



Minnesota Municipal Utilities Association

2019 FEDERAL POSITION STATEMENTS





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About MMUA:

The Minnesota Municipal Utilities Association is a non-profit entity representing 124 electric, 170 water, and 33 gas utilities owned and operated by cities across the state. MMUA strives to be a recognized leader in advocacy, bringing value to municipal utilities and enhancing their position within the industry. MMUA's mission

is to support and serve as a common voice for municipal utilities. Its core values: People, Safety, Advocacy, Teamwork, Communication, Creativity, Dedication, Integrity, and Environment. For more about MMUA, its mission and values, visit us online at www.mmua.org



Why Public Power?



One hundred twenty-four 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!**

Improve Tax-Exempt Financing to Facilitate Infrastructure Development

- *Congress needs to do more to encourage and help fund investments in infrastructure.*
- *Tax-exempt bonds are an essential tool for financing much needed public infrastructure maintenance, repair, and replacement.*
- *Congress needs to restore the authority for municipalities to use advance refunding of bonds to further the value of investments made in public infrastructure.*
- *Congress should also revise 30-year old private use rules, increase the \$10 million small issuer “bank-qualified” exception, and end the sequestration of tax credit payments to Build America Bond issuers.*

Background

Over the next decade, state and local governments are on track to make more than \$3 trillion in tax-exempt bond financed investments in roads, bridges, water systems, schools, hospitals, public

power systems, and other key infrastructure. This follows the \$2.3 trillion in such tax-exempt bond financed investments made in the previous 10 years. Public power utilities alone are making \$5 billion a year in investments in their generation, transmission, and distribution systems using tax-exempt bonds.

Despite these massive investments, U.S. investment in infrastructure is still lagging. Based on research 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 years, and our wastewater infrastructure needs total nearly \$5 billion over the same period.

Federal lawmakers are considering new ways to encourage additional infrastructure investments. While Congress discusses such proposals, it should also focus on improving already powerful tools in hand, including tax-exempt financing of public



The City of Willmar wastewater treatment plant (left) went into service in 2010. Cost of the facility was \$86 million. In 2018, Willmar approved an \$8.5 million project to better filter the city’s drinking water, as there wasn’t a cost-effective way to remove certain elements in the wastewater process.



investments in public infrastructure.

Tax-exempt municipal bonds have been, and will remain, the most powerful and effective tool for financing public investments in public infrastructure. Congress could incentivize further investments in infrastructure, and it should focus on improving this incredibly powerful financing tool with comprehensive municipal bond modernization legislation.

A review of tax-exempt financing laws provides an opportunity to address the errors of the past, update provisions not amended in more than 30 years, and generally modernize the treatment of tax-exempt municipal bonds.

Congress should:

- Repeal the ban on advance refunding of bonds. This ban has reduced the ability to refinance past debt and increased the cost of issuing new debt.
- Revisit private-use rules created more than 30 years ago that are needlessly complex and punitively single out public power.

Tax-exempt bonds help finance municipal water projects, and a host of other public-interest infrastructure.

- Make it easier for more small counties, towns, and villages to sell their bonds to banks by increasing the \$10 million small issuer “bank-qualified” exception, a limit which has not been updated permanently since 1986.

- End the sequestration of tax credit payments to Build America Bond issuers.

These are consensus proposals developed by the American Public Power Association and other state and local stakeholders. Implementation of these proposals would go a long way toward facilitating new investment in publicly-owned infrastructure.

MMUA Position

To jump-start the development of much-needed infrastructure by local governments, Congress should support the continued use of tax-exempt bonds and reinstate advance refunding of bonds. Congress should also increase the small-issuer “bank-qualified” exception from \$10 million to \$30 million, exempt payments to Build America Bond issuers from federal budget sequestration, and repeal outdated private-use rules.



