

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

2/28/12

SUBJECT:

CapX Project Development Agreement (PDA) Amendment

PREPARED BY:

Randy Anderton, Manager of Engineering

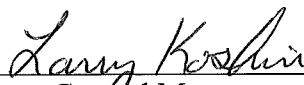
ITEM DESCRIPTION:

In 2007, The RPU Board requested the Council approve the CapX Project Development Agreement (PDA) and Mayor and Clerk authorized (see attachments). The PDA approved funding of \$20 million to get the CapX La Crosse project through the permitting or development phases. Of the \$20 million, RPU has been responsible for 9%, or \$1.8 million. It is projected that the La Crosse project will reach the \$20 million authorized cap sometime in 2012.

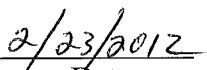
The authorization for funding the construction of the entire LaCrosse project will be accomplished, at the project closing later in 2012, by the signing of the Project Participation Agreement (PPA) and the Construction Management Agreement (CMA). Currently the project is awaiting receipt of Minnesota, Wisconsin and federal permits before actual physical construction can take place.

The CapX LaCrosse Project Management Committee has proposed the approval of an amendment to the PDA which would authorize funding for preconstruction type activities such as engineering, right-of-way work, and other items shown on Schedule 1 of the proposed amendment. On February 8, 2012, the Administrative Law Judge submitted their recommendations to the MN PUC in regards to the routes for the Minnesota portion of the LaCrosse CapX project. It is anticipated that the MN PUC may issue its final ruling on the route in April, 2012. Now that the Administrative Law Judge has issued her recommendation to the MN PUC, the CapX LaCrosse Management Committee and RPU staff believes that it is now prudent to pursue some the engineering, preliminary right-of-way activities, and other activities shown in Schedule 1. Actual right-of-way acquisition will not happen until the MN PUC gives its final ruling on the route, and physical construction still cannot take place prior to receipt of the federal approvals.

By amending the PDA, this will allow the project to continue in a forward direction instead of pausing while waiting for all permits to be in hand. The first phase of the LaCrosse project is, and has always been, the construction of the North Rochester substation, the expansion of the Northern Hills substation, and the construction of the 161kV transmission line between these two substations. Once this new 161kV CapX line is in service, RPU's transmission reliability will be greatly increased since RPU will have an additional transmission interconnection to the bulk electric grid. Due to this fact, it is in RPU's best interest for this line to be completed as soon as possible. Amending the PDA will allow the project to continue without having to wait an additional 7 to 12 months before the final closing and signing of the project agreements. Some of the environmental survey work has to be conducted in the April to June time period.



General Manager



Date

ROCHESTER PUBLIC UTILITIES

FOR BOARD ACTION

Agenda Item # 6

Meeting Date:

2/28/12

The CapX LaCrosse Project Management Committee is seeking the approval for up to an additional \$22 million (of which RPU is responsible for 9%, or \$1.98 million) to be used for these preconstruction activities listed in Schedule 1. If RPU/City approves the amendment to the PDA, but does not sign the PPA later in 2012, any funds that RPU spends towards the PDA amendment will be refunded back to RPU. The CapX LaCrosse Management Committee will determine how much of the \$22 million will be necessary to spend prior to the project closing later in 2012.

The version of the CapX PDA Amendment, as it was submitted with the Board packet, is not in its final form. Additional language will be added to address "wind down" provisions. This additional language will address what happens in the event that the project is cancelled or discontinued. Basically this language will indicate that any future expenditures, if a wind down happens, will be cancelled or minimized and the parties will not be eligible for any reimbursement provisions.

When the PPA and CMA are signed later in 2012, the \$22 million PDA Amendment funds will be transferred to the Construction Management Agreement (CMA) and become an official capital or construction cost. The PDA development cost cap will still remain at the original \$20 million.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Staff anticipated the need for additional funds for a PDA Amendment in 2012, but was uncertain of the amount during the budgeting process in 2011. Currently, there is \$1.9 million in the approved 2012 CapX budget. The intention is that this budgeted amount of \$1.9M will be an adequate amount to take us up to the time of bonding later in 2012.

