

City of Columbia

701 East Broadway, Columbia, Missouri 65201



Agenda Item Number: B 289-14

Department Source: Water & Light

To: City Council

From: City Manager & Staff

Council Meeting Date: September 2, 2014

Re: Power Exchange Agreement with Missouri Joint Municipal Electric Utility Commission

Documents Included With This Agenda Item

Council memo, Resolution/Ordinance, Exhibits to Resolution/Ordinance

Supporting documentation includes: None

Executive Summary

Staff has prepared for Council consideration an ordinance authorizing the City Manager to execute an agreement with the Missouri Joint Municipal Electric Utility Commission. The Iatan Power Station, owned and operated by Kansas City Power & Light (KCPL), just outside of Weston, MO, started with a single 670MW unit in 1980 with the addition of a second 850MW unit in 2010. Under a Unit Power Purchase Agreement (PPA) with the Missouri Joint Municipal Electric Utility Commission (MJMEUC) Columbia Water and Light (CWL) has a contract for 20MW of Capacity and Energy from Unit 2 at this facility. In 2010, Council executed a Power Exchange Agreement with MJMEUC where Columbia would receive a portion of the capacity and energy available to MJMEUC under an Ameren Contract in exchange for MJMEUC receiving the capacity and energy available under CWL's PPA. Staff is requesting to continue this Power Exchange Agreement with MJMEUC.

Discussion

KCPL negotiated with a number of partners for participation in the construction of the 850MW coal fired Iatan 2 and began commercial operation in 2011. The life of the unit is expected to be 40 years. MJMEUC has an ownership share in Iatan 2 of 100MWs and is providing CWL with a 20MW share via the PPA. The MJMEUC owned portion of Iatan 2 is located within the transmission system of the Southern Power Pool (SPP). CWL is located within the transmission system of the Midwest Independent System Operator (MISO) and CWL has secured MISO transmission for delivery of the 20MW from the Iatan 2 facility.

In connection with its operation of the Missouri Public Energy Pool #1 (MoPEP), MJMEUC has an agreement with Ameren Energy Marketing (Ameren Contract) to purchase energy generated within the MISO transmission system for MJMEUC's use in serving member loads located within SPP transmission system.

MJMEUC and CWL believe that it would be to their mutual advantage to continue to engage in the current power exchange agreement, whereby CWL receives a portion of the energy available to MJMEUC under the Ameren Contract in exchange for MJMEUC receiving the energy from Iatan 2 that otherwise would have been provided to CWL under the PPA.

The purpose of this Agreement is to continue to allow MJMEUC to use the capacity and energy from Iatan Unit 2 to which Columbia is entitled under the PPA and which can be delivered from its source

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to MoPEP loads, in exchange for Columbia's continued use of capacity and energy to which MJMEUC is entitled under the Ameren Contract and which can be delivered to Columbia within the MISO transmission system. This agreement has proven to be beneficial for both parties and would continue to be in effect until terminated by either party.

Fiscal Impact

Short-Term Impact: Expected to result in cost reduction.

Long-Term Impact: Expected to result in cost reduction.

Vision, Strategic & Comprehensive Plan Impact

Vision Impact: Not Applicable

Strategic Plan Impact: Financial Health

Comprehensive Plan Impact: Not Applicable

Suggested Council Action

Approval of this ordinance authorizing the City Manager to execute a renewal of the Power Exchange Agreement with the Missouri Joint Municipal Utility Commission.

Legislative History

None


Department Approved


City Manager Approved

Introduced by _____

First Reading _____

Second Reading _____

Ordinance No. _____

Council Bill No. B 289-14

AN ORDINANCE

authorizing a third power exchange agreement with Missouri Joint Municipal Electric Utility Commission relating to latan Unit 2; and fixing the time when this ordinance shall become effective.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF COLUMBIA, MISSOURI, AS FOLLOWS:

SECTION 1. The City Manager is hereby authorized to execute a third power exchange agreement with Missouri Joint Municipal Electric Utility Commission relating to latan Unit 2. The form and content of the agreement shall be substantially in the same form as set forth in "Exhibit A" attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

PASSED this _____ day of _____, 2014.

