasonable.⁵

B. Municipal Authority. Two statutory provisions grant municipalities in Minnesota authority to require a fee from a public energy utility in exchange for the use of public lands within the municipality.⁶ The Minnesota Supreme Court recently affirmed that the plain language of these statutes authorizes municipalities to impose a franchise on a public utility.⁷ Commission staff have also recognized that the statute “gives municipalities broad authority to assess franchise fees on utilities.”⁸ A city may require the utility to obtain a franchise, but the terms and requirements of a franchise may not frustrate the legislature’s paramount authority to determine who has the right to serve an assigned area.⁹

The franchise fee “may include *but is not limited to* a sum of money based upon gross operating revenues or gross earnings from its operations in the municipality so long as the public utility shall continue to operate in the municipality.”¹⁰ It also must be obtained “in accordance with the terms, conditions, and limitations of regulatory acts of the municipality.”¹¹

Within these statutory constraints, franchise fees and other terms and conditions of the franchise are generally determined by mutual agreement. Existing agreements exhibit a fair amount of variety in fee structure. Franchise fees are often billed to customers in the form of a per meter charge, a variable rate determined by customer usage, or as a percentage of the bill.¹²

C. Public Utilities Commission/Department of Commerce Oversight. Rate regulated utilities generally have to seek Commission approval in order to change rates or otherwise recover costs from their ratepayers. While the Commission has long recognized that it

does not have jurisdiction over whether a city may impose a fee¹³ and franchise fees have generally not been considered *rates* by the Commission,¹⁴ the Commission does have authority over how these fees are charged by utilities to ratepayers. For example, Minn. Stat. § 216B.05 requires public utilities to file with the Commission their schedules showing not only all rates, but also all tolls, tariffs, and charges that it has established.¹⁵ In other words, a city's imposition of a franchise fee involves two transactions: (1) the imposition of a fee over which the Commission has no authority and (2) the utility's recovery of the fee over which the Commission does have authority.¹⁶ The Commission generally will not act on other aspects of the franchise agreement between a municipality and the utility,¹⁷ but will review how the fees are passed on to ratepayers.

Because of its limited role in reviewing franchise fees, the Commission has struggled with its direction to utilities regarding filing information associated with franchise fees.¹⁸ Until recently, fee changes were generally included in miscellaneous tariff filings¹⁹ 90 days prior to the imposition of the fee or change in fee.²⁰ But the manner in which utilities filed notice of, and tarified, the fees varied greatly.²¹ When a filing was made, the Department of Commerce's Division of Energy Resources (formerly the Office of Energy Security) reviewed utilities' requests to recover franchise fees through ratepayers by assessing:

- 1) the impact of the proposal on the company's revenues (ensuring that it all flows back to the municipality);
- 2) the sufficiency of notice to the customers; and
- 3) the potential for unreasonable preferential treatment for any customer.²²

Franchise fee filings, however, are becoming more frequent as cities are increasingly using franchise fees to offset declines in other city revenue sources. Xcel, for example, administers at least 49 franchise fees and has argued that the filing should be streamlined to avoid an excessive administrative burden on both the utility and the Commission.²³

In two recent cases where a utility attempted to recoup its own costs of administering the franchise fee as part of the franchise fee line item on customer bills, the Commission determined the portion benefiting the utility was more akin to a rate than a franchise fee.²⁴ While the Commission does not generally establish, authorize, or endorse a franchise *fee*, given its limited jurisdiction, the Commission will scrutinize and seek justification for anything that looks like a *rate*.²⁵ The franchise fees are generally recoverable so long as they exclusively benefit the city and not the utility.²⁶ The Commission has jurisdiction over anything that would flow back to benefit the utility and would be particularly concerned about preventing double-recovery of utility costs charged directly to municipal residents through a franchise fee line item and all customers through general rates.^[27]

In response to the issues and concerns raised by these cases, the Commission sought input on how utilities deal with the franchise fees in their billing and publicly available tariffs.²⁸ Seeing a need for greater uniformity and a more streamlined process, the Commission established a mechanism by which utilities can file to recover franchise fees without prior Commission approval.²⁹ Today utilities give the Commission 60 days' notice prior to

implementing a franchise fee, include a customer notice on the first bill on which the new or modified fee is listed – consistent with that filed in its approved tariff³⁰ – list the fee as a separate line item on customer bills, file the relevant ordinance(s) with the Commission, and note in the tariff that 100% of the fees are remitted to the municipality. Utilities following these uniform requirements are then allowed to recoup franchise fees through customer bills without prior Commission approval.³¹