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Board request Council to approve and the Mayor and City Clerk execute the Twin Cities-Rochester-La Crosse Transmission Project First Resolution of the Management Committee and the Participants Amending the Project Development Agreement, contingent upon acceptance by the General Manager and Rochester City Attorney of any revisions to the Amendment.

General Manager

Date

APPROVED

**SOUTHEAST TWIN CITIES – ROCHESTER – LACROSSE
TRANSMISSION PROJECT**

PROJECT DEVELOPMENT AGREEMENT

Dated as of March 7, 2007

APPROVED

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APPROVED

PROJECT DEVELOPMENT AGREEMENT

THIS PROJECT DEVELOPMENT AGREEMENT dated as of March 7, 2007 (this "Agreement") is entered into by and among Dairyland Power Cooperative, a cooperative association incorporated under the laws of the State of Wisconsin, the City of Rochester, a Minnesota municipal corporation acting through its Public Utility Board, Southern Minnesota Municipal Power Agency, a municipal corporation and political subdivision of the State of Minnesota, Wisconsin Public Power, Inc., a municipal electric company, political subdivision and body public and corporate of the State of Wisconsin, Northern States Power Company, a Minnesota corporation and Northern States Power Company, a Wisconsin corporation, each a wholly owned subsidiary of Xcel Energy Inc., d/b/a Xcel Energy ("Xcel Energy") and Northern States Power Company, the Minnesota corporation, in its capacity as the Development Manager.

RECITALS

A. Each Participant is empowered by law to acquire, construct, maintain and operate facilities for the transmission of electrical energy for public or private use and to acquire, construct and maintain all rights, properties, improvements and other interests necessary therefor in the State of Minnesota and the surrounding region in which such Participant has a load serving obligation;

B. The Participants have determined that the existing transmission system for the region to be served by the Project appears insufficient to serve reliably the projected growth of the electricity requirements of Participants' respective customers;

C. The Project is one of several transmission projects arising from the CapX 2020 Initiative planning process (the "CapX Projects"). The Project is being undertaken to assist in the maintenance of and enhance system reliability for electric customers in Minnesota and the surrounding region;

D. The Participants have further determined that because the Project is regional in nature it is most efficient and effective for the Participants to develop the Project in a collaborative manner to, among other things, prepare and/or obtain such reports, applications and filings that may be required, necessary or desirable to (i) certify the need for the Project, (ii) obtain routing consents and approval(s), and (iii) acquire such other Permits to commence work on the Project;

E. Certain of the Participants have entered into a "Transmission Project Memorandum of Understanding" dated August 24, 2006, as amended (the "Project MOU") pursuant to which the Participants have previously undertaken certain matters, actions and activities in furtherance of the Project;

F. The Participants desire to pursue Development Work for the Project, which was initiated under and pursuant to the Project MOU, pursuant to the terms and conditions of this Agreement; and

G. Each Participant enters into this Agreement to facilitate such Participant's pursuit of the Development Work for the Project as described herein.



APPROVED

RESOLUTION


BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Board requests the Common Council to approve the following agreement, subject to review by the City Attorney of any final revisions, with Dairyland Power Cooperative, Southern Minnesota Municipal Power Agency, Wisconsin Public Power, Inc., and Xcel Energy, and that the Mayor and the City Clerk are authorized to execute the agreement for:

Project Development Agreement for Twin Cities – Rochester – LaCrosse Transmission Project

The amount of the agreement not-to-exceed ONE MILLION NINE HUNDRED EIGHTY THOUSAND AND 00/100THS DOLLARS (\$1,980,000.00). Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of February 2007.



President



Secretary

RESOLUTION

APPROVED


BE IT RESOLVED by the Common Council of the City of Rochester that the Common Council concurs in the resolution of the Rochester Public Utility Board appended hereto, which resolution requests approval for the City to enter into an agreement with Dairyland Power Cooperative, Southern Minnesota Municipal Power Agency, Wisconsin Public Power, Inc. and Xcel Energy, for:

Project Development Agreement for Twin Cities – Rochester – Lacrosse Transmission Project.

