



City of Grand Island

Tuesday, March 08, 2011

Council Session

Item G6

**#2011-52 - Approving Agreement for Marketing Services for
WEC2 Energy between the City of Grand Island and the
Municipal Energy Agency of Nebraska (MEAN)**

Staff Contact: Gary R. Mader

Council Agenda Memo

From: Gary R. Mader, Utilities Director
Jason Eley, Interim City Attorney

Meeting: March 8, 2011

Subject: Approving Agreement for Marketing Services for WEC2 Energy

Item #'s: G-6

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

Background

Grand Island is a participant in the Public Power Generating Agency (PPGA) which is a group of public power utilities organized under the Interlocal Agreement provisions of state law. The purpose of the PPGA is the construction and operation of a base load, coal fired power plant that will provide electric power to the project participants to meet future load growth. The plant is located in Hastings, being built on the same site as the current Hastings power plant, Whelan Energy Center (WEC) #1. The new unit is termed WEC#2. With the addition of this facility, there will be opportunity for increased wholesale sales of electric energy to the regional grid, when that generation resource is not needed to serve Grand Island's native load. It is proposed that a marketing agreement be put in place to facilitate wholesale power sales. WEC#2 construction is nearly completed, and the generating unit is undergoing start-up and performance testing at this time. It is anticipated that commercial operation will be achieved within the next 90 days.

Prior to the de-regulation of the nation's electric industry in the late 1990's, electric power sales were made primarily between adjacent electric utilities that had transmission interconnections. With deregulation, the goal of the federal government has been to expand the opportunities for wholesale sales among utilities, with the theory that lowest cost generators should be used before more expensive generation, and with the theory that these transactions could be on a national scale. To that end, the Federal Energy Regulatory Commission (FERC) had promulgated extensive new regulations to govern the interactions of utilities and the wholesale power markets, and has mandated the creation of bureaucracies to control both the sales transactions and security of the nation's electric grid. Power markets are now created, governed and administered by Regional Transmission Organizations (RTOs). The RTOs have in turn generated their own governing regulatory structure in compliance with the FERC regulatory

requirements. Electric Utilities with regional interconnections have added full time staffs dedicated to the transactions associated with power purchase and sale and documenting compliance with the FERC/RTO regulatory requirements. The Southwest Power Pool (SPP) is the regional RTO for most of Nebraska. SPP governs electric transmission in most of Nebraska, Kansas and Oklahoma and in parts of five other states. Because of the increased regulatory requirements load, administrative requirements and additional staffing needed to participate in the RTO markets, Grand Island has accomplished wholesale power sales through NPPD and OPPD, who are SPP members and staffed and interconnected to operate in the SPP RTO. The addition of WEC#2 increases the potential for wholesale electric power sales.

Discussion

Prior to the development of RTOs, utilities purchased and sold power directly with each other in what is commonly termed bilateral sales. That is the type of sale that Grand Island has used historically. In the new world of RTOs, utilities are more commonly participating in the real-time regional power markets that are strictly price based. The Municipal Energy Agency of Nebraska (MEAN) is the wholesale marketing and electricity supply organization of the Nebraska Municipal Power Pool. MEAN provides power supply, transmission and related services to more than 60 communities, one public power district and one joint-action agency in four states; Nebraska, Colorado, Iowa, and Wyoming. MEAN is also a participant in the WEC#2 power plant project. As partners in the WEC#2 power plant, the Nebraska participants, MEAN, Nebraska City, Hastings Utilities and Grand Island are developing agreements with MEAN to jointly market the available excess power from WEC#2, with MEAN as the marketer. Aggregating the participant share into a larger block for sale offers some advantages in the power market. The marketing agreement establishes the parameters of the marketing effort. It is not an exclusive agreement, and Grand Island would retain its current arrangements with NPPD and OPPD. A copy of the proposed agreement is attached for Council review. Exhibit B of the agreement includes detailed pricing information that is considered confidential. Exhibit B is provided under separate cover and delivered to the Mayor and Council in their City Hall mail boxes.

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 Agreement for Marketing Services for WEC2 Energy with the Municipal Energy Agency of Nebraska.

Sample Motion

Move to approve the Agreement for Marketing Services for WEC2 Energy with the Municipal Energy Agency of Nebraska.

AGREEMENT FOR MARKETING SERVICES FOR WEC2 ENERGY

Dated March 1, 2011

This Agreement for Marketing Services for WEC2 Energy ("Agreement") is entered into by and among the Municipal Energy Agency of Nebraska ("MEAN") and the undersigned participants (each a "Participant" and collectively referred to herein as the "Participants"). MEAN and the Participants are collectively referred to as the "Parties".

