

AGENDA
SHAKOPEE PUBLIC UTILITIES COMMISSION
REGULAR MEETING
FEBRUARY 3, 2020

1. **Call to Order** at 5:00pm in the SPUC Service Center, 255 Sarazin Street.
2. **Approval of Minutes**
3. **Communication**
4. **Approve the Agenda**
5. **Approval of Consent Business**
6. **Bills: Approve Warrant List**
 - 6a) December 16, 2019
 - 6b) February 3, 2020
7. **Liaison Report**
8. **Reports: Water Items**
 - 8a) Water System Operations Report – Verbal
 - 8b) Lead and Copper Sampling Results - 2019
9. **Reports: Electric Items**
 - 9a) Electric System Operations Report – Verbal
 - 9b) MMPA Board Meeting Public Summary – January 2020
10. **Reports: Human Resources**
 - 10a) Resn. #1266 – Regulating Wage and Contract Terms
11. **Reports: General**
 - 11a) Advanced Metering Infrastructure Presentation
 - 11b) City Council Joint Meeting Request
 - 11c) SPU Contribution to the City of Shakopee
 - 11d) Rep. Brad Tabke Meeting
 - 11e) Interviews for SPU Commission Openings
12. **New Business**
13. **Tentative Dates for Upcoming Meetings**

- Mid Month Meeting	--	February 18 (Tuesday)
- Regular Meeting	--	March 2
- Mid Month Meeting	--	March 16
- Regular Meeting	--	April 6
14. **Adjourn** to 2/18/20 at the SPUC Service Center, 255 Sarazin Street

MINUTES
OF THE
SHAKOPEE PUBLIC UTILITIES COMMISSION
(Regular Meeting)

President Joos called the regular session of the Shakopee Public Utilities Commission to order at the Shakopee Public Utilities meeting room at 5:00 P.M., January 21, 2020.

MEMBERS PRESENT: Commissioners Joos, Amundson, Meyer, Clay and Mocol. Also present, Liaison Lehman, Utilities Manager Crooks, Finance Director Schmid, Planning & Engineering Director Adams, Electric Superintendent Drent, Water Superintendent Schemel and Marketing/Customer Relations Director Walsh.

Motion by Amundson, seconded by Mocol to approve the minutes of the January 6, 2020 Commission meeting. Motion carried.

Under Communications, Utilities Manager Crooks stated that he sent an email to the City Council regarding an agenda item at tonight's Council meeting. The Council was discussing the change in the city contribution calculation. Mr. Crooks will provide comments on the City's legal review of the issue.

President Joos offered the agenda for approval. Item 6a: January 6, 2020 was asked to be taken off the agenda.

Motion by Meyer, seconded by Amundson to approve the amended agenda as presented. Motion carried.

Motion by Clay, seconded by Mocol to approve the Consent Business agenda as presented. Motion carried.

President Joos stated that the Consent Items was: Item 11b: Website Analytics – Quarterly Review.

The warrant listing for bills paid January 21, 2020 was presented.

Motion by Mocol, seconded by Meyer to approve the warrant listing dated January 21, 2020 as presented. Motion carried.

Liaison Lehman presented his report. The Council agenda item on the SPU contribution to the City is being discussed at tonight's City Council meeting.

Water Superintendent Schemel provided a report of current water operations. Wells #20 and #10 are going to be pulled for rehab and repair. Preventative maintenance work continues at the

Pumphouses. The water service leak on Bluff Avenue is being repaired. The test well at the Tower #8 site continues with sampling taking place within two weeks from completion of the well construction.

Mr. Schemel presented a response to the Star Tribune article on nitrates in Minnesota drinking water.

Motion by Meyer, seconded by Clay to offer Resolution #1265. A Resolution Approving Payment for the Pipe Oversizing Costs on the Watermain Project – Windermere South First Addition. Ayes: Commissioners Meyer, Mocol, Amundson, Joos and Clay. Nay: none. Motion carried. Resolution passed.

Electric Superintendent Drent provided a report of current electric operations. One electric outage that affected one customer was reviewed. A slow nitrogen leak is being monitored at the Dean Lake Substation and will be repaired under the warranty. Construction and project work was updated.

Finance Director Schmid presented the Pay Equity Implementation Report as required by the State of Minnesota Management and Budget Office for 2019. Filing will be made with Commission approval.

Mr. Crooks reviewed the SPU Donations Policy and charitable donations made by SPU in 2019.

Item 11b: Website Analytics – Quarterly Review was received under Consent Business.

Motion by Clay, seconded by Mocol, to adjourn to a Closed Session to conduct the Utilities Manager's Annual Performance Evaluation. Motion carried.

Motion by Clay, seconded by Amundson to reconvene to regular session. Motion carried.


President Joos stated that no official business took place during the Closed Session.


Motion by Meyer, seconded by Mocol to adjourn to the February 3, 2020 Commission Meeting. Motion carried



Commission Secretary: John R. Crooks

**SHAKOPEE PUBLIC UTILITIES
MEMORANDUM**

TO: John R. Crooks, Utilities Manager 

FROM: Lon Schemel, Water Superintendent 

SUBJECT: **LEAD AND COPPER TESTING RESULTS FOR 2019**

DATE: January 28, 2020

I have attached the results for the triennial testing of lead and copper for the Shakopee water supply. It is required to sample 30 high risk sample points located at residences in the City of Shakopee every 3 years. We had the 30 homes sampled during the month of June and had the samples sent to the Minnesota Department of Health for analysis.

The action level for lead is 15 parts per billion. The action level for copper is 1300 parts per billion. All of our results are below the action levels. Our next round of lead and copper sampling will be June of 2022.

Please see the attached EPA document that explains the basics of the Lead and Copper Rule.



PROTECTING, MAINTAINING & IMPROVING THE HEALTH OF ALL MINNESOTANS

December 17, 2019

Shakopee Public Utilities Commission
c/o Mr. Lon Schemel, Utilities Manager
255 Sarazin Street, P.O. Box 470
Shakopee, Minnesota 55379 - 0470

Gentlemen/Ladies:

SUBJECT: Lead/Copper Tap Water Monitoring Report, PWSID 1700009

This letter is to report the results of your recent lead/copper monitoring that is required by the Safe Drinking Water Act. The results revealed the following 90th percentile levels:

90th percentile lead level = 3 $\mu\text{g/l}$ (rounded as 0.003 mg/l).
The action level for lead is 15.0 $\mu\text{g/l}$.

90th percentile copper level = 175 $\mu\text{g/l}$ (rounded as 0.175 mg/l).
The action level for copper is 1300 $\mu\text{g/l}$.

Based on these results, your public water system **has not exceeded** the action level for lead and **has not exceeded** the action level for copper.

By federal rule, 40 CFR 141.85, you are required to provide the lead/copper results to persons served at the sites that were tested. In addition, you must provide them with an explanation of the health effects of lead/copper, list steps consumers can take to reduce exposure to lead/copper in drinking water, and water utility contact information. The notification must also provide the maximum contaminant level goals, the action levels for lead/copper, and the definitions for these two terms.

Notification must be made within 30 days by U.S. Mail. If the residence is a rental property, both the occupant(s) of the residence and rental property owner must be notified. To assist you in meeting the notification requirements, we have enclosed a sample letter and a fact sheet on lead/copper in drinking water. All of the information contained in the sample letter is EPA required language and must be included in your letter and provided to the homeowner. If you would like to receive any of the enclosed documents via e-mail, please send your request to pauline.wuoti@state.mn.us.

The lead/copper sampling site addresses are private data. This information was classified as "nonpublic" by the Minnesota Department of Administration in October 2004, upon the request of Minnesota Department of Health (MDH) and Minnesota community water supply systems. When notifying the persons served at the sites that were tested, provide them with the results for that address only.

Shakopee Public Utilities Commission

Page 2

December 17, 2019

PWSID 1700009

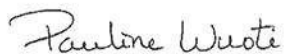
Within 10 days after notifying the residents of their results, you must complete the enclosed Lead/Copper Results Delivery Certification form and return it to us along with a copy of the letter that you sent to the residents notifying them of their results. A return envelope is enclosed for your convenience.

Please note that all enclosures are sent to the addressee of this letter. Persons receiving a copy (cc) of the letter do not receive any enclosures. It is the responsibility of the addressee to follow through with the requirements.

A sampling kit will be sent to you prior to your next scheduled sampling date. The enclosed report should be placed in your records and a copy maintained on or near the water supply premises and available for public inspection for not less than ten (10) years.

If you have any questions, please contact me at 651/201-4674, or Anna Schliep at 651/201-4667.

Sincerely,



Pauline A. Wuoti
Community Public Water Supply Unit
Environmental Health Division
P.O. Box 64975
St. Paul, Minnesota 55164-0975

PAW

Enclosures

cc: Water Superintendent



Understanding the Lead and Copper Rule

EPA established the Lead and Copper Rule (LCR) in 1991 to protect public health and reduce exposure to lead in drinking water. The most common sources of lead in drinking water are lead pipes and brass or bronze faucets and fixtures.

MAXIMUM CONTAMINANT LEVEL GOAL

The Lead and Copper Rule established a Maximum Contaminant Level Goal (MCLG) of zero for lead. The MCLG is zero because there is no level of exposure to lead that is without risk. The Safe Drinking Water Act requires that EPA establish a treatment technique for contaminants like lead and copper that prevents known or anticipated health effects to the extent feasible.

Since implementation, the **Lead and Copper Rule** action level exceedances have decreased by **over 90%**

TREATMENT TECHNIQUE

Lead is not naturally found in water. Lead from lead pipes, faucets, and fixtures can dissolve into water or sometimes can enter as flakes or small particles. To keep lead from entering the water, EPA requires some systems, including those that are having difficulty controlling lead, to treat water using certain chemicals that keep the lead in place by reducing corrosion. This treatment is called corrosion control. When corrosion control alone is not sufficient to control lead exposure, EPA requires systems to educate the public about risks of lead in drinking water and to replace lead service lines.

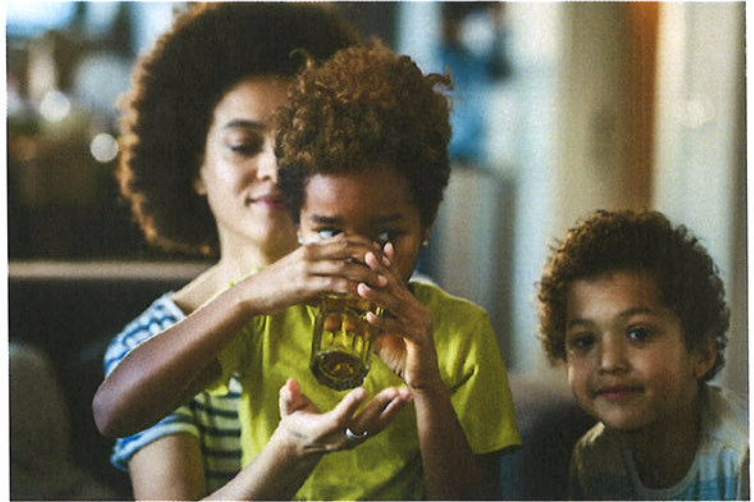
EPA'S LEAD ACTION LEVEL

The lead action level is a measure of the effectiveness of the corrosion control treatment in water systems. The action level is not a standard for establishing a safe level of lead in a home.

To check if corrosion control is working, EPA requires water systems to test for lead at the tap in certain homes, including those with lead service lines. Systems compare sample results from homes to EPA's action level of 0.015 mg/L (15 ppb). If 10 percent of the samples from these homes have water concentrations that are greater than the action level, then the system must perform actions such as public education and lead service line replacement.

