CITY OF COFFEYVILLE
BOARD OF COMMISSIONERS AGENDA ITEM

MEETING DATE	November 25, 2019	
RESOLUTION OR ORDINANCE NUMBER	R-19-77	
AGENDA TITLE	**GRDA – Second Amendment to Power Purchase Agreement, including amendment to Capacity Purchase Agreement, Exhibit F**	
REQUESTING DEPARTMENT	Electric Utility Legal	
PRESENTERS	Mike Shook Paul Kritz	
FISCAL INFORMATION	Cost as recommended:	
	Budget Line Item:	
	Balance Available	
	New Appropriation Required:	[ ] Yes [ ] No
PURPOSE		

BACKGROUND	In 2007 the City of Coffeyville entered into a Wholesale Power Purchase and Sale Agreement which includes a Capacity Purchase Agreement with the Grand River Dam Authority (GRDA). These agreements provide the City with the ability to purchase wholesale energy from GRDA, as well as receive payments from GRDA for the sale of the City's generation capacity. In return, GRDA has the right to dispatch generation. These agreements were previously amended in 2015, to recognize and support the addition of the three (3) Wärtsilä engines, providing the structure for the City to receive additional capacity payments to support the construction and operation of these units, matching the term of debt. In February 2019, City staff consulted GRDA to seek a reduction of the cost of wholesale energy for the City and a large industrial customer, which purchases energy from the City through a pass-through arrangement, plus a small margin denominated as a wheeling charge, in an effort to provide an inducement for a long term electric service agreement with the customer.
SPECIAL NOTES	NA

ANALYSIS	As a result of these efforts, the City and GRDA reached an agreement to reduce delivery charges paid by the City and the industrial customer. In exchange for, and as part of GRDA providing this discount, the City would forego 50% of the capacity payment to which the City is entitled on the 40 MW General Electric steam unit, which is called Unit 7. The reduction of this capacity payment equates to a loss of approximately $880,200 annually, for the next 8 years, at which point GRDA would have the right to extend or terminate the capacity arrangement for Unit 7, altogether. However, the loss is anticipated to be recouped via the discounted delivery charges and allows the City to offer a more competitive price to the large industrial company, which is expected to result in a long term agreement with the customer, thereby strengthening the utility's long-term viability and financial strength. Additional changes to the agreement, regarding electric car charging stations, the late payment fee, and voluntary rates, rider and programs, are housekeeping items. The amendments have already been approved by GRDA.
PUBLIC INFORMATION PROCESS	NA
BOARD OR COMMISSION RECOMMENDATION	NA
STAFF RECOMMENDATION	Staff recommends the Mayor and Commission approve these amendments to the Power Purchase and Sale and Capacity Purchase Agreements with GRDA
REFERENCE DOCUMENTS ATTACHED	Second Amendment to the Power Purchase and Sale Agreement and Capacity Purchase Agreement

RESOLUTION NO. R-19-77

A RESOLUTION TO AUTHORIZE THE EXECUTION OF THE SECOND AMENDMENT TO THE WHOLESALE POWER PURCHASE SALE AND CAPACITY PURCHASE AGREEMENTS WITH THE GRAND RIVER DAM AUTHORITY FOR THE CITY OF COFFEYVILLE.

BE IT RESOLVED by the Board of Commissioners of the City of Coffeyville, Kansas that the Mayor be and is hereby authorized and directed to execute an agreement with the Grand River Dam Authority for the Second Amendment to the Wholesale Power Purchase Sale and Capacity Purchase Agreement for the City of Coffeyville.

ADOPTED THIS 25th DAY OF November 2019.

_____
Paul Bauer, Mayor

ATTEST:

_____
Allison Pryor, City Clerk

APPROVED AS TO FORM AND LEGALITY:

_____
Paul Kritz, City Attorney

SECOND AMENDMENT TO THE
POWER PURCHASE AND SALE AGREEMENT AND
CAPACITY PURCHASE AGREEMENT

This Second Amendment to the Power Purchase and Sale Agreement and Capacity Purchase Agreement ("Amendment") is made between the GRAND RIVER DAM AUTHORITY, an agency of the State of Oklahoma created and existing pursuant to 82 O.S. § 861, *et seq.* ("GRDA"), and the City of Coffeyville, Kansas, a municipal wholesale customer ("Customer") on the 12th day of November, 2019.

