



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 12/12/2023

REQUESTER: NextEra Energy Resources

PRESENTER: Elisabeth Muckala, Asst. City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, POSTPONEMENT, OR AMENDMENT TO CONTRACT K-2324-110: A REVOCABLE LICENSE AND UTILITY/ROW CROSSINGS AGREEMENT BETWEEN THE CITY OF NORMAN AND NEXTERA ENERGY SOUTHWEST, LLC IN THE AMOUNT OF \$202,756.95 AND ALLOWING FOR CERTAIN PLACEMENTS AND UTILITY CROSSINGS WITHIN THE CITY'S RIGHTS-OF-WAY AND APPROPRIATION AS OUTLINED IN THE STAFF REPORT.

BACKGROUND:

NextEra Energy Transmission Southwest, LLC ("NEET") is a Delaware Limited Liability Company. NEET and its affiliates have been active in energy generation and transmission projects nationwide, including 15 Wind Energy Centers located across 14 Oklahoma counties. In April of 2022, NEET was awarded the Minco-Pleasant Valley-Draper Project ("Project") by the Southwest Power Pool ("SPP"), to be regulated by the SPP and according to those regulations enforced by the Federal Energy Regulatory Commission ("FERC"). The Project is a 48-mile long 345 kV transmission line interconnecting Minco, Pleasant Valley and Draper substations owned by OG&E, all located within SPP territory.

The project investment is upwards of \$55 million, and the Project is projected to result in congestion savings to Oklahoma between \$286 million and \$804 million over the next 40 years, as well as inject \$14 million in tax revenue for the state over the next 40 years. The 345 kV lines require an easement width of 150 feet and involve typical pole height of 125 feet. The poles are designed to incorporate a compact footprint, withstand harsh weather conditions, and will incorporate concrete foundations and guyed structures.

NEET has been securing the necessary easements for its Project for several months and is currently in the process of finalizing the last of those transactions. NEET has approached the City of Norman regarding a potential easement on its property located at the NW corner of the intersection of Franklin Road and 12 Avenue NE, as well as a potential lease on the same property to facilitate its construction, but agreements in that regard have not been finalized for City Council consideration.

On April 25, 2023 the City Council considered and approved a Road Use Agreement, which established a two-step framework for setting agreements between NEET and the City regarding use, maintenance and repair of roads affected by NEET's project. On July 7, 2023 the City Council considered and approved three documents: a Transmission Line Easement granted to NEET by the City for the placement of its transmission line on the north boundary of City-owned property located at the northwest corner of Franklin & 12th Ave. NE; and a Compensation Agreement setting forth the terms of the City's compensation for the easement; and a Laydown Yard Lease on the same property, to be utilized for equipment and materials storage by NEET before and during construction of its project. Finally, on August 8, 2023, the City Council approved an amendment to the Road Use Agreement, adding and remove roads from the scope of the agreement.

DISCUSSION:

Since the four agreements referenced above have been finalized, approved, and amended, NEET has been in discussions with the City regarding its proposed use of certain portions of the City's right-of-way. Specifically, NEET proposes several aerial crossing of its transmission lines across the rights-of-way, the construction of several temporary drives within the rights-of-way, and the removal of certain vegetation and growth where its lines will be found, in accordance with its own internal policies and regulations.

City Staff has carefully reviewed all proposals and has drafted an agreement, based closely off of similar City forms and a comparable permit granted by the Oklahoma Department of Transportation for similar allowances, for the City Council's consideration. This agreement provides revocation rights similar to other right-of-way agreements; however in light of the nature of NEET's proposed use of the rights-of-way to further a federal energy project, the language is less discretionary than that found in other private right-of-way agreements, and adds protections where NEET's use has legally preemptive significance to the City's other uses of its rights-of-way.

The agreement includes fees associated with the off-site construction of the temporary drives, contains standards that NEET must satisfy, notices NEET must give the City and its staff, and approvals NEET must obtain prior to construction of its proposed improvements. The agreement, like other right-of-way agreements, also sets expectations for continued use and maintenance of NEET's use of the right-of-way, the City's recourse of NEET should fail to do so, and provisions regarding what occurs if the agreement is termination. The agreement also provides for NEET's provision of insurance and indemnity of the City.

Finally, the agreement addresses the removal of vegetation by NEET in the course of its use of this agreement. City Staff required an audit of the removed vegetation (by type, location and number) and estimated the cost of replacement. Through negotiations included in this agreement, the City and NEET have agreed that NEET will pay \$125,000.00 as damages to this vegetation, in addition to applicable permit fees. These funds are to be placed in an account for the Director of Parks and Recreation to use to plant trees elsewhere within the City.

Based on the amount of right-of-way utilized and the cost of the temporary drive construction, the fee in addition to this damage cost has been set at a one-time total permit fee of \$77,756.95. NEET shall pay this amount by January 1, 2024 or the date it wishes to first use the ROW

agreement, whichever occurs first. Under no circumstances will NEET utilize the rights-of-way before this amount has been paid to the City.

From the total initial permit payment of \$77,756.95, \$2,428.95 is attributable to off-site construction will be receipted into the revenue account for Off-Site Construction Permits (104-323408), and the remaining \$75,328.00 attributable to right-of-way occupation plus the \$125,000 attributable to the damage to and removal of trees and vegetation, a total of \$200,328.00 shall be deposited into Reimbursements-Other City Expense (10-364229) when received.

The \$125,000 attributable to the damage to and removal of trees and vegetation are further recommended to be appropriated from the revenue account to the Minor Equipment and Tools Account (Parks Admin)(10770370-43699).

RECOMMENDATION:

City Staff recommends approval of K-2324-110, a Revocable License and Utility/Crossings Agreement with NextEra Energy Southwest, LLC, in the amount of \$ 202,756.95, and deposits and appropriations as outlined in the staff report.