

FOR BOARD ACTION

Agenda Item # 3

Meeting Date:

5/26/09

SUBJECT: Power Generation Services Purchase Order Agreement – Change Order #1
Unit 3 Turbine Casing Repair

PREPARED BY: Rob Dunnette
Manager of Power Resources

ITEM DESCRIPTION:

At the February 24, 2009 RPU Utility Board meeting the Board approved a purchase order agreement with Power Generation Services to perform an overhaul of the SLP Unit 3 turbine.

During the internal inspection of the Unit 3 turbine a significant crack was discovered to have formed in the casing. The casing was subsequently inspected by a metallurgical consultant. The consultant determined that the cracking was due to thermal cycling; a phenomenon not unusual to this type, and age, of machine. The corrective action for a condition such as this is a specialized weld repair of the apparent defect, followed by heat treating of the entire casing cover to relieve the thermal stress. This work was not included in the specification or workscope approved by the Board.

FOR CAPITAL PURCHASES/BIDS/MAJOR PROJECTS:

The direct cost to perform the repair and stress thru our overhaul contractor (Power Generation Services) is \$157,820. Contingency funds have been identified as the funding source and are approved in the 2009 budget

The work will be administered under change order (Change Order #1) to the existing overhaul agreement in effect with Power Generation Services. The actual work will be performed by Machinery Dynamics and Analysis, Ltd (MD&A). MD&A will be working as a subcontractor to PGS.

UTILITY BOARD ACTION REQUESTED:

Staff recommends that the Board approve Change Order #1 with Power Generation Services Inc. to provide repairs to the SLP Unit #3 turbine casing for a firm price of \$157,820.00. This change will bring the total contract price to \$514,432.00.



General Manager



Date

ROCHESTER PUBLIC UTILITIES



POWER GENERATION SERVICE, INC.

1160 McKinley Street
Anoka, MN 55303
United States of America
(763) 421-1104
Fax # (763) 421-3451

E-mail: hughessc@powergensvc.com

May 8, 2009

Rochester Public Utilities
4000 E. River Road N.E.
Rochester, MN 55904
Attention: Mr. Nick Davis

Re: Silver Lake Plant Unit #3 - 22 MW Westinghouse Turbine Upper Shell Casing Repair

Power Generation Service, Inc. (PGS) is pleased to offer the following proposal for the above noted repair.

CHANGE ORDER #1 - Turbine Upper Shell Casing Repair

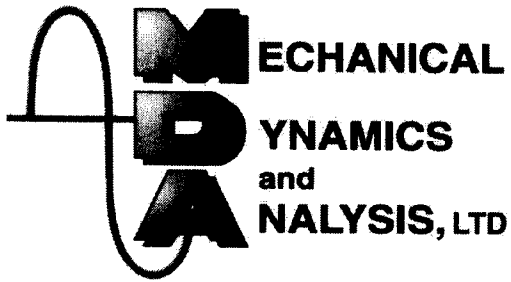
Repair of upper shell casing cracks: Provide all supervision, labor, equipment, and materials necessary to perform the **Full Stress-Relieve Weld Repair** as defined in the attached Mechanical Dynamics and Analysis, LTD (MD &A) workscope (see attached MD&A Proposal #90067).

FIRM PRICE QUOTE \$157,820.00

If you have any questions or require further information with regard to this or other matters please contact us.

Sincerely,

Scott Hughes
Customer Service Manager
Power Generation Service



3804 Weber Rd, St. Louis, Missouri, 63125 (314) 880-3000
FAX: (314) 638-3473

PROPOSAL 90067

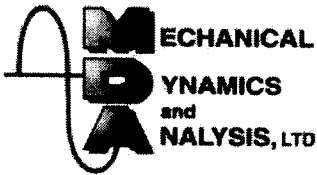
SUBMITTED TO:

POWER GENERATION SERVICES, INC.

22 MW WESTINGHOUSE TURBINE

SUBMITTED:

5/15/2009



MECHANICAL DYNAMICS & ANALYSIS, LTD.
3804 Weber Rd, St. Louis, Missouri, 63125
PHONE: (314) 880-3000 FAX: (314) 638-3473
www.MDAturbines.com

5/15/2009

PROPOSAL 90067

Scott Hughes
Power Generation Services, Inc

E-mail:

Tel:

**Re: 22 MW Westinghouse Turbine - Cylinder Crack Repair
Rochester Public Utility
Silver Lake Station**

Dear: Scott Hughes

Mechanical Dynamics & Analysis is pleased to offer the attached Proposal for performing the above referenced work.

MD&A's proposal is organized as follows:

Section 1 – Pricing

Background Information

Workscope & Pricing

MD&A Rate Schedule(s)

Section 2 – Technical

Technical Clarifications

Division of Responsibilities

Section 3 – Commercial

Supplemental Terms & Conditions

MD&A Terms & Conditions

MD&A appreciates having this potential opportunity to serve Power Generation Services, Inc . at RPU – Sliver Lake Station, and if we get the order, it will be completed in a highly professional manner.

