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STUDY OF THE IMPACTS OF REGULATIONS
AFFECTING THE ACCEPTANCE OF
INTEGRATED COMMUNITY ENERGY SYSTEMS

PRELIMINARY BACKGROUND REPORT

MASTER

Public Utility, Energy Facility
Siting and Municipal Franchising
Regulatory Programs in Iowa

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UNITED STATES DEPARTMENT OF ENERGY

Division of Buildings and Community Systems
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ABSTRACT

This report is one of a series of preliminary reports describing the laws and regulatory programs of the United States and each of the 50 states affecting the siting and operation of energy generating facilities likely to be used in Integrated Community Energy Systems (ICES). Public utility regulatory statutes, energy facility siting programs, and municipal franchising authority are examined to identify how they may impact on the ability of an organization, whether or not it be a regulated utility, to construct and operate an ICES.

This report describes laws and regulatory programs in Iowa. Subsequent reports will (1) describe public utility rate regulatory procedures and practices as they might affect an ICES, (2) analyze each of the aforementioned regulatory programs to identify impediments to the development of ICES and (3) recommend potential changes in legislation and regulatory practices and procedures to overcome such impediments.

CHAPTER 1
INTRODUCTION

One response to current concerns about the adequacy of the nation's energy supplies is to make more efficient use of existing energy sources. The United States Department of Energy (DOE) has funded research, development and demonstration programs to determine the feasibility of applying proven cogeneration technologies in decentralized energy systems, known as Integrated Community Energy Systems (ICES), to provide heating, cooling and electrical services to entire "communities" in an energy conserving and economic manner.

The relevant "community" which will be appropriate for ICES development will typically consist of a combination of current energy "wasters" -- i.e., installations with large energy conversion facilities which now exhaust usable amounts of waste heat or mechanical energy -- and current energy users -- i.e., commercial or residential structures which currently obtain electricity and gas from a traditional central utility and convert part of it on customer premises to space heating and cooling purposes.

In most current applications, energy conversion facilities burn fuels such as coal, oil or natural gas to produce a single energy stream, such as process steam or electricity, for various industrial processes or for sale to other parties. However, the technology exists to produce

more than one energy stream from most energy conversion processes so that the input of a given amount of fuel could lead to the production and use of far more usable energy than is presently produced. This technology is the foundation of the ICES concept. Current examples of the technology can be found on university campuses, industrial or hospital complexes and other developments where a central power plant provides not only electricity but also thermal energy to the relevant community.

It is generally assumed by DOE that ICES will be designed to produce sufficient thermal energy to meet all the demands of the relevant community. With a given level of thermal energy output, an ICES generation facility will be capable of producing a level of electricity which may or may not coincide with the demand for electricity in the community at that time. Thus, an ICES will also be interconnected with the existing electric utility grid. Through an interconnection, the ICES will be able to purchase electricity when its community's need for electricity exceeds the amount can be produced from the level of operations needed to meet the community's thermal needs. In addition, when operations to meet thermal needs result in generation of more electricity than necessary for the ICES community, the ICES will be able to sell excess electricity through the interconnection with the grid.

ICES may take a variety of forms, from a single owner-user such as massive industrial complex or university campus where all energy generated is used by the owner without sales to other customers, to a large residential community in which a central power plant produces heat and electricity which is sold at retail to residents of the community. Since successful operation of an ICES presupposes that the ICES will be able to use or sell all energy produced, it can be anticipated that all ICES will at some point seek to sell energy to customers or to the electric utility grid from which the electricity will be sold to customers. By their very nature ICES are likely to be public utilities under the laws of many, or even all, states.

The Chicago law firm of Ross, Hardies, O'Keefe, Babcock & Parsons has undertaken a contract with the Department of Energy to identify impediments to the implementation of the ICES concept found in existing institutional structures established to regulate the construction and operation of traditional public utilities which would normally be the suppliers to a community of the type of energy produced by an ICES.

