

Date: March 28, 2013

To: Minneapolis City Council

Fr: IGR and Sustainability staff

Re: Legislative Update: Utility Franchise Agreement and Energy Legislation

Utility Franchise Agreements: Overview. Minnesota law (Section 216B) permits cities to enter into a franchise agreement with a public utility to provide gas and or electric service to the properties in the city. The enabling legislation permits the city under its utility franchise agreements to impose a fee on an electric utility (Xcel Energy) and gas utility (CenterPoint Energy) in exchange for use of the public rights-of-way. While Minnesota cities have limited authority to regulate electric and gas utilities, it has broad latitude to determine the amount, structure and use of franchise fees. Under current law a city does not have authority to directly impose renewable energy or conservation targets upon the utility as part of a franchise agreement.

Amount, Structure and Use of Franchise Fees. The City's current franchise agreement with Xcel and CenterPoint has the following key points:

- The term of the CenterPoint agreement is a 23 year agreement (January 1, 1992 through December 31, 2014) 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 right-of-way for such purposes. The term of the Xcel franchise is 21 years (January 1, 1994 through December 31, 2014). The purposes of the agreement are similar to those of CenterPoint.
- The CenterPoint franchise fees vary from 3% to 5% of gross revenue, depending on customer class. Percentage for residential buildings over the term of the agreement. The largest industrial class customer pays 3% while residential customers pay 4.5% and all other customers pay 5%. The franchise fee generated approximately \$5.9 million in 2012. Xcel's franchise fees vary from 3% to 5.75% of gross revenue depending on customer class over the course of the agreement. Xcel's 2012 franchise fee generated approximately \$16.7 million.
- The statute provides the city with discretion to determine the use of franchise fees. Currently the franchise fees are paid into the city's general fund. The statute also permits the city to increase fees and change the fee structure. The term of the franchise agreement is not prescribed in statute as either a minimum or maximum.

Energy Policies and Franchise Agreements. The current Minnesota statute does not provide a city with authority to include such areas as renewable energy standards, conservation goals, greenhouse gas emission reduction targets, efficiency and reliability standards and reporting. As a result, legislation

would be needed similar to existing state wide legislation in order for a city to regulate the utility in these areas.

Franchise Agreement Legislation. Rep. Ray Dehn and Sen. Kari Dziedzic have introduced legislation that would amend the municipal franchise agreement statute (Section 216B). HF 1450/SF 1490 has been referred to the Energy and Environment and Energy Committees of the House and Senate respectively. The bill would, unless the municipality “affirmatively agrees otherwise” must include:

- A written commitment to energy efficient measures to be undertaken by the utility that would reduce the amount of energy consumed within the municipality. Energy efficiency measures may include but not be limited to transmission/delivery efficiency and end use efficiency. The achievement of the reductions must not be offset by increased rates or special tariffs designed to recover lost revenue due to the energy use reduction. The savings from the reductions must be reflected in reduced bills to ratepayers.
- Policies and procedures of the public utility relating to the connection of alternative energy sources such as solar within the municipality to the utility’s grid. The policies and procedures must be timely, simple and cost effective as possible.
- A commitment to annually establish and implement an energy system maintenance schedule for the utility’s infrastructure within the municipality. The schedule shall be providing within one month of entering into a franchise agreement and annually thereafter.
- A written annual analysis of the relationship between energy use within the municipality and the utility’s obligation to meet state energy goals.
- Quarterly reports to the municipality on system reliability that details service continuity and quality within the municipality.

Under the bill, if a municipality and public utility do not enter into a franchise agreement or a franchise agreement expires without a timely renewal, the municipality may charge the utility fees in-lieu of franchise fees in an amount not to exceed five percent of the utility’s gross revenues from services provided within or to the municipality.

A municipality or a public utility that believes the other is not negotiating the franchise in good faith may seek injunctive relief in an appropriate district court.

Overview of Some Energy Bills.

HF 1147/SF 1121 (Rep. Dehn/Sen. Dibble) Bill Summary: PACE Amendments

The bill amends the state’s Property Assessment Clean Energy (PACE) program and special assessments statutes to facilitate the use of PACE. The PACE program authorizes local government or authority to issue bonds whose proceeds are used to make loans to property owners to invest in conservation measures or install renewable energy systems.

