

FOR BOARD ACTION

Agenda Item # 8

Meeting Date:

2/24/09

SUBJECT:

Meter Data Management Services Agreement (MDMA)

PREPARED BY:

Jeremy Sutton, Manager of Portfolio Optimization

ITEM DESCRIPTION:

Since the start of the Midwest Independent System Operator (MISO) Day 2 market in 2005, the Southern Minnesota Municipal Power Agency (SMMPA) agreed to send RPU's meter data to MISO. This activity has been viewed as a member service with no additional fees assessed to RPU. The purpose of this contract is to simply formalize the process that has been in place for the last three plus years. To date, there have been no unresolved metering discrepancies. Metering errors do occur, but have always been remedied expeditiously.

The contract has been reviewed by the City Attorney.

UTILITY BOARD ACTION REQUESTED:

Staff requests that the Board approve the Meter Data Management Services Agreement and that the Mayor and City Clerk execute the Agreement.


General Manager

2/20/09
Date

ROCHESTER PUBLIC UTILITIES

METER DATA MANAGEMENT SERVICES AGREEMENT

THIS METER DATA MANAGEMENT SERVICES AGREEMENT (this "Agreement") is entered into as of the 1st day of January, 2009 (the "Effective Date"), by and between THE CITY OF ROCHESTER, MINNESOTA, a Minnesota municipality, acting by and through Rochester Public Utilities, its public utilities board ("RPU"), and SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY, a municipal corporation and political subdivision of the State Of Minnesota ("SMMPA"). SMMPA and RPU are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, RPU has requested that SMMPA provide certain services to RPU
WHEREAS, RPU is a "Market Participant" as such term is defined in the Open Access Transmission and Energy Market Tariff for the Midwest Independent Transmission System Operator, Inc. (the "TEMT"); and
WHEREAS, all "Market Participants" under the TEMT are required to provide meter data to the Midwest Independent Transmission System Operator, Inc. ("Midwest ISO") for billing and settlement purposes; and
WHEREAS, SMMPA is willing to provide and RPU desires to obtain meter data management services on such terms and conditions as are set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Definitions and Interpretation.

1.1. Definitions.

Unless the context otherwise requires, the following capitalized terms shall have the meanings ascribed to them below:

- "Approved Courts" has the meaning given to such term in Section 8.3 of this Agreement.
- "Business Day" has the meaning given to such term in the TEMT; provided, however, that Business Day shall exclude all days SMMPA observes as holidays.
- "Commercial Pricing Node" has the meaning given to "Commercial Node" in the TEMT.
- "Consultation Period" has the meaning given to such term in Section 5.4 of this Agreement.
- "CPT" means the current prevailing time in Rochester, Minnesota.
- "Dispute" has the meaning given to such term in Section 8.1 of this Agreement.
- "Dispute Notice" has the meaning given to such term in Section 8.2 of this Agreement.
- "Effective Date" has the meaning given to such term in the preamble to this Agreement.
- "Error Notice" has the meaning given to such term in Section 5.4 of this Agreement.
- "RPU" has the meaning given to such term in the preamble to this Agreement.
- "SMMPA" has the meaning given to such term in the preamble to this Agreement.
- "Meter Data" has the meaning given to such term in Section 5.2 of this Agreement.
- "Meters" has the meaning given to such term in Section 5.1(a) of this Agreement.
- "Midwest ISO" has the meaning given to such term in the recitals to this Agreement.

“Operating Day” has the meaning given to such term in the TEMT.

“Representatives” has the meaning given to such term in Section 3.2 of this Agreement.

“Settlement Date” means, in relation to any given Operating Day, the dates on which settlements shall be achieved in respect thereof pursuant to the TEMT and the Midwest ISO’s business practice manuals.

“TEMT” has the meaning given to such term in the recitals to this Agreement.

“Term” has the meaning given to such term in Section 2.2 of this Agreement.

