

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda

VIII S

Resolution or Ordinance (Blue) _____ *Waiver of First Requested*
Recommendations of Boards, Commissions & Committees (Green)
X Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David Hulseberg, Village Manager *deh*

DATE: May 27, 2008 (COW)(B of T) June 5, 2008

TITLE: Motion to Ratify a Contract with Constellation NewEnergy, Inc. for the Provision of Electrical Energy for the Village of Lombard Street Lighting

SUBMITTED BY: Timothy Sexton, Director of Finance

BACKGROUND/POLICY IMPLICATIONS:

A staff report on this matter is attached.


Review (as necessary):

Village Attorney	X _____	Date	_____
Finance Director	X <i>Timothy Sexton</i>	Date	<i>5/27/08</i>
Village Manager	X <i>David Hulseberg</i>	Date	<i>5/27/08</i>

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



To: William T. Lichter
Village Manager

From: Timothy Sexton 
Director of Finance

Date: May 27, 2008

Subject: Electricity Supply Contract – Street Lighting

On May 15, 2008, the Village Board approved Resolution 105-08 which authorized the Northern Illinois Municipal Electric Cooperative (NIMEC) to serve as the broker for the Village in regard to obtaining bids from electricity providers and authorizing the Village Manager or Assistant Village Manager to approve a contract with the lowest cost electricity provider.

Bidding was conducted by NIMEC on May 21, 2008, for the electrical needs for the Village's street lighting. There were two alternatives to ComEd that the Village had to consider, both from Constellation NewEnergy, Inc (CNE). One was a day-ahead floating rate option. Under this option, billing for our street lighting is based on an hourly rate, similar to the method that ComEd has instituted for street lighting. However, since CNE is able to go to market one day ahead for pricing, this pricing historically has been slightly less expensive than the ComEd hourly rate. In addition to the cost of electricity, ComEd charges "Transmission and Other Charges" of 0.742 cents/kwh. Under the day-ahead floating rate option from CNE, the Transmission and Other Charges would be .456 cents/kwh, a savings of .286 cents/kwh as compared to ComEd.

The other option from CNE was a fixed rate option of 5.91 cents/kwh. Before ComEd received approval to institute hourly pricing for street lighting, they were charging 3.2 cents/kwh. The estimate that NIMEC provided for electricity pricing for the upcoming year was 5.0 cents/kwh. However, like all commodities, this is just their best guess and is subject to changes in the market.

In discussing these options, we decided to select the day-ahead floating rate option for several reasons. First, under this option, we can convert to a fixed rate at any time. Since most commodities are run up in price right now, we felt that this would not be a good time to lock in a fixed price for two years. Also, historically, the price for electricity has fallen in the September/October timeframe. While no one knows where commodity prices are headed, the prevailing thought is that they are overpriced right now, and will come back down later this year. Therefore, we will look at locking in a fixed rate later this year.

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Agreement is Not
Valid Unless
Executed by
NewEnergy

Constellation NewEnergy, Inc.

Electricity Supply Agreement – Illinois (ComEd) – Flexible Index Solutions (Day-Ahead)

Village of Lombard ("Customer") AND CONSTELLATION NEWENERGY, INC. ("NewEnergy") AGREE AS FOLLOWS:

Defined Terms. Capitalized terms have the meanings set out in this Electricity Supply Agreement, including the General Terms and Conditions attached hereto ("Agreement"); generally the words "you" and "your" refer to the Customer listed above and the words "we" and "us" refer to NewEnergy, unless the context clearly requires otherwise.

Purchase and Sale of Electricity. You will purchase from us on an exclusive basis and we will supply, or cause to be supplied, all of your electricity requirements on an index price basis (the "Floating Price") for the account(s) identified in the Account Schedule below ("Account(s)"). You may fix from time to time your energy price (the "Fixed Price") for supply periods of three months or longer by entering into one or more Retail Trade Confirmation Transactions ("RTT Confirmation") between us. The Floating Price(s) are published hourly and if your Account(s) are not equipped with meters that provide an hourly reading, we will use the load profiles provided by the Utility for your customer class or in the absence thereof, a load profile reasonably established by us, in order to apply such prices to your monthly usage. By signing this Agreement, you authorize us to enroll your Accounts with your Utility so that we can supply those Accounts. You will take such actions as we request to allow us to enroll your Account(s) in a timely manner. You also give us the authority to supply you with electricity from whatever source we choose.

