

**AMENDED AND RESTATED
JOINT PRICING ZONE REVENUE ALLOCATION AGREEMENT**

between

SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY

and

**CITY OF ROCHESTER, MINNESOTA, BY AND THROUGH THE ROCHESTER
PUBLIC UTILITIES BOARD**

October 2017

**AMENDED AND RESTATED
JOINT PRICING ZONE REVENUE ALLOCATION AGREEMENT**

This Amended and Restated Joint Pricing Zone Revenue Allocation Agreement ("Agreement") is made and entered into as of the 18 day of October, 2017, by and between Southern Minnesota Municipal Power Agency ("SMMPA"), a municipal corporation and political subdivision of the state of Minnesota, and the City of Rochester, a Minnesota municipal corporation acting by and through the Rochester Public Utilities Board ("RPU"), and any successors thereof, which are referred to herein collectively as "Parties" and singularly as "Party," with respect to the allocation of revenues that the Midcontinent Independent System Operator, Inc. ("MISO") distributes to the SMMPA pricing zone (a zone that includes facilities of SMMPA and RPU and loads of SMMPA, GRE and RPU, hereinafter referred to as "SMMPA Joint Pricing Zone") and certain additional payments to be made to RPU.

WITNESSETH:

WHEREAS, SMMPA became a MISO Transmission Owner in the SMMPA Zone on April 1, 2006 and since that time has taken transmission service under the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff ("Tariff"); and

WHEREAS, RPU became a MISO Transmission Owner on December 1, 2014; and

WHEREAS, MISO collects Intra-Zonal and Inter-Zonal Revenues for a pricing zone and remits those revenues to a single Transmission Owner regardless of the number of Transmission Owners within that pricing zone; and

WHEREAS, MISO bills and collects revenues for MISO Network Integration Transmission Service ("NITS") provided to network customers in each MISO transmission pricing zone excluding, among other things, load served under the bundled load exemption; and

WHEREAS, pursuant to the bundled load exemption MISO does not bill and does not collect revenues for the MISO network transmission service provided to SMMPA in the SMMPA Joint Pricing Zone, which includes RPU's load up to the Contract Rate of Delivery ("RPU CROD") as defined in the Power Sales Contract ("PSC") between SMMPA and RPU; and

WHEREAS, MISO distributes all Intra-Zonal Revenues and Inter-Zonal Revenues allocable to the SMMPA Joint Pricing Zone to SMMPA; and

WHEREAS, the charges billed by SMMPA and paid by RPU pursuant to the PSC include costs of transmission service for the RPU CROD; and

WHEREAS, RPU currently takes NITS under the MISO Tariff for its load in excess of the RPU CROD, which is included in the SMMPA Joint Pricing Zone; and

WHEREAS, in April 2016, in conjunction with and as part of the Settlement Agreement entered into by RPU and SMMPA in Docket Nos. ER14-2154 and ER15-277, the Parties originally entered into this Agreement to address the allocation of MISO transmission service revenues between SMMPA and RPU, and certain additional payments to be made to RPU, as provided for herein; and

WHEREAS, the Parties subsequently agreed to revise this Agreement to provide for allocation of MISO Schedule 1 revenues, and therefore wish to enter into this amended and restated version of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants set forth herein, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Capitalized terms used in this Agreement without other definitions will have the meanings set forth below or, if not set forth below, as defined in the Tariff:

Agreement: This Joint Pricing Zone Revenue Allocation Agreement, including any attachments hereto, or amendments thereof.

Annual Transmission Revenue Requirement ("ATRR"): The net transmission revenue requirement for each Party as reflected in that Party's Attachment O.

ATRR Allocator: The percentage representing the *pro rata* share of each Party's Zone 20 ATRR relative to the Zonal Revenue Requirement, expressed to two decimal places (*e.g.* 12.34%) and computed annually (and recalculated whenever there is a change to a Party's ATRR).

