

Electric City Power, Incorporated

Regular Meeting of the Board of Directors

November 6, 2006; 5:30 PM
Gibson Room, Great Falls Civic Center

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Electric City Power, Incorporated.

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November 6, 2006; 5:30 PM.

Gibson Room; Great Falls Civic Center

AGENDA

Call to Order 5:30 PM

Roll Call

A. EXECUTIVE DIRECTOR REPORTS

1. Customer Base Expansion Plan
2. Legislative Issues
3. Discussion of guidelines for Public Comment
4. Financial Update through June 30, 2006

B. OLD BUSINESS

C. NEW BUSINESS

1. Adoption of Board Meeting Minutes of October 2, 2006

D. BOARD MEMBER REPORTS

1. County Zoning Meeting: Chairman Bob Pancich

E. COMMUNICATIONS

1. *Missoulian* CTL article
2. Public Comments

F. ADJOURN

H. NEXT BOARD MEETING

December 4, 2006

**City of Great Falls
POWER SALES PLAN**

Action Steps

- Extend power purchase agreement offers to a variety of customers
- Seek letters of intent/interest to enter into purchase agreements
- City/SME secure bridge contract(s) with PPL Montana or other generator
- Develop final contracts with customers

The Offer

Bridge Contract Terms

- Start date to plant inception (2007 – 2011)
- Cost plus 3%
- Transmission at cost
- Requirements contract

Long Term Output Contract Terms

- Plant inception – 20 years (2011 – 2031)
- Cost plus 3%
- Transmission at cost
- Requirements contract

Customer Focus

Current Customers

- City of Great Falls
- Great Falls International Airport
- Benefis Health Care
- Montana Air National Guard
- Federal Express
- Montana Refining
- General Mills
- Meadow Gold

25 MW

New Customers

- Cities and School Districts
15 MW
- Large Industrial Customer
29 MW
- Various other large customers
? MW

Contingency Plan

Wholesale remainder of power with “take-back” rights

Guidelines for Public Discussion

- We identify ourselves for the public record
- We treat each other with respect
- One person speaks at a time
- The chair will call upon individuals to speak.
- We emphasize open and honest communication—there are no hidden agendas
- No finger pointing--address the issue, not the individual
- Criticize ideas, not people
- We respect differences
- Keep an open mind
- Keep to the current topic
- We will make a sincere commitment to listen to one another and try to understand one another's viewpoint.
- We agree to disagree with the issues, not the people
- Cell phones will be turned off or to "vibrate."

LEGAL DEPARTMENT

Memorandum

To: John Lawton, City Manager and City Commissioners
From: David V. Gliko, City Attorney *DVG*
Date: 6/28/2006
Re: Public Participation at Commission Meetings

The City Commission has expressed concern regarding the degree of participation by the public at City Commission meetings, i.e., parties who appear angry, agitated and speak forcefully, sometimes about topics beyond the scope of City Commission jurisdiction.

Precedent

Fortunately, there are two Montana Supreme Court cases that set forth the parameters of the scope of public participation in the extreme.

In 1986, the Court decided *Montana v. Ytterdahl*, 22 Mont. 258, where a landowner (Ytterdahl) appeared at a meeting of county commissioners. Ytterdahl was upset over the county having bladed a roadway across his property without his permission. Ytterdahl was discourteous, bordering on the irrational, and he screamed at the commissioners. When told that he could sue, he uttered and mumbled a bad word, got up, stormed out, and slammed the door so hard the glass in the room rattled. Ytterdahl was charged with disorderly conduct. Ytterdahl's conviction was overturned by the Supreme Court stating:

"It is the necessity that we give a narrow judicial interpretation of criminal statutes affecting the right of speech in order to insure that they prohibit only speech which is not constitutionally protected. As the Supreme Court of Maine pointed out, the interpretation of such a criminal statute must be restricted to the kind of speech that produces or is likely to produce a clear and present danger of the substantive evils that the state may constitutionally seek to prevent.

...

The right of a citizen to protest an alleged unlawful act of his government is undoubted. His right of speech, even though distasteful, must also be unfettered unless the speech creates the evil of a breach of peace. In weighing, in this case, the necessity that we preserve Ytterdahl's right of protest and right of free speech, in the circumstances here described, as against the interests of the State in preserving the peace, we hold that under the evidence here, the actual conduct of Ytterdahl was not sufficient to constitute the offense of disorderly conduct."