A handwritten signature in cursive script that reads "Honey Mae Lee".

Honey Mae Lee
Steampath Proposal Manager

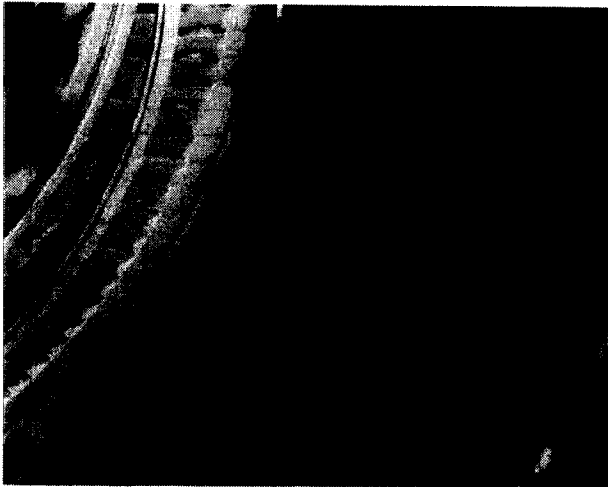
c: J. Reville, MD&A Proposals & Contracts Manager
D. Hatcher, MD&A Manager of Turbine-Generator Repairs
D. Gould, MD&A Manager of Machining

ONE CALL ONE SOURCE POWERFUL SOLUTIONS

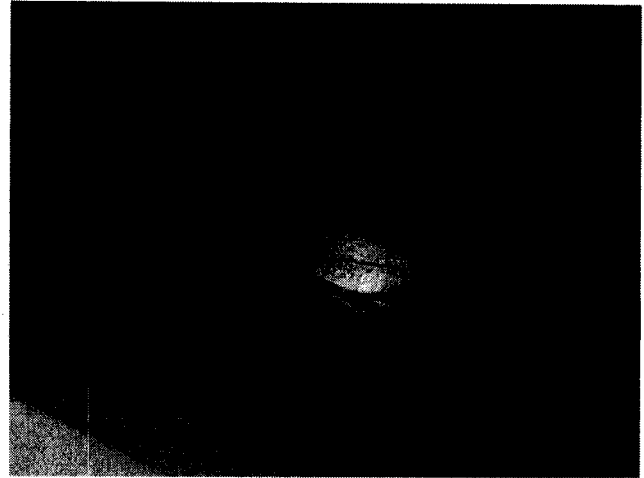


MDA /Turbine Consultants proposes the following stress-relieve weld repair to repair the 6" long crack in the turbine HP upper cylinder at Rochester Public Utility - Silver Lake station.

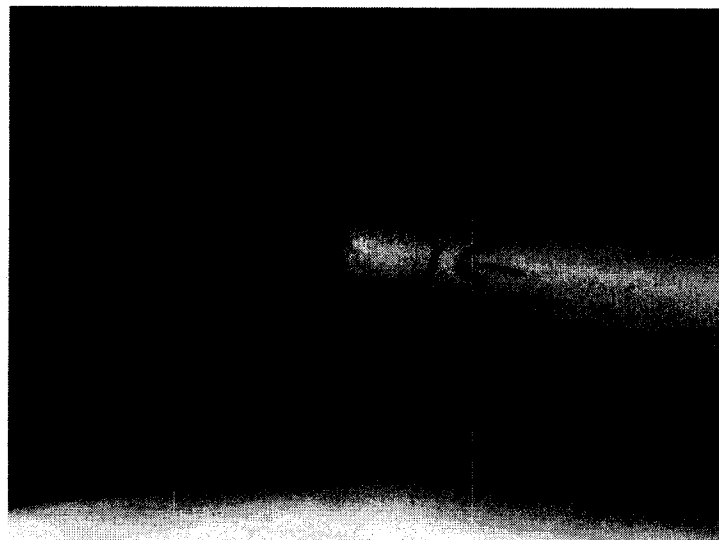
During the maintenance inspection it was discovered that a 6" long crack was propagating out of the generator end of the nozzle chamber to cylinder radius on the right side along with small cracking on the governor end of the radius.



6" long crack in nozzle chamber radius



Close-up of the 6" crack



Small cracks on the gov end of radius

These are low cycle fatigue (LCF) cracks that have initiated from repeated thermal cycling of the unit over the last 47 years of operation. During Startup and Shutdown, the heating and cooling of the cylinder is not uniform and thermal stresses are created. Whenever a thinner section of the cylinder is attached to a thicker area (as it is in this radius) creates thermal stresses (over time) that are higher than the tensile strength of the cylinder material. These stresses (from cycling) will initiate cracks. The mechanism that created the cracking will continue to propagate the cracking is LCF from the thermal cycling. The unit is operated in a cyclic mode where it has had up to 210 cold startups over the last 7 years. Since the right side is by the #1 governor valve it see the highest thermal stresses, especially if the unit is being operated at low load for long period of time. This is why the other side has not cracked yet.

