

Resolution: 2013-12-01
Enacted: December 17, 2013

RESOLUTION TO CONTRACT WITH BIG RIVERS ELECTRIC CORPORATION, HENDERSON, KY FOR PARTIAL AND FULL REQUIREMENTS WHOLESale POWER BETWEEN 2018-2026

WHEREAS, the Board of Directors of the Northeast Nebraska Public Power District (NeNPPD) entered into a 20 year long term 'evergreen' wholesale power supply agreement (WPA) with the Nebraska Electric Generation and Transmission Cooperative (NeG&T) in 2001 and this Agreement has numerous options, provisions and contract rights for NeNPPD to ramp down its power purchases through a provision for NeNPPD to transfer to a direct contract with NPPD in 2015; and

WHEREAS, the contract with the NeG&T and the replacement agreement with NPPD (Schedule E) clearly define NeNPPD's relationship as that of a customer and assigns to the customer specific rights to limit and/or reduce its purchases from NPPD early and to terminate the WPA entirely on December 31, 2021; and

WHEREAS, these rights to 'limit and reduce' and/or terminate were provided in anticipation of competitive wholesale markets being created by the Federal Regulatory Energy Commission's (FERC) Orders which established 'open access' transmission rights for customers like NeNPPD to purchase wholesale power from competitive suppliers and not only a few monopoly legacy suppliers; and

WHEREAS, NPPD notified all customers in 2013 that NPPD desired new long term contracts of 20 + years to be effective about 8 years prior to the expiration of the present contracts; and

WHEREAS, NPPD declared the reason for new contracts was to be able to access future debt/bond markets at the best possible interest rate charges for future borrowing that is estimated between \$1 billion and \$2 billion starting in 2013 for transmission upgrades as ordered by the Southwest Power Pool (SPP), an expansion of capacity at the Cooper Nuclear Station, and future pollution control scrubbers at Gentleman Coal Plant ; and

WHEREAS, NPPD has begun talking to customers about ways for wholesale customers to 'guarantee' these future borrowings and also ways to specifically 'assign' certain future debt amounts to customers that would need to be repaid if a customer ever in the future desired to purchase from another supplier; and

WHEREAS, NPPD has explained they borrow money has an 'integrated vertical monopoly' where debt/bond issues are not designated to their generating plants, or their transmission system, or their retail division, but instead are general obligations of NPPD; and

WHEREAS, NPPD's Board of Directors has sole rate making authority, as a means of meeting conditions for debt/bonds, but does not limit the imposition of rate charges to customers to debt service but has expanded rate charges to include donations, research, green energy purchases, economic development activities and other expenditures beyond that needed to

meet customer power requirements at minimum cost by adding many other costs for which rate making power has been imposed; and

WHEREAS, wholesale power purchases from NPPD at present consume 70% of all revenue paid by NeNPPD retail customers and the cost of wholesale power from NPPD has increased 70% in the last 9 years; and

WHEREAS, NPPD chose not to unbundle its transmission system to allow cost recovery directly from the Southwest Power Pool by segmenting their transmission debt, and is now being asked by customers to do that as part of new contract discussions; and

WHEREAS, it is impossible for a small customer like NeNPPD to audit NPPD's efficiency, especially as it relates to the blending of wholesale power revenues and expenses supporting NPPD's retail operations, and no audit or debt management plan has ever been presented by NPPD to NeNPPD or other customers; and

WHEREAS, NPPD has not responded to our request for performance management indices and accountability measurements as part of any new contract; and

WHEREAS, NeNPPD's Board and Management offered to take a risk on NPPD's future performance and debt management if we could have the opportunity to manage NPPD's distribution system inside our service footprint as a way of lowering cost to all retail customers through NeNPPD's better operational efficiency; and

WHEREAS, NeNPPD is only a customer of NPPD's bulk power commodity product with no rights of ownership of assets and none having been offered for securing any new or existing NPPD debt and NeNPPD rights as a customer do not include control or authority over any actions/inactions or expenditures by NPPD past, present or future; and

WHEREAS, as a potential long term customer of NPPD, NeNPPD's Board evaluated NPPD's Board, Management, and observable culture, words and deeds with an eye toward the pros/cons of making a long term purchase commitment with NPPD; and