These structures have been developed in light of policy decisions which have determined that the most effective means of providing utility services to the public is by means of regulated monopolies serving areas large enough to permit economies of scale while avoiding wasteful

duplication of production and delivery facilities. These existing institutional structures have led to an energy delivery system characterized by the construction and operation of large central power plants, in many cases some distance from the principal population centers being served.

In contrast, effective implementation of ICES depends to some extent upon the concept of small scale operations supplying a limited market in an area which may already be served by one or more traditional suppliers of similar utility services. ICES may in many instances involve both existing regulated utilities and a variety of non-utility energy producers and consumers who have not traditionally been subject to public utility type regulation. It will also require a variety of non-traditional relationships between existing regulated utilities and non-regulated energy producers and consumers.

Ross, Hardies, O'Keefe, Babcock & Parsons is being assisted in this study by Deloitte Haskins & Sells, independent public accountants, Hittman Associates, Inc., engineering consultants, and Professor Edmund Kitch, Professor of Law at the University of Chicago Law School.

The purpose of this report is to generally describe the existing programs of public utility regulation, energy facility siting and municipal franchising likely to relate to the development and operation of an ICES, and the construction of ICES facilities in Iowa. Attention is given to

the problems of the entry of an ICES into a market for energy which has traditionally been characterized by a form of regulated monopoly where only one utility has been authorized to serve a given area and to the necessary relationships between the ICES and the existing utility. In many jurisdictions legal issues similar to those likely to arise in the implementation of the ICES concept have not previously been faced. Thus, this report cannot give definitive guidance as to what will in fact be the response of existing institutions when faced with the issues arising from efforts at ICES implementation. Rather, this report is descriptive of present institutional frameworks as reflected in the public record.

Further reports are being prepared describing the determination and apportionment of relevant costs of service, rates of return and rate structures for the sale and purchase of energy by an ICES. Impediments presented by existing institutional mechanisms to development of ICES will be identified and analyzed. In addition to identifying the existing institutional mechanisms and the problems they present to implementation of ICES, future reports will suggest possible modifications of existing statutes, regulations and regulatory practices to minimize impediments to ICES.

This report is one of a series of preliminary reports covering the laws of all 50 states and the federal government. In addition to the reports on individual states, Ross, Hardies, O'Keefe, Babcock & Parsons is preparing a summary report which will provide a national overview of the existing regulatory mechanisms and impediments to effective implementation of the ICES concept and a series of recommendations for responding to those impediments.

CHAPTER 2

REGULATION OF PUBLIC UTILITIES IN IOWA

I. PUBLIC AGENCIES WHICH REGULATE PUBLIC UTILITIES

The authority to regulate public utilities is vested generally in the Iowa State Commerce Commission (Commission). ^{1/} The Commission is comprised of three members appointed by the governor with the approval of two-thirds of the senate. Commissioners are appointed for six-year terms. ^{2/} They must be free from employment or pecuniary interests in any public utility. ^{3/}

Although the right to grant franchises is specifically reserved for municipalities, local governments exercise no regulatory authority over the provision of utility services by public utilities. ^{4/} Municipally-owned utilities, however, are specifically excepted from rate regulation by the Commission. ^{5/} The regulation of rates charged by municipally-owned utilities is the responsibility of local governments. The Commission is given no authority to review decisions of local governments with respect to rates.

II. JURISDICTION OF REGULATORY AGENCY

The Commission's jurisdiction extends to all "public utilities," which are defined to include:

[A]ny person, partnership, business association, or corporation, domestic or foreign, owning or operating any facilities for:

1. Furnishing gas by piped distribution system or electricity to the public for compensation. . . .

3. Furnishing water by piped distribution system to the public for compensation.

. . . municipally owned utilities, and unincorporated villages which own their own distribution system shall not be subject to the rate regulation provided for in this chapter. . . .6/

The specific activities subject to the Commission's control are not enumerated. The Commission's jurisdiction extends to any party "furnishing" jurisdictional service. The term "furnishing," however, is broad and should provide the Commission with sufficient authority to regulate all phases of the operations of a public utility. The statute does provide specifically that the Commission's jurisdiction shall extend to any facilities used in connection with furnishing the jurisdictional service.

