



City of Grand Island

Tuesday, April 23, 2013

Council Session

Item G-10

**#2013-115 - Approving Execution of Dodd-Frank Act
Representations and Reporting Amending Agreement Relative to
the Tenaska Power Marketing Agreement**

Staff Contact: Tim Luchsinger, Robert Sivick

Council Agenda Memo

From: Timothy Luchsinger, Utilities Director
Robert Sivick, City Attorney

Meeting: April 23, 2013

Subject: Approving the Execution of Dodd-Frank Act
Representations and Reporting Amending the Agreement
Relative to Tenaska Power Marketing Agreement

Item #'s: G-10

Presenter(s): Timothy Luchsinger, Utilities Director

Background

Prior to 2009, Nebraska utilities conducted power purchases and sales with each other via bilateral transactions. Bilateral transactions are simply two utilities agreeing on a quantity and price. In 2009, all large Nebraska utilities including Nebraska Public Power District, Omaha Public Power District and Lincoln Electric Systems officially joined Southwest Power Pool (SPP). SPP is a Regional Transmission Operator that, among other things, provides a real-time energy market that allows participants to buy and sell power directly into the market and avoid the interaction with multiple companies that come with bilateral transactions. Bilateral transactions still continue and this is the only way that Grand Island currently buys and sells power with other companies.

In 2014, SPP plans to deploy a new market called the Integrated Market. This market increases in complexity and requires utilities to provide next day forecasting and pricing information in an effort to utilize the lowest cost energy for load. It will also have a real-time energy market for correcting imbalances from the day-ahead market. With the onset of the integrated market, bilateral transactions will most likely be phased out entirely, and SPP will serve Grand Island's load requirements and dispatch its generating units as required to provide for the system's demand.

Discussion

Several options were explored on how Grand Island may participate in the upcoming Integrated Market. Due to a need of necessary and qualified staff, it was determined that the best way for Grand Island to participate was via a third party. On May 22, 2012,

Council approved an agreement with Tenaska, from Dallas, Texas, to conduct transactions with SPP on behalf of Grand Island.

Within the agreement, Tenaska receives financial incentives for power sold from Grand Island or lower cost power purchased for Grand Island's load. This will provide incentive for Tenaska to transact as much as possible on behalf of Grand Island. Tenaska will help Grand Island position itself and provide the needed expertise to guide Grand Island's decisions regarding pricing and participation in the power markets.

Because certain transactions with Tenaska could be considered a swap under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the City is required to obtain a Commodity Futures Trading Commission Interim Compliant Identifier (CICI), which will be used by Tenaska for their reporting requirements. The Act also requires that the attached Dodd-Frank Act Representations and Reporting Amending Agreement be executed in order for Tenaska to continue to conduct transactions for the City. Department and Legal staff have reviewed this document and recommend its execution by the City.

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 execution of the attached Dodd-Frank Act Representations and Reporting Amending Agreement with Tenaska.

Sample Motion

Move to approve execution of the attached Dodd-Frank Act Representations and Reporting Amending Agreement with Tenaska.



DODD-FRANK ACT REPRESENTATIONS AND REPORTING AMENDING AGREEMENT

This Dodd-Frank Act Representations and Reporting Amending Agreement (this “Agreement”) is made as of April __, 2013, by and between Tenaska Power Services Co. (“Party A”) and _____ (“Party B”) with respect to Swap Transactions (as defined below) entered into under any oral or written agreement between the parties that governs the terms and conditions of one or more Swap Transactions that each such party has or may enter into as principal (each a “Covered Agreement” and collectively with every additional contract or agreement the parties may from time to time hereinafter agree in writing to make subject hereto, the “Covered Agreements”), and amends each Covered Agreement to the extent provided herein.

