



Date: September 22, 2011

To: Thomas J. Bonfield, City Manager
Through: Theodore L. Voorhees, Deputy City Manager
From: Marvin Williams, Director of Public Works
Edward R. Venable, Manager of Engineering and Stormwater
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Subject: PSNC Energy Franchise Agreement Renewal

Executive Summary

The City of Durham granted a 30-year franchise known as the “Public Service Co. of N.C., Inc. Company Gas Franchise” effective November 19, 1981. The existing franchise primarily grants authority to operate within the City while regulating excavations and repair within public rights-of-way. The existing franchise agreement with PSNC Energy will expire on September 30, 2011. While the City and PSNC Energy negotiate the terms of the new franchise, it is in the mutual interest of both parties to extend the existing franchise for an additional year.

Recommendation

The Department of Public Works recommends that the City Council conduct a public hearing, and adopt an Ordinance to extend the existing PSNC Energy Natural Gas Franchise until September 30, 2012.

Background

By authority of N.C.G.S. 160A-319, cities have the authority to grant franchises for the operation of various enterprises including electric power generation, transmission and distribution systems. The City of Durham granted a 30-year franchise known as the “Public Service Co. of N.C., Inc. Company Gas Franchise” effective November 19, 1981. The existing franchise primarily grants authority to operate within the City while regulating excavations and repair within public rights-of-way. It also provides some regulation of the location of facilities, the quality of services, including emergency service, and provides for notice to the City of proposed rate changes while allowing the City access to company records. Despite many of the provisions within the franchise, the North Carolina Utilities Commission’s authority supersedes the City’s authority in a number of these areas. Nevertheless, the City is afforded certain liability protections, and the authority to order facility relocations for public improvements under the franchise.

Issues/Analysis

The existing franchise agreement with PSNC Energy will expire on September 30, 2011. The City has been in negotiations with PSNC Energy regarding extension of their current agreement. PSNC Energy has requested that a new franchise be drafted. While the City and PSNC Energy negotiate the terms of the new franchise, it is in the mutual interest of both parties to extend the existing franchise for an additional year so that the negotiations may be concluded.

Alternatives

1. Extend the existing franchise for a year (until September 30, 2012) while negotiations on a new franchise agreements are finalized. This is the recommended alternative and is supported by both parties as the simplest way to continue operating in good faith while negotiations are completed. The City would realize the greatest level of protection during the negotiations under this alternative.
2. Do not extend the existing franchise but continue negotiations. This would not prevent PSNC Energy from operating within the City as they have authority to do so from the North Carolina Utilities Commission. Any benefits that the franchise now affords the City would no longer apply; however, Durham would continue to realize Utility Franchise taxes and would retain nearly all of its authority to regulate construction and repairs within the City rights-of-way. This alternative is not recommended.

Financial Impact

Regardless of the status of the City's franchise agreement with PSNC Energy, state law requires that a Utilities Franchise Tax (based on a percentage of gross receipts) be collected by the state and that the taxes collected on receipts attributed to customers within Durham be paid to the City. There are, however, key issues concerning the cost of utilities relocation due to public projects, indemnification, repairs to streets and rights-of-way, and other matters that are expected to have a positive financial impact on the City. Failure to award a new franchise could potentially have some limited negative financial and service impacts on the City.

SDBE Summary

The SDBE Summary is not applicable for this update.