The Commission has statutory authority over "any person, partnership, business association, or corporation."^{7/} This provision is broad enough to bring all conventional forms of public utility ownership within the Commission's jurisdiction.

The Commission has jurisdiction only over utility services provided "for compensation."^{8/} There is no specific statutory provision relating to Commission regulation of indirect sales of jurisdictional services. A spokesman for the Commission noted that no statutory provision precludes Commission regulation of indirect sales and that the Commission

would regulate these sales at least to the extent necessary to monitor the rates charged by local utilities for services provided directly to the public.^{9/}

Commission jurisdiction is based on service "to the public."^{10/} There is no statutory definition of "public," but the Iowa Supreme Court has considered the question of what constitutes service "to the public" so as to bring a utility within the jurisdiction of the Commission. Iowa State Commerce Commission v. Northern Natural Gas Co.^{11/} involved a gas pipeline company which sold natural gas to wholesale purchasers who, in turn, sold gas to the public. In addition, the pipeline company made direct sales to land owners located near its high pressure lines and to industrial and commercial customers. The pipeline company served about 1,800 non-wholesale customers.^{12/} The Commission held that, with respect to these direct sales, the company was a public utility and subject to Commission regulation.^{13/}

On appeal, the company argued that "to the public" meant a willingness to serve an indefinite portion of the public, that portion of the public having a legal right to demand service.^{14/} The court, in rejecting this argument and affirming the Commission's decision, reasoned that:

We conclude [to the public] means sales to sufficient of the public to clothe the operation with a public interest and does not mean willingness to sell to each and every one of the public without discrimination.^{15/}

Under this definition of "public," the production of energy for private use clearly would be beyond the jurisdiction of the Commission. In addition to not satisfying the requirement that services be provided to the public, service for private use would not be provided for compensation. Beyond this, the court's definition is not helpful. The Commission is left with broad discretion to determine when a utility operation is clothed with public interest. A Commission spokesman did indicate that the Commission would exercise its regulatory authority over the furnishing of utility service to tenants.^{16/}

III. POWERS OF THE COMMISSION

The Commission has been granted several specific powers over public utilities. It may regulate rates charged for jurisdictional services,^{17/} and may prescribe a system of accounts to be kept by public utilities.^{18/} As discussed in Chapter 3, the Commission must approve the construction or alteration of certain electric power generating plants.^{19/} A franchise must be obtained from the Commission for the construction of electric transmission lines outside a city,^{20/} and the Commission has general supervisory authority over the transportation by pipeline and underground storage of gas.^{21/} In addition, it may assign exclusive service territories to electric utilities.^{22/} However, the Commission does not have power to issue a certificate of public convenience and necessity before a utility initiates service in an area except to the extent its power to approve con-

struction of certain facilities would permit to to preclude initiation of service. The Commission may establish standards of service for public utilities,^{23/} and must approve any abandonment of service by a public utility.^{24/}

The Commission has been granted no other specific powers. However, one statutory provision provides that:

[t]he commission shall have broad general powers to effect the purposes of this chapter notwithstanding the fact that certain specific powers are hereafter set forth.^{25/}

This provision could provide a base from which the Commission could regulate other aspects of public utility operations.

