



Legislation Text

File #: 59955, **Version:** 1

Fiscal Note

See attachment to legislative file for fiscal note.

Title

Final Resolution authorizing the issuance and sale of \$19,300,000 total principal amount Industrial Development Revenue Refunding bonds (Madison Gas and Electric Company Project), Series 2020A, of the City of Madison, Wisconsin; and authorizing the execution and delivery of all necessary and related agreements and documents.

Body

WHEREAS, pursuant to and in accordance with the provisions of Section 66.1103, Wisconsin Statutes (the “Act”), the City of Madison, Dane County, Wisconsin (the “*Issuer*”) has the authority (i) to borrow money and issue industrial development revenue bonds (a) to finance all or part of the costs of industrial projects, including facilities for the generation, manufacturing, transmission, or distribution of electric energy or gas and (b) to refund the whole or any part of any revenue bonds theretofore issued by the Issuer; and (ii) to enter into revenue agreements with eligible participants with respect to such revenue bonds; and,

WHEREAS, on December 23, 1982, the Issuer issued \$25,000,000 aggregate principal amount of its Industrial Development Revenue Bonds, Series 1982 (Madison Gas and Electric Company Project) (the “*Series 1982 Bonds*”) to finance costs of certain electric transmission and distribution facilities in Dane County, Wisconsin (the “*1982 Project*”) owned and operated by the Company, and certain other capital costs of the Company; and,

WHEREAS, on October 28, 1992, the Issuer issued its Industrial Development Revenue Refunding Bonds, Series 1992B (Madison Gas and Electric Company Project) (the “*Series 1992B Bonds*”) to refund in whole the Series 1982 Bonds; and,

WHEREAS, on April 25, 2002, the Issuer issued its \$19,300,000 principal amount Industrial Development Revenue Refunding Bonds, Series 2002B (Madison Gas and Electric Company Project) (the “*Series 2002B Bonds*”) to refund in whole the Series 1992B Bonds; and,

WHEREAS, pursuant to and in accordance with the provisions of the Act, the Issuer has determined that it is desirable to issue its Industrial Development Revenue Refunding Bonds (Madison Gas and Electric Company Project), Series 2020A in the aggregate principal amount of \$19,300,000 (the “*Series 2020A Bonds*”) and loan the proceeds to the Company to refund in whole the Series 2002B Bonds; and,

WHEREAS, the Common Council of the Issuer adopted an initial resolution on February 4, 2020, evidencing the intention of the Issuer to issue the Series 2020A Bonds, and a Notice to Electors of the adoption of said Initial Resolution was published in *The Wisconsin State Journal*, the official newspaper of the City, as a class 1 notice on February 5, 2020; and,

WHEREAS, it is now necessary, desirable and in the best interests of the Issuer to authorize the execution and delivery of a Loan Agreement to be dated as of the first day of the month in which the Series 2020A Bonds are issued, between the Issuer and the Company relating to the Series 2020A Bonds (the “*Loan Agreement*”); and,

WHEREAS, it is now necessary, desirable and in the best interests of the Issuer to authorize the execution

and delivery of an Indenture of Trust dated as of the first day of the month in which the Series 2020A Bonds are issued relating to the Series 2020A Bonds (the “*Indenture*”) between the Issuer and U.S. Bank National Association, as trustee (the “*Trustee*”); and,

WHEREAS, it is now necessary, desirable and in the best interests of the Issuer to authorize the execution and delivery of a Bond Purchase Agreement relating to the Bonds (the “*Bond Purchase Agreement*”), by and among the Issuer, the Company and U.S. Bancorp Investments, Inc., as Underwriter (the “*Underwriter*”); and,

WHEREAS, it is now necessary, desirable and in the best interests of the Issuer to approve the distribution of a Preliminary Official Statement (the “*Preliminary Official Statement*”) and to approve the distribution of an Official Statement (the “*Official Statement*”) in connection with the issuance and sale of the Bonds; and,

WHEREAS, the Issuer has caused to be prepared for and presented before the Common Council of the Issuer forms of the following documents which the Issuer proposes to approve the terms of or enter into:

1. the Loan Agreement;
2. the Indenture;
3. the Bond Purchase Agreement;
4. the Preliminary Official Statement; and
5. the Bonds;

Now Therefore, be it Resolved by the Common Council of the City of Madison, Dane County, Wisconsin, as follows:

Section 1. Pursuant to the Constitution and the laws of the State of Wisconsin, and particularly the Act, the Issuer does hereby approve the refunding of the Series 2022B Bonds through the issuance of the Series 2020A Bonds in accordance with the terms of the Loan Agreement and the Indenture. The Issuer hereby determines that the 1982 Project is an “industrial project” within the meaning of the Act, that the Company is an “eligible participant” within the meaning of the Act and that the refinancing of the 1982 Project through the issuance of the Bonds and the refunding of the Series 2022B Bonds are in furtherance of the public purposes set forth in the Act. The Common Council of the Issuer hereby further finds and determines:

1. The parameters relating to the terms of the Series 2020A Bonds are set forth in Section 7 below and the Company is obligated to pay all such amounts, as well as the optional or mandatory tender purchase price of the Series 2020A Bonds, when due, pursuant to the terms of the Loan Agreement.

2. Under the circumstances of the transactions contemplated by this authorizing Resolution and the Loan Agreement, the Common Council has not deemed it advisable to establish any reserve funds (including without limitation a depreciation fund) in connection with the retirement of the Series 2022B Bonds or the maintenance of the 1982 Project, and therefore, the amount necessary to be paid each year into any such reserve fund for any such purpose is \$-0-.

3. The terms of the Loan Agreement will provide that the Company shall provide for the maintenance of the 1982 Project and the carrying of all proper insurance with respect thereto.

Section 2. The Issuer is hereby authorized to enter into the Loan Agreement with the Company in substantially the same form now before the Issuer. The form, terms and provisions of the Loan Agreement are in all respects approved. The Mayor of the Issuer is authorized, empowered and directed to execute, and the

City Clerk of the Issuer is authorized, empowered and directed to attest and to affix the official seal of the Issuer to, the Loan Agreement in the name, for and on behalf of the Issuer, and to cause the Loan Agreement to be delivered to the Company. The Loan Agreement (as executed) shall provide for the loan of the proceeds of the Series 2020A Bonds to the Company and the use of such proceeds for the refunding of the Series 2002B Bonds in the manner and with the effect therein provided. The Loan Agreement shall be in substantially the same form as now before the Issuer or with such changes therein as the City Attorney of the Issuer shall approve, the officers' execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the forms of the Loan Agreement now before the Issuer. From and after the execution and delivery of the Loan Agreement, the officers, employees and agents of the Issuer are authorized, empowered and directed to do all such acts and things and to execute all such documents and instruments as may be necessary to carry out and comply with the provisions of the Loan Agreement as executed. The Loan Agreement shall constitute, and hereby is made, a part of this Resolution, and a copy of the Loan Agreement shall be placed in the official records of the Issuer, and shall be available for public inspection at the office of the Issuer.

Section 3. The Issuer is hereby authorized to enter into the Indenture with the Trustee in substantially the same form now before the Issuer. The form, terms and provisions of the Indenture are in all respects approved. The Mayor of the Issuer is authorized, empowered and directed to execute and deliver, and the City Clerk of the Issuer is authorized, empowered and directed to attest and to affix the official seal of the Issuer to, the Indenture in the name, for and on behalf of the Issuer, and to cause the Indenture to be delivered to the Trustee. The Indenture shall constitute an assignment and pledge for the security of the Bonds issued thereunder of the revenues and receipts to be received by the Issuer pursuant to the Loan Agreement and an assignment and pledge of other rights under the Loan Agreement, as described in the Indenture (with the exception of rights to receive certain payments, to indemnity and other unassigned rights as specified in the Indenture). The Indenture shall be in substantially the form now before the Issuer or with such changes therein as the City Attorney of the Issuer shall approve, the officers' execution thereof to constitute conclusive evidence of their approval of any and all changes or revisions therein from the form of Indenture now before the Issuer. From and after the execution and delivery of the Indenture, the officers, employees and agents of the Issuer are authorized, empowered and directed to do all such acts and things and to execute all such documents and instruments as may be necessary to carry out and comply with the provisions of the Indenture as executed. The Indenture shall constitute, and hereby is made, a part of this Resolution, and a copy of the Indenture shall be placed in the official records of the Issuer, and shall be available for public inspection at the office of the Issuer.

Section 4. U.S. Bank National Association is hereby designated as Trustee with respect to the Series 2020A Bonds. U.S. Bancorp Investments, Inc. is hereby approved as Underwriter under the Bond Purchase Agreement. Greenberg Traurig, LLP, Chicago, Illinois, is hereby designated as Bond Counsel in connection with the issuance of the Series 2020A Bonds.