The 6" long crack is located on the cylinder sidewall that is about 3 ½" thick. If this crack should ever propagate out to the cylinder OD it will blow super heated steam into the turbine deck forcing the shutdown of the unit and can severely injure or take the life of anyone in the area. For this reason MD&A strongly recommends that either a non or a full stress relieve weld repair be perform during this outage.

MD&A will provide all supervision, labor, equipment and materials necessary to perform the following **Full Stress-Relieve Weld Repair** workscope at the plant site:

A full stress-relieve weld repair is the most permit repair that we can offer. This repair will have a life span of 15 to 20 years if operated within the OEM guidelines.

Workscope and Pricing

1. QC dimensional checks of horizontal joints and diaphragm bores which include laser flatness checks to horizontal joint and diaphragm bore measurements
2. Excavate the 6" long crack by air arcing and hand grinding.
3. Excavate the small cracks on the other side as shown in the photos.
4. Pre heat shells as required.
5. Weld 6" excavation using cylinder matching weld filler material. The welds will be made weld utilizing **MD&A/TURBINE CONSULTANTS®** proprietary, low distortion weld procedure.
6. Setup upper cylinder for stress relieve.
7. Stress relieve the welded areas.
8. Final NDE on welded area.
9. Hand contour the welded area.
10. Final QC & dimensional checks including laser joint flatness verification.

MD&A/TURBINE CONSULTANTS® will perform the aforementioned **Work Scope** for the crack repair of the HP lower cylinder for the budget price of **\$157,820.00** total. Pricing includes welding & heating equipment, mobilization, and craft personnel to carry out this work at the worksite. This price estimate does not include local taxes, license fees, withholdings or permits.

Any additional work as requested by turbine owner or delays caused by others will be charged as an extra at the applicable time and material rates.

Work Scope Schedule:

The Work Scope for this procedure will require about 6 to 7 work days to complete. Work shifts will be 10 - 12 hours per shift, 1 shifts per day, 7 days per week. The schedule may be extended due to additional work or delays caused by others.

See Technical Clarifications and Division of Responsibilities for detailed exclusions or clarifications to this workscope being bid.

Section 1 - Pricing

***Background Information
Workscope & Pricing
MD&A Rate Schedules***

**PRICING CLARIFICATIONS
SUPPLEMENTAL TERMS & CONDITIONS**

1. **Price/Payment**
 - a. We propose the following Payment Schedule:
 - i. 100% invoiced upon completion of work.
 - b. All invoices net thirty (30).
 - c. Work permits, customs, duties and taxes, if any, are an extra.
 - d. If bonding is required, the bond cost allowance is based on known workscope. If contract extras are awarded, all invoices for such extra work will be surcharged to cover additional bond costs.
 - e. All of the scope items quoted individually contain a proportionate amount of project management and fixed site overheads. Therefore, the individual scope item pricing can not be used for work scope deletions.
2. **Extra Work**
 - a. MD&A will be reimbursed for extra scope work, with Customer's prior approval per the attached Rate Schedule(s).
 - b. Extra work can be performed on either a cost plus basis or on a lump sum firm price basis, as requested. MD&A shall not be required to comply with any requested change order until Customer and MD&A have reached written agreement on appropriate adjustments in price, schedule and scope of work.
 - c. MD&A employees are capable of performing safe work in power plants. They are trained and are in compliance with the most current OSHA safety standards. Additional Customer required safety training that has not been specified can be performed on a T&M basis.
3. **Validity**
 - a. Proposal is valid for ninety (90) days. Extensions may be requested by the Customer.
 - b. Due to practical considerations concerning the demand for our services and the scheduling of resources, all offers of service are subject to prior commitment.

The information contained in this proposal shall not be duplicated, used in whole or in part for any purpose other than to evaluate the proposal provided; that if a contract is awarded to MD&A, as a result of the submission of such information, Customer shall have the right to duplicate, use, or disclose this information to the extent provided in the contract. This restriction does not limit Customer's right to use the information contained herein if obtained from another source.

