STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Tukel, P.J., and Sawyer and Riordan, JJ.

VECTREN INFRASTRUCTURE SERVICES CORP.,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

______________________________________/

Supreme Court No. 163742

Court of Appeals No. 345462

Court of Claims No. 17-000107-MT

APPELLANT MICHIGAN DEPARTMENT OF TREASURY'S APPENDIX

Dana Nessel
Attorney General

Fadwa A. Hammoud (P74185)
Solicitor General
Counsel of Record

David W. Thompson (P75356)
Justin R. Call (P80892)
Assistant Attorneys General
Attorneys for Mich Dep't of Treasury
Defendant-Appellant
Revenue and Tax Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7584

Dated: May 4, 2022

TABLE OF CONTENTS

Volume I (Pages 1a to 506a)

Description	Volume	Page No.
Court of Claims Docket Entries	I	1a–6a
Court of Appeals Docket Entries	I	7a–12a
Michigan Court of Claims, Opinion and Order issued August 14, 2018	I	13a–26a
Michigan Court of Claims, Order issued September 7, 2018	I	27a
Michigan Court of Appeals, Opinion issued March 12, 2020	I	28a–36a
Michigan Supreme Court, Order issued November 25, 2020	I	37a
Michigan Court of Appeals, Order issued April 19, 2021	I	38a
Michigan Court of Claims, Opinion and Order on Remand issued May 25, 2021	I	39a–48a
Michigan Court of Appeals, Opinion issued September 30, 2021	I	49a–52a
Sidney Frank Importing Co, Inc v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued December 4, 2012 (Docket No. 306742)	I	53a–59a
Vectren's First Amended Complaint (*without attachments*)	I	60a–78a
Christopher Leines Deposition Transcript (*relevant portions only*)	I	79a–101a
Plaintiff's Response to Treasury's 1st Discovery Request (*without attachments*)	I	102a–121a
Offering Memorandum	I	122a–216a
Consumers 2011 10-K	I	217a–439a
Purchase Agreement	I	440a–506a

Volume II (Pages 507a to 865a)

Description	Volume	Page No.
Purchase Agreement (*continued*)	II	507a–597a
Vectren 2001 10-K	II	598a–665a
Douglas S. Banning, Jr. Deposition Transcript (*relevant portions only*)	II	666a–687a
Vectren 2011 8-K Exhibit 99.1	II	688a–692a
Vectren 2011 10-K	II	693a–812a
Bradley Hirsch Deposition Transcript (*relevant portions only*)	II	813a–825a
KPMG Draft Valuation	II	826a–865a

Volume III (Pages 866a to 1048a)

Description	**Volume**	**Page No.**
Alternative Apportionment Request, June 24, 2016 (*without attachments*)	III	866a–873a
2011 Michigan Business Tax Annual Return	III	874a–883a
Audit Report of Findings	III	884a–892a
2010 Michigan Business Tax Return	III	893a–904a
2010 Federal Forms 4797	III	905a–912a
2011 U.S. Income Tax Return	III	913a–959a
Audit Workbook	III	960a–970a
Intent to Assess	III	971a–972a
Final Assessment	III	973a–974a
Supplement to Alternative Apportionment Request, December 14, 2016 (*without attachments*)	III	975a–982a
Treasury's Denial of Alternative Apportionment Request	III	983a–985a
Hirsch Affidavit (*without attachments*)	III	986a–989a
Vectren's Court of Appeals Brief on Appeal, December 7, 2018 (*without appendices*)	III	990a–1048a

STATE OF MICHIGAN COURT OF CLAIMS	**REGISTER OF ACTIONS**	**CASE ID 17-000107-MT** C/COC/MI	Public 4/25/2022 3:43:17 PM Page: 1 of 6

CASE

Judicial Officer	Date Filed	Adjudication	Status
O'BRIEN, COLLEEN	4/20/17	SUMMARY DISPOSITION 5/25/21	CLOSED 5/25/21

PARTICIPANTS

PLAINTIFF 1	VECTREN INFRASTRUCTURE SERVICES CORP	FILED: 4/20/17
	ATTY: LYNNTERI ARSHT GANDHI # 60466 PRIMARY RETAINED	
DEFENDANT 1	DEPARTMENT OF TREASURY	FILED: 4/20/17
	ATTY: DAVID WENTLAND THOMPSON # 75356 PRIMARY RETAINED	

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 VECTREN INFRASTRUCTURE SERVICES CORP	$280.00	$280.00	$0.00
DEF 1 DEPARTMENT OF TREASURY	$80.00	$80.00	$0.00

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity		User	Entry Date
4/20/17	SUMMONS AND COMPLAINT PTF 1 DEF 1	$175.00	mmla mmla	4/20/17 4/20/17
4/20/17	JUDICIAL OFFICER ASSIGNED TO TALBOT, MICHAEL 21245		mmla	4/25/18
4/20/17	RECEIVABLE ELECTRONIC FILING SYSTEM FEE	$25.00	mmla	4/20/17
4/20/17	RECEIVABLE FILING FEE	$150.00	mmla	4/20/17
4/20/17	PAYMENT RECEIPT NUMBER: COC-LAN.0001934 METHOD: CHECK $175.00	$175.00	mmla	4/20/17
5/1/17	APPEARANCE AND NOTICE OF APPEARANCE DEF 1		mmla	5/2/17
5/12/17	ANSWER, CIVIL TO PLAINTIFF'S COMPLAINT & AFFIRMATIVE DEFENSES DEF 1		mmla	5/12/17
5/16/17	PROOF OF SERVICE SUMMONS AND COMPLAINT PTF 1		mmla	5/16/17
5/17/17	SCHEDULING CONFERENCE BEFORE: TALBOT, MICHAEL LOC: VIA TELEPHONE	CANCELLED 7/27/17 10:00 A	can	5/17/17
5/17/17	SCHEDULING CONFERENCE ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1		can	5/17/17
5/19/17	FIRST DISCOVERY REQUESTS TO PLAINTIFF DEF 1		amd	5/19/17
6/14/17	PROPOSED STIPULATED SCHEDULING ORDER		mmla	6/15/17

Activity Date	Activity		User	Entry Date
	PTF 1 DEF 1			
6/16/17	RESPONSE TO DEFENDANT STATE OF MICHIGAN DEPARTMENT OF TREASURY'S FIRST REQUESTS FOR ADMISSIONS TO PLAINTIFF PTF 1		mmla mmla	6/16/17 8/24/18
6/21/17	STIPULATED SCHEDULING ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1		can mmla	6/21/17 8/14/17
6/21/17	SCHEDULING CONFERENCE 7/27/17 10:00 AM CANCELLED OTHER Stip Sched Ord Issued		can	6/21/17
6/21/17	REVIEW BEFORE: TALBOT, MICHAEL	SET 8/6/18 8:00 A	can	6/21/17
6/28/17	PROOF OF SERVICE STIPULATED SCHEDULING ORDER PTF 1		mmla	6/29/17
9/8/17	EXPERT WITNESS LIST PTF 1		can	9/8/17
10/2/17	PROOF OF SERVICE EXPERT WITNESS INTERROGATORIES TO PLAINTIFF DEF 1		mmla	10/3/17
10/6/17	FIRST REQUESTS FOR ADMISSION PTF 1		amd	10/6/17
10/6/17	WITNESS LIST PTF 1		amd	10/6/17
10/6/17	PROOF OF SERVICE OF A COPY OF PLAINTIFF'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS PTF 1		amd	10/6/17
10/9/17	WITNESS LIST DEF 1		mmla	10/10/17
10/13/17	PROOF OF SERVICE WITNESS INTERROGATORIES TO PLAINTIFF DEF 1		mmla	10/17/17
11/3/17	SECOND DISCOVERY REQUESTS TO PLAINTFF DEF 1		mmla	11/6/17
11/3/17	RESPONSE TO PLAINTIFF'S FIRST REQUEST FOR ADMISSION DEF 1		mmla mmla	11/6/17 1/25/18
11/3/17	PROOF OF SERVICE DEF 1		mmla	11/6/17
11/9/17	MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT PTF 1	$20.00	amd mmla	11/9/17 11/13/17
11/9/17	RECEIVABLE MOTION FEE	$20.00	amd	11/9/17
11/13/17	PAYMENT	$20.00	mmla	11/13/17

Activity Date	Activity		User	Entry Date
	RECEIPT NUMBER: COC-LAN.0002427 METHOD: CHECK $20.00			
11/21/17	PROOF OF SERVICE PLAINTIFF'S SUPPLEMENTAL RESPONSE TO STATE OF MICHIGAN DEPARTMENT OF TREASURY'S FIRST DISCOVERY REQUESTS TO PLAINTIFF PTF 1		mmla	11/21/17
11/27/17	RESPONSE TO PLAINTIFF'S MOTION FOR LEAVE TO FILE FIRST AMENDED COMPLAINT DEF 1		mmla	11/28/17
12/1/17	ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1		can	12/1/17
12/1/17	RESPONSE TO STATE OF MICHIGAN DEPARTMENT OF TREASURY'S SECOND DISCOVERY REQUESTS TO PLAINTIFF PTF 1		amd	12/4/17
12/6/17	FIRST AMENDED COMPLAINT PTF 1		amd	12/6/17
12/8/17	MOTION TO COMPEL DEF 1	$20.00	mmla mmla	12/8/17 5/25/18
12/8/17	RECEIVABLE MOTION FEE	$20.00	mmla	12/8/17
12/26/17	OPPOSITION TO DEFENDANT MICHIGAN DEPARTMENT OF TREASURY'S MOTION TO COMPEL PTF 1		mmla	12/27/17
12/27/17	ANSWER, CIVIL TO PLAINTIFF'S FIRST AMENDED COMPLAINT & AFFIRMATIVE DEFENSES DEF 1		mmla	12/27/17
1/10/18	ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1		can	1/10/18
1/24/18	PROOF OF SERVICE THIRD DISCOVERY REQUESTS TO PLAINTIFF DEF 1		mmla mmla	1/24/18 2/6/18
2/1/18	MOTION TO COMPEL DEFENDANT'S WITNESS INTERROGATORIES TO PLAINTIFF DEF 1	$20.00	mmla mmla	2/1/18 5/25/18
2/1/18	RECEIVABLE MOTION FEE	$20.00	mmla	2/1/18
2/2/18	PROOF OF SERVICE NOTICE DUCES TECUM OF TAKING DEPOSITION OF BRAD HIRSCH AND COPY OF NOTICE DEF 1		mmla	2/2/18
2/5/18	SUA SPONTE ORDER FOR THE FILING OF BRIEFS TALBOT, MICHAEL 21245 PTF 1 DEF 1		can	2/5/18
2/13/18	PROOF OF SERVICE RESPONSE TO DEFENDANT'S WITNESS INTERROGATORIES TO PLAINTIFF PTF 1		mmla	2/13/18

STATE OF MICHIGAN COURT OF CLAIMS	**REGISTER OF ACTIONS**	**CASE ID** **17-000107-MT** C/COC/MI	Public 4/25/2022 3:43:17 PM Page: 4 of 6

Activity Date	Activity		User	Entry Date
2/15/18	RESPONSE TO DEFENDANT'S 2/1/18 MOTION TO COMPEL DEFENDANT'S WITNESS INTERROGATORIES TO PLAINTIFF PTF 1		mmla	2/15/18
2/16/18	WITHDRAWAL OF ITS 2/1/18 MOTION TO COMPEL DEF 1		mmla	2/16/18
2/21/18	PROOF OF SERVICE OF A COPY OF PLAINTIFF'S RESPONSE TO STATE OF MICHIGAN DEPARTMENT OF TREASURY'S THIRD DISCOVERY REQUESTS TO PLAINTIFF PTF 1		amd	2/21/18
3/9/18	PROOF OF SERVICE OF A COPY OF NOTICE OF TAKING THE DEPOSITION OF CHRIS KELLER, SUBPOENA ORDER TO APPEAR AND/OR PRODUCE TO CHRISTOPHER LEINES, AND JEFFREY STARBIRD		amd	3/9/18
3/9/18	PROOF OF SERVICE OF A COPY OF A NOTICE DUCES TECUM OF TAKING THE DEPOSITION OF DOUGLAS S. BANNING, JR.		amd	3/9/18
3/13/18	PROOF OF SERVICE OF A COPY OF THE AMENDED SUBPOENA ORDER TO APPEAR AND/OR PRODUCE TO CHRISTOPHER LEINES AND JEFFREY STARBIRD		amd	3/13/18
3/21/18	PROOF OF SERVICE FOURTH DISCOVERY REQUESTS TO PLAINTIFF DEF 1		mmla	3/21/18
4/20/18	PAYMENT RECEIPT NUMBER: COC-LAN.0002726 METHOD: ELECTRONIC FUND TRANSFER $20.00	$20.00	mlh	4/20/18
4/23/18	PAYMENT RECEIPT NUMBER: COC-LAN.0002742 METHOD: ELECTRONIC FUND TRANSFER $20.00	$20.00	mlh	4/23/18
4/26/18	JUDICIAL OFFICER REASSIGNED FROM TALBOT, MICHAEL 21245		system	4/25/18
4/26/18	JUDICIAL OFFICER ASSIGNED TO O'BRIEN, COLLEEN A. 33095		system	4/25/18
4/26/18	ORDER OF REASSIGNMENT MURRAY, CHRISTOPHER 43849		amd	4/26/18
4/26/18	RESPONSE TO STATE OF MICHIGAN DEPARTMENT OF TREASURY'S FOURTH DISCOVERY REQUESTS TO PLAINTIFF PTF 1		amd	3/14/19
5/1/18	REVIEW 8/6/18 8:00 AM RESCHEDULED TO:		amd	5/1/18
5/9/18	MOTION (STIPULATED) TO EXTEND TIME FOR FILING OF MOTION FOR SUMMARY DISPOSITION AND LEAVE TO FILE A BRIEF IN EXCESS OF THE PAGE LIMIT IN SUPPORT OF THE MOTION FOR SUMMARY DISPOSITION PTF 1	$20.00	mmla mmla	5/9/18 5/9/18
5/9/18	RECEIVABLE MOTION FEE	$20.00	mmla	5/9/18
5/9/18	PAYMENT RECEIPT NUMBER: COC-LAN.0002903 METHOD: CHECK $20.00	$20.00	mmla	5/9/18
5/9/18	PROPOSED ORDER GRANTING PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME AND LEAVE TO EXCEED PAGE LIMIT PTF 1		mmla	5/9/18
5/10/18	ORDER GRANTING PLAINTIFF'S MOTION FOR AN EXTENSION OF TIME AND LEAVE TO EXCEED PAGE LIMIT		mmla	5/10/18
6/12/18	MOTION FOR SUMMARY DISPOSITION WITH BRIEF IN SUPPORT - ORAL ARGUMENT REQUESTED	$20.00	amd amd	6/12/18 6/12/18

Activity Date	Activity		User	Entry Date
	PTF 1			
6/12/18	RECEIVABLE MOTION FEE	$20.00	amd	6/12/18
6/12/18	PAYMENT RECEIPT NUMBER: COC-LAN.0002971 METHOD: CHECK $20.00	$20.00	amd	6/12/18
6/12/18	MOTION FOR SUMMARY DISPOSITION (PARTIAL) WITH BRIEF IN SUPPORT DEF 1	$20.00	amd mmla	6/12/18 6/15/18
6/12/18	RECEIVABLE MOTION FEE	$20.00	amd	6/12/18
6/13/18	EXHIBIT 1 TO 06/12/2018 PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION PTF 1		amd	6/13/18
6/25/18	DOCUMENT AMENDING TITLE OF DEFENDANT'S MOTION FILED 6/12/18 TO "MOTION FOR SUMMARY DISPOSITION" DEF 1		mmla mmla	6/26/18 6/26/18
7/3/18	RESPONSE TO PLAINTIFF'S JUNE 12, 2018 MOTION FOR SUMMARY DISPOSITION		amd	7/3/18
7/3/18	RESPONSE TO DEFENDANT MICHIGAN DEPARTMENT OF TREASURY'S 6/12/18 MOTION FOR SUMMARY DISPOSITION (ORAL ARGUMENT REQUESTED) PTF 1		mmla mmla	7/6/18 8/24/18
7/10/18	REPLY BRIEF TO PLAINTIFF'S 7/3/18 RESPONSE TO DEFENDANT'S 6/12/18 MOTION FOR SUMMARY DISPOSITION DEF 1		mmla	7/10/18
7/10/18	REPLY BRIEF TO DEFENDANT MICHIGAN DEPARTMENT OF TREASURY'S 7/3/18 RESPONSE TO PLAINTIFF'S 6/12/18 MOTION FOR SUMMARY DISPOSITION (ORAL ARGUMENT REQUESTED) PTF 1		mmla	7/11/18
7/19/18	MOTION TO STRIKE PLAINTIFF'S EXHIBIT 16 TO PLAINTIFF'S JULY 10, 2018 REPLY BRIEF DEF 1	$20.00	amd	7/19/18
7/19/18	RECEIVABLE MOTION FEE	$20.00	amd	7/19/18
7/25/18	RESPONSE TO DEFENDANT MICHIGAN DEPARTMENT OF TREASURY'S 7/19/18 MOTION TO STRIKE PLAINTIFF'S EXHIBIT 16 TO PLAINTIFF'S 7/10/18 REPLY BRIEF PTF 1		mmla	7/27/18
7/30/18	ORDER REGARDING DEFENDANT'S MOTION TO STRIKE PLAINTIFF'S EXHIBIT 16		mmla	7/30/18
8/9/18	SUR-REPLY TO PLAINTIFF'S JULY 19, 2018 REPLY BRIEF, TO WIT: EXHIBIT 16 DEF 1		amd	8/10/18
8/14/18	OPINION AND ORDER DEF 1		amd	8/14/18
8/14/18	CLOSE CASE STATUS		amd	8/14/18
9/4/18	MOTION FOR RECONSIDERATION OF OPINION AND ORDER DATED AUGUST 14, 2018 WITH BRIEF IN SUPPORT PTF 1	$20.00	amd amd	9/4/18 9/4/18
9/4/18	RECEIVABLE MOTION FEE	$20.00	amd	9/4/18
9/4/18	PAYMENT RECEIPT NUMBER: COC-LAN.0003122 METHOD: CHECK $20.00	$20.00	amd	9/4/18

STATE OF MICHIGAN COURT OF CLAIMS	**REGISTER OF ACTIONS**	**CASE ID** **17-000107-MT** C/COC/MI	Public 4/25/2022 3:43:17 PM Page: 6 of 6

Activity Date	Activity		User	Entry Date
9/7/18	ORDER REGARDING PLAINTIFF'S MOTION FOR RECONSIDERATION		amd	9/7/18
9/14/18	CLAIM OF APPEAL PTF 1	$25.00	mmla mmla	9/17/18 9/17/18
9/14/18	RECEIVABLE APPEALS FEE	$25.00	mmla	9/17/18
9/17/18	PAYMENT RECEIPT NUMBER: COC-LAN.0003232 METHOD: CHECK $25.00	$25.00	mmla	9/17/18
9/24/18	COPY OF APPEARANCE AND NOTICE OF APPEARANCE IN COURT OF APPEALS DEF 1		mmla	9/24/18
10/18/18	PAYMENT RECEIPT NUMBER: COC-LAN.0003330 METHOD: ELECTRONIC FUND TRANSFER $40.00	$40.00	mlh	10/18/18
3/11/19	COMMENT Court of Appeals request record within 21 days. COA #345462		amd	3/12/19
3/14/19	COMMENT Record prepared and sent electronically to the Court of Appeals.		amd	3/14/19
3/12/20	OPINION AND ORDER (FROM APPELLATE COURT) "WE AGREE, AT LEAST IN PART, WITH PLAINTIFF AND REVERSE"		amd	3/12/20
4/22/20	ORDER OF THE COURT OF APPEALS DENYING MOTION FOR RECONSIDERATION		amd	4/22/20
6/15/20	NOTICE OF FILING APPLICATION FOR LEAVE TO APPEAL WITH PROOF OF SERVICE DEF 1		mmla	6/15/20
4/19/21	OPINION AND ORDER (FROM APPELLATE COURT)		amd	4/19/21
4/19/21	OPEN CASE STATUS		ma	4/26/21
4/19/21	SET ASIDE DISPOSITION DEF 1 DEPARTMENT OF TREASURY		ma	4/26/21
4/21/21	ORDER FOR THE FILING OF BRIEFS		bc	4/21/21
5/12/21	BRIEF FILED ON REMAND (ORAL ARGUMENT REQUESTED) WITH PROOF OF SERVICE PTF 1		ma	5/12/21
5/12/21	BRIEF FILED IN RESPONSE TO 4/21/21 REMAND ORDER WITH PROOF OF SERVICE DEF 1		ma	5/12/21
5/25/21	OPINION AND ORDER DEF 1		ma	5/25/21
5/25/21	CLOSE CASE STATUS		ma	5/25/21
11/12/21	NOTICE OF FILING OF APPLICATION FOR LEAVE TO APPEAL BY DEFENDANT WITH PROOF OF SERVICE DEF 1		ma	11/12/21

COA 345462
MSC 163742

VECTREN INFRASTRUCTURE SERVICES CORP V DEPARTMENT OF TREASURY

Lower Court/Tribunal

COURT OF CLAIMS

Judge(s)

O'BRIEN COLLEEN A

Docket

Case Documents

Case Information

×

Case Header

Case Number

COA #345462

MSC #163742

Case Status

MSC Pending on Application

COA Case Concluded; File Open

Published Case Citation(s)

331 Mich App 568

Parties & Attorneys to the Case – Court of Appeals

1

VECTREN INFRASTRUCTURE SERVICES CORP

Plaintiff - Appellant

Attorney(s)

GANDHI LYNN A

#60466, Retained

2

MINNESOTA LIMITED INC

Other Misc Connection

Attorney(s)

Same

3

TREASURY DEPARTMENT OF

Defendant - Appellee

Attorney(s)

THOMPSON DAVID W

#75356, Attorney General

Parties & Attorneys to the Case – Supreme Court

1

VECTREN INFRASTRUCTURE SERVICES CORP

Plaintiff

Attorney(s)

Lynn Gandhi
#60466

2

MINNESOTA LIMITED INC
Other Misc Connection

3

TREASURY DEPARTMENT OF
Defendant

Attorney(s)

David Thompson, Ass't AG
#75356

COLLAPSE ALL EXPAND ALL

09/14/2018	1	Claim of Appeal - Civil	+
08/14/2018	2	Order Appealed From	+
09/14/2018	4	No Transcript Will Be Filed	+
09/24/2018	5	Appearance - Appellee	+

COA Docket

09/28/2018	6	Docketing Statement MCR 7.204H	+
11/05/2018	7	Stipulation: Extend Time - AT Brief	+
12/07/2018	9	Brief: Appellant	+
12/14/2018	10	Motion: Extend Time - Appellee	+
12/26/2018	12	Submitted on Administrative Motion Docket	+
12/27/2018	13	Order: Extend Time - Appellee Brief - Grant	+
03/08/2019	15	Brief: Appellee	+
03/09/2019	14	Noticed	+
03/14/2019	16	Electronic Record Filed	+
03/28/2019	18	Brief: Reply	+
11/13/2019	24	Submitted on Case Call	+
11/13/2019	26	Oral Argument Audio	+
03/12/2020	27	Opinion - Per Curiam - Published	+
03/12/2020	28	Email Contact	+
04/02/2020	29	Motion: Reconsideration of Opinion	+
04/15/2020	30	Answer - Reconsideration	+
04/21/2020	31	Submitted on Reconsideration Docket	+

COA Docket

04/22/2020	32	Order: Reconsideration - Deny - Appeal Remains Closed	+
06/04/2020	33	Application for Leave to SCt	+
06/04/2020	34	Supreme Court: SCt Case Caption	+
06/11/2020	35	Supreme Court: Miscellaneous Filing	+
06/11/2020	36	Other	+
07/01/2020	37	Supreme Court: Answer - SCt Application/Complain	+
07/22/2020	38	Supreme Court: Reply - SCt Application/Complain	+
11/25/2020	39	Supreme Court Order: Remand to COA	+
11/25/2020	40	Supreme Court - File Ret`d by - Re-Open for Reconsideration	+
01/12/2021	41	Re-Submitted Per Supreme Court Remand	+
01/14/2021	42	Correspondence Sent	+
03/01/2021	44	Michigan Appeals Reports Publication	+
04/19/2021	46	Order: Remand - Retain Jurisdiction	+
05/12/2021	47	Telephone Contact	+
05/12/2021	48	LCt Pleading - Remand	+
05/12/2021	49	LCt Pleading - Remand	+
05/25/2021	51	LCt Order - Remand	+

COA Docket

05/25/2021	53	Interlocutory Remand Concluded	+
09/30/2021	54	Opinion - On Remand SCt - Per Curiam - Published	+
11/12/2021	55	Application for Leave to SCt	+
11/12/2021	56	Other	+
11/12/2021	57	Supreme Court: SCt Case Caption	+
12/10/2021	58	Supreme Court: Answer - SCt Application/Complain	+
12/29/2021	59	Supreme Court: Reply - SCt Application/Complain	+
03/23/2022	60	Supreme Court Order: MOAA -Oral Argument on Lv Appl	+

STATE OF MICHIGAN

COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES CORP., successor of MINNESOTA LIMITED, INC.,

Plaintiff,

v

DEPARTMENT OF TREASURY,

Defendant.
_______________________________/

OPINION AND ORDER

Case No. 17-000107-MT

Hon. Colleen A. O'Brien

Pending before the Court are the parties' competing motions for summary disposition pursuant to MCR 2.116(C)(10). For the reasons stated herein, defendant's motion is GRANTED pursuant to MCR 2.116(C)(10), and plaintiff's competing motion for the same is DENIED. This matter is being decided without oral argument pursuant to LCR 2.119(A)(5).

I. BACKGROUND

Plaintiff is the successor-in-interest to Minnesota Limited Inc. (MLI), a Minnesota-based S-Corporation ("S-Corp"). In March 2011, the shareholders of MLI sold their shares to plaintiff. The parties to the sale were in agreement that the shareholders would treat the sale as an asset sale, pursuant to an election made under 26 USC 338(h)(10). The issues in this case arise from MLI's Michigan Business Tax (MBT) return for the short tax year of January-March 2011 (2011 Short Year).

When MLI filed its 2011 Short Year return, it included the gain on the sale in its "business income" for purposes of calculating business income tax due under the MBT. Also, when MLI calculated the "sales apportionment factor" under MCL 208.1303, it included the sale in the denominator of the fraction. MLI calculated its sales apportionment factor at approximately 14.99%.

On audit, defendant agreed that the gain on the sale was "business income." However, the auditor determined that the sale of stock should not have been included in the denominator of the sales apportionment factor. After removing the sale from the denominator, the auditor determined that the sales apportionment factor was approximately 69.96%. The effect of changing the sales apportionment factor increased MLI's MBT liability by $2,388,963. Defendant issued a final assessment in this amount, plus $550,792.07 in interest, as well as a $112,979 late-payment penalty.

Plaintiff requested an informal conference and penalty relief in June 2016. In addition, plaintiff submitted a request for alternative apportionment under MCL 208.1309. After defendant denied the request for alternative apportionment, plaintiff withdrew its request for informal conference, and filed this complaint. Plaintiff alleges that the gains on the sale of MLI stock should not have been included in the calculation of MLI's "business income" under the MBT.[1] Alternatively, plaintiff argues that it should be entitled to alternative apportionment because the standard apportionment formula unfairly taxes the extent of MLI's business activities in this state. In making its request for alternative apportionment, plaintiff points out

[1] Plaintiff does not challenge the decision of the auditor to remove the gains on the sale from the sales factor denominator.

that its sales within this state were, based on a contract to provide clean-up services in relation to the Enbridge oil spill near the Kalamazoo River, significantly higher than they had ever been. In addition, plaintiff argues that the 2011 Short Year's sales were further inflated by the sale of MLI's stock to plaintiff. Finally, plaintiff argues that it is entitled to penalty abatement.

II. ANALYSIS

Plaintiff and defendant agree that this case is ripe for summary disposition under MCR 2.116(C)(10). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Barnard Mfg Co, Inc v Gates Performance Engineering, Inc*, 285 Mich App 362, 369; 775 NW2d 618 (2009).

A. WHETHER THE SALE OF MLI STOCK IS "BUSINESS INCOME" UNDER THE MBT

The now-repealed MBT, see 2011 PA 39, was comprised of two taxes: the business income tax, see MCL 208.1201, and the modified gross receipts tax, see MCL 208.1203. The taxation at issue concerns MLI's business income tax. The first issue framed by the parties is whether the sale of MLI stock by the company's shareholders constitutes "business income" of MLI. The business income tax was imposed on a taxpayer's "business income tax base, after allocation or apportionment to this state[.]" MCL 208.1201(1). Resolution of this issue involves an examination of pertinent statutory definitions found within the MBA. When interpreting a statute, this Court's "primary goal is to discern and give effect to the Legislature's intent." *TMW v Dep't of Treasury*, 285 Mich App 167, 172; 775 NW2d 342 (2009). The Court must look to the plain language of the statute and must "give effect to every word, phrase, and clause in a statute, and [ ] avoid an interpretation that would render any part of the statute surplusage or nugatory." *Id.* (citation and quotation marks omitted). Moreover, because the statute at issue concerns the imposition of tax liability, any ambiguities in the statute must be resolved in favor of the taxpayer. *Alliance Obstetrics & Gynecology v Dep't of Treasury*, 285 Mich App 284, 286; 776 NW2d 160 (2009).

The starting point for determining whether the sale of MLI stock constitutes "business income" is MCL 208.1105(2), which defines "business income" to mean "that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the partners or shareholders." In this case, MLI was an S-Corp, meaning that it had "no federal taxable income at the federal level[.]" *TMW*, 285 Mich App at 167. Hence, in order to determine its "business income" for purposes of the MBT, the statute directs that the Court look to "payments and items of income and expense" that are: (1) attributable to the business activity of the S-Corp; and (2) separately reported to the shareholders of the S-Corp. MCL 208.1105(2).

The parties do not dispute that the sale represents "income" that was separately reported to the shareholders of MLI. They dispute, however, whether the income is "attributable to the business activity" of MLI. The MBT defines "business activity" to mean:

> a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but does not include the services rendered by an employee to his or her employer or services as a director of a corporation. [MCL 208.1105(1).]

Relying on the structure of transaction between the shareholders and plaintiff and on the structure of an S-Corp, plaintiff contends that the sale cannot be deemed to be the "business activity" of MLI. In doing so, plaintiff notes that the only parties to the sale were the shareholders and plaintiff; MLI was not a party to the transaction. The sale of stock by shareholders, argues plaintiff, cannot reasonably be considered part of MLI's business activity.

However, as defendant points out, the § 338(h)(10) election in place treated the sale as a sale of all of the S-Corp's assets. See 26 USC 338(a)(1). The Court concludes that the § 338 election chosen by plaintiff and MLI's shareholders is of particular significance to this case. In light of this election, the Court cannot agree with plaintiff's contentions about the nature of the MLI sale, i.e., that it was merely a sale of shares with no relation to the "business activity" of MLI. Pursuant to this election, plaintiff and MLI expressly chose to treat the sale as an asset sale. As noted, the term "business activity" under the MBT refers to the "transfer of legal or equitable title to . . . property, whether real, personal, or mixed, tangible or intangible . . . ." MCL 208.1105(1). This also includes activities that are merely "incidental" to the taxpayer's business's activities. *Id.* In this case, selling all of the assets of MLI, tangible or otherwise, is, at a minimum, incidental to MLI's business activity. The definition of "business income" under the MBT asks the Court to consider the business activity of an S-Corp that is "separately reported to the . . . shareholders." MCL 208.1105(2). Here, the sale was expressly reported to the shareholders as a sale of the S-Corp's assets. See 26 USC 338(a). Accordingly, the Court concludes that the sale in this case generated "business income" i.e., income that was attributable to the business activity of an S-Corp and separately reported to the shareholders of the S-Corp. See MCL 208.1105(2). This business income was properly subject to taxation under the MBT.

In advocating for a different result, plaintiff asks this Court to conclude that the § 338 election has no bearing on the question of whether the sale of shares amounted to "business income" or "business activity" under the MBT. Plaintiff points to another section of the MBT which defines the term "gross receipts" for purposes of the imposition of the modified gross receipts tax under MCL 208.1203. To that end, "gross receipts" is defined under MCL 208.1111(1) to mean "the entire amount received by the taxpayer *as determined by using the taxpayer's method of accounting used for federal income tax purposes* . . . ." Plaintiff argues that this Court should construe as intentional: (1) the inclusion of the phrase "method of accounting for federal income tax purposes" in the definition of "gross receipts"; and (2) the exclusion of any reference to federal accounting methods in the definition of "business income."

The Court rejects plaintiff's argument. The phrase "method of accounting used for federal income tax purposes" does not mean what plaintiff insinuates it means, and plaintiff's argument overstates the phrase's significance. The phrase is not defined in the MBT; as such, the Court should look to the Internal Revenue Code for guidance. See MCL 208.1103. The Internal Revenue Code, in 26 USC 446, describes several different "methods of accounting" including, in 26 USC 446(c), those methods deemed to be "permissible methods" for computing taxable income. Stated otherwise, this reference to "methods of accounting" in the definition of gross receipts simply refers to accounting methods that may be utilized by a taxpayer to track its receipts. And it is not remarkable that the MBT's definition of "gross receipts" permits a taxpayer to report those receipts based on a federal accounting method for doing the same. MCL 208.1111(1). Thus, plaintiff's attempt to exclude the effect of a § 338(h)(10) election on a taxpayer's "business income" by pointing to the definition of "gross receipts" is ineffective.

Moreover, and contrary to plaintiff's contentions, MCL 208.1105(2) does incorporate the "federal accounting fiction" occasioned by a § 338 election. Notably, MCL 208.1105(2)'s definition of "business income" refers to items of income and, for an S-Corp, inquires as to how those items are "separately reported to the . . . shareholders." Here, as noted above, a § 338(h)(10) election directly affects how income is "separately reported" to the S-Corp's shareholders. Thus, considering the effect of a § 338(h)(10) election is contemplated by MCL 208.1105(2). Furthermore, in general, the MBT expressly notes that, "[a] reference in [the MBT] to the internal revenue code *includes other provisions of the laws of the United States relating to federal income taxes*." MCL 208.1103 (emphasis added). Here, the definition of "business income" expressly refers to the taxpayer's federal income tax under the Internal Revenue Code. Consistent with MCL 208.1103, this Court is to construe the reference to the Internal Revenue Code in MCL 208.1105(2)'s definition of "business income" to include other pertinent provisions of the Internal Revenue Code. Hence, the § 338(h)(10) election controls the outcome in this case.

B. WHETHER PLAINTIFF SUSTAINED ITS BURDEN WITH RESPECT TO ITS REQUEST FOR ALTERNATIVE APPORTIONMENT

The next set of issues in this case involves plaintiff's request for alternative apportionment. MCL 208.1309(1) allows a taxpayer, in instances where the "apportionment provisions of this act"—in this case, the sales-apportionment factor—"do not fairly represent the extent of the taxpayer's business activity in this state[,]" to petition defendant for alternative apportionment. Alternative apportionment is not, however, an "all-purpose tax equity provision." *Trinovia Corp v Dep't of Treasury*, 433 Mich 141, 164; 445 NW2d 428 (1989), aff'd *Trinovia v Mich Dep't of Treasury*, 498 US 358; 111 S Ct 818; 112 L Ed 2d 884 (1991). In order to be entitled to alternative apportionment, a taxpayer must overcome the rebuttable presumption that the apportionment provisions of the MBT "fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base[.]" MCL 208.1309(3). To do so, the taxpayer must demonstrate that "the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer." MCL 208.1309(3). Such a showing must be made by "clear and cogent evidence." *Trinovia*, 433 Mich at 146. When interpreting a similarly phrased provision in the now-repealed Single Business Tax (SBT), the Court of Appeals explained that alternative apportionment should be applied in only "the most unusual circumstances[.]" *Corning Inc v Dep't of Treasury*, 212 Mich App 1, 5; 537 NW2d 466 (1995).

Plaintiff contends that the apportionment formula as applied to the sale of MLI was out of all appropriate proportion to the business MLI conducted in Michigan and to MLI's activities in Michigan. However, while plaintiff generally frames its argument in this manner, the crux of plaintiff's contention is really with the computation of its tax base. Plaintiff's arguments stem directly from the inclusion of the gain on the sale in the computation of MLI's "business income" for the 2011 Short Tax Year. As noted in *Trinovia*, 433 Mich at 159 n 21, this type of argument is not concerned with the result or constitutionality of the apportionment formula, but it is simply a disagreement with the computation of MLI's tax base. This type of argument is inconsistent with "the proper function" of alternative apportionment. *Id.* The purpose of alternative apportionment is "to provide relief when the statutory apportionment provisions result in the unconstitutional taxation of a unitary business." *Id.* Alternative apportionment does not, on the other hand, operate to "shelter the taxpayer from rightful tax liability" and it does not operate to "provide apportionment relief anytime a taxpayer can show, by manipulating its tax base, that a lower tax liability can be achieved." *Id.* And here, plaintiff's argument, and even one of its proposed alternatives,[2] is predicated on the notion that a different result can be achieved by the simple manipulation of its tax base. Although plaintiff's briefing dedicates a substantial amount of time to plaintiff's contentions about the percentage by which the standard apportionment formula increased MLI's tax liability, an examination of plaintiff's claims reveals that plaintiff's complaint is not with the standard apportionment formula or any effect the formula had on the tax imposed. Rather, the true nature of plaintiff's complaint is with the underlying calculations of its tax base, i.e., its business income. Indeed, plaintiff does not dispute its sales in Michigan for the 2011 Short Year, nor does plaintiff generally dispute the validity of the sales-apportionment formula. For that reason alone, plaintiff's appeal to alternative apportionment is unavailing. See *Trinovia*, 433 Mich at 159 n 21. And, for that reason, plaintiff's citation to the United States Supreme Court's decision in *Hans Rees' Sons, Inc v North Carolina*, 283 US 123; 51 S Ct 385; 75 L Ed 879 (1931), where the plaintiff presented evidence of the distortion and did not quarrel with the calculation of the tax base, is unavailing. As a result, plaintiff cannot overcome the presumption that the standard apportionment formula fairly represents the business activity of MLI in this state. See MCL 208.1309(3).

This conclusion is further underscored by taking note of plaintiff's claims about the Enbridge contract and the sale of MLI. Plaintiff notes that these events drastically increased

[2] One of plaintiff's suggested alternative methods of apportionment includes the sale in the sales factor denominator. Again, plaintiff has not argued, under the plain language of the MBT, that this sale *should* be included in the denominator. Instead, it has alleged the opposite: that including this number in the denominator achieves a fairer result as an *alternative*, i.e., non-statutory, form of apportionment.

MLI's tax liability under the MBT. However, the crux of plaintiff's contentions is not that these events attributed to Michigan activity occurring outside of the state. Rather, plaintiff contends that the "serendipity" of these events distorted MLI's tax liability *from a historical analysis of MLI's business activities*. Plaintiff repeatedly cites the "unique" nature of the transaction and the one-time Enbridge contract in arguing that the tax imposed was disproportionate. As part of its purported "proof," plaintiff points to the 10-year average of MLI's apportionment factor. However, these arguments do not demonstrate that the tax imposed in this case is out of proportion to MLI's activities within the state. These arguments point out that the tax imposed was out of proportion to *MLI's historical activities* in the state; they do not make the same point with respect to MLI's activities *within the state for the pertinent tax year*.

Plaintiff's arguments with respect to the value of the goodwill accrued by MLI fare no better. Plaintiff argues that none of the goodwill accumulated over the 52-year history of MLI can be attributed to the company's activity in Michigan. Plaintiff does not cite any documentary evidence to support this assertion.[3] Plaintiff argues that, because the tax imposed in this case

[3] Plaintiff's brief cites, at page 20, "Hirsch Aff ¶ 19, Ex A" for the proposition that none of MLI's goodwill was attributable to this state. It is unclear whether this is a reference to Bradley Hirsch's affidavit at ¶ 19—the affidavit is "Exhibit 2" to plaintiff's motion for summary disposition—or whether this is a reference to Exhibit A to Hirsh's affidavit, or to both. However, neither Hirsch's affidavit nor Exhibit A to his affidavit states that none of the goodwill accrued by MLI was attributable to this state. Paragraph 19 of Hirsch's affidavit simply explained what Hirsch believed to be goodwill, i.e., his averment that goodwill was "purchase price, less tangible assets, less identifiable intangible assets." Exhibit A to Hirsch's affidavit, meanwhile, is the draft valuation report prepared for plaintiff in advance of plaintiff's purchase of the MLI shareholders' stock. The report covers a wide range of topics, and includes overviews of plaintiff's business and of MLI's business. It also defines and explains the pertinent market in which MLI operated. The report assigns over a $20 million value to MLI's goodwill; however, plaintiff has not identified any sections of the report that source goodwill to any particular state or location.

purports to tax the value of the goodwill accumulated by MLI, the tax imposed extends beyond the actual business activity conducted by MLI in Michigan.

Plaintiff's argument is meritless. Initially, plaintiff has not satisfied its obligation of providing documentary evidence to support its assertion regarding where MLI accrued goodwill. See *Barnard*, 285 Mich App at 369-370. See also *Trinovia*, 433 Mich at 146 (requiring a taxpayer to produce "clear and cogent evidence" of distortion or extraterritorial taxation). Moreover, that a state's apportionment formula is inaccurate or that the formula may result in taxation of some business activity that is not attributable to the taxing state does not amount to a constitutional violation. *Trinovia*, 433 Mich at 158; *Corning*, 212 Mich App at 5-6. Additionally, plaintiff's unsupported contention, that none of the goodwill accumulated by MLI is attributable to this state, lacks merit. MLI conducted business in Michigan for years, and immediately before the sale to plaintiff, MLI significantly—as plaintiff readily admits—increased its presence and its business activity in Michigan by way of the Enbridge project. Hence, the Enbridge project, some of which extended beyond the date of the sale, contributed to the valuation of the company. Defendant was entitled to tax a portion of the goodwill on the sale. Furthermore, by attempting to limit the accumulation of MLI's goodwill solely to Minnesota, plaintiff's argument sounds in the nature of a "geographical accounting" argument that has been rejected. See *Corning*, 212 Mich App at 6.[4]

[4] Plaintiff's citation to a proposed revenue administrative bulletin (RAB) is unavailing. The proposed RAB is just that: a proposal which has not been adopted by defendant. Thus, any persuasive value it could potentially have is significantly undercut. Moreover, the proposed RAB pertains to a different statute and a different tax, and it is not pertinent to the issues raised in the instant case.

In addition to advocating for alternative apportionment, plaintiff argues that the resulting tax imposed in this case is unconstitutional. "Taxation of the intrastate activity of an interstate enterprise presents the potential for Due Process and Commerce Clause violations." *Trinovia*, 433 Mich at 156. Plaintiff's arguments in support of its constitutional claims are largely tied in with its rationale offered in support of alternative apportionment. Because the claim of unfair apportionment is meritless, and because plaintiff has not asserted that the tax was discriminatory, plaintiff's constitutional claims fail as well. See *id.* at 156, 156 n 17 (describing constitutional claims that can arise out of a taxing state's apportionment formula).

C. WHETHER PENALTY ABATEMENT IS WARRANTED

The final issue in this case concerns the $112,979 late-payment penalty imposed by defendant. In instances where a taxpayer fails to pay tax within the time specified by statute, defendant "shall" impose statutory penalties. See MCL 205.24(2). However, while the imposition of penalties is mandatory, the statutory penalties can be waived on a showing of "reasonable cause." See MCL 205.24(4). Defendant has, pursuant to its statutory rulemaking authority, promulgated rules regarding reasonable cause and penalty waiver. See MCL 205.4; MCL 205.24(2). Mich Admin Code, R 205.1013(3) provides that if a taxpayer requests penalty waiver, such request "shall be in writing and shall state the reasons alleged to constitute reasonable cause and the absence of willful neglect." In making a request, "[t]he taxpayer bears the burden of affirmatively establishing, by clear and convincing evidence, that the failure to file or failure to pay was due to reasonable cause." Rule 205.1013(4).

In this case, plaintiff requested an informal conference in June 2016; in part of that request, plaintiff sought a penalty waiver because, according to plaintiff, MLI "exercised ordinary business care and prudence in complying with and filing and paying MBT for the years in issue[.]" Plaintiff asserted that any penalty should be waived "based upon reasonable cause[.]" The matter was not explored further at informal conference because plaintiff, after receiving a letter denying its request for alternative apportionment, withdrew its request for informal conference.

Plaintiff's request for penalty waiver in its briefing is terse and conclusory. Plaintiff cites the correct statute, and then states that a penalty wavier can be obtained where the failure to pay is occasioned by an "honest difference of opinion[.]" The Court concludes that plaintiff, through its cursory assertions, has not satisfied its burden. Although plaintiff requested, in accordance with Rule 205.1013(3), a penalty waiver in its request for informal conference, the request was conclusory and it failed to state, in any meaningful fashion, the reasons relied in support of the penalty waiver. This is contrary to the dictates of Rule 205.1013(3), which mandate that the request for penalty waiver "shall state the reasons alleged to constitute reasonable cause and the absence of willful neglect." Moreover, the taxpayer has the burden to establish entitlement to penalty waiver "by clear and convincing evidence," Rule 205.1013(4), and plaintiff failed to identify such evidence in this case. And, in general, when a litigant fails to advance a meaningful argument in support of a position, a court will not make arguments on the party's behalf. See *VanderWerp v Plainfield Charter Twp*, 278 Mich App 624, 633; 752 NW2d 479 (2008).[5]

[5] The Court also notes that, although plaintiff argues that its position is attributable to an "honest difference of opinion," this "difference of opinion" did not arise until *after* defendant conducted its audit in this case. Indeed, MLI's 2011 Short Year return included the gain on the sale in MLI's business income. Now, after the sales apportionment factor was adjusted on audit, plaintiff's "difference of opinion" has arisen, as plaintiff argues that the gain should not have been included in the calculation of business income.

III. CONCLUSION

IT IS HEREBY ORDERED that defendant's motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(10) and that plaintiff's motion for summary disposition is DENIED.

This order resolves the last pending claim and closes the case.

Dated: August 14, 2018

Colleen A. O'Brien

Colleen A. O'Brien, Judge
Court of Claims

STATE OF MICHIGAN

COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES
CORP.,

Plaintiff,

v

Case No. 17-000107-MT

DEPARTMENT OF TREASURY,

Hon. Colleen A. O'Brien

Defendant.
_______________________________/

ORDER REGARDING PLAINTIFF'S MOTION FOR RECONSIDERATION

Plaintiff having filed a motion for reconsideration of this Court's August 18, 2018 opinion and order granting defendant's motion for summary disposition and denying plaintiff's competing motion for the same;

IT IS HEREBY ORDERED that the motion for reconsideration is DENIED for the reason that plaintiff failed to demonstrate a palpable error by which the court and parties have been misled. MCR 2.119(F)(3).

This is a final order that resolves the last pending claim and closes the case.

September 7, 2018
Date

Colleen A. O'Brien
Colleen A. O'Brien

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

VECTREN INFRASTRUCTURE SERVICES CORP., successor-in-interest to MINNESOTA LIMITED, INC.,

Plaintiff-Appellant,

v

DEPARTMENT OF TREASURY,

Defendant-Appellee.

FOR PUBLICATION
March 12, 2020
9:05 a.m.

No. 345462
Court of Claims
LC No. 17-000107-MT

Before: TUKEL, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

This case presents the complex question of how the gain on the sale of an out-of-state business, which conducts some of its business activities in Michigan, should be taxed under the Michigan Business Tax. Defendant applied the statutory formula and declined to allow calculation under an alternate formula. The trial court agreed with defendant. We agree, at least in part, with plaintiff and reverse.

Minnesota Limited, Inc. (MLI) was an S-corporation headquartered in Big Lake, Minnesota engaged in the business of constructing, maintaining, and repairing oil and gas pipelines, as well as providing HAZMAT response. MLI, which originated as a family business, had grown over the course of its 52-year history to employ over 600 employees at seasonal peak and serve a 24-state territory. MLI's service territory primarily included locations in the northern Midwest, such as Minnesota, Wisconsin, Iowa, and the Dakotas, including some years in the state of Michigan. MLI provided these services to its customers on a contract-by-contract basis, such that MLI's project locations were different every year. At no time did MLI maintain a permanent business location in Michigan or retain permanent employees in the state.

Around the mid-1990s, MLI was owned 50-50 by two siblings; when one began experiencing health issues around 2010 and no longer wished to be involved in the company business, the siblings decided to sell MLI. Notably, during the period that MLI was seeking a buyer in the summer of 2010, Enbridge Energy retained MLI to assist in the cleanup of a severe oil pipeline spill in Kalamazoo, Michigan. MLI brought minimal equipment and employees to this project, which was performed in part during the off season when the ground was frozen making it difficult to service pipelines. MLI rented most of the equipment it used and hired Michigan union employees to perform the work.

Ultimately, while the Enbridge project was still ongoing, MLI sold all its assets on March 31, 2011, including capital assets and intangible assets of receivables, retainages, cash, prepaid expenses, inventory and goodwill, to Vectren ("the Sale"). MLI elected to treat the sale of its stock as a sale of its assets under federal Internal Revenue Code 26 USC 338(h)(10). The purchase price was $80,000,000.

MLI timely filed its MBT return for the 2010 tax year, as well as its MBT return for the period before the sale, i.e., the short year between January 1, 2011 and March 31, 2011 (the Short Year). To accurately tax only Michigan business activity, the MBTA employs an apportionment formula: mainly, the MBTA determines tax liability by multiplying the taxpayer's preapportioned "tax base" by the taxpayer's "sales factor," which is the taxpayer's Michigan sales divided by sales everywhere, to arrive at the taxpayer's Michigan tax base. The tax rate is applied to this tax base. See MCL 208.1201(1); MCL 208.1301. In its return for the Short Year, MLI included the Sale in its preapportioned tax base and in the denominator of the sales factor, i.e., MLI included it in the "sales everywhere." Inclusion of the Sale in this manner resulted in a sales factor of 14.9860 percent.

In December 2014, the Department initiated an audit of MLI's MBT return for the 2010 calendar year and the Short Year between January 1, 2011 and March 31, 2011. For the Short Year, the auditor found that MLI had improperly included the gain from the Sale in the denominator of the sales factor, thereby overstating its total sales and reducing its Michigan tax liability. The auditor adjusted the sales factor by including the gain on the Sale in the preapportioned tax base but excluding it from the sales factor. This calculation increased the sales factor from 14.9860 percent to 69.9761 percent, resulting in additional tax liability. Thereafter, the Department issued an intent to assess for the tax deficiency.

MLI sent a letter to the Department asking for an informal conference and requesting alternative apportionment for the Short Year. In its request, MLI asserted that all the receipts and income from the Sale should be treated as a "sale" under MCL 208.1115(1) and should be sourced to Minnesota in the sales factor to arrive at an equitable apportionment. MLI posited that sourcing the Sale to Michigan would result in an unconstitutional distortion by sourcing to Michigan a percentage of income out of all proportion with business actually transacted in the state and also attributing the long-term gain in the company's assets to Michigan. Alternatively, MLI asked that the Sale be treated as not subject to tax, given that it is unconstitutional to tax value earned outside the state's borders. MLI explained that the Sale was not conducted in MLI's regular course of business and, therefore, was nonbusiness income. MLI pointed out that other jurisdictions treat the liquidation of business assets as cessation of business activity rather than a transaction in the regular course of business, and that the Sale should therefore be treated as nonoperational, nonbusiness income earned from a company's business activities over time.

Ultimately, the Department denied MLI's alternative apportionment request. The Department first noted that MLI's burden was to show by clear and cogent evidence that the statutory formula is distortive before alternate apportionment is allowed. The Department found that MLI had failed to meet its burden, stating:

> While you have provided detail on how the selling price was derived, you have not provided any evidence to the Department that the business activities in Michigan did not contribute to the gain realized or that the formula does not provide Michigan with an equitable allocation of income. Further, including gain in the tax base is not an unusual fact situation or one that necessarily demonstrates that application of the statutory apportionment formula does not reflect [MLI's] business activity in Michigan.

Consequently, the Department determined that MLI had not overcome the presumption that the statutory apportionment formula fairly represents MLI's business activity in Michigan for the period at issue. Soon after the denial, the Department issued its Final Assessment for the Short Year, reflecting $2,926,765.07 due including penalty and interest.

Thereafter, plaintiff filed suit in the Court of Claims, raising four counts. In Count I, plaintiff alleged that the Department's failure to include the gain from the Sale in the sales factor denominator for the Short Year results in a grossly distortive tax, as the calculation used does not fairly represent MLI's business activities in the State, and violates the Equal Protection, Due Process, and Commerce Clauses of the Constitution, mandating use of an alternative formula. In Count II, plaintiff alternatively alleged that the gain on the Sale is nonoperational, nonrecurring, nonbusiness income that should be excluded from MLI's tax base, whereas its inclusion results in taxation of extraterritorial values in violation of the Equal Protection, Due Process, and Commerce Clauses of the Constitution. Count III posited that the Department unlawfully calculated MLI's tax base by including the gain on the Sale; specifically, plaintiff alleged that under the plain language of the MBTA, the sale of shareholder's stock is not a "business activity" to be included in an S corporation's tax base and the federal method of accounting, i.e., MLI's election to treat the liquidation as a sale of assets under the Internal Revenue Code, is irrelevant. Count IV alleged that the penalty should be abated because plaintiff timely paid the tax based on reasonable interpretations of the MBTA.

The parties filed cross-motions for summary disposition. After oral argument, the Court of Claims granted summary disposition for the Department. The court determined that the Department had properly included the Sale in MLI's tax base, because the Sale qualified as "business income" within the meaning of the MBTA. In so concluding, the court rejected plaintiff's argument that the Sale does not qualify as "business income" because it cannot be "attributable" to MLI and relied heavily on the fact that the shareholders had elected to treat the Sale as a sale of all of MLI's assets under 26 USC 338(h)(10). As to MLI's request for alternative apportionment, the court, relying on *Trinova Corp v Dep't of Treasury*, 433 Mich 141; 445 NW2d 428 (1989), concluded that MLI disputed the inclusion of the Sale in its tax base, which the court stated did not concern the constitutionality of the apportionment formula. For this reason alone, the court held that "plaintiff's appeal to alternative apportionment [wa]s unavailing." As to plaintiff's contention that the tax imposed taxed extraterritorial activity, the court determined that plaintiff had failed to provide any documentary evidence in support: it viewed the historical data as merely an indication that MLI's Michigan activity was out of proportion with activity in previous years and noted that no evidence had been submitted to show that MLI's goodwill should be sourced entirely to Minnesota. Given the conclusion that plaintiff's claim of unfair apportionment was meritless, the court held that plaintiff's constitutional claims failed as well. Finally, the court rejected plaintiff's claim that the penalty should be waived because plaintiff had failed to meet its burden to justify abatement of the penalty.

Plaintiff raises several issues on appeal. We need not address all of these issues as we find one to be dispositive in plaintiff's favor. We do note, however, that we do not necessarily disagree with defendant's basic position on how to calculate the tax under the statutory formula. Its position is reasonable in light of the differing definitions of "business activity," "business income," and "sales" and how those terms are employed in calculating the tax base and applying the sales factor to apportion the sales to Michigan. But, for the reasons discussed below, we conclude that to apply the statutory formula, as defendant did, to the circumstances of this case would result in the imposition of a tax in violation of the Commerce Clause. Accordingly, allowing for an alternative formula, as plaintiff requested, would be necessary to avoid the constitutional violation.

In recognition of the difficulty in identifying purely intrastate activity when a unitary business is involved, the United States Supreme Court has not required the use of a particular formula to the exclusion of others. Rather, the Due Process and Commerce Clauses must simply be "fair," i.e., the formula must fairly determine the portion of income that can be "fairly attributed to in-state activities." *Container Corp of America v Franchise Tax Bd*, 463 US 159, 169; 103 S Ct 2933; 77 L Ed 2d 545 (1983). Fairness, in part, requires that the "choice of factors used in the formula 'must actually reflect a reasonable sense of how [the business activity] is generated." *Id*. An apportionment formula will be struck "if the taxpayer can prove "by 'clear and cogent evidence' that the income attributed to the State is in fact 'out of all appropriate proportions to the business transacted . . . in that State,' [*Hans Rees' Sons, Inc v North Carolina*, 283 US 123, 135; 51 S Ct 385; 75 L Ed 879 (1931)], or has 'led to a grossly distorted result[.]' " *Container Corp of America*, 463 US at 170.

The Michigan Legislature recognized the conundrum of allocating income to the state and, consistent with Supreme Court precedent, provided for alternative apportionment under MCL 208.1309 in the instance that the statutory formula resulted in a tax that was not fair. That provision governs the procedural and substantive requirements for seeking alternate apportionment and provides:

> (1) If the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the treasurer may require the following, with respect to all or a portion of the taxpayer's business activity, if reasonable:
>
> (a) Separate accounting.
>
> (b) The inclusion of 1 or more additional or alternative factors that will fairly represent the taxpayer's business activity in this state.
>
> (c) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.

> (2) An alternate method may be used only if it is approved by the department.
>
> (3) The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.
>
> (4) The filing of a return or an amended return is not considered a petition for the purposes of subsection (1).

Plaintiff presented clear and cogent evidence that the statutory formula, as applied, attributed business activity to Michigan "out of all appropriate proportion to the actual business activity transacted in the state," *Hans Rees' Sons*, 283 US at 135 and led to a grossly distorted result, and also operated to unconstitutionally tax extraterritorial activity. Our basis for this conclusion is, unlike many other aspects of this case, fairly straightforward. The value of the business and its assets was built up over many years and attributable to activity in many states. Indeed, much of the activity and assets involved in the Sale never had any connection to Michigan. The problem is then compounded when the Sale occurs in a time period (the Short Year) in which an unusually large percentage of the business activity occurred in Michigan. Then with the application of the statutory formula, an unreasonably large portion of the Sale is thus attributed to Michigan and taxed under the MBT. Simply put, the apportionment formula is unconstitutional as applied to MLI under the circumstances of this case.

To rebut the presumption that the statutory apportionment formula is fair, the taxpayer must show by "clear and cogent evidence" that (1) "the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or[,]" alternatively, (2) the apportionment formula "would operate unconstitutionally to tax the extraterritorial activity of the taxpayer." MCL 208.1309; *Trinova Corp*, 433 Mich at 158 (stating burden of proof).

A state may not tax more than its fair share of interstate commerce and, to be valid, a tax imposed on a business that conducts taxable activities both within and outside a state's borders must be apportioned to the activities within the state. See *Asarco, Inc v Idaho State Tax Comm*, 458 US 307, 315; 102 S Ct 3103; 73 L Ed 2d 787 (1982). However, the profitability of such modern business organizations—which take advantage of functional integration, centralization of management, and economies of scale across state borders—is tied to the business as a whole, which makes it misleading to characterize business income as having a single isolated source. *Mobil Oil Corp v Comm'r of Taxes*, 445 US 425, 438; 100 S Ct 1223; 63 L Ed 2d 510 (1980). Exact precision in apportionment, therefore, is not required, a general approximation is permitted, and a formula that incidentally taxes some out-of-state business activity is constitutionally permissible. *Moorman Mfg Co v Bair*, 437 US 267, 272; 98 S Ct 2340; 57 L Ed 2d 197 (1978). Yet, while the United States Supreme Court has not required use of a particular formula, it has required that such an apportionment formula be fair. *Container Corp of America*, 463 US at 164, 169. An apportionment formula is valid if it does not operate to unreasonably and arbitrarily attribute to the taxing state a "percentage of the total income out of all appropriate proportion to the business transactions by the taxpayer in that state." *Hans Rees' Sons, Inc*, 283 US at 135. Stated differently, a formula that has a palpably disproportionate result that patently taxes out-of-state activity will be nullified. *International Harvester Co v Evatt*, 329 US 416, 422-423; 67 S Ct 444; 91 L Ed 390 (1947).

The difficulty with these general principles is their application. In discerning whether impermissible distortion has occurred, courts are swayed by numerous factors unique to each case, making it nearly impossible to express any set of general rules as to when impermissible distortion occurs. A review of pertinent caselaw demonstrates this point, but will also aid in determining whether distortion occurred in this case.

In *Hans Rees' Sons*, the United States Supreme Court struck down a one-factor apportionment formula that was based on ownership of tangible property. *Hans Rees' Sons*, 283 US at 128-129, 135-136. The taxpayer was in the business of manufacturing leather for wholesale and retail, with warehouses in New York and its manufacturing plant in North Carolina. *Id.* at 126-127. The evidence showed that no more than 21 percent of the taxpayer's income could be attributed to the taxing state, but that between 66 and 85 percent of the taxpayer's total income had been attributed to the state. *Id.* 128, 134-135. The Supreme Court struck down the one-factor formula's application to that taxpayer because, although fair on its face, it operated "so as to reach profits which are in no just sense attributable to transactions within its jurisdiction" and unreasonably and arbitrarily attributed profits to North Carolina that were "out of all appropriate proportion to the business transaction [by the taxpayer] in the state." *Id.* at 134-136.

In *Container Corp of America*, the Supreme Court upheld a three-factor apportionment formula, which used an averaged ratio of payroll, property, and sales to apportion in-state activity, and rejected evidence intended to show systematic distortion. *Container Corp of America*, 463 US at 170, 181-182. Mainly, the taxpayer asserted that the formula failed to consider that the taxpayer's foreign subsidiaries were significantly more profitable and consequently distorted the true allocation of income. *Id.* at 181. The Court found that this argument was based on "geographical accounting," which fails to account for contributions that result from the operation of a multistate business as a whole, and that the three-factor formula had gained wide approval because "payroll, property, and sales appear in combination to reflect a very large share of the activities by which value is generated." *Id.* Further, the taxpayer had failed to demonstrate a substantial margin of error in the three-factor apportionment formula; the difference between the formula used and that advocated by the taxpayer was only a 14 percent increase, which the Court noted fell far short of the 250 percent increase in *Hans Rees' Sons*. *Container Corp of America*, 463 US at 183-184.

The Michigan Supreme Court, in *Trinova v Dep't of Treasury*, also considered whether application of the three-factor apportionment formula of Michigan's Single Business Tax Act's (SBTA), MCL 208.1 *et seq*., was constitutional. *Trinova v Dep't of Treasury*, 433 Mich at 144-147. The SBTA, which was the predecessor statute to the MBTA, imposed a value added tax on business activity in the state; the taxpayer's tax base was allocated to Michigan by multiplying the total tax base by the ratio of Michigan sales, Michigan wages, and Michigan property, to which the tax rate then applied. *Id.* at 150-153. The Court rejected the contention that wages 40 times greater than actuality and depreciation 1000 times greater than actual depreciation was evidence of an unfair apportionment "out of all appropriate proportion" to the taxpayer's actual business transactions in Michigan. *Id*. at 163-164. In so concluding, the court made clear that it could not "ignore the integrated nature of formulary apportionment," which was better suited to take account of a unitary enterprise's business activity, and rejected geographical accounting, which fails to account for contributions to business activity as a result of functional integration. *Id*. at 162. According to the Court, reliance on just two factors of the apportionment formula, by showing that they were not actually accurate, did not demonstrate distortion where the taxpayer's apportioned tax base was almost $20 million, or 9 percent of its total tax base, and where it made sales of nearly $104 million in Michigan. *Id*. at 164.

Well before *Trinova*, however, the Michigan Supreme Court struck down application of a formula that imposed a corporate franchise tax that burdened interstate commerce. *Panhandle Eastern Pipe Line Co v Michigan Corp & Securities Comm*, 346 Mich 50, 56; 77 NW2d 249 (1956). In that case, the taxpayer was a Delaware corporation engaged in the business of distributing natural gas through pipelines it owned, including pipelines it owned in Michigan. *Id*. at 51-52. The taxpayer had 7 percent of its pipeline mileage in Michigan, 5 percent of its total property in Michigan, 3.5 percent of its payroll in Michigan, and 2 percent of its operating expenses in Michigan, and its Michigan sales were around 6 percent. *Id*. at 56. In calculating the tax, the tax commission had included 50 percent of the taxpayer's interstate receipts. *Id*. In striking down that formula as an arbitrary and "unjust burden upon interstate commerce," the court simply concluded: "In our opinion it is clear that the formula used by the commission includes receipts from a business not related to plaintiff's intrastate business." *Id*.

We conclude that this is an exceptional case where the taxpayer has met its burden of providing clear and cogent evidence that the business activity attributed to it "is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result." MCL 208.1309. The statutory formula as applied, which includes 100 percent of the gain on the Sale in MLI's preapportioned tax base, includes income from the Sale that is not related to MLI's Michigan business activities. Application of the statutory formula results in an allocation of 70 percent of the gain on the Sale to Michigan, meaning approximately $38 million is attributed to MLI's business activity in the state of Michigan. While some of MLI's value can undoubtedly—and should undoubtedly—be attributed to its business activity in Michigan, the undisputed history of MLI's sales in the state is that those sales averaged around 7 percent of its total sales, are evidence that well over a majority of the value inherent in MLI stemmed, not from its activity in Michigan during the Short Year or even over the years, but from intangible assets built-up in multiple other states over time. To impose a tax on 70 percent of the gain of the Sale is not commensurate with the "protection, opportunities and benefits" that Michigan conferred on MLI, where the majority of the activities making up MLI's fair market value at the time of the Sale had occurred outside Michigan's borders. See *Wisconsin v JC Penney Co*, 311 US 435, 444; 61 D Ct 246; 85 L Ed 267 (1940). Again, by looking at the Short Year and its unusual concentration of activity in Michigan, an unconstitutional distortion is created.

Application of the statutory formula in this case runs afoul of the Due Process and Commerce Clauses, incorporated in the statute, because it does not fairly determine the portion of income from the Sale that is reasonably attributed to in-state activities. Fairness, in part, requires that the "choice of factors used in the formula 'must actually reflect a reasonable sense of how [the business activity] is generated." *Container Corp of America*, 463 US at 169. Looking only at the

Short Year does not actually and reasonably reflect how the income from the Sale was generated. As in *Hans Rees' Sons*, the statutory formula when applied in this case operates "so as to reach profits which are in no just sense attributable to transactions within its jurisdiction." *Hans Rees' Sons*, 283 US at 134.

Additionally, both the Court of Claims and the Department rely on *Trinova* to support the Department's apportionment. But *Trinova* involved the SBTA's three-factor apportionment formula. The Court effectively held that showing a distortion as to a single factor after the ratios are averaged did not impeach the basic premise of the three-factor formula, given that the business was to be viewed as a whole and that the *averaged* ratios actually reflected a reasonable sense of how the taxpayer's business activity was generated. *Trinova* is not helpful to the Department's position; that the Court accepted an actual distortion of up to 1000 times greater than actual is immaterial to this case where the three-factor apportionment formula is not at issue. Rather, the MBT uses a single factor, sales. And, unlike the three-factor formula in *Trinova*, MLI's Michigan sales alone do not reasonably reflect how the gain on the Sale was generated. *Trinova* is inapposite.

We should briefly address that argument that plaintiff did not follow the statute's procedural requirements by petitioning for alternative apportionment before filing its MBT return. Instead, it filed its return using an alternate apportionment method, including the Sale in the sales factor denominator, and only after the Department's audit removing the Sale to the tax base did MLI ask for an alternate accounting. The Department, however, entertained MLI's request at the informal level and, while pointing out the procedural irregularity in the Court of Claims, the Department did not argue that the request should be denied for failure to strictly comply with the statutory directive. The Department also did not ask for such relief before this Court. Consequently, to the extent the Department may make this argument it should be considered to have waived the procedural irregularity or to otherwise have impliedly consented to try the substantive issue of whether the tax is distortive absent compliance with the statute's procedural requirements. See *Fraser Twp v Haney (On Remand)*, ___ Mich App ___; __ NW2d ___ (Docket No. 337842, rel'd 1/21/20) (indicating that when a party fails to object to an issue raised, and the court subsequently addresses the issue absent objection, the issue is tried by implied consent). Moreover, as discussed above, if an alternative formula is not applied, the constitutional defect cannot be cured.

The Legislature anticipated that the statutory formula may present constitutional defects in particular cases, thus providing for the possibility of an alternative apportionment under § 1309. Reading this section as a whole, if a taxpayer believes the apportionment provisions unfairly represent the extent of the taxpayer's business activity in the state, the taxpayer must (1) petition to propose a "reasonable" alternative method of apportionment, which may be used only if approved by the Department; and (2) rebut the presumption that the statutory apportionment formula fairly represents the taxpayer's business activity in the state. We, however, decline plaintiff's request that we ascertain the alternate method to be employed. The statute clearly directs that this must be settled between the parties; that is, the method must ultimately be approved by the Department.

Accordingly, this matter must be returned to the Department for the determination of the appropriate alternate method to be used. We encourage the parties to engage in a good-faith collaboration to arrive at such a method. Ultimately, just as the Department may not rely on the statutory formula in this case, neither can it insist on an alternate method that does not cure the constitutional defect by continuing to attribute out-of-state revenue to Michigan. And if plaintiff believes that the method ultimately adopted by the Department is constitutionally flawed, it may renew its challenges.

The trial court's decision is reversed and the tax assessment and penalty in this case are vacated. The matter is remanded for the parties to determine an alternate method of apportionment. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ Jonathan Tukel
/s/ David H. Sawyer
/s/ Michael J. Riordan

MSC Order, 11/25/2020

Order

Michigan Supreme Court
Lansing, Michigan

November 25, 2020

Bridget M. McCormack,
Chief Justice

David F. Viviano,
Chief Justice Pro Tem

Stephen J. Markman
Brian K. Zahra
Richard H. Bernstein
Elizabeth T. Clement
Megan K. Cavanagh,
Justices

161422

VECTREN INFRASTRUCTURE SERVICES
CORP., successor-in-interest to MINNESOTA
LIMITED, INC.,
Plaintiff-Appellee,

v

SC: 161422
COA: 345462
Ct of Claims: 17-000107-MT

DEPARTMENT OF TREASURY,
Defendant-Appellant.

____/

On order of the Court, the application for leave to appeal the March 12, 2020 judgment of the Court of Appeals is considered and, pursuant to MCR 7.305(H)(1), in lieu of granting leave to appeal, we VACATE the Court of Appeals judgment and we REMAND this case to the Court of Appeals to address the plaintiff's arguments regarding the proper method for calculating the business tax due under the statutory formula. See MCL 208.1201; MCL 208.1301(2). This foundational issue must be addressed before determining that MCL 208.1309 requires application of an alternative method of apportionment.

We do not retain jurisdiction.

SEAL OF THE MICHIGAN SUPREME COURT · LANSING · DISCITE JUSTITIAM MONITI

s1124

I, Larry S. Royster, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

November 25, 2020

Clerk

Court of Appeals, State of Michigan

ORDER

Vectren Infrastructure Services Corp v Department of Treasury

Docket No. 345462

LC No. 17-000107-MT

Jonathan Tukel
Presiding Judge

David H. Sawyer

Michael J. Riordan
Judges

The Supreme Court, in lieu of granting leave, vacated our judgment, *Vectren Infrastructure Services Corp v Dep't of Treasury*, 331 Mich App 568; 953 NW2d 213 (2020), and remanded the matter to this Court "to address the plaintiff's arguments regarding the proper method for calculating the business tax due under the statutory formula." *Vectren Infrastructure Services Corp v Dep't of Treasury*, ___ Mich ___; 950 NW2d 746 (2020), *slip op* at 1. The Supreme Court concluded that this "foundational issue must be addressed before determining that MCL 208.1309 requires application of an alternative method of apportionment." *Id.*

The parties agree that the Court of Claims never ruled on Count I of plaintiff's first amended complaint and that the issue had been properly preserved. Given the complicated nature of the issue involved, and our view that it is typically preferred that a trial court be given the opportunity to address an issue before this Court does so, we REMAND the matter to the Court of Claims to consider and decide the issue raised in Count I of plaintiff's first amended complaint. The proceedings on remand are limited to this issue.

Proceedings on remand shall commence within 56 days of the Clerk's certification of this order, and they shall be given priority on remand until they are concluded. The parties shall promptly file with this Court a copy of all papers filed on remand. Within seven days after entry, plaintiff-appellant shall file with this Court copies of all orders and/or opinions entered on remand.

We retain jurisdiction.

Jonathan Tukel
Presiding Judge

COURT OF APPEALS OF THE STATE OF MICHIGAN
E PLURIBUS UNUM
TUEBOR
SI QUAERIS PENINSULAM AMOENAM
CIRCUMSPICE
1965

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

April 19, 2021
Date

Jerome W. Zimmer Jr.
Chief Clerk

STATE OF MICHIGAN

COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES CORP., successor-in-interest to MINNESOTA LIMITED, INC.,	**OPINION AND ORDER**
Plaintiff,	
v	Case No. 17-000107-MT
DEPARTMENT OF TREASURY, STATE OF MICHIGAN,	Hon. Colleen A. O'Brien
Defendant. _____________________________/	

This matter is back before the Court on remand from the Court of Appeals. The Court of Appeals has directed this Court to decide the issues raised in Count I of plaintiff's first amended complaint. Having done the same, the Court concludes that defendant is entitled to judgment as a matter of law on Count I. This matter is being decided without oral argument under Local Rule 2.119(A)(6).

I. BACKGROUND

The pertinent facts of this case are set forth in this Court's prior opinion and order as well as in the opinion of the Court of Appeals, see *Vectren Infrastructures Services Corp v Dep't of Treasury*, 331 Mich App 568; 953 NW2d 213 (2020), vacated 506 Mich 964 (2020). This opinion will only briefly set forth pertinent facts for purposes of providing context. In short, this matter arises out of the Michigan Business Tax (MBT) return for the 2011 short year for Minnesota

Limited Inc. (MLI). In March 2011 the shareholders of MLI sold their shares to plaintiff and treated the sale as an asset sale under 26 USC 338(h)(10).

The issue before the Court concerns the treatment of the sale as it was reported on MLI's 2011 short year MBT return. The Michigan Business Tax Act (MBTA) "levied and imposed a business income tax on every taxpayer with business activity within this state . . . ." MCL 208.1201(1). For a taxpayer whose business activities were subject to tax within this state and outside this state, MCL 208.1301(2) provides that the taxpayer's tax base "shall be apportioned to this state by multiplying each tax base by the sales factor calculated under [MCL 208.1303]." The "sales factor" to be used in this calculation "is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year." MCL 208.1303(1). Finally, if "the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the treasurer may require" alternative apportionment approved by defendant. MCL 208.1309(1).

In MLI's MBT return for the 2011 short year, it included the stock sale in its tax base and in the denominator of the sales factor, reflecting that the sale was part of the "everywhere" sales. On audit, defendant rejected this approach, as the auditor determined that MLI should not have included the sale in the sales factor denominator. The auditor removed the sale from the "everywhere" sales, but left the sale in MLI's business income.

The disagreement regarding MLI's MBTA liability led to plaintiff filing a complaint—and later a first amended complaint—in this Court. The first amended complaint raised four counts, only one of which is at issue at the present time. Count I was entitled "Apportionment Without

Factor Representation Under MCL 208.1309 Unconstitutionally Violates the Commerce and Due Process Clause." This count alleges in ¶¶ 31-34 that plaintiff should have been allowed to use an alternative apportionment formula under MCL 208.1309 because, even if the state's statutory apportionment formula were "generally appropriate," it could nevertheless result in unconstitutional application in cases where it led to a "grossly distorted result." In ¶ 36, plaintiff alleges that if the sale was properly classified as having been derived from plaintiff's business activities in this state, then the sale "must be the sale of business assets." In ¶ 37-38, plaintiff alleged that the sale of stock and assets meet the definition of "sales" that should be included in the sales factor denominator under MCL 208.1115 because plaintiff sold stock in trade or other property that would be considered inventory. And in ¶¶ 39-40, plaintiff alleged that the accrued value realized in the sale should be sourced to Minnesota, rather than to Michigan. Plaintiff alleges that apportionment without inclusion of the assets in the sales factor denominator disproportionately attributed long-term gain to Michigan that was out of all appropriate proportion. Plaintiff alleges that application of the statutory formula violates the Due Process and Commerce Clauses of the United States Constitution because it did not produce fair apportionment. As a result, plaintiff alleged that, "pursuant to MCL 208.1309, [it] is allowed and entitled to an alternative apportionment method which includes the gain on the sale of its stock in the denominator of the sales factor . . . ."

In light of these allegations, particularly those raising constitutional concerns and the request for alternative apportionment, the Court originally decided Count I by analyzing the constitutional issues and the request for alternative apportionment. *Vectren Infrastructure Servs Corp v Dep't of Treasury (Vectren I)*, opinion and order of the Court of Claims, issued August 14, 2018 (Docket No. 17-000107-MT). The Court rejected both contentions. *Id*. at pp. 7-12.

On appeal, the Court of Appeals remarked that it did "not necessarily disagree with the Department's basic position on how to calculate the tax under the statutory formula." *Vectren Infrastructure Servs Corp v Dep't of Treasury (Vectren II)*, 331 Mich App 568, 576; 953 NW2d 213 (2020). The panel remarked that defendant's position regarding the statutory formula was "reasonable in light of the differing definitions of 'business activity,' 'business income,' and 'sales' and how those terms are employed in calculating the tax base and applying the sales factor to apportion the sales to Michigan." *Id.* However, the panel reversed because it concluded that application of the statutory formula in this case "would result in the imposition of a tax in violation of the Commerce Clause." *Id.* As a result, the panel held that "allowing for an alternate formula, as plaintiff requested, is necessary to avoid the constitutional violation." *Id.* The panel remanded to this Court "for the parties to determine an alternate method of apportionment." *Id.* at 586.

On application for leave to appeal, the Supreme Court vacated the decision of the Court of Appeals and remanded for the Court of Appeals "to address the plaintiff's arguments regarding the proper method for calculating the business tax due under the statutory formula." *Vectren Infrastructures Servs Corp v Dep't of Treasury (Vectren III)*, 506 Mich 964; 950 NW2d 746 (2020). According to the Supreme Court's remand order, "[t]his foundational issue must be addressed before determining that MCL 208.1309 requires application of an alternative method of apportionment." *Id.*

Following remand from the Supreme Court, the Court of Appeals declared that this Court "never ruled on Count I of plaintiff's first amended complaint" and remanded for this Court "to consider and decide the issues raised in Count I of plaintiff's first amended complaint." *Vectren Infrastructure Servs Corp v Dep't of Treasury*, unpublished order of the Court of Appeals, entered

April 19, 2021 (Docket No. 345462). The order declared that "the proceedings on remand are limited to this issue." *Id.*

While Count I of plaintiff's first amended complaint covered a variety of issues, some of which this Court did in fact rule on—such as alternative apportionment and plaintiff's constitutional claims—the Court will nevertheless interpret the remand order as requiring it to examine the "foundational issue" identified in the Michigan Supreme Court's remand order. That is, the Court will consider arguments regarding the proper method for calculating the business tax due under the statutory formula.

II. PARTIES' ARGUMENTS ON REMAND

Plaintiff's brief on remand spends time arguing matters outside the scope of the remand order, such as arguing that the Court of Appeals reached the correct conclusion when it resorted to alternative apportionment. Plaintiff also argues that defendant incorrectly included the gain from the sale of MLI in MLI's tax base; the Court decided this issue in defendant's favor in the original opinion and order and it is outside the scope of the Court's remand order as well. And while labeling its position on page 10 of its brief as an argument asserted "In the alternative," plaintiff disputes defendant's calculation of the statutory formula. Plaintiff argues that defendant incorrectly applied the statutory formula because it failed to accurately define "sales" in computing MLI's sales factor. According to plaintiff, defendant improperly excluded the receipts of the sale of MLI from the denominator of MLI's sales factor. Plaintiff cites ¶¶ 36-40 of its first amended complaint as well as certain information provided in response to discovery requests and argues that defendant improperly excluded the sale from the denominator of the sales factor. Plaintiff asserts that these items, particularly its discovery requests, shows that it sold assets in the ordinary course of business that should be included as "sales" under MCL 208.1115. Plaintiff also argues that when defendant removed the sale from MLI's sales factor denominator, the sales factor failed to reflect how the income in the apportionable tax base was generated. Plaintiff argues that if the Court determines that the sale is business income then the sale must also be included in the denominator of the sales factor. Plaintiff argues that it is inconsistent and contrary to constitutional principles of taxation to include the sale in business income while at the same time excluding it from the denominator of the sales factor.

Defendant argues that the only issue that this Court can address on remand is whether the sale of MLI's business and assets was a "sale" for purposes of determining the statutory sales apportionment factor denominator. Defendant argues that the MLI sale should be excluded from the sales factor denominator because there were no "sales" as defined by the MBTA. A "sale" under MCL 208.1115(1)(a) of the MBTA refers to stock in trade held in inventory for sale in the regular course of business. Defendant argues that the sale of MLI's business does not fit this statutory definition. Defendant also argues that the "sales" plaintiff noted in some of its discovery responses were sales of depreciable assets, which are not "inventory" under the MBTA. Additionally, defendant argues that plaintiff did not demonstrate that MLI sold assets held primarily for sale to customers in the ordinary course of business. Hence, defendant argues that nothing about the MLI sale qualifies as a "sale" under the MBTA's definition of that term.

III. ANALYSIS

This Court's sole task on remand is, consistent with the appellate courts' remand orders, to address the proper method for calculating the amount of tax due under the MBTA's statutory formula. As noted, the Michigan Business Tax Act (MBTA) "levied and imposed a business income tax on every taxpayer with business activity within this state . . . ." MCL 208.1201(1). For a taxpayer whose business activities were subject to tax within this state and outside this state, MCL 208.1301(2) provides that the taxpayer's tax base "shall be apportioned to this state by multiplying each tax base by the sales factor calculated under [MCL 208.1303]." The "sales factor" to be used in this calculation "is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year." MCL 208.1303(1).

The issue on remand is whether the sale of MLI should be included in the denominator of the sales factor. The denominator is "the total sales of the taxpayer everywhere during the tax year." MCL 208.1303(1). A "sale" under the MBTA is, in pertinent part, defined as:

> The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property. [MCL 208.1115(1)(a).]

The first question the Court must address is whether the sale of MLI, which was treated as a sale of assets pursuant to the parties' elections under federal law, is a "sale" as defined by MCL 208.1115(1)(a). As defendant points out, plaintiff's December 7, 2018 brief filed on appeal from this Court's original opinion and order admitted on page 32 n 22 that "the statutory formula does not provide for inclusion of the Sale proceeds in the sales factor." Nor is the word "inventory" defined so broadly as to include the sale of the entirety of MLI's business. See MCL 208.1111(4). Indeed, the sale of MLI was the sale of the entire business, not just any inventory held—or not held, as defendant's evidence would suggest—by MLI. The statute's reference to inventory held by a taxpayer anticipates that a "sale" under the MBTA is something less than the sale of the taxpayer's entire business. Accordingly, the plain language of the MBTA does not support inclusion of the sale in the denominator of the sales factor formula.

Furthermore, the evidence produced in this case does not support the notion that MLI held or sold property that would be considered "inventory" or that the MLI sale should be included in the sales factor denominator. The MBTA defines "inventory" in pertinent part as:

> (a) The stock of goods held for resale in the regular course of trade of a retail or wholesale business, including electricity or natural gas purchased for resale.
>
> (b) Finished goods, goods in process, and raw materials of a manufacturing business purchased from another person. [MCL 208.1111(4)(a)-(b).]

Inventory does not, however, include "Property allowed a deduction or allowance for depreciation or depletion under the internal revenue code." MCL 208.1111(4)(e)(*ii*). Here, plaintiff points to its supplemental discovery responses as proof that MLI sold "inventory." However, the Court agrees with defendant's assessments that the equipment listed in those discovery responses was depreciable assets, i.e., the type of assets that are expressly excluded from the definition of "inventory" under the MBTA. Indeed, the discovery responses—which were attached to both parties' briefing—include depreciation schedules for equipment plaintiff used in its business. MLI's sales of used equipment that was allowed a deduction for depreciation cannot be considered "inventory." See MCL 208.1111(4)(e)(*ii*). Likewise, the Form 4797 attached to defendant's briefing, on which the sales were reported to the Internal Revenue Service, shows that the overwhelming majority of the assets sold were depreciable assets. Thus, the record does not support the contention that MLI sold "inventory." And if MLI did not sell "inventory," then sales of any equipment cannot be considered "sales" when determining the sales factor denominator. See MCL 208.1115(1)(a) (defining the term "sale" under the MBTA).

Nor does the record support that MLI sold any property that was held primarily for sale to customers in the ordinary course of MLI's trade or business. Cf. MCL 208.1115(1)(a). The documentary evidence in this case, as noted in the prior opinions and order, described MLI as being engaged in the business of construction and maintenance of oil and gas pipelines, as well as providing HAZMAT response. The sales of equipment came only after MLI used the equipment, as illustrated by the depreciation schedules. The used equipment was not held primarily for sale to customers, such that the sale of any equipment by MLI does not constitute a "sale" under MCL 208.1115(1)(a).

In sum, plaintiff's attempt to characterize the sale of MLI and its assets as a sale of stock in trade or inventory is not supported by the record, and plaintiff has not demonstrated that the sale should be included in the sales factor denominator. This conclusion is unchanged by the brief mention in the complaint to MCL 208.1115(1)(c). As noted, plaintiff's briefing cites ¶¶ 36-40 of its first amended complaint in support of its position regarding the calculation of the statutory formula. Paragraph 39 of the first amended complaint states, with no explanation, that "Receipts and income from the use of intangible property is also considered a 'sale' under MCL 208.1115(1)(c). MCL 208.1115(1)(c) includes within the definition of a "sale" under the MBTA: "The rental, lease, licensing, or use of tangible or intangible property, including interest, that constitutes business activity." Here, plaintiff has not identified any "rental, lease, licensing, or use" of tangible or intangible property. Nor is it apparent plaintiff's briefing expressly addressed MCL 208.1115(1)(c).

Finally, the Court rejects plaintiff's argument that the sale must be included in the sales factor denominator for the reason that it was also included in MLI's business activity. Plaintiff argues that, if the sale is included in business activity, it must be included in the sales factor denominator, in order to result in consistent treatment of the sale. This argument finds no merit under the statutory formula. Plaintiff assumes that, if something is included in the taxpayer's business activity under MCL 208.1301, it must also be a "sale" under MCL 208.1115. However, plaintiff has not offered a meaningful argument under the plain language MBTA as to why this is the case. And where the Court of Appeals' remand order did not instruct this Court to revisit its prior decision regarding the inclusion of the sale in MLI's business activity, the Court will not consider it. See *Int'l Bus Machines, Corp v Dep't of Treasury*, 316 Mich App 346, 350; 891 NW2d 880 (2016) ("When an appellate court remands a case with specific instructions, it is improper for a lower court to exceed the scope of the order") (citation and quotation marks omitted). Furthermore, where the sale of MLI's stock and assets does not fit within the plain language of the MBTA's definition of "sale," the Court cannot deviate from the statute's plain language. See *In re Complaint of MCTA*, 241 Mich App 344, 373-374; 615 NW2d 255 (2000) (discussing statutory interpretation).

IV. CONCLUSION

IT IS HEREBY ORDERED that summary disposition is GRANTED to defendant on Count I of plaintiff's complaint.

This is a final order that resolves the last pending claim and closes the case.

May 25, 2021

Colleen A. O'Brien

Colleen A. O'Brien
Judge, Court of Claims

If this opinion indicates that it is "FOR PUBLICATION," it is subject to revision until final publication in the Michigan Appeals Reports.

STATE OF MICHIGAN

COURT OF APPEALS

VECTREN INFRASTRUCTURE SERVICES CORP., successor-in-interest to MINNESOTA LIMITED, INC.,	FOR PUBLICATION September 30, 2021 9:10 a.m.
Plaintiff-Appellant,	
v	No. 345462 Court of Claims LC No. 17-000107-MT
DEPARTMENT OF TREASURY,	
Defendant-Appellee.	

ON REMAND

Before: TUKEL, P.J., and SAWYER and RIORDAN, JJ.

PER CURIAM.

This matter is again before us following a remand by the Supreme Court. The facts of this case are set out in our original opinion and need not be repeated here. *Vectren Infrastructure Services Corp v Dep't of Treasury*, 331 Mich App 568; 953 NW2d 213 (2020). Following the Supreme Court's remand, we determined that, in order to fully comply with the Supreme Court's directions on remand, we must ourselves first remand the matter to the trial court. We did so, and the trial court fully addressed the issue on remand.

In our original opinion, we concluded that:

> Application of the statutory formula in this case runs afoul of the Due Process and Commerce Clauses, incorporated in the statute, because it does not fairly determine the portion of income from the Sale that is reasonably attributed to in-state activities. Fairness, in part, requires that the choice of "factors used in the apportionment formula must actually reflect a reasonable sense of how [the business activity] is generated." *Container Corp of America* [463 US 159, 169; 103 S Ct 2933; 77 L Ed 2d 545 (1983)]. Looking only at the Short Year does not actually and reasonably reflect how the income from the Sale was generated. As in *Hans Rees' Sons*[*, Inc v North Carolina*, 283 US 123, 134; 51 S Ct 385; 75 L Ed

> 879 (1931), the statutory formula when applied in this case operates "so as to reach profits which are in no just sense attributable to transactions within its jurisdiction." [*Vectren*, 331 Mich App at 578.]

Defendant filed an application for leave to appeal to the Supreme Court, which in lieu of granting leave, vacated our judgment and remanded the matter to this Court "to address the plaintiff's arguments regarding the proper method for calculating the business tax due under the statutory formula." *Vectren Infrastructure Services Corp v Dep't of Treasury*, 506 Mich 964; 950 NW2d 746 (2020). The Court concluded that this "foundation issue must be addressed before determining that MCL 208.1309 requires application of an alternative method of apportionment." *Id.*

Our directions to the trial court in our remand order was to address Count I of plaintiff's first amended complaint. In a nutshell, the trial court's task on remand was to answer the question posed by the Supreme Court's remand order, namely what is the proper method under the statutory formula to calculate the tax due. More specifically, the key question addressed by the trial court on remand is whether the sale of the business should have been included in the sales factor of the statutory formula. Under MCL 208.1303(1), the sales factor is "a fraction, numerator of which is the total sales of the taxpayer in this state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year."

In a detailed analysis, the trial court determined that the definition of "sale" under MCL 208.1115(1)(a) would not include the sale of the business, Minnesota Limited, Inc. (MLI).[1] The trial court particularly drew attention to the use of the word "inventory" in the statute. After an extensive analysis, the trial court concluded that the sale of an entire business would not be equivalent to the sale of inventory. In particular, the trial court noted that the sale of the assets of MLI included equipment for which there was a depreciation allowance under the internal revenue code, which MCL 208.1111(4)(e)(ii) excludes from the definition of "inventory."[2] Thus, the trial court rejected plaintiff's argument that the sale of MLI constituted "a sale of stock in trade or inventory" and concluded that it could not be included in the sales factor denominator.

The trial court then addressed plaintiff's argument that the sale must be included in the sales factor denominator because it is included in the calculation of plaintiff's business activity. While this would seem to be a very logical and compelling argument, it fails, as the trial court

[1] MCL 208.1115(1)(a) provides in pertinent part:

> The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property.

[2] Indeed, the trial court noted "the overwhelming majority of the assets sold were depreciable assets."

pointed out, because of the differing definitions employed in the statute.[3] Simply put, the definition of "business activity" under MCL 208.1105 is broader than the definition of the sales factor denominator. Indeed, we made brief reference to this in our original opinion, and that is what lead us to conclude that applying the statutory formula to this case resulted in a constitutional violation:

> We do note, however, that we do not necessarily disagree with the Department's basic position on how to calculate the tax under the statutory formula. Its position is reasonable in light of the differing definitions of "business activity," "business income," and "sales" and how those terms are employed in calculating the tax base and applying the sales factor to apportion the sales to Michigan. But, for the reasons discussed below, we conclude that to apply the statutory formula, as the Department did, to the circumstances of this case would result in the imposition of a tax in violation of the Commerce Clause. Accordingly, allowing for an alternate formula, as plaintiff requested, is necessary to avoid the constitutional violation. [331 Mich App at 576.]

With the trial court now having fully addressed this fundamental issue, we conclude the trial court correctly determined that the proper interpretation of the relevant statutes supports defendant's application of the statutory formula and, like the trial court, we reject plaintiff's challenges to it. Having resolved the question posed to us by the Supreme Court, that brings us back to our conclusion in our original opinion. Our original opinion was essentially based upon assuming that plaintiff's challenges to the determination of the proper calculation of the tax under the statutory formula were without merit. We have now rejected plaintiff's challenges to the proper method of calculating the tax under the statutory formula.

This reaffirms the conclusion that we reached in our original opinion: that the application of the statutory formula to this case constitutes a constitutional violation. We adopt the analysis in our original opinion regarding the constitutional defect present in the case in applying the statutory formula under the facts of this case to calculate the tax owed. An alternate method of apportionment must be adopted. We again vacate the tax assessment and penalty in this case. We remand the case to the trial court with directions to determine an appropriate alternate apportionment method if the parties are unable to agree upon one.

[3] The trial court did not delve deeply into this issue, quite properly, because it was outside the scope of the remand. In any event, the definition of "business activity" under MCL 208.1105(1), which includes "a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible . . ." is sufficiently broad so as to include the sale of the business and, therefore, the sale of MLI would be included in plaintiff's business activity and business income for the determination of the tax. As for plaintiff's additional argument that including the sale of the business in the tax base, but not in the sales factor, is impermissibly inconsistent, that is a large contributing factor, at least in the context of this case, to our conclusion that this represents a constitutional violation.

Reversed and remanded for further proceedings consistent with this opinion and our original opinion. We do not retain jurisdiction. No costs.

/s/ David H. Sawyer
/s/ Michael J. Riordan

TUKEL, J., did not participate.

2012 WL 6034315
Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

UNPUBLISHED
Court of Appeals of Michigan.

SIDNEY FRANK IMPORTING COMPANY, INC.,
Petitioner–Appellant,
v.
DEPARTMENT OF TREASURY,
Respondent–Appellee.

Docket No. 306742.
|
Dec. 4, 2012.

Tax Tribunal; LC No. 00–383623.

Before: BORRELLO, P.J., and FITZGERALD and OWENS, JJ.

Opinion

PER CURIAM.

***1** Petitioner appeals by right from a Michigan Tax Tribunal (MTT) opinion and order that granted summary disposition in favor of respondent. On appeal, petitioner argues that the MTT erred in finding that: (1) the transaction at issue was not a "sale" under MCL 208.7(1)(a); (2) petitioner waived its right to relief under MCL 208.69; (3) petitioner was not entitled to relief under MCL 208.69, and; (4) the application of Michigan tax law to petitioner in this case was not unconstitutional. We affirm in part, reverse in part, and remand.

I. BASIC FACTS AND PROCEDURAL HISTORY

Petitioner initiated the proceedings in this case by filing a petition in the MTT on February 23, 2010. Respondent filed a response in opposition. The parties stipulated to the following facts which were adopted by the tribunal:

> 1. Petitioner is a New York corporation whose principal office is located at 20 Cedar Street, Suite 203, New Rochelle, New York 10801.
>
> 2. Respondent, Michigan Department of Treasury (the "Respondent"), is a department of the State of Michigan, and is the governmental authority responsible for administering the Single Business Tax ("SBT") Act, MCL § 208.1 et. seq., now repealed, and the taxes that were applicable for the year at issue which are the subject of this Petition.
>
> 3. Petitioner's federal employer identification number is XX–XXX7884.
>
> 4. Petitioner is classified as an S Corporation for federal and state income tax purposes.
>
> 5. Petitioner filed its 2004 SBT return.
>
> 6. Petitioner also filed an amended 2004 SBT return on or about October 16, 2007. The tax return was amended to reflect an adjustment by the Internal Revenue Service to Petitioner's 2004 federal income tax return, which adjustments were unrelated to the Grey Goose transaction and the issues involved in this controversy.
>
> 7. Petitioner's initial and amended 2004 SBT returns reflected the gain on the sale of Petitioner's assets related to the Grey Goose vodka product line, as described in more detail below.
>
> 8. Respondent audited Petitioner's 2004 SBT return, utilizing Petitioner's amended return as a basis for the audit (the amended return is hereinafter referred to as the "Tax Return").
>
> 9. Petitioner disagreed with Respondent's Audit Determination.
>
>> 10. Respondent issued its Bill for Taxes Due ("Intent to Assess") number R498688 on or about November 10, 2009.
>>
>> 11. Following receipt of the Intent to Assess, on or about November 20, 2009, Petitioner sent checks to Respondent for the purpose of paying the taxes and

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

interest reflected in the Intent for all years other than the 2004 tax year.

12. Respondent issued its Final Bill for Taxes Due ("Final Assessment") Number R498688 (the "Assessment") on or about January 19, 2010. Although Petitioner previously sent the checks, the Assessment continued to reflect taxes and interest for 2005, 2006 and 2007. Petitioner and Respondent are continuing their efforts to resolve the payment issue for 2005–2007 and will supplement this Stipulation when the issue is resolved.

***2** 13. Petitioner appealed the Assessment upon the commencement of this action by the filing of its Petition on February 23, 2010.

14. Petitioner is an importer and distributor of wines and spirits. Petitioner's business activity in Michigan is limited solely to sales of wine and spirits—primarily to the Michigan Liquor Control Commission.

15. Petitioner maintains no business locations within the State. Petitioner does maintain inventory stock at its Michigan broker's location in Highland Park, Michigan.

16. In addition to its business activities of importing and distributing liquors, Petitioner also owned trade names or licenses to produce and sell several of the brands it sold, including Grey Goose vodka.

17. Prior to 2004, Petitioner owned the exclusive rights to trademark and license a product line known as Grey Goose vodka.

18. Unlike other products imported and distributed by Petitioner that were produced by unrelated third-party producers, Grey Goose vodka was produced by Petitioner's affiliate, Grey Goose SAS ("SAS"). SAS was a French company that produced, shipped, and owned the manufacturing plant for Grey Goose vodka.

19. Petitioner's ownership of SAS was through an intermediate holding company known as Grey Goose Bottling Co., LLC ("GGB"), a Delaware limited liability holding company that owned 100% of SAS.

20. SAS produced Grey Goose vodka in France and shipped it to Petitioner, its sole customer in the United States.

21. Petitioner sold Grey Goose vodka products to its customers, liquor and beverage distributors within Michigan and elsewhere in the United States.

22. Petitioner's involvement with the Grey Goose line of business was completely different and functionally unique from all of Petitioner's other business activities.

23. Grey Goose represented the first and only product line developed and manufactured by Petitioner, and the only aspect of its activities that was handled through the use of separate companies and entities.

24. In 2004, pursuant to an Asset Purchase Agreement among Petitioner, SAS and the purchaser, Bacardi, Limited, Petitioner sold all of its tangible and intangible assets relating to the Grey Goose vodka product line, including inventory and all intellectual property rights relating to the production, distribution, and marketing of the Grey Goose vodka. (The "Grey Goose Transaction.")

25. In 2004, as part of the same transaction, Petitioner's affiliate, SAS, also sold its respective assets to the purchaser, Bacardi, Limited.

26. The adjusted purchase price paid by purchaser to the selling entities was $2,278,588,589. Of this amount, $2,144,993,971 was paid to Petitioner and allocated by Petitioner and the purchaser as follows:

Finished inventory in France	$12,010,430
Dry goods—gin	$658,579

Prepaid—media	$3,127,589
Prepaid—sponsorships	$461,000
Inventory in USA	$9,110,778
Intangible and intellectual property	$2,119,625,596
Total	**$2,144,993,971**

***3** 27. The Grey Goose Transaction was the largest financial transaction in the Petitioner's history.

28. Upon information and belief, the Grey Goose Transaction was one of the largest transactions in the history of the liquor industry.

29. Petitioner recognized a substantial gain from the transaction, which gain was included in Petitioner's federal income tax return as taxable income, and consequently included by Petitioner in its tax base for its 2004 Tax Return.

30. In addition to including more than $2 billion of gain in its SBT tax base for the 2004 tax year, Petitioner reflected the sale from the transaction in the denominator of the sales factor portion of the apportionment formula used to apportion Petitioner's tax base among Michigan and other states in which Petitioner was taxable.

31. For federal income tax purposes, the gain reflected on Petitioner's federal income tax return, Form 1120S, was allocated to its shareholders in accordance with their percentage ownership interests in Petitioner.

32. Petitioner's shareholders also reflected the gain in their 2004 federal and resident state individual income tax returns on an unapportioned basis.

33. To the extent that Petitioner had nexus with various states that imposed an individual income tax, Petitioner's shareholders reflected the gain in their 2004 nonresident state individual income tax returns for the entire gain allocated to each shareholder, which was then allocated or apportioned to each state in accordance with that state's allocation or apportionment rules. The shareholders filed such returns in approximately 35 states. Petitioner agrees to provide summaries of such returns, or copies of the returns, if available, upon the request of Respondent or the Tribunal.

34. In its 2004 SBT return, Petitioner reported total sales in Michigan (sales of products distributed by it) of $18,754,142 over total sales everywhere of $2,542,422,073.

35. With respect to the 2004 calendar year, Respondent recalculated the denominator of the sales factor by removing the proceeds of the Grey Goose sale.

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

> 36. Specifically, Respondent removed $2,176,474,888 from the denominator of sales factor, recalculating the total Michigan sales of $18,754,142 over a 2004 sales denominator of $365,947,185, which increased the 2004 Michigan sales factor apportionment percentage from 0.7376% to 5.1248%, and the overall Michigan apportionment percentage from 0.8891% to 4.8376%.
>
> 37. Respondent's audit adjustment, as reflected in the Assessment, ultimately increased Petitioner's Michigan tax base by $50,228,911, to $61,539,162, and resulted in an asserted tax increase of $858,914, plus additional interest.
>
> 38. If Petitioner prevails on the legal issues relating to the determination of the sales factor of the apportionment formula, the Assessment should be cancelled in full.
>
> 39. Paragraphs 11 and 12 of the Stipulated Facts are hereby modified to reflect that the payments made by Petitioner for the 2005–2007 years have been accepted by Respondent and discharge all outstanding liability for those years. Respondent has issued a corrected Final Assessment, which reflects only the amount assessed for 2004 with respect to the Grey Goose transaction and apportionment issues.

***4** Petitioner filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Respondent filed a brief in opposition and filed a motion for summary disposition pursuant to MCR 2.116(C)(10) and MCR 2.116(I)(2). The tribunal issued a written opinion and order that denied petitioner's motion, granted respondent's motion for summary disposition pursuant to MCR 2.116(C)(10), and affirmed Assessment No. R498688. Petitioner now appeals.

II. STANDARD OF REVIEW

An MTT grant of summary disposition pursuant to MCR 2.116(C)(10) is subject to review de novo. *Paris Meadows, LLC v. City of Kentwood,* 287 Mich.App 136, 141; 783 NW2d 133 (2010). The proper interpretation and application of statutory language is a question of law also subject to review de novo. *Id.*

III. THE GREY GOOSE TRANSACTION

The SBTA, now repealed,[1] was a modified value-added tax that imposed a specific tax on the adjusted tax base of every person with business activity in Michigan after that activity was allocated or apportioned to Michigan. MCL 208.31(1); *ANR Pipeline Co v. Dep't of Treasury,* 266 Mich.App 190, 198–199; 699 NW2d 707 (2005). The SBTA defined "business activity" as follows:

> "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but shall not include the services rendered by an employee to his employer, services as a director of a corporation, or a casual transaction. Although an activity of a taxpayer may be incidental to another or other of his business activities, each activity shall be considered to be business engaged in within the meaning of this act. [MCL 208.3(2).]

The applicable tax base was defined as "business income, before apportionment or allocation." MCL 208.9(1). Business income for an S corporation, such as petitioner, was defined as federal taxable income as defined by section 63 of the internal revenue code. MCL 208.3(3); MCL 208.5(3). Taxpayers that conducted business both inside and outside of Michigan were taxed based on the portion of their business activity apportioned to Michigan by means of formulas provided in the SBTA. MCL 208.41. The apportionment was calculated by multiplying petitioner's tax base by a percentage, calculated as the sum of the percentages of the property factor, payroll factor, and sales factor. MCL 208.45. These three factors are fractions, calculated as the portion of property, payroll, or sales within Michigan, divided by the total property, payroll, or sales of the taxpayer worldwide. MCL 208.46; MCL 208.49;

208.51. "The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer everywhere during the tax year." MCL 208.51(1). For the year 2004, the SBTA provided 90% weighting to the sales factor, with 5% weighting applied to both the property and payroll factor. MCL 208.45a(1).[2]

***5** Petitioner argues that the amount received in the Grey Goose transaction should be included in the sales factor denominator. Respondent disagrees. As a result, petitioner's proposed sales factor is 0.8891% and respondent's 4.8376%. Therefore, the issue in this case is whether the Grey Goose transaction constituted a "sale" and was thus required to be included in the denominator of the sales factor.

The SBTA defined "sale" as follows:

> (a) "Sale" or "sales" means the amounts received by the taxpayer as consideration from the following:
>
> (*i*) The transfer of title to, or possession of, property that is stock in trade or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business.
>
> (*ii*) The performance of services, which constitute business activities other than those included in subparagraph *(i),* or from any combination of business activities described in this subparagraph and subparagraph *(i).*
>
> (*ii*) The rental, lease, licensing, or use of tangible or intangible property which constitutes business activity. [MCL 208.7(1)(a)(*i*)-(*iii*).]

Petitioner argues only that the transaction constituted a sale under MCL 208.7(1)(a)(*iii*) as a "use of intangible property which constitutes business activity." Respondent argues that MCL 208.7(1)(a)(*iii*) applies only to "transactions where the taxpayer allows a person to possess and use the property, and not sales that transfer title and possession of the property."

Petitioner's argument fails. "Sales" clearly fit within the category of "business activity" as defined by the SBTA. However, as respondent argues, they are not equivalent. If this Court were to adopt petitioner's interpretation of MCL 208.7(1)(a)(*iii*), virtually any "business activity" would constitute a "sale." If the Legislature had intended the terms to be synonymous, it would have had no need to provide separate definitions. MCL 208.7(1)(a) defines "sale" as the consideration received by a taxpayer for sale of property that is "stock in trade" or inventory, the rendering of services, or the rental lease, licensing or use of property. Petitioner's sale of the Grey Goose brand fits none of these definitions. The amount received by petitioner in the Grey *Goose transaction was not for* the "use" of the Grey Goose brand name; rather, it was for the transfer of title to the Grey Goose brand as a whole. Petitioner was not temporarily renting, leasing, licensing or permitting another to use the Grey Goose name-petitioner sold the entire brand.

Further, the doctrine of ejusdem generis supports the conclusion that "use" is properly interpreted in the context of rental or lease transactions. As our Supreme Court has stated:

> " '[Ejusdem generis] is a rule whereby in a statute in which general words follow a designation of particular subjects, the meaning of the general words will ordinarily be presumed to be and construed as restricted by the particular designation and as including only things of the same kind, class, character or nature as those specifically enumerated.' " [*Sands Appliance Servs, Inc v. Wilson,* 463 Mich. 231, 242; 615 NW2d 241 (2000), quoting *People v. Brown,* 406 Mich. 215, 221; 277 NW2d 155 (1979), quoting 73 Am Jur 2d, Statutes, § 214, pp 407–408 (alteration by *Sands*).]

***6** Thus, "use" should be understood as falling within a category that includes renting, leasing, and licensing. Each of these involves the exchange of consideration for the right to use, possesses, and/or occupy tangible or intangible property for some term. There is no passing of title; that is addressed in MCL 208.7(1)(a)(*i*), but only with respect to "property that is stock in trade or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business."

Under petitioner's interpretation of "use," almost any activity would fit the definition. As a result, anything that qualified as "business activity" under the SBTA could be "used" and thus constitute a "sale." This reading would render the definition of "sale" nugatory, as merely an equivalent of "business activity." This strained interpretation of "sale" would result in impractical and unintended application of the SBTA. Thus, the tribunal did not err in ruling that the Grey Goose was transaction was not a "sale" within the meaning of MCL 208.7(1).

IV. RELIEF UNDER MCL 208.69

Petitioner argues that it was entitled to an alternate method of apportionment under MCL 208.69. MCL 208.69 provides an option for a taxpayer to petition for alternative apportionment "[i]f the apportionment provisions of [the SBTA] do not fairly represent the extent of the taxpayer's business activity in this state." MCL 208 .69(1). MCL 208.69 explicitly provides that any "alternate method [of apportionment] will be effective only if it is approved by the commissioner." The MTT concluded that petitioner had waived this issue because it failed to petition the commissioner for alternative apportionment.

However, on appeal petitioner argues, and respondent concedes, that it filed such a petition with the commissioner of revenue within the meaning of MCL 208.69. The parties agree that petitioner raised alternative apportionment issues in a manner sufficient to comply with MCL 208.69 through correspondence that petitioner's attorney Timothy Noonan had with John McAndrew, a senior auditor with the Michigan Department of Treasury. This correspondence was not admitted into the record in the MTT; however, on July 12, 2012 this Court granted petitioner's motion to supplement the record. Petitioner then filed a revised reply brief and attached a copy of a letter from Noonan to McAndrew dated July 10, 2009. The letter confirms that a request for alternative apportionment was made. Petitioner also attached Noonan's reply to McAndrew, which stated, "I acknowledge receipt of your letter dated 7/10/09, which I am forwarding to my Supervisors in Lansing for review. I will advise you of their response as soon as received." The parties agree that petitioner never received a response to its request.

Because the parties did not present this evidence to the MTT, the MTT concluded that petitioner had waived the issue and never reached the merits of the argument. However, now that this Court has allowed petitioner to supplement the record, it is clear that petitioner did not waive this matter. Therefore, we remand this issue to the MTT for consideration of the newly supplied documents and for a determination of whether petitioner was entitled to alternative apportionment under MCL 208.69.

V. THE APPORTIONMENT CALCULATION

***7** Petitioner argues that respondent's calculation of the sales factor has "led to a grossly distorted result" that is "out of all appropriate proportions," and is unconstitutional.

Petitioner's arguments are conclusory and without merit. Petitioner fails to meet the applicable burden of providing clear and cogent evidence of such a distorted result. Petitioner cannot contend that the Grey Goose transaction was attributable solely to activities occurring outside of Michigan. Petitioner sold the Grey Goose brand for over $2 billion dollars because it was and is a popular and high-selling brand of vodka. Petitioner sold this brand in Michigan, and those sales contributed to the value of the brand. As such, respondent is entitled to tax a portion of the proceeds of the transaction as provided in the SBTA. Further, arguing that the Grey Goose transaction is attributable only to non-Michigan activities constitutes "geographical accounting," an argument that does not pass constitutional muster. See *Corning,* 212 Mich.App at 8. In any event, state taxation is not unconstitutional merely because it *might* tax some activity that occurred outside the taxing state; such variances are recognized and accepted in this area of jurisprudence. Petitioner's arguments surrounding this single transaction, no matter how strong, do not render the apportionment unconstitutional. As this Court has stated, “single-element analysis does not suffice regardless of the strength of the arguments that might be thereby advanced.” *Id.* at 7. Thus, the tribunal did not err in rejecting petitioner’s constitutional challenge to respondent’s apportionment calculation in this case.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. No costs are taxable pursuant to MCR 7.219, neither party having prevailed in full.

All Citations

Not Reported in N.W.2d, 2012 WL 6034315

Footnotes

[1] The SBTA was repealed by 2006 PA 325.

[2] 🟥 MCL 208.45a(1) provides:
(1) Except as provided in subsection (4) and for tax years beginning after December 31, 1998 and before January 1, 2006, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:
(a) The property factor multiplied by 5%.
(b) The payroll factor multiplied by 5%.
(c) The sales factor multiplied by 90%.

End of Document

© 2019 Thomson Reuters. No claim to original U.S. Government Works.

STATE OF MICHIGAN

COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES CORP.,
Successor-in-interest to MINNESOTA LIMITED, INC.

Plaintiff,

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

Docket No. 17-107-MT

Hon. Michael J. Talbot

June Summers Haas (P59009)
Lynn A. Gandhi (P60466)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiff
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

David W. Thompson (P75356)
Justin R. Call (P80892)
Assistant Attorneys General
Michigan Department of Attorney General
Revenue & Tax Division
Attorneys for Defendant
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

FIRST AMENDED COMPLAINT

There is no other pending or resolved civil action
arising out of the transaction or occurrence alleged
in the First Amended Complaint.

NOW COMES the Plaintiff, Vectren Infrastructure Services Corp., successor-in-interest to Minnesota Limited, Inc. (the "Plaintiff" or "Minnesota Limited"), by and through its attorneys, Honigman Miller Schwartz and Cohn LLP, and for its Complaint against the Defendant, Department of Treasury, State of Michigan (the "Defendant" or "Department"), states as follows:

1. At all times prior to April 1, 2011, Plaintiff was a Minnesota S corporation with its principal office located in Big Lake, Minnesota.

2. Defendant is an administrative department of the State of Michigan and serves as the collection agent for the Michigan Business Tax ("MBT") under the Michigan Business Tax Act ("MBTA"), MCL 208.1101 *et seq*.

3. The tax involved is MBT for Plaintiff's short tax year from January 1, 2011 to March 31, 2011 (the "Short Year 2011").

4. Plaintiff operates a business of oil and gas pipeline construction, repair and HAZMAT response.

5. Plaintiff has operated this business for 52 years.

6. Plaintiff's business has been primarily operated in Minnesota and throughout the Midwest, with only occasional and sporadic contracts performed in Michigan.

7. In March of 2010, the shareholders of Plaintiff began negotiations to sell all of the stock of the business to Vectren Infrastructure Services Corporation ("Vectren"), an Indiana corporation.

8. In the summer of 2010, Plaintiff was engaged by Enbridge Energy ("Enbridge") to respond to a severe oil pipeline rupture that occurred in a tributary of the Kalamazoo River in July of 2010.

9. The Enbridge contract was the largest contract performed in Michigan in Plaintiff's 52 year history.

10. On March 31, 2011, the shareholders of Plaintiff sold all of their stock to Vectren (the "Sale").

11. The shareholders of Plaintiff elected to treat the sale of stock as a sale of assets under the Internal Revenue Code § 338(h)(10).

12. Plaintiff timely filed an MBT return for the Short Year 2011, treating the sale of stock as a sale of business assets and included the income and expenses in Plaintiff's MBT base and sales apportionment factor.

13. Plaintiff's Short Year 2011 MBT return reported a sales factor of 14.9860%.

14. The Department audited Plaintiff for the calendar tax year ending December 31, 2010 and the Short Year 2011. As a result of the audit the Department excluded the gross receipts from the Sale from the calculation of both the numerator and the denominator of the sales factor.

15. The Department adjusted Plaintiff's sales factor for the Short Year 2011 from 14.9860% to 69.9571%.

16. The Department did not adjust the included income and expenses from the Sale. Instead, the Department apportioned the gain on the Sale to Michigan using the increased adjusted sales factor.

17. The Department did not assess any penalty for either calendar year ending December 31, 2010 or the Short Year 2011.

18. On April 20, 2016, the Department issued a Bill for Taxes Due- Intent to Assess UO71593 assessing tax in the amount of $2,262,994, interest in the amount of $465,615.86 and adding penalty in the amount of $678,727.50 for a total purported amount due of $3,407,337.36.

19. By letter dated June 16, 2016, Plaintiff requested penalty relief based on reasonable cause.

20. Plaintiff timely requested an informal conference contesting all assessed amounts.

21. Prior to 2011, Plaintiff had regularly sold business assets and reported such sales for federal tax purposes as sales of capital assets.

22. In a letter dated June 24, 2016 ("the Letter Request"), Plaintiff requested the use of an alternative apportionment method under MCL 208.1309 for the Short Year 2011. A copy of the Letter Request is attached hereto as Exhibit A.

23. In the Letter Request, Plaintiff requested alternative apportionment so that all income from the Sale would be classified as income generated in the regular course of business and, therefore, should be reflected in the denominator of the sales factor to effect an equitable apportionment of Plaintiff's MBT base.

24. In the Letter Request, Plaintiff further requested, in the alternative, that alternative apportionment be granted to treat all of the receipts and income resulting from the Sale as unapportioned, non-operational, non-business income not subject to tax in Michigan because, among other things, all of the value generated and income earned on the Sale related to the Minnesota property and Minnesota activities, and the income was allocable nonbusiness income not incidental to Plaintiff's regular business activities.

25. In a letter dated December 14, 2016, Plaintiff provided additional information in support of its request for alternative apportionment under MCL 208.1309.

26. In a letter dated February 8, 2017, the Department rejected Plaintiff's request for alternative apportionment (the "Denial Letter"). A copy of the Denial Letter is attached hereto as Exhibit B.

27. By letter dated February 13, 2017 Plaintiff withdrew its request for an informal conference.

28. On March 23, 2017, the Department issued a Bill for Taxes Due - Final Assessment UO71593 (the "Final Assessment") assessing tax in the amount of $2,262,994,

interest in the amount of $550,792.07 and penalty in the amount of $112,979.00 for a total purported amount due of $2,926,765.07. A true and correct copy is attached as Exhibit C.

29. Plaintiff hereby sues for a declaratory judgment that 1) the Department's denial of alternative apportionment relief was unlawful, 2) that application of the standard apportionment formula violates the Commerce Clause and the Due Process Clause of the United States and Michigan Constitutions, 3) that the Plaintiff's apportionment for Short Year 2011 was correct as reported, 4) that the Plaintiff's shareholders' income and expenses from their sale of stock in the Short Year 2011 is not the business activity or business income of Plaintiff and 5) that Plaintiff is entitled to cancellation of all tax, interest and penalty assessed for Short Year 2011 plus costs and attorney fees.

Count I - Apportionment Without Factor Representation Under MCL 208.1309 Unconstitutionally Violates the Commerce Clause and Due Process Clause

30. Plaintiff affirms and incorporates its allegations in the previous paragraphs as though fully set forth herein.

31. Plaintiff should be allowed to use an alternative apportionment formula.

32. The MBTA, MCL 208.1309, provides:

> (1) If the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the treasurer may require the following, with respect to all or a portion of the taxpayer's business activity, if reasonable:
>
> > (a) Separate accounting.
> >
> > (b) The inclusion of 1 or more additional or alternative factors that will fairly represent the taxpayer's business activity in this state.
> >
> > (c) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.

> (2) An alternate method may be used only if it is approved by the department.
>
> (3) The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.
> (4) The filing of a return or an amended return is not considered a petition for the purposes of subsection (1).

33. A state's statutory apportionment formula, even though generally appropriate, may be unconstitutional as applied to a particular taxpayer where it apportions income to the state that is out of all appropriate proportion to the taxpayer's business transacted in the state.

34. A state's statutory apportionment formula, even though generally appropriate, may be unconstitutional as applied to a particular taxpayer if it leads to a grossly distorted result.

35. Under constitutional principles, the factors used in the apportionment formula must reflect a reasonable sense of how the value being taxed is actually generated.

36. If the gross receipts and income from the Sale are properly classified as derived from business activities of Plaintiff, then the Sale must be the sale of business assets.

37. Under MCL 208.1115(1), the sales factor includes all sales from either stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

38. Plaintiff's assets and intangible property are therefore considered to be business assets and therefore meet the definition of "sales" under MCL 208.1115 if the sale of the assets generates business receipts and income.

39. Receipts and income from the use of intangible property is also considered a "sale" under MCL 208.1115(1)(c).

40. Plaintiff's accrued value in the tangible and intangible property realized in the Sale occurred over its 52 year business history conducted from its headquarters in Minnesota. Accordingly, all receipts should be sourced to Minnesota.

41. Apportionment without inclusion of the assets in the sales factor denominator disproportionately attributes long term gain to Michigan out of all appropriate proportion.

42. Plaintiff recognized only $25,000 of profit for its Michigan work in Short Year 2011, yet the use of the standard apportionment formula would source approximately $50 million in gain on the Sale to Michigan for the Short Year 2011.

43. This amount of gain is out of all appropriate proportion.

44. The serendipity of the Enbridge environmental disaster, combined with the short tax year in 2011, disproportionately captures gain that has no relationship to the business Plaintiff conducted in Michigan.

45. The Department's audit apportions almost 70% of gain on the shareholders' sale of Plaintiff to Michigan based on a limited 3-month apportionment period in which Plaintiff coincidentally had more work in Michigan than ever before in its 52 year history.

46. The MBTA as applied to Plaintiff apportions value to Michigan that is out of all appropriate proportion to the business transacted and activities conducted in Michigan.

47. The MBTA applied to Plaintiff for Short Year 2011 unconstitutionally distorts Plaintiff's activities in Michigan.

48. Inclusion in the MBT base of Plaintiff's receipts from the Sale that occurred outside Michigan as business income results in an attribution of Minnesota gain to Michigan.

49. All value and benefit generated in Minnesota should be sourced by Plaintiff to the location of the underlying asset, which is Minnesota. MCL 208.1305(10).

50. The MBTA as applied to Plaintiff for the Short Year 2011 violates the Due Process and Commerce Clauses because it does not produce a fair apportionment to Michigan and is not fairly related to the services provided by Michigan.

51. The failure to include the gain from the Asset Sale in the denominator of the sales factor as Minnesota source income results in unconstitutional distortion and sources to Michigan "a percentage of income out of all appropriate proportion to the business transacted by appellant in that state." *Hans Rees Sons v North Carolina,* 283 US 123; 51 S Ct 385 (1931); MCL 208.1309(3).

52. The Equal Protection, Due Process, and Commerce Clauses of the United States Constitution have been interpreted and applied to prohibit a state from taxing activities or values which occur or exist beyond the borders of the taxing state.

53. The United States Constitution has been interpreted and applied to require that the tax base subject to tax in any state, including Michigan, must bear a reasonable relation to the business activity conducted by a taxpayer within the state imposing the tax.

54. The Supreme Court of the United States has held that there must exist a rational relationship between the tax base attributed to the taxing state and the "intrastate values of the enterprise" being taxed.

55. The Supreme Court of the United States has held that a state may not tax income or value generated by activities over which it has no nexus.

56. Income or value from business activity carried on outside Michigan cannot be apportioned to Michigan unless the business activities have nexus with Michigan.

57. When the Department treats the receipts of the Sale as business income, included in both of the MBT bases, but fails to include the receipts in the denominator of the apportionment factor, distortion results.

58. Under the Department's calculation, Plaintiff's MBT liability for 2011 would be $2,977,043.

59. When the Minnesota gain is included in the MBT bases and included in the sales factor denominator the tax liability for Plaintiff would be $633,703.

60. The amount of distortion in this matter is almost $2,343,340.

61. The Department's position results in an apportionment factor of more than 69%.

62. Properly reflecting the source of the income would result in an apportionment factor of 14.9860%.

63. The Department's position results in distortion of the sales factor of more than 466%, greater than the 250% sales factor distortion found unconstitutional in *Hans Rees*.

WHEREFORE, Plaintiff respectfully requests that this Court find and determine as follows:

(1) That exclusion from the MBT sales factor of the receipts from the Sale for the Short Year 2011 is improper because:

(a) the exclusion of the sale from the sales factor does not fairly represent the extent of the Plaintiff's business activity in Michigan;

(b) the exclusion of the Sale from the sales factor does not result in MBT liability that is fairly related to services provided to Plaintiff by Michigan;

(c) MBT liability results in a violation of the Due Process and Commerce Clauses because it does not produce a fair apportionment of receipts from Plaintiff's activities in Michigan;

(d) the MBTA apportions income out of all appropriate proportion to the income generated by the business activity of Plaintiff conducted in Michigan and leads to a grossly distorted result;

(e) the MBTA is unconstitutional as applied to Plaintiff where it apportions income to Michigan that is out of all appropriate proportion to the business transacted by Plaintiff in Michigan;

(f) the MBTA unconstitutionally distorts Plaintiff's income in Michigan;

(g) the MBTA results in the taxation of activities or values which occur or exist beyond the borders of Michigan;

(h) the MBTA apportions to Michigan activities that do not bear a reasonable relation to the business activity conducted by Plaintiff within Michigan;

(i) the MBTA does not produce a rational relationship between the tax base attributed to the taxing state and the "intrastate values of the enterprise" being taxed;

(j) the MBTA results in a tax being imposed by Michigan upon income generated by activities over which it has no nexus; and

(k) the MBTA results in the taxation of extraterritorial values in violation of the Equal Protection, Due Process, and Commerce Clauses of the United States Constitution.

(2) That Plaintiff, pursuant to MCL 208.1309, is allowed and entitled to an alternative apportionment method which includes the gain on the sale of its stock in the denominator of the sales factor;

(3) That the Department's Final Assessment UO71593 is cancelled in its entirety; and

(4) That Plaintiff is entitled to such other relief as this Court sees fit to grant.

Count II – In the Alternative, the Inclusion of the Receipts from the Sale in the Tax Base Results in the Unlawful Taxation of Income Unrelated to Business Carried On in Michigan

64. Plaintiff affirms and incorporates its allegations in the previous paragraphs as though fully set forth herein.

65. Plaintiff should be allowed to use an alternative apportionment formula.

66. The MBTA, MCL 208.1309, provides:

> (1) If the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the treasurer may require the following, with respect to all or a portion of the taxpayer's business activity, if reasonable:
>
> (a) Separate accounting.
>
> (b) The inclusion of 1 or more additional or alternative factors that will fairly represent the taxpayer's business activity in this state.
>
> (c) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.
>
> (2) An alternate method may be used only if it is approved by the department.
>
> (3) The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.
>
> (4) The filing of a return or an amended return is not considered a petition for the purposes of subsection (1).

67. It is a basic principle of state taxation that a state may not tax value earned outside its borders. *Allied Signal, Inc v Director, Div of Taxation*, 504 US 768; 112 S Ct 2251; 119 L Ed 2d 533 (1992).

68. The United States Supreme Court has held that income which is either investment income or non-operational is not apportionable business income.

69. Plaintiff's shareholders' income from the Sale of its stock is inherently nonbusiness income because all of the value generated and income earned was related to the Minnesota business assets and Minnesota activities that accrued over its 52 year history.

70. Plaintiff's gain from the Sale of its stock is non-apportionable (allocable) non-business income.

71. The sale of the Plaintiff's stock was an unusual out-of-the-ordinary transaction that qualifies as nonbusiness income.

72. Plaintiff's gain from the Sale of its stock constitutes an isolated, nonrecurring transaction which should be excluded from the MBT tax base for the Short Year 2011.

73. MCL 208.1309(1)(a) and (c) authorize the use of separate accounting or any other method to effectuate an equitable, constitutional allocation of income.

74. The gain from the Sale of Plaintiff's stock, which is accounted for as arising from the conduct of business and assets located in Minnesota should be subject to separate accounting and be allocated to Minnesota.

75. The Department unlawfully denied Plaintiff's request for alternative apportionment under MCL 208.1309(1)(a) and (c).

76. The Department is required by statute to grant relief from the statutory apportionment formula when the taxpayer demonstrates that "the business activity attributed to

the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer." MCL 208.1309.

77. Inclusion in the MBT base of Plaintiff's Sale of its stock outside Michigan results in the taxation of extraterritorial values in violation of the Equal Protection, Due Process, and Commerce Clauses of the United States Constitution.

78. In violation of the Constitution, Defendant has refused to allow Plaintiff to exclude the Sale of Plaintiff's stock that occurred outside Michigan from its MBT base, resulting in additional tax liability to Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court find and determine as follows:

(1) That inclusion in the MBT base of the Sale of Plaintiff's stock for the Short Year 2011 is improper because:

(a) the Sale was made outside Michigan for the Short Year 2011;

(b) the Sale does not fairly represent the extent of the Plaintiff's business activities in Michigan;

(c) the Sale does not result in MBT liability that is fairly related to services provided to Plaintiff by Michigan;

(d) MBT liability results in a violation of the Due Process and Commerce Clauses because it does not produce a fair apportionment of Plaintiff's activities in Michigan;

(e) the MBTA apportions income out of all appropriate proportion to the income generated by the business activities Plaintiff conducted in Michigan and leads to a grossly distorted result; and

(f) the MBTA is unconstitutional as applied to Plaintiff where it apportions income to Michigan that is out of all appropriate proportion to the business transacted by Plaintiff in Michigan.

(2) That Plaintiff is entitled to use separate accounting to exclude the income from the Sale of its stock from its MBT tax bases calculations;

(3) That the Department's Final Assessment UO71593 is cancelled in its entirety; and

(4) That Plaintiff is entitled to such other relief as this Court sees fit to grant.

Count III - An S Corporation Shareholders' Sale of Stock is Not Business Activity or Business Income of the S Corporation

79. Plaintiff affirms and incorporates its allegations in the previous paragraphs as though fully set forth herein.

80. The Department unlawfully calculated Plaintiff's business income to include gain on its shareholders' sale of their stock when this gain did not arise from Plaintiff's business activity.

81. MCL 208.1105(2) states:

> "Business income" means that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments and items of income and expense that are *attributable to business activity of the* partnership or *S corporation* and separately reported to the partners or shareholders.

82. An S corporation has no federal taxable income. *TMW Enterprises, Inc v Dep't of Treasury*, 297 Mich App 590 (2012).

83. Under the plain language of MCL 208.1105(2), to constitute business income of the S corporation the income and expenses must be 1) attributable to business activity of the S corporation and 2) separately reported to the shareholders.

84. Under MCL 208.1105(1) "business activity" includes any sales by the taxpayer S corporation.

85. In this case the transaction at issue is a sale of stock by Plaintiff's shareholders and not a sale by, or the business activity of, Plaintiff.

86. The federal § 338(h)(10) election to account for Plaintiff's shareholders' gain on the stock sale in an alternative manner for federal income tax purposes did not change the nature of the transaction. The MBTA does not have an equivalent election.

87. Importantly, the Legislature could have incorporated the federal method of accounting into the definition of business income for a partnership or S corporation, as it did for the definition of gross receipts, but it did not.

88. Under MCL 208.1111(1), "gross receipts" requires a taxpayer to determine its gross receipts "by using the taxpayer's federal method of accounting used for federal income tax purposes."

89. In contrast, "business income" for an S corporation specifically refers only to income and expenses "attributable to business activity of the…S corporation" without any mention of income and expenses not derived from the S corporation's own business activity and merely reflected under the federal method of accounting.

90. Clear and unambiguous language in a tax statute should be interpreted and enforced as written.

91. When language in one part of a statute is omitted elsewhere in the statute, this inclusion and omission should be construed as intentional. *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541-42; 840 NW2d 743 (2013).

92. The inclusion of a requirement to use a federal method of accounting to determine taxable income in one provision of a statute that's absent in another part of the statute must be viewed as intentional so that the federal method of accounting is not applicable where omitted.

93. The MBTA's omission of the requirement to determine a partnership or S corporation's income and expenses under the taxpayer's federal method of accounting means that only those income and expenses that derive from the S corporation's business activity are includible in an S corporation's business income.

94. The gain on Plaintiff's shareholders' Sale of their stock did not arise from Plaintiff's business activity.

95. The income from the Sale is not includible in Plaintiff's business income tax base.

WHEREFORE, Plaintiff respectfully requests that this Court find and determine as follows:

(1) That inclusion in the MBT business income tax base of Plaintiff's shareholders' gain on their stock Sale for the Short Year 2011 is improper because the gain did not arise from Plaintiff's business activity;

(2) That Plaintiff is entitled to exclude the gain from the Sale of its shareholders' stock from its MBT income tax base calculations;

(3) That the Department's Final Assessment UO71593 is cancelled in its entirety; and

(4) That Plaintiff is entitled to such other relief as this Court sees fit to grant.

Count IV - Abatement of Penalty

96. Plaintiff affirms and incorporates its allegations in the previous paragraphs as though fully set forth herein

97. The Final Assessment contains an assessment of penalty for the years in issue.

98. MCL 205.24(2) specifies the penalty that can be imposed for untimely filing of a return or payment of a tax administered by the Department.

99. MCL 205.24(4) provides that the penalty shall be waived if the delay was due to reasonable cause and not willful neglect. Specifically, MCL 205.24(4) provides:

> (4) If a return is filed or remittance is paid after the time specified and it is shown to the satisfaction of the department that the failure was due to reasonable cause and not to willful neglect, the state treasurer or an authorized representative of the state treasurer shall waive the penalty prescribed by subsection (2).

100. In preparing and filing its returns, and in paying MBT liability, Plaintiff relied upon judicial decisions and the language of the MBTA, including, but not limited to, the definitions of business income, apportionable income and sales.

101. Even if Plaintiff was liable for additional MBT, any delay in paying was due to reasonable cause and not willful neglect

102. The Michigan Courts have held that the "reasonable cause" standard of MCL 205.24(4) is satisfied in situations in which the position advocated by the taxpayer represents "an honest difference of opinion" relative to the effect or application of law. There is good cause why Plaintiff did not file or pay MBT for the years in issue.

WHEREFORE, Plaintiff respectfully requests that this Court find and determine that:

(1) The penalty assessed in Final Assessment UO71593 should be waived;

(2) That the Department's imposition of negligence penalty upon Plaintiff was improper; and

(3) That Plaintiff shall have such other and further relief as this Court shall determine to be permitted by law and to which Plaintiff is justly entitled.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Plaintiff

Dated: December 6, 2017

By: ________________________________
June Summers Haas (P59009)
Lynn A. Gandhi (P60466)

Vectren Infrastructure Services Corporation, successor-in-interest to Minnesota Limited, Inc.

By: Daniel L. Short

Its: Chief Financial Officer

VERIFICATION

STATE OF INDIANA)
) ss.
COUNTY OF Marion)

On this 7th day of November, 2017, personally appeared before me Daniel L. Short, the CFO for the Plaintiff in the within cause, and stated that he has read the foregoing Complaint and that he believes the contents thereof to be true to the best of his knowledge, information, and belief.

Robin Lynn Parrish, Notary Public
County, Marion
My commission expires: 9/13/2023

ROBIN LYNN PARRISH
Notary Public-Indiana
Resident of Hendricks County
My Commission Expires Sep. 13, 2023

25912880.1

STATE OF MICHIGAN
COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES
CORP., SUCCESSOR-IN-INTEREST
TO MINNESOTA LIMITED, INC.,

Plaintiff,

vs. File No. 17-000107-MT

MICHIGAN DEPARTMENT OF
TREASURY,

Defendant.

The Telephonic Deposition of CHRISTOPHER LEINES, taken pursuant to Notice of Taking Deposition, taken before Valerie A. Benning, RPR, a Notary Public in and for the County of Hennepin, State of Minnesota, taken on the 22nd day of March, 2018, at 2501 Wayzata Boulevard, Minneapolis, Minnesota, commencing at approximately 12:18 p.m.

A. Correct.

Q. Did your tasks change in any sense?

A. That day, no. I had a boss. My boss, CEO was Doug Banning.

Q. Prior to the acquisition am I to understand that you did not have a superior?

A. Yes, my sister and I owned the business fifty-fifty. I was the president, and she was the vice president.

Q. Who is your sister?

A. Her name is Paulette Britzius, B-R-I-T-Z-I-U-S.

Q. You and your sister Miss Britzius owned the company fifty-fifty?

A. Correct.

Q. And then at some point you decided to sell. For the record I am going to use the acronym MLI for Minnesota Limited, Incorporated. Is that fair, Mr. Leines?

A. Sure.

Q. So at some point you decided to sell MLI?

A. That's correct.

Q. And when was that?

A. Well, we retained a firm to look at

options about selling. It was a process that lasted nine months or twelve months, something like that. So it would have been nine to twelve months before 3-31 of 2016.

Q. 3-31 2011 you mean?

A. Excuse me. Yes, 2011. I am sorry.

Q. So is it fair to say then that, I guess, in the winter and spring of 2010, that is when you first kind of started to hash the idea of selling the company?

MS. GANDHI: I am just going to object to foundation. You keep asking "is it fair to say." You can answer the question.

A. Repeat the question again, please.

BY MR. THOMPSON:

Q. Sure. Is it fair to say that in spring and winter 2010 roughly in that time period is when you first considered selling the company?

A. That is when we retained someone to review our options, yes.

Q. Prior to selling MLI, in what states did it conduct business?

A. Minnesota Limited historically -- I think we were licensed -- I don't know the exact number, but we were licensed or did work in approximately twenty to twenty-four states throughout the U.S.

Q. Did your work kind of concentrate in any particular region of the U.S.?

A. Well, the company started based in Minnesota. At the time of the sale we were in business for forty-five years. We worked historically Minnesota, Wisconsin, Iowa, Dakotas. The upper midwest would be a historical region. As the company grew, our clients would take them with us into various other parts of the country.

Q. Can you tell me prior to the acquisition what was MLI's business? What did you guys do?

A. I don't understand the question.

Q. What types of services did you provide? What was the nature of your business?

A. Okay. Thank you. Like I mentioned earlier, I would classify it as underground construction, pipeline construction. We did pipeline maintenance. We built pumping stations and tank farms, things like that. Pipelines and related facilities was the nature of the business.

Q. Presumably you are building pipelines so that certain types of material can flow through them; correct?

A. That's correct.

Q. What types of material would flow through your pipelines?

A. Well, we didn't own the pipelines. We were the labor and equipment component of our clients. They would provide the materials. We would provide the labor and equipment to construct them and turn them over to them. The materials that we worked on were natural gas, crude oil, and refined products.

Q. When you say "refined products," what does that mean?

A. Like gasoline, diesel fuel, jet fuel, kerosene. A products pipeline is something that has already been refined.

Q. What about water?

A. Never really did too much water.

Q. So natural gas, and you said crude oil?

A. Correct.

Q. Anything else?

A. Natural gas, crude oil, refined products.

Q. To be clear, MLI was organized in Minnesota; correct?

A. That is correct.

Q. And you indicated earlier it was initially at least part of the acquisition it was organized as a corporation?

A. That is correct.

Q. Do you know if it was organized as a C corporation or a S Corporation?

A. During what period of time are we talking about?

Q. Prior to the acquisition.

A. Prior to the acquisition it was an S corp.

Q. Okay. Thank you. So going back to 2010 the time period we were discussing earlier when you first considered selling MLI, I guess why were you considering selling it?

A. I think one of the main reasons was my partner, who happens to be fourteen years older than me, was going through health issues. And so she was dealing with a lot of doctoring and some surgeries and things like that. She expressed an interest in wanting to get out of the business would have been one of the reasons, the primary reason, I would guess.

Q. Just so the record is clear -- and I think I understand you, Mr. Leines, when you say "your partner," do you mean your sister?

A. Yes, Paulette Britzius.

Q. Thanks. I understood what you meant. I just wanted the record to be clear. So it had to do with health issues essentially?

A. That was a big driver, yes.

Q. What other reasons were motivating the idea of selling?

A. The industry, there has been a lot of -- I don't know what they call them -- roll ups or whatever. There was less and less privately held businesses in the industry. We were kind of being pursued too as well.

Q. How did that factor into your thinking?

A. Well, I kind of had a partner who didn't want to work there anymore. So we had to kind of come up with a plan on how to transition the business.

Q. I guess my question is you said there were fewer privately held businesses in the industry. How did that affect your thinking?

A. Well, I think that is ancillary to the main issue.

Q. But you indicated that it was a motivator.

A. Yes, that would be a part of it.

Q. So I guess I am just wondering why was that a motivator? What about that was motivating you to sell?

A. When someone is interested in buying your business? Is that what you are asking?

Q. Well, I guess if we can go back for a second, you indicated that there were fewer privately held businesses in the industry. And that was a motivator for you. I am trying to figure out what about that motivated you to sell the business?

A. My partner didn't want to be there anymore. Either I had to buy her out, or we had to shut the company down or look for a seller. And so that is kind of the direction we went. We started looking for a seller -- I mean a buyer. Excuse me.

Q. It sounds to me like there was some push just based on some necessities and also some opportunities; is that fair?

MS. GANDHI: Objection. Foundation.

A. I guess I am not sure what you mean by "fair."

BY MR. THOMPSON:

Q. Is that an accurate statement?

A. I would say that the primary driver was the partner issue. The other part of it was secondary.

Q. So you indicated earlier that you kind of started working with a firm. And I am going to paraphrase your testimony here. If I get it wrong, just tell me. It sounds to me as though you essentially engaged a consultant to evaluate your prospects for selling the business. Is that correct?

A. That's correct.

Q. And who did you, I guess, work with?

A. The name of the firm?

Q. Yes.

A. The name of the firm was Greene, Holcomb & Fisher based in Minneapolis.

Q. Did you contract with them for this work?

A. Yes, we had to sign an agreement.

Q. When did you, I guess, execute this contract with Greene, Holcomb & Fisher?

A. Like I said, I don't know the dates. It was somewhere in the nine to twelve months prior to the sale. Winter of 2010, winter, spring, somewhere in that range.

Q. Okay. Thank you. What did you ask them to do?

A. I would have asked them to help work on -- or pulling together a document that we could use as a tool to help sell the business and to talk about prospective buyers.

Q. My understanding is that they essentially prepared what I am going to call an offering memorandum; is that correct?

A. It could be called that, yes.

Q. Did they prepare anything else for your proposed sale?

A. Well, they would have had to propose like confidentiality agreements, things like that for the prospective people that were going to get a copy of it.

Q. Do you know whether or not Green, Holcomb & Fisher has attorneys on staff?

A. I couldn't answer that.

Q. Was there anything else that they would have prepared for you?

A. Not that I'm aware of.

Q. Let me ask: What did you, I guess, give to them so that they could prepare these items for you?

A. Give to them in terms of what?

Q. Any sort of documentation? Any reports? Anything at all?

A. Well, they would have had to get documents related to how much volume we did, different things like that. They had to pull the offering memorandum together. Whatever is in there we would have helped facilitate them getting it and putting it in a nice, neat format.

Q. What types of documentation did you provide to them so they could compile the offering memo?

A. There would be organizational charts, safety data, things like that.

Q. Anything else?

A. Yes, I am sure there is a lot of things. We had to give them information on financials, things like that. Nothing more is coming to mind right now.

Q. So in other words, you would have to open up your books to them?

A. I don't know that that is what I am saying. They would get a copy of our annual revenue or something like that to make a chart and whatnot.

Q. So you would have provided them some kind of financial statements then?

A. I think that would be fair to say.

Q. Did you provide them with customer lists?

A. I believe in the offering memorandum the customers were left as customer A, customer B, customer C, that type of thing with no names attached to it.

MR. THOMPSON: I would like to enter into the record here as Exhibit 1 the offering memorandum.

(At this time LEINES Deposition Exhibit Number 1 was marked for identification by the Court Reporter.)

BY MR. THOMPSON:

Q. Mr. Leines, do you recognize this document?

A. Yes.

Q. And what is this document?

A. Confidential Memorandum.

Q. We've been talking about what we have been calling an offering memorandum. Is that essentially what this document here is?

A. "Offering" is your word. I guess that is what they called it was a confidential memorandum.

Q. For the record when we refer to the offering memorandum, what we are talking about is this document here. It is actually entitled Confidential Memorandum. How are you familiar with this document, Mr. Leines?

A. How am I familiar with it? I would have had to facilitate them getting some of the information in here and reading it and preparing it to go out to potential buyers.

Q. Did you prepare this document?

A. No.

Q. Did you have any review of this document?

A. Yes, I think that would be fair.

Q. Did you approve this document?

A. And by "approve" you mean what?

Q. Did you have a chance to go through this document, edit certain parts of it, and ultimately, I guess, approve it?

A. The document was prepared by Greene, Holcomb & Fisher. I got to see the document before it went out to sellers, yes.

Q. Did you have a chance to, I guess,

comment on it and make changes?

A. Sure.

Q. Did you ultimately review it to make sure that the information contained in it is accurate?

A. That would be part of it.

Q. Is the information contained in this accurate?

A. Yes.

Q. Aside from ensuring that everything is accurate, what else would you have reviewed for?

A. "Reviewed for" in terms of? Are we talking about this document here?

Q. Yes, that is my question. Aside from making sure that it is accurate, what else would you have been looking for in your review?

A. For example, that the pictures were proper. Like the picture on a page that talks about pipeline would show a pipeline picture, and a picture that talks about pipeline integrity would show a pipeline integrity picture, things like that.

Q. Okay. Thank you. Anything else that you would have looked at with respect to this document?

A. Just that it is as accurate as we could make it for the potential buyers.

Q. Okay. Thank you very much. Aside from working with Greene, Holcomb & Fisher to prepare this document, did you do anything else to prepare for this sale and solicit offers?

A. By "prepare" what are you referring to?

Q. Was there anybody else that you retained or consulted or discussed this potential sale with?

A. Well, I would have retained an M&A attorney.

Q. And who is that?

A. That gentleman's name is Shawn, S-H-A-W-N, McIntee, M-c-I-N-T-E-E. He is with Maslon, a firm locally named Maslon, M-A-S-L-O-N.

Q. Thank you. Was there anybody else that you consulted about this potential sale?

A. My partner.

Q. So you engaged Greene, Holcomb & Fisher to pull together what I am calling the offering memorandum. And you also engaged Mr. McIntee. Was there anybody else, I guess, externally that you consulted?

A. Well, let's see. Jeff Starbird would have been our CPA firm at the time.

in this document?

A. Yes, now that I see the document again, these were some of our core customers that were noted. We didn't let on to potential suitors like who we were doing all of our work for in terms of the concentration for confidential purposes.

Q. What were those confidential purposes?

A. Well, I mean, we have to get a lot of our work by competitive bidding. Some people might just want to review our document that are not even interested in us just in doing recognizance.

Q. I gotcha. You testified a moment ago that you are kind of only outlining your core customers?

A. That's correct, yeah. This is a group of -- we probably worked for twenty to twenty-five different companies at this time. And there is half a dozen here.

Q. I am sure it's obvious based on the foregoing discussion. I want to be clear on the record. This document, this confidential memorandum, this is something that would have been presented to Vectren; correct?

A. Yes, if they signed a confidential agreement, they could get a copy of this.

Q. In other words, in order for MLI at that time to have, I guess, given this document to anybody, they would have had to sign an agreement; correct?

A. I believe so, yes.

Q. And again, that is going back to kind of confidentiality and your business and your competitors and all that stuff?

A. Sure.

Q. So is it fair to say that this document is a summary of how MLI meant to hold itself out to potential suitors?

A. Yes.

Q. And by "potential suitors" I also mean to say potential purchasers. Is that also accurate?

A. Yes.

Q. If you could flip to page 1 of the document, I am looking at the very last paragraph and, in fact, the very last sentence on the page.

A. Okay.

Q. Have you had a chance to read that very quickly?

A. Okay.

Q. So is it fair to say that MLI was

agree with the words that are written that that is what the document says. They are not my words.

Q. My question is whether or not you meant to convey to potential purchasers this information, is that true or false?

MS. GANDHI: David, I am going to object to foundation. I am going to put an objection on badgering the witness. He has testified to the best of his ability. If you want to rephrase the question in a different manner, I will have him answer.

MR. THOMPSON: Thank you, Lynn. Your objections are noted.

BY MR. THOMPSON:

Q. Mr. Leines, is that true or false?

A. Is what true or false?

Q. That MLI and yourself in particular in reviewing and approving this language as accurate meant to convey to potential purchasers that the Antrim Shale formation is in the company's geographic sweet spot?

A. I think it is very apparent what is written.

Q. I am sorry to keep asking the question. I am only going to continue asking. I don't believe I have gotten an answer. Is it true or false that in approving this language you meant to hold MLI out or convey to potential purchasers that the Antrim Shale formation is in the company's geographic sweet spot?

A. I guess I don't know how to answer the question.

Q. A "yes" or a "no" would suffice.

MS. GANDHI: Objection as to form obviously.

BY MR. THOMPSON:

Q. Mr. Leines?

A. Yes, I am here.

Q. I still have a question pending. I am going to keep asking it. In approving this language did you mean to convey to potential purchasers that the Antrim shale formation is in the company's geographic sweet spot?

A. I think what was meant to convey to potential buyers is here is a place of all of the shale places in the country. They could see the geographic area we are currently working in, we are licensed to work in. There would be opportunities in all of the states that we work in.

Q. Is that a "yes" or a "no" to my

question?

MS. GANDHI: Objection. Form. He has answered the question to the best of his ability.

MR. THOMPSON: My question is still pending.

MS. GANDHI: Do you want to repeat it?

BY MR. THOMPSON:

Q. Do you need me to repeat the question, Mr. Leines?

A. Yes.

Q. In reviewing and approving this language that indicates that the Antrim shale formation is in the company's geographic sweet spot, did you mean to convey to potential purchasers that the Antrim Shale formulation is in the company's geographic sweet spot?

A. I didn't mean to convey any of that to them. This is what the Greene, Holcomb & Fisher people wrote that I probably reviewed it, read it, and went on to other things.

Q. This document contains information that you meant to convey to potential purchasers?

A. Say that again.

MS. GANDHI: That wasn't a question.

MR. THOMPSON: It was a question

actually. I am happy to repeat it.

MS. GANDHI: Thank you. Could you repeat the question?

MR. THOMPSON: Yes, I am going to right now.

BY MR. THOMPSON:

Q. This document, the confidential memorandum, was this meant to convey certain information to potential purchasers of MLI?

MS. GANDHI: Asked and answered. You can answer the question.

A. Yes.

BY MR. THOMPSON:

Q. Is there any information contained in this document that you did not mean to convey to potential purchasers?

MS. GANDHI: Objection. Foundation.

A. Not that I'm aware of.

BY MR. THOMPSON:

Q. So all the information contained in this document is what was meant to convey to potential purchasers?

MS. GANDHI: Objection. Asked and answered. You can answer.

A. Yes.

BY MR. THOMPSON:

Q. Thank you for that clarification. I am going to ask you kind of a general question. If I need to break it up into specifics, please let me know. I am not trying to trick you. In, say, the five years prior to the sale to VISCO how many projects did MLI have in Michigan?

A. I'm not aware of that.

Q. Around the time of the sale how much equipment was in Michigan?

A. I'm not aware of specific numbers. There would have been some company equipment on the project in Michigan and a lot of rented equipment from the local Cat dealer and John Deere and such.

Q. Can you say a little bit more like what types of each equipment there would have been?

A. Types of equipment on the job in Michigan? Is that the question?

Q. Yes.

A. Typically on a pipeline job there would be backhoes, dozers, front end loaders, trucks, trailers, pickups, office trailers, things like that.

Q. And all this equipment or certain forms of it, anyway, would have been located in

BY MR. THOMPSON:

Q. Mr. Leines, was Consumers' Energy a customer of MLI?

A. Consumers Energy, we had done work for them. I am not sure of the dates. We maybe did some bidding work for them.

Q. What is bidding work?

A. We bid projects for them.

Q. What type of projects?

A. Like pipeline projects, maintenance projects. The company did a project for them maybe three, four years ago like in the Minnesota Limited, LLC, days. I am not for sure if we maybe did stuff seven, eight years ago, small projects. I don't recall in total. I know we bid a lot of projects for them.

Q. Just to clarify something you said, when you said, "Three to four years ago in the LLC days," three or four years ago was postacquisition; correct?

A. Yes, that is what I meant. Postacquisition.

Q. LLC days are still today; right?

A. Yes. MLI would be the old sub S. ML, LLC, is the current company.

STATE OF MICHIGAN
COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES CORP.,
Successor-in-interest to MINNESOTA LIMITED, INC.

Plaintiff,

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

Docket No. 17-107-MT

Hon. Michael J. Talbot

JUNE SUMMERS HAAS (P59009)
LYNN A. GANDHI (P60466)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiffs
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

DAVID W. THOMPSON (P75356)
JUSTIN R. CALL (P80892)
Assistant Attorneys General
Michigan Department of Treasury
Revenue & Collections Division
Attorneys for Defendant
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

PLAINTIFF'S RESPONSE TO STATE OF MICHIGAN DEPARTMENT OF TREASURY'S FIRST DISCOVERY REQUESTS TO PLAINTIFF

Plaintiff, Vectren Infrastructure Services Corp. ("Plaintiff"), by and through its attorneys, Honigman Miller Schwartz and Cohn LLP, hereby provides answers to Defendant, Department of Treasury, State of Michigan's (the "Department"), first discovery requests.

All answers and responses contained herein are made in reference to and solely for the purpose of this action. The provision of each such response or answer does not in any way restrict or modify Plaintiffs' rights to object to the admissibility of the information so provided if presented by or discussed at the time of trial. Plaintiff reserves all rights to raise any objection allowed by law in an effort to exclude and render inadmissible any of the information provided herein at the time of trial.

Plaintiff's development of all facts and circumstances relating to this action is ongoing. Plaintiff has provided its answers and responses to the Department's discovery requests in an effort to expedite discovery, and by providing these answers, which may later prove to be incomplete, Plaintiff does not in any way limit or affect its ability to produce additional information or facts prior to trial, either in response to the Department's discovery attempts or in furtherance of Plaintiffs' own discovery or presentation of its claims and defenses.

The following responses are true and correct to the best of Plaintiff's knowledge, information, and belief as of the date of these responses. Plaintiff reserves the right to amend or supplement its responses if it finds that inadvertent omissions have been made or if additional document or information is discovered at a later date.

To the extent that any interrogatory seeks information protected from disclosure by the attorney-client privilege or the work-product doctrine, Plaintiff objects to such request. Moreover, Plaintiff expressly objects to the Department's introductory statement wherein the Department provides that Plaintiffs' answers must include such information that is within the "knowledge of your attorney" as vague and appearing to be protected from disclosure by the attorney-client privilege or the work-product doctrine. Further, Plaintiff objects to the Department's definition of "document" to the extent that it purports to impose obligations greater than those set forth in the Michigan Court Rules. To the extent that any interrogatory seeks information protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other privilege, Plaintiff objects to such request.

DISCOVERY REQUESTS

1. For calendar years beginning from 2011 through the present, please list all entities, by year, in Plaintiff's unitary business group.

RESPONSE:

Objection. Interrogatory 1 is objectionable because it is seeks information already in the possession of the Department and compiled by the auditor. See Audit Report of Findings for the Tax Year at Issue: January 1, 2011 to March 31, 2011, attached as VEC 00001 - 000008. In addition, this Interrogatory is objectionable to the extend it seeks discovery of information outside the Tax Year at Issue and thus is not relevant to the Tax Year at Issue nor likely to lead to the discovery of relevant evidence.

2. Please describe Plaintiff's business operations, including but not limited to, constructing and maintaining transmission pipelines; constructing pump stations, compressor stations, terminals and refineries; hydrostatic testing; and hazardous material response.

RESPONSE:

Objection. To the extent that this Interrogatory requests information beyond the Tax Year at Issue, this Interrogatory asks for information that is not relevant nor likely to lead to the discovery of relevant evidence. Notwithstanding this objection, Plaintiff states that Minnesota Limited, Inc.'s business operations up to and through the Tax Year in Issue constituted oil and gas pipeline construction, repair and HAZMAT response business. The company provides construction services to natural gas, crude oil, refined products, and hydrocarbon industries in the United States. The company offers pipeline construction, integrity and maintenance, and station and terminal construction services. Its services

include mainline and midstream pipeline construction, large and small diameter HDPE pipelines for the oil and gas industry, compressor and pumping station construction, terminal/truck loading rack construction, tank farm/refinery piping, hydrostatic testing and pipeline dehydrating, pipeline maintenance and integrity services, emergency response services, HAZMAT response-leak repair/clean up, right-of-way clearing, cathodic/pipe coating repair, pipe fabrication, road boring/split casing, pipeline dehydrating, vacuum truck/drain-up, and vacuum excavation. Minnesota Limited's business has been primarily operated in Minnesota and throughout the Midwest, with only occasional and sporadic contracts performed in Michigan. See also Audit Report of Findings at VEC 000001 - 000008, and the documents already provided to the Department in the course of this litigation at VEC 000048 – 000143; 000144-000183.

3. For each line of business operations or services set forth in response to Request #2, please state how long (in years) Minnesota Limited, Inc. (Minnesota Limited) has conducted/performed such business operations and/or services.

RESPONSE:

Objection. To the extent that this Interrogatory requests information beyond the Tax Year at Issue, this Interrogatory asks for information that is not relevant nor likely to lead to the discovery of relevant evidence. Notwithstanding this objection, Plaintiff states that Plaintiff engaged in each line of business described in Interrogatory No 2 as indicated in the Report of Green Holcomb & Fisher, Confidential Memorandum dated April 2010, VEC 000048-000143.

[Request for Admission No 4 omitted as a reply was provided previously in a separate filing.]

5. If your answer to the preceding request to admit is anything other than an unqualified admission, please provide the following:

a. Identify all facts upon which you rely in support of your qualified admission or denial;

b. Identify all persons who will support your responses and/or who have information relating to your response and set forth the substance of their anticipated testimony;

c. Identify all documents and/or information which in any way relate to your qualified admission or denial.

RESPONSE:

a. Objection, to the extent it requests all fact as discovery is still ongoing and additional facts may be discovered. Without waiving this objection, Plaintiff states that Minnesota Limited has a history of selling its business assets. For each year since 2004, Minnesota Limited has filed Form 4797, *Sales of Business Property*, with its federal income tax return reporting gain on the sale of its business assets. Conforming to the federal income tax treatment, these business assets should be treated as assets that are stock in trade or other property of a kind which is held for sale to customers in the ordinary course of its trade or business in accordance with MCL 208.1115(1)(a).

b. A custodian of records will testify that the Form 4797s provided are true and accurate copies and were filed on behalf of Minnesota Limited for the tax years reflected thereon.

c. **Objection. Interrogatory 5.c. is objectionable because it is overly broad and unduly burdensome insofar as it seeks "all" documents. Plaintiff's development of all facts and circumstances relating to this action is ongoing and further documents may be discovered. Without waiving this objection, see VEC 000001 – 000008; 00185-002111.**

6. Please provide a list of customers for which Minnesota Limited provided services in Michigan (including both in-state and out-of-state customers) for each of the last fifteen (15) years, including dates when such customers executed contracts with Minnesota Limited, the services provided to the customers, and the specific years Minnesota Limited provided services to the customer.

RESPONSE:

Objection. To the extent that this Interrogatory requests information beyond the Tax Year at Issue, this Interrogatory asks for information that is not relevant nor likely to lead to the discovery of relevant evidence. In addition, customer information is not relevant nor likely to lead to the discovery of relevant evidence to determine whether the apportionment formula or calculation of the tax base for Minnesota Limited for the Tax Year in Issue appropriately reflected the business performed by Plaintiff during the Tax Year in Issue or included items of nonbusiness income allocable to its state of domicile Minnesota and excluded from the Michigan Business Tax base. This discovery response requests a compilation of information for fifteen years in a manner that is not normally maintained by Plaintiff in its books and records or in the usual course of Plaintiff's business. In addition, Plaintiff has filed Michigan Business Tax Returns or Michigan Single Business Tax Returns

for each year in which it conducted business in Michigan and accordingly, the Department has in its possession the report of Michigan sales for each year. Without waiving its objections, Plaintiff will again make its books and records available for the Department's review at its headquarters at a mutually convenient time.

7. Please state what services Minnesota Limited provided to Michigan customers prior to Vectren Infrastructure Services Corporation's ("Vectren Infrastructure") acquisition of Minnesota Limited.

RESPONSE:

Objection. To the extent that this Interrogatory requests information beyond the Tax Year at Issue, this Interrogatory asks for information that is not relevant nor likely to lead to the discovery of relevant evidence. Notwithstanding this objection, Plaintiff states Minnesota Limited was engaged by Enbridge Energy ("Enbridge") to respond to a severe oil pipeline rupture that occurred in July 2010 in a tributary of the Kalamazoo River. This project was the Company's largest single contract ever performed in Michigan. The work commenced in July 2010 and was completed in May 2012. Prior to this time, Minnesota Limited performed very limited services in the State of Michigan. See VEC 000048 -000143; 000144 - 000183.

The below chart reflects the Michigan sales reported to the Department of Treasury for the prior ten years:

YEAR	MICHIGAN SALES	EVERYWHERE SALES	APPORTIONMENT	TEN YEAR AVERAGE
2001	0	$19,577,034	0.0000	
2002	0	$25,255,248	0.0000	
2003	$522,713	$38,328,523	0.0137	

2004	$1,428,969	$42,391,279	0.0337	
2005	$1,101,714	$46,556,704	0.0222	
2006	$1,011,461	$48,270,114	0.0210	
2007	$957,516	$99,876,379	0.0096	
2008	$3,341	$155,164,472	0.00002	
2009	$3,136,684	$121,058,709	0.1852	
2010	$43,352,830	$110,365,790	0.3928	.06782

8. Please explain whether Vectren Infrastructure (including Miller Pipeline Corporation) provided any of the services referred in the preceding request before acquiring Minnesota Limited.

RESPONSE:

Objection. To the extent that this Interrogatory requests information beyond the Tax Year at Issue, this Interrogatory asks for information that is not relevant nor likely to lead to the discovery of relevant evidence. Moreover, any services performed by Vectren Infrastructure prior to acquisition of the stock of Minnesota Limited were services performed by a separate entity not included or includible in the Michigan Business Tax Return of Minnesota Limited, and not subject to the audit or assessment at issue and thus irrelevant to the determination of whether the Department improperly calculated the sales factor for Minnesota Limited or improperly included nonbusiness income unrelated to the business activity of the S corporation in Michigan, which was allocable to Minnesota, during the Tax Year in Issue. Without waiving its objections, Vectren Infrastructure (including Miller Pipeline Corporation) did not provide any of the services discussed in response to Interrogatory No. 7 in partnership with, on behalf of, or in any cooperative venture with Minnesota Limited. Such services were performed by Minnesota Limited.

9. Paragraph twenty-one (21) of the Complaint alleges that "[p]rior to 2011, Plaintiff had regularly sold business assets and reported such sales for federal tax purposes as sales of capital assets." Relative to these allegations, please provide the following information for the last ten (10) years prior to 2011:

a. Please explain the legal relevance of this allegation to this case;

b. Please identify the business assets sold, the year in which they were sold, and to whom they were sold;

c. Please produce customer invoices and all other documents associated with the sale of these assets; and

d. Please identify the price Minnesota Limited paid for these assets, the price Minnesota Limited sold these assets, and Minnesota Limited's revenue/loss from the sale of these assets.

RESPONSE:

a. See Complaint paragraphs 36-38 and 40-63. Under MCL 208.1115(1), sales of assets held for sale to others are includible in the calculation of the sales factor. Plaintiff has argued in the alternative that business assets which are regularly sold, and which sales do not constitute an isolated or casual sale, constitute assets that are stock in trade or other property of a kind which is held for sale to customers in the ordinary course of its trade or business under MCL 208.1115(1)(a) and are included in the calculation of the sales factor. Here, such sales are sourced to the location of the asset when sold. The Department has failed to include these assets in its computation of the sales factor.

b. See response to Interrogatory No. 5.

c. See response to Interrogatory No. 5.

d. See VEC 00001 - 000183.

[Request for Admission No 10 omitted as a reply was provided previously in a separate filing.]

11. If your answers to the preceding requests to admit in request #10 is anything other than an unqualified admission, please provide the following:

a. Identify all facts upon which you rely in support of your qualified admission or denial;

b. Identify all persons who will support your responses and/or who have information relating to your response and set forth the substance of their anticipated testimony;

c. Identify all documents and/or information which in any way relate to your qualified admission or denial.

RESPONSE:

a. See response to Interrogatory No. 5.

b. N/A.

c. See response to Interrogatory No. 5.

d. See response to Interrogatory No. 5.

[Request for Admission No 12 omitted as a reply was provided previously in a separate filing.]

13. If your answers to the preceding requests to admit in request #12 is anything other than an unqualified admission, please provide the following:

a. Identify all facts upon which you rely in support of your qualified admission or denial;

b. Identify all persons who will support your responses and/or who have information relating to your response and set forth the substance of their anticipated testimony;

c. Identify all documents and/or information which in any way relate to your qualified admission or denial.

RESPONSE:

N/A.

14. Please produce copies of Plaintiff's complete state tax returns for all states outside of Michigan, including all schedules and supporting documents, for the 2010 and 2011 tax years.

RESPONSE:

Objection. Plaintiff objections to the production of tax returns filed with other states whose business tax statutes, regulations and rules are different than Michigan, none of which impose a tax similar or comparable to the Michigan Business Tax and the calculations for which have no relevance to the calculation or determination of the correct amount of Michigan Business Tax due for the Tax Year in Issue. The documents requested are not relevant nor likely to lead to the discovery of relevant evidence.

15. Paragraph eight (8) of the Complaint alleges that "[i]n the summer of 2010, Plaintiff was engaged by Enbridge Energy ("Enbridge") to respond to a severe oil pipeline rupture that occurred in a tributary of the Kalamazoo River in July of 2010." As to this allegation:

a. Please produce a copy of Plaintiff's said contract (including attachments, exhibits, and amendments) with Enbridge;

b. For tax years 2010-2011, please produce any and all documents showing the amount of revenue that Plaintiff generated from providing services to Enbridge.

RESPONSE:

a. See VEC 000212 – 000219; 000221 - 000378.

b. See VEC 000220.

16. Paragraph nine (9) of the Complaint alleges that "[t]he Enbridge contract was the largest contract performed in Michigan in Plaintiff's 52 year history." As to this allegation:

a. Please describe the services Minnesota Limited provided or provides to Enbridge;

b. Please identify the years in which Minnesota Limited provided or provides services to Enbridge;

c. Please state whether these services were a new line of business for Minnesota Limited and/or Vectren Infrastructure;

d. Please provide any and all documentation showing the revenue generated by Minnesota Limited and/or Vectren Infrastructure for each of the past twenty (20) years for this line of business; and

e. Please provide any and all documentation showing the amount of revenue related to such business conducted in Michigan during these same years.

RESPONSE:

a. **Minnesota Limited was engaged by Enbridge Energy ("Enbridge") to respond to a severe oil pipeline rupture that occurred in July 2010 in a tributary of the Kalamazoo River. This was the Company's largest single contract ever performed in Michigan.**

b. **The work commenced in July 2010 and was completed in May 2012.**

c. **No.**

d. **Objection. Plaintiff objects to this request as burdensome, oppressive and unnecessary. The Department already has in its possession all business tax returns filed by Plaintiff with the Department for all years in which the Plaintiff conducted business and generated revenue from the State of Michigan and from all sources everywhere in the calculation of the sales factor. These returns contain disclosure of revenues sourced to Michigan. To the extent that this Interrogatory requests information about any services performed by Vectren Infrastructure, such information is not relevant to the determination of the appropriate tax due for the Tax Year at Issue, is not subject to the audit or assessment at issue and thus irrelevant to the determination of whether the Department improperly calculated the sales factor for Minnesota Limited or improperly included nonbusiness income unrelated to the business activity of the S corporation in Michigan during the Tax Year in Issue and allocable to Minnesota. Without waiving these objections, Plaintiff provides VEC 000048 – 000143; 000144 - 000183.**

e. See response to d. above.

17. Please explain whether Vectren Infrastructure, Miller Pipeline Corporation, Minnesota Limited, or any other member of the unitary business group has an active contract with, or otherwise provides services to, Enbridge. If so, please identify which entity(ies) has a contract with, or otherwise provides services to, Enbridge.

RESPONSE:

Objection. To the extent that this Interrogatory requests information beyond the Tax Year at Issue, this Interrogatory asks for information that is not relevant nor likely to lead to the discovery of relevant evidence related to the determination of the appropriate taxation of Plaintiff for the Tax Year in Issue. Moreover, any services performed by Vectren Infrastructure after the acquisition of the stock of Minnesota Limited are not relevant to determination of appropriate apportionment or tax base determination for the Tax Year at Issue.

18. Paragraph ten (10) of the Complaint alleges that "[o]n March 31, 2011, Plaintiff sold all of its stock to Vectren (the 'Asset Sale')." Please produce a copy of the purchase agreement (including attachments, exhibits, and amendments) and all valuation studies and/or reports relating to the purchase price for the purchase of Minnesota Limited by Vectren Infrastructure.

RESPONSE:

See VEC 000144 – 000183; 000221 - 000378.

19. For tax years ending December 31, 2011 through December 31, 2016, please identify Vectren Infrastructure's revenue related to Minnesota Limited's operations, including but not limited to, Minnesota Limited's operations in Michigan for the same years.

RESPONSE:

Objection. To the extent that this Interrogatory requests information beyond the Tax Year at Issue, this Interrogatory asks for information that is not relevant nor likely to lead to the discovery of relevant evidence related to the determination of the appropriate taxation of Plaintiff for the Tax Year in Issue. The following amounts of sales were reported to the State of Michigan by the Vectren unitary business group

Post-Acquisition Michigan Sales		**Total Sales**	**Sales Factor**
2012	$10,059,487	$353,475,836	0.0285
2013	$4,984,667	$465,037,475	0.0107
2014	$5,544,211	$417,270,474	0.0133

20. Please state the value of Minnesota Limited before executing/performing any contracts in Michigan.

RESPONSE:

Objection to this interrogatory as vague and unduly burdensome. The term "value" is not defined and depends on the basis and purpose of the valuation. Moreover the interrogatory provides no timeframe for any valuation. The shareholders of Plaintiff did not have the company valued prior to executing/performing any contracts in Michigan in 2003.

21. Please produce any and all documents relating to the immediately preceding request, including but not limited to valuation studies and/or reports.

RESPONSE:

Objection to this interrogatory as vague and unduly burdensome. The term "value" is not defined and depends on the basis and purpose of the valuation. Moreover the interrogatory provides no timeframe for any valuation. The shareholders of Plaintiff did not have the company valued prior to executing/performing any contracts in Michigan in 2003.

22. Please state the value of Minnesota Limited after executing/performing any contracts in Michigan.

RESPONSE:

Objection to this interrogatory as vague and unduly burdensome. The term "value" is not defined and depends on the basis and purpose of the valuation. Moreover the interrogatory provides no timeframe for any valuation. The shareholders of Plaintiff did not have the company valued prior to or subsequent to executing/performing any contracts in Michigan in 2003 or anytime thereafter. Without waiving this objection, see the KPMG Report at VEC 000144 - 000183 which did not include the Enbridge project in its valuation analysis of the Company as the services provided under the contract, a unique response action to an environmental accident, fell outside the Company's core competencies of pipeline construction.

23. Please state your legal position in this case.

RESPONSE:

Objection. Interrogatory 23 is objectionable because it is overly broad and unduly burdensome and requests attorney work product. Without waiving its objections Plaintiff states that its legal position is set forth in the Complaint and the documents attached hereto including letters dated September 2, 3016 and December 13, 2016 to Deputy Treasurer Greg Gursky, at VEC 000029 - 000046. Gain on sale of stock by the shareholders of Minnesota Limited does not constitute receipts from the business activity of the S corporation and is not includible in the business income tax base, irrespective of the federal method of accounting for the gain on shareholders' sale of their stock.

24. Please produce any and all documents relating to the immediately preceding request, including but not limited to valuation studies and/or reports.

RESPONSE:

Objection. Interrogatory 24 is objectionable because it is overly broad and unduly burdensome insofar as it seeks "all" documents. Plaintiff's development of all facts and circumstances relating to this action is ongoing and further documents may be discovered. Interrogatory 23 is also objectionable because it is overly broad and unduly burdensome and requests attorney work product. Without waiving its objections, Plaintiff answers as follows: Plaintiff has not identified all documents that it will rely upon to support its position in this matter. Plaintiff will rely upon the audit work papers and Audit Report of Findings, both of which are in the possession and control of the Department and may rely upon the documents attached hereto and documents produced by the Department in discovery.

25. Please produce copies of all documents Plaintiff may or will rely on to challenge the deficiency and/or the underlying audit findings for the 2010-2011 tax years.

RESPONSE:

Objection. Interrogatory 24 is objectionable because it is overly broad and unduly burdensome insofar as it seeks "all" documents. Plaintiff's development of all facts and circumstances relating to this action is ongoing and further documents may be discovered. Interrogatory 23 is also objectionable because it is overly broad and unduly burdensome and requests attorney work product. Without waiving its objections, Plaintiff answers as follows: Plaintiff has not identified all documents that it will rely upon to support its position in this matter. Plaintiff will rely upon the audit work papers and Audit Report of Findings, both of which are in the possession and control of the Department and may rely upon the documents attached hereto and documents produced by the Department in discovery.

26. Who for Plaintiff is responsible for and/or most familiar with the Plaintiff's general accounting and tax preparation procedures during the audit period?

RESPONSE:

Chris Keller, Director of Finance, Minnesota Limited, Big Lake, MN.

27. For each individual who contributed in any way to the responses to the foregoing discovery requests, please provide his or her name, address, telephone number, title, occupation, and a summary of his or her anticipated testimony.

RESPONSE:

As witnesses have not yet been identified, Plaintiff has not determined who will provide testimony and the substance of any testimony. Counsel for Plaintiffs provided all objections.

28. Please identify all witnesses, lay or expert, that you may or will rely upon to provide testimony at a deposition, in an affidavit, or at a trial to support any allegation set forth in the Complaint and/or to authenticate any documents upon which you may rely upon in this matter.

RESPONSE:

Objection. See Plaintiff's expert witness list as served on Defendant on September 8, 2017. Plaintiffs have not yet identified all witnesses and will identify and disclose all witnesses in accordance with the scheduling order issued by Judge Talbot on June 21, 2017.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Plaintiff

Dated: October 5, 2017

By: Lynn A. Gandhi
Lynn A. Gandhi (P60466)

VERIFICATION

The undersigned states that he has read the foregoing Plaintiffs' Response To State of Michigan Department of Treasury's First Discovery Requests (the "Response"); and he/she verifies that, based upon a reasonable investigation, that the answers to the Interrogatories are true and correct to the best of his/her belief, knowledge, and available information; and that he/she reserves the right to make any changes to the answers if it appears that more accurate information becomes available.

VECTREN INFRASTRUCTURE SERVICES CORP.,
Successor-in-interest to MINNESOTA LIMITED, INC.

Dated: October 4, 2017

By: Christopher Kiefer

CERTIFICATE OF SERVICE

The undersigned states that she is employed by Honigman Miller Schwartz and Cohn LLP and that on October 5, 2017 she served a copy of the foregoing on Defendants respective counsel of record by way of first-class mail, postage prepaid.

Marcy Bowman

24748793.7

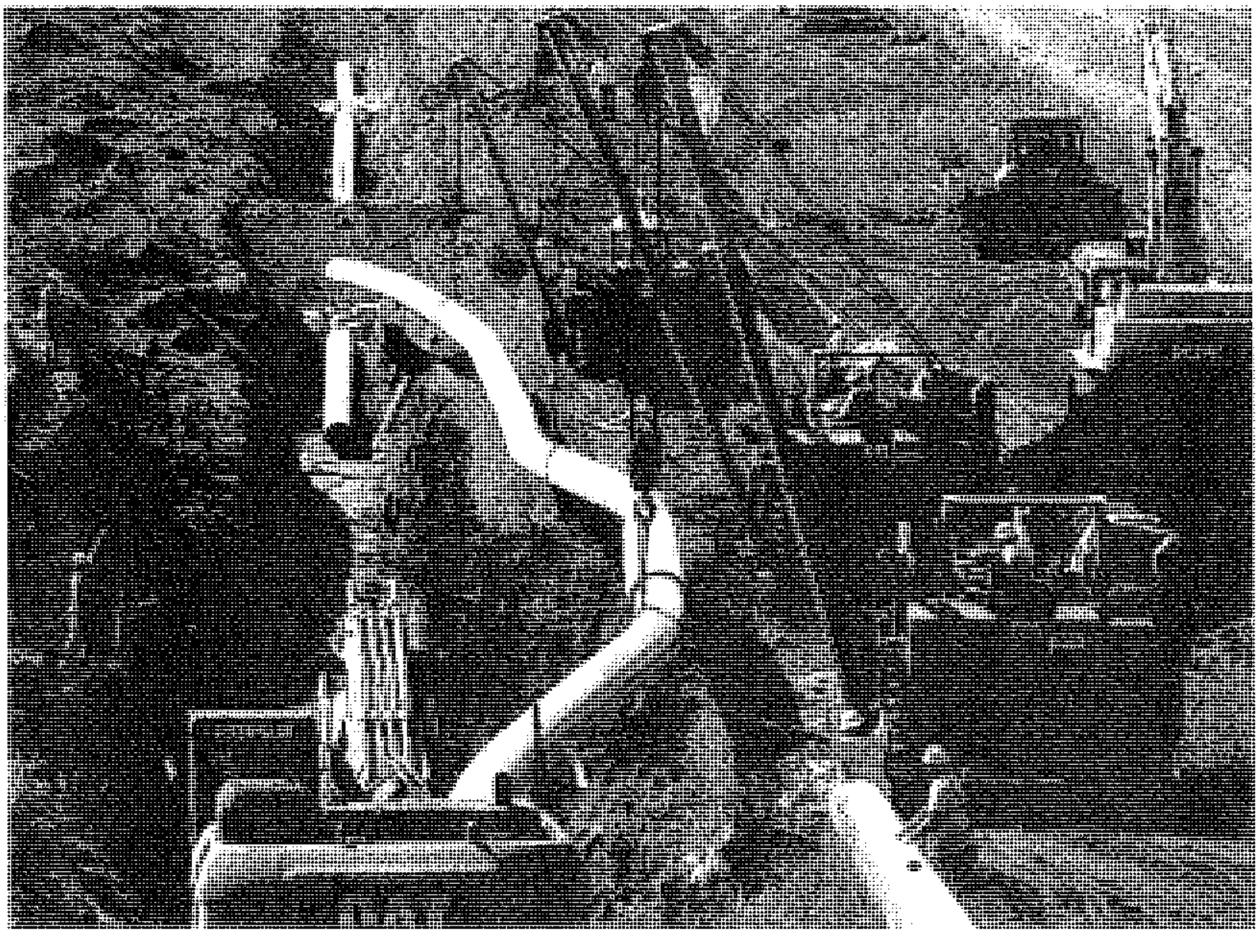
Offering Memo

GH&F GREENE HOLCOMB & FISHER LLC
An Investment Banking Firm
Partner with Experience℠

PROJECT CADILLAC

CONFIDENTIAL MEMORANDUM

APRIL 2010



Kyle Crowe	**Paul Jevnick**	**Bob Dovenberg**	**Scott Gerling**	**Micbael Morgan**
Managing Director	Managing Director	Managing Director	Vice President	Analyst
612.904.5705	612.904.5740	612.904.5725	612.904.5723	612.904.5737
kcrowe@ghf.net	*pjevnick@ghf.net*	*bdovenberg@ghf.net*	*sgerling@ghf.net*	*mmorgan@ghf.net*

DISCLOSURE

This Confidential Offering Memorandum ("Memorandum") has been prepared solely for the purpose of providing a preliminary introduction to Minnesota Limited, Inc. ("MN Limited" or the "Company") and to assist potential purchasers in deciding whether to proceed with an in-depth investigation of the Company in connection with a potential acquisition of the Company. The information contained in this Memorandum and any additional written or oral information provided to potential purchasers (collectively, the "Information"), and the fact that the Company is soliciting strategic partners, is confidential, shall not be used for any purpose other than to evaluate a potential acquisition of the Company, and shall not be disclosed or otherwise made available to anyone not directly concerned with the decision regarding such transaction. The use of this Memorandum is governed by the terms of the previously executed confidentiality agreement. The Memorandum may not be distributed, reproduced or used without the express written consent of Greene Holcomb & Fisher LLC ("GH&F") or the Company for any other purpose than the evaluation of the Company by the person to whom this Memorandum has been delivered. By accepting this Memorandum, the recipient agrees that it will not copy or distribute this Memorandum, in whole or in part, at any time, without the prior written consent of the Company or GH&F. If the recipient of this Memorandum does not wish to pursue a transaction with the Company, the recipient agrees to promptly return the Information to GH&F. In any event, GH&F reserves the right to require the return of the Information at any time.

Information contained herein has been obtained from the Company and other sources which are believed to be reliable. This Memorandum is intended to assist interested parties in making their own evaluation of the Company and does not purport to contain all of the information that may be necessary to fully evaluate the Company. No representations and warranties are made as to the accuracy of such information or any other written or oral communication transmitted to the recipient in the course of its evaluation of the Company. Only those particular representations and warranties that may be in a definitive agreement when, as and if executed, will have any legal effect. This Memorandum includes certain statements, estimates and projections provided by the Company with respect to the anticipated future performance of the Company. Such statements, estimates and projections reflect various assumptions by the Company concerning anticipated results and are subject to significant business, economic and competitive uncertainties, and contingencies, many of which are beyond the control of the Company. Accordingly, there can be no assurance that such statements, estimates and projections will be realized. Neither the Company nor GH&F makes any representations as to the accuracy or completeness of such statements, estimates and projections or that any forecasts will be achieved. The Company's independent public accountants have not reviewed, examined or compiled the projections presented herein, and accordingly assume no responsibility for them. The projections were not prepared with a view to public disclosure or compliance with published guidelines of the Securities and Exchange Commission or any state securities commission, or the guidelines established by the American Institute of Certified Public Accountants. The estimates and projections presented herein and actual results will likely vary, and those variations may be material. The Company and GH&F expressly disclaim any and all liability for inaccuracy or incompleteness of any Information contained herein, or in any other written or oral communication transmitted or made available to a prospective acquirer. In all cases, interested parties should conduct their own investigation and analysis of the Company and the Information.

The Company and GH&F, on the Company's behalf, reserve the right to negotiate with one or more potential parties at any time and enter into a definitive agreement for a transaction involving the Company without prior written notice to you or other potential parties. The Company and GH&F, on the Company's behalf, also reserve the right to terminate, at any time, further participation in the investigation by any party, to modify the rules of procedure set forth herein or any other procedures without prior notice or assigning any reason therefore or to terminate the process contemplated hereby. The Company reserves the right to take any action, whether in or out of the ordinary course of business, that the Company in its sole discretion deems necessary or prudent in the conduct of the Company's business or the process contemplated by this Memorandum.

GREENE HOLCOMB & FISHER LLC
90 SOUTH 7TH STREET, 54TH FLOOR
MINNEAPOLIS, MINNESOTA 55402
612.904.5700
FAX: 612.904.5719

Kyle Crowe	**Paul Jevnick**	**Bob Dovenberg**	**Scott Gerling**	**Michael Morgan**
Managing Director	Managing Director	Managing Director	Vice President	Analyst
612.904.5705	612.904.5740	612.904.5725	612.904.5723	612.904.5737
kcrowe@ghf.net	*pjevnick@ghf.net*	*bdovenberg@ghf.net*	*sgerling@ghf.net*	*mmorgan@ghf.net*

UNDER NO CIRCUMSTANCES SHOULD THE COMPANY OR ANY OF THE COMPANY'S CUSTOMERS, SUPPLIERS OR EMPLOYEES BE CONTACTED.

TABLE OF CONTENTS

SECTION **PAGE**

I **EXECUTIVE SUMMARY** 1

- Summary Fact Sheet
- Strategic Highlights and Investment Considerations
- Situation Overview

II **INDUSTRY OVERVIEW** 14

- Introduction
- Natural Gas Industry Overview
- Oil Industry Overview
- Competition

III **BUSINESS DESCRIPTION** 25

- Introduction
- Company History
- Market Segments
- Customers
- Business Development and Contracting
- Operations
- Growth Strategy
- Information Systems and Technology
- Facilities
- Government Inspections, Regulatory and Legal
- Bonding and Insurance

TABLE OF CONTENTS

SECTION **PAGE**

IV MANAGEMENT AND EMPLOYEES 49

- Organizational Chart
- Senior Management
- Employees
- Company Benefits

V FINANCIAL OVERVIEW 54

- Financial Summary
- Historical and Projected Income Statements
- Historical Balance Sheet
- Capital Expenditures
- Seasonality

APPENDIX

A 2008 and 2009 Audited Financial Statements

I. EXECUTIVE SUMMARY

SUMMARY FACT SHEET

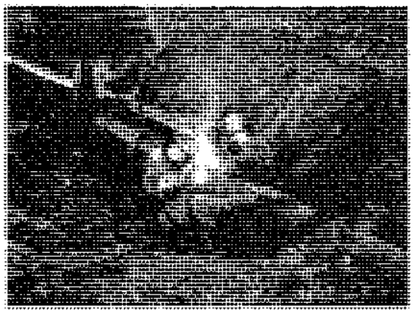
Company: Minnesota Limited, Inc. and related entities ("MN Limited" or the "Company").

Corporate Structure: The Company includes five separate entities, all of which are either Subchapter S Corporation or Limited Liability Company's. Please see the section titled *Corporate Structure* for more detail.

Website: www.mnlimited.com.

Employees: Approximately 600 employees at seasonal peak.

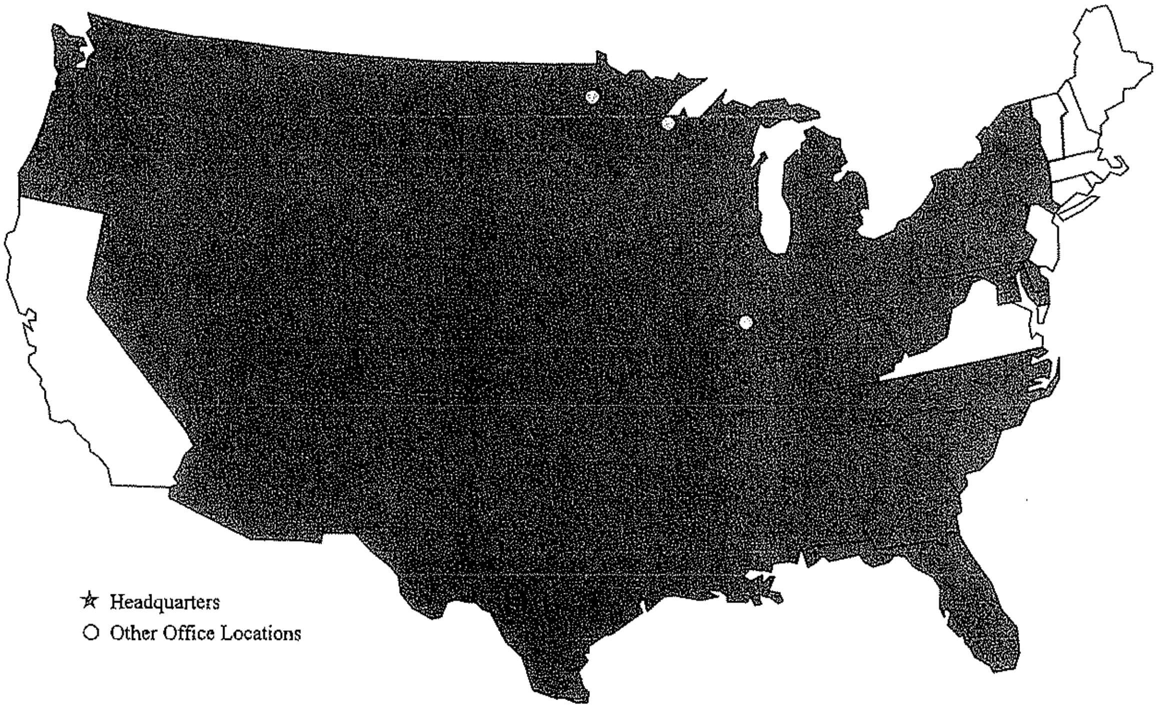
Location: Big Lake, Minnesota (headquarters); Bemidji, Minnesota; Superior, Wisconsin; Altamont, Illinois (branch offices).



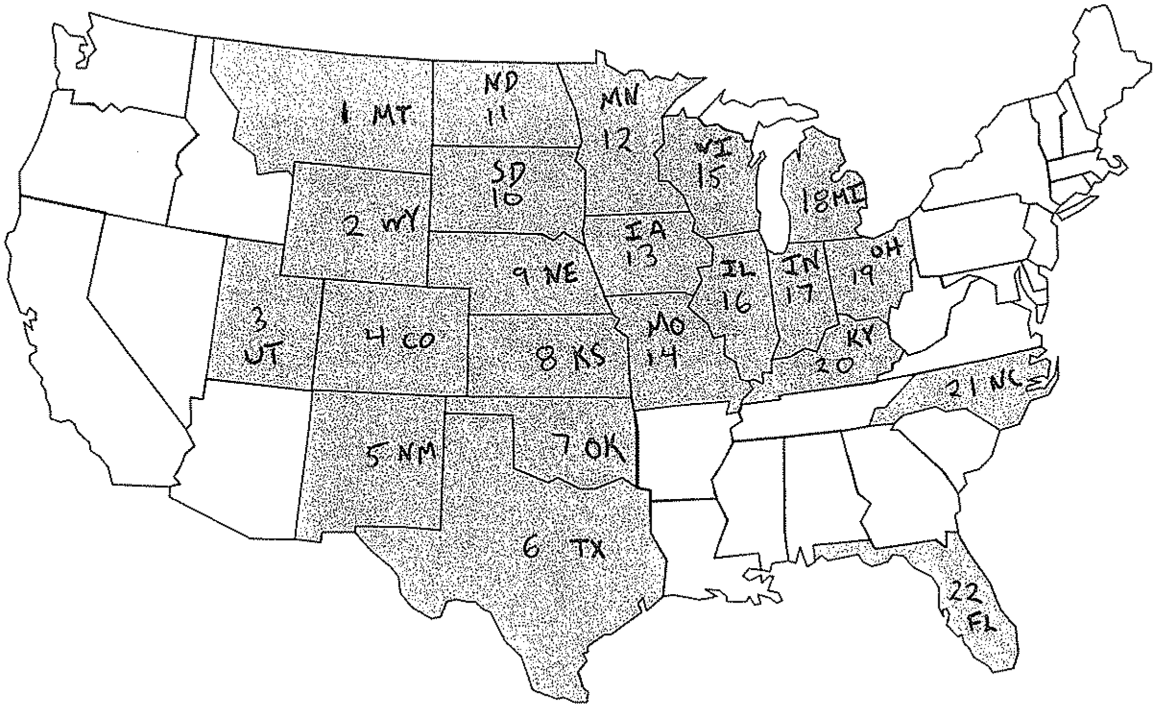
Business Overview: Founded in 1966, MN Limited is one of the leading middle-market providers of construction and maintenance services for large-diameter, high-pressure, welded steel pipelines and related terminals and stations. The Company provides a comprehensive set of self-performed services for leading pipeline operators and energy companies, including: mainline pipeline construction; compressor station construction; pumping station construction; pipeline maintenance; hydrostatic testing; and emergency response. The Company's extensive operating history and relentless focus on safety and quality are key reasons why MN Limited has been successful winning multiple projects from its list of premier clients. Over its 44-year history, the Company has completed more than 2,000 projects representing nearly $900 million in revenue.

MN Limited is widely recognized as one of the premier firms in the pipeline construction and services market and has installed thousands of miles of pipeline for many of the preeminent energy producers and distributors in North America. With fossil fuel pricing remaining historically high even through the recession, development of oil and gas production in more difficult to recover locations will continue. New production requires new transportation infrastructure. According to the Interstate Natural Gas Association of America ("INGAA"), an estimated $150 billion is expected to be spent on gathering and storage infrastructure for the natural gas industry alone over the next 20 years. MN Limited will directly benefit from these trends as much of the new North American production will be in areas that will require pipeline infrastructure in the Company's core Great Plains and Midwest geographies. INGAA estimates that half of North America's proven reserves of natural gas are in the Rocky Mountain region or in the Alberta Tar Sands region. These regions, along with the Bakken Formation in North Dakota, also contain a vast amount of crude oil. Pipelines in these areas generally transit the plains or Midwest to deliver the product to market. The Company also has substantial capabilities in other regions with an emphasis on expansion both west of the Mississippi and areas in the Great Lakes region.

MN Limited Licensed States and Facilities Locations


☆ Headquarters
○ Other Office Locations

MN Limited States with Completed Projects

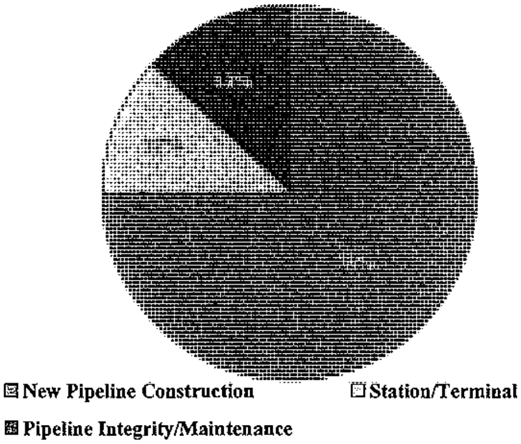

1 MT
ND 11
MN 12
SD 10
WI 15
18 MI
2 WY
IA 13
9 NE
IL 16
IN 17
OH 19
3 UT
4 CO
8 KS
MO 14
KY 20
21 NC
5 NM
7 OK
6 TX
22 FL

Labor and equipment are the key resources of the Company. MN Limited maintains a pool of approximately 1,200 pieces of heavy equipment and over 600 highly qualified employees at a seasonal peak. These resources allow MN Limited to self-perform on the vast majority of work with limited use of subcontractors. This capability gives the Company hands-on control over the project ensuring that the Company meets or exceeds all customer expectations.

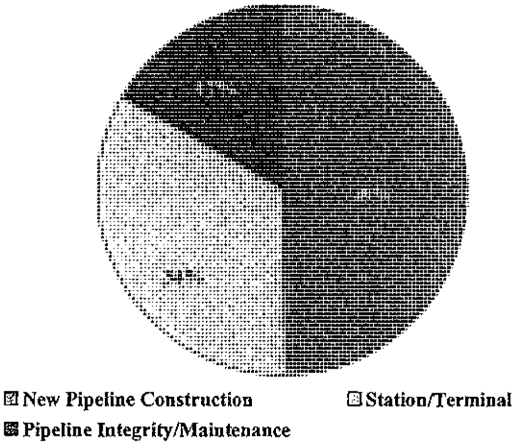
Another key competitive advantage of the Company is its ability to provide a comprehensive suite of services to its customers. The Company segments its offerings into: Pipeline Construction; Station/Terminal Construction; and Pipeline Integrity/Maintenance. The Company's revenue from each of these segments is highlighted below.

Bolstering its complete services offering is the Company's proven ability work in difficult environmental conditions. This has allowed the Company to complete projects in 22 different states in all seasons of the year, including winter projects in the North Central U.S.

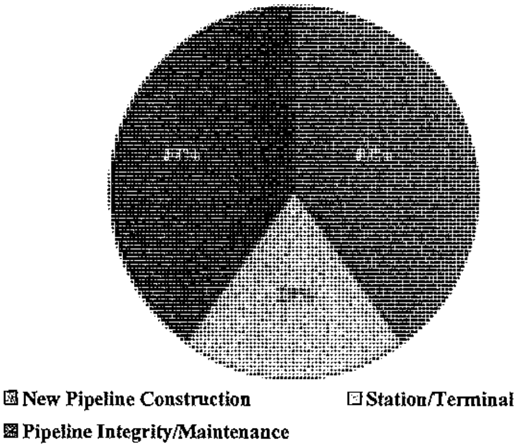
2008 Revenue by Market Segment
($155.6 million)



2009 Revenue by Market Segment
($121.4 million)



2010E Revenue by Market Segment
($110.0 million)



Customers:

The Company's success in developing outstanding customer relationships is evidenced by the fact that over 80% of the Company's 2009 revenue came from repeat customers. The Company has established a strong track record with leading customers in its key target markets throughout the U.S. Some of the Company's customers utilize its services only occasionally, while others rely on the Company for a wide variety of projects on an ongoing basis. Generally, the Company is able to successfully compete for business on the basis of its long operating history, outstanding safety record and repeated ability to exceed customer expectations. No single customer accounted for more than 30% of the Company's revenues in 2009. Key customers include:

CenterPoint. Energy
KINDER MORGAN INC.
ENBRIDGE™
Xcel Energy℠
KOCH
KOCH PIPELINE COMPANY LP
bp
Northern Natural Gas

Corporate Structure:

The Company consists of the following five separate entities, each 100% owned by Christopher Leines and his sister, Paulette Britzius.

- Minnesota Limited, Inc. (S Corp.)
- Nordic Equipment, LLC (LLC)
- Nordic Land Co. (LLC)
- Nordic Pipeline Services, LLC (LLC)
- Nordic Investments LLLP (LLP)

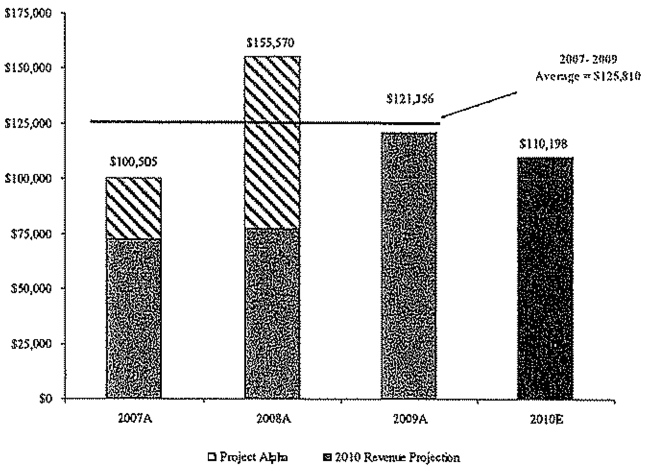
Minnesota Limited, Inc. is the primary operating company. Nordic Equipment, LLC holds certain construction equipment assets and there are numerous "intercompany" transactions between these two entities. Nordic Land Co., holds the real estate and facilities in Bemidji, Superior and Altamont. Nordic Pipeline Services conducts a limited amount of pipeline services work, and Nordic Investments holds the building and real estate at the Company's headquarters in Big Lake, Minnesota. Unless otherwise noted, the financial information presented herein is a consolidation of all entities except Nordic Investments. The Company's owners would contemplate selling this entity in connection with the transaction, but would also consider retaining the entity and entering into a long-term lease. If Nordic Investments had been included, consolidated EBITDA would be increased by $1.4 million annually.

Financial Summary:

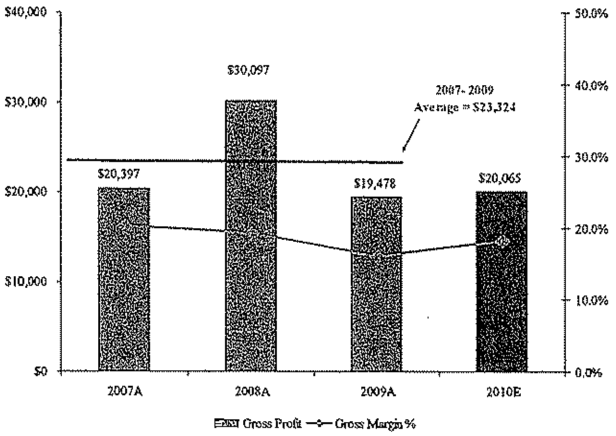
Since 2007, MN Limited has grown revenue at a compound annual growth rate ("CAGR") of 10% to $121 million in 2009 while generating adjusted EBITDA margins between approximately 17% and 23%. The Company benefited from one particularly large contract in 2008, which caused revenue that year to spike abnormally. As a result, 2009 revenue decreased from 2008. However, the Company has been growing consistently for the last several years and 2010 is in line with its recent growth rate.

The Company expects 2010 revenue to be approximately $110 million, driven primarily by projects in its pipeline integrity/maintenance segment, which is expected to be up more than 100% year over year. Historical and estimated revenue and EBITDA are illustrated below.

Revenue
Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)



Adjusted EBITDA[1]
Years Ended and Ending December 31, 2007 – 2010E
(dollars in thousands)



[1] Excludes Nordic Investments LLP which holds the building in Big Lake, Minnesota. The entity had EBITDA of approximately $1.4 million annually in 2009.

STRATEGIC HIGHLIGHTS AND INVESTMENT CONSIDERATIONS

MN Limited is well-positioned as one of the leading providers of construction and maintenance services for large-diameter, high-pressure, welded steel pipelines and related terminals and stations for the oil and gas industry. The Company presents a compelling acquisition opportunity based on a number of important investment considerations, including:

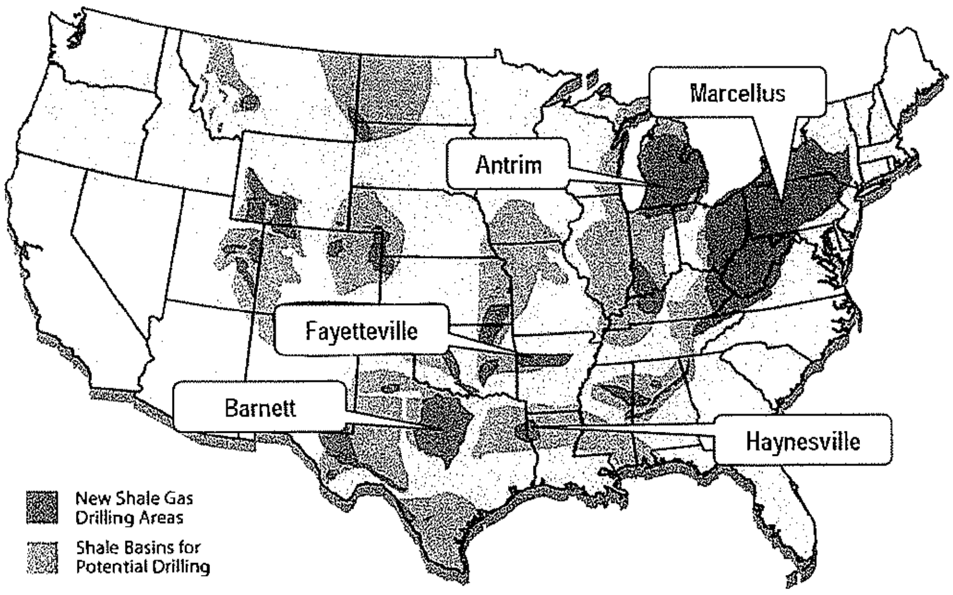
- Exceptional market dynamics
- Significant opportunities resulting from increased North American E&P
- High barriers to entry
- Experience performing in difficult climatic conditions
- Strong relationships with blue chip customer base
- Great Plains footprint with nationwide success stories
- Direct-hire and self-performance business model
- Outstanding safety track record
- Strong management team
- Highly experienced and proficient employee base
- Large and valuable equipment base
- Exceptional financial performance
- Balance between fixed-price contracts and time-and-materials ("T&M") contracts

Exceptional Market Dynamics

The Company primarily focuses on pipeline and related infrastructure serving the natural gas and petroleum industries. Both industries are expected to see exceptional North American growth going forward with an estimated $150 billion of spending on pipeline, gathering and storage infrastructure for the natural gas industry alone over the next 20 years. According to the Federal Energy Regulatory Commission, there are over 50 approved or under construction large (over 50 million cubic feet per day) of crude oil and natural gas pipeline projects in the U.S. with nearly 8,000 miles of pipeline expected to be completed by 2012. Much of the natural gas pipeline construction activity is supporting an increasing reliance on natural gas as a feedstock for electricity generation. Over 50% of all new electricity generation in the U.S. in 2008 used natural gas as a feedstock and the U.S. Energy Information Administration ("USEIA") expects this trend to continue for the next decade. Additionally, recent surveys from the *Pipeline & Gas Journal* indicate there are over 200 natural gas, crude oil or refined products pipelines under way or planned for construction through 2012 totaling over 17,000 miles. In addition, much of the domestic underground petroleum pipeline infrastructure is aging. There are over 300,000 miles of interstate and intrastate transmission lines in the U.S. with much of it over 20 years old. These are lines that will require significant upgrades or replacement in the future. These trends directly support the Company's business and prospects.

Significant Opportunities Resulting from North American E&P

With persistently high oil prices and significant new production coming on line (all of which will require transportation), the Company stands to benefit from increased North American upstream production. There has been renewed domestic attention to difficult to access oil and gas deposits and shale recovery techniques. Unconventional gas production (which includes "shale gas") now represents approximately 40% of all U.S. gas production and is expected to continue to increase rapidly. Much of this unconventional oil and gas production, including the Marcellus and Antrim Shale formations, are right in the Company's geographic sweet spot. In addition, other older but rapidly developing deposits, including the Bakken (Dakotas) formation and the Alberta Tar Sands (Western Canada), benefit the Company because much of the oil and gas in these regions either cross the Company's Midwestern footprint during transportation or are piped to the Midwest for heating in the winter time. In fact, INGAA estimates that over half of the North American proven reserves of natural gas currently exist in the Rocky Mountain region or the Western Canada Sedimentary Basin (Tar Sands).


Marcellus
Antrim
Fayetteville
Barnett
Haynesville
New Shale Gas Drilling Areas
Shale Basins for Potential Drilling

Sources: U.S. Energy Information Administration

High Barriers to Entry

The Company focuses on projects in the "middle market" of the oil and gas transportation industry, which generally means projects between $1 million and $50 million in total value. Customers in this segment tend to be large national or super-regional energy distributors and energy producers such as Koch Industries and Enbridge. While focused on cost, these customers value experience, safety, quality and capabilities very highly. MN Limited has an operating history spanning nearly 45 years, an unparalleled safety record and the ability to perform high quality work under challenging climactic conditions. These are substantial barriers to new entrants who would find it difficult to compete against such a track record and capabilities. In addition, the Company has a large pool of equipment and employee talent at its disposal, making new entry difficult for capital-constrained businesses.

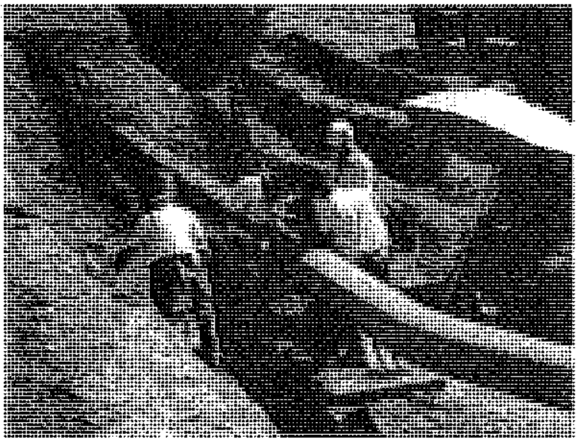
Experienced Cold-Climate Pipeline Contractor

One of the Company's key differentiators is its ability to perform in difficult weather conditions. While the Company tends to experience lower revenue during the winter months, MN Limited has significant expertise with winter construction techniques and has performed a substantial amount of winter maintenance services work. There are only a handful of middle market companies capable of cold-climate pipeline construction work which means the Company can remain relatively busy in northern U.S. regions during periods when others cannot.

Strong Relationships with Blue Chip Customers

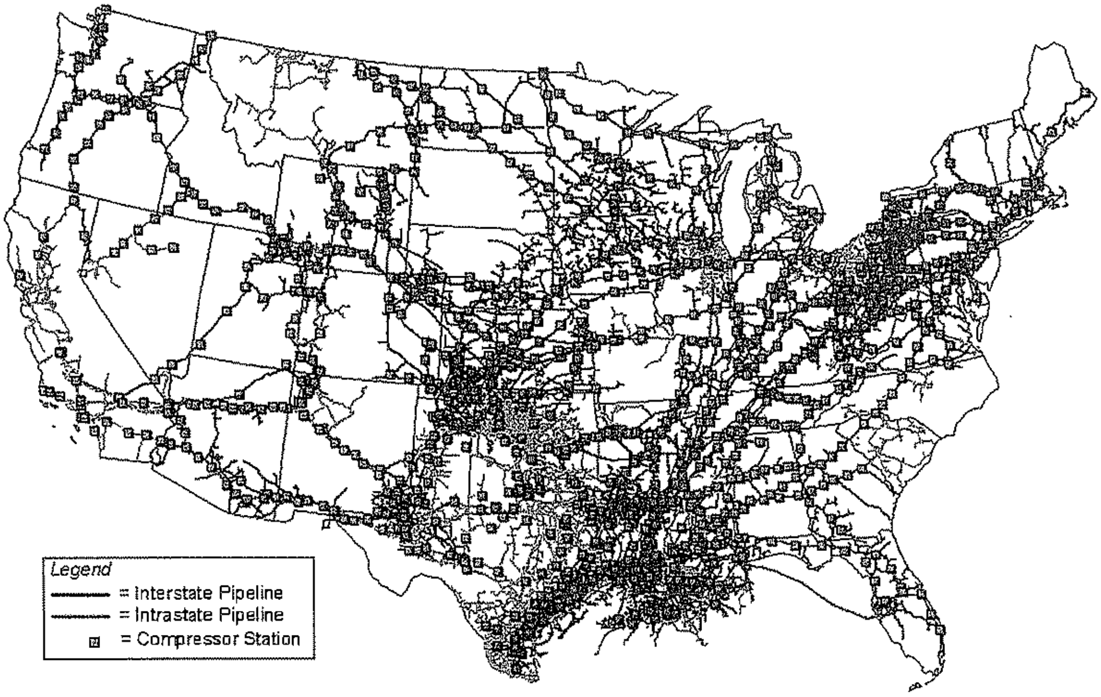
While the Company aggressively pursues new customers on an ongoing basis, it also works diligently to maintain its long-term relationships with its existing customers, many of which are leading firms in the pipeline and energy industries. The Company has completed multiple construction and maintenance projects for most of its top tier customers. In addition, the Company is often involved at the "drawing board" stage with its customers, which gives it visibility into potential new projects several years into the future. As a result, many of the Company's customers view MN Limited as a strategic partner. The Company's success is evident in its customer loyalty. The Company estimates that approximately 80% of its 2009 revenue was derived from repeat customers. Key relationships include: Minnesota Pipeline, Koch Industries, Enbridge, Alliance Pipeline, British Petroleum, Northern Natural and Viking Gas.

Very Strong Great Plains Footprint with Nationwide Success Stories

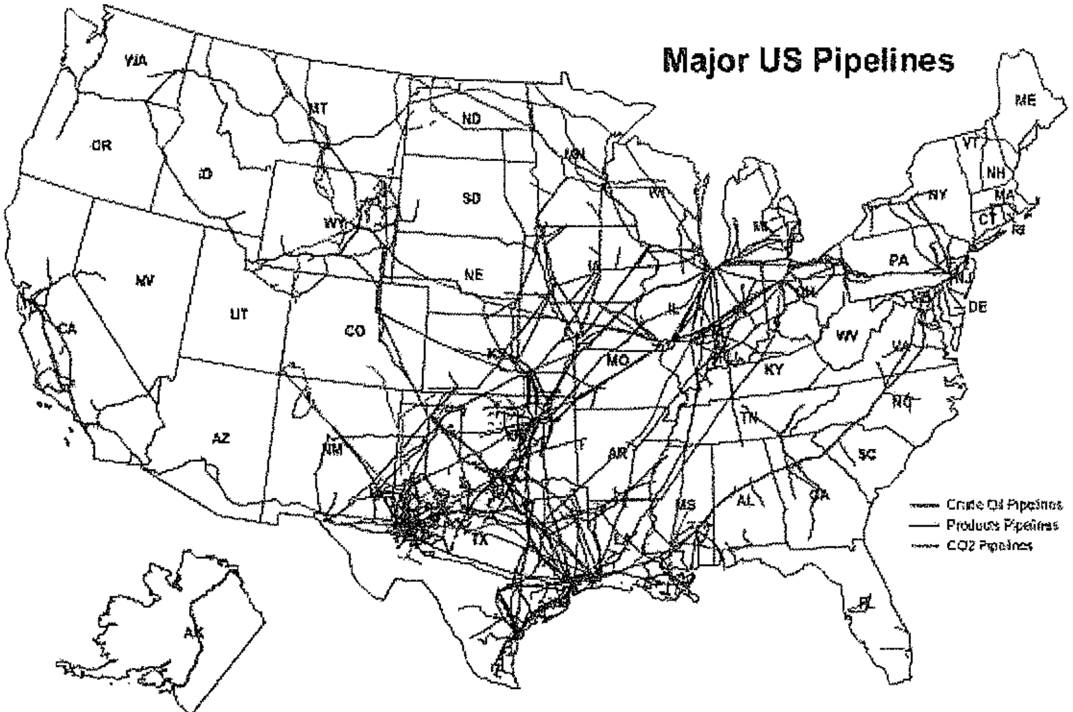


MN Limited has performed work in 22 U.S. states in all seasons. Because the Company is not geographically constrained, it is free to pursue projects of all types throughout North America, including work in difficult climactic and topographical conditions. A significant amount of the Company's work is concentrated in the Midwest which is a major pipeline crossroad connecting production in the Rocky Mountain and Western Canada regions with major markets in the Upper Midwest and east of the Mississippi. The Company is able to deliver equipment and labor anywhere in the country through nationwide logistical coordination. This also means that the company has the scale to effectively build relationships with major customers who develop projects across U.S., including Texas, the Tennessee Valley and the Great Lakes region. The maps on the following page highlight the domestic natural gas and oil pipeline infrastructure.

U.S. Natural Gas Pipeline Network[2]


Legend
= Interstate Pipeline
= Intrastate Pipeline
= Compressor Station

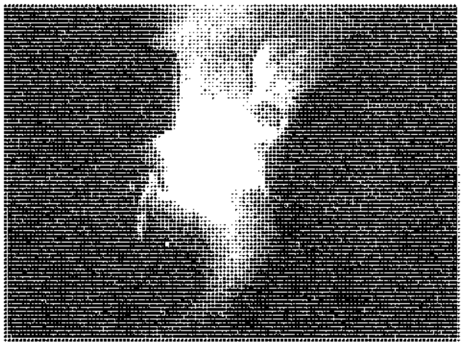
U.S. Oil and Other Products Pipeline Network


Major US Pipelines
WA
OR
ID
MT
ND
SD
WY
NE
NV
UT
CO
CA
AZ
NM
TX
KS
MO
AR
MS
AL
GA
SC
NC
TN
KY
WV
VA
PA
NY
VT
NH
MA
CT
RI
NJ
DE
ME
MN
WI
MI
IA
IL
OH
LA
FL
AK
Crude Oil Pipelines
Products Pipelines
CO2 Pipelines

Source: REXTAG Strategies Corp and the Alaska Department of Natural Resources, as interpreted by API (2/26/09)

[2] *Source: Energy Information Administration, Office of Oil & Gas, Natural Gas Division, Natural Gas Transportation Information System*

Direct-Hire and Self-Performance Business Model



MN Limited is a relationship-based, direct-hire pipeline construction and maintenance services firm that provides a full slate of self-performed services. On average, the Company subcontracts for less than 15% of work performed. By limiting the amount of sub-contracting, the Company believes it can better control its projects and ensure delivery of superior outcomes to clients while driving exceptional margins in its business. Customers also appreciate the Company's control over all aspects of the project, allowing for a single point-of-contact and immediate correction of any problems. Subcontracted work typically is limited to electrical, concrete and directional drilling (used for laying pipelines under roadways).

Outstanding Safety Track Record

One of the Company's core values is reflected in its focus on safety. MN Limited takes a proactive approach to risk analysis and training. Safety is instilled in the Company's culture through rigorous training, constant reinforcement, drug testing/alcohol programs, certifications and quality control. The Company directs several regular educational forums and makes operator training, equipment training and safety training for all employees a priority. Management believes that a safe job site decreases risks on a project, provides a positive environment for employees, reduces project cost and improves customer relationships. In fact, the Company can point to several projects it has won in part because of its environmental, health and safety ranking which is in the 90th percentile when measured against its peers. MN Limited's experience modifier is an exceptionally low .65 and has decreased every year for the last five years. This is especially impressive considering the Company's rapid growth over the past decade. Additionally, MN Limited has been able to maintain an extremely low total recordable incident rate, which was .86 in 2009. The Company has never had a fatality.

Workers Compensation Experience Modification Rate ("EMR")

	2007	2008	2009	2010
EMR Rate	.75	.72	.66	.65

OSHA No. 200 Log

	2007	2008	2009
Total Recordable Incident Rate	.86	1.5	.86
Cases Involving Lost Workdays	0	2	2
Cases with Restricted Activities	1	1	1
Number of Fatalities	0	0	0
Approximate number of employee (direct hire) hours worked	694,623	1,195,562	936,815

Strong Management Team

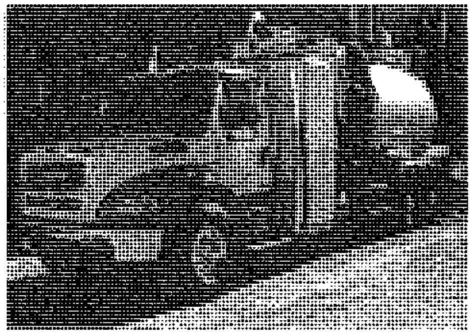
MN Limited has an exceptionally strong senior management team, with over 100 years of combined service to the Company and over 140 years in the construction industry among the Company's top five executives. The Company's President and Chief Executive Officer, Christopher Leines, is a second-generation, 29-year veteran of the Company and has managed the day-to-day operations of the Company since 1991. Mr. Leines started at the bottom as a construction laborer and, as a result, has a complete appreciation for all aspects of the Company's operations. Organizationally, MN Limited has three business leaders (Directors of Operations, Finance and Compliance) and a fourth remains open (Director of Equipment). The strength of the management team lies not only in the leadership team, but also in the quality and experience of its senior project managers, project leaders, project superintendants, engineers and foremen. Please see the section titled *Management and Employees* for biographies of the senior leadership team.

