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Influencing Utilities through Shareholder Advocacy: the Madison Gas & Electric Case Study

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Abstract

A group of Madison Gas & Electric (MGE) shareholders came together in the summer and fall of 2014 after being concerned that MGE's proposed 2014 monthly fixed fee increase was leading the company in the wrong direction. The shareholders met as a group a number of times in November of 2014 and decided that submitting resolutions to be included in the annual proxy statement for a vote was the best course of action for MGE management to take notice of shareholders concerns. Two resolutions, for a renewable energy study and executive compensation tied to sustainability metrics were submitted, and later withdrawn in exchange for a written statement, signed by MGE's CEO, to pursue the objectives of the resolutions. A professional renewable energy firm was hired and conducted a renewable energy price study, currently under review. The initial group of 50 shareholders has now become more formalized and is branded as MGE Shareholders for Clean Energy, has developed a logo, and has a Facebook page. In 2015, the group submitted eight new proxy resolutions to MGE management, which prompted MGE to agree to meet with shareholders four times in 2016 to discuss ways MGE could promote clean energy. This paper describes the process and outcomes thus far of the MGE shareholder advocacy.

Keywords: Madison Gas & Electric, MGE, Shareholder Advocacy, Resolutions

1. Introduction

About 50 percent of American households own stock (shares) in various companies and or mutual funds. Each private company with shareholders must comply with regulations enforced by the US Security and Exchange Commission (SEC). This includes the ability of shareholders to propose resolutions to management and other shareholders on how the company should be run. Resolutions promoting policies on clean energy and climate change are becoming more frequent.

1.1. What is Shareholder Advocacy?

Shareholders can use advocacy tactics to promote environmental, social, and governance change from within. The advocacy can take different forms:

- Corporate dialogue: meeting with the company to express viewpoints;
- Resolutions: prescribed directives submitted to the company and included in proxy statements and sent to all shareholders;
- Proxy voting: actual voting on the resolutions by shareholders to "advise" the company on policy direction.

Shareholder resolutions are a powerful way to encourage corporate responsibility and discourage practices that are unsustainable, unethical, or increase exposure to risk. There are several hundred shareholder resolutions filed every year. Resolutions to be voted on are placed on the company's proxy statement, and all persons and institutions that own stock in the company can vote on the issue. The terms *resolution* and *proposal* may be used interchangeably.

The goal of a shareholder resolution is to influence company decision making, thus success is measured by changes in corporate policy and actions. A successful proposal often leads to a dialogue that addresses the concerns raised in the resolution. Many companies seek to avoid a vote, preferring to project a positive image at the annual meeting. If a resolution is voted on, a majority vote is not required for the company to make the requested change. However, these votes are not mandatory, but are only advisory directions to management.

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Votes with more than 10% support are difficult for companies to ignore. Resolutions with 20% or more support send a clear message to corporate management that the current company policy is too risky or not beneficial to shareholder interests. Only the least responsive company would ignore one in five of its shareholders.

Resolutions also educate and let other shareholders know about these issues.
According to Proxy Preview (http://www.proxypreview.org/): Shareholder advocacy spotlights how corporations affect our planet and everyday lives, and how shareholder resolve can lead to change.

In 2015 there were more resolutions than ever on the environment given a new push for action to battle climate change. In 2015, 415 resolutions were presented to US companies on environmental and social topics, which amounted to 40% of all resolutions filed by shareholders. Of these, 94 resolutions dealt specifically with climate change.

A broad coalition including New York State Common Retirement Fund, the Connecticut Retirement Plans, As You Sow, Arjuna Capital, Calvert Investments, the Unitarian Universalists, and other Interfaith Center for Corporate Responsibility (ICCR) members have come together working under the Investor Network on Climate Risk (INCR) umbrella to focus on climate change financial risk. The shareholder proposals are back-stopped by a Ceres (http://www.ceres.org/investor-network/resolutions) coordinated effort supported by 70 investors with $3 trillion in assets under management. They are asking 45 companies how they will respond to a potential low-carbon future that could strand carbon assets that account for a large part of their market value.

