

FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

5/14/13

SUBJECT:

CapX – Joint Prosecution Agreement Supplement

PREPARED BY:

Randy Anderton, Manager of Engineering

ITEM DESCRIPTION:

The original CapX Joint Prosecution Agreement was approved by the RPU Board, City Council and authorized by the Mayor in December of 2006. This agreement was executed by all CapX parties to allow for the individual Counsels from each participating Utility to jointly share materials in the process of successfully completing the necessary Certificates of Need and “Other Regulatory Proceedings” for the construction of the projects.

The Certificates of Need and Route Permits have been obtained from Minnesota along with the Certificate of Public Convenience and Necessity from Wisconsin. Additional permits, permissions and approvals must be obtained from other state and federal agencies (“Other Approvals”) in order to construct the project.

The attached Joint Prosecution Agreement Supplement is an agreement that adds additional clarifications such that the La Crosse project parties: 1) reaffirm the original Joint Prosecution Agreement and incorporate it into the supplement; 2) affirm the definition of “Other Regulatory Approvals” was intended to include “Other Approvals”; and 3) affirm that the Joint Prosecution Materials identified are covered under the Joint Prosecution Agreement.

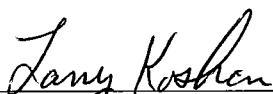
This Joint Prosecution Agreement Supplement does not materially change the intent and purpose of the original Joint Prosecution Agreement but adds further clarity to the definition of “Other Regulatory Proceedings”

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

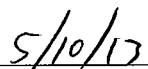
Not Applicable

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Board request Council to approve the Joint Prosecution Agreement Supplement and that the Council authorizes the Mayor and City Clerk to execute the Agreement.



General Manager



Date

ROCHESTER PUBLIC UTILITIES

JOINT PROSECUTION AGREEMENT SUPPLEMENT

This document is a supplement to the Joint Prosecution Agreement (the "JPA") entered into on December 15, 2006 by Northern States Power Company, a Minnesota corporation ("NSPM"), Northern States Power Company, a Wisconsin corporation ("NSPW"), both wholly owned subsidiaries of Xcel Energy Inc., City of Rochester, a Minnesota municipal corporation acting by and through its Public Utility Board ("RPU"), Southern Minnesota Municipal Power Agency ("SMMPA"), Dairyland Power Cooperative ("DPC"), and WPPI Energy, Great River Energy, a Minnesota cooperative corporation, Otter Tail Corporation d/b/a Otter Tail Power Company, a corporation organized and existing under the laws of the State of Minnesota, Southern Municipal Power Agency, Midwest Municipal Transmission Group, Missouri River Energy Services, a body politic and corporate and a public agency organized under the laws of the State of Iowa and existing under the laws of the State of Minnesota, among others, Minnkota Power Cooperative, and Allete, Inc. d/b/a Minnesota Power ("the other CapX2020 Utilities"). This supplement agreement ("JPA Supplement") is intended to bind NSPM, NSPW, RPU, SMMPA, DPC and WPPI Energy ("Supplementing Parties" and "Principals") as well as their successors and assigns, and arises from the following circumstances:

Since entering into the JPA, the Supplementing Parties have obtained a Certificate of Public Convenience and Necessity from the Wisconsin Public Service Corporation and a Certificate of Need and Route Permits from the Minnesota Public Utilities Commission ("State Approvals") for the Hampton-Rochester-La Crosse 345 kV Project ("Project"). To construct the Project in compliance with the State Approvals, Permittees must apply for and obtain additional permits, permissions and approvals from other state and federal agencies ("Other Approvals").

The Supplementing Parties desire that the pursuit of the Other Approvals, including any litigation, be completed successfully. As a result, the Supplementing Parties have concluded that, in connection with these Other Approvals, there are legal and factual issues common to the Supplementing Parties that the Supplementing Parties may be expected to undertake common, coordinated, parallel or interdependent actions. They have also concluded that it is in the interest of all the Supplementing Parties to be able to exchange documents, ideas, factual material and other information (whether written, electronic, oral or otherwise), including client confidences, and material that may contain legal theories and strategies (as more narrowly hereinafter defined as "Joint Prosecution Materials"), all in a manner that protects the continuing confidentiality of, and privileges associated with, the Joint Prosecution Materials and discussions, including the joint prosecution privilege, the attorney-client communication privilege, the attorney-work product doctrine, mutual confidentiality obligations, or any other applicable privilege or doctrine that affords protection against disclosure of information or documents to persons other than the Parties to this Agreement. The Supplementing Parties would not exchange such Joint Prosecution Materials except for their mutual and common interests.

The Supplementing Parties are entering into this JPA Supplement to 1) reaffirm the JPA and all of its provisions which are herein incorporated by reference; 2) affirm that the definition of "Other Regulatory Proceedings" was and is intended to include Other Approvals; and 3) affirm that the Joint Prosecution Materials identified herein were and are subject to the rights and responsibilities of the Supplementing Parties under the JPA.

Dated: _____, 2013

**XCEL ENERGY SERVICES INC., ON
BEHALF OF NORTHERN STATES
POWER COMPANY, A MINNESOTA
CORPORATION AND WHOLLY OWNED
SUBSIDIARY OF XCEL ENERGY INC.**

By _____
Its _____

Dated: _____, 2013

BRIGGS AND MORGAN, P.A.

By _____
Michael C. Krikava
Lisa M. Agrimonti
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 977-8400

Dated: _____, 2013

**XCEL ENERGY SERVICES INC., ON
BEHALF OF NORTHERN STATES
POWER COMPANY, A WISCONSIN
CORPORATION AND WHOLLY OWNED
SUBSIDIARY OF XCEL ENERGY INC.**

By _____
Its _____

Dated: _____, 2013

BRIGGS AND MORGAN, P.A.

By _____
Michael C. Krikava
Lisa M. Agrimonti
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Telephone: (612) 977-8400

Dated: _____, 2013

**SOUTHERN MINNESOTA MUNICIPAL
POWER AGENCY**

By _____
Its _____

Dated: _____, 2013

DORSEY & WHITNEY, LLP

By: _____
B. Andrew Brown
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-8765

Dated: _____, 2013

**CITY OF ROCHESTER, A MINNESOTA
MUNICIPAL CORPORATION, ACTING
BY AND THROUGH IT PUBLIC
UTILITY BOARD**

By _____
Its _____

Dated: _____, 2013

WINTHROP & WEINSTINE, P.A.

By: _____
Eric Swanson
225 South Sixth Street, Suite 3500
Minneapolis, MN 55402-4629
Telephone: 612-604-6511

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

Dated: _____

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

Dated: _____, 2013

Dated: _____, 2013

WPPI ENERGY

By _____
Its _____

1425 Corporate Center Drive
Sun Prairie, WI 53590-9109
Telephone: 608-834-4500

Dated: _____, 2013

Dated: _____, 2013

DAIRYLAND POWER COOPERATIVE

**WHEELER, VAN SICKLE &
ANDERSON, S.C.**

By _____
Its _____

By: _____
Jeff Landsman
25 W. Main St., Suite 801
Madison, WI 53703
Telephone: 608-255-7277
Fax: 608-255-6006



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 the following agreement with the Twin Cities - Rochester - La Crosse CapX project participants and that the Common Council authorize the Mayor and the City Clerk to execute the agreement for

Joint Prosecution Agreement Supplement

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 14th day of May, 2013.

President

Secretary