

FOR BOARD ACTION

Agenda Item # 7.

Meeting Date:

12/14/06

SUBJECT: CapX Participation Agreement and amendments

PREPARED BY: Gerry Steffens, Manager of System Operations/Reliability

ITEM DESCRIPTION:

Since June 2006 the CapX agreements team has been meeting to codify the agreements necessary to create a CapX organization as well as pursue the \$1.3 Billion worth of transmission construction being undertaken by the CapX 2020 participants. Our legal representative has been Eric Swanson of the Minneapolis office of Winthrop and Weinstine. We hired outside legal representation due to the amount of time required for the participation and development agreements.

Three agreements were previously approved (in September) by the Board and Council. They are:

1. The CapX Confidentiality Agreement
2. Southeast Twin Cities-Rochester-La Crosse Transmission Project Memorandum of Understanding
3. The CapX Organization Memorandum of Understanding

This FBA requests approval of amendments to agreements 1 and 2. It further requests approval of the CapX 2020 Transmission Capacity Expansion Initiative Participation Agreement dated January 1, 2007 (hereafter referred to as the Participation Agreement) and the Joint Prosecution Agreement. Each agreement action is discussed individually below.

1. CapX Confidentiality Agreement

The Confidentiality Agreement simply obligates all CapX participants to treat the confidential information of other participants in a uniform manner. The previously approved agreement expires on December 31, 2006. The original schedule called for the permanent participation agreement as well as the four project development agreements to be approved and in place on January 1, 2007. Since the project development agreements will not be in final form until December 22nd and therefore will not be approved by all eleven participants until mid February 2007, the termination date of the Confidentiality Agreement is being amended from December 31, 2006 to February 28, 2007. There is no monetary component to the Confidentiality Agreement. Once both the Participation Agreement and the development agreements are approved, the Confidentiality Agreement will no longer be required since the individual agreements include the confidentiality provisions. Attached is the amendment to the Confidentiality Agreement to change the termination date.



General Manager



Date

ROCHESTER PUBLIC UTILITIES

FOR BOARD ACTION

Agenda Item # 7.

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12/14/06

2. Amendment of the Southeast Twin Cities-Rochester-La Crosse Transmission Project Memorandum of Understanding

Since the Project Development Agreement will not be finalized until December 22, 2006, it will not come to the Board and Council for approval until the January Board meeting and the first February City Council meeting. The original MOU covers the maximum potential 2006 project-related costs of \$1,060,000 for the 345 and 161 lines proposed to be constructed and has a termination date of December 31, 2006. The amendment changes the maximum amount to \$1,272,000 and extends the agreement termination date to February 28, 2007. The maximum exposure of RPU under this agreement is 9% of the total amount, or \$114,480, which is increased from the previous \$95,400 maximum exposure. Adequate monies for this agreement are included in the five year budget projections and the detailed 2007 budget amounts.

3. CapX 2020 Transmission Capacity Expansion Initiative Participation Agreement dated January 1, 2007 (Participation Agreement)

The Participation Agreement replaces the existing CapX Organization Memorandum of Understanding, which terminates on December 31, 2006. It is intended to become effective January 1, 2007 and remain in effect until December 31, 2020 (Section 3a). Any participant can withdraw at any time and their only obligation will be to pay their portion of the approved CapX costs for the remainder of the fiscal year (Section 8a). For 2007, RPU's obligations under the Participation Agreement are expected to be 2.823% (see Appendix B) of an estimated budget of \$1,736,130, or \$49,011. These monies are included in the five-year and 2007 proposed budget amounts. As participants join or withdraw from the CapX organization, RPU's percentage can change somewhat; but it will not change dramatically unless the large members terminate their participation, which would likely mean the organization would terminate. Provisions are included in the Agreement for this eventuality. This Agreement (draft attached) is still undergoing review/revision by the parties.

4. Joint Prosecution Agreement

The Joint Prosecution Agreement is an agreement between the CapX participants that is intended to govern the exchange of ideas, materials, and information in furtherance of obtaining a Certificate of Need and Other Regulatory Proceedings required for the construction of CapX transmission facilities. This Agreement (draft attached) is still undergoing review/revision by the parties.

General Manager

Date

ROCHESTER PUBLIC UTILITIES

FOR BOARD ACTION

Agenda Item # 7.

Meeting Date:

12/14/06

UTILITY BOARD ACTION REQUESTED:

It is recommended that the Board approve and request the Common Council approve the following agreements related to CapX 2020 and authorize the Mayor and City Clerk to execute the documents subject to review by the City Attorney of any final revisions:

1. CapX Confidentiality Agreement Amendment
2. Amendment of the Southeast Twin Cities-Rochester-La Crosse Transmission Project Memorandum of Understanding
3. CapX 2020 Transmission Capacity Expansion Initiative Participation Agreement dated January 1, 2007, subject to approval of the final language by the City Attorney.
4. Joint Prosecution Agreement, subject to approval of the final language by the City Attorney.

General Manager

Date

ROCHESTER PUBLIC UTILITIES

Amendment of
Cap X
Confidentiality Agreement

WHEREAS, the undersigned entities (the "Participants") executed a CapX Confidentiality Agreement dated as of July 21, 2006 (the "Agreement") in connection with proposed transmission line projects involving one or more Participants that may be located in and around the State of Minnesota (the "CapX 2020 Projects"); and

WHEREAS, the Agreement has a termination date of December 31, 2006; and

WHEREAS, the Participants anticipated that the Agreement would be superceded by more definitive agreements (the "Project Development Agreements") with respect to the CapX 2020 Projects that were expected to be executed prior to December 31, 2006; and

WHEREAS, the Participants do not expect the execution process by all Participants to be completed by December 31, 2006; and

WHEREAS, the Participants wish to extend the termination date of the Agreement as provided in this amendment.

NOW, THEREFORE, the Participants agree to amend the Agreement as follows:

1. Section 4(b) of the Agreement shall be modified by deleting "December 31, 2006" and inserting in its stead "February 28, 2007."
2. Except as expressly modified herein, no other changes or modifications to the Agreement are hereby made and the Agreement shall continue in full force and effect as modified herein.
3. This Amendment of CapX Confidentiality Agreement shall be effective as of December 31, 2006.
4. This amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[signatures on following page]

PARTICIPANTS (Continued)

Minnkota Power Cooperative, Inc.

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Wisconsin Public Power, Inc.

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Midwest Municipal Transmission Group

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Western Minnesota Municipal Power Agency

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Rochester Public Utilities

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Montana Dakota Utilities

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

PARTICIPANTS

Otter Tail Power Company

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Southern Minnesota Municipal Power Agency

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Great River Energy

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Minnesota Power

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Missouri River Energy Services

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Northern States Power Company d/b/a Xcel Energy

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

PARTICIPANTS (Continued)

Dairyland Power Cooperative

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

Amendment of
Southeast Twin Cities-Rochester-La Crosse Transmission Project
Memorandum of Understanding

WHEREAS, the undersigned participants (the "Participants") executed a Memorandum of Understanding (the "MOU") with respect to a proposed transmission line project, known as the Southeast Twin Cities-Rochester-La Crosse Transmission Project (the "Project"), which has a termination date of December 31, 2006; and

WHEREAS, the Participants indicated in the MOU that it was viewed as temporary in nature and would be superceded by a more definitive agreement (the "Project Development Agreement") that was expected to be executed prior to December 31, 2006; and

WHEREAS, the Participants expect the form of the Project Development Agreement to be in substantially final form by December 22, 2006, but do not expect the execution process by all Participants to be completed by December 31, 2006; and

WHEREAS, the Participants wish to avoid any disruption of the ongoing development work regarding the Project.

NOW, THEREFORE, the Participants agree to amend the MOU as follows:

1. Section 5 of the MOU entitled "Termination" shall be modified by deleting "December 31, 2006" and inserting in its stead "February 28, 2007."
2. Appendix C of the MOU entitled "ESTIMATED DEVELOPMENT COSTS BUDGET" shall be deleted in its entirety and the attached Appendix C shall be inserted in its stead.
3. Except as expressly modified herein, no other changes or modifications to the MOU are hereby made and the MOU shall continue in full force and effect as modified herein.
4. This Amendment of Southeast Twin Cities-Rochester-La Crosse Transmission Project Memorandum of Understanding shall be effective as of December 31, 2006.
5. This amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

PARTICIPANTS

Dairyland Power Cooperative

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Southern Minnesota Municipal Power Agency

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Rochester Public Utilities

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Wisconsin Public Power, Inc.

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

**Northern States Power Company d/b/a Xcel
Energy**

By _____

Title: _____

Address: _____

Fax Number: _____

E-Mail Address: _____

Phone Number: _____

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

APPENDIX C

ESTIMATED DEVELOPMENT COSTS BUDGET

Technical Standards	\$24,000
Certificate of Need	516,000
Template Project Agreements	120,000
General Projection Execution Activities	72,000
General Planning to Refine Group 1 Projects	12,000
LaCrosse-Related Development Costs	<u>528,000</u>
Total Development Costs Cap	\$1,272,000

**CAPX 2020
TRANSMISSION CAPACITY EXPANSION
INITIATIVE
PARTICIPATION AGREEMENT**

DATED AS OF JANUARY 1, 2007

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PARTICIPATION AGREEMENT

CAPX 2020 TRANSMISSION CAPACITY EXPANSION INITIATIVE

THIS PARTICIPATION AGREEMENT, dated as of January 1, 2007 (this "Agreement"), for the **CAPX 2020 TRANSMISSION CAPACITY EXPANSION INITIATIVE ("CapX 2020 Initiative")** is entered into by and among Great River Energy, a cooperative corporation incorporated under the laws of Minnesota, Midwest Municipal Utilities Association, a non-profit corporation under the laws of Iowa, doing business (and referred to herein) as Midwest Municipal Transmission Group, ALLETE, Inc., a Minnesota corporation, d/b/a Minnesota Power, Missouri Basin Municipal Power Agency, an intergovernmental entity organized under Chapter 28E of the Code of Iowa and existing under the intergovernmental corporation statutes of the States of Iowa, Minnesota, North Dakota, and South Dakota d/b/a (and referred to herein) as Missouri River Energy Services, Otter Tail Power Corporation d/b/a Otter Tail Power Company, a corporation organized and existing under the laws of the State of Minnesota, 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, and Northern States Power Company, a Minnesota corporation and a wholly owned subsidiary of Xcel Energy Inc., d/b/a Xcel Energy. Each of the foregoing shall be deemed a "Participant" in this Agreement, as further defined in Section 2.

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 therefore in the State of Minnesota and the surrounding region;

B. The Participants have determined that the existing transmission system in Minnesota and the surrounding region appears insufficient to serve the projected growth of the electricity requirements of Participants' respective customers and that the construction of certain transmission facilities and upgrades is critically necessary to serve projected load growth and maintain transmission system reliability;

C. The Participants have further determined that due to the regional operation of the transmission grid in Minnesota and surrounding region, and the interconnection of their respective transmission facilities, long-term transmission planning, including identification of transmission upgrades and additions necessary to serve projected growth in customer electricity requirements, can be performed most effectively in a collaborative manner;

D. The Participants have initiated and agreed to participate in the CapX 2020 Initiative as a collaborative and joint initiative to enhance and help ensure the long term reliability of the electric transmission system in Minnesota and the surrounding region;

E. The goals of the CapX 2020 Initiative, are to facilitate the collaborative planning and coordination of one or more Potential Projects as the Vision Team may propose under the terms and conditions of this Agreement, and which possibly may be constructed, owned and/or operated by one or more Participants under other arrangements and agreements;

F. The CapX 2020 Initiative pertains to the Parties' respective transmission systems only and any planning, coordination, construction, or ownership of electric generation facilities is outside the scope of this Agreement;

G. Each Participant enters into this Agreement to facilitate the Participants' pursuit of the goals of the CapX 2020 Initiative and the governance of the relationships among the Participants in connection therewith.

