

GRAND HAVEN BOARD OF LIGHT AND POWER
MINUTES
JANUARY 25, 2024

A regular meeting of the Grand Haven Board of Light and Power was held on Thursday, January 25, 2024, at 6:00 PM at the Board's office located at 1700 Eaton Drive in Grand Haven, Michigan and electronically via live Zoom Meeting.

The meeting was called to order at 6:00 PM by Chairperson Westbrook.

Present: Directors Crum, Hendrick, Knoth, Welling and Westbrook.

Absent: None.

Others Present: General Manager David Walters, Secretary to the Board Danielle Martin, Operations & Power Supply Manager Erik Booth, Finance Manager Lynn Diffell, Distribution & Engineering Manager Rob Shelley, and Attorney John Weiss, Dickinson Wright.

Motion: Director Welling, supported by Director Crum, moved approve the meeting agenda.

24-01A Director Welling, supported by Director Crum, moved to move item 7C to item 7E on the agenda and bump up items D and E to C and D.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Welling and Westbrook; Opposed: None.
Motion carried.

24-01B Director Welling, supported by Director Crum, moved to approve the agenda as amended.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Welling and Westbrook; Opposed: None.
Motion carried.

24-01C Mark Allen, President, and Elizabeth Butler, Director of Economic Development, from the Grand Haven, Spring Lake and Ferrysburg Chamber of Commerce provided an update on Chamber activities. Allen stated the Chamber is increasing its focus on supporting local organizations in the areas of talent, transportation, housing, and childcare. He invited the Board to attend the Chamber's Economic Forecast event on February 6th.

Butler shared that in calendar year 2023, Northwest Ottawa County received \$50 million in private investment in the community, creating 480 to 500 new jobs. Butler thanked the Board for their continued financial support of economic development efforts.

No formal action taken.

Public Comment Period:

Vanessa Wilhelm, Grand Haven Township, stated she submitted a FOIA request in October 2023 for journalistic purposes. Documents received to date indicate that a closer look into allegations against a Board member is needed.

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Jim Hagen, 400 Lake Avenue, stated he attended the City's strategic planning session. He feels regular joint meetings are needed and the Council and Board need to work together.

24-01D Director Welling, supported by Director Crum, moved to approve the consent agenda. The consent agenda includes:

- Approve Minutes of the December 21, 2023 Board Meeting and Closed Session
- Receive and File: December Financial Statements, Power Supply and Retail Sales Dashboards
- Receive and File: December Key Performance Indicator (KPI) Dashboard
- Receive and File: MPPA Energy Services Project Resource Position Report (dated 12/28/2023)
- Receive and File: Constellation Energy Market Update Graphs (dated 01/09/2024)
- Receive and File: Power Grid International: Five Priorities for U.S. Utilities in 2024 (dated 1/2/2024)
- Approve payment of bills in the amount of \$2,779,483.41 from the Operation & Maintenance Fund
- Approve payment of bills in the amount of \$480,069.94 from the Renewal & Replacement Fund
- Confirm Purchase Order 22914 to Western-Telcom, Inc. in the amount of \$5,181 for directional boring services
- Confirm Purchase Order 22923 to the Michigan Municipal Electric Association in the amount of \$23,698 for annual association dues

The General Manager provided three documents to supplement the financial reports. July through December of 2023 were the BLP's lowest sales months in twenty five years, except for 2009. Losing sales to this degree will cause significant hurdles as fixed costs are not being recovered as expected. The loss in sales can be largely attributed to commercial and industrial loads not returning to pre-COVID levels. When sales are lower than forecasted, the BLP may have to sell hedged energy at a loss.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Witherell and Westbrook; Opposed: None.
Motion carried.

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24-01E Director Welling, supported by Director Hendrick, moved to approve Purchase Order 22928 to Altec Industries in the amount of \$228,280 for a replacement backyard machine for the line department.

Planned purchases in the equipment replacement schedule have generally been delayed. Someone dropped out of the queue, giving the BLP the opportunity to purchase this equipment ahead of schedule.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Welling and Westbrook; Opposed: None.
Motion carried.

