

ORIGINAL

ORDINANCE NO. 01-06

AN ORDINANCE OF THE CITY OF LEBANON, AUTHORIZING
THE EXECUTION AND DELIVERY OF THE FIRST AMENDATORY AGREEMENT
TO THE POWER SALES CONTRACT BETWEEN INDIANA MUNICIPAL POWER
AGENCY AND THE CITY OF LEBANON.

WHEREAS, the City of Lebanon (the AMember \cong) is a municipal corporation created and existing under the laws of the State of Indiana and is a member in good standing of the Indiana Municipal Power Agency (the AAgency \cong), a body corporate and politic and political subdivision of the State of Indiana, created pursuant to Ind. Code \S 8-1-2.2 and exercising thereunder a part of the sovereign powers of the State of Indiana; and

WHEREAS, the Member owns and operates a municipal electric system which furnishes retail electric service to the public; and

WHEREAS, the Member is required by law to provide customers with an adequate, reliable and economical supply of electric power and energy; and

WHEREAS, the Agency and the Member entered into a Power Sales Contract dated April 1, 1982, by which the Agency agreed to sell and deliver to the Member, and the Member agreed to purchase and receive from the Agency, all electric power and energy which the Member required for the operation of its municipal electric system; provided, however, Section 3(a) of the Power Sales Contract provides in pertinent part that after December 31, 2002, the maximum amount of power required to be sold and delivered by the Agency and purchased and received by the Member, shall not exceed the AContract Rate of Delivery, \cong which shall be the peak demand

of the Member for power and energy under the Power Sales Contract during the 60 billing periods preceding December 31, 2002, as determined by the Agency, adjusted up or down by not more than 10% so as to provide optimal utilization of the Agency=s power supply resources, such adjustment to be made by the Agency upon the advice of the consulting engineer to the Agency; and

WHEREAS, the Agency has periodically advised the Member of its estimated AContract Rate of Delivery≡ and the Member desires to continue purchasing and receiving from the Agency, all electric power and energy required for the operation of its municipal electric system, including that necessary to serve load growth; and

WHEREAS, the Agency is willing to plan for and invest in power supply resources necessary to sell and deliver all electric power and energy required for the operation of the Member=s municipal electric system, including that necessary to serve the Member=s load growth; and

WHEREAS, the Agency has caused to be prepared the AFirst Amendatory Agreement to Power Sales Contract Between Indiana Municipal Power Agency and the City of Lebanon≡ (the AAmdment≡) for execution by and between the Agency and the Member and representatives of the Member have reviewed such Amendment; and

WHEREAS, the Amendment accurately reflects the intentions of the Agency and the Member that the Agency continue to sell and deliver to the Member, and the Member continue to purchase and receive from the Agency, all electric power and energy which the Member requires for the operation of its municipal electric system, including that necessary to serve load growth; and

WHEREAS, the Amendment marked as Exhibit AA≅ is attached hereto, incorporated herein by reference and two (2) copies of said Amendment are on file in the Office of the Clerk-Treasurer for public inspection pursuant to Ind. Code § 36-1-5-4; and

WHEREAS, based upon the foregoing facts, the Member by this Ordinance hereby finds and determines to approve the Amendment;

NOW THEREFORE, BE IT ORDAINED BY THE COMMON/TOWN COUNCIL OF THE MEMBER:

SECTION 1. The Member is authorized pursuant to this Ordinance to enter into the Amendment in the form attached hereto as Exhibit AA≅ so that the Member may continue purchasing and receiving from the Agency, all electric power and energy required for the operation of its municipal electric system, including that required for load growth, thereby ensuring the Member=s ability to continue providing its customers with an adequate, reliable and economical supply of electric power and energy.

SECTION 2. The findings and determinations set forth in the preambles to this Ordinance are hereby made findings and determinations of the City of Lebanon.

SECTION 3. By this Ordinance, the Mayor is hereby authorized and directed to execute and deliver, and the Clerk-Treasurer is hereby authorized to attest and seal, the Amendment.

SECTION 4. All ordinances and parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. This Ordinance shall be in full force and effect from and after its passage.

PASSED AND ADOPTED by the Common Council of the City of Lebanon this 9th

day of July, 2001.

COMMON COUNCIL

James W. Acton
Presiding Officer

Attest:

J. Elaine Kenster
Clerk-Treasurer

Presented by me to the Mayor of the City of Lebanon this 9th day of

July, 2001 at 7:30 P.M.

J. Elaine Kenster
Clerk-Treasurer

Signed and approved by me, the Mayor of the City of Lebanon, this

9th day of July, 2001, at 7:30 P.M.

James W. Acton
Mayor James Acton

FIRST AMENDATORY AGREEMENT TO
POWER SALES CONTRACT BETWEEN
INDIANA MUNICIPAL POWER AGENCY
AND
THE CITY OF LEBANON

This Agreement, made as of the 9th day of July, 2001, by and between INDIANA MUNICIPAL POWER AGENCY, a body corporate and politic and political subdivision of the State of Indiana, organized and existing under the laws of the State of Indiana (hereinafter the "Agency"), and THE CITY OF LEBANON (hereinafter the "Member").