AGREEMENT

NOW, THEREFORE, the Participants, for and in consideration of the foregoing Recitals, each of which is incorporated herein as an essential term hereof, and the mutual promises and agreements contained in this Agreement agree as follows:

SECTION 1. PURPOSE. The purpose of this Agreement is to facilitate the Participants' pursuit of the goals of the CapX 2020 Initiative and the governance of the relationships among the Participants in connection therewith. Pursuant to the terms of this Agreement the Participants intend jointly and cooperatively to: (a) pursue the study, planning and coordination of one or more Studies or Potential Projects, which may include transmission expansions and upgrades to be owned (as provided in Section 14) and/or operated by one or more Participants; and (b) develop, and coordinate the application of, Project standards to promote an efficient and reliable transmission system; and (c) coordinate the cooperative use of existing transmission facilities to promote efficiency and reliability. This Agreement does not require that any Participants construct, develop, own, or operate any transmission upgrades or expansions, but it is intended that such upgrades or expansions may be the subject of other agreements and arrangements among the Participants and, in some instances, other parties. This Agreement is inapplicable to any planning, acquisition, construction, or coordination of electric generation facilities.

SECTION 2. DEFINITIONS. In addition to the other terms defined herein, the following terms, whether in the singular or in the plural, when used herein and initially capitalized, shall have the meanings specified.

(a) **Agreement.** The term "Agreement" shall be as defined in the preamble paragraph above.

(b) Arbitration Rules. The term "Arbitration Rules" shall be as defined in Section 12.

(c) Auditor. The term "Auditor" shall be as defined in Section 9(c).

(d) CapX 2020 Initiative. The term "CapX 2020 Initiative" shall mean the joint and cooperative efforts of the Participants and other entities to engage in electric transmission projects designed to serve the projected growth of electricity requirements in the transmission grid in Minnesota and the immediately surrounding region, which efforts are anticipated to include, in the aggregate over a long-term period, the study, planning, coordination, development, construction and ownership of electric transmission facilities. The CapX 2020 Initiative is not applicable to any planning, acquisition, construction and/or coordination of electric generation facilities.

(e) CapX Costs. The term "CapX Costs" shall be as defined in Section 6.

(f) CapX Footprint. The term "CapX Footprint" shall be the area designated as the CapX Footprint on Exhibit A.

(g) CapX Material. The term "CapX Material" shall be as defined in Section 13(e).

(h) Chairperson. The term "Chairperson" shall be as defined in Section 4(j).

(i) Confidential Information. The term "Confidential Information" shall be as defined in Section 13(a).

(j) Consultants. The term "Consultants" shall be as defined in Section 13(a).

(k) Default. The term "Default" shall mean: (i) a Participant's failure to make full payment under this Agreement when due and such failure is not remedied within ten (10) days after receipt of notice of such failure from the Expense Coordinator; or (ii) a Participant's failure to comply in any material respect with any of the material terms, conditions and covenants of this Agreement which continues for thirty (30) days following the receipt of notice thereof from the Executive Director, at the direction of the Vision Team.

(l) Disclosing Participant. The term "Disclosing Participant" shall be as defined in Section 13(c).

(m) Dispute. The term "Dispute" shall be as defined in Section 12.

(n) Executive Director. The term "Executive Director" shall be as defined in Section 5(a).

(o) **Expense Coordinator.** The term "Expense Coordinator" shall be as defined in Section 6 (g)(i).

(p) **Fall Vision Team Meeting.** The term "Fall Vision Team Meeting" shall be as defined in Section 4(b)(ii).

(q) **Fiscal Year.** The term "Fiscal Year" shall mean the period commencing on and including January 1 to and including the following December 31.

(r) **Load Serving Entity.** The term "Load Serving Entity" means any entity that has undertaken an obligation by statute, franchise, regulatory requirement or contract for load to provide electric energy for end use customers located within or attached to the electric transmission system designated as the CapX Footprint. Where a distribution cooperative or municipal distribution system otherwise covered by the prior sentence is a wholesale customer of a generation and transmission cooperative or municipal joint action agency, the generation and transmission cooperative or municipal joint action agency may be deemed to be the Load Serving Entity for such distribution cooperative or municipal distribution system for purposes of this Agreement.

(s) **NCP Load.** The term NCP Load shall be the peak load of each Participant within the CapX Footprint during the twelve month period immediately preceding the determination thereof calculated in accordance with Section 6(e) of this Agreement.

(t) **Officers.** The term "Officers" shall be as defined in Section 4(j).

(u) **Participant.** The term "Participant" shall mean (i) the Participants listed and set forth in the preamble paragraph above, each of whom executed and delivered this Agreement on or before the date first above written; (ii) each entity that subsequently executes this Agreement in accordance with Section 7 (Additional Members) hereof; and (iii) a successor (including assigns) of a party to this Agreement referred to in clause (i) or clause (ii) of this subsection. The term "Participant" shall, however, exclude any entity that has withdrawn from this Agreement pursuant to Section 8 (Withdrawal of Participant) or been terminated from this Agreement pursuant to Section 10 (Default and Termination).

(v) **Permitted Purpose.** The term "Permitted Purpose" shall be as defined in Section 13(a).

(w) **Potential Project.** The term "Potential Project" shall mean facilities for the transmission of electrical energy for public or private uses and all rights, interests, properties and improvements necessary therefor, including without limitation all buildings, structures, improvements, facilities and rights and interests appurtenant thereto or provided therefor together with land (and

rights and interests in and to the ownership and/or use of land) necessary therefor which are being considered by the Vision Team pursuant to this Agreement. Any such facilities for the transmission of electric energy may be situated in whole or in part within the State of Minnesota or the surrounding region. The term "Potential Project" shall not include any facility for the generation of electrical power.

(x) Project. The term "Project" shall mean a former Potential Project which is being constructed developed, owned or operated pursuant to separate development and ownership agreements among one or more Participants and, in some instances, other parties.

(y) Secretary. The term "Secretary" shall be as defined in Section 4(j).

(z) Spring Vision Team Meeting. The term "Spring Vision Team Meeting" shall be as defined in Section 4(b)(ii).

(aa) Studies. The term "Studies" shall mean one or more investigations, evaluations, surveys or studies which are undertaken to support the purposes of the CapX 2020 Initiative as set forth in Section 1 or which are undertaken prior to the attribution thereof to a Potential Project.

(bb) Support Teams. The term "Support Team" shall be as defined in Section 5(e).

(cc) Term. The term "Term" shall be as defined in Section 3(a).

(dd) Vice Chairperson. The term "Vice Chairperson" shall be as defined in Section 4(j).

(ee) Vision Team. The term "Vision Team" shall be as defined in Section 4(a).

SECTION 3. TERM AND TERMINATION.

(a) Term. This Agreement shall become effective as of the date hereof and shall continue in full force and effect until December 31, 2020 (the "Term"), unless earlier terminated by the Participants in accordance with the terms set forth herein below, in which case the date of such earlier date shall be the final date of the Term.

(b) Termination. This Agreement may be terminated prior to the end of the Term upon the affirmative vote of at least seventy-five percent (75%) of the representatives of the Vision Team.

(c) Effect of Termination. Upon termination of this Agreement, subject to the survival provisions of Section 18(i), the Participants shall wind-

down all work of the Vision Team and cooperatively allocate the work responsibilities among and between the Participants in an equitable manner consistent with the purpose of this Agreement and intent of the Participants reflected herein.

SECTION 4. VISION TEAM.

(a) Creation. As a means to facilitate timely and orderly cooperation and exchange of information among and between the Participants, there is hereby established a "Vision Team" which shall be established and maintained in accordance with the provisions of Section 4.

(b) Regular Meetings. The Vision Team shall hold regular meetings not less than twice each Fiscal Year beginning the first full Fiscal Year. The date hour and location at which each regular meeting shall be held shall be fixed by resolution of the Vision Team. The Executive Director, at the direction of the Vision Team, shall be responsible for calling regular meetings of the Vision Team, provided, however, that in the event that a regular meeting is not held within the period set forth in subsection (ii) below, any Participant may call such regular meeting. With respect to the regular meetings of the Vision Team:

(i) The first meeting of the Vision Team shall be held promptly following the execution and delivery of this Agreement. The business matters to be considered at the first meeting shall at a minimum include:

(A) election of a Chairperson, Vice Chairperson and Secretary;

(B) appointment of the Executive Director;

(C) appointment of the Expense Coordinator on such terms as may be agreed to by the Vision Team and the Expense Coordinator; and

(D) designate Studies and one or more Potential Projects.

(ii) Beginning the first full Fiscal Year, at least two (2) regular meetings of the Vision Team shall be held in each Fiscal Year, the first of which shall be held between April 1 and June 30 (the "Spring Vision Team Meeting"), and the second between October 1 and December 31 (the "Fall Vision Team Meeting").

(iii) The Spring Vision Team Meeting shall include, at a minimum, the following items of business:

(A) review and, if appropriate, approve the report of the Auditor;

(B) report of the Executive Director;

(C) report of the Expense Coordinator;

(D) review status of existing Studies and Potential Projects;

(E) review and, if appropriate, approve any proposed Studies or Potential Projects; and

(F) review and, if appropriate, approve any proposed revisions to the approved business plan and Fiscal Year budget.

(iv) The Fall Vision Team Meeting shall include, at a minimum, the following items of business;

(A) review and, if appropriate, approve proposed business plan and budget for the next Fiscal Year;

(B) review and, if appropriate, approve the CapX Footprint;

(C) review Exhibit B and verify its accuracy;

(D) election of the Officers;

(E) appoint Executive Director for the next Fiscal Year;

(F) appoint the Expense Coordinator for the next Fiscal Year on such terms as may be agreed to by the Vision Team and the Expense Coordinator;

(G) appoint legal counsel, Auditor and other professionals for the next Fiscal Year on such terms as may be agreed to by the Vision Team and the respective professional;

(H) report of the Executive Director;

(I) report of the Expense Coordinator;

(J) review status of existing Studies and Potential Projects; and

(K) review and, if appropriate, approve any proposed Studies or Potential Projects.

(c) Special Meetings. The Executive Director shall promptly call a special meeting of the Vision Team at the request of any representative on the Vision Team. The location, hour and date of the special meeting shall be fixed by the Executive Director. The business transacted at a special meeting is limited to the purposes stated in the notice of the meeting.

(d) Composition. The Vision Team shall operate in accordance with the following provisions:

(i) Each Participant hereby appoints one duly authorized representative and one duly authorized alternate representative on the Vision Team by setting forth the names of such individuals on Exhibit C.

