

**OFFICIAL PROCEEDINGS OF THE
BOARD OF WATER, ELECTRIC,
AND COMMUNICATIONS TRUSTEES
OF THE CITY OF MUSCATINE, IOWA
OCTOBER 25, 2011 – 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, October 25, 2011, at 5:30 p.m.

Chairperson Joan Axel called the meeting to order. Members of the Board were present as follows: Trustees Doyle Tubandt, Scott Ingstad, Gary Carlson, and Joan Axel. Trustee Warren Heidbreder was present by phone due to previously scheduled travel plans.

Also present were Sal LoBianco, General Manager of Muscatine Power and Water; Donald W. Kerker, Board Secretary; Duane J. Goedken, Board Attorney; Charles Potter, Muscatine Journal; Ray Danz, Erika Cox, Brandy Olson, and Brenda Christensen of Muscatine Power and Water.

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

The minutes of the September 27, 2011, regular meeting, and the September 27, 2011, Audit/Finance Committee Meeting were presented as previously submitted to all Board members in written form. Trustee Carlson moved, seconded by Trustee Tubandt, that the September 27, 2011, regular meeting minutes be approved as submitted. All Trustees voted aye. Motion carried. The September 27, 2011, Audit/Finance Committee Meeting minutes were received and placed on file.

The list of expenditures and transactions for September was presented as previously submitted to all Board members in written form. After review and discussion of the expenditures, Trustee Ingstad moved, seconded by Trustee Carlson, to ratify payment of \$5,040,817.98 for the Electric Utility, \$353,225.56 for the Water Utility, and \$849,385.85 for the Communications Utility for a cumulative total of \$6,243,429.39. All Trustees voted aye. Motion carried.

Mr. LoBianco stated that the next item on the agenda was a Recommendation for an Indemnification Resolution. This resolution commits the Utility to indemnification of Trustees and employees should they be sued for actions taken in the course of performing duties for the Utility when those actions are within the scope of their employment duties. The resolution was reviewed with the Audit/Finance Committee at the September meeting; this resolution has their support. Mr. LoBianco continued that Brandy Olson, Director Legal and Regulatory Affairs, drafted the resolution and was available to discuss any questions that the Trustees might have. After review and discussion, the following resolution was submitted.

RESOLUTION 11-16***INDEMNIFICATION OF TRUSTEES, GENERAL MANAGER, DIRECTORS AND EMPLOYEES***

WHEREAS, the Board has identified the need to provide indemnification for the Trustees, General Manager, Directors, and Employees of the Board of Water, Electric and Communications Trustees of the City of Muscatine, Iowa d/b/a Muscatine Power & Water for defense costs and any obligation for payment arising out of legal actions involving such persons when they have acted in good faith within the scope of their duties or employment; and

NOW, THEREFORE, BE IT RESOLVED: The Board of Water, Electric and Communications Trustees of the City of Muscatine, Iowa, hereby finds it is in the best interests of the Board to provide a defense for its Trustees, General Manager, Directors, and Employees by an attorney of the Board's choosing to indemnify them from any obligation for payment arising from such actions when they have acted in good faith and within the scope of their duties or employment; and

BE IT FURTHER RESOLVED that if any Trustee, General Manager, Director, or Employee of the Board requests indemnification pursuant to Iowa Code Chapter 670 the Board shall hold them harmless, subject to the conditions and provisions herein stated, from any expenses connected with the defense, judgment or judgments, or settlements on any claims arising out of any litigation wherein any of the said persons are named as defendants to the extent that such claims are not covered by insurance for defense costs or insurance that will pay all sums the defendant is legally obligated to pay: provided however, that the costs of defense and/or judgment or settlement against such person shall not be paid if there is a finding by a court of competent jurisdiction that such person was not acting in good faith or within the scope of their employment or duties for the Board; and

BE IT FURTHER RESOLVED that this resolution shall provide indemnification in the nature of excess coverage over and above all insurance coverage for defense costs or claims which coverage must be exhausted before this indemnification becomes effective; provided however if coverage under an insurance policy is the subject matter of negotiation or litigation, then the Board shall advance such funds as are reasonably necessary for such defense costs, judgments or settlements subject to reimbursement from the Utility or fund that may be liable; and provided further that in the event there is no insurance coverage for defense costs for any such persons, or for payment or settlement of claims, the Board shall assume the cost of defense for the above categories of individuals as well as the payment of judgments or settlements that the above category of individuals may legally be obligated to pay; and

BE IT FURTHER RESOLVED that the indemnification provided for herein shall be provided upon written request by the appropriate individuals as to any litigation whether or not the facts giving rise to such liability occurred prior or subsequent to the passage of this resolution; and

BE IT FURTHER RESOLVED that this Resolution does not waive any right the Board may have to assert municipal immunity for certain claims as provided for under Iowa law;

BE IT FURTHER RESOLVED that the Board reserves the right to reject such a request if it finds that such rejection is in the best interest of the Board.

