

Board Members:  
Jack R. Smart, Chairperson  
Larry L. Kieft  
John F. Naser  
James F. VanderMolen  
Gerald A. Witherell

## **Board of Light and Power**

**1700 Eaton Drive  
Grand Haven, Michigan 49417  
616/846-6250  
Fax 616/846-3114**



General Manager  
David R. Walters

November 5, 2018

### City Council Members:

Last week Friday, we learned to our considerable dismay that two significant items involving the Board of Light & Power (the "BLP") were placed on the agenda for this evening's City Council meeting, specifically items 13.A. and 13.B. We believe these action items to be inappropriate for both procedural and substantive reasons, as discussed below. We respectfully request that these two agenda items be withdrawn or tabled. As a procedural matter, the BLP objects to these proposed action items first and foremost because they were generated without any input from the BLP. No one bothered to contact the BLP to solicit its input into these items. Indeed, the BLP was not even afforded the courtesy of being notified that these items were being placed on the agenda, much less being invited to attend the meeting or to speak to the issue. This is not good process.

Further, following the direction of the City Council at its September 4, 2018 meeting, the BLP scheduled a series of public forums for the purpose of sharing information about the its potential future power supply plans, to respond to questions, and to provide an opportunity for public input. These forums will be led by representatives of Burns & McDonnell, a third-party engineering consulting firm. Burns & McDonnell will share their findings and recommendations following their independent study and assessment of the BLP's future power supply needs. Five such meetings are scheduled, the first of which is to take place this evening. Notwithstanding these upcoming public events, however, the City Council has evidently elected to proceed without availing itself of the benefit of these sessions. In doing so, it will be acting without being fully informed of the complex array of issues and challenges involved in a decision of this magnitude. The present agenda items thus seem premature and unduly hasty. For these reasons alone, it would seem prudent to defer the items from discussion at tonight's Council meeting.

The BLP also objects to the proposed Council actions as a substantive matter. We have very grave concerns about the practicality, feasibility, sustainability, and financial viability of these actions. A more detailed explanation of these concerns, however, would require substantial development better suited for another forum, and is beyond the scope of this letter. Suffice it to say that the approval of these proposed items would, in the judgment of the BLP, be a very costly mistake and would most definitely not be in the best interests of the City.

We submit that it would be much more productive for representatives of the City Council and of the BLP to meet privately to work out the details of these types of issues and to then share their joint recommendations to

City Council Members  
November 5, 2018  
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the Council for approval. Such an approach would be far more consonant with the cooperative history and traditions of this community. For these reasons, then, the BLP respectfully reiterates its request that these two action items (specifically, agenda items 13.A. and 13.B.) be taken off the agenda for this evening's meeting.

Sincerely,  
GRAND HAVEN BOARD OF LIGHT AND POWER

A handwritten signature in black ink, appearing to read "Jack Smant". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jack Smant  
Chairman of the Board

c: BLP Board of Directors

## Dave Walters

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**From:** Patrick McGinnis <pmcginnis@grandhaven.org>  
**Sent:** Wednesday, November 7, 2018 5:06 PM  
**To:** Dave Walters  
**Cc:** Ronald A. Bultje (RBultje@dickinson-wright.com); Mary Angel  
**Subject:** Council Resolution

Dave

City Council reviewed and affirmed Chapter 14 of the City Charter on Monday evening, and they passed a resolution asking us to follow the direction set forth in the Charter. It is a straightforward provision, in pertinent part:

### **Sec. 14.1. - Authority of council.**

*(a) The power to authorize the making of contracts on behalf of the city is vested in the council and shall be exercised in accordance with the provisions of law.*

*(b) All contracts, except as otherwise provided by ordinance in accordance with the provisions of [section 14.2](#) hereof, shall be authorized by the council, and shall be signed on behalf of the city by the mayor and the clerk.*

To operationalize this direction, I believe that a list of contracts should be forwarded to attention the attention of Mary Angel ([mangel@grandhaven.org](mailto:mangel@grandhaven.org)) following each BLP meeting. I will then place the list on the consent agenda for the ensuing City Council meeting for approval. Copies of the contracts should also be delivered so we can secure the signatures of the Mayor and City Clerk per Charter direction. If you feel any of the contracts require additional explanation or discussion, please so note and we can place those contracts on the agenda under new business. Otherwise we can work together to routinize this approach so that it does not interfere with the efficient conduct of business.