The 2010 legislature approved the PACE program but decisions by the federal housing finance agencies-- Fannie Mae and Freddie Mac -- have limited the use of PACE by residential property owners. The federal

agencies have ruled that PACE loans cannot assume a superior position to their mortgages. Commercial industrial properties however have been utilizing the program but a change in the term of the special assessment repayment from ten to twenty years could encourage additional program participation. The bill would do the following:

- 1) Define cost effective energy improvements to be improvements that can repay their purchase and installation costs in 20 years or less. (Section 1). The new definition is cross-referenced in defining qualifying property for PACE (Section 2), and the components of a PACE program.
- 2) Amend the special assessment statute to permit the payment of a special assessment made under a PACE program may be payable in up to 20 equal annual installments. Currently there is a ten year limit. (Section 4).

The bill resolves the conflict in state law regarding the length of the payback period. They are strongly supported by the solar industry. The bills are the floor of the House and Senate. The Senate bill is included in the omnibus energy bill (SF 901). Sections 41 and 42 of the House omnibus energy bill (HF956) includes language related to the terms of the bonds. The definition of energy improvements and the cross reference are not in the House omnibus energy bill.

HF 1301/SF 1135 (Rep. Hortman/Sen. Dibble) Bill Summary; Energy Policy Amendment: Energy Savings

The bill amends the state's energy conservation policy goal to state that energy savings are an energy resource and that cost effective energy savings should be systematically pursued. The bill modifies the state energy goal of a 1.5% annual saving in retail sales of gas and electricity to be a minimum measure and not an absolute goal. Energy efficiency achieved by energy consumers without direct utility involvement is added to the energy conservation policy goal section of statute. The section's title is changed to "Energy Savings Policy Goal." (Section 1).

The bill also includes a policy statement that finds that the state's economic growth will be sustained by an optimum combination of energy resources including energy savings. (Section 2).

The bill directs the Minnesota Department of Commerce's Division of Energy Resources to conduct meetings during the interim with the public and stakeholders and prepare finding and legislative recommendations to accomplish the following purposes:

- 1) Clarify statewide energy-savings policies and utility energy-savings goals.
- 2) Maximize cost-effective energy savings, including energy savings of large customers.
- 3) Maximize carbon reductions and economic benefits from energy efficiency and conservation improvements.
- 4) Minimize total utility costs and rate impacts for ratepayers in all sectors.
- 5) Determine appropriate funding sources for non-conversion projects and programs, including cogeneration projects.
- 6) Determine the appropriate consideration in the integrated resource planning and certificate of need processes of the requirement for energy conservation efforts, including attaining energy savings goals required in the conservation improvement program.

The report must be submitted to the chairs and ranking members of the energy policy committees. The House bill requires a report by January 1, 2014 while the Senate version contained in the omnibus

energy bill requires the report to be submitted by January 15, 2015. The Division must provide public notice of the meetings.

The House bill was on the floor but was referred on March 18 to the Commerce Committee. The Senate bill is also on the floor but the bill language is included as Article 8 of the Senate omnibus energy bill.

HF 945/SF 911 (Rep. Hornstein/Sen. Hayden) Bill Summary; Municipal Utility Revisions

The bills would delete one of the factors that the Public Utility Commission considers in determining just compensation for the sale of a public utility to a municipality. The bill eliminates “loss of revenue” to the utility as a factor in determining value. The bill also excludes the “loss of revenue” factor from being an “appropriate other” factor in determining value.

The bill has not been heard in committee.

HF 956/SF 901 (Rep. Hortman /Sen. Marty) Bill Summary; Omnibus Energy Bill

Legislative policy committees traditionally adopt an omnibus policy bill. The bill usually consists of individual bills referred to the committee. The 2013 House and Senate omnibus energy bills include provisions related to state energy policy, funding authority for research and community based energy programs, and cost recovery mechanism for utility expenditures. The focus of the bills is to set a policy framework and implementation process to encourage the increased use of solar power in Minnesota.

Planning for 80% Greenhouse Gas Reduction by 2050

Senate version calls for Legislative Energy Commission to report back by Jan 15, 2014 on progress towards framework and strategies to reduce carbon dioxide emissions by 80% by 2050.

Increased Renewable Energy Standard

The House bill, for Investor Owned Utilities only, increases the Renewable Energy Standard to 40% by 2030 (currently it is 30% by 2025 for Xcel).

Senate version does not include an increased Renewable Energy Standard and instead requires a 2 year integration study to assess the capability of achieving an increased Renewable Energy Standard.