Your Price. You will pay the total of the following costs for the Account(s) pursuant to this Agreement: (A) Floating Price Purchases (if any); plus (B) Fixed Price Purchases (if any); plus (C) the Retail Service Charge; plus (D) Line Loss Charges; plus (E) Capacity Charges; plus (F) Utility Charges; plus (G) Taxes plus (H) a Service Charge. "Floating Price Purchases" for each billing period will equal the sum of each applicable hour's (i) Floating Price Percent of Load of the total actual energy consumed, if such amount is a positive number, multiplied by (ii) the applicable PJM Day-Ahead Hourly LMP. "Floating Price Percent of Load" means one hundred percent (100%) of your electricity usage minus the applicable Fixed Price Percent of Load for such supply period. "Fixed Price Purchases" for each billing period shall equal the sum of each applicable hour's (i) Fixed Price Percent of Load, if any, multiplied by (ii) the Fixed Price. "Fixed Price Percent of Load" means the percentage your electric usage for a particular supply period (each as identified in the RTT Confirmation) with respect to which the corresponding Fixed Price applies. If the Utility changes the designated rate class for any Account(s), we will have the right to adjust your Retail Service Charge to reflect extra costs we incur. Your Retail Service Price and your Fixed Price, if any, are "fixed" for the existing term of this Agreement and only subject to change if there is a change in law and/or market structure, as described in Section 5 of the General Terms and Conditions below. The Capacity Charges, Line Loss Charges, Utility Charges, Taxes and a Service Charge are charged to you as a "pass-through," which means they (but for the Service Charge) will change during the existing term of this Agreement if and as the related charges assessed or charged to us vary for any reason, including but not limited to the types of changes described above.

Term. This Agreement will become effective and binding on both of us after you have signed the Agreement and we have counter-signed. We will begin supplying your Account(s) with electricity on the first regularly scheduled meter read date on or after June 2008 ("Start Date(s)") after enrollment of your Account(s) with the Utility. We will end supplying your Accounts with electricity on the first regularly scheduled meter read date on or after May 2010 ("End Date(s)"), unless extended on a holdover basis as described in this Agreement. If we are not able to enroll your accounts by the Start Date listed above because of circumstances beyond our control (including any acts or omissions by you or the Utility), the Start Date will commence on the next regularly scheduled Utility meter read date, but the End Date will remain the same. Nothing in this Agreement shall be deemed to require or otherwise obligate us to offer to extend the term of this Agreement (and thus send a Renewal Notice to you). Furthermore, where we have sent a Renewal Notice to you, we shall have the right to withdraw such Renewal Notice without penalty or prejudice at any time prior to the expiration of the Renewal Notice Period, and following such withdrawal shall have no obligation to continue to provide service to the Accounts past the End Date(s) set forth herein. At the end of the term of this Agreement, if for any reason you fail to renew this Agreement and/or if any Account(s) remain designated at the Utility as being served by us, we may continue to serve your Account(s) on a month-to-month holdover basis (or "Holdover Term") and will charge you the "Holdover Rate" calculated by NewEnergy in its sole discretion for each billing cycle as (Metered Usage) x (Market Price + Costs + \$ 0.00525 kWh) + Taxes. This Agreement will continue to govern our relationship for the supply of electricity during the Holdover Term, and either of us may terminate the Holdover Term at any time upon 45 days advance written notice to the other. As an alternative to supplying your electricity on a holdover basis following termination, expiration or cancellation of this Agreement, we may instead switch your Accounts to the applicable Utility supply service. Supply of electricity under this Agreement is conditioned upon (1) our review and approval of your creditworthiness, (2) our verification of the accuracy of all the information that you provide to us regarding your electricity usage and the Account(s), and (3) your Account(s) being accepted into the retail access program established by the Utility. We shall have the right to terminate this Agreement upon 15 days' notice without penalty if any of these conditions are not met to our satisfaction.

