

**ELK RIVER MUNICIPAL UTILITIES
REGULAR MEETING OF THE UTILITIES COMMISSION
HELD AT THE UPPERTOWN CONFERENCE ROOM**

November 14, 2023

Members Present: Chair John Dietz, Vice Chair Mary Stewart, Commissioners Paul Bell, Matt Westgaard, and Nick Zerwas

ERMU Staff Present: Mark Hanson, General Manager
Melissa Karpinski, Finance Manager
Tony Mauren, Governance & Communications Manager
Tom Geiser, Operations Director
Chris Sumstad, Electric Superintendent
Mike Tietz, Technical Services Superintendent
Dave Ninow, Water Superintendent
Chris Kerzman, Engineering Manager
Parker Theisen, IT/OT Technician
Megan Zachman, HR Generalist

Others Present: Jared Shepherd, Attorney; Cal Portner, City Administrator; Andrew Harvala, Heritage Construction

1.00 GOVERNANCE

1.01 Call Meeting to Order

The regular meeting of the Utilities Commission was called to order at 3:30 p.m. by Chair Dietz.

1.02 Pledge of Allegiance

The Pledge of Allegiance was recited.

1.03 Consider the Agenda

There were no additions or corrections to the agenda.

Moved by Commissioner Zerwas and seconded by Commissioner Westgaard to approve the November 14, 2023, agenda. Motion carried 5-0

2.00 CONSENT AGENDA (Approved By One Motion)

Moved by Commissioner Stewart and seconded by Commissioner Bell to approve the Consent Agenda as follows:

2.1 Check Register – October 2023

2.2 Regular Meeting Minutes – October 10, 2023

2.3 2023 Third Quarter Utilities Performance Metrics Score Card Statistics

2.4 Use of ERMU Logo for Midwest Esri Utility User Group Conference Flyer

Motion carried 5-0.

3.00 OPEN FORUM

No one appeared for open forum.

4.00 POLICY & COMPLIANCE

4.01 Commission Policy Review – G.2a2 – Street Installation and Maintenance Agreement

Mr. Mauren presented his memo on the agreement between ERMU and the City, explaining that it addresses the material costs and labor associated with installation and maintenance of streetlights and trail lights, as well as ERMU's role in hanging specified decorations throughout the year.

The Commission had no comments or recommended changes to the agreement.

5.00 BUSINESS ACTION

5.01 Water Service Abandonment Appeal

This item was added to the November commission meeting agenda after representatives from Cornerstone Auto and Heritage Construction, including Mr. Harvala, appeared at the October meeting's Open Forum to request an exception from ERMU's water rule requiring abandoned service lines be capped at the water main. The request was made due to the number of other underground utilities in the area that could be impacted by work.

Mr. Hanson presented his memo explaining the rationale behind ERMU's water rule that requires abandoned water services to be capped at the main. Mr. Hanson explained if a service line remains connected to the main the line is "live" and is at a greater risk of being hit as it is not connected to a facility and may be missed during location. Mr. Hanson later noted that the line had in fact been struck during this project and created a leak. He went on to explain that lines gradually age with constant water pressure.

Mr. Hanson noted there is an exemption clause in the rules when the city will not grant a permit to cap the line, adding that was not the circumstances of this case.

Mr. Hanson shared staff's recommendation to require the line to be capped at the main.

Commissioner Westgaard inquired as to whether there was a hardship in this case which would validate an exception to the rules. There was discussion.

Mr. Hanson shared that staff had sought bids to perform the work which ranged from \$5,200-\$17,000, showing that there are contractors who are willing to perform the work. He added it was the staff's position that the work would best be done now in a controlled environment as opposed to emergency work being done due to a leak.

Chair Dietz shared his opinion that staff should provide the estimates to the requester so that they can employ a contractor to do the work.

Mr. Harvala shared concerns over the number of underground utilities at the site that could be impacted during the process of capping at the main. Mr. Harvala shared his understanding that during the deconstruction of a home that occupied the property in 2005 the utilities did not require the line to be capped at the main adding the line was only discovered during the construction project. Mr. Harvala expressed Cornerstone Auto and Heritage Construction's preference to compromise by providing ERMU with \$8,000 to perform the work and take on the liability. There was discussion.