Juxtaposed to the decision in the Ytterdahl case is *Montana v. Lowery*, 233 Mont. 96, decided in 1988, where a city judge appeared before the Darby Town Council to speak about an initiative which the town council had refused to put on the ballot. "Then the discussion between Mr. Lowery and that council member escalated in volume and emotion, with Mr. Lowery complaining about irregularities in the council meeting. The council member asked the police officer to escort Mr. Lowery out of the meeting. The officer attempted to do so, Mr. Lowery resisted, and a scuffle ensued in which a chair was broken. Finally, the sheriff was called and Mr. Lowery was taken out of the room." The Court held:

"Mr. Lowery argues that his forcible removal from the council meeting was a physical censorship and that it is the police officer who should be charged with disturbing the peace, not he. This assertion is without legal support. The decision of a presiding officer to have a citizen physically removed from a public meeting for disrupting the meeting cannot lawfully be challenged by forcible resistance. ... After reviewing the facts in the transcript, we conclude that Mr. Lowery's actions in physically resisting removal from the council meeting do not fit within the concept of speech protected under the Constitution. We further conclude that there is sufficient evidence in the record from which the lower court could find that Mr. Lowery violated the prohibition against fighting in Section 45-8-101(1) (a), MCA. We hold that it was not unlawful to prosecute Mr. Lowery under Count One of the Complaint (disorderly conduct)."

The two cases draw a distinction between verbal participation, even to the extreme, protected by constitutional free speech and physical conduct or the threat thereof, chargeable as disorderly conduct. It appears a "sticks and stones" rule of thumb should apply.

Constitution and Legislation

Public participation in governmental meetings is a constitutional right under the Montana Constitution. Article II, Section 8, provides:

“The public has a right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.”

Following the Constitutional mandate, the Montana Legislature has enacted 2-3-103, MCA, which states in pertinent part:

“The agenda for a meeting, as defined in 2-3-202, must include an item allowing public comment on any public matter that is not on the agenda of the meeting and that is within the jurisdiction of the agency conducting the meeting”, and 7-1-4142:

“Each municipal governing body, committee, board, authority, or entity, in accordance with Article II, section 8, of the Montana Constitution and Title 2, Chapter 3, shall develop procedures for permitting and encouraging the public to participate in decisions that are of significant interest to the public.”

Citing 7-1-4142 in conjunction with 2-3-103, MCA, the Attorney General has opined that: “A city council must provide an Agenda item for public comment on non-agenda matters only for issues that are of significant interest to the public.” 51 Op. Att’y Gen. 12. I would also advise that the statutory language of 2-3-103 not only limits the scope of public participation to items that are of “significant interest to the public” but also only those matters that are within the scope of the jurisdiction of the public entity. Therefore, the Mayor has been on solid ground when she has admonished the public to limit their comments to matters over which the City Commission has actual control.

Roberts Rules of Order

With the aforesaid, precedent and law in mind, the following Sections from Roberts Rules of Order (adopted by Resolution 6601) apply:

Section 72, “A deliberative assembly has the inherent right to make and enforce its own laws and punish an offender, the extreme penalty, however, being expulsion from its own body.”

...

Section 73, “Every deliberative assembly has the right to decide who may be present during its session; and when the assembly, either by a rule or by a

vote, decides that a certain person shall not remain in the room, it is the duty of the chairman to enforce the rule of order, using whatever force is necessary to eject the party.”

Past Action

In the past, the City Commission has taken action to guarantee the security of their public meetings. In 1997, the Commission passed Ordinance#2732 which provides: “The carrying of concealed or unconcealed weapons to, on, or at a public assembly, publically owned building, park under city jurisdiction, or school is hereby prohibited.”

Further, the City has required the attendance of a police officer in the commission chambers to maintain public order.