1.2. Filing a resolution

The resolutions are roughly one page (500 words) in length and contain a formal resolved clause, which is a specific request or "ask", with a number of carefully-researched rationales in the form of "whereas clauses" as supporting statements.

Resolutions typically ask corporations to disclose information or to measure and report on the potential impacts of their operations or to adopt or change policies and practices to mitigate against those potential impacts.

SEC rules also specify issues that may not be addressed through proposals. For instance, anything relating to personal grievances or that relates to operations that constitute less than 5% of revenue may be excluded. A company may challenge the proposal at the SEC if it thinks the proposal may be legally omitted. Many challenges relate to rules stating that issues pertaining to “ordinary business” may be excluded. But proponents can challenge the company’s logic and if the SEC sides with the shareholder proponents’ argument, the proposal must be placed on the company proxy statement and voted on at the annual meeting

Any shareholder with $2,000 worth of stock held continuously a year before filing a shareholder resolution and who continues to hold the stock through the date of the company’s annual meeting is eligible to file. A group of filers can ‘aggregate’ their shares to meet the $2,000 minimum requirement. Each shareholder can file resolutions with as many companies as they like; however, they can only file one resolution per company in a year.

2. Engaging Madison Gas & Electric (MGE) Energy, Inc.

Madison Gas & Electric (MGE) is a small investor owned electric and natural gas company serving the very progressive Madison Wisconsin and adjoining Dane County area. In June of 2014, MGE submitted one of the most regressive rate requests of utilities across the country to the Public Service Commission (PSC) of Wisconsin that would have raised the fixed monthly fee for residential electric users from about $10 a month to $68 a month. After a massive push back from the local community, they revised their proposed fixed fee increase to $19 a month. A similar increase also was submitted for the monthly natural gas fixed fee.
In the summer of 2014, Beth Esser and Don Wichert met at a RePower Madison (an ad hoc clean energy advocacy group: http://www.repowermadison.org/) meeting and discovered they were both MGE shareholders that were disturbed by MGE’s corporate behavior. Beth was most interested in the climate impacts on her young children and Don thought MGE should be a national leader in clean energy and not a national leader in regressive policies. They thought other local shareholders may also be upset and decided to organize and explore options to get MGE to change its anti clean energy direction.

RePower Madison led a full blown assault on MGE in the fall of 2014, which included social media, education forums, newspaper ads, letter to the editors, and a picket of MGE’s headquarters. This led to over a 1,000 formal negative comments to the PSC opposing the fixed fee increase. A RENEW Wisconsin (a state based renewable energy advocacy group) intern developed a computer code to get the names and contact information of those filing comments to the PSC and to search for the word "shareholder" in the comments. This resulted in about 50 shareholders being identified that were upset with MGE.

Although MGE had branded itself as a green community energy company, that image did not match the reality. Their fixed rate proposal sends a price signal, which disincentives energy efficiency and renewable energy and encourages more energy use. In addition, research by RePower Madison had shown that 70 percent of MGE's energy came from coal contracts that were locked in for 20 to 35 years. MGE had also recently turned down a proposal to partner with the City of Madison on a Department of Energy (DOE) Solar proposal and had no plans to increase its renewable energy portfolio.

Beth and Don thought it was important for shareholders to use their voice to push MGE to change their policies. The changing utility business model, focusing on energy efficiency and distributed renewable, is a way to combat climate change and is needed to succeed over the long term to protect our investment and the future of our children. So, beginning in November of 2014, MGE shareholders came together to attempt to influence MGE executives to be leaders in clean energy rather than the opposite. Currently, in June 2016, there are about 80 shareholders connected via monthly meetings and email communication. Nine shareholders co-filed the two 2014 resolutions and 10 Shareholders are currently in quarterly discussions with MGE executives based on withdrawing the 2015 resolutions.