I am copying the City Attorney so that he can advise if there are any legal deficiencies in this approach.



### **Pat McGinnis**

City Manager  
City of Grand Haven  
519 Washington Ave  
Grand Haven, MI 49417  
**43°N 3' 45.4566" -86°W 13' 31.5798"**  
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[pmcginnis@grandhaven.org](mailto:pmcginnis@grandhaven.org)

Board Members:  
Jack R. Smant, Chairperson  
Larry L. Kieft  
John F. Naser  
James F. VanderMolen  
Gerald A. Witherell

## Board of Light and Power

1700 Eaton Drive  
Grand Haven, Michigan 49417  
616/846-6250  
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General Manager  
David R. Walters

January 4, 2019

City of Grand Haven  
Attn: City Council  
Grand Haven City Hall  
519 Washington Avenue  
Grand Haven, MI 49417

Re: Council Resolution of November 5, 2018

Mayor and City Council:

As you know, the City Council adopted a resolution at its November 5, 2018 meeting which was directed to the Board of Light & Power (the "BLP"). More specifically, the resolution, which was carried with a vote of 3-2, directed *"the Board of Light & Power to adhere to the provisions of Chapter 14 of the City Charter in regard to the making of contracts on behalf of the City of Grand Haven."* After reviewing this matter and giving it considerable thought and reflection, the BLP has concluded that it currently is adhering to the provisions of Chapter 14 and that in fact it historically has always been doing so. The purpose of this letter is to explain the BLP's understanding with respect to this matter.

The current issues arise out of language in Chapter 14 of the City Charter, which addresses the subject of contracts. Specifically, Section 14.1 of the Charter specifies that *"[a]ll contracts . . . shall be authorized by the council . . ."* It further provides that all such approved contracts must be signed by the City Mayor and the City Clerk. It is the BLP's understanding, however, that this Charter language must be read in the larger context of other pertinent provisions of the Charter, as well as the historical practice and pragmatic realities of managing a modern utility operation.

We believe that Chapter 14 of the Charter cannot be properly construed without reference to Chapter 16, which specifically addresses the role and responsibilities of the BLP. Section 16.3 describes the powers and duties of the BLP. It provides:

*"Subject to the general direction of the council, the board shall have charge of the city's electric services, and shall organize and conduct the affairs of the city systems for the generation, purchase, and distribution of electric light and power in a manner consistent with the best practices therefor. The board shall make contracts concerning the electric facilities of the city, subject to the overall control of the council relating to all departments of the city."*



The next section, Section 16.4, addresses the purchase and sale of property. It provides, in pertinent part:

*"The board of light and power shall establish the procedures for the purchase and sale of personal property...."*

Similarly, Section 16.5 addresses the acquisition and disposition of property by the BLP:

*"The board shall have the power to acquire property, and interests in property, both real and personal, in the name of the city, for its purposes, and shall have the power to dispose of personal property by sale, exchange, or lease. The board may dispose of real property or any interest therein by sale, exchange, lease, or otherwise, upon the approval thereof by the affirmative vote of not less than four members of the council, and subject to the limitations on the sale of property by the city contained in section 14.3 and 15.5 of this charter."*

It is the BLP's understanding that the general rule of Chapter 14 of the Charter must be construed and interpreted in light of these other Charter provisions. A well-known rule of construction provides that specific terms are to be given greater weight than general language. Under this principle, the general provisions of Chapter 14 must give way to the more precise and specific provisions of Chapter 16, at least to the extent that they cannot be harmonized. We think this is especially the case given that the power given to the Council to exercise "*general direction*" (Section 16.3(a)) and "*overall control*." (Emphasis added.) The fact that the section uses adjectives such as "general" and "overall" strongly implies that the converse is also true, i.e., that the City Council is not authorized to give "specific" direction or to exercise "specific" control. These sections of the Charter clearly contemplate that the general powers of the City Council are circumscribed with respect to the making of purchases or entering into contracts by the BLP.