Criminal Record

It should be noted that Article II, Section 28, of the Montana Constitution provides: “Full rights are restored by termination of state supervision for any offense against the state.” Therefore, any party having been convicted of a felony or misdemeanor who has served his sentence and is no longer under state supervision of probation and parole must be restored “full rights” inclusive the right of participation in public meetings. Moreover, because of the Constitutional mandate, the Attorney General has determined that there is a right to run for a subsequent term of office from which a public servant has been removed after having been convicted of misconduct because the statute (45-7-401 requires forfeiture of office after conviction for misconduct) does not prohibit the officer from running for a subsequent term after the end of state supervision. 39 Op. Att’y Gen. 226.

Recommendations

1) public comment may be restricted to issues that are of “significant interest to the public”; 2) public comment may be restricted to issues within the scope of City Commission jurisdiction; 3) any physical violence or the actual threat thereof, should result in removal and possible criminal charges; 4) it may be a greater deterrent if the police officer in attendance at commission meetings would be in uniform as opposed to the current practice of plain clothes. In other words, greater conspicuousness of law enforcement should result in greater security.

Electric City Power, Incorporated

JOURNAL OF BOARD PROCEEDINGS

October 2, 2006

Electric City Power, Incorporated (ECPI): Regular meeting of the Board of Directors
Great Falls Civic Center, Gibson Room

CALL TO ORDER: 5:30 PM

ROLL CALL: Directors present: Bob Pancich, George Golie, Bill Ryan and Dawn Willey. Also present were the ECPI Executive Director, City Administrative Officer, City Manager, and Assistant City Manager.

Excused: Director Randy Gray

EXECUTIVE DIRECTOR REPORT

Executive Director Coleen Balzarini gave her report. She explained that the mercury information included with the Board's materials was produced by the Western Education Foundation for Resources. The materials address statements made by the Montanan Environmental Information Center (MEIC) on mercury. Chairman Bob Pancich noted that he found the information very helpful and encouraged others to review the booklet.

The Executive Director then reviewed the City's experiences with the Energy and Telecommunications Interim Committee (ETIC) of the Montana Legislature. The City, through its representative Harley Harris, Esq., requested that the ETIC include two amendments aimed at protecting and enhancing the City's role as an electricity supplier in its bill draft LC 170. The committee did not include these amendments.

Chairman Pancich asked Balzarini if the draft, in its current form, would disallow the City's current energy supply operations. She responded that under the draft, contracts executed before the bill's passage would continue, but that no new supply operations could happen after the bill's effective date.

George Golie then asked if the City would introduce its own bill. City Manager John Lawton explained that that is an option. The City's priorities, he continued, are to protect the City's current role as a supplier and possibly to become the public utility for the City of Great Falls, contingent upon approval by the City Commission.

Board members Ryan and Golie both urged staff to work with legislators to enter bill requests reflecting the City's objectives.

Coleen Balzarini next updated the board on ECPI's small customer supply program currently before the Montana Public Service Commission (PSC). The PSC approved the City's petition on September 26, 2006 and will allow ECPI to begin supplying electricity to a limited number of homes and small businesses upon the PSC's receipt and approval of a Standard Service Offer document. The PSC's Order of September 26, 2006 allows the program to continue for five years. Balzarini noted that this will be a good opportunity for the City to familiarize itself with serving small electricity customers.

I. OLD BUSINESS

The Chairman added a discussion of the City's cogeneration facility at the wastewater treatment plant to the Old Business portion of the agenda. Coleen Balzarini briefed the Board on the biogas-fired generator and noted that the construction engineering is about 95 percent complete and that the facility should be operational in the first quarter of 2007.

Chairman Pancich also added a discussion of the Draft Environmental Impact Statement (DEIS) for Highwood Station. Balzarini advised the Board that the plant developers expect the final EIS to be issued in December of 2006 with a record of decision sometime in the first quarter of 2007. She also noted that representatives from Southern Montana Electric Generation and Transmission Cooperative (SME) will be meeting with various interest groups concerned with the DEIS' identification of Highwood Station's potential impact on the Lewis and Clark Portage Route near Great Falls to discuss ways to mitigate the plant's impact.

II. NEW BUSINESS

1. Approval of Board Meeting Minutes of September 11, 2006.

Bill Ryan moved to approve the July 10th minutes. The motion was seconded by George Golie and the minutes were approved by the Board unanimously.

