TEXAS MUNICIPAL POWER AGENCY

BOARD OF DIRECTORS MEETING

VIA VIDEO CONFERENCE CALL

DUE TO THE EXISTENCE OF AN EMERGENCY RELATED TO THE CORONA VIRUS EPIDEMIC, AND IN ACCORDANCE WITH GOVERNOR ABBOTT'S SUSPENSION OF CERTAIN PROVISIONS OF THE TEXAS OPEN MEETINGS ACT, MEMBERS OF THE PUBLIC MAY ATTEND BY USING THE FOLLOWING FREE-OF-CHARGE VIDEOCONFERENCE LINK TO THE VIDEOCONFERENCE CALL:

https://us02web.zoom.us/meeting/register/tZcqdO-tqTkuHdNLZLPv8d0yVc1gIbJVPBbZ

THURSDAY, January 7, 2021
10:00 AM

Preliminary matters:

- Call to order
- Public comments

The following matters are scheduled for discussion and for possible action:

1. Executive session will be held pursuant to the Open Meetings Act (Chapter 551, Government Code) for the following items:

   A. Sale of the Gibbons Creek Steam Electric Station (legal advice under Section 551.071, Government Code, value of real property under Section 551.072, Government Code, and competitive matters under Section 551.086, Government Code.)

In the Board's discretion, the Board may discuss and/or take action on one or more of the above executive session items in open meeting. In regard to items scheduled on this agenda for discussion and/or action in the open portion of the meeting, the Board may, in its discretion, address one or more of such items in executive session if and to the extent permitted by the Texas Open Meetings Act.

2. Resolution No. 2021-1-1, authorizing revisions to the Asset Purchase Agreement relating to the sale of the Gibbons Creek Steam Electric Station; and resolving matters incidental and related thereto.

3. Future Meeting Dates.

4. Adjourn.

January 7, 2021

AGENDA ITEM NO. 1A

SUBJECT: Sale of the Gibbons Creek Steam Electric Station.

DISCUSSION: The purpose of this agenda item is to provide an update on the status of the sale and to address any legal issues associated with the Resolution that is to be considered in open session.

BACKUP MATERIAL: Redlines of the pages of the APA that are being revised are attached to the Resolution.

ACTION REQUESTED: In open session, approval of the Resolution.

January 7, 2021

AGENDA ITEM NO. 2

SUBJECT: Resolution No. 2021-1-1, authorizing revisions to the Asset Purchase Agreement relating to the sale of the Gibbons Creek Steam Electric Station; and resolving matters incidental and related thereto.

DISCUSSION: The Asset Purchase Agreement ("APA") requires that Charah provide at closing an environmental insurance policy for the benefit of TMPA and the Member Cities. The initial insurance quote provided by Charah proposed coverage terms of 10 years for pre-existing conditions and 4 years for new conditions. TMPA was informed by its insurance broker, McGriff, that this shorter term for new conditions was standard in the market.

Charah informed TMPA that a coverage term of 10 years for new conditions could be obtained for an extra premium payment of $230,000. As indicated in the bi-weekly update sent to the Board on December 23, 2020, the Planning & Operating Committee has recommended that TMPA purchase the extra coverage.

Although the resolution adopted in December approving the APA authorizes the General Manager to make changes to the APA, the APA as revised must remain in substantially the same form as the APA that was attached to the resolution. Increasing the amount that TMPA must pay at closing by $230,000 is a substantive change, requiring Board approval.

Resolution No. 2021-1-1 authorizes the following changes to the APA. These changes are shown in the redlined pages of the APA that are attached as Exhibit "A" to the Resolution.

1. It provides for the additional amount of $230,000, to be paid at closing. This extends the environmental insurance coverage for new conditions from 4 years to 10 years. (See page 13 of the redline.)

2. It specifies the amount that TMPA must pay at closing for the premium cost relating to the Regulatory Closure Bond, instead of describing the payment as "fifty (50%) of the premium for the Regulatory Closure Bond". The specified amount of $1,255,151.34 is based on TMPA's 50% share of the annual premium for three years, a premium rate of 2.75%, and a bond amount that declines each year as remediation projects are completed. (See page 13 of the redline.)

3. It modifies the definition of Environmental Insurance Policy to delete the requirement that the policy contain an option to renew at the end of the 10-year primary term. TMPA's broker has informed TMPA that automatic renewal rights are not available in the current insurance market. (See page 3 of the redline.)

4. It provides that, except for the above payments at closing, all costs of the insurance and the bonding are to the account of Charah. (See page 20 of the redline.)

ACTION REQUESTED: Consideration and action on Resolution No. 2021-1-1.