The amount of the agreement is not to exceed \$1,980,000.00.

The Mayor and the City Clerk are authorized and directed to execute said service agreement on behalf of the City.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA, THIS 5th DAY OF MARCH, 2007.


PRESIDENT OF SAID COMMON COUNCIL

ATTEST: 
CITY CLERK

APPROVED THIS 6th DAY OF MARCH, 2007.


MAYOR OF SAID CITY

(Seal of the City of
Rochester, Minnesota)

res.pu\TCRLATransProj.Agreement

**TWIN CITIES-ROCHESTER-LA CROSSE TRANSMISSION PROJECT
FIRST RESOLUTION OF THE
MANAGEMENT COMMITTEE AND THE PARTICIPANTS
AMENDING THE PROJECT DEVELOPMENT AGREEMENT**

WHEREAS, the Participants are parties to the Project Development Agreement for the CapX 2020 Twin Cities Rochester – La Crosse Transmission Project, dated as of March 7, 2007, as amended (the “**PDA**”) (each capitalized term used but not otherwise defined herein shall have the meaning assigned to such term in the PDA);

WHEREAS, the Participants anticipate that the Project Agreements will be executed and delivered by the parties thereto on or prior to December 28, 2012;

WHEREAS, the Management Committee and the Participants have determined that it is in the best interest of the Project and the Participants to: (i) begin performing the Authorized Work (as defined below) immediately instead of waiting until the date that the Project Agreements are executed and delivered and 100% of the ownership interests have been elected in the Project (the “**Effective Time**”); and (ii) authorize the Development Manager to spend Authorized Costs (as defined below) commencing on the date of these resolutions;

WHEREAS, the Development Manager has advised the Management Committee and the Participants that if it performs the Authorized Work and, as a result, spends the Authorized Costs, then it will exceed the Maximum Development Costs by the amount of the Authorized Costs;

WHEREAS, Section 5.3.1.4 of the PDA obligates the Development Manager to notify the Participants at least six (6) months before it projects exceeding the Maximum Development Costs and the Participants have determined to waive such notice;

WHEREAS, Section 5.3.1.5 of the PDA provides that the Management Committee shall review and take action regarding a possible increase in Maximum Development Costs after receiving such notice;

WHEREAS, the Development Manager has provided the Management Committee with information regarding the schedule, activities, and budget, including the proposed increases in the Maximum Development Costs, and the Management Committee and the Participants desire to approve the proposed increases in the Maximum Development Costs;

WHEREAS, the Management Committee and the Participants desire to: (i) designate the Authorized Work as Development Work with the understanding that if the Effective Time occurs, such work will be treated as Construction Work (as hereinafter defined); (ii) designate the Authorized Costs as Development Costs with the understanding that if the Effective Time occurs, such costs will be treated as CM Costs (as hereinafter defined); and (iii) provide that if Project Agreements are executed and delivered by less than all of the Participants, then those Participants that execute and deliver such Project Agreements and have elected in the aggregate 100% of the Percentages will reimburse any eligible Participant(s) that does not, for any such costs that have been paid by such non-executing Participant(s), provided that if a lien has been

granted by such non-executing Participant(s) on the property interests it may have obtained under the PDA, such payment is expressly conditioned upon such lien being fully and unconditionally released; and

WHEREAS, the Participants have the sole authority to amend the PDA pursuant to Section 12.8 thereof.

NOW, THEREFORE, BE IT RESOLVED, that the Management Committee and the Participants hereby unanimously adopt and approve the following resolutions to amend provisions of the PDA effective on the date set forth below and without any further action on the part of the Management Committee or the Participants; and

RESOLVED FURTHER, that Article 1 of the PDA be, and hereby is, amended to add or replace, as applicable, the following definitions:

“Authorized Costs. The term Authorized Costs means all costs paid, payable or incurred (as a future obligation) with respect to the Authorized Work up to the maximum aggregate amount of \$ 22,000,000 between the date hereof and through December 28, 2012.”