Highly Experienced and Proficient Employee Base

Many positions at MN Limited require specialized skills (e.g., engineers, welders, millwrights, machinery operators, project managers, schedulers, estimators, etc.). Historically, there has been an industry shortage of these skilled employees, and such employees typically switch firms frequently depending on the type and volume of work available in a particular geography. While this has changed with the economic downturn, the Company expects that tight labor conditions will emerge again at some point in the future. MN Limited has been extremely successful in hiring and retaining tradesmen and other skilled employees. This success is largely attributable to its positive corporate culture, focus on safety and reputation within the industry.

Large and Valuable Equipment Base

MN Limited owns and leases a fleet of state-of-the-art equipment, including approximately 1,200 pieces of well-maintained construction equipment. The Company owns numerous pieces of heavy equipment including: graders, road tractors, dozers, excavators, pipelayers, piledrivers, welding equipment and other machinery. Management believes the Company's equipment base is a key operating asset because it allows it to self-perform the vast majority of its work. At December 31, 2009, the Company's equipment had a net book value of $11.9 million with an appraised value of approximately $33.7 million. In addition to the equipment on the balance sheet, the Company also owns a substantial amount of equipment which was expensed at the time of purchase, but still has a significant useful life. Management estimates the value of this equipment (which includes most items with a purchase price under $2,000) to be approximately $4.5 million. The Company typically acquires equipment when it is economically prudent to do so and occasionally rents heavy equipment for which utilization rates are low or fluctuate.



Vacuum Excavation Truck

Exceptional Financial Performance

From 2007 to 2009, MN Limited grew revenue at a compound annual rate of 10% to $121 million in 2009, while generating adjusted EBITDA margins of 17%. The Company expects 2010 revenue to be approximately $110 million driven primarily by a more robust financing environment and increasing interest in capital projects on the part of pipeline operators and energy companies. The Company benefited from one particularly large contract in 2008, which caused revenue that year to spike abnormally. As a result, 2009 revenue decreased from 2008. However, the Company has been growing consistently for the last several years and 2010 is in line with its recent growth. MN Limited takes a highly disciplined approach to the financial management of the business. Each project is carefully estimated and reviewed for profitability, and the Company deliberately avoids bid work where price is the primary factor.

Balance Between Fixed-Price Contract and Time-and-Materials ("T&M") Contracts

Historically, the Company has achieved a balance between T&M and fixed-price contracts, although the mix does vary from year to year. The Company would prefer to win as many T&M contacts as possible because the gross margins are fixed and tend to be higher than fixed-price contracts. However, the Company's fixed-price contracts are still attractive projects because MN Limited generally doesn't pursue pure "low-bid" projects. Further, the Company's recent switch to Viewpoint software will enhance its effectiveness in accurately estimating and pricing fixed-price work. This diversification allows the Company to achieve more consistent, sustained growth and not rely on any one specific contract or project type.

SITUATION OVERVIEW

The Company is 100% owned by Christopher Leines and his sister, Paulette Britzius. They are both children of the founder, Reuben Leines. The Company has been privately held since its inception in 1966. The owners of the Company are currently evaluating a sale of the business for purposes of estate planning. Christopher Leines, current President and Chief Executive Officer, is interested in continuing with the Company post-transaction, but the owners wish to divest a material portion of their ownership position.

Greene Holcomb & Fisher LLC ("GH&F") has been retained by the Company on a confidential basis to assist the Company in a potential sale. The Company is willing to share certain information to stimulate discussions with interested parties. GH&F will act as the primary contact with potential buyers and will arrange visits to the Company's facilities and meetings with management, as deemed appropriate by GH&F and the Company. In order to maintain confidentiality, the Company has requested that all contacts be directed to one of the following professionals at GH&F:

Kyle Crowe	**Paul Jevnick**	**Bob Dovenberg**	**Scott Gerling**
Managing Director	Managing Director	Managing Director	Vice President
612.904.5705	612.904.5740	612.904.5725	612.904.5723
kcrowe@ghf.net	*pjevnick@ghf.net*	*bdovenberg@ghf.net*	*sgerling@ghf.net*

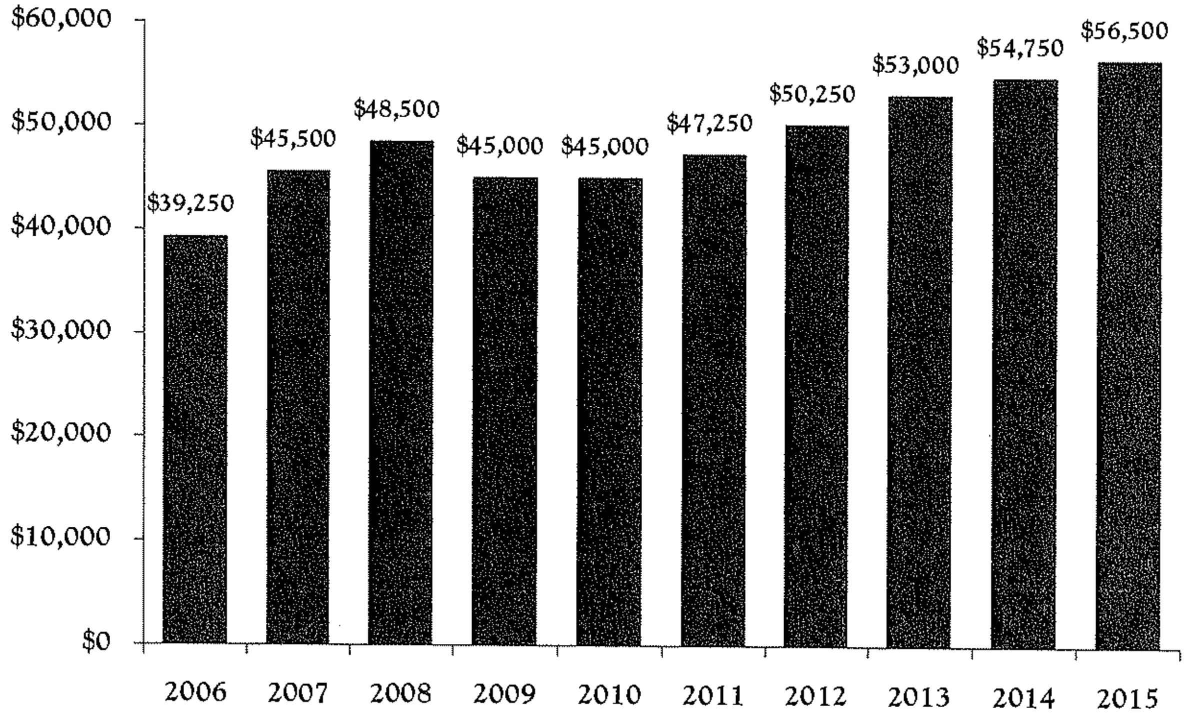
UNDER NO CIRCUMSTANCES SHOULD THE COMPANY OR ANY OF THE COMPANY'S CUSTOMERS, SUPPLIERS OR EMPLOYEES BE CONTACTED REGARDING A POTENTIAL TRANSACTION WITH THE COMPANY.

II. INDUSTRY OVERVIEW

INTRODUCTION

MN Limited operates in the pipeline construction industry. Specifically, the Company builds pipelines for the transportation of natural gas, oil, and refined materials. Growth within oil and gas pipeline construction has been driven by increasing prices of the these commodities and by increasing demand in the global market for oil and gas products. For the five year period ending in 2009, oil transmission pipeline construction grew at an annual rate of 18.8%, while natural gas transmission pipeline construction grew at 7.0%. 2009 declined relative to 2008 due to economic conditions, and many 2009 pipeline construction projects were pushed into 2010. Furthermore, FMI expects increased construction activity due to stimulus legislation, with a focus on pipeline replacement work. Beyond 2010, a survey from the *Pipeline & Gas Journal* indicates that natural gas, crude oil and refined precut pipelines currently in construction or planned for construction in the U.S. through 2012 total approximately 27,000 miles (with 17,000 miles devoted to natural gas pipelines).

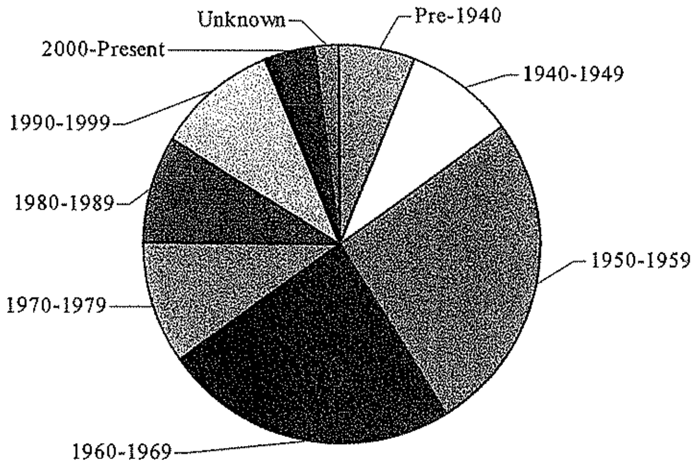
Total U.S. Pipeline Construction Revenues[3]
(dollars in millions)



[3] *Source: IBIS Pipeline Construction in the U.S. Report, dated January 4, 2010*

The outlook for pipeline construction is also enhanced by the U.S.'s aging infrastructure. According to the United States Department of Energy ("DOE"), approximately 25% of the nation's pipelines are more than 50 years old. Furthermore, almost $19 billion will be needed for replacement of current pipe just to maintain existing capacity. These pipes will need to be replaced or repaired for a variety of reasons, mainly corrosion. Corrosion occurs as water and contaminants, such as sulfur, build up and degrade a pipe's inner surface. The longer a pipeline has been in service, the more time it has to accumulate the substances that cause corrosion, and, thus, the higher likelihood that the pipe will have to be replaced. Corrosion tends to be magnified in areas of the pipe where pressure is low because water will coalesce, attach to dirt or other contaminants, and stick to the pipe wall where the combined substance will speed up the natural process of corrosion.

Pipeline Installation Dates for U.S. Gas Transmission and Distribution Lines[4]



Private sector clients, specifically utility companies and land developers, represent the vast majority (90%) of pipeline construction work completed in the U.S. For pipeline construction companies like MN Limited, the main difference between private sector contracts and public sector contracts is that a private sector contracts are usually won on the basis of work quality, safety and price while public sector contracts are often awarded largely on the basis of price. Additionally, private sector investment into oil and natural gas pipeline construction is driven by many factors, including: the prices of oil and gas; the expected rate of return of a project; government incentives to invest; the availability of capital; expansion to meet production capacity; and the increase in acceptance of natural gas as a substitute for electricity and oil (approximately 70% of new single-family households are connect to the natural gas network).

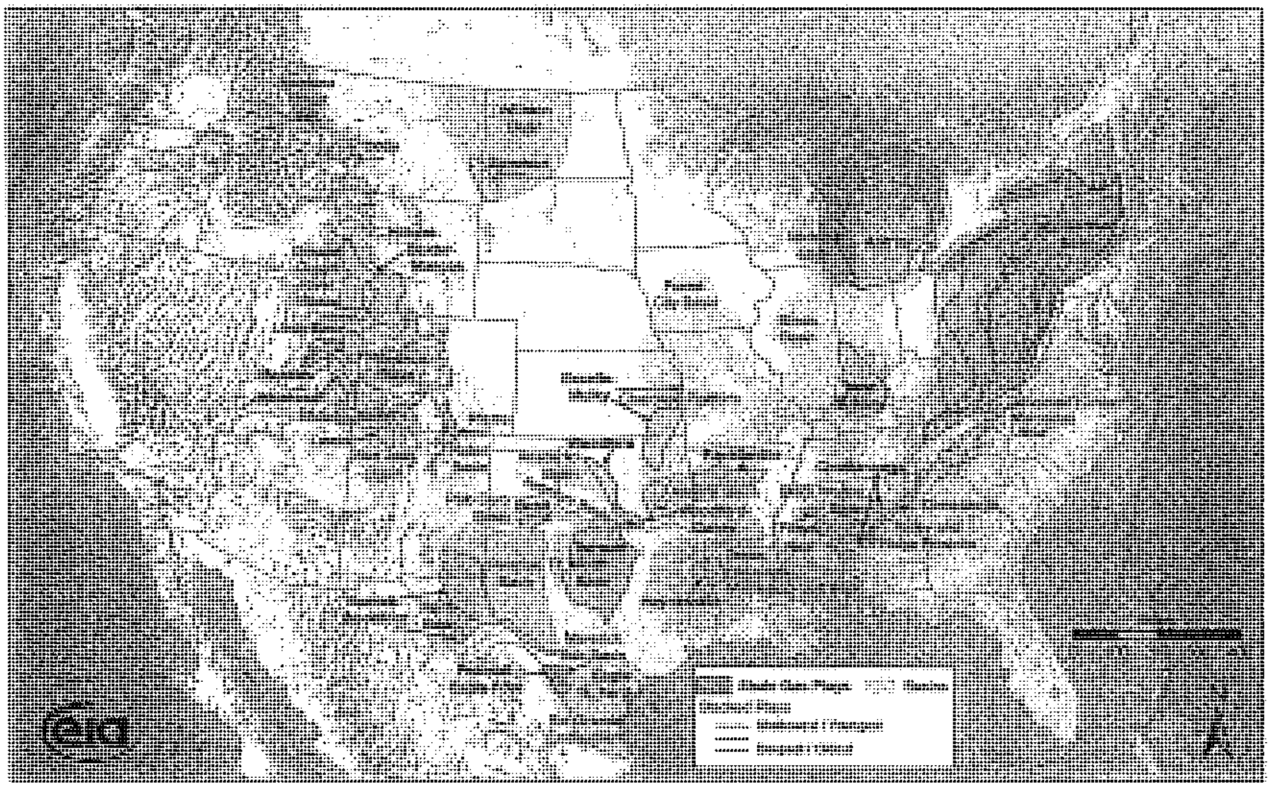
Although MN Limited's core competencies center on the pipeline construction market, the Company's services are driven primarily by its end markets which include the natural gas and crude oil industries.

[4] *Source: U.S. Department of Energy*

NATURAL GAS INDUSTRY OVERVIEW

Natural gas is a combustible gaseous mixture of hydrocarbons, most of which is methane. Natural Gas is one of the cleanest, safest, and most useful of all energy sources. It is used in a variety of everyday activities from generating electricity at a power plant to heating a stove to being used as a raw material in the production of a variety of products. Natural gas is found underneath the surface of the earth. Because natural gas has a low density, it will rise towards the surface of the earth through loose, shale type rock. Some of the gas will rise to the surface and be released into the atmosphere. The remainder of the gas is caught underground, beneath an impermeable layer of rock. This gas can be recovered by drilling a hole through the rock, thus releasing the gas. Most of the natural gas found in North America is concentrated in basins over broad geographical areas as illustrated in the map below.

U.S. Shale Gas Deposits

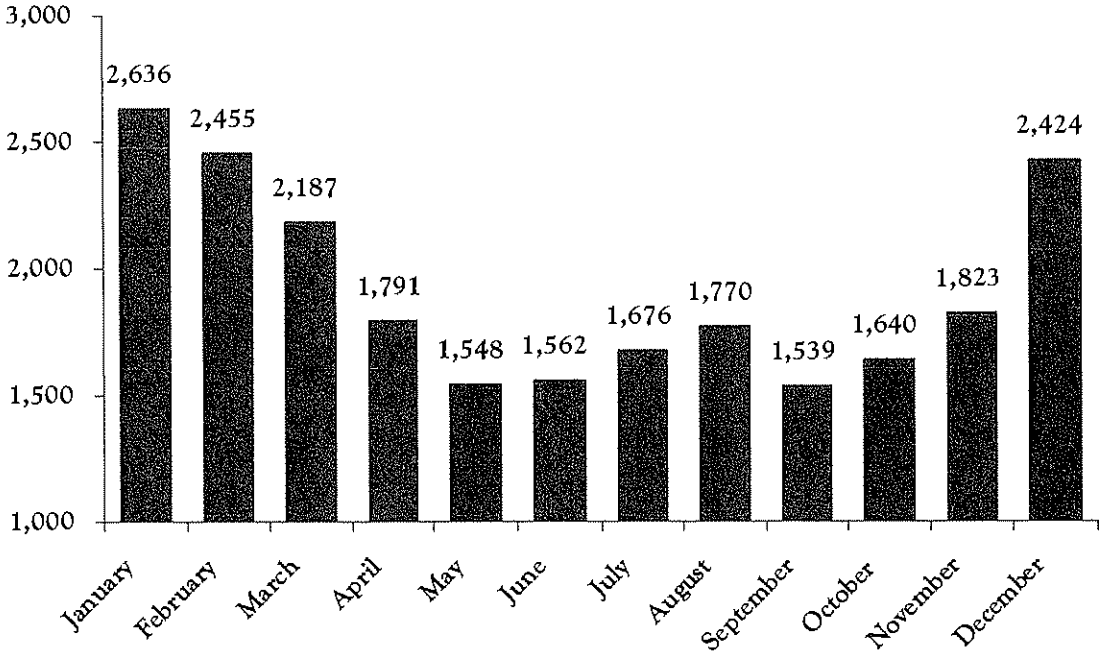


Source: Energy Information Administration based on data from various published studies
Updated: May 28, 2009

Supply and Demand

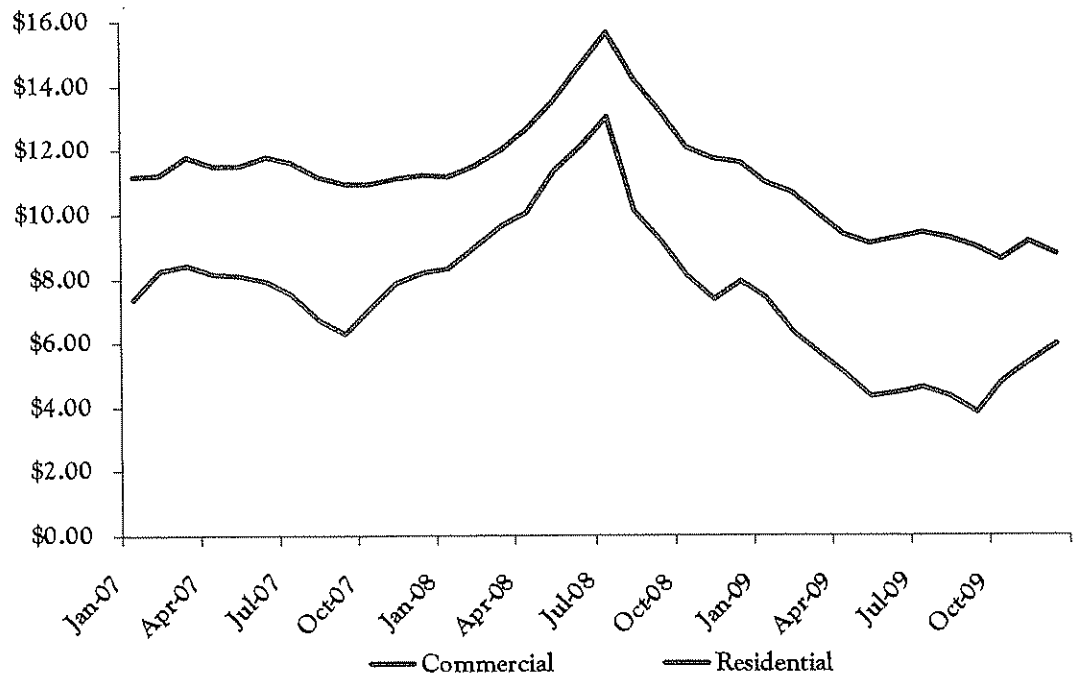
Demand for natural gas tends to be consistently strong because it has a variety of uses and is not easily substitutable. Over the last three years, U.S. natural gas consumption has remained relatively flat as Americans consumed 23.0 trillion cubic feet (tcf), 23.2 tcf and 23.1 tcf in 2007, 2008 and 2009, respectively. Natural gas usage is not uniform from month to month, but rather is seasonal as consumption increases in the winter months when people use more gas for home heating. This means that the natural gas pipeline network must be prepared to handle these seasonal spikes in usage.

2007 – 2009 Average Monthly Natural Gas Uses
(billion cubic feet)



Almost all of the natural gas used in the U.S. comes from North America, with most of that gas being transported by pipeline. In 2008, the U.S. produced more than 20.6 tcf of natural gas, accounting for more than 88% of U.S. consumption. This amount of production was 8% higher than in 2007 due to improved technology. The U.S. imported 3.6 tcf of natural gas in 2008 by pipeline with the vast majority coming from Canada.

2007 – 2009 Monthly Natural Gas Prices[5]

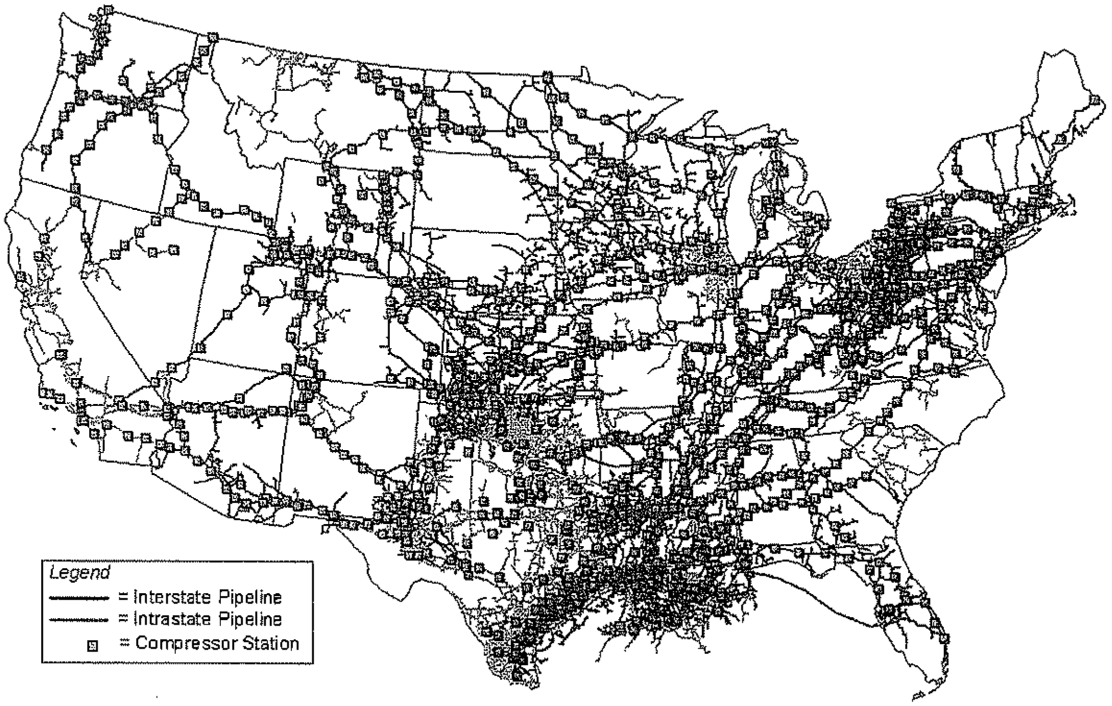


The U.S. Natural Gas Grid

The U.S. natural gas grid is made up of about 107 interstate networks comprising 217,000 miles of pipeline, and 90 intrastate networks that total 89,000 miles of pipeline. This network is predicted to increase by 17,000 miles by 2012 according to a survey from the *Pipeline & Gas Journal*. Growth in the pipeline network is driven by the discovery of new supply areas rather than the expansion of the existing pipeline capacity. Between 1990 and 2000, new pipeline capacity from Canada increased 123% while over the same time period capacity in the Southwestern U.S. increased by only 11%. Furthermore, IBISWorld predicts that "the expansion in the consumption of natural gas for domestic, industrial and power generation will facilitate the planned construction of large scale pipelines straddling the U.S.-Canadian border." The transportation of natural gas from Canada to the U.S. will be a driving factor in the expansion of the U.S. natural gas pipeline network. This is part of the reason why IBISWorld estimates that the natural gas infrastructure market will grow by 4.0% per annum over the next five years.

[5] *Source: Energy Information Administration/Annual Energy Review 2008*

U.S. Natural Gas Pipeline Network [6]



The Trend from Coal to Natural Gas

New electrical power plants are increasing their reliance on natural gas as a feedstock (as opposed to coal), with more than 50% of new production in 2009 being natural gas fired. Increasing regulations regarding emissions are forcing power companies to contemplate this change. Natural gas, in its various forms, has very few to just one carbon atom, making it the cleanest fossil fuel in terms of carbon emissions. It releases about half of the carbon emissions of coal when burned. This is why many power companies prefer to use gas to fire electric power plants as a way to reduce emissions at plants that are currently using coal. This movement should affect the pipeline construction industry because more large-diameter pipes will be needed to transport large amounts of gas to the power plants. FMI estimates that construction of large-diameter pipes will grow at 6% to 10% in 2010.

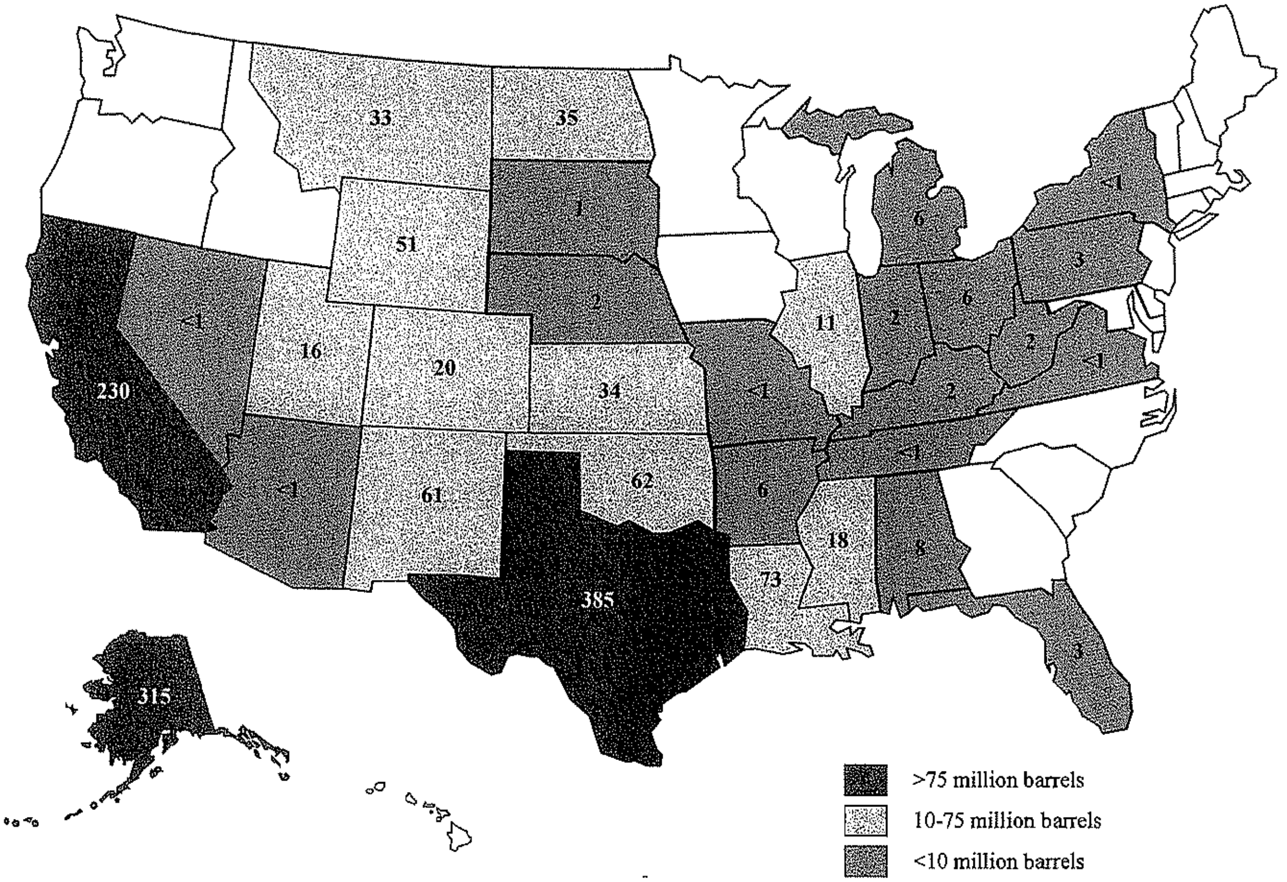
[6] *Source: Energy Information Administration*

OIL INDUSTRY OVERVIEW

Crude oil is a naturally occurring liquid made up of a complex mixture of hydrocarbons and organic compounds, and is found beneath the earth's surface. Crude oil is used in a variety of applications, most notably fuels for cars, trucks, airplanes, and other transportation vehicles. Before crude oil can be used, it is sent to a refinery where it is physically, thermally and chemically separated into fractions and then converted into finished products. About 90% of these products are fuels such as gasoline, aviation fuels, distillate and residual oil, liquefied petroleum gas ("LPG"), coke and kerosene. Many of these products are then transported by pipeline to end-users.

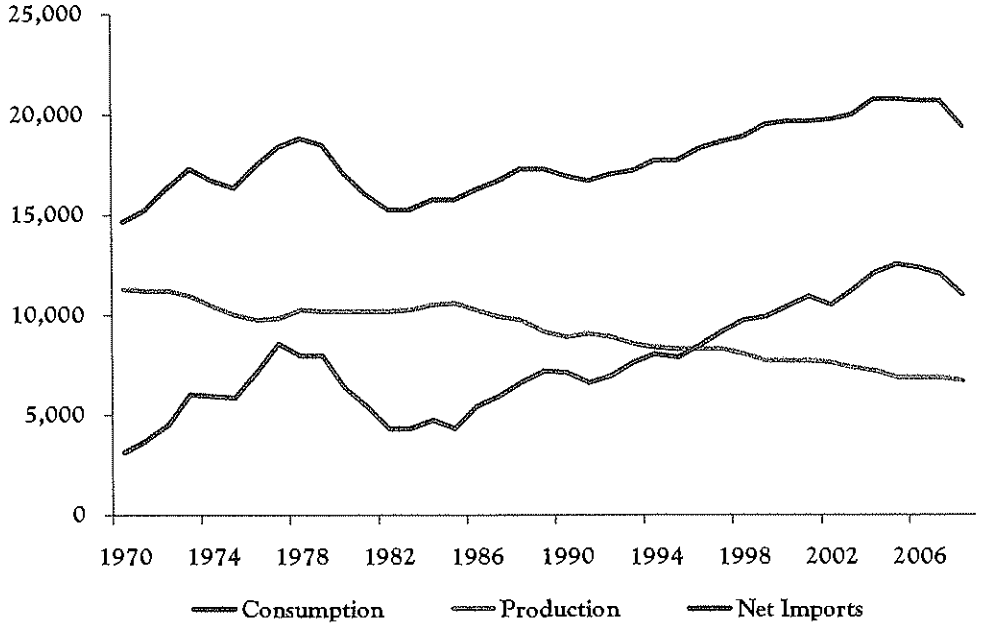
The majority of the crude oil reservoirs in the world are located in the Middle East, but there are numerous reservoirs in U.S. Most of these reserves are located in the southwest and Alaska. Oil production in the U.S. has recently started to decline causing an increase in demand for imported oil.

U.S. Crude Oil Production by State[7]

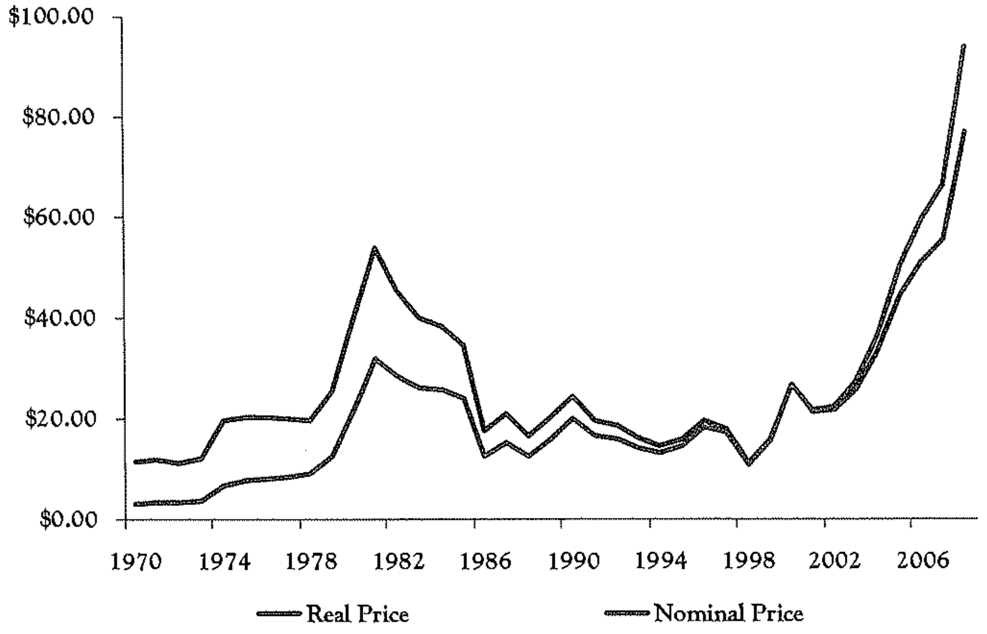


[7] *Source: Energy Information Administration*

Annual U.S. Crude Oil Production, Imports & Consumption [8]
(thousand barrels per day)



U.S. Average Real and Nominal Oil Price per Barrel [9]



[8] *Source: Energy Information Administration/Annual Energy Review 2008*
[9] *Source: Energy Information Administration/Annual Energy Review 2008*

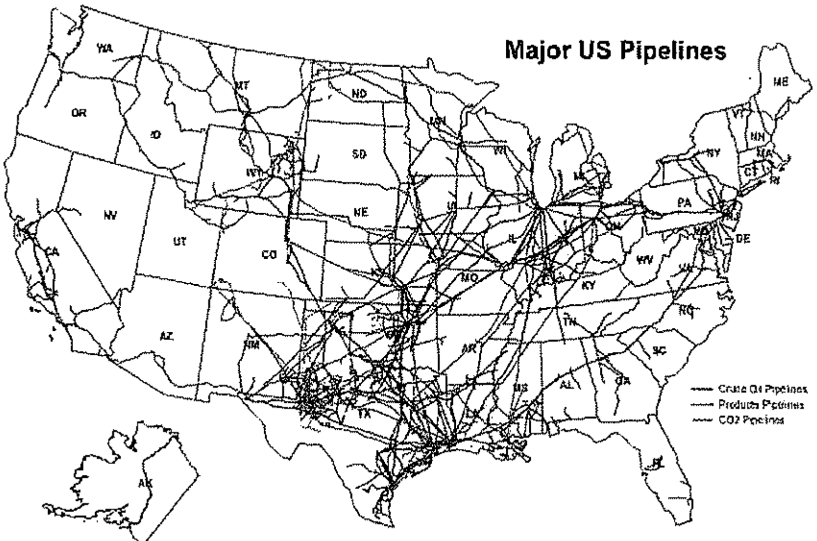
Oil Transportation & the U.S. Oil Pipeline Network

In the U.S., crude oil is either transported by tankers or pipelines. Typically, tankers transport imported oil to the U.S. while pipelines transport oil within the country. U.S.-produced oil is transported by pipeline from reservoirs to refineries, while imported oil is either transported to refineries directly by tankers or by pipelines from the marine terminal. Whereas 80% of locally produced crude oil is transported by pipeline, only 31% of imported oil uses pipelines. Since the mid-1990s, the U.S. output of oil has declined while consumption has continued to expand. This increase in crude oil imports has led to the construction of high-capacity, but shorter, crude oil pipelines running from the marine terminals to refineries.

The U.S. crude oil pipeline network consists of 55,000 miles of trunk lines and an additional 30,000 to 40,000 miles of gathering lines. Gathering lines are smaller in diameter than trunk lines and move crude oil from production areas to trunk lines. A significant portion of the U.S. pipeline network was built in the late 1990s through the early 2000s as a result of the pressure to move Canadian crude oil farther south in the U.S. This trend caused several of the largest pipeline expansions in the last twenty years.

From 2004 to 2009, the overall volume of crude oil transported by pipeline has remained relatively flat, moving from 284 billion ton-miles to 283 ton-miles over the 5-year period. This is a result of flat demand for crude oil primarily due to high prices. Despite this flat demand and an existing pipeline network that is currently doing a sufficient job of transporting oil throughout the U.S., new pipelines are still expected to be needed. One reason is that the U.S. is importing more and more oil from Canada, which is the only country that delivers oil to the U.S. by pipeline. The majority of this oil is transported from Western Canada to the U.S. pipeline network, and more construction is already planned. Furthermore, the U.S. will need additional pipelines to support the increase of imported oil, which will need to be transported from more marine terminals to refineries.

U.S. Oil & Other Products Pipeline Network

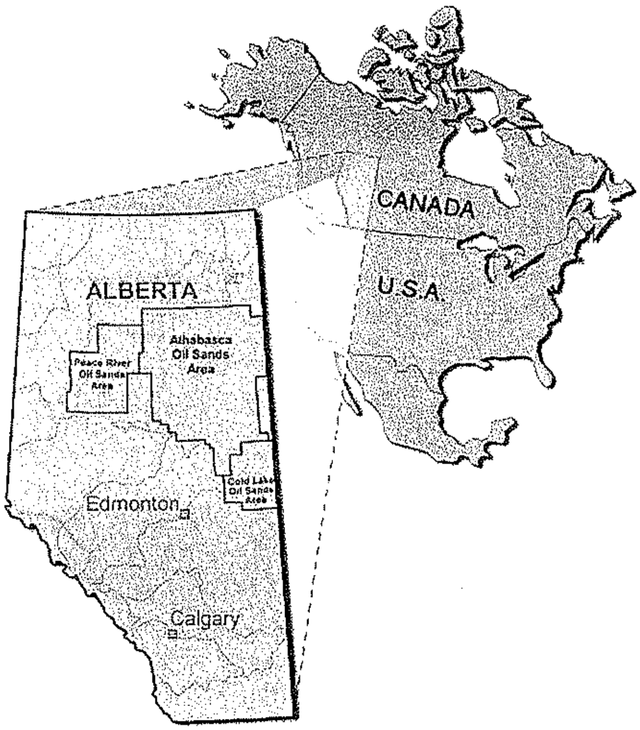


Source: REXTAG Strategies Corp and the Alaska Department of Natural Resources as interpreted by API (2/26/09)

Trends in the Midwest and Canada

Canada's Oil Supply

Canada is the world's third largest producer of natural gas and seventh largest producer of crude oil, with an output of approximately 16.8 billion cubic feet of natural gas per day and 2.8 million barrels of oil per day. Of this oil output, 1.2 million barrels per day, or 45% of Canada's total output, are produced in the Alberta oil sands. The oil sands are located in three regions in Northern Alberta: Athabasca, Cold Lake and Peace River (as seen in the map on the right). These regions hold approximately 173 billion barrels, which represents 97% of the Canadian oil reserves and is second only to Saudi Arabia.



As a result of the Country's oil output and oil reserves, Canada has the world's largest pipeline network for crude oil. However, this network is nearing capacity, particularly in Western Canada. The Canadian Energy Pipeline Association ("CEPA") believes that Canadian pipeline assets must double by 2015 in order to support the projected oil supply. New projects are being added every year, and oil output is expected to increase to 3.0 million barrels per day by 2018.

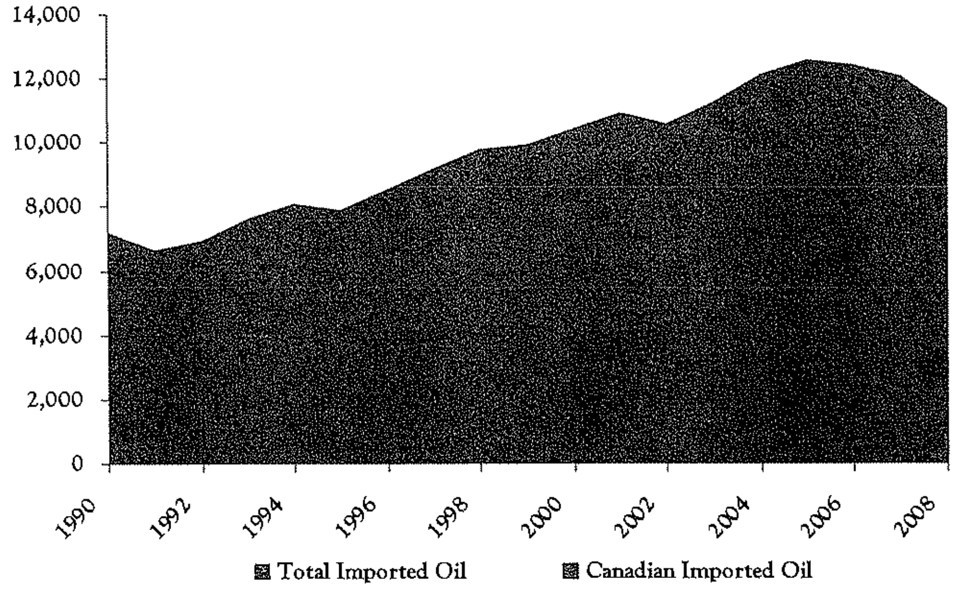
Canadian-U.S. Relationship

Since the Company performs most of its services in the Midwest and is directly affected by the Canadian oil industry, the interplay between these two regions is important. Canada is the only country that delivers oil to the U.S. by pipeline, and delivers most of this oil from Western Canada through the Midwest into the U.S. pipeline network. In the last decade, there has been significant natural gas pipeline construction between Canada and the Great Lakes region.

This trend of transporting oil from Canada into the U.S. is expected to continue. FMI projects pipeline construction to remain strong in 2010 due to a few large projects transporting petroleum south from Canada. For example, the Alberta Clipper Pipeline project has recently been approved by the U.S. State Department. Construction has already begun building the 672 mile, $3 billion pipeline from Hardisty, Alberta to Superior, Wisconsin. This type of construction will increase the demand for pipeline construction in the region where MN Limited does most of its work.

As the U.S. has imported more oil to keep up with demand and lack of locally produced supply, the country has turned to Canada as a major source imported of oil. Since 1990, the amount of crude oil imported from Canada has increased from 834 thousand barrels per day to 2,195 thousand barrels per day in 2008, an increase of over 160%. Over the same time period, Canadian imported oil as a percentage of total imported oil has increased from approximately 12% to 20%. This trend is expected to continue as it is more cost effective to import oil from Canada by pipeline than from the Middle East and other regions by tanker.

Annual Imported Oil from Canada[10]
(thousand barrels per day)



COMPETITION

The markets served by the Company are competitive and, for the most part, require substantial resources and highly skilled and experienced technical personnel. Competition is primarily centered on performance and the ability to provide the design, engineering, planning, management and project execution skills required to complete complex projects in a safe, timely and cost-efficient manner. The Company competes based on its reputation for quality, project management expertise and cost-effectiveness.

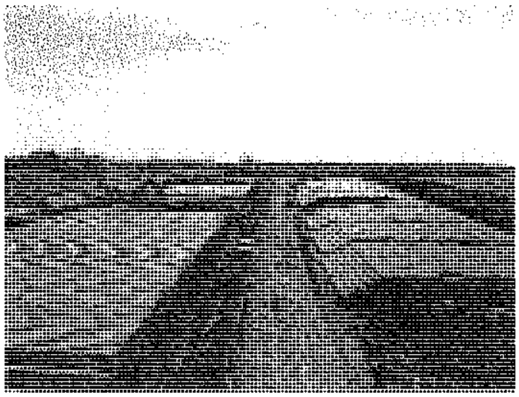
[10] *Source: Energy Information Administration/Annual Energy Review 2008*

III. BUSINESS DESCRIPTION

INTRODUCTION

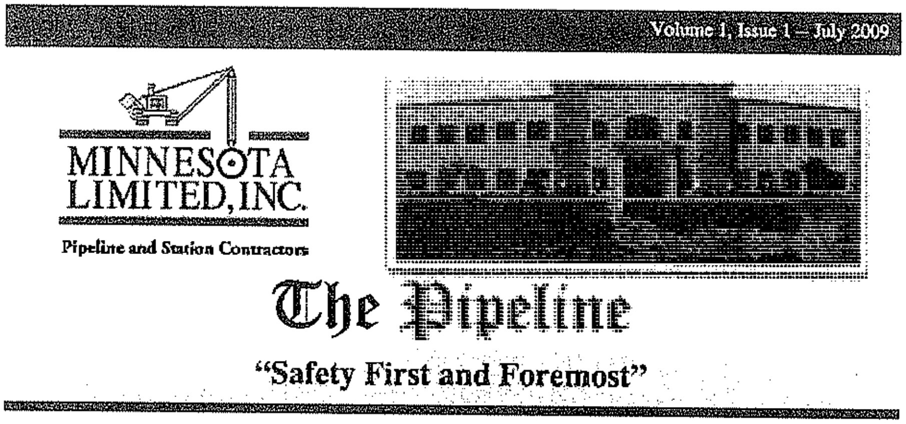
Founded in 1966, MN Limited is one of the leading middle market providers of construction and maintenance services for large-diameter, high-pressure, welded steel pipelines and related terminals and stations. The Company provides a comprehensive set of self-performed services for leading pipeline operators and energy companies, including: mainline pipeline construction; compressor station construction; pumping station construction; pipeline maintenance; hydrostatic testing; and emergency response. The Company's extensive operating history and relentless focus on safety and quality are key reasons why MN Limited has been successful winning multiple projects from its list of premier clients. Over its 44-year history, the Company has completed more than 2,000 projects representing nearly $900 million in revenue.

MN limited is widely recognized as one of the premier firms in the pipeline construction and services market, and has installed thousands of miles of pipeline for some of the preeminent energy producers and distributors in North America. With fossil fuel pricing remaining historically high even through the recession, development of oil and gas production in more difficult to recover locations will continue. New production requires new transportation infrastructure. According to the INGAA, an estimated $150 billion is expected to be spent on gathering and storage infrastructure for the natural gas industry alone over the next 20 years. MN Limited will directly benefit from these trends as much of the new North American production will be in areas that will require pipeline infrastructure in the Company's core Great Plains and Midwest geographies. INGAA estimates that half of North America's proven reserves of natural gas are in the Rocky Mountain region or in the Alberta Tar Sands. These regions, along with the Bakken in North Dakota, also contain a vast amount of crude oil. The Company also has substantial capabilities in other regions with an emphasis on expansion both west of the Mississippi as well as the Great Lakes region.



MN Limited has performed work in 22 U.S. States in all seasons. Because the Company is not geographically constrained it is free to pursue projects of all types throughout North America including work in difficult climactic and topographical conditions. A significant amount of the Company's work is concentrated in the Midwest which is a major pipeline crossroad connecting production in the Rocky Mountain and Western Canada Regions with major markets in the Upper Midwest and east of the Mississippi.

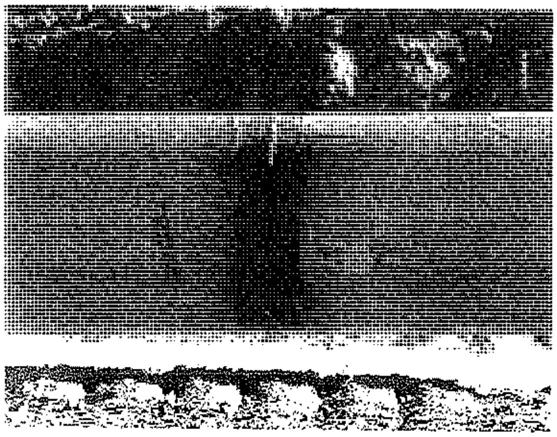
MN Limited has a tireless focus on safety which permeates all levels of the organization. Safety is instilled in the Company's culture through rigorous training, constant reinforcement, drug testing/alcohol programs, certifications and quality control. The Company's safety approach is one of its significant differentiators. In fact, the Company can point to several projects it has won in part because of its environmental, health and safety ranking which is in the 90th percentile when measured against its peers. The Company has a very low injury rate (experience modifier of .65) and has never had a fatality.


Volume 1, Issue 1 – July 2009
MINNESOTA LIMITED, INC.
Pipeline and Station Contractors
The Pipeline
"Safety First and Foremost"

Banner From Each of the Company's Newsletters

The Company offers a number of additional key differentiators from its competition, including: expertise in winter construction techniques; exceptionally long operating history with deep relationships with its core customer base; limited use of subcontractors; a large base of Company owned equipment; and stability during the market turmoil in 2009.

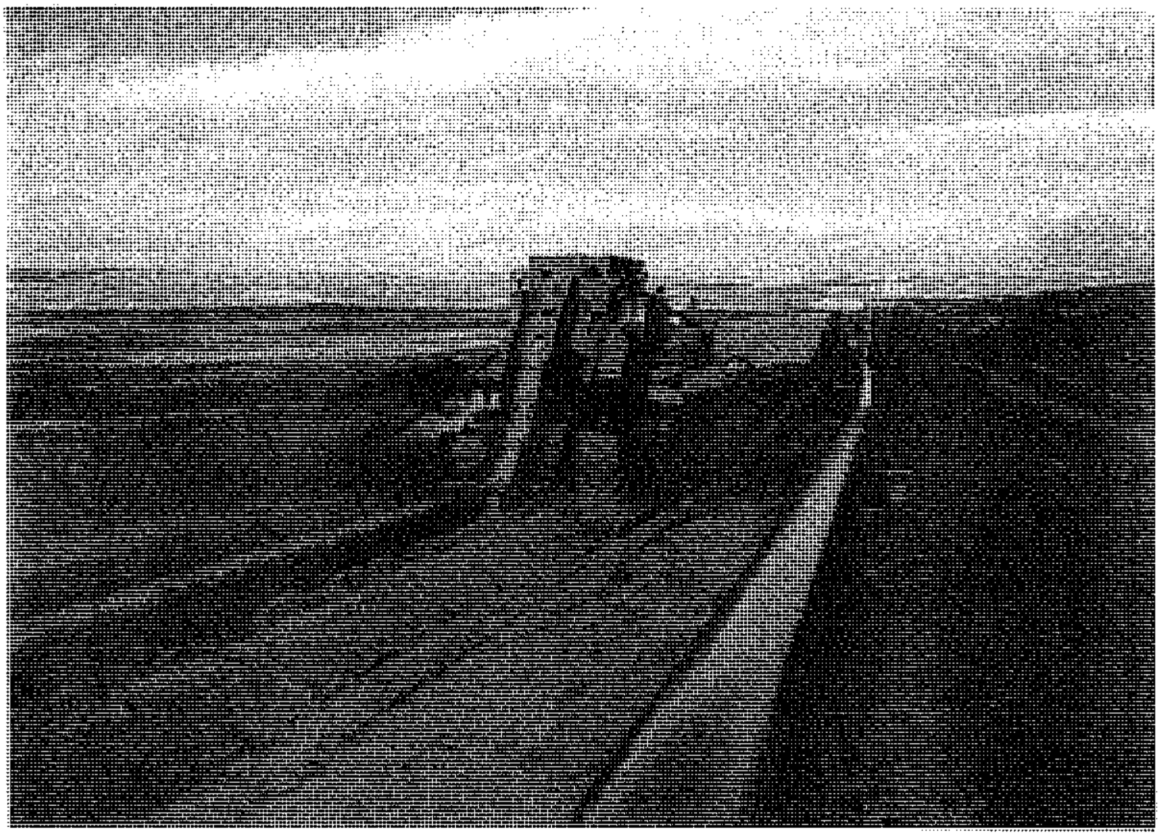
The Company divides is business into three segments: pipeline construction; station/terminal construction; and integrity/maintenance services. The pipeline construction segment focuses on new construction for large diameter, high-pressure, welded steel pipelines for natural gas and petroleum products. This segment has historically represented the bulk of the Company's revenue and is expected to remain so going forward.



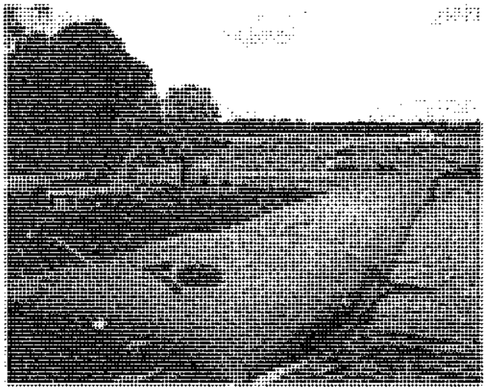
The station/terminal construction segment focuses on the construction of facilities used for processing, storing and moving oil and gas. These station and/or terminal facilities are located along every pipeline in operation today. While Station/Terminal Construction is a separate business segment for the Company (primarily because the type of work is significantly different) this segment is highly synergistic and inextricably linked with Pipeline Construction. This business tends to be slightly lower margin because of the need to utilize subcontractors for certain portions of each project (e.g., electrical), but is still highly profitable.

The integrity/maintenance services segment is responsible for all projects for existing pipelines. This can include general maintenance, segment replacement, emergency response, HAZMAT response, clean-up, dig-ups, sleeving and hydrostatic testing. Many of the Company's customers execute a general services agreement with the Company in connection with initial construction services which allows them to "order off the menu" as services are needed. Other customers pursue maintenance projects in a similar fashion to new construction projects (bid, negotiation, etc.). The Integrity/Maintenance Services segment tends to be the most variable revenue category in any given year, but also the most profitable.

Labor and equipment are the key resources of the Company. MN Limited maintains a pool of approximately 1,200 pieces of heavy equipment and over 600 highly qualified employees on a seasonal basis. These resources allow MN Limited to self-perform on the vast majority of work with limited use of subcontractors. This capability gives the Company hands-on control over the project ensuring that the Company meets or exceeds all customer expectations.



COMPANY HISTORY



The Company was founded by Reuben Leines in 1966. A lifelong veteran of the construction industry, Mr. Leines started his career as an engineer and construction superintendent for Williams Brothers Construction Company during the 1950s and early 1960s. After the Company's founding in 1966, MN Limited's first project was the installation of a gas distribution system in Redwood Falls, Minnesota for Great Plains Natural Gas Company. Subsequently, the Company continued to install gas distribution systems throughout the Midwest and later expanded operations to provide services to the petroleum and refined products industries.

During the 1970s, MN Limited continued working on petroleum pipeline jobs, distribution projects, refinery piping, road boring, and pumping stations. These projects provided the knowledge and experience that comprise the foundation on which the corporation is built. Some of MN Limited's clients in the 1970s included Minnegasco, Inc. (CenterPoint Energy), Northern States Power Company (Xcel Energy), Koch Refining Company, and Minnesota Pipeline Company. These companies fueled the growth of MN Limited and many still remain valued customers today. Throughout the 1980s and 1990s, the Company embarked on a controlled and sustained growth pattern, which has resulted in increased volume, a broadened client base, an expanded fleet of company-owned equipment and, most importantly, an accumulation of highly-skilled, productive employees.

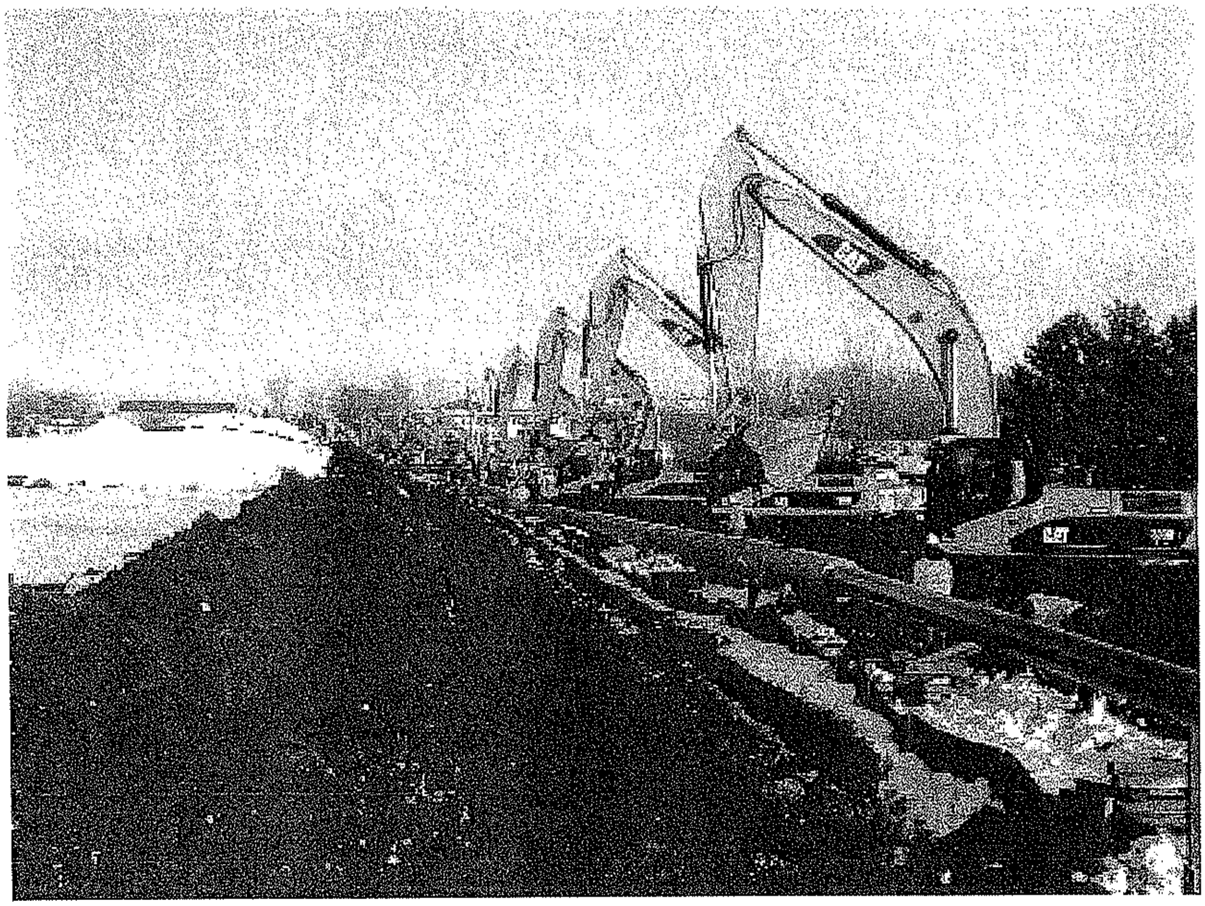
Today, MN Limited has successfully completed projects in a full range of energy industries, including natural gas, crude oil, refined products and hydrocarbon pipelines and facilities. Furthermore, the Company has constructed major interstate pipelines, pumping and compressor stations, gas distribution systems, tank farms, terminal and refinery projects, in addition to completing in excess of 10,000 miles of hydrostatic testing and repair work throughout the U.S. Key events in the Company's history are below.

Year	Significant Historical Events
1959	▫ MN Limited Inc. is incorporated by Reuben Leines to develop real estate.
1966	▫ The Company begins contracting in natural gas distribution market.
1970	▫ MLI Begins working on refined products and crude oil facilities.
1975	▫ Facilities in Roseville, Minnesota open.
1986	▫ Corporate headquarters moves to Rogers, Minnesota.
1991	▫ Christopher Leines promoted to Vice President of Operations.
1994	▫ Opened Bemidji, Minnesota facility.
1998	▫ Reuben Leines retires and Christopher Leines becomes President and CEO.
2005	▫ Opened Superior, Wisconsin facility.
2006	▫ Opened Altamont, Illinois facility.
2007	▫ The Company receives a contract to build 153 miles of 24" Pipeline – its largest project ever.
2007	▫ MN Limited reaches $100 million in revenue.
2008	▫ Company re-locates to its new corporate headquarters in Big Lake, Minnesota.

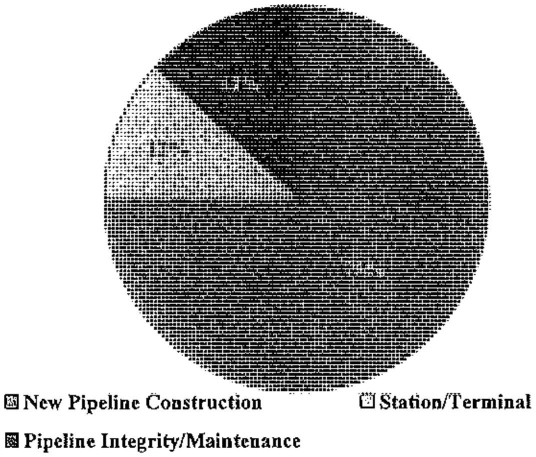
MARKET SEGMENTS

The Company divides is business into three segments: pipeline construction; station/terminal construction and integrity/maintenance services. The pipeline construction segment focuses on new construction for large diameter (2" to 42"), high-pressure, welded steel pipelines for natural gas and petroleum products. The station/terminal construction segment is focused on the construction of facilities used for processing, storing and moving of oil and gas. These station and/or terminal facilities are located along every pipeline in operation today. The integrity/maintenance services segment is responsible for all projects for existing pipelines. This can include general maintenance, segment replacement, emergency response, HAZMAT response, clean-up, dig-ups, sleeving and hydrostatic testing.

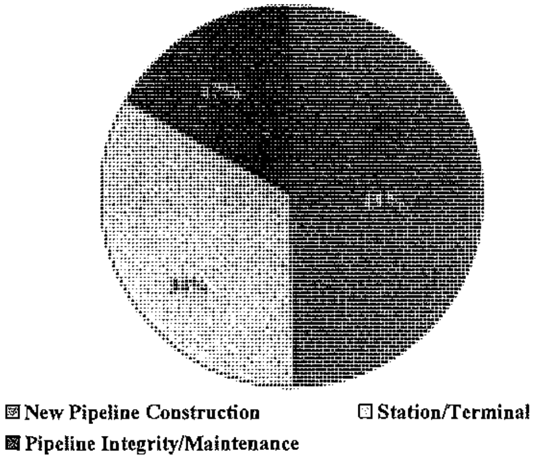
MN Limited is particularly well experienced in the construction of pipelines and associated facilities in harsh environments and is familiar with special provisions for the metallurgy of materials and foundation design of pipelines in arctic conditions, where permafrost and extremely low temperatures are prevalent. The charts on the following page highlight the Company's actual and estimated revenue by market segment for the years ended and ending December 31, 2008–2010E.



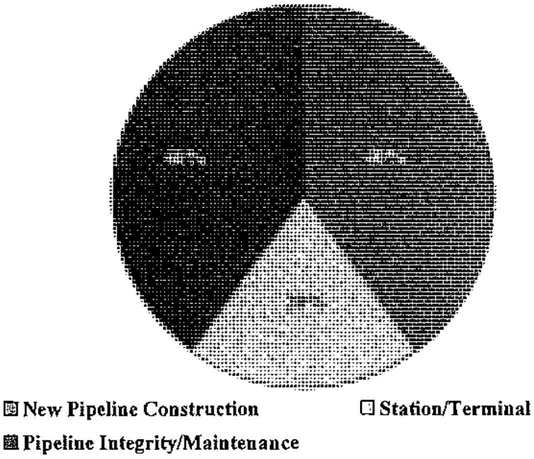
2008 Revenue by Market Segment
($155.6 million)



2009 Revenue by Market Segment
($121.4 million)

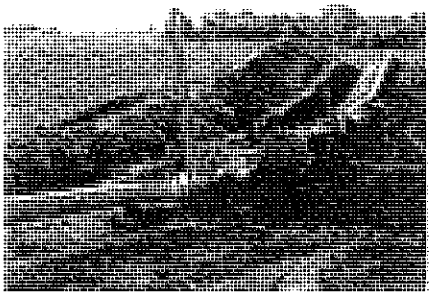


2010E Revenue by Market Segment
($110.0 million)

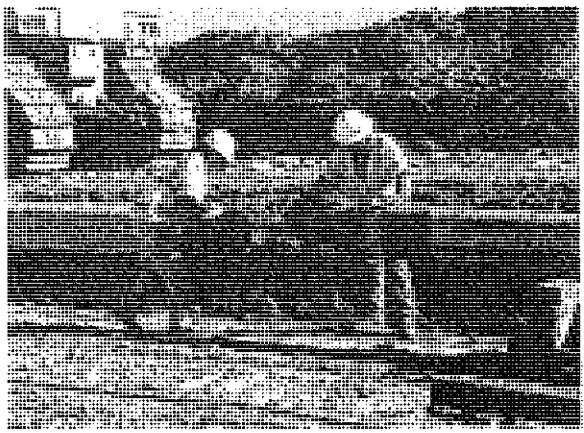


Pipeline Construction

Millions of barrels of crude oil and petroleum products and billions of cubic feet of natural gas are moved to refiners, processors, consumers and industrial users each day. As a result, the pipeline construction industry is both growing and dynamic, with new infrastructure and replacement of old infrastructure driving the market.



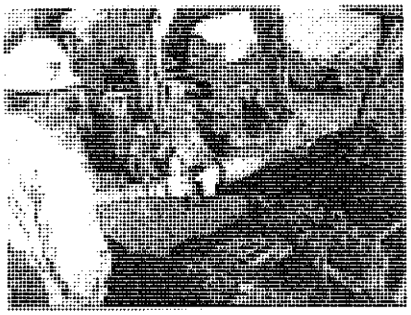
The construction of a cross country pipeline involves a number of sequential operations along the designated pipeline right-of-way. These operations are virtually the same for all overland pipelines, but personnel and equipment may vary widely depending on the time required for completion, general climatic conditions, seasonal weather patterns, the number of road crossings, the number and size of river crossings, terrain considerations, extent of rock formations, density of heavy timber and amount of wetlands. Pipeline construction can also be capital intensive which creates a barrier to entry for upstart firms.

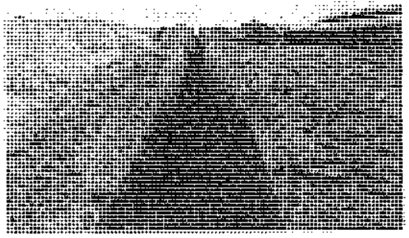


Construction often involves separate crews to perform functions such as clearing the right-of-way, excavating a trench in which to bury the pipe; grading the right- of- way; hauling pipe to intermediate stockpiles from which stringing trucks carry pipe and placing individual lengths (joints) of pipe alongside the ditch; bending the pipe joints to conform to changes of direction and elevation; cleaning the pipe ends; lining up the succeeding joint; performing various welding operations; inspecting the welds; cleaning the pipe and applying anticorrosion coatings; lowering the pipe into the ditch; backfilling the ditch and performing final clean up. Generally, the Company manages the majority of the project in a turnkey role and provides all of the essential services directly with minimal use of subcontractors.

The Company's blue chip customer base in the pipeline construction industry includes a close relationship with Koch Industries. In 2007 and 2008, MN Limited completed a 153 mile pipeline for Koch's subsidiary, Minnesota Pipeline, and is in process with or contracted to complete several more projects over the next year. This project strengthened the Company's relationship with Koch and MN Limited expects this relationship to continue to develop going forward. The table below highlights a subset of the Company's noteworthy pipeline construction projects that have been completed over the last several years.

Year	Location	Client	Project Description
2009	Michigan	Customer C	Pipe installation
2009	Minnesota	Customer A	Branch line extension
2009	Minnesota	Customer A	Main line expansion
2007-2008	Minnesota	Customer E	Pipeline installation
2008	Colorado	Customer O	Pipeline installation
2007-2008	Minnesota	Customer K	Pipeline installation
2007	Minnesota	Customer L	Install oxygen pipeline
2007	Minnesota	Customer M	Install launcher & receiver barrels
2007	Minnesota	Customer M	Pipeline installation
2007	Texas	Customer L	Installation of ethanol pipeline



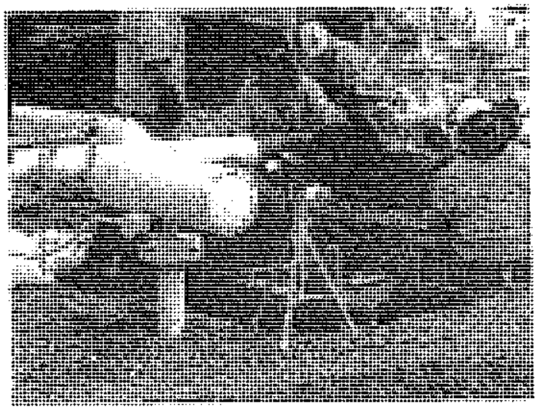


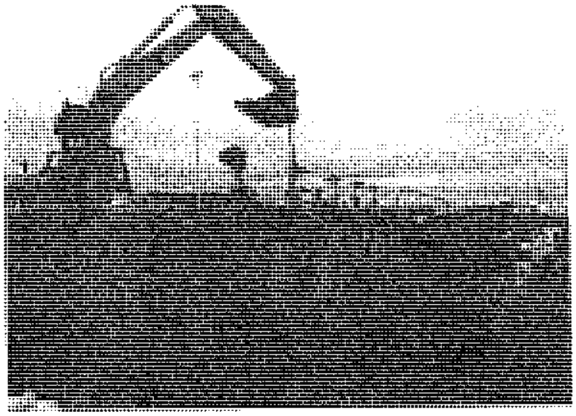
Station Construction

Pipeline-based transportation of oil and natural requires certain ancillary facilities to pressurize the pipeline as well as perform various processing and storage functions. The construction of station facilities, while not nearly as capital intensive as pipeline construction, is generally characterized by complex logistics and scheduling with subcontractors such as concrete and electrical firms.

The Company is has extensive experienced constructing such facilities, including pump stations, gas compressor stations, gas processing facilities, terminal facilities, and metering stations. Station construction is substantially different than new pipeline construction, which is the reason the Company breaks out station construction as a separate business unit. That said, all pipelines require various station facilities. The Company has performed station construction work for many of its pipeline construction clients, though not always simultaneously. Generally, smaller and less fully-featured construction firms may provide one service or another, but not both. In addition, often these station facilities tend to be located in out of the way locations. As a result, the best service providers are familiar with the conditions and constraints imposed by harsh climates and remote locations. Its ability to perform multiple types of services under difficult conditions are key competitive advantages of the Company.

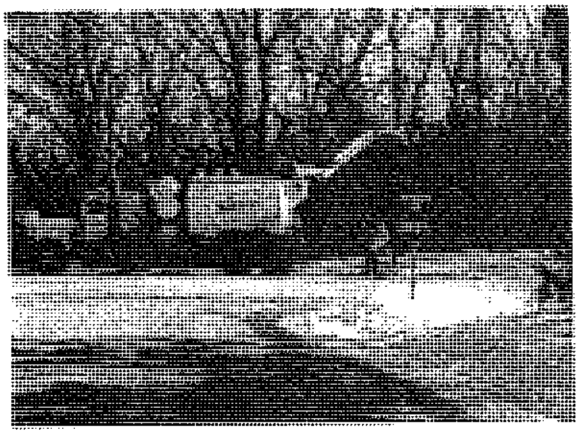
Year	Location	Client	Project Description
2009	North Dakota	Customer F	Install/construction meter station
2009	Minnesota & Wisconsin	Customer B	Install/construct transmission stations
2009	North Dakota	Customer B	Install/construction transmission stations
2009	Minnesota	Customer A	Station modifications
2008	Minnesota & Wisconsin	Customer B	Construct transmission stations
2008	Minnesota	Customer E	Construct pump
2008	North Dakota	Customer F	Construct meter station
2007	Minnesota	Customer A	Border station construction
2007	Wisconsin	Customer A	Pipe fabrication of blowdown headers





Pipeline Integrity/Maintenance Service

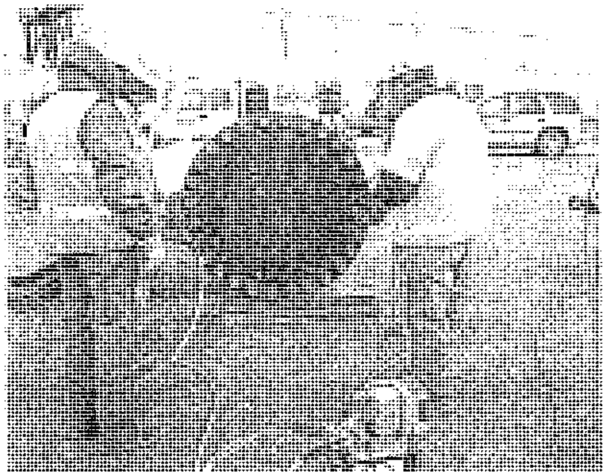
There are over 300,000 miles of interstate and intrastate transmission lines in the U.S. with much of it over 20 years old. These pipelines, along with the expansion of the crude oil and natural gas transportation network in the U.S. in recent years will require maintenance and service to keep these assets in good working condition. The Company has capitalized on this market need with approximately $20 million of its annual revenue coming from this market segment.

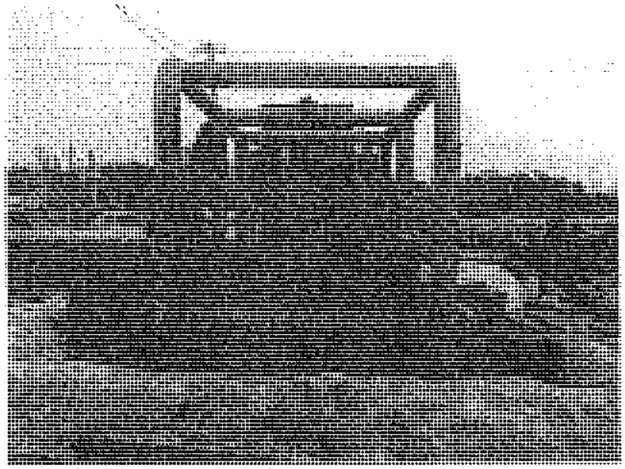


The Company provides a wide range of maintenance and support capabilities to clients. These include: general maintenance, segment replacement, emergency response, HAZMAT response, clean-up, dig-ups, sleeving and hydrostatic testing. Customers typically work with the Company's Services and Integrity/Maintenance group under a general services agreement or on a one-off basis as needed. Like its pipeline construction group, The Company has made a significant investment in heavy equipment and specialized support equipment and is uniquely capable in performing services in extreme climatic and sensitive environmental areas (such as wetlands). This combination qualifies it to perform services which may not otherwise be readily available in some local markets.

Year	Location	Client	Project Description
2009	Iowa	Customer F	Hydrostatic testing
2009	Iowa	Customer G	Integrity digs
2009	Minnesota & North Dakota	Customer B	Pipe Sleeving
2009	Minnesota	Customer B	Pipe crack digs
2009	Iowa	Customer I	Pipeline interconnect modifications
2009	Minnesota	Customer E	Central maintenance
2009	Minnesota	Customer E	Emergency response
2009	Minnesota	Customer A	Emergency response

Year	Location	Client	Project Description
2009	North Dakota & Montana	Customer N	Pipeline digs and recoating
2009	Minnesota	Customer L	Miscellaneous maintenance work
2009	Wisconsin	Customer B	Line fill pigging assistance
2009	Minnesota	Customer B	Pipeline expansion and cathodic protection work





CUSTOMERS

The Company has established an enviable list of leading customers throughout the U.S. Some of the Company's customers utilize its services only occasionally, while others rely on the Company for a wide variety of projects on an ongoing basis. No single customer accounted for more than 30% of revenues during 2009. The project-based nature of the Company's services can result in significant annual variation in revenue mix by customer. The table on the following page shows the Company's top customers for year the ended December 31, 2009. Certain key customers are highlighted below the chart.

Revenue by Customer
(dollars in thousands)

	2009		2008		2007	
Customer	Revenue	% of Revenue	Revenue	% of Revenue	Revenue	% of Revenue
Customer A	$35,410	29.2%	$7,512	4.8%	$14,847	14.8%
Customer B	29,405	24.2%	17,172	11.0%	4,624	4.6%
Customer C	22,272	18.3%	-	0.0%	-	0.0%
Customer D	12,682	10.4%	2,889	1.9%	-	0.0%
Customer E	12,608	10.4%	93,522	60.1%	52,856	52.6%
Customer F	2,098	1.7%	2,390	1.5%	1,588	1.6%
Customer G	1,320	1.1%	1,884	1.2%	1,800	1.8%
Customer H	638	0.5%	-	0.0%	2,776	2.8%
Customer I	613	0.5%	-	0.0%	-	0.0%
Customer J	583	0.5%	-	0.0%	-	0.0%
Customer K	-	0.0%	13,535	8.7%	3,706	3.7%
Customer L	-	0.0%	-	0.0%	4,367	4.3%
Customer M	-	0.0%	2,397	1.5%	7,169	7.1%
Customer N	-	0.0%	1,555	1.0%	1,705	1.7%
Customer O	-	0.0%	7,564	4.9%	-	0.0%
All Others	3,760	3.1%	5,151	3.3%	5,067	5.0%
Total	**$121,389**	**100.0%**	**$155,570**	**100.0%**	**$100,505**	**100.0%**

Key Customers

CenterPoint. Energy

KINDER MORGAN INC.

ENBRIDGE™

Xcel Energy℠

KOCH
KOCH PIPELINE COMPANY LP

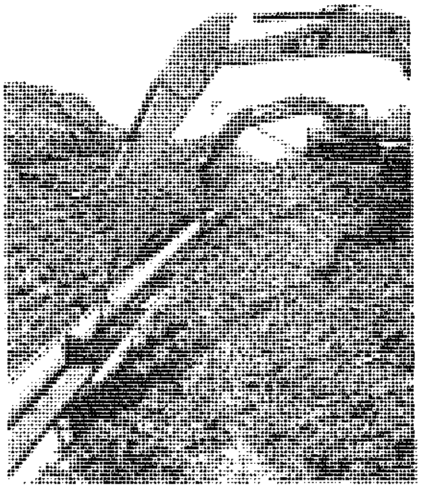
bp

Northern Natural Gas

Appellant's App
Vol I, p 162a

BUSINESS DEVELOPMENT AND CONTRACTING

Business Development

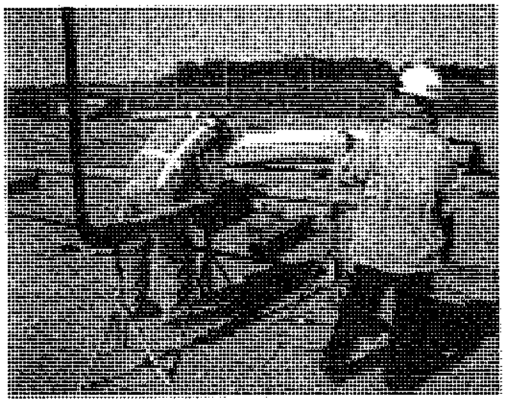


Because many pipeline projects take years to develop, the Company takes a proactive approach to business development. Typically, the first step in a new project is for the project developer (generally a pipeline operator or energy producer), to retain the services of an engineering firm to begin project planning. MN limited's strategy is to assist both the developer and the engineering firm in providing costing estimates and feasibility assessments. This puts MN Limited in an advantageous position when it comes time to bid on the work or negotiate terms of an engagement. The Company estimates that one-third of its projects are generated through this up-front spec work.

In addition, the Company actively courts major developers to ensure that they are on their pre-approved bidding lists. While the Company is not actively involved in the preplanning phase, these target companies remain core relationships for MN Limited. Approximately one-third of the Company's projects are generated in this way. The balance of the Company's projects are responses to direct inquiries from potential clients.

Contracting

Once the Company learns about a new project opportunity, it initiates a comprehensive bid preparation process that involves a pre-bid meeting with all key groups inside the Company. As a team, the Company prepares a comprehensive estimate and submits its proposal to the potential client. While the Company believes that many of its projects are awarded based on factors other than cost, virtually all projects require some form of bidding process.



In the Company's experience, most project owners place emphasis on finding a construction partner they are confident can deliver high quality results on time and on budget. The Company negotiates and agrees to mutually acceptable contract terms with the project owner. In many cases, MN Limited is able to command a pricing premium as a result of its strong reputation. While the basic terms and conditions of the contracts vary widely, generally the Company performs its work under the following types of contracts: time-and-materials, unit-price, lump-sum and cost-plus. Each type of contract contains a different level of risk associated with its formation and execution.

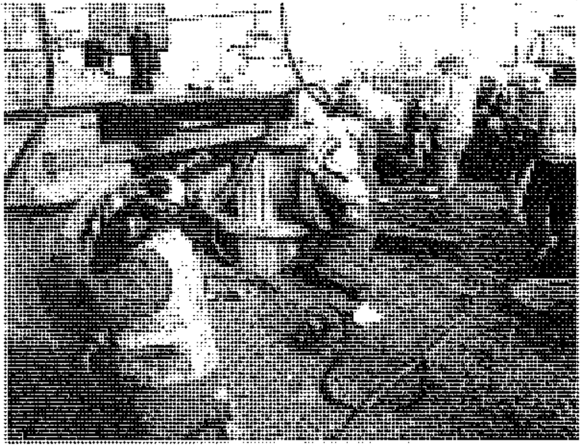
A time-and-materials contract involves using the components of a cost-plus job to calculate rates for the supply of labor and equipment. In this regard, all components of the rates are fixed and MN Limited is compensated for each hour of labor and equipment supplied. The risk associated with this type of contract is the estimation of the rates and incurrence of expenses in excess of a specific component of the agreed upon rate. Any cost overrun in this type of contract must come out of the fixed margin included in the rates.

A unit-price contract is utilized in the execution of projects with large repetitive quantities of work and is commonly used for pipeline work. MN Limited is compensated for each unit of work the Company performs (for example, lineal feet of pipe installed). Within the unit-price contract, there is an allowance for labor, equipment, materials and subcontractors' costs. Once these costs are calculated, the Company adds any site and corporate overhead costs along with an allowance for the targeted margin. The risk associated with this type of contract is in the calculation of the unit costs with respect to completing the required work.

A lump-sum (fixed-price) contract is utilized when a detailed scope of work is known for a specific project. Thus, the associated costs can be readily calculated and a firm price provided to the customer for the execution of the work. The risk in a lump-sum project lies in the fact that there is no escalation of the price if the work takes longer or more resources are required than were estimated in the established price, as the price is fixed regardless of the amount of work required to complete the project.

A cost-plus contract is a contract in which all the work is completed based on actual costs incurred to complete the work. These costs include all labor, equipment, materials and any subcontractors' costs. In addition to these direct costs, all site and corporate overhead costs are charged to the job. An agreed upon fee that represents a profit in the form of a fixed percentage is then applied to all costs charged to the project. Because margins are known in advance and not subject to change, the Company prefers this type of contract.

Although there is a different contract mix each year, the Company historically averages an even split between T&M and fixed-price contracts. Ideally, the Company would prefer to bid as much T&M contracts as possible because the gross margins are locked in and usually higher.

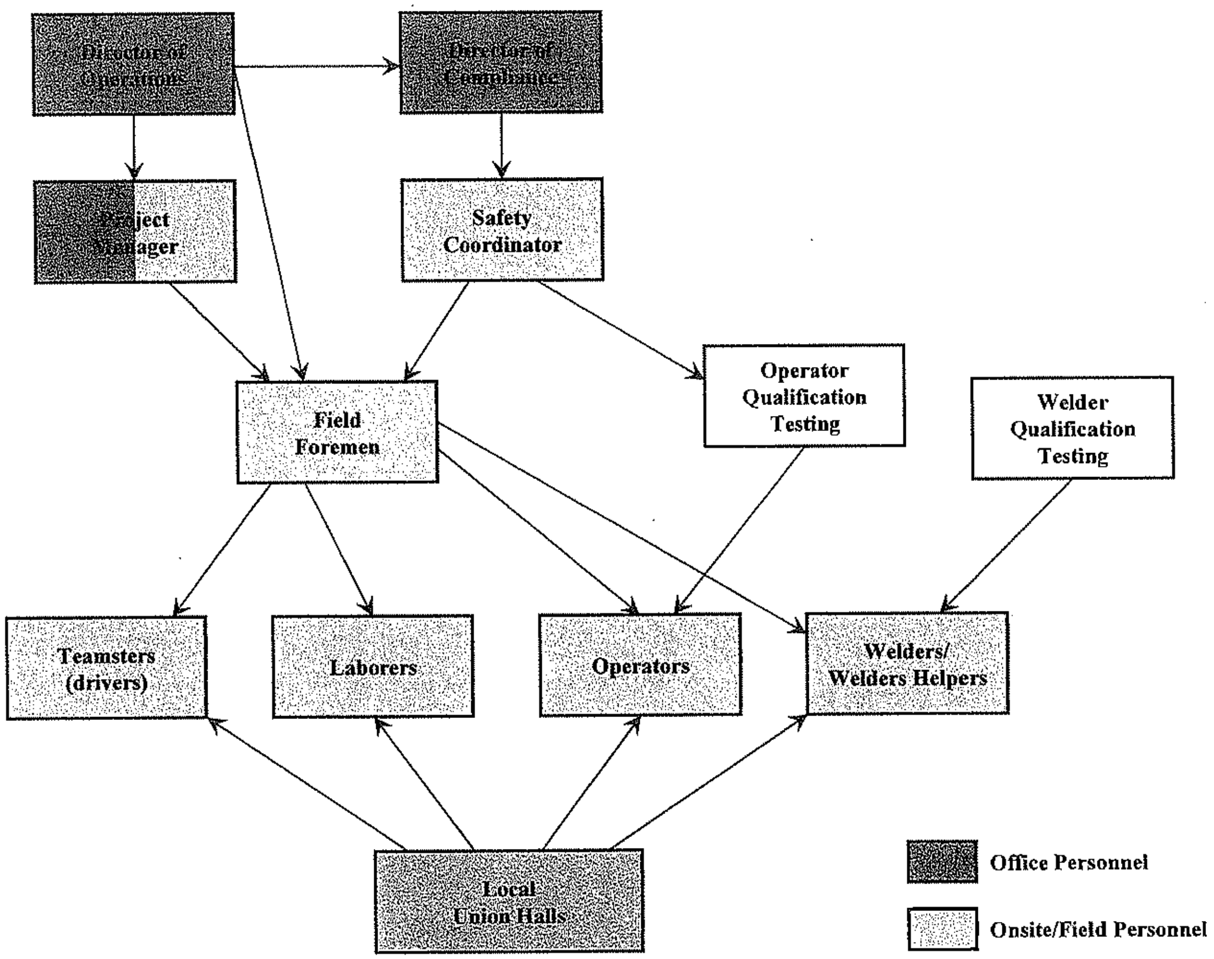


Operations

MN Limited has been successful because of its combination of resources – an experienced senior management team, highly qualified employees and a substantial equipment base. In addition, the Company's reputation for quality, focus on vertical markets and safety are key strengths.

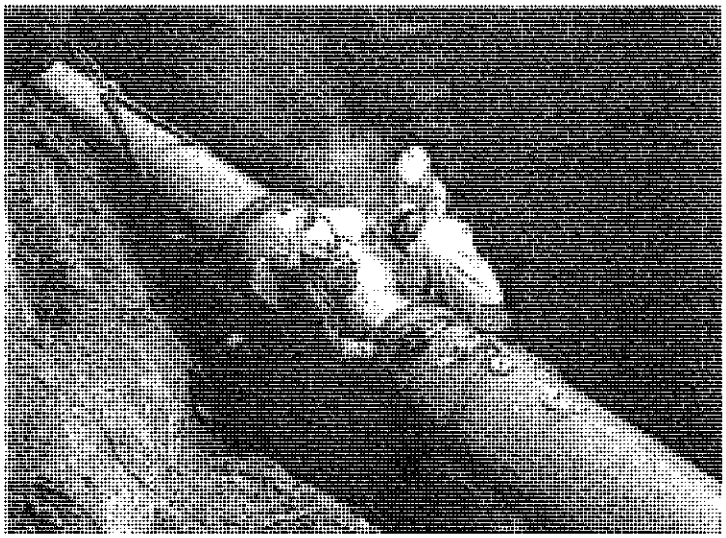
Project Process

The typical project process varies significantly depending on the type and scope of the work. Generally, the first step in the Company's project process is preconstruction and design where all aspects of the process are discussed and agreed upon between MN Limited and the customer. Once the bid phase is complete and a decision is made to proceed with a project, the Company develops a project team with specific divisions of responsibility assigned among the team. The chart below illustrates a typical project team structure.


Director of Operations
Director of Compliance
Project Manager
Safety Coordinator
Operator Qualification Testing
Welder Qualification Testing
Field Foremen
Teamsters (drivers)
Laborers
Operators
Welders/ Welders Helpers
Local Union Halls
Office Personnel
Onsite/Field Personnel

Labor

MN Limited has been extremely successful in hiring and retaining tradesmen and other skilled employees. In addition to constant safety training, the Company provides cross training in various areas so that skilled employees can be proficient in more than one skill or industry segment. MN Limited currently has several hundred skilled trades people on staff with highly diverse skill sets, including heavy equipment operation, welding, pipefitting, mechanical engineering and many others. The Company views its employee base as the single most important asset of the Company.



The Company's employee base tends to fluctuate during the year. During the busy summer months the Company tends to have several hundred more employees than it has during the winter months. The Company's employee turnover rate among its core group of senior management, project managers and superintendants/foremen is extremely low.

Labor Unions

MN Limited's labor force is 100% unionized with the exception of a handful of maintenance personnel. The Company's collective bargaining agreement provides MN Limited the power to discipline workers and make safety and work rules a priority without union interference. Since its inception, the Company has never had a work stoppage. The four unions represented in the workforce include the Welders, Teamsters, Operators and Laborers. The Company's major contract with the Welders Union expires on December 31, 2010 and the contracts with the Teamsters, Operators and Laborers Unions expire on January 31, 2011. Workforce management remains an important aspect of the Company's overall operations. Recruitment and retention of skilled Tradesmen has historically not been a risk, even during periods of market growth.

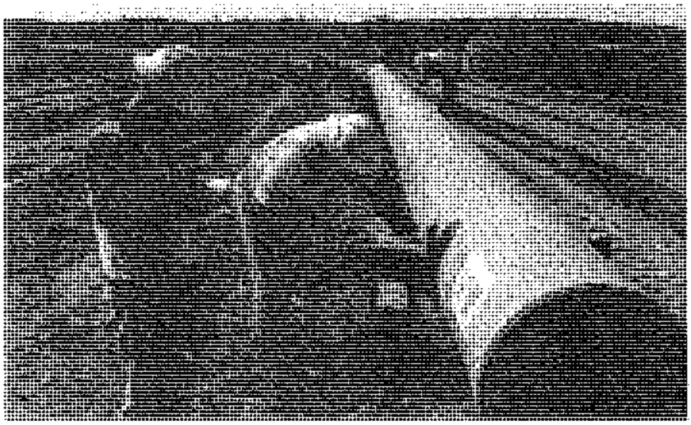
Equipment

MN Limited owns and leases a fleet of state-of-the-art equipment, including approximately 1,200 pieces of well-maintained heavy construction and transportation-related equipment. Management believes the aggregate market value of its equipment exceeds $33.7 million. Historically, the Company has not capitalized items such as small generators, water pumps and dragline mats and has instead elected to expense these items. Management feels these items have a market value of approximately $4.5 million. The table on the following page highlights the Company's core asset categories and estimated values of each.

MN Limited Equipment
(dollars in thousands)

Equipment Type	Pieces of Equipment	Appraised Value
Pipelayers	53	$12,525
Excavators	57	4,593
Dozers	36	2,732
Truck Tractors	45	1,938
Lowboy Trailers	26	875
Pickup - 4X4's	55	866
Loaders	7	515
Air Compressors	50	468
DP Trucks	24	409
Pumps	34	345
Farm Tractors	5	328
Stinger Trucks	4	325
Backhoe/Loaders	20	280
SUV - 4X4's	15	273
Flat Trailers	39	243
Swamp Boxes	8	200
Van Trailers	45	152
Utility Trailers	42	148
Cargo Trailers	39	138
ATVs	15	80
Other	576	6,312
Total	**1,195**	**$33,743**

Subcontractors



In the event the Company does not own the necessary equipment for a job or does not have the personnel in place, MN Limited will utilize subcontractors for specific aspects of its projects such as concrete work, electrical work, directional drilling, painting and fencing. The Company currently maintains relationships with numerous subcontractors and has used many repeatedly. The Company pre-qualifies all subcontractors based on ability, expertise and safety track record. In addition, well established relationships with subcontractors provide further opportunities in new business development through word-of-mouth.

Safety

One of the Company's core values is reflected in its focus on safety. The Company takes a proactive approach to risk analysis and training. For example, the Company has seven dedicated safety managers and consultants. The Company also directs several regular educational forums and makes operator training, equipment training and safety training a priority for all employees. The safety process at MN Limited encompasses subcontractors and suppliers, who are also held to the Company's rigid standards and are involved in all aspects of the project safety process. Management believes that a safe job site decreases risks on a project, provides a positive environment for employees, reduces project cost and improves customer relationships. As highlighted below, the Company has maintained a consistently strong safety record while significantly growing the business at the same time. MN Limited's experience modifier is currently .65.

Workers Compensation Experience Modification Rate ("EMR")

	2007	2008	2009	2010
EMR Rate	.75	.72	.66	.65

OSHA No. 200 Log

	2007	2008	2009
Total Recordable Incident Rate	.86	1.5	.86
Cases Involving Lost Workdays	0	2	2
Cases with Restricted Activities	1	1	1
Number of Fatalities	0	0	0
Approximate number of employees (direct hire) hours worked	694,623	1,195,562	936,815

GROWTH STRATEGY

The Company is well-positioned to benefit from increased spending on oil and natural gas pipeline infrastructure. Management feels that while organic growth will be the primary driver of near-future profitability, other opportunities exist, including, geographic expansion, operational improvements and additional services.

Organic Growth

Historically, organic growth has been the primary method of expansion for the Company. As the Company grows, it is able to attract the attention of larger developers and energy suppliers. While the Company's values its position in the middle market, it believe it is increasingly able to complete larger projects as evidenced by work with Minnesota Pipeline in 2008 and 2009 which generated revenue in excess of $90 million for the Company. In addition, continued oil and natural gas pipeline infrastructure spending, particularly in the Midwest, will further enhance its organic growth opportunities.

Geographic Expansion

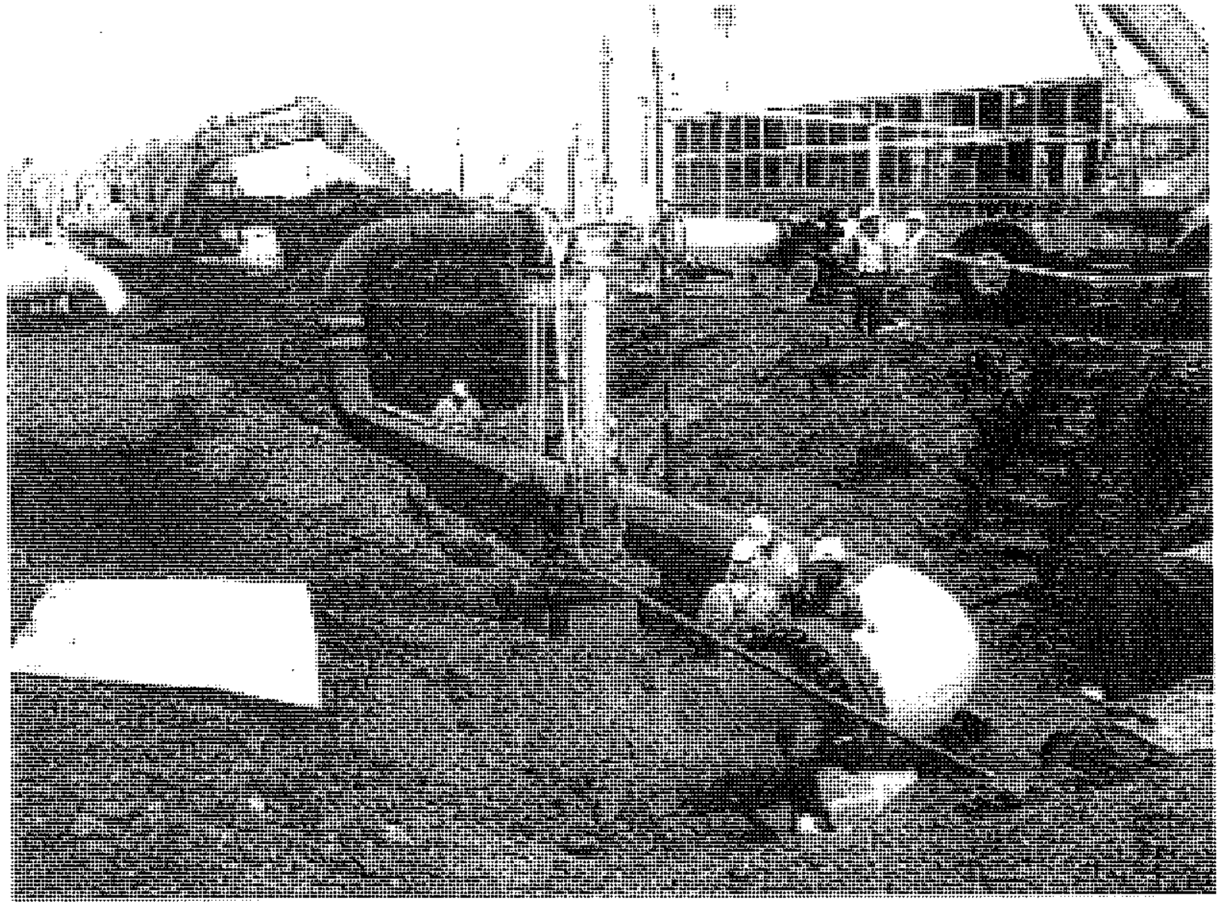
While the Company has a very broad footprint of states where it has completed work, the bulk of the MN Limited's activities to date have focused on the Rocky Mountain and Great Lakes regions. Historically, the Company has selectively opened new facilities where it has either completed work or believes the opportunity exists to establish a beach head for new expansion. Its locations in Bemidji, Minnesota and Superior, Wisconsin are examples of establishing a physical presence at key pipeline crossroads. The Company's Illinois facility is a beachhead for securing work in Illinois, Michigan, Indiana and Missouri. The Company plans to continue this strategy and is evaluating opening two additional locations that would better position it for work in the Great Lakes region and Rocky Mountain region.

Operational Improvements

With the Company's exceptional growth over the last decade, management identified that the Company needed to upgrade its financial and operational software platforms. In the first quarter of 2010, the Company purchased and began the implementation of the Viewpoint suite of integrated applications for accounting, human resources, project management and operations. The Company believes the implementation of Viewpoint represents a dramatic upgrade in both its strategic and financial operations. The Company believes this will lead to better and timelier project bidding, better tracking of backlog and new business pipeline, real-time visibility into the costing of a job and the ability to more effectively and accurately price projects. This will enhance profitability per job as well as ability to win new jobs.

Offer Additional Services

Currently, the Company utilizes subcontractors for certain parts of projects that it does not possess the expertise, equipment or specialized labor to perform. Management has identified certain types of work, such as concrete, electrical and directional drilling that, if properly staffed, or with the appropriate volume of business, the Company could pursue. The Company has engineering, procurement and construction ("EPC") capabilities. As an EPC contractor, the Company would manage all aspects of the project from start to finish and act as the sole point of contact for the customer. Competing as an EPC contractor would allow the Company to expand it services and increase opportunities to complete on larger, higher margin projects. Management is currently reviewing numerous EPC opportunities but has no immediate plans to pursue an expansion of services. However, it remains a viable option for future enhancement of its offering.



INFORMATION SYSTEMS AND TECHNOLOGY

MN Limited employs many different IT systems to ensure the Company's employees have the tools they need to complete their daily tasks. The Company has recently switched to Viewpoint Construction Software, which focuses specifically on the construction industry. Viewpoint offers a suite of integrated applications for Accounting, Human Resources, Project Management and Operations and is built on the award-winning Microsoft.NET Framework using the SQL Server database for timely reporting of critical data. MN Limited is able to benefit from this new IT system because viewpoint provides its users with benefits in the areas of: accounting, pre-construction, project management, operations, and document management.

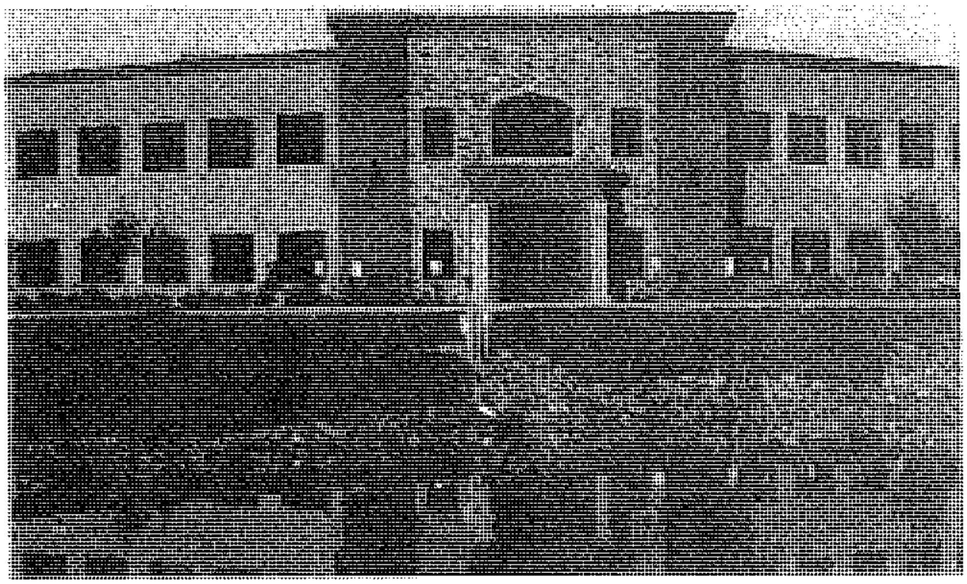
For accounting, Viewpoint is able to handle the Company's complex organizational structure and the intricacies of job costing and job billing. In pre-construction, Viewpoint is able to consolidate all prequalification data of the Company, ensuring that MN Limited is qualified for every job it takes on and that any subcontractors are also qualified. Viewpoint's ability to estimate costs and apply sensitivities to costs and time with regard to a project make project management much easier for the Company. Viewpoint's operations suite keeps track of all equipment, including details, such as cost/revenue, history, location, and maintenance information. Viewpoint's document management is helpful to MN Limited as it easily organized important documents, such as contracts, for easy look-up and retrieval.

The Company uses standard Microsoft applications, including Office and Exchange Server for general corporate purposes. The Company also uses a number of off-the-shelf software applications for project and financial management. Software applications used include the following:

- Accounting Software – Viewpoint and Legacy Timberline including FAS for Asset Depreciation
- JJKeller – Drivers Log Tracking
- Custom Configured Bid Estimator Software
- MS Office
- MS Project
- MS Streets and Trips
- AutoCAD
- Crystal Reports
- Delorme Maps
- XACTRAC GPS Tracking

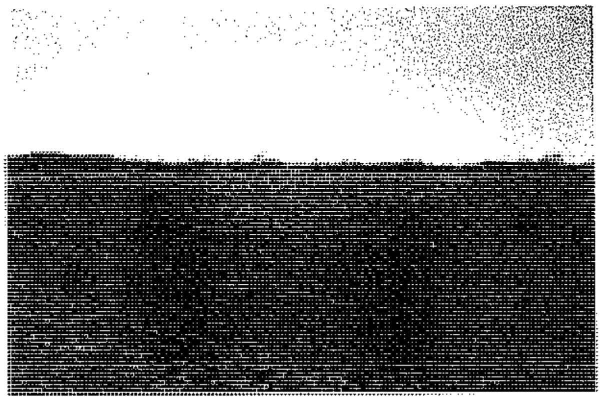
FACILITIES

Headquarters

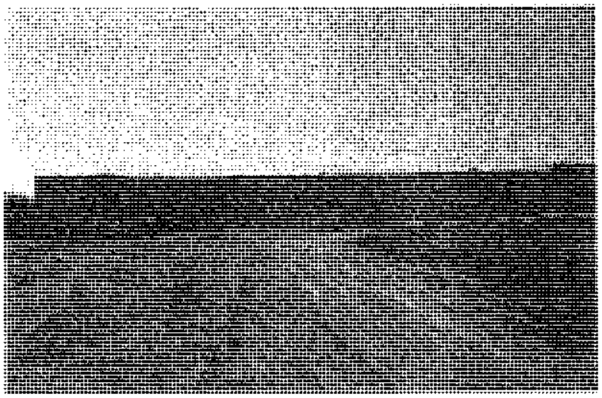


Company Headquarters in Big Lake, Minnesota
25 miles NW of Minneapolis

MN Limited leases its corporate headquarters building and adjacent corporate offices in Big Lake, Minnesota from a related entity for $120,000 per month. Combined, the buildings are over 60,000 square feet consisting of 19,551 square feet of office space (two floors) and 41,034 square feet of shop, warehouse and fabrication facilities. Construction on the buildings was completed in March 2008 and includes offices, warehouse, shop and dedicated pipe fabrication facilities. Additionally, MN Limited owns 22 acres of undeveloped land nearby. The Company has indicated that it would prefer to include the real estate in connection with a transaction but is also considering retaining the real estate and entering into a sale leaseback arrangement. The Company believes that its lease rates are market based.



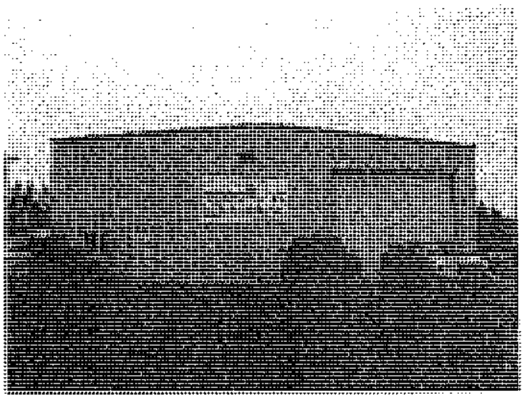
Adjacent Parcel



Storage Yard

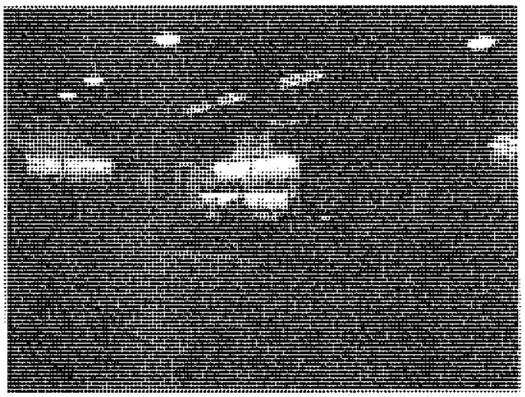
Bemidji, Minnesota Facility

The Company's Northern Region headquarters is located in Bemidji, Minnesota. The Company has a facility in Bemidji because it is a strategic location and is close to a number of existing and future pipeline opportunities. The facility is one building that consists of both a shop area (4,470 square feet) and an office area (408 square feet). The Bemidji shop was built in 1996 and contains total acreage of 3.75 for the building and storage yard.



Bemidji, Minnesota Facility

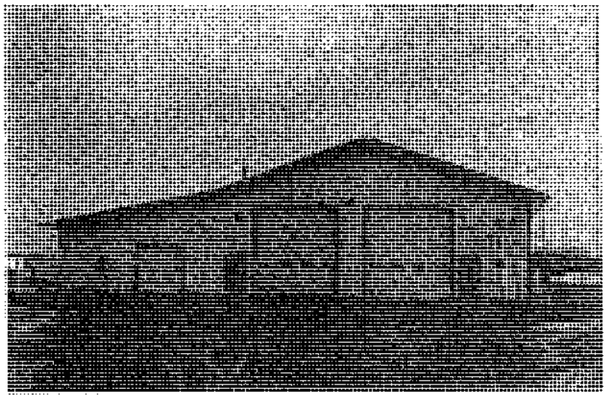
North Central



Bemidji, Minnesota Shop Area

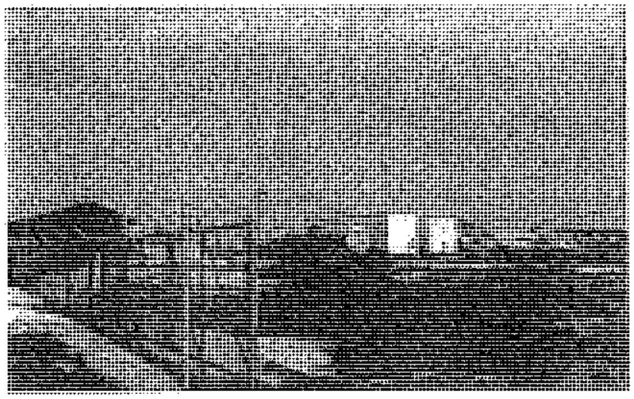
Superior, Wisconsin Facility

The Company's Superior, Wisconsin facility serves as MN Limited's Central Region headquarters. The facility has two buildings: a 7,700 square foot office building and a 5,580 square foot shop and pipe fabrication building. The Superior facility contains total acreage of 4.50 for the building and storage yard.



Superior, Wisconsin Facility

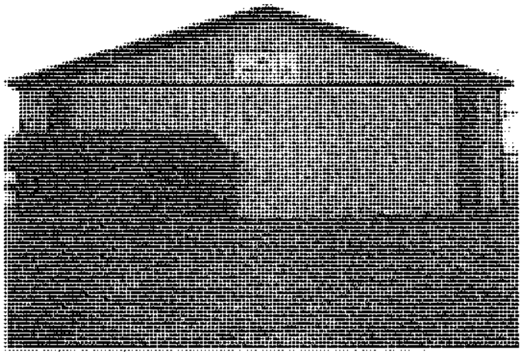
Next to Duluth



Superior, Wisconsin Storage Yard

Altamont, Illinois Facility

The Company's Eastern Region headquarters is located in Altamont, Illinois. The facility consists of one building that houses an 840 square foot office space and a 3,960 square foot shop space. The Altamont building was constructed in 1983 and contains total acreage of 5.10 for the building and storage yard. This facility primarily serves as the Company's beachhead into Central Illinois, Western Indiana and Eastern Missouri.



Altamont, Illinois Facility

Altamont, Illinois Storage Yard

West of @ 57 & 70 Intersection

GOVERNMENT INSPECTIONS, REGULATORY AND LEGAL

MN Limited's work is subject to a number of local, state, and federal requirements including regulations promulgated by various state Departments of Transportation, the Environmental Protection Agency, the Health Administration, the Occupational Safety and Health Administration and other local, state and Federal authorities. The Company believes it is in compliance, in all material respects, with all regulatory requirements.

The Company is not aware of any material pending or threatened litigation and is not a defendant in any legal action.

BONDING AND INSURANCE

Depending on the project owner, from time to time the Company is required to post bonds on specific projects. Bid bonds can be required at the time of submitting a bid and are usually 5% to 10% of the bid amount up to a limit of $100.0 million. As is customary in the industry, MN Limited pays no fee for bid bonds. Upon winning the bid, a payment and performance bond, usually equal to 100% of the contract amount, may be required, and a fee equal to less than 1% of the contract amount is generally paid for these bonds. MN Limited's surety company is Zurich North America, with which the Company maintains an excellent relationship.

During 2009, 27.3% of total revenue was from bonded jobs. This was up substantially from 2008 when 12.8% of total revenue came from bonded jobs. The Company's current backlog requires very little bonding.

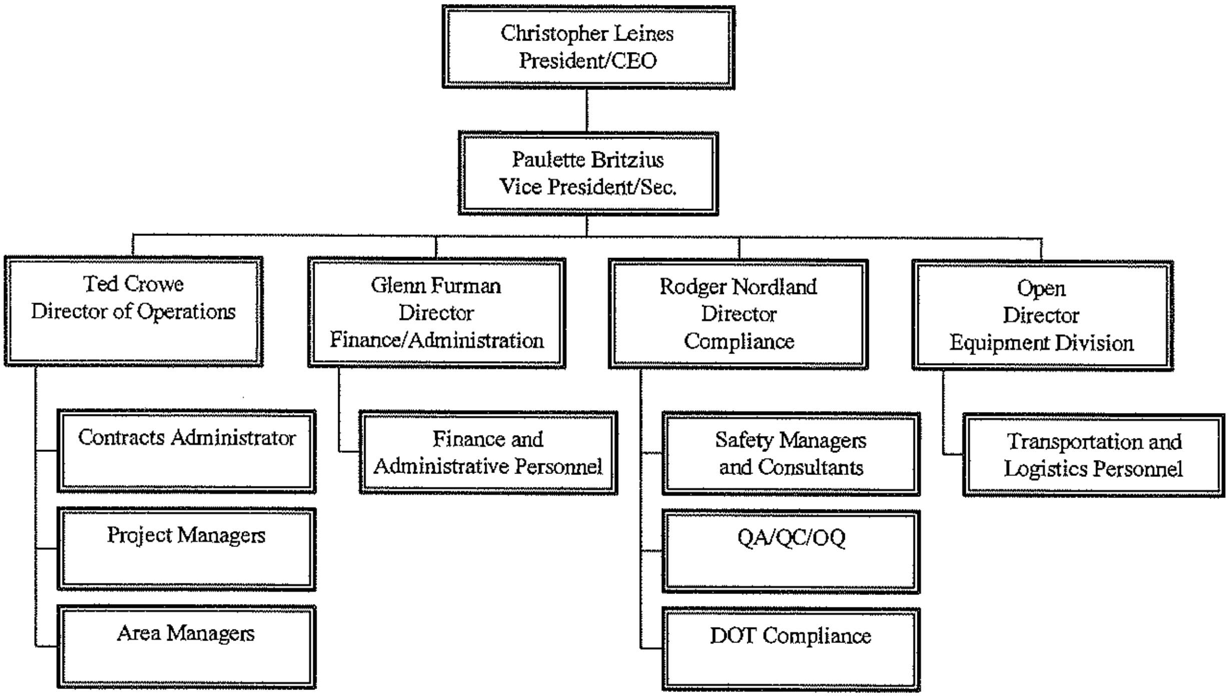
Offering Memo

IV. MANAGEMENT AND EMPLOYEES

ORGANIZATIONAL CHART

MN Limited has an exceptionally strong senior management team with nearly 150 years of industry experience and 85 years of combined service to MN Limited among the Company's top executives. The organizational chart below illustrates the Company's management structure.

Organizational Chart
At April 1, 2010


Christopher Leines
President/CEO
Paulette Britzius
Vice President/Sec.
Ted Crowe
Director of Operations
Glenn Furman
Director
Finance/Administration
Rodger Nordland
Director
Compliance
Open
Director
Equipment Division
Contracts Administrator
Project Managers
Area Managers
Finance and
Administrative Personnel
Safety Managers
and Consultants
QA/QC/OQ
DOT Compliance
Transportation and
Logistics Personnel

SENIOR MANAGEMENT

Name	Title	Company Experience	Industry Experience
Christopher Leines	President and CEO	29	29
Paulette Britzius	Vice President	35	35
Ted Crowe	Director of Operations	11	33
Glenn Furman	Director of Finance and Administration	7	15
Rodger Nordland	Director of Compliance	3	36

Christopher Leines – President and CEO

Mr. Leines joined MN Limited in 1981. Mr. Leines has worked in all facets of the business with an emphasis in operations, estimating and project management. He has been instrumental in growing the Company since taking over the day to day operations in 1991. Prior to that, Mr. Leines has held various other positions within the Company, including Vice President and Project Engineer. Mr. Leines is a past President of the Distribution Contractors Association ("DCA") and a current board member and officer of the Pipeline Contractors Association ("PLCA"). He holds a B.S. in Civil Engineering from North Dakota State University.

Paulette Britzius – Vice President

Ms. Britzius joined MN Limited in 1978. Her main emphasis is on the administrative operations of the business with tasks ranging from quarterly reporting, accounts payable, payroll, billing and receivables management, office management, corporate business planning and human resources. She holds a B.S. from the University of Wisconsin – Stout.

Ted Crowe – Director of Operations

Mr. Crowe joined MN Limited in 2000. His main responsibilities consist of project management, including estimating, procurement, planning, and project supervision. Mr. Crowe has worked as Project Manager on projects for Mid American Energy, Northern Natural Gas, Koch Pipeline, British Petroleum, Dome Pipeline, El Paso Gas Transmission, Viking Gas Transmission, Northern Border, Enron Energy, Great Lakes Gas and Enbridge Energy, Inc. Prior to joining MN Limited, Mr. Crowe held a variety of positions of increasing responsibility at Leonard Pipeline Contractors, Northern Pipeline Construction Company and Sovode Enterprises. He is a member of the Federal Energy Regulatory Commission Environmental Training Program. Mr. Crowe holds a degree from the Certified General Accountants Program at the University of Toronto-Ryerson College.

Glenn Furman – Director of Finance and Administration

Mr. Furman joined MN Limited in 2003. He is responsible for day-to-day finance, accounting and administrative matters including internal control, financial statements, banking/treasury management, income taxes, insurance, information technology and human resources. Mr. Furman's background includes over seven years public accounting experience tax, audit and consulting of closely held companies. Prior to joining MN Limited, he was the Accounting Manager at Metro Sales and a Supervising Senior Auditor at KPMG. Mr. Furman holds a B.S. in accounting from Bemidji State University.

Rodger Nordland – Director of Compliance

Mr. Nordland joined MN Limited in 2007. He oversees the Company's safety, quality assurance and quality control programs, including oversight of the employee operator qualification program. Prior to joining the Company, Rodger worked for the Federal Aviation Administration for 33 years with 25 years as an air traffic management coordinator. In this role, Mr. Nordlund's responsibilities included overseeing shift operations at the Minneapolis/St Paul International Airport air traffic control facility. Mr. Nordlund also has previous experience working for the Department of Defense as the Assistant Fire Chief of Training at O'Hare International Airport in Chicago. He holds degrees in Fire Science Technology and Aviation Management with a minor in Aviation Management from Central Missouri State University.

EMPLOYEES

For the 2009 construction season, the Company employed over 600 workers. The senior management team has created a service-oriented culture that emphasizes teamwork, quality, safety, continuous improvement, accountability and profitability. Management believes its highly trained and experienced employee base is critical to the overall success and profitability of MN Limited, and believes its employee relations are very good. The Company is unionized, and there have been no work stoppages or strikes. The Company's employees are primarily paid on an hourly basis. Management feels that wages are competitive for the region and industry and, in some cases, above market to help retain the top-performing employees. The chart below highlights the Company's approximate headcount by function.

Approximate Headcount
At April 1, 2010[11]

Function	Count
Field and Shop	
Administrative/Overhead/Office	12
Field Supervision	35
Field Laborers, Operators and Welders	512
Safety	11
Total Field and Shop	**570**
Management and Administration	
Senior Management	6
Other Managers	2
Administrative Staff	2
Accounting/Finance Staff	6
Project Management	14
Total Management and Administration	**30**
TOTAL	**600**

[11] Headcount varies throughout the year due to seasonal factors.

COMPANY BENEFITS

The Company offers its employees a comprehensive benefits program. Specific benefits and vacation eligibility depends on position and tenure within the Company. Elements of the Company's benefits program include:

Insurance

The Company offers its employees standard medical insurance, including life and accidental death and dismemberment.

401(k)

MN Limited has a 401(k) retirement plan for employees, which allows employees to contribute to their 401(k). The Company will also match certain contributions made by employees.

Miscellaneous

Other employee benefits include flex time and paid holidays. Employees receive a certain amount of vacation days per year dependant upon tenure. For example, employees with six years or more of experience with the Company receive three weeks of vacation. Additionally, the Company may also provide paid time off, a company vehicle for certain employees, and a cell phone.

Offering Memo

V. FINANCIAL OVERVIEW

SUMMARY

MN Limited has an impressive track record of revenue growth and profitability. The Company has been profitable in each of the last 23 years, during which time revenue has grown at a compound annual growth rate of 14%. In 2009, the Company generated revenue and adjusted EBITDA of $121 million and $20.1 million, respectively, with an adjusted EBITDA margin of 16.2%. In 2010, management estimates revenue of $110.2 million and adjusted EBITDA of $20.0 million, or 18.2% of revenue. Average EBITDA, which smoothes out cyclical macroeconomic factors, is expected to be $25.2 million for the three-year period ended December 31, 2009.

HISTORICAL AND PROJECTED INCOME STATEMENTS

Basis of Presentation

The financial information presented in this Memorandum includes Minnesota Limited, Inc. and its sister companies Nordic Equipment, LLC, Nordic Land Co. and Nordic Pipeline Services, LLC. As presented, the financial information excludes sister company Nordic Investments LLLP, which holds the building and real estate at the Company's headquarters in Big Lake, Minnesota. Unless otherwise noted, the financial information presented herein is a consolidation of all entities except Nordic Investments LLLP. The Company's owners would consider selling Nordic Investments LLLP in connection with the transaction or retaining the entity and entering into a long-term lease with the buyer of the Company. If Nordic Investments LLLP had been included, consolidated EBITDA would be increased by approximately $1.4 million annually.

The financial results have also been adjusted to reflect the true profitability of the business on a stand-alone basis. A summary of these adjustments is on page 60. For these reasons, and the fact that the audit only reflects Minnesota Limited, Inc., the financial statements in this memorandum will not match the audited financial results included herein as Appendix A.

Percentage of Completion Accounting

Project revenue is recognized using the percentage-of-completion method of accounting, which requires management to exercise judgment in estimating the future costs of completing individual projects. At any given point in time, the degree of completion is determined based on costs incurred, excluding costs that are not representative of progress toward completion, as a percentage of the total cost anticipated for the project. Incentive awards, claims and penalty provisions are recognized when such amounts are likely to accrue and can reasonably be estimated. Revisions to estimates of costs and profits of projects are recorded at the time that relevant information becomes available.

MN Limited's historical and projected income statements for the years ended and ending December 31, 2007-2010E are presented below.

Historical and Projected Income Statements
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)

	2007A	2008A	2009A	2010E
Revenues	$100,505	$155,570	$121,356	$110,198
% Growth	*105.2%*	*54.8%*	*-22.0%*	*-9.2%*
Cost of Revenues	80,107	125,472	101,878	90,133
Gross Profit	20,397	30,097	19,478	20,065
Gross Margin %	*20.3%*	*19.3%*	*16.1%*	*18.2%*
Operating Expenses	6,294	10,632	8,872	6,376
EBIT	14,104	19,465	10,606	13,689
EBIT Margin %	*14.0%*	*12.5%*	*8.7%*	*12.4%*
Depreciation & Amortization	3,228	10,140	5,311	4,713
EBITDA	**17,332**	**29,605**	**15,917**	**18,403**
EBITDA Margin %	*17.2%*	*19.0%*	*13.1%*	*16.7%*
Total Adjustments [1]	2,140	6,344	4,139	1,626
Adjusted EBTIDA	**$19,472**	**$35,949**	**$20,056**	**$20,029**
Adjusted EBITDA Margin %	*19.4%*	*23.1%*	*16.5%*	*18.2%*

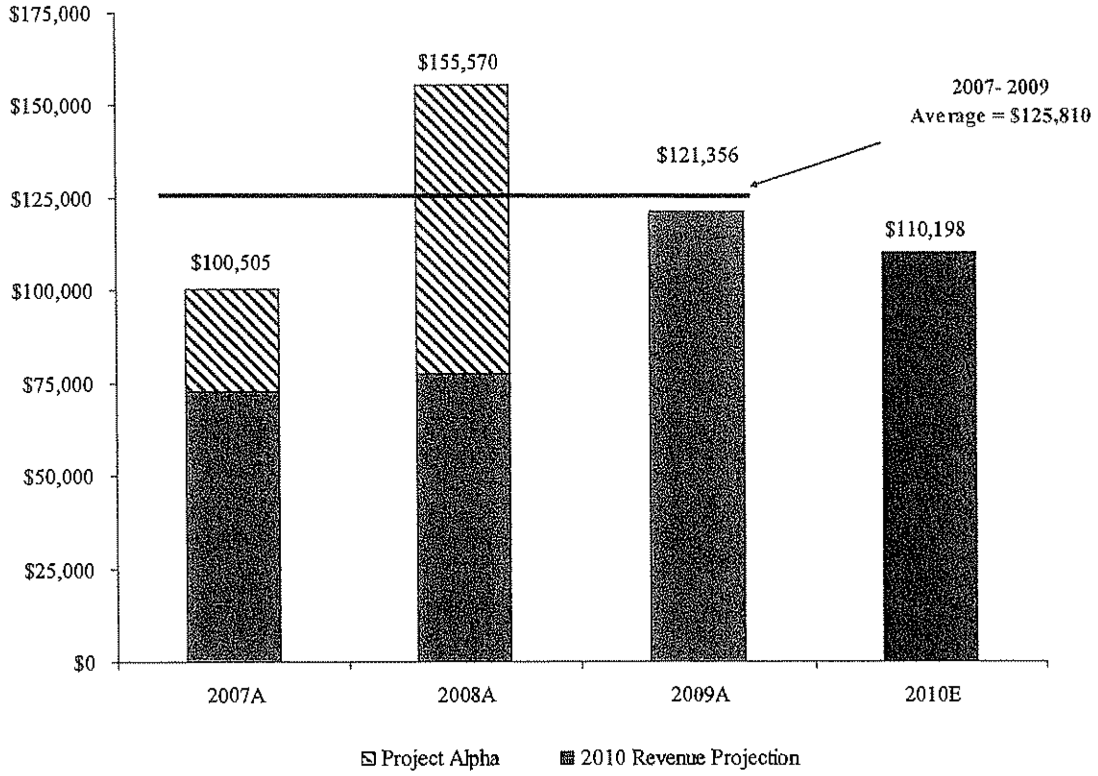
(1) Adjustments are shown in more detail in the Financial Statement Adjustments section on page 59.

Revenue

The Company generates revenue through its three business lines: new pipeline construction, station/terminal construction, and pipeline integrity/maintenance. In 2007, the Company was awarded a new pipeline construction project ("Project Alpha"), the largest in its history, by a long standing customer. A portion of the project was completed in 2007, and the majority of the project was completed in 2008. Project Alpha is depicted in the revenue graph below in the cross-hatched portion of the 2007 and 2008 revenue bars.

Absent Project Alpha, the Company grew consistently from 2007 to 2009. Management anticipates revenue will be down by approximately 10% in 2010 due to macroeconomic forces, but expects to continue on the Company's recent growth trajectory going forward. The Company believes that that Q1 2009 was the low point in the cycle. Q1 2010 revenue was up significantly compared to Q1 2009. Management expects 2010 revenue to be driven primarily by projects in its pipeline integrity/maintenance segment, which is projected to be up more than 100% year over year. The chart below illustrates revenue from 2007 to 2010E.

Revenue
(dollars in thousands)
For the Years Ended and Ending December 31, 2007-2010E



Key Points Regarding Project Alpha

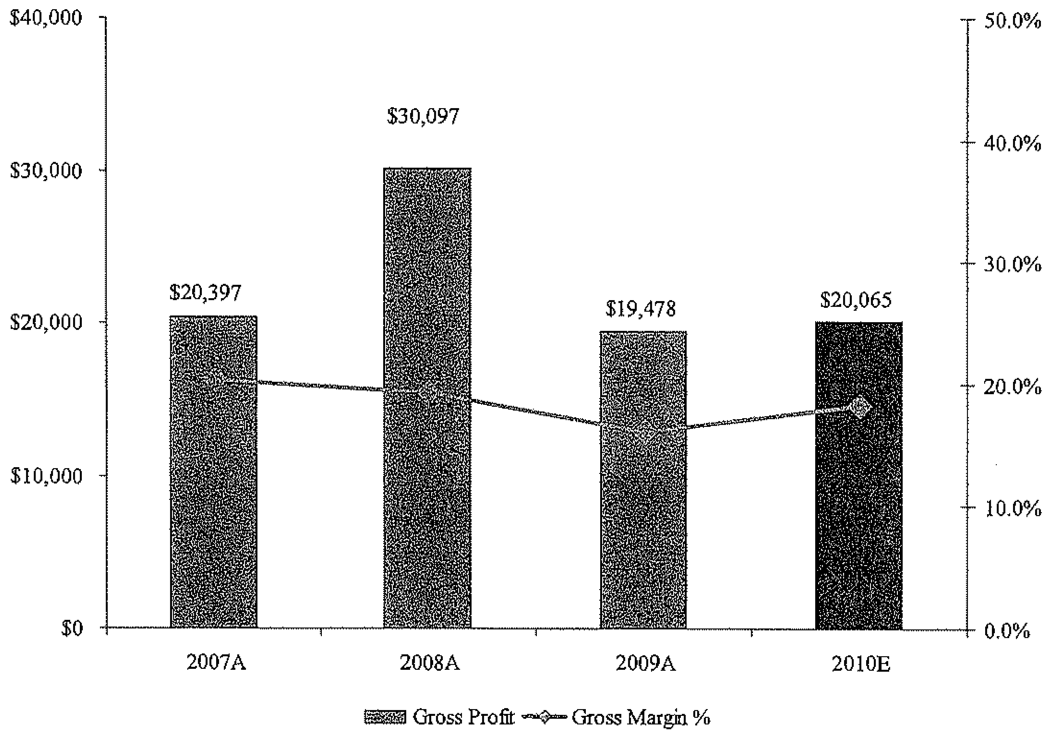
1. While revenue in 2007 and 2008 was positively impacted by Project Alpha, had MN Limited not been awarded Project Alpha, it would have pursued (and presumably secured) other new business. Particularly in 2008, Project Alpha consumed a significant portion of the Company's resources. Accordingly, MN Limited did not pursue other significant projects – its plate was full. Management believes that had the Company not worked on Project Alpha in 2008, the Company would have secured other work and replaced a significant portion of the Project Alpha revenue that year.

2. MN Limited performed successfully on Project Alpha, both in the eyes of its customer as well as measured by the Company's profitability on that contract. This experience provides the Company the credibility to pursue and win other large projects for it's long-time customers and for new customers. Management believes the frequency with which the Company is awarded large projects will increase going forward.

Cost of Revenue and Gross Profit

Contract costs include all direct material, labor, subcontracting, and equipment costs and those indirect costs related to contract performance, such as indirect labor, supplies, tools, repairs, and depreciation. In 2007 and 2008, margins decreased slightly due to Project Alpha because the Company was willing to accept lower margins in exchange for the large volume of work involved. In 2009, the Company's gross margin decreased to 16.1%, down from 19.3% in 2008. The Company recorded the costs associated with the work performed under the disputed change orders, but has not recorded the revenue. Absent this issue, 2009 margins would have been more in line with 2008. Management expects 2010 gross margin to be approximately 18%, in line with 2007 and 2008 levels.

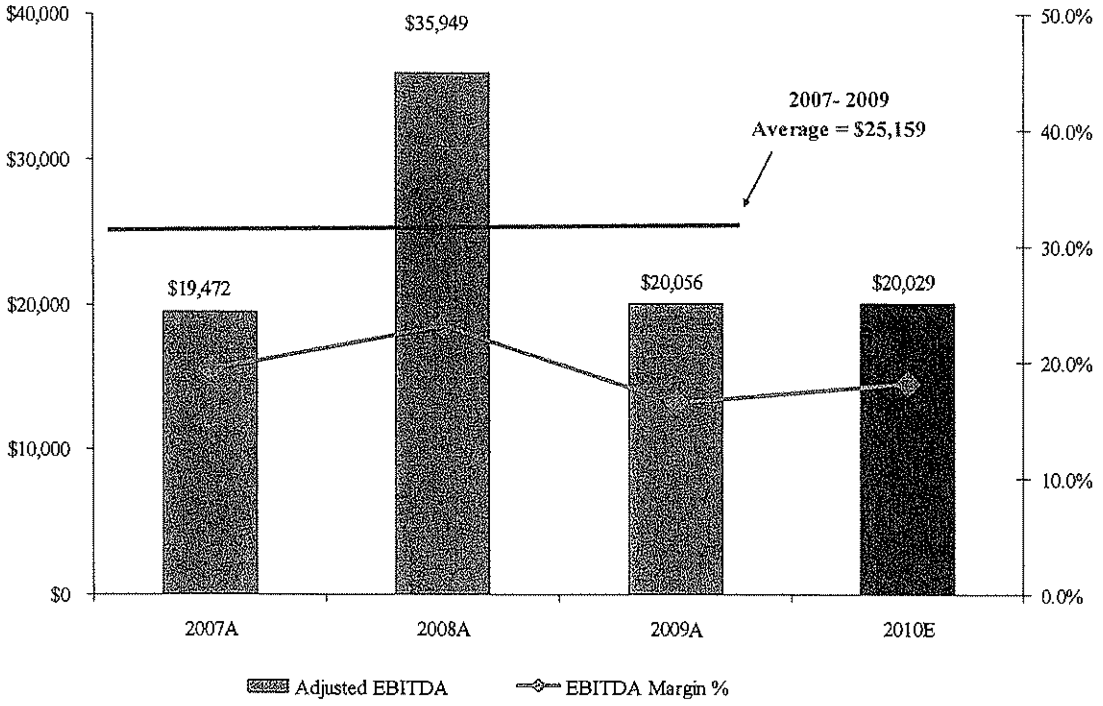
Gross Profit
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)



G&A Expense and Adjusted EBITDA

General and administrative ("G&A") expense includes all expenses related to executive compensation, salaries, rent, advertising, finance and accounting, human resources, outside consulting fees, insurance and general administration of the Company. Many of the Company's G&A expenses are relatively fixed, and therefore, G&A expense tends to be quite predictable. Historically, the Company's G&A expense has averaged between 6% and 7% of total sales. The following chart depicts Adjusted EBITDA from 2007 to 2010E.

Adjusted EBITDA
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)



Income Statement Adjustments

For purposes of the financial information presented herein, management has eliminated a number of costs to more accurately reflect the true profitability of the business. The adjustments include: certain excess compensation and bonuses paid to owners of the Company above and beyond what would be typical for a non-owner employee, certain one-time consulting and professional fees and other one-time costs that are not part of the normal operation of the Company, and certain items that were expensed for tax purposes but could have been capitalized under GAAP.

Excess Compensation and Bonuses

Includes bonuses and salary paid to the CEO in excess of $350,000 and other compensation paid to family members who will not continue with the business under new ownership.

Consulting & One-Time Professional Fees

Includes one-time fees the Company incurred as a result of engaging human resources, software, equipment appraisal and financial advisory firms.

Other One-Time Fees & Expenses

Includes one-time travel, facility and legal settlement expenses.

Dragline Mats

Includes the cost of wooden dragline mats used to cross wetlands during a project. Historically, the Company has expensed dragline mats to a single project even though the useful life is typically two years or greater.

Uncapitalized Costs Related to Equipment

Includes the cost of equipment that was expensed when it could have been capitalized. A corresponding adjustment has been made to Capital Expenditures (please see page 63).

The table below summarizes the adjustments described above.

Historical & Projected Adjustments to Income Statements
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)

	2007A	2008A	2009A	2010E
Excess Compensation and Bonuses	$1,852	$3,824	$1,903	$774
Consulting & One-Time Professional Fees	24	80	525	596
Other One-Time Fees & Expenses	2	94	153	6
Dragline Mats	0	2,029	1,337	0
Uncapitalized Costs Related to Equipment	262	317	221	250
Total Adjustments	**$2,140**	**$6,344**	**$4,139**	**$1,626**

HISTORICAL BALANCE SHEET

The Company's audited balance sheets at December 31, 2007–2009 are presented below. The asset "Costs and Estimated Earnings in Excess of Billings" represents revenues recognized in excess of amounts billed. The liability "Billings in Excess of Costs & Estimated Profits" represents billings in excess of revenues recognized.

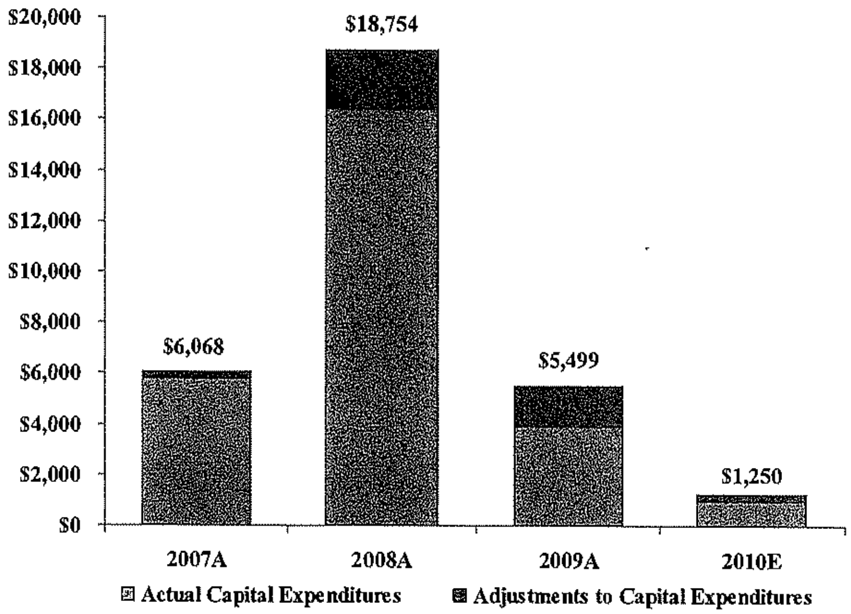
Historical Balance Sheets
At December 31, 2007, 2008 and 2009
(dollars in thousands)

	2007A	2008A	2009A
ASSETS			
Current Assets			
Cash	$36	$4,280	$2,790
Contracts Receivable, net	17,151	15,184	19,414
Other Receivables	893	89	1,374
Receivable from Related Party	1,566	978	25
Costs and Estimated Earnings in Excess of Billings	149	238	1,820
Other Current Assets	149	230	945
Total Current Assets	19,945	20,999	26,368
Total Property & Equipment, net	10,353	14,434	11,945
Total Assets	**$30,297**	**$35,432**	**$38,313**
LIABILITIES & STOCKHOLDERS' EQUITY			
Current Liabilities			
Current Muturities of Long-Term Debt	0	0	2,187
M&I Bank Line of Credit Loan	38	1,762	7,032
Related Part Payable	0	0	0
Cash Balances Payable to Affiliates	19	0	0
Bank Overdraft	3,153	0	1,695
Accounts Payable	7,455	4,510	7,699
Other Accrued Expenses	2,126	2,389	2,051
Billings in Excess of Costs & Estimated Profits	452	235	13
Total Current Liabilities	13,244	8,896	20,678
Long-Term Debt, net	0	7,438	5,250
Total Stockholders' Equity	17,054	19,098	12,385
Total Assets	**$30,297**	**$35,432**	**$38,313**

CAPITAL EXPENDITURES

The Company has made thoughtful investments in capital equipment. Management feels that the Company's current fleet of heavy and other equipment is in excellent condition and would support the operation of the business at its present level for the foreseeable future. In order to support its recent substantial growth (specifically including Project Alpha), the Company significantly upgraded its fleet of Pipelayers in 2008. The chart below reflects historical and projected annual capital expenditures for MN Limited over the period 2007 through 2010. Management believes that typical annual maintenance capital expenditures are between $1.0 million and $3.0 million. For purposes of this table, EBITDA adjustments for certain items that could have been capitalized are shown in the table below in blue.

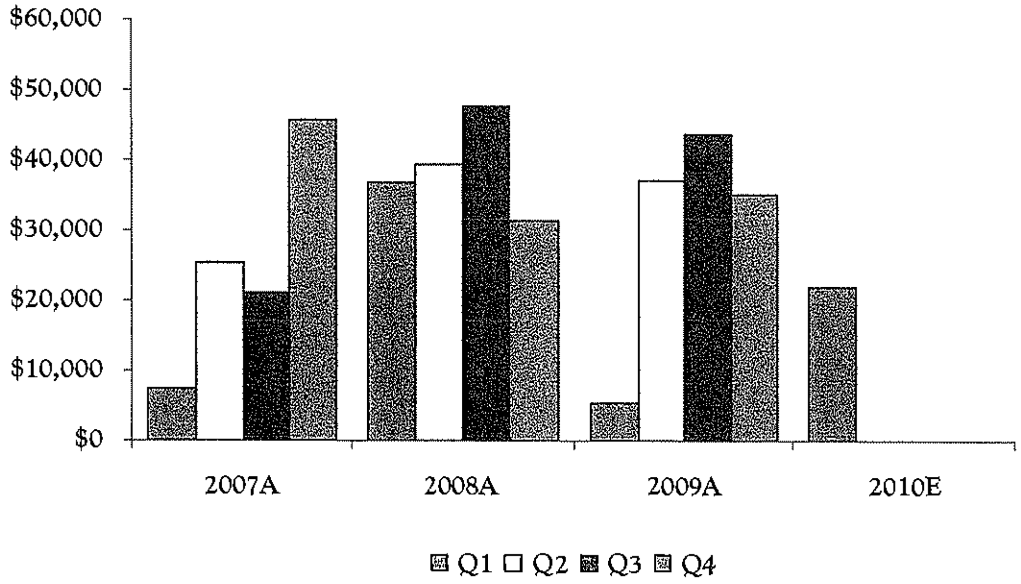
Historical and Projected Capital Expenditures
For the Years Ended and Ending December 31, 2007-2010
(dollars in thousands)



SEASONALITY

Primarily due to the weather, the Company experiences seasonality in revenue throughout the year. In general, the first quarter of the year tends to be the slowest with the bulk of the Company's revenue generated in the May through November timeframe. The chart below illustrates the Company's quarterly net revenue from January 1, 2007 to March 31, 2010.

Quarterly Net Revenue
For the Quarters Ended March 31, 2007–2010E
(dollars in thousands)



V. FINANCIAL OVERVIEW

Summary

MN Limited has an impressive track record of revenue growth and profitability. The Company has been profitable in each of the last 23 years, during which time revenue has grown at a compound annual growth rate of 14%. In 2009, the Company generated revenue and adjusted EBITDA of $121 million and $20.1 million, respectively, with an adjusted EBITDA margin of 16.2%. In 2010, management estimates revenue of $110.2 million and adjusted EBITDA of $20.0 million, or 18.2% of revenue. Average EBITDA, which smoothes out cyclical macroeconomic factors, is expected to be $25.2 million for the three-year period ended December 31, 2009.

Historical and Projected Income Statements

Basis of Presentation

The financial information presented in this Memorandum includes Minnesota Limited, Inc. and its sister companies Nordic Equipment, LLC, Nordic Land Co. and Nordic Pipeline Services, LLC. As presented, the financial information excludes sister company Nordic Investments LLLP, which holds the building and real estate at the Company's headquarters in Big Lake, Minnesota. Unless otherwise noted, the financial information presented herein is a consolidation of all entities except Nordic Investments LLLP. The Company's owners would consider selling Nordic Investments LLLP in connection with the transaction or retaining the entity and entering into a long-term lease with the buyer of the Company. If Nordic Investments LLLP had been included, consolidated EBITDA would be increased by approximately $1.4 million annually.

The financial results have also been adjusted to reflect the true profitability of the business on a stand-alone basis. A summary of these adjustments is on page 60. For these reasons, and the fact that the audit only reflects Minnesota Limited, Inc., the financial statements in this memorandum will not match the audited financial results included herein as Appendix A.

Percentage of Completion Accounting

Project revenue is recognized using the percentage-of-completion method of accounting, which requires management to exercise judgment in estimating the future costs of completing individual projects. At any given point in time, the degree of completion is determined based on costs incurred, excluding costs that are not representative of progress toward completion, as a percentage of the total cost anticipated for the project. Incentive awards, claims and penalty provisions are recognized when such amounts are likely to accrue and can reasonably be estimated. Revisions to estimates of costs and profits of projects are recorded at the time that relevant information becomes available.

MN Limited's historical and projected income statements for the years ended and ending December 31, 2007-2010E are presented below.

Historical and Projected Income Statements
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)

	2007A	2008A	2009A	2010E
Revenues	$100,505	$155,570	$121,356	$110,198
% Growth	*105.2%*	*54.8%*	*-22.0%*	*-9.2%*
Cost of Revenues	80,107	125,472	101,878	90,133
Gross Profit	20,397	30,097	19,478	20,065
Gross Margin %	*20.3%*	*19.3%*	*16.1%*	*18.2%*
Operating Expenses	6,294	10,632	8,872	6,376
EBIT	14,104	19,465	10,606	13,689
EBIT Margin %	*14.0%*	*12.5%*	*8.7%*	*12.4%*
Depreciation & Amortization	3,228	10,140	5,311	4,713
EBITDA	**17,332**	**29,605**	**15,917**	**18,403**
EBITDA Margin %	*17.2%*	*19.0%*	*13.1%*	*16.7%*
Total Adjustments [1]	2,140	6,344	4,139	1,626
Adjusted EBTIDA	**$19,472**	**$35,949**	**$20,056**	**$20,029**
Adjusted EBITDA Margin %	*19.4%*	*23.1%*	*16.5%*	*18.2%*

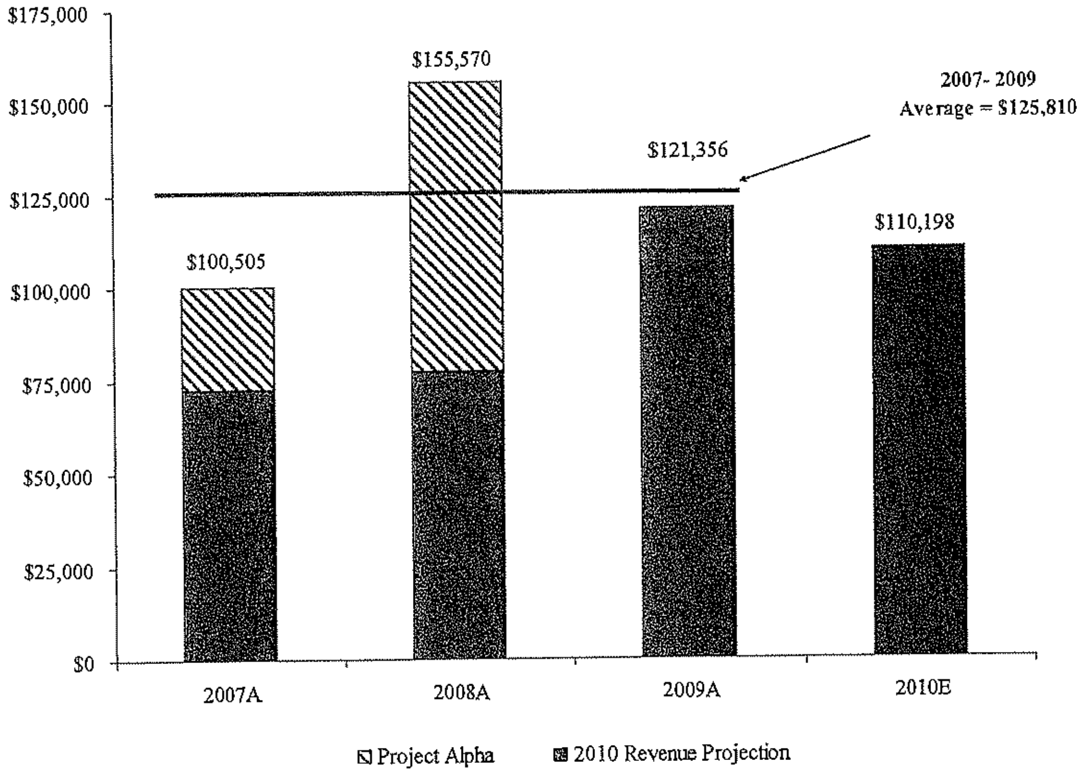
(1) Adjustments are shown in more detail in the Financial Statement Adjustments section on page ~~59~~.
61

Revenue

The Company generates revenue through its three business lines: new pipeline construction, station/terminal construction, and pipeline integrity/maintenance. In 2007, the Company was awarded a new pipeline construction project ("Project Alpha"), the largest in its history, by a long standing customer. A portion of the project was completed in 2007, and the majority of the project was completed in 2008. Project Alpha is depicted in the revenue graph below in the cross-hatched portion of the 2007 and 2008 revenue bars.

Absent Project Alpha, the Company grew consistently from 2007 to 2009. Management anticipates revenue will be down by approximately 10% in 2010 due to macroeconomic forces, but expects to continue on the Company's recent growth trajectory going forward. The Company believes that that Q1 2009 was the low point in the cycle. Q1 2010 revenue was up significantly compared to Q1 2009. Management expects 2010 revenue to be driven primarily by projects in its pipeline integrity/maintenance segment, which is projected to be up more than 100% year over year. The chart below illustrates revenue from 2007 to 2010E.

Revenue
(dollars in thousands)
For the Years Ended and Ending December 31, 2007-2010E



Key Points Regarding Project Alpha

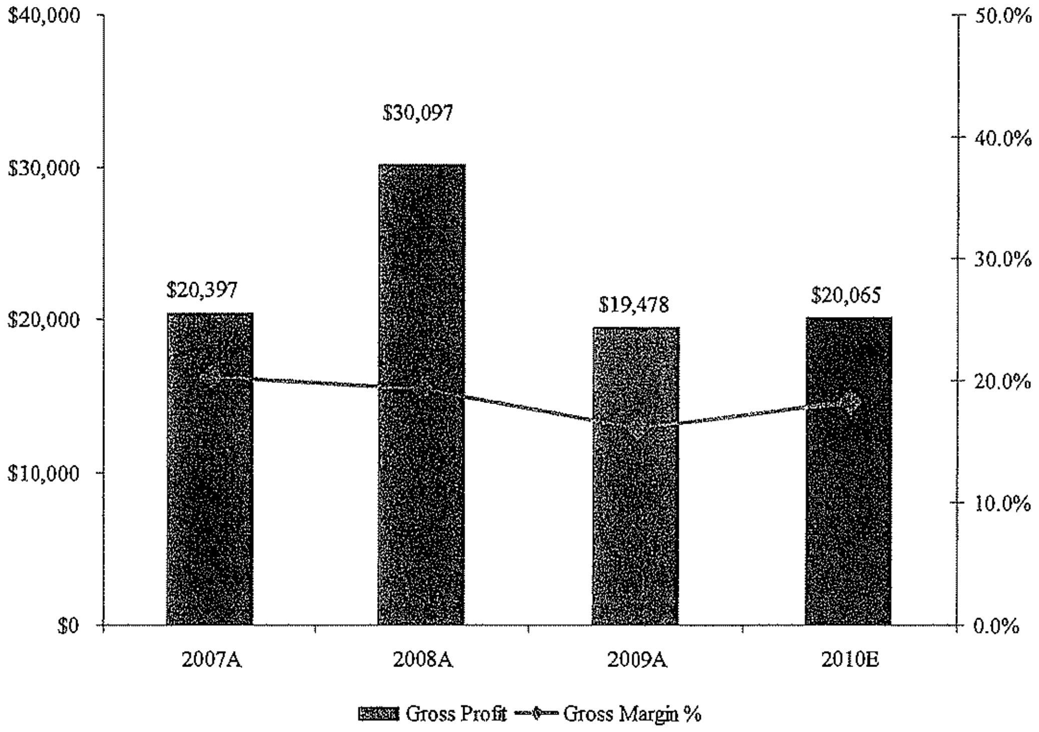
1. While revenue in 2007 and 2008 was positively impacted by Project Alpha, had MN Limited not been awarded Project Alpha, it would have pursued (and presumably secured) other new business. Particularly in 2008, Project Alpha consumed a significant portion of the Company's resources. Accordingly, MN Limited did not pursue other significant projects – its plate was full. Management believes that had the Company not worked on Project Alpha in 2008, the Company would have secured other work and replaced a significant portion of the Project Alpha revenue that year.

2. MN Limited performed successfully on Project Alpha, both in the eyes of its customer as well as measured by the Company's profitability on that contract. This experience provides the Company the credibility to pursue and win other large projects for it's long-time customers and for new customers. Management believes the frequency with which the Company is awarded large projects will increase going forward.

Cost of Revenue and Gross Profit

Contract costs include all direct material, labor, subcontracting, and equipment costs and those indirect costs related to contract performance, such as indirect labor, supplies, tools, repairs, and depreciation. In 2007 and 2008, margins decreased slightly due to Project Alpha because the Company was willing to accept lower margins in exchange for the large volume of work involved. In 2009, the Company's gross margin decreased to 16.1%, down from 19.3% in 2008. The Company recorded the costs associated with the work performed under the disputed change orders, but has not recorded the revenue. Absent this issue, 2009 margins would have been more in line with 2008. Management expects 2010 gross margin to be approximately 18%, in line with 2007 and 2008 levels.

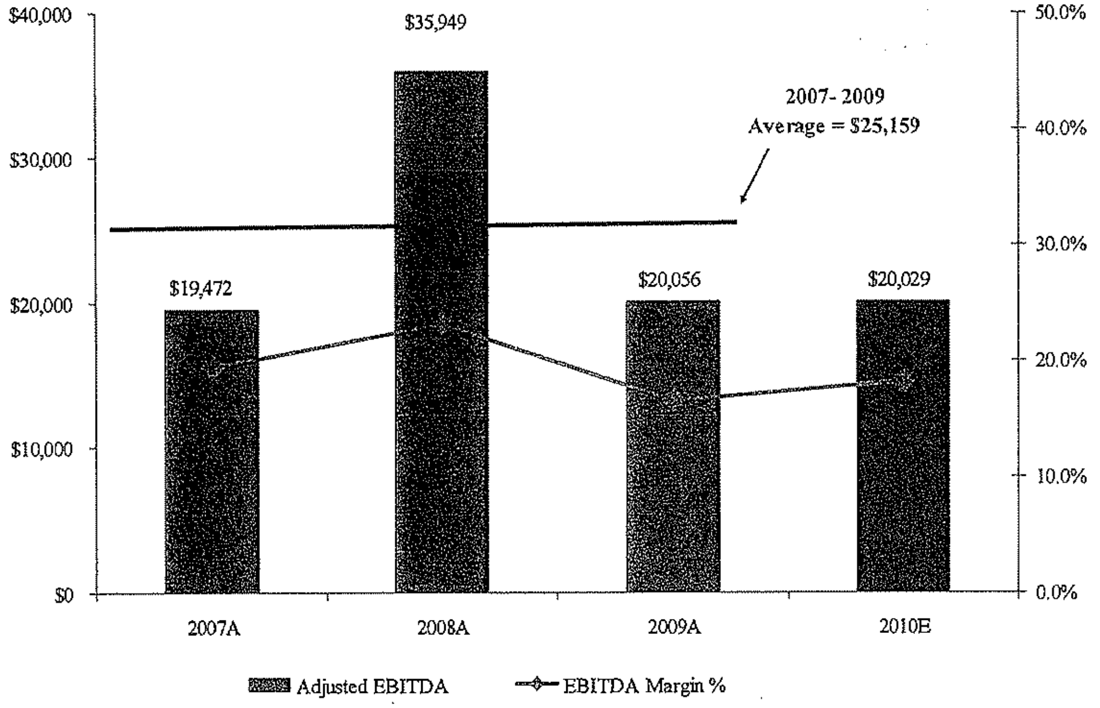
Gross Profit
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)



G&A Expense and Adjusted EBITDA

General and administrative ("G&A") expense includes all expenses related to executive compensation, salaries, rent, advertising, finance and accounting, human resources, outside consulting fees, insurance and general administration of the Company. Many of the Company's G&A expenses are relatively fixed, and therefore, G&A expense tends to be quite predictable. Historically, the Company's G&A expense has averaged between 6% and 7% of total sales. The following chart depicts Adjusted EBITDA from 2007 to 2010E.

Adjusted EBITDA
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)



Income Statement Adjustments

For purposes of the financial information presented herein, management has eliminated a number of costs to more accurately reflect the true profitability of the business. The adjustments include: certain excess compensation and bonuses paid to owners of the Company above and beyond what would be typical for a non-owner employee, certain one-time consulting and professional fees and other one-time costs that are not part of the normal operation of the Company, and certain items that were expensed for tax purposes but could have been capitalized under GAAP.

Excess Compensation and Bonuses

Includes bonuses and salary paid to the CEO in excess of $350,000 and other compensation paid to family members who will not continue with the business under new ownership.

Consulting & One-Time Professional Fees

Includes one-time fees the Company incurred as a result of engaging human resources, software, equipment appraisal and financial advisory firms.

Other One-Time Fees & Expenses

Includes one-time travel, facility and legal settlement expenses.

Dragline Mats

Includes the cost of wooden dragline mats used to cross wetlands during a project. Historically, the Company has expensed dragline mats to a single project even though the useful life is typically two years or greater.

Uncapitalized Costs Related to Equipment

Includes the cost of equipment that was expensed when it could have been capitalized. A corresponding adjustment has been made to Capital Expenditures (please see page 63).

The table below summarizes the adjustments described above.

Historical & Projected Adjustments to Income Statements
For the Years Ended and Ending December 31, 2007-2010E
(dollars in thousands)

	2007A	2008A	2009A	2010E
Excess Compensation and Bonuses	$1,852	$3,824	$1,903	$774
Consulting & One-Time Professional Fees	24	80	525	596
Other One-Time Fees & Expenses	2	94	153	6
Dragline Mats	0	2,029	1,337	0
Uncapitalized Costs Related to Equipment	262	317	221	250
Total Adjustments	**$2,140**	**$6,344**	**$4,139**	**$1,626**

HISTORICAL BALANCE SHEET

The Company's audited balance sheets at December 31, 2007–2009 are presented below. The asset "Costs and Estimated Earnings in Excess of Billings" represents revenues recognized in excess of amounts billed. The liability "Billings in Excess of Costs & Estimated Profits" represents billings in excess of revenues recognized.

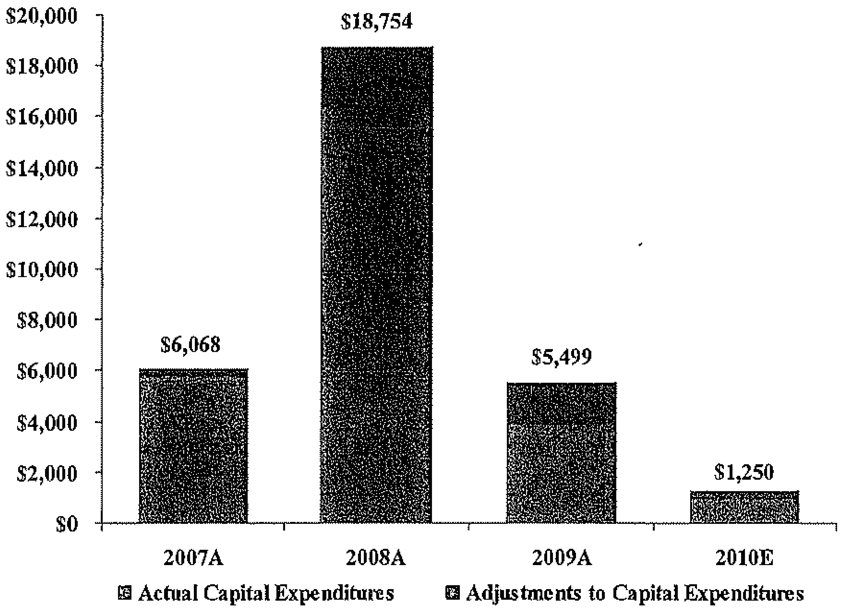
Historical Balance Sheets
At December 31, 2007, 2008 and 2009
(dollars in thousands)

	2007A	2008A	2009A
ASSETS			
Current Assets			
Cash	$36	$4,280	$2,790
Contracts Receivable, net	17,151	15,184	19,414
Other Receivables	893	89	1,374
Receivable from Related Party	1,566	978	25
Costs and Estimated Earnings in Excess of Billings	149	238	1,820
Other Current Assets	149	230	945
Total Current Assets	19,945	20,999	26,368
Total Property & Equipment, net	10,353	14,434	11,945
Total Assets	**$30,297**	**$35,432**	**$38,313**
LIABILITIES & STOCKHOLDERS' EQUITY			
Current Liabilities			
Current Muturities of Long-Term Debt	0	0	2,187
M&I Bank Line of Credit Loan	38	1,762	7,032
Related Part Payable	0	0	0
Cash Balances Payable to Affiliates	19	0	0
Bank Overdraft	3,153	0	1,695
Accounts Payable	7,455	4,510	7,699
Other Accrued Expenses	2,126	2,389	2,051
Billings in Excess of Costs & Estimated Profits	452	235	13
Total Current Liabilities	13,244	8,896	20,678
Long-Term Debt, net	0	7,438	5,250
Total Stockholders' Equity	17,054	19,098	12,385
Total Assets	**$30,297**	**$35,432**	**$38,313**

CAPITAL EXPENDITURES

The Company has made thoughtful investments in capital equipment. Management feels that the Company's current fleet of heavy and other equipment is in excellent condition and would support the operation of the business at its present level for the foreseeable future. In order to support its recent substantial growth (specifically including Project Alpha), the Company significantly upgraded its fleet of Pipelayers in 2008. The chart below reflects historical and projected annual capital expenditures for MN Limited over the period 2007 through 2010. Management believes that typical annual maintenance capital expenditures are between $1.0 million and $3.0 million. For purposes of this table, EBITDA adjustments for certain items that could have been capitalized are shown in the table below in blue.

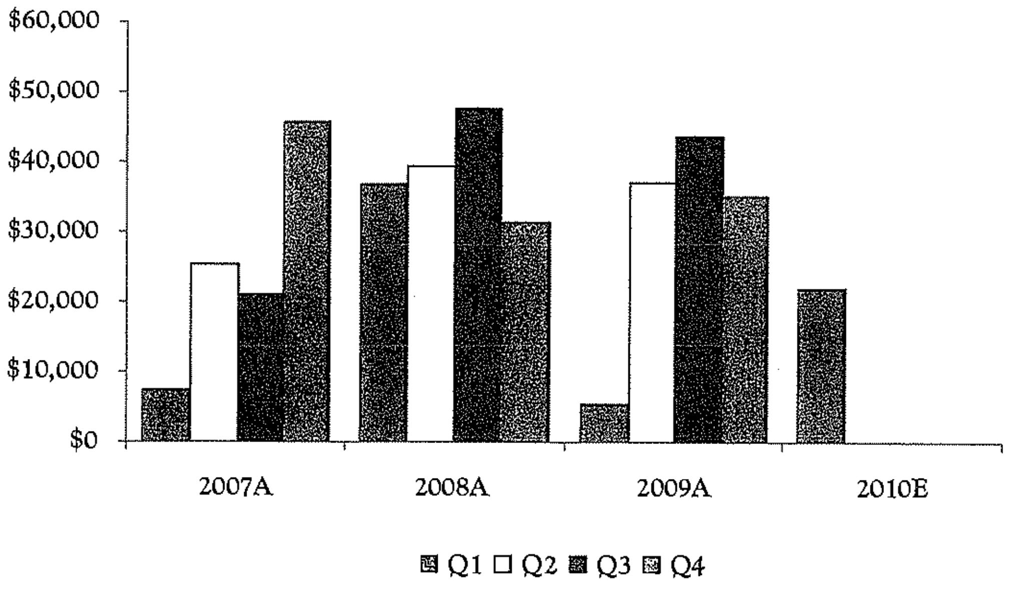
Historical and Projected Capital Expenditures
For the Years Ended and Ending December 31, 2007-2010
(dollars in thousands)



Seasonality

Primarily due to the weather, the Company experiences seasonality in revenue throughout the year. In general, the first quarter of the year tends to be the slowest with the bulk of the Company's revenue generated in the May through November timeframe. The chart below illustrates the Company's quarterly net revenue from January 1, 2007 to March 31, 2010.

Quarterly Net Revenue
For the Quarters Ended March 31, 2007–2010E
(dollars in thousands)



Minnesota Limited, Inc.

Financial Statements

December 31, 2009 and 2008

Minnesota Limited, Inc.

CONTENTS

	Page(s)
Independent Auditor's Report	1
Financial Statements	
Balance Sheets	2
Statements of Income and Retained Earnings	3
Statements of Cash Flows	4
Notes to Financial Statements	5 - 10

Lurie Besikof Lapidus
& Company, LLP

Independent Auditor's Report

The Board of Directors and Stockholders
Minnesota Limited, Inc.
Rogers, Minnesota

We have audited the accompanying balance sheets of Minnesota Limited, Inc. as of December 31, 2009 and 2008, and the related statements of income and retained earnings and of cash flows for the years then ended. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Minnesota Limited, Inc. as of December 31, 2009 and 2008, and the results of its operations and its cash flows for the years then ended in conformity with accounting principles generally accepted in the United States of America.

Lurie Besikof Lapidus & Company, LLP

Lurie Besikof Lapidus & Company, LLP

April 26, 2010

Minnesota Limited, Inc.

Balance Sheets

December 31	2009	2008
ASSETS		
Current Assets		
Cash and cash equivalents	$ **100,998**	$ 2,111,012
Contracts receivable, including retainages of $5,750,300 and $3,551,200	**20,722,694**	15,096,306
Receivable from related parties	**25,473**	1,623,875
Costs and estimated earnings in excess of billings on uncompleted contracts	**1,819,788**	238,232
Other	**889,999**	312,463
Total Current Assets	**23,558,952**	19,381,888
Property and Equipment	**6,466,983**	6,765,687
Total Assets	**$30,025,935**	$26,147,575
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Checks issued in excess of deposits	$ **1,796,272**	$ 1,254,133
Bank line of credit	**7,031,682**	-
Accounts payable	**7,627,454**	4,507,626
Accrued expenses	**2,020,363**	2,345,327
Billings in excess of costs and estimated earnings on uncompleted contracts	**12,840**	234,599
Total Current Liabilities	**18,488,611**	8,341,685
Stockholders' Equity		
Common stock, par value $10 (authorized - 2,500 shares; issued and outstanding - 2,055 shares)	**20,550**	20,550
Additional paid-in capital	**51,554**	51,554
Retained earnings	**11,465,220**	17,733,786
Total Stockholders' Equity	**11,537,324**	17,805,890
Total Liabilities and Stockholders' Equity	**$30,025,935**	$26,147,575

See notes to financial statements.

Minnesota Limited, Inc.

Statements of Income and Retained Earnings

Years Ended December 31	2009	2008
Revenues Earned	**$ 121,058,702**	$ 155,164,472
Construction Costs	**104,963,089**	120,389,571
Gross Profit	**16,095,613**	34,774,901
General and Administrative Expenses	**9,171,104**	10,537,378
Income from Operations	**6,924,509**	24,237,523
Other Income (Expense)		
Interest income	**6,799**	42,915
Gain (loss) on sales of property and equipment	**(39,798)**	27,520
Interest expense	**(57,715)**	(29,544)
Other income (expense)	**(22,634)**	121,266
Total Other Income (Expense), net	**(113,348)**	162,157
Net Income	**6,811,161**	24,399,680
Retained Earnings		
Beginning of year	**17,733,786**	13,912,180
Distributions	**(13,079,727)**	(20,578,074)
End of year	**$ 11,465,220**	$ 17,733,786

See notes to financial statements.

Minnesota Limited, Inc.

Statements of Cash Flows

Years Ended December 31	2009	2008
Operating Activities		
Net income	**$ 6,811,161**	$ 24,399,680
Adjustments to reconcile net income to net cash provided by operating activities:		
Depreciation	**2,252,140**	2,355,498
Bad debt expense	**-**	618,072
Loss (gain) on sales of property and equipment	**39,798**	(27,520)
Changes in operating assets and liabilities:		
Contracts receivable	**(5,626,388)**	1,736,211
Net billings, costs and estimated earnings on uncompleted contracts	**(1,803,315)**	(306,332)
Other assets	**(577,536)**	453,849
Accounts payable	**3,119,828**	(3,067,376)
Accrued expenses	**(324,964)**	(594,191)
Net Cash Provided by Operating Activities	**3,890,724**	25,567,891
Investing Activities		
Net proceeds from (payments to) related parties	**606,045**	(1,994,059)
Purchases of property and equipment	**(2,030,389)**	(2,406,197)
Proceeds from sales of property and equipment	**37,155**	98,350
Net Cash Used by Investing Activities	**(1,387,189)**	(4,301,906)
Financing Activities		
Increase (decrease) in checks issued in excess of deposits	**542,139**	(1,351,696)
Net proceeds (payments) on bank line of credit	**7,031,682**	(178,270)
Distributions to stockholders	**(12,087,370)**	(17,625,007)
Net Cash Used by Financing Activities	**(4,513,549)**	(19,154,973)
Net Increase (Decrease) in Cash and Cash Equivalents	**(2,010,014)**	2,111,012
Cash and Cash Equivalents		
Beginning of year	**2,111,012**	-
End of year	**$ 100,998**	$ 2,111,012

See notes to financial statements.

Minnesota Limited, Inc.

Notes to Financial Statements

1. The Company and Summary of Significant Accounting Policies

Nature of Business

Minnesota Limited, Inc. (Company) is a specialty general contractor serving the natural gas and petroleum industry. The Company focuses on pipeline construction; pump station, compressor station, terminal, and refinery construction; pipeline maintenance; and hydrostatic testing. The Company is headquartered in Big Lake, Minnesota, with facilities in Bemidji, Minnesota; Superior, Wisconsin; and Altamont, Illinois. The Company's revenue is earned on projects throughout the United States, primarily in the midwestern and central states.

Use of Estimates

The preparation of these financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that may affect the reported amounts and disclosures in the financial statements and accompanying notes. Actual results could differ from those estimates. The most significant management estimates relate to the determination of the percentage of completion on construction contracts in progress, the workers' compensation insurance reserve, and the allowance for doubtful accounts. It is reasonably possible these significant management estimates may change in the near term and the effect of the change could be material. Revisions in estimated contract profits are made in the year they become known.

Revenue and Cost Recognition

Revenue from fixed price construction contracts is recognized on the percentage of completion method, measured by the percentage of costs incurred to date to the estimated total costs for each contract. Management considers costs incurred as the best measure of progress on contracts. Because of inherent uncertainties in estimating costs, it is reasonably possible that the estimates used will change in the near term. Contracts typically last from one month to one year. Approximately 81% and 23% of revenues were derived from fixed price construction contracts in 2009 and 2008, respectively.

Revenues on cost plus fee contracts are recognized to the extent of costs incurred during the period plus a proportionate amount of fee earned, measured by the cost to cost method. Approximately 19% and 77% of revenues were derived from cost plus fee contracts in 2009 and 2008, respectively.

Contract costs include all direct material, subcontract, and labor costs, and those indirect costs related to contract performance including depreciation, equipment maintenance and repairs, and supplies. Provisions for estimated losses on uncompleted contracts are made in the period in which such losses are determined. Changes in job performance, job conditions, and estimated profitability, including those arising from contract penalty provisions and final contract settlements, may result in revisions to costs and income and are recognized in the period in which the revisions are determined.

Cash Equivalents

All highly liquid investments purchased with an original maturity of three months or less are considered cash equivalents.

Credit Risk

The Company maintains cash at financial institutions in deposit and money market accounts which, at times, may exceed federally insured limits. The Company has not experienced any losses on such accounts and management believes it is not exposed to any significant credit risk on cash.

Minnesota Limited, Inc.

Notes to Financial Statements

1. The Company and Summary of Significant Accounting Policies (continued)

Contracts Receivable

Management reviews individual contracts receivable as they become past due to determine collectability. The allowance for doubtful accounts is adjusted based on management's consideration of past due contracts receivable. Individual accounts are charged against the allowance when collection efforts have been exhausted. The allowance for doubtful accounts was $450,000 at December 31, 2009 and 2008, respectively.

Property and Equipment

Property and equipment are stated at cost less accumulated depreciation. Depreciation is provided using straight line and accelerated methods over the estimated useful lives of the assets.

Income Taxes

The Company, with the consent of the stockholders, elected S corporation status effective April 1, 1996. Earnings and losses are included in the personal income tax returns of the stockholders. The Company is subject to income taxes in certain states in which it conducts business. Income taxes charged to expense were approximately $242,000 and $36,000 for 2009 and 2008, respectively.

Reclassifications

Certain reclassifications were made to the 2008 financial statements to make them comparable to the 2009 presentation. The reclassifications did not have any effect on previously reported stockholders' equity, net income, or net cash flows.

2. Uncompleted Contracts

Billings, costs and estimated earnings on uncompleted contracts consisted of the following:

December 31	2009	2008
Costs incurred on uncompleted contracts	**$28,703,830**	$ 867,860
Estimated earnings	**4,313,972**	521,460
Costs incurred and estimated earnings	**33,017,802**	1,389,320
Less billings to date	**31,210,854**	1,385,687
Total	**$ 1,806,948**	$ 3,633

Uncompleted contracts are included in the balance sheets as follows:

December 31	2009	2008
Costs and estimated earnings in excess of billings on uncompleted contracts	**$1,819,788**	$ 238,232
Billings in excess of costs and estimated earnings on uncompleted contracts	**(12,840)**	(234,599)
Total	**$1,806,948**	$ 3,633

Minnesota Limited, Inc.

Notes to Financial Statements

3. Property and Equipment

Property and equipment consisted of the following:

December 31	2009	2008
Construction equipment	**$16,184,082**	$15,892,113
Transportation equipment	**13,460,954**	12,391,303
Office equipment	**484,578**	460,762
Computer software	**507,995**	-
Buildings	**210,403**	341,382
Total cost	**30,848,012**	29,085,560
Less accumulated depreciation	**24,381,029**	22,319,873
Property and Equipment	**$ 6,466,983**	$ 6,765,687

The Company purchased a new computer software information and accounting system in 2009, that was placed in service in January 2010.

In 2008, the Company exchanged certain property and equipment totaling $176,313 for similar property and equipment. The transaction is considered to not significantly change the Company's future cash flows. Under accounting principles generally accepted in the United States of America, exchanges that do not significantly change future cash flows are measured at recorded amounts. For income tax purposes in 2008, the Company deferred recognition of a gain on the exchange of approximately $175,200.

4. Bank Line of Credit

The Company has a revolving bank line of credit in the amount of $15,000,000. The credit agreement expires on October 31, 2010. Advances are due on demand, bear interest at 1.60% plus the one-month London Interbank Offered Rate (LIBOR) (0.23% and 0.44% at December 31, 2009 and 2008, respectively), and are collateralized by contracts receivable, approximately $3,000,000 of specific property and equipment, and the personal guarantees of the Company's stockholders. The credit agreement includes an annual unused line of credit fee of 0.125% and requires the Company to maintain certain levels of tangible net worth, debt service coverage and debt to tangible net worth, as defined.

Minnesota Limited, Inc.

Notes to Financial Statements

5. Related Party Transactions and Balances

Related party transactions and balances were as follows:

December 31	2009	2008
Transactions:		
Facilities rent expense to entities controlled by the Company's stockholders	**$1,498,616**	$1,183,332
Advances to related party lessor controlled by the Company's stockholders to facilitate construction of and improvements to the Company's Big Lake, Minnesota headquarters	**95,038**	2,456,808
Advances to pipeline services company related through common ownership	**10,292**	169,889
Purchases from pipeline services company related through common ownership	**281,082**	154,057
Off-road equipment rent expense to equipment leasing company controlled by the Company's stockholders	**6,168,501**	3,130,498
Advances to equipment leasing company controlled by the Company's stockholders to facilitate purchasing equipment	**1,000**	2,608,540
Balances:		
Due from related party lessor of Company Big Lake, Minnesota headquarters	**$ 24,473**	$ 950,618
Due from pipeline services company	**-**	158,883
Due from the equipment leasing company	**1,000**	500,000
Other related party balances due from affiliated entities	**-**	14,374
Receivable from Related Parties	**$ 25,473**	$1,623,875

The Company leases certain off road equipment from an entity related through common ownership. The lease is treated as an operating lease for accounting purposes. The Company is responsible for all maintenance and insurance cost of the equipment. The transactions are governed by a blanket lease agreement. The agreement contains a minimum lease term of 24 months for each specific piece of equipment leased and can be renewed for another 24 months thereafter. No purchase option exists in the agreement.

The Company leases its Big Lake facility and other branch facilities from a related party owned by the Company's stockholders. The other branch facilities are leased on a year-to-year basis. The Big Lake facility lease requires base monthly rent of $100,000 with a minimum increase of $10,000 in each succeeding year. The monthly rent at December 31, 2009 was $110,000. The Big Lake facility lease also requires the Company to pay facility operating costs and real estate taxes. The Big Lake facility lease commenced March 2008, and expires February 2011.

During 2006, the Company began advancing funds to the related party lessor, an entity related through common ownership to finance the construction of the Big Lake facility. Advances are repaid periodically and some advances have been distributed to stockholders. The receivables from related parties are noninterest bearing. Related party balances are unsecured.

5. **Related Party Transactions and Balances (continued)**

Future minimum lease payments are as follows:

Year Ending December 31	Other Facilities	Equipment	Big Lake Facility	Total
2010	$ 165,700	$5,426,500	$1,420,000	$ 7,012,200
2011	-	1,283,900	240,000	1,523,900
Total	$. 165,700	$6,710,400	$1,660,000	$ 8,536,100

6. **Worker's Compensation Insurance**

The Company self-insures its worker's compensation losses up to $250,000 per individual claim. The Company also maintains stop-loss coverage limiting its maximum workers' compensation claims exposure to approximately $1,450,000 annually. The Company's insurance provider administers the claims, including assisting management's estimate of the losses, and processing payments. The Company maintains a cash collateral balance with the insurance provider to facilitate claim payments. This balance was approximately $507,000 and $233,000 at December 31, 2009 and 2008, respectively, and is recorded as a prepaid expense and as a reduction of accrued expenses at December 31, 2009 and 2008, respectively. In 2008, the Company modified its estimate process for worker's compensation insurance resulting in a reduction of worker's compensation expense, recorded in construction costs, of approximately $900,000. Worker's compensation expense was approximately $148,600 and $449,500 in 2009 and 2008, respectively.

7. **Collective Bargaining Agreements**

A majority of the Company's employees are covered under national collective bargaining agreements. The collective bargaining agreements are each negotiated separately and expire on various dates.

8. **Employee Benefit Plans**

Multi-Employer Pension Plan

The Company participates in multi employer pension plans for the benefit of its union employees. The Company contributed $4,945,339 and $6,134,219 in 2009 and 2008, respectively.

Defined Contribution Profit Sharing Plan

The Company has a 401(k) profit sharing plan for the benefit of all employees with one year of service and not participating in a collective bargain agreement. The plan allows employees to contribute the maximum amount of compensation permitted by the Internal Revenue Service. Company contributions to the plan were approximately $72,700 and $72,900 for 2009 and 2008, respectively.

Minnesota Limited, Inc.

Notes to Financial Statements

9. Concentrations

Sales to significant customers, expressed as a percentage of revenues and contracts receivable, as of and for the years ended December 31 were as follows:

December 31	% of Revenue 2009	% of Revenue 2008	% of Receivables 2009	% of Receivables 2008
Customer				
1	**28 %**	5 %	**15 %**	9 %
2	**25**	11	**34**	22
3	**19**	-	**-**	-
4	**11**	2	**7**	-
5	**10**	59	**20**	28
6	**-**	5	**-**	24

10. Supplementary Disclosures of Cash Flow Information

Additional cash flow information consisted of the following:

Years Ended December 31	2009	2008
Cash paid for interest	**$ 63,995**	$ 29,544
Noncash investing and financing activities:		
Receivable from related parties distributed to stockholders	**992,357**	2,953,067
Property and equipment exchanged for like-kind property and equipment	**-**	176,313
Equipment purchases financed with accounts payable	**-**	137,488

CMS ENERGY CORP

FORM 10-K
(Annual Report)

Filed 02/23/12 for the Period Ending 12/31/11

Address	ONE ENERGY PLAZA JACKSON, MI 49201
Telephone	5177881612
CIK	0000811156
Symbol	CMS
SIC Code	4931 - Electric and Other Services Combined
Industry	Electric Utilities
Sector	Utilities
Fiscal Year	12/31

Powered By EDGAR Online
http://www.edgar-online.com
© Copyright 2014, EDGAR Online, Inc. All Rights Reserved.
Distribution and use of this document restricted under EDGAR Online, Inc. Terms of Use.

UNITED STATES SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)**
OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended *December 31, 2011*

OR

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)**
OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from _____to _____

Commission File Number	Registrant; State of Incorporation; Address; and Telephone Number	IRS Employer Identification No.
1-9513	CMS ENERGY CORPORATION (A Michigan Corporation) One Energy Plaza, Jackson, Michigan 49201 (517) 788-0550	[redacted]
1-5611	CONSUMERS ENERGY COMPANY (A Michigan Corporation) One Energy Plaza, Jackson, Michigan 49201 (517) 788-0550	[redacted]

Securities registered pursuant to Section 12(b) of the Act:

Registrant	Title of Class	Name of Each Exchange on Which Registered
CMS Energy Corporation	Common Stock, $.01 par value	New York Stock Exchange
Consumers Energy Company	Preferred Stocks, $100 par value: $4.16 Series, $4.50 Series	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: None

Indicate by check mark if the Registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

CMS Energy Corporation : Yes ☒ No ☐ **Consumers Energy Company** : Yes ☒ No ☐

Indicate by check mark if the Registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

CMS Energy Corporation : Yes ☐ No ☒ **Consumers Energy Company** : Yes ☐ No ☒

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

CMS Energy Corporation : Yes ☒ No ☐ **Consumers Energy Company** : Yes ☒ No ☐

Indicate by check mark whether the Registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the Registrant was required to submit and post such files).

CMS Energy Corporation : Yes ☒ No ☐ **Consumers Energy Company** : Yes ☒ No ☐

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the Registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

CMS Energy Corporation : Large accelerated filer ☒ Accelerated filer ☐ Non-Accelerated filer ☐ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Consumers Energy Company : Large accelerated filer ☐ Accelerated filer ☐ Non-Accelerated filer ☒ Smaller reporting company ☐
(Do not check if a smaller reporting company)

Indicate by check mark whether the Registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).

CMS Energy Corporation : Yes ☐ No ☒ **Consumers Energy Company** : Yes ☐ No ☒

The aggregate market value of CMS Energy voting and non-voting common equity held by non-affiliates was $4.927 billion for the 250,245,978 CMS Energy Common Stock shares outstanding on June 30, 2011 based on the closing sale price of $19.69 for CMS Energy Common Stock, as reported by the New York Stock Exchange on such date.

There were 258,570,812 shares of CMS Energy Common Stock outstanding on February 10, 2012, including 1,296,406 shares owned by

Consumers Energy Company. On February 23, 2012, CMS Energy held all voting and non-voting common equity of Consumers. Documents incorporated by reference in Part III: CMS Energy's proxy statement and Consumers' information statement relating to the 2012 annual meeting of stockholders to be held May 18, 2012.

CMS Energy Corporation
Consumers Energy Company

Annual Reports on Form 10-K to the Securities and Exchange Commission for the Year Ended December 31, 2011

TABLE OF CONTENTS

		Page
Glossary		3
Filing Format		9
Forward-Looking Statements and Information		9
PART I:		
Item 1.	Business	12
Item 1A.	Risk Factors	29
Item 1B.	Unresolved Staff Comments	41
Item 2.	Properties	41
Item 3.	Legal Proceedings	41
Item 4.	Mine Safety Disclosures	41
PART II:		
Item 5.	Market for Registrant’s Common Equity, Related Stockholder Matters and Issuer Purchases of Equity Securities	42
Item 6.	Selected Financial Data	43
Item 7.	Management’s Discussion and Analysis of Financial Condition and Results of Operations	43
Item 7A.	Quantitative and Qualitative Disclosures About Market Risk	43
Item 8.	Financial Statements and Supplementary Data	44
Item 9.	Changes in and Disagreements With Accountants on Accounting and Financial Disclosure	172
Item 9A.	Controls and Procedures	172
Item 9B.	Other Information	173
PART III :		
Item 10.	Directors, Executive Officers and Corporate Governance	174
Item 11.	Executive Compensation	175
Item 12.	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters	175
Item 13.	Certain Relationships and Related Transactions, and Director Independence	175
Item 14.	Principal Accountant Fees and Services	175
PART IV:		
Item 15.	Exhibits and Financial Statement Schedules	176

Table of Contents

GLOSSARY

Certain terms used in the text and financial statements are defined below.

2008 Energy Law	Comprehensive energy reform package enacted in Michigan in October 2008
ABATE	Association of Businesses Advocating Tariff Equity
ABO	Accumulated benefit obligation; the liabilities of a pension plan based on service and pay to date, which differs from the PBO in that it does not reflect expected future salary increases
AFUDC	Allowance for borrowed and equity funds used during construction
AOCI	Accumulated other comprehensive income (loss)
ARO	Asset retirement obligation
ASU	Financial Accounting Standards Board Accounting Standards Update
Bay Harbor	A residential/commercial real estate area located near Petoskey, Michigan, in which CMS Energy sold its interest in 2002
bcf	Billion cubic feet of gas
Big Rock	Big Rock Point nuclear power plant, formerly owned by Consumers
Btu	British thermal unit
CAIR	The Clean Air Interstate Rule
Cantera Gas Company	Cantera Gas Company LLC, a non-affiliated company, formerly known as CMS Field Services
Cantera Natural Gas, Inc.	Cantera Natural Gas, Inc., a non-affiliated company that purchased CMS Field Services
CAO	Chief Accounting Officer
CCB	Coal combustion by-product
CEO	Chief Executive Officer
CFO	Chief Financial Officer
C&HR Committees	The Compensation and Human Resources Committees of the Boards of Directors of CMS Energy and Consumers
City-gate contract	An arrangement made for the point at which a local distribution company physically receives gas from a supplier or pipeline
CKD	Cement kiln dust
Clean Air Act	Federal Clean Air Act, as amended
Clean Water Act	Federal Water Pollution Control Act, as amended
CMS Capital	CMS Capital, L.L.C., a wholly owned subsidiary of CMS Energy
CMS Energy	CMS Energy Corporation, the parent of Consumers and CMS Enterprises
CMS Enterprises	CMS Enterprises Company, a wholly owned subsidiary of CMS Energy

Table of Contents

CMS ERM	CMS Energy Resource Management Company, formerly CMS MST, a wholly owned subsidiary of CMS Enterprises
CMS Field Services	CMS Field Services, Inc., a former wholly owned subsidiary of CMS Gas Transmission
CMS Gas Transmission	CMS Gas Transmission Company, a wholly owned subsidiary of CMS Enterprises
CMS Generation San Nicolas Company	CMS Generation San Nicolas Company, a company in which CMS Enterprises formerly owned a 0.1 percent interest
CMS Land	CMS Land Company, a wholly owned subsidiary of CMS Capital
CMS MST	CMS Marketing, Services and Trading Company, a wholly owned subsidiary of CMS Enterprises, whose name was changed to CMS ERM effective January 2004
CMS Viron	CMS Viron Corporation, a wholly owned subsidiary of CMS ERM
Consumers	Consumers Energy Company, a wholly owned subsidiary of CMS Energy
Consumers Funding	Consumers Funding LLC, a wholly owned consolidated bankruptcy-remote subsidiary of Consumers and special-purpose entity organized for the sole purpose of purchasing and owning Securitization property, assuming Securitization bonds, and pledging its interest in Securitization property to a trustee to collateralize the Securitization bonds
CSAPR	The Cross-State Air Pollution Rule, which would supersede the EPA's proposed Clean Air Transport Rule and replace CAIR, was finalized in July 2011 and was stayed in December 2011 pending judicial review
Customer Choice Act	Customer Choice and Electricity Reliability Act, a Michigan statute
D.C.	District of Columbia
DCCP	Defined Company Contribution Plan
DC SERP	Defined Contribution SERP
Detroit Edison	The Detroit Edison Company, a non-affiliated company
DIG	Dearborn Industrial Generation, L.L.C., a wholly owned subsidiary of Dearborn Industrial Energy, L.L.C., a wholly owned subsidiary of CMS Energy
Dodd-Frank Act	Dodd-Frank Wall Street Reform and Consumer Protection Act, enacted in July 2010
DOE	U.S. Department of Energy
DOJ	U.S. Department of Justice
EBITDA	Earnings before interest, taxes, depreciation, and amortization
EISP	Executive Incentive Separation Plan
EnerBank	EnerBank USA, a wholly owned subsidiary of CMS Capital
Entergy	Entergy Corporation, a non-affiliated company
EPA	U.S. Environmental Protection Agency

EPS	Earnings per share
Exchange Act	Securities Exchange Act of 1934, as amended
Exeter	Exeter Energy Limited Partnership, a limited partnership formerly owned directly and indirectly by HYDRA-CO
FDIC	Federal Deposit Insurance Corporation
FERC	The Federal Energy Regulatory Commission
First Mortgage Bond Indenture	The indenture dated as of September 1, 1945 between Consumers and The Bank of New York Mellon, as Trustee, as amended and supplemented
FLI Liquidating Trust	Trust formed in Missouri bankruptcy court to accomplish the liquidation of Farmland Industries, Inc., a non-affiliated entity
FMB	First mortgage bond
FOV	Finding of Violation
FTR	Financial transmission right
GAAP	U.S. Generally Accepted Accounting Principles
GCC	Gas Customer Choice, which allows gas customers to purchase gas from alternative suppliers
GCR	Gas cost recovery
Genesee	Genesee Power Station Limited Partnership, a VIE in which HYDRA-CO has a 50 percent interest
Grayling	Grayling Generating Station Limited Partnership, a VIE in which HYDRA-CO has a 50 percent interest
GWh	Gigawatt-hour, a unit of energy equal to one billion watt-hours
Health Care Acts	Comprehensive health care reform enacted in March 2010, comprising the Patient Protection and Affordable Care Act and the related Health Care and Education Reconciliation Act
HYDRA-CO	HYDRA-CO Enterprises, Inc., a wholly owned subsidiary of CMS Enterprises
IRS	Internal Revenue Service
ISFSI	Independent spent fuel storage installation
kilovolts	Thousand volts, a unit used to measure the difference in electrical pressure along a current
kVA	Thousand volt-amperes, a unit used to reflect the electrical power capacity rating of equipment or a system
kWh	Kilowatt-hour, a unit of energy equal to one thousand watt-hours
LIBOR	The London Interbank Offered Rate
Ludington	Ludington pumped-storage plant, jointly owned by Consumers and Detroit Edison

MACT	Maximum Achievable Control Technology, which is the emission control that is achieved in practice by the best-controlled similar source; for existing sources, MACT is the average emission limitation achieved by the best performing 12 percent of existing sources or the average limitation achieved by the best performing five sources, depending on the number of sources in the category
MATS	Mercury and Air Toxic Standards, which limit mercury, acid gases, and other toxic pollution from coal-fueled and oil-fueled power plants
MBT	Michigan Business Tax
MCIT	Michigan Corporate Income Tax
MCV Facility	A 1,500 MW natural gas-fueled, combined-cycle cogeneration facility operated by the MCV Partnership
MCV Partnership	Midland Cogeneration Venture Limited Partnership
MCV PPA	PPA between Consumers and the MCV Partnership
MD&A	Management’s Discussion and Analysis
MDEQ	Michigan Department of Environmental Quality
MDL	A pending multi-district litigation case in Nevada
MEI	Michigan Energy Investments LLC, a non-affiliated company
METC	Michigan Electric Transmission Company, LLC, a non-affiliated company
MGP	Manufactured gas plant
Midwest Energy Market	An energy market developed by MISO to provide day-ahead and real-time market information and centralized dispatch for market participants
MISO	The Midwest Independent Transmission System Operator, Inc.
Mothball	To place a generating unit into a state of extended reserve shutdown in which the unit is inactive and unavailable for service for a specified period, during which the unit can be brought back into service after receiving appropriate notification and completing any necessary maintenance or other work; generation owners in MISO must request approval to mothball a unit, and MISO then evaluates the request for reliability impacts
MPSC	Michigan Public Service Commission
MRV	Market-related value of plan assets
MW	Megawatt, a unit of power equal to one million watts
MWh	Megawatt-hour, a unit of energy equal to one million watt-hours
NAV	Net asset value
NERC	The North American Electric Reliability Corporation, a non-affiliated company
NOV	Notice of Violation
NPDES	National Pollutant Discharge Elimination System, a permit system for regulating point sources of pollution under the Clean Water Act

NREPA	Part 201 of Michigan Natural Resources and Environmental Protection Act, a statute that covers environmental activities including remediation
NSR	New Source Review, a construction-permitting program under the Clean Air Act
NYMEX	The New York Mercantile Exchange
OPEB	Postretirement benefit plans other than pensions
Palisades	Palisades nuclear power plant, sold by Consumers to Entergy in 2007
Panhandle	Panhandle Eastern Pipe Line Company, including its wholly owned subsidiaries Trunkline Gas Company, LLC, Pan Gas Storage Company, Panhandle Storage Company, and Panhandle Holding Company, a former wholly owned subsidiary of CMS Gas Transmission
PBO	Projected benefit obligation
PCB	Polychlorinated biphenyl
Pension Plan	Trusteed, non-contributory, defined benefit pension plan of CMS Energy, Consumers, and Panhandle
PISP	Performance Incentive Stock Plan
PPA	Power purchase agreement
PSCR	Power supply cost recovery
PSD	Prevention of Significant Deterioration
PURPA	Public Utility Regulatory Policies Act of 1978
REC	Renewable energy credit established under the 2008 Energy Law
Renewable Operating Permit	Michigan’s Title V permitting program under the Clean Air Act
RMRR	Routine maintenance, repair, and replacement
ROA	Retail Open Access, which allows electric generation customers to choose alternative electric suppliers pursuant to the Customer Choice Act
S&P	Standard & Poor’s Financial Services LLC
SEC	U.S. Securities and Exchange Commission
Securitization	A financing method authorized by statute and approved by the MPSC which allows a utility to sell its right to receive a portion of the rate payments received from its customers for the repayment of securitization bonds issued by a special-purpose entity affiliated with such utility
SERP	Supplemental Executive Retirement Plan
Sherman Act	Sherman Antitrust Act, enacted in 1890
Smart Grid	Consumers’ grid modernization project, which includes the installation of smart meters that transmit and receive data, a two-way communications network, and modifications to Consumers’ existing information technology system to manage the data and enable changes to key business processes

Stranded costs	Costs such as owned and purchased generation and regulatory assets that are incurred by utilities to serve their customers in a regulated monopoly environment, and which may not be recoverable in a competitive environment because of customers leaving their systems and ceasing to pay for their costs
Superfund	Comprehensive Environmental Response, Compensation and Liability Act
Supplemental Environmental Projects	Environmentally beneficial projects that a party agrees to undertake as part of the settlement of an enforcement action, but which the party is not otherwise legally required to perform
TAQA	Abu Dhabi National Energy Company, a subsidiary of Abu Dhabi Water and Electricity Authority, a non-affiliated company
Terminal Rental Adjustment Clause	A provision of a leasing agreement which permits or requires the rental price to be adjusted upward or downward by reference to the amount realized by the lessor under the agreement upon sale or other disposition of formerly leased property
T.E.S. Filer City	T.E.S. Filer City Station Limited Partnership, a VIE in which HYDRA-CO has a 50 percent interest
Title V	A federal program under the Clean Air Act designed to standardize air quality permits and the permitting process for major sources of emissions across the U.S.
Trust Preferred Securities	Securities representing an undivided beneficial interest in the assets of statutory business trusts, the interests of which have a preference with respect to certain trust distributions over the interests of either CMS Energy or Consumers, as applicable, as owner of the common beneficial interests of the trusts
TSR	Total shareholder return
U.S.	United States
USW	United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL-CIO-CLC
UWUA	Utility Workers Union of America, AFL-CIO
VEBA	Voluntary employees' beneficiary association trusts accounts established specifically to set aside employer-contributed assets to pay for future expenses of the OPEB plan
VIE	Variable interest entity
Wolverine	Wolverine Power Supply Cooperative, Inc., a non-affiliated company
XBRL	eXtensible Business Reporting Language
Zeeland	A 935 MW gas-fueled power plant located in Zeeland, Michigan

FILING FORMAT

This combined Form 10-K is separately filed by CMS Energy and Consumers. Information in this combined Form 10-K relating to each individual registrant is filed by such registrant on its own behalf. Consumers makes no representation regarding information relating to any other companies affiliated with CMS Energy other than its own subsidiaries. None of CMS Energy, CMS Enterprises, nor any of CMS Energy's other subsidiaries (other than Consumers) has any obligation in respect of Consumers' debt securities and holders of such debt securities should not consider the financial resources or results of operations of CMS Energy, CMS Enterprises, nor any of CMS Energy's other subsidiaries (other than Consumers and its own subsidiaries (in relevant circumstances)) in making a decision with respect to Consumers' debt securities. Similarly, none of Consumers nor any other subsidiary of CMS Energy has any obligation in respect of debt securities of CMS Energy.

FORWARD-LOOKING STATEMENTS AND INFORMATION

This Form 10-K and other written and oral statements that CMS Energy and Consumers make may contain forward-looking statements as defined by the Private Securities Litigation Reform Act of 1995. The use of "might," "may," "could," "should," "anticipates," "believes," "estimates," "expects," "intends," "plans," "projects," "forecasts," "predicts," "assumes," and other similar words is intended to identify forward-looking statements that involve risk and uncertainty. This discussion of potential risks and uncertainties is designed to highlight important factors that may impact CMS Energy's and Consumers' businesses and financial outlook. CMS Energy and Consumers have no obligation to update or revise forward-looking statements regardless of whether new information, future events, or any other factors affect the information contained in the statements. These forward-looking statements are subject to various factors that could cause CMS Energy's and Consumers' actual results to differ materially from the results anticipated in these statements. These factors include, but are not limited to, the following, all of which are potentially significant:

- the impact of regulation by the MPSC or FERC and other applicable governmental proceedings and regulations, including any associated impact on electric or gas rates or rate structures;
- potentially adverse regulatory treatment or failure to receive timely regulatory orders affecting Consumers that are or could come before the MPSC, FERC, or other governmental authorities, including the treatment of Consumers' pilot electric and gas revenue decoupling mechanisms;
- changes in applicable laws, rules, regulations, principles, or practices, or in their interpretation, including those related to energy policy, the environment, regulation, health care reforms (including the Health Care Acts), taxes, accounting matters, and other business issues that could have an impact on CMS Energy's or Consumers' businesses or financial results, including potential effects of the Dodd-Frank Act and related regulations on CMS Energy, Consumers, or any of their affiliates;
- potentially adverse regulatory or legal interpretations or decisions regarding environmental matters, or delayed regulatory treatment or permitting decisions that are or could come before the MDEQ and/or EPA, and potential environmental remediation costs associated with these interpretations or decisions, including those that may affect Bay Harbor or Consumers' RMRR classification under NSR regulations;
- changes in energy markets, including availability of capacity and the timing and extent of changes in commodity prices and availability of coal, natural gas, natural gas liquids, electricity, oil, and certain related products;
- the price of CMS Energy common stock, the credit ratings of CMS Energy and Consumers, capital and financial market conditions, and the effect of these market conditions on CMS Energy's and Consumers' interest costs and access to the capital markets, including availability of financing to CMS Energy, Consumers, or any of their affiliates;
- the investment performance of the assets of CMS Energy's and Consumers' pension and benefit plans and the discount rates applicable to their plan obligations, and the resulting impact on future funding requirements;

- the impact of the economy, particularly in Michigan, and potential future volatility in the financial and credit markets on CMS Energy’s, Consumers’, or any of their affiliates’ revenues, ability to collect accounts receivable from customers, or cost and availability of capital;
- changes in the economic and financial viability of CMS Energy’s and Consumers’ suppliers, customers, and other counterparties and the continued ability of these third parties, including third parties in bankruptcy, to meet their obligations to CMS Energy and Consumers;
- population changes in the geographic areas where CMS Energy and Consumers conduct business;
- national, regional, and local economic, competitive, and regulatory policies, conditions, and developments;
- loss of customer demand for electric generation supply to alternative energy suppliers;
- federal regulation of electric sales and transmission of electricity, including periodic re-examination by federal regulators of CMS Energy’s and Consumers’ market-based sales authorizations in wholesale power markets without price restrictions;
- the impact of credit markets, economic conditions, and any new banking regulations on EnerBank;
- the availability, cost, coverage, and terms of insurance, the stability of insurance providers, and the ability of Consumers to recover the costs of any insurance from customers;
- the effectiveness of CMS Energy’s and Consumers’ risk management policies, procedures, and strategies, including their strategies to hedge risk related to future prices of electricity, natural gas, and other energy-related commodities;
- factors affecting development of generation projects and distribution infrastructure replacement and expansion projects, including those related to project site identification, construction material pricing, availability of qualified construction personnel, permitting, and government approvals;
- factors affecting operations, such as costs and availability of personnel, equipment, and materials, unusual weather conditions, catastrophic weather-related damage, scheduled or unscheduled equipment outages, maintenance or repairs, environmental incidents, and electric transmission and distribution or gas pipeline system constraints;
- potential disruption to, interruption of, or other impacts on facilities, utility infrastructure, or operations due to accidents, explosions, physical disasters, war, or terrorism, and the ability to obtain or maintain insurance coverage for these events;
- changes or disruption in fuel supply, including but not limited to rail or vessel transport of coal and pipeline transport of natural gas;
- potential costs, lost revenues, or other consequences resulting from misappropriation of assets or sensitive information, corruption of data, or operational disruption in connection with a cyber attack or other cyber incident;
- technological developments in energy production, delivery, usage, and storage;
- the impact of CMS Energy’s and Consumers’ integrated business software system on their operations, including utility customer billing and collections;
- adverse consequences resulting from any past or future assertion of indemnity or warranty claims associated with assets and businesses previously owned by CMS Energy or Consumers, including claims resulting from attempts by foreign or domestic governments to assess taxes on past operations or transactions;
- the outcome, cost, and other effects of legal or administrative proceedings, settlements, investigations, or claims;

- restrictions imposed by various financing arrangements and regulatory requirements on the ability of Consumers and other subsidiaries of CMS Energy to transfer funds to CMS Energy in the form of cash dividends, loans, or advances;
- earnings volatility resulting from the application of fair value accounting to certain energy commodity contracts, such as electricity sales agreements and interest rate and foreign currency contracts;
- changes in financial or regulatory accounting principles or policies, including a possible future requirement to comply with International Financial Reporting Standards, which differ from GAAP in various ways, including the present lack of special accounting treatment for regulated activities; and
- other matters that may be disclosed from time to time in CMS Energy’s and Consumers’ SEC filings, or in other publicly issued documents.

For additional details regarding these and other uncertainties, see Item 1A. Risk Factors and Item 8. Financial Statements and Supplementary Data, MD&A, Outlook and Notes to the Consolidated Financial Statements, Note 5, Contingencies and Commitments and Note 6, Regulatory Matters.

PART I
ITEM 1. BUSINESS

GENERAL

CMS ENERGY

CMS Energy was formed as a corporation in Michigan in 1987 and is an energy company operating primarily in Michigan. It is the parent holding company of several subsidiaries, including Consumers, an electric and gas utility, and CMS Enterprises, primarily a domestic independent power producer. Consumers serves individuals and businesses operating in the alternative energy, automotive, chemical, metal, and food products industries, as well as a diversified group of other industries. CMS Enterprises, through its subsidiaries and equity investments, is engaged primarily in independent power production and owns power generation facilities fueled mostly by natural gas and biomass.

CMS Energy manages its businesses by the nature of services each provides and operates, principally in three business segments: electric utility, gas utility, and enterprises, its non-utility operations and investments. Consumers' consolidated operations account for substantially all of CMS Energy's total assets, income, and operating revenue. CMS Energy's consolidated operating revenue was $6.5 billion in 2011, $6.4 billion in 2010, and $6.2 billion in 2009.

For further information about operating revenue, net operating income, and identifiable assets and liabilities attributable to all of CMS Energy's business segments and operations, see Item 8. Financial Statements and Supplementary Data, CMS Energy's Selected Financial Information, Consolidated Financial Statements, and Notes to the Consolidated Financial Statements.

CONSUMERS

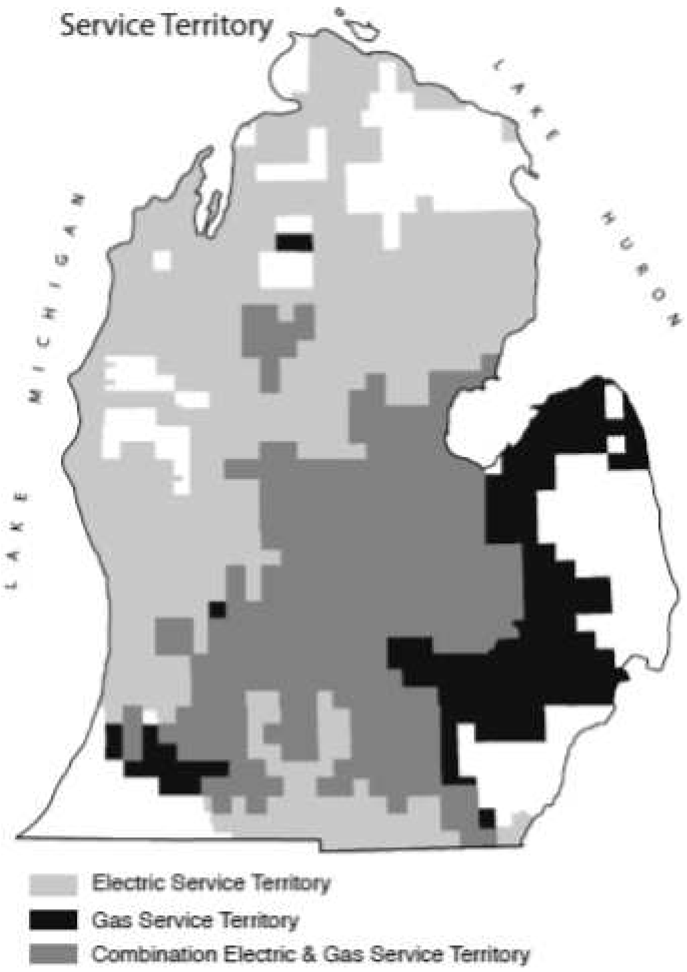
Consumers has served Michigan customers since 1886. Consumers was incorporated in Maine in 1910 and became a Michigan corporation in 1968. Consumers owns and operates electric distribution and generation facilities and gas transmission, storage, and distribution facilities. It provides electricity and/or natural gas to 6.7 million of Michigan's 10 million residents. Consumers' rates and certain other aspects of its business are subject to the jurisdiction of the MPSC and FERC, as described in "CMS Energy and Consumers Regulation" in this Item 1.

Consumers' consolidated operating revenue was $6.3 billion in 2011, $6.2 billion in 2010, and $6.0 billion in 2009. For further information about operating revenue, net operating income, and identifiable assets and liabilities attributable to Consumers' electric and gas utility operations, see Item 8. Financial Statements and Supplementary Data, Consumers' Selected Financial Information, Consolidated Financial Statements, and Notes to the Consolidated Financial Statements.

Consumers owns its principal properties in fee, except that most electric lines and gas mains are located below public roads or on land owned by others and are accessed by Consumers through easements and other rights. Almost all of Consumers' properties are subject to the lien of its First Mortgage Bond Indenture. For additional information on Consumers' properties, see Consumers Electric Utility — Electric Utility Properties and Consumers Gas Utility — Gas Utility Properties in the "Business Segments" section of this Item 1.

Table of Contents

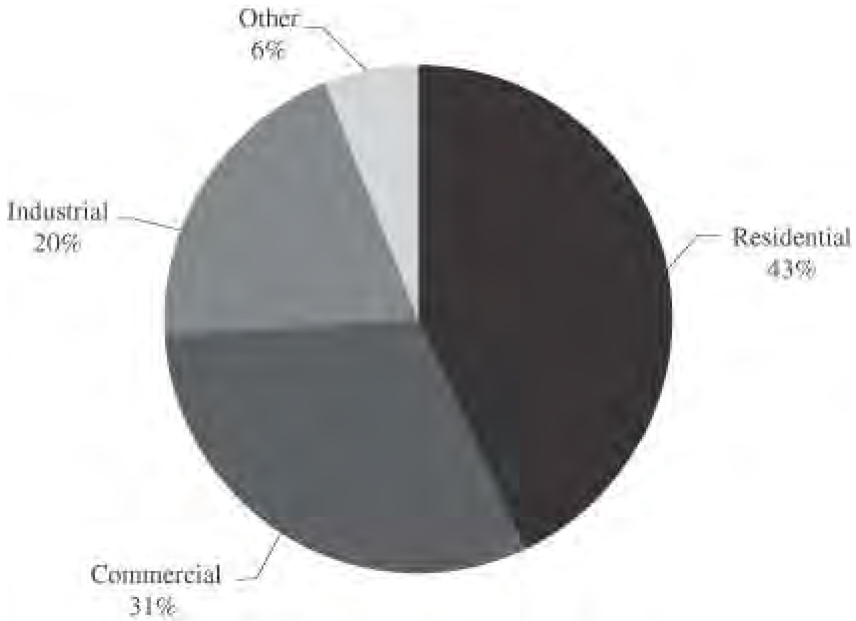
In 2011, Consumers served 1.8 million electric customers and 1.7 million gas customers in Michigan's Lower Peninsula. Presented in the following map is Consumers' service territory:


Service Territory
LAKE MICHIGAN
LAKE HURON
Electric Service Territory
Gas Service Territory
Combination Electric & Gas Service Territory

BUSINESS SEGMENTS

CONSUMERS ELECTRIC UTILITY

Electric Utility Operations: Consumers' electric utility operations, which include the generation, purchase, distribution, and sale of electricity, generated operating revenue of $3.9 billion in 2011, $3.8 billion in 2010, and $3.4 billion in 2009. Consumers' electric utility customer base consists of a mix of residential, commercial, and diversified industrial customers in Michigan's Lower Peninsula. Presented in the following illustration is Consumers' 2011 electric utility operating revenue of $3.9 billion by customer class:

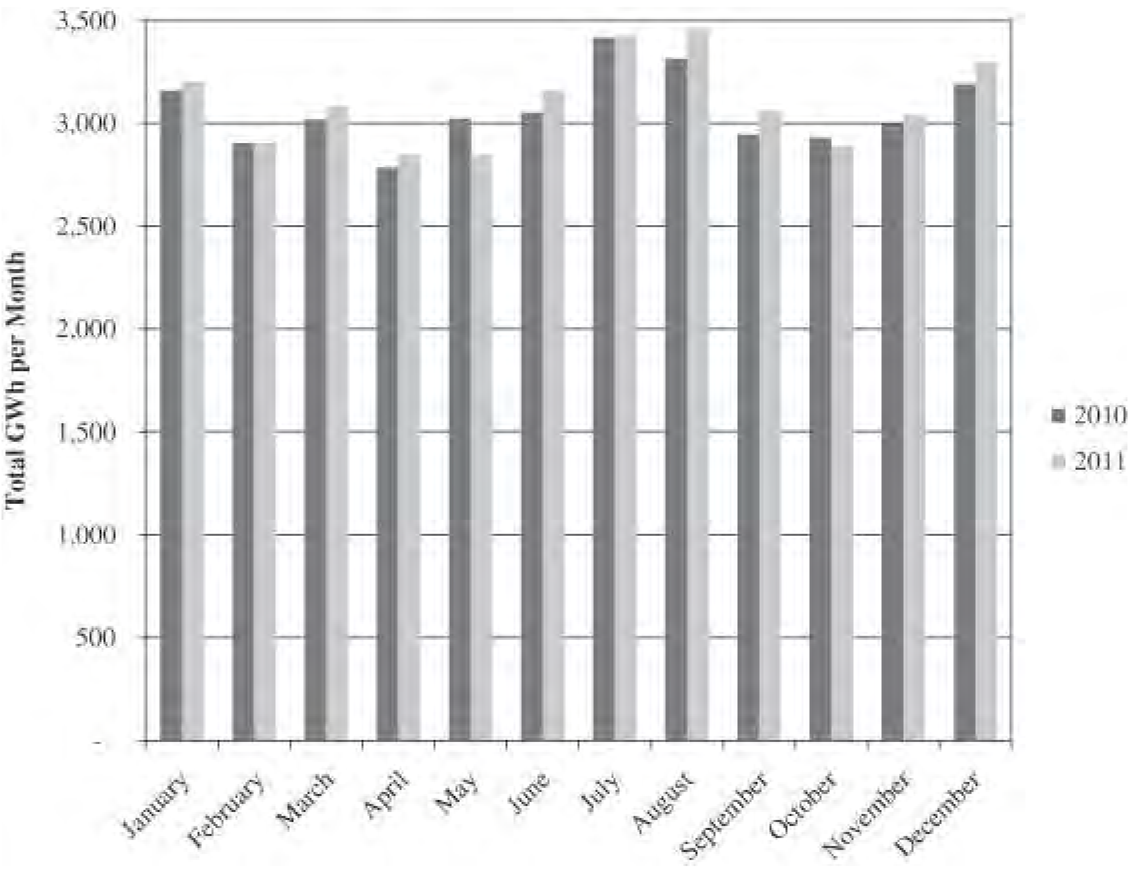


Consumers' electric utility operations are not dependent on a single customer, or even a few customers, and the loss of any one or even a few of Consumers' largest customers is not reasonably likely to have a material adverse effect on Consumers' financial condition.

In each of 2011 and 2010, Consumers' electric deliveries were 38 billion kWh, which included ROA deliveries of four billion kWh. Net bundled sales were 34 billion kWh in each of 2011 and 2010.

Consumers' electric utility operations are seasonal. The consumption of electric energy typically increases in the summer months, due primarily to the use of air conditioners and other cooling equipment.

Presented in the following illustration are Consumers’ monthly weather-adjusted electric deliveries (deliveries adjusted to reflect normal weather conditions) to its customers, including ROA deliveries, during 2011 and 2010:



Consumers’ 2011 summer peak demand was 8,930 MW, which included ROA demand of 624 MW. For the 2010-2011 winter period, Consumers’ peak demand was 6,201 MW, which included ROA demand of 489 MW. As required by MISO reserve margin requirements, Consumers owns or controls, through long-term contracts, capacity required to supply its projected firm peak load and necessary reserve margin for summer 2012.

Electric Utility Properties: Consumers’ distribution system includes:

- 413 miles of high-voltage distribution radial lines operating at 120 kilovolts or above;
- 4,244 miles of high-voltage distribution overhead lines operating at 23 kilovolts and 46 kilovolts;
- 17 miles of high-voltage distribution underground lines operating at 23 kilovolts and 46 kilovolts;
- 55,953 miles of electric distribution overhead lines;
- 10,112 miles of underground distribution lines; and
- substations with an aggregate transformer capacity of 24 million kVA.

Consumers is interconnected to the interstate high-voltage electric transmission system owned by METC and operated by MISO, to neighboring utilities, and to other transmission systems.

Table of Contents

At December 31, 2011, Consumers’ electric generating system consisted of the following:

Name and Location (Michigan)	Number of Units and Year Entered Service	2011 Generation Capacity [1] (MW)	2011 Net Generation (GWh)
Coal Generation			
J. H. Campbell 1 & 2 — West Olive	2 Units, 1962-1967	615	2,764
J. H. Campbell 3 — West Olive [2]	1 Unit, 1980	770	5,171
B. C. Cobb 4 & 5 — Muskegon [3]	2 Units, 1956-1957	310	1,501
D. E. Karn — Essexville	2 Units, 1959-1961	515	2,671
J. C. Weadock — Essexville [3]	2 Units, 1955-1958	290	1,770
J. R. Whiting — Erie [3]	3 Units, 1952-1953	323	1,591
Total coal generation		2,823	15,468
Oil/Gas/Steam Generation			
B. C. Cobb 1 – 3 — Muskegon	3 Units, 1999-2000 [4]	—	—
D. E. Karn — Essexville	2 Units, 1975-1977	1,276	91
Zeeland (combined cycle) — Zeeland	1 Unit, 2002	534	1,660
Total oil/gas/steam generation		1,810	1,751
Hydroelectric			
Conventional hydro generation	13 Plants, 1906-1949	77	425
Ludington — Ludington	6 Units, 1973	955[5]	(365) [6]
Total hydroelectric		1,032	60
Gas/Oil Combustion Turbine			
Various plants	7 Plants, 1966-1971	150	7
Zeeland (simple cycle) — Zeeland	2 Units, 2001	315	161
Total gas/oil combustion turbine		465	168
Total owned generation		6,130	17,447
Purchased and interchange power [7]		2,458[8]	19,499[9]
Total supply		8,588	36,946
Generation and transmission use/loss			(3,011)
Total net bundled sales			33,935

[1] Represents each plant’s electric generation capacity during the summer months.

