



City of Grand Island

Tuesday, November 23, 2021

Council Session

Item G-3

#2021-327 - Approving the 3rd Amendment to the Energy Management and Settlement Service Agreement with Tenaska Power Service

Staff Contact: Tim Luchsinger, Stacy Nonhof

Council Agenda Memo

From: Tim Luchsinger, Utilities Director
Stacy Nonhof, Interim City Attorney

Meeting: November 9, 2021

Subject: Approving the 3rd Amendment to the Energy Management and Settlement Service Agreement with Tenaska Power Services

Presenter(s): Tim Luchsinger, Utilities Director

Background

In order to ensure a reliable electric supply grid, electric utilities are required by federal and regional agencies to maintain accredited electric generation facilities in an amount to meet their maximum load requirements, plus a reserve to support outside needs in an emergency grid situation. This accreditation includes the operation of each unit at full load for a specified duration annually, and the generation source can be either owned by the utility or through an arrangement with another utility. Meeting this capacity accreditation is also a requirement for a utility to be part of the energy market in the regional Southwest Power Pool (SPP) and allow it to buy and sell power to meet its load. With its units at Platte and Burdick, and share of units at Nebraska City and Hastings, the Utilities Department currently has accredited generation of 231 megawatts to serve a maximum load of 170 megawatts.

Discussion

Tenaska Power Services, the Department's power marketer, proposes to buy surplus capacity from the Department and sell to a third party which needs accredited capacity through May 2024 under the terms of the attached agreement as the 3rd Amendment to the Energy Management and Settlement Service Agreement with Tenaska Power Services. Attachment C-1 to Exhibit C includes confidential pricing and is forwarded under separate cover. The Utilities Department recommends that this amendment to the Tenaska agreement be approved by Council.

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 Council approve the 3rd Amendment to the Energy Management and Settlement Service Agreement with Tenaska Power Services.

Sample Motion

Move to approve the 3rd Amendment to the Energy Management and Settlement Service Agreement with Tenaska Power Services.

**THIRD AMENDMENT
TO THE ENERGY MANAGEMENT AND SETTLEMENT SERVICES AGREEMENT**

This Third Amendment to the Energy Management and Settlement Services Agreement (“Amendment”) is entered into as of November 24, 2021 (the “Effective Date”) by and between The City of Grand Island, which through its Electric Division operates a municipal electric utility organized under the laws of Nebraska (“Customer”) and Tenaska Power Services Co. (“TPS”). Each of Customer and TPS may be referred to herein as a “Party” and collectively as the “Parties” to this Amendment.

WHEREAS, Customer and TPS are Parties to that certain Energy Management and Settlement Services Agreement dated as of May 22, 2012, as amended (the “Agreement”); and

WHEREAS, the Parties desire to amend the Agreement to add a power purchase and sale transaction and update the Parties’ notice information.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by both Parties, Customer and TPS hereby agree as follows:

AMENDMENT

1. Unless otherwise defined in this Amendment, capitalized terms used in this Amendment shall have the same meaning as that given to such terms in the Agreement.
2. The Parties hereby amend the Agreement by deleting the Parties’ respective information for notices under Section 10.7 of the Agreement and replacing such information with the information contained in Exhibit B attached hereto. For avoidance of doubt, Exhibit B shall remain effective for the term of the Agreement.
3. The Parties hereby amend the Agreement to add Exhibit C attached hereto. Exhibit C of this Amendment shall terminate at the end of the Delivery Period, as defined in Exhibit C, provided that such termination shall not affect the Parties’ rights and obligations which arose prior to the date of termination, which shall remain in full force and effect.
4. The Parties hereby amend the Agreement to add an additional Section. The following paragraph is hereby inserted as Section 11.16:

“11.16 Survival. The rights and obligations of the Parties hereunder which by their nature survive expiration or termination of this Agreement shall survive and inure to the benefit of the Parties.”
5. For avoidance of doubt, it is the intent of the Parties that this Amendment and all attachments hereto shall survive the expiration or earlier termination of the Agreement.
6. Unless expressly changed by this Amendment, all other terms of the Agreement shall remain in full force and effect.

