

# VARNUM

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December 13, 2022

***Via Email (emily.nail@optum.com)  
and Priority Overnight Mail***

**Ms. Emily Nail, Chairperson  
Grand Haven Human Relations Commission  
Grand Haven City Hall  
519 Washington Avenue  
Grand Haven, Michigan 49417**

**Re: Elizabeth Pell v. Grand Haven Board of Light & Power  
File No. 2022-1  
Complaint of Alleged Discrimination Dated August 23, 2022**

Dear Ms. Nail:

This firm represents the Grand Haven Board of Light & Power (BLP), the Board of Directors of the BLP, and the staff of the BLP, in connection with the above-referenced matter. This letter, along with all attachments, constitutes the BLP's Position Statement in response to the allegations of gender discrimination and harassment by Ms. Elizabeth Pell.<sup>1</sup> Thank you for considering this Position Statement as the Commission looks into this matter.

## **I. INTRODUCTION**

At the outset, it should be noted that the allegations in Ms. Pell's complaint are extremely narrow and do not even involve her. Rather, she is alleging that the BLP Board and its administrative staff discriminated against another member of the BLP Board, Director Andrea Hendrick, based on Director Hendrick's gender, during the course of a single BLP meeting on August 3, 2022. However, it is clear based on the video of that August 3 meeting, and the extensive history between Director Hendrick and the other Board members and staff of the BLP, that Director Hendrick was never treated differently because of her gender.

Instead, the events that occurred during the August 3 meeting exemplify a wide-ranging political dispute between parties with differing opinions regarding the BLP and its future direction and control, a dispute that has nothing to do with anyone's gender. This is a dispute that involves clashing personalities, a disabled former Board chair who suffers from profound hearing loss (and who has since resigned), and difficult behavior by a relatively new Board member – Director

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<sup>1</sup> Please note that while we believe this Position Statement to be complete and correct in all respects, it is based on our initial investigation of the facts and may need to be supplemented if additional facts become available. All defenses to the allegations are reserved regardless of whether those defenses are expressly stated.

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Hendrick – who has made repeated personal attacks on other BLP Board members and staff, even threatening the livelihood of a female staff member and mocking the age, gender, race, and disability status of other Board members and staff. What it is *not* is gender discrimination or harassment *against* Director Hendrick. Accordingly, the Commission should determine that discrimination has not been shown and dismiss the complaint in this matter.

Despite the fact that this complaint by Ms. Pell is meritless, and the Commission itself has apparently concluded that gender discrimination has *not* been established, the BLP understands that the Commission is considering recommending specific training for the BLP Board and staff, including possible training on implicit bias, the Open Meetings Act (OMA), and Board governance. What the Commission may not know, however, is that the BLP already has in place a robust Non-Discrimination and Non-Harassment policy, that all Board members are given training on the OMA and appropriate governance as part of the Board orientation process, and that the entire Board recently underwent a full-day of training on best practices for Board governance.

Nonetheless, the BLP recognizes the critical importance of these issues to effective governance and to providing fair and equitable service to the diverse, vibrant community of Grand Haven that the BLP serves. Thus, although there has been no finding whatsoever that the BLP has engaged in gender discrimination, violated the OMA, or breached any other principle of good Board governance, the BLP is happy to consider implicit bias training and additional training on the OMA and Board governance, provided *all* members of the BLP Board are required to attend and to participate fully. The BLP intends to explore different options for training in these areas in order to ensure that the impact of the costs of such training on community ratepayers are kept to a minimum.

The Commission also apparently plans to recommend that the BLP appoint a timekeeper for Board meetings to preserve data on how long and when each Director or staff member speaks. The BLP notes that this information is already available by viewing the videos of all BLP meetings, currently housed on BLP's YouTube channel, and thus respectfully submits that this information can already be tracked by any individual or member of the public.

With respect to the Commission's proposal that all requests for information from individual Directors to staff be tracked, including dates of requests and what was provided and when, the BLP notes that this issue was already addressed at the BLP's September 15, 2022 meeting. At that meeting, all Directors agreed that it was overwhelming to BLP staff for all of the Directors to constantly be asking the staff for information, and thus the Directors agreed that all requests would go through current Board Chair Michael Westbrook. The BLP thus respectfully suggests that the Commission consider whether this new process is working smoothly before imposing additional costs on the BLP or on Chair Westbrook's limited time.