[2] Represents Consumers’ share of the capacity of the J. H. Campbell 3 unit, net of the 6.69 percent ownership interest of the Michigan Public Power Agency and Wolverine.

[3] In December 2011, Consumers announced its plans to mothball seven smaller coal-fueled units effective January 2015. For further information, see Item 8. Financial Statements and Supplementary Data, MD&A, Outlook.

[4] B. C. Cobb 1-3 are retired coal-fueled units that were converted to gas-fueled units. B. C. Cobb 1-3 were placed back into service in the years indicated, and subsequently mothballed beginning in April 2009. Consumers has received a one-year extension of the mothball period to April 2013 and will reevaluate the status of B. C. Cobb 1-3 before that time.

[5] Represents Consumers’ 51 percent share of the capacity of Ludington. Detroit Edison owns the remaining 49 percent.

[6] Represents Consumers' share of net pumped-storage generation. The pumped-storage facility consumes electricity to pump water during off-peak hours for storage in order to generate electricity later during peak-demand hours.

[7] Includes purchases from the Midwest Energy Market, long-term purchase contracts, and seasonal purchases.

[8] Includes 1,240 MW of purchased contract capacity from the MCV Facility and 778 MW of purchased contract capacity from Palisades.

[9] Includes 2,723 GWh of purchased energy from the MCV Facility and 6,641 GWh of purchased energy from Palisades.

As shown in the following illustration, Consumers' 2011 generation capacity of 8,588 MW, including capacity of 2,458 MW purchased, relied on a variety of fuel sources:

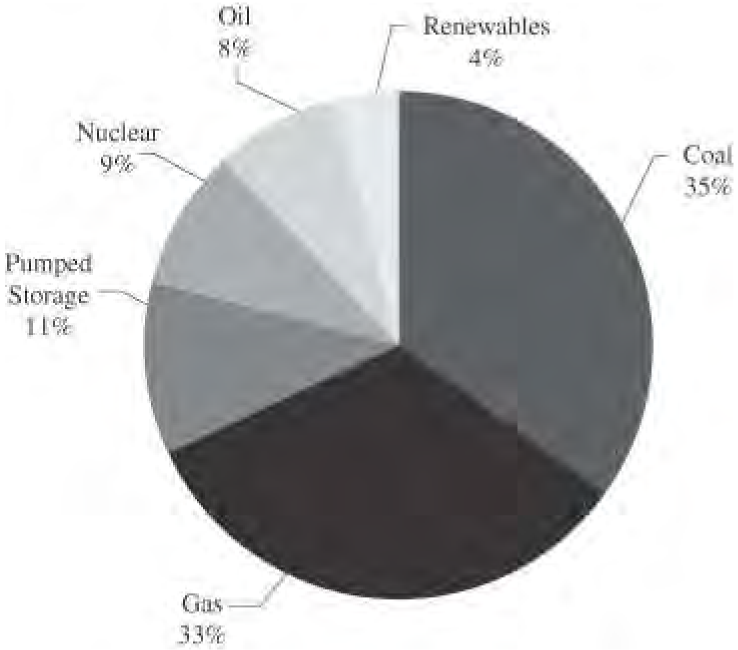


Table of Contents

Consumers generated power from the following sources:

Net Generation	GWh				
	2011	2010	2009	2008	2007
Owned Generation					
Coal	15,468	17,879	17,255	17,701	17,903
Gas	1,912	1,043	565	804	129
Renewable energy (hydro)	425	365	466	454	416
Oil	7	21	14	41	112
Nuclear	—	—	—	—	1,781
Net pumped storage [1]	(365)	(366)	(303)	(382)	(478)
Total owned generation	17,447	18,942	17,997	18,618	19,863
Purchased and Interchange Power					
Purchased renewable energy [2]	1,587	1,582	1,472	1,503	1,480
Purchased generation — other [2]	11,087	10,421	10,066	12,140	11,022
Net interchange power [3]	6,825	6,045	6,925	6,653	8,009
Total purchased and interchange power	19,499	18,048	18,463	20,296	20,511
Total supply	36,946	36,990	36,460	38,914	40,374

[1] Represents Consumers' share of net pumped-storage generation. The pumped-storage facility consumes electricity to pump water during off-peak hours for storage in order to generate electricity later during peak-demand hours.

[2] Includes purchases from long-term purchase contracts.

[3] Includes purchases from the Midwest Energy Market and seasonal purchases.

The cost of all fuels consumed, shown in the following table, fluctuates with the mix of fuel used.

Fuel Consumed	Cost Per Million Btu				
	2011	2010	2009	2008	2007
Coal	$ 2.94	$ 2.51	$ 2.37	$ 2.01	$ 2.04
Gas	4.95	5.57	6.57	10.94	10.29
Oil	18.55	10.98	9.59	11.54	8.21
Nuclear	—	—	—	—	0.42
All fuels [1]	$ 3.18	$ 2.71	$ 2.56	$ 2.47	$ 2.07

[1] Weighted-average fuel costs

In 2011, Consumers' four coal-fueled generating sites burned 9 million tons of coal and produced a combined total of 15,468 GWh of electricity, which represented 42 percent of the energy provided by Consumers to meet customer demand.

In order to obtain its coal requirements, Consumers enters into physical coal supply contracts. At December 31, 2011, Consumers had contracts to purchase coal through 2014; these contracts total $261 million. All of Consumers' coal supply contracts have fixed prices. At December 31, 2011, Consumers had 86 percent of its 2012 expected coal requirements under contract, as well as a 41-day supply of coal on hand.

In conjunction with its coal supply contracts, Consumers leases a fleet of rail cars and has long-term transportation contracts with various companies to provide rail and vessel services for delivery of purchased coal to Consumers' generating facilities. Consumers' coal transportation contracts expire from 2012 through 2014; these contracts total $427 million.

During 2011, Consumers purchased 53 percent of the electricity it provided to customers through long-term PPAs, seasonal purchases, and the Midwest Energy Market. Consumers offers its generation into the Midwest Energy Market on a day-ahead and real-time basis and bids for power in the market to serve the demand of its customers. Consumers is a net purchaser of power and supplements its generation capability with purchases from the Midwest Energy Market to meet its customers' needs during peak demand periods.

At December 31, 2011, Consumers had unrecognized future commitments (amounts for which liabilities, in accordance with GAAP, have not been recorded on its balance sheet) to purchase capacity and energy under long-term PPAs with various generating plants. These contracts require monthly capacity payments based on the plants' availability or deliverability. The payments for 2012 through 2040 total $15.3 billion and range from $901 million to $1.1 billion annually for each of the next five years. These amounts may vary depending on plant availability and fuel costs. For further information about Consumers' future capacity and energy purchase obligations, see Item 8. Financial Statements and Supplementary Data, MD&A, Capital Resources and Liquidity.

Electric Utility Competition : Consumers' electric utility business is subject to actual and potential competition from many sources, in both the wholesale and retail markets, as well as in electric generation, electric delivery, and retail services.

The Customer Choice Act allows all of Consumers' electric customers to buy electric generation service from Consumers or from an alternative electric supplier. The 2008 Energy Law revised the Customer Choice Act by limiting alternative electric supply to ten percent of weather-adjusted retail sales for the preceding calendar year. At December 31, 2011, electric deliveries under the ROA program were at the ten percent limit. Alternative electric suppliers were providing 785 MW of generation service to ROA customers.

Consumers also has competition or potential competition from:

- industrial customers relocating all or a portion of their production capacity outside Consumers' service territory for economic reasons;
- municipalities owning or operating competing electric delivery systems; and
- customer self-generation.

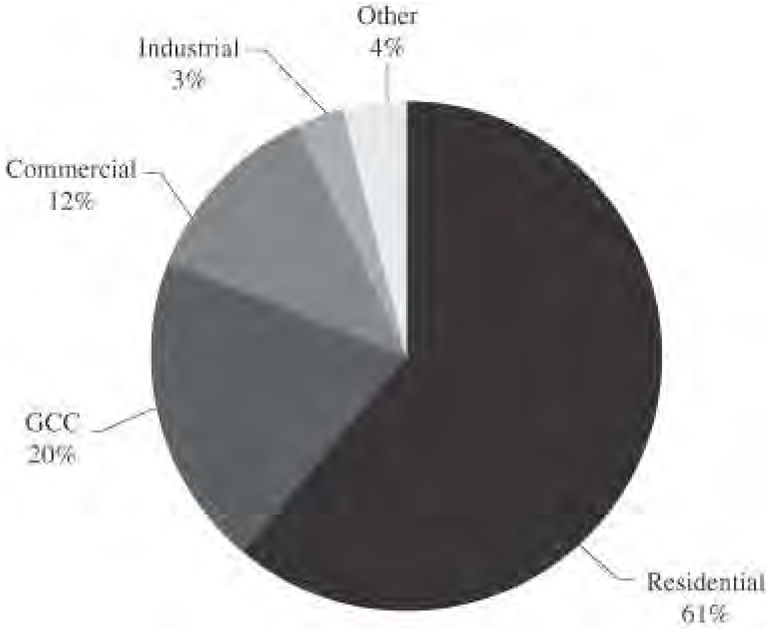
Consumers addresses this competition by monitoring activity in adjacent areas and monitoring compliance with the MPSC's and FERC's rules, providing non-energy services, adding value to customers through Consumers' rates and service, and providing tariff-based incentives that support economic development.

CONSUMERS GAS UTILITY

Gas Utility Operations: Consumers' gas utility operations, which include the purchase, transmission, storage, distribution, and sale of natural gas, generated operating revenue of $2.3 billion in 2011, $2.4 billion in 2010, and $2.6 billion in 2009. Consumers' gas utility customer base consists of a mix of residential, commercial, and diversified industrial customers in Michigan's Lower Peninsula.

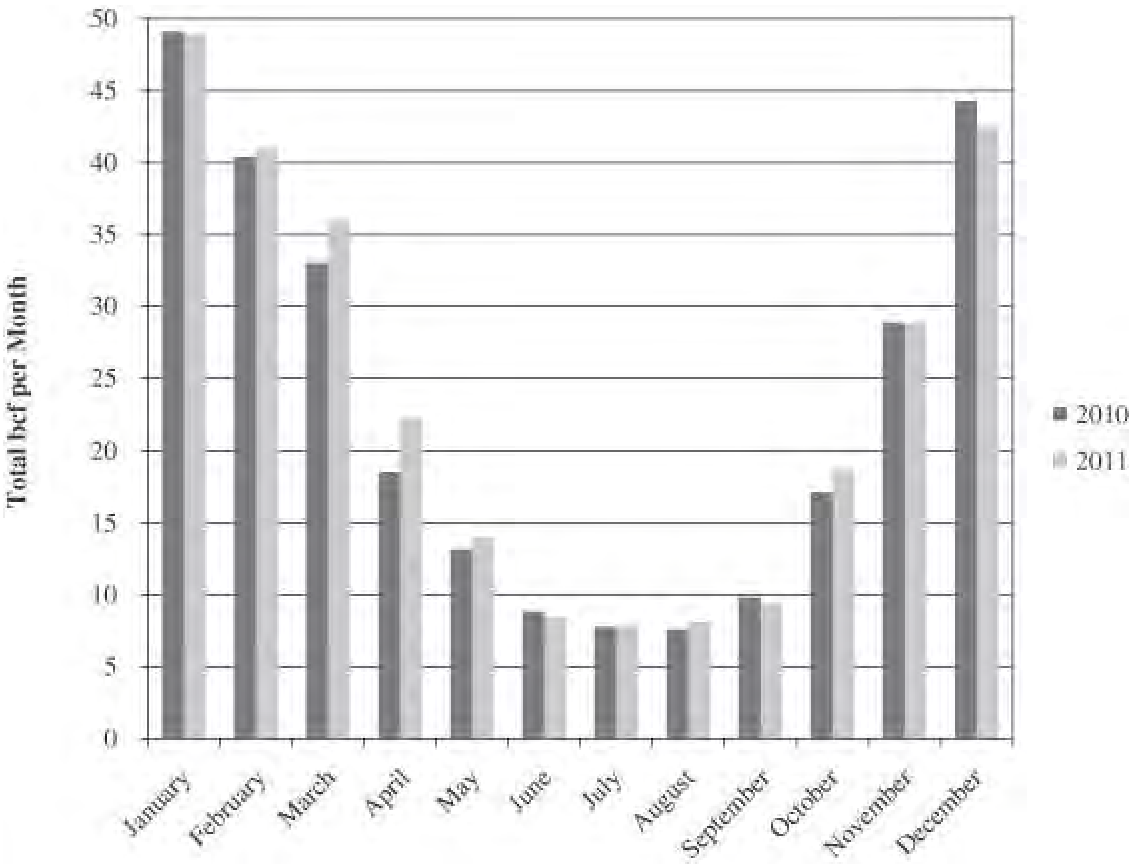
Table of Contents

Presented in the following illustration is Consumers' 2011 gas utility operating revenue of $2.3 billion by customer class:



Consumers' gas utility operations are not dependent on a single customer, or even a few customers, and the loss of any one or even a few of Consumers' largest customers is not reasonably likely to have a material adverse effect on Consumers' financial condition.

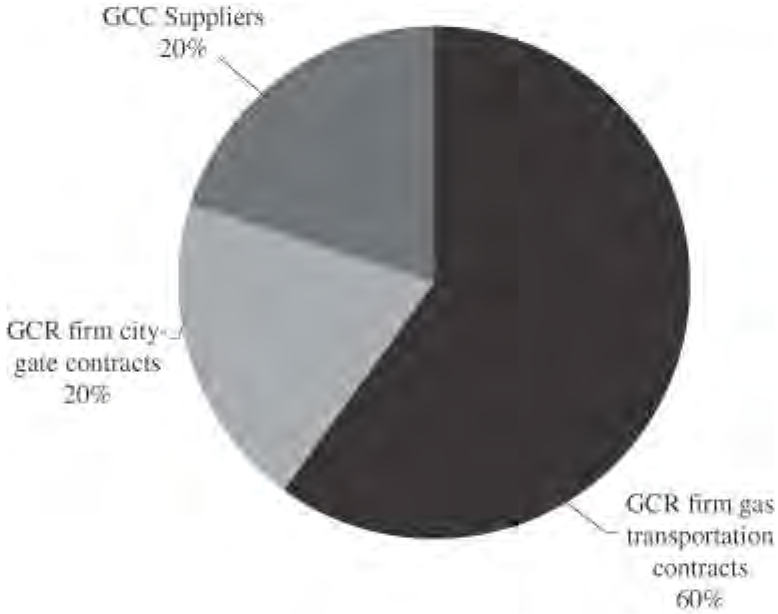
In 2011, deliveries of natural gas, including off-system transportation deliveries, through Consumers’ pipeline and distribution network, totaled 337 bcf, which included GCC deliveries of 48 bcf. In 2010, deliveries of natural gas, including off-system transportation deliveries, through Consumers’ pipeline and distribution network, totaled 317 bcf, which included GCC deliveries of 36 bcf. Consumers’ gas utility operations are seasonal. Consumers injects natural gas into storage during the summer months for use during the winter months when the demand for natural gas is higher. Peak demand occurs in the winter due to colder temperatures and the resulting use of natural gas as a heating fuel. During 2011, 46 percent of the natural gas supplied to all customers during the winter months was supplied from storage. Presented in the following illustration are Consumers’ monthly weather-adjusted gas deliveries to its customers, including GCC deliveries, during 2011 and 2010:



Gas Utility Properties: Consumers’ gas distribution and transmission system located in Michigan’s Lower Peninsula consists of:

- 26,623 miles of distribution mains;
- 1,666 miles of transmission lines;
- seven compressor stations with a total of 150,635 installed and available horsepower; and
- 15 gas storage fields with an aggregate storage capacity of 307 bcf and a working storage capacity of 142 bcf.

Gas Utility Supply: In 2011, Consumers purchased 70 percent of the gas it delivered from U.S. producers and 10 percent from Canadian producers. The remaining 20 percent was purchased from authorized GCC suppliers and delivered by Consumers to customers in the GCC program. Presented in the following illustration are the supply arrangements for the gas Consumers delivered to GCC and GCR customers during 2011:



Firm transportation or firm city-gate contracts are those that define a fixed amount, price, and delivery time frame. Consumers' firm gas transportation contracts are with ANR Pipeline Company, Great Lakes Gas Transmission, L.P., Panhandle, Trunkline Gas Company, LLC, and Vector Pipeline L.P. Under these contracts, Consumers purchases and transports gas to Michigan for ultimate delivery to its customers. Consumers' firm gas transportation contracts expire through 2017 and provide for the delivery of 65 percent of Consumers' total gas supply requirements. Consumers purchases the balance of its required gas supply under firm city-gate contracts and through authorized suppliers under the GCC program.

Gas Utility Competition: Competition exists in various aspects of Consumers' gas utility business. Competition comes from other gas suppliers taking advantage of direct access to Consumers' customers (GCC) and from alternative fuels and energy sources, such as propane, oil, and electricity.

ENTERPRISES SEGMENT — NON-UTILITY OPERATIONS AND INVESTMENTS

CMS Energy's enterprises segment, through various subsidiaries and certain equity investments, is engaged primarily in domestic independent power production and the marketing of independent power production. The enterprises segment's operating revenue included in income from continuing operations in CMS Energy's consolidated financial statements was $204 million in 2011, $238 million in 2010, and $216 million in 2009. The enterprises segment's operating revenue included in income (loss) from discontinued operations in CMS Energy's consolidated financial statements was less than $1 million in 2011, $10 million in 2010, and $7 million in 2009.

Table of Contents

Independent Power Production : At December 31, 2011, CMS Energy had ownership interests in independent power plants totaling 1,135 gross MW or 1,034 net MW. (Net MW reflects that portion of the gross capacity relating to CMS Energy's ownership interests.) Presented in the following table are CMS Energy's interests in independent power plants at December 31, 2011:

Location	Primary Fuel Type	Ownership Interest (%)	Gross Capacity (MW)	Gross Capacity Under Long-Term Contract (%)
Dearborn, Michigan	Natural gas	100	710	20
Gaylord, Michigan	Natural gas	100	156	59
Comstock, Michigan	Natural gas	100	68	59
Filer City, Michigan	Coal	50	73	100
Flint, Michigan	Biomass	50	40	100
Grayling, Michigan	Biomass	50	38	100
New Bern, North Carolina	Biomass	50	50	100
Total			1,135	

The operating revenue from independent power production included in income from continuing operations in CMS Energy's consolidated financial statements was $17 million in 2011 and $18 million in each of 2010 and 2009. The operating revenue from independent power production included in income (loss) from discontinued operations in CMS Energy's consolidated financial statements was less than $1 million in 2011, $10 million in 2010, and $7 million in 2009. CMS Energy's independent power production business faces competition from generators, marketers and brokers, and utilities marketing power in the wholesale market.

Energy Resource Management : CMS ERM purchases and sells energy commodities in support of CMS Energy's generating facilities and continues to focus on optimizing CMS Energy's independent power production portfolio. In 2011, CMS ERM marketed 17 bcf of natural gas and 2,417 GWh of electricity. All marketed electricity was generated by independent power production of the enterprises segment. CMS ERM's operating revenue included in income from continuing operations in CMS Energy's consolidated financial statements was $187 million in 2011, $220 million in 2010, and $198 million in 2009.

O THER B USINESSES

EnerBank: EnerBank, a wholly owned subsidiary of CMS Energy, is a Utah state-chartered, FDIC-insured industrial bank providing unsecured consumer installment loans for financing home improvements. EnerBank's operating revenue included in income from continuing operations in CMS Energy's consolidated financial statements was $46 million in 2011, $38 million in 2010, and $26 million in 2009.

CMS ENERGY AND CONSUMERS REGULATION

CMS Energy, Consumers, and their subsidiaries are subject to regulation by various federal, state, local, and foreign governmental agencies, including those described in the following sections.

FERC

FERC has exercised limited jurisdiction over several independent power plants and exempt wholesale generators in which CMS Enterprises has ownership interests, as well as over CMS ERM, CMS Gas Transmission, and DIG. Among other things, FERC has jurisdiction over acquisitions, operations, and disposals of certain assets and facilities, services provided and rates charged, conduct among affiliates, and limited jurisdiction over holding company matters with respect to CMS Energy. FERC, in connection with NERC and with regional reliability organizations, also regulates generation owners and operators, load serving entities, purchase and sale entities, and others with regard to reliability of the bulk power system. Certain aspects of Consumers' gas business are also subject to regulation by FERC.

Table of Contents

FERC also regulates certain aspects of Consumers' electric operations, including compliance with FERC accounting rules, wholesale rates, operation of licensed hydroelectric generating plants, transfers of certain facilities, corporate mergers, and issuances of securities.

MPSC

Consumers is subject to the jurisdiction of the MPSC, which regulates public utilities in Michigan with respect to retail utility rates, accounting, utility services, certain facilities, corporate mergers, and other matters.

The Michigan Attorney General, ABATE, the MPSC Staff, and certain other parties typically participate in MPSC proceedings concerning Consumers. The Michigan Attorney General, ABATE, and others often appeal significant MPSC orders.

Rate Proceedings: For information regarding open rate proceedings, see Item 8. Financial Statements and Supplementary Data, Notes to the Consolidated Financial Statements, Note 6, Regulatory Matters.

O THER R EGULATION

The U.S. Secretary of Energy regulates imports and exports of natural gas and has delegated various aspects of this jurisdiction to FERC and the DOE's Office of Fossil Fuels.

The U.S. Department of Transportation Office of Pipeline Safety regulates the safety and security of gas pipelines through the Natural Gas Pipeline Safety Act of 1968 and subsequent laws.

EnerBank is regulated by the State of Utah and the FDIC.

E NERGY L EGISLATION

CMS Energy, Consumers, and their subsidiaries are subject to various legislative-driven matters, including Michigan's 2008 Energy Law. This law requires that at least ten percent of Consumers' electric sales volume come from renewable energy sources by 2015, and includes requirements for specific capacity additions. The 2008 Energy Law also requires Consumers to prepare an energy optimization plan and achieve annual sales reduction targets through at least 2015. The targets are incremental with the goal of achieving a six percent reduction in customers' electricity use and a four percent reduction in customers' natural gas use by December 31, 2015. The 2008 Energy Law also reformed the Customer Choice Act to limit alternative energy suppliers to supplying no more than ten percent of Consumers' weather-adjusted sales. For additional information regarding Consumers' renewable energy and energy optimization plans and the Customer Choice Act, see Item 8. Financial Statements and Supplementary Data, MD&A, Outlook, "Consumers' Electric Utility Business Outlook and Uncertainties."

CMS ENERGY AND CONSUMERS ENVIRONMENTAL COMPLIANCE

CMS Energy, Consumers, and their subsidiaries are subject to various federal, state, and local regulations for environmental quality, including air and water quality, solid waste management, and other matters. For additional information concerning environmental matters, see Item 1A. Risk Factors and Item 8. Financial Statements and Supplementary Data, Notes to the Consolidated Financial Statements, Note 5, Contingencies and Commitments.

CMS Energy has recorded a significant liability for its affiliates' obligations associated with Bay Harbor and Consumers has recorded a significant liability for its obligations at a number of MGP sites. For additional information, see Item 1A. Risk Factors and Item 8. Financial Statements and Supplementary Data, Notes to the Consolidated Financial Statements, Note 5, Contingencies and Commitments.

Air: Consumers continues to install state-of-the-art emissions control equipment at its electric generating plants and to convert electric generating units to burn cleaner fuels. Consumers estimates that it will incur expenditures of $1.2 billion from 2012 through 2018 to comply with present and future federal and state regulations that will require extensive reductions in nitrogen oxides, sulfur dioxides, particulate matter, and mercury emissions. Consumers' estimate may increase if additional laws or regulations are adopted or implemented regarding greenhouse gases, including carbon dioxide.

Solid Waste Disposal: Costs related to the construction, operation, and closure of solid waste disposal facilities for coal ash are significant. Historically, Consumers has worked with others to reuse 30 to 40 percent of ash produced by its coal-fueled plants, and sells ash for use as a Portland cement replacement in concrete products, as feedstock for the manufacture of Portland cement, and for other environmentally-compatible uses. Consumers' solid waste disposal areas are regulated under Michigan's solid waste rules. Consumers has converted all of its fly ash handling systems to dry systems, which reduce landfill venting substantially. All of Consumers' ash facilities have programs designed to protect the environment and are subject to quarterly MDEQ inspections. The EPA has proposed new federal regulations for ash disposal areas. Consumers estimates that it will incur expenditures of $150 million from 2012 through 2018 to comply with future regulations relating to ash disposal, assuming ash is regulated as a non-hazardous solid waste.

Water: Consumers uses significant amounts of water to operate and cool its electric generating plants. Water discharge quality is regulated and administered by the MDEQ under the federal NPDES program. To comply with such regulation, Consumers' facilities have discharge monitoring programs. The EPA is developing new regulations related to cooling water intake systems, but these new regulations are not expected to take effect until after 2018. Accordingly, Consumers does not presently expect to incur any significant expenditures to comply with future regulations relating to cooling water intake systems through 2018. Significant expenditures could be required beyond 2018, but until a rule is final any potential expenditures are difficult to predict. Consumers also expects the EPA to propose new federal regulations for wastewater discharges from electric generating plants in July 2012, with a final rule in 2014. Consumers' preliminary estimate of expenditures to comply with these expected regulations is $150 million from 2012 through 2018.

For further information concerning estimated capital expenditures related to air, solid waste disposal, and water see Item 8. Financial Statements and Supplementary Data, MD&A, Outlook, "Consumers' Electric Utility Business Outlook and Uncertainties – Electric Environmental Estimates."

INSURANCE

CMS Energy and its subsidiaries, including Consumers, maintain insurance coverage generally similar to comparable companies in the same lines of business. The insurance policies are subject to terms, conditions, limitations, and exclusions that might not fully compensate CMS Energy or Consumers for all losses. A portion of each loss is generally assumed by CMS Energy or Consumers in the form of deductibles and self-insured retentions that, in some cases, are substantial. As CMS Energy or Consumers renews its policies, it is possible that some of the present insurance coverage may not be renewed or obtainable on commercially reasonable terms due to restrictive insurance markets.

CMS Energy's and Consumers' present insurance program does not cover the risks of certain environmental cleanup costs and environmental damages, such as claims for air pollution, damage to sites owned by CMS Energy or Consumers, and some long-term storage or disposal of wastes.

EMPLOYEES

Presented in the following table are the number of employees of CMS Energy and Consumers:

December 31	2011	2010	2009
CMS Energy, including Consumers			
Number of full-time-equivalent employees	7,727	7,822	8,039
Consumers			
Number of full-time-equivalent employees	7,435	7,522	7,755

Table of Contents

CMS ENERGY EXECUTIVE OFFICERS (as of February 1, 2012)

Name	Age	Position	Period
John G. Russell	54	President and CEO of CMS Energy	5/2010-Present
		President and CEO of Consumers	5/2010-Present
		Director of CMS Energy	5/2010-Present
		Director of Consumers	5/2010-Present
		Director of CMS Enterprises	5/2010-Present
		Chairman of the Board, President, and CEO of CMS Enterprises	5/2010-Present
		President and Chief Operating Officer of Consumers	2004-5/2010
Thomas J. Webb	59	Executive Vice President and CFO of CMS Energy	2002-Present
		Executive Vice President and CFO of Consumers	2002-Present
		Executive Vice President and CFO of CMS Enterprises	2002-Present
		Director of CMS Enterprises	2002-Present
James E. Brunner	59	Senior Vice President and General Counsel of CMS Energy	11/2006-Present
		Senior Vice President and General Counsel of Consumers	11/2006-Present
		Senior Vice President and General Counsel of CMS Enterprises	11/2007-Present
		Director of CMS Enterprises	2006-Present
		Senior Vice President of CMS Enterprises	2006-11/2007
John M. Butler	47	Senior Vice President of CMS Energy	2006-Present
		Senior Vice President of Consumers	2006-Present
		Senior Vice President of CMS Enterprises	2006-Present
David G. Mengebier	54	Senior Vice President and Chief Compliance Officer of CMS Energy	11/2006-Present
		Senior Vice President and Chief Compliance Officer of Consumers	11/2006-Present
		Senior Vice President of CMS Enterprises	2003-Present
Glenn P. Barba	46	Vice President, Controller, and CAO of CMS Energy	2003-Present
		Vice President, Controller, and CAO of Consumers	2003-Present
		Vice President, Controller, and CAO of CMS Enterprises	11/2007-Present
		Vice President and CAO of CMS Enterprises	2003-11/2007

There are no family relationships among executive officers and directors of CMS Energy.

The term of office of each of the executive officers extends to the first meeting of the Board of Directors of CMS Energy after the next annual election of Directors of CMS Energy (scheduled to be held on May 18, 2012).

CONSUMERS EXECUTIVE OFFICERS (as of February 1, 2012)

Name	Age	Position	Period
John G. Russell	54	President and CEO of CMS Energy	5/2010-Present
		President and CEO of Consumers	5/2010-Present
		Director of CMS Energy	5/2010-Present
		Director of Consumers	5/2010-Present
		Director of CMS Enterprises	5/2010-Present
		Chairman of the Board, President, and CEO of CMS Enterprises	5/2010-Present
		President and Chief Operating Officer of Consumers	2004-5/2010
Thomas J. Webb	59	Executive Vice President and CFO of CMS Energy	2002-Present
		Executive Vice President and CFO of Consumers	2002-Present
		Executive Vice President and CFO of CMS Enterprises	2002-Present
		Director of CMS Enterprises	2002-Present
James E. Brunner	59	Senior Vice President and General Counsel of CMS Energy	11/2006-Present
		Senior Vice President and General Counsel of Consumers	11/2006-Present
		Senior Vice President and General Counsel of CMS Enterprises	11/2007-Present
		Director of CMS Enterprises	2006-Present
		Senior Vice President of CMS Enterprises	2006-11/2007
John M. Butler	47	Senior Vice President of CMS Energy	2006-Present
		Senior Vice President of Consumers	2006-Present
		Senior Vice President of CMS Enterprises	2006-Present
David G. Mengebier	54	Senior Vice President and Chief Compliance Officer of CMS Energy	11/2006-Present
		Senior Vice President and Chief Compliance Officer of Consumers	11/2006-Present
		Senior Vice President of CMS Enterprises	2003-Present
William E. Garrity	63	Senior Vice President of Consumers	2005-Present
Jackson L. Hanson	55	Senior Vice President of Consumers	5/2010-Present
		Vice President of Consumers	11/2006-5/2010
Daniel J. Malone	51	Senior Vice President of Consumers	5/2010-Present
		Vice President of Consumers	6/2008-5/2010
		Site Business Manager of Consumers	12/2006-6/2008
Glenn P. Barba	46	Vice President, Controller, and CAO of CMS Energy	2003-Present
		Vice President, Controller, and CAO of Consumers	2003-Present
		Vice President, Controller, and CAO of CMS Enterprises	11/2007-Present
		Vice President and CAO of CMS Enterprises	2003-11/2007

There are no family relationships among executive officers and directors of Consumers.

The term of office of each of the executive officers extends to the first meeting of the Board of Directors of Consumers after the next annual election of Directors of Consumers (scheduled to be held on May 18, 2012).

AVAILABLE INFORMATION

CMS Energy's internet address is www.cmsenergy.com. Information contained on CMS Energy's website is not incorporated herein. All of CMS Energy's annual reports on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act are accessible free of charge on CMS Energy's website. These reports are available soon after they are filed electronically with the SEC. Also on CMS Energy's website are its:

- Corporate Governance Principles;
- Codes of Conduct:
  - CMS Energy Corporation/Consumers Energy Company Board of Directors Code of Conduct — January 2012
  - Code of Conduct and Guide to Ethical Business Behavior 2010
  - Guide to Ethical Business Behavior Addendum — March 1, 2011;
- Board committee charters (including the Audit Committee, the Compensation and Human Resources Committee, the Finance Committee, and the Governance and Public Responsibility Committee); and
- Articles of Incorporation (and amendments) and Bylaws.

CMS Energy will provide this information in print to any stockholder who requests it.

Any materials CMS Energy files with the SEC may also be read and copied at the SEC's Public Reference Room at 100 F Street, N.E., Washington D.C., 20549. Information on the operation of the Public Reference Room may be obtained by calling the SEC at 1-800-SEC-0330. The SEC also maintains an internet site that contains reports, proxy and information statements, and other information regarding issuers that file electronically with the SEC. The address is www.sec.gov.

ITEM 1A. RISK FACTORS

Actual results in future periods for CMS Energy and Consumers could differ materially from historical results and the forward-looking statements contained in this report. Factors that might cause or contribute to these differences include, but are not limited to, those discussed in the following sections. CMS Energy's and Consumers' businesses are influenced by many factors that are difficult to predict, that involve uncertainties that may materially affect results, and that are often beyond their control. Additional risks and uncertainties not presently known or that the companies' management believes to be immaterial may also adversely affect the companies. The risk factors described in the following sections, as well as the other information included in this report and in other documents filed with the SEC, should be considered carefully before making an investment in securities of CMS Energy or Consumers. Risk factors of Consumers are also risk factors of CMS Energy. All of these risk factors are potentially significant.

CMS Energy depends on dividends from its subsidiaries to meet its debt service obligations.

Due to its holding company structure, CMS Energy depends on dividends from its subsidiaries to meet its debt service and other payment obligations. Consumers' ability to pay dividends or acquire its own stock from CMS Energy is limited by restrictions contained in Consumers' preferred stock provisions and potentially by other legal restrictions, such as certain terms in its articles of incorporation, and by FERC requirements. At December 31, 2011, under its articles of incorporation, Consumers had $493 million of unrestricted retained earnings available to pay common stock dividends. If sufficient dividends are not paid to CMS Energy by its subsidiaries, CMS Energy may not be able to generate the funds necessary to fulfill its payment obligations, which could have a material adverse effect on CMS Energy's liquidity and financial condition.

CMS Energy has indebtedness that could limit its financial flexibility and hence its ability to meet its debt service obligations.

At December 31, 2011, CMS Energy, including Consumers, had $7.1 billion aggregate principal amount of indebtedness, including $29 million of subordinated indebtedness relating to its convertible preferred securities. CMS Energy had $2.3 billion aggregate principal amount of indebtedness at December 31, 2011. At December 31, 2011, there were no borrowings and $3 million of letters of credit outstanding under CMS Energy's revolving credit agreement. CMS Energy and its subsidiaries may incur additional indebtedness in the future.

The level of CMS Energy's present and future indebtedness could have several important effects on its future operations, including, among others:

- a significant portion of CMS Energy's cash flow from operations could be dedicated to the payment of principal and interest on its indebtedness and would not be available for other purposes;
- covenants contained in CMS Energy's existing debt arrangements, which require it to meet certain financial tests, could affect its flexibility in planning for, and reacting to, changes in its business;
- CMS Energy's ability to obtain additional financing for working capital, capital expenditures, acquisitions, and general corporate and other purposes could become limited;
- CMS Energy could be placed at a competitive disadvantage to its competitors that are less leveraged;
- CMS Energy's vulnerability to adverse economic and industry conditions could increase; and
- CMS Energy's future credit ratings could fluctuate.

CMS Energy's ability to meet its debt service obligations and to reduce its total indebtedness will depend on its future performance, which will be subject to general economic conditions, industry cycles, changes in laws or regulatory decisions (including with respect to environmental matters), and financial, business, and other factors affecting its operations, many of which are beyond its control. CMS Energy cannot make assurances that its business will continue to generate sufficient cash flow from operations to service its indebtedness. If CMS Energy is unable to generate sufficient cash flows from operations, it may be required to sell assets or obtain additional financing. CMS Energy cannot ensure that additional financing will be available on commercially acceptable terms or at all.

CMS Energy cannot predict the outcome of regulatory reviews and claims regarding its environmental remediation obligation at Bay Harbor.

CMS Energy has participated in discussions with the EPA and the MDEQ relating to proposals by CMS Land and CMS Capital to remedy the flow of leachate from buried CKD piles at the Bay Harbor site to Lake Michigan and related environmental issues. CMS Energy has reached a tentative agreement with the MDEQ that identifies the final remedies at the site. The parties are awaiting EPA review prior to finalizing the agreement. In December 2010, the MDEQ issued a five-year NPDES permit that authorizes CMS Land to discharge treated leachate into Little Traverse Bay. Discharge of treated leachate at the site has commenced. Costs to treat and discharge collected leachate under this permit could exceed present expectations. Additionally, CMS Land and CMS Capital could be required to alter their present water disposal strategy upon expiration of this permit if the MDEQ or EPA identify a more suitable option, or if the permit itself is challenged before the MDEQ or the courts. CMS Land and CMS Capital, the MDEQ, the EPA, and other parties continue to negotiate the long-term remedy for the Bay Harbor site. These negotiations are focused on, among other things, issues related to:

- the disposal of leachate;
- the location and design of collection lines and upstream water diversion systems;
- application of criteria for various substances such as mercury; and
- other matters that are likely to affect the scope of remedial work that CMS Land and CMS Capital may be obligated to undertake.

Depending on the results of these negotiations, as well as the size of any indemnity obligation or liability under an Administrative Order on Consent signed by CMS Land and CMS Capital or other liability under environmental laws, adverse outcomes of some or all of these matters could have a material adverse effect on CMS Energy's liquidity and financial condition and could negatively affect CMS Energy's financial results.

CMS Energy and Consumers expect to incur additional significant costs related to remediation of former MGP sites.

Consumers is presently monitoring or remediating 23 former MGP sites. Consumers is working collaboratively with the MDEQ to agree upon executable remediation plans. About one-third of the 23 sites have been remediated to the extent possible and are now being monitored. The remaining sites are being actively remediated through excavation, treatment at the site, containment, and/or natural reduction; two of these sites require complex remediation plans due to the involvement of surface water.

The MDEQ established a "No Further Action" status for these sites in late 2010 and is presently overhauling the implementation of the 2010 statutory revisions with a focus on streamlining the process, reasonable and consistent implementation, and risk-based techniques.

CMS Energy and Consumers expect to incur additional significant costs related to the remediation of these former MGP sites. Based upon prior MPSC orders, Consumers expects to be able to recover the costs of these cleanup activities through its gas rates, but cannot guarantee that outcome.

CMS Energy could be affected adversely by a regulatory investigation and civil lawsuits regarding pricing information that CMS MST and CMS Field Services provided to market publications.

In 2002, CMS Energy notified appropriate regulatory and governmental agencies that some employees at CMS MST and CMS Field Services appeared to have provided inaccurate information regarding natural gas trades to various energy industry publications which compile and report index prices. CMS Energy has cooperated with the DOJ's investigation regarding this matter. CMS Energy is unable to predict the outcome of the DOJ investigation or the amount of any fines or penalties that may be imposed and what effect, if any, the investigation will have on CMS Energy.

CMS Energy, CMS MST, CMS Field Services, Cantera Natural Gas, Inc., and Cantera Gas Company were named as defendants in various lawsuits arising as a result of alleged false natural gas price reporting.

Allegations included manipulation of NYMEX natural gas futures and options prices, price-fixing conspiracies, and artificial inflation of natural gas retail prices in Colorado, Kansas, Missouri, and Wisconsin. CMS Energy cannot predict the outcome of the lawsuits or the amount of damages for which CMS Energy may be liable. It is possible that the outcome in one or more of the lawsuits could have a material adverse effect on CMS Energy's liquidity, financial condition, and results of operations.

CMS Energy and Consumers retain contingent liabilities in connection with their asset sales.

The agreements that CMS Energy and Consumers enter into for the sale of assets customarily include provisions whereby they are required to:

- retain specified preexisting liabilities, such as for taxes, pensions, or environmental conditions;
- indemnify the buyers against specified risks, including the inaccuracy of representations and warranties they make; and
- make payments to the buyers depending on the outcome of post-closing adjustments, litigation, audits, or other reviews, including claims resulting from attempts by foreign or domestic governments to assess taxes on past operations or transactions.

Many of these contingent liabilities can remain open for extended periods of time after the sales are closed. Depending on the extent to which the buyers may ultimately seek to enforce their rights under these contractual provisions, and the resolution of any disputes concerning them, there could be a material adverse effect on CMS Energy's or Consumers' liquidity, financial condition, and results of operations.

In January 2002, CMS Energy sold its oil, gas, and methanol investments in Equatorial Guinea. The government of Equatorial Guinea claims that CMS Energy owes $142 million in taxes, plus interest, in connection with the sale. CMS Energy has concluded that the government's tax claim is without merit. The government of Equatorial Guinea indicated through a request for arbitration in October 2011 that it still intends to pursue its claim. CMS Energy is vigorously contesting the claim, and cannot predict the financial impact or outcome of this matter. It is possible that the outcome of this matter could have a material adverse effect on CMS Energy's liquidity, financial condition, and results of operations.

CMS Energy and Consumers have financing needs and could be unable to obtain bank financing or access the capital markets. Potential disruption in the capital and credit markets could have a material adverse effect on CMS Energy's and Consumers' businesses, including the availability and cost of short-term funds for liquidity requirements and their ability to meet long-term commitments. These consequences could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

CMS Energy and Consumers may be subject to liquidity demands under commercial commitments, guarantees, indemnities, letters of credit, and other contingent liabilities. Consumers' capital requirements are expected to be substantial over the next several years as it implements renewable power generation and environmental projects, and those requirements may increase if additional laws or regulations are adopted or implemented.

CMS Energy and Consumers rely on the capital markets, particularly for publicly offered debt, as well as on bank syndications, to meet their financial commitments and short-term liquidity needs if internal funds are not available from Consumers' operations and, in the case of CMS Energy, dividends from Consumers and its other subsidiaries. CMS Energy and Consumers also use letters of credit issued under certain of their revolving credit facilities to support certain operations and investments.

Longer term disruptions in the capital and credit markets as a result of uncertainty, changing or increased regulation, reduced alternatives, or failures of significant financial institutions could adversely affect CMS Energy's and Consumers' access to liquidity needed for their respective businesses, as could Consumers' inability to obtain prior FERC authorization for any securities issuances, including publicly offered debt, as is required under the Federal Power Act. Any disruption or inability to obtain FERC authorization could require CMS Energy and Consumers to take measures to conserve cash until the markets stabilize or until alternative credit arrangements or other funding for their business needs can be arranged. These measures could include deferring capital expenditures, changing CMS Energy’s and Consumers’ commodity purchasing strategy to avoid collateral-posting requirements, and reducing or eliminating future share repurchases, dividend payments, or other discretionary uses of cash.

CMS Energy continues to explore financing opportunities to supplement its financial plan. These potential opportunities include refinancing and/or issuing new capital markets debt, preferred stock and/or common equity, and bank financing. Similarly, Consumers plans to seek funds through the capital markets, commercial lenders, and leasing arrangements. Entering into new financings is subject in part to capital market receptivity to utility industry securities in general and to CMS Energy’s and Consumers’ securities issuances in particular. CMS Energy and Consumers cannot guarantee the capital markets’ acceptance of their securities or predict the impact of factors beyond their control, such as actions of rating agencies. If CMS Energy or Consumers is unable to obtain bank financing or access the capital markets to incur or refinance indebtedness, or is unable to obtain commercially reasonable terms for any financing, there could be a material adverse effect on its liquidity, financial condition, and results of operations.

Certain of CMS Energy’s securities and those of its affiliates, including Consumers, are rated by various credit rating agencies. Any reduction or withdrawal of one or more of its credit ratings could have a material adverse impact on CMS Energy’s or Consumers’ ability to access capital on acceptable terms and maintain commodity lines of credit, could make its cost of borrowing higher, and could cause CMS Energy or Consumers to reduce its capital expenditures. If it is unable to maintain commodity lines of credit, CMS Energy or Consumers may have to post collateral or make prepayments to certain of its suppliers under existing contracts. Further, since Consumers provides dividends to CMS Energy, any adverse developments affecting Consumers that result in a lowering of its credit ratings could have an adverse effect on CMS Energy’s credit ratings. CMS Energy and Consumers cannot guarantee that any of their present ratings will remain in effect for any given period of time or that a rating will not be lowered or withdrawn entirely by a rating agency.

CMS Energy and Consumers could incur significant costs to comply with environmental requirements.

CMS Energy, Consumers, and their subsidiaries are subject to costly and increasingly stringent environmental regulations. They believe that environmental laws and regulations related to their operations will continue to become more stringent and require them to make additional significant capital expenditures for emissions control equipment installation and upgrades.

In August 2011, the EPA finalized and promulgated CSAPR as a replacement for CAIR. CSAPR was scheduled to take effect on January 1, 2012, and CMS Energy and Consumers were prepared to comply. In December 2011, the U.S. Court of Appeals for the D.C. Circuit issued a stay of CSAPR, and CAIR remains in effect.

In December 2011, the EPA issued the maximum achievable control technology standard for electric generating units, also known as the EGU MACT. This final rule, which the EPA has renamed MATS, is expected to have a significant impact on Consumers’ coal-fueled generating fleet.

In 2009, the EPA issued an endangerment finding for greenhouse gases under the Clean Air Act. In this finding, which has been challenged in the U.S. Court of Appeals for the D.C. Circuit by numerous parties, the EPA determined that present and projected atmospheric concentrations of six greenhouse gases threaten the public health and welfare of present and future generations. In May 2010, the EPA issued a final rule that addresses greenhouse gas emissions from stationary sources under the Clean Air Act permitting programs. The “tailoring rule” sets thresholds for greenhouse gas emissions that define when permits under the NSR and Title V programs are required for new and existing industrial facilities. This regulation took effect in January 2011. Comprehensive federal legislation that addresses greenhouse gases has not advanced in the U.S. Congress. Federal legislation is considered likely to be enacted in some form in the future and could have a significant impact on the operation and cost of existing and future fossil-fueled power plants.

In 2011, 98 percent of the energy generated by Consumers came from fossil-fueled power plants, with 87 percent coming from coal-fueled power plants. The emissions from fossil-fueled power plants are presently subject to greenhouse gas regulations. CMS Enterprises also has interests in fossil-fueled power plants and other types of power plants that produce greenhouse gases. Federal laws and rules limiting the emission of greenhouse gases or similar state laws and rules, if enacted, as well as international accords and treaties, could require CMS Energy and Consumers to install additional equipment for emission controls, purchase carbon emissions allowances, curtail operations, invest in non-fossil-fuel generating capacity, or take other significant steps to manage or lower the emission of greenhouse gases.

The following risks related to climate change and emissions could also have a material adverse impact on CMS Energy's and Consumers' liquidity, financial condition, and results of operations:

- litigation originated by third parties against CMS Energy, Consumers, or their subsidiaries due to CMS Energy's or Consumers' greenhouse gas or other emissions;
- impairment of CMS Energy's or Consumers' reputation due to its greenhouse gas or other emissions and public perception of its response to potential environmental regulations, rules, and legislation; and
- extreme weather conditions, such as severe storms, that may affect customer demand, company operations, or assets.

The EPA is considering regulating CCBs, such as coal ash, as hazardous wastes under the Resource Conservation and Recovery Act. Michigan already regulates CCBs as low-hazard industrial waste. If coal ash is regulated as a hazardous waste, Consumers would likely cease the beneficial re-use of this product, resulting in significantly more coal ash requiring costly disposal. Additionally, it is possible that existing landfills could be closed if the upgrades to hazardous waste landfill standards are economically prohibitive. Costs associated with this potential regulation could be substantial.

The EPA is revising regulations that govern cooling water intake structures aimed at protecting aquatic life and that govern water discharges. Costs associated with these revisions could be material to CMS Energy, Consumers, and CMS Enterprises and result in operational changes or possibly significant impacts on the economics of generating units.

CMS Energy and Consumers expect to collect fully from their customers, through the ratemaking process, expenditures incurred to comply with environmental regulations, but cannot guarantee this outcome. If Consumers were unable to recover these expenditures from customers in rates, it could negatively affect CMS Energy's and/or Consumers' liquidity, results of operations, and financial condition and CMS Energy and/or Consumers could be required to seek significant additional financing to fund these expenditures.

CMS Energy's and Consumers' businesses could be affected adversely by any delay in meeting environmental requirements.

A delay or failure by CMS Energy or Consumers to obtain or maintain any necessary environmental permits or approvals to satisfy any applicable environmental regulatory requirements or install emission control equipment could:

- prevent the construction of new facilities;
- prevent the continued operation and sale of energy from existing facilities;
- prevent the modification of existing facilities; or
- result in significant additional costs that could have a material adverse effect on their liquidity, financial condition, and results of operations.

Market performance and other changes could decrease the value of employee benefit plan assets, which then could require significant funding.

The performance of the capital markets affects the values of assets that are held in trust to satisfy future obligations under CMS Energy's and Consumers' pension and postretirement benefit plans. CMS Energy and Consumers have significant obligations under these plans and hold significant assets in these trusts. These assets are subject to market fluctuations and will yield uncertain returns, which may fall below CMS Energy's and Consumers' forecasted return rates. A decline in the market value of the assets or a change in the level of interest rates used to measure the required minimum funding levels may significantly increase the funding requirements of these obligations. Also, changes in demographics, including increased number of retirements or changes in life expectancy assumptions, may significantly increase the funding requirements of the obligations related to the pension and postretirement benefit plans. If CMS Energy and Consumers were unable to manage their pension and postretirement plan assets successfully, it could have a material adverse effect on their liquidity, financial condition, and results of operations.

Periodic reviews of the values of CMS Energy's and Consumers' assets could result in impairment charges.

CMS Energy and Consumers are required by GAAP to review periodically the carrying value of their assets, including those that may be sold. Market conditions, the operational characteristics of their assets, and other factors could result in recording impairment charges for their assets, which could have an adverse effect on their stockholders' equity and their access to additional financing. In addition, CMS Energy and Consumers may be required to record impairment charges at the time they sell assets, depending on the sale prices they are able to secure and other factors.

CMS Energy and Consumers are subject to information security risks, risks of unauthorized access to their systems, and technology failures.

In the regular course of business, CMS Energy and Consumers handle a range of sensitive security and customer information. CMS Energy and Consumers are subject to laws and rules issued by various agencies concerning safeguarding and maintaining the confidentiality of this information. A security breach of CMS Energy's and Consumers' information systems could involve theft or the inappropriate release of certain types of information, such as confidential customer information or, separately, system operating information. Such events could disrupt operations, subject CMS Energy and Consumers to possible financial liability, diminish their reputation and the confidence of customers, and have a material adverse effect on CMS Energy's and Consumers' liquidity, financial conditions, and results of operations.

CMS Energy and Consumers operate in a highly regulated industry that requires the continued operation of sophisticated information technology systems and network infrastructure. Despite implementation of security measures, CMS Energy's and Consumers' technology systems are vulnerable to disability, failures, and unauthorized access. Those failures or breaches could impact the reliability of electric and gas generation and delivery and also subject CMS Energy and Consumers to financial harm. If CMS Energy's and Consumers' technology systems were to fail or be breached, CMS Energy and Consumers might not be able to fulfill critical business functions, and sensitive confidential and proprietary data could be compromised, which could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

A variety of technological tools and systems, including both company-owned information technology and technological services provided by outside parties, support critical functions. The failure of these technologies, or the inability of CMS Energy and Consumers to have these technologies supported, updated, expanded, or integrated into other technologies, could hinder their business operations and materially adversely affect their liquidity, financial condition, and results of operations.

CMS Energy's and Consumers' businesses have safety risks.

Consumers' electric and gas delivery systems, power plants, gas infrastructure, and energy products could be involved in accidents that result in injury or property loss to customers, employees, or the public. Although CMS Energy and Consumers have insurance coverage for many potential incidents (subject to deductibles and self-insurance amounts that could be material), depending upon the nature or severity of any incident or accident, CMS Energy or Consumers could suffer financial loss, damage to its reputation, and negative repercussions from regulatory agencies or other public authorities.

CMS Energy's and Consumers' revenues and results of operations are subject to risks that are beyond their control, including but not limited to natural disasters, terrorist attacks or related acts of war, hostile cyber intrusions, or other catastrophic events.

The impact of natural disasters, wars, terrorist acts, cyber intrusions, and other catastrophic events on the facilities and operations of CMS Energy and Consumers could have a material adverse affect on their liquidity, financial condition, and results of operations. A terrorist attack on physical infrastructure or a major natural disaster could result in severe damage to CMS Energy's and Consumers' assets beyond what could be recovered through insurance policies. Hostile cyber intrusions, including those targeting information systems as well as electronic control systems used at the generating plants and for the electric and gas distribution systems, could severely disrupt business operations and result in loss of service to customers, as well as significant expense to repair security breaches or system damage. Terrorist attacks or acts of war could result in the disruption of power and fuel markets that could increase costs or disrupt service. Instability in the financial markets as a result of terrorism, war, natural disasters, credit crises, recessions, or other factors, could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

CMS Energy and Consumers are exposed to significant reputational risks.

Consumers is actively engaged in multiple regulatory oversight processes and has a large electric and gas customer base. As a result, Consumers has a highly visible public profile in Michigan. Consumers and CMS Energy could suffer negative impacts to their reputations as a result of operational incidents, violations of corporate compliance policies, regulatory violations, or other events. This could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations. It could also result in negative customer perception and increased regulatory oversight.

Energy risk management strategies may not be effective in managing fuel and electricity pricing risks, which could result in unanticipated liabilities to CMS Energy and Consumers or increased volatility of their earnings.

Consumers is exposed to changes in market prices for natural gas, coal, electricity, emission allowances, and RECs. Prices for natural gas, coal, electricity, emission allowances, and RECs may fluctuate substantially over relatively short periods of time and expose Consumers to commodity price risk. A substantial portion of Consumers' operating expenses for its plants consists of the costs of obtaining these commodities. Consumers manages these risks using established policies and procedures, and it may use various contracts to manage these risks, including swaps, options, futures, and forward contracts. No assurance can be made that these strategies will be successful in managing Consumers' pricing risk or that they will not result in net liabilities to Consumers as a result of future volatility in these markets.

Natural gas prices in particular have been historically volatile. Consumers routinely enters into contracts to mitigate exposure to the risks of demand, market effects of weather, and changes in commodity prices associated with its gas distribution business. These contracts are executed in conjunction with the GCR mechanism, which is designed to allow Consumers to recover prudently incurred costs associated with those positions. Consumers does not always hedge the entire exposure of its operations from commodity price volatility. Furthermore, the ability to hedge exposure to commodity price volatility depends on liquid commodity markets. As a result, to the extent the commodity markets are illiquid, Consumers may not be able to execute its risk management strategies, which could result in greater unhedged positions than preferred at a given time. To the extent that unhedged positions exist, fluctuating commodity prices could have a negative effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

Changes in taxation as well as the inherent difficulty in quantifying potential tax effects of business decisions could negatively impact CMS Energy's and Consumers' results of operations.

CMS Energy and Consumers are required to make judgments regarding the potential tax effects of various financial transactions and results of operations in order to estimate their obligations to taxing authorities. The tax obligations include income, real estate, sales and use taxes, employment-related taxes, and ongoing issues related to these tax matters. The judgments include determining reserves for potential adverse outcomes regarding tax positions that have been taken and may be subject to challenge by the IRS and/or other taxing authorities. Unfavorable settlements of any of the issues related to these reserves at CMS Energy or Consumers could have a material adverse effect on its liquidity, financial condition, and results of operations.

CMS Energy and Consumers are subject to changing tax laws. Increases in local, state, or federal tax rates or other changes in tax laws could have adverse impacts on their liquidity, financial condition, and results of operations.

Consumers is exposed to risks related to general economic conditions in its service territories.

Consumers' electric and gas utility businesses are affected by the economic conditions impacting the customers they serve. Although Consumers believes that economic conditions in Michigan are improving, the economy in Consumers' service territories continues to be affected adversely by the recession and its impact on the state's automotive and real estate sectors and by relatively high unemployment. The Michigan economy also has been affected negatively by the uncertainty in the financial and credit markets. If economic conditions in Michigan decline further, Consumers may experience reduced demand for electricity or natural gas that could result in decreased earnings and cash flow. In addition, economic conditions in Consumers' service territory affect its collections of accounts receivable and levels of lost or stolen gas, which in turn impact its liquidity, financial condition, and results of operations.

CMS Energy's and Consumers' energy sales and operations are affected by seasonal factors and varying weather conditions from year to year.

CMS Energy's and Consumers' businesses are seasonal. Demand for electricity is greater in the summer cooling season and the winter heating season. Demand for natural gas peaks in the winter heating season. Accordingly, their overall results in the future may fluctuate substantially on a seasonal basis. Mild temperatures during the summer cooling season and winter heating season could have a material adverse affect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

Unplanned power plant outages could be costly for Consumers.

Unforeseen maintenance of our power plants may be required for many reasons, including catastrophic events such as fires, explosions, floods, or other acts of God, equipment failure, operator error, or to comply with environmental or safety regulations. When unplanned maintenance work is required on power plants or other equipment, Consumers will not only incur unexpected maintenance expenses, but it may also have to make spot market purchases of replacement electricity that exceed Consumers' costs of generation. If Consumers were unable to recover any of these increased costs in rates, it could have a material adverse effect on Consumers' liquidity, financial condition, and results of operations.

A work interruption or other union actions could adversely affect Consumers.

Over 40 percent of Consumers' employees are represented by a union. If these employees were to engage in a strike, work stoppage, or other slowdown, or if the terms and conditions in future labor agreements were renegotiated, Consumers could experience a significant disruption in its operations and higher ongoing labor costs.

Failure to attract and retain an appropriately qualified workforce could harm CMS Energy's and Consumers' results of operations.

The workforce of CMS Energy and Consumers is aging and a number of employees will become eligible to retire within the next few years. If CMS Energy and Consumers were unable to match skill sets to future needs, they could encounter operating challenges and increased costs. These challenges could include a lack of resources, loss of knowledge, and delays in skill development. Additionally, higher costs could result from the use of contractors to replace employees, loss of productivity, and safety incidents. Failing to train replacement employees adequately and to transfer internal knowledge and expertise could affect CMS Energy's and

Consumers' ability to manage and operate their businesses. If CMS Energy and Consumers were unable to attract and retain an appropriately qualified workforce, their results of operations could be affected negatively.

Consumers may not be able to obtain an adequate supply of coal or natural gas, which could limit its ability to operate its electric generation facilities or serve its natural gas customers.

Consumers is dependent on coal for a significant portion of its electric generating capacity. While Consumers has coal supply and transportation contracts in place, there can be no assurance that the counterparties to these agreements will fulfill their obligations to supply coal to Consumers. The suppliers under the agreements may experience financial or operational problems that inhibit their ability to fulfill their obligations to Consumers. In addition, suppliers under these agreements may not be required to supply coal to Consumers under certain circumstances, such as in the event of a natural disaster. If Consumers were unable to obtain its coal requirements under existing or future coal supply and transportation contracts, it might be required to purchase coal at higher prices or forced to purchase electricity from higher cost generating resources in the Midwest Energy Market, which would increase Consumers' working capital requirements.

Consumers has firm interstate transportation and supply agreements in place to facilitate deliveries of natural gas to its customers. Apart from the contractual and monetary remedies available to Consumers in the event of a counterparty's failure to perform, there can be no assurances that the counterparties to these firm interstate transportation and supply agreements will fulfill their obligations to provide natural gas to Consumers. In addition, suppliers under these agreements may not be required to deliver natural gas to Consumers in certain circumstances, such as in the event of a natural disaster. If Consumers were unable to obtain its natural gas supply requirements under existing or future natural gas supply and transportation contracts, it could be required to purchase natural gas at higher prices from other sources or implement its natural gas curtailment program filed with the MPSC, which would increase Consumers' working capital requirements and decrease its natural gas revenues.

Electric industry regulation could have a material adverse effect on CMS Energy's and Consumers' businesses.

Federal and state regulation of electric utilities has changed dramatically in the last two decades and could continue to change over the next several years. These changes could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

CMS Energy and Consumers are subject to, or affected by, extensive federal and state utility regulation. In CMS Energy's and Consumers' business planning and management of operations, they must address the effects of existing and proposed regulation on their businesses and changes in the regulatory framework, including initiatives by federal and state legislatures, regional transmission organizations, utility regulators, and taxing authorities. Adoption of new regulations by federal or state agencies, or changes to present regulations and interpretations of these regulations, could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

There are multiple proceedings pending before FERC involving transmission matters. CMS Energy and Consumers cannot predict the impact of these electric industry restructuring proceedings on their liquidity, financial condition, and results of operations.

Electric industry legislation in Michigan, coupled with increased competition in gas and electric markets, could have a material adverse effect on CMS Energy's and Consumers' businesses.

The 2008 Energy Law, among other things, limits alternative electric supply to ten percent of weather-adjusted retail sales for the preceding calendar year. Lower natural gas prices due to a large supply of natural gas on the market, coupled with low capacity prices in the electric supply market, are placing increasing competitive pressure on Consumers' electric supply. Presently, the ROA level on Consumers' system is at the ten-percent cap and there is a backlog. Proposals have been made to raise the ROA limit above ten percent, which, if enacted, could have a material adverse effect on Consumers' business. Proposals also have been made to increase the electric sales volume that will be required from renewable energy sources, including a proposal that would amend the Michigan Constitution to increase the electric sales volume required from renewable energy sources to 25 percent by 2025. Other new legislation or interpretations could change how the businesses of CMS Energy and Consumers operate, impact Consumers' ability to recover costs through rate increases, or require CMS Energy and Consumers to incur additional expenses.

The markets for alternative energy and distributed generation could impact financial results.

Advances in technology could reduce the cost of alternative methods of producing electricity, such as fuel cells, microturbines, windmills, and photovoltaic (solar) cells, to a level that is competitive with that of fossil-fuel technology utilized by CMS Energy and Consumers to produce a majority of their electricity. It is also possible that electric customers could reduce their electric consumption significantly through demand-side energy conservation programs. Changes in technology could also alter the channels through which electric customers buy electricity. Any of these changes could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, or results of operations.

CMS Energy and Consumers are subject to rate regulation, which could have an adverse effect on financial results.

CMS Energy and Consumers are subject to rate regulation. Electric and gas rates for their utilities are set by the MPSC and cannot be increased without regulatory authorization. While Consumers is permitted by the 2008 Energy Law to self-implement rate changes six months after a rate filing with the MPSC, subject to certain limitations, if a final rate order from the MPSC provides for lower rates than Consumers self-implemented, Consumers must refund the difference, with interest. Also, the MPSC may delay or deny implementation of a rate increase upon showing of good cause. In February 2011, the MPSC found good cause to delay Consumers' self-implementation of its requested gas rate increase.

In addition, Consumers' plans for making significant capital investments, including modifications to meet new environmental requirements and investment in new generation, could be affected adversely or could have a material adverse effect on Consumers if rate regulators fail to provide timely rate relief. Regulators seeking to avoid or minimize rate increases could resist raising customer rates sufficiently to permit Consumers to recover the full cost of modifications to meet environmental requirements and other prudent investments. In addition, because certain costs are mandated by state requirements for cost recovery, such as resource additions to meet Michigan's renewable resource standard, regulators could be more inclined to oppose rate increases for other required items and investments. Rate regulators could also face pressure to avoid or limit rate increases for a number of reasons, including failure of Michigan's economy to improve sufficiently or diminishment of Consumers' customer base. In addition to potentially affecting Consumers' investment program, any limitation of cost recovery through rates could have a material adverse effect on Consumers' liquidity, financial condition, and results of operations.

Orders of the MPSC could limit recovery of costs of providing service including, but not limited to, environmental and safety related expenditures for coal-fueled plants and other utility properties, power supply and natural gas supply costs, operating and maintenance expenses, additional utility-based investments, costs associated with the proposed retirement and decommissioning of facilities, MISO energy and transmission costs, costs associated with energy efficiency investments and state or federally mandated renewable resource standards, Smart Grid program costs, or expenditures subjected to tracking mechanisms. These orders could also result in adverse regulatory treatment of other matters including, but not limited to, prevention or curtailment of shutoffs for non-paying customers, Consumers' electric and gas revenue decoupling mechanisms, prevention or curtailment of rights to self-implement rate requests, refunds of previously self-implemented rates, or the allocation of the DOE settlement amount.

FERC authorizes certain subsidiaries of CMS Energy to sell electricity at market-based rates. Failure of CMS Energy and Consumers to obtain adequate rates or regulatory approvals in a timely manner could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations.

The various risks associated with the MPSC and FERC regulation of CMS Energy’s and Consumers’ businesses, which include the risk of adverse decisions in any number of rate or regulatory proceedings before either agency, could have a substantial negative effect on the companies’ investment plans and results of operations.

CMS Energy’s and Consumers’ financial statements, including their reported earnings, could be significantly impacted by convergence with International Financial Reporting Standards.

The Financial Accounting Standards Board is expected to make broad changes to GAAP as part of an overall initiative to converge U.S. standards with International Financial Reporting Standards. These changes could have significant impacts on the financial statements of CMS Energy and Consumers. Also, the SEC is considering incorporating International Financial Reporting Standards into the financial reporting system for U.S. registrants. A transition to International Financial Reporting Standards could significantly impact CMS Energy’s and Consumers’ financial results, since these standards differ from GAAP in many ways. One of the major differences is the lack of special accounting treatment for regulated activities under International Financial Reporting Standards, which could result in greater earnings volatility for CMS Energy and Consumers.

CMS Energy and Consumers are exposed to credit risk of those with whom they do business.

CMS Energy and Consumers are exposed to credit risk of counterparties with whom they do business. Adverse economic conditions or financial difficulties experienced by these counterparties could impair the ability of these counterparties to pay for CMS Energy’s and Consumers’ services or fulfill their contractual obligations, including performance and payment of damages. CMS Energy and Consumers depend on these counterparties to remit payments and perform services timely. Any delay or default in payment or performance of contractual obligations could have a material adverse effect on CMS Energy’s and Consumers’ liquidity, financial condition, and results of operations.

In recent years, the capital and credit markets have experienced unprecedented high levels of volatility and disruption. Market disruption and volatility could have a negative impact on CMS Energy’s and Consumers’ lenders, suppliers, customers, and other counterparties, causing them to fail to meet their obligations. Adverse economic conditions could also have a negative impact on the loan portfolio of CMS Energy’s banking subsidiary, EnerBank.

EnerBank must comply with governmental laws and regulations that are subject to change and may involve material costs or affect how EnerBank operates.

In 2010, the Dodd-Frank Act was passed into law. The Dodd-Frank Act is a sweeping piece of legislation, and the financial services industry is still assessing the impacts. Congress detailed some significant changes, but the Dodd-Frank Act leaves many details to be determined by regulation and further study. The full impact will not be fully known for months or even years, as regulations that are intended to implement the Dodd-Frank Act are adopted by the appropriate agencies, and as the text of the Dodd-Frank Act is analyzed by impacted stakeholders and possibly the courts. The Dodd-Frank Act also created the Bureau of Consumer Financial Protection, which is part of the Federal Reserve and has been granted significant rule-making authority in the area of consumer financial products and services. The direction that the Bureau of Consumer Financial Protection will take, the regulations it will adopt, and its interpretation of existing laws and regulations are not yet known.

Also, as required by the Dodd-Frank Act, the Government Accountability Office published a study of the various exemptions in the Bank Holding Company Act for certain types of depository institutions, including industrial banks such as EnerBank. CMS Energy is not regulated as a bank holding company as a result of such an exemption. It is too early to determine what impact, if any, this study will have on the continued availability of this exemption.

In addition, the Dodd-Frank Act added a new Section 13 to the Bank Holding Company Act. Known as the Volcker Rule, it generally restricts certain banking entities and their subsidiaries or affiliates from engaging in proprietary trading activities and owning equity in or sponsoring any private equity or hedge fund. The Volcker Rule becomes effective in July 2012. The implementing regulations for the Volcker Rule were issued in draft form by various regulatory agencies in October 2011. Under the proposed regulations, CMS Energy (and its affiliates) may be restricted from engaging in proprietary trading, investing in third party hedge or private equity funds, or sponsoring these funds unless CMS Energy qualifies for an exemption from the rule. CMS Energy cannot presently predict the full impact of the Volcker Rule on CMS Energy's or EnerBank's operations or financial condition.

Furthermore, effective July 2011, all companies that directly or indirectly control an FDIC-insured bank are required to serve as a source of financial strength for that institution. As a result, CMS Energy could be called upon by the FDIC to infuse additional capital into EnerBank to the extent that EnerBank fails to satisfy its capital requirements. In addition, CMS Energy is contractually required (i) to make cash capital contributions to EnerBank in the event that EnerBank does not maintain required minimum capital ratios and (ii) to provide EnerBank financial support, in an amount and duration as may be necessary for EnerBank to meet the cash needs of its depositors and other operations. EnerBank presently meets or exceeds all of these requirements.

CMS Energy could be required to pay cash to certain security holders in connection with the optional conversion of their convertible securities.

CMS Energy has issued two series of cash-convertible securities, of which an aggregate principal amount of $398 million was outstanding at December 31, 2011. If the trading price of CMS Energy's common stock exceeds specified amounts at the end of a particular fiscal quarter, then holders of one or both series of these convertible securities will have the option to convert their securities in the following fiscal quarter, with the principal amount payable in cash by CMS Energy. Accordingly, if these trading price minimums are satisfied and security holders exercise their conversion rights, CMS Energy may be required to outlay a significant amount of cash to those security holders, which could have a material adverse effect on CMS Energy's liquidity and financial condition.

There are risks associated with Consumers' significant capital investment program planned for the next five years.

Consumers' planned investments include the Smart Grid program, renewable power generation, gas compression, environmental controls, and other electric and gas infrastructure to upgrade delivery systems. The success of these investments depends on or could be affected by a variety of factors including, but not limited to, effective cost and schedule management during implementation, changes in commodity and other prices, operational performance, changes in environmental, legislative and regulatory requirements, and regulatory cost recovery. Consumers cannot predict the impact that any of these factors could have on the success of its capital investment program. It is possible that adverse events associated with these factors could have a material adverse effect on Consumers' liquidity, financial condition, and results of operations.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Descriptions of CMS Energy's and Consumers' properties are found in the following sections of Item 1. Business, all of which are incorporated by reference in this Item 2:

- Business Segments, "Consumers Electric Utility – Electric Utility Properties;"
- Business Segments, "Consumers Gas Utility – Gas Utility Properties;" and
- Business Segments, "Enterprises Segment – Non-Utility Operations and Investments – Independent Power Production."

ITEM 3. LEGAL PROCEEDINGS

For information regarding CMS Energy's, Consumers', and their subsidiaries' significant pending administrative and judicial proceedings involving regulatory, operating, transactional, environmental, and other matters, see Item 8. Financial Statements and Supplementary Data, Notes to the Consolidated Financial Statements, Note 5, Contingencies and Commitments and Note 6, Regulatory Matters.

CMS Energy, Consumers, and certain of their subsidiaries and affiliates are also parties to routine lawsuits and administrative proceedings incidental to their businesses involving, for example, claims for personal injury and property damage, contractual matters, various taxes, and rates and licensing.

ITEM 4. MINE SAFETY DISCLOSURES

Not applicable.

Table of Contents

PART II

ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

CMS Energy

CMS Energy's common stock is traded on the New York Stock Exchange. Market prices for CMS Energy's common stock and related security holder matters are contained in Item 8. Financial Statements and Supplementary Data, MD&A and Notes to the Consolidated Financial Statements, Note 22, Quarterly Financial and Common Stock Information (Unaudited), which are incorporated by reference herein. At February 10, 2012, the number of registered holders of CMS Energy's common stock totaled 40,543, based on the number of record holders. Presented in the following table are CMS Energy's dividends on its common stock:

	Per Share			
	February	May	August	November
2011	$ 0.21	$0.21	$0.21	$ 0.21
2010	0.15	0.15	0.15	0.21

Information regarding securities authorized for issuance under equity compensation plans is included in CMS Energy's definitive proxy statement, which is incorporated by reference herein. For additional information regarding dividends and dividend restrictions, see Item 8. Financial Statements and Supplementary Data, Notes to the Consolidated Financial Statements, Note 7, Financings and Capitalization.

Consumers

Consumers' common stock is privately held by its parent, CMS Energy, and does not trade in the public market. Presented in the following table are Consumers' cash dividends on its common stock:

	In Millions			
	February	May	August	November
2011	$ 104	$92	$ 96	$ 82
2010	114	54	91	99

For additional information regarding dividends and dividend restrictions, see Item 8. Financial Statements and Supplementary Data, Notes to the Consolidated Financial Statements, Note 7, Financings and Capitalization.

Table of Contents

ISSUER REPURCHASES OF EQUITY SECURITIES

Presented in the following table are CMS Energy’s repurchases of equity securities for the three months ended December 31, 2011:

Period	Total Number of Shares Purchased [1]	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Maximum Number of Shares that May Yet Be Purchased Under Publicly Announced Plans or Programs
October 1, 2011 to October 31, 2011	1,695	$ 19.79	—	—
November 1, 2011 to November 30, 2011	—	—	—	—
December 1, 2011 to December 31, 2011	—	—	—	—
Total	1,695	$ 19.79	—	—

[1] Common shares were purchased to satisfy CMS Energy’s minimum statutory income tax withholding obligation for common shares that have vested under the PISP. Shares repurchased have a value based on the market price on the vesting date.

UNREGISTERED SALES OF EQUITY SECURITIES

None.

ITEM 6. SELECTED FINANCIAL DATA

Selected financial information for CMS Energy and Consumers is contained in Item 8. Financial Statements and Supplementary Data, Selected Financial Information, which is incorporated by reference herein.

ITEM 7. MANAGEMENT’S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management’s discussion and analysis of financial condition and results of operations for CMS Energy and Consumers is contained in Item 8. Financial Statements and Supplementary Data, MD&A, which is incorporated by reference herein.

ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

Quantitative and qualitative disclosures about market risk for CMS Energy and Consumers are contained in Item 8. Financial Statements and Supplementary Data, MD&A, Critical Accounting Policies and Estimates, “Financial and Derivative Instruments and Market Risk Information,” which is incorporated by reference herein.

ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA

	Page
Index to Financial Statements:	
Selected Financial Information	
CMS Energy	46
Consumers	47
Management’s Discussion and Analysis	48
Consolidated Financial Statements	
CMS Energy	78
Consumers	87
Notes to the Consolidated Financial Statements	94
Reports of Independent Registered Public Accounting Firm	
CMS Energy	170
Consumers	171

(This page intentionally left blank)

Table of Contents

Selected Financial Information						CMS Energy Corporation
		2011	2010	2009	2008	2007
Operating revenue (in millions)	($)	6,503	6,432	6,205	6,807	6,451
Income (loss) from equity method investees (in millions)	($)	9	11	(2)	5	40
Income (loss) from continuing operations (in millions) [1]	($)	415	366	220	301	(120)
Income (loss) from discontinued operations (in millions)	($)	2	(23)	20	1	(110)
Net income (loss) available to common stockholders (in millions)	($)	415	324	218	284	(234)
Average common shares outstanding (in thousands)		250,824	231,473	227,169	225,671	224,473
Earnings (loss) from continuing operations per average common share						
CMS Energy — Basic	($)	1.65	1.50	0.87	1.25	(0.65)
— Diluted	($)	1.57	1.36	0.83	1.20	(0.65)
Earnings (loss) per average common share						
CMS Energy — Basic	($)	1.66	1.40	0.96	1.25	(1.04)
— Diluted	($)	1.58	1.28	0.91	1.20	(1.04)
Cash provided by operations (in millions)	($)	1,169	959	848	557	23
Capital expenditures, excluding assets placed under capital lease (in millions)	($)	882	821	818	792	1,263
Total assets (in millions)	($)	16,452	15,616	15,256	14,901	14,180
Long-term debt, excluding current portion (in millions)	($)	6,040	6,448	5,895	6,015	5,533
Non-current portion of capital and finance lease obligations (in millions)	($)	167	188	197	206	225
Total preferred stock (in millions)	($)	—	—	239	243	250
Cash dividends declared per common share	($)	0.84	0.66	0.50	0.36	0.20
Market price of common stock at year-end	($)	22.08	18.60	15.66	10.11	17.38
Book value per common share at year-end	($)	11.92	11.19	11.42	10.93	9.54
Number of employees at year-end (full-time equivalents)		7,727	7,822	8,039	7,970	7,898
Electric Utility Statistics						
Sales (billions of kWh)		38	38	36	37	39
Customers (in thousands)		1,791	1,792	1,796	1,814	1,799
Average sales rate per kWh	(¢)	10.80	10.54	9.81	9.48	8.65
Gas Utility Statistics						
Sales and transportation deliveries (bcf)		337	317	319	338	340
Customers (in thousands) [2]		1,713	1,711	1,708	1,713	1,710
Average sales rate per mcf	($)	9.98	10.60	10.73	11.25	10.66

[1] Income (loss) from continuing operations includes income (loss) attributable to noncontrolling interests of $2 million at December 31, 2011, $3 million at December 31, 2010, $11 million at December 31, 2009, $7 million at December 31, 2008, and $(8) million at December 31, 2007.

[2] Excludes off-system transportation customers.

Selected Financial Information						**Consumers Energy Company**
		2011	**2010**	**2009**	**2008**	**2007**
Operating revenue (in millions)	($)	6,253	6,156	5,963	6,421	6,064
Net income (in millions)	($)	467	434	293	364	312
Net income available to common stockholder (in millions)	($)	465	432	291	362	310
Cash provided by operations (in millions)	($)	1,323	910	922	873	440
Capital expenditures, excluding assets placed under capital lease (in millions)	($)	876	815	811	789	1,258
Total assets (in millions)	($)	15,662	14,839	14,622	14,246	13,401
Long-term debt, excluding current portion (in millions)	($)	3,987	4,488	4,063	3,908	3,692
Non-current portion of capital and finance lease obligations (in millions)	($)	167	188	197	206	225
Total preferred stock (in millions)	($)	44	44	44	44	44
Number of preferred stockholders at year-end		1,428	1,496	1,531	1,584	1,641
Number of employees at year-end (full-time equivalents)		7,435	7,522	7,755	7,697	7,614
Electric Utility Statistics						
Sales (billions of kWh)		38	38	36	37	39
Customers (in thousands)		1,791	1,792	1,796	1,814	1,799
Average sales rate per kWh	(¢)	10.80	10.54	9.81	9.48	8.65
Gas Utility Statistics						
Sales and transportation deliveries (bcf)		337	317	319	338	340
Customers (in thousands) [1]		1,713	1,711	1,708	1,713	1,710
Average sales rate per mcf	($)	9.98	10.60	10.73	11.25	10.66

[1] Excludes off-system transportation customers.

CMS Energy Corporation

Consumers Energy Company

MANAGEMENT'S DISCUSSION AND ANALYSIS

This MD&A is a combined report of CMS Energy and Consumers.

EXECUTIVE OVERVIEW

CMS Energy is an energy company operating primarily in Michigan. It is the parent holding company of several subsidiaries, including Consumers, an electric and gas utility, and CMS Enterprises, primarily a domestic independent power producer. Consumers' electric utility operations include the generation, purchase, distribution, and sale of electricity, and Consumers' gas utility operations include the purchase, transmission, storage, distribution, and sale of natural gas. Consumers' customer base consists of a mix of residential, commercial, and diversified industrial customers. CMS Enterprises, through its subsidiaries and equity investments, owns and operates power generation facilities.

CMS Energy and Consumers manage their businesses by the nature of services each provides. CMS Energy operates principally in three business segments: electric utility; gas utility; and enterprises, its non-utility investments and operations. Consumers operates principally in two business segments: electric utility and gas utility.

CMS Energy and Consumers earn revenue and generate cash from operations by providing electric and natural gas utility services; electric distribution and generation; gas transmission, storage, and distribution; and other energy-related services. Their businesses are affected primarily by:

- regulation and regulatory matters;
- economic conditions;
- weather;
- energy commodity prices;
- interest rates; and
- CMS Energy's and Consumers' securities' credit ratings.

CMS Energy's business strategy has emphasized the key elements depicted below:

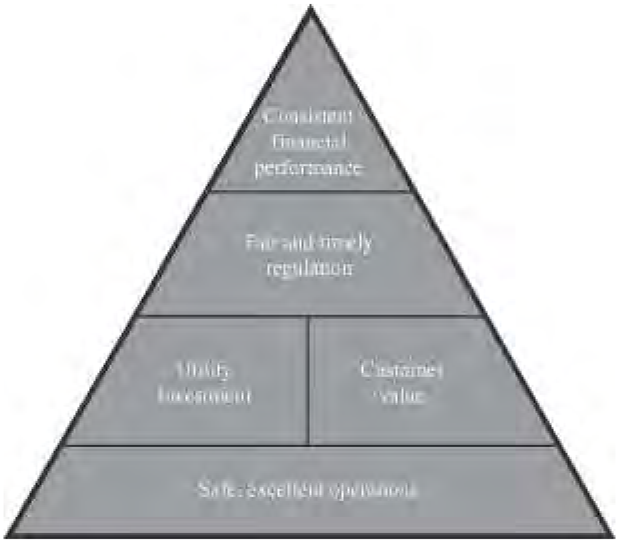


Table of Contents

SAFE, EXCELLENT OPERATIONS

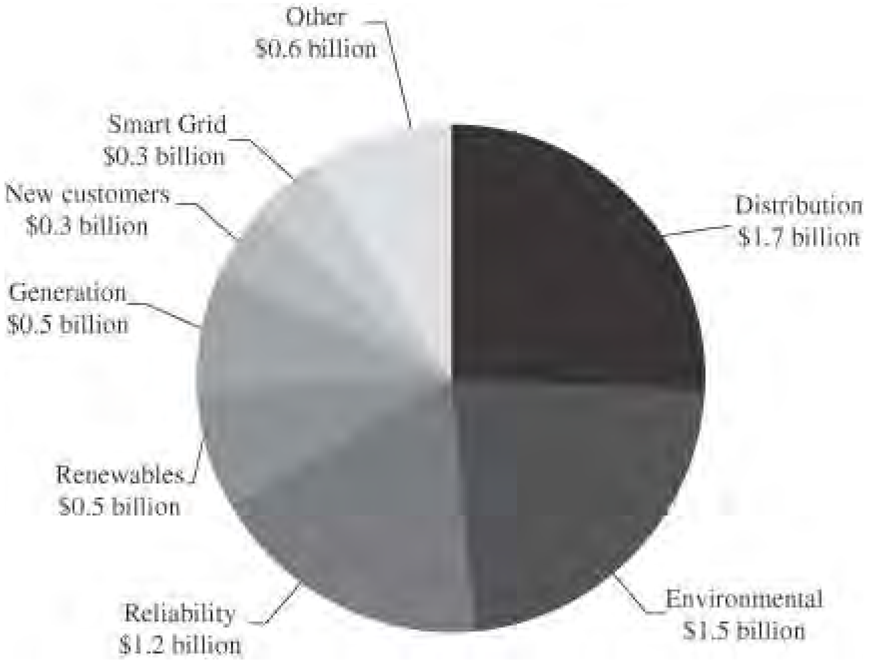
The safety and security of employees, customers, and the general public remain a priority of CMS Energy and Consumers. Accordingly, CMS Energy and Consumers have worked to integrate a set of safety principles into their business operations and culture. These principles include complying with applicable safety, health, and security regulations and implementing programs and processes aimed at continually improving safety and security conditions. From 2007 to 2011, Consumers achieved a 73 percent reduction in the annual number of recordable safety incidents.

CUSTOMER VALUE

Consumers is undertaking a number of initiatives that reflect its intensified customer focus. Consumers' planned investments in reliability are aimed at improving safety, reducing customer outage frequency, reducing repetitive outages, and increasing customer satisfaction. Consumers' productivity and efficiency improvements are expected to help keep annual base rate increases (excluding PSCR and GCR charges) at or below the average rate of inflation. Consumers considers these and other aspects of its customer value initiative to be important to its success.

UTILITY INVESTMENT

Consumers expects to make capital investments of $6.6 billion from 2012 through 2016, as presented in the following illustration:



Consumers has limited its capital investment program to those investments it believes are needed to provide safe, reliable, and efficient service to its customers. Consumers' capital investment program is expected to result in annual rate base growth of five to seven percent while allowing Consumers to maintain sustainable customer base rate increases (excluding PSCR and GCR charges) at or below the rate of inflation.

Among the key components of Consumers' investment program are projects that will enhance customer value. Consumers' planned distribution investments of $1.7 billion comprise $1.0 billion of electric utility projects to improve reliability and increase capacity and $0.7 billion of gas utility projects to increase capacity and deliverability and enhance pipeline integrity. Consumers also expects to spend $1.5 billion on environmental investments needed to comply with state and federal laws and regulations. An additional $1.2 billion of planned reliability investments at Consumers are aimed at reducing outages and improving customer satisfaction; these investments comprise $0.8 billion at the electric utility to strengthen circuits and substations, replace poles, and upgrade the Ludington pumped-storage plant, and $0.4 billion at the gas utility to replace mains and enhance transmission and storage systems.

Renewable energy projects are another major component of Consumers' planned capital investments. Consumers expects to spend $0.5 billion on renewable energy investments from 2012 through 2016. The 2008 Energy Law requires that at least ten percent of Consumers' electric sales volume come from renewable energy sources by 2015, and it includes requirements for specific capacity additions. Consumers has historically included renewable resources as part of its portfolio, with about five percent of its present power supply coming from such renewable sources as hydroelectric, landfill gas, biomass, and wind. In May 2011, the MPSC issued an order approving Consumers' amended renewable energy plan, with slight modifications. Under the amended plan, Consumers reduced the renewable energy surcharge by an annual amount of $54 million, to $23 million beginning in September 2011, reflecting lower-than-expected costs to comply with renewable energy requirements. In October 2011, Consumers filed an application for the biennial review and approval of its renewable energy plan. This filing proposes to reduce further the renewable energy surcharge by an annual amount of $3 million, to $20 million.

Consumers' Smart Grid program, with an estimated total project capital cost of $750 million, also represents a major capital investment. The full-scale deployment of advanced metering infrastructure is planned to begin in the second half of 2012 and to continue through 2019. Consumers has spent $140 million through 2011 on its Smart Grid program, and expects to spend an additional $260 million, following a phased approach, from 2012 through 2016.

In December 2011, Consumers formally canceled its plans to build an 830-MW coal-fueled plant at its Karn/Weadock generating complex. This decision reflects present and anticipated market conditions, new environmental standards, and Consumers' expectations of the generation sources that will provide the best energy value to customers. Consumers updated its capital investment plan in May 2010, when it deferred development of the now-canceled coal-fueled plant. Consumers plans to make other investments in place of the coal-fueled plant, including installing additional environmental controls on some of its existing coal-fired units and improving reliability.

Also in December 2011, Consumers announced plans to mothball seven of its smaller coal-fueled units effective January 2015. Consumers will continue to evaluate its options for the plants, which include:

- installing more environmental equipment on the units to reduce emissions further in order to meet new environmental standards and continue to operate the units;
- converting the units to natural gas instead of coal;
- decommissioning the units; and
- a combination of these three options, depending on customer needs and market conditions.

REGULATION

Regulatory matters are a key aspect of CMS Energy's and Consumers' businesses, particularly Consumers' rate cases and regulatory proceedings before the MPSC. Important regulatory events and developments are summarized below.

- *Gas Rate Cases:* In May 2011, the MPSC approved a settlement agreement in Consumers' 2010 gas rate case, authorizing a $31 million annual rate increase, based on a 10.5 percent authorized return on equity. Consumers filed a new general gas rate case in September 2011, seeking an annual rate increase of $49 million, based on a 10.7 percent authorized return on equity. In February 2012, Consumers filed testimony and exhibits with the MPSC in support of a self-implemented annual rate increase of $23 million, based on a 10.5 percent authorized return on equity.

- *Electric Rate Case:* In June 2011, Consumers filed a new general electric rate case seeking an annual rate increase of $195 million, based on a 10.7 percent authorized return on equity. In December 2011, the MPSC issued an order stating that it found good cause to prevent implementation of any amount over $118 million. Accordingly, Consumers self-implemented an annual rate increase of $118 million in December 2011, subject to refund with interest.
- *Revenue Decoupling Mechanisms:* In March 2011, Consumers filed its first reconciliation of the electric revenue decoupling mechanism, requesting recovery of $27 million from customers for the period December 2009 through November 2010. This mechanism, authorized under the MPSC's 2010 electric rate case order through November 2011, allowed Consumers to adjust future electric rates to compensate for changes in sales volumes resulting from the difference between the level of average sales per customer adopted in the order and actual average sales per customer, subject to certain conditions. In February 2012, the administrative law judge recommended that the MPSC approve Consumers' reconciliation of the electric revenue decoupling mechanism.

  Consumers is required to file its second electric revenue decoupling mechanism reconciliation for the period December 2010 through November 2011 by March 2012.
- In September 2011, Consumers filed its first reconciliation of the gas revenue decoupling mechanism, requesting recovery of $16 million from customers for the period June 2010 through May 2011. This mechanism, authorized under the MPSC's 2010 gas rate case order, allows Consumers to adjust future gas rates to compensate for changes in sales volumes resulting from the difference between the level of average sales per customer adopted in the order and actual average weather-adjusted sales per customer, subject to certain conditions.
- *DOE Settlement:* In July 2011, Consumers entered into an agreement with the DOE to settle for $120 million its claims related to the DOE's failure to accept spent nuclear fuel. In September 2011, Consumers filed an application with the MPSC regarding the allocation of the $120 million settlement amount.

Environmental regulation is another area of importance for CMS Energy and Consumers, and they are monitoring numerous legislative and regulatory initiatives to regulate greenhouse gases, as well as related litigation. The EPA has taken steps to regulate greenhouse gases under the Clean Air Act, and is expected to propose guidelines for states to regulate greenhouse gas emissions from new and existing sources.

In July 2011, the EPA finalized CSAPR, which replaces CAIR and requires Michigan and 27 other states to improve air quality by reducing power plant emissions that allegedly contribute to ground-level ozone and fine particle pollution in other downwind states. In December 2011, due to litigation surrounding CSAPR, the U.S. Court of Appeals for the D.C. Circuit issued a stay of CSAPR, stating that CAIR would remain in place while the court considers the issues.

Additionally, in December 2011, the EPA finalized its MACT emission standards for mercury and other hazardous air pollutants for electric generating units, calling the final rule MATS. Although numerous parties, including the State of Michigan, have sought to extend the deadline of MATS, it is expected to take effect in 2015. CMS Energy and Consumers are continuing to assess the impact and cost of complying with CSAPR and MATS.

FINANCIAL PERFORMANCE IN 2011 AND BEYOND

In 2011, CMS Energy's net income available to common stockholders was $415 million, and diluted EPS were $1.58. This compares with net income available to common stockholders of $324 million and diluted EPS of $1.28 in 2010. Among the factors contributing to CMS Energy's improved performance in 2011 were benefits from rate orders, which allowed CMS Energy to increase spending on forestry, equipment maintenance, and other operating activities aimed at improving reliability, and which offset higher depreciation expense from increased plant in service and higher service restoration costs as a result of a series of unusually severe storms in 2011. CMS Energy also recognized a tax benefit resulting from the enactment of the MCIT in May 2011.

A more detailed discussion of the factors affecting CMS Energy’s and Consumers’ performance can be found in the “Results of Operations” section that follows this Executive Overview.

CMS Energy and Consumers believe that economic conditions in Michigan are improving. Although Michigan’s economy continues to be affected by the recession and its impact on the state’s automotive industry and by high unemployment rates, there are indications that the recession has eased in Michigan. Consumers expects its electric sales to increase by about one percent annually through 2016, driven largely by the continued rise in industrial production. Consumers is projecting that its gas sales will remain stable through 2016. This outlook reflects growth in gas demand offset by energy efficiency and conservation.

As Consumers seeks to continue to receive fair and timely regulatory treatment, delivering customer value will remain a key strategic priority. To keep costs down for its utility customers, Consumers has set goals to achieve further annual productivity improvements. Additionally, Consumers will strive to give priority to capital investments that increase customer value or lower costs.

Consumers expects to continue to have sufficient capacity to fund its investment-based growth plans. CMS Energy also expects its sources of liquidity to remain sufficient to meet its cash requirements. CMS Energy and Consumers will continue to monitor developments in the financial and credit markets, as well as government policy responses to those developments, for potential implications for their businesses and their future financial needs.

RESULTS OF OPERATIONS

CMS Energy’s Consolidated Results of Operations

Years Ended December 31	2011	2010	2009
		In Millions, Except Per Share Amounts	
Net Income Available to Common Stockholders	$ 415	$ 324	$ 218
Basic Earnings Per Share	$1.66	$1.40	$0.96
Diluted Earnings Per Share	$1.58	$1.28	$0.91

Years Ended December 31	2011	2010	Change	2010	2009	Change
			In Millions			
Electric utility	$333	$ 303	$ 30	$ 303	$194	$ 109
Gas utility	130	127	3	127	96	31
Enterprises	32	36	(4)	36	(7)	43
Corporate interest and other	(82)	(119)	37	(119)	(85)	(34)
Discontinued operations	2	(23)	25	(23)	20	(43)
Net Income Available to Common Stockholders	$415	$ 324	$ 91	$ 324	$218	$ 106

Presented in the following table are specific after-tax changes to net income available to common stockholders for 2011 versus 2010:

	2011 better/ (worse) than 2010	
	In Millions	
Electric and gas rate orders	$ 72	
Gas sales	18	
Electric sales	4	
Distribution and service restoration cost	(37)	
Other, including depreciation and property tax	(31)	$ 26
Lower subsidiary earnings of enterprises segment		(22)
Cost of debt retirements and preferred stock redemptions	13	
Interest expense	10	
Other, mainly tax impacts	10	33
MCIT enactment	32	
Absence of 2010 increase in Bay Harbor environmental liability	25	
Absence of 2010 insurance settlement recovery	(31)	
Other, including absence of 2010 tax adjustments related to previously sold businesses	28	54
Total change		$ 91

Presented in the following table are specific after-tax changes to net income available to common stockholders for 2010 versus 2009:

	2010 better/(worse) than 2009		
		In Millions	
Electric and gas rate orders		$ 90	
Electric sales			
Weather	$ 52		
Customer shift to energy-only rates and to ROA	(36)		
Decoupling benefit	11	27	
Gas sales, primarily weather		(14)	
2009 net benefits, primarily asset sale gain and tax credit		(17)	
Write-off of proposed coal-fueled plant cost		(14)	
Other, mainly depreciation		(5)	$ 67
Subsidiary earnings of enterprises segment			13
Cost of debt retirements and preferred stock redemptions, net		(20)	
Interest expense		(9)	
Other, mainly tax adjustments		(6)	(35)
2009 Big Rock decommissioning refund		79	
Insurance settlement recovery		31	
2009 gain on indemnity expiration		(31)	
Other, including increase in Bay Harbor environmental liability		(18)	61
Total change			$106

CONSUMERS' ELECTRIC UTILITY RESULTS OF OPERATIONS

Years Ended December 31	2011	2010	Change	2010	2009	Change
			In Millions			
Net Income Available to Common Stockholders	$333	$303	$ 30	$303	$194	$ 109
Reasons for the change						
Electric deliveries and rate increases			$ 25			$ 266
Power supply costs and related revenue			9			(7)
Other income, net of expenses			(16)			(27)
Maintenance and other operating expenses			(31)			(59)
Depreciation and amortization			38			(9)
General taxes			1			2
Interest charges			8			23
Income taxes			(4)			(80)
Total change			$ 30			$ 109

Electric deliveries and rate increases: For 2011, electric delivery revenues increased $25 million compared with 2010. This variance was due to additional revenues of $92 million resulting from a November 2010 rate increase and a $20 million increase in other revenues, offset largely by the absence, in 2011, of $87 million of surcharges in 2010 to recover retirement benefit expenses and certain regulatory assets. Overall, deliveries to end-use customers were 37.8 billion kWh in 2011 and 37.7 billion kWh in 2010.

For 2010, electric delivery revenues increased $266 million compared with 2009. This variance included $84 million associated with favorable weather in 2010, offset partially by $40 million of decreased demand revenues and $19 million from lower customer usage. Additionally, revenues increased $32 million due to surcharges from MPSC orders allowing recovery of retirement benefit expenses and $100 million from authorized rate increases in November 2010 and November 2009. Revenues also increased $99 million due to the absence of a refund ordered in 2009 related to the Big Rock decommissioning case. Other miscellaneous revenue increases totaled $10 million. Overall, deliveries to end-use customers were 37.7 billion kWh in 2010 and 35.8 billion kWh in 2009.

Other income, net of expenses: For 2011, other income decreased $16 million compared with 2010, due to a reduction in the return on certain regulatory assets as a result of their declining balances.

For 2010, other income decreased $27 million compared with 2009. This decrease was due primarily to an $8 million reduction in the return on certain regulatory assets as a result of their declining balances and to the absence, in 2010, of $9 million of gains recognized on land sales in 2009.

Maintenance and other operating expenses: For 2011, maintenance and other operating expenses increased $31 million compared with 2010. The increase was due to $28 million of higher service restoration costs, caused by a series of unusually severe storms in 2011, a $15 million increase in energy optimization program costs, and an $11 million increase in uncollectible accounts expense. Additionally, forestry, plant maintenance, and other operating expenses increased $31 million in 2011. These increases were offset partially by the absence, in 2011, of $32 million of retirement benefit expenses that were recovered in revenues in 2010 and a $22 million impairment charge related to Consumers' 2010 decision to defer the development of its proposed coal-fueled plant. In December 2011, Consumers' formally cancelled its plans to build the plant.

For 2010, maintenance and other operating expenses increased $59 million compared with 2009. The increase was due primarily to $32 million of higher retirement benefit expenses that were recovered in revenues in 2010 and a $22 million impairment charge related to Consumers' 2010 decision to defer the development of its proposed coal-fueled plant.

Depreciation and amortization: For 2011, depreciation and amortization expense decreased $38 million compared with 2010, due to lower amortization expense on certain regulatory assets, offset partially by higher depreciation expense from increased plant in service.

Interest charges: For 2011, interest charges decreased $8 million compared with 2010, primarily from the absence, in 2011, of interest expense on a Michigan use tax assessment.

For 2010, interest charges decreased $23 million compared with 2009. The decrease was due to the absence, in 2010, of $31 million of interest expense associated with the 2009 Big Rock decommissioning order, offset partially by an $8 million increase in other interest charges in 2010, including interest expense on a Michigan use tax assessment.

Income taxes: For 2011, income taxes increased $4 million compared with 2010, due to higher electric utility earnings, offset partially by $6 million of benefits including the treatment of plant, property, and equipment, as required by MPSC orders.

For 2010, income taxes increased $80 million compared with 2009, due to higher electric utility earnings.

CONSUMERS' GAS UTILITY RESULTS OF OPERATIONS

Years Ended December 31	2011	2010	Change	2010	2009	Change
			In Millions			
Net Income Available to Common Stockholders	$130	$127	$ 3	$127	$96	$ 31
Reasons for the change						
Gas deliveries and rate increases			$ 64			$ 60
Other income, net of expenses			(9)			(2)
Maintenance and other operating expenses			(34)			(7)
Depreciation and amortization			(8)			(4)
General taxes			(3)			2
Interest charges			3			(7)
Income taxes			(10)			(11)
Total change			$ 3			$ 31

Gas deliveries and rate increases: For 2011, gas delivery revenues increased $64 million compared with 2010. This increase reflected $11 million in additional revenues from a May 2011 rate increase and $28 million from higher customer usage, of which $16 million was due to colder weather in 2011. In addition, surcharge and other miscellaneous revenues increased $25 million. Gas deliveries, including miscellaneous transportation to end-use customers, were 287.3 bcf in 2011, an increase of 14.2 bcf, or 5.2 percent, compared with 2010.

For 2010, gas delivery revenues increased $60 million compared with 2009, due to additional revenues of $54 million from an authorized rate increase in May 2010. In addition, surcharge and other miscellaneous revenues increased $30 million. These increases were offset partially by a $24 million reduction due to unfavorable weather in 2010. Gas deliveries, including miscellaneous transportation to end-use customers, were 273.1 bcf in 2010, a decrease of 11.2 bcf, or 3.9 percent, compared with 2009.

Other income, net of expenses: For 2011, other income decreased $9 million compared with 2010, due primarily to a reduction in interest income related to secured lending agreements.

Maintenance and other operating expenses: For 2011, maintenance and other operating expenses increased $34 million compared with 2010. The increase was due to $24 million of higher energy optimization program costs, a $6 million increase in uncollectible accounts expense, and $4 million in higher distribution operating expenses.

For 2010, maintenance and other operating expenses increased $7 million compared with 2009, due primarily to higher energy optimization program costs.

Depreciation and amortization: For 2011, depreciation and amortization expense increased $8 million compared with 2010, and for 2010, depreciation and amortization expense increased $4 million compared with 2009. Both increases were due to higher depreciation expense from increased plant in service.

Income taxes: For 2011, income taxes increased $10 million compared with 2010, due to higher gas utility earnings and the absence, in 2011, of a benefit related to the Medicare Part D subsidy.

For 2010, income taxes increased $11 million compared with 2009, due to higher gas utility earnings.

ENTERPRISES RESULTS OF OPERATIONS

Years Ended December 31	2011	2010	Change	2010	2009	Change
			In Millions			
Net Income (Loss) Available to Common Stockholders	$32	$36	$ (4)	$36	$ (7)	$ 43

For 2011, net income of the enterprises segment decreased $4 million compared with 2010, due to the absence, in 2011, of a $31 million insurance settlement recovery and the absence of a $9 million benefit related to the MBT, lower electric revenues of $14 million, and lower mark-to-market gains of $3 million. These after-tax decreases were offset largely by a $28 million income tax benefit resulting from the enactment of the MCIT in May 2011 and by the absence, in 2011, of a $25 million increase in the environmental remediation liability associated with Bay Harbor.

For 2010, the enterprises segment reported net income of $36 million, compared with a net loss of $7 million for 2009. The $43 million change reflected income of $31 million from the settlement of an insurance claim related to a previously sold asset and a $9 million benefit related to the MBT. Additionally, income increased $6 million due to higher earnings from gas and power sales offset partially by higher maintenance and other operating expenses. These after-tax increases were offset slightly by a $3 million decrease associated with Bay Harbor; in 2010, the enterprises segment recorded a $25 million after-tax increase in the environmental remediation liability associated with Bay Harbor, compared with a $22 million after-tax increase in 2009.

For further details about the enactment of the MCIT, see Note 13, Income Taxes. For further details regarding Bay Harbor, see Note 5, Contingencies and Commitments.

CORPORATE INTEREST AND OTHER RESULTS OF OPERATIONS

Years Ended December 31	2011	2010	Change	2010	2009	Change
			In Millions			
Net Loss Available to Common Stockholders	$(82)	$(119)	$ 37	$(119)	$(85)	$ (34)

For 2011, corporate interest and other net expenses decreased $37 million compared with 2010, due to a $10 million after-tax decrease in interest expense, reflecting reduced borrowings at lower interest rates, the absence, in 2011, of an $8 million after-tax charge recorded in 2010 for deferred issuance costs on the conversion of preferred stock, and a $5 million after-tax reduction in premiums paid on the early retirement of debt. Also contributing to the decrease were lower income tax expense resulting partially from the enactment of the MCIT in May 2011 and a $4 million benefit from the impact of a final Michigan single business tax assessment for the years 2004 through 2007 that resulted in a tax deficiency less than the amount previously accrued.

For 2010, corporate interest and other net expenses increased $34 million compared with 2009, due to the absence, in 2010, of an $18 million gain recognized in 2009 on the early retirement of long-term debt related parties and $15 million in higher expense related primarily to the MBT. Additionally, interest expense increased $10 million due to higher debt levels at higher average interest rates. These items were offset partially by $9 million of higher net earnings at EnerBank and lower legal fees.

DISCONTINUED OPERATIONS

For 2011, income of $2 million was recorded from discontinued operations due to a legal settlement, compared with a loss from discontinued operations of $23 million in 2010 related to prior asset sales.

For 2010, a loss of $23 million was recorded from discontinued operations, compared with income of $20 million for 2009. The $43 million change was due primarily to a $28 million gain recognized in 2009 on the expiration of an indemnity for a 2007 asset sale and $10 million of additional tax expense in 2010 resulting from an IRS audit adjustment related to a 2003 asset sale.

For further details regarding discontinued operations, see Note 20, Asset Sales, Discontinued Operations, and Impairment Charges.

CASH POSITION, INVESTING, AND FINANCING

At December 31, 2011, CMS Energy had $188 million of consolidated cash and cash equivalents, which included $27 million of restricted cash and cash equivalents and Consumers had $111 million of consolidated cash and cash equivalents, which included $26 million of restricted cash and cash equivalents.

OPERATING ACTIVITIES

Presented in the following table are specific components of net cash provided by operating activities for the years ended December 31, 2011 and 2010:

Years Ended December 31	2011	2010	Change
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Net income	$ 417	$ 343	$ 74
Non-cash transactions [1]	981	1,112	(131)
	$1,398	$1,455	$ (57)
Sale of gas	682	756	(74)
Purchase of gas	(675)	(663)	(12)
Accounts receivable sales, net	—	(50)	50
Postretirement benefits contributions	(323)	(463)	140
Change in other core working capital [2]	113	(22)	135
Other changes in assets and liabilities, net	(26)	(54)	28
Net cash provided by operating activities	$1,169	$ 959	$ 210
CONSUMERS			
Net income	$ 467	$ 434	$ 33
Non-cash transactions [1]	947	1,103	(156)
	$1,414	$1,537	$ (123)
Sale of gas	682	756	(74)
Purchase of gas	(675)	(663)	(12)
Accounts receivable sales, net	—	(50)	50
Postretirement benefits contributions	(315)	(447)	132
Change in other core working capital [2]	116	(19)	135
Other changes in assets and liabilities, net	101	(204)	305
Net cash provided by operating activities	$1,323	$ 910	$ 413

[1] Non-cash transactions comprise depreciation and amortization, changes in deferred income taxes, postretirement benefits expense, and other non-cash items.

[2] Other core working capital comprises other changes in accounts receivable and accrued revenues, inventories, and accounts payable.

For the year ended December 31, 2011, net cash provided by operating activities at CMS Energy increased $210 million compared with 2010. The increase was due primarily to lower pension contributions and decreased refunds paid to customers.

For the year ended December 31, 2011, net cash provided by operating activities at Consumers increased $413 million compared with 2010. The increase was due primarily to lower pension contributions, decreased refunds paid to customers, and lower income taxes paid to CMS Energy. These changes were offset partially by the impact of lower gas prices on inventory sold in 2011.

Presented in the following table are specific components of net cash provided by operating activities for the years ended December 31, 2010 and 2009:

Years Ended December 31	2010	2009	Change
		In Millions	
CMS Energy, including Consumers			
Net income	$ 343	$ 240	$ 103
Non-cash transactions [1]	1,112	877	235
	$1,455	$1,117	$ 338
Sale of gas	756	845	(89)
Purchase of gas	(663)	(718)	55
Accounts receivable sales, net	(50)	(120)	70
Postretirement benefits contributions	(463)	(262)	(201)
Change in other core working capital [2]	(22)	(62)	40
Other changes in assets and liabilities, net	(54)	48	(102)
Net cash provided by operating activities	$ 959	$ 848	$ 111
Consumers			
Net income	$ 434	$ 293	$ 141
Non-cash transactions [1]	1,103	841	262
	$1,537	$1,134	$ 403
Sale of gas	756	845	(89)
Purchase of gas	(663)	(718)	55
Accounts receivable sales, net	(50)	(120)	70
Postretirement benefits contributions	(447)	(254)	(193)
Change in other core working capital [2]	(19)	(58)	39
Other changes in assets and liabilities, net	(204)	93	(297)
Net cash provided by operating activities	$ 910	$ 922	$ (12)

[1] Non-cash transactions comprise depreciation and amortization, changes in deferred income taxes, postretirement benefits expense, and other non-cash items.

[2] Other core working capital comprises other changes in accounts receivable and accrued revenues, inventories, and accounts payable.

For the year ended December 31, 2010, net cash provided by operating activities at CMS Energy increased $111 million compared with 2009. The increase was due primarily to higher net income, net of non-cash transactions, offset partially by higher pension contributions.

For the year ended December 31, 2010, net cash provided by operating activities at Consumers decreased $12 million compared with 2009. The decrease was due primarily to higher pension contributions and refunds to customers. These changes were offset largely by increased billings due to regulatory actions.

Table of Contents

INVESTING ACTIVITIES

Presented in the following table are specific components of net cash used in investing activities for the years ended December 31, 2011 and 2010:

Years Ended December 31	2011	2010	Change
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Capital expenditures	$ (882)	$ (821)	$ (61)
Cash effect of deconsolidation of partnerships	—	(10)	10
Increase in loans and notes receivable	(100)	(131)	31
Costs to retire property and other	(76)	(41)	(35)
Net cash used in investing activities	$(1,058)	$(1,003)	$ (55)
CONSUMERS			
Capital expenditures	$ (876)	$ (815)	$ (61)
Costs to retire property and other	(75)	(44)	(31)
Net cash used in investing activities	$ (951)	$ (859)	$ (92)

For the year ended December 31, 2011, net cash used in investing activities at CMS Energy increased $55 million compared with 2010. The change was due primarily to increases in capital expenditures and costs to retire property, offset partially by slower growth in EnerBank consumer lending. For the year ended December 31, 2011, net cash used in investing activities at Consumers increased $92 million compared with 2010, due to increases in capital expenditures and costs to retire property.

Presented in the following table are specific components of net cash used in investing activities for the years ended December 31, 2010 and 2009:

Years Ended December 31	2010	2009	Change
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Capital expenditures	$ (821)	$(818)	$ (3)
Cash effect of deconsolidation of partnerships	(10)	—	(10)
Increase in loans and notes receivable	(131)	(83)	(48)
Costs to retire property and other	(41)	(34)	(7)
Net cash used in investing activities	$(1,003)	$(935)	$ (68)
CONSUMERS			
Capital expenditures	$ (815)	$(811)	$ (4)
Costs to retire property and other	(44)	(39)	(5)
Net cash used in investing activities	$ (859)	$(850)	$ (9)

For the year ended December 31, 2010, net cash used in investing activities at CMS Energy increased $68 million compared with 2009. The change was due primarily to an increase in EnerBank consumer lending. For the year ended December 31, 2010, net cash used in investing activities at Consumers increased $9 million compared with 2009, due to increases in capital expenditures and costs to retire property.

FINANCING ACTIVITIES

Presented in the following table are specific components of net cash (used in) provided by financing activities for the years ended December 31, 2011 and 2010:

Years Ended December 31	2011	2010	Change
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Issuance of FMBs, senior notes, and other debt	$ 725	$ 1,704	$ (979)
Retirement of debt and other debt maturity payments	(665)	(1,033)	368
Payment of DOE liability	(43)	—	(43)
Payments of common and preferred stock dividends	(211)	(162)	(49)
Redemption of preferred stock	—	(239)	239
Changes in EnerBank notes payable	—	(40)	40
Other financing activities	(5)	(28)	23
Net cash (used in) provided by financing activities	$(199)	$ 202	$ (401)
CONSUMERS			
Issuance of FMBs	$ —	$ 600	$ (600)
Retirement of debt and other debt maturity payments	(37)	(482)	445
Payment of DOE liability	(43)	—	(43)
Payments of common and preferred stock dividends	(376)	(360)	(16)
Stockholder's contribution from CMS Energy	125	250	(125)
Other financing activities	(27)	(27)	—
Net cash used in financing activities	$(358)	$ (19)	$ (339)

For the year ended December 31, 2011, net cash used in financing activities at CMS Energy increased $401 million compared to 2010. The change was due primarily to a decrease in net proceeds from borrowings, offset partially by the absence, in 2011, of preferred stock redemptions in 2010.

For the year ended December 31, 2011, net cash used in financing activities at Consumers increased $339 million compared with 2010. The change was due primarily to a decrease in net proceeds from borrowings by Consumers and a reduced stockholder's contribution from CMS Energy.

Table of Contents

Presented in the following table are specific components of net cash provided by (used in) financing activities for the years ended December 31, 2010 and 2009:

Years Ended December 31	2010	2009	Change
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Issuance of FMBs, senior notes, and other debt	$ 1,704	$ 1,374	$ 330
Retirement of debt and other debt maturity payments	(1,033)	(1,271)	238
Payments of common and preferred stock dividends	(162)	(125)	(37)
Redemption of preferred stock	(239)	(4)	(235)
Changes in EnerBank notes payable	(40)	40	(80)
Other financing activities	(28)	(49)	21
Net cash provided by (used in) financing activities	$ 202	$ (35)	$ 237
CONSUMERS			
Issuance of FMBs	$ 600	$ 500	$ 100
Retirement of debt and other debt maturity payments	(482)	(387)	(95)
Payments of common and preferred stock dividends	(360)	(287)	(73)
Stockholder's contribution from CMS Energy	250	100	150
Other financing activities	(27)	(28)	1
Net cash used in financing activities	$ (19)	$ (102)	$ 83

For the year ended December 31, 2010, net cash provided by financing activities at CMS Energy increased $237 million compared to 2009. The change was due primarily to an increase in net proceeds from borrowings by CMS Energy, offset partially by a decrease in borrowings by EnerBank.

For the year ended December 31, 2010, net cash used in financing activities at Consumers decreased $83 million compared with 2009. The change was due primarily to a larger stockholder's contribution from CMS Energy, offset partially by an increase in common dividend payments.

For additional details on long-term debt activity, see Note 7, Financings and Capitalization.

CAPITAL RESOURCES AND LIQUIDITY

CMS Energy uses dividends from its subsidiaries and external financing and capital transactions to invest in its utility and non-utility businesses, retire debt, pay dividends, and fund its other obligations. The ability of CMS Energy's subsidiaries, including Consumers, to pay dividends to CMS Energy depends upon each subsidiary's revenues, earnings, cash needs, and other factors. In addition, Consumers' ability to pay dividends is restricted by certain terms included in its articles of incorporation and potentially by provisions under the Federal Power Act and the Natural Gas Act and FERC requirements. For additional details on Consumers' dividend restrictions, see Note 7, Financings and Capitalization, "Dividend Restrictions." For the year ended December 31, 2011, Consumers paid $374 million in common stock dividends to CMS Energy.

Consumers uses cash flows generated from operations and external financing transactions, as well as stockholder's contributions from CMS Energy, to fund capital expenditures, retire debt, pay dividends, contribute to its employee benefit plans, and fund its other obligations.

CMS Energy's and Consumers' access to the financial and capital markets depends on their credit ratings and on market conditions. As evidenced by past financing transactions, CMS Energy and Consumers have had ready access to these markets and, barring major market dislocations or disruptions, they expect to continue to have such access. If access to these markets were to become diminished or otherwise restricted, however, CMS Energy and Consumers would implement contingency plans to address debt maturities, which could include reduced capital spending. CMS Energy and Consumers had the following secured revolving credit facilities available at December 31, 2011:

	Amount of Facility	Amount Borrowed	Letters of Credit Outstanding	Amount Available	Expiration Date
			In Millions		
CMS ENERGY					
Revolving credit facility [1]	$ 550	$ —	$ 3	$ 547	March 2016
CONSUMERS					
Revolving credit facility [2,3]	$ 500	$ —	$ 1	$ 499	March 2016
Revolving credit facility [3]	150	—	—	150	August 2013
Revolving credit facility [3]	30	—	30	—	September 2014

[1] On March 31, 2011, CMS Energy entered into a $550 million secured revolving credit facility with a consortium of banks. This facility has a five-year term and replaced CMS Energy's revolving credit facility that was set to expire in 2012. Obligations under this facility are secured by Consumers common stock.

[2] On March 31, 2011, Consumers entered into a $500 million secured revolving credit facility with a consortium of banks. This facility has a five-year term and replaced Consumers' revolving credit facility that was set to expire in 2012.

[3] Obligations under this facility are secured by FMBs of Consumers.

CMS Energy and Consumers use these credit facilities for general working capital purposes and to issue letters of credit. An additional source of liquidity is Consumers' revolving accounts receivable sales program, which allows it to transfer up to $250 million of accounts receivable as a secured borrowing. At December 31, 2011, $250 million of accounts receivable were eligible for transfer under this program.

In December 2011, CMS Energy entered into a $180 million unsecured term loan credit agreement. The agreement provides for delayed draws through July 20, 2012. Outstanding borrowings will bear interest at an annual interest rate of LIBOR plus 2.5 percent and will mature in December 2016. CMS Energy expects to use the proceeds of the draws to finance the redemption of $150 million principal amount of the outstanding CMS Energy floating rate senior notes due 2013 and $29 million principal amount of the 7.75 percent Trust Preferred Securities. The Trust Preferred Securities were called for redemption in January 2012, to be redeemed in late February 2012.

Certain of CMS Energy's and Consumers' credit agreements and debt indentures contain covenants that require CMS Energy and Consumers to maintain certain financial ratios. CMS Energy's $550 million revolving credit agreement and its $180 million term loan credit agreement specify a maximum debt-to-EBITDA ratio, as defined therein. Certain of CMS Energy's senior notes indenture supplements and its $180 million term loan credit agreement specify a minimum interest coverage ratio, as defined therein. Consumers' revolving credit agreements and its revolving accounts receivable purchase agreement specify a maximum debt-to-capital ratio, as defined therein. At December 31, 2011, no events of default had occurred with respect to any debt covenants contained in CMS Energy and Consumers' credit agreements or debt indentures. CMS Energy and Consumers were each in compliance with these limits as of December 31, 2011, as presented in the following table:

Credit Agreement or Facility	Description	Limit	Ratio at December 31, 2011
CMS Energy			
$550 million revolving credit agreement and $180 million term loan credit agreement	Debt to EBITDA	≤ 6.0 to 1.0	4.7 to 1.0
Senior notes indenture	Interest Coverage	> 1.6 to 1.0	3.8 to 1.0
$180 million term loan credit agreement	Interest Coverage	> 2.0 to 1.0	3.8 to 1.0
Consumers			
$500 million and $30 million revolving credit agreements	Debt to Capital	≤ 0.65 to 1.0	0.49 to 1.0
$150 million revolving credit agreement and $250 million accounts receivable purchase agreement	Debt to Capital	≤ 0.70 to 1.0	0.49 to 1.0

Components of CMS Energy's and Consumers' cash management plan include controlling operating expenses and capital expenditures and evaluating market conditions for financing and refinancing opportunities. CMS Energy and Consumers believe that their present level of cash and their expected cash flows from operating activities, together with their access to sources of liquidity, will be sufficient to fund their contractual obligations for 2012 and beyond.

Contractual Obligations : Presented in the following table are CMS Energy's and Consumers' contractual cash obligations for each of the periods presented. The table excludes all amounts classified as current liabilities on CMS Energy's and Consumers' consolidated balance sheets, other than the current portion of long-term debt and capital and finance leases.

	Payments Due				
December 31, 2011	Total	Less Than One Year	One to Three Years	Three to Five Years	More Than Five Years
			In Millions		
CMS Energy, including Consumers					
Long-term debt	$ 7,093	$ 635	$ 1,158	$ 1,094	$ 4,206
Interest payments on long-term debt	2,577	348	631	546	1,052
Capital and finance leases	191	28	43	39	81
Interest payments on capital and finance leases	85	13	19	17	36
Operating leases	180	27	46	39	68
Purchase obligations [1]	14,966	1,868	2,131	2,020	8,947
Purchase obligations — related parties [1]	1,686	92	187	204	1,203
Total contractual obligations	$26,778	$ 3,011	$ 4,215	$ 3,959	$ 15,593
Consumers					
Long-term debt	$ 4,329	$ 339	$ 659	$ 673	$ 2,658
Interest payments on long-term debt	1,659	228	398	341	692
Capital and finance leases	191	28	43	39	81
Interest payments on capital and finance leases	85	13	19	17	36
Operating leases	180	27	46	39	68
Purchase obligations [1]	14,966	1,868	2,131	2,020	8,947
Purchase obligations — related parties [1]	1,686	92	187	204	1,203
Total contractual obligations	$23,096	$ 2,595	$ 3,483	$ 3,333	$ 13,685

[1] Long-term contracts for purchase of commodities and services. These obligations include operating contracts used for the purchase of capacity and energy from PURPA qualifying facilities. These commodities and services include natural gas and associated transportation, electricity, and coal and associated transportation.

Retirement benefits are not included in the table above. For details related to benefit payments, see Note 12, Retirement Benefits.

Off-Balance-Sheet Arrangements : CMS Energy, Consumers, and certain of their subsidiaries also enter into various arrangements in the normal course of business to facilitate commercial transactions with third parties. These arrangements include indemnities, surety bonds, letters of credit, and financial and performance guarantees. Indemnities are usually agreements to reimburse a counterparty that may incur losses due to outside claims or breach of contract terms. The maximum payment that could be required under a number of these indemnity obligations is not estimable; the maximum obligation under indemnities for which such amounts were estimable was $512 million at December 31, 2011. While CMS Energy and Consumers believe it is unlikely that they will incur any material losses related to indemnities they have not recorded as liabilities, they cannot predict the impact of these contingent obligations on their liquidity and financial condition. For additional details on these and other guarantee arrangements, see Note 5, Contingencies and Commitments, "Guarantees."

Capital Expenditures: Over the next five years, CMS Energy and Consumers expect to make capital investments of $6.6 billion. CMS Energy and Consumers may revise their forecasts of capital expenditures periodically due to a number of factors, including environmental regulations, business opportunities, market volatility, economic trends, and the ability to access capital. Presented in the following table are CMS Energy's and Consumers' estimated capital expenditures, including lease commitments, for 2012 through 2016:

	2012	2013	2014	2015	2016	Five Years Total
			In Millions			
CMS ENERGY, INCLUDING CONSUMERS						
Consumers	$1,400	$1,250	$1,380	$1,430	$1,170	$ 6,630
Enterprises	9	1	1	1	1	13
Total CMS Energy	$1,409	$1,251	$1,381	$1,431	$1,171	$ 6,643
CONSUMERS						
Electric utility operations [1,2]	$1,080	$ 960	$1,090	$1,150	$ 890	$ 5,170
Gas utility operations [2]	320	290	290	280	280	1,460
Total Consumers	$1,400	$1,250	$1,380	$1,430	$1,170	$ 6,630

[1] These amounts include estimates for capital expenditures that may be required by environmental laws, regulations, or potential consent decrees.

[2] These amounts include estimates for capital expenditures related to information technology projects, facility improvements, and vehicle leasing.

OUTLOOK

Several business trends and uncertainties may affect CMS Energy's and Consumers' financial condition and results of operations. These trends and uncertainties could have a material impact on CMS Energy's and Consumers' consolidated income, cash flows, or financial position. For additional details regarding these and other uncertainties, see Forward-Looking Statements and Information; Item 1A. Risk Factors; and Note 5, Contingencies and Commitments.

CONSUMERS' ELECTRIC UTILITY BUSINESS OUTLOOK AND UNCERTAINTIES

Balanced Energy Initiative: Consumers' balanced energy initiative is a comprehensive energy resource plan designed to meet the short-term and long-term electricity needs of its customers through:

- energy efficiency;
- demand management;
- expanded use of renewable energy;
- development of new power plants;
- power purchases to complement existing generating sources;
- continued operation of existing units; and
- potential retirement or mothballing of older generating units.

In December 2011, Consumers formally canceled its plans to build an 830-MW coal-fueled plant at its Karn/Weadock generating complex. This decision reflects present and anticipated market conditions, new environmental standards, and Consumers' expectations of the generation sources that will provide the best energy value to customers. Consumers also plans to mothball seven of its smaller coal-fueled units effective January 2015. Consumers will continue to evaluate its options for the plants, which include:

- installing more environmental equipment on the units to reduce emissions further in order to meet new environmental standards and continue to operate the units;

- converting the units to natural gas instead of coal;
- decommissioning the units; and
- a combination of these three options, depending on customer needs and market conditions.

Renewable Energy Plan: Consumers' renewable energy plan details how Consumers will meet REC and capacity standards prescribed by the 2008 Energy Law. This law requires Consumers to obtain RECs in an amount equal to at least ten percent of its electric sales volume (estimated to be 3.5 million RECs annually) by 2015. RECs represent proof that the associated electricity was generated from a renewable energy resource. Under its renewable energy plan, Consumers expects to secure its renewable energy requirement each year with a combination of newly generated RECs and previously generated RECs carried over from prior years. At December 31, 2011, the combination of these sources represented 84 percent of Consumers' 2015 REC requirement.

The 2008 Energy Law also requires Consumers to obtain 500 MW of capacity from renewable energy resources by 2015, either through generation resources owned by Consumers or through agreements to purchase capacity from other parties. To meet its renewable capacity requirements, Consumers expects to add more than 500 MW of owned or contracted renewable capacity by 2015. Through December 2011, Consumers has contracted for the purchase of 297 MW of nameplate capacity from renewable energy suppliers, which represents 59 percent of the 2015 renewable capacity requirement.

Consumers has secured more than 82,000 acres of land easements in Michigan's Huron, Mason, and Tuscola Counties for the potential development of wind generation, and is now collecting wind speed and other meteorological data at those sites. Consumers has entered into construction and supply contracts as well as a contract to purchase wind turbine generators for the construction of Lake Winds Energy Park, a 100-MW wind park in Mason County, which Consumers expects to be operational in late 2012. In July 2011, the Mason County Planning Commission voted in favor of granting a special land use permit for the construction of Lake Winds Energy Park. The actions of the Mason County Planning Commission have been upheld by the Mason County Zoning Board of Appeals. The permit has now been appealed to the Mason County Circuit Court. Construction of the Lake Winds Energy Park began in November 2011. Consumers will also continue development of Cross Winds Energy Park, its 150-MW wind park in Tuscola County, scheduled for operation by late 2015, as well as seek other opportunities for wind generation development in support of the renewable capacity standards. Upon completion of the Lake Winds and Cross Winds Energy Parks, Consumers will have purchased or constructed 110 percent of the 2015 renewable capacity requirement.

Electric Customer Deliveries and Revenue: Consumers' electric customer deliveries are largely dependent on Michigan's economy, which has suffered from economic and financial instability in the automotive and real estate sectors. Consumers believes economic conditions in Michigan are improving, and expects weather-adjusted electric deliveries to increase in 2012 by two percent compared with 2011.

Consumers expects average electric delivery growth of about one percent annually over the next five years. This increase reflects growth in electric demand, offset partially by the predicted effects of energy efficiency programs and appliance efficiency standards. Actual deliveries will depend on:

- energy conservation measures and results of energy efficiency programs;
- fluctuations in weather; and
- changes in economic conditions, including utilization, expansion, or contraction of manufacturing facilities, population trends, and housing activity.

The MPSC's 2009 electric rate case order authorized Consumers to implement an electric revenue decoupling mechanism, subject to certain conditions. This decoupling mechanism, which was extended through November 2011 in the MPSC's 2010 electric rate case order, allowed Consumers to adjust future electric rates to compensate for changes in sales volumes resulting from the difference between the level of average sales per customer adopted in the order and actual average sales per customer. This mechanism was intended to mitigate the impacts of weather fluctuations, energy efficiency, and conservation on Consumers' electric utility revenue.

Electric ROA: The Customer Choice Act allows all of Consumers' electric customers to buy electric generation service from Consumers or from an alternative electric supplier. The 2008 Energy Law revised the Customer Choice Act by limiting alternative electric supply to ten percent of Consumers' weather-adjusted retail sales of the preceding calendar year. At December 31, 2011, electric deliveries under the ROA program were at the ten percent limit and alternative electric suppliers were providing 785 MW of generation service to ROA customers. Based on 2011 weather-adjusted retail sales, Consumers expects 2012 electric deliveries under the ROA program to be at a similar level to 2011.

Electric Transmission: In July 2011, FERC issued an order in a rulemaking proceeding concerning regional electric transmission planning and cost allocations. In August 2011, Consumers and several other electric utilities filed a joint petition seeking clarification/rehearing of FERC's July order and opposing the allocation methodology.

In a related matter, in July 2010, MISO filed a tariff revision with FERC proposing a cost allocation methodology for a new category of transmission projects. In December 2010, FERC approved MISO's cost allocation proposal. Under this tariff revision, the cost of these new transmission projects will be spread proportionally across the Midwest Energy Market. Consumers believes that Michigan customers will bear additional costs under MISO's tariff without receiving comparable benefits from these projects. In January 2011, Consumers, along with the Michigan Attorney General, ABATE, Detroit Edison, the Michigan Municipal Electric Association, and the Michigan Public Power Agency, filed a request for rehearing with FERC, opposing the allocation methodology in the MISO tariff revision. In October 2011, FERC denied this request for rehearing. In December 2011, Consumers, along with the Michigan Attorney General, ABATE, Detroit Edison, the Michigan Municipal Electric Association, and the Michigan Public Power Agency, filed a petition for review of FERC's order with the U.S. Court of Appeals for the Seventh Circuit. Regardless of the outcome of this appeal, Consumers expects to continue to recover transmission expenses, including those associated with the MISO tariff revision, through the PSCR process.

Electric Rate Matters: Rate matters are critical to Consumers' electric utility business. See Note 6, Regulatory Matters, "Consumers' Electric Utility" and "Regulatory Assets and Liabilities" for details on the following electric rate matters:

- electric rate case;
- PSCR;
- Big Rock decommissioning;
- electric revenue decoupling mechanism;
- energy optimization plan;
- uncollectible expense tracking mechanism; and
- renewable energy plan.

Pending Electric Rate Case: In June 2011, Consumers filed an application with the MPSC seeking an annual rate increase of $195 million, based on a 10.7 percent authorized return on equity. The filing requested authority to recover new investment in system reliability, environmental compliance, and technology enhancements.

In November 2011, the MPSC Staff recommended an annual rate increase of $39 million, based on a 9.95 percent return on equity. Consumers also filed testimony and exhibits with the MPSC in November 2011 in support of a self-implemented annual rate increase of $147 million. In December 2011, the MPSC issued an order stating that it found good cause to prevent implementation of any amount over $118 million. Accordingly, Consumers self-implemented an annual rate increase of $118 million in December 2011, subject to refund with interest.

Pending Power Supply Cost Recovery Plan: Consumers submitted its 2012 PSCR plan to the MPSC in September 2011. In accordance with its proposed plan, Consumers self-implemented the 2012 PSCR charge beginning in January 2012. In February 2012, Consumers filed a revised 2012 PSCR plan, which reflected significantly reduced costs.

Electric Depreciation: In June 2011, the MPSC approved a settlement agreement in Consumers' electric depreciation case, authorizing a $19 million increase in annual depreciation expense. The new depreciation rates will go into effect with a final order in Consumers' next electric rate case.

Electric Environmental Estimates: Consumers' operations are subject to various state and federal environmental laws and regulations. Consumers estimates that it will incur expenditures of $1.5 billion from 2012 through 2018 to continue to comply with the Clean Air Act, Clean Water Act, and numerous state and federal environmental regulations. Consumers expects to recover these costs in customer rates, but cannot guarantee this result. Consumers' primary environmental compliance focus includes, but is not limited to, the following matters:

Air Quality: In July 2011, the EPA released CSAPR, a final replacement rule for CAIR, which requires Michigan and 27 other states to improve air quality by reducing power plant emissions that allegedly contribute to ground level ozone and fine particle pollution in other downwind states. This rule had mandated emission reductions beginning in 2012, which CMS Energy and Consumers were prepared to meet through fuel blend changes. In December 2011, due to litigation surrounding CSAPR, the U.S. Court of Appeals for the D.C. Circuit issued a stay of CSAPR, stating that CAIR would remain in place while the court considers the issues. The court has set a briefing schedule, but there is no timeline for a decision or order from the court.

In December 2011, the EPA finalized its MACT emission standards for electric generating units, based on Section 112 of the Clean Air Act, calling the final rule MATS. Under the final rule, all of Consumers' coal-fueled electric generating units will require additional controls for hazardous air pollutants. Generally, existing units must meet the standards within three to four years of issuance of the final rule.

Presently, Consumers' strategy to comply with CAIR, CSAPR, and MATS involves the installation of state-of-the-art emission control equipment at some facilities and the suspension of operations at others; however, Consumers continues to evaluate CSAPR and MATS in conjunction with other EPA rulemakings, litigation, and congressional action. This evaluation could result in:

- additional or accelerated environmental compliance costs related to Consumers' coal-fueled power plants;
- a change in the fuel mix at coal-fueled and oil-fueled power plants;
- changes in how certain plants are used; and
- the retirement, mothballing, or repowering with an alternative fuel of some or all of Consumers' older, smaller generating units.

The MDEQ renewed and issued the B.C. Cobb Renewable Operating Permit in August 2011 after an extensive review and a public comment period. In October 2011, the Sierra Club and the Natural Resources Defense Council filed a petition with the EPA to object to the MDEQ's issuance of the state Renewable Operating Permit, alleging that the facility is not in compliance with certain provisions of the Clean Air Act, including NSR and Title V. Consumers responded to these allegations in December 2011. The EPA could either deny the petition outright or grant the petition and remand the matter to the MDEQ for further action. Consumers believes these claims are baseless, but is unable to predict the outcome of this petition.

Greenhouse Gases: In the recent past, there have been numerous legislative and regulatory initiatives at the state, regional, and national levels that involve the regulation of greenhouse gases. Consumers continues to monitor and comment on these initiatives and also follows litigation involving greenhouse gases. Consumers believes Congress may eventually pass greenhouse gas legislation, but is unable to predict the form and timing of any final legislation.

In 2010, the EPA released its Prevention of Significant Deterioration and Title V Greenhouse Gas Tailoring Rule, which sets greenhouse gas emissions limits that define when permits are required for new and existing industrial facilities under NSR PSD and Title V Operating Permit programs. Numerous parties have challenged this rule in the U.S. Court of Appeals for the D.C. Circuit, and Consumers is monitoring this litigation. Consumers does not expect to incur significant expenditures to comply with this rule.

In December 2010, the EPA entered into a settlement agreement with certain states and environmental groups wherein in September 2011 the EPA was to propose new source performance standards for greenhouse gases at new and modified power plants pursuant to Section 111(b) of the Clean Air Act and finalize the standards in May 2012. The EPA did not meet the September 2011 deadline, but is expected to issue the proposed standards by March 31, 2012. The EPA is also expected to propose emissions guidelines for the states to regulate greenhouse gas emissions from existing generating units under Section 111(d) of the Clean Air Act. Under the expected schedule, states will need to submit plans to the EPA within nine months of issuance of the final rule and guidelines. Consumers will continue to monitor activity from this settlement agreement and any proposed new source performance standards regulations.

Litigation, as well as federal laws, EPA regulations regarding greenhouse gases, or similar treaties, state laws, or rules, if enacted or ratified, could require Consumers to replace equipment, install additional emission control equipment, purchase emission allowances, curtail operations, arrange for alternative sources of supply, or take other steps to manage or lower the emission of greenhouse gases. Although associated capital or operating costs relating to greenhouse gas regulation or legislation could be material and cost recovery cannot be assured, Consumers expects to recover these costs and capital expenditures in rates consistent with the recovery of other reasonable costs of complying with environmental laws and regulations.

In 2011, carbon dioxide emissions from fossil-fueled power plants owned by Consumers, excluding the portion of Campbell Unit 3 that is owned by others, were 16 million metric tons. During the same period, coal-fueled plants owned by the enterprises segment emitted 570,000 metric tons of carbon dioxide.

CCBs: In June 2010, the EPA proposed rules regulating CCBs, such as coal ash, under the Resource Conservation and Recovery Act. Michigan already regulates CCBs as low-hazard industrial waste. The EPA proposed a range of alternatives for regulating CCBs, including regulation as either a non-hazardous waste or a hazardous waste. If coal ash were regulated as a hazardous waste, Consumers would likely cease the beneficial re-use of this product, which would result in a significant increase in the amount of coal ash requiring costly disposal. Additionally, if the cost of upgrading existing coal ash disposal areas to meet hazardous waste landfill standards were to become economically prohibitive, existing coal ash disposal areas could close, requiring Consumers to find costly alternative arrangements for disposal. Consumers is unable to predict the impacts from this wide range of possible outcomes, but significant expenditures are likely.

Water: In March 2011, the EPA issued a proposed rule to regulate existing electric generating plant cooling water intake systems under Section 316(b) of the Clean Water Act aimed at reducing alleged harmful impacts on fish and shellfish. Consumers continues to evaluate this proposed rule and its potential impacts on Consumers' plants. A final rule is expected in July 2012. Consumers also expects the EPA to propose new regulations in July 2012 for wastewater discharges from electric generating plants that will require physical and/or chemical treatment facilities for all wastewater. A final rule is expected in 2014.

PCBs: In April 2010, the EPA issued an Advance Notice of Proposed Rulemaking, indicating that it is considering a variety of regulatory actions with respect to PCBs. One proposal aims to phase out equipment containing PCBs by 2025. Another proposal eliminates an exemption for small equipment containing PCBs. To comply with this proposed rule, Consumers could incur substantial costs associated with existing electrical equipment potentially containing PCBs. A proposal is expected in late 2012.

Other electric environmental matters could have a major impact on Consumers' outlook. For additional details on other electric environmental matters, see Note 5, Contingencies and Commitments, "Consumers' Electric Utility Contingencies – Electric Environmental Matters."

CONSUMERS' GAS UTILITY BUSINESS OUTLOOK AND UNCERTAINTIES

Gas Deliveries: Consumers believes economic conditions in Michigan are improving, and expects weather-adjusted gas deliveries to increase in 2012 by about one percent compared with 2011. Over the next five years, Consumers expects average gas deliveries to remain stable. This outlook reflects modest growth in gas demand offset by the predicted effects of energy efficiency and conservation. Actual delivery levels from year to year may vary from this trend due to:

- fluctuations in weather;
- use by independent power producers;

- availability and development of renewable energy sources;
- changes in gas prices;
- Michigan economic conditions, including population trends and housing activity;
- the price of competing energy sources or fuels; and
- energy efficiency and conservation impacts.

A decoupling mechanism was authorized by the MPSC in Consumers’ 2009 gas rate case, subject to certain conditions. This mechanism, which was extended in the MPSC’s 2010 gas rate case order, allows Consumers to adjust future gas rates to compensate for changes in sales volumes resulting from the difference between the level of average sales per customer adopted in the order and actual average weather-adjusted sales per customer. The mechanism does not provide rate adjustments for changes in sales volumes arising from weather fluctuations. This mechanism is intended to mitigate the impacts of energy efficiency programs, conservation, and changes in economic conditions on Consumers’ gas utility revenue.

Gas Rate Matters: Rate matters are critical to Consumers’ gas utility business. See Note 6, Regulatory Matters, “Consumers’ Gas Utility” and “Regulatory Assets and Liabilities” for details on Consumers’ gas rate case, GCR, and gas revenue decoupling mechanism.

Pending Gas Rate Case: In September 2011, Consumers filed an application with the MPSC seeking an annual rate increase of $49 million based on a 10.7 percent authorized return on equity. The filing requested recovery for investments made to enhance safety, system reliability, and operational efficiencies that improve service to customers. In February 2012, the MPSC Staff recommended an annual rate reduction of $22 million, based on a 9.95 percent return on equity. Consumers also filed testimony and exhibits with the MPSC in February 2012 in support of a self-implemented annual rate increase of $23 million, based on a 10.5 percent authorized return on equity.

Presented in the following table are the components of the rate reduction recommended by the MPSC Staff and Consumers’ proposed self-implemented rate increase:

Components of the Rate Increase	Rate Reduction Recommended by the MPSC Staff	Consumers’ Proposed Self-Implemented Increase	Difference
		In Millions	
Investment in rate base	$ 17	$ 22	$ (5)
Uncollectible accounts	3	15	(12)
Cost of capital	(11)	1	(12)
Gross margin	(18)	(11)	(7)
Operating and maintenance costs	(13)	(4)	(9)
Total	$ (22)	$ 23	$ (45)

Pending Gas Cost Recovery Plan : Consumers submitted its 2012-2013 GCR plan to the MPSC in December 2011. In accordance with its proposed plan, Consumers expects to self-implement the 2012-2013 GCR charge beginning in April 2012.

Gas Pipeline Safety: In January 2012, President Obama signed the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2011. The law reauthorizes existing federal pipeline safety programs of the Pipeline and Hazardous Materials Safety Administration through 2015 and it contains provisions mandating:

- an increase in the maximum fine for safety violations to $2 million;
- an increase in the number of pipeline inspectors;

- a study regarding application of integrity management requirements outside of “high consequence areas;”
- a survey regarding existing plans for safe management and replacement of cast iron pipelines;
- prescribed notification and on-site incident response times;
- installation of automatic or remotely controlled shut-off valves on new or replaced pipelines where feasible;
- verification of maximum allowable operating pressure of pipelines in populated areas; and
- pressure testing (or equivalent) of previously untested pipelines.

Consumers continues to comply with laws and regulations governing natural gas pipeline safety. These laws and regulations could cause Consumers to incur significant additional costs related to its natural gas pipeline safety programs. Consumers expects that it would be able to recover the costs in rates, consistent with the recovery of other reasonable costs of complying with laws and regulations.

Gas Environmental Estimates: Consumers expects to incur response activity costs at a number of sites, including 23 former MGP sites. For additional details, see Note 5, Contingencies and Commitments, “Consumers’ Gas Utility Contingencies – Gas Environmental Matters.”

The Mandatory Reporting of Greenhouse Gases Rule requires facilities engaging in the distribution of natural gas to collect data on greenhouse gas emissions resulting from the combustion of natural gas. In 2011, Consumers estimated that carbon dioxide emissions from its customers were 16 million metric tons.

CONSUMERS’ OTHER OUTLOOK AND UNCERTAINTIES

Smart Grid: Consumers’ grid modernization effort continues, with the recent selection of a vendor that will provide smart electric meters and a cellular communications network to allow Consumers to transmit and receive electric usage information from customers’ homes and businesses. Smart meters are designed to allow customers to monitor and manage their energy usage, which should help reduce demand during critical peak times, resulting in lower peak capacity requirements. The installation of smart meters should also provide operational benefits to Consumers. Consumers intends to use a phased implementation approach, beginning deployment in the second half of 2012 and continuing through 2019. Consumers also plans to install communication modules on gas meters in areas where Consumers provides both electricity and natural gas to customers.

ENTERPRISES OUTLOOK AND UNCERTAINTIES

The primary focus with respect to CMS Energy’s remaining non-utility businesses is to optimize cash flow and maximize the value of their assets.

Trends, uncertainties, and other matters that could have a material impact on CMS Energy’s consolidated income, cash flows, or financial position include:

- indemnity and environmental remediation obligations at Bay Harbor;
- obligations related to a tax claim from the government of Equatorial Guinea;
- the outcome of certain legal proceedings;
- impacts of declines in electricity prices on the profitability of the enterprises segment’s generating units;
- representations, warranties, and indemnities provided by CMS Energy or its subsidiaries in connection with previous sales of assets;
- changes in commodity prices and interest rates on certain derivative contracts that do not qualify for hedge accounting and must be marked to market through earnings;

- changes in various environmental laws, regulations, principles, or practices, or in their interpretation; and
- economic conditions in Michigan, including population trends and housing activity.

For additional details regarding the enterprises segment's uncertainties, see Note 5, Contingencies and Commitments.

OTHER OUTLOOK AND UNCERTAINTIES

EnerBank: EnerBank, a wholly owned subsidiary of CMS Capital, is a Utah state-chartered, FDIC-insured industrial bank providing unsecured home improvement loans. EnerBank represented two percent of CMS Energy's net assets at December 31, 2011, and two percent of CMS Energy's net income available to common stockholders for the year ended December 31, 2011. The carrying value of EnerBank's loan portfolio was $480 million at December 31, 2011. Its loan portfolio was funded primarily by deposit liabilities of $462 million. Twelve-month rolling average default rates on loans held by EnerBank have declined from 1.4 percent at December 31, 2010 to 0.9 percent at December 31, 2011. CMS Energy is required both by law and by contract to provide financial support, including infusing additional capital, to ensure that EnerBank satisfies mandated capital requirements and has sufficient liquidity to operate. Presently, EnerBank meets or exceeds all of its capital requirements.

Litigation: CMS Energy, Consumers, and certain of their subsidiaries are named as parties in various litigation matters, as well as in administrative proceedings before various courts and governmental agencies, arising in the ordinary course of business. For additional details regarding these and other legal matters, see Note 5, Contingencies and Commitments and Note 6, Regulatory Matters.

CRITICAL ACCOUNTING POLICIES AND ESTIMATES

The following accounting policies and related information are important to an understanding of CMS Energy's and Consumers' results of operations and financial condition. For additional accounting policies, see Note 1, Significant Accounting Policies.

USE OF ESTIMATES AND ASSUMPTIONS

In the preparation of CMS Energy's and Consumers' consolidated financial statements, estimates and assumptions are used that may affect reported amounts and disclosures. CMS Energy and Consumers use accounting estimates for asset valuations, unbilled revenue, depreciation, amortization, financial and derivative instruments, employee benefits, the effects of regulation, indemnities, and contingencies. Actual results may differ from estimated results due to changes in the regulatory environment, regulatory decisions, lawsuits, competition, and other factors. CMS Energy and Consumers consider all relevant factors in making these assessments.

Contingencies: CMS Energy and Consumers make judgments regarding the future outcome of various matters that give rise to contingent liabilities. For such matters, they record liabilities when they are considered probable and reasonably estimable, based on all available information. In particular, CMS Energy and Consumers are participating in various environmental remediation projects for which they have recorded liabilities. The recorded amounts represent estimates that may take into account such considerations as the number of sites, the anticipated scope, cost, and timing of remediation work, the available technology, applicable regulations, and the requirements of governmental authorities. For remediation projects in which the timing of estimated expenditures is considered reliably determinable, CMS Energy and Consumers record the liability at its net present value, using a discount rate equal to the interest rate on monetary assets that are essentially risk-free and have maturities comparable to that of the environmental liability. The amount recorded for any contingency may differ from actual costs incurred when the contingency is resolved.

Fair Value Measurements: CMS Energy and Consumers have assets and liabilities that are accounted for or disclosed at fair value. Fair value measurements incorporate assumptions that market participants would use in pricing an asset or liability, including assumptions about risk. Development of these assumptions may require significant judgment. For a detailed discussion of the valuation techniques and inputs used to calculate fair value measurements, see Note 4, Fair Value Measurements. Details about the fair value measurements for the Pension Plan and OPEB plan assets are included in Note 12, Retirement Benefits.

Income Taxes: The amount of income taxes paid by CMS Energy is subject to ongoing audits by federal, state, and foreign tax authorities, which can result in proposed assessments. An estimate of the potential outcome of any uncertain tax issue is highly judgmental. CMS Energy believes adequate reserves have been provided for these exposures; however, future results may include favorable or unfavorable adjustments to the estimated tax liabilities in the period the assessments are made or resolved or when statutes of limitation on potential assessments expire. Additionally, CMS Energy's judgment as to the ability to recover its deferred tax assets may change. CMS Energy believes the valuation allowances related to its deferred tax assets are adequate, but future results may include favorable or unfavorable adjustments. As a result, CMS Energy's effective tax rate may fluctuate significantly over time.

Long-Lived Assets and Equity Method Investments: CMS Energy and Consumers assess the recoverability of their long-lived assets and equity method investments by performing impairment tests if certain triggering events occur or if there has been a decline in value that may be other than temporary. CMS Energy and Consumers base their evaluations of impairment on such indicators as:

- the nature of the assets;
- projected future economic benefits;
- regulatory and political environments;
- historical and future cash flow and profitability measurements; and
- other external market conditions and factors.

The estimates CMS Energy and Consumers use may change over time, which could have a material impact on their consolidated financial statements. For additional details, see Note 20, Asset Sales, Discontinued Operations, and Impairment Charges.

Unbilled Revenues: CMS Energy's and Consumers' customers are billed monthly in cycles having billing dates that do not generally coincide with the end of a calendar month. This results in customers having received electricity or gas that they have not been billed for as of the month-end. Consumers estimates its unbilled revenues by applying an average billed rate to total unbilled deliveries for each customer class. Unbilled revenues, which are recorded as accounts receivable on CMS Energy's and Consumers' consolidated balance sheets, were $387 million at December 31, 2011 and $439 million at December 31, 2010.

A CCOUNTING FOR THE E FFECTS OF I NDUSTRY R EGULATION

Because Consumers has regulated operations, it uses regulatory accounting to recognize the effects of the regulators' decisions on its financial statements. Consumers continually assesses whether future recovery of its regulatory assets is probable by considering communications and experience with its regulators and changes in the regulatory environment. If Consumers determined that recovery of a regulatory asset were not probable, Consumers would be required to write off the asset and immediately recognize the expense in earnings.

Under electric and gas rate case orders issued by the MPSC in 2009 and 2010, Consumers was granted authority to implement revenue decoupling mechanisms, subject to certain conditions. The electric revenue decoupling mechanism, which was extended through November 2011 in the 2010 electric rate case order, allowed Consumers to adjust future electric rates to compensate for changes in sales volumes resulting from the difference between the level of average sales per customer adopted in the order and actual average sales per customer. The gas revenue decoupling mechanism is similar, but does not adjust customer rates for changes in sales volumes resulting from weather fluctuations. Consumers accounts for these programs as alternative-revenue programs that meet the criteria for recognizing the effects of decoupling adjustments on revenue as electricity and gas are delivered.

In September 2009, the MPSC approved an energy optimization incentive mechanism that provides a financial incentive if the energy savings of Consumers' customers exceed annual targets established by the

MPSC. Consumers accounts for this program as an alternative-revenue program that meets the criteria for recognizing revenue related to the incentive as soon as energy savings exceed the annual targets established by the MPSC.

To the extent that decoupling and energy optimization revenues are collected beyond the maximum period prescribed by authoritative accounting guidance for alternative revenue programs, such revenues are not recognized until they are collected from customers.

Unless prohibited by the MPSC upon a showing of good cause, Consumers is allowed to self-implement new energy rates six months after a new rate case filing; however, the rates that Consumers self-implements may be subject to refund, with interest. Consumers recognizes revenue associated with self-implemented rates. If Consumers considers it probable that it will be required to refund a portion of its self-implemented rates, it records a provision for revenue subject to refund. A final rate order could differ materially from Consumers' estimates underlying its self-implemented rates, giving rise to accounting adjustments. Under accounting rules for prior period adjustments, CMS Energy and Consumers may need to record such differences, if they are specifically identifiable to prior interim periods, as revisions to those periods.

For additional details, see Note 6, Regulatory Matters.

FINANCIAL AND DERIVATIVE INSTRUMENTS AND MARKET RISK INFORMATION

Financial Instruments: Debt and equity securities classified as available for sale are reported at fair value as determined from quoted market prices or other observable, market-based inputs. Unrealized gains and losses resulting from changes in fair value of the equity securities are reported, net of tax, in equity as part of AOCI, except that unrealized losses determined to be other than temporary are reported in earnings. Unrealized gains resulting from changes in fair value of the debt securities are reported, net of tax, in equity as part of AOCI. Unrealized losses on the debt securities, if significant, are considered other than temporary and reported in earnings since these securities are managed by an independent investment manager that can sell the securities at its own discretion.

Derivative Instruments: CMS Energy and Consumers account for certain contracts as derivative instruments. The criteria used to determine if an instrument qualifies for derivative accounting are complex and often require significant judgment in application. If a contract is a derivative and does not qualify for the normal purchases and sales exception, it is recorded on the consolidated balance sheets at its fair value. Each quarter, the resulting asset or liability is adjusted to reflect any change in the fair value of the contract. The fair values calculated for CMS Energy's and Consumers' derivatives may change significantly as commodity prices and volatilities change. The cash returns actually realized on derivatives may be different from their estimated fair values. For additional details on CMS Energy's and Consumers' derivatives and how the fair values of derivatives are determined, see Note 4, Fair Value Measurements, and Note 10, Derivative Instruments.

Market Risk Information: CMS Energy and Consumers are exposed to market risks including, but not limited to, changes in interest rates, commodity prices, and investment security prices. They may enter into various risk management contracts to limit exposure to these risks, including swaps, options, futures, and forward contracts. CMS Energy and Consumers enter into these contracts using established policies and procedures, under the direction of an executive oversight committee consisting of senior management representatives and a risk committee consisting of business unit managers.

These contracts contain credit risk, which is the risk that the counterparties will fail to meet their contractual obligations. CMS Energy and Consumers reduce this risk using established policies and procedures, such as evaluating counterparties' credit quality and setting collateral requirements as necessary. If terms permit, standard agreements are used that allow for the netting of positive and negative exposures associated with the same counterparty. Given these policies, present exposures, and credit reserves, CMS Energy and Consumers do not expect a material adverse effect on their financial position or future earnings because of counterparty nonperformance.

The following risk sensitivities illustrate the potential loss in fair value, cash flows, or future earnings from financial instruments, including derivative contracts, assuming a hypothetical adverse change in market rates or prices of ten percent. Potential losses could exceed the amounts shown in the sensitivity analyses if changes in market rates or prices were to exceed ten percent.

Interest-Rate Risk: CMS Energy and Consumers are exposed to interest-rate risk resulting from issuing fixed-rate and variable-rate financing instruments. CMS Energy and Consumers use a combination of these instruments, and may also enter into interest-rate swap agreements, in order to manage this risk and to achieve a reasonable cost of capital.

Interest-Rate Risk Sensitivity Analysis (assuming an adverse change in market interest rates of ten percent):

December 31	**2011**	**2010**
	In Millions	
Fixed-rate financing — potential loss in fair value		
CMS Energy, including Consumers	$154	$187
Consumers	82	113

The fair value losses in the above table could be realized only if CMS Energy and Consumers transferred all of their fixed-rate financing to other creditors. The annual earnings exposure related to variable-rate financing was insignificant for both CMS Energy and Consumers at December 31, 2011 and 2010, assuming an adverse change in market interest rates of ten percent.

Investment Securities Price Risk: Through investments in debt and equity securities, CMS Energy and Consumers are exposed to changes in interest rates and price fluctuations in equity markets. The following table shows the potential effect of adverse changes in interest rates and fluctuations in equity prices on CMS Energy's and Consumers' available-for-sale investments.

Investment Securities Price Risk Sensitivity Analysis (assuming an adverse change in market interest rates or prices of ten percent):

December 31	**2011**	**2010**
	In Millions	
CMS ENERGY, INCLUDING CONSUMERS		
Potential reduction in fair value of available-for-sale:		
SERP:		
Mutual fund	$11	$ 6
CONSUMERS		
Potential reduction in fair value of available-for-sale:		
SERP:		
Mutual fund	$ 7	$ 4
CMS Energy common stock	3	3

Notes Receivable Risk: CMS Energy is exposed to interest-rate risk resulting from EnerBank's fixed-rate installment loans. EnerBank provides these loans to homeowners to finance home improvements.

Notes Receivable Sensitivity Analysis (assuming an adverse change in market interest rates of ten percent):

December 31	**2011**	**2010**
	In Millions	
CMS ENERGY, INCLUDING CONSUMERS		
Potential reduction in fair value :		
Notes receivable	$ 7	$ 6

The fair value losses in the above table could be realized only if EnerBank sold its loans to other parties. For additional details on market risk, financial instruments, and derivatives, see Note 9, Financial Instruments and Note 10, Derivative Instruments.

Retirement Benefits

Pension : CMS Energy and Consumers have external trust funds to provide retirement pension benefits to their employees under a non-contributory, defined benefit Pension Plan. On September 1, 2005, the defined benefit Pension Plan was closed to new participants and CMS Energy and Consumers implemented the qualified DCCP, which provides an employer contribution of six percent of base pay to the existing 401(k) plan. An employee contribution is not required to receive the plan’s employer cash contribution. All employees hired on or after September 1, 2005 participate in this plan as part of their retirement benefit program. Previous cash balance Pension Plan participants also participate in the DCCP as of September 1, 2005. Additional pay credits under the cash balance Pension Plan were discontinued as of that date.

401(k) : CMS Energy and Consumers provide an employer match in their 401(k) plan equal to 60 percent on eligible contributions up to the first six percent of an employee’s wages.

OPEB : CMS Energy and Consumers provide postretirement health and life benefits under their OPEB plan to qualifying retired employees.

CMS Energy and Consumers record liabilities for pension and OPEB on their consolidated balance sheets at the present value of the future obligations, net of any plan assets. The calculation of the liabilities and associated expenses requires the expertise of actuaries, and requires many assumptions, including:

- life expectancies;
- discount rates;
- expected long-term rate of return on plan assets;
- rate of compensation increases; and
- expected health care costs.

A change in these assumptions could change significantly CMS Energy’s and Consumers’ recorded liabilities and associated expenses.

Presented in the following table are estimates of CMS Energy’s and Consumers’ pension cost, OPEB cost, and cash contributions through 2014:

	Pension Cost	OPEB Cost	Pension Contribution	OPEB Contribution
			In Millions	
CMS Energy, including Consumers				
2012	$ 103	$ 75	$ —	$ 65
2013	104	69	—	75
2014	90	64	106	69
Consumers				
2012	$ 100	$ 77	$ —	$ 64
2013	101	71	—	74
2014	88	66	104	68

Contribution estimates include amounts required and discretionary contributions. Consumers’ pension and OPEB costs are recoverable through its general ratemaking process. Actual future pension cost and contributions will depend on future investment performance, changes in future discount rates, and various other factors related to the populations participating in the Pension Plan.

Lowering the expected long-term rate of return on the Pension Plan assets by 0.25 percentage point (from 7.75 percent to 7.50 percent) would increase estimated pension cost for 2012 by $4 million for both CMS Energy and Consumers. Lowering the discount rate by 0.25 percentage point (from 4.90 percent to 4.65 percent) would increase estimated pension cost for 2012 by $5 million for both CMS Energy and Consumers.

For additional details on postretirement benefits, see Note 12, Retirement Benefits.

Table of Contents

ASSET RETIREMENT OBLIGATIONS

CMS Energy and Consumers are required to record the fair value of the cost to remove assets at the end of their useful lives if there is a legal obligation to remove them. CMS Energy and Consumers have legal obligations to remove some of their assets at the end of their useful lives. CMS Energy and Consumers calculate the fair value of ARO liabilities using an expected present value technique that reflects assumptions about costs, inflation, and profit margin that third parties would require to assume the obligation. For additional details, see Note 17, Asset Retirement Obligations.

NEW ACCOUNTING STANDARDS

For details regarding new accounting standards issued that were not yet effective as of December 31, 2011, see Note 2, New Accounting Standards.

CMS Energy Corporation

CONSOLIDATED STATEMENTS OF INCOME

	Years Ended December 31		
	2011	2010	2009
		In Millions	
Operating Revenue	$6,503	$6,432	$6,205
Operating Expenses			
Fuel for electric generation	636	604	541
Purchased and interchange power	1,282	1,239	1,163
Purchased power — related parties	82	85	—
Cost of gas sold	1,512	1,590	1,866
Maintenance and other operating expenses	1,237	1,206	1,163
Depreciation and amortization	546	576	570
General taxes	205	210	217
Insurance settlement	—	(50)	—
Gain on asset sales, net	—	(6)	(13)
Total operating expenses	5,500	5,454	5,507
Operating Income	1,003	978	698
Other Income (Expense)			
Interest income	9	19	18
Allowance for equity funds used during construction	6	5	6
Income (loss) from equity method investees	9	11	(2)
Other income	16	32	80
Other expense	(22)	(24)	(30)
Total other income	18	43	72
Interest Charges			
Interest on long-term debt	396	394	383
Other interest expense	23	40	56
Allowance for borrowed funds used during construction	(4)	(3)	(4)
Total interest charges	415	431	435
Income Before Income Taxes	606	590	335
Income Tax Expense	191	224	115
Income From Continuing Operations	415	366	220
Income (Loss) From Discontinued Operations, Net of Tax Expense of $ -, $2, and $13	2	(23)	20
Net Income	417	343	240
Income Attributable to Noncontrolling Interests	2	3	11
Net Income Attributable to CMS Energy	415	340	229
Charge for Deferred Issuance Costs on Preferred Stock	—	8	—
Preferred Stock Dividends	—	8	11
Net Income Available to Common Stockholders	$ 415	$ 324	$ 218

Table of Contents

	Years Ended December 31		
	2011	2010	2009
	In Millions, Except Per Share Amounts		
Net Income Attributable to Common Stockholders			
Amounts attributable to continuing operations	$ 413	$ 347	$ 198
Amounts attributable to discontinued operations	2	(23)	20
Net income available to common stockholders	$ 415	$ 324	$ 218
Income Attributable to Noncontrolling Interests			
Amounts attributable to continuing operations	$ 2	$ 3	$ 11
Amounts attributable to discontinued operations	—	—	—
Income attributable to noncontrolling interests	$ 2	$ 3	$ 11
Basic Earnings Per Average Common Share			
Basic earnings from continuing operations	$1.65	$ 1.50	$0.87
Basic earnings (loss) from discontinued operations	0.01	(0.10)	0.09
Basic earnings attributable to common stock	$1.66	$ 1.40	$0.96
Diluted Earnings Per Average Common Share			
Diluted earnings from continuing operations	$1.57	$ 1.36	$0.83
Diluted earnings (loss) from discontinued operations	0.01	(0.08)	0.08
Diluted earnings attributable to common stock	$1.58	$ 1.28	$0.91
Dividends Declared Per Common Share	$0.84	$ 0.66	$0.50

The accompanying notes are an integral part of these statements.

Table of Contents

CMS Energy Corporation

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Years Ended December 31		
	2011	2010 In Millions	2009
Cash Flows from Operating Activities			
Net income	$ 417	$ 343	$ 240
Adjustments to reconcile net income to net cash provided by operating activities			
Depreciation and amortization	546	576	570
Deferred income taxes and investment tax credit	167	227	122
Postretirement benefits expense	161	213	181
Bad debt expense	74	57	54
Other non-cash operating activities	33	39	(50)
Postretirement benefits contributions	(323)	(463)	(262)
Changes in other assets and liabilities			
Decrease (increase) in accounts receivable, notes receivable, and accrued revenue	104	(105)	(91)
Decrease (increase) in accrued power supply revenue	15	33	(41)
Decrease (increase) in inventories	(14)	133	86
Increase (decrease) in accounts payable	30	(7)	(50)
Increase (decrease) in accrued expenses	(34)	22	(6)
Decrease (increase) in other current and non-current assets	(48)	(28)	59
Increase (decrease) in current and non-current regulatory liabilities	49	(69)	102
Decrease in other current and non-current liabilities	(8)	(12)	(66)
Net cash provided by operating activities	1,169	959	848
Cash Flows from Investing Activities			
Capital expenditures (excludes assets placed under capital lease)	(882)	(821)	(818)
Cost to retire property	(54)	(43)	(49)
Cash effect of deconsolidation of partnerships	—	(10)	—
Increase in EnerBank loans receivable	(100)	(131)	(83)
Other investing activities	(22)	2	15
Net cash used in investing activities	(1,058)	(1,003)	(935)

Table of Contents

	Years Ended December 31		
	2011	2010	2009
		In Millions	
Cash Flows from Financing Activities			
Proceeds from issuance of long-term debt	375	1,400	1,218
Proceeds from EnerBank notes, net	98	149	39
Issuance of common stock	29	10	9
Retirement of long-term debt	(413)	(878)	(1,164)
Payment of DOE liability	(43)	—	—
Payment of common stock dividends	(211)	(154)	(114)
Payment of preferred stock dividends	—	(8)	(11)
Redemption of preferred stock	—	(239)	(4)
Payment of capital and finance lease obligations	(24)	(23)	(23)
Increase (decrease) in notes payable	—	(40)	40
Other financing costs	(10)	(15)	(35)
Net cash (used in) provided by financing activities	(199)	202	(35)
Net (Decrease) Increase in Cash and Cash Equivalents, Including Assets Held for Sale	(88)	158	(122)
Decrease (Increase) in Cash and Cash Equivalents Included in Assets Held for Sale	2	(1)	5
Net (Decrease) Increase in Cash and Cash Equivalents	(86)	157	(117)
Cash and Cash Equivalents, Beginning of Period	247	90	207
Cash and Cash Equivalents, End of Period	$ 161	$ 247	$ 90
Other cash flow activities and non-cash investing and financing activities:			
Cash transactions			
Interest paid (net of amounts capitalized)	$ 397	$ 405	$ 422
Income taxes paid	27	14	17
Non-cash transactions			
Capital expenditures not paid	$ 92	$ 56	$ 15
Other assets placed under capital lease	4	16	16

The accompanying notes are an integral part of these statements.

Table of Contents

CMS Energy Corporation

CONSOLIDATED BALANCE SHEETS

	December 31	
	2011	2010
	In Millions	
ASSETS		
Current Assets		
Cash and cash equivalents	$ 161	$ 247
Restricted cash and cash equivalents	27	23
Accounts receivable and accrued revenue, less allowances of $35 in 2011 and $25 in 2010	869	981
Notes receivable	49	70
Accounts receivable — related parties	10	10
Accrued power supply revenue	—	15
Inventories at average cost		
Gas in underground storage	929	946
Materials and supplies	92	104
Generating plant fuel stock	166	125
Deferred income taxes	24	—
Deferred property taxes	187	180
Regulatory assets	1	19
Assets held for sale	—	2
Prepayments and other current assets	50	37
Total current assets	2,565	2,759
Plant, Property, and Equipment		
Plant, property, and equipment, gross	14,751	14,145
Less accumulated depreciation and amortization	4,901	4,646
Plant, property, and equipment, net	9,850	9,499
Construction work in progress	783	570
Total plant, property, and equipment	10,633	10,069
Other Non-current Assets		
Regulatory assets	2,466	2,093
Accounts and notes receivable, less allowances of $5 in 2011 and 2010	462	397
Investments	50	49
Assets held for sale	—	4
Other	276	245
Total other non-current assets	3,254	2,788
Total Assets	$16,452	$15,616

	December 31	
	2011	2010
	In Millions	
LIABILITIES AND EQUITY		
Current Liabilities		
Current portion of long-term debt, capital and finance lease obligations	$ 1,057	$ 750
Accounts payable	575	492
Accounts payable — related parties	9	9
Accrued rate refunds	30	19
Accrued interest	101	102
Accrued taxes	282	302
Deferred income taxes	—	180
Regulatory liabilities	125	22
Liabilities held for sale	—	1
Other current liabilities	159	144
Total current liabilities	2,338	2,021
Non-current Liabilities		
Long-term debt	6,040	6,448
Non-current portion of capital and finance lease obligations	167	188
Regulatory liabilities	1,875	1,988
Postretirement benefits	1,289	1,135
Asset retirement obligations	254	245
Deferred investment tax credit	46	49
Deferred income taxes	1,035	438
Other non-current liabilities	336	267
Total non-current liabilities	11,042	10,758
Commitments and Contingencies (Notes 5, 6, 7, 9, and 10)		
Equity		
Common stockholders' equity		
Common stock, authorized 350.0 shares; outstanding 254.1 shares in 2011 and 249.6 shares in 2010	3	2
Other paid-in capital	4,627	4,588
Accumulated other comprehensive loss	(49)	(40)
Accumulated deficit	(1,553)	(1,757)
Total common stockholders' equity	3,028	2,793
Noncontrolling interests	44	44
Total equity	3,072	2,837
Total Liabilities and Equity	$16,452	$15,616

The accompanying notes are an integral part of these statements.

Table of Contents

CMS Energy Corporation

CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY

	Years Ended December 31					
	Number of Shares					
	2011	2010	2009	2011	2010	2009
	In Millions, Except Number of Shares in Thousands					
Common Stock						
At beginning of period				$ 2	$ 2	$ 2
Common stock issued				1	—	—
At end of period				3	2	2
Other Paid-in Capital						
At beginning of period	249,628	227,891	226,414	4,588	4,560	4,533
Common stock issued	4,541	22,090	1,793	40	22	17
Common stock reissued	269	—	—	5	—	—
Common stock repurchased	(323)	(148)	(78)	(6)	(2)	(1)
Common stock reacquired	(15)	(205)	(238)	—	—	—
Conversion option on convertible debt	—	—	—	—	—	11
Charge for deferred issuance costs	—	—	—	—	8	—
At end of period	254,100	249,628	227,891	4,627	4,588	4,560
Accumulated Other Comprehensive Loss						
Retirement benefits liability						
At beginning of period				(39)	(32)	(27)
Net loss arising during the period [1]				(11)	(9)	(6)
Amortization of net actuarial loss [1]				2	1	1
Prior service credit adjustment [1]				—	1	—
At end of period				(48)	(39)	(32)
Investments						
At beginning of period				—	—	—
Unrealized gain on investments [1]				—	—	5
Reclassification adjustments included in net income [1]				—	—	(5)
At end of period				—	—	—
Derivative instruments						
At beginning and end of period				(1)	(1)	(1)
At end of period				(49)	(40)	(33)
Accumulated Deficit						
At beginning of period				(1,757)	(1,927)	(2,031)
Net income attributable to CMS Energy [1]				415	340	229
Common stock dividends declared				(211)	(154)	(114)
Preferred stock dividends declared				—	(8)	(11)
Charge for deferred issuance costs				—	(8)	—
At end of period				(1,553)	(1,757)	(1,927)
Preferred Stock						
At beginning of period				—	239	243
Conversion of preferred stock				—	(239)	(4)
At end of period				—	—	239
Noncontrolling Interests						
At beginning of period				44	97	96
Income attributable to noncontrolling interests [1]				2	3	11
Distributions and other changes in noncontrolling interests				(2)	(56)	(10)
At end of period				44	44	97
Total Equity				$ 3,072	$ 2,837	$ 2,938

	Years Ended December 31		
	2011	2010 In Millions	2009
[1] **Disclosure of Comprehensive Income**			
Net income	$ 417	$ 343	$ 240
Income attributable to noncontrolling interests	2	3	11
Net income attributable to CMS Energy	415	340	229
Retirement benefits liability			
Net loss arising during the period, net of tax benefit of $(7) in 2011, $(6) in 2010, and $(3) in 2009	(11)	(9)	(6)
Amortization of net actuarial loss, net of tax of $1 in 2011, and $ - in 2010 and 2009	2	1	1
Prior service credit adjustment, net of tax of $1 in 2010	—	1	—
Investments			
Unrealized gain on investments, net of tax $ - in 2011 and 2010, and $3 in 2009	—	—	5
Reclassification adjustments included in net income, net of tax benefit of $ - in 2011 and 2010, and $(3) in 2009	—	—	(5)
Total Comprehensive Income	$ 406	$ 333	$ 224

The accompanying notes are an integral part of these statements.

(This page intentionally left blank)

Table of Contents

Consumers Energy Company

CONSOLIDATED STATEMENTS OF INCOME

	Years Ended December 31		
	2011	2010	2009
		In Millions	
Operating Revenue	$6,253	$6,156	$5,963
Operating Expenses			
Fuel for electric generation	559	520	460
Purchased and interchange power	1,267	1,224	1,151
Purchased power — related parties	81	84	81
Cost of gas sold	1,438	1,516	1,778
Maintenance and other operating expenses	1,175	1,109	1,045
Depreciation and amortization	542	572	559
General taxes	206	205	209
Gain on asset sales, net	—	—	(9)
Total operating expenses	5,268	5,230	5,274
Operating Income	985	926	689
Other Income (Expense)			
Interest income	7	18	17
Interest and dividend income — related parties	2	—	—
Allowance for equity funds used during construction	6	5	6
Other income	19	31	47
Other expense	(20)	(15)	(11)
Total other income	14	39	59
Interest Charges			
Interest on long-term debt	251	246	250
Other interest expense	18	34	46
Allowance for borrowed funds used during construction	(4)	(3)	(4)
Total interest charges	265	277	292
Income Before Income Taxes	734	688	456
Income Tax Expense	267	254	163
Net Income	467	434	293
Preferred Stock Dividends	2	2	2
Net Income Available to Common Stockholder	$ 465	$ 432	$ 291

The accompanying notes are an integral part of these statements.

Table of Contents

Consumers Energy Company

CONSOLIDATED STATEMENTS OF CASH FLOWS

	Years Ended December 31		
	2011	2010	2009
		In Millions	
Cash Flows from Operating Activities			
Net income	$ 467	$ 434	$ 293
Adjustments to reconcile net income to net cash provided by operating activities			
Depreciation and amortization	542	572	559
Deferred income taxes and investment tax credit	161	246	67
Postretirement benefits expense	158	208	177
Bad debt expense	70	53	47
Other non-cash operating activities	16	24	(9)
Postretirement benefits contributions	(315)	(447)	(254)
Changes in other assets and liabilities			
Decrease (increase) in accounts receivable, notes receivable, and accrued revenue	97	(92)	(92)
Decrease (increase) in accrued power supply revenue	15	33	(41)
Decrease (increase) in inventories	(17)	132	91
Increase (decrease) in accounts payable	43	(16)	(50)
Increase (decrease) in accrued expenses	74	(83)	2
Decrease (increase) in other current and non-current assets	(49)	(21)	60
Increase (decrease) in current and non-current regulatory liabilities	49	(69)	101
Increase (decrease) in other current and non-current liabilities	12	(64)	(29)
Net cash provided by operating activities	1,323	910	922
Cash Flows from Investing Activities			
Capital expenditures (excludes assets placed under capital lease)	(876)	(815)	(811)
Cost to retire property	(56)	(43)	(49)
Other investing activities	(19)	(1)	10
Net cash used in investing activities	(951)	(859)	(850)

	Years Ended December 31		
	2011	2010	2009
		In Millions	
Cash Flows from Financing Activities			
Proceeds from issuance of long-term debt	—	600	500
Retirement of long-term debt	(37)	(482)	(387)
Payment of DOE liability	(43)	—	—
Payment of common stock dividends	(374)	(358)	(285)
Payment of preferred stock dividends	(2)	(2)	(2)
Stockholder’s contribution	125	250	100
Payment of capital and finance lease obligations	(24)	(23)	(23)
Other financing costs	(3)	(4)	(5)
Net cash used in financing activities	(358)	(19)	(102)
Net Increase (Decrease) in Cash and Cash Equivalents	14	32	(30)
Cash and Cash Equivalents, Beginning of Period	71	39	69
Cash and Cash Equivalents, End of Period	$ 85	$ 71	$ 39
Other cash flow activities and non-cash investing and financing activities:			
Cash transactions			
Interest paid (net of amounts capitalized)	$ 253	$ 259	$ 276
Income taxes paid	8	149	104
Non-cash transactions			
Capital expenditures not paid	$ 92	$ 56	$ 15
Other assets placed under capital lease	4	16	16

The accompanying notes are an integral part of these statements.

Consumers Energy Company

CONSOLIDATED BALANCE SHEETS

	December 31	
	2011	2010
	In Millions	
ASSETS		
Current Assets		
Cash and cash equivalents	$ 85	$ 71
Restricted cash and cash equivalents	26	23
Accounts receivable and accrued revenue, less allowances of $33 in 2011 and $23 in 2010	860	963
Notes receivable	23	55
Accounts receivable – related parties	1	1
Accrued power supply revenue	—	15
Inventories at average cost		
Gas in underground storage	929	941
Materials and supplies	88	100
Generating plant fuel stock	164	124
Deferred property taxes	187	180
Regulatory assets	1	19
Prepayments and other current assets	43	27
Total current assets	2,407	2,519
Plant, Property, and Equipment		
Plant, property, and equipment, gross	14,621	14,022
Less accumulated depreciation and amortization	4,846	4,593
Plant, property, and equipment, net	9,775	9,429
Construction work in progress	782	566
Total plant, property, and equipment	10,557	9,995
Other Non-current Assets		
Regulatory assets	2,466	2,093
Accounts and notes receivable	1	22
Investments	35	34
Other	196	176
Total other non-current assets	2,698	2,325
Total Assets	$15,662	$14,839

	December 31	
	2011	2010
	In Millions	
LIABILITIES AND EQUITY		
Current Liabilities		
Current portion of long-term debt, capital and finance lease obligations	$ 363	$ 61
Accounts payable	561	471
Accounts payable — related parties	11	11
Accrued rate refunds	30	19
Accrued interest	73	74
Accrued taxes	287	199
Deferred income taxes	73	209
Regulatory liabilities	125	22
Other current liabilities	119	95
Total current liabilities	1,642	1,161
Non-current Liabilities		
Long-term debt	3,987	4,488
Non-current portion of capital and finance lease obligations	167	188
Regulatory liabilities	1,875	1,988
Postretirement benefits	1,225	1,076
Asset retirement obligations	253	244
Deferred investment tax credit	46	49
Deferred income taxes	1,817	1,289
Other non-current liabilities	256	176
Total non-current liabilities	9,626	9,498
Commitments and Contingencies (Notes 5, 6, 7, 9, and 10)		
Equity		
Common stockholder’s equity		
Common stock, authorized 125.0 shares; outstanding 84.1 shares for both periods	841	841
Other paid-in capital	2,957	2,832
Accumulated other comprehensive loss	(2)	—
Retained earnings	554	463
Total common stockholder’s equity	4,350	4,136
Preferred stock	44	44
Total equity	4,394	4,180
Total Liabilities and Equity	$15,662	$14,839

The accompanying notes are an integral part of these statements.

Consumers Energy Company

CONSOLIDATED STATEMENTS OF CHANGES IN EQUITY

	Years Ended December 31		
	2011	2010 In Millions	2009
Common Stock			
At beginning and end of period	$ 841	$ 841	$ 841
Other Paid-in Capital			
At beginning of period	2,832	2,582	2,482
Stockholder’s contribution	125	250	100
At end of period	2,957	2,832	2,582
Accumulated Other Comprehensive Income (Loss)			
Retirement benefits liability			
At beginning of period	(16)	(11)	(7)
Net loss arising during the period [1]	(4)	(5)	(4)
Amortization of net actuarial loss [1]	1	—	—
At end of period	(19)	(16)	(11)
Investments			
At beginning of period	16	13	6
Unrealized gain on investments [1]	1	3	10
Reclassification adjustments included in net income [1]	—	—	(3)
At end of period	17	16	13
At end of period	(2)	—	2
Retained Earnings			
At beginning of period	463	389	383
Net income [1]	467	434	293
Common stock dividends declared	(374)	(358)	(285)
Preferred stock dividends declared	(2)	(2)	(2)
At end of period	554	463	389
Preferred Stock			
At beginning and end of period	44	44	44
Total Equity	$4,394	$4,180	$3,858

Table of Contents

	Years Ended December 31		
	2011	2010	2009
		In Millions	
[1] **Disclosure of Comprehensive Income**			
Net income	$ 467	$ 434	$ 293
Retirement benefits liability			
Net loss arising during the period, net of tax benefit of $(3) in 2011 and 2010 and $(2) in 2009	(4)	(5)	(4)
Amortization of net actuarial loss, net of tax of $1 in 2011 and $ - in 2010 and 2009	1	—	—
Investments			
Unrealized gain on investments, net of tax of $ - in 2011, $2 in 2010, and $6 in 2009	1	3	10
Reclassification adjustments included in net income, net of tax benefit of $ - in 2011 and 2010 and $(2) in 2009	—	—	(3)
Total Comprehensive Income	$ 465	$ 432	$ 296

The accompanying notes are an integral part of these statements.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

1: SIGNIFICANT ACCOUNTING POLICIES

Corporate Structure: CMS Energy is an energy company operating primarily in Michigan. It is the parent holding company of several subsidiaries, including Consumers, an electric and gas utility, and CMS Enterprises, primarily a domestic independent power producer. CMS Energy and Consumers manage their businesses by the nature of services each provides. CMS Energy operates principally in three business segments: electric utility; gas utility; and enterprises, its non-utility investments and operations. Consumers operates principally in two business segments: electric utility and gas utility.

Principles of Consolidation: CMS Energy and Consumers prepare their consolidated financial statements in conformity with GAAP. CMS Energy's consolidated financial statements comprise CMS Energy, Consumers, CMS Enterprises, and all other entities in which CMS Energy has a controlling financial interest or is the primary beneficiary. Consumers' consolidated financial statements comprise Consumers and all other entities in which it has a controlling financial interest or is the primary beneficiary. CMS Energy uses the equity method of accounting for investments in companies and partnerships that are not consolidated, where they have significant influence over operations and financial policies but are not the primary beneficiary. CMS Energy and Consumers eliminate intercompany transactions and balances.

Use of Estimates: CMS Energy and Consumers are required to make estimates using assumptions that may affect reported amounts and disclosures. Actual results could differ from those estimates.

Revenue Recognition Policy: CMS Energy and Consumers recognize revenue from deliveries of electricity and natural gas, and from the transportation, processing, and storage of natural gas, when services are provided. CMS Energy and Consumers record unbilled revenue for the estimated amount of energy delivered to customers but not yet billed. CMS Energy and Consumers record sales tax net and exclude it from revenue. CMS Energy recognizes revenue on sales of marketed electricity, natural gas, and other energy products at delivery.

Alternative-Revenue Programs: Under electric and gas rate case orders issued by the MPSC in 2009 and 2010, Consumers was granted authority to implement revenue decoupling mechanisms. The electric revenue decoupling mechanism adjusts customer rates to collect or refund the change in marginal revenue arising from the difference between the level of average sales per customer adopted in the electric rate case order and actual average sales per customer. The gas revenue decoupling mechanism is similar, but does not adjust customer rates for changes in sales volumes resulting from weather fluctuations. Consumers accounts for these programs as alternative-revenue programs that meet the criteria for recognizing the effects of decoupling adjustments on revenue as electricity and gas are delivered. For details on Consumers' decoupling mechanisms, see Note 6, Regulatory Matters.

In September 2009, the MPSC approved an energy optimization incentive mechanism that provides a financial incentive if the energy savings of Consumers' customers exceed annual targets established by the MPSC. Consumers accounts for this program as an alternative-revenue program that meets the criteria for recognizing revenue related to the incentive as soon as energy savings exceed the annual targets established by the MPSC.

Self-Implemented Rates: Unless prohibited by the MPSC upon a showing of good cause, Consumers is allowed to self-implement new energy rates six months after a new rate case filing if the MPSC has not issued an order in the case. The MPSC then has another six months to issue a final order. If the MPSC does not issue a final order within that period, the filed rates are considered approved. If the MPSC issues a final order within that period, the rates that Consumers self-implemented may be subject to refund, with interest. Consumers recognizes revenue associated with self-implemented rates. If Consumers considers it probable that it will be required to refund a portion of its self-implemented rates, then Consumers records a provision for revenue subject to refund. For details on Consumers' self-implemented rates, see Note 6, Regulatory Matters.

Accounts Receivable: Accounts receivable comprise trade receivables and unbilled receivables. CMS Energy and Consumers record their accounts receivable at cost, which approximates fair value. CMS Energy and Consumers establish an allowance for uncollectible accounts based on historical losses, management's assessment of existing economic conditions, customer trends, and other factors. CMS Energy and Consumers assess late payment fees on trade receivables based on contractual past-due terms established with customers. CMS Energy and Consumers charge off accounts deemed uncollectible to operating expense.

Allowance for Uncollectible Notes Receivable: The allowance for uncollectible notes receivable is a valuation allowance to reflect possible credit losses. The allowance is increased by the provision for credit losses and decreased by note charge-offs net of recoveries. Management estimates the allowance balance required using historical loan loss experience, the nature and volume of the portfolio, economic conditions, and other factors. Notes deemed uncollectible are charged against the allowance when the loss is confirmed, but no later than the point at which a note becomes 120 days past due. For further details about CMS Energy's notes receivable, see Note 9, Financial Instruments, and Note 11, Notes Receivable.

Cash and Cash Equivalents: Cash and cash equivalents include short-term, highly liquid investments with original maturities of three months or less.

Contingencies: CMS Energy and Consumers record estimated liabilities for contingencies on their consolidated financial statements when it is probable that a liability has been incurred and when the amount of loss can be reasonably estimated. CMS Energy and Consumers expense legal fees as incurred; fees incurred but not yet billed are accrued based on estimates of work performed. This policy also applies to any fees incurred on behalf of employees and officers under indemnification agreements; such fees are billed directly to CMS Energy or Consumers.

Debt Issuance Costs, Discounts, Premiums, and Refinancing Costs: CMS Energy and Consumers defer issuance costs, discounts, and premiums associated with long-term debt and amortize those amounts over the terms of the debt issues. For the non-regulated portions of CMS Energy's and Consumers' businesses, refinancing costs are expensed as incurred. For the regulated portions of CMS Energy's and Consumers' businesses, any remaining unamortized issuance costs, discounts, and premiums associated with refinanced debt are amortized over the term of the newly issued debt.

Derivative Instruments: CMS Energy and Consumers record derivative contracts that do not qualify for the normal purchases and sales exception at fair value on their consolidated balance sheets. Each reporting period, the resulting asset or liability is adjusted to reflect any change in the fair value of the contract. Since none of CMS Energy's or Consumers' derivatives has been designated as an accounting hedge, all changes in fair value are reported in earnings. For a discussion of how CMS Energy and Consumers determine the fair value of their derivatives, see Note 4, Fair Value Measurements. For additional details regarding derivative instruments, see Note 10, Derivative Instruments.

Determination of Pension and OPEB MRV of Plan Assets: CMS Energy and Consumers determine the MRV for pension plan assets as the fair value of plan assets on the measurement date, adjusted by the gains or losses that will not be admitted into the MRV until future years. CMS Energy and Consumers reflect each year's gain or loss in the MRV in equal amounts over a five-year period beginning on the date the original amount was determined. CMS Energy and Consumers determine the MRV for OPEB plan assets as the fair value of assets on the measurement date. CMS Energy and Consumers use the MRV in the calculation of net pension and OPEB costs. For further details, see Note 12, Retirement Benefits.

Earnings Per Share: CMS Energy calculates basic and diluted EPS using the weighted-average number of shares of common stock and dilutive potential common stock outstanding during the period. Potential common stock, for purposes of determining diluted EPS, includes the effects of dilutive stock options, warrants, and convertible securities. CMS Energy computes the effect on potential common stock using the treasury stock method or the if-converted method, as applicable. Diluted EPS excludes the impact of antidilutive securities, which are those securities resulting in an increase in EPS or a decrease in loss per share. For EPS computations, see Note 8, Earnings Per Share – CMS Energy.

Financial Instruments: CMS Energy and Consumers record debt and equity securities classified as available for sale at fair value as determined from quoted market prices or other observable, market-based inputs. Unrealized gains and losses on these securities are determined on a specific-identification basis. CMS Energy and Consumers report unrealized gains and losses from changes in fair value of the equity securities, net of tax, in equity as part of AOCI, except that unrealized losses determined to be other than temporary are reported in earnings. CMS Energy and Consumers report unrealized gains resulting from changes in fair value of the debt securities, net of tax, in equity as part of AOCI. Unrealized losses on the debt securities, if significant, are considered other than temporary and reported in earnings since these securities are managed by an independent investment manager that can sell the securities at its own discretion. For additional details regarding financial instruments, see Note 9, Financial Instruments.

Impairment of Long-Lived Assets and Equity Method Investments: CMS Energy and Consumers perform tests of impairment if certain triggering events occur, or if there has been a decline in value that may be other than temporary.

CMS Energy and Consumers evaluate long-lived assets held in use for impairment by calculating the undiscounted future cash flows expected to result from the use of the asset and its eventual disposition. If the undiscounted future cash flows are less than the carrying amount, CMS Energy and Consumers recognize an impairment loss equal to the amount by which the carrying amount exceeds the fair value. CMS Energy and Consumers estimate the fair value of the asset using quoted market prices, market prices of similar assets, or discounted future cash flow analyses.

CMS Energy also assesses equity method investments for impairment whenever there has been a decline in value that is other than temporary. This assessment requires CMS Energy to determine the fair value of the equity method investment. CMS Energy determines fair value using valuation methodologies, including discounted cash flows, and assesses the ability of the investee to sustain an earnings capacity that justifies the carrying amount of the investment. CMS Energy records an impairment if the fair value is less than the carrying amount and the decline in value is considered to be other than temporary.

For additional details, see Note 20, Asset Sales, Discontinued Operations, and Impairment Charges.

Inventory: CMS Energy and Consumers use the weighted-average cost method for valuing working gas, recoverable base gas in underground storage facilities, and materials and supplies inventory. CMS Energy and Consumers also use this method for valuing coal inventory, and they classify these amounts as generating plant fuel stock on their consolidated balance sheets.

CMS Energy and Consumers classify RECs and emission allowances as materials and supplies inventory and use the weighted average method to remove amounts from inventory. RECs and emission allowances are used to satisfy compliance obligations related to the generation of power.

CMS Energy and Consumers use the lower-of-cost-or-market method to evaluate inventory for impairment.

MISO Transactions: MISO requires the submission of hourly day-ahead and real-time bids and offers for energy at locations across the MISO region. Consumers and CMS ERM account for MISO transactions on a net hourly basis in each of the real-time and day-ahead markets, and they net transactions across all MISO energy market locations. CMS Energy and Consumers record net purchases in a single hour in purchased and interchange power and net sales in a single hour in operating revenue on the consolidated statements of income. They record net sale billing adjustments upon invoice receipt, record expense accruals for future net purchases adjustments based on historical experience, and reconcile accruals to actual expenses upon invoice receipt.

Property Taxes: Property taxes are based on the taxable value of Consumers' real and personal property assessed by local taxing authorities. Consumers records property tax expense over the fiscal year of the taxing authority for which the taxes are levied based on Consumers' budgeted customer sales. The deferred property tax balance represents the amount of Consumers' accrued property tax that will be recognized over future governmental fiscal periods.

Reclassifications: CMS Energy and Consumers have reclassified certain prior-period amounts on their consolidated financial statements to conform to the presentation for the current period. These reclassifications did not affect consolidated net income or cash flows for the periods presented.

Restricted Cash and Cash Equivalents: CMS Energy and Consumers have restricted cash and cash equivalents dedicated for repayment of Securitization bonds and for payment under performance guarantees. CMS Energy and Consumers classify these amounts as a current asset if they relate to payments that could or will occur within one year.

2: NEW ACCOUNTING STANDARDS

NEW ACCOUNTING STANDARDS NOT YET EFFECTIVE

ASU 2011-05, Presentation of Comprehensive Income: This standard, effective January 1, 2012 for CMS Energy and Consumers, eliminates the option of reporting other comprehensive income and its components on the statement of changes in equity. Presently, both CMS Energy and Consumers use this option for their consolidated financial statements. Under the standard, entities will be required to present either a single continuous statement of comprehensive income, containing both net income and components of other comprehensive income, or two separate consecutive statements. This standard will affect only the presentation of comprehensive income on CMS Energy's and Consumers' consolidated financial statements.

ASU 2011-04, Amendments to Achieve Common Fair Value Measurement and Disclosure Requirements in U.S. GAAP and IFRSs: This standard, effective January 1, 2012 for CMS Energy and Consumers, is the result of a joint project of the Financial Accounting Standards Board and the International Accounting Standards Board. The primary objective of the standard is to ensure that fair value has the same meaning under GAAP and International Financial Reporting Standards and to establish common fair value measurement guidance in the two sets of standards. The standard does not change the overall fair value model in GAAP, but it amends various fair value principles and establishes additional disclosure requirements. This standard will not impact CMS Energy's or Consumers' consolidated income, cash flows, or financial position, but will require additional disclosures.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

3: OTHER INCOME AND OTHER EXPENSE

Presented in the following tables are the components of other income and other expense at CMS Energy and Consumers:

Years Ended December 31	2011	2010	2009
		In Millions	
Other income:			
CMS ENERGY, INCLUDING CONSUMERS			
Gain on early retirement of long-term debt	$—	$—	$28
Regulatory return on capital expenditures	—	17	26
Gain on SERP investment	—	—	8
Return on stranded and security costs	3	4	5
All other	13	11	13
Total other income	$16	$32	$80
CONSUMERS			
Regulatory return on capital expenditures	$—	$17	$26
Gain on SERP investment	—	—	5
Gain on CMS Energy common stock	4	—	—
Return on stranded and security costs	3	4	5
All other	12	10	11
Total other income	$19	$31	$47

Years Ended December 31	2011	2010	2009
		In Millions	
Other expense:			
CMS ENERGY, INCLUDING CONSUMERS			
Loss on reacquired and extinguished debt	$ (1)	$ (8)	$(18)
Donations	(11)	(6)	—
Civic and political expenditures	(3)	(3)	(3)
All other	(7)	(7)	(9)
Total other expense	$(22)	$(24)	$(30)
CONSUMERS			
Donations	$(11)	$ (6)	$ —
Civic and political expenditures	(3)	(3)	(3)
All other	(6)	(6)	(8)
Total other expense	$(20)	$(15)	$(11)

4: FAIR VALUE MEASUREMENTS

Accounting standards define fair value as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants. When measuring fair value, CMS Energy and Consumers are required to incorporate all assumptions that market participants would use in pricing an asset or liability, including assumptions about risk. A fair value hierarchy prioritizes inputs used to measure fair value according to their observability in the market. The three levels of the fair value hierarchy are as follows:

- Level 1 inputs are unadjusted quoted prices in active markets for identical assets or liabilities.
- Level 2 inputs are observable, market-based inputs, other than Level 1 prices. Level 2 inputs may include quoted prices for similar assets or liabilities in active markets, quoted prices in inactive markets, interest rates and yield curves observable at commonly quoted intervals, credit risks, default rates, and inputs derived from or corroborated by observable market data.
- Level 3 inputs are unobservable inputs that reflect CMS Energy’s or Consumers’ own assumptions about how market participants would value their assets and liabilities.

To the extent possible, CMS Energy and Consumers use quoted market prices or other observable market pricing data in valuing assets and liabilities measured at fair value. If this information is unavailable, they use market-corroborated data or reasonable estimates about market participant assumptions. CMS Energy and Consumers classify fair value measurements within the fair value hierarchy based on the lowest level of input that is significant to the fair value measurement in its entirety.

Assets and Liabilities Measured at Fair Value on a Recurring Basis

Presented in the following tables are CMS Energy's and Consumers' assets and liabilities, by level within the fair value hierarchy, reported at fair value on a recurring basis:

December 31, 2011	Total	Level 1	Level 2	Level 3
		In Millions		
CMS Energy, including Consumers				
Assets				
Cash equivalents	$109	$ 109	$ —	$ —
Restricted cash equivalents	15	15	—	—
Nonqualified deferred compensation plan assets	4	4	—	—
SERP:				
Cash equivalents	1	1	—	—
Mutual funds	113	113	—	—
Derivative instruments:				
Commodity contracts	3	1	—	2
Total	$245	$ 243	$ —	$ 2
Liabilities:				
Nonqualified deferred compensation plan liabilities	$ 4	$ 4	$ —	$ —
Derivative instruments:				
Commodity contracts	7	—	3	4
Total	$ 11	$ 4	$ 3	$ 4
Consumers				
Assets:				
Cash equivalents	$ 56	$ 56	$ —	$ —
Restricted cash equivalents	14	14	—	—
CMS Energy common stock	35	35	—	—
Nonqualified deferred compensation plan assets	3	3	—	—
SERP:				
Cash equivalents	1	1	—	—
Mutual funds	74	74	—	—
Derivative instruments:				
Commodity contracts	2	—	—	2
Total	$185	$ 183	$ —	$ 2
Liabilities:				
Nonqualified deferred compensation plan liabilities	$ 3	$ 3	$ —	$ —
Total	$ 3	$ 3	$ —	$ —

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

December 31, 2010	Total	Level 1	Level 2	Level 3
		In Millions		
CMS ENERGY, INCLUDING CONSUMERS				
Assets:				
Cash equivalents	$183	$ 183	$ —	$ —
Restricted cash equivalents	6	6	—	—
Nonqualified deferred compensation plan assets	6	6	—	—
SERP:				
Cash equivalents	1	1	—	—
Mutual fund	62	62	—	—
State and municipal bonds	28	—	28	—
Derivative instruments:				
Commodity contracts	1	—	—	1
Total	$287	$ 258	$ 28	$ 1
Liabilities:				
Nonqualified deferred compensation plan liabilities	$ 6	$ 6	$ —	$ —
Derivative instruments:				
Commodity contracts	4	—	—	4
Total	$ 10	$ 6	$ —	$ 4
CONSUMERS				
Assets:				
Cash equivalents	$ 19	$ 19	$ —	$ —
Restricted cash equivalents	6	6	—	—
CMS Energy common stock	34	34	—	—
Nonqualified deferred compensation plan assets	4	4	—	—
SERP:				
Cash equivalents	1	1	—	—
Mutual fund	39	39	—	—
State and municipal bonds	17	—	17	—
Derivative instruments:				
Commodity contracts	1	—	—	1
Total	$121	$ 103	$ 17	$ 1
Liabilities:				
Nonqualified deferred compensation plan liabilities	$ 4	$ 4	$ —	$ —
Total	$ 4	$ 4	$ —	$ —

Cash Equivalents: Cash equivalents and restricted cash equivalents consist of money market funds with daily liquidity.

Nonqualified Deferred Compensation Plan Assets: The nonqualified deferred compensation plan assets consist of various mutual funds that are valued using a market approach. CMS Energy and Consumers value these assets using the daily quoted net asset values that are the basis for transactions to buy or sell shares in each fund. CMS Energy and Consumers report these assets in other non-current assets on their consolidated balance sheets.

SERP Assets: CMS Energy and Consumers value their SERP assets using a market approach, incorporating prices and other relevant information from market transactions. The SERP cash equivalents consist of a money market fund with daily liquidity. The SERP invests in mutual funds that hold primarily fixed-income instruments of varying maturities. In order to meet their investment objectives, the funds hold investment-grade debt securities, and may invest a portion of their assets in high-yield securities, foreign debt, and derivative instruments. CMS Energy and Consumers value these funds using the daily quoted net asset values that are the basis for transactions to buy or sell shares in each fund.

At December 31, 2010, the SERP held state and municipal bonds, which were valued using a matrix pricing model incorporating Level 2 market-based information. The fair value of the bonds was derived from various observable inputs, including benchmark yields, reported trades, broker/dealer quotes, bond ratings, and general information on market movements normally considered by market participants when pricing such debt securities.

CMS Energy and Consumers report their SERP assets in other non-current assets on their consolidated balance sheets. For additional details about SERP securities, see Note 9, Financial Instruments.

Nonqualified Deferred Compensation Plan Liabilities: CMS Energy and Consumers value their non-qualified deferred compensation plan liabilities based on the fair values of the plan assets, as they reflect what is owed to the plan participants in accordance with their investment elections. CMS Energy and Consumers report these liabilities in other non-current liabilities on their consolidated balance sheets.

Derivative Instruments: CMS Energy and Consumers value their derivative instruments using either a market approach that incorporates information from market transactions, or an income approach that discounts future expected cash flows to a present value amount. CMS Energy has exchange-traded derivative contracts that are valued based on Level 1 quoted prices, as well as derivatives valued using Level 2 inputs, including commodity market prices, interest rates, credit ratings, default rates, and market-based seasonality factors. CMS Energy and Consumers have classified certain derivatives as Level 3 since the fair value measurements incorporate pricing assumptions that cannot be observed or confirmed through market transactions. At December 31, 2011, the most significant derivatives classified as Level 3 were a power option sold by CMS ERM and FTRs held by Consumers. At December 31, 2010, the most significant derivative classified as Level 3 was an electricity sales agreement held by CMS ERM. In valuing their derivative instruments not classified as Level 1, CMS Energy and Consumers may incorporate adjustments for credit risk, or the risk of nonperformance, as deemed appropriate. For additional details about derivative contracts, see Note 10, Derivative Instruments.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Assets and Liabilities Measured at Fair Value on a Recurring Basis using Significant Level 3 Inputs

Presented in the following table are reconciliations of changes in the fair values of Level 3 assets and liabilities at CMS Energy and Consumers:

Years Ended December 31	2011	2010	2009
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Balance at beginning of period	$ (3)	$ (8)	$(16)
Total gains included in earnings [1]	2	5	7
Total gains offset through regulatory accounting	2	3	9
Purchases	1	1	1
Sales	(4)	(1)	—
Settlements	—	(3)	(9)
Balance at end of period	$ (2)	$ (3)	$ (8)
Unrealized gains included in earnings relating to assets and liabilities still held at end of period [1]	$ 2	$ 4	$ 6
CONSUMERS			
Balance at beginning of period	$ 1	$ —	$ —
Total gains offset through regulatory accounting	2	3	9
Purchases	1	1	1
Settlements	(2)	(3)	(10)
Balance at end of period	$ 2	$ 1	$ —

[1] CMS Energy records realized and unrealized gains and losses for Level 3 recurring fair values in earnings as a component of operating revenue or maintenance and other operating expenses on its consolidated statements of income.

Assets and Liabilities Measured at Fair Value on a Nonrecurring Basis

CMS Energy and Consumers had no nonrecurring fair value measurements during the year ended December 31, 2011.

Presented in the following table are CMS Energy's assets, by level within the fair value hierarchy, reported at fair value on a nonrecurring basis during the year ended December 31, 2010:

	Level 1	Level 2	Level 3	Losses
		In Millions		
CMS ENERGY, INCLUDING CONSUMERS				
Assets held for sale	$ —	$ 5	$ —	$ (6)

In 2010, CMS Energy wrote down assets held for sale from their carrying amount of $11 million to their fair value of $5 million, resulting in a loss of $6 million, which was recorded in earnings as part of discontinued operations. The fair value was determined based on the price that CMS Energy received for the sale of these assets, which closed in January 2011. CMS Energy had no other nonrecurring fair value measurements and Consumers had no nonrecurring fair value measurements during the years ended December 31, 2010 and 2009.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

5: CONTINGENCIES AND COMMITMENTS

CMS Energy and Consumers are involved in various matters that give rise to contingent liabilities. Depending on the specific issues, the resolution of these contingencies could have a material effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations. In their disclosures of these matters, CMS Energy and Consumers provide an estimate of the possible loss or range of loss when such an estimate can be made. Disclosures that state that CMS Energy or Consumers cannot predict the outcome of a matter indicate that they are unable to estimate a possible loss or range of loss for the matter.

CMS Energy Contingencies

Gas Index Price Reporting Investigation: In 2002, CMS Energy notified appropriate regulatory and governmental agencies that some employees at CMS MST and CMS Field Services appeared to have provided inaccurate information regarding natural gas trades to various energy industry publications which compile and report index prices. Although CMS Energy has not received any formal notification that the DOJ has completed its investigation, the DOJ's last request for information occurred in 2003, and CMS Energy completed its response to this request in 2004. CMS Energy is unable to predict the outcome of the DOJ investigation and what effect, if any, the investigation will have on CMS Energy.

Gas Index Price Reporting Litigation: CMS Energy, along with CMS MST, CMS Field Services, Cantera Natural Gas, Inc., and Cantera Gas Company, are named as defendants in various lawsuits arising as a result of alleged inaccurate natural gas price reporting to publications that report trade information. Allegations include manipulation of NYMEX natural gas futures and options prices, price-fixing conspiracies, restraint of trade, and artificial inflation of natural gas retail prices in Colorado, Kansas, Missouri, and Wisconsin. The following provides more detail on these proceedings:

- In 2005, CMS Energy, CMS MST, and CMS Field Services were named as defendants in a putative class action filed in Kansas state court, Learjet, Inc., et al. v. Oneok, Inc., et al. The complaint alleges that during the putative class period, January 1, 2000 through October 31, 2002, the defendants engaged in a scheme to violate the Kansas Restraint of Trade Act. The plaintiffs are seeking statutory full consideration damages consisting of the full consideration paid by plaintiffs for natural gas allegedly purchased from defendants.
- In 2007, a class action complaint, Heartland Regional Medical Center, et al. v. Oneok, Inc. et al., was filed in Missouri state court alleging violations of Missouri antitrust laws. Defendants, including CMS Energy, CMS Field Services, and CMS MST, are alleged to have violated the Missouri antitrust law in connection with their natural gas reporting activities.
- Breckenridge Brewery of Colorado, LLC and BBD Acquisition Co. v. Oneok, Inc., et al., a class action complaint brought on behalf of retail direct purchasers of natural gas in Colorado, was filed in Colorado state court in 2006. Defendants, including CMS Energy, CMS Field Services, and CMS MST, are alleged to have violated the Colorado Antitrust Act of 1992 in connection with their natural gas reporting activities. Plaintiffs are seeking full refund damages.
- A class action complaint, Arandell Corp., et al. v. XCEL Energy Inc., et al., was filed in 2006 in Wisconsin state court on behalf of Wisconsin commercial entities that purchased natural gas between January 1, 2000 and October 31, 2002. The defendants, including CMS Energy, CMS ERM, and Cantera Gas Company, are alleged to have violated Wisconsin's antitrust statute. The plaintiffs are seeking full consideration damages, plus exemplary damages and attorneys' fees. After dismissal on jurisdictional grounds in 2009, plaintiffs filed a new complaint in the U.S. District Court for the Eastern District of Michigan. In 2010, the MDL judge issued an opinion and order granting the

CMS Energy defendants' motion to dismiss the Michigan complaint on statute-of-limitations grounds and all CMS Energy defendants have been dismissed from the Arandell (Michigan) action.

- Another class action complaint, Newpage Wisconsin System v. CMS ERM, et al., was filed in 2009 in circuit court in Wood County, Wisconsin, against CMS Energy, CMS ERM, Cantera Gas Company, and others. The plaintiff is seeking full consideration damages, treble damages, costs, interest, and attorneys' fees.
- In 2005, J.P. Morgan Trust Company, in its capacity as Trustee of the FLI Liquidating Trust, filed an action in Kansas state court against CMS Energy, CMS MST, CMS Field Services, and others. The complaint alleges various claims under the Kansas Restraint of Trade Act. The plaintiff is seeking statutory full consideration damages for its purchases of natural gas in 2000 and 2001.

After removal to federal court, all of the cases described above were transferred to the MDL. CMS Energy was dismissed from the Learjet, Heartland, and J.P. Morgan cases in 2009, but other CMS Energy defendants remained parties. All CMS Energy defendants were dismissed from the Breckenridge case in 2009. In 2010, CMS Energy and Cantera Gas Company were dismissed from the Newpage case and the Arandell (Wisconsin) case was reinstated against CMS ERM. In July 2011, all claims against remaining CMS Energy defendants in the MDL cases were dismissed based on FERC preemption. Plaintiffs have filed appeals in all of the cases. The issues on appeal are whether the district court erred in dismissing the cases based on FERC preemption and denying the plaintiffs' motions for leave to amend their complaints to add a federal Sherman Act antitrust claim. The plaintiffs did not appeal the dismissal of CMS Energy as a defendant in these cases, but other CMS Energy entities remain as defendants.

These cases involve complex facts, a large number of similarly situated defendants with different factual positions, and multiple jurisdictions. Presently, any estimate of liability would be highly speculative; the amount of CMS Energy's possible loss would be based on widely varying models previously untested in this context. If the outcome after appeals is unfavorable, these cases could have a material adverse impact on CMS Energy's liquidity, financial condition, and results of operations.

Bay Harbor: As part of the development of Bay Harbor by certain subsidiaries of CMS Energy, and under an agreement with the MDEQ, third parties constructed a golf course and park over several abandoned CKD piles left over from the former cement plant operations on the Bay Harbor site. The third parties also undertook a series of response activities, including constructing a leachate collection system in one area where CKD-impacted groundwater was entering Little Traverse Bay. Leachate is produced when water enters into the CKD piles. In 2002, CMS Energy sold its interest in Bay Harbor, but retained its obligations under environmental indemnities entered into at the start of the project.

In 2005, the EPA, along with CMS Land and CMS Capital, voluntarily executed an Administrative Order on Consent under Superfund, and the EPA approved a Removal Action Work Plan to address contamination issues. Collection systems required under the plan have been installed and effectiveness monitoring of the systems at the shoreline is ongoing. CMS Land, CMS Capital, and the EPA agreed upon augmentation measures to address areas where pH measurements were not satisfactory. Several augmentation measures were implemented and completed in 2009, with the remaining measure completed in 2010.

In May 2011, CMS Energy received approval from the EPA on a revised scope of remedies that CMS Energy had submitted in December 2010. CMS Energy reached a tentative agreement with the MDEQ in December 2011 that identifies the final remedies at the site. The parties are awaiting EPA review prior to finalizing the agreement. In December 2010, the MDEQ issued an NPDES permit that authorizes CMS Land to discharge treated leachate into Little Traverse Bay. This permit requires renewal every five years. Discharge of treated leachate under the permit has commenced. Additionally, CMS Land has committed to investigate the potential for a deep injection well on the Bay Harbor site as an alternative long-term solution to the leachate disposal issue. In 2008, the MDEQ and the EPA granted permits for CMS Land or its wholly owned subsidiary, Beeland Group LLC, to construct and operate an off-site deep injection well in Antrim County, Michigan, to dispose of leachate from Bay Harbor. Certain environmental groups, a local township, and a local county filed lawsuits appealing the permits and seeking an injunction. A temporary restraining order was issued by the trial court. The legal proceeding was stayed in 2009 and can be renewed by either party at any time.

Various claims have been brought against CMS Land or its affiliates, including CMS Energy, alleging environmental damage to property, loss of property value, insufficient disclosure of environmental matters, breach of agreement relating to access, or other matters. In October 2010, CMS Land and other parties received a demand for payment from the EPA in the amount of $7 million, plus interest, whereby the EPA is seeking recovery, as allowed under Superfund, of the EPA's response costs incurred at the Bay Harbor site. CMS Land communicated to the EPA in November 2010 that it does not believe that this is a valid claim.

CMS Land and CMS Capital, the MDEQ, the EPA, and other parties continue to negotiate the long-term remedy for the Bay Harbor site, including:

- the disposal of leachate;
- the location and design of collection lines and upstream water diversion systems;
- application of criteria for various substances such as mercury; and
- other matters that are likely to affect the scope of response activities that CMS Land and CMS Capital may be obligated to undertake.

CMS Energy has recorded a cumulative charge related to Bay Harbor of $224 million, which includes accretion expense. At December 31, 2011, CMS Energy had a recorded liability of $77 million for its remaining obligations. CMS Energy calculated this liability based on discounted projected costs, using a discount rate of 4.34 percent and an inflation rate of one percent on annual operating and maintenance costs. CMS Energy based the discount rate on the interest rate for 30-year U.S. Treasury securities at December 31, 2010. The undiscounted amount of the remaining obligation is $100 million. CMS Energy expects to pay $21 million during 2012, $8 million in 2013, $4 million in 2014, $4 million in 2015, $5 million in 2016, and the remaining amount thereafter on long-term liquid disposal and operating and maintenance costs.

CMS Energy's estimate of response activity costs and the timing of expenditures could change if there are additional major changes in circumstances or assumptions, including but not limited to:

- inability to complete the present long-term water disposal strategy at a reasonable cost;
- delays in implementing the present long-term water disposal strategy;
- requirements to alter the present long-term water disposal strategy upon expiration of the NPDES permit if the MDEQ or EPA identify a more suitable alternative;
- an increase in the number of contamination areas;
- different remediation techniques;
- the nature and extent of contamination;
- inability to reach agreement with the MDEQ or the EPA over additional response activities;
- delays in the receipt of requested permits;
- delays following the receipt of any requested permits due to legal appeals of third parties;
- additional or new legal or regulatory requirements; or
- new or different landowner claims.

Depending on the size of any indemnity obligation or liability under environmental laws, an adverse outcome of this matter could have a material adverse effect on CMS Energy’s liquidity and financial condition and could negatively affect CMS Energy’s financial results. Although a liability for its present estimate of remaining response activity costs has been recorded, CMS Energy cannot predict the ultimate financial impact or outcome of this matter.

Equatorial Guinea Tax Claim: In January 2002, CMS Energy sold its oil, gas, and methanol investments in Equatorial Guinea. The government of Equatorial Guinea claims that CMS Energy owes $142 million in taxes, plus interest, in connection with the sale. CMS Energy has concluded that the government’s tax claim is without merit. The government of Equatorial Guinea indicated through a request for arbitration in October 2011 that it still intends to pursue its claim. CMS Energy is vigorously contesting the claim, and cannot predict the financial impact or outcome of this matter.

CONSUMERS’ ELECTRIC UTILITY CONTINGENCIES

Electric Environmental Matters: Consumers’ operations are subject to environmental laws and regulations. Historically, Consumers has generally been able to recover, in customer rates, the costs to operate its facilities in compliance with these laws and regulations.

Cleanup and Solid Waste: Consumers expects to incur remediation and other response activity costs at a number of sites under NREPA. Consumers believes that these costs should be recoverable in rates, but cannot guarantee that outcome. Consumers estimates that its liability for NREPA sites will be between $1 and $4 million. At December 31, 2011, Consumers had a recorded liability of $1 million, the minimum amount in the range of its estimated probable NREPA liability.

Consumers is a potentially responsible party at a number of contaminated sites administered under the Superfund. Superfund liability is joint and several. In addition to Consumers, many other creditworthy parties with substantial assets are potentially responsible with respect to the individual sites. In November 2010, Consumers received official notification from the EPA that identified Consumers as a potentially responsible party at the Kalamazoo River Superfund site. The notification claimed that the EPA has reason to believe Consumers disposed of PCBs and arranged for the disposal and treatment of PCB-containing materials at portions of the site. Consumers responded to the EPA in December 2010, stating that it has no information showing that it disposed of PCBs or arranged for disposal or treatment of PCB-containing material at portions of the site and requesting further information from the EPA before Consumers would commit to perform or finance cleanup activities at the site. In April 2011, Consumers received a follow-up letter from the EPA requesting that Consumers, as a potentially responsible party at the Kalamazoo River Superfund site, agree to participate in a removal action plan along with several other companies for an area of lower Portage Creek. The letter also indicated that under Sections 106 and 107 of Superfund, Consumers may be liable for reimbursement of the EPA’s costs and potential penalties for noncompliance with any unilateral order that the EPA may issue requiring performance under the removal action plan. All parties, including Consumers, that were asked to participate in the removal action plan declined to accept liability. In August 2011, the EPA announced that it would proceed with the removal action plan and would continue to pursue potentially responsible parties to perform or pay for some or all of the work. The EPA has provided limited information regarding Consumers’ potential responsibility for contamination at the site and has not yet given an indication of the share of any cleanup costs for which Consumers could be held responsible. Consumers continues to investigate the EPA’s claim that it disposed of PCBs or arranged for disposal or treatment of PCB-containing material at portions of the site. Until further information is received from the EPA, Consumers is unable to estimate a range of potential liability for cleanup of the river.

Based on its experience, Consumers estimates that its share of the total liability for other known Superfund sites will be between $2 million and $8 million. Various factors, including the number of potentially responsible parties involved with each site, affect Consumers' share of the total liability. At December 31, 2011, Consumers had a recorded liability of $2 million for its share of the total liability at these sites, the minimum amount in the range of its estimated probable Superfund liability.

The timing of payments related to Consumers' remediation and other response activities at its Superfund and NREPA sites is uncertain. Consumers periodically reviews these cost estimates. Any significant change in the underlying assumptions, such as an increase in the number of sites, different remediation techniques, the nature and extent of contamination, and legal and regulatory requirements, could affect its estimates of NREPA and Superfund liability.

Ludington PCB: In 1998, during routine maintenance activities, Consumers identified PCB as a component in certain paint, grout, and sealant materials at Ludington. Consumers removed and replaced part of the PCB material with non-PCB material. Since proposing a plan to take action with respect to the remaining materials, Consumers has had several communications with the EPA. Consumers is not able to predict when the EPA will issue a final ruling and cannot predict the financial impact or outcome of this matter.

Electric Utility Plant Air Permit Issues and Notices of Violation: In 2007, Consumers received an NOV/FOV from the EPA alleging that fourteen utility boilers exceeded the visible emission limits in their associated air permits. Consumers has responded formally to the NOV/FOV denying the allegations. In addition, in 2008, Consumers received an NOV for three of its coal-fueled facilities alleging, among other things, violations of NSR PSD regulations relating to ten projects from 1986 to 1998 allegedly subject to review under the NSR. The EPA has alleged that some utilities have classified incorrectly major plant modifications as RMRR rather than seeking permits from the EPA or state regulatory agencies to modify their plants. Consumers responded to the information requests from the EPA on this subject in the past. Consumers believes that it has properly interpreted the requirements of RMRR.

