

Volek, Christina

From: Russ Doty <iwin4u1@earthlink.net>
Sent: Sunday, October 20, 2013 9:00 PM
To: Cimmino, Angela; 'Becky Bird'; Cromley, Brent; 'Denis Pitman'; Ulledalen, Ed3; McCall2, Jani; Ronquillo2, Jim; 'Ken Crouch'; Astle, Mark; McFadden, Richard; Hanel, Tom; Brooks, Brent; Volek, Christina
Subject: FW: Saving energy and Billings money on street lighting will require citizen action

Hello all:

This link below is to the spot-on article by Ed Kemmick that you may have seen in the Billings Gazette that explains our case to claw back millions of dollars in street light overcharges and apply that to purchasing new LED street lights which are much more energy efficient than what is currently installed in most Montana areas. LEDs will reduce the energy component of the bill by roughly 50%. Los Angeles is seeing a 63% saving on the 140,000 LEDs it used to replace outmoded technology like that still used by NorthWestern Energy.

It would be helpful if the city of Billings would intervene on our behalf in the case and also ask the Montana League of Cities to intervene. Since, as you know, the time for intervention is short (by October 25) you may have to petition for late intervention in addition to taking action in a special meeting (requested by 3 members) or in one meeting, duly noticed, as appears to be permitted when resolutions are adopted. Draft Resolutions are copied below (MS Word copy can be supplied if the formatting is not clear in the email you receive).

The Kemmick article is at:

http://billingsgazette.com/news/local/complaint-over-billings-street-lights-to-go-before-public-service/article_20dd4117-fd64-5fe4-b040-3679588372cb.html

Thanks much.

Your friend,

Russ Doty,

Attorney for Petitioners in PSC Docket # D2010.2.14

406-696-2842

(DRAFT) COUNCIL RESOLUTION NO. _____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS MONTANA APPROVING
OF THE CITY JOINING THE MUNICIPAL SOLID STATE LIGHTING CONSORTIUM

WHEREAS the city wishes to steward its street lighting budget by providing quality light in needed areas for the least possible cost to its taxpayers;

WHEREAS more than 2160 local government units in all 50 states (+Washington DC, Guam, Virgin Is & Northern Mariana Is); 84 (of 196) countries & all 13 Canadian provinces and territories have installed or are planning to install LED street lighting;

WHEREAS the Municipal Solid State Lighting Consortium (MSSLC) brings together the experience that internationally recognized experts and US municipalities have had with LED street lighting, quantifying potential energy and maintenance saving, publishing model LED specifications, warranty requirements, Requests for Proposal, updates on roadway lighting standards, and exchanging information on various products that have been tried.

WHEREAS membership in the Municipal Solid State Lighting Consortium, a program supported by the US Department of Energy, is free.

WHEREAS the Municipal Solid State Lighting Consortium has hundreds of municipal and utility members from every state but Montana, the Dakotas, and Kentucky.

WHEREAS pursuant to Billings City Code Sec. 2-241, the city is **not** governed by Montana Code Annotated (MCA) § 7-5-4208, governing the adoption of resolutions. Instead it is governed by Billings City Code, Sec. 2-237 which provides: **Resolution requirements.**

- 1) All resolutions shall be submitted in the form prescribed by resolution of the city council.
- 2) **Resolutions may be submitted and adopted at a single meeting of the city council.**
- 3) After passage and approval, all resolutions shall be entered into the minutes and signed by the mayor and the city clerk.

WHEREAS pursuant to MCA § 7-1-4121(22): General definitions. As used in 7-1-4121 through 7-1-4127 and 7-1-4129 through 7-1-4149, unless otherwise provided, the following definitions apply: ... (22) "Resolution" means a statement of policy by the governing body or an order by the governing body that a specific action be taken. Similarly, the Billings City Code establishes:

Sec. 2-231. **Definitions.** ... Resolution means a statement of policy by the city council or an order by the city council that a specific action be taken.

WHEREAS pursuant to MCA §7-5-4101: **"General powers of municipal council.** The city or town council has power to make and pass all bylaws, ordinances, orders, and resolutions not repugnant to the constitution of the United States or of the state of Montana or to the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title."

WHEREAS MCA § 7-5-121. Provides in pertinent part: **"Resolution requirements.** (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body."

WHEREAS a similar single meeting provision is also found in Billings City Code Sec. 2-238

WHEREAS The Council has, pursuant to MCA § 7-1-4142, Article II, section 8, of the Montana constitution, and Title 2, chapter 3, complied with procedures for permitting and encouraging the public to participate in this decision made in an open meeting by complying with the provisions of Billings City Code, § 2-221, §2-213, §2-214(14) [Council Initiatives], §2-600 et.seq. or § 2-211 (special meeting requested by 3 council members); no other notice requirements for this action are required.