Your Invoice. Your invoice will contain all charges applicable to your electricity usage, including Ancillary Service Charges, Line Loss Charges, Transmission Service Charges, Utility Charges, Taxes and a Service Charge. All amounts charged are due in full within sixty (60) days of the invoice date, and we reserve the right to adjust amounts previously invoiced based upon supplemental or additional data we may receive

GENERAL TERMS AND CONDITIONS

1. Definitions: "Ancillary Service Charges" means for any billing period the applicable charges regarding ancillary services as set forth in the applicable ISO Open Access Transmission Tariff ("OATT") and more specifically identified in the applicable schedules to the OATT; whether such specific charges are set forth in the OATT or are determined market based in accordance with the OATT. "Capacity Charges" means a capacity charge per Account that is the product of the (a) applicable ISO annual capacity auction market-clearing price for the period (i.e. June 1, 2007 – May 31, 2008, June 1, 2008 – May 31, 2009, etc.) containing the last day of the applicable billing period; multiplied by (b) the unforced capacity obligation attributed to such Account by the ISO and/or the applicable Utility as of the applicable day of the applicable billing period, which requirement shall (i) include ISO reserves and (ii) be subject to change periodically by the ISO and/or the applicable Utility. "Congestion Charges" means a charge reflecting the cost associated with transmission congestion. "Costs" means the sum of all charges incurred by NewEnergy (in \$/kWh) for the retail delivery of energy, including, without limitation and as applicable, Capacity Charges, Ancillary Service Charges, Transmission Service Charges, Line Loss Charges, the Federal Energy Regulatory Commission, renewable portfolio standards, and any similar charges that may be imposed on NewEnergy with respect to the Accounts (whether by the ISO or the Utility) from time to time. We will pass Costs through to you on your invoice without mark-up as part of your Holdover Rate. "Delivery Point" means existing and future points of interconnection between your Utility's transmission system and/or distribution system and those of a third-party. "ISO" means PJM-West, L.L.C. ("PJM"), or other entity approved by the Federal Energy Regulatory Commission or other applicable regulatory body, that provides transmission service within the Utility's service territory. "Line Loss Charges" means the distribution charges imposed by the Utility in connection with the supply of electricity by us to you in accordance with this Agreement, which are calculated based on a percentage of your kilowatt-hour consumption during the applicable period times for the applicable price set forth below. "Market Price" means the LMP, expressed in \$/kWh. "Metered Usage" means your kilowatt-hour usage at the Accounts during the applicable billing period, as adjusted by the applicable line loss factor(s). "On-Peak" means the hours designated from time to time as "peak" by Utility. Currently, On-Peak hours are 9:00 a.m. to 10:00 p.m. Central Prevailing Time on Monday through Friday, exclusive of days designated by the North American Electric Reliability Council as holidays. "Off-Peak" means all hours other than On-Peak hours. "LMP" means the PJM Day-Ahead Locational Marginal Price applicable for the Customer's retail load settlements (currently the ComEd Zone) as published by PJM, expressed in dollars per kWh. "Retail Service Price" is a fixed charge expressed in Dollars per kWh (\$/kWh) as set forth on the Account Schedule. "Retail Service Charge" is the product of the Retail Service Price times your entire usage in kWh during an applicable billing period. The Retail Service Charge includes the Ancillary Service Charges, the Transmission Service Charges and the Congestion Charges. "Taxes" means all taxes, duties, fees, levies, premiums or any other charges of any kind, whether direct or indirect, relating to the sale, purchase or delivery of electricity, together with all interest, penalties or other additional amounts imposed, including but not limited to gross receipts, sales, consumption, use, value added, kWh, commercial activity or other privilege tax, and any other tax (whether in effect as of the effective date of this Agreement or thereafter) imposed by any governmental entity. "Transmission Service Charges" means the applicable transmission service charges (other than Ancillary Service Charges, which will be invoiced separately) as identified in the applicable OATT Tariff for the provision of transmission service by the ISO within the Utility's service territory. "Utility" means the transmission and distribution service provider owning and/or controlling and maintaining the distribution system required for delivery of electricity to the Accounts.

"Utility Charges" means (i) all delivery services or Utility costs, charges, and fees, due under Rate RDS, any successor rates or otherwise, and (ii) other applicable Utility tariff charges associated with your use of Utility's distribution network and any similar or related charges the Utility may impose from time to time.