24-01F The Board Secretary confirmed Respectful Workplace Training for all employees and Board members is scheduled for Friday, February 9th from 2:30 to 4:00pm.

No formal action taken.

23-01G Director Welling, supported by Director Hendrick, moved to reschedule the February Board Meeting from February 15, 2024 to February 29, 2024.

The General Manager will be traveling for the Public Power Summit February 11th through 14th and the APPA Board of Directors Meeting and Legislative Rally February 24th through 28th.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Welling and Westbrook; Opposed: None.
Motion carried.

24-01H The Board discussed each proposed bylaw change that was provided to the Board Secretary. Changes that received majority support will be submitted to the Board's legal counsel to draft appropriate wording. The bylaws will be brought to a future meeting for the Board's approval of proposed changes.

No formal action taken.

24-01I The Chairman provided an update on Whistleblower investigation activities. Two executive staff members and the whistleblower have been interviewed. Two additional executive staff interviews are in the process of being scheduled.

Director Crum expressed frustration with how long the investigation has taken and that the Board has not been informed of the details of the complaint.

No formal action taken.

24-01J Director Knoth, supported by Director Welling, moved to approve the Indemnification Resolution as presented. (Attachment A)

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Chairperson Westbrook reported the Board has been advised by its attorney that under the current bylaws, the Board must indemnify Director Hendrick for her legal costs associated with responding to the three FOIA requests for her correspondence. The scope of work provided by Director Hendrick's attorney includes a 30-day timeline to resolve disputed documents. The resolution states reimbursement will be withheld until the materials subject to FOIA, as determined by the BLP Board, have been provided to the requesting parties.

Directors Welling and Knoth felt the Board must follow the bylaws. Director Crum felt Director Hendrick is not under investigation and is not being sued so this indemnification does not follow the intent of the bylaws.

Attorney Weiss agreed with Attorney Bultje's determination that indemnification fits with the bylaws as currently written.

The General Manager stated several of the resolution's whereas statements incorrectly characterize his statements and should be removed. He feels classifying a FOIA request as an investigation is not accurate.

Roll Call Vote:

In favor: Directors Hendrick, Knoth, Welling and Westbrook; Opposed: Crum.
Motion carried.

24-01K Director Hendrick, supported by Director Welling, moved to approve purchasing the Public Power Governance Essentials On-Demand Training as presented.

Directors Knoth and Welling were not on the Board when this training was previously conducted on-site. The on-demand training cost will be \$2,250 for the full Board and executive staff to participate. The materials will be accessible for two years after purchase.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Welling and Westbrook; Opposed: None.
Motion carried.

24-01L Director Knoth, supported by Director Hendrick, moved to approve the resolution regarding the General Manager as presented. (Attachment B)

Chairperson Westbrook read the resolution aloud.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, and Westbrook; Opposed: Welling.
Motion carried.

Following the vote, the General Manager thanked the Board for taking action. He stated he now has the opportunity to dispute the Board's actions through the appropriate channels if necessary.

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Chairperson Westbrook thanked the General Manager for his years of service. He commended the General Manager's leadership in shutting down the Sims power plant with no employee layoffs and bringing the utility to a financially sound position.

24-01M Director Welling, supported by Director Knoth, moved to offer the Interim General Manager position to Rob Shelley at a pay rate of 10 percent above his current salary for the duration of the assignment.

Chairperson Westbrook met with executive staff members individually and all three were willing to fulfill the General Manager role on an interim basis should the General Manager retire. Rob Shelley stood out with his eagerness to fulfill this role. The interim pay increase being recommended is in line with data provided by the Society for Human Resource Management. The Board directed the Secretary to execute the necessary documentation.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Welling and Westbrook; Opposed: None.
Motion carried.

24-01N Director Welling, supported by Director Knoth, moved to proceed with the request for proposal process for executive search services as previously discussed.

The deadline for proposal requests will be Friday, February 23, 2024. Proposals received will be included in the Board's package for review at the February 29, 2024 meeting.

Roll Call Vote:

In favor: Directors Crum, Hendrick, Knoth, Welling and Westbrook; Opposed: None.
Motion carried.

