

# **City Council Proceedings**

## **Regular Meeting/Work Session**

### **NOVEMBER 14, 2005**

Pursuant to due call and notice, a regular meeting/work session of the City Council of the City of Bemidji, Beltrami County, Minnesota, was held on Monday, November 14, 2005, at 5:30 p.m. in the Conference Room of City Hall, Mayor Lehmann presiding.

Upon roll call, the following Councilmembers were declared present: Lehmann, Markeson, Hellquist, Johnson, Downs, Meuers. Absent: Erickson

Staff Present: Minke, Felix, Eischens, Swenson

Mayor Lehmann stated that the purpose of the meeting was to discuss the possibility of implementing a franchise fee for gas and electric utilities and develop rate design options, estimate revenues and identify uses of the funds. These discussion topics were summarized in Minke's memorandum of November 10, 2005 as follows:

#### **Rate Design Options**

The rate may be applied as either a percentage of the utility bill amount, or as a per meter charge. The per meter charge is more predictable; both from a revenue standpoint and a customer expense stand point. It would also have the advantage of not increasing when the utility bills were highest, such as during the winter.

#### **Estimated Revenue**

The Council reviewed a worksheet showing the estimated revenue assuming a per meter fee. The fee is graduated for residential, small general user, large general user, and street lights. The Council could vary the total revenue by increasing or decreasing the monthly per meter charge.

#### **Uses of Funds**

The Council can use the funds for virtually any legal purchase. At the July work session uses discussed included infrastructure improvements and the maintenance of parks and trails. It can be argued that the franchise fee is an indirect way of recovering costs for maintenance of the rights of way used by the utility companies. Therefore, it would be appropriate to use the franchise fee for improvements in the rights of way such as local street improvements.

Jim Strommen, Kennedy & Graven, joined the meeting via conference call.

Minke stated that there are several things that the Council needs to determine at this meeting: whether they do want a franchise fee implemented, the amount of revenue they would like generated from the fee, the rate design and then after those have been decided, there will be a number of administrative things that will follow, such as drafting of the Ordinances. Minke suggested the Council focus on rate design and then move forward with amount of revenue that the Council feels is appropriate. Eischens provided estimates that equal approximately \$350,000, which can be adjusted to the Council's preferences and the use of these funds.

Minke stated the question is whether to implement the franchise fee as a percentage of revenue or as a flat per meter rate. Examples were provided as follows with a per meter rate of \$1.00 on residential and varying commercial rates and a 2% revenue fee:

**FRANCHISE FEE PROJECTIONS BASED ON PER METER FEE**

Classification	Proposed Monthly Franchise Fee	Projected Annual Franchise Revenue	% of Total
Residential	1.00	105,780	30%
Small General User	5.00	130,320	37%
Large General User	40.00	111,840	32%
Street Lights/Other	5.00	4,200	1%
<b>TOTAL</b>		<b>\$352,140</b>	<b>100%</b>

**FRANCHISE FEE PROJECTIONS BASED ON % OF REVENUE**

Meter Type	% of Billing	Annual Revenue	% of Total
Residential	2%	105,978	31%
Small General User	2%	123,419	37%
Large General User	2%	103,122	31%
Street Lights/Other	2%	4,975	1%
<b>TOTAL</b>		<b>\$337,493</b>	<b>100%</b>

Lehmann questioned Jim Strommen as to whether 2% of billing is common number for this type of billing rate or if the 2% was used just as an illustration. Eischens stated that the 2% was used just as an illustration to try to generate approximately the same amount as the Per Meter Fee. Downs asked Strommen which rate base is a more typical way to approach the fees. Strommen responded that the meter fee is more typical. He stated that with the fluctuation in electric rates and gas rates, when tying it to a percent of gross revenue has the issue of spiking rates and a much larger franchise recovery. It can also be, usually with the large business customers, more objectionable and the utilities tend to be less favorable to the percent of gross revenue.

Councilmember Erickson joined the meeting at 5:40 p.m.

Strommen stated that the meter fee is a fixed amount and therefore, more predictable. Johnson asked what the difference is between the small general user and the large user. Strommen stated that the utilities define the classes and do it based on the usage or the business type. With the electric customer, the large user will often trigger a demand ratchet, which is a more complicated component of an electric rate, were the electric company needs to have power available to serve the needs of a large user and so they pay a demand premium with a more complicated rate design. Most of the residential and small businesses would be based on simple kilowatt hours that would not have a demand component. Eischens stated that all three utilities (Ottertail Power Company, People’s Natural Gas and Beltrami Electric) the City will be dealing with have same categories for users and the small and large commercial users is based on the amount of the utility they consumed.

Markeson asked Strommen to comment on the rate that other communities have given for the franchise fees as a comparison to the 2% in our examples. Strommen stated that 2% is certainly used. He stated that there are only a few cities that exceed 2%. He stated that a few cities that do exceed that and are in the 4%-5% of gross revenue range are St. Paul, West St. Paul and Moundsview, but that most cities who have recently implemented the fee are generally between the 1%-2% range.