7. This Amendment may be executed in multiple counterparts, including facsimile(s) or emails, each one of which will be considered an original Agreement, but all of which together will constitute one and the same instrument.
8. This Amendment contains the entire agreement between the Parties with respect to the subject matter of this Amendment and supersedes any previous understandings, commitments, or agreements, oral or written, with respect to such subject matter of this Amendment.

WHEREFORE, the Parties acknowledge and agree to this Amendment effective as of the Effective Date.

TENASKA POWER SERVICES CO.

THE CITY OF GRAND ISLAND

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Signature Page to Third Amendment
to the Energy Management and Settlement Services Agreement

EXHIBIT B
Notice Information

TENASKA POWER SERVICES CO.	THE CITY OF GRAND ISLAND
All Notices:	All Notices:
Address: 300 E. John Carpenter Freeway, Suite 1100 Irving, TX 75062	Address: 315 N. Jefferson Grand Island, NE 68802
Attn: Manager, Contract Administration	Attn: Ryan Schmitz
Phone: (817) 303-1860	Phone: (308) 385-5463
Facsimile: (817) 303-1867	Facsimile: (308) 382-0558
Email: TPSContractAdmins@tnsk.com	Email: rschmitz@giud.com
CICI Number: 549300K7NFSB93YGBN35	CICI Number:
CFTC Designation: End User	CFTC Designation:
Duns: 01-501-6913	Duns: 040919607
Federal Tax ID Number: 47-0824081 (The above is the Tax ID for Tenaska Energy, Inc., the parent company of Party A. Party A is a disregarded entity for federal tax purposes.)	Federal Tax ID Number: 47-6006205
Invoices: Attn: Accounts Payable Phone: (817) 462-1521 Facsimile: (817) 462-1038 Email: tps-accounting@tnsk.com	Invoices: Attn: Ryan Schmitz Phone: (308) 385-5463 Facsimile: (308) 382-0558 Email: rschmitz@giud.com
Real-Time Trading: Phone: (817) 462-1528 Facsimile: (817) 462-1104	Real-Time Trading: Phone: (308) 385-5461 Facsimile: (308) 382-0558
Confirmations: Attn: Contract Administration Phone: (817) 303-1860 Facsimile: (817) 462-1520 Email: confirms@tnsk.com	Confirmations: Attn: Ryan Schmitz Phone: (308) 385-5461 Facsimile: (308) 382-0558 Email: pcc-dispatch@grand-island.com
Payments: Attn: Accounts Receivable 14302 FNB Parkway Omaha, NE 68154 Phone: (402) 938-1621 Facsimile: (402) 938-1677	Payments: Attn: Ryan Schmitz Phone: (308) 385-5463 Facsimile: (308) 382-0558 Email: rschmitz@giud.com
Wire/ACH Transfer: Bank: US Bank, Omaha, NE ABA No: 042000013 Account No: 130111671306 Account Name: Tenaska Power Services Co.	Wire/ACH Transfer: Bank: Five Points Bank, Grand Island, NE ABA No: 104901678 Account No: 10731784 Account Name: City of Grand Island

Credit and Collections: Attn: Credit Department Phone: (817) 303-1113 Facsimile: (817) 462-1038 Email: credit@tnsk.com	Credit and Collections: Attn: Phone: Facsimile: Email:
With additional Notices of an Event of Default or Potential Event of Default to: Attn: Associate General Counsel Phone: (817) 462-8053 Facsimile: (817) 303-1104 Email: eodnotices@tnsk.com	With additional Notices of an Event of Default or Potential Event of Default to: Attn: Phone: Facsimile: Email:

Exhibit C
POWER PURCHASE AND SALE TRANSACTION AGREEMENT

This Confirmation Agreement (“Confirmation”) shall confirm and govern solely the transaction (“Transaction”) agreed to on October 19, 2021 (“Effective Date”) between The City of Grand Island, which through its Electric Division operates a municipal electric utility organized under the laws of Nebraska (“Seller”), and Tenaska Power Services Co. (“Buyer”), individually a “Party” and collectively the “Parties”, regarding the sale/purchase of the Product under the terms and conditions as follows:

Buyer: Tenaska Power Services Co.

