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**PUBLIC POWER GENERATION AGENCY**

**FOURTH SUPPLEMENTAL**

**WHELAN ENERGY CENTER UNIT 2 REVENUE BOND RESOLUTION**

authorizing

Whelan Energy Center Unit 2 Revenue Refunding Bonds

2015 Series B

Adopted June 18, 2015

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WHEREAS, the Public Power Generation Agency (the “Agency”) is authorized, pursuant to the provisions of Sections 13-801 *et seq.*, Reissue Revised Statutes of Nebraska, 1997, as amended, the same being the Interlocal Corporation Act (the “Act”), to issue its revenue bonds for the purposes for which it was created; and

WHEREAS, the Agency was created by the Interlocal Agreement dated as of September 1, 2005, by and among the Members of the Agency for the purpose, among other things, of financing the Project; and

WHEREAS, the Board of Directors of the Agency adopted on January 4, 2007, its Whelan Energy Center Unit 2 General Revenue Bond Resolution (the “General Bond Resolution”) providing for the issuance, pursuant to resolutions supplemental to the General Bond Resolution, of Whelan Energy Center Unit 2 Revenue Bonds (the “Bonds”) to finance Project Costs and to refund outstanding Bonds; and

WHEREAS, pursuant to the Act and the General Bond Resolution as supplemented by the First Supplemental Whelan Energy Center Unit 2 Revenue Bond Resolution adopted by the Board of Directors of the Agency on January 4, 2007 (the “First Supplemental Resolution”), the Agency issued a Series of Bonds – the Public Power Generation Agency Whelan Energy Center Unit 2 Revenue Bonds, 2007 Series A (the “2007 Series A Bonds”) – for the purpose of financing a portion of the Project Costs; and

WHEREAS, Citibank, N.A. (“Citi”) is the beneficial owner of \$23,765,000 of the \$116,755,000 aggregate principal amount of 2007 Series A Bonds maturing on January 1, 2037, and \$76,235,000 of the \$115,235,000 aggregate principal amount of 2007 Series A Bonds maturing on January 1, 2041 (such 2007 Series A Bonds of which Citi is the beneficial owner, collectively, the “Citi-owned 2007 Series A Bonds”) bearing interest at 5.00% and subject to optional redemption by the Agency on and after January 1, 2017, and wishes to tender for cancellation the Citi-owned 2007 Series A Bonds in exchange for other Bonds of like maturity but bearing interest at a lower rate of interest and subject to optional redemption by the Agency on and after January 1, 2025 (the “Exchange”); and

WHEREAS, the Board of Directors of the Agency hereby determines that it is advantageous and in the best interests of the Agency to issue, pursuant to and in accordance with the Act and the General Bond Resolution, a Series of Refunding Bonds to refund and exchange for the tendered Citi-owned 2007 Series A Bonds.

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the Public Power Generation Agency, as follows:

## ARTICLE I

### DEFINITIONS AND STATUTORY AUTHORITY

**Section 1.01. Supplemental Resolution; Authority.** This Fourth Supplemental Whelan Energy Center Unit 2 Revenue Bond Resolution (the "Fourth Supplemental Resolution") is supplemental to, and is adopted in accordance with Article II and Article X of, the General Bond Resolution, and is adopted pursuant to the provisions of the Act.

#### **Section 1.02. Definitions.**

(a) All terms which are defined in Section 1.01 of the General Bond Resolution shall have the same meanings for purposes of this Fourth Supplemental Resolution, including the preambles hereto, unless otherwise defined herein.

(b) In this Fourth Supplemental Resolution:

*"Bond Counsel"* shall mean the counsel retained by the Agency for the purpose of rendering advice to the Agency with respect to the validity of, and if applicable the exclusion from gross income for Federal income taxation purposes of the interest on, the 2015 Series B Bonds.

*"Certificate of Determination"* shall mean a certificate or certificates of an Authorized Officer of the Agency delivered pursuant to Section 2.03 of this Fourth Supplemental Resolution, setting forth certain terms and provisions of the 2015 Series B Bonds, as such certificate(s) may be amended and supplemented.