Just as the Commission does not have authority over fees imposed by the City, it does not have authority over what the City does with the revenue raised through the fees. The statute simply provides that utilities may be obligated to pay municipal fees “to raise revenue or defray increased municipal costs accruing as a result of utility operations, or both.”³² The City has wide latitude to use the recovered funds for purposes of its choosing.

D. Current Agreements and Fee Structure Examples

1. CenterPoint

a. Minneapolis Agreement with Minnegasco (CenterPoint), January 1, 1992 through December 31, 2014. The City’s current franchise agreement grants Minnegasco a nonexclusive 23-year franchise to construct, operate, repair, and maintain facilities and equipment for the transportation, distribution, manufacture, and sale of gas energy for public and private use and to use the public ground of the City for such purposes. The franchise fees vary from 3% to 5% of gross revenue, depending on customer class. Percentages for residential buildings increase over the term of the agreement. Currently, the largest industrial class of customer pays the lowest fee of 3%, while residential customers pay 4.5% and all other classes of customers pay 5%.

b. Other Natural Gas Franchises. In other cities imposing natural gas franchise fees on CenterPoint, the amount and structure of the fees imposed varies considerably. Anoka, for example, imposes a flat fee graduated by customer class and ranging from \$3.00 per meter for residential users to \$981.80 per meter for the largest industrial user.³³ By contrast, Excelsior imposes a flat fee of \$2.50 per meter for all customer classes.³⁴ Granite Falls includes a percentage-based fee with a cap that is the same for all customer classes, and Minneapolis currently imposes a percentage-based fee that differs by customer class.³⁵ Many cities also impose a volumetric fee³⁶ or a volumetric fee combined with a flat fee³⁷ on their natural gas utility.

2. Xcel

a. Minneapolis Agreement with Northern States Power (Xcel), January 1, 1994 through December 31, 2014. The City’s current franchise agreement grants Northern States Power the right for 21 years to construct, install, enlarge, operate, repair, and maintain, in the City, its electric distribution system and electric transmission lines, for the furnishing of electricity to the City and its inhabitants, and others, and transmitting electricity from, into, and through the

City, and to use the streets, alleys, and public grounds of the City for such purposes. Franchise fees vary from 3% to 5.75% of gross revenue, depending on customer class. Percentages decrease for each customer class over the course of the agreement.

b. Other Electricity Franchises. In other cities imposing franchise fees for electric service on Xcel, there are a variety of structures. The Coon Rapids franchise agreement authorizes a fee of up to 5% of Xcel's gross operating revenue from Coon Rapids customers but currently imposes a fee of only 4% of gross earnings. Winsted imposes a flat per account fee that is the same across all customer classes. Hopkins imposes a flat monthly fee that is graduated by customer class, where residential customers pay \$1.70 per month and large industrial customers pay \$105.00 per month. New Brighton imposes a usage fee that is roughly three times higher for residential customers (\$0.0023/kWh) than for large industrial customers (\$0.0009/kWh). Sauk Rapids imposes a percentage-based fee that is also dramatically less for larger customers. St. Joseph imposes a graduated flat fee for all customer classes except large industrials, on which it imposes a percentage-based fee.

c. St. Paul Agreements with Northern States Power (Xcel), August 31, 2006 through August 30, 2026. In the City of St. Paul's most recent gas and electric franchise renewal, St. Paul decided to impose a more complicated multi-part franchise fee that includes: 1) a per meter flat fee; 2) a monthly energy factor fee (charge per kWh); and 3) a monthly demand factor fee (charge per kW). In all cases, the fees generally vary by customer class and generally increase over the term of the agreement.

III. Franchise Fee Options

A. Increase Fees. The statute specifically grants the City the right to use the franchise fee to raise general revenue, and the City has long allocated franchise fee revenue to the City's general fund. While there are no statutory limits on how the City uses franchise fee revenue, existing budgetary uses of the current amount of fee revenue could be a constraint to redirecting it to new programs.