Finally, with respect to the Commission's possible recommendation regarding mediation, the BLP is intrigued. It is unclear what is the nature of the dispute within the Board of Directors, and between the staff and the Board, that the Commission believes could be resolved through mediation, but the BLP is interested in hearing more, including what the specific topics for such mediation might be.

The proposal for mediation with the Grand Haven City Council is even more intriguing. Although the Commission has provided no explanation what the BLP's relationship with the City Council possibly has to do with the unproven allegations of gender discrimination currently pending before the Commission, and the Commission's recommendation for mediation with the City Council appears to fall far afield of the Commission's mandate, the BLP would welcome the opportunity to engage in mediation with the City Council on the major areas of disagreement between the two bodies. Currently, the primary issue in dispute relates to the Harbor Island Contamination and Environmental Remediation matter.

Accordingly, the BLP would like to engage in more detailed discussions with the Commission to better understand this recommendation regarding mediation, but the BLP is interested in exploring it further, and looks forward to discussing these issues with the Commission and possibly developing a joint plan for mediation.

## **II. BLP INFORMATION AND PHILOSOPHY**

### **A. BLP's Commitment to Equitable Treatment, Equal Opportunity, and Non-Harassment**

BLP has long-had a strong commitment to treat all stakeholders – customers, community members, employees, and Board members – fairly and equitably. This is expressed in the BLP's most recent Strategic Plan, which lists the following Core Values:

#### Work cooperatively as a team

- Prioritize wellness, education and training
- Maintain a safe a secure workplace
- *Treat our team members fairly, equitably and with mutual respect*
- *Value the contributions of everyone on the team*

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#### Serve with integrity

- Be accountable for our actions
- Serve openly and honestly
- *Treat all in our community fairly, equitably, and respectfully*

#### Provide value to the community

- *Improve the community we serve*
- Remain a trusted energy partner
- *Engage and understand our customers*

(Excerpts from Strategic Plan, Tab A (emphasis added).) This statement of the Core Values is repeated during the orientation that all Board members receive at the time of their appointment or election to the BLP. ("Our Mission and Core Values," Tab B.)

In addition, the BLP has for many years had a robust Non-discrimination and Non-harassment policy, which provides:

The Board is committed to principles of equal employment opportunity and non-discrimination. The Board believes individuals should be treated with dignity and respect, and forbids any unlawful discrimination, offensive conduct, or harassment by Board employees (and by others related to the BLP) of a sexual nature, or based on race, creed, color, religion, *sex*, age, national origin, height, weight, marital status, disability, or any other protected status.

(Excerpts from Employee Handbook, Tab C, at 13 (emphasis added).) Employees and others who believe they have been subjected to discrimination or harassment in violation of this policy must immediately report such conduct, so that a "prompt, thorough and confidential . . . investigation" can be conducted. (*Id.* at 14.) Once the investigation has been concluded, "[d]isciplinary action, up to and including termination, will be taken against any employee engaging in this type of behavior. Any supervisor or manager who has knowledge of such behavior yet takes no action to end it is also subject to disciplinary action." (*Id.*)

## **B. BLP's Commitment to Best Practices in Board Governance**

The BLP also takes seriously its commitment to conduct Board matters appropriately in conformity with best practices for effective, fair, and equitable governance of public utilities. As noted above, all newly elected or appointed Board members undergo an extensive orientation process, that covers many categories, including the BLP's Core Values, its Charter and Bylaws, and the relevant City of Grand Haven ordinances. In addition, particular attention is paid in orientation to the Open Meetings Act (OMA), and all new members are provided with the Open Meetings Act Handbook published by Michigan Attorney General Dana Nessel. (Tab D.) New Board members are also given a primer on Robert's Rules of Order, to help guide them in the conduct of meetings. (Robert's Rules Information, Tab E.)