*"Debt Service"* for any period shall mean, as of any date of calculation and with respect to the Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds, an amount equal to the sum of (i) the interest accruing during such period on the Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds, and (ii) that portion of each Principal Installment for the Outstanding 2007 Series A Bonds and 2015 Series B Bonds which would accrue during such period if such Principal Installment were deemed to accrue daily in equal amounts from the next preceding Principal Installment due date for the Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds (or, with respect to the 2015 Series B Bonds, from the date of issuance of the 2015 Series B Bonds, whichever date is later). Such interest and Principal Installments for the Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds shall be calculated on the assumption that no Outstanding 2007 Series A Bonds, 2015 Series A Bonds or 2015 Series B Bonds Outstanding at the date of calculation will cease to be Outstanding except by reason of the payment of each Principal Installment on the due date thereof.

*"Debt Service Reserve Account"* shall mean, for purposes of this Fourth Supplemental Resolution, the 2007 Series A Bonds Debt Service Reserve Account created in the Bond Fund by Section 3.01 of the First Supplemental Resolution.

*"Debt Service Reserve Account Requirement"* shall, for purposes of this Fourth Supplemental Resolution, have the meaning given to that term in the First Supplemental

Resolution, after giving effect to Section 3.03(f) thereof and Section 3.01 hereof, as follows: “Debt Service Reserve Account Requirement” shall mean, as of any date of calculation, an amount equal to the lesser of (i) the maximum aggregate Debt Service in any Fiscal Year thereafter (or for the balance of the then current Fiscal Year) on all Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds then Outstanding or (ii) the least of (A) 10% of the aggregate principal amount of Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds upon original issuance, or, in the event of more than a de minimis amount of original issue discount or premium, 10% of the issue price (net of pre-issuance accrued interest) of the Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds upon original issuance (determined based on Code principles), (B) as of the original issuance of the Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds, the maximum aggregate Debt Service in any Fiscal Year (including the then current Fiscal Year) on all Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds originally issued, or (C) as of the original issuance of the Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds, 125% of the average of the Debt Service during any Fiscal Year (including the then current Fiscal Year) on all Outstanding 2007 Series A Bonds, 2015 Series A Bonds and 2015 Series B Bonds originally issued.

“*Defaulted Interest*” shall have the meaning specified in Section 2.05 hereof.

“*DTC*” shall mean The Depository Trust Company, New York, New York, or its successors.

“*Exchange*” shall have the meaning specified in the preambles hereto.

“*First Supplemental Resolution*” shall have the meaning set forth in the preambles hereto.

“*Person*” shall mean any individual, corporation, partnership, limited partnership, joint venture, association, joint-stock company, trust, unincorporated association, limited liability corporation or partnership, or governmental entity or any agency or subdivision thereof, or other legal entity or group of entities.

“*Rebate Account*” shall mean, for purposes of this Fourth Supplemental Resolution, the 2015 Series B Bonds Rebate Account created in the Revenue Fund by Section 2.09 hereof.

“*Record Date*” shall mean a Regular Record Date or a Special Record Date, as appropriate.

“*Regular Record Date*” shall mean the 15<sup>th</sup> day (whether or not a Business Day) of the calendar month next preceding each Interest Payment Date.

“*Securities Depository*” shall mean DTC or its successors.

“*Special Record Date*” shall have the meaning set forth in Section 2.05 hereof.

*“Tender and Purchase Agreement”* shall mean the Tender and Purchase Agreement authorized by Section 4.01 hereof to provide for the Exchange.

*“Third Supplemental Resolution”* shall mean the Third Supplemental Whelan Energy Center Unit 2 Revenue Bond Resolution adopted by the Board of Directors of the Agency on March 23, 2015, including as a part thereof the Certificate of Determination dated May 28, 2015, authorized thereby.

*“2007 Series A Bonds”* shall have the meaning set forth in the preambles hereto.

*“2015 Series A Bonds”* shall mean the Whelan Energy Center Unit 2 Revenue Refunding Bonds, 2015 Series A, authorized to be issued pursuant to the General Bond Resolution and the Third Supplemental Resolution.

*“2015 Series B Bonds”* shall mean the Bonds authorized to be issued pursuant to Section 2.01 hereof.

## ARTICLE II

### AUTHORIZATION OF BONDS

**Section 2.01. Principal Amount, Designation, Series and Interest Bearing.** Pursuant to the provisions of the General Bond Resolution, a Series of Bonds entitled to the benefit, protection and security of such provisions is hereby authorized in an aggregate principal amount not to exceed \$110,000,000. Such Bonds shall be designated and shall be distinguished from the Bonds of all other Series by the title “Whelan Energy Center Unit 2 Revenue Refunding Bonds, 2015 Series B”. Such Bonds shall be issued as Interest Bearing Bonds.