Section 2 - Technical

***Technical Clarifications
Division of Responsibilities***

TECHNICAL CLARIFICATIONS

GENERAL

1. In case of a work stoppage of any nature beyond MD&A's control, we will give the Customer the option of keeping our crew standing by locally or returning our crew to their home base. In the event that crew members are required to return to their respective home base location and to return to the Customer's plant at a later date to finish the work, MD&A will submit a quotation for appropriate "in and out" expenses due to the work stoppage.
2. MD&A assumes no liability for the crane inspection or its operational reliability. It will be the Customer's responsibility to determine that the crane meets all operational and safety standards. The proper operation of the overhead crane is critical to the success of this outage. It is therefore imperative that Customer makes every effort to have a complete preventive maintenance check performed prior to the outage. MD&A does not include a crane inspection. Critical spare parts should also be inventoried and parts' lead times checked with suppliers. We understand that it may be necessary to share the use of the crane with another vendor. Minor delays in crane availability can be accommodated, however extended periods of time during which the crane is not available will be considered delay time. Additional overtime required to regain the schedule will be billed per the Rate Schedules.
3. All electrical testing will be performed at the OEM's recommended voltages, unless otherwise instructed by Customer.
4. The conditions of any tests related to work performed by MD&A, shall be mutually agreed upon and MD&A shall be notified of, and may be represented at, all tests that may be made.
5. Customer is responsible for treatment and removal of hazardous substances and related contamination of any nature.
6. Customer to provide full access to the turbine components as required in a dry weather protected location with adequate lighting and proper foundation support plus crane and rigging services.
7. Provide access to an authorized contact person at all times. Be able to make decisions on any engineering holds or extra work items within 24 hours of notification to avoid delay charges.
8. Customer to remove obstructing components which protrude above the horizontal joints. This would include all joint hardware and fasteners.
9. Provide free access to all available drawings, operating procedures and/or information, and historical data on the equipment covered under this proposal.
10. Customer to provide labor support such as scaffolding, electrical hookups, loading / unloading and moving of equipment, and positioning of components to perform repair work.
11. Customer to remove all the insulation on the lower turbine cylinder and reinstall it after the repair.

12. Straight time is defined as work up to (8) hours on weekdays. Overtime is defined as work after (8) hours on weekdays and all day Saturday, Sunday and Holidays.
13. Extra work scope includes:
 - a. All non-specific repairs.
 - b. Estimated staff and labor is based on the planned work dates stated above. If conditions not within MD&A's ability to control, such as the extension of time for repair activities, cause the schedule to be extended, all staff time and expenses, and any added labor costs beyond the end date above, would be considered extra.
 - c. If standby time is encountered, waiting for work to be completed by others, it will be considered an extra (8 hours per day per person).

DIVISION OF RESPONSIBILITIES

| A. Consumables / Materials | | Customer | MD&A |
|-----------------------------------|--|-----------------|-----------------|
| 1 | All parts, including gaskets, material, nuts, keys, washers, bolts and fittings, in a timely manner. | X | |
| 2 | Lubricating oils and greases which will be a part of the operating unit. | X | |
| 3 | Cribbing and barrier materials. | X | |
| 4 | Consumable materials including rags, cleaning fluids, emery cloth, etc. | | X |
| 5 | Welding/Cutting gases. | X | |
| 6 | Joint and thread lubricants. | NA | NA |

| B. Site Services | | Customer | MD&A |
|-------------------------|---|-----------------|-----------------|
| 1 | Scaffolding services (as required). | X | |
| 2 | Blast cleaning tent (as required). | X | |
| 3 | NDE services (as required). | X | |
| 4 | Insulation services. | X | |
| 5 | Compressed air for tools (minimum 90 PSIG convenient to work area). | X | |
| 6 | Night shift lighting (as required). | X | |
| 7 | Service water. | X | |
| 8 | Electrical services (minimum requirements: 110V, 440V 3 phase, including appropriate power plug. Maximum of 330 amps, 440V, and 3 phase required for heat treatment). | X | |
| 9 | Isolation of all electrical services (including disconnect, at Isophase termination enclosures, both generator line side and neutral links, and neutral grounding transformer connections; disconnect all RTD's as required). | X | |
| 10 | Drain and refill of main lube oil tank and seal oil system. (if required) | NA | NA |
| 11 | Blinding of pressurized piping. | NA | NA |
| 12 | Temporary office. | X | |
| 13 | Temporary sanitary facilities. | X | |
| 14 | Phone/Fax lines and Internet access. | X | |
| 15 | Provide a secure area and lay down space for MD&A equipment adjacent to the repair area. | X | |
| 16 | Provide MD&A 24-hour access to the work area. | X | |

| C. Tools & Equipment | | Customer | MD&A |
|---------------------------------|--|-----------------|-----------------|
| 1 | Special tools, jigs, non-standard wrenches and alignment fixtures provided by the OEM or fabricated by the Customer to facilitate maintenance. | X | |
| 2 | Overhead crane (as required). | X | |
| 3 | Flatbed trucks and mobile crane, including outside equipment handling (as required). | X | |
| 4 | Lapping blocks (as required). | X | |
| 5 | Try bar (as required). | X | |
| 6 | All hand tools. | | X |
| 7 | Non-OEM supplied rigging. | X | |
| 8 | Taps and dies up to 1 1/2 inches. | | X |
| 9 | Tool container. | | X |
| 10 | Turbine deck protection, plywood and cribbing. | X | |

