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August 31, 2012

Burl W. Haar  
Executive Secretary  
Minnesota Public Utilities Commission  
350 Metro Square Building  
121 7th Place East  
St. Paul, Minnesota 55101-2147

RE: Supplemental Response Comments of the Minnesota Department of Commerce, Division  
of Energy Resources  
Docket No. G007,011/AI-10-783

Dear Dr. Haar:

Attached are the Supplemental Response Comments of the Minnesota Department of Commerce,  
Division of Energy Resources (Department) in the following matter:

Petition of Minnesota Energy Resources Corporation (MERC or the Company) for  
Approval of an Affiliated Interest Agreement (Agreement).

The Department's Supplemental Response Comments are provided in response to Reply  
Comments filed by MERC on August 20, 2012. Upon further consideration of the Minnesota  
Government Data Practices Act, the Department is clarifying the recommendations it has made  
concerning MERC being required to file the cost study and annual updates to the cost study. The  
Department requests that MERC confirm its assent to the recommendations in Supplemental  
Reply Comments.

The Department is available to answer any questions the Commission may have.

Sincerely,

/s/ MARLON GRIFFING  
Financial Analyst  
651-297-3900

MG/sm  
Attachment

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

COMMENTS OF THE  
MINNESOTA DEPARTMENT OF COMMERCE  
DIVISION OF ENERGY RESOURCES

DOCKET No. G007,011/AI-10-783

**I. BACKGROUND**

MERC filed a petition for approval of an affiliated interest agreement (Agreement) with the Minnesota Public Utilities Commission (Commission) in this matter on July 12, 2010.

In September 17, 2010 Reply Comments, MERC requested that the Commission defer scheduling consideration until any changes made to the Agreement by the Illinois Commerce Commission (ICC) and the Public Service Commission of Wisconsin (PSCW), which were also considering the Agreement, were known.

In Supplemental Comments filed September 22, 2010, the Department agreed that the Commission should defer further consideration of the Agreement until any changes to the Agreement from Illinois and Wisconsin were known and submitted by MERC.

On February 9, 2011, MERC filed notice that the ICC approved the Agreement with modifications, notably to Sections 4.3 and 4.4, on December 15, 2010.

On April 25, 2012, MERC filed notice that the PSCW had approved the Agreement as modified by the ICC.

On August 8, 2012, the Department filed Additional Supplemental Comments in which it set forth recommended filing requirements for MERC. The Department seeks to clarify those recommendations in this filing.

On August 20, MERC filed Reply Comments.

## II. DEPARTMENT ANALYSIS

In its August 8, 2012 Additional Supplemental Comments the Department recommended that the Commission require MERC to:

- make available for study in the Commission offices the cost study and annual updates to the study;
- file the cost study covering the period ending December 31, 2011, within 30 days of the date of an Order approving the Agreement; and
- file a study with the Commission three years from the effective date of the Agreement providing information sufficient to enable the Commission to determine whether the Agreement should continue, be modified, or be discontinued.

The Department continues to recommend the second and third of these above requirements without alteration. However, to clarify how information is provided in Minnesota proceedings, the Department is modifying the first recommendation.

### A. *MODIFICATIONS TO SECTIONS 4.3 AND 4.4 MADE IN OTHER STATES*

As indicated in the Department's August 8, 2012 comments, ICC and PSCW modified Sections 4.3 and 4.4 of the Agreement. The modifications approved by the ICC and PSCW to the Agreement as submitted by MERC are underlined.

4.3 Every year there shall be an internal audit of transactions under this Agreement for the purpose of testing compliance with the Agreement. Such audit may be either a discrete audit solely of Services under this Agreement or may be an audit of the Services under this Agreement and other affiliated interest service agreements. The internal audit shall include, but not be limited to, the following: 1) the accuracy of the derivations of costs billed by the Providing Parties; 2) the determination that the costs billed to the Regulated Parties are priced at the lesser of cost or fair market value, based on the studies and updates required by Section 4.4; 3) the determination that Services provided by the Regulated Parties to the Non-Regulated Parties, except Integrys Support, are billed at the higher of cost or market, based on the studies and updates required by Section 4.4; and 4) the accuracy of invoices issued under the Agreement during the year. The Regulated Parties shall submit a copy of the audit report to the person or department designated by the Commissions or the Commissions' staffs no later than July 1 of each audit year. The first such audit report shall pertain to the period ending December 31 of the year in which this Agreement is effective, and shall be due on or before July 1 of the

following year. Subsequent audit reports shall be due July 1 following the calendar year that is the subject of the audit.

4.4 Every third year, on or before May 1, the Parties shall conduct a new study of the cost of Services provided hereunder for the purpose of testing compliance with the provisions of this Agreement requiring charges at the fair market value and to analyze the market price of services provided. The study shall include Services provided between a Regulated Party and a Non-Regulated Party at cost. The study shall be updated at least annually. The Parties shall notify the person or department designated by the Commissions or the Commissions' staffs of the availability of the study and annual update and, if requested, make such available for review at the Commission's offices. The first such new study shall pertain to the period ending December 31, 2011, and shall be due on or before May 1, 2012.