(ii) Any entity that becomes a Participant after the effective date of this Agreement shall appoint one duly authorized representative and one duly authorized alternate representative and shall designate such individuals as its representatives on the Vision Team by giving written notice to the Executive Director and all other Participants of such designation. The Executive Director shall cause Exhibit C to be revised to include such individuals.

(iii) The representative and alternate representative of each Participant shall be deemed for all purposes to be duly authorized to represent and act on behalf of the Participant in respect of all matters under this Agreement.

(iv) A Participant may remove and/or replace its authorized representative and alternate representative in its sole discretion. Such removal and/or replacement shall be effective upon receipt of written notice by the Executive Director and all other Participants. The Executive Director shall cause Exhibit C to be revised upon receipt of such notice.

(v) In the event neither the representative nor the alternate of a Participant is able to attend a meeting of a the Vision Team, a Participant may, by giving notice to the Executive Director and all other Participants, designate a further alternate to act as its representative on the Vision Team, such notice to be effective, however, only if given at or prior to the first meeting of the Vision Team at which such alternate shall attend.

(e) Notice. Each Participant shall be given advance written notice of any meeting of the Vision Team stating the location, date and hour of the meeting, the purposes for which the meeting is called and an agenda including matters on which votes are expected to be taken. Such advance written notice shall be given not less than three (3) calendar days and no more than thirty (30)

days in advance of a meeting. A representative of a Participant who is present at a meeting shall be deemed to have waived notice thereof, unless objection to the notice is presented at the commencement of the meeting by such representative in which case no waiver shall be construed.

(f) Minutes. The Secretary shall cause to be kept minutes of the meetings of the Vision Team, both regular and special, and shall, as soon as possible after each meeting, cause a copy of the minutes to be forwarded to each Participant. Minutes shall include all resolutions voted upon and any other actions taken by the Vision Team. The Secretary shall cause to be established a minute book of the Vision Team recording all actions of the Vision Team at all meetings. Such minute book shall be available for review and copying by any Participant at all reasonable times.

(g) Quorum. Forty percent (40%) of the representatives on the Vision Team shall constitute a quorum for the transaction of business, except that, if due to departure of representatives during a meeting less than forty percent (40%) is present at a meeting, a majority of those representatives present shall have the power to adjourn the meeting.

(h) Voting. Except as otherwise indicated in this Agreement all actions of the Vision Team must receive the affirmative vote of at least a majority of the representatives of the Vision Team present at any meeting. Except as otherwise provided in this Agreement, each Participant shall have one vote on all matters brought to the Vision Team. If, on the day any vote is to be taken by the Vision Team, any Participant is in Default under this Agreement, its representative on the Vision Team shall be precluded from voting on such day. For purposes of determining a quorum and whether an action has been approved or disapproved, the number of votes entitled to be cast shall be reduced for any Participant in Default. Any vote, action, resolution, determination or report of the Vision Team may be taken or made in an assembled meeting or by telephone or other means by which the Vision Team representative(s) not physically present are able simultaneously to hear and be heard by all other Vision Team representative(s) present at the meeting. Any action required or permitted to be taken at a meeting of the Vision Team may be taken by written action signed, or consented to by authenticated electronic communications, by unanimous consent of the Vision Team. Notwithstanding the provisions of this subsection, actions by the Vision Team with respect to those matters identified below require compliance with the voting requirements set forth below:

(i) An affirmative vote of at least sixty percent (60%) of the representatives of the Vision Team, regardless of the number of representatives present at any meeting, shall be required to approve the following actions:

(A) appointment or termination of the Officers or an Executive Director (Sections 4(b) and 5);

(B) appointment or termination of Expense Coordinator (Section 6(g));

(C) appointment or termination of Auditors (Section 9 (c));

(D) appointment of legal counsel;

(E) approval of CapX Costs, business plan and Fiscal Year budget and any revisions thereto (Section 6(a));

(F) approval of the report of the Auditor (Section 4 (b)(iii)(A));

(G) approval of Studies and Potential Projects (Section 4(b)(iii)(D));

(H) approval of agreements or commitments (Section 11); and

(I) approval of terms of use of tangible and intangible property interests (Section 14).

(ii) An affirmative vote of at least seventy-five percent (75%) of the representatives of the Vision Team, regardless of the number of representatives present at any meeting, shall be required to approve the following actions:

(A) termination of this Agreement (Section 3(b)); and

(B) modification of any provision of this Agreement, provided, however that any modification to Sections 4(h) (Voting), 6(c) (Participant Share of CapX Costs), 18(b) (Successors and Assigns), 13 (Confidentiality) and 14 (Property Interests) of this Agreement shall require the affirmative vote of one-hundred percent (100%) of the representatives of the Vision Team, regardless of the number of representatives present at any meeting.

(i) Committees. The Vision Team shall establish such committees as the Vision Team deems necessary and convenient. Such committees shall have such authority as expressly authorized by the Vision Team.

(j) Officers of the Vision Team. The Vision Team shall elect a Chairperson of the Vision Team ("Chairperson") who shall act in a general

executive capacity of the Vision Team, subject to the direction of the Vision Team. The Chairperson shall preside at all meetings of the Vision Team at which he or she is present. The Vision Team shall elect a Vice Chairperson of the Vision Team ("Vice Chairperson") who shall perform the duties of the Chairperson in his or her absence. The Vision Team shall elect a Secretary of the Vision Team ("Secretary") who shall keep the minutes of the meetings of the Vision Team (or cause such minutes to be kept) and exercise such other powers as usually incident to such office. The Chairperson, Vice Chairperson and Secretary (collectively, the "Officers") shall perform such further duties as are assigned thereto by the Vision Team and may be removed at any time with or without reason by the Vision Team pursuant to the affirmative vote described in Section 4(h)(i) above.

SECTION 5. OFFICERS AND STAFF OF THE CAPX 2020 INITIATIVE.

(a) Election. The Vision Team shall appoint one or more executive directors of the CapX 2020 Initiative (each, an "Executive Director" or collectively referred to as the "Executive Director") and may also designate staff which will report to the Executive Director. The Executive Director shall be selected from a list developed and proposed by the Participants. In the event the Vision Team appoints more than one individual as Executive Director such individuals shall be jointly obligated to perform the duties of the Executive Director and each such individual shall be responsible to coordinate with the other individual(s) to ensure the timely performance of the duties of the Executive Director.

(b) Removal and Other Vacancy. In the event that an Executive Director ceases to be an employee of a Participant, resigns from such office, is terminated by the Vision Team or is otherwise unable to perform the duties of such office, the resulting vacancy shall be filled at the next regular or special meeting of the Vision Team held after such vacancy occurs.

(c) Duties of Executive Director. The Executive Director shall have the following duties and responsibilities:

- (i) execute the directives of the Vision Team;
- (ii) perform the day to day responsibilities of the management of CapX 2020 Initiative pursuant to the directives of the Vision Team;
- (iii) coordinate and facilitate the activities of Support Teams;
- (iv) coordinate preparation of annual business plan and budget of CapX Costs pursuant to Section 6 and provide reports as to status of carrying out the business plan and compliance with the budget as requested by Vision Team;

(v) maintain communication protocols and tools for communication for the Vision Team and Participants;

(vi) provide, coordinate and/or obtain background information, data, statistics and other relevant information for Studies and Potential Projects;

(vii) communicate with Participants, both individually and collectively, regarding the CapX 2020 Initiative;

(viii) coordinate with and facilitate flow of information, processes and reporting for the Expense Coordinator;

(ix) act as primary liaison of the Vision Team to Projects and the Project managers;

(x) prepare regular (quarterly, or such other as requested) reports of the overall activities of the CapX 2020 Initiative, including the status of Studies and Potential Projects;

(xi) investigate and make recommendations to the Vision Team regarding admission of new Participants, withdrawal of Participants and Default issues;

(xii) call and notice all special meetings of the Vision Team;

(xiii) supervise and assess the performance of outside vendors (other than the Auditor) engaged for CapX 2020 Initiative;

(xiv) supervise staff designated to the CapX 2020 Initiative;

(xv) prepare the annual adjustment of the NCP Loads; and

(xvi) such other duties and responsibilities that may be from time to time assigned by the Vision Team.

(d) Indemnification of Officers, Executive Director and Staff.

The Officers, Executive Director and staff shall not incur any liability with respect to any action taken or any omission so long as the action or omission was not made in bad faith or with gross negligence. The Officers, the Executive Director and staff may, in all questions arising in connection with their respective duties, rely on the advice of legal counsel in all matters to be done, omitted or suffered in good faith by the Officers, the Executive Director or staff, and shall not be liable to the Participants in the event such standard(s) are met in the performance of their duties and obligations hereunder. The Participants shall, in accordance with their respective total cost sharing percentages set forth on Exhibit B, defend and indemnify the Officers, the Executive Director and staff, and hold him or her (and/or their employer entity) harmless, from and

against any loss, liability or expense incurred without gross negligence or bad faith arising out of or in connection with the performance of his or her duties under this Agreement. The foregoing obligation of indemnification shall be net of all applicable insurance recoveries. Each Participant shall exercise reasonable commercial efforts to obtain an endorsement pursuant to which its insurers waive subrogation against the other Participants under policies of insurance that provide coverage for employment acts, errors and omissions of employees of such Participant.

(e) **Support Teams.** The Vision Team shall establish such support teams ("Support Teams") as the Vision Team deems necessary and convenient. Such Support Teams shall be comprised of employees of the Participants or retained professionals of the Participants and shall have such duties and authority as expressly authorized by the Vision Team.

SECTION 6. COST SHARING. The Participants expect to incur costs and expenses arising from, in connection with and/or incident to the CapX 2020 Initiative, including, but not limited to, general organization development planning and management, Studies and Potential Projects (the "CapX Costs") in each Fiscal Year. Except as otherwise unanimously agreed by all Participants, each Participant agrees to pay a portion of the CapX Costs determined pursuant to this Section 6.

(a) **Business Plan and Budgets.** A business plan and a budget of CapX Costs for each Fiscal Year shall be developed by the Executive Director and reviewed, and if appropriate, approved by the Vision Team prior to commencement of each Fiscal Year. Except as otherwise determined by the Participants, total CapX Costs shall be limited as provided in the approved budget. For the Fiscal Year ending December 31, 2006 the approved budget shall be the remaining portion of the budget set forth on Appendix A to the CapX Organization Memorandum of Understanding, effective July 28, 2006.

(b) **Periodic Reporting.** The Expense Coordinator will use commercially reasonable efforts to prepare and distribute to each Participant the monthly reports set forth in Section 6(g)(ii) below within twenty (20) days after each month-end period during each Fiscal Year of the Term.

(c) **Participant Share of CapX Costs.** Except as otherwise unanimously agreed by all Participants, each Participant agrees to pay a portion of the CapX Costs in accordance with subsections (d) through (f) of this Section.

(d) **Pro-rata Amount.** Twenty-five percent (25%) of the CapX Costs will be paid by Participants on a pro-rata basis. Each Participant's pro-rata share of the twenty-five percent of the CapX Costs will be equal to one divided by the number of Participants from time to time. Initially, such amount will be 0.111.