LCR VIOLATIONS

Exceeding the action level is not a violation. Violations can be assessed if a system does not perform certain required actions (e.g., public education or lead service line replacement) after the action level is exceeded. Other violations may also be assessed under the rule. For example, if samples are collected improperly, samples are not reported, or if treatment is done incorrectly.



IMPLEMENTATION AND NEXT STEPS

Implementation of the LCR over the past twenty-five years has resulted in major improvements in public health. The number of the nation's large drinking water systems that have exceeded the LCR action level has decreased by over 90 percent since the initial implementation of the rule. Based on June 2019 SDWIS data, about 97 percent of the systems have not reported an action level exceedance in the last 3 years.


EPA is continuing to work with primacy agencies to ensure that the LCR is being properly implemented.

EPA has recently released the proposed rule for public comment. To learn more visit: www.epa.gov/safewater/lcrproposal.



For more information, visit: epa.gov/safewater

**SHAKOPEE PUBLIC UTILITIES
MEMORANDUM**

TO: SHAKOPEE PUBLIC UTILITIES COMMISSION
FROM: JOHN R. CROOKS, UTILITIES MANAGER 
SUBJECT: MMPA BOARD MEETING PUBLIC SUMMARY
JANUARY 2020
DATE: JANUARY 30, 2020

The Board of Directors of the Minnesota Municipal Power Agency (MMPA) met on January 21, 2020 at Shakopee Public Utilities in Shakopee, Minnesota.

The Board reviewed 2019 performance. Management's presentation is attached.

The Board discussed the status of the renewable projects the Agency is pursuing.

Participation in MMPA's residential Clean Energy Choice program increased over December, with market penetration that is at 3.3%.



Minnesota Municipal Power Agency

the power of your hometown

2019 Review

January 21, 2020



Outline

- Business Environment Changes
- Operational Review
- Financial Review



Business Environment Changes

- Load Growth Is Slowing
- No More Transmission for Renewables



Operational Review

- Completed Two Hometown Solar Installations
- Repowering of Hometown Wind Program
- Successful Expansion of High School Energy Ed. Program
- Integrated Resource Plan Approved
- New Government Relations Initiative



2019 Hometown Solar Installations



Buffalo
Tatanka Elementary School



Elk River
Elk River City Hall



Hometown Wind Repowering

- Life Extension Project for Hometown Wind Turbines
 - Extend Life for 20 Years
- Scope Includes Refurbishment, Replacement, and Cleaning
- Turbines Projected to Be Back in Service Q1 2020
- Procuring New Turbine for Elk River



High School Energy Education

- New High School Program Offering
 - Expanded on Pilot from Prior Year
- Eight Members Participated in 2019
 - 460 Students
- More In-Depth Coverage of Energy Issues
 - Electric Circuits
 - Electric Generation Case Study
 - Career Panel
- Well Received by Teachers and Students



Integrated Resource Plan

- Minnesota Public Utilities Commission Approved MMPA's Integrated Resource Plan for 2019-2033
- PUC Approved Moving Next IRP Due from 2020 to 2025
 - Recognizes MMPA Has Sufficient Capacity Until 2030
 - Significant Cost Savings From Delaying Next Report



Government Relations

- Hired Stinson as Lobbyist to Enhance Our Government Relations Efforts
- Developing Relationships with Local Legislators
 - Met with Four Representatives and Four Senators in 2019



Financial Review

- Rates Below Budget
- Fitch Upgraded MMPA's Bond Outlook
- Renewed Credit Agreement with US Bank



Rates Below Budget

- 2019 Average Rate to Members: \$73.95 per MWh
 - \$1.95 per MWh Lower than Budget of \$75.90
 - 2.6% Lower than Budget



Fitch Rating Outlook Upgrade

- Fitch Affirmed MMPA's A+ Bond Rating in December
- Rating Outlook Improved from Stable to Positive
- Fitch Noted:
 - Strong Financial Performance
 - Increased Liquidity
 - Lower Debt Ratio
 - Strong Member Credit Quality
 - Effective Risk Management



Credit Agreement Renewal

- Renewed Credit Agreement with US Bank in May
- \$20 Million Facility
- Extended Agreement to May 2022
- Better Terms than Previous Agreement
 - Lower Interest Rate on Draws
 - Allows For Issuance of Standby Letters of Credit
- Credit Facility Supports Liquidity, Flexibility, and Bond Rating



Minnesota Municipal Power Agency

the power of your hometown

RESOLUTION # 1266
RESOLUTION REGULATING WAGE
AND CONTRACT TERMS

BE IT RESOLVED BY THE SHAKOPEE PUBLIC UTILITIES COMMISSION,
in meeting duly assembled on February 3, 2020 that the Shakopee Public Utilities
Commission does hereby affirm wage and contract terms offered and accepted
in accordance with the Appendix "A" to this Resolution.

BE IT FURTHER RESOLVED that said wage and contract terms are to
become effective from and after January 1, 2020.

BE IT FURTHER RESOLVED that the salary range and wage will be adjusted
annually on January 1, as determined by the Shakopee Public Utilities Commission.

BE IT FURTHER RESOLVED, that all things necessary to carry out the
terms and purpose of this Resolution are hereby authorized and performed.

Passed in regular session of the Shakopee Public Utilities Commission this
3rd day of February, 2020.

Commission President: Terrance Joos

ATTEST:

Commission Secretary: John R. Crooks



11a

SHAKOPEE PUBLIC UTILITIES

“Lighting the Way – Yesterday, Today and Beyond”

January 29, 2020

TO: John Crooks, Utilities Manager *JRC*
FROM: Greg Drent, Electric Superintendent *GD*
Subject: AMI (Advanced Metering Infrastructure) Discussion

Background:

SPU has looked at AMI for many years. In 2011, West Monroe did a study for SPU on a smart grid technology roadmap. The total cost at that time was going to be about \$21.1 million dollars. The Commission decided in 2011 that the total cost outweighed the benefits of an AMI project.

Since 2011, we have continued to keep a close eye on AMI costs and benefits. We feel that it is time for SPU to revisit an AMI project and get direction from SPU commissioners.

1. We have done some small-scale projects and added over 1200 meters, which we can drive by and read.
2. We have installed 24 meters that are remote disconnects so we can read and disconnect from the office.
3. We have recently interviewed some of the major meter manufacturers to understand who can read water and electric meters.
4. SPU staff went to Marshall, MN to look at their AMI project and get some insight on the process of deploying an AMI project.
5. We interviewed two consultants who have deployed many AMI projects.

In 2020, we have CIP dollars allocated to hire a consultant to help staff plan, design, bid documents, Pilot/Demonstration phase and construction phase of an AMI project. The consultant would be bidding on each phase of consulting work. If the consultant is doing a great job on planning, we will use them for design work. If design goes well then they will prepare the bid documents and so on. We feel this is the best way to see real results as the consultant is constantly proving their worth otherwise we can go a different direction if we feel we are not getting the value for the consultant.

Recommendation:

Direct staff to have an RFP (Request for Proposal) for consulting work on an AMI project starting in 2020 and ending in 2023. The proposal will be in five segments plan, design, bid documents, demonstration phase and construction phase.



Shakopee Public Utilities AMI Discussion

What is AMI and how does it work?

Advanced Metering Infrastructure (AMI) is an integrated system of smart meters, communications networks, data management systems that enables two-way communications between utilities and their equipment.



What is two-way communication to the meter?

The meters are electronic and are capable of recording and storing meter data. SPU will send a radio signal to the meter over a communication system that is installed at the time of the project. The meter then sends the stored meter data back to the SPU headend where the meter data is stored until needed.



History

In 2011 West Monroe did a Smart grid case and technology roadmap for SPU. The study looked at some of the following criteria...

- ▶ New System
 - ▶ Capital Cost \$21.1 million
 - ▶ Operation and Maintenance Cost over 15 years \$9.6 million
 - ▶ Electric and Water Meters Costs and Benefits
 - ▶ Backhaul Infrastructure
 - ▶ System Integration



History

In 2011 West Monroe did a Smart grid case and technology roadmap for SPU. The study looked at some of the following criteria...

- ▶ Customers
 - ▶ ePortal
 - ▶ Prepay Programs
 - ▶ TOU (Time of Use) Rates
 - ▶ Electric Vehicles Rates



History

In 2011 West Monroe did a Smart grid case and technology roadmap for SPU. The study looked at some of the following criteria...

- ▶ SPU
 - ▶ Meter Data Management
 - ▶ GIS
 - ▶ Distribution and Substation Automation
 - ▶ Load Control
 - ▶ Demand Side Management
 - ▶ Conservation Voltage Regulation
 - ▶ Mobile Data Workforce
 - ▶ Asset Management System

What have we done with AMI/AMR since 2011?

- ▶ AMR drive by system –1233 meters on SPU's system
- ▶ Nighthawk reading and disconnect meters
- ▶ Interviewed meter manufacturers in preparation for AMI
- ▶ Staff went to Marshall, MN to look at their AMI project and insight on the process of deploying an AMI Project
- ▶ Interviewed two consultants who have deployed many AMI projects



Why should we consider an AMI investment?

- ▶ Customer Benefits

- ▶ Automatic meter readings
- ▶ Constant bill cycles
- ▶ More accurate readings
- ▶ Customer Portal
- ▶ Customers are informed on their bill
- ▶ Reduction in customer calls accurate reads and customers can view their account
- ▶ Informed customers on usage



Why should we consider an AMI investment?

▶ SPU Benefits

- ▶ Disconnects/ Reconnects
- ▶ Leak detection Inform customers before they have a high bill
- ▶ Theft detection
- ▶ (OMS) Outage Management System
- ▶ TOU rates
- ▶ EV Electric Vehicle rate
- ▶ AC control
- ▶ Voltage detection
- ▶ Heat detection on meter socket
- ▶ Transformer loading information more efficient operation
- ▶ Faster outage response and shorter outages
- ▶ Distribution automation
- ▶ Video Surveillance at SPU Facilities

FAQ ?

Is Advanced Metering new technology?

No approximately 50% of all meters in America are Advanced "Smart" meters.

How does Advanced Metering benefit the customers?

The new metering will allow SPU to reduce the labor cost associated with reading the meters. The additional meter data will enable SPU to better communicate with the customer regarding their water and electricity consumption patterns, detect abnormal consumption due to leaks, faucets running etc. and SPU will be able to help the customers use water and electricity more efficiently.

FAQ?

Will the Utility be able to remotely disconnect/reconnect electric service using the new meters?

Yes. Residential meters will have remote disconnect and reconnect capabilities.

Will the new meters be able to notify the Utility in the event of a power outage or problem with my service?

Yes. AMI meters are capable of initiating two-way communications. This means that the meter can report outages and voltage variances, as well as other service conditions.

FAQ?



Will I continue to be billed the same way?

The monthly utility bill will look the same. The consumption period will reflect the actual calendar month of the utility bill

Next steps...

If the Commission wants to move forward with AMI there is money budgeted in 2020 to hire a consultant. What would the consultant do for SPU?

1. Planning
2. Design
3. Bid Period
4. PILOT/ Demonstration phase
5. Construction

CIP Budget 2020-2023



2020 - \$245,000 consulting work

2021-2023 \$11,100,000 Demonstration, construction and implementation of AMI for all SPU customers



Do you have any questions for
SPU staff?



**SHAKOPEE PUBLIC UTILITIES
MEMORANDUM**

TO: SHAKOPEE PUBLIC UTILITIES COMMISSION

FROM: JOHN R. CROOKS, UTILITIES MANAGER 

SUBJECT: SPU / CITY COUNCIL JOINT MEETING

DATE: FEBRUARY 1, 2020

An email was sent to Commissioners and myself requesting a joint meeting between the SPU Commission and the City Council. There are two issues that the Council would like to discuss; those being notification of rate increases and the SPU contribution to the City of Shakopee.

