



# City of Grand Island

Tuesday, May 24, 2016

Council Session

## Item G-6

**#2016-123 - Approving Certificate of Participant with the Public Power Generation Agency for Revenue Refunding Bonds, 2016, Series A**

Staff Contact: Tim Luchsinger, Jerry Janulewicz

# Council Agenda Memo

**From:** Jerry Janulewicz, City Attorney  
Timothy Luchsinger, Utilities Director

**Meeting:** May 24, 2016

**Subject:** Public Power Generation Agency – *Certificate of Participant*

**Presenter(s):** Tim Luchsinger, Utilities Director

## Background

The City of Grand Island is a member of Public Power Generation Agency, an agency formed through an Interlocal Agreement on September 1, 2005 and Participation Agreement on October 5, 2006 for the ownership and operation of the Whelan Energy Center Unit 2, a coal-fueled generating plant which began operation May, 2011. This inter-local agency issued revenue bonds in 2007 for the construction of the project. A 2016 issue of bonds to allow the refinancing of the 2007 issue was recently completed.

## Discussion

The 2016 Series A Bonds issue requires the compilation of financial and operating data from each of the project Participants in order to prepare the Official Statement and other documents necessary to proceed with the issuance of the bonds to finance the Participants' share of the construction project. Each Participant must provide the required information and certify that this information is correct.

Attached is the *Certificate of Participant*. By execution of this document the City certifies that the information provided for preparation of the 2016 Series A Bonds issue is correct and that there are not material legal matters pending which would affect the Participants' ability to meet its obligation to the project at the date of bond issuance.

All participants in the 2016 Series A Bonds issuance are required to execute a *Certificate of Participant*.

## Alternatives

It appears that the Council has the following alternatives concerning the issue at hand. The Council may:

1. Move to approve
2. Refer the issue to a Committee
3. Postpone the issue to future date
4. Take no action on the issue

### **Recommendation**

City Administration recommends that the *Certificate of Participant* be approved by Council for execution by the Mayor.

### **Sample Motion**

Move to approve the *Certificate of Participant* and to authorize the Mayor to execute the document.

## CERTIFICATE OF PARTICIPANT

The undersigned hereby certifies that he is the Mayor of the City of Grand Island, Nebraska (the "*Participant*"), a member of Public Power Generation Agency ("*PPGA*"), and that as such he is authorized to execute this Certificate on behalf of the Participant, and hereby further certifies as follows:

1. This Certificate has been executed in connection with the Public Power Generation Agency Interlocal Agreement, dated as of September 1, 2005 (the "*Interlocal Agreement*"), by and among the Participant and four other public agencies; and the Amended and Restated Participation Agreement, dated as of October 5, 2006 (the "*Participation Agreement*"), between the Participant and PPGA; and the proposed issuance by PPGA of its Whelan Energy Center Unit 2 Revenue Refunding Bonds, 2016 Series A.
2. The Participant is a City of the First Class of the State of Nebraska and is governed by a City Council (the "*Governing Body*").
3. The Interlocal Agreement and the Participation Agreement have each been duly authorized, executed and delivered by the Participant and constitute legal, valid and binding agreements of the Participant, and have not been amended, revised or supplemented.
4. The resolutions adopted at a meeting of the Governing Body held on August 9, 2005 authorizing the execution and delivery of the Interlocal Agreement and related matters and the ordinance adopted at a meeting of the Governing Body held on November 14, 2006 authorizing the execution and delivery of the Participation Agreement and related matters have each been duly adopted, and are in full force and effect and have not been amended, modified, repealed or supplemented.
5. No referendum petition was filed with the Participant or any of its officers seeking to refer such resolution or ordinance to the electors of the Participant in accordance with the provisions of state law; and (b) no litigation has been instituted, is pending or has been threatened to require a referendum election thereon.
6. The Participant now owns and operates a local electric utility system (the "*System*") and furnishes electric energy to all persons desiring such service within its service area. The electric energy to be provided by its Entitlement Share in the Project (each as defined in the Participation Agreement) will be used by the Participant to provide electric service within its service area.
7. The payments to be made by the Participant to PPGA under the Participation Agreement will constitute ordinary and necessary expenses payable solely from the revenues and other available funds of the System.

