

CITY OF HIGH POINT

AGENDA ITEM



Title: NCMPA1 - Waiver Agreement - Project and Supplemental Power Sales Agreement 2020

From: Randy McCaslin

Meeting Date: May 18, 2020

Public Hearing: No

**Advertising Date /
Advertised By:** N/A

Attachments:

- 1) Waiver Agreement NCMPA1 Project and Supplemental Power Sales Agreement 2020
- 2) Ordinance Waiver Agreement NCMPA1 PSPS Agreements 2020
- 3) Clerks Certificate - Waiver Agreement NCMPA1 PSPS Agreements 2020
- 4) 2020 04 24 NCMPA1 Waiver Agreement Resolution BDR-6-20

PURPOSE:

NCMPA1 request to send the monthly wholesale power bill electronically through email. To do this NCMPA1 is requesting a Waiver Agreement from each Participant that waives the US mail requirement outlined in the Project and Supplemental Power Sales Agreements.

BACKGROUND:

This item was discussed at the NCMPA1 Rate Committee meeting on March 19 and the NCMPA1 Board of Commissioners meeting on April 21. The ElectriCities Board of Directors approved at its meeting on April 24, authorization of such Waiver Agreement in the attached resolution BDR-6-20.

BUDGET IMPACT:

None

RECOMMENDATION / ACTION REQUESTED:

City Council is requested by NCMPA1 to approve a request to send the monthly wholesale power bill electronically through email.

WAIVER AGREEMENT

This WAIVER AGREEMENT is dated as of May 4, 2020, by and between North Carolina Municipal Power Agency Number 1, a joint agency of the State of North Carolina (“Power Agency”), and the municipality of the State of North Carolina that has executed this Waiver Agreement (the “Participant”).

WHEREAS, Power Agency and the Participant, by agreement dated as of the first day of May, 1978, entered into a Project Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “PPSA”) pursuant to which Power Agency, among other things, agreed to sell, and the Participant, among other things, agreed to purchase and pay for, its Participant’s Share of Project Output; and

WHEREAS, Power Agency and the Participant, by agreement also dated as of the first day of May, 1978, entered into a Supplemental Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “SPSA” and, together with the PPSA, the “Agreements”) pursuant to which Power Agency, among other things, agreed to provide or cause to be provided and to sell, and the Participant, among other things, agreed to purchase, the Participant’s All Requirements Bulk Power Supply requirements, consisting of Project Output and Supplemental Bulk Power Supply, and

WHEREAS, Section 5(a) of each of the Agreements provides that Power Agency shall mail to the Participant prior to each Contract Year certain budget information and, when appropriate, certain amended budget information (collectively, “Annual Budget Information”); and

WHEREAS, Section 5(b) of each of the Agreements provides that Power Agency shall mail to the Participant during each month of each Contract Year a Monthly Bill (the “Monthly Bill”) and

WHEREAS, since the date of the Agreements, (i) Power Agency’s and the Participant’s accounting systems have significantly changed due to improvements to and enhancements in computer technology and their respective accounting and computer systems, and (ii) the advent of and improvements to electronic means of communication have been developed, in each case making it easier, faster and more efficient for Power Agency and the Participant to communicate and exchange information, including Annual Budget Information and Monthly Bills; and

WHEREAS, as a result of the foregoing, Power Agency and the Participant have determined that it is more efficient and preferable for Power Agency to transmit Annual Budget Information and Monthly Bills to the Participant by electronic means as opposed to United States mail, as is required by the Agreements; and

WHEREAS, on April 24, 2020, the Board of Directors of Power Agency adopted a resolution approving waiving the provisions of Section 5(a) and 5(b) of each of the Agreements requiring the mailing of Annual Budget Information and Monthly Bills, respectively, to the Participant and permitting Power Agency to provide Annual Budget Information and Monthly Bills to the Participant by electronic means (collectively, the “Waiver”), and directed that a waiver agreement be submitted to each of the Participants for approval and execution; and

WHEREAS, the Participant has determined that the Waiver is in the best interest of the Participant and has authorized and directed that this Waiver Agreement be executed for and on behalf of the Participant.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged hereby, the parties hereto mutually agree as follows:

Section 1. Unless the context clearly indicates to the contrary, all capitalized terms used in this Waiver Agreement shall have the meanings given them in the Agreements.

