

**OFFICIAL PROCEEDINGS OF THE
BOARD OF WATER, ELECTRIC,
AND COMMUNICATIONS TRUSTEES
OF THE CITY OF MUSCATINE, IOWA
JULY 29, 2008—5:30 P.M.**

The Board of Trustees met in regular session at Muscatine Power and Water's Administration/Operation Building, 3205 Cedar Street, Muscatine, Iowa, on Tuesday, July 29, 2008 at 5:30 p.m., CDT.

Chairperson Tubandt called the meeting to order. Members of the Board were present as follows: Trustees Doyle Tubandt, Warren Heidbreder, and Joan Axel. Trustees Scott Ingstad and Don Mead were absent.

Also present were Mr. Jay D. Logel, General Manager of Muscatine Power and Water; Mr. Duane J. Goedken, Board Attorney; Mr. Donald W. Kerker, Board Secretary; Mr. Charles Potter, KWPC/KMCS Radio Station; Messrs. Sal LoBianco, Gary Wieskamp, and Ms. Erika Cox, Brandy Dulceak and Brenda Christensen of Muscatine Power and Water.

At the June 19, 2008 City Council meeting Mayor O'Brien appointed Trustee Joan Axel to the Board of Trustees for a six-year term beginning July 1, 2008 through June 30, 2014 and the City Council ratified the appointment. Mr. Logel advised that Trustee Axel was originally appointed to the Board of Trustees in January 2000 to replace William Finney, so this would be her second full term on the Board. The Certificate of Appointment should be received and placed on file.

Trustee Heidbreder moved, seconded by Trustee Axel, to receive and place on file the Certificate of Appointment for Joan Axel to the Board of Trustees for a period of July 1, 2008 through June 30, 2014. Motion carried. All Trustees present voted aye.

Chairperson Tubandt asked if there was anyone in attendance that wished to make any public comments. There were no comments.

The minutes of the June 20, 2008, public hearing and regular meeting were presented as previously submitted to all Board members in written form. Also included for the Board of Trustees' information was the Audit/Finance Committee's June 20, 2008 meeting minutes. Trustee Axel moved, seconded by Trustee Heidbreder, that the June public hearing and regular meeting minutes be approved and the June Finance/Audit Committee meeting minutes be received and placed on file as submitted. Motion carried. All Trustees present voted aye.

The list of expenditures and transactions for June was presented as previously submitted in written form to all Board members. Mr. Logel pointed out that there was a communications expenditure in the amount of \$332,505.56 for the purchase of approximately 1300 digital box converters. Mr. Logel also brought an expenditure in the amount of \$342,125.16 to the Board's attention; this was for the 2007 Title V Annual Emissions Fee. Trustee Axel asked if any of this charge involved fines and Mr. Logel stated that no fines were included in this payment, it is the annual fee paid based on emissions that gives us the right to do business. Trustee Heidbreder moved, seconded by Trustee Axel to ratify payment of \$6,533,034.45 for the Electric Utility, \$450,193.92 for the Water Utility, and \$1,033,102.46 for

the Communications Utility for a total amount of \$8,016,330.83. Motion carried. All Trustees present voted aye.

Mr. Logel stated that the next meeting agenda item pertained to the recommendation for ratification of the Qwest Communications, Internet Bandwidth and Telephone Service. Mr. Logel explained that the use of the Internet is growing and MP&W needs to acquire more bandwidth for our Internet customers; staff has analyzed the situation and this is the best way to meet this need. The contract requires Board approval.

On June 19, 2008, a Purchase Order was issued to Qwest Communications totaling \$538,976.21 for an OC-12 circuit, Internet Port, and CO Meet Point to carry the new Internet port and existing services into MP&W for 36 months and a lump sum non-recurring Internet port installation fee. The monthly recurring fee for this contract will be \$14,764.45, with \$13,359.34 being allocated to Internet access and bandwidth expense and the remainder of \$1,405.11 allocated across all three utilities to carry other telecommunication services that currently reside on the existing OC-3 circuit. Our current total monthly Internet bandwidth and access charges are \$18,590.55, with this new contract our total monthly Internet bandwidth and access charges will be \$25,609.53. Taking into account that we are replacing 45 MB of Qwest Internet with this new connection, this represents a net increase of \$7,018.98 per month for the additional 110 MB of Internet bandwidth. This comparison is exclusive of taxes and federal fees.