Chapter 14 of the Charter must also be construed in light of the unique governance accorded the BLP. Unlike other departments of the City, the BLP is governed by a five-member Board elected directly by the voters. While the BLP indisputably remains a department of the City, it is also clear that the drafters of the Charter contemplated that the BLP would enjoy a level of independence and autonomy. Indeed, Section 16.1 provides that the BLP shall "*keep a journal of its meetings*" and that journal "*shall be filed with the clerk as a public record*." This further suggests that the BLP is to make its own decisions and to report those decisions to the City Council only on an after-the-fact basis. It does not seem to imply some process of Council pre-approval or pre-authorization.

This interpretation is also consistent with the general character and complexity of the services provided by the BLP. Much of what the BLP does is highly sophisticated and technical in nature. This is undoubtedly why Section 16.2 of the Charter mandates that the BLP appoint its own professional director. Significantly, that section provides that the director is to report to the BLP, not to the City Council. Again, this is all consistent with the understanding that the management and administration of a modern municipal power system

necessitates its own professional management and executive leadership. This also suggests a limited role for Council oversight.

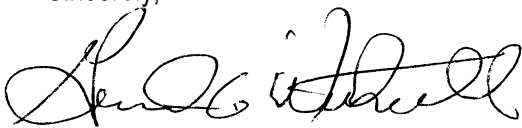
The interpretation of Chapter 14 must also be considered in the context of a historical perspective. To our knowledge, the City Council has never, in its entire history, assumed the responsibility for reviewing contracts of the BLP. This is not a case of where Council review has become more lax over time and somehow needs to be "re-set." Rather, this is a case of where the City Council has never required review of BLP contracts on a contract-by-contract basis. Further, this long-standing approach has consistently been approved and affirmed by the prior City Attorney on those occasions when the issue was raised.

Finally, the obligations of Chapter 14 must be construed in light of the practical implications. Requiring City Council approval of all contracts (particularly if they include all purchases, which might effectively be construed as contracts) would simply be administratively impractical. This would be particularly true if each such contract further required the signatures of both the City Mayor and the City Clerk. Such a process would be administratively burdensome, cause inordinate delays and added expense to the City, and would substantially interfere with the BLP's mandate to *"organize and conduct the affairs of the city's systems for the generation, purchase, and distribution of electric light and power in a manner consistent with the best practices therefor."* (Emphasis added.) The BLP submits that a contract-by-contract review by the City Council would not constitute "best practices" and simply could not have been within the contemplation of the Charter drafters.

What then, does it mean, that the City Council is to provide "general direction" and exercise "overall control" of the BLP? We believe that this involves City Council approval of the BLP's purchase policies, as amended from time to time, as required in Section 16.4. This was the interpretation of the prior City Attorney, and this is the approach that has been followed by the BLP throughout its operating history. We also believe this involves Council review of BLP actions as highlighted in its minutes and communicating any concerns as they arise. It should not involve a substitution of the Council's judgment for that of the BLP, or supplant the unique role and responsibilities accorded the BLP under the Charter.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald A. Witherell", written in a cursive style.

Gerald A. Witherell  
Acting Chairperson

c: Pat McGinnis  
David Walters  
BLP Board of Directors

Board Members:  
Jack R. Smant, Chairperson  
Larry L. Kieft  
John F. Naser  
James F. VanderMolen  
Gerald A. Witherell

## Board of Light and Power

1700 Eaton Drive  
Grand Haven, Michigan 49417  
616/846-6250  
Fax 616/846-3114



General Manager  
David R. Walters

January 4, 2019

City of Grand Haven  
Attn: City Council  
Grand Haven City Hall  
519 Washington Avenue  
Grand Haven, MI 49417

Re: Improving BLP/Council Communications and Information Sharing

Mayor and City Council:

As you know, the City Council adopted a resolution at its November 5 meeting encouraging the Grand Haven Board of Light & Power ("BLP") "to adhere to the provisions of Chapter 14 of the City Charter in regard to the making of contracts on behalf of the City of Grand Haven." After discussing the matter at our meeting of December 20, we provided a written response outlining our understanding of the requirements of Chapter 14. As that letter indicates, we believe we have been, and continue to be, in compliance with those requirements.

