

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE MENASHA UTILITIES COMMISSION APPROVING A  
PRELIMINARY ASSET SALE AGREEMENT WITH WPPI ENERGY INC. FOR THE  
SALE OF CERTAIN CITY OF MENASHA ELECTRIC UTILITY ASSETS

WHEREAS, the City of Menasha and staff of Menasha Utilities, together with a team of expert consultants and legal advisors have been actively working to develop a work-out strategy with respect to outstanding steam utility related financial obligations ("the Work-out Process") and with the goal of minimizing the impact of the cessation in operation of the City's steam facility ("Steam Facility") on the City, its taxpayers, its steam customers, and bondholders; and

WHEREAS, events beyond the reasonable control of the City and the Menasha Utilities Commission made it impossible for the Steam Facility to generate sufficient revenues to recover its operation and maintenance costs, to meet debt coverage requirements, and to perform its obligations; and

WHEREAS, the City has a number of outstanding steam utility related financial obligations, including approximately \$2.7 million in note anticipation notes and approximately \$14 million in general obligation bonds, as well as over \$24 million in principal and interest on revenue bond anticipation notes ("Revenue BANS"), which Revenue BANS were due to be paid in full on September 1, 2009 and are now in default; and

WHEREAS, a report prepared on behalf of the City by the financial firm of Stern Brothers & Co. concluded, based on an analysis of the financial viability of the Steam Facility, that the facility would not generate sufficient revenues to provide payment for any of the outstanding obligations issued by the City to finance the Steam Facility and recommended that the City cease operating the facility; and

WHEREAS, after exhaustive consideration of all other options, the City concluded that it was in the best interests of the City and its taxpayers to cease operation of the Steam Facility, which operations ceased on October 9, 2009; and

WHEREAS, the City has entered into a release and settlement agreement with two of its three former Steam Facility customers, settling all claims with regard to the Steam Facility, but has yet to reach a resolution of claims brought by the third former customer, whose claims exceed \$3 million; and

WHEREAS, on September 18, 2009, holders of the Revenue BANS filed a class action complaint in the United States District Court-Northern District of Indiana, Case No. 4:09CV0064, against the City, Menasha Utilities and the Steam Facility, alleging certain claims and causes of action with respect to the Revenue BANS; and

WHEREAS, as part of the Work-out Process, the City has carefully considered possible work-out strategies and has determined that the best opportunity to achieve a reasonable resolution of the bondholders' claims and the claims of other Steam Facility creditors and to help to protect the future financial health of the City is to enter into a proposed sale/leaseback transaction with WPPI Energy, Inc., under which the City would sell certain assets of the City's electric utility to WPPI Energy and then lease back such assets in order to provide a substantial source of funds for the Work-out Process; and

WHEREAS, the City has authority to sell any complete public utility plant it owns pursuant to Wis. Stat. ' 66.0817, subject to the approval of the Public Service Commission of Wisconsin and a local referendum seeking approval of the sale by a majority of those voting on the question; and

WHEREAS, the proposed terms of the preliminary asset sale agreement between the City and WPPI and associated lease agreement may be summarized as follows:

1. The City will sell substantially all the distribution assets of the City's electric utility and the utility administration building to WPPI Energy and will lease back the assets for 20 years at net book value.
2. The lease is structured as a capital lease so that the transaction will be viewed for tax purposes as a loan, allowing the City to retain the payments in lieu of tax the City receives from its electric utility. These payments will be used to pay debt service on the City's general obligation debt associated with the Steam Facility.
3. The City will also sell to WPPI Energy the City's ownership interests in the American Transmission Company.
4. The total purchase price is approximately \$18,156,818 (which price will be updated at the time of closing). This price includes a \$2.2 million premium that will not be recovered by WPPI Energy through the lease. WPPI Energy will earn a 6.5% return on the full amount of its costs of the transaction, less the premium amount.
5. The electric utility will be separated from the currently combined electric and water utilities, but will remain under the charge and management of the Menasha Utilities Commission in accordance with Wis. Stat. ' 66.0805.
6. At the end of the lease term, the City will buy back the electric utility for a nominal sum.
7. The transaction is conditioned on a number of regulatory approvals and on the City reaching a global settlement of all claims related to the Steam Facility. These regulatory approvals include: approval by the

WHEREAS, the proposed disposition of the proceeds from the sale may be summarized as follows:

The proceeds of the sale will be used to: (1) defease, redeem or satisfy, to the extent necessary, the City's existing electric utility debt; (2) establish a lease reserve fund equal to one year's lease payment to WPPI Energy; (3) establish a capital acquisition fund of \$1 million; (4) establish an adequate working capital fund; and (5) reimburse WPPI Energy for its external legal and consulting expenses relating to the proposed transaction. Finally, the proceeds of the sale in excess of the requirements of the preliminary asset sale and lease agreements and Wis. Stat. ' 66.0811(2) will be used to satisfy claims of the holders of the Revenue BANs and other creditors of the Steam Facility; and

WHEREAS, the proposed provisions to be made to protect holders of obligations against the assets to be sold may be summarized as follows:

The City currently has outstanding four revenue bond issues issued to finance improvements to the combined water and electric utilities ("Combined Utility"), as follows:

1. \$7,015,000 Combined Utility Revenue Refunding Bonds, Series 2005, dated December 28, 2005 ("2005 Bonds");
2. \$12,061,890 Combined Utility Revenue Bonds, Series 2006, dated April 26, 2006 ("2006 Bonds");
3. \$779,363 Combined Utility Revenue Bonds, Series 2007, dated April 11, 2007 ("2007 Bonds"); and
4. \$678,908 Combined Utility Revenue Bonds, Series 2009, dated April 22, 2009 ("2009 Bonds").

The 2006 Bonds, 2007 Bonds and 2009 Bonds issued to finance water utility improvements will be restructured, with the consent of the holders thereof, so they are secured solely by net revenues of the water utility. The 2005 Bonds, sold to investors in the bond market, are expected to be defeased, either prior to or contemporaneously with the proposed sale of the electric utility assets to WPPI Energy, with funds on hand in the electric utility, proceeds of the proposed sale of the electric utility assets to WPPI Energy, and/or a portion will be refunded through the issuance of revenue bonds payable solely from the net revenues of the separated water utility; and

WHEREAS, the terms of the preliminary asset sale agreement and lease agreement require that each agreement be entered into by both the City and the Menasha Utilities Commission;

NOW, THEREFORE, BE IT RESOLVED BY THE MENASHA UTILITIES COMMISSION:

1. That the preliminary asset sale agreement ("Sale Agreement") and the associated lease back agreement ("Lease Agreement") among the City, the Menasha Utilities Commission, and WPPI Energy, as described above and as presented to the Commission by the Mayor, the City Attorney, and the Commission's special counsel, are hereby approved.

2. That the Menasha Utilities Commission recommends to the Common Council of the City of Menasha that the Common Council authorize and direct the Commission President or his designee to execute the Sale Agreement and, upon closing of the sale transaction, to execute and deliver the Lease Agreement as required by the Sale Agreement and, in consultation with legal counsel, to take all other necessary actions in support of the transaction, including submitting, on behalf of the City, a joint application with WPPI Energy to the Public Service Commission of Wisconsin seeking approval of the transaction and an adjustment in current electric rates.

Approved on December \_\_\_\_, 2009.

MENASHA UTILITIES COMMISSION

By

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President

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Vice President