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December 1, 2014

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 the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota
MPUC Docket No. G-011/GR-13-617

Dear Dr. Haar:

On behalf of Minnesota Energy Resources Corporation (MERC), enclosed for filing in the above matter, please find MERC's Answer to the Petition for Reconsideration of the Minnesota Office of the Attorney General – Antitrust and Utilities Division.

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

Sincerely yours,

/s/ Michael J. Ahern

Michael J. Ahern

Enclosure

cc: Service List

STATE OF MINNESOTA

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

| | |
|-------------------------|--------------|
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| David C. Boyd | Commissioner |
| Nancy Lange | Commissioner |
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| Betsy Wergin | Commissioner |

In the Matter of the Application of
Minnesota Energy Resources Corporation
for Authority to Increase Rates for Natural
Gas Service in Minnesota

Docket No. G-011/GR-13-617

**MINNESOTA ENERGY RESOURCES CORPORATION'S ANSWER TO THE
PETITION FOR RECONSIDERATION OF THE MINNESOTA OFFICE OF THE
ATTORNEY GENERAL – ANTITRUST AND UTILITIES DIVISION**

DECEMBER 1, 2014

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I. INTRODUCTION.

Pursuant to Minn. R. 7829.3000, subp. 4, Minnesota Energy Resources Corporation (“MERC” or the “Company”) respectfully submits to the Minnesota Public Utilities Commission (the “Commission”) this Answer to the November 17, 2014, Petition for Reconsideration filed by the Minnesota Office of the Attorney General – Antitrust and Utilities Division (the “OAG”). The OAG, in its Petition, asks the Commission to reconsider its October 28, 2014, Findings of Fact, Conclusions, and Order (“Order”) with respect to the allocation of income taxes and travel and entertainment expense.

To be granted, a petition for reconsideration must show that the Commission’s original decision, order, or determination is unlawful or unreasonable.¹ With respect to the allocation of income taxes in future cases, the Commission’s Order accurately reflects the Commission’s decision on that issue and, therefore, the OAG’s request for reconsideration should be denied. While MERC agrees that, during deliberations, the Commission voted not to adopt Decision Option 157, the Commission also did not vote to adopt Decision Option 158. Instead, the Commission took no action on the issue of the appropriate allocation of income taxes in future rate cases. That decision is appropriately reflected in the Commission’s Order. Therefore, the OAG’s request for reconsideration should be denied.

With respect to MERC’s travel and entertainment expenses the OAG’s Petition raises no new issues, presents no new evidence, and does not otherwise justify reconsideration of the Commission’s decision on this subject. The Commission should deny the OAG’s Petition as it pertains to travel and entertainment expenses.

¹ Minn. Stat. 216B.27, subd. 3.

II. ALLOCATION OF INCOME TAXES IN FUTURE RATE CASE PROCEEDINGS

The OAG first argues that the Commission should modify its Order on the allocation of income taxes in order to “accurately reflect the Commission’s decision during deliberations.”² While MERC agrees that the Commission voted not to adopt Decision Option 157 during deliberations, MERC disagrees that modification of the Order is necessary or appropriate under the circumstances here. Further, if the Commission does decide to grant reconsideration on the issue of the allocation of income taxes in future rate cases, the Commission should determine that the appropriate method of allocation of income taxes in future rate filings is by class on the basis of taxable income that fully and only reflects the Class Cost of Service Study (“CCOSS”).³

During deliberations, the Commission considered two issues with respect to the allocation of income taxes: (1) the appropriate allocation method in this case and (2) the appropriate allocation of income taxes in future rate cases. With respect to the first issue, the Commission voted unanimously to adopt Decision Option 154 to “[d]etermine that, for the Class Cost of Service Study, taxable income should be based on allocation of costs within the Class Cost of Service Study (allocated by class on the basis of taxable income that fully and only reflects the CCOSS.)”⁴ This decision is accurately

² Petition for Reconsideration of the Office of the Attorney General – Antitrust and Utilities Division at 2-3 (November 17, 2014) (Document ID 201411-104700-02).

³ See Ex. 29 at 3-4 and Schedules 1, 9 (J. Hoffman Malueg Direct) (Document ID 20139-91892-09); Ex. 30 at 36-41, 44-45 (J. Hoffman Malueg Rebuttal) (Document ID 20144-98360-05); Initial Post-Hearing Brief of Minnesota Energy Resources Corporation at 76-79 (June 24, 2014) (Document ID 20146-100750-01); Reply Brief of Minnesota Energy Resources Corporation at 61-63 (July 11, 2014) (Document ID 20147-101391-01).