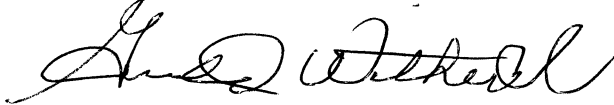
Nonetheless, it is certainly not our intent to be difficult and we recognize the Council's on-going responsibility to exercise "overall control" and to provide "general direction" to the BLP with respect to its operations. We would welcome the opportunity to improve communications and information sharing between the governing bodies to facilitate that type of general oversight. In that regard, we have two suggestions to propose.

First, we propose placing "current and prospective BLP issues" on the agenda of a council work-study session on a quarterly basis. Staff and representatives of the BLP would attend these sessions, during which they would provide a brief report, respond to questions, and/or update the Council on any matters for which the Council may desire interaction. This would provide an opportunity for regular dialogue and interaction during a period where significant events will be taking place.

Second, we would invite and encourage Council members to attend our Board meetings, potentially on a staggered basis. Doing so would enable Council members to observe first-hand the business and affairs of the BLP. Our agendas set aside a period of time for questions and public comment. Alternatively, the designated staff "liaison" could more regularly attend to better facilitate this process.

These two steps would be in addition to the oversight already being exercised by the Council through its review of BLP minutes, audited financial statements, and annual report. Taken together, these steps should go a long way toward maintaining open lines of communication and ensuring proper Council oversight. Please let us know when it would be convenient to discuss these matters further.

Sincerely,

A handwritten signature in black ink, appearing to read "Gerald Witherell", written in a cursive style.

Gerald Witherell  
Acting Chairperson

c: Pat McGinnis  
David Walters  
BLP Board of Directors



January 25, 2019

**Via First Class Mail**

Mr. Gerald A. Witherell, Acting Chairperson  
Board of Light and Power  
1700 Eaton Drive  
Grand Haven, MI 49417

**Re: Correspondence of January 4, 2019**

Dear Mr. Witherell:

On January 4, 2019, you wrote to the Mayor and the Council of the City of Grand Haven, and in the process gave your interpretation of City of Grand Haven Charter, particularly as to the contractual authority of the Council and the Board of Light and Power as described in Section 14.1 and Section 16.3 of the Charter. I have given a written opinion to the Council on the matter, and the Council has asked me to correspond directly to you in response to your letter.

Section 14.1 of the Charter is very clear. It specifies that all contracts shall be authorized by the Council and signed by the Mayor and the Clerk. The only exceptions to those requirements do not apply to the BLP.

Section 16.3 of the Charter does indeed give some contractual authority to the BLP. Specifically, it states that the BLP shall "make contracts" concerning the City's electric facilities, but subject to the "overall control of the council relating to all departments of the city." I note that according to Merriam-Webster.com, when "overall" is used as an adjective, it means "including everything; viewed as a whole." In other words, nothing in Section 16.3 regarding the contractual authority of the BLP changes the control over City contracts granted to the Council per Section 14.1. Further, Section 16.3 makes it clear that the BLP is treated like "all departments of the city."

In your letter, you stated "the City Council has never, in its entire history, assumed the responsibility for reviewing contracts of the BLP." That simply is not correct. In the very recent past, the Council approved a contract with Varnum to do legal work for the City through the BLP, without "being in any way adversarial to the City" [Varnum letter dated November 19, 2018]. Further, the Council has approved contracts for wind farms and solar projects in which the BLP has participated for many years. The Council has

Mr. Gerald A. Witherell  
January 25, 2019  
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approved contracts allowing the BLP to contract for pooled energy efforts through Michigan Public Power Agency. In reality, the Council has a long history of being very involved with and exercising control over BLP contracts.

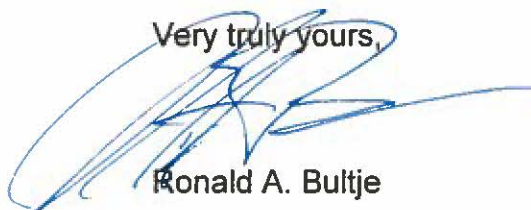
It is true that the Council has not always approved every contract in which the BLP has entered. However, that is exactly what the Council has decided to do now, and the Council has the authority to do so per Section 14.1.