WITNESSETH:

WHEREAS, the Agency and the Member entered into a Power Sales Contract dated April 1, 1982, by which the Agency agreed to sell and deliver to the Member, and the Member agreed to purchase and receive from the Agency, all electric power and energy which the Member required for the operation of its municipal electric system; provided, however, Section 3(a) of the Power Sales Contract provides in pertinent part that after December 31, 2002, the maximum amount of power required to be sold and delivered by the Agency and purchased and received by the Member, shall not exceed the "Contract Rate of Delivery," which shall be the peak demand of the Member for power and energy under this Contract during the 60 billing periods preceding December 31, 2002, as determined by the Agency, adjusted up or down by not more than 10% so as to provide optimal utilization of the Agency's Power Supply Resources, such adjustment to be made by the Agency upon the advice of the consulting engineer to the Agency; and

WHEREAS, the Agency has periodically advised the Member of its estimated "Contract Rate of Delivery" and the Member desires to continue purchasing and receiving from the Agency, all electric power and energy required for the operation of its municipal electric system, including that necessary to serve load growth; and

WHEREAS, the Agency is willing to plan for and invest in Power Supply Resources necessary to sell and deliver all electric power and energy required for the operation of the Member's municipal electric system, including that necessary to serve the Member's load growth; and

WHEREAS, the Agency and the Member desire to amend the Power Sales Contract to reflect their intentions.

NOW, THEREFORE, in consideration of the premises and the covenants, terms and conditions hereinafter provided, the parties hereto mutually agree as follows:

1. The reference to the "Contract Rate of Delivery" in Section 1, "Definitions," of the Power Sales Contract is deleted.
2. The reference to "Power Supply Resources" in Section 1, "Definitions," of the Power Sales Contract is deleted in its entirety and the following is substituted:

Power Supply Resources shall mean those resources for the production of electric power and energy included in the System to the extent the same are employed by the Agency to supply electric power and energy sold under the Power Sales Contracts.

3. Subsection (a) of Section 3, "Sale and Purchase of Electricity," of the Power Sales Contract is deleted in its entirety and the following is substituted:

SECTION 3. Sale and Purchase of Electricity

(a) The Agency hereby agrees to sell and deliver to the Member, and the Member hereby agrees to purchase and receive from the Agency, commencing on the date of the First Amendatory Agreement and extending through the term hereof, all electric power and energy which the Member shall require for the operation of its municipal electric system.

In the event that, pursuant to the Public Utility Regulatory Policies Act of 1978 or other provisions of law, electric power is required to be purchased from a small power production facility, a cogeneration facility or other facility, the Member and the Agency shall use their best efforts to arrange for such purchases to be made by the Agency. If such arrangements can not be made, then the Member shall make the required purchases and sell the power purchased to the Agency at a price equal to the price paid by the Member. The Member appoints the Agency to act as its agent in all dealings with the owner of any such facility from which power is to be purchased and in connection with all other matters relating to such purchases.

- D. Subsection (b) of Section 6, "Covenants of the Agency," of the Power Sales Contract is deleted in its entirety and the following is substituted:

(b) The Agency shall use its best efforts while following Prudent Utility Practice to provide a constant and uninterrupted supply of electric power and energy under this Contract. In the event that the Agency is not able to supply all of the electric power and energy requirements of all of the Participating Members that it is required to supply hereunder, it shall use its best efforts to allocate its electric power and energy available from its Power Supply Resources during any billing period among the Member and the other Participating Members as follows: Such allocation shall be made pro rata in accordance with their respective electric power and energy requirements supplied hereunder during the corresponding billing period of the preceding calendar year. During any period the Agency is unable to supply all of the Member's electric power and energy requirements that it is required to supply hereunder, the Agency shall not in any case be

liable to the Member for damages resulting from such interruption of service and the Member shall be permitted to acquire from other sources such amount of electric power and energy which is not supplied by the Agency; provided, however, that at such time as the Agency is thereafter again able to supply all of the Member's electric power and energy requirements that it is required to supply hereunder, the Member shall be required to take and pay for such electric power and energy in accordance with the provisions hereof.

IN WITNESS WHEREOF, Indiana Municipal Power Agency and the City of Lebanon have caused this First Amendatory Agreement to be executed by their respective duly authorized officers as of the day, month and year first above written.

INDIANA MUNICIPAL POWER AGENCY

By: Thomas S. [Signature]

Title: Chairman

ATTEST:

Marilyn Puchert
Secretary
(Seal)

CITY OF LEBANON

By: Jana W. [Signature]

Title: MAYOR - CITY OF LEBANON

ATTEST:

J. Elaine [Signature]
[Clerk-Treasurer/Clerk]
(Seal)