Chairman Bob Pancich added a discussion of Montana Governor Brian Schweitzer's announcement that a deal had been reached to construct a coal to liquids facility in eastern Montana.

City Manager John Lawton noted that his comments were on behalf of the City and that he could not comment on the reaction of SME to the announcement. Lawton stated that he knew relatively little about the details of the project and briefly compared the two projects. He noted that the financings appear to be quite different in that the City's share of financing for Highwood Station would be debt financing and that the proposed Bull Mountain project would likely have equity investors. He also

stated that the timelines for the two projects are relatively far apart, with SME members needing electricity in 2008. He also noted that the City was supportive of the project and that it would help to address energy issues in Montana. Board Member Bill Ryan noted that the owners of the coal to be used are involved in the project and that this would be very advantageous to the overall financing package. John Lawton noted that he has invited the Governor's staff to make a presentation to the Great Falls City Commission.

III. BOARD MEMBER REPORTS

IV. COMMUNICATIONS

1. Public Comment

Rich Liebert stated that he sits on the steering committee for the 25 by '25 national initiative on renewable energy. The goal of the initiative is to have 25 percent of the nation's energy consumption come from renewable sources by the year 2025. He also noted that this effort could help revitalize rural America. The Farmers' Union would be happy to present on this topic if the Board would like. He also encouraged people to visit the initiative's web site at www.25x25.org

Ken Thorton said that he was concerned with the carbon dioxide emissions that would come from Highwood Station and that IGCC technology can easily sequester carbon dioxide. He noted that a carbon tax is likely and this would affect the cost of power from Highwood Station. Thorton continued that SME's reliance on Highwood Station would overly expose its customers to the affects of a carbon tax.

In response to Mr. Thorton's comments, City Manager John Lawton noted that Highwood Station would in fact be a part of a balanced SME portfolio consisting of renewable sources as well as power from Highwood Station. He noted that it is important to cover base load requirements first and then to add other sources of electricity next.

Bill Zucconi asked several questions relating to the definition of the term "equity," and also asked about the City's financial participation in the proposed Highwood Station. Executive Director Coleen Balzarini explained that the Great Falls City Commission has authorized up to \$2 million in development costs.

Chairman Bob Pancich adjourned the meeting at 6:20PM



Coal-to-liquids plant faces many hurdles

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By MIKE DENNISON *Missoulian State Bureau*

HELENA - As headlines early this month proclaimed the birth of a major energy project near Roundup, partners behind the coal-to-liquids plant are quite frank about what lies ahead: a long, expensive and difficult road.

In fact, when you strip away the fanfare, the bird-in-hand at the Bull Mountain project is basically one thing: a preliminary agreement to perform a "feasibility study" on whether a coal-to-liquids refinery might work at that location.

The study will look at the economics of the \$1.5 billion to

\$2 billion plant, says Bethany Daley, spokeswoman for DKRW Advanced Fuels of Houston, the lead partner in the deal.

Once that study is completed and the project looks possible, then the real heavy lifting begins, she says - such as lining up the money to finance an engineering study and the construction.

"We'll be the ones looking for the financing once the feasibility study is done," Daley says. "It's not just, 'Can we do Bull Mountain?' but (the) need to look at what type of financing we need."

Observers and industry officials say the final outcome can hinge on many factors, not the least of which is the cost of oil, which is a competing commodity.

Gov. Brian Schweitzer's top economic development official also says the project has many pitfalls to negotiate.

"There are a lot of show-stoppers in every deal," says Evan Barrett, chief business officer for the state. "When deals are announced, there are 10 different ways it might not happen. This is no different."

Schweitzer, who's been promoting the coal-to-liquids technology as a possible economic boon for eastern Montana and the nation, held a news conference Oct. 2 in Helena to announce the Bull Mountain project plan.

It calls for a coal-to-liquids refinery that would produce 22,000 barrels a day of diesel fuel, using coal from an expanded Bull Mountain mine south of Roundup. It also includes building a 300-megawatt electric power plant that would use "clean coal" technology.

It offers the prospect of 800 construction jobs, several hundred permanent jobs at the plant, thousands of spinoff jobs in the area and millions of dollars in tax revenue.

Schweitzer and others at the news conference acknowledged the project is at least four or five years down the road, possibly seven.