Section 5. The Issuer is hereby authorized to enter into the Bond Purchase Agreement with the Company and the Underwriter in substantially the same form as now before the Issuer. The form, terms and provisions of the Bond Purchase Agreement are in all respects approved. The Mayor of the Issuer is authorized, empowered and directed to execute the Bond Purchase Agreement in the name, for and on behalf of the Issuer, and to cause the Bond Purchase Agreement to be delivered to the Company and the Underwriter. The Bond Purchase Agreement shall be in substantially the same form now before the Issuer or with such changes therein as the City Attorney of the Issuer shall approve, the Mayor's execution thereof to constitute conclusive evidence of such approval of any and all changes and revisions therein from the form of Bond Purchase Agreement now before the Issuer. From and after the execution and delivery of the Bond Purchase Agreement, the officers, employees and agents of the Issuer are authorized, empowered and directed to do all such acts and things and to execute all such documents and instruments as may be necessary to carry out and comply with the provisions of the Bond Purchase Agreement as executed. The Bond Purchase Agreement shall constitute, and hereby is made, a part of this Resolution, and a copy of the

Bond Purchase Agreement shall be placed in the official records of the Issuer, and shall be available for public inspection at the office of the Issuer.

Section 6. The Issuer does hereby approve the distribution of the Preliminary Official Statement and the Official Statement by the Underwriter in connection with the offering and sale of the Series 2020A Bonds. The final Official Statement shall be substantially in the form of the draft Preliminary Official Statement provided to and on file with the Issuer and hereby approved, or with such changes therein as shall be approved by the City Attorney of the Issuer, with the execution of the Indenture evidencing conclusive evidence of the Issuer's approval of such final form of the Official Statement. The Preliminary Official Statement shall constitute, and hereby is made, a part of this Resolution, and a copy of the Preliminary Official Statement shall be placed in the official records of the Issuer, and shall be available for public inspection at the office of the Issuer.

Section 7. The Mayor and City Clerk of the Issuer are authorized, empowered and directed to cause to be prepared an issue of the Series 2020A Bonds of the Issuer in the aggregate principal amount of \$19,300,000, bearing interest initially at the Long Term Rate (as defined in the Indenture) in no event to exceed a maximum rate of the lesser of (i) the maximum rate permitted by law, and 12% per annum (the "*Maximum Rate*"), and thereafter at a Long Term Rate, Index Short Term Rate, Direct Purchase Long Term Rate, Short Term Rate or Commercial Paper Rate (as such terms are defined in the Indenture), each such rate being determined by the Remarketing Agent in the manner set forth in the Indenture, but in no event to exceed the Maximum Rate. The Series 2020A Bonds shall be payable on such date or dates, in such denominations, maturing on such date not later than October 1, 2027, subject to redemption prior to maturity, subject to tender for purchase prior to maturity, in such form, and having the other terms and provisions as specified in the Indenture (as executed and delivered); provided, that the City Attorney of the Issuer may approve all such changes in such documents, instruments and certificates to conform to the Indenture as executed and delivered and this Resolution, the officer or officers' execution thereof to constitute conclusive evidence of such approval.

Section 8. The forms of the Bonds set forth in the Indenture now before the Issuer, subject to appropriate insertions and revisions in order to comply with the provisions of the Indenture (as executed and delivered) are approved. The Bonds shall be executed in the name, for and on behalf of the Issuer with the manual or facsimile signature of its Mayor and attested with the manual or facsimile signature of its City Clerk and the official seal of the Issuer shall be impressed or imprinted thereon. The Mayor of the Issuer or any other officer of the Issuer shall cause the Bonds, as so executed and attested, to be delivered to the Trustee for authentication. When the Bonds shall be executed on behalf of the Issuer in the manner contemplated by the Indenture and this Resolution, they shall represent the approved forms of Bonds of the Issuer. The Bonds shall contain a recital that they are issued pursuant to the Act, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. The Bonds shall not be subject to the general provisions of Wisconsin law respecting the authorization, execution and delivery of bonds, but rather shall be governed by the terms of this Resolution and the Indenture.

Section 9. The sale of the Series 2020A Bonds in the aggregate principal amount of \$19,300,000 in accordance with the Bond Purchase Agreement relating to the Series 2020A Bonds at a purchase price of not less than 97% of the aggregate principal amount thereof and accrued interest, if any, to the date of delivery, is hereby approved and confirmed.