Section 2. For and during the remainder of the term of each of the Agreements, and any extensions thereto, the Participant hereby waives and forever relieves Power Agency of the obligation to mail Annual Budget Information and Monthly Bills to the Participant, as required by Section 5(a) and 5(b) of each of the Agreements, respectively, so long as Power Agency provides Annual Budget Information and Monthly Bills to the Participant by electronic means to such address as the Participant shall specify in writing to Power Agency (as such address may be changed similarly from time to time).

Section 3. This Waiver Agreement shall become effective upon the execution and delivery of similar waiver agreements by Power Agency and each Participant, and shall otherwise become effective upon execution and delivery hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Waiver Agreement all by the authority of their respective governing bodies duly given.

Executed the 18th day of May, 2020.

City of High Point

By: _____
Jay W. Wagner, Mayor

ATTEST:

Lisa B. Vierling, City Clerk

(SEAL)

Executed this ____ day of _____, 2020.

NORTH CAROLINA MUNICIPAL POWER
AGENCY NUMBER 1

By: _____

ATTEST:

(Ass't) Secretary-Treasurer

(SEAL)

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
HIGH POINT, NORTH CAROLINA, DETERMINING THAT IT
IS IN THE BEST INTEREST OF THE CITY OF HIGH POINT
TO APPROVE A WAIVER AGREEMENT WITH NORTH
CAROLINA MUNICIPAL POWER AGENCY NUMBER 1 AND
AUTHORIZING THE EXECUTION AND DELIVERY OF THE
WAIVER AGREEMENT

WHEREAS, the City of High Point, North Carolina (the “Municipality”) and North Carolina Municipal Power Agency Number 1 (“Power Agency”) entered into a Project Power Sales Agreement dated as of the first day of May, 1978, (as amended in 1984 and as may be further amended or supplemented, the “Project Power Sales Agreement”), pursuant to which Power Agency sells, and the Municipality purchases and pays for, the Municipality’s Participant’s Share (as defined in the Project Power Sales Agreement) of Project Output (as defined in the Project Power Sales Agreement); and

WHEREAS, the Municipality and Power Agency entered into a Supplemental Power Sales Agreement also dated as of the first day of May, 1978 (as amended in 1984 and as may be further amended or supplemented, the “Supplemental Power Sales Agreement” and, together with the Project Power Sales Agreement, the “Agreements”), pursuant to which Power Agency sells, and the Municipality purchases and pays for, All Requirements Bulk Power Supply (as defined in the Supplemental Power Sales Agreement), which consists of Project Output (as defined in the Supplemental Power Sales Agreement) and Supplemental Bulk Power Supply (as defined in the Supplemental Power Sales Agreement); and

WHEREAS, Section 5(a) of each of the Agreements provides that Power Agency shall mail to the Participant prior to each Contract Year certain budget information and, when appropriate, certain amended budget information (collectively, “Annual Budget Information”); and

WHEREAS, Section 5(b) of each of the Agreements provides that Power Agency shall mail to the Participant during each month of each Contract Year a Monthly Bill (the “Monthly Bill”); and

WHEREAS, as a result of changes to Power Agency’s and the Participant’s accounting systems due to improvements to and enhancements in computer technology and their respective accounting and computer systems, and (ii) the advent of and improvements to electronic means of communication since the date of the Agreements, in each case making it easier, faster and more efficient for Power Agency and the Participant to communicate and exchange information, including Annual Budget Information and Monthly Bills, Power Agency and the Participant have determined that it is more efficient and preferable for Power Agency to transmit Annual Budget Information and Monthly Bills to the Participant by electronic means as opposed to United States mail, as is required by the Agreements; and

WHEREAS, on April 24, 2020, the Board of Directors of Power Agency adopted a resolution approving waiving the provisions of Section 5(a) and 5(b) of each of the Agreements requiring the mailing of Annual Budget Information and Monthly Bills, respectively, to the Participant and permitting Power Agency to provide Annual Budget Information and Monthly Bills to the Participant by electronic means (collectively, the “Waiver”), and directed that a waiver agreement (the “Waiver Agreement”) be submitted to each of the Participants for approval and execution; and

WHEREAS, Power Agency has caused to be furnished to this governing body a copy of the Waiver Agreement.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of High Point, North Carolina:

1. After due consideration to the contents of each of the preambles set forth above and of the Waiver Agreement, it is hereby found and determined that it is in the best interest of the Municipality to approve and authorize the execution and delivery of the Waiver Agreement.

