

FOR BOARD ACTION

Agenda Item # 6

Meeting Date: 4/26/05

SUBJECT: SMMPA Power Purchase Agreement relating to Uniform Statewide Contracts for Cogeneration and Small Power Production Facilities (Under 40 kW)

PREPARED BY: Patty Hanson, Residential Account Representative

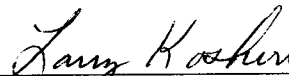
ITEM DESCRIPTION:

Under the terms of the power purchase agreement with SMMPA, all power sold in Rochester when RPU is below the CROD is first sold by SMMPA to RPU, and then to the customer. Also, when RPU is below the CROD, any power produced by a customer, while it will first be sold by the customer to RPU under the terms of RPU's "Rules Covering Cogeneration and Small Power Production Facilities", must eventually be sold by RPU to SMMPA.

To accommodate these requirements, SMMPA has developed the attached proposed contract. This contract governs how the power produced by a co-generator or small power producer and sold to RPU will be metered and purchased by SMMPA, and the rate SMMPA will pay RPU. It also determines how this same power will be sold back to RPU, and the rates SMMPA will charge RPU. Finally, it governs how both the purchase of this power by SMMPA, and the sale of it back to RPU, is handled when part of RPU's load is above CROD, and part is below CROD.

UTILITY BOARD ACTION REQUESTED:

The Board is requested to approve the proposed contract with SMMPA relating to Uniform Statewide Contracts for Cogeneration and Small Power Production Facilities (Under 40 kW), and request the Mayor and City Clerk execute the Agreement.


General Manager

4-15-05
Date

ROCHESTER PUBLIC UTILITIES

POWER PURCHASE AGREEMENT
relating to
UNIFORM STATEWIDE CONTRACTS
FOR COGENERATION AND SMALL POWER PRODUCTION FACILITIES
(Under 40 KW)

THIS POWER PURCHASE AGREEMENT (this "Agreement") dated as of _____, 20__ (Contract Date), is entered into by and between SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY (the "Agency"), a municipal corporation and political subdivision of the state of Minnesota and [THE CITY OF _____] ("Member"), a municipal corporation and political subdivision of the state of Minnesota and a member of the Agency.

RECITALS:

Pursuant to the second paragraph of Section 3(a) of the Power Sales Contract between Member and the Agency the parties agreed that they would use best efforts to arrange for purchases of power required of Member under the Public Utility Regulatory Policy Act (including the Minnesota implementation thereof in Minnesota Statutes Section 216B.164 and Minnesota Rules Chapter 7835, "PURPA") to be made by the Agency. If such arrangements cannot be made, the Member is to purchase the power and resell the same to the Agency.

Minnesota's implementation of PURPA specifies standard forms of contract to be used in purchases from a Qualified Facility ("QF") of less than 40 kilowatts, all as defined under PURPA, which contemplate that the purchaser of such power also provides power and energy to the QF. It is not deemed feasible for the Agency to assume such a role. The parties hereto desire to set forth the details of their agreement under which the Member will purchase such power and resell it to the Agency.

THEREFORE, it is hereby agreed as follows:

1. QF Contracts. Member may enter into one or more contracts for Cogeneration and Small Power Production Facilities using (a) the Uniform Statewide Contract (the "Uniform Contract") promulgated under Minnesota Rules 7835.9910, as of the date hereof or (b) another form consistent therewith and with the Power Sales Contract and determined by the Agency to be economically identical to the Uniform Contract for purposes relevant to this Agreement, (a "QF Contract" and collectively, the "QF Contracts"), for QF's of less than 40 kilowatts of capacity that meet all requirements of PURPA and of any Member rules to require such purchase. Promptly after entering into any QF Contract, Member shall notify the Agency and provide the Agency with a copy of the applicable QF Contract.

2. Term. The term of this Agreement shall commence on the date hereof and continue thereafter from calendar year to calendar year unless terminated by at least 90 days written notice from either party to the other (The effective date of such termination being the "Termination Date"). No such termination shall excuse either party from its continuing obligations under Section 3(a) of the Power Sales Contract.

3. Application of this Agreement. This Agreement shall apply to all present and future QF Contracts between Member and a QF with less than 40 kilowatts of capacity which is a

customer of Member provided that (a) in the event that PURPA (or the Member's rules in implementation thereof) is changed so that Member is not required to enter into such contracts or the terms of such standard contract are changed, at the option of either party this agreement shall not apply to QF Contracts thereafter entered into (however Section 3(a) of the Power Sales Contract shall continue to apply to such future QF Contracts) and (b) as to QF Contracts to which this Agreement does apply, it shall continue to apply until the earliest of (i) the termination of the applicable QF Contract, (ii) the Termination Date or (iii) the expiration or earlier termination of the Power Sales Contract.

4. Power Sold to the Agency. All power and energy delivered by the QF to the Member shall be deemed sold by the Member to the Agency. [See Section 20 for "CROD" Provisions.]