(e) Non-coincident Peak Load Amount. Seventy-five percent (75%) of the CapX Costs will be paid by Participants on a NCP Load basis. The NCP Loads will be adjusted annually. The Executive Director shall propose the annual adjustments to the NCP Load and in connection therewith each Participant shall provide to the Executive Director such information as is requested by the Executive Director. In determining its NCP Load each Participant shall determine its largest electric power requirement (based on net energy for load) during the twelve-month period immediately preceding the determination, integrated over one clock hour and expressed in megawatts (MW), necessary to fulfill its obligations as a Load Serving Entity for load located within or attached to the electric transmission system designated as the CapX Footprint. The Vision Team may authorize the engagement of an independent third party to assist the Executive Director in the annual adjustments to the NCP Load. Each Participant's share of the seventy-five percent (75%) of the CapX Costs will be equal to the Participant's NCP Load divided by the aggregate NCP Load of all Participants.

(f) Table. Exhibit B sets forth each Participant's pro-rata amount, NCP Load, percentage of aggregate NCP Load and the total cost sharing percentage as of the date of this Agreement. Such amounts shall be revised annually prior to the beginning of the next Fiscal Year and upon the withdrawal or exclusion of a Participant pursuant to Section 8 or termination pursuant to Section 10 and upon the admittance of a new Participant pursuant to Section 7 and, in each such instance, Exhibit B shall be revised accordingly.

(g) Expense Coordinator.

(i) Prior to the commencement of each Fiscal Year the Vision Team shall appoint a Participant to act as an expense coordinator (the "Expense Coordinator") that will on a monthly basis coordinate, collect, assemble, classify, organize and pay the CapX Costs pursuant to procedures approved by the Vision Team. The Vision Team shall have authority to terminate the Expense Coordinator.

(ii) The Expense Coordinator shall prepare the reports required by this Section 6, determine each Participant's allocable payment share of the CapX Costs, and distribute such reports and invoices to all Participants. Such reports shall include:

(A) monthly financial statements, with monthly and year-to-date results, along with budget-to-actual comparisons;

(B) cash disbursements of CapX Costs on a monthly and year-to-date basis;

(C) cash receipts on a monthly and year-to-date basis;

(D) report of CapX Costs incurred;

(E) report of any Defaults or notices to Participants of failure to make payment;

(F) aging report of accounts payable; and

(G) report of disputed invoices, expenditures and other accounting highlights of material concern.

(iii) Participants will pay (by wire transfer or otherwise) to the Expense Coordinator all amounts due under the invoice within ten (10) days after the date of the invoice to the address or account designated by the Expense Coordinator.

(iv) If a Participant shall dispute any portion of the amount due under any such invoice, the Participant shall make the disputed payment but such payment, if accompanied by notice of the Participant's protest thereof, shall not jeopardize the Participant's right to have the Dispute resolved in accordance with the procedures set forth in Section 12.

(h) Liability of Expense Coordinator. The Expense Coordinator shall not incur any liability with respect to any action taken or suffered by it or its representatives so long as it was not made in bad faith or with gross negligence. The Expense Coordinator may, in all questions arising in connection with its duties as Expense Coordinator, rely on the advice of independent accountants and legal counsel in all matters to be done, omitted or suffered in good faith by the Expense Coordinator, and shall not be liable to the Participants in the event such standard(s) are met in the performance of its duties and obligations hereunder. The Participants shall, in accordance with their respective total cost sharing percentages set forth on Exhibit B, defend and indemnify the Expense Coordinator, and hold it and its representatives harmless, from and against any loss, liability or expense incurred without gross negligence or bad faith arising out of or in connection with the acceptance or administration of its duties under this Agreement or any agreement ancillary hereto.

SECTION 7. ADDITIONAL MEMBERS.

(a) Eligibility. Any entity which directly or indirectly through its members is a Load Serving Entity may become a Participant upon approval of the Vision Team.

(b) Application. Any entity which desires to become a Participant shall submit to the Executive Director a request which shall include a statement that it is a Load Serving Entity, a statement of its purpose for applying to become a Participant, and a statement that the entity will be able to make the representations and warranties contained in Section 17 of this Agreement.

(c) **Approval.** The Executive Director shall submit the request to the Vision Team which shall act on such request within sixty (60) days of the Executive Director's transmittal of the request to the Vision Team. The Executive Director shall ascertain and advise the Vision Team of the expected NCP Load of the requesting entity.

(d) **Execution of Agreement.** Upon the approval of the Vision Team, the requesting entity shall execute and deliver this Agreement to the Executive Director, Exhibit B shall be revised as provided in Section 6(f), Exhibit C shall be revised to include the new Participant's representative and alternate on the Vision Team and to include the new Participant's notice information.

SECTION 8. WITHDRAWAL OF PARTICIPANT.

(a) **Participant Withdrawal.** Any Participant may withdraw from this Agreement upon satisfaction of the following conditions: (i) the Participant shall have filed with the Vision Team a certified copy of a resolution of its governing body expressing its desire to so withdraw and (ii) the withdrawing Participant shall have paid, or made arrangements reasonably satisfactory to the Vision Team (excluding the withdrawing Participant) to pay, its obligations under this Agreement which shall include, without limitation, the withdrawing Participant's portion of the previously approved CapX Costs for the remainder of the Fiscal Year during which the Participant withdraws.

(b) **Effect of Withdrawal.** Upon compliance with the conditions specified in subsection (a) of this Section 8, the withdrawing Participant shall no longer be considered a Participant for any reason or purpose under this Agreement and its rights and obligations under this Agreement shall terminate except for previously approved payment obligations under this Agreement and the resolution of any pending Disputes. The withdrawal of a Participant shall not affect any obligations of such Participant under any other contract between the withdrawing Participant and one or more other Participants. The withdrawal of a Participant shall require revision of Exhibits B and C. The Executive Director shall promptly cause such revised Exhibits to be distributed to all Participants.

SECTION 9. ACCOUNTS AND REPORTS.

(a) **Accounts.** There shall be strict accountability of all funds, and reporting of all receipts and disbursements made under this Agreement. The Expense Coordinator shall establish and maintain such funds and accounts as may be required by good accounting practice. The books and records of the Expense Coordinator shall be open to inspection at all reasonable times established at least two (2) days in advance of such inspection to each Participant and its Consultants.

(b) Financial Accounting Reports. The Expense Coordinator shall prepare the reports set forth in Section 6 of this Agreement and shall also coordinate, prepare and provide accounting data, information and schedules to the Auditor for the year-end agreed upon procedure.

(c) Fiscal Year End. After the completion of each Fiscal Year (or the completion of the initial Fiscal Year), the CapX 2020 Initiative books and records described by this Agreement shall undergo an agreed upon procedure by a public accounting firm experienced in utility and regulated industry accounting (the "Auditor"). The Auditor shall be retained by the Vision Team. The Auditor will be engaged pursuant to a written engagement letter for the applicable Fiscal Year. The report of the Auditor shall be completed and a report issued by the Auditor within seventy-five days after the Fiscal Year end. The Vision Team shall have the authority to terminate the Auditor.

SECTION 10. DEFAULT AND TERMINATION. In the event that a Participant is in Default under this Agreement such Participant shall be precluded from its voting rights under this Agreement and such Participant may be subject to termination from this Agreement pursuant to the affirmative vote of the Vision Team. Any Participant who is terminated shall continue to be liable for its obligations under this Agreement prior to its termination including such Participant's portion of the previously approved CapX Costs for the remainder of the Fiscal Year, and hereby forfeit any and all claims of any right, title or interest of any kind or nature to any property interests created or that may have been created pursuant to this Agreement. In addition, the other Participants shall have all of the rights and remedies provided at law or equity.

SECTION 11. RELATIONSHIP OF PARTICIPANTS; AUTHORITY. The covenants, obligations and liabilities of the Participants are intended to be several and not joint or collective and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the Participants. Each Participant shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Participant shall be under the control of or shall be deemed to control any other Participant or the Participants as a group. A Participant or the Executive Director shall be authorized to enter into agreements or make commitments with third parties as agent for the Participants only upon a duly approved resolution of the Vision Team. Each such resolution shall expressly provide a Participant or the Executive Director with authority as agent, to bind the remaining Participants with respect to the matter approved in the resolution.

SECTION 12. DISPUTE RESOLUTION. All disputes arising under this Agreement (a "Dispute") shall be addressed by the Vision Team. Any Participant shall have the right to request that a Dispute be brought before the Vision Team by delivering a written request to the Vision Team. In response to a request, the Vision Team shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively. In the event the Vision Team cannot resolve the Dispute

within thirty (30) days after commencement of negotiations, then the chief executive officer of each party to the Dispute or a designee of the chief executive officer with authority to settle the Dispute, shall meet, negotiate and attempt in good faith to resolve the Dispute quickly, informally and inexpensively.

Any Dispute arising out of or relating to this Agreement, or the breach thereof, that cannot be resolved by the Vision Team or the chief executive officers (or their designees) shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules ("Arbitration Rules"), and judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction. The arbitration hearing will be conducted in Minneapolis, Minnesota, in accordance with the Arbitration Rules and the United States Arbitration Act. There shall be three arbitrators. At least two panel members of the panel shall be attorneys at law, and at least two of the panel members shall have prior experience or training in the area of electric transmission or power generation.

Upon the request of any party, the arbitrators shall have the authority to permit discovery in accordance with the Federal Rules of Civil Procedure to the extent they deem appropriate, provided that the Participants intend that any discovery permitted be efficient and prompt. The Federal Rules of Evidence shall apply to determine the admissibility of evidence during the arbitration hearing. A court reporter shall record the arbitration proceeding and the reporter's transcript shall be the official transcript of the proceeding. The arbitrators shall have no power to add or detract from the provisions of this Agreement, and their ruling or award shall conform to the terms or conditions of this Agreement as construed or interpreted in accordance with applicable law. The arbitrators shall have the authority to grant permanent injunctive relief in a form substantially similar to that which would otherwise be granted by a court of law. The arbitrators shall not have the authority to award punitive damages. The arbitrators shall provide a written decision specifying the bases for their decision, including the bases for any award of damages or other monetary relief and the types of monetary relief awarded. The decision of the arbitrators shall be final and binding on the Participants and may be entered and enforced in any court of competent jurisdiction by a Participant. The Participants adopt the Rules for Emergency Measures of Protection of the Arbitration Rules. In the event injunctive relief is granted under the Rules for Emergency Measures of Protection of the Arbitration Rules, then this provision shall not preclude any Participant from seeking temporary or preliminary injunctive relief prior to the commencement of arbitration from any court of competent jurisdiction.

SECTION 13. CONFIDENTIALITY.

(a) Confidentiality of Information. Each Participant agrees to use the confidential and proprietary information it developed pursuant to this Agreement or confidential and proprietary information provided to it by any other Participant in connection with this Agreement ("Confidential Information") solely in order to evaluate and/or participate in the activities contemplated by this Agreement ("Permitted Purpose"). Each Participant shall keep Confidential Information confidential and shall not, and shall advise its

Consultants not to, disclose to any person or entity any Confidential Information in any manner whatsoever or otherwise use any Confidential Information other than for a Permitted Purpose; provided, however, that any Confidential Information may be disclosed to a Participant's financial, technical and legal advisors, members, and consultants (collectively referred to as "Consultants") who may need to know such Confidential Information for the purpose of advising the Participant on the activities contemplated by this Agreement provided that such Consultants are informed by the Participant of the confidential nature of the Confidential Information and that they shall be bound by the confidentiality provisions of this Section 13 to the same extent as if they were parties hereto. Each Participant agrees that it will be responsible for any breach of this Section 13 by any of its Consultants and for any use of the Confidential Information by any of them for any purpose other than a Permitted Purpose. Written documents, electronic documents and other physical information shall be deemed Confidential Information only if clearly and prominently marked and identified as "CONFIDENTIAL". Oral or other non-written communications shall be deemed Confidential Information only if it is declared to be Confidential Information at the time disclosed.