Would there be other issues that the SPU Commission would like placed on a joint meeting agenda?

Attached are emails between the City Administrator and myself to attempt setting an agreed upon date and location.

Crooks, John

From: Bill Reynolds <BReynolds@ShakopeeMN.gov>
Sent: Wednesday, January 22, 2020 11:16 AM
To: Crooks, John
Cc: Mathew Meyer; Terry Joos; Mocol, Kathi; Amundson, Deb; Clay, Steve
Subject: Joint Meeting

Mr. Crooks,

The City Council would like to conduct a joint meeting to discuss the following issues:

- 1) An agreement as to what constitutes "notification" to the city for SPUC changes to water rates; and
- 2) An agreement as to the process to change the transfer payment made by SPUC to the city and a renegotiation of that amount. SPUCS unilateral action is considered invalid under our legal analysis.

Please advise as to when your commission will be available to meet.



William H. Reynolds
City Administrator, City of Shakopee
952-233-9311
www.ShakopeeMN.gov



2019 AWARD RECIPIENT

Crooks, John

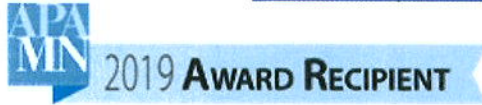
From: Bill Reynolds <BReynolds@ShakopeeMN.gov>
Sent: Tuesday, January 28, 2020 1:49 PM
To: Crooks, John; William Mars; William.Mars; Joos, Terry; Terry Joos
Subject: RE: Proposed Joint Meeting Date

Unfortunately this date will not work. It is the night of a City Council meeting. Also, after consultation with the City Council, the meeting will be held here at city hall. The meeting was called by the City Council in regards to the highly unusual SPUC transfer adjustment. In the future, I would suggest that there be an agreement as to the meeting location as opposed to demanding where it is to be held.

I suggest the 17th or 19th of March for a meeting date.



William H. Reynolds
City Administrator, City of Shakopee
952-233-9311
www.ShakopeeMN.gov



From: Crooks, John <jcrooks@shakopeeutilities.com>
Sent: Tuesday, January 28, 2020 11:08 AM
To: Bill Reynolds <BReynolds@ShakopeeMN.gov>; William Mars <WMars@ShakopeeMN.gov>; William.Mars <William.Mars@target.com>; Joos, Terry <TJoos@MNSupply.com>; Terry Joos <terryjoos@gmail.com>
Subject: Proposed Joint Meeting Date

Good Morning,

While somewhat preliminary, I would propose a date of Tuesday, February 18 for the Joint Meeting. This date would need to be accepted by the SPU Commission at their February 3 Commission meeting. As previously provided, This Joint Meeting would be held in the Shakopee Public Utilities Commission Room. Please let me know if you have any questions.

Regards,
John

**SHAKOPEE PUBLIC UTILITIES
MEMORANDUM**

TO: SHAKOPEE PUBLIC UTILITIES COMMISSION
FROM: JOHN R. CROOKS, UTILITIES MANAGER
SUBJECT: RESPONSE TO CITY COUNCIL AGENDA ITEM
DATE: JANUARY 31, 2020

This is a response to the January 21, 2020 City Council Agenda Item 7.A.2 – *Review of Legal Opinion on SPUC Unilateral Modification of City Contribution Agreement.*

Before the City Council meeting that was held January 21, 2020, I informed the SPU Commission that I had sent an email to the Council stating that there were errors within the information provided with Agenda Item 7.A.2. The Commission and City Council were informed that I would follow up with a formal response.

In the cover memo written by the City Administrator for the Agenda Item, there are several statements I would like to point out.

In his memo, Mr. Reynolds states SPUC changed the method of calculation *“without any notice”*. Mr. Reynolds also states *“SPUC had at no point made any attempt to notify city staff or council regarding the action”*.

Fact-Mr. Reynolds starts out the memo with the *statement “on Tuesday December 3, 2019 City Councilor (and SPUC Liaison) Lehman informed the City Council that SPUC was in the process”* of changing the method of calculation for the city contribution.

It is also important to note the Council and city staff were notified of the calculation change via the December 16, 2019 SPUC public packet, posted on line and made available to the City on December 13, 2019. This is in agreement with City Attorney Jim Thompson’s and SPU’s attorney Kaela Brennen’s attachment that says SPUC does notify the City through several methods.

Mr. Reynolds refers in his memo to the June 7, 2019 letter to the SPU Commission in regards to the city contribution. The question in the June 7 letter states *“would SPUC be amenable to reviewing their contribution in regard to electric revenues”*. In his memo from the January 21, 2020 meeting Mr. Reynolds

states "SPUC failed to answer the question directly instead they simply noted the current contribution level".

Fact- This is the July 25th response to the June 7th question as provided to both the Commission and Council. *"Presently, SPU contributes 2.71% of gross electric sales and free street light service, along with other free services. This is very similar contribution as with the City Franchise Fee for both Xcel Energy and Minnesota Valley Electric Cooperative.*

With the water utility, SPU contributes 23.77% of gross water sales less the cost of energy for pumping. This is considerably higher than the present City of Shakopee Franchise Fee.

Please refer to the attachment for the historical overview of SPU contributions to the City of Shakopee.

Any review of the City contribution would be decided by the SPU Commission".

Within the January 21 memo, there is also reference to the Baker Tilly study that was completed for the City in regards to contributions from municipal utilities in 8 MN cities. While I do not disagree with the information contained in the study, it is important to provide additional information. Comparing SPU electric fees and rates in context to the contribution is critical. Shakopee has the lowest fixed monthly electric fee of all the cities Baker Tilly compared. SPU's monthly fixed fee is \$9, compared to an average of the 8 cities at \$12. Marshall had the highest fixed monthly fixed fee at \$21. SPU electric rates are also lower than the average of the cities (taking out 2 cities that receive WAPA allocation) at 9.88 cents/kWh.

On the water side, the SPU also has the lowest fixed monthly fee at \$3.37 compared to an average of the 8 cities at \$8.30/month. Once again Marshall is the highest at \$17.80/month. As compared to the 8 cities SPU is on the lower end of the cities at \$2.49/1000 gallons for usage under 5000 gallons.

It is apparent that the each of the utilities city contributions are funded through rates. This leads to higher rates with higher levels of contribution to their individual cities.

Mr. Reynolds memo states there is a "long standing agreement" between the City and SPUC.

Fact-No current agreement exists. Referring to the December 3, 2001 SPU Resolution #672 – A Resolution Authorizing Certain Payments from the Shakopee Public Utilities Commission to the City of Shakopee, there is no reference to an existing or new agreement between the two parties. It also states clearly that *"contributions from the electric and water utility operations shall be made by the Shakopee Public Utilities Commission to the General Fund of the City for the year 2002 and subsequent years, until such further action as may be taken by the Shakopee Public Utilities Commission".*

In follow up to this resolution, it should be noted that in SPU/City Joint Meeting minutes from February 25, 2003, over a year after SPU Resolution #625, it is stated that 'SPUC sets an annual contribution to the City'. Also noted in those minutes it is *"pointed out Resolution #672 lays out how and why a contribution is made to the City"*. It was noted in the minutes that *"past practices have been that the Commission would propose to the City and each body would adopt resolutions concurring"*. This has not happened since 1977. Since 1977, there have been 6 SPU resolutions addressing the City contribution with no corresponding City resolutions. It should be noted that Resolution #672 repeals other SPU resolutions concerning the city contribution, which makes #672 quite clear. In SPU Resolution #1261, passed on December 16, 2019, Resolution #672 is repealed.

Mr. Reynolds' memo states the change in the contribution *"will have impact upon taxes in the future. City budgets are crafted for the need to deliver services and any decrease in the SPUC contribution will be addressed through taxes which will impact lower income properties the hardest"*.

Fact-The change in the contribution methodology did have the City budget in mind, as the change was to be revenue neutral for the City. This can clearly be noted in the difference between both methods of calculation for 2019.

The new calculation for 2020 and forward establishes the calculation at 4.4% of defined sales for the utility. The contribution will go up or down dependent on sales just as it has resulting in similar contribution amounts to the city.

Based on electric revenue, the 4.4% is 47% higher than the 3.0% franchise fee for the city's two other electricity suppliers; Excel Energy and Minnesota Valley Electric Cooperative. SPU is willingly increasing the contribution of electric sales from 2.71% to 4.4%.

The SPU contribution to the City in 2019, not counting free services provided, is at \$2,320,000. The difference with the 2 calculations, per Resolutions #672 and #1261 methods is \$8,000. **This is a difference of 0.35%**. It is the City's decision if property taxes will need to be addressed due to this change.

RECOMMENDATION –

To have the Commission again request a meeting between the Shakopee City Administrator and the SPU Utilities Manager. It would also be requested, the Mayor and SPU Commission President be present.

7.A.2.



Shakopee City Council
January 21, 2020

FROM: William H. Reynolds, City Administrator
TO: Mayor and Council Members

Subject:

Review of City Attorney Legal Opinion on Shakopee Public Utilities Commission's Unilateral Modification of City Contribution Agreement

Policy/Action Requested:

Review and Determination of Next Steps.

Recommendation:

None.

Discussion:

On Tuesday, December 3, 2019, City Councilor (and SPUC Liaison) Lehman informed the City Council that SPUC was in the process of unilaterally changing the longstanding and agreed to contribution amounts to the City of Shakopee.

Following that announcement, an inquiry was made to SPUC regarding the issue since SPUC staff had at no point made any attempt to notify city staff or council regarding this action, nor made any request to enter into discussions on the issue. Renee Schmid, SPUC's Director of Finance and Administration responded, "*The Shakopee Public Utilities Commission is the governing body with authority for setting rates for the electric and water utilities and determining the municipal contribution amounts, neither of which require City Council approval.*"

On December 6, 2019, I inquired of Ms. Schmid, "*Can you please help me understand where SPUC gets the authority to determine municipal contribution amounts without city agreement? This appears to be very different than our history and contrary to city ordinances.*" I also copied Mr. John Crooks, SPUC Utilities Manager, and Mr. Terry Joos, SPUC President. I received no response to my inquiry.

On Monday, December 16, 2019, SPUC moved ahead and unilaterally changed the formula used to determine the contributions made to the city - without any notice or discussion - effectively severing the long-standing contribution agreement between the two entities.

Based upon City Council's concerns, the City Attorney reviewed the issue and has determined among other findings that:

- 1) Historically since 1950, SPUC's payment to the City in lieu of taxes has been determined either by agreement between the parties or by a separate action of the City or the state legislature, and
- 2) In 2001, the City and SPUC agreed to the current formula and the City has not agreed to modify that agreement.

It should be noted that staff has always been willing to discuss reviewing the transfer fees and specifically addressed the issue as part of a June 7, 2019 memo. (SPUC initially voted to table this memo and not address any of the issues it contained, but answered upon City Council's formal request to do so.).

In a section of the memo entitled "*Overview of the SPUC City Contribution*", it noted that, "*SPUC, as do most public utilities, provides a yearly transfer to the city's general fund from both their water and electrical utility operations... SPUC has the second largest sales in water and pays the second largest water contribution to a city, but had the largest sales in electric and is behind 5 of the top 6 in city contributions - several by millions. Based upon this information, would SPUC be amenable to reviewing their contribution in regard to its electrical revenues?*" In their July 25, 2019 response, SPUC failed to answer the question directly instead they simply noted the current contribution level.