| D. EHS | | Customer | MD&A |
|---------------|---|-----------------|-----------------|
| 1 | Safety tagging. | X | |
| 2 | Safe access to and from work area. | X | |
| 3 | Secure parking area & transportation. | X | |
| 4 | Security for parts and tool storage. | X | |
| 5 | Hazardous material removal (as required). | X | |
| 6 | Written plant safety regulations and procedures. | X | |
| 7 | Waste containers for disposal of trash. | X | |
| 8 | First aid facilities (emergency use only). | X | |
| 9 | All required permits. | X | |
| 10 | Fire protection equipment other than local fire fighters. | X | |

| E. Personnel / Documents | | Customer | MD&A |
|---------------------------------|---|-----------------|-----------------|
| 1 | Representative for coordination of parts and repair services within four (4) hours of notification to avoid delays, for repair/replace decisions and for authorization of Extra Work. | X | |
| 2 | Start-up and Operation personnel. | X | |

| | | | |
|---|---|---|---|
| 3 | Free access to all available drawings, operating procedures and/or information, and historical data on the equipment covered under this proposal. | X | |
| 4 | Electricians and Instrument Technicians. | X | |
| 5 | Crane Operator (as required). | X | |
| 6 | Technical Direction. | X | |
| 7 | Final report. | | X |

Section 3 - Commercial

***Supplemental Terms & Conditions
MD&A Terms & Conditions***

MD&A TERMS AND CONDITIONS SERVICES AND PARTS

1. WARRANTY.

a. Services and Parts. Services performed on Customer's equipment by MD&A and any parts supplied by MD&A are warranted to conform to the Contract specifications and to be free from defects in workmanship, material and title for a period of twelve months following the equipment's return to service, or eighteen months following completion of work, whichever occurs first. If any services or parts fail to meet the foregoing warranty, at MD&A's option, MD&A shall correct such failure, (i) by reperforming any portion of the noncompliant services or repairing or replacing any noncompliant part; or (ii) by making available Ex Works MD&A's facility (Incoterms 2000), any necessary repaired or replacement parts. Where a noncompliant part cannot be corrected by MD&A's reasonable efforts, the parties will negotiate an equitable adjustment in price. All costs and risks of access to the equipment, disassembly, and reassembly associated with the corrective action shall be borne by Customer, if not included in the original work scope. The supply of repaired or replacement parts, or reperfomed services by MD&A shall not extend the duration of the warranty period.

b. Rentals. With respect to rental services, MD&A warrants only that rental equipment when delivered is in good operating condition. If the equipment rented hereunder is not in good operating condition due to no fault of Customer and Customer notifies MD&A promptly, MD&A shall thereupon (at its option) either repair the equipment or rent replacement equipment, subject to availability.

c. Exclusive. The preceding paragraphs set forth the exclusive remedies for claims (except as to title) based on failure to comply with plans or specifications or defects in workmanship, material, parts or services, or professional errors or omissions which may be asserted under any theory including, for example, breach of contract, indemnity, warranty, tort (including MD&A's negligence), strict liability or otherwise. Upon the expiration of the warranty period, all such liability shall terminate and Customer shall have a reasonable time, within ten (10) days after the warranty period, to give written notice of any defects that appear during the warranty period. Except as set forth in Article 6, "Patents," the foregoing warranties are exclusive and in lieu of all other warranties, whether written, oral, implied or statutory. **NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE SHALL APPLY.**

d. Limits. The conditions of any tests shall be mutually agreed upon and MD&A shall be notified of, and may be represented at, all tests that may be made. MD&A's obligations under this Article 1 shall not apply to any part or portion thereof, which (i) is defective due to normal wear and tear including that due to environment or operation, or (ii) has a normal life inherently shorter than the warranty period, or (iii) is not properly stored, installed, used or maintained other than pursuant to MD&A's written instructions or approval, or (iv) has been subjected to any other kind of misuse or detrimental exposure or has been involved in an accident. In addition, this warranty shall be void if (i) Customer makes any repairs to, or effects any changes in, parts or any portion thereof, which have not been authorized by MD&A in writing, or (ii) MD&A is not promptly notified of any failure in writing or has not been given prompt and complete access to the failed parts or equipment including full access to all diagnostic and repair efforts.

e. Latent Defects. In no event shall MD&A be liable for any loss or damage whatsoever arising from its failure to discover or repair latent defects or defects inherent in the design of parts

or equipment serviced or caused by the use of parts by Customer against the advice of MD&A.

