



Minnesota Municipal Utilities Association



2017 STATE POSITION STATEMENTS



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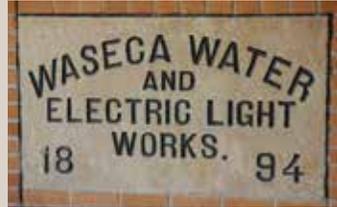
Electric Industry Regulation

The tradition of public power in Minnesota dates back nearly to the state's 1858 founding.

Beginning in the 1880s, as soon as electric service was possible, Minnesotans in cities like Ada, Ortonville, Springfield, Le Sueur, Alexandria and New Ulm began installing electric generators and connecting their homes, schools and businesses to power. Many of

the 125 municipal utilities operating today were established through their city charters well before the state gave cities formal statutory authority to provide electric service beginning in 1901.

In 1974 the Legislature authorized the establishment of electric utility service areas “to encourage the development of coordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public.” Investor-owned utilities would no longer be regulated solely through the municipal franchise, but by the newly-established Minnesota Public Utilities Commission. Municipal utilities would continue



The Waseca power plant no longer exists, but its cornerstone is at the entrance to city hall.

to be accountable to their customers through locally elected or appointed city councils or utility commissions. All electric consumers would buy electricity from their designated retail supplier. (See Minn. Stat. 216B.01.)

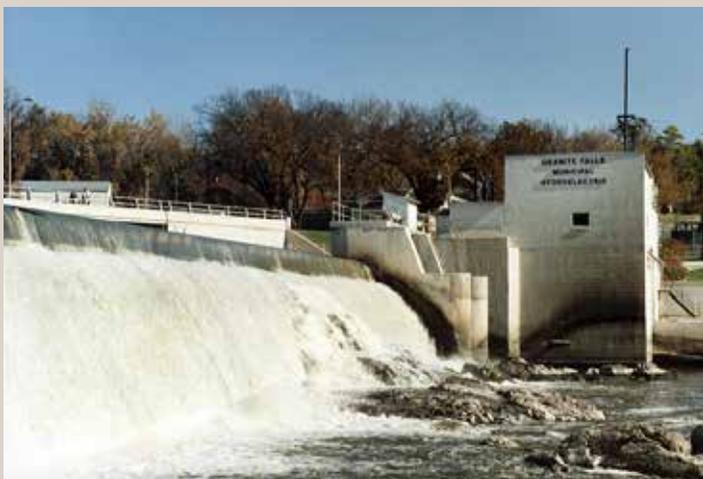
In the 1990s, many states, including Minnesota, debated whether to break their regulatory framework and allow unregulated companies to sell electricity to end-use customers. This is known in the industry as deregulation or “providing retail choice.” Sixteen states followed the deregulation route while seven more states started down the retail choice path and stopped when they saw what was happening in other states (particularly California)—namely rate spikes, brown-outs and market manipulation by pseudo-utility financial speculators like Enron. Minnesota, after earnest study and debate, wisely resisted efforts to allow third-party electricity sales at the retail level.

In 2001, the Legislature established fundamental service standards and customer protections for all utilities in the state, to ensure that all Minnesotans could rely on their provider's service and to ensure reasonable rates. Today few in the state would complain about their electric provider in light of their customer service experiences with the deregulated telecom and airline industries. Utilities – particularly municipal utilities – are holding up their end of the regulatory compact as Minnesotans expect from a public service provider.

Despite the fact that Minnesota consciously rebuffed the deregulation threat of the '90s, advocates for third-party electricity sales persist to this day, lobbying for the state to allow unregulated electricity sales from generators directly to the customer, circumventing regulatory consumer protections.

One way they would accomplish this is by allowing wholesale energy purchases by end-use customers. In some cases, utilities would be required to “wheel” energy from third parties across their

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The City of Granite Falls has produced hydropower at this site since 1901. The hydro plant supplies the municipal utility with upwards of 30 percent of its annual usage.



power lines to retail customers in violation of the utility's exclusive service right. Another way to arrange third-party sales is by selling electricity from solar panels or other generating equipment sited on a consumer's own property to retail customers, while maintaining ownership of those panels or equipment. The equipment owner would charge for electricity it provides, yet rely on the local utility to provide reliable service to the customer at all other times.

