

**RESOLUTION NO. 12
SERIES 2008**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GUNNISON,
COLORADO, AMENDING EXHIBIT D OF THE SERVICE SCHEDULE M TOTAL
POWER REQUIREMENTS POWER PURCHASE AGREEMENT WITH THE
MUNICIPAL ENERGY AGENCY OF NEBRASKA.**

WHEREAS, the City of Gunnison, Colorado adopted Ordinance No. 10, Series 1992, on September 8, 1992, which authorized the execution of the Service Schedule M Total Power Requirements Power Purchase Agreement (hereinafter referred to as "SSM") with the Municipal Energy Agency of Nebraska (hereinafter referred to as "MEAN"); and

WHEREAS, the City has received notice that on May 15, 2008, the MEAN Board of Directors approved entering into a Purchase and Sale Agreement with Black Hills Wyoming, Inc. to purchase 23.5% (approximately 20MW) ownership interest in Wygen I, which is a coal-fired, steam electric generating unit with a net generating capability of approximately 85 MW; and

WHEREAS, the City has received notice that on November 15, 2007, the MEAN Board of Directors approved entering into an agreement with the Heartland Consumers Power District to purchase 19.5% (approximately 10 MW) of wind-generated energy from the Wessington Springs Wind Project; and

WHEREAS, the City has received notice that on August 16, 2007, the MEAN Board of Directors approved entering into an agreement with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 0.4% (approximately 3 MW) of the energy generating capability and energy associated therewith, of Council Bluffs Energy Center Unit 4 (now known as Walter Scott Energy Center Unit 4); and

WHEREAS, the City has received notice that on August 16, 2007, the MEAN Board of Directors approved entering into an agreement with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 1.1% (approximately 7 MW) of the energy generating capability and energy associated therewith, of the Louisa Generating Station; and

WHEREAS, each of the power supply resources described in the four preceding recitals constitutes or has been designated by the MEAN Board of Directors as a "Project" within the meaning of SSM (such power supply resources are hereinafter referred to collectively as the "Projects"); and

WHEREAS, SSM has been in effect since the date of execution and the City continues to be a Total Requirements Purchaser under SSM; and

WHEREAS, the City has received a Notice to Service Schedule M Participants to amend Exhibit D to SSM dated August 29, 2008, pursuant to Section 3.01(c) of SSM, a copy of which is attached; and

WHEREAS, the City recognizes its right, pursuant to Section 3.01(c) of SSM, to advise MEAN within sixty (60) days of its receipt of the Notice to Service Schedule M Participants that it does not want to participate in each of the Projects, as described in the Notice, and, therefore become a Contract Purchaser; and

WHEREAS, the City determines it is in the best interest of the City and its ratepayers to decline exercising this right, to consent to participate in each of the Projects, and to amend Exhibit D of SSM, and therefore, remain a Total Requirements Purchaser.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GUNNISON, COLORADO, THAT:

Section 1. The City finds and declares that it is in the public interest of the City and its ratepayers that the City remain a Total Requirements Purchaser under SSM and consent to the amendment of Exhibit D to SSM by adding each of the following Projects as an additional Project for all purposes of SSM:

- a. 23.% undivided ownership interest in Wygen 1 (approximately 20MW);
- b. 19.55% participation purchase in the Wessington Springs Wind Project (approximately 10MW);
- c. Supplemental Agreement for Partial Assignment of Ownership Interest in Council Bluffs Energy Center Unit 4, dated August 7, 2007, with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 0.4% (approximately 3 MW) of the energy generating capability and energy associated therewith, of Council Bluff's Energy Center Unit 4 (now known as Walter Scott Energy Center Unit 4), until termination of Waverly's Service Schedule M Agreement with MEAN; and
- d. Supplemental Agreement for Partial Assignment of Ownership Interest in Louisa Generating Station, dated August 7, 2007, with the Waverly Light & Power, a municipal utility of the City of Waverly, Iowa, for the partial assignment to MEAN of Waverly's interest currently equal to 1.1% (approximately 7 MW) of the energy generating capability and energy associated therewith, of the Louisa Generating Station, until termination of Waverly's Service Schedule M Agreement with MEAN.

Section 2. It is hereby ordered and directed that the City of Gunnison, acting through its Mayor and City Clerk, consent to amend Exhibit D to SSM, a copy of Exhibit D being attached hereto and made a part hereof.

Section 3. The City of Gunnison does hereby reaffirm each of the objectives, terms and conditions set forth in SSM, as amended.

Section 4. The City of Gunnison does hereby acknowledge and agree that: (a) MEAN's acquisition of a 23.5% undivided ownership interest in Wygen I constitutes the acquisition of nongovernmental output property within the meaning of Section 141(d) of the Internal Revenue Code; and (b) in order to enable MEAN to establish and maintain the tax exempt status of interest on the bonds it will issue to finance the acquisition of its interest in Wygen I, the City will use all of the electricity delivered to it by MEAN from Wygen I to serve customers located in service areas it has served for at least 10 years and such other areas as are approved by MEAN pursuant to generally applicable and uniformly applied rates and charges.

INTRODUCED, READ, PASSED AND ADOPTED at a Regular Session meeting of the City Council of the City of Gunnison, Colorado, held this 14th day of October, 2008.

(SEAL)

Mayor

ATTEST:

City Clerk