2018

FEDERAL
POSITION
STATEMENTS
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Infrastructure

• The Administration budget for public utility infrastructure needs more funding, more detail and less reliance on private interests.

• Much of the country’s infrastructure is significantly past its expected lifespan. The need to modernize our infrastructure is rapidly becoming a national crisis.

• Increasingly stringent federal regulation of air and water is a major driver of the need to update local government infrastructure, as well as a factor in increased costs and rates.

• The Administration’s proposed funding only averages $400 million per state per year, and would cover only 13% of project costs. This is insufficient to meet the needs of cash-strapped local governments.

• Tax exempt bonds play a critical part in financing infrastructure needs and should not be further restrained by federal tax law. The opportunity to use advance refunding for tax-exempt bonds should be restored.

• Privatization is not the answer to our infrastructure crisis.

Background

Municipal electric, natural gas, water and wastewater utilities are the key local agents in providing, utilizing and maintaining local public utility infrastructure across the country. These facilities provide the essential public services that form the underpinnings of modern society.

In the decades when much of the nation’s existing public utility infrastructure was built, federal funds paid for as much as 80% of it with 20% matching funds coming from state and local government. The current near-crisis condition of much of the nation’s infrastructure is in large part due to a shift away from this funding arrangement toward reliance on more state and local financing.

Minnesota’s need for infrastructure improvement is significant and growing year by year. And the major driver in the need to build expensive new water and wastewater facilities is the continual evolution of federal water quality regulation. Plants built to meet federal regulations become obsolete more quickly than anticipated because of the need to meet more stringent federal regulations.

Water

Based on recent surveys conducted by the Minnesota Pollution Control Agency (MPCA), Minnesota Department of Health and the U.S. Environmental Protection Agency, Minnesota’s drinking water infrastructure needs exceed $7 billion over the coming 20-year period. These needs include replacing aging treatment plants and underground infrastructure, upgrading treatment plants to meet new requirements, and expanding systems in some areas to accommodate growth.

Wastewater

Much of Minnesota’s wastewater infrastructure was built with federal grants during the 1970s and 80s and is reaching the end of its effective design life. In response to the MPCA’s survey, 715
communities (85% of those surveyed) identified nearly $5 billion in infrastructure needs over the next 20 years – a 15% increase in need from the 2015 survey. Most of the need is for replacement of aging infrastructure.

Wastewater treatment facilities’ major structural components have an expected useful life of 40 years. As these structures deteriorate, effectiveness declines, leading to additional operating and maintenance costs and a greater potential for permit violations and unintended discharges. Currently, 20% of Greater Minnesota’s treatment facilities are more than 40 years old. Of the sewer systems that carry wastewater to those plants in, 32% are over 50 years old, which is typically beyond the end of their useful life.

Electric
The growing demand for renewable energy requires greater investments in transmission to carry wind power from its source to Minnesota’s customer. The retirement of much of the nation’s coal-fired generation fleet with replacement by natural gas power plants and renewable generation is already irreversible despite the new administration’s restraint on further regulation. Further, regulatory requirements have greatly increased costs, doubling them in some cases. As an example, the EPA’s Reciprocal Internal Combustion Engines (RICE) rule required municipal utilities to install expensive catalytic converters on diesel generating units that operate only a few hours per year.

Tax exempt bonds have financed $2 trillion in new investments in infrastructure in the last decade, including $112 billion in new investments in electric power generation, transmission and distribution. Bonds have been and will continue to be vital to maintaining the electric infrastructure and other public facilities of the nation.

Administration’s Budget and Congressional Action
We are encouraged by the renewed federal focus on maintaining and developing the nation’s core infrastructure. There appears to be recognition at last from Washington of the urgent situation facing local communities. While attention to the problem is welcome, the Administration’s FY2019 budget causes us concern.

