

## FOR BOARD ACTION

Agenda Item # 6

Meeting Date: 8/30/11

**SUBJECT:**

Approval of Revisions to the IBM Electric Service Agreement

**PREPARED BY:**

Mark Kotschevar, Director of Core Services

ITEM DESCRIPTION:

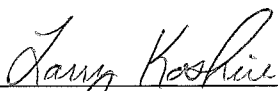
For the past six months RPU staff has been in discussions with IBM about the possibility of using the existing IBM substation to provide 13.8 kV service to the expanding Mayo Support Center Campus along West Circle Dr. NW. The existing Electric Service Agreement needed to be modified to allow for non-IBM load to be served from the 13.8 kV bus at the substation. Discussions have culminated in the attached revised agreement that provides for 2 - 13.8 kV underground feeders to be fed from new switchgear at the substation. The agreement preserves IBM's access to the existing redundant capacity while allowing Mayo to initially use 5 MVA of the substation's excess capacity. The agreement also calls for annual meetings for the purpose of forecasting future substation loads and planning for capacity changes. All other parts of the existing agreement remain unchanged. In order to meet Mayo's tight construction schedule staff is requesting the Board approve the revised agreement and then it will be forwarded on to IBM for their review and signature. Staff will be available at the Board meeting to answer any questions.

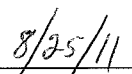
FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not Applicable

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Utility Board approve the revised IBM Electric Service Agreement, and request the Mayor and City Clerk to execute the agreement.

  
\_\_\_\_\_  
General Manager

  
\_\_\_\_\_  
Date

ELECTRIC SERVICE AGREEMENT

This is an agreement by and between the City of Rochester, a Minnesota municipal corporation, hereinafter called "City," and International Business Machines Corporation, a New York corporation with a facility located in Rochester, Minnesota, hereinafter called "IBM."

WHEREAS, City owns, maintains, and operates a municipal electric utility for the purpose of supplying electrical power to retail customers in an area in which IBM's manufacturing facility is located; and

WHEREAS, IBM wishes to purchase electrical power from City;

NOW, THEREFORE, the parties agree to the following terms and conditions:

1 ELECTRIC SERVICE

1 Tariffs

IBM will purchase electrical power from City under tariffs now in effect, presently designated "Large Industrial Service" effective January 1, 2009, and attached hereto as Exhibit A, or as such tariff may be from time to time amended by City. IBM understands such tariff includes a purchased power adjustment clause which may be increased or decreased at any time by City.

2 Metering

Power will be metered on each 13.8 kV circuit and totalized into one set of recording watt and var meters for billing purposes. City will provide such meters in any building within any substation constructed on IBM's premises.

3 Demand

City will provide demand capacity and electrical power on a firm basis. IBM will provide City annually with its projected power requirements, and City will include such requirements in its power resource planning.

4 Billings

City will bill IBM monthly. IBM will pay City in accordance with the due date provisions of City's bills.

2 TERM AND TERMINATION

This Agreement will continue in effect for one-year periods until either party notifies the other in writing twelve (12) months prior to the anniversary date of this Agreement (December 31 of any year) of its intent to terminate this Agreement or subject to earlier termination as provided for in Section 6 below.

Notice shall be effective upon deposit of such notice in the US Mail as certified mail addressed to the other party, and such termination will be effective as of the anniversary date of this Agreement of the next succeeding year.

3 SUBSTATION(S) AND TRANSMISSION LINE FACILITIES

Any electric distribution or transmission lines and substation(s) that City may construct on IBM's premises will be maintained by City. The arrangement of any newly constructed modifications to the existing substation on IBM's premises will be shown in Exhibit B attached hereto. In the event of such construction, City will restore the surface of IBM's land in a manner equivalent to its former condition including any improvements made under this Agreement. IBM will retain rights to use the easement areas provided such use does not interfere with the rights herein granted. IBM and City will share in the cost of any such work. The cost to be negotiated by the parties.

City will provide IBM with redundant or backup electrical supply whereby two (2) sources will be capable of supplying the total electrical power requirements of the IBM load. IBM has and will reimburse City for actual costs incurred for such facilities beyond those required for a single source. IBM retains access to the full capacity of the existing, redundant 37.5 MVA substation during the life of the existing transformers.