The following figure shows a timeline for the 2014 resolutions:

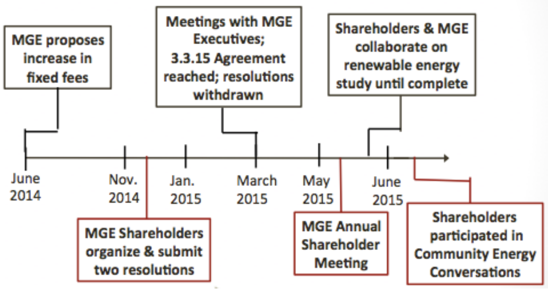

Fig. 1: Timeline for the 2014 resolutions

Shareholders held two meetings in November of 2014 to discuss options to submit resolutions by November 25, the filing deadline to meet SEC rules. The shareholders decided that submitting resolutions to be included in the annual proxy statement for a vote was the best course of action for MGE management to take notice of shareholders concerns. Shareholders initially drafted the six resolutions below:

- 25 % renewable energy by 2025 study;
- Report on potential stranded fossil fuel assets;
- Report disclosing political lobbying over the past 5 years;
- Report on meeting 80% CO2 reduction by 2050;
- Report on how MGE is encouraging distributed renewable energy and how it can be integrated into the grid;
- Tying executive compensation to sustainability metrics.

In the end, two resolutions, a renewable energy study and executive compensation tied to sustainability metrics, were submitted to MGE to be included in the 2015 proxy statement by the deadline.

2.1. Negotiating with MGE and Shareholders

MGE was surprised that shareholders did not let them know of their concerns before resolutions were submitted. MGE did not want their "green" community utility image damaged when 38,000 stockholders and the Madison community would publicly learn about our resolutions through the Proxy statement and subsequent media coverage. The shareholder resolutions were also supported by the City of Madison, which also owned MGE shares. Over the next five and a half months, MGE executives tried to get shareholders to withdraw the resolutions.

Finally, a last minute signed agreement was reached. Shareholders agreed to withdraw the resolutions in exchange for:

- A joint press release by MGE and the shareholders explaining the outcome;
- A written statement in the proxy statement about the resolutions;
- An oral statement at the annual meeting by the CEO on the resolutions;
- An agreement to conduct a renewable energy study with oversight by shareholders;

- A pledge that shareholders would receive private meetings with a professional mediation group, Justice Sustainability Associates (JSA), in a community wide energy engagement process.

Not all shareholders in our group were interested in withdrawing the resolutions. Their argument for not withdrawing the resolutions was that all shareholders would be more aware of MGE's anti clean energy activities through the vote in the proxy statement. However, in the end, more shareholders thought it better to work "from within the company" and establish a relationship with MGE executives in future decision-making. Most shareholders thought the best way to get MGE to take on a renewable energy study was to agree to withdraw the resolutions in exchange for an agreement that MGE would do a study, and not take a chance that the resolution was defeated in a proxy vote. In addition, if MGE did not do what it promised, more resolutions could be submitted in the next year.

2.2. Impact of the two resolutions and their withdrawal

Shareholders had asked MGE to conduct a cost study of increasing renewable energy sources from the current ~13% to 25% by 2025. In addition, shareholders asked to have executive compensation tied to environmental metrics. MGE managed to side step the executive compensation resolution by arguing that this objective was already occurring and was reported in their biannual "Environmental Report". Although shareholders did not agree completely, we decided to withdraw the resolution, determined to propose a subsequent resolution in the future with more specific, objective environmental metrics tied to executive compensation.

The renewable energy project, however, actually should achieve more than what shareholders initially had asked for. The group of nine shareholders that formally filed the resolutions began meeting with MGE executives (mostly vice presidents) about the study, which included the concept of 25% renewable energy by 2025 in the resolution. Eventually, shareholders were able to get MGE to issue an RFP for a cost study of increasing MGE's renewable energy supply to 20% by 2020, 25% by 2025, and 30% by 2030. Shareholders submitted the names of nine firms and organizations (like NREL) that could be qualified to do the study. MGE accepted four of these and added another; so five firms received the RFP and three submitted proposals.