Commissioner Stewart shared her preference to follow staff's recommendation to have the property owner take responsibility for capping the line at the main.

Commissioner Bell expressed concern about the potential plight of the property owner if the rules were not followed by the Utilities when the house was demolished in 2005.

Mr. Shepherd noted that the Commission appears to be lacking information on the history of the property, adding that an exception should only be made if there is evidence that warrants it. Mr. Shepherd continued that if historical information is the basis of appeal the burden of proof should be on the property owner, adding that with a policy in place there must be a justifiable reason to change practice. Mr. Shepherd noted that whoever employs the contractor takes liability for their work.

Commissioner Stewart suggested allowing the property owner to provide evidence of the circumstances they explained.

Mr. Hanson asked Mr. Shepherd if it is generally the case that the property owner accepts the liability for the property when they purchase it.

Mr. Shepherd responded that is generally the case.

Commissioner Zerwas stated his preference to follow current rules as written unless the property owner can show previous rules were not followed by ERMU, at which point he would be inclined to re-evaluate the circumstances.

Commissioner Stewart asked if there is a timeline for when the decision needs to be made.

Mr. Harvala explained that the issue needs to be resolved for the property owner to receive a certificate of occupancy.

The Commission directed staff to make no change to the ERMU Water Rules and invited the property owner to provide any evidence.

5.02 **Financial Report – September 2023**

Ms. Karpinski presented the September 2023 financial report.

Moved by Commissioner Bell and seconded by Commissioner Stewart to receive the September 2023 Financial Report. Motion carried 5-0.

5.03 **2024 Annual Business Plan: Rates and Review, Stakeholder Communication Plan, CIP Budget**

Ms. Karpinski presented the rates and review, stakeholder communication plan, and CIP budget portions of the Annual Business Plan in preparation for approval of the entire plan in December.

Ms. Karpinski shared that staff was proposing a 0% electric rate increase and a 2% water rate increase for 2024.

Ms. Karpinski explained that some water projects will be happening earlier and that ERMU will likely be bonding in 2025 for water treatment plants and wells.

Ms. Karpinski also explained that ERMU would be moving to a budgeting system more comparable with other utilities in providing more of a direct pass through of Energy Adjustment Clause (EAC) charges to customers in the form of a Power Cost Adjustment (PCA).

Chair Dietz asked if staff was aware what other local utilities would have for rate changes in 2024.

Mr. Hanson responded that staff didn't know yet and added that it is common practice in Minnesota Municipal Power Agency member communities to pass through all EAC to customers in the form of a PCA, whereas ERMU had been absorbing the initial \$500,000 in increases.

Mr. Mauren contributed that a press release will be written to announce the 2024 rates in the Elk River Star Newspaper. He also shared some of the measures the communications department has taken to increase the public's awareness of ERMU's rebate offerings.

Commissioner Bell expressed concern over the fact that the vacancy in the conservation department created in early 2023 had not been filled and suggested it could be having an effect on meeting Conservation Improvement Program requirements. There was discussion.

Ms. Karpinski explained that the position is budgeted to be filled halfway through 2024.

5.04 **2024 Utilities Fee Schedule**

Mr. Hanson presented the Utilities Fee Schedule. He noted the Grid Access Fee, \$5.56 per kW in excess of four kW, prevents other customer groups from subsidizing these systems. Mr. Hanson also explained that statute requires the fee amount must be established by a rate study which ERMU had completed in 2019.

He added that some cooperative utilities cap this fee and that staff will evaluate the need for a cap in the future.

Mr. Hanson explained that the increase in Manual Meter Reading fees is related to the implementation of Advanced Metering Infrastructure which will no longer require a mobile meter reader in the community. The fee now covers the cost of mobilizing staff to read the meter in person rather than gather the data through the network.

Moved by Commissioner Westgaard and seconded by Commissioner Bell to approve the 2024 Utilities Fee Schedule for Adoption into Ordinance by the City Council. Motion carried 5-0.