*B. DEPARTMENT'S PRIOR RECOMMENDATIONS*

In regard to Section 4.3, the Department concluded in its Additional Supplemental Comments filed August 8, 2012 that the ICC language specifying both the contents of the required internal audit and the due date for filing the audit report to the person or department designated by the Commissions or the Commissions' staffs clarified the scope that MERC is to include in its internal audit filing and would provide the Commission sufficient data to monitor compliance with the Agreement. The Department continues to conclude that the data required by ICC and PSCW would provide sufficient data to monitor the Agreement, consistent with the Commission's ongoing authority in Minnesota Statute §216B.48, subd. 6:

**Subd. 6. Commission retains continuing authority over contract.**

The commission shall have continuing supervisory control over the terms and conditions of the contracts and arrangements as are herein described so far as necessary to protect and promote the public interest. The commission shall have the same jurisdiction over the modifications or amendment of contracts or arrangements as are herein described as it has over such original contracts or arrangements. The fact that the commission shall have approved entry into such contracts or arrangements as described herein shall not preclude disallowance or disapproval of payments made pursuant thereto, if upon actual experience under such contract or arrangement it appears that the payments provided for or made were or are unreasonable.

The Department recognizes, however, that the language in Section 4.3 as to where the filing is to be made is ambiguous. It was the Department's intent that MERC would file the information in the current docket, which is the usual practice in Minnesota proceedings. Therefore, the Department clarifies our recommendation below.

As for Section 4.4, the Department recommended, in its August 8, 2012 Additional Supplemental Comments, that the Commission approve this section as amended by the ICC. That recommendation included the provision that MERC make the cost study and annual updates available for study in the Commission offices. The Department also recommended that if MERC could demonstrate that certain contents of the cost study had economic value that trade-secret or some other level of protection could be granted to MERC. The Department recognizes, however, that the language in Section 4.4 as amended by the ICC is ambiguous as to where or how the filing is to be made.

To be fully consistent with Minnesota's practices as to how information is provided in dockets, the Department amends its recommendations for language in Sections 4.3 and 4.4, to apply in Minnesota, regarding where MERC should file its annual internal audit report, its cost study, and annual updates to the cost study. Although not amended in the ICC proceeding, Section 4.2 also needs a change in language to be consistent with Minnesota practice.

First, the Department recommends that the following passage from Section 4.2 be amended as follows:

Each year by May 1, each of the Regulated Parties shall submit to the ~~person or department designated by its Commission or its Commission's staff~~ in this docket:

Second, the Department recommends that the following sentence from Section 4.3 be amended as follows:

The Regulated Parties shall submit a copy of the audit report to the ~~person or department designated by the Commission~~ in this docket ~~s or the Commissions' staffs~~ no later than July 1 of each audit year.

Third, the Department recommends that the following sentence from Section 4.4 be amended as follows:

The Regulated Parties shall ~~notify the person or department designated by~~ submit a copy of the cost study to the Commissions in this docket. Annual updates to the cost study shall also be submitted to the Commission by May 1 of each applicable year. ~~or the Commissions' staffs of the availability of the study and annual update and, if requested, make such available for review at the Commission's offices.~~

With these changes, the Department recommends Commission Approval of the Agreement.

*C. TRADE-SECRET DESIGNATION*

MERC stated in its Reply Comments that in Docket No. G007,011/AI-07-779 – MERC’s Integrys Business Support (IBS) AIA – the Commission required MERC to make the market study and annual updates required by the IBS AIA available for review but the Commission did not require MERC to file or otherwise provide a copy of the study.

The Department reviewed the Order in the cited docket, including the recommendations in the Department’s (known at the time as the Office of Energy Security) Comments that are adopted by the Commission and incorporated in the Order. The Department was unable to find any reference to the Commission allowing MERC to make the market study and annual updates available for review, but not to file them with the Commission.

MERC indicated in its Reply Comments in the instant docket that, “if required MERC will request trade secret protection and file non-public and public copies of the study as the Commission directs.” MERC is aware of the processes to follow to request any trade-secret designation that the Company believes would be necessary with any of its filings. Given MERC’s stated intent, the Department requests that MERC confirm its assent to these recommendations in Supplemental Reply Comments.

**III. SUMMARY OF DEPARTMENT CONCLUSION AND RECOMMENDATION**

The Department concludes that the proposed deletions and insertions to Sections 4.2, 4.3, and 4.4 of the Agreement remove ambiguity as to how and where MERC is to file the annual internal audit report, the cost study, and annual updates to the cost study.

Therefore, the Department recommends that the Commission approve the Agreement as approved by the ICC and PSCW, including the Addendum, provided that the Commission require MERC to file in this docket:

- the annual internal audit report according to revised Section 4.3;
- the cost study covering the period ending December 31, 2011, within 30 days of the date of an Order approving the Agreement; and
- the annual updates to the cost study and subsequent cost studies according to revised Section 4.4.

The Department requests that MERC confirm its assent to these recommendations in Supplemental Reply Comments.

/sm

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Supplemental Response Comments**

**Docket No. G007,011/AI-10-783**

Dated this 31<sup>st</sup> of August, 2012

**/s/Sharon Ferguson**

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