2. The Municipality hereby approves the form, terms and provisions of the Waiver Agreement in the form presented to the meeting at which this Ordinance is adopted, with such changes therein as shall be approved by the officials of the Municipality executing the same, their execution thereof to constitute conclusive evidence of their approval of any and all such changes. The Mayor and the Clerk of the Municipality are hereby authorized and directed to execute, acknowledge and deliver the Waiver Agreement in the name of and on behalf of the Municipality and thereupon to cause the aforesaid Waiver Agreement to be delivered to Power Agency.

3. The officers and officials of the Municipality are hereby authorized and directed to execute such further documents and to take any and all further action as, upon the advice of the Attorney of the Municipality, shall be deemed necessary or desirable in order to effectuate the execution and delivery of the Waiver Agreement.

4. The Clerk of the Municipality is hereby directed to file with the minutes of the meeting at which this Ordinance is adopted the copy of the Waiver Agreement.

5. This Ordinance shall become effective from and after its adoption.

ADOPTED this 18th day of May, 2020.

Jay W. Wagner, Mayor

ATTEST:

Lisa B. Vierling, City Clerk

(Impress SEAL here)

CLERK'S CERTIFICATE

I, Lisa B. Vierling, City Clerk of the City of High Point, North Carolina, (the "Municipality"), DO HEREBY CERTIFY as follows:

1. As of the date of this Certificate and the date of the introduction and adoption of the Ordinance hereinafter described, the City Council of the Municipality ("the Governing Body") consisted of nine (9) members, all of whom have been duly elected and qualified.

2. **Jay W. Wagner** was the duly elected and qualified Mayor of the Municipality at the time of the introduction and adoption of the Ordinance hereinafter described and at the time of the execution by the Municipality of the document hereinafter described. **Bobby Fitzjohn** was the finance officer of the Municipality duly appointed by the City Manager and confirmed by the Governing Body, and acting in that capacity at the time of the introduction and adoption of the Ordinance hereinafter described and at the time of the execution by the Municipality of the documents hereinafter described.

3. The undersigned has been duly appointed by the High Point City Council and such appointment was confirmed by the Governing Body as Clerk of the Municipality, to hold office at the pleasure of the City Council, and the appointment as Clerk predated the introduction and adoption of the Ordinance hereinafter described and remains in full force and effect as of the date of this Certificate.

4. The seal, an impression of which appears below, is the corporate seal duly adopted by the Municipality.

5. The undersigned, as Clerk, is charged with the duty of keeping custody of the minutes and official records of the proceedings of the Governing Body.

6. At a regular meeting of the Governing Body conducted on the 18th day of May, 2020, the ordinance entitled "AN ORDINANCE OF THE CITY/TOWN COUNCIL OF THE CITY OF HIGH POINT, NORTH CAROLINA, DETERMINING THAT IT IS IN THE BEST INTEREST OF THE CITY OF HIGH POINT TO APPROVE A WAIVER AGREEMENT WITH NORTH CAROLINA MUNICIPAL POWER AGENCY NUMBER 1 AND APPROVING AND

AUTHORIZING THE EXECUTION AND DELIVERY OF THE WAIVER AGREEMENT, a copy of which is attached hereto and made a part of this Certificate (the “Ordinance”), was introduced.

7. After consideration by the Governing Body, the Ordinance was duly adopted by the Governing Body at a regular meeting of the Governing Body conducted on the 18th day of May, 2020, by a vote of ___yeas and ___nays. The Ordinance was thereafter duly recorded in the ordinance book of the Municipality and the municipal journal, if any. A copy of an excerpt of the pertinent minutes of said meeting is attached hereto.

8. The meeting referred to in this Certificate was a duly called and held regular meeting of the Governing Body, open to the public, and a quorum of the Governing Body was present and acting throughout; the excerpt of the minutes attached hereto has been compared by the undersigned with the original thereof that is on file and of record in the office of the undersigned and it is a full, true and complete copy of said original; the copy of the Ordinance attached hereto has been compared by the undersigned with the original thereof that is on file in the ordinance book (and municipal journal, if any) and it is a full, true and complete copy of said original. The Ordinance has not been amended, modified, superseded or repealed and is in full force and effect as of the date hereof.