RESOLUTION NO. 2021-1-1

A RESOLUTION BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY ("AGENCY") AUTHORIZING REVISIONS TO THE ASSET PURCHASE AGREEMENT RELATING TO THE SALE OF THE GIBBONS CREEK STEAM ELECTRIC STATION; AND RESOLVING MATTERS INCIDENTAL AND RELATED THERETO.

WHEREAS, on December 10, 2020, the Board adopted Resolution No. 2020-12-8, authorizing the execution of an Asset Purchase Agreement ("APA");

WHEREAS, the Board desires to authorize certain revisions to the APA as set forth in Exhibit "A", attached to this Resolution No. 2021-1-1;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TEXAS MUNICIPAL POWER AGENCY:

1. That the above recitals are true and correct;

2. That the APA may be modified as shown in Exhibit "A";

3. That it is officially found and determined that notice of this meeting of the Board of Directors of the Agency was given as required by law.

PASSED AND APPROVED THIS 7TH DAY OF JANUARY 2021.

____
Sue Ann Harting, President
Board of Directors
Texas Municipal Power Agency

ATTEST: ____________________________
Buppy Simank, Secretary
Board of Directors
Texas Municipal Power Agency

"Dispute" has the meaning set forth in Section 10.05(a).

"Dispute Notice" has the meaning set forth in Section 10.05(a).

"Environment" means soil, land, surface and subsurface strata, surface waters (including navigable and non-navigable inland and ocean waters), groundwaters, drinking water supply, stream sediments, indoor or outdoor air, plant and animal life, and any other environmental medium or natural resource.

"Environmental Compliance" means any permitting, registering, closure, remediation, mitigation, investigation, monitoring, posting of financial assurance, reporting, filing, maintaining, inspecting, recording or other actions, obligations or requirements under Environmental Laws in connection with the Purchased Assets, irrespective of whether the Liability, Release, acts, omissions, Claims or violations giving rise to such requirements are alleged to have occurred, or the facts and conditions giving rise or related to such Liability, obligations or requirements existed prior to or subsequent to Closing or were known or unknown as of Closing.

"Environmental Conditions" means the presence of Hazardous Substances which have been Released into the Environment or the presence of Hazardous Substances that would reasonably be expected to pose a threat of Release of Hazardous Substances into the Environment in violation of Environmental Laws.

"Environmental Designee" means an individual or consulting firm selected by Seller to perform the environmental review and audit activities set forth in Section 9.01(b).

"Environmental Insurance Policy" means a pollution legal liability insurance policy covering the Real Property, in form and substance acceptable to Seller, for the benefit of the Seller Indemnitees and issued by an insurer rated no less than A- or equivalent by Moody's, S&P or A.M. Best, with: (i) a 100% earned premium on the Closing Date, (ii) $25,000,000 coverage limits for all on-site and off-site Response Actions, third-party bodily injury and property claims, unknown environmental conditions at, on, under or migrating from the Real Property, diminution in value, off-site disposal and transportation, and Purchaser's Indemnification Obligations, and (iii) a minimum 10-year primary term commencing on the Closing Date~~, and (iv) the option for Seller Indemnitees, at their own expense, to renew the policy at the conclusion of the primary term~~.

"Environmental Laws" means any and all Laws or permits relating to pollution or occupational health or safety or protection of human health or the Environment, including those relating to emissions, Release or threatened Release into or impacting the Environment, or otherwise relating to the management, generation, manufacture, processing, distribution, use, treatment, storage, disposal, emission, discharge, transport or handling of Hazardous Substances. "Environmental Laws" includes, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Emergency Planning and Community Right-to-Know Act, as amended, the Resource Conservation and Recovery Act, as amended, the Occupational Safety and Health Act, as amended, the Clean Air Act, as amended, the Clean Water Act, as amended, the Oil Pollution Act, as amended, the Safe Drinking Water Act, as amended, the Toxic Substances Control Act, as amended, and any other federal, state and local Laws related

(d) an executed original of the Escrow Agreement substantially in the form attached hereto as Exhibit D (the "Escrow Agreement");

(e) delivery of the Escrowed Amount to the Escrow Agent;

(f) delivery of Six Million Three Hundred Fifty-Four Thousand Dollars ($6,354,000) to Purchaser;

(g) delivery of ~~fifty (50%) of the premium for~~ One Million Two Hundred Fifty-Five Thousand One Hundred Fifty-One and 34/100 Dollars ($1,255,151.34) to the issuer of the Regulatory Closure Bond ~~to Purchaser; and~~in payment of fifty percent (50%) of the current estimated premiums for the Regulatory Closure Bond;

(h) delivery of Two Hundred Thirty Thousand Dollars ($230,000) to the issuer of the Environmental Insurance Policy in payment of a portion of the premium for the Environmental Insurance Policy; and

(i) ~~(h)~~an affidavit dated as of the Closing Date, in the form required by Treasury Regulations Section 1.1445-2(b)(2) and signed under penalties of perjury, stating that Seller (or, in the case of a Seller that is a disregarded entity, its owner for federal income Tax purposes) is not a foreign person (within the meaning of Section 1445 of the Code).

