



City of Grand Island

Tuesday, February 12, 2008

Council Session

Item G11

**#2008-38 - Approving Confidentiality Agreement for Community
Wind Energy Transmission, LLC**

Staff Contact: Gary R. Mader; Wesley Nespor

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Wesley Nespor, Asst. City Attorney/Purchasing

Meeting: February 12, 2008

Subject: Confidentiality Agreement for Community Wind Energy Transmission, LLC

Item #'s: G-11

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

Background

Since 1998, Grand Island Utilities has participated in wind power developments in the state. The most recent project, Community Wind Energy Transmission (CWET) is in the early stages of development. The three projects in which the City has participated are summarized below.

Spring View Project – was the first utility sized wind generator project in Nebraska. The project was funded by several public power utilities in the state and by a grant from the Electric Power Research Institute. The units operated for about eight years, but were decommissioned last year because of severe and very frequent mechanical failures. The participants are investigating installation of replacement units of newer design. Project size was 1.5 MW.

Elkhorn Ridge – is an 80 MW project proposed to be constructed near Bloomfield, in northeast Nebraska. Nebraska Public Power District (NPPD) is the lead agency in this development. In December 2007, the City Council approved a Confidentiality Agreement among the potential project participants and the developer, Midwest Wind Energy LLC, of Genoa, Illinois. Project development and evaluation continue.

Community Wind Energy Transmission Project (CWET) – this most recent project, is a 40 MW facility also located near Bloomfield, Nebraska. CWET was originally set up with NPPD as its sole participant. Recently, the NPPD Board decided to open this project for participation by other utilities.

Discussion

Since the CWET is being built by a private developer, participants are required to maintain confidentiality regarding the project, as with the Elkhorn Ridge project. Initial cost figures for the CWET project estimate a savings of approximately 5% per MWh over the larger 80 MW project. Acceptance of the Confidentiality Agreement allows Grand Island to receive detailed information regarding cost and components and provides the opportunity to participate in the project should it be determined to be economically feasible and come to full development.

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 participation in the State wind power projects be continued and that the Confidentiality Agreement be signed to allow continued involvement in the Community Wind Energy Transmission LLC Project.

Sample Motion

Move to approve the Confidentiality Agreement to continue involvement in the Community Wind Energy Transmission LLC Project.

CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

The City of Grand Island ("GI") and Community Wind Energy Transmission LLC ("CWET") agree as follows:

WHEREAS, the parties have entered into, or will likely soon enter into, discussions and negotiations relating to Community Wind Energy Transmission LLC ("Business Relationship") during which the parties may disclose certain confidential information related to their operations and business ("Confidential Information"); and

WHEREAS, the parties desire to protect the Confidential Information that they may disclose to each other pursuant to this Agreement;

NOW, THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

1. **Confidential Information.** For purposes of this Agreement, "Confidential Information" shall mean any information about the real, personal and intellectual properties, finances, operations, development strategies, business plans and other business information of each party and any affiliate companies, which is designated as "Confidential" in accordance with this Agreement, but shall not include information excluded under paragraph 5 hereof. Confidential Information, when disclosed in written, machine-readable, or other tangible form by one party to the other party, shall be clearly marked as "Confidential." Information which is disclosed orally and is considered confidential by a party shall be treated as Confidential Information and used only according to the terms of this Agreement. Each disclosure of Confidential Information shall be documented by the disclosing party, and in the case of oral disclosures such documentation shall be provided to the opposite party within fifteen (15) working days in the form of a written notice, summarizing those matters designated as Confidential Information.

2. **Use of Confidential Information.** During the course of discussions as to the Business Relationship, the parties may disclose to each other certain Confidential Information, either by oral or written communications. These disclosures will be made upon the basis of the confidential relationship between the parties and upon their agreement that, unless specifically authorized in writing by the other, they will:

- (a) use such Confidential Information solely for the purpose of evaluating the Business Relationship, and shall not use such Confidential Information for any other purpose, including, but not limited to, entering or negotiating any competing business venture, or soliciting any other business; and
- (b) promptly return to each other, upon request, any and all tangible material concerning such Confidential Information, including all copies and notes, or destroy the same and provide the other party with a written statement that such destruction has occurred. Under no circumstances shall any Confidential Information or copy thereof be retained, except with the express written approval of the owner of such Confidential Information.

3. **Nondisclosure.**

- (a) Each party agrees that it will use reasonable care to prevent unauthorized disclosure of Confidential Information. Neither party will make any copies of Confidential Information that is in written or other tangible form except for use by authorized persons with a need to know in connection with the Business Relationship, and all persons having access to Confidential Information shall agree to comply with the terms of this Agreement. Each party shall, upon request, provide the other with a list of persons authorized to receive Confidential Information.
- (b) Each party further agrees not to distribute, disclose or disseminate Confidential Information in any way to anyone, except persons who have such need to know, or use Confidential Information for its own purpose. Each party agrees that its disclosure of Confidential Information to a person who has a need to know shall be limited to only so much of the Confidential Information as is necessary for that person to perform his/her function in connection with the Confidential Information.

4. **No Obligations.** The furnishing of Confidential Information hereunder shall not obligate either party to enter into any further agreement or negotiation with the other or to refrain from discussing or entering into a business relationship with any other party.

