

## FOR BOARD ACTION

Agenda Item # 4

Meeting Date:

7/27/10

**SUBJECT:**

Joint RPU/City Council Resolution – SMMPA Future Generation Capacity

**PREPARED BY:**

Larry Koshire, General Manager

ITEM DESCRIPTION:

At the last board meeting, we discussed a draft of the proposed resolution that would rescind the 1994 and 2004 RPU Board and City Council resolutions regarding future SMMPA generation. These resolutions directed the RPU Board representative in voting on SMMPA future generation, and are no longer appropriate following the completion of the recent litigation. The attached resolution was discussed at the June 29 board meeting, and comments from the Utility Board have been reflected in the attached resolution.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not Applicable

UTILITY BOARD ACTION REQUESTED:

Management recommends that the Board approve the attached resolution and request Council approval.

  
General Manager

7-23-10  
Date

**ROCHESTER PUBLIC UTILITIES**

## RESOLUTION

WHEREAS, on February 23, 1994, and December 20, 2004, the Rochester Public Utility Board and Common Council passed joint resolutions (identified as Resolution #92-94 and Resolution #651-04, respectively) regarding the City of Rochester's position concerning its obligation to help pay for future generation capacity from the Southern Minnesota Municipal Power Agency (SMMPA) as a result of Rochester's decision to accept the Contract Rate of Delivery (CROD) under the existing Power Sales Contract between the City and SMMPA and thereby freeze the maximum amount of power it receives from SMMPA; and,

WHEREAS, the issue involving Rochester's obligation to pay for generation and transmission assets to serve SMMPA system load growth beyond 1999 has been the subject of litigation and is now completed; and,

WHEREAS, on May 26, 2009 and June 1, 2009, the Rochester Public Utility Board and Rochester Common Council, respectively, elected not to extend the City's Power Sales Contract with SMMPA beyond the expiration date of 2030 as described in the attached resolutions; and,

WHEREAS, the cities of Austin and Waseca also elected not to extend their Power Sales Contracts with SMMPA beyond 2030; and,

WHEREAS, SMMPA may require refinancing or capital expansion through construction of generation or transmission facilities funded by bonds, or other financing extending beyond 2030; and,

WHEREAS, the City of Rochester may not benefit from such an investment in generation and transmission capital assets with extended lives beyond the expiration of the Power Sales Contract in 2030; and,

WHEREAS, the result of the litigation between SMMPA and the City as well as the City's decision to not extend the Power Sales Contracts with SMMPA beyond 2030 requires direction from the Board and Council as to how the City should respond to potential investments in capital assets proposed by SMMPA; and,

WHEREAS, the purpose of this resolution is to provide for that direction and to formally rescind Resolutions #92-94 and #651-04.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Rochester that Rochester's representative to SMMPA will consider the purpose and benefits of the capital expansion, the manner in which any capital expansion may be financed, including by bonds, and the potential rate impacts to the City before voting on any such financing or bond issue between now and 2030.

BE IT FURTHER RESOLVED by the Council that Resolutions #92-94 and #651-04 are hereby rescinded and no longer in effect.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

\_\_\_\_\_  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: \_\_\_\_\_  
CITY CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2010.

\_\_\_\_\_  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

Passed by the Public Utility Board of the City of Rochester, Minnesota this \_\_\_\_\_ day of  
\_\_\_\_\_, 2010

\_\_\_\_\_  
President

\_\_\_\_\_  
Secretary

#92-94

## RESOLUTION

WHEREAS, the City of Rochester is a member of the Southern Minnesota Municipal Power Agency (SMMPA); and,

WHEREAS, the City of Rochester elected to not amend its Power Sales Contract with SMMPA to extend the total requirement provision of such contract beyond the year 1999; and,

WHEREAS, the Rochester Common Council and the Rochester Public Utility Board are concerned that SMMPA may require Rochester to pay the cost of capital expansion projects required to meet the total requirements of those SMMPA members who have elected to extend the total requirements provision of their SMMPA power sales contracts beyond the year 1999; and,

WHEREAS, the Rochester Common Council and the Rochester Public Utility Board contend that the City of Rochester is not legally obligated to pay for any generation or transmission capacity required to satisfy the generation or transmission requirements of those SMMPA members who have elected to extend their SMMPA power sales contracts beyond the year 1999.

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the City of Rochester and the Rochester Public Utility Board that Rochester's SMMPA representative will vote against any capital expenditure proposed by SMMPA designed to expand existing SMMPA generation or transmission capacity if implementation of such proposal is likely to result in the City of Rochester paying any portion of the cost of such expansion through higher rates for power purchased from SMMPA under its existing power sales contract or otherwise.

BE IT FURTHER RESOLVED that the City of Rochester intends to contest in a court of law any attempt by SMMPA to cause Rochester to pay for any generation or transmission capacity required to satisfy the generation or transmission requirements of those SMMPA members who have elected to extend their SMMPA power sales contracts beyond the year 1999.

BE IT FURTHER RESOLVED that the City Clerk shall send a copy of this resolution to the President of the SMMPA Board of Directors.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA, THIS 23 DAY OF February 1994.

