

MEMORANDUM

To: City Council

From: David J. Deutsch
City Manager

Subject: Amendments to Washington Gas Energy Services Contract and PEPCO Energy Services Contract – Resolution R-15-12

Date: January 25, 2012

The participating entities of the Baltimore Regional Cooperative Purchasing Committee (BRCPC), of which the City of Bowie is a member, awarded a new contract for electric supply services to Washington Gas Energy Services, Inc. (WGES) in September 2011. The City Council approved this action by Resolution R-62-11 on September 6, 2011. This contract replaced the contract with PEPCO Energy Services, Inc. (PEPCO) which expired December 31, 2011. The PEPCO contract was originally approved by City Council by Resolution R-5-06 on January 3, 2006.

These contracts are for electricity procurement transactional services in which BRCPC, through their energy consultant EnerNOC, Inc., instruct their contractor when to purchase electricity block hedges and spot market purchases.

The only other business for BRCPC to conduct with PEPCO is the transfer of BRCPC's remaining block hedge purchases for which the BRCPC entities have not yet consumed the power. There are five remaining hedges, each for 25MW that cover FY2012 and FY2013.

In the WGES contract, it specified that the previous contractor would novate (substitute a new obligation for an old one) the remaining hedges over to the new contractor. PEPCO approached the BRCPC group at its December meeting requesting a different way to transfer the hedges other than through a novation agreement between PEPCO and WGES.

PEPCO is getting out of the wholesale power business and their parent company PEPCO Holdings has hired Price Waterhouse to oversee their close-out. PEPCO has been instructed by Price Waterhouse not to novate any outstanding hedges with any of their customers, but rather, to transfer the outstanding blocks just in time or as they are needed by their customer to consume the power. If they transfer any blocks through novation, they must value the power on the current market, not for the original purchase

price. This would show as an accounting loss for PEPCO and ultimately de-value PEPCO stock.

PEPCO and BRCPC have negotiated a payment to BRCPC of \$750,000 to transfer the five hedge block purchases on a just in time basis, rather than transferring all five blocks at one time under a novation agreement. The payment will be credited to the BRCPC working capital account and be deducted from BRCPC final payments as BRCPC trues-up their electricity purchases with PEPCO over the next two months.

Because BRCPC will be taking the hedge block purchases on a just in time basis and not through a novation agreement, the BRCPC group saves \$392,000 in carrying costs that WGES would have charged. BRCPC will be taking each hedge as they need to use the power, thus WGES does not have to pay PJM and the counter parties supplying the power the full amount up front and then have to wait through FY 2013 until the power is consumed by the BRCPC entities. Instead, WGES can bill BRCPC immediately as BRCPC uses the power.

Finally, the transactional fee that WGES will charge BRCPC for the hedged block purchases is \$0.46 MWh which will total \$427,754. Because WGES will be charging BRCPC the \$0.46 MWh transactional fee, WGES will not charge BRCPC the .5% per month re-collateralizing fee on the hedged block purchase running balance as BRCPC uses the power. The re-collateralization fee is one of the contract unit prices (as the electricity market prices drop below the hedge prices, the BRCPC transactional contractor such as PEPCO or WGES, have to post additional collateral to the counter parties supplying the power). WGES had anticipated that they would be charging the BRCPC entities because the electricity market prices have dropped below the hedge prices. With a "just in time" transfer of the hedge block purchases, there will be no need to re-collateralize the hedges with the counter parties because BRCPC would be using the power as it was transferred.

Attached is Amendment #1 for the WGES contract and Amendment #2 to the PEPCO contract. These amendments were drafted by an attorney for Baltimore County and reviewed by attorneys for other BRCPC entities. These agreements have been signed by WGES and PEPCO.

Staff Recommendation

Staff recommends Council approval of Resolution R-15-12 which approves amendments to the WGES contract and the PEPCO contract. These amendments will allow the transfer of five block hedge purchases of 25MV from PEPCO to BRCPC entities by a just in time process rather than by a novation process. These amendments will also establish a transactional fee that WGES will charge BRCPC to make these hedged block purchases. As outlined in this memorandum, there are advantages to the BRCPC entities in taking this approach and amending both contracts accordingly.

