

FOR BOARD ACTION

Agenda Item # 8.

Meeting Date:

10/30/07

SUBJECT:

Agreement to Assign CapX 2020 Intellectual Property to Trust

PREPARED BY:

Walt Lorber, Director of Core Services

The CapX consortium of utilities has determined that it is not possible to retain and control intellectual property (such as the trademark and website domain) and associated rights without the existence of an "official" entity. CapX legal counsel determined that the creation of a trust would accomplish this need. A Certificate of Trust was filed in Delaware on August 30, 2007. RPU and each of the other CapX members are named as Beneficial Owners of the Trust.

Each CapX member is now asked to execute a Grant and Assignment of CapX Intellectual Property to the Delaware Statutory Trust. The Assignment has been reviewed by the City Attorney and is attached.

UTILITY BOARD ACTION REQUESTED:

It is recommended that the Utility Board request the Common Council to approve the Grant and Assignment of CapX Intellectual Property and authorize the Mayor and City Clerk to execute the document.



General Manager



Date

**GRANT AND ASSIGNMENT
OF
CAPX 2020 INTELLECTUAL PROPERTY**

(Pursuant to the CapX 2020 Transmission Capacity Expansion Initiative Participation Agreement)

KNOW ALL MEN BY THESE PRESENTS, that the entities set forth on Appendix I hereto (collectively, the "Assignors" and individually, each an "Assignor"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, given by **CapX 2020 Transmission Capacity Expansion Initiative Trust**, a Delaware Statutory Trust ("Assignee"), each hereby grants, conveys, transfers and assigns to Assignee, its successors and assigns, any and all of its right, title and interest in and to any and all the intellectual property and associated rights and interests created under and pursuant to the CapX 2020 Transmission Capacity Expansion Initiative Participation Agreement dated as of January 1, 2007 by and among the Assignors (the "**CapX 2020 Participation Agreement**") whether the same are now existing or are hereafter created (the "**Intellectual Property**"), together with the goodwill associated with the use of such Intellectual Property including, without limitation, (i) all Proprietary Rights (as defined below) owned by Assignor or to which Assignor has access, right of use, or right of control; (ii) all licenses and other rights granted by Assignor to any third party with respect to Proprietary Rights; (iii) all licenses, sublicenses, marketing and other rights granted by any third party to Assignor with respect to the Proprietary Rights, and rights thereunder; (iv) all agreements with third parties respecting the acquisition of licenses in respect of any Proprietary Rights of Assignor; and (v) all rights and remedies against infringement, and rights to protection of interests in such Proprietary Rights as provided under the laws of any applicable jurisdictions.

"**Proprietary Rights**" means all rights and interests arising from, in connection with or incident to the Intellectual Property now existing or hereafter created, including all rights in: all names, domain names, web sites, inventions (whether or not patentable and whether or not reduced to practice), all improvements thereto; all patents, patent applications and patent disclosures, together with all reissuances, continuations, continuations-in-part, revisions, extensions, and reexaminations thereof, including all supporting documentation of any kind; all trade names, trademarks, service marks, logos, trade dress, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith; all copyrightable works, all copyrights; all mask works and associated rights covered by the Semiconductor Chip Protection Act; all registrations and applications and renewals for any of the foregoing; all trade secrets, all Know-How (as defined below), Code (as defined below), all designs, drawings, specifications, all construction and production processes and techniques, all testing data and data management techniques and knowledge, all technical and computer data, Documentation (as defined below) and Software (as defined below), financial, business and marketing plans, all formulations information, all intellectual property related books, records, ledgers, files, documents, correspondence, lists, creative materials, advertising and promotional materials, studies, reports and other printed or written materials, and all copies and tangible embodiments thereof, which Assignor possesses or has the right to control arising from or related to the CapX 2020 Initiative and the CapX 2020 Participation Agreement.

As used herein, the following capitalized terms shall have the following definitions: "**Know-How**" shall include trade secrets and other confidential and proprietary information, including without limitation, technical information, research, schematics, models, programs, Documentation, Code, tools, methods and methodologies and data, including engineering,

scientific and practical information and formulas, hardware and software designs, technical information recorded in reports, on drawings, in specifications, and in other writings; "**Documentation**" shall mean written materials, including without limitation, technical reference handbooks, technical disclosures, publications, Source Code, and other materials which are used to support the Intellectual Property; "**Code**" shall mean computer programming code, and except as otherwise specified shall include both Object Code and Source Code; "**Object Code**" shall mean the machine executable form of the Code; "**Source Code**" shall mean the human-readable form of the Code, including commentary and notes necessary for a reasonably skilled programmer to maintain and modify the computer program; and "**Software**" shall mean any instructions and associated data capable of being executed, compiled, or interpreted by a data processing machine, whether or not such instructions and associated data are in Object Code or in Source Code form, as well as program specifications, input data and report layouts and format, record file layouts, diagrams, functional specifications, and narrative descriptions, flow charts produced by or for Assignor as of the undersigned date, which are related to the Intellectual Property.

To the extent any of the aforementioned rights in and to such intangible assets are not immediately assignable, and to the extent any such rights are created in the future with respect to the aforementioned rights, each Assignor shall fully identify and describe each such asset and use its best efforts to: (i) provide Assignee the benefits of any such rights, and hold same in trust for Assignee without additional compensation therefore; and (ii) cooperate in any reasonable and lawful arrangement designed to provide such benefits and rights to Assignee, without additional compensation therefore.

Each Assignor shall promptly prepare and deliver for recording, at Assignees expense, any instrument necessary to perfect or record the transfer of any of the Intellectual Property in the United States Patent and Trademark Office, in the United States Copyright Office, the domain name registrar, or any other recording office where such recordings are properly made.

