



Our Waterfront Community

Escanaba
Soak it Up!

**Joint City Council and
Electrical Advisory Committee Meeting
October 26, 2016 – 4:00 p.m.
Regular Meeting**

CITY COUNCIL

Marc D. Tall, Mayor
Ronald J. Beauchamp, Mayor Pro-Tem
Patricia A. Baribeau, Council Member
Ralph B. Blasier, Council Member
Michael R. Satterm, Council Member

ELECTRICAL ADVISORY COMMITTEE

Tim Wilson, Chairperson
Glendon Brown, Advisory Member
Ann Bissell, Advisory Member
John Anthony, Advisory Member
John Mellinger, Advisory Member

Escanaba City Hall Room C102- 410 Ludington Street - Escanaba, MI 49829 - Meeting Agenda

CALL TO ORDER
ROLL CALL
APPROVAL/ADJUSTMENTS TO THE AGENDA
CONFLICT OF INTEREST DECLARATION
NEW BUSINESS

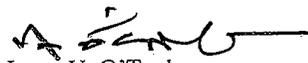
1. **Update – Electric Department –General Operations.**
Explanation: An update on departmental operations will be given by Electrical Superintendent Mike Furmanski.
2. **Purchase Approval Request – North Substation General Building Materials.**
Explanation: Administration is seeking Council approval to purchase needed materials for the construction of the North Substation. The bid opening for this item was conducted on October 21, 2016*.
3. **Purchase Approval Request – North Substation Structural Steel.**
Explanation: Administration is seeking Council approval to purchase the structural steel needed for the construction of the North Substation. The bid opening for this item was conducted on October 21, 2016*.
4. **Approval – North Substation Construction Services.**
Explanation: Administration is seeking Council approval to retain construction services for construction of the North Substation. The bid opening for this item was conducted on October 21, 2016*.
5. **Discussion – Parcel Transfers.**
Explanation: Administration will update the Electrical Advisory Committee, the City Council and the Citizens of Escanaba on the progress being made to transfer the original power plant substation and fuel storage tank to DunYet Enterprises, LLC as outlined in the previously Council approved Power Plant/Property Asset Purchase Agreement.
6. **Update – MISO System Support Resources Case.**
Explanation: Administration will update the Electrical Advisory Committee, the City Council and the Citizens of Escanaba on the latest developments related to the cost allocation ruling issued by the Federal Energy Regulatory Commission as part of our MISO System Support Resources Agreement.
7. **Discussion – Power Purchase.**
Explanation: Administration will update the Electrical Advisory Committee, the City Council and the Citizens of Escanaba on potential future power purchase options.

(*Administration is completing a full bid review from the bid opening that was conducted on October 21, 2016. An administrative bid recommendation will be made to the City Council and Electrical Advisory Committee at the October 26, 2016 meeting. Funds for these items are included in the current fiscal year operating budget).

GENERAL PUBLIC COMMENT
COMMISSION/STAFF COMMENT AND ANNOUNCEMENTS
ADJOURNMENT

The City of Escanaba will provide all necessary, reasonable aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting to individuals with disabilities at the meeting/hearing upon five days notice to the City of Escanaba. Individuals with disabilities requiring auxiliary aids or services should contact the City of Escanaba by writing or calling City Hall at (906) 786-9402.

Respectfully Submitted,


James V. O'Toole
City Manager

MEMORANDUM

NB#2

To: Jim O'Toole

From: Mike Furmanski

Date: 21OCT16

Re: North Substation Materials

On October 6, 2016, the Electric Department issued bids for North Substation Materials. These materials will be used to construct the new North Substation. This project is included in the current capital budget.

Materials for this bid include: insulators, switches, instrumentation transformers, connectors, aluminum bus, ground grate, ground rods, wire, cable, terminations, etc. The City has already purchased most of the major equipment needed for this substation, such as the main transformer, the reclosers, and the main breaker.

MEMORANDUM

NB#3

To: Jim O'Toole

From: Mike Furmanski

Date: 21OCT16

Re: North Substation Steel

On October 6, 2016, the Electric Department issued bids for North Substation Steel. This steel will be used in the new North Substation to support the bus, wires, instrumentation devices, switches, etc. This project is included in the current capital budget.

