

City of Scottsbluff, Nebraska

Monday, September 16, 2019

Regular Meeting

Item Reports2

Council to discuss and consider action on increasing the NPPD lease payment by one-half percent.

Staff Contact: Nathan Johnson, City Manager

PROFESSIONAL RETAIL OPERATIONS AGREEMENT

between

NEBRASKA PUBLIC POWER DISTRICT

and

CITY OF SCOTTSBLUFF, NEBRASKA

EFFECTIVE: JANUARY 1, 2019

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PROFESSIONAL RETAIL OPERATIONS AGREEMENT
between
NEBRASKA PUBLIC POWER DISTRICT
and
CITY OF SCOTTSBLUFF, NEBRASKA

This Professional Retail Operations Agreement (Agreement) is made and entered into by and between Nebraska Public Power District, a public corporation and political subdivision of the State of Nebraska (NPPD), and the City of Scottsbluff, a municipal corporation of the State of Nebraska.

RECITALS

WHEREAS, NPPD operates an integrated electric utility system, including facilities for generation, transmission and distribution of electric power and energy at wholesale and retail, and is engaged in the generation, purchase, transmission, distribution and sale of electric power and energy; and

WHEREAS, the City owns an electric distribution system as hereinafter defined (Distribution System), which is directly or indirectly connected to NPPD's integrated utility electric system, and desires that NPPD provide retail electric service to the City and to the residents and businesses served from its Distribution System; and

WHEREAS, NPPD and the City previously entered into a Professional Retail Operations Agreement which provides, among other things, for NPPD's lease and operation of the City's Distribution System; and

WHEREAS, NPPD and the City now desire to enter into a new long-term Agreement in order to provide for NPPD's continued lease and operation of the City's Distribution System.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties hereto agree as follows:

ARTICLE I
TERM AND EFFECTIVE DATE

This Agreement shall become effective on January 1, 2019, and shall continue in force for a term of twenty-five (25) years, through December 31, 2043, subject to the following provisions:

Either party may terminate this Agreement (i) in accordance with the provisions of ARTICLE XIV herein, or (ii) upon five (5) years prior written notice given by either party to the other, with termination notice date of no earlier than January 1, 2039.

ARTICLE II LEASE OF DISTRIBUTION SYSTEM

During the term of this Agreement, City hereby leases and delivers possession of the Distribution System to NPPD. The Distribution System shall constitute an addition to NPPD's System under its General Revenue Bond Resolution, adopted June 4, 1998, as supplemented (the General Revenue Bond Resolution).

For the purposes of this Agreement, the Distribution System shall comprise the electric distribution facilities consisting of wires, poles and associated fixtures, meters, services, distribution transformers, and street lighting owned by the City as of the effective date of this Agreement or as may be added during the term of this Agreement. The facilities, which comprise the Distribution System, are identified in Exhibit A, as it may be revised from time to time, which is attached hereto and incorporated herein by this reference.

During the term of this Agreement, City has the right to sell the entire Distribution System outright without prior written approval of NPPD, in which event the new owner of the Distribution System shall have all of the rights and obligations of the City under the Agreement.

ARTICLE III OPERATION AND USE OF FACILITIES

NPPD shall operate the Distribution System as part of its integrated statewide electric utility system and the Board of Directors of NPPD shall fix rates and other terms and conditions of service as provided in Chapter 70, Article 6, of the Revised Statutes of Nebraska.

NPPD shall serve any and all electrical customers located in any area that is annexed by City during the term of this Agreement, and NPPD shall do so pursuant to the terms and conditions of this Agreement and shall take all appropriate action to integrate any and all facilities serving such customers into City's Distribution System. Notwithstanding the foregoing, the City shall have the unilateral right, with thirty (30) days written notice to NPPD, to direct that NPPD delete this annexation provision from the Agreement through an appropriate amendment to the Agreement, which shall be effective on a date that is agreeable to the City.

ARTICLE IV PAYMENTS

The gross retail electric revenues recognized by NPPD during the term of this Agreement from sales to customers purchasing electricity from the Distribution System shall be adjusted to eliminate (i) any bad debt charge-offs associated with such sales, (ii) any revenue associated with application of production cost and similar adjustments, including, but not limited to, sales tax and federal energy taxes.

