

# FOR BOARD ACTION

Agenda Item # 8

Meeting Date:

5/26/09

**SUBJECT:**

Consideration of SMMPA Contract Extension Offer

**PREPARED BY:**

Larry Koshire, General Manager

**ITEM DESCRIPTION:**

The Utility Board has been discussing for some time now the Southern Minnesota Municipal Power Agency's (SMMPA) Power Sales Contract extension offer which was approved by the SMMPA Board at their December 10, 2008 meeting (see attachment). The item was placed on the March Utility Board Board agenda for discussion (see attachment labeled "Copy"). At the planning meeting following the April board meeting, we heard from our consultant a technical evaluation of the economics of continuing with the Power Sales Contract after 2030. This evaluation showed significant economic benefit for not extending the contract.

As we discussed, we believe it is appropriate to provide to SMMPA a decision on RPU's intent to extend the Power Sales Contract or not extend it for the benefit of planning by SMMPA and its other members. Also as we have discussed, since the 2030 date is so far in the future, there will be other opportunities to discuss any potential relationships beyond 2030 with SMMPA, other joint action agencies, and/or other municipals. Based on the discussion of the Utility Board, evaluation of our technical consultant as to the economics of extending the Contract, RPU staff believes it is in the best interest of the RPU rate payers to decline the offer to extend the contract with SMMPA beyond 2030, under the attached terms and conditions.

**FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:**

Not Applicable

**UTILITY BOARD ACTION REQUESTED:**

The Board is requested to approve a resolution requesting the City Council to decline the offer to extend the Power Sales Contract beyond 2030.

  
\_\_\_\_\_  
General Manager

  
\_\_\_\_\_  
Date

**ROCHESTER PUBLIC UTILITIES**



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**MEMORANDUM**

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TO: SMMPA Board of Directors

FROM: Raymond A. Hayward, Executive Director & CEO

DATE: December 4, 2008

RE: POWER SALES CONTRACT AMENDMENT

At the October 17, 2008 board meeting, we discussed the events leading up to a possible extension of the Power Sales Contract. A copy of the memo from the October meeting is attached. Referred to therein were (1) a memo from counsel discussing the procedure used to amend, and (2) a Resolution the board could adopt to set the process in motion, which included (3) a draft form amendment that would extend the contracts from April 1, 2030 to April 1, 2050. All have been updated and also are attached.

This information was presented in October so that Members would have an opportunity to consider the matter and to provide comment to the board and/or staff on any matters of concern prior to the December meeting.

One Member has expressed the view that the time frame for that Member to make a decision on the amendment (deadline of September 1, 2009) may not be adequate and requested additional time to consider the amendment. No deadline was specified in the request.

As discussed in the October memo, we feel it is important that this move forward. The clarity provided by knowing which Members will extend beyond 2030 will help inform resource decisions (size, type, ownership and/or contract) and financing decisions that should not be postponed.

We are available to discuss the matter further and to make a presentation to any Member, commission or council if any Member finds that desirable. If the board/Member would find it helpful, we also can give the presentation at one of the upcoming board meetings or at a special meeting called for that purpose.

We recommend that the board adopt the draft Resolution to set in motion the amendment process.

RAH:ng:08\_039  
Attachments



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**MEMORANDUM**

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DATE: October 10, 2008  
TO: SMMPA Board of Directors  
FROM: Raymond A. Hayward, Executive Director & CEO  
RE: POWER SALES CONTRACT AMENDMENT

Each Member's Power Sales Contract extends until at least 2030. For some time now we have discussed the topic of a possible Power Sales Contract amendment to extend that term. The topic was raised during the 2007 board retreat. It was a topic for the 2008 board retreat as well as a follow up board retreat limited to that specific topic. At that meeting, the board provided direction on how to proceed.

Consistent with the board's direction, attached are three documents. One is a memo from counsel describing the process that can be used to amend the term of the contract from 2030 to 2050. Another is a board resolution that would provide each Member with the opportunity to decide whether to offer to amend the term of its contract to 2050. And the third is a draft amendment that each Member could use for that purpose.

The documents will be discussed at the October board meeting. The matter then will be brought back to the board for decision at its December meeting. This procedure will provide the Members two months to consider any questions or comments about the specific amendment or the process before the board makes a final decision on how to proceed. If the attached board Resolution is adopted in December, each Member then would have another 9 months (the September 2009 board meeting) to make a decision on whether to seek to amend the term of its contract to 2050.

While 2030 seems like a long time away, over the past several years, many joint action agencies in our region with similar length contracts have extended the terms of their power sales contracts. These include Missouri River Energy Services, Wisconsin Public Power, Inc., and Indiana Municipal Power Agency. The reasons for learning now which Members will extend are quite simple. With an extended term (1) future debt issuances can have a longer term thereby lowering the annual debt service costs and helping to reduce the Agency's rates; (2) long-term contracts, such as for wind power, can have a longer life thereby better matching financial needs of project developers and providing lower costs to the Agency; and, (3) knowing now which Members will extend will allow the Agency to acquire resources (either by ownership or contract) that better match the post 2030 needs of the Agency.

RAH:ng:08\_030  
Attachments



## Memorandum

**To:** SMMPA Board of Directors and Member Representatives  
**From:** W. Charles Lantz, In-House Counsel  
**Date:** December 4, 2008  
**RE:** PROPOSED POWER SALES CONTRACT EXTENSIONS

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I understand that the Board of Directors contemplates offering the opportunity for each of the Members to amend their respective Power Sales Contracts to extend the term of such contract for an additional 20 year period. This memorandum sets forth the contemplated procedure.

1. The Board would pass a resolution asking each Member whether it desires to enter into the proposed Amendment, setting a deadline for response to the proposal and the terms of the proposed Amendment. A copy of a proposed resolution is attached.
2. A Member wishing to extend would need to obtain authorization from the Member's governing body, city council and/or utility board (as required for that Member) authorizing the Amendment and submit a signed Amendment to the Agency, accompanied by the supporting documents described in the footnote below<sup>1</sup>.
3. 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.
4. The Board would then adopt a resolution either (i) withdrawing the proposal or (ii) accepting the executed Amendments.
5. The Board would direct (i) an Authorized Officer of the Agency to file with the Bond Trustee a certificate setting forth the Board's determination and a certified copy of the unexecuted Amendment; (ii) that the Amendment be executed and (iii) that an executed copy of the Amendment be forwarded to the Bond Trustee, Bond Counsel and General Counsel.

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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.

**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 10<sup>th</sup> day of December, 2008.

**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

# FOR BOARD ACTION

Agenda Item # 5

Meeting Date:

3/31/09

**SUBJECT:**

Power Sales Contract Extension - Discussion

**PREPARED BY:**

Larry Koshire, General Manager

**COPY**

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.

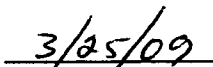
FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

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

**COPY**



## 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.



**COPY**

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.

**COPY**

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BETWEEN SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY  
AND THE CITY OF \_\_\_\_\_, MINNESOTA**

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

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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

**COPY**

**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.



## **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.

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**President**

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**Secretary**