1.2. Interpretation.

In this Agreement, unless a contrary intention clearly appears:

- (a) the singular includes the plural and vice versa;
- (b) reference to any Party includes such Party’s legal and/or permitted successors and assignees, and reference to a Party in a particular capacity excludes such Party in any other capacity or individually;
- (c) reference to any gender includes the other gender;
- (d) reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or otherwise modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
- (e) reference to any Section or Attachment means such Section of this Agreement or such Attachment to this Agreement, and references in any Section or definition to any clause or paragraph means such clause or paragraph of such Section or definition;
- (f) “hereunder”, “hereof”, “hereto” and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;
- (g) relative to the determination of any period of time, “from” means “from and including”, “to” means “to but excluding” and “through” means “through and including”; and
- (h) reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations, promulgated thereunder.

1.3. No Interpretation Based on Other Agreements.

Except as otherwise expressly provided in this Agreement, all terms defined and/or used in this Agreement shall be interpreted without regard for how such terms may be defined and/or used in other agreements between the Parties and/or their affiliated entities.

1.4. Titles and Headings.

Section headings in this Agreement are inserted for convenience and ease of reference only and shall not be a part of or affect the meaning or interpretation of this Agreement.

2. Effectiveness and Term.

2.1. Effectiveness.

This Agreement and the rights and obligations of the Parties shall become effective as of the Effective Date and shall continue in effect during the Term.

2.2. Term.

The term of this Agreement ("Term") shall commence on the Effective Date and shall terminate at the end of the hour beginning 2300 hours CPT on the date specified in any notice given pursuant to Section 4.1 hereof.

3. Duties and Responsibilities; Indemnity.

3.1. Duties and Responsibilities.

RPU agrees that SMMPA shall have no duties or responsibilities except those expressly set forth in this Agreement, and shall not be responsible for any action taken or omitted to be taken by it hereunder or under any other agreement, document or instrument referred to or provided for herein or in connection herewith, except for its gross negligence and willful misconduct.

3.2. Indemnity.

RPU agrees to indemnify, defend and hold harmless SMMPA and its officers, directors, employees, contractors and representatives (collectively, the "Representatives") from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever (including reasonable attorney fees) which may be imposed on, incurred by or asserted against SMMPA or any of its Representatives in any way relating to or arising out of this Agreement or any other instruments, documents or agreements contemplated by or referred to herein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof (including any such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements which may be imposed on, incurred by or asserted against SMMPA or any of its Representatives by the Midwest ISO relating to or arising out of this Agreement), provided that RPU shall not be liable for any of the foregoing to the extent they arise from SMMPA's or its Representatives' gross negligence or willful misconduct.

4. Termination.

4.1. Termination for Convenience.

Either Party may, in its sole and absolute discretion, terminate this Agreement without cause at any time upon sixty(60) Business Days' prior written notice to the other Party. This Agreement shall terminate and be of no further force and effect as of the termination date specified in such notice (which date shall not be any sooner than sixty (60) Business Days after the date of such notice).

4.2. Continuing Liability.

Notwithstanding any provision to the contrary contained herein, each Party shall remain liable for all payments and liabilities incurred prior to the expiration or early termination of this Agreement.

5. Scope of Services

5.1. Electric Usage Meters; Read or Estimate Meter Readings.

(a) RPU's Electric Usage Meter(s). The Parties acknowledge and agree that Attachment A contains a current list as of the Effective Date of all electric usage meters ("Meters") that are included in the Commercial Pricing Node(s) for RPU that are subject to this Agreement. RPU

shall promptly notify SMMPA in the event of any change in the list of Meter(s) [or customer account numbers] that are included in the Commercial Pricing Node(s) for RPU and shall include with such notice an updated Attachment A. Upon receipt by SMMPA, the updated Attachment A shall automatically, and without any further action on the part of either Party, become effective and replace in its entirety the then current Attachment A.