Currently, Qwest provides an OC-3 to MP&W. This OC-3 carries telephone communications, dial-up Internet lines, DSL bandwidth, and Internet bandwidth. We have reached capacity on the OC-3. An increase in bandwidth was budgeted for 2008 because increasing subscriber count and over-all utilization of the Internet by subscribers has consumed our current bandwidth resources. Staff recommends that we continue to keep our Internet access relatively balanced between two companies so that we do not experience Internet outages if one company experiences Internet access problems. We currently have bandwidth contracted with Iowa Network Services (INS) and Qwest. INS carries slightly more than twice as much bandwidth as our Qwest connection does. Therefore, staff believes that we should increase our Qwest capacity. In order to do this, we will require a larger access point. We will be moving from an OC-3 to an OC-12 Sharp circuit. The OC-12 Sharp provides a redundant path between Qwest's office and our facility at 3205 Cedar St.

This expenditure will allow us to more than triple our Qwest bandwidth from 45 MB to 155 MB and allow for future growth without additional construction of fiber facilities from Qwest. It also provides additional reliability on all of our Qwest communications lines. During late June, Qwest notified us that we needed to move forward with a PO by the end of June or we would have to start Qwest's lengthy fiber construction approval process over again, the funding approval for the installation of new fiber and equipment was set to run out. It is anticipated that construction and installation of the new line and equipment will be complete in the 4th quarter of this year.

The 36-month agreement was the minimum amount that would meet Qwest's funding requirements for new construction. Staff also reviewed a 60 month agreement. The 60 month agreement contained more favorable pricing; however, the breakeven point on selecting such an agreement would have been 49+ months of full payment. Discontinuing service any sooner would have required payments up to the 49 month commitment. With frequently changing

technology and pricing structures, staff selected the 36 month agreement. Trustee Axel asked what the other options were. Mr. LoBianco stated that Muscatine Power and Water has access to and uses two separate carriers, Qwest and INS, the Utility tries to keep each carrier at equal capacity in case of an outage.

After discussion and review the following resolution was submitted.

RESOLUTION 08-25

WHEREAS, the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa, had previously approved an expenditure for additional internet bandwidth in the 2008 budget, and;

WHEREAS, after consulting with Staff, the General Manager approved a purchase order to Qwest Communications on June 19, 2008 in the amount of \$538,976.21 for additional internet bandwidth and telephone service, and;

THEREFORE, in accordance with Board of Water, Electric and Communications Trustees Board Policy Manual, Exhibit A Expenditure Authorization Policy, the ratification of the Qwest Communications purchase order is being recommended to the Board for approval, now therefore;

BE IT RESOLVED, by the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa that PO #83956 to Qwest Communications is hereby ratified, confirmed and approved for a total cost of \$538,976.21.

Trustee Heidbreder moved, seconded by Trustee Axel, to approve ratification of the Qwest Communications Purchase Order in the amount of \$538,976.21. On roll call Trustees Heidbreder, Axel, and Tubandt, voted aye. Voting nay, none. Trustees Ingstad and Mead were absent.

The next meeting agenda item pertained to the Communications Utility Reimbursement Resolution. Mr. Logel stated that as talked about with the Board in the past, the Utility anticipates the use of outside financing to meet the needs of the digital transition and asked that Mr. Don Kerker, Director, Finance and Administrative Services continue with the update. Mr. Kerker stated that the Ten-Year Communications Utility Financial Projection being updated by staff shows tax-exempt financing in 2008 and 2009. Debt issuance of \$6,000,000 is contemplated, but that is only a rough estimate until customer equipment needs are better known.