If efforts to reinstitute the former 80/20 federal-local sharing arrangement are unsuccessful, we still urge support for something better than the proposed 13/87 split. That relatively small proportion of federal investment in the Administration’s budget will not suffice to construct, repair and improve the infrastructure as needed to keep our communities safe and developing without significant increases in local taxes and utility rates.
Unfortunately, despite appeals from public infrastructure proponents, Congress and the Administration in 2017 repealed the authority to advance refund municipal bonds. This will only add to the final expense of existing and future public infrastructure projects. We urge support of HR 5003, bipartisan legislation that would restore our ability to advance refund bonds.

The Administration’s budget extends the scope of infrastructure funding to include “a broader range of infrastructure needs,” including railroads and airports. While these infrastructure areas are, of course, important, they are not matched with sufficient additional funds necessary to include them along with funding for utility infrastructure. The proposed $200 billion investment over ten years would provide on average only $400 million per state per year – only ten percent of Minnesota’s identified need.

Public-private partnerships provide welcome solutions in certain utility situations like extending broadband to places that private industry is unable or unwilling to reach alone. However, we have concerns that privatization, as a driving force, is being marketed in the budget as simply leveraging private funds.

The Administration’s plan to distribute funds for rural infrastructure as grants to states for governors to allocate may be cause for concern, making Minnesota compete with other states for funds under an undefined scheme that could be inequitable or political.

**MMUA Position**

For communities to maintain safe, sanitary and reliable utilities, we urge Congress to match its moral support for infrastructure by increasing the federal proportion of utility infrastructure project funding.

If utility infrastructure funding must compete with transportation funding, then significantly more resources need to be put on the table than the $200 billion budgeted by the Administration. We urge Congress to keep funding focused enough to make it effective or increase federal resources significantly.

We urge Congress not to take any action that further limits the usefulness of tax-exempt municipal bonds for financing public infrastructure, and to pass legislation restoring the authority for advance refunding of such bonds as introduced in the House by Representatives Hultgren and Ruppersberger (HR 5003).

Public-private partnerships should be utilized where appropriate and not used to profit private interests at public expense where public service continues to make more sense. Furthermore, public-private partnership should not be confused with privatization.

We are skeptical of proposals to put states in competition with one another for rural infrastructure grants and ask Minnesota’s delegation members to be wary of them.

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*Detroit Lakes Public Utility dedicated its community solar plant during Public Power Week, October 2017.*
Preserve Local Control of Pole Attachments

- The municipal exemption from FCC pole attachment rates and other pole attachment regulations must be retained, and any attempt to grant the FCC authority to regulate public power utility poles must be rejected.

- The exemption recognizes the public nature and accountability of municipal utilities.

- The FCC has not shown a single example in which local control or fees have been an impediment to broadband deployment.

- Granting the FCC authority over public power utility poles would be a backdoor method of preempting local control over pole attachments and their related rates.

Background
Municipal utilities are exempt from Federal Communications Commission (FCC) jurisdiction over pole attachments. This exemption was expressly granted in 1978 based on the recognition of the public process and accountability to constituents involved with adopting local regulations and setting fees, and it has been retained in multiple updated versions of the federal Communications Act. Further, Section 224 of the Communications Act prohibits the FCC from regulating public power utility poles.

Local technical, health, reliability, and safety considerations, need to be considered when establishing appropriate pole attachment regulations. And with the FCC pole attachment rate having been lowered to the cable rate, a municipality is unlikely to recover the maintenance and management costs for the attached facilities. Thus, the authority to regulate pole attachments and to set applicable rates must remain at the local municipal level.

Since 2010, the FCC has repeatedly recommended to Congress that the municipal exemption from FCC regulation of pole attachment and rates be repealed. Last year, Senator John Thune (R – South Dakota), chairman of the Senate Commerce Committee, and Senator Brian Schatz (D – Hawaii,) developed draft legislation to grant the FCC authority to regulate municipal power utility poles, a move widely viewed as an attempt to backdoor the authority of the FCC to regulate pole attachments and rates.

