

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

5/29/07

SUBJECT: APPOINTMENT OF DESIGNATED REPRESENTATIVE AND ALTERNATE DESIGNATED REPRESENTATIVE (Acid Rain Program, Clean Air Interstate Rule, and Clean Air Mercury Rule Requirements)

PREPARED BY: Joseph S. Hensel, Director of Field Services

ITEM DESCRIPTION:

Under the Acid Rain Program (40 CFR Part 72 Subpart B) owners and operators for each affected source were required to designate an authorized representative. The designated representative (DR) is defined as a responsible person or official authorized by the owner or operator of an affected source to represent the owner/operator in various compliance matters, including the submission of permit applications, compliance plans, monitoring plans, emissions reports, compliance certifications, etc. The regulations also provide for an alternate designated representative (ADR) to act in lieu of the DR. The DR and ADR also act as authorized account representatives in matters pertaining to the holding, transfer or disposition of allowances. The DR and ADR must be selected by an agreement binding the owner/ operator, and providing all necessary authority to carry out the duties and responsibilities of the Acid Rain Program on behalf of the owner/ operator. The owner/operator must agree to be bound by the actions and submissions of the DR and to be bound by orders issued to the DR by the U.S. EA or state permitting authority. The current DR and ADR are Wally Schlink and Joseph Hensel, respectively.

In addition to the Acid Rain Program (ARP), RPU must now designate DR and ADR authority for Clean Air Interstate Rule (CAIR) and Clean Air Mercury Rule (CAMR) compliance programs. ARP affected units owned by RPU include Silver Lake Plant Unit 4 and Cascade Creek Station Combustion Turbines 2 and 3; CAIR affected units are SLP Unit 4 and all three combustion turbines at Cascade Creek; CAMR affected unit is SLP Unit 4. The Designated Representative agreement has been revised to specify all three air compliance programs that require authorized representation.

Attached are:

- Updated agreement designating DR and ADR for ARP, CAIR and CAMR compliance requirements
- Resolution

UTILITY BOARD ACTION REQUESTED:

The Board is requested to designate Walter Schlink as Designated Representative and Joseph Hensel as Alternate Designated Representative, and approve the agreement for execution by Mayor and City Clerk.


General Manager


Date

ROCHESTER PUBLIC UTILITIES

Agreement for
DESIGNATED REPRESENTATIVES OF AFFECTED SOURCE

This agreement ("Agreement") made and entered this ____ day of _____, 2007, by and between the City of Rochester, a Minnesota municipal corporation, its successors and assigns, acting through its Public Utility Board ("Rochester Public Utilities" or "RPU"), and those individual persons employed in the RPU positions of Director of Power Resources and Director of Field Services being sometimes hereinafter referred to singly as a "Party" and collectively as "Parties".

WHEREAS, The Acid Rain Program (ARP) Title IV of the federal Clean Air Act Amendments (CAAA) of 1990 (Title 40 Code of Federal Regulations Part 72), the federal Clean Air Interstate Rule (CAIR) (found in Title 40 Code of Federal Regulation Part 97) and federal Clean Air Mercury Rule (CAMR) (found in Title 40 Code of Federal Regulations Part 60 Subpart HHHH) require that owners of certain electric generating units designate one Representative and, if desired, one Alternate Representative, to act on their behalf; and

WHEREAS, Rochester Public Utilities owns and operates such affected sources as defined by the ARP, CAIR and CAMR; and

WHEREAS, Rochester Public Utilities wishes to designate those individuals employed in the positions of Director of Power Resources and Director of Field Services to act on its behalf as Designated Representative (DR) and Alternate Designated Representative (ADR), respectively; and

WHEREAS, such designation may result in significant personal liability being placed on those individuals carrying out the responsibilities of DR and ADR; and

WHEREAS, the individual employees would not receive specific remuneration for these responsibilities

NOW THEREFORE, the Parties mutually covenant and agree as follows:

**ARTICLE I
CERTAIN DEFINITIONS**

The terms shall have the following meanings for all purposes of this Agreement.