Most significantly, on February 16, 2022, all BLP Board Directors, the General Manager, and the Administrative Services Manager (who also serves as Secretary to the Board), underwent a full day of training on "Best Practices in Public Power Governance" conducted through the American Public Power Association and Hometown Connections, both of which are national non-profit utility services organizations specializing in the unique challenges faced by community-owned utilities. (*See Home | American Public Power Association and Hometown Connections: Solutions for Public Utilities.*) This intensive training covered a variety of critical issues, including fair and transparent governance of public utilities, the duty of loyalty, the mechanics of a good board meeting (including yet another review of Robert's Rules), and the importance of recruiting board members of different ages, genders, ethnicities, and income levels to ensure that boards are representative of the communities that they serve. (In-House Training, GHBLP, Best Practices in Public Power Governance, Tab F.)

One of the key takeaways from the "Best Practices in Public Power Governance" training in February 2022 was the importance of a self-assessment by a board to ensure effective

governance and a well-functioning body.<sup>2</sup> Accordingly, the need to conduct an annual Board self-assessment was incorporated into the BLP's recent Strategic Plan. (Tab A.) Since then, on multiple occasions, Board Chair Michael Westbrook has tried to begin the self-assessment process using an outside professional provided through the American Public Power Association and Hometown Connections, but has been unsuccessful. Most recently, at the BLP meeting on November 17, 2022, when Director Westbrook again brought up the issue of using a professional consultant to undertake the self-assessment and implement a Board development plan, Director Hendrick moved to table consulting with the professional, pending resolution of the current complaint of gender discrimination involving her that is now pending before this Commission. Her motion passed. (Minutes of BLP Meeting, Nov. 17, 2022, Tab G, at 6.) Thus, at Director Hendrick's urging, the BLP's efforts to move forward with this critical survey using a professional consultant have been halted for now.

### III. RELEVANT FACTS

#### A. Background Prior to the August 3, 2022 BLP Meeting

As the Commission is undoubtedly aware, there is currently a wide-ranging political debate in the Grand Haven community between parties with differing opinions regarding the BLP and its future direction and control. These are political disputes, and they often reflect the robust sharing of differing viewpoints that are an essential part of our democracy and critical to ensuring that the community is well-served by its public entities. However, unfortunately at times the debate has taken a negative and very personal tone, culminating in highly personal attacks on Board Directors and staff for the BLP, including comments based on their protected categories, such as age and disability status.

For example, in past public Facebook posts, now-Director Hendrick repeatedly mentioned the age, gender, and race of other members of the Board of Directors. She implied that such protected characteristics somehow rendered them no longer qualified to serve on the BLP, despite the fact that each one of them was elected by the voters of the community. (Sample Facebook Posts, Tab H.)

In addition, during a formal performance appraisal of BLP General Manager David Walters that occurred in March 2022, comments that were gathered indicated that Mr. Walters was personally criticized for being an "old white man" who operates in an "echo chamber" with other "old white men," even though it is a basic principal of equal employment opportunity that an employee's protected characteristics – including age, race, and gender – should *never* form the basis for any employment action against an employee. While the Board is unsure if these comments came from Director Hendrick herself or a member of the public, there is a perception that Director Hendrick's previous public comments about Mr. Walters' age, race, and gender have opened the door for others to attack him based on those characteristics, rather than on the merits of his qualifications and job performance.

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<sup>2</sup> Indeed, a Board self-assessment has been recommended for the BLP since the BLP's Readiness Assessments that were issued in 2016 and 2021.

Director Hendrick has also shown a lack of empathy toward a fellow Board Director with a disability. In February 2022, then-Board Chair Larry Kieft informed Renee Molyneux, the Administrative Services Manager for the BLP, that he was suffering from profound hearing loss, and had lost 85 percent of his hearing. He asked that the BLP accommodate him by reorganizing the seating at Board meetings so that he would be able to see each Board member's lips while they are speaking, as this would allow him to follow the discussions and fully participate in Board meetings. All of the other Board members readily accepted this new seating arrangement, except Director Hendrick, who was upset she would no longer be as visible on camera under the new configuration (all BLP meetings are now livestreamed). Seeming to mock Director Kieft's disability, she said in front of BLP staff, "my disability is *not* being seen on camera." She eventually accepted the new seating arrangement, but her attitude was very distressing to Director Kieft and to the staff members who were attempting to accommodate his disability.