In 2016, Mobilitie, a major manufacturer and supplier of wi-fi equipment and networks, petitioned the FCC for a declaratory ruling that municipalities have zoning, land use, and technical considerations (including the National Electric Safety Code) that justify local authority over the use of our infrastructure.
interpreting the “fair and reasonable compensation” provision of the federal Communications Act, Section 253. This section provides the FCC with some authority to preempt enforcement of any state or local government action that may inhibit the ability of an entity to compete effectively in providing telecommunications services. In its request for comments, the FCC expanded the inquiry to include Section 332 of the Communications Act, which addresses the expansion of wireless facilities. The FCC sought input on several items, including local government practices that may have an effect on prohibiting providing wireless service, whether the “reasonable period of time” for small cell siting should differ from macro cell siting, and what qualifies as a small cell.

MMUA and the League of Minnesota Cities jointly submitted comments to the FCC to emphasize the need for maintaining local control of siting wireless facilities. Municipalities have zoning, land use, and technical considerations (including National Electric Safety Code requirements) that justify local authority over the use of its infrastructure.

Despite not being able to show a single example of where local control and the existing exemption from FCC rate control over pole attachments has proven to be an impediment to broadband deployment, in November 2017 the FCC issued a partial response to the Mobilitie case by excluding certain capital costs from pole attachment rates, establishing “shot clock” deadlines to respond to pole attachment complaints, and excluding certain poles from historic preservation rules. It did not, however, expressly address the municipal exemption nor the restriction on the FCC’s jurisdiction over public power utility poles.

The Minnesota legislature also considered legislation in 2017 that would have preempted local control on a number of issues related to the expansion of 5G service and what is known as small cell wireless, but in the end the legislature exempted municipal utilities from the new regulations regarding the siting of small cell antennae and the fees which can be charged.

**MMUA Position**

We urge Congress to oppose any repeal or weakening of the current municipal exemptions from FCC regulations over pole attachments and applicable rate charges. This includes opposing any effort to grant the FCC regulatory authority over public power utility poles and the fees which can be charged.
Protecting the Interests of WAPA Customers

• The Administration’s proposals to sell off PMA transmission assets and require PMA power to be sold at market rates should be rejected.

• Selling off PMA transmission assets would provide a one-time infusion of $9.5 billion out of a projected $4.5 trillion budget and lead to decades of higher transmission rates for dozens of small municipal utilities in western Minnesota.

• Abandoning the long-standing policy of cost-base rates and moving to market-based rates would result in a $1.9 billion rate increase for PMA customers.

Background
The four federal power marketing administrations (PMAs) deliver reliable, cost-based hydroelectric power to various regions of the United States. Approximately 1,200 public power systems and rural electric cooperatives throughout the country buy low-cost, zero-emissions hydropower from the PMAs that market this power from the federal multi-purpose dams.

The Western Area Power Administration (WAPA) is the PMA that delivers power to a 15-state region of the central and western United States that also includes the western third of Minnesota. WAPA’s 17,000-mile transmission system carries electricity from 55 hydropower plants operated by the Bureau of Reclamation, the U.S. Army Corps of Engineers and the International Boundary and Water Commission. Minnesota is served by WAPA’s Upper Great Plains Region office which provides electricity from the seven dams of the Pick-Sloan Missouri River Program established by Congress in 1944.

WAPA is critical to Minnesota municipal utilities, providing about one third of the wholesale power needs of 47 public power systems serving over 200,000 people in the western part of the state. The relationship between WAPA and most of the Minnesota municipal utilities it serves has been in place since the 1950s.

The Administration’s Budget Proposals
Unfortunately, the Administration’s FY 2019 budget seeks to disrupt this long-standing relationship with two troubling proposals.

First, the Administration proposes privatizing WAPA, Southwestern Power Administration and the Bonneville Power Administration transmission assets, as well as The Tennessee Valley Authority. The budget estimates that:

• Selling Western Area Power Administration’s transmission assets will raise $580 million;
• Selling Southwestern Power Administration transmission assets will raise $15 million;
• Selling Bonneville Power Administration transmission assets will raise $5.193 billion; and
• Selling Tennessee Valley Authority transmission assets will raise $3.671 billion.
The $9.5 billion that the federal government might receive for selling off these publicly-owned transmission assets will not move the needle much in a $4.5 trillion budget, but the negative impact on the public and not-for-profit entities that rely on those assets will be felt for decades.