The City is also free to negotiate higher fees through its franchise agreement and allocate additional monies raised to new programs or initiatives. The statute authorizes the City to impose franchise fees to "raise revenue or defray increased municipal costs accruing as a result of utility operations, or both."³⁸ We are not aware of any upper-bound or Commission threshold for reasonable franchise fees, though the City would likely be constrained by other factors such as how much of an increase is reasonable to pass on to City residents and businesses.

B. Change Fee Structures. Although the statute provides a percentage of gross operating revenue as one way to structure the fee, it clearly leaves open other possible fee structures. Fee structures vary considerably in existing franchise agreements as discussed in Section II.D above.

C. Other Contract Terms. The City may want to carefully consider many different aspects of a new franchise agreement. One provision that is getting increased attention is the term of the grant of franchise. Of the recently negotiated franchise agreements with Xcel, several were for 20-year terms.³⁹ On the other hand, some negotiated much shorter terms or at least shorter terms for the imposed fee. Mound, for example, passed an ordinance in 2003 imposing a franchise fee for five years on Xcel with a sunset clause. It recently amended the sunset clause to provide for an extension of only one year.⁴⁰ Likewise, Hopkins recently adjusted its fee and limited the term of the fee to two years “to ensure that there would be a review of the effect and need for these fees.”⁴¹

IV. Other Options for the City That Require a Legislative Change

Aside from increasing or changing the franchise fee structure, the City’s ability to require changes to the services Xcel and CenterPoint provide is very limited. Although the issue has not been directly tested at the Commission or in court, the City does not appear to have authority to impose through the franchise agreement a city-based renewable energy standard, conservation goals, or greenhouse gas emission reduction targets. As a result, new legislation would likely be required for the City to regulate utilities in these areas, whether through a franchise agreement or through another mechanism.

Other Jurisdictional Example: Ann Arbor, Michigan. When the U.S. Environmental Protection Agency conducted a survey of Midwest franchise agreements, Ann Arbor was the only city that included environmental targets as part of the agreement.⁴² As part of its grant of franchise, Ann Arbor requires the grantee to obtain certain percentages (escalating over the tenure of the contract) of the electricity supplied from renewable resources and establishes penalties for not meeting the requirements.⁴³ Ann Arbor also stipulates that the grant of franchise must not result in an increase in CO₂ emissions. Notably, Michigan is a partially deregulated state and includes some direct access, and the franchise agreements were entered into before the state had a significant statewide renewable energy standard. However, Michigan law allows for more regulation of utilities by municipalities than does Minnesota law.⁴⁴ Because Minnesota law is different, the City does not have the same options available to it that Ann Arbor did.

V. Municipal Utility Option

As an alternative to negotiating franchise agreements, the City has the option of acquiring the existing utility property and creating its own municipal utility. This would considerably expand the City’s authority over utility services. This option, however, is a dramatically more significant investment of human and financial resources than renegotiating agreements with CenterPoint and Xcel.

The City would first need a resolution of the city council, ratified by a majority of the voters voting on the question during a special election held for that purpose.⁴⁵ The City could then elect to either purchase the utility’s property pursuant to Minn. Stat. § 216B.45 or acquire the utility’s property by eminent domain pursuant to Minn. Stat. § 216B.47. To the extent the parties could not agree on a purchase price under the first option, the Commission would set a place and time for a public hearing and by order determine the just compensation for the property

to be purchased. The statute provides a list of factors that must be assessed in determining just compensation, including: “the original cost of the property less depreciation, loss of revenue to the utility, expenses resulting from integration of facilities, and other appropriate factors.”⁴⁶ By statute, court appointed commissioners in an eminent domain proceeding must also consider the same factors.⁴⁷

These factors were recently determined by the Minnesota Court of Appeals to preclude a fair market value assessment of the property.⁴⁸ Furthermore, the court recognized that these factors were intended to create a higher valuation of the property acquired than that created using a fair market value assessment.⁴⁹ Therefore, under current law, which is currently under review by the Minnesota Supreme Court,⁵⁰ acquiring utility property will likely cost more than fair market value because loss of revenue, integration expenses, and other factors must be considered in the process.