Attachment O: Attachment O to the Tariff applicable to each Party.

Facilities Value: The gross book value of the Zonal Transmission Facilities owned by each Party, as reflected in that Party's Attachment O.

FERC or Commission: The Federal Energy Regulatory Commission or its successor.

Gross Book Value ("GBV") Allocator: The percentage representing the *pro rata* share of each Party's Facilities Value relative to the Total Facilities Value (in terms of gross book value), expressed to two decimal places (*e.g.*, 12.34%) and computed at least annually (and recalculated whenever a Party's Attachment O is updated).

Inter-Zonal MISO Adjustments: Credit or debit adjustments to Inter-Zonal Revenues made by MISO after such revenues have been distributed to SMMPA.

Inter-Zonal Revenues: Revenues received by SMMPA from MISO, which were collected by MISO under Tariff Schedules 7 and 8 from point-to-point transmission service customers for transactions into, out of, or outside of the SMMPA Joint Pricing Zone, and distributed to SMMPA for the SMMPA Joint Pricing Zone.

Intra-Zonal MISO Adjustments: Credit or debit adjustments to Intra-Zonal Revenues made by MISO after such revenues have been distributed to SMMPA.

Intra-Zonal Revenues: Revenues received by SMMPA from MISO, which were collected by MISO under Tariff Schedule 9 from network integrated transmission service customers within the SMMPA Joint Pricing Zone, and distributed to SMMPA for the SMMPA Joint Pricing Zone, and revenues received by SMMPA from MISO, which were collected by MISO under Tariff Schedules 7 and 8 from point-to-point transmission service customers for transactions within the SMMPA Joint Pricing Zone, and distributed to SMMPA for the SMMPA Joint Pricing Zone.

MISO: The Midcontinent Independent System Operator, or its successor.

Monthly Revenue Share: The revenues to which each Party is entitled, which includes its share of Inter-Zonal Revenues and its share of Intra-Zonal Revenues, as calculated on a monthly basis pursuant to Section 3.3.

Parties: The signatories to this Agreement.

PSC: The Power Sales Contract between SMMPA and RPU dated April 1, 1981.

RPU CROD: RPU's load up to the Contract Rate of Delivery ("CROD") as defined in the Power Sales Contract ("PSC") between SMMPA and RPU.

Schedule 1 Allocator: The percentage representing the *pro rata* share of that Party's Zone 20 Schedule 1 costs (as reflected on its Attachment O) relative to the total Zone 20 Schedule 1 costs, expressed to two decimal places (*e.g.* 12.34%) and computed at least annually (and recalculated whenever there is a change to a Party's Schedule 1 costs as reflected on its Attachment O).

Settlement Agreement: The April 2016 settlement agreement entered into by RPU and SMMPA in Docket Nos. ER14-2154 and ER15-277.

SMMPA Joint Pricing Zone: Zone 20 of the Tariff, or its successor designation.

SMMPA's Bundled Load: The load of SMMPA members, including the RPU CROD, served under their Power Sales Contracts with SMMPA.

Tariff: The Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midcontinent Independent System Operator, Inc. on file with the Commission as MISO FERC Electric Tariff, Fifth Revised Volume No. 1, or any successor tariff.

Total Facilities Value: The sum of the Parties' Facilities Values.

Transmission Owner: A signatory to the Transmission Owners' Agreement that meets the criteria for the term "Owner" set forth therein and that has received approval from the MISO Board of Directors.

Transmission Owners' Agreement: Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, on file with the FERC as MISO FERC Electric Tariff, Third Revised Rate Schedule No. 1, or any successor agreement.

Zonal Revenue Requirement: The sum of the Parties' Zone 20 ATRRs.

Zonal Transmission Facilities: Facilities that are classified as transmission pursuant to the Tariff and whose revenue requirements are allocated to Zone 20, as reflected in a Party's Attachment O. The Parties acknowledge that the revenue requirements associated with RPU's investment in the Hampton-to-North Rochester 345 kV line may not be allocated to Zone 20 except through resolution of the Hampton Reserved Issues as defined in the Settlement Agreement.