WHEREAS, CFTC Regulation 45.8(d)(2) provides in pertinent part that “the counterparties shall agree as one term of their swap which counterparty shall be the reporting counterparty”;

In consideration of the mutual covenants set forth herein, the parties hereto agree as follows:

Article 1:

Amendment of each Covered Agreement

1.1 The parties hereby amend each Covered Agreement as set forth herein. In the event of any inconsistency between the provisions of this Agreement and a Covered Agreement, this Agreement shall prevail for the purpose of the relevant Swap Transaction. In the event of any inconsistency between the provisions of any confirmation entered into after the date hereof and this Agreement, such confirmation shall prevail for the purpose of the relevant Swap Transaction.

Article 2:

Definitions; Rules of Construction

2.1 Capitalized terms used in this Agreement and not otherwise defined herein are defined below.

“*CFTC*” means the U.S. Commodity Futures Trading Commission.

“*CFTC Regulations*” means the rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations published or issued by the CFTC, in each

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applicable case as amended, and when used herein may also include specific citations to Titles, Parts or Sections of Title 17 of the Code of Federal Regulations without otherwise limiting the applicability of other rules, regulations, orders, supplementary information, guidance, questions and answers, staff letters and interpretations.

“*Commodity Exchange Act*” means the U.S. Commodity Exchange Act, as amended, 7 USC Section 1, *et seq.*

“*Commodity Option*” means a “commodity option” within the meaning of CFTC Regulations.

“*Eligible Contract Participant*” is defined in Section 1a(18) in the Commodity Exchange Act.

“*Historical Swap*” means a “pre-enactment swap” within the meaning of CFTC Regulation 46.1 or a “transition swap” within the meaning of CFTC Regulation 46.1, in either case entered into under a Covered Agreement.

“*Notice Procedures*” means (i) the procedure specified in a Covered Agreement regarding delivery of notices or information to a party; and (ii) such other means for the delivery of notices or information to a party as may be agreed in writing between the parties from time to time.

“*Reporting Counterparty*” means the party designated as such for those categories of Swaps so identified in Exhibit A, or as otherwise agreed to by the parties in a Swap Transaction.

“*Reportable Event*” means any event that results in a Swap under a Covered Agreement or in a change to the primary economic terms of such a Swap, including execution, termination, assignment, novation, exchange, transfer, amendment, conveyance, or extinguishing of rights or obligations of a Swap.

“*SDR*” means a registered “swap data repository” as defined in Section 1a(48) of the Commodity Exchange Act and CFTC Regulations.

“*Swap*” means a “swap” as defined in the Section 1a(47) of the Commodity Exchange Act and CFTC Regulations.

“*Swap Transaction*” means a transaction between the parties under a Covered Agreement involving a Swap.

“*Trade Option*” means a Commodity Option between the parties under a Covered Agreement that meets the conditions contained in CFTC Regulation 32.3(a).

2.2 As used in this Agreement, (i) “or” is not necessarily exclusive; (ii) “hereof,” “herein,” “hereunder,” and similar words refer to this Agreement in its entirety; (iii) “Articles,” “Sections” and “Exhibits” refer to Articles, Sections and Exhibits hereof unless otherwise stated or indicated; (iv) “including” is not limiting and means “including without limitation”; (v) all references to a particular entity include a reference to such entity’s successors and (if applicable) permitted assigns; and (vi) all references to a Covered Agreement or any other agreement include such Covered Agreement or other agreement as amended.

Article 3: **Representations**

3.1 Each party represents to the other as of the date hereof that:

- (a) it is duly organized or incorporated and in good standing under the laws of the jurisdiction of its organization or incorporation;
- (b) it has all requisite power and authority and, if applicable, third party and regulator consents, necessary to execute and perform this Agreement; and
- (c) the information concerning it set forth on Exhibit A is true, correct and complete.