Convenient as these arrangements might be for an unregulated third party, they come at a significant cost to utilities and their rate payers. Reliable electricity at the flip of a switch requires power lines, substations, generation and transmission capacity purchases, and other expenses that have to be passed on to customers. In fairness, those revenues should come from all utility customers because all utility customers utilize them, no matter how much electricity they receive from a third-party provider. Given the small size of most of Minnesota's municipally-owned systems, the potential cost shifts from such third-party intervention could be significant – even devastating.



Purveyors of solar panels sometimes seek to arrange third-party sales by selling electricity generated at a customer's property to retail customers.

All of Minnesota's electric utilities have the responsibility to provide customers with the amount and quality of electric service they need, when they need it, at a reasonable price. To build the infrastructure to accomplish this obligation, we have been given an exclusive right to provide electric service. That is the regulatory model that has proven itself over the years across the country and particularly in states like Minnesota, where regulatory control for municipally owned utilities is local and accountable to all citizens.

MMUA Position

It is important for legislators to recognize that proposals in favor of "small-scale" deregulation threaten to unravel Minnesota's regulatory framework, one thread at a time. The persistent pressure from non-regulated third-party business interests to sell electricity directly to retail customers undermines the regulated industry's financial footing and reliability of our electrical grid. The Legislature must refuse these dangerous efforts for the overall good of Minnesota's electric industry.



Reliable electricity at the flip of a switch requires power lines, substations, generation and transmission capacity purchases, and other expenses that have to be passed on to customers.



Local Control of Municipal Electric Utilities

Only Nebraska and Iowa have more municipal electric utilities than the 125 municipals serving communities here in Minnesota. But while we have a lot of municipal utilities, most of them are quite small. Nearly 75% of our municipal electric utilities have fewer than 2,500 customers, and nearly 40% have fewer than 1,000 customers. About a fifth have fewer than 500 customers. More than half of our municipal electric utilities are smaller than the smallest Minnesota electric cooperative.



Municipal utilities are close to the customers they serve and responsive to community needs. Municipals represent Main Street, not Wall Street.

Unlike investor-owned utilities, which are regulated by the Minnesota Public Utilities Commission, our municipal utilities are locally governed, either by the city council or by a city public utilities commission. As elements of local government, municipal utilities' operations and governance are open and accountable. Commission or council meetings are open to anyone and often available on the internet or broadcast on local cable television. Financial information and other documentation is publicly available. Construction contracts are awarded under the public bidding law. Our tradition of local governance and open, accountable operation for the good of the community works just as well today as it has for generations.

A number of Minnesota laws, including our renewable energy and energy efficiency policies, apply to all electric utilities regardless of size, ownership, or governance. Our municipal utilities do their best to comply with these mandates, although they often place a significant administrative burden on a small organization. Experience has shown that it is very difficult to craft a regulatory policy that works equally well for a utility with more than a million customers

and one with a few thousand or a few hundred customers.

One area that illustrates our concern is the emerging trend toward customer-owned wind or solar generation. Under Minnesota's net metering law, a municipal utility must purchase excess generation from customer-owned solar panels and wind turbines of up to 40kW in capacity. And the utility must pay for this energy at the full retail rate which the utility charges its customers. Often, if not always, the utility could buy this energy elsewhere at a much lower cost. The utility's other customers pick up the tab.

Generation-owning customers continue to rely upon the utility for electricity during periods when the customers' generation is not producing sufficiently to meet the customer's needs, but reduced purchases provide less revenue to the utility to cover its costs of operating the system. Further, customers are compensated for their generation at a windfall price. The result is a significant cost shift from the customers that own generation to those who do not. While cost shifts may go unnoticed in

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a large utility, they are very noticeable in a small municipal system.

