

City of Great Falls told to release power plant documents

By RICHARD ECKE • Tribune Staff Writer • March 10, 2010

In a sharply worded opinion, State District Judge E. Wayne Phillips on Monday ordered the city of Great Falls to open to the public nearly all documents the city and a business partner had refused to disclose.

After nearly three years, the Montana Environmental Information Center of Helena finally appeared to have won its open-records battle with the city of Great Falls and power-plant developer Southern Montana Electric Generation & Transmission Cooperative based in Billings.

"The public shouldn't be shut out of government," Anne Hedges, program manager for MEIC, said. "The city made bad decisions, all in the name of SME. Hopefully, that's coming to an end."

"I think it's marvelous," added Richard Liebert, chairman of Citizens for Clean Energy, a group that jostled with the city over open records and the proposed Highwood Generating Station power plant east of Great Falls. "Let freedom ring."

In his ruling, Phillips described his exasperation when the defendants' attorneys "dumped two boxes of documents on the court's desk and expected the court to do the work."

Phillips had ruled earlier in MEIC's favor, but the city and Southern Montana subsequently sought to keep secret a 22-inch-high stack of documents.

Defendants claimed various protections for the documents, citing attorney-client privilege, trade secrets and a confidentiality agreement signed years ago by former City Manager John Lawton and Coleen Balzarini, the city's Fiscal Services director.

In his ruling, the judge said he slogged through about one-third of the documents before finally giving up. He admonished defendants' attorneys for not scrutinizing the documents more carefully before turning them in and for not creating a master list.

"The quality of that review was so abysmal they shall not have a second bite at the apple," Phillips wrote.

Phillips sealed a handful of documents that were legitimate trade secrets, and will give the defendants' attorneys 10 days from Monday to try to seal any other privileged documents.

City officials may open up the records as quickly as later this week, City Attorney James Santoro said. City officials will identify the documents eligible for the 10-day examination and release the rest, he said.

"I'm not going to sit on this," Santoro promised.

Hedges noted the ruling came nearly three years after the lawsuit was filed. During that span, two city elections were held, the power plant switched its fuel source from coal to natural gas and the city manager changed from John Lawton to Greg Doyon.

City Commissioner Mary Jolley, a longtime advocate of open records and meetings, criticized former city commissioners for not objecting to the secrecy. She added that some commissioners were worried about being sued by SME if the city released the documents.

Phillips said requesting secrecy for many of the documents amounted to "patent absurdity."

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"I think they sealed embarrassments," Jolley theorized. Jolley said she believes minutes from past Southern Montana board meetings fall under the judge's order and will be released to the public.

"If it's in the Civic Center, you've made it a public document," Jolley said.

Attorneys for Southern Montana could not be reached Tuesday to say whether they might appeal the judge's order.

"The city's position is, no, we're not interested in an appeal," Santoro reported.

In his 15-page decision, Phillips cast off the defendants' attorney-client privilege arguments, saying defendants failed to produce any evidence of a retainer agreement between the city and SME attorneys.

In addition, Phillips repeated his view that a confidentiality agreement between SME and two city officials was not enforceable.

Phillips concluded that the defendants legitimately could claim some documents constituted trade secrets, but he said defendants had only 10 days to claim that privilege. Hedges said very few documents fall into that category, and she is not concerned about it.

In his decision, Phillips cited "the clear constitutional right of Montana citizens to view documents of their governmental entities." The judge also praised MEIC and the Montana Newspaper Association, which intervened in the case, for helping him make some sense out of the large number of documents submitted.

Hedges was asked whether the ruling might constitute a hollow victory for her group, since Southern Montana recently obtained financing for Phase I of a gas-fired power plant. Construction may begin this summer.

"Public access to documents is never a hollow victory," Hedges said.

"Chalk one up for good government," said Travis Kavulla, a Republican candidate from Great Falls for the Montana Public Service Commission.

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