Many of these transmission assets have been in place for years and are substantially depreciated. A new owner, likely a for-profit transmission company, would seek to recover the full purchase price plus a rate of return in rates. The result will likely be sharp increases in transmission costs for public agencies, small town municipal utilities, and rural electric co-ops. The modest one-time benefit from selling these assets is simply not worth the ongoing increased cost to not-for-profit entities across the country.

Second, the Administration estimates that the federal government could raise an additional $1.9 billion over 10 years by charging PMA customers market-based rates instead of the current cost-based rate structure. This proposal would violate current federal law in addition to upsetting the long-standing beneficial partnership between WAPA and its preference customers.

In accordance with federal law, PMA “cost-based” rates are set at the levels needed to recover the costs of the initial federal investment (plus interest) in the hydropower and transmission facilities. The PMAs annually review their rates to ensure full cost recovery. None of the costs are borne by taxpayers. If a deficit is projected, rates are adjusted to eliminate any deficit. Power rates also help to cover the costs of other activities authorized by these multipurpose dams such as navigation, flood control, water supply, environmental programs, and recreation. PMA power is generally low-cost in relation to other sources of electricity because hydropower is a renewable resource and most dams were constructed long ago, when material and labor costs were much lower than today.

The Administration’s proposal would impose an unwarranted $1.9 billion rate increase on small municipal utilities and other not-for-profit and government PMA customers.

**MMUA Position**

MMUA urges Congress to reject proposals that would disrupt the stable, low-cost, and emission-free power that WAPA provides to so many Minnesota communities. For well over half a century there has been a successful partnership between federal power marketing administrations and the communities that receive a federal hydropower allocation, which has helped keep costs low for our customers. The Administration’s proposals to sell off PMA transmission assets and require PMA power to be sold at market rates should be rejected.
Energy Capacity Markets

• A mandatory capacity market in the MISO region is unnecessary and would only lead to increased costs for consumers.

• Congress should exercise its oversight authority at FERC to guard against unwarranted imposition of a mandatory capacity market in MISO.

Background
The transmission grid in our region of the country is run by one of the nation’s seven federally designated Regional Transmission Organizations (RTO). All seven RTOs are quasi-governmental entities under supervision of the Federal Energy Regulatory Commission (FERC). Ours is called the Midcontinent Independent System Operator (MISO).

In addition to managing the region’s transmission system, MISO operates mandatory day-ahead and real-time markets for purchase of wholesale electricity. During the early years of MISO’s energy market in the last decade, prices were often volatile, but as the market has matured it has become more stable.

In 2012 FERC approved a voluntary capacity market for MISO but ruled against mandatory participation or a minimum offer price rule in that market. In 2016 MISO proposed to develop a mandatory capacity market for just those utilities that no longer own generation to serve their customers’ load. FERC rejected MISO’s proposal out of concern that such a bifurcated market would result in inefficient and volatile pricing.

Mandatory Capacity Markets
Inflated capacity prices in mandatory capacity markets have increased the cost of electricity and account for a significant share of the total electricity costs paid by consumers and businesses. Though they are intended to incent the development of new generation resources, these markets have not demonstrated that they incent investment in either the generation necessary to achieve a reliable and diverse supply of power, or
generation where it is most needed. Mandatory capacity markets do not exhibit any of the features of competitive markets, and are instead administrative constructs requiring elaborate rules and processes.

These markets have high costs: in the PJM RTO capacity market, approximately $102 billion has been paid or pledged to capacity suppliers through the middle of 2021, which works out to approximately $1,700 per man, woman, and child living in PJM’s 13-state area. In 2016 the PJM capacity market added $120 per year to the average electric bill of a homeowner, $915 for a retail establishment, and $19,000 for an industrial facility. And only a small portion of the $100 billion spent or committed is actually financing new generation capacity.

