

November 19, 2012

VIA ELECTRONIC FILING

Burl Haar
Executive Secretary
Minnesota Public Utilities Commission
121 Seventh Place East, Suite 350
St. Paul, MN 55101-2147

**Re: *In the Matter of Minnesota Energy Resources Corporation (MERC's)
Petition for Approval of an Affiliated Interest Agreement***

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

Additional Reply Comments

Dear Dr. Haar:

Minnesota Energy Resources Corporation ("MERC") offers these comments in reply to the November 7, 2012, Supplemental Comments of the Department of Commerce, Division of Energy Resources ("the Department" or "the DER") on MERC's petition for approval of an Affiliated Interest Agreement ("AIA" or "Agreement").

MERC thanks the Department for their additional comments. MERC agrees with and accepts all of the conditions recommended by the Department except the final recommendation.

Background

MERC originally sought approval of this "Non-IBS AIA" on July 12, 2010. This agreement when approved will replace the AIA currently effective and approved in Docket No. G007,011/AI-06-1052. Requests for approval of the same Non-IBS AIA were also filed by MERC's regulated utility affiliates in Wisconsin and Illinois. Though it had been originally contemplated that quick approval would be forthcoming from Wisconsin and Illinois, this assumption proved to be incorrect. As a result in September of 2010, MERC requested the Minnesota Public Utilities Commission ("Commission") defer further review and consideration of the Agreement until any changes and approvals were received from Wisconsin and Illinois regulators. It wasn't until April 2012 that the Public Service Commission of Wisconsin finally approved the Agreement with revisions that triggered MERC's renewed request for approval of the now revised Agreement on April 25, 2012.

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Unfortunately during this entire two-year period no effort was made to alter or call attention to the original “hard wired” date of May 1, 2012, on which the first cost study was to be due under the Agreement covering the period ending December 31, 2011. See Agreement Article IV at 4.4.

The Agreement does not take effect until all final regulatory approvals are received. See Article VII at 7.1 (“This Agreement shall become effective upon the first day of the first fiscal year quarter following issuance of all approvals or waivers as might be required by law from each and all of the Commissions”). Because the Minnesota Commission has not yet approved the Agreement, it is not yet in effect in ANY jurisdiction and will not be until final Minnesota Commission approval is received in late 2012 or early 2013. Because the “hard wired” date of May 1, 2012, is clearly inoperative, the default date for the first cost study is governed by the first sentence of section 4.4: “Every third year, on or before May 1 the Parties shall conduct a new study...” If the Agreement goes into effect in 2013, the third year would be 2015 requiring a cost study on or before May 1 for the first two years of the Agreement. MERC has proposed to provide the first cost study no later than May 1, 2015.

MERC sincerely apologizes for the failure to call attention to the substantial time lag and corresponding inapplicability of the May 1, 2012, date. MERC could have noted this in earlier filings in this docket.

Objection to the Final DER Recommendation

Notwithstanding the inoperative May 1, 2012 date, the suggestion in the last paragraph of Page 7 of the Department’s Comments is perplexing. There the Department states in part: “the Department concludes that it is appropriate for the Commission to condition its approval of MERC’s petition with the requirement that MERC obtain approval of the non-IBS study prior to MERC’s next rate case....Thus MERC would either need to wait to file its next rate case until it receives approval of the non-IBS study filed in 2015 or, if MERC intends to file its next rate case sooner, the Company would need to file its non-IBS study sooner.” MERC believes this recommendation is without precedent or legal authority.

The Department’s concern over the new proposed non-IBS cost study, (which is not a requirement in the current non-IBS AIA), is curious as MERC has been operating under its current non-IBS AIA without any known concerns. MERC has had two rate cases (2008 and 2010) without any known controversy, incident or inquiry regarding this AIA and its cost allocations.

In addition, MERC voluntarily filed the cost study that was completed in conjunction with its IBS AIA on October 2, 2012, in Docket 007,011/AI-07-779.¹ MERC filed this study because it

¹ In other Integrys jurisdictions these cost studies have been made available to the regulators but not publicly filed. The sensitive and proprietary nature of these cost studies requires considerable effort to prepare a redacted public version.

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demonstrates MERC's compliance with the IBS AIA and because it is illustrative of the type of cost study that will be prepared if the pending non-IBS AIA is approved.

A Possible Solution

MERC agrees with the Department's recitation of the Commission's ongoing authority over AIAs and the precedents that set forth the appropriate allocation methods and hierarchies. MERC believes it is in compliance with these requirements in all of its AIA's.

Rather than seek to impose a pre-condition on filing a rate case – a condition for which there is no known legal authority – as an alternative, MERC suggests the Department could initiate a review of the current non-IBS AIA which the Commission approved in March 2008. Review of transactions made pursuant to this Agreement should be relevant as the current Agreement employs similar standards and criteria as are contained in the pending Agreement. If the Department has sufficient interest or concern, MERC would offer to make available for examination a summary of all of the non-IBS/non-regulated affiliated transactions MERC has recorded to date in 2012. This type of inquiry could be initiated anytime by the Department without the legal complications of attempting to restrict or limit a utility's ability to file a future rate case. MERC believes any such inquiry should allay any concerns about the cost allocations in the current or pending non-IBS AIA's. Accordingly, MERC suggests the Department's last recommendation be amended to read as follows:

~~MERC shall obtain approval of the non-IBS cost study prior to MERC's next rate case; in any event, MERC must file its non-IBS study no later than May 1, 2015.~~

In conclusion, MERC believes the Department's interest or concern regarding the cost study can be satisfied without restricting MERC's ability to file a rate case. Please contact me if you have any questions regarding this filing.

Sincerely yours,

/s/ Michael J. Ahern

Michael J. Ahern

cc: Service List

AFFIDAVIT OF SERVICE

STATE OF MINNESOTA)
) ss
COUNTY OF HENNEPIN)

Amber S. Lee hereby certifies that on the 19th day of November, 2012, on behalf of Minnesota Energy Resources Corporation (MERC) she electronically filed a true and correct copy of the Additional Supplemental Reply Comments on www.edockets.state.mn.us. Said documents were also served via U.S. mail and electronic service as designated on the attached service list.

/s/ Amber S. Lee _____
Amber S. Lee

Subscribed and sworn to before me
this 19th day of November, 2012.

/s/ Sara Garcia _____
Notary Public, State of Minnesota

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