During the term of this Agreement, lease payments in an amount equal to twelve percent (12%) of the retail revenue as so adjusted, as determined by NPPD records, shall be paid by NPPD to the City. By an act of the City, the City can increase or decrease NPPD's lease payment in one-half percent (0.5%) increments subject to an overall cap of fourteen percent (14%). Notice of the first one-half percent (0.5%) step change may be provided to NPPD anytime on or after the effective date of this Agreement. Any future one-half percent (0.5%) step changes may not take effect until a minimum of one (1) year after the effective date of the previous step change. Written notice of each one-half percent (0.5%) step change shall be provided to NPPD at least ninety (90) days before the effective date of such change.

In the event that during the term of this Agreement customers whose electricity needs would otherwise be served by NPPD from the Distribution System pursuant to this Agreement have the option under Nebraska law to choose their electricity supplier, then the gross retail electric revenues utilized in the above lease payment formula shall be appropriately modified. Such modification shall consist of an adjustment to recognize that NPPD's lease payment to the City, as described elsewhere in the Agreement, will be reduced such that it will only include NPPD's cost of service associated with the delivery of electricity to those customers who have chosen a supplier other than NPPD for their electricity needs, and will not include the costs of the actual electricity delivered to such customers from another power supplier.

Lease payments will be made on a monthly basis based on the previous month's actual activity and settlement. The lease payment will be remitted to the City no later than 30 days after the end of the month. The obligations of NPPD hereunder shall be subject and subordinate to the pledge of Pledged Property pursuant to the General Revenue Bond Resolution adopted by NPPD on June 4, 1998, as supplemented.

ARTICLE V MAINTENANCE AND CONSTRUCTION OF FACILITIES

NPPD shall maintain the Distribution System and construct any additions necessary for service to the extent such additions are within the established extension policies of NPPD, as they may be revised from time to time by the NPPD Board of Directors. Any additions to the Distribution System which are within the boundary shown on the Distribution System Boundary Map attached to Exhibit A hereto, as it may be revised from time to time, and which are rated at or below 15,000 volts, shall become a part of the Distribution System and belong to the City. Any materials removed in connection with maintenance or construction shall become the property of NPPD.

ARTICLE VI RETAIL ADVISORY COMMITTEE

A Retail advisory committee shall be formed. The committee, made up of interested Retail elected or appointed community officials, would be offered a chance to review items including, but not limited to, monthly Board agendas, rate and business

policy modifications, industry updates, and future strategies. While NPPD recognizes the importance of the City's participation in the rate, price and product development process, the City agrees that the NPPD Board of Directors has the ultimate authority and responsibility for maintaining adequate revenues and for designing rates, policies and pricing structures.

ARTICLE VII RENEWABLE GENERATION

NPPD agrees to accommodate the integration of renewable generation resources with the power supply it utilizes for providing retail electric service for customers it is obligated to serve under the terms of this Agreement. This accommodation will be made under the terms and conditions of agreements developed and entered into by the necessary parties at the time of the proposed integration. For the purposes of this section, renewable generation resources shall be comprised of two types: 1) Renewable generation resources whose output and associated environmental attributes are purchased by NPPD and conferred by NPPD under the provisions of its rate schedules to customers who qualify for economic development project benefits and who purchase electricity from the Distribution System, and 2) Community renewable generation resources or qualified local generation. There shall be no limitation on the amount of renewable generation resources for service under NPPD's rate schedules, as described in type 1) above. The maximum nameplate size of renewable generation resources installed under type 2) above shall be ten percent (10%) of the City's annual peak load. Renewable generation resources shall be installed and interconnected to the Distribution System if applicable.

ARTICLE VIII SURRENDER OF DISTRIBUTION SYSTEM

Upon termination of this Agreement, NPPD shall surrender the Distribution System to the City in as good a condition as it is at the time of execution of this Agreement, with reasonable wear and tear excepted. Upon such surrender, any and all materials, supplies, tools, transportation and office equipment and buildings owned by NPPD shall remain the property of NPPD.

ARTICLE IX TAXES

NPPD shall make payments of taxes and in-lieu-of taxes with respect to its operation of the City's Distribution System as may be required by law from time to time.