“Authorized Work. The term Authorized Work means the activities set forth on Schedule 1, in each case necessary or desirable and in accordance with Good Utility Practice to construct or operate the facilities.”

“CM Costs. The term CM Costs shall have the meaning ascribed thereto in the Project Agreements at the time they are executed and delivered by Participants that have elected in the aggregate 100% of the Percentages in the Project.”

“Construction Work. The term Construction Work shall have the meaning ascribed thereto in the Project Agreements at the time they are executed and delivered by Participants that have elected in the aggregate 100% of the Percentages in the Project.”

“Development Costs. The term Development Costs shall mean the cost obligations paid, payable or incurred (as a future obligation) with respect to carrying out Development Work and Joint Development Work, as well as those costs which, pursuant to the terms of this Agreement are, or are deemed to be, Development Costs. The following Development Costs shall not be counted in the calculation of Maximum Development Costs: (i) amounts paid to MOU Participants in accordance with Section 2.10 hereof, and (ii) costs arising from or paid under the Project MOU. Authorized Costs shall be and shall be deemed to be Development Costs unless and until the Project Agreements are executed and delivered by each of the parties thereto that have elected in the aggregate 100% of the Percentages in the Project, in which case they shall be and hereby are deemed to be CM Costs.”

“Development Work. The term Development Work shall have the meaning ascribed thereto in Section 5.1.1 hereof. Development Work shall include Joint Development Work. Authorized Work shall be and shall be deemed to be Development Work unless

and until the Project Agreements are executed and delivered by each of the parties thereto that have elected in the aggregate 100% of the Percentages in the Project, in which case they shall be and hereby are deemed to be Construction Work.”; and

RESOLVED FURTHER, that the Management Committee and the Participants hereby approve a \$ 22,000,000 increase in the Maximum Development Costs effective as of March ___, 2012, such that, from and after March ___, 2012, \$ 22,000,000 shall be the Preliminary Increase in Maximum Development Costs and the Approved Amount of Increase in Maximum Development Costs and \$ 42,000,000 shall be the Maximum Development Costs; and

RESOLVED FURTHER, that each Participant hereby waives, only with respect to the \$22,000,000 preceding resolution and not with respect to any future Preliminary Increase in Maximum Development Costs, (i) the obligation of the Development Manager set forth in Section 5.3.1.5 of the PDA to provide written notice to all Participants of the Management Committee’s approval of the Preliminary Increase in Maximum Development Costs, and (ii) its right to provide written notice that it irrevocably exercises its right to withdraw from the PDA as a result of the Preliminary Increase in Maximum Development Costs; and

RESOLVED FURTHER, that Section 2.5.3.2 (No Reimbursement of Payments for Development Costs) be, and hereby is, amended to add a new proviso to the end of the first sentence such that the first sentence shall read as follows: “No Withdrawing Participant shall be reimbursed for Development Costs paid by such Withdrawing Participant; provided, however, that a Withdrawing Participant shall be reimbursed for Authorized Costs paid by it in the circumstances set forth in Section 6.4.”; and

RESOLVED FURTHER, that Section 6.3.2 (Failure to Exercise Right of First Refusal) be, and hereby is, amended to add a proviso at the end of the second sentence such that the second sentence shall read as follows: “Any Participant that fails to elect or to notify pursuant to the provisions of Section 6.3.1 hereof shall (i) have no further rights to or in the Project (including but not limited to the results of any Development Work), and (ii) remain obligated under this Agreement to pay its Participant Percentage of outstanding and unpaid Development Costs as provided in this Agreement; provided, however, such Participant shall not be obligated to pay its Participant Percentage of outstanding and unpaid Authorized Costs in the circumstances set forth in Section 6.4.”; and

