

Memorandum of Understanding

Mediation of Plains Grains, et al. v. Board of County Commissioners of Cascade County; Southern Montana Electric Generation & Transmission Cooperative, Inc.; the Estate of Duane L. Urquhart; Mary Urquhart; Scott Urquhart; and Linda Urquhart, Intervenors and Defendants.

On August 16, 2010, the parties to the above-entitled action, through counsel, participated in a settlement conference mediated by James Regnier. Following extensive negotiations the parties have reached agreement to settle the litigation upon the following terms:

- 1. No coal-fired power plant to be constructed.** Plaintiffs reported seeing a series of media reports throughout 2009, indicating that SME had not abandoned the possibility of a coal-fired facility at this site. Therefore, this condition is of fundamental importance to Plaintiffs, and it immediately implicates consideration of the mechanisms of enforcement of settlement conditions.
- 2. Mechanisms of enforcement.** These include the settlement agreement itself as an enforceable contract and which shall include the award of attorney fees for enforcement, restrictive covenants running with SMEs land, and conditions in the SUP which SME will pursue under the Cascade County Zoning Regulations. It is understood that this entails drafting of implementing documents, preceded by this Memorandum of Understanding. These implementive documents shall be drafted by counsel for SME, and reviewed and approved by counsel for Plaintiffs. SME, its affiliates and successors, will comply with the above referenced documents.
- 3. The entire site shall remain zoned Agricultural, instead of Industrial.** This objective is to be achieved through the Special Use Permit process, discussed below.
- 4. The SUP alternative will maintain the underlying Agricultural zoning,** which will not allow other industrial activities, and which will specify mitigation of impacts including especially noise pollution, light pollution, as well as the need to improve the roads used to access the power plant site sooner rather than later. During construction SME shall be responsible for dust control and maintenance of Salem Road. Salem Road shall be paved to Cascade County standards upon completion of construction, but in no event shall it be paved later than 12 months after the commencement of commercial operation of Phase I.
- 5. The issue of noise pollution is of enormous concern for those residing near the proposed gas-fired generators.** Phase I of SMEs proposal will install a simple cycle turbine. Phase II will install combined cycle turbines. Noise reduction measures will be necessary for all significant noise sources, including the turbines, pumps, transformers, backup generators, as well as other noise creating activities. ATCO will continue to provide SME with analysis and noise reduction strategies which will be implemented for the Highwood Generating facility. The noise level at the western boundary of the site shall not exceed Ldn 40 dBA during Phase I and Ldn 42 dBA during Phase II when ambient sound conditions do not exceed Ldn 35 dBA. These measurements shall be calculated with the use of two monitors, one at the southwestern boundary of the site, and the ambient noise measurement at a site that is fairly representative of ambient noise unaffected by the Highwood Generating station. SME agrees to install an additional monitor to the southeast of the facility in the proximity of the nearest southeast residents to ensure that noise levels comply with the above-stated standards. SME will conduct periodic testing to verify compliance with these standards after startup, which testing will occur during each season and at

representative intervals throughout the 24-hour day. This data will be provided to Cascade County annually and to adjoining landowners upon request.

- 6. Limit the maximum size of natural gas-fired power generating facility to the 120 MW size permitted by DEQ.**
- 7. Limit the acreage subject to the SUP to the amount of land reasonably necessary for SME to operate a 120 MW gas-fired generating station, which is 197.6 acres, as described as Tract B of COS 4660.**
- 8. Permanently preserve the approximately 240 acres that lies within the boundaries of the Lewis & Clark Portage National Historic Landmark.** There are various options to achieve this condition, including some form of permanent conservation easement, perhaps deeding over the land to a non-profit entity or Cascade County, and perhaps the sale of the excess acreage beyond that needed for the smaller gas-fired facility to an agricultural entity that will keep it in agricultural production.
- 9. A commitment to the ongoing testing of adjacent agricultural lands, specifically to include testing which will be provided to Lassilas and other organic farmers so that they can continue to pursue organic farming.**
- 10. Negotiated location of right-of-ways and right of reverter.** As the parties are aware, Plaintiffs counsel does not represent the landowners in regards to any condemnation proceedings. With that continued understanding, SME agrees that utility lines, including transmission, sewer and water, will be located, through negotiated agreement, including compensation with the landowners, in a manner that minimizes disruption to the landowners agricultural operations. In addition, if the negotiated utility right-of-ways are not used by SME as planned, then there will be a right of reverter to the landowner within three years.

There are no current plans for a potable water line, as sufficient potable water can be supplied by an on-site well flowing less than 35 gpm. Although no wastewater line would be necessary for the first phase of the HGS project, the preferred course for the wastewater line necessary for development of the 120 MW combined cycle facility would be south along Salem Road (in County R/W) to the old Milwaukee railroad bed and then west along that route to the City of Great Falls' wastewater line near Malmstrom Air Force Base (MAFB). The size of the line would be approximately 6". The line would be installed at a depth prescribed in applicable regulations (approximately 6 feet).

The only other water line that will be constructed off site will be a raw water line necessary for the installation of the combined cycle system associated with the build out of HGS to 120 MW. The raw water line will originate at a series of collector wells on private property adjacent to the Missouri River and terminate at the HGS site as represented on the site plan. The raw water line will be located almost exclusively on Southern and Urquhart property. The raw water line will cross the NHL (on Southern and Urquhart property) at a depth of approximately six feet. The land impacted by the installation of the raw water line is currently used for agricultural purposes and will continue being used for agricultural purposes after the water line installation is complete.

11. **Commitment to energy efficiency.** In consultation with an independent expert, within two years SME commits to develop an effective energy efficiency plan for implementation by its distribution member systems, which is publicly available on SME's website. Provided that the plan demonstrates that implementation of the plan will result in savings to SME and its member cooperatives, SME's member systems will implement the cost-effective measures identified in the plan.
12. **Plaintiffs' attorneys fees and costs would be paid by SME.** Within 30 days SME agrees to pay fees and costs in the total amount of \$140,565.65.
13. **It is agreed that the Montana Supreme Court decision stands, and SME will withdraw its motion to reconsider.**
14. **Miscellaneous provisions.** As a good neighbor gesture, adjacent landowners will be allowed natural gas and sewer service interconnection without being required to compensate SME. The settlement will include a mutual release of all claims. It is understood that Plaintiffs have been represented in the negotiations leading to this MOU by counsel and a committee of plaintiffs; this MOU is subject to ratification by Plaintiffs. It is further understood that the SUP will still need to run its course before the Cascade County Board of Adjustments as specified in the CCZR.

FOR THE PLAINTIFFS AND APPELLANTS:

Montana Environmental Information Center

By: _____

Anne Hedges, Executive Director Program Director

Walker S. Smith, Jr.

Joseph W. Kantola

Approved By: _____

Roger M. Sullivan

Roger M. Sullivan, Attorney for Plaintiffs and Appellants

FOR THE DEFENDANTS AND APPELLEES:

Southern Montana Electric Generation and
Transmission Cooperative, Inc. ["SME"]

By: T.R. Gregori
Timothy R. Gregori,
General Manager and CEO

By: William C. Fitzgerald
William Fitzgerald, President of the
Board of Trustees of SME

Approved By:
A. Clifford Edwards
A. Clifford Edwards, Attorney for SME

Estate of Duane L. Urquhart, Mary Urquhart,
Scott Urquhart, and Linda Urquhart

By: Gary M. Zadick
Gary M. Zadick, Their Attorney