IV. AUTHORITY TO ASSIGN RIGHTS TO PROVIDE SERVICE IN A GIVEN AREA

A. Generally

No electric utility (including municipally-owned electric utilities),^{26/} may construct or extend facilities or offer electric service to an existing point of delivery of any customer already receiving electric service without the permission of the utility already serving the customer or the approval of the Commission.^{27/} An electric utility may not construct or extend any facility or offer service to a customer not already receiving service unless its facilities are nearer the proposed point of delivery than the facilities of any other electric utility without the permission of the nearer utility or the approval of the Commission.^{28/} In addition, no

person may construct or significantly alter the location, construction, operation or maintenance of any electric power generating plant with a total capacity of one hundred megawatts or more or construct or operate any transmission lines over any public grounds outside of any city without first obtaining Commission approval.^{29/} Finally, no person may construct or operate any pipeline or underground storage facility for any gas or liquid (except water) without obtaining Commission approval.^{30/}

B. Competition

The Iowa legislature has declared that it is:

In the public interest to encourage the development of co-ordinated statewide electric service at retail, to eliminate or avoid unnecessary duplication of electric utility facilities, and to promote economical, efficient, and adequate electric service to the public.^{31/}

In order to effect this public interest, the Commission has been authorized to establish service areas to be served exclusively by electric utilities.^{32/} The service area boundaries are to be drawn approximately equidistant between the electric utility lines of adjacent electric utilities as they existed on January 1, 1976.^{33/}

A Commission spokesman stated that the Commission is in the process of assigning exclusive service areas pursuant to the authority discussed above. Upon completion of this project, all areas of the state will be assigned to one, and only one,

electric utility.^{34/} This will preclude competition among electric utilities and effectively foreclose opportunities for new electric utilities to begin offering service. The Commission spokesman did opine that the Commission probably would not object to the construction and operation of small cogeneration facilities to provide service to the owner of the facility. The decision in each case, however, would depend on the facts of the case.^{35/}

There are no statutory provisions dealing specifically with the authority of the Commission to grant exclusive certificates to other utilities. A Commission spokesman stated, however, that competition between utilities is viewed with disfavor by the Commission because it tends to be wasteful and uneconomic. As a general rule, competition is not allowed.^{36/}

C. Certificating Procedure

An electric utility seeking approval of a proposed extension of service must file its petition with the Commission. The Commission will give notice to interested parties and, if any objection is made, hold a hearing. The certificate will be granted if the Commission determines that the proposed construction or service is in the public interest.^{37/}

Any person seeking Commission approval to construct or alter any electric power generating plant with a total

capacity of one hundred megawatts or more must submit its application to the Commission.^{38/} The Commission will give notice to all interested parties and conduct a public hearing.^{39/} The Commission will grant the certificate if the construction or alteration is required by the public convenience and necessity, the petitioner is willing to construct or alter the facilities pursuant to any conditions imposed by the Commission, and the construction of the facility will cause minimal adverse land use and environmental and aesthetic impact.^{40/}

A person wishing to construct transmission lines outside the boundaries of any city must file a petition with the Commission.^{41/} The petition must include a description of the route of the lines, specification as to materials and manner of construction, the maximum wattage to be carried and an allegation that the proposed construction is necessary to serve a public use.^{42/} The Commission will hold a hearing for the purpose of considering the petition and will allow the construction if it is necessary to serve a public use and "represents a reasonable relationship to an overall plan of transmitting electricity in the public interest."^{43/} The procedure is essentially the same for obtaining Commission approval of the construction of a pipeline or underground storage facility for any gaseous or liquid substance (except water).^{44/}

In addition to the statutory criteria for the issuance of certificates noted above, the Commission has established other criteria to be considered. In determining whether to grant the requested certificate, the Commission will consider the public demand for the proposed service, the adequacy of existing service, the probability of continuing reliability of existing facilities, the financial stability of the applicant and the equipment proposed to be used.^{45/}

A public utility must obtain Commission approval before abandoning any service.^{46/} No specific procedure for obtaining Commission approval nor criteria governing the grant of such approval have been established.