Other Jurisdictional Example: Boulder, Colorado. Boulder has recently been the subject of considerable attention because of the city council’s and voters’ recent decision to end the franchise agreement with Xcel and consider creating a municipal utility. After a long franchise negotiation broke down – partially over the language that would be included on the ballot – Boulder voters approved an effort to municipalize.

Colorado law provides that the governing body of each municipality has the power to acquire gas or electric light and power works and distribution systems or to authorize the ownership and maintenance of such systems by others.⁵¹ Notably, even the granting of a franchise requires voter approval⁵² and must include an express condition that the municipality has the right and power to purchase or condemn any such works or systems at their fair market value.⁵³

The November 1, 2011 decision by voters included two parts. The voters approved Ballot Issue No. 2b, which increased and extended Boulder’s utility occupation tax, a voter-approved tax that replaced the franchise fee after Boulder’s franchise agreement with Xcel expired at the end of 2010.⁵⁴ Note that Minnesota law governing utility franchise agreements only provides for municipalities to impose an excise tax to replace franchise fees in the limited scenario in which an existing franchise was abrogated or impaired by the adoption of the Minnesota Public Utilities Act in 1974.⁵⁵

The voters also elected to amend the city charter through the addition of a new Article XIII, “Light and Power Utility,” which authorizes and sets the conditions under which the city could establish a municipal utility.⁵⁶ Specifically, it requires that the city can establish a light and power utility only if it can demonstrate, verified by an independent third party, that the utility can acquire the electrical distribution system in Boulder and charge rates that do not exceed those rates charged by Xcel at the time of acquisition. It also requires that the utility demonstrate reliability comparable to Xcel and include a plan for reduced greenhouse gas emissions and increased use of renewable energy.⁵⁷ Notably, the current cost estimates associated with acquiring Xcel’s system in Boulder range from under \$200 million to over \$1 billion.⁵⁸

Endnotes

¹ Minn. Stat. § 216B.01

² Minn. Stat. §§ 216B.37-43.

³ See, e.g., *Minn. Gas Co. v. Pub. Serv. Comm'n, Dep't of Pub. Serv., State of Minn.*, 523 F.2d 581 (8th Cir. 1975).

⁴ Minn. Stat. § 216B.02, subd. 5.

⁵ Minn. Stat. § 216B.03.

⁶ Minn. Stat. § 216B.36 (“Under the license, permit, right, or franchise, the utility may be obligated by any municipality to pay to the municipality fees to raise revenue or defray increased municipal costs accruing as a result of utility operations, or both. The fee may include but is not limited to a sum of money based upon gross operating revenues or gross earnings from its operations in the municipality so long as the public utility shall continue to operate in the municipality, unless upon request of the public utility it is expressly released from the obligation at any time by such municipality.”); Minn. Stat. § 301B.01 (“A corporation may be organized to construct, acquire, maintain, or operate internal improvements, including railways, street railways, telegraph and telephone lines, canals, slackwater, or other navigation, dams to create or improve a water supply or to furnish power for public use, and any work for supplying the public, by whatever means, with water, light, heat, or power, including all requisite subways, pipes, and other conduits, and tunnels for transportation of pedestrians. No corporation formed for these purposes may construct, maintain, or operate a railway of any kind, or a subway, pipe line, or other conduit, or a tunnel for transportation of pedestrians in or upon a street, alley, or other public ground of a city, without first obtaining from the city a franchise conferring this right and compensating the city for it.”).

⁷ *City of Cohasset v. Minn. Power*, 798 N.W.2d 50 (Minn. 2011) (holding that the statutes provide this right even if the utility is not using the rights-of-way to provide services to the municipality and also holding that the right is not preempted by a state routing permit).

⁸ *Staff Briefing Papers*, Minn. Pub. Util. Comm’n, Docket No. CI-09-970, at 1 (Feb. 17, 2011).

⁹ *City of Rochester, Relator v. Minn. Pub. Utils. Comm’n*, No. C0-90-808, 1990 Minn. App. LEXIS 833 (Minn. Ct. App. Aug. 15, 1990).

¹⁰ Minn. Stat. § 216B.36 (emphasis added).

¹¹ Minn. Stat. § 216B.36

¹² *Order Establishing Franchise Fee Filing Requirements*, Minn. Pub. Util. Comm’n, Docket No. CI-09-970 (Mar. 23, 2011).