Finally, Director Hendrick has been particularly condescending to, and demanding of, BLP staff. With BLP General Manager Walters, she has exhibited an extremely hostile and dismissive tone. For example, in one email exchange from December 2021, she repeatedly demanded – beginning on Friday, December 10, 2021, after 5 p.m., when she knew General Manager Walters was attending a holiday party -- that she receive documents for an upcoming BLP meeting *that very weekend* and before other Board members would receive the documents. In her final email in that exchange, sent near midnight that Sunday night, December 12, she demanded that he provide the documents and only the documents, stating that he provide "ABSOLUTELY NO NARRATIVE" in ALLCAPS in her email to him, over and over again. (Email String Between A. Hendrick and D. Walters, Dec. 10-12, 2021, Tab I.) General Manager Walters was so stunned by the hostile tone and the unreasonable demands over a weekend, that he requested that a copy of the email be put in his personnel file. (*Id.*) Director Hendrick also has made untrue statements on public Facebook posts that BLP staff were refusing to provide her with documents. (*See* Email from E. Booth to D. Walters, Jan 17, 2022, and Jan. 11, 2022 Facebook Post, Tab J.)

But one of the most egregious examples of Director Hendrick's treatment of BLP staff may be the way in which she has treated Administrative Services Manager Renee Molyneux. On Friday, January 7, 2022, at 12:02 p.m., Director Hendrick emailed Ms. Molyneux and requested a copy of General Manager Walters' employment contract by the end of the day. Ms. Molyneux responded that she was out of town with her son because he was undergoing outpatient surgery, and that her assistant – the only other BLP staff member with access to personnel records – was also out due to illness. Ms. Molyneux indicated that she would be happy to provide Mr. Walters' employment contract to Director Hendrick and the rest of the Board on the very next Monday, upon approval by the Board Chair or the Vice Chair. Director Hendrick responded:

I have the right to this information without all of this ridiculousness, I'm just going to request this information via FOIA. Since any request I make seems to take way longer than I would anticipate, I'm requesting Erik and your contract as well.

(Email String Between A. Hendrick and R. Molyneux, Jan. 7, 2022, Tab K.) Ms. Molyneux perceived this to be a direct threat on her job from Director Hendrick, presumably because she was unable to provide Mr. Walters' employment contract to Director Hendrick at that very moment on a Friday when Ms. Molyneux's was off work to take her son to outpatient surgery.

Director Hendrick has also personally accused Ms. Molyneux of gender discrimination. During the February 17, 2022, BLP meeting, Director Hendrick was observed by Ms. Molyneux, who acts as Secretary for the Board, texting or emailing with someone else during the meeting. As the Open Meetings Act Handbook issued by Attorney General Nessel makes clear, such text messages could violate the OMA, depending on the recipient, or, if they involve discussions or deliberations about the matters at the meeting, should at least be made part of the public record to ensure "the OMA's core purpose – the promotion of openness in government." (Tab D at 9.) Accordingly, following the meeting, Ms. Molyneux reached out to Director Hendrick to obtain her texts and emails that were sent or received during the actual Board meeting. Director Hendrick responded, "This is clearly more hostile bullying of the only female member of this board." (Email String Between A. Hendrick and R. Molyneux, Tab L.) When Ms. Molyneux politely responded with a long explanation of why the information was relevant, including citing to the Open Meetings Act Handbook, Director Hendrick responded with a very terse, two-word statement: "FOIA it." (*Id.*)

## **B. The August 3, 2022 BLP Meeting**

As the above facts indicate, there had been a great deal of animosity between Director Hendrick and some of the other BLP Board members and senior staff prior to August 3, 2022. The multiple public comments about some of the Board members' age, race, and gender have stung. Dismissive comments about former Board Chair Kieft's disability have been upsetting. The treatment of the BLP staff, including comments about one employee's age, race, and gender, untrue accusations that staff have refused to provide her with documents, and threats to some staff members' job security, have undermined trust and morale.

