

REQUEST FOR ACTION

Department Head

Phil Kern, City Administrator

City Council Date

March 2, 2010

Agenda Item

Discuss recommendation from Delano Water, Light, and Power Commission to approve CMMPA Fourth Restated Agency Agreement.

ACTION REQUESTED

The Delano Water, Light, and Power Commission (DMU) is recommending approval of the Fourth Restated Agency Agreement with CMMPA.

BACKGROUND

The Central Minnesota Municipal Power Agency is a power agency of currently eleven communities in Central/Southern Minnesota. The communities historically formed the agency to collectively purchase power and provide for complex electric supply/distribution needs. The agency has revised the formative agreement on three occasions, and now is attempting to get a fourth version approved by its member agencies.

The City was presented with drafts of the agreement starting in July 2009. Since that time, staff has identified several issues for Council consideration. In the back-and-forth with CMMPA, there have been a number of exchanges between representatives of the City, DMU, and CMMPA. Many of the correspondence pieces were distributed to the Council for the February 18, 2010 special meeting and have not been reproduced with this packet.

Primarily, staff has had concern about three remaining items, along with the proposed resolution:

1. The Agreement requires the City to execute the document, whereas the City does not have the powers or abilities in most instances to execute the documents requirements. The City Attorney has outlined the challenges with this requirement in several memos. At the special meeting on February 18, 2010, CMMPA CEO Bob Schulte recommended language be added to the signature page of the agreement limiting the City's involvement. Both CMMPA Attorney Mike Gavin and City Attorney Mark Johnson have drafted this language as attached.
2. The Agreement states, in summary, that CMMPA would have bonding authority and cities/power commissions must charge rates sufficient to cover bonding obligations. The Agreement provides an exception for major projects, such as the Big Stone II project that required separate City approval. Staff has raised the concern to the City Council that this puts the City's electric payers at risk for decisions made by the CMMPA Board, only one of which represents Delano. Gavin has not included any prohibitive language in his signature page, while the document prepared by Mark Johnson states CMMPA must come back to Delano for approval before issuing bonds.
3. One of the significant changes with this agreement is the advent of a 5-year termination period. Previously, the CMMPA Agency Agreement required a 60-day notice of withdrawal from the agency. That time period has been increased to 5 years in this agreement. The Agreement contains a buy-out provision, should a municipality sell its municipal utility it can pay a buyout payment equal to five years of the then-current annual member dues. CMMPA has held to the position that this time period is not a negotiable item.

Following the February 18, 2010 Special Meeting, both Mike Gavin and Mark Johnson have drafted signature pages for Council consideration. Staff presents them to the Council for consideration and discussion.

CMPA Agency Agreement

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FUNDING

All funding obligations of the CMPA

ATTACHMENTS

- Draft Signature page prepared by Mark Johnson, City Attorney
- Draft Signature page prepared by Mike Gavin, CMPA Attorney