⁴ Revised Deliberation Outline at 30 (September 22, 2014) (Document ID 20149-103205-01). Video and audio recordings of the Commission’s deliberation on September 24, 2014 are available on the Commission’s website. <http://www.mn.gov/puc/>. The Commission’s discussion of the appropriate method of allocation of income taxes in this case can be found at approximately 5:29:48-5:34:11 of the recording.

reflected in the Commission's Order and the OAG has raised no new arguments or evidence that would support reconsideration of that decision.

With respect to the allocation of income taxes in future rate cases, the Commission considered two Decision Alternatives:

157. Determine that, in future rate cases, MERC should allocate income taxes by class on the basis of taxable income that fully and only reflects the CCOSS.

158. Make no determination regarding the treatment of income tax in the CCOSS of future rate cases.⁵

Although the Commission discussed these decision options, ultimately, the Commission did not adopt either Decision Alternative. During Commission deliberations, Commissioner Wergin made a motion to adopt Decision Option 157; however, that motion failed by a vote of 2 to 3. No action was taken on Decision Option 158.

The Commission's Order, at pages 42-44, correctly states the Commission's decision on the appropriate allocation of income taxes in this case. Specifically, the Order provides "MERC's allocation method, using the class share of rate base determined in the class cost of service study, is consistent with cost-causation principles and is the most accurate method for allocating income-tax expense on this record."⁶ The Order further notes "[t]he Department agreed that under MERC's circumstances, allocating income taxes by class share of rate base would accurately reflect the cost of providing service. The Administrative Law Judge noted the parties' agreement, and the Commission adopted the ALJ's report without commenting on the income-tax allocation

⁵ Revised Deliberation Outline at 30 (September 22, 2014) (Document ID 20149-103205-01). The Commission's discussion of these Deliberation Options begins at approximately 5:34:12.

⁶ *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, FINDINGS OF FACT, CONCLUSIONS AND ORDER at 44, Docket No. G-011/GR-13-617 (October 28, 2014) (Document ID 201410-104203-01) (emphasis added).

issue.”⁷ Therefore, contrary to the arguments presented by the OAG, no modification of the Commission’s order is necessary in order to accurately reflect the Commission’s decisions during deliberations.

Nevertheless, if the Commission grants reconsideration based on the OAG’s Petition, it should reconsider its decision not to adopt Decision Option 157 and determine that, in future rate cases, MERC should allocate income taxes by class on the basis of taxable income that fully and only reflects the CCOSS. As explained in MERC’s pre-filed testimony and briefs in this proceeding, allocating income taxes based on an allocation methodology that does not reflect a class’s true cost of service (as would be the case if one were to use an allocation method solely on “taxable income”) does not provide an accurate cost of service allocation, an accurate calculation of revenue deficiency by rate class, or an accurate overall cost of service by rate class.⁸ Rather, to do so would incorrectly include embedded policy judgments as to rate design from MERC’s last rate case.⁹ Allocating income taxes on the basis of taxable income that fully and only reflects the CCOSS is the most accurate approach for the allocation of income taxes amongst customer classes, because it solely reflects the costs imposed by each customer class, which is the purpose of a class cost of service study.¹⁰

⁷ *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 43, Docket No. G-011/GR-13-617 (October 28, 2014) (Document ID 201410-104203-01) (emphasis added).

⁸ Ex. 30 at 37-38, 45 (J. Hoffman Malueg Rebuttal) (Document ID 20144-98360-05); Initial Post-Hearing Brief of Minnesota Energy Resources Corporation at 78 (June 24, 2014) (Document ID 20146-100750-01); Reply Brief of Minnesota Energy Resources Corporation at 61-62 (July 11, 2014) (Document ID 20147-101391-01).

