



City of Grand Island

Tuesday, April 13, 2004

Council Session

Item G13

#2004-77 - Approving Agreement to Continue Participation in the Whelan Energy Center Unit #2 Power Plant - Utilities Dept.

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director

Meeting: April 13, 2004

Subject: Agreement to Continue Participation in the Whelan Energy Center Unit #2 Power Plant

Item #'s: G-13

Presenter(s): Gary R. Mader, Utilities Director

Background

Grand Island has been participating in the development of a new base load, coal fired electric generating plant to be built in Hastings at the same site as the existing Hastings plant. That site is named the Whelan Energy Center and the new project is generally referred to as WEC2. WEC2 capacity is designed to be between 180MW and 220MW depending upon the level of participation from other utilities. The current Grand Island share is 15MW. Other participants include the Municipal Energy Agency of Nebraska (MEAN), Hastings, Nebraska Public Power District (NPPD), Heartland Electric Cooperative (S. Dakota) and Nebraska City. Lincoln Electric System (LES) and Falls City were participants in Phase 1 of the project but have since selected other options to meet their future base load needs. LES opted to participate in a coal fired unit in Iowa; Falls City selected Nebraska City Unit #2.

Phase 1 of the WEC2 project included site design, steam cycle engineering selection, detailed plant cost estimates, and unit design to the point of allowing application for environmental permitting by NDEQ. The permitting and public hearing processes have been completed and NDEQ has issued the construction permits. Phase 1 of WEC2 project development is completed.

Discussion

WEC2 Project Phase 1.5 is proposed to continue project development and would include;

- Initiation of the preconstruction ambient air particulate monitoring as required by the construction permit.
- Initiation of detailed plant design to maintain the permit requirement to begin construction within 18 months of the permit date.
- Making application to the Nebraska Power Review Board for project approval as required by state law.

- Initiation of the transmission service study for plant output delivery to all participants.

The total cost of Phase 1.5 is projected to be \$375,000. At a 15MW level of participation, the Grand Island share would not exceed \$40,000. A copy of the proposed contract is attached.

Alternatives

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

1. Approve the Phase 1.5 Contract.
2. Deny the Phase 1.5 Contract.
3. Modify the Contract to meet the wishes of the Council.
4. Table the issue.

Recommendation

The Hastings WEC2 project is one of three Nebraska base load power plant projects in which the City is participating;

- Nebraska City Unit 2 (NC2) is a 600MW unit being built at Nebraska City by OPPD. Grand Island is participating at 30MW. Scheduled unit start-up in 2009.
- Hastings WEC2 is a 180MW – 220MW unit to be built at Hastings. Grand Island is participating at 15MW. Scheduled unit start-up is 2010.
- NPPD 400MW unit at the Cornhusker Army Ammunition Plant near Grand Island. This unit is still in the early discussion stage. Property acquisition is underway. Project time line is not yet established.

The WEC2 project is an integral part of the Utilities Department plans to meet increasing electric demand as Grand Island is projected to continue to grow into the future.

City Administration recommends that the Council approve the Financial Agreement for Phase 1.5 and that the Mayor be authorized to execute the contract.

Sample Motion

Approve the Financial Agreement for Phase 1.5 of the Whelan Energy Center Unit #2 project and authorize the Mayor to execute the contract on behalf of the City Of Grand Island.

**Financial Commitment Agreement for Phase 1.5
Among
Municipal Energy Agency of Nebraska
And
Hastings Utilities
And
Participant, (as hereinafter defined)**

This Financial Commitment Agreement for Phase 1.5 ("Agreement") is made and entered into this _____ day of _____, 2004, among the Municipal Energy Agency of Nebraska ("MEAN"), Hastings Utilities ("HU") and parties which execute this Agreement, hereinafter called "Participants", including the _____ ("Participant"). The parties may sometimes be referred to herein individually as a "Party" or collectively as the "Parties".