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8. There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or administrative body pending or, to the best of our knowledge threatened, against the Participant which (a) challenges, contests or questions the due and regular adoption of the resolution or ordinance referred to in paragraph 4 above or the validity thereof, or affects or seeks to prohibit, restrain or enjoin the Participant from complying with the obligations contained in the Participation Agreement or the Interlocal Agreement, including the payment obligations to PPGA contained in the Participation Agreement, (b) in any way affects or questions the validity or enforceability of the Interlocal Agreement or the Participation Agreement, nor, to the best of our knowledge, is there any basis therefor, (c) challenges or affects the corporate existence of the Participant or the titles of its officers to their respective offices, (d) seeks to prohibit, restrain or enjoin the collection of revenues from the System to be used to make payments to PPGA under the Participation Agreement, and (e) involves any of the property or assets of the Participant which involves the possibility of any judgment or liability, not fully covered by insurance, which may result in any material adverse change in the business, properties, assets or in the condition, financial or otherwise, of the System.

9. The Participant requested PPGA to acquire and construct the “Project”, as defined in the Participation Agreement (consisting primarily of Whelan Energy Center Unit 2), on its behalf in order to provide electric energy needed by the Participant to serve its customers, and the Participant continues to expect the Project to be needed for such purpose.

10. Timothy G. Luchsinger has been duly appointed by the Governing Body to serve as a member, and Travis Burdett as alternate member, of the Board of Directors of PPGA on and from May 10, 2011.

11. The information with respect to the Participant and the System contained in the Official Statement of PPGA, dated April 28, 2016, was provided by the Participant, does not contain any untrue statement of a material fact and does not omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

Dated: May 25, 2016

CITY OF GRAND ISLAND, NEBRASKA

By \_\_\_\_\_  
Jeremy Jensen, Mayor

RESOLUTION 2016-123

WHEREAS, through and by adoption of Resolution 2005-224 on August 9, 2005, the City of Grand Island became a member of the Public Power Generation Agency by its approval of the Interlocal Agreement creating the Public Power Generation Agency, approving the agency bylaws, and approving the Participation Agreement, all providing for the governance of the agency and the ownership and operation of the Whelan Energy Center Unit 2, a coal-fueled generating plant; and

WHEREAS, on November 14, 2006, the City Council of the City of Grand Island enacted Ordinance No. 9089 thereby approving the Amended Participation Agreement by and between the City of Grand Island and the Public Power Generation Agency; and

WHEREAS, the Public Power Generation Agency issued revenue bonds in 2007 for the construction of the Whelan Energy Center Unit 2 and a 2016 issue of bonds to allow the refinancing of the 2007 issue was recently completed; and

WHEREAS, as a part of the process of arranging financing for the Public Power Generation Agency Bonds, the Public Power Generation Agency has requested that the City execute a Certificate of Participant; and

WHEREAS, the form of the Certificate of Participant was reviewed and approved by the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, as follows:

1. The actions and proceedings of the City of Grand Island, and its City Council and Mayor, had and taken on August 9, 2005, with respect to the above-mentioned Interlocal Agreement and bylaws of the Public Power Generation Agency, should be and the same are hereby confirmed, ratified and approved; and
2. The Mayor is authorized to execute the above-mentioned Certificate of Participant on behalf of the City of Grand Island.
3. This resolution is hereby determined to be a measure necessary to carry out the obligations of the City under the Agreement and shall be in force and effect immediately upon its passage and approval.

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PASSED AND APPROVED by the City Council of the City of Grand Island, Nebraska, May 24, 2016.

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Jeremy L. Jensen, Mayor

Attest:

\_\_\_\_\_  
Nicki Stoltenberg, City Clerk Pro Tem

Approved as to Form	☐ _____
May 20, 2016	☐ City Attorney