DJD/JLF/adf

Attachments

**RESOLUTION
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND
APPROVING THE FIRST AMENDMENT TO THE WASHINGTON GAS
ENERGY SERVICES, INC. CONTRACT AND APPROVING THE SECOND
AMENDMENT TO THE PEPCO ENERGY SERVICES INC. CONTRACT TO
ALLOW THE TRANSFER OF FIVE BLOCK HEDGE PURCHASES OF 25
MW BY A JUST IN TIME PROCESS RATHER THAN BY A
NOVATION PROCESS**

WHEREAS, the City of Bowie (“City”) is a member of the Baltimore Regional Cooperative Purchasing Committee (“BRCPC”); and

WHEREAS, BRCPC is comprised of 23 public entities located in the Baltimore metropolitan area; and

WHEREAS, all entities, including the City of Bowie, entered into a contract with PEPCO Energy Services, Inc. (PEPCO) in January 2006 to purchase block hedges and spot market purchases on the wholesale electricity market; and

WHEREAS, the PEPCO contract expired on December 31, 2011; and

WHEREAS, all entities, including the City of Bowie, entered into a contract with Washington Gas Energy Services, Inc. (WGES) in September 2011 to purchase block hedges and spot market purchases on wholesale electricity market starting January 1, 2012; and

WHEREAS, the only business BRCPC has to conduct with PEPCO is the transfer of five remaining block hedge purchases of 25 MW each for which the BRCPC entities have not yet consumed electricity; and

WHEREAS, the contract with WGES specifies that the previous contractor would novate the remaining hedges to the new contractor; and

WHEREAS, PEPCO has requested a just in time transfer process rather than a transfer by a novation process; and

WHEREAS, PEPCO will pay BRCPC \$750,000 to transfer the five hedge block purchases on a just in time basis rather than transferring all five blocks at one time under a novation agreement; and

WHEREAS, WGES will charge a transaction fee of \$0.46 MWh for these hedged block purchases at a cost of \$427,754; and

WHEREAS, there are other advantages to the BRCPC entities as a result of the change from a novation process to a just in time process that are of benefit to the City of Bowie.

NOW, THEREFORE BE IT RESOLVED by the Council of the City of Bowie, Maryland that the First Amendment to the Washington Gas Energy Service, Inc. contract is hereby approved; and

BE IT FURTHER RESOLVED that the Second Amendment to the PEPCO Energy Services, Inc. contract is hereby approved; and

BE IT FURTHER RESOLVED that the City Manager is authorized to sign the First Amendment to the Washington Gas Energy Services, Inc. contract and the Second Amendment to the PEPCO Energy Services, Inc. contract to allow the transfer of five block hedge purchases of 25 MV by a just in time process rather than by a novation process.

INTRODUCED AND PASSED by the Council of the City of Bowie, Maryland at a Regular Meeting on February 6, 2012.

ATTEST:

THE CITY OF BOWIE, MARYLAND

Pamela A. Fleming, City Clerk

G. Frederick Robinson, Mayor

ORIGINAL

**BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE ENTITIES
TERM CONTRACT FOR ELECTRIC SUPPLY SERVICES
AMENDMENT NO. 1**

THIS AMENDMENT TO AGREEMENT ("Amendment"), is made this 28th day of December, 2011 by and between City of Bowie, Maryland, a body politic (hereinafter "County" or "Participating Entity") and Washington Gas Energy Services, Inc., 13865 Sunrise Valley Drive, Suite 200, Herndon, VA 20170-4661 (hereinafter the "Contractor" or "WGES").

WHEREAS, by agreement dated September 6, 2011 ("Agreement"), the County engaged said Contractor to provide electric supply services to the County and the other BRCP Participating Entities;

WHEREAS, the Agreement provides for transferring management of the existing energy hedged block purchases attached hereto as Attachment A (the "Energy Purchases") from the current contractor PEPCO Energy Services, Inc., 1300 N. 17th, Suite 1600, Arlington, VA 22209 (or PES) to the Contractor through the execution of a novation agreement between PEPCO Energy Services, Inc. and the Contractor;

WHEREAS, the parties desire to amend the Agreement to allow PEPCO Energy Services, Inc. to continue to manage the Energy Purchases on behalf of BRCP Participating Entities and ultimately to deliver the Energy Purchases on behalf of the BRCP Participating Entities to the Washington Gas Energy Services, Inc. PJM Subaccount through which the BRCP Entity accounts are supplied by WGES and to provide a mechanism for each BRCP Participating Entity to satisfy its obligation to PEPCO Energy Services, Inc. for said Energy Purchases and deliveries by amending the Agreement. PES will remain obligated to deliver said Energy Purchases to BRCP Participating Entities subject to damages due to non-performance;

WHEREAS, both Parties have agreed, in lieu of a novation, to permit delivery and transfer of the Energy Purchases from PEPCO Energy Services, Inc. to the BRCP Participating Entities through the WGES PJM Subaccount and for WGES to provide the necessary services for the Energy Purchases to be delivered to the WGES PJM subaccount;

WHEREAS, both parties now desire to amend Section 4 of Attachment A of the Agreement.