To give the Board maximum flexibility in sizing the debt issue, staff is recommending adoption of a Reimbursement Resolution. The Resolution was drafted by our bond counsel, Chapman and Cutler and reviewed by MP&W's Staff Attorney. The Resolution states that the Board reasonably expects to reimburse itself or pay for capital expenditures from the proceeds of a future debt issue. The Board may then issue tax-exempt debt for capital projects paid within 60 days prior (May 30, 2008) to the passage of the resolution or paid after passage of the Resolution (July 29, 2008). The IRS requires that funds, obtained through the issuance of tax-

exempt debt, be expended within three years. The Reimbursement Resolution gives the Board the flexibility to size the issue to include those projects that could be completed within three years of the debt issuance, including projects paid for after May 30, 2008. The Reimbursement Resolution does not obligate the Board to include all capital projects paid for after May 29, 2008 and prior to the date of the debt issue, but it does give the Board the ability to include them in the debt issue, if they otherwise qualify and the economics warrant. By approving the Resolution, the Board does not obligate itself to a Bond Issue.

The Board has authorized similar Resolutions in the past expressing official intent regarding certain capital expenditures to be reimbursed from proceeds of an obligation. The resolution obligates the Board to nothing, and it is recommended that the Board adopt the following resolution.

After discussion and review the following resolution was submitted.

RESOLUTION 8-26

WHEREAS the City of Muscatine, Iowa (the "Issuer"), acting by and through its Board of Water, Electric and Communications Trustees (the "Board"), now desires to finance improvements and additions to the municipal communications system, including without limitation upgrades and equipment in connection with the conversion of the cable television system to a digital format (the "Projects"); and

WHEREAS all or a portion of the expenditures relating to such Projects (the "Expenditures") (i) have been paid within the sixty days prior to the passage of this Resolution or (ii) will be paid on or after the passage of this Resolution; and

WHEREAS the Issuer reasonably expects to reimburse itself or pay for the Expenditures with the proceeds of an obligation;

IT IS THEREFORE RESOVED, by the Board of Water, Electric and Communications Trustees of the City of Muscatine, Iowa, as follows:

Section 1: The Issuer reasonably expects to reimburse or pay the Expenditures with proceeds of an obligation.

Section 2: The maximum principal amount of the obligations expected to be issued for the Projects is \$7,000,000.

Section 3: All actions of the officers, agents and employees of the Issuer or the Board that are in conformity with the purposes and intent of this Resolution, whether taken before or after the adoption hereof, are hereby ratified, confirmed and adopted.

Section 4: This Resolution shall be in full force and effect immediately upon its adoption on July 29, 2008.

Trustee Heidbreder moved, seconded by Trustee Axel, to approve the Communications Utility Reimbursement Resolution. On roll call Trustees Heidbreder, Axel, and Tubandt, voted aye. Voting nay, none. Trustees Ingstad and Mead were absent.

Mr. Logel stated that the next item on the agenda was a recommendation to approve the negotiation of bond alternatives for Hoffmann, Inc. of Muscatine, IA. For various reasons, Hoffman, Inc is not able to economically obtain a bond at this time. At the Board meeting on June 20, 2008, a contract was awarded to Hoffmann, Inc. for a total of \$1,253,923 for the Unit 9 Crusher House, Unit 9 Conveyor Room and Unit 8 Coal Silo Dust Control Project. The Board's approval of the bid for Project GN20148 included the requirement of 100% Performance and Payment Bond. The single bidder, Hoffmann, Inc. has requested consideration of alternatives in lieu of the 100% bond, as permitted under Iowa Code Chapter 573. At this time, Staff request permission from the Board to negotiate an alternative to the 100% bond as permitted by Chapter 573.

Mr. Goedken stated that there are limits on the bond and there is a clause in the Iowa law that alternatives can be offered in place of bond. Details will need to be worked out with Hoffmann, Inc. in a way that is secure for Muscatine Power and Water.

Mr. Logel requested that the Board allow Staff to negotiate, with Staff Attorney review, an acceptable Performance and Payment Bond alternative in accordance with Chapter 573.

Trustee Axel moved, seconded by Trustee Heidbreder, to allow Staff to negotiate an acceptable bond alternative in accordance with Chapter 573 for Hoffmann, Inc. Motion carried. All Trustees present voted aye.