Artificially inflated prices
Mandatory capacity markets employ a variety of techniques to artificially inflate capacity prices. “Minimum offer price rules” (MOPR) require the RTO to replace low-cost capacity bids from new natural gas plants with higher price offers, making it more difficult for these new plants to clear the capacity auctions. “Capacity performance” requirements or “performance incentives” subject generators that are not operating or providing reserves during periods of scarcity to stringent penalties encouraging resources to submit higher offers for capacity.

Potential impact on public power
In addition to raising prices for consumers, these artificially inflated mandatory capacity markets could have a devastating effect on a public power system that develops its own generation to meet its capacity needs. If self-supplied capacity is required to be offered at a higher price under buyer-side mitigation rules, that capacity might not clear the auction, but the utility would be required to purchase capacity that had cleared the auction. Thus, the buyer-side mitigation rules could force a public power system to pay for capacity twice—first in paying for the construction of its own power plant and then again as a capacity payment to a generator that did clear the auction.

A solution in search of a problem
Power suppliers in our region have an excellent record of developing new generation resources as needed to meet load growth or make up for the retirement of old plants that have outlived their usefulness. This has been true through the entire history of our industry and it continues today as utilities bring new generation on line and plan for future additions. There is no need in our region for a mandatory capacity market that would only serve to artificially raise prices for consumers.

MMUA Position
One of the important roles Congress fulfills is that of a watchdog over federal agencies. FERC created RTOs and is supposed to control them for the benefit of the American public. While there may not be any direct action currently under consideration in Congress to rein in RTOs, it is extremely important for Minnesota’s delegation members to be aware that the concept of mandatory capacity markets has been creeping westward and has already been considered by MISO. A mandatory capacity market in the MISO region is unnecessary and would only lead to increased costs for consumers.

Electric utility facilities, such as Southern Minnesota Municipal Power Agency’s new gas-fired generating facility in Fairmont, are very expensive to build. There is no reason to artificially inflate prices in our region with a mandatory capacity market.
Reasonable and Effective Environmental Regulation

- Minnesota’s municipal utilities are strong supporters of clean air and water.

- We are investing in new, clean, and efficient generating resources to position ourselves for a changing market and improve our air quality, and we continue to explore and develop innovative new technologies.

- Under the previous administration EPA had a pattern of overreach in developing overly broad air and water regulations with questionable legal underpinnings.

- We appreciate EPA’s consideration in repealing rules such as the Clean Power Plan and Waters of the U.S. rules (WOTUS), and look forward to working with EPA on reasonable and effective replacements.

Background

Minnesota’s municipal utilities are strong supporters of clean air and water. Our municipal water and wastewater facilities are on the front lines of maintaining Minnesota’s high level of water quality. As water quality regulations change, our cities meet the challenge of developing new and ever more expensive treatment facilities to meet the new standards.

Our municipal electric utilities are also active in working to improve air quality. Most of our municipal diesel generation plants have invested in expensive catalytic converters to reduce air emissions. Southern Minnesota Municipal Power Agency (SMMPA) brought a new natural gas generating station online in Fairmont in 2013, and will commission another natural gas plant in Owatonna this year. Minnesota Municipal Power Agency (MMPA) brought a similar natural gas plant online in Shakopee last year. These clean and efficient plants can respond quickly to changes in electric load and are well-suited to support and back up renewable generation.

All of our municipal joint action agencies have substantial wind resources in their portfolios, and are on track to meet Minnesota’s Renewable Energy Standard. Our joint action agencies are active in developing other new renewable resources as well. Both utility-scale and community solar projects have been developed or are coming on line. Our public power systems are exploring other renewable resources, as well. SMMPA operates a methane-to-electricity facility in Mora. MMPA utilizes anaerobic digestion technology to produce biogas from agricultural and food processing wastes in LeSueur. Missouri River Energy Services (MRES) will begin producing electricity from the Red Rock Hydroelectric Project next year.
We recognize the need for appropriate and effective regulation of both air quality and water quality, and we have a long history of working with both federal and state regulators to meet those regulations. But to be effective, regulation must consider the available technology and the need for the regulated community to have appropriate timelines to address the technological and fiscal burdens of meeting new standards.