RECITALS

WHEREAS, the Parties desire to secure additional electric power and energy resources to fulfill a portion of their future energy supply needs; and

WHEREAS most or all of the Parties have been a participant in the preliminary design and air permitting ("Phase 1 of the Project") required for the construction and financing of a new 180 - 220 megawatt (180-220 MW) coal-fired electric generating plant to be located at the existing Whelan Energy Center in Hastings, Nebraska (the "Project"); and

WHEREAS the air permit issued by the Nebraska Department of Environmental Quality ("NDEQ") requires monitoring of Particulate Matter less than 10 microns (PM10) beginning immediately upon issuance of the permit, and

WHEREAS the air permit issued by the NDEQ on March 30, 2004 requires commencement of construction of the Project within eighteen (18) months after issuance of the permit, and

WHEREAS in order to commence construction of the Project within 18 months of permit issuance by the NDEQ, contracts must be entered into by the Participants by September 30, 2005 for preliminary engineering and design of portions of the power plant, and

WHEREAS, the Parties desire to secure additional financial commitments from additional participants in the Project to increase cost efficiencies, and

WHEREAS, the Parties agree to continue to abide by the terms and conditions of the Non-Disclosure and Confidentiality Agreement, that each of the parties of the Phase 1 of the Project signed in 2003 and each additional participant will agree to sign as part of this Phase 1.5 Financial Commitment Agreement, and

WHEREAS the Parties desire to set forth in writing the financial arrangements to which Parties hereby commit toward this phase of the Project.

NOW THEREFORE, in consideration of the rights and obligations of the Parties hereunder and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, each of Parties hereby agrees as follows:

Section 1. Funding Commitment. By entering into this Agreement, Participant hereby agrees that it will pay its pro-rata share of all costs and expenses related to the Phase 1.5 Scope of Work outlined in Section 4 of this Agreement ("Share of Costs"). Participant's Share of Costs will be a percentage of the total costs of the Phase 1.5 Scope of Work based upon the amount of megawatts subscribed to by this Participant as set forth in Section 2 below, as compared to the total megawatts subscribed to by all Participants. Participant's Share of Costs is subject to change as provided in Section 6 below. Total amount of Phase 1.5 Scope of Work costs is estimated to be \$375,000 plus any costs associated with project administration as reviewed and approved by the Participants.

Section 2. Shared Benefits. In return for Participant's financial commitment as set forth above, and provided that Participant executes the appropriate Project agreement(s) and is not then in default, Participant will have the rights but not the obligation to purchase and own capacity from the Project in the amount set forth in Exhibit 1, attached to and made a part of this Agreement. Such capacity commitment shall be equal to the Participant's share of output from the Project ("Share of Output"). Exhibit 1 may be modified only upon approval by all then-current Participants and execution of a revised Exhibit 1. Participant having any liability hereunder is contingent upon the total of the subscribed shares of all Participants equaling not less than 140 MW.

Section 3. Project Administrator. MEAN is hereby appointed as the project administrator ("Project Administrator") and has authority to act on all matters related to the Project and this Agreement, at the direction of the Phase 1.5 Participants. MEAN will submit to each Participant quarterly status reports on the Project, including summaries of the Phase 1.5 Scope of Work costs incurred and payments disbursed.

After the Effective Date of this Agreement, as defined in Section 7.01 below, the Project Administrator shall establish and issue a dated exhibit naming each Participant, its billing address, its subscribed Share of Output from the Project and the resulting percentage Share of Costs. Such exhibit shall be attached as Exhibit 2 and made a part of this Agreement. Exhibit 2 may be revised in accordance with Section 6 below.

Section 4. Phase 1.5 Scope of Work. The Project Administrator will complete the following tasks as part of the Phase 1.5 Scope of Work:

- Determine final terms and conditions of all PM10 monitoring requirements with the NDEQ
- Negotiate and contract with a NDEQ-approved air monitoring contractor to complete:
 - Air monitoring plan for submittal to NDEQ
 - Installation of PM10 air monitoring and weather measurement equipment
 - Monthly operations of the air monitoring equipment
 - Regular reporting of air monitoring data to the NDEQ
- Negotiate and contract with Black & Veatch to complete partial engineering and design activities to allow for construction efforts to commence within 18 months of NDEQ air permit issuance, in an amount not to exceed \$125,000.