ATTEST:

City Clerk

Mayor and Presiding Officer

APPROVED AS TO FORM:

City Counselor

**THIRD POWER EXCHANGE AGREEMENT BETWEEN MISSOURI JOINT
MUNICIPAL ELECTRIC UTILITY COMMISSION AND CITY OF COLUMBIA,
MISSOURI**

THIS AGREEMENT is made and entered into as of the ____ day of _____, 2014 (the "Effective Date"), by and between the MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION, a body public and corporate of the State of Missouri (hereinafter "MJMEUC") and the CITY OF COLUMBIA, MISSOURI, a municipal corporation of the State of Missouri operating through its Water and Light Department, and a member of MJMEUC (hereinafter "Columbia") (MJMEUC and Columbia hereinafter referred to collectively as "Parties" or, at times, individually as "Party").

RECITALS:

WHEREAS, MJMEUC has an undivided ownership interest in the Iatan Unit 2 coal-fired generating unit ("Iatan Unit 2") that is operated by Kansas City Power & Light Company ("KCPL"), located within the transmission system of the Southwest Power Pool ("SPP");

WHEREAS, MJMEUC and Columbia have entered into a purchased-power agreement ("PPA") pursuant to which MJMEUC has agreed to sell and Columbia has agreed to purchase twenty percent (20%) of the capacity and energy from MJMEUC's undivided interest in Iatan Unit 2;

WHEREAS, Columbia is located within the transmission system of the Midwest Independent Transmission System Operator ("MISO");

WHEREAS, KCPL has requested that all co-owners of undivided interests in Iatan Unit 2 utilize automated generation control ("AGC") to schedule and regulate their use of capacity and energy from Iatan Unit 2, and desires that MJMEUC utilize a pseudo-tie to transfer to Columbia its entitlement to a portion of MJMEUC's Iatan Unit 2 capacity and energy;

WHEREAS, MJMEUC and Columbia have concluded that there are certain disadvantages associated with transferring Columbia's PPA entitlement to the MISO transmission system as requested by KCPL;

WHEREAS, in connection with its operation of the Missouri Public Energy Pool #1 ("MoPEP"), MJMEUC has an agreement with Illinois Power Marketing ("IPM Contract") to purchase capacity and energy generated within the MISO transmission system;

WHEREAS, the Parties in 2010 entered into a power exchange, whereby Columbia would receive energy available to MJMEUC under a power purchase contract in exchange for MJMEUC receiving the energy from Iatan 2 that otherwise would have been provided to Columbia under the PPA, which exchange ended by its terms on May 31, 2012;

WHEREAS, the Parties in 2012 entered into another power exchange agreement to continue the exchange past May 31, 2012;

WHEREAS, the Parties wish to continue the power exchange arrangement under the terms of this new Agreement by which the Parties shall exchange capacity and energy. The exchange of energy shall only occur during periods in which Iatan Unit 2 is not experiencing a planned or unplanned outage;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties agree as follows:

1 DEFINITIONS

- 1.1 Iatan Unit 2** has the meaning set forth in the recitals hereto.
- 1.2 IPM:** Illinois Power Marketing.
- 1.3 IPM Contract:** The February 19, 2014 Amended and Restated Power Supply Agreement between Illinois Power Marketing Company and The Missouri Joint Municipal Electric Utility Commission.
- 1.4 PPA:** The “Amended and Restated Unit Power Purchase Agreement for the Purchase and Sale of Capacity and Energy from the Iatan 2 Unit” entered into by the Parties as of July 10, 2006.
- 1.5 PPA Entitlement Amount.** The quantity of energy that Columbia is entitled to receive under Section 5.1 of the PPA in a given hour, based on the actual output of Iatan Unit 2 in such hour.