Shareholders were allowed in the selection process and convinced MGE to go with the highest bidder, ICF Inc., who offered the most comprehensive proposal. The study was initially conceived to be finished by the end of December, 2015. However, currently (June 2016) a draft report has just been submitted, a full six months later. Shareholders have yet to see the results, but expect to do so in July 2016.

3.0. The 2015/2016 Shareholder Advocacy

Like many things, shareholder advocacy can continue indefinitely. Pressure is needed to keep the company moving in the right direction. To this end MGE shareholders for Clean Energy have kept meeting every six weeks or so, discussing updates and potential new initiatives, including new resolutions.
The following figure describes the time line on shareholder advocacy in 2015 and 2016:

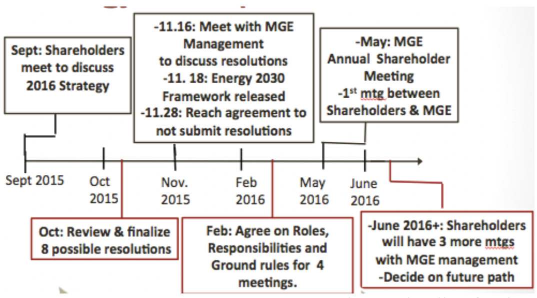

Fig. 2: Timeline for the 2015/16 Shareholder Engagement

After a few meetings in the fall of 2015, the following eight resolutions in four categories were drafted by shareholders in SEC compliant submittal form. Some of these resolutions were repeats from 2014, but most were new.

Policy: "Support federal cap and dividend legislation"
Governance

- "Link executive compensation to carbon reduction"
- "Diversify the Board of Directors with social and environmental experts"
- "Remove the CEO from the Board"

- "Perform a B-Corporation assessment"

Studies: "Perform a risk analysis of MGE's stranded assets"

Other
- "Perform a study on the economic and social impacts of the fixed charge increase"
- "Report on MGE Foundation giving"

Shareholders decided to meet with MGE executives this year before submitting resolutions. This approach was meant to solidify the relationship with MGE management, to show that shareholders were interested in "working together" with management to study and implement clean energy issues and concerns. About two weeks before resolutions needed to be filed, shareholders and management met and MGE politely listened to shareholder descriptions of the proposed resolutions.

Within the next few days, MGE announced a 15-year clean energy initiative, the "2030 Energy Framework". The major goals of the framework were:
- 30% retail energy sales by renewable energy by 2030 (with a milestone 25% by 2025)
- Increase EE and conservation (but no specific goal)
- Reduce CO2 emissions 40% from 2005 levels by 2030.

MGE's marketing spin that described the planning process was: "The company's vision was informed by input from our nearly 100 Community Energy Conversations; an extensive customer survey; our own industry research, analysis and planning; other collaborative partnerships; and numerous stakeholder discussions."

On the surface, the 2030 Energy Framework seems like a step in the right direction, and it is. Shareholders felt vindicated that their efforts, in combination with other Madison area clean energy advocates, had made a positive impact on MGE's decision making. However the four-step community engagement process MGE laid out in cooperation with their facilitator, JSA, was usurped by MGE as indicated by:
- The "Community Energy Conversations" process was not yet complete and no independent report published;
- The renewable energy study is not yet complete. Shareholders had been told: "When the study is done, MGE will combine the study's results with feedback from the Community Conversations and input from others to develop the path forward";
- The goals were not as ambitious as other utilities, like MidAmerican Energy, Green Mountain Power, Xcel Energy, Austin Energy, to name a few;
- The goals are not much different from MGE's previous, business as usual, efforts and may not be enough to mitigate the climate problem. The renewable resource increase is about one (1) % per year, which is similar to MGE's renewable energy increase over the past 15 years (going from 2% to 13% in 10 years). The 40% reduction from CO2 is already at a 20% reduction from 2005, due primarily to the switch to natural gas at an old coal plant.