Zone 20 ATRR: For each Party, the portion of its ATRR that is allocated to Zone 20 for its Zonal Transmission Facilities, as reflected in that Party's Attachment O.

ARTICLE II

RELATIONSHIPS BETWEEN MISO AND THE PARTIES

2.1 Relationship between MISO and the Parties. As the Tariff administrator and independent operator of a regional transmission system that includes the Zonal Transmission Facilities, MISO distributes Inter-Zonal Revenues and Intra-Zonal Revenues to SMMPA. As designee to receive such revenues allocated to the SMMPA Joint Pricing Zone, SMMPA shall distribute such revenues pursuant to this Agreement.

2.2 Relationship between the Parties. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon a Party. SMMPA will bill, allocate and distribute all amounts due to, or owed by, the Parties under this Agreement.

ARTICLE III

REVENUE DISTRIBUTION METHOD

3.1 Annual Calculations. On an annual basis, or as otherwise necessary to reflect changes to a Party's Attachment O or the calculation of its ATRR thereunder, the Parties will update their respective Attachment O templates. SMMPA will use the Attachment O information to calculate the following:

- (a) **Total Facilities Value; GBV Allocator.** To determine the Total Facilities Value, SMMPA will calculate the sum of the Parties' Facilities Values. SMMPA will then determine a GBV Allocator for each Party based on the *pro rata* share of that Party's Facilities Value relative to the Total Facilities Value.
- (b) **Zonal Revenue Requirement; ATRR Allocator.** To determine the Zonal Revenue Requirement, SMMPA will calculate the sum of the Parties' Zone 20 ATRRs. SMMPA will then determine an ATRR Allocator for each Party based on the *pro rata* share of that Party's Zone 20 ATRR relative to the Zonal Revenue Requirement.
- (c) **Schedule 1 Allocator.** SMMPA will determine a Schedule 1 Allocator for each Party based on the *pro rata* share of that Party's Zone 20 Schedule 1 costs relative to the total Zone 20 Schedule 1 costs.

3.2 Distribution of Annual Calculations. The computations detailed in Section 3.1 above will be calculated annually and recalculated any time there is a change in a Party's Attachment O or the calculation of its ATRR or Schedule 1 costs thereunder. SMMPA will provide this calculation to RPU within thirty (30) days of a change in the Attachment O data and calculations posted by MISO. Each Party shall provide timely notification to the other of any such changes that occur outside of the normal Attachment O annual update and true-up processes.

3.3 Monthly Calculations. The following computations will be made on a monthly basis, effective as of December 1, 2014:

- (a) **Monthly Revenue Shares.** To calculate the Monthly Revenue Share for each Party, SMMPA will determine the sum of the following six (6) numbers:
 - (i) the product of the Inter-Zonal Revenues for the preceding month and that Party's GBV Allocator in effect for the preceding month;
 - (ii) the product of the Intra-Zonal Revenues for the preceding month and that Party's ATRR Allocator in effect for the preceding month;
 - (iii) the Party's allocated share of any Inter-Zonal MISO Adjustments in the preceding month, as calculated pursuant to Section 3.3(b) below;
 - (iv) the Party's allocated share of any Intra-Zonal MISO Adjustments in the preceding month, as calculated pursuant to Section 3.3(c) below;