D. Service Area Disputes

The resolution of service area disputes by the Commission is governed by the general procedure for hearing complaints. Any person may file a complaint with the Commission alleging that any public utility has acted in contravention of any statutory provision regulating public utilities.^{47/} The Commission will forward the complaint to the public utility complained of and, if the utility does not satisfy the Commission with respect to the complaint, the Commission may conduct any necessary investigation and resolve any issues raised by the complaint after a hearing.^{48/}

V. APPEALS OF COMMISSION DECISIONS

Judicial review of actions of the Commission may be had in accordance with the terms of the Iowa administrative procedure act.^{49/} Any aggrieved party, after exhausting all administrative remedies, may seek judicial review of a Commission action by filing a petition in the district court for Polk County, the county in which the petitioner resides or any county where any part of the Commission's order is to take effect.^{50/} The petition must be filed within thirty days^{51/} after the issuance of the final decision by the Commission. Within ten days of filing the petition, the petitioner must mail copies of the petition to all parties named in the petition and to all parties of record in the Commission case to be reviewed.^{52/}

In reviewing a Commission action in a contested case, the court may not hear evidence not presented to the Commission. If the court determines that additional evidence should be heard, the new evidence will be heard by the Commission and the Commission given an opportunity to modify its order if appropriate.^{53/} The court may grant any appropriate relief if it finds that the agency action was:

- a. In violation of constitutional or statutory provisions;
- b. In excess of statutory authority of the agency;
- c. In violation of an agency rule;
- d. Made upon unlawful procedure;

- e. Affected by other error of law;
- f. In a contested case, unsupported by substantial evidence in the record made before the agency when that record is viewed as a whole; or
- g. Unreasonable, arbitrary or capricious or characterized by an abuse of discretion or a clearly unwarranted exercise of discretion. 54/

Any person aggrieved by the final judgment of the district court may appeal that judgment to the state supreme court. 55/

FOOTNOTES

1. Iowa Code, §476.1 (1977).
2. Id., §474.1.
3. Id., §474.2.
4. Id., §476.23(4).
5. Id., §476.1.
6. Id., §476.1.
7. Id., §476.1.
8. Ibid.
9. Mr. Ralph Kaufman, Hearing & Compliance Officer, Utilities Div., Commission, 3/14/79.
10. Iowa Code, §476.1 (1977).
11. 161 N.W. 2d 111 (Iowa 1968).
12. Id., 161 N.W. 2d at 112.
13. Ibid.
14. Id., 161 N.W. 2d at 113.
15. Id., 161 N.W. 2d at 115.
16. Mr. Ralph Kaufman, Hearing & Compliance Officer, Utilities Div., Commission, telephone conversation, 3/14/79.
17. Iowa Code, §476.7 (1977).
18. Id., §476.9.
19. Id., §476A.2(1) (2).
20. Id., §478.1. See chapter 4 for fuller discussion.
21. Id., §479.1.
22. Id., §476.25.
23. Id., §476.8.
24. Id., §476.20.
25. Id., §476.2.

26. Id., §390.1.
27. Id., §476.23(1).
28. Id., §476.23(2).
29. Id., §§476A.2, 478.1.
30. Id., §479.5.
31. Id., §476.25.
32. Ibid.
33. Id., §476.25(1).
34. Mr. Ralph Kaufman, Hearing & Compliance Officer,
Utilities Div., Commission, telephone conversation,
3/14/79.
35. Ibid.
36. Ibid.
37. Iowa Code, §476.23(1977).
38. Id., §476A.3.
39. Id., §476A.4.
40. Id., §476A.6.
41. Id., §478.2.
42. Id., §478.3.
43. Id., §478.4.
44. Id., §§479.5, 479.6, 479.7, 479.12.
45. Re Thomson, 39 P.U.R. (N.S.) 326, 331-32 (I.S.C.C. 1940).
46. Iowa Code, §476.20 (1977).
47. Id., §476.3.
48. Ibid.
49. Id., §476.13
50. Id., §§ 17A.19(1,2), 476.13