¹³ *Order Approving New Gas and Electric Rate Books*, Minn. Pub. Util. Comm’n, Docket M-97-985 (Feb. 3, 1998). See also *Staff Briefing Papers*, Minn. Pub. Util. Comm’n, Docket No. CI-09-970 (Feb. 17, 2011) (“Thus, if a city chooses to impose a franchise fee on a utility, the utility presumably is obligated to pay it to the city on the date selected by the city through its ordinance. Staff is not aware of any instance in which the Commission would become involved in this piece of the transaction.”).

¹⁴ *Staff Briefing Papers*, Minn. Pub. Util. Comm’n, Docket No. CI-09-970 (Feb. 17, 2011).

¹⁵ Minn. Stat. § 216B.05, subd. 1.

¹⁶ *Staff Briefing Papers*, Minn. Pub. Util. Comm’n, Docket No. CI-09-970 (Feb. 17, 2011) (“[I]t appears that a city’s imposition of a franchise fee involves two transactions: first, the city’s right to impose a franchise fee on the utility; and second, the utility’s ability to pass that franchise fee through to the customer. This first transaction, between the city and the utility, generally does not involve the Commission. Thus if a city chooses to impose a franchise fee on a utility, the utility presumably is obligated to pay it to the city on the date selected by the city through its ordinance. Staff is not aware of any instance in which the Commission would become involved in this piece of the transaction. What the Commission has authority over is the utility’s ability to collect the franchise fee from its customers, how it is displayed on the utility bill, and how it is otherwise communicated to customers. Staff therefore agrees with the SRA that a city has the authority to collect a franchise fee from the utility even if the Commission-filing process has not concluded.”).

¹⁷ See, e.g., *Comments of the Minn. Office of Energy Sec.*, Minn. Pub. Util. Comm'n, Docket No. M-09-1422 (Feb. 10, 2010) ("Moreover, as noted above, the Commission's actions in this proceeding pertain to the rates that MP charges its customers; the Commission is not acting on the franchise fee agreement between MP and the City of Staples. Thus, the OES concludes that the effective date of the franchise fee is a matter between the City of Staples and MP.").

¹⁸ *Order Approving New Gas and Electric Rate Books*, Minn. Pub. Util. Comm'n, Docket M-97-985 (Feb. 3, 1998) ("[T]he Commission notes that it does not have jurisdiction over whether a city may impose a fee or surcharge and finds as a practical matter that the burden on the Company to file a new Surcharge Rider 1 every time a city changes or implements a franchise fee or gross earnings fee outweighs the value of maintaining the Company's tariff as the publicly accessible central location for such information. Accordingly, the Commission will allow the Company to shed its previous practice of maintaining such information as part of its tariff.").

¹⁹ Minn. Rules, part 7829.1300.

²⁰ See, e.g., *Comments of the Minn. Office of Energy Sec.*, Minn. Pub. Util. Comm'n, Docket No. M-09-1422 (Feb. 10, 2010) ("MP must seek and obtain the Commission's approval before the Company can recover the costs of the proposed franchise fee as a separate line item on the utility bills it sends to its customers."); see also Minn. Rules, part 7825.3200 (requiring that utilities serve notice to the Commission at least 90 days prior to the effective date of modified rates).

²¹ *Order Establishing Franchise Fee Filing Requirements*, Minn. Pub. Util. Comm'n, Docket No. CI-09-970 (Mar. 23, 2011).

²² See, e.g., *Order*, Minn. Pub. Util. Comm'n, Docket No. M-10-1214 (Feb. 8, 2011).

²³ *Comments and Filing in Response to Notice Franchise Fees*, Minn. Pub. Util. Comm'n, Docket No. CI-09-970 (July 6, 2010) ("As the Commission recognized in its February 3, 1998 Order, Minn. Stat. §216B.36 gives municipalities the authority to impose fees on utilities. Since the Commission does not have authority over the fee itself, the administrative burden of filing a new Rider each time a city changes or implements a fee could outweigh the benefit of maintaining the specific fee information in the tariff. We currently implement 49 franchise or other city fees on our electric customer bills and over 20 similar fees on our gas customer bills; many of these fees require updates or changes on an annual basis.").

