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East Lansing Missing Out on Millions a Year from BWL ^[1]

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By:

Michael Teager



The City of East Lansing has been missing out on income that could have amounted to millions of dollars per year because?unlike every other municipality that has electric service provided to it by the Lansing Board of Water & Light (BWL)?East Lansing has been lacking a franchise agreement with BWL. While required by state law, that franchise agreement has been missing for East Lansing for over a hundred years.

East Lansing?s City Council convened for a special meeting at 8:00 a.m. yesterday morning to

discuss entering into a franchise agreement with BWL, East Lansing's main electricity provider. Council met specifically to approve a resolution [2] before tonight's meeting of the BWL's board [3].

The resolution calls for BWL to enter into a franchise agreement with the City of East Lansing and make a payment in lieu of a franchise fee to the City of East Lansing in the amount of 5% of [BWL's] gross sales within the City.

At yesterday's meeting, Mayor Mark Meadows estimated that BWL services cost East Lansing's government, residents, and business owners a total of roughly \$50 million annually, and that therefore a 5% payment in lieu of franchise fee would result in an estimated \$2.5 million of additional revenue for the City each year.

The issue appears to have first come before this City Council at its January 19, 2016 meeting [4] during a special presentation by East Lansing's BWL non-voting representative Bob Nelson. His presentation included discussion of East Lansing not currently operating under a franchise agreement nor another analogous arrangement with BWL, making the City the only surrounding municipality to not be doing so.

In his remarks Monday morning, Meadows discussed a state constitutional requirement that a franchise agreement must be entered into with the local unit of government in order for a utility to provide service. This presents legal complications, as East Lansing has apparently been operating without a franchise agreement (or equivalent mechanism) for decades, seemingly all the way back to the initial 1909 law requiring franchise agreements.

In general, a franchise agreement between the City of East Lansing and BWL would mean that BWL would pay the City for use of its property and infrastructure to provide services to its customers. This fee could effectively be passed on to customers, but the money would go directly to the City. During his January presentation, Mr. Nelson estimated that East Lansing would generate approximately \$1.2M annually under a 5% franchise agreement.

Each municipality in the BWL service area has its own arrangement with BWL. For example, Lansing, Meridian, and Watertown Townships all have 5% payment in lieu of franchise agreement agreements with BWL, whereas Delhi Township's agreement brings it 3.5%. Meadows said that, statewide, agreements are usually 5%.

At the January 19 meeting, there was considerable confusion regarding any existing franchise structure between East Lansing and BWL. Meadows had implied that BWL sought a payment in lieu of taxes (and that it may have already been doing so), which would direct money to East Lansing without the cost being passed off to citizens. This arrangement would allow BWL to not operate under the restrictions of a franchise agreement.

At that January meeting, Councilmember Erik Altmann repeatedly asked how it would be feasible for BWL if the cost wouldn't be reimbursed via the end-customer. Mayor Pro Tem Ruth Beier responded that the non-franchise status was worth the financial cost to BWL.

Now, however, given Monday morning's discussion, it appears that there may not have been any financial nor the state-mandated legal structure in place, be it a franchise or anything else.

At yesterday's meeting, Meadows stated that the lack of a franchise agreement had come before East Lansing's Council in 2014 but that, according to WILX's reporting from May 2014 ^[5], it wasn't considered a priority. "It is a priority for me, and I hope it's a priority for the Council to resolve this issue," Meadows said yesterday. He said the substantial revenue generated could be used to fix streets and other City infrastructure in need of repair.

Meadows explained yesterday that the 5% of gross sales would "not [be] passed on to a specific customer, but would be rolled into the general rate base of the utility," meaning that all BWL customers would help pay the fee. City Attorney Yeadon confirmed that such a structure would meet the state's constitutional requirement for a franchise agreement.

Responding to Meadows's claim that the issue had come before Council in 2014, both Beier and Councilmember Susan Woods responded that the issue was "never" discussed at Council. Meadows again quoted the aforementioned WILX report ^[5]: "[Then-Mayor Nathan] Triplett acknowledges the need for a franchise agreement, but it's not a top priority." But the WILX article mentions only Triplett and City Attorney Tom Yeadon knowing about the absence of a franchise agreement, and does not discuss the rest of Council.

Meadows also said yesterday that the issue had been discussed with BWL, so that both parties were aware of the situation.

After yesterday's meeting, for this report I asked former-Mayor Triplett why an arrangement was not pursued in 2014, when he knew it was lacking. Referring to two formal reviews done after the 2013-214 ice storm which left many without power for eight or more days, Triplett responded, "We were rightly focused on seeing that the CRT/MPSC recommendations ^[6] were implemented and securing East Lansing residents a [non-voting] voice on the BWL's Board of Commissioners via an amendment to the Lansing City Charter, which was successfully passed in November 2014" in the wake of the ice storm and subsequent fallout ^[7].

Mr. Triplett saw that as "improving [East Lansing's] position vis-à-vis the BWL before attempting to enter into a negotiation regarding a franchise agreement".

Responding to a request for comment on Triplett's statement, Mayor Pro Tem Beier, who served with Triplett on Council in 2014, told ELi yesterday that his not bringing it to Council "was an error," but that she's "focused on the future rather than the past" and is "confident that we can work with BWL to come up with a fair [agreement]."

Monday morning's approval of the resolution was a first step in the process, with official negotiations to follow, meaning that a start date for any agreement has yet to be established. Once established, a franchise agreement can remain in place for up to thirty years.

There was also discussion of an agreement with Consumers Energy, which is another utility supplier to East Lansing, but Council agreed to discuss that at another time. City Attorney Tom Yeadon said the franchise agreement with Consumers Energy was worked out about two years

ago.

Meadows told Council that if the electricity to be supplied to the Facility for Rare Isotope Beams (FRIB) on MSU's campus will be passing through the City of East Lansing, East Lansing may see substantial revenue from its financial allowance from that utility provision.

Council voted 4-0 to adopt the resolution (with Councilmember Shanna Draheim absent).

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[5] <http://www.wilx.com/home/headlines/BWL-Operating-in-East-Lansing-Without-Franchise-Agreement-258191521.html>

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