3.2 Without limiting the representations of the parties to each other under the applicable Covered Agreement, but amending such representations to the extent inconsistent herewith, each party represents to the other as of the date hereof, and as of the time of each Reportable Event, unless otherwise stated on Exhibit A or in a subsequent notice delivered to the other party, that it is, and any guarantor, credit support provider or pledgor of assets in support of its obligations are each, an Eligible Contract Participant.

3.3 No event of default, termination event, grounds to vitiate, rescind, cancel or otherwise terminate a Swap, or other similar event shall be deemed to occur under a Covered Agreement or any other contract between the parties solely on the basis of a breach of any covenant or agreement set forth solely in Section 3.4 or Article 4 of this Agreement; provided, however, that nothing in this Section 3.3 shall prejudice any other right or remedy of a party at law or under such Covered Agreement or any other contract in respect of any misrepresentation or breach hereunder or thereunder. This Section 3.3 shall not limit or alter a party's termination rights or remedies, if any, applicable to a breach of any representation, warranty, covenant, or agreement that is not set forth solely in Section 3.4 or Article 4. Any provisions in a Covered Agreement that limit the liability of one party to the other party are not amended or affected by this Agreement.

3.4 Each party will promptly notify the other party, before any Reportable Event in accordance with the Notice Procedures, if any representation made by such party in Exhibit A or this Agreement becomes incorrect or misleading in any material respect, and will update such representation in accordance with the Notice Procedures.

Article 4: **Reporting**

4.1 The parties hereby agree as one term of each Swap Transaction that the Reporting Counterparty designated in Exhibit A for such Swap Transaction shall be the reporting counterparty. For each Reportable Event, the Reporting Counterparty designated in Exhibit A will report to an SDR everything that is required to be reported by the "reporting counterparty" or "reporting party" under CFTC Regulations 43.3(a), 45.8, and 46.5, and to the extent CFTC Regulations provide that the party other than the Reporting Counterparty is to be the "reporting counterparty" or "reporting party," the Reporting Counterparty is appointed as its "third party service provider" under CFTC Regulations 45.9 and 46.6.

4.2 With respect to Swap Transactions that are Trade Options, each party will report everything that is required to be reported by it under CFTC Regulation Part 32.

4.3 The Reporting Counterparty will provide to an SDR, or if no SDR is available to receive the information of the Reporting Counterparty, to the CFTC, everything that is required to be provided under CFTC Regulation 50.50(b) regarding the election (if any) of the exception to the clearing requirement under Section 2(h)(7)(A) of the Commodity Exchange Act. If a party elects the exception to the clearing requirement under Section 2(h)(7)(A) of the Commodity Exchange Act, it represents as

of the date of each Swap Transaction for which such election is made that it has provided the annual filing described in CFTC Regulation 50.50(b)(2) less than one year before the date of such Swap Transaction and the information therein remains true, correct and complete. Upon request, a party electing the end-user exception for any Swap Transaction will provide the other party with a copy of its current annual filing described in CFTC Regulation 50.50(b)(2).

4.4 Each party will provide to the other party any information reasonably requested by such other party to enable such other party to comply with CFTC Regulations in connection with any Swap Transaction.

4.5 The party that is not the Reporting Counterparty with respect to a Swap Transaction will promptly notify the Reporting Counterparty of the occurrence of a “life cycle event” (as defined in CFTC Regulation 45.1) in respect of such Swap Transaction, that is related to a corporate event (the meaning of “corporate event” as used in CFTC Regulation 45.1 to be reasonably determined by such party that is not the Reporting Counterparty unless and until the CFTC issues a specific definition of such term) in respect of the non-Reporting Counterparty, no later than noon Central U.S. Time on the applicable “business day” (as that term is defined in CFTC Regulation 45.1) with sufficient detail regarding such life cycle event to allow the Reporting Counterparty to comply with CFTC Regulation 45.4(c), provided, however that nothing herein requires a party to provide material non-public information respecting its securities to the Reporting Counterparty.