4 EASEMENTS OR RIGHT-OF-WAYS

City will designate easements or right-of-ways as may be required to accommodate its facilities that may be installed on IBM's premises. IBM will grant to City easements or right-of-ways for any construction, operation, and maintenance of electrical transmission lines to interconnect any substation with existing lines. Such easements or right-of-ways will be provided to City at no cost. IBM agrees to keep such easements or right-of-ways clear of obstructions and accessible for 25 feet on either side of the centerline of such easements or right-of-ways.

5 DISTRIBUTION CIRCUIT EQUIPMENT FOR OTHERS

City may install distribution circuit equipment in any substation(s) and circuit line exit(s) away from IBM's premises for the purpose of serving other electrical loads. Such equipment will be (a) separately connected to a 161 kV bus, will not limit the electrical capability of the facilities installed to serve IBM loads, and be electrically protected from facilities needed to serve IBM loads so that disturbances on such circuits will not affect the continuity of service to IBM or (b) two redundant circuits connected to the existing substation's 13.8 kV buses for the purpose of providing service to the Mayo Support Center Campus along West Circle Drive NW, given these circuits are separately connected to the 13.8 kV bus and electrically protected from the circuits serving IBM loads so that disturbances on such circuits will not affect the continuity of service to IBM. Capacity from this substation to serve Mayo Support Center Campus load will be initially limited to 5 MVA.

The project design and construction schedule of any new distribution or transmission equipment or circuits will be mutually agreed upon.

The City agrees to route any new circuits either overhead or underground in concrete capped duct bank along easements or rights-of-way of any 161 kV transmission line across IBM's property or across such other easements or rights-of-way as may be mutually agreed upon by the parties in the future.

If new circuits serving the Mayo Support Center Campus are connected to the 13.8 kV bus in the substation serving IBM, then the City will facilitate annual reviews of existing and projected electrical loads on the substation for the purpose of developing a forecast of potential need for substation capacity changes. The City will meet with IBM and Mayo to review the forecast and the City will propose possible changes or improvements to load balancing.

Any future costs associated with changes in the equipment providing a redundant power source will be shared in an equitable manner between the parties taking power from the substation based on existing and projected loads.

6 GENERATION OF ELECTRICAL POWER BY IBM

If IBM, at its option, begins to generate some or all of its electrical power needs, this Agreement shall terminate. IBM will give a minimum of twelve (12) months' written notice to City of its intent to generate such power.

7 NOTICES AND COMMUNICATIONS

All notices and communications between the parties concerning this Agreement, if given to City, will be in writing and sent by first class mail to:

City of Rochester  
Attention General Manager  
Public Utility Department  
4000 East River Road NE  
Rochester, MN 55904-2813

And, if given to IBM, will be in writing and sent by first class mail to:

IBM Corporation  
Attention Facilities Services Manager  
3605 Highway 52 North  
Rochester, MN 55901

For the purpose of this Agreement, a "notice" is deemed given upon receipt by the addressee.

Either party may change the above department or address by notifying the other party in the same manner as any other notice.

8 FORCE MAJEURE

City will use all reasonable care to provide continuous electrical service as herein provided and if City is prevented from delivering such service, wholly or in part, due to fire, accident, explosion, flood, strike, act of nature, or other causes, it shall diligently do whatever may be necessary to put its operation to work again and to supply electric service as herein provided. City will not be liable for any damage or loss resulting from interruptions, deficiencies, or imperfections of service due to such causes nor shall the same be considered a breach of this Agreement.

9 GOVERNING LAW

This Agreement shall be construed and the legal relations created herein between the parties shall be determined in accordance with the substantive laws of the State of Minnesota which pertain to agreements executed in, and fully performed within, the State of Minnesota. Any proceeding to enforce, or to resolve disputes arising under or relating to, this Agreement shall be brought before a court of competent jurisdiction in the State of Minnesota including a Federal District Court sitting within such State. The parties hereby expressly waive any right to a jury trial and agree that any proceeding hereunder shall be tried by a judge without a jury.

10 AMENDMENTS OR CHANGES

Except as provided for in Section 7 above, this Agreement may not be changed or amended except by a written agreement between the parties.

11 GENERAL

This Agreement shall be executed in two (2) copies, any of which shall be deemed to be an original.

