

OFFICIAL PROCEEDINGS OF THE  
BOARD OF WATER, ELECTRIC,  
AND COMMUNICATIONS TRUSTEES  
OF THE CITY OF MUSCATINE, IOWA  
DECEMBER 23, 2008 – 5:30 P.M.

The Board of Trustees met in regular session at Muscatine Power and Water's Administration/Operations Building, 3205 Cedar Street, Muscatine, Iowa, on Tuesday, December 23, 2008, at 5:30 p.m., CDT.

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

Also present were Jay Logel, General Manager of Muscatine Power and Water; Donald W. Kerker, Board Secretary; Charles Potter, KWPC/KWCC Radio Station; Sal LoBianco, Terry Curry, Erika Cox, Brandy Dulceak, and Brenda Christensen of Muscatine Power and Water. Margaret LoBianco was also present.

Chairperson Tubandt asked if there was anyone in attendance who wished to make any public comments. Mr. LoBianco introduced his daughter, Margaret LoBianco and explained that she was there to witness a government meeting for a class at Muscatine High School.

There were no other public comments.

The minutes of the November 25, 2008 public hearing and regular meeting were presented as previously submitted to all Board members in written form.

Trustee Axel moved, seconded by Trustee Ingstad, that all minutes be approved and placed on file as submitted. Motion carried. All Trustees present voted aye.

The list of November expenditures and transactions was presented as previously submitted in written form to all Board members. Mr. Logel stated that Mr. Kerker would now review some information prepared for the Board in response to questions raised at the November Board meeting regarding utility expenditures. Mr. Kerker gave the Board a handout that contained a list of year-to-date expenditures by vendor and sorted from largest to smallest dollar amount. Also passed out was a recap of how purchases are made. He pointed out that the highest percentages of expenditures are coal related and are negotiated between the Utility and suppliers. The other major purchases are related to project work that typically goes out for competitive bids. Mr. Kerker asked that the Board review the handouts and let him know if they would like to see any changes in the expenditure information included in the Board packets in the future. Mr. Kerker noted that it is an Iowa Code requirement that the Board approves the expenditure list.

After review, Trustee Heidbreder moved, seconded by Trustee Ingstad to ratify payments of \$5,857,883.50 for the Electric Utility, \$421,063.32 for the Water Utility, and \$834,788.91 for the Communications Utility for a total amount of \$7,113,735.73. Motion passed. All Trustees present voted aye.

At the October Board of Trustees meeting management presented a proposed water utility revenue adjustment with the 2009 Water Utility's annual Operating Budget. The recommendation was for an overall revenue adjustment increase of three percent (3%) effective with the April 1, 2009 water consumption. Mr. Logel stated that the major drivers for the revenue increase were the costs for labor, electricity, and chemicals. Additional drivers

for the revenue increase included the need to make capital investments to replace aging infrastructure, to provide adequate fire protection, and to serve the growth in the community. It was recommended that the Board of Trustees approve the rate structure as outlined in the written memorandum and the Water Cost-of-Service/Rate Design Study, updated by Stanley Consultants, previously submitted to all Board members in written form and to authorize a three percent revenue increase effective April 1, 2009. This revenue adjustment of three percent will increase the average residential customer monthly cost by forty-one cents.

General discussion was conducted on the proposed water revenue increase. Mr. Logel stated that the Board of Trustees had adopted the philosophy of small annual revenue increases instead of larger biennial increases several years ago. Mr. Logel stated that with the requirement for additional real estate and the need to make capital investments to replace aging infrastructure, etc. the small annual increases would continue for the foreseeable future.

The following resolution was submitted.

#### **RESOLUTION 08-47**

WHEREAS, certain studies have been made of the financial condition of the Water Utility and presented to the Board of Water, Electric, and Communications Trustees for its consideration; and,

WHEREAS, the Board has reviewed these studies and determined that a revenue increase was necessary to keep the Water Utility in a sound financial condition; now therefore,

BE IT RESOLVED, by the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa that water revenue be increased by three percent (3.0%) effective with water usage starting April 1, 2009; and,

BE IT FURTHER RESOLVED, that said increase be effected by adoption of the rate classes and rates proposed by management; and,

BE IT FURTHER RESOLVED, that proper notice be given to contract consumers in accordance with the terms of the contracts.

Trustee Ingstad moved, seconded by Trustee Axel, that the said resolution should be passed, approved, and adopted this 23<sup>rd</sup> day of December 2008. On roll call Trustees Tubandt, Heidbreder, Ingstad, Axel, and Carlson voted aye. Voting nay, none.