Consumers is engaged in discussions with the EPA on all of these matters. Depending upon the outcome of these discussions, the EPA could bring legal action against Consumers and/or Consumers could be required to install additional pollution control equipment at some or all of its coal-fueled electric generating plants, surrender emission allowances, engage in Supplemental Environmental Projects, and/or pay fines. Additionally, Consumers would need to assess the viability of continuing operations at certain plants. The potential costs relating to these matters could be material and the extent of cost recovery cannot be reasonably estimated. Although Consumers cannot predict the financial impact or outcome of these matters, Consumers expects that it would be able to recover some or all of the costs in rates, consistent with the recovery of other reasonable costs of complying with environmental laws and regulations.

Nuclear Matters: The matters discussed in this section relate to Consumers' previously owned nuclear generating plants.

In 1997, a U.S. Court of Appeals decision confirmed that the DOE was to begin accepting deliveries of spent nuclear fuel for disposal by January 1998. Subsequent U.S. Court of Appeals litigation, in which Consumers and other utilities participated, had not been successful in producing more specific relief for the DOE's failure to accept the spent nuclear fuel. A number of court decisions have supported the right of utilities to pursue damage claims in the U.S. Court of Claims against the DOE for failure to take delivery of spent nuclear fuel. Consumers filed a complaint in 2002.

In July 2011, Consumers entered into an agreement with the DOE to settle its claims for $120 million. In September 2011, Consumers filed an application with the MPSC regarding the regulatory treatment of the settlement amount. For further information, see Note 6, Regulatory Matters.

As part of the agreement with the DOE, Consumers settled its liability to the DOE to fund the disposal of spent nuclear fuel used at Palisades and Big Rock before 1983. This liability, which totaled $163 million, comprised $44 million collected from customers for spent nuclear fuel disposal fees and $119 million of interest accrued on those fees, and was to be paid no later than when the DOE began accepting delivery of spent nuclear fuel. CMS Energy and Consumers classified the liability as long-term debt on their consolidated balance sheets.

Following the settlement, Consumers terminated its letter of credit to Entergy, which Consumers had provided as security for its retained obligation to the DOE in connection with its sale of Palisades and the Big Rock ISFSI to Entergy in 2007.

In its November 2010 electric rate case order, the MPSC had directed Consumers to establish an independent trust fund for the amount payable to the DOE. Following its settlement with the DOE, Consumers petitioned the MPSC to relieve it of the obligation to fund the trust.

Consumers’ Gas Utility Contingencies

Gas Environmental Matters: Consumers expects to incur remediation and other response activity costs at a number of sites under the NREPA. These sites include 23 former MGP facilities. Consumers operated the facilities on these sites for some part of their operating lives. For some of these sites, Consumers has no present ownership interest or may own only a portion of the original site.

In 2011, Consumers increased its remaining liability for these sites by $104 million. The factors that contributed to this revision of estimated costs include new physical evidence regarding the extent of contamination at certain of these sites and statutory changes in Michigan that allow for the achievement of a “no further action” status for environmental sites. These changes led to a new plan of site-by-site remediation work necessary to achieve this status.

At December 31, 2011, Consumers had a recorded liability of $128 million for its remaining obligations for these sites. This amount represents the present value of long-term projected costs, using a discount rate of 2.57 percent and an inflation rate of 2.5 percent. Consumers based the discount rate on the interest rate for 20-year U.S. Treasury securities at December 31, 2011. The undiscounted amount of the remaining obligation is $142 million. Consumers expects to incur remediation and other response activity costs in each of the next five years as follows:

	2012	2013	2014	2015	2016
			In Millions		
Consumers					
Remediation and other response activity costs	$14	$12	$12	$21	$13

Consumers periodically reviews these cost estimates. Any significant change in the underlying assumptions, such as an increase in the number of sites, changes in remediation techniques, or legal and regulatory requirements, could affect Consumers’ estimates of annual response activity costs and the MGP liability.

Pursuant to orders issued by the MPSC, Consumers defers its MGP-related remediation costs and recovers them from its customers. At December 31, 2011, Consumers had a regulatory asset of $156 million related to the MGP sites.

Consumers’ Other Contingencies

Other Environmental Matters: Consumers is initiating preliminary investigations during 2012 at a number of potentially contaminated sites it presently owns with the intent of determining whether any contamination exists and the extent of any identified contamination. The sites to be investigated include combustion turbine sites, generating sites, compressor stations, and remote storage tanks. As of December 31, 2011, no contamination had been confirmed at any of these sites, but it is reasonably possible that contamination exists. Consumers is unable to estimate a possible loss or range of loss at this stage of the investigations.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

GUARANTEES

Presented in the following table are CMS Energy's and Consumers' guarantees at December 31, 2011:

Guarantee Description	Issue Date	Expiration Date		Maximum Obligation		Carrying Amount
		In Millions				
CMS ENERGY, INCLUDING CONSUMERS						
Indemnity obligations from asset sales and other agreements	Various	Various through September 2029	$	512[1]	$	17
Guarantees and put options [2]	Various	Various through March 2021		63		1
CONSUMERS						
Indemnity obligations and other guarantees	Various	Various through September 2029	$	30	$	1

[1] The majority of this amount arises from stock and asset sale agreements under which CMS Energy or a subsidiary of CMS Energy, other than Consumers, indemnified the purchaser for losses resulting from various matters, including claims related to tax disputes, claims related to PPAs, and defects in title to the assets or stock sold to the purchaser by CMS Energy subsidiaries. Except for items described elsewhere in this Note, CMS Energy believes the likelihood of material loss to be remote for the indemnity obligations not recorded as liabilities.

[2] At December 31, 2011, the carrying amount of CMS Land's put option agreements with certain Bay Harbor property owners was $1 million. If CMS Land is required to purchase a Bay Harbor property under a put option agreement, it may sell the property to recover the amount paid under the put option agreement.

Presented in the following table is additional information regarding CMS Energy's and Consumers' guarantees:

Guarantee Description	How Guarantee Arose	Events That Would Require Performance
CMS ENERGY, INCLUDING CONSUMERS		
Indemnity obligations from asset sales and other agreements	Stock and asset sale agreements	Findings of misrepresentation, breach of warranties, tax claims, and other specific events or circumstances
Guarantees	Normal operating activity	Nonperformance or non-payment by a subsidiary under a related contract
Put options	Bay Harbor remediation efforts	Owners exercising put options requiring CMS Land to purchase property
CONSUMERS		
Guarantees and indemnity obligations	Normal operating activity	Nonperformance or claims made by third party under a related contract

CMS Energy, Consumers, and certain other subsidiaries of CMS Energy also enter into various agreements containing tax and other indemnity provisions for which they are unable to estimate the maximum potential obligation. These factors include unspecified exposure under certain agreements. CMS Energy and Consumers consider the likelihood that they would be required to perform or incur substantial losses related to these indemnities to be remote.

OTHER CONTINGENCIES

Other: In addition to the matters disclosed in this Note and Note 6, Regulatory Matters, there are certain other lawsuits and administrative proceedings before various courts and governmental agencies arising in the ordinary course of business to which CMS Energy, Consumers, and certain other subsidiaries of CMS Energy are parties. These other lawsuits and proceedings may involve personal injury, property damage, contracts, environmental matters, federal and state taxes, rates, licensing, employment, and other matters. Further, CMS Energy and Consumers occasionally self-report certain regulatory non-compliance matters that may or may not eventually result in administrative proceedings. CMS Energy and Consumers believe that the outcome of any one of these proceedings will not have a material adverse effect on their consolidated results of operations, financial condition, or liquidity.

CONTRACTUAL COMMITMENTS

Purchase Obligations: Presented in the following table are Consumers' contractual cash obligations at December 31, 2011 for each of the periods shown. CMS Energy did not have any contractual cash obligations at December 31, 2011 that were not included in Consumers' reported amounts.

		Payments Due					
	Total	2012	2013	2014	2015	2016	Beyond 2016
				In Millions			
CONSUMERS							
Purchase obligations	$14,966	$1,868	$1,204	$927	$1,010	$1,010	$8,947
Purchase obligations – related parties	1,686	92	91	96	101	103	1,203

Purchase obligations are long-term contracts for the purchase of commodities and services. These obligations include operating contracts used to ensure adequate supply with generating facilities that meet PURPA requirements. The commodities and services include natural gas and associated transportation, electricity, and coal and associated transportation.

The MCV PPA: Consumers has a 35-year PPA that began in 1990 with the MCV Partnership to purchase 1,240 MW of electricity. The MCV PPA, as amended and restated, provides for:

- a capacity charge of $10.14 per MWh of available capacity;
- a fixed energy charge based on Consumers' annual average baseload coal generating plant operating and maintenance cost, fuel inventory, and average administrative and general expenses;
- a variable energy charge for all delivered energy that reflects the MCV Partnership's cost of production;
- a $5 million annual contribution by the MCV Partnership to a renewable resources program; and
- an option for Consumers to extend the MCV PPA for five years or purchase the MCV Facility at the conclusion of the MCV PPA's term in March 2025.

Capacity and energy charges under the MCV PPA were $292 million in 2011, $285 million in 2010, and $246 million in 2009. Consumers estimates that capacity and energy charges under the MCV PPA will average $380 million annually. These amounts are included in the table above.

The Palisades PPA: Consumers has a PPA expiring in 2022 with Entergy to purchase all of the capacity and energy produced by Palisades, up to the annual average capacity of 798 MW. Consumers estimates that capacity and energy payments under the Palisades PPA will average $340 million annually. A portion of these amounts is included in the table above. Consumers' total purchases of capacity and energy under the PPA were $311 million in 2011, $286 million in 2010, and $276 million in 2009. For further details about Palisades, see Note 15, Leases.

6: REGULATORY MATTERS

Rate Matters

Rate matters are critical to Consumers. Depending upon the specific issues, the outcomes of rate cases and proceedings could have a material adverse effect on CMS Energy's and Consumers' liquidity, financial condition, and results of operations. Consumers cannot predict the outcome of these proceedings.

Consumers' Electric Utility

Electric Rate Case: The MPSC, in its 2010 electric rate case order, authorized Consumers to increase its rates by $146 million annually, $4 million less than the rate increase self-implemented by Consumers in July 2010. In June 2011, the MPSC approved a settlement agreement, finding that no refund of self-implemented rates to customers is required.

Power Supply Cost Recovery: The PSCR process is designed to allow Consumers to recover all of its power supply costs if incurred under reasonable and prudent policies and practices. The MPSC reviews these costs, policies, and practices in annual plan and reconciliation proceedings. Consumers adjusts its PSCR billing factor monthly in order to minimize the overrecovery or underrecovery amount in the annual PSCR reconciliation.

PSCR Plan: Consumers submitted its 2011 PSCR plan to the MPSC in September 2010. In accordance with its proposed plan, Consumers self-implemented the 2011 PSCR charge beginning in January 2011. In October 2011, the administrative law judge recommended that the MPSC approve Consumers' 2011 PSCR plan with minor modifications.

PSCR Reconciliations : Presented in the following table is the PSCR reconciliation filing pending with the MPSC:

			PSCR Cost of
PSCR Year	**Date Filed**	**Net Underrecovery**	**Power Sold**
2010	March 2011	$ 15 million	$1.7 billion

In June 2011, the MPSC issued an order approving Consumers' 2009 PSCR reconciliation, as modified by the order, and authorized Consumers to include an underrecovery of $31 million in its 2010 PSCR reconciliation.

Electric Depreciation : In November 2011, the MPSC issued an order approving a settlement agreement in the electric depreciation case for Ludington, which was filed jointly by Consumers and Detroit Edison. The settlement agreement resulted in a minor decrease to annual depreciation expense effective November 2011.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

CONSUMERS’ GAS UTILITY

Gas Rate Case: In August 2010, Consumers filed an application with the MPSC seeking an annual rate increase of $55 million based on an 11 percent authorized return on equity. The filing requested recovery for investments made to enhance safety, system reliability, and operational efficiencies that improve service to customers.

In May 2011, the MPSC approved a partial settlement agreement authorizing Consumers to increase its rates by $31 million annually, based on a 10.5 percent authorized return on equity. Matters not addressed in the settlement agreement included the decoupling mechanism, the Smart Grid program, and contributions to the low-income and energy efficiency fund. Presented in the following table are the components of the rate increase authorized by the MPSC and the rate increase originally requested by Consumers:

Components of the Rate Increase	Increase Authorized by the MPSC	Increase Originally Requested by Consumers	Difference
		In Millions	
Investment in rate base	$ 29	$ 30	$ (1)
Impact of sales declines	15	4	11
Operating and maintenance costs	2	16	(14)
Cost of capital	(15)	5	(20)
Total	$ 31	$ 55	$ (24)

In August 2011, the MPSC authorized the continuation of the decoupling mechanism and the collection of low-income and energy efficiency funds, but denied recovery of costs associated with the Smart Grid program related to Consumers’ gas utility. Consumers filed a petition for rehearing in this case to address the disallowance of Smart Grid costs and stated that it would remove all costs associated with the gas Smart Grid program from its next general rate case application. In October 2011, the MPSC granted Consumers’ petition for rehearing, allowing Consumers to recover costs that the gas utility has incurred associated with the Smart Grid program.

Gas Cost Recovery: The GCR process is designed to allow Consumers to recover all of its purchased natural gas costs if incurred under reasonable and prudent policies and practices. The MPSC reviews these costs, policies, and practices in annual plan and reconciliation proceedings. Consumers adjusts its GCR billing factor monthly in order to minimize the overrecovery or underrecovery amount in the annual GCR reconciliation.

GCR Plan: Consumers submitted its 2011-2012 GCR plan to the MPSC in December 2010. In accordance with its proposed plan, Consumers self-implemented the 2011-2012 GCR charge beginning in April 2011. In September 2011, the administrative law judge recommended that the MPSC approve Consumers’ 2011-2012 GCR plan, with certain adjustments to its fixed-price purchase guidelines.

GCR Reconciliations : Presented in the following table are the GCR reconciliation filings pending with the MPSC:

GCR Year	Date Filed	Net Overrecovery	GCR Cost of Gas Sold
2009-2010	June 2010	$1 million	$1.3 billion
2010-2011	June 2011	6 million	1.2 billion

In November 2011, the administrative law judge recommended that the MPSC approve Consumers’ 2009-2010 GCR reconciliation and authorize Consumers to include the overrecovery of $1 million in its 2010-2011 GCR plan.

Table of Contents

REGULATORY ASSETS AND LIABILITIES

Consumers is subject to the actions of the MPSC and FERC and prepares its consolidated financial statements in accordance with the provisions of regulatory accounting. A utility must apply regulatory accounting when its rates are designed to recover specific costs of providing regulated services. Under regulatory accounting, Consumers records regulatory assets or liabilities for certain transactions that would have been treated as expense or revenue by non-regulated businesses.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Consumers reflected the following regulatory assets and liabilities on its consolidated balance sheets:

December 31	End of Recovery or Refund Period	2011	2010
		In Millions	
Regulatory assets:			
Current			
Postretirement benefits (Note 12) [1]	2011	$ —	$ 19
Other [2]	2012	1	—
Total current regulatory assets		$ 1	$ 19
Non-current			
Postretirement benefits (Note 12) [1]	various	$1,665	$1,364
Securitized costs (Note 7) [3]	2015	252	310
MGP sites (Note 5) [3]	various	156	58
ARO (Note 17) [3]	various	114	107
Big Rock nuclear decommissioning and related costs [3]	n/a	85	85
Electric revenue decoupling mechanism	n/a	59	28
Unamortized debt costs [3]	various	44	52
Energy optimization plan incentive	various	26	14
Stranded costs [2]	2013	23	46
Gas revenue decoupling mechanism	n/a	21	11
Uncollectible expense tracking mechanism [2]	2012	2	3
Other [2]	various	19	15
Total non-current regulatory assets		$2,466	$2,093
Total regulatory assets		$2,467	$2,112
Regulatory liabilities:			
Current			
DOE settlement	2012	$ 120	$ —
Self-implemented rate refunds	2011	—	14
Refund of revenue in excess of nuclear decommissioning costs	2011	—	7
Other	2012	5	1
Total current regulatory liabilities		$ 125	$ 22
Non-current			
Cost of removal	various	$1,364	$1,311
Income taxes, net (Note 13)	various	181	410
Renewable energy plan	n/a	161	101
ARO (Note 17)	various	113	122
Energy optimization plan	n/a	45	34
Other	various	11	10
Total non-current regulatory liabilities		$1,875	$1,988
Total regulatory liabilities		$2,000	$2,010

[1] The regulatory asset associated with postretirement benefits is offset partially by liabilities. The net amount is included in rate base, thereby providing a return.

[2] These regulatory assets either are included in rate base (or are expected to be included, for costs incurred subsequent to the most recently approved rate case), thereby providing a return on expenditures, or provide a specific return on investment authorized by the MPSC.

[3] These regulatory assets represent expenditures for which the MPSC has provided, or Consumers expects, recovery without a return on investment.

Big Rock Nuclear Decommissioning and Related Costs and DOE Settlement: Consumers has an $85 million regulatory asset recorded for $30 million it paid to Entergy to assume ownership responsibility for the Big Rock ISFSI and for $55 million of nuclear fuel storage costs it incurred as a result of the DOE's failure to accept nuclear fuel. Consumers had filed a complaint against the DOE in 2002 for this failure. In July 2011, Consumers entered into an agreement with the DOE to settle its claims for $120 million; Consumers recorded a $120 million regulatory liability related to this settlement. In September 2011, Consumers filed an application with the MPSC requesting authority to utilize $85 million of the settlement amount as recovery of its regulatory asset, and to refund to customers $23 million previously collected through rates for spent nuclear fuel costs. If the MPSC concludes that Consumers may retain any portion of the remaining $12 million of the settlement amount, Consumers will recognize that amount in earnings. For further information, see Note 5, Contingencies and Commitments, "Consumers' Electric Utility Contingencies – Nuclear Matters."

Electric and Gas Revenue Decoupling Mechanisms: The MPSC's 2009 electric rate case order authorized Consumers to implement an electric revenue decoupling mechanism, subject to certain conditions. This decoupling mechanism, which was extended through November 2011 in the 2010 electric rate case order, allowed Consumers to adjust future electric rates to compensate for changes in sales volumes resulting from the difference between the level of average sales per customer adopted in the order and actual average sales per customer. Various parties have filed appeals concerning the electric revenue decoupling mechanism.

In March 2011, Consumers filed its first reconciliation of the electric revenue decoupling mechanism with the MPSC, requesting recovery of $27 million from customers for the period December 2009 through November 2010. In February 2012, the administrative law judge recommended that the MPSC approve Consumers' reconciliation of the electric revenue decoupling mechanism for the full amount of its request for the first year of operation of the decoupling mechanism. The matter remains pending before the MPSC. The MPSC Staff and intervenors oppose this recovery.

The MPSC's 2009 gas rate case order authorized Consumers to implement a gas revenue decoupling mechanism, subject to certain conditions. This decoupling mechanism, which was extended in the 2010 gas rate case order, allows Consumers to adjust future gas rates to compensate for changes in sales volumes resulting from the difference between the level of average sales per customer adopted in the order and actual average weather-adjusted sales per customer. In September 2011, Consumers filed its first reconciliation of the gas revenue decoupling mechanism with the MPSC, requesting recovery of $16 million from customers for the period June 2010 through May 2011.

If the MPSC were to reject all or a major portion of Consumers' requested recovery from its electric and gas revenue decoupling mechanisms or if the recovery period were to be substantially delayed, Consumers could be required to write off all or portions of the related regulatory assets. An unfavorable outcome in these reconciliations also could impair Consumers' ability to continue recording decoupling revenue as volume deficiencies occur, rather than waiting until the recovery period.

Energy Optimization Plan: In May 2011, the MPSC issued an order approving Consumers' reconciliation of energy optimization plan costs for 2009. The MPSC also authorized Consumers to collect $6 million from customers as an incentive payment for exceeding savings targets under both its gas and electric energy optimization plans during 2009.

In December 2011, the MPSC issued an order approving Consumers' reconciliation of energy optimization plan costs for 2010. The MPSC also authorized Consumers to collect $8 million from customers as an incentive payment for exceeding savings targets under both its gas and electric energy optimization plans during 2010.

During 2011, Consumers achieved 138 percent of its electric savings target and 129 percent of its gas savings target. For achieving these savings levels, Consumers will request the MPSC's approval to collect $15 million, the maximum incentive, in the energy optimization reconciliation to be filed in April 2012.

As one of the conditions to the continuation of the electric and gas revenue decoupling mechanisms, Consumers must exceed the statutory savings targets for 2012 through 2015 specified in the 2008 Energy Law. In August 2011, Consumers filed an amended energy optimization plan with the MPSC, requesting approval of the additional spending necessary to exceed these savings targets.

At December 31, 2011 and 2010, surcharges collected from customers to fund Consumers' energy optimization plan exceeded Consumers' spending. These excess amounts are reported in the non-current portion of regulatory liabilities, as the period in which Consumers will spend the surcharges collected is beyond one year.

Uncollectible Expense Tracking Mechanism: In March 2011, Consumers filed its reconciliation of the uncollectible expense tracking mechanism with the MPSC, requesting recovery of $3 million from customers for November 2009 through November 2010, the entire period of the tracker. The uncollectible expense tracking mechanism, authorized by the MPSC in its 2009 electric rate case order, allowed future rates to be adjusted to collect or refund 80 percent of the difference between the level of electric uncollectible expense included in rates and actual uncollectible expense. In November 2011, the MPSC approved a settlement agreement in Consumers' uncollectible expense tracking mechanism reconciliation, authorizing the recovery of $3 million from customers in December 2011.

Refund of Revenue in Excess of Nuclear Decommissioning Costs: The MPSC and FERC regulate the recovery of Consumers' costs to decommission Big Rock. Subsequent to 2000, Consumers stopped funding a Big Rock trust fund because the collection period for an MPSC-authorized decommissioning surcharge expired. The level of funds provided by the trust fell short of the amount needed to complete decommissioning and Consumers provided $44 million of corporate contributions for decommissioning costs.

In an order issued in February 2010, the MPSC concluded that certain revenues collected during a statutory rate freeze from 2001 through 2003 should have been deposited in a decommissioning trust fund. The MPSC agreed that Consumers was entitled to recover $44 million of decommissioning costs, but concluded that Consumers had collected this amount previously through the rates in effect during the rate freeze. In April 2010, the MPSC ordered Consumers to refund $85 million of revenue collected in excess of decommissioning costs plus interest. Consumers completed this refund in January 2011. Consumers filed an appeal with the Michigan Court of Appeals in March 2010 to dispute the MPSC's conclusion that the collections received during the rate freeze should be subject to refund. In January 2012, the Michigan Court of Appeals rejected Consumers' appeal. Consumers plans to file an appeal with the Michigan Supreme Court to dispute this decision.

Renewable Energy Plan: In 2010, Consumers filed with the MPSC its first annual report and reconciliation for its renewable energy plan, requesting approval of its plan costs for 2009. In December 2011, the MPSC approved Consumers' renewable energy plan reconciliation with minor modifications. Consumers filed with the MPSC its second annual report and reconciliation for its renewable energy plan in June 2011, requesting approval of its plan costs for 2010.

In May 2011, the MPSC issued an order approving Consumers' amended renewable energy plan with minor modifications. The amended plan reduces the renewable energy surcharge by an annual amount of $54 million, to $23 million. The reduction is a result of lower-than-expected costs to comply with the 2008 Energy Law. In October 2011, Consumers filed an application for the biennial review and approval of its renewable energy plan. This filing proposes to reduce further the renewable energy surcharge by an annual amount of $3 million, to $20 million.

Table of Contents

At December 31, 2011 and 2010, surcharges collected from customers to fund Consumers' renewable energy plan exceeded Consumers' spending. These excess amounts are reported in the non-current portion of regulatory liabilities, as the period in which Consumers will spend the surcharges collected is beyond one year. This regulatory liability will be amortized as costs are incurred to operate and depreciate Consumers' planned wind farms and as Consumers purchases RECs under renewable energy purchase agreements. Consumers expects its first wind farm, Lake Winds Energy Park, to be operational in late 2012. Delivery of RECs under the majority of Consumers' renewable energy purchase agreements is also expected to begin during 2012.

POWER SUPPLY COST RECOVERY AND GAS COST RECOVERY

Consumers' PSCR and GCR mechanisms also represent probable future revenues that will be recovered from customers or previously collected revenues that will be refunded to customers through the ratemaking process. Underrecoveries are included in accrued power supply and overrecoveries are included in accrued rate refunds on Consumers' consolidated balance sheets.

Consumers reflected the following assets and liabilities for PSCR and GCR underrecoveries and overrecoveries on its consolidated balance sheets:

December 31	2011	2010
	In Millions	
Accrued power supply revenue	$—	$15
Accrued rate refunds	30	19

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

7: FINANCINGS AND CAPITALIZATION

Presented in the following table is CMS Energy's long-term debt at December 31:

	Interest Rate (%)	Maturity	2011	2010
			In Millions	
CMS Energy				
Senior notes	8.500	2011	$ —	$ 146
	6.300	2012	—	50
	Variable [1]	2013	150	150
	2.750	2014	250	—
	6.875	2015	125	125
	4.250	2015	250	250
	6.550	2017	250	250
	5.050	2018	250	250
	8.750	2019	300	300
	6.250	2020	300	300
	3.375 [2]	2023	—	4
	2.875 [2]	2024	226	288
	5.500 [2]	2029	172	172
Total — CMS Energy			$ 2,273	$2,285
Consumers			$ 4,329	$4,529
Other CMS Energy Subsidiaries				
EnerBank certificates of deposit	1.328 [3]	2012- 2018	$ 462	$ 363
Trust preferred securities	7.750	2027	29	29
Total — other CMS Energy subsidiaries			$ 491	$ 392
Total CMS Energy principal amount outstanding			$ 7,093	$7,206
Current amounts			(1,033)	(726)
Net unamortized discount			(20)	(32)
Total CMS Energy long-term debt			$ 6,040	$6,448

[1] CMS Energy's variable-rate senior notes bear interest at three-month LIBOR plus 95 basis points (1.353 percent at December 31, 2011 and 1.239 percent at December 31, 2010).

[2] CMS Energy's contingently convertible notes. See the "Contingently Convertible Securities" section in this Note for further discussion of the conversion features.

[3] The weighted-average interest rate for EnerBank's certificates of deposit was 1.328 percent at December 31, 2011 and 1.707 percent at December 31, 2010. EnerBank's primary deposit product consists of brokered certificates of deposit with varying maturities. EnerBank sells these deposits through investment brokers in large pools, with each certificate within the pool having a face value of $1,000. They cannot be withdrawn until maturity, except in the case of death or incompetence of the holder.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following table is Consumers' long-term debt at December 31:

	Interest Rate (%)	Maturity	2011	2010
			In Millions	
CONSUMERS				
FMBs [1]	5.000	2012	$ 300	$ 300
	5.375	2013	375	375
	6.000	2014	200	200
	5.000	2015	225	225
	2.600	2015	50	50
	5.500	2016	350	350
	5.150	2017	250	250
	3.210	2017	100	100
	5.650	2018	250	250
	6.125	2019	350	350
	6.700	2019	500	500
	5.650	2020	300	300
	3.770	2020	100	100
	5.300	2022	250	250
	5.800	2035	175	175
	6.170	2040	50	50
	4.970	2040	50	50
			$3,875	$3,875
Senior notes	6.875	2018	180	180
Securitization bonds	5.652 [2]	2012-2015	171	208
Nuclear fuel disposal liability to DOE	0.132 [3]		—	163
Tax-exempt pollution control revenue bonds	Various	2018-2035	103	103
Total Consumers principal amount outstanding			$4,329	$4,529
Current amounts			(339)	(37)
Net unamortized discount			(3)	(4)
Total Consumers long-term debt			$3,987	$4,488

[1] The weighted-average interest rate for Consumers' FMBs was 5.5 percent at December 31, 2011 and 2010.

[2] The weighted-average interest rate for Consumers' Securitization bonds was 5.652 percent at December 31, 2011 and 5.613 percent at December 31, 2010.

[3] The interest rate for Consumers' nuclear fuel disposal liability was 0.132 percent at December 31, 2010. For additional details, see the "Consumers' Electric Utility Contingencies – Nuclear Matters" section included in Note 5, Contingencies and Commitments.

Financings: Presented in the following table is a summary of major long-term debt transactions during the year ended December 31, 2011:

	Principal (In Millions)	Interest Rate	Issue/Retirement Date	Maturity Date
DEBT ISSUANCES:				
CMS ENERGY				
Senior notes	$ 250	2.75%	May 2011	May 2014
CONSUMERS				
Tax-exempt bonds [1]	68	Variable	May 2011	April 2018
Tax-exempt bonds [1]	35	Variable	May 2011	April 2035
Total	$ 353			
DEBT RETIREMENTS:				
CMS ENERGY				
Senior notes	$ 146	8.5%	April 2011	April 2011
Senior notes	50	6.3%	October 2011	February 2012
Contingently convertible senior notes [2]	62	2.875%	December 2011	December 2024
CONSUMERS				
Nuclear fuel disposal liability [3]	163	Variable	July 2011	—
Tax-exempt bonds [1]	68	Variable	May 2011	April 2018
Tax-exempt bonds [1]	35	Variable	May 2011	April 2035
Total	$ 524			

[1] In May 2011, Consumers utilized the Michigan Strategic Fund for the issuance of $68 million and $35 million of tax-exempt Michigan Strategic Fund Variable Rate Limited Obligation Revenue Bonds. The initial interest rate, which resets weekly, was 0.26 percent for the $68 million bond issuance and 0.28 percent for the $35 million bond issuance. The bonds, which are backed by letters of credit and collateralized by FMBs, are subject to optional tender by the holders that would result in remarketing. Consumers used the proceeds to redeem $103 million of tax-exempt bonds in May 2011.

[2] CMS Energy's contingently convertible notes. See the "Contingently Convertible Securities" section in this Note for further discussion of the conversions.

[3] In July 2011, Consumers settled its nuclear fuel disposal liability with the DOE. For additional details, see the "Consumers' Electric Utility Contingencies – Nuclear Matters" section in Note 5, Contingencies and Commitments.

In December 2011, CMS Energy entered into a $180 million term loan credit agreement that provides for delayed draws through July 20, 2012. Outstanding borrowings will bear interest at an annual interest rate of LIBOR plus 2.5 percent and will mature in December 2016.

In January 2012, CMS Energy called all of its outstanding 7.75 percent Trust Preferred Securities, to be redeemed in late February 2012.

FMBs: Consumers secures its FMBs by a mortgage and lien on substantially all of its property. Consumers' ability to issue FMBs is restricted by certain provisions in the First Mortgage Bond Indenture and the need for regulatory approvals under federal law. Restrictive issuance provisions in the First Mortgage Bond Indenture include achieving a two-times interest coverage ratio and having sufficient unfunded net property additions.

Regulatory Authorization for Financings: FERC has authorized Consumers to have outstanding at any one time, up to $1.0 billion of secured and unsecured short-term securities for general corporate purposes. The remaining availability is $700 million at December 31, 2011. FERC has also authorized Consumers to issue and sell up to $2.5 billion of secured and unsecured long-term securities for general corporate purposes. The remaining availability is $1.4 billion at December 31, 2011. The authorizations are for the period ending June 30, 2012. Any long-term issuances during the authorization period are exempt from FERC's competitive bidding and negotiated placement requirements.

Securitization Bonds: Certain regulatory assets owned by Consumers' subsidiary, Consumers Funding, collateralize Consumers' Securitization bonds. The bondholders have no recourse to Consumers' other assets. Through its rate structure, Consumers bills customers for Securitization surcharges to fund the payment of principal, interest, and other related expenses. The surcharges collected are remitted to a trustee and are not available to creditors of Consumers or creditors of Consumers' affiliates other than Consumers Funding.

Debt Maturities: At December 31, 2011, the aggregate annual contractual maturities for long-term debt for the next five years were:

	Payments Due				
	2012	2013	2014	2015	2016
			In Millions		
CMS ENERGY, INCLUDING CONSUMERS					
Long-term debt	$635	$631	$527	$725	$369
CONSUMERS					
Long-term debt	$339	$416	$243	$323	$350

Revolving Credit Facilities: The following secured revolving credit facilities with banks were available at December 31, 2011:

Expiration Date	Amount of Facility	Amount Borrowed	Letters of Credit Outstanding	Amount Available
		In Millions		
CMS ENERGY				
March 31, 2016 [1]	$ 550	$ —	$ 3	$ 547
CONSUMERS				
March 31, 2016 [2, 3]	$ 500	$ —	$ 1	$ 499
August 9, 2013 [3]	150	—	—	150
September 9, 2014 [3]	30	—	30	—

[1] On March 31, 2011, CMS Energy entered into a $550 million secured revolving credit facility with a consortium of banks. This facility has a five-year term and replaced CMS Energy's revolving credit facility that was set to expire in 2012. Obligations under this facility are secured by Consumers common stock. CMS Energy's average borrowings during the year ended December 31, 2011 totaled $11 million, with a weighted-average annual interest rate of 2.22 percent, representing LIBOR plus 2.00 percent.

[2] On March 31, 2011, Consumers entered into a $500 million secured revolving credit facility with a consortium of banks. This facility has a five-year term and replaced Consumers' revolving credit facility that was set to expire in 2012.

[3] Obligations under this facility are secured by FMBs of Consumers.

Short-term Borrowings: Under Consumers' revolving accounts receivable sales program, Consumers may transfer up to $250 million of accounts receivable, subject to certain eligibility requirements. These transactions are accounted for as short-term secured borrowings. At December 31, 2011, $250 million of accounts receivable were eligible for transfer, and no accounts receivable had been transferred under the program. During the year ended December 31, 2011, Consumers had no borrowings under this program.

During the year ended December 31, 2010, Consumers' maximum short-term borrowings totaled $50 million, and its average short-term borrowings totaled $1 million, with a weighted-average annual interest rate of 0.2 percent.

Contingently Convertible Securities: Presented in the following table are the significant terms of CMS Energy's contingently convertible securities at December 31, 2011:

Security	Maturity	Outstanding (In Millions)	Adjusted Conversion Price	Adjusted Trigger Price
2.875% senior notes	2024	$ 226	$ 12.54	$ 15.04
5.50% senior notes	2029	172	14.08	18.31

The holders of the 2.875 percent senior notes have the right to require CMS Energy to purchase the notes at par on December 1, 2014 and December 1, 2019.

The securities become convertible for a calendar quarter if the price of CMS Energy's common stock remains at or above the trigger price for 20 of 30 consecutive trading days ending on the last trading day of the previous quarter. The trigger price at which these securities become convertible is 120 percent of the conversion price for the 2.875 percent senior notes and 130 percent for the 5.5 percent senior notes. The conversion and trigger prices are subject to adjustment in certain circumstances, including payments or distributions to CMS Energy's common stockholders. The conversion and trigger price adjustment is made when the cumulative change in conversion and trigger prices is one percent or more. During December 2011, trigger price contingencies were met for both series of the contingently convertible senior notes, and as a result, the senior notes are convertible at the option of the security holders for the three months ending March 31, 2012.

All of CMS Energy's contingently convertible securities, if converted, require CMS Energy to pay cash up to the principal amount of the securities. For the 2.875 percent senior notes, any conversion value in excess of the principal amount is paid in shares of CMS Energy's common stock. For the 5.50 percent senior notes, any conversion value in excess of the principal amount can be paid in cash or in shares of CMS Energy's common stock, at the election of CMS Energy.

Presented in the following table are details about conversions of contingently convertible securities during the year ended December 31, 2011:

Series	Conversion Date	Principal Converted (In Millions)	Conversion Value per $1,000 of principal	Shares of Common Stock Issued on Settlement	Cash Paid on Settlement (In Millions)
3.375% contingently convertible senior notes due 2023	January 2011	$ 4	$1,994.21	197,472	$ 4
2.875% contingently convertible senior notes due 2024	December 2011	62	1,654.13	1,954,542	62

In January 2012, holders tendered for conversion $73 million principal amount of the 2.875 percent contingently convertible senior notes. The conversion value per $1,000 principal amount of convertible note was $1,738.99. CMS Energy issued 2,464,138 shares of its common stock and paid $73 million cash on settlement of these conversions in January and February 2012.

Dividend Restrictions: Under provisions of CMS Energy's senior notes indenture, at December 31, 2011, payment of common stock dividends by CMS Energy was limited to $1.2 billion.

Under the provisions of its articles of incorporation, at December 31, 2011, Consumers had $493 million of unrestricted retained earnings available to pay common stock dividends to CMS Energy. Provisions of the Federal Power Act and the Natural Gas Act appear to restrict dividends payable by Consumers to the amount of Consumers' retained earnings. Several decisions from FERC suggest that under a variety of circumstances common stock dividends from Consumers would not be limited to amounts in Consumers' retained earnings. Any decision by Consumers to pay common stock dividends in excess of retained earnings would be based on specific facts and circumstances and would result only after a formal regulatory filing process.

For the year ended December 31, 2011, CMS Energy received $374 million of common stock dividends from Consumers.

Capitalization: The authorized capital stock of CMS Energy consists of:

- 350 million shares of CMS Energy Common Stock, par value $0.01 per share, and
- 10 million shares of CMS Energy Preferred Stock, par value $0.01 per share.

Issuance of Common Stock: On June 15, 2011, CMS Energy entered into a continuous equity offering program under which CMS Energy may sell, from time to time in "at the market" offerings, common stock having an aggregate sales price of up to $50 million. In June 2011, under this program, CMS Energy issued 762,925 shares of common stock at an average price of $19.66 per share, resulting in net proceeds of $15 million.

Preferred Stock of Subsidiary: Presented in the following table are details about Consumers' preferred stock outstanding:

December 31, 2011 and 2010	Series	Optional Redemption Price	Number of Shares	Balance In Millions
Cumulative, $100 par value, authorized 7,500,000 shares, with no mandatory redemption	$4.16	$ 103.25	68,451	$ 7
	$4.50	$ 110.00	373,148	37
Total preferred stock of Consumers				$ 44

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

8: EARNINGS PER SHARE — CMS ENERGY

Presented in the following table are CMS Energy's basic and diluted EPS computations based on income from continuing operations:

Years Ended December 31	2011	2010	2009
	In Millions, Except Per Share Amounts		
Income Available to Common Stockholders			
Income from continuing operations	$ 415	$ 366	$ 220
Less income attributable to noncontrolling interests	2	3	11
Less charge for deferred issuance costs on preferred stock	—	8	—
Less preferred stock dividends	—	8	11
Income from Continuing Operations Available to Common Stockholders — Basic and Diluted	$ 413	$ 347	$ 198
Average Common Shares Outstanding			
Weighted average shares — basic	250.8	231.5	227.2
Add dilutive contingently convertible securities	12.2	21.3	10.6
Add dilutive non-vested stock awards and options	0.4	0.1	0.1
Weighted average shares — diluted	263.4	252.9	237.9
Income from Continuing Operations per Average Common Share Available to Common Stockholders			
Basic	$ 1.65	$ 1.50	$ 0.87
Diluted	1.57	1.36	0.83

Contingently Convertible Securities

When CMS Energy has earnings from continuing operations, its contingently convertible securities dilute EPS to the extent that the conversion value of a security, which is based on the average market price of CMS Energy common stock, exceeds the principal value of that security.

Stock Options and Warrants

For the year ended December 31, 2011, outstanding options to purchase 0.1 million shares of CMS Energy common stock had no impact on diluted EPS, since the exercise price was greater than the average market price of CMS Energy common stock. These stock options have the potential to dilute EPS in the future.

Non-vested Stock Awards

CMS Energy's non-vested stock awards are composed of participating and non-participating securities. The participating securities accrue cash dividends when common stockholders receive dividends. Since the recipient is not required to return the dividends to CMS Energy if the recipient forfeits the award, the non-vested stock awards are considered participating securities. As such, the participating non-vested stock awards were included in the computation of basic EPS. The non-participating securities accrue stock dividends that vest concurrently with the stock award. If the recipient forfeits the award, the stock dividends accrued on the non-participating securities are also forfeited. Accordingly, the non-participating awards and stock dividends were included in the computation of diluted EPS, but not basic EPS.

CONVERTIBLE DEBENTURES

For each of the years ended December 31, 2011, 2010, and 2009 CMS Energy's 7.75 percent convertible subordinated debentures would have increased diluted EPS had they been included in the calculation. Using the if-converted method, the debentures would have had the following impacts on the calculation of diluted EPS:

Years Ended December 31	2011	2010	2009
		In Millions	
Increase to numerator from assumed reduction in interest expense	$ 1	$ 1	$ 5
Increase to denominator from assumed conversion of debentures into common shares	0.7	0.7	2.3

CMS Energy can revoke the conversion rights if certain conditions are met.

9: FINANCIAL INSTRUMENTS

The carrying amounts of CMS Energy's and Consumers' cash, cash equivalents, current accounts and notes receivable, short-term investments, and current liabilities approximate their fair values because of their short-term nature. Presented in the following table are the cost or carrying amounts and fair values of CMS Energy's and Consumers' long-term financial instruments:

December 31	2011		2010	
	Cost or Carrying Amount	Fair Value	Cost or Carrying Amount	Fair Value
		In Millions		
CMS ENERGY, INCLUDING CONSUMERS				
Securities held to maturity	$ 7	$ 7	$ 5	$ 6
Securities available for sale	113	113	90	90
Notes receivable [1]	480	504	386	407
Long-term debt [2]	7,073	8,025	7,174	7,861
CONSUMERS				
Securities available for sale	$ 81	$ 109	$ 64	$ 90
Long-term debt [3]	4,326	4,882	4,525	4,891

[1] Includes current portion of notes receivable of $19 million at December 31, 2011 and $11 million at December 31, 2010.

[2] Includes current portion of long-term debt of $1.0 billion at December 31, 2011 and $726 million at December 31, 2010.

[3] Includes current portion of long-term debt of $339 million at December 31, 2011 and $37 million at December 31, 2010.

Notes receivable consist of EnerBank's fixed-rate installment loans. EnerBank estimates the fair value of these loans using a discounted cash flows technique that incorporates market interest rates as well as assumptions about the remaining life of the loans and credit risk. Fair values for impaired loans are estimated using discounted cash flows or underlying collateral values.

CMS Energy and Consumers estimate the fair value of their long-term debt using quoted prices from market trades of the debt, if available. In the absence of quoted prices, CMS Energy and Consumers calculate market yields and prices for the debt using a matrix method that incorporates market data for similarly rated debt. Depending on the information available, other valuation techniques may be used that rely on internal assumptions and models. CMS Energy includes the value of the conversion features in estimating the fair value of its convertible debt, and incorporates, as appropriate, information on the market prices of CMS Energy common stock.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The effects of third-party credit enhancements are excluded from the fair value measurements of long-term debt. At December 31, 2011 and 2010, CMS Energy's long-term debt included $103 million principal amount that was supported by third-party credit enhancements. This entire principal amount was at Consumers.

Presented in the following table are CMS Energy's and Consumers' investment securities:

December 31	2011				2010			
	Cost	Unrealized Gains	Unrealized Losses	Fair Value	Cost	Unrealized Gains	Unrealized Losses	Fair Value
				In Millions				
CMS Energy, including Consumers								
Available for sale								
SERP:								
Mutual funds	$113	$ —	$ —	$113	$62	$ —	$ —	$ 62
State and municipal bonds	—	—	—	—	28	—	—	28
Held to maturity								
Debt securities	7	—	—	7	5	1	—	6
Consumers								
Available for sale								
SERP:								
Mutual funds	$ 74	$ —	$ —	$ 74	$39	$ —	$ —	$ 39
State and municipal bonds	—	—	—	—	17	—	—	17
CMS Energy common stock	7	28	—	35	8	26	—	34

The mutual funds classified as available for sale are fixed-income funds of varying maturities. During the year ended December 31, 2011, CMS Energy contributed $27 million to the SERP, which included a contribution of $20 million by Consumers. The contributions were used to acquire additional shares in the mutual funds. State and municipal bonds classified as available for sale consisted of investment grade state and municipal bonds. Debt securities classified as held to maturity consist primarily of mortgage-backed securities held by EnerBank, as well as state and municipal bonds held by EnerBank.

Presented in the following table is a summary of the sales activity for CMS Energy's and Consumers' investment securities:

Years Ended December 31	2011	2010	2009
		In Millions	
CMS Energy, including Consumers			
Proceeds from sales of investment securities [1]	$29	$ 1	$53
Realized gains	—	—	8
Net gains from AOCI recognized in net income	—	—	5
Consumers			
Proceeds from sales of investment securities [1]	$19	$—	$32
Realized gains	—	—	5
Net gains from AOCI recognized in net income	—	—	3

[1] All proceeds related to sales of investments that were held within the SERP and classified as available for sale. Realized losses on these sales were less than $1 million for both CMS Energy and Consumers during each period.

In 2011, CMS Energy and Consumers sold their SERP investments in state and municipal bonds. The proceeds were reinvested in a mutual fund that holds fixed-income instruments of varying maturities. The activity during 2009 related primarily to the sale of a SERP investment in a mutual fund.

10: DERIVATIVE INSTRUMENTS

In order to limit exposure to certain market risks, primarily changes in commodity prices, interest rates, and foreign exchange rates, CMS Energy and Consumers may enter into various risk management contracts, such as forward contracts, futures, options, and swaps. The contracts used to manage market risks may qualify as derivative instruments. Neither CMS Energy nor Consumers enters into any derivatives for trading purposes.

Commodity Price Risk : In order to support ongoing operations, CMS Energy and Consumers enter into contracts for the future purchase and sale of various commodities, such as electricity, natural gas, and coal. These forward contracts are generally long-term in nature and result in physical delivery of the commodity at a contracted price. Most of these contracts are not subject to derivative accounting because:

- they do not have a notional amount (that is, a number of units specified in a derivative instrument, such as MWh of electricity or bcf of natural gas);
- they qualify for the normal purchases and sales exception; or
- there is not an active market for the commodity.

Consumers’ coal purchase contracts are not derivatives because there is not an active market for the coal it purchases. If an active market for coal develops in the future, some of these contracts may qualify as derivatives. Since Consumers is subject to regulatory accounting, the resulting fair value gains and losses would be deferred as regulatory assets or liabilities and would not affect net income.

Consumers also uses FTRs to manage price risk related to electricity transmission congestion. An FTR is a financial instrument that entitles its holder to receive compensation or requires its holder to remit payment for congestion-related transmission charges. FTRs are accounted for as derivatives. Under regulatory accounting, all changes in fair value associated with these instruments are deferred as regulatory assets or liabilities until the instruments are settled.

CMS ERM has not designated its contracts to purchase and sell electricity and natural gas as normal purchases and sales and, therefore, CMS Energy accounts for those contracts as derivatives.

The fair value of CMS Energy’s commodity contracts not designated as hedging instruments and recorded in other assets were $3 million at December 31, 2011 and $1 million at December 31, 2010. The fair value of Consumers’ commodity contracts not designated as hedging instruments and recorded in other assets were $2 million at December 31, 2011 and $1 million at December 31, 2010. The fair value of CMS Energy’s commodity contracts not designated as hedging instruments and recorded in other liabilities were $7 million at December 31, 2011 and $4 million at December 31, 2010. Consumers did not have any contracts recorded as liabilities at December 31, 2011 and 2010.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following table is the effect on CMS Energy's and Consumers' consolidated statements of income of their derivatives not designated as hedging instruments:

Location of Gain (Loss) on Derivatives Recognized in Income	Amount of Gain (Loss) on Derivatives Recognized in Income		
	Years Ended December 31		
	2011	2010	2009
		In Millions	
CMS ENERGY			
Commodity contracts:			
Operating revenue	$ 2	$ 4	$ 7
Fuel for electric generation	—	4	(3)
Cost of gas sold	(2)	—	(2)
Purchased and interchange power	—	2	—
Other expense	—	—	(1)
Interest rate contracts:			
Other expense	—	—	(1)
Foreign exchange contracts :			
Other expense	—	—	(1)
Total CMS Energy	$—	$10	$ (1)
CONSUMERS			
Commodity contracts:			
Other expense	—	—	(1)

Consumers' gains on FTRs deferred as regulatory liabilities were $2 million for the year ended December 31, 2011, $3 million for the year ended December 31, 2010, and $9 million for the year ended December 31, 2009.

CMS Energy's derivative liabilities subject to credit-risk-related contingent features were $4 million at December 31, 2011 and $1 million at December 31, 2010.

11: NOTES RECEIVABLE

EnerBank provides unsecured consumer installment loans for financing home improvements. These loans totaled $480 million, net of an allowance for loan losses of $5 million, at December 31, 2011, and $386 million, net of an allowance for loan losses of $5 million, at December 31, 2010. At December 31, 2011, $19 million of EnerBank's loans were classified as current notes receivable and $461 million were classified as non-current notes receivable on CMS Energy's consolidated balance sheets. At December 31, 2010, $11 million of EnerBank's loans were classified as current notes receivable and $375 million were classified as non-current notes receivable on CMS Energy's consolidated balance sheets.

The allowance for loan losses is a valuation allowance to reflect estimated credit losses. The allowance is increased by the provision for loan losses and decreased by loan charge-offs net of recoveries. Management estimates the allowance balance required by taking into consideration historical loan loss experience, the nature and volume of the portfolio, economic conditions, and other factors. Loan losses are charged against the allowance when the loss is confirmed, but no later than the point at which a loan becomes 120 days past due.

Presented in the following table are the changes in the allowance for loan losses:

Year Ended December 31, 2011		In Millions
Balance at beginning of period	$	5
Charge-offs		(5)
Recoveries		1
Provision for loan losses		4
Balance at end of period	$	5

Loans that are 30 days or more past due are considered delinquent. Presented in the following table is the delinquency status of EnerBank's consumer loans at December 31, 2011:

Past Due 30-59 Days	Past Due 60- 89 Days	Past Due Over 90 Days	Total Delinquent	Current	Total Outstanding
			In Millions		
$1	$ -	$ 1	$ 2	$ 478	$ 480

At December 31, 2011, $1 million of EnerBank's loans had been modified as troubled debt restructurings.

12: RETIREMENT BENEFITS

CMS Energy and Consumers provide pension, OPEB, and other retirement benefits to employees under a number of different plans. These plans include:

- a non-contributory, qualified defined benefit Pension Plan (closed to new non-union participants as of July 1, 2003 and closed to new union participants as of September 1, 2005);
- a qualified cash balance Pension Plan for certain employees hired between July 1, 2003 and August 31, 2005;
- a non-contributory, qualified DCCP for employees hired on or after September 1, 2005;
- benefits to certain management employees under a non-contributory, nonqualified defined benefit SERP (closed to new participants as of March 31, 2006);
- a non-contributory, nonqualified DC SERP for certain management employees hired or promoted on or after April 1, 2006;
- health care and life insurance benefits under an OPEB plan;
- benefits to a selected group of management under a non-contributory, nonqualified EISP; and
- a contributory, qualified defined contribution 401(k) plan.

Pension Plan : Participants in the Pension Plan include CMS Energy's and Consumers' present employees, employees of their subsidiaries, and employees of Panhandle, a former CMS Energy subsidiary. Pension Plan trust assets are not distinguishable by company.

CMS Energy and Consumers provide an employer contribution of five percent of base pay to the DCCP 401(k) plan for employees hired on or after September 1, 2005. On January 1, 2011, the employer contribution was increased to six percent. Employees are not required to contribute in order to receive the plan's employer contribution.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Participants in the cash balance Pension Plan, effective July 1, 2003 to August 31, 2005, also participate in the DCCP as of September 1, 2005. Additional pay credits under the cash balance Pension Plan were discontinued as of September 1, 2005. DCCP expense for CMS Energy and Consumers was $7 million for the year ended December 31, 2011, $5 million for the year ended December 31, 2010, and $4 million for the year ended December 31, 2009.

SERP : The SERP is a non-qualified plan as defined by the Internal Revenue Code. SERP benefits are paid from a rabbi trust established in 1988. SERP rabbi trust earnings are taxable. Presented in the following table are the funded status and fair value of trust assets for CMS Energy's and Consumers' SERP:

Years Ended December 31	**2011**	**2010**
	In Millions	
CMS Energy, including Consumers		
Trust assets [1]	$114	$ 91
ABO	117	107
Contributions	27	17
Consumers		
Trust assets [1]	$ 75	$ 57
ABO	76	66
Contributions	20	11

[1] Trust assets are included in other non-current assets on CMS Energy's and Consumers' consolidated balance sheets.

On April 1, 2006, CMS Energy and Consumers implemented a DC SERP and froze further new participation in the SERP. The DC SERP provides participants benefits ranging from 5 percent to 15 percent of total compensation. The DC SERP requires a minimum of five years of participation before vesting. CMS Energy's and Consumers' contributions to the plan, if any, are placed in a grantor trust. For CMS Energy and Consumers, trust assets were less than $1 million at December 31, 2011 and December 31, 2010. DC SERP assets are included in other non-current assets on CMS Energy's and Consumers' consolidated balance sheets. CMS Energy's and Consumers' DC SERP expense was less than $1 million for each of the years ended December 31, 2011, 2010, and 2009.

401(k) : The 401(k) plan employer match equals 60 percent of eligible contributions up to the first six percent of an employee's wages. The total 401(k) plan cost for CMS Energy, including Consumers, was $16 million for each of the years ended December 31, 2011, 2010, and 2009. The total 401(k) plan cost for Consumers was $16 million for the year ended December 31, 2011 and $15 million for each of the years ended December 31, 2010 and 2009.

EISP : In 2002, CMS Energy and Consumers implemented a nonqualified EISP to provide flexibility in separation of employment by officers, a selected group of management, or other highly compensated employees. Terms of the plan include payment of a lump sum, payment of monthly benefits for life, payment of premiums for continuation of health care, or any other legally permissible term deemed to be in CMS Energy's and Consumers' best interest. EISP expense for CMS Energy and Consumers was less than $1 million for each of the years ended December 31, 2011, 2010, and 2009. The ABO for the EISP for CMS Energy, including Consumers, was $5 million at December 31, 2011 and 2010. The ABO for the EISP for Consumers was $1 million at December 31, 2011 and 2010.

OPEB : Participants in the OPEB plan include all regular full-time employees covered by the employee health care plan on the day before retirement from either CMS Energy or Consumers at age 55 or older with at least ten full years of applicable continuous service. Regular full-time employees who qualify for Pension Plan

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

disability retirement and have 15 years of applicable continuous service may also participate in the OPEB plan. Retiree health care costs were based on the assumption that costs would increase 7.5 percent in 2012 and 8.0 percent in 2011 for all retirees. The rate of increase was assumed to decline to five percent for all retirees by 2017 and thereafter.

The assumptions used in the health care cost-trend rate affect service, interest, and PBO costs. Presented in the following table are the effects of a one-percentage-point change in the health care cost-trend assumption:

	One Percentage Point Increase	In Millions	One Percentage Point Decrease
CMS ENERGY, INCLUDING CONSUMERS			
Effect on total service and interest cost component	$ 19		$ (16)
Effect on PBO	245		(213)
CONSUMERS			
Effect on total service and interest cost component	$ 18		$ (15)
Effect on PBO	238		(207)

Assumptions : Presented in the following tables are the weighted-average assumptions used in CMS Energy's and Consumers' retirement benefits plans to determine benefit obligations and net periodic benefit cost:

	Pension and SERP			OPEB		
December 31	**2011**	**2010**	**2009**	**2011**	**2010**	**2009**
CMS ENERGY, INCLUDING CONSUMERS						
Weighted Average for Benefit Obligations :						
Discount rate [1]	4.90%	5.40%	5.85%	5.10%	5.60%	6.00%
Mortality table [2]	2000	2000	2000	2000	2000	2000
Rate of compensation increase						
Pension	3.50%	4.00%	4.00%			
SERP	5.50%	5.50%	5.50%			
Weighted Average for Net Periodic Benefit Cost:						
Discount rate [1]	5.40%	5.85%	6.50%	5.60%	6.00%	6.50%
Expected long-term rate of return on plan assets [3]	8.00%	8.00%	8.25%	7.50%	7.50%	7.75%
Mortality table [2]	2000	2000	2000	2000	2000	2000
Rate of compensation increase						
Pension	4.00%	4.00%	4.00%			
SERP	5.50%	5.50%	5.50%			

[1] The discount rate reflects the rate at which benefits could be effectively settled and is equal to the equivalent single rate resulting from a yield curve analysis. This analysis incorporated the projected benefit payments specific to CMS Energy's and Consumers' Pension Plan and OPEB plan and the yields on high quality corporate bonds rated Aa or better.

[2] The mortality assumption was based on the RP-2000 mortality tables with projection of future mortality improvements using Scale AA, which aligned with the IRS prescriptions for cash funding valuations under the Pension Protection Act of 2006.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

[3] CMS Energy and Consumers determined the long-term rate of return using historical market returns, the present and expected future economic environment, the capital market principles of risk and return, and the expert opinions of individuals and firms with financial market knowledge. CMS Energy and Consumers considered the asset allocation of the portfolio in forecasting the future expected total return of the portfolio. The goal was to determine a long-term rate of return that could be incorporated into the planning of future cash flow requirements in conjunction with the change in the liability. Annually, CMS Energy and Consumers review for reasonableness and appropriateness the forecasted returns for various classes of assets used to construct an expected return model. CMS Energy's and Consumers' expected long-term rate of return on Pension Plan assets was eight percent in 2011. The actual return on Pension Plan assets was four percent in 2011, 13 percent in 2010, and 21 percent in 2009.

Costs : Presented in the following tables are the costs and other changes in plan assets and benefit obligations incurred in CMS Energy's and Consumers' retirement benefits plans:

	Pension and SERP		
Years Ended December 31	**2011**	**2010**	**2009**
		In Millions	
CMS Energy, including Consumers			
Net periodic pension cost			
Service cost	$ 49	$ 45	$ 41
Interest expense	106	104	102
Expected return on plan assets	(112)	(92)	(86)
Amortization of:			
Net loss	65	52	41
Prior service cost	5	5	6
Net periodic pension cost	$ 113	$114	$104
Regulatory adjustment [1]	—	30	—
Net periodic pension cost after regulatory adjustment	$ 113	$144	$104
Consumers			
Net periodic pension cost			
Service cost	$ 48	$ 44	$ 40
Interest expense	101	99	97
Expected return on plan assets	(109)	(89)	(83)
Amortization of:			
Net loss	63	50	40
Prior service cost	5	5	5
Net periodic pension cost	$ 108	$109	$ 99
Regulatory adjustment [1]	—	30	—
Net periodic pension cost after regulatory adjustment	$ 108	$139	$ 99

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Years Ended December 31		OPEB	
	2011	2010	2009
		In Millions	
CMS Energy, including Consumers			
Net periodic OPEB cost			
Service cost	$ 27	$ 26	$ 24
Interest expense	77	80	80
Expected return on plan assets	(66)	(60)	(50)
Amortization of:			
Net loss	30	32	33
Prior service credit	(20)	(17)	(10)
Net periodic OPEB cost	$ 48	$ 61	$ 77
Regulatory adjustment [1]	—	5	—
Net periodic OPEB cost after regulatory adjustment	$ 48	$ 66	$ 77
Consumers			
Net periodic OPEB cost			
Service cost	$ 26	$ 25	$ 24
Interest expense	74	77	77
Expected return on plan assets	(61)	(56)	(46)
Amortization of:			
Net loss	31	33	33
Prior service credit	(20)	(16)	(10)
Net periodic OPEB cost	$ 50	$ 63	$ 78
Regulatory adjustment [1]	—	5	—
Net periodic OPEB cost after regulatory adjustment	$ 50	$ 68	$ 78

[1] Regulatory adjustments are the differences between amounts included in rates and the periodic benefit cost calculated. These regulatory adjustments were offset by surcharge revenues, which resulted in no impact to net income for the years presented. The pension and OPEB regulatory liability was less than $1 million at December 31, 2011 and 2010.

For CMS Energy, the estimated net loss and prior service cost for the defined benefit Pension Plans that will be amortized into net periodic benefit cost in 2012 from the regulatory asset is $79 million and from AOCI is $2 million. For Consumers, the estimated net loss and prior service cost for the defined benefit Pension Plans that will be amortized into net periodic benefit cost in 2012 from the regulatory asset is $79 million. For CMS Energy, the estimated net loss and prior service credit for OPEB plans that will be amortized into net periodic benefit cost in 2012 from the regulatory asset is $33 million, with a decrease from AOCI of $1 million. For Consumers, the estimated net loss and prior service credit for OPEB plans that will be amortized into net periodic benefit cost in 2012 from the regulatory asset is $33 million.

CMS Energy and Consumers amortize net gains and losses in excess of ten percent of the greater of the PBO or the MRV over the average remaining service period. The estimated period of amortization of gains and losses for CMS Energy and Consumers was 11 years for pension and 13 years for OPEB for the year ended December 31, 2011, and 12 years for pension and 14 years for OPEB for each of the years ended

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

December 31, 2010 and 2009. Prior service cost amortization is established in the year in which the prior service cost first occurred, and is based on the same amortization period for all future years until the prior service costs are fully amortized. CMS Energy and Consumers had new prior services credits for OPEB in 2010. The estimated period of amortization of these new prior service credits for CMS Energy and Consumers was ten years for OPEB for the year ended December 31, 2010.

Reconciliations: Presented in the following tables are reconciliations of the funded status of CMS Energy's and Consumers' retirement benefits plans with their retirement benefits plans' liabilities:

Years Ended December 31	Pension Plan	
	2011	2010
	In Millions	
CMS ENERGY, INCLUDING CONSUMERS		
Benefit obligation at beginning of period	$1,896	$1,717
Service cost	48	44
Interest cost	100	98
Actuarial loss	107	150
Benefits paid	(79)	(113)
Benefit obligation at end of period [1]	$2,072	$1,896
Plan assets at fair value at beginning of period	$1,401	$1,007
Actual return on plan assets	54	132
Company contribution	250	375
Actual benefits paid [2]	(79)	(113)
Plan assets at fair value at end of period	$1,626	$1,401
Funded status at December 31 [3,4]	$ (446)	$ (495)

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Years Ended December 31	SERP		OPEB	
	2011	2010	2011	2010
	In Millions			
CMS ENERGY, INCLUDING CONSUMERS				
Benefit obligation at beginning of period	$ 118	$ 106	$1,410	$1,423
Service cost	1	1	27	26
Interest cost	6	6	77	80
Plan amendments [5]	—	—	—	(101)
Actuarial loss	8	11	180	36
Benefits paid	(6)	(6)	(53)	(54)
Benefit obligation at end of period [1]	$ 127	$ 118	$1,641	$1,410
Plan assets at fair value at beginning of period	$ —	$ —	$ 887	$ 782
Actual return on plan assets	—	—	23	88
Company contribution	6	6	67	71
Actual benefits paid [2]	(6)	(6)	(53)	(54)
Plan assets at fair value at end of period	$ —	$ —	$ 924	$ 887
Funded status at December 31 [3]	$(127)	$(118)	$ (717)	$ (523)
CONSUMERS				
Benefit obligation at beginning of period	$ 77	$ 67	$1,358	$1,373
Service cost	1	1	26	25
Interest cost	4	4	74	77
Plan amendments [5]	—	—	—	(100)
Actuarial loss	6	8	178	34
Benefits paid	(3)	(3)	(51)	(51)
Benefit obligation at end of period [1]	$ 85	$ 77	$1,585	$1,358
Plan assets at fair value at beginning of period	$ —	$ —	$ 825	$ 725
Actual return on plan assets	—	—	21	81
Company contribution	3	3	66	70
Actual benefits paid [2]	(3)	(3)	(51)	(51)
Plan assets at fair value at end of period	$ —	$ —	$ 861	$ 825
Funded status at December 31 [3]	$ (85)	$ (77)	$ (724)	$ (533)

[1] The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 established a prescription drug benefit under Medicare (Medicare Part D) and a federal subsidy, which is tax-exempt, to sponsors of retiree health care benefit plans that provide a benefit that is actuarially equivalent to Medicare Part D. In 2010, the Health Care Acts repealed these tax-exempt deductions for years beginning after December 31, 2012. The Medicare Part D annualized reduction in net OPEB cost for CMS Energy was $26 million for 2011, $28 million for 2010, and $19 million for 2009. Consumers' Medicare Part D annualized reduction in net OPEB costs was $25 million for 2011, $26 million for 2010, and $18 million for 2009. The reduction for CMS Energy and Consumers included $9 million for 2011, $10 million for 2010, and $6 million for 2009 in capitalized OPEB costs.

[2] CMS Energy received payments of $5 million in each of 2011 and 2010 and $4 million in 2009 for the Medicare Part D subsidies. Consumers received payments of $5 million in each of 2011 and 2010 and $4 million in 2009 for the Medicare Part D subsidies.

[3] At December 31, 2011, CMS Energy classified $7 million as current liabilities and $1.3 billion as non-current liabilities on its consolidated balance sheets. At December 31, 2010, CMS Energy classified $7 million as current liabilities and $1.1 billion as non-current liabilities on its consolidated balance sheets. Current liabilities relate to SERP projected payments for the next year.

At December 31, 2011, Consumers classified $4 million as current liabilities and $1.2 billion as non-current liabilities on its consolidated balance sheets. At December 31, 2010, Consumers classified $4 million as current liabilities and $1.1 billion as non-current liabilities on its consolidated balance sheets.

[4] At December 31, 2011, $414 million of the total funded status of the Pension Plan was attributable to Consumers based on an allocation of expenses. At December 31, 2010, $463 million of the funded status of the Pension Plan was attributable to Consumers based on an allocation of expenses.

[5] Plan amendments reflect changes resulting from an agreement reached with the UWUA in April 2010 on a new five-year contract for UWUA members.

Presented in the following table are the Pension Plan PBO, ABO, and fair value of plan assets:

Years Ended December 31	2011	2010
	In Millions	
CMS ENERGY, INCLUDING CONSUMERS		
Pension PBO	$2,072	$1,896
Pension ABO	1,765	1,517
Fair value of Pension Plan assets	1,626	1,401

Items Not Yet Recognized as a Component of Net Periodic Benefit Cost: Presented in the following table are the amounts recognized in regulatory assets and AOCI that have not been recognized as components of net periodic benefit cost. For additional details on regulatory assets, see Note 6, Regulatory Matters.

	Pension and SERP		OPEB	
Years Ended December 31	2011	2010	2011	2010
		In Millions		
CMS ENERGY, INCLUDING CONSUMERS				
Regulatory assets				
Net loss	$1,014	$ 914	$ 766	$ 579
Prior service cost (credit)	17	23	(132)	(152)
AOCI				
Net loss (gain)	81	72	(5)	(9)
Prior service cost (credit)	2	2	(3)	(4)
Total amounts recognized in regulatory assets and AOCI	$1,114	$1,011	$ 626	$ 414
CONSUMERS				
Regulatory assets				
Net loss	$1,014	$ 914	$ 766	$ 579
Prior service cost (credit)	17	23	(132)	(152)
AOCI				
Net loss	27	22	—	—
Prior service cost	—	1	—	—
Total amounts recognized in regulatory assets and AOCI	$1,058	$ 960	$ 634	$ 427

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Plan Assets: Presented in the following tables are the fair values of CMS Energy’s and Consumers’ Pension Plan and OPEB plan assets at December 31, 2011 and 2010, by asset category and by level within the fair value hierarchy. For additional details regarding the fair value hierarchy, see Note 4, Fair Value Measurements.

December 31, 2011	Pension Plan		
	Total	Level 1	Level 2
		In Millions	
CMS Energy, including Consumers			
Asset Category:			
Cash and short-term investments [1]	$ 241	$ 241	$ —
U.S. government and agencies securities [2]	24	—	24
Corporate debt [3]	236	—	236
State and municipal bonds [5]	10	—	10
Foreign corporate debt [6]	23	—	23
Mutual funds [8]	257	257	—
Pooled funds [9]	835	—	835
Total	$1,626	$ 498	$1,128

December 31, 2010	Pension Plan		
	Total	Level 1	Level 2
		In Millions	
CMS Energy, including Consumers			
Asset Category:			
Cash and short-term investments [1]	$ 248	$ 248	$ —
U.S. government and agencies securities [2]	57	—	57
Corporate debt [3]	161	—	161
State and municipal bonds [5]	8	—	8
Foreign corporate debt [6]	17	—	17
Mutual funds [8]	183	183	—
Pooled funds [9]	727	—	727
Total	$1,401	$ 431	$ 970

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

	OPEB Plan		
December 31, 2011	Total	Level 1	Level 2
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Asset Category:			
Cash and short-term investments [1]	$ 64	$ 64	$ —
U.S. government and agencies securities [2]	203	—	203
Corporate debt [4]	28	—	28
State and municipal bonds [5]	71	—	71
Foreign corporate debt [6]	3	—	3
Common stocks [7]	113	113	—
Mutual funds [8]	31	31	—
Pooled funds [10]	411	—	411
Total	$924	$ 208	$ 716
CONSUMERS			
Asset Category:			
Cash and short-term investments [1]	$ 60	$ 60	$ —
U.S. government and agencies securities [2]	189	—	189
Corporate debt [4]	26	—	26
State and municipal bonds [5]	66	—	66
Foreign corporate debt [6]	3	—	3
Common stocks [7]	105	105	—
Mutual funds [8]	29	29	—
Pooled funds [10]	383	—	383
Total	$861	$ 194	$ 667

Table of Contents

December 31, 2010		OPEB Plan	
	Total	Level 1	Level 2
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Asset Category:			
Cash and short-term investments [1]	$ 56	$ 56	$ —
U.S. government and agencies securities [2]	181	—	181
Corporate debt [4]	20	—	20
State and municipal bonds [5]	36	—	36
Foreign corporate debt [6]	2	—	2
Common stocks [7]	154	154	—
Mutual funds [8]	23	23	—
Pooled funds [10]	415	—	415
Total	$887	$ 233	$ 654
CONSUMERS			
Asset Category:			
Cash and short-term investments [1]	$ 52	$ 52	$ —
U.S. government and agencies securities [2]	168	—	168
Corporate debt [4]	19	—	19
State and municipal bonds [5]	34	—	34
Foreign corporate debt [6]	2	—	2
Common stocks [7]	143	143	—
Mutual funds [8]	21	21	—
Pooled funds [10]	386	—	386
Total	$825	$ 216	$ 609

[1] Cash and short-term investments consist of money market funds with daily liquidity.

[2] U.S. government and agencies securities consist of U.S. Treasury notes and other debt securities backed by the U.S. government and related agencies. These securities were valued based on quoted market prices.

[3] At December 31, 2011, corporate debt investments in the Pension Plan comprised investment grade bonds (69 percent) and non-investment grade, high-yield bonds (31 percent) of U.S. issuers from diverse industries. At December 31, 2010, corporate debt investments in the Pension Plan comprised investment grade bonds (61 percent) and non-investment grade, high-yield bonds (39 percent) of U.S. issuers from diverse industries. These securities are valued based on quoted market prices, when available, or yields presently available on comparable securities of issuers with similar credit ratings.

[4] At December 31, 2011, corporate debt investments in the OPEB plan comprised investment grade bonds (69 percent) and non-investment grade, high-yield bonds (31 percent) of U.S. issuers from diverse industries. At December 31, 2010, corporate debt investments in the OPEB plan comprised investment grade bonds (61 percent) and non-investment grade, high-yield bonds (39 percent) of U.S. issuers from diverse industries. These securities are valued based on quoted market prices, when available, or yields presently available on comparable securities of issuers with similar credit ratings.

[5] State and municipal bonds were valued using a matrix-pricing model that incorporates Level 2 market-based information. The fair value of the bonds was derived from various observable inputs, including benchmark

yields, reported securities trades, broker/dealer quotes, bond ratings, and general information on market movements for investment grade state and municipal securities normally considered by market participants when pricing such debt securities.

[6] Foreign corporate debt securities were valued based on quoted market prices, when available, or on yields available on comparable securities of issuers with similar credit ratings.

[7] Common stocks in the OPEB plan consist of equity securities with low transaction costs that were actively managed and tracked by the S&P 500 Index. These securities were valued at their quoted closing prices.

[8] Mutual funds represent shares in registered investment companies that are priced based on the quoted NAV that is the basis for transactions to buy or sell shares in the funds.

[9] Pooled funds in the Pension Plan include both common and collective trust funds as well as special funds that contain only employee benefit plan assets from two or more unrelated benefit plans. At December 31, 2011, these funds comprised investments in U.S. equity securities (53 percent), foreign equity securities (22 percent), foreign fixed-income securities (16 percent), U.S. fixed-income securities (five percent), and alternative investments (four percent). At December 31, 2010, these funds comprised investments in U.S. equity securities (55 percent), foreign equity securities (24 percent), foreign fixed-income securities (14 percent), U.S. fixed-income securities (four percent), and alternative investments (three percent). These investments were valued at the quoted NAV provided by the fund managers that is the basis for transactions to buy or sell shares in the funds.

[10] Pooled funds in the OPEB plan include both common and collective trust funds as well as special funds that contain only employee benefit plan assets from two or more unrelated benefit plans. At December 31, 2011, these funds comprised investments in U.S. equity securities (88 percent), foreign equity securities (six percent), foreign fixed-income securities (four percent), U.S. fixed-income securities (one percent), and alternative investments (one percent). At December 31, 2010, these funds comprised investments in U.S. equity securities (89 percent), foreign equity securities (six percent), foreign fixed-income securities (three percent), U.S. fixed-income securities (one percent), and alternative investments (one percent). These investments are valued at the quoted NAV provided by the fund managers that is the basis for transactions to buy or sell shares in the funds.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following table are the contributions to CMS Energy’s and Consumers’ OPEB plan and Pension Plan:

Years Ended December 31	2011	2010
	In Millions	
CMS ENERGY, INCLUDING CONSUMERS		
OPEB [1]		
VEBA trust	$ 48	$ 57
401(h) component	19	14
	$ 67	$ 71
Pension [2]	$250	$375
CONSUMERS		
OPEB [1]		
VEBA trust	$ 47	$ 57
401(h) component	19	13
	$ 66	$ 70
Pension [2]	$245	$366

[1] CMS Energy, including Consumers, plans to contribute $65 million to the OPEB plan in 2012 and Consumers plans to contribute $64 million to the OPEB plan in 2012.

[2] CMS Energy, including Consumers, does not plan to contribute to the Pension Plan in 2012.

Contributions include required and discretionary amounts. Actual future contributions will depend on future investment performance, changes in discount rates, and various factors related to the populations participating in the plans.

In 2011, CMS Energy reached its target asset allocation for Pension Plan assets of 50 percent equity, 30 percent fixed income, and 20 percent alternative-strategy investments. This target asset allocation is expected to continue to maximize the long-term return on plan assets, while maintaining a prudent level of risk. The level of acceptable risk is a function of the liabilities of the plan. Equity investments are diversified mostly across the S&P 500 Index, with lesser allocations to the S&P MidCap and SmallCap Indexes and Foreign Equity Funds. Fixed-income investments are diversified across investment grade instruments of government and corporate issuers as well as high-yield and global bond funds. Alternative strategies are diversified across absolute return investment approaches and global tactical asset allocation. CMS Energy and Consumers use annual liability measurements, quarterly portfolio reviews, and periodic asset/liability studies to evaluate the need for adjustments to the portfolio allocation.

CMS Energy and Consumers established union and non-union VEBA trusts to fund their future retiree health and life insurance benefits. These trusts are funded through the ratemaking process for Consumers and through direct contributions from the non-utility subsidiaries. CMS Energy and Consumers have a target asset allocation of 60 percent equity and 40 percent fixed-income investments.

CMS Energy and Consumers invest the equity portions of the union and non-union health care VEBA trusts in an S&P 500 Index fund. CMS Energy and Consumers invest the fixed-income portion of the union health care VEBA trust in domestic investment grade taxable instruments. CMS Energy and Consumers invest the fixed-income portion of the non-union health care VEBA trust in a diversified mix of domestic tax-exempt securities.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

The investment selections of each VEBA trust are influenced by the tax consequences, as well as the objective of generating asset returns that will meet the medical and life insurance costs of retirees.

Benefit Payments: Presented in the following table are the expected benefit payments for each of the next five years and the five-year period thereafter:

	Pension	SERP	OPEB[1]
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
2012	$ 111	$ 7	$ 70
2013	120	7	73
2014	129	7	76
2015	138	8	80
2016	144	8	83
2017-2021	777	44	466
CONSUMERS			
2012	$ 108	$ 4	$ 67
2013	117	4	70
2014	126	4	73
2015	134	4	76
2016	140	4	80
2017-2021	757	23	445

[1] CMS Energy's and Consumers' OPEB benefit payments are net of employee contributions and expected Medicare Part D prescription drug subsidy payments. For CMS Energy, subsidies to be received are estimated to be $6 million for 2012, $7 million for each of 2013 and 2014, $8 million for each of 2015 and 2016, and $49 million combined for 2017 through 2021. For Consumers, subsidies to be received are estimated to be $6 million for each of 2012 and 2013, $7 million for each of 2014 and 2015, $8 million for 2016, and $47 million combined for 2017 through 2021.

Collective Bargaining Agreements: At December 31, 2011, unions represented 42 percent of CMS Energy's employees and 44 percent of Consumers' employees. The UWUA represents Consumers' operating, maintenance, construction, and call center employees. The USW represents Zeeland employees. Union contracts expire in 2015.

13: INCOME TAXES

CMS Energy and its subsidiaries file a consolidated U.S. federal income tax return and a unitary Michigan income tax return. Income taxes are allocated based on each company's separate taxable income in accordance with the CMS Energy tax sharing agreement.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following table is the difference between actual income tax expense on continuing operations, excluding noncontrolling interests, and income tax expense computed by applying the statutory U.S. federal income tax rate:

Years Ended December 31	2011	2010	2009
		In Millions, Except Tax Rate	
CMS ENERGY, INCLUDING CONSUMERS			
Income from continuing operations before income taxes	$ 604	$ 587	$ 324
Income tax expense at statutory rate	211	205	114
Increase (decrease) in income taxes from:			
MCIT law change, net of federal benefit [1]	(32)	—	—
State and local income taxes, net of federal benefit	21	26	21
Income tax credit amortization	(4)	(4)	(4)
Medicare Part D exempt income, net of law change [2]	(6)	(6)	(6)
Plant basis differences	(1)	2	1
Tax credits, net	(1)	(3)	(9)
Valuation allowance	1	1	2
Other, net	2	3	(4)
Income tax expense	$ 191	$ 224	$ 115
Effective tax rate	31.6%	38.2%	35.5%
CONSUMERS			
Income from continuing operations before income taxes	$ 734	$ 688	$ 456
Income tax expense at statutory rate	257	241	160
Increase (decrease) in income taxes from:			
State and local income taxes, net of federal benefit	24	26	19
Income tax credit amortization	(4)	(4)	(4)
Medicare Part D exempt income	(6)	(9)	(6)
Plant basis differences	(1)	2	1
Tax credits, net	(1)	(3)	(7)
Other, net	(2)	1	—
Income tax expense	$ 267	$ 254	$ 163
Effective tax rate	36.4%	36.9%	35.7%

[1] CMS Energy's effective tax rate for the year ended December 31, 2011 was reduced due to a one-time non-cash reduction in tax expense resulting from a change in Michigan tax law. In May 2011, Michigan enacted the MCIT, effective January 1, 2012. The MCIT, a simplified six percent corporate income tax, will replace the MBT, which is a complex multi-part business tax. Both the MBT and the MCIT are income taxes for financial reporting purposes, for which deferred income tax assets and liabilities are recorded. CMS Energy and Consumers remeasured their Michigan deferred income tax assets and liabilities at June 30, 2011 to reflect this change in law. Unlike the MBT, the MCIT does not allow future tax deductions to offset the book-tax differences that existed upon enactment of the tax. Due primarily to the elimination of these future tax deductions, Consumers has eliminated $128 million of net deferred tax assets associated with its utility book-tax temporary differences, recognizing a $128 million regulatory asset (not including

Table of Contents

the effects of income tax gross-ups), and in addition to the amounts related to Consumers, CMS Energy eliminated $32 million of net deferred tax liabilities associated with its non-utility book-tax temporary differences, recognizing a $32 million deferred income tax benefit.

[2] For the year ended December 31, 2010, CMS Energy recognized deferred tax expense of $3 million to reflect the enactment of the Health Care Acts. The law change prospectively repealed the tax deduction for the portion of the health care costs reimbursed by the Medicare Part D subsidy for taxable years beginning after December 31, 2012. Consumers has recorded a regulatory asset of $98 million at December 31, 2011 to reflect the expected recovery of additional future income taxes.

Presented in the following table are the significant components of income tax expense on continuing operations:

Years Ended December 31	2011	2010	2009
		In Millions	
CMS Energy, including Consumers			
Current income taxes *:*			
Federal	$ 2	$ (21)	$ (12)
State and local	24	26	17
	$ 26	$ 5	$ 5
Deferred income taxes *:*			
Federal	$207	$210	$ 86
State and local	11	13	28
MCIT law change	(49)	—	—
	$169	$223	$114
Deferred income tax credit, net	(4)	(4)	(4)
Tax expense	$191	$224	$115
Consumers			
Current income taxes *:*			
Federal	$ 74	$ (17)	$ 72
State and local	32	25	24
	$106	$ 8	$ 96
Deferred income taxes:			
Federal	$159	$236	$ 66
State and local	6	14	5
	$165	$250	$ 71
Deferred income tax credit, net	(4)	(4)	(4)
Tax expense	$267	$254	$163

Table of Contents

Presented in the following table are the principal components of deferred income tax assets (liabilities) recognized:

December 31	2011	2010
	In Millions	
CMS ENERGY, INCLUDING CONSUMERS		
Employee benefits	$ (126)	$ (76)
Gas inventory	(155)	(177)
Plant, property, and equipment	(1,668)	(1,382)
Regulatory tax liability	70	162
Reserves and accruals	86	101
Securitized costs	(96)	(120)
Tax loss and credit carryforwards	806	996
Other	92	(103)
	$ (991)	$ (599)
Less valuation allowance	(20)	(19)
Total net deferred income tax liabilities	$(1,011)	$ (618)
Deferred tax assets, net of valuation reserves	$ 1,034	$ 1,240
Deferred tax liabilities	(2,045)	(1,858)
Total net deferred income tax liabilities	$(1,011)	$ (618)
CONSUMERS		
Employee benefits	$ (158)	$ (110)
Gas inventory	(155)	(177)
Plant, property, and equipment	(1,742)	(1,464)
Regulatory tax liability	70	162
Reserves and accruals	44	45
Securitized costs	(96)	(120)
Tax loss and credit carryforwards	67	281
Other	81	(115)
	$(1,889)	$(1,498)
Less valuation allowance	(1)	—
Total net deferred income tax liabilities	$(1,890)	$(1,498)
Deferred tax assets, net of valuation reserves	$ 261	$ 488
Deferred tax liabilities	(2,151)	(1,986)
Total net deferred income tax liabilities	$(1,890)	$(1,498)

Deferred tax assets and liabilities are recognized for the estimated future tax effect of temporary differences between the tax basis of assets or liabilities and the reported amounts on CMS Energy's and Consumers' consolidated financial statements. Deferred tax assets and liabilities are classified as current or non-current according to the classification of the related assets or liabilities. Deferred tax assets and liabilities not related to assets or liabilities are classified according to the expected reversal date of the temporary differences.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following table are the tax loss and credit carryforwards at December 31, 2011:

	Gross Amount	Tax Attribute	Expiration
		In Millions	
CMS Energy, including Consumers			
Federal net operating loss carryforward	$ 1,403	$ 491	2023 –2031
Local net operating loss carryforwards	439	4	2023 –2031
State capital loss carryforward	26	2	2014 –2015
Alternative minimum tax credits	269	269	No expiration
General business credits	40	40	2012 – 2031
Total tax attributes		$ 806	
Consumers			
Federal net operating loss carryforward	$ 134	$ 47	2023 – 2031
State capital loss carryforward	10	1	2014 – 2015
Alternative minimum tax credits	5	5	No expiration
General business credits	14	14	2012 – 2031
Total tax attributes		$ 67	

CMS Energy has provided a valuation allowance of $2 million for the local tax loss carryforward, a valuation allowance of $2 million for the state capital loss carryforward, and a valuation allowance of $2 million for general business credits. Consumers has provided a valuation allowance of $1 million for the state capital loss carryforward. CMS Energy and Consumers expect to utilize fully tax loss and credit carryforwards for which no valuation has been provided. It is reasonably possible that further adjustments will be made to the valuation allowances within one year.

Presented in the following table is a reconciliation of the beginning and ending amount of uncertain tax benefits:

Years Ended December 31	2011	2010	2009
		In Millions	
CMS Energy, including Consumers			
Balance at beginning of period	$ 4	$ 62	$65
Reductions for prior year tax positions	(1)	(58)	(6)
Additions for prior year tax positions	1	—	2
Additions for current year tax positions	—	—	1
Balance at end of period	$ 4	$ 4	$62
Consumers			
Balance at beginning of period	$ 3	$ 57	$55
Reductions for prior year tax positions	—	(54)	(1)
Additions for prior year tax positions	1	—	2
Additions for current year tax positions	—	—	1
Balance at end of period	$ 4	$ 3	$57

CMS Energy, including Consumers, had uncertain tax benefits of $4 million at December 31, 2011 and 2010 and $8 million at December 31, 2009 that, if recognized, would affect the annual effective tax rate in future years. Consumers had uncertain tax benefits of $4 million at December 31, 2011 and $3 million at December 31, 2010 and 2009 that, if recognized, would affect the annual effective tax rate in future years.

CMS Energy and Consumers recognize accrued interest and penalties, where applicable, as part of income tax expense. CMS Energy, including Consumers, recognized no interest for the year ended December 31, 2011 and less than $1 million for each of the years ended December 31, 2010 and 2009. In 2010, CMS Energy settled with the IRS and, as a result, paid $6 million of accrued interest in December 2010. At that time, a remaining accrued interest balance of $3 million was eliminated. Consumers recognized no interest for the year ended December 31, 2011 and less than $1 million for each of the years ended December 31, 2010 and 2009. Upon settlement with the IRS in 2010, Consumers paid $4 million to CMS Energy and eliminated a remaining accrued interest balance of $1 million.

In November 2010, the IRS concluded its audit of CMS Energy and its subsidiaries, and proposed changes of $132 million to taxable income for the years ended December 31, 2002 through December 31, 2007. Of this amount, $82 million resulted in an adjustment to the existing net operating loss carryforward; the remaining $50 million increased taxable income. Most of the adjustments related to the timing of deductions, not the disallowance of deductions. CMS Energy accepted the proposed adjustments to taxable income, which resulted in the payment of $15 million of tax and accrued interest. The tax adjustments were allocated based on the companies' separate taxable income, in accordance with CMS Energy's tax sharing agreement. The impact to net income was less than $1 million.

In December 2010, the IRS began its audit of CMS Energy and its subsidiaries' 2008 and 2009 federal tax returns. The IRS also is auditing CMS Energy's research and development tax credit claims for 2001 through 2009. These credits are part of CMS Energy's overall general business credit carryforwards. It is reasonably possible that, within the next twelve months, a settlement will be reached with the IRS on CMS Energy's research and development tax credit claim. The total claimed credit for these years is $21 million.

The amount of income taxes paid is subject to ongoing audits by federal, state, local, and foreign tax authorities, which can result in proposed assessments. CMS Energy's and Consumers' estimate of the potential outcome for any uncertain tax issue is highly judgmental. CMS Energy and Consumers believe that their accrued tax liabilities at December 31, 2011 were adequate for all years.

14: STOCK-BASED COMPENSATION

CMS Energy and Consumers provide a PISP to key employees and non-employee directors based on their contributions to the successful management of the company. The PISP has a five-year term, expiring in May 2014.

All grants under the PISP for 2011, 2010, and 2009 were in the form of TSR restricted stock and time-lapse restricted stock. Restricted stock recipients receive shares of CMS Energy common stock. Restricted stock shares granted prior to August 1, 2010 have full dividend and voting rights. The TSR restricted stock shares granted after August 1, 2010 continue to have full voting rights. In lieu of cash dividend payments, however, the TSR restricted stock shares granted after August 1, 2010 receive additional restricted shares equal to the value of the dividend. These additional restricted shares are subject to the same vesting conditions as the underlying restricted stock shares.

TSR restricted stock vesting is contingent on meeting a three-year service requirement and a specific market condition. The market condition is based entirely on a comparison of CMS Energy's TSR with the median TSR of a peer group over the same three-year period. Depending on the outcome of the market condition, a recipient may earn a total award ranging from zero to 200 percent of the initial grant. Time-lapse restricted stock vests after a service period of three years.

Restricted stock awards granted to officers in 2011 were 75 percent TSR restricted stock and 25 percent time-lapsed restricted stock. Awards granted to officers in 2010 and 2009 were 67 percent TSR restricted stock and 33 percent time-lapse restricted stock.

For awards granted prior to August 1, 2010, restricted shares may vest fully upon retirement, disability, or change of control of CMS Energy if certain minimum service requirements are met or are waived by action of the C&HR Committees. If employment terminates for any other reason (other than death) or the minimum service requirements are not met or waived, the restricted shares will be fully forfeited. For awards granted after August 1, 2010, a pro-rata portion of the award equal to the portion of the service period served between the award grant date and the employee's termination date will vest upon termination of an employee due to retirement, disability, or change of control of CMS Energy. For TSR awards, this vesting is contingent upon the outcome of the market condition. The remaining portion of the award will be forfeited. All awards vest fully upon death.

The PISP also allows for stock options, stock appreciation rights, phantom shares, performance units, and incentive options, none of which was granted in 2011, 2010, or 2009.

Shares awarded or subject to stock options, phantom shares, or performance units may not exceed 6 million shares from June 2009 through May 2014, nor may such awards to any recipient exceed 500,000 shares in any fiscal year. CMS Energy and Consumers may issue awards of up to 3,884,919 shares of common stock under the PISP at December 31, 2011. Shares for which payment or exercise is in cash, as well as shares or stock options forfeited for any reason other than failure to meet a market condition, may be awarded or granted again under the PISP.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following table is restricted stock activity under the PISP:

Year Ended December 31, 2011	Number of Shares		Weighted-Average Grant Date Fair Value per Share
CMS ENERGY, INCLUDING CONSUMERS			
Nonvested at beginning of period	1,993,465	$	13.26
Granted [1]	787,149		13.89
Vested	(917,190)		7.64
Forfeited	(15,356)		16.94
Nonvested at end of period	1,848,068	$	16.29
CONSUMERS			
Nonvested at beginning of period	1,805,023	$	13.28
Granted [1]	737,504		14.17
Vested	(837,174)		7.77
Forfeited	(15,356)		16.94
Nonvested at end of period	1,689,997	$	16.36

[1] During 2011, CMS Energy granted 310,100 TSR shares, 215,400 time-lapse shares, 25,329 shares from dividends paid on TSR shares, and 236,320 shares granted as a result of the outcome of the TSR awards' market condition. During 2011, Consumers granted 295,035 TSR shares, 207,613 time-lapse shares, 23,328 shares from dividends paid on TSR shares, and 211,528 shares granted as a result of the outcome of the TSR awards' market condition.

CMS Energy and Consumers charge the fair value of the awards to expense over the required service period. As a result, for awards granted prior to August 1, 2010, CMS Energy and Consumers recognize all compensation expense for share-based awards that have accelerated service provisions upon retirement by the period in which the employee becomes eligible to retire. TSR restricted stock awards granted after August 1, 2010 have graded vesting features, and CMS Energy and Consumers recognize expense for those awards on a graded vesting schedule over the required service period. Expense for time-lapse awards is recognized on a straight-line basis over the required service period. CMS Energy and Consumers calculate the fair value of time-lapse restricted stock based on the price of CMS Energy's common stock on the grant date. CMS Energy and Consumers calculate the fair value of TSR restricted stock awards on the grant date using a Monte Carlo simulation. CMS Energy and Consumers base expected volatilities on the historical volatility of the price of CMS Energy common stock.

The risk-free rate for each valuation was based on the three-year U.S. Treasury yield at the award grant date. Presented in the following table are the significant assumptions used to estimate the fair value of the TSR restricted stock awards:

	2011	2010	2009
Expected volatility	29.6%	30.1%	29.8%
Expected dividend yield	4.6%	2.4%	2.0%
Risk-free rate	1.0%	0.9%	1.8%

Presented in the following table are amounts related to restricted stock awards:

Years Ended December 31	2011	2010	2009
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Fair value of shares that vested during the year	$ 7	$ 7	$ 4
Compensation expense recognized	10	9	9
Income tax benefit recognized	4	4	3
CONSUMERS			
Fair value of shares that vested during the year	$ 7	$ 6	$ 4
Compensation expense recognized	10	9	8
Income tax benefit recognized	4	3	3

At December 31, 2011, $10 million of total unrecognized compensation cost was related to restricted stock for CMS Energy, including Consumers, and $10 million of total unrecognized compensation cost was related to restricted stock for Consumers. CMS Energy and Consumers expect to recognize this cost over a weighted-average period of 2.0 years.

Presented in the following table is stock option activity under the PISP:

Year Ended December 31, 2011	Options Outstanding, Fully Vested, and Exercisable	Weighted-Average Exercise Price per Share	Weighted-Average Remaining Contractual Term	Aggregate Intrinsic Value
				(In Millions)
CMS ENERGY, INCLUDING CONSUMERS				
Outstanding at beginning of period	437,080	$ 22.34	1.1 years	$ (2)
Granted	—	—		
Exercised	(127,500)	11.87		
Cancelled or expired	(244,000)	27.85		
Outstanding at end of period	65,580	$ 22.20	0.2 years	$ —
CONSUMERS				
Outstanding at beginning of period	267,468	$ 20.64	1.2 years	$ (1)
Granted	—	—		
Exercised	(92,968)	10.25		
Cancelled or expired	(113,000)	28.34		
Outstanding at end of period	61,500	$ 22.20	0.2 years	$ —

Stock options give the holder the right to purchase common stock at the market price on the grant date. Stock options are exercisable upon grant, and expire up to ten years and one month from the grant date. CMS Energy and Consumers issue new shares when recipients exercise stock options. The total intrinsic value of stock options exercised for CMS Energy was $1 million for each of the years ended December 31, 2011 and 2010 and less than $1 million for the year ended December 31, 2009. The total intrinsic value of stock options exercised for Consumers was $1 million for each of the years ended December 31, 2011 and 2010 and less than $1 million for the year ended December 31, 2009. Cash received from exercise of these stock options in 2011 was $2 million for CMS Energy and $1 million for Consumers.

Since CMS Energy has utilized tax loss carryforwards, CMS Energy was unable to realize excess tax benefits upon exercise of stock options and vesting of restricted stock. Therefore, CMS Energy did not recognize the related excess tax benefits in equity. As of December 31, 2011, CMS Energy has $31 million of unrealized excess tax benefits.

Presented in the following table is the weighted-average grant-date fair value of awards under the PISP:

Years Ended December 31	2011	2010	2009
CMS ENERGY, INCLUDING CONSUMERS			
Weighted-average grant-date fair value per share			
Restricted stock granted	$13.89	$16.22	$13.49
CONSUMERS			
Weighted-average grant-date fair value per share			
Restricted stock granted	$14.17	$16.27	$13.44

15: LEASES

CMS Energy and Consumers lease various assets, including service vehicles, railcars, gas pipeline capacity, and buildings. In addition, CMS Energy and Consumers account for a number of their PPAs as capital and operating leases.

Operating leases for coal-carrying railcars have lease terms expiring without extension provisions over the next 12 years and with extension provisions over the next 15 years. These leases contain fair market value extension and buyout provisions, with some providing for predetermined extension period rentals. Capital leases for Consumers' vehicle fleet operations have a maximum term of 120 months with some having Terminal Rental Adjustment Clause end-of-life provisions and others having fixed percentage purchase options.

Consumers has capital leases for gas transportation pipelines to the Karn generating complex and Zeeland. The capital lease for the gas transportation pipeline into the Karn generating complex has a term of 15 years with a provision to extend the contract from month to month. The remaining term of the contract was 10 years at December 31, 2011. The capital lease for the gas transportation pipeline to Zeeland has a term of 12 years with a renewal provision at the end of the contract. The remaining term of the contract was one year at December 31, 2011. The remaining terms of Consumers' long-term PPAs range between one and 20 years. Most of these PPAs contain provisions at the end of the initial contract terms to renew the agreements annually.

Consumers is authorized by the MPSC to record operating lease payments as operating expense and recover the total cost from customers. Presented in the following table are Consumers' operating lease expense and contingent rental expense. For each of the years ended December 31, 2011, 2010, and 2009, all of CMS Energy's operating lease expense and contingent rental expense were attributable to Consumers.

Years Ended December 31	2011	2010	2009
		In Millions	
CONSUMERS			
PPA operating lease expense	$10	$ 5	$ 9
Non-PPA operating lease expense	22	22	23
Contingent rental expense [1]	11	14	9

[1] Contingent rental expense comprises PPA energy and capacity payments and any other payments not associated with RECs. This expense is excluded from operating lease expense.

Presented in the following table are the minimum annual rental commitments under Consumers' non-cancelable leases at December 31, 2011. All of CMS Energy's non-cancelable leases at December 31, 2011 were attributable to Consumers.

	Capital Leases	Finance Lease [1]	Operating Leases
		In Millions	
CONSUMERS			
2012	$ 20	$ 20	$ 27
2013	13	20	24
2014	11	19	22
2015	12	18	22
2016	8	17	17
2017 and thereafter	39	79	68
Total minimum lease payments	$ 103	$ 173	$ 180
Less imputed interest	46	39	
Present value of net minimum lease payments	$ 57	$ 134	
Less current portion	11	13	
Non-current portion	$ 46	$ 121	

[1] In 2007, Consumers sold Palisades to Entergy and entered into a 15-year PPA to buy all of the capacity and energy then capable of being produced by Palisades. Consumers has continuing involvement with Palisades through security provided to Entergy for Consumers' PPA obligation and other arrangements. Because of these ongoing arrangements, Consumers accounted for the transaction as a financing of Palisades and not a sale. Accordingly, no gain on the sale of Palisades was recognized on the consolidated statements of income. Consumers accounted for the remaining non-real-estate assets and liabilities associated with the transaction as a sale.

Palisades remains on Consumers' consolidated balance sheets and Consumers continues to depreciate it. Consumers recorded the related proceeds as a finance obligation with payments recorded to interest expense and the finance obligation based on the amortization of the obligation over the life of the Palisades PPA. The value of the finance obligation was determined based on an allocation of the transaction proceeds to the fair values of the net assets sold and fair value of the plant asset under the financing. Total amortization and interest charges under the financing were $21 million, $22 million, and $23 million, respectively, for the years ended December 31, 2011, 2010, and 2009.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

16: PLANT, PROPERTY, AND EQUIPMENT

Presented in the following table are details of CMS Energy's and Consumers' plant, property, and equipment:

Years Ended December 31	Estimated Depreciable Life in Years	2011	2010
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Electric:			
Generation	18 - 85	$ 3,936	$ 3,812
Distribution	12 -75	5,538	5,250
Other	7 - 40	651	609
Capital and finance leases		275	273
Gas:			
Underground storage facilities [1]	30 - 65	322	311
Transmission	13 - 75	722	713
Distribution	30 - 80	2,754	2,654
Other	5 - 50	403	380
Capital leases		5	5
Enterprises:			
Independent power production	3 - 30	89	85
Other	3 - 40	20	17
Other	1 - 51	36	36
Construction work in progress		783	570
Less accumulated depreciation and amortization		4,901	4,646
Net plant, property, and equipment [2]		$10,633	$10,069

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Years Ended December 31	Estimated Depreciable Life in Years	2011	2010
		In Millions	
CONSUMERS			
Electric:			
Generation	18 - 85	$ 3,936	$3,812
Distribution	12 - 75	5,538	5,250
Other	7 - 40	651	609
Capital and finance leases		275	273
Gas:			
Underground storage facilities [1]	30 - 65	322	311
Transmission	13 - 75	722	713
Distribution	30 - 80	2,754	2,654
Other	5 - 50	403	380
Capital leases		5	5
Other non-utility property	8 - 51	15	15
Construction work in progress		782	566
Less accumulated depreciation and amortization		4,846	4,593
Net plant, property, and equipment [2]		$10,557	$9,995

[1] Underground storage includes base natural gas of $26 million at December 31, 2011 and 2010. Base natural gas is not subject to depreciation.

[2] For the year ended December 31, 2011, utility plant additions were $700 million and utility plant retirements were $104 million. For the year ended December 31, 2010, utility plant additions were $783 million and utility plant retirements were $85 million.

Presented in the following table is further detail on changes in Consumers' capital and finance leases:

Years Ended December 31	2011	2010
	In Millions	
CONSUMERS		
Balance at beginning of period	$278	$306
Additions	4	15
Net retirements and other adjustments	(2)	(43)
Balance at end of period	$280	$278

Capital and finance leases presented are gross amounts. Accumulated amortization of capital and finance leases was $87 million at December 31, 2011 and $65 million at December 31, 2010 for Consumers.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following table is further detail on CMS Energy’s and Consumers’ accumulated depreciation and amortization:

Years Ended December 31	2011	2010
	In Millions	
CMS ENERGY, INCLUDING CONSUMERS		
Utility plant assets	$4,844	$4,592
Non-utility plant assets	57	54
CONSUMERS		
Utility plant assets	$4,844	$4,592
Non-utility plant assets	2	1

Maintenance and Depreciation: CMS Energy and Consumers record property repairs and minor property replacement as maintenance expense. CMS Energy and Consumers record planned major maintenance activities as operating expense unless the cost represents the acquisition of additional long-lived assets or the replacement of an existing long-lived asset.

Consumers depreciates utility property on an asset-group basis, in which it applies a single MPSC-approved depreciation rate to the gross investment in a particular class of property within the electric and gas segments. Consumers performs depreciation studies periodically to determine appropriate group lives. Presented in the following table are the composite depreciation rates for Consumers’ segment properties:

Years Ended December 31	2011	2010	2009
Electric utility property	3.0%	3.0%	3.0%
Gas utility property	2.9%	2.9%	2.9%
Other property	7.4%	7.4%	7.6%

CMS Energy and Consumers record plant, property, and equipment at original cost when placed into service. The cost includes labor, material, applicable taxes, overhead such as pension and other benefits, and AFUDC, if applicable. Consumers’ plant, property, and equipment is generally recoverable through its general rate making process. For additional details see Note 6, Regulatory Matters.

When utility property is mothballed, the property is reserved for future use, stays in rate base, and continues to be depreciated at the same rate as before the mothball period. No changes are made to rates unless it is decided that the units will be retired, or the MPSC disallows some or all costs associated with the property.

When utility property is retired or otherwise disposed of in the ordinary course of business, Consumers records the original cost to accumulated depreciation, along with associated cost of removal, net of salvage. CMS Energy and Consumers recognize gains or losses on the retirement or disposal of non-regulated assets in income. Consumers records cost of removal collected from customers, but not spent, as a regulatory liability.

Consumers capitalizes AFUDC on regulated major construction projects, except pollution control facilities on its fossil-fueled power plants. AFUDC represents the estimated cost of debt and authorized return-on-equity funds used to finance construction additions. Consumers records the offsetting credit as a reduction of interest for the amount representing the borrowed funds component and as other income for the equity funds component on the consolidated statements of income. When construction is completed and the property is placed in service,

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Consumers depreciates and recovers the capitalized AFUDC from customers over the life of the related asset. Presented in the following table are Consumers' composite AFUDC capitalization rates:

Years Ended December 31	2011	2010	2009
AFUDC capitalization rate	7.6%	7.6%	7.6%

CMS Energy and Consumers capitalize the purchase and development of internal-use computer software. These costs are expensed evenly over the estimated useful life of the internal-use computer software. If computer software is integral to computer hardware, then its cost is capitalized and depreciated with the hardware. The types of costs capitalized are consistent for all periods presented by the financial statements.

Intangible Assets : Included in net plant, property, and equipment are intangible assets. Presented in the following table are CMS Energy's and Consumers' intangible assets:

Years Ended December 31		2011		2010	
Description	Amortization Life in years	Gross Cost[1]	Accumulated Amortization	Gross Cost[1]	Accumulated Amortization
			In Millions		
CMS ENERGY, INCLUDING CONSUMERS					
Software development	3 - 15	$ 361	$ 142	$ 323	$ 125
Plant acquisition adjustments	40 - 46	214	22	213	16
Rights of way	50 - 75	128	38	140	37
Leasehold improvements	various[2]	11	9	13	9
Franchises and consents	5 - 30	15	7	15	6
Other intangibles	various	19	14	20	14
Total		$ 748	$ 232	$ 724	$ 207
CONSUMERS					
Software development	3 - 15	$ 360	$ 141	$ 323	$ 125
Plant acquisition adjustments	40 - 46	214	22	213	16
Rights of way	50 - 75	128	38	140	37
Leasehold improvements	various[2]	11	9	13	9
Franchises and consents	5 - 30	15	7	15	6
Other intangibles	various	18	14	18	14
Total		$ 746	$ 231	$ 722	$ 207

[1] Net intangible asset additions for Consumers' utility plant were $23 million during 2011 and $25 million during 2010.

[2] Leasehold improvements are amortized over the life of the lease, which may change whenever the lease is renewed or extended.

Presented in the following table is CMS Energy’s and Consumers’ amortization expense related to intangible assets:

	CMS Energy, including Consumers			Consumers	
Years Ended December 31	Total Amortization Expense	Software Amortization Expense		Total Amortization Expense	Software Amortization Expense
			In Millions		
2011	$ 32	$ 24		$ 32	$ 24
2010	28	19		27	19
2009	30	22		30	22

Amortization of intangible assets is expected to range between $39 million and $50 million per year over the next five years.

JOINTLY OWNED REGULATED UTILITY FACILITIES

Presented in the following table are Consumers’ investments in jointly owned regulated utility facilities at December 31, 2011:

	Campbell Unit 3		Ludington	Distribution
Ownership share	93.3%		51.0%	various
		In Millions, Except Ownership Share		
Utility plant in service	$ 1,059		$ 175	$ 168
Accumulated depreciation	(430)		(118)	(46)
Construction work-in-progress	55		43	7
Net investment	$ 684		$ 100	$ 129

Consumers includes its share of the direct expenses of the jointly owned plants in operating expenses. Consumers shares operation, maintenance, and other expenses of these jointly owned utility facilities in proportion to each participant’s undivided ownership interest. Consumers is required to provide only its share of financing for the jointly owned utility facilities.

17: ASSET RETIREMENT OBLIGATIONS

CMS Energy and Consumers record the fair value of the cost to remove assets at the end of their useful lives, if there is a legal obligation to remove them. No market risk premiums were included in CMS Energy’s and Consumers’ ARO fair value estimates since reasonable estimates could not be made. If a five percent market risk premium were assumed, CMS Energy’s and Consumers’ ARO liabilities at December 31, 2011 would increase by $13 million and at December 31, 2010 would increase by $12 million.

If a reasonable estimate of fair value cannot be made in the period in which the ARO is incurred, such as for assets with indeterminate lives, the liability is recognized when a reasonable estimate of fair value can be made. CMS Energy and Consumers have not recorded liabilities for assets that have insignificant cumulative disposal costs, such as substation batteries.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented below are the categories of assets that CMS Energy and Consumers have legal obligations to remove at the end of their useful lives and for which they have an ARO liability recorded:

Company and ARO Description	In-Service Date	Long-Lived Assets
CMS ENERGY, INCLUDING CONSUMERS		
Close gas treating plant and gas wells	Various	Gas transmission and storage
Closure of coal ash disposal areas	Various	Generating plants coal ash areas
Closure of wells at gas storage fields	Various	Gas storage fields
Indoor gas services equipment relocations	Various	Gas meters located inside structures
Asbestos abatement	1973	Electric and gas utility plant
Gas distribution cut, purge, and cap	Various	Gas distribution mains and services
CONSUMERS		
Closure of coal ash disposal areas	Various	Generating plants coal ash areas
Closure of wells at gas storage fields	Various	Gas storage fields
Indoor gas services equipment relocations	Various	Gas meters located inside structures
Asbestos abatement	1973	Electric and gas utility plant
Gas distribution cut, purge, and cap	Various	Gas distribution mains and services

No assets have been restricted for purposes of settling AROs.

Presented in the following tables are the changes in CMS Energy's and Consumers' ARO liabilities:

Company and ARO Description	ARO Liability 12/31/10	Incurred	Settled	Accretion	Cash flow Revisions	ARO Liability 12/31/11
			In Millions			
CMS ENERGY, INCLUDING CONSUMERS						
Close gas treating plant and gas wells	$ 1	$ —	$ —	$ —	$ —	$ 1
Consumers	244	(2)	(7)	18	—	253
Total CMS Energy	$ 245	$ (2)	$ (7)	$ 18	$ —	$ 254
CONSUMERS						
Coal ash disposal areas	$ 66	$ —	$ (2)	$ 6	$ —	$ 70
Wells at gas storage fields	1	—	—	—	—	1
Indoor gas services relocations	1	—	(1)	—	—	—
Asbestos abatement	40	—	(1)	3	—	42
Gas distribution cut, purge, and cap	136	(2)	(3)	9	—	140
Total Consumers	$ 244	$ (2)	$ (7)	$ 18	$ —	$ 253

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Company and ARO Description	ARO Liability 12/31/09	Incurred	Settled	Accretion	Cash flow Revisions	ARO Liability 12/31/10
				In Millions		
CMS ENERGY, INCLUDING CONSUMERS						
Close gas treating plant and gas wells	$ 1	$ —	$ —	$ —	$ —	$ 1
Consumers	228	6	(7)	17	—	244
Total CMS Energy	$ 229	$ 6	$ (7)	$ 17	$ —	$ 245
CONSUMERS						
Coal ash disposal areas	$ 64	$ —	$ (4)	$ 6	$ —	$ 66
Wells at gas storage fields	1	—	—	—	—	1
Indoor gas services relocations	1	—	—	—	—	1
Asbestos abatement	38	—	(1)	3	—	40
Gas distribution cut, purge, and cap	124	6	(2)	8	—	136
Total Consumers	$ 228	$ 6	$ (7)	$ 17	$ —	$ 244

18: VARIABLE INTEREST ENTITIES

Variable interests are contractual, ownership, or other interests in an entity that change as the fair value of the VIE's net assets, excluding variable interests, changes. An entity is considered to be a VIE when its capital is insufficient to permit it to finance its activities without additional subordinated financial support or its equity investors, as a group, lack the characteristics of having a controlling financial interest.

Entities that are VIEs must be consolidated if the reporting entity determines that it has a controlling financial interest. The entity that is required to consolidate the VIE is called the primary beneficiary. The primary beneficiary is the entity that has both (1) the power to direct the activities of a VIE that most significantly impact the VIE's economic performance and (2) the obligation to absorb losses of the VIE that could potentially be significant to the VIE.

Effective January 1, 2010, new guidance changed the criteria for consolidating VIEs. As a result of adopting this guidance, CMS Energy consolidated CMS Energy Trust I and deconsolidated three partnerships that it had previously consolidated.

CMS Energy has consolidated CMS Energy Trust I because CMS Energy is the variable interest holder that designed the entity and, through the design, has the power to direct the activities of CMS Energy Trust I that most significantly impact the trust's economic performance. The sole assets of the trust consist of subordinated notes issued by CMS Energy, and the sole liabilities of the trust consist of Trust Preferred Securities. CMS Energy has guaranteed payment of the Trust Preferred Securities. Upon consolidation, CMS Energy reduced its equity method investment by $5 million and its long-term debt by $34 million. CMS Energy also recorded a $29 million liability for the mandatorily redeemable preferred securities issued by the trust. No gain or loss was recognized on the consolidation of CMS Energy Trust I. The balance of the Trust Preferred Securities was $29 million at December 31, 2011. In January 2012, CMS Energy called all of the securities, to be redeemed in late February 2012.

CMS Energy has variable interests in T.E.S. Filer City, Grayling, and Genesee. CMS Energy is not the primary beneficiary of any of these partnerships because power is shared among unrelated parties, and no one party has the power to direct the activities that most significantly impact the entities' economic performance. The partners must agree on all major decisions for each of the partnerships.

Presented in the following table is information about these partnerships:

Name (Ownership Interest)	Nature of the Entity	Financing of Partnership
T.E.S. Filer City (50%)	Coal-fueled power generator	Non-recourse long-term debt that matured in December 2007.
Grayling (50%)	Wood waste-fueled power generator	Sale of revenue bonds that mature in November 2012 and bear interest at variable rates. The debt is recourse to the partnership, but not the individual partners, and secured by a letter of credit equal to the outstanding balance.
Genesee (50%)	Wood waste-fueled power generator	Sale of revenue bonds that mature in 2021 and bear interest at fixed rates. The debt is non-recourse to the partnership and secured by a CMS Energy guarantee capped at $3 million annually.

CMS Energy has operating and management contracts with Grayling and Genesee, and Consumers is the primary purchaser of power from each partnership through long-term PPAs. Consumers also has reduced dispatch agreements with Grayling and Genesee, which allow these facilities to be dispatched based on the market price of wood waste. This results in fuel cost savings that each partnership shares with Consumers' customers.

CMS Energy's investment in these partnerships is included in investments on its consolidated balance sheets in the amount of $52 million as of December 31, 2011 and $49 million as of December 31, 2010. The creditors of these partnerships do not have recourse to the general credit of CMS Energy or Consumers, except through a guarantee provided by CMS Energy of $3 million annually. CMS Energy has deferred collections on certain receivables owed by Genesee. CMS Energy's maximum exposure to loss from these receivables is $6 million. Consumers has not provided any financial or other support during the periods presented that was not previously contractually required.

19: RELATED-PARTY TRANSACTIONS — CONSUMERS

Consumers enters into a number of significant transactions with related parties. These transactions include:

- purchase and sale of electricity from and to affiliates of CMS Enterprises;
- payment of parent company overhead costs to CMS Energy; and
- investment in CMS Energy common stock.

Transactions involving power supply purchases from certain affiliates of CMS Enterprises are based on avoided costs under PURPA, state law, and competitive bidding. The payment of parent company overhead costs is based on the use of accepted industry allocation methodologies. These payments are for costs that occur in the normal course of business.

Presented in the following table are Consumers' recorded income and expense from related parties as of December 31:

Description	Related Party	2011	2010	2009
			In Millions	
Purchases of capacity and energy	Affiliates of CMS Enterprises	$81	$84	$81

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Amounts payable to related parties for purchased power and other services were $11 million at December 31, 2011 and 2010.

Consumers owned 1.6 million shares of CMS Energy common stock with a fair value of $35 million at December 31, 2011. For additional details on Consumers' investment in CMS Energy common stock, see Note 9, Financial Instruments.

20: ASSET SALES, DISCONTINUED OPERATIONS, AND IMPAIRMENT CHARGES

ASSET SALES

The impacts of asset sales are included in gain on asset sales, net and income (loss) from discontinued operations on CMS Energy's consolidated statements of income, and they are included in loss (gain) on asset sales, net on Consumers' consolidated statements of income. Asset sales for CMS Energy and Consumers were less than $1 million for each of the years ended December 31, 2011 and 2009.

In 2010, CMS Enterprises exercised its option to sell its stock interest in CMS Generation San Nicolas Company and transferred the sale proceeds to MEI. As a result, CMS Enterprises recognized a $3 million net gain. In 2010, CMS Enterprises also sold a cost-method investment with a carrying value of zero, and recognized a $3 million gain.

DISCONTINUED OPERATIONS

Discontinued operations are a component of the enterprises segment. CMS Energy included the following amounts in income (loss) from discontinued operations:

Years Ended December 31	2011	2010	2009
		In Millions	
Revenues	$—	$ 10	$ 7
Discontinued operations			
Pretax income (loss) from discontinued operations	$ 2	$(21)	$33
Income tax expense	—	2	13
Income (loss) from discontinued operations, net of tax expense	$ 2[1]	$(23)[2]	$20[3]

[1] Includes an operating gain of $3 million related to a litigation settlement at CMS Viron.

[2] Includes an operating loss of $2 million ($1 million net of tax) at Exeter, whose assets and liabilities were reclassified as held for sale in 2009.

Also includes disposal-related losses of $10 million in additional tax expense resulting from an IRS audit adjustment related to a 2003 asset sale, a $6 million ($4 million net of tax) loss for the write down of CMS Energy's investment in Exeter, a $5 million ($3 million net of tax) loss for the increase in a liability for a 2007 asset sale, and a $5 million ($3 million net of tax) loss on the settlement of a 2002 asset sale indemnity.

[3] Includes an operating loss of $11 million ($7 million net of tax) at Exeter and a loss of $3 million ($2 million net of tax) related to a litigation settlement at CMS Viron.

Also includes a gain for the expiration of an indemnity obligation related to a 2007 asset sale. CMS Energy provided an indemnity to TAQA in connection with the sale of its ownership interests in businesses in the Middle East, Africa, and India, and recorded a $50 million provision for the contingent liability. This indemnity expired in 2009 and CMS Energy eliminated the liability from its consolidated balance sheets,

Table of Contents

recognizing a $45 million benefit ($28 million net of tax) to income (loss) from discontinued operations and a $5 million benefit to gain on asset sales, net.

Discontinued operations include a provision for closing costs and a portion of CMS Energy’s parent company interest expense. The amount of interest expense allocated by CMS Energy was less than $1 million in each of 2011, 2010, and 2009. CMS Energy allocates its interest expense by applying its total interest expense to the net carrying amount of the asset sold divided by CMS Energy’s total capitalization.

During the fourth quarter of 2009, CMS Energy’s management committed to a plan to sell its interest in Exeter and initiated an active program to locate potential buyers. CMS Energy completed the sale of this business in January 2011. Presented in the following table are the major classes of assets and liabilities of Exeter classified as held for sale on CMS Energy’s consolidated balance sheet at December 31, 2010:

Year Ended December 31	2010 In Millions
Assets	
Current Assets:	
Cash	$ 1
Accounts receivable, net	1
Non-current Assets:	
Plant, property, and equipment, net	3
Other	1
Total assets	$ 6
Liabilities:	
Current Liabilities	$ 1
Total liabilities	$ 1

IMPAIRMENT CHARGES

In 2010, CMS Energy wrote down its investment in Exeter from its carrying amount of $11 million to Exeter’s fair value of $5 million. This valuation was based on the price that CMS Energy received for the sale of Exeter, which closed in January 2011. The impairment resulted in a loss of $6 million, which was recorded in earnings as part of discontinued operations for the year ended December 31, 2010.

In May 2010, Consumers announced plans to defer the development of its proposed 830-MW coal-fueled plant at its Karn/Weadock generating complex. At that time, Consumers recorded a charge of $3 million to write off certain capitalized development costs because the costs were deemed not to have long-term value in connection with the potential future construction of the plant. The project’s air permit, issued by the MDEQ in December 2009, was set to expire in August 2011 if construction of the coal plant had not commenced or if Consumers had not been granted an extension of the air permit. In December 2010, Consumers determined that it would not begin construction before August 2011 as a means of preserving the air permit. As a result, the likelihood that the plant would be constructed had diminished significantly. In December 2010, in accordance with accounting standards governing impairment of plant costs for regulated utilities, Consumers recorded an additional charge of $19 million to write off the remaining previously capitalized development costs associated with the proposed plant. The total charge of $22 million was recorded in other operating expenses for the year ended December 31, 2010. In December 2011, Consumers announced the cancellation of the proposed plant.

CMS Energy and Consumers recorded no other impairments of long-lived assets for the years ended December 31, 2011, 2010, and 2009.

21: REPORTABLE SEGMENTS

Reportable segments consist of business units defined by the products and services they offer. CMS Energy and Consumers evaluate the performance of each segment based on its contribution to net income available to CMS Energy’s common stockholders. The reportable segments for CMS Energy and Consumers are:

CMS Energy:

- electric utility, consisting of regulated activities associated with the generation and distribution of electricity in Michigan;
- gas utility, consisting of regulated activities associated with the transportation, storage, and distribution of natural gas in Michigan;
- enterprises, consisting of various subsidiaries engaging primarily in domestic independent power production; and
- other, including EnerBank, corporate interest and other expenses, and discontinued operations.

Consumers:

- electric utility, consisting of regulated activities associated with the generation and distribution of electricity in Michigan;
- gas utility, consisting of regulated activities associated with the transportation, storage, and distribution of natural gas in Michigan; and
- other, including a consolidated special-purpose entity for the sale of accounts receivable.

Accounting policies for CMS Energy’s and Consumers’ segments are as described in Note 1, Significant Accounting Policies. The consolidated financial statements reflect the assets, liabilities, revenues, and expenses of the individual segments when appropriate. Accounts are allocated among the segments when common accounts are attributable to more than one segment. The allocations are based on certain measures of business activities, such as revenue, labor dollars, customers, other operation and maintenance expense, construction expense, leased property, taxes, or functional surveys. For example, customer receivables are allocated based on revenue, and pension provisions are allocated based on labor dollars.

Inter-segment sales and transfers are accounted for at current market prices and are eliminated in consolidated net income available to common stockholders by segment.

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Presented in the following tables is financial information by reportable segment:

Years Ended December 31	2011	2010	2009
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Operating Revenue:			
Electric utility	$3,913	$3,802	$3,407
Gas utility	2,340	2,354	2,556
Enterprises	204	238	216
Other	46	38	26
Total Operating Revenue — CMS Energy	$6,503	$6,432	$6,205
CONSUMERS			
Operating Revenue:			
Electric utility	$3,913	$3,802	$3,407
Gas utility	2,340	2,354	2,556
Total Operating Revenue — Consumers	$6,253	$6,156	$5,963
CMS ENERGY, INCLUDING CONSUMERS			
Depreciation and Amortization:			
Electric utility	$ 412	$ 450	$ 441
Gas utility	130	122	118
Enterprises	3	3	10
Other	1	1	1
Total Depreciation and Amortization — CMS Energy	$ 546	$ 576	$ 570
CONSUMERS			
Depreciation and Amortization:			
Electric utility	$ 412	$ 450	$ 441
Gas utility	130	122	118
Total Depreciation and Amortization — Consumers	$ 542	$ 572	$ 559
CMS ENERGY, INCLUDING CONSUMERS			
Income (Loss) from Equity Method Investees [1]			
Enterprises	$ 9	$ 11	$ (2)
Total Income (Loss) from Equity Method Investees — CMS Energy	$ 9	$ 11	$ (2)
CMS ENERGY, INCLUDING CONSUMERS			
Interest Charges:			
Electric utility	$ 192	$ 202	$ 225
Gas utility	71	73	66
Enterprises	—	—	5
Other	152	156	139
Total Interest Charges — CMS Energy	$ 415	$ 431	$ 435
CONSUMERS			
Interest Charges:			
Electric utility	$ 192	$ 202	$ 225
Gas utility	71	73	66
Other	2	2	1
Total Interest Charges — Consumers	$ 265	$ 277	$ 292

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Years Ended December 31	2011	2010 In Millions	2009
CMS ENERGY, INCLUDING CONSUMERS			
Income Tax Expense (Benefit):			
Electric utility	$ 190	$ 187	$ 107
Gas utility	77	67	56
Enterprises	(24)	14	4
Other	(52)	(44)	(52)
Total Income Tax Expense — CMS Energy	$ 191	$ 224	$ 115
CONSUMERS			
Income Tax Expense:			
Electric utility	$ 190	$ 187	$ 107
Gas utility	77	67	56
Total Income Tax Expense — Consumers	$ 267	$ 254	$ 163
CMS ENERGY, INCLUDING CONSUMERS			
Net Income (Loss) Available to Common Stockholders:			
Electric utility	$ 333	$ 303	$ 194
Gas utility	130	127	96
Enterprises	32	36	(7)
Discontinued operations	2	(23)	20
Other	(82)	(119)	(85)
Total Net Income Available to Common Stockholders — CMS Energy	$ 415	$ 324	$ 218
CONSUMERS			
Net Income Available to Common Stockholder:			
Electric utility	$ 333	$ 303	$ 194
Gas utility	130	127	96
Other	2	2	1
Total Net Income Available to Common Stockholder — Consumers	$ 465	$ 432	$ 291
CMS ENERGY, INCLUDING CONSUMERS			
Plant, Property, and Equipment, Gross:			
Electric utility	$10,400	$ 9,944	$ 9,525
Gas utility	4,206	4,063	3,812
Enterprises	109	102	345
Other	36	36	34
Total Plant, Property, and Equipment — CMS Energy	$14,751	$14,145	$13,716
CONSUMERS			
Plant, Property, and Equipment, Gross:			
Electric utility	$10,400	$ 9,944	$ 9,525
Gas utility	4,206	4,063	3,812
Other	15	15	15
Total Plant, Property, and Equipment — Consumers	$14,621	$14,022	$13,352

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Years Ended December 31	2011	2010	2009
		In Millions	
CMS ENERGY, INCLUDING CONSUMERS			
Investments in Equity Method Investees [1]:			
Enterprises	$ 49	$ 48	$ 3
Other	1	1	6
Total Investments in Equity Method Investees — CMS Energy	$ 50	$ 49	$ 9
CMS ENERGY, INCLUDING CONSUMERS			
Total Assets:			
Electric utility [2]	$ 9,938	$ 9,321	$ 9,157
Gas utility [2]	4,956	4,614	4,594
Enterprises	242	191	303
Other	1,316	1,490	1,202
Total Assets — CMS Energy	$16,452	$15,616	$15,256
CONSUMERS			
Total Assets:			
Electric utility [2]	$ 9,938	$ 9,321	$ 9,157
Gas utility [2]	4,956	4,614	4,594
Other	768	904	871
Total Assets — Consumers	$15,662	$14,839	$14,622
CMS ENERGY, INCLUDING CONSUMERS			
Capital Expenditures [3]:			
Electric utility	$ 661	$ 642	$ 557
Gas utility	261	235	270
Enterprises	5	4	7
Other	1	2	—
Total Capital Expenditures — CMS Energy	$ 928	$ 883	$ 834
CONSUMERS			
Capital Expenditures [3]:			
Electric utility	$ 661	$ 642	$ 557
Gas utility	261	235	270
Total Capital Expenditures — Consumers	$ 922	$ 877	$ 827

[1] Consumers had no material equity method investments.

[2] Amounts include a portion of Consumers' other common assets attributable to both the electric and gas utility businesses.

[3] Amounts include purchase of capital lease additions. Amounts also include a portion of Consumers' capital expenditures for plant and equipment attributable to both the electric and gas utility businesses.

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

CMS Energy and Consumers had no international operating revenues or operating income for each of the years ended December 31, 2011, 2010, and 2009. CMS Energy had international assets of $1 million at December 31, 2011 and $3 million at December 31, 2010 and 2009. Consumers had no international assets for any of the years presented.

22: QUARTERLY FINANCIAL AND COMMON STOCK INFORMATION (UNAUDITED)

Quarters Ended	2011			
	March 31	June 30	Sept. 30	Dec. 31
	In Millions, Except Per Share Amounts and Stock Prices			
CMS ENERGY, INCLUDING CONSUMERS				
Operating Revenue	$ 2,055	$1,364	$1,464	$1,620
Operating Income	306	207	316	174
Income From Continuing Operations	133	101	140	41
Income From Discontinued Operations	2	—	—	—
Net Income	135	101	140	41
Income Attributable to Noncontrolling Interests	—	1	1	—
Net Income Attributable to CMS Energy	135	100	139	41
Net income Available to Common Stockholders	135	100	139	41
Earnings From Continuing Operations Per Average Common Share — Basic [1]	0.53	0.40	0.55	0.16
Earnings From Continuing Operations Per Average Common Share — Diluted [1]	0.51	0.38	0.53	0.15
Basic Earnings Per Average Common Share [1]	0.54	0.40	0.55	0.16
Diluted Earnings Per Average Common Share [1]	0.52	0.38	0.53	0.15
Common stock prices [2]				
High	19.78	20.39	20.47	22.35
Low	18.60	18.90	17.16	19.18
CONSUMERS				
Operating Revenue	$ 1,988	$1,303	$1,397	$1,565
Operating Income	300	207	305	173
Net Income	153	92	155	67
Preferred Stock Dividends	—	1	1	—
Net Income Available to Common Stockholder	153	91	154	67

Table of Contents

CMS Energy Corporation
Consumers Energy Company

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)

Quarters Ended	2010			
	March 31	June 30	Sept. 30	Dec. 31
	In Millions, Except Per Share Amounts and Stock Prices			
CMS ENERGY, INCLUDING CONSUMERS				
Operating Revenue	$ 1,967	$1,340	$1,443	$1,682
Operating Income	239	262	319	158
Income From Continuing Operations	89	100	146	31
Loss From Discontinued Operations	(1)	(16)	—	(6)
Net Income	88	84	146	25
Income Attributable to Noncontrolling Interests	—	2	1	—
Net Income Attributable to CMS Energy	88	82	145	25
Charge for Deferred Issuance Cost on Preferred Stock	—	—	8	—
Preferred Stock Dividends	3	2	3	—
Net Income Available to Common Stockholders	85	80	134	25
Earnings From Continuing Operations Per Average Common Share — Basic [1]	0.38	0.42	0.58	0.13
Earnings From Continuing Operations Per Average Common Share — Diluted [1]	0.35	0.39	0.53	0.11
Basic Earnings Per Average Common Share [1]	0.37	0.35	0.58	0.11
Diluted Earnings Per Average Common Share [1]	0.34	0.32	0.53	0.09
Common stock prices [2]				
High	15.90	16.55	18.15	19.16
Low	14.57	14.26	14.68	17.72
CONSUMERS				
Operating Revenue	$ 1,890	$1,276	$1,370	$1,620
Operating Income	224	207	304	191
Net Income	107	88	160	79
Preferred Stock Dividends	—	1	1	—
Net Income Available to Common Stockholder	107	87	159	79

[1] The sum of the quarters may not equal annual EPS due to changes in the number of shares outstanding.

[2] Based on New York Stock Exchange composite transactions.

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholders of
CMS Energy Corporation

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of income, of cash flows, and of changes in equity present fairly, in all material respects, the financial position of CMS Energy Corporation and its subsidiaries at December 31, 2011 and December 31, 2010, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2011 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedules listed in the index appearing under Item 15(a)(2) present fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and financial statement schedules, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Annual Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedules, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/PricewaterhouseCoopers LLP

Detroit, Michigan
February 23, 2012

Report of Independent Registered Public Accounting Firm

To the Board of Directors and Stockholder of
Consumers Energy Company

In our opinion, the accompanying consolidated balance sheets and the related consolidated statements of income, of cash flows, and of changes in equity present fairly, in all material respects, the financial position of Consumers Energy Company and its subsidiaries at December 31, 2011 and December 31, 2010, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2011 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the index appearing under Item 15(a)(2) presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. Also in our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on criteria established in *Internal Control—Integrated Framework* issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The Company's management is responsible for these financial statements and the financial statement schedule, for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting, included in Management's Annual Report on Internal Control over Financial Reporting appearing under Item 9A. Our responsibility is to express opinions on these financial statements, on the financial statement schedule, and on the Company's internal control over financial reporting based on our integrated audits. We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement and whether effective internal control over financial reporting was maintained in all material respects. Our audits of the financial statements included examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. Our audit of internal control over financial reporting included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, and testing and evaluating the design and operating effectiveness of internal control based on the assessed risk. Our audits also included performing such other procedures as we considered necessary in the circumstances. We believe that our audits provide a reasonable basis for our opinions.

A company's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (i) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (iii) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of its inherent limitations, internal control over financial reporting may not prevent or detect misstatements. Also, projections of any evaluation of effectiveness to future periods are subject to the risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

/s/PricewaterhouseCoopers LLP

Detroit, Michigan
February 23, 2012

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

CMS Energy

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures: Under the supervision and with the participation of management, including its CEO and CFO, CMS Energy conducted an evaluation of its disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the Exchange Act). Based on such evaluation, CMS Energy's CEO and CFO have concluded that its disclosure controls and procedures were effective as of December 31, 2011.

Management's Annual Report on Internal Control Over Financial Reporting: CMS Energy's management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). CMS Energy's internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of CMS Energy;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of CMS Energy are being made only in accordance with authorizations of management and directors of CMS Energy; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of CMS Energy's assets that could have a material effect on its financial statements.

Management, including its CEO and CFO, does not expect that its internal controls will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. In addition, any evaluation of the effectiveness of controls is subject to risks that those internal controls may become inadequate in future periods because of changes in business conditions, or that the degree of compliance with the policies or procedures deteriorates.

Under the supervision and with the participation of management, including its CEO and CFO, CMS Energy conducted an evaluation of the effectiveness of its internal control over financial reporting as of December 31, 2011. In making this evaluation, management used the criteria set forth in the framework in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on such evaluation, CMS Energy's management concluded that its internal control over financial reporting was effective as of December 31, 2011. The effectiveness of CMS Energy's internal control over financial reporting as of December 31, 2011 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears under Item 8. Financial Statements and Supplementary Data.

Changes in Internal Control over Financial Reporting: There have been no changes in CMS Energy's internal control over financial reporting during the most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

Consumers

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures: Under the supervision and with the participation of management, including its CEO and CFO, Consumers conducted an evaluation of its disclosure controls and procedures (as such term is defined in Rules 13a-15(e) and 15d-15(e) under the

Table of Contents

Exchange Act). Based on such evaluation, Consumers’ CEO and CFO have concluded that its disclosure controls and procedures were effective as of December 31, 2011.

Management’s Annual Report on Internal Control Over Financial Reporting: Consumers’ management is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in Exchange Act Rule 13a-15(f). Consumers’ internal control over financial reporting is a process designed to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with GAAP and includes policies and procedures that:

- pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of Consumers;
- provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with GAAP, and that receipts and expenditures of Consumers are being made only in accordance with authorizations of management and directors of Consumers; and
- provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of Consumers’ assets that could have a material effect on its financial statements.

Management, including its CEO and CFO, does not expect that its internal controls will prevent or detect all errors and all fraud. A control system, no matter how well designed and operated, can provide only reasonable, not absolute, assurance that the objectives of the control system are met. Further, the design of a control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs. In addition, any evaluation of the effectiveness of controls is subject to risks that those internal controls may become inadequate in future periods because of changes in business conditions, or that the degree of compliance with the policies or procedures deteriorates.

Under the supervision and with the participation of management, including its CEO and CFO, Consumers conducted an evaluation of the effectiveness of its internal control over financial reporting as of December 31, 2011. In making this evaluation, management used the criteria set forth in the framework in Internal Control – Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on such evaluation, Consumers’ management concluded that its internal control over financial reporting was effective as of December 31, 2011. The effectiveness of Consumers’ internal control over financial reporting as of December 31, 2011 has been audited by PricewaterhouseCoopers LLP, an independent registered public accounting firm, as stated in their report which appears under Item 8. Financial Statements and Supplementary Data.

Changes in Internal Control over Financial Reporting: There have been no changes in Consumers’ internal control over financial reporting during the most recently completed fiscal quarter that have materially affected, or are reasonably likely to materially affect, its internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

CMS Energy

Information that is required in Item 10 regarding executive officers is included in the Item 1. Business, CMS Energy Executive Officers section, which is incorporated by reference herein.

Information that is required in Item 10 regarding directors, executive officers, and corporate governance is included in CMS Energy’s definitive proxy statement, which is incorporated by reference herein.

CODE OF ETHICS

CMS Energy adopted a code of ethics that applies to its CEO, CFO, and CAO, as well as all other officers and employees of CMS Energy and its affiliates, including Consumers. This code of ethics, entitled “Code of Conduct and Guide to Ethical Business Behavior 2010,” is posted on CMS Energy’s website at www.cmsenergy.com, under “Compliance and Ethics.” CMS Energy’s Code of Conduct and Guide to Ethical Business Behavior 2010 is administered by the Chief Compliance Officer of CMS Energy, who reports directly to the Audit Committee of the Board of Directors of CMS Energy. Any amendment to, or waiver of, a provision of CMS Energy’s code of ethics that applies to CMS Energy’s CEO, CFO, CAO, or persons performing similar functions will be disclosed on CMS Energy’s website at www.cmsenergy.com under “Compliance and Ethics.”

CMS Energy has also adopted a code of conduct that applies to its directors, entitled “Board of Directors Code of Conduct.” This Board of Directors Code of Conduct can also be found on CMS Energy’s website at www.cmsenergy.com, under “Compliance and Ethics.” CMS Energy’s Board of Directors Code of Conduct is administered by the Audit Committee of the Board of Directors of CMS Energy. Any alleged violation of this Board of Directors Code of Conduct by a director will be investigated by disinterested members of the Audit Committee of the Board of Directors of CMS Energy, or if none, by disinterested members of the entire Board of Directors of CMS Energy.

Consumers

Information that is required in Item 10 regarding executive officers is included in the Item 1. Business, Consumers Executive Officers section, which is incorporated by reference herein.

Information that is required in Item 10 regarding Consumers’ directors, executive officers, and corporate governance is included in CMS Energy’s definitive proxy statement, which is incorporated by reference herein.

CODE OF ETHICS

Consumers adopted a code of ethics that applies to its CEO, CFO, and CAO, as well as all other officers and employees of Consumers and its affiliates. This code of ethics, entitled “Code of Conduct and Guide to Ethical Business Behavior 2010,” is posted on Consumers’ website at www.consumersenergy.com, under “Our Company,” “Compliance and Ethics.” Consumers’ Code of Conduct and Guide to Ethical Business Behavior 2010 is administered by the Chief Compliance Officer of Consumers, who reports directly to the Audit Committee of the Board of Directors of Consumers. Any amendment to, or waiver of, a provision of Consumers’ code of ethics that applies to Consumers’ CEO, CFO, CAO, or persons performing similar functions will be disclosed on Consumers’ website at www.consumersenergy.com under “Our Company,” “Compliance and Ethics.”

Consumers has also adopted a code of conduct that applies to its directors, entitled “Board of Directors Code of Conduct.” This Board of Directors Code of Conduct can also be found on Consumers’ website at www.consumersenergy.com, under “Our Company,” “Compliance and Ethics.” Consumers’ Board of Directors Code of Conduct is administered by the Audit Committee of the Board of Directors of Consumers. Any alleged violation of this Board of Directors Code of Conduct by a director will be investigated by disinterested members of the Audit Committee of the Board of Directors of Consumers, or if none, by disinterested members of the entire Board of Directors of Consumers.

ITEM 11. EXECUTIVE COMPENSATION

Information that is required in Item 11 regarding executive compensation of CMS Energy's and Consumers' executive officers is included in CMS Energy's definitive proxy statement, which is incorporated by reference herein.

ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS

Information that is required in Item 12 regarding securities authorized for issuance under equity compensation plans and security ownership of certain beneficial owners and management of CMS Energy and Consumers is included in CMS Energy's definitive proxy statement, which is incorporated by reference herein.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS, AND DIRECTOR INDEPENDENCE

Information that is required in Item 13 regarding certain relationships and related transactions, and director independence regarding CMS Energy and Consumers is included in CMS Energy's definitive proxy statement, which is incorporated by reference herein.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information that is required in Item 14 regarding principal accountant fees and services relating to CMS Energy and Consumers is included in CMS Energy's definitive proxy statement, which is incorporated by reference herein.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a)(1) Financial Statements and Reports of Independent Public Accountants for CMS Energy and Consumers are included in Item 8. Financial Statements and Supplementary Data and are incorporated by reference herein.

(a)(2) Index to Financial Statement Schedules.

		Page
Schedule I	Condensed Financial Information of Registrant CMS Energy – Parent Company	
	Condensed Statements of Income	182
	Condensed Statements of Cash Flows	183
	Condensed Balance Sheets	184
	Notes to the Condensed Financial Statements	186
Schedule II	Valuation and Qualifying Accounts and Reserves	
	CMS Energy	187
	Consumers	187
Report of Independent Registered Public Accounting Firm		
	CMS Energy	170
	Consumers	171

Schedules other than those listed above are omitted because they are either not required, not applicable, or the required information is shown in the financial statements or notes thereto. Columns omitted from schedules filed have been omitted because the information is not applicable.

(a)(3) Exhibits for CMS Energy and Consumers are listed after Item 15(b) below and are incorporated by reference herein.

(b) Exhibits, including those incorporated by reference.

CMS ENERGY'S AND CONSUMERS' EXHIBITS

The agreements included as exhibits to this Form 10-K filing are included solely to provide information regarding the terms of the agreements and are not intended to provide any other factual or disclosure information about CMS Energy, Consumers, or other parties to the agreements. The agreements may contain representations and warranties made by each of the parties to each of the agreements that were made exclusively for the benefit of the parties involved in each of the agreements and should not be treated as statements of fact. The representations and warranties were made as a way to allocate risk if one or more of those statements prove to be incorrect. The statements were qualified by disclosures to the parties to each of the agreements and may not be reflected in each of the agreements. The agreements may apply standards of materiality that are different than standards applied to other investors. Additionally, the statements were made as of the date of the agreements or as specified in the agreements and have not been updated.

The representations and warranties may not describe the actual state of affairs of the parties to each agreement. Additional information about CMS Energy and Consumers may be found in this filing, at www.cmsenergy.com, at www.consumersenergy.com, and through the SEC's website at www.sec.gov.

	Previously Filed			
	With File	As Exhibit		
Exhibits	Number	Number		Description
3.1	1-9513	(3)(a) [1]	—	Restated Articles of Incorporation of CMS Energy, effective June 1, 2004, as amended May 22, 2009 (2nd qtr. 2009 Form 10-Q)
3.2	1-9513	3.1 [1]	—	CMS Energy Corporation Bylaws, amended and restated as of January 27, 2011 (Form 8-K filed February 1, 2011)
3.3	1-5611	3(c)	—	Restated Articles of Incorporation of Consumers effective June 7, 2000 (2000 Form 10-K)
3.4	1-5611	3.2	—	Consumers Energy Company Bylaws, amended and restated as of January 27, 2011 (Form 8-K filed February 1, 2011)
4.1	2-65973	(b)(1) -4	—	Indenture dated as of September 1, 1945 between Consumers and Chemical Bank (successor to Manufacturers Hanover Trust Company), as Trustee, including therein indentures supplemental thereto through the Forty-third Supplemental Indenture dated as of May 1, 1979 (Form S-16 filed November 13, 1979) Indentures Supplemental thereto:
4.1.a	1-5611	(4)(a)	—	71st dated as of 3/06/98 (1997 Form 10-K)
4.1.b	1-5611	(4)(d)	—	90th dated as of 4/30/03 (1st qtr. 2003 Form 10-Q)
4.1.c	1-5611	(4)(b)	—	92nd dated as of 8/26/03 (3rd qtr. 2003 Form 10-Q)
4.1.d	1-5611	(4)(a)	—	96th dated as of 8/17/04 (Form 8-K filed August 20, 2004)
4.1.e	1-5611	4.4	—	98th dated as of 12/13/04 (Form 8-K filed December 13, 2004)
4.1.f	1-5611	(4)(a)(i)	—	99th dated as of 1/20/05 (2004 Form 10-K)
4.1.g	1-5611	4.2	—	100th dated as of 3/24/05 (Form 8-K filed March 30, 2005)
4.1.h	1-5611	4.2	—	104th dated as of 8/11/05 (Form 8-K filed August 11, 2005)
4.1.i	1-5611	4.1	—	108th dated as of 3/14/08 (Form 8-K filed March 14, 2008)
4.1.j	1-5611	4.1	—	109th dated as of 9/11/08 (Form 8-K filed September 16, 2008)
4.1.k	1-5611	4.1	—	110th dated as of 9/12/08 (Form 8-K filed September 12, 2008)
4.1.l	1-5611	4.1	—	111th dated as of 3/6/09 (Form 8-K filed March 6, 2009)
4.1.m	1-5611	4.1	—	112th dated as of 9/1/10 (Form 8-K filed September 7, 2010)
4.1.n	1-5611	4.1	—	113th dated as of 10/15/10 (Form 8-K filed October 20, 2010)
4.1.o	1-5611	4.1	—	114th dated as of 3/31/11 (Form 8-K filed April 6, 2011)

	Previously Filed			
Exhibits	**With File Number**	**As Exhibit Number**		**Description**
4.1.p	333-174906-01	4.16.18	—	115th dated as of 5/4/11 (Form S-3ASR filed June 15, 2011)
4.1.q	1-5611	4.1	—	116th dated as of 9/1/11 (3rd qtr. 2011 Form 10-Q)
4.2	1-5611	(4)(b)	—	Indenture dated as of January 1, 1996 between Consumers and The Bank of New York Mellon, as Trustee (1995 Form 10-K)
4.3	1-5611	(4)(c)	—	Indenture dated as of February 1, 1998 between Consumers and The Bank of New York Mellon (formerly The Chase Manhattan Bank), as Trustee (1997 Form 10-K)
4.4	33-47629	(4)(a) [1]	—	Indenture dated as of September 15, 1992 between CMS Energy and NBD Bank, as Trustee (Form S-3 filed May 1, 1992)
				Indentures Supplemental thereto:
4.4.a	1-9513	4.2 [1]	—	17th dated as of 12/13/04 (Form 8-K filed December 13, 2004)
4.4.b	1-9513	4.2 [1]	—	19th dated as of 12/13/05 (Form 8-K filed December 15, 2005)
4.4.c	1-9513	4.2 [1]	—	20th dated as of 7/3/07 (Form 8-K filed July 5, 2007)
4.4.d	1-9513	4.3 [1]	—	21st dated as of 7/3/07 (Form 8-K filed July 5, 2007)
4.4.e	1-9513	4.1 [1]	—	22nd dated as of 6/15/09 (Form 8-K filed June 15, 2009)
4.4.f	1-9513	4.3 [1]	—	23rd dated as of 6/15/09 (Form 8-K filed June 15, 2009)
4.4.g	1-9513	4.1 [1]	—	24th dated as of 1/14/10 (Form 8-K filed January 14, 2010)
4.4.h	1-9513	4.1 [1]	—	25th dated as of 9/23/10 (Form 8-K filed September 23, 2010)
4.4.i	1-9513	4.1 [1]	—	26th dated as of 11/19/10 (Form 8-K filed November 19, 2010)
4.4.j	1-9513	4.1 [1]	—	27th dated as of 5/12/11 (Form 8-K filed May 12, 2011)
4.5	1-9513	(4a) [1]	—	Indenture dated as of June 1, 1997 between CMS Energy Corporation and The Bank of New York Mellon, as Trustee (Form 8-K filed July 1, 1997)
				Indentures Supplemental thereto:
4.5.a	1-9513	(4)(b) [1]	—	1st dated as of 6/20/97 (Form 8-K filed July 1, 1997)
10.1	1-9513	(10)(g)	—	2004 Form of Executive Severance Agreement (3rd qtr. 2009 Form 10-Q)
10.2	1-9513	(10)(h)	—	2004 Form of Officer Severance Agreement (3rd qtr. 2009 Form 10-Q)
10.3	1-9513	10.1	—	CMS Energy’s Performance Incentive Stock Plan, effective February 3, 1988, amended and restated, effective August 1, 2010 (2nd qtr. 2010 Form 10-Q)
10.4	1-9513	(10)(i)	—	CMS Deferred Salary Savings Plan effective December 1, 1989 and as further amended effective December 1, 2007 (2007 Form 10-K)
10.5	1-9513	(10)(l)	—	Amendment to the Deferred Salary Savings Plan dated December 21, 2008 (2008 Form 10-K)
10.6	1-9513	10.6	—	Supplemental Executive Retirement Plan for Employees of CMS Energy/Consumers Energy Company effective on January 1, 1982 and as amended effective April 1, 2011 (1st qtr. 2011 Form 10-Q)
10.7	1-9513	10.5	—	Defined Contribution Supplemental Executive Retirement Plan effective April 1, 2006 and as amended effective April 1, 2011 (1st qtr. 2011 Form 10-Q)
10.8	1-9513	(10)(t)	—	2009 Form of Officer Separation Agreement (2008 Form 10-K)
10.9	1-9513	(10)(v) [1]	—	Amended and Restated Investor Partner Tax Indemnification Agreement dated as of June 1, 1990 among Investor Partners, CMS Midland as Indemnitor and CMS Energy as Guarantor (1990 Form 10-K)

	Previously Filed			
Exhibits	With File Number	As Exhibit Number		Description
10.10	1-9513	(10)(y) [1]	—	Environmental Agreement dated as of June 1, 1990 made by CMS Energy to The Connecticut National Bank and Others (1990 Form 10-K)
10.11	1-5611	(10)(y)	—	Unwind Agreement dated as of December 10, 1991 by and among CMS Energy, Midland Group, Ltd., Consumers, CMS Midland, Inc., MEC Development Corp. and CMS Midland Holdings Company (1991 Form 10-K)
10.12	1-9513	(10)(aa) [1]	—	Parent Guaranty dated as of June 14, 1990 from CMS Energy to MCV, each of the Owner Trustees, the Indenture Trustees, the Owner Participants and the Initial Purchasers of Senior Bonds in the MCV Sale Leaseback transaction, and MEC Development (1991 Form 10-K)
10.13	1-5611	(10)(i)	—	Asset Sale Agreement dated as of July 11, 2006 by and among Consumers Energy Company as Seller and Entergy Nuclear Palisades, LLC as Buyer (3rd qtr. 2009 Form 10-Q)
10.14	1-5611	(10)(j)	—	Palisades Nuclear Power Plant Power Purchase Agreement dated as of July 11, 2006 between Entergy Nuclear Palisades, LLC and Consumers Energy Company (3rd qtr. 2009 Form 10-Q)
10.15	1-9513	(10)(k) [1]	—	Agreement of Purchase and Sale, by and between CMS Enterprises Company and Abu Dhabi National Energy Company PJSC dated as of February 3, 2007 (3rd qtr. 2009 Form 10-Q)
10.16	1-9513	(10)(a) [1]	—	Form of Indemnification Agreement between CMS Energy Corporation and its Directors, effective as of November 1, 2007 (3rd qtr. 2007 Form 10-Q)
10.17	1-5611	(10)(b)	—	Form of Indemnification Agreement between Consumers Energy Company and its Directors, effective as of November 1, 2007 (3rd qtr. 2007 Form 10-Q)
10.18	1-5611	10.3	—	Amended and Restated Letter of Credit Reimbursement Agreement between Consumers and U.S. Bank National Association, dated as of September 21, 2010 (3rd qtr. 2010 Form 10-Q)
10.19	1-5611	10.1	—	$150,000,000 Second Amended and Restated Revolving Credit Agreement dated as of August 11, 2010 among Consumers Energy Company, the Banks, Agent, Co-Syndication Agents, and Documentation Agent all as defined therein (Form 8-K filed August 16, 2010)
10.20	1-5611	(10)(t)	—	Settlement Agreement and Amended and Restated Power Purchase Agreement between Consumers Energy Company and Midland Cogeneration Venture Limited Partnership (3rd qtr. 2009 Form 10-Q)
10.21	1-5611	10.4	—	1st Amendment to the Amended and Restated Power Purchase Agreement between Consumers and MCV Partnership, dated as of March 1, 2010 (3rd qtr. 2010 Form 10-Q)
10.22	1-5611	10.34	—	Amended and Restated Receivables Purchase Agreement dated as of November 23, 2010 among Consumers Receivables Funding II, LLC, Consumers Energy Company, The Conduits from time to time party thereto, The Financial Institutions from time to time party thereto, The Managing Agents from time to time party thereto, and JPMorgan Chase Bank, NA, as Administrative Agent (2010 Form 10-K)
10.23	1-5611	10.1	—	Amendment No. 1 to Amended and Restated Receivables Purchase Agreement dated as of November 18, 2011(Form 8-K filed November 25, 2011)
10.24			—	Amendment No. 2 to Amended and Restated Receivables Purchase Agreement dated as of December 15, 2011
10.25	1-5611	(10)(v)	—	Receivables Sale Agreement, dated as of May 22, 2003, between Consumers Energy Company, as Originator and Consumers Receivables Funding II, LLC, as Buyer, as amended by Amendment No. 1 dated as of May 20, 2004 and as amended by Amendment No. 2 dated as of August 15, 2006 (3rd qtr. 2009 Form 10-Q)

	Previously Filed			
Exhibits	With File Number	As Exhibit Number		Description
10.26	1-5611	(10)(rr)	—	Amendment No. 3 to the Receivables Sale Agreement dated as of September 3, 2009 (2009 Form 10-K)
10.27	1-5611	(10)(ss)	—	Amendment No. 4 to the Receivables Sale Agreement dated as of February 12, 2010 (2009 Form 10-K)
10.28	1-5611	(10)(b)	—	Amendment No. 5 to the Receivables Sale Agreement, dated as of March 17, 2010 (1st qtr. 2010 Form 10-Q)
10.29	1-5611	(10)(d)	—	Amendment No. 6 to the Receivables Sale Agreement, dated as of April 20, 2010 (1st qtr. 2010 Form 10-Q)
10.30	1-5611	10.40	—	Amendment No. 7 to the Receivables Sale Agreement dated as of November 23, 2010 (2010 Form 10-K)
10.31	1-9513	10.4	—	CMS Incentive Compensation Plan for CMS Energy and its Subsidiaries, amended and restated effective as of January 1, 2011 (1st qtr. 2011 Form 10-Q)
10.32	1-9513	(10)(f)	—	Form of Change in Control Agreement as of March 2010 (1st qtr. 2010 Form 10-Q)
10.33	1-9513	(10)(g) [1]	—	Agreement between David W. Joos and CMS Energy Board of Directors (1st qtr. 2010 Form 10-Q)
10.34	1-5611	(10)(h)	—	Bond Purchase Agreement between Consumers and each of the Purchasers named therein, dated as of April 19, 2010 (1st qtr. 2010 Form 10-Q)
10.35	1-5611	10.1	—	Bond Purchase Agreement between Consumers and each of the Purchasers named therein, dated as of September 27, 2010 (Form 8-K filed September 30, 2010)
10.36	1-9513	10.1 [1]	—	$550 million Revolving Credit Agreement dated as of March 31, 2011 between CMS Energy Corporation, the Banks, as defined therein, and Barclays Bank PLC, as Agent (Form 8-K filed April 6, 2011)
10.37	1-5611	10.2	—	$500 million Revolving Credit Agreement dated as of March 31, 2011 among Consumers Energy Company, the Banks, as defined therein, and JPMorgan Chase Bank, N.A., as Agent (Form 8-K filed April 6, 2011)
10.38	1-9513	10.3 [1]	—	Pledge and Security Agreement dated as of March 31, 2011, made by CMS Energy Corporation to Barclays Bank PLC, as Administrative Agent for the Banks, as defined therein (Form 8-K filed April 6, 2011)
10.39	1-5611	10.1	—	Settlement Agreement between Consumers and United States to Resolve Claims Arising from Contract DE-CR01-83NE44374, entered into on July 11, 2011(2nd qtr. 2011 Form 10-Q)
10.40	1-9513	10.1	—	Consumers and other CMS Energy Companies Retired Executives Survivor Benefit Plan for Management/ Executive Employees, distributed July 1, 2011 (3rd qtr. 2011 Form 10-Q)
10.41	1-9513	10.1 [1]	—	$180,000,000 Term Loan Credit Agreement dated as of December 15, 2011 among CMS Energy Corporation, the financial institutions named therein and JPMorgan Chase Bank, N.A. as Agent (Form 8-K filed December 20, 2011)
12.1			—	Statement regarding computation of CMS Energy's Ratios of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Dividends
12.2			—	Statement regarding computation of Consumers' Ratios of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Dividends
21.1			—	Subsidiaries of CMS Energy and Consumers
23.1			—	Consent of PricewaterhouseCoopers LLP for CMS Energy
23.2			—	Consent of PricewaterhouseCoopers LLP for Consumers
24.1			—	Power of Attorney for CMS Energy
24.2			—	Power of Attorney for Consumers
31.1			—	CMS Energy's certification of the CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002

	Previously Filed			
		As Exhibit		
Exhibits	With File Number	Number		Description
31.2			—	CMS Energy's certification of the CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.3			—	Consumers' certification of the CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.4			—	Consumers' certification of the CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1			—	CMS Energy's certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2			—	Consumers' certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
99.1	333-177886	99.1 [1]	—	CMS Energy Corporation Stock Purchase Plan, as amended and restated November 10, 2011 (Form S-3ASR filed November 10, 2011)
101.INS [2]			—	XBRL Instance Document
101.SCH [2]			—	XBRL Taxonomy Extension Schema
101.CAL [2]			—	XBRL Taxonomy Extension Calculation Linkbase
101.DEF [2]			—	XBRL Taxonomy Extension Definition Linkbase
101.LAB [2]			—	XBRL Taxonomy Extension Labels Linkbase
101.PRE [2]			—	XBRL Taxonomy Extension Presentation Linkbase

[1] Obligations of CMS Energy or its subsidiaries, but not of Consumers.

[2] In accordance with Regulation S-T, the XBRL-related information in Exhibit 101 shall be deemed to be "furnished" and not "filed." The financial information contained in the XBRL-related information is "unaudited" and "unreviewed."

Exhibits listed above that have heretofore been filed with the SEC pursuant to various acts administered by the SEC, and which were designated as noted above, are hereby incorporated herein by reference and made a part hereof with the same effect as if filed herewith.

Table of Contents

CMS ENERGY CORPORATION

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

CMS Energy — Parent Company

Condensed Statements of Income

Years Ended December 31	2011	2010	2009
		In Millions	
Operating Expenses			
Other operating expenses	$ (9)	$ (6)	$ (10)
General taxes	6	—	[illegible]
Total operating expenses	(3)	(6)	(10)
Operating Loss	(3)	(6)	(10)
Other Income (Expense)			
Equity earnings of subsidiaries	510	464	310
Interest income	1	1	—
Other income (expense)	(5)	(8)	12
Total other income	506	457	322
Interest Charges			
Interest on long-term debt	143	147	124
Interest on preferred securities	—	—	8
Intercompany interest expense and other	6	4	8
Total interest charges	149	151	140
Income Before Income Taxes	354	300	172
Income Tax Benefit	(61)	(50)	(57)
Income From Continuing Operations	415	350	229
Loss From Discontinued Operations	—	(10)	—
Net Income	415	340	229
Charge for Deferred Issuance Costs on Preferred Stock	—	8	—
Preferred Stock Dividends	—	8	11
Net Income Available to Common Stockholders	$415	$324	$218

The accompanying condensed notes are an integral part of these statements.

Table of Contents

CMS ENERGY CORPORATION

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

CMS Energy — Parent Company

Condensed Statements of Cash Flows

Years Ended December 31	2011	2010	2009
		In Millions	
Cash Flows from Operating Activities			
Net income	$ 415	$ 340	$ 229
Adjustments to reconcile net income to net cash provided by operating activities			
Equity earnings of subsidiaries	(510)	(464)	(310)
Dividends received from subsidiaries	474	358	340
Increase in accounts receivable	(1)	—	(2)
Increase (decrease) in accounts payable	—	(16)	16
Change in other assets and liabilities	(71)	117	7
Net cash provided by operating activities	307	335	280
Cash Flows from Investing Activities			
Investment in subsidiaries	(125)	(250)	(100)
Net cash used in investing activities	(125)	(250)	(100)
Cash Flows from Financing Activities			
Proceeds from issuance of senior notes	375	800	718
Issuance of common stock	29	8	9
Retirement of senior notes	(376)	(396)	(788)
Payment of common stock dividends	(211)	(154)	(114)
Payment of preferred stock dividends	—	(8)	(11)
Debt issuance costs and financing fees	(6)	(11)	(5)
Redemption of preferred stock	—	(239)	(4)
Increase (decrease) in notes payable	7	(85)	15
Net cash used in financing activities	(182)	(85)	(180)
Net Change in Cash and Cash Equivalents	$ —	$ —	$ —
Cash and Cash Equivalents, Beginning of Period	$ —	$ —	$ —
Cash and Cash Equivalents, End of Period	$ —	$ —	$ —

The accompanying condensed notes are an integral part of these statements.

Table of Contents

CMS ENERGY CORPORATION

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

CMS Energy — Parent Company

Condensed Balance Sheets

December 31	2011	2010
	In Millions	
ASSETS		
Current Assets		
Notes and accrued interest receivable	$ 1	$ 1
Accounts receivable, including intercompany and related parties	6	5
Accrued taxes	16	—
Deferred income taxes	3	13
Total current assets	26	19
Plant, Property, and Equipment		
Plant, property, and equipment	16	16
Less accumulated depreciation	(16)	(16)
Total plant, property, and equipment	—	—
Other Non-current Assets		
Deferred income taxes	367	372
Investment in subsidiaries	5,096	4,941
Other investment — SERP	23	19
Other	28	27
Total other non-current assets	5,514	5,359
Total Assets	$5,540	$5,378

CMS ENERGY CORPORATION

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

CMS Energy — Parent Company

Condensed Balance Sheets

December 31	2011	2010
	In Millions	
LIABILITIES AND EQUITY		
Current Liabilities		
Current portion of long-term debt	$ 398	$ 437
Accounts and notes payable, including intercompany and related parties	163	156
Accrued interest, including intercompany	28	27
Accrued taxes	—	81
Other current liabilities	5	5
Total current liabilities	594	706
Non-current Liabilities		
Long-term debt	1,875	1,848
Related party	34	34
Unamortized discount	(17)	(28)
Postretirement benefits	24	23
Other non-current liabilities	2	2
Total non-current liabilities	1,918	1,879
Equity		
Common stockholders’ equity	3,028	2,793
Total Liabilities and Equity	$5,540	$5,378

The accompanying condensed notes are an integral part of these statements.

CMS ENERGY CORPORATION

SCHEDULE I — CONDENSED FINANCIAL INFORMATION OF REGISTRANT

CMS Energy — Parent Company

Notes to the Condensed Financial Statements

1: Basis of Presentation

CMS Energy's condensed financial statements have been prepared on a parent-only basis. In accordance with Rule 12-04 of Regulation S-X, these parent-only financial statements do not include all of the information and notes required by GAAP for annual financial statements, and therefore these parent-only financial statements and other information included should be read in conjunction with CMS Energy's audited consolidated financial statements contained within Item 8. Financial Statements and Supplementary Data.

2: Guarantees

CMS Energy has issued guarantees with a maximum potential obligation of $112 million on behalf of some of its wholly owned subsidiaries. CMS Energy's maximum potential obligation consists primarily of payment obligations to third parties under commodity purchase and swap agreements at CMS ERM and to the DOE for non-payment by Consumers Energy in relation to the DOE settlement. The expiry dates of these guarantees vary, depending upon contractual provisions or upon the statute of limitations under the relevant governing law.

Table of Contents

CMS ENERGY CORPORATION

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

Years Ended December 31, 2011, 2010, and 2009

Description	Balance at Beginning of Period	Charged to Expense	Charged to Other Accounts	Deductions	Balance at End of Period
			In Millions		
Allowance for uncollectible accounts [1]					
2011	$ 25	$ 70	$ —	$ 60	$ 35
2010	23	53	—	51	25
2009	26	47	—	50	23
Deferred tax valuation allowance					
2011	$ 19	$ 1	$ —	$ —	$ 20
2010	34	1	(15)	1	19
2009	32	2	—	—	34
Allowance for notes receivable [1]					
2011	$ 5	$ 4	$ —	$ 4	$ 5
2010	6	4	—	5	5
2009	34	7	—	35	6

[1] Deductions are write-offs of uncollectible accounts, net of recoveries.

CONSUMERS ENERGY COMPANY

SCHEDULE II — VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

Years Ended December 31, 2011, 2010, and 2009

Description	Balance at Beginning of Period	Charged to Expense	Charged to Other Accounts	Deductions	Balance at End of Period
			In Millions		
Allowance for uncollectible accounts [1]					
2011	$ 23	$ 70	$ —	$ 60	$ 33
2010	21	53	—	51	23
2009	24	47	—	50	21
Deferred tax valuation allowance					
2011	$ —	$ 1	$ —	$ —	$ 1
2010	—	—	—	—	—
2009	—	—	—	—	—

[1] Deductions are write-offs of uncollectible accounts, net of recoveries.

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, CMS Energy Corporation has duly caused this Annual Report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 23rd day of February 2012.

CMS ENERGY CORPORATION

By /s/ JOHN G. RUSSELL
John G. Russell
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report has been signed below by the following persons on behalf of CMS Energy Corporation and in the capacities indicated and on the 23rd day of February 2012.

Signature	Title
(i) Principal executive officer:	
/s/ JOHN G. RUSSELL John G. Russell	President and Chief Executive Officer
(ii) Principal financial officer:	
/s/ THOMAS J. WEBB Thomas J. Webb	Executive Vice President and Chief Financial Officer
(iii) Controller or principal accounting officer:	
/s/ GLENN P. BARBA Glenn P. Barba	Vice President, Controller and Chief Accounting Officer
(iv) A majority of the Directors:	
* Merribel S. Ayres	Director
* Jon E. Barfield	Director
* Stephen E. Ewing	Director
* Richard M. Gabrys	Director
* David W. Joos	Director
* Philip R. Lochner, Jr.	Director
* Michael T. Monahan	Director
* John G. Russell	Director
* Kenneth L. Way	Director
* John B. Yasinsky	Director
***** By /s/ Thomas J. Webb Thomas J. Webb, Attorney-in-Fact	

Table of Contents

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, Consumers Energy Company has duly caused this Annual Report to be signed on its behalf by the undersigned, thereunto duly authorized, on the 23rd day of February 2012.

CONSUMERS ENERGY COMPANY

By /s/ JOHN G. RUSSELL
John G. Russell
President and Chief Executive Officer

Pursuant to the requirements of the Securities Exchange Act of 1934, this Annual Report has been signed below by the following persons on behalf of Consumers Energy Company and in the capacities indicated and on the 23rd day of February 2012.

Signature	Title
(i) Principal executive officer:	
/s/ John G. Russell John G. Russell	President and Chief Executive Officer
(ii) Principal financial officer:	
/s/ Thomas J. Webb Thomas J. Webb	Executive Vice President and Chief Financial Officer
(iii) Controller or principal accounting officer:	
/s/ Glenn P. Barba Glenn P. Barba	Vice President, Controller and Chief Accounting Officer
(iv) A majority of the Directors:	
* Merribel S. Ayres	Director
* Jon E. Barfield	Director
* Stephen E. Ewing	Director
* Richard M. Gabrys	Director
* David W. Joos	Director
* Philip R. Lochner, Jr.	Director
* Michael T. Monahan	Director
* John G. Russell	Director
* Kenneth L. Way	Director
* John B. Yasinsky	Director

* By /s/ Thomas J. Webb
Thomas J. Webb, Attorney-in-Fact

(This page intentionally left blank)

Table of Contents

CMS ENERGY'S AND CONSUMERS' EXHIBIT INDEX

Exhibits		Description
10.24	—	Amendment No. 2 to Amended and Restated Receivables Purchase Agreement dated as of December 15, 2011
12.1	—	Statement regarding computation of CMS Energy's Ratios of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Dividends
12.2	—	Statement regarding computation of Consumers' Ratios of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Dividends
21.1	—	Subsidiaries of CMS Energy and Consumers
23.1	—	Consent of PricewaterhouseCoopers LLP for CMS Energy
23.2	—	Consent of PricewaterhouseCoopers LLP for Consumers
24.1	—	Power of Attorney for CMS Energy
24.2	—	Power of Attorney for Consumers
31.1	—	CMS Energy's certification of the CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.2	—	CMS Energy's certification of the CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.3	—	Consumers' certification of the CEO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
31.4	—	Consumers' certification of the CFO pursuant to Section 302 of the Sarbanes-Oxley Act of 2002
32.1	—	CMS Energy's certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
32.2	—	Consumers' certifications pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
101.INS [1]	—	XBRL Instance Document
101.SCH [1]	—	XBRL Taxonomy Extension Schema
101.CAL [1]	—	XBRL Taxonomy Extension Calculation Linkbase
101.DEF [1]	—	XBRL Taxonomy Extension Definition Linkbase
101.LAB [1]	—	XBRL Taxonomy Extension Labels Linkbase
101.PRE [1]	—	XBRL Taxonomy Extension Presentation Linkbase

[1] In accordance with Regulation S-T, the XBRL-related information in Exhibit 101 shall be deemed to be "furnished" and not "filed." The financial information contained in the XBRL-related information is "unaudited" and "unreviewed."

Exhibit 10.24

AMENDMENT NO. 2

TO

AMENDED AND RESTATED RECEIVABLES PURCHASE AGREEMENT

Dated as of December 15, 2011

THIS AMENDMENT NO. 2 (this " Amendment ") is entered into as of December 15, 2011 by and among Consumers Receivables Funding II, LLC, a Delaware limited liability company (the " Seller "), Consumers Energy Company, a Michigan corporation (" Consumers "), as initial servicer (the " Servicer "), the entities party hereto from time to time as Conduits (together with any of their respective successors and assigns hereunder, the " Conduits "), the entities party hereto from time to time as Financial Institutions (together with any of their respective successors and assigns hereunder, the " Financial Institutions "), the entities party hereto from time to time as Managing Agents (together with any of their respective successors and assigns hereunder, the " Managing Agents ") and JPMorgan Chase Bank, N.A. (" JPMC "), as administrative agent for the Purchasers (together with its successors and assigns hereunder, the " Administrative Agent ").

PRELIMINARY STATEMENT

The Seller, the Servicer, the Conduits, the Financial Institutions, the Managing Agents and the Administrative Agent are parties to that certain Amended and Restated Receivables Purchase Agreement dated as of November 23, 2010 (as amended prior to the date hereof and as further amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the " RPA "). Terms used herein and not otherwise defined herein shall have the meanings assigned in the RPA.

The parties to the RPA enter into this Amendment to provide for certain modifications to the terms and provisions of the RPA as more particularly set forth hereinbelow.

NOW THEREFORE, in consideration of the premises herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Amendment to the RPA . Subject to the satisfaction of the conditions precedent set forth in Section 2 below, Section 9.1(f) of the RPA is hereby amended to restate clause (iii) thereof in its entirety as follows:

> (iii) the average of the Past Due Ratios as of the end of such Accrual Period and the two preceding Accrual Periods shall exceed (A) 12.0% for any Accrual Period occurring in May through November of any calendar year, (B) 10.0% for the December 2011 Accrual Period and (C) 8.5% for any Accrual Period occurring in December (other than December 2011) through April of any calendar year, or

2. Conditions Precedent . This Amendment shall become effective and be deemed effective, as of the date first above written, upon the latest to occur of receipt by the Administrative Agent of one copy of each of this Amendment.

3. Covenants, Representations and Warranties of the Seller and the Servicer .

3.1. Upon the effectiveness of this Amendment, each of the Seller and the Servicer hereby reaffirms all covenants, representations and warranties made by it in the RPA, as amended, and agrees that all such covenants, representations and warranties shall be deemed to have been re-made as of the effective date of this Amendment.

3.2. Each of the Seller and the Servicer hereby represents and warrants as to itself (i) that this Amendment constitutes the legal, valid and binding obligation of such party enforceable against such party in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and general principles of equity which may limit the availability of equitable remedies and (ii) upon the effectiveness of this Amendment, that no event shall have occurred and be continuing which constitutes an Amortization Event or a Potential Amortization Event.

4. Fees, Costs, Expenses and Taxes . Without limiting the rights of the Administrative Agent, the Managing Agents and the Purchasers set forth in the RPA and the other Transaction Documents, the Seller agrees to pay on demand all reasonable fees and out-of-pocket expenses of counsel for the Administrative Agent, the Managing Agents and the Purchasers incurred in connection with the preparation, execution and delivery of this Amendment and the other instruments and documents to be delivered in connection herewith and with respect to advising the Administrative Agent and the Purchasers as to their rights and responsibilities hereunder and thereunder.

5. Ratification . The RPA, as amended hereby, is hereby ratified, approved and confirmed in all respects.

6. Reference to Agreement . From and after the effective date hereof, each reference in the RPA to "this Agreement", "hereof", or "hereunder" or words of like import, and all references to the RPA in any and all agreements, instruments, documents, notes, certificates and other writings of every kind and nature shall be deemed to mean the RPA as amended by this Amendment.

7. CHOICE OF LAW . THIS AMENDMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS (INCLUDING, WITHOUT LIMITATION, SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF NEW YORK, BUT OTHERWISE WITHOUT REGARD TO THE LAW OF CONFLICTS) OF THE STATE OF NEW YORK, BUT GIVING EFFECT TO FEDERAL LAWS APPLICABLE TO NATIONAL BANKS.

8. Execution of Counterparts . This Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

9. Headings . Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed and delivered as of the date first written above.

CONSUMERS RECEIVABLES FUNDING II, LLC, as Seller

By: /s/ Laura L Mountcastle
Name: Laura L. Mountcastle
Title: President, Chief Executive Officer,
Chief Financial Officer and Treasurer

CONSUMERS ENERGY COMPANY, as Servicer

By: /s/ Laura L Mountcastle
Name: Laura L. Mountcastle
Title: Vice President and Treasurer

Signature Page to
Amendment No. 2 to Amended and Restated Receivables Purchase Agreement

JPMORGAN PURCHASER GROUP:

CHARIOT FUNDING LLC (successor to
Falcon Asset Securitization Company LLC),
as a Conduit

By: JPMorgan Chase Bank, N.A., its attorney-in-fact

By: /s/ Joel C Gedroic
Name: Joel C. Gedroic
Title: Executive Director

JPMORGAN CHASE BANK, N.A., as a Financial Institution, as a Managing Agent and as Administrative Agent

By: /s/ Joel C Gedroic
Name: Joel C. Gedroic
Title: Executive Director

Signature Page to
Amendment No.2 to Amended and Restated Receivables Purchase Agreement

Exhibit 12.1

CMS ENERGY CORPORATION

Ratio of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Dividends

	In Millions, Except Ratios				
Years Ended December 31	2011	2010	2009	2008	2007 [1]
Earnings as defined [2]					
Pretax income from continuing operations	$ 606	$ 590	$ 335	$ 440	$(317)
Exclude equity basis subsidiaries	(1)	(2)	2	(1)	(22)
Fixed charges as defined [3]	437	449	456	429	489
Earnings as defined [3]	$1,042	$1,037	$ 793	$ 868	$ 150
Fixed charges as defined [2]					
Interest on long-term debt	$ 396	$ 394	$ 383	$ 371	$ 415
Estimated interest portion of lease rental	18	16	17	25	23
Other interest charges	25	42	58	35	53
Fixed charges as defined [3]	$ 439	$ 452	$ 458	$ 431	$ 491
Preferred dividends	—	13	17	17	12
Combined fixed charges and preferred dividends	$ 439	$ 465	$ 475	$ 448	$ 503
Ratio of earnings to fixed charges	2.37	2.29	1.73	2.01	—
Ratio of earnings to combined fixed charges and preferred dividends	2.37	2.23	1.67	1.94	—

NOTES:

[1] For the year ended December 31, 2007, fixed charges exceeded earnings by $341 million and combined fixed charges and preferred dividends exceeded earnings by $353 million. Earnings as defined include $204 million in asset impairment charges and a $279 million charge for an electric sales contract termination.

[2] Earnings and fixed charges as defined in instructions for Item 503 of Regulation S-K.

[3] Preferred dividends of a consolidated subsidiary are included in fixed charges, but excluded from earnings as defined because the amount was not deducted in arriving at pretax income from continuing operations.

Exhibit 12.2

CONSUMERS ENERGY COMPANY

Ratio of Earnings to Fixed Charges and Combined Fixed Charges and Preferred Dividends

	In Millions, Except Ratios				
Years Ended December 31	2011	2010	2009	2008	2007
Earnings as defined [1]					
Pretax income from continuing operations	$ 734	$ 688	$ 456	$ 562	$ 437
Exclude equity basis subsidiaries	—	—	—	—	—
Fixed charges as defined	287	296	313	276	293
Earnings as defined	$1,021	$ 984	$ 769	$ 838	$ 730
Fixed charges as defined [1]					
Interest on long-term debt	$ 251	$ 246	$ 250	$ 229	$ 236
Estimated interest portion of lease rental	18	16	17	25	23
Other interest charges	18	34	46	22	34
Fixed charges as defined	$ 287	$ 296	$ 313	$ 276	$ 293
Preferred dividends	3	3	3	3	3
Combined fixed charges and preferred dividends	$ 290	$ 299	$ 316	$ 279	$ 296
Ratio of earnings to fixed charges	3.56	3.32	2.46	3.04	2.49
Ratio of earnings to combined fixed charges and preferred dividends	3.52	3.29	2.43	3.00	2.47

NOTES:

[1] Earnings and fixed charges as defined in instructions for Item 503 of Regulation S-K.

Exhibit 21.1

For the purpose of this filing, information is organized under the headings of CMS Energy Corporation (Tier 1), CMS Capital, L.L.C. (Tier 2), CMS Enterprises Company (Tier 2), CMS Treasury Services, LLC (Tier 2), Consumers Energy Company (Tier 2), and Dearborn Industrial Energy, L.L.C. (Tier 2). As set forth in detail below, CMS Energy Corporation is the parent company of CMS Capital, L.L.C., CMS Enterprises Company, CMS Treasury Services, LLC, Consumers Energy Company, and Dearborn Industrial Energy, L.L.C. All ownership interests are 100 percent unless indicated parenthetically to the contrary and are accurate as of December 31, 2011.

01 CMS Energy Corporation

Address:
One Energy Plaza
Jackson, Michigan 49201

CMS Energy Corporation, also conducting business as CMS Energy, is an integrated energy company, which has as its primary business operations an electric and natural gas utility, natural gas pipeline systems, and independent power generation.

The name, state of organization and nature of business of CMS Energy's direct subsidiaries are described below:

02 CMS Capital, L.L.C.

CMS Capital, L.L.C. is a Michigan limited liability company that holds ownership interests in CMS Land Company and EnerBank USA.

02 CMS Enterprises Company

CMS Enterprises Company, also conducting business as CMS Enterprises, is a Michigan corporation that, through various subsidiaries and affiliates, is engaged in diversified businesses in the United States and in select international markets.

02 CMS Treasury Services, LLC

CMS Treasury Services, LLC is a Michigan limited liability company formed to handle cash management functions and intercompany banking operations for CMS Energy and its subsidiaries and affiliates.

02 Consumers Energy Company

Consumers Energy Company is a Michigan corporation engaged in the generation, purchase, distribution, and sale of electricity, and in the purchase, storage, distribution, and sale of natural gas, in the lower peninsula of the State of Michigan.

02 Dearborn Industrial Energy, L.L.C.

Dearborn Industrial Energy, L.L.C. is a Michigan limited liability company that holds the ownership interest in Dearborn Industrial Generation, L.L.C.

The name, state of organization, and nature of business of each subsidiary and their subsidiaries are described below:

02 CMS Capital, L.L.C.

Address:
One Energy Plaza
Jackson, Michigan 49201

CMS Capital, L.L.C. is a Michigan limited liability company that holds ownership interests in CMS Land Company and EnerBank USA.

03 CMS Land Company

CMS Land Company is a Michigan corporation formed to act as a repository for any unused real property formerly owned by Consumers Energy Company, and hold the same for possible non-utility development.

04 Beeland Group LLC

Beeland Group LLC is a Michigan limited liability company formed to acquire land and other property in order to provide a disposal well for the Bay Harbor properties.

03 EnerBank USA

EnerBank USA, also conducting business as EnerBank USA, Inc., is a Utah corporation engaged in the business of an “industrial bank” to issue certificates of deposit for the payment of money, to issue capital notes or debentures, to receive payments with or without allowance for interest, and to exercise all of the rights, privileges, and powers of an industrial bank.

02 CMS Enterprises Company

Address:
One Energy Plaza
Jackson, Michigan 49201

CMS Enterprises Company, also conducting business as CMS Enterprises, is a Michigan corporation that, through various subsidiaries and affiliates, is engaged in diversified businesses in the United States and in select international markets.

03 CMS Energy Resource Management Company

CMS Energy Resource Management Company, also conducting business as CMS ERM, is a Michigan corporation concentrating on the purchase and sale of energy commodities in support of CMS Energy's generating facilities.

04 CMS ERM Michigan LLC

CMS ERM Michigan LLC is a Michigan limited liability company formed for the sole purpose of taking an assignment of the Ford/Rouge Electricity Sales Agreements from Dearborn Industrial Generation, L.L.C. and to perform those contracts.

04 CMS Viron Corporation

CMS Viron Corporation, also conducting business as CMS Viron Energy Services, is a Missouri corporation formed to provide services in the area of energy usage analysis and the engineering and implementation of energy conservation measures.

03 CMS Enterprises Development, L.L.C.

CMS Enterprises Development, L.L.C. is a Michigan limited liability company formed to invest in various projects.

03 CMS Gas Transmission Company

CMS Gas Transmission Company, also conducting business as CMS Gas Transmission and Storage, is a Michigan corporation organized to engage in the transmission, storage, and processing of natural gas.

04 CMS Gas Argentina Company

CMS Gas Argentina Company is a Cayman Islands corporation formed to own an equity interest in Transportadora de Gas del Norte S.A., an Argentine corporation, which provides natural gas transmission services to the northern and central parts of Argentina.

04 CMS International Ventures, L.L.C. (37.01%) (See Exhibit A for list of subsidiaries)

CMS International Ventures, L.L.C. is a Michigan limited liability company, formed to own, manage, and sell certain of CMS Energy's international investments.

04 Nitrotec Corporation (50%)

Nitrotec Corporation is a Delaware corporation formed to invest in plants that extract helium from natural gas.

04 Otsego EOR, L.L.C. (25%)

Otsego EOR, L.L.C. is a Michigan limited liability company formed to hold oil reservoirs, pipeline, and compression facilities located in Otsego County, Michigan.

03 CMS Generation Jegurupadu I Limited Duration Company (1%)

CMS Generation Jegurupadu I Limited Duration Company is a Cayman Islands company and formerly one of the owners of the company which operates a 235-MW gas- and naphtha-fueled independent power generating plant in Jegurupadu, Andhra Pradesh Province, India.

04 Jegurupadu O&M Company Mauritius (50%)

Jegurupadu O&M Company Mauritius, a Mauritius company, is inactive and in the process of liquidation.

03 CMS Generation Jegurupadu II Limited Duration Company (1%)

CMS Generation Jegurupadu II Limited Duration Company is a Cayman Islands company and formerly one of the owners of the company which operates a 235-MW gas- and naphtha-fueled independent power generating plant in Jegurupadu, Andhra Pradesh Province, India.

04 Jegurupadu O&M Company Mauritius (50%) (In process of liquidation)

03 CMS International Ventures, L.L.C. (61.49%) (See Exhibit A for list of subsidiaries)

03 HYDRA-CO Enterprises, Inc. (See Exhibit B for list of subsidiaries)

HYDRA-CO Enterprises, Inc. is a New York corporation involved in the management and operation of various power plants. The plants are fueled by coal, natural gas, waste wood, and water.

02 CMS Treasury Services, LLC

Address:
One Energy Plaza
Jackson, Michigan 49201

CMS Treasury Services, LLC is a Michigan limited liability company formed to handle the cash management functions and intercompany banking operations for CMS Energy and certain of its subsidiaries and affiliates.

02 Consumers Energy Company

Address:
One Energy Plaza
Jackson, Michigan 49201

The consolidated operations of Consumers Energy Company account for the largest share of CMS Energy's total assets and income and account for a substantial portion of its revenues. Consumers also conducts business under the following assumed names:

Consumers Business Energy Services
Consumers Energy
Consumers Energy Business Services
Consumers Energy Consultants
Consumers Energy Contractor Network
Consumers Energy Dealer Network
Consumers Energy Finance
Consumers Energy Fitness Audits
Consumers Energy Group
Consumers Energy HouseCall
Consumers Energy HouseCall Services
Consumers Energy Management
Consumers Energy Resources
Consumers Energy Security Services
Consumers Energy Services
Consumers Energy Systems
Consumers Energy Traders
Consumers Power
Consumers Power Company
Laboratory Commercial Services
Laboratory Services
Michigan Gas Storage
Michigan Gas Storage Company
Technical Training Centers
Zeeland Power Company

The name, state of organization, and nature of business of Consumers' subsidiaries are described below:

03 CMS Engineering Co.

CMS Engineering Co. is a Michigan corporation engaged in offering design, engineering, project management and related construction services to natural gas utilities, natural gas exploration and production companies, and other energy businesses.

03 Consumers Campus Holdings, LLC

Consumers Campus Holdings, LLC is a Michigan limited liability company formed for the purpose of being the lessee in the synthetic lease financing of the Consumers office building located in downtown Jackson, Michigan.

03 Consumers Funding LLC

Consumers Funding LLC is a Delaware limited liability company formed for the purpose of acting as issuer of securitization bonds and assignee of property transferred by Consumers.

03 Consumers Receivables Funding II, LLC

Consumers Receivables Funding II, LLC is a Delaware limited liability company that buys certain accounts receivable from Consumers and sells them to a third party.

03 ES Services Company

ES Services Company is a Michigan corporation formed for the purpose of offering design, engineering, project management, and related services primarily to electric utilities and generation facilities.

03 Maxey Flats Site IRP, L.L.C. (1.71%)

Maxey Flats Site IRP, L.L.C. is a Virginia limited liability company formed for the purpose of environmental remediation of a former low-level radioactive waste disposal site.

02 Dearborn Industrial Energy, L.L.C.

Address:
One Energy Plaza
Jackson, Michigan 49201

Dearborn Industrial Energy, L.L.C. is a Michigan limited liability company that holds the ownership interest in Dearborn Industrial Generation, L.L.C.

03 Dearborn Industrial Generation, L.L.C.

Dearborn Industrial Generation, L.L.C. is a Michigan limited liability company engaged in the operation of the Ford/Rouge Cogeneration Facility in Dearborn, Michigan.

Exhibit A

Subsidiaries of CMS International Ventures, L.L.C.

Address:
One Energy Plaza
Jackson, Michigan 49201

04 CMS Electric & Gas, L.L.C.

CMS Electric & Gas, L.L.C. is a Michigan limited liability company. CMS International Distribution LLC and CMS Electric and Gas Company merged in December 2002 to form CMS Electric & Gas, L.L.C.

05 CMS Venezuela, S.A.

CMS Venezuela, S.A. is a Venezuelan corporation formed to operate Sistema Electrico Nueva Esparta C.A. (SENECA), and is in the process of liquidation.

05 ENELMAR S.A.

ENELMAR S.A. is a Venezuelan corporation formed to hold CMS Electric & Gas, L.L.C.'s interests in the privatized electric system of the State of Nueva Esparta, and is in the process of liquidation.

05 CMS Empreendimentos Ltda (99.99%)

CMS Empreendimentos Ltda, a Brazilian corporation was established as CMS Electric & Gas, L.L.C.'s Rio office in Brazil and is in the process of liquidation.

04 CMS Generation Jegurupadu I Limited Duration Company (99%)

CMS Generation Jegurupadu I Limited Duration Company is a Cayman Islands company and formerly one of the owners of the company which operates a 235-MW gas- and naphtha-fueled independent power generating plant in Jegurupadu, Andhra Pradesh Province, India.

05 Jegurupadu O&M Company Mauritius (50%)

Jegurupadu O&M Company Mauritius, a Mauritius company, is inactive and in the process of liquidation.

04 CMS Generation Jegurupadu II Limited Duration Company (99%)

CMS Generation Jegurupadu II Limited Duration Company is a Cayman Islands company and formerly one of the owners of the company which operates a 235-MW gas- and naphtha-fueled independent power generating plant in Jegurupadu, Andhra Pradesh Province, India.

05 Jegurupadu O&M Company Mauritius (50%) (In process of Liquidation)

04 Jegurupadu CMS Generation Company Ltd.

Jegurupadu CMS Generation Company Ltd. is a Mauritius company that is inactive and is in the process of liquidation.

Exhibit B

Subsidiaries of HYDRA-CO Enterprises, Inc.

Address:
One Energy Plaza
Jackson, Michigan 49201

04 CMS Exeter LLC

CMS Exeter LLC is a Michigan limited liability company formed to facilitate the restructuring of Oxford/CMS Development Limited Partnership for state tax planning purposes.

05 Oxford/CMS Development Limited Partnership (1% GP)

04 CMS Generation Filer City, Inc.

CMS Generation Filer City, Inc. is a Michigan corporation involved as a General Partner in the T.E.S. Filer City Station Limited Partnership, a Michigan limited partnership that is the owner of the 54 megawatt (net) woodchip- and coal-fueled electric generating station in Filer City, Michigan.

05 T.E.S. Filer City Station Limited Partnership (50%)

04 CMS Generation Filer City Operating LLC

CMS Generation Filer City Operating LLC is a Michigan limited liability company formed to operate a coal and waste wood-fueled power plant near Filer City, Michigan owned by the T.E.S. Filer City Station Limited Partnership.

04 CMS Generation Genesee Company

CMS Generation Genesee Company is a Michigan corporation involved as a General Partner in the Genesee Power Station Limited Partnership, a Delaware limited partnership, which owns and operates a 35-megawatt (net) waste wood-fired electric generating facility located in Genesee County, Michigan.

05 Genesee Power Station Limited Partnership (1% GP)

04 CMS Generation Grayling Company

CMS Generation Grayling Company is a Michigan corporation involved as a General Partner in Grayling Generating Station Limited Partnership, a Michigan limited partnership, that owns a waste wood-fueled power plant in Grayling, Michigan. Grayling Generating Station Limited Partnership owns GGS Holdings Company, a Michigan corporation, which is a General Partner in AJD Forest Products Limited Partnership (also conducting business as AJD Forest Products), a Michigan limited partnership, that operates a sawmill adjacent to the Grayling Generating Station and also supplies waste wood fuel to Grayling Generating Station. Grayling Generating Station Limited Partnership is a Limited Partner in AJD Forest Products Limited Partnership.

05 Grayling Generating Station Limited Partnership (1% GP)

06 AJD Forest Products Limited Partnership (49.5% LP)

06 GGS Holdings Company

A Michigan corporation that owns a General Partner interest in AJD Forest Products Limited Partnership, a Michigan limited partnership.

07 AJD Forest Products Limited Partnership (0.5% GP)

05 Grayling Partners Land Development, L.L.C. (1%)

A Michigan limited liability company formed to acquire land near the Grayling facility for potential development of an ash disposal site.

04 CMS Generation Grayling Holdings Company

CMS Generation Grayling Holdings Company is a Michigan corporation involved as a Limited Partner in Grayling Generating Station Limited Partnership, a Michigan limited partnership. Grayling Generating Station Limited Partnership owns GGS Holdings Company, a Michigan corporation that owns a General Partner interest in AJD Forest Products Limited Partnership, a Michigan limited partnership.

05 Grayling Generating Station Limited Partnership (49% LP)

06 AJD Forest Products Limited Partnership (49.5% LP)

06 GGS Holdings Company

07 AJD Forest Products Limited Partnership (0.5% GP)

05 Grayling Partners Land Development, L.L.C. (49%)

04 CMS Generation Holdings Company

CMS Generation Holdings Company is a Michigan corporation involved as a limited partner in various partnerships.

05 Genesee Power Station Limited Partnership (48.75% LP)

05 GPS Newco, L.L.C. (50%)

GPS Newco, L.L.C. is a Kansas limited liability company formed for the purpose of facilitating financing and /or restricting liabilities of CMS Energy’s equity invested in Genesee Power Station Limited Partnership.

06 Genesee Power Station Limited Partnership (0.5% LP)

04 CMS Generation Michigan Power L.L.C.

CMS Generation Michigan Power L.L.C. is a Michigan limited liability company formed to own generating units in Michigan for the purpose of generating power during peak demand periods.

04 CMS Generation Operating Company II, Inc.

CMS Generation Operating Company II, Inc. is a New York corporation formed to operate power plants, primarily in the United States.

04 CMS Generation Operating LLC

CMS Generation Operating LLC is a Michigan limited liability company involved in the operation of various power plants throughout the United States.

04 CMS Generation Recycling Company

CMS Generation Recycling Company is a Michigan corporation that has ownership interest in Mid-Michigan Recycling, L.C. Mid-Michigan Recycling, L.C. was created to be involved in supplying waste wood fuel for the Genesee Power Station Limited Partnership.

05 Mid-Michigan Recycling, L.C. (50%)

Mid-Michigan Recycling, L.C. is a Michigan limited liability company involved in supplying waste-wood fuel for the Genesee Power Station Limited Partnership.

04 Craven County Wood Energy Limited Partnership (44.99% LP)

04 Dearborn Generation Operating, L.L.C.

Dearborn Generation Operating, L.L.C. is a Michigan limited liability company formed to operate the Ford/Rouge Project.

04 HCE-Biopower, Inc.

HCE-Biopower, Inc. is a New York corporation formed to hold partnership interests in various power projects.

05 IPP Investment Partnership (51%)

06 Craven County Wood Energy Limited Partnership (0.01% LP)

04 IPP Investment Partnership (49%)

05 Craven County Wood Energy Limited Partnership (0.01% LP)

04 New Bern Energy Recovery, Inc.

New Bern Energy Recovery, Inc. is a Delaware corporation formed to participate as a General Partner in the Craven County Wood Energy limited partnership formed to construct, operate and own a wood-fired electric generating facility in Craven County, North Carolina.

05 Craven County Wood Energy Limited Partnership (5% GP)

04 Oxford/CMS Development Limited Partnership (99% LP)

Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Forms S-8 (No. 333-152800) and S-3 (Nos. 333-174906 and 333-177886) of CMS Energy Corporation of our report dated February 23, 2012 relating to the financial statements, financial statement schedules, and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Detroit, Michigan
February 23, 2012

Exhibit 23.2

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We hereby consent to the incorporation by reference in the Registration Statement on Form S-3 (No. 333-174906-01) of Consumers Energy Company of our report dated February 23, 2012 relating to the financial statements, financial statement schedule, and the effectiveness of internal control over financial reporting, which appears in this Form 10-K.

/s/ PricewaterhouseCoopers LLP

Detroit, Michigan
February 23, 2012

Exhibit 24.1

February 23, 2012

Mr. Thomas J. Webb
Mr. James E. Brunner
Ms. Catherine M. Reynolds
CMS Energy Corporation
One Energy Plaza
Jackson, MI 49201-2276

CMS Energy Corporation is required to file an Annual Report on Form 10-K for the year ended December 31, 2011 with the Securities and Exchange Commission within 60 days after the end of the year.

We hereby make, constitute and appoint each of you our true and lawful attorney for each of us and in each of our names, places and steads to sign and cause to be filed with the Securities and Exchange Commission said Annual Report with any necessary exhibits, and any amendments thereto that may be required.

Very truly yours,

/s/ D. W. Joos
David W. Joos

/s/ Merribel S. Ayres
Merribel S. Ayres

/s/ Jon E. Barfield
Jon E. Barfield

/s/ Stephen E. Ewing
Stephen E. Ewing

/s/ Richard M. Gabrys
Richard M. Gabrys

/s/ Philip R. Lochner, Jr.
Philip R. Lochner, Jr.

/s/ M. T. Monahan
Michael T. Monahan

/s/ John G. Russell
John G. Russell

/s/ K. L. Way
Kenneth L. Way

/s/ John B. Yasinsky
John B. Yasinsky

Exhibit 24.2

February 23, 2012

Mr. Thomas J. Webb
Mr. James E. Brunner
Ms. Catherine M. Reynolds
Consumers Energy Company
One Energy Plaza
Jackson, MI 49201-2276

Consumers Energy Company is required to file an Annual Report on Form 10-K for the year ended December 31, 2011 with the Securities and Exchange Commission.

We hereby make, constitute and appoint each of you our true and lawful attorney for each of us and in each of our names, places and steads to sign and cause to be filed with the Securities and Exchange Commission said Annual Report with any necessary exhibits, and any amendments thereto that may be required.

Very truly yours,

/s/ D. W. Joos
David W. Joos

/s/ Merribel S. Ayres
Merribel S. Ayres

/s/ Jon E. Barfield
Jon E. Barfield

/s/ Stephen E. Ewing
Stephen E. Ewing

/s/ Richard M. Gabrys
Richard M. Gabrys

/s/ Philip R. Lochner, Jr.
Philip R. Lochner, Jr.

/s/ M. T. Monahan
Michael T. Monahan

/s/ John G. Russell
John G. Russell

/s/ K. L. Way
Kenneth L. Way

/s/ John B. Yasinsky
John B. Yasinsky

Exhibit 31.1

CERTIFICATION OF JOHN G. RUSSELL

I, John G. Russell, certify that:

1. I have reviewed this annual report on Form 10-K of CMS Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d–15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 23, 2012

By: /s/ John G. Russell
John G. Russell
President and Chief Executive Officer

Exhibit 31.2

CERTIFICATION OF THOMAS J. WEBB

I, Thomas J. Webb, certify that:

1. I have reviewed this annual report on Form 10-K of CMS Energy Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d–15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 23, 2012

By /s/ Thomas J. Webb
Thomas J. Webb
Executive Vice President and Chief Financial Officer

Exhibit 31.3

CERTIFICATION OF JOHN G. RUSSELL

I, John G. Russell, certify that:

1. I have reviewed this annual report on Form 10-K of Consumers Energy Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant’s other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d–15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant’s disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant’s internal control over financial reporting that occurred during the registrant’s most recent fiscal quarter (the registrant’s fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant’s internal control over financial reporting; and

5. The registrant’s other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant’s auditors and the audit committee of the registrant’s board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant’s ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant’s internal control over financial reporting.

Dated: February 23, 2012

By: /s/ John G. Russell
John G. Russell
President and Chief Executive Officer

Exhibit 31.4

CERTIFICATION OF THOMAS J. WEBB

I, Thomas J. Webb, certify that:

1. I have reviewed this annual report on Form 10-K of Consumers Energy Company;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)), and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d–15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Dated: February 23, 2012

By /s/ Thomas J. Webb
Thomas J. Webb
Executive Vice President and Chief Financial Officer

Exhibit 32.1

Certification of CEO and CFO Pursuant to
18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report on Form 10-K of CMS Energy Corporation (the “Company”) for the annual period ended December 31, 2011 as filed with the Securities and Exchange Commission on the date hereof (the “Report”), John G. Russell, as President and Chief Executive Officer of the Company, and Thomas J. Webb, as Executive Vice President and Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ John G. Russell
Name: John G. Russell
Title: President and
Chief Executive Officer
Date: February 23, 2012

/s/ Thomas J. Webb
Name: Thomas J. Webb
Title: Executive Vice President and
Chief Financial Officer
Date: February 23, 2012

Exhibit 32.2

Certification of CEO and CFO Pursuant to
18 U.S.C. Section 1350,
as Adopted Pursuant to
Section 906 of the Sarbanes-Oxley Act of 2002

In connection with the Annual Report on Form 10-K of Consumers Energy Company (the "Company") for the annual period ended December 31, 2011 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), John G. Russell, as President and Chief Executive Officer of the Company, and Thomas J. Webb, as Executive Vice President and Chief Financial Officer of the Company, each hereby certifies, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that, to the best of his knowledge:

(1) The Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and

(2) The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ John G. Russell

Name: John G. Russell
Title: President and
Chief Executive Officer
Date: February 23, 2012

/s/ Thomas J. Webb

Name: Thomas J. Webb
Title: Executive Vice President and
Chief Financial Officer
Date: February 23, 2012

PURCHASE AGREEMENT

by and among

Vectren Infrastructure Services Corporation

("Buyer")

and

Christopher T. Leines

and

Paulette A. Britzius

("Sellers")

and

Nordic Land Company, LLC

("Nordic Land")

Dated effective as of March 31, 2011

Table of Contents

Page

1. PURCHASE TRANSACTION 1
   - 1.1 Equity Interests 2
   - 1.2 Purchase Price; Payment. 2
   - 1.3 Escrow. 2
   - 1.4 Working Capital Adjustment 2
2. CLOSING 4
   - 2.1 Closing Date 4
   - 2.2 Deliveries by Sellers 4
   - 2.3 Deliveries by Buyer 6
3. INTENTIONALLY BLANK 7
4. REPRESENTATIONS AND WARRANTIES OF SELLERS 7
   - 4.1 Organization and Good Standing. 7
   - 4.2 Authority; No Conflict; Consents 7
   - 4.3 Capitalization; Ownership. 8
   - 4.4 Financial Statements 8
   - 4.5 Real Property. 9
   - 4.6 Condition and Sufficiency of Assets; Ownership; Encumbrances. 10
   - 4.7 Accounts Receivable. 10
   - 4.8 Inventory. 10
   - 4.9 No Undisclosed Liabilities. 10
   - 4.10 Taxes. 10
   - 4.11 No Material Adverse Change. 12
   - 4.12 Employee Benefits. 12
   - 4.13 Compliance with Legal Requirements. 14
   - 4.14 Governmental Authorizations. 14
   - 4.15 Legal Proceedings; Orders. 14
   - 4.16 Absence of Certain Changes and Events. 15
   - 4.17 Contracts; No Defaults. 16
   - 4.18 Insurance. 18
   - 4.19 Environmental Matters. 18
   - 4.20 Employees. 19
   - 4.21 Labor Relations; Compliance. 19
   - 4.22 Intellectual Property. 19
   - 4.23 Customers. 20
   - 4.24 Warranty. 20
   - 4.25 Books and Records; Bank Accounts. 20
   - 4.26 Relationship with Related Persons. 21
   - 4.27 Disclosure. 21
   - 4.28 Brokers or Finders. 21
5. REPRESENTATIONS AND WARRANTIES OF BUYER 21
   - 5.1 Organization and Good Standing. 21
   - 5.2 Authority; No Conflict; Consents 21
   - 5.3 Certain Proceedings. 22
   - 5.4 Investment Intent. 22
   - 5.5 Brokers or Finders. 22
6. INTENTIONALLY BLANK 22
7. POST-CLOSING COVENANTS 22
   - 7.1 Tax Matters 22
   - 7.2 Covenants regarding Buyer's Parents and Affiliates 25
   - 7.3 Confidential Information 25

7.4 Seller Release. 25
7.5 WARN Act. 25
7.6 Insurance. 25
7.7 Workers Compensation Insurance 26
7.8 Labor Matters. 26
7.9 Nordic Land Superior, LLC. 26
7.10 Greater Minnesota Transmission LLC Settlement Stipulation and Order 27
7.11 LLC Agreements and Shareholder Agreement. 27
7.12 Intentionally blank. 27
7.13 Post Closing True-Ups. 27
7.14 Accrued Bonuses. 28
7.15 Audited Financial Statements. 28
8. INTENTIONALLY BLANK 28
9. INDEMNIFICATION; REMEDIES 28
9.1 Survival. 28
9.2 Indemnification by Sellers. 29
9.3 Indemnification by Buyer. 29
9.4 Limitations - Sellers. 30
9.5 Limitations - Buyer. 31
9.6 Procedure for Indemnification -- Third Party Claims. 31
9.7 Procedure for Indemnification -- Other Claims. 32
9.8 Exclusive Remedy. 32
10. GENERAL PROVISIONS 32
10.1 Sellers' Representative. 32
10.2 Expenses. 33
10.3 Public Announcements. 33
10.4 Notices. 33
10.5 Jurisdiction; Service of Process. 34
10.6 Further Assurances. 34
10.7 Waiver. 34
10.8 Entire Agreement and Modification. 34
10.9 Disclosure Letter. 34
10.10 Assignments, Successors, and No Third-Party Rights. 34
10.11 Severability. 35
10.12 Section Headings. 35
10.13 Governing Law. 35
10.14 Execution of Agreement. 35
10.15 Interpretation. 35
10.16 Legal Representation of the Parties. 35
10.17 Post Closing Obligations. 36

Schedules and Exhibits

Schedule 1.2(c) – Closing Indebtedness
Schedule 1.4 – Preliminary Net Working Capital Schedule
Schedule of Other Excluded Liabilities
Exhibit A – Definitions
Exhibit B – Disclosure Letter
Exhibit C – Escrow Agreement
Exhibit D – Non-Competition Agreement
Exhibit E – Lease Agreement

Disclosure Letter

Part 4.1	Jurisdictions
Part 4.2(b)	No Conflict
Part 4.2(c)	Consents
Part 4.3(a)	Investments
Part 4.3(b)	Ownership Proportion
Part 4.3(c)	Conduct of Business
Part 4.4	Financial Statements
Part 4.5(a)	Owned Real Property
Part 4.5(b)	Leased Real Property
Part 4.6(a)	Condition of Assets
Part 4.6(b)	Permitted Encumbrances
Part 4.7	Accounts Receivable
Part 4.9	No Undisclosed Liabilities
Part 4.10	Tax
Part 4.10(a)(i)	Tax Returns
Part 4.10(a)(ii)	Unpaid Taxes
Part 4.10(b)(i)	Audits
Part 4.10(b)(ii)	Audit Deficiencies
Part 4.10(b)(iii)	Adjustments
Part 4.10(b)(iv)	Adjustment Deficiencies
Part 4.10(c)	Proposed Tax Assessment
Part 4.11	No Material Adverse Change
Part 4.12(a)	Employee Plans
Part 4.12(b)	Qualified Plan Compliance
Part 4.12(c)	Multiemployer Plans
Part 4.12(d)	Post-Retirement Health Benefits
Part 4.12(g)	Employees
Part 4.12(h)	Prohibited Transactions and Fiduciary Breaches
Part 4.12(i)	Separately Funded Employee Benefit Plans
Part 4.12(l)	Right to Terminate Employee Plans
Part 4.13	Compliance with Legal Requirements
Part 4.14(a)	Governmental Authorizations
Part 4.14(b)	Governmental Authorizations - Compliance
Part 4.15(a)	Proceedings
Part 4.15(b)	Orders
Part 4.16	Absence of Certain Changes and Events
Part 4.17(a)	Contracts
Part 4.17(b)	Contracts
Part 4.17(c)	Contracts
Part 4.17(d)	Contracts
Part 4.18	Insurance
Part 4.19	Environmental Matters
Part 4.19(a)	Environmental Matters - Permits
Part 4.20	Employees
Part 4.21	Labor Relations; Compliance
Part 4.22	Intellectual Property
Part 4.22(a)	Intellectual Property - Title
Part 4.22(c)	Intellectual Property - Licensing Arrangements
Part 4.23	Customers
Part 4.24	Product Warranty
Part 4.25(b)	Bank Accounts

Part 4.26	Affiliated Party Transactions

PURCHASE AGREEMENT

This Purchase Agreement (this "Agreement") is made effective as of March 31, 2011, by and among Vectren Infrastructure Services Corporation, an Indiana corporation ("Buyer"), Christopher T. Leines and Paulette A. Britzius, individually (each a "Seller" and collectively "Sellers"), and Nordic Land Company, LLC ("Nordic Land").

WITNESSETH:

WHEREAS, Sellers own 100% of the outstanding capital stock of Minnesota Limited, Inc., a Minnesota corporation ("Minnesota Limited");

WHEREAS, Sellers also own 100% of the state law membership interests of Nordic Land;

WHEREAS, Nordic Land owns 100% of the Membership Interests of each of the following Minnesota limited liability companies: Nordic Equipment, LLC ("Nordic Equipment"), Nordic Pipeline Services LLC ("Nordic Pipeline"), Nordic Land Bemidji, LLC ("Nordic Bemidji"), and Nordic Land Altamont, LLC ("Nordic Altamont," and, together with Nordic Equipment, Nordic Pipeline, and Nordic Bemidji, the "LLC Group");

WHEREAS, Nordic Land also owns 100% of the state law membership interests of Nordic Land Superior, LLC ("Nordic Superior"), but it is the express intent of the parties to exclude Nordic Superior and its assets and liabilities from the transactions contemplated hereby;

WHEREAS, Minnesota Limited and the LLC Group are also sometimes collectively referred to herein as the "Seller Group";

WHEREAS, Buyer is an affiliate of Miller Pipeline, LLC, an Indiana limited liability company ("Miller Pipeline");

WHEREAS, the Seller Group is engaged in the business of providing the following services for the natural gas and petroleum industries: (i) high-pressure, welded steel pipeline installation and construction services; (ii) pump station, compressor station, terminal, and refinery construction services related to such pipelines; (iii) gas distribution pipeline construction services; (iv) pipeline maintenance; and (v) hydrostatic testing (the "Business");

WHEREAS, Sellers and Nordic Land desire to sell and transfer their respective interests in, and Buyer desires to purchase and acquire, (i) all of the outstanding capital stock of Minnesota Limited (the "Shares") and (ii) all of the state law membership interests of each member of the LLC Group (the "Membership Interests," and together with the Shares, the "Equity Interests"), all on the terms and conditions set forth in this Agreement; and

WHEREAS, for purposes of this Agreement, capitalized terms used herein but not otherwise defined herein shall have the meanings specified or referred to in Exhibit A attached hereto and made a part hereof.

NOW, THEREFORE, in consideration of the respective premises, mutual covenants and agreements of the Parties and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

AGREEMENT

1. PURCHASE TRANSACTION

1.1 Equity Interests. Upon the terms and subject to the conditions set forth in this Agreement and on the basis of the representations, warranties, covenants and agreements herein contained, at the Closing, Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, (i) all of Sellers' right, title and interest in and to the Shares and (ii) all of Nordic Land's right, title and interest in and to the Membership Interests.

1.2 Purchase Price; Payment.

(a) The aggregate consideration for the Equity Interests to be paid by Buyer to Sellers and Nordic Land will be Eighty Million Dollars ($80,000,000), subject to the following adjustments:

(i) plus or minus, as the case may be, the amount by which the Preliminary Net Working Capital is greater than or less than the Target Working Capital;

(ii) minus, the aggregate amount of funded debt and related items of the Seller Group set forth on Schedule 1.2(a)(ii), if any (the "Closing Indebtedness");

(iii) minus, the amount of the U.S. Bancorp Loans debt on the Closing Date, which loans will be retained by Minnesota Limited in connection with the Transaction, plus a credit one-half of the prepayment penalty associated therewith;

The foregoing calculations, shall be the "Estimated Purchase Price."

(b) On the Closing Date, the Estimated Purchase Price shall be paid by Buyer in the following manner:

(i) the Escrow Amount shall be paid pursuant to Section 1.3;

(ii) any amounts directed in writing by Sellers to be paid by Buyer on Sellers' behalf (excluding any payments of Closing Indebtedness which shall be paid by Buyer as set forth in the last paragraph of this subsection (b)), including without limitation payment of any brokerage or other fees payable to Greene Holcomb & Fisher LLC, shall be paid by wire transfer of immediately available funds to one or more accounts designated in writing by Sellers; and

(iii) the balance shall be paid to Sellers by wire transfer of immediately available funds to an account designated in writing by such Sellers at least one (1) business day prior to the Closing.

On the Closing Date, the Buyer shall pay an amount equal to the Closing Indebtedness by wire transfer of immediately available funds to one or more accounts designated in the Payoff Letters, in the amounts set forth therein.

(c) After the Closing Date, the Estimated Purchase Price may be adjusted in accordance with Section 1.4 (as adjusted, the "Purchase Price"), and such adjustment, if any, shall be paid pursuant to Section 1.4(b).

1.3 Escrow. At the Closing, Buyer shall deposit an amount equal to Four Million Dollars ($4,000,000) (the "Escrow Amount") with U.S. Bank, N.A., as escrow agent (the "Escrow Agent") by wire transfer of immediately available funds (the Escrow Amount together with all earnings thereon, the "Escrow Deposit"). The Escrow Deposit shall be held, invested and disbursed as specified in and pursuant to the terms and conditions of an Escrow Agreement, substantially in the form attached hereto and incorporated herein as Exhibit C (the "Escrow Agreement"), and in accordance with the terms and conditions of Section 9 hereof. All interest and other income earned on the Escrow Deposit shall be paid to Sellers in accordance with their respective Percentage Interest at the end of the Escrow Period.

1.4 Working Capital Adjustment. Following the Closing, the Estimated Purchase Price may be adjusted as follows:

(a) Net Working Capital Computation. (i) Not later than the sixtieth (60th) day following the Closing Date, (A) Buyer shall prepare and deliver to the Sellers' Representative a balance sheet of the Seller Group prepared in accordance with GAAP (any requirement by GAAP to have reserves or allowances for any of the receivables or workers compensation shall be ignored) and in a manner consistent with the preparation of the Interim Balance Sheet (as defined in Section 4.4) (the "Closing Date Balance Sheet") as of 11:59 p.m., central standard time, on the Closing Date and (B) based on the Closing Date Balance Sheet, Buyer shall prepare and deliver to the Sellers' Representative a statement (the "Net Working Capital Schedule") of the Net Working Capital as of the Closing Date (the "Closing Net Working Capital"). The Closing Net Working Capital shall use the same methodology in computing current assets, current liabilities and working capital as was used in the determination of the Preliminary Net Working Capital.

(ii) If the Sellers' Representative disagrees with the Closing Net Working Capital as reflected on the Net Working Capital Schedule, the Sellers' Representative shall notify Buyer on or before the date thirty (30) days after the date on which Buyer delivered to the Sellers' Representative such Net Working Capital Schedule. Unless the Sellers' Representative delivers such a notice disagreeing with the accuracy of the Closing Net Working Capital within such thirty (30) day period, the Net Working Capital Schedule shall be deemed final and binding on the Sellers and Buyer. The Sellers' Representative and Buyer shall attempt to resolve any such disagreements. If the Sellers' Representative and Buyer are unable to resolve all such disagreements on or before the date fifteen (15) days following notification by the Sellers' Representative of any such disagreements (which period may be extended by agreement of Buyer and the Sellers' Representative), Buyer and the Sellers' Representative shall retain Grant Thornton LLP (the "Final Accounting Firm"), to resolve all such disagreements, who shall adjudicate only those items still in dispute with respect to the Net Working Capital Schedule and the calculation of the Closing Net Working Capital.

(iii) The Final Accounting Firm shall offer Buyer and the Sellers' Representative the opportunity to provide written submissions regarding their positions on the disputed matters, which written submissions shall be provided to the Final Accounting Firm, if at all, no later than twenty (20) days after the date of referral of the disputed matters to the Final Accounting Firm (the "Submission Period"). The Final Accounting Firm shall deliver a written report resolving only the disputed matters and setting forth the basis for such resolution within twenty (20) days after the Submission Period. Absent arithmetic error, the determination of the Final Accounting Firm with respect to the Closing Net Working Capital shall be final and binding on the Parties. Buyer and Sellers shall bear the fees and expenses of the Final Accounting Firm in the same proportion (on an inverse basis) as each Party's determination of Closing Net Working Capital (as submitted to the Final Accounting Firm) compares to the final Closing Net Working Capital determined by the Final Accounting Firm, all as det ermined by the Final Accounting Firm, which shall be final and binding on the Parties. The Final Accounting Firm shall conduct its determination activities in a manner wherein all materials submitted to it are held in confidence and shall not be disclosed to third parties. The Parties hereto agree that judgment may be entered upon the determination of the Final Accounting Firm in any court having jurisdiction over the Party against which such determination is to be enforced.

(iv) Buyer shall provide the Sellers' Representative and its agents and advisors with access to the relevant books and records of the Seller Group and Buyer's financial advisors and accountants in order to confirm the Net Working Capital Schedule and determine the Closing Net Working Capital. Upon reasonable prior notice, the Sellers' Representative and its agents and advisors shall be entitled to discuss such books and records with Buyer and those persons whom the Sellers' Representative reasonably deems necessary for confirmation of the Net Working Capital Schedule.

(b) Payments. (i) If the Closing Net Working Capital as determined pursuant to this Section 1.4 is greater than the Target Working Capital, then Buyer shall pay to the Sellers (or their designee(s) as set forth in a written notice to Buyer) an amount equal to the sum of (A) the difference between the Closing Net Working Capital and the Target Working Capital (less any increase, if any, that has previously been paid based on the Preliminary Net Working Capital being greater than the Target Working Capital) and (B) the amount, if any, by which the Preliminary Net Working Capital was less than the Target Working Capital, in cash by wire transfer of immediately available funds on or before the date three (3) days after the date of such determination. Any payment which is not made by such third day shall accrue interest from and after such third day at the Prime Rate.

(ii) If the Closing Net Working Capital as determined pursuant to this Section 1.4 is less than the Target Working Capital, then the Sellers shall pay to Buyer (or its designee as set forth in a written notice to the Sellers' Representative) an amount equal to the sum of (a) the difference between the Target Working Capital and the Closing Net Working Capital (less any decrease, if any, that has previously been made based on the Preliminary Working Capital being less than the Target Working Capital) and (B) the amount, if any, by which the Preliminary Net Working Capital was greater than the Target Working Capital, which amount shall be paid in cash by wire transfer of immediately available funds on or before the date three (3) days after the date of such determination. Any payment which is not made by such third day shall accrue interest from and after such third day at the Prime Rate. Any payment owed by Sellers pursuant to this Section 1.4(b)(ii) may, in Buyer's sole discretion, be paid in whole or in part out of such account established pursuant to the Escrow Agreement in the event Sellers do not make such payment within three (3) days after the date of determination.