2 TERM OF AGREEMENT AND TERMINATION.

- 2.1** This Agreement shall be binding on the Parties as of the date of its execution.
- 2.2** The power exchange transaction to be effected hereunder shall commence on the first day of the month following the Effective Date.
- 2.3** Termination.
 - 2.3.1** This Agreement may be terminated at any time during its Term upon the mutual agreement of both Parties.
 - 2.3.2** If there is a change in law, rule, or regulation that negatively impacts the costs and risks associated with this power exchange agreement, the Party impacted may terminate this Agreement with at least thirty (30) days’ written notice.
 - 2.3.3** Unless terminated earlier by mutual agreement of the Parties pursuant to Section 2.3.1 or unless terminated due to impact of regulatory change pursuant to Section 2.3.2, the power exchange transaction, and this Agreement, shall remain in effect until terminated by either Party by providing at least 60 days’ written

notice to the other Party. The provisions of this Agreement regarding billing and payment and indemnification shall survive termination of this Agreement to the extent necessary to effectuate obligations arising prior to termination.

2.3.4 Notwithstanding any of the foregoing, the timing of termination of this Agreement shall be coordinated with the effective date of any associated transmission service assignments and market registration changes pursuant to Sections 2.4 and 2.5.

2.4 MJMEUC currently holds, for the benefit of Columbia in connection with its PPA, two point-to-point transmission service agreements with the Southwest Power Pool (“SPP”). One service agreement is for a 20 MW reservation for the period June 2010 – June 2015 (OASIS # 1268638) and the other is for a 1 MW reservation for the period October 2013 – October 2018 (OASIS # 78539153); each reservation is for service from Iatan Unit 2 to MISO. Columbia has authorized MJMEUC to roll over the 20 MW reservation for a period of five additional years (June 2015 – June 2020). Absent agreement of the Parties (i) to extend this capacity and energy exchange pursuant to a superseding agreement or (ii) mutually acceptable alternative arrangements for disposition of these transmission reservations, MJMEUC shall assign to Columbia, and Columbia shall accept permanent assignment of, both service agreements for the remainder of their original terms and, if applicable, any extensions thereof pursuant to MJMEUC’s exercise of rollover rights to the extent authorized by Columbia. The parties recognize that the effective date of such assignment will depend in part on action of SPP pursuant to the applicable transmission tariff, and the parties will coordinate to make the assignment and the termination of this Agreement effective as of the same date.

2.5 Pursuant to Section 5.1 of this Agreement and if permitted by the SPP market rules, the Parties shall coordinate with SPP to change the asset registration of Columbia’s Purchase Percentage of Iatan Unit 2, to be effective as of the same date as termination of this Agreement.

3 POWER EXCHANGE

The Parties recognize and agree that the purpose of this Agreement is to permit MJMEUC to use the capacity and energy from Iatan Unit 2 to which Columbia is entitled under the PPA and which can be delivered from its source to MoPEP loads, in exchange for Columbia’s use of capacity and energy to which MJMEUC is entitled under the IPM Contract and which can be delivered to Columbia within the MISO transmission system. The Parties recognize and agree that MJMEUC will have no obligation to provide, and Columbia will have no obligation to receive, energy hereunder or under the PPA during periods in which Iatan Unit 2 is experiencing a planned or unplanned outage.

4 SCHEDULING, USAGE AND TRANSMISSION OF ENERGY FROM IPM

- 4.1** During the term of the power exchange, MJMEUC shall submit and Columbia shall confirm, or Columbia shall submit and MJMEUC shall confirm a “Financial Schedule” (as such term is used in the IPM Contract) in an amount equal to the PPA Entitlement Amount for each hour of each month, except during periods of outage of Iatan Unit 2 identifying Columbia as the recipient of that quantity of energy at the delivery point under the IPM Contract.
- 4.2** Columbia shall bear all responsibility for and costs associated with delivery of the energy it receives hereunder from the point of delivery under the IPM Contract to Columbia’s loads (or to any third party to which Columbia may wish to resell the energy).
- 4.3** Pursuant to the terms of the IPM Contract, MJMEUC shall remain responsible to make all required payments directly to IPM for capacity and energy received by Columbia pursuant to this power exchange transaction.
- 4.4** Pursuant to Section 7 below, MJMEUC will take appropriate actions to enforce IPM’s obligation to deliver energy; however, in the event of any failure of IPM to deliver the energy, MJMEUC’s liability to Columbia shall be limited to passing through any sums or credits received from IPM for its failure to deliver, as provided in Section 6.1 below.

