



City of Grand Island

Tuesday, February 18, 2003

Council Session

Item G19

#2003-52 - Approving Memorandum of Understanding Between Omaha Public Power District and Grand Island Utilities Department

Background:

The Utilities Department's addition of the Gas Turbines will meet the peaking requirements of the City for many years to the future. However in the 2008-2012 time frame, optimum mix of peaking and base load electric generation resources will begin to erode, as operation of the gas fired generation increases to meet projected City load increases. With the cost of natural gas fuel three to five times higher than coal fired energy, increases in gas consumption have a major impact on finances. Therefore, the Utilities Department Staff has been participating in the preliminary discussions of three possible base load, coal fired power plant projects being evaluated in the State.

1.) Hastings Utilities and the Nebraska Municipal Power Pool (HU/NMPP).

A 200MW unit to be built at the Whelan Energy Center in Hastings, projected commercial operation in 2008. GI has participated at a 15MW level, and executed a Confidentiality Agreement and Preliminary Engineering Evaluation Agreement, with the Department's cost share for the preliminary analysis not to exceed \$67,500. This plant does not yet have State Power Review Board (PRB) approval.

2.) Omaha Public Power District (OPPD), Nebraska City Unit #2 (NC2).

A 600MW unit to be built by OPPD at their existing plant site on the Missouri River near Nebraska City, projected commercial operation in 2009. OPPD will retain 300MW of capacity for its load growth and is marketing the additional 300MW. Grand Island Utilities has expressed interest in participation at the amount of 30MW. However, no formal commitment to this project has been made. OPPD has PRB approval for this project.

3.) Nebraska Public Power District (NPPD).

A 400MW unit, possibly to be built west of Grand Island at the old Cornhusker Army Ammunition Plant (CHAAP), projected commercial operation after 2012. CHAAP is one of three sites being considered by NPPD. With the HU/NMPP and OPPD projects, and a 700MW Council Bluffs #4 unit in Iowa moving toward construction, and NPPD's apparent decision to continue to operate the Cooper Nuclear Station, the time line of this project is expected to be well into the future. Grand Island has a Letter of Agreement with NPPD for capacity if/when the plant is built, but this project remains in the very preliminary stage.

Discussion:

OPPD is moving ahead rapidly with the NC2 Project and wishes to firm up the participation agreements. They have asked the participants to execute a Memorandum of Understanding (MOU) committing to shares of the 300MW being marketed. The MOU includes commitment to negotiate in good faith to reach agreement on a final Participation Power Agreement (PPA) and the providing of certain financial and utility operating information to the project sponsor, OPPD. A copy of the MOU is attached.

Recommendation:

It is the recommendation of the Utilities Department that the MOU be approved and that the Department continue to participate in the development of this base load, coal fired power resource being added in the State.

Fiscal Effects:

The final form of the payment schedules is to be developed with the PPA. However, it is known that the payment schedule will cover the capital cost of a 30MW share of a 600MW unit over the projected 40 year life of the plant. That share is estimated at an initial cost of \$45,000,000; plus fuel, operation and maintenance costs associated with the operation of a coal fired power plant on a percentage of participation basis among the project sponsor and participants over the life of the plant.

Alternatives:

None recommended. This is one of only two base load, coal fired plants being pursued for completion in the next ten years in the State, and the only one with Power Review Board approval. See attached RESOLUTION.

Staff Contact: Gary R. Mader

MEMORANDUM OF UNDERSTANDING
BETWEEN OMAHA PUBLIC POWER DISTRICT
AND _____

February 5, 2003

A. Overview.

This Memorandum of Understanding ("MOU") summarizes the basic terms of a proposed transaction (the "Proposed Transaction") between Omaha Public Power District ("OPPD") and _____ (the "Participant"). The Proposed Transaction involves the construction and operation of a single coal fueled generating unit located near Nebraska City, Nebraska with an anticipated 600MW capacity ("NC2"). The Proposed Transaction also involves various other parties entering into MOU's with OPPD in forms substantially similar hereto, which parties are also referred to as ("Other Participants").

B. Parties.

The "Parties" to the Proposed Transaction are OPPD, the Participants and other parties who may in the future become participants under the Definitive Agreement, as hereinafter defined.

C. Proposed Transaction and Definitive Agreement.

The terms of the Proposed Transaction are outlined in the Participation Power Agreement attached hereto as Exhibit "A" (the "Definitive Agreement").