Restore and Preserve Local Control of Pole Attachments

- *MMUA actively supports access to reliable broadband services for all Minnesotans, but strongly opposes the FCC's September 26, 2018 order regarding small-cell telecommunications antennae that preempts local control over rights-of-way and municipally owned utility poles.*
- *These FCC regulations ignore express language in federal law exempting municipal utility poles from FCC regulations on pole attachments and fees.*
- *Counter to FCC implications, municipal utilities do NOT pose a barrier to the expansion of broadband or other forms of telecommunication.*
- *Congress needs to pass legislation returning control over local rights-of-way and public infrastructure to the cities responsible for them.*

Background

In recognition of the local jurisdiction's responsibility to protect the public interest in its public infrastructure assets, municipal utilities have historically been exempted from Federal Communications Commission (FCC) jurisdiction over utilities' rights-of-way (ROWs), pole attachments, and related fees. This exemption was codified in 1978 as Section 224 of the amended Communications Act of 1938. Congress again affirmatively upheld local control during debate of the 1996 Telecommunications Act, expressly finding that decisions about the use of ROWs and infrastructure are best left to the most local governing body.

Despite the clear benefits of, and congressional support for, maintaining this local accountability, in or around 2010, the FCC began recommending to Congress that municipal utilities' exempt status should be amended or repealed. After unsuccessfully pushing the telecommunications industry's stone uphill for nearly a decade, the FCC decided to act on its own.



Municipalities have zoning, land use, and technical considerations (including the National Electric Safety Code) that justify local authority over the use of our infrastructure.

On September 26, 2018, over the objection of hundreds of comments submitted by public utilities and their associations, including MMUA and the American Public Power Association (APPA), the FCC issued a *Declaratory Ruling and Third Report and Order* subjecting municipal utility poles and municipal rights-of-way to FCC jurisdiction for



installation of small-cell telecommunications equipment. This order took effect January 14, 2019. The order is under legal challenge, a move supported by MMUA and APPA, but the legal issues could more efficiently and cost-effectively be dealt with by congressional action vacating the order and restoring local control.

The new FCC regulations prescribe what small cell antennae equipment cities must allow in their ROWs and on their infrastructure, such as utility poles. These regulations include tight timelines for processing applications, and fee limits that, if exceeded, are presumed to be excessive and thus an unlawful barrier to access.

The Minnesota Legislature debated this issue in 2017. Legislation was developed that would have preempted local control on a number of issues related to the expansion of 5G service and “small cell” wireless, but in the end the Legislature exempted municipal utilities from the new regulations.

The basis for the FCC’s approach appears to be a new perspective that simply disregards the benefits of local accountability, combined with a suggestion that local governments may be creating a “barrier to service providers” seeking to establish their more profitable 5G networks via the use of small-cell equipment.

When establishing appropriate regulations and fees regarding pole attachments and public rights-of-way under their care, local governments

and the publicly-owned utilities serving municipalities must have the authority to account for the safety and health of their communities as well as authority over technical and aesthetic considerations. They must also be able to impose fees that fully cover the costs associated with processing small cell installation applications and enforcing related local ordinances and regulations applicable to small-cell providers. This is the only way to fully ensure that the public not be forced to subsidize the protected private use of the public’s assets.

Without Congressional action to undo the FCC’s order, MMUA and its member utilities will be forced to continue seeking relief from the courts. Litigation is far more costly than reasonable legislation to restore long protected local control efforts. To minimize costs, MMUA is currently working with three other states to identify the best way to support and participate in current and possible future legal challenges to the FCC’s order, but even shared efforts are expensive.

MMUA Position

MMUA urges Congress to pass legislation in line with Rep. Eshoo’s HR 530 which would overturn the FCC’s jurisdictional overreach and restore local control over public rights-of-way, utility poles and attachments, and the fees which can be charged for providing access to them. Finally, Congress needs to oppose efforts to bypass previously provided congressional exemption from most FCC oversight of municipal utilities’ control of their ROWs and infrastructure.



Safety and aesthetics are legitimate local government concerns. Pole attachments can be particularly troublesome in cities where much of the utility infrastructure has already been placed underground. Pictured here is Barnesville.