²⁴ See, e.g., *Comments of the Minn. Office of Energy Sec.*, Minn. Pub. Util. Comm'n, Docket No. M-09-1422 (Feb. 10, 2010) ("The OES concludes that the Commission has thoroughly vetted this issue[sic], including the relevance of Minnesota Statutes, sections 216B.03 and 216B.07, and has concluded that an administrative fee associated with collecting a franchise fee is a rate and must be justified and approved as a rate prior to its imposition.").

²⁵ *Id.*

²⁶ See, e.g., *Order Barring Collections of Administrative Costs Through Franchise Fee and Requiring Compliance Filing*, Minn. Pub. Util. Comm'n, Docket No. M-11-1105 (Dec. 30, 2011).

²⁷ *Reply Comments of the Minn. Office of Energy Sec. to the Reply Comments of Interstate Power and Light*, Minn. Pub. Util. Comm'n, Docket No. M-08-200 (Apr. 18, 2008) ("Minnesota Statutes §216B.36 pertains only to the "Municipal Regulatory and Taxing Powers;" it does not pertain to the utility's ratemaking, as the responsibility for such ratemaking falls under the Commission's responsibility. It is important to make this distinction because it would not be reasonable for a municipality to require a utility to charge its customers for costs over and above the franchise fee, since such charges could lead to double-recovery of costs if those costs are recovered in rates charged to the citizens in the municipality and to all of the utility's customers (thus charging the citizens in the municipality twice for such costs). Such a result would violate Minnesota Statutes §216B.03 requiring just and reasonable rates.").

²⁸ *Notice Seeking Filings and Comments on Franchise Fees*, Minn. Pub. Util. Comm'n, Docket No. CI-09-970 (June 7, 2010).

²⁹ *Order Establishing Franchise Fee Filing Requirements*, Minn. Pub. Util. Comm'n, Docket No. CI-09-970 (Mar. 23, 2011).

³⁰ See, e.g., *Northern States Power Compliance Filing – Franchise Fee Compliance Filing*, Minn. Pub. Util. Comm’n, Docket No. CI-09-970 (Apr. 21, 2011) (“The Community of [City][adopts/collects] a [\$x.xx/\$x.xx per kWh/therm/x%][franchise/city] fee on Xcel Energy [electric/gas] accounts effective [date]. The line item appears on your bill as ‘City Fees.’ We pass along 100% of this fee to the community imposing the fee.”); see also Franchise Fee Rider in CenterPoint Energy’s *Informational Filing: Change Tariff to Update Franchise Fee in the City of Eden Prairie*, Minn. Pub. Util. Comm’n, Docket No. M-12-750 (July 9, 2012) (“The MUNICIPALITY granted CenterPoint Energy a franchise to operate within the city Limits. A Gas franchise fee of x.x% of Gross Revenues/\$x.xx per Meter/\$x.xx per Therm will be collected from customers effective MM/DD/YYYY. The line item appears on your bill as ‘City Franchise Fee.’ CenterPoint Energy remits 100% of this fee to the MUNICIPALITY.”).

³¹ *Order Establishing Franchise Fee Filing Requirements*, Minn. Pub. Util. Comm’n, Docket No. CI-09-970 (Mar. 23, 2011).

³² Minn. Stat. § 216B.36.

³³ *Informational Filing: Change Tariff to Update Franchise Fee in the City of Eden Prairie*, Minn. Pub. Util. Comm’n, Docket No. M-12-750 (July 9, 2012).

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Informational Filing: City of Ortonville Franchise Fee*, Minn. Pub. Util. Comm’n, Docket No. M-12-68 (Jan. 19, 2012) (Roseau imposes a volumetric fee of \$0.01122 per therm, and Nashwauk imposes a volumetric fee of \$0.013 per therm on Minnesota Energy Resources Corporation).

³⁷ *Id.* (Ortonville, for example, imposes a \$1.50/month meter charge and a \$0.013 charge for every 100 cf of gas “transported, sold, furnished, or delivered by the Gas Company within the City limits”; Plainview imposes a flat fee of \$0.50 plus a volumetric fee that is higher for residential than for industrial users).

³⁸ Minn. Stat. § 216B.36.