This issue certainly needs to be discussed by the city and SPUC. The city recently had a comparison of Utility Franchise Fees and Transfers completed by BakerTilly which concluded that, "*... the Shakopee Electric Utility budget transfers are considerably less than the comparison utilities and less than the average transfers of the members of APPA. Budgeted transfers from the water utility are considerably greater than the comparison; however, the water utility revenues are also significantly less for each utility than the electric revenues. Perhaps the most relevant comparison is the combined budgeted revenues which shows Shakopee Public Utilities budgets transfers are less than half of the budgeted transfers of the comparison utilities.*" By adjusting the SPUC contribution rate, we could essentially provide property tax relief to lower income residents - who are disproportionately hit by tax increases due to market forces impact upon the value of affordable housing.

Budget Impact:

This is a significant abrogation of a long-standing agreement that will have impact upon taxes in the future. City budgets are crafted for the need to deliver services and any decrease in the SPUC contribution will be addressed through taxes which will impact lower income properties the hardest (switching funding largely from commercial/industrial users of water and electric to residential taxpayers).


ATTACHMENTS:

- ▢ City Attny Opinion on SPUC Rate Setting
- ▢ BakerTilly Utility Transfer Comparison



Offices in
Minneapolis
Saint Paul
St. Cloud

470 U.S. Bank Plaza
200 South Sixth Street
Minneapolis, MN 55402
(612) 337-9300 telephone
(612) 337-9310 fax
www.kennedy-graven.com
Affirmative Action, Equal Opportunity Employer

To: Shakopee City Council
From: Jim Thomson, City Attorney 
Re: SPUC Rate-Setting and Payment to City Matters
Date: January 16, 2020

INTRODUCTION

At its meeting on December 16, 2019, the Shakopee Public Utilities Commission (“SPUC”) took the following actions:

- Adopted Resolution #1254 adjusting water fees to \$0.42 per 1,000 gallons;
- Adopted Resolution #1255 adjusting electrical underground relocation fees to \$0.00030 per kWh;
- Adopted Resolution #1256 adjusting electrical distribution fees;
- Adopted Resolution #1257 establishing various fees, charges and rates; and
- Adopted Resolution #1261 modifying the method of calculating SPUC’s annual payment to the City’s general fund.

The first two resolutions were effective immediately; the last three resolutions were effective on January 1, 2020.

SPUC’s adoption of the above resolutions raises the following questions:

1. Is SPUC required to inform the City Council before SPUC changes its rates or fees? If so, did SPUC properly do so before modifying its rates and fees for 2020?
2. Is SPUC’s action to modify the method of calculating its annual payment to the City’s general fund effective without the City’s approval?

Attached for your information is a December 23, 2019 letter that I received from attorney Kaela Brennan summarizing SPUC's perspective on those two questions.

SHORT ANSWERS

1. SPUC is required to inform the City Council before SPUC changes its rates. In this particular instance, SPUC informed the City Council before modifying its rates for 2020. That notification occurred, however, only because the mayor and city administrator requested the information. Going forward, I recommend that the City and SPUC agree on a specific process for SPUC to follow to inform the City of SPUC's intention to adopt new fees or rates.
2. SPUC's action on December 16, 2019 modifying the method by which its annual payment to the City is calculated is not effective without the City's approval. The current agreement, which was established in 2001, between the City and SPUC set SPUC's payment to the City at 2.71% of SPUC's gross annual electric sales and 23.77% of SPUC's gross water margin. Until the City approves the new method adopted by SPUC on December 16, 2019, the 2001 agreement remains the operative agreement between SPUC and the City, and SPUC's payment to the City should continue to be calculated pursuant to the terms of that agreement.

ANALYSIS

Background

As I indicated in my July 2, 2019 memorandum to you, the City Council established SPUC by a December 12, 1950 Resolution. That Resolution created a "Water, Light, Power and Public Building Commission" for the City. The Resolution gave the commission "full, absolute and exclusive control of and power over the water, light, power plants." The Mayor approved the Resolution on December 14, 1950. The Resolution was adopted pursuant to the authority created by Minnesota Statutes, Sections 453.01- 453.14. The legislature later repealed those sections. Minnesota Statutes, Sections 412.321-412.391 now govern municipal utility commissions. Section 412.331 states that a previously established "water, light, power and building commission" shall continue to operate as "a public utilities commission."

City Code Section 32.22 also governs SPUC. That section contains many of the same provisions as those in Minnesota Statutes, Sections 412.321-412.391. I am attaching a copy of Section 32.22.

The resolution, statutes, and City Code provisions grant broad powers to SPUC. Those powers, however, are not unlimited, and SPUC can only exercise those powers within the confines of the authority granted to it.

Question #1

Section 32.22, Paragraph H states as follows (underlining is mine):

Rates, rules, and regulations. The Commission shall have power, after informing the Council, to fix rates and to adopt reasonable rules and regulations for utility service supplied by the municipally- owned public utilities within its jurisdiction. A joint meeting shall be held between the Commission and Council when requested by either body.

Ms. Brennan expresses concern in her letter regarding whether the City Council has the authority to impose the highlighted requirement on SPUC. I do not share her concern. SPUC was created by a City Council action. SPUC must therefore act within the confines of the powers granted by the City Council. Here, the power granted to SPUC to set rates was conditioned on the requirement that SPUC first inform the Council that SPUC would be doing so.

Ms. Brennan correctly points out that Paragraph H does not state how the “informing” is to occur. The paragraph does, though, clearly state that SPUC’s power to fix rates exists only “after” it informs the Council. Ms. Brennan states that in this situation the following events constituted “informing”:

- A copy of the Commission’s November 26, 2019 staff report was given to the city administrator, mayor, and council liaison;
- The Commission’s signed resolution and the minutes of the December 2, 2019 meeting were routed to city hall on December 18th;

- The rate modifications were discussed “in some detail” at the December 17th City Council meeting; and
- The Commission’s meeting materials are available on-line.

The Merriam-Webster dictionary definition of “inform” is “to communicate knowledge to.” In the context of Paragraph H, the “informing” is to take place *before* SPUC exercises its power to set rates. Posting meeting materials on-line does not, in my opinion, meet the “informing” requirement in Paragraph H. In addition, the fact that SPUC’s rate modifications were briefly¹ discussed by the City Council at its December 17th City Council meeting also does not meet the “informing” requirement, because the Council discussion occurred only after SPUC acted to change its rates. Similarly, the fact that SPUC’s signed resolution and minutes of its December 2nd meeting were routed to city hall on December 18th does not meet the “informing” requirement, because that action also occurred after SPUC took its actions on December 16th.

I have been advised that the November 26th SPUC staff report was provided to the mayor and city administrator on or about December 5th. That report dealt with SPUC’s proposed overall budget for 2020, not only the proposed rate changes. The report was provided to the City only after the mayor and city administrator requested the information. Nevertheless, because the November 26th staff report contains information relating to the proposed rate changes and because the report was received by the City before SPUC took its actions on December 16th, the “informing” requirement in Paragraph H was met. In the future, however, it would be advisable if the City and SPUC could agree upon a specific process that will be used by SPUC to inform the City Council before SPUC adopts any changes to its rates.

¹ I reviewed the video of the December 17th City Council meeting. The City Council did not discuss SPUC’s rate changes “in some detail.” Council Member Lehman did advise the Council of SPUC’s action. Most of the ensuing discussion, however, involved the Council’s concern over the lack of advance notice to the City of the rate changes.

Question #2

Minnesota Statutes, Section 412.361, Subdivision 5 states (underlining is mine):

Subd 5. Relations, finances with city. The Commission shall have power to enter into agreements with the Council for payments by the city of utility service; compensation for the use by either the Commission or the city of buildings, equipment, and personnel under the control of the other; payments to the city in lieu of taxes; transfers of surplus utility funds to the General Fund; and also agreements on other subjects of relationships between the Commission and the Council

City Code Section 32.22, Paragraph G (entitled “Agreement with city”) is identical to the statutory provision, except that it also includes the following two sentences:

The Commission shall also have any and all power and authority provided by law. All existing agreements between the Commission and Council are preserved.

Ms. Brennan is correct that simply because a statute grants power to a government entity does not typically mean that the governmental entity is obligated to exercise that power. Section 412.361, Subdivision 5 is, however, somewhat unique. Unlike the other subdivisions in Section 412.361, the legislature specified in Subdivision 5 the precise manner by which a utilities commission must exercise the powers listed in that subdivision – i.e. by entering “into agreements with the council.” In other words, unlike the powers granted to a utilities commission by the other subdivisions in Section 412.361, when a utilities commission exercises any of the powers enumerated in Subdivision 5, the legislature stated that the commission must do so pursuant to an agreement with the city.

Ms. Brennan states that since 1993, SPUC has adopted resolutions establishing the method by which SPUC funds would be transferred to the City without an agreement being “negotiated or signed”² with the City. My review of the history does not support that conclusion, either before or after 1993.

² Neither the City Code provision nor the statute requires “signed” agreements. Those provisions simply state that SPUC has the power “to enter into agreements” with the City.

The following is a summary of the history of the changes to the method by which SPUC's annual payment to the City's general fund has been calculated:

- 1950** City Council Resolution creating SPUC established the payment at "not less than 4% of the fixed assets" of SPUC
- 1965** State legislature adopted a special law regulating the City; the law required 6% of SPUC's gross receipts to be transferred to the City's general fund
- 1967** City Council Ordinance No. 265 increased the payment to 12% of SPUC's gross receipts
- 1977** City Council Ordinance No. 413 repealed Ordinance No. 265 and provided that SPUC's payment into the City's general fund shall be established by the City by resolution. SPUC Resolution No. 193 and City Council Resolution No. 1144 set the payment amount at the greater of \$240,383.00, or 23.77% of SPUC's "gross margin" effective as of January 1, 1978
- 1984** SPUC Resolution #272 established the factors to be used to calculate "gross margin" based on an agreement reached during a joint meeting between SPUC and the City Council
- 1992** SPUC Resolution #385 stated that SPUC and the City Council agreed that for a period of four years SPUC's payment to the City would not include revenue derived by SPUC in 1990 from its acquisition of the territory previously served by Minnesota Valley Electric Cooperative
- 1993** SPUC Resolution #409 adjusted how the monthly payment was to be calculated based on a discussion at a joint City Council/SPUC meeting in 1992. The monthly payment will be 1/12th of the actual total annual amount based on the SPUC's audited financial reports for the previous two years rounded down to the nearing one thousand. The Resolution did not change the total annual amount established by the City Council and SPUC in 1977
- 1999** SPUC Resolution #553 capped the payment from SPUC's electric fund at \$727,102 pending the City's adoption of a franchise fee; the Resolution did not change the method of calculating the payment from SPUC's water fund
- 2001** SPUC Resolution #672 set the payment from electric fund at 2.71% of gross electric sales and payment from the water fund at 23.77% (same percentage as set in 1977) of gross water margin; the change to 2.71% for electric was based on a rate study conducted by the City
- 2019** SPUC Resolution #1261 set the payment at 4.4% of electric sales and 4.4% of water sales; no previous SPUC discussion with City

The above history³ demonstrates the following:

- In three instances (1950, 1965, 1967) SPUC's payment to the City's general fund was established either by the City or by the legislature without any action by SPUC
- In one instance (1977) SPUC's payment to the City's general fund was established by the City and SPUC jointly adopting resolutions
- In five instances (1984, 1992, 1993, 1999, 2001) SPUC's payment to the City's general fund was modified based on previous discussions with, and agreement by, the City
- In one instance (2019) SPUC changed the method of calculating its payment to the City's general fund without prior consultation with the City

The above history demonstrates that SPUC's adoption of Resolution #1261 on December 16, 2019 is the first time that SPUC unilaterally changed the method of calculating its payment to the City's general fund. It is worthwhile noting that the change in the percentage of water sales (from 23.77% to 4.4%) modified the method by which SPUC's payment from the water fund had been calculated for 42 years.