1. ARP shall mean the Acid Rain Program of Title IV of the federal Clean Air Act Amendments (CAAA) of 1990
2. ADR shall mean Alternate Designated Representative as defined in 40 CFR Parts 72 and 97.

3. Affected Source shall mean a facility with one or more affect units subject to ARP, CAIR or CAMR.
4. Affected Unit shall mean an existing generating unit with a nameplate capacity of 25 Megawatts or greater, or any new unit subject to ARP, CAIR or CAMR.
5. Appointee shall mean a person who has been designated and has agreed to act as RPU's DR or ADR under the provisions of this Agreement.
6. Certificate of Representation shall mean required documentation of DR and ADR submitted in a format as prescribed by the Administrator of the U.S. Environmental Protection Agency.
7. CAIR shall mean federal Clean Air Interstate Rule.
8. CAMR shall mean the federal Clean Air Mercury Rule
9. DR shall mean Designated Representative as defined in 40 CFR Parts 60, 72 and 97.
10. Director of Field Services shall mean the person employed by RPU in the position of Director of Field Services.
11. Director of Power Resources shall mean the person employed by RPU in the position of Director of Power Resources.
12. General Manager shall mean the person employed by RPU in the position of General Manager.
13. 40 CFR 60 shall mean Title 40 of the Code of Federal Regulations Part 60.
14. 40 CFR 72 shall mean Title 40 of the Code of Federal Regulations Part 72.
15. 40 CFR 97 shall mean Title 40 of the Code of Federal Regulations Part 97.

ARTICLE II
DESIGNATION OF REPRESENTATION

- 2.1 Pursuant to the requirements of ARP, CAIR and CAMR the present and future persons employed in the following RPU positions are henceforth designated to represent RPU in conformance with the requirements of 40 CFR 72, 40 CFR 97 and 40 CFR 60 Subpart HHHH.

Director of Power Resources: Designated Representative

Director of Field Services: Alternate Designated Representative

- 2.2 Such appointment is to the individual person permanently employed in each named position, and who is a signatory to this Agreement or is bound to the terms of this Agreement through the execution of Exhibit A.
- 2.3 Subject to the Term of Agreement provision, RPU's General Manager is henceforth authorized to appoint, through the execution of Exhibit A, any new replacement employees permanently hired into the above positions to act as the DR or ADR under the provisions of this Agreement.
- 2.4 Appointments to act as DR and/or ADR to persons not in the positions named in Paragraph 2.1 shall be approved by the RPU Board through an amended or new agreement.

**ARTICLE III
RESPONSIBILITIES OF THE REPRESENTATIVES**

- 3.1 The DR and ADR shall act on behalf of RPU under the authorization and responsibilities prescribed by the . Such authority shall include, but is not limited to:
 - 3.1.1 Execution of the Certificate of Representation.
 - 3.1.2 Legally binding the owner and operator of the Affected Sources in all matters pertaining to the ARP, CAIR, and CAMR.
 - 3.1.3 Certifying, under penalty of law, those submittals required by ARP, CAIR CAMR.
 - 3.1.4 Directing the operating personnel of RPU's affected units to operate such units in conformance with ARP, CAIR and/or CAMR, notwithstanding the authority delegated in their job descriptions.
 - 3.1.5 Functioning as the authorized account representative. With prior approval of the General Manager, committing RPU to certain allowance transactions (purchase, sell, transfer or otherwise dispose of allowances) necessary to comply with ARP, CAIR and/or CAMR requirements or deemed prudent for RPU's operations. The financial consequences of such commitments shall be the responsibility of RPU.
- 3.2 The ADR shall act as DR for: a) time periods as delegated by the DR; and b) in the event that the DR has not expressly delegated such authority however is not available or capable to perform such duties of the DR that may need to be performed in conformance with ARP, CAIR and/or CAMR regulations.