2. LIMITATIONS OF LIABILITY.

a. In no event, whether as a result of breach of contract, indemnity, warranty, tort (including MD&A's negligence), strict liability or otherwise, shall MD&A's liability to Customer, its affiliates, successors or assigns, or its insurers for any loss or damage arising out of, connected with, or resulting from the Contract, or from MD&A's performance or breach, or from any parts or services covered by or furnished under the Contract or any extension or expansion thereof (including remedial warranty efforts), exceed the price allocable to the portion of the particular part or service giving rise to the claim. Except as to title to any parts furnished, all such liability shall terminate upon the expiration of the warranty period specified in the Article 1 "Warranty". Any such claim of liability must be commenced in a court of competent jurisdiction in no event later than one year from the termination of the warranty period. This limitation of liability shall not apply to the indemnity for bodily injury or death as set forth in Article 4 "Indemnity" hereof.

b. If MD&A furnishes Customer with advice or assistance concerning any part supplied hereunder or any system or equipment in which any such part may be installed and which is not required pursuant to this Contract, the furnishing of such advice or assistance will not subject MD&A to any liability, whether as a result of breach of contract, indemnity, warranty, tort (including MD&A's negligence), strict liability or otherwise.

c. Customer waives all rights of recovery against MD&A and all rights of subrogation, whether Customer's claim is brought under breach of contract, indemnity, warranty, tort (including MD&A's negligence), and strict liability or otherwise, for loss or damage to the property of Customer to the extent such claim is covered by insurance maintained by Customer. For the purposes of this Article 2, the term "MD&A" includes MD&A and its subcontractors, suppliers, subsidiaries and affiliates and the officers, agents, employees, successors and assigns and authorized representatives

3. CONSEQUENTIAL DAMAGES. In no event, whether as a result of breach of contract, indemnity, warranty, tort (including MD&A's negligence), strict liability or otherwise, shall MD&A be liable to Customer or its affiliates, successors or assigns for any special, incidental, exemplary, indirect or consequential damages, including, for example, loss of profits or revenues, loss of use of any property, parts or any associated equipment, damage to associated equipment, cost of capital, cost of purchased power, cost of substitute equipment, facilities, parts, services or replacement power, downtime costs or claims of customers of Customer for such damages and Customer will indemnify MD&A against any such claims from Customer's customer.

4. INDEMNITY. Limited to the amount of insurance available to respond to any such claim, MD&A and Customer each agrees to defend, indemnify, and hold harmless each other, its subcontractors, suppliers, subsidiaries and affiliates and the officers, agents, employees, successors and assigns and authorized representatives, from and against legal liability for all bodily injury or death, but only to the extent such bodily injury or death is caused by its negligent acts, errors, or omissions. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of MD&A and Customer, they shall be borne by each party in proportion to its own negligence.

MD&A Terms and Conditions Services and Parts

5. INSURANCE. MD&A, at its expense, shall procure and maintain in effect without interruption during the term of this Contract with insurance companies authorized to transact insurance in the State in which the Work is performed, policies of insurance providing the coverages and limits specified, and complying with the other requirements stated below:

- (a) Worker's Compensation in statutory amounts and Employer's Liability with a minimum limit of \$1,000,000 each accident, \$1,000,000 Disease - each Employee, \$1,000,000 Disease Policy Limit.
- (b) Commercial General Liability on an Occurrence Basis, with the following coverages and limits:
 - i. Per Occurrence \$1,000,000
 - ii. General Aggregate \$1,000,000
 - iii. Products-Completed Operations Aggregate \$1,000,000
 - iv. Personal & Advertising Injury Each Occurrence \$1,000,000
- (c) Automobile Liability covering automobiles of MD&A, including owned, hired and non-owned automobiles, for Bodily Injury and Property Damage with a combined single limit of \$1,000,000 each Occurrence.
- (d) Excess Liability in Umbrella Form with a limit of \$4,000,000 each Occurrence, \$4,000,000 Aggregate.

6. PATENTS. MD&A warrants that parts furnished hereunder shall be delivered free of any rightful claim of any third party for infringement of any U.S. patent. If notified promptly in writing and given authority, information and assistance, MD&A shall defend, or may settle, at its expense, any suit or proceeding against Customer so far as based on a claimed infringement which would result in a breach of this warranty and MD&A shall pay all damages and costs awarded therein against Customer due to such breach. In case any part is in such suit held to constitute such an infringement and the use for the purpose intended of said part is enjoined, MD&A shall, at its expense and option, either procure for Customer the right to continue using said part, or replace same with a noninfringing part, or modify same so it becomes noninfringing, or remove the part and refund the purchase price. The foregoing states the entire liability of MD&A for patent infringement.