12 HEADINGS

The headings of the subsections or sections of this Agreement are for convenience only and are not a part of this Agreement. They do not in any way limit or amplify the terms and provisions of this Agreement.

13 SEVERABILITY

If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions of this Agreement shall in no way be affected or impaired thereby.

14 SOLE AGREEMENT

A This Agreement, together with Exhibits A and B, is the entire agreement on this subject between the parties. This Agreement supersedes all previous written or oral agreements on this subject between the parties or any of their officials or representatives.

B It is expressly understood that IBM has made no inducement to City to enter into this Agreement other than the terms of this Agreement.

If the foregoing is in accordance with your understanding, please have an authorized person indicate your agreement by signing, dating, and returning one copy of this Agreement to Contract Administration, Department 396, IBM Corporation, Highway 52 and 37<sup>th</sup> Street Northwest, Rochester, MN 55901, keeping the other copies for your files.

INTERNATIONAL BUSINESS  
MACHINES CORPORATION

CITY OF ROCHESTER

By \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Attachments: Exhibit A – 2011 Large Industrial Service Tariff

Exhibit B - One line diagram of Typical IBM Substation

# EXHIBIT A

## ROCHESTER PUBLIC UTILITIES

### LARGE INDUSTRIALS SERVICE TARIFF

**ROCHESTER PUBLIC UTILITIES  
(RPU)**

**RATE SCHEDULE LIS**

### LARGE INDUSTRIAL SERVICE

**AVAILABILITY:**

At all locations for loads with measured demands in excess of 10,000 kW for three or more billing periods in a given calendar year, and where facilities of adequate capacity and voltage are adjacent to the premises to be served. For loads where the service desired by the customer is not adjacent to the premises to be served, contract arrangements may be required prior to service being furnished.

**APPLICATION:**

To industrial customers with all service taken at one point and measured through one meter or meter totalizer. Not applicable to stand-by service.

**CHARACTER OF SERVICE:**

Three phase 60 Hertz alternating current at 13,800 GRDY/7970 volts.

**RATE:**

Demand Charge:	\$17.583 per kW
Energy Charge:	4.746¢ per kWh

**POWER SUPPLY ADJUSTMENT:**

Bills computed under this rate schedule are subject to adjustment in accordance with the Power Supply Adjustment (PSA).

**POWER FACTOR ADJUSTMENT:**

The customer agrees to maintain an average power factor of 0.95 or greater for the billing period and to prevent a leading power factor. If the customer's average power factor is less than 0.95 for the billing period, the billing demand will be determined by multiplying the measured demand by 0.95 and dividing the results by the customer's average power factor. The average power factor is defined to be the quotient obtained by dividing the kWh used during the month by the square root of the sum of the squares of the kWh used and the lagging reactive kilovoltampere-hours supplied during the same period. The customer's average power factor will be determined by means of permanently installed meters.

**DETERMINATION OF DEMAND:**

Measured demand is defined as the maximum rate at which energy is used for any period of fifteen consecutive minutes during the billing period. The billing demand shall be the greater of the measured demand for the billing period adjusted for power factor, or 75% of the maximum measured demand for the most current June - September billing periods adjusted for power factor. Billing periods may not coincide with calendar months.

**MINIMUM BILL:**

The minimum bill shall not be less than the billing demand, as provided above, whether or not energy is used.

**PAYMENT:**

Payments are due on or before the due date.

**CONDITIONS OF DELIVERY:**

1. Service furnished under this rate schedule is subject to applicable provisions of RPU's published Electric Service Rules and Regulations.
2. Unless authorized by separate written agreement, stand-by electric generating equipment installed by the customer shall not be interconnected or operated in parallel with the RPU system: Customer shall own, install, operate, and maintain electrical interlocking equipment which will prevent parallel operation, and such equipment shall be approved by RPU prior to installation.
3. RPU shall not be liable for any damage or loss sustained by customer resulting from interruptions, deficiencies or imperfections of service provided under this rate.
4. Energy furnished under this rate shall not be resold.
5. Customer agrees to manage its utilization equipment so as not to unbalance the current per phase by more than 10%.
6. RPU may require a separate electric service agreement for service under this rate schedule.