5 SCHEDULING, USAGE AND TRANSMISSION OF ENERGY FROM IATAN UNIT 2

- 5.1** To complete the power exchange, during the effective term of the power exchange, MJMEUC shall be the registered “Asset Owner” (as such term is defined by SPP) for Columbia’s “City’s Purchase Percentage” (as defined in the PPA) of Iatan Unit 2. As the registered Asset Owner, MJMEUC shall have the exclusive right to offer this share of Iatan Unit 2 in the Integrated Marketplace and to receive and retain all revenues resulting therefrom. The Parties agree that for purposes of Section 5 of the PPA the energy produced from City’s Purchase Percentage of Iatan Unit 2 shall be deemed to have been scheduled, utilized and received by Columbia, although it was exchanged to MJMEUC pursuant to this Agreement. Absent agreement of the Parties (i) to extend this exchange pursuant to a superseding agreement or (ii) upon mutually acceptable alternative arrangements, and if permitted by the SPP market rules, MJMEUC and Columbia shall coordinate with SPP to change the asset registration of City’s Purchase Percentage of Iatan Unit 2 from MJMEUC to Columbia effective as of the termination of this Agreement.
- 5.2** Unless otherwise agreed by the Parties, MJMEUC shall arrange and pay for any necessary transmission service and any necessary ancillaries under applicable tariffs related to delivery of the output of City’s Purchase Percentage of Iatan Unit 2 in the Integrated Marketplace or to locations outside of SPP.

- 5.3** Columbia shall remain responsible to make all required payments (including payments for both capacity and energy) to MJMEUC under the PPA as though Columbia had scheduled and received all of the energy to which it was entitled under the PPA but which was received by MJMEUC pursuant to this power exchange transaction.

6 BILLING AND PAYMENT OBLIGATIONS

- 6.1** If MJMEUC receives from IPM any compensation or credit for IPM's failure to comply with the IPM Contract (including liquidated damages for failure to deliver) which resulted in Columbia not receiving an amount of energy equal to its PPA Entitlement Amount in an hour (other than an hour in which Iatan Unit 2 was in an outage), MJMEUC shall pass through to Columbia the portion of such payments or credit properly allocable to Columbia within fifteen (15) days of receipt of the payment from IPM.
- 6.2** The Parties shall from time to time make mutually agreeable arrangements for invoicing and payment of any other charges or reimbursements that are to be made under this Agreement.

7 COMPLIANCE WITH RELATED CONTRACTS

MJMEUC shall in good faith and in accordance with good utility practice carry out its obligations, and enforce its rights, under the IPM Contract. Columbia shall in good faith comply with all of the provisions of the PPA except as otherwise provided in this Agreement. Each Party recognizes that the other Party's ability to benefit from this power exchange transaction will depend upon such contract compliance and enforcement.

MJMEUC certifies that MJMEUC has complied with any contract provisions in the IPM Contract related to the assignment or transfer of rights or obligations under the IPM Contract, and that this power exchange agreement is not a violation of the terms of the IPM Contract. Should MJMEUC be found to have violated any contract provision in the IPM Contract, MJMEUC will indemnify Columbia for any expenses or losses, including attorney's fees.

MJMEUC certifies that MJMEUC has complied with any contract provisions in the two point to point transmission service agreements referenced in Section 2.4, and that this power exchange agreement is not a violation of the terms of the point to point transmission service agreements. Should MJMEUC be found to have violated any contract provision in the point to point transmission service agreements, MJMEUC will indemnify Columbia for any expenses or losses, including attorney's fees.

8 REMEDIES FOR BREACH OR DEFAULT

If a Party fails to perform or breaches any of its obligations under this Agreement, then the non-defaulting Party shall be entitled to exercise all remedies available to it at law or in equity. The Parties acknowledge and agree that monetary damages

may not be an adequate remedy at law for the failure of a Party to perform certain obligations under this Agreement (including without limitation the Parties' obligations under Section 7), and under such circumstances, the non-defaulting Party shall have the right to specific performance by the defaulting Party of such obligations under this Agreement.