WHEREAS, the NeNPPD Board notified NPPD in April 2013 that NeNPPD would consider a new long term WPA but only after seeking competitive bids from other commodity producers and further told NPPD that the NeNPPD Board believed it had a fiduciary responsibility to seek competitive bids for future power purchases; and

WHEREAS, seeking competitive Requests for supply Proposals (RFP) is perfectly aligned with the NeNPPD Mission Statement and the objectives of creating value for our retail customers; and

WHEREAS, NeNPPD presented the NeG&T with a Board resolution dated March 18, 2013 that NeNPPD was intent on obtaining education about commodity market purchasing and intended to seek education and purchasing opportunities; and

WHEREAS, in June 2013 NeNPPD along with its customer the Village of Emerson, and neighboring NPPD customers: the City of Wayne, the City of Wakefield, and the City of South Sioux City placed a public advertisement for competitive bids; and

WHEREAS, the timing of the competitive RFP was driven by NPPD's assertion that new contracts were expected to be finalized by December 2013, the timing has proved opportune as it is a 'buyer's market' with lots of supply and suppliers available; and

WHEREAS, NeNPPD has spent months evaluating the proposals from potential suppliers with the help of an outside expert consultant; and

WHEREAS, NPPD did not respond in any manner to our Request For (supply) Proposals (RFP); and

WHEREAS, NeNPPD has kept both NPPD and the NeG&T informed of our process by asking their interpretations of contract language and providing periodic statements; and

WHEREAS, all customers of NPPD power today are partial requirements customers with all having direct allocations of power from the Western Area Power Administration (WAPA) and that these WAPA allocations are accommodated by NPPD exactly the same as supplemental supplies from any other supplier chosen from the RFP process; and

WHEREAS, NeNPPD will fulfill all its contractual obligations to both NeG&T and NPPD so as to not create any financial harm (unless any loss/added cost is the result of mismanagement by NPPD or poor negotiations within the terms of the current WPA about which NeNPPD has no control or ability to prevent); and

WHEREAS, NeNPPD desired to purchase renewable energy that has financial benefits to our customers unlike the present arrangements through NPPD whereby NPPD's excessive fleet of base load generation competes directly with NPPD's own wind generation developments creating financial losses to all ratepayers; and

WHEREAS, BREC has offered numerous benefits most significant of which is a 10% reduction in NPPD's pricing and a 10 year guaranteed indexed discount to the cost of bulk power; and

WHEREAS, NeNPPD desired to keep competitive commodity power purchases from any supplier to a reasonable planning horizon of around 10 years, so that other competitive bids can be made in the future; and

WHEREAS, NeNPPD ultimately concluded that while the cost savings are important, the most significant aspect in the decision change suppliers away from NPPD was the ability of the Board to retain its local control established by Nebraska Statutes over future purchase decisions and that no contract discussions to date by NPPD are going to permit such future local decision making; and

WHEREAS, NeNPPD's Board concluded that the continued right to seek suppliers through competitive bidding is expected to provide our customers with the best long term value. Indications of that are NPPD now being in the 'middle of the pack' of regional cost-based suppliers and significantly more expensive than market priced proposals including the one in hand from BREC; and

WHEREAS, numerous other safeguards and stop gaps have been incorporated in a new power purchase agreement with Big Rivers Electric Corporation (BREC); and

WHEREAS, the costs of producing and transmitting power to NeNPPD retail customer loads must be paid whether completely bundled by NPPD (and paid with rate increases) or itemized as in the BREC proposal. NeNPPD believes there to be significant advantages to the new power purchase arrangement with BREC and where some pricing risk exists it is being capped or shared or mitigated through established market hedging practices; and

WHEREAS, we have continually kept our retail customers and the general public informed of our work and findings, then:

THEREFORE BE IT RESOLVED THAT the Board of Directors of the Northeast Nebraska Public Power District enter into a bulk power purchase and delivery agreement with the Big Rivers Electric Corporation, Henderson, KY for the maximum amounts of partial power supply as permitted by the NPPD WPA in years 2018 through 2021 and a full requirements purchase agreement for years 2022 through 2026 and beyond.

Signed: _____



Dan Gansebom, Secretary