4.6 The parties shall seek to agree at the time a transaction is executed whether the transaction is a Swap, a Trade Option or a contract excluded from the defined term “Swap” or otherwise exempt from reporting. If the parties fail to so agree, the Reporting Counterparty shall determine and advise the other party prior to or concurrently with the execution of such transaction that it will report the transaction as a Swap Transaction or a Trade Option; provided however, a determination made solely by the Reporting Counterparty shall not preclude the other party from making its own determination, and shall not constitute an agreement by the parties, as to whether the transaction is a Swap, a Trade Option, or a contract excluded from the defined term “Swap” or otherwise exempt from reporting.

4.7 Notwithstanding any restrictions on disclosure to the contrary in any Covered Agreement or in any non-disclosure, confidentiality or similar agreement between the parties, each party consents to the disclosure of information only to the extent required by CFTC Regulations and only to the persons or entities contemplated by those CFTC Regulations.

Article 5: **Trade Options**

5.1 As of the time of each offer to enter into a Swap Transaction that is or may be a Commodity Option, and each Reportable Event in respect of such Swap Transaction, each party represents to the other, for each Commodity Option that by its terms can be exercised for physical settlement or that the parties have agreed pursuant to Section 4.6 hereof is a Trade Option, that it (i) is a producer, processor, or commercial user of, or a merchant handling the commodity that is the subject of the Commodity Option or the products or by-products thereof; (ii) is entering into the Commodity Option solely for purposes related to its business as such; and (iii) intends to physically settle the Commodity Option, so that if exercised, the Commodity Option will result in the sale of an “exempt commodity” (as defined in Section 1a(20) of the Commodity Exchange Act) or an “agricultural commodity” (as defined in CFTC Regulation 1.3(zz)) for immediate or deferred shipment or delivery.

Article 6:
Miscellaneous

6.1 This Agreement (i) is governed by the law specified to govern the applicable Covered Agreement for the applicable Swap Transaction; (ii) may be executed and delivered in counterparts (including by facsimile transmission or PDF files), all of which taken together shall constitute one and the same instrument; and (iii) does not create a partnership or joint venture between the parties.

6.2 Each party, upon the reasonable request of the other, will perform such further acts and execute such further documents as may be necessary to carry out the essential intent and purpose hereof.

6.3 Any part hereof that is or becomes invalid, illegal, or unenforceable may be severed from the remainder hereof, and to the extent possible, the parties will use reasonable efforts to replace any such part with provisions that preserve their original intent.

6.4 This Agreement does not create any third-party beneficiaries that are in addition to those provided under a Covered Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

PARTY A

Tenaska Power Services Co.

By: _____
Name: Kevin R. Smith
Title: President

PARTY B

By: _____
Name: _____
Title: _____

EXHIBIT A

Party A: Tenaska Power Services Co. CICI/Legal Entity Identifier: 549300K7NFSB93YGBN35	Party B: CICI/Legal Entity Identifier:
Principal Address: 1701 E. Lamar Blvd. Arlington, TX 76006 Phone: (817) 462-1521 Fax: (817) 303-1867 Email: TPScontractadmins@tnsk.com	Principal Address: Phone: Fax: Email:
Guarantor, if applicable: Tenaska Energy, Inc. Address: 1044 N. 115 th Street, Suite 400 Omaha, NE 68154 Phone: (401) 758-6142 Fax: (402) 758-6290 Email: msoulliere@tenaska.com	Guarantor, if applicable: Address: Phone: Fax: Email:
Reporting Counterparty: (select only one)	
<input checked="" type="checkbox"/> Party A	<input type="checkbox"/> Party B
<input type="checkbox"/> Other [specify]	
Swap Data Repository(ies) selected by the Reporting Counterparty(ies):	
SDR if Party A is a/the Reporting Counterparty: ICE or DTCC SDR if Party B is a/the Reporting Counterparty:	
Reportable Events to be reported by Reporting Counterparty:	
<input checked="" type="checkbox"/> Historical Swaps entered into prior to the date hereof <input checked="" type="checkbox"/> Reportable Events on or after the date hereof including in respect of Historical Swaps <input type="checkbox"/> Reportable Events on or after the date hereof excluding in respect of Historical Swaps <input checked="" type="checkbox"/> Historical Swaps as used in this election excludes cleared Historical Swaps	
Swap Dealer within the meaning of Section 1a(49) of the Commodity Exchange Act and CFTC Regulations:	
Party A: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Party B: <input type="checkbox"/> Yes <input type="checkbox"/> No
Major Swap Participant within the meaning of Section 1a(33) of the Commodity Exchange Act and CFTC Regulations:	
Party A: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Party B: <input type="checkbox"/> Yes <input type="checkbox"/> No
Eligible Contract Participant:	
Party A: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Party B: <input type="checkbox"/> Yes <input type="checkbox"/> No
U.S. person within the meaning of CFTC Regulations:	
Party A: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Party B: <input type="checkbox"/> Yes <input type="checkbox"/> No