2. Cash deposit and other security. At any time, we may require that you provide information to us so that we may evaluate your creditworthiness. We reserve the right to require that you make a cash deposit or provide other security acceptable to us (or increase such deposit or security) if your financial obligations to us increase under this Agreement, or if, in our opinion, your credit, payment history, or ability to pay your bills as they come due becomes a concern. You will deliver any required cash deposit or other required security (or any increase therein) within 5 days of our request.

3. Default under this Agreement. You will be in default under this Agreement if you fail to: pay your bills on time and in full; provide cash deposits or other security as required by Section 2 above; or perform all material obligations under this Agreement and you do not cure such default within 5 days of written notice from us; or if you declare or file for bankruptcy or otherwise become insolvent or unable to pay your debts as they come due.

4. Remedies upon default. If you are in default under this Agreement, in addition to any other remedies available to us, we may terminate this Agreement entirely, or solely with respect to those Accounts adversely affected by such default, and switch your Account(s) back to Utility service (consistent with applicable regulations and Utility practices); and/or require that you compensate us for all losses we sustain due to your default, including the following:

- payment of all amounts you owe us for electricity provided to you;
- when the Agreement is terminated early (entirely or as to certain Accounts), payment of an amount (that we will calculate using our reasonable judgment) equal to the positive difference between (A) the dollar amount you would have paid to us under this Agreement had it not been terminated early and (B) the dollar amount we could resell such electricity for to a third party under then-current market conditions; and
- all costs (including attorneys' fees, expenses and court costs) we incur in collecting amounts you owe us under this Agreement.

The parties agree that any early termination payment determined in accordance with this Section is a reasonable approximation of harm or loss, and is not a penalty or punitive in any respect.

5. Changes in law, market structure, or classifications. If a change in or implementation of (a) law, rule, regulation, ordinance, statute, judicial decision, administrative order, ISO operating guidelines, ISO protocols, zonal boundary definitions, Utility tariffs, and the like (including resource adequacy or renewable portfolio standards or other renewable energy requirements), or (b) electricity market structure, causes our costs under this Agreement to increase, we will have the right to pass such increased costs on to you. The changes described in this Section may change any or all of the charges described in this Agreement, whether described as "fixed," "variable," "pass-through" or otherwise. Your first bill reflecting increased costs will include a bill insert describing the increase in costs in reasonable detail.

6. Events beyond either of our reasonable control. If something happens that is beyond either of our reasonable control that prevents either of us from performing our respective obligations under this Agreement, then whichever one of us cannot perform will be relieved from performance until the situation is resolved. Examples of such events include: acts of God, fire, flood, hurricane, war, terrorism; declaration of emergency by a governmental entity, the ISO or the Utility; curtailment, disruption or interruption of electricity transmission, distribution or supply; regulatory, administrative, or legislative action, or action or restraint by court order or other governmental entity; actions taken by third parties not under your or



ACCOUNT SCHEDULE:
For: Village of Lombard

The pricing set forth below is only valid until 2:00 PM CST on May 22, 2008

NewEnergy shall have no obligation to enroll or supply electricity to any account(s) that are not identified on the Account Schedule below.

Please verify that your specific information is COMPLETE and ACCURATE.
Your review and acceptance of this information will help ensure accurate future invoices.

Payments to Certain Third-Parties: You acknowledge and understand that:

- o We are making a payment to Glenview Consulting Corp. in connection with its efforts to facilitate our entering into this Agreement; and
- o Your price reflects the fee we are paying to Glenview Consulting Corp.
- o Glenview Consulting Corp. is acting on your behalf as your representative and is not a representative or agent of ours.

You should direct any questions regarding such fee to Glenview Consulting Corp.

Notes: Accounts listed in the Account(s) Schedule may be updated or replaced with a new account number issued by the Utility, ISO or other entity.

UDC Account Number*	Service Address	Contract Start Date	Contract End Date	Retail Service Price (\$/kWh)
9876543210	255 E. Wilson Ave., Lombard, IL, 601483926	6/2/2008	5/1/2010	\$ 0.004548

*The account number(s) have been assigned as temporary place holders for the street lighting to be supplied at the corresponding addresses and NewEnergy will notify Customer of the proper account number(s) once they have been assigned by the Utility, which notification shall serve as an amendment to this Agreement without the need of a countersignature by Customer.

ComEd Account Number(s)	For Each metered ComEd Account, identify at least one ComEd Meter Number	Requested ComEd Processing Date
9876543210	987654321	6/2/2008