

CITY OF GREAT FALLS, MONTANA

AGENDA # 17

A G E N D A R E P O R T

DATE March 15, 2005

ITEM Approve Water Service Agreement with Southern Montana Electric Generation and Transmission Cooperative (Southern)

INITIATED BY Fiscal Services Department/Southern

ACTION REQUESTED Approve Agreement

PREPARED BY Martha Cappis, Operations Supervisor

APPROVED & PRESENTED BY Coleen Balzarini, Fiscal Services Director

RECOMMENDATION: Staff recommends approval of the Water Service Agreement with Southern

MOTION: "I move the Commission approve the Water Service Agreement with Southern Montana Electric Generation and Transmission Cooperative and authorize the City Manager to execute the agreement."

SYNOPSIS: The agreement outlines the rates charged for water service through June 30, 2010 for raw water, and applicable fees. The agreement also outlines the responsibilities of the parties in regards to the reporting of data, the ownership of the meters and system, and the payment requirements, along with addressing the water rights transfer application necessary to utilize available municipal raw water.

BACKGROUND: The City of Great Falls and Southern have been negotiating the charges for raw water service to the proposed Highwood Station Coal Fired plant to be built north of Great Falls. The rate was established after analyses and/or consultation with Black & Veatch Engineering Consultants and Water Right Solutions, Inc. Consulting. The City will bill Southern at the raw water rate as described in Exhibit A on a monthly basis for the volume of industrial process water consumed by Southern. Southern will receive credit against the monthly billing for the difference in the cost of power paid by the City as set forth in the Agreement dated the 22nd day of October, 2004.

WATER SERVICE AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 2005, by and between the **CITY OF GREAT FALLS**, an incorporated city with its principal place of business of City Hall, 2 Park Drive South, Great Falls, Montana, 59401, (hereinafter referred to as the City), and **SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE, INC.**, a corporation organized and existing under the laws of the State of Montana, with its principal place of business at 3521 Gabel Road, Suite #5, Billings, Montana 59102, (hereinafter referred to as Southern). The City and Southern are collectively referred to hereinafter as the parties.

WHEREAS, the City is a member system of Southern with expectation of purchasing wholesale electricity from Highwood Station, a 250 mW CFB coal-fired power plant which Southern anticipates constructing and operating east of the City; and

WHEREAS, the City has water rights and water right reservations in the Missouri River, for which there is actual water subject to appropriation, which the City has agreed to make available to Southern in quantities necessary for operation of the Highwood Station by means of transfer of water right or sale of water mutually agreeable to Southern and the City. The City has agreed to make appropriate application and provide all necessary information to the Montana Department of Natural Resources and Conservation (DNRC), and/or other appropriate agency, to gain approval for transfer of the City's water right, sale of water or transfer of place of use of water outside the corporate limits of the City, to accommodate Southern's industrial use of water contemplated herein.

NOW, THEREFORE, in consideration of the agreements set forth hereinafter, the parties covenant and agree as follows:

A. Sale of City Water to Southern for Industrial Purposes.

1. The City agrees to sell to Southern the raw water necessary to operate a 250 mW circulating fluidized bed coal fired electric generating plant known as the Highwood Station to be located east of the boundary of the corporate limits of the City. The City agrees to dedicate an instantaneous maximum of 3,200 gallons per minute from the City's available water rights to provide industrial water to be used in connection with operation of Highwood Station, commencing during the course of construction, anticipated to begin in 2006, but not later than 2016, and continuing thereafter during the life of the project which, as of the date hereof, the parties agree will be a minimum of thirty-five (35) years, from and after commencement of commercial operation.

2. The City agrees to file all necessary and appropriate applications, notices, or petitions with the Montana Department of Natural Resources and Conservation (DNRC), the Montana Water Court, PP&L Montana LLC, the Federal Energy Regulatory Commission, or elsewhere to obtain change in place of appropriation and/or use and to preserve and defend its reserved water right so the City may allocate water to Southern during the term hereof. The City and Southern agree to participate in appropriate environmental assessments or environmental impact statements which may be necessitated as a consequence of the City's applications to allocate water for use by Southern.