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

1. Add the following to Section 4 of Attachment A:
 - 4.2 In lieu of a novation agreement; the current electric supply services contractor may, at the request of the BRCP Participating Entities, deliver the existing hedged block purchases to the new contractor's PJM Subaccount for use by the BRCP Participating Entities. Any service charge that may be incurred by the BRCP Participating Entities as a result of such transfers shall be between the current contractor (PES) and the BRCP Participating Entities, it being understood and agreed that the new contractor (WGES) will not take legal title to the Energy Purchases delivered by PES during the term of Amendment No 1.
2. Starting January 1, 2012 WGES shall accept delivery of Energy Purchases from PEPCO Energy Services, Inc. into the WGES PJM Subaccount through the remaining term of delivery specified in the Energy Purchases listed in Attachment A.

3. Upon confirmation by the BRCPC Participating Entity and WGES of the monthly delivery of the Energy Purchases pursuant to Energy Purchases identified in Attachment A pursuant to this Amendment, the BRCPC Participating Entity will direct WGES to pay PEPCO Energy Services, Inc. for said deliveries in accordance with the terms of this Amendment. Such payments are due the later of fifteen days from the date of the PEPCO Energy Services, Inc. accurate and complete invoice to the BRCPC Participating Entity, or the 25th of each month after such invoice is submitted.
4. The BRCPC Participating Entity and WGES agree that payments made by WGES to PEPCO Energy Services, Inc., in accordance with the Agreement, as amended, for delivery of the Energy Purchases shall constitute a cost of supplying the BRCPC Participating Entity accounts pursuant to the Agreement.
5. Any costs charged to or incurred by WGES and/or the WGES PJM Subaccount due to non-performance by PEPCO Energy Services, Inc. under the Agreement as amended shall constitute a cost of supplying the BRCPC Participating Entity under the Agreement, as amended. WGES shall provide supporting documentation to BRCPC Participating Entity accounts for any non-performance costs incurred specific to the Energy Purchases listed in Attachment A.
6. In lieu of novation and in consideration of WGES receiving, processing and reviewing the Energy Purchases, the BRCPC Participating Entity shall pay WGES a processing fee of \$0.46 per MWh for the volumes specified in the Energy Block Transactions listed in Attachment A equaling \$427,754.00.
7. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WITNESS:

Kim Graham

WASHINGTON GAS ENERGY SERVICES, INC.
Federal Identification No. 52-1542867

By: Harry Warren
Harry Warren
President

[Signatures continued on next page]

ORIGINAL

BALTIMORE REGIONAL COOPERATIVE PURCHASING COMMITTEE ("BRCPC") ENTITIES
TERM CONTRACT FOR ELECTRIC SUPPLY SERVICES
AMENDMENT NO. 2

THIS AMENDMENT TO AGREEMENT ("Amendment"), is made this _____ day of _____, 2012 by and between City of Bowie, Maryland, a body politic (hereinafter "Participating Entity") and PEPCO Energy Services, Inc. (hereinafter the "Current Contractor" or "PES").

WHEREAS, by agreement dated January 17, 2006, and Amendment No. 1 dated October 13, 2010, solely between the Participating Entity and PES, the Participating Entity engaged PES to provide electric supply services to the Participating Entity; and

WHEREAS, in the ordinary course of business Baltimore County, Maryland, serving as lead Participating Entity (the "Lead Participating Entity") and PES entered into energy block confirmations for and on behalf of Participating Entity and other participating entities (the "BRCPC Participating Entities") pursuant to a Master Agreement dated December 17, 2006, as amended; and

WHEREAS, in response to PES' announcement that it will be exiting from the business of supplying retail electricity upon the completion of all of its electricity supply obligations, BRCPC Participating Entities selected Washington Gas Energy Services, Inc. ("WGES") as its retail electricity supplier, thereby necessitating arrangements for the orderly continuation of deliveries under certain confirmations to the BRCPC Participating Entities and entered into the Agreement and Amendment No. 1 dated December 28, 2011 between the BRCPC Entity and WGES ; and

WHEREAS, on December 22, 2011, to effectuate an orderly transition, and pursuant to an unsolicited proposal from PES (the "Proposal")(set forth as Appendix A hereto), Lead Participating Entity, for and on behalf of the other BRCPC Participating Entities, entered into certain Amended and Restated Energy Block Confirmations with PES (the "Amended Confirmations"). The form of Amended and Restated Energy Block Confirmations is included in Appendix A. The deliveries under the Amended and Restated Energy Block Confirmations starting on January 1, 2012 through the end of the term are set forth in Appendix B also known as Attachment A in the amendment by and between WGES and the BRCPC Participating Entity (jointly, severally and collectively known as the "Energy Purchases"); and