(c) Exclusive Remedy for Working Capital Adjustment. Each of Buyer and the Sellers acknowledges and agrees that the adjustment provisions set forth in this Section 1.4 shall be the sole and exclusive remedy of Buyer and the Sellers with respect to (i) determining whether or not any adjustment would be made to the Estimated Purchase Price pursuant to this Section 1.4 (whether or not any such adjustment was, in fact, made), (ii) determining the amount of any such adjustment; (iii) any other claims relating to the determination of Closing Net Working Capital (in lieu of claims under Section 9 hereof, except any claims based on the failure of a Party to make any payments required by this Section 1.4 and claims relating to Section 7.13); and (iv) any other representation, warranty or covenant set forth in this Agreement related to any component of Net Working Capital, to the extent Damages arising out of a breach of such representation, warranty or covenant were resolved in connection with the Closing Net Working Capital; provided that, in the case of fraud, the foregoing adjustment provisions shall not be exclusive, but shall be in addition to any other rights or remedies to which Buyer and the Sellers or their respective assigns, as the case may be, may be entitled under Section 9.

2. CLOSING

2.1 Closing Date. The closing of the Contemplated Transactions (the "Closing") shall be deemed to take place at the offices of Maslon Edelman Borman & Brand, LLP at 10:00 a.m. central standard time on March 31, 2011 unless the parties agree otherwise (the "Closing Date"). The Parties hereto acknowledge and agree that all proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously, and no proceedings shall be deemed taken nor any documents executed or delivered until all have been taken, executed and delivered.

2.2 Deliveries by Sellers. At the Closing, Sellers shall deliver (or cause to be delivered) to Buyer originals or copies, if specified, of the following:

(a) certificates representing the Shares accompanied by an appropriate stock power;

(b) assignments of the Membership Interests;

(c) the stock ledger, the membership interest ledgers, minute books and any other corporate records of each member of the Seller Group;

(d) a counterpart of the Escrow Agreement, duly executed by the Sellers' Representative and the Escrow Agent;

(e) a Non-Competition Agreement by and between Buyer or its designated Affiliate and the Sellers in the form as set forth in Exhibit D, attached hereto and made a part hereof (the "Non-Competition Agreement"), executed and delivered by Sellers;

(f) an Employment Agreement by and between Buyer or its designated Affiliate and Christopher T. Leines (the "Employment Agreement"), executed and delivered by Christopher T. Leines;

(g) a Lease Agreement for the Leased Real Property in the form of Exhibit E, attached hereto and made a part hereof (the "Lease Agreement"), executed and delivered by either MLBL, LLC, a wholly-owned subsidiary of Nordic Investments, LLLP, or Nordic Investments, LLLP, as lessor;

(h) counterparts of all agreements, documents and instruments required to be delivered by the Seller Group, Nordic Land, or any of the Sellers pursuant to this Agreement or any of the agreements to be executed in connection with the Contemplated Transactions, duly executed by each member of the Seller Group, as applicable, Nordic Land, and such Sellers;

(i) copies of each consent, waiver, authorization and approval required pursuant to Section 4.2(c) of this Agreement;

(j) resignations of those officers and directors of the Seller Group identified in writing by Buyer at least five (5) business days prior to the Closing, effective as of the Closing Date;

(k) a Certificate of Good Standing of Nordic Land and each member of the Seller Group issued by the Secretary of State of the State of Minnesota and appropriate Governmental Bodies of each state in which the nature of the Business or the ownership of assets in such state would require such member of the Seller Group to be qualified to do business in such state, each dated within sixty (60) days of the Closing Date;

(l) a copy of the certified Articles of Incorporation of Minnesota Limited, including all amendments thereto, certified as true, complete and correct by the Secretary of State of the State of Minnesota;

(m) a copy of the Articles of Organization of Nordic Land and each member of LLC Group, including all amendments thereto, certified as true, complete and correct by the Secretary of State of the State of Minnesota;

(n) a copy of the Bylaws and Shareholder Control and Buy and Sell Agreement of Minnesota Limited, including all amendments thereto, certified as true, complete and correct by the Secretary of Minnesota Limited;

(o) a copy of the Member Control Agreement and Operating Agreement for Nordic Land and each member of the LLC Group, if any, including all amendments thereto, certified as true, complete and correct by the Secretary of Nordic Land or such member of the LLC Group (the "LLC Agreements");

(p) a duly executed certificate of non-foreign status from each Seller (or its owner, in the case of a Seller that is a "disregarded entity" for United States federal income tax purposes) dated as of the Closing Date, certifying that such Person is not a "foreign person" as defined in Section 1445 of the Code;

(q) payoff letters for each instrument evidencing Closing Indebtedness from the obligees thereunder setting forth the amounts necessary to pay off all such Closing Indebtedness under such instrument as of the Closing Date along with the per diem interest amount with respect thereto and otherwise in form and substance reasonably satisfactory to Buyer, and evidence reasonably satisfactory to Buyer of the release of all encumbrances and UCC financing statements related thereto (each, a "Payoff Letter");

(r) a certificate, dated as of the Closing Date, duly executed by the Sellers' Representative acknowledging delivery by Buyer of the items set forth in Section 2.3 of this Agreement; and

(s) evidence of the termination of that certain lease by Minnesota Limited for real property owned by the Leines Family Partnership (the "Family Partnership Property"); and

(t) Such other documents as Buyer may reasonably request.

2.3 Deliveries by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to Sellers originals, or copies if specified, of the following agreements, documents and other items:

(a) the Estimated Purchase Price payments and other payments, all as provided in Section 1.2, which amount shall be divided between the Sellers and Nordic Land in such amounts as mutually agreed by the Sellers and Buyer (the amount allocated to the Sellers shall be split equally between the Sellers);

(b) a counterpart of the Escrow Agreement, duly executed by Buyer;

(c) counterparts of all agreements, documents and instruments required to be delivered by Buyer pursuant to this Agreement or any of the agreements to be executed in connection with the Contemplated Transactions, duly executed by Buyer;

(d) copies of all the resolutions adopted by the board of directors of Buyer and its Parent, and authorizing and approving the execution and delivery of this Agreement and the consummation of the Contemplated Transactions, certified to be true, complete, correct and in full force and effect by the Secretary of Buyer and Secretary of Parent, respectively;

(e) a Certificate of Existence of Buyer issued by the Secretary of State of the State of Indiana, dated within ten (10) business days of the Closing Date;

(f) a copy of the certified Articles of Incorporation of Buyer, including all amendments thereto, certified as true, complete and correct by the Secretary of State of the State of Indiana;

(g) the Lease Agreement and Employment Agreement executed and delivered by Buyer or designated Affiliate;

(h) a certificate executed by the Secretary of Buyer acknowledging delivery by Sellers of the items set forth in Section 2.2 of this Agreement; and

(i) evidence of Buyer's supplying of replacement collateral in connection with the Travelers Insurance paid loss program described in Section 7.7.

3. INTENTIONALLY BLANK

4. REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers, jointly and severally, hereby represent and warrant to Buyer on the date hereof and as of the Closing Date as follows:

4.1 Organization and Good Standing. Minnesota Limited is a corporation duly organized, validly existing, and in good standing under the laws of the State of Minnesota, with full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under Seller Group Contracts. Nordic Land and each member of the LLC Group is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Minnesota, with full limited liability company power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations under Seller Group Contracts. Nordic Land and each member of the Seller Group is qualified to conduct business and is in good standing in the jurisdictions set forth in Part 4.1 of the Disclosure Letter, which includes all jurisdictions, domestic or foreign, in which the nature of the business conducted or the character or location of property owned or leased by it requires such qualification, except to the extent that the failure to so qualify would not have a Material Adverse Effect on the Seller Group. Part 4.1 of the Disclosure Letter sets forth the name(s) used by each member of the Seller Group, other than its legal name, in the conduct of its business as well as the jurisdictions in which these names are used.

4.2 Authority; No Conflict; Consents.

(a) Sellers have full power and authority and legal capacity to execute and deliver this Agreement and each Related Agreement to which they are or will be a party and to perform the Contemplated Transactions. The parties acknowledge and agree that this Agreement, the Escrow Agreement, Employment Agreement and Non-Competition Agreements executed by the Seller Group will be at the discretion of and for the benefit of Buyer. The execution and delivery by Sellers of this Agreement and each of the Related Agreements to which any of them are or will be a party, and the consummation of the Contemplated Transactions, have been duly authorized on their part. This Agreement has been, and each of the Related Agreements to which any Seller is a party upon execution will be, duly executed and delivered by Sellers, as applicable, and this Agreement is, and each of the Related Agreements to which any Seller is a party upon execution will be, the legal, valid and binding obligation of them, enforceable against them in accordance with its terms.

(b) Except as set forth in Part 4.2(b) of the Disclosure Letter, neither the execution and delivery of this Agreement by Sellers nor the consummation or performance of any of the Contemplated Transactions by Sellers will (with or without notice or lapse of time): (i) contravene, conflict with, or result in a violation of (A) any provision of the Organizational Documents of Nordic Land or the Seller Group, or (B) any resolution adopted by the board of directors, board of managers, members or the stockholders of Nordic Land or the Seller Group; (ii) contravene, conflict with, or result in a violation of, or give any Governmental Body or other Person the right to challenge any of the Contemplated Transactions or to exercise any remedy or obtain any relief under, any Legal Requirement or any Order to which the Seller Group, Nordic Land, or any Seller, or any of the assets owned or used by the Seller Group, may be subject; (iii) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate, or modify, any Governmental Authorization that is held by the Seller Group or that otherwise relates to the business of, or any of the assets owned or used by, the Seller Group; (iv) contravene, conflict with, or result in a violation or breach of any provision of, or give any Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any Seller Group Contract; or (v) result in the imposition or creation of any Encumbrance upon or with respect to any of the assets owned or used by the Seller Group.

(c) Except as set forth in Part 4.2(c) of the Disclosure Letter, no Seller, Nordic Land, or any member of the Seller Group is or will be required to give any notice to or obtain any consent, approval or other authorization from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions, except for any filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the "HSR Act").

4.3 Capitalization; Ownership.

(a) The Seller Group does not, directly or indirectly, own, of record or beneficially, or have any Contract to acquire any securities or other equity or ownership interest in, or control, any Person. Except as set forth on Part 4.3(a) of the Disclosure Letter, no Seller or Nordic Land, directly or indirectly, owns, of record or beneficially, or has any Contract to acquire any securities or other equity or ownership interest in, or control, any Person (other than the Seller Group) that is directly or indirectly involved in or related to the Business, except for passive investments in publicly traded stock of companies who do not compete with the business, are not a Parent or Affiliate of Buyer, and which represent ownership of less than 1% of the issued and outstanding capital stock of each such company.

(b) The authorized securities of Minnesota Limited consist of 2,500 shares of common stock, $10.00 par value, of which 2,055 shares are issued and outstanding, all of which are owned by Sellers in the proportions set forth on Part 4.3(b) of the Disclosure Letter. There are no other authorized securities of Minnesota Limited. Sellers each own 50% of the issued and outstanding state law membership interests of Nordic Land. There are no other authorized state law membership interests of Nordic Land. Nordic Land is the sole member of each member of the LLC Group. Sellers and Nordic Land are and will be on the Closing Date the only record and/or beneficial owners and holders of any of the securities of any member of the Seller Group. None of the Equity Interests or Membership Interests are held jointly with any other person. The Equity Interests and Membership Interests of any member of the Seller Group owned and/or held by Sellers or Nordic Land will be on the Closing Date duly authorized, validly issued, fully paid and non-assessable and transferred to Buyer free and clear of all Encumbrances. Except as set forth in Part 4.3(b) of the Disclosure Letter, there are no Contracts relating to the issuance, sale or transfer of any securities of any member of the Seller Group. None of the outstanding securities of any member of the Seller Group was issued in violation of preemptive or similar rights of any Person, the Securities Act or any other Legal Requirement.

(c) In the past ten years, except as set forth in Part 4.3(c) of the Disclosure Letter, the Seller Group, Nordic Land, and Sellers have conducted the Business only through the Seller Group.

4.4 Financial Statements. Sellers have delivered or made available to Buyer (a) audited balance sheets of Minnesota Limited and unaudited balance sheets of the other members of the Seller

Group as at December 31, 2007, December 31, 2008 and December 31, 2009 (including the notes thereto for the audited financial statements, the "Balance Sheet"), and the related combined statements of operations, retained earnings and cash flow for the fiscal years then ended (including the notes thereto for the audited financial statements, the "Income Statement" and, together with the Balance Sheet, the "Annual Financial Statements"), together with the report on the audited financial statements of Lurie Besikof Lapidus & Company, LLP, independent certified public accountants, and (b) an unaudited balance sheet of the Seller Group as at January 31, 2011 (the "Interim Balance Sheet") and the related unaudited statements of operations, and retained earnings for the period then ended (the "Interim Income Statement" and together with the Interim Balance Sheet the "Interim Financial Statements"). Except as set forth in Part 4.4 of the Disclosure Letter, such financial statements fairly present in all material respects the financial condition and the results of operations, retained earnings and cash flow (only for the Annual Financial Statements) of each member of the Seller Group as at the respective dates of and for the periods referred to in such financial statements, are current and complete in all material respects, are in all material respects consistent with the books and records of each member of the Seller Group, in each case in accordance with and as required by GAAP, subject, in the case of the Interim Financial Statements and the other unaudited financial statements, to normal recurring year-end adjustments and the absence of notes. Except as set forth in Part 4.4 of the Disclosure Letter, the Interim Financial Statements reflect the consistent application of the accounting principles used in the preparation of the Annual Financial Statements. No financial statements of any other Person are required by GAAP to be included in the financial statements of the Seller Group.

4.5 Real Property.

(a) Part 4.5(a) of the Disclosure Letter sets forth the correct legal description, street address, and tax parcel identification number of each location of all properties owned by the Seller Group (the "Owned Real Property"). Except as described in Part 4.5(a) of the Disclosure Letter, the Seller Group does not lease the Owned Real Property or any interest therein to any Person. Except as described in Part 4.5(a) of the Disclosure Letter, neither Nordic Land nor the Seller Group is a party to any existing agreements, options, commitments, or rights which grant or provide to any person the right to use or acquire the Owned Real Property, any portion thereof, or any interest therein. The Seller Group has good and marketable fee simple title to the Owned Real Property, free and clear of all Encumbrances, except for and subject to the Permitted Encumbrances. The Seller Group will maintain possession of the Owned Real Property at Closing. The Seller Group has obtained all authorizations and rights-of-way which are necessary to ensure vehicular and pedestrian ingress and egress to and from the Owned Real Property. To the Knowledge of Sellers, (i) there are no legal restrictions of record or otherwise Known on entrance to or exit from the Owned Real Property to adjacent public streets and (ii) no conditions exist which will result in the termination of the present access from the Owned Real Property to existing highways and roads. The Sellers have no Knowledge of any proposed assessment on or against the Owned Real Property or Nordic Land or the Seller Group as the owners of the Owned Real Property. The Sellers have no Knowledge of any planned public improvements affecting the Owned Real Property that may result in material special assessments or other action involving eminent domain. Since December 31, 2009, no governmental agency has served any written notice upon Sellers requiring correction of any conditions existing on or within the Owned Real Property. Except as set forth in Part 4.5(a) of the Disclosure Letter, no written notice has been served upon Nordic Land or the Seller Group with respect to the Owned Real Property, from any entity, governmental body, or individual, claiming any violation of any law, regulation, ordinance, or code, or requiring compliance with any law, regulation, ordinance, or code, or demanding payment or contribution for environmental damage, injury to natural resources, or Environmental Laws or Occupational Health and Safety Laws which has not been corrected or remedied. To the Knowledge of Sellers, the Owned Real Property and the present uses thereof comply with all regulations and zoning requirements of all governmental authorities having jurisdiction over the Owned Real Property, the current zoning classification of the Owned Real Property is sufficient and appropriate for all present uses thereof, and the Sellers have not received written notices from any governmental authority, and have no Knowledge, that the Owned Real Property or any improvements erected or situated thereon, or the uses conducted thereon or therein, presently violate any regulations or zoning requirements of any governmental authority having jurisdiction over the Owned Real Property. Except as described in Part 4.5(a) of the Disclosure Letter, the Owned Real Property is serviced by water, solid waste and sewage disposal, storm drainage, telephone, gas and electric facilities, each of which is in good operating condition and is adequate for the present use and operation of the Business located thereon. There is no Proceeding of any nature pending or, to the Knowledge of Sellers, threatened against or affecting the Owned Real Property, or any portion thereof, by any third-party, in any court or before or by any Governmental Body. No condemnation or other taking by eminent domain of the Owned Real Property or any portion thereof, including, to the Knowledge of Sellers, threat in lieu thereof, has been instituted, the Sellers have not received any notice of taking or condemnation or intent to take or condemn all or any portion of the Owned Real Property, and there are no pending or, to the Knowledge of Sellers, threatened condemnation or eminent domain proceedings in connection with the Owned Real Property or any portion thereof.

(b) Part 4.5(b) of the Disclosure Letter sets forth the street address of each location where each member of the Seller Group currently engages in Business upon properties leased by the Seller Group (the "Leased Real Property"), along with a description of the Contract pursuant to which such real property was leased (collectively, the "Leases"). Sellers have delivered or made available to Buyer correct and complete copies of the Leases. Each Lease is a legal, valid, and binding obligation of such member of the applicable Seller Group, enforceable against such member of the Seller Group in accordance with its terms. No member of the Seller Group, and to the Knowledge of Sellers, nor any other party thereto, is in material default, violation or breach in any respect under any Lease. Except as described in Part 4.5(b) of the Disclosure Letter, the transfer of the Equity Interests does not require the consent of, or notice to, any landlord of the Leased Real Property. The applicable member of the Seller Group has good and valid title to the leasehold estate under each Lease pursuant to the terms of each such Lease. The applicable member of the Seller Group enjoys peaceful and undisturbed possession under its respective Leases for the Leased Real Property. To the Knowledge of Sellers, except as set forth in Part 4.5(b) of the Disclosure Letter, there is no Order outstanding, nor any Proceeding (including, without limitation, eminent domain), pending or threatened, relating to the ownership, lease, use, occupancy or operation by any Person of the Leased Real Property that is likely to have a Material Adverse Effect on any member of the Seller Group. To the Knowledge of Sellers, the Leased Real Property (including, without limitation, any improvements thereon) is in material compliance with the Lease, and the Sellers have not received any written notice of violation or claimed violation of any Legal Requirement of such Leased Real Property which has not been corrected or remedied.

4.6 Condition of Assets; Ownership; Encumbrances. To the Knowledge of the Sellers, the material buildings, plants, structures and equipment owned by the Seller Group and reflected in the Interim Balance Sheet are structurally sound, are in reasonably good operating condition and repair, subject to normal wear and tear. The Seller Group owns good and marketable title to, or a valid leasehold interest in, all of the properties and assets reflected in the Interim Balance Sheet (except for assets sold since the date of the Interim Balance Sheet in the ordinary course of business and consistent with past practice). All the assets owned by the Seller Group are free and clear of all Encumbrances, except those listed on Part 4.6 of the Disclosure Letter (the "Permitted Encumbrances").

4.7 Accounts Receivable. All Accounts Receivable reflected on the Interim Balance Sheet represent valid obligations arising from bona fide sales actually made or services actually performed by the Seller Group. Except as set forth on Part 4.7 of the Disclosure Letter, to the Knowledge of Sellers, there is no contest, claim, or asserted right of set-off under any Contract with any obligor of an Account Receivable relating to the amount or validity of such Account Receivable.

4.8 Inventory. The Seller Group does not have any Inventory that is intended for retail sale that it capitalizes on its balance sheet.

4.9 No Undisclosed Liabilities. Except as set forth in Part 4.9 of the Disclosure Letter, to the Knowledge of Sellers, the Seller Group has no material liability of the type required to be reflected as liabilities on a balance sheet prepared in accordance with GAAP as of the Closing Date consistent with the past practices of such member of the Seller Group (whether absolute, accrued, or, contingent) which are not shown, or which are in excess of the amounts shown or reserved for, in the Interim Balance Sheet, except for accounts payable and other liabilities incurred in the ordinary course of business and consistent with past practice since the date of the Interim Balance Sheet.

4.10 Taxes. Except as set forth in Part 4.10 of the Disclosure Letter:

(a) Each member of the Seller Group has filed or caused to be filed on a timely basis all Tax Returns that are or were required to be filed by or with respect to it, pursuant to applicable Legal Requirements. Sellers have delivered or made available to Buyer copies of, and Part 4.10(a)(i) of the Disclosure Letter contains a complete and accurate list of, all such Tax Returns filed since January 1, 2007. The Seller Group has paid, or on the Interim Balance Sheet has accrued an amount at least equal to the amount required for the payment of, all Taxes that have or may have become due pursuant to those Tax Returns or otherwise, or pursuant to any assessment received by Sellers, Nordic Land, or any member of the Seller Group, except such Taxes, if any, as are listed in Part 4.10(a)(ii) of the Disclosure Letter and are being contested in good faith and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Interim Balance Sheet.

(b) Part 4.10(b)(i) of the Disclosure Letter contains a complete and accurate list of all audits of all such Tax Returns in the past ten years, including a reasonably detailed description of the nature and outcome of each audit. All deficiencies proposed as a result of such audits have been paid, reserved against, settled or, as described in Part 4.10(b)(ii) of the Disclosure Letter, are being contested in good faith by appropriate proceedings and as to which adequate reserves (determined in accordance with GAAP) have been provided in the Interim Balance Sheet. Part 4.10(b)(iii) of the Disclosure Letter describes all adjustments to the United States federal income Tax Returns filed by any member of the Seller Group for all Taxable years since January 1, 2007, and the resulting deficiencies proposed by the IRS. Except as described in Part 4.10(b)(iv) of the Disclosure Letter, no Seller, Nordic Land, or member of the Seller Group has given or been requested to give waivers or extensions (or is or would be subject to a waiver or extension given by any other Person) of any statute of limitations relating to the payment of Taxes of any member of the Seller Group or for which any member of the Seller Group may be liable.

(c) The charges and accruals with respect to Taxes on the Interim Balance Sheet are adequate (determined in accordance with GAAP) and are at least equal to the Seller Group's aggregate liability for Taxes. The Sellers have no notice or Knowledge of any proposed Tax assessment against any member of the Seller Group except as disclosed in the Interim Balance Sheet and in Part 4.10(c) of the Disclosure Letter. All Taxes that any member of the Seller Group is or was required by Legal Requirements to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Taxing Authority.

(d) All Tax Returns filed by (or that include on a consolidated basis) any member of the Seller Group are true, correct, and complete in all material respects. There is no Tax sharing agreement that will require any payment by any member of the Seller Group after the date of this Agreement.

(e) Minnesota Limited properly and timely filed a valid election under Code Section 1362 to be treated as an S corporation as defined under Code Section 1361 for federal income Tax purposes effective as of April 1, 1996; and such election became effective as of the same date under the income Tax laws of the State of Minnesota. Such election has remained in effect under all such Tax laws since such time. Except for the Contemplated Transactions, neither Sellers nor Minnesota Limited have taken any action or failed to take any action, nor has any event occurred, that could reasonably be expected to result in the revocation or termination of such election at any time.

(f) None of the entities that comprise the LLC Group has ever been subject to an election under Treasury Regulations Section 301.7701-3(c) to be treated differently from their default status as defined in Treasury Regulations Section 301.7701-3(b). Thus, if an entity included in the LLC Group has or had two or more owners, it is or was considered a partnership for United States federal income Tax purposes for each period in which it has or had two or more owners. If an entity included in the LLC Group has or had a single owner, it is or was considered disregarded as an entity separate from its owner for United States federal income Tax purposes for each period in which it has or had a single owner.

4.11 No Material Adverse Change. Except as set forth in Part 4.11 of the Disclosure Letter, since December 31, 2009, to the Knowledge of Sellers there has not been any Material Adverse Change in the business, operations, properties or assets of the Seller Group.

4.12 Employee Benefits.

(a) Part 4.12(a) of the Disclosure Letter sets forth a list of all pension, retirement, supplemental retirement, stock option, stock purchase, stock ownership, savings, stock appreciation right, profit sharing, deferred compensation, consulting, bonus, medical, disability, workers' compensation, vacation, group insurance, severance, employee welfare benefit plans (as defined in ERISA), employee pension benefit plans (as defined in ERISA) and other employee benefit, incentive and welfare policies, contracts, plans and arrangements, and all trust agreements related thereto, maintained by or contributed to by any member of the Seller Group or any of their ERISA Affiliates in respect of any of the present or former directors, officers, other employees and/or consultants of or to any member of the Seller Group or any of their ERISA Affiliates, or in which any of such directors, officers, employees or consultants participates (each an "Employee Plan"). Except for each Employee Plan that is a "multiemployer plan" as defined in Section 3(37) of ERISA (a "Multiemployer Plan"), the Employee Plans have been maintained and operated substantially in accordance with both their terms and with all applicable Legal Requirements, including, without limitation, ERISA, the Code, HIPAA, USERRA and COBRA. For each Employee Plan that is not a Multiemployer Plan, Sellers have provided or made available to Buyer complete and correct copies of: (i) the plan document, if written, or a description of such plan if not written; and (ii) to the extent applicable to such plan, (A) the three (3) most recent Forms 5500 or other annual report (and all financial schedules thereto) required by applicable Legal Requirements to have been filed with the IRS or any other Governmental Body; (B) the most recent IRS determination letter or any pending request for a determination letter with respect to any Employee Plan that is not a Multiemployer Plan and is intended to be "qualified" under Code Section 401(a) (a "Qualified Plan"); (C) the three (3) most recent reports regarding the coverage and nondiscrimination testing of each Qualified Plan that is subject to Sections 410(b), 401(a)(4), 401(k) and 401(m) of the Code; (D) all correspondence from and to the IRS, PBGC, U.S. Department of Labor or other Governmental Body regarding any such Employee Plan within the last three (3) years; and (E) all current summary plan descriptions and summaries of material modifications with respect to such Employee Plans that are subject to ERISA.

(b) None of the Qualified Plans is subject to Title IV of ERISA (a "Title IV Employee Plan") as a single employer plan as defined in Section 4001(a)(15) of ERISA. None of the Qualified Plans is subject to liability under Sections 4063, 4069 or 4212 of ERISA. Each Qualified Plan, and the trust (if any) forming a part thereof, has received a favorable determination letter from the IRS as to its qualification under Section 401(a) of the Code and to the effect that each such trust is exempt from federal income Tax under Section 501(a) of the Code or, if the plan is documented in the form of a prototype, master or volume submitter plan and trust, such plan document has received an opinion or advisory letter from the IRS stating that the plan document meets the requirements of Section 401(a) of the Code taking into consideration the provisions of EGTRRA and, except as described in Part 4.12(b) of the Disclosure Letter, nothing has occurred since the date of the most recent favorable determination, opinion or advisory letter which could reasonably be expected to adversely affect such qualification or Tax-exempt status. With respect to any Employee Plan that is not a Multiemployer Plan, there are no Proceedings being conducted or, to the Knowledge of the Sellers, threatened by any Governmental Body. Except as otherwise provided in subsection (c), none of the Qualified Plans or Multiemployer Plans is subject to the minimum funding standards of ERISA or the Code. There are no pending or, to the Knowledge of the Sellers, threatened claims by or on behalf of any of the Employee Plans other than Multiemployer Plans, by any participant or otherwise involving any such Employee Plan or the assets of any such Employee Plan (other than routine claims for benefits).

(c) With respect to each Multiemployer Plan in which any member of the Seller Group or any of their ERISA Affiliates participates or has participated, except as set forth on Part 4.12(c) of the Disclosure Letter, neither (i) any member of the Seller Group, nor any such ERISA Affiliate, has withdrawn, partially withdrawn, or received any notice of any claim or demand for withdrawal liability or partial withdrawal liability; (ii) any member of the Seller Group, nor any such ERISA Affiliate, has received any notice that any such plan is in reorganization, that increased contributions may be required to avoid a reduction in plan benefits or the imposition of any excise Tax, or that any such plan is or may become insolvent, or that such plan has or is in the process of developing a rehabilitation plan or a funding improvement plan as required under Section 305 of ERISA; (iii) any member of the Seller Group, nor any such ERISA Affiliate, has failed to make any required contributions; (iv) to the Knowledge of Sellers, no such plan is a party to any pending merger or asset or liability transfer; (v) to the Knowledge of Sellers, there are no PBGC proceedings against or affecting any such plan; and (vi) any member of the Seller Group, nor any such ERISA Affiliate, has (or may have as a result of the transactions contemplated hereby) any withdrawal liability by reason of a sale of assets pursuant to Section 4204 of ERISA.

(d) Except as set forth on Part 4.12(d) of the Disclosure Letter, neither any member of the Seller Group, nor any such ERISA Affiliate, has any liability for, and the consummation of the Contemplated Transactions will not result in any liability to Buyer or any the Seller Group or any of their ERISA Affiliates, nor any Encumbrance on any asset of any member of the Seller Group or any such ERISA Affiliate, with respect to any Employee Plan, including, without limitation, any post-retirement health, medical or similar benefit of any kind whatsoever (except as required by COBRA, any similar state Legal Requirement or USERRA).

(e) With respect to each Employee Plan, all contributions which are due (including all employer contributions and employee salary reduction contributions) from the Seller Group have been paid to such Employee Plan; and all unpaid contributions for prior plan years, and the portion of the current plan year ending on the Closing Date, which are owed by the Seller Group but not yet due have been accrued in full on the Interim Balance Sheet. With respect to all Employee Plans, all premiums, administrative fees and other payments which are due from the Seller Group have been paid.

(f) Neither the execution nor delivery of this Agreement, nor the consummation of any of the Contemplated Transactions, will (i) result in any payment (including without limitation any severance, bonus, unemployment compensation or "excess parachute" payment within the meaning of Section 280G of the Code) becoming due to any director or employee of the Seller Group from any Person; (ii) increase any benefit otherwise payable under any of the Employee Plans; (iii) result in the acceleration of the time of payment or vesting of any such benefit; or (iv) constitute or involve a prohibited transaction as defined under Section 406 of ERISA or Section 4975 of the Code for which an exemption is not available.

(g) Except as set forth in Part 4.12(g) of the Disclosure Letter, each member of the Seller Group has at all times (i) properly classified its workers as employees or independent contractors under IRS regulations; (ii) properly withheld and paid over to the IRS all applicable federal employment

Taxes and other payments required under applicable federal Legal Requirements; and (iii) provided benefits under each Employee Plan that is not a Multiemployer Plan to all eligible persons substantially in accordance with the provisions of the applicable plan and applicable Legal Requirements.

(h) Except as described in Part 4.12(h) of the Disclosure Letter, no prohibited transaction as defined under ERISA or the Code, or breach of fiduciary duty under Title I of ERISA, that could reasonably be expected to result in any material liability to any member of the Seller Group, has occurred with respect to any Employee Plan that is not a Multiemployer Plan; nor has any member of the Seller Group participated, with respect to any Multiemployer Plan, in any such prohibited transaction or breach of fiduciary duty that could reasonably be expected to result in any material liability to any member of the Seller Group.

(i) Except as described in Part 4.12(i) of the Disclosure Letter, the Seller Group does not maintain and has not maintained (i) a voluntary employees' beneficiary association within the meaning of Section 501(c)(9) of the Code or (ii) a multiple employer welfare arrangement within the meaning of Section 3(40)(A) of ERISA.

(j) All filings required by ERISA and the Code to be delivered to any Governmental Body with respect to the Employee Plans that are not Multiemployer Plans have been timely made.

(k) All disclosures required to be made to participants and beneficiaries with respect to the Employee Plans that are not Multiemployer Plans have been timely made.

(l) Except as described in Part 4.12(l) of the Disclosure Letter, each Employee Plan that is not a Multiemployer Plan can be terminated at the election of the applicable member or members of the Seller Group or Sellers without either (i) payment of any additional contributions or amounts by any Person pursuant to such plan or any applicable Legal Requirement, except for amounts that are not yet due and have been accrued in full on the Interim Balance Sheet; and (ii) the acceleration of any benefits under such Employee Plan.

4.13 Compliance with Legal Requirements. Except as set forth in Part 4.13 of the Disclosure Letter: (i) each Member of the Seller Group is and, to the Knowledge of Sellers, each member of the Seller Group has been since January 1, 2005 in compliance with each Legal Requirement that is applicable to it or to the conduct or operation of its Business or the ownership or use of any of its assets, except to the extent that the failure to so comply would not have a Material Adverse Effect on the Seller Group; and (ii) Sellers have not received, at any time since January 1, 2005, any written notice or other communication from any Person regarding any actual or alleged violation of, or failure to comply with, any Legal Requirement, except to the extent that the failure to comply with such notice or other communication would not have a Material Adverse Effect on the Seller Group.

4.14 Governmental Authorizations.

(a) Part 4.14(a) of the Disclosure Letter contains a complete and accurate list of each Governmental Authorization that is held by the Seller Group or that otherwise relates to the business of, or to any of the assets owned or used by, the Seller Group. Each Governmental Authorization listed or required to be listed in Part 4.14(a) of the Disclosure Letter is valid and in full force and effect.

(b) Except as set forth in Part 4.14(b) of the Disclosure Letter: (i) to the Knowledge of Sellers, each member of the Seller Group is in compliance in all material respects with all of the terms and requirements of each Governmental Authorization listed or required to be listed in Part 4.14(a) of the Disclosure Letter; (ii) no Seller has received, at any time since January 1, 2010, any written notice or other communication from any Person regarding any actual or alleged violation of or failure to comply with any term or requirement of any Governmental Authorization; (iii) all applications required to have been filed for the renewal of the Governmental Authorizations listed or required to be listed in Part 4.14(a) of the Disclosure Letter have been duly filed on a timely basis with the appropriate Governmental Body, and (iv) all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Body. The Governmental Authorizations listed in Part 4.14(a) of the Disclosure Letter collectively constitute all of the Governmental Authorizations necessary to permit the Seller Group to lawfully conduct and operate the Business in the manner it currently conducts and operates such business and to permit the Seller Group to own and use its assets in the manner in which it currently owns and uses such assets, except to the extent the failure to obtain any of the foregoing will not have a Material Adverse Effect on the Seller Group.

4.15 Legal Proceedings; Orders.

(a) Except as set forth in Part 4.15(a) of the Disclosure Letter, there is no pending Proceeding, and to the Knowledge of the Sellers, no Proceeding has been threatened: (i) by or against the Seller Group; or (ii) that challenges any of the Contemplated Transactions.

(b) Except as set forth in Part 4.15(b) of the Disclosure Letter, (i) there is no Order to which the Seller Group, or any of the assets owned or to the Knowledge of Seller used by the Seller Group, is subject; and (ii) no Seller or Nordic Land is subject to any Order that relates to the business of, or any of the assets owned or used by, the Seller Group. The Seller Group is, and has been, in compliance with all of the terms and requirements of each Order to which it, or any of the assets owned or, to the Knowledge of Sellers, used by it, is or has been subject. Sellers have not received, at any time since January 1, 2010, any written notice or other communication from any Governmental Body or any other Person regarding any actual or alleged violation of, or failure to comply with, any material term or requirement of any Order to which the Seller Group, or any of the assets owned or used by the Seller Group, is or has been subject.

4.16 Absence of Certain Changes and Events. Except as set forth in Part 4.16 of the Disclosure Letter, since the date of the Interim Balance Sheet (or, for subsections (f), (g), (h), and (i), since December 31, 2009), the Seller Group has conducted its business only in the ordinary course of business and consistent with past practice and there has not been:

(a) any change in Minnesota Limited's authorized or issued capital stock; grant of any stock option or right to purchase shares of capital stock of Minnesota Limited; issuance of any security convertible into such capital stock; grant of any registration rights of such capital stock; or purchase, redemption, retirement, or other acquisition by Minnesota Limited of any shares of any such capital stock, or declaration or payment of any dividend or other distribution or payment in respect of shares of capital stock other than cash dividends;

(b) any change in Nordic Land's or any member of the LLC Group's issued membership interests; grant of any option or right to purchase any membership interests of Nordic Land or any member of the LLC Group; issuance of any security convertible into such membership interests; grant of any registration rights of such membership interests; purchase, redemption, retirement, or other acquisition by Nordic Land or any member of the LLC Group of any membership interests, or declaration or payment of any distribution or payment in respect of any membership interests other than cash dividends;

(c) any amendment to the Organizational Documents of Nordic Land or any member of the Seller Group;

(d) any material increase by the Seller Group of any bonuses, salaries, or other compensation to any director, manager, officer, or employee or entry into any employment, bonus, severance, or similar Contract with any director, manager, officer, or employee;

(e) any adoption of, or increase in the payments to or benefits under, any profit sharing, bonus, deferred compensation, savings, insurance, pension, retirement, or other employee benefit plan for or with any employees of the Seller Group;

(f) any material damage, destruction, loss or claim, whether or not covered by insurance, or condemnation or other taking adversely affecting any of the assets of the Seller Group or the Business;

(g) any intentional acceleration or delay in the collection of Accounts Receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of the business consistent with past practice;

(h) any intentional delay or acceleration in the payment of any material account payable or other material liability of the Seller Group beyond or in advance of its due date or the date when such liability would have been paid in the ordinary course of the business consistent with past practice;

(i) any institution of, becoming a party to, any settlement or agreement to settle any Proceeding;

(j) any change in the accounting principles and practices used by the Seller Group from those applied in the preparation of the Annual Financial Statements or Interim Financial Statements, including, without limitation, any change in any assumption underlying or methods of calculating reserves, provisions or accruals; or

(k) any Contract to do any of the foregoing.

4.17 Contracts; No Defaults.

(a) Part 4.17(a) of the Disclosure Letter contains a complete and accurate list, and Sellers have delivered or made available to Buyer true and complete copies (or written descriptions if unwritten), of the types of Seller Group Contracts described below (the "Listed Seller Group Contracts"):

(i) each Seller Group Contract that involves performance of services or delivery of goods or materials by any member of the Seller Group for an amount (on a project by project basis if pursuant to a master agreement) payable to such member of the Seller Group in excess of $100,000 in the next twelve months, each of which Seller Group Contract shall be designated as a fixed price Contract or a time and materials Contract on Part 4.17(a);

(ii) each Seller Group Contract that involves performance of services for or delivery of goods or materials to any member of the Seller Group which will require, by its specific terms, such member of the Seller Group to pay in excess of $100,000 in the next twelve months;

(iii) each Seller Group Contract that has any written warranty period that has not expired by its terms (which remaining warranty period shall be specifically disclosed for each such Seller Group Contract), which Contract resulted in payments to such member of the Seller Group in excess of $100,000;

(iv) each Seller Group Contract that relates to the borrowing of money by or the extension of credit to any member of the Seller Group;

(v) each lease (other than the Leases), rental or occupancy agreement, license, and installment and conditional sale agreement affecting the ownership of, leasing of, title to, use of, or any leasehold or other interest in, any personal property (except personal property leases having aggregate annual payments of less than $26,000);

(vi) each Seller Group Contract with respect to Intellectual Property (other than standard agreements with current or former employees, consultants, or contractors regarding the appropriation or the non-disclosure of any of the Intellectual Property, forms of which have been delivered or made available to Buyer), but not including any "shrink wrap" Software;

(vii) each collective bargaining agreement and other Seller Group Contract with any labor union or other employee representative of a group of employees of the Seller Group;

(viii) each form of Seller Group Contract relating to the employment of an individual;

(ix) each joint venture Contract or Contract intending to create a partnership to which any member of the Seller Group is a party;

(x) each Contract containing covenants that in any way purport to restrict the business activity of the Seller Group or limit the freedom of the Seller Group to engage in any line of business or to compete with any Person;

(xi) each Seller Group Contract that requires any member of the Seller Group to spend more than $100,000 for capital expenditures in any one year period;

(xii) each Seller Group Contract relating to the guarantee of the obligations of any third party (including, without limitation, customers, suppliers, stockholders, or members) by the Seller Group;

(xiii) each other Contract to which a member of Seller Group is a party involving the payment by or to the Seller Group in excess of $100,000 in the next 12 months that is not cancelable on 30 days or less notice;

(xiv) each power of attorney that is currently in effect;

(xv) each master services agreement that is currently in effect; and

(xvi) each amendment, supplement, and modification (whether oral or written) in respect of any of the foregoing.

The disclosure of any Contract above shall not be construed as a guarantee of future performance or revenues received by any member of the Seller Group or Buyer.

(b) Other than as set forth in Part 4.17(b) of the Disclosure Letter, each Listed Seller Group Contract is in full force and effect and is valid and enforceable against such member of the Seller Group in accordance with its terms and will not discontinue to be in full force and effect or invalid or unenforceable in accordance with its terms as a direct result of the consummation of the Contemplated Transactions. Other than the Lease Agreement and as set forth Part 4.17(b) of the Disclosure Letter, no Seller or Nordic Land (and no Affiliate of any Seller or Nordic Land) has or may acquire any rights under, and no Seller has or may become subject to any obligation or liability under, any Contract that relates to the business of, or any of the assets owned or used by the Seller Group.

(c) Other than as set forth in Part 4.17(c) of the Disclosure Letter, the Seller Group is in compliance with all applicable terms and requirements of each Listed Seller Group Contract. To the Knowledge of the Sellers, each other Person that has any obligation or liability under any Listed Seller Group Contract is in compliance with all applicable terms and requirements of such Listed Seller Group Contract. Except as set forth in Part 4.17(c) of the Disclosure Letter, the Sellers have not given to or received from any other Person any notice regarding any actual or alleged violation or breach of, or default under, or lapse or termination of any Listed Seller Group Contract.

(d) Other than as set forth in Part 4.17(d) of the Disclosure Letter, to the Knowledge of Sellers, there are no current renegotiations of any material amounts paid or payable to the Seller Group under current or completed Listed Seller Group Contract with any Person.

For purposes of Sections 4.17(b), 4.17(c), and 4.17(d), the term "Listed Seller Group Contract" shall be deemed to include any Seller Group Contract that should have been listed in Part 4.17(a) of the Disclosure Letter.

4.18 Insurance. Part 4.18 of the Disclosure Letter sets forth a list and brief description (including nature of coverage, limits, deductibles, premiums and the loss experience for the most recent five years with respect to each type of coverage) of all policies of insurance maintained, owned or held by the Seller Group on the date hereof, all of which are currently in force and provide coverage pursuant to their respective terms. Except as set forth in Part 4.18 of the Disclosure Letter, such policies shall not be terminated as a result of the consummation of the Contemplated Transactions and the premium payments of such policies are not in default. Except as set forth in Part 4.18 of the Disclosure Letter, there is no self-insurance arrangement by or affecting the Seller Group. The Seller Group has complied with and performed all of its obligations under each of such insurance policies and, to the Knowledge of the Sellers, has not failed to present any material claim thereunder in a due and timely manner. The Seller Group has delivered or made available to Buyer correct and complete copies of the most recent inspection reports, if any, received from insurance underwriters as to the condition of the assets of the Seller Group. Part 4.18 of the Disclosure Letter sets out all claims made by the Seller Group under any policy of insurance during the past two years.

4.19 Environmental Matters. Except as set forth in Part 4.19 of the Disclosure Letter:

(a) Permits. All Governmental Authorizations that relate to Environmental Laws or Occupational Health and Safety Laws applicable to the Business ("Environmental Permits") are identified in Part 4.19(a) of the Disclosure Letter. To the Knowledge of the Sellers, the Seller Group currently holds all such Environmental Permits necessary to or required for the Business. The Seller Group has not been notified in writing by any relevant Governmental Body that any Environmental Permit will be modified, suspended, canceled or revoked, or cannot be renewed in the ordinary course of business.

(b) Compliance. To the Knowledge of the Sellers, the Seller Group is in material compliance with and is not in violation of any Environmental Law, Occupational Health and Safety Law or Environmental Permit nor has Sellers received any actual or, to the Knowledge of the Sellers, threatened Order, notice, citation, directive, inquiry, summons, warning or other written communication from (i) any Governmental Body of any actual or potential violation or failure to comply with any Environmental Law or Occupational Health and Safety Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental, Health, and Safety Liabilities with respect to any of the Facilities in which the Seller Group has a present interest, or with respect to any Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used, disposed of, or processed by the Seller Group, or any other Person for whose conduct they are or may be held responsible which has not been corrected or remedied. To the Knowledge of the Seller Group, the Seller Group is in present compliance with all Legal Requirements related to the disposal and handling of its wastes.

(c) No Claims. To the Knowledge of the Sellers, there are no pending or threatened claims, Encumbrances, or other restrictions of any nature, arising under or pursuant to any Environmental Law or Occupational Health and Safety Law, with respect to or affecting any of the Facilities in which the Seller Group has or had an interest.

(d) No Liability. To the Knowledge of the Sellers, the Seller Group has no liabilities under any Environmental Law with respect to the Facilities in which the Seller Group has or had an interest.

(e) No Hazardous Materials. To the Knowledge of the Sellers, and except for limited amounts used in the ordinary course of business in compliance with all applicable Environmental Laws and Environmental Permits or other laws, statutes or regulations applicable thereto, there are no Hazardous Materials present on or in the Environment at the Facilities in which the Seller Group has or had an interest, including without limitation, any Hazardous Materials contained in barrels, above or underground storage tanks, landfills, land deposits, dumps, machinery, equipment (whether moveable or fixed) or other containers, either temporary or permanent, or deposited or located in land, water, sumps, or any other part of the Facilities in which the Seller Group has or had an interest, or incorporated into any structure therein or thereon. The Seller Group has not intentionally permitted or conducted, nor is any Seller aware of, any Hazardous Activity conducted with respect to the Facilities in which the Seller Group has or had an interest, except in compliance with all applicable Environmental Laws and Environmental Permits.

(f) No Release. To the Knowledge of the Sellers, there has been no material Release of any Hazardous Materials at or from the Facilities in which the Seller Group has or had an interest or at any other locations where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, disposed of, or processed from or by the Facilities in which the Seller Group has or had an interest.

4.20 Employees. Except as set forth in Part 4.20 of the Disclosure Letter, to the Knowledge of the Sellers, no employee of the Seller Group intends, within the next six months, to terminate his or her employment with the Seller Group. Part 4.20 of the Disclosure Letter contains a complete and accurate list of the following information for each employee of the Seller Group, including each employee on leave of absence or layoff status: name; job title; date of hiring; current compensation paid or payable; sick and vacation leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan. The Seller Group has not violated the WARN Act.

4.21 Labor Relations; Compliance. Except as set forth in Part 4.21 of the Disclosure Letter, there has not been in the past three years, there is not presently pending or existing, and to the Knowledge of the Sellers, there is not threatened, (a) any strike, slowdown, picketing, work stoppage, or employee grievance process, (b) any Proceeding against or affecting the Seller Group relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters including, without limitation, any charge or complaint filed by an employee or union with the National Labor Relations Board, the Equal Employment Opportunity Commission, or any comparable Governmental Body, organizational activity, or other labor or material employment dispute against or affecting the Seller Group or its premises, or (c) any application for certification of a collective bargaining agent. There is no lockout of any employees by the Seller Group, and no such action is currently contemplated by the Seller Group. To the Knowledge of Sellers, the Seller Group has complied in all material respects with all Legal Requirements relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar taxes, occupational safety and health, and plant closing. Except as set forth in Part 4.21 of the Disclosure Letter, to the Knowledge of Sellers, the Seller Group is not liable for the payment of any compensation, damages, taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements. No arbitration proceeding arising out of or under any collective bargaining or other labor agreement is pending, and no claim therefor has been asserted in writing to the Seller Group. To the Knowledge of Sellers, there is no organizational activity involving the Seller Group pending or threatened by any labor union or group of employees. There are no representation proceedings involving the Seller Group pending or, to the Knowledge of the Sellers, threatened with the National Labor Relations Board, and no labor union or group of Seller Group employees has made a demand for recognition which is currently pending. All labor Contracts are set forth in Part 4.17(a) of the Disclosure Letter.

4.22 Intellectual Property.

(a) Title. Part 4.22(a) of the Disclosure Letter contains a complete and accurate list and summary description of all Intellectual Property owned, licensed or used by the Seller Group ("Intellectual Property Assets"), indicating which a re owned, licensed or used, provided that Trade Secrets, know-how, and other proprietary rights may be omitted from such list. The Seller Group is the owner of all right, title, and interest in and to, or has the right to use, each item of Intellectual Property Asset as currently used. Except as set forth in Part 4.22(a) of the Disclosure Letter, to the Knowledge of the Sellers, no employee of the Seller Group is a party to any Contract that restricts or limits in any way the scope or type of work in which the employee may be engaged or requires the employee to transfer, assign, or disclose information concerning his or her work to anyone other than the Seller Group.

(b) No Infringement. To the Knowledge of the Sellers, the conduct of the Business does not infringe any rights of any Person in respect of any Intellectual Property. To the Knowledge of Sellers, none of the Intellectual Property Assets is being infringed or otherwise used or available for use, by any other Person.

(c) Licensing Arrangements. Part 4.22(c) of the Disclosure Letter sets forth all Contracts (i) pursuant to which the Seller Group has licensed Intellectual Property Assets to, or the use of Intellectual Property Assets is otherwise permitted (through non-assertion, settlement or similar agreements) by, any other Person; and (ii) pursuant to which the Seller Group has had Intellectual Property licensed to it, or has otherwise been permitted to use Intellectual Property (through non-assertion, settlement or similar agreements). All of the agreements or arrangements set forth or required to be set forth on Part 4.22(c) of the Disclosure Letter (x) are in full force and effect in accordance with their terms and no material default exists thereunder by the Seller Group or, to the Knowledge of the Sellers, by any other party thereto, and (y) do not contain any change in control or other terms or conditions that will become applicable or inapplicable as a result of the consummation of the Contemplated Transactions. The Seller Group has delivered or made available to Buyer true and complete copies of all Contracts set forth on Part 4.22(c) of the Disclosure Letter.

(d) No Intellectual Property Litigation. Sellers have not received any written claim or demand of any Person nor is there any Proceeding pending, or to the Knowledge of the Sellers, threatened, which (i) challenges the rights of the Seller Group in respect of any Intellectual Property, (ii) asserts that the Seller Group is infringing or otherwise in conflict with, or is required to pay any royalty, license fee, charge or other amount with regard to, any Intellectual Property, or (iii) claims that any default exists under any Contract listed or required to be listed on Part 4.22(c) of the Disclosure Letter. To the Knowledge of Sellers, none of the Seller Group's Intellectual Property are subject to any outstanding Order or have been the subject of any Proceeding within the last five years, whether or not resolved in favor of the Seller Group.

4.23 Customers. Part 4.23 of the Disclosure Letter sets forth the names of the Seller Group's ten (10) largest customers, based on revenues for calendar years 2009 and 2010. To the Knowledge of Sellers, no such customer currently intends to terminate any agreement with the Seller Group.

4.24 Warranty.

(a) Except as set forth in Part 4.24 of the Disclosure Letter, no customer of the Seller Group has made any warranty claims in respect of any service rendered prior to the Closing by or on behalf of the Seller Group or any predecessor of the Seller Group which work has not been completed.

(b) Except as set forth in Part 4.24 of the Disclosure Letter, in the past two years, there has been no single claim, or series of claims based on the same alleged underlying facts or defects, against any member of the Seller Group in excess of $100,000, against or involving the Seller Group.

4.25 Books and Records; Bank Accounts.

(a) The minute books of the Seller Group, all of which have been made available to Buyer, contain current Organizational Documents and accurate and complete, in all material respects, records of all meetings held, and corporate action taken by, the shareholders or members, as applicable, the board of directors and boards of managers, as applicable, and committees of the board of directors and boards of managers, as applicable, of the Seller Group. At the Closing, all of those books and records will be in the possession of the Seller Group.

(b) Part 4.25(b) of the Disclosure Letter lists the names, account numbers and locations of all banks and other financial institutions of which the Seller Group has any accounts or safe deposit boxes, and the names of all Persons authorized to draft or have access to any such accounts.

4.26 Relationship with Related Persons. Except for Sellers' ownership in Nordic Land, the Seller Group, MLBL, LLC, Nordic Investments, LLLP and as otherwise set forth in Part 4.26 of the Disclosure Letter, no Seller or any Affiliate or immediate family member of any Seller has any interest in any property (whether real, personal, or mixed and whether tangible or intangible), used in or by the Seller Group's businesses. Except for Sellers' ownership in Nordic Land, Nordic Land's interest in the LLC Group, the Seller Group, MLBL, LLC, Nordic Investments, LLLP and as otherwise set forth in Part 4.26 of the Disclosure Letter, no Seller or any Affiliate or immediate family member of any Seller owns (of record or as a beneficial owner) an equity interest or any other financial or profit interest in, a Person that has (i) has current business dealings or a current financial interest in any on-going transaction with the Seller Group or (ii) engaged in competition with the Seller Group with respect to any line of products or services of the Seller Group (a "Competing Business") except for less than five percent of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Part 4.26 of the Disclosure Letter, no Seller or Affiliate or immediate family member of any Seller has, to the Knowledge of Sellers, any claim or right against Nordic Land or the Seller Group.

4.27 Disclosure. To the Knowledge of Sellers, no representation, warranty or other statement made by Sellers in Section 4 of this Agreement, as qualified by the Disclosure Letter, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make that representation, warranty or statement made, in the light of the circumstances under which it was made, not misleading.

4.28 Brokers or Finders. Except for Greene Holcomb & Fisher LLC, no Seller nor any member of the Seller Group has incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement. Sellers shall be solely responsible for the payment of any brokerage or other fees payable to Greene Holcomb & Fisher LLC and shall indemnify Buyer from any claim for such fees.

Other than the representations and warranties set forth in this Section 4, neither Nordic Land nor the Sellers make, and each further disclaims, any other representations and warranties. Buyer is not relying on any representations or warranties, or any other information or facts outside those set forth in this Agreement and the Related Agreements in making its decision to proceed with the execution of this

Agreement and the Contemplated Transactions. Neither Nordic Land nor the Sellers make any representations or warranties regarding the future results, prospects or revenue of the Seller Group.

5. REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers, on the date hereof and as of the Closing Date, as follows:

5.1 Organization and Good Standing. Buyer is a corporation duly organized and validly existing under the laws of the State of Indiana.

5.2 Authority; No Conflict; Consents.

(a) This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Related Agreements to which Buyer is a party, such Related Agreements will constitute the legal, valid, and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms. Buyer has the absolute and unrestricted right, power, and authority to execute and deliver this Agreement and the Related Agreements to which it is a party and to perform its obligations under this Agreement and such Related Agreements. This Agreement, the Related Agreements to which Buyer is a party, and the Contemplated Transactions have been duly authorized by all necessary corporate action on the part of Buyer.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay, or otherwise interfere with any of the Contemplated Transactions pursuant to: (i) any provision of Buyer's Organizational Documents; (ii) any resolution adopted by the board of directors or the stockholders of Buyer; (iii) any Legal Requirement or Order to which Buyer may be subject; or (iv) any Contract to which Buyer is a party or by which Buyer may be bound.

5.3 Certain Proceedings. There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Contemplated Transactions. To Buyer's Knowledge, no such Proceeding has been threatened.

5.4 Investment Intent. Buyer is acquiring the Equity Interests for its own account for investment purposes only and not with a view to any public distribution thereof or with any intention of selling, distributing or otherwise disposing of the Equity Interests in a manner that would violate the registration requirements of the Securities Act.

5.5 Brokers or Finders. Buyer and its Representatives have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement.

6. INTENTIONALLY BLANK

7. POST-CLOSING COVENANTS

7.1 Tax Matters.

(a) Transfer Taxes. All excise, sales, use, transfer (including stock transfer, real property transfer or gains), stamps, documentary, filing, recordation and other similar Taxes, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties (the "Transfer Taxes") resulting under applicable Tax Legal Requirements from the transfer of the Equity Interests pursuant to this Agreement or the Contemplated Transactions shall be borne by Buyer.

(b) Responsibility for Income Tax Returns. Sellers and Nordic Land shall cause to be prepared on behalf of the Seller Group all Tax Returns and any other filings that any member of the Seller Group is required to file with respect to federal and state income or franchise Taxes accruing during a Taxable period ending on or before the Closing Date (each, a "Pre-Closing Tax Period") or for any Taxable period that includes (but does not end on) the Closing Date (a "Straddle Period"), on a basis consistent with this Agreement. Such Tax Returns shall be prepared in consultation with and subject to the reasonable advance review of Buyer; and Sellers and Nordic Land shall, at least thirty (30) business days before the respective due dates (as may be extended by the applicable member of the Seller Group) for filing such Tax Returns, deliver such Tax Returns to Buyer for signing and Buyer shall timely file them on behalf of the applicable member of the Seller Group. Such Tax Returns shall include without limitation a federal income Tax return of Minnesota Limited for the Taxable period ending on the Closing Date for the "S short year" (within the meaning of Section 1362(e)(1)(A) of the Code, as modified by Section 1.338(h)(10)-1(d)(3) of the Treasury Regulations). Such Taxes, Tax Returns and filings for each Pre-Closing Tax Period shall be determined by closing the Seller Group's books and records as of and including the Closing Date, and the Parties shall make all elections to cause that result, including an election under Section 1362(e)(3) of the Code.

(c) Filing of Other Tax Returns. Except for the Tax Returns to be prepared by Sellers and Nordic Land under subsection (b) above, Buyer shall prepare and file or shall cause to be prepared and filed all Tax Returns that are required under applicable Legal Requirements to be filed after the Closing Date by or with respect to each member of the Seller Group or in respect of its business, assets or operations.

(d) Cooperation on Tax Matters.

(i) The Parties and their respective Affiliates shall cooperate in the preparation of all Tax Returns for any Taxable periods for which one party could reasonably require the assistance of the other party in obtaining any necessary information and any Proceeding with respect to Taxes of any member of the Seller Group. Such cooperation shall include, but not be limited to: (A) timely signing and delivering such certificates or forms as may be reasonably necessary or appropriate to establish an exemption from (or otherwise reduce), or file Tax Returns or other reports with respect to, Transfer Taxes; (B) furnishing prior years' Tax Returns or Tax Return preparation packages to the extent related to any member of the Seller Group and illustrating previous reporting practices or containing historical information relevant to the preparation of such Tax Returns; and (C) furnishing such other information within such Party's possession, as reasonably requested by the Party filing such Tax Returns, or in the case of Sellers and Nordic Land, information for their Tax Returns that relate to the Seller Group, as is relevant to their preparation, and the provision of other records and information reasonably relevant to any Proceeding. Such cooperation and information also shall include without limitation promptly forwarding copies of appropriate notices and forms or other communications received from or sent to any applicable Governmental Body responsible for the imposition of Taxes (a "Taxing Authority") that relate to any member of the Seller Group; and providing copies of all relevant Tax Returns to the extent related to any member of the Seller Group together with the applicable schedules and related workpapers, documents relating to rulings or other determinations by any Taxing Authority, and records concerning the ownership and Tax basis of property, which the requested Party may possess. The Parties and their respective Affiliates shall make their respective Representatives and facilities available on a mutually convenient basis to explain any documents or information provided hereunder. Each of the Parties further agrees upon reasonable request to provide to any other Party all information that the requesting Party may be required to report pursuant to Section 6043 of the Code and all Treasury Regulations promulgated thereunder.

(ii) Buyer shall have the sole right to represent the Seller Group's interests in any audit, examination, claims, assessments, or similar events by any Taxing Authority ("Tax Matters") relating to Taxable periods ending after the Closing Date and to employ counsel of its choice at its sole expense; provided, however, that in the case of a Straddle Period, (A) Sellers and Nordic Land shall be entitled to participate at their expense in any Tax Matter relating in any part to Taxes attributable to such Taxable period; and (B) to the extent a Tax Matter could increase the Tax liability of any of the Sellers or Nordic Land for such period, Buyer shall settle any issue only with the consent of such Seller or Nordic Land, as applicable, which consent shall not be unreasonably withheld, conditioned or delayed. Buyer will keep Sellers and Nordic Land reasonably informed with respect to the commencement, status and nature of any Tax Matter relating to a Straddle Period.

(iii) Sellers and Nordic Land shall have the sole right to represent the Seller Group's interests in any Tax Matters relating to Pre-Closing Tax Periods and to employ counsel of their choice at their sole expense; provided, however, that (A) Buyer shall be entitled to participate at its expense in any Tax Matter relating in any part to Taxes attributable to such Taxable period; and (B) to the extent any such Tax Matter could increase the Tax liability of Buyer or any member of the Seller Group for any later Taxable period, Sellers and Nordic Land shall settle any issue only with the consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. Sellers and Nordic Land will keep Buyer reasonably informed with respect to the commencement, status and nature of any Tax Matter relating to a Pre-Closing Tax Period.

(e) Section 338(h)(10) Election.

(i) Requesting, Making and Preserving the Election. Sellers and Buyer shall, upon the written request of Buyer (the "Election Request"), jointly make the election provided for by Section 338(h)(10) of the Code and Section 1.338(h)(10)-1 of the Treasury Regulations and any comparable election under state or local Tax laws, with respect to the purchase and sale of the stock of Minnesota Limited hereunder (collectively, the "338(h)(10) Election"). If Buyer decides, in its sole discretion, to request the 338(h)(10) Election, its Election Request shall be made to Sellers at any time on or after the date this Agreement is executed and before the 15th day of the third month beginning after the month in which the Closing occurs. Within thirty (30) days after the Aggregate Consideration and Allocation (as defined below) are finally determined under the following paragraph (ii), Buyer shall prepare and deliver to Sellers a completed Form 8023 for review by Sellers. Within thirty (30) days after such delivery, and in no event later than the due date for filing the 338(h)(10) Election with the Internal Revenue Service (the 15th day of the ninth month beginning after the month in which the Closing occurs), each of Buyer and Sellers shall sign such Form 8023 and furnish a signed copy to the other Party. Moreover, Buyer and Sellers shall cooperate with each other to take all other actions, at Buyer's expense, necessary and appropriate (including filing such additional forms, returns, elections, schedules and other documents as may be required) to effect and preserve a timely 338(h)(10) Election in accordance with the provisions of Section 1.338(h)(10)-1 of the Treasury Regulations (or any comparable provisions of state or local Tax Legal Requirements) or any successor provisions.

(ii) Determination of Aggregate Consideration and Allocation. Within 60 days after Buyer delivers any Election Request, Sellers and Buyer shall act together in good faith to (A) determine and agree upon the Aggregate Consideration (in accordance with Sections 1.338(h)(10)-1(d)(3) and 1.338-4 of the Treasury Regulations) and (B) determine and agree upon the proper allocations of the Aggregate Consideration among the assets of Minnesota Limited (in accordance with Code Section 338(b)(5) and the Treasury Regulations promulgated thereunder); provided, however, notwithstanding the foregoing, Buyer shall use its best efforts (i) to have the Aggregate Consideration equal to the Purchase Price minus $16,596,603.01 (which amount is being paid to Nordic Land Company) and (ii) to have the allocation as contemplated by subsection (B) allocated pursuant to Schedule 7.1(e)(ii) (the "Allocation"). In addition, if any asset of the Seller Group has been expensed and not previously capitalized, such asset shall not be allocated any portion of the Purchase Price. In the event Sellers and Buyer fail to agree on the

Aggregate Consideration and the Allocation, all such unresolved matters shall be submitted for resolution, as soon as practicable, to the Final Accounting Firm for final determination. The determinations of the Final Accounting Firm as to all such unresolved matters shall be final and binding on Sellers and Buyer. Sellers and Buyer shall each bear an equal portion of the costs and expenses of the Final Accounting Firm. Sellers and Buyer shall (A) be bound by such determination and such allocation for purposes of determining any Taxes, (B) prepare and file their respective Tax Returns (including without limitation Tax Returns of Minnesota Limited) on a basis consistent with such determination of the Aggregate Consideration and such Allocation (Minnesota Limited's preparation and filing of any such Tax Returns shall be on an accrual basis and subject to Sellers' approval, which approval shall not be unreasonably withheld, conditioned or delayed), and (C) take no position inconsistent with such determination and Allocation on any applicable Tax Return, in any Proceeding before any Taxing Authority or otherwise, except as may be required by applicable Legal Requirements. Buyer shall pay all out-of-pocket costs directly related to the preparation of Form 8023.

(iii) Section 338 Tax Claim. In the event that any of the Allocation, Aggregate Consideration, or the amount of Taxable gain or loss resulting therefrom is disputed by any Taxing Authority (a "Section 338 Tax Claim"), the Party receiving notice of the dispute shall promptly notify the other Parties. Sellers and Buyer shall jointly control all Proceedings taken concerning any such Section 338 Tax Claim. In no event shall either Buyer or Sellers settle or otherwise compromise any Section 338 Tax Claim without the others' prior written consent, which shall not be unreasonably withheld, conditioned or delayed. Sellers and Buyer shall cooperate with each other in contesting such Section 338 Tax Claim, which cooperation shall include, without limitation, the reasonable retention and (upon Sellers' request) the provision to the other party of records and information that are relevant to such Section 338 Tax Claim; and making employees, accountants or other agents available to provide additional information or explanation of any material provided hereunder or to testify at Proceedings relating to such Section 338 Tax Claim, all at the expense of Buyer, except that no party hereto shall be compensated for its or their time or the time of anyone employed by it or them on a full-time basis.

7.2 Covenants regarding Buyer's Parents and Affiliates. Sellers hereby acknowledge and agree that their Knowledge of the Contemplated Transactions may be considered material, non-public information, and that trading on the basis of material, non-public information, or insider trading, or otherwise using such information for their personal gain, is prohibited under federal securities laws. For a period of ninety (90) days after the Closing, neither Seller shall acquire or enter into any Contract to acquire any securities or other equity or ownership interest in, or control, any Parent or Affiliate of Buyer that is publicly traded.

7.3 Confidential Information. Each Seller acknowledges and agrees that the Confidential Information of the Seller Group is an asset which Buyer will acquire pursuant to this Agreement. Each Seller agrees to maintain the confidentiality of, and refrain from using or disclosing to any Person, all Confidential Information, except to the extent disclosure of any such information is required by Legal Requirements. Confidential Information shall cease to be such when it is in the public domain through no wrongful act on the part of any Seller or any of their respective Affiliates or Representatives.

7.4 Seller Release.

(a) Anything contained herein to the contrary notwithstanding, effective as of the Closing Date, in consideration of the mutual covenants and agreements contained herein, including, without limitation, the Purchase Price to be directly or indirectly received by the Sellers, the Sellers and Nordic Land hereby irrevocably release and forever discharge the Seller Group (for the benefit of the Seller Group, and their past and present directors, managers, officers, employees and agents, and each of their respective successors, heirs, assigns, executors and administrators (collectively, the "Released Persons")) of and from all manner of action and actions, cause and causes of action, suits, rights, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, omissions, promises, variances, trespasses, losses, judgments, executions, claims and demands whatsoever, in law or in equity which the Sellers ever had, now have or which it hereafter can, shall or may have, against the Released Persons, whether known or unknown, suspected or unsuspected, matured or unmatured, fixed or contingent, for, upon or by reason of any matter or cause arising at any time prior to the Closing, other than with respect to the rights under this Agreement and the Related Documents and rights related to compensation and benefits through the Closing Date and any rights under Minnesota Statutes 302A.521 or 322B.699, or any statute providing similar benefits or rights.

(b) Each Seller and Nordic Land represents and warrants to the Released Persons that such Seller or Nordic Land has not assigned any such claim set forth in Section 7.4(a).

(c) Anything contained herein to the contrary notwithstanding, effective as of the Closing Date, in consideration of the mutual covenants and agreements contained herein, each member of the Seller Group hereby irrevocably release and forever discharge each Seller and Nordic Land of and from all manner of action and actions, cause and causes of action, suits, rights, debts, dues, sums of money, accounts, bonds, bills, covenants, contracts, controversies, omissions, promises, variances, trespasses, losses, judgments, executions, claims and demands whatsoever, in law or in equity which any member of the Seller Group ever had, now have or which it hereafter can, shall or may have, against any Seller and/or Nordic Land, whether known or unknown, suspected or unsuspected, matured or unmatured, fixed or contingent, for, upon or by reason of any matter or cause arising at any time on or prior to the Closing, other than with respect to the rights under this Agreement and the Related Documents.

7.5 WARN Act. It is the present intent of the Parties that the Contemplated Transactions will not violate the WARN Act, and Buyer shall not take, or cause to be taken, any actions within six months following Closing that will violate the WARN Act with respect to the Seller Group.

7.6 Insurance.

(a) If any of the Contractors Professional Liability Protection Policy, Contractors Pollution Liability Policy or Employment Protection Liability Policy that are maintained by the Seller Group and in effect immediately prior to Closing are terminated, expire or are not renewed for any or no reason during the period ending (i) with respect to the Contractors Pollution Liability Policy, five years following the Closing Date and (ii) with respect to the Contractors Professional Liability Protection Policy and Employment Practices Liability Policy, three years following the Closing Date, Buyer and the Seller Group, at their sole cost and expense, shall cause to be maintained in effect an extended reporting period insurance policy with coverage limits of not less than such limits in effect immediately prior to Closing ("Comparable Coverage") for each such policy for a period of at least (i) with respect to the Contractors Pollution Liability Policy, five years from the Closing Date and (ii) with respect to the Contractors Professional Liability Protection Policy and Employment Protection Liability Policy, three years from the Closing Date (the "Comparable Coverage Period"). The Comparable Coverage shall be non-cancelable upon payment of the applicable premium.

(b) In addition to the insurance required to be maintained by Buyer and the Seller Group in subsection (a) above, during the fourteen month period following the Closing Date, Buyer and Seller Group shall maintain insurance coverage for the Seller Group with protections and limits which are at least as comprehensive and protective as those policies maintained by the Seller Group prior to the Closing and disclosed to Buyer on Part 4.18 of the Disclosure Letter.

7.7 Workers Compensation Insurance. The Seller Group's workers compensation insurance through Travelers Insurance is a paid loss program which is secured by a letter of credit written by M&I Bank for the benefit of Minnesota Limited in the aggregate amount of $1,335,000 (the "L/C"). The collateral securing the Seller Group's line of credit with M&I Bank serves as collateral for the L/C, which line of credit will be terminated as of the Closing Date. Buyer acknowledges and agrees that it must supply replacement collateral for the L/C effective as of the Closing Date.

7.8 Labor Matters. It is the present intent of the Parties that (a) none of the Contemplated Transactions will interrupt, discontinue, or otherwise interfere with the membership of any member of the Seller Group in any multi-employer bargaining unit; (b) none of the Contemplated Transactions will cause or require any entity in the Seller Group to withdraw recognition of any labor organization that represents such entity's employees; (c) none of the Contemplated Transactions will cause or require any member of the Seller Group to cease abiding by any collective bargaining agreement to which it is currently a party. In no event shall either of the Sellers nor Nordic Land be responsible or liable for any Multiemployer Plan withdrawal liability that is incurred (a) at any time by Buyer, or (b) by any member of the Seller Group with respect to a withdrawal occurring on or after the Closing Date.

7.9 Nordic Land Superior, LLC.

(a) Background. Nordic Superior is a wholly-owned subsidiary of Nordic Land. Nordic Superior owns real property located at 3116 James Day Avenue, Superior, Wisconsin 54888, tax parcel identification number: 02-802-07114-01 and 02-802-07114-00, County of Douglas, State of Wisconsin, described as follows: Lot Thirteen (13), and the South 210.50 feet of Lot Fourteen (14), Block Two (2), Superior Industrial Park, in the City of Superior, Douglas County, Wisconsin (the "Property"). Prior to the Closing, Nordic Superior leased the Property to Minnesota Limited pursuant to a Lease Agreement (3116 James Day Avenue, Superior Facility) dated as of January 1, 2005. The Property was contaminated with Hazardous Materials prior to the date Nordic Superior acquired the Property and Minnesota Limited leased the Property. After remediation efforts, the Wisconsin Department of Commerce issued a final closure letter dated August 24, 2004. In connection with the Contemplated Transactions, Buyer performed Phase I and Phase II tests on the Property, the results of which are set forth in that certain Phase I Environmental Site Assessment conducted by American Engineering Testing, Inc. dated November 24, 2010 and that certain Report of Phase II Environmental Site Assessment conducted by American Environmental Testing, Inc. dated December 23, 2010 (collectively, the "Reports"). As a result of the Reports, Nordic Superior and Minnesota Limited filed *Form 4400-237 Technical Assistance and Environmental Liability Clarification Request* dated January 1, 2011 with the State of Wisconsin Department of Natural Resources ("WDNR"). In response thereto, Nordic Superior and Minnesota Limited received a letter dated February 14, 2011, from the WDNR relating to the legal responsibilities associated with the reported contamination at the Property and a letter dated February 14, 2011, from the WDNR relating to the Department of Natural Resources' Remediation and Redevelopment program associated with the reported contamination at the Property.

(b) Voluntary Party Liability Exemption ("VPLE"). Nordic Superior has filed a separate application on behalf of each of Nordic Superior and Minnesota Limited to participate in the State of Wisconsin Voluntary Party Liability Exemption ("VPLE") program (the "Program") (the Program is authorized by Wisconsin Statute Section 292.15) by filing *Form 4400-178 Voluntary Party Liability Exemption Application* dated February 16, 2011 with the WDNR. Sellers shall use their reasonable commercial efforts to, at their sole expense, obtain a Certificate of Completion from the WDNR under the procedures and requirements established by law and practice for the Program for each of Nordic Superior and Minnesota Limited within a reasonable time following the Closing Date. Nordic Superior and Sellers shall, to the extent not independently provided to Minnesota Limited by the WDNR, provide to Minnesota Limited copies of all reports, submissions, letters, and correspondence to and from the WDNR as soon as practicable after receipt or transmittal thereof. Upon receipt of a Certificate of Completion from the WDNR with Minnesota Limited named on such Certificate, subparagraph (ii) of the definition of Excluded Liabilities shall be deleted; provided, however, that the representations and warranties set forth in Section 4.19, subject to the Disclosure Letter, shall continue to apply to the Property as contemplated by this Agreement. Buyer shall cause Minnesota Limited to cooperate with Sellers in connection with obtaining the Certificates of Completion contemplated by this Section. Upon obtaining the Certificates of Completion, Sellers shall have no indemnification obligations whatsoever with respect to any Proceedings by the WDNR or any other Government Body upon which the Certificate of Completion naming Minnesota Limited as a recipient and beneficiary thereof is binding.

7.10 Greater Minnesota Transmission LLC Settlement Stipulation and Order. Minnesota Limited commenced an action against Greater Minnesota Transmission LLC and certain other parties in Minnesota state court, First Judicial District, Dakota County, Minnesota, with a court file number of 19-HA-CV-08-4937, pursuant to which the parties to such action entered into that certain Settlement Stipulation and Order (the "GMT Lawsuit"). The account receivable associated with the claim underlying the GMT Lawsuit has been written off the 2010 financial statements of Minnesota Limited. At the Closing, Minnesota Limited shall assign all rights and obligations with respect to the GMT Lawsuit (including, without limitation, the rights associated with such written off account receivable) to the Sellers or an entity designated by Sellers.

7.11 LLC Agreements and Shareholder Agreement. Effective immediately before the Closing, the Sellers hereby terminate the LLC Agreements and that certain Shareholder Control and Buy and Sell Agreement between the Sellers dated January 10, 2007.

7.12 Intentionally blank.

7.13 Post Closing True-ups.

(a) Accounts Receivable. During the fourteen (14) month period following the Closing Date (the "Collection Period"), Buyer and the Seller Group shall use commercially reasonable efforts to collect the accounts receivable of the Seller Group that existed on the Closing Date and reflected on the Preliminary Net Working Capital Schedule (as updated by the schedules used to calculate the Closing Net Working Capital) ("Accounts Receivable"); provided, however, that neither Buyer nor the Seller Group shall be obligated to resort to litigation or arbitration, nor shall the Seller Group or Buyer turn any Accounts Receivable over to a collection agency. Any payments received by the Seller Group after the Closing Date from a third party who has Accounts Receivable as of the Closing Date shall be applied to such Accounts Receivable in the order that such Accounts Receivable were accrued. After the expiration of the Collection Period, Buyer shall determine the amount of the Accounts Receivable that remain outstanding (the "Outstanding Accounts") and shall provide written notice to the Sellers' Representative of the Outstanding Accounts along with reasonably available records supporting such conclusion (collectively, the "A/R Details"). The Sellers' Representative shall have fifteen (15) days to review the A/R Details; if the Sellers' Representative disputes the A/R Details, it shall provide written notice to Buyer within two business days following the end of the foregoing review period. Any disputes shall be resolved by the Final Accounting Firm consistent with the procedures set forth in Section 1.4. That amount, if any, by which the Outstanding Accounts is more than one percent of the Accounts Receivable amount shall be paid by Sellers to Buyer within two (2) business days following any final determination of such amount. If Sellers pay any amount to Buyer for such Outstanding Accounts, then the Seller Group shall assign all such Outstanding Accounts to Sellers. If the Seller Group receives payment for any of the Outstanding Accounts after the determination of the Outstanding Accounts, then, if Sellers have paid Buyer under this Section, such payment shall be paid to Sellers within two (2) business days and, if Sellers have not so paid Buyer, the Outstanding Accounts amount shall be reduced by such collected amount. The obligations under this Section with respect to Accounts Receivable and Outstanding Accounts shall not be qualified or changed as a result of any disclosures made on the Disclosure Letter.

(b) Workers Compensation. Within fifteen days following the Collection Period, Buyer shall provide written notice to Sellers' Representative that shall include (i) the amounts actually paid as of the last day of the Collection Period by the Seller Group ("Paid Workers Compensation Claims") on the workers compensation claims that existed as of the Closing Date and were reflected in the Closing Net Working Capital (the "Original WC Reserve"), (ii) the reserve for workers compensation claims as of the last day of the Collection Period by the Seller Group that is recommended by Travelers Insurance (the "New WC Reserve"), and (iii) supporting documents to reflect such paid amounts and New WC Reserve amount (collectively, "Workers Compensation Details"). The Sellers' Representative shall have fifteen (15) days to review the Workers Compensation Details; if the Sellers' Representative disputes the Workers Compensation Details, it shall provide written notice to Buyer within two business days following the end of the foregoing review period. Any disputes shall be resolved by the Final Accounting Firm consistent with the procedures set forth in Section 1.4. If the sum of the Paid Workers Compensation Claims and the New WC Reserve are greater than the Original WC Reserve, Sellers shall pay to the Seller Group an amount equal to such difference. If the Original WC Reserve is greater than the sum of the Paid Workers Compensation Claims and the New WC Reserve, then Buyer or the Seller Group shall pay to Sellers an amount equal to such difference.

7.14 Accrued Bonuses. To the extent any bonuses or similar compensation is included within the final Closing Net Working Capital, then the Sellers' Representative shall have the sole and exclusive right to determine how and to whom such amounts are paid.

7.15 Audited Financial Statements. As of the date hereof, the Seller Group is in the process of conducting their audit of the financial statements prepared by company management for the annual period ending December 31, 2010 (including the notes thereto, balance sheets and related statements of operations, retained earnings and cash flows, the "Audited 2010 Financial Statement"). Buyer acknowledges and agrees that each of Sellers' Representatives, on behalf of the Sellers, and the accountants that are preparing the Audited 2010 Financial Statement, shall have the right to access materials of the Seller Group that are reasonably necessary to conduct their audit of the Audited 2010 Financial Statement. The Audited 2010 Financial Statement shall be the sole property of the Seller Group; provided, however, that the Sellers shall be entitled to retain a copy of the Audited 2010 Financial Statement.

8. INTENTIONALLY BLANK

9. INDEMNIFICATION; REMEDIES

9.1 Survival. Except for the representations and warranties underlying the Exception Items, all representations, warranties, and agreements in this Agreement will survive the Closing until and shall expire 14 months from the Closing Date; provided, however, those agreements that by their terms are intended to be performed after such 14 month period shall survive beyond such 14 month period. The representations and warranties underlying each Exception Item shall survive until the last date of the indemnification period for each such Exception Item as set forth in Section 9.4(d).

9.2 Indemnification by Sellers. Sellers will Severally (except for any Damages reimbursed from the Escrow Account, which shall be deemed a joint and several and obligation) indemnify and hold harmless Buyer, the Seller Group, and their officers and directors, and Affiliates (collectively, the "Indemnified Persons") for, and will pay to the Indemnified Persons the amount of, any out-of-pocket loss, liability, claim, damage, expense (including reasonable costs of investigation and defense and reasonable attorneys' fees), (in all cases, excluding incidental, special and consequential damages or damages related to shareholder claims), whether or not involving a third-party claim (collectively, "Damages"), arising or resulting from:

(a) any breach of any representation or warranty made by any Seller in Section 4 of this Agreement, as qualified by the Disclosure Letter; and/or

(b) any breach by any Seller of any covenant or agreement of any Seller in this Agreement or the Escrow Agreement; and/or

(c) any and all Excluded Liabilities.

For purposes of this Section 9, "Severally" shall mean that each Seller shall be responsible for one-half of the Damages as a result of the indemnification obligations described herein, and the inclusion of Nordic Land as a party to this Agreement or the payment of any amount of the Purchase Price to Nordic Land shall be ignored for purposes of determining the proportionate responsibility for indemnification. Except to the extent specifically set forth for any Exception Item during the applicable Exception Period in Section 9.4(d) for an Exception Item, and Sellers' payment obligations under Sections 1.4(b) (Payments), 7.1 (Tax Matters) and 7.13 (Post Closing True-Ups) ("Sellers Post Closing Payment Obligations"), (i) any and all amounts payable by the Sellers pursuant to this Section 9.2 shall be reimbursed to Buyer, in cash, only out of such account established pursuant to the Escrow Agreement pursuant to the rights and procedures set forth herein and in the Escrow Agreement; (ii) the existence of any escrowed funds under the Escrow Agreement is the exclusive remedy of Buyer under this Agreement and is the limit of the amount of any allowable claims by Buyer pursuant to this Agreement or the Escrow Agreement for Damages; and (iii) Sellers will not be individually or collectively responsible or liable for any indemnification claims under this Section 9 or any other claims under this Agreement or the Escrow Agreement.

9.3 Indemnification by Buyer. Buyer and the Seller Group will, jointly and severally, indemnify and hold harmless Sellers and will pay to Sellers the amount of any Damages arising or resulting from:

(a) any breach of any representation or warranty made by Buyer or the Seller Group in this Agreement; and/or

(b) any breach by Buyer of any covenant or agreement of Buyer or the Seller Group in this Agreement or the Escrow Agreement; and/or

(c) any personal guaranties, performance or other bonds or similar instruments executed by either Seller on behalf or for the benefit of any member of the Seller Group.

Either Seller, or both, shall have the right to assert all claims that Nordic Land has under this Agreement as if Nordic Land were a "Seller" or on its own behalf.

9.4 Limitations - Sellers.

(a) Time. Except as set forth in Section 9.4(d), Sellers will have no liability for indemnification under Section 9.2 or any other liability to Buyer or the Indemnified Persons under this Agreement or the Escrow Agreement unless on or before 14 months after the Closing Date ("Indemnification Termination Date") Buyer notifies Sellers of a claim indemnifiable under Section 9.2, which notice shall specify in reasonable detail the facts and circumstances giving rise to such claim.

(b) Insurance. Concurrently with making any claims for indemnification under this Section 9 against Sellers, Buyer and the Seller Group shall, to the extent such Damages are likely to be insurable, submit and tender all Damages to the applicable insurance carriers. Liability for indemnification shall be limited to amounts not covered by insurance with respect to such claims. The Seller Group, Buyer, each Indemnified Person and their Affiliates (individually, an "Insured Party" and collectively, "Insured Parties") shall have the obligation to make any and all insurance claims under all policies held by the Insured Parties or under which the Insured Parties are beneficiaries. No Insured Party shall have an obligation to sue its insurance carrier or any other third party to collect upon such insurance payments, provided, however, at the request of either Seller, such Insured Party shall, if assignable, assign its rights to such insurance claim to such Seller (or its assigns).

(c) Amount. Except as set forth in Section 9.4(d), Sellers will have no liability for indemnification under Section 9.2 until the aggregate amount of such claims exceeds Seven Hundred Thousand Dollars ($700,000) (the "Basket") and then only for the amount by which such claims exceed the Basket. Any indemnifiable claim pursuant to which insurance amounts are obtained under Section 9.4(b) shall not be applied to the Basket. Sellers' maximum liability for indemnification under Section 9.2 shall not exceed as much of the Escrow Amount remaining in the Escrow Account from time to time (the "Maximum Amount").

(d) Exception Items. Notwithstanding Sections 9.4(a) and (c), the limits as to time, Maximum Amount and Basket for the following claims shall be adjusted, if any, to the extent set forth in this Section 9.4(d) (the "Exception Items"):

(i) claims for breaches of representations and warranties contained in Section 4.12 (Employee Benefits) shall survive until the three year anniversary of the Closing Date and the Maximum Amount for indemnification under Section 9.2 for such Section shall not exceed Sixteen Million Dollars ($16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise);

(ii) claims pursuant to Section 7.1(e) and for breaches of representations and warranties contained in Section 4.10 (Taxes) shall survive until the three (3) year anniversary of the Closing Date and the Maximum Amount for indemnification under Section 9.2 for such Section shall not exceed Sixteen Million Dollars ($16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise);

(iii) claims for breaches of representations and warranties contained in Section 4.19 (Environmental Matters) (excluding claims to the extent related to Occupational Health and Safety Laws) shall survive until the five year anniversary of the Closing Date and the Maximum Amount for indemnification under Section 9.2 for such Section shall not exceed the following, as applicable: (A) during the three year period following the Closing Date, Sixteen Million Dollars ($16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise); and (B) during the two year period following the expiration of the foregoing three year period, Twelve Million Dollars ($12,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise); provided, however, that in the event that Buyer or any Indemnified Person has made a good faith claim for breach of representations and warranties contained in Section 4.19 (Environmental Matters) (excluding claims to the extent related to Occupational Health and Safety Laws) prior to the expiration of the foregoing three year period, and Damages related to such good faith claim or claims in excess of Twelve Million Dollars ($12,000,000) are ultimately awarded to Buyer or an Indemnified Person (whether before or after the expiration of the foregoing three year period), the Maximum Amount for the two year period following the expiration of the foregoing three year period shall remain at Sixteen Million Dollars ($16,000,000) less all amounts paid to or reserved for all Indemnified Persons (from the Escrow Deposit or otherwise);

(iv) claims arising from Sellers deliberate and knowing breach of a representation and warranty contained in Section 4 of this Agreement, with the intent to deprive Buyer of its rights under this Agreement or harm Buyer shall survive until the five year anniversary of the Closing Date and Sellers' liability for indemnification under Section 9.2 for such claims shall not be subject to the Maximum Amount nor shall the Basket apply to such claims; and

(v) claims for breaches of representations and warranties contained in the first, third and seventh sentence of Section 4.3(b) (Capitalization) and Excluded Liabilities shall survive the Indemnification Termination Date indefinitely, and Sellers' liability for indemnification under Section 9.2 for such claims shall not be subject to the Maximum Amount nor shall the Basket apply to such claims.

To the extent not specifically changed by this Section 9.4(d), all limits (including, without limitation, time, Basket and Maximum Amount) on each and all of the foregoing claims shall be controlled by Sections 9.4(a) and (c). The period of time an Exception Item extends beyond the Indemnification Termination Date shall be referred to as the "Exception Period" for such item. Notwithstanding the foregoing, any and all claims for Damages prior to the Indemnification Termination Date shall first be made to and, as applicable, paid from the Escrow Account.

9.5 Limitations - Buyer. Neither Buyer nor the Seller Group will have any liability for indemnification for breaches of representations or warranties contained in Section 5 unless on or before 14 months following the Closing Date, a Seller notifies Buyer of a claim with respect thereto. All other claims for indemnification against either of Buyer or any member of the Seller Group shall survive the Closing. All claim notices against Buyer or any member of the Seller Group shall specify in reasonable detail the facts and circumstances giving rise to such claim.

9.6 Procedure for Indemnification -- Third Party Claims.

(a) Promptly after receipt by an indemnified Party of notice of the commencement of any Proceeding against it involving indemnifiable Damages arising under Section 9.2 or Section 9.3 (an "Indemnifiable Proceeding"), such indemnified Party will, if a claim is to be made against an indemnifying Party under such Section, give notice to the indemnifying Party of the commencement of such claim, but the failure to notify the indemnifying Party will not relieve the indemnifying Party of any liability that it may have to any indemnified Party, except to the extent that the indemnifying Party demonstrates that the defense of such action is prejudiced by the indemnified Party's failure to give such notice. Notwithstanding the foregoing, any Tax Matters issue that is also a "Proceeding" shall be handled pursuant to Section 7.1(d).

(b) If any Indemnifiable Proceeding is brought against an indemnified Party, the indemnifying Party whether or not so notified under Section 9.6(a) will be entitled to participate in such Indemnifiable Proceeding and, to the extent that it wishes (unless (i) the indemnifying Party is also a party to such Indemnifiable Proceeding and the indemnified Party determines in good faith that joint representation would be inappropriate, or (ii) the indemnifying Party fails to provide reasonable assurance to the indemnified Party of its financial capacity to defend such Indemnifiable Proceeding), to assume the defense of such Indemnifiable Proceeding with counsel reasonably satisfactory to the indemnified Party. After notice from the indemnifying Party to the indemnified Party of its election to assume the defense of such Indemnifiable Proceeding, the indemnifying Party will not, as long as it diligently conducts such defense, be liable to the indemnified Party under this Section 9 for any fees of other counsel or any other expenses with respect to the defense of such Indemnifiable Proceeding, in each case subsequently incurred by the indemnified Party in connection with the defense of such Indemnifiable Proceeding. The parties further acknowledge and agree that the indemnified Party shall have the right (i) to assume the defense if the indemnifying Party is not diligently conducting such defense, and (ii) to, based on the time-sensitive nature of an Indemnifiable Proceeding, assume the defense on a temporary basis prior to receipt of notice from the indemnifying Party that it intends to assume the defense. If the indemnifying Party assumes the defense of a Indemnifiable Proceeding, (i) no compromise or settlement of such claims may be effected by the indemnifying Party without the indemnified Party's consent, which consent shall not be unreasonably withheld, conditioned or delayed, unless (A) there is no finding or admission of any violation of Legal Requirements or any violation of the rights of any Person and no effect on any other claims that may be made against the indemnified Party, and (B) the sole relief provided is monetary damages that are paid in full by the indemnifying Party; and (ii) the indemnifying Party will have no liability with respect to any compromise or settlement of such claims effected without its consent. If notice is given to an indemnifying Party of the commencement of any Indemnifiable Proceeding and the indemnifying Party does not, within thirty (30) days after the indemnified Party's notice is given, give notice to the indemnified Party of its election to assume the defense of such Indemnifiable Proceeding, the indemnified Party shall have the right to assume the defense of such Indemnifiable Proceeding. The assumption of any defense by an indemnifying Party shall not by itself obligate or bind such indemnifying Party to any indemnification obligation under this Agreement.

(c) Notwithstanding the foregoing, if (i) a Indemnifiable Proceeding is an investigation or audit by a Governmental Body or a criminal lawsuit or (ii) there is a substantial likelihood that a Indemnifiable Proceeding may materially adversely affect an Indemnified Person or its Affiliates other than as a result of monetary damages or mere damage to reputation for which it would be entitled to indemnification under this Agreement, the indemnified Party may, by notice to the indemnifying Party, assume the exclusive right to defend, compromise, or settle such Indemnifiable Proceeding, but the indemnifying Party will not be bound by any determination of a Proceeding so defended or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

9.7 Procedure for Indemnification -- Other Claims. A claim for indemnification for any matter not involving a third-party claim may be asserted by notice to the Party from whom indemnification is sought.

9.8 Exclusive Remedy. From and after the Closing Date, the indemnification obligations of Sellers and Buyer under this Section 9 and any remedies specifically set forth in this Agreement shall constitute the sole and exclusive remedies of the Sellers, each member of the Seller Group, Buyer and each of the Indemnified Persons defined in Section 9.2, and their respective successors and assigns, under each and all of this Agreement and the Related Agreements (except as set forth in the last sentence of this section), and Sellers and Buyer shall not be entitled to any further remedies or claims of any nature whatsoever in respect of this Agreement, the Related Agreements (except as set forth in the last sentence of this section) or the Contemplated Transactions, whether such remedies or claims are based on Legal Requirements, breach of duty, tort, express or implied warranty, contract or otherwise, all of which Sellers and Buyer waive and agree not to assert or pursue; provided, however, that all equitable remedies for injunctive relief and specific performance shall remain available and shall not require an election of remedies. In addition, the parties shall have all remedies available under the Lease Agreement, Non-Competition Agreement and the Employment Agreement.

10. GENERAL PROVISIONS

10.1 Sellers' Representative. Each Seller and Nordic Land irrevocably constitutes and appoints Christopher T. Leines (the "Sellers' Representative") as such Seller's and Nordic Land's true and lawful agent, proxy and attorney-in-fact and agent and authorizes the Sellers' Representative acting for Nordic Land and such Seller and in Nordic Land's and such Seller's name, place and stead, in any and all capacities to do and perform every act and thing required or permitted to be done by Nordic Land or the Sellers or the Sellers' Representative hereunder or otherwise in connection with the agreements and transactions contemplated by this Agreement, as fully to all intents and purposes as such Person might or could do in person. Nordic Land and each Seller, by executing this Agreement, agrees that such agency, proxy and power of attorney are coupled with an interest, and are therefore irrevocable without the mutual consent of the Sellers' Representative and Nordic Land or such Seller and shall survive the death, incapacity, or bankruptcy of such Seller or Nordic Land. The Sellers' Representative shall not have by reason of this Agreement a fiduciary relationship in respect of Nordic Land or any Seller, except in respect of amounts received on behalf of Nordic Land or such Seller. The Buyer shall be entitled to rely on instructions given and information provided by the Sellers' Representative.

10.2 Expenses. Except as otherwise expressly provided in this Agreement and except for the obligation of Buyer to pay all fees and amounts (excluding legal costs in the preparation of such filing) of all parties hereto and the Seller Group under the HSR Act, each Party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of its Representatives.

Sellers will cause the Seller Group to pay as of the Closing all expenses in connection with the preparation, execution and performance of this Agreement and the Contemplated Transactions.

10.3 Public Announcements. Any public announcement or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyer and Sellers mutually determine, unless required by Legal Requirements. Sellers and Buyer will consult with each other concerning the means by which the Seller Group's employees, customers, dealers, suppliers and others will be informed of the Contemplated Transactions and Buyer will have the right to be present for any such communication.

10.4 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a Party may designate by notice to the other Parties):

Sellers or Nordic Land:
Christopher T. Leines, Shareholders' Representative
18640 200th Street
Big Lake, MN 55309
Facsimile No.: (763)-262-7500

with a copy to:
Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Attention: Shawn R. McIntee, Esq.
Facsimile No.: (612) 642-8316

Buyer:
Vectren Infrastructure Services Corporation
8850 Crawfordsville Road
P.O. Box 34141
Indianapolis, Indiana 46234
Attention: Douglas Banning, President
Facsimile No.: (317) 293-8502

with a copy to:
Krieg DeVault LLP
2800 One Indiana Square
Indianapolis, Indiana 46204
Attention: Michael E. Williams, Esq.
Facsimile No.: (317) 636-1507

10.5 Jurisdiction; Service of Process. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement, the Contemplated Transactions or any Related Agreement shall be brought against any of the Parties only in the courts of Hennepin County of the State of Minnesota and, if it has or can acquire jurisdiction, in the United States District Court for the District of Minnesota, and each of the Parties consents to the exclusive jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

10.6 Further Assurances. The Parties agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as the other Party may reasonably request for the purpose of carrying out the intent of this Agreement and the Related Agreements.

10.7 Waiver. Except as otherwise set forth in this Agreement or any Related Agreement, (i) neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the Related Agreements will operate as a waiver of such right, power, or privilege, and (ii) no single or partial exercise of any such right, power, remedy, or privilege will preclude any other or further exercise of such right, power, remedy, or privilege or the exercise of any other right, power, remedy, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the Related Agreements can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of such Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the Related Agreements.

10.8 Entire Agreement and Modification. This Agreement supersedes all prior agreements between the Parties with respect to its subject matter (including the Letter of Intent between Sellers, Miller Pipeline, and Minnesota Limited dated October 19, 2010) and constitutes (along with the Related Agreements) a complete and exclusive statement of the terms of the agreement among the Parties with respect to its subject matter. This Agreement may not be amended except by a writt en agreement executed by the Party to be charged with the amendment.

10.9 Disclosure Letter. The disclosures in the Disclosure Letter are arranged in sections corresponding to the numbered and lettered sections contained in Section 4 of this Agreement, but the disclosures in any section of the Disclosure Letter shall qualify any other section in Section 4 to the extent that it is reasonably apparent from the face of such disclosure that it is or could be relevant to such other section.

10.10 Assignments, Successors, and No Third-Party Rights. No Party may assign any of its rights under this Agreement without the prior written consent of the other Parties, except that Buyer may assign any of its rights under this Agreement to any Affiliate or Subsidiary of Buyer, provided, however, Buyer shall remain liable as "Buyer" under this Agreement if such Affiliate or Subsidiary fails to perform under this Agreement. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon, and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties to this Agreement any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement. This Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the Parties to this Agreement and their successors and permitted assigns.

10.11 Severability. If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

10.12 Section Headings. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement.

10.13 Governing Law. This Agreement will be governed by the laws of the State of Minnesota, without regard to conflicts of laws principles.

10.14 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile transmission or by electronic transmission in Adobe Acrobat format shall be deemed to be their original signatures for any purposes whatsoever.

10.15 Interpretation. In this Agreement, unless a clear contrary intention appears: (i) references to the Seller Group shall include and specifically be applicable to each of Minnesota Limited, Nordic Equipment, Nordic Pipeline, Nordic Bemidji, and Nordic Altamont; (ii) references to the LLC Group shall include and specifically be applicable to each of Nordic Equipment, Nordic Pipeline, Nordic Bemidji, and Nordic Altamont; (iii) the singular number includes the plural number and vice versa; (iv) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement; (v) reference to any gender includes each other gender; (vi) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (vii) reference to any Legal Requirement means such Legal Requirement as in effect at the time applicable by the use of such term; (viii) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof; (ix) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; (x) "or" is used in the inclusive sense of "and/or"; (xi) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; (xii) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto; and (xiii) whenever this Agreement or any Related Agreement addresses the enforceability of a Contract or other right or the right, authority or power of a Person, it shall be deemed qualified as follows: "except as to the effect, if any, of (a) applicable bankruptcy and other similar laws affecting the rights of creditors generally and (b) rules of law and equity governing specific performance, injunctive relief and other equitable remedies."

10.16 Legal Representation of the Parties. This Agreement and each of the Related Agreements were negotiated by the Parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement or any of the Related Agreements to be construed or interpreted against any Party shall not apply to any construction or interpretation hereof. Sellers hereby acknowledge and agree that he or she (i) has read this Agreement and the Related Agreements in their entirety prior to executing them, (ii) understands the provisions and effects of this Agreement and the Related Agreements, and (iii) has consulted with such attorneys, accountants, and other advisors as he or she has deemed appropriate in connection with his or her execution of this Agreement and the Related Agreements.

10.17 Post Closing Obligations. Following the Closing, each member of the Seller Group shall be jointly and severally liable for each and every obligation and liability of Buyer.

[Signature page immediately following.]

IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase Agreement as of the date first written above.

Sellers:

Christopher T. Leines, Individually

Paulette A. Britzius

Paulette A. Britzius, Individually

Nordic Land:

Nordic Land Company, LLC

By:
Christopher T. Leines, President

Buyer:

Vectren Infrastructure Services Corporation

By:__________________________________
Douglas S. Banning, Jr., President

The following signatures are for post Closing obligations:

Minnesota Limited, Inc.

By:__________________________________
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Equipment, LLC

By:__________________________________
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Pipeline Services LLC

By:__________________________________
Douglas S. Banning, Jr., Chief Executive Officer

[SIGNATURE PAGE 1 OF 2 TO PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed and delivered this Purchase Agreement as of the date first written above.

Sellers:

____
Christopher T. Leines, Individually

____
Paulette A. Britzius, Individually

Nordic Land:

Nordic Land Company, LLC

By:______________________________________
Christopher T. Leines, President

Buyer:

Vectren Infrastructure Services Corporation

By: Douglas S Banning
Douglas S. Banning, Jr., President

The following signatures are for post Closing obligations:

Minnesota Limited, Inc.

By: Douglas S Banning
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Equipment, LLC

By: Douglas S Banning
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Pipeline Services LLC

By: Douglas S Banning
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Land Altamont, LLC

By: Douglas S Banning
Douglas S. Banning, Jr., Chief Executive Officer

Nordic Land Bemidji, LLC

By: Douglas S Banning
Douglas S. Banning, Jr., Chief Executive Officer

EXHIBIT A

Definitions

"338(h)(10) Election" has the meaning set forth in Section 7.1(e).

"Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

"Aggregate Consideration" means (a) that portion of the Purchase Price allocated to the Shares, (b) that portion of the liabilities of the Seller Group allocated to Minnesota Limited, and (c) all other items required under Treasury Regulation Section 1.338-4 to be included in the amount realized from the sale of the Shares for federal income Tax purposes pursuant to the 338(h)(10) Election. The determination of Aggregate Consideration shall be made in accordance with Section 7.1(f)(ii).

"Agreement" has the meaning set forth in the first paragraph of this Agreement.

"Allocation" has the meaning set forth in Section 7.1(e).

"Annual Financial Statements" has the meaning set forth in Section 4.4.

"Balance Sheet" has the meaning set forth in Section 4.4.

"Basket" has the meaning set forth in Section 9.4(b).

"Business" has the meaning set forth in the seventh "Whereas" clause.

"Buyer" has the meaning set forth in the first paragraph of this Agreement.

"CERCLA" shall mean the United States Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq*., as amended.

"Cleanup" has the meaning set forth in the definition of Environmental, Health and Safety Liabilities.

"Closing" has the meaning set forth in Section 1.3.

"Closing Date" has the meaning set forth in Section 1.3.

"Closing Date Balance Sheet" has the meaning set forth in Section 1.4(a)(i).

"Closing Net Working Capital" has the meaning set forth in Section 1.4(a)(i).

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Code" means the Internal Revenue Code of 1986 or any successor law, and regulations issued by the IRS pursuant to the Internal Revenue Code or any successor law.

"Competing Business" has the meaning set forth in Section 4.26.

"Confidential Information" means the Seller Group's trade secrets, other Intellectual Property and other information regarding the Seller Group, the Business and the other business operations of the Seller Group, which information: (i) was used in the Business, is confidential and is proprietary to, about or created by the Seller Group (including any of the Seller Group's personnel) for use in the Business; or (ii) is used in the Business as of the date of this Agreement, is confidential and is proprietary to, about or created by the Seller Group (including any of the Seller Group's personnel) for use in the Business. "Confidential Information" does not include any information which is (a) available to the public other than by breach of this Agreement by Sellers, (b) rightfully received by Sellers from a third party without confidential limitation, or (c) independently developed by a Seller without use or knowledge of the Seller Group Confidential Information.

"Contemplated Transactions" means all of the transactions contemplated by this Agreement, including, without limitation, the sale of the Equity Interests by Sellers to Buyer, and the execution, delivery, and performance of the Related Agreements.

"Contract" means any agreement, contract, obligation, promise, or undertaking (whether written or oral) that is legally binding and currently in effect.

"Copyrights" means United States and foreign copyrights, whether registered or unregistered, and pending applications to register the same.

"Damages" has the meaning set forth in Section 9.2.

"Disclosure Letter" means the disclosure letter delivered by Sellers to Buyer concurrently with the execution and delivery of this Agreement and contained in Exhibit B to this Agreement.

"EGTRRA" means the Economic Growth and Tax Relief Reconciliation Act of 2001 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Election Request" has the meaning set forth in Section 7.1(e).

"Employee Plan" has the meaning set forth in Section 4.12(a).

"Employment Agreements" has the meaning set forth in Section 2.2(f).

"Encumbrance" means (i) any charge, claim, lien, option, pledge, security interest, encroachment, right of first refusal, or other restriction, in each case on or against the title of an asset, or (ii) any kind of restrictions on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership, except for those imposed by Legal Requirements, which are in each case not material in any respect.

"Environment" means soil, land, surface or subsurface strata, surface waters (including navigable waters, ocean waters, streams, ponds, drainage basins, and wetlands), groundwater, storm-water, subsurface waters, drinking water, water stream sediments, ambient air (including indoor air), air, plant and animal life, and any other environmental medium or natural resource.

"Environmental, Health and Safety Liabilities" means any out-of-pocket damages arising from or under Environmental Law or Occupational Safety and Health Law and consisting of or relating to: (a) any environmental, health, or safety matters or conditions (including on-site or off-site contamination, occupational safety and health, and regulation of chemical substances or products); (b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial, compliance, or inspection costs and expenses arising under Environmental Law or Occupational Safety and Health Law; (c) financial responsibility under Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment, or other remediation or response actions ("Cleanup") required by applicable Environmental Law or Occupational Safety and Health Law (but only to the extent the same is required by any Governmental Body or any other Person) and for any natural resource damages; or (d) any other compliance, corrective, investigative, or remedial measures required under Environmental Law or Occupational Safety and Health Law. The terms "removal," "remedial," and "response action," include, without limitation, types of activities covered by CERCLA.

"Environmental Law" means any Legal Requirement that requires or relates to pollution or protection of the Environment, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes into ambient air, surface water, ground water, or lands or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, or chemical, industrial, hazardous, or toxic materials or wastes including, without limitation, CERCLA and the Resource Conservation and Recovery Act of 1976, each as amended and the rules and regulations promulgated thereunder, as well as state law equivalents. For purposes of this Agreement, petroleum and petroleum-based constituents are expressly included.

"Environmental Permits" has the meaning set forth in Section 4.19(a).

"ERISA" means the Employee Retirement and Income Security Act of 1974 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"ERISA Affiliate" means any entity which is a member of a controlled group of corporations with, under common control with or a member of an affiliated services group with, the Sellers or any member of the Seller Group, as defined in Sections 414(b), (c), (m) or (o) of the Code.

"Escrow Agent" has the meaning set forth in Section 1.2.

"Escrow Amount" has the meaning set forth in Section 1.2.

"Escrow Deposit" has the meaning set forth in Section 1.3.

"Estimated Purchase Price" has the meaning set forth in Section 1.2(b)(i).

"Exchange Act" means the Securities Exchange Act of 1934 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Excluded Liabilities" means (i) the liabilities arising directly out of the GMT Lawsuit, (ii) subject to Section 7.9(b), any liabilities arising out of Nordic Superior or the Property, including those matters disclosed on the Disclosure Letter, and (iii) those items set forth in the Schedule of Other Excluded Liabilities attached to the Agreement.

"Facilities" means any real property, leaseholds, or other real property owned, leased or operated by the Seller Group and any buildings, plants, structures, or fixtures owned, leased or operated by the Seller Group, including, without limitation, the Owned Real Property and the Leased Real Property.

"Final Accounting Firm" has the meaning set forth in Section 1.4(a)(ii).

"GAAP" means generally accepted United States accounting principles prevailing at the time.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" means any federal, state, local, municipal, foreign, or other governmental or quasi-governmental authority or regulatory body.

"Hazardous Activity" means the distribution, generation, handling, importing, management, manufacturing, processing, production, refinement, Release, disposal, receipt, storage, transfer, transportation, treatment, or use (including any withdrawal or other use of groundwater) of Hazardous Materials in, on, under, about, or from the Facilities or any part thereof into the Environment.

"Hazardous Materials" means any waste or other substance that is listed, defined, designated, or classified as, or otherwise determined to be, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any mixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Income Statement" has the meaning set forth in Section 4.4.

"Indemnified Persons" has the meaning set forth in Section 9.2.

"Intellectual Property" means (a) all Patent Rights, (b) all Trademarks, (c) all Copyrights, (d) all mask works and all applications, registrations, and renewals in connection with such Patent Rights, Trademarks, Copyrights, and/or mask works, (e) all Trade Secrets, (f) all know-how, (g) all Software, (h) all other proprietary rights, (i) all domain names, websites, and URLs, and (j) all copies and tangible embodiments thereof (in whatever form or medium).

"Intellectual Property Assets" has the meaning set forth in Section 4.22(a).

"Interim Balance Sheet" has the meaning set forth in Section 4.4.

"Interim Financial Statements" has the meaning set forth in Section 4.4.

"Interim Income Statement" has the meaning set forth in Section 4.4.

"Inventory" means raw materials, work in process, finished goods and other inventory.

"IRS" means the United States Internal Revenue Service or any successor agency, and, to the extent relevant, the United States Department of the Treasury.

"Knowledge" means an individual will be deemed to have "Knowledge" of a particular fact or other matter if such individual is actually aware of such fact or other matter. In addition, the Sellers shall be deemed to have "Knowledge" of any fact actually disclosed to them after either Seller asks Ted Crowe, Glenn Furman, Rodger Nordland and Seazon Voss about such item qualified by "Knowledge". Sellers shall ask the foregoing individuals about each underlying representation and warranty qualified by "knowledge" and, to the extent necessary, ask such individuals to perform a reasonable investigation or inquiry of the underlying facts.

"Leased Real Property" has the meaning set forth in Section 4.5.

"Leases" has the meaning set forth in Section 4.5.

"Legal Requirement" means any applicable federal, state, local, municipal, foreign, international, multinational, or other administrative order, constitution, law, ordinance, principle of common law, regulation, statute, or treaty.

"Material Adverse Effect" or "Material Adverse Change" means, when used with respect to the Seller Group, any change, event, circumstance or effect that, individually, has a materially adverse effect upon the Business, assets, financial condition, or results of operations of the Seller Group taken as a whole.

"Maximum Amount" has the meaning set forth in Section 9.4(b).

"Net Working Capital" shall mean (i) the sum of the Seller Group's current assets (excluding cash and cash equivalents) less (ii) the sum of the Seller Group's current liabilities (excluding Closing Indebtedness). The foregoing shall be determined in good faith and in accordance with the Preliminary Net Working Capital Schedule and the methodology for computing Preliminary Net Working Capital.

"Net Working Capital Schedule" has the meaning set forth in Section 1.4(a)(i).

"Non-Competition Agreement" has the meaning set forth in Section 2.2(e).

"Occupational Safety and Health Law" means any Legal Requirement designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether governmental or private (including those promulgated or sponsored by industry associations and insurance companies), designed to provide safe and healthful working conditions including, without limitation, the Occupational Safety and Health Act of 1970, as amended and the rules and regulations promulgated thereunder.

"Order" means any award, decision, injunction, judgment, order, ruling, subpoena, or verdict entered, issued, made, or rendered by any Governmental Body or by any arbitrator, facilitator or mediator.

"Organizational Documents" means (a) the articles or certificate of incorporation and the bylaws of a corporation; (b) the partnership agreement and any statement of partnership of a general partnership; (c) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (d) the articles of organization and the operating agreement of a limited liability company; (e) any charter or similar document adopted or filed in connection with the creation, formation, or organization of a Person; and (f) any amendment to any of the foregoing.

"Parent" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

"Parties" means Buyer, Sellers, and Nordic Land, collectively. For all post Closing obligations, "Parties" shall include each member of the Seller Group.

"Party" means Buyer, Nordic Land, or any Seller, individually. For all post Closing obligations, "Party" shall include each member of the Seller Group.

"Patent Rights" means United States and foreign patents, patent applications, patent continuations, patent continuations-in-part, patent divisions, patent reissues or patent disclosures.

"Payoff Letter" has the meaning set forth in Section 2.2.

"PBGC" means the Pension Benefit Guaranty Corporation.

"Permitted Encumbrances" has the meaning set forth in Section 4.6(b).

"Percentage Interest" means with respect to each Seller, a fifty percent (50%) interest.

"Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

"Pre-Closing Tax Period" has the meaning set forth in Section 7.1(b).

"Preliminary Net Working Capital" means the estimated Net Working Capital of the Seller Group as of the Closing Date as set forth in the Preliminary Net Working Capital Schedule.

"Preliminary Net Working Capital Schedule" means the statement of Preliminary Net Working Capital as set forth in Schedule 1.4, prepared by Buyer and the Sellers and their respective authorized representatives at least three (3) business days prior to the Closing, which quantifies in reasonable detail the items constituting the Net Working Capital, and which has been prepared in good faith and consistent with the Interim Balance Sheet. The methodology used in connection with the determination of the Preliminary Net Working Capital in Schedule 1.4 shall be binding on all Parties for all purposes with respect to the computation of Preliminary Net Working Capital and Closing Net Working Capital. All other computations of Net Working Capital under this Agreement shall use the same methodology in computing current assets, current liabilities and net working capital as was used in determination of Preliminary Net Working Capital.

"Prime Rate" means the interest rate for borrowed money designated as the prime rate and published in the most recent issue of the Wall Street Journal, Midwest Edition, immediately preceding the Closing Date.

"Proceeding" means any legal action, alternative dispute resolution proceeding, audit by a Governmental Body, hearing by a Governmental Body, investigation by a Governmental Body or litigation or suit (whether civil, criminal, administrative or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Body, arbitrator, facilitator or mediator.

"Prohibited Transactions" has the meaning set forth in Section 6.5.

"Purchase Price" has the meaning set forth in Section 1.2(c).

"Related Agreements" means the Escrow Agreement, the Non-Competition Agreement, the Employment Agreement, the Lease Agreement, and other documents, agreements, certificates, or affidavits entered into in connection with the Contemplated Transactions.

"Release" means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping, or other releasing into the Environment, whether intentional or unintentional.

"Representatives" means with respect to a particular Person, any director, manager, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, brokers, and financial advisors.

"Securities Act" means the Securities Act of 1933 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Section 338 Tax Claim" has the meaning set forth in Section 7.1(e).

"Seller Group" has the meaning set forth in the fifth "Whereas" clause.

"Seller Group Contract" means any Contract (a) to which the Seller Group is a party, (b) under which the Seller Group has or may acquire any rights, (c) under which the Seller Group has or may become subject to any obligation or liability, or (d) by which the Seller Group or any of the assets owned or used by it is or may become bound.

"Sellers" has the meaning set forth in the first paragraph of this Agreement.

"Shares" has the meaning set forth in Section 1.1.

"Software" means computer software programs and software systems, including, without limitation, all databases, compilations, tool sets, compilers, higher level or "proprietary" languages, related documentation and materials, whether in source code, object code or human readable form.

"Straddle Period" has the meaning set forth in Section 7.1(b).

"Subsidiary" means with respect to any Person, means any other Person whose securities or other interests having the power to elect a majority of that other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that other Person are held by such Person or one or more of its Subsidiaries.

"Target Working Capital" means Six Million Two Hundred Thousand Dollars ($6,200,000).

"Tax" (and with the corresponding meaning "Taxes" and "Taxable") means any tax (including any income tax, capital gains tax, value-added tax, sales tax, use tax, transfer tax, property tax, gift tax, or estate tax), levy, assessment, tariff, duty (including any customs duty), deficiency, or other fee, and any related charge or amount (including any fine, penalty, interest, or addition to tax), imposed, assessed, or collected by or under the authority of any Governmental Body or Taxing Authority or payable pursuant to any Tax-sharing agreement or any other Contract relating to the sharing or payment of any such tax, levy, assessment, tariff, duty, deficiency, or fee.

"Tax Matters" has the meaning set forth in Section 7.1(d).

"Tax Returns" means any return (including any information return), report, statement, schedule, notice, form, or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body or Taxing Authority in connection with the determination, assessment, collection, or payment of any Tax or in connection with the administration, implementation, or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Taxing Authority" has the meaning set forth in Section 7.1(d).

"Title IV Employee Plan" has the meaning set forth in Section 4.12(b).

"Trademarks" means United States, state and foreign trademarks, service marks and trade names, whether registered or unregistered, and pending applications to register the foregoing.

"Trade Secrets" means confidential and proprietary: ideas, trade secrets, know-how, concepts, methods, processes, formulae, reports, data, customer lists, mailing lists, business plans, or other proprietary information.

"Transfer Taxes" has the meaning set forth in Section 7.1(a).

"USERRA" means the Uniformed Services Employment and Reemployment Rights Act of 1994 or any successor law, and regulations and rules issued pursuant to that Act or any successor law.

"Working Capital Adjustment" has the meaning set forth in Section 1.4(a).

EXHIBIT C

FORM OF ESCROW AGREEMENT

ESCROW AGREEMENT

THIS ESCROW AGREEMENT (this "Agreement") is made as of March 31, 2011 ("Effective Date") by and among Vectren Infrastructure Services Corporation (the "Buyer"), Christopher T. Leines ("Leines" or "Sellers' Representative"), Paulette A. Britzius ("Britzius" and, together with Leines, "Sellers") and U.S. Bank National Association, a national banking association, as escrow agent (the "Escrow Agent"). The Buyer, Sellers and the Escrow Agent are sometimes collectively referred to herein as the "Parties" and individually as a "Party." Capitalized terms used and not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement (as defined below).

WHEREAS, the Buyer and Sellers are parties to that certain Purchase Agreement dated as of the date hereof (as the same may be amended, modified, restated or supplemented from time to time in accordance with its terms, the "Purchase Agreement");

WHEREAS, pursuant to the terms of the Purchase Agreement and as part of the transactions contemplated thereby, the parties thereto agreed to enter into this Agreement and deliver the Escrow Amount (as defined below) to the Escrow Agent for the purposes set forth herein;

WHEREAS, pursuant to the terms of the Purchase Agreement, the parties thereto agreed that the Escrow Funds (as defined below) shall provide a non exclusive source of funds for the satisfaction of amounts that may become payable to the Buyer by Sellers under the Purchase Agreement during the term of this Agreement;

WHEREAS, Sellers and the Buyer desire to create an escrow account for the Escrow Amount, and appoint the Escrow Agent as the escrow agent for such account, upon the terms and conditions set forth below; and

WHEREAS, the execution and delivery of this Agreement is a closing deliverable under the Purchase Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement hereby agree as follows:

1. Appointment of the Escrow Agent. The Buyer and Sellers hereby appoint the Escrow Agent as the escrow agent under and pursuant to the terms, conditions and provisions of this Agreement, and the Escrow Agent hereby accepts such appointment and agrees to perform the duties thereof subject to the terms, conditions and provisions of this Agreement.

2. Escrow Deposit. Simultaneously with the execution of this Agreement, the Buyer has deposited with the Escrow Agent cash in the amount of Four Million Dollars ($4,000,000) in accordance with Section 1.3 of the Purchase Agreement (the "Escrow Amount"). The Escrow Agent hereby acknowledges receipt of the Escrow Amount and agrees to hold the Escrow Amount, together with all products and proceeds thereof (including all interest, dividend, gains and other income earned with respect thereto (collectively, the "Escrow Funds")), in a separate and distinct account (the "Escrow Account"), subject to the terms and conditions of this

Agreement. The Escrow Agent shall not distribute or release the Escrow Funds except in accordance with the express terms and conditions of this Agreement.

3. Permitted Investments. The Escrow Agent hereby agrees to establish and maintain the Escrow Funds in the Escrow Account and shall invest the Escrow Funds as jointly directed by Sellers' Representative and the Buyer, from time to time, in writing, in money market accounts and money market mutual funds (including those of the Escrow Agent), treasury bills, treasury notes or any other direct obligations issued by or guaranteed in full as to principal and interest by the United States of America, certificates of deposit issued by a commercial bank having capital, surplus and undivided profits of not less than $500,000,000 (including the Escrow Agent and its Affiliates) and interest-bearing demand accounts of the Escrow Agent (collectively, the "Permitted Investments"). Investments made hereunder shall be made in the name of the Escrow Agent. Notwithstanding anything to the contrary contained herein, the Escrow Agent may, without notice to the Buyer or the Sellers, sell or liquidate any investments at any time if the proceeds thereof are required for any disbursement of Escrow Funds permitted or required hereunder. All investment earnings shall become part of the Escrow Funds and investment losses shall be charged against the Escrow Funds. Escrow Agent shall not be liable or responsible for loss in the value of any investment made pursuant to this Escrow Agreement, or for any loss, cost or penalty resulting from any sale or liquidation of the Escrow Funds made pursuant to this Escrow Agreement. The Escrow Agent shall have no power or authority to invest or reinvest any Escrow Funds except in Permitted Investments as jointly instructed by Sellers' Representative and the Buyer; provided, that in the event the Escrow Agent shall receive joint written instructions signed by Sellers' Representative and the Buyer directing the Escrow Agent to invest Escrow Funds in an investment other than a Permitted Investment, the Escrow Agent shall invest such Escrow Funds in the manner specified in such joint written instructions. Notwithstanding the foregoing, if the Escrow Agent has not received instructions from Sellers' Representative and the Buyer as to investment of the Escrow Funds, the Escrow Agent shall invest the Escrow Funds in the Escrow Agent's U.S. Bank Money Market Deposit Account as described on Schedule II hereto.

4. Release of Escrow Funds. The Escrow Funds shall be held and disposed of by the Escrow Agent as follows:

(a) Payment Claims. At any time and from time to time prior to fourteen months from the Effective Date (the "Survival Date"), if the Buyer desires to make a claim permitted by and pursuant to Section 1.4 or 9 of the Purchase Agreement for which the Escrow Funds may be used to satisfy such claim, then the Buyer shall deliver to Sellers' Representative a written notice (a "Payment Notice") setting forth the amount of such claim for payment (a "Payment Claim") and setting forth in detail why Buyer is entitled to payment pursuant to the Purchase Agreement. Buyer agrees not to make a Payment Claim unless it believes in good faith that such Payment Claim is payable to Buyer pursuant to the Purchase Agreement. The Buyer shall also deliver to the Escrow Agent proof of delivery to Sellers' Representative of such Payment Notice (which proof may consist of a photocopy of the registered or certified mail or overnight courier receipt or the signed receipt if delivered by hand). If the Escrow Agent has not received a written objection to such Payment Claim from Sellers' Representative within ten (10) Business Days following the Escrow Agent's receipt of such proof of delivery to Sellers' Representative, then on the eleventh (11th) Business Day following such receipt, the Escrow

Agent shall release, by wire transfer to an account or accounts designated by the Buyer in the Payment Notice, an amount of Escrow Funds from the Escrow Account equal to the amount of such Payment Claim.

(b) Disputes. If Sellers' Representative delivers to the Escrow Agent and the Buyer a written objection (a "Dispute Notice") to any Payment Claim or portion thereof within ten (10) Business Days following the Escrow Agent's receipt of proof of delivery of such Payment Notice, then, except as otherwise provided in Section 4(c) below, the Escrow Agent shall not distribute to the Buyer any Escrow Funds that are the subject of the Dispute Notice until the Escrow Agent receives either (i) joint written instructions signed by Sellers' Representative and the Buyer authorizing the release to the Buyer of the Escrow Funds that are the subject of the Dispute Notice or (ii) a copy of a final decision of a court of competent jurisdiction or binding arbitral award directing the release to the Buyer of the Escrow Funds that are the subject of the Dispute Notice. Upon receipt of such joint written instructions or a copy of such final decision or binding arbitral award, as the case may be, the Escrow Agent shall release to the Buyer the Escrow Funds subject to dispute in accordance with such joint written instructions or final decision or binding arbitral award. In the event that Sellers' Representative is the prevailing party in whole or in part in connection with any such dispute, the portion of the Escrow Funds that were the subject of such Dispute Notice and that are not released to the Buyer as provided in the immediately preceding sentence shall remain in the Escrow Account and shall be available to satisfy other Payment Claims until released as provided in Section 4(d) below. Sellers' Representative agrees not to object to a Payment Claim unless it believes in good faith that such Payment Claim is not payable to the Buyer pursuant to the Purchase Agreement. Any Dispute Notice shall describe in reasonable detail the basis for any objection to the matters set forth in the Payment Notice and the portion of such Payment Claim (if less than all) which is the subject of such Dispute Notice.

(c) Partial Release. If any Dispute Notice includes an objection to only a portion of a Payment Claim, the Escrow Agent shall promptly release to the Buyer an amount of Escrow Funds equal to the portion of the Payment Claim for which there is no objection. No such partial release by the Escrow Agent shall terminate or otherwise prejudice either Party's rights with respect to the remainder of any Payment Claim set forth in a Payment Notice.

(d) Release of Remaining Escrow Funds.

(i) No later than five (5) Business Days following the Survival Date, the Escrow Agent shall release (without further instruction) to Sellers the remaining balance of the Escrow Funds in the Escrow A ccount as of the Survival Date, less the amount of all Unresolved Claims (as defined below). Sellers' Representative or the Buyer may give the Escrow Agent notice of the occurrence of the Survival Date; provided, such notice shall not be required for Escrow Agent to release such funds; provided, further, that the Party delivering such notice provides a copy of such notice to the other Parties. "Unresolved Claims" shall mean the aggregate amount of all Payment Claims claimed by the Buyer in accordance with Section 9.2 of the Purchase Agreement, which are unsatisfied as of the Survival Date.

(ii) Promptly upon the Escrow Agent's receipt of a signed agreement of the Buyer and Sellers' Representative or the final determination of a court of competent jurisdiction or the arbitrator that is not appealed, as the case may be, of any Unresolved Claims that are the subject of a Dispute Notice or upon the expiration of the ten (10) Business Day objection period for any Unresolved Claims for which no Dispute Notice has been delivered, the Escrow Agent shall release by wire transfer to an account or accounts designated by the Buyer an amount of Escrow Funds equal to the amount of Escrow Funds to be released to the Buyer pursuant to such signed agreement or such final determination or the amount of such Unresolved Claim for which no Dispute Notice has been delivered, as the case may be. After the resolution of all Unresolved Claims, any remaining Escrow Funds not distributed to the Buyer pursuant to the immediately preceding sentence shall be released promptly thereafter by the Escrow Agent to Sellers.

(e) No Limitation of Remedies. The parties acknowledge and agree that the payment of Escrow Funds to the Buyer pursuant to this Agreement shall not limit any right of indemnification to which the Buyer may be entitled under the Purchase Agreement for the Exception Items, and that the Escrow Funds do not constitute an exclusive remedy for Damages incurred by Buyer with regard to such Exception Items. Accordingly, in the event that the amounts distributed to the Buyer pursuant to this Section 4 are insufficient to fully indemnify the Buyer for all Damages related to the Exception Items (including Damages arising after distribution of all of the Escrow Funds and the termination of this Agreement), Sellers shall be liable to the Buyer for all such amounts not otherwise satisfied by the Escrow Funds in accordance with the terms of the Purchase Agreement.

(f) Termination. This Agreement shall terminate when all of the Escrow Funds in the Escrow Account have been released and distributed in accordance with this Section 4. Upon such termination, this Agreement shall have no further force and effect, except that the provisions of Section 4(e) above, this Section 4(e) and Sections 5, 6, 7, and Sections 9 through 21 below shall survive such termination.

5. Conditions to Escrow. Sellers and the Buyer agree that the Escrow Agent shall not assume any responsibility for the failure of such Parties to perform in accordance with the Purchase Agreement or this Agreement. The acceptance by the Escrow Agent of its responsibilities hereunder is subject to the following terms and conditions which the Parties agree shall govern and control with respect to the Escrow Agent's rights, duties and liabilities hereunder:

(a) Documents. The Escrow Agent shall be protected in acting upon any written notice, request, waiver, consent, receipt or other paper or document furnished to it, not only as to its due execution and validity and the effectiveness of its provisions, but also as to the truth and accuracy of any information therein contained, which the Escrow Agent in good faith believes to be genuine and what it purports to be. Should it be necessary for the Escrow Agent to act upon any instructions, directions, documents or instruments issued or signed by or on behalf of any Person acting on behalf of the Buyer, it shall not be necessary for the Escrow Agent to inquire into such Person's authority. The Escrow Agent is also relieved from the necessity of satisfying itself as to the authority of the Persons executing this Agreement in a representative capacity on behalf of Sellers or the Buyer.

(b) Liability. The Escrow Agent shall not be liable for any act or omission taken or suffered in good faith with respect to this Agreement unless such act or omission is the result of the gross negligence, bad faith or willful misconduct of the Escrow Agent. In no event shall the Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage, unless such loss or damage is the result of the gross negligence, bad faith or willful misconduct of the Escrow Agent. The Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Purchase Agreement, or to appear in, prosecute or defend any such legal action or proceeding.

(c) Legal Counsel. The Escrow Agent may consult with, and obtain advice from, legal counsel in the event of any question as to any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected in acting in good faith in accordance with the opinion and instructions of such counsel. The Buyer and Sellers, jointly and severally, shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel.

(d) Limitation of Duties. The Escrow Agent shall have no duties except those which are expressly set forth herein and it shall not be bound by any agreement of the other Parties hereto, including the Purchase Agreement (whether or not it has any knowledge thereof).

(e) Resignation or Termination of the Escrow Agent. The Escrow Agent shall have the right to resign at any time by giving written notice of such resignation to Sellers' Representative and the Buyer, and Sellers' Representative and the Buyer shall have the right to terminate the services of the Escrow Agent hereunder at any time by giving written notice (with such written notice being signed by the Buyer and Sellers' Representative) of such termination to the Escrow Agent, in each case specifying the effective date of such resignation or termination. If within thirty (30) days after receiving or delivering either of the aforesaid notices, as the case may be, the Buyer and Sellers' Representative appoint a successor escrow agent, and such successor escrow agent accepts such appointment, the Escrow Agent shall distribute the Escrow Funds less the amount of any fees owing to the Escrow Agent hereunder as of such date to such successor escrow agent. If a successor escrow agent has not been appointed and has not accepted such appointment by the end of such 30-day period, the Escrow Agent may apply to a court of competent jurisdiction for the appointment of a successor escrow agent, and each of the Buyer and Sellers shall be liable for 50% of the costs, expenses and reasonable attorney's fees incurred by the Escrow Agent in connection with any such proceeding. Any successor escrow agent shall be a banking corporation or trust company having total assets in excess of $500,000,000. Except as otherwise agreed to in writing by Sellers' Representative and the Buyer, no Escrow Funds shall be released from the Escrow Account unless and until a successor escrow agent has (i) been appointed in accordance with this Section 5(e) and (ii) agreed, in writing, to be bound by the terms and conditions of this Agreement. After any such appointment, such successor escrow agent shall be the "Escrow Agent" hereunder. After any retiring Escrow Agent's resignation, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement. Any corporation or association into which the Escrow Agent may be merged or converted or with which it may be consolidated, or any corporation or association to which all or substantially all of the escrow business of the Escrow Agent's corporate trust line of business may be transferred, shall be the Escrow Agent under this Escrow Agreement without further act.

(f) Discharge of the Escrow Agent. Upon delivery of all of the Escrow Funds pursuant to the terms of Section 4 above or to a successor escrow agent in accordance with Section 5(e), the Escrow Agent shall thereafter be discharged from any further obligations hereunder. The Escrow Agent is hereby authorized, in any and all events, to comply with and obey any and all final judgments, orders and decrees of any court of competent jurisdiction which may be filed, entered or issued, and all final arbitration awards and, if it shall so comply or obey, it shall not be liable to any other Person by reason of such compliance or obedience.

6. Indemnification. The Buyer and Sellers, jointly and severally, hereby agree to indemnify the Escrow Agent and each director, officer, employee, attorney, agent and affiliate of the Escrow Agent (collectively, the "Indemnified Parties") for and to hold it harmless against any and all actions, claims (whether or not valid), losses, damages, liability or reasonable expense (including reasonable attorneys' fees and documented out-of-pocket expenses) incurred without gross negligence, willful misconduct or bad faith on the part of the Escrow Agent arising out of or in connection with its performance under this Agreement.

7. Escrow Costs. The Escrow Agent shall be entitled to be paid a fee for its services pursuant to the Fee Schedule attached as Schedule I and to be reimbursed for its reasonable costs and documented out-of-pocket expenses incurred in connection with maintaining the Escrow Account hereunder, which fees, costs and documented out-of-pocket expenses shall, unless expressly provided otherwise herein, be paid by Buyer. Obligations under this Section 7 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent.

8. Limitations on Rights to Escrow Funds. None of the Parties shall have any right, title or interest in or to, or possession of, the Escrow Account and therefore shall not have the ability to pledge, convey, hypothecate or grant as security all or any portion of the Escrow Funds unless and until such Escrow Funds have been released pursuant to Section 4 above. Accordingly, the Escrow Agent shall be in sole possession of the Escrow Funds and shall not act as custodian of Sellers and the Buyer under this Agreement for the purposes of perfecting a security interest therein, and no creditor of any of the Parties shall have any right to have or to hold or otherwise attach or seize all or any portion of the Escrow Funds as collateral for any obligation and shall not be able to obtain a security interest in any of the Escrow Funds unless and until such Escrow Funds have been released pursuant to Section 4 above.

9. Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be delivered by hand or overnight courier service or by facsimile to the Parties at the following addresses:

If to the Buyer, to:

Vectren Infrastructure Services Corporation
c/o Douglas S. Banning, Jr., President

8850 Crawfordsville Road
Indianapolis, IN 46234
Telephone: (317) 293-0278
Fax: (317) 293-8502

with a copy (which copy shall not constitute notice) to:

Krieg DeVault LLP
12800 North Meridian Street, Suite 300
Carmel, Indiana 46032
Telephone: (317) 238-6258
Fax: (317) 636-1507
Attention: Charles S. Coleman, II

If to Sellers, to:

Christopher Leines, Sellers' Representative
P.O. Box 353
4675 County Road 11
Medina, MN 55357
Telephone: 612-817-4545
Fax: (763) 262-7500

with a copy (which copy shall not constitute notice) to:

Maslon Edelman Borman & Brand, LLP
3300 Wells Fargo Center
90 South Seventh Street
Minneapolis, MN 55402
Telephone: (612) 672-8316
Fax: (612) 642-8316
Attention: Shawn R. McIntee

If to the Escrow Agent, to:

U.S. Bank National Association
60 Livingston Avenue
EP-MN-WS3C
St. Paul, MN 55107
Telephone: 651-495-3911
Fax: 651-495-8096
Attention: Tom Maple, Corporate Trust Services

or to such other Persons, addresses or facsimile numbers as may be designated in writing by the Person entitled to receive such communication as provided above. Each such communication shall be effective (a) if delivered by hand, when such delivery is made at the address specified in this Section 9, (b) if delivered by overnight courier service, the next Business Day after such communication is sent to the address specified in this Section 9 or (c) if delivered by facsimile, when such facsimile is transmitted to the facsimile number specified in this Section 9 and appropriate confirmation is received.

10. Entire Agreement; Amendments. This Agreement, together with the Purchase Agreement to the extent referenced herein, contains the entire understanding of the Parties with respect to the holding, investment and disbursement of the Escrow Funds and supersedes any prior understandings or agreements by or among the Parties, whether written or oral, which may have related to the subject matter hereof in any way. This Agreement may be amended, or any provision of this Agreement may be waived, so long as such amendment or waiver is set forth in a writing executed by the Buyer and Sellers' Representative (a copy of which shall be promptly provided to the Escrow Agent); provided, that if any such amendment or waiver would have the effect of increasing or expanding the Escrow Agent's obligations or duties under this Agreement, the written consent of the Escrow Agent shall be required in addition to the written consent of the other Parties. No course of dealing between or among the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement of any rights or obligations of any Party under or by reason of this Agreement.

11. Assigns and Assignment. This Agreement and all actions taken hereunder shall inure to the benefit of and shall be binding upon all of the Parties and upon all of their respective successors and permitted assigns; provided, that the Escrow Agent shall not be permitted to assign its obligations hereunder except as provided in Section 5(e) above.

12. Taxation of Interest Earned on Investment of Escrow Amount. Sellers and the Buyer agree that, for federal and state income tax purposes, that Sellers will be treated as the owners of the Escrow Funds and will report all interest, dividends, or other income earned on the investment of the Escrow Amount (the "Income") as Sellers' income in the taxable year or years in which such Income is properly includable and pay or cause to be paid any taxes attributable thereto. Any such Income shall not be a part of the Escrow Funds from which it was earned or derived from. The Escrow Agent shall be responsible for reporting any Income earned to the Internal Revenue Service.

13. No Other Third Party Beneficiaries. Nothing herein expressed or implied is intended or shall be construed to confer upon or to give any Person other than the Escrow Agent, the Parties and their permitted assigns any rights or remedies under or by reason of this Agreement.

14. Interpretation. The headings in this Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning hereof.

15. No Waiver. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, and no single or partial exercise thereof shall preclude any right of further exercise or the exercise of any other right, power or privilege. The right of the Buyer or Sellers to receive all or a portion of the Escrow Funds under the circumstances described in Section 4 above is in addition to, and not in lieu of, any other remedies that any such Party may have against the other pursuant to the Purchase Agreement in the event of a breach of the Purchase Agreement.

16. Severability. The Parties agree that (a) the provisions of this Agreement shall be severable in the event that for any reason whatsoever the provisions hereof are invalid, void or otherwise unenforceable, (b) such invalid, void or otherwise unenforceable provisions shall be automatically replaced by other provisions which are as similar as possible in terms to such invalid, void or otherwise unenforceable provisions, but are valid and enforceable and (c) the remaining provisions shall remain enforceable to the fullest extent permitted by Legal Requirements.

17. No Strict Construction. The language used in this Agreement shall be deemed to be the language chosen by the Parties to express their collective mutual intent, and no rule of strict construction shall be applied against any person. The term "including" as used herein shall be by way of example, and shall not be deemed to constitute a limitation of any term or provision contained herein. Each defined term used in this Agreement has a comparable meaning when used in its plural or singular form.

18. Releases on Non-Business Days. In the event that a release of Escrow Funds hereunder is required to be made on a date that is not a Business Day, such release may be made on the next succeeding Business Day with the same force and effect as if made when required.

19. Governing Law. All issues and questions concerning the construction, validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State of Minnesota without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the Legal Requirements of any jurisdiction other than the State of Minnesota. In furtherance of the foregoing, the internal laws of the State of Minnesota shall control the interpretation and construction of this Agreement, even though under that jurisdiction's choice of law or conflict of law analysis, the substantive law of some other jurisdiction would ordinarily apply.

20. Counterparts. This Agreement may be executed by the Parties individually or in any combination, in counterparts (including by means of telecopied, e-mailed or other means of electronically transmitted signature pages), each of which shall be an original and all of which shall together constitute one and the same agreement.

21. Identifying Information. To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account. For a non-individual person such as a business entity, a charity, a trust or other legal entity, the Escrow Agent will ask for documentation to verify its formation and existence as a legal entity. The Escrow Agent may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation. The Buyer and Sellers acknowledge that a portion of the identifying information set forth herein is being requested by the Escrow Agent in connection with the USA Patriot Act, Pub.L.107-56 (the "Act"), and Buyer and Sellers agree to provide any additional information requested by the Escrow Agent in connection with the Act or any similar legislation or regulation to which Escrow Agent is subject, in a timely manner.

22. Security Advice Waiver. The Buyer and Sellers acknowledge that to the extent regulations of the Comptroller of the Currency or other applicable regulatory entity grant the Buyer and Sellers the right to receive brokerage confirmations for certain security transactions as they occur, the Buyer and Sellers specifically waive receipt of such confirmations to the extent permitted by law. The Escrow Agent will furnish the Buyer and Sellers periodic cash transaction statements that include detail for all investment transactions made by the Escrow Agent.

23. Representatives. Each of the Buyer and Sellers agree that the applicable persons designated on Schedule III hereto have been duly appointed to act as its representatives hereunder and have full power and authority to execute and deliver any joint written instruction, to amend, modify or waive any provision of this Escrow Agreement and to take any and all other actions as the Representatives under this Escrow Agreement, all without further consent or direction from, or notice to, it or any other party.

24. Suspension of Performance Disbursement Into Court. If at any time, (i) there shall exist any dispute between the Buyer and Sellers with respect to the holding or disposition of all or any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, (ii) Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of all or any portion of the Escrow Funds or Escrow Agent's proper actions with respect to its obligations hereunder, or (iii) the Buyer and Sellers have not within 30 days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 5 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

a. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed (as the case may be).

b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required or permitted by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

The Escrow Agent shall have no liability to Buyer, Sellers, their respective owners, shareholders or members or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

The Escrow Agent is authorized, in its sole discretion, to comply with final orders issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

[Signature page immediately following.]

IN WITNESS WHEREOF, the Parties hereto have executed this Escrow Agreement as of the date first written above.

VECTREN INFRASTRUCTURE SERVICES CORPORATION

By: ________________________________
Douglas S. Banning, Jr., President

____
Christopher T. Leines

____
Paulette A. Britzius

U.S. BANK NATIONAL ASSOCIATION

By: ________________________________
Name:
Title:

Schedule I

U.S. BANK NATIONAL ASSOCIATION

Schedule of Fees for Services as Escrow Agent
Due Upon Closing

I. One Time Fee: $1,500

The one time fee includes the administrative review of documents, initial set-up of the account, and other reasonably required services up to and including the closing. It also includes performance of the routine duties of the escrow agent associated with the management of the account. This is a flat one-time fee, payable at closing.

II. Out-of-Pocket Expenses: At Cost

Reimbursement of expenses associated with the performance of our duties, including but not limited to fees and expenses of legal counsel, accountants and other agents, tax preparation, reporting and filing, publications, and filing fees.

III. Extraordinary Expenses:

Extraordinary services are duties or responsibilities of an unusual nature, including termination, but not provided for in the governing documents or otherwise set forth in this schedule. A reasonable charge will be assessed based on the nature of the service and the responsibility involved. At our option, these charges will be billed at a flat fee or our hourly rate then in effect.

IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW ACCOUNT

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify and record information that identifies each person who opens an account.

For a non-individual person such as a business entity, a charity, a Trust or other legal entity we will ask for documentation to verify its formation and existence as a legal entity. We may also ask to see financial statements, licenses, identification and authorization documents from individuals claiming authority to represent the entity or other relevant documentation.

Schedule II

U.S. BANK NATIONAL ASSOCIATION
MONEY MARKET ACCOUNT AUTHORIZATION FORM
DESCRIPTION AND TERMS

The U.S. Bank Money Market account is a U.S. Bank National Association ("U.S. Bank") interest-bearing money market deposit account designed to meet the needs of U.S. Bank's Corporate Trust Services Escrow Group and other Corporate Trust customers of U.S. Bank. Selection of this investment includes authorization to place funds on deposit and invest with U.S. Bank.

U.S. Bank uses the daily balance method to calculate interest on this account (actual/365 or 366). This method applies a daily periodic rate to the principal balance in the account each day. Interest is accrued daily and credited monthly to the account. Interest rates are determined at U.S. Bank's discretion, and may be tiered by customer deposit amount.

The owner of the account is U.S. Bank as Agent for its trust customers. U.S. Bank's trust department performs all account deposits and withdrawals. Deposit accounts are FDIC Insured per depositor, as determined under FDIC Regulations, up to applicable FDIC limits.

AUTOMATIC AUTHORIZATION

In the absence of specific written direction to the contrary, U.S. Bank is hereby directed to invest and reinvest proceeds and other available moneys in the U.S. Bank Money Market Account. The U.S. Bank Money Market Account is a permitted investment under the operative documents and this authorization is the permanent direction for investment of the moneys until notified in writing of alternate instructions.

Schedule III

Representatives:

The following person(s) are hereby designated and appointed as Buyer Representative under the Escrow Agreement (only one signature shall be required for any direction):

Douglas S. Banning, Jr. ______________________
Name Specimen signature

______________________ ______________________
Name Specimen signature

______________________ ______________________
Name Specimen signature

The following person(s) are hereby designated and appointed as Seller Representative under the Escrow Agreement (only one signature shall be required for any direction):

Christopher T. Leines ______________________
Name Specimen signature

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Tukel, P.J., and Sawyer and Riordan, JJ.

VECTREN INFRASTRUCTURE SERVICES CORP.,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.
_______________________________________/

Supreme Court No. 163742

Court of Appeals No. 345462

Court of Claims No. 17-000107-MT

APPELLANT MICHIGAN DEPARTMENT OF TREASURY'S APPENDIX

Dana Nessel
Attorney General

Fadwa A. Hammoud (P74185)
Solicitor General
Counsel of Record

David W. Thompson (P75356)
Justin R. Call (P80892)
Assistant Attorneys General
Attorneys for Mich Dep't of Treasury
Defendant-Appellant
Revenue and Tax Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7584

Dated: May 4, 2022

TABLE OF CONTENTS

Volume I (Pages 1a to 506a)

Description	Volume	Page No.
Court of Claims Docket Entries	I	1a–6a
Court of Appeals Docket Entries	I	7a–12a
Michigan Court of Claims, Opinion and Order issued August 14, 2018	I	13a–26a
Michigan Court of Claims, Order issued September 7, 2018	I	27a
Michigan Court of Appeals, Opinion issued March 12, 2020	I	28a–36a
Michigan Supreme Court, Order issued November 25, 2020	I	37a
Michigan Court of Appeals, Order issued April 19, 2021	I	38a
Michigan Court of Claims, Opinion and Order on Remand issued May 25, 2021	I	39a–48a
Michigan Court of Appeals, Opinion issued September 30, 2021	I	49a–52a
Sidney Frank Importing Co, Inc v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued December 4, 2012 (Docket No. 306742)	I	53a–59a
Vectren's First Amended Complaint (*without attachments*)	I	60a–78a
Christopher Leines Deposition Transcript (*relevant portions only*)	I	79a–101a
Plaintiff's Response to Treasury's 1st Discovery Request (*without attachments*)	I	102a–121a
Offering Memorandum	I	122a–216a
Consumers 2011 10-K	I	217a–439a
Purchase Agreement	I	440a–506a

Volume II (Pages 507a to 865a)

Description	Volume	Page No.
Purchase Agreement (*continued*)	II	507a–597a
Vectren 2001 10-K	II	598a–665a
Douglas S. Banning, Jr. Deposition Transcript (*relevant portions only*)	II	666a–687a
Vectren 2011 8-K Exhibit 99.1	II	688a–692a
Vectren 2011 10-K	II	693a–812a
Bradley Hirsch Deposition Transcript (*relevant portions only*)	II	813a–825a
KPMG Draft Valuation	II	826a–865a

Volume III (Pages 866a to 1048a)

Description	Volume	Page No.
Alternative Apportionment Request, June 24, 2016 (*without attachments*)	III	866a–873a
2011 Michigan Business Tax Annual Return	III	874a–883a
Audit Report of Findings	III	884a–892a
2010 Michigan Business Tax Return	III	893a–904a
2010 Federal Forms 4797	III	905a–912a
2011 U.S. Income Tax Return	III	913a–959a
Audit Workbook	III	960a–970a
Intent to Assess	III	971a–972a
Final Assessment	III	973a–974a
Supplement to Alternative Apportionment Request, December 14, 2016 (*without attachments*)	III	975a–982a
Treasury's Denial of Alternative Apportionment Request	III	983a–985a
Hirsch Affidavit (*without attachments*)	III	986a–989a
Vectren's Court of Appeals Brief on Appeal, December 7, 2018 (*without appendices*)	III	990a–1048a

Exhibit D

Form of Non-Competition Agreement

NON-COMPETITION AGREEMENT

THIS NON-COMPETITION AGREEMENT (this "Agreement") is made and entered into this 31st day of March, 2011 (the "Effective Date"), by and among Christopher T. Leines, an individual residing in State of Minnesota ("Leines"), Minnesota Limited, Inc., a Minnesota corporation ("Minnesota Limited"), Nordic Equipment, LLC, a Minnesota limited liability company ("Nordic Equipment"), Nordic Pipeline Services LLC, a Minnesota limited liability company ("Nordic Pipeline"), Nordic Land Bemidji, LLC, a Minnesota limited liability company ("Nordic Bemidji"), Nordic Land Altamont, LLC, a Minnesota limited liability company ("Nordic Altamont," and, together with Minnesota Limited, Nordic Equipment, Nordic Pipeline, and Nordic Bemidji, the "Selling Entities"), Vectren Infrastructure Services Corporation, an Indiana corporation ("Buyer"), Miller Pipeline Corporation, an Indiana corporation ("Miller"), and Vectren Corporation, an Indiana corporation ("Vectren").

RECITALS

WHEREAS, Leines sold one hundred percent (100%) of his ownership in each of the Selling Entities (directly or indirectly) pursuant to that certain Purchase Agreement dated of even date herewith by and among Leines, Paulette Britzius, Nordic Land Company, LLC, a Minnesota limited liability company, and Buyer (the "Purchase Agreement");

WHEREAS, the Selling Entities are in the business of providing the following services for the natural gas and petroleum industries: (i) high-pressure, welded steel pipeline installation and construction services; (ii) pump station, compressor station, terminal, and refinery construction services related to such pipelines; (iii) gas distribution pipeline construction services; (iv) pipeline maintenance; and (v) hydrostatic testing (collectively, the "Business");

WHEREAS, Leines is intimately familiar with the Selling Entities, the Business, and the Confidential Information used by the Selling Entities; and

WHEREAS, Leines is a recipient of a portion of the Purchase Price (as defined in the Purchase Agreement) and has benefitted from the sale to Buyer of his ownership in the Selling Entities and, in partial consideration thereof, Leines agrees to limit his ability to take certain actions, including competing with the Selling Entities; and

WHEREAS, Leines acknowledges that the agreements and covenants contained in this Agreement are essential to protect the value of the Business and the Selling Entities and are a material inducement to Buyer's agreement to enter into the Purchase Agreement;

NOW, THEREFORE, the parties hereto incorporate the foregoing recitals, and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

AGREEMENT

1. Confidential Information. Leines acknowledges that Leines has occupied a position of trust and confidence with each of the Selling Entities and will continue to occupy a position of trust and confidence with each of the Selling Entities, Buyer, Miller, and Vectren, and has had access to and has become familiar with the confidential information described below, any and all of which constitute confidential information of the Selling Entities, Buyer, Vectren, and Miller, as applicable (collectively, the "Confidential Information"), including without limitation any of the following proprietary information: (i) any and all trade secrets concerning the business and affairs of the Selling Entities, Buyer,

Vectren, and Miller, and/or their successors and assigns, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), database technologies, systems, structures, architectures, processes, improvements, devices, know-how, discoveries, concepts, methods, and information of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns and any other information, however documented, of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns that is a trade secret within the meaning of Indiana law or under other applicable law; (ii) any and all information concerning the business and affairs of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns (which includes, without limitation, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, customers and potential customers, personnel training and techniques), however documented; and (iii) any and all notes, analysis, compilations, studies, summaries and other material prepared by or for the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns containing or based, in whole or in part, upon any information included in the foregoing. Confidential Information shall in no event include data or information that: (i) was generally available or accessible to the public prior to the date hereof; (ii) becomes available to the public after the date hereof other than as a result of disclosure by Leines in violation hereof or by Paulette Britzius in violation of her confidentiality restrictions imposed by the Selling Entities, Buyer, Vectren, or Miller; (iii) following the later of the termination of the Employment Agreement by and between Minnesota Limited and Leines executed on even date herewith (the "Employment Agreement") or Leines's employment with Minnesota Limited, is rightfully received by Leines from a third party without a confidential obligation to the Selling Entities, Buyer, Vectren or Miller, as long as Leines did not provide such information to such third party on behalf of the Selling Entities, Buyer, Vectren or Miller, (iv) following the later of the termination of the Employment Agreement or Leines's employment with Minnesota Limited, is independently developed by Leines without use of the Confidential Information of the Selling Entities, Buyer, Vectren, or Miller, or (v) is required to be disclosed by order of a court of competent jurisdiction, subpoena (including an administrative subpoena), or other compulsory legal process; provided, however, that with respect to clause (v), Leines shall give prompt written notice of such requirement to the Selling Entities, Buyer, Vectren, and Miller, as applicable, and shall give such party or parties the opportunity to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and Leines shall reasonably cooperate in such efforts.

2. Ownership of Confidential Information. As among the parties to this Agreement, all Confidential Information is and shall remain the exclusive property of the Selling Entities, Buyer, Vectren, or Miller, as applicable, whether or not prepared in whole or in part by Leines, and whether disclosed to or entrusted to the custody of Leines. Leines acknowledges and agrees that the protection of the Confidential Information is necessary to protect and preserve the value of each of the Selling Entities, Buyer, Vectren, and Miller. Therefore, Leines hereby agrees that he will not disclose to any individual, entity, or association (collectively, "Person"), or use for Leines's own account or for the benefit of any Person, any Confidential Information, whether or not such Confidential Information is embodied in writing or other physical form. Leines agrees to use his commercially reasonable best efforts to immediately deliver to the Selling Entities, Buyer, Vectren, or Miller, upon written request from such Person, all documents, memoranda, notes, plans, records, reports and other documentation, models, components, devices or computer software, whether embodied in a disk or in other form (and all copies of all of the foregoing) that contain Confidential Information and any other Confidential Information and property of the Selling Entities, Buyer, Vectren, or Miller, that Leines may then possess or have under Leines's control.

3. Noncompetition.

(a) For a term of five (5) years after the Effective Date (the "Non-Compete Period"), Leines will not, except on behalf of Buyer or the Selling Entities or their Affiliates:

(i) directly or indirectly, have any ownership interest in or, directly or indirectly, engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, work for, advise, be associated with, or in any manner connected with, lend Leines's name or any similar name to, lend Leines's credit to, or render services or advice to, any Competitive Business (as hereinafter defined) in the United States;

(ii) directly or indirectly, either for Leines or any other Person, (x) induce or attempt to induce any employee of Buyer, Miller, or any of the Selling Entities to leave their employ or hire any such employees, (y) in any way interfere with the relationship between any of the Selling Entities and their employees, or (z) employ, or otherwise engage as an employee, independent contractor, or otherwise, any employee of any of the Selling Entities; and/or

(iii) directly or indirectly, either for Leines or any other Person, induce or attempt to induce any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities to cease doing business with Buyer, Miller, or any of the Selling Entities or, in a competitive capacity, to do business with the any other Person, or in any way interfere with the relationship between any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities.

(b) For the purposes of this Section 3, "Competitive Business" is defined as any Person that engages in any aspect of the Business.

(c) In the event of a breach by Leines of any covenant set forth this Section, the Non-Compete Period will be extended by the period of the duration of such breach.

Notwithstanding the foregoing, Leines shall not be prevented or limited from owning or operating the business, pipeline and other assets associated with or related to the GMT Lawsuit (as defined in the Purchase Agreement).

4. Reasonableness. Leines acknowledges that the covenants set forth in this Agreement are reasonable and necessary to protect and preserve the Buyer's and Vectren's interests in and right to the use and operation of the Selling Entities and the value of the Selling Entities.

5. Remedies. Any violation by Leines of this Agreement may cause Buyer, Vectren, Miller, and the Selling Entities to suffer irreparable harm for which they will not have an adequate remedy at law. Therefore, if Leines violates or threatens to violate any provision of this Agreement, each of Buyer, Vectren, Miller, and the Selling Entities shall be entitled to seek injunctive relief, including, without limitation, temporary restraining orders and/or preliminary or permanent injunctions, to restrain or enjoin any violation or threatened violation of this Agreement. Such right to seek injunctive relief shall be in addition to, and not in lieu of, any other legal or equitable remedies that may be available to Buyer, Vectren, Miller, and the Selling Entities, including, without limitation, monetary damages, including lost profits. Any claim or cause of action by Leines against Buyer (other than a final determination by a court of competent jurisdiction of Buyer's wrongful failure to pay (i) the Purchase Price, as defined in the Purchase Agreement, when and as the same becomes due pursuant to the terms of the Purchase Agreement or (ii) amounts under the Employment Agreement when and as the same becomes due

pursuant to the terms of such Employment Agreement), and/or any of the Selling Entities shall not constitute a defense to the enforcement of the restrictions and covenants set forth in this Agreement and shall not be used to prohibit the injunctive relief provided for in this Section. In no event will the Selling Entities or Buyer have the right to off set any amounts owed to the Selling Entities or Buyer (or any other person) by Leines against any amounts owed Leines under any agreement.

6. Waiver. The waiver by Buyer, Vectren, Miller, or any of the Selling Entities of a breach of any provision of this Agreement by Leines shall not operate or be construed as a waiver of any subsequent breach of the same or a different provision by Leines by such or any other party.

7. Governing Law. This Agreement shall be governed by, interpreted under, and construed in accordance with the laws of the State of Indiana, without regard to conflict-of-law principles.

8. Entire Agreement. The terms of this Agreement are intended by the parties as a complete, exclusive, and final expression of their agreement with respect to the subject matter contained herein. This Agreement may be altered or modified only by a writing signed by the parties hereto.

9. Successor and Assignment. This Agreement shall be binding upon and inure to the benefit of Leines and the Selling Entities and their respective successors and permitted assigns. This Agreement may be assigned by the Selling Entities, without the consent of Leines, to any affiliated person or entity and shall inure to the benefit of and may be enforceable by the Selling Entities or any such person or entity, including, but not limited to, any surviving entity that exists because of a merger, change in ownership, name, or form of business, or sale of the assets of the Selling Entities (provided that in the case of any merger, change in ownership, or sale of assets, any successor entity shall expressly assume the Selling Entities' obligations hereunder). Leines hereby consents to any such assignment. Leines may not assign or transfer this Agreement or any of Leines's rights or obligations hereunder.

10. Severability. Whenever possible, each provision and term of this Agreement will be interpreted in a manner to be effective and valid, but if any provision or term of this Agreement is held to be unreasonable, unenforceable, or invalid for any reason, then such provision or term will be ineffective only to the extent of such unreasonableness, unenforceability, or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement. If any term, provision or covenant of this Agreement is held to be unreasonable, arbitrary or against public policy, a court may limit the application of such term, provision or covenant or modify such term, provision or covenant and proceed to enforce this Agreement as so limited or modified, which limited or modified term, provision or covenant will be effective, binding and enforceable against Leines.

11. Notice. Any notice, request, demand, or other communication required to be given hereunder shall be made in writing and shall be deemed to have been fully given if personally delivered or if mailed by overnight delivery (the date on which such notice, request, demand, or other communication is received shall be the date of delivery).

12. Jurisdiction. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement shall be brought against any of the parties in the courts of Hennepin County of the State of Minnesota or, if it has or can acquire jurisdiction, in the United States District Court for the District of Minnesota, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

13. Execution of Agreement. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by electronic transmission in Adobe Acrobat format shall be deemed to be their original signatures for any purposes whatsoever.

14. Joint Drafting. This Agreement shall be deemed to have been drafted jointly by the parties, and in the event of an ambiguity in this Agreement, the same shall not be construed against any party.

15. Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof. Leines hereby acknowledges and agrees that he (i) has read this Agreement in its entirety prior to executing it, (ii) understands the provisions and effects of this Agreement, and (iii) has consulted with such attorneys, accountants, and other advisors as he has deemed appropriate in connection with his execution of this Agreement.

* * *

IN WITNESS WHEREOF, THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ THIS NON-COMPETITION AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS. They further acknowledge that they have exercised due diligence in reviewing this Agreement, and that each has had adequate opportunity to consult with legal counsel or other advisors to the extent that each deemed such consultation necessary.

MINNESOTA LIMITED, INC.

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC EQUIPMENT, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC LAND BEMIDJI, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC LAND ALTAMONT, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC PIPELINE SERVICES, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

VECTREN INFRASTRUCTURE SERVICES CORPORATION

By: ______________________________
Douglas S. Banning, Jr.,
President

MILLER PIPELINE CORPORATION

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

VECTREN CORPORATION

By: ______________________________
Ronald E. Christian,
Executive Vice President, Chief Legal and External Affairs Officer

____
Christopher T. Leines

NON-COMPETITION AGREEMENT

THIS NON-COMPETITION AGREEMENT (this "Agreement") is made and entered into this 31st day of March, 2011 (the "Effective Date"), by and among Paulette A. Britzius, an individual residing in State of Minnesota ("Britzius"), Minnesota Limited, Inc., a Minnesota corporation ("Minnesota Limited"), Nordic Equipment, LLC, a Minnesota limited liability company ("Nordic Equipment"), Nordic Pipeline Services LLC, a Minnesota limited liability company ("Nordic Pipeline"), Nordic Land Bemidji, LLC, a Minnesota limited liability company ("Nordic Bemidji"), Nordic Land Altamont, LLC, a Minnesota limited liability company ("Nordic Altamont," and, together with Minnesota Limited, Nordic Equipment, Nordic Pipeline, and Nordic Bemidji, the "Selling Entities"), Vectren Infrastructure Services Corporation, an Indiana corporation ("Buyer"), Miller Pipeline Corporation, an Indiana corporation ("Miller"), and Vectren Corporation, an Indiana corporation ("Vectren").

RECITALS

WHEREAS, Britzius sold one hundred percent (100%) of her ownership in each of the Selling Entities (directly or indirectly) pursuant to that certain Purchase Agreement dated of even date herewith by and among Britzius, Christopher T. Leines, Nordic Land Company, LLC, a Minnesota limited liability company, and Buyer (the "Purchase Agreement");

WHEREAS, the Selling Entities are in the business of providing the following services for the natural gas and petroleum industries: (i) high-pressure, welded steel pipeline installation and construction services; (ii) pump station, compressor station, terminal, and refinery construction services related to such pipelines; (iii) gas distribution pipeline construction services; (iv) pipeline maintenance; and (v) hydrostatic testing (collectively, the "Business");

WHEREAS, Britzius is intimately familiar with the Selling Entities, the Business, and the Confidential Information used by the Selling Entities; and

WHEREAS, Britzius is a recipient of a portion of the Purchase Price (as defined in the Purchase Agreement) and has benefitted from the sale to Buyer of her ownership in the Selling Entities and, in partial consideration thereof, Britzius agrees to limit her ability to take certain actions, including competing with the Selling Entities; and

WHEREAS, Britzius acknowledges that the agreements and covenants contained in this Agreement are essential to protect the value of the Business and the Selling Entities and are a material inducement to Buyer's agreement to enter into the Purchase Agreement;

NOW, THEREFORE, the parties hereto incorporate the foregoing recitals, and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

AGREEMENT

1. Confidential Information. Britzius acknowledges that Britzius has occupied a position of trust and confidence with each of the Selling Entities and will continue to occupy a position of trust and confidence with each of the Selling Entities, Buyer, Miller, and Vectren, and has had access to and has become familiar with the confidential information described below, any and all of which constitute confidential information of the Selling Entities, Buyer, Vectren, and Miller, as applicable (collectively, the "Confidential Information"), including without limitation any of the following proprietary information: (i) any and all trade secrets concerning the business and affairs of the Selling Entities, Buyer,

Vectren, and Miller, and/or their successors and assigns, product specifications, data, know-how, formulae, compositions, processes, designs, sketches, photographs, graphs, drawings, samples, inventions and ideas, customer lists, current and anticipated customer requirements, price lists, market studies, business plans, computer software and programs (including object code and source code), database technologies, systems, structures, architectures, processes, improvements, devices, know-how, discoveries, concepts, methods, and information of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns and any other information, however documented, of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns that is a trade secret within the meaning of Indiana law or under other applicable law; (ii) any and all information concerning the business and affairs of the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns (which includes, without limitation, historical financial statements, financial projections and budgets, historical and projected sales, capital spending budgets and plans, the names and backgrounds of key personnel, contractors, agents, suppliers and potential suppliers, customers and potential customers, personnel training and techniques), however documented; and (iii) any and all notes, analysis, compilations, studies, summaries and other material prepared by or for the Selling Entities, Buyer, Vectren, and Miller, and/or their successors and assigns containing or based, in whole or in part, upon any information included in the foregoing. Confidential Information shall in no event include data or information that: (i) was generally available or accessible to the public prior to the date hereof; (ii) becomes available to the public after the date hereof other than as a result of disclosure by Britzius in violation hereof or by Christopher T. Leines in violation of his confidentiality restrictions imposed by the Selling Entities, Buyer, Vectren, or Miller; (iii) is rightfully received by Britzius from a third party without a confidential obligation to the Selling Entities, Buyer, Vectren or Miller, as long as Britzius did not provide such information to such third party on behalf of the Selling Entities, Buyer, Vectren or Miller, (iv) is independently developed by Britzius without use of the Confidential Information of the Selling Entities, Buyer, Vectren, or Miller, or (v) is required to be disclosed by order of a court of competent jurisdiction, subpoena (including an administrative subpoena), or other compulsory legal process; provided, however, that with respect to clause (v), Britzius shall give prompt written notice of such requirement to the Selling Entities, Buyer, Vectren, and Miller, as applicable, and shall give such party or parties the opportunity to seek an appropriate confidentiality agreement, protective order, or modification of any disclosure, and Britzius shall reasonably cooperate in such efforts.

2. Ownership of Confidential Information. As among the parties to this Agreement, all Confidential Information is and shall remain the exclusive property of the Selling Entities, Buyer, Vectren, or Miller, as applicable, whether or not prepared in whole or in part by Britzius, and whether disclosed to or entrusted to the custody of Britzius. Britzius acknowledges and agrees that the protection of the Confidential Information is necessary to protect and preserve the value of each of the Selling Entities, Buyer, Vectren, and Miller. Therefore, Britzius hereby agrees that she will not disclose to any individual, entity, or association (collectively, "Person"), or use for Britzius's own account or for the benefit of any Person, any Confidential Information, whether or not such Confidential Information is embodied in writing or other physical form. Britzius agrees to use his commercially reasonable best efforts to immediately deliver to the Selling Entities, Buyer, Vectren, or Miller, upon written request from such Person, all documents, memoranda, notes, plans, records, reports and other documentation, models, components, devices or computer software, whether embodied in a disk or in other form (and all copies of all of the foregoing) that contain Confidential Information and any other Confidential Information and property of the Selling Entities, Buyer, Vectren, or Miller, that Britzius may then possess or have under Britzius's control.

3. Noncompetition.

(a) For a term of five (5) years after the Effective Date (the "Non-Compete Period"), Britzius will not, except on behalf of Buyer or the Selling Entities or their Affiliates:

(i) directly or indirectly, have any ownership interest in or, directly or indirectly, engage or invest in, own, manage, operate, finance, control, or participate in the ownership, management, operation, financing, or control of, be employed by, work for, advise, be associated with, or in any manner connected with, lend Britzius's name or any similar name to, lend Britzius's credit to, or render services or advice to, any Competitive Business (as hereinafter defined) in the United States;

(ii) directly or indirectly, either for Britzius or any other Person, (x) induce or attempt to induce any employee of Buyer, Miller, or any of the Selling Entities to leave their employ or hire any such employees, (y) in any way interfere with the relationship between any of the Selling Entities and their employees, or (z) employ, or otherwise engage as an employee, independent contractor, or otherwise, any employee of any of the Selling Entities; and/or

(iii) directly or indirectly, either for Britzius or any other Person, induce or attempt to induce any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities to cease doing business with Buyer, Miller, or any of the Selling Entities or, in a competitive capacity, to do business with the any other Person, or in any way interfere with the relationship between any current or prospective customer, dealer, supplier, licensee, or business relation of Buyer, Miller, or any of the Selling Entities.

(b) For the purposes of this Section 3, "Competitive Business" is defined as any Person that engages in any aspect of the Business.

(c) In the event of a breach by Britzius of any covenant set forth this Section, the Non-Compete Period will be extended by the period of the duration of such breach.

Notwithstanding the foregoing, Britzius shall not be prevented or limited from owning or operating the business, pipeline and other assets associated with or related to the GMT Lawsuit (as defined in the Purchase Agreement).

4. Reasonableness. Britzius acknowledges that the covenants set forth in this Agreement are reasonable and necessary to protect and preserve the Buyer's and Vectren's interests in and right to the use and operation of the Selling Entities and the value of the Selling Entities.

5. Remedies. Any violation by Britzius of this Agreement may cause Buyer, Vectren, Miller, and the Selling Entities to suffer irreparable harm for which they will not have an adequate remedy at law. Therefore, if Britzius violates or threatens to violate any provision of this Agreement, each of Buyer, Vectren, Miller, and the Selling Entities shall be entitled to seek injunctive relief, including, without limitation, temporary restraining orders and/or preliminary or permanent injunctions, to restrain or enjoin any violation or threatened violation of this Agreement. Such right to seek injunctive relief shall be in addition to, and not in lieu of, any other legal or equitable remedies that may be available to Buyer, Vectren, Miller, and the Selling Entities, including, without limitation, monetary damages, including lost profits. Any claim or cause of action by Britzius against Buyer (other than a final determination by a court of competent jurisdiction of Buyer's wrongful failure to pay the Purchase Price, as defined in the Purchase Agreement, when and as the same becomes due pursuant to the terms of the Purchase Agreement), and/or any of the Selling Entities shall not constitute a defense to the enforcement

of the restrictions and covenants set forth in this Agreement and shall not be used to prohibit the injunctive relief provided for in this Section. In no event will the Selling Entities or Buyer have the right to off set any amounts owed to the Selling Entities or Buyer (or any other person) by Britzius against any amounts owed Britzius under any agreement.

6. Waiver. The waiver by Buyer, Vectren, Miller, or any of the Selling Entities of a breach of any provision of this Agreement by Britzius shall not operate or be construed as a waiver of any subsequent breach of the same or a different provision by Britzius by such or any other party.

7. Governing Law. This Agreement shall be governed by, interpreted under, and construed in accordance with the laws of the State of Indiana, without regard to conflict-of-law principles.

8. Entire Agreement. The terms of this Agreement are intended by the parties as a complete, exclusive, and final expression of their agreement with respect to the subject matter contained herein. This Agreement may be altered or modified only by a writing signed by the parties hereto.

9. Successor and Assignment. This Agreement shall be binding upon and inure to the benefit of Britzius and the Selling Entities and their respective successors and permitted assigns. This Agreement may be assigned by the Selling Entities, without the consent of Britzius, to any affiliated person or entity and shall inure to the benefit of and may be enforceable by the Selling Entities or any such person or entity, including, but not limited to, any surviving entity that exists because of a merger, change in ownership, name, or form of business, or sale of the assets of the Selling Entities (provided that in the case of any merger, change in ownership, or sale of assets, any successor entity shall expressly assume the Selling Entities' obligations hereunder). Britzius hereby consents to any such assignment. Britzius may not assign or transfer this Agreement or any of Britzius's rights or obligations hereunder.

10. Severability. Whenever possible, each provision and term of this Agreement will be interpreted in a manner to be effective and valid, but if any provision or term of this Agreement is held to be unreasonable, unenforceable, or invalid for any reason, then such provision or term will be ineffective only to the extent of such unreasonableness, unenforceability, or invalidity, without invalidating or affecting in any manner whatsoever the remainder of such provision or term or the remaining provisions or terms of this Agreement. If any term, provision or covenant of this Agreement is held to be unreasonable, arbitrary or against public policy, a court may limit the application of such term, provision or covenant or modify such term, provision or covenant and proceed to enforce this Agreement as so limited or modified, which limited or modified term, provision or covenant will be effective, binding and enforceable against Britzius.

11. Notice. Any notice, request, demand, or other communication required to be given hereunder shall be made in writing and shall be deemed to have been fully given if personally delivered or if mailed by overnight delivery (the date on which such notice, request, demand, or other communication is received shall be the date of delivery).

12. Jurisdiction. Any action or proceeding seeking to enforce any provision of, or based upon any right arising out of, this Agreement shall be brought against any of the parties in the courts of Hennepin County of the State of Minnesota or, if it has or can acquire jurisdiction, in the United States District Court for the District of Minnesota, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

13. Execution of Agreement. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or by electronic transmission in Adobe Acrobat format shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile or by electronic transmission in Adobe Acrobat format shall be deemed to be their original signatures for any purposes whatsoever.

14. Joint Drafting. This Agreement shall be deemed to have been drafted jointly by the parties, and in the event of an ambiguity in this Agreement, the same shall not be construed against any party.

15. Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof. Britzius hereby acknowledges and agrees that she (i) has read this Agreement in its entirety prior to executing it, (ii) understands the provisions and effects of this Agreement, and (iii) has consulted with such attorneys, accountants, and other advisors as she has deemed appropriate in connection with her execution of this Agreement.

* * *

IN WITNESS WHEREOF, THE PARTIES HERETO ACKNOWLEDGE THAT THEY HAVE READ THIS NON-COMPETITION AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS. They further acknowledge that they have exercised due diligence in reviewing this Agreement, and that each has had adequate opportunity to consult with legal counsel or other advisors to the extent that each deemed such consultation necessary.

MINNESOTA LIMITED, INC.

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC EQUIPMENT, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC LAND BEMIDJI, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC LAND ALTAMONT, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

NORDIC PIPELINE SERVICES, LLC

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

VECTREN INFRASTRUCTURE SERVICES CORPORATION

By: ______________________________
Douglas S. Banning, Jr.,
President

MILLER PIPELINE CORPORATION

By: ______________________________
Douglas S. Banning, Jr.,
Chief Executive Officer

VECTREN CORPORATION

By: ______________________________
Ronald E. Christian,
Executive Vice President, Chief Legal and External Affairs Officer

____
Paulette A. Britzius

EXHIBIT E

Form of Lease Agreement

LEASE AGREEMENT FOR HEADQUARTERS, ADMINISTRATIVE OFFICES, SHOP AND YARD OF MINNESOTA LIMITED, INC.

(Big Lake Township)

THIS LEASE AGREEMENT (the "***Lease***") is executed effective March 31, 2011 (the "***Effective Date***") by and between MLBL, LLC, a Minnesota limited liability company ("***Landlord***") and Minnesota Limited, Inc., a Minnesota corporation ("***Tenant***"):

1. LEASED PREMISES: In consideration of the rents, terms, provisions and covenants of this Lease, Landlord does hereby lease and let onto Tenant and Tenant does hereby lease from Landlord, that certain property located at Big Lake, Minnesota consisting of the entire office, commercial and warehouse building (the "***Building***"), together with parking areas and adjacent grounds serving as outside storage for Tenant's equipment, commonly known as 18640 200th Street, Big Lake, Minnesota 55309 (the "***Leased Premises***"), and shown on the sketch as set forth in Exhibit A attached.

At any time during the Term of this Lease, the Landlord may, by at least thirty (30) days written notice to Tenant (the "***Recapture Notice***"), elect to recapture that portion of the property adjacent to State Highway 25 as depicted on Exhibit A-1 attached (the "***Recapture Property***"). On the effective date of such notice, the Recapture Property shall no longer be part of the Leased Premises, but, except as set forth in Section 4.4 herein, no Rent due hereunder shall be changed by such recapture.

2. TERM. Tenant shall have and hold the Leased Premises for a term of one hundred twenty (120) months, plus the fractional month in which the Effective Date occurs, commencing on the Effective Date and continuing through the last day of the month in which the tenth anniversary of the Effective Date occurs (hereinafter called the "***Term***").

3. USE: The Leased Premises shall be used by the Tenant solely for the following purposes: administrative offices, storage, warehousing, light assembly operations, fabrication, exterior storage of equipment and materials.

4. RENT:

4.1 Base Rent. Tenant agrees to pay to Landlord as base rent (hereinafter called "***Base Rent***") for the Leased Premises, the sum of Eighty Three Thousand, Three Hundred Thirty Three and 33/100 Dollars ($83,333.33) per month, said monthly installments to be due and payable by Tenant, without setoff or deduction, in advance at the office of Landlord as set forth in this Lease or at such other place as Landlord may designate in writing. One monthly installment of rent shall be due and payable on or before the first day of each calendar month during the Term of this Lease, or any extension or renewal thereof. The Base Rent for any partial month during the Term shall be prorated against a thirty (30) day month. All Base Rent, Additional Rent and all other sums payable hereunder by Tenant shall be paid without notice, demand, set off, counter-claim, abatement, suspension, deduction or defense.

4.2 Intentionally Deleted.

4.3 Maintenance of the Leased Premises and Operating Expenses. During the Term, and any renewals and extensions thereof, Tenant shall, at its cost and expense, keep and maintain the Leased Premises, including without limitation the maintenance, operation, repair, replacement and care of all altered, rebuilt, additional or substituted buildings; the exterior and interior portions of all doors; glass and glass windows; all lighting, mechanical, plumbing, heating, air conditioning, ventilating and electrical equipment and systems within, affixed to (roof mounted, or otherwise), or serving the Leased Premises; the roof; interior walls; Building exterior (structural and non-structural); partitions; floors and ceilings; signs of Tenant; all fixtures, appliances and equipment furnished by Landlord; and structures or other improvements thereto; in as good a condition and repair as they were in at the time that Tenant took possession thereof, reasonable wear and tear excepted. Tenant will pay, directly to the providers, the cost of all (i) utilities (including without limitation, sewer rents and charges for water, L.P. gas, natural gas, electricity, or other energy sources, telephone, refuse removal and all other service or services furnished to the Leased Premises or to the occupants thereof), and (ii) maintenance for all parking lots, security lighting, cleaning, gardening, lawn maintenance, snow removal, and landscaping for the Leased Premises. Tenant will promptly make all structural and nonstructural, foreseen and unforeseen, ordinary and extraordinary changes and repairs of any kind which may be required to be made to keep and maintain the Leased Premises in good condition, repair and appearance and keep the Leased Premises orderly and free and clear of rubbish. Tenant covenants to perform or observe all terms, covenants or conditions or maintenance agreement to which it may at any time be a party or to which the Leased Premises are subject, including any and all protective covenants. Landlord shall not be required to maintain, repair or rebuild or to make any alterations, replacements or renewals of any nature to the Leased Premises, or any part thereof, whether ordinary or extraordinary, structural or nonstructural, foreseen or not foreseen or to maintain the Leased Premises or any part thereof in any way, regardless of the nature or cause of the work required hereunder. Tenant hereby expressly waives the right to make repairs at the expense of Landlord which may be provided for in any law in effect at the time of the commencement of the Term or which may thereafter be enacted.

Tenant will pay all Operating Expenses of the Leased Premises. The term "***Operating Expenses***" herein shall include without limitation, (i) all expenses, costs, fees and disbursements necessary for all of the foregoing or other items necessary to proper maintenance of the Leased Premises; (ii) the cost of any replacements of a capital nature ("***Capital Costs***") defined as capital improvements under GAAP ("***Capital Improvements***"), including, without limitation, the roof, HVAC or other mechanical systems, and parking areas or any capital improvements which are required under any governmental law or regulation that was not applicable to the Leased Premises at the time it was constructed during the first five (5) years of the Term; (iii) the cost of all service contracts (as set forth below); and (iv) reimbursements to Landlord, on demand, for all payments by Landlord for insurance premiums, including fire, extended coverage, liability, worker's compensation, rent loss (if Landlord determines Tenant's business interruption insurance to be inadequate) and other insurance which may be carried by Landlord, any management fees of Landlord and personnel employed by Landlord in connection with the foregoing, if Tenant fails to perform any obligations hereunder which Landlord then undertakes, legal and accounting expenses, water and sewer rents, rates and charges and other taxes and improvements which may be levied upon, assessed or imposed against the Leased Premises, but excluding from all of the foregoing, specifically, any improvements or alteration made at Tenant's request pursuant to Section 11 hereof, which shall be, in all cases, at the sole cost and expense of Tenant. Tenant shall provide to Landlord, on demand, evidence of payment of all utility expenses. Tenant shall inform Landlord, as soon as possible during the Term, of all proposed or recommended Capital Improvements, including those recommended by the service contracts (as set forth below), and such Capital Improvements shall be completed by contractors and in a manner as approved by Landlord pursuant to Section 11 herein. Tenant agrees to maintain the Leased Premises in a manner consistent with and at least equal to the manner in which the Landlord has maintained the Leased Premises prior to the Effective Date. Tenant shall be responsible for all Capital Improvements necessary after the first five (5) years of the Term (the "***Shared Capital Improvements***"), but Tenant's share of the cost of the Shared Capital Improvements shall be equal to the portion of the cost of such Shared Capital Improvements, amortized on a straight line basis over the estimated life of the Shared Capital Improvement in accordance with GAAP ("***Amortized Capital Costs***"), which is attributable to the period remaining in the Term of this Lease (the "***Tenant's Share***"), and the balance shall be paid by Landlord (the "***Landlord's Share***"). Landlord shall have the right to elect whether to make the Shared Capital Improvements, in which case Tenant shall pay Tenant's Share of the Shared Capital Improvements directly to Landlord, on demand therefor by Landlord, or to pay Tenant's Share monthly over the balance of the Term, with interest accruing at an interest rate equal to ten percent (10%) (the "***Amortization Rate***"). In the event that Landlord does not elect to make the Shared Capital Improvements, Tenant shall make such improvements, and Landlord may either pay the Landlord's Share at the time of completion of such improvements or mayelect to have the Tenant amortize the Landlord's Share over the remaining Term of the Lease using the Amortization Rate, and the Tenant may deduct from other amounts due to Landlord hereunder such monthly amortization amount.

(a) Service Contracts. Tenant shall enter into appropriate service contracts with reputable vendors, approved by Landlord (which approval will not be unreasonably withheld, delayed or denied), with respect to all maintenance obligations not conducted by Tenant itself, including but not limited to those listed on Exhibit D attached hereto. Such contracts for HVAC shall require annual reports (and every third year there shall be a report on the overall condition of the Building and all its major components, including the roof and parking areas), as to the condition of the portions/components of the Building being serviced, including recommendations as to preventative maintenance and replacements upon reaching the end of the useful life of such portion/component, as well as such maintenance required to conform to any requirements of the roof warranty and/or guaranty. Copies of all required periodic certifications and recertifications, service contracts, together with all service reports (including such service performed directly by Tenant) shall be provided to Landlord. Subject to the preceding paragraph, Tenant shall be responsible for implementing the recommendations as contained in such reports relating to maintenance, repair and replacement of the Building and any components thereof, such as the parking areas, HVAC and roof.

(b) Trash Dumpsters/Waste Containers. Tenant shall provide its own dumpster and waste removal containers and comply with any and all requirements of the township and county where the Leased Premises are located. Tenant shall not leave or store any materials or trash on the Leased Premises and shall not litter the grounds and parking areas. All dumpsters and waste containers shall be properly secured and covered. Hazardous materials shall be separated, properly contained, and identified for removal in compliance with the representations of Section 6.

The payment of Operating Expenses set forth herein shall be in addition to the Base Rent payable pursuant to subsections 4.1 and 4.2 set forth above. Should this Lease commence or terminate at any time other than the first day of the calendar year, the Operating Expenses referred to herein shall be prorated such that Tenant shall pay only the operating expenses for the calendar days during such calendar year for which Tenant is obligated to pay rent with respect to the Leased Premises.

Notwithstanding the foregoing, at any time during the Term, (i) if Landlord elects to develop the Recapture Property (the "Development Extension"), or (ii) in the event of any default by Tenant which is not cured within any cure period contained herein, Landlord may, by written notice to Tenant, elect to maintain the Leased Premises, in which event, Landlord shall estimate the reasonable Operating Costs for each calendar year and provide such estimate to Tenant. Thereafter, until Landlord shall provide additional notice to Tenant that Tenant shall resume direct maintenance of the Leased Premises and subject to the limitations in the following paragraph, Tenant shall pay as additional rent hereunder

(“***Additional Rent***”, and with the Base Rent and other amounts due from Tenant to Landlord hereunder, the “***Rent***”), along with its monthly Base Rent payments required under Section 4.1 of the Lease, one-twelfth (1/12) of such estimated Operating Expenses, and such Additional Rent shall be payable until subsequently adjusted for the following year pursuant to this paragraph. Within thirty (30) days after the expiration of each calendar year, Landlord shall inform Tenant of the actual Operating Expenses for the previous year. If such statement shows that Tenant’s estimated monthly payments for the previous calendar year do not equal the actual Operating Expenses, then Tenant shall, within twenty (20) days after being informed by Landlord, pay such deficiency to Landlord or, in the event of an overpayment by Tenant, such overpayment shall be refunded to Tenant as soon as possible after the expiration of each calendar year in the form of an adjustment in the following year’s estimated Operating Expenses.

Notwithstanding the foregoing paragraph, in the event that the Landlord elects to maintain the Leased Premises due to the Development Extension, rather than due to a Tenant default, Operating Expenses may include expenses relating to the Recapture Property, provided that they are prorated between the Leased Premises and the Recapture Property based upon the square footage of the area being maintained. In no event shall the Operating Expenses payable by the Tenant, excluding commercially reasonable management fees and increased costs reasonably commensurate with inflation, exceed the amount of the Operating Expenses incurred by the Tenant prior to the Landlord election to maintain the Leased Premises as a result of the Development Extension. Operating Expenses shall not include marketing fees and rental commissions, costs and legal fees in connection with Landlord’s financing of the Leased Premises, negotiation and preparation of leases, and any disputes with tenants, franchise or income taxes imposed upon Landlord, the cost of painting, repainting, decorating or redecorating for any tenant, any penalties or fines assessed against Landlord, and the cost for complying with environmental laws unless resulting from Tenant’s use of the Leased Premises. If Tenant does not agree with Landlord’s annual statement of Operating Expenses, then Tenant shall have the right, if written notice is given to Landlord not later than six (6) months following receipt of such statement by Tenant and Landlord and Tenant are unable to resolve such disagreement by negotiation, to cause an audit to be made of Landlord’s records concerning the Operating Expenses, by an independent certified public accountant designated by Landlord from a list of not less than three (3) such accountants provided by Tenant, at the expense of Tenant, unless such audit discloses an error in excess of five percent (5%) in the computation of Operating Expenses, in which event such audit shall be at the expense of Landlord. The results of such audit shall be binding upon Landlord and Tenant, and Tenant shall be entitled to reimbursement by Landlord of any excessive additional rent paid.

If Tenant shall fail to keep and preserve the Leased Premises in the state and condition required by the provisions of this Lease (including the failure to implement recommendations contained in third party reports), Landlord may, at its option and after 30 days written notice to Tenant (or such shorter period of time if required because of health, safety or emergency) put or cause the same to be put in the condition and state of repair agreed upon, and in such case, Tenant shall pay the reasonable cost thereof. Tenant, at its cost, shall move or remove fixtures whenever such moving or removal is requested by Landlord for purposes of necessary repair, however Landlord shall coordinate with Tenant so as to not cause unnecessary disruption of Tenant’s business activities in connection with such removal or moving.

4.4 Payment of Real Estate Taxes. All Real Estate Taxes, as defined below, shall be paid directly by Tenant with proof of such payment being provided to Landlord prior to such time as penalties and/or interest accrues or would be imposed upon such Real Estate Taxes. Commencing with the calendar year in which Real Estate Taxes become payable for the year in which the Term commences and continuing for each calendar year thereafter, Landlord shall furnish Tenant with a statement of the Real Estate Taxes for the Leased Premises due and payable in said calendar year, consisting of a copy of the original tax statement issued by the taxing authority. If the Term covers only a portion of a calendar year, Tenant's share of the Real Estate Taxes shall be prorated for the period of the calendar year actually covered by the Term, as provided above. In the event said Real Estate Taxes are payable to the applicable governmental entity in installments, then Tenant may pay the amount of said installments not less than thirty (30) days prior to said installment becoming due and payable; provided, however, Landlord may, at Landlord's option at any time during the Term, require Tenant to pay a monthly deposit to Landlord for the Real Estate Taxes, in which case, Tenant shall make such deposit as Landlord may reasonably require, provided Tenant's deposits shall be limited to deposits for those months for which Tenant has held occupancy and for which taxes have not been paid, plus one month advance deposit. Real Estate Taxes mean all taxes, including special assessments, due and owing on the Leased Premises; provided, however, in the event that the Landlord gives a Recapture Notice to Tenant, then, in such event, the Landlord shall either (i) obtain a tax parcel split of the Leased Premises from the Recapture Property or (ii) equitably allocate the portion of the Real Estate Taxes allocated to land between Leased Premises and the Recapture Property, in Landlord's reasonable discretion, and the Tenant shall be responsible for the portion allocated to the Leased Premises. In the event that the tax parcel of which the Leased Premises is a part is separated such that the Leased Premises become an independent tax parcel, the Tenant shall pay, as set forth above, all of the Real Estate Taxes for the parcel containing the Leased Premises.

4.5 Increases in Insurance Premiums. If any increase in the fire and extended coverage and/or liability insurance premiums paid for the Leased Premises is caused by Tenant's use and occupancy of the Leased Premises, then Tenant shall pay as Additional Rent the amount of such increase to Landlord.

4.6 Net Lease. This is an absolutely net lease to Landlord, unless otherwise expressly provided in this Lease. It is the intent of the parties hereto that the Base Rent payable under this Lease shall be an absolutely net return to the Landlord and that the Tenant shall pay all costs and expenses relating to the Leased Premises and the business carried on therein, unless otherwise expressly provided in this Lease. Any amount or obligation herein relating to the Leased Premises is an obligation of the Tenant to be performed by the Tenant at the Tenant's expense.

5. CONDITION OF LEASED PREMISES: Tenant accepts the Leased Premises in an "as is, where is" condition, with all faults, latent or patent, subject to the continuing obligations of the parties for repair and maintenance as set forth herein. Tenant specifically agrees that the items of personalty listed on Exhibit B will be maintained as part of the Leased Premises, as if they were a fixture in the Building, to be replaced and maintained as provided for herein, and surrendered with the Leased Premises at the end of the Term of this Lease.

6. ENVIRONMENTAL REPRESENTATIONS; INDEMNIFICATION:

6.1 Definitions. For purposes of this section 6, the following definitions apply:

(a) "***Environmental Laws***" is defined as any federal, state or local statute, law, ordinance, code, rule, regulation, order or decree, regulating, relating to, or imposing liability or standards concerning any hazardous materials as may now or at any time hereafter be in effect, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended by Superfund Amendments and Reauthorization Act of 1986 (SARA), the Clean Air Act (CAA), the Clean Water Act (CWA), the Toxic Substances Control Act (TSCA), the Solid Waste Disposal Act (SWDA), as amended by the Resource Conservation and Recovery Act (RCRA), and the Occupational Safety and Health Act of 1970 (OSHA), together with any amendments thereto., and any other federal, state or local laws, regulations or ordinances which deal with, regulate or pertain to either Hazardous Waste, oil or petroleum products, whether such laws, regulations or ordinances are currently existing, or are hereafter amended, adopted, or enacted and whether they are given retroactive or prospective effect.

(b) "***Hazardous Materials***" is defined as any hazardous or toxic waste, substance or material and any other waste, material, substance, pollutant or other contaminant, defined as such or defined as any similar term, by, in or for the purpose of the Environmental Laws. This includes petroleum products, flammable explosives, radioactive materials or waste, urea-formaldehyde, asbestos or any material containing asbestos and/or polychlorinated biphenyls.

6.2 Representations and Warranties. Tenant represents and warrants as follows:

(a) That Tenant will not use, store, dispose or install any Hazardous Material on, in or about the Leased Premises in violation of the Environmental Laws;

(b) That Tenant will not violate or permit any violation of any Environmental Laws relating to or affecting the Leased Premises or which will increase the insurance rates on the Leased Premises or which will be in violation of any insurance policy carried on the Leased Premises by Landlord;

(c) That there is not now existing any action, suit, investigation or proceeding against Tenant seeking to enforce any right or remedy under any of the Environmental Laws; and

(d) That the Leased Premises will not be used by Tenant as or for a mine, landfill, dump or other disposal facility.

(e) Tenant, at its expense, shall comply with all governmental laws, ordinances, rules and regulations applicable to the use of the Leased Premises and its occupancy and shall promptly comply with all governmental orders, rulings and directives for the correction, prevention and abatement of any violation upon, or in connection with the Leased Premises or Tenant's use or occupancy of the Leased Premises, including the making of any alterations or improvements to the Leased Premises, all at Tenant's sole cost and expense.

(f) Tenant shall immediately, upon receipt, provide Landlord with copies of all permits, inspection reports, monitoring reports, licenses, orders, demands, compliance requests, edicts or other documents filed, served, delivered or transmitted either with, to or from the Minnesota Department of Health, Minnesota Pollution Control Agency or the Environmental Protection Agency (or any successor organization) or other governmental body (hereafter "***Environmental Requirements***"). Tenant further agrees to comply with all Environmental Requirements. In no event shall any Hazardous Waste or substance or any pollutant or contaminate be disposed of on the Leased Premises through the sewer system serving the Leased Premises or stored underground. Tenant agrees to take all appropriate action, at its sole expense, to prevent any release or threatened release into the Leased Premises or the environment as a result of Hazardous Wastes or substances deposited, stored, placed on or which otherwise come to be located upon the Leased Premises or which is the result of the existence or emission of any Hazardous Waste or toxic chemicals, substances, materials or pollutants in, on or from the Leased Premises. Tenant's indemnification in Section 6.5 shall be deemed to include any breach of this representation and warranty. The representation and warranty of this Section shall survive the termination, expiration or cancellation of this Lease.

6.3 Inspection Rights. Landlord shall have the right from time to time to enter upon and investigate the Leased Premises and at its sole option to obtain a report from a reputable environmental consultant of Landlord's choice as to the presence of any Hazardous Waste, which report shall be addressed and available to Landlord (its mortgage lender, if any) and Tenant. If such consultant's report shows that there is a threat of imminent release (or there has been a previous release) of Hazardous Waste onto the Leased Premises, or the surrounding environment within the meaning of Environmental Laws or if Hazardous Waste is located upon the Leased Premises in violation of Environmental Laws, then Tenant shall pay for the cost of said report and investigation and Landlord shall have the right in its sole discretion to make such further investigations on the Leased Premises and procure such reports from consultants as Landlord deems necessary, all at the sole cost and expense of Tenant.

6.4 Corrective Actions. If at any time it is determined that Hazardous Wastes are present on the Leased Premises and in violation of Environmental Laws, and Tenant fails or refuses to take timely corrective, remedial or responsive action, then Landlord may, but shall not be required to, take such action, after giving prior notice of 30 days, unless Landlord reasonably believes immediate or other sooner action is warranted by the circumstances, in which case such reasonable or contemporary notice as is warranted by the circumstances shall be given. Any such corrective, remedial or responsive action taken in connection therewith shall be at Tenant's sole expense, whether such corrective, remedial or responsive action is taken by Landlord or Tenant; and if taken by Landlord, Tenant shall reimburse Landlord for all such costs on demand. If any corrective, remedial or responsive action includes any alterations to the Leased Premises or such alterations are required by Environmental Laws, said alterations shall be performed in compliance with this Lease.

6.5 Tenant Indemnification. Tenant shall indemnify and hold harmless Landlord, Landlord's manager, and each of their former, present and future officers, directors, employees, agents, shareholders or members, and attorneys, and all of their respective successors and assigns, from and against any and all liability, loss, cost, damage and expense, including witnesses' and attorneys' fees, resulting from or due to the violation of this Section 6, including the release or threatened release of any Hazardous Waste that was or is claimed or alleged to have been deposited, stored, disposed of, placed or otherwise located or allowed to be located on the Leased Premises by any person at any time or in connection with the removal or contamination of such Hazardous Waste, provided however, this indemnification and hold harmless provision shall not be applicable with respect to any conditions relating to the Leased Premises or Land which existed prior to Tenant's taking possession of the Leased Premises, unless such conditions were exacerbated by Tenant's activities.

6.6 Survival. Tenant's representations, warranties and obligations under this Section 6 shall not be terminated, released, discharged, extinguished or otherwise affected by the expiration of the Term or the termination or cancellation of this Lease. This provision may be enforced at any time by Landlord, or its successors and assigns.

7. ASSUMPTION OF RISK: Tenant assumes all risk of loss or damage of Tenant's property within the Leased Premises, including any loss or damage caused by water leakage, fire, windstorm, explosion, theft, act of any other tenant, or other cause. Landlord shall not be liable for and Tenant waives any claims against Landlord for injury or damage to the person or the property of Tenant, Tenant's employees, contractors, invitees, customers or any other person in or about the Leased Premises or the Building from any cause whatsoever, including, but not limited to, damage or injury which is caused by or results from: (i) fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures or (ii) from the condition of the Leased Premises or the Building. Notwithstanding Landlord's negligence, gross negligence or breach of this Lease, Landlord shall under no circumstances be liable for

(a) injury to Tenant's business, for any loss of income or profit therefrom or any indirect, consequential or punitive damages, or (b) any damage to property or injury to persons arriving from any act of God, such as earthquakes, hurricanes, floods or similar events.

8. UNLAWFUL USE: Tenant agrees not to occupy or use, or permit any portion of the Leased Premises to be occupied or used, for any business or purpose which is unlawful, disreputable or deemed to be extra-hazardous on account of fire or other reasons or permit anything to be done which would in any way increase the rate of fire insurance coverage on the Leased Premises and/or its contents.

9. COMPLIANCE WITH LAWS AND REGULATIONS: Tenant agrees to comply with all laws, ordinances, orders, rules or regulations (state, federal, municipal, or promulgated by other agencies or bodies having any jurisdiction thereof) relating to the use, condition or occupancy of the Leased Premises.

10. ENTRY FOR REPAIRS, INSPECTION: The Landlord or Landlord's employees or agents shall have the right without any diminution of rent or other charges payable hereunder by Tenant to enter the Leased Premises at all reasonable times during the last year of this Lease, for the purposes of exhibiting the Leased Premises to prospective tenants or purchasers, inspection, cleaning, repairing, altering or improving the same, but nothing contained in this Section shall be construed so as to impose any obligation on the Landlord to make any repairs, alterations or improvements.

11. ALTERATIONS/LEASEHOLD IMPROVEMENTS: Except for non-structural improvements which do not exceed $50,000 in cost (per project), Tenant will not make any alterations, additions or improvements in or to the Leased Premises or add, subtract, or in any way change any locks, plumbing or wiring therein without the prior consent of the Landlord, which consent may be predicated on Landlord's approval of such alterations, additions or improvements, including the contractors, installation manner and other details, and Tenant providing evidence to Landlord of Tenant's ability to pay the cost of such alterations. Tenant at its own expense shall obtain all permits and government approvals. Notwithstanding such approvals, Tenant agrees to comply with all Landlord's instructions regarding such alterations, additions or improvements, which may include posting ownership and lien notices on the Leased Premises. Tenant is responsible for payment of all leasehold improvements to the Leased Premises throughout the duration of the Lease. Unless Landlord specifically agrees otherwise in writing, all such leasehold improvements shall inure to and remain the property of Landlord. Regardless of whether Landlord's approval for any improvements are required hereunder, complete plans, contracts (general and sub) and all related material relating to such improvements shall be provided to Landlord.

12. SIGNS: All sign, advertisement or notices placed or painted on any part of the outside or inside of the Building or otherwise on the Leased Premises must be installed in a manner and style as currently exist as of the date hereof. The signage on State Highway 25 shall be governed by Section 36 below.

13. QUIET ENJOYMENT: Landlord does hereby warrant that, subject to the terms and conditions hereof, Tenant shall peacefully have, hold and enjoy the Leased Premises during the full Term of this Lease and any extension or renewal thereof.

14. ASSIGNMENT AND SUBLETTING:

14.1 Tenant Transfer. Tenant agrees not to assign, sublet, license, mortgage or encumber this Lease, the Leased Premises, or any part thereof (each, a "***Transfer***"), whether by voluntary act, operation of law, or otherwise, without the specific prior written consent of Landlord in each instance, which consent shall be unreasonably withheld. If Tenant is a corporation or partnership or other entity, transfer of a controlling interest of Tenant (and multiple transfers that together, transfer a controlling interest) shall be considered an assignment of this Lease for purposes of this Section 14.1, provided, however, that this sentence shall not apply to Tenant, or any direct or indirect owner of Tenant, to the extent such entity is a publicly traded entity. Consent by Landlord in one such instance shall not be a waiver of Landlord's rights under this Section 14.1 as to requiring consent for any subsequent instance. In the event Tenant desires to sublet a part or all of the Leased Premises, or assign this Lease, Tenant shall give written notice to Landlord at least thirty (30) days prior to the proposed subletting or assignment, which notice shall state the name of the proposed subtenant or assignee, the terms of any sublease or assignment documents and copies of financial reports or other relevant financial information of the proposed subtenant or assignee. Tenant agrees that fifty percent (50%) of any additional rent or transfer consideration received by Tenant, beyond what Tenant is paid for its other assets, from a Transfer for which the Landlord's consent is required above shall be due to Landlord as Additional Rent hereunder. At Landlord's option, any and all payments by the proposed assignee or sublessee with respect to the assignment or sublease shall be paid directly to Landlord. In any event no subletting or assignment shall release Tenant of its obligation to pay the rent and to perform all other obligations to be performed by Tenant hereunder for the Term of this Lease or the Guarantor from its obligations under the Guaranty. The acceptance of rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision hereof.

14.2 Landlord Assignment. Landlord's right to assign this Lease is and shall remain unqualified upon any sale or transfer of the Leased Premises and, providing the purchaser succeeds to the interests of Landlord under this Lease, Landlord shall thereupon be entirely freed of all obligations of the Landlord's hereunder and shall not be subject to any liability resulting from any act or omission or event occurring after such conveyance.

15. LOSS BY CASUALTY:

15.1 Except as provided in Section 15.3, if fire or other casualty renders the whole or any material part of the Leased Premises untenantable and Landlord determines (in Landlord's reasonable discretion) that it can make the Leased tenantable within one year after the date of the casualty, then Landlord will notify Tenant that Landlord will, within the one year period, repair and restore the Building and the Leased Premises to as near their condition prior to the casualty as is reasonably possible, provided that Landlord shall have no responsibility to replace any of the Tenant's personal property or the Personalty. Landlord will provide the notice within 30 days after the date of the casualty, provided, however, that Tenant may terminate this Lease in the event that there are two (2) years or less remaining in the Term at the time of the casualty, or in the event that the Leased Premises are not made tenantable on or before that date which is one year from the date of such casualty, subject to delays caused by delays by Tenant or events of force majeure, and provided further, if such casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers or agents, Tenant shall have no right to terminate whatsoever. If this Lease is not terminated and if the casualty is not caused, in whole or in part, by the negligence or intentional acts of Tenant, its employees, officers, invitees or agents, this Lease shall remain in full force and effect but Base Rent after the first twelve (12) months following such casualty shall abate pro rata (based upon the rentable area of the untenantable portion of the Building premises as compared with the rentable area of the entire Building premises).

15.2 If fire or other casualty renders the whole or any material part of the Leased Premises untenantable and Landlord determines (in Landlord's reasonable discretion) that it cannot make the Leased tenantable within one year after the date of the casualty, then Landlord will so notify Tenant within 30 days after the date of the casualty and may, in such notice, either party may terminate this

Lease effective on the date as of the date of the casualty, by written notice of the same to the other party, except that if such casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers or agents, Tenant shall have no right to terminate whatsoever.

15.3 Notwithstanding the terms and conditions of Section 15.1, if the Building is damaged or destroyed by fire or other casualty and either (a) fewer than two (2) years remain in the Term, or (b) the damage reduces the value of the Building improvements on the Property by more than 50% (as Landlord reasonably determines value before and after the casualty) then, regardless whether Landlord determines (in Landlord's reasonable discretion) that it can make the Building tenantable within one year after the date of the casualty, Landlord, at Landlord's option, by notice to Tenant within 30 days after the casualty, may terminate this Lease effective on the date of the casualty.

15.4 Notwithstanding any contrary language in this Section 15, if this Section 15 obligates Landlord to repair damage to the Leased Premises or Building caused by fire or other casualty but Landlord does not receive sufficient insurance proceeds (excluding any deficiency caused by the amount of any policy deductible) to repair all of the damage, or Landlord's lender does not allow Landlord to use sufficient proceeds to repair all of the damage, then Landlord or Tenant, by notifying the other party within 30 days after the casualty, may terminate this Lease effective on the date of the casualty.

15.5 If this Lease is not terminated under Sections 15.2 through 15.4 following a fire or other casualty, then Landlord will repair and restore the Leased Premises and the Building to as near their condition prior to the fire or other casualty as is reasonably possible with all commercially reasonable diligence and speed (subject to delays caused by delays by Tenant or Force Majeure), and except in the event that any such casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers or agents, Tenant shall have no right to terminate whatsoever. Base Rent after the first six (6) months following such casualty shall abate pro rata (based upon the rentable area of the untenantable portion of the Building premises as compared with the rentable area of the entire Building premises), In no event is Landlord obligated to repair, restore or replace any equipment or improvements installed, owned or maintained by Tenant, the Personalty or any personal or other property of Tenant.

15.6 If either Landlord or Tenant terminates this Lease under this Article 15, Landlord will apportion Base Rent on a per diem basis and Tenant will pay the Base Rent to (a) the date of the fire or other casualty if the event renders the Leased completely untenantable or (b) if the event does not render the Leased Premises completely untenantable, the effective date of such termination (provided that if a portion of the Leased Premises is rendered untenantable, but the remaining portion is tenantable, then Tenant's obligation to pay Base Rent abates pro rata [based upon the rentable area of the untenantable portion of the Building premises divided by the rentable area of the original Building premises] from the date of the casualty and Tenant will pay the unabated portion of the Rent to the date of such termination). Notwithstanding anything contained in this Lease to the contrary, in the event that the casualty is caused, in whole or in part, by the intentional acts of Tenant, its employees, officers, invitees or agents, Tenant shall have no right to terminate this Lease under this Section 15 and no Rent due hereunder shall abate.

16. CASUALTY INSURANCE: At Tenant's sole cost, Tenant shall at all times during the Term of this Lease maintain a policy or policies of insurance with the premiums paid in advance, insured by and binding upon an insurance company acceptable to Landlord, in Landlord's sole discretion, insuring the improvements on the Leased Premises against loss or damage by fire, explosion or other hazards and contingencies for the full replacement value, including complete business interruption insurance, which shall be in such amounts as to ensure that sufficient funds are present to pay all rents due hereunder, and which names Landlord, and any lender or other parties designated by Landlord, as the primary insured and loss payee thereunder. At Tenant's sole cost, Tenant shall also maintain policy(ies) insuring all of

Tenant's personal property and the Personalty, on a full replacement cost basis, against loss or damage by fire, explosion or other hazards and contingencies for the full insurable value, naming Landlord, and any lender or other parties designated by Landlord, as an additional insured and loss payee thereunder as to the Personalty. Each such policy will contain a no coinsurance penalty provision. Landlord may, but shall not be obligated to, maintain such casualty insurance, in which event the cost of such insurance will be paid by Tenant as Additional Rent hereunder. Landlord is not, in any way or manner, required to insure any personal property of Tenant which Tenant may have upon or within the Leased Premises, the personalty or any fixtures installed by or paid for by Tenant upon or within the Leased Premises or any additional improvement which Tenant may construct on the Leased Premises.

17. PUBLIC LIABILITY INSURANCE: Tenant shall, during the Term hereof, keep in full force and effect at its expense (i) a policy or policies of public liability insurance with respect to the Leased Premises and the business of Tenant, in which both Tenant and Landlord shall be covered by being named as insured parties under reasonable limits of liability not less than $10,000,000.00 in the aggregate, or such greater amount as may be required by Landlord from time to time, and (ii) a policy or policies of environmental liability insurance with respect to the Leased Premises and the business of Tenant, in which both Tenant and Landlord shall be covered by being named as insured parties under reasonable limits of liability as may be mutually agreed by Landlord and Tenant from time to time; provided, however, that Tenant shall maintain, and renew, as appropriate, the existing coverage until a mutually agreed change to the amount of such coverage is made. Such policy or policies shall provide that ten (10) days written notice must be given to Landlord prior to cancellation thereof. Tenant shall furnish evidence satisfactory to Landlord prior to the commencement date of this Lease that such coverage is in full force and effect.

At any time during the Term, Landlord may require evidence that Tenant carries other commercially reasonable insurance, including, without limitation, worker's compensation insurance, with statutory limits employer's liability insurance, business interruption insurance (covering a period of not less than six (6) months), and automobile liability insurance covering all owned, non-owned and hired vehicles, which insurance shall be carried in commercially reasonable amounts.

18. WAIVER OF SUBROGATION/INDEMNIFICATION: Anything in this Lease to the contrary notwithstanding, to the extent permitted by law and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant hereby waive and release each other of and from any and all rights of recovery, claim, action or cause of action, against each other, their agents, officers and employees for any loss or damage that may occur to the Leased Premises, improvements to the Building of which the Leased Premises are a part, or personal property (building contents) within the Building by reason of fire or other casualty actually covered by insurance actually carried or required to be carried hereunder, to the extent of the proceeds realized from such insurance coverage, regardless of cause or origin, including negligence of Landlord or Tenant and their agents, officers and employees. Each party to this Lease agrees immediately to give each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of the mutual waiver as contained in this paragraph, and to have insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of the mutual waivers contained in this Section.

Tenant shall protect, indemnify and hold the Landlord harmless from and against any and all loss, claims, liability or costs (including court costs and attorney's fees) incurred by reason of: any damage to any property (including but not limited to property of any Landlord) or death or injury to any person occurring in or about the Leased Premises or the Building to the extent that such injury or damage shall be caused by or arise from any actual or alleged act, neglect, fault or omission by or of Tenant, its agents, servants, employees, invitees, or visitors; the conduct or management of any work or anything whatsoever done by the Tenant on or about the Leased Premises or from transactions of the Tenant concerning the Leased Premises; Tenant's failure to comply with any and all governmental laws, ordinances and regulations applicable to the condition or use of the Leased Premises or its occupancy; or any breach or default on the part of Tenant in the performance of any covenant or agreement on the part of the Tenant to be performed pursuant to this Lease. The provisions of this paragraph shall survive the termination of this Lease with respect to any claims or liability accruing prior to such termination.

19. CONDEMNATION: If during the Term or any extension or renewal of this Lease all or a substantial part of the Leased Premises are taken or condemned for any public purpose, and the taking would prevent or materially interfere with the use of the Leased Premises for the purpose for which they are being used, this Lease shall terminate and the rent shall be abated during the unexpired portion of this Lease effective on the date physical possession is taken by the condemning authority. Tenant shall have no claim to any condemnation award, including its leasehold interest, except that Tenant shall be entitled to make a separate claim for its moving expenses.

20. NON-PAYMENT OF RENT, DEFAULTS:

20.1 If any one or more of the following occurs: (1) a rent payment or any other payment due from Tenant to Landlord shall be and remain unpaid in whole or in part after five (5) days notice that the same is due and payable (provided that Landlord agrees to provide written notice of such default to Tenant once in each calendar year, and for such month that written notice is required, the five (5) business days notice will run from the date such notice is mailed); (2) Tenant shall violate or default on any of the other covenants, agreements, stipulations or conditions herein, and such violation or default shall continue for a period of ten (10) days after the mailing of written notice from Landlord of such violation or default, or such longer period as may be necessary given the nature of the default, provided that Tenant shall diligently prosecute such cure, and in no event shall any cure period exceed sixty (60) days; (3) if Tenant shall commence or have commenced against Tenant proceedings under a bankruptcy, receivership, insolvency or similar type of action; (4) Guarantor dissolves, sells or otherwise conveys all or substantially all of its assets or enters into an agreement to do any of the foregoing, and the transferee or successor of such business fails to reaffirm the Guaranty (as defined herein) in writing to Landlord prior to or upon the consummation of such transaction; or (5) Guarantor revokes the Guaranty (each, a "***Default***"), then Landlord shall have all the rights and remedies available as set forth herein or in law or in equity. For the sake of clarity, Guarantor shall have no right to revoke the Guaranty. A Default under items (4) and (5) above shall also constitute a breach of the Guaranty and this Lease.

20.2 In the event of a Default hereunder, Landlord, at any time and from time to time, and without preventing Landlord from exercising any other right or remedy, may exercise any one or more of the following remedies:

(a) Terminate Tenant's right to possess the Leased Premises by any lawful means with or without terminating this Lease, in which event Tenant will immediately surrender possession of the Leased Premises to Landlord. Unless Landlord specifically states that it is terminating this Lease, Landlord's termination of Tenant's right to possess the Leased Premises is not to be construed as an election by Landlord to terminate this Lease or Tenant's obligations and liabilities under this Lease. In such event, this Lease continues in full force and effect (except for Tenant's right to possess the Leased Premises) and Tenant continues to be obligated for and must pay all Rent as and when due under this Lease. If Landlord terminates Tenant's right to possess the Leased Premises, Landlord is not obligated to but may re-enter the Leased Premises and remove all persons and property from the Leased Premises.

Subject to applicable law, Landlord may store any property Landlord removes from the Leased Premises in a public warehouse or elsewhere at the cost and for the account of Tenant. Landlord shall have no obligation to relet all or any part of the Leased Premises during the remainder of the Term for Tenant's account. Tenant is immediately liable to Landlord for all Re-entry Costs and must pay Landlord the same within five days after Landlord's notice to Tenant. Landlord may relet the Leased Premises for a period shorter or longer than the remaining Term. If Landlord relets all or any part of the Leased Premises, Tenant will continue to pay Rent when due under this Lease and Landlord will refund to Tenant the net rent Landlord actually receives from the reletting up to a maximum amount equal to the Rent Tenant paid that came due after Landlord's reletting. If the net rent Landlord actually receives from reletting exceeds such Rent, Landlord will apply the excess sum to future Rent due under this Lease. Landlord may retain any surplus net rent remaining at the expiration of the Term.

(b) Terminate this Lease effective on the date Landlord specifies in its termination notice to Tenant. Upon termination, Tenant will immediately surrender possession of the Leased Premises to Landlord. If Landlord terminates this Lease, Landlord may recover from Tenant and Tenant will pay to Landlord on demand all damages Landlord incurs by reason of Tenant's default, including, without limitation, (a) all Rent due and payable under this Lease as of the effective date of the termination; (b) any amount necessary to compensate Landlord for any detriment proximately caused Landlord by Tenant's failure to perform its obligations under this Lease or which in the ordinary course would likely result from Tenant's failure to perform, including, but not limited to, any Re-entry Costs, and (c) Tenant's Additional Rent to the extent Landlord is not otherwise reimbursed for such expenses. For purposes of this section, Landlord will compute present worth by utilizing a discount rate of 4% per annum. Nothing in this section limits or prejudices Landlord's right to prove and obtain damages in an amount equal to the maximum amount allowed by law, regardless whether such damages are greater than the amounts set forth in this section.

(c) Recover from Tenant, and Tenant will pay to Landlord on demand, an amount equal to the then present worth, as of the effective date of termination, of the aggregate of the Rent and any other charges payable by Tenant under this Lease for the unexpired portion of the Term. Landlord will employ a discount rate of 4% per annum to compute present worth.

(d) Perform the Tenant's obligation hereunder on Tenant's behalf without waiving Landlord's rights under this Lease, at law or in equity and without releasing Tenant from any obligation under this Lease. Tenant will pay to Landlord, as Additional Rent, all sums Landlord pays and obligations Landlord incurs on Tenant's behalf under this section.

(e) Any other right or remedy available to Landlord under this Lease, at law or in equity.

20.3 Costs. Tenant will reimburse and compensate Landlord on demand and as Additional Rent for any actual loss Landlord incurs in connection with, resulting from or related to a Default, regardless whether suit is commenced or judgment is entered. Such loss includes all reasonable legal fees, costs and expenses (including paralegal fees and other professional fees and expenses) Landlord incurs investigating, negotiating, settling or enforcing any of Landlord's rights or remedies or otherwise protecting Landlord's interests under this Lease. In addition to the foregoing, Landlord is entitled to reimbursement of all of Landlord's fees, expenses and damages, including, but not limited to, reasonable attorneys' fees and paralegal and other professional fees and expenses, Landlord incurs in connection with protecting its interests in any bankruptcy or insolvency proceeding involving Tenant, including, without limitation, any proceeding under any chapter of the Bankruptcy Code; by exercising and advocating rights under Section 365 of the Bankruptcy Code; by proposing a plan of reorganization and objecting to competing plans; and by filing motions for relief from stay. Such fees and expenses are payable on demand, or, in any event, upon assumption or rejection of this Lease in bankruptcy.

20.4 Waiver and Release by Tenant. Except to the extent done in violation of this Lease or applicable law, Tenant waives and releases all claims Tenant may have resulting from Landlord's re-entry and taking possession of the Leased Premises by any lawful means and removing and storing Tenant's property as permitted under this Lease, regardless whether this Lease is terminated, and, to the fullest extent allowable under the Laws, Tenant releases and will indemnify, defend (with counsel reasonably acceptable to Landlord), protect and hold harmless the Landlord from and against any and all Claims occasioned by Landlord's lawful re-entry of the Leased Premises and disposition of Tenant's property.