- Solicit interest and seek to obtain written financial commitments from potential additional participants to increase the unit size to a maximum of 220 MW.
- Complete and present a new power resource application to the Nebraska Power Review Board ("NPRB") requesting NPRB approval to construct the Project.
- Negotiate and contract with the Nebraska Public Power District to complete a full transmission feasibility study to ensure that all contracted resources by the Participants are afforded firm transmission rights to deliver plant output to their load obligations.
- Obtain the necessary information from each of the Participants to complete the Power Review Board application and full transmission feasibility study noted above.

The Participants agree to complete the following tasks as part of the Phase 1.5 Scope of Work:

- The Participants agree to provide timely and accurate information and support of all such efforts to complete the transmission study and NPRB application led by the Project Administrator.

Section 5. Funding Method. The Project Administrator will act as agent for purposes of accepting funds provided by Participant in order to satisfy the funding commitment, and disbursing those funds as required for the Phase 1.5 Scope of Work. Each Participant shall pay Project Administrator its pro-rata Share of Costs in one or more payments as outlined below. Project Administrator will record the funds received from all Participants in special accounts to be used for payment of the Phase 1.5 Scope of Work costs in connection with the Project.

Project Administrator will render bills at least quarterly in amounts sufficient to cover all anticipated Phase 1.5 Scope of Work costs for the following three (3) month period, or a shorter period, if necessary. Bills shall be adjusted to "true-up" actual expenses versus anticipated expenses paid for the previous billing period. Such amounts will be paid by each Participant to Project Administrator within twenty (20) days of the date of the invoice and without deduction. Interest on any unpaid amount will be accrued from the date due until the date upon which payment is made at the rate of 1% per month or fraction thereof. Interest so earned shall not change any Participant's Share of Costs and shall become a credit to be applied toward total expenses for the Phase 1.5 Scope of Work.

Each Participant and its representatives shall have the right to examine applicable books, records and underlying source documentation of the Project Administrator to verify compliance with this Agreement. Such examination shall be scheduled with Project Administrator during normal business hours.

Section 6. Additional Participants.

If an additional Participant executes this Agreement after the Effective Date, Exhibit 2 will be revised to reflect the new Participant's Share of Output and the resulting adjusted percentage Share of Costs for each Participant. The Project Administrator shall issue a revised

Exhibit 2 each time an additional Participant is added. A revised Exhibit 2 shall supersede any previously issued Exhibit 2.

Section 7. Term.

7.01 This Agreement becomes binding and the term begins upon execution by sufficient Participants to commit to at least 140 MW from the Project ("Effective Date") and will end when all Phase 1.5 Scope of Work is complete and the costs have been paid in full, unless sooner terminated as provided in this Agreement.

7.02 In the event that the Project is deemed not feasible at any time for any reason whatsoever, as determined by the Participants, the Project Administrator shall have the authority to take all necessary actions, including but not limited to any winding up arrangements to properly abandon the Project. Excess amounts, if any, remaining in the special accounts after such actions have been completed and all payments for costs and expenses incurred have been made, shall be distributed on a pro-rata basis according to the funding commitment levels paid by each of the Participants.

7.03 Notwithstanding any provision to the contrary in this Agreement, in the event that on the date 120 days prior to the expiration of the air permit, the total of the subscribed shares by existing and any additional Participants equals less than 180 MW, the Project Participants shall deem the Project to not be feasible and shall take the necessary actions in accordance with Section 7.02 to properly abandon the Project.