In 2013 the Legislature considered a bill that would have raised the maximum threshold for customer-owned generation projects from 40 KW to 1 MW (1,000 KW). Since about a third of our municipal systems have annual system peaks between 1 MW and 3 MW, it was clear that the proposal could have overwhelmed a municipal utility, and municipals and cooperatives were able to secure an exemption from the bill. This is just one recent example of the potential danger of “one size fits all” lawmaking in the energy arena.

In 2015, the Legislature returned a degree of local control over this situation to municipal and cooperative utilities by authorizing them to charge fees to help reduce the cost shift from one group of customers to another, but only after conducting an expensive cost of service study.

MMUA Position

Minnesota’s framework of local regulatory control for municipal utilities is the right framework and needs to be recognized and preserved by the Legislature. Rather than implementing “one size fits all” policies, the legislature should allow locally-governed municipal utilities to develop programs that further state policy goals in a way that is appropriate and manageable for a small organization. Regarding net metering, municipals should be able to charge net metered customers a modest, cost-based fee to help recover the cost of operating the distribution system without having to invest in a full-blown cost of service study.



Because wind and solar resources do not generate all the time, customers still rely on the electric distribution system. Municipal utilities need to be able to continue to recover the costs of providing this service.



Minnesota’s framework of local regulatory control for municipal utilities is effective and allows local efforts to further state policy goals. Here, Moorhead Public Service customers gathered Oct. 4 for the dedication of the utility’s community solar ‘garden.’ Unfortunately, the day was windy and rainy and people gathered in the lee of the panels to listen to a brief dedication ceremony.



Small Cell Distributed Antenna Systems (DAS)

Across the nation, wireless service providers are making legislative and regulatory efforts to restrict local governments from regulating access to their utility poles, traffic signals, streetlights, and signs for attaching antenna equipment to increase wireless service. The telecommunications companies are pushing to cap local application fees and impose timelines for local governments to approve permits as well as provide unrestricted access to public right-of-ways.

Uniform processes may sound appealing to policymakers, given the desire to increase the quality of wireless service across the state. However, each municipality has zoning, land use, and technical considerations that warrant local authority over the use of their infrastructure. For instance, the expertise of municipal utility staff is likely needed to determine the most effective way to install and provide power to the equipment. Different pieces of municipal infrastructure may require different adaptations for siting wireless attachments.

As an example, the decorative street light poles in one MMUA member community are designed to handle the wind loading of the lights and one 2' x 4' banner and nothing else. Banners must come off before holiday decorations go up. Adding a six cubic foot small wireless facility would clearly exceed the design standards of these poles.

As another example, the National Electric Safety Code (NESC) has very specific requirements regarding working clearances, structural design, and placement of telecommunication facilities on electric utility poles. A municipal electric utility must have the ability to ensure compliance with the NESC on utility poles that carry energized electric lines.

Further, public right-of-way is a public asset that must be managed and for which the city is responsible. A municipality's longstanding



Street light poles are often targeted for placement of distributed antenna systems. However, adding a “small” wireless facility will often exceed the engineered design standard of many light poles.

authority to regulate activities within its right-of-way was affirmed most recently in a November 2016 MPUC decision involving Mobilitie Management LLC. When dealing with the powering of facilities within the public right-of-way, it is imperative that city hold the authority to ensure public safety.

While cities and municipal utilities are great supporters of improved internet access, the expansion of wireless services cannot come at the expense of local responsibility and control.

MMUA Position

MMUA urges the Legislature to resist efforts to reduce municipal authority over the private use of its infrastructure, including the authority to site wireless facilities. The attachment of telecommunications equipment to city property involves significant issues of safety, aesthetics, and functionality, and those issues are best addressed locally.

Local Government Sales Tax Exemption for Construction Materials

Local governments are exempt from paying sales tax on most purchases, including construction materials. Unfortunately, a Department of Revenue rule excludes purchases of construction materials made by the local government's contractor from eligibility for the sales tax exemption. This makes it extremely difficult for local governments to receive the sales tax exemption to which they are entitled.