⁹ *Id.*

¹⁰ Ex. 29 at 3-4 and Schedules 1, 9 (J. Hoffman Malueg Direct) (Document ID 20139-91892-09); Ex. 30 at 36-41, 44-45 (J. Hoffman Malueg Rebuttal) (Document ID 20144-98360-05); Initial Post-Hearing Brief of Minnesota Energy Resources Corporation at 76-79 (June 24, 2014) (Document ID 20146-100750-01);

Additionally, as explained by the Department of Commerce, Division of Energy Resources, the ratio of income tax to taxable income for each customer class within MERC's CCOSS is identical to the overall Minnesota jurisdictional income tax to Minnesota jurisdictional taxable income.¹¹ This further supports that allocating income taxes on the basis of taxable income that fully and only reflects the CCOSS is the most accurate approach for the allocation of income taxes amongst customer classes. In contrast, allocating income taxes to customer classes based upon policy judgments from MERC's prior rate cases (as would be the case if one were to use an allocation method based solely on "taxable income") would provide skewed information to the Commission.¹²

III. THE COMMISSION'S DECISION ON TRAVEL AND ENTERTAINMENT

The OAG also argues that, with respect to travel and entertainment expenses, the Commission's Order does not follow Minnesota law or Commission precedent. Contrary to the position taken by the OAG, however, MERC did comply with the letter of the statute with respect to reporting travel and entertainment expenses, and the Commission did not find that MERC had violated the letter of the law.¹³ Rather, the Commission required that for future rate case filings, MERC must include an itemization

Reply Brief of Minnesota Energy Resources Corporation at 61-63 (July 11, 2014) (Document ID 20147-101391-01).

¹¹ Ex. 208 at 4 and Schedule SO-R-1 (S. Ouanes Rebuttal) (Document ID 20144-98330-03).

¹² Ex. 30 at 37-38, 45 (J. Hoffman Malueg Rebuttal) (Document ID 20144-98360-05); Initial Post-Hearing Brief of Minnesota Energy Resources Corporation at 78 (June 24, 2014) (Document ID 20146-100750-01); Reply Brief of Minnesota Energy Resources Corporation at 61-62 (July 11, 2014) (Document ID 20147-101391-01).

¹³ See *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 25, Docket No. G-011/GR-13-617 (October 28, 2014) (Document ID 201410-104203-01) ("MERC provided information on its travel, entertainment, and related employee expenses, as required by Minn. Stat. § 216B.16, subd. 17.").

of both the travel and entertainment expenses incurred directly by MERC employees (as MERC had done in this case) and those related to employees working for MERC affiliates.

In its preparation of this rate case, MERC interpreted the plain language of Minn. Stat. § 216B.16, subd. 17, as requiring only disclosure of the filing utility's expenses, not the expenses of its affiliates. Therefore, under MERC's reading of the statute, the itemization of expenses from IBS was not required. The language of Minn. Stat. 216B.16, subd. 17(a), provides:

The commission may not allow as operating expenses a public utility's travel, entertainment, and related employee expenses that the commission deems unreasonable and unnecessary for the provision of utility service. In order to assist the commission in evaluating the travel, entertainment, and related employee expenses that may be allowed for ratemaking purposes, a public utility filing a general rate case petition shall include a schedule separately itemizing all travel, entertainment, and related employee expenses as specified by the commission, including but not limited to the following categories. . . .¹⁴

MERC read the statute to require reporting only with respect to the public utility expense, not the expense of utility affiliates. As discussed during Commission deliberations, the Commission had not previously specified that reporting of affiliate expense was required.¹⁵ Therefore, the language of the statute, "as specified by the

¹⁴ Minn. Stat. 216B.16, subd. 17(a) (emphasis added).

¹⁵ The fact that no party has raised similar issues in other cases supports allowing MERC's expenses in this case. Absent such guidance from the Commission, MERC had no basis to conclude that its interpretation of the statute was incorrect. As noted in Addendum 3 to Staff Briefing Papers, "CenterPoint Energy, like MERC, allocates Travel & Entertainment expenses from its service company, CenterPoint Energy Service Company, LLC. In CenterPoint's last rate case (G008/GR13-316) the allocation of expenses from the service company was not an issue. . . . T&E Expenses were not an issue in Xcel Energy's last rate case (E002/GR-12-961) and the interested parties did not address the issue. Like CenterPoint Energy and MERC, Xcel allocates costs to the Minnesota jurisdiction for T&E Expense from its service company, Xcel Business Service." Addendum 3 to Staff Briefing Papers (Document ID 20149-103243-01) (September 23, 2014).

Commission,” had not specifically addressed reporting of this information until the Commission’s decision in the current case.