It is in this context that the August 3, 2022, meeting occurred. The agenda and video of that meeting are available for review through the BLP's YouTube channel. (*See* 08/03/22 Grand Haven Board of Light & Power - Special Meeting - Bing video). The video speaks for itself, so this Position Statement will not walk through it, step-by-step, here. But it is apparent from the video that there is antagonism between different Board members, that different Board members are frustrated and talking over each other, and that former Board Chair Kieft is struggling with hearing everything that is occurring.

Indeed, at a few points, Board Chair Kieft outright states that he can't hear what is going on, and the video captures members of the audience laughing at him because he is having difficulty hearing. It is worth noting that Mr. Kieft resigned just a few weeks after this August 3 hearing, citing medical issues and his hearing disability.

What is completely absent from the video of the August 3 meeting, however, is any evidence of gender discrimination. At no point does anyone comment on Director Hendrick's gender, or make any sort of comment that could be perceived as gender-related. Indeed, at one point, General Manager Walters can be seen on the video very clearly advocating for Director Hendrick and asking Board Chair Kieft to send the matter at issue to the floor for discussion, rather than moving immediately to a vote.

## **C. Events Subsequent to the August 3, 2022 Meeting**

Since the August 3, 2022, meeting, the BLP Board and staff have attempted to work constructively with Director Hendrick. For example, the start time for Board meetings has been moved back to a start time of 6 p.m. to better accommodate her personal schedule and the schedules of other newer Board members. BLP staff members also continue to follow up on her requests for documents and information as soon as is reasonably feasible and/or in accordance with the Freedom of Information Act requirements.

Indeed, at the BLP's September 15, 2022 meeting, this issue of providing information to Directors, including Director Hendrick, was specifically discussed. At that meeting, the Directors agreed that it was overwhelming to BLP staff for all of the Directors to constantly be asking the staff for information, and thus *all* of the Directors agreed that going forward, all requests for information would go through current Board Chair Michael Westbrook. (Minutes of Sept. 15, 2022 Meeting, Tab P, at 3.)

The BLP and its Directors and staff are unaware of additional allegations of gender discrimination outside of the allegations pertaining to the August 3 meeting, which were the sole subject of the complaint by Ms. Pell to this Commission, other than the accusation of gender discrimination and bullying that Director Hendrick leveled at Ms. Molyneux back in February 2022 when Ms. Molyneux asked, pursuant to the OMA, to see the text messages and email messages that Director Hendrick sent and received during a public Board meeting (see above). If there have been additional allegations that Director Hendrick has been subjected to discrimination based on her gender by any other member of the BLP Board or staff, other than what has been discussed in this Position Statement, we ask that the Commission please bring it to the undersigned's attention so that the BLP Board and its Directors and staff have an opportunity to perform a confidential investigation in accordance with the BLP's Non-Harassment and Non-Discrimination policy, and respond accordingly.

During the Commission's meeting on October 27, 2022, where Ms. Pell's complaint regarding the August 3, 2022 BLP meeting was most recently discussed, several Commission members indicated that it had not been proven that Director Hendrick had been discriminated against based on her gender during the August 3 meeting. Despite this conclusion, the Commission's draft report recommends follow-up action for the BLP and its Directors and staff, including possibly some sort of mediation between the differing political factions or between Director Hendrick and BLP staff, implicit bias training, and training on the OMA and Robert's Rules. However, the Commission appears to be unaware of the extensive training and robust policies on many of these topics that the BLP already has in place, as noted above, and primarily appears to be relying on Director Hendrick to provide information on the BLP's approach to these topics.

## **IV. LEGAL ANALYSIS**

### **A. Duties of the Human Relations Commission and Legal Standards**

The Human Relations Commission for the City of Grand Haven was created to "encourage, promote, and cause mutual understanding, sensitivity, awareness, and respect among all groups in



the city and beyond." Grand Haven, MI Code of Ordinances, Sec. 20-1. Specifically, the Commission is charged with "[e]ncourag[ing] equality of treatment of and nondiscrimination against people of differing *gender*, sexual orientation, *race*, religion, ethnicity, culture, *age*, marital status, *ability* and economic circumstances." *Id.* at 20-3(2) (emphasis added). To effect this, the Commission is responsible for investigating and evaluating complaints of discrimination, and to seeking to correct practices of discrimination through negotiation and education. *Id.* at 20-3(5). If the Commission is unable to resolve a matter, the issue should be referred to the appropriate agency or organization, including, in some cases, the Michigan Civil Rights Commission.