Trustee Ingstad moved, seconded by Trustee Heidbreder, that said resolution be passed, approved, and adopted this 25th day of October 2011. On roll call Trustees Carlson, Ingstad, Heidbreder, Tubandt, and Axel voted aye. Voting nay, none.

The next item on the agenda was a Recommendation for Final Acceptance for the Construction of Well 42 at Owner's Main Well Field Project. Mr. LoBianco reviewed the memorandum to the Board. A Contract Change Order has been generated, and staff recommends approval by the Board of Trustees, in the reduced amount of \$4,108.82 for a new final contract price \$173,539.33. Staff recommends proceeding with final acceptance and release of retainage. Work covered by this contract has been completed, checked by staff and found to be in accordance with the specifications.

After discussion and review, the following resolutions were submitted.

RESOLUTION 11-17

WHEREAS, Contract Change Order No. 1 has been prepared for the Construction of Well 42 at Owner's Main Well Field Project in the reduced amount of \$4,108.82 and said contract change order was reviewed by the Board and the Board's staff has recommended approval of said contract change order; now therefore,

BE IT RESOLVED, by the Board of Water, Electric, and Communications Trustees that said contract change order in the reduced amount of \$4,108.82 and the same was hereby approved for an amended contract price of \$173,539.33.

Trustee Tubandt moved, seconded by Trustee Ingstad, that said resolution be passed, approved, and adopted this 25th day of October 2011. On roll call Trustees Carlson, Ingstad, Heidbreder, Tubandt, and Axel voted aye. Voting nay, none.

RESOLUTION 11-18

WHEREAS, it appears in a written report from Board's staff that the contract with The Northway Well and Pump Company for the Construction of Well 42 at Owner's Main Well Field Project in the final amount of \$173,539.33 has been substantially completed in accordance with the project specifications and the recommendation has been made that said contract be accepted by the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa; now therefore,

BE IT RESOLVED, by the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa, that the Construction of Well 42 at Owner's Main Well Field Project, furnished under the above named contract be and the same was hereby accepted and approved by the Board; and,

BE IT FURTHER RESOLVED, that five percent (5%) of the contract price be retained for a period of thirty-one (31) days from and after the date of resolution, all in accordance with the provisions of the Code of Iowa.

Trustee Carlson moved, seconded by Trustee Heidbreder, that said resolution be passed, approved, and adopted this 25th day of October 2011. On roll call Trustees Carlson, Ingstad, Heidbreder, Tubandt, and Axel voted aye. Voting nay, none.

The preliminary 2012 Annual Operating Budgets for the Electric, Water, and Communications Utilities were submitted under separate cover to all Board members. Mr. LoBianco stated that the Operating Budgets were presented for information and comments, approval of the Budgets will be requested at the November meeting. Mr. LoBianco continued that the assumptions driving the Budgets are similar to those used in the Ten-Year Financial Projections that were reviewed at last month's Board meeting except for modifications reflecting the possible impact of the Cross State Air Pollution Rule (CSAPR) on the operation of Units 8/8A resulting in a reduction of steam sales and wholesale energy revenue. The Budget assumptions used were those that support the medium term achievement of financial targets, meet the needs of our customer/owners at the lowest possible cost and support the Critical Issues identified in the Strategic Plan. The Budgets reflect ongoing efforts to keep expenses and capital expenditures at conservative levels in response to the ongoing economic conditions.

Mr. LoBianco gave a brief summary of each Utility starting with the Electric Utility, which he stated still faces some significant financial challenges including escalating coal and coal transportation expenses, lower margins and cash flows from wholesale energy sales, and a reduction in wholesale energy and steam sales as a result of the EPA CSAPR rule. The Budget reflects a net loss of \$9.0 million, however shows a positive cash flow of \$3.05 million after capital expenditures and debt service payments; the Budget also includes a net \$26.8 million borrowing to partially fund capital expenditures and substantially achieve financial reserve targets.

The Water Utility Budget includes a net \$2.45 million borrowing to partially fund capital expenditures and substantially achieve financial reserve targets. Chemical and electric expense continue to be the most significant expense drivers, with maintenance expenses up 8.7% from projected expenses in 2011 driven by recent experience with main breaks and anticipated reservoir maintenance. Native system revenues reflect a nearly 2% drop in consumption and a rate increase of 5% to preserve operating margins. The Budget reflects net income of \$138,000 and positive cash flow of \$771,000 after debt service payment, not including capital expenditures and borrowings. Mr. LoBianco added that future capital expenditures will be significantly influenced by the recently completed Reliability Study; staff is in the process of evaluating results and prioritizing the recommendations.

The Communications Utility Budget indicates improved financial performance compared to the Projections and last year. The Budget reflects a 3% gain in CATV and Internet subscribers, along with a rate increase to preserve operating margins; major expense drivers continue to be CATV programming costs and Internet bandwidth costs. The Budget reflects a net loss of \$926,000 and a positive cash flow of \$1.4 million after debt service payments.