Ultimately, the Commission concurred with the ALJ and adopted the findings, conclusions, and recommendation with respect to MERC’s travel and entertainment expense, concluding that while MERC should have itemized the affiliate expenses, the OAG’s recommendation that they be excluded entirely was not well founded. The Commission’s decision is reasonable and fully supported by the record in this case.

Contrary to the position taken by the OAG, the Commission’s written Order need not rely only on the reasoning referenced during Commission deliberations. “The Commission may modify a decision prior to the issuance of an Order and may continue deliberations and change its decision during the course of those deliberations. . . . The Commission acts through its Orders.”¹⁶ With respect to its decision on MERC’s travel and entertainment expenses here, the Commission’s Order properly reflects the decision made during deliberations and the Commission has acted well within the scope of its authority in reaching its decision on MERC’s travel and entertainment expenses.

Further, the underlying conclusion the OAG relies on to support its Petition for Reconsideration – that the Commission found MERC in violation of Minn. Stat. § 216B.16, subd. 17 – is not accurate and is not supported in the record. The Commission did not conclude that MERC violated the statutory requirements. Rather, the Commission interpreted the statute to require that, going forward, MERC provide information for all travel and entertainment expenses, including expenses related to employees working for MERC affiliates. MERC has agreed in future cases to provide

¹⁶ *In re Petition of Rosemount Cogeneration Joint Venture*, 1989 WL 509763 (Minn. P.U.C.); see also *In re Excelsior Energy, Inc.*, 782 N.W.2d 282, 296 (Minn. Ct. App. 2010) (“But the commission does not speak through deliberations of the commissioners; it speaks only through written orders.”).

the information required under Minn. Stat. § 216B.16, subd. 17, for its affiliates.¹⁷ The Commission has significant discretion to determine appropriate penalties, sanctions, and disallowances in rate case proceedings¹⁸ and the Commission acted well within its discretion in this case.

The record in this case fully demonstrates the reasonableness of the Commission's decision with respect to travel and entertainment expense. Therefore, the OAG's Petition for Reconsideration should be denied.

IV. CONCLUSION

Based upon the foregoing and the record in this proceeding, the Commission should deny the OAG's Petition for Reconsideration. The Commission's October 28 Order on the allocation of income taxes and MERC's travel and entertainment expense is reasonable and fully supported by the record in this case. The OAG's Petition fails to show the decisions reached by the Commission were unlawful or unreasonable, and should be denied. If, however, the Commission reconsiders its decision on the allocation of income taxes in future rate cases, the Commission should determine that the appropriate method of allocation of income taxes in future rate filings is by class on the basis of taxable income that fully and only reflects the CCOSS.

¹⁷ See *In the Matter of a Petition by Minnesota Energy Resources Corporation for Authority to Increase Natural Gas Rates in Minnesota*, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 26, Docket No. G-011/GR-13-617 (October 28, 2014) (Document ID 201410-104203-01) (“[T]he Company has agreed to itemize these expenses in future rate cases. Thus, beginning with MERC's next rate case, the IBS expenses will be itemized and receive greater scrutiny.”).

¹⁸ See, e.g., *In re Qwest's Wholesale Service Quality Standards*, 678 N.W.2d 58 (Minn. Ct. App. 2004) (“The assessment of penalties and sanctions by an administrative agency is not a factual finding but the exercise of a discretionary grant of power.”); *In re Commission Investigation of Issues Governed by Minnesota Statutes, Section 216A.036*, 724 N.W.2d 743, 748 (Minn. Ct. App. 2006); *In re Pet. of Minn. Power and Light Co.*, 1982 WL 992949 (Minn. P.U.C. 1982) (“In the area of adjustments to rate base, the Commission has wide discretion.”).

Dated: December 1, 2014

MINNESOTA ENERGY
RESOURCES CORPORATION

DORSEY & WHITNEY LLP

/s/ Michael J. Ahern

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AFFIDAVIT OF SERVICE

STATE OF MINNESOTA

) ss.

COUNTY OF HENNEPIN

Kristin M. Stastny, being first duly sworn on oath, deposes and states that on the 1st day of December, 2014, the attached Answer of Minnesota Energy Resources Corporation was electronically filed with the Minnesota Public Utilities Commission and the Minnesota Department of Commerce. A copy of the filing was provided via United States first class mail to the remaining individuals on the attached service list.

/s/ Kristin M. Stastny
Kristin M. Stastny

Subscribed and sworn before me this
1st day of December, 2014.

/s/ Alice Jaworski
Notary Public, State of Minnesota

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