WHEREAS the City Council being fully informed and having considered all relevant matters and review criteria.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Billings, Montana, pursuant to power granted in MCA §§ 7-1-4122(2), 7-1-4123 & 7-1-4124 that:

Section 1

The city staff is directed to join the Municipal Solid State Lighting Consortium on behalf of the city. The MSSLC website link is <http://www1.eere.energy.gov/buildings/ssl/consortium.html>

Section 2

As determined by the City Administrator, city staff shall review and monitor the Consortium website, participate in the MSSLC National Street Lighting Inventory, and MSSLC webcasts, and report back to the Council.

Section 3

Effective Date: Pursuant to MCA §§ 7-5-123 & 7-5-4203(2), this resolution shall be in full force and effect upon passage.

APPROVED by the City Council of the City of Billings, Montana on (date), 2013.

	ATTEST:	APPROVED AS TO FORM:
Mayor	City Clerk	City Attorney

(DRAFT) COUNCIL RESOLUTION NO. _____
RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BILLINGS MONTANA DIRECTING
THE BILLINGS CITY ATTORNEY TO SEEK INTERVENTION OR LATE INTERVENTION (AS
APPROPRIATE) BEFORE THE MONTANA PUBLIC SERVICE COMMISSION IN DOCKET #
D2010.2.14.

WHEREAS the city wishes to steward its street lighting budget by providing quality light in needed areas for the least possible cost to its taxpayers;

WHEREAS more than 2160 local government units in all 50 states (+Washington DC, Guam, Virgin Is & Northern Mariana Is); 84 (of 196) countries & all 13 Canadian provinces and territories have installed or are planning to install LED street lighting;

WHEREAS recent tests by DOE, and others have shown US-made roadway and parking facility lighting luminaires:

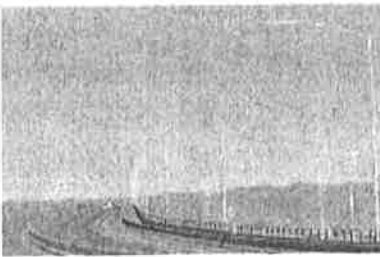
- 1) to be cost effective,
- 2) to provide superior color rendition and mesopic light,
- 3) to eliminate between 15 and 75% of the electricity needed for nighttime lighting (depending on the application),
- 4) to reduce peak demand coming from roadway lighting by 15 - 64%, and
- 5) to qualify for Energy Efficiency & Conservation Block Grants (Pub. L. 110-140, §544(12)), and zero-interest Qualified Energy Conservation Bond funding.

WHEREAS installation of LED roadway lighting will:

- 1) minimize counterproductive state and local government tax increases needed to defray nighttime lighting costs of transportation projects;
- 2) provide long-term economic benefits by avoiding wasteful energy use in those projects for the 10 to 30 year time it takes to amortize the cost of old-style luminaires; and
- 3) help protect the guaranteed right enshrined in our Montana Constitution, Article II, Section 3 to a clean and healthful environment by reducing the need for electricity often produced from the burning of fossil fuel.

WHEREAS the conversion of 26 to 52 million street lighting luminaires to LEDs will save enough energy to supply up to 1,000,000 US households while saving local taxpayers \$1 to \$2 billion a year in energy costs (depending on the number of conversions).

WHEREAS During the summer of 2012, Caltrans began a 24-month program to retrofit 67,000 roadway lights with LEDs. It will target 40,000 lights in the California state highway system. The agency is counting on 50% energy savings and extended lifetime of 15-20 years from the products.



WHEREAS the picture on the left shows where Caltrans retrofitted luminaires on the Dumbarton Bridge over the San Francisco Bay. Caltrans replaced 400 Watt high-pressure sodium (HPS) lights with 183 Watt LED lights.

WHEREAS the city of Los Angeles has replaced 141,089 existing cobrahead streetlights with LEDs creating a 63.4% street lighting energy-use reduction and \$7 million annual savings in energy costs plus \$2.5 million in maintenance savings (as of June 18, 2013).

WHEREAS Pompano Beach Florida replaced 460 watt highway lights with 200 watt LEDs on 60 foot poles, spaced 300 feet apart, and; Maine's DOT has installed 105 high-mast LEDs.

WHEREAS Nova Scotia, Canada has embarked on a province-wide replacement of 120,000 old street lights with LEDs, and New Brunswick Power is replacing 72,000 of its roadway lights with LEDs.