Financial Entity within the meaning of CFTC Regulations:	
Party A: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Party B: <input type="checkbox"/> Yes <input type="checkbox"/> No
Special Entity within the meaning of CFTC Regulations:	
Party A: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If Yes, check if the following applies: “owns or operates electric or natural gas facilities or electric or natural gas operations (or anticipated facilities or operations), supplies natural gas and/or electric energy to other utility special entities, has public service obligations (or anticipated public service obligations) under Federal, State or local law or regulation to deliver electric energy and/or natural gas service to utility customers, or is a Federal power marketing agency as defined in Section 3 of the Federal Power Act (16 U.S.C. 796(19))”	Party B: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> If Yes, check if the following applies: “owns or operates electric or natural gas facilities or electric or natural gas operations (or anticipated facilities or operations), supplies natural gas and/or electric energy to other utility special entities, has public service obligations (or anticipated public service obligations) under Federal, State or local law or regulation to deliver electric energy and/or natural gas service to utility customers, or is a Federal power marketing agency as defined in Section 3 of the Federal Power Act (16 U.S.C. 796(19))”

Other information if requested:

Ultimate Parent (legal entity name of the company that owns or controls the counterparty, and that itself has no parent entity): Tenaska Energy, Inc.	Ultimate Parent (legal entity name of the company that owns or controls the counterparty, and that itself has no parent entity):
<input checked="" type="checkbox"/> Check if 100% owned by above entity	<input type="checkbox"/> Check if 100% owned by above entity

RESOLUTION 2013-115

WHEREAS, in 2009, all large Nebraska utilities officially joined the Southwest Power Pool (SPP) that allows participants to buy and sell power directly into the market and avoid interaction with multiple companies; and

WHEREAS, in 2014, SPP plans to deploy a new market called the Integrated Market that increases in complexity and requires utilities to provide next day forecasting and pricing information in an effort to utilize the lowest cost energy for load; and

WHEREAS, it will also have a real time energy market for correcting imbalances from the day-ahead market; and

WHEREAS, it was determined that the best way for Grand Island to participate is through a third party, and on May 22, 2012, Council approved an agreement with Tenaska, from Dallas, Texas, to conduct transactions with SPP on behalf of Grand Island Utilities; and

WHEREAS, because certain transactions with Tenaska could be considered a swap under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the City is required to obtain a Commodity Futures Trading Commission Interim Compliant Identifier (CICI), which will be used by Tenaska for their reporting requirements; and

WHEREAS, the Act also requires that the Dodd-Frank Act Representations and Reporting Amending Agreement be executed in order for Tenaska to continue to conduct transactions for the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Dodd-Frank Act Representations and Reporting Amending Agreement with Tenaska is hereby approved, and that the Mayor is authorized to execute the Agreement on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, April 23, 2013.

Jay Vavricek, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
April 19, 2013	☐ City Attorney