³⁹ *Informational Filing: Franchise Fee – Winsted, Minnesota*, Docket No. CI-09-970 (Feb. 13, 2012) (term of 20 years); *Informational Filing: Franchise Fee – Clements, Minnesota*, Docket No. CI-09-970 (Apr. 6, 2012) (term of 20 years); *Informational Filing: Franchise Fee – Henderson, Minnesota*, Docket No. CI-09-970 (Jan. 17, 2012) (Henderson granted a 20-year franchise to Xcel in August 2011 that at the time did not include an associated fee but provided the option for the city to impose a fee by separate ordinance in the future. By late December 2011, the city had already exercised its option to impose a fee); *Informational Filing: Franchise Fee – Coon Rapids, Minnesota*, Docket No. CI-09-970 (Nov. 7, 2011) (term of 20 years).

⁴⁰ See *Informational Filing: Franchise Fee – Mound, Minnesota*, Docket No. CI-09-970 (June 18, 2012) (amended the automatic sunset clause from December 31, 2012 to December 31, 2013).

⁴¹ See *Informational Filing: Franchise Fee – Hopkins, Minnesota*, Docket No. CI-09-970 (Oct. 18, 2011) (referencing City Ordinance 2011-1036).

⁴² *Utility Franchise Agreements Summary Report: Research on Municipal Franchise Agreements Gas and Electric Utilities*, submitted to U.S. Environmental Protection Agency Region 5 (Dec. 21, 2009), available at <http://www.epa.gov/r5climatechange/pdfs/franchise-agreement-report.pdf>.

⁴³ See, e.g., Ann Arbor Municipal Code § 2:623 (portfolio of renewable energy sources; option to purchase greater percentage of power from renewable energy sources; prohibition against degradation of quality of energy sources).

⁴⁴ See Mich. Comp. Laws § 460.54.

⁴⁵ Minn. Stat. § 216B.46.

⁴⁶ Minn. Stat. § 216B.45.

⁴⁷ Minn. Stat. § 216B.47.

⁴⁸ *City of Moorhead v. Red River Valley Coop. Power Ass’n*, 811 N.W.2d 151 (Minn. Ct. App. 2012).

⁴⁹ *Id.* at 160 (“Red River contends that, because eminent-domain proceedings pursuant to Minn. Stat. § 216B.47 are not traditional eminent-domain proceedings, damages are unique and appropriately higher than damages calculated under a fair-market-value analysis. Again, we agree with Red River. We acknowledge that fair market value is the typical method to calculate just compensation in eminent-domain proceedings, but the legislature can require a different method to calculate damages that results in higher-than-market-value damages in certain circumstances.”).

⁵⁰ *City of Moorhead v. Red River Valley Co-op*, No. A11-0705, 2012 Minn. LEXIS 175 (Minn. Apr. 17, 2012) (granting certiorari).

⁵¹ Colo. Rev. Stat. § 31-15-707.

⁵² Colo. Rev. Stat. § 31-15-707(1)(a)(I) (requiring the majority of registered electors voting upon the question in a special election to vote in favor of the provision); *see also* Boulder Revised Charter, art. VIII, § 108.

⁵³ Colo. Rev. Stat. § 31-15-707(1)(a)(II) (“All such works or systems authorized by any municipality to be erected by others or the franchise of which is extended or renewed shall be authorized, extended, or renewed upon the express condition that such municipality has the right and power to purchase or condemn any such works or systems at their fair market value at the time of purchasing or condemning such works or systems, excluding all value of the franchise or right-of-way through the streets”); *see also* Boulder Grant of Franchise to the Public Service Company of Colorado, art. 14 (Purchase Condemnation) (Ordinance No. PO-9302).

⁵⁴ Boulder City Ordinance Nos. 7769 (2010) and 7825 (2011).

⁵⁵ Minn. Stat. § 216B.36.

⁵⁶ Boulder City Charter, art. XIII, § 178.

⁵⁷ *Id.*

⁵⁸ *See, e.g.*, Mark Jaffe, *Boulder voters OK with municipal utility, tax to set it up*, The Denver Post (Nov. 2, 2011); *see also* Heath Urie, *Xcel consultant: Cost of Boulder utility near \$1.2B*, Daily Camera (July 29, 2011), available at http://www.dailycamera.com/energy/ci_18581008.