The City Ordinance establishing these duties of the Commission does not discuss the standards that the Commission should apply in determining if discrimination based on a protected category has occurred. However, the standards typically applied by the Michigan Department of Civil Rights, the operational arm of the Michigan Civil Rights Commission, when investigating allegations of discrimination based on a protected category under Michigan's civil rights law, are instructive. The Michigan Department of Civil Rights typically adopts the position of the Michigan Supreme Court in investigating complaints of discrimination, which has held that an individual claiming discrimination based on a protected category must prove "by a preponderance of the evidence" that they were subjected to unlawful discrimination. *See Lytle v. Malady*, 458 Mich. 153, 177 (1998).

During the September 27, 2022 meeting of the Commission to discuss the procedure for investigating Ms. Pell's complaint, City Attorney Ronald Bultje cautioned the Commission that its responsibility was to determine whether discrimination on the basis of sex had been shown, or if the behavior identified was in part due to interpersonal differences. (*See* Draft Minutes for City of Grand Haven Human Relations Commission, Sept. 27, 2022, Tab M.) At no time did City Attorney Bultje suggest it would be appropriate for the Commission to weigh in on any political disagreements, or mandate a process that the BLP must follow to resolve such political disagreements.

## **B. Unlawful Discrimination Based on Gender Has Not Been Shown**

Based on this standard, it is clear that neither Ms. Pell nor Director Hendrick has demonstrated that Director Hendrick was subjected to discrimination based on gender during the August 3, 2022, BLP meeting. The meeting was highly contentious, and clearly shows Board members with strong opinions and differing viewpoints, talking over each other. Former Board Chair Kieft's profound hearing loss is readily apparent. But there is no evidence that any individual was discriminating against Director Hendrick because of her gender. The BLP is relieved to see that the Commission has NOT concluded that gender discrimination occurred during this August 3 BLP meeting by a preponderance of the evidence.

In contrast, there is significant evidence that Director Hendrick has acted in a derogatory fashion toward other Board members and BLP staff based on their age, race, gender, and even disability. Indeed, at times she has been *explicit* in attacking them because of these protected categories, including expressly referencing certain individual's age, race, and gender during her past public Facebook post discussions. She has also demonstrated hostility and a belittling attitude toward BLP staff, including on one occasion even causing Administrative Services Manager

Molyneux to fear for her job because Ms. Molyneux had taken a Friday off from work for personal reasons and wasn't immediately able to respond to Director Hendrick's request for information.

But ultimately, this complaint that is now before the Commission is less about allegations of discrimination, and more about a political debate that has roiled the BLP, as the entire Grand Haven community sorts through issues involving the future and direction of this public body. The BLP Board of Directors are all elected officials (except for Director Knoth, who was appointed to replace former Board Chair Kieft), and the disputes currently playing out among them should be resolved through the political process, not through unfounded accusations of gender discrimination. Because the Commission has concluded that gender discrimination cannot be shown, the Commission should dismiss the complaint filed by Ms. Pell and avoid wading into the political issues currently enveloping the BLP. The Commission is also not equipped to opine whether the BLP has violated the OMA or any other principle of good Board governance. These concerns involving governance of a public entity and the intense political debates at issue simply do not fall within the purview of the Commission under Section 20 of the City Ordinance.

That being said, the BLP, its Directors, and its staff are committed to seeking a cooperative, positive resolution of this matter, and eagerly hope to continue to build a positive working relationship with Director Hendrick. She too is an elected representative for the Grand Haven community, and thus the other Directors and staff look forward to building the future of the BLP with her in conjunction with the entire Board and staff. The BLP represents a diverse, vibrant community in the City of Grand Haven, and it is always striving to ensure that it is delivering excellent service to all of its customers in a fair and equitable manner. If the Commission feels strongly that implicit bias training and/or additional training on the OMA or Robert's Rules would be helpful, even though no discrimination has been established through this complaint, then the BLP will certainly consider it, provided that *all* members of the Board – including Director Hendrick – are required to attend.