The preceding paragraph shall not apply to any parts specified by Customer or manufactured to Customer's design, or purchased from other sources, or to the use of any parts furnished hereunder in conjunction with any other parts in a combination not furnished by MD&A as part of this Contract. As to any such parts, or use in such combination, MD&A assumes no liability whatsoever for patent infringement and Customer will hold MD&A harmless against any infringement claim arising therefrom.

In the case of rental equipment MD&A may, at any time after it becomes aware of a possible infringement, elect to require that the equipment be returned and excuse Customer from further rental payments. This paragraph contains the entire liability of MD&A for patent infringement by rental equipment.

7. DELIVERY. Completion dates are approximate and are based upon prompt receipt of the equipment and all necessary information from Customer, or ready access to same if work is to be done at Customer's facility. Unless otherwise specified by MD&A, all shipments of parts are Ex Works MD&A's facility (Incoterms 2000), shipping and insurance prepaid by Customer. In the case of rental equipment, shipping dates quoted are based on rental stocks available at the time of quotation and are, therefore, subject to prior rentals.

8. EXCUSABLE DELAYS. MD&A shall not be liable for any delay in delivery or performance, or for any failure to manufacture, deliver, or perform due to (i) any cause beyond its reasonable control; or (ii) any act of God, act of Customer, act of civil or military authority, government priority, fire, severe weather condition, earthquake, strike or other labor disturbance, flood, epidemic, war, riot, terrorist act, delay in transportation or car shortage; or (iii) inability on account of any cause beyond the reasonable control of MD&A to obtain necessary materials, components, services or facilities. The date of delivery or of performance shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of such excusable delay. MD&A shall notify Customer, as soon as practicable, of the revised date of delivery or of performance. If MD&A is delayed by acts or omissions of Customer, or by the prerequisite work of Customer's other contractors or suppliers, MD&A shall also be entitled to an equitable price adjustment.

9. PAYMENTS AND FINANCIAL CONDITION. Unless otherwise specified by MD&A in its quotation, pro rata payments shall become due without setoff as shipments are made or as work is completed. If MD&A consents to delay shipments, payment shall become due on the date when MD&A is prepared to make shipment. If the work to be performed hereunder is delayed by Customer, payments shall be made based on the purchase price and the percentage of completion. Parts held for Customer shall be at the risk and expense of Customer.

If Customer fails to fulfill any condition of its payment obligations, MD&A may suspend performance and delivery. Any cost incurred by MD&A in accordance with such suspension, including storage costs (including storage at MD&A's facility), shall be payable by Customer upon submission of MD&A's invoices.

Any order for services/parts by Customer shall constitute a representation that Customer is solvent. If the financial condition of Customer at any time does not, in the judgment of MD&A, justify continuance of MD&A's obligations hereunder on the terms of payment agreed upon, MD&A may require full or partial payment in advance or shall be entitled to terminate the Contract and receive termination charges. In the event of bankruptcy or insolvency of Customer or in the event any proceeding is brought against Customer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, MD&A shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against Customer and shall receive reimbursement for its proper cancellation charges. MD&A's rights under this Article 9 are in addition to all rights available to it at law or in equity.

MD&A shall have a lien on and may retain possession of equipment repaired, modified, inspected, tested, maintained or serviced under this Contract until its charges for such services are paid. If such charges are not paid within ninety (90) days following completion of the work and invoicing Customer, MD&A may, upon not less than seven (7) days written notice by certified mail to Customer at Customer's last known address, sell the equipment at public or private sale and apply the net proceeds to MD&A's charges.

10. TERMINATION.

a. By Customer. Customer shall be entitled to terminate the Contract in the event MD&A fails to commence reasonable cure within thirty (30) days after notice from Customer specifying a material default. MD&A's liability for material default shall be limited to the direct costs that Customer must pay a third party to correct the default, but in no event shall exceed the Contract Price. MD&A shall be entitled to recover reasonable termination

MD&A Terms and Conditions Services and Parts

charges on any order that is terminated unless MD&A is in prior material breach of these Terms and Conditions. Termination of an order shall not relieve either party of any obligation arising prior to termination.

b. **By MD&A.** If Customer fails to fulfill any condition of its payment obligations and does not correct such failure in the manner and time satisfactory to MD&A, then MD&A may, terminate the Contract in respect to the portion of the parts not delivered and work not yet performed. Customer shall pay MD&A its reasonable and proper termination charges in the event of such termination, in addition to the amounts owed up to the date of termination.

11. TITLE. Title to parts not yet incorporated into Customer's equipment will pass to Customer upon MD&A's receipt of all payments for the parts/services under this Contract. Title and right of possession of equipment repaired, modified, inspected, tested, or maintained under this Contract shall remain with Customer, subject to any applicable lien rights of MD&A and to its right of sale in the event of nonpayment as provided in Article 9. Title to all rental equipment shall remain with MD&A.

