

AGENDA REPORT

REVISED

DATE November 1, 2005

ITEM Ord. 2925, Amending Title 5, OCCGF, to include Chapter 20, Authorizing and Approving the Creation of Electric City Power, Inc. Pursuant to the Montana Nonprofit Corporation Act in Order to Secure and Provide Reliable and Economic Supplies of Electricity for the City of Great Falls, Its Residents and Other Consumers

INITIATED BY Coleen Balzarini, Fiscal Services Director

ACTION REQUESTED Conduct public hearing and Adopt Ord. 2925 on final reading

PRESENTED BY Coleen Balzarini, Fiscal Services Director

RECOMMENDATION: It is recommended that the City Commission conduct the public hearing and accept Ord. 2925 on final reading.

MOTION: I move the City Commission adopt Ordinance 2925 as amended and depicted in Exhibit A on final reading.

SYNOPSIS: This is a proposed ordinance amendment to allow the City to provide for creation and organization of a nonprofit corporation to be known as "Electric City Power, Inc." to own, operate and take all other actions necessary or desirable in connection with the municipal electric utility of the City, including the provision of electricity supply services to consumers and others located within or outside of the City.

The non-profit corporation will operate for the primary purpose of securing and providing reliable, long-term supplies of electricity to the City, its residents and electric consumers. The proposed ordinance identifies and defines the duties and obligations conveyed to the non-profit Board as well as the duties and obligations retained by the City Commission. It includes items such as the purpose, powers, rules of operation, and tax-exempt obligations of the non-profit corporation and its board. The proposed ordinance, Articles and By Laws are attached for review and comment. It is anticipated there will be changes from the first reading to the final reading in order to incorporate suggestions received from the Commission and the public.

The proposed ordinance, articles and by-laws were carefully crafted to ensure that ultimate authority for ratemaking, and the appointment and removal of governing board members lies with the elected City Commission. A summary of the major points is provided as an attachment to this agenda.

BACKGROUND: Creation of the non-profit corporation enables the City Commission to establish a board of directors comprised of individuals with the expertise deemed valuable to the successful operations of Electric City Power. It will also enable Electric City Power to develop a comprehensive financing package which may include a negotiated revenue bond component. The amended ordinance will continue the current Electric City Power operations including the purchase of electricity in wholesale markets and the distribution of that electricity to serve its own needs, the needs of other governmental users, large commercial users, and to small commercial and residential customers at sometime in the future, when the appropriate licenses are in place to do so.

MEMORANDUM

October 18, 2005

To: City of Great Falls

From: Chapman and Cutler LLP

RE: Power of City to Control Electric City Power, Inc.

The following is a summary of the control the City of Great Falls (the “City”) will have over Electric City Power, Inc. (the “Corporation”) and the protections provided to the City in the revised ordinance (the “Ordinance”) authorizing and approving the creation of the Corporation, the Articles of Incorporation of the Corporation (the “Article”), the Bylaws of the Corporation (the “Bylaws”) and the Montana Nonprofit Corporation Act, Title 35, Chapter, Montana Code Annotated (the “Nonprofit Act”).

CONTROL AND PROTECTION IN ORDINANCE

- The Corporation cannot issue or incur any bonds, notes or other evidences of indebtedness without the prior approval of the City Commission (5.20.060).
- The Corporation does not have any power to bind or create obligations of the City (5.20.060).
- All rates and charges recommended by the Board of Directors of the Corporation (the “Board”) must approved by the City Commission (5.20.070).
- All rules of operation recommended by the Board for the electric utility must be approved by the City Commission (5.20.080).

CONTROL AND PROTECTION IN ARTICLES

- The Corporation is organized to act as the agency, instrumentality and constituted authority of the City (Article V).
- The Corporation will be operated solely and only to accomplish the public purposes of the City (Article V).
- The Corporation must be operated as a nonprofit corporation. No part of the income of the Corporation may insure to the benefit of any director or officer of the Corporation or any private individual and no director or officer of the Corporation or any private individual is entitled to share in any distribution of any of the assets of the Corporation (Article V).

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- Any net revenues of the Corporation may inure solely to the benefit of the City (Article V).
- The Corporation cannot issue or incur any bonds, notes or other evidences of indebtedness without the prior approval of the City Commission (Article V).
- The Corporation does not have any power to bind or create obligations of the City (Article V).
- The City Commission must approve any amendment to the Articles or the Bylaws (Article XIII).

CONTROL AND PROTECTION IN BYLAWS

- All meetings of the Board and all records of the Corporation must be open and available to the public in accordance with the Public Participation Act (Sec. 2.01).
- The City Commission appoints the Directors of the Board (Sec. 4.01).
- The City Commission may remove any Director at any time, with or without cause (Sec. 4.02).

CONTROL AND PROTECTION IN NONPROFIT ACT

- The City Commission may remove any Director without cause (Sec. 35-2-422).
- The City is not liable for the acts, debts, liabilities or obligations of the Corporation (Sec. 35-2-516).