(b) Information Not Deemed Confidential Information.

Notwithstanding Section 13(a), the term "Confidential Information" shall not be deemed to include any information which (i) is or becomes generally available to the public other than as a result of a disclosure by a Participant or any of its Consultants in violation of Section 13(a) hereof, (ii) was within a Participant's possession prior to its being furnished to such Participant by or on behalf of any other Participant, (iii) becomes available to a Participant on a non-confidential basis from a source other than any other Participant or any of their respective Consultants, provided that the Participant does not know that such source is bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to the Participant or any other party with respect to such information; or (iv) is independently developed by a Participant, without access to the Confidential Information.

(c) Requirement to Disclose Confidential Information.

Notwithstanding Section 13(a), in the event that a Participant is required by legal process, a government agency or otherwise by operation of law to disclose any Confidential Information, then to the extent legally permissible, the Participant shall provide prompt notice of such requirement to the Participant to which such Confidential Information relates ("Disclosing Participant") so that the Disclosing Participant at its own costs may seek a protective order or other appropriate judicial remedy. The Participant shall disclose only that portion of the Confidential Information which it is legally required to disclose and shall provide prompt notice of same to the Disclosing Participant. If the Disclosing Participant fails to obtain a protective order or other appropriate judicial remedy with respect to the extent of the Participant's planned disclosure of Confidential Information, the Participant may rely on advice of its legal counsel (which may

be in-house counsel to such Participant) with respect to its obligations of disclosure as contemplated by this subsection.

(d) No Transmission Information to Sales or Marketing Function. The Participant receiving Confidential Information from a Disclosing Participant shall not reveal any non-public Transmission Information directly provided by the Disclosing Participant's Transmission Function to any person employed by a Disclosing Participant in a Sales or Marketing Function or by an Energy Affiliate (as the defined terms used in this subsection are defined in 18 C.F.R. Part 358). In the event of an inadvertent disclosure of non-public Transmission Information, the Participant shall notify the Disclosing Participant's Transmission Function and the Disclosing Participant's Transmission Function shall make arrangements to provide contemporaneous disclosure per 18 C.F.R. Part 358.

(e) Confidential Information Remains Property of Disclosing Participant. Except Confidential Information developed by a Participant in connection with a Study or a Potential Project for which the Participant was reimbursed in accordance with this Agreement, all Confidential Information shall remain the sole property of the Disclosing Participant and, except as provided in this subsection, any Confidential Information provided to any other Participant shall be returned or destroyed at the instruction of the Disclosing Participant. A Participant's Confidential Information may be utilized in or integrated into a CapX 2020 Initiative report, survey, drawing, or other related material with respect to a Study or Potential Project ("CapX Material"). Notwithstanding any provision in this Section 13 to the contrary, if such Participant subsequently (i) withdraws from this Agreement, (ii) or is terminated from this Agreement as provided in Section 10, such Participant shall have no authority to demand that such CapX Material be returned to such Participant or be destroyed at the instruction of such Participant unless such CapX Material contains such Participant's Confidential Information in a discrete and clearly identifiable manner (e.g., set forth in a table or chart).

(f) No Warranty Regarding Confidential Information. The Disclosing Participant is not providing any warranties or representations as to the accuracy of any Confidential Information. Nothing herein is intended to, nor shall it, obligate the Disclosing Participant to provide any information or Confidential Information to any other Participant.

(g) Breach of Confidentiality Provisions Cause Irreparable Harm. Each Participant expressly agrees that a breach of any of the terms or conditions of this Section 13 would result in irreparable harm and that money damages would not be a sufficient remedy for any such breach. Accordingly, in the event of a breach or threatened breach by a Participant or by any of its representatives or advisors or any CapX 2020 Initiative participant or representative of any of the provisions of this Section 13 (and in addition to any other remedy provided by law or in equity), the Participant harmed by such

breach or threatened breach will be entitled to seek appropriate equitable relief it deems appropriate, including injunctive relief and specific performance in any court of competent jurisdiction.

(h) Public Disclosure of Confidential Information. If a Participant intends to make, directly or indirectly, any material public comment, statement, or communication with respect to, or otherwise to disclose or to permit the disclosure of the existence of discussions regarding, a material aspect of the CapX 2020 Initiative or any of the material terms, conditions, or other material aspects of a Study or Potential Project, it will use its best efforts to first provide to Executive Director and the other Participants the content of the proposed disclosure, and the time and place that the disclosure will be made and provide the Executive Director and the other Participants a reasonable opportunity to comment on the proposed disclosure; provided that no such public comment, statement or communication shall include any Confidential Information.

(i) Public Disclosure Laws. The Participants intend that nothing in this Agreement and no action taken pursuant to this Agreement shall (i) cause Confidential Information that would otherwise have been exempt from public access or inspection to become subject to public access or inspection under any local, state, or federal laws regarding public access to information or (ii) make unavailable or waive any exception to or protection under public disclosure laws that would otherwise enable the Participants to preserve the confidentiality of Confidential Information.

SECTION 14. PROPERTY INTERESTS.

(a) Property Interests. All tangible, intangible and mixed property interests (which include any and all rights and licenses, express or implied) that arise as a result of this Agreement shall be owned by the Participants as tenants in common in undivided ownership interests; subject, however, to the limitations set forth in this Section 14 and as otherwise provided in this Agreement. Such ownership interests shall be in accordance with the total cost sharing percentages set forth in Exhibit B, as adjusted annually. Such tangible, intangible and mixed property interests which relate to Studies or Potential Projects may be used or provided to a Project on such terms as approved by the Vision Team.

(b) Effect of Withdrawal or Termination on Property Interests. Any Participant that withdraws from this Agreement pursuant to Section 8 or is terminated from this Agreement pursuant to Section 10 shall irrevocably forfeit and release any and all rights to any tangible, intangible or mixed property interests which may have been obtained pursuant to this Agreement.

(c) Property Interests with Respect to Projects. It is understood and agreed that the cooperative work of the Participants which gives rise to the

creation of such property interests is undertaken and funded with the specific intent of the Participants that such interests will be (i) used for the Projects and for no other purpose, other than as expressly authorized herein, and (ii) by operation of this Agreement transferred to the Projects, in the name of the owners of such Projects, by right and/or license (perpetual, royalty-free, transferable (limited) and non-exclusive) for use in and by the owners of such Projects, free and clear of any and all Participant and third party liens, encumbrances and interests (other than such liens, encumbrances and interests of the other Participants therein). In clarification of the foregoing and for the avoidance of doubt, the rights of a withdrawing or terminated Participant in and to any such property interests that have been or are subsequently transferred or granted to the owners of a Project in the manner contemplated by this Section 14(c) shall not affect rights subsequently acquired by such withdrawing or terminated Participant as an electing owner in, or purchaser of an interest in, a Project pursuant to the provisions of other transactions and/or agreements.

(d) Estoppel with Respect to Property Interests. Based upon, and in furtherance of the foregoing, each Participant acknowledges and agrees that it does not have and shall not claim, except as expressly provided herein, either through itself or any other person or entity, any right, title or other interest in or to any of the tangible, intangible or mixed property interests that may arise as a result of this Agreement except insofar as the Participant has interests in and to same hereunder, as such interests are conclusively established in definitive agreements for a Project. Each Participant further acknowledges and agrees that any assertion by any Participant, or any person or entity claiming interests through a Participant, of any right, title or other interest in such property interests inconsistent with the foregoing shall be null and void. Any such claim made by a Participant in all or any part of the property interests created hereunder, shall be estopped by the provisions of this Section 14, and any costs and expenses incurred by the non-claiming Participants in defense of such claim shall be chargeable to the Participant making the claim (and the person or entity claiming interests through such Participant). The foregoing is intended to eliminate assertion of any claim of right or other interest by any person or entity against the tangible, intangible or mixed property interests that may arise as a result of this Agreement, including without limitation the security interests of lenders of any Participant and/or the interests of any trustee of the bankruptcy estate of any Participant, such that the property interests created hereunder are transferred to and utilized by the Participants who elect to proceed with a Project free and clear of any and all liens, encumbrances and interests.

(e) Further Assurances of Participants. The Participants agree that at any time and from time-to-time they will do or cause to be done all further acts and things, and execute, acknowledge and deliver, any and all papers, documents, instruments, agreements, assignments, transfers, assurances and conveyances that may be necessary or desirable to carry out and give effect to the provisions and intent of this Agreement with respect to the property interests described herein.

(f) Effect of Agreement Termination on Property Interests. In the event this Agreement is terminated and the property interests hereunder (i) are not used by a Project, then the Participants shall exercise rights as a tenant-in-common under the common law with respect to such property interests, or (ii) are used by a Project, then the Participants shall be deemed to have relinquished such property interests with respect to the applicable Project and shall have no claim or right of claim with respect to any property interests in or to any such Project or its owners.

SECTION 15. NOTICES.

(a) Notices Generally. All notices, requests or other communications required under this Agreement shall be in writing and shall be sufficient in all respects: (i) if delivered in person or by courier, upon receipt by the intended recipient or an employee that routinely accepts packages or letters from couriers or other persons for delivery to personnel at the address identified about (as confirmed by, if delivered by courier, the records of such courier), (ii) if sent by facsimile transmission, when the sender receives confirmation from the sending facsimile machine that such facsimile transmission was transmitted to the facsimile number of the addressee, or (iii) if mailed, upon the date of delivery as shown by the return receipt therefor. Notices shall be sent to the persons set forth on Exhibit C.

(b) Change of Notice Address. A Participant may, at any time, by written notice to each other Participant and the Executive Director, designate different or additional persons or different addresses for giving of notices, demands or requests to it hereunder.

SECTION 16. GOVERNING LAW AND VENUE. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota (exclusive of conflicts of law provisions of any jurisdiction and the principles of comity). Subject to the provisions of Section 12, each Participant agrees and consents that any legal action, suit or proceeding seeking to enforce any provision of this Agreement shall be instituted and adjudicated solely and exclusively in any court of general jurisdiction in Minnesota, or in the United States District Court having jurisdiction in Minnesota. Each Participant agrees that each such court shall have personal jurisdiction over it with respect to such legal action, suit or proceeding, and waives any objections it may have, and expressly consents, to such personal jurisdiction. Each Participant agrees to accept and acknowledge service of any and all process which may be served in any such suit, action or proceeding in said courts, and also agrees that service of process or notice upon it shall be deemed in every respect effective service of process or notice upon it, in any suit, action, proceeding, if given or made (i) according to applicable law, (ii) by a person over the age of 18 who personally served such notice or service of process on the party, as the case may be, or (iii) by certified mail, return receipt requested, mailed to the Participant at its address set forth in this Agreement.

