



Item: Stipulation for Records Access
From: David Gliko, City Attorney
Initiated By: Attorneys for MEIC, SME and City Attorney
Presented By: David Gliko, City Attorney
Action Requested: Ratification of Stipulation

Suggested Motion:

1. Commissioner moves:
“I move that the City Commission (ratify/deny) the Stipulation for Records Access.
 2. Mayor calls for a second, discussion public participation and calls the vote.
-

Staff Recommendation: It is recommended that the City Commission ratify the Stipulation for Records Access.

Background: Pursuant to the June 30, 2008, Order by the District Court, the City began allowing public access to records related to SME and the Highwood Generating Station. By letter dated July 28, 2008, SME demanded the City cease public access to said records until SME reviewed the same and identified any "trade secrets" subject to proprietary protection from disclosure. Thereafter, on July 30, 2008, MEIC moved the Court for an Order to Enforce the Order of June 30, 2008. Subsequently, on August 1, 2008, the City Attorney moved the Court to join SME in the litigation as a necessary and indispensable party to ensure protection of SME's alleged trade secrets. It is anticipated SME will not resist joinder and the Court will so Order. Thereafter, if there is continuing litigation such as MEIC seeking to contest some or all of the documents identified as trade secrets, SME attorneys will participate directly in the litigation to protect SME's proprietary interest. In that event, the City would defend its review and confirmation of the trade secrets identified by SME. It is anticipated such litigation would be held in-camera before the Court and any records found to be trade secrets sealed in the action.

After extended negotiation, the attorneys for MEIC, SME and the City have agreed upon and executed a Stipulation for SME's review of such records to identify trade secrets to be withheld and the release of the remainder of the records to the public on or before August 22, 2008. The

Stipulation was signed by the City Attorney on August 11, 2008, with the understanding the Stipulation would be subject to City Commission ratification.

Concurrences: MEIC and SME's attorneys have signed the Stipulation representing the concurrence of their clients.

Fiscal Impact: The Stipulation will avoid further legal fees and costs involved in litigating the issue of public access vis-à-vis trade secret protection in Court.

Alternatives: The City Commission could deny the ratification of the Stipulation and choose to litigate the issue in Court.

Attachments/Exhibits: Stipulation for Records Access

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CLERK OF DISTRICT COURT
BUTTE COUNTY
2008 AUG 12 AM 11:43
FILED
BY _____
DEPUTY

Attorneys for Plaintiffs

MONTANA EIGHTH JUDICIAL DISTRICT COURT, CASCADE COUNTY

<p>MONTANA ENVIRONMENTAL INFORMATION CENTER,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CITY OF GREAT FALLS,</p> <p style="text-align: center;">Defendant.</p>	<p>Cause No. CDV 07-614</p> <p style="text-align: center;">STIPULATION</p>
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This Stipulation is entered into this 11th day of August, 2008, by and between the Defendant City of Great Falls (hereinafter, "City"), a municipal corporation and political subdivision of the State of Montana; the Plaintiff Montana Environmental Information Center (hereinafter, "MEIC"), a Montana nonprofit public benefit organization; and Southern Montana Electric Generation and Transmission Cooperative, Inc. (hereinafter "SME"), a Montana nonprofit electric cooperative membership corporation.

RECITALS

WHEREAS, a dispute has arisen between the City, SME and MEIC regarding review by MEIC members and the public of documents in the City's possession which concern the Highwood Generating Station and the City's relationship with SME;

WHEREAS, this dispute is the subject of MEIC's July 30, 2008 Motion to Enforce the Summary Judgment Order dated June 30, 2008, filed in the Eighth Circuit Judicial District Court for Cascade County, Cause No. CDV 07-614;

WHEREAS, the City and MEIC agree that SME may be a participant in and signatory to this stipulation, although it is not a party to this lawsuit, as the entity whose documents and information in the City's custody and possession are at issue herein; and

WHEREAS, the City, SME and MEIC desire to resolve this dispute pursuant to the terms of this Stipulation.

