

Special City Commission Meeting

Mayor Winters presiding

**CALL TO ORDER:** 7:00 PM

**PLEDGE OF ALLEGIANCE**

**MOMENT OF SILENCE**

**ROLL CALL:** City Commissioners present: Michael Winters, Bob Jones, Bill Bronson, Bob Kelly and Fred Burow.

**STAFF PRESENT:** City Manager, Interim City Attorney, and the City Clerk.

**\*\* Action Minutes of the Great Falls City Commission. Please refer to the audio/video recording of this meeting for additional detail. \*\***

**NEW BUSINESS**

**1. SETTLEMENT AGREEMENT AND RELEASE WITH SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC. DATED APRIL 26, 2013.**

Doug James, Moulton Bellingham PC, reported that the Southern Montana case is an extremely complex case. He thanked the Mayor, Commissioners, City Manager and staff for the tremendous amount of time committed to this case and the assistance given to them. The assistance was necessary and has made a difference. He pointed out that, at the last bankruptcy hearing, the presence of the Mayor, Commissioners and City Manager made a difference and he believes that is why they are here today with a proposed settlement. The right issues were raised at the right time in this case. The trustee was initially demanding in excess of \$61 million dollars from the City of Great Falls. The proposed settlement is for \$3,250,000. Attorney James recommended that the City accept the proposed settlement. He noted that he addressed multiple reasons for acceptance in his letter to the City. That letter has been made public and posted on the City's website. In addition to what he has already set forth in that letter, he added that, if the City was successful in its lawsuits against Southern Montana, the benefit of those lawsuits would potentially be very small. For example, if the City obtained a judgment against Southern Montana for \$1 million dollars, because of the bankruptcy that \$1 million dollars would be grouped with all of the other unsecured claims which are approximately \$500 million dollars. So, if Southern ends up having \$1 million dollars to pay to unsecured creditors, and the City gets a judgment against Southern for \$1 million dollars, the City might receive approximately \$2,000. With substantial costs and litigation risk it is not a sufficient benefit. He further noted that if the City continues this litigation it will take a substantial amount of the Commission's, City Manager's and City staff time and he believes that time commitment will be a significant interference with City business.

Attorney James recommended that the Commission approve the proposed settlement and authorize the City Manager to execute the agreement and release on behalf of the City.

**Commissioner Bronson moved, seconded by Commissioner Jones, that the City Commission approve the Settlement Agreement and Release with Southern Montana Electric Generation**

**and Transmission Cooperative, Inc. presented to the City on April 26, 2013, and authorize the City Manager to execute the agreement.**

Mayor Winters asked if there was any discussion amongst the Commissioners. Hearing none, Mayor Winters asked if there were any comments from the public.

**Aart Dolman**, 3016 Central Avenue, expressed disappointment that when the ECP Board recommended approval of the proposed settlement to the Commission it did not have a plan on how to solve the financial dilemma. As a taxpayer, he would rather have taxes raised than have City services cut.

**Richard Liebert**, 289 Boston Coulee Road, displayed a toy airplane and provided an analogy of crash landing the airplane to how the City arrived at this point.

**Kathy Gessaman**, 1006 36<sup>th</sup> Avenue NE, thanked former Justice Jim Regnier for mediating the settlement agreement and attorneys Doug James and Jerry Murphy for writing a very clear letter for the public to read. She is cautiously optimistic that the City will, at last, separate from Southern. It has been a very expensive journey. She further hopes for the total dissolution of Electric City Power. She is dismayed over \$12 million dollars of taxpayer money was spent with nothing to show for it.

**Larry Rezendes**, 2208 1<sup>st</sup> Avenue North, identified himself as a CPA with extensive experience in turn around management and restructuring of companies in and out of Chapter 11. He currently works in the public sector and is charged with overseeing all Chapter 11 bankruptcies filed in the state. He agrees with approval of the settlement agreement as it is reasonable and fair and it puts closure on a lot of issues. However, Mr. Rezendes suggested ultra vires actions be instituted against current and prior commissions and mayors. He suggested legal resources need to be deployed by the City to appoint an independent counselor to investigate the potential for recovering monies from prior customers of Electric City Power and prior elected officials to mitigate the damage done to the City finances. He noted that he personally worked on the liquidation of Touch America and a lot of the recovery that took place to unsecured creditors came about from directors and officers coverage for the failings of executive officers of Touch America. He believes the potential for that exists here.

**Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, commented he doesn't understand how the Commission can make a decision on the settlement without knowing where the money is coming from. The agenda report indicates the \$2.5 million dollar payment is coming from current fiscal amounts of the City. He referred to the 2012 CAFR noting the money on loan to other City funds and the balance of the general fund. He agreed with the prior speaker's comments regarding recovering money from those that bear the responsibility of the incurred debt.

**John Hubbard**, 615 7<sup>th</sup> Avenue South, commented that he holds the prior City Commission at fault. The prior commission, manager, attorney and members of the Electric City Power Board should be held accountable for this debt, not the citizens.

**Paul Boland**, 3605 Fairway Drive, suggested the City require that Southern pay local contractors for what is due to them.

Written correspondence via Citizen Request 23757 was received from **Karen Venetz** in support of approval of the settlement agreement.

There being no further comments, Mayor Winters called for the vote.

Motion carried 5-0.

### **PETITIONS AND COMMUNICATIONS**

#### **2. MISCELLANEOUS REPORTS AND ANNOUNCEMENTS.**

- A. Alma Winberry**, 423 15<sup>th</sup> Street South, discussed mold issues in buildings, disseminated health records, and drainage outlets polluting the river. Ms. Winberry suggested the City create a local structure to address citizen's concerns regarding air quality inside buildings and water quality monitoring.
- B. Larry Rezendes**, 2008 1<sup>st</sup> Avenue North, commented it doesn't give him a lot of comfort that the City is attuned enough to its financial needs and results. He alerted the Commission to be sure the City has adequate resources to comply with the settlement agreement. Mr. Rezendes discussed again ultra vires acts outside of the realm of the Commission's authority and authority of prior commissioners and mayors where the ordinance required the entity to be self sustaining.
- C. Ron Gessaman**, 1006 36<sup>th</sup> Avenue NE, noted two items on the next meeting agenda and hoped the Commission would reconsider approving Tax Increment Financing Districts.
- D. Richard Liebert**, 289 Boston Coulee Road, commented this period of the meeting is a time for dialogue with the Commission and should not be limited to comments. On a personal note, Mr. Liebert expressed resentment for having to increase liability insurance on his property because he was attacked legally by SME for being outspoken.
- E. John Hubbard**, 615 7<sup>th</sup> Avenue South, commented that the EPA didn't do its job when he reported his former employer was polluting.

### **CITY MANAGER**

City Manager Greg Doyon reported that answers to questions will be presented in upcoming weeks. The approval of the settlement by the Commission still has to go through the Court process for approval. He commented that there are three elements to the settlement to keep in mind: (1) how to come up with the cash by June 30<sup>th</sup>; (2) how to come up with the second payment by December 30<sup>th</sup>; and (3) how to address the ECP debt. The first and second elements will be addressed in the upcoming budget process. The Commission directed him to pay the first payment with existing City funds. In the upcoming months, the Commission will consider budget adjustments. The City has 56 different funds, some of which are restricted. The goal is to minimize the impact to operations of the City for the first payment. The Commission will also consider writing off some internal debt, reclassify a portion of internal debt into a longer term of repayment, and consider further actions against ECP customers in the coming months.

If the settlement is approved, the City will have an opportunity to negotiate its power supply contracts. He is looking forward to some savings there which will translate to positive budget impacts in the various City departments.

He will work with the litigation team to transition the customers from ECP to other suppliers and, at the appropriate time, dissolve ECP.

### **CITY COMMISSION**

Commissioner Burow acknowledged Doug James and Jerry Murphy for getting the City through this matter. He also thanked Commissioner Jones for the countless hours he has spent working on ECP matters.

Commissioner Jones thanked Manager Doyon for his explanation.

### **ADJOURNMENT**

There being no further business to come before the Commission, **Commissioner Bronson moved, seconded by Commissioner Burow, to adjourn the special meeting of May 1, 2013, at 7:53 p.m.**

Motion carried 5-0.

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Mayor Michael J. Winters

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City Clerk Lisa Kunz

Minutes Approved: May 7, 2013