Mr. Logel indicated that the next meeting item pertained to 2008 uncollectible customer accounts. Mr. Logel recognized the diligent work of the Customer Services Department to control account write-offs for 2008. Mr. Logel asked Mr. Kerker to review the previously submitted memorandum to the Board of Trustees. Enclosed with the memorandum was the list of uncollectible accounts that were ninety or more days past due and were deemed by Utility staff to be uncollectible accounts for Electric, Water, and Communications services, for service/merchandise charges, and for non-returned communication equipment.

Mr. Kerker stated that \$66,649.05 was received during 2008 on previously uncollectible accounts written off by the Board of Trustees. In 2007 MP&W again participated in a state program entitled Iowa Income Offset Program, which allowed debt recovery due MP&W from customer funds held by the State of Iowa. MP&W received \$35,283.00 from the program this year. Staff continued to work with credit agencies to collect unpaid accounts, and if an individual with an uncollectible account would request service from MP&W, the uncollectible amount must be paid in addition to a full deposit prior to receiving service. The 2008 customer account total amount recommended for write-off was \$86,502.51; of that amount \$69,613.96 was uncollectible Electric, Water, and Communications service accounts, \$11,139.33 for repairs to Electric and Water property and hydrant usage, and \$5,749.22 for non-returned Communications equipment.

The Board was also provided with two graphs, which showed Utility write-offs and collections on previous written-off accounts for the past five years and MP&W's Electric Utility net write-offs as a percentage of operating revenue compared to other public power utilities. Trustee Heidbreder moved, seconded by Trustee Axel, to approve the write-off of the 2008 Electric, Water, and Communications uncollectible customer accounts in the total amount of \$86,502.51. Motion carried. All Trustees present voted aye.

The next item on the agenda was a new Bank Deposit Agreement naming Sal LoBianco and Don Kerker as authorized to execute documents and agreements with the three local banks. Muscatine Power and Water uses First National Bank of Muscatine, Central State Bank of Muscatine, and Community Bank of Muscatine as depositories for Utility funds.

The following resolution was submitted.

#### **RESOLUTION 08-48**

BE IT RESOLVED, that the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa, utilize the services of First National Bank of Muscatine, Central State Bank of Muscatine, and Community Bank of Muscatine ("Depositories") for the deposit of public funds belonging to the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa, or coming into its possession, pursuant to a duly executed Agreement to Receive and Repay Deposits of Public Funds. The maximum amount which may be thus deposited in any of the above listed Depositories without further approval of this Board is Twenty Million Dollars (\$20,000,000).

BE IT RESOLVED, that the following officers are hereby authorized and directed to execute said Agreement, to execute and deliver signature authorization cards to Depositories concurrently therewith, and to execute all drafts, checks and other documents and correspondence regarding any accounts of the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa, at Depositories:

| <u>NAME</u>      | <u>OFFICE</u>                               |
|------------------|---|
| Sal LoBianco     | General Manager                             |
| Donald W. Kerker | Director, Finance & Administrative Services |

BE IT RESOLVED, that the officers described above are hereby authorized and directed to take such action, and execute such documents and agreements as may be

necessary to secure the repayment of the deposits of public funds authorized hereunder, including, but not limited to: Security Agreements, Notices, and any documents or instruments supplemental or incidental thereto.

BE IT RESOLVED, that the Secretary forward a certified copy of this Resolution to Depositories, and any other parties which may request it for purposes of effectuating the deposit of public funds authorized hereunder or any security therefore, together with a certificate attesting to the names and signatures of the present holders of the offices described above; and that the Secretary further certify to Depositories or other parties from time-to-time the signatures of any successors in office of any of the present office holders.

Trustee Carlson moved, seconded by Trustee Axel, that the said resolution should be passed, approved, and adopted this 23<sup>rd</sup> day of December 2008. On roll call Trustees Tubandt, Heidbreder, Ingstad, Axel, and Carlson voted aye. Voting nay, none.

The next item on the agenda was a recommendation to approve the ratification of the VOD Services Agreement with TVN Entertainment Corporation (TVN). Mr. Logel explained that this contract requires Board approval due to the cost of the contract. Mr. LoBianco continued that as the end of the final extension approached, the parties reached agreement and it was necessary to execute the contract to ensure continuation of services. Therefore, the request is now coming to the Board for ratification of the VOD Services Agreement with TVN.