5.05 **2023 Third Quarter Delinquent Items**

Ms. Karpinski presented the 2023 Third Quarter Delinquent Items.

Moved by Commissioner Zerwas and seconded by Commissioner Stewart to approve the 2023 third quarter delinquent items submitted. Motion carried 5-0.

5.06 **2023 Assessments**

Mr. Hanson presented the 2023 Assessments in the amount of \$10,994.99.

Chair Dietz asked if staff tracks whether properties repeatedly appear on the list year after year.

Staff responded that they do not track how often a property is assessed.

Moved by Commissioner Westgaard and seconded by Commissioner Bell to approve 2023 Assessments Listing totaling \$10,994.99 to provide to City Council for assessment on property taxes. Motion carried 5-0.

5.07 Health Insurance Update

Mr. Hanson presented the Health Insurance Update which provided details on a change in medical insurers from Blue Cross Blue Shield to HealthPartners to provide comparable coverage at a lower increase, and a continued 85% employer contribution towards premiums and health savings accounts.

Chair Dietz asked if staff had heard any concerns from employees about changing providers.

Mr. Hanson explained that he had met with staff and no concerns were expressed.

Moved by Commissioner Stewart and seconded by Commissioner Bell to approve the 2024 ERMU employee benefits offering including a continued employer contribution to health savings accounts. Motion carried 5-0.

5.08 Financial Reserves & Investment Committee Update

Commissioner Westgaard provided an update from the Financial Reserves & Investment Committee meeting which occurred immediately before the commission meeting.

The committee recommended no changes to reserve balances while recommending that staff research short-term investment opportunities.

Chair Dietz sought confirmation that the committee was recommending no changes to reserve balances in order to fund future projects.

Staff confirmed this was correct.

5.09 Customer Satisfaction Survey Report – Q3 – 2023

Mr. Mauren presented the Customer Satisfaction Survey Report – Q3 – 2023. There was discussion.

5.10 Wage & Benefit Committee Proposed 2024 Adjustments

Mr. Hanson presented the memo which laid out the following proposed adjustments for 2024:

- 4.0% wage adjustment for all staff, regardless of the Metro Average.
- Updating the Bereavement Leave Policy to include more inclusive language for relations that qualify for three days of leave and a one-day tier for aunts, uncles, and cousins.
- Adjustments to the Nightwork and Rest Time Policy to provide a two-hour minimum rest time for nightwork occurring 10:00 p.m. to 6:00 a.m. and eight hours of rest time for employees working four or more hours between the hours of 12:00 a.m. to 6:00 a.m.
- 2024 Vacation Accrual Schedule (increases to years 0-13):

0-4 yrs.	15 days
5-9 yrs.	16 days
10-11 yrs.	17 days
12-13 yrs.	19 days
14-15 yrs.	20 days
16-18 yrs.	22 days
19 yrs.	25 days
20-21 yrs.	26 days
22-23 yrs.	27 days
24+ yrs.	28 days

Mr. Hanson asked that the minutes reflect that the Metro Average table presented in his memo reflects the respective entities vacation accruals for new hires.

Mr. Hanson followed up to clarify confusion at the October meeting by confirming the City offers 15 days of accruable vacation time for new hires.

Chair Dietz asked staff what the current Metro Average Wage Adjustment calculation was.

Ms. Zachman responded that it was at 3.47%.

Chair Dietz noted that ERMU offered the most time off of all the utilities listed in the Metro Average table.

Mr. Hanson shared that staff has raised concerns for losing candidates to entities that offer higher starting vacation rates. He asked that the commission consider approving a starting rate of 15 days as the hiring market is extremely competitive and ERMU hopes to continue to draw good candidates to provide high quality services.

Commissioner Bell shared his perspective that he has a hard time with the increase to vacation time given ERMU's position in the comparison.

Mr. Hanson reiterated the difficult hiring market and feedback from interview candidates was also a basis for this request.

Commissioner Zerwas asked what entities offer 15 days of time off to new hires. There was discussion.

Mr. Hanson added for consideration that ERMU is not only in competition with other utilities with regard to administration and water staff, whereas the Metro Average comes from other electric utility companies.