Mr. Logel stated that included with the Board's meeting materials was a memorandum from the Audit/Finance Committee regarding the selection of auditors for the 2008 audit. The Board, in 2006, retained the firm of Virchow Krause & Company, LLC for three-years with an annual review option. This is the third year of the three-year engagement with Virchow Krause for auditing the Utility's records. The original proposal for 2008 fees was \$36,800, but due to additional audit work now required by the State Auditor's office an amended price of \$42,800.00 was submitted. Mr. Kerker stated that management was pleased with the performance of Virchow Krause. They completed the 2003 through 2007 audits on a timely basis, in a professional manner, and for the proposed fees. Trustee Heidbreder stated that the Audit/Finance Committee is recommending to the Board that engagement with Virchow Krause & Company, LLP be continued for the 2008 audit.

Trustee Axel moved, seconded by Trustee Heidbreder, to engage the firm of Virchow Krause & Company LLP at a cost of \$42,800.00 for the 2008 audit of Muscatine Power and Water records. Motion carried. All Trustees present voted aye.

Mr. Logel reviewed a previously submitted memorandum to all Board members regarding a request for water service outside the city limits. A written request for water service outside the city limits was received from Chris and Lori Ulch whose residence is located at 1833 N. Highway 38. The Ulch property is located just north of the Rolling Acres subdivision, adjacent to Muscatine Power and Water's newly constructed 12 inch water main. The new main

was constructed to serve the Oak Drive subdivision and the Rolling Acres subdivision. The homeowner will pay all expenses for connection to the water main.

The single residence will not impact the Board's water system and it is staff's recommendation that the Board of Trustees approve the water service request for 1833 N. Highway 38.

Trustee Heidbreder moved, seconded by Trustee Axel, to authorize water service outside the city limits for Chris and Lori Ulch at 1833 N. Highway 38. Motion carried. All Trustees present voted aye.

The following appointments were being recommended for the 2007/2008 Board Committees:

Audit and Finance – Warren Heidbreder as Committee Chair with Scott Ingstad
Planning and Operations – Don Mead as Committee Chair with Scott Ingstad
Personnel and Public Relations – Joan Axel as Committee Chair with Don Mead

The Muscatine Area Geographic Information Consortium (MAGIC) appointment occurs in December. Currently Trustees Joan Axel and Doyle Tubandt represent the Board of Trustees on the MAGIC Board. Trustee Tubandt's two-year appointment will be completed in December 2008.

After discussion Trustee Axel moved, seconded by Trustee Heidbreder, to receive and place on file the Board Committee appointments. Motion carried. All Trustees present voted aye.

Mr. Logel advised that the next meeting agenda item pertained to the Board Policy Manual and asked Mr. Wieskamp to review the proposed changes/updates to the manual. Mr. Wieskamp stated that the manual had been updated to address several issues. The changes included: the updating of Iowa Code Sections that relate to public records, added the word communications to several areas so all utilities are included and the section pertaining to PURPA was revised to include the Board's action pertaining to the standards. Also Exhibit A, Exhibit C and Exhibit H were updated with 2008 versions.

Mr. Wieskamp advised that the manual was submitted to all Board members in a "redline/track mode" for their review. No action was being requested this evening. At the August 26, 2008 Board meeting, it will be recommended that the policy manual be approved. If there were any questions or comments regarding the manual, please let management know prior to the next meeting.

In the General Manager's report Mr. Logel reviewed his previously submitted memorandum to all Board members regarding some environmental issues and a storm update.

Muscatine Power and Water recently learned that the courts have overturned a portion of the Clean Air Act which, for the time being, may relieve MP&W of the responsibility to operate the over fire air systems installed on Units 8 & 9. These systems are still undergoing acceptance testing and were installed at a cost of approximately \$5.5 million and were designed to reduce NOx emissions. The setting aside of the CAIR regulations also affects SO2 reduction

and other requirements until such time as the provisions are rewritten which may be two or three years from now. We have appointed a taskforce of internal expertise to develop a recommendation regarding how we can best serve our customer/owners in light of this recent action and will update the Board at a future meeting.

