

AN ORDINANCE      99907

**APPROVING A COMPETITIVE MATTER MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND CITY PUBLIC SERVICE (CPS) TO GRANT ADDITIONAL FLEXIBILITY IN PURSUING WHOLESALE OFF-SYSTEM SALES.**

\*   \*   \*   \*

**WHEREAS**, on September 30, 2004, pursuant to Ordinance No. 99823, the City approved modifications to CPS' modified electric rate schedules, which were a necessary component in the exercise of CPS' Right of First Refusal related to the purchase of an additional 12% ownership interest in the South Texas Project (STP) nuclear power plant; and

**WHEREAS**, as a result of that purchase, CPS will have the opportunity to sell excess energy to wholesale off-system customers; and

**WHEREAS**, the Electric Reliability Council of Texas (ERCOT) wholesale electric market is a competitive market and offers opportunities to CPS to maximize its electric power generation assets by making sales of excess energy to off-system wholesale customers; and

**WHEREAS**, the approval of a Competitive Matter Memorandum of Understanding (MOU) between the City and CPS granting CPS the authority to implement wholesale off-system pricing strategies under certain circumstances is necessary to place CPS in a more favorable position when pursuing such sales, and it is expected to have a positive impact on the CPS system and its customers by generating additional revenue for the CPS system; and

**WHEREAS**, the MOU that details the flexibility being granted to CPS, and how the system will benefit from revenues, shall remain confidential pursuant to §552.133 of the Texas Public Information Act (Chapter 552 of the Tex. Govt. Code); and

**WHEREAS**, upon a good faith determination by the City Council that the subject matter of the MOU is an appropriate competitive matter, the MOU shall be outlined for City Council in executive session pursuant to §551.086 of the Texas Open Meeting Act (Chapter 551 of the Tex. Govt. Code); and

**WHEREAS**, the subject has already been identified as a competitive activity pursuant to CPS' Competitive Matters Resolution, and the details of that activity, if disclosed, would confer an advantage upon actual and prospective competitors of CPS; and

**WHEREAS**, the City Clerk shall maintain a certified executive session agenda or tape recording that includes the substantive details of the MOU that will be presented in executive session and the City Council will vote on the MOU in the public forum; and

**WHEREAS**, this Ordinance shall remain on file for public access in the City Clerk's office, however, the MOU shall not be attached to the Ordinance and shall remain confidential and be maintained by the appropriate City and CPS staff; and

**WHEREAS**, this action is anticipated to generate additional revenue for CPS and the City; and

**WHEREAS**, this item was reviewed by the Public Utilities Division, the City Attorney's Office and City Public Service; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The Competitive Matter Memorandum of Understanding between the City and City Public Service to allow CPS greater flexibility in pursuing certain wholesale off-system sales is hereby approved. The Interim City Manager, or his designee, is authorized to execute the MOU consistent with the information provided to City Council in executive session; however, the MOU shall not be attached to this Ordinance. City Council reserves the right to modify or revoke this grant of flexibility, however, such action will have no effect on the then-existing contracts of CPS made before the effective date of the modification or revocation. The MOU shall be clearly marked as "Confidential" and maintained by the Supervisor of Public Utilities, by CPS, and in the City Clerk's executive session files.

**SECTION 2.** This Ordinance shall take effect on the tenth (10<sup>th</sup>) day after the date of passage hereof.

**MAYOR**

EDWARD D. GARZA

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
for City Attorney



~~CONSENT AGENDA~~  
ITEM NO 29

**CITY OF SAN ANTONIO**  
**Interdepartmental Correspondence**

**TO:** Mayor and City Council

**FROM:** Andrew Martin, City Attorney and Ben Gorzell Jr., CPA, Public Utilities Supervisor

**THROUGH:** J. Rolando Bono, Interim City Manager

**COPIES:** Melissa Byrne Vossmer, Assistant City Manager; File

**SUBJECT:** Ordinance Authorizing Competitive Matter MOU w/ CPS

**DATE:** October 21, 2004

**SUMMARY AND RECOMMENDATION**

This ordinance will authorize a Competitive Matter Memorandum of Understanding (MOU) between the City and City Public Service (CPS) to allow CPS greater flexibility in pursuing wholesale off-system sales. Staff recommends approval of this ordinance.

**BACKGROUND INFORMATION**

On September 30, 2004, pursuant to Ordinance No. 99823, the City approved modifications to CPS' electric rate schedules. Those adjustments to the electric rate schedules were a necessary component in the exercise of CPS' Right of First Refusal related to the purchase of an additional 12% ownership interest in the South Texas Project (STP) nuclear power plant. As a result of that purchase, CPS will have the opportunity to sell excess energy to wholesale off-system customers. The Electric Reliability Council of Texas (ERCOT) wholesale electric market is a competitive market. This market offers opportunities to CPS to maximize its electric power generation assets by making sales of excess energy to off-system wholesale customers.

**POLICY ANALYSIS**

The ordinance and MOU are necessary to place CPS in a more competitive position when pursuing wholesale off-system sales. The sale of excess energy is expected to have a positive impact on the CPS system and its customers by generating additional revenue for the system.

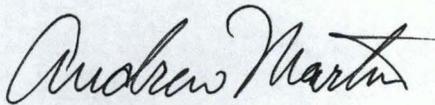
In order to preserve CPS' competitive position in seeking wholesale off-system sales, the MOU, which describes the flexibility being provided to CPS, shall remain confidential pursuant to §552.133 of the Texas Public Information Act (Chapter 552 of the Tex. Govt. Code). Also, upon a good faith determination by the City Council that the subject matter of the MOU is an appropriate competitive matter, the details of the MOU shall be outlined for City Council in executive session pursuant to §551.086 of the Texas Open Meeting Act (Chapter 551 of the Tex. Govt. Code). The subject has already been identified as a competitive activity pursuant to CPS' Competitive Matters Resolution, and the details of that activity, if disclosed, would confer an advantage upon actual and prospective competitors of CPS. The City Clerk shall maintain a certified executive session agenda or tape recording that includes the substantive details of the MOU that will be presented in executive session. After the briefing in executive session, City Council will vote on the MOU in the public forum. If the ordinance authorizing the MOU is passed, then the ordinance shall remain on file for public access in the City Clerk's office; however, the MOU shall not be attached to the ordinance. The MOU shall remain confidential and be maintained by the appropriate City and CPS staff.

**FISCAL IMPACT**

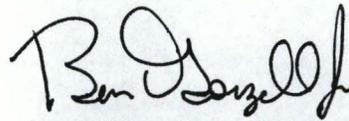
The additional flexibility in the pursuit of wholesale off-system sales is anticipated to generate additional revenue for CPS and the City.

**COORDINATION**

This item has been reviewed by the Public Utilities Division, the City Attorney's Office and City Public Service.



Andrew Martin  
City Attorney

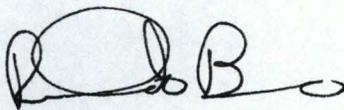


Ben Gorzell Jr., CPA  
Supervisor of Public Utilities

**Approved:**



Melissa Byrne Vossmer  
Assistant City Manager



J. Rolando Bono  
Interim City Manager