

October 17, 2016

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, Minnesota 55101-2147

RE: Response of the Minnesota Department of Commerce, Division of Energy Resources to Minnesota Energy Resources Corporation's Reply Comments; MERC's Petition for Approval of the Affiliated Interest Agreement with WEC Energy Group
Docket No. G011/AI-16-284

Dear Mr. Wolf,

In its August 31, 2016 Comments in the above-referenced matter, the Minnesota Department of Commerce, Division of Energy Resources (Department or DOC) concluded that the affiliated interest agreement (AIA) proposed by Minnesota Energy Resources Corporation's (MERC or the Company) is consistent with the public interest, and recommended that the Minnesota Public Utilities Commission (Commission) approve MERC's Petition with modification and conditions.

Specifically, the Department recommended that the Commission:

- Put MERC on notice that it should be prepared to demonstrate in the Company's rate cases that its proposed allocation methods provide similar results compared to the Commission's preferred general allocation method, or that the Company's method better serves the public interest. For example, MERC will need to show that the Company made a "good faith effort" to obtain an alternative to an affiliated transaction;
- allow MERC's proposed increased limit from \$100,000 to \$250,000 to apply only to services and not to any plant as an operating unit or system in Minnesota;
- require MERC's internal audit to apply to both Regulated and Non-Regulated entities to assess whether MERC is overpaying or undercharging either Regulated or Non-Regulated affiliates in transactions when market alternatives are available;

- require the following to be added to the provision regarding treatment of customer data:
Additionally, each Party agrees to protect the other Parties' information using the same degree of care which it uses to protect its own confidential information, and in no event less than reasonable care. However, any Party with information about customers of MERC shall treat the information according to the requirements of the Minnesota Public Utilities Commission.
- Require the Company to file in its next general rate case, Direct Testimony demonstrating continued compliance with the Commission's 1008 Docket requirements and support that the Company's cost assignments and cost allocations continue to be reasonable;
- Require the Company to supplement the annual reporting required by Article V of the AIA, highlighting all transactions that are over the \$100,000; and
- Terminate WEC AIA and the Master AIA approved in Docket Nos. G011/AI-15-704 and G007,011/AI-07-779 respectively.

On September 12, 2016, MERC filed Reply Comments stating that it broadly accepts the Department recommendations; however, the Company requested that "the Commission incorporate the proposals into its order or separate MERC-specific addendum to the WEC Energy AIA and not require MERC to amend the WEC Energy AIA."¹

The Department agrees with MERC that including the language the Department proposed to add to the AIA regarding the treatment of customer information would be just as effective if included in the Commission's Order in this proceeding instead of requiring MERC to seek to amend the WEC Energy AIA. Further, the Department agrees with MERC's proposed language as follows, where the underlined text reflects MERC's proposed new language:

If any Regulated or Non-Regulated affiliate is responsible for the treatment of MERC customer data, MERC must inform that affiliate, in writing, that the information about MERC's customers must be treated according to the requirements of the Minnesota Public Utilities Commission, then in effect.

Further, the Department recommends that the Commission require the Company to include in its May 1 annual compliance report a listing of the affiliates receiving MERC customer data, a general description of the data shared, the notice provided to the affiliate, and a discussion of unauthorized release of data, if any occurred.

¹ MERC's Reply Comments, Page 1.

MERC indicated that it did not entirely agree with the Department's recommendation that the Commission:

Put MERC on notice that it should be prepared to demonstrate in the Company's rate cases that its proposed allocation methods provide similar results compared to the Commission's preferred general allocation method, or that the Company's method better serves the public interest. For example, MERC will need to show that the Company made a "good faith effort" to obtain an alternative to an affiliated transaction.

Specifically, MERC said that the second sentence in the above quote is "unnecessary and potentially confusing in the context of the overall AIA." The Department understands that there may be situations in which it may be sufficient for MERC to demonstrate that there was no alternative, rather than make a "good faith effort" to obtain one. Nevertheless, the Department's intent is to continue to stress that MERC has the burden of proof to demonstrate the reasonableness of all transactions it participates in, and all allocation methods used, under the AIA. To clarify, the Department's recommendation is that similar language to the language included in the Commission's Order in Docket No. G007,011/AI-06-1052 be included in the Commission's Order in the instant docket:²

Put MERC on notice that it should be prepared to demonstrate in the Company's rate cases that its proposed allocation methods provide similar results compared to the Commission's preferred general allocation method, or that the Company's method better serves the public interest.

In conclusion, the Department recommends that the Commission approve MERC's proposed WEC Energy AIA with the following revised modifications:

- Put MERC on notice that it should be prepared to demonstrate in the Company's next rate case that its proposed allocation methods provide similar results compared to the Commission's preferred general allocation method, or that the Company's method better serves the public interest;
- Allow MERC's proposed increased limit from \$100,000 to \$250,000 to apply only to services and not to any plant as an operating unit or system in Minnesota;
- Require MERC's internal audit to apply to both Regulated and Non-Regulated entities to assess whether MERC is overpaying or undercharging either Regulated or Non-Regulated affiliates in transactions when market alternatives are available;

² DOC Comments, Page 8.

- Require that, if any Regulated or Non-Regulated affiliate is responsible for the treatment of MERC customer data, MERC must inform that affiliate, in writing, that the information about MERC's customers must be treated according to the requirements of the Minnesota Public Utilities Commission, then in effect.
- Require the Company to include in its May 1 annual compliance report a listing of the affiliates receiving MERC customer data, a general description of the data shared, the notice provided to the affiliate, and a discussion of unauthorized release of data, if any occurred.
- Require the Company to file in its next general rate case, Direct Testimony demonstrating continued compliance with the Commission's 1008 Docket requirements and support that the Company's cost assignments and cost allocations continue to be reasonable;
- Require the Company to supplement the annual reporting required by Article V of the AIA, highlighting all transactions that are over the \$100,000; and
- Terminate WEC AIA and the Master AIA approved in Docket Nos. G011/AI-15-704 and G007,011/AI-07-779 (most recently amended in Docket No. G011/AI-13-934) respectively.

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

Sincerely,

/s/ BEN KAMARA
Financial Analyst

BK/ja

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
Response to Reply Comments**

Docket No. G011/AI-16-284

Dated this 17th day of October 2016

/s/Sharon Ferguson

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