5. Metering. Member shall install for each QF, or cause the QF to install, a meter that will measure and store hourly data of power input and output for purposes of the QF Contract, this Agreement and the Power Sales Contract. Where the QF elects that its entire generation be deemed to be made available to Member, such generation shall be metered in a separately identifiable manner. Where remote reading meters are used, Member will make reasonable efforts, in cooperation with the Agency, to use meters compatible with the Agency's meter reading system software. In the absence of remote meter reading capabilities, the Member shall read the meter at the end of each Agency billing month and forward the electronic data, including the hourly data, (all in a form compatible with the Agency's power accounting system software) to the Agency via email within two business days of the end of the Agency billing month. Member shall have the option to bill the Agency, at mutually agreed rates, for additional meter reading costs which result solely from the need to supply the data to the Agency.

6. QF Energy Measurement. Based upon the metering information, the net energy (the "Net Energy Flow") supplied by the Member to the QF (a negative amount) or by the QF to the Member (a positive amount) shall be determined for the applicable Agency billing period. Where the QF elects that its entire generation be deemed to be made available to Member, the entire output of its generation (the "QF Generation Flow") also shall be determined for the applicable Agency billing period.

7. Coincident Peak Capacity. Based upon the metering information, the Agency coincident peak net output from the QF to the Member (the "CP Capacity") shall be determined each Agency billing period at the times and in the manner used to determine the Member's capacity charges under the Power Sales Contract. If the Agency coincident peak net output from the QF to the Member is negative, the CP Capacity shall be 0.

8. Payment by the Agency to the Member.

- a. For purposes of this Section, the "Agency Energy Rate" shall be the energy rate charged by the Agency to the Member and the "Agency Capacity Rate" shall be the capacity cost per kilowatt charged by the Agency to the Member divided by the number of hours in the billing period (or in the case of a QF using the Time of Day Rate, divided by the number of on-peak hours in the billing period), (Such amounts are the rates required to be filed as the

Schedule H rates for non-generating utilities obtaining all power and energy from the Agency).

- b. If the QF is on the Net Billing Rate the following payments shall be made for the energy and capacity from the QF:
 - i. If the Net Energy Flow for an applicable billing period is zero or negative, no payment shall be made by the Agency for the energy or the capacity from the QF.
 - ii. If the Net Energy Flow for such billing period is positive, the Agency will pay the Member for the amount of such Net Energy Flow at the energy rate Member is paying the QF under the QF Contract.
- c. If the QF is on the Simultaneous Purchase and Sale Rate or the Time of Day Rate, the following payments shall be made for the energy and capacity from the QF:
 - i. The Agency will pay the Member for the QF Generation Flow which the Member is required to purchase from the QF, at the Agency Energy Rate. *[See Section 20 for "CROD" Provisions.]*
 - ii. If a QF electing the Simultaneous Purchase and Sale Rate or the Time of Day Rate is entitled to receive a capacity payment for an applicable billing period under the QF Contract (for providing firm power), the Agency will pay Member an amount equal to the product of the Agency Capacity Rate multiplied by the QF Generation Flow of the QF. *[See Section 20 for "CROD" Provisions.]*
- d. Unless otherwise agreed, such sums shall be payable monthly by adjustment to the Member's bill from the Agency under the Power Sales Contract for QF capacity and energy for the applicable month.

9. Adjustment to Member Energy and Demand Computations.

- a. If the QF is on the Net Billing Rate the following adjustments will be made to the metered energy of the Member under the Power Sales Contract:
 - i. If the Net Energy Flow from the QF for an Agency billing period is zero or negative, no adjustment shall be made to the metered energy of the Member under the Power Sales Contract (notwithstanding that theoretically energy from the QF may have been sold to the Agency at one time and the Agency may have provided an equal amount of energy to Member at another time during such billing period).
 - ii. If the Net Energy Flow for such billing period is positive, the Net Energy Flow for the QF shall be added to the metered energy of the Member under the Power Sales Contract for such billing period. *[See Section 20 for "CROD" Provisions.]*
- b. If the QF is on the Simultaneous Purchase and Sale Rate or the Time of Day Rate the QF Generation Flow will be added to the metered energy of the Member under the Power Sales Contract. *[See Section 20 for "CROD" Provisions.]*

- c. The CP Capacity of the QF will be added to the Member's metered demand at the times used to determine demand charges under the Power Sales Contract. *[See Section 20 for "CROD" Provisions.]*

10. Notices. Any notices, elections, demands or requests required or authorized by this Agreement, or any other instrument or document or information required to be tendered or delivered by a party, shall be in writing and personally delivered or sent by certified mail, return receipt requested, postage prepaid, or by facsimile (confirmed by regular mail) to:

(a) If to the Agency at

500 First Avenue SW
Rochester, Minnesota 55902-3303
Attention of the Executive Director & CEO
Facsimile number: (507) 292-6413, and

(b) If to Member at

or such other address as such party shall provide by similar notice. Any notice given hereunder shall be deemed to be given upon the earlier of (a) actual receipt or (b) three days after deposit in a properly addressed envelope in the U.S. mail, postage prepaid, certified mail, return receipt requested.