MEMORANDUM

NB # 4

To: Jim O'Toole

From: Mike Furmanski

Date: 21OCT16

Re: North Substation Construction

On October 6, 2016, the Electric Department issued bids for North Substation Construction. This bid is for all the labor needed to construct, test, and commission the new North Substation. This project is included in the current capital budget.

MEMORANDUM

NB #5

To: Jim O'Toole

From: Mike Furmanski

Date: 21OCT16

Re: Powerplant property transfer

Section 3 of the PURCHASE AND SALE AGREEMENT between the City of Escanaba and Dun Yet Enterprises, LLC contains a provision that states that should the City abandon the substation, peaking generator, and fuel tank, the City shall sell to Dun Yet Enterprises, LLC the abandoned real estate and abandoned assets for one (\$1.00) dollar.

The City has removed all the usable fuel from the fuel tank, therefore I am ready to abandon that asset. The City has removed the assets we wanted to keep from the old substation, therefore I am ready to abandon that asset. We have recently issued a Request for Proposals regarding the peaking generator. The proposals for the generator are due November 1, 2016. Once the City awards that contract, the winning bidder has 60 days to have the generator completely removed from the site. At that point, I will be ready to abandon that asset.

I would like to transfer the fuel tank and the substation as soon as possible.

(10) Seller shall provide Purchaser with any survey(s) performed on behalf of the Seller which encompasses the parcels that are the subject of this transaction. Any such survey(s) must be satisfactory to Purchaser and Purchaser's counsel.

(11) The zoning classification of the subject property is heavy manufacturing.

§2.1 Good Faith Provision: The Parties to this Agreement covenant that they shall make all reasonable, proper, and lawful efforts to procure the performance and fulfillment of the conditions precedent set forth above. The Parties mutually acknowledge and agree that they shall execute and deliver all instruments, documents, exhibits, and/or other papers which may be required or requested to cause the fulfillment of the conditions precedent.

§3. PURCHASE AND SALE PROVISION:

Seller is the owner of certain real property which the Seller desires to sell and the Purchaser desires to purchase. Said property is located in the City of Escanaba, County of Delta, and State of Michigan, as described more particularly on Exhibit "A" (Survey and Survey Property Description), attached hereto and made a part hereof by reference.

In addition to the real property described on the Plat of Survey and related property description attached as Exhibit "A" (that being the property to be conveyed by Seller to Purchaser at closing), the Parties acknowledge that Seller is the owner of an additional parcel of real property that is contiguous to the South portion of the parcel being sold to Purchaser hereunder. Said parcel encompasses the Substation, Peaking Generator, and the above ground Fuel Tank. In the event the Seller abandons the Substation, Peaking Generator, and Fuel Tank, Seller shall sell to the Purchaser the abandoned real property, and the abandoned related assets and fixtures situated thereon, for the sum of ONE (\$1.00) DOLLAR.

Seller grants to Purchaser the right to make two (2) divisions under Section 108 of the Land Division Act (Act No. 288 of Public Acts of 1967), as amended; however, Seller does not represent or warrant that any future divisions are available under the Act or under applicable zoning regulations.

This property may be located within the vicinity of farm land or of a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan Right to Farm Act.

§4. PURCHASE PRICE AND TERMS:

The purchase price for all assets (both real and personal) sold by Seller to Purchaser hereunder shall be the sum of FIVE HUNDRED THOUSAND AND NO/100THS (\$500,000.00) DOLLARS. The purchase price is inclusive of all assets transferred and conveyed by the Seller to the Purchaser, which encompasses the real and personal property described herein.

§4.1 Good Faith Earnest Money Deposit: The Purchaser shall, as of the date this Agreement is executed by both Parties, make a good faith earnest money down payment to the Seller in the amount of ONE THOUSAND AND NO/100THS (\$1,000.00) DOLLARS. The Parties agree that said sum shall bind both Parties to the terms of this Agreement. The Parties further agree that the return of the good faith earnest money deposit, or the forfeiture of the deposit, shall be subject to the fulfillment of the conditions precedent and otherwise controlled by the terms set forth herein. Furthermore, the Parties acknowledge and agree that the entire good faith earnest money deposit shall be credited to the Purchaser at closing.