- (v) the product of that Party's GBV Allocator in effect for the preceding month and the total Schedule 1 revenues SMMPA received from MISO for that month in connection with service provided by MISO under Tariff Schedules 7 and 8 from point-to-point transmission service customers for transactions into, out of, or outside of the SMMPA Joint Pricing Zone; and
- (vi) the product of that Party's Schedule 1 Allocator in effect for the preceding month and the total Schedule 1 revenues SMMPA received from MISO for that month in connection with service provided by MISO under Tariff Schedule 9 from network service customers within the SMMPA Joint Pricing Zone.
- (b) **Inter-Zonal MISO Adjustments.** Inter-Zonal MISO Adjustments are applicable only to revenues that were distributed to SMMPA and shared by the Parties pursuant to this Agreement. The GBV Allocators in effect when the revenues that require the Inter-Zonal MISO Adjustment were originally shared shall be used to allocate the Inter-Zonal MISO Adjustment. Each month, SMMPA shall review the Inter-Zonal MISO Adjustments and allocate the Inter-Zonal MISO Adjustments. Inter-Zonal MISO Adjustments may be either positive or negative.
- (c) **Intra-Zonal MISO Adjustments.** Intra-Zonal MISO Adjustments are applicable only to revenues that were distributed to SMMPA and shared by the Parties pursuant to this Agreement. The ATRR Allocators in effect when the revenues that require the Intra-Zonal MISO Adjustment were originally shared shall be used to allocate the Intra-Zonal MISO Adjustment. Each month, SMMPA shall review the Intra-Zonal MISO Adjustments and allocate the Intra-Zonal MISO Adjustments. Intra-Zonal MISO Adjustments may be either positive or negative.

Monthly Revenue Shares

$$\begin{aligned} \text{SMMPA Revenue Share} = & \text{SMMPA GBV Allocator x Inter-Zonal Revenues} \\ & + \\ & \text{SMMPA ATRR Allocator x Intra-Zonal Revenues} \\ & + \\ & \text{SMMPA share of Inter-Zonal MISO Adjustments} \\ & + \\ & \text{SMMPA share of Intra-Zonal MISO Adjustments} \\ & + \\ & \text{SMMPA GBV Allocator x Inter-Zonal Schedule 1} \\ & \text{Revenues} \\ & + \\ & \text{SMMPA Schedule 1 Allocator x Intra-Zonal Schedule 1} \\ & \text{Revenues} \end{aligned}$$

$$\begin{aligned} \text{RPU Revenue Share} = & \text{RPU GBV Allocator x Inter-Zonal Revenues} \\ & + \\ & \text{RPU ATRR Allocator x Intra-Zonal Revenues} \\ & + \\ & \text{RPU share of Inter-Zonal MISO Adjustments} \\ & + \\ & \text{RPU share of Intra-Zonal MISO Adjustments} \\ & + \\ & \text{RPU GBV Allocator x Inter-Zonal Schedule 1 Revenues} \\ & + \\ & \text{RPU Schedule 1 Allocator x Intra-Zonal Schedule 1} \\ & \text{Revenues} \end{aligned}$$

3.4 Additional Payment Amount. In addition to the revenue sharing provided for in Section 3.3, and pursuant to the Settlement Agreement, SMMPA shall make a monthly payment of \$64,583.33 to RPU, effective as of the month after the CAPX 2020 North Rochester to Chester 161 kV line is placed in service and continuing through March 31, 2030.

3.5 Initial (Catch-Up) Payments. The initial payment by SMMPA to RPU for the period prior to the commencement of monthly ATRR payments pursuant to Section 3.6 shall be calculated and paid in accordance with Attachment B hereto. The initial payment calculated and paid with regard to amounts due pursuant to Section 3.3 shall include simple interest at a rate of 0.5%. No interest shall be paid with respect to any catch-up payment associated with Section 3.4. The initial payment for Schedule 1 revenues shall be \$32,925.36, covering the period beginning December 2014 through and including August 2017; this initial payment shall be made in October 2017, at the same time as the monthly payment that includes the allocations for September 2017.

3.6 Monthly Payments. The following payments will be made on a monthly basis, starting as of the first month following the filing of the Settlement Agreement:

- (a) By SMMPA to RPU: If the sum of RPU's Monthly Revenue Share and the additional payment amount provided for in Section 3.4 is a positive number, then SMMPA will pay such amount to RPU.
- (b) By RPU to SMMPA: If the sum of RPU's Monthly Revenue Share and the additional payment amount provided for in Section 3.4 is a negative number, then RPU will pay such amount to SMMPA.