As noted in the draft report, the Commission also apparently plans to recommend that the BLP appoint a timekeeper for Board meetings to preserve data on how long and when each Director or staff member speaks. The BLP notes that this information is already available by viewing the videos of all BLP meetings, currently housed on BLP's YouTube channel, and thus respectfully submits that this information can already be tracked by any individual or member of the public. The BLP is thus reluctant to bring in an outside timekeeper – at additional cost to the BLP, and possibly also the ratepayers – when this information is already available online.

With respect to the Commission's proposal in the draft report that all requests for information from individual Directors to staff be tracked, including dates of requests and what was provided and when, the BLP notes that this issue was already addressed at the BLP's September 15, 2022 meeting. (*See* Tab P, at 3.) At that meeting, all Directors agreed that it was overwhelming to BLP staff for all five of the Directors to constantly be asking the staff for information, and thus the Directors agreed that all requests would go through current Board Chair Michael Westbrook. Because Mr. Westbrook has a full-time job in the community (he is the Corporate Compliance Officer for Shape Corp.), it would be overly burdensome to require him to track each and every request, logging dates, noting documents produced, etc. The BLP thus respectfully suggests that the Commission consider whether the new process – adopted at the September 15 Board meeting – is working smoothly, before recommending additional costs on the BLP or additional demands

on Board Chair Westbrook's limited time. Please note that all FOIA requests will continue to be tracked and responded to on a timely basis as required by law.

Regarding the mediation proposal made by the Commission, the BLP is interested to learn more, including possible topics and parameters. Mediation with the City Council is of particular interest to the BLP.

Finally, the BLP hopes to soon undertake the self-assessment strongly recommend by the recent Board governance training, under the direction of the professional consultant engaged through the American Public Power Association and Hometown Connections. (*See Best Practices in Public Power Governance, Tab F.*) The BLP notes that whether and when to begin this self-assessment process is a decision that is to be made by the BLP Board itself.

### **C. The BLP Has Never Declined or Delayed Providing Information to the Commission**

Unrelated to the issue of gender discrimination, the Commission has now suggested in its draft report that the BLP supposedly tried to prevent the Commission from obtaining certain videos or recordings, or has been trying to obstruct this investigation. THIS ACCUSATION IS FLATLY UNTRUE. In the afternoon on October 27, 2022, Commission Member Keith Colson for the first time contacted Administrative Services Manager Renee Molyneux and asked for recordings of the June and July 2022 BLP Board meetings. (*See Various Emails, Tab N.*) This was over six hours of content, yet was requested just hours before the Commission's October 27 meeting was to begin at 5:30 pm that day. Ms. Molyneux was unfamiliar with Mr. Colson's name, and thus immediately reached out to Ms. Emily Nail, Chair of the Commission, to confirm that it was appropriate to provide this information to Mr. Colson. Ms. Nail responded, "I approve and he is Vice Chair. **Thank you for asking me.**" (*Id.* (emphasis added).) Eighteen minutes later, Ms. Molyneux contacted the Distribution & Engineering Manager for the BLP, Robert Shelley, who has responsibility over such recordings, and asked him to forward the recordings of the June and July Board meetings to Mr. Colson. (*Id.*) Within less than one hour and twenty minutes, by 4:07 pm, Mr. Shelley had spoken to Mr. Colson via both telephone and email, and explained that the recordings were too large to email, but indicated that if the Commission would still like the videos to please contact him to discuss how best to get them to the Commission. (*Id.*)<sup>3</sup> Given this exchange, the assertion that the BLP staff somehow dragged its feet in responding to the Commission's requests on October 27, or acted inappropriately in confirming Mr. Colson's status with Commission Chair Nail, is completely unwarranted.