Section 2.05 Deliveries by Purchaser. On or before the Closing Date, Purchaser shall deliver, or cause to be delivered, the following items to Seller:

(a) an executed original of the Assignment Agreement;

(b) an executed original of the Escrow Agreement;

(c) an issued original of the Regulatory Closure Bond;

(d) evidence that the Environmental Insurance Policy will be bound at Closing as required by this Agreement; and

(e) executed originals of the Warranty Deeds.

Section 2.06 Prorations. No amounts receivable or payable under any Contracts will be prorated between Seller and Purchaser as of the Closing Date. No Taxes will be prorated since Seller is not subject to any sales, ad valorem, or income taxes.

Section 2.07 Assumed Liabilities. At the Closing, Purchaser shall assume the Liabilities and obligations relating to the Purchased Assets set forth in Schedule 2.07 (collectively, the "Assumed Liabilities") and the pre-Closing Liabilities included in the Indemnification Obligations.

Section 2.08 Excluded Liabilities. Except for the Assumed Liabilities and the pre-Closing Liabilities included in the Indemnification Obligations, Purchaser shall not assume, and shall not be deemed to have assumed, any Liabilities or obligations related to the Purchased Assets

(vi) terminate any material policy of insurance, unless such policy is replaced with a policy of insurance from financially responsible insurers covering substantially the same risks, including substantially the same coverage amounts, and including substantially the same or lower deductibles; or

(vii) agree or commit to do any of the foregoing.

(b) Seller may take commercially reasonable actions with respect to emergency situations or to comply with applicable Laws.

Section 5.03 Press Releases. For the period between the signing of this Agreement and the Closing Date, Seller and Purchaser will consult with each other before issuing, and provide each other a reasonable opportunity to review and make reasonable comment upon any press release relating to this Agreement; provided, however, the Parties acknowledge that this Agreement will become a public record on the earlier of the date when it is posted for consideration of approval by Seller or by a Member City and that all correspondence with Seller and/or the Member Cities may be subject to the Texas Public Information Act (Texas Government Code Chapter 552).

Section 5.04 Expenses and Fees. Except as expressly provided otherwise in this Agreement or in the Reimbursement Agreement, all costs and expenses incurred by a Party in performing its express obligations under this Agreement shall be paid by the Party incurring such costs and expenses; provided, however, that, to the extent that either Party requests the other Party (pursuant to Section 5.05, Section 5.06, or otherwise) to take any action, do any thing, cooperate in any manner, execute any documents, or provide any material or information, in each case that is not an express obligation of the other Party under this Agreement and the resulting costs are expected to be in excess of $1,000, then the Parties must mutually agree in advance in writing as to which Party will bear the resulting costs and expenses prior to the other Party having any obligation with respect to such request, which agreement will be in each Party's sole discretion. Seller shall be responsible for all compensation to be paid to the Environmental Designee. Except for the amounts payable by Seller at Closing pursuant to Section 2.04, all costs of the Regulatory Closure Bond and the Environmental Insurance Policy shall be payable by Purchaser.

Section 5.05 Agreement to Cooperate; Governmental Approvals. Subject to the terms and conditions of this Agreement and applicable Law, each Party shall use its commercially reasonable efforts to take, or cause to be taken, all action and do, or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental Authorities, and to satisfy all other conditions required in order to consummate the transactions contemplated by this Agreement (and, in such case, to proceed with the consummation of the transactions contemplated by this Agreement as expeditiously as possible).

Section 5.06 Further Assurances. Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, at either Party's request and without further consideration, the other Party shall execute and deliver to such Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information

January 7, 2021

AGENDA ITEM NO. 3

SUBJECT: Future meeting dates.

DISCUSSION: The date for the next scheduled Board meeting is **February 11, 2021 with Zoom**.

TENTATIVE MEETING DATES FOR 2021 and 2022:

June 10, 2021 - Garland
September 9, 2021 - Bryan
December 9, 2021 – Garland

February 10, 2022 – Bryan
June 9, 2022 – Garland
September 8, 2022 – Bryan
December 8, 2022 – Garland