WHEREAS Seattle City Light's Edward Smalley, Director of DOE's Municipal Solid-State Street Lighting Consortium, notes:

As cities are faced with deciding between implementation of an LED street lighting program or staying with incumbent products like High Pressure Sodium (HPS) it is becoming easier to make the business case for LED. LED technology has advanced to a point where it not only meets design standards for a plurality of applications where cobra head fixtures are used, but cost benefit analysis reveals the technology to also be cost effective. While many are seeing energy saving of greater than 50% over HPS, the driver for a large number of system owners is actually the operations and maintenance savings, both in manpower and resources.

WHEREAS Petitioners in PSC Docket # D2010.2.14 are seeking:

- 1) to eliminate approximately \$2.1 million/year in alleged overcharges occurring for street lighting because Northwestern Energy has misapplied an approved rate tariff by assigning rates to the wrong tier in the tariff, something which recoups the allowed-by-law, original costs of street lights years before eliminating the value assigned to the lights out of its rate base;
- 2) to require applied tariff rates to be matched to actual rate base depreciation levels;
- 3) to claw back alleged overcharges;
- 4) to have as much of that overcharge as is necessary applied to finance the provision of appropriate LED street lighting in overcharged lighting districts;
- 5) to have any excess overcharge not allocated to provision of LEDs refunded to taxpayers in affected Street Improvement and Lighting Districts;
- 6) to require NorthWestern Energy to provide LED street lights (or lights of equivalent energy efficiency and longevity) in any future light district it serves;
- 7) to require NorthWestern to allow the city or any citizen of the city served by NorthWestern energy's street and area lighting to use NorthWestern's poles to house LED or other equally efficient lighting in the event that the city wishes to own its luminaires;
- 8) to eliminate NorthWestern Energy's "ownership charge" (or similar charge, however worded, that defrays infrastructure cost) when the infrastructure in a lighting district has been paid for by consumers;
- 9) to prevent NorthWestern from selling street lights that have been paid for by consumers in a manner that causes additional charges to be incurred by consumers for street lighting beyond the original cost depreciated of the lights.

WHEREAS pursuant to Billings City Code Sec. 2-241, the city is **not** governed by Montana Code Annotated (MCA) § 7-5-4208, governing the adoption of resolutions. Instead it is governed by Billings City Code, Sec. 2-237 which provides: **Resolution requirements.**

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WHEREAS pursuant to MCA §7-5-4101: **"General powers of municipal council.** The city or town council has power to make and pass all bylaws, ordinances, orders, and resolutions not repugnant

to the constitution of the United States or of the state of Montana or to the provisions of this title, necessary for the government or management of the affairs of a city or town, for the execution of the powers vested in the body corporate, and for carrying into effect the provisions of this title.”

WHEREAS MCA § 7-5-121. Provides in pertinent part: “**Resolution requirements.** (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.”

WHEREAS a similar single meeting provision is also found in Billings City Code Sec. 2-238

WHEREAS The Council may upgrade street lights in the interest of energy conservation and reduction of utility bills as sought by petitioners in PSC Docket # D2010.2.14 without following the notice and hearing procedures described in MCA § 7-12-4351 through § 7-12-4353 because of the exceptions found in MCA § **7-12-4354**, which provides:

Minor modifications exempt. Nothing in 7-12-4351 through 7-12-4354 prevents the city or town council from eliminating unnecessary lights, relocating individual lights, upgrading lights and lighting-related facilities in the interest of energy conservation, or making other minor modifications in a special improvement lighting district without following the procedures described in 7-12-4351 through 7-12-4353. For the purposes of this section, "minor modifications" includes but is not limited to adding properties or lights if the additions:

(1) reduce assessments within the maintenance district; or

(2) increase the average assessments within the maintenance district by 3% or less in a fiscal year.

WHEREAS The Council has, pursuant to MCA § 7-1-4142, Article II, section 8, of the Montana constitution, and Title 2, chapter 3, complied with procedures for permitting and encouraging the public to participate in this decision made in an open meeting by complying with the provisions of Billings City Code, § 2-221, §2-213, §2-214(14) [Council Initiatives], §2-600 et.seq. or § 2-211 (special meeting requested by 3 council members); no other notice requirements for this action are required.

WHEREAS the City Council being fully informed and having considered all relevant matters and review criteria.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Billings, Montana, pursuant to power granted in MCA §§ 7-1-4122(2), 7-1-4123 & 7-1-4124 that:

Section 1

The city attorney is directed seek intervention (or late intervention if necessary) in PSC Docket # D2010.2.14.

Section 2

The City attorney shall report back to the Council on the progress in the case.

Section 3

Effective Date: Pursuant to MCA §§ 7-5-123 & 7-5-4203(2), this resolution shall be in full force and effect upon passage.

APPROVED by the City Council of the City of Billings, Montana on (date), 2013.

	ATTEST:	APPROVED AS TO FORM:
Mayor	City Clerk	City Attorney