Background and Definition of Electric Charging Stations as Retail Customers:

1. On August 1, 2007, GRDA and Customer entered into that certain Power Purchase and Sale Agreement ("PPSA") pursuant to which GRDA agreed to supply, and Customer agreed to purchase, Wholesale Full Requirements Service; and

2. On March 1, 2015, GRDA and Customer entered into the First Amendment to Power Purchase and Sale Agreement ("First Amendment"), pursuant to which GRDA and Customer agreed to certain terms related to Customer's generation facilities under Article 13 of the PPSA; and

3. Paragraph 3.02 of the PPSA requires Customers to sell electric power and energy only to Retail Customers; and

4. Paragraphs 1.16 and 3.14 of the PPSA define the term "Retail Customer", but do not specifically address electric vehicle charging stations; and

5. Customer and GRDA seek to clarify that electric vehicle charging stations are considered to be Retail Customers under the PPSA; and

Clarification that the lower of two conflicting late payment charges applies:

6. Paragraph 8.05 of the PPSA establishes a "late payment charge of two (2) percent per month"; and

7. The applicable GRDA rate schedule establishes a late payment charge of 1.5% per month; and

8. Customer and GRDA seek to clarify that the applicable late payment charge is the lower amount of 1.5% per month; and

Clarification that voluntary programs offered by GRDA are permissible:

9. Paragraph 6.02 of the PPSA requires GRDA to apply any "change, including rate increases or decreases, in a Rate Schedule . . . in a reasonable and not unduly discriminatory manner;" and

10. GRDA and Customer wish to clarify that GRDA may make available various voluntary programs, such as renewable/clean energy programs, economic development riders, and other programs or riders for Customer and other customers in the same rate class, without violating paragraph 6.02;

Amendments to Customer Capacity Availability and Payments:

11. Exhibit F-1 of the First Amendment requires Coffeyville to make available certain generation resources to GRDA, and for GRDA to compensate Coffeyville for that generation, subject to the terms and conditions of Exhibit F-1; and

12. According to Article 13.01 of the First Amendment, Customer no longer receives payment from GRDA for certain pre-2014 generation facilities (i.e. Coffeyville Units 1, 2, and 6) (collectively, "Pre-2014 Generation), but the Pre-2014 Generation is still included in Exhibit F-1 to the First Amendment; and

13. The Parties seek to amend Exhibit F-1 of the First Amendment to remove the applicable Pre-2014 Generation for which Customer no longer receives payment; and

14. GRDA and Customer seek to reduce the price that GRDA pays to Customer for Coffeyville Unit #7; and

15. GRDA and Customer seek to reduce GRDA's ability to dispatch Coffeyville Unit #7; and

16. Neither GRDA nor Customer seek to alter the rights and obligations of the parties with respect to Coffeyville's Wärtsilä generating units;

Therefore, the Parties agree as follows:

1. **Electric Charging Stations are Permissible**. Paragraph 1.16 of the PPSA, the definition of "Retail Customer" is hereby amended as follows (additions underlined):

   "'Retail Customer'" shall have the meaning set forth in Section 3.14. For the avoidance of doubt, electric vehicle charging stations that are provided electrical service by CUSTOMER shall be considered by GRDA to be Retail Customers."

2. **Late Payment Amount Correction**. Paragraph 8.05 of the PPSA is hereby amended as follows (deletions marked with strikethrough font; additions underlined):

   "'If GRDA does not receive payment by the date specified in Section 8.03, GRDA may assess a late payment charge of ~~two (2)~~ one and one half (1.5) percent per month."

3. **Voluntary Rates, Riders, and Programs Permissible**. Paragraph 6.02, sentence 4 of the PPSA is hereby amended as follows (additions underlined):

   "Any change, including rate increases or decreases, in a Rate Schedule will be applied to all GRDA customers served under the same Rate Schedule, and served at the same service level, as set forth in Exhibit A, in a reasonable and not unduly discriminatory manner. For the avoidance of doubt, GRDA may develop and offer voluntary riders and programs related to: (a) renewable/clean energy, including a renewable/clean energy-based Schedule PCA; (b) locally-sited, renewable distributed generation; (c) economic development; and (d) other voluntary offerings that GRDA determines may benefit its customers, so long as GRDA takes reasonable efforts to develop and offer those programs under terms and rates that are substantially fair to all customers served under the same Rate Schedule, and served at the same service level."

