

RESOLUTION NO. 2015-71

A RESOLUTION TO FUND A PORTION OF POTENTIAL LITIGATION IN PARTNERSHIP WITH OTHER WHOLESALE CUSTOMERS OF NEBRASKA PUBLIC POWER DISTRICT (NPPD) THAT DESIRE TO CONTINUE WHOLESALE POWER PURCHASES FROM NPPD UNDER THE TERMS OF THE EXISTING GENERAL FIRM POWER SERVICE CONTRACT (GFPS).

WHEREAS, none of the existing approximately 75 wholesale customers purchasing bulk power from NPPD under the terms of the existing GFPS contract asked for different terms of purchase; and

WHEREAS, the terms of the existing contract define the pricing for GFPS to be an average cost-based rate; and

WHEREAS since implementation of the existing GFPS contract on January 1, 2002, NPPD has honored the intent and expressed terms of GFPS by applying the GFPS rate universally and consistently to all purchases made by all wholesale customers of NPPD; and

WHEREAS, the existing contract for GFPS service is a long-term contract for a 20 year period; and

WHEREAS, the City of Wayne intends to honor the terms of the existing long-term contract for GFPS; and

WHEREAS, NPPD alone stated in 2013 that it needed different contract terms with its wholesale customers to avoid a downgrade in bond ratings on its existing debt; and

WHEREAS, the City of Wayne has, over the last 2.5 years, outlined new contract terms which mirror in most respects the existing GFPS contract terms except the ending date; and

WHEREAS, the City of Wayne and all other wholesale customers only have a purchase obligation under the existing GFPS contract and were never offered input into NPPD's past decisions regarding debt financing, nor has any wholesale customer assumed any direct responsibility for NPPD's existing debt nor have wholesale customers been notified as to the terms of any NPPD bond issue used for refinancing of existing NPPD debt nor do wholesale customers hold any equity in NPPD as security against which debt is issued; and

WHEREAS, NPPD's management and Board had opportunities and obligations to manage its business expenses, including long-term debt, within the terms of its long-term GFPS contract in a way that would not require a forced re-negotiation of contract terms only 12 years into a 20-year contract; and

WHEREAS, to date, there has not been a problem in NPPD's ability to issue new debt, nor has NPPD had a bond rating downgrade, nor has NPPD undertaken new large capital projects which require new debt funding, yet NPPD is still pressing wholesale customers to accept new contract terms; and

WHEREAS, as part of negotiations for an extended contract, NPPD is proposing different wholesale rates that are not based on an 'average cost of service' for all wholesale customers and seem to instead assign debt obligations differently to different wholesale customers based on internal decisions to be made by NPPD at some future date; and

WHEREAS, NPPD has not explained itself in detail, nor has NPPD answered what specifically costs more to produce and sell power to a GFPS customer between 2016 and 2021 as another customer that may purchase under a proposed contract extension during the same years 2016 through 2021; and

WHEREAS, the lack of clear communication from NPPD about its intent to change the terms of purchase of GFPS power leads the Mayor and Council and staff of the City of Wayne to believe NPPD plans to dishonor its obligations under the existing GFPS contract; and

WHEREAS, should NPPD's Board impose upon the ratepayers of the City of Wayne rates that attempt to collect accelerated debt service, accelerate the cost of other obligations or collect for future, post-contract options, such that the City of Wayne would pay more per unit of power purchased than wholesale customers that sign new wholesale purchase contracts such that NPPD is discriminatory in its charges to Northeast and punishes the City of Wayne's customers and rewards other wholesale customers; and

WHEREAS, the City of Wayne recognizes that other wholesale customers may voluntarily decide to extend their purchase requirements with NPPD for a longer term and that their future purchase contract may be used by NPPD to underwrite NPPD debt, but that is a voluntary decision and not a mandatory decision and that the GFPS contract provides that the City of Wayne can continue to purchase bulk power at an "average cost-based rate" based on all NPPD costs and all total purchases of all NPPD wholesale customers; and

WHEREAS, the Mayor and City Council of the City of Wayne believe it prudent to protect its ratepayers from any attempt by NPPD to disregard or deviate from its obligations under the GFPS contract by preparing any and all legal cases required to continue keep the terms of the existing GFPS contract in force through 2021 as they have been since 2002; and

WHEREAS, the Mayor and City Council of the City of Wayne have entered into a joint defense agreement with other wholesale customers of similar status and the law firm of Baird Holm to prepare for and conduct a legal challenge to NPPD's potential discriminatory actions regarding GFPS as may be necessitated by NPPD's ratemaking actions; and

WHEREAS, Baird Holm has provided an estimate of legal and expert witness fees to conduct such a legal defense and the City of Wayne and other wholesale customers have agreed upon a method to proportion the financial responsibility; and

WHEREAS, the City of Wayne will act as agent and will pay the expenses and collect from the partners, and it is estimated at this time that the City of Wayne's share will be \$_____ then:

NOW, THEREFORE, BE IT RESOLVED THAT the Mayor and City Council of the City of Wayne authorizes expenditures of up to 110 percent of \$_____ toward the joint defense of our contract rights under the existing GFPS contract through 2021.

PASSED AND APPROVED this 7th day of July, 2015.

THE CITY OF WAYNE, NEBRASKA,

By _____
Mayor

ATTEST:

City Clerk