Mr. Ninow contributed that ERMU's current vacation offering have made it harder for the water department to hire experienced staff.

Commissioner Zerwas shared that he was amenable to do some increase in vacation accrual this year while next year creating a policy for lateral transfers for new hires with more experience, giving them more days to start with.

The Commission asked staff to develop a policy for lateral transfers.

Chair Dietz proposed the following vacation accrual schedule:

0-3 yrs.	13 days
4-9 yrs.	16 days
10-11 yrs.	17 days
12-13 yrs.	19 days
14-15 yrs.	20 days
16-18 yrs.	22 days
19 yrs.	25 days
20-21 yrs.	26 days
22-23 yrs.	27 days
24+ yrs.	28 days

There was consensus to adopt this schedule.

Chair Dietz asked that the minutes state that the committee was recommending a 4% wage adjustment instead of the Metro Average of 3.47% in response to extreme inflation but that this should not be considered a precedent for future wage adjustments.

Moved by Commissioner Stewart and seconded by Commissioner Zerwas to approve proposed 2024 Wage and Benefits Adjustments with the adaptation to the vacation accrual schedule, effective January 1, 2024. Motion carried 5-0.

5.11 PFAS Litigation Settlement

Mr. Hanson presented his memo sharing that legal staff has advised him that it was in ERMU's best interest to join a class action lawsuit against 3M and DuPont for the proliferation of Per- and polyfluoroalkyl substances (PFAS).

Chair Dietz asked if settlement money had to be used for PFAS remediation only.

Mr. Hanson responded that is unknown at this point.

There was discussion of ERMU's current PFAS level. Mr. Hanson explained there would be additional testing to get trending data.

Commissioner Zerwas shared his awareness that there are multiple legal agencies that could provide services and suggested researching an agency with a lower fee than what was listed in the retainer agreement for Lockridge Grindel Nauen.

There was discussion about contingency fee structuring.

Mr. Shepherd provided context that any firm that would be hired would apply contingency and disbursement fees like those listed in the contract provided for approval. He went on to state that while the current contract called for a 25% contingency fee it was standard for a firm to require 33.33% with 40% set aside when a case goes to trial. There was discussion.

Moved by Commissioner Westgaard and seconded by Commissioner Bell to direct staff to remain in class and file claim forms. Motion carried 5-0.

Moved by Commissioner Stewart and seconded by Commissioner Westgaard to engage legal counsel and approve retainer agreement. Motion carried 4-1. Commissioner Zerwas voted against.

6.00 BUSINESS DISCUSSION

6.01 Staff Updates

Mr. Hanson corrected his staff update to say that ERMU had only received one proposal from a contractor to conduct the compensation study that the Commission directed staff to pursue at the October meeting.

Mr. Hanson shared on behalf of the administration director that ERMU is planning to enter into a contract with Frontier Energy Services and will be bringing the contract forward soon. He explained they will be handling commercial rebates and provide a program to assist with tracking rebates.

Mr. Mauren expressed his appreciation for the opportunity to attend American Public Power Association's Legal & Regulatory Conference sharing that it was a very informative and beneficial opportunity. Mr. Shepherd also attended the conference and expressed his appreciation.

6.02 City Council Update

Commissioner Westgaard provided an update from the City Council covering topics including conditional use permits for outdoor storage, a home occupation ordinance, and traffic management.

6.03 Future Planning

Chair Dietz announced the following:

- a. Regular Commission Meeting – December 12, 2023
- b. 2023 Governance Agenda

6.04 Other Business

With consensus from the Commission, Commissioner Stewart requested that staff bring forward a proposal to increase the annual Employee Clothing allotment of \$75 in branded apparel for non-field staff.

There was discussion about the Employee Appreciation Lunch. The group agreed that it was a great event.

7.00 ADJOURN REGULAR MEETING

Moved by Commissioner Westgaard and seconded by Commissioner Bell to adjourn the regular meeting of the Elk River Municipal Utilities Commission at 5:04p.m. Motion carried 5-0.

Minutes prepared by Tony Mauren.



John J. Dietz, ERMU Commission Chair

Tina Allard, City Clerk