Seller: The City of Grand Island

Facility: C.W. Burdick Station, 800 Bischeld Street Grand Island, Nebraska, 68801

Product: SPP Firm Capacity (“Firm Capacity”) as defined in Attachment AA of the OATT. Firm Capacity shall be sourced from the Facility, or a Seller specified replacement resource as specified below, which shall qualify as a Designated Resource in accordance with the OATT as provided in Transaction Contingencies set forth below. Seller shall be obligated to sell and deliver, and Buyer shall be obligated to purchase and receive Firm Capacity in an amount equal to the Contract Quantity. Buyer and Seller acknowledge and agree that Firm Capacity shall not include any planning reserves, energy or ancillary services.

(“SPP”) means the Southwest Power Pool.

Term: June 1, 2022 through and including May 31, 2024, subject to the Transaction Contingencies set forth below.

Contract Quantity of Firm Capacity: For each month of the Planning Year listed in the table below, Seller and Buyer shall schedule the following volumes in SPP Resource Adequacy Workbook:

KW/Month	Planning Year Term
7,000	June 1, 2022-May 31, 2023
7,000	June 1, 2023-May 31, 2024

Governing Agreement: Energy Management Agreement dated May 22, 2012, as amended (“EMA”)

Delivery Period: June 1, 2022 through and including May 31, 2024

Capacity

Price: Per Attachment C-1, attached hereto.

Delivery: Buyer shall be responsible for purchasing necessary firm transmission to deliver the Product to Buyer. Delivery of the Quantity of Firm Capacity will be completed upon (a) Buyer's designation of the Facility in the applicable SPP Engineering Data Submission Tool (or successor) as a Source of Buyer's Resource Adequacy obligations (as defined in the SPP Tariff) for the Delivery Period, and (b) Seller's consent to that designation.

Notices: All notices referred to in this Confirmation shall be according to Section 10.7 of the Governing Agreement, as amended.

Payments: Per Section 5.1 of the Governing Agreement.

Seller Failure
to Perform:

Unless otherwise excused by Force Majeure, in the event the Facility is not available to be used by Buyer to meet the Buyer's SPP Capacity Obligation for an upcoming Planning Year, Seller shall have the right to supply the Product from a replacement resource, and (i) as long as Seller designates the replacement resource in the SPP Engineering Data Submission Tool by May 15th preceding the upcoming Planning Year and (ii) upon SPP acceptance of such designation as a Summer Season Resource for Buyer, Seller shall have no liability under this Confirmation to Buyer for failure to deliver the Product. Unless otherwise excused by Force Majeure, in the event Seller fails to select a replacement resource for the Product as provided in this section, and in respect of any penalty or costs Buyer incurs as a result of such failure for which Buyer seeks to be indemnified, Buyer shall provide Seller with sufficient supporting documentation of such costs incurred and Seller will refund to Buyer any payments made by Buyer for the Quantity of Firm Capacity for the previous Planning Year up to such costs incurred. The remedies in this section for failure by Seller to perform its obligations to provide the Quantity of Firm Capacity to Buyer shall be in lieu of any and all remedies whether under this Confirmation, the Governing Agreement, at law, in equity or otherwise, and shall be Buyer's sole and exclusive remedies with respect to such failure.

Capacity

Representations: Seller represents that the Product made available hereunder shall meet, in all material respects (i) SPP Resource Adequacy requirements and standards, and (ii) the Firm Capacity requirements of SPP Open Access Transmission Tariff, effective October 1, 2021, as filed with the Federal Energy Regulatory Commission and as amended from time to time ("OATT"), as each of these requirements and/or standards in clause (i) and clause (ii) exist on the date the Parties execute this Confirmation.

SPP Rules: Each party agrees to abide by all applicable SPP operating procedures, market rules, standards, protocols, and/or product definitions, each as promulgated from time to time by SPP or its successors (the “SPP Rules”). Capitalized terms used but not otherwise defined in this Confirmation or in the Governing Agreement shall have the meanings set forth in the SPP Rules.