The City agrees to make available to Southern all notices of all filings and administrative or judicial approvals or decisions relating to the City's water right as it relates to this agreement.

3. Southern agrees to provide the City with the legal description of the location of the point of diversion and appropriation, together with the place of use of the water. Southern agrees to provide information regarding water intake structures and other detailed information as requested and deemed necessary to allow for the successful application and approval of water right transfer. Southern agrees that it will construct water intake structures, provide necessary pumps, pipeline, storage and return facilities at its sole cost and expense. All water shall be metered through a water meter selected and provided by the City and installed by Southern.

The Industrial Process Water Meter shall be an appropriately designed and sized propeller meter with digital register display, showing rate of flow and total flow in gallons. The propeller meter need not be capable of field testing and repair and in event the meter must be removed for repair water use will be estimated based upon previous use. All meters shall be installed in accordance with manufacturer's requirements at a location agreeable and accessible to the City.

4. Southern shall own the water service line from the point of diversion to the place of use. The City shall have continued ownership of all water meters installed within the water service line, together with the obligation of maintenance and upkeep of the same.

5. Southern shall keep daily records of industrial process water passing through the meter. Southern agrees it shall make all records of water consumption available to the City upon request at all times its business office is open.

B. Fees and Rates.

1. In consideration of receiving water provided by the City, Southern shall pay the City appropriate service fees as required by Title 13, Official Code of the City of Great Falls (OCCGF).

2. Southern agrees to pay the City for use of the City's industrial water at the rate described in Exhibit A attached hereto.

3. Southern shall pay the City the agreed upon rate for industrial water based upon the volume of water consumed by Southern. To ensure the integrity of the City's water rights the volume of Southern's industrial water consumption will be determined by the total gallons of water passing through the industrial water meter provided and owned by the City. Southern shall keep records and report daily, electronically or otherwise, to the City the amount of water passing through the industrial water meter in a manner which is mutually acceptable to the City. The City shall bill Southern at the raw water rate as described in Exhibit A on a monthly basis for the volume of industrial process water consumed by Southern. Southern shall be entitled to credit against said monthly billing for Southern's difference in cost of power than paid therefore by the City as set forth in that certain Agreement dated the 22nd day of October, 2004.

4. Each month the City will invoice Southern for industrial process water consumed by Southern in the prior month. In event there remains a balance due the City, after credit is given as described in paragraph 3 hereinabove, Southern shall pay the City said balance within thirty days from each invoice date. Late payment penalties will be charged and paid by Southern at the rate of Ten Percent (10%) per annum upon any balance which shall be in excess of sixty (60) days past due.

C. Term of Agreement.

1. This agreement shall commence upon the date the Montana Department of Natural Resources and Conservation issues its Order or other written communication approving the transfer of water rights or sale of water by the City to Southern and shall continue for an initial term expiring on December 31st, 2045. In event the Highwood Station power generation facility is, on the date of expiration of this agreement, viable and operational the parties agree this agreement shall continue for the remaining operational life of the Highwood Station under terms which are mutually satisfactory to the parties.

2. If either party perceives the other has failed to perform material obligation hereunder thereby giving rise to a dispute which remains un-remedied for a period of sixty (60) days after written notice of the nature of, and facts giving rise to, the dispute, said party shall appoint an arbitrator and place the other party on notice that the other party shall have fourteen (14) days to appoint an arbitrator. The two arbitrators selected on behalf of each party shall then, within fourteen (14) days, select a mutually agreed upon third arbitrator. Upon establishment of the Board of Arbitrators all hearings and proceedings shall be held in accordance with, and all

matters in dispute shall be resolved as provided for in, the Montana Uniform Arbitration Act, M.C.A. § 27-5-101, et seq.

The parties hereto expressly acknowledge, due to the public nature of the use of water, pursuant to the terms of this agreement, that the same is not subject to cancellation or termination without mutual consent during the term as set forth hereinabove.

