



City of Duluth

411 West First Street
Duluth, Minnesota 55802

Minutes - Final

Duluth Public Utilities Commission.

Tuesday, August 15, 2023

5:15 PM

Council Chambers, City Hall, 411 West First Street

CALL TO ORDER

Commissioner Crouse called the meeting to order at 5:22 p.m.

ROLL CALL

Members Present: Erin Abramson, Andrea Crouse, Councilor Noah Hobbs,
Councilor Mike Mayou, Councilor Terese Tomanek

Members Absent: Chris Adatte, Carrie Ryan

Staff Present: Jim Benning, Jean Coleman, Cyndi Falconer, Leanna Gilbert, Chris
Ostern, Kerry Venier

PUBLIC COMMENT PERIOD

No comments were made at this time.

APPROVAL OF MINUTES

[DPUC107](#) June 20, 2023 DPUC meeting minutes draft

Indexes:

Attachments: [06202023 DPUC meeting minutes draft](#)

These Duluth Public Utilities Commission meeting minutes were approved.

[DPUC109](#) July 18, 2023 DPUC meeting notes draft

Indexes:

Attachments: [07182023 DPUC meeting notes draft](#)

Commissioner Hobbs motioned to approve the June 20, 2023 meeting minutes
and the July 18, 2023 meeting notes, and the motion was approved by all
present.

NEW BUSINESS

[DPUC111](#) 2024 Proposed Utilities Budget

Indexes:

Attachments: [2024-PUC Budget Presentation Final 15AUG2023](#)

Staff gave an overview of the proposed 2024 utilities budget and answered questions from commissioners. Commissioner Crouse asked about a list of water capital projects. Staff will have the water 5-year capital plan ready for the budget presentation to Council. Commissioner Abramson requested the water portion of the budget presentation. Staff can provide that and the draft water public education presentation at the September meeting.

[DPUC110](#) 23PUC-002 - RESOLUTION APPROVING AND RECOMMENDING 2024 UTILITIES BUDGET.

Indexes:

Attachments: [23PUC-002 approving 2024 budget](#)

Commissioner Hobbs motioned to approve resolution 23PUC-002, and the motion was approved by all present.

UPDATES FROM STAFF

Jim Benning reported that there will be an EPA inspection of the water system over the next two days. The Public Works & Utilities Department budget presentation to Council was moved to November 9.

Assistant City Attorney Jean Coleman addressed a previous question about attending meetings virtually or electronically. The State of Minnesota in the last legislative session passed a statute that changed the ability to attend in electronic format under certain circumstances. Previously, that had only been allowed during a declared emergency. The open meetings law requires that we be transparent with the public in our decision making. This change in legislation allows for electronic attendance only when a member is ill and cannot attend for that reason. This Commission could adopt a policy that would allow members to attend under those limited circumstances, which are when a member has been advised by a health care professional against being in a public place for medical reasons. There is a limit on the number of times that any member can choose to do that in a calendar year, and that is three. Attorney Coleman advised that a policy be adopted because of some of the practicalities of a member participating electronically. The member needs to be able to see all other members and be seen by all other members and the public. There are technological changes that would have to be made in order to accommodate that. Every vote would need to be taken by roll call if someone was participating virtually. Commissioner Tomanek motioned that the language that was just read be adopted by this body for future attendance. Attorney Coleman advised adding to the motion a reference to the Law of Minnesota 2023, Chapter 62, Article 3, Section 1. There was some discussion about the benefits of allowing electronic attendance. There was also discussion about whether technology would allow for it and if it would be practical. Commissioner Mayou asked about adding a clause regarding adequate notice. Jim Benning responded that this would be a method to accommodate a commissioner who wants to participate unless it is impractical for either technology or other reasons. Commissioner Tomanek said that this would probably only be used if we had something that we needed to get passed and the only way to get a quorum was this. Commissioner Mayou asked for clarification that this would not bind us to having this participation method

available at every single meeting, but only as we are able to provide it. Attorney Coleman responded that the Commission could craft the policy any way they want. Commissioner Mayou motioned to amend the motion on the floor that this would be available on an ad hoc as-needed basis as we are able to. This amendment was approved by all present. All present approved the motion to adopt a policy allowing electronic attendance under certain circumstances as amended.

Cyndi Falconer reported that the E 8th Street project has completed approximately 50 of 80 services so far. We anticipate that the project will be completed this fall. A few more private services on that street have been added to the project through additional methods of identification. The 2023 projects that were certified by the State are still on hold, since we have not received the loan application from the PFA yet. At this point, we anticipate that those projects will probably not start until 2024. We will be meeting with the State in about a month at a conference here in Duluth and are hoping to get some answers to questions that we have and direction regarding our program. The deadline for compliance with the new lead and copper rule is October 16, 2024, so we are really focusing on the elements that we need to complete in order to be compliant. The water meter replacement project is 46% complete. We have distributed approximately 2,200 pitcher filters so far, and many people are requesting replacement filters. Commissioner Tomanek asked about recycling of old water meters and funding for replacement filters. Commissioner Mayou reported that he had his water meter replaced recently. It was a great process and the technician was very knowledgeable. He also thanked Director Benning and staff for help with a constituent who wanted a non-electronic meter.

COMMISSIONER QUESTIONS OR COMMENTS

Commissioner Mayou asked about the Moline case regarding ERU's and whether it was true that it would be a class action as he saw in the news. Attorney Coleman responded that what Commissioner Mayou stated is true. Last Friday the District Court certified the class, which means that others can join in the suit that are similarly situated to the two main plaintiffs. Commissioner Mayou asked if there was a timeline of when that might be litigated or arbitrated. Attorney Coleman replied that the order on the class certification encouraged parties to meet and mediate. There has been no schedule set for a trial or discovery. That should be set in the next couple of months. Commissioner Abramson asked where the attorneys fees would be funded from. Jim Benning replied that they are being paid by the stormwater fund. Commissioner Crouse asked about clarification for joining in the suit versus opting out. Attorney Coleman can look into that. Commissioner Mayou asked whether litigation fees were factored into the stormwater budget. Kerry Venier responded that we budgeted a set amount for that, which is the same amount that we budgeted for that last year.

UPCOMING COUNCIL ACTIONS

Jim Benning mentioned two resolutions for the thermal district.

PREVIEW OF UPCOMING BUSINESS

The next regular meeting is scheduled for Tuesday, September 19, 2023 at 5:15 p.m. in City Council Chambers. Staff will provide a list of water capital projects, the water portion of the budget presentation, and a draft public education piece

for water. In October, we could finalize the public education presentation. In November, the Commission could determine what the rates should be prior to going into the public outreach phase. In January or February, public meetings could be held with a potential public hearing and vote in February. Staff has not received a response from WLSSD regarding an update or a meeting at their location.

KNOWN ABSENCES FOR FUTURE MEETINGS

No upcoming absences were mentioned.

ADJOURNMENT

The meeting was adjourned at 6:33 p.m.