



Item: Dissolution of Electric City Power, Inc. and Ord. 3115, An Ordinance Repealing Title 5, Chapter 20, of the Official Code of the City of Great Falls (OCCGF) Titled “Establish and Operate an Electric Utility.”

From: City Commission

Initiated By: City Commission

Presented By: Greg Doyon, City Manager

Action Requested: Approve Dissolution of Electric City Power, Inc., approve the Articles of Dissolution, and authorize action to wind up and liquidate its affairs; and, Accept Ordinance 3115 on First Reading and set public hearing for December 17, 2013.

Suggested Motion:

1. Commissioner moves: (each motion to be considered separately)

“I move that the City Commission (approve/not approve) the dissolution of Electric City Power, Inc. *requires a four-fifths (4/5) vote*, (approve/not approve) the Articles of Dissolution, and (authorize/not authorize) the City Manager to take all action to wind up and liquidate the affairs of ECPI.”

and

“I move that the City Commission accept Ordinance 3115 on first reading and set a public hearing for December 17, 2013.”

2. Mayor calls for a second, discussion, public comment, and calls the vote.
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Background: On May 1, 2013, the City of Great Falls/Electric City Power and Southern Montana G&T reached a settlement that will permanently sever the City’s relationship with Southern Montana G&T. The settlement agreement included an owed water credit in the amount of \$1,186,061.83 plus a mediated settlement amount of \$2,063,938.17, totaling \$3.25 million dollars to be paid in two installments.

On October 24, 2013, the City Commission awarded natural gas and electric supply contracts to Energy West and PPL Montana respectively. On November 1, 2013, two significant events

occurred: 1) the City transitioned its electrical service from Southern to PPL 2) all customer contracts with ECPI were terminated.

ECPI does not have any customers and the City Commission does not desire to continue operating ECPI as an electric provider. ECPI may be dissolved and still retain authority to wind up and liquidate its affairs (Mont. Code Ann. §35-2-725). Notice to the State Attorney General's office was provided on November 13, 2013.

Ordinance 2925 was adopted on November 1, 2005. The City Commission does not desire to continue to operating ECPI and, therefore, wants to repeal the enabling ordinance. The process for repealing an ordinance is the same as adopting an ordinance.

On December 2, 2013, the ECPI Board held a vote on the dissolution of ECPI. As the only member of ECPI, and pursuant to OCCGF 5.20.120, the City of Great Falls must consider and approve a dissolution by a 4/5 vote.

Fiscal Impact: There are no fiscal impacts to dissolving ECPI. Previous ECPI customers, however, will be billed for their percentage of renewable energy credits owed to the State of Montana.

Attachments/Exhibits: Articles of Dissolution
Ord. 3115
November 13, 2013, letter to Attorney General Tim Fox

ARTICLES OF DISSOLUTION
OF
ELECTRIC CITY POWER, INC.,
A Montana nonprofit corporation

ARTICLE I

The name of the nonprofit public benefit corporation is Electric City Power, Inc. (the "Corporation").

ARTICLE II

The dissolution of the Corporation was authorized on December 2, 2013 and was approved by a sufficient vote of the board of directors; dissolution was approved and authorized by the City of Great Falls, which is the Corporation's only "member" as defined in Montana Nonprofit Corporations Act, Mont. Code Ann. § 35-2-114.

ARTICLE II

Pursuant to Mont. Code Ann. § 35-2-722, notice of the intent to dissolve was provided to the Attorney General of the State of Montana on November 13, 2013.

ARTICLE II

The Corporation is dissolved as of the date set forth below.

DATED this _____ day of December, 2013.

ELECTRIC CITY POWER, Inc.

By: _____
Bob Jones

Its: Chairman

CITY OF GREAT FALLS

By: _____
Gregory T. Doyon

Its: City Manager

ORDINANCE 3115

AN ORDINANCE REPEALING TITLE 5, CHAPTER 20, OF THE OFFICIAL CODE OF THE CITY OF GREAT FALLS (OCCGF) TITLED “ESTABLISH AND OPERATE AN ELECTRIC UTILITY”

* * * * *

WHEREAS, on October 7, 2003, the City Commission adopted Ordinance 2861, which established Title 5, Chapter 20 of the OCCGF authorizing the City of Great Falls to establish and operate an electric utility and to market electric power services to consumers; and