**Section 2.02. Purpose.** The 2015 Series B Bonds shall be issued for the purpose of refunding the Citi-owned 2007 Series A Bonds pursuant to the Exchange. Series 2015 Series B Bonds shall not bear interest at a rate per annum in excess of percent (5%) or be subject to optional redemption prior to January 1, 2017.

**Section 2.03. Delegation of Authority.** There is hereby delegated to any Authorized Officer of the Agency, subject to the limitations contained herein, the power to determine (i) the interest rate or rates of the 2015 Series B Bonds subject to the conditions of Section 2.02 hereof, (ii) the definitive form of the 2015 Series B Bonds, assignment and Trustee’s certificate of authentication thereon; (iii) an allocation of Sinking Fund Installments pursuant to Section 5.07(f) of the General Bond Resolution; and (iv) any other provisions deemed advisable by an Authorized Officer of the Agency not materially contrary to or inconsistent with the provisions of this Fourth Supplemental Resolution or of the General Bond Resolution.

An Authorized Officer of the Agency shall execute one or more certificates evidencing determinations or other actions taken pursuant to the authority granted herein, an executed copy of which shall be delivered to the Trustee. Each such certificate shall be deemed a Certificate of Determination and shall be conclusive evidence of the action or determination of

such officer as to the matters stated therein. The provisions of each Certificate of Determination shall be deemed to be incorporated in Article II hereof.

#### **Section 2.04. Trustee and Paying Agent; Place of Payment.**

(a) Wells Fargo Bank, N.A., heretofore has been appointed the Trustee under the Resolution, which appointment is hereby confirmed.

(b) The Agency hereby appoints the Trustee as the initial Paying Agent for the 2015 Series B Bonds, and reserves the right to appoint any other or additional Paying Agents as permitted by the General Bond Resolution. Except as provided in Section 3.08 of the General Bond Resolution, the principal and Redemption Price of the 2015 Series B Bonds shall be payable at the principal corporate trust office of the Paying Agent. The interest on 2015 Series B Bonds shall be paid by check payable to the Holder and mailed by first class mail, postage prepaid, to the address of such Person as it shall appear on the books of the Agency kept at the office of the Bond Registrar, except as may be provided otherwise for 2015 Series B Bonds held in a book-entry only system.

(c) Notwithstanding Sections 2.04(b) and 2.05 hereof, a Holder of \$1,000,000 or more in aggregate principal amount of 2015 Series B Bonds of a Series, upon the written request of such Holder to the Trustee received on or prior to a Record Date, specifying the account or accounts to which such payment shall be made, payment of interest when due shall be made by wire transfer of immediately available funds. Any such direction or request shall remain in effect until revoked or revised by such Holder by an instrument in writing delivered to the Trustee.

**Section 2.05. Payment of Interest on 2015 Series B Bonds; Interest Rights Preserved.** Interest on any 2015 Series B Bonds, which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that 2015 Series B Bond is registered at the close of business on the Regular Record Date.

Any interest on any 2015 Series B Bond which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date ("Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such owner, and such Defaulted Interest shall be paid by the Agency to the Persons in whose names the 2015 Series B Bonds are registered at the close of business on a date (the "Special Record Date") for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Agency shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each 2015 Series B Bond and the date of the proposed payment, and at the same time the Agency shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this subsection provided. Thereupon, the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment notice of the proposed payment. The Trustee shall promptly notify the Agency of such Special Record Date and, in the name and at



the expense of the Agency, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each 2015 Series B Bondholder at such 2015 Series B Bondholder's address as it appears in the books of registry kept by the Bond Registrar, not less than 10 days prior to such Special Record Date.

Subject to the foregoing provisions of this Section, each 2015 Series B Bond delivered under the General Bond Resolution upon transfer of or in exchange for or in lieu of any other 2015 Series B Bond shall carry the rights to interest accrued and unpaid, and to accrue, which were carried by such other 2015 Series B Bond.