Erickson asked Strommen if the franchise fee is offered by many cities in greater Minnesota. Strommen stated that he believes it is less common in greater Minnesota than the larger suburbs, but also stated that there is no legal requirement that the utilities publish this information, making it hard to be sure. Minke stated that he believed that we would find that a number of municipalities in greater Minnesota own the utility distribution system within their communities, which would be rare in the metro area; therefore there would be no franchise fee. Strommen did state that in the last five years, there has been a fairly significant increase in the amount of cities that have exercised their authority to have a franchise fee.

Felix stated that Strommen has already drafted two sets of Ordinances, one which renews a franchise agreement between the City and the three utilities, as well as a set of actual Franchise Fee Ordinances that will implement whatever rate they decide upon. Strommen stated that the City should have all of the documentation that would be necessary in place now, but would add to that a Right of Way Ordinance that would be incorporated into the Franchise. He stated that the franchise agreement that he has submitted to the City for review, contemplates a comprehensive Right of Way Management Ordinances that would be referenced. If there were no additions to the Right of Way Ordinances that Bemidji has, it might be necessary to review them to be sure that they are covered because there are a number of Statutes right now, which allow comprehensive right-of-way management by cities adopted by Ordinance. He stated that the utility must consent to the franchise agreement. Utilities need to be aware of the City's intentions so they can prepare for the financial aspect of implementing the fee. The City and the utilities would then come to agreement as to when the utilities would begin collecting the fees. Strommen felt that a meter fee collection could likely be collected rather quickly after the Ordinance was adopted.

Felix stated that the Council will likely be asked by their constituents if the fee is going to be passed through to them on their bill and if the utilities can do that and stated that it was his belief that the utilities need to go to the Public Utility's Commission to get permission if they want to collect the fee from the consumer. Strommen stated that the utility has pre-approval from Public Utilities Commission to pass the franchise fee through to the customer in the same manner as a tax would be passed through. There would be a notice given to the customers and the City could work with the utility on that. He stated that if there is a permit fees implemented to the utilities for right-of-way management as opposed to the franchise fees, the permit fees cannot be added a customer's bill as a line item as they are a cost of doing business to the utilities. He went on to state that the utilities will generally request a waiver of the permit fees if the City is charging a franchise fee.

Felix stated that the City would follow up with any additional questions and the conference call with Strommen ended 6:00 p.m.

Erickson questioned whether the City is charging permit fees to the utilities. Felix answered that the utilities notify the City of their work, but the City has not implemented any permit fees in the past. He stated that the new Ordinance draft does mention permit fee and if the City follows through with that, it can be expected that the utilities will ask the City to waive any permit fees.

Erickson asked what the City's levy is for 2006 and Eischens responded that it is approximately \$2.1 million. Eischens stated that the franchise fee revenue could be used for parks operations and maintenance after spending the near \$10 million to fix up the parks

and trails. He explained that the average life of park improvements is typically 20 years. He said that the City will have to gradually ramp up staff to maintain the improvements that have been made.

Erickson expressed her concern of adding the financial burden to the residential customers, stating that she feels the City is just finding different ways to tax residences. Markeson also stated that he was having a hard time trying to justify the tax. Erickson questioned eliminating the residential fee altogether. Lehmann stated that he would not be comfortable eliminating the residential customers altogether, but could see adjusting it. Felix questioned Eischens and Minke on whether they recalled talking to Strommen about charging just one group of consumers and whether there could be a discrimination argument to it.

Lehmann questioned if the City was a large utility user. Eischens stated that the City is a large general user. He also stated that the City would be paying a larger user franchise fee themselves. Markeson stated that if the fee were implemented, he would like to see the fee either go to 1% of revenue or half of meter fee rate, which would be \$.50 per residential user. Lehmann said he would rather not go with the percentage rate since it could make it harder for customers to budget and would rather go with flat fee, whatever that may be.

Lehmann mentioned that the City is currently supplementing funds from liquor store funds for road maintenance. Eischens confirmed that the City is spending approximately \$400,000 per year from the liquor store funds for road maintenance and that this revenue could offset that and some of the liquor store funds could shift to parks for future operation and maintenance.

Motion by Downs, second by Johnson to impose a franchise fee with the rate based per meter, with residential being charged a \$1.00 per month franchise fee, small general user, \$2.50, larger general user, \$20.00 and Street Lights/Other at \$2.50 per month. Motion passed unanimously.

**Council Committee Assignment Discussion:**

Meuers started that the Public Affairs Committee discussed this at a recent meeting when reviewing Council per diem and base pay. The Public Affairs distributed a questionnaire to the Council to get input from Councilmembers on their current committee assignments. Meuers questioned whether there were rules on how many Councilmembers can sit on a particular committee. After discussion, it was concluded that it depends on each committee, but in general there is no rule regarding how many members are on a committee. Public Affairs Commission will review the completed questionnaire forms and decide in what fashion they will be used.

**ADJOURN**

There being no further business, motion by Johnson, second by Downs, to adjourn the meeting. Motion carried. Meeting adjourned at 7:40 p.m.

Respectfully submitted,

Shawn M. Swenson  
Deputy City Clerk