

**THIS IS A PROPOSED DRAFT AND WILL BE REPLACED BY THE FINAL, SIGNED ORDINANCE OR RESOLUTION ADOPTED BY CITY COUNCIL.**

**AN ORDINANCE**

**APPROVING A SECOND AMENDMENT TO THE COMPETITIVE MATTERS MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY AND CPS ENERGY AS AUTHORIZED BY ORDINANCE NO. 99907 ON OCTOBER 21, 2004 ALLOWING FURTHER PRICING FLEXIBILITY TO CPS ENERGY IN PURSUING CERTAIN WHOLESALE OFF-SYSTEM SALES.**

\* \* \* \*

**WHEREAS**, pursuant to Chapter 1502 of the Texas Government Code, the City Council, acting in its regulatory capacity, has original jurisdiction over the retail and wholesale rates of CPS Energy; and

**WHEREAS**, the City Charter created the position of Supervisor of Public Utilities authorized to oversee the activities of CPS Energy and to gather and analyze information necessary for the City Council to establish fair and reasonable rates; and

**WHEREAS**, CPS Energy operates a combined electric and gas utility system on behalf of the City of San Antonio through the CPS Energy Board of Trustees; and

**WHEREAS**, on or about April 10, 2012, CPS Energy closed a transaction with Tenaska Capital Management, LLC on the purchase of the Rio Nogales power plant, an 800 megawatt (MW) combined-cycle natural gas plant located in Seguin, Texas; and

**WHEREAS**, the purchase of the Rio Nogales power plant will allow CPS Energy to virtually replace the output of the 870 MW J.T. Deely coal power plant, which is scheduled to be decommissioned in 2018; and

**WHEREAS**, until such time that the J.T. Deely power plant is decommissioned, CPS Energy intends to use a portion of the energy output of the Rio Nogales power plant and sell the remainder in the Texas competitive wholesale electric power market; and

**WHEREAS**, on October 21, 2004, the City Council passed Ordinance No. 99907 approving a Competitive Matter Memorandum of Understanding (MOU) between the City and CPS Energy, which authorized CPS Energy to exercise pricing flexibility in wholesale off-system sales pursuant to a competitively sensitive formula outlined in the MOU; and

**WHEREAS**, on June 7, 2012, the City Council passed Ordinance No. 2012—06-07-0410 approving Amendment No. 1 to the MOU in order to achieve greater pricing flexibility over

wholesale off-system sales from the Rio Nogales power plant while attempting to maintain rate neutrality; and

**WHEREAS**, CPS Energy and the City have reached agreement on a second amendment (2<sup>nd</sup> Amendment) to the MOU to allow additional time for the Rio Nogales power plant to be incrementally included in the utility's rate base, and for any annual city payment associated with operation of the power plant to occur upon completion of the CPS Energy fiscal year; and

**WHEREAS**, the Supervisor of Public Utilities concurs with the CPS Energy proposed 2<sup>nd</sup> Amendment to the MOU; and

**WHEREAS**, the MOU and the proposed 2<sup>nd</sup> Amendment to the MOU are competitive matters subject to protection from public disclosure pursuant to Section 552.133 of the Texas Public Information Act (Chapter 552 of the Texas Government Code); and

**WHEREAS**, on April 2, 2014, the City Council met in executive session to discuss the proposed 2<sup>nd</sup> Amendment to the MOU after determining by a unanimous vote that the subject matter of the amendment is an appropriate competitive matter in accordance with Section 551.086 of the Texas Open Meetings Act (Chapter 551 of the Texas Government Code); and

**WHEREAS**, as a competitive matter, the 2<sup>nd</sup> Amendment to the MOU is competitively sensitive information the disclosure of which would confer an unfair advantage upon actual and prospective competitors of CPS Energy in the wholesale electric market; and

**WHEREAS**, this Ordinance shall remain on file for public access at the City Clerk's Office, however, the 2<sup>nd</sup> Amendment to the MOU shall not be attached to the Ordinance and shall remain confidential; and **NOW THEREFORE:**

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

**SECTION 1.** Amendment No. 2 to the Competitive Matter Memorandum of Understanding between the City and CPS Energy is designed to grant additional time for the Rio Nogales power plant to be incrementally included in the utility's rate base, and for any annual city payment associated with operation of the power plant to occur upon completion of the CPS Energy fiscal year. The City Manager or Supervisor of Public Utilities is authorized to execute the 2<sup>nd</sup> Amendment. The executed 2<sup>nd</sup> Amendment shall be clearly marked "Confidential – Competitively Sensitive Information" and maintained by the Supervisor of Public Utilities, CPS Energy, and in the City Clerk's executive session files.

**SECTION 2.** This Ordinance shall become effective immediately upon passage by eight (8) votes of the City Council and if passed upon fewer than eight (8) votes after the tenth (10<sup>th</sup>) day after passage thereof.

GG  
4/10/14  
Item No.

**PASSED AND APPROVED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

**M A Y O R**  
Julián Castro

**ATTEST:**

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Leticia M. Vacek, City Clerk

**APPROVED AS TO FORM:**

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Robert F. Greenblum, City Attorney

Draft