SECTION 17. REPRESENTATIONS AND WARRANTIES. Each Participant represents and warrants as follows:

(a) **Organization and Good Standing.** It is, as applicable, an agency, cooperative corporation, municipal corporation and political subdivision, or corporation duly organized, validly existing and in good standing under the laws of the state of its formation and authorized to conduct business in Minnesota;

(b) **Power and Authority.** It has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

(c) **Authorization.** It has taken all action required by applicable law in order to approve, execute and deliver this Agreement; and

(d) **Binding Agreement.** This Agreement is a legal, valid and binding obligation of such Participant enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

SECTION 18. MISCELLANEOUS.

(a) **Severability.** In the event that any term, covenant or condition of this Agreement or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction in the premises, all other terms, covenants or conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the provisions are not separable from all other provisions of this Agreement.

(b) **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Participants. Participants may assign their rights and obligations hereunder to any Load Serving Entity upon the approval of the Vision Team in its sole discretion. Other than as provided in the preceding sentence, no Participant may assign any right or obligation hereunder without the unanimous consent of all other Participants (in their sole discretion); provided, however, any Participant may assign all of its rights, duties and obligations under this Agreement to (i) any member of a Participant's controlled group of affiliates, or (ii) to the purchaser of all or substantially all of the assets of the Participant; provided; further, however, a Participant shall not be relieved of its obligations under this Agreement in the event of such assignment unless a novation instrument is executed by the assigning Participant and all other Participants.

(c) **Entire Agreement.** This Agreement constitutes the entire agreement among the Participants, and supersedes all prior oral or written agreements, understandings, representations and warranties, and courses of conduct and dealing between the Participants on the subject matter hereof.

(d) **Execution of Counterparts and Delivery of Electronic Signatures.** This Agreement may be executed in any number of counterparts. All such counterparts shall be deemed to be originals and shall together constitute but one and the same instrument. This Agreement shall become effective upon its execution by all of the Participants listed below. The executed counterparts of this Agreement and any ancillary documents hereto, such as amendments, may be delivered by electronic means, such as email and/or facsimile, by the Participants and the receiving party may rely on the receipt of such executed counterpart as if the original had been received

(e) **Construction.** The Participants have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Participants and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement. The words "including," "include" or "includes" shall mean including without limitation.

(f) **Scope of Agreement.** Unless the context otherwise requires, all references in this Agreement or in any schedule or exhibit hereto, to the assets, properties, operations, business, financial statements, employees, books and records, accounts receivable, accounts payable, contracts or other attributes of the CapX 2020 Initiative shall mean such items or attributes as they are used in, apply to, or relate to the CapX 2020 Initiative.

(g) **Waiver.** The terms, conditions, warranties, representations and covenants contained in this Agreement, including the documents, instruments and agreements executed and delivered by the Participants pursuant hereto, may be waived only by a written instrument executed by the party waiving compliance. Any such waiver shall only be effective in the specific instance and for the specific purpose for which it was given and shall not be deemed a waiver of any other provision hereof or of the same breach or default upon any recurrence thereof. No failure on the part of a Participant to exercise and no delay in exercising any right hereunder shall operate as a waiver thereof nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

(h) **Headings.** The headings of the articles, sections and subsections of this Agreement are intended for the convenience of the Participants only and shall in no way be held to explain, modify, construe, limit, amplify or aid in the interpretation of the provisions hereof. The terms "this Agreement," "hereof," "herein," "hereunder," "hereto" and similar expressions refer to this Agreement

as a whole and not to any particular article, section, subsection or other portion hereof and include the schedules and exhibits hereto and any document, instrument or agreement executed and/or delivered by the Participants pursuant hereto.

(i) Survival of Representations and Warranties, Covenants and Agreements. Each of the (i) representations and warranties of the Participants contained in this Agreement and in any ancillary documents delivered by or on behalf of any of the Participants hereto pursuant to this Agreement and the transactions contemplated hereby, and (ii) covenants and agreements arising from, incident to or in connection with this Agreement hereof, shall survive the termination of this Agreement indefinitely, until each of such covenants and agreements are fully satisfied and require no performance or forbearance, or the rights of a Participant expire on a specific date by the terms hereof, including without limitation the provisions of Sections 13 (Confidentiality) and 14 (Property Interests).

IN WITNESS WHEREOF, the Participants hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and to be effective as of the day and year first above written.

OTTER TAIL POWER COMPANY

By: _____
Title: _____

**SOUTHERN MINNESOTA
MUNICIPAL POWER AGENCY**

By: _____
Title: _____

GREAT RIVER ENERGY

By: _____
Title: _____

**ALLETE, INC., D/B/A MINNESOTA
POWER**

By: _____
Title: _____

**MISSOURI RIVER ENERGY
SERVICES**

By: _____
Title: _____

**NORTHERN STATES POWER
COMPANY, D/B/A XCEL ENERGY**

By: _____
Title: _____

**MIDWEST MUNICIPAL
TRANSMISSION GROUP**

By: _____
Title: _____

WISCONSIN PUBLIC POWER, INC.

By: _____
Title: _____

CITY OF ROCHESTER

By: _____
Title: _____

Dated: _____

ROCHESTER PUBLIC UTILITIES

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney

EXHIBIT A

CAPX FOOTPRINT

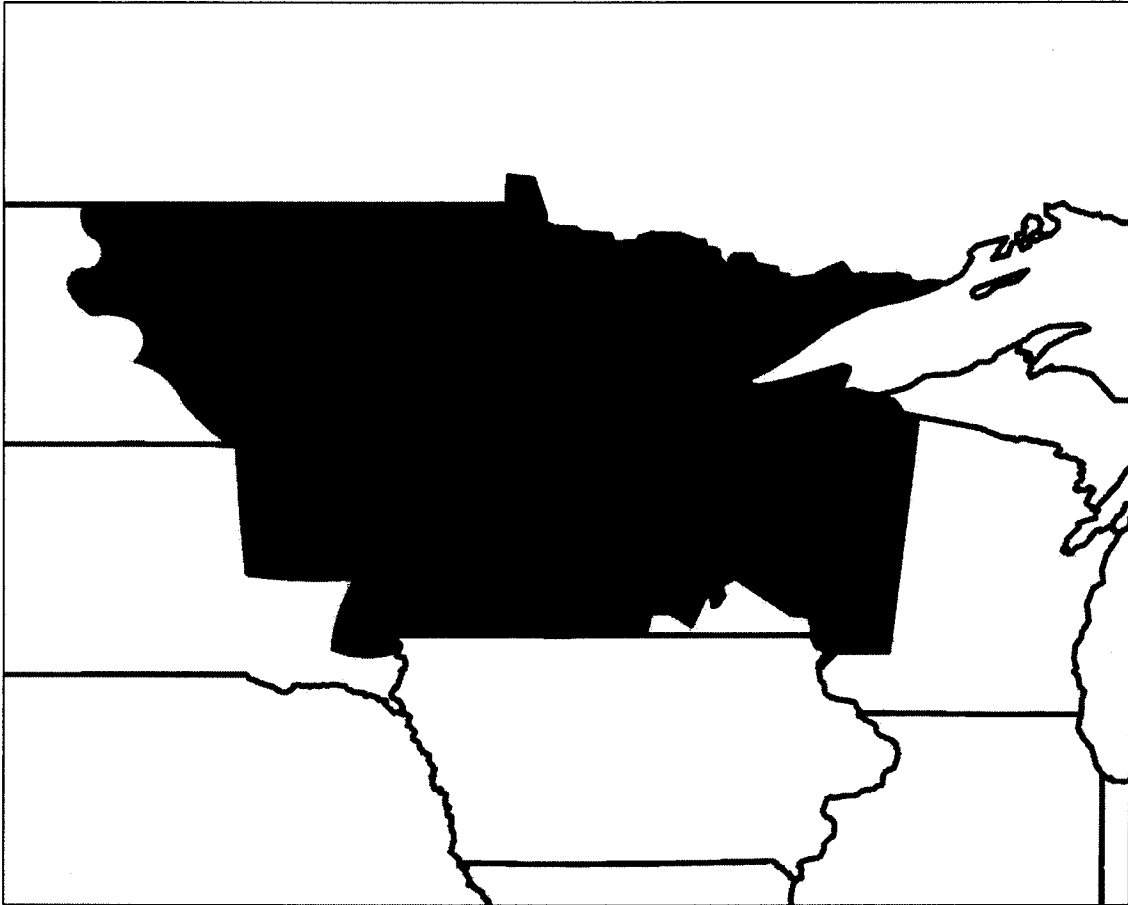


EXHIBIT B
COST SHARING TABLE

Xcel Energy	.111	6,866	59.848	47.664
Southern Minnesota Municipal Power Agency	.111	421	3.669	5.530
Otter Tail Power Company	.111	592	5.160	6.648
Missouri River Energy Services	.111	125	1.090	3.595
Minnesota Power	.111	1,408	12.273	11.983
Great River Energy	.111	1,880	16.387	15.068
Midwest Municipal Transmission Group	.111	123	1.071	3.581
Wisconsin Public Power	.111	51	.442	3.109
City of Rochester	.111	7	.060	2.823

EXHIBIT C

NOTICES

If to:

Otter Tail Power Company
215 S. Cascade St.
P. O. Box 496
Fergus Falls, MN 56538-0496
Representative: Rodney C. H. Scheel
Alternative: Thomas R. Brause
Telephone: 218-639-2582
Fax: 218-739-8218

If to:

City of Rochester
4000 East River Rd. NE
Rochester, MN 55906-2813
Representative: Larry Koshire
Alternative: Gerry Steffens
Telephone: 507-280-1607
Fax: 507-280-1542

If to:

Great River Energy
17845 East Highway 10
P. O. Box 800
Elk River, MN 55330-0800
Representative: Will Kaul
Alternative: Gordon Pietsch
Telephone: 763-241-2380
Fax: 763-241-6288

If to:

Southern Minnesota Municipal Power
Agency
500 First Avenue Southwest
Rochester, MN 55902-3303
Representative: David Geschwind
Alternative: Richard Hettwer
Telephone: 507-285-0478
Fax: 507-292-6414

If to:

Missouri River Energy Services
3724 West Avera Drive
P. O. Box 88920
Sioux Falls, SD 57109-8920
Representative: Ray Wahle
Alternative: Terry Wolf
Telephone: 605-338-4042
Fax: 605-978-9365

If to:

ALLETE, Inc., a Minnesota corporation,
d/b/a Minnesota Power
30 West Superior Street
Duluth, MN 55802
Representative: Tom Ferguson
Alternative: Mike Klopp
Telephone: 218-720-2662
Fax: 218-720-2685

If to:

Midwest Municipal
Transmission Group
c/o Iowa Association of
Municipal Utilities
1735 NE 70th Avenue
Ankeny, IA 50021
Representative: Anne Kimber
Alternative: Greg Oxley
Telephone: 515-289-1999
Fax: 515-289-2499

If to:

Northern States Power Company, d/b/a
Xcel Energy
Office of the General Counsel
414 Nicollet Mall, 5th Floor
Minneapolis, MN 55401
Representative: Priti R. Patel
Alternative: Gary Johnson
Telephone: 612-215-4612
Fax: 612-215-4544

If to:

Wisconsin Public Power, Inc.
1425 Corporate Center Drive
Sun Prairie, WI 53590-9109
Representative: Pat Connors
Alternative: Tim Noeldner
Telephone: 608-834-4500
Fax: 608-837-0274

JOINT PROSECUTION AGREEMENT

This document sets forth the Joint Prosecution Agreement (the "Agreement") entered into as of this ___ day of December, 2006 between XCEL ENERGY SERVICES INC., ON BEHALF OF NORTHERN STATES POWER COMPANY, A MINNESOTA CORPORATION ("NSPM") and NORTHERN STATES POWER COMPANY, A WISCONSIN CORPORATION ("NSPW"), BOTH WHOLLY OWNED SUBSIDIARIES OF XCEL ENERGY INC. (COLLECTIVELY REFERRED TO AS "NSP"), GREAT RIVER ENERGY ("GRE"), OTTER TAIL CORPORATION D/B/A OTTER TAIL POWER COMPANY ("OTTER TAIL"), A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF MINNESOTA, SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY, MIDWEST MUNICIPAL TRANSMISSION GROUP, ROCHESTER PUBLIC UTILITIES, 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, ALLETE, INC. D/B/A MINNESOTA POWER, WISCONSIN PUBLIC POWER, INC., AND DAIRYLAND POWER COOPERATIVE (individually, "Principal" and collectively, "Principals") and their legal counsel (inside and outside) which execute this Agreement ("Counsel") (Principals and Counsel are collectively "Parties," individually, "Party"). This Agreement is intended to cover and bind the Parties as well as their successors and assigns and arises from the following circumstances:

The Principals are part of a consortium of regional utilities that have worked to develop a transmission plan to address the energy needs of Minnesota and neighboring states over the next ten (10) to fifteen (15) years. This initiative is called CapX2020. In furtherance of the initiative, and in conjunction with and on behalf of the Principals, certain Principals, including but not necessarily limited to NSP and GRE, intend to file a Certificate of Need application with the Minnesota Public Utilities Commission ("Commission") for three new 345 kV transmission lines and associated facilities ("Facilities") in Docket No. E002/CN-06-1115 ("Certificate of Need Proceedings"). Some of the Principals also anticipate undertaking other Certificate of Need, routing and administrative processes related to CapX2020 in Minnesota and in other states, including, but not limited to, a Certificate of Need proceeding for a new 230 kV transmission line in the Bemidji, Minnesota area (collectively, "Other Regulatory Proceedings").

The Principals desire that Certificates of Need be granted for the proposed Facilities and that Other Regulatory Proceedings be completed successfully. As a result, the Principals have concluded that, in connection with the Certificate of Need Proceedings and Other Regulatory Proceedings there are legal and factual issues common to the Principals and that the Principals may be expected to undertake common, coordinated, parallel or interdependent actions. They have also concluded that it is in the interest of all Principals that Counsel 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 Principals would not exchange such Joint Prosecution Materials except for their mutual and common interests.

The Parties therefore agree as follows:

1. Purposes; Consultation. The Principals agree to confer on a regular and frequent basis concerning the Certificate of Need Proceedings and Other Regulatory Proceedings and their respective undertakings related to the Certificate of Need Proceedings and Other Regulatory Proceedings. To facilitate the Principals conferring and their joint prosecution of the Certificate of Need Proceedings and Other Regulatory Proceedings, the Principals consent to their respective Counsel exchanging Joint Prosecution Materials under the terms and conditions of this Agreement. The Principals agree that their mutual objectives are to obtain Certificates of Need for the Facilities from the Commission and to achieve positive outcomes in Other Regulatory Proceedings. Nothing in this Agreement impairs the discretion of any Principal to act independently in a manner it determines to be in its or its members' best interests.

2. Joint Prosecution Materials.

(a) Joint Prosecution Materials shall include only that information that (i) is treated as confidential by the disclosing Party and treated as such in the ordinary course of business, (ii) potentially reveals joint prosecution strategies, mental impressions of counsel, or legal advice, and (iii) is designated as such either in writing or orally at the time of communication of oral materials, provided that failure to designate information as Joint Prosecution Materials shall not cause a waiver of the right to so designate at any time or a waiver of any applicable privilege. Because Joint Prosecution Materials may not be disclosed to all members of each Party (some Parties have members that are Municipal Corporations subject to the Data Practices Act), each Party will attempt in good faith to limit its designation of Joint Prosecution Materials to information falling within the above definition.

(b) Joint Prosecution Materials shared pursuant to this Agreement may be marked "JOINT-PROSECUTION MATERIALS—CONFIDENTIAL." Failure to mark Joint Prosecution Materials shared pursuant to this Agreement shall not in any way waive or impair the protections or restrictions on the use, access, or disclosure of the documents, ideas or other factual material and information provided pursuant hereto. Such unmarked Joint Prosecution Materials shall be deemed Joint Prosecution Materials as though they were appropriately marked.

(c) A Party receiving Joint Prosecution Materials will hold such Joint Prosecution Materials in confidence against all third parties, except with the prior written consent of the furnishing Party or if required by law or by court order, or as otherwise provided herein. Each Party shall take all necessary and appropriate steps to keep Joint Prosecution Materials separate from other materials, including such other materials that are "CONFIDENTIAL" under that certain Confidentiality Agreement executed by certain Principals dated as of July 21, 2006, and otherwise provide adequate physical security for all Joint Prosecution Materials.

(d) Except as otherwise expressly authorized in writing by the disclosing Party, a receiving Party may disclose materials designated as Joint Prosecution Materials only to the following persons ("Recipients"), on a "need-to-know" basis: (i) to a Principal's officers, directors, employees or Counsel, (ii) to stenographic, paralegal, clerical and other employees of a Party, and (iii) to independent experts and advisors who are engaged by a Party for the purpose of performing work related to the Certificate of Need Proceedings or Other Regulatory Proceedings. The receiving Party is responsible for advising the Recipient of the operative provisions of the Agreement, including the restriction on disclosure of Joint Prosecution Materials. The Parties acknowledge that the receiving Party is responsible for any breaches of the provisions of the Agreement by any Recipient to whom the disclosing Party disclosed Joint Prosecution Materials. The Parties further acknowledge that a breach of this confidentiality provision would result in irreparable harm to the non-breaching Parties that could not be compensated by money damages and would entitle the non-breaching Parties to immediate injunctive relief to prevent further harm.

(e) A Party is not required by this Agreement to treat confidentially any document or information that has not been previously designated by the disclosing party as Joint Prosecution Materials either orally or in writing. A Party also is not required by this Agreement to treat confidentially any document or information to the extent the Party rightfully has possession of the document or information through means other than disclosure to it by another Party under this Agreement, and any such document or information shall not be Joint Prosecution Materials under this Agreement.

(f) At their discretion, Parties may also designate as "CONFIDENTIAL—ATTORNEYS' EYES ONLY" Joint Prosecution Materials shared pursuant to this Agreement. Joint Prosecution Materials so designated shall only be reviewed by Counsel and not by any officers (other than inside counsel), directors or employees of the Principals unless the disclosing Party who furnished the Joint Prosecution Materials has given its prior written consent.

3. Prior Agreement. The Parties previously have entered into an oral joint prosecution agreement, which occurred prior to the sharing of any information among the Parties. To the extent that the Parties have already been in communication with each other or shared work product related to the Certificate of Need Proceedings and Other Regulatory Proceedings, this Agreement formalizes their prior understanding, and their prior communications and work product were and are subject to the joint prosecution privilege and are subject to this Agreement.

4. Withdrawal. Any Principal may terminate its participation in this Agreement at any time upon written notice to all other Principals. Any Counsel may withdraw from its representation of a Principal at will, subject to the terms and conditions of any retainer agreement or arrangement between such Counsel and its client-Principal, but must promptly notify all other Principals and Counsel of its withdrawal. The termination of participation in this Agreement by any Party shall not excuse the withdrawing Party from continuing to abide by the provisions of this Agreement with respect to all Joint Prosecution Materials received from other Parties pursuant to this Agreement. Upon termination of a Principal's participation in this Agreement, the terminating Principal, and Counsel for such terminating Principal, shall return to each disclosing Principal within thirty (30) days all Joint Prosecution Materials originally provided by

the disclosing Principal, including copies, summaries, or excerpts of the same, or alternatively, certify that all Joint Prosecution Materials have been destroyed, and that no copies have been retained. Upon a Counsel's withdrawal from its representation of a Principal, Counsel shall return to the Principal it had represented within thirty (30) days, all Joint Prosecution Materials it obtained under this Agreement, including copies, summaries, or excerpts of the same or alternatively, certify that all Joint Prosecution Materials have been destroyed, and that no copies have been retained. The withdrawing Principal or Counsel shall also cause any person to whom Joint Prosecution Materials of another Principal have been disclosed pursuant to this Agreement to do likewise. Withdrawal of a Principal or Counsel shall in no way affect or impair the privileged status of, or obligations of confidentiality with respect to, Joint Prosecution Materials previously furnished pursuant to this Agreement. The obligations of a Principal or its Counsel under this Paragraph 4 to return or certify the destruction of Joint Prosecution Materials upon withdrawal under the Agreement is subject to the respective rights of the Principal to use and retain the same information under any then presently effective agreement between or among the Principals or any of them that provides for prosecution of the Certificate of Need Proceedings or Other Regulatory Proceedings. The Parties further agree that in the event that any Principal or Counsel withdraws from the Agreement, nothing in the Agreement shall create a conflict of interest so as to require the disqualification of any Counsel from the representation of their respective Principal(s) and Counsel and their respective Principal(s) hereby waive any such conflict of interest.

5. Privilege. The Principals agree to exchange Joint Prosecution Materials in furtherance of a joint prosecution and in a common effort to reach positive outcomes in the Certificate of Need Proceedings and in the Other Regulatory Proceedings. Counsel for each Principal reserves the right to determine what information will be shared pursuant to this Agreement. The Principals further agree that any such exchange is for the sole purpose of protecting the interests and rights of the Principals, and that any disclosure pursuant to this Agreement shall not constitute a waiver of any applicable privilege or other legal right, and except as otherwise provided herein, that none of the Parties may reveal any Joint Prosecution Materials obtained pursuant to this Agreement to any third party without first obtaining the written consent of the Party or Parties who may be entitled to claim any privilege with respect to such information.

6. No Further Obligations. Nothing in this Agreement shall create any obligation which does not otherwise exist on the part of a Principal or Counsel to provide any information to any other Party, whether privileged or not. Except for the attorney-client relationship between the Principal and its specific Counsel, nothing in this Agreement shall obligate a Principal or its Counsel to participate or assist any other Party in any litigation or potential litigation.

7. No Attorney-Client Representation. Each of the Principals understands and acknowledges that the Principal is represented exclusively by the Principal's own counsel in the Certificate of Need Proceedings and Other Regulatory Proceedings and that nothing in this Agreement transforms counsel for any Principal into counsel for any other Principal or creates an attorney-client relationship between a Principal and counsel for any other Principal. Nothing in this Agreement creates any agency or similar relationship between the Parties. Each Party expressly reserves the right to make its own independent judgment in all matters and on all issues.