12. TAXES. In addition to any price specified herein, Customer shall pay the gross amount of any present or future sales, use, excise, value-added, or other similar tax applicable to the price, sale, or delivery of any parts or services furnished hereunder or to their use by MD&A or Customer, or Customer shall furnish MD&A with a tax exemption certificate acceptable to the taxing authorities.

13. SOFTWARE. Unless otherwise agreed in writing by MD&A, there are no rights to software granted to Customer under this Contract. In the event that Customer desires to license any software used by MD&A, Customer must contact the owner of such software to negotiate a software license agreement with such owner in order to use such software. MD&A makes no representation that it is the owner or licensee of any software, or that it has any right to sell, or grant any license to Customer to use, any software.

14. PROHIBITION ON NUCLEAR USE.

a. Parts and materials sold, equipment rented, and any services provided hereunder, are not intended for application, and shall not be used, in connection with any nuclear facility or activity. Customer represents and warrants that it shall not use them or permit others to use them for any such purpose, and that it will not transfer parts, materials and equipment sold hereunder or the benefit of services provided hereunder to any third party, or permit them to be so transferred or used, without having first obtained the agreement of such third party or parties not to use them for any such purpose.

b. If, notwithstanding the foregoing, any use in connection with any nuclear facility or activity occurs, MD&A shall have no liability whatsoever for any nuclear or other damage, injury or contamination. In addition to any other legal or equitable rights of MD&A, Customer shall indemnify MD&A against any such liability, and shall reimburse MD&A for all expenses incurred by MD&A in investigation, settlement and defense of any claims arising out of such use, including without limitation attorneys' and experts' fees, settlement awards and costs, court costs, disbursements, and internal expenses resulting from such claims. The term "nuclear damage" means any loss, damage, or loss of use, which in whole or in part is caused by, arises out of, results from, or is in any way related, directly or indirectly, to the radioactive or other hazardous properties of source, special nuclear or byproduct material, as those materials are defined in the Atomic Energy Act of 1954, as amended.

15. GENERAL. The provisions of this Contract are for the benefit of the parties hereto and not for any other party or person except as specifically provided herein.

Any services furnished by MD&A hereunder will be performed in compliance with the Fair Labor Standards Act of 1938, as amended and applicable. MD&A will comply with applicable federal, state, and local laws and regulations as of the date of any quotation which relate to (i) equal employment opportunity (including the seven paragraphs appearing in Section 202 of Executive Order 11246, as amended); (ii) workers' compensation; and (iii) the performance of any services in MD&A's facilities. Price and, if necessary, delivery will be equitably adjusted to compensate MD&A for the cost of compliance with any other laws or regulations.

The delegation or assignment by Customer of any or all of its duties or rights hereunder without MD&A's prior written consent shall be void. Any representation, promise, warranty, course of dealing or trade usage not contained or referenced herein will not be binding on MD&A.

The 15 articles in these Terms and Conditions, including MD&A's quotation, collectively referred to herein as the "Contract", contain the entire and only agreement between Customer and MD&A respecting the terms and conditions and supersedes and cancels all previous negotiations, agreements, commitments, representations and writings in respect thereto. No modification, amendment, rescission, waiver or other change shall be binding on MD&A unless agreed to in writing by MD&A's authorized representative.

The validity, performance, and all matters relating to the interpretation and effect of this Contract and any amendment hereof shall be exclusively governed by the law of the State of New York, except for any of its conflict of law principles that would require the application of the law of another jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The invalidity, in whole or part, of any of the articles or paragraphs in these Terms and Conditions will not affect the remainder of such article or paragraph or any other article or paragraph. Nothing in this Contract shall be construed to impose any overall "system responsibility" on MD&A. When used in this Contract, the terms (i) "including" and "includes" mean "including but not limited to" the specifically enumerated things, states, or actions that follow such terms, and (ii) "or" means "one or the other or all" of the specifically enumerated things, states, or actions that follow such term.

Any information, suggestions or ideas transmitted by the Customer to MD&A are not to be regarded as secret or submitted in confidence, unless agreed to by MD&A in writing.

The following Articles shall survive termination of this Contract: Article 1 (Warranty), Article 2 (Limitation of Liability), Article 4 (Indemnity), Article 6 (Patents), Article 12 (Taxes), Article 14 (Prohibition of Nuclear Use), Article 15 (General) and any remaining payment obligations of Customer.

Section 4 – Attachments

Resumes



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve Change Order #1 to the purchase order agreement with Power Generation Services, Inc., the overhaul contractor, for

Turbine Casing Repair Services for the SLP Unit #3 Turbine Generator

The amount of Change Order #1 to be a firm price of ONE HUNDRED FIFTY SEVEN THOUSAND EIGHT HUNDRED TWENTY AND 00/1000 DOLLARS (\$157,820.00) bringing the total contract price to \$514,432.00.

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

President

Secretary