51. Id., § 17A.19 (3).

52. Id., § 17A.19 (2).

53. Id., §17A.19 (7).

54. Id., § 17A.19 (8).

55. Id., § 17A.20.

CHAPTER 3

SITING OF ENERGY FACILITIES IN IOWA

I. AGENCIES WHICH ADMINISTER SITING LAWS

As discussed in Chapter 2, the Iowa State Commerce Commission (Commission) issues certificates of public convenience, use, and necessity for any "significant alteration" in the location, construction, maintenance or operation of electric power plants with total capacities of one hundred megawatts or more and associated transmission lines. In issuing certificates, the Commission functions in a combined capacity as an economic regulatory body and an environmental siting authority. The criteria for issuing certificates, as noted in Chapter 2, include that:

1. The services and operations resulting from the construction of the facility are required by the present or future public convenience, use and necessity; and,
2. The applicant is willing to perform such services and construct, maintain, and operate the facility pursuant to the provisions of the certificate and this chapter; and,
3. The construction, maintenance, and operation of the facility will cause minimum adverse land use, environmental, and aesthetic impact and are consonant with reasonable utilization of air, land and water resources for beneficial purposes considering available technology and the economics of available alternatives. 1/

The Commission's membership, jurisdiction, and procedures are fully discussed in Chapter 2. Because the Commission

must generally adhere to the requirements of other agencies with permitting and licensing jurisdiction, and because local zoning authorities may state their recommendations to the Commission, ^{2/} (and for facilities not subject to the Commission's certificating jurisdiction, local zoning authorities have essentially veto power), those other agencies and the sources of zoning authority should be noted. The principal state agencies having jurisdiction which may affect the siting of a power plant are the Department of Environmental Quality, Natural Resources Council, and Conservation Commission.

II. DEPARTMENT OF ENVIRONMENTAL QUALITY

The Department of Environmental Quality has overall responsibility for promulgating and enforcing standards for, and issuing permits with respect to, air and water pollution and effluent discharges. ^{3/} Within the Department, the Air Quality Control Commission and the Water Quality Control Commission set the rules and standards respectively for air and water quality. ^{4/} However, the Executive Director of the Department, or his designee, actually issues the permits. ^{5/} Extensive technical data is required in support of permits for electrical power generating facilities subject to the certifying authority of the Commerce Commission. This includes engineering descriptions, flow diagrams and schematics that qualitatively and quantitatively identify effluent streams and alternative disposal systems. ^{6/}

III. NATURAL RESOURCES COUNCIL

The Natural Resources Council is responsible for developing a comprehensive state water control, use, and protection plan, and for issuing permits for the diversion, storage, or withdrawal of public or private waters from any watercourse, drainage ditch, or underground basin or watercourse.^{7/} Permits are required when daily usage exceeds certain established limits or when a person diverts any material or water from the surface directly into any underground watercourse or basin.^{8/} Criteria in issuing permits include the effect on natural flow, effect on riparian owners, and effect on the state comprehensive plan.^{9/} Priority of use prior to 1957 is preserved.^{10/}

IV. CONSERVATION COMMISSION

The State Conservation Commission is responsible for the administration of state parks and preserves and is responsible for protecting the state's wildlife.^{11/} While the Commission's powers may be read more narrowly, arguably the Commission would have authority to seek to enjoin the construction of a power plant that threatened, for example, a species of animals.^{12/}

V. LOCAL ZONING

With respect to electric power generating facilities subject to the Commerce Commission's certifying procedures,

local zoning authorities may participate at the Commission hearings, but may not veto the project.^{13/} For facilities not subject to the Commerce Commission's jurisdiction, however, local zoning authorities may effectively veto many proposed projects.