21. SURRENDER: On the last day of the Term of this Lease, and any extension thereof, or on the sooner termination thereof in accordance with the terms hereof, Tenant shall peaceably surrender the Leased Premises, with the Personalty, in good condition and repair consistent with Tenant's duty to make repairs as provided for in this Lease. On or before said last day, Tenant shall at its expense remove all of its equipment from the Leased Premises, repairing any damage caused thereby, and any property not removed shall be deemed abandoned. All alterations, additions and fixtures which have been made or installed by either Landlord or Tenant upon the Leased Premises shall remain as Landlord's property and shall be surrendered with the Leased Premises as a part thereof, or shall be removed by Tenant, at the option of Landlord, in which event Tenant shall at its expense repair any damage caused thereby. If the Leased Premises are not surrendered at the end of the Term or the sooner termination thereof, Tenant shall indemnify Landlord against loss or liability resulting from delay by Tenant in so surrendering the Leased Premises including, with limitation, claims made by any succeeding tenant founded on such delay. Tenant shall promptly surrender all keys for the Leased Premises to Landlord at the place then fixed for payment of rent and shall inform Landlord of combinations on any locks and safes on the Leased Premises.

22. WAIVER: Failure of Landlord to declare any default immediately upon occurrence thereof, or delay in taking any action in connection therewith, shall not waive such default, but Landlord shall have the right to declare any such default at any time thereafter.

23. HOLDING OVER. Tenant will, at the expiration of this Lease, whether by lapse of time or termination, give up immediate possession to Landlord. If Tenant fails to give up possession the Landlord may, at its option, serve written notice upon Tenant that such holdover constitutes any one of (i) creation of a month-to-month tenancy, or (ii) creation of a tenancy at sufferance. If Landlord does not give said notice, Tenant's holdover shall create a tenancy at sufferance. In any such event the tenancy shall be upon the terms and conditions of this Lease, except that the Base Rent shall be 150% the Base Rent Tenant was obligated to pay Landlord under this Lease immediately prior to termination (in the case of tenancy at sufferance such Base Rent shall be prorated on the basis of a 365 day year for each day Tenant remains in possession); excepting further that in the case of a tenancy at sufferance, no notices shall be required prior to commencement of any legal action to gain repossession of the Leased Premises. In the case of a tenancy at sufferance, Tenant shall also pay to Landlord all damages sustained by Landlord resulting from retention of possession by Tenant. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry as otherwise available to Landlord; nor shall receipt of any rent or any other act in apparent affirmance of the tenancy operate as a waiver of the right to terminate this Lease for a breach by Tenant hereof.

24. SUBORDINATION TO MORTGAGE: Tenant agrees that this Lease shall be subordinate to any mortgage that may now or hereafter be placed upon the Leased Premises, and to any and all advances to be made thereunder, and to the interest thereon, and all renewals, replacements, and extensions thereof,

provided the mortgagees named in such mortgages shall agree to recognize this Lease or Tenant in the event of foreclosure provided the Tenant is not in default. In confirmation of such subordination, Tenant shall promptly execute and deliver any instrument as reasonably required by Landlord's mortgagee.

25. ESTOPPEL CERTIFICATES: Tenant agrees, at Landlord's request, to promptly execute either an estoppel certificate addressed to any mortgagee of Landlord or any purchaser of Landlord's interest or a third party agreement among Landlord, Tenant and such mortgagee(s) certifying as to such facts (if true) and agreeing to such notice provisions and other matters as may be reasonably required by Landlord or Landlord's mortgagee.

26. AGREEMENT TO PROVIDE FINANCIAL STATEMENTS. Tenant agrees to provide to any mortgage holder encumbering the Leased Premises, upon request by Landlord, copies of Tenant's most recent financial statements. If no financial statements are in existence, Tenant shall provide financial information, which generally would be disclosed on financial statements. For purposes of this Section 26, "financial statements" shall mean profit and loss statements and balance sheets. Tenant shall certify as to the accuracy of such financial statements, if requested by Landlord.

27. ATTORNEY'S FEES: In the event either party places the enforcement of this Lease or any part thereof, or the collection of any rent due, or to become due hereunder, or recovery of the possession of the Leased Premises in the hands of an attorney, or files suit upon the same, the non-prevailing party shall pay the other party's reasonable attorney's fees and court costs.

28. NOTICES: All rent and other payments required to be made by Tenant shall be payable to Landlord at the address set forth below, or any other address Landlord may specify from time to time by written notice delivered to Tenant. All payments required to be made by Landlord to Tenant shall be payable to Tenant at the address set forth below, or at any other address within the United States as Tenant may specify from time to time by written notice. Any written notice or document required or permitted to be delivered by this Lease shall be deemed to be delivered (whether or not actually received) when deposited in United States mail, postage paid, certified mail, return receipt requested, addressed to the parties at their respective address set forth below, or at such other address as either party may designate in writing to the other party.

LANDLORD:

MLBL, LLC,
c/o Nordic Investments LLLP
P.O. Box 353
4675 County Road 11
Medina, MN 55357
Attn: Christopher T. Leines

TENANT:

Minnesota Limited, Inc.
c/o Miller Pipeline Corp.
P.O. Box 34141
Indianapolis IN 46234-0141
ATTN: Douglas S. Banning, Jr.

29. Intentionally Deleted.

30. GUARANTY: This Lease is expressly contingent on execution of a guaranty of Tenant's obligations under this Lease in the form attached hereto as Exhibit C (the "Guaranty") and full compliance by the guarantor thereunder.

31. MEMORANDUM OF LEASE. The parties agree that neither this Lease, nor a memorandum of this Lease, shall be recorded.

32. SECURITY DEPOSIT. Upon the execution hereof, Tenant agrees to pay Landlord an amount equal to two months Rent (Base and Additional), as a Security Deposit to guarantee the payment of rent and the performance by Tenant of all the terms of this Lease. All such amounts held as a security deposit shall bear no interest. Upon the occurrence of any default hereunder by Tenant, Landlord may use said Security Deposit to the extent necessary to cure such default, whether rent or otherwise. Any remaining balance of said Security Deposit shall be returned to Tenant upon compliance with the terms hereof and acceptance of the vacated Leased Premises by Landlord. Tenant understands that its potential liability under this Lease is not limited to the amount of the Security Deposit. Use of such Security Deposit by Landlord shall not constitute a waiver, but is in addition to other remedies available to Landlord under this Lease and under law. Upon the use of all or any part of the Security Deposit to cure any default of Tenant, Tenant shall forthwith deposit with Landlord the amount of Security Deposit so used.

33. TENANT REMEDIES. If at any time during the Term there shall be a default by Landlord in, or other noncompliance with, any of the duties imposed upon Landlord in this Lease, and so long as any such default continues for thirty (30) days after written notice has been provided to Landlord of such default, or such longer period as may be necessary given the nature of the default, Tenant may reasonably remedy any such default or other noncompliance and expend any sums necessary therefor at the cost and expense of the Landlord and the sums so expended shall be payable to the Tenant on demand and if not paid within sixty (60) days shall be deducted by Tenant from the rents or other sums due or to become due hereunder. In the event of any litigation by the parties concerning this Lease and enforcement of obligations hereunder, the prevailing party shall be entitled to recover from the opposing party reasonable attorneys' fees and other expenses of litigation.

34. RIGHT TO BUY THE LEASED PREMISES. For the period from the Effective Date until the ninth (9th) anniversary of the Effective Date, Landlord agrees that if it decides to sell the Leased Premises, it shall notify Tenant in writing (**"Initial Notice"**). Said Initial Notice shall set forth the proposed sale price for the Leased Premises. Within ten (10) business days of such Initial Notice, Tenant shall respond to Landlord in writing whether or not Tenant wishes to proceed with negotiations for the purchase and sale of the Leased Premises as set forth in Landlord's Initial Notice. If Tenant is not interested in the purchase of the Leased Premises, its response shall include a waiver by it of its rights under this Right of First Offer provision, in which event, Tenant's rights under this Section 34 shall be terminated, void and without further effect. In the event Tenant is interested in negotiating for the purchase of the Leased Premises as listed in the Initial Notice, the parties shall proceed in good faith with such negotiations for a reasonable period of time, but in no event to exceed forty five (45) days from the date of the Initial Notice. If the parties are unable to reach a satisfactory agreement as to the price and terms at which to sell the Leased Premises within such time, then the Tenant's rights under this Section 33 are terminated, void and without further effect, and the Landlord shall thereafter be free to enter into a purchase agreement with any other person or entity for the sale of the Leased Premises. Any rights of Tenant under this Section 34 shall be void, expire and be of no further force and effect as of the ninth (9th) anniversary of the date hereof. Further, the rights granted hereunder are personal to Tenant. In the event of an assignment or sublease, this Section 34 shall be void, expire and be of no further force and effect as to any successors or assigns of Tenant.

35. EXCULPATION. Tenant agrees to look solely to Landlord's interest in the Leased Premises for the recovery of any judgment from Landlord, it being agreed that Landlord and Landlord's partners, whether general or limited (if Landlord is a partnership) or its directors, governors, officers, managers, members or shareholders (if Landlord is a limited liability company or corporation), shall never be personally liable for any such judgment.

36. TERMINATION OF PRIOR LEASE. This Lease replaces that certain lease dated April 1, 2008, by and between Nordic Investments, LLLP , as Landlord, and Minnesota Limited, Inc., as Tenant (the "**Prior Lease**"). The parties hereto agree that the Prior Lease is hereby terminated in its entirety.

37. SIGNAGE. The parties agree that the existing signage, on State Highway 25, may remain in place until such time that any municipal authority required removal or relocation, or until the Landlord sells or begins development of the land bordering State Highway 25, at which time, Tenant shall relocate the sign to an area on the Leased Premises, at no cost to Landlord.

38. SUCCESSORS AND ASSIGNEES: This Lease shall be binding upon and inure to the benefit of Landlord, its successors and assignees, and shall be binding upon and inure to the benefit of Tenant, its successors, and to the extent assignments may be approved by Landlord hereunder, Tenant's assigns.

39. RIGHTS CUMULATIVE; GOVERNING LAW: All rights and remedies of Landlord under this Lease shall be cumulative and none shall exclude any of the rights or remedies allowed by law; and this Lease is declared to be a Minnesota contract, and all of terms hereof shall be construed according to the laws of the State of Minnesota. This Lease is not intended to supersede or control over that certain Purchase Agreement dated as of March 31, 2011, by and among Vectren Infrastructure Services Company, an Indiana corporation, as Buyer, Nordic Land Company, LLC, a Minnesota corporation, and Christopher T. Leines and Paulette A. Britzius, individually as Sellers, or any other agreement entered into by the parties in connection with such agreement.

40. COMMISSION: Each party will defend the other against, indemnify it against, and hold it harmless from, any claim for a broker's or finder's fee or commission claimed as having been earned as a consequence of this Lease being entered into as a result of any association the defending party had with said claimant.

40. GENERAL: This Lease does not create the relationship of principal and agent or of partnership or of joint venture or of any association between Landlord and Tenant, the sole relationship between Landlord and Tenant being that of landlord and tenant. No waiver of any default of Tenant hereunder shall be implied from any omission by Landlord to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. Each term and each provision of this Lease performable by Tenant shall be construed to be both a covenant and a condition. The marginal or topical headings of the several paragraphs and clauses are for convenience only and do not define, limit or construe the contents of such paragraphs or clauses. All preliminary negotiations are merged into and incorporated in this Lease. This Lease can only be modified or amended by an agreement in writing signed by the parties hereto.

SIGNATURE PAGES TO FOLLOW

IN WITNESS WHEREOF, the parties have executed and delivered this Lease Agreement as of the date first written above.

TENANT:

Minnesota Limited, Inc.

____
Douglas S. Banning, Jr.,
Chief Executive Officer

[SIGNATURE PAGE 1 OF 2 TO LEASE AGREEMENT]

LANDLORD:

MLBL, LLC

____
By:
Its:______________________________

____
By:
Its:______________________________

EXHIBIT A

SKETCH OF LEASED PREMISES

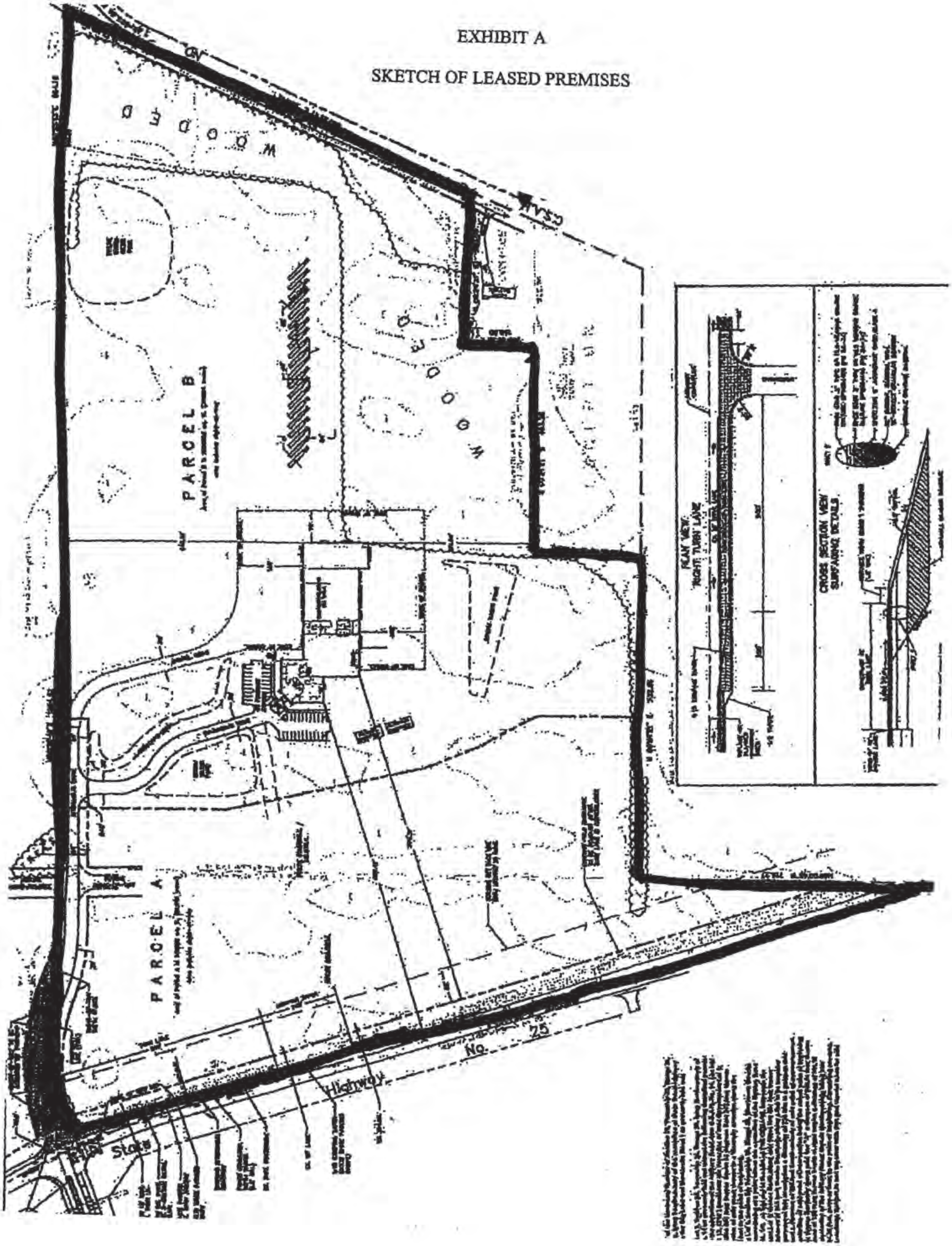

WOODED
WOODED
PARCEL B
PARCEL A
CSX
Highway No. 25
State
PLAN VIEW "RIGHT TURN LANE"
CROSS SECTION VIEW SURFACING DETAILS

EXHIBIT A-1
RECAPTURE PROPERTY SKETCH

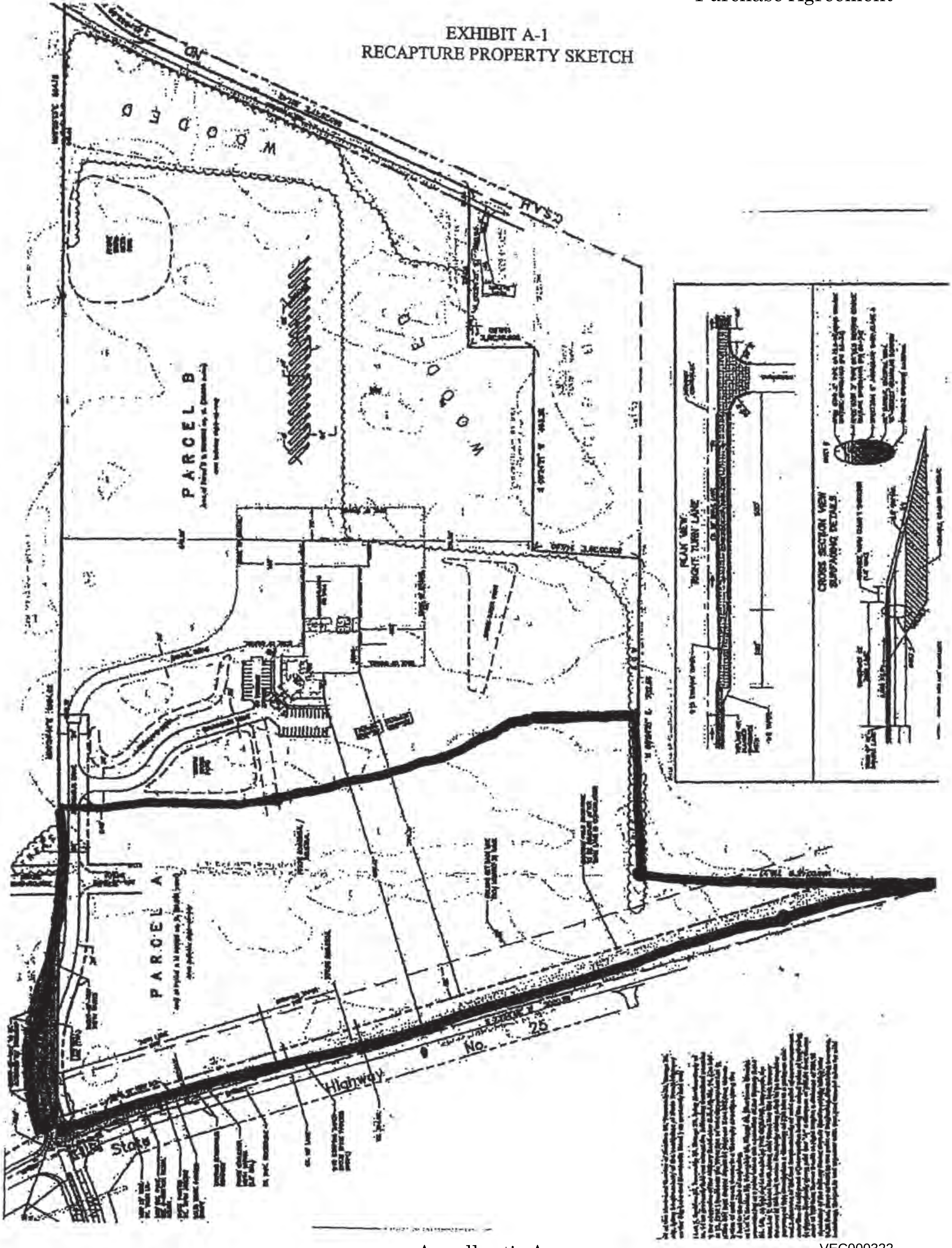

WOODED
PARCEL B
WOODED
PARCEL A
Highway
No. 25
PLAN VIEW
RIGHT TURN LANE
CROSS SECTION VIEW
SUPPORTING DETAILS

EXHIBIT B

PERSONALTY

All the following personal property, as presently located on the Leased Premises, or as improved, replaced or maintained under the Lease:

1) All wiring and cabling.
2) All furniture
3) Existing telephone system
4) Window treatments
5) Cranes
6) Cold Storage building and improvements
7) Appliances
8) Fencing
9) Landscaping
10) Fire Protection System
11) Audio Visual Entertainment System
12) Satellite Television System
13) Warehouse racking/shelving

EXHIBIT C
LEASE GUARANTY

FOR VALUE RECEIVED, in consideration for, and as an inducement to MLBL, LLC, a Minnesota limited liability company (hereinafter referred to as "**Landlord**") to enter into that certain Lease Agreement dated March 31, 2011, pertaining to the premises located in the building commonly known as 18640 200th Street, Big Lake, Minnesota 55309 (hereafter referred to as the "**Lease**") with Minnesota Limited, Inc., a Minnesota corporation (hereafter referred to as "**Tenant**"), the undersigned hereby absolutely, unconditionally and irrevocably guaranties to Landlord the full and complete performance of all of the Tenant's covenants and obligations under the Lease, and the full payment by Tenant of all rents, and other charges and amounts required to be paid thereunder, including all of Landlord's expenses, including attorneys' fees, incurred in enforcing the obligations of Tenant under the Lease or incurred in enforcing this Guaranty. The undersigned further represents to Landlord as an inducement for Landlord to make said Lease, that the execution and delivery of this Guaranty is not in contravention of any other lease, mortgage, loan agreement or other agreement of which the undersigned is a party. This Guaranty shall be binding upon the undersigned for obligations which accrue during the term of the Lease, as the same is amended or extended from time to time. The undersigned acknowledges and covenants to Landlord that the undersigned has a beneficial interest in Tenant and, accordingly, has a direct financial interest in the making of the Lease.

The undersigned hereby waives all demands or requirements for performance, notices of performance, and notices of the acceptance of this Guaranty, notices of breach or non-performance by Tenant, and any and all defenses, claims, and setoffs of the Tenant. The undersigned also waives: (i) presentment and demand for payment and (ii) notice of any amendment to or modification of any of the terms and provisions of the Lease. The undersigned's obligations hereunder shall remain fully binding although Landlord may have waived one or more defaults by Tenant, extended the time of performance by Tenant, released, returned or misapplied other collateral given as additional security (including other guaranties) or released Tenant from the performance of all or part of Tenant's obligations under the Lease. The undersigned further agrees that the undersigned's liability under this Guaranty is an absolute, primary, and continuing guaranty of payment and performance and is independent of Tenant's obligations under the Lease, and that in any right of action which shall accrue to Landlord under said Lease, Landlord may, at Landlord's option, proceed against the undersigned (or any of them) and Tenant, jointly or severally, or may proceed against the undersigned (or any of them) without having commenced any action against or having obtained any judgment against Tenant. The undersigned's obligations hereunder shall remain fully binding, notwithstanding any course of dealings between Landlord and Tenant and notwithstanding that Tenant have assigned the Lease or sublet all or part of the Leased Premises to third parties. Without notice to or consent by the undersigned and without affecting the liability of the undersigned hereunder, Landlord and Tenant may at any time, compromise, modify, extend, amend, or make other covenants respecting the Lease Agreement as they may deem appropriate. The undersigned shall not be released, but shall continue to be fully liable for payment and performance of all liabilities, obligations, and duties of Tenant under the Lease Agreement as modified, extended, amended or assigned.

The liability of the undersigned under this Guaranty will not be affected by (1) the release or discharge of Tenant from, or impairment, limitation or modification of, Tenant's obligations under the Lease in any bankruptcy, receivership, or other debtor relief proceeding, whether state or federal and whether voluntary or involuntary; (2) the rejection or disaffirmance of the Lease in any such proceeding; or (3) the cessation from any cause whatsoever of the liability of Tenant under the Lease. The undersigned agrees to pay to Landlord all costs incurred by Landlord in enforcing this Guaranty (including, without limitation, reasonable attorneys' fees and expenses).

This Guaranty shall be binding upon the undersigned and their respective successors and assigns. This Guaranty may be enforced by Landlord or the successors or assigns of Landlord under the Lease.

IN WITNESS WHEREOF, the undersigned guarantor has caused this Guaranty to be executed as of the same date as the Lease.

Vectren Enterprises, Inc.

By:____________________________________

Its:____________________________________

EXHIBIT D

LIST OF SERVICE CONTRACTS

Minnesota Limited, Inc.
Big Lake Facility
List of Vendors Supplying Service On A Recurring Basis

Vendor	Type of Service	Address	Annual Estimated Cost
Wright Hennepin Security	Monthly security monitoring for building/elevator	PO Box 77027 Minneapolis, MN 55480-7727	500
Pro Building Maintenance	Office cleaning	19810 159th Street NW Elk River, MN 55330	22,000
Duane's Septic Service, LLC	Septic tank removal	10502 31st Place NE St Michael, MN 55376	3,800
Nutri Green	Lawn fertilizer and weed control	2486 Bobolink Road Long Lake MN 55356	3,000
Country Side Pest Control, Inc.	pest control	PO Box 543 Princeton, MN 55371	800
Architect Mechanical, Inc.	Monthly HVAC service	2917 Anthony Lane North St. Anthony MN 55418	15,000
Thyssenkrupp Elevator Corp.	Elevator maintenance	PO Box 933004 Atlanta GA 31193	800
Ditsch Property Management	Lawn service	6076 Meridian Avenue South Montrose MN 55363	7,700
Mineral Service Plus, LLC	Water treatment and pond pump	16409 371st Avenue Grenn Isle MN 55338	1,000
Blue Line Enterprises, Inc.	Landscaping service	6143 10th Street NW Buffalo, MN 55313	5,000
Midwest Landscapes	Irrigation system winterization	6221 Oakwood Avenue NE Otsego MN 55330	400
		Total Estimated Annual Operating Costs	60,000

Schedule 1.2(a)(ii)
Closing Indebtedness

Revolving Credit Agreement, by and between Minnesota Limited and M&I Marshall & Ilsley Bank, dated as of October 27, 2010 in the amount set forth in the Payoff Letter provided by M&I Marshall & Ilsley Bank in connection with the Closing.

Minnesota Limited, Nordic Equipment, NPS, Nordic Land
As of 3/30/11

Schedule 1.4 - Preliminary Net Working Capital Schedule

Current Assets		
Cash - Citizens Bank Michigan	$100,940	
Cash - Monarch Community Bank	$40,000	
Accounts receivable	$16,649,033	
Retainage receivable	$1,102,561	
Accrued job revenue	$4,974,965	
Receivable - Other	$99,788	
Receivable from related party	$0	
Prepaid Insurance (net)	$7,591	
Employee Advances	$11,825	
Other Prepaid Expenses	$200,509	
Costs & Est. Profits in excess of billings (est)	$0	
Total current assets	$23,187,212	
Current Liabilities		
Accounts payable - Trade	$2,619,298	
Accounts payable - Subcontract	$586,350	
Accrued Payroll Payable	$799,340	1
Reserve - Loss on Fixed Contract	$0	
Accrued Closed Job Costs	$482,465	3
Accrued Union Fringes Payable	$112,764	
Other accrued expenses	$47,485	2
Accrued real estate taxes	$303,983	
Sales/Use Tax Payable	$39,849	
Workers Compensation Payable	$348,423	
General Liability Insurance Payable	$0	
Billings in Excess of Costs and Profits	$1,177,691	
Other payroll withholdings	$0	
Accrued Payroll Taxes	$24,194	
Payroll Tax Withholdings	$14,207	
Vacation payable	$80,259	
Total current liabilities	$6,636,308	
Preliminary Net Working Capital	$16,550,904	
Target Working Capital	$6,200,000	
Excess Working Capital	$10,350,904	

1. Accrued payroll balance includes estimated payroll for the period of 3/28 to 3/31, along with employer payroll taxes and union fringes. Net payroll for PPE 3/27 that was paid out on 4/1 was funded separately from this schedule as a final settlement of the bank account before closing on 3/31. Employee deductions, payroll taxes and union fringes for this period are reflected in this balance

2. An estimated accrued liability of $8,485 is reflect here for Michigan personal property taxes. The actual tax is not calculated by the state until June 2011

3. This balance includes a estimated liability for the MinnCan warranty claim of $282,465. The remainder of balance is an estimate for punch list items for jobs initially performed in 2010

The insurance premium for the workers compensation stop/loss policy that expires on 3/31/11 was amortized on a straight-line basis. An insurance audit will be performed in April 2011 to ascertain whether an additional premium will be owed or refunded. The April audit will also audit the premium for the general liability policy and auto. A estimated prepayment nor liability is reflected in this schedule

Schedule of
Other Excluded Liabilities

The Sellers shall collectively have the exclusive right to exercise, resolve and control, each at their own expense, all of the Excluded Liabilities set forth below (the "Other Excluded Liabilities")(including the right to settle or otherwise terminate any contest with respect thereto), including without limitation, the handling, disposition and/or settlement of any and all issues and Proceedings related thereto, and Buyer shall reasonably cooperate with Seller upon the reasonable request of Sellers with respect thereto. The Sellers and Buyer shall keep the other parties reasonably informed of the status of the settlement and status of the Other Excluded Liabilities. With respect to Item 2 of the Other Excluded Liabilities, the Sellers shall provide to Buyer at least 15 days' advance notice of its intent to initiate a Proceeding against Northern Border Pipeline or TransCanada Keystone Pipeline, LP, an affiliate of Northern Border Pipeline, to recover or finally determine such Other Excluded Liability. Upon receipt of such notice, Buyer shall have 15 days to determine if it desires to assume such Other Excluded Liability, in which case Buyer shall assume the full amount of such Other Excluded Liability and Sellers shall be fully and finally released from any liability related thereto. If Buyer determines not to assume such Other Excluded Liability, it shall retain the right to such assumption during the pendency of the Proceeding, and upon such assumption, shall pay the full amount sought by Sellers with respect to such Proceeding. Upon proper assumption by Buyer of such Other Excluded Liability, Sellers and Buyer shall execute additional documents as required to fully transfer its rights with respect to such Other Excluded Liability and Proceeding, if applicable, which documents shall include indemnification of Sellers by Buyer with respect thereto. Buyer acknowledges that the Excluded Liabilities shall not be a part of the Preliminary Net Working Capital or Closing Net Working Capital, and Buyer waives any and all claims that the Excluded Liabilities are required to be a part thereof, whether on the basis of GAAP or any other basis.

The following are additional Excluded Liabilities:

1. Those matters specifically set forth in a Notice of Intent to Levy dated February 7, 2011, sent by the IRS to Minnesota Limited, claiming that Minnesota Limited owes an aggregate of $65,799.77 in unpaid federal Taxes for the Tax Period ending September 30, 2010.

2. Those matters specifically set forth in the letter dated October 28, 2010, sent by Northern Border Pipeline to Minnesota Limited, related to invoices that Minnesota Limited issued to Northern Border Pipeline between April 2007 and December 2009; *provided, however*, that in connection with the settlement of such matters, if such payment made by Minnesota Limited in connection with the foregoing matter is deductible for income tax purposes, Sellers shall be obligated to pay only 59.475% of such amounts to Minnesota Limited.

Schedule 7.1(e)(ii)

MINNESOTA LIMITED/NORDIC EQUIPMENT SALE
SALE PRICE ALLOCATION

TOTAL SALE PRICE	80,000,000
ALLOCATION OF SALE PRICE	
MLI EQUIPMENT	18,240,400
NORDIC EQUIPMENT	16,596,603
MLI WORKING CAPITAL	6,200,000
GOODWILL	38,962,997
TOTAL	80,000,000

NOTES:

1. GOODWILL IS ASSUMED ALL MINNESOTA LIMITED GOODWILL
2. VALUES PER SCHEDULE PROVIDED BY MANAGEMENT

Part 4.21
Labor Relations; Compliance

In or about September 2008, Charles Adams, a former employee of Minnesota Limited, commenced an action against Minnesota Limited alleging violations of, among other things, Title VII and the Minnesota Human Rights Act. This dispute was settled pursuant to a Confidential Settlement Agreement & Release, dated as of February 17, 2009.

In or about September 2008, Calvin Larson, a former employee of Minnesota Limited, alleged he was owed $19,635 from Minnesota Limited as a result of not being paid for five hours of work on Tuesday, June 24, 2008. Minnesota Limited disputed Mr. Larson's claim, and in or about June 2009, offered to settle such claim for approximately $500, which was not accepted. Minnesota Limited has not recently heard from Mr. Larson and it has been advised that his claim is currently barred by the statute of limitations.

The Seller Group receives informal threats of employee grievances from time to time, which are not recorded by the Seller Group.

Seller Group utilizes independent contractors from time to time that may be considered employees of Seller Group.

In connection with the DEED audit of Minnesota Limited regarding unemployment tax for the calendar year 2005, DEED classified Steve Kuledge as an employee of Minnesota Limited, when Minnesota Limited classified him as a subcontractor.

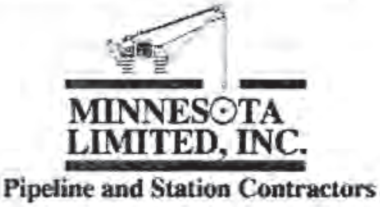
The disclosures set forth in Part 4.12 are incorporated herein.

Part 4.22
Intellectual Property

(a) Intellectual Property – Title

Minnesota Limited has a pending application for the mark: Minnesota Limited, Inc.

Minnesota Limited uses the following unregistered Trademark:



Minnesota Limited is the registrant of the following domain names:

www.mnlimited.com
www.nordicpipeline.com

The Seller Group uses the following trade names:

Minnesota Limited, Inc.
Nordic Equipment, LLC
Nordic Pipeline Services LLC
Nordic Land Bemidji, LLC
Nordic Land Altamont, LLC
Minn Limited, Inc.
Minnesota Limited Pipeline Contractors, Inc.

The Seller Group owns unregistered Copyrights in various material produced by or for such entities, including, without limitation, manuals, pamphlets, and websites.

Seller Group uses a custom database for equipment management and transportation, which uses a Microsoft Access program.

Seller Group uses a custom database for safety department, which uses a Microsoft Access program.

Seller Group uses a Bid Estimator, which is a SQL database.

Seller Group uses an Estimating Template, which uses Microsoft Excel.

The disclosures set forth in Part 4.22(c) are incorporated herein.

(c) Intellectual Property - Licensing Arrangements

Master Software License Agreement, Contract No. 6144, by and between Viewpoint Construction Software, and Minnesota Limited, dated as of April 6, 2009, including the corresponding Addendum to Master Software License Agreement, dated as of March 31, 2009.

Subscriber Service Agreement, by and between Guardian Global Technologies, Inc. (including its affiliate XacTrac), and Minnesota Limited, dated as of January 12, 2009.

The Seller Group uses the following vendors for the purposes listed below:

Name of Vendor	**Purpose**
CDW Direct	Software licensing
Kenison Technical Services, Inc.	Programming/customizing Crystal Reports
Atlanta Information Technology Services	Data conversion consultant
Netrix IT	Microsoft windows server consultant
Sage Software	Fixed asset management software licensing
Cloudnet, Inc.	DNS & Website hosting
JJ Keller & Associates	DOT compliance software licensing/support
Securance	E-mail spam filter service
Ziegler	CAT SIS web-based software license/support
FAS Software	Depreciation
Timberline Accounting Software	Accounting

The Seller Group uses the following Software for the purposes listed below:

Software Title	**Purpose**
Keri System	Keycard Access Software
Websense	Internet Filtering
Microsoft Licensing	Terminal Server, SQL, Exchange, Windows, Office, Project, Visio, Streets and Trips, CALs
Crystal Reports Server	1 License
Crystal Reports Client Software	3 Licenses
Kaspersky Antivirus	Antivirus and Administrative Kit
Blackberry Enterprise Server	BES Server
JJKellerScan	Driver Log Scanning Software
JJKeller Log Checker	Driver Log Software
Viewpoint Software Assurance	ERP
SourceOne	Email Archive
Microsoft Visio Standard 2007	3 Boxed Versions
Microsoft Visio Pro 2007	1 Boxed Version
AutoCad 2009	2 Licenses
AutoCAD LT 2009	1 License
Oracle Primavera Contractor	2 Boxed Versions
Symantec Ghost	Imaging Software
CA Brightstor Backup	Backup Software
Exclaimer Signature Manager	Email Signature Software
WSUS	Microsoft Patches
NetWrix Password Expiration Notifier	Password Expiration Notifying Software
Sage FAS	Fixed Asset Software
Xactrac	Webhosted GPS Software
Access Databases for Equipment and Safety	
BidEstimator	Custom.NET Estimating Software

Management Reporter	Financial Reporting Bundled with Viewpoint
Sage Timberline	Old ERP Software
Delorme	Multiple Boxed Versions in the Field
Snagit	10 Licenses
Adobe Acrobat	6 Licenses
SSL Certificates for vpn.mnlimited.com and mail.mnlimited.com	
Adobe Create Suite 3 Web Premium	1 Boxed License

The Seller Group has the following support commitments:

Websense
SonicWall
GoToAssist
SourceOne
Watchguard Firewall
Watchguard Edge Devices
Sage FAS Software
BES Support
Cisco Service Agreements (router and 3 switches)

The Seller Group utilizes the following services for the purposes listed below:

Name of Vendor	**Purpose**
Iron Mountain	Offsite Tape Storage
Cloudnet	External DNS Hosting and Website Hosting (mnlimited.com and nordicpipeline.com)
Securance	Spam Filtering for Both Domains

The Seller Group has the following subscriptions:

DNSStuff.com
ISNetworld

The Seller Group uses various "shrink wrap" Software.

Part 4.23
Customers

Customer	**2009 Revenue (in thousands)**
Northern Natural Gas Company	$35,410
EB Enbridge	$29,405
Consumers Energy Company	$22,272
EN Enbridge	$12,682
Minnesota Pipeline Company, LLC	$12,608
Alliance Pipeline L.P.	$2,098
BP	$1,320
Spearhead	$638
Kinder Morgan Operating L.P. "A"	$613
Viking Gas Transmission Company	$583

Customer	**2010 Revenue**
Enbridge Energy Partners	$38,444,386
Northern Natural Gas Company	$28,170,614
Consumers Energy Company	$17,774,842
Minnesota Pipeline	$11,185,683
Enbridge Pipelines ND	$3,862,360
CenterPoint Energy	$3,018,277
BP Pipelines North America	$1,518,491
Florida Gas Transmission	$1,190,516
Lake Superior Consulting	$995,389
Koch Pipeline Company	$991,769

Part 4.24
Product Warranty

Minnesota Limited received an aggregate of three letters regarding warranty claims from Minnesota Pipe Line Company, LLC, dated May 8, 2009, July 15, 2009, and September 15, 2009. The claims related to seven locations that required pipeline lowering. As of the date hereof, Minnesota Limited has completed all work to settle such claims with the exception of the installation of a 700-800 foot pipeline, which is currently scheduled to occur in the spring of 2011. Minnesota Limited expects the costs of this installation to be approximately $282,465. Minnesota Limited has not included any owned equipment expenses or overhead costs to complete such work or in the calculation of such reserve. The parties have agreed that such treatment is appropriate and will apply to the remaining work. With respect to the remaining work to be completed, the Buyer agrees that no charges related to equipment expenses or related labor and other related overhead costs shall be charged against Minnesota Limited with respect to operation of equipment owned by Minnesota Limited.

Minnesota Limited received a letter, dated December 20, 2010, from Koch Companies Public Sector, LLC, alleging Minnesota Limited performed defective work in connection with that certain Intermittent Services Agreement #950019 and Scope of Work Agreement dated November 5, 2010, between Minnesota Limited and Koch Pipeline Company, L.P. ("KPL"), and that KPL will be looking to Minnesota Limited to recover any and all loss, damage, or expense KPL has incurred or may thereafter incur arising out of the performance of defective work. Minnesota Limited believes that its applicable insurance policies will cover these claims if the subcontractor that performed this work does not. The cost of deductibles related to such insurance policies may be $1,000 or $100,000, depending upon which insurance policy may apply, if any.

Minnesota Limited routinely receives requests to complete "punch-list" type work, but does not consider such requests to be warranty claims. As of the date hereof, the estimated cost for such work is $482,465, including the warranty claims of Minnesota Pipe Line Company set forth above.

Part 4.25
Bank Accounts

(b) Bank Accounts

Company Name	Financial Institution	Type of Account	Account Number	Signatory Authority
Minnesota Limited	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	43722624	Christopher Leines Paulette Britzius Glenn Furman
Minnesota Limited	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Overnight; Investment Sweep	43722525	N/A
Minnesota Limited	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Draft Checking	47697144	Christopher Leines Paulette Britzius Glenn Furman
Minnesota Limited	Monarch Community Bank 375 North Willowbrook Road Coldwater, MI 49036	Checking	8020697	Christopher Leines Paulette Britzius
Minnesota Limited	Citizens Bank 328 South Saginaw Street Flint, MI 48502	Checking	4532564954	Christopher Leines Dale Britzius
Nordic Pipeline	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	43722613	Christopher Leines Paulette Britzius Glenn Furman
Nordic Equipment	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	43722602	Christopher Leines Paulette Britzius Glenn Furman
Nordic Bemidji	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	43722558	Christopher Leines Paulette Britzius Glenn Furman
Nordic Altamont	M&I Bank 50 South 6th Street, Suite 1000 Minneapolis, MN 55402	Checking	43722547	Christopher Leines Paulette Britzius Glenn Furman

To the extent not otherwise restricted by the Agreement, the Company will distribute to the Sellers amounts equal to the aggregate amounts in each of the checking and draft checking accounts set forth above at or prior to the Closing, except with respect to those accounts set forth on the Preliminary Net Working Capital Schedule as "current assets."

Part 4.26
Affiliated Party Transactions

Minnesota Limited leases real property from the Leines Family Limited Partnership, pursuant to a Lease Agreement (Big Lake Storage Facility), dated as of September 1, 2009. Such lease has been terminated immediately prior to Closing.

Minnesota Limited leases the Property from Nordic Superior, pursuant to a Lease Agreement dated as of January 1, 2005. Such lease has been terminated immediately prior to Closing.

Dale Britzius, an immediate family member of the Sellers, has indicated that he plans to continue his employment with the Seller Group in a reduced capacity to ensure that, upon the termination of Mr. Britzius' employment, (i) Minnesota Limited has proper personnel in place at the time of to continue to hold those Governmental Authorizations set forth in Part 4.1 of the Disclosure Letter, and (ii) that certain Certified Specialty Contractor, issued by State of Florida Department of Business and Professional Regulation Construction Industry Licensing Board, dated July 22, 2010, in the name of Mr. Britzius, may be transferred to Minnesota Limited, or Minnesota Limited is able to qualify to for a similar Governmental Authorization permitting it to conduct similar operations in the State of Florida as Minnesota Limited currently conducts.

The GMT Lawsuit was transferred from Minnesota Limited to Nordic Enterprises, LLC in exchange for membership interests in Nordic Enterprises, LLC. Immediately prior to the Closing, Minnesota Limited distributed such membership interests to the Sellers.

(j) The Seller Group has not properly accrued vacation time as required by GAAP. Seller Group estimates that the current accrued amount for 2010 is approximately $80,259. Seller Group has begun accruing such vacation time.

In January 2010, Minnesota Limited started using a new accounting software, Viewpoint.

(k) None, other than as set forth in this Part 4.16.

Part 4.17
Contracts

(a)

(i) Minnesota Limited is a party to the following Contracts that have an amount payable to it in excess of $100,000 in the next twelve months:

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
Centerpoint Energy – Illinois Gas Transmission Company	Pipeline Construction Contract	August 1, 2010	N/A	FP
Enbridge Energy, Limited Partnership	Work Order and Field Purchase Order	June 30, 2010	JHP 19134-2010	FP
Florida Gas Transmission Company, LLC	Capital Construction Agreement	July 13, 2010	CCA-FGT-50282	FP
Koch Pipeline Company L.P.	Scope of Work Agreement	November 5, 2010	N/A	FP
Northern Natural Gas Company	Capital Construction Agreement	November 8, 2010	CCA-179-2010-7075	FP

(ii) Member Agreement, by and between Minnesota Limited and Cellco Partnership (on behalf of itself and its controlled and/or managed affiliates doing business as Verizon Wireless), dated as of December 12, 2008.

The Leases.

Equipment Lease Agreement (Nordic Equipment, LLC), by and between Minnesota Limited and Nordic Equipment, LLC, dated as of January 1, 2005.

(iii) Minnesota Limited is a party to the following Contracts that resulted in payments to it in excess of $100,000 and that have a written warranty period that expires on the dates set forth below:

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Centerpoint Energy – Illinois Gas Transmission Company	Pipeline Construction Contract	August 1, 2010	N/A	12/2011
Consumers Energy Company	Contract	March 19, 2009	GTSE-RJD-08.053	11/2011
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on August 6, 2009	August 14, 2008	0730272000-02-SL-CLS	9/2013
Enbridge Energy Limited Partnership	Agreement, as amended on September 8, 2009	August 14, 2008	0791243100-01-AC-CLS	7/2013
Enbridge Energy Limited Partnership	Agreement, as amended on September 10, 2009	October 10, 2008	0791243100-02 AC-DRS	6/2013
Enbridge Pipelines (North Dakota) LLC	Agreement	November 3, 2008	0790401121-07 SICIM	10/2013
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	December 4, 2008	WBH-07127-08	6/2012
Enbridge Energy Limited Partnership	Agreement	December 12, 2008	0691218A101-06 SA-DS-MBS	6/2012

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-VP-01	11/2012
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-DN-01	11/2012
Enbridge Pipelines (Southern Lights) L.L.C.	Agreement, as amended on May 22, 2009	January 16, 2009	SL-CM-CTR-AM-01	12/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order, and corresponding letter dated March 9, 2009	March 9, 2009	WBH-07181-09	10/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	March 9, 2009	WBH-07173-09	12/2012
Enbridge Pipelines (North Dakota) LLC	Agreement	March 16, 2009	0790401121-11 MSM	9/2012
Enbridge Pipelines (North Dakota) LLC	Agreement	April 17, 2009	0790401121-12 BLSM	12/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	May 7, 2009	WBH-07285-09	10/2012
Enbridge Pipelines (North Dakota) LLC	Work Order and Field Purchase Order	July 10, 2009	WBH-07326-09	12/2012
Enbridge Energy Limited Partnership	Amendment	September 8, 2009	Amendment to 0791243100-03 AC-VS	7/2013
Enbridge Energy, Limited Partnership	Work Order Contract	January 27, 2010	WSA-20759-10	1/2013
Enbridge Energy, Limited Partnership	Work Order Contract	February 2, 2010	WSA-20758-10	1/2013
Enbridge Energy, Limited Partnership	Work Order and Field Purchase Order	June 30, 2010	JHP 19134-2010	10/2013
Enbridge Pipelines (North Dakota) LLC	Letter of Intent Berthold Trap Modifications Mechanical, Berthold, North Dakota 2010 Construction	October 7, 2010	N/A	12/2013
Florida Gas Transmission Company, LLC	Capital Construction Agreement	July 13, 2010	CCA-FGT-50282	1/2013
Koch Pipeline Company L.P.	Scope of Work Agreement	November 5, 2010	N/A	6/2012
Marathon Petroleum Company LLC	Job Order	August 11, 2010	2010-581314-Min-001	12/2011
Northern Natural Gas Company	Capital Construction Agreement	September 22, 2008	CCA-179-2008-6098	12/2011
Northern Natural Gas Company	Capital Construction Agreement	January 29, 2009	CCA-179-2009-6187	10/2012
Northern Natural Gas Company	Capital Construction Agreement	February 16, 2009	CCA-179-2009-6202	6/2011
Northern Natural Gas Company	Capital Construction Agreement	July 24, 2009	CCA-179-2009-6495	9/2011
Northern Natural Gas Company	Work Offer	September 8, 2009	GSMA-179-2009-6237 Work Offer No. 1216	10/2011

Other Party(ies)	Contract	Dated	Contract Number	Warranty Period Expiration
Northern Natural Gas Company	Work Order	October 14, 2009	GSMA-179-2009-6237 Work Offer No. 1495	10/2011
Northern Natural Gas Company	Work Order	October 21, 2009	GSMA-179-2009-6237 Work Offer No. Willmar Projects	12/2011
Northern Natural Gas Company	Work Offer	May 7, 2010	GMSA-179-2009-6237 Work Offer No. 2407	12/2012
Northern Natural Gas Company	Capital Construction Agreement	May 10, 2010	CCA-179-2010-6840	11/2012
Northern Natural Gas Company	Capital Construction Agreement	August 9, 2010	CCA-179-2010-6949	12/2012
Northern Natural Gas Company	Capital Construction Agreement	August 23, 2010	CCA-179-2010-6965	11/2012
Northern Natural Gas Company	Capital Construction Agreement	September 13, 2010	CCA-179-2010-6987	11/2012
Northern Natural Gas Company	Capital Construction Agreement	September 13, 2010	CCA-179-2010-6989	11/2012
Northern Natural Gas Company	Work Offer	October 4, 2010	GSMA-179-2009-6237 Work Offer No. 3363	11/2012
Northern Natural Gas Company	Capital Construction Agreement	October 11, 2010	CCA-179-2010-7026	11/2012
Northern Natural Gas Company	Capital Construction Agreement	November 8, 2010	CCA-179-2010-7075	5/2013
Northern Natural Gas Company	Work Offer	N/A	GSMA-179-2009-6237 Work Offer No. 1074	7/2011
Northern Natural Gas Company	Work Offer	N/A	GSMA-179-2009-6237 Work Offer No. 1268	9/2011

(iv) Revolving Credit Agreement, by and between Minnesota Limited and M&I Marshall & Ilsley Bank, dated as of October 27, 2010, and each Loan Document, as defined in such agreement, including:

Amended and Restated Revolving Note No. 1, issued by Minnesota Limited to M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Revolving Note No. 2, issued by Minnesota Limited to M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Security Agreement, by and between Minnesota Limited and M&I Marshall & Ilsley Bank, dated as of October 27, 2010

Limited Personal Guaranty, by Christopher Leines to M&I Marshall & Ilsley Bank, dated as of October 27, 2010.

Limited Personal Guaranty, by Paulette Britzius to M&I Marshall & Ilsley Bank, dated as of October 27, 2010.

Clean Irrevocable Letter of Credit No. SB 56769, issued by M&I Marshall & Ilsley Bank, with The Travelers Indemnity Company as the beneficiary and Minnesota Limited as the applicant, dated as of May 28, 2010.

The foregoing items will be terminated effective as of the Closing.

Master Loan Agreement, by and between Nordic Equipment and U.S. Bancorp Equipment Financing, dated as of February 20, 2008, and each Schedule thereunder, as defined in such agreement, including:

Schedule Number 893367-AFS, dated as of February 29, 2008

Schedule Number 893367-AFS, dated as of November 11, 2008

Schedule Number 893367-AFS, dated as of December 10, 2008

Loan Contract – Security Agreement, by and between Minnesota Limited and John Deere Construction & Forestry Company, dated as of April 27, 2010.

Wright Express Business Charge Account Agreement, by and between Minnesota Limited and Wright Express Financial Services Corporation, as amended by that certain Wright Express Tailored Fee Schedule dated December 27, 2006, and by that certain Amendment dated December 27, 2006.

The Seller Group has Contracts related to credit cards and other products or services for which Seller Group pays in arrears, for which there are no reserves on the financial statements.

(v) The Contracts set forth in Part 4.6 are incorporated herein.

Equipment Lease Agreement (Nordic Equipment, LLC), by and between Minnesota Limited and Nordic Equipment, LLC, dated as of January 1, 2005.

Lease Agreement, by and between Minnesota Limited and IKON Financial Services, dated as of July 28, 2010, and the corresponding Additional Equipment Addendum, Equipment Removal Authorization, Work Order-US, Sales Order/Service Order, Master Maintenance and Sale Agreement, and Bill of Sale and Assignment, each dated as of July 28, 2010.

Minnesota Limited leases personal property from third parties from time to time in the ordinary course of business. Such leases may result in Minnesota Limited making aggregate annual payment of greater than $26,000, but such leases are generally on a month-to-month basis (or shorter timeframe) and the payments are based on the amount of time Minnesota Limited uses such personal property. Therefore, it is uncertain as to whether Minnesota Limited will have to make aggregate annual payments of greater than $26,000 under any such lease.

(vi) The Contracts set forth in Part 4.22 are incorporated herein.

Field Services Agreement (Multiple Work Order), by and between Minnesota Limited and Alliance Pipeline L.P., dated as of October 1, 2009.

Major Service Contract, by and between Minnesota Limited and Marathon Petroleum Company LLC, dated as of April 2, 2006.

Construction Services Agreement, by and between Minnesota Limited and Alliance Pipeline L.P., dated as of September 1, 2009.

Minnesota Limited has the following oral Contracts with the following Persons:

Dennis Anderson
Mr. Anderson does consulting in Minnesota Limited's Compliance department assisting its compliance director. Mr. Anderson's daily billing rate is $500 and works 4 days a week. Mr. Anderson bills Minnesota Limited semi-monthly and is reimbursed for his business-related expenses. He has been a consultant for Minnesota Limited since April of 2008. In March 2011, Minnesota Limited informed Mr. Anderson that his services were no longer needed at the frequency in which he had been engaged previously. It is currently anticipated that Mr. Anderson may continue to provide consulting to Minnesota Limited in the future, but in a reduced capacity.

Tom Poe
Mr. Poe started consulting with Minnesota Limited in May 2009 as a process reengineer and has performed process assessments in the equipment/transportation, finance/accounting and operations department. He is currently assisting Minnesota Limited with implementing a costing system in our equipment department, as well as assisting with implementing Viewpoint's equipment module. Mr. Poe is also assisting in implementing a formal budgeting process/plan for 2011. He invoices Minnesota Limited on an hourly basis of $100 per hour and averages 30 to 35 hours a week.

Atlanta Information Technology Services (Tim Denison)
Mr. Denison does data conversion for Minnesota Limited. He handled the conversion of data from Timberline (old accounting system) to Viewpoint at the beginning of 2010 when Minnesota Limited went live with the new system. Mr. Denison's services are still needed when data needs to be reconfigured within Viewpoint. He invoices Minnesota Limited on an hourly basis at $195 per hour. He currently is able to access Minnesota Limited's software system via VPN.

Kenison Technology Services, Inc. (KTSI)
KTSI does Crystal Reports custom report programming for Minnesota Limited. Crystal Reports is the reporting program platform for Viewpoint. KTSI's hourly billing rate is $100. KTSI is based out of Butte, Montana and have access to Minnesota Limited's accounting system via VPN connection.

Rick Volz & Associates
Minnesota Limited engages Rick annually to perform a desktop appraisal of its off-road equipment and transportation fleet. Appraisal fees range from $2,000 to $3,000.

(vii) National Pipe Line Agreement, by and between the Pipe Line Contractors Association and the International Brotherhood of Teamsters, for the period November 1, 2005 to January 31, 2011. (By letter of August 16, 2010, Minnesota Limited notified the Union of its intent to terminate the Agreement on January 31, 2011).

National Pipe Line Agreement, by and between the Pipe Line Contractors Association and The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, for the period November 1, 2005 to December 31, 2010. (By letter of August 16, 2010, Minnesota Limited notified the United Association of its intent to terminate the Agreement on December 31, 2010).

National Pipe Line Agreement, by and between the Pipe Line Contractors Association and the International Union of Operating Engineers, for the period November 1, 2005 to January 31, 2011. (By letter of August 16, 2010, Minnesota Limited notified the Union of its intent to terminate the Agreement on January 31, 2011).

National Pipe Line Agreement, by and between the Pipe Line Contractors Association and the Laborers' International Union of North America, for the period November 1, 2005 to January 31, 2011. (By letter of August 16, 2010, Minnesota Limited notified the Union of its intent to terminate the Agreement on January 31, 2011).

National Distribution Pipeline Agreement, by and between the Distribution Contractors Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, AFL-CIO, for the period November 16, 2009 to May 31, 2015.

Agreement, between MCAA of East Central Illinois and Local Union Number 65 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, for the period June 16, 2009 through June 15, 2011.

National Distribution and Utilities Construction and Maintenance Agreement, by and between the Distribution Contractors Association and the International Union of Operating Engineers (Local No. 49), for the period June 1, 2008 to May 31, 2012.

Commercial Agreement with Lakes and Plains Regional Council of Carpenters & Joiners of Minnesota, North Dakota, South Dakota, & Parts of Wisconsin, Local 361, for the period ending April 30, 2009. Minnesota Limited sent a letter dated February 18, 2011 to Local 361 notifying Local 361 that Minnesota Limited was terminating the agreement upon the expiration thereof, on April 30, 2011.

National Distribution Pipeline Agreement, by and between the Distribution Contractors Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (AFL-CIO) (Local #15), for the period November 16, 1999 to November 15, 2004.

Working Agreement, by and between the Minnesota Mechanical Contractors Association and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, AFL-CIO, Local No. 455, for the period May 1, 2008 through April 30, 2011.

Standard Labor Agreement, by and between Western Lake Superior Plumbing Contractors Association and Plumbers and Steamfitters Local No. 11, for the period May 6, 2002 through April 30, 2005.

National Distribution Agreement, by and between the Distribution Contractors Association and the Laborers' International Union of North America, for the period June 1, 2010 to May 31, 2015.

Building, Heavy and Municipal/Utilities Construction Master Agreement Area II, between Associated General Contractors of Wisconsin, Inc. and the AGC Municipal/Utilities Division and the International Union of Operating Engineers, Local Union No. 139, for the period June 1, 2008 to May 31, 2011. (By letter of March 1, 2011, Minnesota Limited sent notification of its intent to terminate the Agreement on May 31, 2011).

(viii) See attached forms.

(ix) Minnesota Limited has recently orally agreed with Barnard Construction Co., out of Bozeman Montana, to submit a bid to install certain pipeline spreads for TransCanada's Keystone Phase IV 36" pipeline in the state of Montana. Minnesota Limited's share of the work could either be a 65 mile spread or 75 mile spread, but not both. If awarded the bid, the project is anticipated to start in 2012.

(x) The disclosures set forth in Part 4.17(a)(vii) are incorporated herein.

Confidential Document Destruction Service Agreement, by and between Minnesota Limited and Randy's Sanitation Document Destruction Division, dated as of March 26, 2008.

Agreement for Supply of G&K Services, by and between Minnesota Limited and G&K Services, dated as of February 26, 2010.

Field Services Agreement (Multiple Work Order), by and between Minnesota Limited and Alliance Pipeline L.P., dated as of October 1, 2009.

Master Supply Agreement – Field Services, by and between Minnesota Limited and TransCanada Keystone Pipeline, LP, dated as of March 15, 2010.

Master Services Agreement, by and between Minnesota Limited and Ledcor Industrial Maintenance Inc., dated as of April 1, 2009.

Major Service Contract, by and between Minnesota Limited and Marathon Petroleum Company LLC, dated as of April 2, 2006.

Construction Services Agreement, by and between Minnesota Limited and Alliance Pipeline L.P., dated as of September 1, 2009.

Certain of the Contracts set forth in this Part 4.17 restrict such member of the Seller Group that is a party thereto from using sub-contractors or hiring the employees of the other party with respect to such Contracts.

(xi) None.

(xii) None.

(xiii) The Contracts set forth in Part 4.17(a)(i) and (a)(ii) are incorporated herein.

(xiv) Pursuant to that certain Master Loan Agreement, by and between Nordic Equipment and U.S. Bancorp Equipment Finance, Inc., dated as of February 20, 2008, Nordic Equipment appointed U.S. Bancorp Equipment Finance, Inc. as attorney-in-fact for the matters described therein.

Pursuant to that certain Power of Attorney and Declaration of Representative, on Form 2848, dated as of August 16, 2010, Minnesota Limited appointed Seazon Herezi-Vozz and Glenn Furman as attorneys in fact to represent Minnesota Limited before the Internal Revenue Service with respect to employment Taxes on Form 941 for the tax year ending 2010.

Pursuant to that certain General Agreement of Indemnity, by and between Minnesota Limited and Travelers Casualty and Surety Company of America, dated as of April 26, 2005, under which bonds were issued and are currently outstanding, Minnesota Limited appointed Travelers Casualty and Surety Company of America, St. Paul Fire and Marine Insurance Company, and its affiliates and successors and assigns, as attorney in fact for the matters described therein.

Pursuant to the Zurich Agreement, Minnesota Limited appointed Surety (as defined therein) as its attorney-in-fact for the matters described therein.

(xv) Minnesota Limited is a party to the following master services agreements:

Other Party(ies)	**Contract**	**Dated**	**Contract Number**	**Fixed Price ("FP") or Time and Materials ("T/M")**
Alliance Pipeline L.P.	Field Services Agreement (Multiple Work Order)	October 1, 2009	02 LEG 23 5814 00	T/M
Chicago Pipe Line Company	Master Services Agreement	May 22, 2006	CHI-2006MSA002	T/M
EOG Resources, Inc.	Master Service Contract	April 1, 2009	N/A	T/M
Great Lakes Gas Transmission Limited Partnership	Agreement, as amended on October 12, 2009	June 10, 1996	N/A	T/M
Great Lakes Transmission Limited Partnership	Agreement, as amended on October 12, 2009	October 1, 2003	N/A	T/M
Guardian Pipeline, L.L.C.	Blanket Work Order	July 31, 2010	ENTMSA-226-2009-7587-7	T/M
Integrys Business Support, LLC	Contractor Agreement	August 11, 2008	08IBS-0003-TJK	T/M
Kinder Morgan Operating L.P. "A"	General Services Agreement	May 6, 2010	23866	T/M
Koch Refining Company	Field Services Agreement, as amended by letter agreement dated September 14, 2010	April 10, 1995	3074	T/M
Koch Pipeline Co., L.P., Koch Fertilizer Storage & Terminal, Koch Hydrocarbon Co., Koch Nitrogen Co., and Koch Service, Inc.	Intermittent Services Agreement, as amended pursuant to letter agreements dated, February 27, 1997, December 11, 2001, March 25, 2002, March 10, 2004, June 27, 2005, October 21, 2005	November 9, 1995	N/A	T/M
Marathon Petroleum Company LLC	Major Service Contract	April 2, 2006	MS06SP13	T/M
Northern Natural Gas Company	General Services and Maintenance Agreement	March 16, 2009	GSMA-179-2009-6237	T/M

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
ONEOK Partners Intermediate Limited Partnership	Master Service Agreement	April 1, 2009	ENTMSA-226-2009-7587	T/M
Panhandle Eastern Pipe Line Company, LP; Trunkline Gas Company, LLC and Pan Gas Storage, LLC, d/b/a Southwest Gas Storage Company	General Services and Maintenance Agreement	July 23, 2008	GSMA-PE-23041	T/M
TransCanada Keystone Pipeline, LP by its agent TC Oil Pipeline Operations, Inc.	Master Supply Agreement – Field Services	March 15, 2010	8102	T/M
Viking Gas Transmission Company	Blanket Work Order	June 17, 2010	ENTMSA-226-2009-7587-5	T/M
Ledcor Industrial Maintenance Inc.	Master Service Agreement	April 23, 2010	US 2005-2	T/M
Natural Gas Pipeline Company of America	General Services Agreement	August 13, 2007	07GA69571LKW	T/M
Midwestern Gas Transmission Company	Blanket Work Order	July 31, 2010	ENTMSA-226-2009-7587-8	T/M

Nordic Pipeline is a party to the following master agreements:

Other Party(ies)	Contract	Dated	Contract Number	Fixed Price ("FP") or Time and Materials ("T/M")
Northern Natural Gas Company	General Services and Maintenance Agreement	May 1, 2009	GSMA-179-2009-6354	T/M
TransCanada Northern Border Inc.	General Services and Maintenance Agreement, as amended by Amendment #1, dated April 1, 2007	April 1, 2007	GSMA-210-2007-5515	T/M
CenterPoint Energy Resources Corp., d/b/a CenterPoint Energy Minnesota Gas	Construction Agreement	April 1, 2009	N/A	T/M

(xvi) The amendments, supplements and modifications set forth in Part 4.17(a) above, and the change orders with respect to Minnesota Limited attached hereto.

Change Order No. 10-01 SAP Contract 4600021745 requested March 18, 2010 by and between CenterPoint Energy and Nordic Pipeline.

(b) The disclosures set forth in Part 4.2 are incorporated herein.

Minnesota Limited leases real property from the Leines Family Limited Partnership, pursuant to a Lease Agreement (Big Lake Storage Facility), dated as of September 1, 2009. Such lease has been terminated immediately prior to Closing.

Minnesota Limited leases the Property from Nordic Superior, pursuant to a Lease Agreement dated as of January 1, 2005. Such lease has been terminated immediately prior to Closing.

The Leases among members of the Seller Group.

Equipment Lease Agreement (Nordic Equipment, LLC), by and between Minnesota Limited and Nordic Equipment, LLC, dated as of January 1, 2005.

Pursuant to that certain General Agreement of Indemnity, by and between Minnesota Limited and Travelers Casualty and Surety Company of America, dated as of April 26, 2005, under which bonds were issued and are currently outstanding, the Contemplated Transactions are deemed to be a default under such agreement. Pursuant to a letter to Minnesota Limited dated March 15, 2011, Travelers Casualty and Surety Company of America waived the foregoing default provision with respect to the Contemplated Transactions.

Limited Personal Guaranty by Christopher Leines to M&I Marshall & Ilsley Bank, dated as of October 27, 2010, which shall be terminated effective as of the Closing.

Limited Personal Guaranty by Paulette Britzius to M&I Marshall & Ilsley Bank, dated as of October 27, 2010, which shall be terminated effective as of the Closing.

Each Seller may become subject to an obligation or liability under the Zurich Agreement.

Each Seller may become subject to an obligation or liability under that certain U.S. Bank FlexPerks Business Travel Rewards Visa Agreement, dated effective as of December 30, 2010.

(c)

Minnesota Limited received an aggregate of three letters regarding warranty claims from Minnesota Pipe Line Company, LLC, dated May 8, 2009, July 15, 2009, and September 15, 2009. The claims related to seven locations that required pipeline lowering. As of the date hereof, Minnesota Limited has completed all work to settle such claims with the exception of the installation of a 700-800 foot pipeline, which is currently scheduled to occur in the spring of 2011. Minnesota Limited expects the costs of this installation to be approximately $282,465. Minnesota Limited has not included any owned equipment expenses or overhead costs to complete such work or in the calculation of such reserve. The parties have agreed that such treatment is appropriate and will apply to the remaining work. With respect to the remaining work to be completed, the Buyer agrees that no charges related to equipment expenses or related labor and other related overhead costs shall be charged against Minnesota Limited with respect to operation of equipment owned by Minnesota Limited.

Minnesota Limited received a letter, dated December 20, 2010, from Koch Companies Public Sector, LLC, alleging Minnesota Limited performed defective work in connection with that certain Intermittent Services Agreement #950019 and Scope of Work Agreement dated November 5, 2010, between Minnesota Limited and Koch Pipeline Company, L.P. ("KPL"), and that KPL will be looking to Minnesota Limited to recover any and all loss, damage, or expense KPL has incurred or may thereafter incur arising out of the performance of defective work. Minnesota Limited believes that its applicable insurance policies will cover these claims if the subcontractor that performed this work does not. The cost of deductibles related to such insurance policies may be $1,000 or $100,000, depending upon which insurance policy may apply, if any.

Minnesota Limited has not received annual funding notices from the Multiemployer Plans in which Minnesota Limited's unionized employees participate.

Minnesota Limited routinely receives requests to complete "punch-list" type work.

(d)

Minnesota Limited renegotiates labor and equipment rates at the end of each year in the ordinary course of business.

OFFER LETTER

DATE

EMPLOYEE NAME
ADDRESS 1
ADDRESS 2

Dear ____________,

This letter is to confirm in writing our offer and your acceptance of _________________ position in the Big Lake, MN office of Minnesota Limited, Inc. You will report directly to the _______________. We would anticipate that your first day of work will be DATE. Please formally accept our offer and signify your agreement with the terms and conditions of your employment by signing and returning one copy of this letter at your earliest convenience.

This offer is contingent upon your passing a drug-screening test, which can be arranged at a convenient location. Please contact the Big Lake office at 763.262.7000 to schedule an appointment for the drug-screening test. The drug screen must be taken within three days of receipt of this offer, or the offer may be withdrawn.

Your employment is conditioned upon your signing a standard (Confidentiality Agreement and/or Employment Agreement). A sample copy of the agreement(s) you will be asked to sign is enclosed for your review. This document does not promise you employment for a specified period. Employees of the Company are subject to the employment-at-will doctrine, which means either you or the Company may terminate the relationship at any time.

Your initial hourly rate of pay will be _________ and are qualified to earn time and half overtime pay when necessary. You will also be paid a daily non-taxable travel per diem of _______. You will be eligible for a compensation review on or about DATE, in accordance with the Company's normal compensation administration procedures. Your hourly rate may be adjusted, upward or downward, upon such compensation review date, or from time-to-time. Your compensation will be paid to you on a weekly basis for weeks in which you are performing work for the Company.

Under the guidelines of the Immigration Reform and Control Act of 1986, the Company must request proof of identification and authorization to work. Acceptable documentation could include a current U.S. passport, social security card or birth certificate plus a state issued driver's license or ID card with a photograph. This documentation must be presented and verified on your first day of employment.

Minnesota Limited, Inc. has assembled some of the best professionals in the pipeline construction industry. We are convinced that your experience and expertise will help us maintain and enhance our reputation. We look forward to your joining the Limited team.

Sincerely,

Glenn L. Furman
Director of Finance & Administration

Enclosure

Offer Accepted:

____
SIGNATURE

Date: ______________________

Please initial:

Received and filled out Sign-up information ____

Received and signed confidentiality and employment agreement ____

III

EMPLOYMENT AGREEMENT

This **EMPLOYMENT AGREEMENT** ("Agreement") is made to be effective the _______ day of __________, ________, between **MINNESOTA LIMITED, INC.** ("Employer"), and ____________ ("Employee").

Employer wishes to employ Employee, and Employee wishes to be employed by Employer.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Employment, Compensation and Benefits.** During the period of this Agreement, Employer agrees to employ Employee and to pay Employee such compensation as is set forth in the offer letter attached hereto as Exhibit A. Such compensation may be changed by Employer pursuant to its normal compensation review procedures or from time to time.

2. **Ownership of Business.** All business activity participated in by Employee as an employee of Employer ("Business Activity") is the sole property of Employer. Employee shall have no right to share in any commission or fee resulting from such Business Activity other than the compensation referred to in Paragraph 1, and any monies due to Employer as a result of Business Activity shall be collected on behalf of and promptly paid over to Employer.

3. **Confidential Information.** Employer agrees that it shall provide, and Employee acknowledges and agrees that, in the course of Employee's employment, Employee will receive, access to nonpublic Employer information reasonably necessary to the performance of Employee's job duties (including, but not limited to, information regarding Employer's clients and customers). Employee shall (a) execute the Confidentiality Agreement attached hereto as Exhibit B, and (b) use Employee's best efforts, both during the course of employment hereunder and at all times hereafter, to prevent the taking or disclosure of nonpublic information to which Employee is exposed during Employee's period of employment with Employer. Upon termination of Employee's employment hereunder, Employee shall promptly return to Employer all Employer materials, information and any other property belonging to Employer, including (but not limited to) all files, computer discs, manuals and other Employer property, as may then be in Employee's possession or control.

4. **Employee Loyalty, Noncompetition and Nonsolicitation.** Employee agrees to devote Employee's entire business time and best efforts to the furtherance of the business of Employer during the term of this Agreement. All references in this paragraph to "Employer / Minnesota Limited, Inc." shall be understood to refer to Employer and Employer's parent, sister, and subsidiary companies, as well as their successors and assigns. Upon termination of employee's employment with Minnesota Limited, Inc., Employee agrees that for a period of three (3) years thereafter, the Employee shall not, either on his own or in conjunction with, or for any other person, company, or employer:

a. within the "Territories" described below, directly or indirectly solicit, accept, or perform pipeline and station contracting, pipeline maintenance, supervising, estimating, project management, marketing, safety direction, or consulting for any (i) customers of Employer / Minnesota Limited, Inc. for which services were provided or (ii) prospective customers of Employer / Minnesota Limited, Inc. with whom Employer had solicited on bid business within two years prior to termination of Employee's Employment with Employer.

b. accept employment with any person, company or entity which performs pipeline construction, maintenance or repair under contract with pipeline owners, utilities or their agents and assigns in any of the Territories described below.

c. directly or indirectly solicit any of Employer's employees or any of the employees of Employer's parent, sister or subsidiary companies to work for Employee or any competitor (whether an individual or a competing company) of Employer.

For purposes of this paragraph 4, "Territories" shall refer to those states where the clients or prospective clients of Employer / Minnesota Limited, Inc. are present and available for solicitation and servicing and are deemed to include, but are not limited to, the states of Minnesota, Illinois, Iowa, Wisconsin and North and South Dakota.

Employee acknowledges that in the event of breach of this paragraph, the Employer has no adequate remedy at law and shall be entitled to immediate injunctive or other equitable relief. Further, Employee agrees that in the event Employer seeks equitable, it shall not be required to post more than a minimal bond.

5. **Term and Termination.** This Agreement shall commence upon the effective date first set forth above and shall continue until terminated (i) by either party, with or without cause, upon fifteen calendar days prior written notice or (ii) immediately by Employer upon any willful or gross misconduct or material breach by Employee of this Agreement. Should Employer give Employee fifteen days notice of employment termination, (i) Employee will not, thereafter, be entitled to access to the office premises of Employer and (ii) said fifteen calendar days shall be treated as two weeks' pay under any severance or termination arrangement between Employer and Employee. This

Agreement shall also terminate automatically upon the Employee's death or disability. Paragraphs 3 (including Exhibit B), 4, 6 and 8 shall survive termination of this Agreement.

6. **Mandatory Binding Arbitration.** Except for a claim which includes a request for injunctive relief by Employer for paragraph 4 violations or breach of the confidentiality agreement; Employer and Employee agree that any dispute arising either under this Agreement or from the employment relationship shall be resolved by arbitration, with such arbitration process to include the following:

a. the party invoking arbitration under this Agreement shall notify the other party in writing, and such notice shall propose an arbitrator, who shall be required to complete a disclosure of interest form;

b. each party may exercise one peremptory strike of an otherwise competent arbitrator (provided the party objecting to the proposed arbitrator proposes an alternative arbitrator). The parties shall exercise their best efforts, in good faith, to agree upon selection of a single arbitrator. If the parties are unable to agree upon selection of a single arbitrator, they shall so notify the American Arbitration Association ("AAA") and shall request that the AAA work with the parties to select a single arbitrator pursuant to the method and manner contemplated by the AAA's National Rules for the Resolution of Employment Disputes;

c. the arbitration shall be conducted by a single arbitrator in a manner consistent with the American Arbitration Association's National Rules for the Resolution of Employment Disputes;

d. the arbitration shall be conducted at a location reasonably convenient to that office of the Employer at which the Employee had most recently been assigned;

e. the arbitration, including the arbitrator's decision, shall be completed within ninety days of receipt of notice by the party other than the party invoking this Paragraph 6;

f. the arbitrator shall have no authority to assess punitive or exemplary damages as to any dispute (i) arising out of or concerning the provisions of this Agreement or (ii) otherwise arising out of the employment relationship, except as and unless such damages are expressly authorized by otherwise applicable and controlling statutes;

g. the arbitrator's decision shall be final and binding and enforceable in any court of competent jurisdiction; and

h. each party shall bear its own costs, including attorneys, fees, and share all costs of the arbitration equally; except however, this provision shall not (i) interfere with either party's right to seek or receive damages as may be allowed by relevant statutory law, if any, or (ii) require Employee to pay all or a portion of the arbitrator's fees if the issues submitted to arbitration primarily concern Employee allegations of unlawful discrimination in the terms and/or conditions of employment.

7. **Representations and Warranties.** Employee represents and warrants the following:

a. Except as set forth in Exhibit C attached hereto, Employee is not subject to (1) any oral or written agreement with any former employer, (2) or any existing order, judgment or decree involving any former employment, independent contractor or other business relationship. Employee agrees to provide (or describe in writing, in the case of past oral agreements) any such agreement, order, judgment or decree for attachment as Exhibit C.

b. Employee has received and read a copy of, and will at all times abide by, Minnesota Limited, Inc.'s Code of Ethics (or any variant of such adapted for use by Employer).

Employee agrees to indemnify and hold Employer harmless against any and all losses, damages, costs and expenses (including legal fees) incurred by Employer by reason of any breach of this Paragraph 7. This indemnification provision is subject to arbitration, as provided in Paragraph 6.

8. **Miscellaneous.** This Agreement sets forth the entire agreement between Employer and Employee, supersedes any and all prior agreements and understandings regarding the subject matter herein, and may be modified only by a written instrument signed by both parties (and, in the case of Employer, only by a duly authorized officer). If any term of this Agreement is rendered invalid or unenforceable by judicial, legislative or administrative action, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated. Any notices given pursuant to this Agreement shall be sent by certified mail to the addresses set forth below (or, in the event of an address change by either party, to the then current address of the party, with both parties agreeing to promptly provide the other party with written notice of any change in address). This Agreement shall be governed by Minnesota law without giving effect to its conflicts of law principles. The waiver by either party of any breach of this Agreement shall not operate or be construed as a waiver of that party's rights upon any subsequent breach. This Agreement shall inure to the benefit of and be binding upon and enforceable against the heirs, legal representatives and assigns of Employee and the successors and assigns of Employer. Should Employee be transferred or reassigned from Employer to a parent, sister, or subsidiary company of Employer, this agreement shall be automatically assigned by Employer to such new employer, and Employee's acceptance of Employee's first payment of compensation from such new employer shall be deemed as Employee's acknowledgement of such assignment. Upon the commencement by the

Employee of employment with any third party, during the two (2) year period following termination, the Employee shall promptly furnish such new employer with a copy of this Agreement.

9. **Survivability/Assignment.** The provisions of paragraphs 3, 4, 6, and 7 should survive employee's termination. Employee may not assign his obligations under this agreement to any Third party. The employer may assign the assignment to a successor company. Except as otherwise set forth above. This Agreement shall be binding on to the parties heir, executors and successor assignees.

10. **Governance** This Agreement shall be governed exclusively by the laws of the State of Minnesota, regardless of the venue of any court or arbitration proceeding.

IN WITNESS WHEREOF, the parties hereto have executed this Employment Agreement as of the date first above written.

EMPLOYER

MINNESOTA LIMITED, INC.
18640 200th STREET
BIG LAKE, MN 55309

BY:______________________________

TITLE:____________________________

EMPLOYEE

____

SIGNATURE:

SSN:__________________________

II
EXHIBIT ___

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT, dated as of the _____ day of ___________, ________, between **MINNESOTA LIMITED, INC.**, a corporation ("Employer") and ____________, an employee of the Employer ("Employee").

NOW, THEREFORE, Employer and Employee hereby agree as follows:

1. Employee acknowledges that all non-public information (including, but not limited to, information regarding Employer's clients and customers), owned or possessed by Employer, its affiliated, sister, subsidiary, parent and predecessor companies (collectively, "Confidential Information") constitutes a valuable, special and unique asset of the Employer's business, access to and knowledge of which are essential to the performance of Employee's duties. Given the value of this Confidential Information, Employee agrees as a condition of his/her employment that Employee shall not, during or after the period of his/her employment with the Employer, in whole or in part, disclose such Confidential Information to any third party without the consent of Employer for any reason or purpose whatsoever. In addition, Employee shall not make use of any such Confidential Information for his/her own purposes or for the benefit of any third party under any circumstances, during or after the period of Employee's employment with Employer; provided, however, that, during and after such term of employment, these restrictions shall not apply to such Confidential Information which is then in the public domain (provided that Employee was not responsible, directly or indirectly, for the fact that such secrets or information have entered the public domain without the Employer's consent).

2. Employee hereby assigns and transfers to Employer all his/her right and interest to all intellectual property (whether an invention, discovery or refinement) (including but not limited to computer programs, manuals, training materials and other proprietary compilations of information) developed or made by Employee in his/her capacity as an employee during Employee's period of employment with Employer (collectively, "Proprietary Materials"), including any such Proprietary Materials developed or made before execution of this Confidentiality Agreement. Employee acknowledges that all Proprietary Materials shall be considered as "work made for hire", and shall be considered the sole property of Employer. Employee agrees (i) to disclose promptly the existence of all Proprietary Materials to Employer, (ii) not to disclose such Proprietary Materials to any third party without the consent of Employer, and (iii) to cooperate fully in Employer's efforts to establish and protect Employer's rights to such Proprietary Materials against all other parties. Employee shall not be entitled to additional compensation for his/her role in developing or making such Proprietary Materials.

3. Employee acknowledges and agrees that monetary damages will not be an adequate remedy for a breach by Employee of any of the provisions of this Agreement and that, in the event of such a breach, irreparable injury will result to Employer, its affiliated, sister, subsidiary or parent companies and their businesses and property. Accordingly, Employee

acknowledges that Employer may, in addition to recovering legal damages, including lost commissions, fees and revenues, proceed in equity to enjoin Employee from violating any of the provisions noted.

4. Employee agrees that any obligations under this Confidentiality Agreement shall be independent of, and unaffected by, any other agreement binding Employee, which applies to Employee's business activities during or subsequent to his/her period of employment with Employer. This Confidentiality Agreement shall inure to the benefit of any and all of Employer's successors, assigns, parent companies, sister companies, subsidiary companies and affiliated companies. If any term of this Agreement is rendered invalid or unenforceable by judicial, legislative or administrative action, the remaining provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The waiver by Employer of any breach of this Agreement shall not operate or be construed as a waiver of Employer's rights upon any subsequent breach.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year set forth above.

EMPLOYER:

MINNESOTA LIMITED, INC.
18640 200th Street
BIG LAKE, MN 55309

By:______________________________

TITLE:___________________________

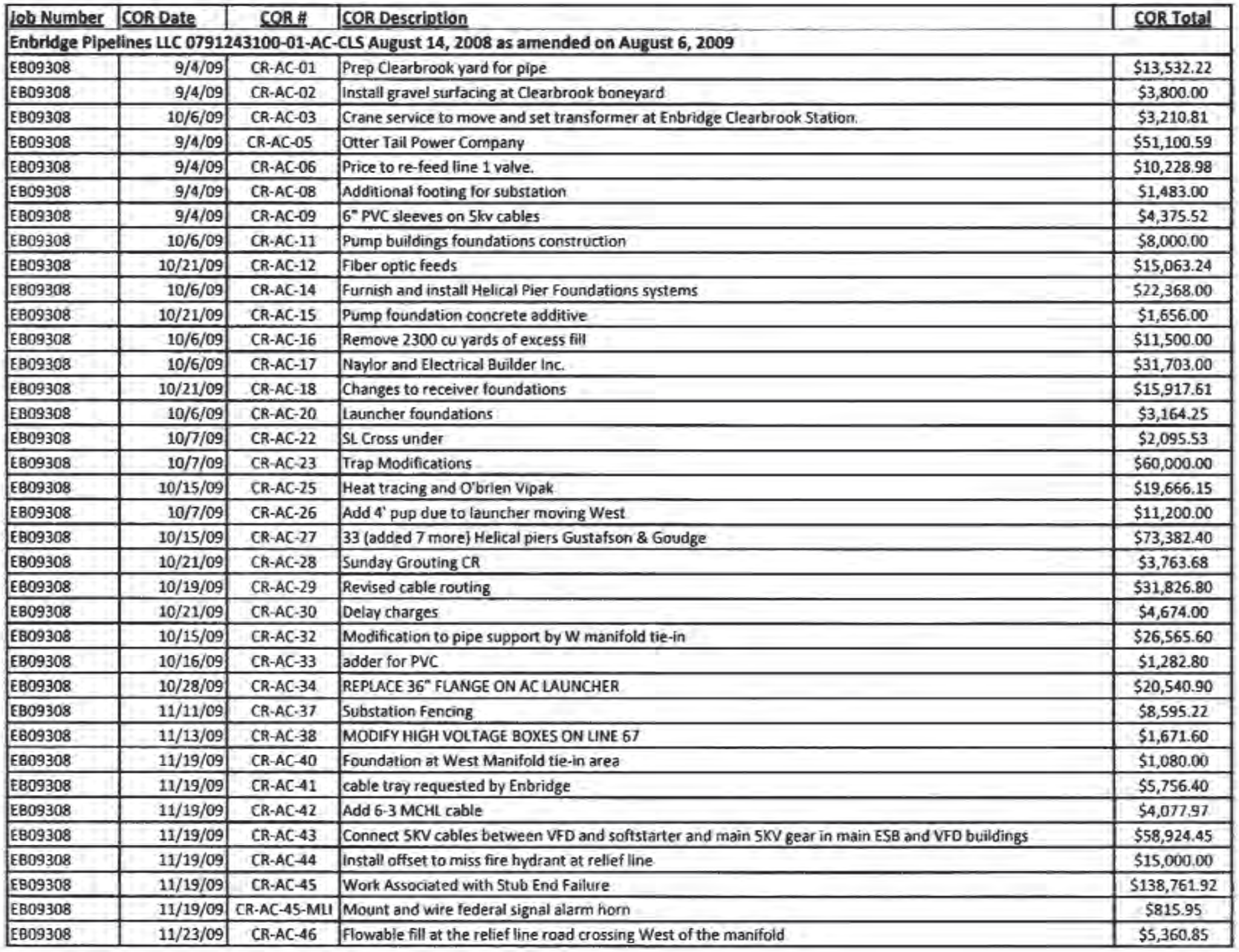
EMPLOYEE:

____

Job Number	COR Date	COR #	COR Description	COR Total	
Centerpoint Energy - Illinois Gas Transmission Company - Pipeline Construction Contract August 1, 2010					
CP10127	09/17/2010	COR 1	CHANGE IN WALL THICKNESS FOR HDD	$13,738.59	
CP10127	11/09/2010	COR 2	COR 2	$13,060.28	
CP10127	12/09/2010	COR 3	GRAVEL ACCESS RDS PER LAND AGT AGREEMENT W/ LANDOWNER	$2,272.14	
CP10127	12/09/2010	COR 4	ROW CLEARING	$38,218.26	
CP10127	12/09/2010	COR 5	PLACE RIP-RAP AT KINDER MORGAN LOCATION	$15,381.84	
CP10127	12/09/2010	COR 6	MISC EXTRAS	$13,545.77	
CP10127	12/09/2010	COR 7	ADDT'L COST FOR PIG RUN	$13,200.00	
CP10127	12/14/2010	COR 8	EXTRA ELECTRICAL WORK BY STATE GROUP	$30,107.44	
CP10127	01/28/2011	COR 9	ADJUST FOR ACTUAL FOOTAGE LAID	-$48,305.00	
CP10127	01/28/2011	COR 10	ADJUST FOR ADDT'L UPI'S AND HDD LENGTH (AS OF 1/28/11)	$85,416.18	$176,635.50
Enbridge Energy Agreement 0691218A101-06 SA-DS-MBS December 12, 2008					
EB08322	1/19/2009	1	Hot Work for Vesper Tie-in - Extra ground thaw, installing double face blinds, Installing spectical's	$48,701.94	
EB08322	1/19/2009	2	24" U/G Valve removal at Delavan - Install doubleface on line	$6,893.45	
EB08322	1/19/2009	4	Repair work on damaged Flow-cell	$459.10	
EB08322	1/19/2009	5	Night Shift Labor to monitor Ground Thaw Units	$19,867.68	
EB08322	1/19/2009	7	Purchased 6 - 4" saddles in lieu of WOL	$14,401.54	
EB08322	1/22/2009	8	Assist with Hydro-test of Mainline at west end of Station	$5,317.43	
EB08322	1/26/2009	9	Additional Hydro-test on Flow-cell	$12,791.29	
EB08322	1/26/2009	10	Apply SP-2888 coating to underground 42" bare pipe that was thought to be coated	$14,136.53	
EB08322	1/26/2009	11	X-ray cost for delay procedure on transitions	$5,927.67	
EB08322	1/26/2009	12	Place flowable fill at new 42" pipe (materials only)	$3,887.00	
EB08322	1/26/2009	13	Additional Concrete installation at Delavan - 42" Flange support/Sleeper Pads	$1,014.14	
EB08322	6/24/2009	17	haul scrap piping for vesper	$3,050.00	$136,447.77
Enbridge Energy Agreement 0791243100-02 AC-DRS October 10, 2008 as amended on September 10, 2009					
EB09307	5/25/10	CS-VG-01	Settlement of Alberta Clipper/Southern Lights Claims	$100,000.00	
EB09307	10/22/09	VG-01	Unload Transformer	$27,877.91	
EB09307	10/22/09	VG-02	Unload Cooling Unit	$1,197.51	
EB09307	10/22/09	VG-03	Pump house elevation Revisions	$4,600.00	
EB09307	10/22/09	VG-04	5000 PSI concrete with superplasticize	$2,088.00	
EB09307	10/22/09	VG-05	Pre-tie revar	$4,358.00	
EB09307	10/22/09	VG-06	Set of forms	$6,036.00	
EB09307	10/22/09	VG-07	Chromalox	$10,322.00	
EB09307	10/22/09	VG-08	Delay Charges - Naylor and Electrical Builder Inc.	$29,650.00	

Job Number	COR Date	COR #	COR Description	COR Total
EB09307	10/22/09	VG-09	Heat Tracing and O'Brien Vipak	$14,231.25
EB09307	10/22/09	VG-10	Additional cost for epoxy grout in cold weather	$2,976.00
EB09307	10/22/09	VG-11	1 Additional cable tray support	$2,440.80
EB09307	10/20/09	VG-12	Sunday grouting	$3,659.88
EB09307	10/22/09	VG-14	Delay Charges-Naylor	$3,782.00
EB09307	10/28/09	VG-15	fiber optic and auxiliary power	$17,525.10
EB09307	11/6/09	VG-16	EXTENDING THE 4" DRAIN LINE BEYOND THE FOOTING WALL	$4,995.00
EB09307	11/11/09	VG-17	FENCE GROUNDING	$8,632.07
EB09307	11/18/09	VG-18	Modify high voltage junction boxes on line 67 ESBs	$1,671.60
EB09307	11/19/09	VG-20	Install (2) 20" 600# flanges and (2) TORs	$13,900.00
EB09307	11/18/09	VG-21	Working slab under 36" main line valve area	$2,836.08
EB09307	11/18/09	VG-22	Cable tray requested by Enbridge	$5,080.28
EB09307	11/18/09	VG-23	Add 6-3 MCHL cable from the ESB to the densitometer	$2,108.17
EB09307	11/18/09	VG-24	Connect 5KV cables between VFD and softstarts and main 5KV gear in ESB and VFD buildings	$25,687.55
EB09307	11/19/09	VG-25	Work Associated with Stub End Replacements	$123,299.73
EB09307	12/3/09	VG-26	Substation Shelter	$16,443.72
EB09307	12/3/09	VG-27	Ground thaw unit/heaters	$5,807.50
EB09307	12/9/09	VG-28	pump shelters	$28,014.01
EB09307	1/5/10	VG-29	Extra cost to erect pump building	$9,600.00
EB09307	2/3/10	VG-30	temp sheltering and heating needed during commissioning	$3,265.31
EB09307	2/11/10	VG-31	2" and larger material	$14,201.16
EB09307	12/3/09	VG-32	Personal Shelters	$3,539.70
EB09307	2/12/10	VG-33	pump drain piping revision	$2,581.68
EB09307	2/18/10	VG-34	Additional grounding	$2,966.67
EB09307	2/22/10	VG-35	Densitometer	$4,800.00
EB09307	3/5/10	VG-36	Auxilary / Temp power	$2,581.75
EB09307	2/25/10	VG-37	Add fluid switch wiring to REXA valve	$958.35
EB09307	3/5/10	VG-38	Cost to go to 6-10s	$2,502.40
EB09307	2/18/10	VG-39	Credit for previous incorrect markups	-$1,761.04
EB09307	5/10/10	VG-41	Densitometer pads	$4,218.60
EB09307	5/10/10	VG-42	new perimeter fencing	$31,090.25
EB09307	5/10/10	VG-43	Flowmeter installation	$5,000.00
EB09307	6/4/10	VG-46	densitometer and flow cell	$22,007.44
EB09307	6/28/10	VG-47	Viking grading revision	$13,702.00
EB09307	8/12/10	VG-48	Sump Tank Heat Tracing	$7,809.00
EB09307	8/20/10	VG-49	VFD Sensor	$298.23
EB09307	9/7/10	VG-50	PT Stands	$2,404.04

$600,985.70

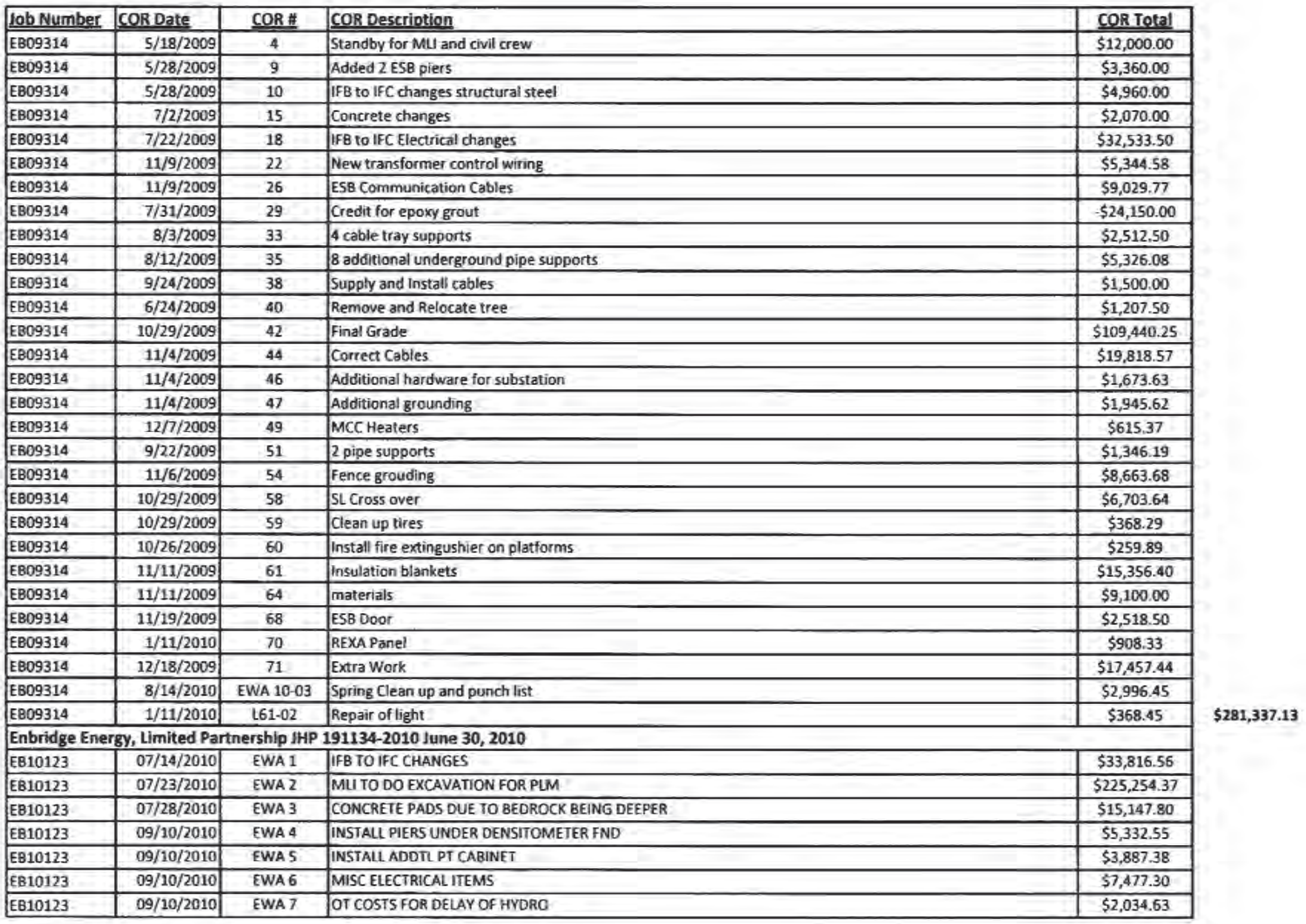


Job Number	COR Date	COR #	COR Description	COR Total
Enbridge Pipelines LLC 0791243100-01-AC-CLS August 14, 2008 as amended on August 6, 2009				
EB09308	9/4/09	CR-AC-01	Prep Clearbrook yard for pipe	$13,532.22
EB09308	9/4/09	CR-AC-02	Install gravel surfacing at Clearbrook boneyard	$3,800.00
EB09308	10/6/09	CR-AC-03	Crane service to move and set transformer at Enbridge Clearbrook Station.	$3,210.81
EB09308	9/4/09	CR-AC-05	Otter Tail Power Company	$51,100.59
EB09308	9/4/09	CR-AC-06	Price to re-feed line 1 valve.	$10,228.98
EB09308	9/4/09	CR-AC-08	Additional footing for substation	$1,483.00
EB09308	9/4/09	CR-AC-09	6" PVC sleeves on 5kv cables	$4,375.52
EB09308	10/6/09	CR-AC-11	Pump buildings foundations construction	$8,000.00
EB09308	10/21/09	CR-AC-12	Fiber optic feeds	$15,063.24
EB09308	10/6/09	CR-AC-14	Furnish and install Helical Pier Foundations systems	$22,368.00
EB09308	10/21/09	CR-AC-15	Pump foundation concrete additive	$1,656.00
EB09308	10/6/09	CR-AC-16	Remove 2300 cu yards of excess fill	$11,500.00
EB09308	10/6/09	CR-AC-17	Naylor and Electrical Builder Inc.	$31,703.00
EB09308	10/21/09	CR-AC-18	Changes to receiver foundations	$15,917.61
EB09308	10/6/09	CR-AC-20	Launcher foundations	$3,164.25
EB09308	10/7/09	CR-AC-22	SL Cross under	$2,095.53
EB09308	10/7/09	CR-AC-23	Trap Modifications	$60,000.00
EB09308	10/15/09	CR-AC-25	Heat tracing and O'brien Vipak	$19,666.15
EB09308	10/7/09	CR-AC-26	Add 4' pup due to launcher moving West	$11,200.00
EB09308	10/15/09	CR-AC-27	33 (added 7 more) Helical piers Gustafson & Goudge	$73,382.40
EB09308	10/21/09	CR-AC-28	Sunday Grouting CR	$3,763.68
EB09308	10/19/09	CR-AC-29	Revised cable routing	$31,826.80
EB09308	10/21/09	CR-AC-30	Delay charges	$4,674.00
EB09308	10/15/09	CR-AC-32	Modification to pipe support by W manifold tie-in	$26,565.60
EB09308	10/16/09	CR-AC-33	adder for PVC	$1,282.80
EB09308	10/28/09	CR-AC-34	REPLACE 36" FLANGE ON AC LAUNCHER	$20,540.90
EB09308	11/11/09	CR-AC-37	Substation Fencing	$8,595.22
EB09308	11/13/09	CR-AC-38	MODIFY HIGH VOLTAGE BOXES ON LINE 67	$1,671.60
EB09308	11/19/09	CR-AC-40	Foundation at West Manifold tie-in area	$1,080.00
EB09308	11/19/09	CR-AC-41	cable tray requested by Enbridge	$5,756.40
EB09308	11/19/09	CR-AC-42	Add 6-3 MCHL cable	$4,077.97
EB09308	11/19/09	CR-AC-43	Connect 5KV cables between VFD and softstarter and main 5KV gear in main ESB and VFD buildings	$58,924.45
EB09308	11/19/09	CR-AC-44	Install offset to miss fire hydrant at relief line	$15,000.00
EB09308	11/19/09	CR-AC-45	Work Associated with Stub End Failure	$138,761.92
EB09308	11/19/09	CR-AC-45-MLI	Mount and wire federal signal alarm horn	$815.95
EB09308	11/23/09	CR-AC-46	Flowable fill at the relief line road crossing West of the manifold	$5,360.85

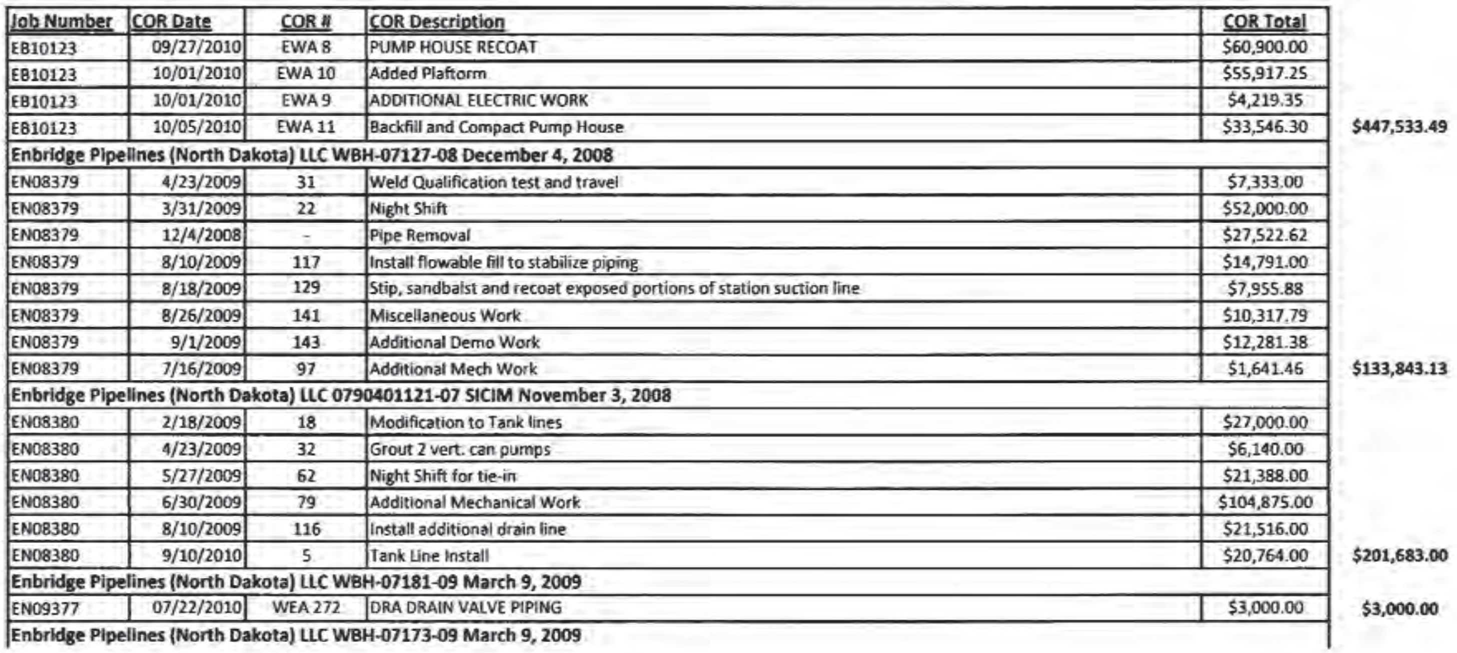
Job Number	COR Date	COR #	COR Description	COR Total
EB09308	12/3/09	CR-AC-48	Densitometer Shelter	$9,451.26
EB09308	12/9/09	CR-AC-49	Pump Shelters	$37,277.79
EB09308	12/14/09	CR-AC-50	Shortage of 8 triad 16	$2,507.21
EB09308	12/14/09	CR-AC-51	Revised platform walkways and pier addition to South Manifold	$43,067.50
EB09308	12/15/09	CR-AC-53	Provide circuits for temporary power to motor heaters	$1,402.64
EB09308	12/15/09	CR-AC-54	provide additional temporary power for substation commissioning	$1,706.52
EB09308	12/15/09	CR-AC-55	Tape substation breaker connections at both breakers in substation	$1,697.15
EB09308	12/16/09	CR-AC-56	Densitometer heat trace	$35,485.65
EB09308	1/5/10	CR-AC-57	Slab for Nitrogen bottle	$2,978.89
EB09308	12/2/09	CR-AC-58	Redo Pressure Test of East Clearbrook Piping	$35,422.32
EB09308	12/30/09	CR-AC-59	handrail modifications	$714.60
EB09308	1/7/10	CR-AC-60	2" valve bodies, leaking, testing	$55,424.36
EB09308	2/11/10	CR-AC-65	2" and larger material	$17,313.08
EB09308	2/12/10	CR-AC-66	Nitrogen Cabinet Install	$3,576.80
EB09308	2/12/10	CR-AC-67	personal shelters	$1,769.85
EB09308	2/12/10	CR-AC-68	Pump drain piping revision	$7,602.21
EB09308	2/15/10	CR-AC-69	2" valves with internal reliefs	$4,154.30
EB09308	2/18/10	CR-AC-70	Grounding in manifold and manifold densitometer areas	$3,651.73
EB09308	2/18/10	CR-AC-71	Cable shortages	$2,927.76
EB09308	2/25/10	CR-AC-75	Misc tasks authorized by commissioning crew or inspector	$2,649.04
EB09308	2/25/10	CR-AC-76	Line 67 ESB densitometer	$4,585.41
EB09308	3/5/10	CR-AC-77	cost to go to 6-10s	$8,680.20
EB09308	3/5/10	CR-AC-78	Misc shelters	$7,462.61
EB09308	2/18/10	CR-AC-79	Credit for previous incorrect markups	-$7,797.78
EB09308	4/28/10	CR-AC-80	Underground valve support	$1,495.00
EB09308	5/12/10	CR-AC-81	Washout slab	$3,328.88
EB09308	5/14/10	CR-AC-82	Additional site grading and rock surfacing around the flow meter.	$6,212.48
EB09308	5/14/10	CR-AC-83	Install rock surfacing in lieu of gravel surfacing.	$6,032.00
EB09308	6/28/10	CR-AC-84	Heat tracing on sump tank	$7,969.63
EB09308	8/5/10	CR-AC-85	Bollards and Barriers	$9,836.06
EB09308	8/20/10	CR-AC-86	VFD Sensor	$582.62
EB09308	9/7/10	CR-AC-87	PT Stands	$2,511.07
EB09308	5/25/10	CS-CR-AC-01	Settlement of Alberta Clipper/Southern Lights Claims	$200,000.00
EB09308	10/21/09	CR-SL-01	Prep CR yard for pipe	$13,532.22
EB09308	10/6/09	CR-SL-02	Install gravel surfacing at Clearbrook boneyard.	$3,800.00
EB09308	9/4/09	CR-SL-03	Crane service to move and set transformer.	$3,210.81
EB09308	11/24/09	CR-SL-05	Ottertail Power Company	$51,100.59

Job Number	COR Date	COR #	COR Description	COR Total	
EB09308	9/4/09	CR-SL-06	Price to re-feed line 1 valve.	$6,322.77	
EB09308	9/4/09	CR-SL-07	High strength, low water content mix for pump foundations	$1,242.88	
EB09308	10/21/09	CR-SL-08	Additional footing for substation	$1,483.00	
EB09308	9/4/09	CR-SL-09	6" PVC sleeves on 5kv cables	$3,168.48	
EB09308	10/6/09	CR-SL-10	Additonal non shrink grout	$1,489.00	
EB09308	10/21/09	CR-SL-12	Fiber optic feeds	$15,063.24	
EB09308	10/6/09	CR-SL-13	Stand by time	$20,051.76	
EB09308	10/6/09	CR-SL-16	Remove 2300 cu yards of excess fill	$11,500.00	
EB09308	10/7/09	CR-SL-21	Underground pipe supports	$974.40	
EB09308	11/4/09	CR-SL-22	SL Cross under	$2,095.53	
EB09308	10/27/09	CR-SL-23	Trap Modifications	$37,000.00	
EB09308	10/21/09	CR-SL-24	Heat tracing and O'brien Vipak	$14,231.25	
EB09308	10/21/09	CR-SL-31	Delay Charges SL	$2,889.00	
EB09308	10/16/09	CR-SL-33	adder for PVC	$1,282.80	
EB09308	11/11/09	CR-SL-35	Substation Fencing	$8,595.22	
EB09308	11/19/09	CR-SL-36	PCV foundation change	$1,456.80	
EB09308	11/19/09	CR-SL-37	cable tray cover requested by Enbridge	$3,502.72	
EB09308	12/9/09	CR-SL-38	Pump Shelters	$35,698.60	
EB09308	12/15/09	CR-SL-39	Provide circuits for temporary power to motor heaters	$1,402.64	
EB09308	12/15/09	CR-SL-40	provide additional temporary power for substation commissioning	$1,706.52	
EB09308	12/15/09	CR-SL-41	Tape substation breaker connections at both breakers in substation	$1,770.94	
EB09308	12/30/09	CR-SL-42	Handrial modifications	$714.60	
EB09308	2/11/10	CR-SL-44	2" and larger material	$17,313.09	
EB09308	2/12/10	CR-SL-45	personal shelters	$1,769.85	
EB09308	2/12/10	CR-SL-46	Pump drain piping revision	$7,932.51	
EB09308	2/25/10	CR-SL-47	Add fluid switch wiring to REXA valve	$958.35	
EB09308	3/5/10	CR-SL-48	cost to go to 6-10s	$8,680.20	
EB09308	3/11/10	CR-SL-49	Installation of SL spacer rings on pump units	$12,991.64	
EB09308	2/18/10	CR-SL-50	Credit for previous incorrect markups	-$581.05	
EB09308	5/14/10	CR-SL-51	Install rock surfacing in lieu of gravel surfacing	$6,032.00	
EB09308	6/28/10	CR-SL-52	Misc tasks	$1,092.78	
EB09308	6/28/10	CR-SL-53	Heat tracing from EWA 24	$7,573.37	
EB09308	8/19/10	CR-SL-55	Bollards and Barriers	$3,278.69	
EB09308	9/7/10	CR-SL-56	PT Stands	$2,447.85	**$1,528,599.33**
Enbridge Pipelines LLC SL-CM-CTR-AM-01 January 16, 2009 as amended May 22, 2009					
EB09309	5/4/2009	1	Load and haul pipe	$6,000.00	
EB09309	5/5/2009	3	IFB to IFC changes Electrical (price increase on wire)	$8,000.00	

Job Number	COR Date	COR #	COR Description	COR Total	
EB09309	5/18/2009	5	Additional grounding & revised cable schedules	$15,254.00	
EB09309	5/28/2009	10	IFB to IFC changes structural steel	$353.00	
EB09309	6/5/2009	11	Added whistles	$48,500.00	
EB09309	7/29/2009	28	Jersey Barriers	$9,510.00	$87,617.00
Enbridge Pipelines LLC SL-CM-CTR-VP-01 January 16, 2009 as amended May 22, 2009					
EB09313	5/18/2009	2	Added Reinforcement	$8,317.50	
EB09313	5/5/2009	3	IFB to IFC changes Electrical (price increase on wire)	$15,115.00	
EB09313	5/28/2009	8	Install rock laydown	$13,500.00	
EB09313	5/28/2009	10	IFB to IFC changes structural steel	$4,960.00	
EB09313	6/22/2009	14	Concrete changes	$5,092.20	
EB09313	7/22/2009	17	IFB to IFC Electrical changes	$32,533.50	
EB09313	11/9/2009	19	U-Bolts - needed to get correct size	$686.87	
EB09313	6/17/2009	20	Buss Bar	$1,162.51	
EB09313	11/9/2009	27	ESB Communication Cables	$8,955.11	
EB09313	7/31/2009	30	Credit for epoxy grout	-$24,150.00	
EB09313	8/3/2009	34	4 cable tray supports	$2,512.50	
EB09313	8/17/2009	37	Insulator Credit	-$2,282.76	
EB09313	8/24/2009	39	Supply and Install cables	$2,000.00	
EB09313	9/1/2009	43	7 additional cable tray supports	$5,410.31	
EB09313	11/4/2009	45	Correct Cables	$19,700.44	
EB09313	11/4/2009	48	Additional grounding	$1,895.27	
EB09313	11/4/2009	50	MCC Heaters	$798.84	
EB09313	9/24/2009	53	Adduitional pipe supports	$519.92	
EB09313	10/6/2009	56	Final Grade	$44,602.00	
EB09313	11/6/2009	57	Relocate heater and jumpers	$465.69	
EB09313	11/11/2009	62	Insulation blankets	$18,814.00	
EB09313	11/11/2009	63	materials	$14,040.09	
EB09313	1/11/2010	73	REXA Panel	$1,019.58	
EB09313		EWA 10-01	Spring work requested by Enbridge	$2,598.55	
EB09313	6/14/2010	EWA 10-03	Spring Clean up and punch list	$7,391.13	
EB09313	6/14/2010	EWA 10-01SA	Cleanup - Punchlist	$19,681.62	
EB09313	1/13/2010	L61-01	SKV Fuses for transformers	$889.69	
EB09313	1/13/2010	L61-03	Fab and install supports for existing cable tray	$998.61	
EB09313	1/13/2010	L61-05	Fill 17 seal off	$421.67	$207,649.84
Enbridge Pipelines LLC SL-CM-CTR-DN-01 January 16, 2009 as amended May 22, 2009					
EB09314	5/18/2009	2	Added Reinforcement	$10,987.50	
EB09314	5/5/2009	3	IFB to IFC changes Electrical (price increase on wire)	$15,115.00	



Job Number	COR Date	COR #	COR Description	COR Total	
EB09314	5/18/2009	4	Standby for MLI and civil crew	$12,000.00	
EB09314	5/28/2009	9	Added 2 ESB piers	$3,360.00	
EB09314	5/28/2009	10	IFB to IFC changes structural steel	$4,960.00	
EB09314	7/2/2009	15	Concrete changes	$2,070.00	
EB09314	7/22/2009	18	IFB to IFC Electrical changes	$32,533.50	
EB09314	11/9/2009	22	New transformer control wiring	$5,344.58	
EB09314	11/9/2009	26	ESB Communication Cables	$9,029.77	
EB09314	7/31/2009	29	Credit for epoxy grout	-$24,150.00	
EB09314	8/3/2009	33	4 cable tray supports	$2,512.50	
EB09314	8/12/2009	35	8 additional underground pipe supports	$5,326.08	
EB09314	9/24/2009	38	Supply and Install cables	$1,500.00	
EB09314	6/24/2009	40	Remove and Relocate tree	$1,207.50	
EB09314	10/29/2009	42	Final Grade	$109,440.25	
EB09314	11/4/2009	44	Correct Cables	$19,818.57	
EB09314	11/4/2009	46	Additional hardware for substation	$1,673.63	
EB09314	11/4/2009	47	Additional grounding	$1,945.62	
EB09314	12/7/2009	49	MCC Heaters	$615.37	
EB09314	9/22/2009	51	2 pipe supports	$1,346.19	
EB09314	11/6/2009	54	Fence grouding	$8,663.68	
EB09314	10/29/2009	58	SL Cross over	$6,703.64	
EB09314	10/29/2009	59	Clean up tires	$368.29	
EB09314	10/26/2009	60	Install fire extingushier on platforms	$259.89	
EB09314	11/11/2009	61	Insulation blankets	$15,356.40	
EB09314	11/11/2009	64	materials	$9,100.00	
EB09314	11/19/2009	68	ESB Door	$2,518.50	
EB09314	1/11/2010	70	REXA Panel	$908.33	
EB09314	12/18/2009	71	Extra Work	$17,457.44	
EB09314	8/14/2010	EWA 10-03	Spring Clean up and punch list	$2,996.45	
EB09314	1/11/2010	L61-02	Repair of light	$368.45	$281,337.13
Enbridge Energy, Limited Partnership JHP 191134-2010 June 30, 2010					
EB10123	07/14/2010	EWA 1	IFB TO IFC CHANGES	$33,816.56	
EB10123	07/23/2010	EWA 2	MLI TO DO EXCAVATION FOR PLM	$225,254.37	
EB10123	07/28/2010	EWA 3	CONCRETE PADS DUE TO BEDROCK BEING DEEPER	$15,147.80	
EB10123	09/10/2010	EWA 4	INSTALL PIERS UNDER DENSITOMETER FND	$5,332.55	
EB10123	09/10/2010	EWA 5	INSTALL ADDTL PT CABINET	$3,887.38	
EB10123	09/10/2010	EWA 6	MISC ELECTRICAL ITEMS	$7,477.30	
EB10123	09/10/2010	EWA 7	OT COSTS FOR DELAY OF HYDRO	$2,034.63	

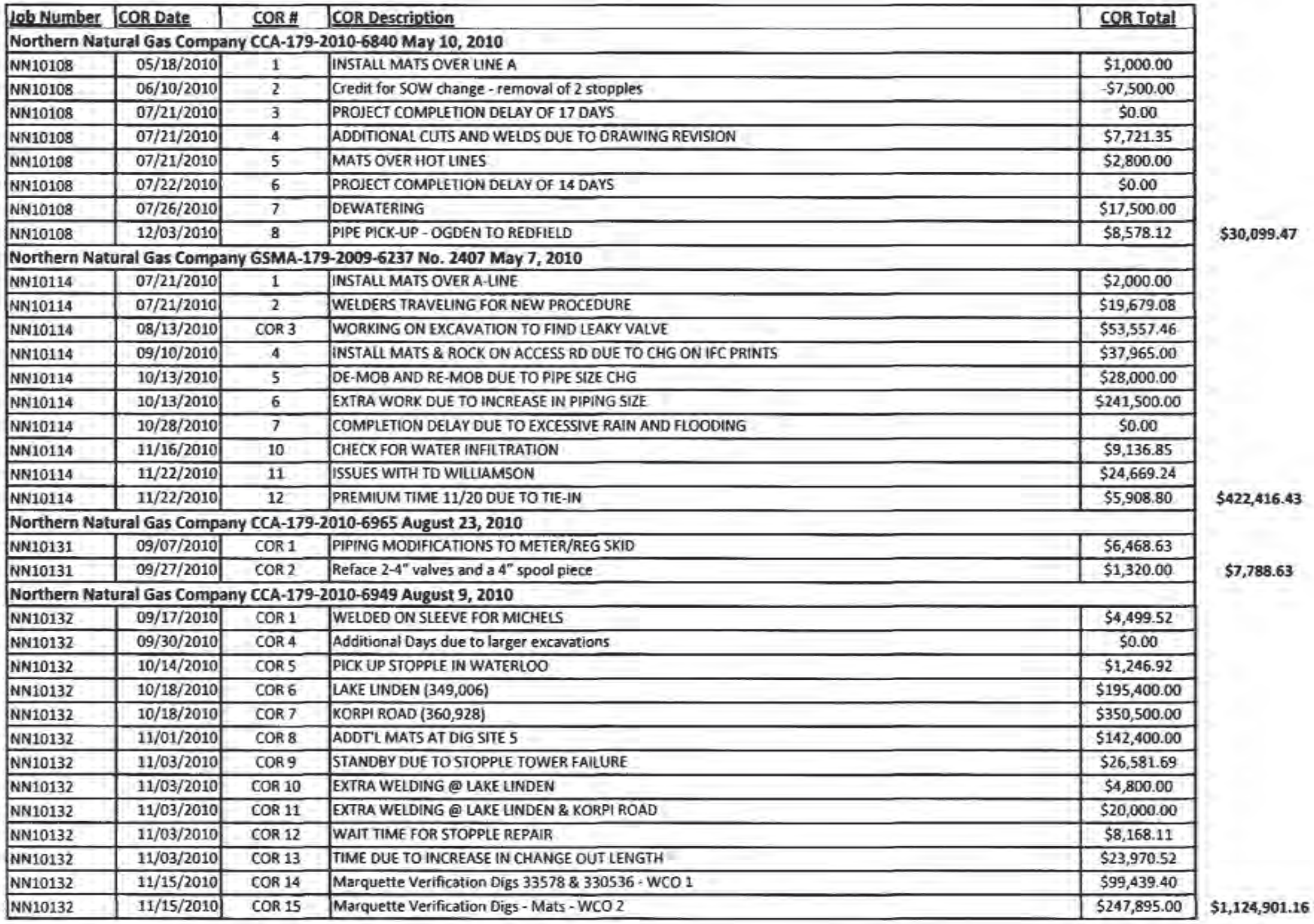


Job Number	COR Date	COR #	COR Description	COR Total	
EB10123	09/27/2010	EWA 8	PUMP HOUSE RECOAT	$60,900.00	
EB10123	10/01/2010	EWA 10	Added Plaftorm	$55,917.25	
EB10123	10/01/2010	EWA 9	ADDITIONAL ELECTRIC WORK	$4,219.35	
EB10123	10/05/2010	EWA 11	Backfill and Compact Pump House	$33,546.30	$447,533.49
Enbridge Pipelines (North Dakota) LLC WBH-07127-08 December 4, 2008					
EN08379	4/23/2009	31	Weld Qualification test and travel	$7,333.00	
EN08379	3/31/2009	22	Night Shift	$52,000.00	
EN08379	12/4/2008	-	Pipe Removal	$27,522.62	
EN08379	8/10/2009	117	Install flowable fill to stabilize piping	$14,791.00	
EN08379	8/18/2009	129	Stip, sandbalst and recoat exposed portions of station suction line	$7,955.88	
EN08379	8/26/2009	141	Miscellaneous Work	$10,317.79	
EN08379	9/1/2009	143	Additional Demo Work	$12,281.38	
EN08379	7/16/2009	97	Additional Mech Work	$1,641.46	$133,843.13
Enbridge Pipelines (North Dakota) LLC 0790401121-07 SICIM November 3, 2008					
EN08380	2/18/2009	18	Modification to Tank lines	$27,000.00	
EN08380	4/23/2009	32	Grout 2 vert. can pumps	$6,140.00	
EN08380	5/27/2009	62	Night Shift for tie-in	$21,388.00	
EN08380	6/30/2009	79	Additional Mechanical Work	$104,875.00	
EN08380	8/10/2009	116	Install additional drain line	$21,516.00	
EN08380	9/10/2010	5	Tank Line Install	$20,764.00	$201,683.00
Enbridge Pipelines (North Dakota) LLC WBH-07181-09 March 9, 2009					
EN09377	07/22/2010	WEA 272	DRA DRAIN VALVE PIPING	$3,000.00	$3,000.00
Enbridge Pipelines (North Dakota) LLC WBH-07173-09 March 9, 2009					

Job Number	COR Date	COR #	COR Description	COR Total	
EN09378	4/24/2009	34	Grouting	$25,830.00	
EN09378	7/30/2009	111	Move motor to Minot Station	$9,340.00	
EN09378	9/1/2009	144	Hydrotesting on Swagelok	$7,163.00	
EN09378	10/23/2009	210	Rotate 4 valve actuators	$6,350.00	
EN09378	12/11/2009	267	REDESIGN/ REWORKING OF COPPER LINES	$5,000.00	
EN09378	11/10/2009	274	Transfer new pump & existing pump	$1,441.00	$55,124.00
Enbridge Pipelines (North Dakota) LLC 0790401121-11 MSM March 16, 2009					
EN09379	7/22/2010	WEA 272	DRA Drain valve Piping	$3,000.00	$3,000.00
Enbridge Pipelines (North Dakota) LLC 0790401121-12 BLSM April 17, 2009					
EN09381	8/11/2009	120	lube oil skid	$21,875.00	
EN09381	8/14/2009	123	tie-ins	$30,310.75	$52,185.75
Enbridge Pipelines (North Dakota) LLC Berthhold Trap Modifications October 7, 2010					
EN10143	11/19/2010	COR 1	Install and Supply Extra materials	$4,775.39	$4,775.39
Florida Gas Transmission Company LLC CCA-FGT-50282 July 13, 2010					
FG10126	09/13/2010	COR 1	GATE GUARD @ COMPRESSOR STATION 18 - 8/30 TO 9/25	$15,845.89	
FG10126	11/01/2010	COR 2	TRAFFIC CONTROL / MAINTENANCE @ ALL LOCATIONS	$112,527.64	
FG10126	11/09/2010	COR 3	PERMIT FEES	$5,521.44	
FG10126	12/18/2010	COR 12	DENT #1	$534,358.48	
FG10126	12/21/2010	COR 4	WORK STOPPED BY FGT OPERATIONS FOR STATION BLOWDOWN	$8,372.56	
FG10126	12/21/2010	COR 5	INSTALL TEMPORARY FENCE PANELS @ LAUNCHER/RECEIVER	$3,514.50	
FG10126	12/21/2010	COR 6	SEED, FERTILIZE AND MULCH @ FITTINGS 1, 2 AND 5	$673.28	
FG10126	12/21/2010	COR 7	CHECK FOR GOOD SPOT TO WELD STOPPLE TEE & TOR @ FITTING 1	$12,682.96	
FG10126	12/22/2010	COR 8	GATE GUARD @ COMPRESSOR STATION 18 - 9/27 - 11/27	$38,569.36	
FG10126	12/25/2010	COR 13	DENT #2	$4,613.52	
FG10126	01/11/2011	COR 9	GATE GUARD @ COMPRESSOR STATION 18 - 11/29 TO 12/25	$16,233.56	
FG10126	01/11/2011	COR 10	FITTING REPLACEMENT #8 - UNACCEPTABLE STOPPLE	$57,351.89	
FG10126	01/11/2011	COR 11	SCHEDULED TIE-IN ABORTED BY OPERATIONS & GAS CONTROL	$19,235.25	
FG10126	01/20/2011	COR 14	GATE GUARD @ COMPRESSOR STATION 18 - 12/27 TO 1/15	$11,338.13	
FG10126	02/24/2011	COR 15	GATE GUARD @ COMPRESSOR STATION 18 - 1/17 TO 2/24	$22,712.30	
FG10126	03/09/2011	COR 16	MISC. EXTRA WORK	$14,562.28	
FG10126	03/24/2011	COR 17	ADDT'L SUPERINTENDENT TIME RELATING TO MOT ISSUES	$51,255.88	
FG10126	03/24/2011	COR 18	MOT SUPERVISOR TIME	$60,677.32	$990,046.24
Koch Pipeline Company LP Scope of Work Agreement November 5, 2010					
MN10146	11/12/2010	COR 4	Removing trees on the Arndt's Property	$5,417.48	
MN10146	12/02/2010	COR 2	Check valve leak during test	$7,278.57	
MN10146	12/02/2010	COR 3	Change in coating material	$1,214.40	$13,910.45

Job Number	COR Date	COR #	COR Description	COR Total	
Northern Natural Gas Company CCA-179-2008-6098 September 22, 2008					
NN08512	7/7/2009	COR 1	Install Fiberglass floor in meter building	$7,347.00	
NN08512	7/8/2009	COR 2	Fill Meter bldg with Class 5	$5,970.85	$13,317.85
Northern Natural Gas Company CCA-179-2009-6202 February 16, 2009					
NN09505	5/8/2009	1	MODIFY 10" VALVE/FLANGE @ TAPPING TEE	$2,824.63	
NN09505	5/7/2009	2	HAUL MATS	$10,418.18	
NN09505	5/7/2009	3	ASSIST OPERATIONS & HAULING	$3,476.86	
NN09505	5/18/2009	4	ASSIST OPERATIONS IN CONNECTING COMPRESSORS TO LINE	$1,052.43	
NN09505	5/7/2009	5	HAUL TRACK HOE	$1,677.36	$19,449.46
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09507	1/25/2010	62	Tested Traps (50/50 for each pkg)	$12,255.54	
NN09507	1/25/2010	64	install open cut driveway per landowner req	$16,400.00	
NN09507	1/25/2010	66	Install & remove addt'l road approaches	$52,404.77	
NN09507	1/25/2010	67	Install & remove addt'l road approaches	$26,202.39	
NN09507	1/27/2010	70	addt'l powercrete coating	$5,756.01	
NN09507	1/27/2010	71	Addt'l HDD ft at CR 17 due to IFB to IFC changes	$30,155.00	
NN09507	2/15/2010	73	remove antique tractors & equip	$4,962.38	
NN09507	2/15/2010	74	Safety Training for rev. 2010 NNG policies	$34,626.80	
NN09507	3/16/2010	75	Fab & Hydrotest piping on farm taps	$6,481.60	
NN09507	3/31/2010	76	Fix fences on tract CA-077, MP10	$4,783.46	$194,027.95
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09508	5/1/2009	2	Driveway Installation	$3,480.00	
NN09508	6/15/2009	9	blacktopping of 146th Lane in Andover	$164,656.00	
NN09508	6/15/2009	10	6 additional road approaches	$34,981.60	
NN09508	7/2/2009	12	Additional Ditch Depth	$14,455.48	
NN09508	7/15/2009	13	Reduced Workspace	$222,855.00	
NN09508	7/15/2009	14	Lanced Leaved Violets	$35,500.00	
NN09508	7/15/2009	15	Oak Wilt Move Arounds	$73,233.93	
NN09508	8/19/2009	18	remove and replace rusted culvert	$1,839.63	
NN09508	8/19/2009	19	matts over septic	$3,425.55	
NN09508	8/6/2009	20	remove grave and replace w/rock	$10,886.22	
NN09508	7/16/2009	21	Pipe issues	$10,498.62	
NN09508	8/19/2009	22	load and haul landowner debris	$2,480.07	
NN09508	8/14/2009	23	Install additional road approaches	$14,798.36	
NN09508	8/19/2009	24	Reduced Workspace	$25,165.00	
NN09508	8/6/2009	25	Wait time re: leaky valve	$2,523.68	
NN09508	8/14/2009	26	remove access roads	$7,026.31	

Job Number	COR Date	COR #	COR Description	COR Total	
NN09508	7/31/2009	27	Load and haul debris	$4,328.73	
NN09508	8/27/2009	34	excavation looking for missing stopple	$31,457.68	
NN09508	8/19/2009	36	install access road & haul rubble	$2,094.00	
NN09508	10/8/2009	54	Additional welding	$224,000.00	
NN09508	12/4/2009	59	fix wrong valve extension	$8,211.22	$897,897.08
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09509	12/4/2009	57	12" Valve Extension installation	$9,371.71	$9,371.71
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09510	6/26/2009	11	Move EFM Building	$2,930.00	
NN09510	12/8/2009	61	Rewire building	$2,920.94	$5,850.94
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09511	4/1/2009	1	Install meter run & concrete piers	$19,600.00	
NN09511	5/22/2009	7	Rubber Boot install	$1,450.00	$21,050.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09513	2/1/2010	72	Travel to Waterloo to pick up traps for NNG	$1,900.00	
NN09513	12/2/2009	58	IFB to IFC Changes	$55,544.00	$57,444.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09514	7/29/2009	17	Land Owner Sod Installation	$26,950.00	$26,950.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09515	8/18/2009	30.1	30" Valve Re-work	$5,356.25	
NN09515		31-R	combination of 30 & 31	$14,374.46	
NN09515	8/17/2009	29	Lost coupon	$5,238.02	$24,968.73
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09520	9/21/2009	46	Addt'l work req to jeep and repair coating	$57,560.80	
NN09520	6/2/2009	8	4" Tapping	$4,655.04	$62,215.84
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09521	10/21/2009	47	Fab & Eng of ML Block Valve	$6,500.00	
NN09521	5/15/2009	5	removal of contaminated Heater Bundle	$5,040.00	$11,540.00
Northern Natural Gas Company CCA-179-2009-6187 January 29, 2009					
NN09522	1/25/2010	63	Belknap Electric	$1,150.00	
NN09522	9/21/2009	48	shutdown delay due to pinhole leak on private gas line	$7,500.00	
NN09522	12/4/2009	60	Heater piping	$15,490.24	$24,140.24
Northern Natural Gas Company CCA-179-2009-6495 July 24, 2009					
NN09526	10/8/2009	53	install and remove addt'l road approaches	$52,404.77	$52,404.77
Northern Natural Gas Company GSMA-179-2009-6237 No. 1216 September 8, 2009					
NN09528	9/25/2009	2	INSTALL RELIEF VALVE	$5,126.74	
NN09528	9/21/2009	1	STANDBY TIME	$5,902.34	$5,902.34



Job Number	COR Date	COR #	COR Description	COR Total	
Northern Natural Gas Company CCA-179-2010-6840 May 10, 2010					
NN10108	05/18/2010	1	INSTALL MATS OVER LINE A	$1,000.00	
NN10108	06/10/2010	2	Credit for SOW change - removal of 2 stopples	-$7,500.00	
NN10108	07/21/2010	3	PROJECT COMPLETION DELAY OF 17 DAYS	$0.00	
NN10108	07/21/2010	4	ADDITIONAL CUTS AND WELDS DUE TO DRAWING REVISION	$7,721.35	
NN10108	07/21/2010	5	MATS OVER HOT LINES	$2,800.00	
NN10108	07/22/2010	6	PROJECT COMPLETION DELAY OF 14 DAYS	$0.00	
NN10108	07/26/2010	7	DEWATERING	$17,500.00	
NN10108	12/03/2010	8	PIPE PICK-UP - OGDEN TO REDFIELD	$8,578.12	$30,099.47
Northern Natural Gas Company GSMA-179-2009-6237 No. 2407 May 7, 2010					
NN10114	07/21/2010	1	INSTALL MATS OVER A-LINE	$2,000.00	
NN10114	07/21/2010	2	WELDERS TRAVELING FOR NEW PROCEDURE	$19,679.08	
NN10114	08/13/2010	COR 3	WORKING ON EXCAVATION TO FIND LEAKY VALVE	$53,557.46	
NN10114	09/10/2010	4	INSTALL MATS & ROCK ON ACCESS RD DUE TO CHG ON IFC PRINTS	$37,965.00	
NN10114	10/13/2010	5	DE-MOB AND RE-MOB DUE TO PIPE SIZE CHG	$28,000.00	
NN10114	10/13/2010	6	EXTRA WORK DUE TO INCREASE IN PIPING SIZE	$241,500.00	
NN10114	10/28/2010	7	COMPLETION DELAY DUE TO EXCESSIVE RAIN AND FLOODING	$0.00	
NN10114	11/16/2010	10	CHECK FOR WATER INFILTRATION	$9,136.85	
NN10114	11/22/2010	11	ISSUES WITH TD WILLIAMSON	$24,669.24	
NN10114	11/22/2010	12	PREMIUM TIME 11/20 DUE TO TIE-IN	$5,908.80	$422,416.43
Northern Natural Gas Company CCA-179-2010-6965 August 23, 2010					
NN10131	09/07/2010	COR 1	PIPING MODIFICATIONS TO METER/REG SKID	$6,468.63	
NN10131	09/27/2010	COR 2	Reface 2-4" valves and a 4" spool piece	$1,320.00	$7,788.63
Northern Natural Gas Company CCA-179-2010-6949 August 9, 2010					
NN10132	09/17/2010	COR 1	WELDED ON SLEEVE FOR MICHELS	$4,499.52	
NN10132	09/30/2010	COR 4	Additional Days due to larger excavations	$0.00	
NN10132	10/14/2010	COR 5	PICK UP STOPPLE IN WATERLOO	$1,246.92	
NN10132	10/18/2010	COR 6	LAKE LINDEN (349,006)	$195,400.00	
NN10132	10/18/2010	COR 7	KORPI ROAD (360,928)	$350,500.00	
NN10132	11/01/2010	COR 8	ADDT'L MATS AT DIG SITE 5	$142,400.00	
NN10132	11/03/2010	COR 9	STANDBY DUE TO STOPPLE TOWER FAILURE	$26,581.69	
NN10132	11/03/2010	COR 10	EXTRA WELDING @ LAKE LINDEN	$4,800.00	
NN10132	11/03/2010	COR 11	EXTRA WELDING @ LAKE LINDEN & KORPI ROAD	$20,000.00	
NN10132	11/03/2010	COR 12	WAIT TIME FOR STOPPLE REPAIR	$8,168.11	
NN10132	11/03/2010	COR 13	TIME DUE TO INCREASE IN CHANGE OUT LENGTH	$23,970.52	
NN10132	11/15/2010	COR 14	Marquette Verification Digs 33578 & 330536 - WCO 1	$99,439.40	
NN10132	11/15/2010	COR 15	Marquette Verification Digs - Mats - WCO 2	$247,895.00	$1,124,901.16

Job Number	COR Date	COR #	COR Description	COR Total	
Northern Natural Gas Company CCA-179-2010-6987 September 13, 2010					
NN10138	09/14/2010	COR 1	Temporary Skid Mods	$1,000.00	
NN10138	10/01/2010	COR 2	Pickup and Deliver 2 Regulators	$1,274.64	
NN10138	10/20/2010	COR 3	Fab and Test (2) 6" Spool Pieces	$2,300.00	
NN10138	10/20/2010	COR 5	Remove and dispose of 50' of sidewalk	$500.00	
NN10138	10/26/2010	COR 6	Modify supports	$2,400.00	
NN10138	10/27/2010	COR 7	Haul PCB contaminated pipe	$1,800.00	**$9,274.64**
Northern Natural Gas Company CCA-179-2010-6989 September 13, 2010					
NN10139	10/04/2010	COR 2	ADDT'L STOPPLE AND BY-PASS	$337,700.00	
NN10139	12/03/2010	COR 3	HAUL REMOVED PIPE	$8,578.12	**$346,278.12**
Northern Natural Gas Company CCA-179-2010-7026 October 11, 2010					
NN10141	10/27/2010	COR 1	Disconnect seperator trailer	$4,663.46	
NN10141	12/01/2010	COR 3	Extra Electrical Work	$3,231.50	**$7,894.96**
Northern Natural Gas Company CCA-179-2010-7075 November 8, 2010					
NN10145	11/18/2010	COR 1	REMOVAL OF UNKNOWN DISCOVERED CONCRETE	$9,141.48	**$9,141.48**
					$8,308,699.52

Part 4.18
Insurance

The list attached hereto sets forth a list and brief description of all policies of insurance maintained, owned or held by the Seller Group on the date hereof.

The insurance broker of Minnesota Limited has advised Minnesota Limited that coverage has been bound for a new policy period April 1, 2011 through March 31, 2012.

The list attached hereto sets out all claims made by the Seller Group under any policy of insurance during the past two years.

The disclosures set forth in Part 4.12(a) are incorporated herein.

Pursuant to that certain Employment Practices Liability Policy No. 105259222 issued April 1, 2010 by Travelers Casualty to Minnesota Limited, coverage will cease with respect to Claims for Wrongful Acts committed after the Contemplated Transactions, and the Liability Policy may not be canceled by the Named Insured and the entire premium for the Liability Policy will be deemed fully earned. In addition, the right to elect the Run-Off Extended Reporting Period shall terminate unless written notice of such election, together with payment of the additional premium due, is received by the Company within 30 days of the Closing. (Capitalized terms not defined herein or in the Agreement have the meanings set forth in such policy). Pursuant to a letter dated March 16, 2011 sent by Erin D. Ramsey of Travelers Casualty to Andrew Mahoney, Travelers Casualty has agreed to waive the change of control provisions set forth above upon the receipt of the notice of the consummation of the Contemplated Transaction.

Part 4.18
List of Insurance Policies

Policy	Insurance Carrier	Policy Period	Description/Nature of Coverage	Coverage Limits Per occ./Agg.	Deductible		12 Month Premium	Loss Experience Last 5 Years
Automobile	Travelers	4/1/10-3/31/11	Property and liability coverage for over-the-road vehicles	$1,000,000	1,000		143,109	138,417
General liability	Travelers	4/1/10-3/31/11	3rd party liability coverage including completed operations	$1,000,000/$2,000,000	100,000		168,845	12,340
Workers Compensation	Travelers	4/1/10-3/31/11	Statutory coverage for employee work-related injuries	Statutory requirements	250,000		464,086	2,003,389
Crime	Travelers	4/1/10-3/31/11	Employee theft and ERISA fidelity	$1,000,000	10,000		2,660	-
Property	Travelers	4/1/10-3/31/11	Damage to off-road equipment	Replacement/cash value	1,000		123,390	141,616
Non-owned aircraft	StarNet	4/1/10-3/31/11	aircraft liability coverage when hiring plane/helicopter to survey jobs	$1,000,000	N/A		2,869	-
Employment practices liability	Travelers	4/1/10-3/31/11	Liability to employee for non-compliance of federal/state labor/benefit laws	$1,000,000	25,000		6,724	-
Umbrella liability	Everest National	4/1/10-3/31/11	Excess liability coverage for general liability policy	$10,000,000	10,000		107,550	-
Excess liability	Axis Surplus	4/1/10-3/31/11	Liability coverage after primary $10M is exhausted with Everest	$15,000,000	N/A		43,828	-
Excess liability	RSUI Indemnity	4/1/10-3/31/11	Liability coverage after secondary $15M is exhausted with Axis	$25,000,000	N/A		29,700	-
Contractor's Polution Liability	Chartis	7/1/10-7/1/13	3rd party liability for release of pollutants	$1,000,000/$10,000,000	25,000	*	181,088	-
Contractor's Professional Liability	Travelers	4/1/10-3/31/11	3rd party damages for right-of-way acquisition consulting	$1,000,000	100,000		11,860	-
ND Workers compensation	ND Workforce Safety & Insurance	8/1/10-7/31/11	Indemnity and medical costs for ND workers injured on the job	Statutory requirements	N/A		1,294	-
Ohio Workers Compensation	Ohio Bureau of Workers Comp.	7/1/10-12/31/10	Indemnity and medical costs for OH workers injured on the job	Statutory requirements	N/A		2,272	-

* - premium amount is for 3 years

Part 4.18
Claims Detail

Insurance Policy	Claimant	Claim Date	Claim Number	Status	MU Incurred Cost
Auto	Don Hedlund, Jr	4/21/09	A4I9485	Closed	-
Auo	Don Hedlund, Jr	4/21/09	B6A3816	Closed	-
Auto	Mike Hegge	10/15/09	EGV1544	Closed	$ 4,534
Auto	Jonathan Hyke	3/4/09	A4I5166	Closed	$ 14,053
Auto	John Nelson	5/27/09	CLK2748	Closed	$ -
Auto	John Nelson	7/27/09	EGE7631	Closed	$ 3,857
Auto	Michael Nepean	1/5/10	FZL3095	Closed	$ 5,983
Auto	Michael Simpson	4/8/09	A4I8043	Closed	$ 7,688
Auto	Michael Simpson	5/11/10	EKZ2388	Open	$ 4,736
Auto	Unknown	4/23/09	A5E3730	Closed	$ 5,385
General Liability	Vicky Kunshier	8/10/09	CLK2839	Closed	$ 11,090
General Liability	Qwest	8/13/10	CLK3217	Open	$ 1.250
General Liability	Charles Skinner	4/23/09	CLK2725	Closed	$ -
Workers Compensation	Danny Allen	10/15/09	A4P7842	Closed	$ 432
Workers Compensation	Dave Bebus	6/29/10	EGJ3794	Open	$ 49,267
Workers Compensation	Jeffrey Bergkamp	6/12/10	EJA0676	Closed	$ -
Workers Compensation	Nick Billiet Jr	7/18/09	A5K2429	Closed	$ 2,533
Workers Compensation	Kenneth Doyle	10/7/10	EMS5487	Closed	$ -
Workers Compensation	James Eckhoff	10/12/10	EGJ7610	Open	$ 184,992
Workers Compensation	Kenny Gates	5/15/09	A6H1163	Closed	$ -
Workers Compensation	Todd Goedker	4/24/09	A8B9919	Closed	$ 13,005
Workers Compensation	James Gumpert	7/19/10	EJA2621	Open	$ 24,074
Workers Compensation	Don Hedlund, Jr	4/21/09	A8B9379	Closed	$ 58
Workers Compensation	Matthew Hutchinson	9/10/10	EJA6669	Open	$ 5,400
Workers Compensation	Robert Johnson	9/4/09	A5K3789	Closed	$ -
Workers Compensation	Arthur Kobberdahl	5/21/09	A5K2080	Closed	$ 102
Workers Compensation	Paul Mertens	7/15/09	A5K2080	Closed	$ -
Workers Compensation	Gerald Molitor	9/11/09	A5K4192	Open	$ 74,742
Workers Compensation	Bradford Nevill	7/23/09	A5K5554	Closed	$ 1,176
Workers Compensation	Greg Oeltjenbruns	7/15/09	A5K2081	Closed	$ 439
Workers Compensation	Justin Price	2/3/10	A5K8594	Open	$ 78,629
Workers Compensation	John Rosten	8/11/09	A5K3019	Closed	$ 19,930
Workers Compensation	Cory Schwartz	11/12/09	A5K6094	Closed	$ 914
Workers Compensation	Zachary Sedarski	7/22/10	EJA3097	Open	$ 1,443
Workers Compensation	Zachary Sedarski	12/9/09	A5K6721	Closed	$ 22,411
Workers Compensation	Eric Swenson	1/8/10	A5K7767	Open	$ 89,100
Workers Compensation	Derek Yaklin	7/17/09	A5K2136	Closed	$ 2,938
					$ 630,161

Part 4.19
Environmental Matters

(a) Environmental Matters – Permits

Hazardous Materials Certificate of Registration for Registration Year(s) 2010-2013, issued to Minnesota Limited, dated as of 6/18/2010, by United States of America Department of Transportation Pipeline and Hazardous Materials Safety Administration.

Hazardous Waste Generator License, issued to location MNS000135210, Minnesota Limited, 18640 200th St., Big Lake, MN 55309, issued by Minnesota Pollution Control Agency, with an expiration date of June 30, 2011.

Asbestos Contractor License, issued to Minnesota Limited, dated as of August 25, 2010, issued by Minnesota Department of Health.

Minnesota Limited obtains various stormwater permits from time to time in the ordinary course of business, including, without limitation, the following:

> General Stormwater Permit for Construction Activity, dated October 7, 2010, issued by Minnesota Pollution Control Agency, for Directional Drill Proj on MN Pipeline at CSW (ID# C00030922).
>
> General Stormwater Permit for Construction Activity, dated May 28, 2010, issued by Minnesota Pollution Control Agency, for Willow River 2 in BL Reloc/CR 41 Bridges CSW (ID# C00029957).
>
> General Stormwater Permit for Construction Activity, dated June 9, 2010, issued by Minnesota Pollution Control Agency, for Lake Elmo 1B Modifications CSW (ID# C00030036).
>
> General Stormwater Permit for Construction Activity, dated July 3, 2010, issued by Minnesota Pollution Control Agency, for Carlton ML Line Lowering MP 58.12 CSW (ID# C00030260).
>
> General Stormwater Permit for Construction Activity, dated May 28, 2010, issued by Minnesota Pollution Control Agency, for Carlton M432 Replacement 0.00-0.78 CSW (ID# C00029953).
>
> General Stormwater Permit for Construction Activity, for construction start date of September 27, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 125.9.
>
> General Stormwater Permit for Construction Activity, for construction start date of September 27, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 124.3.
>
> General Stormwater Permit for Construction Activity, for construction start date of October 25, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 184.3.

General Stormwater Permit for Construction Activity, for construction start date of October 18, 2010, issued by Minnesota Pollution Control Agency, for MinnCan Project – Pipeline Lowering at Milepost 88.2.

General Permit No. 2 for Storm Water Discharge Associated with Industrial Activity for Construction Activities, dated July 6, 2010.

Sherburne County Septic Certification, inspected on August 8, 2007, relating to property located at 18640 200th Street, Big Lake, Minnesota 55309.

(b)-(f)

Those matters set forth in that certain letter dated January 27, 2011 sent by the Michigan Occupational Safety and Health Administration to Minnesota Limited, and attachments thereto.

The Owned Real Property located in Altamont, Illinois, may need a septic certification.

List of potential Hazardous Material & industrial waste generated:		
Type of Waste	**Disposed By Vendor**	**Monthly Amount**
Oil Waste Water	Duane's Septic	Varies
Septic Tanks	Duane's Septic	Varies
Oil From Separator	Duane's Septic	Varies
Used Antifreeze	OSI	Varies
Used Oil Filters	OSI	Varies
Oily Rags	OSI	Varies
Paint	OSI	Varies
Epoxy Hardener	OSI	Varies
Solvent	OSI	Varies

Minnesota Limited burns used oil in waste oil burners on the Owned and Leased Real Property from time to time.

Minnesota Limited received a letter dated February 14, 2011, from the State of Wisconsin Department of Natural Resources, relating to the legal responsibilities associated with the reported contamination at the Property.

Minnesota Limited received a letter dated February 14, 2011, from the WDNR, relating to the WDNR's Remediation and Redevelopment program associated with the reported contamination at the Property. Each of Nordic Superior and Minnesota Limited received a letter dated March 23, 2011, from the WDNR, notifying such parties that they had received approval to proceed in the Program.

An underground storage tank was removed from the Seller Group's previous headquarters, located in Rogers, Minnesota, and from the Property.

A monitoring well is located on the Owned Real Property located in Bemidji, Minnesota. Widseth Smith and Nolting, an environmental firm located in Baxter, Minnesota, has the right to enter the property to monitor such well on behalf of the Minnesota Department of Agriculture.

Minnesota Limited utilizes mobile aboveground storage tanks in the ordinary course of business.

In connection with refueling trucks and other equipment, de minimis amounts of gasoline and diesel fuel are spilled from time to time in the ordinary course of business.

The Property was previously contaminated with Hazardous Materials and, after remediation efforts for such contamination, the Wisconsin Department of Commerce issued a final closure letter dated August 24, 2004.

The conditions identified in that certain Phase I Environmental Site Assessment, by American Engineering Testing, Inc., dated November 24, 2010, for the Leased Real Property located in Big Lake, Minnesota, are incorporated herein.

The conditions identified in that certain Phase I Environmental Site Assessment, by American Engineering Testing, Inc., dated November 24, 2010, for the Owned Real Property located in Bemidji, Minnesota, are incorporated herein.

The conditions identified in that certain Phase I Environmental Site Assessment, by American Engineering Testing, Inc., dated November 24, 2010, for the Property, are incorporated herein.

The conditions identified in that certain Phase One Environmental Site Assessment, by SCI Engineering, Inc., dated November 29, 2010, for the Owned Real Property located in Altamont, Illinois, are incorporated herein.

The conditions identified in that certain Report of Phase II Environmental Site Assessment, by American Environmental Testing, Inc., dated December 22, 2010, for the Owned Real Property located in Bemidji, Minnesota, are incorporated herein. The Buyer is solely responsible with respect to any and all liabilities related to its decision to notify or not notify the Minnesota Duty Officer of the matters described in such report.

The conditions identified in that certain Report of Phase II Environmental Site Assessment, by American Environmental Testing, Inc., dated December 23, 2010, for Property, are incorporated herein.

Part 4.20
Employees

The Employee List is attached hereto.

Seller Group utilizes independent contractors from time to time that may be considered employees of Seller Group.

In connection with the DEED audit of Minnesota Limited regarding unemployment tax for the calendar year 2005, DEED classified Steve Kuledge as an employee of Minnesota Limited, when Minnesota Limited classified him as a subcontractor.

Paulette Britzius currently intends to terminate her employment with each member of the Seller Group upon Closing.

Dale Britzius, an immediate family member of the Sellers, has indicated that he plans to continue his employment with the Seller Group in a reduced capacity to ensure that, upon the termination of Mr. Britzius' employment, (i) Minnesota Limited has proper personnel in place at the time of to continue to hold those Governmental Authorizations set forth in Part 4.1 of the Disclosure Letter, and (ii) that certain Certified Specialty Contractor, issued by State of Florida Department of Business and Professional Regulation Construction Industry Licensing Board, dated July 22, 2010, in the name of Mr. Britzius, may be transferred to Minnesota Limited, or Minnesota Limited is able to qualify to for a similar Governmental Authorization permitting it to conduct similar operations in the State of Florida as Minnesota Limited currently conducts.

```
<DOCUMENT>
<TYPE>10-K/A
<SEQUENCE>1
<FILENAME>vvc10k-a_2000.txt
<DESCRIPTION>FORM 10-K AMENDMENT NO. 1
<TEXT>
                       SECURITIES AND EXCHANGE COMMISSION
                             Washington, D.C. 20549

                                   Form 10-K/A
                                 Amendment No. 1


                 X ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d)
                                      - -
                     OF THE SECURITIES EXCHANGE ACT OF 1934
                    For the fiscal year ended December 31, 2000

                                       OR

                TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d)
                                      ----
                     OF THE SECURITIES EXCHANGE ACT OF 1934
                        For the transition period from to

  Commission     Registrant, State of Incorporation;       IRS Employer
  File Number       Address and Telephone Number        Identification No.
  -----------    ----------------------------------     ------------------

   1-15467                Vectren Corporation                [redacted]
                      (An Indiana Corporation)
                       20 N. W. Fourth Street
                    Evansville, Indiana 47741-0001
                           (812) 491-4000

Securities registered pursuant to Section 12(b) of the Act:
                                                       Name of each exchange
   Registrant               Title of each class         on which registered
--------------------    -------------------------     -----------------------
Vectren Corporation     Common- Without Par Value     New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act:

                                      None
      -------------------------------------------------------------------

Indicate by check mark whether the Registrant (1) has filed all reports required
to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during
the preceding 12 months (or for such shorter period that the registrant was
required to file such reports), and (2) have been subject to such filing
requirements for the past 90 days: Yes X No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405
of Regulation S-K is not contained herein, and will not be contained, to the
best of Registrant's knowledge, in definitive proxy or information statements
incorporated by reference in Part III of this Form 10-K or any amendment to this
Form 10-K. X.
As of March 21, 2001, the aggregate market value of the Common Stock held by
nonaffiliates was $1,476,131,802.

Indicate the number shares outstanding of each of the Registrant's classes of
common stock, as of the latest practicable date.

Common Stock- Without Par Value     67,712,468          March 21, 2001
```

```
------------------------------  ---------------      --------------
          Class                 Number of shares         Date
```

<PAGE>

Documents Incorporated by Reference

Information in the company's Current Report on Form 8-K which was filed with the Securities and Exchange Commission on March 29, 2001, regarding gas cost adjustment proceedings is incorporated by reference in Item 7 of this Form 10-K/A.

Table of Contents

```
Item                                                                   Page
Number                                                                Number
  7   Management's Discussion and Analysis
        of Financial Condition and Results of Operations................   2
  8   Financial Statements and Supplementary Data.......................   21
 14   Exhibits, Financial Statement Schedules and Reports on Form 8-K....   57
      Signatures.........................................................   60
```

ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The following discussion and analysis should be read in conjunction with the consolidated financial statements and notes thereto:

Description of the Business

Vectren Corporation (Vectren) is an Indiana corporation that was organized on June 10, 1999, solely for the purpose of effecting the merger of Indiana Energy, Inc. (Indiana Energy) and SIGCORP, Inc. (SIGCORP). On March 31, 2000, the merger of Indiana Energy with SIGCORP and into Vectren was consummated with a tax-free exchange of shares and has been accounted for as a pooling of interests. The common shareholders of SIGCORP received one and one-third shares of Vectren common stock for each SIGCORP common share and the common shareholders of Indiana Energy received one share of Vectren common stock for each Indiana Energy common share, resulting in the issuance of 61.3 million shares of Vectren common stock. The preferred stock and debt securities of Indiana Energy's and SIGCORP's utility subsidiaries were not affected by the merger.

Vectren is a public utility holding company, whose wholly owned subsidiary, Vectren Utility Holdings, Inc. (VUHI), is the intermediate holding company for Vectren's three operating public utilities, Indiana Gas Company, Inc. (Indiana Gas), formerly a wholly owned subsidiary of Indiana Energy, Southern Indiana Gas and Electric Company (SIGECO), formerly a wholly owned subsidiary of SIGCORP, and the Ohio operations (defined hereafter). VUHI's regulated subsidiaries serve approximately one million customers. Indiana Gas and its subsidiaries provide natural gas and transportation services to a diversified base of customers in 311 communities in 49 of Indiana's 92 counties. SIGECO provides generation, transmission, distribution and the sale of electric power to Evansville, Indiana, and 74 other communities, and the distribution and sale of natural gas to Evansville, Indiana, and 64 communities in ten counties in southwestern Indiana. Vectren's Ohio operations provide natural gas distribution and transportation services to Dayton, Ohio and 16 counties in west central Ohio.

Vectren is involved in non-regulated activities through three primary business groups: Energy Services, Utility Services, and Communications. Energy Services trades and markets natural gas and provides energy performance contracting services. Utility Services provides utility products and services, such as underground construction and facilities locating, meter reading and materials management, and the mining and sale of coal. Communications provides integrated broadband communications services, including local and long distance telephone, Internet access and cable television. In addition, other businesses invest in other energy-related opportunities and corporate technology.

Acquisition of Gas Distribution Assets of The Dayton Power and Light Company

On December 15, 1999, Indiana Energy, now Vectren, announced that the board of directors had approved a definitive agreement under which it would acquire the natural gas distribution assets of The Dayton Power and Light Company, which would add 310,000 gas distribution customers in 16 counties in west central Ohio. On October 31, 2000, Vectren completed the approximate $465 million acquisition. Vectren acquired the natural gas distribution assets as a tenancy in common through two wholly owned subsidiaries. Vectren Energy Delivery of Ohio, Inc. (VEDO) holds a 53 percent undivided ownership interest in the assets

and Indiana Gas holds a 47 percent undivided ownership interest in the assets. VEDO is the operator of the assets, operations of which are herein referred to as "the Ohio operations." VUHI established a $435 million commercial paper program to fund the majority of the acquisition. This facility was utilized at October 31, 2000, and will be replaced over time with permanent financing. VEDO's portion of the acquisition was funded with short-term borrowings from VUHI. Indiana Gas' portion of the acquisition was funded with a combination of short-term borrowings from VUHI and its commercial paper program.

Common Stock Offering

On January 19, 2001, Vectren filed a registration statement with the Securities and Exchange Commission with respect to a public offering of 5.5 million shares of new common stock. On February 8, 2001, the registration became effective and agreement was reached to sell 5.5 million shares to a group of underwriters. On February 14, the shares were sold, at which time the underwriters exercised their over-allotment option to sell an additional 825,000 shares for a total of about 6.3 million shares. The net proceeds of $129.4 million will be used principally to repay outstanding commercial paper utilized for recent acquisitions.

Recent Development

In March 2001, Vectren, Indiana Gas, and SIGECO reached agreement with the Indiana Office of Utility Consumer Counselor (OUCC) and The Citizens Action Coalition of Indiana, Inc. (CAC) regarding an Indiana Utility Regulatory Commission (IURC) Order disallowing Indiana Gas the recovery of $3.8 million in gas costs. Vectren recorded a $3.8 million reduction of 2000 fourth quarter revenues as a result of the disallowance.

As part of the agreement, among other things, the company agreed to contribute additional funds to the state of Indiana's Low Income Heating Assistance Program in 2001 and to credit $3.3 million of the $3.8 million disallowed amount to Indiana Gas customers' April 2001 utility bills in exchange for both the OUCC and the CAC dropping their appeals of the IURC Order. The contributions to Indiana's Low Income Heating Assistance Program totaling $1.9 million were made in 2001 and were charged to operations and maintenance expense. There was no impact to 2000 operations as a result of this contribution.

For further information on the $3.8 million disallowance refer to Rate and

Regulatory Matters below. For further information on the settlement refer to Vectren's Current Report on Form 8-K dated March 29, 2001.

Results of Operations

Vectren's consolidated earnings result from the operations of its utility subsidiaries, Indiana Gas, SIGECO and the Ohio operations, and from the non-utility operations and investments of Vectren's non-regulated businesses.

(In millions, except per share amounts)	2000	1999	1998
Net income, as reported	$ 72.0	$ 90.7	$ 86.6
Merger and integration costs, net of tax	36.8	-	-
Net income before merger and integration costs	$ 108.8	$ 90.7	$ 86.6
Attributable to:			
Regulated	$ 84.0	$ 75.4	$ 69.3
Non-regulated	$ 24.8	$ 15.3	$ 17.3

<PAGE> 4

	2000	1999	1998
Basic earnings per share, as reported	$ 1.18	$ 1.48	$ 1.41
Merger and integration costs	0.60	-	-
Basic earnings per share before merger and integration costs	$ 1.78	$ 1.48	$ 1.41
Attributable to:			
Regulated	$ 1.37	$ 1.23	$ 1.13
Non-regulated	$ 0.41	$ 0.25	$ 0.28

Net Income

Consolidated net income was $72.0 million, or $1.18 on a basic earnings per share basis, for the year ended December 31, 2000. Consolidated net income before merger and integration costs of $52.5 million, including $11.4 million of additional depreciation included in depreciation and amortization (see merger and integration costs below), was $108.8 million, or $1.78 per share, for the year ended December 31, 2000, as compared to net income of $90.7 million, or $1.48 per share, and $86.6 million, or $1.41 per share, for 1999 and 1998, respectively. Vectren's 2000 results reflect two months of results of the Ohio operations.

Dividends

On October 28, 2000, Vectren's board of directors increased the quarterly dividend on common stock to 25.5 cents per share from 24.25 cents per share. This resulted in total dividends paid of 98 cents compared to 94 cents in 1999. In 1998, dividends paid totaled 90 cents per share.

Utility Margin (Utility Operating Revenues Less Utility Cost of Gas, Cost of Fuel for Electric Generation and Purchased Electric Energy)

Vectren's utility gas margin increased $33.1 million to $266.2 million compared to the twelve-month period in 1999, $28.2 million of the increase reflected the inclusion of the Ohio operations' results for two months. The remaining $4.9 million, or 2 percent, increase attributable to Indiana Gas and SIGECO gas operations reflects 8 percent (11.9MMDth) greater throughput (combined sales and transportation) due to much colder temperatures during the fourth quarter of 2000 than the 1999 period and a 2 percent growth in customers. Residential and commercial sales rose 7 percent and 10 percent, respectively. Temperatures were 11 percent colder during the current twelve-month period and approached normal for the year. These favorable impacts on gas margin were partially offset by a $3.8 million disallowance of recoverable gas costs by the IURC, charged against gas revenues in December 2000 (see Rate and Regulatory Matters).

In 1999, gas utility margin was $233.1 million, as compared to $217.3 million for the prior year. The 1999 increase is primarily attributable to weather being 8 percent colder than the same period in 1998 and the addition of new residential and commercial customers.

Vectren's utilities' rates for gas transportation generally provide for the same margins as are earned on the sale of gas under their applicable sales tariffs. Approximately one-half of total gas system throughput represents gas used for space heating and is affected by weather.

Total cost of gas sold was $552.5 million in 2000, $266.4 million in 1999 and $270.0 million in 1998. Excluding $83.2 million related to the Ohio operations for two months, total cost of gas sold increased $202.9 million, or 76 percent, for the year ended December 31, 2000 compared to 1999, primarily due to

significantly higher average per unit purchased gas costs. The total average cost per dekatherm of gas purchased by Indiana Gas and SIGECO was $5.77 in 2000 compared to $3.58 in 1999. The price changes are due primarily to changing commodity costs in the marketplace. Lower average per unit costs of gas sold during 1999 as compared to 1998 more than offset the impact of the increased throughput, causing the slight decline in 1999 cost of gas sold. Vectren's utility subsidiaries are generally allowed full recovery of such changes in purchased gas costs from their retail customers through commission-approved gas cost adjustment mechanisms. (see Rate and Regulatory Matters).

Electric margin rose $8.3 million, or 4 percent, to $228.8 million for the twelve-month period in 2000 compared to the same period in 1999. Although unit prices were lower than in 1999, sales to the wholesale energy markets contributed $4.4 million of the margin increase with volumes up 39 percent for 2000 compared to 1999. Additionally, the impact of much colder temperatures on electric heating sales and a 5 percent growth in commercial customers contributed to the 2000 electric margin increase. Mild summer temperatures impacted both 2000 and 1999. Retail and firm wholesale electric sales for 2000 increased 2 percent and total electric sales increased 8 percent.

Electric utility margin for the year ended December 31, 1999 was $220.5 million, compared to $211.9 million for the prior year. The $8.6 million increase in margin reflects a 5 percent increase in retail and firm wholesale electric sales primarily due to stronger industrial and commercial sales and a $1.0 million increase in margin from sales to other wholesale customers. Although sales to other wholesale customers declined 17 percent in 1999 due to milder summer temperatures which eased demand in these markets, several new sales contracts produced higher average unit sales prices to these customers.

A 1 percent increase in electric generation and higher per unit coal costs resulted in a $4.9 million, or 7 percent, increase in fuel costs for electric generation for 2000 compared to the prior year. Fuel costs for electric generation increased $1.1 million, or 2 percent, in 1999.

Although SIGECO's sales of electric energy to other wholesale customers are provided primarily from otherwise unutilized capacity, SIGECO's purchases of electricity from other utilities for resale to other wholesale customers typically represent the majority of SIGECO's total purchased electric energy costs. The 39 percent increase in sales to other wholesale customers combined with higher average market prices caused purchased electric energy costs to increase $15.6 million, or 75 percent, for the year ended December 31, 2000 compared to 1999. During 1999, total purchases of electric energy declined 13 percent due to the 17 percent decline in sales to wholesale customers, however higher average market prices for energy purchased resulted in total costs remaining comparable to 1998 costs.

Non-Utility Margin (Energy Services and Other Revenues Less Cost of Energy Services and Other)

Total margin from Vectren's non-utility operations (primarily the operating companies of its Energy Services, Utility Services, and Communications groups) for the twelve month period in 2000 was $20.3 million compared to $13.7 million and $10.1 million for the same periods in 1999 and 1998, respectively. The $6.6 million increase in 2000 and $3.6 million increase in 1999 were primarily from the Energy Services group reflecting the continued growth of its natural gas marketing operations and its performance contracting and energy efficiency project operations, including several large government contracts in progress. Energy Services' margin increased $3.6 million and $3.7 million for 2000 and 1999, respectively. Expanded coal mining operations at Utility Services and

additional municipal projects at Communications also contributed an additional $2.5 million to the rise in 2000 non-utility margin.

During 2000, the cost of energy services and other, which was chiefly the cost of natural gas purchased for resale by Energy Services and project contract costs at Energy Services and Communications, rose $225.7 million, or 91 percent, compared to 1999 due primarily to significantly higher per unit purchased gas costs and growth in gas sales at Energy Services, following $45.1 million higher costs in 1998.

Operating Expenses (excluding Cost of Gas Sold, Cost of Fuel for Electric Generation, Purchased Electric Energy and Cost of Energy Services and Other)

Excluding $7.1 million in expenses related to the Ohio operations, Vectren's other operating expenses increased $2.9 million, or less than 2 percent, for the year ended December 31, 2000, compared to the same period in 1999. The increase is attributable to higher operating expenses related to continued growth in operations at certain non-regulated subsidiaries, primarily Energy Services. Other operating expenses rose $7.8 million, or 4 percent, for 1999 as compared to 1998. This increase reflects greater other general operating expenses at Vectren's utility subsidiaries, including expenses associated with the new customer information and work management systems and rental expense related to buildings previously owned. Higher other operating expenses were also experienced at Energy Services and Communications due to the continuing growth in their operations.

Depreciation and amortization increased $18.7 million, or 21 percent, and $5.4 million, or 7 percent, for the years ended December 31, 2000 and December 31, 1999, respectively. The increase in 2000 expense is chiefly the result of additional depreciation related to merger integration activities (see below) and $1.7 million of depreciation of utility plant and amortization of goodwill related to the Ohio operations. Goodwill related to the acquisition of the Ohio operations of approximately $198 million is being amortized on a straight-line basis over a 40 year period. The remaining $5.6 million, or 6 percent, increase in expense over 1999 and the increase in expense over 1998 reflects depreciation of normal additions of utility plant at Indiana Gas and SIGECO.

Taxes other than income taxes rose $8.1 million, or 27 percent, during 2000 due to $7.1 million related to the Ohio operations, primarily Ohio excise tax, and increased $2.5 million, or 9 percent, in 1999 due to higher gross receipts and property tax expense.

Merger and Integration Costs

Merger and integration costs incurred for the year ended December 31, 2000 totaled $41.1 million, including $1.8 million related to the integration of the

Ohio operations Vectren expects to realize net merger savings of nearly $200 million over the next ten years from the elimination of duplicate corporate and administrative programs and greater efficiencies in operations, business processes and purchasing. The continued merger integration activities, which will contribute to the merger savings, will be substantially completed in 2001.

Of the $41.1 million of merger and integration costs incurred in 2000, accruals were established at March 31, 2000 totaling $20.7 million. Of this amount, $5.5 million related to employee and executive severance costs, $13.1 million related to transaction costs and regulatory filing fees, and the remaining $2.1 million related to employee relocations that occurred prior to or coincident with the merger closing. At December 31, 2000, the accrual remaining for such costs totaled $1.8 million, all related to severance costs. Of the $41.1 million, the remaining $20.4 million was expensed throughout the remainder of the year as

expenses were incurred. Such expenses included $6.0 million related to sign changes at all company facilities to display the Vectren name, changes to all fleet vehicles to reflect the new corporate name and logo, and changes to company stationery. An additional $13.9 million was incurred over the course of the year for accounting fees resulting from merger related filing requirements, consulting fees related to integration activities such as organization structure, employee travel between company locations as part of integration activities, internal labor of employees assigned to integration teams, investor relations, communications activities, and certain benefit costs. In addition, $0.5 million was recorded related to severance costs associated with the integration of the Ohio operations.

During the merger planning process, approximately 135 positions were identified for elimination. As of December 31, 2000, approximately 70 positions had been vacated, with the remaining 65 positions to be eliminated in 2001

The integration activities experienced by the company included such things as information system consolidation, process review and definition, organization design and consolidation, and knowledge sharing.

As a result of merger integration activities, management has identified certain information systems that are expected to be retired in 2001. Accordingly, the useful lives of these assets have been shortened to reflect this decision, resulting in additional depreciation expense of approximately $11.4 million for the year ended December 31, 2000.

In total, merger and integration costs were $52.5 million ($36.8 million after tax), or $.60 on a basic earnings per share basis, in 2000.

Other Income

Equity in earnings of unconsolidated investments increased $2.4 million for the year ended December 31, 2000, compared to the prior year. The increase in 2000 is due primarily to a $7.0 million pre-tax net gain related to the restructuring of Communications' investment in SIGECOM. The increase was partially offset by lower pre-tax earnings recognized from ProLiance Energy Services, LLC (ProLiance), Energy Services' energy marketing joint venture, and lower other investment earnings.

Equity in earnings of unconsolidated investments decreased $3.2 million for 1999, compared to 1998. The decrease in 1999 reflected lower pre-tax earnings recognized from ProLiance.

Other-net increased $11.6 million for the year ended December 31, 2000, compared to the prior year due primarily to increased interest income mainly from Vectren's investments in structured finance and investment transactions, including leveraged leases and increased capitalized interest on utility construction expenditures.

Other-net increased 1.5 million for the year ended December 31, 1999, compared to the prior year due primarily to increased leveraged lease income, partially offset by less sales of emission allowance credits.

Interest Expense

Interest expense for the twelve-month period in 2000 rose $14.3 million, or 33 percent, compared to 1999. The increase was due primarily to increased working capital requirements resulting from extremely high natural gas prices, additional debt required for Vectren's increased financial investment activities, interest related to the financing of the acquisition of the Ohio operations, and higher average interest rates on utility debt and short-term borrowings than incurred during 1999. Interest expense increased $2.5 million to $42.9 million for 1999, as compared to 1998, due to increased average debt outstanding required primarily to fund Vectren's increased financial investment activities and higher average interest rates on utility debt.

Income Taxes

Federal and state income taxes declined $11.5 million in 2000, compared to 1999 due primarily to $30.1 million lower pre-tax earnings and to additional tax benefits realized from certain non-regulated investments, which were partially offset by the non-deductibility of certain merger costs. Federal and state income taxes increased $3.4 million, or 8 percent during 1999 compared to 1998 due primarily to higher pre-tax income in 1999 and the favorable impact on the 1998 effective tax rate of the liquidation of a leveraged lease investment.

Other Operating Matters

Acquisition of Miller Pipeline Corporation

On December 13, 2000, Reliant Services, LLC (Reliant), a 50 percent owned, non-regulated utility services affiliate of Vectren and Cinergy Corporation (Cinergy), purchased the common stock of Miller Pipeline Corporation from NiSource, Inc. for $68.3 million. Vectren and Cinergy each contributed $16 million of equity, and the remaining $36.3 million was funded with 7-year intermediate bank loans. Miller Pipeline Corporation is one of the nation's premier natural gas distribution contractors with over 50 years of experience in the construction industry, currently providing such services to Indiana Gas, among other customers. The acquisition will expand Vectren's utility services business by adding underground pipeline construction, replacement and repair to existing utility services.

Additional Investment with Utilicom Networks

Vectren Advanced Communications (VAC), a wholly owned non-regulated subsidiary, was formed to hold Vectren's investments in Utilicom Networks, LLC (Utilicom) and related entities. Utilicom Networks is a provider of bundled communications services through high capacity broadband networks, including high speed internet service, cable television and telephone service. VAC has a 14 percent interest in Class A units of Utilicom, which is accounted for using the equity method of accounting.

In January 2000, VAC completed the restructuring of its investment in SIGECOM, LLC (SIGECOM), which is a venture between VAC and Utilicom which provides communications services to the greater Evansville, Indiana area. On January 28, 2000, affiliates of The Blackstone Group, a private equity fund, invested in Class B units of Utilicom. In connection with the Blackstone Group investment, VAC exchanged its 49 percent preferred equity interest in SIGECOM for $16.5 million of convertible subordinated debt of Utilicom and a 14 percent indirect common equity interest in SIGECOM, which was valued at $6.5 million The debt is convertible into Class A units of Utilicom at the option of VAC or upon the event of a public offering of stock by Utilicom. The carrying value of VAC's 49% preferred equity interest was $15 million prior to the exchange. The consideration received by VAC in the exchange was valued based upon an

investment bank analysis of the fair value of SIGECOM at the transaction date. The investment restructuring resulted in a pre-tax gain of $8 million, which is classified in equity in earnings in unconsolidated investments in the accompanying Consolidated Statements of Income. For the year ended December 31, 2000, Vectren also recognized losses of $1 million to reflect its share of Utilicom and SIGECOM's operating results. At December 31, 2000, VAC's equity investment in SIGECOM-related entities was $8.2 million.

In December 2000, VAC invested an additional $8.1 million with Utilicom in the form of convertible subordinated debt as part of Utilicom's plans to raise $600 million in capital to establish operating ventures in Indianapolis, Indiana and Dayton, Ohio and to recapitalize the SIGECOM venture. Vectren is committed to invest up to $100 million, inclusive of the $8.1 million already invested, in the form of convertible subordinated debt, subject to Utilicom obtaining all required funding. The debt is convertible into common equity interests in the Indianapolis and Dayton ventures at the option of VAC or upon the event of a public offering of stock by Utilicom. At December 31, 2000, VAC's investment in convertible debt totals approximately $25 million and, upon conversion, VAC would have up to a 31 percent interest in the Indianapolis and Dayton ventures and up to a 10 percent interest in Utilicom, assuming completion of all required funding.

Both the Indianapolis and Dayton projects have received all necessary regulatory approvals and are in advanced stages of pre-engineering and pre-construction planning. Pole attachment rights have been secured, and launch dates of early 2002 are expected.

Operation of Warrick Generating Station

On August 21, 2000, SIGECO announced that no later than April 18, 2001, ALCOA, INC. (ALCOA) would begin operating the Warrick Generating Station. In 1956, arrangements were made for SIGECO to operate the Warrick Generating Station as an agent for ALCOA. Three generating units at the plant are owned by ALCOA. SIGECO owns the fourth unit equally with ALCOA. The operating change will have no impact on SIGECO's generating capacity and is not expected to have any negative impact on Vectren's financial results. Additionally, SIGECO will retain ALCOA as a wholesale power and transmission services customer. Transition of the plant operations was completed in March 2001.

Realignment

Effective January 1, 2001, the utility operations were realigned into two primary business units, Energy Delivery and Power Supply.

ProLiance Energy, LLC

ProLiance, a 50 percent owned, non-regulated, energy marketing affiliate of Vectren, began providing natural gas and related services to Indiana Gas, Citizens Gas and Coke Utility (Citizens Gas) and others effective April 1, 1996. The sale of gas and provision of other services to Indiana Gas by ProLiance is subject to regulatory review through the quarterly gas cost adjustment (GCA) process administered by the IURC.

On September 12, 1997, the IURC issued a decision finding the gas supply and portfolio administration agreements between ProLiance and Indiana Gas and ProLiance and Citizens Gas to be consistent with the public interest and that ProLiance is not subject to regulation by the IURC as a public utility. The

IURC's decision reflected the significant gas cost savings to customers obtained

through ProLiance's services and suggested that all material provisions of the agreements between ProLiance and the utilities are reasonable. Nevertheless, with respect to the pricing of gas commodity purchased from ProLiance, the pricing of fees paid by ProLiance to the utilities for the prospect of using pipeline entitlements if and when they are not required to serve the utilities' firm customers, and the pricing of fees paid by the utilities to ProLiance for portfolio administration services, the IURC concluded that additional review in the GCA process would be appropriate and directed that these matters be considered further in the pending, consolidated GCA proceeding involving Indiana Gas and Citizens Gas. The IURC has not yet established a schedule for conducting these additional proceedings. Through a series of appeals, the order was finally considered by the Indiana Supreme Court.

On September 22, 2000, the Indiana Supreme Court issued a decision affirming the IURC's decision on ProLiance in all respects. However, until the three pricing issues reserved by the IURC are resolved, Vectren will continue to reserve a portion of its share of ProLiance earnings.

In August 1998, Indiana Gas, Citizens Gas and ProLiance each received a Civil Investigative Demand (CID) from the United States Department of Justice requesting information relating to Indiana Gas' and Citizens Gas' relationship with and the activities of ProLiance. The Department of Justice issued the CID to gather information regarding ProLiance's formation and operations, and to determine if trade or commerce has been restrained. Indiana Gas has provided all information requested and management continues to believe that there are no significant issues in this matter.

Indiana Gas continues to record gas costs in accordance with the terms of the ProLiance contract and Vectren continues to record its proportional share of ProLiance's earnings. Pretax income of $5.4 million and $6.7 million was recognized as ProLiance's contribution to earnings for the years ended December 31, 2000 and 1999, respectively. Earnings recognized from ProLiance are included in equity in earnings of unconsolidated investments on the Consolidated Statements of Income. At December 31, 2000 and 1999, Vectren has reserved approximately $2.4 million and $1.7 million, respectively, of ProLiance's earnings after tax pending resolution of the remaining issues. The reserve represents 10% of ProLiance's pretax earnings and serves as management's best estimate of potential exposure arising from the three pricing issues.

Environmental Matters

Clean Air Act

NOx SIP Call Matter. In October 1997, the United States Environmental Protection Agency (USEPA) proposed a rulemaking that could require uniform nitrogen oxide (NOx) emissions reductions of 85 percent by utilities and other large sources in a 22-state region spanning areas in the Northeast, Midwest, Great Lakes, Mid-Atlantic and South. This rule is referred to as the "NOx SIP call." The USEPA provided each state a proposed budget of allowed NOx emissions, a key ingredient of ozone, which requires a significant reduction of such emissions. Under that budget, utilities may be required to reduce NOx emissions to a rate of 0.15 lb/mmBtu below levels already imposed by Phase I and Phase II of the Clean Air Act Amendments of 1990 (the Act). Midwestern states (the alliance) have been working together to determine the most appropriate compliance strategy as an alternative to the USEPA proposal. The alliance submitted its proposal, which calls for a smaller, phased in reduction of NOx levels, to the USEPA and the Indiana Department of Environmental Management (IDEM) in June 1998.

In July 1998, Indiana submitted its proposed plan to the USEPA in response to the USEPA's proposed new NOx rule and the emissions budget proposed for Indiana. The Indiana plan, which calls for a reduction of NOx emissions to a rate of 0.25 lb/mmBtu by 2003, is less stringent than the USEPA proposal but more stringent than the alliance proposal.

On October 27, 1998, USEPA issued a final rule "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," (63 Fed. Reg. 57355). The final rule requires that 23 states and jurisdictions must file revised state implementation plans (SIPs) with the USEPA by no later than September 30, 1999, which was essentially unchanged from its October 1997, proposed rule. The USEPA has encouraged states to target utility coal-fired boilers for the majority of the reductions required, especially NOx emissions. Northeastern states have claimed that ozone transport from midwestern states (including Indiana) is the primary reason for their ozone concentration problems. Although this premise is challenged by others based on various air quality modeling studies, including studies commissioned by the USEPA, the USEPA intends to incorporate a regional control strategy to reduce ozone transport. The USEPA's final ruling is being litigated in the federal courts by approximately ten midwestern states, including Indiana.

During the second quarter of 1999, the USEPA lost two federal court challenges to key air-pollution control requirements. In the first ruling by the U.S. Circuit Court of Appeals for the District of Columbia on May 14, 1999, the Court struck down the USEPA's attempt to tighten the one-hour ozone standard to an eight-hour standard and the attempt to tighten the standard for particulate emissions, finding the actions unconstitutional. In the second ruling by the same Court on May 25, 1999, the Court placed an indefinite stay on the USEPA's attempts to reduce the allowed NOx emissions rate from levels required by the Clean Air Act Amendments of 1990. The USEPA appealed both court rulings. On October 29, 1999, the Court refused to reconsider its May 14, 1999 ruling.

On March 3, 2000, the D.C. Circuit of Appeals upheld the USEPA's October 27, 1998 final rule requiring 23 states and the District of Columbia to file revised SIPs with the USEPA by no later than September 30, 1999. Numerous petitioners, including several states, have filed petitions for rehearing with the U.S. Court of Appeals for the District of Columbia in Michigan v. the USEPA. On June 22, 2000, the D.C. Circuit Court of Appeals denied petition for rehearing en banc and lifted its May 25, 1999 stay. Following this decision, on August 30, 2000, the D.C. Circuit Court of Appeals issued an extension of the SIP Call implementation deadline, previously May 1, 2003, to May 31, 2004. On September 20, 2000, petitioners filed a Petition of Writ of Certiori with the United States Supreme Court requesting review of the D.C. Circuit Court's March 3, 2000 Order. The Court has not yet ruled on the Petition for Certiorari. The USEPA granted Section 126 Petitions filed by northeastern states that require named sources in the eastern half of Indiana to achieve NOx reduction by May 1, 2003. No SIGECO facilities are named in the Section 126 Petitions filed by northeastern states, therefore SIGECO's compliance date remains May 31, 2004.

The proposed NOx emissions budget for Indiana stipulated in the USEPA's final ruling requires a 36 percent reduction in total NOx emissions from Indiana. The ruling, pending finalization of state rule making, could require SIGECO to lower its system-wide emissions by approximately 70 percent. Depending on the level of system-wide emissions reductions ultimately required, and the control technology utilized to achieve the reductions, the estimated construction costs of the control equipment could reach $160 million, which are expected to be expended during the 2001-2004 period, and related additional operation and maintenance expenses could be an estimated $8 million to $10 million, annually. No accrual has been recorded by the company related to the NOx SIP Call matter. The rules governing NOx emissions, once finalized, are to be applied prospectively.

Mercury Emissions. Under the Act, the USEPA is required to study emissions from power plants in order to determine if additional regulations are necessary to protect public health. The USEPA reported its study to Congress in February 1998. That study concluded that of all toxic pollution examined, mercury posed the greatest concern to public health. An earlier USEPA study concluded that the largest single source of human-caused mercury pollution in the United States was coal-fired power plants.

After completion of the study, the Act required the USEPA to determine whether to proceed with the development of regulations. The USEPA announced that it had affirmatively decided that mercury air emissions from power plants should be regulated.

On December 14, 2000, the USEPA released a statement announcing that reductions of mercury emissions from coal-fired plants will be required in the near future. The USEPA has indicated they will propose regulations by December 2003 and will begin developing those regulations shortly. Industry, the public, and state, local and tribal governments will have an opportunity to participate in the process. The USEPA will then issue final regulations by December 2004. Because rules governing mercury emissions are under development, the determination of exposure, if any, is impossible as there are no standards or rules by which compliance (or lack thereof) can be measured. Accordingly, no accrual has been recorded by the company related to the mercury emissions matter.

Culley Generating Station Investigation Matter. The USEPA initiated an investigation under Section 114 of the Act of SIGECO's coal-fired electric generating units in commercial operation by 1977 to determine compliance with environmental permitting requirements related to repairs, maintenance, modifications and operations changes. The focus of the investigation was to determine whether new source performance standards should be applied to the modifications and whether the best available control technology was, or should have been, used. Numerous other electric utilities were, and are currently, being investigated by the USEPA under an industry-wide review for similar compliance. SIGECO responded to all of the USEPA's data requests during the investigation. In July 1999, SIGECO received a letter from the Office of Enforcement and Compliance Assurance of the USEPA discussing the industry-wide investigation, vaguely referring to the investigation of SIGECO and inviting SIGECO to participate in a discussion of the issues. No specifics were noted; furthermore, the letter stated that the communication was not intended to serve as a notice of violation. Subsequent meetings were conducted in September and October with the USEPA and targeted utilities, including SIGECO, regarding potential remedies to the USEPA's general allegations.

On November 3, 1999, the USEPA filed a lawsuit against seven utilities, including SIGECO. The USEPA alleges that, beginning in 1992, SIGECO violated the Act by: (i) making modifications to its Culley Generating Station in Yankeetown, Indiana without obtaining required permits; (ii) making major modifications to the Culley Generating Station without installing the best available emission control technology; and (iii) failing to notify the USEPA of the modifications. In addition, the lawsuit alleges that the modifications to the Culley Generating Station required SIGECO to begin to comply with federal new source performance standards.

SIGECO believes it performed only maintenance, repair and replacement activities at the Culley Generating Station, as allowed under the Act. Because proper maintenance does not require permits, application of the best available emission

control technology, notice to the USEPA, or compliance with new source performance standards, SIGECO believes that the lawsuit is without merit, and intends to vigorously defend the lawsuit.

The lawsuit seeks fines against SIGECO in the amount of $27,500 per day per violation. The lawsuit does not specify the number of days or violations the USEPA believes occurred. The lawsuit also seeks a court order requiring SIGECO to install the best available emissions technology at the Culley Generating Station. If the USEPA is successful in obtaining an order, SIGECO estimates that it would incur capital costs of approximately $40 million to $50 million complying with the order. In the event that SIGECO is required to install system-wide NOx emission control equipment, as a result of the NOx SIP call issue, the majority of the $40 million to $50 million for best available emissions technology at Culley Generating Station would be included in the $160 million expenditure previously discussed.

The USEPA has also issued an administrative notice of violation to SIGECO making the same allegations, but alleging that violations began in 1977.

While it is possible that SIGECO could be subjected to criminal penalties if the Culley Generating Station continues to operate without complying with the new source performance standards and the allegations are determined by a court to be valid, SIGECO believes such penalties are unlikely as the USEPA and the electric utility industry have a bonafide dispute over the proper interpretation of the Act. Accordingly, no accrual has been recorded by the company, and SIGECO anticipates at this time that the plant will continue to operate while the matter is being decided.

Information Request. On January 23, 2001, SIGECO received an information request from the USEPA under Section 114(a) of the Act for historical operational information on the Warrick and A.B. Brown generating stations. SIGECO plans to provide all information requested, and management believes that no significant issues will arise from this request.

Manufactured Gas Plants

In the past, Indiana Gas and others operated facilities for the manufacture of gas. Given the availability of natural gas transported by pipelines, these facilities have not been operated for many years. Under currently applicable environmental laws and regulations, Indiana Gas, and the others, may now be required to take remedial action if certain byproducts are found above the regulatory thresholds at these sites.

Indiana Gas has identified the existence, location and certain general characteristics of 26 gas manufacturing and storage sites for which it may have some remedial responsibility. Indiana Gas has completed a remedial investigation/feasibility study (RI/FS) at one of the sites under an agreed order between Indiana Gas and the Indiana Department of Environmental Management (IDEM), and a Record of Decision (ROD) was issued by IDEM in January 2000. Although Indiana Gas has not begun an RI/FS at additional sites, Indiana Gas has submitted several of the sites to IDEM's Voluntary Remediation Program (VRP) and is currently conducting some level of remedial activities including groundwater monitoring at certain sites where deemed appropriate and will continue remedial activities at the sites as appropriate and necessary.

In conjunction with data compiled by expert consultants, Indiana Gas has accrued the estimated costs for further investigation, remediation, groundwater monitoring and related costs for the sites. While the total costs that may be incurred in connection with addressing these sites cannot be determined at this

time, Indiana Gas has accrued costs that it reasonably expects to incur totaling approximately $20.3 million.

The estimated accrued costs are limited to Indiana Gas' proportionate share of the remediation efforts. Indiana Gas has arrangements in place for 19 of the 26 sites with other potentially responsible parties, which serve to limit Indiana Gas' share of response costs at these 19 sites to between 20 and 50 percent.

With respect to insurance coverage, as of December 31, 2000, Indiana Gas has received and recorded settlements from all known insurance carriers in an aggregate amount approximating its $20.3 million accrual.

Environmental matters related to manufactured gas plants have had no material impact on earnings since costs recorded to date approximate PRP and insurance settlement recoveries. While Indiana Gas has recorded all costs which it presently expects to incur in connection with activities at these sites, it is possible that future events may require some level of additional remedial activities which are not presently foreseen.

New Accounting Pronouncement

In June 1998, the Financial Accounting Standards Board issued Statement of Financial Accounting Standard No. 133 "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133), which requires that every derivative instrument be recorded on the balance sheet as an asset or liability measured at its fair value and that changes in the derivative's fair value be recognized currently in earnings unless specific hedge accounting criteria are met.

SFAS 133, as amended, is effective for fiscal years beginning after June 15, 2000 and must be applied to derivative instruments and certain derivative instruments embedded in hybrid contracts that were issued, acquired or substantively modified after December 31, 1998. Vectren has completed the process of identifying all derivative instruments, determining fair market values of these derivatives, designating and documenting hedge relationships, and evaluating the effectiveness of those hedge relationships. As a result of the successful completion of this process, Vectren adopted SFAS 133 as of January 1, 2001.

SFAS 133 requires that as of the date of initial adoption, the difference between the fair market value of derivative instruments recorded on the balance sheet and the previous carrying amount of those derivatives be reported in net income or other comprehensive income, as appropriate, as the cumulative effect of a change in accounting principle in accordance with Accounting Principles Board Opinion No. 20 "Accounting Changes."

A limited number of Vectren's contracts are defined as derivatives under SFAS 133. These derivatives are forward physical contracts for both the purchase and sale of natural gas and electricity by its wholly owned gas marketing subsidiary, SIGCORP Energy Services, Inc. (SES) and SIGECO, respectively, and an interest rate swap.

SES's primary business is the buying and re-selling of physical natural gas to the industrial market segment. SES manages its pricing risk by entering into corresponding gas commodity contracts that ensure a reasonable matching of the associated risk. In addition, SES utilizes gas storage facilities to ensure operational as well as price risk management of its forward positions. Minimal open positions in terms of price, volume and specified delivery locations do occur and are managed by SES using the above instruments and through management

reporting. These commodity contracts and gas storage facilities are for the normal purchase and sale of natural gas and therefore do not require fair value accounting under SFAS 133. SES also utilizes price swap agreements that are accounted for under SFAS 133 to mitigate price risk related to certain forward physical contracts. These derivatives have not been designated as hedges, accordingly, the changes in market value will be recorded currently in earnings. The mark to market impact of these derivatives has been reflected as part of the transition adjustment recorded to earnings on January 1, 2001.

Derivatives used in the power marketing operations are used to effectively manage the utilization of SIGECO's generation capability. These derivatives include forward physical wholesale sales and purchases. The forward sales contracts are generally used to sell the excess generation capacity of SIGECO when demand conditions warrant this activity. These contracts are for the normal purchase and sale of electricity and therefore do not require fair value accounting under SFAS 133. The forward purchase contracts are entered into as part of "buy-sell" transactions with other utilities and power marketers. These contracts are derivatives and do not qualify for hedge accounting, accordingly, they have been marked to market currently in earnings. The mark to market impact of these derivatives has been reflected as part of the transition adjustment recorded to earnings on January 1, 2001.

The interest rate swap is used to hedge the exposure to interest rate risk associated with VUHI's $150 million floating rate notes that bear interest at the three month US dollar LIBOR rate plus .75 percent that were issued on December 28, 2000. The swap was entered into concurrently with the issuance of the floating rate debt. Vectren has formally documented the hedging relationship between the swap and floating rate debt as well as its risk management objectives and strategies for undertaking each hedge transaction. The swap has been designated as a cash flow hedge and the mark to market impact has been reflected as part of the transition adjustment recorded to other comprehensive income on January 1, 2001.

The cumulative impact of the adoption of SFAS 133 on January 1, 2001 is a gain of approximately $6.3 million due to the derivatives used in power marketing operations. The impact of the derivatives used by SES and the interest rate swap was immaterial.

Rate and Regulatory Matters

As a result of the ongoing appeal of a generic order issued by the IURC in August 1999 regarding guidelines for the recovery of purchased power costs, SIGECO entered into a settlement agreement with the Indiana Office of Utility Consumer Counselor (OUCC) that provides certain terms with respect to the recoverability of such costs. The settlement, originally approved by the IURC on August 9, 2000, has been extended by agreement through March 2002. Under the settlement, SIGECO can recover the entire cost of purchased power up to an established benchmark, and during forced outages, SIGECO will bear a limited share of its purchased power costs regardless of the market costs at that time. Based on this agreement, SIGECO believes it has significantly limited its exposure to unrecoverable purchased power costs.

Commodity prices for natural gas purchases during the last six months of 2000 unexpectedly increased significantly, primarily due to the expectation of a colder winter, which led to increased demand and tighter supplies. Vectren's utility subsidiaries are allowed full recovery of such charges in purchased gas costs from their retail customers through commission-approved gas cost adjustment mechanisms, and margin on gas sales should not be impacted. In 2001,Vectren 's utility subsidiaries may experience higher working capital

requirements, increased expenses, including unrecoverable interest costs and uncollectibles, and possibly some level of price sensitive reduction in volumes sold.

On October 11, 2000, Indiana Gas filed for approval of its regular quarterly GCA. In early December, the IURC issued an interim order approving the request by Indiana Gas for a GCA factor for December 2000. On January 4, 2001, the IURC approved the January and February 2001 GCA as filed. The order also addressed the claim by the OUCC that a portion of the requested GCA be disallowed because Indiana Gas should have entered into additional commitments for this winter's gas supply in late 1999 and early 2000. In procuring gas supply for this winter, Indiana Gas followed the gas procurement practices that it had employed over the last several years. In response to the claim by the OUCC, the IURC found that there should be a $3.8 million disallowance related to gas procurement for the winter season. As a result, Indiana Gas recognized a pre-tax charge of $3.8 million in December 2000. Both Indiana Gas and the OUCC have appealed this ruling. The Citizens Action Coalition of Indiana, Inc., a not for profit consumer advocate, has also filed with the IURC a petition to intervene and a notice of appeal of the order. (See Recent Development.)

Competition

The utility industry has been undergoing dramatic structural change for several years, resulting in increasing competitive pressures faced by electric and gas utility companies. Increased competition may create greater risks to the stability of utility earnings generally and may in the future reduce our earnings from retail electric and gas sales. Currently, several states, including Ohio, have passed legislation that allows electricity customers to choose their electricity supplier in a competitive electricity market and several other states are considering such legislation. At the present time, Indiana has not adopted such legislation. Ohio regulation provides for choice of commodity for all gas customers. Vectren plans to implement this choice for all of its gas customers in Ohio by 2002. Indiana has not adopted any regulation requiring gas choice except for large volume customers.

Liquidity and Capital Resources

Vectren's capitalization objective is 40-50 percent permanent capitalization. This objective may have varied, and will vary, from time to time, depending on particular business opportunities and seasonal factors that affect the company's operation. Vectren's common equity component was 51 percent and 56 percent of its total capitalization, including current maturities of long-term debt, at December 31, 2000 and 1999, respectively. The common equity component of 51 percent at December 31, 2000 is expected to be reduced in 2001 upon the refinancing of a substantial amount of short-term debt to long-term debt.

New construction, normal system maintenance and improvements, and information technology investments needed to provide service to a growing customer base will continue to require substantial expenditures. Additionally, during the four year period 2001 through 2004, construction costs for NOx emissions control equipment are estimated to total approximately $160 million. For the years ended December 31, 2000 and 1999, capital expenditures totaled $164.3 million and $132.2 million, respectively. The increase in capital expenditures for 2000 is related primarily to the additional coal mine development costs at Utility Services. Vectren's anticipated investments in non-regulated affiliates during the next five years will also require funding. Capital expenditures and investments in affiliates for the five year period 2001 - 2005 are as follows:

<TABLE>
<CAPTION>

In millions	2001	2002	2003	2004	2005	Total
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Capital expenditures						
Utility (1) (2) (3)	$ 160.3	$ 143.3	$ 143.1	$ 122.8	$ 135.5	$705.0
Non-regulated (4)	66.0	23.4	27.1	11.0	7.6	135.1
Total capital expenditures	226.3	166.7	170.2	133.8	143.1	840.1

Non-regulated investments	$ 83.5	$ 39.2	$ 33.3	$ 17.9	$ 11.0	$184.9

</TABLE>

(1) Includes expenditures for NOx compliance of approximately $40 million in 2001, $30 million in 2002, $55 million in 2003 and $35 million in 2004.
(2) Includes expenditures for an 80-megawatt gas combustion turbine generator of $20 million in 2001 and $13 million in 2002.
(3) Includes expenditures for additional generation assets of approximately $40 million in 2005.
(4) Includes expenditures for corporate technology hardware and software of approximately $48 million in 2001.

During the five year period 2001 - 2005, maturities and sinking fund requirements on long-term debt subject to mandatory redemption, in millions, are $0.3 in 2001, $16.0 in 2003, $15.0 in 2004, and $38.0 in 2005.

At December 31, 2000, Vectren had $969 million of short-term borrowing capacity for use in its utility and non-regulated operations, of which approximately $209 million was available.

Short-term cash working capital is required primarily to finance customer accounts receivable, unbilled utility revenues resulting from cycle billing, gas in underground storage, prepaid gas delivery services, capital expenditures and investments until permanently financed. Short-term borrowings tend to be greatest during the summer when accounts receivable and unbilled utility revenues related to electricity are highest and gas storage facilities are being refilled. During 2000, however, short-term borrowings related to working capital requirements were greatest during the last six months of the year due to the higher natural gas costs. On October 31, 2000, Vectren completed the acquisition of the Ohio operations for a purchase price of approximately $465 million. Commercial paper was issued to fund the purchase and will be replaced over time with permanent financing.

Vectren's primary source of liquidity to fund working capital requirements has been cash generated from operations, which totaled approximately $40.7 million, $149.2 million and $156.6 million in 2000, 1999 and 1998 respectively. Cash from operations decreased during 2000 as compared to 1999 by approximately $108.8 million. The decrease is primarily attributable to merger and integration costs causing lower net income, increased recoverable fuel and natural gas costs and increased working capital requirements resulting from higher natural gas costs. The decrease in 1999 cash flow from operations as compared to 1998 of approximately $7.4 million is primarily attributable to unfavorable changes in working capital accounts offset by increased net income.

At December 31, 2000, Indiana Gas is not in compliance with the total indebtedness to capitalization ratio contained in its back up credit facility for its commercial paper program. The non-compliance resulted from the indebtedness incurred to purchase its ownership interest in the Ohio operations. A waiver on the Indiana Gas facility has been obtained to waive the non-compliance through and including March 31, 2001. Vectren will provide an equity investment in Indiana Gas to bring Indiana Gas into compliance. No amount is outstanding under the back up facility.

<PAGE> 18

On December 21, 2000, Vectren Capital Corporation, a wholly owned subsidiary that provides financing for Vectren's non-regulated subsidiaries' operations and investments, issued $78 million of private placement intermediate term notes to three institutional investors. The issues and their terms are: $38.0 million, due December 21, 2005, at 7.67 percent; $17.5 million, due December 21, 2007, at 7.83 percent; and $22.5 million, due December 21, 2010, at 7.98 percent. The proceeds were used to repay outstanding short-term borrowings.

In December 2000, Indiana Gas filed a prospectus with the SEC with respect to the issuance of $70 million in debt securities. On December 28, 2000, $20 million of 15-Year Insured Quarterly (IQ) Notes bearing interest at a rate of 7.15 percent per year and $50 million of 30-Year IQ Notes bearing interest at a rate of 7.45 percent per year were issued. The 15-Year IQ Notes will mature on December 15, 2015, and 30-Year IQ Notes will mature on December 16, 2030, unless, in each case, redeemed prior to that date. Indiana Gas will have the option to redeem the 15-Year IQ Notes, in whole or in part, from time to time on or after December 15, 2004. Indiana Gas will have the option to redeem the 30-Year IQ Notes in whole or in part, from time to time on or after December 15, 2005. The net proceeds of the debt issuance were used to repay outstanding commercial paper.

On December 28, 2000, VUHI issued $150 million in floating rate notes to repay an equal amount of outstanding commercial paper utilized for the Ohio operations acquisition. The notes bear interest at a rate equal to the three month US dollar LIBOR rate plus .75 percent. Concurrently with the completion of this financing, a floating rate to fixed rate swap was executed which in effect resulted in a fixed rate of 6.64 percent on the notes.

On January 19, 2001, Vectren filed a registration statement with the Securities and Exchange Commission with respect to a public offering of 5.5 million shares of new common stock. On February 8, 2001, the registration became effective and agreement was reached to sell 5.5 million shares to a group of underwriters. On February 14, the shares were sold, at which time the underwriters exercised their over-allotment option to sell an additional 825,000 shares for a total of 6.3 million shares. The net proceeds of $129.4 million will be used principally to repay outstanding commercial paper utilized for recent acquisitions.

On March 1, 2000, the interest rate on $31.5 million of Adjustable Rate Pollution Control Bonds of SIGECO, due March 1, 2025, was changed from 3.00 percent to 4.30 percent. The new interest rate was fixed through February 28, 2001. Also on March 1, 2000, the interest rate on $22.2 million of Adjustable Rate Pollution Control Bonds of SIGECO, due March 1, 2020, was changed from 3.05 percent to 4.45 percent. The new interest rate was also fixed through February 28, 2001. For financial statement presentation, the $53.7 million of Adjustable Rate Pollution Control Bonds are shown as a current liability. The two series of bonds will be re-set for a five-year period effective March 1, 2001.

Financing Activities

Vectren expects the majority of its utility capital expenditures requirements and debt security redemptions to be provided by internally generated funds.

Indiana Gas' and SIGECO's credit ratings on outstanding debt at December 31, 2000 were A/A2 and A/A1, respectively. VUHI's commercial paper related to the

October 2000 the Ohio operations acquisition has a credit rating of A-1/P-2. Indiana Gas' commercial paper retains an A-1/P-1 rating.

Cash flow from financing activities of $638.7 million for the year ended December 31, 2000 includes $697.0 million of additional net borrowings offset by $60.0 million of dividends on shares of common stock. This is an increase of $576.5 million over prior year due primarily to funding the acquisition of the Ohio operations and increased working capital requirements.

Cash required for investing activities of $681.5 million for the year ended December 31, 2000 includes, among other things, $463.3 million required for the Ohio operations acquisition, $164.3 million of capital expenditures and $32.0 million additional notes receivable. This is an increase of $480.1 million over prior year due primarily to the Ohio operations acquisition.

Forward-Looking Information

A "safe harbor" for forward-looking statements is provided by the Private Securities Litigation Reform Act of 1995 (Reform Act of 1995). The Reform Act of 1995 was adopted to encourage such forward-looking statements without the threat of litigation, provided those statements are identified as forward-looking and are accompanied by meaningful cautionary statements identifying important factors that could cause the actual results to differ materially from those projected in the statement. Certain matters described in Management's Discussion and Analysis of Results of Operations and Financial Condition, including, but not limited to Vectren's realization of net merger savings and ProLiance, are forward-looking statements. Such statements are based on management's beliefs, as well as assumptions made by and information currently available to management. When used in this filing, the words "believe," "anticipate," "endeavor," "estimate," "expect," "objective," "projection," "forecast," "goal," and similar expressions are intended to identify forward-looking statements. In addition to any assumptions and other factors referred to specifically in connection with such forward-looking statements, factors that could cause Vectren and its subsidiaries' actual results to differ materially from those contemplated in any forward-looking statements included, among others, the following:

|X| Factors affecting utility operations such as unusual weather conditions; catastrophic weather-related damage; unusual maintenance or repairs; unanticipated changes to fossil fuel costs; unanticipated changes to gas supply costs, or availability due to higher demand, shortages, transportation problems or other developments; environmental or pipeline incidents; transmission or distribution incidents; unanticipated changes to electric energy supply costs, or availability due to demand, shortages, transmission problems or other developments; or electric transmission or gas pipeline system constraints.

|X| Increased competition in the energy environment including effects of industry restructuring and unbundling.

|X| Regulatory factors such as unanticipated changes in rate-setting policies or procedures, recovery of investments and costs made under traditional regulation, and the frequency and timing of rate increases.

|X| Financial or regulatory accounting principles or policies imposed by the Financial Accounting Standards Board, the Securities and Exchange Commission, the Federal Energy Regulatory Commission, state public utility commissions, state entities which regulate natural gas transmission, gathering and processing, and similar entities with regulatory oversight.

|X| Economic conditions including inflation rates and monetary fluctuations.

|X| Changing market conditions and a variety of other factors associated with physical energy and financial trading activities including, but not limited to, price, basis, credit, liquidity, volatility, capacity, interest rate, and warranty risks.

|X| Availability or cost of capital, resulting from changes in Vectren Corporation and its subsidiaries, interest rates, and securities ratings or market perceptions of the utility industry and energy-related industries.

|X| Employee workforce factors including changes in key executives, collective bargaining agreements with union employees, or work stoppages.

|X| Legal and regulatory delays and other obstacles associated with mergers, acquisitions, and investments in joint ventures.

|X| Costs and other effects of legal and administrative proceedings, settlements, investigations, claims, and other matters, including, but not limited to, those described in Management's Discussion and Analysis of Results of Operations and Financial Condition.

|X| Changes in federal, state or local legislature requirements, such as changes in tax laws or rates, environmental laws and regulations.

Vectren and its subsidiaries undertake no obligation to publicly update or revise any forward-looking statements, whether as a result of changes in actual results, changes in assumptions, or other factors affecting such statements.

ITEM 8. Financial Statements and Supplementary Data

<TABLE>
<CAPTION>

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED BALANCE SHEETS
(in thousands)

	As of December 31,	
	2000	1999
ASSETS		
<S>	<C>	<C>
Current Assets:		
Cash and cash equivalents	$ 15,170	$ 17,351
Temporary investments	-	903
Accounts receivable, less reserves of $5,716 and $3,949, respectively	295,351	123,612
Accrued unbilled revenues	143,365	55,370
Inventories	95,245	58,863
Prepaid gas delivery service	34,849	20,937
Recoverable fuel and natural gas costs	96,084	5,585
Prepayments and other current assets	20,998	23,091
Total current assets	701,062	305,712
Utility Plant:		
Original cost	2,788,794	2,367,831
Less: accumulated depreciation and amortization	1,233,033	1,031,498
Net utility plant	1,555,761	1,336,333
Other Investments:		
Investments in leveraged leases	93,145	85,737
Investments in partnerships and other corporations	108,645	74,644
Notes receivable	64,276	32,271
Other	1,057	996
Total other investments	267,123	193,648
Nonutility property, net of accumulated depreciation	103,477	64,474
Other Assets:		

Deferred charges, net	31,094	31,672
Goodwill, net	197,977	-
Regulatory assets	52,246	47,593
Other	447	1,035
Total other assets	281,764	80,300
TOTAL ASSETS	$2,909,187	$1,980,467

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

<PAGE> 22

<TABLE>
<CAPTION>

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED BALANCE SHEETS
(in thousands)

	As of December 31,	
	2000	1999
LIABILITIES AND SHAREHOLDERS' EQUITY		
<S>	<C>	<C>
Current Liabilities:		
Current maturities of adjustable rate bonds subject to tender	$ 53,700	$ 53,700
Current maturities of long-term debt and other obligations	249	776
Short-term borrowings	759,908	207,638
Accounts payable	201,481	66,541
Accounts payable to affiliated companies	102,540	29,286
Refunds to customers and customer deposits	22,922	27,396
Accrued taxes	556	26,602
Accrued interest	10,272	12,097
Other current liabilities	70,750	49,467
Total current liabilities	1,222,378	473,503
Deferred Credits and Other Liabilities:		
Deferred income taxes	229,911	215,520
Accrued postretirement benefits other than pensions	45,883	40,942
Unamortized investment tax credit	23,165	25,524
Other	5,826	8,297
Total deferred credits and other liabilities	304,785	290,283
Commitments and Contingencies (Notes 6, 7, 15, 17, 18 and 19)		
Minority Interest in Subsidiary	1,421	916
Long-term debt and other obligations, net of current maturities	631,954	486,726
Preferred stock of subsidiary:		
Redeemable	8,076	8,192
Nonredeemable	8,889	11,090
Total preferred stock	16,965	19,282

Common stock (no par value) - issued and outstanding 61,419 and 61,305, respectively	217,720	215,917
Retained earnings	506,462	493,918
Accumulated other comprehensive income	7,502	(78)
Total common shareholders' equity	731,684	709,757
Total capitalization	1,380,603	1,215,765
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 2,909,187	$ 1,980,467

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

<PAGE> 23

<TABLE>
<CAPTION>

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED STATEMENTS OF INCOME
(in thousands, except per share amounts)

	Year Ended December 31,		
	2000	1999	1998
<S>	<C>	<C>	<C>
OPERATING REVENUES:			
Gas utility	$ 818,753	$ 499,573	$ 487,260
Electric utility	336,409	307,569	297,865
Energy services and other	493,528	261,275	212,581
Total operating revenues	1,648,690	1,068,417	997,706
OPERATING EXPENSES:			
Cost of gas sold	552,540	266,429	269,999
Fuel for electric generation	71,170	66,305	65,222
Purchased electric energy	36,394	20,791	20,762
Cost of energy services and other	473,258	247,590	202,441
Other operating	199,591	189,622	181,818
Merger and integration costs	41,145	-	-
Depreciation and amortization	105,661	86,998	81,558
Taxes other than income taxes	38,010	29,910	27,369
Total operating expenses	1,517,769	907,645	849,169
OPERATING INCOME	130,921	160,772	148,537
OTHER INCOME:			
Equity in earnings of unconsolidated investments	9,856	7,490	10,671
Other - net	24,649	13,054	11,538
Total other income	34,505	20,544	22,209
INTEREST EXPENSE	57,133	42,862	40,301
INCOME BEFORE PREFERRED DIVIDENDS AND INCOME TAXES	108,293	138,454	130,445

```
PREFERRED DIVIDEND REQUIREMENT OF SUBSIDIARY                 1,017        1,078        1,095
                                                        ----------   ----------   ----------

INCOME BEFORE INCOME TAXES                                 107,276      137,376      129,350

INCOME TAXES                                                34,232       45,708       42,328
                                                        ----------   ----------   ----------

NET INCOME BEFORE MINORITY INTEREST                         73,044       91,668       87,022

MINORITY INTEREST IN SUBSIDIARY                              1,004          920          422
                                                        ----------   ----------   ----------

NET INCOME                                              $   72,040   $   90,748   $   86,600
                                                        ==========   ==========   ==========


AVERAGE COMMON SHARES OUTSTANDING                           61,297       61,306       61,578
DILUTED COMMON SHARES OUTSTANDING                           61,380       61,430       61,756

BASIC EARNINGS PER AVERAGE SHARE OF COMMON STOCK        $     1.18   $     1.48   $     1.41
DILUTED EARNINGS PER AVERAGE SHARE OF COMMON STOCK      $     1.17   $     1.48   $     1.40
</TABLE>


     The  accompanying notes are an integral part of these consolidated
          financial statements.

<PAGE> 24

<TABLE>
<CAPTION>
                  VECTREN CORPORATION AND SUBSIDIARY COMPANIES
                      CONSOLIDATED STATEMENTS OF CASH FLOWS
                                 (in thousands)

                                                                     Year Ended December 31,
                                                                  -----------------------------------
                                                                      2000         1999          1998
                                                                  ----------   ---------    ---------
<S>                                                               <C>          <C>          <C>
CASH FLOWS FROM OPERATING ACTIVITIES
     Net Income                                                   $  72,040    $  90,748    $  86,600
     Adjustments to reconcile net income to cash provided
        from operating  activities:
          Depreciation and amortization                             105,661       86,998       81,558
          Preferred dividend requirement of subsidiary                1,017        1,078        1,095
          Deferred income taxes and investment tax credits           12,032        8,548
(1,644)
          (Gain) loss on sale or retirement of assets or
              investments                                            (8,961)           -
(2,102)
          Undistributed earnings of unconsolidated investments      (10,554)     (11,642)
(12,104)

          Changes in assets and liabilities:
               Receivables - net                                   (246,771)     (19,978)      18,052
               Inventories                                           17,817        7,823
(30,110)
               Prepaid gas delivery service                         (13,912)     (20,937)      17,024
               Recoverable fuel and natural gas costs               (82,343)         346        3,198
               Prepayments and other current assets                   7,553       (7,805)
(8,242)
```

Regulatory assets	(4,653)	1,718	(3,494)
Accounts payable, refunds to customers, customer deposits and other current liabilities	217,122	1,514	7,208
Accrued taxes and interest	(27,871)	13,585	(9,522)
Accrued post-retirement benefits and other than pensions	4,941	3,455	2,472
Other - net	(2,411)	(6,226)	6,598
Total adjustments	(31,333)	58,477	69,987
Net cash flows from operating activities	40,707	149,225	156,587
CASH FLOWS (REQUIRED FOR) FROM FINANCING ACTIVITIES			
Issuance of common stock	3,979	982	-
Retirement of common and preferred stock	(4,493)	(2,447)	(6,191)
Proceeds from long-term debt and other obligations	328,000	110,000	60,052
Retirement of long-term debt and other obligations	(33,299)	(67,067)	(50,828)
Net change in short-term borrowings	402,270	81,655	12,253
Dividends on common stock	(59,977)	(57,365)	(55,727)
Other	2,175	(3,614)	(675)
Net cash flows (required for) from financing activities	638,655	62,144	(41,116)
CASH FLOWS (REQUIRED FOR) FROM INVESTING ACTIVITIES			
Capital expenditures	(164,266)	(132,159)	(135,069)
Investment in leveraged leases	(850)	(49,734)	5,194
Investments in partnerships and other corporations	(29,446)	(10,711)	(11,512)
Change in notes receivable	(32,005)	(11,899)	1,032
Cash distributions from unconsolidated investments	7,033	4,550	7,806
Proceeds from sale of assets	-	-	13,317
Acquisition of DPL gas distribution assets	(463,301)	-	-
Other	1,292	(1,456)	3,074
Net cash flows (required for) investing activities	(681,543)	(201,409)	(116,158)
Net increase (decrease) in cash and cash equivalents	(2,181)	9,960	(687)
Cash and cash equivalents at beginning of period	17,351	7,391	8,078
Cash and cash equivalents at end of period	$ 15,170	$ 17,351	$ 7,391

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements..

<PAGE> 25

<TABLE>
<CAPTION>

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED STATEMENTS OF COMMON SHAREHOLDERS' EQUITY
(in thousands)

	Common Stock					
	Shares	Amount	Restricted Stock Grants	Retained Earnings	Accumulated Other Comprehensive Income (Loss)	Total
<S> <C> <C>	<C>	<C>	<C>	<C>	<C>	<C>
Balance at December 31, 1997	61,621	$225,049	$(1,708)	$430,248	$77	$653,666
Comprehensive income:						
Net income				86,600		86,600
Unrealized investment loss, net of ($54) tax					(89)	(89)
Total comprehensive income						86,511
Common stock dividends ($0.90 per share)				(55,727)		(55,727)
Common stock repurchases	(215)	(4,834)				(4,834)
Common stock issuances for Executives' and Directors' Stock plans, net of amortization	14	(1,572)	331			(1,241)
Common stock issuance expense				(33)		(33)
Other				(428)		(428)
Balance at December 31, 1998	61,420	$218,643	$(1,377)	$460,660	$(12)	$677,914
Comprehensive income:						
Net income				90,748		90,748
Unrealized investment loss, net of ($40) tax					(66)	(66)
Total comprehensive income						90,682
Common stock dividends ($0.94 per share)				(57,365)		(57,365)
Common stock repurchases	(113)	(2,331)				(2,331)
Common stock issuances for Executives' and Directors' stock plans, net of amortization	(2)	1,150	(168)			982
Other				(125)		(125)
Balance at December 31, 1999	61,305	$217,462	$(1,545)	$493,918	$ (78)	$709,757
Comprehensive income:						
Net income				72,040		72,040
Comprehensive income of unconsolidated investment, net of $4,626 tax (Note 5O)					7,580	7,580
Total comprehensive income						79,620

Common stock dividends ($0.98 per share)				(59,977)		(59,977)
Common stock repurchases	(86)	(2,176)				(2,176)
Common stock issuances for Executives' and Directors' stock plans, net of amortization	200	3,979				3,979
Other				481		481
Balance at December 31, 2000	61,419	$219,265	$(1,545)	$506,462	$7,502	$731,684

</TABLE>

The accompanying notes are an integral part of these consolidated financial statements.

