

RESOLUTION NUMBER 7805

A resolution authorizing the Mayor and City Clerk to enter into a Deliverable Capacity Transaction Agreement with the City of Superior, Nebraska, to provide the City of Beatrice, Nebraska deliverable capacity for the Winter 2026-2027 season.

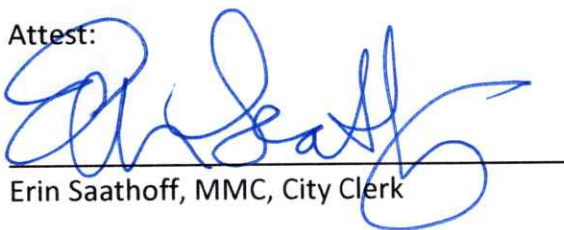
NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BEATRICE, NEBRASKA:

SECTION 1. That the Mayor and City Clerk are hereby authorized to execute the Deliverable Capacity Transaction Agreement with the City of Superior, Nebraska, to provide the City of Beatrice, Nebraska deliverable capacity for the Winter 2026-2027 season. A copy of the said Deliverable Capacity Transaction Agreement, marked as Exhibit "A", is attached hereto and incorporated by reference.

SECTION 2. That all resolutions or parts of resolutions in conflict herewith are hereby repealed.

RESOLUTION PASSED AND ADOPTED this 15th day of June, 2026.

Attest:


Erin Saathoff, MMC, City Clerk


Robert Morgan, Mayor

Exhibit "A"

**DELIVERABLE CAPACITY TRANSACTION
CONFIRMATION LETTER**

This confirmation letter ("Confirmation Letter" or "Agreement") shall confirm the transaction ("Transaction") agreed to on the "Trade Date" below, between the City of Superior, Nebraska ("Superior" or "Seller") and the City of Beatrice, Nebraska ("Beatrice" or "Buyer"). Superior and Beatrice may be referred to herein individually as "Party" and collectively as "Parties."

Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Governing Terms or the SPP Documents, as applicable.

The terms and conditions of the Transaction are as follows:

Trade Date: June 15, 2026

Buyer: City of Beatrice, Nebraska

Seller: City of Superior, Nebraska

Term: December 1, 2026 through March 31, 2027 (SPP Winter Resource Adequacy Season).

Generation Resource: Don Henry Power Center, purchased from NextEra Energy Marketing under an Agreement dated October 24, 2023.

Products: Deliverable Capacity: Deliverable Capacity as defined in Attachment AA of the OATT. Deliverable Capacity shall be sourced from the Generation Resource. Seller shall be obligated to sell and deliver, and Buyer shall be obligated to purchase and receive Deliverable Capacity in an amount equal to the Contract Quantity. Buyer and Seller acknowledge and agree that Deliverable Capacity shall not include any planning reserves. Further, Parties acknowledge that firm transmission service is not required for Deliverable Capacity and that Buyer will not be requesting firm transmission service.

"SPP Documents" means (i) the Southwest Power Pool ("SPP") Open Access Transmission Tariff ("OATT") as filed with the Federal Energy Regulatory Commission ("FERC") and as amended from time to time; (ii) the SPP Planning Criteria, effective February 10, 2026, as amended from time to time ("SPP Planning Criteria"); and (iii) any business practices and market protocols established or

implemented by SPP, as amended from time to time, *provided that* in the event of any inconsistency in the SPP Documents, the OATT shall at all times prevail.

Contract Quantity: MW, or kW

Contract Price: \$ per month, based on a rate of \$ per kW-month applied to Contract Quantity

Delivery Point: Not applicable to Deliverable Capacity.

Scheduling: The Generation Resource is offered into the SPP Integrated Marketplace in accordance with the SPP Documents by its owner, Hastings Utilities. Buyer acknowledges that Buyer has no right to actual commitment or dispatch of the Generation Resource.