3.1. The 2016 Agreement
In the two weeks before resolutions needed to be filed, shareholders reached another agreement with MGE in exchange for not submitting the resolutions. MGE agreed to "provide a forum for holding constructive and collaborative discussions on issues of mutual interest & collaboration to advance their 2030 Energy framework" with up to 10 shareholders. Shareholders agreed to this proposal based on a strategy to engage with executives to push progressive and sustainable policies forward with MGE. Shareholders also wanted to leverage the potential to submit resolutions later in 2016 if shareholder requests were not considered or progress was not being made as fast as possible.

Once again, a formal agreement was signed by both parties, which defined the agreement and its provisions. Over the next three months, a more refined statement was developed, which described the roles and responsibilities of both parties in the 2016 dialogue.

The 10 shareholders met with MGE executives in May 2016 as an introductory meeting and to agree on the process for the 2016 meetings. The first formal meeting occurred in June of 2016 and primarily focused on ways MGE could increase its energy efficiency and community solar efforts. Three more meetings are scheduled to conclude before November 2016, leaving time for shareholders to submit more resolutions by the 2017 Annual meeting resolution filing deadline if MGE does not live up to its part of the agreement.

4. What's next, lessons learned

4.1. What's next?

In the final six months of 2016, shareholders will be involved in:

- Evaluating the ICF Renewable Energy Study with MGE;
- Meeting with MGE on a regular basis to discuss clean energy ideas and policies;
- Connecting with more MGE shareholders;
- Exploring future resolutions;
- Continuing to be a voice for shareholders who support clean energy;
- Encouraging shareholders of other utilities to engage in shareholder advocacy.

4.2. Lessons learned

In the past 20 months, our MGE Shareholders for Clean Energy group has learned quite a bit about influencing our local utility to move toward clean energy polices. Going from no basic knowledge on shareholder advocacy opportunities to being regularly engaged with utility management has been quite an intense, but worthwhile effort. A few key takeaways include:

- Leverage of shareholder resolutions is powerful. Companies do not want all shareholders to hear of their transgressions and will negotiate with shareholders to avoid it;
- Shareholder advocacy is a way to promote environmental, social, & governance change from within. It appears best to develop an ongoing personal dialogue with company executives, if possible.
- Shareholders need to focus on ultimate goals and to keep pushing for tangible results rather than just talk;
- Be prepared for last minute negotiations. Don't back down until you have to;
- A lot of ongoing follow up is needed with companies to complete elements of an agreement. With an all volunteer group, this can lead to mission fatigue. New people need to get energized and be willing to take over the organizations efforts.

5. Summary

Shareholder advocacy is being used across the country as a way for citizens to promote clean energy activities by major corporations, including utilities. MGE shareholders initially formed to fight the 2014 fixed rate increase and MGE's long-term reliance on fossil fuels. This got us in the door and was a way to initially organize. It also started the development of a longer-term relationship with MGE executives.
Our organized shareholder group, MGE Shareholders for Clean Energy, is having a tangible impact on MGE's policies and is now part of the decision matrix that MGE considers when making decisions. Thus far, a major renewable energy price study is under review that considers increasing renewable energy by more than double in the next 15 years. MGE has proposed a citizen engagement process and a major clean energy initiative, in part due to our shareholder impact. Shareholders are also meeting with MGE executives every few months to discuss clean energy proposals that the company should consider.

Corporations do not want negative resolutions in the proxy statement, which can be leveraged by shareholders as one way to get corporations to increase clean energy agendas.

We have accomplished quite a bit, but more needs to be done to get MGE to follow through on their commitments and become a national leader in clean energy. It's an ongoing process, but is worthwhile doing.

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