

CERTIFICATE AS TO RESOLUTION AND ADOPTING VOTE

I, the undersigned, being the duly qualified and acting recording officer of the City of Great Falls, Montana (the "City"), hereby certify that the attached resolution is a true copy of a Resolution entitled: "RESOLUTION RELATING TO ELECTRIC CITY POWER, INC. (ECPI), ESTABLISHING A FINANCIAL ASSURANCE RESERVE FUND AND DETERMINING THE USE OF SUCH FUND" (the "Resolution"), on file in the original records of the City in my legal custody; that the Resolution was duly adopted by the City Commission of the City at a regular meeting on May 16, 2006, and that the meeting was duly held by the City Commission and was attended throughout by a quorum, pursuant to call and notice of such meeting given as required by law; and that the Resolution has not as of the date hereof been amended or repealed.

I further certify that, upon vote being taken on the Resolution at said meeting, the following Commissioners voted in favor thereof: \_\_\_\_\_; voted against the same: \_\_\_\_\_; abstained from voting thereon: \_\_\_\_\_; or were absent: \_\_\_\_\_.

WITNESS my hand officially this \_\_\_\_ day of May, 2006.

\_\_\_\_\_  
Peggy J. Bourne, City Clerk

RESOLUTION NO. 9568

RESOLUTION RELATING TO ELECTRIC CITY POWER, INC. (ECPI),  
ESTABLISHING A FINANCIAL ASSURANCE RESERVE FUND AND  
DETERMINING THE USE OF SUCH FUND

BE IT RESOLVED by the City Commission (the “Commission”) of the City of Great Falls, Montana (the “City”), as follows:

Section 1. Recitals.

1.01. The City of Great Falls (the “City”) adopted a Charter on July 1, 1986 with plenary self-governing powers not prohibited by the Constitution or statutes of the State of Montana (the “State”).

1.02. The continued growth, economic development and prosperity of the City and its residents requires the availability of secure, reliable and economic supplies of electricity at stable, cost-based rates for all residential, commercial, industrial and other electric consumers within the City.

1.03. The City has previously been licensed by the Montana Public Service Commission (the “PSC”) as an “electricity supplier” under the Electric Utility Industry Restructuring and Customer Choice Act, Title 69, Chapter 8, Montana Code Annotated, as amended (the “Restructuring Act”), with the authority to provide electricity supply services to certain classes of consumers within NorthWestern Energy’s electric utility service territory.

1.04. The City Commission has previously enacted Title 5, Chapter 20, OCCGF, authorizing the City to establish and operate an electric utility and to provide electric supply services.

1.05. The City Commission has by Ordinance No. 2925, adopted on November 1, 2005, amended Title 5, Chapter 20, OCCGF, to provide for creation and organization of a nonprofit corporation to be known as “Electric City Power, Inc.” (“ECPI”) 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.

1.06. ECPI has requested that the Public Service Commission grant it an electricity supplier license. Once ECPI has obtained a license, the City intends to transfer its supply contracts to ECPI in accordance with the applicable contract terms and Public Service Commission regulations.

1.07. As a condition thereto, the Public Service Commission has, pursuant to 69-8-404(4), M.C.A., required a showing of financial integrity by or on behalf of ECPI.

1.08. The purpose of this Resolution is to establish a Financial Assurance Fund on behalf of ECPI to meet the requirements of the Public Service Commission.

Section 2. Financial Assurance Reserve Fund.

2.01. Establishment of ECPI Electric City Power Reserve Fund. The City hereby establishes an Electric City Power Reserve Fund (the “Financial Assurance Fund”) on its books which shall be maintained as a separate account to be used for the purposes and in the manner provided in this Resolution.

2.02. Purpose. Mont. Adm. R.38.5.8002 (1)(k) requires that prior to executing contracts with residential and commercial (under 300 kW) customers, an applicant must demonstrate its financial integrity through one of the following:

(i) a long term bond (or other senior debt) rating of BBB-, or equivalent debt or credit rating, obtained in one of the following ways:

(A) the rating must be determined by Standard and Poors, Dunn and Bradstreet Information Services, or another recognized U.S. or Canadian debt or credit rating service, or

(B) the applicant may, at its own expense, obtain a private rating from a recognized debt rating service, or request that an independent accountant or financial advisor, mutually acceptable to the commission and the applicant, prepare an equivalent evaluation based on the financial rating methodology, criteria, and ratios for the industry as published by the above rating agencies from time to time;

(ii) two years of audited financial statements; or

(iii) a \$ 100,000 performance bond;

The City, pursuant to this Resolution, is providing a cash deposit of the \$100,000 into the Financial Assurance Fund in lieu of a performance bond to satisfy this requirement.

2.03. Funding. When required by the Public Service Commission, the City shall deposit \$100,000 in the Financial Assurance Fund (the “Fund Requirement”). On or before January 1 of each year, the City shall deposit such additional amounts as may be required to restore the Financial Assurance Fund to the Fund Requirement.

2.04. Maintenance of the Fund.

(a) The City shall maintain the Financial Assurance Fund at the Fund Requirement until ECPI can provide the Public Service Commission adequate financial integrity on its own.

(b) The City will notify the Public Service Commission of any withdrawal of funds or payments in excess of \$10,000.

(c) The City will cause ECPI to include with its annual report required by Mont. Adm. R.38.5.8004 a status report of the Financial Assurance Fund, including the amount on hand, the amounts paid out and for what purposes.

(d) Upon satisfaction of the Public Service Commission's financial integrity requirement by ECPI, the City may transfer any amounts in the Financial Assurance Fund to its General Fund. To the extent the City has advanced funds or made payments from the Financial Assurance Fund, ECPI shall be obligated to repay the City from excess ECPI funds that may arise in the future.

Section 3. Use of Fund.

3.01. Use. The fund shall be used solely to pay claims against ECPI arising from its ownership and operation of the municipal electrical utility, that may not be covered by revenues and other funds of ECPI.

3.02. Claims. Claims approved by the Board of ECPI, claims ordered to be paid by the Public Service Commission, and claims ordered to be paid by a court of competent jurisdiction shall be submitted to the City Finance Director. Upon approval by the City Manager and the City Finance Director, the claims shall be paid from the Financial Assurance Fund.

Section 4. Obligation of ECPI. The Board of ECPI, in establishing rates and charges and classifications for customers, shall ensure that they will be sufficient to establish and maintain responsible reserves as may be required for the sound operation of the Utility and to provide assurance of its financial integrity as soon as reasonably possible.

PASSED AND ADOPTED by the City Commission of the City of Great Falls, Montana, this 16th day of May, 2006.

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Dona R. Stebbins, Mayor

Attest:

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Peggy J. Bourne, City Clerk

Approved for Legal Content

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Dave Gliko, City Attorney