Public Comment Period:

David Walters, 14637 Brucker Woods Court, provided a written comment regarding the indemnification resolution that was received and filed by the Board. He feels the Board should have considered executing the provisions of his employment contract in open session and given him the opportunity to participate.

Geri McCaleb, West Olive, stated there has been a non-stop attack against David Walters. He has had a distinguished career, and it is a shame people kept the drumbeat going simply because they did not like his personality.

Chairperson Westbrook read a comment received from BLP customer Linda Petix thanking the lineman for restoring her power quickly in the recent snowstorm.

On behalf of the Board, Chairperson Westbrook thanked all employees for their work during the recent snowstorms and outages.

Adjournment

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At 7:54PM by motion of Director Hendrick, supported by Director Knoth, the January 25, 2024 Board meeting was unanimously adjourned.

Respectfully submitted,

A handwritten signature in black ink that reads "Danielle Martin". The signature is written in a cursive, flowing style.

Danielle Martin
Secretary to the Board

DM

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Attachment A

**Board of Light and Power
Board Resolution Regarding Indemnification**

WHEREAS, Section 31 of the Grand Haven Board of Light and Power (the “BLP”) Bylaws (the “Bylaws”) provides in relevant part that a “. . . Board member shall be indemnified by the BLP as of right to the fullest extent now or hereafter permitted by law in connection with any actual or threatened civil, criminal, administrative, or investigative action, suit, or proceeding, which is brought against the member because of the Board member’s position on the Board”

WHEREAS, Andrea Hendrick is a member of the BLP Board.

WHEREAS, the BLP General Manager (the “General Manager”) has submitted a request under the Freedom of Information Act (“FOIA”) for:

E-mail and text correspondence to or from personal and/or GHBLP e-mail addresses and cell phones of **GHBLP Board Member Andrea Hendrick** mentioning [sic], discussing [sic], or addressing in any way **GHBLP employee David Walters** by name (Dave or David) or by position (General Manager, GM, or Director of Light and Power) **with Grand Haven Council Members** including Ryan Cummins, Kevin McLaughlin, and/or Karen Lowe **and/or GHEO/BLPCCC group members** including John Field Reichardt, Dennis Craun, John Nasser, Jeff Miller, David Mann, Steve Miller, and/or Jon Jellema **and/or reporters, writers, columnists, and/or submitters of “your views” in the Grand Haven Tribune** including Karalea Davis, Brendon Thomas, Jared Cramer, and/or Elizabeth Pell, since taking office as a Board Member in November, 2021.

WHEREAS, the General Manager has stated that the purpose of his FOIA request for these records of Director Hendrick pertain to her position on the BLP Board, because the General Manager believes these records of Director Hendrick will show that he has been constructively discharged by the BLP Board.

WHEREAS, the BLP has subsequently received identical requests for the same documents from members of the public, Vanessa Wilhelm and Ed Lystra.

WHEREAS, the General Manager’s FOIA request, and the subsequent FOIA requests, are so broad that they cover not only “public records” as defined by the FOIA, but they also cover records that could be personal to Director Hendrick and thus exempt from FOIA, as well as records that could be subject to Director Hendrick’s rights under the First Amendment to the United States Constitution and thus exempt from FOIA, as well as records that could be exempt from FOIA for other lawful reasons.

WHEREAS, because the General Manager’s FOIA request, and the subsequent FOIA requests, are so broad that they will only be partially granted and partially denied, and because determining which of Director Hendrick’s documents are subject to FOIA and which are exempt from FOIA will of necessity involve interpretations of applicable law and constitutional provisions, Director Hendrick has incurred and will continue to incur legal expenses in order to respond to the FOIA request.

WHEREAS, Director Hendrick’s attorney has filed a claim for insurance coverage by the BLP, but that claim has been denied, as has the appeal of that denial. The latest denial was by a letter dated

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December 29, 2023.

THEREFOR, the BLP Board resolves as follows.

