STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Beverly Jones Heydinger	Chair
Dr. David C. Boyd	Commissioner
Nancy Lange	Commissioner
Dan Lipschultz	Commissioner
Betsy Wergin	Commissioner

DOCKET NO. G-001, G-011/PA-14-107

In the Matter of a Request for Approval of the Asset Purchase & Sale Agreement Between Interstate Power and Light Company and Minnesota Energy Resources Corporation.

REPLY SUPPLEMENTAL COMMENTS OF THE OFFICE OF THE ATTORNEY GENERAL - ANTITRUST AND UTILITIES DIVISION

The Office of the Attorney General - Antitrust and Utilities Division ("OAG") submits the following Reply Supplemental Comments in response to the submissions of the Department of Commerce and the Petitioners. In its Initial Comments, Reply Comments, and Supplemental Comments, the OAG identified many concerns with the Petitioner's proposed transaction. Rather than repeat these issues, in these Reply Supplemental Comments the OAG will respond to the issues raised in the Supplemental Comments filed by the other parties and clarify the OAG's primary concern with this case: that it is inconsistent with the public interest to subject the IPL customers to a massive rate increase without the procedural safeguards of a rate case. For that reason, and for the reasons described in the OAG's previous Comments, the Commission should not approve the proposed transaction unless it imposes conditions to ensure that the transaction is consistent with the public interest.

I. THE COMMISSION SHOULD COMPARE IPL'S CURRENT RATES TO THE RATES THAT THE IPL CUSTOMERS WOULD FACE IF TRANSITIONED TO MERC'S TARIFFS.

In its Initial Comments and Reply Comments, the OAG analyzed the impact of transitioning the IPL customers to MERC's current interim rates or the rates that MERC has proposed in its pending rate case. The OAG's analysis demonstrates that IPL residential customers would pay 52.42% more to receive natural gas service under MERC's proposed rates.[1] Small business customers would pay 41.41% more, and the interruptible classes would see increases approaching and even exceeding 100%.[2]

The Department, however, disagrees with the OAG's methodology. According to the Department, the Commission should analyze the proposed transaction by comparing MERC's rates to "IPL's estimated [future] rates based on IPL's 2014 projected cost of service."[3] To accomplish this analysis, the Department uses a new revenue requirement and rate structure that IPL provided in response to an information request.[4] But the Department does not know, and in fact no parties know, what IPL's future rates might be because the Department did not do any analysis in order to find out. Instead, IPL told the Department what revenue it thought it might be entitled to after a rate case. The Department then used that number to reach the conclusion that the proposed transaction would, somehow, only increase rates for IPL's residential customers by 1%.[5]

In reaching this conclusion, the Department did not challenge the reasonableness of any of IPL's capital investment projects. The Department did not determine whether IPL's expenses

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[1] OAG Reply Comments, Exhibit A.
[2] *Id.*
[3] Department Supplemental Comments, 5.
[4] *Id.*
[5] In addition to the questionable methodology used to estimate IPL's future rates, the Department performed a questionable calculation to determine what MERC's rates might be based on the Department's position in the pending rate case, Docket 13-617. *See id.* at 7.

were proper for rate recovery or met statutory reporting requirements. The Department did not create a proxy group or perform a discounted cash flow analysis to determine whether IPL's return on equity was proper. The Department did not consider whether IPL's revenue allocation methods were sound, or whether its rate structure was fair to customers and designed to encourage energy conservation. In short, the Department did not do *any* of the analysis that is standard when reviewing utility rate increases. Without this analysis, it is entirely unreasonable for the Department to claim that it can predict what IPL's rates might be in the future. The Department would never neglect these issues in a rate case, and it is unreasonable to neglect them in this context as well.

The problems with attempting to estimate IPL's hypothetical rates in the future are exactly the reason that the OAG used IPL's current rates to analyze the impact of the Petitioner's transaction. Without the analysis provided in a rate case, no party can know what IPL's rates would look like after the rate case was completed. And the OAG believes that it is unwise to base conclusions about the rate impact of the proposed transaction based solely on limited data that was provided by the Petitioners, who have stated repeatedly that their preference is to close on the transaction as soon as possible. For that reason, the OAG recommends that when considering whether the transaction is consistent with the public interest, the Commission compare IPL's current rates to the rates that the IPL customers would face if transitioned to MERC's tariffs. The OAG has performed this analysis, and the results demonstrate that moving the IPL customers to MERC's rates will result in significant rate increases for all customer classes.

