

FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

10/26/04

SUBJECT:

Minnesota Municipal Power Agency
October 8, 2004 Settlement Agreement

PREPARED BY:

Wally Schlink, Director of Power Resources

ITEM DESCRIPTION: RPU and MMPA participated in federal mediation sessions in February 2004 to assist in resolution of issues arising from the Unit Participation Agreement between the parties. An Addendum to the Agreement addressing fuel inventory management was a result of the mediation and was approved by the Utility Board. Since the conclusion of the mediation sessions, staff from MMPA and the Utility has continued to conduct discussions intended to resolve remaining issues and improve the working relationship between or groups.

The primary outstanding issues facing the 2 parties have been a claim by RPU of additional monies owed by MMPA associated to a discrepancy related to the coal pile inventory adjustment; a claim from MMPA relating to miscellaneous coal cost overpayment through July 31, 2004 and claims by MMPA of potential damages related to coal shortages and forced outages through July 31, 2004.

RPU staff has reviewed all monetary claims either through financial records or through physical inventory conducted by a third party and has concluded that the issues of coal pile inventory adjustment and overpayment of miscellaneous coal costs through July 31, 2004 were legitimate and could be resolved by offset.

In addition, the MMPA has agreed to drop all claims for damages related to coal shortages and forced outages and consider them forever resolved.

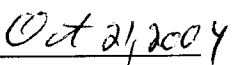
Discussions by RPU and MMPA staff have led to a formal Settlement Agreement which is attached.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Board approve a resolution requesting the Mayor to approve the Settlement Agreement with the Minnesota Municipal Power Agency dated October 8, 2004.



General Manager



Date

ROCHESTER PUBLIC UTILITIES

SETTLEMENT AGREEMENT
Between
THE CITY OF ROCHESTER MINNESOTA
And
MINNESOTA MUNICIPAL POWER AGENCY
October 8, 2004

WHEREAS, Minnesota Municipal Power Agency (hereinafter MMPA) and the City of Rochester Minnesota, a Minnesota municipal corporation, acting through its Public Utility Board (hereinafter CITY) have a certain contract dated June 19, 1992, with respect to selling electrical power to MMPA (hereinafter the Contract); and

WHEREAS, MMPA and CITY have utilized federal mediation services to assist in the resolution of a number of issues arising out of the Contract; and

WHEREAS, some of the issues were resolved as described in a letter dated October 10, 2003, which letter also contained a commitment by MMPA and CITY to continue the mediation process on a number of remaining issues; and

WHEREAS, the parties have continued discussions and have agreed to resolve the remaining issues;

NOW, THEREFORE, the parties agree as follows:

1. CITY's 2003 coal inventory adjustment and the MMPA's remaining monetary issues were determined by the parties to be an offset. MMPA and CITY agree that CITY's coal inventory adjustment and the MMPA issues listed by MMPA in the February 5, 2004 mediation meeting are hereby forever resolved without payment of funds by either party.

The issues referred to include, but are not limited to; the adjustment of the coal inventory volume to agree with the Mikon Corporation October 15, 2003 report, any and all losses or damages claimed by MMPA due to forced outages of the Silver Lake Plant units or related equipment through July 31, 2004, any and all losses or damages claimed by MMPA due to coal shortages at the Silver Lake Plant through July 31, 2004, any and all claims generated by the over or under recovery of FERC 501 costs by either party through July 31, 2004.

By its execution of this Agreement, each party releases the other party from that party's claim or cause of action against the other party relating to the issues described in this section.

2. CITY will perform a coal storage inventory in September of each year, utilizing the inventory methodology set forth in the October 15, 2003 Coal Storage Inventory report of Mikon Corporation. CITY will provide MMPA with a copy of the coal storage inventory report. MMPA will have 10 business days to review and comment on the report. Following the MMPA review, CITY and MMPA will agree on the adjustment to be made

to CITY's coal inventory records and how MMPA's energy invoices will be adjusted (increased or decreased) to financially settle the coal inventory shortfall or overage.

3. Discussions between MMPA and CITY will continue regarding establishing a mutually agreeable method in accordance with the Participation Sales Agreement for the allocation and assignment of FERC 501 costs going forward for expenses incurred after July 2004.
4. Discussions between MMPA and CITY will continue regarding the Mayo steam sale and the reduction in MMPA's purchase of capacity on November 1, 2005.
5. Duration: This agreement will continue until the expiration of the Contract on October 31, 2015.

This Agreement constitutes the final expression of the parties' agreement. It supersedes all prior negotiations, understandings, agreements, and representations. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. By the signature below of its authorized representative, both parties hereby acknowledge that it has read this Agreement, understands its terms and agrees to be bound thereby.

IN WITNESS WHEREOF, the parties have executed this agreement as their free, voluntary, and knowing act.

CITY OF ROCHESTER MINNESOTA

MINNESOTA MUNICIPAL
POWER AGENCY

By: _____
Its Mayor

David Pokorney, Chairman

By: _____
Its City Clerk

Approved As to Form

By: _____
City Attorney

Reviewed by Rochester Public Utilities

By: _____
General Manager



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a Settlement Agreement with the Minnesota Municipal Power Agency and that the Board requests the Mayor and the City Clerk to execute the agreement for

Settlement Agreement
October 8, 2004

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 26th day of October, 2004.

President

Secretary