



Memo

Legal Department

TO: Mayor Campbell and City Council Members
FROM: Kristine Stone, Assistant City Attorney
RE: Closed Session to Discuss Confidential Contract with Peabody Coal
DATE: February 6, 2013

You will be asked to review and approve a contract at your next council meeting between the City of Ames and Peabody COALSLES, LLC for the supply of coal to the power plant. Our previous contract with this company expired in December of 2012. Peabody has asked that the new contract remain confidential as the pricing terms are “trade secret” and thus not subject to disclosure.

Iowa Code Section 22.7 provides that “[t]he following public records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information: ... (3) Trade secrets which are recognized and protected as such by law.”

“An agency in possession of an item makes the preliminary determination of whether it is a trade secret within the meaning of this section. If an agency has reasonable grounds for concluding the item is a trade secret, it need not make the item available for inspection and copying.”
Op.Atty.Gen. (Nelson), June 14, 1979.

“Some factors to be considered in determining whether given information is one’s trade secret are: (1) the extent to which the information is known outside of his business; (2) the extent to which it is known by employees and others involved in his business; (3) the extent of measures taken by him to guard the secrecy of the information; (4) the value of the information to him and to his competitors; (5) the amount of effort or money expended by him in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.” *Id.*

Based upon discussions between electric and Peabody and considering the attached letter, it is my opinion that the pricing information contained in the contract does fall under the “trade secret” exception to the Iowa public records law and a closed session is permitted to discuss these contract terms.

Iowa Code Section 21.5(1) provides that “[a] governmental body may hold a closed session only by affirmative public vote of either two-thirds of the members of the body or all of the members present at the meeting. A governmental body may hold a closed session only to the extent a closed session is necessary for any of the following reasons: a. To review or discuss records which are required or authorized by state or federal law to be kept confidential.”

Att: Peabody Request for Confidentiality



PEABODY ENERGY
Peabody Plaza
701 Market Street
St. Louis, MO 63101-1826
314.588-2029

November 26, 2012

Ames City Council
City Hall
515 Clark Ave
Ames, IA 50010

Dear City Council Members:

I write to you today on behalf of Peabody COALSALES, LLC, a subsidiary of Peabody Energy Corporation (collectively "Peabody").

Peabody hereby requests that the Council keep all pricing information received from Peabody confidential pursuant to Section 3 of Iowa Code Section 22.7. Peabody considers its pricing information to have competitive and economic value and Peabody takes significant measures to protect this trade secret.

As a result, Peabody hereby requests that any discussion of the pricing and quality information received from Peabody be discussed only in a closed session.

Thank you for your understanding and consideration of our request.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher W. Wittenauer".

Christopher W. Wittenauer, Esq.
Peabody Energy Corporation
Senior Counsel

COUNCIL ACTION FORM

SUBJECT: POWER PLANT COAL CONTRACT (COMMODITY ONLY)

BACKGROUND:

The Ames Municipal Electric System (AMES) operates two power generating facilities for the primary purpose of providing electric power to the City's electric customers. The two facilities are the Steam Electric Plant located at 200 East Fifth Street and the Combustion Turbine Peaking Units at 2200 Pullman Avenue. The Steam Electric Plant consists of two coal-fired generating units; Unit 7 rated at 33 megawatts, and Unit 8 rated at 65 megawatts. Both units burn ultra-low sulfur sub-bituminous coal as the primary fuel, additionally co-firing refuse derived fuel (RDF) and #2 fuel oil (as a start-up and boiler flame stabilization fuel).

For the past three years, the City has had a contract with the Peabody COALSALES, LLC for their North Antelope Rochelle Mine (NARM) coal from the Powder River Basin located in Campbell County, Wyoming. In fact, the power plant has used this coal as its primary fuel continuously for more than 20 years. The NARM coal is a premier ultra-low sulfur sub-bituminous coal that has proved to be a very compatible fuel for our pulverized coal-fired boilers. It has a nominal heating value of 8800 Btu/lb and a sulfur dioxide content of 0.48 lbs.SO₂/mmBtu.

Prior to the expiration of the most recent contract on December 31, 2012, Peabody COALSALES approached the City on August 14, 2012, expressing a strong desire to extend the coal agreement for three more years. After checking with the City's Purchasing Department to determine if a negotiated extension would be allowable under State of Iowa law and the City's Purchasing Policies, Electric Services engaged in a negotiating process with Peabody COALSALES to attempt to come to an agreement on a contract extension that would be a good value for the City.

Peabody COALSALES commenced the negotiation by proposing pricing for the next three years (2013 through 2015) in an email dated August 22, 2012. Additional terms along with pricing included reducing the minimum annual tonnages, and inserting a clause allowing the City to reduce or suspend delivery of coal with 120 days notice, without penalty. Over the next two and one-half months, the City and Peabody COALSALES exchanged three counteroffers, ultimately reaching a tentative agreement based upon the City's counteroffer in an email to Peabody COALSALES dated October 30, 2012.