Traditionally, construction bidding includes all labor, materials, and equipment needed for a project. However, the Department of Revenue rule only allows the sales tax exemption for construction materials purchased directly by local governments. This means that to access the sales tax exemption, a city would have to split apart the industry-standard singular contract form and undertake separate contracts for labor and materials. In addition to overcomplicating the calculations and billing of these interrelated costs, purchasing the construction materials separately brings local governments the added liability of storing and securing those materials until they are used. The Department of Revenue rule allows a local government to designate a contractor as a "purchasing agent" in a contract, and thus receive the sales tax exemption, but only if: all vendors are notified of this arrangement, the title of all materials is transferred to the local government, and the local government assumes all liability for the materials. The burden of these conditions makes that option almost entirely impracticable.

Along with being time consuming and difficult to understand, the separate purchase of materials



Simplifying the local government sales tax exemption for construction materials will save time and money for local governments, many of which have precious little to spare.

or use of a purchasing agent ends up being costly to cities (storage, insurance, etc.). Often, local governments opt to forgo the sales tax exemption rather than take on these additional costs and liabilities. As MMUA member cities consider upgrades to water or wastewater treatment facilities—projects with very significant capital costs—receiving the sales tax exemption to which they are entitled would help defray the cost to municipal property taxpayers and rate payers.

MMUA Position

MMUA supports efforts to simplify the process to receive the local government sales tax exemption for construction materials. Local governments should be allowed to report sales taxes paid on construction materials and then receive a refund from the Department of Revenue. This would permit cities to use the traditional contracting process and avoid added expense and inconvenience to receive a tax exemption to which they are entitled under law.



Clean Water Costs

Recognizing the importance of clean water to public health and economic viability, MMUA members spend significant dollars on the construction, operation, and maintenance of water and wastewater treatment facilities. Over the years, municipal utilities' costs to comply with new state and federal regulations on a growing list of contaminants have increased substantially. At the same time, cities have seen the federal funding share of these clean water projects drop from 75% to zero, presenting many local funding challenges.

Numerous communities across the state are facing expensive water and wastewater infrastructure projects. During the 2016 Legislative Session, the Governor had proposed \$167 million in state capital investment to assist cities with water and wastewater system upgrades, and the Legislature seemed to be in favor of providing this assistance. Unfortunately, the 2016 session ended without the passage of a bonding bill. Although bonding bills are not common during odd-numbered years, the new Legislature could keep its commitments to Greater Minnesota with a 2017 bonding bill and not wait until 2018.

Another important and costly wastewater issue concerns facilities clogged with non-degradable consumer products. In 2016, MMUA joined with the Minnesota Pollution Control Agency (MPCA) and other local government stakeholders to support legislation requiring the proper labeling of non-flushable wipes. Currently, many of these wipes are falsely labeled as "flushable" or "septic-safe," and when flushed, cause blockages and damages to municipal wastewater facilities. Nearly every city in Minnesota has needed to expend significant staff time and financial resources to deal with these wipes. The 2016 legislation stalled and was not passed by both bodies of the Legislature, yet the problem persists.



The cost of providing water that meets increasingly stringent regulatory requirements has increased dramatically while federal funding for water projects has dried up.

MMUA Position

MMUA supports efforts to assist municipal water and wastewater utilities with the rising costs of clean water. An influx of state matching dollars would benefit cities needing to replace outdated infrastructure or upgrade their systems for nutrient compliance. MMUA also supports efforts to prevent materials that should not be flushed from entering a municipal wastewater system, as doing so will reduce local maintenance and repair costs.



Municipal water and wastewater utilities are being hit with what are often sharply increased regulatory costs, with little or no additional funding to meet the standards.



Broadband Access

Access to high-speed broadband is critically important for local economies and the future of rural communities. Yet the state remains far from reaching its goal of “border to border” access to high speed internet, with much of Greater Minnesota lacking the necessary infrastructure.

To help Minnesota’s rural communities and businesses attain the high-quality broadband necessary to be competitive in today’s economy, the Legislature created the Border-to-Border Broadband Grant Program in 2014. To date, \$65 million has been appropriated towards this fund.