As described in the Definitive Agreement, OPPD desires to allocate 300MW of NC2's generating capacity to Participant and the Other Participants. Participant hereby subscribes for _____MW (such subscription will be converted to a percentage and/or rounded up or down pursuant to the Definitive Agreement) of NC2's generating capacity ("Participant's Subscription"). OPPD shall have the right to reduce or offer to increase, at OPPD's sole discretion, Participant's Subscription in the event that the total of all Participants' Subscriptions exceeds or is less than 300MW. In the event that OPPD elects to reduce or offers to increase Participant's Subscription and OPPD delivers written notice thereof to Participant, Participant shall have 30 days from the date of such notice to notify OPPD in writing of its desire to increase or accept the proposed change in Participant's Subscription. If no written response is timely

received by OPPD, the proposed change by OPPD shall be deemed to have been accepted by Participant. In no event shall any single Participant have a right to a Participant's Subscription in excess of 150 MW of the generating capacity of NC2.

The Parties agree to negotiate in good faith to finalize the terms and conditions of and effect the Proposed Transaction in a form substantially similar to the Definitive Agreement. The Participant may provide comments on the Definitive Agreement in writing to OPPD by April 15, 2003. Participant understands that OPPD is relying upon Participant's firm commitment of interest in the Proposed Transaction, as expressed herein, in evaluating, engineering and designing NC2. Specifically, the maximum design capacity of NC2 will be based substantially upon the commitment of Participant hereunder and the commitments of Other Participants under their separate MOUs.

D. Submission of Information Participant agrees to provide to OPPD, at or before Participant's acceptance of this MOU, the following information:

- (a) the financial information requested in Exhibit "B" attached hereto; and
- (b) the power supply information requested in Exhibit "C" attached hereto.

Participant also agrees to meet with OPPD and/or its consultants if necessary to provide additional background information that may be necessary to supplement Participant's responses to Exhibits B and C.

E. Expenses

Participant shall bear its own costs and expenses (including all legal, accounting and other costs) with respect to this MOU and the Proposed Transaction, whether the Proposed Transaction is consummated or not.

In consideration of the substantial time that OPPD has spent and will be required to spend and the substantial expenses that it has and will be required to incur in connection with the engineering and design of NC2 and the negotiation, preparation, execution or consummation of a Definitive Agreement, and as an inducement to OPPD to enter into this MOU without regard to whether the Proposed Transaction is consummated, Participant agrees that in the event that the Definitive Agreement is not executed by Participant for any reason whatsoever, Participant will reimburse OPPD promptly \$200.00 per MW of Participant's Subscription.

F. Contingencies.

The Parties agree that the Proposed Transaction is contingent upon the execution of this MOU and a Definitive Agreement satisfactory to the Parties and upon obtaining the following approvals:

- (a) final approval of the Proposed Transaction by the Board of Directors of OPPD; and
- (b) any regulatory approvals necessary, as determined by OPPD, for any part of the Proposed Transaction.

G. Confidentiality.

To the fullest extent provided by law, the Parties agree that the terms of this MOU, the Definitive Agreement and the Proposed Transaction shall be confidential and shall not be disclosed except as agreed in writing by the Parties or as required by law. However, prior to any disclosure that may be required by law, the Party affected by the legal requirement shall provide prompt written notice to the other Party and that Party may bring a legal action to prevent disclosure. Furthermore, the Parties agree that any press release or any publicly available description of the Proposed Transaction, this MOU, or any other aspect of this proposed business arrangement will be reviewed and approved by each Party prior to any public release.

H. Enforceability of MOU.

Except for the obligations of the Parties in this Paragraph H and in Paragraphs C, E, G, and I neither this MOU nor any past or future conduct of the Parties hereto, their affiliates, agents or representatives (other than the execution and delivery of the Definitive Agreement) shall be deemed to constitute a binding or enforceable agreement, express or implied, for the Proposed Transaction. Without limiting the generality of the foregoing, OPPD and the Participant each agree on behalf of itself and its affiliates not to institute or maintain any claims or proceedings which seek to establish, or which are otherwise based upon an assertion, that any such contractual relationship exists, except pursuant to the Definitive Agreement if negotiated, executed and delivered by the Parties. In the event the Parties execute the Definitive Agreement, this MOU shall be superseded thereby (regardless of whether the Definitive Agreement expressly so provides).

I. Governing Law and Jurisdiction

This MOU shall be governed by, and construed in accordance with, the laws of the State of Nebraska without regard to conflict of law principles. In the event any Party to this MOU commences a legal proceeding in connection with or relating to this MOU, the Parties hereby:

- (a) agree under all circumstances absolutely and irrevocably to institute any legal proceeding in a court of competent jurisdiction located within the State of Nebraska, whether a state or federal court;
- (b) agree to consent and submit to the personal jurisdiction of any such court located in Nebraska; and
- (c) agree to waive to the fullest extent permitted by law any objection that they may now or hereafter have to the venue of any such legal proceeding or that any such legal proceeding was brought in any inconvenient forum.