Key features of the tentative agreement reached between Peabody COALSALES and the City are as follows:

- I) Firm unit pricing for 2013 and 2014. Pricing for 2015 is to be negotiated and determined at a later date (after July 1, 2014).
- II) Annual tonnages as follows:

2010 - 2012 Agreement	Minimum	Target	Maximum	<i>Actual</i>
2010	200,000	250,000	400,000	233,501
2011	200,000	250,000	400,000	213,827
2012	200,000	250,000	400,000	212,860
Proposed Agreement				
2013	150,000	200,000	300,000	
2014	125,000	200,000	300,000	
2015	125,000	200,000	300,000	

- III) Allow the City to reduce or suspend deliveries of coal with 120 days notice, without penalty.

Compelling reasons to approve the tentative agreement include the following:

- 1) The unit prices for coal for 2013 and 2014 represent a good value for the City. **The unit price for 2013 is less than the unit prices the City paid for coal back in 2011 and 2012. Likewise, the unit price for 2014 is less than the unit price the City paid for coal during 2012.**
- 2) The North Antelope Rochelle Mine coal produces a premium sub-bituminous coal. Its combination of high heating value (8800 Btu/lb) and ultra-low sulfur content (0.21 percent sulfur) makes it a very desirable fuel, with a low emissions yield, especially for SO₂. The nominal SO₂ emissions value from this coal is 0.48 lbs SO₂/mmBtu, which allows our plant to comfortably meet its SO₂ compliance limit of 1.2 lbs SO₂/mmBtu. In contrast, many other low-sulfur sub-bituminous coals have a heating value of approximately 8400 Btu/lb, and a sulfur content of 0.40 or higher, which may comply with the SO₂ emissions limit of 1.2 lbs SO₂/mmBtu but with a very small compliance margin.
- 3) The City's Steam Electric Plant has used Peabody's NARM coal as its primary source of fuel for more than 20 years. This coal burns very well in our boilers with a low tendency to form deposits and foul (plug).

- 4) Peabody COALSALES understands the issues that our Steam Electric Plant currently faces. These include power market economics (versus our power plant's production costs); additional and more restrictive environmental regulations; and local, regional, and national political pressures, etc.

As a result:

- a. Peabody COALSALES agreed to a very simple exit clause that, given 120 days notice, the City can reduce or suspend the delivery of coal, without penalty.
 - b. Peabody COALSALES also agreed to reduce the minimum (tonnage) take from 200,000 tons per year in the previous agreement (2010 through 2012) down to 150,000 tons per year for 2013, and down to 125,000 tons per year for 2014 and 2015.
- 5) It is critically important for the City to be able to use NARM coal for a permit specific stack test that must be performed on Unit 8 after our spring overhaul in 2013. Back in July of 2011, after an arduous effort, we received a PSD Air Quality Construction Permit from the Iowa Department of Natural Resources for maintenance work on Unit 8 consisting of four projects. The projects were (1) repair/replacement of the boiler's lower waterwall tubes, (2) repair/replacement of the air heater baskets, (3) re-tubing/replacement of two high pressure feedwater heaters, and (4) repair/replacement of the boiler's pendant superheater sections. In this permit, Iowa DNR mandated an unusual requirement in that we had to perform stack tests before the work could commence; and after all work is completed, we must repeat the stack tests. Iowa DNR's purpose for requiring these "before" and "after" stack tests was to have the City prove that the maintenance work did not cause an increase in air emissions. **Given this stack testing requirement, it is very important to use the same coal in Unit 8 boiler for both stack tests.** If a different coal were be used for the "after" stack test, it would introduce new fuel-related variables into the test, possibly skewing the results, and could create a regulatory compliance issue with Iowa DNR.

ALTERNATIVES:

1. Waive the Purchasing Policy requirement to solicit bids for coal and approve an amendment to the original agreement with Peabody COALSALES, LLC to supply coal for the City of Ames Steam Electric Plant for the period January 1, 2013 through December 31, 2015, with coal to be supplied from Peabody's North Antelope Rochelle Mine located in Campbell County, Wyoming.
2. Reject the amended agreement with Peabody COALSALES, LLC, and direct staff to request proposals from suppliers of coal that would be compatible with

the City's power plant boilers and provide reliable compliance with the existing SO₂ air emissions limit.

MANAGER'S RECOMMENDED ACTION:

City staff and Peabody COALSALES, LLC were able to reach an amended agreement for supply of coal that is very favorable for the City because of (1) a significant reduction in unit pricing for at least the next two years (2013 and 2014), and (2) a reduction in the minimum tonnage obligation of the City for all three years of the contract extension, and (3) the ability for the City to reduce or suspend deliveries of coal, without penalty, if we provide Peabody COALSALES, LLC 120 days notice.

Therefore, it is the recommendation of the City Manager that the City Council adopt Alternative No. 1, thereby waiving the Purchasing Policy requirement to solicit bids for coal as well as approving an amendment to the original agreement with Peabody COALSALES, LLC to supply coal for the City's Steam Electric Plant for the period January 1, 2013 through December 31, 2015, with coal from Peabody's North Antelope Rochelle Mine located in Campbell County, Wyoming.