Iowa cities have traditional broad zoning powers to regulate and restrict the height, size, density, location, and use of buildings to promote the public health, safety, morals, or general welfare, and may divide the city into zoning districts.^{14/} Regulations must be made in accordance with a comprehensive plan designed among other things to lessen congestion, secure the public safety, and "to facilitate the adequate provisions of transportation, water, sewerage, schools, parks, and other public requirements."^{15/}

Iowa counties have similar zoning powers with respect to their unincorporated areas.^{16/}

FOOTNOTES

1. Iowa Code Ann. §476 A.6 (West Supp. 1979).
2. Id. §476A.5
3. Id. ch. 455B.
4. Id. §§455B.12, 455B.32.
5. Id., §§455B.13, 455B.33.
6. Id., §§455B.13, 455B.33.
7. Id. §§445A.17 (West Supp. 1978), 445A.18 (West 1971), 445A.19 (West 1971).
8. Id., §455A.25 (West 1971).
9. Id., §455A.18.
10. Id., §455A.21 (West Supp. 1979).
11. Id. ch. 107.
12. See, Id., §§107.23, 107.24.
13. Id. §476A.5.
14. Id. §§414.1, 414.2 (West 1976).
15. Id., §414.3.
16. Id., §358A.3 et seq. (West 1977).

CHAPTER 4

FRANCHISING OF PUBLIC UTILITIES IN IOWA

I. AUTHORITY TO GRANT FRANCHISES

Cities in Iowa are authorized to grant franchises to any person:

to erect, maintain and operate plants and systems for electric light and power, heating, . . . waterworks and gas works, within the city for a term of not more than twenty-five years 1/

Franchising authority has been extended to all cities in Iowa.

"City" is defined to include all municipal corporations but specifically excludes counties, townships, school districts or any other special-purpose districts or authorities. 2/

Thus, this power is not limited by any statutory classifications of municipalities.

The statute does not limit the type of entities to which a franchise may be granted. Franchises may be granted to any "person" which is defined to include individuals, firms, partnerships, corporations and associations. However, governmental bodies are not included within this definition. 3/

Cities may franchise only the specific utility services set out in the statute, but there is no requirement that the grantee be a public utility or otherwise provide service to or for the public. 4/

The state Commerce Commission (Commission) has been authorized to grant franchises to use public highways

outside of cities.^{5/} Such a franchise may be granted to any "individual, company, or corporation" to "construct, erect, maintain, or operate any transmission line, wire, or cable . . . for the transmission, distribution, or sale of electric current."^{6/} This provision applies only to franchising of electric utilities and requires that the proposed construction be necessary to serve a public use.^{7/} However, the erection of transmission lines associated with electric power plants with total capacities of one hundred megawatts or more is certificated by the Commission and need not be franchised pursuant to this section.^{8/}

II. PROCEDURES FOR GRANTING FRANCHISES

The statutory provision granting franchising authority to cities provides a specific procedure for granting franchises. City franchises may be granted only by ordinance.^{9/} Any proposed ordinance must be considered and voted on at two council meetings prior to the meeting at which it finally is passed. This requirement may, however, be suspended by a vote of three-fourths of the council members.^{10/} If a summary of the proposed ordinance is published in a local newspaper at least four but not more than twenty days before consideration, and copies of the summary are available from the city clerk, it need be considered at only one meeting prior to the meeting at which it finally is passed.^{11/} Passage of the ordinance requires an affirmative vote of a majority of the council members.^{12/}

A franchise ordinance does not become effective until approved at an election. The election may be called by the council or by petition of at least ten percent of the persons who voted in the last regular city election.^{13/}

Notice of the election must be published in a newspaper of general circulation.^{14/} A favorable vote of the electors does not grant the franchise; the city council must still enact the ordinance.^{15/} The franchise is not fully effective until a written acceptance is filed and the costs of the notice and election are paid by the franchisee.^{16/}

