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(via email: molly.kuether-steele@milwaukee.gov)

City of Milwaukee
Public Works Committee
Attn: Molly Kuether-Steele -- Staff Assistant
City Hall
200 East Wells Street
Milwaukee, WI 53202

Re. Resolution 140808

Dear Ald. Bauman:

I am writing to you regarding Resolution 140808, which I understand will be discussed at a hearing of the Public Works Committee tomorrow. Your clerk called Joel Haubrich late this afternoon to ask whether a representative of We Energies will attend the hearing. We will not be able to participate, given the short notice. However, I wanted to clear up an apparent misunderstanding underlying the Resolution.

The Resolution suggests that the City of Milwaukee is being “unreasonably forced to pay We Energies facility-relocation costs associated with municipal public works projects throughout the We Energies service area” and would authorize the Department of Public Works and the City Attorney’s Office to:

jointly identify municipal public works projects in the We Energies service area that will involve the absorption of utility relocation costs by We Energies, and file petitions at their discretion, on behalf of the City of Milwaukee as a We Energies customer and ratepayer, with the Public Service Commission of Wisconsin to object to the requirement that We Energies be required to bear utility relocation costs associated with the projects.

I do not wish to re-litigate the Streetcar proceeding, particularly in light of the good working relationship that has developed between the City and We Energies on that project. However, the Resolution appears to be rooted in a misunderstanding of that case and our policies governing who bears the costs of utility relocations both in the City of Milwaukee and the other municipalities we serve. In the Streetcar case, the Commission and Milwaukee County Court found -- guided largely by Wis. Stat. § 196.58(4)(c), which applies to urban rail transit systems -- that the City should bear the costs of utility relocation.

However, for projects involving the relocation of our facilities that do not concern urban rail transit systems, the law is clear that there are some instances where the utility will bear such costs, and others where it will not.

As you know, Wisconsin law permits municipalities to determine, by municipal regulation, “all . . . terms and conditions . . . upon which [a] public utility may be permitted to occupy the streets, highways, or other public places within the municipality.” Wis. Stat. § 196.58(1r)(a). This grant of authority to municipalities is conditioned by a reasonableness requirement, *id.*

Wisconsin law also provides a remedy in the event a utility and a municipality disagree over how to apply municipal regulations to utility relocations. The same statute authorizes the Commission to review any “municipal regulation under sub. (1r)” for reasonableness “[u]pon complaint made by a public utility or any qualified complainant under § 196.26.” Wis. Stat. § 196.58(4)(a). The statute further provides that if the Commission finds such municipal regulation to be unreasonable, “the municipal regulation shall be void.” *Id.*

Section PSC 130.09 of the Wisconsin Administrative Code was promulgated pursuant to Wis. Stat. § 196.58 and provides: “A municipal regulation that requires a utility to permanently relocate transmission or distribution facilities in a municipal right-of-way at the expense of the utility is unreasonable *unless* there is an adequate health, safety, or public welfare justification for the requirement.” PSC 130.09(1). It further provides that such a municipal regulation is *per se* unreasonable if it is “substantially for the benefit of a person other than the municipality.” PSC 130.09(2).

Guided by these clear legal standards, We Energies evaluates every municipal project throughout our service territory that is brought to our attention. If the work is undertaken for a public safety or welfare purpose, then We Energies does not seek reimbursement from the municipality. On the other hand, where work is undertaken on private property, or for the benefit of private enterprise, and a public safety or welfare purpose is not evident, We Energies seeks and receives reimbursement for relocation costs. Our evaluation process is the applied the same way across our service territory.

Thank you for your attention to this matter.



Bert Garvin
Executive Vice President
External Affairs

Cc: Ald. Robert Baumann (via email: rjbauma@milwaukee.gov)