Section 10. The Bonds, together with interest thereon, shall not be general obligations of the City but rather shall be special, limited obligations of the Issuer payable solely from the revenues and receipts and other amounts received by or on behalf of the Issuer pursuant to the Loan Agreement. No owner of any of the Bonds shall have the right to compel any exercise of the taxing power of the Issuer, Dane County, Wisconsin, the State of Wisconsin or any political subdivision thereof to pay the principal of, premium, if any, or interest on the Bonds. The Bonds and interest thereon shall not constitute an indebtedness of the Issuer, Dane County,

Wisconsin, the State of Wisconsin, or any political subdivision thereof, or a loan of credit thereof within the meaning of any constitutional or statutory provisions. The Issuer and any of its officials, officers, employees or agents shall have no monetary liability arising out of the obligations of the Issuer in the Indenture and the Loan Agreement or in any connection with any covenant, representation or warranty made by the Issuer in the Indenture and the Loan Agreement, and neither the Issuer nor its officials shall be obligated to pay any amounts in connection with the transactions contemplated hereby other than from moneys received from the Company.

Section 11. The Mayor and the City Clerk of the Issuer are authorized and directed to execute, attest, seal and deliver any and all documents, instruments and certificates and do any and all things deemed necessary to effect the issuance and sale of the Bonds and the execution and delivery of the Loan Agreement, the Indenture, the Bond Purchase Agreement, the Preliminary Official Statement and the Official Statement and such other instruments (including financing statements), to perform its obligations and duties thereunder and to carry out the intent and purposes of this Resolution, including the preambles hereto, including, but not limited to, such agreements or certificates regarding the tax-exempt status of the Series 2020A Bonds, all subject to the review and approval of the City Attorney of the Issuer, such approval to be evidenced by the execution of such agreements or certificates by the officials of the Issuer executing such agreements or certificates.

Section 12. All acts of the Common Council members, officers, agents and employees of the Issuer that are in conformity with the intent and purposes of this Resolution, whether heretofore or hereafter taken or done are in all respects, ratified, confirmed and approved.

Section 13. The Bonds shall be registered initially in a book-entry system administered by The Depository Trust Company and the officers of the Issuer are authorized to execute such agreements and take such actions as are necessary in connection with such book-entry system of registration.

Section 14. The provisions of this Resolution are hereby declared to be separable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases and provisions.

Section 15. All resolutions, or parts thereof, in conflict herewith are hereby superseded to the extent of such conflict.

Section 16. This Resolution shall become effective immediately upon its approval, as by law provided.

Adopted _____, 2020.

Approved _____, 2020.

Mayor

[Seal] Attest: City Clerk

Motion was made by _____ that said resolution be adopted, and said motion was seconded by _____. After due consideration, and upon roll being called, the following voted:

AYE:
NAY:
ABSENT OR NOT VOTING:

The resolution was thereupon declared adopted.

* * *

State of Wisconsin)
) SS
County of Dane)

I, the City Clerk of the City of Madison, Dane County, Wisconsin (the "City"), Do Hereby Certify that the attached and foregoing is a true and correct excerpt of minutes of a regular meeting of the Common Council of the City held on the ___ day of _____, 2020, insofar as the same relates to the adoption of a resolution entitled,

A Final Resolution authorizing the issuance and sale of \$19,300,000 total principal amount Industrial Development Revenue Refunding bonds (Madison Gas and Electric Company Project), Series 2020A, of the City of Madison, Wisconsin; and authorizing the execution and delivery of all necessary and related agreements and documents.

and that a true, correct and complete copy of said resolution as adopted at said meeting appears in the foregoing excerpt of the minutes of said meeting.

I Do Further Certify that the original of which the attached and foregoing is a true, correct and complete copy is entrusted to my care for safekeeping and is now on file in my office, and that I am the keeper of the records, ordinances, entries, resolutions, papers, books and the official seal of said City.

I Do Further Certify that the deliberations of said Common Council on the adoption of said resolution were taken openly; that the vote on the adoption of said resolution was taken openly; that said meeting was held at a specified time and place convenient to the public; that notice of said meeting was duly given to all newspapers, radio or television stations and other news media requesting such notice; and that said meeting was called and held in strict accordance with the provisions of Subchapter V of Chapter 19, *Wisconsin Statutes*, as amended, and that the Common Council has complied with all of the applicable provisions of said Act and its procedural rules in the adoption of said resolution.

Witness my hand and the official seal of the City of Madison, Wisconsin, this ___ day of _____, 2020.

City Clerk

[Seal]