VECTREN CORPORATION AND SUBSIDIARY COMPANIES

NOTES TO THE CONSOLIDATED FINANCIAL STATEMENTS

DECEMBER 31, 2000 AND 1999

1. Organization and Nature of Operations

Vectren Corporation (Vectren) is an Indiana corporation that was organized on June 10, 1999 solely for the purpose of effecting the merger of Indiana Energy, Inc. (Indiana Energy) and SIGCORP, Inc. (SIGCORP). On March 31, 2000, the merger of Indiana Energy with SIGCORP and into Vectren was consummated with a tax-free exchange of shares and has been accounted for as a pooling-of-interests. The common shareholders of SIGCORP received one and one-third shares of Vectren common stock for each SIGCORP common share and the common shareholders of Indiana Energy received one share of Vectren common stock for each Indiana Energy common share, resulting in the issuance of 61.3 million shares of Vectren common stock. The preferred stock and debt securities of Indiana Energy's and SIGCORP's utility subsidiaries were not affected by the merger.

Vectren is a public utility holding company, whose wholly owned subsidiary, Vectren Utility Holdings, Inc. (VUHI), is the intermediate holding company for Vectren's three operating public utilities, Indiana Gas Company, Inc. (Indiana Gas), formerly a wholly owned subsidiary of Indiana Energy, Southern Indiana Gas and Electric Company (SIGECO), formerly a wholly owned subsidiary of SIGCORP, and the Ohio operations (defined hereafter). Indiana Gas and its subsidiaries provide natural gas and transportation services to a diversified base of customers in 311 communities in 49 of Indiana's 92 counties. SIGECO provides generation, transmission, distribution and the sale of electric power to Evansville, Indiana, and 74 other communities, and the distribution and sale of natural gas to Evansville, Indiana, and 64 communities in ten counties in southwestern Indiana. The Ohio operations provide natural gas distribution and transportation services to Dayton, Ohio and 16 counties in west central Ohio.

Vectren is involved in non-regulated activities through three primary business groups: Energy Services, Utility Services and Communications. Energy Services trades and markets natural gas and provides energy performance contracting services. Utility Services provides utility products and services, such as underground construction and facilities locating, meter reading and materials management, and the mining and sale of coal. Communications provides integrated broadband communications services, including local and long distance telephone, Internet access and cable television. In addition, other businesses invest in other energy-related opportunities and corporate technology.

2. Acquisition of the Natural Gas Distribution Assets of The Dayton Power and Light Company

On October 31, 2000, Vectren acquired the natural gas distribution assets of The Dayton Power and Light Company (DP&L) for approximately $465 million. The acquisition has been accounted for as a purchase transaction in accordance with Accounting Principles Board (APB) Opinion No. 16 and accordingly, the results of operations of the acquired businesses are included in the accompanying financial statements since the date of acquisition.

Vectren acquired the natural gas distribution assets as a tenancy in common through two separate wholly owned subsidiaries. Vectren Energy Delivery of Ohio, Inc. (VEDO) holds a 53 percent undivided ownership interest in the assets and Indiana Gas holds a 47 percent undivided ownership interest. VEDO is the operator of the assets, operations of which are referred to as "the Ohio operations." VUHI established a $435 million commercial paper program to fund the majority of the acquisition. This facility was utilized at October 31, 2000 and will be replaced over time with permanent financing. VEDO's portion of the acquisition was funded with short-term borrowings from VUHI. Indiana Gas' portion of the acquisition was funded with a combination of short-term borrowings from VUHI and its commercial paper program.

Goodwill has been recognized for the amount of the excess of the purchase price paid over the book value of the net assets acquired and is being amortized on a straight line basis over 40 years. Goodwill recognized as a result of the acquisition is $198 million. The purchase price is subject to adjustment based on the finalization of the closing balance sheet in accordance with the Asset Purchase Agreement.

The following table depicts, for the years ended December 31, 2000 and 1999, unaudited pro forma consolidated information, as if the acquisition of the Ohio operations occurred on January 1, 1999. The pro forma summary information presented below is not necessarily indicative of the results that actually would have occurred if the transaction indicated above had been consummated at the beginning of the periods presented and is not intended to be a projection of future results.

Unaudited	Year Ended December 31,	
In thousands, except per share amounts	2000	1999
Total operating revenues	$1,831,136	$1,287,283
Net income	$ 72,007	$ 87,402
Average shares outstanding:		
Basic	61,297	61,306
Diluted	61,380	61,430
Earnings per average share of common stock:		
Basic	$ 1.17	$ 1.43
Diluted	$ 1.17	$ 1.42

3. Merger and Integration Costs

Merger and integration costs incurred for the year ended December 31, 2000 totaled $41.1 million, including $1.8 million related to the integration of the Ohio operations. The merger integration activities will be substantially completed in 2001.

Of the $41.1 million of merger and integration costs incurred in 2000, accruals were established at March 31, 2000 totaling $20.7 million. Of this amount, $5.5 million related to employee and executive severance costs, $13.1 million related to transaction costs and regulatory filing fees, and the remaining $2.1 million related to employee relocations that occurred prior to or coincident with the merger closing. At December 31, 2000, the accrual remaining for such costs totaled $1.8 million, all related to severance costs. Of the $41.1 million, the remaining $20.4 million was expensed throughout the remainder of the year as expenses were incurred. Such expenses included $6.0 million related to sign changes at all company facilities to display the Vectren name, changes to all fleet vehicles to reflect the new corporate name and logo, and changes to company stationery. An additional $13.9 million was incurred over the course of the year for accounting fees resulting from merger related filing requirements, consulting fees related to integration activities such as organization structure, employee travel between company locations as part of integration activities, internal labor of employees assigned to integration teams, investor relations communications activities, and certain benefit costs. In addition, $0.5 million was recorded related to severance costs associated with the integration of the Ohio operations.

During the merger planning process, approximately 135 positions were identified for elimination. As of December 31, 2000, approximately 70 positions had been vacated, with the remaining 65 positions to be eliminated in 2001

The integration activities experienced by the company included such things as information system consolidation, process review and definition, organization design and consolidation, and knowledge sharing.

<PAGE> 28

As a result of merger integration activities, management has identified certain information systems that are expected to be retired in 2001. Accordingly, the useful lives of these assets have been shortened to reflect this decision, resulting in additional depreciation expense of approximately $11.4 million ($7.1 million after tax) for the year ended December 31, 2000.

4. Indiana Energy and SIGCORP Results (Prior to the Combination)

The results of the predecessor companies, Indiana Energy and SIGCORP, for the three months ended March 31, 2000 and for the years ended December 31, 1999 and 1998 are as follows (in millions):

<TABLE>
<CAPTION>

	Three months ended March 31, 2000	Twelve months ended December 31, 1999	Twelve months ended December 31, 1998
<S>	<C>	<C>	<C>
Indiana Energy:			
Operating Revenues	$172.0	$433.3	$440.6
Net Income	$22.1	$38.7	$36.1
SIGCORP:			
Operating Revenues	$187.4	$604.5	$557.1
Net Income	$19.3	$52.1	$50.5

</TABLE>

5. Summary of Significant Accounting Policies

A. Principles of Consolidation

The accompanying consolidated financial statements for the years ended December 31, 1999 and 1998 of Vectren and its subsidiary companies reflect the company on a historical basis as restated for the effects of the pooling-of-interests transaction completed on March 31, 2000 between Indiana Energy and SIGCORP. The consolidated financial statements include the accounts of Vectren and its wholly owned and majority owned subsidiaries, after elimination of intercompany transactions. Investments in limited partnerships and less than majority-owned affiliates are accounted for on the equity method. The financial statements also reflect the consolidation of a majority-owned affiliate, Energy Systems Group, LLC, which was an equity method investment of Indiana Energy and SIGCORP prior to the merger.

B. Investments in Partnerships and Other Corporations

Investments in partnerships and other corporations, which are more than 20 percent owned but less than majority owned, are generally accounted for by the equity method. Vectren's share of net income or loss from these investments is recorded in equity in earnings of unconsolidated affiliates. Dividends are recorded as a reduction of the carrying value of the investment when received.

Investments in other corporations less than 20 percent owned are generally carried at cost less writedowns for declines in value judged to be other than temporary. Dividends are recorded as other income when received.

C. Reclassifications

Certain reclassifications have been made to the prior years' financial statements to conform to the current year presentation. These reclassifications have no impact on net income previously reported.

D. Utility Plant and Depreciation

Utility plant is stated at historical cost, including an allowance for the cost of funds used during construction. Depreciation of utility property is provided using the straight-line method over the estimated service lives of the depreciable assets.

The original cost, together with depreciation rates expressed as a percentage of original cost, for the components of utility plant were as follows":

<PAGE> 29

<TABLE>
<CAPTION>

				At December 31,
In thousands	2000		1999	
	Original Cost	Depreciation Rates as a Percent of Original Cost	Original Cost	Depreciation Rates as a Percent of Original Cost
<S>	<C>	<C>	<C>	<C>
Gas utility plant	$1,543,924	3.6%	$1,152,628	3.8%
Electric utility plant	1,136,760	3.3%	1,109,847	3.4%
Common utility plant	47,307	3.3%	59,963	6.7%
Construction work in progress	60,803	-	45,393	-
	$2,788,794		$2,367,831	

</TABLE>

Vectren follows the practice of charging maintenance and repairs, including the cost of removal of minor items of property, to expense as incurred. When property that represents a retirement unit is replaced or removed, the cost of such property is credited to utility plant, and such cost, together with the cost of removal less salvage, is charged to accumulated depreciation.

E. Nonutility Plant

Nonutility plant consists of property and equipment used by Vectren's non-regulated operations. The depreciation of nonutility plant is charged against income over their estimated useful lives, using the straight-line method of depreciation or units of production method of amortization. Repairs and maintenance, which are not considered betterments and do not extend the useful life of the nonutility plant, are charged to expense as incurred. When nonutility plant is retired, or otherwise disposed of, the asset and accumulated depreciation are removed and the resulting gain or loss is reflected in income.

Nonutility plant consists of the following:

<TABLE>
<CAPTION>

		At December 31,	
In thousands	Useful Life	2000	1999
<S>	<C>	<C>	<C>
Land	-	$ 4,309	$ 1,706
Mining property and development costs	Units of production	36,947	13,076
Other non utility plant	5 - 40 years	115,803	70,334
		157,059	85,116
Less: Accumulated depreciation and amortization		53,582	20,642
		$ 103,477	$64,474

</TABLE>

F. Cash Flow Information

For purposes of the Consolidated Statements of Cash Flows, Vectren considers cash investments with an original maturity of three months or less to be cash equivalents. Cash paid during the periods reported for interest, income taxes and acquired assets and liabilities were as follows:

	Year Ended December 31,		
In thousands	2000	1999	1998
Cash paid during the year for			
Interest (net of amount capitalized)	$ 55,734	$ 34,826	$ 35,798
Income taxes	53,450	36,909	53,311
Details of acquisition (Note 2)			
Book value of assets acquired	$278,080	-	-
Liabilities assumed	7,881	-	-
Net assets acquired	$270,199	-	-

G. Revenues

Revenues are recorded as products and services are delivered to customers. To more closely match revenues and expenses, Vectren's utility subsidiaries record revenues for all gas and electricity delivered to customers but not billed at the end of the accounting period.

<PAGE> 30

Excise taxes are embedded in rates charged to customers. Accordingly, the company records excise tax received as a component of operating revenues. Excise taxes paid are recorded as a component of taxes other than income taxes.

H. Inventories

Inventories primarily consist of gas in underground storage, fuel for electric generation and materials and supplies. Gas in underground storage at SIGECO and Indiana Gas is valued using last-in, first-out (LIFO) method, while all other inventories, including the acquired inventories of the Ohio operations, are valued using the average cost method. Based on the average cost of gas purchased during December, the cost of replacing the current portion of gas in underground storage exceeded LIFO cost at December 31, 2000 and 1999 by approximately $64.3 million and $23.2 million, respectively. Inventories consist of the following:

	At December 31,	
In thousands	2000	1999
Fuel (coal and oil) for electric generation	$ 4,368	$12,824
Materials and supplies	16,958	15,224
Emission allowances	3,860	4,437
Gas in storage - at LIFO cost	18,988	23,068
Gas in storage - at average cost	49,424	-
Other	1,647	3,310
Total inventories	$95,245	$58,863

I. Refundable or Recoverable Gas Costs, Fuel for Electric Production and Purchased Power

All metered gas rates contain a gas cost adjustment clause, which allows for adjustment in charges for changes in the cost of purchased gas. Metered electric rates typically contain a fuel adjustment clause that allows for adjustment in charges for electric energy to reflect changes in the cost of fuel and the net energy cost of purchased power. SIGECO also collects through a quarterly rate adjustment mechanism the margin on electric sales lost due to the implementation of demand side management programs.

Vectren's utility subsidiaries record any adjustment clause under-or-overrecovery each month in revenues. A corresponding asset or liability is recorded until such time as the under-or-overrecovery is billed or refunded to utility customers. The cost of gas sold is charged to operating expense as delivered to customers and the cost of fuel for electric generation is charged to operating expense when consumed.

J. Allowance for Funds used During Construction

An allowance for funds used during construction (AFUDC), which represents the cost of borrowed and equity funds used for construction purposes, is charged to construction work in progress during the period of construction and included in other - net on the Consolidated Statements of Income.

The table below reflects the total AFUDC capitalized and the portion of which was computed on borrowed and equity funds for all periods reported.

	Year Ended December 31,		
In thousands	2000	1999	1998

AFUDC - borrowed funds	$2,634	$3,090	$2,394
AFUDC - equity funds	2,645	739	230
Total AFUDC capitalized	$5,279	$3,829	$2,624

K. Income Taxes

The liability method of accounting is used for income taxes under which deferred income taxes are recognized, at currently enacted income tax rates, to reflect the tax effect of temporary differences between the book and tax bases of assets and liabilities. Deferred investment tax credits are being amortized over the life of the related asset.

<PAGE> 31

L. Use of Estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from these estimates.

M. Regulation

The utility operations of Indiana Gas and SIGECO are subject to regulation by the Indiana Utility Regulatory Commission (IURC) and the Ohio operations are subject to regulation by the Public Utilities Commission of Ohio (PUCO). The wholesale energy sales of SIGECO are subject to regulation by the Federal Energy Regulatory Commission (FERC). The accounting policies of Vectren and its utility subsidiaries give recognition to the ratemaking and accounting practices of these agencies and to accounting principles generally accepted in the United States, including the provisions of Statement of Financial Accounting Standards No. 71 "Accounting for the Effects of Certain Types of Regulation" (SFAS 71). Regulatory assets represent probable future revenues associated with certain incurred costs, which will be recovered from customers through the ratemaking process. Regulatory liabilities represent probable future reductions in revenues associated with amounts that are to be credited to customers through the ratemaking process.

The following regulatory assets and liabilities are reflected in the financial statements:

	At December 31,	
In thousands	2000	1999
Regulatory Assets:		
Demand side management programs	$ 26,243	$ 25,298
Unamortized premium on reacquired debt	4,192	4,416
Unamortized debt discount and expenses	16,741	13,233
Regulatory income tax asset	4,723	2,741
Other	347	1,905
Regulatory assets in other assets	52,246	47,593
Recoverable fuel and natural gas costs	96,084	5,585
Total regulatory assets	$148,330	$ 53,178
Regulatory Liabilities:		
Refundable gas costs	-	$ 10,204

As of December 31, 2000, the recovery of $126.9 million of Vectren's $148.3 million of total regulatory assets is reflected in rates charged to customers. The remaining $21.4 million of regulatory assets, which are not yet included in rates, represent SIGECO's demand side management (DSM) costs incurred after 1993. When SIGECO files its next electric base rate case, these costs will be included in rate base and requested to earn a return. Amortization of the costs over a period anticipated to be 15 years will be recovered through rates as a cost of operations. SIGECO is currently recovering $4.8 million of DSM costs in rates. Based upon this prior regulatory authority, management believes that future recovery of the $21.4 million of regulatory assets for DSM costs is probable.

Indiana Gas was authorized as part of an August 17, 1994 financing order from the IURC to amortize over a 15-year period the debt discount and expense related to new debt issues and future debt issues and future premiums paid for debt reacquired in connection with refinancing. Debt discount and expense for issues in place prior to this order are being amortized over the lives of the related issues. Premiums paid prior to this order for debt reacquired in connection with refinancing are being amortized over the life of the refunding issue. SIGECO's debt discounts and expense related to new debt issues and premiums paid for debt reacquired is being amortized over the lives of the related issues.

Of the $126.9 million of regulatory assets currently reflected in rates, a total of $9.1 million is earning a return: $4.9 million of pre-1994 DSM costs and $4.2 million of unamortized premium on reacquired debt. The remaining recovery periods for the DSM costs and premium on reacquired debt are 11.5 years and 20 years, respectively. The remaining $117.9 million of regulatory assets included in rates, but not earning a return, are being recovered over varying periods: $7.1 million of fuel costs and $89.0 million of gas costs, over 12 months; $4.7 million of regulatory income tax asset, over approximately 30 years; and $16.8 million of unamortized debt discount and expense to be recovered as discussed above.

Vectren's utility subsidiaries' policy is to continually assess the recoverability of costs recognized as regulatory assets and the ability to continue to account for their activities in accordance with SFAS 71, based on the criteria set forth in SFAS 71. Based on current regulation, the utility subsidiaries believe such accounting is appropriate. If all or part of Vectren's utility operations cease to meet the criteria of SFAS 71, a write-off of related regulatory assets and liabilities would be required. In addition, Vectren would be required to determine any impairment to the carrying costs of deregulated plant and inventory assets.

N. New Accounting Pronouncement

In June 1998, the Financial Accounting Standards Board issued SFAS No. 133 "Accounting for Derivative Instruments and Hedging Activities" (SFAS 133), which requires that every derivative instrument be recorded on the balance sheet as an asset or liability measured at its fair value and that changes in the derivative's fair value be recognized currently in earnings unless specific hedge accounting criteria are met.

SFAS 133, as amended, is effective for fiscal years beginning after June 15, 2000 and must be applied to derivative instruments and certain derivative instruments embedded in hybrid contracts that were issued, acquired or substantively modified after December 31, 1998. Vectren has completed the process of identifying all derivative instruments, determining fair market values of these derivatives, designating and documenting hedge relationships, and evaluating the effectiveness of those hedge relationships. As a result of the successful completion of this process, Vectren adopted SFAS 133 as of January 1, 2001.

SFAS 133 requires that as of the date of initial adoption, the difference between the fair market value of derivative instruments recorded on the balance sheet and the previous carrying amount of those derivatives be reported in net income or other comprehensive income, as appropriate, as the cumulative effect of a change in accounting principle in accordance with APB 20, "Accounting Changes."

A limited number of Vectren's contracts are defined as derivatives under SFAS 133. These derivatives are forward physical contracts for both the purchase and sale of natural gas and electricity by its wholly owned gas marketing subsidiary, SIGCORP Energy Services, Inc (SES) and SIGECO, respectively, and an interest rate swap.

SES's primary business is the buying and re-selling of physical natural gas to the industrial market segment. SES manages its pricing risk by entering into corresponding gas commodity contracts that ensure a reasonable matching of the associated risk. In addition, SES takes physical delivery of gas in storage facilities to ensure operational as well as price risk management of its forward positions. Open positions in terms of price, volume and specified delivery locations do occur and are managed by SES using the above instruments and through management reporting. These commodity contracts and gas storage facilities involve the normal purchase and sale of natural gas and therefore do not require fair value accounting under SFAS 133. SES also utilizes price swap agreements that are accounted for under SFAS 133 to mitigate price risk related to certain forward physical contracts. These derivatives have not been designated as hedges, accordingly, the changes in market value will be recorded currently in earnings. The mark to market impact of these derivatives has been reflected as part of the transition adjustment recorded to earnings on January 1, 2001.

Derivatives used in the power marketing operations are used to effectively manage the utilization of SIGECO's generation capability. These derivatives include forward physical wholesale sales and purchases. The forward sales contracts are generally used to sell the excess generation capacity of SIGECO when demand conditions warrant this activity. These contracts are for the normal purchase and sale of electricity and therefore do not require fair value accounting under SFAS 133. The forward purchase contracts are entered into as

part of "buy-sell" transactions with other utilities and power marketers. These contracts are derivatives and do not qualify for hedge accounting, accordingly, they have been marked to market currently in earnings. The mark to market impact of these derivatives has been reflected as part of the transition adjustment recorded to earnings on January 1, 2001.

The interest rate swap is used to hedge the exposure to interest rate risk associated with VUHI's $150 million floating rate notes. The swap was entered into concurrently with the issuance of the floating rate debt. Vectren has formally documented the hedging relationship between the swap and floating rate debt as well as its risk management objectives and strategies for undertaking the hedging transaction. The swap has been designated as a cash flow hedge and the mark to market impact has been reflected as part of the transition adjustment recorded to other comprehensive income on January 1, 2001.

The cumulative impact of the adoption of SFAS 133 on January 1, 2001 is an earnings gain of approximately $6.3 million due to the derivatives used in power marketing operations. The impact of the derivatives used by SES and the interest rate swap was immaterial.

O. Comprehensive Income

Comprehensive income is a measure of all changes in equity of an enterprise which result from the transactions or other economic events during the period other than transactions with shareholders. This information is reported in the Consolidated Statements of Common Shareholders' Equity. Vectren's components of accumulated other comprehensive income (loss) include unrealized gains (losses) on available for sale securities and its portion of ProLiance Energy, LLC's (ProLiance) other comprehensive income. Vectren records its portion of ProLiance's other comprehensive income as increases or decreases to the investment account with a corresponding adjustment to other comprehensive income. As of December 31, 2000, Vectren has recorded an adjustment to other comprehensive income of $7.5 million related to its investment in ProLiance. ProLiance's other comprehensive income was adjusted due its adoption of SFAS 133.

P. Impairment Review of Long-Lived Assets

Long-lived assets are reviewed for impairment in accordance with SFAS No. 121, Accounting for Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed Of, as facts and circumstances indicate that the carrying amount may be impaired. Specifically, the evaluation for impairment involves the comparison of an asset's carrying value and the estimated undiscounted future cash flows the asset is expected to generate over its remaining life. If this evaluation were to conclude that the carrying value of the asset is impaired, an impairment charge would be recorded as a charge to operations based on the difference between the asset's carrying amount and its fair value.

6. ProLiance Energy, LLC

ProLiance, a 50 percent owned, non-regulated, energy marketing affiliate of Vectren, began providing natural gas and related services to Indiana Gas, Citizens Gas and Coke Utility (Citizens Gas) and others effective April 1, 1996. The sale of gas and provision of other services to Indiana Gas by ProLiance is subject to regulatory review through the quarterly gas cost adjustment (GCA) process administered by the IURC.

On September 12, 1997, the IURC issued a decision finding the gas supply and portfolio administration agreements between ProLiance and Indiana Gas and ProLiance and Citizens Gas to be consistent with the public interest and that ProLiance is not subject to regulation by the IURC as a public utility. The IURC's decision reflected the significant gas cost savings to customers obtained through ProLiance's services and suggested that all material provisions of the agreements between ProLiance and the utilities are reasonable. Nevertheless, with respect to the pricing of gas commodity purchased from ProLiance, the pricing of fees paid by ProLiance to the utilities for the prospect of using pipeline entitlements if and when they are not required to serve the utilities' firm customers, and the pricing of fees paid by the utilities to ProLiance for portfolio administration services, the IURC concluded that additional review in the GCA process would be appropriate and directed that these matters be considered further in the pending, consolidated GCA proceeding involving Indiana Gas and Citizens Gas. The IURC has not yet established a schedule for conducting

these additional proceedings. Through a series of appeals, the order was finally considered by the Indiana Supreme Court.

On September 22, 2000, the Indiana Supreme Court issued a decision affirming the IURC's decision on ProLiance in all respects. However, until the three pricing issues reserved by the IURC are resolved, Vectren will continue to reserve a portion of its share of ProLiance earnings.

On or about August 11, 1998, Indiana Gas, Citizens Gas and ProLiance each received a Civil Investigative Demand (CID) from the United States Department of Justice requesting information relating to Indiana Gas' and Citizens Gas' relationship with and the activities of ProLiance. The Department of Justice issued the CID to gather information regarding ProLiance's formation and operations, and to determine if trade or commerce has been restrained. Indiana Gas has provided all information requested and management continues to believe that there are no significant issues in this matter.

Indiana Gas continues to record gas costs in accordance with the terms of the ProLiance contract and Vectren continues to record its proportional share of ProLiance's earnings. Pretax income of $5.4 million, $6.7 million, and $7.0 million was recognized as ProLiance's contribution to earnings for the years ended December 31, 2000, 1999 and 1998, respectively. Earnings recognized from ProLiance are included in equity in earnings of unconsolidated investments on the Consolidated Statements of Income. At December 31, 2000, and 1999, Vectren has reserved approximately $2.4 million and $1.7 million, respectively, of ProLiance's earnings pending resolution of the remaining issues. The reserve represents 10% of ProLiance's pretax earnings and serves as management's best estimate of potential exposure arising from the three pricing issues.

7. Vectren Advanced Communications

Vectren Advanced Communications (VAC), a wholly owned non-regulated subsidiary, was formed to hold Vectren's investments in Utilicom Networks, LLC (Utilicom) and related entities. Utilicom Networks is a provider of bundled communications services through high capacity broadband networks, including high speed internet service, cable television and telephone service. VAC has a 14 percent interest in Class A units of Utilicom, which is accounted for using the equity method of accounting.

In January 2000, VAC completed the restructuring of its investment in SIGECOM, LLC (SIGECOM), which is a venture between VAC and Utilicom which provides communications services to the greater Evansville, Indiana area. On January 28, 2000, affiliates of The Blackstone Group, a private equity fund, invested in Class B units of Utilicom. In connection with the Blackstone Group investment, VAC exchanged its 49 percent preferred equity interest in SIGECOM for $16.5 million of convertible subordinated debt of Utilicom and a 14 percent indirect common equity interest in SIGECOM, which was valued at $6.5 million The debt is convertible into Class A units of Utilicom at the option of VAC or upon the event of a public offering of stock by Utilicom. The carrying value of VAC's 49% preferred equity interest was $15 million prior to the exchange. The consideration received by VAC in the exchange was valued based upon an investment bank analysis of the fair value of SIGECOM at the transaction date. The investment restructuring resulted in a pre-tax gain of $8 million, which is classified in equity in earnings in unconsolidated investments in the accompanying Consolidated Statements of Income. For the year ended December 31, 2000, Vectren also recognized losses of $1 million to reflect its share of Utilicom and SIGECOM's operating results. At December 31, 2000 and 1999, VAC's equity investment in SIGECOM-related entities was $8.2 million and $16.1 million, respectively.

In December 2000, VAC invested an additional $8.1 million with Utilicom in the form of convertible subordinated debt as part of Utilicom's plans to raise $600 million in capital to establish operating ventures in Indianapolis, Indiana and Dayton, Ohio and to recapitalize the SIGECOM venture. Vectren is committed to invest up to $100 million, inclusive of the $8.1 million already invested, in the form of convertible subordinated debt, subject to Utilicom obtaining all required funding. The debt is convertible into common equity interests in the Indianapolis and Dayton ventures at the option of VAC or upon the event of a public offering of stock by Utilicom. At December 31, 2000, VAC's investment in convertible debt totals approximately $25 million and, upon conversion, VAC

would have up to a 31 percent interest in the Indianapolis and Dayton ventures and up to a 10 percent interest in Utilicom, assuming completion of all required funding.

8. Short-Term Borrowings

At December 31, 2000, Vectren has approximately $969 million of short-term borrowing capacity, including $803 million for its regulated operations and $166 million for its non-regulated operations, of which approximately $149 million is available for regulated operations and $60 million is available for non-regulated operations. See the table below for outstanding balances and interest rates.

In thousands	At December 31, 2000	1999
Outstanding:		
Bank Loans	$146,494	$ 124,638
2001, Note Payable, 6.6425%	150,000	-
Commercial paper	463,414	83,000
Total short term borrowings	$759,908	$ 207,638
Weighted average interest rates:		
Bank Loans	6.95%	8.08%
Commercial paper	6.87%	6.30%
Weighted average interest rates during the year:		
Bank Loans	6.98%	5.76%
Commercial paper	6.53%	5.40%
Weighted average total outstanding during the year	$318,822	$ 163,762

At December 31, 2000, Indiana Gas is not in compliance with the total indebtedness to capitalization ratio contained in its back up credit facility for its commercial paper program. The non-compliance resulted from the indebtedness incurred to purchase its ownership interest in the Ohio operations. A waiver has been obtained from the banks on the Indiana Gas facility to waive the non-compliance through and including March 31, 2001. Subject to regulatory approval, Vectren will provide an equity investment in Indiana Gas to bring Indiana Gas back into compliance. No amount is outstanding under the back up credit facility.

9. Long-Term Debt and Other Obligations

First mortgage bonds, notes payable and partnership obligations outstanding and classified as long-term are as follows:

In thousands	At December 31, 2000	1999
Southern Indiana Gas and Electric Company		
First Mortgage Bonds due:		
2014, 4.60% Pollution Control Series A	$ 22,500	$ 22,500
Adjustable Rate Pollution Control:		
2015, Series A, presently 4.55%	9,975	9,975
2016, 8.875%	13,000	13,000
2020, 4.40% Pollution Control Series B	4,640	4,640
Adjustable Rate Environmental Improvement:		
2023, Series B, presently 6%	22,800	22,800
2023, 7.60%	45,000	45,000
2025, 7.625%	20,000	20,000
2029, 6.72%	80,000	80,000
2030, 4.40% Pollution Control Series B	22,000	22,000
Total first mortgage bonds	$ 239,915	$ 239,915

Notes Payable:		
Tax Exempt, due 2003, 6.25%	$ 1,000	$ 1,000
Indiana Gas Company		
Notes Payable due:		
2003, Series F, 5.75%	$ 15,000	$ 15,000
2004, Series F, 6.36%	15,000	15,000
2007, Series E, 6.54%	6,500	6,500
2013, Series E, 6.69%	5,000	5,000
2015, Series E, 7.15%	5,000	5,000
2015, Insured Quarterly Notes, 7.15%	20,000	-
2015, Series E, 6.69%	5,000	5,000
2015, Series E, 6.69%	10,000	10,000
2021, Private Placement, 9.375%	25,000	25,000
2021, Series A, 9.125%	7,000	7,000
2025, Series E, 6.31%	5,000	5,000
2025, Series E, 6.53%	10,000	10,000
2027, Series E, 6.42%	5,000	5,000
2027, Series E, 6.68%	3,500	3,500
2027, Series F, 6.34%	20,000	20,000
2028, Series F, 6.75%	14,109	14,849
2028, Series F, 6.36%	10,000	10,000
2028, Series F, 6.55%	20,000	20,000
2029, Series G, 7.08%	30,000	30,000
2030, Insured Quarterly Notes, 7.45%	50,000	-
Total notes payable	$ 281,109	$ 211,849
Non-Regulated		
Notes Payable:		
2005, Senior note, 7.67%	$ 38,000	$ -
2007, Senior note, 7.83%	17,500	-
2010, Senior note, 7.98%	22,500	-
Insurance Company, due 2012, 7.43%	35,000	35,000
Other	249	2,371
Total notes payable and other	$ 113,249	$ 37,371
Total long-term debt outstanding	$ 635,273	$ 490,135
Less: Maturities and sinking fund requirements	(249)	(776)
Unamortized debt premium and discount, net	(3,070)	(2,633)
Total long-term debt and other obligations, net of current maturities	$ 631,954	$ 486,726

Consolidated maturities and sinking fund requirements on long-term debt subject to mandatory redemption during the five years following 2000 (in millions) are $0.3 in 2001, $16.0 in 2003, $15.0 in 2004, and $38.0 in 2005.

In addition to the obligations presented in the table above, SIGECO has $53.7 million of adjustable rate pollution control series first mortgage bonds which could, at the election of the bondholder, be tendered to SIGECO annually in March. If SIGECO's agent is unable to remarket any bonds tendered at that time, SIGECO would be required to obtain additional funds for payment to bondholders.

For financial statement presentation purposes those bonds subject to tender in 2001 are shown as current liabilities. The two series of bonds will be re-set for a five-year period effective March 1, 2001.

Provisions under which certain of Indiana Gas' Series E Notes were issued entitle the holders of $25.0 million of these notes to put the debt back to Indiana Gas at face value at certain specified dates before maturity. Long-term debt subject to the put provisions during the five years following 2000 (in millions) is $6.5 in 2002, $3.5 in 2004 and $10.0 in 2005.

The annual sinking fund requirement of SIGECO's first mortgage bonds is 1 percent of the greatest amount of bonds outstanding under the Mortgage Indenture. This requirement may be satisfied by certification to the Trustee of unfunded property additions in the prescribed amount as provided in the Mortgage Indenture. SIGECO intends to meet the 2001 sinking fund requirement by this means and, accordingly, the sinking fund requirement for 2001 is excluded from current liabilities on the Consolidated Balance Sheets. At December 31, 2000, $220.9 million of SIGECO's utility plant remained unfunded under SIGECO's Mortgage Indenture.

The above debt agreements contain certain financial covenants and other restrictions with which Vectren must comply. Except as described in Note 8, Vectren was in compliance with all remaining financial covenants and restrictions.

On December 21, 2000, Vectren Capital Corporation, a wholly owned subsidiary that provides financing for Vectren's non-regulated subsidiaries' operations and investments, issued $78 million of private placement senior notes to three institutional investors. The issues and their terms are $38.0 million, due December 21, 2005, at 7.67 percent; $17.5 million, due December 21, 2007, at 7.83 percent; and $22.5 million, due December 21, 2010, at 7.98 percent. The net proceeds were used to repay outstanding short-term borrowings.

On October 5, 1999, Indiana Gas issued $30 million in principal amount of Series G Medium-term Notes bearing interest at the per annum rate of 7.08 percent with a maturity date of October 5, 2029. In December 2000, Indiana Gas filed a prospectus with the Securities and Exchange Commission with respect to the issuance of $70 million in debt securities. On December 28, 2000, $20 million of 15-Year Insured Quarterly (IQ) Notes bearing interest at a rate of 7.15 percent per year and $50 million of 30-Year IQ Notes bearing interest at a rate of 7.45 percent per year were issued. The 15-Year IQ Notes will mature on December 15, 2015, and the 30-Year IQ Notes will mature on December 16, 2030, unless, in each case, redeemed prior to that date. Indiana Gas will have the option to redeem the 15-Year IQ Notes, in whole or in part, from time to time on or after December 15, 2004. Indiana Gas will have the option to redeem the 30-Year IQ Notes in whole or in part, from time to time on or after December 15, 2005. The net proceeds of the debt issuance were used to repay outstanding commercial paper utilized for general corporate purposes.

10. Fair Value of Financial Instruments

The carrying values and estimated fair values of Vectren's financial instruments were as follows:

	At December 31,			
In thousands	2000		1999	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
Short-term borrowings	$759,908	$ 759, 908	$207,638	$207,638
Partnership obligations (includes amounts due within one year	249	312	845	905
Redeemable preferred stock of subsidiary	7,500	7,737	7,500	7,538
Long term debt (includes amounts due within one year)	685,903	758,478	541,202	544,928

Certain methods and assumptions must be used to estimate the fair value of financial instruments. Because of the short maturity of notes payable, the carrying amounts approximate fair values for these financial instruments. The fair value of Vectren's long-term debt was estimated based on the quoted market prices for the same or similar issues or on the current rates offered to Vectren for debt of the same remaining maturities. The fair value of partnership obligations was estimated based on current quoted market rate of comparable debt. The fair value of redeemable preferred stock of SIGECO was based on the current quoted market rate of long-term debt with similar characteristics.

Under current regulatory treatment, call premiums on reacquisition of long-term debt are generally recovered in customer rates over the life of the refunding issue or over a 15-year period (see Note 5M). Accordingly, any reacquisition would not be expected to have a material effect on Vectren's financial position or results of operations.

The market price used to value these transactions reflects management's best estimate of market prices considering various factors, including published prices for certain delivery locations, time value and volatility factors underlying the commitments.

11. Common Stock

On March 31, 2000, the merger of Indiana Energy and SIGCORP with and into Vectren was consummated with a tax-free exchange of shares and has been accounted for as a pooling of interests. The common shareholders of SIGCORP received 1.333 shares of Vectren common stock for each SIGCORP common share and the common shareholders of Indiana Energy received one share of Vectren common stock for each Indiana Energy common share, resulting in the issuance of 61.3 million shares of Vectren common stock.

The Vectren board of directors has adopted a Shareholder Rights Agreement. Under the Shareholder Rights Agreement, the Vectren board of directors has declared a dividend distribution of one right for each outstanding Vectren common share. A right will attach to each Vectren common share Vectren issues. Each right entitles the holder to purchase from Vectren one share at a price of $65.00 per share (subject to adjustment to prevent dilution). Initially, the rights will not be exercisable. The rights only become exercisable 10 days following a public announcement that a person or group of affiliated or associated persons (Vectren Acquiring Person) has acquired beneficial ownership of 15 percent or more of the outstanding Vectren common shares (or a 10 percent acquirer who is determined by the Vectren board of directors to be an adverse person), or 10 days following the announcement of an intention to make a tender offer or exchange offer the consummation of which would result in any person or group becoming a Vectren Acquiring Person. The Vectren Shareholder Rights Agreement expires October 21, 2009.

Conversion of Options

Certain SIGCORP and SIGECO employees held options to purchase SIGCORP common shares granted under the 1994 SIGECO Stock Option Plan and other employee compensation benefits arrangements. When the merger was consummated, each unexpired and unexercised option to purchase SIGCORP common shares was automatically converted into an option to purchase the number of Vectren common shares that could have been purchased under the original option multiplied by 1.333. The exercise price per Vectren common share under the new option is equal to the original per share price divided by 1.333. The new Vectren options will otherwise be subject to the same terms and conditions as the original SIGCORP options. The expiration dates for options outstanding as of December 31, 2000, ranged from July 13, 2004 to July 19, 2009. This stock option activity for the past three years, converted to Vectren common shares, was as follows:

<PAGE> 39

<TABLE>
<CAPTION>

	2000		1999		1998	
	Exercise Shares	Wtd. Avg. Price	Exercise Shares	Wtd. Avg. Price	Exercise Shares	Wtd. Avg. Price
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Outstanding at January 1	931,004	$ 18.33	671,389	$ 17.46	610,742	$ 16.19
Granted	-	-	272,783	$ 20.26	99,973	$ 24.05
Cancelled	(30,955)	$ 19.04	-			-
Exercised	(40,608)	$ 15.92	(13,168)	$ 14.22	(39,326)	$ 14.49
Outstanding at December 31	859,441	$ 18.41	931,004	$ 18.33	671,389	$ 17.46
Exercisable at December 31	781,415		658,221		508,892	
Reserved for future grants at end of year	-		-		272,783	
Weighted average price of options exercisable	$18.41		$17.53		$15.88	

</TABLE>

<TABLE>
<CAPTION>

Options Outstanding				At December 31, 2000 Options Exercisable	
Range of Exercise Prices	Number of Options Outstanding	Weighted Average Remaining Contractual Life	Weighted Average Exercise Price	Number of Options Exercisable	Weighted Average Exercise Price
<S> <C>	<C>	<C>	<C>	<C>	<C>
$12.03-$14.43	229,230	3.4	$13.82	229,230	$13.82
14.44-16.84	50,779	4.0	15.32	50,779	15.32
16.85-19.24	52,124	5.2	17.44	52,124	17.44
19.25-21.65	431,908	7.8	20.09	353,882	20.05
24.05	95,400	7.3	24.05	95,400	24.05
$12.03-$24.05	859,441	6.2	$18.41	781,415	$18.23

</TABLE>

Vectren accounts for stock compensation in accordance with APB 25, "Accounting for Stock Issued to Employees." Under APB 25, no compensation cost has been recognized for stock options. Had compensation cost for stock options been determined consistent with SFAS No. 123 "Accounting for Stock-based Compensation," net income would have been reduced to the following pro forma amounts:

At December 31,

In thousands, except per share amounts	2000	1999	1998
Net Income:			
As reported	$ 72,040	$ 90,748	$ 86,600
Pro forma	71,583	90,077	86,085
Basic Earnings Per Share:			
As reported	$ 1.18	$ 1.48	$ 1.41
Pro forma	1.17	1.47	1.40
Diluted Earnings Per Share:			
As reported	$ 1.17	$ 1.48	$ 1.40
Pro forma	1.17	1.47	1.39

The fair value of each option granted used to determine pro forma net income is estimated as of the date of grant using the Black-Scholes option pricing model with the following weighted average assumptions used for grants in the years ended December 31, 1999 and 1998: risk-free interest rate of 6.46 percent and 4.44 percent, respectively; expected option term of five years; expected volatilities of 34.00 percent and 33.16 percent, respectively; and dividend rates of 4.46 percent and 3.77 percent, respectively. The weighted average fair value of options granted in 1999 and 1998 were $5.05 and $5.99, respectively. No options were granted in 2000.

<PAGE> 40

Conversion of Restricted Stock

Indiana Energy had an Executive Restricted Stock Plan for the principal officers of the company and participating subsidiary companies. Indiana Energy also had a Directors' Restricted Stock Plan through which non-employee directors receive one-third of their combined compensation (exclusive of attendance fees) as directors of Indiana Energy, Indiana Gas or IEI Investments, Inc. in shares of Indiana Energy's common stock subject to certain restrictions on transferability.

Upon consummation of the merger, the restrictions on each outstanding share of restricted stock of Indiana Energy lapsed and all shares of Indiana Energy that were issued as restricted stock were treated as unrestricted shares of Indiana Energy in the merger exchange. During 2000, Vectren adopted these plans and 194,884 restricted shares were issued to executives and non-employee directors. Shares of restricted stock issued in 1999 and 1998 by Indiana Energy were 15,238 and 14,303, respectively.

The cost of these performance based awards, determined to be the fair market value at the date of grant, is charged to compensation expense as earned over the performance periods. The weighted average fair value of these stock based instruments, together with recognized compensation expense, was $2.3 million and $19.90 in 2000; $0.8 million and $23.20 in 1999; and $0.7 million and $20.26 in 1998. Substantially all of the year 2000 expense is for the lifting of restrictions triggered by the merger transaction.

Common stock dividends of Vectren may be reinvested under a Dividend Reinvestment and Stock Purchase Plan. Common shares purchased in connection with the plan are currently being acquired through the open market.

At December 31, 2000 and 1999, respectively, shares of common stock reserved for issuance were as follows:

	At December 31,	
	2000	1999
Dividend Reinvestment and Stock Purchase Plan	1,018,435	417,836
Executive Restricted Stock Plan	222,726	346,319
Directors' Restricted Stock Plan	50,116	54,994

Retirement Savings Plan	853,423	964,208
Total	2,144,700	1,783,357

12. Earnings Per Share

Basic earnings per share is computed by dividing net income available to common shareholders by the weighted-average number of common shares outstanding for the period. Diluted earnings per share assumes the conversion of stock options into common shares using the treasury stock method to the extent the effect would be dilutive.

The following table illustrates the basic and dilutive earnings per share calculations.

<TABLE>
<CAPTION>

Year Ended December 31,

In thousands, except per share amounts	2000			1999			1998		
	Income	Shares	Per Share Amount	Income	Shares	Per Share Amount	Income	Shares	Per Share Amount
<S>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>	<C>
Basic EPS	$72,040	61,297	$1.18	$90,748	61,306	$1.48	$86,600	61,578	$1.41
Effect of dilutive stock options		83			124			178	
Diluted EPS	$72,040	61,380	$1.17	$90,748	61,430	$1.48	$86,600	61,756	$1.40

</TABLE>

Options to purchase 526,469 common shares for the year ended December 31, 2000 and 99,973 common shares for the years ended December 31, 1999 and 1998 were not included in the computation of dilutive earnings per share because the options' exercise prices were greater than the average market price of the common shares during the period. Exercise prices for options excluded from the computation ranged from $19.83 to $24.05 in 2000 and equaled $24.05 in 1999 and 1998.

Subsequent to December 31, 2000, Vectren issued about 6.3 million common shares in a public offering (see Note 22).

13. Retirement Plans and Other Postretirement Benefits

Prior to July 1, 2000, SIGCORP and Indiana Energy had separate retirement and other postretirement benefit plans. The activities in these plans are described below by company. Effective July 1, 2000, the SIGECO and Indiana Energy pension plans for employees not covered by a collective bargaining unit were merged. Also effective July 1, 2000, the SIGECO and Indiana Energy retirement savings plans for employees not covered by a collective bargaining unit were merged, as were their postretirement health care and life insurance plans.

Vectren has multiple defined benefit pension and other postretirement benefit plans which cover eligible full-time regular employees. All of the plans are non-contributory with the exception of the health care plan which contains cost-sharing provisions whereby employees retiring after January 1, 1996, are required to make contributions to the plan when increases in Indiana Energy's health care costs exceed the general rate of inflation, as measured by the Consumer Price Index (CPI). The nonpension plans include plans for health care and life insurance through a combination of self-insured and fully insured plans.

The IURC has authorized SIGECO and Indiana Gas to recover the costs related to postretirement benefits other than pensions under the accrual method of accounting consistent with Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other Than Pensions. Amounts accrued prior to that authorization were deferred as allowed by the IURC and amortized over a 60-month period.

The detailed disclosures of benefit components that follow are based on an actuarial valuation performed for the December 31, 2000 financial statements using a measurement date as of September 30, 2000. The disclosures required as of and for the years ended December 31, 1999 and 1998 have been restated based on actuarial valuations previously performed for SIGECO as of December 31 and Indiana Gas as of September 30, respectively. In management's opinion, disclosures from revised actuarial valuations would not differ materially from those presented below.

<PAGE> 42

Net periodic benefit cost consisted of the following components:

<TABLE>
<CAPTION>

	Year Ended December 31,					
	Pension Benefits			Other Benefits		
In thousands	2000	1999	1998	2000	1999	1998
<S>	<C>	<C>	<C>	<C>	<C>	<C>
Service cost	$ 4,282	$ 5,053	$ 4,056	$ 1,328	$ 1,502	$ 1,299
Interest cost	11,708	10,550	9,986	5,904	4,844	4,863
Expected return on plan assets	(15,815)	(13,826)	(12,742)	(921)	(751)	(577)
Amortization of prior service cost	157	361	256	-	-	-
Amortization of transitional obligation (asset)	(744)	(734)	(734)	3,738	3,266	3,267
Recognized actuarial gain	(1,040)	(10)	(47)	(1,475)	(889)	(1,204)
Settlement charge	2,123	-	-	-	-	-
Special termination benefit charge	553	-	-	-	-	-
Net periodic benefit cost	$ 1,224	$ 1,394	$ 775	$ 8,574	$ 7,972	$ 7,648

======== ======== ======== ======== ========
========
</TABLE>

A reconciliation of the plan's benefit obligations, fair value of plan assets, funded status and amounts recognized in the Consolidated Balance Sheets follows:

<TABLE>
<CAPTION>

	At December 31,			
Benefit obligation	Pension Benefits		Other Benefits	
In thousands	2000	1999	2000	1999
<S>	<C>	<C>	<C>	<C>
Benefit obligation at beginning of year	$ 151,505	$ 156,840	$ 68,278	$ 73,598
Service cost - benefits earned during the year	4,282	5,053	1,328	1,502
Interest cost on projected benefit obligation	11,708	10,550	5,904	4,844
Plan amendments	2,418	(3,278)	(711)	-
Acquisitions	700	-	-	-
Settlements	2,123	-	-	-
Benefits paid	(10,382)	(8,001)	(5,396)	(3,605)
Actuarial (gain) loss	4,614	(9,659)	7,975	(8,061)
Benefit obligation at end of year	$ 166,968	$ 151,505	$ 77,378	$ 68,278

</TABLE>

<TABLE>
<CAPTION>

Fair value of Plan Assets	Pension Benefits		Other Benefits	
In thousands	2000	1999	2000	1999
<S>	<C>	<C>	<C>	<C>
Plan assets at fair value at beginning of year	$ 187,261	$ 180,965	$ 11,710	$ 9,511
Actual return on plan assets	16,959	14,179	595	1,434
Employer contributions	-	118	4,314	4,369
Benefits paid	(10,382)	(8,001)	(5,396)	(3,604)
Fair value of plan assets at end of year	$ 193,838	$ 187,261	$ 11,223	$ 11,710

</TABLE>

<TABLE>
<CAPTION>

Funded Status	Pension Benefits		Other Benefits	
In thousands	2000	1999	2000	1999
<S>	<C>	<C>	<C>	<C>
Funded status	$ 26,870	$ 35,756	$ (66,155)	$ (56,568)
Unrecognized transitional obligation (asset)	(1,491)	(2,279)	39,969	44,418
Unrecognized service cost	5,357	3,639	-	-
Unrecognized net (gain) loss and other	(36,968)	(44,733)	(19,697)	(28,792)
Net amount recognized	$ (6,232)	$ (7,617)	$ (45,883)	$ (40,942)

</TABLE>

<PAGE> 43

The aggregate benefit obligation and aggregate fair value of the plan assets for pension plans with benefit obligations in excess of plan assets were $10.5 million and $7.9 million, respectively, as of December 31, 2000, and $5.5 million and $4.5 million, respectively, as of December 31, 1999.

Weighted-average assumptions used in the accounting for these plans were as follows:

	Year Ended December 31,			
	Pension Benefits		Other Benefits	
	2000	1999	2000	1999
Discount rate	7.75%	7.50%	7.75%	7.50%
Expected return on plan assets	8.50%	8.50%	N/A	N/A
Rate of compensation increase	5.00%	5.00%	N/A	N/A
CPI rate	N/A	N/A	7.00%	6.50%

As of December 31, 2000, the health care cost trend is 7 percent declining to 5 percent in 2004 and remaining level thereafter. The accrued health care cost trend rate for 2001 is 7 percent. The estimated cost of these future benefits could be significantly affected by future changes in health care costs, work force demographics, interest rates or plan changes.

A 1 percent change in the assumed health care cost trend for Vectren's postretirement health care plan would have the following effects:

In thousands	1% Increase	1% Decrease
Effect on the aggregate of the service and interest cost components	$ 483	$ (394)
Effect on the postretirement benefit obligation	5,107	(4,263)

Vectren has adopted Voluntary Employee Beneficiary Association (VEBA) Trust Agreements for the funding of postretirement health benefits for retirees and their eligible dependents and beneficiaries. Annual funding is discretionary and is based on the projected cost over time of benefits to be provided to cover persons consistent with acceptable actuarial methods. To the extent these postretirement benefits are funded, the benefits will not be shown as a liability on Vectren's financial statements.

Vectren also has defined contribution retirement savings plans that are qualified under sections 401(a) and 401(k) of the Internal Revenue Code. During 2000, 1999, and 1998, Vectren made contributions to these plans of $1.6 million, $1.9 million and $2.3 million, respectively.

14. Leveraged Leases

Southern Indiana Properties, Inc. (SIPI), a wholly owned subsidiary, is a lessor in several leveraged lease agreements under which real estate or equipment is leased to third parties. The economic lives and lease terms vary with the leases. The total equipment and facilities cost was approximately $409.7 million at December 31, 2000 and 1999. The cost of the equipment and facilities was partially financed by nonrecourse debt provided by lenders, who have been granted an assignment of rentals due under the leases and a security interest in the leased property, which they accepted as their sole remedy in the event of default by the lessee. Such debt amounted to approximately $380.0 million and $373.5 million at December 31, 2000 and 1999, respectively. SIPI's net investment in leveraged leases at December 31, 2000 and 1999, respectively, was as follows:

<PAGE> 44

	At December 31,	
In thousands	2000	1999
Minimum lease payments receivable	$165,210	$161,551
Estimated residual value	29,073	29,073
Less: unearned income	101,138	104,887
Investment in lease financing receivables and loan	93,145	85,737
Less: deferred taxes arising from leveraged leases	38,302	30,700
Net investment in leveraged leases	$ 54,843	$ 55,037

15. Commitments and Contingencies

Future minimum lease payments required under operating leases that have initial or remaining noncancellable lease terms in excess of one year as of December 31, 2000 are as follows:

In millions	
2001	$4.1
2002	3.9
2003	3.4
2004	3.1
2005	2.4
Thereafter	6.7
Total	$23.6

Total lease expense, in millions, was $3.4 in 2000, $2.7 in 1999, and $2.2 in 1998.

As part of a restructuring plan initiated by Indiana Energy in 1997, a charge was recorded to reflect the corporate office facility at fair value. The company then entered into a sale leaseback transaction with a third party which was completed in 1998, resulting in proceeds of $9.2 million and an operating lease with a 10 year term with rental payments of $1.5 million per year. The annual payments are included in the future minimum lease payments above.

Vectren is party to various legal proceedings arising in the normal course of business. In the opinion of management, with the exception of litigation matters related to the Clean Air Act and ProLiance, there are no legal proceedings pending against Vectren that are likely to have a material adverse effect on the financial position or results of operations. Refer to Note 6 for litigation matters related to ProLiance and Note 17 for litigation matters concerning the Clean Air Act.

A wholly owned subsidiary of Vectren has an 8.3 percent ownership interest in Pace Carbon Synfuels Investors, LP (Pace Carbon), a Delaware limited partnership formed to develop, own and operate four projects to produce and sell coal-based synthetic fuel. In addition to its initial investment of $7.5 million, Vectren has a continuing obligation to invest approximately $40 million in Pace Carbon, with any such additional investments to be funded to the extent it generates federal tax credits that are earned from the production and sale of briquettes by the projects. As of December 31, 2000 and 1999, Vectren's net investment in Pace Carbon, which is accounted for using the equity method of accounting, totaled approximately $6.7 million and $6.3 million, respectively, and is included in investments in partnerships and other corporations in the Consolidated Balance Sheets.

A wholly owned subsidiary of Vectren has an approximate 40 percent ownership interest in Haddington Energy Partners, LP (Haddington) and has committed to invest $10 million of which $9.8 million has been funded as of December 31, 2000. Haddington, a Delaware limited partnership, raised $77 million to invest in energy projects. On July 28, 2000, Vectren made a commitment to fund an additional $20 million in Haddington Energy Partners II, LP, which is expected to raise an additional $150 million. This second fund will provide additional

capital for the initial fund portfolio companies as well as make investments in new areas, such as distributed generation, power backup and quality devices, and emerging technologies such as fuel cells, microturbines and photovoltaics. Through December 31, 2000, Vectren had invested approximately $2.1 million of this $20 million commitment to Haddington II. Upon complete funding, Vectren will have an approximate 40 percent ownership interest in Haddington II. The remainder of this investment is expected to be made through 2002. As of December 31, 2000 and 1999, Vectren's net investment in the Haddington Ventures, both of which are accounted for using the equity method of accounting, totaled approximately $13.0 million and $2.6 million, respectively, and is included in investments in partnerships and other corporations in the Consolidated Balance Sheets.

Vectren has entered into a contract to purchase and construct an 80-megawatt combustion gas turbine generator which will be owned by SIGECO. The total capital cost of the project is estimated to be $33 million during the 2001-2002 construction period.

Vectren has invested to date approximately $33 million with Utilicom Networks. On December 22, 2000, Vectren announced its commitment to invest up to $100 million with Utilicom Networks, pending completion of all funding (see Note 7).

16. Income Taxes

The components of consolidated income tax expense were as follows:

	Year Ended December 31,		
In thousands	2000	1999	1998
Current:			
Federal	$ 19,976	$ 33,028	$ 34,449
State	2,908	5,379	5,450
Total current taxes	22,884	38,407	39,899
Deferred:			
Federal	11,591	8,238	4,625
State	2,117	1,423	181
Total deferred taxes	13,708	9,661	4,806
Amortization of investment tax credits	(2,360)	(2,360)	(2,377)
Consolidated income tax expense	$ 34,232	$ 45,708	$ 42,328

A reconciliation of the statutory rate to the effective income tax rate is as follows:

	Year Ended December 31,		
	2000	1999	1998
Statutory federal and state rate	37.9%	37.9%	37.9%
Nondeductible merger costs	4.0	-	-
Amortization of investment tax credit	(2.2)	(1.7)	(1.8)
Other tax credits	(7.1)	(3.2)	(2.9)
All other, net	(0.2)	0.3	(0.5)
Effective tax rate	32.4%	33.3%	32.7%

Indiana Gas, SIGECO and the Ohio operations use a normalized method of accounting for deferred income taxes as required by the IURC and PUCO. Deferred income taxes reflect the net tax effect of temporary differences between the carrying amounts of assets and liabilities for financial reporting purposes and the amounts used for income tax purposes. Deferred income taxes are provided for taxes not currently payable due to, among other things, the use of various accelerated depreciation methods, shorter depreciable lives and the deduction of certain construction costs for tax purposes. Taxes deferred in prior years are being charged and income credited as these tax effects reverse over the lives of the related assets.

Significant components of Vectren's net deferred tax liability as of December 31, 2000 and 1999 are as follows:

<TABLE>
<CAPTION>

	At December 31,	
In thousands	2000	1999
<S>	<C>	<C>
Deferred tax liabilities:		
Depreciation and cost recovery timing differences	$ 185,113	$ 185,799
Deferred fuel costs, net	33,446	2,427
Leveraged leases	38,302	30,700
Regulatory assets recoverable through future rates	28,726	30,519
Deferred tax assets:		
LIFO inventory	(7,900)	-
Regulatory liabilities to be settled through future rates	(32,293)	(29,211)
Tax credit carryforwards	(17,079)	-
Other - net	(15,483)	(4,714)
Net deferred tax liability	$ 212,832	$ 215,520

</TABLE>

At December 31, 2000, the components of the net deferred tax liability are reflected in the Consolidated Balance Sheets as a long-term liability of approximately $229.9 million and as a reduction to accrued taxes in current liabilities of approximately $17.1 million.

Investment tax credits have been deferred and are being credited to income over the life of the property, giving rise to the credit. The Tax Reform Act of 1986 eliminated investment tax credits for property acquired after January 1, 1986.

At December 31, 2000, Vectren has Alternative Minimum Tax credit carryforward of approximately $13 million, which has no expiration date. Through certain of its non-regulated subsidiaries and investments, Vectren also realizes Federal income tax credits associated with affordable housing projects, historical rehabilitation projects and projects for the production and sale of synthetic fuels. At December 31, 2000, Vectren has tax credit carryforwards of approximately $4.1 million which expire in 20 years.

17. Environmental Matters

Clean Air Act

NOx SIP Call Matter. In October 1997, the United States Environmental Protection Agency (USEPA) proposed a rulemaking that could require uniform nitrogen oxide (NOx) emissions reductions of 85 percent by utilities and other large sources in a 22-state region spanning areas in the Northeast, Midwest, Great Lakes, Mid-Atlantic and South. This rule is referred to as the "NOx SIP call". The USEPA provided each state a proposed budget of allowed NOx emissions, a key ingredient of ozone, which requires a significant reduction of such emissions. Under that budget, utilities may be required to reduce NOx emissions to a rate of 0.15 lb/mmBtu below levels already imposed by Phase I and Phase II of the Clean Air Act Amendments of 1990 (the Act). Midwestern states (the alliance) have been working together to determine the most appropriate compliance strategy as an alternative to the USEPA proposal. The alliance submitted its proposal, which calls for a smaller, phased in reduction of NOx levels, to the USEPA and the Indiana Department of Environmental Management (IDEM) in June 1998.

In July 1998, Indiana submitted its proposed plan to the USEPA in response to the USEPA's proposed new NOx rule and the emissions budget proposed for Indiana. The Indiana plan, which calls for a reduction of NOx emissions to a rate of 0.25 lb/mmBtu by 2003, is less stringent than the USEPA proposal but more stringent than the alliance proposal.

On October 27, 1998, USEPA issued a final rule "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," (63 Fed. Reg. 57355). The final rule requires that 23 states and jurisdictions must file

revised state implementation plans (SIPs) with the USEPA by no later than September 30, 1999, which was essentially unchanged from its October 1997, proposed rule. The USEPA has encouraged states to target utility coal-fired boilers for the majority of the reductions required, especially NOx emissions. Northeastern states have claimed that ozone transport from midwestern states (including Indiana) is the primary reason for their ozone concentration problems. Although this premise is challenged by others based on various air quality modeling studies, including studies commissioned by the USEPA, the USEPA intends to incorporate a regional control strategy to reduce ozone transport. The USEPA's final ruling is being litigated in the federal courts by approximately ten midwestern states, including Indiana.

During the second quarter of 1999, the USEPA lost two federal court challenges to key air-pollution control requirements. In the first ruling by the U.S. Circuit Court of Appeals for the District of Columbia on May 14, 1999, the Court struck down the USEPA's attempt to tighten the one-hour ozone standard to an eight-hour standard and the attempt to tighten the standard for particulate emissions, finding the actions unconstitutional. In the second ruling by the same Court on May 25, 1999, the Court placed an indefinite stay on the USEPA's attempts to reduce the allowed NOx emissions rate from levels required by the Clean Air Act Amendments of 1990. The USEPA appealed both court rulings. On October 29, 1999, the Court refused to reconsider its May 14, 1999 ruling.

On March 3, 2000, the D.C. Circuit of Appeals upheld the USEPA's October 27, 1998 final rule requiring 23 states and the District of Columbia to file revised SIPs with the USEPA by no later than September 30, 1999. Numerous petitioners, including several states, have filed petitions for rehearing with the U.S. Court of Appeals for the District of Columbia in Michigan v. the USEPA. On June 22, 2000, the D.C. Circuit Court of Appeals denied petition for rehearing en banc and lifted its May 25, 1999 stay. Following this decision, on August 30, 2000, the D.C. Circuit Court of Appeals issued an extension of the SIP Call implementation deadline, previously May 1, 2003, to May 31, 2004. On September 20, 2000, petitioners filed a Petition of Writ of Certiori with the United States Supreme Court requesting review of the D.C. Circuit Court's March 3, 2000 Order. The Court has not yet ruled on the Petition for Certiorari. The EPA granted Section 126 Petitions filed by northeastern states that require named sources in the eastern half of Indiana to achieve NOx reduction by May 1, 2003. No SIGECO facilities are named in the Section 126 Petitions filed by northeastern states, therefore the compliance date remains May 31, 2004.

The proposed NOx emissions budget for Indiana stipulated in the USEPA's final ruling requires a 36 percent reduction in total NOx emissions from Indiana. The ruling, pending finalization of state rule making, could require SIGECO to lower its system-wide emissions by approximately 70 percent. Depending on the level of system-wide emissions reductions ultimately required, and the control technology utilized to achieve the reductions, the estimated construction costs of the control equipment could reach $160 million, which are expected to be expended during the 2001-2004 period, and related additional operation and maintenance expenses could be an estimated $8 million to $10 million, annually. No accrual has been recorded by the company related to the NOx SIP Call matter. The rules governing NOx emissions, once finalized, are to be applied prospectively.

Mercury Emissions. On December 14, 2000, the USEPA released a statement announcing that reductions of mercury emissions from coal-fired plants will be required in the near future. The USEPA will propose regulations by December 2003 and issue final rules by December 2004.

Under the Act, the USEPA is required to study emissions from power plants in order to determine if additional regulations are necessary to protect public health. The USEPA reported its study to Congress in February 1998. That study concluded that of all toxic pollution examined, mercury posed the greatest concern to public health. An earlier USEPA study concluded that the largest source of human-made mercury pollution in the United States was coal-fired power plants.

After completion of the study, the Act required the USEPA to determine whether to proceed with the development of regulations. The USEPA announced that it had affirmatively decided that mercury air emissions from power plants should be regulated. Because rules governing mercury emissions are under development, the

determination of exposure, if any, is impossible as there are no standards or rules by which compliance (or lack thereof) can be measured. Accordingly, no accrual has been recorded by the company related to the mercury emissions matter.

Culley Generating Station Investigation Matter. The USEPA initiated an investigation under Section 114 of the Act of SIGECO's coal-fired electric generating units in commercial operation by 1977 to determine compliance with environmental permitting requirements related to repairs, maintenance, modifications and operations changes. The focus of the investigation was to determine whether new source performance standards should be applied to the modifications and whether the best available control technology was, or should have been, used. Numerous other electric utilities were, and are currently, being investigated by the USEPA under an industry-wide review for similar compliance. SIGECO responded to all of the USEPA's data requests during the investigation. In July 1999, SIGECO received a letter from the Office of

Enforcement and Compliance Assurance of the USEPA discussing the industry-wide investigation, vaguely referring to the investigation of SIGECO and inviting SIGECO to participate in a discussion of the issues. No specifics were noted; furthermore, the letter stated that the communication was not intended to serve as a notice of violation. Subsequent meetings were conducted in September and October with the USEPA and targeted utilities, including SIGECO, regarding potential remedies to the USEPA's general allegations.

On November 3, 1999, the USEPA filed a lawsuit against seven utilities, including SIGECO. The USEPA alleges that, beginning in 1992, SIGECO violated the Act by: (i) making modifications to its Culley Generating Station in Yankeetown, Indiana without obtaining required permits; (ii) making major modifications to the Culley Generating Station without installing the best available emission control technology; and (iii) failing to notify the USEPA of the modifications. In addition, the lawsuit alleges that the modifications to the Culley Generating Station required SIGECO to begin to comply with federal new source performance standards.

SIGECO believes it performed only maintenance, repair and replacement activities at the Culley Generating Station, as allowed under the Act. Because proper maintenance does not require permits, application of the best available emission control technology, notice to the USEPA, or compliance with new source performance standards, SIGECO believes that the lawsuit is without merit, and intends to vigorously defend the lawsuit.

The lawsuit seeks fines against SIGECO in the amount of $27,500 per day per violation. The lawsuit does not specify the number of days or violations the USEPA believes occurred. The lawsuit also seeks a court order requiring SIGECO to install the best available emissions technology at the Culley Generating Station. If the USEPA is successful in obtaining an order, SIGECO estimates that it would incur capital costs of approximately $40 million to $50 million complying with the order. In the event that SIGECO is required to install system-wide NOx emission control equipment, as a result of the NOx SIP call issue, the majority of the $40 million to $50 million for best available emissions technology at Culley Generating Station would be included in the $160 million expenditure previously discussed.

The USEPA has also issued an administrative notice of violation to SIGECO making the same allegations, but alleging that violations began in 1977.

While it is possible that SIGECO could be subjected to criminal penalties if the Culley Generating Station continues to operate without complying with the new source performance standards and the allegations are determined by a court to be valid, SIGECO believes such penalties are unlikely as the USEPA and the electric utility industry have a bonafide dispute over the proper interpretation of the Act. Accordingly, no accrual has been recorded by the company, and SIGECO anticipates at this time that the plant will continue to operate while the matter is being decided.

Information Request. On January 23, 2001, SIGECO received an information request from the USEPA under Section 114(a) of the Act for historical operational information on the Warrick and A.B. Brown generating stations. SIGECO plans to provide all information requested, and management believes that no significant issues will arise from this request.

Manufactured Gas Plants

In the past, Indiana Gas and others operated facilities for the manufacture of gas. Given the availability of natural gas transported by pipelines, these facilities have not been operated for many years. Under currently applicable environmental laws and regulations, Indiana Gas and the others may now be required to take remedial action if certain byproducts are found above the regulatory thresholds at these sites.

Indiana Gas has identified the existence, location and certain general characteristics of 26 gas manufacturing and storage sites for which it may have some remedial responsibility. Indiana Gas has completed a remedial investigation/feasibility study (RI/FS) at one of the sites under an agreed order between Indiana Gas and IDEM, and a Record of Decision was issued by IDEM in January 2000. Although Indiana Gas has not begun an RI/FS at additional sites, Indiana Gas has submitted several of the sites to IDEM's Voluntary Remediation Program (VRP) and is currently conducting some level of remedial activities including groundwater monitoring at certain sites where deemed appropriate and will continue remedial activities at the sites as appropriate and necessary.

In conjunction with data compiled by expert consultants, Indiana Gas has accrued the estimated costs for further investigation, remediation, groundwater monitoring and related costs for the sites. While the total costs that may be incurred in connection with addressing these sites cannot be determined at this time, Indiana Gas has accrued costs that it reasonably expects to incur totaling approximately $20.3 million.

The estimated accrued costs are limited to Indiana Gas' proportionate share of the remediation efforts. Indiana Gas has arrangements in place for 19 of the 26 sites with other potentially responsible parties, which serve to limit Indiana Gas' share of response costs at these 19 sites to between 20 and 50 percent.

With respect to insurance coverage, as of December 31, 2000, Indiana Gas has received and recorded settlements from all known insurance carriers in an aggregate amount approximating its $20.3 million accrual.

Environmental matters related to manufactured gas plants have had no material impact on earnings since costs recorded to date approximate PRP and insurance settlement recoveries. While Indiana Gas has recorded all costs which it presently expects to incur in connection with activities at these sites, it is possible that future events may require some level of additional remedial activities which are not presently foreseen.

18. Rate and Regulatory Matters

As a result of the ongoing appeal of a generic order issued by the IURC in August 1999 regarding guidelines for the recovery of purchased power costs, SIGECO entered into a settlement agreement with the Indiana Office of Utility consumer Counselor (OUCC) that provides certain terms with respect to the recoverability of such costs. The settlement, originally approved by the IURC on August 9, 2000, has been extended by agreement through March 2002. Under the settlement, SIGECO can recover the entire cost of purchased power up to an established benchmark, and during forced outages, SIGECO will bear a limited share of its purchased power costs regardless of the market costs at that time. Based on this agreement, SIGECO believes it has significantly limited its exposure to unrecoverable purchased power costs.

Commodity prices for natural gas purchases during the last six months of 2000 increased significantly, primarily due to the expectation of a colder winter, which led to increased demand and tighter supplies. Vectren's utility subsidiaries are typically allowed full recovery of such charges in purchased gas costs from their retail customers through commission-approved gas cost adjustment (GCA). On October 11, 2000, Indiana Gas filed for approval of its quarterly GCA. In early December, the IURC issued an interim order approving the request by Indiana Gas for a GCA factor for December 2000. On January 4, 2001, the IURC approved the January and February 2001 GCA as filed. The order also addressed the claim by the OUCC that a portion of the requested GCA be disallowed because Indiana Gas should have entered into additional commitments for this winter's gas supply in late 1999 and early 2000. In procuring gas supply for this winter, Indiana Gas followed the gas procurement practices that it had employed over the last several years. In response to the claim by the OUCC, the IURC found that there should be a $3.8 million disallowance related to gas procurement for the winter season. As a result, Indiana Gas recognized a pre-tax charge of $3.8 million in December 2000. Both Indiana Gas and the OUCC have appealed this ruling. The Citizens Action Coalition of Indiana, Inc., a not for profit consumer advocate, has also filed with the IURC a petition to intervene and a notice of appeal of the order.

19. Affiliate Transactions

ProLiance provides natural gas supply and related services to Indiana Gas. Indiana Gas' purchases from ProLiance for resale and for injections into storage for the years ended December 31, 2000 and 1999, totaled $401.4 million and $240.7 million, respectively. As of December 31, 2000 and 1999, Vectren's net investment in ProLiance, which is accounted for using the equity method of accounting, totaled approximately $27.8 million and $16.2 million, respectively, and is included in investments in partnerships and other corporations in the Consolidated Balance Sheets.

ProLiance has a standby letter of credit facility with a bank for letters up to $45.0 million. This facility is secured in part by a support agreement from Vectren. Letters of credit outstanding at December 31, 2000 totaled $22.0 million.

CIGMA, LLC (CIGMA), owned jointly and equally by a wholly owned subsidiary of Vectren and a third party, provides materials acquisition and related services that are used by Indiana Gas and others. Indiana Gas' purchases of these services during the years ended December 31, 2000 and 1999, totaled $17.2 million and $17.3 million, respectively. As of December 31, 2000 and 1999, Vectren's net investment in CIGMA, which is accounted for using the equity method of accounting, totaled approximately $4.2 million and is included in investments in partnerships and other corporations in the Consolidated Balance Sheets.

Reliant Services, LLC (Reliant), owned jointly and equally by a wholly owned subsidiary of Vectren and Cinergy Corp., provides utility locating, meter reading and construction services to Indiana Gas and others. Amounts paid by Indiana Gas to Reliant for such services totaled $3.7 million and $2.9 million for years ended December 31, 2000 and 1999, respectively. On December 13, 2000, Reliant purchased the common stock of Miller Pipeline Corporation from NiSource, Inc. for approximately $68.3 million. Vectren and Cinergy Corp. each contributed $16 million of equity, and the remaining $36.3 million was funded with 7-year intermediate bank loans. As of December 31, 2000 and 1999, Vectren's net investment in Reliant, which is accounted for using the equity method of accounting, totaled approximately $19.2 million and $3.6 million, respectively, and is included in investments in partnerships and other corporations in the Consolidated Balance Sheets.

Vectren is a two-thirds guarantor of certain surety bond and other obligations of Energy Systems Group, LLC, a two-thirds owned consolidated subsidiary. Vectren's share of the guarantee of such obligations totaled $50.6 million at December 31, 2000.

Amounts owed to unconsolidated affiliates totaled $102.5 million and $29.3 million at December 31, 2000 and 1999, respectively, and are included in accounts payable to affiliated companies on the Consolidated Balance Sheets. The $73.2 million increase at December 31, 2000 is due primarily to amounts owed to ProLiance resulting from the much higher gas prices and increased customer consumption. Amounts due from unconsolidated affiliates totaled $17.6 million and $7.6 million at December 31, 2000 and 1999, respectively, and are included in accounts receivable on the Consolidated Balance Sheets.

20. Segment Reporting

SFAS 131 "Disclosure about Segments of an Enterprise and Related Information" establishes standards for the reporting of information about operating segments in financial statements and disclosures about products, services and geographical areas. Operating segments are defined as components of an enterprise for which separate financial information is available and evaluated regularly by the chief operating decision makers in deciding how to allocate resources and in the assessment of performance.

There were three operating segments of Vectren during 2000: (1) Gas Utility Services, (2) Electric Utility Services, and (3) Non-regulated Operations. The Gas Utility Services segment includes regulated gas utilities which provide natural gas distribution and transportation services. The Electric Utility Services segment generates, transmits and distributes and sells electricity within primarily southwestern Indiana communities. The Non-regulated Operations segment is made up of various businesses providing energy-related products and services; telecommunication products and services; materials management, debt collection and meter reading services; underground utility asset location and construction services; structured finance and investment transactions including leveraged leases of real estate and equipment; venture capital projects; coal mining and sales; and other energy-related services. Revenues for each segment are principally attributable to customers in the United States.

The following tables provide information about business segments. Vectren makes decisions on finance and dividends at the corporate level; these topics are addressed on a consolidated basis. In addition, adjustments have been made to the segment information to arrive at information included in the consolidated results of operations and financial position. These adjustments include unallocated corporate assets, revenues and expenses and the elimination of intercompany transactions.

<TABLE>
<CAPTION>

	At and Year Ended December 31,		
In thousands	2000	1999	1998
<S>	<C>	<C>	<C>
Operating Revenues:			
Gas Utility Services	$ 818,753	$ 499,573	$ 487,260
Electric Utility Services	336,409	307,569	297,865
Non-regulated Operations	552,838	315,367	256,220
Intersegment Eliminations	(59,310)	(54,092)	(43,639)
Total operating revenues	$ 1,648,690	$ 1,068,417	$ 997,706
Interest Expense:			
Gas Utility Services	$ 27,969	$ 18,704	$ 17,601
Electric Utility Services	18,103	17,544	18,191
Non-regulated Operations	23,107	12,535	8,046
Intersegment Eliminations	(12,046)	(5,921)	(3,537)
Total interest expense	$ 57,133	$ 42,862	$ 40,301
Income Taxes:			
Gas Utility Services	$ 11,538	$ 18,830	$ 16,211
Electric Utility Services	23,386	24,331	22,881
Non-regulated Operations	(595)	2,575	3,148

Intersegment Eliminations	(97)	(28)	88
Total income taxes	$ 34,232	$ 45,708	$ 42,328
Net Income:			
Gas Utility Services	$ 15,589	$ 33,612	$ 30,931
Electric Utility Services	36,811	41,820	38,342
Non-regulated Operations	19,799	15,316	17,327
Intersegment Eliminations	(159)	-	-
Net income	$ 72,040	$ 90,748	$ 86,600
Depreciation and amortization:			
Gas Utility Services	$ 43,791	$ 38,623	$ 37,082
Electric Utility Services	38,639	40,829	38,077
Non-regulated Operations	23,231	7,546	6,399
Intersegment Eliminations	-	-	-
Total depreciation and amortization	$ 105,661	$ 86,998	$ 81,558
Capital expenditures:			
Gas Utility Services	$ 73,114	$ 72,773	$ 64,701
Electric Utility Services	37,549	51,080	47,114
Non-regulated Operations	53,603	8,306	23,254
Intersegment Eliminations	-	-	-
Total capital expenditures	$ 164,266	$ 132,159	$ 135,069
Identifiable assets:			
Gas Utility Services	$ 1,658,778	$ 882,948	$ 827,931
Electric Utility Services	799,104	751,159	740,746
Non-regulated Operations	749,237	505,564	326,048
Intersegment Eliminations	(297,932)	(159,204)	(95,885)
Total identifiable assets	$ 2,909,187	$ 1,980,467	$ 1,798,840

</TABLE>

21. Other Income

For the years ended December 31, 2000, 1999 and 1998, other - net consists of the following:

(in thousands)	2000	1999	1998
Leveraged lease investment income	$ 7,698	$ 4,152	$ 1,433
AFUDC	5,279	3,829	2,624
Interest income	9,397	5,849	5,668
Other income	7,205	1,499	3,660
Other expense	(4,930)	(2,275)	(1,847)
Total other - net	$ 24,649	$ 13,054	$ 11,538

22. Preferred Stock of Subsidiary

Cumulative Preferred Stock of SIGECO
The amount payable in the event of involuntary liquidation of each series of the $100 par value preferred stock is $100 per share, plus accrued dividends. This nonredeemable preferred stock is callable at the option of SIGECO as follows:

the 4.8% Series at $110 per share, plus accrued dividends; and the 4.75% Series at $101 per share, plus accrued dividends. As of December 31, 2000 and 1999, there were 85,895 shares of the 4.8% Series outstanding and 3,000 shares and 25,000 shares of the 4.75% Series outstanding, respectively.

Cumulative Redeemable Preferred Stock of SIGECO
The Series has a dividend rate of 6.50% and is redeemable at $100 per share on December 1, 2002. In the event of involuntary liquidation of this series of $100 par value preferred stock, the amount payable is $100 per share, plus accrued dividends. As of December 31, 2000 and 1999, there were 75,000 shares outstanding.

Cumulative Special Preferred Stock of SIGECO
The Cumulative Special Preferred Stock has a dividend rate of 8.5% and in the event of involuntary liquidation the amount payable is $100 per share, plus accrued dividends. This Series is callable at the option of SIGECO at a rate of 1,160 shares per year. As of December 31, 2000 and 1999, there were 5,757 shares and 6,917 shares outstanding, respectively.

23. Quarterly Financial Data (Unaudited) (1)

Summarized quarterly financial data (in thousands of dollars except per share amounts) for 2000 and 1999 are as follows:

<TABLE>
<CAPTION>

2000

In thousands, except per share amounts	Q1(2)	Q2	Q3	Q4	Total
Operating revenues	$ 359,444	$ 263,477	$ 317,854	$ 707,915	$1,648,690
Operating income	34,276	15,716	27,643	53,286	130,921
Net income	22,125	8,273	15,458	26,184	72,040
Basic earnings per average share of common stock	0.36	0.14	0.25	0.43	1.18
Diluted earnings per average share of common stock	0.36	0.13	0.25	0.43	1.17

</TABLE>

<TABLE>
<CAPTION>

1999

In thousands, except per share amounts	Q1	Q2	Q3	Q4	Total
Operating revenues	$ 321,033	$ 207,042	$ 231,160	$ 309,182	$1,068,417
Operating income	68,133	22,940	29,397		

				40,302	160,772
Net income	40,723	11,554	16,236	22,235	90,748
Basic earnings per average share of common stock	0.66	0.19	0.26	0.37	1.48
Diluted earnings per average share of common stock	0.66	0.19	0.26	0.37	1.48

</TABLE>

(1) Information in any one quarterly period is not indicative of annual results due to the seasonal variations common to the company's utility operations

(2) Includes merger and integration charges as described in Note 3.

24. Subsequent Event

On January 19, 2001, Vectren filed a registration statement with the Securities and Exchange Commission with respect to a public offering of 5.5 million shares of new common stock. On February 8, 2001, the registration became effective and agreement was reached to sell 5.5 million shares to a group of underwriters. On February 14, the shares were sold, at which time, the underwriters exercised their over-allotment option to sell an additional 825,000 shares for a total of about 6.3 million shares. The net proceeds of $129.4 million will be used principally to repay outstanding commercial paper utilized for recent acquisitions.

<PAGE> 54

MANAGEMENT'S RESPONSIBILITY FOR FINANCIAL STATEMENTS

The management of Vectren Corporation is responsible for the preparation of the consolidated financial statements and the related financial data contained in this report. The financial statements are prepared in conformity with accounting principles generally accepted in the United States and follow accounting policies and principles applicable to regulated public utilities.

The integrity and objectivity of the data in this report, including required estimates and judgments, are the responsibility of management. Management maintains a system of internal control and utilizes an internal auditing program to provide reasonable assurance of compliance with company policies and procedures and the safeguard of assets.

The board of directors pursues its responsibility for these financial statements through its audit committee, which meets periodically with management, the internal auditors and the independent auditors, to assure that each is carrying out its responsibilities. Both the internal auditors and the independent auditors meet with the audit committee of Vectren Corporation's board of directors, with and without management representatives present, to discuss the scope and results of their audits, their comments on the adequacy of internal accounting control and the quality of financial reporting.

/s/ Niel C. Ellerbrook
Niel C. Ellerbrook
Chairman and Chief Executive Officer
January 24, 2001.

<PAGE> 55

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Shareholders and Board of Directors of Vectren Corporation:

We have audited the accompanying consolidated balance sheets of Vectren Corporation (an Indiana corporation) and subsidiary companies as of December 31, 2000 and 1999, and the related consolidated statements of income, common shareholders' equity and cash flows for each of the three years in the period ended December 31, 2000. These financial statements are the responsibility of the company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Vectren Corporation and subsidiary companies as of December 31, 2000 and 1999, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States.

/s/ Arthur Andersen LLP
Arthur Andersen LLP

Indianapolis, Indiana,
January 24, 2001 (except with respect
to the matter discussed in Note 24, as to
which the date is February 14, 2001).

ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

(a)(1) Financial Statements
Financial statements filed as part of this Form 10-K are included under Item 8.

(a)(2) Financial Statement Schedules:

	PAGES IN FORM 10-K/A
Report of Independent Accountants	56
For the years ended December 31, 2000, 1999, and 1998:	
Schedule II -- Valuation and Qualifying Accounts	58

All other schedules are omitted as the required information is inapplicable or the information is presented in the Consolidated Financial Statements or related notes.

REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS

To the Shareholders and Board of Directors of Vectren Corporation.

We have audited in accordance with auditing standards generally accepted in the United States, the consolidated financial statements included in Vectren Corporation's annual report to shareholders included in this Form 10-K, and have issued our report thereon dated January 24, 2001 (except with respect to the matter discussed in Note 24, as to which the date is February 14, 2001). Our audit was made for the purpose of forming an opinion on those statements taken as a whole. The schedule listed in item 14(a)(2) is the responsibility of the company's management and are present for the purposes of complying with the Securities and Exchange Commission's rules and is not part of the basic financial statements. The schedule has been subjected to the auditing procedures applied in the audit of the basic financial statements, and in our opinion, fairly states in all material respects the financial data required to be set forth therein in relation to the basic financial statements taken as a whole.

/s/ Arthur Andersen LLP
Arthur Andersen LLP

Indianapolis, Indiana,
January 24, 2001.

<PAGE> 57

SCHEDULE II

<TABLE>
<CAPTION>

Vectren Corporation and Subsidiaries

VALUATION AND QUALIFYING ACCOUNTS AND RESERVES

Column A	Column B	Column C		Column D	Column E
		Additions			
Description	Balance Beginning Of Year	Charged To Expenses	Charged to Other Accounts	Deductions from Reserves, Net	Balance End of Year
		(in thousands)			
<S>	<C>	<C>	<C>	<C>	<C>
VALUATION AND QUALIFYING ACCOUNTS:					
Year 2000 - Accumulated provision for uncollectible accounts	$ 3,949	$ 7,671	$ 500	$6,404	$ 5,716
Year 1999 - Accumulated provision for uncollectible accounts	$ 3,953	$ 3,657	$ -	$3,661	$3,949
Year 1998 - Accumulated provision for uncollectible accounts	$ 2,480	$ 5,232	$ -	$3,759	$3,953
OTHER RESERVES:					
Year 2000 - Reserve for merger and integration charges	$ -	$ 20,700	$ -	$ 18,881	$1,819
Year 2000 - Reserve for injuries and damages	$ 1,547	$ 851	$ -	$ 574	$1,824
Year 1999 - Reserve for injuries and damages	$ 1,282	$ 661	$ -	$ 396	$1,547

Year 1998 - Reserve for injuries and damages	$ 1,047	$ 568	$ 261	$ 594	$1,282

</TABLE>

(a)(3). EXHIBITS
Exhibits for the company are listed in the Index to Exhibits beginning on page 62.

(b) REPORTS ON FORM 8-K

On October 31, 2000, Vectren Corporation (the Company) filed a Current Report on Form 8-K with respect to the completion of the approximate $465 million acquisition of the natural gas distribution assets from The Dayton Power and Light Company, a wholly owned subsidiary of DPL, Inc., and with respect to Reliant Services, LLC, jointly and equally owned by subsidiaries of the company and Cinergy Corp., the announcement it signed a definitive agreement to purchase the common stock of Indianapolis, Indiana-based Miller Pipeline Corporation from NiSource Inc. Items reported include:
Item 5. Other Events
Item 7. Exhibits
99-1 Press Release - Vectren Corporation Completes Acquisition of DPL's Natural Gas Distribution Business
99-2 Press Release - Vectren, Cinergy Affiliate To Acquire Miller Pipeline Corporation From NiSource
99-3 Cautionary Statement for Purposes of the "Safe Harbor" Provisions of the Private Securities Litigation Reform Act of 1995

On December 15, 2000, Vectren Corporation filed a Current Report on Form 8-K with respect to providing an update on potential impact of Increased Gas Costs and Gas Cost Adjustment Proceedings. Items reported include:
Item 5. Other Events

On December 22, 2000 Vectren Corporation filed a Current Report on Form 8-K with respect to attaching the press release issued December 13, 2000, concerning the completion of the common stock purchase of Indianapolis-based Miller Pipeline Corporation from NiSource Inc. Items reported include:
Item 5. Other Events
Item 7. Exhibits
99 Press Release dated December 13, 2000

On December 27, 2000, Vectren Corporation filed a Current Report on Form 8-K with respect to making available certain selected financial information of its subsidiary, Vectren Utility Holdings, Inc. (VUHI), which was disclosed as part of a Rule 144A offering of $150,000,000 aggregate principal amount of VUHI's floating rate notes. Items reported include:
Item 5. Other Events.
Item 7. Exhibits
99 Selected Financial Information

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

VECTREN CORPORATION

Dated August 27, 2001

/s/ Niel C. Ellerbrook
Niel C. Ellerbrook, Chairman
and Chief Executive Officer

INDEX TO EXHIBITS

EX - 1.1 Form of Purchase Agreement among Vectren and underwriters for the sale of Vectren's common stock. (Filed and designated in Form S-3 (No. 333-5390), filed January 19, 2001, File No. 1-15467, as Exhibit 1.1.)

EX - 2.1 Agreement and Plan of Merger dated as of June 11,1999 among Indiana Energy, Inc., SIGCORP, Inc. and Vectren Corporation (the "Merger Agreement "). (Filed and designated in Form S-4 to (No. 333-90763) filed on November 12, 1999, File 1-15467, as Exhibit 2.)

EX - 2.2 Amendment No.1 to the Merger Agreement dated December 14, 1999 (Filed and designated in Current Report on Form 8-K filed December 16, 1999, File 1-09091, as Exhibit 2.)

EX - 2.3 Asset Purchase Agreement dated December 14,1999 between Indiana Energy, Inc. and The Dayton Power and Light Company and Number-3CHK with a commitment letter for a 364-Day Credit Facility dated December 16,1999. (Filed and designated in Current Report on Form 8-K dated December 28, 1999, File No. 1-9091, as Exhibit 2 and 99.1.)

EX - 3.1 Amended and Restated Articles of Incorporation of Vectren Corporation effective March 31, 2000. (Filed and designated in Current Report on Form 8-K filed April 14, 2000, File No. 1-15467, as Exhibit 4.1.)

EX - 3.2 Code of By-Laws of Vectren Corporation. (Filed and designated in Form S-3 (No. 333-5390), filed January 19, 2001, File No. 1-15467, as Exhibit 4.2.)

EX - 3.3 Shareholders Rights Agreement dated as of October 21, 1999 between Vectren Corporation and Equiserve Trust Company, N.A., as Rights Agent. (Filed and designated in Form S-4 (No. 333-90763), filed November 12. 1999, File No 1-15467, as Exhibit 4.)

EX - 4.1 Mortgage and Deed of Trust dated as of April 1, 1932 between Southern Indiana Gas and Electric Company and Bankers Trust Company, as Trustee, and Supplemental Indentures thereto dated August 31, 1936, October 1, 1937, March 22, 1939, July 1, 1948,

June 1, 1949, October 1, 1949, January 1, 1951, April 1, 1954, March 1, 1957, October 1, 1965, September 1, 1966, August 1, 1968, May 1, 1970, August 1, 1971, April 1, 1972, October 1, 1973, April 1, 1975, January 15, 1977, April 1, 1978, June 4, 1981, January 20, 1983, November 1, 1983, March 1, 1984, June 1, 1984, November 1, 1984, July 1, 1985, November 1, 1985, June 1, 1986. (Filed and designated in Registration No. 2-2536 as Exhibits B-1 and B-2; in Post-effective Amendment No. 1 to Registration No. 2-62032 as Exhibit (b)(4)(ii), in Registration No. 2-88923 as Exhibit 4(b)(2), in Form 8-K, File No. 1-3553, dated June 1, 1984 as Exhibit (4), File No. 1-3553, dated March 24, 1986 as Exhibit 4-A, in Form 8-K, File No. 1-3553, dated June 3, 1986 as Exhibit (4).) July 1, 1985 and November 1, 1985 (Filed and designated in Form 10-K, for the fiscal year 1985, File No. 1-3553, as Exhibit 4-A.) November 15, 1986 and January 15, 1987. (Filed and designated in Form 10-K, for the fiscal year 1986, File No. 1-3553, as Exhibit 4-A.) December 15, 1987. (Filed and designated in Form 10-K, for the fiscal year 1987, File No. 1-3553, as Exhibit 4-A.) December 13, 1990. (Filed and designated in Form 10-K, for the fiscal year 1990, File No. 1-3553, as Exhibit 4-A.) April 1, 1993. (Filed and designated in Form 8-K, dated April 13, 1993, File 1-3553, as Exhibit 4.) June 1, 1993 (Filed and designated in Form 8-K, dated June 14, 1993, File 1-3553, as Exhibit 4.) May 1, 1993. (Filed and designated in Form 10-K, for the fiscal year 1993, File No. 1-3553, as Exhibit 4(a).) July 1, 1999. (Filed and designated in Form 10-Q, dated August 16, 1999, File 1-3553, as Exhibit 4(a).)

EX - 4.2 Indenture dated February 1, 1991, between Indiana Gas and Continental Bank, National Association. Inc.'s. (Filed and designated in Current Report on Form 8-K filed February 15, 1991, File No. 1-6494.); First Supplemental Indenture thereto dated as of February 15, 1991. (Filed and designated in Current Report on Form 8-K filed February 15, 1991, File No 1-6494, as Exhibit 4(b).); Second Supplemental Indenture thereto dated as of September 15, 1991, (Filed and designated in Current Report on Form 8-K filed September 25, 1991, File No 1-6494, as Exhibit 4(b).); Third supplemental Indenture thereto dated as of September 15, 1991 (Filed and designated in Current Report on Form 8-K filed September 25, 1991, File No 1-6494, as Exhibit 4(c).); Fourth Supplemental Indenture thereto dated as of December 2, 1992, (Filed and designated in Current Report on Form 8-K filed December 8, 1992, File No 1-6494, as Exhibit 4(b).); Fifth Supplemental Indenture thereto dated as of December 28, 2000, (Filed and designated in Current Report on Form 8-K filed December 27, 2000, File No 1-6494, as Exhibit 4.)

EX - 4.3 $435,000,000 Credit Agreement arranged by Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated dated as of June 29, 2000 among Vectren Corporation, Vectren Utility Holdings, Inc., certain Lenders, Merrill Lynch & Co., Merrill Lynch, Pierce, Fenner & Smith Incorporated, as Sole Lead Arranger and Syndication Agent, ABN AMRO, as Documentation Agent, and Credit Suisse First Boston, as Administrative Agent. (Filed and designated in Current Report on Form 8-K dated January 26, 2001, File No 1-15467, as Exhibit 4.1.)

EX - 4.4 Credit Agreement dated as of March 8, 1999 among Indiana Gas Company, Inc., the Lenders, ABN AMRO Bank N.V., as Syndication Agent, National City Bank of Indiana, as Documentation Agent, and Bank One, Indiana, N.A., as Administrative Agent. (Filed and designated in Current Report on Form 8-K dated January 26, 2001, File No 1-15467, as Exhibit 4.2.)

EX - 4.5 First Amendment dated as of March 7, 2000 to the Credit Agreement dated as of March 8, 1999 among Indiana Gas Company, Inc., certain lenders, ABN AMRO BANK N.V., as Syndication Agent, National City Bank of Indiana, as Documentation Agent, and Bank One, Indiana, N.A., as Administrative Agent. (Filed and designated in Current Report on Form 8-K dated January 26, 2001, File No 1-15467, as Exhibit 4.3.)

EX - 4.6 Second Amendment dated as of October 31, 2000 to the Credit Agreement dated as of March 8, 1999 among Indiana Gas Company, Inc., certain lenders, ABN AMRO BANK N.V., as Syndication Agent, National City Bank of Indiana, as Documentation Agent, and Bank One, Indiana, N.A., as Administrative Agent. (Filed and designated in Current Report on Form 8-K dated January 26, 2001, File No 1-15467, as Exhibit 4.4.)

EX - 4.7 Bank One letter dated as of January 29, 2001 waiving the covenant compliance under Section 6.13 of the Indiana Gas Company, Inc. Credit Agreement dated as of March 8, 1999. (Filed and designated in Current Report on Form 8-K dated January 26, 2001, File No 1-15467, as Exhibit 4.5.)

EX - 10.1 Agreement, dated, January 30, 1968, for Unit No. 4 at the Warrick Power Plant of Alcoa Generating Corporation ("Alcoa"), between Alcoa and Southern Indiana Gas and Electric Company. (Filed and designated in Registration No. 2-29653 as Exhibit 4(d)-A.)

EX - 10.2 Letter of Agreement, dated June 1, 1971, and Letter Agreement, dated June 26, 1969, between Alcoa and Southern Indiana Gas and Electric Company. (Filed and designated in Registration No. 2-41209 as Exhibit 4(e)-2.)

EX - 10.3 Letter Agreement, dated April 9, 1973, and Agreement dated April 30, 1973, between Alcoa and Southern Indiana Gas and Electric Company. (Filed and designated in Registration No. 2-53005 as Exhibit 4(e)-4.)

EX - 10.4 Electric Power Agreement (the "Power Agreement"), dated May 28, 1971, between Alcoa and Southern Indiana Gas and Electric Company. (Filed and designated in Registration No. 2-41209 as Exhibit 4(e)-1.)

EX - 10.5 Second Supplement, dated as of July 10, 1975, to the Power Agreement and Letter Agreement dated April 30, 1973 - First Supplement. (Filed and designated in Form 10-K for the fiscal year 1975, File No. 1-3553, as Exhibit 1(e).)

EX - 10.6 Third Supplement, dated as of May 26, 1978, to the Power Agreement. (Filed and designated in Form 10-K for the fiscal year 1978 as Exhibit A-1.)

EX - 10.7 Letter Agreement dated August 22, 1978 between Southern Indiana Gas and Electric Company and Alcoa, which amends Agreement for Sale in an Emergency of Electrical Power and Energy Generation by Alcoa and Southern Indiana Gas and Electric Company dated June 26, 1979. (Filed and designated in Form 10-K for the fiscal year 1978, File No. 1-3553, as Exhibit A-2.)

EX - 10.8 Fifth Supplement, dated as of December 13, 1978, to the Power Agreement. (Filed and designated in Form 10-K for the fiscal year 1979, File No. 1-3553, as Exhibit A-3.)

EX - 10.9 Sixth Supplement, dated as of July 1, 1979, to the Power Agreement. (Filed and designated in Form 10-K for the fiscal year

1979, File No. 1-3553, as Exhibit A-5.)

<PAGE> 62

EX - 10.10 Seventh Supplement, dated as of October 1, 1979, to the Power Agreement. (Filed and designated in Form 10-K for the fiscal year 1979, File No. 1-3553, as Exhibit A-6.)

EX - 10.11 Eighth Supplement, dated as of June 1, 1980 to the Electric Power Agreement, dated May 28, 1971, between Alcoa and Southern Indiana Gas and Electric Company. (Filed and designated in Form 10-K for the fiscal year 1980, File No. 1-3553, as Exhibit (20)-1.)

EX - 10.12 Summary description of Southern Indiana Gas and Electric Company's nonqualified Supplemental Retirement Plan (Filed and designated in Form 10-K for the fiscal year 1992, File No. 1-3553, as Exhibit 10-A-17.)

EX - 10.13 Supplemental Post Retirement Death Benefits Plan, dated October 10, 1984. (Filed and designated in Form 10-K for the fiscal year 1992, File No. 1-3553, as Exhibit 10-A-18.)

EX - 10.14 Summary description of Southern Indiana Gas and Electric Company's Corporate Performance Incentive Plan. (Filed and designated in Form 10-K for the fiscal year 1992, File No. 1-3553, as Exhibit 10-A-19.)

EX - 10.15 Southern Indiana Gas and Electric Company's Corporate Performance Incentive Plan as amended for the plan year beginning January 1, 1994. (Filed and designated in Form 10-K for the fiscal year 1993, File No. 1-3553, as Exhibit 10-A-20.)

EX - 10.16 Southern Indiana Gas and Electric Company 1994 Stock Option Plan (Filed and designated in Southern Indiana Gas and Electric Company's Proxy Statement dated February 22, 1994, File No. 1-3553, as Exhibit A.)

EX - 10.17 Southern Indiana Gas and Electric Company's nonqualified Supplemental Retirement Plan as amended, effective April 16, 1997. (Filed and designated in Form 10-K for the fiscal year 1997, File No. 1-3553, as Exhibit 10.29.)

EX - 10.18 Agreement dated April 16, 1997 between Southern Indiana Gas and Electric Company and Ronald G. Reherman regarding supplemental pension and disability benefits, which supercedes such agreement dated February 1, 1995. (Filed and designated in Form 10-K for the fiscal year 1997, File No. 1-3553, as Exhibit 10.27.)

EX - 10.19 Southern Indiana Gas and Electric Company's nonqualified Supplemental Retirement Plan as amended, effective April 16, 1997. (Filed and designated in Form 10-K for the fiscal year 1997, File No. 1-3553, as Exhibit 10.29.)

EX - 10.20 Vectren Corporation Retirement Savings Plan. (Filed and designated in Form 10-Q for the quarterly period ended September 30, 2000, File 1-15467, as Exhibit 99.1.)

EX - 10.21 Vectren Corporation Combined Non-Bargaining Retirement Plan. (Filed and designated in Form 10-Q for the quarterly period ended September 30, 2000, File 1-15467, as Exhibit 99.2.)

EX - 10.22 Indiana Energy, Inc. Unfunded Supplemental Retirement Plan for a Select Group of Management Employees as amended and restated effective December 1, 1998. (Filed and designated in Form 10-Q for the quarterly period ended December 31, 1998, File 1-9091, as Exhibit 10-G.)

<PAGE> 63

EX - 10.23 Indiana Energy, Inc. Nonqualified Deferred Compensation Plan effective January 1, 1999. (Filed and designated in Form 10-Q for the quarterly period ended December 31, 1998, File 1-9091, as Exhibit 10-H.)

EX - 10.24 Indiana Energy, Inc. Annual Management Incentive Plan effective October 1, 1987. (Filed and designated in Form 10-K for the fiscal year ended September 30, 1987, File 1-9091, as Exhibit 10-D.)

EX - 10.25 First Amendment to the Indiana Energy, Inc. Annual Management Incentive Plan effective October 1, 1997. (Filed and designated in Form 10-K for the fiscal year ended September 30, 1998, File 1-9091, as Exhibit 10-Q.)

EX - 10.26 Formation Agreement among Indiana Energy, Inc., Indiana Gas Company, Inc., IGC Energy, Inc., Indiana Energy Services, Inc., Citizens Gas & Coke Utility, Citizens Energy Services Corporation and ProLiance Energy, LLC, effective March 15, 1996. (Filed and designated in Form 10-Q for the quarterly period ended March 31, 1996, File 1-9091, as Exhibit 10-C.)

EX - 10.27 Gas Sales and Portfolio Administration Agreement between Indiana Gas Company, Inc. and ProLiance Energy, LLC, effective March 15, 1996, for services to begin April 1, 1996. (Filed and designated in Form 10-Q for the quarterly period ended March 31, 1996, File 1-6494, as Exhibit 10-C.)

EX - 10.28 Amended appendices to the Gas Sales and Portfolio Administration Agreement between Indiana Gas Company, Inc. and ProLiance Energy, LLC effective November 1, 1998. (Filed and designated in Form 10-Q for the quarterly period ended March 31, 1999, File 1-6494, as Exhibit 10-A.)

EX - 10.29 Amended appendices to the Gas Sales and Portfolio Administration Agreement between Indiana Gas Company, Inc. and ProLiance Energy, LLC effective November 1, 1999. (Filed and designated in Form 10-K for the fiscal year ended September 30, 1999, File 1-6494, as Exhibit 10-V.)

EX - 10.30 Indiana Energy, Inc. Executive Restricted Stock Plan as amended and restated effective October 1, 1998. (Filed and designated in Form 10-K for the fiscal year ended September 30, 1998, File 1-9091, as Exhibit 10-O.)

EX - 10.31 Amendment to Indiana Energy, Inc. Executive Restricted Stock Plan effective December 1, 1998. (Filed and designated in Form 10-Q for the quarterly period ended December 31, 1998, File 1-9091, as Exhibit 10-I.)

EX - 10.32 Indiana Energy, Inc. Director's Restricted Stock Plan as amended and restated effective May 1, 1997. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 1997, File 1-9091, as Exhibit 10-B.)

EX - 10.33 First Amendment to Indiana Energy, Inc. Directors' Restricted Stock Plan, effective December 1, 1998. (Filed and designated in Form 10-Q for the quarterly period ended December 31, 1998, File

1-9091, as Exhibit 10-J.)

<PAGE> 64

EX - 10.34 Second Amendment to Indiana Energy, Inc. Directors Restricted Stock Plan, renamed the Vectren Corporation Directors Restricted Stock Plan effective October 1, 2000. (Filed and designated in Form 10-K for the year ended December 31, 2000, File 1-15467, as Exhibit 10-34.)

EX - 10.35 Third Amendment to Indiana Energy, Inc. Directors Restricted Stock Plan, renamed the Vectren Corporation Directors Restricted Stock Plan effective March 28, 2001. (Filed and designated in Form 10-K for the year ended December 31, 2000, File 1-15467, as Exhibit 10-35.)

EX - 10.36 Vectren Corporation Employment Agreement between Vectren Corporation and Niel C. Ellerbrook dated as of March 31, 2000. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.1.)

EX - 10.37 Vectren Corporation Employment Agreement between Vectren Corporation and Andrew E. Goebel dated as of March 31, 2000(Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.2.)

EX - 10.38 Vectren Corporation Employment Agreement between Vectren Corporation and Jerome A. Benkert, Jr. dated as of March 31, 2000. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.3.)

EX - 10.39 Vectren Corporation Employment Agreement between Vectren Corporation and Carl L. Chapman dated as of March 31, 2000. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.4.)

EX - 10.40 Vectren Corporation Employment Agreement between Vectren Corporation and Ronald E. Christian dated as of March 31, 2000. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.5.)

EX - 10.41 Vectren Corporation Employment Agreement between Vectren Corporation and Timothy M. Hewitt dated as of March 31, 2000. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.6.)

EX - 10.42 Vectren Corporation Employment Agreement between Vectren Corporation and J. Gordon Hurst dated as of March 31, 2000. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.7.)

EX - 10.43 Vectren Corporation Employment Agreement between Vectren Corporation and Richard G. Lynch dated as of March 31, 2000. (Filed and designated in Form 10-Q for the quarterly period ended June 30, 2000, File 1-15467, as Exhibit 99.8.)

EX - 21 Listing of Subsidiaries (Filed and designated in Form 10-K for the year ended December 31, 2000, File 1-15467, as Exhibit 21.)

EX - 23 Consent of Independent Public Accountants (Filed herewith)

EX - 99.1 Vectren Corporation Press Release regarding gas cost adjustment proceedings filed in Current Report on 8-K on March 29, 2001. (Filed herewith.)

```
</TEXT>
</DOCUMENT>
```

STATE OF MICHIGAN
COURT OF CLAIMS

Court of Claims No. 17-000107-MT
Honorable Michael J. Talbot

VECTREN INFRASTRUCTURE SERVICES CORP., SUCCESSOR-IN-INTEREST TO MINNESOTA LIMITED, INC.,)

Plaintiff,)

-vs-)

MICHIGAN DEPARTMENT OF TREASURY,)

Defendant.)

DEPOSITION UPON ORAL EXAMINATION OF:

DOUGLAS S. BANNING, JR.,

the deponent produced and sworn before me, Joyce E. Shinault, a Notary Public at large, in and for the State of Indiana, taken on behalf of the Defendant, at the offices of MVerge Headquarters, 8850 Crawfordsville Road, Indianapolis, Indiana, on the 16th day of March, 2018, pursuant to notice thereof.

mean, at one point in time they had an MP acquisition corp for the acquisition of Miller Pipeline. I don't know if that's in existence. I don't have that knowledge.

Q. Okay. Is Miller Pipeline owned by another entity?

A. It's owned by the holding company, one of Vectren's subsidiaries, yes.

Q. So do I have the nomenclature right, if I refer to VISCO as the holding company?

A. That would be correct.

Q. And it's fair to say that VISCO is the parent company of Miller Pipeline?

A. And Minnesota Limited, yes.

Q. Okay, good. Thank you. As between VISCO and Miller Pipeline, how long has Miller Pipeline been a subsidiary?

A. Vectren acquired, with another company, 50 percent ownership in Miller Pipeline, I believe, in 2001. And in 2006 -- it's either 2006, 2007, they acquired the other 50 percent ownership from Duke Energy was the other partner.

Q. This is kind of a broad question, so if you need me to clarify, I'd be happy to do so. But can you just tell me generally, what is VISCO in the business of doing?

A. It's very simple. We have three distinct lines of business. One is a distribution pipeline construction company to where we construct pipelines, you know, for local distribution companies. The other is a transmission pipeline construction company where we construct pipelines generally regulated by FERC, but they are transmission pipelines that are interstate pipelines. And then the other is a water and wastewater rehab business that rehabs wastewater and constructs new water pipelines.

Q. For purposes of the record, FERC is an acronym. Can you tell me what the acronym is?

A. I don't know what FERC is. It's a regulatory agency.

MS. GANDHI: Federal Energy Regulatory Commission.

THE WITNESS: Thank you.

MR. THOMPSON: Thank you.

BY MR. THOMPSON:

Q. So if I have -- just so I'm clear on this, so essentially, you've got local pipelines, you've got interstate pipelines, and then you've got water waste rehabilitation and water pipelines. Is that like a simple kind of three-part summary of your business?

A. Yes. I would believe so, yes.

Q. Can a pipeline handle various types of things like oil and natural gas and other things, or are they unique to one particular thing?

A. No. We deal with oil, wet gas, natural gas, water, and wastewater.

Q. And I'm assuming that the local and interstate transmission and distribution pipelines, they handle the oil and the gas, but the third item you mentioned, the water waste, only deals with water?

A. Water and wastewater, yes. Could be drainage pipelines, yes.

Q. Before VISCO acquired Miller Pipeline, was it in all of these three businesses at that time?

A. It was in none of those businesses.

Q. That's fine. So the three -- I guess, the three areas that we were talking about earlier, the distribution pipeline, the transmission pipeline, and the wastewater pipeline, were those things that -- I guess, that VISCO did through Miller Pipeline?

MS. GANDHI: Objection to form. It's unclear. I would suggest you restate the question.

BY MR. THOMPSON:

Q. Do you understand the question, sir? Do you need me to restate it?

MS. GANDHI: You can respond if you understand it.

A. Yeah, I'm not sure what you're really after. I mean, Miller Pipeline performed all three, you know, functions in those markets, you know, prior to the acquisition of Minnesota Limited. So we did have, you know, those functions when Vectren acquired us.

Q. Okay. Now, with the acquisition of Minnesota Limited, are there, I guess, new areas beyond these three that you guys engage in?

A. No. I mean, actually, it's a brief history.

We thought the shale plays were going to be large in the marketplace back in 2008. We had a small group that worked in the transmission marketplace. We knew we didn't have a management team large enough to really take advantage of the opportunities that we thought were going to happen.

At the same time, you know, we knew Chris Leines. He came to us when we were developing a strategy to acquire somebody in that industry, and it just worked out. The timing was good. So we acquired Minnesota Limited, we then took all of our transmission folks and assets and put it underneath Minnesota Limited.

Q. So let me see if I understand. So back in 2008, you guys thought you saw an opportunity with shale, and you just needed more infrastructure to be able to develop those opportunities?

A. Sure, absolutely.

Q. And this is where Minnesota Limited and Chris -- is it Leines? Is that how you pronounce his name?

A. Leines.

Q. Leines, okay.

MR. THOMPSON: For the record, I believe the spelling is L-E-I-N-E-S.

BY MR. THOMPSON:

Q. And you guys saw -- so you started talking with Mr. Leines about kind of developing these shale opportunities.

A. Well, we didn't necessarily disclose, you know, why we wanted the acquisition, but we talked to Mr. Leines about acquiring his company, yes.

Q. Before the acquisition of Minnesota Limited, can you tell me, I guess, about the geographic scope of what Miller Pipeline -- the service areas?

A. Yeah. I mean, prior to 2011 -- well, 2011 is when we acquired Minnesota Limited. The geographic scope would be similar to what it is today. I'm sure we are in a couple of new areas in the south, but today we work in about 30 different states. So I'm guessing we worked in at least 20 or 25 states during that time period.

city gate.

Q. Okay. So is it fair to say that the phrase "distribution" has to do with getting to the end consumer, or as transmission is to, I guess, other energy companies that will do something else with it? Is that a fair summary?

A. Generally, yes.

MS. GANDHI: Objection to form. You can answer.

A. Generally, yes.

Q. Okay. So earlier you talked about trying to take advantage of certain -- and I'm not going to get the terminology right, so bear with me, but is it certain shale formations?

A. That's correct. There's been shale formations found in the United States, and they have new techniques to frack those formations to where they can extract oil, gas, and wet gases from them. And they are fairly new formations, you know, whether it be the Bakken, Marcellus, Utica, Permian, Niobrara. There's quite a few throughout the United States.

Q. Okay. And for us lay folks, when we're talking about shale formations, we're talking primarily about natural gas, not oil; is that right?

A. That's incorrect. No, it just depends --

Q. So what could a shale formation yield? Is it natural gas and coal and other types of gas, or is it --

A. There is no coal. It is oil, wet gases, which is ethane, propane, butane, and then natural gas.

Q. So for purposes of the rest of this discussion, when we're talking about these shale formations, we're talking about oil and gas. Gas comes in two types, wet and natural.

A. That's correct.

MR. THOMPSON: Okay. I'm getting an error message here. Can we go off the record here for a second?

MS. GANDHI: Sure.

(Whereupon, a discussion was held off the record.)

MR. THOMPSON: We can go back on

that you were kind of familiar with Minnesota Limited's customer base; is that correct?

A. Yes.

Q. What did you understand about their customer base?

A. What do you mean, what did I understand? I understand who their customers were.

Q. Okay. Who were their customers?

A. Enbridge, Koch, Minnesota Pipe Line.

Q. And their customers included Consumers Energy?

A. I don't know that I knew that at the time. I don't think we do work for Consumers today.

Q. On that same exhibit which displays the map, the very next page, page 5, there's two sets of bullet points, one for Miller Pipeline, one for Minnesota Limited.

A. Yes.

Q. Correct?

A. Yes.

Q. If you look at the very last bullet point under Minnesota Limited, it talks about the major customers.

A. Yes.

Q. And the major customers include Consumers, Enbridge, and Minnesota Pipe Line?

A. Yeah, we would have just listed current customers of theirs at that point in time, yes.

Q. Do you know who prepared this exhibit?

A. No. I mean, we would have helped with some of the information, but I don't know who prepared it.

Q. But this would have been prepared on behalf of the utility Vectren Corp, right?

A. Yes. It's a public filing for them, yes.

Q. So flipping back to Exhibit 2, if you go to page 1 of the exhibit -- so this is the offering memorandum, for the record. So I know that the page on the screen says "Disclosure," but there is actually a formal page 1. I think it's a couple more pages into the exhibit. It's with the heading of "Executive Summary."

A. Yes, we're there.

Q. Okay. If you go to the very, very last sentence on the page, it talks about, "The Company also has substantial capabilities" --

and I'm not going to read the whole thing, but just to summarize, "substantial capabilities to expand in areas including the Great Lakes region."

A. I see it, yes.

Q. Is that what you understood, I guess, as a capability that Minnesota Limited brought to Miller?

A. Yeah. I mean, this business, you go where the pipelines are at. So we didn't look at any specific region. What we looked at is specifically in the Marcellus and the Bakken shale plays.

Q. Okay. You talked earlier about how you wanted -- well, you mentioned earlier discussing the other exhibit and the ovals depicting the transmission territories. You said that those ovals were placed to kind of demonstrate that there was no overlap in the transmission territories. Is that an accurate summary of your testimony?

A. Yes. I believe the first bullet point actually indicates that, does it not?

Q. Are you referring back to Exhibit 1?

A. It says limited overlap of territories.

Q. Correct. Was Miller Pipeline looking to expand into the areas depicted in the oval for Minnesota's transmission territory?

A. Not necessarily. We were looking to expand the abilities in the Marcellus and the Bakken territories. Primarily the Marcellus.

Q. If you flip to page 23 of Exhibit 2, and there's kind of a subheading here called "Canadian-U.S. Relationship."

A. Yes.

Q. In that first paragraph, the very last sentence of it says, "In the last decade, there has been significant natural gas pipeline construction between Canada and the Great Lakes region."

A. Okay.

Q. Is that something that, I guess, you guys considered in acquiring Minnesota Limited?

A. No.

Q. What type of things did you consider in acquiring Minnesota Limited?

A. As I said before, we thought the shale plays were going to be, you know, large. We never even looked at a shale play in Michigan at all. Primarily Marcellus and the Utica in Ohio, Pennsylvania, West Virginia area, and then, you know, we understood the Bakken from, you know, their work and what they were doing from that perspective. So, you know, our goal was to obtain a larger, more experienced management team, you know, that we could put our resources underneath, and then take advantage of pipeline construction within these shale plays, not necessarily specific to a geographic region. Geography would have been probably considered as it relates to union and non-union type geographic territories.

Q. Okay.

A. You're picking out things, I mean, we wouldn't even have considered or looked at within the operating memorandum.

Q. So there are parts of this offering memorandum that you would not have accounted for in considering the acquisition?

A. Yeah, I mean, I'm sure we read them, but we're not looking specifically at that sentence or that region.

Q. Now, let me ask you this. What about the Antrim shale basin, what if I just disqualified it from your consideration of developing that region?

A. Yeah, it didn't disqualify -- we didn't consider the Antrim shale basin. I mean, we just considered the customer base and the geographic territories in which they worked. We did not specifically acquire it to look at any shale plays other than Marcellus, Utica, and the Bakken.

Q. Okay. So as I understand your testimony so far, you were generally looking to expand your own territory and prospects, right?

A. Yeah. As I said, we had a small group that we felt like we could take advantage of market opportunities with a more seasoned, larger management team.

Q. So when you talk about the Marcellus and Bakken shales, what was, I guess, better about those shales than the Antrim shale?

A. I don't believe there was anything better or worse. It's what we were familiar with and the customer relationships we had within those plays.

Q. Okay. So it was based on familiarity with customers?

A. That would be part of the consideration, yes.

Q. I mean, wasn't a larger part of this to try to get new customers and expand your territory?

A. Yes. We had not worked for Enbridge nor Minnesota Pipe Line nor Koch Industries nor Hess before.

Q. Okay. But certainly, you know, you're acquiring an entity that had strong business relationships with those entities, correct?

A. Yes, hence the circles and the notification that there is a limited overlap of territories. Our customer base would be fairly territory specific.

Q. So you might be familiar with certain customers, but really it sounds to me like what you're trying to do is get new customers and have, you know, new developments and new territories; isn't that right?

MS. GANDHI: Objection to form.

You can answer.

A. Yes, that would be correct. That's -- Enbridge and Koch and Minnesota Pipe Line, all the customers we talked about, are new customers to us.

Q. So while you might be familiar with customers in other regions like you're saying in the Marcellus and Bakken regions, you're really looking to develop a larger customer base, right?

MS. GANDHI: Objection to form.

You can answer.

A. Yeah, I thought I've already answered this. Yes, we got new customers within the acquisition.

Q. So, I guess, wouldn't your lack of familiarity with the Antrim region kind of be a plus insofar as you're trying to expand your territory and customer base?

MS. GANDHI: Objection to form.

A. Sure, it would be a plus, but it didn't really enter into our acquisition criteria as far as whether we wanted to acquire it or not.

Q. If you could turn to page 7 of Exhibit 2.
A. (Witness complies.)
Q. And, I guess, the heading here, it's under Executive Summary, but the subheading is "Significant Opportunities Resulting from North American E&P."
A. Uh-huh.
Q. Do you see that?
A. Uh-huh.
Q. I believe it's -- I want to point your attention to -- I think it's the fourth sentence. It's almost right in the middle of that first paragraph. It begins "Much of this unconventional." Do you see that?
A. Yes.
Q. Can you just read that sentence for me real quick?
A. "Much of this unconventional oil and gas production, including the Marcellus and Antrim shale formations, are right in the company's geographic sweet spot."
Q. So the company here is Minnesota Limited, right?
A. Correct.

Q. So the Antrim shale formation is right in the company's geographic sweet spot?

A. That's what the sentence says, yes.

Q. Okay. And the fact that, for example, the Antrim shale formation is in the company's geographic sweet spot, that's not something that you guys would have considered?

MS. GANDHI: Asked and answered. You can respond.

A. Yeah, I'd have to admit, prior to today, I don't even know that I've even understood that there was an Antrim shale play in Michigan.

Q. Okay. But you did review this offering memorandum back when you were doing the acquisition?

A. Yeah, the offering memorandums are put together by investments bankers, and they just take public information and regurgitate it into, you know, market data. We have much more sophisticated market data.

Q. But this is a document that you would have reviewed back at the time that you were considering the acquisition?

you know, customer information; whatever they have is opened up to us at that time.

Q. I have kind of a separate question here. It's really not tied to anything in particular. If you look at page 57 of the offering memorandum, it talks about Project Alpha. Do you see that?

A. Yes, I do.

Q. Do you know what Project Alpha is?

A. I do not, no.

Q. And I guess, just to be clear, when you're talking about expanding your customer base and your territory and opportunities, we're talking about installation of large diameter gas and petroleum pipes and that kind of infrastructure, correct?

A. Oil pipes, yes, that's correct.

Q. Is it your understanding that at that time there was kind of a gross -- I'm sorry, a growth in demand for gas transmission construction?

A. Yes, that would have been indicated in the market studies that we talked about previously.

Q. It was also your understanding that there were new natural gas pipeline regulations as well?

MS. GANDHI: Foundation. You can answer.

A. Yeah, I mean, we're very familiar with the regulatory bodies and what regulations come into play, yes.

Q. Was it your understanding that at that time there was increased demand for pipeline upgrades?

A. Yes.

Q. In terms of new opportunities for Miller -- and when I say Miller, I also mean to refer to VISCO. Is that fair? I mean, it's a new opportunity for VISCO as well, right?

A. Yes, I understand. Yes.

Q. And that's accurate?

A. Yeah, I don't remember -- as I said previously, I don't remember when VISCO was created.

Q. Sure. But if you're looking to acquire Minnesota Limited, you're looking at certain new opportunities, correct?

REDIRECT EXAMINATION,

QUESTIONS BY MR. THOMPSON:

Q. One quick follow-up, Mr. Banning. What do the financials tell you about a company's customer base?

A. They tell you nothing about a company's customer base.

Q. You indicated earlier that, you know, Minnesota Limited's customer base was a part of your consideration for the acquisition?

A. Sure, sure.

Q. So how do you evaluate the customer base just looking at the financials?

A. Well, since we have no -- or very limited overlap, we know that their customers are not the same as our customers because our customers are geographic; it's where they own the pipelines.

Q. So I know this is going to sound repetitive, and I'm sorry for that, but what do you review or how do you learn about Minnesota Limited's customer base?

A. Well, I mean, somewhat through the offering memorandum. It probably doesn't identify the

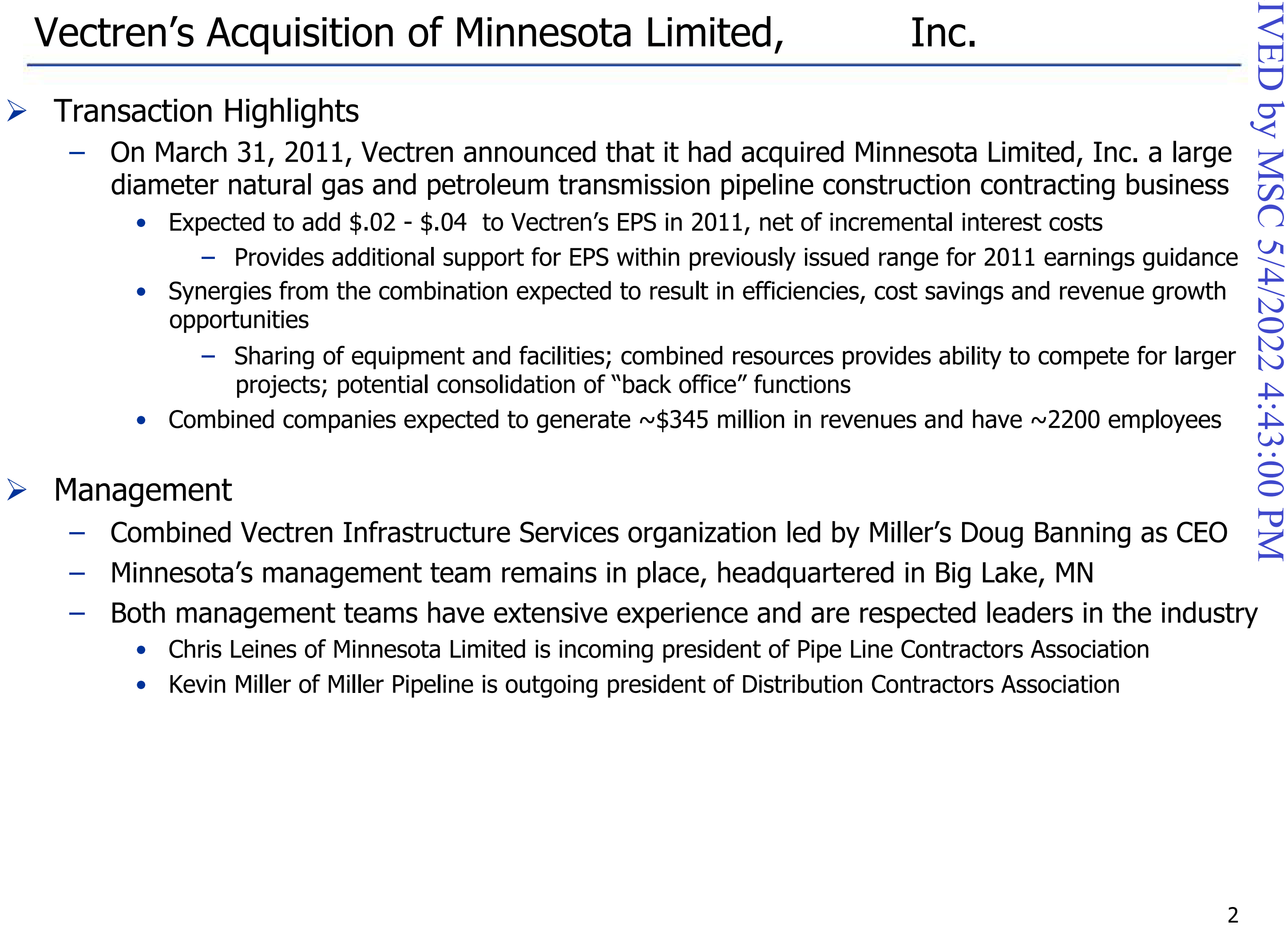
Vectren 2011 8-K, Ex 99.1

VECTREN

Vectren Co rporation's Acquisition of Minnesota Limited, Inc.

March 31, 2011

Vectren 2011 8-K, Ex 99.1

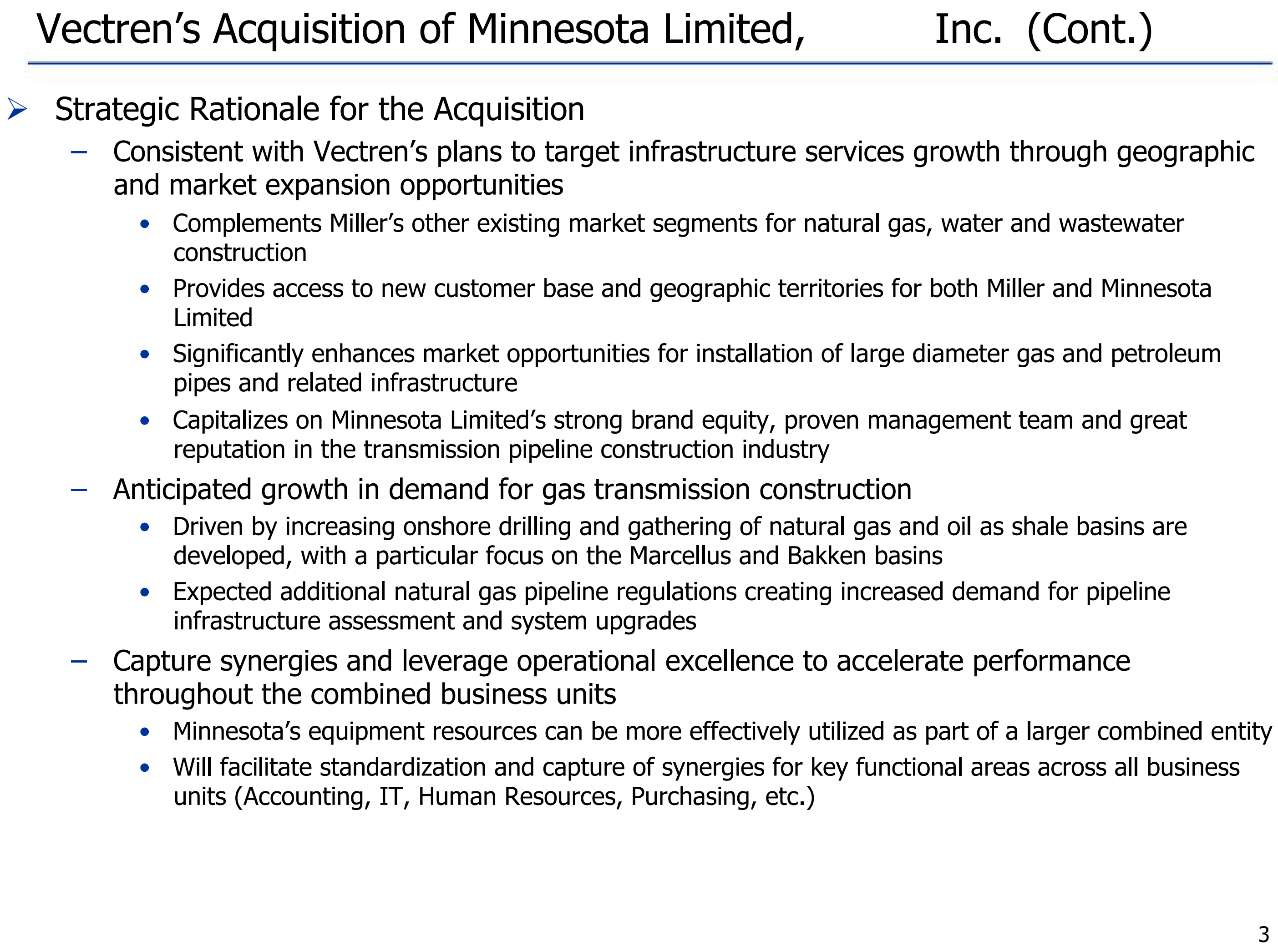


Vectren’s Acquisition of Minnesota Limited, Inc.

- Transaction Highlights
  - On March 31, 2011, Vectren announced that it had acquired Minnesota Limited, Inc. a large diameter natural gas and petroleum transmission pipeline construction contracting business
    - Expected to add $.02 - $.04 to Vectren’s EPS in 2011, net of incremental interest costs
      - Provides additional support for EPS within previously issued range for 2011 earnings guidance
    - Synergies from the combination expected to result in efficiencies, cost savings and revenue growth opportunities
      - Sharing of equipment and facilities; combined resources provides ability to compete for larger projects; potential consolidation of “back office” functions
    - Combined companies expected to generate ~$345 million in revenues and have ~2200 employees

- Management
  - Combined Vectren Infrastructure Services organization led by Miller’s Doug Banning as CEO
  - Minnesota’s management team remains in place, headquartered in Big Lake, MN
  - Both management teams have extensive experience and are respected leaders in the industry
    - Chris Leines of Minnesota Limited is incoming president of Pipe Line Contractors Association
    - Kevin Miller of Miller Pipeline is outgoing president of Distribution Contractors Association

Vectren 2011 8-K, Ex 99.1

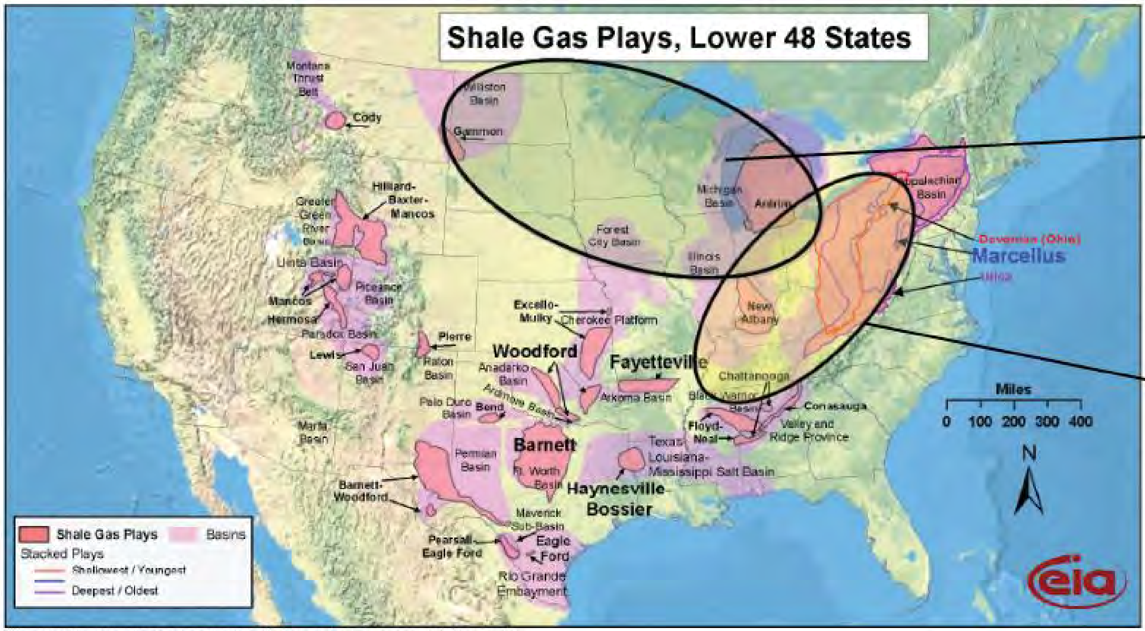


Vectren's Acquisition of Minnesota Limited, Inc. (Cont.)

- Strategic Rationale for the Acquisition
  - Consistent with Vectren's plans to target infrastructure services growth through geographic and market expansion opportunities
    - Complements Miller's other existing market segments for natural gas, water and wastewater construction
    - Provides access to new customer base and geographic territories for both Miller and Minnesota Limited
    - Significantly enhances market opportunities for installation of large diameter gas and petroleum pipes and related infrastructure
    - Capitalizes on Minnesota Limited's strong brand equity, proven management team and great reputation in the transmission pipeline construction industry
  - Anticipated growth in demand for gas transmission construction
    - Driven by increasing onshore drilling and gathering of natural gas and oil as shale basins are developed, with a particular focus on the Marcellus and Bakken basins
    - Expected additional natural gas pipeline regulations creating increased demand for pipeline infrastructure assessment and system upgrades
  - Capture synergies and leverage operational excellence to accelerate performance throughout the combined business units
    - Minnesota's equipment resources can be more effectively utilized as part of a larger combined entity
    - Will facilitate standardization and capture of synergies for key functional areas across all business units (Accounting, IT, Human Resources, Purchasing, etc.)

Vectren 2011 8-K, Ex 99.1

Jo intly Capitalizing on Development of N atural Gas and Oil in Shale Basins


Shale Gas Plays, Lower 48 States
Montana Thrust Belt
Cody
Williston Basin
Gammon
Hilliard-Baxter-Mancos
Greater Green River Basin
Uinta Basin
Piceance Basin
Mancos
Hermosa
Paradox Basin
Lewis
San Juan Basin
Pierre
Raton Basin
Excello-Mulky
Cherokee Platform
Woodford
Anadarko Basin
Ardmore Basin
Fayetteville
Arkoma Basin
Palo Duro Basin
Bend
Marfa Basin
Permian Basin
Barnett
Ft. Worth Basin
Haynesville-Bossier
Barnett-Woodford
Texas-Louisiana-Mississippi Salt Basin
Maverick Sub-Basin
Pearsall-Eagle Ford
Eagle Ford
Rio Grande Embayment
Forest City Basin
Illinois Basin
Michigan Basin
Antrim
New Albany
Chattanooga
Black Warrior Basin
Floyd-Neal
Conasauga
Valley and Ridge Province
Appalachian Basin
Devonian (Ohio)
Marcellus
Utica
Miles
0 100 200 300 400
N
eia
Shale Gas Plays
Basins
Stacked Plays
Shallowest / Youngest
Deepest / Oldest

Minnesota Limited current transmission territory

Miller Pipeline current transmission territory

Source: Energy Information Administration based on data from various published studies
Updated: March 10, 2010

- Limited overlap of territories
- Positioned well to take advantage of the pipeline construction impacts from shale

Vectren 2011 8-K, Ex 99.1

Overview of Miller Pipeline and Minnesota Limited, Inc.

Miller Pipeline

- ➢ Provides underground pipeline construction and repair services for natural gas, water and wastewater companies
- ➢ 2010 gross revenues of ~$235 million ($30 million from transmission construction)
- ➢ Over 1700 employees
- ➢ Over 55 years in construction business
- ➢ Wholly-owned subsidiary of Vectren Corporation
- ➢ Headquartered in Indianapolis, IN
- ➢ Operates primarily in Midwest, Mid-Atlantic and Southern regions
- ➢ Major customers are regional utilities, such as Vectren, NiSource, Duke, LG&E, Alagasco and Citizens

MINNESOTA LIMITED, INC.
Pipeline and Station Contractors

- ➢ Provides underground pipeline construction and repair services for natural gas and petroleum transmission companies
- ➢ 2010 gross revenues of ~$110 million
- ➢ Nearly 500 employees
- ➢ Over 45 years in construction business
- ➢ Business owned by Leines family
- ➢ Headquartered in Big Lake, MN
- ➢ Operates primarily in Minnesota and surrounding states
- ➢ Major customers include Northern Natural, Consumers Energy, Enbridge Energy and Minnesota Pipe Line

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM 10-K

(Mark One)

☒ ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the fiscal year ended December 31, 2011

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from ________________ to ______________________

Commission file number: 1-15467

VECTREN CORPORATION

(Exact name of registrant as specified in its charter)

VECTREN

INDIANA
(State or other jurisdiction of incorporation or organization)

[redacted]
(IRS Employer Identification No.)

One Vectren Square
(Address of principal executive offices)

47708
(Zip Code)

Registrant's telephone number, including area code: 812-491-4000

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common – Without Par	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: NONE

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act. Yes ☒ No□

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act. Yes □ No ☒

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No □

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files). Yes ☒ No □

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☒

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large accelerated filer ☒ Accelerated filer □

Non-accelerated filer □
(Do not check if a smaller
reporting company)

Smaller reporting company □

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).
Yes □ No ☒

The aggregate market value of the voting and non-voting common equity held by non-affiliates computed by reference to the price at which the common equity was last sold, or the average bid and asked price of such common equity, as of June 30, 2011, was $2,270,509,262.

Indicate the number of shares outstanding of each of the registrant's classes of common stock, as of the latest practicable date.

Common Stock - Without Par Value	81,934,781	January 31, 2012
Class	Number of Shares	Date

Documents Incorporated by Reference

Certain information in the Company's definitive Proxy Statement for the 2012 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission pursuant to Regulation 14A, not later than 120 days after the end of the fiscal year, is incorporated by reference in Part III of this Form 10-K.

Definitions

AFUDC: allowance for funds used during construction

ASC: Accounting Standards Codification

BTU / MMBTU: British thermal units / millions of BTU

DOT: Department of Transportation

EPA: Environmental Protection Agency

FASB: Financial Accounting Standards Board

FERC: Federal Energy Regulatory Commission

IDEM: Indiana Department of Environmental Management

IURC: Indiana Utility Regulatory Commission

IRC: Internal Revenue Code

Kv: Kilovolt

MCF / BCF: thousands / billions of cubic feet

MDth / MMDth: thousands / millions of dekatherms

MISO: Midwest Independent System Operator

MW: megawatts

MWh / GWh: megawatt hours / thousands of megawatt hours (gigawatt hours)

NERC: North American Electric Reliability Corporation

OCC: Ohio Office of the Consumer Counselor

OUCC: Indiana Office of the Utility Consumer Counselor

PUCO: Public Utilities Commission of Ohio

Throughput: combined gas sales and gas transportation volumes

Access to Information

Vectren Corporation makes available all SEC filings and recent annual reports free of charge through its website at www.vectren.com as soon as reasonably practicable after electronically filing or furnishing the reports to the SEC, or by request, directed to Investor Relations at the mailing address, phone number, or email address that follows:

Mailing Address:
One Vectren Square
Evansville, Indiana 47708

Phone Number:
(812) 491-4000

Investor Relations Contact:
Robert L. Goocher
Treasurer and Vice President, Investor Relations
rgoocher@vectren.com

Table of Contents

Item Number		Page Number
	Part I	
1	Business	5
1A	Risk Factors	14
1B	Unresolved Staff Comments	20
2	Properties	20
3	Legal Proceedings	21
4	Mine Safety Disclosures	22
	Part II	
5	Market for the Company’s Common Equity, Related Stockholder Matters, and Issuer Purchases of Equity Securities	22
6	Selected Financial Data	23
7	Management's Discussion and Analysis of Results of Operations and Financial Condition	24
7A	Qualitative and Quantitative Disclosures About Market Risk	55
8	Financial Statements and Supplementary Data	57
9	Changes in and Disagreements with Accountants on Accounting and Financial Disclosure	108
9A	Controls and Procedures, including Management’s Assessment of Internal Controls over Financial Reporting Controls and Procedures	108
9B	Other Information	108
	Part III	
10	Directors, Executive Officers and Corporate Governance	108
11	Executive Compensation	109
12	Security Ownership of Certain Beneficial Owners and Management and Related Stockholder Matters.	109
13	Certain Relationships, Related Transactions and Director Independence	110
14	Principal Accountant Fees and Services	110
	Part IV	
15	Exhibits and Financial Statement Schedules	110
	Signatures	116

PART I

ITEM 1. BUSINESS

Description of the Business

Vectren Corporation (the Company or Vectren), an Indiana corporation, is an energy holding company headquartered in Evansville, Indiana. The Company's wholly owned subsidiary, Vectren Utility Holdings, Inc. (Utility Holdings), serves as the intermediate holding company for three public utilities: Indiana Gas Company, Inc. (Indiana Gas or Vectren North), Southern Indiana Gas and Electric Company (SIGECO or Vectren South), and Vectren Energy Delivery of Ohio, Inc. (VEDO). Utility Holdings also has other assets that provide information technology and other services to the three utilities. Utility Holdings' consolidated operations are collectively referred to as the Utility Group. Both Vectren and Utility Holdings are holding companies as defined by the Energy Policy Act of 2005 (Energy Act). Vectren was incorporated under the laws of Indiana on June 10, 1999.

Indiana Gas provides energy delivery services to approximately 563,000 natural gas customers located in central and southern Indiana. SIGECO provides energy delivery services to approximately 141,000 electric customers and approximately 110,000 gas customers located near Evansville in southwestern Indiana. SIGECO also owns and operates electric generation assets to serve its electric customers and optimizes those assets in the wholesale power market. Indiana Gas and SIGECO generally do business as Vectren Energy Delivery of Indiana. VEDO provides energy delivery services to over 310,000 natural gas customers located near Dayton in west central Ohio.

The Company, through Vectren Enterprises, Inc. (Enterprises), is involved in nonutility activities in four primary business areas: Infrastructure Services, Energy Services, Coal Mining, and Energy Marketing. Infrastructure Services provides underground construction and repair services. Energy Services provides performance contracting and renewable energy services. Coal Mining mines and sells coal. Energy Marketing markets and supplies natural gas and provides energy management services. Enterprises also has other legacy businesses that have invested in energy-related opportunities and services, real estate, and leveraged leases, among other investments. All of the above are collectively referred to as the Nonutility Group. Enterprises supports the Company's regulated utilities pursuant to service contracts by providing natural gas supply services, coal, and infrastructure services.

Narrative Description of the Business

The Company segregates its operations into three groups: the Utility Group, the Nonutility Group, and Corporate and Other. At December 31, 2011, the Company had $4.9 billion in total assets, with $4.0 billion (82 percent) attributed to the Utility Group, $0.9 billion (18 percent) attributed to the Nonutility Group. Net income for the year ended December 31, 2011, was $141.6 million, or $1.73 per share of common stock, with net income of $122.9 million attributed to the Utility Group, $23.8 million attributed to the Nonutility Group, and a loss of $5.1 million attributed to Corporate & Other. Net income for the year ended December 31, 2010, was $133.7 million, or $1.65 per share of common stock. For further information regarding the activities and assets of operating segments within these Groups, refer to Note 22 in the Company's Consolidated Financial Statements included under "Item 8 Financial Statements and Supplementary Data." Following is a more detailed description of the Utility Group and Nonutility Group.

Utility Gr oup

The Utility Group consists of the Company's regulated operations and other operations that provide information technology and other support services to those regulated operations. The Company segregates its regulated operations into a Gas Utility Services operating segment and an Electric Utility Services operating segment. The Gas Utility Services segment includes the operations of Indiana Gas, VEDO, and SIGECO's natural gas distribution business and provides natural gas distribution and transportation services to nearly two-thirds of Indiana and to west central Ohio. The Electric Utility Services segment includes the operations of SIGECO's electric transmission and distribution services, which provides electric distribution services primarily to southwestern Indiana, and the Company's power generating and wholesale power operations. In total, these regulated operations supply natural gas and/or electricity to over one million customers. Following is a more detailed description of the Utility Group's Gas Utility and Electric Utility operating segments.

Gas Utility Services

At December 31, 2011, the Company supplied natural gas service to approximately 993,300 Indiana and Ohio customers, including 908,100 residential, 83,600 commercial, and 1,600 industrial and other contract customers. Average gas utility customers served were approximately 983,700 in 2011, 982,100 in 2010, and 981,300 in 2009.

The Company's service area contains diversified manufacturing and agriculture-related enterprises. The principal industries served include automotive assembly, parts and accessories, feed, flour and grain processing, metal castings, aluminum products, polycarbonate resin (Lexan®) and plastic products, gypsum products, electrical equipment, metal specialties, glass, steel finishing, pharmaceutical and nutritional products, gasoline and oil products, ethanol, and coal mining. The largest Indiana communities served are Evansville, Bloomington, Terre Haute, suburban areas surrounding Indianapolis and Indiana counties near Louisville, Kentucky. The largest community served outside of Indiana is Dayton, Ohio.

Revenues

The Company receives gas revenues by selling gas directly to customers at approved rates or by transporting gas through its pipelines at approved rates to customers that have purchased gas directly from other producers, brokers, or marketers. Total throughput was 196.9 MMDth for the year ended December 31, 2011. Gas sold and transported to residential and commercial customers was 99.9 MMDth representing 51 percent of throughput. Gas transported or sold to industrial and other contract customers was 97.0 MMDth representing 49 percent of throughput. Rates for transporting gas generally provide for the same margins earned by selling gas under applicable sales tariffs.

For the year ended December 31, 2011, gas utility revenues were approximately $819.1 million, of which residential customers accounted for 67 percent and commercial 24 percent. Industrial and other contract customers account for only 9 percent of revenues due to the high number of transportation customers in that customer class.

Availability of Natural Gas

The volume of gas sold is seasonal and affected by variations in weather conditions. To mitigate seasonal demand, the Company's Indiana gas utilities have storage capacity at seven active underground gas storage fields and six liquefied petroleum air-gas manufacturing plants. Periodically, purchased natural gas is injected into storage. The injected gas is then available to supplement contracted and manufactured volumes during periods of peak requirements. The volumes of gas per day that can be delivered during peak demand periods for each utility are located in "Item 2 Properties."

Natural Gas Pur chasing Activity in Indiana

The Indiana utilities also contract with a wholly-owned subsidiary of ProLiance Holdings, LLC (ProLiance), to ensure availability of gas. ProLiance is an unconsolidated, nonutility, energy marketing affiliate of Vectren and Citizens Energy Group (Citizens). (See the discussion of Energy Marketing below and Note 7 in the Company's Consolidated Financial Statements included in "Item 8 Financial Statements and Supplementary Data" regarding transactions with ProLiance). The Company also prepays ProLiance for natural gas delivery services during the seven months prior to the peak heating season in lieu of maintaining gas storage. Vectren received regulatory approval on April 25, 2006, from the IURC for ProLiance to continue to provide natural gas supply services to the Company's Indiana utilities through March 2011. On March 17, 2011, an order was received from the IURC providing for ProLiance's continued provision of gas supply services to the Company's Indiana utilities and Citizens Gas through March 2016.

Natural Gas Pur chasing Activity in Ohio

On April 30, 2008, the PUCO issued an order adopting a stipulation involving the Company, the OCC, and other interveners. The order approved the first two phases of a three phase plan to exit the merchant function in the Company's Ohio service territory. The Company used a third party provider for VEDO's gas supply and portfolio services through September 30, 2008.

On August 20, 2008, the PUCO approved the results of an auction selecting qualified wholesale suppliers to provide the gas commodity to the Company for resale to its customers at auction-determined standard pricing. This standard pricing was comprised of the monthly NYMEX settlement price plus a fixed adder. This standard pricing, which was effective from October 1, 2008 through March 31, 2010, was the initial step in exiting the merchant function in the Company's Ohio service territory. During the initial phase, wholesale suppliers that were winning bidders in a PUCO approved auction provided the gas commodity to VEDO for resale to its residential and general service customers at auction-determined standard pricing. This standard pricing was comprised of the monthly NYMEX settlement price plus a fixed adder. On October 1, 2008, the Company transferred its natural gas inventory at book value to the winning bidders, receiving proceeds of approximately $107 million, and began purchasing natural gas from those suppliers (one of which was Vectren Source, see the discussion of Vectren Source in Note 6 of the Company's Consolidated Financial Statements included in "Item 8 Financial Statements and Supplementary Data"). This method of purchasing gas eliminated the need for monthly gas cost recovery (GCR) filings and prospective PUCO GCR audits.

The second phase of the exit process began on April 1, 2010. During this phase, the Company no longer sells natural gas directly to customers. Rather, state-certified Competitive Retail Natural Gas Suppliers, that were successful bidders in a similar regulatory-approved auction, sell the gas commodity to specific customers for a 12-month period at auction-determined standard pricing. The first auction was conducted on January 12, 2010, and the auction results were approved by the PUCO on January 13, 2010. The plan approved by the PUCO required that the Company conduct at least two annual auctions during this phase. As such, the Company conducted another auction on January 18, 2011 in advance of the second 12-month term which commenced on April 1, 2011. The results of that auction were approved by the PUCO on January 19, 2011. Vectren Source was also a successful bidder in both auctions winning one tranche of customers in the first auction and two tranches of customers in the second auction. Each tranche of customers equates to approximately 28,000 customers. As per the terms of the plan approved by the PUCO, because no application for a full exit of the merchant function was neither sought nor approved by April 1, 2011, VEDO conducted a third retail auction on January 31, 2012 to address the 12-month term beginning April 1, 2012. The results of that auction were approved by the PUCO on February 1, 2012. Consistent with current practice, customers continue to receive a single bill for the commodity as well as the delivery component of natural gas service from VEDO.

In the last phase, which was not approved in the April 2008 order, it is contemplated that all of the Company's Ohio residential and general service customers will choose their commodity supplier from state-certified Competitive Retail Natural Gas Suppliers in a competitive market.

The PUCO provided for an Exit Transition Cost rider, which allows the Company to recover costs associated with the transition process. Exiting the merchant function has not had a material impact on earnings or financial condition. It, however, has and will continue to reduce Gas utility revenues and have an equal and offsetting impact to Cost of gas sold and revenue related taxes recorded in Taxes other than income taxes as VEDO no longer purchases gas for resale to these customers.

Total Natural Gas Pur chased Volumes

In 2011, Utility Holdings purchased 71.2 MMDth volumes of gas at an average cost of $5.30 per Dth, of which approximately 97 percent was purchased from ProLiance, 1 percent was purchased from Vectren Source, and 2 percent was purchased from third party providers. The average cost of gas per Dth purchased for the previous four years was $5.99 in 2010, $5.97 in 2009, $9.61 in 2008, and $8.14 in 2007.

Electric Utility Services

At December 31, 2011, the Company supplied electric service to approximately 141,600 Indiana customers, including approximately 123,200 residential, 18,300 commercial, and 100 industrial and other customers. Average electric utility customers served were approximately 141,400 in 2011, 141,300 in 2010, and 140,900 in 2009.

The principal industries served include polycarbonate resin (Lexan®) and plastic products, aluminum smelting and recycling, aluminum sheet products, automotive assembly, steel finishing, pharmaceutical and nutritional products, automotive glass, gasoline and oil products, ethanol, and coal mining.

Revenues

For the year ended December 31, 2011, retail electricity sales totaled 5,594.8 GWh, resulting in revenues of approximately $593.4 million. Residential customers accounted for 36 percent of 2011 revenues; commercial 27 percent; industrial 36 percent; and other 1 percent. In addition, in 2011 the Company sold 586.7 GWh through wholesale activities principally to the MISO. Wholesale revenues, including transmission-related revenue, totaled $42.5 million in 2011.

System Load

Total load for each of the years 2007 through 2011 at the time of the system summer peak, and the related reserve margin, is presented below in MW.

Date of summer peak load	7/21/2011	8/4/2010	6/22/2009	7/21/2008	8/8/2007
Total load at peak [(1)]	1,220	1,275	1,143	1,167	1,341
Generating capability	1,298	1,298	1,295	1,295	1,295
Firm purchase supply	136	136	136	135	130
Interruptible contracts & direct load control	60	62	62	62	62
Total power supply capacity	1,494	1,496	1,493	1,492	1,487
Reserve margin at peak	22%	17%	31%	28%	11%

[(1)] The total load at peak is increased 25 MW in 2007 from the total load actually experienced. The additional 25 MW represents load that would have been incurred if the Summer Cycler program had not been activated. The 25 MW is also included in the interruptible contract portion of the Company's total power supply capacity in that year. During the time of peak in 2008-2011 the Summer Cycler program was not activated.

The winter peak load for the 2010-2011 season of approximately 943 MW occurred on December 14, 2010. The prior winter peak load for the 2009-2010 season was approximately 916 MW, occurring on January 8, 2010.

Generating Capability

Installed generating capacity as of December 31, 2011, was rated at 1,298 MW. Coal-fired generating units provide 1,000 MW of capacity, natural gas or oil-fired turbines used for peaking or emergency conditions provide 295 MW, and in 2009 SIGECO purchased a landfill gas electric generation project which provides 3 MW. Electric generation for 2011 was fueled by coal (97 percent) and natural gas (3 percent). Oil was used only for testing of gas/oil-fired peaking units. The Company generated approximately 4,631 GWh in 2011. Further information about the Company's owned generation is included in "Item 2 Properties."

There are substantial coal reserves in the southern Indiana area, and coal for coal-fired generating stations has been supplied from operators of nearby coal mines, including coal mines in Indiana owned by Vectren Fuels, Inc. (Vectren Fuels), a wholly owned subsidiary of the Company. Approximately 2.3 million tons were purchased for generating electricity during 2011, of which approximately 90 percent was supplied by Vectren Fuels from its mines. This compares to 2.2 million tons and 2.8 million tons purchased in 2010 and 2009, respectively. The utility's coal inventory was approximately 1 million tons at December 31, 2011 and 2010.

Coal Purchases

The average cost of coal per ton purchased for the last five years was $75.04 in 2011, $70.47 in 2010, $64.28 in 2009, $42.76 in 2008, and $40.86 in 2007. Effective January 1, 2009, SIGECO began purchasing coal from Vectren Fuels under new coal purchase agreements. The term of these coal purchase agreements continues to December 31, 2015, with prices specified originally ranging from two to four years. The prices in these contracts were at or below market prices for Illinois Basin coal at the time of execution and were subject to a bidding process with third parties. The IURC has found that costs incurred under these contracts are reasonable. For contracts with price reopeners, amendments were finalized in 2011 for coal deliveries beginning in 2012 at lower prices.

The Company received an order on January 25, 2012 to allow for the lower prices that are set to begin late in 2012 and beyond to be reflected in customer bills beginning in early 2012. Because the cost of coal expensed in 2012 will be lower than amounts paid under existing contracts and included in the carrying amount of inventory at December 31, 2011, the IURC authorized deferral of the difference between costs paid under these contracts and that charged to customers for future recovery over a six year period beginning in 2014. See Rate and Regulatory Matters in Item 7 regarding coal procurement procedures and electric fuel cost reductions.

Firm Purchase Supply

The Company has a 1.5 percent interest in the Ohio Valley Electric Corporation (OVEC). OVEC is owned by several electric utility companies, including SIGECO, and supplies power requirements to the United States Department of Energy's (DOE) uranium enrichment plant near Portsmouth, Ohio. The participating companies can receive from OVEC, and are obligated to pay for, any available power in excess of the DOE contract demand. At the present time, the DOE contract demand is essentially zero. The Company's 1.5 percent interest in OVEC makes available approximately 30 MW of capacity. The Company purchased approximately 197 GWh from OVEC in 2011.

The Company executed a capacity contract with Benton County Wind Farm, LLC in April 2008 to purchase as much as 30 MW from a wind farm located in Benton County, Indiana, with the approval of the IURC. The contract expires in 2029. In 2011, the Company purchased approximately 80 GWh under this contract.

In December 2009, the Company executed a 20 year power purchase agreement with Fowler Ridge II Wind Farm, LLC to purchase as much as 50 MW of energy from a wind farm located in Benton and Tippecanoe Counties in Indiana, with the approval of the IURC. The Company purchased 129 GWh under this contract in 2011.

The Company had a capacity contract with Duke Energy Marketing America, LLC to purchase as much as 100 MW at any time from a power plant located in Vermillion County, Indiana. The contract expired on December 31, 2009 and was not renewed.

Other Power Purchases

The Company occasionally enters into short-term purchased power agreements with various suppliers. During 2011, total purchases under these contracts totaled 67 GWh. In addition, the Company also purchases power from the MISO to supplement its generation and firm purchase supply. Volumes purchased from the MISO in 2011 totaled 1,230 GWh.

MISO Capacity Purchase

In May 2008, the Company executed a MISO capacity purchase from Sempra Energy Trading, LLC to purchase 100 MW of name plate capacity from its generating facility in Dearborn, Michigan. The term of the contract began January 1, 2010 and continues through December 31, 2012.

Interconnections

The Company has interconnections with Louisville Gas and Electric Company, Duke Energy Shared Services, Inc., Indianapolis Power & Light Company, Hoosier Energy Rural Electric Cooperative, Inc., Big Rivers Electric Corporation, and the City of Jasper, Indiana, providing the ability to simultaneously interchange approximately 655 MW. This interchange capability has been impacted in recent years as a result of ongoing initiatives to improve the transmission grid throughout the Midwest. As an example, once completed, a 345 kV Vectren transmission project that is currently in process will result in the ability to simultaneously interchange an additional 100 MW. The Company, as a member of the MISO, has turned over operational control of the interchange facilities and its own transmission assets, like many other Midwestern electric utilities, to MISO.

Competition

The utility industry has undergone structural change for several years, resulting in increasing competitive pressures faced by electric and gas utility companies. Currently, several states have passed legislation allowing electricity customers to choose their electricity supplier in a competitive electricity market and several other states have considered such legislation. At the present time, Indiana has not adopted such legislation. Ohio regulation allows gas customers to choose their commodity supplier. The Company implemented a choice program for its gas customers in Ohio in January 2003. At December 31, 2011, approximately 129,000 customers in Vectren's Ohio service territory have opted to purchase natural gas from a supplier other than VEDO. In addition, VEDO's service territory continues transition toward a choice model for all gas customers. Margin earned for transporting natural gas to those customers, who have purchased natural gas from another supplier, are generally the same as those earned by selling gas under Ohio tariffs. Indiana has not adopted any regulation requiring gas choice; however, the Company operates under approved tariffs permitting certain industrial and commercial large volume customers to choose their commodity supplier.

Regulatory and Envir onmental Matters

See "Item 7 Management's Discussion and Analysis of Results of Operations and Financial Condition" regarding the Company's regulatory environment and environmental matters.

Nonutility Gr oup

The Company is involved in nonutility activities in four primary business areas: Infrastructure Services, Energy Services, Coal Mining, and Energy Marketing.

Infrastructur e Services

Infrastructure Services provides underground construction and repair to utility infrastructure through its wholly owned subsidiaries Miller Pipeline, LLC (Miller) and Minnesota Limited, Inc. (Minnesota Limited). The Company, through its wholly owned subsidiary Vectren Infrastructure Services Company, Inc., purchased Minnesota Limited on March 31, 2011 (see Note 5 in the Company's Consolidated Financial Statements included under "Item 8 Financial Statements and Supplementary Data"). Infrastructure Services provides services to many utilities, including the Company's utilities. Infrastructure Services generated approximately $421 million in gross revenues for 2011, compared to $236 million in 2010 and $202 million in 2009. Man hours worked within Infrastructure Services were 3.9 million in 2011, compared to 2.6 million in 2010 and 2.5 million in 2009. Of these 2011 revenues and man hours, $117 million in revenues and 0.7 million in man hours, respectively, related to Minnesota Limited's operations.

Energy Services

Performance-based energy contracting operations and renewable energy services are performed through Energy Systems Group, LLC (ESG). ESG assists schools, hospitals, governmental facilities, and other private institutions to reduce energy and maintenance costs by upgrading their facilities with energy-efficient equipment. ESG is also involved in creating renewable energy projects, including projects to process landfill gas into usable natural gas and electricity. During 2009, SIGECO purchased one such project with IURC approval. ESG's customer base is located throughout the Midwest, Mid-Atlantic, Southern and Southwestern United States. ESG generated revenues of approximately $162 million in 2011, compared to $147 million in 2010 and $121 million in 2009. ESG's backlog at December 31, 2011 was $82 million, compared to $118 million at December 31, 2010.

Coal Mining

The Coal Mining group mines and sells coal to the Company's utility operations and to other third parties through its wholly owned subsidiary, Vectren Fuels. The Company owns three underground mines (Prosperity, Oaktown 1, and Oaktown 2) and one surface mine (Cypress Creek). All mines are located in Indiana. All coal is high-to-mid sulfur bituminous coal from the Illinois Basin. The Company engages contract mining companies to perform substantially all mining operations. Coal mining generated approximately $286 million in revenues in 2011, compared to $210 million in 2010 and $193 million in 2009.

Oaktown Mine Expansion

In April 2006, Vectren Fuels announced plans to open two new underground mines. The first of two underground mines located near Vincennes, Indiana, began full operations in 2010. The second mine is currently expected to open in the third quarter of 2012. However, Vectren Fuels may continue to change this time table as it evaluates the impacts of market conditions. Reserves at the two mines are estimated at about 102 million tons of recoverable number-five coal at 11,200 BTU and less than 6-pound sulfur dioxide. Once in full production, the two mines are capable of producing about 5 million tons of coal per year. The Company estimates approximately $10 million of additional capital is required to complete the second mine.

The Oaktown mine infrastructure is located on 1,100 acres near Oaktown in Knox County, Indiana. Oaktown's location is within 50 miles of multiple coal-fired power plants including a coal gasification plant currently under construction. It is estimated approximately 25,000 acres of coal will be mined during the life of both mines. Through December 31, 2011, approximately 900 acres of coal have been mined with approximately 24,100 acres remaining. Access to the Oaktown 1 mine was accomplished via a 90 foot deep box cut and a 2,200 foot slope on a 14 percent grade, reaching coal in excess of 375 feet below the surface. Access to the Oaktown 2 mine is planned via an 80 foot deep box cut and a 2,600 foot slope on a 14 percent grade, reaching coal in excess of 400 feet below the surface.

Both Oaktown mines are room and pillar underground mines meaning that main airways and transportation entries are developed and maintained while remote-controlled continuous miners extract coal from so-called rooms by removing coal from the seam, leaving pillars to support the roof. Shuttle cars or similar transportation is used to transport coal to a conveyor belt for transport to the surface. The two Oaktown mines are separated by a sandstone channel. The coal seam thickness ranges from 4 feet to over 9 feet. The mine's wash plant was originally sized to process 800 tons per hour and has been expanded to 1,600 tons per hour, although the addition to the wash plant will not be utilized until the Oaktown 2 mine is opened. The two mines are connected to a railway equipped to handle 110 to 120 car unit trains. Coal is also transported via truck to its customers, which include the Company's power supply operations and other third party utilities. The total plant and development costs to date for the Oaktown mining complex are $224 million, inclusive of advance royalty payments. The remaining unamortized plant balance as of December 31, 2011 approximates $196 million, inclusive of $45 million in land and buildings, $147 million in mine development and equipment, and $4 million in advance royalty payments. Reserves, absent expansion, are expected to be completely exhausted over the next 20 years.

Prosperity Mine

Prosperity is an underground mine located on 1,100 surface acres outside of Petersburg in Pike County, Indiana. Prosperity is also a room and pillar mine where coal removal is accomplished with continuous mining machines. The mine entrance slopes gradually for 500 ft on a 9 degree grade and is more than 250 feet below ground level. The coal seam varies in thickness from 4-1/2 to 8 feet. The mine has a wash plant sized to process 1,000 tons per hour. The mine is connected to a railway and can handle 110 to 120 car unit trains. Coal is also transported via truck to its customers, which include Vectren's power supply operations and other third party utilities. The mine opened in 2001, and the total plant and development costs to date are $193 million. Through December 31, 2011, approximately 7,000 acres of coal have been mined with approximately 13,000 acres remaining. Reserves at December 31, 2011 approximate 30 million tons, not including possible nearby expansion opportunities. The remaining unamortized plant balance as of December 31, 2011 approximates $81 million, inclusive of $3 million of land and buildings and $78 million of mine development and equipment. Reserves, absent expansion, are expected to be exhausted by 2021.

Cypress Creek

Cypress Creek was an above-ground, or surface mine, located on 155 acres about 4 miles north of Boonville in Warrick County, Indiana. Cypress Creek was a combination truck/shovel, dozer push and high wall mining operation, meaning large shovels or front-end loaders removed earth and rock covering a coal seam and loading equipment placed the coal into trucks for transportation to a blending and loading area. Due to the cost of extensive digging, the coal mining limit was 125 to 135 feet deep. All coal mined from Cypress Creek was transported via truck to Vectren's power supply operations. The mine opened in 1998 and as of December 31, 2011, no significant reserves remain, the mine is substantially reclaimed, and the remaining carrying amount is not significant.

Following is summarized data regarding coal mining operations:

	Cypress Creek	Prosperity	Oaktown Mine 1	Oaktown Mine 2	Totals
Type of Mining	Surface	Underground	Underground	Underground	
Mining Technology	Truck & Shovel	Room & Pillar	Room & Pillar	Room & Pillar	
Tons Mined (in thousands)					
2011	-	2,457	2,668	-	5,125
2010	91	2,685	995	-	3,771
2009	969	2,583	-	-	3,552
County Located in Indiana	Warrick	Pike	Knox	Knox	
Coal Reserves (thousands of tons)	-	30,400	62,900	38,800	132,100
Average Heat Content (BTU/lb.)	10,500	11,300	11,100	11,300	
Average Sulfur Content (lbs./ton)	8.0	4.0	5.6	4.8	

Mine Safety Information

The Company, through its wholly owned subsidiary Vectren Fuels, Inc., owns coal mines and related assets located in Indiana. The Company has retained independent third party contract mining companies to operate its coal mines. Five Star Mining LLC ("Five Star") is the contract mining company at the Prosperity underground mine and Black Panther Mining LLC ("Black Panther") is the contract mining company at the Oaktown underground mines. While in operation, Vigo-Cypress Creek, LLC was the contract mining company at Cypress Creek surface mine. The contract mining companies are the mine "operator", as that term is used in both the Federal Mine Safety and Health Act of 1977 (the "Mine Act") and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. All employees at the coal mines are hired, supervised, and paid by the contract mining companies. As the mine operator, the contract mining companies make all regulatory filings required by the MSHA. In most circumstances, however, the cost of fines and penalties assessed by MSHA are contractually passed through from the contract mining company to Vectren Fuels. The process of settling such claims can take years in certain circumstances. During the year ended December 31, 2011, the Company paid approximately $0.7 million related to assessments issued to the mine operators.

More detailed information about the Company's mines, including safety-related data, can be found at MSHA's website, www.MSHA.gov. Prosperity operates under the MSHA identification number 1202249; Oaktown 1 operates under the identification number 1202394; Oaktown 2's identification number is 1202418; and Cypress Creek's identification number is 1202178. Mine safety-related data included on the MSHA website is influenced by the size of the mine, the level of activity at the mine, and the mine inspector's judgment, among other factors. These factors can impact the comparability of information from mine to mine and time period to time period. Given the recent incidents at coal mines of other companies, a significant increase in the frequency and scope of MSHA inspections continues. In addition, both houses of Congress are considering new mine safety legislation. The Company is currently assessing the impact new laws and regulations may have on its investments.

Energy Marketing

ProLiance

ProLiance, a nonutility energy marketing affiliate of Vectren and Citizens, provides services to a broad range of municipalities, utilities, industrial operations, schools, and healthcare institutions located throughout the Midwest and Southeast United States. ProLiance's customers include Vectren's Indiana utilities and nonutility gas supply operations and Citizens' utilities. ProLiance's primary businesses include gas marketing, gas portfolio optimization, and other portfolio and energy management services. Consistent with its ownership percentage, Vectren is allocated 61 percent of ProLiance's profits and losses; however, governance and voting rights remain at 50 percent for each member; and therefore, the Company accounts for its investment in ProLiance using the equity method of accounting. The Company, including its former nonutility retail gas marketing operations, contracted for approximately 69 percent of its natural gas purchases through ProLiance in 2011.

For the year ended December 31, 2011, ProLiance's revenues, including sales to Vectren companies, were $1.4 billion, compared to $1.5 billion in 2010 and $1.7 billion in 2009. Summarized financial data regarding ProLiance's operations are included in Note 7 to the Consolidated Financial Statements included in Item 8. At December 31, 2011, the ProLiance customer base was 1,950 customers, compared to 1,789 customers in 2010 and 1,578 customers in 2009.

Vectren Source

Vectren Source, a former wholly owned subsidiary, provided natural gas and other related products and services in the Midwest and Northeast United States to approximately 283,000 residential and commercial customers, as of December 31, 2011. This customer base reflected approximately 143,000 customers in VEDO's service territory that have either voluntarily opted to choose their natural gas supplier or are supplied natural gas by Vectren Source but remain customers of the regulated utility as part of VEDO's exit the merchant function process. Gas sold by Vectren Source approximated 25.3 MMDth in 2011; 21.0 MMDth in 2010; and 18.5 MMDth in 2009. Average customers served by Vectren Source were 254,000 in 2011; 203,000 in 2010; and 179,000 in 2009. Vectren Source generated approximately $150 million in revenues for 2011 compared to $143 million in 2009 and $157 million in 2009. On December 31, 2011, the Company sold Vectren Source for $84.3 million, including, and subject to a final determination of, working capital.

Other Businesses

The Other Businesses group includes a variety of legacy, wholly owned operations and investments that have invested in energy-related opportunities and services, real estate, and leveraged leases, among other investments. Investments at December 31, 2011, include two Haddington Energy Partnerships both approximately 40 percent owned; and wholly owned subsidiaries, Southern Indiana Properties, Inc. and Energy Realty, Inc.

Synthetic Fuel

The Company had an 8.3 percent ownership interest in Pace Carbon Synfuels, LP (Pace Carbon). Pace Carbon produced and sold coal-based synthetic fuel using Covol technology, and according to US tax law, its members received a tax credit for every ton of coal-based synthetic fuel sold. In addition, Vectren Fuels, Inc. received processing fees from synfuel producers unrelated to Pace Carbon for a portion of its coal production. These synfuel related credits and fees ended on December 31, 2007 when tax laws expired. The partnership was dissolved in 2010.

Personnel

As of December 31, 2011, the Company and its consolidated subsidiaries had approximately 4,500 employees. Of those employees, 700 are subject to collective bargaining arrangements negotiated by Utility Holdings and 2,200 are subject to collective bargaining arrangements negotiated by Infrastructure Services.

Utility Holdings

In December 2011, the Company reached a three year labor agreement, ending December 1, 2014, with Local 1393 of the International Brotherhood of Electrical Workers and United Steelworkers of America Locals 12213 and 7441.

In June 2010, the Company reached a three year labor agreement with Local 702 of the International Brotherhood of Electrical Workers, ending June 30, 2013.

In April 2010, the Company reached a three year agreement with Local 175 of the Utility Workers Union of America. The labor agreement was retroactively effective to November 1, 2009 and ends October 31, 2012.

In September 2009, the Company reached a three year agreement with Local 135 of the Teamsters, Chauffeurs, Warehousemen, and Helpers Union, ending September 23, 2012.

Infrastructure Services

The Company, through its Infrastructure Services subsidiaries, negotiates various trade agreements through contractor associations. The two primary associations are the Distribution Contractors Association (DCA) and the Pipeline Contractors Association (PLCA). These trade agreements are with a variety of construction unions including Laborer's International Union of North America, International Union of Operating Engineers, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry, and Teamsters. The trade agreements through the DCA have varying expiration dates ranging from 2012 through 2015. The trade agreements through the PLCA recently expired, and most agreements have been renegotiated into 2014. Negotiations continue with the Teamsters, and the parties continue to work under expired agreements with a current extension through April 13, 2012. A primary issue in these negotiations is certain member companies of the PLCA, including the Company's infrastructure subsidiaries, withdrawing from the Teamsters multiemployer defined benefit pension plan. In addition, these subsidiaries have various project agreements and small local agreements. These agreements expire upon completion of a specific project or on various dates throughout the year.

ITEM 1A. RISK FACTORS

Investors should consider carefully the following factors that could cause the Company's operating results and financial condition to be materially adversely affected. New risks may emerge at any time, and the Company cannot predict those risks or estimate the extent to which they may affect the Company's businesses or financial performance.

Corporate Risks

Vectren is a holding company, and its assets consist primarily of investments in its subsidiaries.

Dividends on Vectren's common stock depend on the earnings, financial condition, capital requirements and cash flow of its subsidiaries, principally Utility Holdings and Enterprises, and the distribution or other payment of earnings from those entities to Vectren. Should the earnings, financial condition, capital requirements, or cash flow of, or legal requirements applicable to them restrict their ability to pay dividends or make other payments to the Company, its ability to pay dividends on its common stock could be limited and its stock price could be adversely affected. Vectren's results of operations, future growth, and earnings and dividend goals also will depend on the performance of its subsidiaries. Additionally, certain of the Company's lending arrangements contain restrictive covenants, including the maintenance of a total debt to total capitalization ratio.

Deterioration in general economic conditions may have adverse impacts.

Economic conditions may have some negative impact on both gas and electric large customers and wholesale power sales. This impact may include volatility and unpredictability in the demand for natural gas and electricity, tempered growth strategies, significant conservation measures, and perhaps plant closures or bankruptcies. Economic conditions may also cause reductions in residential and commercial customer counts and lower revenues. It is also possible that an uncertain economy could affect costs including pension costs, interest costs, and uncollectible accounts expense. Economic declines may be accompanied by a decrease in demand for products and services offered by nonutility operations and therefore lower revenues for those products and services. The economic conditions may have some negative impact on utility industry spending for construction projects, demand for natural gas and coal, and spending on performance contracting and renewable energy expansion. It is also possible that unfavorable conditions could lead to reductions in the value of certain nonutility real estate and other legacy investments.

Financial market volatility could have adverse impacts.

The capital and credit markets may experience volatility and disruption. If market disruption and volatility occurs, there can be no assurance that the Company, or its unconsolidated affiliates, will not experience adverse effects, which may be material. These effects may include, but are not limited to, difficulties in accessing the short and long-term debt capital markets and the commercial paper market, increased borrowing costs associated with current short-term debt obligations, higher interest rates in future financings, and a smaller potential pool of investors and funding sources. Finally, there is no assurance the Company will have access to the equity capital markets to obtain financing when necessary or desirable.

A downgrade (or negative outlook) in or withdrawal of Vectren's credit ratings could negatively affect its ability to access capital and its cost.

The following table shows the current ratings assigned to certain outstanding debt by Moody's and Standard & Poor's:

	Current Rating	
	Moody's	Standard & Poor's
Utility Holdings and Indiana Gas senior unsecured debt	A3	A-
Utility Holdings commercial paper program	P-2	A-2
SIGECO's senior secured debt	A1	A

The current outlook of both Standard and Poor's and Moody's is stable and both categorize the ratings of the above securities as investment grade. A security rating is not a recommendation to buy, sell, or hold securities. The rating is subject to revision or withdrawal at any time, and each rating should be evaluated independently of any other rating. Standard and Poor's and Moody's lowest level investment grade rating is BBB- and Baa3, respectively.

If the rating agencies downgrade the Company's credit ratings, particularly below investment grade, or initiate negative outlooks thereon, or withdraw Vectren's ratings or, in each case, the ratings of its subsidiaries, it may significantly limit Vectren's access to the debt capital markets and the commercial paper market, and the Company's borrowing costs would increase. In addition, Vectren would likely be required to pay a higher interest rate in future financings, and its potential pool of investors and funding sources would likely decrease. Finally, there is no assurance that the Company will have access to the equity capital markets to obtain financing when necessary or desirable.

Utility Operating Risks

Vectren's gas and electric utility sales are concentrated in the Midwest.

The operations of the Company's regulated utilities are concentrated in central and southern Indiana and west central Ohio and are therefore impacted by changes in the Midwest economy in general and changes in particular industries concentrated in the Midwest. These industries include automotive assembly, parts and accessories; feed, flour and grain processing; metal castings; aluminum products; polycarbonate resin (Lexan®) and plastic products; gypsum products; electrical equipment, metal specialties, glass, steel finishing, pharmaceutical and nutritional products; gasoline and oil products; ethanol and coal mining.

Vectren's regulated utilities operate in an increasingly competitive industry, which may affect its future earnings.

The utility industry has been undergoing structural change for several years, resulting in increasing competitive pressure faced by electric and gas utility companies. Increased competition may create greater risks to the stability of Vectren's earnings generally and may in the future reduce its earnings from retail electric and gas sales. Currently, several states, including Ohio, have passed legislation that allows customers to choose their electricity supplier in a competitive market. Indiana has not enacted such legislation. Ohio regulation also provides for choice of commodity providers for all gas customers. In 2003, the Company implemented this choice for its gas customers in Ohio and is currently in the second of the three phase process to exit the merchant function in its Ohio service territory. The state of Indiana has not adopted any regulation requiring gas choice in the Company's Indiana service territories; however, the Company operates under approved tariffs permitting certain industrial and commercial large volume customers to choose their commodity supplier. Vectren cannot provide any assurance that increased competition or other changes in legislation, regulation or policies will not have a material adverse effect on its business, financial condition or results of operations.

A significant portion of Vectren's electric utility sales are space heating and cooling. Accordingly, its operating results may fluctuate with variability of weather.

Vectren's electric utility sales are sensitive to variations in weather conditions. The Company forecasts utility sales on the basis of normal weather. Since Vectren does not have a weather-normalization mechanism for its electric operations, significant variations from normal weather could have a material impact on its earnings. However, the impact of weather on the gas operations in the Company's Indiana territories has been significantly mitigated through the implementation in 2005 of a normal temperature adjustment mechanism. Additionally, the implementation of a straight fixed variable rate design in a January 2009 PUCO order mitigates most weather risk related to Ohio residential gas sales.

Vectren's utilities are exposed to increasing regulation, including environmental and pipeline safety regulation.

Vectren's utilities are subject to regulation by federal, state, and local regulatory authorities and are exposed to public policy decisions that may negatively impact the Company's earnings. In particular, Vectren is subject to regulation by the FERC, the NERC, the EPA, the IURC, the PUCO, and the DOT. These authorities regulate many aspects of its transmission and distribution operations, including construction and maintenance of facilities, operations, and safety, and its gas marketing operations involving title passage, reliability standards, and future adequacy. In addition, these regulatory agencies approve its utility-related debt and equity issuances, regulate the rates that Vectren's utilities can charge customers, the rate of return that Vectren's utilities are authorized to earn, and its ability to timely recover gas and fuel costs. Further, there are consumer advocates and other parties which may intervene in regulatory proceedings and affect regulatory outcomes.

Vectren's utility operations and properties are subject to extensive environmental regulation pursuant to a variety of federal, state and municipal laws and regulations. These environmental regulations impose, among other things, restrictions, liabilities, and obligations in connection with storage, transportation, treatment, and disposal of hazardous substances and waste in connection with spills, releases, and emissions of various substances in the environment. Such airborne emissions from electric generating facilities include particulate matter, sulfur dioxide (SO_2), nitrogen oxide (NOx), and mercury, among others. Environmental legislation/regulation also requires that facilities, sites, and other properties associated with Vectren's operations be operated, maintained, abandoned, and reclaimed to the satisfaction of applicable regulatory authorities. The Company's current costs to comply with these laws and regulations are significant to its results of operations and financial condition. In addition, claims against the Company under environmental laws and regulations and other laws and regulations could result in material costs and liabilities.

There are proposals to address global climate change that would regulate carbon dioxide (CO_2) and other greenhouse gases and other proposals that would mandate an investment in renewable energy sources. Any future legislative or regulatory actions taken by the EPA or other agencies to address global climate change or mandate renewable energy sources could substantially affect both the costs and operating characteristics of the Company's fossil fuel generating plants and natural gas distribution businesses. Further, such legislation or regulatory action would likely impact the Company's generation resource planning decisions. At this time and in the absence of final legislation or regulatory mandates, compliance costs and other effects associated with reductions in greenhouse gas emissions or obtaining renewable energy sources remain uncertain. The Company has gathered preliminary estimates of the costs to control greenhouse gas emissions. A preliminary investigation demonstrated costs to comply would be significant, first with regard to operating expenses and later for capital expenditures as technology becomes available to control greenhouse gas emissions. However, these compliance cost estimates are based on highly uncertain assumptions, including allowance prices if a cap and trade approach were employed, and energy efficiency targets.

With the trend toward stricter standards, greater regulation, more extensive permit requirements and an increase in the number and types of assets operated by Vectren subject to regulation, its investment in compliant infrastructure, and the associated operating costs have increased and are expected to increase in the future. As examples of the trend toward stricter regulation, the EPA is currently reviewing/revising regulations involving fly ash disposal, cooling tower intake facilities, greenhouse gases, and airborne emissions such as SO_2, NOx, and mercury. In addition, the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011was signed into law on January 3, 2012 and may result in increased operating expenses and capital expenditures for the Company.

Increasing regulation could affect Vectren's utility rates charged to customers, its costs, and its profitability.

Any additional expenses or capital incurred by Vectren's utilities, as it relates to complying with increasing regulation are expected to be borne by the customers in its service territories through increased rates. Increased rates have an impact on the economic health of the communities served. New regulations could also negatively impact industries in the Company's service territory, including industries in which the Company operates.

The Company's utilities' ability to obtain rate increases and to maintain current authorized rates of return depends upon regulatory discretion, and there can be no assurance that Vectren will be able to obtain rate increases or rate supplements or earn currently authorized rates of return. Both Indiana and Ohio have passed laws allowing utilities to recover at least some of the cost of complying with federal mandates outside of a base rate proceeding.

Vectren regulated energy delivery operations are subject to various risks.

A variety of hazards and operations risks, such as leaks, accidental explosions, and mechanical problems are inherent in the Company's gas and electric distribution activities. If such events occur, they could cause substantial financial losses and result in loss of human life, significant damage to property, environmental pollution, and impairment of operations. The location of pipelines, storage facilities, and the electric grid near populated areas, including residential areas, commercial business centers, and industrial sites, could increase the level of damages resulting from these risks. These activities may subject the Company to litigation or administrative proceedings from time to time. Such litigation or proceedings could result in substantial monetary judgments, fines, or penalties or be resolved on unfavorable terms. In accordance with customary industry practices, the Company maintains insurance against a significant portion, but not all, of these risks and losses. To the extent that the occurrence of any of these events is not fully covered by insurance, it could adversely affect the Company's financial condition and results of operations.

Vectren's regulated power supply operations are subject to various risks.

The Company's electric generating facilities are subject to operational risks that could result in unscheduled plant outages, unanticipated operation and maintenance expenses and increased power purchase costs. Such operational risks can arise from circumstances such as facility shutdowns due to equipment failure or operator error; interruption of fuel supply or increased prices of fuel as contracts expire; disruptions in the delivery of electricity; inability to comply with regulatory or permit requirements; labor disputes; and natural disasters.

The Company participates in the MISO.

The Company is a member of the MISO, which serves the electrical transmission needs of much of the Midwest and maintains operational control over SIGECO's electric transmission facilities as well as that of other Midwest utilities. As a result of such control, SIGECO's continued ability to import power, when necessary, and export power to the wholesale market has been, and may continue to be, impacted.

The need to expend capital for improvements to the regional transmission system, both to SIGECO's facilities as well as to those facilities of adjacent utilities, over the next several years is expected to be significant. The Company timely recovers its investment in certain new electric transmission projects that benefit the MISO infrastructure at a FERC approved rate of return.

Also, the MISO allocates operating costs and the cost of multi value projects throughout the region to its participating utilities such as SIGECO and such costs are significant. Adjustments to these operating costs, including adjustments that result from participants entering or leaving the MISO, could cause increases or decreases to customer bills. The Company timely recovers its portion of MISO operating expenses as tracked costs.

Wholesale power marketing activities may add volatility to earnings.

Vectren's regulated electric utility engages in wholesale power marketing activities that primarily involve the offering of utility-owned or contracted generation into the MISO hourly and real time markets. As part of these strategies, the Company may also execute energy contracts that are integrated with portfolio requirements around power supply and delivery. Presently, margin earned from these activities above or below $7.5 million is shared evenly with customers. These earnings from wholesale marketing activities may vary based on fluctuating prices for electricity and the amount of electric generating capacity or purchased power available beyond that needed to meet firm service requirements. In addition, this earnings sharing approach may be modified in future regulatory proceedings.

Increases in the wholesale price of natural gas, coal, and electricity could reduce earnings and working capital.

The Company's regulated operations have limited exposure to commodity price risk for transactions involving purchases and sales of natural gas, coal, and purchased power for the benefit of retail customers due to current state regulations, which subject to compliance with those regulations, allow for recovery of the cost of such purchases through natural gas and fuel cost adjustment mechanisms. However, significant increases in the price of natural gas, coal, or purchased power may cause existing customers to conserve or motivate them to switch to alternate sources of energy as well as cause new home developers, builders, and new customers to select alternative sources of energy. Decreases in volumes sold could reduce earnings. The decrease would be more significant in the absence of constructive regulatory orders, such as those authorizing revenue decoupling, lost margin recovery, and other innovative rate designs. A decline in new customers could impede growth in future earnings. In addition, during periods when commodity prices are higher than historical levels, working capital costs could increase due to higher carrying costs of inventories and cost recovery mechanisms, and customers may have trouble paying higher bills leading to bad debt expenses.

Nonutility Operating Risks

The performance of Vectren's nonutility businesses is subject to certain risks.

Execution of the Company's nonutility business strategies and the success of efforts to invest in and develop new opportunities in the nonutility business area are subject to a number of risks. These risks include, but are not limited to, the effects of weather; failure of installed performance contracting products to operate as planned; failure to properly estimate the cost to construct projects; failure to develop or obtain gas storage field and mining property; potential legislation that may limit CO_2 and other greenhouse gases emissions; creditworthiness of customers and joint venture partners; changes in federal, state or local legal requirements, such as changes in tax laws or rates; and changing market conditions.

Vectren's nonutility businesses support its regulated utilities pursuant to service contracts by providing natural gas supply services, coal, and infrastructure services. In most instances, Vectren's ability to maintain these service contracts depends upon regulatory discretion and negotiation with interveners, and there can be no assurance that it will be able to obtain future service contracts, or that existing arrangements will not be revisited.

Nonutility Coal mining operations could be adversely affected by a number of factors.

The success of coal mining operations is predicated on the ability to fully access coal at company-owned mines; for the contract operator to operate owned mines in accordance with MSHA guidelines and regulations, recent interpretations of those guidelines and regulations, and any new guidelines or regulations that could result from the recent mining incidents at coal mines of other companies and to respond to more frequent and broader inspections; to negotiate and execute new sales contracts; to adapt to any new laws or rules, such as climate change or air quality legislation, that impact users of coal; and to manage production and production costs and other risks in response to changes in demand. Other risks, which could adversely impact operating results, include but are not limited to: market demand for coal including impacts of fuel switching to alternative sources; geologic, equipment, and operational risks; supplier and contract miner performance; the availability of miners, key equipment and commodities; availability of transportation; and the ability to access/replace coal reserves. Coal sales and production could be impacted by significant variations in weather and have a material impact on the Company's earnings.

In addition, coal mining operations have exposure to coal commodity prices. If coal commodity prices change in a direction or manner that is not anticipated, or if the forecasted sales transactions do not occur, losses may result. Although forecasted sales are hedged with owned coal inventory and known reserves, all exposure to both short and long-term coal price volatility is not hedged. Therefore, fluctuating coal prices are likely to cause the Company's net income to be volatile.

The success of Vectren's nonutility natural gas marketing strategies is affected by a number of factors.

ProLiance relies on long-term firm transportation and storage contracts with pipeline companies to deliver natural gas to its customer base. Those contracts are optimized by balancing physical and financial markets and summer and winter time horizons. Therefore, recovery of the these contracts' fixed costs is dependent on a number of factors, including the health of the economy, weather, changes in the availability and location of natural gas supply and related transmission assets, the price of natural gas, and the availability of credit. Optimization opportunities at current market prices or a deterioration of the customer base may result in the inability to fully recover these fixed price obligations.

Recent market conditions have compressed optimization opportunities, and ProLiance has operated at a loss. If current market conditions continue, resulting in continued depressed asset optimization opportunities, losses could continue in future years should ProLiance be unable to adjust to the current market conditions or be unsuccessful in further renegotiating its transportation and storage contracts over time.

In addition to physical and financial contracts executed for optimization opportunities, forward contracts and from time to time option contracts are executed to meet forecasted customer demand that may or may not occur and to hedge commodity price risk and basis risk. If the value of these contracts changes in a direction or manner that is not anticipated, or if the forecasted sales transactions do not occur, losses may result. These contracts include fixed-price forward physical purchase and sales contracts, and/or financial forwards, futures, swaps and option contracts traded in the over-the-counter markets or on exchanges. Therefore, fluctuating natural gas prices are likely to cause the Company's net income to be volatile.

Vectren's nonutility group competes with larger energy providers, which may limit its ability to grow its business.

Competitors for Vectren's nonutility businesses include regional, national and global companies. Many of Vectren's competitors are well-established and have larger and more developed networks and systems, greater name recognition, longer operating histories and significantly greater financial, technical and marketing resources. This competition, and the addition of any new competitors, could negatively impact the financial performance of the nonutility group and the Company's ability to grow its nonutility businesses.

Other Corporate Operating Risks

The Company is exposed to physical and financial risks related to the uncertainty of climate change.

A changing climate creates uncertainty and could result in broad changes to the Company's service territories. These impacts could include, but are not limited to, population shifts; changes in the level of annual rainfall; changes in the weather; and changes to the frequency and severity of weather events such as thunderstorms, wind, tornadoes, and ice storms that can damage infrastructure. Such changes could impact the Company in a number of ways including the number and/or type of customers in the Company's service territories; the demand for energy resulting in the need for additional investment in generation assets or the need to retire current infrastructure that is no longer required; an increase to the cost of providing service; and an increase in the likelihood of capital expenditures to replace damaged infrastructure.

To the extent climate change impacts a region's economic health, it may also impact the Company's revenues, costs, and capital structure and thus the need for changes to rates charged to regulated customers. Rate changes themselves can impact the economic health of the communities served and may in turn adversely affect the Company's operating results.

Increased derivative regulation could impact results.

The Company, as well as ProLiance, uses natural gas derivative instruments in conjunction with energy marketing and procurement activities. The Company also uses interest rate derivative instruments to minimize the impact of interest rate fluctuations associated with anticipated debt issuances.

New regulations related to the use of derivatives became law in 2010. These regulations include a requirement that certain transactions be cleared on exchanges and a requirement to post cash collateral for certain transactions. Depending on the regulations adopted by the Commodities Futures Trading Commission (CFTC) and other agencies, the Company and ProLiance could be required to post additional collateral with dealer counterparties for commitments and interest rate derivative transactions. Requirements to post collateral could limit cash for investment and for other corporate purposes or could increase debt levels. In addition, a requirement for counterparties to post collateral could result in additional costs associated with executing transactions, thereby decreasing profitability. An increased collateral requirement could also reduce the Company's and ProLiance's ability to execute derivative transactions to reduce commodity price and interest rate uncertainty and to protect cash flows. The new regulations may also limit the pool of potential counterparties.

The law provides for an exception from these clearing and cash collateral requirements for commercial end-users. Significant rule-making by numerous governmental agencies, particularly the CFTC, must be adopted in the near term so that the restrictions, limitations, and requirements contemplated by the new law can be implemented. The Company and ProLiance continue to evaluate the impact as these rulemaking and interpretations become available and whether exemptions will apply to the Company's and ProLiance's use of derivative instruments.

Vectren's subsidiaries have performance and warranty obligations, some of which are guaranteed by Vectren.

In the normal course of business, subsidiaries of Vectren issue performance bonds and other forms of assurance that commit them to timely install infrastructure, operate facilities, pay vendors or subcontractors, and/or support warranty obligations. Vectren Corporation, as the parent company, will from time to time guarantee its subsidiaries' commitments. These guarantees do not represent incremental consolidated obligations; rather, they represent parental guarantees of subsidiary obligations in order to allow those subsidiaries the flexibility to conduct business without posting other forms of collateral. The Company has not been called upon to satisfy any obligations pursuant to these parental guarantees.

From time to time, Vectren is subject to material litigation and regulatory proceedings.

From time to time, the Company, as well as its equity investees such as ProLiance, may be subject to material litigation and regulatory proceedings including matters involving compliance with state and federal laws, regulations or other matters. There can be no assurance that the outcome of these matters will not have a material adverse effect on Vectren's business, prospects, results of operations, or financial condition.

The investment performance of pension plan holdings and other factors impacting pension plan costs could impact Vectren's liquidity and results of operations.

The costs associated with the Company's retirement plans are dependent on a number of factors, such as the rates of return on plan assets; discount rates; the level of interest rates used to measure funding levels; changes in actuarial assumptions; future government regulation; and Company contributions. In addition, the Company could be required to provide for significant funding of these defined benefit pension plans. Such cash funding obligations could have a material impact on liquidity by reducing cash flows for other purposes and could negatively affect results of operations.

Catastrophic events, such as cyber-attacks, terrorist attacks, acts of war, and acts of God, may adversely affect Vectren's facilities and operations.

Catastrophic events such as fires, earthquakes, explosions, floods, ice storms, tornados, terrorist acts, cyber-attacks, or similar occurrences could adversely affect Vectren's facilities, operations, financial condition and results of operations. Either a direct act against company-owned generating facilities or transmission and distribution infrastructure or an act against the infrastructure of neighboring utilities or interstate pipelines that are used by the Company to transport power and natural gas could result in the Company being unable to deliver natural gas or electricity for a prolonged period. Further, Vectren relies on information technology networks and systems to operate its generating facilities, engage in asset management activities, and process, transmit and store electronic information. Security breaches of this information technology infrastructure, including cyber-attacks and cyber-terrorism, could lead to system disruptions, generating facility shutdowns or unauthorized disclosure of confidential information. In the event of a severe disruption resulting from such events, Vectren has contingency plans and employs crisis management to respond and recover operations. Despite these measures, if such an attack or security breach were to occur, results of operations and financial condition could be materially adversely affected.

Workforce risks could affect Vectren's financial results.

The Company is subject to various workforce risks, including but not limited to, the risk that it will be unable to attract and retain qualified personnel; that it will be unable to effectively transfer the knowledge and expertise of an aging workforce to new personnel as those workers retire; that it will be unable to react to a pandemic illness; and that it will be unable to reach collective bargaining arrangements with the unions that represent certain of its workers, which could result in work stoppages.

ITEM 1B. UNRESOLVED STAFF COMMENTS

None.

ITEM 2. PROPERTIES

Gas Utility Services

Indiana Gas owns and operates four active gas storage fields located in Indiana covering 58,100 acres of land with an estimated ready delivery from storage capability of 5.6 BCF of gas with maximum peak day delivery capabilities of 143,500 MCF per day. Indiana Gas also owns and operates three liquefied petroleum (propane) air-gas manufacturing plants located in Indiana with the ability to store 1.5 million gallons of propane and manufacture for delivery 33,000 MCF of manufactured gas per day. In addition to its company owned storage and propane capabilities, Indiana Gas has contracted with ProLiance for 16.5 BCF of interstate natural gas pipeline storage service with a maximum peak day delivery capability of 245,867 MMBTU per day. Indiana Gas' gas delivery system includes 13,000 miles of distribution and transmission mains, all of which are in Indiana except for pipeline facilities extending from points in northern Kentucky to points in southern Indiana so that gas may be transported to Indiana and sold or transported by Indiana Gas to ultimate customers in Indiana.

SIGECO owns and operates three active underground gas storage fields located in Indiana covering 6,100 acres of land with an estimated ready delivery from storage capability of 6.3 BCF of gas with maximum peak day delivery capabilities of 108,000 MCF per day. In addition to its company owned storage delivery capabilities, SIGECO has contracted with ProLiance for 0.4 BCF of interstate pipeline storage service with a maximum peak day delivery capability of 16,812 MMBTU per day. SIGECO's gas delivery system includes 3,200 miles of distribution and transmission mains, all of which are located in Indiana.

VEDO owns and operate three liquefied petroleum (propane) air-gas manufacturing plants, all of which are located in Ohio. The plants can store 0.5 million gallons of propane, and the plants can manufacture for delivery 52,200 MCF of manufactured gas per day. In addition to its propane delivery capabilities, VEDO has contracted for 11.8 BCF of natural gas delivery service with a maximum peak day delivery capability of 246,080 MMBTU per day. While the Company still has title to this delivery capability, it has released it to those retail gas marketers now supplying VEDO's customers with natural gas, and those suppliers are responsible for the demand charges. VEDO's gas delivery system includes 5,500 miles of distribution and transmission mains, all of which are located in Ohio.

Electric Utility Services

SIGECO's installed generating capacity as of December 31, 2011, was rated at 1,298 MW. SIGECO's coal-fired generating facilities are the Brown Station with two units of 490 MW of combined capacity, located in Posey County approximately eight miles east of Mt. Vernon, Indiana; the Culley Station with two units of 360 MW of combined capacity, and Warrick Unit 4 with 150 MW of capacity. Both the Culley and Warrick Stations are located in Warrick County near Yankeetown, Indiana. SIGECO's gas-fired turbine peaking units are: two 80 MW gas turbines (Brown Unit 3 and Brown Unit 4) located at the Brown Station; two Broadway Avenue Gas Turbines located in Evansville, Indiana with a combined capacity of 115 MW (Broadway Avenue Unit 1, 50 MW and Broadway Avenue Unit 2, 65 MW); and two Northeast Gas Turbines located northeast of Evansville in Vanderburgh County, Indiana with a combined capacity of 20 MW. The Brown Unit 3 and Broadway Avenue Unit 2 turbines are also equipped to burn oil. Total capacity of SIGECO's six gas turbines is 295 MW, and they are generally used only for reserve, peaking, or emergency purposes due to the higher per unit cost of generation. In 2009, SIGECO, with IURC approval, purchased a landfill gas electric generation project in Pike County, Indiana with a total capability of 3 MW.

SIGECO's transmission system consists of 989 circuit miles of 345Kv, 138Kv and 69Kv lines. The transmission system also includes 35 substations with an installed capacity of 4,863 megavolt amperes (Mva). The electric distribution system includes 4,281 pole miles of lower voltage overhead lines and 372 trench miles of conduit containing 1,999 miles of underground distribution cable. The distribution system also includes 96 distribution substations with an installed capacity of 2,929 Mva and 54,000 distribution transformers with an installed capacity of 2,349 Mva.

SIGECO owns utility property outside of Indiana approximating nine miles of 138,000 volt electric transmission line, which is included in the 989 circuit miles discussed above, located in Kentucky and which interconnects with Louisville Gas and Electric Company's transmission system at Cloverport, Kentucky.

Nonutility Pr operties

Subsidiaries other than the utility operations have no significant properties other than the ownership and operation of coal mining property in Indiana which is identified in Item 1.

Pr operty Serving as Collateral

SIGECO's properties are subject to the lien of the First Mortgage Indenture dated as of April 1, 1932, between SIGECO and Bankers Trust Company, as Trustee, and Deutsche Bank, as successor Trustee, as supplemented by various supplemental indentures.

ITEM 3. LEGAL PROCEEDINGS

The Company is party to various legal proceedings and audits and reviews by taxing authorities and other government agencies arising in the normal course of business. In the opinion of management, there are no legal proceedings or other regulatory reviews or audits pending against the Company that are likely to have a material adverse effect on its financial position, results of operations, or cash flows. See the notes to the consolidated financial statements regarding commitments and contingencies, environmental matters, and rate and regulatory matters. The consolidated financial statements are included in "Item 8 Financial Statements and Supplementary Data."

ITEM 4. MINE SAFETY DISCLOSURES

Not Applicable.

PART II

ITEM 5. MARKET FOR COMPANY'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS, AND ISSUER PURCHASES OF EQUITY SECURITIES

Market Data, Dividends Paid, and Holders of Record

The Company's common stock trades on the New York Stock Exchange under the symbol "VVC." For each quarter in 2011 and 2010, the high and low sales prices for the Company's common stock as reported on the New York Stock Exchange and dividends paid are presented below.

	Cash	Common Stock Price Range	
	Dividend	High	Low
2011			
First Quarter	$ 0.345	$ 27.31	$ 25.33
Second Quarter	0.345	28.84	26.66
Third Quarter	0.345	28.73	23.65
Fourth Quarter	0.350	30.65	25.49
2010			
First Quarter	$ 0.340	$ 25.07	$ 22.14
Second Quarter	0.340	25.60	21.66
Third Quarter	0.340	26.05	22.97
Fourth Quarter	0.345	27.85	24.18

On January 31, 2012 the board of directors declared a dividend of $0.350 per share, payable on March 1, 2012, to common shareholders of record on February 15, 2012.

As of January 31, 2012, there were 9,091 registered shareholders of the Company's common stock.

Quarterly Share Purchases

Periodically, the Company purchases shares from the open market to satisfy share requirements associated with the Company's share-based compensation plans. The following chart contains information regarding open market purchases made by the Company to satisfy share-based compensation requirements during the quarter ended December 31, 2011.

Period	Number of Shares Purchased	Average Price Paid Per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans	Maximum Number of Shares That May Be Purchased Under These Plans
October 1-31	-	$ -	-	-
November 1-30	221,368	29.22	-	-
December 1-31	20,500	28.67	-	-

Dividend Policy

Common stock dividends are payable at the discretion of the board of directors, out of legally available funds. The Company's policy is to distribute approximately 65 percent of earnings over time. On an annual basis, this percentage has varied and could continue to vary due to short-term earnings volatility. The Company has increased its dividend for 52 consecutive years. While the Company is under no contractual obligation to do so, it intends to continue to pay dividends and increase its annual dividend consistent with historical practice. Nevertheless, should the Company's financial condition, operating results, capital requirements, or other relevant factors change, future dividend payments, and the amounts of these dividends, will be reassessed.

ITEM 6. SELECTED FINANCIAL DATA

The following selected financial data is derived from the Company's audited consolidated financial statements and should be read in conjunction with those financial statements and notes thereto contained in this Form 10-K.

	Year Ended December 31,				
(In millions, except per share data)	2011	2010	2009	2008	2007
Operating Data:					
Operating revenues	$ 2,325.2	$ 2,129.5	$ 2,088.9	$ 2,484.7	$ 2,281.9
Operating income	$ 370.0	$ 316.8	$ 280.1	$ 263.4	$ 260.5
Net income	$ 141.6	$ 133.7	$ 133.1	$ 129.0	$ 143.1
Average common shares outstanding	81.8	81.2	80.7	78.3	75.9
Fully diluted common shares outstanding	81.8	81.3	81.0	78.7	76.4
Basic earnings per share on common stock	$ 1.73	$ 1.65	$ 1.65	$ 1.65	$ 1.89
Diluted earnings per share on common stock	$ 1.73	$ 1.64	$ 1.64	$ 1.63	$ 1.87
Dividends per share on common stock	$ 1.385	$ 1.365	$ 1.345	$ 1.310	$ 1.270
Balance Sheet Data:					
Total assets	$ 4,878.9	$ 4,764.2	$ 4,671.8	$ 4,632.9	$ 4,296.4
Long-term debt, net	$ 1,559.6	$ 1,435.2	$ 1,540.5	$ 1,247.9	$ 1,245.4
Common shareholders' equity	$ 1,465.5	$ 1,438.9	$ 1,397.2	$ 1,351.6	$ 1,233.7

Executive Summary of Consolidated Results of Operations

In this discussion and analysis, the Company analyzes contributions to consolidated earnings and earnings per share from its Utility Group and Nonutility Group separately since each operates independently requiring distinct competencies and business strategies, offers different energy and energy related products and services, and experiences different opportunities and risks.

The Utility Group generates revenue primarily from the delivery of natural gas and electric service to its customers. The primary source of cash flow for the Utility Group results from the collection of customer bills and the payment for goods and services procured for the delivery of gas and electric services. The activities of, and revenues and cash flows generated by, the Nonutility Group are closely linked to the utility industry, and the results of those operations are generally impacted by factors similar to those impacting the overall utility industry. In addition, there are other operations, referred to herein as Corporate and Other, that include unallocated corporate expenses such as advertising and charitable contributions, among other activities.

The Company has in place a disclosure committee that consists of senior management as well as financial management. The committee is actively involved in the preparation and review of the Company's SEC filings.

Net income and earnings per share, in total and by group, for the years ended December 31, 2011, 2010, and 2009 follow:

	Year Ended December 31,		
(In millions, except per share data)	2011	2010	2009
Net income	$ 141.6	$ 133.7	$ 133.1
Attributed to:			
Utility Group	$ 122.9	$ 123.9	$ 107.4
Nonutility Group	23.8	9.8	25.8
Corporate & Other	(5.1)	-	(0.1)
Basic earnings per share	$ 1.73	$ 1.65	$ 1.65
Attributed to:			
Utility Group	$ 1.50	$ 1.53	$ 1.33
Nonutility Group	0.29	0.12	0.32
Corporate & Other	(0.06)	-	-

Results

For the year ended December 31, 2011, consolidated net income was $141.6 million, or $1.73 per share, compared to earnings of $133.7 million, or $1.65 per share in 2010 and $133.1 million, or $1.65 per share in 2009.

In 2011, the Company advanced initiatives to grow its nonutility infrastructure services segment; to reduce exposure to volatile commodity-related businesses; and to permit its utilities to earn their allowed returns. During the first quarter of 2011, the Company purchased Minnesota Limited, a transmission pipe construction company. Earnings were favorably impacted by this acquisition along with increased demand in the services offered by the nonutility infrastructure services segment. During the fourth quarter of 2011, the Company sold its wholly owned retail natural gas marketer, Vectren Source. New base rates were established in the Company's electric utility service territory in May providing for the opportunity to earn on the $325 million of rate base added since the last base rate case. Further, multiple Utility Group refinancing transactions were completed in 2011 at favorable interest rates.

Natural gas market conditions continued to impact the Company's investment in wholesale energy marketer ProLiance Holdings, LLC, and the continued soft real estate market resulted in impairment charges associated with legacy real estate holdings. These transactions, along with other operating trends, are further described below.

Utility Group

During 2011, the Utility Group earned $122.9 million, compared to $123.9 million earned in 2010 and $107.4 million earned in 2009. The results in 2011 reflect an increase in earnings from electric operations and slightly lower earnings from gas operations. Utility results also include an unfavorable income tax adjustment associated with the sale of Vectren Source. The increase in 2010 compared to 2009 results from the return of large customer usage, summer cooling weather that was significantly warmer than normal and the prior year, and lower operating expenses.

Gas utility services

The gas utility segment earned $52.5 million during the year ended December 31, 2011, compared to earnings of $53.7 million in 2010 and $50.2 million in 2009. Results over the periods presented have been impacted by continued growth in large customer margin and return on bare steel, cast iron, and distribution riser replacement activities in Ohio. In 2011 increased operating expenses associated with planned maintenance activities, environmental remediation efforts, and a brief work stoppage related to bargaining unit labor negotiations unfavorably impacted year over year trends. In 2010 results were favorably impacted by the phased implementation of a straight fixed variable rate design in the Ohio service territory and by lower operating expenses.

Electric utility services

The electric operations earned $65.0 million during 2011, compared to $60.9 million in 2010 and $48.3 million in 2009. The year ended 2011 has been positively impacted by new electric base rates implemented on May 3, 2011 and negatively impacted by summer weather that, while warmer than normal, was cooler than the extreme summer temperatures in 2010. Earnings in 2011 were also reduced by increased power supply operating expenses associated with planned electric generating maintenance activities. The increase in 2010 compared to 2009 is principally due to extreme summer weather and increased large customer margins.

Management estimates the impact of weather on electric margin, compared to normal temperatures, to be approximately $3.0 million favorable in 2011. This compares to 2010, where management estimated a $10.4 million favorable impact on margin compared to normal. In 2010 summer cooling weather was 34 percent warmer than normal. In 2009, there was mild cooling weather, and management estimates the impact on electric margin to be $4.8 million unfavorable compared to normal in that year. Although summer temperatures were warmer than normal in 2011, year over year compared to 2010, there was a decline in earnings of approximately $4.4 million after tax, or $0.05 per share. In 2010 compared to 2009, there was an estimated increase of $9.0 million after tax, or $0.11 per share, due to electric weather.

Other utility operations

In 2011 earnings from other utility operations were $5.4 million compared to $9.3 million in 2010 and $8.9 million in 2009. The decrease in 2011 is primarily due to a higher effective income tax rate. The higher income tax rate results primarily from the revaluation of existing Utility Group deferred income taxes as a result of the fourth quarter sale of Vectren Source. The charge to income taxes as a result of the revaluation was approximately $2.8 million.

Nonutility Group

In 2011, Nonutility Group earnings were $23.8 million compared to earnings of $9.8 million in 2010 and $25.8 million in 2009. The infrastructure services, energy services, and coal mining operations combined for $38.2 million of earnings contribution in 2011 compared to $21.4 million of earnings contribution in 2010 and $24.2 million in 2009. In 2011, Infrastructure Services earnings increased $11.8 million compared to 2010, driven by increased demand and the Minnesota Limited acquisition. Coal Mining earnings also increased $4.7 million year over year due to increased third party sales resulting from the opening of Oaktown 1. Both 2011 and 2010 reflect reduced optimization opportunities at ProLiance, which resulted in its contribution to Vectren's results being a loss of $22.9 million in 2011 and $7.9 million in 2010. In 2009 ProLiance contributed earnings of approximately $14.2 million, before the impacts of an impairment charge associated with an investment in a storage asset held by ProLiance (the Liberty Charge).

Overall results were impacted by the sale of retail natural gas marketer Vectren Source in 2011 and certain charges throughout the years presented. In 2011, the sale of Vectren Source, net of transaction costs, resulted in a pretax gain of $25.4 million. After current taxes and the impact of the revaluation of deferred taxes resulting from the sale of $3.5 million ($2.8 million at the Utility Group and $0.7 million at the Nonutility Group), the after tax consolidated gain was approximately $12.4 million. Legacy real estate charges totaled $15.4 million, or $9.2 million after tax, in 2011. Results in 2010 were also impacted by charges related to legacy investments totaling $6.9 million after tax, and 2009 contains an $11.9 million after tax charge associated with the Liberty Charge. In the consolidated financial statements, Note 6 describes the sale of Vectren Source, Note 8 describes the legacy investment charges, and Note 7 describes the Liberty Charge.

Corporate & Other

The 2011 results in corporate and other primarily reflect a contribution to the Vectren Foundation, a 501(c)(3) charitable organization, totaling $6.0 million, or $3.9 after tax. The contribution is reflected in Other operating expenses in the consolidated financial statements.

Dividends

Dividends declared for the year ended December 31, 2011 were $1.385 per share, compared to $1.365 in 2010 and $1.345 per share in 2009. In November 2011, the Company's board of directors increased its quarterly dividend to $0.350 per share from $0.345 per share. The increase marks the 52nd consecutive year Vectren and predecessor companies' have increased annual dividends paid.

Use of Non-GAAP Performance Measur es and Per Shar e Measur es

Per share earnings contributions of the Utility Group, Nonutility Group, and Corporate and Other are presented and are non-GAAP measures. Such per share amounts are based on the earnings contribution of each group included in Vectren's consolidated results divided by Vectren's basic average shares outstanding during the period. The earnings per share of the groups do not represent a direct legal interest in the assets and liabilities allocated to the groups, but rather represent a direct equity interest in Vectren Corporation's assets and liabilities as a whole. These non-GAAP measures are used by management to evaluate the performance of individual businesses. In addition, other items giving rise to period over period variances, such as weather, are presented on an after tax and per share basis. These amounts are calculated at a statutory tax rate divided by Vectren's basic average shares outstanding during the period. Accordingly, management believes these measures are useful to investors in understanding each business' contribution to consolidated earnings per share and in analyzing consolidated period to period changes and the potential for earnings per share contributions in future periods. Reconciliations of the non-GAAP measures to their most closely related GAAP measure of consolidated earnings per share are included throughout this discussion and analysis. The non-GAAP financial measures disclosed by the Company should not be considered a substitute for, or superior to, financial measures calculated in accordance with GAAP, and the financial results calculated in accordance with GAAP.

Detailed Discussion of Results of Operations

Following is a more detailed discussion of the results of operations of the Company's Utility and Nonutility operations. The detailed results of operations for these groups are presented and analyzed before the reclassification and elimination of certain intersegment transactions necessary to consolidate those results into the Company's Consolidated Statements of Income.

Results of Operations of the Utility Group

The Utility Group is comprised of Utility Holdings' operations and consists of the Company's regulated operations and other operations that provide information technology and other support services to those regulated operations. Regulated operations consist of a natural gas distribution business that provides natural gas distribution and transportation services to nearly two-thirds of Indiana and to west central Ohio and an electric transmission and distribution business, which provides electric distribution services primarily to southwestern Indiana, and the Company's power generating and wholesale power operations. In total, these regulated operations supply natural gas and/or electricity to over one million customers. Utility Group operating results before certain intersegment eliminations and reclassifications for the years ended December 31, 2011, 2010, and 2009, follow:

	Year Ended December 31,		
(In millions, except per share data)	2011	2010	2009
OPERATING REVENUES			
Gas utility	$ 819.1	$ 954.1	$ 1,066.0
Electric utility	635.9	608.0	528.6
Other	2.0	1.6	1.6
Total operating revenues	1,457.0	1,563.7	1,596.2
OPERATING EXPENSES			
Cost of gas sold	375.4	504.7	618.1
Cost of fuel & purchased power	240.4	235.0	194.3
Other operating	313.1	299.2	304.6
Depreciation & amortization	192.3	188.2	180.9
Taxes other than income taxes	54.0	59.6	60.3
Total operating expenses	1,175.2	1,286.7	1,358.2
OPERATING INCOME	281.8	277.0	238.0
Other income - net	4.3	5.4	7.8
Interest expense	80.3	81.4	79.2
INCOME BEFORE INCOME TAXES	205.8	201.0	166.6
Income taxes	82.9	77.1	59.2
NET INCOME	$ 122.9	$ 123.9	$ 107.4
CONTRIBUTION TO VECTREN BASIC EPS	$ 1.50	$ 1.53	$ 1.33

Trends in Utility Operations

The Regulatory Environment

Gas and electric operations, with regard to retail rates and charges, terms of service, accounting matters, financing, and certain other operational matters specific to its Indiana customers (the operations of SIGECO and Indiana Gas), are regulated by the IURC. The retail gas operations of VEDO are subject to regulation by the PUCO.

Over the last five years, orders establishing new base rates have been received by each utility. SIGECO's electric territory received an order in April 2011, effective May 2011, and its gas territory received an order in August 2007. Indiana Gas received its most recent base rate order in February 2008 and VEDO in January 2009. The orders authorize a return on equity ranging from 10.15 percent to 10.40 percent. The authorized returns reflect the impact of innovative rate design strategies having been authorized by these state commissions. Outside of a full base rate proceeding, these innovative approaches to some extent mitigate the impacts of investments in government-mandated projects, operating costs that are volatile or that increase with government mandates, and changing consumption patterns. In addition to timely gas and fuel cost recovery, approximately $41 million of the Utility Group's approximate $313 million in Other operating expenses incurred during 2011 are subject to a recovery mechanism outside of base rates. In 2011, state laws in both Indiana and Ohio were passed that expand the ability of utilities to recover certain costs of federally mandated projects, and in Ohio other projects, outside of a base rate proceeding. Therefore, utilization of these mechanisms will likely increase in the coming years.

Rate Design Strategies

Sales of natural gas and electricity to residential and commercial customers are seasonal and are impacted by weather. Trends in average use among natural gas residential and commercial customers have tended to decline as more efficient appliances and furnaces are installed and the Company's utilities have implemented conservation programs. In the Company's two Indiana natural gas service territories, normal temperature adjustment (NTA) and lost margin recovery mechanisms largely mitigate the effect that would otherwise be caused by variations in volumes sold to these customers due to weather and changing consumption patterns. The Ohio natural gas service territory has a straight fixed variable rate design. This rate design, which was fully implemented in February 2010, mitigates most of the Ohio service territory's weather risk and risk of decreasing consumption. Prior to the implementation of this rate design, the Ohio service territory had a lost margin recovery mechanism. In all natural gas service territories, commissions have authorized bare steel and cast iron replacement programs. SIGECO's electric service territory currently recovers certain transmission investments outside of base rates. The electric service territory has neither an NTA nor a decoupling mechanism; however, rate designs provide for a lost margin recovery mechanism that works in tandem with conservation initiatives.