J. Expiration

In the event that this MOU is not executed by the Parties on or before March 1, 2003, this MOU shall be void and Participant shall be precluded from entering into any agreement with OPPD regarding the purchase of power and energy produced at NC2.

OMAHA PUBLIC POWER DISTRICT
("OPPD")

By: _____

Its: _____

("PARTICIPANT")

By: _____

Its: _____

EXHIBIT A

PARTICIPATION POWER AGREEMENT

(See enclosed Participation Power Agreement dated 2-5-03)

EXHIBIT B
FINANCIAL INFORMATION

1. Complete the attached OMAHA PUBLIC POWER DISTRICT – Credit Information Sheet.
2. Provide copies of the following documents:
 - a) Most recent audited financial statements/annual reports for the past consecutive three years; including the Balance Sheet, Statement of Net Earnings and Statement of Cash Flows;
 - b) Most recent quarterly financial statement; and
 - c) Most recent company credit profile report from a nationally recognized rating agency.

EXHIBIT B (Continued)
OMAHA PUBLIC POWER DISTRICT
Credit Information Sheet

General	Legal Name _____
	Type and State of Organization _____
	Mailing Address _____

	Telephone Number _____ Years in Business _____
	Fax Number _____ Web site address _____
	Generation Capacity _____

Credit	Name of Credit Contact _____ Name of A/P Contact _____
	Telephone Number _____ Telephone Number _____
	S&P Rating & Business Profile _____
	Moody's Rating _____
	Other Rating _____
	Dun & Bradstreet Number _____

References	Bank Reference	Name of Bank _____
		Contact Person _____
		Telephone Number _____
		Mailing Address _____

		Relationship ____ (Yrs.) _____
		Bank Lines Credit Yes No Amt.
	Name of Bank _____	
	Exp. Date _____	
	Amt. Outstanding _____	
	Name of Reference _____	
	Contact Person _____	
	Telephone Number _____	
	Mailing Address _____	

EXHIBIT C

PARTICIPANT POWER SUPPLY INFORMATION

The Participant agrees to provide to OPPD the following information:

1. Copy (paper or electronic) of most recent Integrated Resource Plan or other available power supply planning document containing, at a minimum, the following information:
 - a. Historical monthly peak demand, total energy, and load factor data.
 - b. Most recently updated peak demand and total energy forecast.
 - c. Generating unit data for existing generating units and planned new units such as net capacity, heat rate, fuel, and operation & maintenance costs.
 - d. Power purchase and sales agreement information such as available capacity, average power cost, and contract term.
 - e. Planning reserve requirements.
2. Historical hourly system load data for most recently available calendar year(s) in electronic form such as an Excel spreadsheet.

Additional information may be requested from Participant as needed.

RESOLUTION 2003-52

WHEREAS, the addition of the gas turbines at the Burdick Station will meet the City of Grand Island's utility peaking requirements for many years into the future; and

WHEREAS, optimum mix of peaking and base load electric generation resources, however, will begin to erode in the 2008-2012 time frame; and

WHEREAS, with the cost of natural gas fuel three to five times higher than coal fired energy, increases in gas consumption have a major impact on finances; and

WHEREAS, participation with other Nebraska coal-fired power plants will be an option to obtain additional energy sources if necessary; and

WHEREAS, Omaha Public Power District is constructing a 600MW unit at their existing plant site on the Missouri River near Nebraska City, which will have 300MW of generating capacity available to other entities; and

WHEREAS, it is recommended that the City commit to negotiate in good faith to reach agreement with Omaha Public Power District for up to 30 MW of energy from its Nebraska City Unit #2; and

WHEREAS, a Memorandum of Understanding has been prepared to finalize the terms and conditions of a Participation Power Agreement between the parties in order to obtain up to 30MW of energy after the Omaha Public Power District Nebraska City Unit #2 is constructed and operational.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Memorandum of Understanding between the City of Grand Island and Omaha Public Power District is hereby approved to finalize the terms and conditions of a Participation Power Agreement between the parties in order to obtain up to 30MW of energy after the Omaha Public Power District Nebraska City Unit #2 is constructed and operational.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such Memorandum of Understanding on behalf of the City of Grand Island.

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Adopted by the City Council of the City of Grand Island, Nebraska, February 18, 2003.

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
February 14, 2003	☐ City Attorney