Another point worth noting is that the last sentence in Section 32.22, Paragraph G, which the City Council adopted in 1978, states that all "existing agreements between the Commission and the Council are preserved." As demonstrated by the above history, the 1977 agreement was the agreement that was in effect when Section 32.22 was adopted. Although the City and SPUC later changed that agreement, Paragraph G clearly indicates that there were existing "agreements" in place between SPUC and the City as of 1978.

³ I compiled the history by reviewing City and SPUC documents. I do not believe that I overlooked any significant events. The minutes of a joint SPUC/City Council meeting on January 10, 1989 include a statement by a councilmember "that the action taken to reduce the 12% was illegal." I am not sure what that statement is referring to. I have not found any action by either SPUC or the City to reduce the 12% established by the City Council in 1967 by Ordinance 265. As shown in the timeline, the next action after 1967 that occurred was the 1976 action establishing the payment as the greater of \$240,383.00, or 23.77% of SPUC's "gross margin."

Based on my analysis of the applicable law and of the history between SPUC and the City,
my conclusion is:

1. In adopting Section 412.361, Subdivision 5, the legislature clearly contemplated that the powers granted by that provision to a public utilities commission were to be implemented pursuant to an agreement with the city that established the commission.
2. One of the powers granted to a local public utilities commission by Section 412.361, Subdivision 5 is to make payments to a city in lieu of taxes pursuant to an agreement with the city.
3. The SPUC/City history since 1950 demonstrates that SPUC's payment to the City in lieu of taxes has been determined either by agreement between the parties or by a separate action of the City or the state legislature.
4. The City and SPUC agreed in 2001 that SPUC's annual payment to the City from SPUC's electric fund would be 2.71% of SPUC's gross electric sales and the annual payment from its water fund would be 23.77% of SPUC's gross water margin. The City has not agreed to modify that agreement.
5. Until the City approves the action taken by SPUC on December 16, 2019 by Resolution #1261, the 2001 agreement remains the operative agreement between SPUC and the City.

McGRANN SHEA CARNIVAL STRAUGHN & LAMB, CHARTERED

ATTORNEYS AT LAW

WILLIAM R. McGRANN
DOUGLAS M. CARNIVAL
KATHLEEN M. LAMB
JOHN R. SCHULZ
BRIAN L. SOBOL
SCOTT B. CROSSMAN
CARLA J. PEDERSEN

JOSEPH T. BAGNOLI
ROGER J. STELLJES
JEFFREY C. URBAN
KATHLEEN MICHAELA BRENNAN
CARL S. WOSMEK
AMY L. COURT
CHRISTY E. LAWRIE

CURT N. TRISKO

OF COUNSEL
ROBERT O. STRAUGHN
PETER L. COOPER

ANDREW J. SHEA
(1938-2018)

December 23, 2019

Jim Thompson
Kennedy and Graven, Chartered
200 South Sixth Street
Minneapolis, MN 55402

Re: Shakopee Public Utilities Commission – Rate Setting, Transfer to
City General Fund
Our File No.: 13889-0067

Dear Mr. Thompson:

This letter follows our recent discussion concerning some pending issues between our clients. You asked me to provide some further information of the Shakopee Public Utilities Commission's (the "Commission") perspective. The two issues that have emerged concern: (1) the Commission's authority to modify utility fees/rates with respect to informing the City Council; and (2) the Commission's ability to apportion between the water and electric utilities to determine the transfer of funds to the City's general fund. This letter provides a summary of the Commission's perspective. It is important to note that the transfer to the City's general fund remains constant, so the true issue is the authority of the Commission to set rates.

FACTUAL BACKGROUND

In terms of communications between the Commission and the City of Shakopee (the "City"), I understand that a member of the City Council is appointed as liaison (the "Liaison") to the Commission, attends Commission meetings (although does not vote as a Commissioner), and provides regular updates at City Council meetings. The Liaison receives both a hard copy and electronic copy of the Commission packet. After a Commission meeting, the City receives a copy of all signed resolutions and minutes of the meeting. In addition, the Commission is subject to the Open Meeting Law and its agenda and meeting information are publicly available.

In terms of transfers, the Commission has a long history of transferring funds to the City's general fund. Since 1951, the Commission has passed 29 resolutions authorizing transfer of funds to the City; only three (namely, resolutions approved in 1977,

The purpose was to create a . . . commission . . . and to clothe it with exclusive authority, acting by itself, and independently of the city council, or mayor, to operate, control and manage a city water and light plant. This authority is expressed in clear and unambiguous language and effectually creates a department of village or city government responsible only to the people. No revisory control is vested in the council or mayor. . . . *State ex rel Briggs v McIlraith*, 129 N.W. 377, 378 (Minn. 1911) (emphasis added).

The Minnesota Supreme Court later emphasized in strong terms the intent for a utilities commission to be independent from a city council. *State ex rel Chisholm v Borgeran*, 194 N.W. 624 (Minn. 1923) (stating “[t]he duties and powers of the commission emphasizes the legislative intent to create a body free from any coercion or control by the village council. . . . free from the baneful influences which so often result from the frequent changes of the political complexion of an elective village council.”).

Even assuming, for the sake of argument, that Section 32.22(G) applies, the Commission has “informed” the City of the adjustment in rates that will take effect on January 1, 2020. The Code does not detail how the “informing” must occur. Of course, the Code does not reference any “approval” by the City Council. The Commission staff report dated November 26, 2019 was specifically provided to the City Administrator and the Mayor, as well as to the Liaison. The Commission’s signed resolutions along with the minutes of the December 2, 2019 meeting were routed to City Hall on December 18, 2019. The rate modifications take effect on January 1, 2020. The rate modifications were discussed in some detail at the City Council meeting on December 17, 2019, as part of the Liaison report and the City Administrator’s report. The Commission meeting materials are available on-line. In short, it is difficult to see how the City Council was not “informed” of rate adjustments before the January 1, 2020 effective date.

II. Transfers to the City’s General Fund.

As to the issue of apportioning between utilities for a transfer to the City’s general fund, Minnesota Statutes, Section 412.361 lists a number of powers of a municipal utilities commission, including the power to enter into agreements with a city council. “The commission shall have power to enter into agreements with the council for payments by the city for utility service, compensation for the use by either the commission or the city of buildings, equipment, and personnel under the control of the other, payments to the city in lieu of taxes, transfers of surplus utility funds to the general fund, and also agreements on other subjects of relationships between the commission and the council.” Minn. Stat. § 412.361, subd. 5 (emphasis added). (City Code Section 32.22(H) contains similar language).

In statutory interpretation, the Courts typically construe the surrounding language within a statute. The remaining four provisions in Section 412.361 include a reference to the “power” of a municipal utilities commission, using similar permissive language. Each of these sections confers the authority or “power” upon a commission, but does not

1984, and 1992), referenced a joint meeting.

Most recently, the Commission adopted Resolution 672 on December 3, 2001. Resolution 672 set Commission transfers of 23.77% of water utility sales less energy costs for pumping and 2.71% of electric utility sales to the City's general fund. Neither Resolution 672 nor the minutes references any joint agreement with the City.

I understand that, over the years, the Commission has discussed the ability of the water utility to sustain the level of the transfer. In preparing the Commission's budget for 2020, staff considered the Commission's transfer of funds to the City's general fund in light of projected revenues, expenses, rate-setting, and utility reserves. Staff concluded that "[t]o continue with the current water municipal contribution will either require a significant increase in rates for our water customers, a significant reduction in costs, or a change to [the] municipal contribution transfer." (Nov. 26, 2019 Memo. at 11). The 2020 budget proposed revising the transfer to the City's general fund to apply the same 4.4% rate to both water and electric utilities. Significantly, the revisions "would maintain a consistent amount" in the total transfer of funds to the City's general fund. *Id.*

ANALYSIS

I. Informing the City.

At its December 16, 2019 meeting, in Resolutions 1254, 1255, 1256, and 1257, the Commission adjusted certain utility fees/rates. I understand that a question arose as to the Commission's authority to modify rates, particularly with respect to City Code Section 32.22(G), which states "The Commission shall have power, after informing the Council, to fix rates"

It bears noting that Minnesota Statutes broadly grant a municipal utilities commission the power to set rates without any reference to informing a city council. "The commission shall have power to fix rates" Minn. Stat. § 412.361, subd. 4. Considering the lack of statutory authority for the City to add requirements to the Commission's power to set rates, it is unclear whether the additional language in the City Code provision is valid. *See, e.g., Harstad v. City of Woodbury*, 916 N.W.2d 540, 545 (Minn. 2018) (noting city powers must be "expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred"); Minn. Stat. § 412.321, subd. 1 ("the [city] council, except as its powers have been limited through establishment of a public utilities commission in the city"). City Code Section 32.22(H) also broadly states that "[t]he Commission shall also have any and all power and authority provided by law."

Indeed, the Minnesota Courts have long emphasized the importance of maintaining the independence and autonomy of the municipal utilities commission, particularly in matters relating to rates.

Jim Thompson
December 23, 2019
Page 4

require a commission to so act. For example, the commission has the “power” to “modify or rebuild any public utility” but it is not required to rebuild or to modify. Similarly, a commission has “power to employ” staff, but it is not required to only employ persons and may instead engage consultants. A commission has the “power to buy all fuel and supplies,” but it may also generate electricity or otherwise arrange power or supplies. And a commission has “power to fix rates and adopt reasonable rules and regulations for utility service” but it is not required to establish minimum rates, or rates according to specific terms, and it is not required to adopt regulations. It would be illogical to interpret subdivision 5 of Section 412.361 (power to enter agreements) to undermine a commission’s ratemaking determinations in subdivision 4.

In interpreting statutes, the Courts also consider the common and ordinary meaning of terms that are not defined. The definition of “power” encompasses an ability or capacity: “The ability or capacity to act or do something effectively. . . . The ability or official capacity to exercise control; authority.” *American Heritage Dictionary* (5th ed. 2020). This common meaning supports the interpretation of a municipal utilities commission having the ability or capacity to enter agreements with a city council, but not the obligation.

This interpretation comports with past practices. Since 1993, the Commission has adopted resolutions establishing the method and procedure to transfer funds to the City’s general fund. No joint agreement was negotiated or signed. The minutes from these meetings reflect no discussion or agreement with the City Council. Moreover, the Commission’s resolution is rooted in ratemaking, including reducing or avoiding rate increases and in establishing prudent reserves. As noted above, the Minnesota Courts accord independence and autonomy to a municipal utilities commission in determining rates.

I trust that this letter provides further explanation of the Commission’s perspective of these issues. Please feel free to contact me if you have any questions.