In an email dated November 7, 2018, the City Manager advised the BLP's General Manager how the Council will approve BLP contracts, and have them signed by the Mayor and the Clerk, in an expeditious and efficient manner. The procedure will not cause a major disruption to the BLP's operating procedure.

I have been advised this week that since Council adopted a resolution on November 5, 2018 regarding its approval process for BLP contracts, and since the City Manager's email of November 7, 2018, the BLP has it appears approved numerous contracts without sending any of them to the Council. The Council has asked me to be very clear on this point. The BLP's compliance with the Council resolution of November 5, 2018 and the City Manager's email of November 7, 2018 is not optional. A deliberate failure by the BLP to comply will be regarded as a violation of the contractual authority granted by the Charter to the Council, and thus a violation of the Charter itself.

Please advise if you have questions or comments. However, in the meantime, the Council anticipates that there will be mutual cooperation and respect between it and the BLP, and that the BLP will comply with the Council's directives regarding BLP contracts. Thank you.

Very truly yours,



Ronald A. Bultje

RAB:jls

cc: Mr. Pat McGinnis, City Manager (via email)  
Mr. David Walters, General Manager (via email)

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Board Members:  
Jack R. Smart, Chairperson  
Larry L. Kieft  
John F. Naser  
James F. VanderMolen  
Gerald A. Witherell

## Board of Light and Power

1700 Eaton Drive  
Grand Haven, Michigan 49417  
616/846-6250  
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General Manager  
David R. Walters

March 6, 2019

City of Grand Haven  
Attn: City Council  
Grand Haven City Hall  
519 Washington Avenue  
Grand Haven, MI 49417

Re: City Attorney's Correspondence of January 25, 2019

Mayor and City Council:

I have received and reviewed the January 25, 2019 correspondence from the City Attorney and have shared it with the Board of Light and Power (the "Board" or "BLP"). The Board has directed me to send this letter as its response.

It is the BLP's position that it has been and continues to be operating in a manner consistent with and in full compliance with all approved purchasing policies and historically established purchasing and contracting procedures and practices. Such policies, procedures, and practices have been duly approved by the Board and by the City Council and have been affirmed by the City Attorney over a period of many years – probably since the Board's establishment under the Charter. These policies, procedures, and practices have been appropriately determined to be in compliance with the Charter's requirements and have been deemed lawful by past legal counsel to the City. As such, they are also fully consistent with the Council's initial direction to the Board in its November 5 resolution.

Further direction given to the BLP in the City Manager's November 7, 2018 e-mail to the BLP's General Manager, and in the January 25, 2019 direction to the Board from the City Attorney, are wholly inconsistent and irreconcilable with these approved purchasing policies and established practices. The Board does not understand the apparent urgency for the newly established legal requirements contained in these directives, as it has not been discussed or shared with us. Additionally, it is apparent Council does not fully understand the Board's currently established and approved purchasing policies and practices nor the potentially detrimental consequences such changes, as suggested, would involve.

As you know, the Board had expressed in its November 5, 2018 letter to Council, its "grave concerns about the practicality, feasibility, sustainability, and financial viability of these actions" (i.e., the two resolutions the Council was considering that evening). We requested Council withdraw or table these actions for "both

procedural and substantive reasons" to allow for a more detailed and productive process between members of the Board and Council, "more consonant with the cooperative history and traditions of this community." Despite our entreaties, Council decided to pass the revised resolution we are now addressing without engaging in such a process.

The Board thus will continue to follow its lawful and approved policies and well-established historical procedures and practices until it can more fully understand the purpose, rationale, and legal basis for this entirely new direction provided by the City Manager and City Attorney, and until the City Council and the Board can reach some mutual understanding on how it could even be implemented as a practical matter.

Respectfully,

A handwritten signature in black ink, appearing to read 'Gerald A. Witherell', written in a cursive style.

Gerald A. Witherell  
Acting Chairperson

c: Mr. David Walters, General Manager  
Mr. Ronald A. Bultje, City Attorney  
Mr. Jack Smant, Chairperson  
Mr. Larry Kieft, Director  
Mr. John Naser, Director  
Mr. Jim VanderMolen, Director