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September 6, 2013

VIA ELECTRONIC FILING

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

Re: In the Matter of Possible Amendments to Rules Governing Utility Proceeding,
Practice, and Procedure, Minnesota Rules Chapter 7829;
Docket Number U-999/R-13-24

Dear Dr. Haar:

Minnesota Energy Resources Corporation (MERC, the Company) submits these Comments in accordance the Minnesota Public Utilities Commission's (Commission) August 7, 2013 Notice of Comment Period on Possible Amendments to Rule Chapter 7829 in the above referenced docket.

Please feel free to contact me at (612) 340-2881 if you have any questions regarding this matter.

Sincerely yours,

/s/ Michael J. Ahern

Michael J. Ahern

cc: Service List

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger
J. Dennis O'Brien
David C. Boyd
Nancy Lange
Betsy Wergin

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of Possible Amendments
To Rules Governing Utility Proceeding,
Practice, and Procedure, Minnesota Rules
Chapter 7929, Excluding Part 7829.2550,
Which is Subject to a Separate Pending
Rulemaking

Docket No. U-999/R-13-24

Comments of Minnesota Energy Resources Corporation

Minnesota Energy Resources Corporation (MERC, the Company) submits these Comments in accordance the Minnesota Public Utilities Commission's (Commission) August 7, 2013 Notice of Comment Period on Possible Amendments to Rule Chapter 7829 in the above referenced docket. The August 7, 2013 Notice stated that the following topics were open for comment:

- Any issue arising from the draft of possible amendments filed in the Commission's electronic filing system in this docket as an attachment to Staff Briefing Papers on July 25, 2013—with emphasis on the following possible revisions:
- What should the Commission consider when deciding whether to include language that discusses possible sanctions for violations of the proposed Commission rule governing representations of fact or law to the Commission (Part 7829.0250)?
- Assuming that the Commission were to decide that a sanctions provision is appropriate, the Commission seeks comment on the following proposed language:

Subp. 2. Sanctions. If, after notice and an opportunity for comment and reply, the commission determines that subpart 1 has been violated, the commission may impose a sanction on any party or participant who violated subpart 1 or is responsible for the violation. A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

- What should the Commission consider when deciding whether to amend rule part 7829.2600 to read “If commission staff recommend action not advocated by any party, at the request of any party and to the extent practicable, all parties must be granted an opportunity to comment.”?

MERC will limit its comments to only a select number of the suggested revisions.

1. *Proposed Revisions to Rule 7829.0700 Official Service List.*

The proposed limitation of the official service list to one individual per party or participant is an extreme suggestion that would unduly limit ready participation in Commission dockets. For many organizations, whether public or private, often several individuals are necessary participants in a docket. The proposal to limit official service to one individual per party is an overly restrictive limitation that is not needed or reasonable. Whatever burden is imposed by the current rule should increasingly diminish as more and more parties and participants are encouraged to migrate to electronic service.

2. *Proposed Repeal of Rule 7829.1400 subp 7. and Rule 7829.1900 subp 8.*

The repeal of 7928.1400, Subp. 7 and 7829.1900, Subp. 8 would seem to deny the Executive Secretary the delegated flexibility to vary time periods when appropriate. The Commission may wish to retain this flexibility which has been exercised with restraint and without known objection for many years.

3. *Proposed Revisions to Rule 7829.2400, Subp 5, Filing Requiring Determination of Gross Revenue, Rejection of Filing.*

A proposed change to this section was first suggested by the Office of Attorney General (OAG). Specifically, the OAG recommended that the Commission adopt a rule for rejection of filings based on the parties' ability to evaluate a utility filing. The OAG proposed that the Commission replace the language of Rule 7829.2400 with the following: “The Commission may accept a filing that is out of compliance with Minnesota Statutes section 216B.16 or 237.075, or other requirement imposed by rule, statute, or previous commission order if it finds that the filing does not impair the parties' ability to evaluate the need for a change in gross revenue of a utility.” The OAG's suggestion was then incorporated in the current draft as further modified by Commission staff. MERC believes that both versions of the suggested change are unnecessary and unreasonable. No problem exists that requires any change to the current rule.

Both the OAG's suggestion and staff's modification of that suggestion should be rejected for a number of reasons. First, there has not been a demonstrated problem with the current rule that would necessitate the proposed revision. Second, both suggested changes severely constrain and improperly confine the Commission's current ability to find a filing "substantially out of compliance." Third, consistent with other suggestions that have been rejected by Commission staff in these draft rules, the current Commission discretion to define matters as "substantially out of compliance" should be left to case-by-case review.¹ Fourth, the OAG's suggestion turns the current rule on its head by presuming a filing should be rejected if it is merely "out of compliance" while the current rule presumes acceptance of a filing unless there is a finding of "substantially out of compliance." Fifth, the OAG's suggestion proposes a new and uniquely vague standard. The "out of compliance" determination is not based on the Commission's judgment; instead the Commission must somehow determine whether a party's evaluation of the filing will be "impaired." Sixth, the OAG would have the Commission's current judgment and discretion impermissibly supplanted by a "party's" vague allegation of an "impairment" of their ability to evaluate a filing. And finally, staff's suggested revision to the OAG's proposal also inappropriately limits the Commission's current discretion. The staff suggests an undefined and vague Commission finding of "impairment" should be the basis for the rejection of a rate case filing. This too, is an impermissibly vague and unnecessary limitation on the Commission's discretion. The current rule does not need "fixing."

4. Proposed Revisions to Rule 7829.2600: Staff Comments.

In practice, the Commission's current rule has worked quite well. The Commission in past proceedings has not always limited responsive comments to oral submissions, but when appropriate allowed additional filed comments. If it is determined that this past practice is ultra vires and needs to be addressed in the rule, the suggestion contained in the notice to qualify this provision "to the extent practicable" may be appropriate.

5. Comment on Proposed Language of Sanctions Provision

¹ For example, Commission staff rejected Legalectric, Inc's recommendation that the Commission define "exigent circumstances" in Rule 7829.2800 because staff concluded "it is appropriate and within the Commission's authority to find exigent circumstances on a case-by-case basis." See Staff Briefing Papers at 4. Similarly, Commission staff rejected proposed changes to Rule 7829.2800 on petitions to intervene because staff concluded Commission flexibility to address petitions for intervention on a case-by-case basis was appropriate. See Staff Briefing Papers at 9.

The Commission's notice also requests comment on possible sanctions for violation of proposed rule 7829.0250. It is not clear how big of a problem the proposed sanctions provision is seeking to address. It is quite likely that any effort of the Commission to self-impose sanctions for violations of Commission rules, orders, etc. would require a statutory amendment. Minn. Stat. Section 216B.57 requires that any enforcement actions must be referred to the attorney general. Further, specific penalties are already set forth in Minn. Stat. Sections 216B.57-216B.61.

As to the specific sanction language proposed in the August 7, 2013 notice, the nature of the appropriate sanction should be limited to the specific party being sanctioned and directed to that party's conduct. The proposed language that states: "A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated" appears to expand a specific sanction well beyond the wrongdoer's conduct and seeks to invoke individual sanctions based on some impermissibly vague notion of what would deter "comparable conduct by others similarly situated." At a minimum, the underlined language noted above should be stricken.

DATED: September 6, 2013

Respectfully Submitted,

DORSEY & WHITNEY LLP

By: /s/ Michael J. Ahern

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