5. **Exception.** The obligations imposed herein shall not apply to Confidential Information:

- (a) which becomes available to the public through no wrongful act of the receiving party; or
- (b) which may be published or otherwise made available to the public prior to the date hereof; or
- (c) which is received from a third party without restriction known to the receiving party and without breach of this Agreement; or
- (d) which is independently developed by the receiving party; or
- (e) which must be disclosed pursuant to a legal requirement (including but not limited to the Nebraska Public Records Act, Neb. Rev. Stat. ' 84-712.01 et seq.) If disclosure is requested or demanded as to Confidential Information pursuant to a legal requirement, the party receiving the request or demand shall provide the owner of such Confidential Information with prompt written notice to enable the owner to seek protective legal remedies and the receiving party shall reasonably cooperate in connection therewith.

6. **Termination.** Either party may terminate this Agreement upon ten (10) days written notice. However, upon termination, each party shall return or destroy Confidential Information, as

provided in paragraph 2 hereof, and shall continue to comply with the requirements of paragraph 2 and 3 hereof for a period of one (1) year following the return or destruction of the Confidential Information, or the delivery of the Confidential Information, whichever is longer.

7. **Reliance.** Each party acknowledges that neither it nor any of its representatives makes any express or implied representation or warranty as to the accuracy or completeness of any Confidential Information, except as may be otherwise agreed in writing between the parties. Neither party or its representatives shall have any liability to the other party, any of such other party's representatives, or any other person, relating to or arising from the use of the Confidential Information or for any errors therein or omissions therefrom, and each party assumes full responsibility for all conclusions such party derives from the Confidential Information, except as may be otherwise agreed in writing between the parties.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the treatment of Confidential Information. This Agreement may be modified only by written agreement of the parties. It shall be binding upon the parties hereto and their respective successors and assigns.

9. **Enforcement.** All provisions hereof for the protection of each party are intended to be for each party's benefit and enforceable directly by each party. Each party agrees that any remedy at law for any actual or threatened breach of this Agreement by the other would be inadequate, and that each party shall be entitled to specific performance hereof or injunctive relief or both, by temporary remedy, writ or orders as may be entered into by a state or federal court of competent jurisdiction in the State of Nebraska in addition to any damages that the harmed party may be legally entitled to recover, together with reasonable expenses of litigation, including attorney's fees incurred in connection therewith as may be approved by such court, and each party further agrees to waive any requirement for the securing or posting of any bond in connection with obtaining any such injunctive or equitable relief.

10. **Notices.** All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by written confirmation of receipt, sent by overnight commercial air courier (such as Federal Express), or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at their addresses or facsimile numbers set forth below or to such other address or facsimile number as the party to whom notice is to be given may have furnished to the other party in writing in accordance herewith. Any such communication shall be deemed to have been given when delivered if delivered personally, the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday), on the first business day after dispatch if sent by overnight commercial air courier, or on the fifth business day after posting if sent by mail.

IF TO GI:

City of Grand Island

ATTN: Travis Burdett
PO Box 1968
Grand Island, NE 68802
Phone: (308) 385-5466
Telefax: (308) 385-5449

IF TO CWET: Community Wind Energy Transmission LLC
ATTN: Dan McGuire
4540 Oakridge Circle
Lincoln, NE 68516
Phone: (402)489-1346
Telefax:

11. **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by, construed and enforced in accordance with, the laws of the State of Nebraska.

12. **No Waiver.** The failure of either party to exercise its rights and remedies under this Agreement upon an occurrence of a breach of this Agreement shall not be deemed a waiver of any subsequent breach of this Agreement.

13. **Negotiations.** Unless otherwise required by law (including as required by a court order), neither party hereto, without the prior written consent of the other, shall disclose to any other person any information about the Business Relationship, or the terms, conditions or other facts relating thereto, including the fact that the Confidential Information has been made available.

DATED for reference purposes this _____ day of _____, 20__.

_____, ("____"),

By: _____
Title: _____

COMMUNITY WIND ENERGY TRANSMISSION LLC ("CWET")

By: _____
Title: Managing Member

W128927.03

RESOLUTION 2008-38

WHEREAS, Since 1998, the Grand Island Utilities Department has participated in Wind Turbine Electric Generation Projects to secure the most cost effective form of renewable energy; and

WHEREAS, it is in the best interests of the City to continue participation of various renewable energy projects as they develop; and

WHEREAS, Community Wind Energy Transmission LLC (CWET) and several Nebraska utilities are investigating the development of a new wind turbine project.

WHEREAS, in order to secure the information exchanged, and to comply with the National Electric Reliability Council's standards prohibiting the disclosure of information that may be used to gain an unfair advantage in electric power markets, it is recommended that a confidentiality agreement be entered into between the parties; and

WHEREAS, the confidentiality agreement would authorize NPPD, the City's Utility Department and other participants to disclose to one another as well as their Reliability Coordinator, as required under applicable National Electric Reliability Council reliability standards, real-time power system reliability data for all points; and

WHEREAS, the proposed agreement has been reviewed and approved by the City Attorney.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Confidentiality Agreement between the City, other participants, and the Nebraska Public Power District for Electric System Reliability Data is hereby approved; and the Mayor is hereby authorized and directed to execute such agreement on behalf of the City of Grand Island.

- - -

Adopted by the City Council of the City of Grand Island, Nebraska, February 12, 2008.

Margaret Hornady, Mayor

Attest:

Approved as to Form	☐ _____
February 7, 2008	☐ City Attorney

RaNae Edwards, City Clerk