ARTICLE X INSURANCE

NPPD agrees at all times during the existence of this Agreement to have in force with a company authorized to issue such insurance in the State of Nebraska, General

Liability, including Products and Completed Operations, and Independent Contractor's and Explosion, Collapse and Underground (XCU) insurance with limits of \$10,000,000 combined single limit bodily injury and property damage per occurrence with specific contractual coverage insuring the hereinafter assumed liability of NPPD. Under the same conditions, NPPD also agrees at all times during the existence of this Agreement to have in force with a company authorized to issue such insurance in the State of Nebraska, automobile liability insurance on NPPD's vehicles with limits of \$10,000,000 combined single limit bodily injury and property damage per occurrence. Provided, however, as an alternative to said insurance specified above, NPPD may self-insure all or any part of the risk for loss or damage from such hazards and risks to the person and property of others as are usually insured against by those entities operating properties similar to the Distribution System. NPPD shall notify City in writing of any decision to fully self-insure against said hazards and risks, and specify the date such self-insurance shall take effect. NPPD agrees to save harmless the City from loss (excluding liability of the City to pay workmen's compensation benefits) as a result of legal liability to members of the public imposed upon the City for bodily injury or death and for property damage arising out of NPPD's operation of the Distribution System and performance of this Agreement. This ARTICLE X, and the obtaining and maintaining of insurance coverage, is not intended to and it shall not be construed to create any liability to members of the public in excess of that provided by law.

It is further agreed that the City hereby consents to NPPD having the sole responsibility to decide whether or not to insure against physical damage to all or any part of the property leased by NPPD and in the care, custody or control of NPPD in the performance of this Agreement with the City. NPPD also agrees that the cost for any loss or damage to such property or for expenses incidental to such loss or damage shall be included in NPPD's retail cost of service.

ARTICLE XI AMENDMENTS

Neither this Agreement nor any part hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by the party against which the enforcement of the termination, amendment, supplement, waiver or modification is sought.

ARTICLE XII SUCCESSORS AND ASSIGNS

Neither party may assign this Agreement in whole or in part, or any rights granted hereunder, or delegate to a third party any of the duties or obligations hereunder, without the prior written consent of the other party, except as otherwise provided in this ARTICLE XII. In the event that either one of or all NPPD generation assets, wholesale power marketing and/or retail operations functions are merged into or become part of another public power entity, such prior written consent shall not be required for the assignment by NPPD to its successor(s) in interest. No assignment of this Agreement

shall be effective unless and until the assignee assumes in writing the duties and obligations of the assignor.

ARTICLE XIII REPLACEMENT OF PRIOR AGREEMENT

This Agreement shall supersede the Professional Retail Operations Agreement, which NPPD and the City entered into effective the February 1, 2017, together with any exhibits attached thereto and any amendments or supplements thereto. Said Professional Retail Operations Agreement shall, upon the effective date of this Agreement, be null and void and without further force and effect.

ARTICLE XIV PRIVATIZATION

In the event that NPPD is privatized (i.e., it is converted into a taxable, non-public power entity), NPPD will provide notice to the City and the City shall have the right, upon sixty (60) days prior written notice to NPPD or NPPD's successor organization, to terminate this Agreement. Termination of this Agreement pursuant to this ARTICLE XIV will be without any cost to the City.

ARTICLE XV INFORMATION

NPPD agrees to provide the City with available information in sufficient detail for the City to comply with the financial reporting requirements of the Governmental Accounting Standards Board.

IN WITNESS WHEREOF, the parties hereto have caused this Professional Retail Operations Agreement to be executed in duplicate by their duly authorized officers or representatives as of the dates indicated below.

ATTEST: **CITY OF SCOTTSBLUFF, NEBRASKA**

By: _____ By: _____
Print: _____
Title: _____
Date: _____

ATTEST: **NEBRASKA PUBLIC POWER DISTRICT**

By: _____ By: _____
Print: _____
Title: _____
Date: _____

**EXHIBIT A
to
PROFESSIONAL RETAIL OPERATIONS AGREEMENT**

This Exhibit A is attached to and incorporated in the Professional Retail Operations Agreement (Agreement) between Nebraska Public Power District (NPPD) and the City of Scottsbluff, Nebraska.

The facilities comprising the Distribution System, as defined in ARTICLE II of the Agreement, are identified in this Exhibit A and consist of the wires, poles and associated fixtures, meters, services, distribution transformers, and street lighting owned by the City, including any additions or improvements thereto which are rated at or below 15,000 volts and excluding any removals, disposition, or sales thereof, all as located within the area designated on the Distribution System Boundary Map, which is attached hereto and incorporated herein by this reference, except as may be otherwise specifically noted thereon. For any substation involving transformation to the Distribution System from a higher voltage, the Distribution System shall extend to the point at which the low-voltage switching and protection facilities connect to the low-voltage bus within said substation.

CITY OF SCOTTSBLUFF, NEBRASKA

By: _____

Print: _____

Title: _____

Date: _____

NEBRASKA PUBLIC POWER DISTRICT

By: _____

Print: _____

Title: _____

Date: _____