9. A copy of the Waiver Agreement has been filed in the Clerk’s office with the minutes of the proceedings at which the Ordinance was adopted.

10. The copy of the Waiver Agreement furnished to North Carolina Municipal Power Agency Number 1 by the undersigned, together with this Certificate, has been duly executed by the Mayor of the Municipality and duly attested by the undersigned as Clerk of the Municipality, and the corporate seal of the Municipality has been impressed thereon or affixed thereto, all pursuant to authority granted by the Ordinance. In addition, the execution copy of the Waiver Agreement has been endorsed by the appropriate representative of the Municipality to the extent such endorsement is required to be affixed thereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of the City of High Point
this the 18th day of May, 2020.

Lisa B. Vierling, City Clerk

(Impress Seal Here)

Attachments:

Ordinance
Minutes

**NORTH CAROLINA MUNICIPAL POWER AGENCY NUMBER 1
BOARD OF DIRECTORS
RESOLUTION NO. BDR-6-20**

**A RESOLUTION APPROVING AND AUTORIZING THE
EXECUTION OF A WAIVER AGREEMENT BETWEEN
NORTH CAROLINA MUNICIPAL POWER AGENCY
NUMBER 1 AND EACH OF ITS PARTICIPANTS**

WHEREAS, North Carolina Municipal Power Agency Number 1 (“Power Agency”) and each of its Participants, by agreement dated as of the first day of May, 1978, entered into a Project Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “PPSA”) pursuant to which Power Agency, among other things, agreed to sell, and the Participant, among other things, agreed to purchase and pay for, its Participant’s Share of Project Output; and

WHEREAS, Power Agency and each of its Participants, by agreement also dated as of the first day of May, 1978, entered into a Supplemental Power Sales Agreement (as amended in 1984 and as may be further amended or supplemented, the “SPSA” and, together with the PPSA, the “Agreements”) pursuant to which Power Agency, among other things, agreed to provide or cause to be provided and to sell, and the Participant, among other things, agreed to purchase, the Participant’s All Requirements Bulk Power Supply requirements, consisting of Project Output and Supplemental Bulk Power Supply; and

WHEREAS, Section 5(a) of each of the Agreements provides that Power Agency shall mail to the Participant prior to each Contract Year certain budget information and, when appropriate, certain amended budget information (collectively, “Annual Budget Information”); and

WHEREAS, Section 5(b) of each of the Agreements provides that Power Agency shall mail to the Participant during each month of each Contract Year a Monthly Bill (the “Monthly Bill”); and

WHEREAS, since the date of the Agreements, (i) Power Agency’s and the Participants’ accounting systems have significantly changed due to improvements to and enhancements in computer technology and their respective accounting and computer systems, and (ii) the advent of and improvements to electronic means of communication have been developed, in each case making it easier, faster and more efficient for Power Agency and the Participant to communicate and exchange information, including Annual Budget Information and Monthly Bills; and

WHEREAS, as a result of the foregoing, Power Agency and the Participant have determined that it is more efficient and preferable for Power Agency to transmit Annual Budget Information and Monthly Bills to the Participant by electronic means as opposed to United States mail, as is required by the Agreements, and have agreed to execute a waiver agreement giving effect thereto.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS
OF NORTH CAROLIA MUNICIPAL POWER AGENCY NUMBER 1:**

Section 1: Waiver Agreement. The Board of Directors of Power Agency hereby determines that it is in the best interest of Power Agency to execute an agreement waiving the provisions of Section 5(a) and 5(b) of each of the Agreements requiring the mailing of Annual Budget Information and Monthly Bills, respectively, to the Participant and permitting Power Agency to provide Annual Budget Information and Monthly Bills to the Participant by electronic means (collectively, the “Waiver”), approves and authorizes the execution of a waiver agreement (the “Waiver Agreement”) giving effect to the Waiver and directs that a copy of the Waiver Agreement be delivered to each of the Participants for the Participant’s approval and execution.

Section 2. Effective Date. This resolution shall take effect immediately upon adoption.

Adopted this 24th day of April, 2020.