

Borough Gas Utility

The Borough Assembly will be considering an ordinance to establish a government gas utility on Thursday night, October 11th. To acquire these powers the Borough would need to have them ceded to them by the Cities of North Pole and Fairbanks. The City of North Pole passed an ordinance ceding those powers last week, and the City of Fairbanks will be voting on the issue on Monday night, the 8th (after this article has been written). There are two main arguments the proponents bring forth for a Borough gas utility. The first is the Governor's stated need for a unified front, and the other is the tax-free abilities of a municipal utility.

The Governor did state that Fairbanks needed to unite on a gas plan, but never specified the form. There are many, many ways that the community could unite on a solution without going to the extreme step of a socialistic construct, creating another layer of bureaucracy. One example could be, as pointed out by the attorney at the work session last Thursday (10/4/12), that the Borough could accept "limited" utility powers just like they did for Health and Social Services, which would allow them to accept grants and allocate them appropriately. Another example would be the councils and assembly passing resolutions to get behind the Lowell group's plan. Still another would be GVEA, FNG and Flint Hills working out their differences and presenting one agreed upon course of action.

The one valid point made by the proponents is that the utility would have tax-free advantages (from a federal perspective, since any state ones could be modified). There are extra costs, in both money and time, associated with government operations that I believe will mitigate these. The most obvious cost is the extra time and money another layer of bureaucracy will cost us. The Borough right now is looking at an initial funding of \$350,000 plus unlimited help from Borough staff and administration, which anyone who has seen other interfund charges in the Borough knows can amount to hundreds of thousands of dollars itself. There is also the well-established fact that government is slower at getting things done than private enterprise is; this utility will slow down the build-out of our gas distribution system. It is even worse than what I just presented because once the government utility is in the mix, private capital will be more hesitant to take a role in providing any of the gas distribution system because of the increased risk. There are also additional costs of regulation that government funding will have that will greatly increase the costs of construction.

An important aspect here is that two of the funding mechanisms that have been tossed about general obligation bonds and revenue bonds, will both put the Borough on the hook, liable for those debts. GO bonds of course are always backed by the Borough after voted for by the people; revenue bonds to have a decent interest rate have to be backed by revenue, but since you won't start with any, the bond counsel at the work session said that it would be important for these to be guaranteed. The proponents

hope that the State will back these up, but there is no assurance that they will, which would mean that the Borough taxpayers would be on the hook. An important thing to note for the City of Fairbanks is that the proponents have said the utility is for outside the existing FNG service area, i.e. the city, therefore the City taxpayers will be paying for and/or liable for the gas distribution system that they will not be getting any benefit from (disclosure: I'm a city taxpayer). **The City of Fairbanks might want to include language that restricts any bonding to be non-areawide, so that the cities aren't affected.**

The largest problem with the borough utility concept is that we can't even plumb the depths of the largest problem because the proponents of the utility ordinance have put NO restraints in the ordinance. The Federal constitution was designed specifically to restrain government and specifically enumerates powers. All good law is similar in that it sets up the constraints under which government can function. The text of the proposed borough ordinance states (emphasis mine), "the power to acquire, own, and operate a natural gas utility includes, **without limitation**, the power to acquire, own and operate distribution, transmission, and transportation-related facilities and pipelines and conditioning facilities as well as all powers necessarily or fairly implied in or incident to that purpose. **Such powers are intended to be broadly construed.**" In other words, not only does it not setup restraints, it removes all it legally can. This is the worst kind of law; instead of restraining government as our Founding Fathers recognized was necessary, it gives it unlimited power to do most anything it wants. For example, the phrase "transportation-related facilities" could be used to illegitimately give the Borough road powers that it doesn't have.

The proponents have stated they intend for the utility to just "implement and facilitate", but yet have refused to restrict the language to make sure that it stays within those bounds.

We've already seen how things can go bad in general and specific in the Borough. We've had public utilities that ended up not being able to control their costs and had to be sold off. We've had the port authority disaster, where we now have a public entity so far off of its original mandate that it is spending public money to influence elections. It is critical that some restraints be put on this entity and hopefully the City of Fairbanks will implement some (the ones in the proposed city ordinance are a good start), since the City of North Pole failed to include any and the Assembly has none in its existing ordinance. Please send input to the Assembly at assembly@co.fairbanks.ak.us.