D. Further Representations.

1. Failure in the water system shall create no liability against the City unless such failure shall have been caused by the gross negligence or willful misconduct of the City, its employees, agents or contractors. Southern shall hold the City harmless and indemnify the City from any and all claims and actions for property damage or personal injury arising from any acts or omissions of Southern with respect to Southern's construction and use of pipelines or facilities to convey the City's water located upon realty or rights-of-way of the City or elsewhere, unless such damage or injury shall arise from the gross negligence or willful misconduct of the City, its employees, agents or contractors.

2. During the term of this agreement, no delay by the City or Southern in exercising any right or power or in enforcing any of its remedies hereunder shall be deemed a waiver of such default of the rights, power and remedies herein provided.

3. The provisions of this agreement will be binding upon and inure to the benefit of the successors and assignees of each of the parties hereto. Neither party shall assign any of its rights or obligations hereunder without the consent of the other party. Any consent required by this section shall not be unreasonably withheld.

4. This agreement shall be interpreted according to the laws of the State of Montana.

5. Any notice, demand, request, statement or correspondence provided for in this agreement, or any notice which a party may desire to give to the other, shall be in writing (unless otherwise provided) and shall be considered duly delivered when received by mail, facsimile or overnight courier, at the address below listed otherwise required or directed in this agreement.

CITY OF GREAT FALLS

SOUTHERN MONTANA ELECTRIC

John Lawton, City Manager
P.O. Box 5021
Great Falls MT 59403

Tim Gregori, Manager
3521 Gabel Road, Suite 5
Billings MT 59102

EXECUTED the day and year first hereinabove written.

Southern Montana Electric Generation and Transmission
Cooperative, Inc.

By: _____
President

Attest: _____
Vice-President

City of Great Falls

By: _____
Its: _____

Attest: _____
Its: _____

STATE OF MONTANA)
 :SS.
County of _____)

On this _____ day of _____, 2005 before me, the undersigned, a Notary Public in and for said state, personally appeared _____ and _____, the President and Vice-President of Southern Montana Electric Generation and Transmission Cooperative, Inc., a Montana corporation, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of said corporation, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

(Notarial Seal)

Printed Name: _____
Notary Public for the State of Montana
Residing at: _____
My Commission Expires: _____

STATE OF MONTANA)
 :SS.
County of _____)

On this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for said state, personally appeared _____ and _____, the _____ and _____, respectively, of the City of Great Falls, an incorporated city, each known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that they executed the same, on behalf of said city, for the purposes therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first hereinabove written.

(Notarial Seal)

Printed Name: _____
Notary Public for the State of Montana
Residing at: _____
My Commission Expires: _____

CITY OF GREAT FALLS, MONTANA
SOUTHERN MONTANA ELECTRIC GENERATION AND TRANSMISSION COOPERATIVE
WATER RATES

Valid thru June 30, 2010
All Rates Subject to Yearly Rate Review
As of June 1, 2004

RAW WATER

	(per 100 ccf)
1st 300 CCF/Month	0.16
Over 300 CCF/Month	0.16

CONNECTION FEES

Fee shall be ADDED TO: General Plumbing Permit for extension to new buildings; or, Inspection Permits for larger diameter pipe.

SERVICE LINE SIZE

0.75"	1"	1.25"	1.5"	2"	3"	4"	6"	8"	10"	12"
270.00	300.00	NA	365.00	395.00	595.00	765.00	1,185.00	1,980.00	NA	3,970.00

Fee shall be ADDED TO: General Plumbing Permit for extension to new buildings; or, Inspection Permits for larger diameter pipe.
Where one meter serves one multi-purpose development, either mobile home, multiple family housing units, local business, commercial, industrial, residential use zones or variance, the connection charge will be based upon the size of the water tap. If there is no water tap, the charge will be based upon the the sewage being discharged on the same ratio as for other sewer connections.

INSPECTION FEES

Fees for inspection and approval of all water service work and all sewer connections under Title 13 OCCGF.

WATER Flat fee of : \$ 100