Payments shall be made by the twenty-fifth day of each month by wire transfer, automated clearing house, or other mutually agreeable payment method.

3.7 Provision of Information. SMMPA will provide RPU with the calculations provided for herein, based on then-available data (including MISO monthly transmission revenue and transmission cost files), for the preceding month, including the calculations for Monthly Revenue Shares for each Party, as well as Inter-Zonal Revenues and Intra-Zonal Revenues for the SMMPA Joint Pricing Zone. If after receiving from MISO any Inter-Zonal MISO Adjustments and/or Intra-Zonal MISO Adjustments, SMMPA will provide a line item on the following month's calculations identifying such.

3.8 Data and Records Requirements. SMMPA will maintain records substantiating all revenues that it allocates, distributes, or receives under this Agreement. RPU will maintain records substantiating all information provided to SMMPA and documenting all amounts that it pays or receives under this Agreement. The records maintained by the Parties pursuant to this Section 3.8 shall be subject to the audit requirements of Section 8.9.

3.9 Billing Errors. The Parties shall be obligated to disclose to each other any known, identified, or potential billing error(s) within 10 business days of the potential error being identified. The Parties agree that any such billing error, once validated, shall be settled retroactively, without interest, to the start of the error or 12 calendar months from the date SMMPA is notified (or notifies RPU) in writing of the error, whichever is shorter.

ARTICLE IV

TERM AND WITHDRAWAL

4.1 Effective Date. Subject to FERC approval of the Settlement Agreement, the distribution of MISO revenues will be effective as provided for in Section 3.3 of this Agreement, and the additional monthly payments will be effective as provided for in Section 3.4 of this Agreement. Notwithstanding the foregoing, SMMPA's initial payment to RPU for sums due prior to the commencement of monthly payments under Section 3.6 shall be made in accordance with Section 3.5 and Attachment B.

4.2 Termination. This Agreement will remain in effect through March 31, 2030, subject to earlier termination as expressly permitted herein. The Parties' obligations under this Agreement shall continue after termination of the Agreement until final billings and payments are completed.

4.3 Withdrawal from MISO. Upon one year's prior written notice to the other Party, a Party may withdraw from this Agreement if such Party is withdrawing from MISO. Up to and after its withdrawal from MISO, the withdrawing Party will be entitled to receive, or obligated to pay, revenues in accordance with Article III for the period up to its withdrawal. All of the withdrawing Party's other rights and obligations hereunder will terminate upon withdrawal from MISO, subject to financial settlement for the period ending on the date of termination. Nothing in this Agreement will be construed as affecting the rights of a Party hereto to: (i) unilaterally seek to withdraw from MISO; or (ii) challenge such withdrawal from MISO by any other Party.

4.4 Material Changes to MISO Tariff. In the event that the Commission approves a change to the MISO Tariff that has a material impact on the revenue-sharing provisions in Article III of this Agreement, the Parties shall negotiate in good faith to amend this Agreement. In the event the Parties are unable to reach agreement, either Party may initiate dispute resolution of that issue. In any such dispute, the Party seeking to change the JPZ Agreement shall bear the burden to demonstrate that the Commission-approved MISO Tariff change has a material impact on the revenue-sharing provisions of this Agreement and that due to the Tariff change, the revenue-sharing provisions in Article III of the JPZ Agreement no longer operate as intended and have become unjust and unreasonable. In addition, absent agreement by the Parties in resolving any such dispute, the tribunal shall preserve the principles for revenue sharing as between SMMPA and RPU as set forth in this Agreement to the extent reasonably possible, unless such principles are fundamentally inconsistent with the changes to the MISO Tariff giving rise to the dispute. The principles for revenue sharing referenced in the immediately preceding sentence are: (i) the payments specified in Section 3.4 above and (ii) the omission of any imputed recognition of SMMPA's Bundled Load. Further, in the event the Commission-approved MISO Tariff change requires SMMPA to make Schedule 9 (or similar) payments to MISO for all or any portion of SMMPA's Bundled Load in Zone 20, the tribunal shall preserve the above-stated revenue-sharing principles by also requiring the exclusion of any revenues received by SMMPA from MISO associated with SMMPA's payments to MISO under Schedule 9 (or similar) from the revenues to be shared with RPU pursuant to Article III of the JPZ Agreement. Subject to the restrictions set forth in this paragraph, the applicable standard of review for such changes shall

