

Defendant WTMPA was created under the predecessor version of Chapter 163 of the Texas Utilities Code and is comprised of the cities of Brownfield, Floydada, Lubbock, and Tulia (the "Cities"). As a municipal power agency and municipally-owned utility under the Texas Utilities Code, Defendant WTMPA is obligated to provide for the reliable and adequate supply of electric energy for the service, including the economic development, of the Cities.³ Defendant WTMPA currently satisfies its obligations to supply electric energy to the Cities under a wholesale power sales contract with a third party, which contract will expire without the possibility of renewal in 2019.

Extensive renewable energy resources exist in the High Plains region of Texas that Defendant WTMPA serves, including wind, solar, and biomass energy sources. The development of these resources, along with the development of traditional electric generation fuels, including clean coal and natural gas, would provide balanced and reliable sources of electricity for Defendant WTMPA and its member Cities. However, the timeline for developing and constructing electric generation facilities and infrastructure could take many years. Because Defendant WTMPA's wholesale power sales contract will expire without the possibility of renewal in 2019, Defendant WTMPA must ensure that facilities capable of generating electricity to replace the electricity currently provided are built and online in advance of 2019.

To fulfill its obligation to provide electricity to the Cities, Defendant WTMPA has entered into an Agreement with Plaintiff Republic Power to develop, in the High Plains region served by Defendant WTMPA, additional sources of renewable and traditional electric energy generation, together with the required transmission facilities (the "Project"). As permitted by law, excess electric energy not currently required by Defendant WTMPA for its own needs will be sold through off-system sales to others in the State of Texas. While Defendant WTMPA will be the

³ See Amended Power Sales Contract between WTMPA and the Cities at 1 (Apr. 1, 1998), attached to Plaintiff's Motion for Summary Judgment as Exhibit C; see also TEX. UTIL. CODE § 163.012.

initial owner of the Project, Defendant WTMPA has created a local government corporation, Defendant High Plains Diversified Energy Corporation ("High Plains"), to aid in the performance of Defendant WTMPA's rights and responsibilities under the Development Agreement and will assign its powers and duties under the Development Agreement to Defendant High Plains.

Plaintiff Republic Power and Defendant WTMPA have devoted substantial financial resources and efforts in connection with the Development Agreement. As a prerequisite to continued development of the additional energy sources contemplated in the Development Agreement, Defendant WTMPA has required that Plaintiff Republic Power obtain a declaratory judgment confirming Defendants WTMPA's and High Plains' legal authority to participate in the activities contemplated by the Development Agreement. This Court's entry of declaratory relief will resolve the live dispute between the parties and allow them to continue to proceed towards satisfaction of the objectives of and obligations under the Development Agreement.

The Court, after considering the Motion, the response, the legal briefing, and the summary judgment evidentiary record, finds that Plaintiff Republic Power is entitled to summary judgment on all declaratory judgment claims set forth in Plaintiff's Original Petition. It is therefore:

ORDERED, ADJUDGED AND DECREED that Plaintiff Republic Power's Motion is **GRANTED** in all respects. Specifically, this Court finds:

- a. The WTMPA is a municipal power agency, a municipal corporation, and a municipally owned utility.
- b. The WTMPA has the authority to execute the Development Agreement.
- c. The WTMPA has the authority to construct generation facilities in excess of its current system requirements.
- d. The WTMPA is a municipality for purposes of Chapter 431 of the Texas Transportation Code and has the authority to create a local government corporation to carry out the WTMPA's rights and responsibilities under the Development Agreement.

- e. The WTMPA has the authority to assign the Development Agreement to High Plains, and High Plains has the authority to accept the assignment, and to perform under, and be bound by, the terms of the Development Agreement.
- f. High Plains will have all the authority of a non-profit corporation and is empowered to do the following:
 - i. Plan, finance, construct, purchase, own, manage, operate, sell or lease electric generation, including capacity, energy, and transmission.
 - ii. Contract without competitive bidding.
 - iii. Exercise the power of eminent domain in connection with its construction of generation and transmission facilities.
 - iv. Hire employees.
 - v. Finance the construction and development of generation and transmission facilities through issuance of taxable revenue bonds repayable only through the revenues received from the project and secured solely by the project assets.
 - vi. Agree to compensate a private developer by means of a percentage share of the net revenues from the project in lieu of a fixed fee.
 - vii. From time to time, at High Plains' election, distribute to the WTMPA a portion of High Plains' share of net revenues.
 - viii. Make off-system sales into the wholesale power market or through bilateral contracts of any electric energy not required by the WTMPA.
 - ix. Recover cost of transmission either through a separate charge or through a bundled rate for power and transmission.
- g. High Plains is a municipally-owned utility as that term is defined by the Public Utility Regulatory Act⁴ ("PURA") and, consequently:
 - i. High Plains is not required to obtain a certificate of convenience and necessity for construction of power plants or transmission lines.
 - ii. Rates for bundled wholesale power sales and transmission services by the WTMPA/High Plains are not subject to regulation under PURA.
 - iii. High Plains has not elected to enter competition under PURA by virtue of making off-system sales of wholesale power into the Electric Reliability Council of Texas ("ERCOT").
- h. High Plains was properly formed and has authority to issue bonds without seeking a declaratory judgment under Chapter 1205 of the Texas Government Code.

⁴ Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §§ 11.001 - 66.017 (Vernon 2007) (PURA).

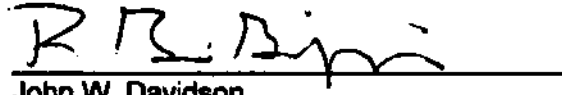
- i. All indebtedness and other obligations incurred by High Plains are not debts, obligations, contingent liabilities, or enterprise liabilities of the WTMPA or of the cities of Brownfield, Floydada, Lubbock and Tulia, Texas.

SIGNED this 21st day of January, 2009.


PRESIDING JUDGE

APPROVED AS TO FORM:


Craig T. Enoch
Attorney for Plaintiff Republic Power Partners, LP


John W. Davidson
R. Gaines Griffin
Attorneys for Defendants West Texas Municipal Power Agency
and High Plains Diversified Energy Corporation

Austin_1555001\2
46629-1 1/20/2009