Resolution No. 77-18

Resolution Concerning Offer of Northwestern Wisconsin Electric Company to Transfer Clam Falls Dam

TO THE HONORABLE SUPERVISORS OF THE COUNTY BOARD OF THE COUNTY OF POLK:

Ladies and Gentlemen:

WHEREAS, the Clam Falls Dam is owed by Northwestern Wisconsin Electric Company (NWE) and under lease to Renewable World Energies, a subsidiary of Harris Energy Group; and

WHEREAS, NWE has offered to transfer ownership and responsibility to the County along with the sum of $700,000, subject to certain terms of the offer, which is attached hereto; and

WHEREAS, NWE has represented that in May 2017 the Wisconsin Department of Natural Resources had assigned a Significant Hazard rating to the dam and that in November 2017, NWE conducted a Spillway Capacity Upgrade Feasibility Study wherein the estimated cost of modifications necessary to be eligible for a Low Hazard rating was between $1,384,000,000 and $1,542,000.00.

WHEREAS, the terms of the proposed transfer would require the County to retain a specific contractor and modify the dam to a lower hazard rating.

WHEREAS, the terms of the proposed transfer would, in the alternative, require the County to return to NWE $325,000 if the County, within 3 years of the transfer, chose to either not enter into a contract with the specified contractor or go with another contractor for modifications to the dam; and

WHEREAS, as required by the provisions of County Finance policy pertaining to the acquisition and management of real property, the Administrator has considered the offer and has made a recommendation to reject the offer.

WHEREAS, the General Government Committee has recommended to reject the offer; and

WHEREAS, upon recommendation of the General Government Committee, the Administrator has met with the Town of Clam Falls Chairperson, the NWE president and the President and CEO of Harris Energy Group to discuss the possibility of joint ownership and responsibility of the dam through an intergovernmental agreement between the County and the Town of Clam Falls; and

WHEREAS, during such discussions, the County and the Town of Clam were informed that NWE could apply to the Wisconsin Department of Natural Resources (WDNR) for a lower spillway capacity or an exemption from the spillway capacity standards, such that the terms of the offer would be significantly altered if NWE made the business decision to submit the application and WDNR approval such application.

NOW, THEREFORE, BE IT RESOLVED, that Polk County Board of Supervisors rejects the offer of Northwestern Wisconsin Electric to transfer the Clam Falls Dam to the County on the proposed terms contained in the offer, attached hereto and incorporated herein.

Offered and Submitted on this 5 day of Oct, 2018.

BY: _____
Brad Olson, Supervisor, District #1

_____
Doug Route, Supervisor, District #2

_____
Dean Johansen, Chair,
Supervisor, District #3,

_____
Chris Nelson, Supervisor, District #4

_____
Tracy LaBlanc, Supervisor, District #5

10/5/18
Brian Masters, Supervisor, District #6

_____
Michael Prichard, Supervisor, District #7

_____
James Edgell, Supervisor, District #8

_____
Kim O'Connell, Supervisor, District #9

_____
Larry Jepsen, Supervisor, District #10

_____
Jay Luke, 1st Vice Chair,
Supervisor, District #11

_____
Michael Larsen, Supervisor, District #12

_____
Russell Arcand, Supervisor, District #13

_____
John Bonneprise, 2nd Vice Chair,
Supervisor, District #14

_____
Joe DeMulling, Supervisor, District #15

Reviewed By County Administrator:

Jeffrey B. Fuge
Interim County Administrator

Fiscal Impact Note: Rejection of the offer avoids all known and unknown costs. Acceptance of the offer presents considerable financial impact. Acceptance of the offer would bind the County to incur or otherwise fund the expenses associated with necessary modifications. Acceptance of the offer creates a contingent liability of $325,000.00. Additionally, acceptance of the offer would subject the County to the compliance standards for maintaining the dam. The costs of future maintenance and management of the dam are unknown. The costs of abandonment of the dam in the future, if determined by the County Board, are also unknown.

Approved as to Form and Execution:

Malia T. Malone, Assistant Corporation Counsel

Legal Impact Note: Rejection of the offer presents no legal impacts. Acceptance of the offer binds the County to the terms of the offer of transfer. Acceptance would present the County with all legal requirements associated with ownership and management of a dam, including those regulations concerning abandonment.