be the ordinary just and reasonable standard of review and not the “public interest” standard of review commonly referred to as the “*Mobile Sierra*” standard of review (as described in Section 8.8).

4.5 New Zone 20 TOs. In the event that the Commission, through an initial or final order, accepts or approves an application made by a transmission owner (“New TO”), or by MISO on behalf of the New TO, to include all or a portion of the New TO’s transmission revenue requirement in Zone 20, the Parties agree as follows.

(a) Subject to Sections 4.5(b) and (c), each Party reserves all its respective rights under the Federal Power Act, the MISO Tariff, and any other applicable laws, tariffs or agreements with respect to any and all issues pertaining to the proposed inclusion of the New TO’s transmission costs in Zone 20 and the allocation of, or sharing of revenues related to, such transmission costs.

(b) If this Joint Pricing Zone Agreement is modified or replaced (through negotiations or litigation) to allocate a portion of the Zone 20 revenues to the New TO, each of the Parties shall be obligated to pay its pro rata share of any revenue distributions required to be made to the New TO for the entire period starting with the effective date of the revenue-sharing provisions applicable to the New TO, and accordingly each Party shall refund any previous revenue distributions it received (or retained) hereunder that were inconsistent with such new revenue-sharing provisions.

(c) Absent agreement by the Parties, any modifications to this Joint Pricing Zone Agreement or replacement agreement providing for revenue distribution to the New TO shall not: (1) provide for imputed recognition of SMMPA’s Bundled Load, (2) entitle either SMMPA or RPU to decrease or increase the payments specified in Section 3.4 above, or (3) entitle the New TO to receive any portion of the payments specified in Section 3.4 above. Any proposal that is not consistent with the foregoing sentence shall be subject to (i) the “public interest” standard of review commonly referred to as the “*Mobile Sierra*” standard of review (as described in Section 8.8) if made by one of the Parties hereto, or (ii) the most stringent standard permitted by law if made by any entity other than one of the Parties, including the Commission acting *sua sponte*.

(d) SMMPA shall not voluntarily enter into a Joint Pricing Zone Agreement or other revenue sharing arrangement in Zone 20 with a New TO that is also a member of SMMPA which in total treats such member more favorably than RPU under this Joint Pricing Zone Agreement.

ARTICLE V

OTHER TARIFF SCHEDULES AND CHARGES

5.1 Revenues Collected Pursuant to Other Tariff Schedules. Unless specifically addressed by this Agreement, revenues collected by MISO pursuant to Tariff Schedules that are

in effect at the time of execution of this Agreement, but are not explicitly referenced in this Agreement, will not be distributed under this Agreement. In the event that the Commission approves new Schedules to the Tariff that generate revenues to be paid by MISO to SMMPA for distribution among MISO Transmission Owners in the SMMPA Joint Pricing Zone, the Parties will negotiate in good faith to establish an equitable methodology for allocation of revenues collected thereunder, applying the principles established in Section 3.3.

5.2 Revenues Collected for Wholesale Distribution Service on Distribution Facilities.

Any revenues received by SMMPA for Wholesale Distribution Service, as defined in the Tariff, provided by RPU in the SMMPA Joint Pricing Zone shall be remitted by SMMPA to RPU. Revenues received by SMMPA for Wholesale Distribution Service, as defined in the Tariff, provided by SMMPA in the SMMPA Joint Pricing Zone shall be retained by SMMPA and not be subject to distribution to RPU.