Sincerely,
/s/

Kaela Brennan

32.22 Public Utilities Commission

1. *Generally.* The City Public Utilities Commission, heretofore established, continues. The Commission shall have the full, absolute, and exclusive control of, and power over, all city water plants and systems, and all light and power plants and systems. The Commission shall also have control of, and power over, such public buildings that by agreement between the Council and the Commission, are placed under the jurisdiction of the Commission. This control and power shall extend to all parts, buildings, attachments, and appurtenances thereto; and to all apparatus, machinery, and material of every kind used in operating these plants and systems. The Commission is empowered to operate and control any other utilities subsequently acquired.
2. *Membership.* In accordance with 2002 Minnesota Session Laws, Ch. 226, as it may be amended from time to time, the Commission shall consist of 5 members appointed by the Council, and their compensation shall be set by the Council. No more than 1 member shall be a member of the Council. Each member shall serve for a term of 3 years. Commission members must reside within the corporate limits of the city at the time of their appointment to the Commission, and if they move outside of the corporate limits during their term of office, they shall tender their resignation to the Council who may accept or reject it. If the Council rejects the resignation, said Commissioner may complete the Commissioner's term of office.
3. *Procedures.* The Commission shall adopt rules for its own proceedings which shall provide for, among other things, at least 1 regular meeting by the Commission each month. It shall annually choose a President from among its own members. It shall appoint a Secretary who need not be a member of the Commission, for an indefinite term. The Secretary shall receive a salary fixed by the Commission.
4. *Powers.* The Commission shall have power to extend and to modify or rebuild any public utility and to do anything it deems necessary to its proper and efficient operation; and it may enter into necessary contracts for these purposes.
5. *Employees.* The Commission shall have power to employ all necessary help for the management and operation of the public utility, prescribe duties of officers and employees and fix their compensation.
6. *Purchases.* The Commission shall have power to buy all fuel and supplies, and it may purchase wholesale electric energy, steam heat, gas, or water, as the case may be, for municipal distribution,
7. *Rates, rules, and regulations.* The Commission shall have power, after informing the Council, to fix rates and to adopt reasonable rules and regulations for utility service supplied by the municipally- owned public utilities within its jurisdiction. A joint meeting shall be held between the Commission and Council when requested by either body.
8. *Agreement with city.* The Commission shall have power to enter into agreements with the Council for payments by the city of utility service; compensation for the use by either the Commission or the city of buildings, equipment, and personnel under the control of the other; payments to the city in lieu of taxes; transfers of surplus utility funds to the General Fund; and also agreements on other subjects of relationships between the Commission and the Council. The Commission shall also have any and all power and authority provided by law. All existing agreements between the Commission and Council are preserved.
9. *Disposition.* No utility, or portion thereof, shall be transferred from under the jurisdiction of the Commission and no utility, or portion thereof, shall be sold, rented, leased, or otherwise disposed of except as by law.



now joined with
Springsted and Umbaugh

Baker Tilly Municipal Advisors, LLC
380 Jackson St., Ste 300
St. Paul, MN 55101
United States of America

T: +1 (651) 223 3000
F: +1 (651) 223 3046
bakertilly.com

Memorandum

To: Micah Heckman

From: Nick Dragisich

Subject: Comparison of Utility Franchise Fees and Transfers

Date: January 10, 2020

A comparison of franchise fees and transfers from municipal utilities to other city funds was undertaken to provide context to the transfers to the City from the Shakopee Public Utilities. The comparison municipal utilities chosen were those in geographic proximity to Shakopee which included Anoka, Buffalo, Chaska, Delano, Elk River, and North Saint Paul which are all metropolitan cities. Marshall and Moorhead were chosen because they are larger municipal utilities in regional centers while not being overwhelmingly larger such as Rochester.

Each of these municipal utilities transfer funds to other city funds. The budgeted amounts of funds transferred in 2019, and the basis of the transfer varies for each of them. Municipal utilities can transfer funds to other City funds under Minnesota statutes absent any specific local restrictions. Local restrictions are generally found in those cities governed by a home rule charter. A description of the transfers and the basis for each comparison City is provided below.

Anoka

Anoka is governed by a home rule charter. Transfers from the utility are authorized by a city ordinance. Transfers budgeted from the electric utility in 2019 included a franchise fee of \$0.004/kWh which was budgeted at \$955,000 and a \$500,000 transfer to other funds. The total budgeted transfer was \$1,455,000 which is 4.92% of electric revenues. Transfers from the water utility to other funds were budgeted at \$380,180 which is 20.03% of water revenues. The total budgeted transfers were \$1,835,180 which is 5.83% of total revenues.

Buffalo

Buffalo is a statutory city. Transfers from the utility were not defined in any ordinances or other data available on the city's website. However, the city's budget documents included language about the transfers as follows:

Transfers In includes revenue from the enterprise funds to cover services provided by the General Fund and Special Revenue Funds. The City's general fund tax levy would be significantly higher without these transfers of excess profits. Budgeted transfers from enterprise funds to the General Fund in 2019 include \$900,000 from Electric and \$475,000 from the Liquor Funds to Parks. A \$100,000 transfer from the Electric Fund to the Civic Center Fund is also budgeted in 2019.

Transfers appear to be made only from the electric utility. The total budgeted transfers for 2019 were \$1,000,000 which represents 6.25% of electric revenues and 5.28% of combined electric and water revenues.

Chaska

Chaska is statutory city. The transfers from the utility are made pursuant to city ordinance Chapter 8 - Electricity /Article III Section 49 Franchise Fee. Information in the City's 2019 budget shows the City charges the electric utility a franchise fee on per kilowatt-hour basis which is roughly equal to 10% of electric revenue. The amount budgeted for 2019 was \$3,750,000. In addition, the City budgeted transfers \$1,530,000 from the electric utility to other city funds. These budgeted transfers include:

- \$430,000 to the Community Cente
- \$800,000 the Community Building Fund
- \$300,000 to the Fire Station Debt Service Fund

The total franchise fees and transfers from the electric utility were budgeted to be \$5,280,000 or 14.15% of electric revenues for 2019.

Transfers from the Water Utility were budgeted at \$56,000 which is 1.79% of budgeted revenues. There was no explanation for this budgeted transfer.

Total transfers were budgeted to be \$5,336,000 or 13.19% of total budgeted electric and water revenues.

Delano

Delano is a statutory city. Transfers from the electric utility are made pursuant to an agreement between the city and the utility commission. There are two transfers. One is a transfer comparable to a franchise fee and the other is a payment in lieu of taxes (PILOT). The transfer was budgeted at \$200,000 and the PILOT was budgeted at \$130,000 for a total of \$330,000 in 2019. This amount is 5.2% of budgeted electric revenues. There are no transfers from the water utility. The transfers are budgeted at 4.43% of combined electric and water revenues.

Elk River

Elk River is a statutory city. Transfers out of the electric utility are by city ordinance and are 4% of gross electric sales within the corporate limits of the city. The City Council determines the portion of this contribution to be allocated to the General fund, Library, and the Equipment Replacement fund. 2019 budget data was not available on the city's website, so 2018 actual data was used. In 2018 the electric fund transferred \$1,188,664 as franchise fees and transferred \$215,296 to pay

for city services bringing total transfers to \$1,403,960 which was 4.72% of electric revenues. There were no transfers out of the water utility. The transfers were 4.36% of combined electric sales and water revenues.

North Saint Paul

North Saint Paul is a statutory city. Transfers from the electric utility are made pursuant to city ordinance. The 2019 budget included \$363,256 in electric utility franchise fees and \$236,744 in other transfers out of the electric utility. The franchise fee is based on \$0.004/Kwh sold. The other transfer was not defined in the budget documents other than the amount. The total electric utility transfer was budgeted at \$600,000 or 6.10% of budgeted electric revenues.

Transfers out of the water utility for 2019 were budgeted at \$205,000. There was no description of this transfer in the budget documents. The transfer was 11.77% of budgeted water revenues.

Total combined budgeted transfers were \$805,000 which was 6.95% of combined budgeted revenues.

Marshall

Marshall is a home rule charter city. Transfers out of the electric utility are made by agreement between utility and city. Electric transfers for 2019 were budgeted to be from PILOT payments. The first payment is based on \$0.0014/Kwh based on 5-year average sales and were budgeted at \$828,669. The other transfers from the electric utility is also a PILOT for industrial land development and was budgeted at \$500,000 for 2019. The combined PILOT payments \$1,328,669 or 6.58% of revenues.

Marshall does not transfer any funds from its water utility.

The combined transfer was budgeted to be \$1,328,669 which was 5.17% of combined revenues.

Moorhead

Moorhead is a home rule charter city. Franchise fees are limited by the provisions of the city charter not to exceed 20% of gross revenues for both the electric and water utilities. The applicable charter sections are pasted below,

Subd. 4. The council may by a vote of six members transfer in any fiscal year to the general revenue fund of the city from the net revenues of a utility or service under the control of the commission and from the net revenues of any city owned utility the following amounts:

(a) from the electric utility, an amount not to exceed 20 percent of gross revenues,

(b) from the district heating utility, an amount not to exceed 10 percent of gross revenues,

(c) from any other city owned utility, an amount not to exceed 5 percent of gross revenues, and

(d) any amount authorized by law to be so transferred.

Subd. 5. In this chapter the term "gross revenues" means all operating and non-operating revenues of a utility from whatever source derived; the term "net revenues" means gross revenues less current expenses of the operation of the utilities. The amounts of gross revenues and net revenues must be determined by the commission in accordance with generally accepted accounting principles. Transfers made pursuant to this section must be consistent with covenants with bondholders in city resolutions authorizing the issuance of obligations payable from revenues of the utilities.

The 2019 budget showed electric utility transfers totaling \$8,986,000 or 19.92% of revenues as follows;

- General Fund \$6,850,000
- Economic Development Fund \$50,000
- Capital Improvement Fund \$2,086,000

The budget shows water utility transfers totaling \$596,000 or 6.41% of revenues as follows:

- General Fund \$470,000
- Capital Improvement Fund \$126,000

The combined transfer was \$9,582,000 which is 17.61% of combined electric and water revenues.

The average of these comparable utilities percent of transfers is shown in the tables and charts that follow.

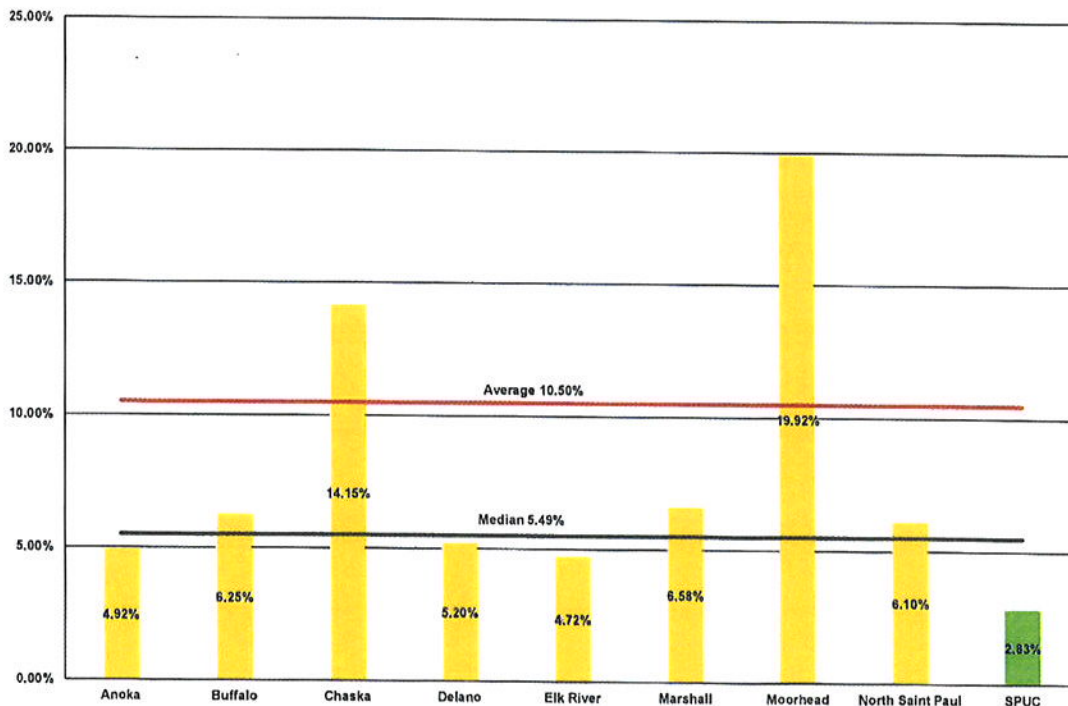
The first table shows the budgeted electric utility transfers from each utility. The comparison shows that the Shakopee Public Utility budgeted transfers of 2.83% of electric revenues the lowest percentage of the comparison utilities. Their budgeted transfer was 26.9% of the 10.50% average budgeted transfer and 51.4% of the 4.59% median budgeted transfer for the group.