1. Each of the undersigned Participants requests, and MEAN hereby agrees, that MEAN will perform the services described on Exhibit A, attached hereto and made part of this Agreement, for such Participant. Exhibit A may be modified from time to time upon written agreement of all of the Parties hereto.
2. Compensation for services, transmission and any other charges or costs shall be as set forth in Exhibit B, attached hereto and made part of this Agreement, and will be netted against revenue from the sale of the Parties' energy from the Whelan Energy Center Unit 2 ("WEC2") as described herein. Exhibit B may be modified from time to time upon written agreement of all the Parties hereto. The net balance each month as calculated by MEAN for each Participant will then be invoiced by MEAN. Each such invoice will be paid by Participant to MEAN if expenses and compensation due for such month exceed the revenue due to Participant from WEC2 energy sales in such month, or will be paid by MEAN to Participant if the revenue from WEC2 energy sales in such month exceeds the expenses and compensation due for such month. Payments are due within thirty (30) days of the date of invoice. Interest on any unpaid amount from the date due until the date upon which payment is made shall accrue at the rate of one percent per month or fraction thereof.
3. This Agreement shall be legally binding upon execution by MEAN and at least one Participant. The services hereunder shall take effect upon the Commercial Operation Date of WEC2. After the initial execution by any Participant and MEAN, any other participant in WEC2 may become a Participant by the execution of this Agreement with MEAN and delivery of the Agreement to MEAN. The list of Participants shall be set forth on Exhibit C, attached hereto and made part of this Agreement. MEAN may terminate this Agreement on ninety (90) days written notice to all Participants. Any Participant may terminate its participation in this Agreement by ninety (90) days written notice to MEAN, which will then send written notice to all other Participants notifying them of the termination.
4. Notwithstanding any other provision of this Agreement, MEAN's total liability to each Participant for any loss or damage, including, but not limited to, special and/or consequential damages arising out of or in connection with the performance of services or any other cause shall not exceed the compensation received by MEAN from such Participant for scheduling, marketing and settlement services under this Agreement (excluding costs of transmission service, transmission losses and electrical energy, and other fees payable to transact energy schedules), and each Participant hereby releases and waives any and all contractual or legal rights against MEAN for any liability above such amount. The Participants further agree, to the fullest extent permitted by law, to defend, indemnify, and hold harmless MEAN and its officers, directors, employees and agents from and against all third party claims for damages, losses and expenses, direct or indirect, or consequential damages including, but not limited to, attorney's fees arising out of or resulting from the failure of its timely and proper performance hereunder.
5. MEAN shall at all times and for all purposes be an independent contractor under this Agreement. It is understood that MEAN, pursuant to the terms and conditions of this Agreement, shall not assume duties of any existing agent(s) or manager(s) that have been established under other agreements regarding Public Power Generation Agency's WEC2.

6. The Parties hereby deem subsections (i), (ii), (iii) and (iv) of Exhibit B of this Agreement to constitute confidential information ("Confidential Information"), subject to the provisions of this paragraph. Each Party agrees that it will use reasonable care to prevent unauthorized disclosure of Confidential Information. Each Party agrees that it will not make any copies of Confidential Information except for use by its authorized officers, employees, agents and members of its governing body(ies) with a need to know in connection with this Agreement ("Representatives"), and each Party agrees to inform its Representatives having access to Confidential Information of the terms of the confidentiality and non-disclosure terms within this Agreement. Each Party agrees not to distribute, disclose or disseminate Confidential Information in any way to anyone, except Representatives who have such need to know. The obligations imposed in this paragraph shall not apply to Confidential Information which must be disclosed pursuant to any law, order or regulatory requirement (including, but not limited to, the Open Meetings Act, Neb. Rev. Stat. § 84-1407 et seq., and the Nebraska public records Laws, Neb. Rev. Stat. § 84-712 et seq.). If disclosure is requested or demanded as to Confidential Information pursuant to any law, order or regulatory requirement, the Party receiving the request or demand shall provide MEAN with prompt notice to enable MEAN to seek protective legal remedies, and the Party receiving the request or demand shall reasonably cooperate in connection therewith.

7. Except as otherwise provided herein, this Agreement may be amended only by a written instrument duly executed by all of the Parties hereto.

8. This Agreement does not and is not intended to confer any rights or remedies upon any person other than MEAN and the Participants.

9. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

10. Separate copies of this Agreement are executed by the Parties with the understanding that, when each of the Parties has executed a copy with MEAN, 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.

11. This document, along with exhibits marked A through C, encompass the whole and total agreement on the matters contained in this Agreement, and except as provided in Section 7 above, no other document shall be incorporated into this Agreement.

[SIGNATURE PAGES FOLLOWING.]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement for Marketing Services for WEC2 Energy to be executed by its duly authorized officer as of the day and year shown below.