*Dorothy B. Selby*

\_\_\_\_\_  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: *Dorothy A. DeMunn*  
CITY CLERK

APPROVED THIS 24 DAY OF February, 1994

*Osceola B. Selby*  
Attorney  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

Passed by the Public Utility Board of the City of Rochester, Minnesota this 8<sup>th</sup> day of  
February, 1994.

*Jim A. Paul*  
President

*Hardee Wilson*  
Secretary

## JOINT RESOLUTION

WHEREAS, the City of Rochester is a member of the Southern Minnesota Municipal Power Agency (SMMPA) and has signed a Power Sales Contract with SMMPA by which the City receives power from SMMPA for its electrical requirements; and,

WHEREAS, in 1999, as permitted by the Power Sales Contract, the City of Rochester elected to freeze the amount of power it receives from SMMPA (commonly referred to as the Contract Rate of Delivery or "CROD") and thus to become a partial requirements member of SMMPA; and,

WHEREAS, other city members of SMMPA elected to continue to take their total power requirements from SMMPA; and,

WHEREAS, in the early 1990's, the City of Rochester Public Utility Board and Common Council became concerned that SMMPA might require the City of Rochester to pay the cost of capital expansion projects required to meet the total requirements of those SMMPA members who have elected to extend the total requirements provision of their SMMPA power sales contracts beyond 1999; and,

WHEREAS, on February 8, 1994, and February 24, 1994, the City of Rochester Public Utility Board and Common Council adopted a resolution setting forth its concern and publicly announcing its intent to contest in a court of law any attempt by SMMPA to cause the City of Rochester to pay for any generation or transmission capacity required to satisfy the generation or transmission requirements of those SMMPA members who have elected to extend their SMMPA power sales contracts beyond 1999. A copy of that resolution is attached and incorporated by reference; and,

WHEREAS, on December 9, 2004, the SMMPA Executive Director wrote a letter to the Rochester Public Utility General Manager and stated that SMMPA had rejected the City's proposed dual rate model (that took into consideration the fact that some SMMPA members remained total requirements members while RPU elected to become a partial requirements member) and instead reaffirmed "a single rate model for all Members;" and

WHEREAS, in light of SMMPA's December 9, 2004, letter, the Rochester Public Utility Board and City of Rochester Common Council believe it important to reaffirm in its entirety the February, 1994, resolutions adopted by the Board and Council; and,

NOW, THEREFORE, BE IT RESOLVED by the Rochester Public Utility Board and the City of Rochester Common Council that it reaffirm in its entirety the resolution dated February 8, and February 24, 1994, that is attached hereto.

BE IT FURTHER RESOLVED that the City Clerk shall send a copy of this Joint Resolution to the President of the SMMPA Board of Directors.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF  
ROCHESTER, MINNESOTA, THIS 20<sup>TH</sup> DAY OF DECEMBER, 2004.

*John Huntington*  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: *Judy Kay Spear*  
CITY CLERK

APPROVED THIS 21<sup>ST</sup> DAY OF DECEMBER, 2004.

*Clifford F. Breda*  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)

PASSED BY THE PUBLIC UTILITY BOARD OF THE CITY OF ROCHESTER,  
MINNESOTA, THIS 16<sup>TH</sup> DAY OF DECEMBER, 2004.

*R. R. Lindbeck*  
President

*Kathleen Wilson*  
Secretary

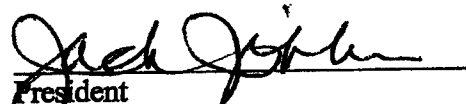



## RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, that the Common Council of the said City is requested to decline the Southern Minnesota Municipal Power Agency (SMMPA) Board of Directors' offer to extend the Power Sales Contract beyond 2030.

BE IT FURTHER RESOLVED that the Common Council authorize the City Clerk to notify in writing the SMMPA Agency of the City of Rochester's intent to decline the offer.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26<sup>th</sup> day of May, 2009.

  
President

  
Secretary



223-09

RESOLUTION

BE IT RESOLVED by the Common Council of the City of Rochester that the Common Council concurs in the resolution of the Rochester Public Utility Board appended hereto, which resolution requests the City to decline the Southern Minnesota Municipal Power Agency (SMMPA) Board of Directors' offer to extend the Power Sales Contract beyond 2030.

BE IT FURTHER RESOLVED that the Common Council authorize the City Clerk to notify in writing the SMMPA Agency of the City of Rochester's intent to decline the offer.

The Mayor and the City Clerk are authorized and directed to execute said agreement on behalf of the City.

PASSED AND ADOPTED BY THE COMMON COUNCIL OF THE CITY OF ROCHESTER, MINNESOTA, THIS 1ST DAY OF JUNE, 2009.

James L. Hanson  
PRESIDENT OF SAID COMMON COUNCIL

ATTEST: Tidy Key Schen  
CITY CLERK

APPROVED THIS 2nd DAY OF JUNE, 2009.

Arnell F. Beede  
MAYOR OF SAID CITY

(Seal of the City of  
Rochester, Minnesota)