Solar Standard

Both bills establish a solar electricity standard for 2016, 2020 and 2025. The standard is a percentage of the electric utility’s total retail electric sales to retail customers in Minnesota that is generated by solar energy at the end of the indicated year. While the House and Senate bills agree on the definition of the standard, they differ as indicated by the following table on the percentage for the benchmark years:

Year	House File 956 First Engrossment	Senate File 901 as Passed Env. Energy Comm.*
2016	0.50%	0.25%
2020	2.0	1.0
2025	4.0	2.0

* The Senate bill also has a separate standard for a public utility. The Senate bill's public utility solar standard is the House's standard.

The House standard only applies to public utilities (not municipal, cooperatives). It also sets a goal (not a standard) of 10% by 2030.

Value of Solar

Both bills create a "value of solar" tariff in which a utility would pay solar providers for the solar power produced. This is an alternative to net metering for customers and uses a formula to calculate an economic "value of solar" based on a variety of components – the formula differs in the two bills.

Solar Incentives

Both bills include provisions that allow for the production of solar power by small producers, metering and billing procedures, methods to calculate the distributive value of solar energy. Several provisions also permit the Public Utility Commission to promulgate rules to increase net metering limits and approve alternative tariffs that compensate customers for operating distributed solar photovoltaic resources connected to the utility system.

The incentive is financed by an assessment made by the Commissioner of Commerce. The assessment is equal to a percentage of the utility's gross annual retail electric sales during the preceding year. The House bill has an assessment of up to 1.33% while the Senate has a 1% assessment.

To be eligible to receive an incentive payment, an owner of a solar photovoltaic device who is a customer of a utility must submit an application to the utility and receive from the utility in writing that the device qualifies for the incentive. A device with a capacity in excess of two megawatts and a device owned by a utility are not eligible for an incentive. Payments will be made if funds are available and will be made for devices that begin generating electricity after January 1, 2014. Payments can be made for up to 20 years. No payments can be made after December 31, 2049. The incentive payment is based on the number of kilowatt hours generated. The House rate of payment is related to the location of the device (roof top, ground) and generating capacity. The Senate bill directs the Commissioner of Commerce to determine the rate.

Community Solar

Both bills also authorize the development of community solar generating facilities that basically lets participants receive an estimated or actual kWh credit for their portion of the installation on their utility bill for the energy subscription they purchased at a one-time cost, while also receiving the 30% federal income tax credit. It's an option for people who are renting, don't have great solar potential on their property or have other barriers to installing solar – but still want to support solar. The facility would be interconnected with the utility's distribution system and would have a capacity of less than two megawatts. The facility would not be owned by a utility and has subscribers under long term contracts to consume energy generated by the facility. There must be at least two subscribers.

The facility will be managed by a manager who can construct, own and operate the facility. The facility manager can be a person whose sole purpose is to own and operate the facility, a Minnesota non-profit,

a Minnesota cooperative association, a tribal council and a Minnesota political subdivision or local government including a public or private college or university. The price for a subscription to the community solar facility is not subject to regulation by the Department of Commerce and is negotiated between the subscriber and the facility manager. The section also provides for the transfer of subscribers, new subscribers, energy credits the resolution of disputes, billing and the disposition of electricity generated by the facility.

The electricity generated by the facility shall be available to the subscribers who may not resell the electricity produced by the facility. Any electricity not used by the subscribers must be sold to the utility interconnected with the facility. The price paid by the utility for the community facility electricity is governed by the net metering law or any other law governing prices paid for solar energy.

Made in Minnesota Solar Manufacturing Incentive

Both bills also provide incentives for the manufacture of solar photovoltaic modules manufactured in Minnesota. The section defines the eligibility criteria for the modules. The Senate bill has a detailed calculation to determine the incentive while the House bill has the Commissioner of Commerce determine the amount of the incentive to be paid for the Made in Minnesota program.

Studies

Both bills require the Commissioner of Commerce to contract for studies regarding the value of on-site energy storage and one regarding the value of solar thermal. The studies are due by January 1, 2014.

The House requires each public utility, cooperative and municipal utility selling electricity to provide the Commissioner of Commerce an assessment of the maximum capacity available on its electric distribution system for interconnecting solar photovoltaic devices installed on or adjacent to nonresidential building in the utility's service area. The assessment is due by November 1, 2013.

The House also directs the Public Utility Commission to order all electric utilities to study and develop plans for the transmission network enhancements necessary to support increasing the renewable energy standard to 40% while maintain system reliability. The study must be completed by December 1, 2013.

By January 1, 2014 the Commissioner of Commerce must complete a study of the potential for solar energy installations on public buildings throughout the state.