**Section 2.06. Regulations With Respect to Exchanges and Transfers.** In all cases in which the privilege of exchanging 2015 Series B Bonds or transferring registered 2015 Series B Bonds is exercised, the Agency shall execute and the Trustee shall authenticate and deliver 2015 Series B Bonds, in accordance with the provisions of the General Bond Resolution. Upon the transfer of any 2015 Series B Bond, the Agency shall issue in the name of the transferee a new 2015 Series B Bond or Bonds of the same aggregate principal amount, interest rate and maturity as the surrendered 2015 Series B Bond. All 2015 Series B Bonds surrendered in any such exchanges or transfers shall forthwith be delivered to the Trustee and canceled or retained by the Trustee. For every such exchange or transfer of 2015 Series B Bonds, the Agency or the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange, transfer or registration.

Neither the Agency nor the Bond Registrar shall be required to transfer or exchange any 2015 Series B Bonds (i) during the period from and including any Regular Record Date to and including the next succeeding Interest Payment Date for the 2015 Series B Bonds, (ii) during the period from and including the day 15 days prior to any Special Record Date to and including the date of the proposed payment pertaining thereto; (iii) during the period from and including the day 15 days prior to the mailing of notice calling any 2015 Series B Bonds for redemption or for purchase in lieu of redemption to and including the date of such mailing; or (iv) any time following the mailing of notice of redemption or of purchase in lieu of redemption.

**Section 2.07. Offices for Servicing Bonds.** The Agency hereby appoints the Trustee as the Bond Registrar to maintain an agency for the registration, transfer or exchange of 2015 Series B Bonds and for the service upon the Agency of notices, demands and other documents, and the Trustee shall continuously maintain or make arrangements to provide such services.

**Section 2.08. Book-Entry Only.** The 2015 Series B Bonds initially shall be registered in the name of Cede & Co., as nominee of DTC. DTC is hereby designated the initial securities depository for the 2015 Series B Bonds. So long as the Securities Depository or its nominee is the Holder of 2015 Series B Bonds, individual purchases of beneficial ownership interests in such 2015 Series B Bonds may be made only in book-entry form by or through participants of the Securities Depository, and purchasers of such beneficial ownership interests in such 2015 Series B Bonds will not receive physical delivery of 2015 Series B Bond certificates representing the beneficial ownership interest purchased.



Unless the Agency agrees otherwise, so long as the Securities Depository or its nominee is the Holder of 2015 Series B Bonds, (i) payments of principal of and redemption premium, if any, and interest on such 2015 Series B Bonds will be made by the Agency by wire transfer to the Securities Depository or its nominee, and (ii) the Agency shall send notice of redemption of any such 2015 Series B Bonds and any other notice required to be given pursuant to the Resolution, to the Securities Depository in a secure fashion (i.e., legible facsimile transmission, registered or certified mail, or overnight delivery service) in a timely manner designed to ensure that such notice is in the possession of the Securities Depository no later than the close of business on the Business Day before such notice otherwise is required to be given.

Notwithstanding anything in this Fourth Supplemental Resolution to the contrary, so long as the Securities Depository or its nominee is the Holder of 2015 Series B Bonds, notice of redemption may be given in the manner, and presentation and surrender of such 2015 Series B Bonds may be waived to the extent, agreed to by the Agency, the Trustee and the Securities Depository. Any failure of the Securities Depository or participant thereof to notify a beneficial owner of a Bond of any redemption shall not affect the sufficiency or the validity of the redemption of such 2015 Series B Bond.

Notwithstanding anything in this Fourth Supplemental Resolution to the contrary, for so long as the Securities Depository or its nominee is the Holder of 2015 Series B Bonds, payment of principal and sinking fund installments, if any, of and redemption premium, if any, and interest on such 2015 Series B Bonds may be made in any manner agreed to by the Agency, the Trustee and the Securities Depository.

The Agency shall have no responsibility for transmitting payments to, communicating with, notifying, or otherwise dealing with any beneficial owners of the 2015 Series B Bonds or nominees thereof.

The Agency shall issue or caused to be issued 2015 Series B Bond certificates directly to beneficial owners of the 2015 Series B Bonds or to the Securities Depository, as specified by procedures of the Securities Depository, but only in the event that (i) the Securities Depository determines to discontinue providing its services with respect to such 2015 Series B Bonds at any time by giving reasonable notice to the Agency or (ii) the Agency determines, subject to procedures of the Securities Depository, to discontinue use of the Securities Depository.