ARTICLE VI

AMENDMENT

6.1 Amendment. This Agreement may be amended only by a written instrument duly executed by the Parties. No modification to any of the provisions herein will be binding on either of the Parties unless approved in writing by both of the Parties.

ARTICLE VII

DISPUTE RESOLUTION

7.1 Dispute Resolution Process. Any dispute or controversy relating to this Agreement shall be referred to one or more designated representative(s) of each Party for resolution on an informal basis as promptly as practicable. A Party may initiate this process by providing written notice of the dispute to the other Party. In the event that the Parties are unable to resolve the dispute within sixty (60) days, either Party may pursue any rights available at law or in equity, or before any court or regulatory authority that the Party believes has jurisdiction to resolve the dispute. Neither party will oppose FERC as a forum for resolution of disputes hereunder. The Parties irrevocably waive the right to a jury trial in any action.

7.2 Reimbursement. Any amounts owed by a Party upon the resolution of a dispute shall be paid, without interest, within ten (10) days following resolution of that dispute unless otherwise agreed by the Parties.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Descriptive Headings. The descriptive headings in this Agreement have been inserted for convenience of reference and shall not affect the construction of this Agreement.

8.2 Governing Law. This Agreement shall be interpreted and enforced according to the laws of the State of Minnesota, except to the extent preempted by the laws of the United States of America.

8.3 Successors and Assigns. This Agreement shall inure to the benefit of, and be binding upon, the Parties' successors and assigns.

8.4 Delivery of Notices. Notices required under this Agreement shall be in writing, and shall be sent by certified mail/return receipt requested, overnight courier, or other reliable and verifiable means. Any notice required under this Agreement will be deemed to have been given either: i) upon delivery, if sent by certified mail/return receipt requested or overnight courier; or ii) upon confirmation, if given by other reliable means. The addresses to which notices are to be delivered are set forth in Attachment A, which may be revised by the Parties through notice without requiring formal amendment.

8.5 Entire Agreement. This Agreement, including any attachments hereto, constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement, and its interpretation shall not be affected by previous or contemporary oral or written representations made by a Party unless such representations are contained in this Agreement.

8.6 Counterparts. This Agreement may be executed in counterparts, all of which will constitute one agreement and will have the same force and effect as an original instrument.

8.7 FERC Acceptance. This Agreement is subject to FERC's acceptance, without material modification, of the Settlement Agreement. In the event that FERC disapproves or refuses to accept the settlement, including this Joint Pricing Zone Agreement, in whole or in part, this Agreement will be deemed never to have become effective, except for the Parties' binding commitment in such event to make all payments necessary to reverse their interim implementation of this Agreement and restore the Parties to the positions they would have been in absent such implementation.

8.8 Future FERC Proceedings. This Agreement is exclusively between SMMPA and RPU, each of which is a municipal entity that is not subject to the Commission's general ratemaking jurisdiction. This Joint Pricing Zone Agreement is being submitted as part of the Settlement Agreement without regard to whether this Joint Pricing Zone Agreement is itself a contract subject to the Commission's ratemaking review and authority. However, no Settling Party will oppose FERC as a forum for resolution of disputes under this Agreement. Without waiving or prejudicing their respective rights or positions, the Parties agree that mutually agreed-upon changes to this Agreement need not be submitted to the Commission unless the Commission

imposes such a requirement as an express condition of accepting or approving the Settlement Agreement.

The standard of review for any proposed changes to the terms of this Joint Pricing Zone Agreement unilaterally sought by either Party shall be the “public interest” standard of review commonly referred to as the “*Mobile Sierra*” standard of review. See *United Gas Pipe Line Co. v. Mobile Gas Services Corp.*, 350 U.S. 332 (1956), *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1*, 554 U.S. 527 (2008). The standard of review for any modifications to this Joint Pricing Zone Agreement proposed by any non-Party, including any modifications resulting from the Commission acting *sua sponte*, will be the most stringent standard permitted by law.

