

FOR BOARD ACTION

Agenda Item # 8

Meeting Date:

1/31/12

SUBJECT:

10 MW capacity sale to Southern Minnesota Municipal Power Agency,
for the period of March 2012 – May 2013

PREPARED BY:

Jeremy Sutton, Manager of Portfolio Optimization

ITEM DESCRIPTION:

15 month sale of capacity (no energy associated)

10 MW's March 2102 – May 2013

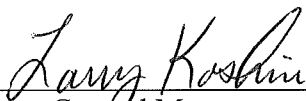
The contract has been reviewed by the City Attorney.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not applicable.

UTILITY BOARD ACTION REQUESTED:

Staff requests that the Board approve the 10 MW sale and that the Mayor and City Clerk execute the Agreement.



General Manager

1-26-12
Date

CAPACITY

CONFIRMATION AGREEMENT

This confirmation Agreement (“Agreement”) shall confirm the agreement reached on December 20, 2011 (“Transaction Date”), between the City of Rochester, Minnesota (“the City”), (as “Seller”) and Southern Minnesota Municipal Power Agency (“SMMPA”) (as “Buyer”) (hereinafter the City and SMMPA are sometimes referred to singly as a “Party” and collectively as the “Parties”_ with respect to the purchase and sale of capacity under the terms and conditions as follows:

Seller: The City of Rochester, Minnesota

Buyer: SMMPA

Schedule P Product:

Other: “Local Planning Resources Credits” (“LPRC”) or “Aggregate Planning Resources Credits” (“APRC”), as such term is defined in (i) the Midwest Independent Transmission System Operator, Inc. (“MISO”) Open Access Transmission and Energy Markets Tariff as may be amended from time to time (“MISO Tariff”); and (ii) the MISO Resource Adequacy Business Practices Manual as may be amended from time to time (“RA BPM”, or together with the MISO Tariff referred to as the “MISO Rules”).

For clarification purposes, the Parties acknowledge and understand that, in accordance with the MISO Rules, one LPRC or APRC represents one megawatt (“MW”) of Unforced Capacity, as such term is defined in the MISO Rules, that qualifies to satisfy the resource adequacy requirements of Module E of the MISO Tariff.

Term:

March 2012 – May 2013

Contract Quantity and Contract Price:

The Quantity of LPRCs or APRCs encompassed by this Transaction and the Contract Price(s) associated therewith shall be as follows:

10 MWs at \$26.20 per MW-Month for all fifteen (15) months of the Term.

Contract Total = \$3,930.00.

Seller represents and warrants that with respect to the Product, Seller: (A) Will enter the LPRCs or APRCs in the MISO Module E capacity tracking system, or its successor, and (B) Has not and will not sell such LPRCs or APRCs (or the MWs of Unforced Capacity associated with each LPRC or APRC) to any other counterparty.

Special Conditions:

1. Delivery and Receipt.

Seller shall accomplish delivery of the monthly Quantity by submitting the appropriate transaction(s) in MISO's Module E capacity tracking system, or any successor system ("MECT") to electronically assign the monthly Quantity to Buyer. Buyer shall accomplish receipt of the monthly Quantity by confirming the appropriate transaction(s) submitted by Seller in the MECT. It is the intention of the Parties that Seller and Buyer shall accomplish delivery and receipt of the monthly Quantity by submitting and confirming the appropriate transaction(s) in the MECT not later than ten (10) Business Days prior to the Resource Plan Deadline, as such term is defined in the MISO Tariff, for the first month and each subsequent month encompassed by this Transaction as is permissible to deliver and receive in the MECT ("Transfer Deadline"). The submitting and confirming of the appropriate transaction(s) in the MECT shall be conducted by the Parties in accordance with the requirements of the MISO Rules and other applicable rules adopted by the MISO regarding the MECT.

2. Payment Terms:

The Parties agree that the payment schedule for the Product delivered and received hereunder shall be governed by the terms and conditions of the NAEMA Tariff (as defined herein). For the avoidance of doubt, as soon as practicable, after the end of each month during each planning year set forth above, Seller will render to Buyer an invoice for the LPUCs or APUCs attributable to the preceding month.

