



City of Grand Island

Tuesday, February 24, 2015

Council Session

Item G-7

#2015-46 - Approving Alternate Designated Representative for the EPA Acid Rain Program

Staff Contact: Tim Luchsinger, Utilities Director

Council Agenda Memo

From: Timothy G. Luchsinger, Utilities Director
Stacy Nonhoff, Assistant City Attorney

Meeting: February 24, 2015

Subject: EPA Representation Agreement – Assigning New
Alternate Designated Representative

Item #'s: G-7

Presenter(s): Timothy Luchsinger, Utilities Director

Background

In 1990, Congress instituted a much expanded program of emission control, monitoring and reporting for major fossil burning facilities with passage of the Clean Air Act Amendments of 1990. At the time, the primary focus of the increased regulation was on sulfur emissions and the creation of the new sulfur emission accounting and trading program known as the Acid Rain Program. Among the new requirements were:

- Installation of continuous monitoring equipment on fuel burning equipment
- Extensive reporting of emissions and monitoring equipment performance and calibration
- Creation of the sulfur emission trading system
- Assignment of emission allowances to existing facilities
- Development of trading and sale provisions to produce a market system for trading the newly created commodity of sulfur allowances
- Detailed specifications for equipment operational accuracy and reliability with extensive reporting requirements
- And other provisions included in this major legislation

Being operators of fossil fueled power plants, the City was included under the new regulatory requirements. The 1990 Amendments shifted regulatory compliance from obligating subject facilities to meet limits established by EPA, to requiring much expanded monitoring and reporting to demonstrate emission limit compliance with penalties associated with any failures in the monitoring and reporting, without regard for the actual emission. With the much more complex requirements, the 1990 Amendments required the owner or operator of a source to appoint a “Designated Representative” who was to have control and responsibility for the newly enacted regulatory compliance

processes, and an “Alternate Designated Representative” to act in the event the Designated Representative is not available.

Designated Representative Responsibilities:

Environmental Protection Agency rules governing the Designated Representative are set forth in 40 CFR §72.20, Subpart B. These rules include the following:

1. The Designated Representative is defined as a “responsible person or official authorized by the owner and operator of a unit to represent the owner and operator in matters pertaining to the holding, transfer, or disposition of allowances allocated to a unit, and the submission of and compliance with permits, permit applications, and compliance plans for the unit.
2. That the Designated Representative “by his or her actions, inactions, or submissions, legally bind each owner and operator of the affected source...”
3. That the “... owners and operators shall be bound by any order issued to a Designated Representative by the Administrator, the permitting authority, or the court.”
4. That “...where a particular violation resulted from acts or omissions that are within the scope of the Designated Representative’s responsibilities, he will be subject to liability for that violation.”

In the case of municipal ownership of power plants, there is an apparent conflict between the federal mandate to have a Designated Representative who is a “natural person” and who can “legally bind” and “be subject to liability for violation”; and Nebraska law which does not permit the City Council to delegate its authority to any individual. A notation to that affect was made on the required document submitted to EPA.

After evaluation by the Utilities Department and the Legal Department of the City, the decision was made to appoint the Utilities Director as the Designated Representative (DR) and the Assistant Utilities Director-Production Division as the Alternate Designated Representative (ADR). The appointments were made by the City Council at a regular session in December of 1994, by execution of a Representative Agreement document.

Discussion

With the recent resignation of Emily Muth, Regulatory and Environmental Manager, the City must appoint a new ADR to fulfill EPA requirements. The appointment of the Utilities Director as the DR will remain as before and the position of Regulatory and Environmental Manager is a legally acceptable alternate position to serve as the ADR. The Regulatory and Environmental Manager is responsible for monitoring and ensuring compliance with environmental regulatory programs at Utilities Department facilities and the position is currently filled by Scott Sekutera.

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 Representation Agreement with the appointment of Scott A. Sekutera as Alternate Designated Representative.

Sample Motion

Move to approve the Representation Agreement appointing Scott A. Sekutera as the Alternate Designated Representative for the City of Grand Island in compliance with the Clean Air Act and Environmental Protection Agency regulations.

REPRESENTATION AGREEMENT

This Representation Agreement is made on this 24th day of February, 2015 by and between the City of Grand Island, Nebraska, a municipal corporation (CITY), Timothy G. Luchsinger ("MR. LUCHSINGER") and Scott A. Sekutera ("MR. SEKUTERA").

WITNESSETH:

WHEREAS, City is the owner and operator of Platte Generating Station and C.W. Burdick Power Station ("UNITS");

WHEREAS, the UNITS are subject to regulation under the Clean Air Act Acid Rain Program, as amended;

WHEREAS, MR. LUCHSINGER is employed by the CITY as Utilities Director;

WHEREAS, Mr. SEKUTERA is employed by the CITY as the Regulatory and Environmental Manager.

NOW, THEREFORE, in consideration of the premises, the covenants hereinafter set forth and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do hereby agree as follows:

SECTION 1 Designated Representative.

Pursuant to the Clean Air Act, as amended, the CITY hereby retains MR. LUCHSINGER as its Designated Representative for the UNITS. MR. LUCHSINGER hereby agrees to continue to act as CITY's Designated Representative for the UNITS.