Unfortunately, policy changes were made to the Border-to-Border Grant Program in 2016 that limit its usefulness. A new challenge process allows an incumbent provider to challenge the application of another potential service provider by claiming that it already provides or plans to provide broadband service at or above the state speed goals in the area. The provider must pledge to complete construction within 18 months of grant awards date. However, no signed commitment or verification of financing is required. During the 2016 grant submittal process, nearly every application was challenged by an incumbent provider; and incumbent providers received most of the grant funds. This discourages grant applications from other entities and makes it more difficult for the Office of Broadband Development to issue grants.



Much of Greater Minnesota is served by obsolete telecommunications systems.

The challenge process is only the most recent attempt to undermine the ability of local governments to provide telecommunications services to their residents. Cities have both the statutory authority and proven capability to own



Municipal entities are often key players in today’s broadband efforts.



facilities and provide services, and this ability should be supported by the state. Public-private partnerships should also be encouraged to bridge the divide where service is lacking. The RS Fiber project—which was awarded a Border-to-Border Broadband grant—is a prime example of a successful partnership.

Another aspect of the grant process has an unintended consequence of keeping broadband access from small cities in Greater Minnesota. Because areas already deemed to be receiving broadband service (a city) may in fact have inadequate or prohibitively expensive service, population centers may actually end up with lesser service than outlying rural areas that are being upgraded through a grant-funded project. This is the case in Madison, for example, which suffers with outmoded internet service while Lac qui Parle county enjoys grant-funded fiber-based service.

Another obstacle to improving broadband access is the misconception that wireless service can be a stand-alone solution. While wireless may be a solution to cover the “last mile” for residential customers in some areas, there are technical limitations to wireless that restrict its applicability, particularly for business use. Fiber-optic infrastructure may have a higher upfront cost,

but it has a longer useful life and provides more reliable service to the end user.

MMUA Position

To provide meaningful progress in broadband expansion, MMUA supports a robust investment in the Border-to-Border Broadband Grant Program. The Governor’s Broadband Taskforce has recommended a \$100 million appropriation in its 2015 and 2016 reports.

MMUA also supports the continued funding of the Office of Broadband Development, as this office provides critical support to achieving statewide, high-quality broadband.

Finally, MMUA believes grant funds should be used to deliver broadband service that is transformative and scalable, not just incrementally better than today’s technology. MMUA also believes the Office of Broadband Development should have the flexibility to work with local governments and incumbent providers to determine where program resources could provide the greatest benefit. The current challenge process limits this flexibility. Accordingly, no further barriers should be put in place for local governments to apply for grant funding.



Current grant policies may keep high-speed broadband internet from rural population centers that need the service.

Why Public Power?



photo courtesy of the Owatonna People's Press

One hundred twenty-five Minnesota cities benefit from having a locally owned and locally operated municipal electric utility. Thirty-three cities have a municipal natural gas system. Fifty of our eighty-seven county seats are served by a municipal electric or gas system. A not-for-profit municipal electric or gas utility is a tremendous asset in these uncertain times. Here are some of the reasons why:

- **We have great service.** We're part of the community and our policy makers, managers and workers are part of the community. Our crews are always on hand in the event of emergency. You don't need to call an 800 number to talk to us.
- **We're locally regulated.** Members of the community who live in the community set rates and service practices. If you have a problem, you know who to talk to.
- **We're owned by our customers.** There is no tension between the interests of customers and the

interests of stockholders. Our focus is Main Street, not Wall Street. We work for you.

- **We're not in it for the money.** Municipal utilities are not-for-profit and operated in the public interest. Our goal is long-term community benefit, not short-term gain. We work hard to save *you* money.
- **We're the yardstick for the industry.** For generations, public power systems have set standards for rates and service that other utilities have had to meet.
- **We'll be there.** Most Minnesota's municipal electric utilities have served their communities for more than a hundred years. In an era when new competitors come and go faster than we can learn their names, you can count on us. We will be there when you need us.
- **We're Public Power. We're here for you!**