3. Failures to Deliver and/or Receive.

(a) Seller's Failure to Deliver. In the event that: (i) Seller fails to deliver all or part of the Product by the Transfer Deadline, and such failure is not excused by Buyer's failure to perform; (ii) Buyer provides notice of such failure to Seller at least nine (9) Business Days prior to the Resource Plan Deadline; and (iii) Seller fails to cure such failure within one (1) Business Day after notice from the Buyer, then Seller shall pay Buyer, within five (5) Business Days of invoice receipt, all Financial Settlement Charges assessed to Buyer (either directly or through contractual obligation) resulting directly from Seller's failure to deliver all or part of the Product. In addition, to the extent that Seller's failure to deliver all or part of the Product results in Buyer being assessed (i) Financial Settlement Charges for an amount of MW that is less than the Quantity that Seller failed to deliver, or (ii) no Financial Settlement Charges for the Quantity that

Seller failed to deliver, then Buyer shall also be entitled to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and multiplying such positive difference, if any, by the portion of the Quantity which Seller failed to deliver and for which no Financial Settlement Charges are assessed to Buyer.

In the event that: (i) Seller fails to deliver all or part of the Product by the Transfer Deadline, and such failure is not excused by Buyer's failure to perform; and (ii) Buyer fails to provide notice of such failure to Seller at least nine (9) Business Days prior to the Resource Plan Deadline, then Seller shall pay Buyer, within five (5) Business Days of invoice receipt, the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price and multiplying such positive difference, if any, by the Quantity which Seller failed to deliver.

Buyer shall use commercially reasonable efforts to purchase replacement Product for the Quantity which Seller failed to deliver.

The invoice from Buyer to Seller for any amount owed by Seller to Buyer pursuant to this provision shall include a written statement explaining in reasonable detail the calculation of such amount. The Parties acknowledge and agree that with respect to this Transaction only, Section 2.47 of the NAEMA Tariff shall be amended to delete all references to "at the Delivery Point" and "to the Delivery Point" contained in such section.

(b) Buyer's Failure to Receive.

In the event that: (i) Buyer fails to receive all or part of the Product by the Transfer Deadline, and such failure is not excused by Seller's failure to perform; (ii) Seller provides notice of such failure to Buyer at least nine (9) Business Days prior to the Resource Plan Deadline; and (iii) Buyer fails to cure such failure within one (1) Business Day after notice from the Seller, then Buyer shall pay Seller, within five (5) Business Days of invoice receipt, an amount equal to the Contract Price multiplied by the portion of the Quantity which Buyer failed to receive.

In the event that: (i) Buyer fails to receive all or part of the Product by the Transfer Deadline, and such failure is not excused by Seller's failure to perform; and (ii) Seller fails to provides notice of such failure to Buyer at least nine (9) Business Days prior to the Resource Plan Deadline, then Buyer shall pay Seller, within five (5) Business Days of invoice receipt, an amount equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price and multiplying such positive difference, if any, by the portion of the Quantity which Buyer failed to receive; provided, however, that if Seller, after using commercially reasonable efforts, is unable to resell all or a portion of the Quantity which Buyer failed to receive, the Sales Price with respect to such Quantity that Seller is unable to resell shall be deemed to be equal to zero (0).

The invoice from Seller to Buyer for any amount owed by Buyer to Seller pursuant to this provision shall include a written statement explaining in reasonable detail the calculation of such amount. The Parties acknowledge and agree that with respect to this Transaction only, Section 2.49 of the NAEMA Tariff (as defined herein) shall be amended to delete all references to "at the Delivery Point" contained in such section.

(c) Limitation of Remedies. The Parties acknowledge and agree that the remedies set forth herein regarding failures to deliver/receive shall supercede and replace Sections 5.1 and 5.2 of the NAEMA Tariff (as defined herein) with respect to this Transaction only.

4. Governing Agreement:

This Agreement is being provided pursuant to and in accordance with the North American Energy Markets Association Capacity and Energy Tariff, effective February 22, 2011 (the "NAEMA Tariff") and constitutes part of and is subject to the terms and provisions of such NAEMA Tariff. Terms used but not defined herein (e.g. "Sales Price") shall have the meanings ascribed to them in the NAEMA Tariff. Capitalized terms used but not defined herein or in the NAEMA Tariff shall have the meanings ascribed to such terms in the MISO Rules.

Rochester Public Utilities

Southern Minnesota Municipal
Power Agency

By: _____
Title: _____
Phone No: _____
Fax: _____

By: David P. Geschwind
Title: Executive Director and CEO
Phone No: 507-285-0478
Fax: 507-292-6414

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a 10 MW sale of capacity for the period of March 2012 to May 2013 to Southern Minnesota Municipal Power Agency, and request the Mayor and the City Clerk to execute the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of January, 2012.

President

Secretary