

Thoughts Relating to Highwood/SME/ECP Directives from Commission

1. **The City should maintain its current relationship with Southern Montana Electric Co-operative; i.e. as a customer of electric power services, with existing contracts to be maintained.**

Discussion:

My primary concern continues to be the structural relationship between SME and the City. SME is a private corporation requiring strict confidentiality in order to be competitive in the energy business. On the other hand, the City is bound by Montana's broad right to know laws.

Regardless of what SME does in the future, or its desire to attract private investors, its new corporation, the construction of HGS, the energy market, national energy policy, global warming concerns, carbon sequestration, etc., etc.,.....one thing remains true: under the terms of this current structure, the City cannot fully disclose publicly all aspects of its involvement.

After attending several SME Board meetings, I have observed that the discussions involve everything from environmental compliance, permit status, legal strategy, rate structures, and financing strategies. Some information is clearly proprietary and some is not. I mention this specifically because I have been asked to produce notes, give verbal reports, and provide copies of SME board packets for public inspection. The fact is that these documents and discussions contain highly sensitive business matters – they are not often easily separated. Rather, they are woven together as part of SME's overall business strategy and its effort to sell power competitively and construct HGS.

Disclosing some pieces of that information is possible. However, staff would be reduced to providing, what amounts to, "pieces of a puzzle" to the Commission and the public. A partial picture may be provided, but that piece may be connected to an undisclosed proprietary "piece". As such, there is a feeling that the public never gets the entire picture and are forced into drawing their own, sometimes erroneous, conclusions. It also fans the flames for some public residents that the City is hiding behind trade secret information as claimed by SME.

Under this veil, it will be impossible for staff or the appointed SME Trustee to effectively advise the Commission on SME Board decisions publicly. Furthermore, City representatives are unable to publicly disclose their rationale for SME Board votes or to provide back-up documentation to the Commission and the public on SME policy (See SME's June 10, 2008 letter to me and its recent August 2008 cease and desist order).

I have expressed numerous concerns about representing the City on the Board without being able to share with the Commission and the public why an action was taken. The inability to communicate openly works against **both** those who support SME and HGS and those that do not support the relationship or the City's involvement with the project.

The conundrum is that if our membership status changes and the City no longer participates actively in SME Board meetings, then it is very likely the City would no longer have a voice regarding SME actions for its electric rates or its limited involvement with HGS.

There does not appear to be however, any other viable means by which to resolve this problem other than asking SME to construct a new membership class. It would appear to me, with all the right to know requests and legal challenges the City is facing, SME would be receptive and relieved to resolve this dynamic once and for all.

Questions:

- What kind of structure would allow the city to be present at SME Board meetings and provide important (sometime trade-secreted information) to the Commission and ECP?
- Can the City Commission and ECP Board operate effectively without this information?
- Is it appropriate to have city staff in a policy making role and not be able to disclose their rationale for votes made at the SME Board level?

Potential Action items:

- Obtain a clear picture (in a future workshop) of the following:
 - a. What's the benefit (future) to the City and its residents?
 - b. What's our long term goal now that the "goal post" has been shifted?
 - c. What are the lengths of our current contracts with SME and ECP customers?
 - d. What legal requirements do we have to continue the residential pilot program?
 - e. Does the City have the capacity to operate an electric utility?
- Retain the services of an experienced public utility consultant to determine if the city has the organizational and financial capacity to continue (I had the auditors perform a special emphasis on ECP as a starting point for the consultant).

2. The City will not at this time join the separate development corporation formed by four of the Southern Montana co-op members to construct the Highwood generating Station. Rational: 1) expense; and (2) complications associated with the membership by a public entity within a private corporate body. We reserve the right to revisit the subject of membership at a later time.

Discussion: Current revenues and fund losses to ECP, do not permit the City (nor would I recommend using) any other funds to continue direct participation in HGS. Unless state law changes relative to who ECP can sell power to and ECP is then able to expand ECP's customer base, there is simply not enough capital to use toward additional HGS investment/ involvement.

This does not mean the City opposes the HGS project. While many people do, it is the majority position of the Commission that it endorses construction of the plant. I believe that the City Commission can continue to endorse the HGS while not being an active participant in the process – in fact, I would even argue that the City would be in a better position to support without direct involvement.

The down side of not participating in HGS is possibility losing an opportunity to secure a block of power in the future for potential industrial clients (unless state law changes). However, at the end of the day, if the plant is completed, I don't know anyone who would guarantee that those rates will be competitive.

Questions:

- What is the city's current ownership interest in the HGS?
- Would another SME Co-Op be willing to purchase that interest?
- As HGS construction continues, will this percentage continue to decrease to the point that there is no benefit to the ECP?

Potential Action Items:

- Formally request from SME:
 - What the City's ownership interest is in HGS and how it was calculated?
 - How is the ownership interest affected when financing is secured for the plant?
 - Would the City be able to join the new entity at a later date?
 - When and if financing is secured, will the City receive its initial investment back?
- Use a consultant to determine the City's opportunities in continuing its relationship with HGS.

3. We think that SME representatives should report to the City Commission on a regular basis as to the status of HGS.

Discussion:

If the Commission formerly decides not to actively participate in HGS, I'm not sure we can require SME members to report to the City about the plant's status. Due to the sensitive nature of the project, its permitting requirements, and continued legal challenges, I'm not sure how much of a substantial public report the Commission would receive.

Another option would be to appoint a member from the Commission or ECP Board to serve as Trustee to SME. This is contingent however, on future relationship structure and resolving right to know challenges.

Potential Action Items:

- Request SME representatives attend one Commission meeting a month to provide a report.
- Appoint a member of the Commission or ECP to the serve as Trustee in SME.

4. We would also like to explore a different level of membership from the City within the co-operative, if that is possible, consistent with the thoughts expressed herein.

As discussed in Item #1, the primary challenge for the City is how to continue its relationship with SME in any form (SME being corporate entity that requires confidentiality).

Potential Action Items:

- Request a new membership status that allows the city to purchase power from SME while the City continues to explore the future of ECP.

- Explore whether or not another SME Co-op member would be willing to purchase ECP contracts as part of an overall transition plan (again a consultant would be helpful).

5. The four of us continue to endorse the construction of Highwood generating Station, regardless of whether the City is directly involved in the project. I have been asked by the mayor and Commissioners Beecher and Rosenbaum to prepare a letter to that effect.

Discussion:

As previously mentioned, the City Commission can continue to endorse the HGS while not being an active participant in its construction – maybe more effectively.

Potential Action Items:

- A letter or resolution could be drafted to send to SME indicating the City’s support.

6. Consistent with our thoughts as to Items (1) and (2) above, we would like you and staff to prepare and present appropriate revisions to Resolution 9537, concerning the City’s intent to participate in the development of HGS. Item (3) can be addressed by an appropriate communication with the SME. Item (4) likewise can be raised with SME.

Discussion: While staff can make suggestions, it might be better to wait and see what the sentiment of the Commission and ECP is after the workshop meeting.

Possible Action Items:

- Discuss this issue with the ECP at a workshop meeting.

7. In addition, we would like you and the staff to come back with proposed revisions to the structure and operation of Electric City Power (ECP), through amendments to Ordinance 2925 and Resolution 9529. Rationale – there is no present need for bonding authority. We want the input and advice of our current ECP Board members as part of this process.

Discussion: Staff will wait for the Commission and ECP to meet and discuss this topic.