TVN has been providing pay-per-view and Video on Demand (VOD) content to MP&W since launching the cable system. TVN is a content aggregator and distributor that obtains licensing and distribution rights for VOD and pay-per-view content from numerous studios and providers. TVN then contracts with cable systems to provide that content to cable customers. VOD and pay-per-view sales have been a significant revenue generator for the Communications Utility. TVN has been a reliable service provider. Since November 2007, MP&W and TVN have been operating under a series of extensions while negotiations progressed.

Under the new 4-year agreement with TVN, MP&W must pay the minimum of \$2,500 per month or the applicable per viewing/subscriber fees, whichever is higher. MP&W anticipates the monthly fees will continue to exceed the minimum required by TVN. The total of the minimum fee for the life of the contract is \$120,000, therefore it requires Board approval.

After discussion and review the following resolution was submitted.

#### **RESOLUTION 08-49**

WHEREAS, the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa, had previously approved an expenditure for pay-per-view and VOD in the budget, and;

WHEREAS, after consulting with Staff, the General Manager approved a contract with TVN Entertainment Corporation for a minimum fee of \$2,500.00 per month or the applicable monthly per viewing/subscriber fees, whichever is higher, and:

THEREFORE, in accordance with Board of Water, Electric and Communications Trustees Board Policy Manual, Exhibit A Expenditure Authorization Policy, the ratification of the TVN Contract for VOD Services 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 the VOD Services Agreement with TVN Entertainment Corporation be ratified, confirmed and approved for a total minimum cost of \$120,000.00 for the life of the contract.

Trustee Ingstad moved, seconded by Trustee Carlson to approve ratification of the VOD Services Agreement with TVN Entertainment Corporation. On roll call Trustees Tubandt, Heidbreder, Ingstad, Axel, and Carlson voted aye. Voting nay, none.

The Board of Trustees has contracted for legal services from the firm of Goedken and Creasey for a number of years. Historically, the Board has reviewed and approved an annual contract for legal services at the end of each calendar year. Duane Goedken has been designated as the Board's legal representative with William Creasey as his backup. With the additional position of Staff Attorney the Utility has supplement support for legal issues. Mr. Logel advised that he had requested a proposal for 2009 legal services from the firm of Goedken and Creasey, PC. Enclosed in the Board's meeting information was a copy of 2009 proposal.

Attorney Goedken left the meeting during the discussion of his proposal for legal services.

Mr. Logel advised that Attorney Goedken's knowledge and background in utility affairs and municipal law have represented Muscatine Power and Water's interests very well. In addition to the legal services from the firm of Goedken and Creasey, Mr. Logel stated Muscatine Power and Water also utilized specialized legal firms for labor, finance, and communications issues and that the Staff Attorney position has also lessened the need for MPW's use of Attorney Goedken. Mr. Logel also advised that the Board does need to continue to be represented by outside council in some cases for Board needs. The 2009 proposal is at the billing rate of \$144.00 per hour, the same as the 2008 hourly rate. Chairperson Tubandt led a discussion on the transition of work from the Board Attorney to the Staff Attorney and how long we can expect to retain Duane before he retires. The Board asked that Mr. LoBianco, Ms. Dulceak and Attorney Goedken provide an update to the Board on what work has transitioned and what the plan will be for legal services going forward. Attorney Goedken returned to the meeting and was briefed on the discussion that had taken place. It was agreed that a comprehensive assessment of internal vs. external attorney needs will be provided to the Board by the team of Mr. LoBianco, Ms. Dulceak and Attorney Goedken. The intention of the Board is to continue to use the legal services of Attorney Goedken, but overall scope of services could change.

Trustee Ingstad moved, seconded by Trustee Carlson, to accept the proposal for 2009 legal services at the hourly rate of \$144.00 as submitted by the firm of Goedken and Creasey. Motion carried. All Trustees present voted aye.

Chairperson Tubandt stated that the Board of Trustees Committee appointments occur each July. This action coincides with the appointments by the Mayor to the Board of Trustees and other City boards. One of the Board of Trustees' Committees is the Muscatine Area

Geographic Information Consortium (MAGIC). The MAGIC Board is comprised of two representatives each from the Board of Water, Electric, & Communications Trustees, the City of Muscatine Council, and the Muscatine County Board of Supervisors. The City and County made appointments to the MAGIC Board on a calendar year basis and therefore MAGIC has requested that the Board of Trustees' appointments to the MAGIC Board be on a calendar year basis also. Trustee Tubandt will complete his second year on the MAGIC Board December 31, 2008. The other current MP&W representative is Trustee Joan Axel, who was appointed to the MAGIC Board in December of 2007. It was recommended that Trustee Gary Carlson be appointed to the MAGIC Board effective January 1, 2009 for a two-year term to represent Muscatine Power & Water, Trustee Carlson's term will be for the years of 2009-2010.