For example, IPL's residential customers currently pay a total volumetric charge of $0.18649; under MERC rates their volumetric charge would increase to $0.25720 based upon

MERC's updated request in its pending rate case.[6] This would be an increase of 37.9%. The IPL customers also pay a customer charge of $5.00, which would be increased to $9.50 under MERC's updated proposed rates for an increase of 90%.[7] Small business customers would see volumetric rate increases of nearly 20%, and a 260% increase to their customer charge.[8] These numbers represent what would actually happen to the IPL customers, regardless of the Department's attempt to compute IPL's hypothetical future rates. The actual impact would be a 52.42% increase in the non-fuel bills for residential customers, and a 41.41% increase for small business customers.[9] It is important that the Commission keep the true rate impact for IPL customers in mind when deciding whether the transaction is consistent with the public interest.

II. THE COMMISSION SHOULD ONLY APPROVE THE TRANSACTION IF IT FINDS THAT THE BENEFITS OUTWEIGH THE DETRIMENTS.

Minnesota law requires the Petitioners to demonstrate that their proposed transaction is consistent with the public interest.[10] In this case, the Petitioners have failed to show that the alleged benefits of their proposal outweigh the detriments that the OAG has identified in its Comments, Reply Comments, and Supplemental Comments. For that reason, the Commission should approve the transaction only after imposing conditions to ensure that the transaction is consistent with the public interest.

The OAG has described in detail its concerns with the Petitioners' proposal in its previous Comments, and will not restate all of its concerns. The OAG has determined that the Petitioners' proposal would improperly shift former manufactured gas plant remediation costs to

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[6] OAG Reply Comments Exhibit B.
[7] *Id.*
[8] *Id.*
[9] And this is *in addition* to the significantly greater fuel costs that the IPL customers would see under MERC. IPL's current fuel cost is $0.57079 per therm, but MERC's fuel cost is $0.73062. *Id.*
[10] Minn. Stat. § 216B.50, subd. 1.

a utility that has no authority to collect rates for any related expenses;[11] require additional remediation work to be performed by IPL after it is no longer a regulated utility;[12] and strip millions of dollars in deferred tax assets from IPL ratepayers and deprive the ratepayers of rate base reductions that they have accumulated through pre-paid taxes.[13] And the transaction would dramatically increase natural gas rates for every IPL customer without any of the analytical process that traditionally ensures that utility rates are just and reasonable.[14]

On top of all of these measurable detriments, the Petitioners' proposal departs dramatically from the Commission's historical precedent which favors separately administering customers who are transferred between utilities until they can be consolidated in a rate case. When Minnegasco transferred property with Midwest Gas, the Commission ordered Minnegasco to defer consolidation of its new customers until its subsequent rate case, and ordered the utility to "fully justify its request to consolidate rates and PGAs and explain the impact on current Minnegasco customers demonstrating that they would not be harmed as a result of the consolidation."[15] And when MERC purchased two divisions of Aquila, Inc. in 2006, it operated them as separate entities for years before they were consolidated – in a rate case.[16] The Commission's decisions for both Minnegasco and MERC establish the process to use when customers are transferred between utilities: they are maintained separately until they can be consolidated in a rate case proceeding.

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[11] OAG Supplemental Comments, 2–5; OAG Comments, 13–14

[12] OAG Supplemental Comments, 3–4.

[13] *See* OAG Supplemental Comments, 6–9.

[14] OAG Reply Comments, 1–5; OAG Reply Comments Exhibits A, B.

[15] *See In the Matter of the Joint Petition of Minnegasco, a Division of Arkla, Inc., and Midwest Gas, a Division of Midwest Power Systems, Inc., for Authority to Exchange Assets, Utility Operations and Business,* Docket No. G-008, 010/PA-93-92, 1993 WL 597808, at *7–8 (1993).

[16] Findings of Fact, Conclusions of Law, and Order, *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-007, 011/ GR-10-977 (July 13, 2012).

There are good reasons for the Commission's preference for consolidating customers during a rate case. The Commission has the duty to ensure that utility rates in the State of Minnesota are "just and reasonable."[17] And the procedures used to ensure that rates are just and reasonable are the procedures of a rate case. Without the financial data and careful analysis provided by a rate case, the Commission cannot be sure that the Petitioners' proposal would result in rates that are fair for the customers of either IPL or MERC.

Rather than identifying or quantifying any particular public benefit that will result from the Petitioner's transaction, the Petitioners repeatedly claim that the reason the Commission must immediately increase rates is that IPL's current rates are unsustainable. But this argument is unconvincing. It is unlikely that IPL's rates have only suddenly become "unsustainable." If IPL is truly facing a significant revenue deficiency, it is a problem that IPL has allowed to grow over many years by deciding not to file a rate case. And, for that matter, IPL has always had a solution to its claimed revenue deficiency problem – to file a rate case and justify an increased revenue requirement. The decision not to do so was made by IPL, and IPL alone. It would be inequitable to punish IPL's customers for IPL's poor decision-making by increasing their rates by 52% without, at the very least, requiring that their utility justify its revenue requirement in the same fashion that every other utility is required to use.