Notwithstanding the foregoing general provision for the public interest standard of review, the following shall be subject to the ordinary (“just and reasonable”) standard of review under FPA Section 205 or the ordinary burden of proof under FPA Section 206, as applicable:

- (a) Modifications to this Joint Pricing Zone Agreement that are mutually agreed to by SMMPA, RPU, and any additional parties to this agreement (if the Commission requires, as a condition of approval of the Settlement Agreement, filing of changes to the Joint Pricing Zone Agreement).
- (b) Modifications to this Joint Pricing Zone Agreement to reflect the resolution of the Hampton Reserved Issues (consistent with Section 4.2 of the Settlement Agreement).

Further, notwithstanding the foregoing general provision for the public interest standard of review set forth above, the standard of review applicable under Section 4.4 or Section 4.5 of this Joint Pricing Zone Agreement shall be as set forth in the respective section.

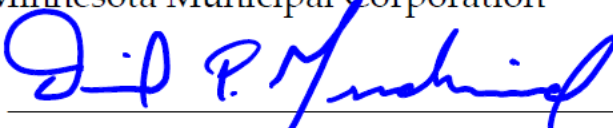
8.9 Audits. The Parties will maintain and retain for six (6) years the books and records needed to substantiate the calculations performed pursuant to Article III, and all data substantiating allocation of revenues or costs under this Agreement, unless applicable record retention requirements establish a retention requirement longer than 6 years for a Party; if so, the applicable retention requirements shall apply. A Party may conduct, at its own expense, audits of the other Party's books and records that relate to this Agreement. Such audits will be conducted at reasonable, mutually agreed-upon times, and the Parties will cooperate in good faith to effectuate such audits.

8.10 Limitations. Nothing contained herein shall be construed to create an association, joint venture, trust, or partnership. Each Party will remain liable for its share of charges or assessments incurred under the Tariff or Transmission Owners’ Agreement, including congestion costs, lost revenue charges, exit fees and comparable costs.

IN WITNESS THEREOF, the Parties, by their duly authorized representatives, have hereunder executed this Agreement.

SOUTHERN MINNESOTA MUNICIPAL POWER AGENCY

A Minnesota Municipal Corporation

By: 

David P. Geschwind,


Executive Director and Chief Executive Officer

Date: 10/17/17

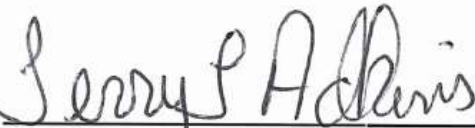
CITY OF ROCHESTER

By: 

Ardell Brede, Mayor


Attest: 

Anissa Hollingshead, City Clerk

Approved
As to Form: 

Terry Adkins, City Attorney

ROCHESTER PUBLIC UTILITIES

By: 

Mark Kotschevar, General Manager

Date: 10-18-17

ATTACHMENT A

Addresses for Delivery of Notices and Billings

Notices:

Southern Minnesota Municipal Power Agency:

Richard Hettwer, Manager of Power Delivery
500 First Avenue SW
Rochester, MN 55902
rj.hettwer@smmpa.org
Direct: (507) 292-6451

Rochester Public Utilities:

Mark Kotschevar, General Manager
4000 East River Rd, NE
Rochester, MN 55906
mkotschevar@RPU.org
Direct: (507) 280-1601

Billings and Payments:

Southern Minnesota Municipal Power Agency:

Attn: Accounts payable
500 First Avenue SW
Rochester, MN 55902
kellyg@smmpa.org

Rochester Public Utilities:

Attn: Accounts Receivable/Payable

4000 East River Rd, NE
Rochester, MN 55906
BBlom@RPU.org