**A pattern of overreach**
In recent years EPA has shown a pattern of overreach in developing environmental regulations that are overbroad and overly burdensome. EPA’s Clean Power Plan went far beyond EPA’s prior practice in directing electric utilities to produce sharp reductions in greenhouse gases. If the regulation had gone in effect, it would have been subject to years of litigation over its questionable legal underpinnings. EPA’s Reciprocal Internal Combustion Engines (RICE) rule was developed without considering the concerns of hundreds of municipal electric utilities in the Midwest that operate diesel-powered generating stations.

On the water side, the Waters of the U.S. (WOTUS) rule was widely criticized for its overreach. It would have subjected millions of acres to federal regulation with little or no legitimate underlying federal purpose.

**Trump Administration Response**
EPA has repealed both the Clean Power Plan and the Waters of the U.S. Rules. We appreciate the Administration’s actions on these rules. We look forward to working with EPA on air and water regulation going forward.

**MMUA Position**
Minnesota’s municipal utilities are strong supporters of clean air and water. We are doing what we can back home to improve both air and water quality.

Our public power systems are investing in new, clean, and efficient generating resources to position themselves for a changing market and improve our air quality. We have made a lot of progress and we will continue to explore and develop innovative new technologies.

Under the previous administration EPA had a pattern overreach in developing overbroad air and water regulations with questionable legal underpinnings. We appreciate EPA’s consideration in repealing rules such as the Clean Power Plan and Waters of the U.S. rules. We look forward to working with EPA on reasonable and effective air and water quality in the future.

Municipal utilities, acting through joint action agencies, have substantial windpower resources. Pictured is the Minnesota Municipal Power Agency’s Oak Glen Wind Farm.
Municipal Utilities’ Right to Grow With Their Cities—A State Issue

The designation of electric utility service territory has historically been, is, and needs to remain solely a state issue.

In recent years, the Farm Bill has become a target for attempts to preempt state regulation of service territories. Any such efforts should continue to be denied.

Background
Municipal electric utilities work very closely with their rural electric cooperative and investor-owned utility (IOU) colleagues on many issues. Unfortunately, one issue on which electric utilities sometimes disagree is the process by which service territory boundaries are modified when property located within a co-op or IOU’s service territory is brought into, or is incorporated as part of, a municipality, usually, as a result of annexation.

Like most issues relating to retail electric distribution service, the designation of service territories has long been governed by each respective state’s statutes. Most state statutes have recognized the right of a municipal utility to grow along with the growth of the city’s boundaries. In Minnesota, municipal electric utilities have had the right to serve annexed areas since the inception of the industry more than 100 years ago. This right was preserved in the 1974 state law that established the current regulatory scheme. Minnesota law does provide that the utility previously serving the annexed area—be it an investor-owned utility or a rural co-op—must be provided with fair compensation.

This right of a municipal utility to grow with its city has not had a significantly negative effect on electric co-ops or IOUs. In Minnesota, the co-ops have enjoyed tremendous growth in the years since the service territory law was enacted. In fact, their growth, which has largely come from the expansion of cities that do not own their electric service, has made co-ops the fastest-growing segment of the electric industry in Minnesota.

Over the years, some cooperatives have unsuccessfully tried to secure federal legislation preempting the right of the states to determine the best way to handle service territory issues in their communities which would also deny municipal utilities their right to grow with their cities. More recently, such efforts have come in the form of requested amendments to the periodic Farm Bill. As it is time to once again pass a Farm Bill, there are concerns that the co-ops might try this approach again.

MMUA Position
We urge Congress to reject any attempt to preempt states’ rights to regulate service territory issues, or which would otherwise deny municipal utilities the ability to grow with their cities.
Why Public Power?

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. Of our 87 county seats, 50 are served by a municipal electric or gas system. A not-for-profit municipal electric or gas utility is a tremendous asset. 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!**
A drawing of the U.S. Capitol Building, circa 1830, showing its original dome which was made of brick, wood, and copper and designed by Architect of the Capitol Charles Bulfinch.