

# FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

3/31/09

**SUBJECT:**

Power Sales Contract Extension - Discussion

**PREPARED BY:**

Larry Koshire, General Manager

ITEM DESCRIPTION:

In December, 2008, the Southern Minnesota Municipal Agency (SMMPA) Board of Directors passed a resolution offering an extension of the Power Sales Contract. The Power Sales Contract for all of the SMMPA members currently expires in 2030. The resolution provided an option for the members to extend the contract to 2050. No other terms and conditions of the Power Sales Contract were changed.

The SMMPA Board requested a response by the September, 2009 SMMPA board meeting date. At that point, the SMMPA Board will evaluate the responses, and determine whether to accept the amendments or reject them.

RPU is in the process of evaluating its infrastructure plan, including its long-term power resource plan. As the Utility Board considers the SMMPA proposal, a number of issues should be evaluated, including the technical nature of the resource plan, future power supply options, and governance issues that we have discussed relating to the current Power Sales Contract language. This item and the attached amendment are being put on the agenda for Utility Board discussion only at this point. We would entertain questions and requests for further evaluation prior to bringing the decision back at a future board meeting.

Since RPU is a member of significant size in SMMPA, we believe it is appropriate to provide a decision on our intent to extend the contract or not extend it for the benefit of other SMMPA members. If the decision by the Utility Board is not to accept the amendment, we believe it would still be appropriate for RPU to indicate to SMMPA that we may be interested in a Purchased Power Agreement (PPA) that may extend beyond 2030. A decision on a PPA would not need to be made for some time to come. A decision to extend the contract by other SMMPA members would allow for more appropriate terms in long-term financing, and signing of future resource contracts. We look forward to further discussion at the board meeting.

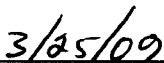
FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

Not Applicable

UTILITY BOARD ACTION REQUESTED:

This is a discussion item. No action is requested at the March 31, 2009 board meeting.

  
General Manager

  
Date



## Memorandum

**To:** Board of Directors  
**From:** W. Charles Lantz, In-House Counsel  
**Date:** October 9, 2008  
**Re:** Procedures to offer Power Sales Contract Extensions

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I understand you are considering the possibility of offering the opportunity for each of the Members to amend their respective Power Sales Contracts to extend the term thereof. This memorandum sets forth a procedure that could be followed by the Agency in doing so. The Power Sales Contract requires that any amendment be in writing, signed by the Member involved and the Agency. The following summary sets forth a procedure that could be used for an Amendment which only extends the term of the Power Sales Contracts.

1. The Board would initially determine the length of the extended term for which the Agency would be prepared to enter into Amendments with the Members. A possible form of such an Amendment extending the term for an additional 20 years is attached.
2. The Board would then pass a resolution asking each Member whether it desires to enter into the Amendment to the Power Sales Contract with the Agency, setting a realistic deadline (perhaps 9 months) for response to the proposal and setting forth the general terms of the proposed Amendment. A copy of a possible resolution is attached.
3. Depending upon the particular Member involved, the Member would have to obtain appropriate authorization from the Member's governing body, city council and/or utility board authorizing the Amendment and submit a signed Amendment to the Agency, accompanied by the supporting documents described in the footnote below<sup>1</sup>.

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<sup>1</sup> If a Member decides to seek authorization from its governing body, we request that the Member advise the Agency in advance. In order to maintain consistency in the authorizations by the various governing bodies, the Agency will provide the Member with a form of resolution for its governing body. (In the alternative, if the Member would prefer to prepare its own resolution, the Agency's attorneys will want to have an opportunity to review the resolution and make comments, if appropriate, before its adoption.) In addition to the executed Amendment, the Agency will need a certified copy of the resolution. The Agency will also request an opinion of the Member's attorney, as to the due authorization, execution and delivery and the enforceability of the Amendment. The Agency will provide the Member with a form of the opinion.

4. Once the deadline has passed, the Board would review the responses and supporting documents and determine whether it is in the best interest of the Agency to enter into the Amendments with those Members who have responded affirmatively.
5. The Board would then adopt a resolution either (i) withdrawing the offer to enter into the Amendments or (ii) accepting the Amendments and, in the latter case, authorizing an officer of the Agency to enter into the Amendments.
6. The Amendment would be executed and an executed copy of the Amendment would be forwarded to the Bond Trustee, Bond Counsel and General Counsel and the Authorized Officer of the Agency would file with the Bond Trustee a certificate of the Authorized Officer of the Agency setting forth the Board's determination; and a certified copy of the Amendment.

**AMENDMENT TO THE POWER SALES CONTRACT  
BETWEEN SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY  
AND THE CITY OF \_\_\_\_\_, MINNESOTA**

This Amendment dated as of October 1, 2009, to the Power Sales Contract dated as of April 1, 1981<sup>2</sup>, as amended to the date hereof, between Southern Minnesota Municipal Power Agency ("the Agency") and the City of \_\_\_\_\_, Minnesota (the "Power Sales Contract").

The parties hereto have agreed to amend the Power Sales Contract in order to extend the term thereof. Accordingly, the parties hereto hereby agree as follows:

1. Revision to Section 2: Section 2 of the Power Sales Contract is hereby amended to read as follows:

**SECTION 2. *Term***

This Contract shall become effective on the day, month and year first above written and shall remain in effect until April 1, 2050 and thereafter until terminated by the Agency or the Member upon one year's prior written notice to the other party.

2. Effective Date: If approved and adopted by the Board of Directors of the Agency after receiving the responses of Members of the Agency to a similar proposed amendment, the changes set forth in Section 1 hereof shall be effective as of October 1, 2009. Otherwise, this document shall be null and void without force or effect.

3. Effect on Power Sales Contract: Except as amended hereby, the Power Sales Contract shall continue in full force and effect, and any reference to the Power Sales Contract shall mean the Power Sales Contract as amended hereby.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be executed by duly authorized officers all as of the date first set forth above.

SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY

By \_\_\_\_\_  
Its Executive Director and CEO

CITY OF \_\_\_\_\_, MINNESOTA

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest  
By \_\_\_\_\_  
Its \_\_\_\_\_

And \_\_\_\_\_  
Its \_\_\_\_\_

<sup>2</sup> For Grand Marais, Litchfield, Mora, North Branch and Princeton, the date will be September 1, 1984

**INITIAL RESOLUTIONS OF THE BOARD OF DIRECTORS OF  
SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY  
CONCERNING POSSIBLE EXTENSIONS OF  
POWER SALES CONTRACTS**

WHEREAS, Southern Minnesota Municipal Power Agency (the "Agency") has determined that it may be in the best interest of the Agency to amend the Power Sales Contracts with its Member Cities (the "Members") in order to extend the term of the Power Sales Contracts; and

WHEREAS, a proposed "Amendment to the Power Sales Contract" to be entered into between the Agency and the Members substantially in the form of Exhibit A attached hereto (the "Amendment"), was presented to the Board of Directors on the date hereof; and

NOW, THEREFORE, BE IT HEREBY RESOLVED, that the Agency give to each Member the opportunity to offer to enter into the Amendment, substantially in the form of Exhibit A attached hereto, with blanks completed, provided such Amendment be executed by the Member and delivered to the Agency on or before September 1, 2009; and

ADOPTED by the Board of Directors of Southern Minnesota Municipal Power Agency this \_\_\_\_\_ day of December, 2008.