WHEREAS, on November 1, 2005, the City Commission adopted Ordinance 2925 that repealed Ordinance 2861, and, in part, revised Title 5 Chapter 20 of the OCCGF, and authorized and provided for the creation of a non-profit corporation to be known as Electric City Power, Inc. in order to secure and provide reliable and economic supplies of electricity for the City of Great Falls; and,

WHEREAS, on November 15, 2005, the City Commission adopted Resolution Nos. 9529 and 9530 approving the Articles of Incorporation and the By-Laws of Electric City Power, Inc.; and,

WHEREAS, on March 2, 2010, the City Commission adopted Resolution 9876 authorizing the removal of Electric City Power, Inc. Directors in accordance with Montana Code Annotated (MCA), the Official Code of the City of Great Falls (OCCGF), and the Articles and the By-Laws of Electric City Power, Inc; and authorizing the initiation of the process of notification of the removal and subsequent appointment of members of the City Commission to fill the vacated positions; and,

WHEREAS, on March 16, 2010, the City Commission appointed the members of the City Commission to replace the five Electric City Power Directors that resigned or were removed by the City Commission, and have subsequently served one-year terms pursuant to the provisions of the By-Laws as amended by Resolution 9877, adopted April 20, 2010; and,

WHEREAS, on October 21, 2011, Southern Montana Electric Generation and Transmission Cooperative, Inc., filed bankruptcy under Chapter 11 of the Bankruptcy Code; and,

WHEREAS, on May 1, 2013, the City Commission approved a mutual Settlement and Release of all claims with Southern Montana Electric Generation and Transmission Cooperative, Inc., that totally, completely and permanently severed the City’s relationship with Southern Montana Electric Generation and Transmission Cooperative, Inc.; and,

WHEREAS, on October 24, 2013, the City Commission accepted proposals from Energy West Resources and PPL EnergyPlus, LLC, for gas and electricity supply for the City of Great Falls and authorized the City Manager to execute the necessary supply agreements; and,

WHEREAS, on November 1, 2013, the City transitioned its electrical service from Southern Montana Electric Generation and Transmission Cooperative, Inc. to PPL EnergyPlus, LLC.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF GREAT FALLS, MONTANA:

Section 1. That Ordinance 2925 is hereby repealed;

Section 2. That Title 5, Chapter 20 of the Official Code of the City of Great Falls is hereby repealed in its entirety;

Section 3. This ordinance shall be in full force and effect thirty (30) days after second reading and final adoption by the City Commission.

APPROVED by the City Commission on first reading December 3, 2013.

ADOPTED by the City Commission of the City of Great Falls, Montana on second reading December 17, 2013.

Michael J. Winters, Mayor

ATTEST:

Lisa Kunz, City Clerk

(Seal of the City)

APPROVED FOR LEGAL CONTENT:

Sara R. Sexe, City Attorney

State of Montana)
County of Cascade : ss
City of Great Falls)

I, Lisa Kunz, City Clerk of the City of Great Falls, Montana, do hereby certify that I did post, as required by law and as prescribed and directed by the City Commission, Ordinance 3115 in three places within the limits of said City to-wit:

On the Bulletin Board, first floor, Civic Center Building;
On the Bulletin Board, first floor, Cascade County Court House;
On the Bulletin Board, Great Falls Public Library

(Seal of the City)

Lisa Kunz, City Clerk



City Attorney's Office
Civic Center
P.O. Box 5021
Great Falls, MT 59403
Tel: 406-771-1180
Fax: 406-727-0005

Sara R. Sexe,
City Attorney

Neil A. Anthon,
Chief Prosecutor
Cassidy R. Blomgren,
Assistant City Attorney

November 13, 2013

Attorney General Tim Fox
Montana Dept. of Justice
P.O. Box 201401
Helena, Montana 59620-1401

RE: Dissolution of Electric City Power, Inc.

Dear Attorney General Fox:

Pursuant to Mont. Code Ann. § 35-2-722, please be advised that Electric City Power, Inc., a non-profit public benefit corporation, intends to dissolve as a Montana entity and to wind up and liquidate its affairs. A public meeting in which dissolution will be considered and voted upon will be held on December 3, 2013. If after such meeting, dissolution is approved by the Board of Electric City Power, Inc., any and all assets, which consist of accounts receivable, after payment of outstanding bills, will be distributed to the general fund of its public and only member, City of Great Falls.

Within twenty days of this letter, please advise in writing as to whether you consent to the dissolution or that you will not take action in respect to the transfer of accounts receivable to the City of Great Falls.

If you require additional or further information regarding this matter, please contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Sara R. Sexe".

Sara R. Sexe

c: Public Service Commission