SECTION 2 Duties of the Designated Representative.

CITY authorizes MR. LUCHSINGER to continue to fulfill the duties placed on the CITY's Designated Representative as such duties are defined in the Clean Air Act, as amended, and the implementing regulations promulgated thereunder by federal and state agencies. MR. LUCHSINGER agrees to fulfill these duties.

SECTION 3 Duties of the Alternate Designated Representative.

Pursuant to the Clean Air Act, as amended, CITY hereby appoints MR. SEKUTERA to act as CITY's Alternate Designated Representative for the UNITS. MR. SEKUTERA hereby agrees to act as CITY's Alternate Designated Representative.

SECTION 4 Duties of the Alternate Designated Representative.

CITY authorized MR. SEKUTERA to fulfill the duties placed on CITY's Alternate Designated Representative as such duties are defined in the Clean Air Act, as amended, and the implementing regulations promulgated thereunder by federal and state agencies. MR. SEKUTERA agrees to fulfill these duties.

SECTION 5 Procedures for the Alternate Designated Representative to Act in Lieu of the Designated Representative.

CITY hereby authorizes MR. LUCHSINGER to notify MR. SEKUTERA either orally or in writing when he is unable to fulfill his duties as set forth in Section 2 for any reason, including, without limitation by enumeration, sickness, vacations, or business travel, and upon receipt of such notice, MR. SEKUTERA shall fulfill MR. LUCHSINGER's Section 2 duties until such time as MR. LUCHSINGER notifies MR. SEKUTERA (either orally or in writing) that he is able to resume his Section 2 duties. If MR. LUCHSINGER suddenly incapacitated and is unable to provide the notice required by this Section, (i) CITY authorizes MR. SEKUTERA to assume MR. LUCHSINGER's Section 2 duties, (ii) MR. SEKUTERA will either orally or in writing notify MR. LUCHSINGER of his actions, and (iii) MR. SEKUTERA will continue to perform MR. LUCHSINGER's Section 2 duties until such time as MR. LUCHSINGER notifies MR. SEKUTERA (either orally or in writing) that he is able to resume his section 2 duties.

SECTION 6. Certificate of Representation.

CITY authorizes MR. LUCHSINGER and MR. SEKUTERA to submit a Certificate of Representation as provided by 40 C.F.R. §72.24 and 40 C.F.R. §60.4113. CITY further agrees to be bound by the certifications made by MR. LUCHSINGER and MR. SEKUTERA in the submitted Certificate of Representation. MR. LUCHSINGER and MR. SEKUTERA agree to promptly execute and file the Certificate of Representation.

SECTION 7. Liability.

CITY agrees to indemnify and hold harmless MR. LUCHSINGER and MR. SEKUTERA for any personal liability that they may incur in their capacities as Designated Representative and Alternate Designated Representative, respectively, unless such liability is the product of personal dishonesty or fraud.

SECTION 8. Binding Effect.

This Agreement is binding on CITY in its capacity as the owner and operator of the UNITS.

SECTION 9 Termination

Any party may terminate this Agreement hereto at any time by giving notice of such termination in writing to the other parties. Termination of this Agreement by MR. LUCHSINGER or MR. SEKUTERA shall not affect their employment status with the CITY. The

CITY agrees to immediately file a Certificate of Representation selecting a new representative upon termination of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year written above.

CITY OF GRAND ISLAND,
A Municipal Corporation

By: _____
Jeremy L. Jensen, Mayor

Attest: _____
RaNae Edwards, City Clerk

By: _____
Timothy G. Luchsinger,
Utilities Director

By: _____
Scott A. Sekutera, Regulatory and
Environmental Manager

RESOLUTION 2015-46

WHEREAS, the City of Grand Island' Platte Generating Station and C. W. Burdick Power Station are subject to regulation under the Clean Air Act, as amended;

WHEREAS, in 1990, Congress instituted an expanded program of emission control, monitoring and reporting for major fossil burning facilities with passage of the Clean Air Act Amendments of 1990; and

WHEREAS, as a requirement of the Clean Air Act Amendments of 1990, an appointment of a "Designated Representative" is necessary to have control and responsibility for the enacted regulatory compliance process. It is further required that an "Alternate Designated Representative" be appointed to act in the event the Designated Representative is not available; and

WHEREAS, it would be in the best interest of the City to retain Utilities Director Tim Luchsinger as the Designated Representative appoint Regulatory and Environmental Manager, Scott Sekutera as the Alternate Designated Representative.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the retention of Utilities Director Timothy Luchsinger as Designated Representative and appointment of Regulatory and Environmental Manager Scott Sekutera at Alternate Designated Representative for the City of Grand Island, in compliance with the Clean Air Act are hereby approved.

BE IF FURTHER RESOLVED THAT the Mayor is hereby authorized and directed to execute the Representation 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, February 24, 2015.

Jeremy L. Jensen, Mayor

Attest:

RaNae Edwards, City Clerk

Approved as to Form	☐ _____
February 20, 2015	☐ City Attorney