MUNICIPAL ENERGY AGENCY OF NEBRASKA

By _____
Executive Director

Date _____

PARTICIPANT: GRAND ISLAND UTILITIES, ACTING FOR
AND ON BEHALF OF THE CITY OF GRAND ISLAND,
NEBRASKA

By _____

Title _____

Date _____

**EXHIBIT A, SCOPE OF SERVICES
TO
AGREEMENT FOR MARKETING SERVICES FOR WEC2 ENERGY**

Issued March 1, 2011

Pursuant to the Agreement for Marketing Services for WEC2 Energy ("Agreement"), the Municipal Energy Agency of Nebraska ("MEAN") shall be responsible for the performance of the following services for Participant on a non-exclusive basis for any day on which Participant requests MEAN to perform such service, beginning on the Commercial Operation Date of WEC2, subject to the terms of this Exhibit and the Agreement:

- i. MEAN will use reasonable efforts, with the limitations described in this Exhibit, to schedule and market in the Eastern Interconnection and/or Western Interconnection each Party's share of energy generated by WEC2, or the portion thereof that is desired by such Party to be marketed by MEAN. All marketing efforts and the completion of marketing transactions by MEAN under this Agreement are subject to transmission availability and market conditions. In the event MEAN cannot find a buyer or determines in its sole discretion that marketing the energy is not feasible because the WEC2 incremental cost exceeds the bilateral market, MEAN shall allow the Parties' WEC2 energy to be delivered into the Southwest Power Pool, Inc. ("SPP") market and the Parties will receive the revenue or pay the cost associated with the resulting energy imbalance pricing in the SPP market according to Exhibit B. Each Party's share of energy generated by WEC2 will be combined with the shares of the other Parties for whom MEAN is providing this service. For purposes of clarity, it is intended that MEAN's share of WEC2 energy that is not scheduled to MEAN's load will be included with the other Parties' shares. MEAN shall allocate all revenues and expenses associated with this service according to Exhibit B.
- ii. MEAN will tag and settle the WEC2 energy of the Parties for sales to third parties or SPP made pursuant to subsection i above.
- iii. Any request for MEAN to market energy must be received by MEAN from Participant by 6:00 a.m. Central Prevailing Time in the then-current day ahead marketing period.
- iv. MEAN will tag and schedule any Party's share of WEC2 energy to such Party's load as requested by such Party.

The Participants acknowledge that in the performance of services hereunder by MEAN, conflicts of interest may arise due to the nature of MEAN's duty to serve its participating municipalities and manage its power system. Further, the Participants acknowledge that MEAN's duty to acquire and supply the lowest-cost, reliable energy supply to its participating municipalities is superior to MEAN's duty to the Participants under this Agreement. Accordingly, each determination of MEAN to dispose of the energy will be made with the intent, first, to keep MEAN whole and second, to maximize profit and minimize losses for the Parties, with no particular Participant's interests being superior to any other Participant's interests. Nothing in this Exhibit or the Agreement shall be deemed to require MEAN to take any action or make any sale of energy that causes a negative financial impact to MEAN. THE FOREGOING IS IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY.

Terms used but not defined in this Exhibit shall have the meaning ascribed thereto in the Agreement.

This Exhibit A may be modified from time to time as described in the Agreement.

Exhibit B

**(Fees, Revenue Sharing)
Is a Confidential Agreement**

Provided to Council under separate cover

**EXHIBIT C, LIST OF PARTICIPANTS
TO
AGREEMENT FOR MARKETING SERVICES FOR WEC2 ENERGY**

Issued _____, 2011

[LIST TO BE ISSUED AFTER EXECUTION]

RESOLUTION 2011-52

WHEREAS, Grand Island is a participant in the Public Power Generating Agency (PPGA) which is a group of public power utilities organized under the Interlocal Agreement provisions of state law; and

WHEREAS, the purpose of the PPGA is the construction and operation of a base load, coal fired power plant that will provide electric power to the project participants to meet future load growth; and

WHEREAS, the plant is located in Hastings, being built on the same site as the current Hastings power plant, Whelan Energy Center (WEC) #1, the new unit is termed WEC #2; and

WHEREAS, with the addition of this facility, there will be opportunity for increased wholesale sales of electric energy to the regional grid, when that generation resource is not needed to serve Grand Island's native load; and

WHEREAS, a marketing agreement is needed to facilitate wholesale power sales; and

WHEREAS, the Municipal Energy Agency of Nebraska (MEAN) is the wholesale marketing and electricity supply organization of the Nebraska Municipal Power Pool, and a participant in the WEC #2 power plant project; and

WHEREAS, the Nebraska Participants, MEAN, Nebraska City, Hastings Utilities and Grand Island have developed an agreement with MEAN to jointly market the available excess power from WEC #2 with MEAN as the marketer.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, that the Mayor is hereby authorized, on behalf of the City, to execute the Agreement for Marketing Services for WEC2 Energy between the City of Grand Island and the Municipal Energy Agency of Nebraska (MEAN).

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Adopted by the City Council of the City of Grand Island, Nebraska, March 8, 2011

Jay Vavricek, Mayor

Attest:

Approved as to Form	☐ _____
March 4, 2011	☐ City Attorney

RaNae Edwards, City Clerk