Payments: Billing and payment for Deliverable Capacity shall occur on a monthly basis within ten (10) days of the conclusion of each month during which this Agreement is effective. Payment will be due within twenty (20) days of the date on which the invoice is issued. Interest on past due amounts will accrue at a rate of twelve percent (12%) per annum, compounded monthly.

Change in SPP Documents:

If FERC or other applicable regulatory body shall implement any change in law, rule, regulation, tariff or practice that materially and adversely affects Seller's or Buyer's ability to perform its obligations hereunder, the Parties shall negotiate in good faith an amendment to this Confirmation Letter or take other appropriate action the effect of which is to restore each Party, as closely as possible, to its same position as prior to such change.

Compliance with SPP Documents:

The Parties acknowledge and agree that Seller shall not be responsible for Buyer's compliance with any SPP Planning Criteria or the OATT. Buyer acknowledges that Seller is not Buyer's Load Responsible Entity ("LRE") as defined in Attachment AA to the OATT and that Buyer or another SPP Market Participant is the LRE for Buyer.

Governing Terms: This Confirmation Letter is subject to the terms and conditions in Attachment A.

[Signatures follow]

City of Beatrice, Nebraska

By: _____
Name: _____
Title: _____
Date: _____

City of Superior, Nebraska

By: _____
Name: _____
Title: _____
Date: _____

ATTACHMENT A

DELIVERABLE CAPACITY TRANSACTION
CONFIRMATION AGREEMENT
DATED MAY 1, 2026

OTHER TERMS AND CONDITIONS

CONTACT INFORMATION

Name: City of Superior, Nebraska ("Party A")

All Notices:

Street: 134 West 4th Street

City: Superior, NE Zip: 68978

Attn: City Administrator

Phone: 402-879-4713

Facsimile: 402-879-4907

Federal Tax ID Number _____

Name: City of Beatrice, Nebraska ("Party B")

All Notices:

Street: 400 Ella Street

City: Beatrice, NE Zip: 68310

Attn: Board of Public Works

Phone: 402-228-5211

Facsimile: 402-228-4586

Federal Tax ID Number: _____

Events of Default and Remedies:

- Events of Default: An "Event of Default" means, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:
 - Failure to make, when due, any payment required pursuant hereto if such failure is not remedied within five (5) business days after written notice;
 - Failure to deliver or receive Product when due pursuant to this Agreement, unless caused by an event of "Force Majeure";
 - Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when repeated;
 - Such Party becomes bankrupt; or
 - A Party's failure to perform any other material obligation set forth herein if such failure is not remedied within twenty (20) business days after written notice.
- Declaration of Early Termination Date and Calculation of Settlement Amounts: If an Event of Default with respect to a Defaulting Party occurs and continues for more than five (5) business days, the other Party (the "Non-Defaulting Party") will have the right to (a) upon two (2) business days' written notice to the Defaulting Party to terminate this Agreement ("Early Termination Date"), to accelerate all amounts owing between the Parties and to liquidate and terminate any transactions related to this Agreement, (b) withhold any

payments due to the Defaulting Party under this Agreement, and (c) suspend performance.

- **Limitation of Liability:** IN THE EVENT OF A DEFAULT, THE DEFAULTING PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY, AND SUCH DIRECT, ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY HEREUNDER. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR PUNITIVE, EXEMPLARY, OR INDIRECT DAMAGES, LOST PROFIT OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, CONTRACT OR OTHERWISE.

Assignment of Contract:

Neither Party shall have the right to assign this Agreement or rights hereunder, except by the express written consent of the other Party. Permission shall not be unreasonably withheld.

Waiver of Default:

No waiver of any term, provision or condition of this Agreement, the breach or default thereof, by conduct or otherwise, in one or more instances shall be deemed to be either a continuing waiver or waiver of a subsequent breach or default of any such term, provision or condition of this Agreement.