Trustee Ingstad moved, seconded by Trustee Heidbreder to appoint Trustee Gary Carlson to the MAGIC Board effective January 1, 2009 for a two-year term. Motion passed. All Trustees present voted aye.

Mr. Logel advised that the Iowa Code requires the annual publication of public employees' gross annual compensation. It was recommended that the Board of Trustees authorize the Board Secretary, subject to the Board Attorney's agreement, to publish the gross salaries in the Muscatine Journal as soon as the information can be compiled. The information will contain the employee's name and gross compensation as reported to the IRS on the W2 form.

Trustee Axel moved, seconded by Trustee Ingstad, authorizing the Board Secretary to publish the gross annual salaries of all Muscatine Power and Water employees in the local newspaper in accordance with the Code of Iowa. Motion carried. All Trustees present voted aye.

Mr. Logel stated that the Communication Utility financing had been completed with the three local banks and commented what a good job the team had done on making this happen.

Mr. Logel introduced the subject of the economy and reminded the Board that one of the Critical Issues identified in the recent Strategic Plan Review is "Monitor the effect of the developing economic situation and identify potential responsive action by each of the utilities". This issue is being assigned to a team that will develop recommendations going forward. Some of the actions that have already begun are priority grouping of identified expenditures that were approved in the 2009 Operating Budgets that will require additional internal approval before going forward, and a process that requires further review/justification for the addition and replacement of employees by the General Manager and his Staff. A copy of a memo that will go to all employees company wide to communicate the importance of reviewing all expenditure decisions at every level was shared with the Board. Mr. Logel reminded the Board that he and his staff are always monitoring the financial performance of the three utilities and are prepared to act as necessary.

The November financial operating statements and balance sheets for the Electric, Water, and Communications Utilities were presented to the Board of Trustees as previously submitted in written form to all Board members. Mr. Logel asked Mr. Kerker to present the financial highlights.

Mr. Kerker advised that all three utilities were doing well compared to budget, the Electric Utility was close to budget and the Water and Communications Utilities were performing above budget. The Electric Utility experienced wholesale sales in November that

were 7.4% lower than budgeted with a 7.6% higher than average sale price. The Utility is seeing some firmer pricing in wholesale sales. Native system sales were also somewhat lower than expected and steam sales were higher with a higher than budgeted average price. Electric Utility Operations saved over \$400,000 on lower costs for transmission paths/fees and maintenance cost were lower than budget due to many things, including budgeted work that was not needed on Units 8, 8A and 9. On the expense side, a greater amount of coal was burned at a higher average cost, along with higher than budgeted coal handling equipment diesel fuel costs and higher purchase power costs. The Water Utility Sales were lower due to lower consumption by contract, residential and commercial customers, resulting in \$89,777 lower revenue, which was offset somewhat by 18.9% higher usage at the Power Plants. Water Utility operating expenses were down due to lower fuel/power purchases and well cleaning that has been postponed until 2009. The Communications Utility cable revenue was higher than anticipated due to more HDTV subscribers, along with greater buys in pay-per-view and VOD than budgeted, which was somewhat offset by lower digital converter box fee revenue than budgeted. There was discussion about how December financials are expected to look, staff is optimistic since wholesale pricing has been firmer and that December is expected to be closer to budget.

Trustee Ingstad moved, seconded by Trustee Carlson, to receive and place on file the November financial operating statements and balance sheets for all Utilities. Motion carried. All Trustees present voted aye.

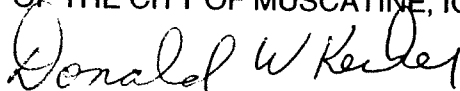
The monthly Competitive Quotes for Public Improvement Report was presented as previously submitted to all Board members. There were no competitive quotes awarded during November. The report was received and placed on file.

The departmental reports were presented as previously submitted to all Board members in written form. There was some discussion on the PM 2.5 ruling. Mr. Logel explained MPW's expectations on this subject and added that depending on the outcome of final ruling, there may be a requirement of significant capital expenditures, but at this time there has been no impact on budget.

Trustee Ingstad moved, seconded by Trustee Axel, to receive and place on file the November departmental reports. Motion carried. All Trustees present voted aye.

Trustee Axel moved, seconded by Trustee Carlson that the meeting be adjourned. The meeting stood adjourned at 6:35 p.m.

BOARD OF WATER, ELECTRIC,  
AND COMMUNICATIONS TRUSTEES  
OF THE CITY OF MUSCATINE, IOWA



Donald W. Kerker  
Board Secretary