WHEREAS, the BRCPC Participating Entities incurred immediate administrative costs to amend its electricity supply agreement with WGES to implement the Proposal. Giving consideration to these administrative costs, PES has issued a credit in the amount of \$750,000 to the BRCPC cost of service account for the sole and exclusive benefit of the BRCPC Participating Entity, and

WHEREAS, to implement the Proposal, and consistent with the Amended Confirmations, this Amendment No. 2 to the Agreement provides for continuing delivery and management of the existing energy block purchases by the current contractor, PES, to the PJM Subaccount through which the BRCPC Participating Entity accounts are to be supplied by the new contractor, Washington Gas Energy Services, Inc., 13865 Sunrise Valley Drive, Suite 200, Herndon, VA 20170-4660 (WGES); and

WHEREAS, this Amendment also provides a mechanism for each BRCPC Participating Entity to satisfy its obligation to PES for said Energy Purchases and deliveries by amending the Agreement. PES will remain obligated to deliver said Energy Purchases to BRCPC Participating Entities, and the Participating Entity will remain obligated to accept and pay PES for said Energy Purchases satisfactorily delivered and managed in accordance with the Agreement, as amended, both being subject to damages due to non-performance; and

WHEREAS, both Parties have agreed, in lieu of a novation, to permit delivery of the Energy Purchases from PES to the BRCPC Participating Entities through the WGES PJM Subaccount and for

WGES to provide the necessary services for the Energy Purchases to be delivered to the WGES PJM subaccount along with any credits and debits remaining in the PES PJM Subaccount from the BRCPC Participating Entities; and

WHEREAS, PES agrees that no charges, or any additional costs of transfer, other than as set forth herein shall be due and payable by the BRCPC Participating Entities under applicable law or in equity; and

WHEREAS, Participating Entity agrees that no charges, or any additional fees, other than as set forth herein shall be due and payable by PES under applicable law or in equity to the Participating Entities; and

WHEREAS, both parties now desire to amend the Agreement,

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

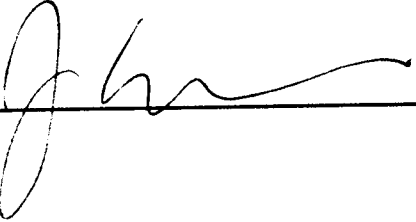
Add the following to the Agreement, as amended:

1. The current electric supply services contractor PES shall deliver the existing block purchases to the new contractor WGES' PJM Subaccount for use by the Participating Entity through the end of term set forth in Appendix B. Any charges or costs incurred by the Participating Entity as a result of such transfers by PES to WGES or by PES to the Participating Entity per the Participating Entity's direction shall be between PES and the Participating Entity, it being understood and agreed that the new contractor WGES will not take legal title to the Energy Purchases delivered by PES during the term hereof. Starting January 1, 2012, WGES shall accept delivery of Energy Purchases from PES into the WGES PJM Subaccount through the remaining term of delivery specified in the Energy Purchases listed in Appendix B.
2. Upon confirmation by the Lead Participating Entity and WGES of the monthly delivery of the Energy Purchases pursuant to Energy Purchases identified in Appendix B pursuant to this Amendment, the Lead Participating Entity will direct WGES to pay PES for said deliveries in accordance with the terms of this Amendment. Such payments are due the later of fifteen days from the date of the PES accurate and complete invoice to the Lead Participating Entity, or the 25th of each month after such invoice is submitted.
3. The Participating Entity and WGES have agreed that payments made by WGES to PES, in accordance with the Agreement, as amended, for delivery of the Energy Purchases, shall constitute a full and final payment by the Participating Entity, to PES, and shall constitute a cost of supplying the Participating Entity accounts pursuant to the Agreement.
4. Any reasonable costs charged to or incurred by WGES and/or the WGES PJM Subaccount due to non-performance by PES under the Agreement as amended shall be borne by PES. WGES shall provide supporting documentation to the Lead Participating Entity which shall also be provided to PES for any non-performance costs incurred specific to the Energy Purchases listed in Appendix B.
5. This Amendment shall remain in force and effect until completion of delivery of electric supply provided for in the Amended Confirmations and in the Agreement.
6. All other terms and conditions of the Agreement shall remain unchanged and in full force and effect including, but not limited to all rights and remedies in law and equity set forth therein.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first written above.

WITNESS:

Seller: PEPCO Energy Services, Inc.



By: Mark S. Kumm
Mark S. Kumm
President, Retail Electric Supply

[Signatures continued on next page]