11. No Rights of Third Parties. This Agreement is intended for the benefit of the parties hereto. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to, any person not a party to this Agreement.

12. Subject to Applicable Laws. This Agreement is subject to applicable laws including applicable federal, state and local laws, ordinances, rules and regulations. Nothing herein contained shall be construed as a waiver of any right to question or contest any such law, ordinance, rule or regulation or asserted regulatory jurisdiction.

13. No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the parties or to impose any partnership obligation or liability upon any party. No party shall have any right, power or authority to enter in any Agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other parties.

14. Amendment. This Agreement may be amended only upon written agreement of the parties.

15. No Waiver. Failure of a Party to insist, on any occasion, upon strict performance of this Agreement shall not be a waiver of the right to insist upon strict performance of any provision on any other occasion.

16. Captions. The captions of the various articles and sections of this Agreement are for convenience and reference only and shall not limit or define any of the terms and provisions hereof.

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

18. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

19. Power Sales Contract. The Power Sales Contract is a separate and distinct agreement between the Agency and the Member, although the Agency and Member agree that the point of metering for the QF under this Agreement shall be deemed to be a Point of Delivery under the Power Sales Contract. In all other respects the Parties do not intend this Agreement to amend or modify the Power Sales Contract. In the event that this Agreement is terminated, the Power Sales Contract shall remain in full force and effect.

20. CROD Provisions. If Member has elected to limit the maximum amount of power to be purchased from the Agency under its Power Sales Contract to its Contract Rate of Delivery and such election is in effect, the following modifications shall apply to the foregoing contract:

a. Definitions:

- i. 'Customer Generation' shall mean all power and energy from any QF's and any other Member customer-related generation that is sold in whole or in part to the Agency.
- ii. 'Metered Base Demand' shall mean the total hourly demand of the Member from the Agency as measured under the Power Sales Contract but before any addition for power and energy from any Customer Generation (or if any Customer Generation is included in such measurement, reduced by such Customer Generation).

b. Section 4 (Power Sold to the Agency) above shall be amended to read: "That portion of the power and energy delivered by the QF to the Member which, when added to the Metered Base Demand, does not cause the Member's load to exceed its Contract Rate of Delivery under the Power Sales Contract shall be deemed sold by the Member to the Agency."

c. In computing the amount of QF Generation Flow for which the Agency will pay the Member under Paragraphs (c) (i) and (ii) of Section 8, any energy delivered in either direction when the Member's electrical demand from the Agency exceeds its Contract Rate of Delivery under the Power Sales Contract shall be excluded.

d. In computing the amount of energy to be added to the Member's metered energy under Paragraph (a)(ii) of Section 9 (Adjustment to Member Energy and Demand)

Computations.) the Net Energy Flow for the applicable billing period shall be multiplied by a fraction, the numerator of which is the metered hourly positive Net Energy Flow from the QF which does not result in the Member's demand exceeding its Contract Rate of Delivery and the denominator of which is the positive Net Energy Flow from the QF for the same period. (If the Net Energy Flow is zero or negative, nothing is added to the Member's metered energy.)

- e. In computing the amount of energy to be added to the Member's metered energy under Paragraph (b) of Section 9 (Adjustment to Member Energy and Demand Computations.) the QF Generation Flow for the applicable billing period shall be multiplied by a fraction, the numerator of which is the metered hourly QF Generation Flow from the QF which does not result in the Member's demand exceeding its Contract Rate of Delivery and the denominator of which is the QF Generation Flow from the QF for the same period.
- f. Paragraph (c) of Section 9 (Adjustment to Member Energy and Demand Computations.) above shall be amended to read: "(c) That portion of the CP Capacity of the QF which, when added to the Metered Base Demand, does not cause the Member's load to exceed its Contract Rate of Delivery, will be added to the Member's metered demand at the times used to determine demand charges under the Power Sales Contract."
- g. If the Member has Customer Generation from more than one source, to the extent that application of the provisions of Section 9 (Adjustment to Member Energy and Demand Computations.), as revised in this Section 20, would result in the Member's hourly demand exceeding its Contract Rate of Delivery, the hourly power and energy provided from each QF during such hour to be used in computations under Sections 8 and 9 of this Agreement shall be reduced by multiplying such hourly amount by the lesser of (1) one or (2) a fraction, the numerator of which is the greater of (i) zero or (ii) the Contract Rate of Delivery minus the Metered Base Demand and the denominator of which is the hourly power and energy from all Customer Generation.

SOUTHERN MINNESOTA MUNICIPAL
POWER AGENCY

By _____
Raymond A. Hayward, Executive Director
and CEO

Dated: _____

ROCHESTER PUBLIC UTILITIES

Authorized Representative

General Manager

CITY OF ROCHESTER

Mayor

Attest:

City Clerk

Reviewed By:

City Attorney



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the said Board approve and execute the “Power Purchase Agreement relating to Uniform Statewide Contracts for Cogeneration and Small Power Production Facilities (Under 40 kW)” with SMMPA.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26 day of April, 2005.

President

Secretary