

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE PUBLIC UTILITIES COMMISSION

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

**FIRST PREHEARING ORDER**

A prehearing conference was held before Eric L. Lipman, Administrative Law Judge, on October 13, 2008, at the Public Utilities Commission, 350 Metro Square Building, 121 Seventh Place East, St. Paul, Minnesota. The following persons entered a formal appearance:

Ann M. Seha, Michael J. Ahern, Sarah J. Kerbeshian, Dorsey & Whitney LLP, 50 South 6th Street, Minneapolis, MN 55402, and Gregory J. Walters, Post Office Box 6538, Rochester, MN 55903-6538 appeared on behalf of the Petitioners Minnesota Energy Resources Corporation (MERC).

Andrew P. Moratzka and Robert S. Lee, Mackall, Crouse & Moore, 1400 AT&T Tower, 901 Marquette Avenue, Minneapolis, Minnesota 55402, appeared behalf of ArcelorMittal USA, Hibbing Taconite Company, Northshore Mining Company, United States Steel Corporation and United Taconite, LLC, collectively known as the Large Power Intervenors (LPI).

Eric F. Swanson, Winthrop & Weinstine, Suite 3500, 225 South Sixth Street, Minneapolis, Minnesota 55402, appeared behalf of Cornerstone Energy, Incorporated d/b/a Constellation New Energy – Gas Division, LLC (Constellation).

Karen Finstad Hammel and Julia Anderson, Assistant Attorneys General, 1400 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared on behalf of Minnesota Department of Commerce, Office of Energy Security (OES).

Ronald M. Giteck and William T. Stamets, Assistant Attorneys General, 900 Bremer Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, appeared behalf of the Office of the Attorney General Residential and Small Business Utility Division (OAG/RUD).

Robert Harding and Gerald C. Dasinger, Rates Analysts, appeared behalf of the Public Utilities Commission staff.

Based upon the record and the discussion among the participants at the prehearing conference, the Administrative Law Judge makes the following:

## **ORDER**

### **I. Procedure**

1. The rules of the Office of Administrative Hearings govern the conduct of the hearings in this matter.

2. Parties shall notify the Office of Administrative Hearings as soon as possible if an interpreter, or an accommodation for a disability, is needed in order to enable a particular person's participation in any of the hearings.

3. Requests for issuance of subpoenas for the attendance of witnesses or the production of documents shall be made to the Administrative Law Judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at the OAH website at: [www.oah.state.mn.us](http://www.oah.state.mn.us).

### **II. Parties, Intervention, and Public Participation**

4. The parties to this matter, as named on Page 7 of the Commission's September 25, 2008 Notice and Order for Hearing, are MERC, OES and a group that the Commission has denominated the Large Power Intervenors (LPI). Later petitions to intervene were filed by the Residential and Small Business Utility Division of Office of the Minnesota Attorney General and Constellation New Energy – Gas Division, LLC.<sup>1</sup>

5. Other persons who wish to intervene as parties in this proceeding must file a Petition to Intervene that complies with Minn. R. 1400.6200 with the Administrative Law Judge no later than November 26, 2008. Copies of the Petition must be served upon all existing parties and the Commission. A Notice of Appearance must be filed with the Petition. Objections to such a petition must be filed within seven days of the filing of the petition.

6. Members of the public need not become formal parties in order to participate in these proceedings. Members of the public may participate in the public

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<sup>1</sup> At the October 13, 2008, Prehearing Conference in this matter, counsel for MERC requested an opportunity to confer with counsel for Constellation as to the nature and scope of Constellation's intervention. Since that time, the undersigned has been informally advised that an accord between these two parties has been reached and that MERC does not interpose an objection to Constellation's participation in this matter.

hearings and may offer oral or written testimony and exhibits pursuant to Minn. R. 1400.6200, subp. 5, and 1400.7150, subp. 1. If time permits, public participation may also be permitted by the Administrative Law Judge during the evidentiary hearing. Any person who participates in a public or evidentiary hearing may be questioned by the parties and the Administrative Law Judge.