Reasonable and Effective Environmental Regulation

- *Municipal utilities are strong supporters of clean air and water.*

- *Municipal utilities are working hard to meet evolving customer expectations, and to help provide cleaner air and water.*

- *Municipal utilities believe that incentives work better than mandates and that all regulations need to account for needed infrastructure, time, and costs before being imposed, in order to ensure that the goals are viable, sustainable, and limit secondary impacts.*



Municipal utilities support their communities and reasonable, effective environmental regulation. Two Harbors, pop. 3,500, recently spent \$3 million to upgrade its wastewater treatment plant. Pictured is the Two Harbors Lake Superior breakwater.

Background

Whether one supports the ‘Green New Deal’ or applauds the use of executive orders to repeal perceived prior overreach in imposing government regulations, there is no question that environment related matters are at the forefront of both state and federal political efforts.

Municipal utilities are investing in cleaner and more efficient power generation, including the increasing use of renewables; improving load management; educating consumers on ways to save energy (and money); and implementing innovations, all to position ourselves to meet a changing market, to meet evolving customer expectations, and to help provide cleaner air and water.

Minnesota’s municipal electric utilities are meeting, and frequently exceeding, the mandatory use of renewable energy sources, often before

statutorily imposed deadlines. And, Minnesota’s municipal water and wastewater facilities are proud to have long been on the front lines of maintaining Minnesota’s high level of water quality. However, these efforts have not come without expense, hard work, and innovations.

Municipal utilities recognize the need for appropriate and effective regulation of both air quality and water quality, and have a long history of sharing concerns and ideas about proposed regulations, and working hard to comply with those eventually adopted. But for a regulation to be effective, the entity proposing it must, at the very least, consider the following:

- Whether the technology and infrastructure necessary to implement the regulation are available;



- Whether proposed timelines take into account factors like planning and siting of transmission lines, permit approvals, expiration dates of existing purchase agreements, etc.;
- Costs to be borne by regulated entities and the public; and
- Potential unintended consequences of the proposed new regulation.

As an example of unintended consequences, increasing a solar mandate could help reduce overall greenhouse gas emissions, but it might also result in large amounts of prime tillable acreage being taken out of production, which would have other consequences. Thus, dialogue is needed before regulations are adopted, standards increased, or other major changes in how utilities provide services are imposed.

On the electric side, municipal utilities acknowledge the growing demand for reliance on renewables and are already pursuing viable

options. Further, most electric utilities have had at least some discussion about how to plan for, or maybe even incentivize, increased use of electric vehicles. And, of course, they maintain a focus on efficiencies and best management practices. On the water side, MMUA and APPA look forward to working on new provisions to more accurately define and effectively regulate the Waters of the U.S. (WOTUS).

MMUA Position

Municipal utilities are already taking, and will continue to take, important but prudent steps to reduce their carbon footprints and protect air and water quality. Mandates are not necessary and may be counterproductive. For example, some power agencies saw significant price increases for wind power when early renewable mandates were first imposed. Congress and the administration need to engage in meaningful dialogue with municipal utilities and need to fully research issues such as costs, viability, needed v. available technology, etc. before adopting stricter regulations with shorter time frames for compliance.



Renewable energy mandates have resulted in massive investment in electric transmission infrastructure.

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-based 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 Oahe Dam powerplant, just north of Pierre, South Dakota, provides electricity for much of western Minnesota and the north-central United States. Along with power, the project provides flood control, irrigation and navigation benefits estimated by the Corps of Engineers at \$150 million per year.

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.

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 longstanding 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.

Any disruption to the federal hydropower program would harm the successful partnerships between the power marketing agencies and the cities and rural electric cooperatives that have supported hydropower development for well over half a century.





The most recent Minnesota Lineworkers Rodeo was held at the MMUA Training Center in Marshall on September 11, 2018. The event starts with a flag-raising ceremony and singing of the Star Spangled Banner.



Minnesota Municipal Utilities Association

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