Force Majeure:

The term "Force Majeure," as used herein, shall mean any cause or causes not reasonably within the control and without the fault or negligence of the affected Party which wholly or partly prevents the performance of any of its obligations under this Agreement, including, without limitation by enumeration, acts of God, acts of the public enemy, acts of terrorism or threats thereof (or actions to prevent the same), blockades, strikes or differences with workmen, civil disturbances, fires, explosions, storms, floods, landslides, washouts, pandemics or epidemics, labor and material shortages, boycotts, breakdowns of or damage to equipment or facilities and actions to prevent the same, interruptions to supply or delays in transportation, embargoes, inability to obtain or renew a necessary license, permit or approval, acts of military authorities, acts of local, state or federal agencies or regulatory bodies, court actions, bankruptcy court actions, arrests and restraints.

If an event defined as Force Majeure occurs, and the affected Party is unable to carry out any of its obligations under this Agreement, then upon the affected Party giving written notice to the other Party of such Force Majeure, the affected Party's obligations shall be suspended from and after the date of the Force Majeure specified in the notice to the extent made necessary by such Force Majeure and during its continuance. The notice shall specify in detail (to the extent known) the nature of the Force Majeure, the obligations which the affected Party is unable to perform or furnish due to Force Majeure, and the affected Party's best estimate of the probable duration of the Force Majeure. The affected

Party shall use commercially reasonable efforts to eliminate and cure such Force Majeure insofar as possible and with a minimum of delay, and to resume full performance of its obligations.

Choice of Law – Nebraska:

This Agreement shall be governed by the laws of the State of Nebraska.

Binding Contract:

This Agreement shall be binding upon the Parties hereto, their successors, heirs, personal representatives, and assigns.

Counterparts:

This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

Severability of Agreement:

In the event that any of the terms of this Agreement shall be in conflict with and void as a result of the laws of the State of Nebraska, as the same may be from time to time amended, then the remainder of this Agreement shall remain in full force and effect.

Enforceability:

If any of the terms of this document are unenforceable, it shall in no way invalidate the balance of such Agreement.

Entire Agreement:

This instrument embodies the entire agreement of the Parties. There are no promises, terms, conditions, or obligations other than contained herein, and this agreement supersedes all previous communications, representations, or other agreements or contracts, either oral or written hereto.

Miscellaneous:

The headings of the paragraphs of this agreement are inserted for convenience only and shall not constitute a part hereof. Wherever applicable the singular shall include the plural and the masculine the feminine.

Amendment:

This Agreement may not be amended except by written consent of both Parties.



AGENDA ITEM

Subject: Resolution executing the Deliverable Capacity Transaction Agreement with the City of Superior, as recommended by the Board of Public Works

For Agenda of: June 15, 2026

Exhibit(s):

Date Submitted: June 10, 2026

Recommend a resolution executing the Deliverable Capacity Transaction Agreement with the City of Superior, Nebraska, to provide the City of Beatrice deliverable capacity for the Winter 2026-2027 season, to the Mayor and City Council

Tobias J. Tempelmeyer, City Administrator/General Manager, reported to the Board due to the increase in winter capacity by Southwest Power Pool's (SPP), the City needs to purchase additional capacity for this winter. This agreement is for the City of Superior to provide Beatrice with the additional capacity. Tempelmeyer stated the price per megawatt has doubled since the City entered into the contract with NextEra. Boardmember Hartley asked for clarification that the additional capacity is required even if it is not used and Tempelmeyer stated that was correct. Boardmember Zarybnicky inquired how many other companies have additional capacity. Tempelmeyer stated he was unsure, however, John Krajewski of JK Energy, knew Superior had additional capacity and Beatrice needed additional capacity, and assisted with the agreement.

Moved by Hartley, seconded by Trauernicht, that the Mayor and City Council execute the Deliverable Capacity Transaction Agreement with the City of Superior, Nebraska, to provide the City of Beatrice deliverable capacity for the Winter 2026-2027 season.

Roll Call: Yea: Baehr, Hartley, Jones, Trauernicht, Zarybnicky
Nay: None

MOTION CARRIED.