9 GENERAL PROVISIONS

- 9.1** This Agreement shall inure to the benefit of, and be binding upon, the Parties hereto and their respective successors. Neither this Agreement, nor any right or obligation hereunder, shall be assigned to a third person by a Party except to any person succeeding to all or substantially all of the assets of such Party, whether by merger or otherwise, where such person shall, as part of such succession, have assumed in writing all of the obligations of the transferor under this Agreement. Any other assignment shall be void and of no effect against the other Party. Notwithstanding the foregoing, no assignment or transfer under this Agreement may be made that may jeopardize the tax status of the other Party or its financing without the explicit consent of the jeopardized Party.
- 9.2** This Agreement may be modified only by written amendment executed by the authorized representatives of both Parties. The Parties will negotiate in good faith any modifications that may be necessary to continue this Agreement in effect in light of changes such as modifications of MISO or SPP practices.
- 9.3** Unless otherwise agreed, any written notice required or appropriate hereunder shall be deemed properly made, given to, or served on the Party to whom it is directed when sent by U.S. mail addressed as follows:

Notices sent to Columbia:

City of Columbia
Water & Light Department
701 East Broadway
PO Box 6015
Columbia, Missouri 65205
Attention: Director Water & Light

Notices sent to MJMEUC:

General Manager
Missouri Joint Electric Utility Commission
1808 I 70 Dr SW
Columbia, Missouri 65203

With a copy to: contractnotices@mpua.org

Notice of change in any of the above addresses shall be given in the manner specified above.

- 9.4** Either Party may waive its rights with respect to a default or any other matter arising in connection with this Agreement, but such waiver shall not be deemed to be a waiver with respect to any subsequent default or matter. Any delay, less than the statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights.
- 9.5** Governing Law and Venue. This contract shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.
- 9.6** Descriptive headings used in this Agreement have been inserted for convenience of reference only and shall not define, modify, restrict, construe, or otherwise affect the construction or interpretation of any of the provisions of this Agreement.
- 9.7** Each Party agrees that it shall hereafter execute and deliver such further instruments, provide all information, and take or forbear such further acts and things as may be reasonably required and useful to carry out the intent and purpose of this Agreement and as are not inconsistent with the provisions of this Agreement.
- 9.8** Nothing in this Agreement, express or implied, is intended to confer on any person, other than the Parties hereto, any rights or remedies under or by reason of this Agreement.
- 9.9** The obligations of Columbia under this Agreement, which require the expenditure of funds, shall be conditional obligations, subject to the availability of funds appropriated for those purposes and payable out of revenues received from the sale of electricity to Columbia's retail customers only when earned or due MJMEUC in accordance with the provisions of this Agreement and shall not be construed to be general obligations of the City of Columbia or a debt of the City of Columbia within the meaning of the Constitution and the Laws of the State of Missouri.
- 9.10** The Parties shall comply with all applicable laws, regulations, ordinances, codes, and rules of the federal government, the State of Missouri, and the City of Columbia.

- 9.11** As of the Effective Date, this Agreement shall supersede the June 29, 2012 exchange agreement between the Parties, which shall thereafter have no further effect other than as necessary to complete any final billings thereunder.
- 9.12** Missouri Sunshine Law. Nothing in this agreement shall be construed to supersede, conflict with or otherwise defeat any provision of the Missouri Revised Statutes Chapter 610 Governmental Bodies and Records (Missouri Sunshine Law).
- 9.13** No Waiver of Immunities. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be executed by its duly authorized representative, pursuant to authority vested by the lawful action of the Party's respective council, commission or board, as of the day and year above written.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF COLUMBIA, MISSOURI

By: _____

Name: Mike Matthes

Title: City Manager

ATTEST:

By: _____

Name: Sheela Amin

Title: City Clerk

APPROVED AS TO FORM:

By: _____

Name: Nancy Thompson

Title: City Counselor

**MISSOURI JOINT MUNICIPAL
ELECTRIC UTILITY COMMISSION**

By _____
Duncan Kincheloe, General Manager

Date: _____

ATTEST:

Title