**III. Schedule of Proceedings**

7. MERC has agreed to waive the statutory deadline for the Commission’s final order on its application for a change in rates until June 16, 2008. MERC will confirm that waiver in writing to the Commission. Contingent upon the filing of that waiver, the following schedule is adopted:

Deadline for Petitions for Intervention	November 26, 2008
Due Date for the Pre-Filing of Direct Testimony	December 4, 2008
Due Date for the Pre-Filing of Rebuttal Testimony	January 7, 2009
Public Hearings	
Rochester, Minnesota	January 8, 2009 (Afternoon) meeting place and time to be determined
Eagan, Minnesota	January 8, 2009 (Evening) meeting place and time to be determined
Cloquet, Minnesota	January 12, 2009 (Evening) meeting place and time to be determined
Section 216B.16 Status Conferences on the Progress of Settlement Talks	January 8 and 12, 2009
Due Date for the Pre-Filing of Surrebuttal Testimony	January 22, 2009
Due Date for the Filing of Objections to the Qualifications of Witnesses or the Admissibility of Pre-filed Direct or Rebuttal Testimony	January 22, 2009

Due Date for Public Comments	January 22, 2009
Due Date for Filing of Corrections of Minor Errors in Pre-filed Testimony	January 29, 2009
Due Date for the Filing of Objections to the Qualifications of Witnesses or the Admissibility of Pre-filed Surrebuttal Testimony	January 29, 2009
Evidentiary Hearing	February 3 – 6, 2009 Public Utilities Commission
Due Date for Initial Briefs and Proposed Findings	March 3, 2009
Due Date for Reply Briefs	March 18, 2009
Anticipated Date of the ALJ's Report	April 17, 2009

8. Nonpublic versions of pre-filed testimony shall be eFiled by the dates indicated above and paper copies of such filings must be received by the Administrative Law Judge and the appropriate parties on the following business day.

9. Notice of the public and evidentiary hearings shall be given by MERC as set forth in the Commission's Notice and Order for Hearing.

**IV. 216B.16 Settlement Process**

10. Minn. Stat. § 216B.16, subd. 1(a), requires the Administrative Law Judge to convene a proceeding for the purpose of encouraging settlement of any or all of the issues in this proceeding. The Administrative Law Judge encourages the parties to discuss opportunities for settlement with each other prior to the public hearings. During the days of the public hearings, an informal conference will be held to discuss the progress of such discussions.

**V. Discovery**

11. A party may serve requests for information on any other party. All requests for information shall be made in writing by electronic mail, and the requesting party shall follow the electronic mail with a copy of the request sent by regular U.S. mail or other delivery service to all parties. **Information requests shall NOT be eFiled.** To the extent that a request includes material designated as Trade Secret or Nonpublic under the Minnesota Government Data Practices Act, Minn. Stat. Chap. 13, an electronic mail request is required only between the requesting and responding party.

Requests shall be sent to the person(s) designated to receive data requests by the party from whom the information is sought.

12. The party responding to the request shall provide the requested information to the requesting party within **eight (8) business days** of receipt of the information request. Any request that is received by electronic mail after 4:30 p.m. on a business day, or at any time on either a weekend day or on a Minnesota state holiday, is considered received on the next business day. If the information cannot be supplied within eight (8) business days, the responding party shall notify the requesting party as soon as reasonably possible in advance of the deadline of the reasons for not being able to supply the information and attempt to agree upon a schedule of compliance with the requesting party.

13. Responses to information requests shall be submitted by electronic mail, and the responding party shall follow the electronic mail with a copy of the response sent by regular U.S. mail or other delivery service, unless the receiving party agrees to accept responses by electronic mail delivery only. **Responses to information requests shall NOT be eFiled.** If a response includes material designated as Trade Secret or Nonpublic, an electronic mail response is required only between the requesting party and the responding party. Any response that is received after 4:30 p.m. on a business day is considered to be received on the following business day.