4. **Amendments to Customer Generation Availability and Compensation**.

a. In Article IV, Exhibit F-1 of First Amendment, the following new paragraph is added as Article 4.4 (additions underlined):

> "Notwithstanding any other provisions to the contrary, effective on January 1, 2020, and continuing throughout January 1, 2025, GRDA will use commercially reasonable efforts to limit the dispatch of Coffeyville Unit #7. Provided, GRDA will retain the right to call upon Coffeyville Unit #7 if GRDA: (i) determines that Coffeyville Unit #7 is needed for commercial, operational, or reliability purposes; or (ii) is directed to dispatch Coffeyville Unit #7 by the Southwest Power Pool. If GRDA determines that Coffeyville Unit #7 will be dispatched, GRDA will provide Coffeyville with as much notice as possible under the circumstances."

b. In Article VI, Exhibit F-1 of First Amendment, the following new paragraph is added as Article 6.10 (additions underlined):

> "(a) Notwithstanding any other provision to the contrary, effective on January 1, 2020, and continuing throughout January 1, 2028, the amount of payment otherwise due and payable by GRDA to CUSTOMER arising from or related to Coffeyville Unit #7 will be reduced by 50%.
>
> (b) Beginning on January 1, 2020, and continuing through January 1, 2025, Coffeyville Unit #7 will not be staffed 24/7, and GRDA will use reasonable efforts to limit the dispatch of Coffeyville Unit #7 as more particularly described in Article 4.4. Limited dispatch will include GRDA modifying the Coffeyville Unit #7 price offer curves and startup times in the SPP Integrated Marketplace to truthfully reflect the additional call-out and start-up costs and times that would be incurred with each dispatch of Coffeyville Unit #7. Provided, limited dispatch will not include physically withholding Coffeyville Unit #7 from the SPP Integrated Marketplace, or any other conduct that is prohibited under federal law.
>
> If GRDA is unable or unwilling to comply with the limited dispatch provisions during this time, GRDA and CUSTOMER will negotiate an equitable amendment and dispatch schedule to provide CUSTOMER reasonable and adequate compensation.
>
> (c) On and after January 1, 2025, GRDA will be restored to the same dispatch rights regarding Coffeyville Unit 7 as those to which GRDA was entitled prior to the adoption of this Article 6.10. During this period, GRDA will continue to pay the amount described in paragraph (a) (i.e. a 50% reduced payment).
>
> (d) Beginning on January 1, 2028, GRDA will have the ability to terminate GRDA's right to call upon Coffeyville Unit #7, together with any GRDA obligation to pay CUSTOMER for Coffeyville Unit #7. For any GRDA notice of cancellation issued on or after January 1, 2028, CUSTOMER agrees to waive the requirement under Article 1.3 of the First Amendment that GRDA must provide a five-year prior written notice of that cancellation."

c. In Attachment 1-B to Exhibit F-1 of the First Amendment, the phrase "Capacity Payment $____4.14____ is deleted and replaced by the phrase "Capacity Payment $ (in accordance with Article VI)" (additions underlined).

d. In the Additional Comments section of Attachment 1-B to Exhibit F-1 of the First Amendment, the following phrase is added:

> "Effective January 1, 2020, and continuing throughout January 1, 2025, Coffeyville Unit #7's operating availability will be modified in accordance with Article 4.4 of Exhibit F-1."

e. Attachment 1 to Exhibit F-1 of the First Amendment is deleted in its entirety. Customer will have no obligation to provide, and GRDA will have no obligation to compensate Customer for, any generation resource listed in Attachment 1.

f. Attachment 1-C to Exhibit F-1 of the First Amendment is deleted in its entirety. Customer will have no obligation to provide, and GRDA will have no obligation to compensate Customer for, any generation resource listed in Attachment 1-C.

g. Attachment 1-D to Exhibit F-1 of the First Amendment is deleted in its entirety. Customer will have no obligation to provide, and GRDA will have no obligation to compensate Customer for, any generation resource listed in Attachment 1-D.

5. **Conflicting Terms**. The terms of this Second Amendment will supersede any conflicting terms in the First Amendment or PPSA.

6. **Representation of Authority**. The signatory for Customer below represents that he/she possesses sufficient authority to bind Customer to the terms of this Amendment.

7. **Remainder of Agreements Unchanged**. Each of the remaining terms in the PPSA and First Amendment shall remain unchanged.

(signature page to follow)

IN WITNESS WHEREOF, GRDA and Customer agree to the terms of this Amendment.

GRAND RIVER DAM AUTHORITY

By_____
Daniel S. Sullivan, CEO

AM - Wed Nov 06 2019
GRDA LEGAL

ATTEST:

(Seal)

_____
Sheila Allen, Corporate Secretary

GRAND RIVER DAM AUTHORITY OFFICIAL SEAL

Customer

CITY OF COFFEYVILLE
COFFEYVILLE, KS

By_____
Paul Bauer, Mayor

ATTEST:
(Seal)

_____
Allison Pryor, City Clerk