BURKHART, LEWANDOWSKI & MILLER, P.C. 8716 LUDINGTON STREET, ESCANABA, MICHIGAN 49829-3890 (906) 766-4422

TO: Jim O'Toole, Mike Furmanski, Melissa Becotte
FROM: Chris Jones
DATE: October 21, 2016
RE: SSR Litigation Update

CONFIDENTIAL ATTORNEY-CLIENT COMMUNICATION

This brief memorandum responds to your request for an update on the status of the SSR case and summarizes our recent conversations.

There are two outstanding, but separate, proceedings related to SSR costs. First, the question of how much Wisconsin Electric's Presque Isle unit should earn in SSR compensation is pending before the Federal Energy Regulatory Commission ("FERC") on review of the FERC Administrative Law Judge's ("ALJ") decision. Second, the question of how to allocate the SSR costs of Presque Isle, White Pine, and Escanaba SSR agreements appears ready to proceed to federal court on review of FERC's decision.

On the question of Presque Isle costs, the ALJ issued an Initial Decision on July 25, 2016.¹ The Initial Decision found that Wisconsin Electric should refund a portion of the roughly \$64 million in SSR compensation it received for Presque Isle. The ALJ ordered a refund of approximately \$13 million on the first SSR contract.² The refund amount for the second contract is not yet known because the ALJ lacked the data to calculate it,³ but the Michigan Commission estimates that the reasoning in the Initial Decision requires a refund of approximately \$5.6 million on the second SSR contract. Wisconsin Electric is arguing to FERC that the ALJ erred and that the refunds should be substantially less, while the Michigan Parties are arguing that the refunds should be slightly more. FERC will have to issue an order upholding or modifying the ALJ's Initial Decision, but is on no set timetable to do that.

On the issue of allocation of the costs of Presque Isle, White Pine, and Escanaba SSR agreements, FERC issued its most recent order on September 22, 2016.⁴ The September 22 order upheld FERC's prior determination to use a cost allocation methodology that confines most of the costs of the SSR Agreements to the Upper Peninsula and spares most of Wisconsin.⁵

¹ *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 63,013 (2016).

² *Id.* at P 77.

³ *Id.* at P 87.

⁴ *Pub. Serv. Comm'n of Wis. v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,205 (2016).

⁵ *Id.* at 77.

However, FERC has ordered MISO not to implement the new allocation until it issues a decision in the Presque Isle cost-of-service case described above (to avoid multiple resettlements).⁶ The allocation case is now ready to proceed to the U.S. Court of Appeals. The City will file a petition for review of the September 22 Order and will work with the other Michigan Parties to litigate that case. The other active Michigan Parties are Verso Corporation, Tilden and Empire Mines, UPPCo, Cloverland, Mackinac Island, the Sault Ste. Marie Tribe of Chippewa Indians, Constellation Energy, and the Michigan Public Service Commission.

The primary issue that the appeal will focus on is whether FERC has the legal authority to order the Michigan surcharges necessary to pay the refunds to Wisconsin. Normally, when FERC changes a rate or allocation, it does so prospectively from the date of the order fixing the new rate. But FERC has narrow authority to issue *refunds* to over-charged parties for a 15-month period beginning the date of the complaint. In a normal utility rate case, the refunds come from the utility to the customers. In the case of a reallocation *among* customers like this one, FERC's general rule is to implement the new allocation on a going-forward basis only. Of course, because the SSR Agreements at issue have terminated, our reading of the law would leave Wisconsin with no refunds. We believe that predicament compelled FERC to make a narrow exception in this case to order a retroactive re-allocation, but that FERC lacked the legal authority to do so.

The court case on allocation is expected to commence soon, with briefing likely to begin in Q1 2017. If that schedule holds, it is possible that we could have a court decision on allocation by this time next year. So, if FERC rules on the Presque Isle cost-of-service case in the meantime, MISO will move to reallocate the costs per FERC's directive and invoice the City for its increased SSR liability. If we subsequently win at court on the allocation issue, MISO would have to refund whatever increased payments the City will have made. If we lose at the court, the new allocation and invoices would stand.

Please let me know if you would like any additional detail.

⁶ *Id.* at 81.