



City of Grand Island

Tuesday, April 22, 2008

Council Session

Item G11

**#2008-117 - Approving Confidentiality and Nondisclosure
Agreements with Omaha Public Power District (OPPD) and
Nebraska Public Power District (NPPD)**

Staff Contact: David Springer

Council Agenda Memo

From: Dave Springer, Finance Director

Meeting: April 22, 2008

Subject: Electric Rate Study: Approving Confidentiality and Nondisclosure Agreements with Omaha Public Power District (OPPD) and Nebraska Public Power District (NPPD).

Item #'s: G-11

Presenter(s): Dave Springer, Finance Director

Background

At the November 13, 2007 council meeting, a contract was approved with Christensen Associates to perform a load profiling and cost-of-service study for the Electric Department. Some of the core work of this study entailed gathering consumption information and usage patterns on our customer base. We anticipated having to randomly install a number of interval data recorders, or “smart meters”, to gather data for statistical analysis.

Discussion

In discussions with OPPD and NPPD, we were informed that they have load profile data for their customers, for which, we believe there is good correlation to our customer base, at a minimum, at least, for residential customers. They have agreed to provide this data to Grand Island for the nominal fees of \$900 and \$2,500 respectively. They have requested, however, that the City execute confidentiality and nondisclosure agreements that state that the information will only be used by authorized personnel and be used for the City’s load profiling and cost-of-service study as indicated. This is a reasonable request and will save the City considerable costs in having to install many fewer smart meters than originally estimated, as well as speeding up the analytical work.

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 Resolution.

Sample Motion

Move to approve the Resolution to execute confidentiality and nondisclosure agreements with OPPD and NPPD.

AGREEMENT

Omaha Public Power District ("OPPD"), a public corporation and political subdivision of the State of Nebraska, and the City of Grand Island, Nebraska, a municipal corporation doing business as Grand Island Utilities ("Grand Island"), agree this ____ day of April, 2008, as follows:

1. **Load Data.** Within a reasonable time of execution of this Agreement, OPPD agrees to supply to Grand Island electric load data showing the interval electricity usage for various classes of OPPD customers ("Load Data"). The Load Data will be provided to Grand Island in a spreadsheet format, without customer names, addresses or other identifying information. The Load Data will be used solely by Grand Island for ratemaking and load forecasting ("Authorized Uses").
2. **Limitations.** The Load Data supplied by OPPD is provided to Grand Island "as is" without any representations, warranties or promises of any kind, other than the agreement to provide the Load Data as set forth in paragraph 1 above. Grand Island represents and warrants that it shall use the Load Data solely for the Authorized Uses.
3. **Fees and Other Costs.** Upon execution of this Agreement, in consideration of OPPD providing the Load Data, Grand Island shall pay to OPPD the sum of Two Thousand Five Hundred and no/100 Dollars (\$2,500.00), plus expenses incurred by OPPD in the preparation of this Agreement, which OPPD estimates to be less than \$1,000.00.
4. **Confidentiality.** Grand Island agrees to maintain as confidential the Load Data supplied by OPPD and agrees that the Load Data shall not be provided to any person other than employees, agents or consultants of Grand Island with the need to know the Load Data. In the event Grand Island is subject to a demand or legal action to release the Load Data pursuant to a legal requirement, Grand Island promptly shall notify OPPD and, at OPPD's request, shall cooperate with OPPD in contesting disclosure of the Load Data to the fullest extent provided by law.
5. **Liability and Indemnity.** To the fullest extent permitted by law, Grand Island shall indemnify, defend and hold harmless OPPD against and from all liabilities that arise from or are related to an act or omission of Grand Island with respect to the Load Data, unless such liabilities are caused by OPPD. Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any punitive, consequential, incidental or special damages, or alleged lost profits, incurred or alleged to have been incurred as a result of or related to the Load Data.
6. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. Neither party may assign this Agreement without the prior written consent of the other party.

7. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the law of the State of Nebraska.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, statements and negotiations are hereby superseded. This Agreement may be amended only by a writing signed by each party.

OMAHA PUBLIC POWER DISTRICT
("OPPD")

By: _____
Title: _____

CITY OF GRAND ISLAND, NEBRASKA,
d/b/a GRAND ISLAND UTILITIES
("GRAND ISLAND")

By: _____
Title: _____

CONFIDENTIALITY AND NONDISCLOSURE AGREEMENT

This Confidentiality and Nondisclosure Agreement ("Agreement") is made on this ___th day of March, 2008 between Nebraska Public Power District ("NPPD"), the City of Grand Island ("Grand Island"), and Christensen Associates Energy Consulting, LLC. ("Consultant"), hereinafter also referred to as "Party" or "Parties".