Electric Utility Transfers

Electric

City	Franchise Fee Basis	2019 Budgeted Franchise Fees	2019 Budgeted Transfers to Other Funds	2019 Total Fees	2019 Budgeted Revenues	Fees as a Percent of Electric Revenues
Anoka	\$0.004/Kwh	\$ 955,000	\$ 500,000	\$ 1,455,000	\$ 29,570,275	4.92%
Buffalo	flat fee	\$ 900,000	\$ 100,000	\$ 1,000,000	\$ 15,988,420	6.25%
Chaska	10% of revenues	\$ 3,750,000	\$ 1,530,000	\$ 5,280,000	\$ 37,323,400	14.15%
Delano	\$0.00317/Kwh	\$ 200,000	\$ 130,000	\$ 330,000	\$ 6,345,000	5.20%
Elk River	4% of sales within corporate	\$ 1,188,664	\$ 215,296	\$ 1,403,960	\$ 29,716,600	4.72%
Marshall	\$0.0014/Kwh based on 5-year average sales	\$ 828,669	\$ 500,000	\$ 1,328,669	\$ 20,185,000	6.58%
Moorhead	Not to exceed 20% of gross	\$ 6,850,000	\$ 2,136,000	\$ 8,986,000	\$ 45,118,000	19.92%
North Saint Paul	\$0.004/Kwh	\$ 363,256	\$ 236,744	\$ 600,000	\$ 9,835,500	6.10%
Average				\$ 2,547,954	\$ 24,260,274	10.50%
Median				\$ 1,366,315	\$ 24,877,638	5.49%
SPUC		\$ -	\$ 1,446,000	\$ 1,446,000	\$ 51,176,000	2.83%

2019 Transfers From Electric Utility As a Percent of Budgeted Revenues



The next table shows the budgeted water utility transfers from each utility. The comparison shows that the Shakopee Public Utility budgeted transfer of 20.55% of water revenues was the highest percentage of the

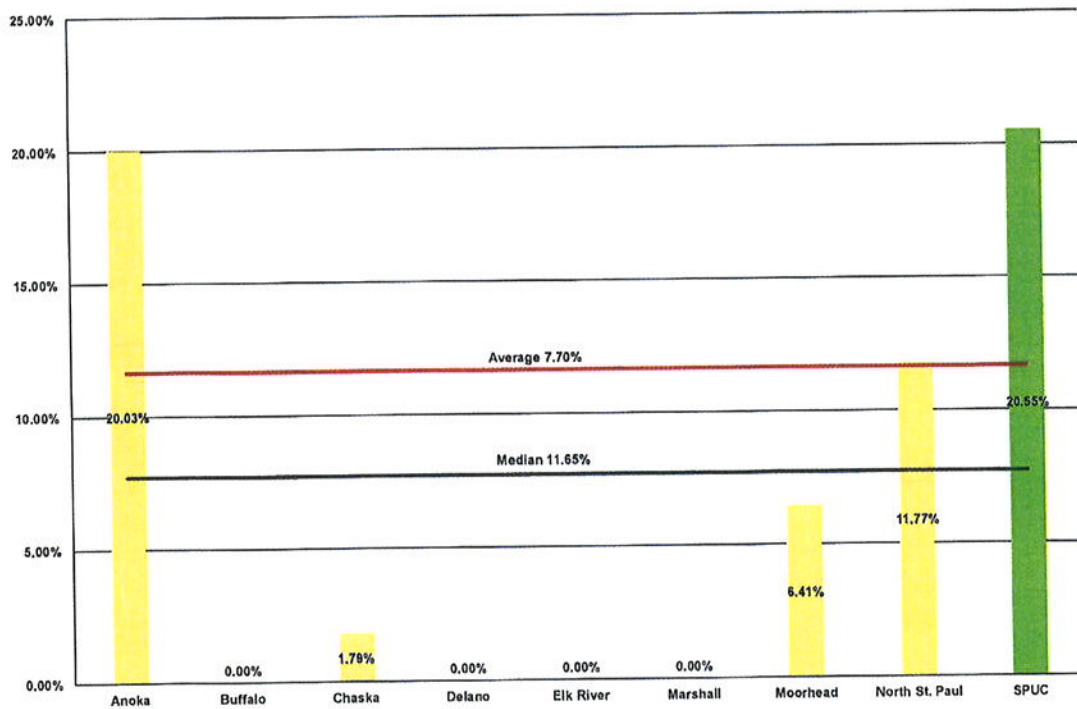
comparison utilities. Their budgeted transfer was 267% of the 7.70% average budgeted transfer and 176% of the 11.65% median budgeted transfer for the group.

Water Utility Transfers

Water

City	Franchise Fee Basis	2019 Budgeted Franchise Fees	2019 Budgeted Transfers to Other Funds	2019 Total Fees	2019 Budgeted Revenues	Fees as a Percent of Water Revenues
Anoka		\$ -	\$ 380,180	\$ 380,180	\$ 1,898,500	20.03%
Buffalo		\$ -	\$ -	\$ -	\$ 2,954,456	0.00%
Chaska		\$ -	\$ 56,000	\$ 56,000	\$ 3,126,380	1.79%
Delano		\$ -	\$ -	\$ -	\$ 1,110,934	0.00%
Elk River		\$ -	\$ -	\$ -	\$ 2,515,821	0.00%
Marshall		\$ -	\$ -	\$ -	\$ 5,528,000	0.00%
Moorhead	Not to exceed 20% of gross	\$ 470,000	\$ 126,000	\$ 596,000	\$ 9,294,486	6.41%
North St. Paul		\$ -	\$ 205,000	\$ 205,000	\$ 1,741,000	11.77%
Average				\$ 309,295	\$ 4,015,092	7.70%
Median				\$ 292,590	\$ 2,512,440	11.65%
SPUC		\$ -	\$ 1,079,000	\$ 1,079,000	\$ 5,250,000	20.55%

2019 Transfers From Water Utility As a Percent of Budgeted Revenues

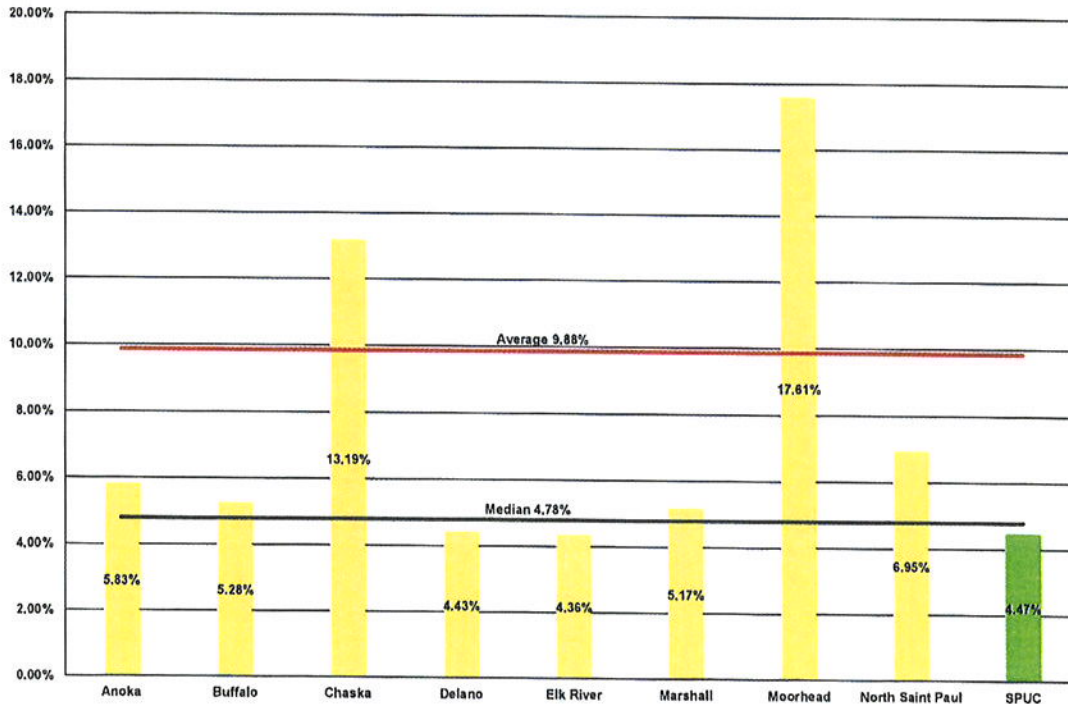


The last table shows the combined utility budgeted transfers from each utility. This comparison shows that the Shakopee Public Utility combined budgeted transfers of 4.47% of revenues was the second lowest of the comparison utilities with only Delano budgeted to transfer less at 4.43% of combined revenues. Shakopee's budgeted combined transfer was 45.29% of the 9.88% average budgeted transfer and 93.64 % of the median budgeted transfer for the group.

Combined Utility Transfers

City	Franchise Fee Basis	2019 Budgeted Franchise Fees	2019 Budgeted Transfers to Other Funds	2019 Total Fees	2019 Budgeted Revenues	Fees as a Percent of Combined Revenues
Anoka		\$ 955,000	\$ 880,180	\$ 1,835,180	\$ 31,468,775	5.83%
Buffalo		\$ 900,000	\$ 100,000	\$ 1,000,000	\$ 18,942,876	5.28%
Chaska		\$ 3,750,000	\$ 1,586,000	\$ 5,336,000	\$ 40,449,780	13.19%
Delano		\$ 200,000	\$ 130,000	\$ 330,000	\$ 7,455,934	4.43%
Elk River		\$ 1,188,664	\$ 215,296	\$ 1,403,960	\$ 32,232,421	4.36%
Marshall		\$ 828,669	\$ 500,000	\$ 1,328,669	\$ 25,713,000	5.17%
Moorhead		\$ 7,320,000	\$ 2,262,000	\$ 9,582,000	\$ 54,412,486	17.61%
North Saint Paul		\$ 363,256	\$ 441,744	\$ 805,000	\$ 11,576,500	6.95%
Average		\$ 2,163,190	\$ 810,497	\$ 2,973,687	\$ 30,096,467	9.88%
Median		\$ 927,500	\$ 470,872	\$ 1,366,315	\$ 28,590,888	4.78%
SPUC		\$ -	\$ 2,525,000	\$ 2,525,000	\$ 56,426,000	4.47%

2019 Transfers From Combined Utility As a Percent of Budgeted Revenues



Summary of the comparison is shown below. The summary also shows the 2016 American Public Power Association (APPA) average transfers from electric revenues.

Comparison Utility Statistics	Average	Median	Shakopee Public Utility	APPA 2016 Average From Electric Revenues
Electric Utility transfer	10.50%	5.49%	2.83%	5.60%
Water Utility transfer	7.70%	11.65%	20.55%	
Combined Utility transfer	9.88%	4.78%	4.47%	

The comparative data shows that the Shakopee Electric Utility budgeted transfers are considerably less than the comparison utilities and less than the average transfers of the members of A PPA. Budgeted transfers from the water utility are considerably greater than the comparison; however, the water utility revenues are also significantly less for each utility than the electric revenues. Perhaps the most relevant comparison is the combined budgeted revenues which shows Shakopee Public Utilities budgeted transfers are less than half of the budgeted transfers of the comparison utilities. However, it is important to understand that there is no standard transfer amount but rather a broad range of franchise fees and other transfers that are driven by the specific needs of each city as the data shows. Shakopee should review this comparison and discuss what is an appropriate transfer amount from the Utility to the City given this comparative data and the unique needs of the City and the Utility.