8. Effect of Settlement. If any Party discusses settlement of, or enters into a resolution with respect to the Certificate of Need Proceedings or Other Regulatory Proceedings, any privilege or protection that exists with respect to Joint Prosecution Materials shall not be waived and shall be deemed to continue in full force and effect.

9. Effect of Waiver or Consent. No waiver of any other Party's obligations under this Agreement, and no consent to disclosure granted in one instance shall operate as a waiver or consent in any other instance. No waiver of any applicable right, privilege, or doctrine by the consent of one Party shall be construed to apply to any other Party.

10. No Waiver of Actions Between Parties. Notwithstanding the obligations of this Agreement, each Party preserves any and all actions and defenses, legal or equitable, that it otherwise now has or in the future may have against any other Party or against any opponent in the Certificate of Need Proceedings or the Other Regulatory Proceedings.

11. No Use of Joint Prosecution Materials Against Another Party. No Joint Prosecution Materials received by a Party shall be used by that Party against the Party which provided such Joint Prosecution Materials unless it is otherwise legally obtained by due process of law outside this Agreement. This Agreement shall not prevent a Party from using non-privileged information or documents that are learned or derived from Joint Prosecution Materials. Nothing herein shall preclude a Party from using all available means to obtain such non-privileged information and documents.

12. No Disqualification of Counsel. Neither this Agreement nor the sharing of Joint Prosecution Materials shall be grounds for seeking the disqualification of any Counsel in the Certificate of Need Proceedings and Other Regulatory Proceedings. In the event of any litigation or other dispute between the Principals, each Principal hereby waives any claim that Counsel for the other Principal is or should be disqualified from representing the other Principal by reason of receipt of Joint Prosecution Materials.

13. No Effect on Other Agreements. This Agreement will not be integrated with another agreement, merged out of existence, or otherwise superseded absent a written agreement among all of the Principals expressly naming this Agreement as being so integrated, merged, or superseded.

14. Cross-examination. The Parties mutually understand and agree that, should any of the Principals (or their officers, directors or employees) testify in any proceeding, Counsel for the other Principals to this Agreement will not be disqualified from cross-examining the testifying Principal (or applicable officer, director or employee) for any reason arising out of the existence of this Agreement, including the ground that such Counsel have been privy to attorney-client communications pursuant to this Agreement; provided, however, that no Party may in any way use Joint Prosecution Materials obtained pursuant to this Agreement in connection with any such cross-examination.

15. Compelled Disclosure. The Parties agree that if a government or private entity or individual inside or outside of the United States, requests or demands, by subpoena or otherwise, any Joint Prosecution Materials, the Party receiving the request or demand will immediately

notify the other Parties and provide each with a copy thereof. Once such notice has been given, the Party or Parties desiring to prohibit the disclosure of Joint Prosecution Materials shall take all steps necessary and appropriate to assert all applicable rights and privileges with respect to such Joint Prosecution Materials to the request or demand. The Party receiving the request shall permit the other Parties to this Agreement reasonable opportunity to intervene and be heard, and otherwise cooperate with such other Parties to enable all Parties to this Agreement to take any other appropriate steps to protect their rights under this Agreement or otherwise.

16. Intellectual Property Rights and Public Disclosure Laws. The Parties intend that nothing in this Agreement and no action taken pursuant to this Agreement shall (i) cause proprietary or confidential information of a Principal that would otherwise be exempt from public access or inspection to become subject to public access or inspection under any local, state, or federal laws regarding public access to information or (ii) make unavailable or waive any exception to or protection under public disclosure laws that would otherwise enable the Principals to preserve the confidentiality of their confidential and proprietary information.

17. Preservation of Joint Prosecution Privilege. The Parties shall undertake good faith efforts at all times to preserve and to avoid waiving the joint prosecution privilege.

18. No Modification of Attorney-Client Relationships. Each Principal understands that it is represented only by its own counsel with respect to the Certificate of Need Proceedings and any Other Regulatory Proceedings and that while Counsel representing the other Parties have a duty to preserve the confidentiality of and privileges applicable to Joint Prosecution Materials disclosed to them pursuant to this Agreement, each of the undersigned Counsel will be acting only as the attorney for his or her respective client and will owe a duty of loyalty only to its own client. Nothing in this Agreement is intended to (a) conflict with any Principal's interest in receiving independent, vigorous and separate representation, or (b) create an attorney-client relationship between any Principals and any Counsel retained by any other Principal.

19. Effectiveness; Additional Parties; Assignment. This Agreement may be signed in separate counterparts. This Agreement is effective with respect to the signatories of this Agreement upon execution by any two of the Principals irrespective of whether the third (or any subsequent) Principal signs this Agreement. Additional parties may be added hereto with the prior unanimous written consent of all of the original signatories who have not then withdrawn from this Agreement merely by executing a signature page which shall then be attached hereto and deemed a part of this Agreement. The Principals are presently negotiating, and anticipate that they may in the future enter one or more Project Development Agreements by and between two or more Principals (each a "Development Agreement") under which the Principals or their affiliates may be Participants. If a Participant under the Development Agreements transfers its interest to a third party (including any affiliate of the Participant), this Agreement shall be deemed automatically amended to include such transferee as an additional Principal under this Agreement, and the transferee shall execute all reasonable documentation to reflect its inclusion under this Agreement. This Agreement may not otherwise be assigned without the prior written consent of all Parties who have not then withdrawn from this Agreement. Notwithstanding the previous sentence, Missouri River Energy Services may assign this Agreement to Western Minnesota Municipal Power Agency.

20. Obligations upon Termination of Proceedings. Final and complete termination of the Certificate of Need Proceedings and Other Regulatory Proceedings shall be deemed to occur for purposes of this Agreement on the date that the decisions of the Certificate of Need Proceedings and Other Regulatory Proceedings become final and no longer subject to appeal. All Joint Prosecution Materials received from another Party pursuant to this Agreement (and all copies of such Joint Prosecution Materials) shall be returned to the disclosing Party within ninety (90) days after the final and complete termination of the Certificate of Need Proceedings and Other Regulatory Proceedings. Alternatively, Counsel for a Principal may certify that all Joint Prosecution Materials have been destroyed, and no copies have been retained. The obligations of a Principal or its Counsel under this Paragraph 20 to return or certify the destruction of Joint Prosecution Materials upon termination of proceedings are subject to the respective rights of the Principal to use and retain the same information under any then presently effective agreement between or among the Principals or any of them that provides for prosecution of the Certificate of Need Proceedings or Other Regulatory Proceedings. The provisions of this Agreement restricting use of Joint Prosecution Materials shall survive the termination of the Certificate of Need Proceedings and Other Regulatory Proceedings and termination of this Agreement.

21. Notices. All notices required under this Agreement to be sent to any Party shall be sent to the Counsel for the Party at the address contained on the signature pages of this Agreement.

22. Nature of Agreement. Nothing contained in this Agreement shall be deemed to create an association, joint venture, trust, partnership or other legal entity or a principal and agent relationship between or among the Parties.

23. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subjects addressed herein. Any modification to this Agreement shall be effective only if it is expressed in writing and signed by each Principal which has not then withdrawn from this Agreement.

24. Governing Law/Forum Selection. This Agreement will be governed by and construed in accordance with the laws of the State of Minnesota (exclusive of conflicts of law principles). Any legal action by any Party under the Agreement will be brought in a State or Federal court in Hennepin County, Minnesota.

25. Binding Effect. This Agreement shall be binding on the Parties hereto, their counsel, officers, directors and employees as well as their respective successors and permitted assigns.

[remainder of the page intentionally left blank]

Dated: _____, 2006

**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: _____, 2006

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: _____, 2006

**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: _____, 2006

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: _____, 2006

GREAT RIVER ENERGY

By _____
Its _____

Dated: _____, 2006

MOSS & BARNETT

By _____
Thomas A. Keller III
Michael R. Nixt
4800 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402-4129
Telephone: 612-347-0448
Fax: 612-339-6686
Fax: 612-339-6686

Dated: _____, 2006

**OTTER TAIL CORPORATION D/B/A
OTTER TAIL POWER COMPANY, A
CORPORATION ORGANIZED AND
EXISTING UNDER THE LAWS OF THE
STATE OF MINNESOTA**

By _____
Its _____

Dated: _____, 2006

WRIGHT & TALISMAN, P.C.

By: _____
Arnold B. Podgorsky
1200 G Street, N.W., Suite 600
Washington D.C. 20005-3802
Telephone: (202) 393-1200
Fax: (202) 393-1240

Dated: _____, 2006

**SOUTHERN MINNESOTA MUNICIPAL
POWER AGENCY**

By _____
Its _____

Dated: _____, 2006

DORSEY & WHITNEY, LLP

By: _____
William A. Dossett
Suite 1500, 50 South Sixth Street
Minneapolis, MN 55402-1498
Telephone: (612) 340-8765

Dated: _____, 2006

**MIDWEST MUNICIPAL
TRANSMISSION GROUP**

By _____
Its _____

Dated: _____, 2006

MCGRANN SHEA

By: _____
Kaela Brennan
800 Nicollet Mall, Suite 2600
Minneapolis, MN 55402-7035
Telephone: 612-338-2525
Fax: 612-339-2386

Dated: _____, 2006

ROCHESTER PUBLIC UTILITIES

By _____
Its _____

Dated: _____, 2006

WINTHROP & WEINSTINE, P.A.

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

Dated: _____, 2006

**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**

By _____
Its _____

Dated: _____, 2006

VAN NESS FELDMAN, P.C.

By: _____
David P. Yaffe
John Buchovecky
1050 Thomas Jefferson Street, NW
Seventh Floor
Washington, DC 20007
Telephone: 202-298-1840
dpy@vnf.com

Dated: _____, 2006

MINNKOTA POWER COOPERATIVE

By _____
Its _____

Dated: _____, 2006

By: _____
David Sogard
General Counsel
1822 Mill Road
P. O. Box 13200
Grand Forks, ND 58208-3200
Telephone: 701-795-4210

Dated: _____, 2006

**ALLETE, INC. D/B/A
MINNESOTA POWER**

By _____
Its _____

Dated: _____, 2006

By: _____
Bethany M. Owen
Senior Attorney
ALLETE, Inc. / Minnesota Power
30 West Superior Street
Duluth, MN 55802
Telephone: 218-723-3907
Fax: 218-723-3955

Dated: _____, 2006

WISCONSIN PUBLIC POWER, INC.

By _____
Its _____

Dated: _____, 2006

By: _____
Mike Stuart
Senior Vice President - Legal &
Regulatory Affairs
1425 Corporate Center Drive
Sun Prairie, WI 53590-9109
Telephone: 608-834-4500

Dated: _____, 2006

DAIRYLAND POWER COOPERATIVE

By _____
Its _____

Dated: _____, 2006

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

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 Board requests the Common Council to approve the following agreements, subject to review by the City Attorney of any final revisions, between the CapX 2020 organization and the City of Rochester, Minnesota, and that the Mayor and the City Clerk are authorized to execute the agreements for:

1. CapX Confidentiality Agreement Amendment
2. Amendment of the Southeast Twin Cities-Rochester-La Crosse Transmission Project Memorandum of Understanding
3. CapX 2020 Transmission Capacity Expansion Initiative Participation Agreement dated January 1, 2007
4. Joint Prosecution Agreement

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 14th day of December 2006.

President

Secretary