WHEREAS, NPPD is in possession of certain confidential, proprietary, and trade secret information, relating to NPPD's retail load research data consisting of hourly load profiles for the NPPD residential RS, RSSH, RSWH, RSWHSH and commercial GS rate classes for the June 1, 2006 through May 31, 2007 time period and the NPPD commercial GSDM and CESH rate classes for the June 1, 2002 through May 31, 2003 time period ("Data"); and

WHEREAS, NPPD is willing to have Consultant receive, analyze and use the Confidential Information in order to support and assist Consultant in performing its cost-of-service analysis services related to Grand Island and NPPD is willing to disclose the same to Consultant and Grand Island as herein provided.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. The Parties agree and acknowledge that the Confidential Information, including all contents, information and material therein, is confidential commercial information and constitutes proprietary and trade secret information of NPPD and that the Confidential Information shall not be disclosed or used other than as expressly provided herein. Confidential Information may be marked or labeled as such by NPPD but failure to do so shall not affect or diminish its inclusion within this Agreement. Information that is (i) publicly available from sources other than NPPD through no unauthorized act of Consultant, (ii) rightfully received from a third party, or (iii) independently developed by Consultant without use of Confidential Information, shall not be deemed to be Confidential Information.

2. In consideration of the receipt of the Confidential Information, Consultant and Grand Island agree that it shall:

(a) Not disclose, reveal, or allow access to the Confidential Information, and the contents or existence thereof, in any form or manner to any person, except its employees that have a need to know related to the cost-of-service analysis for the Consultant's client, Grand Island, without the prior express written consent of an officer of NPPD and shall take whatever action is necessary to prevent access to Confidential Information by unauthorized persons and shall prevent disclosure of Confidential Information by its

employees to other persons, including employees of corporate parents, subsidiaries, affiliates, partners, subcontractors, or contractors.

(b) Use the Confidential Information only with respect to the cost-of-service analysis related to Grand Island by Consultant, and advice, opinions and reports related thereto, and not for any other commercial, competitive, strategic, advertising, sales, promotion, technical, personal, educational, or industry purpose or other public or private purpose or activity.

(c) Not copy, reproduce, recopy or duplicate the Confidential Information without written consent of NPPD, except as is required in the execution of the consulting services for its client, Grand Island, or for the use of the cost-of-service analysis results by Grand Island.

(d) Return the Confidential Information and all copies, reproductions, abstracts, excerpts, notations, summaries, outputs, reiterations or compilations thereof to NPPD upon completion of Consultant's performance of said services or earlier if requested by NPPD.

3. NPPD may enforce this Agreement by appropriate legal and equitable actions and remedies, including specific performance and injunctive relief, and any violation of this Agreement in any respect shall constitute a material breach of the Agreement and a conclusive presumption that NPPD has been damaged by the breach.

4. This Agreement is deemed to have been made and entered into in the State of Nebraska and shall be governed, controlled and construed in accordance with the laws of the State of Nebraska, without application of conflict of law principles. Any legal action on or arising out of or related to this Agreement shall be commenced and maintained in courts in the State of Nebraska and the Parties agree to such forum and venue.

5. This Agreement may be executed in two counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

NEBRASKA PUBLIC POWER DISTRICT

CHRISTENSEN ASSOCIATES ENERGY
CONSULTING, LLC.

By _____

By _____

Name _____

Name _____

Title _____

Title _____

Date _____

Date _____

CITY OF GRAND ISLAND

By _____

Name _____

Title _____

Date _____

RESOLUTION 2008-117

WHEREAS, the City Electric Department has previously entered into a contract with Christensen Associates to perform a load profiling and cost-of-service study; and

WHEREAS, this study entails the gathering of consumption and usage pattern information on our customer base for statistical analysis; and

WHEREAS, Omaha Public Power District (OPPD) and Nebraska Public Power District (NPPD) have such data on their customers which they have agreed to make available to Grand Island; and

WHEREAS, OPPD and NPPD have requested that the City execute Confidentiality and Nondisclosure agreements on their behalf; and

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized and directed to execute Confidentiality and Nondisclosure agreements with OPPD and NPPD relative to their customer data.

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Adopted by the City Council of the City of Grand Island, Nebraska, April 22, 2008.

Margaret Hornady, Mayor

Attest:

RaNae Edwards, City Clerk