THEREFORE, the parties to this Stipulation agree as follows:

1. There is no admission of fact, law or liability, by any party to this Stipulation, by virtue of having entered into this Stipulation.
2. The City will release for public inspection, pursuant to the schedule set forth below, documents that are public records in its possession related to the Highwood Generating Station and the City's relationship with SME and which are not potentially subject to claims by 1) SME of trade secret, privilege and/or confidentiality ("SME's protection claims"), and by 2) the City of privilege or individual privacy. MEIC disputes that SME can assert any privilege other than trade secrets or that the City may assert any privilege other than individual privacy of third parties.

3. In order to protect SME's claims for protection, prior to the release of records to the public, the City is allowing SME to review all documents in the City's custody and possession related to the Highwood Generating Station and the City's relationship with SME.

4. In conjunction with its internal review of the documents that are related to the Highwood Generating Station and the City's relationship with SME, the City will create a log of all the documents it believes are subject to claims of trade secret, privilege and/or confidentiality, including a description of each document, an explanation of the nature of the claim, including whether the City or SME is asserting trade secret protection, privilege and/or confidentiality as to each document, and the date or means by which the claim was asserted. This log is a public record available to the public. MEIC reserves the right to dispute any trade secret, confidentiality or privilege asserted by SME or the City, and to ask the Court to review any assertion of trade secret, privilege or confidentiality or any alleged waiver thereof.

5. The City shall, in good faith, use its best efforts timely to release documents subject to this Stipulation for review by the public. The City intends to release all documents that are public records and that are not potentially subject to claims for protection, beginning on or around August 12, 2008 and shall use its best efforts to complete its release of such documents, and the log discussed in ¶ 4, by August 22, 2008. If the City is unable to make this deadline, despite its best efforts, the City shall notify the parties at least 72 hours prior to August 22nd, confer with the other parties to this Stipulation to attempt to agree on a new deadline and, failing agreement, may move the court to extend the deadline.


6. The City shall not return, remove, mark or alter, or destroy any documents in its possession related to the Highwood Generating Station and the City's relationship with SME prior to the August 22, 2008 deadline or any agreed-upon or court ordered extension of that deadline, and thereafter only pursuant to the provisions of § 2-6-401, *et seq.*, MCA.

7. Following execution of this Stipulation, MEIC shall file the Stipulation along with a motion with the Eighth Judicial District Court for Cascade County requesting dismissal of its July 30, 2008 Motion to Enforce June 12, 2008 Order, and an Order approving the Stipulation.

DATED this 11th day of August, 2008.

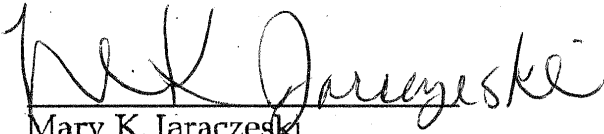
CITY OF GREAT FALLS

BY:


David Gliko
Attorney for Defendant


UGRIN, ALEXANDER, ZADICK & HIGGINS

BY:


Mary K. Jaraczek
Attorney for SME

WOLFBLOCK LLP

By:


Kenneth A. Reich
Attorney for SME


6. The City shall not return, remove, mark or alter, or destroy any documents in its possession related to the Highwood Generating Station and the City's relationship with SME prior to the August 22, 2008 deadline or any agreed-upon or court ordered extension of that deadline, and thereafter only pursuant to the provisions of § 2-6-401, *et seq.*, MCA.

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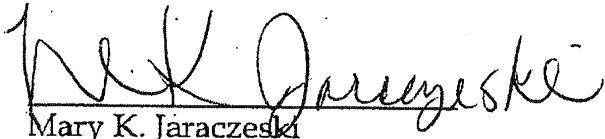
CITY OF GREAT FALLS

BY:


David Glko
Attorney for Defendant

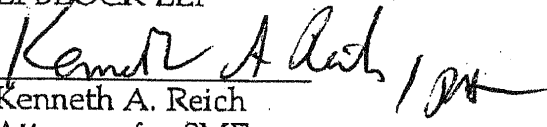
UGRIN, ALEXANDER, ZADICK & HIGGINS

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