**Section 2.09. Tax Covenants; Rebate Account.** The Agency covenants that it shall comply with the applicable provisions of the Code relating to the exclusion of the interest paid by the Agency on such 2015 Series B Bonds from gross income for Federal income taxation purposes. In furtherance of the foregoing covenant:

(i) The Agency shall not take or permit to be taken any action or actions with respect to the application and investment of any proceeds of such 2015 Series B Bonds or any other funds of the Agency from whatever source derived, or the use, ownership or management of the Project or any portion thereof, which would cause any such 2015 Series B Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code or “private activity bonds” within the meaning of Section 141 of the Code.

(ii) The Agency shall comply with the Tax Agreement executed and delivered by it and the letter of instructions, if any, delivered by Bond Counsel, in connection with the issuance of such 2015 Series B Bonds as to compliance with applicable provisions of the Code, as such Tax Agreement and letter may be amended from time to time, as a source of guidance for achieving compliance with the Code, including, without limitation, timely payments of all rebate or other amounts to the United States Department of the Treasury under Section 148 of the Code.

(iii) The Agency shall cause, to the best of its ability and to the extent permitted by the Participation Agreement and applicable law, each Member to comply with the tax agreement executed and delivered by such Member and the letter of instructions, if any, delivered by Bond Counsel, in connection with the issuance of such 2015 Series B Bonds as to compliance with applicable provisions of the Code, as such tax agreement and letter may be amended from time to time, as a source of guidance for achieving compliance with the Code.

There is hereby created and established pursuant to Section 5.04(b) of the General Bond Resolution a "2015 Series B Bonds Rebate Account" (the Rebate Account) in the Revenue Fund for the purposes set forth in such Section 5.04(b) with respect to such 2015 Series B Bonds. The Agency shall deposit moneys in the Rebate Account or withdraw moneys from the Rebate Account and otherwise administer the Rebate Account in compliance with the Tax Agreement executed and delivered by the Agency in connection with the issuance of such 2015 Series B Bonds.

### ARTICLE III

#### DEBT SERVICE RESERVE ACCOUNT

**Section 3.01. Debt Service Reserve Account.** The Agency hereby elects, pursuant to Section 3.03(f) of the First Supplemental Resolution, that the Debt Service Reserve Account shall apply to the 2015 Series B Bonds immediately following the refunding of the Citi-owned 2007 Series A Bonds by the 2015 Series B Bonds. As a result, references in the First Supplemental Resolution to the 2007 Series A Bonds in the definitions of Debt Service and Debt Service Reserve Account Requirement in Section 1.02 thereof and in Section 3.03 thereof shall be deemed to refer to the 2007 Series A Bonds, the 2015 Series B Bonds and, pursuant to the Third Supplemental Resolution, the 2015 Series A Bonds remaining Outstanding following such refunding, in the aggregate.

**Section 3.02. Deposit to Debt Service Reserve Account.** There shall be deposited in the Debt Service Reserve Account, simultaneously with the issuance of the 2015 Series B Bonds, moneys and/or Investment Securities, but only if and to the extent required for the aggregate amount and value of Investment Securities on deposit in the Debt Service Reserve Account to be equal to the Debt Service Reserve Account Requirement.

## **ARTICLE IV**

### **TENDER AND PURCHASE**

**Section 4.01. Authorization of Tender and Purchase Agreement.** A Tender and Purchase Agreement between the Agency and the Trustee is hereby authorized and approved in substantially the form of the draft of Tender and Purchase Agreement presented at this meeting, subject to and with such changes therein as an Authorized Officer of the Agency may approve as necessary or desirable, such approval to be conclusively evidenced by the execution and delivery thereof. Any Authorized Officer of the Agency is hereby authorized to execute the Tender and Purchase Agreement, with such changes therein as such Authorized Officer of the Agency may approve as aforesaid, and to deliver the same to the other party thereto.

## **ARTICLE V**

### **EFFECTIVE DATE**

**Section 5.01. Effective Date.** This Fourth Supplemental Resolution shall take effect immediately upon the filing with the Trustee of (i) a copy of this Fourth Supplemental Resolution, certified by an Authorized Officer of the Agency, and (ii) the Opinion of Counsel required by Section 10.04(b) of the General Bond Resolution with respect to this Fourth Supplemental Resolution.

Adopted this 18th day of June, 2015.