



# City of Grand Island

Tuesday, November 08, 2011

Council Session

## Item I4

**#2011-341 - Approving Confidentiality Agreement with Municipal Energy Agency of Nebraska (MEAN) to Provide Southwest Power Pool Marketing Service Agreement Proposal**

Staff Contact: Tim Luchsinger

# Council Agenda Memo

**From:** Timothy Luchsinger, Utilities Director

**Meeting:** November 8, 2011

**Subject:** Confidentiality Agreement with the Municipal Energy Agency of Nebraska (MEAN) to Provide Southwest Power Pool Marketing Service Agreement Proposal

**Item #'s:** I-4

**Presenter(s):** Timothy Luchsinger, Utilities Director

## Background

Electric generation plants are connected to a national electric transmission grid for the distribution of electricity to users. The national grid is broken into several regional control groups that balance generation with demand among the region's individual electric utility organizations, as well as the transfer of power to other regional grids. As part of controlling the transfer of electricity, these groups are also involved in the economic aspect of these transfers and the conditions of the sales and purchases. This has evolved from previous informal or formal agreements between utilities to the current point of a free market where power transactions are priced according to what buyers and sellers bid. The electric markets are implementing highly regulated systems for the control and dispatching of power from each plant and are similar to commodity or equity markets, in that they have complex requirements for conducting business transactions.

The regional grid that Grand Island is located in is the Southwest Power Pool (SPP). At this time, Grand Island is not a member of SPP and transfers of power are arranged through interconnected utilities, Nebraska Public Power District (NPPD) and the Municipal Energy Agency of Nebraska (MEAN). MEAN conducts marketing of our share of the Whelan 2 plant in Hastings through an agreement with our inter-local body, the Public Power Generation Agency (PPGA). We also conduct sales from our share of the Nebraska City 2 through Omaha Public Power District. These utilities are registered members of SPP and have the qualified staff and systems needed to conduct transactions in the SPP market.

The SPP market is evolving from one that looks at current pricing to one that will include conducting transactions a day ahead in order to better balance supply and demand. This will impact our operations as we will go from looking at real-time market conditions to

also evaluating market conditions a day in advance and take into consideration hedging our needs and resources as the markets pan out.

To participate in future power sales from our units in Grand Island, we will be required to register our generating units in SPP and either become a member of SPP, or use another member to conduct transactions and dispatch power using the SPP control network. At this time, we have neither the staff nor systems necessary to conduct transactions in the SPP market, so we have contacted MEAN and NPPD regarding proposals to become our broker until we determine whether to do these functions internally. Part of these proposals may also include some sort of a commission or other compensation to use their resources to help us determine long and short term strategies.

## **Discussion**

MEAN has provided the attached Confidentiality Agreement that they require to be executed prior to providing their proposal. This agreement is applicable to the SPP market assistance proposal from MEAN, and does not bind or exclude the City to any other agreements. Utilities Department and Legal staff have reviewed the agreement and recommend that it be executed by the City.

## **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 execution of the Confidentiality Agreement between the City of Grand Island Utilities Department and the Municipal Energy Agency of Nebraska (MEAN) to provide Southwest Power Pool Marketing Service Agreement Proposal.

## **Sample Motion**

Move to approve execution of the Confidentiality Agreement between the City of Grand Island, Utilities Department, and the Municipal Energy Agency of Nebraska (MEAN) to provide Southwest Power Pool Marketing Service Agreement Proposal.

## NON-DISCLOSURE CONFIDENTIALITY AGREEMENT

This Agreement is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) by and between the Municipal Energy Agency of Nebraska, (hereinafter referred to as “MEAN”) and Grand Island Utilities, acting for and on behalf of the City of Grand Island, Nebraska (hereinafter referred to as “Utility”).

WHEREAS, the Parties intend to enter into discussions to explore the possibility of entering into an Agreement Regarding SPP Market Assistance (“Services Agreement”) under which MEAN would provide assistance to Utility to participate in the Southwest Power Pool, Inc. imbalance market and Day Two market; and

WHEREAS, the Parties desire to protect the confidentiality of certain information contained within the Services Agreement document, regardless of whether such Services Agreement is executed or declined by the Parties.

NOW, THEREFORE, the Parties hereto agree as follows:

1. **Confidential Information.** Confidential Information shall mean any information regarding compensation, pricing or fees contained within the Services Agreement, including, but not limited to Early Termination Fee, hourly billing rates, administrative fees, and estimated number of hours required to complete each task, except for that information specified in Section 9 below entitled “Exceptions.”

2. **Use of Confidential Information.** Unless specifically authorized in writing by MEAN, Utility will:

- a) use such Confidential Information solely for the purpose of evaluating the proposed services relationship for SPP market assistance between the Parties; and
- b) promptly return to MEAN, upon written request, any and all tangible material concerning such Confidential Information, including all copies and notes, *provided, however*, that in the event the Services Agreement is executed by and between the Parties, Utility may retain one original copy of the executed Services Agreement.

3. **Non-Disclosure.** Utility agrees to receive the Confidential Information in confidence. Utility agrees that it will treat such Confidential Information in the same manner that it treats like information of its own that it does not wish to disclose to the public, potential competition, or other carriers, but in all events it shall undertake at least a reasonable degree of care. To that end, Utility will not make a copy of any Confidential Information that is in documented form except for use by its employees and board members with a need to know.