Approved by Rochester Public Utility Board: December 12, 2008

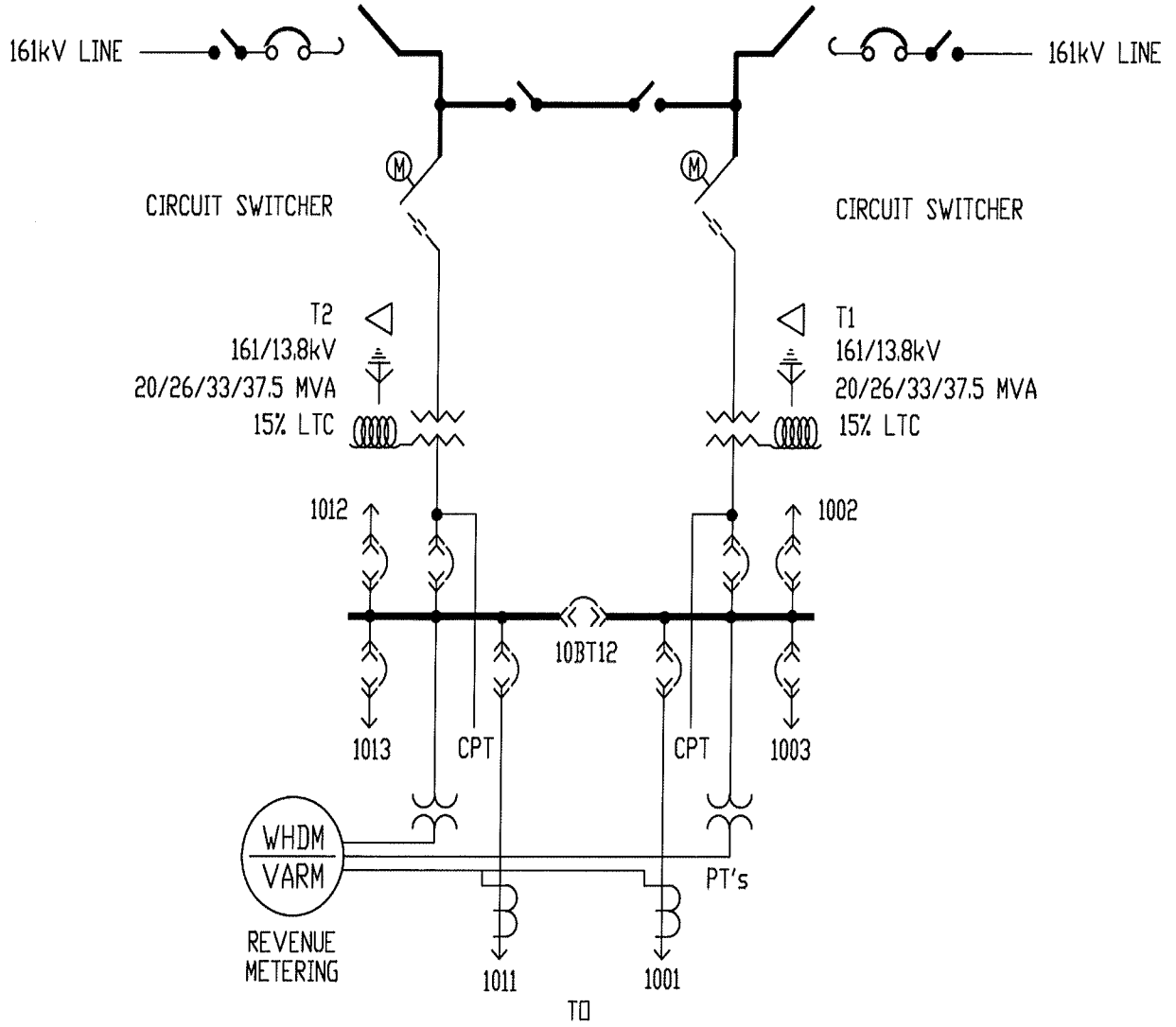
Effective Date: January 1, 2009



# EXHIBIT B

## ROCHESTER PUBLIC UTILITIES

### ONE LINE DIAGRAM OF TYPICAL IBM SUBSTATION





## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the revised IBM Electric Service Agreement, and to request that the Mayor and the City Clerk execute the Agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 30<sup>th</sup> day of August, 2011.

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President

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Secretary