(b) Read and Estimate Meter Readings. SMMPA shall obtain readings from the Meter(s) that are included in the Commercial Pricing Node(s) for RPU on the same schedule SMMPA has obtained such readings prior to the Effective Date. If for any reason SMMPA is unable to obtain a reading from a Meter, then SMMPA will estimate the electric usage using information that is available to SMMPA.

5.2. Meter Data.

(a) Aggregation. SMMPA shall aggregate all hourly meter readings and electric usage estimates determined by SMMPA pursuant to Section 5.1(b) at the applicable Commercial Pricing Node in accordance with Attachment A to arrive at aggregated adjusted hourly data for RPU at each applicable Commercial Pricing Node.

5.3. Submission of Meter Data to Midwest ISO.

SMMPA agrees to submit electronically all Meter Data to the Midwest ISO in accordance with the timing requirements set forth in the TEMT and the Midwest ISO's business practice manuals.

5.4. Correction of Meter Data Submitted to Midwest ISO.

RPU shall review all Meter Data provided to the Midwest ISO by SMMPA and shall promptly provide SMMPA written notice (each, an "Error Notice") of any error in the Meter Data, including a description of the error in the Meter Data and, if practicable, what RPU believes the correct Meter Data should be. Promptly after receipt of an Error Notice, SMMPA and RPU shall attempt to reach agreement on what the correct Meter Data should be within five (5) Business Days of the date of the Error Notice or, if sooner, by 1200 hours CPT two (2) Business Days before the next Settlement Date (the "Consultation Period"). If the Parties cannot reach agreement within the Consultation Period, then no later than 1200 hours CPT on the Business Day before the next Settlement Date SMMPA shall submit to the Midwest ISO the corrected Meter Data which RPU provided SMMPA in the Error Notice, if any, or, absent such corrected Meter Data, what SMMPA reasonably believes the corrected Meter Data should be in light of the Error Notice and previous discussions with the RPU; provided, however, that if SMMPA has not received the Error Notice within three (3) Business Days before the next Settlement Date, then SMMPA may, but shall not be obligated to, submit such corrected Meter Data to the Midwest ISO by 1200 hours CPT one (1) Business Day before the next Settlement Date, but shall be obligated to submit such corrected Meter Data to the Midwest ISO by no later than 1200 hours CPT one (1) Business Day before the second (2nd) Settlement Date occurring after SMMPA receives the Error Notice. Notwithstanding any provision to the contrary contained in this Agreement, SMMPA's submission of corrected Meter Data pursuant to this Section 5.5 shall not constitute SMMPA's acceptance of such corrected Meter Data, and SMMPA shall retain all of its rights to dispute such corrected Meter Data pursuant to Section 8.

5.5. Limitation on Liability.

(a) The Parties agree that in no event shall SMMPA be liable under this Agreement or otherwise to RPU other than for its gross negligence and willful misconduct in accordance with this Section 5.5(a). If, and only if, the performance by SMMPA of its obligations under this Agreement is finally determined pursuant to Section 8.3 to have constituted gross negligence or willful misconduct, then, subject to Section 5.5(b), SMMPA shall be liable to RPU for Market Participant's direct damages, if any, under the TEMT which result from SMMPA's gross negligence or willful misconduct.

(b) Notwithstanding any provision to the contrary contained in this Agreement, the Parties agree that in no event shall SMMPA be liable under this Agreement or otherwise to Market Participant for failure to submit Meter Data or other data of any kind to the Midwest ISO or for any Meter Data or other data of any kind submitted to the Midwest ISO, in each case, pursuant to this Agreement, if corrected Meter Data or other data is submitted to the Midwest ISO before the last Settlement Date with respect to such Meter Data.

(c) Notwithstanding any provision to the contrary contained in this Agreement, in no event shall SMMPA be liable under this Agreement or otherwise to RPU for any exemplary or punitive damages or consequential or indirect loss or damage or any other special or incidental damages of any kind whatsoever arising out of or in connection with the performance or failed performance by SMMPA of its obligations or the exercise by SMMPA of its rights under this Agreement.