Excerpt of Minutes

At its regular business meeting on the 16th day of October, 2018, the Polk County Board of Supervisors acted upon Resolution No. 77-18: Resolution Concerning Offer of Northwestern Wisconsin Electric Company to Transfer Clam Falls Dam, as follows:

- ☐ Adopted by a majority of the members present by a vote of _____ in favor and _____ against.
- ☒ Adopted by unanimous voice vote.
- ☐ Adopted as amended. See Below.
- ☐ Defeated
- ☐ Other: _____

Insert amendment to resolution according to minutes:

SIGNED BY:

Dean Johansen, County Board Chairperson

ATTEST:

Sharon Jorgenson, County Clerk

CERTIFIED COPY OF POLK COUNTY RESOLUTION

STATE OF WISCONSIN

COUNTY OF POLK

I Sharon E. Jorgenson, Polk County Clerk do hereby certify that the attached hereto and incorporated herein is a full, true and correct copy of Resolution No. 77-18: Resolution Concerning Offer of Northwestern Wisconsin Electric Company to Transfer Clam Falls Dam adopted by the Polk County Board of Supervisors at its regular business meeting held on October 16, 2018

Sharon E. Jorgenson 10/21/18

Sharon E. Jorgenson, Polk County Clerk Date

Northwestern
Wisconsin Electric Company

Phone (715) 463-5371
FAX (715) 463-2765

104 South Pine Street • P.O. Box 9 • Grantsburg, WI 54840-0009

August 2, 2018

Mr. Dean Johansen, Polk County Chair
Polk County Government Center
100 Polk County Plaza
Balsam Lake, WI 54810

Dear Sir,

Enclosed please find an Offer to Transfer Clam Falls Dam whereby Northwestern Wisconsin Electric Company (NWE) is offering to transfer ownership of the Clam Falls dam to you along with the sum of $700,000. NWE's offer is set out in its entirety in the enclosed document and is subject to the terms and conditions in that document.

NWE is making this offer with the same terms to both Polk County and the Town of Clam Falls.

NWE commits to providing as much information as it has available to help in your decision and to helping with the transfer.

I respectfully ask that you consider this offer and respond with a Yes or No vote by the Polk County Board prior to November 1, 2018.

Feel free to contact me with any questions.

Sincerely,

David M. Dahlberg
President

Cc: Jeff Fuge, County Administrator

August 1, 2018

Offer to Transfer Clam Falls Dam

Northwestern Wisconsin Electric (NWE) hereby offers to transfer the Clam Falls Dam, the surrounding dam site and all property thereon (the Dam), on an as-is, where-is basis for no consideration, and to donate an additional sum of Seven Hundred Thousand Dollars ($700,000) in cash to the entity acquiring the Dam.

The transfer will be subject to the approval of the Wisconsin Department of Natural Resources (DNR) and on the execution and consummation of a definitive written agreement for the transfer and related matters.

The donation of cash will be subject to the acquirer retaining Kiser Hydro LLC, as general contractor on a time and materials basis to make modifications to the Dam required to make it eligible for either a Significant or Low hazard rating, as follows: if the acquirer of the dam, within three (3) years of acquiring the Dam, does not enter into a contract with Kiser for repair of the Dam, or contracts with another contractor to do that work, the purchaser shall refund $325,000 to NWE. Kiser's rate schedules are available upon request.

NWE will provide inspection reports and engineering studies they have received for the Dam to interested parties. Neither NWE nor Renewable World Energies LLC (RWE) former tenant of the Dam, make any warranty as to the accuracy, completeness or currency of any such reports or studies.

In their sole discretions, NWE and RWE will cooperate with the acquirer on a best efforts basis with respect to the required DNR approval and any applications for grants the acquirer makes to defray the repair and restoration costs of the dam. Each party will be solely responsible for its own expenses relating to the transfer.

Background

The Dam was built in 1914 and modified around 1953. It has a maximum height of approximately 35 feet and impounds the 127 acre Clam Falls Flowage. A bridge serving Polk County Highway I crosses the flowage just upstream from the Dam.

The Dam was last inspected in November, 2012, and has a current sufficiency rating of Conditionally Fair. Concrete repairs identified in the inspection report have not been completed.

In May, 2017, the DNR assigned a Significant hazard rating to the Dam. The Dam must be modified within five (5) years from that time to safely withstand a five hundred-year flood without over-topping. In November of 2017, Ayres Associates completed a Spillway Capacity Upgrade Feasibility Study which determined that, with modifications and an enhanced emergency action plan, the Dam could be assigned a low hazard rating. The estimated cost of the modifications at that time was between $1,384,000.00 and $1,542,000.00.

The alternative to making the required repairs and modifications to the Dam is to remove the Dam, which would drain the flowage, and remediate the Dam site. The current estimated cost of removal and remediation is approximately $750,000.00.

It is the understanding of NWE that a municipality or other government body acquiring the Dam may be eligible for grants to repair the Dam. NWE further understands that a government body that owns the Dam would have the authority to collect a special one-time levy for repairs to the Dam. NWE makes no warranty as to the availability, terms or amount of grant money or other sources of funding for dam restoration.

If a transferee is not found before November 1, 2018, NWE will most likely begin the process of applying for abandonment and removal of the dam and restoration of the site.