

FOR BOARD ACTION

Agenda Item # 7

Meeting Date:

8/31/04

SUBJECT:

Guaranteed Delivery Agreement
Cornerstone Energy Inc.

PREPARED BY:

Wally Schlink, Director of Power Resources

ITEM DESCRIPTION:

Cornerstone Energy Inc. is the provider of all transportation of natural gas for RPU's Silver Lake Power Plant (SLP) as well as other fuel supply services. The majority of transportation of gas is on an interruptible basis, which means that the flow of gas to the facility may be interrupted at any time which may directly impact RPU's ability to generate electrical power in a safe and dependable manner. RPU has experienced both winter and summer interruptions of gas supply to SLP. For the past 3 years RPU has had a Guaranteed Delivery Agreement or what is commonly known as firm gas delivery agreement with Cornerstone Energy Inc.

Due to the uncertainty of gas transportation in the increasingly volatile energy market, staff feels it is prudent to continue with a Guaranteed Delivery Agreement with Cornerstone Energy Inc., for the firm interstate transportation capacity volume to deliver 200 MMBtu to the SLP facility.

The term of the Agreement is for three years at a price of \$12.50 per MMBtu. The price is the same as the expired 3 year agreement

This expenditure is included in the annual Cost Center budget for Fuel. Through November, 2005 the cost related to this agreement will be recovered through the Participation Sales Agreement with MMPA, after that date the cost will be shared on a ratio based on the allocation of capacity from SLP.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Board approve a resolution requesting the Mayor to approve a contract agreement with Cornerstone Energy Inc., to provide the services as defined in the Guaranteed Delivery Agreement for a contract price of \$12.50 per MMBtu for a volume of 200 MMBtu per month and a term of three years. The total value of the Agreement is \$90,000.00


General Manager

8/27/04
Date

ROCHESTER PUBLIC UTILITIES

GUARANTEED DELIVERY AGREEMENT

This Guaranteed Delivery Agreement is made and entered into effective the 5th day of April, 2004, by and between **Cornerstone Energy, Inc.** ("Company") and **City of Rochester Minnesota**, a **Minnesota Municipal Corporation** acting through its **Public Utilities Board, Silver Lake** ("Customer").

WHEREAS, Company and Customer have previously entered into various Agreements including a commodity sale agreement, regarding the sale and/or transportation of natural gas to which this agreement will be an extension thereto; and

WHEREAS, Customer is actively seeking to reserve "firm" natural gas interstate transportation capacity and Company has certain interstate transportation capacity, which it is willing to make available to Customer on a firm basis.

NOW, THEREFORE, in consideration of the above premises and mutual covenants and agreements contained herein, the parties agree as follows:

1. Customer agrees to reserve and pay for and Company agrees to provide to Customer a Daily "Firm" interstate transportation capacity volume of up to **200 MMBtu per Day** (Daily Firm Units) to the City Gate serving Customer's facility located in **Rochester, MN**. Customer shall notify Company no later than October 1, 2004, if Customer requires volumes that exceed the volumes stated in this paragraph. If Customer requires additional volumes, the parties will execute an amendment to this Agreement setting forth such volumes; otherwise, the volumes stated herein shall apply.
2. The term of this Agreement is effective from the date both parties have executed this Agreement. Customer's right to transport gas under the firm capacity reserved under this Agreement will be effective on **July 1, 2004, and continue through June 30, 2007**. This Agreement requires that Company is Customer's natural gas supplier through the term stated in this Agreement.
3. The rate for the units of Daily "Firm" interstate transportation capacity that is reserved for Customer hereunder is **\$12.50 per Daily Firm Unit per Month**. This charge is in addition to any charges for (i) gas supply, (ii) local transportation by the LDC, (iii) services provided under other agreements, or (iv) imbalance, scheduling, or other charges related to the transportation under the interstate transportation capacity reserved under this Agreement.
4. This Agreement is subject to all valid laws, orders, rules, and regulations of any and all duly constituted authorities having jurisdiction over the subject matter herein. This Agreement is also subject to the tariffs of the interstate pipeline with whom Company has acquired the interstate transportation capacity. In the event such pipeline increases its rates or other charges to Company affecting the interstate transportation capacity reserved hereunder, then Customer agrees to and shall pay such increase in rates applicable to such capacity. The services provided under this Agreement are intended to be exempt from regulation of state or federal agencies. If the rates, terms, or conditions contained herein ever become subject to state or federal regulation that adversely affects or deprives Company from realizing the economic value of its bargain, then Company may terminate this Agreement upon thirty (30) days' prior written notice.
5. The terms of this Agreement shall be kept confidential by Company and Customer. If Company, in its sole discretion and through either direct or circumstantial evidence, determines that the confidentiality provision of this Agreement has been breached by Customer, then, in addition to any other remedy it may have, Company may immediately terminate this Agreement. Upon such termination, Company shall have no further obligation to Customer hereunder and Customer shall immediately pay to Company all amounts due Company hereunder.
6. If either party is rendered unable wholly or in part by force majeure to carry out its obligations under this Agreement, then the obligations of the parties, to the extent that they are affected by such force majeure, shall be suspended during the continuance of the event of force majeure. For the purposes of this Agreement, "Force Majeure" shall have the same meaning as defined by the applicable transporting interstate pipeline with whom Company has acquired transportation capacity to perform this Agreement. In the event the transporting pipeline limits, curtails, interrupts, or in any manner affects the supply or transportation of natural gas for the maintenance, repair, overhaul, replacement or construction of any facilities or equipment; or to assure the availability of capacity equitably, then Company may suspend service under this Agreement for the duration of the limitation, curtailment or interruption.

If initialed here _____, Customer appoints Company as Agent to execute LDC firm addendum (IA, MN only) priced at the current regulated tariff rate.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date shown first above.

Cornerstone Energy, Inc.

City of Rochester/Rochester Public Utilities – Silver Lake
Acct#: 190-0005791-001

By: _____



By: _____ See attachment

Title: _____ Vice President, Sales

Title: _____

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, to approve a contract agreement with Cornerstone Energy Inc., and to request that the Mayor and City Clerk execute the agreement for

Guaranteed Delivery Agreement – Natural Gas

The contract price to be \$12.50 per MMBtu for a volume of 200 MMBtu per month and a term of three years. The total value of the Agreement is \$90,000.00.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 31st day of August, 2004.

President

Secretary