14. If the responding party is unable to send the response by electronic mail because of the volume or nature of information included in a response, the responding party shall send the response by facsimile, U.S. mail, or delivery so that the requesting party receives the entire response (including any material designated as Trade Secret or Nonpublic) by the applicable date due. Responding parties may utilize optical data storage (DVDs or CDs) to convey large volumes of data. If the response is sent by facsimile, the responding party shall follow the facsimile with a copy of the response sent by regular U.S. mail or other delivery service. There shall be a continuing obligation to update and supplement information responses with any responsive material that may subsequently be discovered or acquired by the responding party. The responsive information need not be supplied to other parties unless specifically requested by a party.

15. A party that wishes to receive electronic mail copies of requests or responses shall notify the requesting or responding party, which shall provide the information in that format. If the request or response contains material designated as Trade Secret or Nonpublic information, the providing party may require that the requesting party comply with the terms of the Protective Order in this matter before providing the information.

16. MERC proposed a Protective Order for these proceedings. Upon inquiry, there were no objections to the proposed form of the Protective Order and a copy of the undersigned's Protective Order accompanies this Prehearing Order.

17. A common practice in Commission proceedings is for a party to make a blanket information request for copies of all responses to other parties' information requests. Any responding party is allowed to object and decline to provide all or certain Trade Secret or Nonpublic information in responses, to any particular party. Any party denied responses in this manner may raise the issue with the Administrative Law Judge through a motion to compel.

18. The following persons shall be served with an electronic mail copy of any information requests or responses addressed to MERC.

Ann M. Seha, Dorsey & Whitney, LLP	<a href="mailto:seha.ann@dorsey.com">seha.ann@dorsey.com</a>
David Kyto, Integrys Business Support	<a href="mailto:DJKyto@Integrysgroup.com">DJKyto@Integrysgroup.com</a>
Seth DeMerritt, Integrys Business Support	<a href="mailto:SSDeMerritt@integrysgroup.com">SSDeMerritt@integrysgroup.com</a>

Any necessary paper copies of information requests or responses shall be mailed to:

Ann M. Seha Dorsey & Whitney LLP 50 South 6th Street, Minneapolis, MN 55402-1498	David Kyto Integrys Business Support P.O. Box 19001 Green Bay, WI 54307-9001
Seth DeMerritt Integrys Business Support P.O. Box 19001 Green Bay, WI 54307-9001	

19. All disputes concerning the reasonableness of discovery requests and the timing and sufficiency of responses shall be resolved by the Administrative Law Judge upon motion of a party. Such motions may be submitted informally by electronic mail. Notice of such motions may likewise be made by electronic mail. Informal motions to address discovery requests and responses will ordinarily be heard by telephone conference.

**VI. Pre-filed Testimony**

20. Pre-filed testimony and exhibits may be in any reasonable format that is understandable, logically organized, and capable of being readily cited (either by page and line number, paragraph number, or similar identifier).

21. A paper copy of pre-filed testimony that is offered for admission into the record at the hearing shall be provided for use of the witnesses and others at the hearing. The offering party will identify the document as having been eFiled with the unique eFile identifying number of the document. The Administrative Law Judge will assign a hearing exhibit number to the document at the time that it is offered for admission at the hearing.

22. Corrections to any pre-filed testimony shall be identified and marked on the paper copy of the exhibit. Those changes will be eFiled as soon as practicable after the hearing. A hearing exhibit list will be prepared that identifies each exhibit in the hearing record, with its hearing exhibit number and unique eFile identifying number. The eFiled documents constitute the official record of the proceeding, along with any supplemental record data that cannot be eFiled. Any such supplemental record data will be identified by the Administrative Law Judge as included in the official record.