Upon the Assignee's request at any time and from time to time, and at Assignee's expense, each Assignor shall execute and deliver to the Assignee such additional instruments as the Assignee deems necessary to vest the Assignee with the sole ownership of exclusive rights in and to all such intangible assets.

This instrument shall be effective as of August 30, 2007, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

This instrument may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The counterparts of this instrument may be executed and delivered by facsimile or other electronic signature by any of the parties to any other party and the receiving party may rely on the receipt of such document so executed and delivered by facsimile as if the original had been received.

All terms or phrases capitalized herein and not otherwise defined shall have the meaning(s) ascribed to them in that certain Declaration of Delaware Statutory Trust of the Assignee as of August 30, 2007.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

ASSIGNORS:

OTTER TAIL CORPORATION, d/b/a OTTER TAIL POWER COMPANY

SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY

By [SEE ATTACHED EXECUTION PAGE]
Its _____

By [SEE ATTACHED EXECUTION PAGE]
Its _____

GREAT RIVER ENERGY

ALLETE, Inc., d/b/a MINNESOTA POWER

By [SEE ATTACHED EXECUTION PAGE]
Its _____

By [SEE ATTACHED EXECUTION PAGE]
Its _____

WISCONSIN PUBLIC POWER, INC.

MISSOURI BASIN MUNICIPAL POWER AGENCY, d/b/a MISSOURI RIVER ENERGY SERVICES

By [SEE ATTACHED EXECUTION PAGE]
Its _____

By [SEE ATTACHED EXECUTION PAGE]
Its _____

MIDWEST MUNICIPAL TRANSMISSION GROUP, c/o IOWA ASSOCIATION OF MUNICIPAL UTILITIES

XCEL ENERGY SERVICES INC., AS AGENT FOR: 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 (AS TENANTS-IN-COMMON)

By [SEE ATTACHED EXECUTION PAGE]
Its _____

By [SEE ATTACHED EXECUTION PAGE]
Its _____

CITY OF ROCHESTER

By [SEE ATTACHED EXECUTION PAGE]
Its _____

The foregoing is hereby accepted by Assignee:

CAPX 2020 TRANSMISSION CAPACITY EXPANSION INITIATIVE TRUST, a Delaware Statutory Trust

By: [SEE ATTACHED EXECUTION PAGE]
Its: _____

[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020 PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

**OTTER TAIL CORPORATION, d/b/a
OTTER TAIL POWER COMPANY**

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

GREAT RIVER ENERGY

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

WISCONSIN PUBLIC POWER, INC.

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

**MIDWEST MUNICIPAL TRANSMISSION
GROUP, c/o IOWA ASSOCIATION OF
MUNICIPAL UTILITIES**

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007

CITY OF ROCHESTER

By _____
Its Mayor

Attest:

By _____
Its City Clerk

Reviewed:

By _____
Its City Attorney

ROCHESTER PUBLIC UTILITIES

By _____
Its General Manager

Dated: _____

[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020 PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

**SOUTHERN MINNESOTA MUNICIPAL
POWER AGENCY**

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

**ALLETE, INC., d/b/a MINNESOTA
POWER**

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

**MISSOURI BASIN MUNICIPAL POWER
AGENCY, d/b/a MISSOURI RIVER
ENERGY SERVICES**

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

**XCEL ENERGY SERVICES INC., AS
AGENT FOR: 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 (AS TENANTS-IN-COMMON)**

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

IN WITNESS WHEREOF, Assignor, intending to be legally bound, has caused this Assignment to be executed as of the date affixed by the Assignors to be effective as of the 30th day of August, 2007.

The foregoing is hereby accepted by
Assignee:

**CAPX 2020 TRANSMISSION CAPACITY
EXPANSION INITIATIVE TRUST, a
Delaware Statutory Trust**

By _____
Its _____

Dated: _____, 2007

**[SIGNATURE PAGE TO GRANT AND ASSIGNMENT OF CAPX 2020
PARTICIPATION AGREEMENT INTELLECTUAL PROPERTY]**

APPENDIX I

ASSIGNORS

Wisconsin Public Power, Inc.
1425 Corporate Center Drive
Sun Prairie, WI 53590-9109

Great River Energy
17845 East Highway 10
P. O. Box 800
Elk River, MN 55330-0800

Northern States Power Company
(Minnesota) and Northern States
Power Company (Wisconsin),
jointly
414 Nicollet Mall, 5th Floor
Minneapolis, MN 55401

Otter Tail Corporation, d/b/a
Otter Tail Power Company
215 S. Cascade St.
P. O. Box 496
Fergus Falls, MN 56538-0496

Southern Minnesota Municipal
Power Agency
500 First Avenue Southwest
Rochester, MN 55902-3303

Missouri River Energy Services
3724 West Avera Drive
P. O. Box 88920
Sioux Falls, SD 57109-8920

City of Rochester
4000 East River Rd. NE
Rochester, MN 55906-2813

Minnesota Power, a division of
ALLETE, Inc.
30 West Superior Street
Duluth, MN 55802

Midwest Municipal
Transmission Group
c/o Iowa Association of
Municipal Utilities
1735 NE 70th Avenue
Ankeny, IA 50021



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Board requests the Common Council to approve an assignment of the City of Rochester's CapX 2020 intellectual property and associated rights to CapX 2020 Transmission Capacity Expansion Initiative Trust, a Delaware Statutory Trust, and to authorize the Mayor and the City Clerk to execute the

Grant and Assignment of CapX 2020 Intellectual Property

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 30th day of October 2007.

President

Secretary