Utility further agrees not to distribute, disclose or disseminate the Confidential Information in any way to anyone, except its employees and board members who have such need

to know. Utility further agrees not to use the Confidential Information for its own benefit or the benefit of others, except as authorized in writing by MEAN. Utility agrees that its disclosure of Confidential Information to its employees and board members who have such a need to know shall be limited to only so much of such Confidential Information as is necessary for that employee or board member to perform his/her function.

4. **Term.** This Agreement shall become effective upon execution and shall remain in effect for a term of two (2) years from the Effective Date.

5. **No License.** Nothing contained in this Agreement shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information disclosed to Utility.

6. **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 entering into an agreement or negotiation with any other party.

7. **No Circumvention.** Utility agrees not to circumvent MEAN by using Confidential Information or contacts provided or enter into negotiations with an individual(s) or entity(s) that one Party may introduce to the other Party for a period of two (2) years from the Effective Date of this Agreement.

8. **Propriety Information.** The Parties recognize that the Confidential Information is in many respects proprietary in nature, and as such Utility agrees that for a period of two (2) years from the Effective Date of this Agreement, Utility will not use anything that it may learn from MEAN (except generic industry related information) in such a way as to compete with MEAN.

9. **Exceptions.** The obligations imposed upon the Parties herein shall not apply to Confidential Information:

- a) which becomes available to the public through no wrongful act of Utility; or
- b) which is already in the possession of Utility and not subject to an existing agreement of confidence between the Parties; or
- c) which is received from a third party without restriction and without breach of this Agreement; or
- d) which is independently developed by Utility; or
- e) which is required to be disclosed by law, order, or regulation. In such a case, Utility must first notify MEAN and must make a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the Confidential Information solely for the purposes intended to be served by the original order of production.

10. **Reliance.** Each Party acknowledges that neither MEAN 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 MEAN nor its representatives shall have any liability to Utility, Utility'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 Utility assumes full responsibility for all conclusions such Party derives from the Confidential Information, except as may be otherwise agreed in writing between the Parties.

11. **Breach of Agreement.** The Parties acknowledge that, in the event of a threatened or actual breach of the Agreement, monetary damages may not be sufficient. Accordingly, MEAN shall be entitled to injunctive relief in the event of a threatened or actual breach of this Agreement.

12. **Arbitration.** Any dispute which shall arise as to the obligations of either Party to this Agreement or as to the interpretation of any provision of this Agreement shall be decided by arbitration in accordance with the Rules of the American Arbitration Association (“AAA”) applicable to commercial disputes. The Parties agree that in the event that arbitration is demanded by either Party, upon reasonable notice each Party shall make all non-privileged documents related to the issues in dispute available to the other Party for inspection and copying. Unless otherwise agreed, any such arbitration hearing shall be conducted in Lincoln, Nebraska. This Agreement shall be construed and any disputes arising thereunder shall be resolved in accordance with the laws of the State of Nebraska.

13. **Governing State.** This Agreement shall be governed by, construed and enforced in accordance with, the laws of the State of Nebraska.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes any prior or contemporaneous oral or written representations with regard to the subject matter hereof. This Agreement may not be modified except by a writing signed by both Parties.

**IN WITNESS WHEREOF**, the Parties have caused this Non-Disclosure Confidentiality Agreement to be executed by their respective duly authorized representatives as of the date first written above.

MUNICIPAL ENERGY AGENCY  
OF NEBRASKA

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

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

RESOLUTION 2011-341

WHEREAS, electric generation plants are connected to a national electric transmission grid for the distribution of electricity to users; and

WHEREAS, the national grid is broken into several regional groups that balance generation with demand among the region's individual electric utility organizations, as well as transfer power to other regional grids; and

WHEREAS, the market is evolving to a free market where power transactions are priced according to what buyers and sellers bid; and

WHEREAS, the electric markets are implementing highly regulated systems for the control and dispatching of power from each plant and are similar to commodity or equity markets, in that they have complex requirements for conducting business transactions; and

WHEREAS, the regional grid that Grand Island is located in is the Southwest Power Pool (SPP), and at the time, Grand Island is not a member of SPP and transfers of power are arranged through interconnected utilities, Nebraska Public Power District (NPPD) and the Municipal Energy Agency of Nebraska (MEAN); and

WHEREAS, at this time, Grand Island Utilities has contacted MEAN and NPPD regarding proposals to become our broker until it is determined whether this functions can be done internally; and

WHEREAS, MEAN has provided a Confidentiality Agreement that is required to be executed prior to providing their proposal, and this agreement is applicable to the SPP market assistance proposal from MEAN, and does not bind or exclude the City to any other agreements; and

WHEREAS, Utilities Department and Legal staff have reviewed the agreement and recommend that it be executed by the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF GRAND ISLAND, NEBRASKA, the Confidentiality Agreement with the Municipal Energy Agency of Nebraska (MEAN) to provide Southwest Power Pool Marketing Service Agreement Proposal is hereby approved, and the Utilities Director is authorized to sign the 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, November 8, 2011.

\_\_\_\_\_  
Jay Vavricek, Mayor

Attest:

\_\_\_\_\_  
RaNae Edwards, City Clerk

|                     |                 |
|---------------------|-----------------|
| Approved as to Form | ☐ _____         |
| November 2, 2011    | ☐ City Attorney |