The Petitioners also attempt to justify the immediate transfer by arguing that waiting to transition the IPL customers would result in a marginally greater rate increase in the future, based upon the assumption that utility rates will inevitably increase over time. There are several reasons why this argument is unpersuasive. First, MERC has stated in its pending rate case that

[17] Minn. Stat. § 216B.03.

it intends to file a new rate case just next year.[18] If that is the case, MERC will have the opportunity to consolidate the IPL customers in the near future if it wishes to do so. MERC's rates should not be significantly different after only one year as long as MERC's investments and expenditures are reasonable. And second, the need for a rate case is not related only to the size of the rate increase. Due to the magnitude of the proposed rate increase, rate shock is just as likely to occur if rates are increased immediately or increased in a future rate case. A rate case, however, is a significantly better option because a rate case would allow the Commission to control the process of increasing rates if rate shock appears likely.

In response to the OAG's recommendations, the Department argues that Minnesota law would not allow IPL's customers to pay different rates if they are transitioned to MERC.[19] But the Department's position does not align with the Commission's precedent. In 2006, MERC purchased two divisions of Aquila, Inc., People's Natural Gas and Northern Minnesota Utilities.[20] Before the sale, the two divisions were operated separately.[21] And they continued to be operated separately after the sale. In MERC's 2008 rate case, the Commission determined a separate revenue requirement for both MERC-PNG and MERC-NMU,[22] and the two divisions were not consolidated until MERC's 2010 rate case.[23] The Commission has previously allowed

[18] Rebuttal Testimony of Seth DeMerrit, 16, *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.
[19] Department's Supplemental Comments, at 5–6; *see* Minn. Stat. § 216B.03.
[20] Order Approving Sale Subject to Conditions, *In the Matter of the Sale of Aquila, Inc.'s Minnesota Assets to Minnesota Energy Res. Corp.*, Docket No. G-007,011/M-05-1676, at 3 (June 1, 2006).
[21] Order Accepting and Adopting Settlement, *In the Matter of a Petition by Peoples Natural Gas Company and Northern Minnesota Utilities, Divisions of UtiliCorp United Inc., for Authority to Increase Natural Gas Rates in Minnesota and to Consolidate the Two Utilities*, Docket No. GR-00-951, at 10 (July 29, 2003).
[22] Findings of Fact, Conclusions of Law, and Order, *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-007, 011/GR-08-835, at 26 (June 29, 2009).
[23] Findings of Fact, Conclusions of Law, and Order, *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-007, 011/GR-10-977 (July 13, 2012).

utilities to operate independent groups of ratepayers without violating the statute cited by the Department, and the Commission should do so in this case.

It is also important to clarify that the OAG's position is *not* that the IPL customers should never receive a rate increase. It is also not the OAG's position that property acquisition is inconsistent with the public interest just because it would result in a rate increase. Rather, the OAG's position is that in this case, on these facts, it would be unfair to dramatically increase rates for the IPL customers because the Petitioners have not proven that the resulting rates would be just and reasonable. If the IPL customers must be subjected to such a significant rate increase in order for their utility to recover its costs, then they are entitled, at the very least, to know that that the Commission has reviewed every aspect of the utility's costs and determined that they are necessary. Additionally, it would be unfair to subject the IPL customers to a massive and immediate rate increase when the only reason for the increase is that IPL has declined to file a rate case in a reasonable time frame. For all of the foregoing reasons, the OAG recommends that if the Commission approves the Petitioners' transaction, the IPL customers be administered separately at their current rates until they can be modified or consolidated in a rate case.

III. CONCLUSION

For all of the reasons stated in its Comments, the OAG recommends that the Commission impose the following conditions if the asset transfer is approved:

1. Maintain the current rates for IPL's gas customers until a rate case is filed authorizing a change in their rates;

2. Separately identify the costs associated with setting rates between IPL's former customers and MERC's current customers until they are integrated during a future rate case;

3. Maintain IPL's current obligation to remediate contaminated manufactured gas plants located in Minnesota and deny the Petitioners' request to transfer that obligation to MERC;

4. Require MERC to take up the compliance reporting requirements in Docket No. G-001/M-06-1166, and require MERC to provide additional compliance reporting on IPL's past and future FMGP expenditures;

5. Preserve the benefit of deferred taxes that the IPL customers have paid for by implementing a transaction adjustment refund or creating a regulatory asset account to reduce rate base in a future rate case; and,

6. Conduct public hearings in IPL's service territory to allow ratepayers to meaningfully participate in the process.

Dated: July 3, 2014

Respectfully submitted,

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