From February 2022 until recently, the BLP followed the same practice – all videos of BLP meetings were posted on the BLP's YouTube channel immediately; when a new video was posted, older videos (more than 30 days old) were removed from the channel to make room for the new video, but they were never destroyed. Indeed, at the BLP Meeting on February 17, 2022, Director Kieft, *supported by Director Hendrick*, moved to post videos of meetings for just one month following each meeting, while staff was charged with researching storage requirements on YouTube. ALL Board Directors voted in favor of this motion, including, again, Director Hendrick.

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<sup>3</sup> Mr. Shelley actually sent two emails to Mr. Colson around this time, but the first email had the incorrect email address for Mr. Colson, so Mr. Shelley resent it to the correct email address. (*See Tab N.*)

(Minutes of BLP Meeting, Feb. 17, 2022, Tab O, at 5.) Since that time, all videos of the BLP meetings, going back to February 2022, have been available for viewing upon request.

In addition, recently the issues with YouTube have been resolved, and all BLP meetings that have been recorded will now be posted on YouTube for one year and stored for one year on the BLP's network, unless BLP staff or the Board asks to have a recording stored longer.

The August 3, 2022 meeting, and recordings of other BLP meetings, are now posted on the BLP's YouTube channel and are available for viewing by anyone. (See 08/03/22 Grand Haven Board of Light & Power - Special Meeting - Bing video.) In contrast, the BLP notes that the Commission itself does not video or livestream its own meetings – indeed, the only meeting that the Commission has apparently ever recorded or livestreamed was the October 27, 2022 meeting regarding this very complaint, and it was apparently recorded or livestreamed at the request of an unnamed individual. Interestingly, this was the one meeting that no one from the BLP, other than Director Hendrick, attended, and thus any member of the public trying to determine the facts of this matter by observing the video online would be deprived of the BLP's perspective on this matter.

## V. CONCLUSION

Based on the foregoing, Ms. Pell's allegation that Director Hendrick was discriminated against and/or harassed based on her gender during the August 3, 2022 BLP Board meeting is meritless. This is a wide-ranging political dispute between parties with differing opinions regarding the BLP, a dispute that involves clashing personalities, a disabled former Board chair, and difficult behavior by a relatively new Board member who has made repeated personal attacks on other BLP Board members and staff. What it is *not* is gender discrimination or harassment against that relatively new Board member. Accordingly, the Commission should issue a finding that gender discrimination has not been shown, and dismiss the complaint in this matter.

As noted above, the BLP is happy to consider implicit bias training and additional training on the OMA and Board governance, provided *all* members of the BLP Board are required to attend and to participate fully. With respect to the proposals for a timekeeper and tracking of Director information requests, the BLP respectfully submits that those issues have already been addressed through the posting of recordings of all BLP meetings since February 2022 on YouTube, and the new process for Director information requests agreed to at the September 15, 2022 Board meeting.

Finally, regarding the Commission's recommendation regarding mediation, the BLP is interested in learning more about the proposal for mediation within the Board and between the Board and staff, including the topics that the Commission recommends be addressed. But the BLP is most interested in the Commission's proposal regarding mediation with the Grand Haven City Council. Although the BLP's conflicts with the City Council are political and financial in nature, and have nothing to do with the allegation of gender discrimination currently pending before the Commission, the BLP would welcome the opportunity to engage in mediation with the City Council on the major areas of disagreement between the two bodies, including, most notably, the Harbor Island Contamination and Environmental Remediation matter. The BLP thus looks forward to further discussions on this issue with the Commission.

Ms. Emily Nail  
December 13, 2022  
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# VARNUM

If you have any questions or require additional information, please contact me at (616) 336-6620 or ewskaggs@varnumlaw.com. I currently plan to be in attendance at the December 15, 2022, meeting of the Commission, and look forward to meeting the Commission members in person then. Thank you for your time and for consideration of this Position Statement.

Sincerely yours,

VARNUM

A handwritten signature in black ink that reads "Elizabeth Wells Skaggs". The signature is written in a cursive style with a large initial 'E' and 'S'.

Elizabeth Wells Skaggs

Enclosures  
cc via email w/encls.: Ronald Bultje, Ashley Latsch

EWS/clc