A specific statutory procedure is also provided with respect to franchise grants by the Commission for the erection of electric power lines over or along public highways outside of cities. If the transmission lines are to carry 34.5 kilowatts or more of electricity and extend one mile or more across privately-owned real property (whether or not construction of the proposed line will necessitate exercise of the power of eminent domain), informational meetings must be held by the applicant for the franchise. Meetings must be held in each county in which real property will be affected not less than thirty days prior to the filing of a petition requesting a franchise. A Commission official, designated by the Commission, will preside over the meeting. Notice of the meetings must be given to all landowners affected by the proposed project.^{17/}

The petition submitted to the Commission must set forth the route of the proposed line, the manner of construction, whether the applicant must exercise a right of eminent domain

and an allegation that the construction is necessary to serve a public use.^{18/} Applicants seeking approval for the construction of lines carrying in excess of 34.5 kilowatts must also demonstrate that the proposed construction is reasonably related to an overall plan of transmitting electricity in the public interest.^{19/}

Upon receipt of a petition, the Commission will publish notice of the proposal in local newspapers for two consecutive weeks. Any person affected by the proposal may file written objections within twenty days of the last publication.^{20/} If objections are filed or the petition involves the taking of property by condemnation, a public hearing must be held. The hearing must be held thirty or more days after the date of last publication.^{21/} No franchise becomes effective until the petitioner has paid all costs of conducting the franchise proceeding.^{22/}

A public utility need not obtain a certificate of public convenience and necessity before seeking a franchise from a city or the Commission.

III. CRITERIA USED IN EVALUATING A FRANCHISE REQUEST

No statutory criteria have been established for use by cities in evaluating franchise requests. No reported judicial decisions have discussed any such criteria.

The Commission must find that the proposed construction is necessary to serve a public use and bears a reasonable relationship to an overall plan of transmitting electricity

in the public interest before granting a franchise.^{23/} This criterion has not been expanded upon in reported judicial or Commission decisions.

IV. CHARACTERISTICS OF A FRANCHISE

Neither a city nor the Commission may grant a franchise for a term in excess of twenty-five years.^{24/} No exclusive franchise may be granted by either the Commission^{25/} or a city.

Unless the improvement for which a Commission franchise has been issued is constructed in whole or in part within two years, the franchise will be forfeited.^{26/} There are no provisions for the automatic forfeiture of city franchises. If the term of a franchise ends, the franchisee may be forced to remove its fixtures from the public ways.^{27/}

Both city and Commission franchisees are required to reimburse the city or Commission for the cost of the franchising proceedings before the franchise becomes effective.^{28/} In addition, Iowa courts have held that a city^{29/} may assess a franchise fee to cover administrative costs.

FOOTNOTES

1. Iowa Code § 364.2(4)(a)(1977).
2. Id., §362.2(1).
3. Id., §362.2(10).
4. Id., §364.2(4).
5. Id., §478.1.
6. Ibid.
7. Id., §478.3(1)(h).
8. Id., §476A.1(1), .2.
9. Id., §364.2(4)(a).
10. Id., §380.3.
11. Id., §§362.3, 380.3.
12. Id., §380.4.
13. Id., §§364.2(4)(b), 362.4.
14. Id., §§364.2(4)(c), 49.53.
15. Schnieders v. Incorporated Town of Pocahontas, 234 N.W. 2d 207 (Iowa 1931).
16. Iowa Code §364.2(4)(d)(1977).
17. Id., §§478.3(2), 478.2.
18. Id., §478.3(1).
19. Id., §478.3(2).
20. Id., §478.5.
21. Id., §378.6.
22. Id., §478.7.
23. Id., §478.3.
24. Id., §§364.2(4)(a), 478.9.
25. Ibid.

26. Id., §478.21.
27. City of Pella v. Fowler, 244 N.W. 734 (Iowa 1932).
28. Iowa Code §§364.2(4)(d), 478.7 (1977).
29. City of Pella v. Fowler, 244 N.W. 734 (Iowa 1932).