Mr. Kerker reviewed the primary drivers for each Utility. The drivers are laid out to look at the cash inflows and outflows for each of the Utilities and the primary difference between these schedules and the Income Statements is that the schedules show borrowings, debt principal repayment, capital expenditures and excludes depreciation/amortization.

Mr. LoBianco stated that the 2012 Operating Budgets were presented for informational purposes this evening and asked the Board of Trustees to provide any additional comments to him regarding the Budgets. The comments and suggestions will be incorporated in the Operating Budgets prior to approval at the November Board meeting. A public hearing will be conducted prior to the November Board of Trustees regular meeting to receive any public comments regarding the Budgets.

Mr. LoBianco continued that the State of Iowa requires that a Budget Summary for all three Utilities be prepared and a public hearing conducted on the Budget Summary to provide the public an opportunity to review and present any comments on the published Budget Summary. Prior to the November Board of Trustees meeting, the Budget Summary and Public Hearing Notice will be published in the Muscatine Journal. The Budget Summary will be posted at City Hall and at Musser Public Library, along with the MP&W offices for citizens' information and review. After approval of the Budget Summary by the Board of Trustees, the Budget Summary will be provided to the City of Muscatine for submittal to the State of Iowa as an attachment to the City of Muscatine's Budget. It was management's recommendation that the public hearing be set for November 29, 2011, at 5:28 p.m. The following resolution was submitted.

RESOLUTION 11-19

WHEREAS, the Budget Summary of the combined Electric, Water, and Communications Utilities was being prepared for the 2012 calendar year, and it was recommended that a public hearing be established for the review of said Budget Summary; now therefore,

BE IT RESOLVED, by the Board of Water, Electric, and Communications Trustees of the City of Muscatine, Iowa that the Budget Estimate Summary of the combined Electric, Water, and Communications Utilities be placed on file at the office of the City Clerk and at the City Library, along with MP&W Offices, for any resident, taxpayer, or consumer to view; and,

BE IT FURTHER RESOLVED, that a public hearing be held on the 29th day of November 2011 at 5:28 p.m. in the Board Room of Muscatine Power and Water's Administration/Operations Building located at 3205 Cedar Street, in the City of Muscatine, Iowa, and the notice of said hearing shall be published once in the Muscatine Journal, a newspaper of general circulation published daily in the City of Muscatine, Iowa, not less than ten (10) nor more than twenty (20) days prior to said hearing all as required by the Code of Iowa.

Trustee Carlson moved, seconded by Trustee Heidbreder, that the said resolution should be passed, approved and adopted this 25th day of October 2011. On roll call Trustees Carlson, Ingstad, Heidbreder, Tubandt, and Axel voted aye. Voting nay, none.

In the General Manager's report, Mr. LoBianco reviewed his previously submitted memorandum regarding the IAMU Annual Conference in Des Moines on October 5-7, 2011. He also reviewed the new Multiroom DVR service that is being offered by MP&W Digital TV. Next Mr. LoBianco also reviewed the MuniPac donation email he had sent previously to the Trustees.

The next item on the agenda was to receive and place on file the YTD and September Financial Operating Statements and Balance Sheets for each Utility and the Quarterly Investment Report. Mr. LoBianco stated that the September financial Operating Statements for the Electric, Water, and Communications Utilities would be reviewed in detail during the Third Quarter Critical Issue and Key Performance Indicator presentation. Trustee Ingstad moved, seconded by Trustee Tubandt, that the YTD and September Financial Operating Statements and Balance Sheets for the Water, Electric, and Communications Utilities and the Quarterly Investment Report be received and placed on file. All Trustees voted aye. Motion carried.

Trustee Tubandt left the meeting at 6:20 p.m.

The Quarterly Project Status Report and Variance Analysis were presented as previously submitted to all Board members in written form. Trustee Carlson moved, seconded by Trustee Ingstad, to receive and place on file the Quarterly Project Status Report and Variance Analyses. All Trustees voted aye. Motion carried.

The Competitive Quotes for Public Improvements Report was presented as previously submitted to all Board members in written form. There were no items for approval.

The Critical Issues and Key Performance Indicators Presentation for the Water, Electric, and Communications Utilities was the next agenda item. Mr. LoBianco asked each critical issue leader to review the status of their critical issue and Mr. Kerker to review the key performance indicators. After review and discussion, Trustee Ingstad moved, seconded by Trustee Carlson, to receive and place on file the 2011 Third Quarter Critical Issues and Key Performance Indicators for the Water, Electric, and Communications Utilities. All Trustees voted aye. Motion carried.

The September Departmental reports were presented as previously submitted to all Board members in written form. Trustee Carlson moved, seconded by Trustee Ingstad, to receive and place on file the September Departmental Reports. All Trustees voted aye. Motion carried.

Chairperson Axel asked if there were any other items of business. With no other items of business, the meeting was adjourned at 7:15 p.m.

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



Donald W. Kerker
Board Secretary