SPP Market Participant Status: If either Party ceases to be an SPP Market Participant (as defined in the SPP Documents) and is not able to perform its obligations under this Confirmation, an Event of Default under the Governing Agreement shall have occurred with respect to such Party unless such Party cures such default within 15 Business Days. For avoidance of doubt, SPP Documents means (i) the SPP OATT; (ii) the SPP Planning Criteria, Revision 1.6, effective January 31, 2019, as amended from time to time (“SPP Planning Criteria”); and (iii) any business practices and market protocols established or implemented by SPP, as amended from time to time; *provided that* in the event of any inconsistency in the SPP Documents, the OATT shall at all times prevail.

Change in SPP Documents: If the Federal Energy Regulatory Commission or other applicable regulatory body shall implement any change in law, rule, regulation, tariff or practice that materially and adversely affects Seller’s or Buyer’s ability to perform its obligations hereunder, the Parties shall negotiate in good faith an amendment to this Confirmation or take other appropriate action the effect of which is to restore each Party, as closely as possible, to its same position as prior to such change.

Buyer’s Re-Sale of Product: Seller acknowledges and agrees that Buyer will re-sell all or a portion of the Product hereunder to a third party purchaser (“Third Party Purchaser”); provided, however, that any such re-sale does not increase Seller’s obligations or liabilities hereunder.

Transaction Contingencies: Designated Resource Status for Facility

The obligations of the Parties related to the Scheduling, delivery, sale and purchase of, and payment for, Firm Capacity under this Agreement are conditioned on Buyer, or Buyer’s Third Party Purchaser, as applicable, obtaining Designated Resource status for the Facility pursuant to the applicable SPP transmission service study process, which status shall allow for the firm transmission of energy from the Facility to Buyer’s, or Buyer’s

Third Party Purchaser's, as applicable, load.

Buyer will, or Buyer's Third Party Purchaser agrees to, use commercially reasonable efforts to obtain Designated Resource status for the Facility and any Replacement Capacity Resource pursuant to the applicable SPP transmission service study process.

If the Directly Assigned Upgrade Costs exceed \$0, this Confirmation Letter may be terminated by Buyer by providing written notice to Seller, no later than five (5) Business Days after the Directly Assigned Upgrade Costs are made available by SPP, without penalty or further obligation on the part of Buyer or Seller.

If Buyer fails to notify Seller in writing within ten (10) Business Days after the release of the results of the applicable Aggregate Facility Study that Buyer, or Buyer's Third Party Purchaser, as applicable, has obtained Designated Resource status for the Facility in accordance with the OATT, this Confirmation Letter may be terminated by Seller by providing written notice to Buyer, without penalty or further obligation on the part of Buyer or Seller.

This Confirmation is being provided pursuant to and in accordance with the EMA and constitutes part of and is subject to the terms and provisions of the EMA. Terms used but not defined herein shall have the meanings ascribed to them in the EMA, or if not defined therein, then in the SPP Documents. Specific provisions contained in this Confirmation shall control in the event of a conflict between the provisions of the EMA and the provisions of this Confirmation.

Tenaska Power Services Co.

By: _____

Name:

Title:

The City of Grand Island

By: _____

Name:

Title:

RESOLUTION 2021-327

WHEREAS, to ensure a reliable electric supply grid, electric utilities are required by federal and regional agencies to maintain accredited electric generation facilities in an amount to meet their maximum load requirements, plus a reserve to support outside needs in an emergency grid situation; and

WHEREAS, with its units at Platte and Burdick, and a share of units at Nebraska City and Hastings, the Utilities Department currently has accredited generation of 231 megawatts to serve a maximum load of 170 megawatts; and

WHEREAS, Tenaska Power Services proposes under the terms of Amendment #3 to the Energy Management and Settlement Service Agreement to buy surplus capacity from the Department and sell to a third party which needs accredited capacity through May 2024.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that Amendment #3 to the Energy Management and Settlement Service Agreement with Tenaska Power Services is approved, and the Mayor is hereby authorized to sign the amendment on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, November 23, 2021.

Roger G. Steele, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	▣ _____
November 19, 2021	▣ City Attorney