6. Additional Services

SMMPA may, in its sole and absolute discretion, provide such additional services as RPU may request. SMMPA shall provide any such additional services on such terms and conditions as the Parties may mutually agree. SMMPA shall not be obligated to provide any such additional services until this Agreement has been amended in accordance with Section 9.4 or the Parties have entered into another agreement which provides for such additional services.

7. Representations and Warranties.

Each Party represents and warrants to each other Party, as of the Effective Date, as follows:

7.1. Due Organization; Requisite Power.

It is duly formed, validly existing and in good standing under the laws of the State of Minnesota.

7.2. Requisite Power.

It has all requisite corporate power necessary to own its assets and carry on its business as now being conducted or as proposed to be conducted under this Agreement.

7.3. Due Authorization.

It has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part.

7.4. Non-Contravention.

The execution and delivery of this Agreement and the performance by it of this Agreement do not and shall not violate its governance documents or any law or government approval applicable to it or its property.

7.5. Enforceability.

Assuming the due authorization, execution and delivery of this Agreement by the other Party, this Agreement constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by general principles of equity.

8. Dispute Resolution.

8.1. Exclusive Procedure.

Any controversy, claim or dispute of whatsoever nature or kind between the Parties arising out of or in connection with this Agreement or its validity or interpretation (each a "Dispute") shall be resolved pursuant to the procedures in Section 5.4 or this Section 8.

8.2. Informal Resolution of Disputes.

If a Dispute arises between the Parties, then either Party may provide written notice thereof to the other Party, including a detailed description of the subject matter of the Dispute (the "Dispute Notice"). Upon the issuance or receipt of a Dispute Notice, the representatives of each Party shall in good faith attempt to resolve such Dispute by informal negotiations within ten (10) Business Days from the date of receipt of such Dispute Notice. If the Dispute is not resolved within ten (10) Business Days following receipt of the Dispute Notice or such later date as the Parties may mutually agree, then each Party shall promptly designate its most senior executive responsible for the subject matter of the Dispute who shall have authority to resolve the Dispute. The senior executives shall obtain such information as may be necessary to inform themselves of the substance and particulars of the Dispute and shall meet within twenty (20) Business Days of the date on which the Parties' Representatives failed to resolve the Dispute pursuant to the immediately preceding sentence, at a time and place mutually acceptable to the senior executives.

8.3. Final Resolution of Disputes.

If the senior executives are unable to resolve the Dispute within twenty (20) Business Days of their first meeting or such later date as the senior executives may mutually agree, then the Dispute shall be resolved solely and exclusively by the state courts situated in Olmsted County, Minnesota (the "Approved Courts"). Each Party consents to and accepts for itself and in respect of its property, generally and unconditionally, the exclusive jurisdiction of the Approved Courts and appellate courts from any appeal thereof, and irrevocably waives any objection which it may now or hereafter have to the jurisdiction of the Approved Courts. Each Party further irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, proceeding or other action brought pursuant to this Section 8.3 in any of the Approved Courts, and irrevocably waives and agrees not to plead or claim in any such Approved Court that any suit, proceeding or other action brought therein has been brought in an inconvenient forum.

9. Miscellaneous.

9.1. Applicable Law.

This Agreement and the rights and obligations of the Parties hereunder shall be governed by, and construed and interpreted in accordance with, the laws of the State of Minnesota.

9.2. Jury Trial.

EACH OF THE PARTIES WAIVES TO THE FULLEST EXTENT PERMITTED BY LAW ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHTS UNDER THIS AGREEMENT OR UNDER ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION WITH THIS AGREEMENT AND AGREES THAT ANY SUCH ACTION OR PROCEEDING SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.