The question of having a portion of Muscatine and Scott Counties declared a non-attainment area for PM 2.5 emissions continues to be addressed with IDNR, USEPA, local and regional affected entities. We have recently agreed to support a University of Iowa study addressing the possible background contributions to the overall emissions in order to help the economic development status of the area.

The IDNR has alleged that MP&W and GPC are a single source of air emissions in Muscatine. Their position is being challenged by both GPC and MP&W. Both entities have sent letters questioning the single source position using outside environmental attorneys.

Mr. Logel stated that the weather man continues to send MP&W challenge after challenge. Last Monday was the latest, and in some ways, the most extreme of those challenges. After the early morning wind storm of over 90 miles per hour we found over 8,700 of our 11,200 plus customers were without power and a large number of our Communication customers were out of service. This is the most customers MP&W has had without power at one time. Crews from Tipton, Durant, and Wilton assisted our people to begin the long and difficult process of sorting out the damage and restoring service. Mr. Logel stated when an event like this happens our employees answer the call, and he is so proud of how we put in place our training and experience to deal with such emergencies. The overall cost of this event will be presented in the future, estimates are that costs will be about \$250,000 and there is a chance that FEMA will provide some reimbursement.

The Board expressed their appreciation to Jay and Staff for the great job of getting all customers' power back on so quickly. Mr. Wieskamp added that although many employees had damage to their personal property, they were all still at work doing all that they could for the customers. Mr. Logel said that the Utility employees' performance will be recognized with a picnic similar to the one after the tornado last year.

Mr. Logel stated that concluded the General Manager's report, unless there were questions for him or management.

The Year-To-Date and June financial operating statements and balance sheets for Water, Electric, and Communications Utilities were presented to the Board as previously submitted in written form to all Board members.

Included with the monthly financial operating statements was the year-to-date financial review for the Board's information. Mr. Don Kerker, Director of Finance and Administrative Services, briefly recapped the financial information for all three Utilities. All Utilities were operating better than budgeted levels.

The Electric Utility had strong wholesale sales through June with a higher than average sale price (+12%). The costs for coal were higher due to a larger amount burned plus a 5% cost increase over budget due to a diesel fuel pass-through in the rail transportation contracts.

The Communications Utility cable revenue was higher than anticipated due to more HDTV subscribers, along with greater buys in pay-per-view and VOD, and ad insertion revenues are higher than budgeted.

Trustee Heidbreder moved, seconded by Trustee Axel, to receive and place on file the Year-To-Date and June financial reports for all Utilities, and the Quarterly Investment Report. Motion carried. All Trustees present voted aye.

The Quarterly Project Status Report was presented as previously submitted in written form to all Board members. Mr. Logel advised that this was a quarterly report on the status of all Board approved projects. These projects were in excess of \$100,000, and were included in the annual Operating Budget, or approved by the Board as individual projects and therefore incorporated in the Quarterly Project Status Report. Each quarter these reports are provided in written format to the Board of Trustees, management reviews them and requests the Board of Trustees approval of the status reports.

Trustee Axel moved, seconded by Trustee Heidbreder, that the 2008 Second Quarter Project Status Report be approved as submitted. Motion carried. All Trustees present voted aye.

The monthly Competitive Quotes for Public Improvement report was presented as previously submitted to all Board members. There were no awards in the month of June. The report was received and placed on file.

The Second Quarter Critical Issues and Key Performance Indicators were presented as previously submitted in written format to all Board members. Trustee Heidbreder moved, seconded by Trustee Axel, to receive and place on file the 2008 Second Quarter Critical Issues and Key Performance Indicators. Motion carried. All Trustees present voted aye.

The June departmental reports were presented as previously submitted in written form to all Board members. Trustee Axel moved, seconded by Trustee Heidbreder, to receive and place on file the June departmental reports. Motion carried. All Trustees present voted aye.

Trustee Mead moved, seconded by Trustee Axel, that the meeting be adjourned. The meeting stood adjourned at 7:05 p.m.

BOARD OF WATER, ELECTRIC,
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Donald W. Kerker
Board Secretary