1. The BLP Board is obligated to indemnify Director Hendrick for her legal expenses which are the result of the General Manager's FOIA request and the subsequent FOIA requests for the same material.
2. The BLP Board agrees to reimburse Director Hendrick for \$6,050.00, an amount equal to the legal expenses she has already incurred as a result of the General Manager's FOIA request, and the subsequent FOIA requests for the same material, as evidenced by the information received from Director Hendrick's attorney which is attached as Exhibit A.
3. The BLP Board agrees to reimburse Director Hendrick for reasonable future legal expenses incurred as a result of the General Manager's FOIA request, and the subsequent FOIA requests for the same material, as long as the legal expenses are incurred in accordance with the information received from Director Hendrick's attorney which is attached as Exhibit A.
4. Having resolved the indemnification issue regarding Director Hendrick and the FOIA requests by the General Manager and other members of the public, the BLP Board now directs its attorney and Director Hendrick's attorney to resolve their respective clients' positions regarding these FOIA requests as promptly as reasonably possible.
5. The reimbursement payment to Director Hendrick will be made after any FOIA disputes have been resolved by the BLP Board; and the materials subject to FOIA, as determined by the BLP Board, have been provided to the General Manager and the other requesting parties.

RESOLUTION DECLARED ADOPTED

January 25, 2024

BOARD OF LIGHT AND POWER

By: Danielle Mauri
Its: Board Secretary

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Attachment B

**Board of Light and Power
Board Resolution Regarding General Manager**

WHEREAS, the General Manager has stated that the employment relationship between him and the Grand Haven Board of Light and Power (the "BLP") has been damaged by a toxic workplace because of actions by the BLP against him that discriminate, harass, and retaliate against him;

WHEREAS, the BLP has done an internal investigation of the General Manager's claims and has not found any basis for them;

WHEREAS, the BLP's internal investigation conclusions have been confirmed by the BLP attorney and by a neutral, third party employment agency;

WHEREAS, the General Manager has properly called on the BLP to promptly take definitive action regarding his employment status;

WHEREAS, the City's investigation by special counsel into a BLP employee's whistleblower accusations against the General Manager has not been completed;

WHEREAS, the General Manager and the BLP have a July 1, 2022 Employment Agreement, by which the BLP agreed to provide to the General Manager the benefits he requested if his employment is terminated without cause;

THEREFOR, the BLP Board resolves as follows.

1. Per Paragraph 10.C of the July 1, 2022 Employment Agreement, the BLP provides the General Manager written notice that his retirement will take effect 90 days after his receipt of this Resolution as adopted by the Board (i.e. April 24, 2024). The General Manager shall be provided with a copy of this resolution when it is considered by the BLP Board.
2. Upon his retirement, the General Manager shall receive all of the benefits permitted by Paragraph 10.C of the July 1, 2022 Employment Agreement.
3. During the 90 day period, the General Manager shall be fully paid by the BLP, but he shall not be actively at work for the BLP, except as specifically requested by the BLP, through the Board Chair or the Board Chair's designee. The General Manager is authorized to attend off-site conferences and trainings previously scheduled and approved by the BLP / (February 11 through 14 and 24 through 28).
4. If the final disposition of the FOIA request made by the General Manager against Director Hendrick provides evidence that the General Manager's allegations of discrimination, harassment, and retaliation by the BLP against the General Manager are warranted, the BLP will seek to negotiate more generous terms of separation for the General Manager, along with a release of any claims he may have against the BLP, all subject to a vote of the BLP Board.
5. If the City's investigation into the whistleblower accusations against the General Manager provides evidence that the BLP had cause to terminate the General Manager according to

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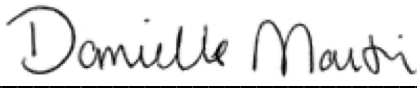
Paragraph 10.B of the July 1, 2022 Employment Agreement, the BLP reserves the right to terminate the General Manager accordingly and to not pay the General Manager the benefits provided to him by Paragraph 10.C, all subject to a vote of the BLP Board.

6. The General Manager shall return all BLP property in his possession promptly upon his retirement date, which shall be April 24, 2024.

RESOLUTION DECLARED ADOPTED

January 25, 2024

BOARD OF LIGHT AND POWER

By: 
Its: Board Secretary