23. Pre-filed testimony that is not offered into the record, or stricken portions of pre-filed testimony, shall be considered withdrawn and no witness shall be cross-examined concerning the withdrawn testimony. Except for good cause shown, any new affirmative matter that is not offered in reply to another party's direct case will not be received into the record as part of rebuttal testimony and exhibits. Except for good cause shown, all revisions or corrections to any pre-filed testimony shall be in writing and served upon the Administrative Law Judge and the parties no later than **three (3) days prior** to the commencement of the evidentiary hearing.

## **VII. Witnesses**

24. Subject to change by agreement of the parties or further order of the Administrative Law Judge, the order of testimony shall be: MERC, LPI, Constellation, remaining intervenors in the order of intervention, OAG/RUD, and OES. Questioning of the witnesses shall proceed in the same order, followed by Commission staff.

25. In the event that a witness must be scheduled for a day certain to offer testimony, the sponsoring party should attempt to reach agreement with the other parties and then submit a request to the Administrative Law Judge.

26. Witnesses will be granted ten (10) minutes within which to summarize their pre-filed testimony. In order for a witness to include new information in his or her summary, the party offering that witness' testimony must obtain the prior approval of the Administrative Law Judge upon a motion and a showing of good cause for not having addressed that information in pre-filed testimony. Similarly, a witness will be permitted to respond to new matter raised by another party that was not previously addressed in pre-filed testimony, upon direct examination, and with the prior approval of the Administrative Law Judge.

27. Parties that are represented by counsel shall examine and cross-examine witnesses through their attorneys. Any party not represented by counsel may examine and cross-examine each witness through any one representative chosen by the party.

28. Except for good cause shown, objections by any party as to the qualifications of a witness, or the admissibility of any portion of a witness' pre-filed testimony (except surrebuttal testimony), shall be considered waived unless the objecting party states its objection by motion made to the Administrative Law Judge, as

provided above. Such objections to surrebuttal testimony shall be filed and served no later than **three (3) business days** prior to commencement of the evidentiary hearing.

**VII. Filing of Documents (Excluding Information Requests and Responses)**

29. Original documents shall be filed using the Commission's eFiling system where feasible, in accordance with Minn. Stat. § 216.17, subd. 3 and the Commission's filing standards. In any instance where the eFiling system cannot be used, the original document shall be filed by delivery or mail with the Administrative Law Judge.

30. The effective date of filing shall be the date the document is eFiled or delivered to the Administrative Law Judge, whichever is earlier. Parties using the eFiling system should retain the unique document identifier as proof of filing. Any document filed shall also be served upon the participants to this proceeding as specified on the Official Service List. Proof of service to the service list in this proceeding shall be filed with each document or within three (3) business days thereafter.

31. With the exception of Trade Secret and other Nonpublic Data, copies of all documents that are filed shall be served by electronic mail according to the Official Service List by 4:30 p.m., with a paper copy mailed or delivered that day to these persons. The list will be revised as necessary by the Office of Administrative Hearings.

32. Hard copies of trade secret and other nonpublic data shall be transmitted by U.S. Mail or delivery to the parties who have signed Exhibit A to the Protective Order. Such documents may be served on the next business day following the filing of the public version.

33. After the Administrative Law Judge's Report is issued, the parties shall file the original of all documents with the Executive Secretary of the Commission in accordance with the Commission's standards.

34. Where Trade Secret or Nonpublic Data is filed with the Administrative Law Judge, that filing shall be prepared and marked in accordance with the Public Utilities Commission's September 1, 1999, Revised Procedures for Handling Trade Secret and Privileged Data. The procedures are available from the Commission website and may be viewed at [www.puc.state.mn.us/docs/tradsecret.pdf](http://www.puc.state.mn.us/docs/tradsecret.pdf). Access to nonpublic data shall be governed by the Protective Order to be issued in this proceeding.

Dated: October 17, 2008

/s/ Eric L. Lipman  
ERIC L. LIPMAN  
Administrative Law Judge

Reported: Shaddix and Associates  
Transcript prepared, 1 volume