RESOLVED FURTHER, that Section 6.4 (Final Participant Elected Project Participation) be, and hereby is, amended to add a second sentence after the first sentence, which second sentence shall read as follows: “If, at the conclusion of the election processes set forth in the provisions of Section 6.3 above, (i) the Management Committee determines to commence the Project, Project Agreements are executed and delivered and 100% of the ownership interests have been elected for the Project and (ii) a Participant (a) has withdrawn from this Agreement pursuant to Section 2.5, (b) was terminated from this Agreement pursuant to Section 2.4, or (c) has not elected into the Project pursuant to Section 6.3, then, within 45 business days after such execution and delivery of such Project Agreements, the Participants that executed and delivered such Project Agreements shall reimburse the withdrawn, terminated or non-electing Participant for the Authorized Costs remitted by it to the Development Manager, in proportion to the

percentage of the non-electing Participant's Election Right elected by each Participant that executed and delivered such Project Agreements (or as otherwise agreed by such executing and delivering Participants); provided, however, if such non-electing Participant has granted a lien on any tangible (including real and personal), intangible or mixed property interests which it may have obtained pursuant to this Agreement, then such non-electing Participant shall not be entitled to reimbursement for any Authorized Costs unless and until it delivers evidence reasonably satisfactory to the executing and delivering Participants of the full and unconditional release of such lien."; and

RESOLVED FURTHER, that if the Project Agreements are executed and delivered and 100% of the ownership interests have been elected in the Project, then the Participants shall direct (i) their respective Authorized Owner Representatives (as such term is defined in the Project Agreements at the time they are executed and delivered) to designate the Authorized Costs as CM Costs and the Authorized Work as Construction Work at the first meeting of the Management Committee (as such term is defined in the Project Agreements at the time they are executed and delivered) established under one of the Project Agreements, and (ii) their respective administrative accounting departments to separate and allocate costs incurred for Development Work from the CM Costs and report such allocation to such Management Committee for proper allocation to and for such Participants' credit as CM Costs under the Project Agreements; and

RESOLVED FURTHER, that from and after the date hereof, all references in the PDA or any other instrument to the PDA, shall mean the PDA as amended hereby.

[SIGNATURE PAGES FOR PARTICIPANTS FOLLOWS]

IN WITNESS WHEREOF, the undersigned do hereby consent to, approve and adopt the foregoing resolutions as of this ____ day of February 2012.

PARTICIPANTS:

DAIRYLAND POWER COOPERATIVE

By _____
Its _____

CITY OF ROCHESTER

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

**SOUTHERN MINNESOTA MUNICIPAL
POWER AGENCY**

By _____
Its _____

WPPI ENERGY

By _____
Its _____

**XCEL ENERGY SERVICES INC., AS
AGENT FOR: NORTHERN STATES
POWER COMPANY, A MINNESOTA
CORPORATION**

By _____
Its _____

**XCEL ENERGY SERVICES INC., AS
AGENT FOR: NORTHERN STATES
POWER COMPANY, A WISCONSIN
CORPORATION**

By _____
Its _____

SCHEDULE 1

Authorized Work

Planned work through 2012:

North Rochester to Northern Hills and North Rochester to the Mississippi River Segments

- Aerial and ground survey work including analysis of data already gathered on all segments.
- Right of way acquisition on North Rochester to Northern Hills
- Begin right of way activities on North Rochester to Mississippi River segment.
- Biological, archaeological, and historical field surveys as required by permits.
- US Army Corps of Engineering permit may also require these field surveys on the North Rochester to Hampton and North Rochester to Chester segments.
- Begin engineering and design activities

The following discrete owned substation work is also planned in 2012 but is not subject to the PDA amendment. Provided here for information.

North Rochester Substation

- Land acquisition
- Begin engineering and design activities

Northern Hills Substation

- Begin engineering and design activities



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to approve a contract amendment to the CapX Project Development Agreement approved in 2007, contingent upon acceptance by the General Manager and Rochester City Attorney of any revisions to the Amendment, and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Twin Cities-Rochester-La Crosse Transmission Project
First Resolution of the Management Committee
and the Participants Amending the Project Development Agreement

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 28th day of February, 2012.

President

Secretary