RESOLUTION #672

A RESOLUTION AUTHORIZING CERTAIN PAYMENTS
FROM THE SHAKOPEE PUBLIC UTILITIES COMMISSION
TO THE CITY OF SHAKOPEE

WHEREAS, the Shakopee Public Utilities Commission has historically contributed from its resources to the City of Shakopee General Fund, and

WHEREAS, the City of Shakopee has considered the adoption of a franchise fee to be imposed upon all energy providers within the City, although its action thereon has not been completed, and

WHEREAS, the Shakopee Public Utilities Commission believes it would be beneficial to the City and the Utilities Commission to establish a basis for the payment of an amount to the City which would be equivalent to a franchise fee on its electric services revenues, utilizing some of the factors under consideration by the City, and

WHEREAS, the Shakopee Public Utilities Commission has determined that this approach to the contribution to the City will permit the Commission to achieve an equitable balance between support of the City's General Fund and maintaining rates that are fair to the Commission's customers and which will sustain the Commission's ability to provide reliable electric service at a competitive price, and

WHEREAS, the Commission desires to confirm the basis of the transfer to the City from water operations is unchanged by this Resolution,

NOW THEREFORE BE IT RESOLVED, that the following contributions from the electric and water utility operations shall be made by the Shakopee Public Utilities Commission to the General Fund of the City for the year 2002 and subsequent years, until such further action as may be taken by the Shakopee Public Utilities Commission:

Payment on <u>Electric Gross Sales</u>	
Residential	\$\$
Commercial	\$\$
Industrial	\$\$
Customer Late Fees	<u>\$\$</u>
<u>Total Gross Electric Sales</u>	\$\$
Times 2.71%	<u>0.0271</u>
Payment to City from Electric Operations	<u>\$\$</u>
Payment on <u>Water Gross Margin</u>	
Water Sales	<u>\$\$</u>
Total Gross Water Sales	\$\$
Less Cost of Energy for pumping:	<u>\$\$</u>
Gross Water Margin	\$\$
Times 23.77%	<u>0.2377</u>
Payment to City from Water Operations	<u>\$\$</u>

BE IT FURTHER RESOLVED, that energy for street lighting and the cost of maintenance and operation of street lights will continue to be donated to the City of Shakopee consistent with the past practices of the Shakopee Public Utilities Commission.

BE IT FURTHER RESOLVED, that the payments due to the City pursuant to the foregoing schedule and the determination of gross sales shall be based on the corresponding figures contained in the audited financial statements of the Shakopee Public Utilities Commission for the year 2002 and thereafter. Until those figures are available, monthly payments shall be made to the City commencing in January 2002 and each month thereafter equal to one-twelfth (1/12) of the annual payment due, estimated on the basis of the gross sales figures reflected in the audited financial statements of Shakopee Public Utilities Commission for the year 2000, rounded down to the nearest \$1,000. Upon the availability of the audited financial statements for the year 2002, a determination will be made if an over or under payment has been made for the year 2002 and that difference will be remitted to the City of Shakopee or refunded to the Shakopee Public Utilities Commission. This procedure shall be followed in subsequent years, substituting the appropriate year under consideration.

BE IT FURTHER RESOLVED that the following Resolutions of the Shakopee Public Utilities Commission shall be repealed, effective on the date of the adoption of this Resolution: Numbers 193, 272, 385 and 553 and, effective upon completion of the last payment due in respect to year 2001, Number 409.

BE IT FURTHER RESOLVED, that the payments and services authorized to be provided hereunder are subordinate to the obligation of the Shakopee Public Utilities Commission to timely pay principal and interest upon its outstanding bonds and is further subject to reconsideration in the event of unforeseen events which may adversely affect the utility operations or the best interests of the utilities customers of Shakopee Public Utilities Commission.

BE IT FURTHER RESOLVED, that all things necessary to carry out the terms and purposes of this Resolution are hereby authorized and performed.

Passed in regular session of the Shakopee Public Utilities Commission this 3rd day of December, 2001.

ATTEST:


Commission Secretary: Jerry Fox


Commission President: Joan Lynch

RESOLUTION #1261

RESOLUTION AUTHORIZING CERTAIN PAYMENTS FROM THE SHAKOPEE PUBLIC UTILITIES COMMISSION TO THE CITY OF SHAKOPEE

WHEREAS, the Shakopee Public Utilities Commission (the "Commission") has historically contributed from its resources to the City of Shakopee (the "City") general fund, most recently through a methodology adopted in Commission Resolution 672, approved December 3, 2001, and

WHEREAS, the Commission has continued to transfer funds to the City's general fund according to Resolution 672. The Commission has determined that it is beneficial for its customers and the City to modify the method of calculating the transfer to the City's general fund to preserve adequate utility reserves and to minimize or avoid a rate increase, and

WHEREAS, the Commission wishes to achieve an equitable balance between support of the City's general fund and maintaining rates that are fair to the Commission's customers as well as adequate utility reserves and which will sustain the Commission's ability to provide reliable electric and water service at a competitive price.

NOW THEREFORE BE IT RESOLVED, that the following transfers to the City's general fund from the electric and water utilities operations shall be made by the Commission for the year 2020 and subsequent years, until such further action as may be taken by the Commission:

	Year	Defined as:
Electric Transfer		
Residential Sales Total	\$	Fixed/Service, Energy, PCA, Security Lights (GL 440 excluding conservation)
Commercial Sales Total	\$	Fixed/Service, Energy, PCA, Security Lights (GL 442)
Industrial Sales Total	\$	Fixed/Service, Energy, PCA, Security Lights (GL 443)
Total Defined Electric Sales *	\$	GL 904
Less Bad Debt Expense	\$	
Total Defined Electric Sales Net of Bad Debt	\$	
Multipplied by Transfer Rate	4.40%	
Electric Transfer	\$	

	Year	Defined as:
Water Transfer		
Residential Sales Total	\$	Fixed/Service, Usage (GL 461 excluding conservation)
Commercial Sales Total	\$	Fixed/Service, Usage (GL 462)
Industrial Sales Total	\$	Fixed/Service, Usage (GL 463)
Total Defined Water Sales *	\$	GL 904
Less Bad Debt Expense	\$	
Total Defined Water Sales Net of Bad Debt	\$	
Multipplied by Transfer Rate	4.40%	
Water Transfer	\$	

*Defined Sales excludes revenues for specific purposes such as electric relocation underground, water reconstruction, conservation, water division pumping penalties, hydrant sales, etc.

BE IT FURTHER RESOLVED, that energy for street lighting and the cost of maintenance and operation of street lights will continue to be donated to the City consistent with the past practices of the Commission.

BE IT FURTHER RESOLVED, that water usage and related costs to support firefighting and water system flushing to support fire protection will continue to be donated to the City consistent with past practices of the Commission.

BE IT FURTHER RESOLVED, that the payments due to the City pursuant to the foregoing schedule and the determination of sales shall be based on the corresponding figures contained in the audited financial statements of the Commission for the year 2020 and thereafter. Until those figures are available, monthly payments shall be made to the City commencing in January 2020 and each month thereafter equal to one-twelfth (1/12) of the annual payment due, estimated on the basis of the sales figures reflected in the audited financial statements of the

Commission for the year 2019, rounded to the nearest \$1,000. Upon the availability of the audited financial statements for the year 2020, a determination will be made if an over or under payment has been made for the year and that difference will be remitted to the City or refunded to the Commission. This procedure shall be followed in subsequent years, substituting the appropriate year under consideration.

BE IT FURTHER RESOLVED, that the Resolution #672 of the Commission shall be repealed, effective on the date of the adoption of this Resolution, and effective upon completion of the last payment due in respect to year 2019.

BE IT FURTHER RESOLVED, that the payments and services authorized to be provided hereunder are subordinate to the obligation of the Commission to timely pay principal and interest upon its outstanding bonds and is further subject to reconsideration in the event of unforeseen events which may adversely affect the utilities operations or the best interests of the utilities' customers of the Commission.

BE IT FURTHER RESOLVED, that all things necessary to carry out the terms and purposes of this Resolution are hereby authorized and performed.

Passed in regular session of the Shakopee Public Utilities Commission, this 16th day of December, 2019.

ATTEST:




Commission Secretary: John R. Crooks



Commission President: Terrance Joos

**SHAKOPEE PUBLIC UTILITIES
MEMORANDUM**

TO: SHAKOPEE PUBLIC UTILITIES COMMISSION
FROM: JOHN R. CROOKS, UTILITIES MANAGER 
SUBJECT: MEETING WITH REPRESENTATIVE BRAD TABKE
DATE: JANUARY 30, 2020

Pursuant to a conversation several weeks ago between Rep. Tabke and Commissioner Amundson, I was invited to meet with Rep. Tabke concerning proposed legislation he has written in regards to the abolishment of the Shakopee Public Utilities Commission.

We met the afternoon of January 13. During our meeting, Rep. Tabke stated that he was approached by the City of Shakopee to sponsor a bill that would change MN Statute 412.391 – Abolishment of Commission or Utility Transfer. Attached to this memo is the existing Statute for your review.

Rep. Tabke said he has prepared 3 different pieces of possible legislation addressing the issue of changing control of the Shakopee Public Utilities from a State authorized/defined Commission to the City Council.


Most alarming of the proposed bills is taking the potential abolishment or transfer of control of the Utilities from the voting public as with current State Statute, to only a simple majority of the City Council. Our rate payers should and deserve the right to express their decision with a vote and not the Mayor/ City Council members whose position can change with election periods.

While I have not seen the proposed legislation, this information has been made available to Senator Eric Pratt who has told Rep. Tabke he is not interested in modifying the existing overall process.

We will continue to monitor the situation if or when Rep. Tabke would introduce legislation to change existing State Statute.

Office of the Revisor of Statutes

2019 Minnesota Statutes

Authenticate  PDF**412.391 ABOLITION OF COMMISSION OR UTILITY TRANSFER.**

Subdivision 1. **To council; procedure.** The public utilities commission of any statutory city may be abolished or its jurisdiction over any particular utility transferred to the council by following the procedure prescribed in this section.

Subd. 2. **Ballot question if abolition.** The council may, and upon petition therefor signed by voters equal in number to at least 15 percent of the electors voting at the last previous city election shall submit to the voters at a regular or special election the question of abolition of the public utilities commission. The question on the ballot shall be stated substantially as follows: "Shall the public utilities commission be abolished?"


Subd. 3. **Ballot question if transfer.** Upon like presentation of a petition for election on the question of transfer to the council of the jurisdiction of the commission over any one or more of the utilities previously placed under its jurisdiction, the council shall, in the same manner as under subdivision 2, submit the question to the voters. The question on the ballot shall be stated substantially as follows: "Shall jurisdiction over (Name of public utility) be transferred from the public utilities commission to the council?"

Subd. 4. **Time of effect.** If a majority of the votes cast on a proposition submitted to the voters under subdivision 2 or 3 is in the affirmative, the provisions of sections [412.331](#) to [412.381](#) shall cease to apply to the city, in the case of an election under subdivision 2, or to the particular utility mentioned in the proposition submitted to the voters, in the case of an election under subdivision 3. Such change shall take place 30 days after the election.

History: *1949 c 119 s 49; 1953 c 735 s 7; 1973 c 123 art 2 s 1 subd 2*

Copyright © 2019 by the Revisor of Statutes, State of Minnesota. All rights reserved.

**SHAKOPEE PUBLIC UTILITIES
MEMORANDUM**

TO: SHAKOPEE PUBLIC UTILITIES COMMISSION
FROM: JOHN R. CROOKS, UTILITIES MANAGER 
SUBJECT: INTERVIEWS FOR SPU COMMISSIONERS
DATE: FEBRUARY 1, 2020

Interviews for the two openings on the SPU Commission will be held Wednesday February 12th at 630pm at City Hall. As of January 30th, there are six applicants for the two positions.

Procedurally, it is the SPU Vice President that attends the interviews. This year Vice President Amundson will be not be able to attend.

President Joos can either attend the interviews or appoint another Commissioner to attend.