9.3. Notices.

Unless otherwise expressly provided for in this Agreement, all communications and notices to a Party in connection with this Agreement shall be in writing, by facsimile or by email, and any such notice shall become effective (a) upon personal delivery thereof, including, by overnight mail or next Business Day or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, (c) in the case of notice by facsimile, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided promptly by either of the methods set forth in clause (a) or (b) above, or (d) in the case of email, upon transmission thereof, provided that in addition to such transmission a confirmation copy of the notice is also provided by either of the methods set forth in clause (a) or (b) above. All notices provided by the means described in clauses (a), (b), (c) or (d) above shall be addressed to a Party as provided below such Party's signature, or to such other address as any Party may designate by written notice to the other Party.

9.4. Amendments and Waivers.

Except as provided in Section 5.1(a), this Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument or instruments in writing executed by the Parties. No waiver by any Party of any one or more defaults by any other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations or period of time expressly provided for herein, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of any Party to enforce any provisions hereof shall not be construed to waive such provision or to affect the validity of this Agreement or any part thereof, or the right of any Party thereafter to enforce each and every provision thereof.

9.5. Severability.

Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law; but if any provision of this Agreement shall be prohibited by or deemed invalid under any applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.6. Parties Bound.

This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

9.7. Third-Party Beneficiaries.

Except as expressly provided herein, none of the provisions of this Agreement are intended for the benefit of any person or entity other than the Parties and their respective successors and permitted assigns.

9.8. Entire Agreement.

This Agreement states the rights of the Parties with respect to the transactions contemplated by this Agreement and supersedes all prior agreements, oral or written, with respect thereto.

9.9. Counterparts.

This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which together shall constitute one and the same instrument.

9.10. No Joint Venture.

Any intention to create a joint venture or partnership relation between the Parties is hereby expressly waived.

9.11. Survival.

Except as provided below, the representations, warranties, obligations and liabilities of each Party contained in this Agreement shall not survive the expiration or early termination of this Agreement. The provisions of Sections 3.2 and 4.2 shall survive the expiration or early termination of this Agreement.

9.12. Further Assurances.

Each Party shall promptly and duly execute and deliver such further documents and assurances for and take such further actions reasonably requested by the other Party, all as may be reasonably necessary to carry out the purposes of this Agreement.

9.13. Concurrence.

By executing this Agreement, the parties acknowledge that they: (a) enter into and execute this Agreement knowingly, voluntarily and willingly of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had a sufficient amount of time to consider this Agreement's terms and conditions, and to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms, appreciate the significance of those terms and have made the decision to accept them as stated herein; and (d) have not relied upon any representation or statement not set forth herein. Both parties wish to avoid any development or administrative delays associated with a legal challenge to any of the terms of this Agreement. As such, both parties agree that they will not challenge the legality of any term or condition found within this Agreement and specifically waive any and all legal objections they may have to any such term or condition. Notwithstanding any provision in this Agreement to the contrary, this clause will survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, each of the Parties has caused its duly authorized representative to execute this Meter Data Management Services Agreement as of the date first above written.

SMMPA

By: _____
David P. Geschwind, Chief Operating Officer
Address: 500 First Avenue SW, Rochester, MN 55902
Attention: Chief Operating Officer
Telephone: (507) 285-0748
Facsimile: (507) 292-6413

RPU

ROCHESTER PUBLIC UTILITIES

CITY OF ROCHESTER, MINNESOTA

Authorized Representative

Mayor

General Manager

Attest: _____
City Clerk

Address:
Attention:
Telephone:
Facsimile:

Reviewed By:

City Attorney

Attachment A

List of Meter(s) Included in RPU's Commercial Pricing Node(s)
Commercial Pricing Node Meter(s)

SMP.MMPA.CCRK1

SMP.MMPA.CCRK2

SMP.MMPA.SLP12

SMP.MMPA.SLP3

SMP.MMPA.SLP4



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a Meter Data Management Services Agreement with Southern Minnesota Municipal Power Agency, and request the Mayor and the City Clerk to execute the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 24th day of February, 2009.

President

Secretary