Interviews with the Missoulian State Bureau in the past week, partners in the deal talked more about the project details and how the pieces may fit together - or may not.

Lead partner DKRW is pursuing a similar plant near Medicine Bow, Wyo., in the south-central part of the state. It has licensing agreements with General Electric and Rentech Inc., which have developed the technology to "gasify" coal and convert that gas to diesel fuel.

DKRW was founded nearly five years ago by a trio of former executives from Enron Corp., who were involved in renewable energy programs for Enron.

Arch Coal Inc. of St. Louis, the second-largest coal producer in the country, is a

25 percent partner with DKRW Advanced Fuels on the potential coal-to-liquid projects, contributing \$25 million in cash this summer.

The Montana partner is Bull Mountain Properties, which controls the Roundup-area coal mine that's supposed to provide the coal.

Daley of DKRW says the Bull Mountain and Wyoming projects are separate, and are not dependent on each other in any way. One advantage of the Bull Mountain project is that it has an operating coal mine, while the Medicine Bow project has only coal reserves that aren't developed, she says.

Among other things, the feasibility study will examine whether coal reserves at Bull Mountain are adequate to supply the CTL plant for many years, she says.

Arch Coal has leases on the coal reserve in Wyoming, but has no coal interests at the Bull Mountain project, says spokeswoman Kim Link. Its interest in the Montana deal is only through its 25 percent partnership with DKRW Advanced Fuels, she says.

Link says Arch believes the main hurdle for a CTL plant is ensuring the technology will work on an industrial scale, because it hasn't been tested at that scale anywhere in the United States.

Loan guarantees or subsidies from the federal government may be needed to underwrite some of the risk, she says, and a new tax-incentive proposal before Congress is expected in November.

Mark Koenig, director of investor relations for Rentech in Denver, says his company believes preparing the technology for large-scale production shouldn't be that difficult.

Rentech has been working since the early 1990s on the process that converts natural gas (or gasified coal) into diesel fuel, and is building a plant in Commerce City, Colo., that will produce 10 barrels a day of diesel fuel, he says.

The "reactor" used in that plant is 6 feet in diameter, and doubling its diameter would boost the fuel output to more than 2,500 barrels per day, he says. A series of reactors would be installed in an industrial plant, and shouldn't be that difficult a technical feat, he says.

"The tougher nut to crack is the (plant) permitting and the financing," Koenig says. "Those are items that can really slow down a project. And, of course, any change in commodity price."

As explained by Koenig and others, any CTL plant will be competing with traditional oil refineries that manufacture diesel fuel. If oil prices drop, then a CTL plant looks less attractive. That could pose a financing dilemma, because a

\$1.5 billion to \$2 billion investment needs a steady income stream over many years to recoup the investment.

The problem is, can you make it at a competitive price?" Koenig says. "If oil gets into (the \$40 per barrel range), you have to look at these projects real hard." Oil was selling in the high \$50s per barrel last week.

The permitting is up to state regulators, but it faces potential challenges from landowners, environmental groups or both who aren't enthusiastic about coal development.

The CTL plant has been advertised as environmentally friendly, but skeptics point out that it still produces carbon dioxide - a major greenhouse gas - and still is being used to crank out diesel fuel, which, when burned, doesn't help global warming, either.

The developers and the Schweitzer administration have said the plant is committed to "capturing" or "sequestering" its carbon dioxide emissions - a technology not in wide use right now.

Barrett says while hurdles lie ahead, the fact that partners have signed agreements to examine the Bull Mountain site is a "major step."

They'll be doing what any project developer would do at this point, he says, such as scrutinizing the availability of the coal they'll need, laying out a schedule for obtaining a permit, looking at plant design and figuring out how the technology adapts to the site.

"They just have to take all of these elements in place and tighten them all down as they proceed," Barrett said. "At what point does that bear fruit? You just keep going until you're stopped. That's the way business deals work."

Rep. Alan Olson, R-Roundup, a longtime promoter of the Bull Mountain coal mine and related developments, says local supporters have been waiting years for various plant proposals to take off. They're prepared to wait some more, he said.

"I think (this one) is the real deal," he said in a recent interview. "But it's going to take time. (We've) been in here for the long haul. Projects like this don't happen in 20 months."

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