7.04 In the event that the Project is deemed feasible, as determined by the Participants, each Participant will be so notified in writing by the Project Administrator, which writing shall establish the timeline and conditions for execution of a separate agreement setting forth Participant's rights to the output of the Project and Participant's obligations; provided, however, that in the event thereafter the total of the subscribed shares by existing and any additional Participants equals less than 180 MW, the Project Participants may deem the Project to not be feasible and take the necessary actions in accordance with Section 7.02 to properly abandon the Project.

Section 8. Miscellaneous.

8.01 This Agreement shall be governed by the laws of the State of Nebraska.

8.02 No Party may assign this Agreement without the prior written consent of the other Parties.

8.03 All terms, covenants and conditions of this Agreement will inure to the benefit of, and be binding upon, each of the Parties and their permitted successors and assigns.

8.04 No amendment may be made to this Agreement unless reduced to writing and signed by all of the Parties hereto.

8.05 All notices under this Agreement shall be deemed properly given when mailed first class, postage prepaid, to the address each Party shall provide in writing to the other Parties upon execution of this Agreement.

Execution. Separate copies of this Agreement are executed by the Parties with the understanding that, when each of the Parties has executed a copy, its separately executed copy will be joined together with all other similarly executed copies and one conformed master copy of said Agreement shall be prepared, which shall bind all of the Parties to the same extent and purpose as if all of said Parties has joined in the execution of said master copy.

IN WITNESS WHEREOF, each of the Parties hereto, by signing this Financial Commitment Agreement for Phase 1.5, represent that its execution of this Agreement and its participation in the Project have been duly authorized by all necessary action.

MUNICIPAL ENERGY AGENCY
OF NEBRASKA

By: _____

Title: _____

Date: _____

HASTINGS UTILITIES

By: _____

Title: _____

Date: _____

PARTICIPANT:

By: _____

Title: _____

Date: _____

EXHIBIT 1

To

Financial Commitment Agreement for Phase 1.5

Project Participant and Address

MW (Capacity Commitment)

Gary R. Mader
Grand Island Utilities Department
P.O. Box 1968
Grand Island, NE 68802-1968

15 Megawatts

- Phone (308)385-5444, ext. 280
e-mail gmader@grand-island.com

This Exhibit 1 shall supersede and replace Exhibit 1 dated n/a.

MUNICIPAL ENERGY AGENCY
OF NEBRASKA

HASTINGS UTILITIES

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

PARTICIPANT:

By: _____

Title: _____

Date: _____

EXHIBIT 2

To

Financial Commitment Agreement for Phase 1.5

[To be issued after the Effective Date of the Agreement.]

Project Administrator

April 30, 2004
Date

Supersedes Exhibit 2 dated n/a

RESOLUTION 2004-77

WHEREAS, the City of Grand Island has been participating in the development of a new base load, coal fired electric generating plant to be built in Hastings at the same site as the existing Hastings plant; and

WHEREAS, the site is named Whelan Energy Center, and the new project is generally referred to as WEC2; and

WHEREAS, the City is intending to participate in such project at a level of 15MW; and

WHEREAS, Phase 1 of the project is now complete, and Phase 1.5 is proposed to continue project development in the following areas:

- Initiation of the preconstruction ambient air particulate monitoring as required by the construction permit
- Initiation of detailed plant design to maintain the permit requirement to begin construction within 18 months of the permit date
- Making application to the Nebraska Power Review Board for project approval as required by state law
- Initiation of the transmission service study for plant output delivery to all participants; and

WHEREAS, the total cost of Phase 1.5 is projected to be \$375,000, with the City's share not to exceed \$40,000; and

WHEREAS, it is recommended that the City enter into a Financial Commitment Agreement for Phase 1.5 of such project; and

WHEREAS, the City Attorney has reviewed and approved the Financial Commitment Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Financial Commitment Agreement among the Municipal Energy Agency of Nebraska (MEAN) and Hastings Utilities for financial assistance for Phase 1.5 costs for the scope of work outlined above is hereby approved.

BE IT FURTHER RESOLVED, that the Mayor is hereby authorized and directed to execute such 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 13, 2004.

RaNae Edwards, City Clerk