**ARTICLE IV
RESPONSIBILITIES OF RPU**

- 4.1 RPU shall indemnify and hold harmless such appointed persons which are acting, or have acted in the past, on behalf of RPU under the provisions of this agreement, against liability for civil forfeitures or penalties and for any fines resulting from criminal prosecutions, provided such prosecutions are not the result of willful misconduct of the appointed persons.
- 4.2 RPU shall pay directly the cost of all reasonable legal and expert witness fees incurred by such appointed persons in defending themselves against charges brought within the ambit of Paragraph 4.1.
- 4.3 In the event that such appointed persons are incarcerated or detained from normal employment upon conviction of violating any laws to which their appointment has subjected them (under circumstances not involving willful misconduct of the appointees), RPU shall pay their normal employment wages and benefits during the full period of their incarceration. Upon an appointee's release from incarceration, RPU shall continue to make such payments until the appointee is offered or finds comparable employment. In the event RPU desires to dispute all or any part of the lost income charges submitted by an appointee, PRU shall nevertheless pay the full amount of the charges within 30 days and give notification in writing within 60 days from the date of the submittal stating the grounds on which the charges are disputed and the amount in dispute.
- 4.4 The assurance provided by this agreement shall be in addition to any indemnity otherwise authorized for the appointees as employees of RPU.
- 4.5 RPU shall cause the written position descriptions for Director of Power Resources and Director of Field Services to include the responsibilities of DR and ADR respectively.

**ARTICLE V
TERM OF AGREEMENT**

- 5.1 This Agreement shall become effective on the date entered above and shall remain binding upon RPU and any current or future signatory appointee.
- 5.2 RPU, acting through its General Manager, may terminate this Agreement with an appointee immediately by giving written notice to the appointee. Such termination does not diminish RPU's assurances under Article IV above.
- 5.3 Except for the assurances provided under Article IV above, the covenants of this Agreement shall cease to be applicable to an appointee upon an appointee's cessation of active, full-time employment in the position of Director of Power Resources or Director of Field Services.

**ARTICLE VI
MISCELLANEOUS**

6.1 This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the date first set forth above.

CITY OF ROCHESTER

DESIGNATED REPRESENTATIVE

Its Mayor

Director of Power Resources

Its City Clerk

**ALTERNATE DESIGNATED
REPRESENTATIVE**

ROCHESTER PUBLIC UTILITIES

Director of Field Services

Its General Manager

EXHIBIT A
APPOINTMENT OF DESIGNATED REPRESENTATIVE OR ALTERNATE

Rochester Public Utilities' (RPU's) General Manager, acting on behalf of the Public Utility Board in accordance with the provisions of the Agreement for Designated Representatives of Affected Source ("Agreement"), hereby appoints:

Appointee

as RPU's _____ Designated Representative

_____ Alternate Designated Representative

for purposes of ensuring compliance with ARP, CAIR and CAMR as they pertain to RPU's generating facilities.

The execution of this document fully binds the appointee to the provisions of the Agreement. The appointee has been given a copy of and has read the Agreement and understands the responsibilities and liabilities hereby assumed. Within ten (10) days, the appointee will execute a Certificate of Representation, and shall be responsible for the submittal of the Certificate to the Environmental Protection Agency.

IN WITNESS WHEREOF, the parties hereto have caused this document to be duly executed as of the date set forth below.

Date: _____

ROCHESTER PUBLIC UTILITIES

APPOINTEE

General Manager

Name

Position



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to designate Mr. Walter Schlink as Designated Representative and Mr. Joseph Hensel as Alternate Designated Representative under the provisions of the Acid Rain Program, Clean Air Interstate Rule and Clean Air Mercury Rule federal compliance programs.

BE IT FURTHER RESOLVED by the Board to approve the Designated Representatives of Affected Source Agreement and to request that the Mayor and the City Clerk execute the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 29th day of May, 2007.

President

Secretary