Tracked Operating Expenses

Gas costs and fuel costs incurred to serve Indiana customers are two of the Company's most significant operating expenses. Rates charged to natural gas customers in Indiana contain a gas cost adjustment (GCA) clause. The GCA clause allows the Company to timely charge for changes in the cost of purchased gas, inclusive of unaccounted for gas expense based on historical experience. Electric rates contain a fuel adjustment clause (FAC) that allows for timely adjustment in charges for electric energy to reflect changes in the cost of fuel. The net energy cost of purchased power, subject to an approved variable benchmark based on NYMEX natural gas prices, is also timely recovered through the FAC.

GCA and FAC procedures involve periodic filings and IURC hearings to establish the amount of price adjustments for a designated future period. The procedures also provide for inclusion in later periods of any variances between actual recoveries representing the estimated costs and actual costs incurred.

The IURC has also applied the statute authorizing GCA and FAC procedures to reduce rates when necessary to limit net operating income to a level authorized in its last general rate order through the application of an earnings test. These earnings tests have not had any material impact to the Company's recent operating results and are not expected to have any material impact in the foreseeable future. Since October of 2008, the Company has not been the supplier of natural gas in its Ohio territory.

In Indiana, gas pipeline integrity management costs, costs to fund energy efficiency programs, MISO costs, and the gas cost component of uncollectible accounts expense based on historical experience are recovered by mechanisms outside of standard base rate recovery. Certain operating costs, including depreciation, associated with operating environmental compliance equipment at electric generation facilities and regional electric transmission investments are also recovered outside of base rates when the associated asset is recovered outside of base rates. In Ohio, expenses such as uncollectible accounts expense, costs associated with exiting the merchant function, and costs associated with a distribution replacement program are subject to recovery outside of base rates. Revenues and margins are also impacted by the collection of state mandated taxes, which primarily fluctuate with gas and fuel costs.

See the Rate and Regulatory Matters section of this discussion and analysis for more specific information on significant proceedings involving the Company's utilities over the last three years.

Utility Group Margin

Throughout this discussion, the terms Gas Utility margin and Electric Utility margin are used. Gas Utility margin is calculated as Gas utility revenues less the Cost of gas sold. Electric Utility margin is calculated as Electric utility revenues less Cost of fuel & purchased power. The Company believes Gas Utility and Electric Utility margins are better indicators of relative contribution than revenues since gas prices and fuel and purchased power costs can be volatile and are generally collected on a dollar-for-dollar basis from customers. Following is a discussion and analysis of margin generated from regulated utility operations.

Gas Utility Margin (Gas utility revenues less Cost of gas sold)

Gas utility margin and throughput by customer type follows:

	Year Ended December 31,		
(In millions)	2011	2010	2009
Gas utility revenues	$ 819.1	$ 954.1	$ 1,066.0
Cost of gas sold	375.4	504.7	618.1
Total gas utility margin	$ 443.7	$ 449.4	$ 447.9
Margin attributed to:			
Residential & commercial customers	$ 375.2	$ 384.7	$ 387.2
Industrial customers	56.4	52.2	46.6
Other	12.1	12.5	14.1
Sold & transported volumes in MMDth attributed to:			
Residential & commercial customers	99.9	106.2	106.5
Industrial customers	97.0	90.8	78.0
Total sold & transported volumes	196.9	197.0	184.5

Over the three years ended December 31, 2011, volumes sold to residential and commercial customers have been impacted by weather, lower gas prices, conservation initiatives, and changing consumption patterns. However, the impact on margin has been generally offset as planned by rate design strategies. Large customer volumes were impacted by the recession, falling approximately 15 percent in 2009. With the economy stabilizing in 2010, volumes in 2010 returned to pre-recession levels with additional growth in 2011. The recovery from the recession and increasing ethanol production were the principal reasons for the change in large customer margin over the years presented. The average cost per dekatherm of gas purchased during 2011 was $5.30, compared to $5.99 in 2010 and $5.97 in 2009.

Gas utility margins were $443.7 million for year ended December 31, 2011, and compared to 2010 decreased $5.7 million. Margin decreased $8.0 million year over year due to lower revenue taxes and operating costs recovered in margin. Management estimates a decrease of $3.5 million due to Ohio rate design changes, as described below. Returns generated on investments in bare steel/ cast iron and distribution riser replacement in Ohio increased margins $2.7 million year over year. Large customer margin, net of the impacts of regulatory initiatives and tracked costs, increased by $3.8 million due primarily to ethanol producers.

For the year ended December 31, 2010, gas utility margins increased $1.5 million compared to 2009. Management estimates an increase of $2.4 million due to Ohio rate design changes, as described below. Large customer margin, net of the impacts of regulatory initiatives and tracked costs, increased by $5.7 million due primarily to increased volumes sold. Margin decreased $1.9 million due to lower miscellaneous revenues and other revenues associated with lower gas costs. The remaining decrease is primarily due to a $5.0 million decrease for lower operating expenses and revenue taxes directly recovered in margin.

The rate design approved by the PUCO on January 7, 2009, and initially implemented on February 22, 2009, allowed for the phased movement toward a straight fixed variable rate design. This rate design places substantially all of the fixed cost recovery in the monthly customer service charge. This rate design mitigates most weather risk as well as the effects of declining usage, similar to the company's lost margin recovery mechanism in place in the Indiana natural gas service territories and the mechanism in place in Ohio prior to this rate order. Since the straight fixed variable rate design was fully implemented in February 2010, nearly 90 percent of the combined residential and commercial base rate gas margins were recovered through the customer service charge. As a result of the timing of this conversion, margin in 2010 was favorably impacted by the volumetric rate design in place during the peak delivery winter months of January and the first half of February. Margin recognized in 2011 reflects the full implementation of the rate design which resulted in a decrease in margin in 2011 compared to 2010.

Electric Utility Margin (Electric utility revenues less Cost of fuel & purchased power)
Electric utility margin and volumes sold by customer type follows:

	Year Ended December 31,		
(In millions)	2011	2010	2009
Electric utility revenues	$ 635.9	$ 608.0	$ 528.6
Cost of fuel & purchased power	240.4	235.0	194.3
Total electric utility margin	$ 395.5	$ 373.0	$ 334.3
Margin attributed to:			
Residential & commercial customers	$ 255.8	$ 241.2	$ 224.6
Industrial customers	101.6	97.1	81.7
Municipals & other customers	8.5	8.5	7.3
Subtotal: Retail	$ 365.9	$ 346.8	$ 313.6
Wholesale margin	29.6	26.2	20.7
Total electric utility margin	$ 395.5	$ 373.0	$ 334.3
Electric volumes sold in GWh attributed to:			
Residential & commercial customers	2,827.2	2,964.0	2,760.8
Industrial customers	2,744.8	2,630.3	2,258.9
Municipals & other	22.8	22.6	20.0
Total r etail & firm wholesale volumes sold	5,594.8	5,616.9	5,039.7

Retail

Electric retail utility margins were $365.9 million for the year ended December 31, 2011 and compared to 2010 increased by $19.1 million. The impact of new base rates increased margin $23.7 million. Management estimates the impact of weather, which was warmer than normal but cooler compared to the prior year, to have decreased residential and commercial margin $7.4 million. Margin increased $2.4 million year over year due to increased MISO operating costs that are directly recovered in margin.

In 2010, electric retail utility margins increased $33.2 million compared to 2009. Management estimates the impact of warmer than normal weather to have increased residential and commercial margin $14.2 million year over year. Management also estimates industrial margins, net of the impacts of regulatory initiatives and recovery of tracked costs, to have increased approximately $12.8 million year over year due primarily to increased volumes. Margin among the customer classes associated with returns on pollution control investments increased $3.4 million, and margin associated with tracked costs such as recovery of MISO and pollution control operating expenses increased $4.1 million.

Margin from Wholesale Electric Activities

Periodically, generation capacity is in excess of native load. The Company markets and sells this unutilized generating and transmission capacity to optimize the return on its owned assets. Substantially all off-system sales occur into the MISO Day Ahead and Real Time markets. Further detail of Wholesale activity follows:

	Year Ended December 31,		
(In millions)	2011	2010	2009
Transmission system margin	$ 23.5	$ 18.8	$ 14.6
Off-system margin	6.1	7.4	6.1
Total wholesale margin	$ 29.6	$ 26.2	$ 20.7

The Company earns a return on electric transmission projects constructed by the Company in its service territory that meet the criteria of MISO's regional transmission expansion plans. Margin associated with these projects, including the reconciliation of recovery mechanisms, and other transmission system operations, totaled $23.5 million during 2011, compared to $18.8 million in 2010 and $14.6 million in 2009. Increases are primarily due to increased investment in qualifying projects.

One such project currently under construction meeting these expansion plan criteria is an interstate 345 Kv transmission line that connects Vectren’s A.B. Brown Generating Station to a station in Indiana owned by Duke Energy to the north and will connect to a station in Kentucky owned by Big Rivers Electric Corporation to the south. During the construction of these transmission assets and while these assets are in service, SIGECO will recover an approximate 10 percent return, inclusive of the FERC approved equity rate of return of 12.38 percent, on capital investments through a rider mechanism which is projected annually and reconciled the following year based on actual results. Of the total investment, which is expected to approximate $100 million, the Company has invested approximately $74 million as of December 31, 2011. The north leg of this expansion was placed in service in November 2010, and the south leg of this project is expected to be operational in 2012.

For the year ended December 31, 2011, margin from off-system sales was $6.1 million, compared to $7.4 million in 2010 and $6.1 million in 2009. The base rate changes implemented in May 2011 require that wholesale margin from off-system sales earned above or below $7.5 million be shared equally with customers. This compares to a $10.5 million sharing threshold established in 2007. Results for the periods presented reflect the impact of that sharing. Off-system sales totaled 586.7 GWh in 2011, compared to 587.6 GWh in 2010, and 603.6 GWh in 2009.

Utility Group Operating Expenses

Other Operating
For the year ended December 31, 2011, Other operating expenses were $313.1 million, and compared to 2010 reflect an increase of $13.9 million. The increase is primarily attributable to higher electric power supply operating expenses. Such expenses increased $10.8 million year over year with $6.9 million attributed to planned outage maintenance and $3.1 million attributed to variable production costs. The remaining variance is primarily attributable to higher planned energy delivery costs.

For the year ended December 31, 2010, Other operating expenses decreased $5.4 million compared to 2009. Excluding expenses tracked directly in margin, operating costs decreased $7.9 million. There was a $3.0 million reduction in Indiana uncollectible accounts expense. And in 2009, the Company incurred $5.3 million related to environmental remediation efforts.

Depreciation & Amortization
For the year ended December 31, 2011, depreciation and amortization expense was $192.3 million, compared to $188.2 million in 2010 and $18 million in 2009. These increases reflect utility investments placed into service. The higher deprecation as a result of increasing rate base was of by lower amortization of certain deferred costs pursuant to the May 2011 electric base rate order. Such decreased amortizations were $2.5 millic 2011.

Taxes Other Than Income Taxes
Taxes other than income taxes decreased $5.6 million in 2011 compared to 2010 and decreased $0.7 million in 2010 compared to 2009. The decreases are primarily attributable to lower Ohio excise and usage taxes associated with that territory’s ongoing process of exiting the merchant function, which started in the second quarter of 2010. These taxes are primarily revenue-related taxes and are offset dollar-for-dollar with lower gas utility revenues.

Other Income-Net
Other income-net reflects income of $4.3 million in 2011, compared to $5.4 million in 2010 and $7.8 million in 2009. The declines among the years principally reflect lower returns associated with investments that fund benefit plans. The earnings in 2009 reflect the partial recovery of those investments from the significant market declines in 2008 associated with the recession.

Interest Expense
For year ended December 31, 2011, interest expense was $80.3 million, and is a slight decrease compared to 2010. The decrease is primarily due to fourth quarter 2011 refinancing activity in which $250 million of long-term debt with a 6.625 percent interest rate matured and was replaced with $150 million of new long-term debt with an average interest rate of 5.12 percent and $100 million of short-term borrowings. During the fourth quarter, the Company also called $96.2 million of long-term debt at a rate of 5.95 percent and replaced that issuance in February 2012 with new debt at a rate of 5.0 percent. The impacts of refinancing at lower rates will decrease interest more significantly in 2012.

The $2.2 million increase in 2010 compared to 2009 reflects the impact of long-term financing transactions completed in 2009, offset by lower interest from less debt outstanding overall. The long-term financing transactions completed in 2009 include a second quarter issuance by Utility Holdings of $100 million in unsecured eleven year notes with an interest rate of 6.28 percent and a third quarter completion by SIGECO of a $22.3 million debt issuance of 31 year tax exempt first mortgage bonds with an interest rate of 5.4 percent.

Income Taxes

In 2011, Utility Group federal and state income taxes were $82.9 million, compared to $77.1 million in 2010 and $59.2 million in 2009. The $5.8 million increase in 2011 primarily reflects a higher effective income tax rate. The higher income tax rate includes a $2.8 million charge that results from the revaluation of existing Utility Group deferred income taxes as a result of the fourth quarter sale of Vectren Source.

Federal and state income taxes increased $17.9 million in 2010 compared to 2009. The increase is primarily impacted by greater pre-tax income in 2010 and no manufacturing tax deduction in 2010 as a result of significant bonus depreciation driving down qualifying income. In addition, the lower effective tax rate in 2009 reflects a greater share of taxable income in states with low, or no, state income taxes.

Legislative Matters

Pipeline Safety Law

On January 3, 2012 the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 was signed into law. This new law, which reauthorizes federal pipeline safety programs through fiscal year 2015, provides for enhanced safety, reliability and environmental protection in the transportation of energy products by pipeline. The new law increases federal enforcement authority, grants the federal government expanded authority over pipeline safety, provides for new safety regulations and standards, and authorizes or requires the completion of several pipeline safety-related studies. The DOT is required to promulgate a number of new regulatory requirements. The direction of those regulations will be based on the results of the studies and reports required or authorized by the new law and may eventually lead to further regulatory or statutory requirements.

The Company continues to study the impact of the new law and potential new regulations associated with its implementation. At this time, compliance costs and other effects associated with the increased pipeline safety regulations remain uncertain. However, the new law is expected to result in further investment in pipeline inspections, and where necessary, additional modernization of pipeline infrastructure; and therefore, result in both increased levels of operating expenses and capital expenditures associated with the Company's natural gas distribution businesses. Operating expenses associated with expanded compliance requirements may grow to approximately $9 million annually, with $6 million attributable to the Indiana operations. The Company expects to seek recovery under Senate Bill 251 referenced below, or such costs may be recoverable through current tracking mechanisms. Capital investments, driven by the pipeline safety regulations, associated with the Company's Indiana gas utilities are expected to be approximately $80 million over the next five years, which would likely qualify as federally mandated regulatory requirements. In Ohio, capital investments are expected to be approximately $55 million over the next five years. The Company expects to seek recovery of capital investments associated with complying with these federal mandates in accordance with Senate Bill 251 in Indiana and House Bill 95 in Ohio (referenced below).

Indiana House Bill 1004

In May 2011, House Bill 1004 was signed into law. This legislation phases in over four years a two percent rate reduction to the Indiana Adjusted Gross Income Tax for corporations. Pursuant to House Bill 1004, the tax rate will be lowered by one-half percent each year beginning on July 1, 2012, to the final rate of six and one-half percent effective July 1, 2015. Pursuant to FASB guidance, the Company accounted for the effect of the change in tax law on its deferred taxes in the second quarter of 2011, the period of enactment. The impact was not material to results of operations or financial condition as the decrease in Deferred tax liabilities was generally offset by a $17.1 million decrease in Regulatory assets.

Indiana Senate Bill 251

In April 2011, Senate Bill 251 was signed into law. While the bill is broad in scope, it allows for cost recovery outside of a base rate proceeding for federal government mandated projects and provides for a voluntary clean energy portfolio standard.

The law applies to both gas and electric utility operations and provides a framework to recover 80 percent of federally mandated costs through a periodic rate adjustment mechanism outside of a general rate case. Such costs include construction, depreciation, operating and other costs. The remaining 20 percent of those costs are to be deferred for recovery in the utility's next general rate case. The Company is currently evaluating the impact this law may have on its operations, including applicability to expenditures associated with the integrity, safety, and reliable operation of natural gas pipelines and facilities; ash disposal; water regulations; and air pollution, including greenhouse gas emissions, among other federally mandated projects and potential projects.

The legislation establishes a voluntary clean energy portfolio standard that provides incentives to electricity suppliers participating in the program. The goal of the program is that by 2025, at least 10 percent of the total electricity obtained by the supplier to meet the energy needs of its Indiana retail customers will be provided by clean energy sources, as defined. The financial incentives include an enhanced return on equity and tracking mechanisms to recover program costs. In advance of a federal portfolio standard and Senate Bill 251, SIGECO received regulatory approval to purchase a 3 MW landfill gas generation facility from a related entity. The facility was purchased in 2009 and is directly connected to the Company's distribution system. In 2009, the Company also executed a long term purchase power commitment for 50 MW of wind energy. These transactions supplement a 30 MW wind energy purchase power agreement executed in 2008. Before the impacts of efficiency measures, the Company currently stands at approximately 5 percent of its electricity being provided by clean energy sources due to the long-term wind contracts and landfill gas investments. The Company continues to evaluate whether to participate in this voluntary program.

Ohio House Bill 95

In June 2011, Ohio House Bill 95 was signed into law. The law adjusts, among other things, the manner in which gas utilities file for rate changes, including the implementation of base rate changes, alternative rate plans, and automatic rate adjustment mechanisms. Outside of a base rate proceeding, the legislation permits a natural gas company to apply to implement a capital expenditure program for infrastructure expansion, upgrade, or replacement; installation, upgrade, or replacement of information technology systems; or any program necessary to comply with government regulation. Once such application is approved, the legislation authorizes recovery or deferral of program costs, such as depreciation, property taxes, and carrying costs. The Company is assessing the impact this legislation may have on its operations. On February 3, 2012, the Company initiated a filing under House Bill 95. This filing requests accounting authority to defer depreciation, post in service carrying costs and property taxes for its approximate $25 million 2012 capital expenditure program. The capital expenditure program includes infrastructure expansion and improvements not covered by the Company's distribution replacement rider as well as expenditures necessary to comply with PUCO rules, regulations and orders. A procedural schedule associated with the filing has not yet been set.

Envir onmental Matters

Air Quality

Cross-State Air Pollution Rule (Formerly Clean Air Interstate Rule (CAIR))

On July 7, 2011, EPA finalized the Cross-State Air Pollution Rule (CSAPR). CSPAR is the EPA's response to the US Court of Appeals for the District of Columbia's (the Court) remand of the Clean Air Interstate Rule (CAIR). CAIR was originally established in 2005 as an allowance cap and trade program that required reductions from coal-burning power plants for NOx emissions beginning January 1, 2009 and SO_2 emissions beginning January 1, 2010, with a second phase of reductions in 2015.

In an effort to address the Court's finding that CAIR did not adequately ensure attainment of pollutants in certain downwind states due to unlimited trading of $SO_2$and NOx allowances, CSPAR reduces the ability of facilities to meet emission reduction targets through allowance trading. Like CAIR, CSPAR sets individual state caps for $SO_2$and NOx emissions. However, unlike CAIR in which states allocated allowances through state implementation plans, CSPAR allowances were allocated to individual units directly through the federal rule. As finalized, CSAPR requires a 71 percent reduction of SO_2 emissions compared to 2005 national levels and a 52 percent reduction of NOx emissions compared to 2005 national levels and that such reductions are to be achieved with initial step reductions beginning January 1, 2012, with final compliance to be achieved in 2014. Multiple administrative and judicial challenges have been filed, including requests to stay CSPAR's implementation.

On December 30, 2011, the Court granted a stay of CSPAR and ordered expedited briefing schedules be submitted by January 18, 2012, that would allow for completion of briefing and a hearing in April 2012. Two primary issues are before the Court for review: (1) EPA's use of air modeling data (as opposed to exclusive reliance on actual monitoring data) to support state contribution levels, and (2) EPA's allocation of allowances directly through a federal implementation plan as opposed to setting state caps and providing states the opportunity to submit individual state implementation plans. In addition, there are initiatives in the Congress that, if adopted, would suspend CSPAR's implementation.

Utility Hazardous Air Pollutants (HAPs) Rule

On December 21, 2011, the EPA finalized the Utility HAPs rule. The HAPs Rule is the EPA's response to the US Court of Appeals for the District of Columbia vacating the Clean Air Mercury Rule (CAMR) in 2008. CAMR was originally established in 2005 as a nation-wide mercury emission allowance cap and trade system which sought to reduce utility emissions of mercury starting in 2010.

The HAPs rule sets emission limits for hazardous air pollutants for existing and new coal-fired power plants and identifies the following broad categories of hazardous air pollutants: mercury, non-mercury hazardous air pollutants (primarily arsenic, chromium, cobalt, and selenium) and acid gases (hydrogen cyanide, hydrogen chloride, and hydrogen fluoride). The rule imposes mercury emission limits for two sub-categories of coal, and proposed surrogate limits for non-mercury and acid gas hazardous air pollutants. The EPA did not grant blanket compliance extensions, but asserted that states have broad authority to grant one year extensions for individual units where potential reliability impacts have been demonstrated. Reductions are to be achieved within three years of publication of the final rule in the Federal register (early 2015). Initiatives to suspend CSPAR's implementation by the Congress also apply to the implementation of the HAPs Rule.

Conclusions Regarding Air Regulations

To comply with Indiana's implementation plan of the Clean Air Act, and other federal air quality standards, the Company obtained authority from the IURC to invest in clean coal technology. Using this authorization, the Company invested approximately $411 million starting in 2001 with the last equipment being placed into service on January 1, 2010. The pollution control equipment included Selective Catalytic Reduction (SCR) systems, fabric filters, and an SO_2 scrubber at its generating facility that is jointly owned with ALCOA (the Company's portion is 150 MW). SCR technology is the most effective method of reducing NOx emissions where high removal efficiencies are required and fabric filters control particulate matter emissions. The unamortized portion of the $411 million clean coal technology investment was included in rate base for purposes of determining SIGECO's new electric base rates approved in the latest base rate order obtained April 27, 2011. SIGECO's coal fired generating fleet is 100 percent scrubbed for SO_2 and 90 percent controlled for NOx.

Utilization of the Company's NOx and SO_2 allowances can be impacted as these regulations are revised and implemented. Most of these allowances were granted to the Company at zero cost; therefore, any reduction in carrying value that could result from future changes in regulations would be immaterial.

The Company is currently reviewing the sufficiency of its existing pollution control equipment in relation to the requirements described in CSPAR and the Utility HAPs Rule. Based upon an initial review of the final rules, including minor revisions made to CSPAR in October 2011, the Company believes that it will be able to meet these requirements with its existing suite of pollution control equipment and the anticipated allotment of new emission allowances. However, it is possible some minor modifications to the control equipment and additional operating expenses could be required. The Company believes that such additional costs, if necessary, would be recoverable under Indiana Senate Bill 251 referenced above.

Water

Section 316(b) of the Clean Water Act requires that generating facilities use the "best technology available" to minimize adverse environmental impacts in a body of water. More specifically, Section 316(b) is concerned with impingement and entrainment of aquatic species in once-through cooling water intake structures used at electric generating facilities. In April 2009, the U.S. Supreme Court affirmed that the EPA could, but was not required to, consider costs and benefits in making the evaluation as to the best technology available for existing generating facilities. The regulation was remanded back to the EPA for further consideration. In March 2011, the EPA released its proposed Section 316(b) regulations. The EPA did not mandate the retrofitting of cooling towers in the proposed regulation, but if finalized the regulation will leave it to the state to determine whether cooling towers should be required on a case by case basis. A final rule is expected in 2012. Depending on the final rule and on the Company's facts and circumstances, capital investments could be in the $40 million range if new infrastructure, such as new cooling water towers, is required. Costs for compliance with these final regulations would likely qualify as federally mandated regulatory requirements under Indiana Senate Bill 251 referenced above.

Coal Ash Waste Disposal & Ash Ponds

In June 2010, the EPA issued proposed regulations affecting the management and disposal of coal combustion products, such as ash generated by the Company's coal-fired power plants. The proposed rules more stringently regulate these byproducts and would likely increase the cost of operating or expanding existing ash ponds and the development of new ash ponds. The alternatives include regulating coal combustion by-products that are not being beneficially reused as hazardous waste. The EPA did not offer a preferred alternative, but took public comment on multiple alternative regulations. Rules may not be finalized in 2012 given oversight hearings, congressional interest, and other factors.

At this time, the majority of the Company's ash is being beneficially reused. However, the alternatives proposed would require some retrofitting or closure of existing ash ponds. The Company estimates capital expenditures to comply could be as much as $30 million, and such expenditures could exceed $100 million if the most stringent of the alternatives is selected. Annual compliance costs could increase slightly or be impacted by as much as $5 million. Costs for compliance with these regulations would likely qualify as federally mandated regulatory requirements under Senate Bill 251 referenced above.

Climate Change

Vectren is committed to responsible environmental stewardship and conservation efforts and if a national climate change policy is implemented believes it should have the following elements:

- An inclusive scope that involves all sectors of the economy and sources of greenhouse gases, and recognizes early actions and investments made to mitigate greenhouse gas emissions;
- Provisions for enhanced use of renewable energy sources as a supplement to base load coal generation including effective energy conservation, demand side management, and generation efficiency measures;
- A flexible market-based cap and trade approach with zero cost allowance allocations to coal-fired electric generators. The approach should have a properly designed economic safety valve in order to reduce or eliminate extreme price spikes and potential price volatility. A long lead time must be included to align nearer-term technology capabilities and expanded generation efficiency and other enhanced renewable strategies, ensuring that generation sources will rely less on natural gas to meet short term carbon reduction requirements. This new regime should allow for adequate resource and generation planning and remove existing impediments to efficiency enhancements posed by the current New Source Review provisions of the Clean Air Act;
- Inclusion of incentives for investment in advanced clean coal technology and support for research and development;
- A strategy supporting alternative energy technologies and biofuels and increasing the domestic supply of natural gas to reduce dependence on foreign oil and imported natural gas; and
- The allocation of zero cost allowances to natural gas distribution companies if those companies are required to hold allowances for the benefit of the end use customer.

The Company emits greenhouse gases (GHG) primarily from its fossil fuel electric generation plants. The Company uses methodology described in the Acid Rain Program (under Title IV of the Clean Air Act) to calculate its level of direct CO_2 emissions from its fossil fuel electric generating plants. The Company's direct CO_2 emissions from its plants over the past 5 years are represented below:

(in thousands)	2011	2010	2009	2008	2007
Direct CO_2 Emissions (tons)	5,645	6,120	5,500	8,029	7,995

Based on data made available through the Electronic Greenhouse Gas Reporting Tool (e-GRRT) maintained by the EPA, the Company's direct CO_2 emissions from its fossil fuel electric generation that report under the Acid Rain Program were less than one half of one percent of all emissions in the United States from similar sources. Emissions from other Company operations, including those from its natural gas distribution operations and the greenhouse gas emissions the Company is required to report on behalf of its end use customers, are similarly available through the EPA's e-GRRT database and reporting tool.

Current Initiatives to Increase Conservation & Reduce Emissions

The Company is committed to a policy that reduces greenhouse gas emissions and conserves energy usage. Evidence of this commitment includes:

- Focusing the Company's mission statement and purpose on corporate sustainability and the need to help customers conserve and manage energy costs;
- Building a renewable energy portfolio to complement base load coal-fired generation in advance of mandated renewable energy portfolio standards;
- Implementing conservation initiatives in the Company's Indiana and Ohio gas utility service territories;
- Implementing conservation and demand side management initiatives in the electric service territory;
- Evaluating potential carbon requirements with regard to new generation, other fuel supply sources, and future environmental compliance plans;
- Reducing the Company's carbon footprint by measures such as utilizing hybrid vehicles and optimizing generation efficiencies by utilizing dense pack technology; and
- Developing renewable energy and energy efficiency performance contracting projects through its wholly owned subsidiary, Energy Systems Group.

Legislative Actions & Other Climate Change Initiatives

In April 2007, the US Supreme Court determined that greenhouse gases meet the definition of "air pollutant" under the Clean Air Act and ordered the EPA to determine whether greenhouse gas emissions from motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In April 2009, the EPA published its proposed endangerment finding for public comment. The proposed endangerment finding concludes that carbon emissions from mobile sources pose an endangerment to public health and the environment. The endangerment finding was finalized in December 2009, and is the first step toward EPA regulating carbon emissions through the existing Clean Air Act in the absence of specific carbon legislation from Congress. The EPA has promulgated two greenhouse gas regulations that apply to the Company's generating facilities. In 2009, the EPA finalized a mandatory greenhouse gas emissions registry which requires the reporting of emissions. The EPA has also finalized a revision to the Prevention of Significant Deterioration (PSD) and Title V permitting rules which would require facilities that emit 75,000 tons or more of greenhouse gases a year to obtain a PSD permit for new construction or a significant modification of an existing facility. The Company anticipates additional EPA rulemaking related to new generation sources and significant modifications to existing sources, but the timetable remains uncertain.

Numerous competing federal legislative proposals have also been introduced in recent years that involve carbon, energy efficiency, and renewable energy. Comprehensive energy legislation at the federal level continues to be debated, but there has been little progress to date. The progression of regional initiatives throughout the United States has also slowed.

Impact of Legislative Actions & Other Initiatives is Unknown

If regulations are enacted by the EPA or other agencies or if legislation requiring reductions in CO_2 and other greenhouse gases or legislation mandating a renewable energy portfolio standard is adopted, such regulation could substantially affect both the costs and operating characteristics of the Company's fossil fuel generating plants, nonutility coal mining operations, and natural gas distribution businesses. At this time and in the absence of final legislation or rulemaking, compliance costs and other effects associated with reductions in greenhouse gas emissions or obtaining renewable energy sources remain uncertain. The Company has gathered preliminary estimates of the costs to control greenhouse gas emissions. A preliminary investigation demonstrated costs to comply would be significant, first with regard to operating expenses and later for capital expenditures as technology becomes available to control greenhouse gas emissions. However, these compliance cost estimates are based on highly uncertain assumptions, including allowance prices if a cap and trade approach were employed, and energy efficiency targets. Costs to purchase allowances that cap greenhouse gas emissions or expenditures made to control emissions should be considered a cost of providing electricity, and as such, the Company believes such costs and expenditures would be recoverable from customers through Senate Bill 251. Customer rates may also be impacted should decisions be made to reduce the level of sales to municipal and other wholesale customers in order to meet emission targets.

Manufactured Gas Plants

In the past, the Company operated facilities to manufacture natural gas. Given the availability of natural gas transported by pipelines, these facilities have not been operated for many years. Under current environmental laws and regulations, those that owned or operated these facilities may now be required to take remedial action if certain contaminants are found above the regulatory thresholds at these sites.

In the Indiana Gas service territory, the existence, location, and certain general characteristics of 26 gas manufacturing and storage sites have been identified for which the Company may have some remedial responsibility. A remedial investigation/feasibility study (RI/FS) was completed at one of the sites under an agreed order between Indiana Gas and the IDEM, and a Record of Decision was issued by the IDEM in January 2000. The remaining sites have been submitted to the IDEM's Voluntary Remediation Program (VRP). The Company has identified its involvement in five manufactured gas plants sites in SIGECO's service territory, all of which are currently enrolled in the IDEM's VRP. The Company is currently conducting some level of remedial activities, including groundwater monitoring at certain sites.

The Company has accrued the estimated costs for further investigation, remediation, groundwater monitoring, and related costs for the sites. While the total costs that may be incurred in connection with addressing these sites cannot be determined at this time, the Company has recorded cumulative costs that it reasonably expects to incur totaling approximately $41.6 million ($23.1 million at Indiana Gas and $18.5 million at SIGECO). The estimated accrued costs are limited to the Company's share of the remediation efforts and are therefore net of exposures of other potentially responsible parties (PRP).

With respect to insurance coverage, Indiana Gas has received approximately $20.8 million from all known insurance carriers under insurance policies in effect when these plants were in operation. SIGECO filed a declaratory judgment action against its insurance carriers seeking a judgment finding its carriers liable under the policies for coverage of further investigation and any necessary remediation costs that SIGECO may accrue under the VRP program and/or another site subject to a lawsuit that has been settled. In November 2011, the Court ruled on two motions for summary judgment, finding for SIGECO and against certain insurers on indemnification and defense obligations in the policies at issue. SIGECO has settlement agreements with all known insurance carriers and has recorded approximately $15.1 million of expected insurance recoveries.

The costs the Company expects to incur are estimated by management using assumptions based on actual costs incurred, the timing of expected future payments, and inflation factors, among others. While the Company's utilities have recorded all costs which they presently expect to incur in connection with activities at these sites, it is possible that future events may require some level of additional remedial activities which are not presently foreseen and those costs may not be subject to PRP or insurance recovery. As of December 31, 2011 and 2010, respectively, approximately $6.5 million and $5.5 million of accrued, but not yet spent, costs are included in Other Liabilities related to both the Indiana Gas and SIGECO sites.

Jacobsville Superfund Site

On July 22, 2004, the EPA listed the Jacobsville Neighborhood Soil Contamination site in Evansville, Indiana, on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The EPA has identified four sources of historic lead contamination. These four sources shut down manufacturing operations years ago. When drawing up the boundaries for the listing, the EPA included a 250 acre block of properties surrounding the Jacobsville neighborhood, including the Company's operations center. Vectren's property has not been named as a source of the lead contamination. Vectren's own soil testing, completed during the construction of the operations center, did not indicate that the Vectren property contains lead contaminated soils above industrial cleanup levels. At this time, it is anticipated that the EPA may request additional soil testing at some future date.

Rate & Regulatory Matters

Vectren South Electric Base Rate Filing

On December 11, 2009, Vectren South filed a request with the IURC to adjust its base electric rates. The requested increase in base rates addressed capital investments, a modified electric rate design that would facilitate a partnership between Vectren South and customers to pursue energy efficiency and conservation, and new energy efficiency programs to complement those currently offered for natural gas customers. The IURC issued an order in the case on April 27, 2011. The order provides for an approximate $28.6 million revenue increase to recover costs associated with approximately $325 million in system upgrades that were completed in the three years leading up to the December 2009 filing and modest increases in maintenance and operating expenses. The approved revenue increase is based on rate base of $1,295.6 million, return on equity of 10.4 percent and an overall rate of return of 7.29 percent. The new rates were effective May 3, 2011. The IURC, in its order, denied the Company's request for implementation of the decoupled rate design, which is discussed further below. Addressing issues raised in the case concerning coal supply contracts and related costs, the IURC found that current coal contracts remain effective and that a prospective review process of future procurement decisions would be initiated.

Coal Procurement Procedures

Vectren South submitted a request for proposal in April 2011 regarding coal purchases for a four year period beginning in 2012. After negotiations with bidders, Vectren South has reached an agreement in principle for multi-year purchases with two suppliers, one of which is Vectren Fuels, Inc. Consistent with the IURC direction in the electric rate case, a sub docket proceeding was established to review the Company's prospective coal procurement procedures, and the Company submitted evidence related to its recent request for proposal (RFP) and those coal procurement procedures to the IURC in September 2011. In October 2011, the OUCC filed its testimony which, while suggesting enhancements to the process to be considered, does not challenge the results of the RFP and the resulting new contracts. All hearings were completed in December 2011 and an order is expected in early 2012.

Vectren South Electric Fuel Cost Reduction

On December 5, 2011 within the quarterly Fuel Adjustment Clause (FAC) filing, Vectren South submitted a joint proposal with the OUCC to reduce its fuel costs by accelerating the impact of lower cost coal contracts to be effective after 2012. In the spring of 2011, Vectren secured contracts for lower coal costs through a formal bidding process. This lower-priced coal is expected to start being delivered and used at Vectren's power plants by late 2012 to early 2013 and beyond. The agreement to accelerate savings into early 2012 means that the existing 2012 coal costs that are above the new, lower prices will be deferred to a regulatory asset and recovered over a six-year period without interest beginning in 2014. This deferral also includes a reduction to the coal inventory balance at December 31, 2011 of approximately $17.7 million to reflect existing inventory at the new, lower price. The IURC approved this proposal on January 25, 2012, with an impact to customer's rates effective February 1, 2012.

Vectren South Electric Demand Side Management Program Filing

On August 16, 2010, Vectren South filed a petition with the IURC, seeking approval of its proposed electric Demand Side Management (DSM) Programs, recovery of the costs associated with these programs, recovery of lost margins as a result of implementing these programs for large customers, and recovery of performance incentives linked with specific measurement criteria on all programs. The DSM Programs proposed are consistent with a December 9, 2009 order issued by the IURC, which, among other actions, defined long-term conservation objectives and goals of DSM programs for all Indiana electric utilities under a consistent statewide approach. In order to meet these objectives, the IURC order divided the DSM programs into Core and Core Plus programs. Core programs are joint programs required to be offered by all Indiana electric utilities to all customers, and include some for large industrial customers. Core Plus programs are those programs not required specifically by the IURC, but defined by each utility to meet the overall energy savings targets defined by the IURC.

On August 31, 2011 the IURC issued an order approving an initial three year DSM plan in the Vectren South service territory that complies with the IURC's energy saving targets. Consistent with the Company's proposal, the order approved, among other items, the following: 1) recovery of costs associated with implementing the DSM Plan; 2) the recovery of a performance incentive mechanism based on measured savings related to certain DSM programs; 3) lost margin recovery associated with the implementation of DSM programs for large customers; and 4) deferral of lost margin up to $1 million in 2011 associated with small customer DSM programs for subsequent recovery under a tracking mechanism to be proposed by the Company. This mechanism is an alternative to the electric decoupling proposal that was denied by the IURC in the order received April 27, 2011. On January 26, 2012, the Company filed with the IURC a proposal for a small customer lost margin recovery mechanism within the existing Demand Side Management Adjustment (DSMA). The proposal includes a request for recovery of the $1 million deferred in 2011, and a request for continued deferral of lost margins in 2012 until such point as these lost margins are included in DSMA rates. The procedural schedule has not been set in this filing, but the Company expects an order in 2012.

Vectren South Electric Dense Pack Filing

On September 14, 2011, Vectren South filed a petition with the IURC seeking recovery of and return on the capital investment in dense pack technology to improve the efficiency of its A.B. Brown Generating Station. This investment is expected to be approximately $32 million over the next two years, of which approximately $19 million has been invested to date. This technology is expected to allow the A.B. Brown units to run at least 5 percent more efficient, thereby burning less fuel, and reducing fuel costs and emissions of pollutants. Indiana statute provides for timely recovery of investments, with a return, in instances where the investment increases the efficiency of existing generating plants that are fueled by coal. Several parties have intervened in the case and are requesting that the IURC deny recovery of these project costs outside of a base rate proceeding. The IURC will conduct a hearing in February 2012.

Vectren North Reporting Location Consolidation Proceeding

Vectren North implemented a reporting location consolidation plan in 2011 and closed certain locations throughout the North territory. On May 26, 2011, the International Brotherhood of Electrical Workers Local 1393, United Steel Workers Locals 12213 and 7441 and others filed a formal complaint with the IURC claiming that the consolidation and simultaneous closing by Vectren North of select reporting locations endangers public safety and impairs Vectren North's ability to provide adequate, safe and reliable service. These parties have asked the IURC to require Vectren North to reopen previously consolidated reporting locations and maintain and staff those locations. A hearing in this case was held in February 2012, and the Company expects the IURC to act some time in 2012.

Vectren North & Vectren South Gas Decoupling Extension Filing

On April 14, 2011, the Company's Indiana based gas companies (Vectren North and Vectren South) filed with the IURC a joint settlement agreement with the OUCC on an extension of the offering of conservation programs and the supporting gas decoupling mechanism originally approved in December 2006. On August 18, 2011, the IURC issued an order approving the settlement as filed, granting the extension of the current decoupling mechanism in place at both gas companies and recovery of new conservation program costs through December 2015.

VEDO Gas Rate Design

The rate design approved by the PUCO on January 7, 2009, and initially implemented on February 22, 2009, allowed for the phased movement toward a straight fixed variable rate design, which places substantially all of the fixed cost recovery in the monthly customer service charge. This rate design mitigates most weather risk as well as the effects of declining usage, similar to the company's lost margin recovery mechanism in place in the Indiana natural gas service territories and the mechanism in place in Ohio prior to this rate order. Since the straight fixed variable rate design was fully implemented in February 2010, nearly 90 percent of the combined residential and commercial base rate gas margins were recovered through the customer service charge. As a result, some margin previously recovered during the peak delivery winter months, such as January and the first half of February 2010, is more ratably recognized throughout the year.

In addition in 2010, the Company began recognizing a return on and of investments made to replace distribution risers and bare steel and cast iron infrastructure per a PUCO order.

VEDO Continues the Process to Exit the Merchant Function

On August 20, 2008, the PUCO approved the results of an auction selecting qualified wholesale suppliers to provide the gas commodity to the Company for resale to its customers at auction-determined standard pricing. This standard pricing was comprised of the monthly NYMEX settlement price plus a fixed adder. This standard pricing, which was effective from October 1, 2008 through March 31, 2010, was the initial step in exiting the merchant function in the Company's Ohio service territory. The approach eliminated the need for monthly gas cost recovery (GCR) filings and prospective PUCO GCR audits.

The second phase of the exit process began on April 1, 2010. During this phase, the Company no longer sells natural gas directly to customers. Rather, state-certified Competitive Retail Natural Gas Suppliers, that were successful bidders in a similar regulatory-approved auction, sell the gas commodity to specific customers for a 12-month period at auction-determined standard pricing. The first auction was conducted on January 12, 2010, and the auction results were approved by the PUCO on January 13, 2010. The plan approved by the PUCO required that the Company conduct at least two annual auctions during this phase. As such, the Company conducted another auction on January 18, 2011 in advance of the second 12-month term which commenced on April 1, 2011. The results of that auction were approved by the PUCO on January 19, 2011. Vectren Source, the Company's former wholly owned nonutility retail gas marketer, was a successful bidder in both auctions winning one tranche of customers in the first auction and two tranches of customers in the second auction. Each tranche of customers equates to approximately 28,000 customers. As per the terms of the plan approved by the PUCO, because no application for a full exit of the merchant function was neither sought nor approved by April 1, 2011, VEDO conducted a third retail auction on January 31, 2012 to address the 12-month term beginning April 1, 2012. The results of that auction were approved by the PUCO on February 1, 2012. Consistent with current practice, customers continue to receive a single bill for the commodity as well as the delivery component of natural gas service from VEDO.

The PUCO provided for an Exit Transition Cost rider, which allows the Company to recover costs associated with the transition process. Exiting the merchant function has not had a material impact on earnings or financial condition. It, however, has and will continue to reduce Gas utility revenues and have an equal and offsetting impact to Cost of gas sold and revenue related taxes recorded in Taxes other than income taxes as VEDO no longer purchases gas for resale to these customers. VEDO's gas costs were $12.7 million, $89.5 million, and $157.4 million for the twelve months ended December 31, 2011, 2010, and 2009, respectively, while revenue taxes were $11.5 million, $15.6 million, and $18.6 million, respectively. Therefore, Gas utility revenues resulting from VEDO's exit of the merchant function decreased $80.9 million in 2011 compared to 2010 and $70.9 million in 2010 compared to 2009.

Results of Operations of the Nonutility Group

The Nonutility Group operates in four primary business areas: Infrastructure Services, Energy Services, Coal Mining, and Energy Marketing. Infrastructure Services provides underground construction and repair. Energy Services provides performance contracting and renewable energy services. Coal Mining mines and sells coal. Energy Marketing markets and supplies natural gas and provides energy management services. There are also other legacy businesses that have invested in energy-related opportunities and services, real estate, and leveraged leases, among other investments. The Nonutility Group supports the Company's regulated utilities pursuant to service contracts by providing natural gas supply services, coal, and infrastructure services. Nonutility Group earnings for the years ended December 31, 2011, 2010, and 2009, follow:

	Year Ended December 31,		
(In millions, except per share amounts)	2011	2010	2009
NET INCOME	$ 23.8	$ 9.8	$ 25.8
CONTRIBUTION TO VECTREN BASIC EPS	$ 0.29	$ 0.12	$ 0.32
NET INCOME (LOSS) ATTRIBUTED TO:			
Infrastructure Services	$ 14.9	$ 3.1	$ 2.4
Energy Services	6.7	6.4	8.4
Coal Mining	16.6	11.9	13.4
Energy Marketing			
Vectren Source	18.7	3.7	6.4
ProLiance	(22.9)	(7.9)	(2.3)
Other Businesses	(10.2)	(7.4)	(2.5)

Infrastructure Services

Infrastructure Services provides underground construction and repair to utility infrastructure through Miller Pipeline (Miller) and Minnesota Limited, which was acquired on March 31, 2011. Inclusive of holding company costs, results from Infrastructure's operations for the year ended December 31, 2011 were earnings of $14.9 million, compared to earnings of $3.1 million in 2010 and $2.4 million in 2009. In 2011, Minnesota Limited contributed earnings of $9.4 million and reflects increased demand for work on transmission pipeline repairs. The remainder of the increase, totaling $2.4 million, relates to Miller's ongoing operations and is representative of increased demand. In 2010, earnings increased $0.7 million, compared to earnings generated in 2009. Even with cold weather conditions in the first quarter of 2010 restricting construction levels, results in 2010 compared to 2009 reflect higher revenues and man hours worked. Man hours worked were 3.9 million in 2011, compared to 2.6 million in 2010 and 2.5 million in 2009 with Minnesota Limited contributing 0.7 million man hours in 2011. Construction activity generally is expected to remain strong as utilities and pipeline operators continue to replace their aging natural gas and oil infrastructure and as the need for shale gas and oil infrastructure becomes more prevalent.

Acquisition of Minnesota Limited

On March 31, 2011, the Company purchased Minnesota Limited, Inc., excluding certain assets. Minnesota Limited is a specialty contractor focusing on transmission pipeline construction and maintenance; pump station, compressor station, terminal and refinery construction; gas distribution; and hydrostatic testing. Minnesota Limited is headquartered in Big Lake, Minnesota and the majority of its customers are generally located in the northern Midwest region. This acquisition positions the Company for anticipated growth in demand for gas transmission construction resulting from the need to transport new sources of natural gas and oil found in shale formations and the need to upgrade the nation's aging pipelines.

The following table summarizes the allocation of the purchase price to the fair value of the assets acquired and liabilities assumed.

(In millions)		
Working capital assets	$	21.5
Working capital liabilities		(6.7)
Net working capital		14.8
Property, plant & equipment		34.4
Identifiable intangible assets		19.1
Goodwill		20.3
Net assets acquired		88.6
Debt obligation assumed		(5.2)
Cash paid in acquisition, net of cash acquired	$	83.4

Level 3 market inputs, such as discounted cash flows, revenue growth rates, royalty rates, and dealer and auction values of used equipment, were used to derive the preliminary fair values of the identifiable intangible assets and property plant and equipment. Identifiable intangible assets include backlog, long-term customer relationships, and trade name. The Company intends to use the acquired assets for an extended period and is amortizing them on a straight-line basis over their estimated useful lives. Goodwill arising from the purchase represents intangible value the Company expects to realize over time. This value includes but is not limited to: 1) expected synergies from more efficient utilization of equipment and human resources within the combined entities; 2) the experience and size of the acquired work force; and 3) the reputation of the current Minnesota Limited management team. The purchase price and its allocation remain preliminary and could still change during the first quarter of 2012.

Transaction costs associated with the acquisition and expensed by the Company totaled approximately $0.6 million, of which $0.2 million are included in Other operating expenses during the year ended December 31, 2011 and the remainder was expensed in 2010. For the period from April 1, 2011 through December 31, 2011, Minnesota Limited contributed approximately $116.5 million to the Company's Nonutility revenues, $29.1 million of Cost of nonutility revenues, and $63.4 million of Other operating expenses.

Concurrent with the purchase agreement, the Company executed a lease arrangement at fair value for the Minnesota Limited corporate headquarters, which is owned by a member of the Minnesota Limited management team and certain family members. The lease obligates the Company to pay approximately $83,333 per month for 10 years along with certain executory costs for taxes and other operating expenses. Pursuant to FASB guidance, the Company accounts for the obligation as an operating lease, expensing the lease payments and executory costs as incurred.

Energy Services

Energy Services provides energy performance contracting and renewable energy services through Energy Systems Group, LLC (ESG). Inclusive of holding company costs, Energy Services' operations contributed earnings of $6.7 million in 2011, compared to earnings of $6.4 million in 2010 and $8.4 million in 2009.

The 5 percent increase in earnings in 2011 compared to 2010 reflects a 10 percent increase in revenues. The increased sales and related tax impacts provided an offset to increased sales force ramp up including recruitment costs incurred throughout the year. Results in 2009 were favorably impacted by a renewable energy project. As part of ESG's ongoing renewable energy project development strategy, results in 2009 include the sale of a 3 megawatt landfill gas facility. With IURC approval, the facility was sold to SIGECO, to further the utility's strategy of building a renewable energy portfolio.

At December 31, 2011, backlog was $82 million compared to $118 million at December 31, 2010, and $70 million at December 31, 2009. The national focus on a comprehensive energy strategy and a continued focus on energy conservation, renewable energy, and sustainability are expected to create favorable conditions for long-term growth in this area.

Coal Mining

Coal Mining owns mines that produce and sell coal to the Company's utility operations and to third parties through its wholly owned subsidiary Vectren Fuels, Inc. (Vectren Fuels). Coal Mining, inclusive of holding company costs, earned approximately $16.6 million, compared to earnings of $11.9 million in 2010 and $13.4 million in 2009.

Coal Mining revenues were $285.6 million in 2011 and represent increases of $75.7 million compared to 2010 and $92.2 million compared to 2009. The increase in revenues reflects increased sales to third parties as a result of opening Oaktown 1 in 2010. Revenues from Oaktown 1 more than offset lost revenues from the Cypress Creek surface mine which closed in 2010 with only limited production. In 2010, the expected higher depreciation and other mining costs as well as higher interest costs associated with the ramp up of mining at the Oaktown mine complex more than offset the increase in sales. Coal sold in 2011 was 5.2 million tons, compared to 3.7 million tons in 2010 and 3.5 million tons in 2009.

Vectren Fuels is currently in negotiation with a number of customers regarding sales in 2012 and beyond. Vectren Fuels and Vectren South have adjusted both the price and quantity of coal through the remaining terms of contracts that had price reopener clauses. Pursuant to the supply contracts, Vectren Fuels expects to supply Vectren South, including its plant jointly owned with ALCOA, approximately 1.8 million tons in 2012. Sales to Vectren South are estimated between 2.1 million and 2.5 million tons in 2013. While both production and sales are expected to increase in 2012, the impact of lower prices is expected to more than offset the higher volumes, and earnings from Coal Mining operations in 2012 are expected to be lower than results in 2011. However, changes in market conditions or other circumstances could cause actual results to be materially different from this expectation.

Coal Reserves

As of December 31, 2011 management estimates the Company's total Illinois Basin coal reserves to be approximately 132 million tons. Of this amount, approximately 39 million tons are attributable to a mine located at the Company's Oaktown mining complex that is currently under construction and is expected to open in the third quarter of 2012. However, Vectren Fuels may continue to adjust this timing as it evaluates the impacts of market conditions. The Company estimates approximately $10 million of additional capital is required to complete the mine. Once this mine is in production, Vectren Fuels underground mines are capable of producing about 7.5 million tons of coal per year.

Energy Marketing

Energy Marketing is comprised of the Company's gas marketing operations, energy management services, and retail gas supply operations. Inclusive of holding company costs, results from Energy Marketing were a loss of $4.2 million for the years ended December 31, 2011 and 2010 and earnings of $4.1 million in 2009. The loss in 2011 includes a gain on the sale of Vectren Source which totaled $15.8 million after current taxes. The earnings in 2009 include the $11.9 million after tax Liberty Charge

ProLiance

ProLiance, a nonutility energy marketing affiliate of Vectren and Citizens, provides services to a broad range of municipalities, utilities, industrial operations, schools, and healthcare institutions located throughout the Midwest and Southeast United States. ProLiance's customers include Vectren's Indiana utilities and Citizens' utilities. ProLiance's primary businesses include gas marketing, gas portfolio optimization, and other portfolio and energy management services. Consistent with its ownership percentage, Vectren is allocated 61 percent of ProLiance's profits and losses; however, governance and voting rights remain at 50 percent for each member. Therefore, the Company accounts for its investment in ProLiance using the equity method of accounting. On March 17, 2011, an order was received from the IURC providing for ProLiance's continued provision of gas supply services to the Company's Indiana utilities and Citizens Energy Group through March 2016.

Vectren Energy Marketing and Services, Inc (EMS), a wholly owned subsidiary, holds the Company's investment in ProLiance. Within the consolidated entity, EMS is responsible for certain financing costs associated with ProLiance and is also responsible for income taxes and allocated corporate expenses related to the Company's portion of ProLiance's results. During the year ended December 31, 2011, EMS' results related to the Company's share of ProLiance's results, which include financing costs and income taxes, was a loss of approximately $22.9 million, compared to a loss of $7.9 million in 2010 and a loss of $2.3 million in 2009.

The $15.0 million increased loss in 2011 and $22.1 million of the increased loss in 2010 (which is before the Liberty Charge) reflect the impact on the market of new natural gas sources from shale and greater transmission capacity, as well as the impacts of reduced industrial demand for natural gas in the Midwest. These conditions have resulted in plentiful natural gas supply and lower and less volatile natural gas prices. Historical basis differences between physical and financial markets and summer and winter prices narrowed in 2011. As a result, there were reduced opportunities to optimize ProLiance's firm transportation and storage capacity. ProLiance has structured optimization activities to remain flexible to maximize potential opportunities if market conditions improve and as an example has hedged nearly 25 Bcf of storage against next winter at higher margins than in 2011.

Various profit improvement initiatives are underway, including efforts to lower the cost of pipeline and storage demand costs through ongoing renegotiations. Through these negotiations and by dropping some uneconomical contracts as they expire, pipeline transportation and storage costs have been lowered to approximately $55 million in 2012, compared to $73 million in 2011. In addition to this reduction, additional opportunities exist to renegotiate or drop the remaining contracts, including those with annual demand costs of $18 million that are scheduled to expire through 2015. At December 31, 2011, ProLiance had just over $160 million of members' equity on its balance sheet, no long-term debt outstanding, and $86 million in seasonal borrowings on its short-term credit facility. Depressed market conditions continue, but the demand savings and other actions are expected to reduce ProLiance's losses in 2012. Changes in these market conditions or other circumstances could cause actual results to be materially above or below this range.

For the year ended December 31, 2011, the amounts recorded to Equity in earnings (losses) of unconsolidated affiliates related to ProLiance's operations totaled a pre-tax loss of $28.6 million, compared to a loss of $2.5 million in 2010 and earnings of $3.6 million in 2009.

Investment in Liberty Gas Storage

Liberty Gas Storage, LLC (Liberty), a joint venture between a subsidiary of ProLiance and a subsidiary of Sempra Energy (SE), is a development project for salt-cavern natural gas storage facilities. ProLiance is the minority member with a 25 percent interest, which it accounts for using the equity method. The project was expected to include 17 Bcf of capacity in its North site, and an additional capacity of at least 17 Bcf at the South site. The South site also has the potential for further expansion. The Liberty pipeline system is currently connected with several interstate pipelines, including the Cameron Interstate Pipeline operated by Sempra Pipelines & Storage, and will connect area LNG regasification terminals to an interstate natural gas transmission system and storage facilities.

In late 2008, the project at the North site was halted due to subsurface and well-completion problems, resulting in Liberty recording a $132 million impairment charge related to the North site in 2009. ProLiance recorded its share of the charge in 2009 totaling $33 million. The Company's share was $11.9 million after tax, or $0.15 per share. In the Consolidated Statement of Income for the year ended December 31, 2009, the charge is an approximate $19.9 million reduction to Equity in earnings (losses) of unconsolidated affiliates and an income tax benefit reflected in Income taxes of approximately $8.0 million. ProLiance's ability to meet the needs of its customers has not been, nor does it expect it to be, impacted. Approximately 12 Bcf of the storage at the South site, which comprises three of the four FERC certified caverns, is fully completed and tested. As a result of the issues encountered at the North site, Liberty requested and the FERC approved the separation of the North site from the South site. As of December 31, 2011 and 2010, ProLiance's investment in Liberty approximated $35.1 million and $36.7 million, respectively.

Liberty received a Demand for Arbitration from Williams Midstream Natural Gas Liquids, Inc. ("Williams") on February 8, 2011 related to a Sublease Agreement ("Sublease") between Liberty and Williams at the North site. Williams alleges that Liberty was negligent in its attempt to convert certain salt caverns to natural gas storage and thereby damaged the caverns. Williams alleges damages of $56.7 million. Liberty intends to vigorously defend itself and has asserted counterclaims substantially in excess of the amounts asserted by Williams.

Vectren Source

Vectren Source, a former wholly owned subsidiary, provides natural gas and other related products and services to customers opting for choice among energy providers. On December 31, 2011, the Company sold Vectren Source receiving proceeds of approximately $84.3 million, including, and subject to a final determination of, working capital. The sale, net of transaction costs, resulted in a pretax gain included in Other operating expenses of $25.4 million, or $12.4 million after all associated tax impacts. VEDO continues doing business with Vectren Source, now owned by a third party. Vectren Source sells natural gas directly to customers in VEDO's service territory, and VEDO purchases receivables and natural gas from Vectren Source. Prior to the sale, Vectren Source earned $2.8 million in 2011, compared to $3.7 million in 2010 and $6.4 million in 2009. Vectren Source's customer count at the time of sale was approximately 283,000 customers.

Other Businesses

Within the Nonutility business segment, there are legacy investments involved in energy-related opportunities and services, real estate, leveraged leases, and other ventures. As of December 31, 2011, remaining legacy investments included in the Other Businesses portfolio total $36.9 million, of which $29.6 million are included in Other nonutility investments and $7.3 million are included in Investments in unconsolidated affiliates. Further separation of that remaining investment by type of investment follows: commercial real estate $8.0 million; leveraged leases $18.5 million; affordable housing projects $3.1 million; Haddington Energy Partners $3.4 million; and other investments $3.9 million. Net of deferred taxes related to these leveraged leases, the net investment at December 31, 2011 was $23.1 million. Subsequent to year end, the Company sold one of its leverage leases with a book value of $5.2 million, before the consideration of related deferred taxes of $2.5 million, at a small gain.

Other Businesses losses were $10.2 million in 2011, compared to a loss of $7.4 million in 2010 and a loss of $2.5 million in 2009. Results in 2011 include charges totaling $9.2 million after tax associated with legacy real estate holdings. Results in 2010 reflect a $4.0 million after tax charge related to a decline in the fair value of an energy-related investment originally made in 2004 by Haddington Energy Partners and a $2.9 million after tax charge related to the reduction in value of a note receivable recorded in 2002 related to a previously exited business.

2011 Commercial Real Estate Charge

During the fourth quarter of 2011, the Company obtained new evidence confirming further weakness in markets where the Company holds legacy real estate investments. The Company holds real estate investments such as an office building, affordable housing projects, and second mortgages. The evaluation of the evidence resulted in a $15.4 million, or $9.2 million after tax, charge in 2011. Of the $15.4 million charge, $8.8 million is reflected in Other-net, $3.6 million is reflected in Equity in earnings/losses of unconsolidated affiliates, and $3.0 million is reflected in Other operating expenses.

Haddington Energy Partnerships

The Company has an approximate 40 percent ownership interest in Haddington Energy Partners, LP (Haddington I) and Haddington Energy Partners II, LP (Haddington II). These Haddington ventures have interests in two remaining mid-stream energy related investments. Both Haddington ventures are investment companies accounted for using the equity method of accounting.

During 2010, the Company recorded its share of the decline in fair value and also impaired a note receivable associated with Haddington's investment in a liquefied natural gas facility. In total, the charge was approximately $6.5 million, of which, $6.1 million is reflected in Equity in earnings of unconsolidated affiliates and $0.4 million is reflected in Other-net. At December 31, 2011, the Company's remaining $3.4 million investment in the Haddington ventures is related to payments to be received associated with the sale of a compressed air storage facility sold in 2009. The Company has no further commitments to invest in either Haddington I or II.

Impact of Recently Issued Accounting Guidance

Other Comprehensive Income (OCI)

In June 2011, the FASB issued new accounting guidance regarding the presentation of comprehensive income within financial statements. The new guidance will require entities to report components of comprehensive income in either (1) a continuous statement of comprehensive income or (2) two separate but consecutive statements. Under the two-statement approach, the first statement would include components of net income, which is consistent with the income statement format used today, and the second statement would include components of OCI. The guidance does not change the items that must be reported in OCI. The new guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 and retrospective application is required. The Company will adopt this guidance for its quarterly reporting period ending March 31, 2012. The adoption of this guidance will have no material impacts to the Company's financial statements.

Goodwill Testing

In September 2011, the FASB issued new accounting guidance regarding testing goodwill for impairment. The new guidance will allow the Company an option to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Using the new guidance, the Company no longer would be required to calculate the fair value of a reporting unit unless the Company determines, based on that qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The new guidance is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The adoption of this guidance will have no material impact to the Company's financial statements.

Multiemployer Pension Plan Disclosures

In September 2011, the FASB issued new accounting guidance that requires enhanced disclosures regarding an employer's participation in multiemployer pension plans. For plans that are individually significant, these enhanced disclosures include the legal name of the plan, the plan's Employer Identification Number, the employer's contributions made to the plan, the expiration date(s) of the collective-bargaining agreement(s) requiring contributions to the plan, the most recently available certified zone status provided by the plan, and several other disclosures. The Company participates in several multiemployer pension plans and has adopted this guidance for the Company's 2011 financial statements as required.

Fair Value Measurement and Disclosure

In May 2011, the FASB issued accounting guidance to improve the comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with U.S. GAAP and International Financial Reporting Standards (IFRS). The amendments are not intended to change the application of the current fair value requirements, but to clarify the application of existing requirements. The guidance does change particular principles or requirements for measuring fair value or disclosing information about fair value measurements. To improve consistency, language has been changed to ensure that U.S. GAAP and IFRS fair value measurement and disclosure requirements are described in the same way. The guidance will be effective for interim and annual periods beginning after December 15, 2011. The Company will adopt this guidance for its quarterly reporting period ending March 31, 2012. We do not expect the adoption of this guidance to have a material impact on our financial position, results of operations or cash flows.

Critical Accounting Policies

Management is required to make judgments, assumptions, and estimates that affect the amounts reported in the consolidated financial statements and the related disclosures that conform to accounting principles generally accepted in the United States. The consolidated financial statement footnotes describe the significant accounting policies and methods used in the preparation of the consolidated financial statements. Certain estimates used in the financial statements are subjective and use variables that require judgment. These include the estimates to perform goodwill and other asset impairments tests and to determine pension and postretirement benefit obligations. The Company makes other estimates in the course of accounting for unbilled revenue and the effects of regulation that are critical to the Company's financial results but that are less likely to be impacted by near term changes. Other estimates that significantly affect the Company's results, but are not necessarily critical to operations, include depreciating utility and nonutility plant, valuing reclamation liabilities, and estimating uncollectible accounts and coal reserves, among others. Actual results could differ from these estimates.

Impairment Review of Investments and Long-Lived Assets

The Company has both debt and equity investments in unconsolidated entities. When events occur that may cause an investment to be impaired, the Company performs both a qualitative and quantitative review of that investment and when necessary performs an impairment analysis. An impairment analysis of notes receivable usually involves the comparison of the investment's estimated free cash flows to the stated terms of the note, or in certain cases for notes that are collateral dependent, a comparison of the collateral's fair value, to the carrying amount of the note. An impairment analysis of equity investments involves comparison of the investment's estimated fair value to its carrying amount and an assessment of whether any decline in fair value is "other than temporary." Fair value is estimated using market comparisons, appraisals, and/or discounted cash flow analyses.

Property, plant and equipment along with other long-lived assets are reviewed as facts and circumstances indicate that the carrying amount may be impaired. This impairment review involves the comparison of an asset's (or group of assets') carrying value to the estimated future cash flows the asset (or asset group) is expected to generate over a remaining life. If this evaluation were to conclude that the carrying value is impaired, an impairment charge would be recorded based on the difference between the carrying amount and its fair value (less costs to sell for assets to be disposed of by sale).

Calculating free cash flows and fair value using the above methods is subjective and requires judgment concerning growth assumptions, longevity of cash flows, and discount rates (for fair value calculations), among others.

Over the year's presented, the Company has recorded charges associated with legacy commercial real estate and other investments using the methods described above and also has reflected its portion of charges taken by equity method investees using these or similar methods. The $15.4 million in charges impacting 2011 operating results principally reflects recent appraisals and third party offers on similar properties. Should market conditions worsen, additional impairments affecting these and other assets could result and actual realized values could differ from the current carrying values.

Goodwill & Intangible Assets

The Company performs an annual impairment analysis of its goodwill, most of which resides in the Gas Utility Services operating segment, at the beginning of each year, and more frequently if events or circumstances indicate that an impairment loss may have been incurred. Impairment tests are performed at the reporting unit level. The Company has determined its Gas Utility Services operating segment as identified in Note 22 to the consolidated financial statements to be the level at which impairment is tested as its components are similar. Nonutility Group impairment testing for its infrastructure services and energy services segments are also performed at the operating segment level. An impairment test requires fair value to be estimated. The Company used a discounted cash flow model and other market based information to estimate the fair value of its Gas Utility Services operating segment, and that estimated fair value was compared to its carrying amount, including goodwill. Goodwill related to the Nonutility Group is also tested using market comparable data, if readily available, or a discounted cash flow model. The estimated fair value has been in excess of the carrying amount in each of the last three years and therefore resulted in no impairment.

Estimating fair value using a discounted cash flow model is subjective and requires significant judgment in applying a discount rate, growth assumptions, company expense allocations, and longevity of cash flows. A 100 basis point increase in the discount rate utilized to calculate the Gas Utility Services segment's fair value also would have resulted in no impairment charge.

The Company also annually tests non-amortizing intangible assets for impairment and amortizing intangible assets are tested on an event and circumstance basis. During the last three years, these tests yielded no impairment charges.

Pension & Other Postr etir ement Obligations

The Company estimates the expected return on plan assets, discount rate, rate of compensation increase, and future health care costs, among other inputs, and obtains actuarial estimates to assess the future potential liability and funding requirements of the Company's pension and postretirement plans. The Company used the following weighted average assumptions to develop 2011 periodic benefit cost: a discount rate of 5.5 percent, an expected return on plan assets of 8.0 percent, a rate of compensation increase of 3.5 percent, and an inflation assumption of 3.0 percent. Due to low interest rates, the discount rate is 50 basis points lower from the assumption used in 2010. To estimate 2012 costs, the discount rate, expected return on plan assets, rate of compensation increase, and inflation assumption were approximately 4.80 percent, 7.75 percent, 3.5 percent, and 2.75 percent respectively, reflecting the further reductions in interest rates. Management currently estimates a pension and postretirement cost of approximately $16 million in 2012, compared to approximately $13 million in 2011, $14 million in 2010, and $15 million in 2009. Future changes in health care costs, work force demographics, interest rates, asset values or plan changes could significantly affect the estimated cost of these future benefits.

Management estimates that a 50 basis point decrease in the discount rate used to estimate retirement costs generally increases periodic benefit cost by approximately $1.5 million to $2.0 million.

Unbilled Revenues

To more closely match revenues and expenses, the Company records revenues for all gas and electricity delivered to customers but not billed at the end of the accounting period. The Company uses actual units billed during the month to allocate unbilled units by customer class. Those allocated units are multiplied by rates in effect during the month to calculate unbilled revenue at balance sheet dates.

Regulation

At each reporting date, the Company reviews current regulatory trends in the markets in which it operates. This review involves judgment and is critical in assessing the recoverability of regulatory assets as well as the ability to continue to account for its activities based on the criteria set forth in FASB guidance related to accounting for the effects of certain types of regulation. Based on the Company's current review, it believes its regulatory assets are probable of recovery. If all or part of the Company's operations cease to meet the criteria, a write off of related regulatory assets and liabilities could be required. In addition, the Company would be required to determine any impairment to the carrying value of its utility plant and other regulated assets and liabilities. In the unlikely event of a change in the current regulatory environment, such write-offs and impairment charges could be significant.

Financial Condition

Within Vectren's consolidated group, Utility Holdings primarily funds the short-term and long-term financing needs of the Utility Group operations, and Vectren Capital Corp (Vectren Capital) funds short-term and long-term financing needs of the Nonutility Group and corporate operations. Vectren Corporation guarantees Vectren Capital's debt, but does not guarantee Utility Holdings' debt. Vectren Capital's long-term debt, including current maturities, and short-term obligations outstanding at December 31, 2011 approximated $410 million and $84 million, respectively. Utility Holdings' outstanding long-term and short-term borrowing arrangements are jointly and severally guaranteed by Indiana Gas, SIGECO, and VEDO. Utility Holdings' long-term debt, including current maturities, and short-term obligations outstanding at December 31, 2011 approximated $722 million and $243 million, respectively. Additionally, prior to Utility Holdings' formation, Indiana Gas and SIGECO funded their operations separately, and therefore, have long-term debt outstanding funded solely by their operations. SIGECO will also occasionally issue tax exempt debt to fund qualifying pollution control capital expenditures. Total Indiana Gas and SIGECO long-term debt outstanding at December 31, 2011, was $388 million.

The Company's common stock dividends are primarily funded by utility operations. Nonutility operations have demonstrated profitability and the ability to generate cash flows. These cash flows are primarily reinvested in other nonutility ventures, but are also used to fund a portion of the Company's dividends, and from time to time may be reinvested in utility operations or used for corporate expenses.

The credit ratings of the senior unsecured debt of Utility Holdings and Indiana Gas, at December 31, 2011, are A-/A3 as rated by Standard and Poor's Ratings Services (Standard and Poor's) and Moody's Investors Service (Moody's), respectively. The credit ratings on SIGECO's secured debt are A/A1. Utility Holdings' commercial paper has a credit rating of A-2/P-2. The current outlook of both Moody's and Standard and Poor's is stable. A security rating is not a recommendation to buy, sell, or hold securities. The rating is subject to revision or withdrawal at any time, and each rating should be evaluated independently of any other rating. Standard and Poor's and Moody's lowest level investment grade rating is BBB- and Baa3, respectively.

The Company's consolidated equity capitalization objective is 45-55 percent of long-term capitalization. This objective may have varied, and will vary, depending on particular business opportunities, capital spending requirements, execution of long-term financing plans, and seasonal factors that affect the Company's operations. The Company's equity component was 47 percent and 46 percent of long-term capitalization at December 31, 2011 and 2010, respectively. Long-term capitalization includes long-term debt, including current maturities and debt subject to tender, as well as common shareholders' equity.

Both long-term and short-term borrowing arrangements contain customary default provisions; restrictions on liens, sale-leaseback transactions, mergers or consolidations, and sales of assets; and restrictions on leverage and interest coverage, among other restrictions. Multiple debt agreements contain a covenant that the ratio of consolidated total debt to consolidated total capitalization will not exceed 65 percent. As of December 31, 2011, the Company was in compliance with all debt covenants.

Available Liquidity in Current Credit Conditions

The Company's A-/A3 investment grade credit ratings have allowed it to access the capital markets as needed. The Company anticipates funding future capital expenditures and dividends principally through internally generated funds. Available liquidity has been enhanced by the extension of bonus depreciation legislation. However, the resources required for capital investment remain uncertain for a variety of factors including pending legislative and regulatory initiatives involving gas pipeline modernization; coal mine safety; and expanded EPA regulations for air, water, and fly ash. In addition, the Company may expand its businesses through acquisitions and/or joint venture investment. The timing and amount of such investments depends on a variety of factors, including the availability of acquisition targets and forecasted liquidity. The Company plans to enhance its liquidity as needed by accessing the capital markets. The Company may also consider disposing of certain assets, investments, or businesses to enhance or accelerate internally generated cash flow.

Long-term debt transactions completed in 2011, 2010, and 2009 include issuances by Vectren Capital totaling $275 million and issuances by Vectren Utility Holdings totaling $250 million. SIGECO also remarketed $41.3 million of long-term debt and completed a $22.3 million tax-exempt first mortgage bond issuance. Vectren Utility Holdings also issued $100 million of long-term debt in February 2012. These transactions are more fully described below. (See Financing Cash Flow.)

Consolidated Short-Term Borrowing Arrangements

At December 31, 2011, the Company has $600 million of short-term borrowing capacity, including $350 million for the Utility Group and $250 million for the wholly owned Nonutility Group and corporate operations. As reduced by borrowings currently outstanding, approximately $107 million was available for the Utility Group operations and approximately $166 million was available for the wholly owned Nonutility Group and corporate operations. These facilities are used to supplement working capital needs and also to fund capital investments and debt redemptions until financed on a long-term basis. Liquidity was increased by the $100 million Utility Holdings debt issuance in February 2012, the net proceeds of which were used to repay short-term indebtedness.

Both Vectren Capital's and Utility Holdings' short-term credit facilities were renewed in November 2011 and are available through September 2016. The maximum limit of both facilities remained unchanged. The Company has historically funded the short-term borrowing needs of Utility Holdings' operations through the commercial paper market and expects to use the Utility Holdings short-term borrowing facility in instances where the commercial paper market is not efficient. Following is certain information regarding these short-term borrowing arrangements.

	Utility Group Borrowings			Nonutility Group Borrowings		
(In millions)	2011	2010	2009	2011	2010	2009
Year End						
Balance Outstanding	$ 242.8	$ 47.0	$ 16.4	$ 84.3	$ 71.3	$ 197.1
Weighted Average Interest Rate	0.57%	0.41%	0.25%	1.45%	2.01%	0.60%
Annual Average						
Balance Outstanding	$ 39.6	$ 14.0	$ 29.2	$ 124.9	$ 143.2	$ 151.8
Weighted Average Interest Rate	0.48%	0.40%	1.28%	1.92%	0.93%	0.78%
Maximum Month End Balance Outstanding	$ 242.8	$ 47.0	$ 151.1	$ 180.1	$ 174.6	$ 256.5

Throughout 2011, 2010, and most of 2009, the Company has placed commercial paper without any significant issues and only had to borrow from its backup credit facility in early 2009 on a limited basis.

ProLiance Short-Term Borrowing Arrangements

ProLiance, a nonutility energy marketing affiliate of the Company, has separate borrowing capacity available through a syndicated credit facility. This facility was renewed on May 18, 2011 at a $130 million capacity level as adjusted for letters of credit and current inventory and receivable balances. This new one year credit facility reflects the impact of lower gas prices and resulting lower working capital need. As of December 31, 2011, $85.5 million in borrowings were outstanding. The facility is not guaranteed by Vectren or Citizens. ProLiance is currently working with financial institutions on replacement of the facility before expiration.

New Share Issues

The Company may periodically issue new common shares to satisfy the dividend reinvestment plan, stock option plan and other employee benefit plan requirements. New issuances added additional liquidity of $7.9 million in 2011, $14.0 million in 2010, and $5.8 million in 2009.

Potential Uses of Liquidity

Pension & Postretirement Funding Obligations

As of December 31, 2011, asset values of the Company's qualified pension plans were approximately 83 percent of the projected benefit obligation. Management currently estimates contributing approximately $15 million to qualified pension plans in 2012. Contributions in 2013 and beyond are dependent on a variety of factors, including the Company's progress toward attaining its long-term goal of being fully funded related to the plans' accrued benefit obligations and the available sources of cash to fund such additional contributions.

Corporate Guarantees

The Company issues parent level guarantees to certain vendors and customers of its wholly owned subsidiaries and unconsolidated affiliates. These guarantees do not represent incremental consolidated obligations; rather, they represent parental guarantees of subsidiary and unconsolidated affiliate obligations in order to allow those subsidiaries and affiliates the flexibility to conduct business without posting other forms of collateral. At December 31, 2011, parent level guarantees support a maximum of $25 million of ESG's performance contracting commitments and warranty obligations and $27 million of other project guarantees. The broader scope of ESG's performance contracting obligations, including those not guaranteed by the parent company, are described below. In addition, the parent company has approximately $25 million of other guarantees outstanding supporting other consolidated subsidiary operations, of which $20 million represent letters of credit supporting other nonutility operations. Guarantees issued and outstanding on behalf of unconsolidated affiliates approximated $3 million at December 31, 2011. These guarantees relate primarily to arrangements between ProLiance and various natural gas pipeline operators. The Company has not been called upon to satisfy any obligations pursuant to these parental guarantees and has accrued no significant liabilities related to these guarantees.

As a result of the sale of Vectren Source on December 31, 2011, the Company has $56 million of outstanding guarantees related to this formerly wholly owned subsidiary that will remain in effect for up to 90 days after the closing. The buyer's parent will hold the Company harmless if any amounts are required to be paid pursuant to these guarantees and, within the 90 day period, the buyer is required to provide its own guarantees in substitution for the Company guarantees.

Performance Guarantees & Product Warranties

In the normal course of business, wholly owned subsidiaries, including ESG, issue performance bonds or other forms of assurance that commit them to timely install infrastructure, operate facilities, pay vendors or subcontractors, and/or support warranty obligations. Based on a history of meeting performance obligations and installed products operating effectively, no significant liability or cost has been recognized during the periods presented.

Specific to ESG, in its role as a general contractor in the performance contracting industry, at December 31, 2011, there are 78 open surety bonds supporting future performance. The average face amount of these bonds is $3.6 million, and the largest obligation has a face amount of $25.7 million. The maximum exposure of these obligations is less than these amounts for several factors, including the level of work already completed. At December 31, 2011, approximately 60 percent of work was completed on projects with open surety bonds. A significant portion of these commitments will be fulfilled within one year. In instances where ESG operates facilities, project guarantees extend over a longer period. In addition to its performance obligations, ESG also warrants the functionality of certain installed infrastructure generally for one year and the associated energy savings over a specified number of years.

Other Letters of Credit

As of December 31, 2011, Utility Holdings has letters of credit outstanding in support of two SIGECO tax exempt adjustable rate first mortgage bonds totaling $41.7 million. In the unlikely event the letters of credit were called, the Company could settle with the financial institutions supporting these letters of credit with general assets or by drawing from its credit facility that expires in September 2016. Due to the long-term nature of the credit agreement, such debt is classified as long-term at December 31, 2011.

Planned Capital Expenditures & Investments

During 2011 capital expenditures and other investments approximated $320 million, of which approximately $230 million related to Utility Group expenditures. This compares to 2010 where consolidated investments were approximately $280 million with $230 million attributed to the Utility Group and 2009 where consolidated investments exceeded $400 million with over $300 million attributed to the Utility Group. Planned Utility Group capital expenditures, including contractual purchase commitments, for the five-year period 2012 – 2016 are expected to be more consistent with expenditures made in 2011 and 2010 and total approximately (in millions): $250, $270, $260, $260, and $260, respectively.

Planned Nonutility Group capital expenditures for mine development and recurring infrastructure investments, including contractual purchase commitments, for the five-year period 2012 – 2016 are expected to total (in millions): $120, $80, $70, $80, and $80, respectively. In addition, the Company may expand its Infrastructure Services business through acquisitions and/or make investments in renewable energy projects, among other growth strategies. The timing and amount of such investments depends on a variety of factors, including the availability of acquisition targets, energy demand, and forecasted liquidity.

Contractual Obligations

The following is a summary of contractual obligations at December 31, 2011:

(In millions)	Total	2012	2013	2014	2015	2016	Thereafter
Long-term debt [1]	$ 1,622.3	$ 62.7	$ 106.4	$ 30.0	$ 179.8	$ 73.0	$ 1,170.4
Short-term debt	227.1	227.1	-	-	-	-	-
Long-term debt interest commitments	1,174.3	88.7	84.6	79.9	78.7	66.1	776.3
Nonutility commodity purchase commitments	4.3	2.9	1.4	-	-	-	-
Plant purchase commitments	60.1	52.9	3.6	-	-	-	-
Operating leases	17.9	4.7	3.8	2.5	1.5	1.1	4.3
Total [2]	$ 3,106.0	$ 439.0	$ 199.8	$ 112.4	$ 260.0	$ 140.2	$ 1,951.0

[1] The debt due in 2012 is comprised of debt issued by Vectren Capital totaling $60 million and $2.7 million associated with the Company's nonutility operations.

[2] The Company has other long-term liabilities that total approximately $239 million. This amount is comprised of the following: pension obligations $68 million, postretirement obligations $75 million, deferred compensation and share-based compensation obligations $30 million, asset retirement obligations $44 million, investment tax credits $4 million, environmental remediation obligations $6 million, and other obligations including unrecognized tax benefits totaling $12 million. Based on the nature of these items their expected settlement dates cannot be estimated.

The Company's regulated utilities have both firm and non-firm commitments to purchase natural gas, electricity, and coal as well as certain transportation and storage rights. Costs arising from these commitments, while significant, are pass-through costs, generally collected dollar-for-dollar from retail customers through regulator-approved cost recovery mechanisms. Because of the pass through nature of these costs, they have not been included in the listing of contractual obligations.

Comparison of Historical Sources & Uses of Liquidity

Operating Cash Flow

The Company's primary source of liquidity to fund working capital requirements has been cash generated from operations, which totaled $416.9 million in 2011, compared to $384.8 million in 2010 and $449.6 million in 2009.

The $32.1 million increase in operating cash flow in 2011 compared to 2010 is primarily due to a much greater level of cash utilized from working capital in 2010 and increased earnings and non-cash charges in 2011. These increases were partially offset by a higher level of employer contributions to pension and postretirement plans in 2011.

In 2010, operating cash flows decreased $64.8 million compared to 2009. This decrease was primarily due to much a greater level of cash generated from working capital in 2009 offset by a special dividend from ProLiance totaling approximately $30 million and higher net income and non-cash charges in 2010.

Tax payments in the periods presented were favorably impacted by federal legislation extending bonus depreciation and a change in the tax method for recognizing repair and maintenance activities. Federal legislation allowing bonus depreciation on qualifying capital expenditures was increased to 100 percent for 2011 and continues at 50 percent for 2012. A significant portion of the Company's capital expenditures qualify for this bonus treatment.

Financing Cash Flow

Financing cash flow reflects the Company's utilization of the long-term capital markets and the current low interest rate environment. In 2011, and as impacted by the $100 million long-term debt issuance in February 2012, the Company has refinanced at lower rates approximately $346.2 million of maturing or callable long-term debt, with $250 million of new long-term debt and short-term borrowings. These lower rates began to favorably impact interest expense in the fourth quarter of 2011, and will decrease interest more significantly in 2012. Long-term financing transactions completed in 2010 and 2009 were used to refinance over $400 million of short-term borrowings. The Company's operating cash flow funded over 95 percent of capital expenditures and dividends in 2011 and 2010 and over 80 percent in 2009. Recently completed long-term financing transactions are more fully described below.

Utility Holdings 2012 Debt Issuance
On February 1, 2012, Utility Holdings issued $100 million of senior unsecured notes at an interest rate of 5.00 percent per annum and with a maturity date of February 3, 2042. The notes were sold to various institutional investors pursuant to a private placement note purchase agreement executed in November 2011 with a delayed draw feature. These senior notes are unsecured and jointly and severally guaranteed by Utility Holdings' regulated utility subsidiaries, Southern Indiana Gas and Electric Company (SIGECO), Indiana Gas Company, Inc. (Indiana Gas), and Vectren Energy Delivery of Ohio, Inc. (VEDO). The proceeds from the sale of the notes, net of issuance costs, totaled approximately $99.5 million. These notes have no sinking fund requirements and interest payments are due semi-annually. These notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Utility Holdings' borrowing arrangements. As of December 31, 2011, the Company has reclassified $100 million of short-term borrowings as long-term debt to reflect those borrowings were refinanced with the proceeds received. The proceeds received from the issuance of the senior notes was used to refinance VUHI's $96.2 million 5.95 percent senior notes due 2036, that were called at par and retired on Nov. 21, 2011.

Utility Holdings 2011 Debt Issuance
On November 30, 2011, Utility Holdings closed a financing under a private placement note purchase agreement pursuant to which various institutional investors purchased the following tranches of notes: (i) $55 million of 4.67 percent Senior Guaranteed Notes, due November 30, 2021, (ii) $60 million of 5.02 percent Senior Guaranteed Notes, due November 30, 2026, and (iii) $35 million of 5.99 percent Senior Guaranteed Notes, due December 2, 2041. These senior notes are unsecured and jointly and severally guaranteed by Utility Holdings' regulated utility subsidiaries, SIGECO, Indiana Gas, and VEDO. The proceeds from the sale of the notes, net of issuance costs, totaled approximately $148.9 million. These notes have no sinking fund requirements and interest payments are due semi-annually. These notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Utility Holdings' borrowing arrangements. Proceeds received from the issuance were used to partially refinance $250 million of VUHI long-term debt with an interest rate of 6.625 percent that matured Dec. 1, 2011.

Vectren Capital Corp. 2010 Debt Issuance
On December 15, 2010, the Company and Vectren Capital closed a financing under a private placement note purchase agreement pursuant to which various institutional investors purchased the following tranches of notes from Vectren Capital: (i) $75 million 3.48 percent Senior Notes, Series A due 2017, and (ii) $50 million 4.53 percent Senior Notes, Series B due 2025. These Senior Notes are unconditionally guaranteed by Vectren. The proceeds from the issuance replaced $48 million debt maturities due in December 2010 and provided long-term financing for some nonutility investments originally financed with short-term borrowings. These notes have no sinking fund requirements and interest payments are due semi-annually. The proceeds from the sale of the notes, net of issuance costs, totaled approximately $124.2 million. These notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Vectren Capital borrowing arrangements.

Vectren Capital Corp. 2009 Debt Issuance

On March 11, 2009, Vectren and Vectren Capital closed a financing under a private placement Note Purchase Agreement (the "2009 Note Purchase Agreement") pursuant to which various institutional investors purchased the following tranches of notes from Vectren Capital: (i) $30 million in 6.37 percent senior notes, Series A due 2014, (ii) $60 million in 6.92 percent senior notes, Series B due 2016 and (iii) $60 million in 7.30 percent senior notes, Series C due 2019. These senior notes are unconditionally guaranteed by Vectren, the parent of Vectren Capital. These notes have no sinking fund requirements and interest payments are due semi-annually. The proceeds from the sale of the notes, net of issuance costs, totaled approximately $149.0 million. The 2009 Note Purchase Agreement contains customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Vectren Capital borrowing arrangements. On March 11, 2009, Vectren and Vectren Capital also entered into a first amendment with respect to prior note purchase agreements for the remaining outstanding Vectren Capital debt, other than the $22.5 million series due in 2010, to conform the covenants in certain respects to those contained in the 2009 Note Purchase Agreement.

Utility Holdings 2009 Debt Issuance

On April 7, 2009, Utility Holdings closed a financing under a private placement note purchase agreement pursuant to which institutional investors purchased from Utility Holdings $100 million in 6.28 percent senior unsecured notes due April 7, 2020 (2020 Notes). The 2020 Notes are guaranteed by Utility Holdings' three utilities: SIGECO, Indiana Gas, and VEDO. These guarantees are full and unconditional and joint and several. The proceeds from the sale of the 2020 Notes, net of issuance costs, totaled approximately $99.5 million. The 2020 Notes have no sinking fund requirements and interest payments are due semi-annually. The 2020 Notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Utility Holdings' borrowing arrangements.

SIGECO 2009 Debt Issuance

On August 19, 2009 SIGECO also completed a $22.3 million tax-exempt first mortgage bond issuance at an interest rate of 5.4 percent that is fixed through maturity. The bonds mature in 2040. The proceeds from the sale of the bonds, net of issuance costs, totaled approximately $21.3 million.

Auction Rate Securities

On March 26, 2009, SIGECO remarketed the remaining $41.3 million of its auction rate securities obligations, receiving proceeds, net of issuance costs of approximately $40.6 million. The remarketed notes have a variable rate interest rate which is reset weekly and are supported by a standby letter of credit. The notes are collateralized by SIGECO's utility plant, and $9.8 million are due in 2015 and $31.5 million are due in 2025.

Long-Term Debt Puts & Calls

Certain long-term debt issues contain put and call provisions that can be exercised on various dates before maturity. Certain instruments can be put to the Company upon the death of the holder (death puts). During 2011, 2010, and 2009, the Company repaid approximately $0.8 million, $1.8 million, and $3.0 million, respectively, related to death puts.

On October 21, 2011, the Company notified holders of Utility Holdings $96.2 million 5.95 percent senior notes due 2036, of its intent to call those notes. This call option was exercised at par on November 21, 2011.

Investing Cash Flow

Cash flow required for investing activities was $319.7 million in 2011, $269.0 million in 2010, and $431.1 million in 2009. Capital expenditures are the primary component of investing activities and totaled $321.3 million in 2011, $277.2 million in 2010 compared to $431.1 million in 2009. The increase in capital expenditures in 2011 compared to 2010 primarily reflects a $35.8 million increase in nonutility projects including expenditures for the Oaktown coal mines, infrastructure services equipment, and renewable energy projects. Increased capital expenditures within the Utility Group primarily related to bare steel cast iron replacement projects. Investing cash flow in 2011 was also impacted by the purchase of Minnesota Limited and the sale of Vectren Source.

The decrease in capital expenditures in 2010 compared to 2009 reflects the roughly $20 million spent in 2009 associated with the January 2009 ice storm restoration projects and approximately $55 million in lower other utility capital spending as well as approximately $90 million in lower expenditures relating to Coal Mining, primarily Oaktown mine development costs.

Forward-Looking Information

A "safe harbor" for forward-looking statements is provided by the Private Securities Litigation Reform Act of 1995(Reform Act of 1995). The Reform Act of 1995 was adopted to encourage such forward-looking statements without the threat of litigation, provided those statements are identified as forward-looking and are accompanied by meaningful cautionary statements identifying important factors that could cause the actual results to differ materially from those projected in the statement. Certain matters described in Management's Discussion and Analysis of Results of Operations and Financial Condition are forward-looking statements. Such statements are based on management's beliefs, as well as assumptions made by and information currently available to management. When used in this filing, the words "believe", "anticipate", "endeavor", "estimate", "expect", "objective", "projection", "forecast", "goal", "likely", and similar expressions are intended to identify forward-looking statements. In addition to any assumptions and other factors referred to specifically in connection with such forward-looking statements, factors that could cause the Company's actual results to differ materially from those contemplated in any forward-looking statements include, among others, the following:

- Factors affecting utility operations such as unusual weather conditions; catastrophic weather-related damage; unusual maintenance or repairs; unanticipated changes to fossil fuel costs; unanticipated changes to gas transportation and storage costs, or availability due to higher demand, shortages, transportation problems or other developments; environmental or pipeline incidents; transmission or distribution incidents; unanticipated changes to electric energy supply costs, or availability due to demand, shortages, transmission problems or other developments; or electric transmission or gas pipeline system constraints.
- Catastrophic events such as fires, earthquakes, explosions, floods, ice storms, tornados, terrorist acts or other similar occurrences could adversely affect Vectren's facilities, operations, financial condition and results of operations.
- Increased competition in the energy industry, including the effects of industry restructuring and unbundling.
- Regulatory factors such as unanticipated changes in rate-setting policies or procedures, recovery of investments and costs made under traditional regulation, and the frequency and timing of rate increases.
- Financial, regulatory or accounting principles or policies imposed by the Financial Accounting Standards Board; the Securities and Exchange Commission; the Federal Energy Regulatory Commission; state public utility commissions; state entities which regulate electric and natural gas transmission and distribution, natural gas gathering and processing, electric power supply; and similar entities with regulatory oversight.
- Economic conditions including the effects of inflation rates, commodity prices, and monetary fluctuations.
- Economic conditions surrounding the current economic uncertainty, including significantly lower levels of economic activity; uncertainty regarding energy prices and the capital and commodity markets; volatile changes in the demand for natural gas, electricity, coal, and other nonutility products and services; impacts on both gas and electric large customers; lower residential and commercial customer counts; higher operating expenses; and further reductions in the value of certain nonutility real estate and other legacy investments.
- Volatile natural gas and coal commodity prices and the potential impact on customer consumption, uncollectible accounts expense, unaccounted for gas and interest expense.
- Changing market conditions and a variety of other factors associated with physical energy and financial trading activities including, but not limited to, price, basis, credit, liquidity, volatility, capacity, interest rate, and warranty risks.
- Direct or indirect effects on the Company's business, financial condition, liquidity and results of operations resulting from changes in credit ratings, changes in interest rates, and/or changes in market perceptions of the utility industry and other energy-related industries.
- The performance of projects undertaken by the Company's nonutility businesses and the success of efforts to invest in and develop new opportunities, including but not limited to, the Company's infrastructure, energy services, coal mining, and energy marketing strategies.
- Factors affecting coal mining operations including MSHA guidelines and interpretations of those guidelines, as well as additional mine regulations and more frequent and broader inspections that could result from the recent mining incidents at coal mines of other companies; geologic, equipment, and operational risks; the ability to execute and negotiate new sales contracts and resolve contract interpretations; volatile coal market prices and demand; supplier and contract miner performance; the availability of key equipment, contract miners and commodities; availability of transportation; and the ability to access/replace coal reserves.
- Factors affecting the Company's investment in ProLiance including natural gas price volatility and basis; the ability to lower fixed contract costs; and availability of credit.

- Employee or contractor workforce factors including changes in key executives, collective bargaining agreements with union employees, aging workforce issues, work stoppages, or pandemic illness.
- Risks associated with material business transactions such as mergers, acquisitions and divestitures, including, without limitation, legal and regulatory delays; the related time and costs of implementing such transactions; integrating operations as part of these transactions; and possible failures to achieve expected gains, revenue growth and/or expense savings from such transactions.
- Costs, fines, penalties and other effects of legal and administrative proceedings, settlements, investigations, claims, including, but not limited to, such matters involving compliance with state and federal laws and interpr etations of these laws.
- Changes in or additions to federal, state or local legislative requirements, such as changes in or additions to tax laws or rates, environmental laws, including laws governing greenhouse gases, mandates of sources of renewable energy, and other r egulations.

The Company undertakes no obligation to publicly update or revise any forward-looking statements, whether as a result of changes in actual results, changes in assumptions, or other factors affecting such statements.

ITEM 7A. QUANTIT ATIVE AND QUALIT ATIVE DISCLOSURES ABOUT MARKET RISK

The Company is exposed to various business risks associated with commodity prices, interest rates, and counter-party credit. These financial exposures are monitored and managed by the Company as an integral part of its overall risk management program. The Company's risk management program includes, among other things, the use of derivatives. The Company may also execute derivative contracts in the normal course of operations while buying and selling commodities to be used in operations and optimizing its generation assets.

The Company has in place a risk management committee that consists of senior management as well as financial and operational management. The committee is actively involved in identifying risks as well as reviewing and authorizing risk mitigation strategies.

Commodity Price Risk

Regulated Operations

The Company's regulated operations have limited exposure to commodity price risk for transactions involving purchases and sales of natural gas, coal and purchased power for the benefit of retail customers due to current state regulations, which subject to compliance with those regulations, allow for recovery of the cost of such purchases through natural gas and fuel cost adjustment mechanisms. Constructive regulatory orders, such as those authorizing lost margin recovery, other innovative rate designs, and recovery of unaccounted for gas and other gas related expenses, also mitigate the effect volatile gas costs may have on the Company's financial condition. Although Vectren's regulated operations are exposed to limited commodity price risk, volatile natural gas prices have other effects on working capital requirements, interest costs, and some level of price-sensitivity in volumes sold or delivered.

Wholesale Power Marketing

The Company's wholesale power marketing activities undertake strategies to optimize electric generating capacity beyond that needed for native load. In recent years, the primary strategy involves the sale of excess generation into the MISO Day Ahead and Real-time markets. As part of these strategies, the Company may also from time to time execute energy contracts that commit the Company to purchase and sell electricity in future periods. Commodity price risk results from forward positions that commit the Company to deliver electricity. The Company mitigates price risk exposure with planned unutilized generation capability. The Company accounts for any energy contracts that are derivatives at fair value with the offset marked to market through earnings. No market sensitive derivative positions were outstanding on December 31, 2011 and 2010.

For retail sales of electricity, the Company receives the majority of its NOx and SO_2 allowances at zero cost through an allocation process. Based on arrangements with regulators, wholesale operations can purchase allowances from retail operations at current market values, the value of which is distributed back to retail customers through a MISO cost recovery tracking mechanism. Wholesale operations are therefore at risk for the cost of allowances, which for the recent past have been volatile. The Company manages this risk by purchasing allowances from retail operations as needed and occasionally from other third parties in advance of usage. In the past, the Company also used derivative financial instruments to hedge this risk, but no such derivative instruments were outstanding at December 31, 2011 or 2010.

Other Operations

Other commodity-related operations are exposed to commodity price risk associated with natural gas and coal. Other commodity-related operations include Vectren Source, a nonutility retail gas marketer prior to its sale on December 31, 2011, coal mining operations, and the operations at ProLiance. Open positions in terms of price, volume, and specified delivery points may occur and are managed using methods described below with frequent management reporting.

These subsidiaries, as well as ProLiance, purchase and sell natural gas and coal to meet customer demands. Forward contracts, and occasionally option contracts, commit them to purchase and sell commodities in the future. Price risk from forward positions is mitigated using stored inventory and offsetting forward purchase contracts. Price risk also results from forward contracts to purchase commodities to fulfill forecasted non-regulated sales of natural gas and coal that may or may not occur. Related to coal mining operations, contracts are expected to be settled by physical receipt or delivery of the commodity. ProLiance more frequently uses financial instruments that are derivatives to hedge its market exposures that arise from gas in storage, imbalances, and fixed-price forward purchase and sale contracts.

Inter est Rate Risk

The Company is exposed to interest rate risk associated with its borrowing arrangements. Its risk management program seeks to reduce the potentially adverse effects that market volatility may have on interest expense. The Company limits this risk by allowing only an annual average of 15 percent to 25 percent of its total debt to be exposed to variable rate volatility. However, this targeted range may not always be attained during the seasonal increases in short-term borrowings. To manage this exposure, the Company may use derivative financial instruments.

Market risk is estimated as the potential impact resulting from fluctuations in interest rates on adjustable rate borrowing arrangements exposed to short-term interest rate volatility. During 2011 and 2010, the weighted average combined borrowings under these arrangements approximated $206 million and $198 million, respectively. At December 31, 2011, combined borrowings under these arrangements were $368 million, which excludes the impact of a $100 million long-term debt issuance occurring February 2012. As December 31, 2010 combined borrowings under these arrangements were $160 million. Based upon average borrowing rates under these facilities during the years ended December 31, 2011 and 2010, an increase of 100 basis points (one percentage point) in the rates would have increased interest expense by approximately $2 million in each year.

Other Risks

By using financial instruments to manage risk, the Company, as well as ProLiance, creates exposure to counter-party credit risk and market risk. The Company manages exposure to counter-party credit risk by entering into contracts with companies that can be reasonably expected to fully perform under the terms of the contract. Counter-party credit risk is monitored regularly and positions are adjusted appropriately to manage risk. Further, tools such as netting arrangements and requests for collateral are also used to manage credit risk. Market risk is the adverse effect on the value of a financial instrument that results from a change in commodity prices or interest rates. The Company attempts to manage exposure to market risk associated with commodity contracts and interest rates by establishing parameters and monitoring those parameters that limit the types and degree of market risk that may be undertaken.

The Company's customer receivables associated with utility operations are primarily derived from residential, commercial, and industrial customers located in Indiana and west central Ohio. However, some exposure from nonutility operations extends throughout the United States. The Company manages credit risk associated with its receivables by continually reviewing creditworthiness and requests cash deposits or refunds cash deposits based on that review. Credit risk associated with certain investments is also managed by a review of creditworthiness and receipt of collateral. In addition, credit risk is mitigated by regulatory orders that allow recovery of all uncollectible accounts expense in Ohio and the gas cost portion of uncollectible accounts expense in Indiana based on historical experience.

MANAGEMENT'S RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

Vectren Corporation's management is responsible for establishing and maintaining adequate internal control over financial reporting. Those control procedures underlie the preparation of the consolidated balance sheets, statements of income, cash flows, and common shareholders' equity, and related footnotes contained herein.

These consolidated financial statements were prepared in conformity with accounting principles generally accepted in the United States and follow accounting policies and principles applicable to regulated public utilities. The integrity and objectivity of these consolidated financial statements, including required estimates and judgments, is the responsibility of management.

These consolidated financial statements are also subject to an evaluation of internal control over financial reporting conducted under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer. Based on that evaluation, conducted under the framework in Internal Control — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission, the Company concluded that its internal control over financial reporting was effective as of December 31, 2011. Management certified this in its Sarbanes Oxley Section 302 certifications, which are attached as exhibits to this 2011 Form 10-K.

REPOR T OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of Vectren Corporation:

We have audited the accompanying consolidated balance sheets of Vectren Corporation and subsidiaries (the “Company”) as of December 31, 2011 and 2010, and the related consolidated statements of income, common shareholders’ equity and cash flows for each of the three years in the period ended December 31, 2011. Our audits also included the financial statement schedule listed in the Index at Item 15. These financial statements and financial statement schedule are the responsibility of the Company’s management. Our responsibility is to express an opinion on the financial statements and financial statement schedule based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, such consolidated financial statements present fairly, in all material respects, the financial position of Vectren Corporation and subsidiaries as of December 31, 2011 and 2010, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2011, in conformity with accounting principles generally accepted in the United States of America. Also, in our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the Company’s internal control over financial reporting as of December 31, 2011, based on the criteria established in Internal Contr ol — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission and our report dated February 16, 2012 expressed an unqualified opinion on the Company’s internal control over financial reporting.

/s/ DELOITTE & TOUCHE LLP
Indianapolis, Indiana
February 16, 2012

REPOR T OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

To the Board of Directors and Shareholders of Vectren Corporation:

We have audited the internal control over financial reporting of Vectren Corporation and subsidiaries (the "Company") as of December 31, 2011, based on criteria established in Internal Contr ol — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company's management is responsible for maintaining effective internal control over financial reporting and for its assessment of the effectiveness of internal control over financial reporting included in the accompanying Management's Report on Internal Control over Financial Reporting. Our responsibility is to express an opinion on the Company's internal control over financial reporting based on our audit.

We conducted our audit in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether effective internal control over financial reporting was maintained in all material respects. Our audit included obtaining an understanding of internal control over financial reporting, assessing the risk that a material weakness exists, testing and evaluating the design and operating effectiveness of internal control based on the assessed risk, and performing such other procedures as we considered necessary in the circumstances. We believe that our audit provides a reasonable basis for our opinion.

A company's internal control over financial reporting is a process designed by, or under the supervision of, the company's principal executive and principal financial officers, or persons performing similar functions, and effected by the company's board of directors, management, and other personnel to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles. A company's internal control over financial reporting includes those policies and procedures that (1) pertain to the maintenance of records that, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the company; (2) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements in accordance with generally accepted accounting principles, and that receipts and expenditures of the company are being made only in accordance with authorizations of management and directors of the company; and (3) provide reasonable assurance regarding prevention or timely detection of unauthorized acquisition, use, or disposition of the company's assets that could have a material effect on the financial statements.

Because of the inherent limitations of internal control over financial reporting, including the possibility of collusion or improper management override of controls, material misstatements due to error or fraud may not be prevented or detected on a timely basis. Also, projections of any evaluation of the effectiveness of the internal control over financial reporting to future periods are subject to the risk that the controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

In our opinion, the Company maintained, in all material respects, effective internal control over financial reporting as of December 31, 2011, based on the criteria established in Internal Contr ol — Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission.

We have also audited, in accordance with the standards of the Public Company Accounting Oversight Board (United States), the consolidated financial statements and financial statement schedule as of and for the year ended December 31, 2011 of the Company and our report dated February 16, 2012 expressed an unqualified opinion on those financial statements and financial statement schedule.

/s/ DELOITTE & TOUCHE LLP
Indianapolis, Indiana
February 16, 2012

VECTREN CORPORA TION AND SUBSIDIAR Y COMP ANIES
CONSOLIDA TED BALANCE SHEETS
(In millions)

	At December 31,	
	2011	2010
ASSETS		
Current Assets		
Cash & cash equivalents	$ 8.6	$ 10.4
Accounts receivable - less reserves of $6.7 & $5.3, respectively	221.3	176.6
Accrued unbilled revenues	121.5	162.0
Inventories	161.9	187.1
Recoverable fuel & natural gas costs	12.4	7.9
Prepayments & other current assets	84.3	101.2
Total curr ent assets	610.0	645.2
Utility Plant		
Original cost	4,979.9	4,791.7
Less: accumulated depreciation & amortization	1,947.3	1,836.3
Net utility plant	3,032.6	2,955.4
Investments in unconsolidated affiliates	92.9	135.2
Other utility & corporate investments	34.4	34.1
Other nonutility investments	29.6	40.9
Nonutility plant - net	550.8	488.3
Goodwill - net	262.3	242.0
Regulatory assets	226.0	189.4
Other assets	40.3	33.7
TOTAL ASSETS	$ 4,878.9	$ 4,764.2

The accompanying notes are an integral part of these consolidated financial statements.

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED BALANCE SHEETS
(In millions)

	At December 31,	
	2011	2010
LIABILITIES & SHAREHOLDERS' EQUITY		
Current Liabilities		
Accounts payable	$ 185.8	$ 183.7
Accounts payable to affiliated companies	36.8	59.6
Accrued liabilities	181.1	178.4
Short-term borrowings	227.1	118.3
Current maturities of long-term debt	62.7	250.7
Long-term debt subject to tender	-	30.0
Total current liabilities	693.5	820.7
Long-term Debt - Net of Current Maturities & Debt Subject to Tender	1,559.6	1,435.2
Deferred Income Taxes & Other Liabilities		
Deferred income taxes	575.7	515.3
Regulatory liabilities	345.2	333.5
Deferred credits & other liabilities	239.4	220.6
Total deferred credits & other liabilities	1,160.3	1,069.4
Commitments & Contingencies (Notes 7, 17-20)		
Common Shareholders' Equity		
Common stock (no par value) – issued & outstanding 81.9 and 81.7, respectively	692.6	683.4
Retained earnings	786.2	759.9
Accumulated other comprehensive income/(loss)	(13.3)	(4.4)
Total common shareholders' equity	1,465.5	1,438.9
TOTAL LIABILITIES & SHAREHOLDERS' EQUITY	$ 4,878.9	$ 4,764.2

The accompanying notes are an integral part of these consolidated financial statements.

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED STATEMENTS OF INCOME
(In millions, except per share amounts)

	Year Ended December 31,		
	2011	2010	2009
OPERATING REVENUES			
Gas utility	$ 819.1	$ 954.1	$ 1,0
Electric utility	635.9	608.0	5
Nonutility	870.2	567.4	4
Total operating revenues	2,325.2	2,129.5	2,0
OPERATING EXPENSES			
Cost of gas sold	375.4	504.7	6
Cost of fuel & purchased power	240.4	235.0	1
Cost of nonutility revenues	385.3	243.3	2
Other operating	652.2	538.4	5
Depreciation & amortization	244.3	229.1	2
Taxes other than income taxes	57.6	62.2	
Total operating expenses	1,955.2	1,812.7	1,8
OPERATING INCOME	370.0	316.8	2
OTHER INCOME (EXPENSE)			
Equity in earnings (losses) of unconsolidated affiliates	(32.0)	(8.6)	
Other income (expense) – net	(3.5)	4.8	
Total other income (expense)	(35.5)	(3.8)	
Interest expense	106.5	104.6	1
INCOME BEFORE INCOME TAXES	228.0	208.4	1
Income taxes	86.4	74.7	
NET INCOME	$ 141.6	$ 133.7	$ 1
AVERAGE COMMON SHARES OUTSTANDING	81.8	81.2	
DILUTED COMMON SHARES OUTSTANDING	81.8	81.3	
EARNINGS PER SHARE OF COMMON STOCK:			
BASIC	$ 1.73	$ 1.65	$
DILUTED	$ 1.73	$ 1.64	$

The accompanying notes are an integral part of these consolidated financial statements.

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED STATEMENTS OF CASH FLOWS
(In millions)

	Year Ended December 31,		
	2011	2010	2009
CASH FLOWS FROM OPERATING ACTIVITIES			
Net income	$ 141.6	$ 133.7	$ 133.1
Adjustments to reconcile net income to cash from operating activities:			
Depreciation & amortization	244.3	229.1	211.9
Deferred income taxes & investment tax credits	71.7	69.3	84.9
Equity in (earnings) losses of unconsolidated affiliates	32.0	8.6	(3.4)
Provision for uncollectible accounts	11.8	16.8	15.1
Expense portion of pension & postretirement benefit cost	9.0	10.0	10.4
(Gain) on sale of business in 2011, net of other non-cash charges	(0.1)	15.9	13.3
Changes in working capital accounts:			
Accounts receivable & accrued unbilled revenue	(17.5)	(48.3)	96.9
Inventories	(26.1)	(19.3)	(36.1)
Recoverable/refundable fuel & natural gas costs	(4.5)	(30.2)	21.3
Prepayments & other current assets	17.9	(23.5)	43.1
Accounts payable, including to affiliated companies	(21.2)	5.5	(85.8)
Accrued liabilities	6.4	10.2	4.0
Unconsolidated affiliate dividends	0.1	42.7	12.6
Employer contributions to pension & postretirement plans	(38.8)	(22.0)	(38.5)
Changes in noncurrent assets	0.3	(7.6)	0.2
Changes in noncurrent liabilities	(10.0)	(6.1)	(33.4)
Net cash flows from operating activities	416.9	384.8	449.6
CASH FLOWS FROM FINANCING ACTIVITIES			
Proceeds from:			
Long-term debt, net of issuance costs	148.9	124.2	312.5
Dividend reinvestment plan & other common stock issuances	7.9	14.0	5.8
Requirements for:			
Dividends on common stock	(113.2)	(110.8)	(108.6)
Retirement of long-term debt	(349.1)	(49.3)	(3.5)
Other financing activities	(2.3)	(0.2)	-
Net change in short-term borrowings	208.8	(95.2)	(306.0)
Net cash flows from financing activities	(99.0)	(117.3)	(99.8)
CASH FLOWS FROM INVESTING ACTIVITIES			
Proceeds from:			
Sale of business	84.3	-	-
Unconsolidated affiliate distributions	0.5	0.5	4.6
Other collections	1.1	10.8	1.5
Requirements for:			
Capital expenditures, excluding AFUDC equity	(321.3)	(277.2)	(432.0)
Business acquisition, net of cash acquired	(83.4)	-	
Other investments	(0.9)	(3.1)	(5.2)
Net cash flows from investing activities	(319.7)	(269.0)	(431.1)
Net change in cash & cash equivalents	(1.8)	(1.5)	(81.3)
Cash & cash equivalents at beginning of period	10.4	11.9	93.2
Cash & cash equivalents at end of period	$ 8.6	$ 10.4	$ 11.9

The accompanying notes are an integral part of these consolidated financial statements.

VECTREN CORPORATION AND SUBSIDIARY COMPANIES
CONSOLIDATED STATEMENTS OF COMMON SHAREHOLDERS' EQUITY
(In millions, except per share amounts)

	Common Stock			Accumulated Other	
	Shares	Amount	Retained Earnings	Comprehensive Income (Loss)	Total
Balance at January 1, 2009	81.0	659.1	712.8	(20.3)	1,351.6
Comprehensive income:					
Net income			133.1		133.1
Pension/OPEB funded status adjustment - net of $0.4 million in tax				0.5	0.5
Comprehensive income of unconsolidated affiliates - net of $8.9 million in tax				13.0	13.0
Total comprehensive income					146.6
Common stock:					
Issuance: option exercises & dividend reinvestment plan	0.3	5.8			5.8
Dividends ($1.345 per share)			(108.6)		(108.6)
Other	(0.2)	1.9	(0.1)		1.8
Balance at December 31, 2009	81.1	666.8	737.2	(6.8)	1,397.2
Comprehensive income:					
Net income			133.7		133.7
Pension/OPEB funded status adjustment - net of $0.2 million in tax				(0.3)	(0.3)
Cash flow hedges:					
unrealized gains (losses) - net of $1.5 million in tax				2.5	2.5
reclassifications to net income- net of tax				(0.1)	(0.1)
Comprehensive income of unconsolidated affiliates - net of $0.2 million in tax				0.3	0.3
Total comprehensive income					136.1
Common stock:					
Issuance: option exercises & dividend reinvestment plan	0.6	14.0			14.0
Dividends ($1.365 per share)			(110.8)		(110.8)
Other		2.6	(0.2)		2.4
Balance at December 31, 2010	81.7	683.4	759.9	(4.4)	1,438.9
Comprehensive income:					
Net income			141.6		141.6
Pension/OPEB funded status adjustment - net of $0.7 million in tax				(1.0)	(1.0)
Cash flow hedges:					
unrealized gains (losses) - net of $1.5 million in tax				(2.1)	(2.1)
reclassifications to net income- net of tax				(0.3)	(0.3)
Comprehensive income of unconsolidated affiliates - net of $3.8 million in tax				(5.5)	(5.5)
Total comprehensive income					132.7
Common stock:					
Issuance: option exercises & dividend reinvestment plan	0.2	7.9			7.9
Dividends ($1.385 per share)			(113.2)		(113.2)
Other		1.3	(2.1)		(0.8)
Balance at December 31, 2011	81.9	$ 692.6	$ 786.2	$ (13.3)	$ 1,465.5

The accompanying notes are an integral part of these consolidated financial statements.

VECTREN CORPORA TION AND SUBSIDIAR Y COMP ANIES
NOTES T O THE CONSOLIDA TED FINANCIAL ST ATEMENTS

1. Organization and Natur e of Operations

Vectren Corporation (the Company or Vectren), an Indiana corporation, is an energy holding company headquartered in Evansville, Indiana. The Company's wholly owned subsidiary, Vectren Utility Holdings, Inc. (Utility Holdings), serves as the intermediate holding company for three public utilities: Indiana Gas Company, Inc. (Indiana Gas or Vectren North), Southern Indiana Gas and Electric Company (SIGECO or Vectren South), and Vectren Energy Delivery of Ohio, Inc. (VEDO). Utility Holdings also has other assets that provide information technology and other services to the three utilities. Utility Holdings' consolidated operations are collectively referred to as the Utility Group. Both Vectren and Utility Holdings are holding companies as defined by the Energy Policy Act of 2005 (Energy Act). Vectren was incorporated under the laws of Indiana on June 10, 1999.

Indiana Gas provides energy delivery services to approximately 563,000 natural gas customers located in central and southern Indiana. SIGECO provides energy delivery services to approximately 141,000 electric customers and approximately 110,000 gas customers located near Evansville in southwestern Indiana. SIGECO also owns and operates electric generation assets to serve its electric customers and optimizes those assets in the wholesale power market. Indiana Gas and SIGECO generally do business as Vectren Energy Delivery of Indiana. VEDO provides energy delivery services to over 310,000 natural gas customers located near Dayton in west central Ohio.

The Company, through Vectren Enterprises, Inc. (Enterprises), is involved in nonutility activities in four primary business areas: Infrastructure Services, Energy Services, Coal Mining, and Energy Marketing. Infrastructure Services provides underground construction and repair services. Energy Services provides performance contracting and renewable energy services. Coal Mining mines and sells coal. Energy Marketing markets and supplies natural gas and provides energy management services. Enterprises also has other legacy businesses that have invested in energy-related opportunities and services, real estate, and leveraged leases, among other investments. All of the above are collectively referred to as the Nonutility Group. Enterprises supports the Company's regulated utilities pursuant to service contracts by providing natural gas supply services, coal, and infrastructure services.

2. Summary of Significant Accounting Policies

In applying its accounting policies, the Company makes judgments, assumptions, and estimates that affect the amounts reported in these consolidated financial statements and related footnotes. Examples of transactions for which estimation techniques are used include valuing pension and postretirement benefit obligations, deferred tax obligations, unbilled revenue, uncollectible accounts, regulatory assets and liabilities, reclamation liabilities, and derivatives and other financial instruments. Estimates also impact the depreciation of utility and nonutility plant and the testing goodwill and other assets for impairment. Recorded estimates are revised when better information becomes available or when actual amounts can be determined. Actual results could differ from current estimates.

Principles of Consolidation

The consolidated financial statements include the accounts of the Company and its wholly owned subsidiaries, after elimination of intercompany transactions.

Subsequent Events Review

Management performs a review of subsequent events for any events occurring after the balance sheet date but prior to the date the financial statements are issued.

Cash & Cash Equivalents

All highly liquid investments with an original maturity of three months or less at the date of purchase are considered cash equivalents. Cash and cash equivalents are stated at cost plus accrued interest to approximate fair value.

Allowance for Uncollectible Accounts

The Company maintains allowances for uncollectible accounts for estimated losses resulting from the inability of its customers to make required payments. The Company estimates the allowance for uncollectible accounts based on a variety of factors including the length of time receivables are past due, the financial health of its customers, unusual macroeconomic conditions, and historical experience. If the financial condition of its customers deteriorates or other circumstances occur that result in an impairment of customers' ability to make payments, the Company records additional allowances as needed.

Inventories

In most circumstances, the Company's inventory components are recorded using an average cost method; however, natural gas in storage at the Company's Indiana utilities and coal inventory at the Company's nonutility coal mines are recorded using the Last In – First Out (LIFO) method. Inventory related to the Company's regulated operations is valued at historical cost consistent with ratemaking treatment. Materials and supplies are recorded as inventory when purchased and subsequently charged to expense or capitalized to plant when installed. Nonutility inventory is valued at the lower of cost or market.

Property, Plant & Equipment

Both the Company's Utility Plant and Nonutility Plant is stated at historical cost, inclusive of financing costs and direct and indirect construction costs, less accumulated depreciation and when necessary, impairment charges. The cost of renewals and betterments that extend the useful life are capitalized. Maintenance and repairs, including the cost of removal of minor items of property and planned major maintenance projects, are charged to expense as incurred.

Utility Plant & Related Depreciation

Both the IURC and PUCO allow the Company's utilities to capitalize financing costs associated with Utility Plant based on a computed interest cost and a designated cost of equity funds. These financing costs are commonly referred to as AFUDC and are capitalized for ratemaking purposes and for financial reporting purposes instead of amounts that would otherwise be capitalized when acquiring nonutility plant. The Company reports both the debt and equity components of AFUDC in Other – net in the Consolidated Statements of Income.

When property that represents a retirement unit is replaced or removed, the remaining historical value of such property is charged to Utility plant, with an offsetting charge to Accumulated depreciation, resulting in no gain or loss. Costs to dismantle and remove retired property are recovered through the depreciation rates as determined by the IURC and PUCO.

The Company's portion of jointly owned Utility Plant, along with that plant's related operating expenses, is presented in these financial statements in proportion to the ownership percentage.

Nonutility Plant & Related Depreciation

The depreciation of Nonutility Plant is charged against income over its estimated useful life, using the straight-line method of depreciation or units-of-production method of amortization for certain coal mining assets. When nonutility property is retired, or otherwise disposed of, the asset and accumulated depreciation are removed, and the resulting gain or loss is reflected in income, typically impacting operating expenses.

Impairment Reviews

Property, plant and equipment along with other long-lived assets are reviewed as facts and circumstances indicate that the carrying amount may be impaired. This impairment review involves the comparison of an asset's (or group of assets') carrying value to the estimated future cash flows the asset (or asset group) is expected to generate over a remaining life. If this evaluation were to conclude that the carrying value is impaired, an impairment charge would be recorded based on the difference between the carrying amount and its fair value (less costs to sell for assets to be disposed of by sale) as a charge to operations or discontinued operations. There were no impairments related to property, plant and equipment during the periods presented.

Investments in Unconsolidated Affiliates

Investments in unconsolidated affiliates where the Company has significant influence are accounted for using the equity method of accounting. The Company's share of net income or loss from these investments is recorded in Equity in earnings of unconsolidated affiliates. Dividends are recorded as a reduction of the carrying value of the investment when received. Investments in unconsolidated affiliates where the Company does not have significant influence are accounted for using the cost method of accounting. Dividends associated with cost method investments are recorded as Other – net when received. Investments, when necessary, include adjustments for declines in value judged to be other than temporary.

Goodwill

Goodwill recorded on the Consolidated Balance Sheets results from business acquisitions and is based on a fair value allocation of the businesses' purchase price at the time of acquisition. Goodwill is charged to expense only when it is impaired. The Company tests its goodwill for impairment at an operating segment level because the components within the segment are similar. These tests are performed at least annually and that test is performed at the beginning of each year. Impairment reviews consist of a comparison of fair value to the carrying amount. If the fair value is less than the carrying amount, an impairment loss is recognized in operations. No goodwill impairments have been recorded during the periods presented.

Regulation

Retail public utility operations affecting Indiana customers are subject to regulation by the IURC, and retail public utility operations affecting Ohio customers are subject to regulation by the PUCO. The Company's accounting policies give recognition to the ratemaking and accounting practices authorized by these agencies.

Refundable or Recoverable Gas Costs & Cost of Fuel & Purchased Power

All metered gas rates contain a gas cost adjustment clause that allows the Company to charge for changes in the cost of purchased gas. Metered electric rates contain a fuel adjustment clause that allows for adjustment in charges for electric energy to reflect changes in the cost of fuel. The net energy cost of purchased power, subject to a variable benchmark based on NYMEX natural gas prices, is also recovered through regulatory proceedings. The Company records any under-or-over-recovery resulting from gas and fuel adjustment clauses each month in revenues. A corresponding asset or liability is recorded until the under or over-recovery is billed or refunded to utility customers. The cost of gas sold is charged to operating expense as delivered to customers, and the cost of fuel and purchased power for electric generation is charged to operating expense when consumed.

Regulatory Assets & Liabilities

Regulatory assets represent probable future revenues associated with certain incurred costs, which will be recovered from customers through the ratemaking process. Regulatory liabilities represent probable expenditures by the Company for removal costs or future reductions in revenues associated with amounts that are to be credited to customers through the ratemaking process. The Company continually assesses the recoverability of costs recognized as regulatory assets and liabilities and the ability to recognize new regulatory assets and liabilities associated with its regulated utility operations. Given the current regulatory environment in its jurisdictions, the Company believes such accounting is appropriate.

The Company collects an estimated cost of removal of its utility plant through depreciation rates established in regulatory proceedings. The Company records amounts expensed in advance of payments as a Regulatory liability because the liability does not meet the threshold of an asset retirement obligation.

Postretirement Obligations & Costs

The Company recognizes the funded status of its pension plans and postretirement plans on its balance sheet date. The funded status of a defined benefit plan is its assets (if any) less its projected benefit obligation (PBO), which reflects service accrued to date and includes the impact of projected salary increases (for pay-related benefits). The funded status of a postretirement plan is its assets (if any) less its accumulated postretirement benefit obligation (APBO), which reflects accrued service to date. To the extent this obligation exceeds amounts previously recognized in the statement of income, the Company records a Regulatory asset for that portion related to its cost-based and rate regulated utilities. To the extent that excess liability does not relate to a rate-regulated utility, the offset is recorded as a reduction to equity in Accumulated other comprehensive income.

The annual cost of all post retirement plans is recognized in operating expenses or capitalized to plant following the direct labor of current employees. Specific to pension plans, the Company uses the projected unit credit actuarial cost method to calculate service cost and the PBO. This method projects the present value of benefits at retirement and allocates that cost over the projected years of service. Annual service cost represents one year's benefit accrual while the PBO represents benefits allocated to previously accrued service. For other postretirement plans, service cost is calculated by dividing the present value of a participant's projected postretirement benefits into equal parts based upon the number of years between a participant's hire date and first eligible retirement date. Annual service cost represents one year's benefit accrual while the APBO represents benefit allocated to previously accrued service. To calculate the expected return on pension plan assets, the Company uses the plan assets' market-related value and an expected long-term rate of return. For the majority of the Company's pension plans, the fair market value of the assets at the measurement date is adjusted to a market-related value by recognizing the change in fair value experienced in a given year ratably over a five-year period. Interest cost represents the annual accretion of the PBO and APBO at the discount rate. Actuarial gains and losses outside of a corridor (equal to 10 percent of the greater of the benefit obligation and the market-related value of assets) are amortized over the expected future working lifetime of active participants (except for plans where almost all participants are inactive). Prior service costs related to plan changes are amortized over the expected future working lifetime (or to full eligibility date for postretirement plan other than pensions) of the active participants at the time of the amendment.

Asset Retirement Obligations
A portion of removal costs related to interim retirements of gas utility pipeline and utility poles, certain asbestos-related issues, and reclamation activities meet the definition of an asset retirement obligation (ARO). The Company records the fair value of a liability for a legal ARO in the period in which it is incurred. When the liability is initially recorded, the Company capitalizes a cost by increasing the carrying amount of the related long-lived asset. The liability is accreted, and the capitalized cost is depreciated over the useful life of the related asset. Upon settlement of the liability, the Company settles the obligation for its recorded amount or incurs a gain or loss. To the extent regulation is involved, regulatory assets and liabilities result when accretion and amortization is adjusted to match rates established by regulators and any gain or loss is subject to deferral.

Product Warranties, Performance Guarantees & Other Guarantees
Liabilities and expenses associated with product warranties and performance guarantees are recognized based on historical experience at the time the associated revenue is recognized. Adjustments are made as changes become reasonably estimable. The Company does not recognize the fair value of an obligation at inception for these guarantees because they are guarantees of the Company's own performance and/or product installations.

While not significant at December 31, 2011 or 2010, the Company does recognize the fair value of an obligation at the inception of a guarantee in certain circumstances. These circumstances would include executing certain indemnification agreements and guaranteeing operating lease residual values, the performance of a third party, or the indebtedness of a third party.

Energy Contracts & Derivatives
The Company will periodically execute derivative contracts in the normal course of operations while buying and selling commodities to be used in operations, optimizing its generation assets, and managing risk. A derivative is recognized on the balance sheet as an asset or liability measured at its fair market value and the change in the derivative's fair market value is recognized currently in earnings unless specific hedge criteria are met.

When an energy contract that is a derivative is designated and documented as a normal purchase or normal sale (NPNS), it is exempted from mark-to-market accounting. Most energy contracts executed by the Company are subject to the NPNS exclusion or are not considered derivatives. Such energy contracts include Real Time and Day Ahead purchase and sale contracts with the MISO, natural gas purchases from ProLiance and others, and wind farm and other electric generating contracts.

When the Company engages in energy contracts and financial contracts that are derivatives and are not subject to the NPNS or other exclusions, such contracts are recorded at market value as current or noncurrent assets or liabilities depending on their value and on when the contracts are expected to be settled. Contracts and any associated collateral with counter-parties subject to master netting arrangements are presented net in the Consolidated Balance Sheets. The offset resulting from carrying the derivative at fair value on the balance sheet is charged to earnings unless it qualifies as a hedge or is subject to regulatory accounting treatment. When hedge accounting is appropriate, the Company assesses and documents hedging relationships between the derivative contract and underlying risks as well as its risk management objectives and anticipated effectiveness. When the hedging relationship is highly effective, derivatives are designated as hedges. The market value of the effective portion of the hedge is marked to market in Accumulated other comprehensive income for cash flow hedges. Ineffective portions of hedging arrangements are marked to market through earnings. For fair value hedges, both the derivative and the underlying hedged item are marked to market through earnings. The offset to contracts affected by regulatory accounting treatment are marked to market as a regulatory asset or liability. Market value for derivative contracts is determined using quoted market prices from independent sources. The Company rarely enters into contracts that have a significant impact to the financial statements where internal models are used to calculate fair value. As of and for the periods presented, related derivative activity is not material to these financial statements.

Income Taxes

Deferred income taxes are provided for temporary differences between the tax basis (adjusted for related unrecognized tax benefits, if any) of an asset or liability and its reported amount in the financial statements. Deferred tax assets and liabilities are computed based on the currently-enacted statutory income tax rates that are expected to be applicable when the temporary differences are scheduled to reverse. The Company's rate-regulated utilities recognize regulatory liabilities for deferred taxes provided in excess of the current statutory tax rate and regulatory assets for deferred taxes provided at rates less than the current statutory tax rate. Such tax-related regulatory assets and liabilities are reported at the revenue requirement level and amortized to income as the related temporary differences reverse, generally over the lives of the related properties. A valuation allowance is recorded to reduce the carrying amounts of deferred tax assets unless it is more likely than not that the deferred tax assets will be realized.

Tax benefits associated with income tax positions taken, or expected to be taken, in a tax return are recorded only when the more-likely-than-not recognition threshold is satisfied and measured at the largest amount of benefit that is greater than 50 percent likely of being realized upon settlement. The Company reports interest and penalties associated with unrecognized tax benefits within Income taxes in the Consolidated Statements of Incomeand reports tax liabilities related to unrecognized tax benefits as part of Deferred credits & other liabilities.

Investment tax credits (ITCs) related to the utility operations are deferred and amortized to income over the approximate lives of the related property in accordance with the regulatory treatment. Production tax credits (PTCs) are recognized as energy is generated and sold based on a per kilowatt hour rate prescribed in applicable federal and state statutes.

Revenues

Most revenues are recorded as products and services are delivered to customers. Some nonutility revenues are recognized using the percentage of completion method with such percentage based on project cost. The Company records revenues for all gas and electricity delivered to customers but not billed at the end of the accounting period in Accrued unbilled revenues.

MISO Transactions

With the IURC's approval, the Company is a member of the MISO, a FERC approved regional transmission organization. The MISO serves the electrical transmission needs of much of the Midwest and maintains operational control over the Company's electric transmission facilities as well as that of other Midwest utilities. The Company is an active participant in the MISO energy markets, bidding its owned generation into the Day Ahead and Real Time markets and procuring power for its retail customers at Locational Marginal Pricing (LMP) as determined by the MISO market.

MISO-related purchase and sale transactions are recorded using settlement information provided by MISO. These purchase and sale transactions are accounted for on a net hourly position. Net purchases in a single hour are recorded in Cost of fuel & purchased power and net sales in a single hour are recorded in Electric utility revenues. On occasion, prior period transactions are resettled outside the routine process due to a change in MISO's tariff or a material interpretation thereof. Expenses associated with resettlements are recorded once the resettlement is probable and the resettlement amount can be estimated. Revenues associated with resettlements are recognized when the amount is determinable and collectability is reasonably assured.

The Company also receives transmission revenue that results from other members' use of the Company's transmission system. These revenues are also included in Electric utility revenues. Generally, these transmission revenues along with costs charged by the MISO are considered components of base rates and any variance from that included in base rates is recovered from / refunded to retail customers through tracking mechanisms.

Share-Based Compensation

The Company grants share-based compensation to certain employees and board members. Liability classified share-based compensation awards are re-measured at the end of each period based on their expected settlement date fair value. Equity classified stock-based compensation awards are measured at the grant date, based on the fair value of the award. Expense associated with share-based awards is recognized over the requisite service period, which generally begins on the date the award is granted through the earlier of the date the award vests or the date the employee becomes retirement eligible.

Excise & Utility Receipts Taxes

Excise taxes and a portion of utility receipts taxes are included in rates charged to customers. Accordingly, the Company records these taxes received as a component of operating revenues, which totaled $29.3 million in 2011, $33.8 million in 2010, and $36.3 million in 2009. Expense associated with excise and utility receipts taxes are recorded as a component of Taxes other than income taxes.

Operating Segments

The Company's chief operating decision maker is comprised of a group of executive management led by the Chief Executive Officer. The Company uses net income calculated in accordance with generally accepted accounting principles as its most relevant performance measure. The Company has three operating segments within its Utility Group, five operating segments in its Nonutility Group, and a Corporate and Other segment.

Fair Value Measurements

Certain assets and liabilities are valued and/or disclosed at fair value. Financial assets include securities held in trust by the Company's pension plans. Nonfinancial assets and liabilities include the initial measurement of an asset retirement obligation or the use of fair value in goodwill, and intangible assets and long-lived assets impairment tests. FASB guidance provides the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. The hierarchy gives the highest priority to unadjusted quoted prices in active markets for identical assets or liabilities (Level 1 measurements) and the lowest priority to unobservable inputs (Level 3 measurements). The three levels of the fair value hierarchy are described as follows:

Level 1	Inputs to the valuation methodology are unadjusted quoted prices for identical assets or liabilities in active markets that the Company has the ability to access.
Level 2	Inputs to the valuation methodology include • quoted prices for similar assets or liabilities in active markets; • quoted prices for identical or similar assets or liabilities in inactive markets; • inputs other than quoted prices that are observable for the asset or liability; • inputs that are derived principally from or corroborated by observable market data by correlation or other means If the asset or liability has a specified (contractual) term, the Level 2 input must be observable for substantially the full term of the asset or liability.
Level 3	Inputs to the valuation methodology are unobservable and significant to the fair value measurement.

The asset or liability's fair value measurement level within the fair value hierarchy is based on the lowest level of any input that is significant to the fair value measurement. Valuation techniques used need to maximize the use of observable inputs and minimize the use of unobservable inputs.

3. Utility & Nonutility Plant

The original cost of Utility Plant, together with depreciation rates expressed as a percentage of original cost, follows:

	At December 31,			
(In millions)	2011		2010	
	Original Cost	Depreciation Rates as a Percent of Original Cost	Original Cost	Depreciation Rates as a Percent of Original Cost
Gas utility plant	$ 2,516.8	3.5%	$ 2,410.2	3.6%
Electric utility plant	2,316.8	3.3%	2,258.6	3.4%
Common utility plant	51.6	2.9%	49.7	3.1%
Construction work in progress	94.7	-	73.2	-
Total original cost	$ 4,979.9		$ 4,791.7	

SIGECO and Alcoa Generating Corporation (AGC), a subsidiary of ALCOA, own the 300 MW Unit 4 at the Warrick Power Plant as tenants in common. SIGECO's share of the cost of this unit at December 31, 2011, is $182.6 million with accumulated depreciation totaling $70.3 million. AGC and SIGECO also share equally in the cost of operation and output of the unit. SIGECO's share of operating costs is included in Other operating expenses in the Consolidated Statements of Income.

Nonutility plant, net of accumulated depreciation and amortization follows:

	At December 31,	
(In millions)	2011	2010
Coal mine development costs & equipment	$ 222.0	$ 196.9
Computer hardware & software	101.9	114.5
Land & buildings	112.0	112.8
Vehicles & equipment	92.5	46.9
All other	22.4	17.2
Nonutility plant - net	$ 550.8	$ 488.3

Nonutility plant is presented net of accumulated depreciation and amortization totaling $418.5 million and $385.5 million as of December 31, 2011 and 2010, respectively. For the years ended December 31, 2011, 2010, and 2009, the Company capitalized interest totaling $2.1 million, $2.1 million, and $6.0 million, respectively, on nonutility plant construction projects.

4. Regulatory Assets & Liabilities

Regulatory Assets

Regulatory assets consist of the following:

	At December 31,	
(In millions)	2011	2010
Future amounts recoverable from ratepayers related to:		
Benefit obligations (See Note 11)	$ 126.0	$ 92.5
Deferred Income taxes (See Notes 10 & 18)	1.3	19.2
Asset retirement obligations & other	2.3	2.1
	129.6	113.8
Amounts deferred for future recovery related to:		
Deferred coal costs (See Note 20)	17.7	-
Cost recovery riders & other	6.4	2.8
	24.1	2.8
Amounts currently recovered in customer rates related to:		
Unamortized debt issue costs & hedging proceeds	34.3	35.7
Demand side management programs	6.3	9.5
Indiana authorized trackers	24.3	17.3
Ohio authorized trackers	1.0	2.0
Premiums paid to reacquire debt	3.3	3.8
Other base rate recoveries	3.1	4.5
	72.3	72.8
Total r egulatory assets	$ 226.0	$ 189.4

Of the $72.3 million currently being recovered in customer rates, $6.3 million that is associated with demand side management programs is earning a return. The weighted average recovery period of regulatory assets currently being recovered is 17 years. The Company has rate orders for all deferred costs not yet in rates and therefore believes that future recovery is probable.

Assets arising from benefit obligations represent the funded status of retirement plans less amounts previously recognized in the statement of income. The Company records a Regulatory asset for that portion related to its rate regulated utilities. If the cost is ultimately recognized as a periodic cost, it will be recovered through rates charged to customers. See Note 11.

Regulatory Liabilities

At December 31, 2011 and 2010, the Company has approximately $345.2 million and $333.5 million, respectively, in Regulatory liabilities. Of these amounts, $320.9 million and $307.5 million relate to cost of removal obligations. The remaining amounts primarily relate to timing differences associated with asset retirement obligations and deferred financing costs.

5. Acquisition of Minnesota Limited, Inc.

On March 31, 2011, the Company, through its wholly owned subsidiary Vectren Infrastructure Services Company, Inc., purchased Minnesota Limited, Inc., excluding certain assets. Minnesota Limited is a specialty contractor focusing on transmission pipeline construction and maintenance; pump station, compressor station, terminal and refinery construction; gas distribution; and hydrostatic testing. Minnesota Limited is headquartered in Big Lake, Minnesota and the majority of its customers are generally located in the northern Midwest region.

Along with the Company's wholly owned subsidiary, Miller Pipeline LLC, Minnesota Limited is included in the Company's nonutility Infrastructure Services operating segment. This acquisition positions the Company for anticipated growth in demand for gas transmission construction resulting from the need to transport new sources of natural gas and oil found in shale formations and the need to upgrade the nation's aging pipelines.

The Company accounted for the cash acquisition in accordance with FASB authoritative guidance for business combinations, which requires the Company to recognize the assets acquired and the liabilities assumed, measured at their fair values as of the date of acquisition. The following table summarizes the allocation of the purchase price to the fair value of the assets acquired and liabilities assumed.

(In millions)	
Working capital assets	$ 21.5
Working capital liabilities	(6.7)
Net working capital	14.8
Property, plant & equipment	34.4
Identifiable intangible assets	19.1
Goodwill	20.3
Net assets acquired	88.6
Debt obligation assumed	(5.2)
Cash paid in acquisition, net of cash acquired	$ 83.4

The purchase price and its allocation remain preliminary and could change in subsequent periods. Any subsequent material changes to the purchase price and its allocation will be adjusted pursuant to FASB guidance. Since the initial purchase price allocation was disclosed only minor adjustments have been made. The final purchase price and the allocation are dependent on final reconciliations of working capital and other items.

Level 3 market inputs, such as discounted cash flows, revenue growth rates, royalty rates, and dealer and auction values of used equipment, were used to derive the preliminary fair values of the identifiable intangible assets and property plant and equipment. Identifiable intangible assets include back log, long-term customer relationships, and trade name. The Company intends to use the acquired assets for an extended period and is amortizing them on a straight-line basis over their estimated useful lives. Goodwill arising from the purchase represents intangible value the Company expects to realize over time. This value includes but is not limited to: 1) expected synergies from more efficient utilization of equipment and human resources within the combined entities; 2) the experience and size of the acquired work force; and 3) the reputation of the current Minnesota Limited management team. The goodwill, which does not amortize pursuant to FASB guidance, is deductible over a 15 year period for purposes of computing current income tax expense.

Transaction costs associated with the acquisition and expensed by the Company totaled approximately $0.6 million, of which $0.2 million are included in Other operating expenses during the twelve months ended December 31, 2011 and the remainder was expensed in 2010. For the period from April 1, 2011 through December 31, 2011, Minnesota Limited contributed approximately $116.5 million and $9.4 million to the Company's revenue and net income, respectively.

The following table presents the Company's unaudited proforma results of operations for the twelve months ended December 31, 2011, 2010, and 2009 as if the acquisition had occurred on January 1, 2009.

	Year Ended December 31,		
(In millions, except per share data)	2011	2010	2009
Total operating revenues	$ 2,346.3	$ 2,239.7	$ 2,210.0
Net income	$ 141.4	$ 134.6	$ 138.1
Basic earnings per share	$ 1.73	$ 1.66	$ 1.71
Diluted earnings per share	$ 1.73	$ 1.66	$ 1.70

In addition to the incremental revenues and expenses recorded by Minnesota Limited during this period, the proforma financial data for all periods presented contain several adjustments including the following: recording the additional amortization expense from the identifiable intangible assets; adjusting the estimated tax provision of the proforma combined results; and adjusting for the issuance of short-term debt to facilitate the acquisition. The Company prepared the proforma financial information for the combined entities for comparative purposes only, and it may not be indicative of what actual results would have been if the acquisition had taken place on the proforma date, or of future results.

Concurrent with the purchase agreement, the Company executed a lease arrangement at fair value for the Minnesota Limited corporate headquarters, which is owned by a member of the Minnesota Limited management team and certain family members. The lease obligates the Company to pay approximately $83,333 per month for 10 years along with certain executory costs for taxes and other operating expenses. Pursuant to FASB guidance, the Company accounts for the obligation as an operating lease, expensing the lease payments and executory costs as incurred.

6. Sale of Retail Gas Marketing Operations

On December 31, 2011, the Company sold its retail gas marketing operations performed through Vectren Source receiving cash proceeds of approximately $84.3 million, including, and subject to a final determination of, working capital. The sale, net of transaction costs, resulted in a pretax gain of approximately $25.4 million, which is included in Other operating expenses in the Consolidated Statements of Income. VEDO continues doing business with Vectren Source. Vectren Source sells natural gas directly to customers in VEDO's service territory, and VEDO purchases receivables and natural gas from Vectren Source. Vectren Source is a component of the Energy Marketing operating segment.

7. Investment in Pr oLiance Holdings, LLC

ProLiance Holdings, LLC (ProLiance), a nonutility energy marketing affiliate of Vectren and Citizens Energy Group (Citizens), provides services to a broad range of municipalities, utilities, industrial operations, schools, and healthcare institutions located throughout the Midwest and Southeast United States. ProLiance's customers include Vectren's Indiana utilities and nonutility gas supply operations as well as Citizens' utilities. ProLiance's primary businesses include gas marketing, gas portfolio optimization, and other portfolio and energy management services. Consistent with its ownership percentage, Vectren is allocated 61 percent of ProLiance's profits and losses; however, governance and voting rights remain at 50 percent for each member; and therefore, the Company accounts for its investment in ProLiance using the equity method of accounting. The Company, including its former retail gas supply operations, contracted for a substantial portion of its natural gas purchases through ProLiance in 2011, 2010, and 2009.

Summarized Financial Information

	Year Ended December 31,		
(In millions)	2011	2010	2009
Summarized Statement of Income information:			
Revenues	$ 1,410.5	$ 1,497.0	$ 1,654.9
Operating income (loss)	(44.5)	(3.1)	35.2
Charge related to Investment in Liberty Gas Storage	-	-	(32.7)
ProLiance's earnings (losses)	(47.3)	(3.7)	4.5

	As of December 31,	
(In millions)	2011	2010
Summarized balance sheet information:		
Current assets	$ 381.9	$ 441.4
Noncurrent assets	56.1	59.1
Current liabilities	298.5	298.1
Noncurrent liabilities	0.7	0.4
Members' equity	161.5	208.9
Accumulated other comprehensive income (loss)	(26.0)	(10.8)
Noncontrolling interest	3.3	3.9

Vectren records its 61 percent share of ProLiance's results in Equity in earnings (losses) of unconsolidated affiliates. Interest expense and income taxes associated with the investment are recorded separately within the statements of income in those line items. As of December 31, 2011 and 2010, the Company's investment balance is $85.4 million and $123.2 million, respectively. The amounts recorded to Equity in earnings (losses) of unconsolidated affiliates related to ProLiance's operations totaled a pre-tax loss of $28.6 million and $2.5 million for the twelve months ended December 31, 2011 and 2010, respectively, and pre-tax income of $3.6 million for the twelve months ended December 31, 2009. Lower natural gas prices, which have resulted in narrowed summer/winter spreads and locational margins, have negatively impacted ProLiance's results.

Investment in Liberty Gas Storage

Liberty Gas Storage, LLC (Liberty), a joint venture between a subsidiary of ProLiance and a subsidiary of Sempra Energy (SE), is a development project for salt-cavern natural gas storage facilities. ProLiance is the minority member with a 25 percent interest, which it accounts for using the equity method. The project was expected to include 17 Bcf of capacity in its North site, and an additional capacity of at least 17 Bcf at the South site. The South site also has the potential for further expansion. The Liberty pipeline system is currently connected with several interstate pipelines, including the Cameron Interstate Pipeline operated by Sempra Pipelines & Storage, and will connect area LNG regasification terminals to an interstate natural gas transmission system and storage facilities.

In late 2008, the project at the North site was halted due to subsurface and well-completion problems, resulting in Liberty recording a $132 million impairment charge related to the North site in 2009. ProLiance recorded its share of the charge in 2009 totaling $33 million; the Company recorded its share of the charge in 2009 totaling $11.9 million after tax. In the Consolidated Statement of Income for the year ended December 31, 2009, the charge is an approximate $19.9 million reduction to Equity in earnings of unconsolidated affiliates and an income tax benefit reflected in Income taxes of approximately $8.0 million. ProLiance's ability to meet the needs of its customers has not been, nor does it expect it to be, impacted. Approximately 12 Bcf of the storage at the South site, which comprises three of the four FERC certified caverns, is fully completed and tested. As a result of the issues encountered at the North site, Liberty requested and the FERC approved the separation of the North site from the South site. As of December 31, 2011 and December 31, 2010, ProLiance's investment in Liberty approximated $35.1 million and $36.7 million, respectively.

Liberty received a Demand for Arbitration from Williams Midstream Natural Gas Liquids, Inc. ("Williams") on February 8, 2011 related to a Sublease Agreement ("Sublease") between Liberty and Williams at the North site. Williams alleges that Liberty was negligent in its attempt to convert certain salt caverns to natural gas storage and thereby damaged the caverns. Williams alleges damages of $56.7 million. Liberty believes that it has complied with all of its obligations to Williams, including properly terminating the Sublease. Liberty intends to vigorously defend itself and has asserted counterclaims substantially in excess of the amounts asserted by Williams.

Firm Transportation and Storage Commitments

ProLiance has various firm transportation and storage agreements with only minimal support from Vectren or Citizens. (See Note 17 regarding corporate guarantees.) Under these agreements, ProLiance must make specified minimum payments which extend through 2029. At December 31, 2011, the estimated aggregated amounts of such required future payments were $55.5 million, $49.0 million, $46.6 million, $38.2 million, $33.9 million, and $247.9 million for 2012, 2013, 2014, 2015, 2016, and thereafter, respectively. During 2011, 2010, and 2009, fixed payments under these agreements were $73.0 million, $76.8 million, and $63.0 million, respectively. ProLiance also made variable payments under these agreements in 2011, 2010, and 2009. Variable payments include storage injection and withdrawal charges, and commodity transportation charges.

Transactions with ProLiance

Purchases from ProLiance for resale and for injections into storage for the years ended December 31, 2011, 2010, and 2009, totaled $378.7 million, $437.7 million, and $533.4 million, respectively. Amounts owed to ProLiance at December 31, 2011, and 2010, for those purchases were $36.8 million and $59.6 million, respectively, and are included in Accounts payable to affiliated companies in the Consolidated Balance Sheets. Vectren received regulatory approval on April 25, 2006, from the IURC for ProLiance to provide natural gas supply services to the Company's Indiana utilities through March 2011. On March 17, 2011, an order was received from the IURC providing for ProLiance's continued provision of gas supply services to the Company's Indiana utilities and Citizens Energy Group through March 2016. Amounts charged by ProLiance for gas supply services are established by supply agreements with each utility.

8. Nonutility Real Estate & Other Legacy Holdings

Within the Nonutility business segment, there are legacy investments involved in energy-related infrastructure and services, real estate, leveraged leases, and other ventures. As of December 31, 2011 and 2010, total remaining legacy investments included in the Other Businesses portfolio total $36.9 million and $52.7 million, respectively. Further separation of that 2011 investment by type of investment follows:

	December 31, 2011		
		Value Included In	
(In millions)	Carrying Value	Other Nonutility Investments	Investments in Unconsolidated Affiliates
Commercial real estate investments	$ 8.0	$ 8.0	$ -
Leveraged leases	18.5	18.5	-
Affordable housing projects	3.1	0.1	3.0
Haddington energy partnerships	3.4	-	3.4
Other investments	3.9	3.0	0.9
	$ 36.9	$ 29.6	$ 7.3

Net of deferred taxes related to these leveraged leases, the net investment at December 31, 2011 was $23.1 million.

Commercial Real Estate Charge

During the fourth quarter of 2011, the Company obtained new evidence confirming further weakness in markets where the Company holds legacy real estate investments. The Company holds real estate investments such as an office building, affordable housing projects, and second mortgages. The evaluation of the evidence resulted in a $15.4 million charge in 2011. Of the $15.4 million charge, $8.8 million is reflected in Other-net, $3.6 million is reflected in Equity in earnings/losses of unconsolidated affiliates, and $3.0 million is reflected in Other operating expenses.

Leveraged Leases

The Company is a lessor in leveraged lease agreements under which real estate or equipment is leased to third parties. The total equipment and facilities cost was approximately $45.2 million at December 31, 2011. The cost of the equipment and facilities was partially financed by non-recourse debt provided by lenders who have been granted an assignment of rentals due under the leases and a security interest in the leased property, which they accepted as their sole remedy in the event of default by the lessee. Such debt amounted to approximately $39.8 million at December 31, 2011. Subsequent to year end on January 3, 2012 the Company divested of one leveraged lease with a book value of approximately $5.2 million, and net of deferred taxes a net book value of $2.7 million at December 31, 2011, at a small gain.

Notes Receivable

At December 31, 2011 and 2010, notes receivable totaled $2.1 million and $10.9 million, respectively, and reflect the impairment charges discussed above. These amounts are inclusive of accrued interest and net of reserves totaling $15.7 million and $6.1 million, respectively. As of December 31, 2011, the Company is recognizing interest on the cash basis for substantially the entire note portfolio. Such interest income has been insignificant during the past three years. Second mortgages serve as collateral for notes associated with the commercial real estate investments.

Haddington Energy Partnerships

The Company has an approximate 40 percent ownership interest in Haddington Energy Partners, LP (Haddington I) and Haddington Energy Partners II, LP (Haddington II). As of December 31, 2011, these Haddington ventures have interests in two remaining mid-stream energy related investments. Both Haddington ventures are investment companies accounted for using the equity method of accounting. During 2010, the Company recorded its share of the decline in fair value and also impaired a note receivable associated with Haddington's investment in a liquefied natural gas facility. In total, the charge was approximately $6.5 million, of which, $6.1 million is reflected in Equity in earnings (losses) of unconsolidated affiliates and $0.4 million is reflected in Other income-net, for the twelve months ended December 31, 2010. At December 31, 2011, the Company's remaining $3.4 million investment in the Haddington ventures is related to payments to be received associated with the sale of a compressed air storage facility sold in 2009. The Company has no further commitments to invest in either Haddington I or II.

The following is summarized financial information as to the results of operations of Haddington. For the year ended December 31, 2011, operating results were insignificant. For the year ended December 31, 2010, revenues, operating loss, and net loss were (in millions) zero, $(0.3), and $(18.1), respectively. For the year ended December 31, 2009, revenues, operating loss, and net income were (in millions) zero, $(0.4), and $7.9, respectively.

Variable Interest Entities

Some of these legacy nonutility investments are partnership-like structures involved in activities surrounding multifamily housing and office properties and are variable interest entities. The Company is either a limited partner or a subordinated lender and does not consolidate any of these entities. The Company's exposure to loss is limited to its investment which as of December 31, 2011, and 2010, totaled $3.0 million and $7.0 million, respectively, recorded in Investments in unconsolidated affiliates, and $0.1 million and $9.0 million, respectively, recorded in Other nonutility investments.

9. Intangible Assets

Intangible assets, which are included in Other assets, consist of the following:

(In millions)	At December 31,							
	2011				2010			
		Amortizing		Non-amortizing		Amortizing		Non-amortizing
Customer-related assets	$	20.6	$	-	$	7.4	$	-
Market-related assets		3.6		7.0		-		7.0
Intangible assets, net	$	24.2	$	7.0	$	7.4	$	7.0

As of December 31, 2011, the weighted average remaining life for amortizing customer-related assets and all amortizing intangibles is 14 years. These amortizing intangible assets have no significant residual values. Intangible assets are presented net of accumulated amortization totaling $5.1 million for customer-related assets and $0.9 million for market-related assets at December 31, 2011 and $3.4 million for customer-related assets and $0.3 million for market-related assets at December 31, 2010. Annual amortization associated with intangible assets totaled $2.3 million in 2011 and $0.6 million in 2010 and 2009. Amortization should approximate $2.6 million, $2.3 million, $2.3 million, $2.2 million, and $1.6 million in 2012, 2013, 2014, 2015, and 2016, respectively. Intangible assets are primarily in the Nonutility Group.

10. Income Taxes

A reconciliation of the federal statutory rate to the effective income tax rate follows:

	Year Ended December 31,		
	2011	2010	2009
Statutory rate:	35.0%	35.0%	35.0%
State & local taxes-net of federal benefit	4.2	3.8	2.3
Amortization of investment tax credit	(0.3)	(0.4)	(0.5)
Depletion	(1.9)	(2.0)	(2.0)
Other tax credits	(0.2)	(0.2)	(0.2)
Adjustment of income tax accruals and all other-net	1.1	(0.4)	(2.1)
Effective tax rate	37.9%	35.8%	32.5%

Significant components of the net deferred tax liability follow:

	At December 31,	
(In millions)	2011	2010
Noncurrent deferred tax liabilities (assets):		
Depreciation & cost recovery timing differences	$ 625.5	$ 565.7
Leveraged leases	13.8	14.2
Regulatory assets recoverable through future rates	25.1	20.1
Other comprehensive income	(10.2)	(4.2)
Alternative minimum tax carryforward	(35.1)	(48.6)
Employee benefit obligations	(9.4)	(18.9)
Net operating loss & other carryforwards	(6.7)	(3.8)
Regulatory liabilities to be settled through future rates	(17.2)	(4.8)
Impairments	(11.4)	(4.4)
Other – net	1.3	-
Net noncurrent deferred tax liability	575.7	515.3
Current deferred tax (assets)/liabilities:		
Deferred fuel costs-net	6.0	2.4
Demand side management programs	0.7	2.5
Alternative minimum tax carryforward	(15.6)	(0.8)
Other – net	(7.1)	(7.9)
Net current deferred tax asset	(16.0)	(3.8)
Net deferred tax liability	$ 559.7	$ 511.5

At December 31, 2011 and 2010, investment tax credits totaling $4.3 million and $5.0 million, respectively, are included in Deferred credits & other liabilities. At December 31, 2011, the Company has alternative minimum tax carryforwards which do not expire. In addition, the Company has $6.7 million in net operating loss and general business credit carryforwards, which will expire in 5 to 20 years.

The components of income tax expense and utilization of investment tax credits follow:

	Year Ended December 31,		
(In millions)	2011	2010	2009
Current:			
Federal	$ 4.4	$ (0.8)	$ (21.4)
State	10.3	6.2	0.6
Total curr ent taxes	14.7	5.4	(20.8)
Deferred:			
Federal	66.0	65.6	78.7
State	6.4	4.5	7.3
Total deferr ed taxes	72.4	70.1	86.0
Amortization of investment tax credits	(0.7)	(0.8)	(1.1)
Total income tax expense	$ 86.4	$ 74.7	$ 64.1

Uncertain Tax Positions

Following is a roll forward of unrecognized tax benefits for the three years ended December 31, 2011:

(In millions)	2011	2010	2009
Unrecognized tax benefits at January 1	$ 13.3	$ 11.5	$ 2.2
Gross increases - tax positions in prior periods	3.3	1.6	1.1
Gross decreases - tax positions in prior periods	(4.5)	(0.3)	(1.8)
Gross increases - current period tax positions	0.6	1.0	9.0
Settlements	(0.3)	-	(0.1)
Lapse of statute of limitations	-	(0.5)	1.1
Unr ecognized tax benefits at December 31	$ 12.4	$ 13.3	$ 11.5

Of the change in unrecognized tax benefits during 2011, 2010, and 2009, almost none impacted the effective rate. The amount of unrecognized tax benefits, which if recognized, that would impact the effective tax rate was $0.7 million at December 31, 2011, $0.7 million at December 31, 2010 and $0.5 million at December 31, 2009. As of December 31, 2011, the unrecognized tax benefit relates to tax positions for which the ultimate deductibility is highly certain but for which there is uncertainty about the timing of such deductibility. Because of the impact of deferred tax accounting, other than interest and penalties, the disallowance of the shorter deductibility period would not affect the annual effective tax rate but would accelerate the payment of cash to the taxing authority. Thus, it is not expected that any changes to these tax positions would have a significant impact on earnings.

The Company recognized expense related to interest and penalties totaling approximately $0.4 million in 2011, $0.3 million in 2010, and $0.2 million in 2009. The Company had approximately $1.3 million and $0.9 million for the payment of interest and penalties accrued as of December 31, 2011 and 2010, respectively.

The net liability on the Consolidated Balance Sheet for unrecognized tax benefits inclusive of interest, penalties and net of secondary impacts which are a component of the Deferred income taxes and are benefits, totaled $10.1 million and $9.8 million, respectively, at December 31, 2011 and 2010.

The Company and/or certain of its subsidiaries file income tax returns in the U.S. federal jurisdiction and various states. The Internal Revenue Service (IRS) has concluded examinations of the Company's U.S. federal income tax returns for tax years through December 31, 2005. Tax years 2006 and 2008 are currently under IRS examination. The primary focus of the IRS examination is certain repairs and maintenance deductions, an area of particular focus by the IRS throughout the utility industry. The Company received Notices of Assessment from the IRS related to these deductions. The Company responded to the assessments in January 2012 and continues to follow industry activities in this area. However, in the event the IRS assessments related to these deductions are upheld, any impact is not expected to be material to the Company's results of operations or financial condition. Further, the Company does not expect any changes to this liability for unrecognized income tax benefits within the next 12 months that would significantly impact the Company's results of operations or financial condition. The State of Indiana, the Company's primary state tax jurisdiction, has conducted examinations of state income tax returns for tax years through December 31, 2007. The statutes of limitations for assessment of federal income tax have expired with respect to tax years through 2005 and through 2007 for Indiana income tax.

11. Retirement Plans & Other Postretirement Benefits

At December 31, 2011, the Company maintains three qualified defined benefit pension plans, a nonqualified supplemental executive retirement plan (SERP), and three other postretirement benefit plans. The defined benefit pension and other postretirement benefit plans, which cover eligible full-time regular employees, are primarily noncontributory. The postretirement health care and life insurance plans are a combination of self-insured and fully insured plans. The qualified pension plans and the SERP are aggregated under the heading "Pension Benefits." Other postretirement benefit plans are aggregated under the heading "Other Benefits."

Net Periodic Benefit Costs

A summary of the components of net periodic benefit cost for the three years ended December 31, 2011 follows:

	Pension Benefits			Other Benefits		
(In millions)	2011	2010	2009	2011	2010	2009
Service cost	$ 6.9	$ 6.3	$ 6.3	$ 0.5	$ 0.5	$ 0.5
Interest cost	15.9	15.9	15.8	4.3	4.6	4.4
Expected return on plan assets	(21.2)	(18.4)	(16.4)	-	(0.4)	(0.3)
Amortization of prior service cost (benefit)	1.7	1.6	1.7	(0.8)	(0.8)	(0.8)
Amortization of actuarial loss (gain)	3.8	3.2	2.2	0.6	0.5	0.4
Amortization of transitional obligation		-	-	1.1	1.2	1.1
Net periodic benefit cost	$ 7.1	$ 8.6	$ 9.6	$ 5.7	$ 5.6	$ 5.3

A portion of benefit costs are capitalized as Utility plant. Costs capitalized in 2011, 2010, and 2009 are estimated at $3.9 million, $4.3 million, and $4.5 million, respectively.

The Company lowered the discount rate used to measure periodic cost from 6.0 percent in 2010 to 5.50 percent in 2011 due to lower benchmark interest rates that approximate the expected duration of the Company's benefit obligations. For fiscal year 2012, the weighted average discount rate will be 4.82 percent for the defined benefit pension plans. Over the periods presented other assumptions have also declined reflecting the lower interest rate environment.

The weighted averages of significant assumptions used to determine net periodic benefit costs follow:

	Pension Benefits			Other Benefits		
	2011	2010	2009	2011	2010	2009
Discount rate	5.50%	6.00%	6.25%	5.50%	6.00%	6.25%
Rate of compensation increase	3.50%	3.50%	3.75%	N/A	N/A	N/A
Expected return on plan assets	8.00%	8.00%	8.25%	8.00%	8.00%	8.25%
Expected increase in Consumer Price Index	N/A	N/A	N/A	3.00%	3.00%	3.50%

Health care cost trend rate assumptions do not have a material effect on the service and interest cost components of benefit costs. The Company's plans limit its exposure to increases in health care costs to annual changes in the Consumer Price Index (CPI). Any increase in health care costs in excess of the CPI increase is the responsibility of the plan participants.

Benefit Obligations

A reconciliation of the Company's benefit obligations at December 31, 2011 and 2010 follows:

	Pension Benefits		Other Benefits	
(In millions)	2011	2010	2011	2010
Benefit obligation, beginning of period	$ 297.3	$ 271.5	$ 80.7	$ 79.6
Service cost – benefits earned during the period	6.9	6.3	0.5	0.5
Interest cost on projected benefit obligation	15.9	15.9	4.3	4.6
Plan participants' contributions	-	-	1.9	1.7
Plan amendments	-	0.8	-	-
Actuarial loss (gain)	23.1	21.3	(0.5)	1.2
Medicare subsidy receipts	-	-	1.0	0.5
Benefit payments	(14.0)	(18.5)	(8.2)	(7.4)
Benefit obligation, end of period	$ 329.2	$ 297.3	$ 79.7	$ 80.7

The accumulated benefit obligation for all defined benefit pension plans was $310.9 and $280.5 million at December 31, 2011 and 2010, respectively.

The benefit obligation as of December 31, 2011 and 2010 was calculated using the following weighted average assumptions:

	Pension Benefits		Other Benefits	
	2011	2010	2011	2010
Discount rate	4.82%	5.50%	4.78%	5.50%
Rate of compensation increase	3.50%	3.50%	N/A	N/A
Expected increase in Consumer Price Index	N/A	N/A	2.75%	3.00%

To calculate the 2011 ending postretirement benefit obligation, medical claims costs in 2012 were assumed to be 8 percent higher than those incurred in 2011. That trend was assumed to reach its ultimate trending increase of 5 percent by 2018 and remain level thereafter. A one-percentage point change in assumed health care cost trend rates would have changed the benefit obligation by approximately $2.5 million.

Plan Assets

A reconciliation of the Company's plan assets at December 31, 2011 and 2010 follows:

	Pension Benefits		Other Benefits	
(In millions)	2011	2010	2011	2010
Plan assets at fair value, beginning of period	$ 237.2	$ 211.1	$ 3.1	$ 4.0
Actual return on plan assets	2.1	26.8	0.1	0.3
Employer contributions	35.7	17.8	3.1	4.5
Plan participants' contributions	-	-	1.9	1.7
Benefit payments	(14.0)	(18.5)	(8.2)	(7.4)
Fair value of plan assets, end of period	$ 261.0	$ 237.2	$ -	$ 3.1

The Company's overall investment strategy for its retirement plan trusts is to maintain investments in a diversified portfolio, comprised of primarily equity and fixed income investments, which are further diversified among various asset classes. The diversification is designed to minimize the risk of large losses while maximizing total return within reasonable and prudent levels of risk. The investment objectives specify a targeted investment allocation for the pension plans of 60 percent equities, 35 percent debt, and 5 percent for other investments, including real estate. Both the equity and debt securities have a blend of domestic and international exposures. Objectives do not target a specific return by asset class. The portfolios' return is monitored in total. Following is a description of the valuation methodologies used for trust assets measured at fair value.

Mutual Funds

The fair values of mutual funds are derived from quoted market prices or net asset values as these instruments have active markets (Level 1 inputs).

Common Collective Trust Funds (CTF's)

The Company's plans have investments in trust funds similar to mutual funds in that they are created by pooling of funds from investors into a common trust and such funds are managed by a third party investment manager. These trust funds typically give investors a wider range of investment options through this pooling of funds than that generally available to investors on an individual basis. However, unlike mutual funds, these trusts are not publicly traded in an active market. The fair values of these trusts are derived from Level 2 market inputs based on a daily calculated unit value as determined by the issuer. This daily calculated value is based on the fair market value of the underlying investments. These funds are primarily comprised of investments in equity and fixed income securities which represent approximately 52 percent and 40 percent, respectively, of their fair value as of December 31, 2011 and approximately 55 percent and 37 percent, respectively, as of December 31, 2010. Equity securities within these funds are primarily valued using quoted market prices as these instruments have active markets. From time to time, less liquid equity securities are valued using Level 2 inputs, such as bid prices or a closing price, as determined in good faith by the investment manager. Fixed income securities are valued at the last available bid prices quoted by an independent pricing service. When valuations are not readily available, fixed income securities are valued using primarily other Level 2 inputs as determined in good faith by the investment manager.

The fair value of these funds totals $128.2 million at December 31, 2011 and $110.4 million at December 31, 2010. In relation to these investments, there are no unfunded commitments. Also, the Plan can exchange shares with minimal restrictions. However, in certain events, a restriction of up to 31 days may exist.

Guaranteed Annuity Contract

One of the Company's pension plans is party to a group annuity contract with John Hancock Life Insurance Company. At December 31, 2011 and 2010, the estimate of undiscounted funds necessary to satisfy John Hancock's remaining obligation was $3.4 million and $3.1 million, respectively. If funds retained by John Hancock are not sufficient to satisfy retirement payments due these retirees, the shortfall must be funded by the Company. The composite investment return, net of manager fees and other charges for the years ended December 31, 2011 and 2010 was 5.26 percent and 5.37 percent, respectively. The Company values this illiquid investment using long-term interest rate and mortality assumptions, among others, and is therefore considered a Level 3 investment. There is no unfunded commitment related to this investment.

The fair values of the Company's pension and other retirement plan assets at December 31, 2011 and December 31, 2010 by asset category and by fair value hierarchy are as follows:

	As of December 31, 2011			
(In millions)	Level 1	Level 2	Level 3	Total
Domestic equities & equity funds	$ 54.7	$ 66.5	$ -	$ 121.2
International equities & equity funds	28.6	-	-	28.6
Domestic bonds & bond funds	38.2	39.1	-	77.3
Inflation protected security fund	-	11.8	-	11.8
Real estate, commodities & other	7.5	10.8	3.8	22.1
Total Plan Investments	$ 129.0	$ 128.2	$ 3.8	$ 261.0

	As of December 31, 2010			
(In millions)	Level 1	Level 2	Level 3	Total
Domestic equities & equity funds	$ 54.6	$ 60.8	$ -	$ 115.4
International equities & equity funds	29.7	-	-	29.7
Domestic bonds & bond funds	35.3	31.3	-	66.6
Inflation protected security fund	-	9.2	-	9.2
Real estate, commodities & other	6.6	9.1	3.7	19.4
Total Plan Investments	$ 126.2	$ 110.4	$ 3.7	$ 240.3

A roll forward of the fair value of the guaranteed annuity contract calculated using Level 3 valuation assumptions follows:

(In millions)	2011	2010
Fair value, beginning of year	$ 3.7	$ 3.6
Unrealized gains related to investments still held at reporting date	0.2	0.2
Purchases, sales and settlements, net	(0.1)	(0.1)
Fair value, end of year	$ 3.8	$ 3.7

Funded Status

The funded status of the plans as of December 31, 2011 and 2010 follows:

	Pension Benefits		Other Benefits	
(In millions)	2011	2010	2011	2010
Qualified Plans				
Benefit obligation, end of period	$ (314.7)	$ (285.5)	$ (79.7)	$ (80.7)
Fair value of plan assets, end of period	261.0	237.2	-	3.1
Funded Status of Qualified Plans, end of period	(53.7)	(48.3)	(79.7)	(77.6)
Benefit obligation of SERP Plan, end of period	(14.5)	(11.8)	-	-
Total funded status, end of period	$ (68.2)	$ (60.1)	$ (79.7)	$ (77.6)
Accrued liabilities	$ 0.7	$ 0.7	$ 5.1	$ 4.6
Deferred credits & other liabilities	$ 67.5	$ 59.4	$ 74.6	$ 73.0

Expected Cash Flows

In 2012, the Company expects to make contributions of approximately $15 million to its pension plan trusts. In addition, the Company expects to make payments totaling approximately $0.7 million directly to SERP participants and approximately $5.1 million directly to those participating in other postretirement plans.

Estimated retiree pension benefit payments, including the SERP, projected to be required during the years following 2011 (in millions) are approximately $16.4 in 2012, $17.3 in 2013 $17.9 in 2014, $18.7 in 2015, $19.8 in 2016 and $125.2 in years 2017-2021. Expected benefit payments projected to be required for postretirement benefits during the years following 2011 (in millions) are approximately $7.5 in 2012, $8.1 in 2013, $8.7 in 2014, $9.2 in 2015, and $9.8 in 2016 and $58.1 in years 2017-2021.

Prior Service Cost, Actuarial Gains and Losses, and Transition Obligation Effects

Following is a roll forward of prior service cost, actuarial gains and losses, and transition obligations.

(In millions)	Pensions		Other Benefits		
	Prior Service Cost	Net Gain or Loss	Prior Service Cost	Net Gain or Loss	Transition Obligation
Balance January 1, 2009	$ 9.5	$ 90.9	$ (3.7)	$ 3.5	$ 6.2
Amounts arising during the period	0.1	(20.2)	0.1	6.6	(0.1)
Reclassification to benefit costs	(1.7)	(2.2)	0.8	(0.4)	(1.1)
Balance December 31, 2009	$ 7.9	$ 68.5	$ (2.8)	$ 9.7	$ 5.0
Amounts arising during the period	0.8	12.9	-	1.1	-
Reclassification to benefit costs	(1.6)	(3.2)	0.8	(0.5)	(1.2)
Balance December 31, 2010	$ 7.1	$ 78.2	$ (2.0)	$ 10.3	$ 3.8
Amounts arising during the period	-	42.2	-	(0.6)	-
Reclassification to benefit costs	(1.7)	(3.8)	0.8	(0.6)	(1.1)
Balance December 31, 201 1	$ 5.4	$ 116.6	$ (1.2)	$ 9.1	$ 2.7

Following is a reconciliation of the amounts in Accumulated other comprehensive income (AOCI) and Regulatory assets related to retirement plan obligations at December 31, 2011 and 2010:

(In millions)	2011		2010	
	Pensions	Other Benefits	Pensions	Other Benefits
Prior service cost	$ 5.4	$ (1.2)	$ 7.1	$ (2.0)
Unamortized actuarial gain/(loss)	116.6	9.1	78.2	10.3
Transition obligation	-	2.7	-	3.8
	122.0	10.6	85.3	12.1
Less: Regulatory asset deferral	(115.9)	(10.1)	(81.0)	(11.5)
AOCI befor e taxes	$ 6.1	$ 0.5	$ 4.3	$ 0.6

Related to pension plans, $1.6 million of prior service cost and $6.8 million of actuarial gain/loss is expected to be amortized to cost in 2012. Related to other benefits, $1.1 million of the transition obligation and $0.5 million of actuarial gain/loss is expected to be amortized to periodic cost in 2012, and $0.8 million of prior service cost is expected to reduce cost in 2012.

Multiemployer Benefit Plan

The Company, through its Infrastructure Services operating segment, participates in several industry wide multiemployer pension plans for its union employees which provide for monthly benefits based on length of service. Expense is recognized as payments are accrued for work performed or when withdrawal liabilities are probable and estimable. Expense associated with multiemployer plans was $18.3 million for the year ended December 31, 2011 and includes results from Minnesota Limited and a small withdrawal liability from one plan. Expense in 2010 and 2009 was $10.0 million and $8.8 million, respectively. During 2011, the Company made contributions on behalf of employees that participate in over 260 unions. The average contribution to each union was less than $0.1 million, and the largest contribution was $1.1 million. Multiple unions can contribute to a single multiemployer plan. The Company identified contributions to at least 17 plans in 2011 and total contributions to each plan were not significant.

Defined Contribution Plan

The Company also has defined contribution retirement savings plans that are qualified under sections 401(a) and 401(k) of the Internal Revenue Code and include an option to invest in Vectren common stock, among other alternatives. During 2011, 2010 and 2009, the Company made contributions to these plans of $6.2 million, $6.6 million, and $4.6 million, respectively.

12. Borr owing Arrangements

Long-Term Debt

Long-term senior unsecured obligations and first mortgage bonds outstanding by subsidiary follow:

	At December 31,	
(In millions)	2011	2010
Utility Holdings		
Fixed Rate Senior Unsecured Notes		
2011, 6.625%	$ -	$ 250.0
2013, 5.25%	100.0	100.0
2015, 5.45%	75.0	75.0
2018, 5.75%	100.0	100.0
2020, 6.28%	100.0	100.0
2021, 4.67%	55.0	-
2026, 5.02%	60.0	-
2035, 6.10%	75.0	75.0
2036, 5.95%	-	96.7
2039, 6.25%	121.6	121.9
2041, 5.99%	35.0	-
Total Utility Holdings	721.6	918.6
Indiana Gas		
Fixed Rate Senior Unsecured Notes		
2013, Series E, 6.69%	5.0	5.0
2015, Series E, 7.15%	5.0	5.0
2015, Series E, 6.69%	5.0	5.0
2015, Series E, 6.69%	10.0	10.0
2025, Series E, 6.53%	10.0	10.0
2027, Series E, 6.42%	5.0	5.0
2027, Series E, 6.68%	1.0	1.0
2027, Series F, 6.34%	20.0	20.0
2028, Series F, 6.36%	10.0	10.0
2028, Series F, 6.55%	20.0	20.0
2029, Series G, 7.08%	30.0	30.0
Total Indiana Gas	121.0	121.0
SIGECO		
First Mortgage Bonds		
2015, 1985 Pollution Control Series A, current adjustable rate 0.10%, tax exempt, 2011 weighted average: 0.19%	9.8	9.8
2016, 1986 Series, 8.875%	13.0	13.0
2020, 1998 Pollution Control Series B, 4.50%, tax exempt	4.6	4.6
2023, 1993 Environmental Improvement Series B, 5.15%, tax exempt	22.6	22.6
2024, 2000 Environmental Improvement Series A, 4.65%, tax exempt	22.5	22.5
2025, 1998 Pollution Control Series A, current adjustable rate 0.08%, tax exempt, 2011 weighted average: 0.19%	31.5	31.5
2029, 1999 Senior Notes, 6.72%	80.0	80.0
2030, 1998 Pollution Control Series B, 5.00%, tax exempt	22.0	22.0
2030, 1998 Pollution Control Series C, 5.35%, tax exempt	22.2	22.2
2040, 2009 Environmental Improvement Series, 5.40%, tax exempt	22.3	22.3
2041, 2007 Pollution Control Series, 5.45%, tax exempt	17.0	17.0
Total SIGECO	267.5	267.5

(In millions)	2011	2010
Vectren Capital Corp.		
Fixed Rate Senior Unsecured Notes		
2012, 5.13%	25.0	25.0
2012, 7.43%	35.0	35.0
2014, 6.37%	30.0	30.0
2015, 5.31%	75.0	75.0
2016, 6.92%	60.0	60.0
2017, 3.48%	75.0	75.0
2019, 7.30%	60.0	60.0
2025, 4.53%	50.0	50.0
Total Vectren Capital Corp.	410.0	410.0
Other Long-Term Notes Payable	4.1	1.1
Total long-term debt outstanding	1,524.2	1,718.2
Current maturities of long-term debt	(62.7)	(250.7)
Short-term borrowings refinanced in 2012	100.0	
Debt subject to tender	-	(30.0)
Unamortized debt premium & discount - net	(1.9)	(2.3)
Total long-term debt-net	$ 1,559.6	$ 1,435.2

Utility Holdings 2012 Debt Issuance

On February 1, 2012, Utility Holdings issued $100 million of senior unsecured notes at an interest rate of 5.00 percent per annum and with a maturity date of February 3, 2042. The notes were sold to various institutional investors pursuant to a private placement note purchase agreement executed in November 2011 with a delayed draw feature. These senior notes are unsecured and jointly and severally guaranteed by Utility Holdings' regulated utility subsidiaries, SIGECO, Indiana Gas, and VEDO. The proceeds from the sale of the notes, net of issuance costs, totaled approximately $99.5 million. These notes have no sinking fund requirements and interest payments are due semi-annually. These notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Utility Holdings' borrowing arrangements. As of December 31, 2011, the Company has reclassified $100 million of short-term borrowings as long-term debt to reflect those borrowings were refinanced with the proceeds received.

Utility Holdings 2011 Debt Issuance

On November 30, 2011, Utility Holdings closed a financing under a private placement note purchase agreement pursuant to which various institutional investors purchased the following tranches of notes: (i) $55 million of 4.67 percent Senior Guaranteed Notes, due November 30, 2021, (ii) $60 million of 5.02 percent Senior Guaranteed Notes, due November 30, 2026, and (iii) $35 million of 5.99 percent Senior Guaranteed Notes, due December 2, 2041. These senior notes are unsecured and jointly and severally guaranteed by Utility Holdings' regulated utility subsidiaries, SIGECO, Indiana Gas, and VEDO. The proceeds from the sale of the notes, net of issuance costs, totaled approximately $148.9 million. These notes have no sinking fund requirements and interest payments are due semi-annually. These notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Utility Holdings' borrowing arrangements.

Vectren Capital Corp. 2010 Debt Issuance

On December 15, 2010, the Company and Vectren Capital closed a financing under a private placement note purchase agreement pursuant to which various institutional investors agreed to purchase the following tranches of notes from Vectren Capital: (i) $75 million 3.48 percent Senior Notes, Series A due 2017, and (ii) $50 million 4.53 percent Senior Notes, Series B due 2025. These Senior Notes are unconditionally guaranteed by Vectren. The proceeds from the issuance replaced $48 million debt maturities due in December 2010 and provided long-term financing for some nonutility investments originally financed with short-term borrowings. These notes have no sinking fund requirements and interest payments are due semi-annually. The proceeds from the sale of the notes, net of issuance costs, totaled approximately $124.2 million. These notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Vectren Capital borrowing arrangements.

Vectren Capital Corp. 2009 Debt Issuance

On March 11, 2009, Vectren and Vectren Capital closed a financing under a private placement Note Purchase Agreement (the "2009 Note Purchase Agreement") pursuant to which various institutional investors purchased the following tranches of notes from Vectren Capital: (i) $30 million in 6.37 percent senior notes, Series A due 2014, (ii) $60 million in 6.92 percent senior notes, Series B due 2016 and (iii) $60 million in 7.30 percent senior notes, Series C due 2019. These senior notes are unconditionally guaranteed by Vectren, the parent of Vectren Capital. These notes have no sinking fund requirements and interest payments are due semi-annually. The proceeds from the sale of the notes, net of issuance costs, totaled approximately $149.0 million. The 2009 Note Purchase Agreement contains customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Vectren Capital borrowing arrangements. On March 11, 2009, Vectren and Vectren Capital also entered into a first amendment with respect to prior note purchase agreements for the remaining outstanding Vectren Capital debt, other than the $22.5 million series due in 2010, to conform the covenants in certain respects to those contained in the 2009 Note Purchase Agreement.

Utility Holdings 2009 Debt Issuance

On April 7, 2009, Utility Holdings closed a financing under a private placement note purchase agreement pursuant to which institutional investors purchased from Utility Holdings $100 million in 6.28 percent senior unsecured notes due April 7, 2020 (2020 Notes). The 2020 Notes are guaranteed by Utility Holdings' three utilities: SIGECO, Indiana Gas, and VEDO. These guarantees are full and unconditional and joint and several. The proceeds from the sale of the 2020 Notes, net of issuance costs, totaled approximately $99.5 million. The 2020 Notes have no sinking fund requirements and interest payments are due semi-annually. The 2020 Notes contain customary representations, warranties and covenants, including a leverage covenant consistent with leverage covenants contained in other Utility Holdings' borrowing arrangements.

SIGECO 2009 Debt Issuance

On August 19, 2009 SIGECO also completed a $22.3 million tax-exempt first mortgage bond issuance at an interest rate of 5.4 percent that is fixed through maturity. The bonds mature in 2040. The proceeds from the sale of the bonds, net of issuance costs, totaled approximately $21.3 million.

Auction Rate Securities

On March 26, 2009, SIGECO remarketed the remaining $41.3 million of its auction rate securities obligations, receiving proceeds, net of issuance costs of approximately $40.6 million. The remarketed notes have a variable rate interest rate which is reset weekly and are supported by a standby letter of credit. The notes are collateralized by SIGECO's utility plant, and $9.8 million are due in 2015 and $31.5 million are due in 2025.

Long-Term Debt Puts & Calls

Certain long-term debt issues contain put and call provisions that can be exercised on various dates before maturity. Certain instruments can be put to the Company upon the death of the holder (death puts). During 2011, 2010, and 2009, the Company repaid approximately $0.8 million, $1.8 million, and $3.0 million, respectively, related to death puts.

On October 21, 2011, the Company notified holders of Utility Holdings $96.2 million 5.95 percent senior notes due 2036, of its intent to call those notes. This call option was exercised at par on November 21, 2011.

Future Long-Term Debt Sinking Fund Requirements and Maturities

The annual sinking fund requirement of SIGECO's first mortgage bonds is 1 percent of the greatest amount of bonds outstanding under the Mortgage Indenture. This requirement may be satisfied by certification to the Trustee of unfunded property additions in the prescribed amount as provided in the Mortgage Indenture. SIGECO intends to meet the 2011 sinking fund requirement by this means and, accordingly, the sinking fund requirement for 2011 is excluded from Current liabilities in the Consolidated Balance Sheets. At December 31, 2011, $1.3 billion of SIGECO's utility plant remained unfunded under SIGECO's Mortgage Indenture. SIGECO's gross utility plant balance subject to the Mortgage Indenture approximated $2.7 billion at December 31, 2011.

Consolidated maturities of long-term debt during the five years following 2011 (in millions) are $62.7 in 2012, $106.4 in 2013, $30.0 in 2014, $179.8 in 2015, $73.0 in 2016, and $1,170.4 thereafter.

Debt Guarantees

Vectren Corporation guarantees Vectren Capital’s long-term and short-term debt, which totaled $410 million and $84 million, respectively, at December 31, 2011. Utility Holdings’ currently outstanding long-term and short-term debt is jointly and severally guaranteed by Indiana Gas, SIGECO, and VEDO. Utility Holdings’ long-term debt, including current maturities, and short-term debt outstanding at December 31, 2011, totaled $722 million and $243 million, respectively.

Covenants

Both long-term and short-term borrowing arrangements contain customary default provisions; restrictions on liens, sale-leaseback transactions, mergers or consolidations, and sales of assets; and restrictions on leverage and interest coverage, among other restrictions. Multiple debt agreements contain a covenant that the ratio of consolidated total debt to consolidated total capitalization will not exceed 65 percent. As of December 31, 2011, the Company was in compliance with all debt covenants.

Short-Term Borrowings

At December 31, 2011, the Company has $600 million of short-term borrowing capacity, including $350 million for the Utility Group and $250 million for the wholly owned Nonutility Group and corporate operations. As reduced by borrowings currently outstanding, approximately $107 million was available for the Utility Group operations and approximately $166 million was available for the wholly owned Nonutility Group and corporate operations. This short-term borrowing facility was amended effective November 10, 2011 to extend its maturity date from 2013 to 2016 at current market rates. The $350 million of capacity remains unchanged. The Company has historically funded the short-term borrowing needs of Utility Holdings’ operations through the commercial paper market and expects to use the Utility Holdings short-term borrowing facility in instances where the commercial paper market is not efficient.

Following is certain information regarding these short-term borrowing arrangements.

	Utility Group Borrowings			Nonutility Group Borrowings		
(In millions)	2011	2010	2009	2011	2010	2009
Year End						
Balance Outstanding	$ 242.8	$ 47.0	$ 16.4	$ 84.3	$ 71.3	$ 197.1
Weighted Average Interest Rate	0.57%	0.41%	0.25%	1.45%	2.01%	0.60%
Annual Average						
Balance Outstanding	$ 39.6	$ 14.0	$ 29.2	$ 124.9	$ 143.2	$ 151.8
Weighted Average Interest Rate	0.48%	0.40%	1.28%	1.92%	0.93%	0.78%
Maximum Month End Balance Outstanding	$ 242.8	$ 47.0	$ 151.1	$ 180.1	$ 174.6	$ 256.5

Throughout 2011, 2010, and most of 2009, the Company has placed commercial paper without any significant issues and only had to borrow from its backup credit facility in early 2009 on a limited basis. As noted above, $100 million of the outstanding borrowings are presented as long-term at December 31, 2011.

13. Common Shar eholders’ Equity

Authorized, Reserved Common and Preferred Shares

At December 31, 2011 and 2010, the Company was authorized to issue 480.0 million shares of common stock and 20.0 million shares of preferred stock. Of the authorized common shares, approximately 6.8 million shares at December 31, 2011 and 5.5 million shares at December 31, 2010, were reserved by the board of directors for issuance through the Company’s share-based compensation plans, benefit plans, and dividend reinvestment plan. At December 31, 2011 and 2010, there were 391.3 million and 392.8 million, respectively, of authorized shares of common stock and all authorized shares of preferred stock, available for a variety of general corporate purposes, including future public offerings to raise additional capital and for facilitating acquisitions.

14. Earnings Per Share

The Company uses the two class method to calculate earnings per share (EPS). The two class method is an earnings allocation formula that treats a participating security as having rights to earnings that otherwise would have been available to common shareholders. Under the two class method, earnings for a period are allocated between common shareholders and participating security holders based on their respective rights to receive dividends as if all undistributed book earnings for the period were distributed. Basic EPS is computed by dividing net income attributable to only the common shareholders by the weighted-average number of common shares outstanding for the period. Diluted EPS includes the impact of stock options and other equity based instruments to the extent the effect is dilutive.

The following table illustrates the basic and dilutive EPS calculations for the three years ended December 31, 2011:

	Year Ended December 31,		
(In millions, except per share data)	2011	2010	2009
Numerator:			
Numerator for basic EPS	$ 141.6	$ 133.6	$ 132.9
Add back earnings attributable to participating securities	-	0.1	0.2
Reported net income (Numerator for Diluted EPS)	$ 141.6	$ 133.7	$ 133.1
Denominator:			
Weighted average common shares outstanding (Basic EPS)	81.8	81.2	80.7
Conversion of share based compensation arrangements	-	0.1	0.3
Adjusted weighted average shares outstanding and assumed conversions outstanding (Diluted EPS)	81.8	81.3	81.0
Basic earnings per share	$ 1.73	$ 1.65	$ 1.65
Diluted earnings per share	$ 1.73	$ 1.64	$ 1.64

For the year ended December 31, 2011, there were no antidilutive options outstanding. For the years ended December 31, 2010 and 2009, options to purchase 308,800 and 837,100, respectively, of additional shares of the Company's common stock were outstanding, but were not included in the computation of diluted EPS because their effect would be antidilutive. The exercise prices for these options ranged from $24.90 to $27.15 and $23.19 to $27.15 for the years ended December 31, 2010 and 2009, respectively.

15. Accumulated Other Comprehensive Income

A summary of the components of and changes in Accumulated other comprehensive income for the past three years follows:

	2009			2010		2011	
(In millions)	Beginning of Year Balance	Changes During Year	End of Year Balance	Changes During Year	End of Year Balance	Changes During Year	End of Year Balance
Unconsolidated affiliates	$ (29.0)	$ 21.9	$ (7.1)	$ 0.5	$ (6.6)	$ (9.3)	$ (15.9)
Pension & other benefit costs	(5.3)	0.9	(4.4)	(0.5)	(4.9)	(1.7)	(6.6)
Cash flow hedges	0.1	-	0.1	3.9	4.0	(3.9)	0.1
Deferred income taxes	13.9	(9.3)	4.6	(1.5)	3.1	6.0	9.1
Accumulated other comprehensive income (loss)	$ (20.3)	$ 13.5	$ (6.8)	$ 2.4	$ (4.4)	$ (8.9)	$ (13.3)

Accumulated other comprehensive income arising from unconsolidated affiliates is primarily the Company's portion of ProLiance Holdings, LLC's accumulated comprehensive income related to use of cash flow hedges. (See Note 7 for more information on ProLiance.)

16. Share-Based Compensation & Deferred Compensation Arrangements

The Company has various share-based compensation programs to encourage executives, key non-officer employees, and non-employee directors to remain with the Company and to more closely align their interests with those of the Company's shareholders. Under these programs, the Company issues stock options, non-vested shares (herein referred to as restricted stock), and restricted stock units. All share-based compensation programs are shareholder approved. In addition, the Company maintains a deferred compensation plan for executives and non-employee directors where participants have the option to invest earned compensation and vested restricted stock and restricted units in phantom Company stock units. Certain option and share awards provide for accelerated vesting if there is a change in control or upon the participant's retirement.

Following is a reconciliation of the total cost associated with share-based awards recognized in the Company's financial statements to its after tax effect on net income:

	Year ended December 31,		
(In millions)	2011	2010	2009
Total cost of share-based compensation	$ 5.8	$ 4.9	$ 4.6
Less capitalized cost	0.8	1.7	1.6
Total in other operating expense	5.0	3.2	3.0
Less income tax benefit in earnings	2.0	1.3	1.2
After tax effect of share-based compensation	$ 3.0	$ 1.9	$ 1.8

Restricted Stock & Restricted Stock Unit Plans

The Company periodically grants restricted stock and/or restricted stock units to executives and other key non-officer employees. The vesting of those grants is contingent upon meeting a total return and/or return on equity performance objectives. In addition non-employee directors receive a portion of their fees in restricted stock. Grants to executives and key non-officer employees generally vest at the end of a four-year period, with performance measured at the end of the third year. Based on that performance, awards could double or could be entirely forfeited. However, a limited number of awards are time-vested awards that vest ratably over a three year period. Awards to non-employee directors are not performance based and generally vest over one year. Because executives and non-employee directors have the choice of settling awards in shares, cash, or deferring their receipt into a deferred compensation plan (where the value is eventually withdrawn in cash), these awards are accounted for as liability awards at their settlement date fair value. Certain share awards to key non-officer employees must be settled in shares and are therefore accounted for in equity at their grant date fair value.

A summary of the status of the Company's restricted stock and restricted unit awards separated between those accounted for as liabilities and equity as of December 31, 2011, and changes during the year ended December 31, 2011, follows:

	Equity Awards		Liability Awards	
	Shares	Wtd. Avg. Grant Date Fair value	Shares/Units	Fair value
Restricted awards at January 1, 2011	41,458	$ 26.19	668,892	
Granted	27,518	25.64	277,480	
Vested	(7,226)	28.63	(108,390)	
Forfeited	(7,737)	28.61	(139,872)	
Restricted awards at December 31, 2011	54,013	$ 25.22	698,110	$ 30.23

As of December 31, 2011, there was $7.6 million of total unrecognized compensation cost related to restricted stock awards. That cost is expected to be recognized over a weighted-average period of 1.6 years. The total fair value of shares vested for liability awards during the years ended December 31, 2011, 2010, and 2009, was $3.0 million, $5.0 million, and $2.8 million, respectively. The total fair value of equity awards vesting during the year ended December 31, 2011, 2010, and 2009 was $0.2 million, $0.2 million, $0.1 million, respectively.

Stock Option Plans

In the past, option awards were granted to executives and other key employees with an exercise price equal to the market price of the Company's stock at the date of grant; those option awards generally required 3 years of continuous service and have 10-year contractual terms. These awards generally vested on a pro-rata basis over 3 years. The last option grant occurred in 2005, and the Company does not intend to issue options in the future. All compensation cost has been recognized. A summary of the status of the Company's stock option awards as of December 31, 2011, and changes during the year ended December 31, 2011, follows:

		Weighted average		Aggregate
			Remaining	Intrinsic
	Shares	Exercise	Contractual	Value
		Price	Term (years)	(In millions)
Outstanding at January 1, 2011	929,806	$ 24.55		
Exercised	(522,173)	$ 23.61		
Outstanding at December 31, 2011	407,633	$ 25.74	2.5	$ 1.8
Exercisable at December 31, 2011	407,633	$ 25.74	2.5	$ 1.8

The total intrinsic value of options exercised during the year ended December 31, 2011 and 2010 was $2.4 million and $1.3 million, respectively. The actual tax benefit realized for tax deductions from option exercises was approximately $1.0 million and $0.5 million in 2011 and 2010, respectively.

The Company periodically issues new shares and also from time to time repurchases shares to satisfy share option exercises. During the year ended December 31, 2011 and 2010, the Company received cash upon exercise of stock options totaling approximately $12.3 million and $9.5 million, respectively. During these periods, the Company repurchased shares totaling approximately $12.8 million and $1.2 million respectively. During the year ended December 31, 2009, stock option activity was insignificant.

The fair value of option awards granted in prior years was estimated on the date of grant using a Black-Scholes option valuation model. Expected volatilities were based on historical volatility of the Company's stock and other factors. The Company used historical data to estimate the expected term and forfeiture patterns of the options. The risk-free rate for periods within the contractual life of the option was based on the U.S. Treasury yield curve in effect at the time of grant.

Deferred Compensation Plans

The Company has nonqualified deferred compensation plans, which permit eligible executives and non-employee directors to defer portions of their compensation and vested restricted stock or units. A record keeping account is established for each participant, and the participant chooses from a variety of measurement funds for the deemed investment of their accounts. The measurement funds are similar to the funds in the Company's defined contribution plan and include an investment in phantom stock units of the Company. The account balance fluctuates with the investment returns on those funds. At December 31, 2011 and 2010, the liability associated with these plans totaled $21.1 million and $19.1 million, respectively. Other than $0.7 million and $0.5 million which are classified in Accrued liabilities at December 31, 2011 and 2010, respectively, the liability is included in Deferred credits & other liabilities. The impact of these plans on Other operating expenses was expense of $2.1 million in 2011, $2.3 million in 2010 and income of $0.8 million in 2009. The amount recorded in earnings related to the investment activities in Vectren phantom stock associated with these plans during the years ended December 31, 2011, 2010, and 2009, was a cost of $1.7 million, a cost of $1.6 million and a benefit of $1.5 million, respectively.

The Company has certain investments currently funded primarily through corporate-owned life insurance policies. These investments, which are consolidated, are available to pay deferred compensation benefits. These investments are also subject to the claims of the Company's creditors. The cash surrender value of these policies included in Other corporate & utility investments on the Consolidated Balance Sheets were $27.3 million and $27.5 million at December 31, 2011 and 2010, respectively. Earnings from those investments, which are recorded in Other-net, were earnings $0.1 million in 2011, $1.9 million in 2010, and $4.1 million in 2009.

17. Commitments & Contingencies

Commitments

Future minimum lease payments required under operating leases that have initial or remaining noncancelable lease terms in excess of one year during the five years following 2011 and thereafter (in millions) are $4.7 in 2012, $3.8 in 2013, $2.5 in 2014, $1.5 in 2015, $1.1 in 2016, and $4.3 thereafter. Total lease expense (in millions) was $6.9 in 2011, $7.3 in 2010, and $8.0 in 2009.

The Company's regulated utilities have both firm and non-firm commitments to purchase natural gas, electricity, and coal as well as certain transportation and storage rights. Costs arising from these commitments, while significant, are pass-through costs, generally collected dollar-for-dollar from retail customers through regulator-approved cost recovery mechanisms.

Corporate Guarantees

The Company issues parent level guarantees to certain vendors and customers of its wholly owned subsidiaries and unconsolidated affiliates. These guarantees do not represent incremental consolidated obligations; rather, they represent parental guarantees of subsidiary and unconsolidated affiliate obligations in order to allow those subsidiaries and affiliates the flexibility to conduct business without posting other forms of collateral. At December 31, 2011, parent level guarantees support a maximum of $25 million of ESG's performance contracting commitments and warranty obligations and $27 million of other project guarantees. The broader scope of ESG's performance contracting obligations, including those not guaranteed by the parent company, are described below. In addition, the parent company has approximately $25 million of other guarantees outstanding supporting other consolidated subsidiary operations, of which $20 million represent letters of credit supporting other nonutility operations. Guarantees issued and outstanding on behalf of unconsolidated affiliates approximated $3 million at December 31, 2011. These guarantees relate primarily to arrangements between ProLiance and various natural gas pipeline operators. The Company has not been called upon to satisfy any obligations pursuant to these parental guarantees and has accrued no significant liabilities related to these guarantees.

As a result of the sale of Vectren Source on December 31, 2011, the Company has $56 million of outstanding guarantees related to this formerly wholly owned subsidiary that will remain in effect for up to 90 days after the closing. The buyer's parent will hold the Company harmless if any amounts are required to be paid pursuant to these guarantees and, within the 90 day period, the buyer is required to provide its own guarantees in substitution for the Company guarantees.

Performance Guarantees & Product Warranties

In the normal course of business, wholly owned subsidiaries, including ESG, issue performance bonds or other forms of assurance that commit them to timely install infrastructure, operate facilities, pay vendors or subcontractors, and/or support warranty obligations. Based on a history of meeting performance obligations and installed products operating effectively, no significant liability or cost has been recognized for the periods presented.

Specific to ESG, in its role as a general contractor in the performance contracting industry, at December 31, 2011, there are 78 open surety bonds supporting future performance. The average face amount of these obligations is $3.6 million, and the largest obligation has a face amount of $25.7 million. The maximum exposure of these obligations is less than these amounts for several factors, including the level of work already completed. At December 31, 2011, approximately 60 percent of work was completed on projects with open surety bonds. A significant portion of these commitments will be fulfilled within one year. In instances where ESG operates facilities, project guarantees extend over a longer period. In addition to its performance obligations, ESG also warrants the functionality of certain installed infrastructure generally for one year and the associated energy savings over a specified number of years. The Company has no significant accruals for these warranty obligations as of December 31, 2011.

Legal & Regulatory Proceedings

The Company is party to various legal proceedings, audits, and reviews by taxing authorities and other government agencies arising in the normal course of business. In the opinion of management, there are no legal proceedings or other regulatory reviews or audits pending against the Company that are likely to have a material adverse effect on its financial position, results of operations or cash flows.

18. Legislative Matters

Pipeline Safety Law

On January 3, 2012 the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011 was signed into law. This new law, which reauthorizes federal pipeline safety programs through fiscal year 2015, provides for enhanced safety, reliability and environmental protection in the transportation of energy products by pipeline. The new law increases federal enforcement authority, grants the federal government expanded authority over pipeline safety, provides for new safety regulations and standards, and authorizes or requires the completion of several pipeline safety-related studies. The DOT is required to promulgate a number of new regulatory requirements. The direction of those regulations will be based on the results of the studies and reports required or authorized by the new law and may eventually lead to further regulatory or statutory requirements.

The Company continues to study the impact of the new law and potential new regulations associated with its implementation. At this time, compliance costs and other effects associated with the increased pipeline safety regulations remain uncertain. However, the new law is expected to result in further investment in pipeline inspections, and where necessary, additional modernization of pipeline infrastructure; and therefore, result in both increased levels of operating expenses and capital expenditures associated with the Company's natural gas distribution businesses. Operating expenses associated with expanded compliance requirements may grow to approximately $9 million annually, with $6 million attributable to the Indiana operations. The Company expects to seek recovery under Senate Bill 251 referenced below, or such costs may be recoverable through current tracking mechanisms. Capital investments, driven by the pipeline safety regulations, associated with the Company's Indiana gas utilities are expected to be approximately $80 million over the next five years, which would likely qualify as federally mandated regulatory requirements. In Ohio, capital investments are expected to be approximately $55 million over the next five years. The Company expects to seek recovery of capital investments associated with complying with these federal mandates in accordance with Senate Bill 251 in Indiana and House Bill 95 in Ohio (referenced below).

Indiana House Bill 1004

In May 2011, House Bill 1004 was signed into law. This legislation phases in over four years a two percent rate reduction to the Indiana Adjusted Gross Income Tax for corporations. Pursuant to House Bill 1004, the tax rate will be lowered by one-half percent each year beginning on July 1, 2012, to the final rate of six and one-half percent effective July 1, 2015. Pursuant to FASB guidance, the Company accounted for the effect of the change in tax law on its deferred taxes in the second quarter of 2011, the period of enactment. The impact was not material to results of operations or financial condition as the decrease in Deferred tax liabilities was generally offset by a $17.1 million decrease in Regulatory assets.

Indiana Senate Bill 251

In April 2011, Senate Bill 251 was signed into law. While the bill is broad in scope, it allows for cost recovery outside of a base rate proceeding for federal government mandated projects and provides for a voluntary clean energy portfolio standard.

The law applies to both gas and electric utility operations and provides a framework to recover 80 percent of federally mandated costs through a periodic rate adjustment mechanism outside of a general rate case. Such costs include construction, depreciation, operating and other costs. The remaining 20 percent of those costs are to be deferred for recovery in the utility's next general rate case. The Company is currently evaluating the impact this law may have on its operations, including applicability to expenditures associated with the integrity, safety, and reliable operation of natural gas pipelines and facilities; ash disposal; water regulations; and air pollution, including greenhouse gas emissions, among other federally mandated projects and potential projects.

The legislation establishes a voluntary clean energy portfolio standard that provides incentives to electricity suppliers participating in the program. The goal of the program is that by 2025, at least 10 percent of the total electricity obtained by the supplier to meet the energy needs of its Indiana retail customers will be provided by clean energy sources, as defined. The financial incentives include an enhanced return on equity and tracking mechanisms to recover program costs. In advance of a federal portfolio standard and Senate Bill 251, SIGECO received regulatory approval to purchase a 3 MW landfill gas generation facility from a related entity. The facility was purchased in 2009 and is directly connected to the Company's distribution system. In 2009, the Company also executed a long term purchase power commitment for 50 MW of wind energy. These transactions supplement a 30 MW wind energy purchase power agreement executed in 2008. Before the impacts of efficiency measures, the Company currently stands at approximately 5 percent of its electricity being provided by clean energy sources due to the long-term wind contracts and landfill gas investments. The Company continues to evaluate whether to participate in this voluntary program.

Ohio House Bill 95

In June 2011, Ohio House Bill 95 was signed into law. The law adjusts, among other things, the manner in which gas utilities file for rate changes, including the implementation of base rate changes, alternative rate plans, and automatic rate adjustment mechanisms. Outside of a base rate proceeding, the legislation permits a natural gas company to apply to implement a capital expenditure program for infrastructure expansion, upgrade, or replacement; installation, upgrade, or replacement of information technology systems; or any program necessary to comply with government regulation. Once such application is approved, the legislation authorizes recovery or deferral of program costs, such as depreciation, property taxes, and carrying costs. The Company is assessing the impact this legislation may have on its operations. On February 3, 2012, the Company initiated a filing under House Bill 95. This filing requests accounting authority to defer depreciation, post in service carrying costs and property taxes for its approximate $25 million 2012 capital expenditure program. The capital expenditure program includes infrastructure expansion and improvements not covered by the Company's distribution replacement rider as well as expenditures necessary to comply with PUCO rules, regulations and orders. A procedural schedule associated with the filing has not yet been set.

19. Envir onmental Matters

Air Quality

Cross-State Air Pollution Rule (Formerly Clean Air Interstate Rule (CAIR))

On July 7, 2011, EPA finalized the Cross-State Air Pollution Rule (CSAPR). CSPAR is the EPA's response to the US Court of Appeals for the District of Columbia's (the Court) remand of the Clean Air Interstate Rule (CAIR). CAIR was originally established in 2005 as an allowance cap and trade program that required reductions from coal-burning power plants for NOx emissions beginning January 1, 2009 and SO_2 emissions beginning January 1, 2010, with a second phase of reductions in 2015.

In an effort to address the Court's finding that CAIR did not adequately ensure attainment of pollutants in certain downwind states due to unlimited trading of $SO_2$and NOx allowances, CSPAR reduces the ability of facilities to meet emission reduction targets through allowance trading. Like CAIR, CSPAR sets individual state caps for $SO_2$and NOx emissions. However, unlike CAIR in which states allocated allowances through state implementation plans, CSPAR allowances were allocated to individual units directly through the federal rule. As finalized, CSAPR requires a 71 percent reduction of SO_2 emissions compared to 2005 national levels and a 52 percent reduction of NOx emissions compared to 2005 national levels and that such reductions are to be achieved with initial step reductions beginning January 1, 2012, with final compliance to be achieved in 2014. Multiple administrative and judicial challenges have been filed, including requests to stay CSPAR's implementation.

On December 30, 2011, the Court granted a stay of CSPAR and ordered expedited briefing schedules be submitted by January 18, 2012, that would allow for completion of briefing and a hearing in April 2012. Two primary issues are before the Court for review: (1) EPA's use of air modeling data (as opposed to exclusive reliance on actual monitoring data) to support state contribution levels, and (2) EPA's allocation of allowances directly through a federal implementation plan as opposed to setting state caps and providing states the opportunity to submit individual state implementation plans. In addition, there are initiatives in the Congress that, if adopted, would suspend CSPAR's implementation.

Utility Hazardous Air Pollutants (HAPs) Rule

On December 21, 2011, the EPA finalized the Utility HAPs rule. The HAPs Rule is the EPA's response to the US Court of Appeals for the District of Columbia vacating the Clean Air Mercury Rule (CAMR) in 2008. CAMR was originally established in 2005 as a nation-wide mercury emission allowance cap and trade system which sought to reduce utility emissions of mercury starting in 2010.

The HAPs rule sets emission limits for hazardous air pollutants for existing and new coal-fired power plants and identifies the following broad categories of hazardous air pollutants: mercury, non-mercury hazardous air pollutants (primarily arsenic, chromium, cobalt, and selenium) and acid gases (hydrogen cyanide, hydrogen chloride, and hydrogen fluoride). The rule imposes mercury emission limits for two sub-categories of coal, and proposed surrogate limits for non-mercury and acid gas hazardous air pollutants. The EPA did not grant blanket compliance extensions, but asserted that states have broad authority to grant one year extensions for individual units where potential reliability impacts have been demonstrated. Reductions are to be achieved within three years of publication of the final rule in the Federal register (early 2015). Initiatives to suspend CSPAR's implementation by the Congress also apply to the implementation of the HAPs Rule.

Conclusions Regarding Air Regulations

To comply with Indiana’s implementation plan of the Clean Air Act, and other federal air quality standards, the Company obtained authority from the IURC to invest in clean coal technology. Using this authorization, the Company invested approximately $411 million starting in 2001 with the last equipment being placed into service on January 1, 2010. The pollution control equipment included Selective Catalytic Reduction (SCR) systems, fabric filters, and an SO_2 scrubber at its generating facility that is jointly owned with ALCOA (the Company’s portion is 150 MW). SCR technology is the most effective method of reducing NOx emissions where high removal efficiencies are required and fabric filters control particulate matter emissions. The unamortized portion of the $411 million clean coal technology investment was included in rate base for purposes of determining SIGECO’s new electric base rates approved in the latest base rate order obtained April 27, 2011. SIGECO’s coal fired generating fleet is 100 percent scrubbed for SO_2 and 90 percent controlled for NOx.

Utilization of the Company’s NOx and SO_2 allowances can be impacted as these regulations are revised and implemented. Most of these allowances were granted to the Company at zero cost; therefore, any reduction in carrying value that could result from future changes in regulations would be immaterial.

The Company is currently reviewing the sufficiency of its existing pollution control equipment in relation to the requirements described in CSPAR and the Utility HAPs Rule. Based upon an initial review of the final rules, including minor revisions made to CSPAR in October 2011, the Company believes that it will be able to meet these requirements with its existing suite of pollution control equipment and the anticipated allotment of new emission allowances. However, it is possible some minor modifications to the control equipment and additional operating expenses could be required. The Company believes that such additional costs, if necessary, would be recoverable under Indiana Senate Bill 251 referenced above.

Water

Section 316(b) of the Clean Water Act requires that generating facilities use the “best technology available” to minimize adverse environmental impacts in a body of water. More specifically, Section 316(b) is concerned with impingement and entrainment of aquatic species in once-through cooling water intake structures used at electric generating facilities. In April 2009, the U.S. Supreme Court affirmed that the EPA could, but was not required to, consider costs and benefits in making the evaluation as to the best technology available for existing generating facilities. The regulation was remanded back to the EPA for further consideration. In March 2011, the EPA released its proposed Section 316(b) regulations. The EPA did not mandate the retrofitting of cooling towers in the proposed regulation, but if finalized the regulation will leave it to the state to determine whether cooling towers should be required on a case by case basis. A final rule is expected in 2012. Depending on the final rule and on the Company’s facts and circumstances, capital investments could be in the $40 million range if new infrastructure, such as new cooling water towers, is required. Costs for compliance with these final regulations would likely qualify as federally mandated regulatory requirements under Indiana Senate Bill 251 referenced above.

Coal Ash Waste Disposal & Ash Ponds

In June 2010, the EPA issued proposed regulations affecting the management and disposal of coal combustion products, such as ash generated by the Company’s coal-fired power plants. The proposed rules more stringently regulate these byproducts and would likely increase the cost of operating or expanding existing ash ponds and the development of new ash ponds. The alternatives include regulating coal combustion by-products that are not being beneficially reused as hazardous waste. The EPA did not offer a preferred alternative, but took public comment on multiple alternative regulations. Rules may not be finalized in 2012 given oversight hearings, congressional interest, and other factors.

At this time, the majority of the Company’s ash is being beneficially reused. However, the alternatives proposed would require some retrofitting or closure of existing ash ponds. The Company estimates capital expenditures to comply could be as much as $30 million, and such expenditures could exceed $100 million if the most stringent of the alternatives is selected. Annual compliance costs could increase slightly or be impacted by as much as $5 million. Costs for compliance with these regulations would likely qualify as federally mandated regulatory requirements under Senate Bill 251 referenced above.

Climate Change
In April 2007, the US Supreme Court determined that greenhouse gases meet the definition of "air pollutant" under the Clean Air Act and ordered the EPA to determine whether greenhouse gas emissions from motor vehicles cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. In April 2009, the EPA published its proposed endangerment finding for public comment. The proposed endangerment finding concludes that carbon emissions from mobile sources pose an endangerment to public health and the environment. The endangerment finding was finalized in December 2009, and is the first step toward EPA regulating carbon emissions through the existing Clean Air Act in the absence of specific carbon legislation from Congress. The EPA has promulgated two greenhouse gas regulations that apply to the Company's generating facilities. In 2009, the EPA finalized a mandatory greenhouse gas emissions registry which requires the reporting of emissions. The EPA has also finalized a revision to the Prevention of Significant Deterioration (PSD) and Title V permitting rules which would require facilities that emit 75,000 tons or more of greenhouse gases a year to obtain a PSD permit for new construction or a significant modification of an existing facility. The Company anticipates additional EPA rulemaking related to new generation sources and significant modifications to existing sources, but the timetable remains uncertain.

Numerous competing federal legislative proposals have also been introduced in recent years that involve carbon, energy efficiency, and renewable energy. Comprehensive energy legislation at the federal level continues to be debated, but there has been little progress to date. The progression of regional initiatives throughout the United States has also slowed.

Impact of Legislative Actions & Other Initiatives is Unknown
If regulations are enacted by the EPA or other agencies or if legislation requiring reductions in CO_2 and other greenhouse gases or legislation mandating a renewable energy portfolio standard is adopted, such regulation could substantially affect both the costs and operating characteristics of the Company's fossil fuel generating plants, nonutility coal mining operations, and natural gas distribution businesses. At this time and in the absence of final legislation or rulemaking, compliance costs and other effects associated with reductions in greenhouse gas emissions or obtaining renewable energy sources remain uncertain. The Company has gathered preliminary estimates of the costs to control greenhouse gas emissions. A preliminary investigation demonstrated costs to comply would be significant, first with regard to operating expenses and later for capital expenditures as technology becomes available to control greenhouse gas emissions. However, these compliance cost estimates are based on highly uncertain assumptions, including allowance prices if a cap and trade approach were employed, and energy efficiency targets. Costs to purchase allowances that cap greenhouse gas emissions or expenditures made to control emissions should be considered a cost of providing electricity, and as such, the Company believes such costs and expenditures would be recoverable from customers through Senate Bill 251. Customer rates may also be impacted should decisions be made to reduce the level of sales to municipal and other wholesale customers in order to meet emission targets.

Manufactured Gas Plants

In the past, the Company operated facilities to manufacture natural gas. Given the availability of natural gas transported by pipelines, these facilities have not been operated for many years. Under current environmental laws and regulations, those that owned or operated these facilities may now be required to take remedial action if certain contaminants are found above the regulatory thresholds at these sites.

In the Indiana Gas service territory, the existence, location, and certain general characteristics of 26 gas manufacturing and storage sites have been identified for which the Company may have some remedial responsibility. A remedial investigation/feasibility study (RI/FS) was completed at one of the sites under an agreed order between Indiana Gas and the IDEM, and a Record of Decision was issued by the IDEM in January 2000. The remaining sites have been submitted to the IDEM's Voluntary Remediation Program (VRP). The Company has identified its involvement in five manufactured gas plants sites in SIGECO's service territory, all of which are currently enrolled in the IDEM's VRP. The Company is currently conducting some level of remedial activities, including groundwater monitoring at certain sites.

The Company has accrued the estimated costs for further investigation, remediation, groundwater monitoring, and related costs for the sites. While the total costs that may be incurred in connection with addressing these sites cannot be determined at this time, the Company has recorded cumulative costs that it reasonably expects to incur totaling approximately $41.6 million ($23.1 million at Indiana Gas and $18.5 million at SIGECO). The estimated accrued costs are limited to the Company's share of the remediation efforts and are therefore net of exposures of other potentially responsible parties (PRP).

With respect to insurance coverage, Indiana Gas has received approximately $20.8 million from all known insurance carriers under insurance policies in effect when these plants were in operation. SIGECO filed a declaratory judgment action against its insurance carriers seeking a judgment finding its carriers liable under the policies for coverage of further investigation and any necessary remediation costs that SIGECO may accrue under the VRP program and/or another site subject to a lawsuit that has been settled. In November 2011, the Court ruled on two motions for summary judgment, finding for SIGECO and against certain insurers on indemnification and defense obligations in the policies at issue. SIGECO has settlement agreements with all known insurance carriers and has recorded approximately $15.1 million of expected insurance recoveries.

The costs the Company expects to incur are estimated by management using assumptions based on actual costs incurred, the timing of expected future payments, and inflation factors, among others. While the Company's utilities have recorded all costs which they presently expect to incur in connection with activities at these sites, it is possible that future events may require some level of additional remedial activities which are not presently foreseen and those costs may not be subject to PRP or insurance recovery. As of December 31, 2011 and 2010, respectively, approximately $6.5 million and $5.5 million of accrued, but not yet spent, costs are included in Other Liabilities related to both the Indiana Gas and SIGECO sites.

Jacobsville Superfund Site
On July 22, 2004, the EPA listed the Jacobsville Neighborhood Soil Contamination site in Evansville, Indiana, on the National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The EPA has identified four sources of historic lead contamination. These four sources shut down manufacturing operations years ago. When drawing up the boundaries for the listing, the EPA included a 250 acre block of properties surrounding the Jacobsville neighborhood, including the Company's operations center. Vectren's property has not been named as a source of the lead contamination. Vectren's own soil testing, completed during the construction of the operations center, did not indicate that the Vectren property contains lead contaminated soils above industrial cleanup levels. At this time, it is anticipated that the EPA may request additional soil testing at some future date.

20. Rate & Regulatory Matters

Vectren South Electric Base Rate Filing
On December 11, 2009, Vectren South filed a request with the IURC to adjust its base electric rates. The requested increase in base rates addressed capital investments, a modified electric rate design that would facilitate a partnership between Vectren South and customers to pursue energy efficiency and conservation, and new energy efficiency programs to complement those currently offered for natural gas customers. The IURC issued an order in the case on April 27, 2011. The order provides for an approximate $28.6 million revenue increase to recover costs associated with approximately $325 million in system upgrades that were completed in the three years leading up to the December 2009 filing and modest increases in maintenance and operating expenses. The approved revenue increase is based on rate base of $1,295.6 million, return on equity of 10.4 percent and an overall rate of return of 7.29 percent. The new rates were effective May 3, 2011. The IURC, in its order, denied the Company's request for implementation of the decoupled rate design, which is discussed further below. Addressing issues raised in the case concerning coal supply contracts and related costs, the IURC found that current coal contracts remain effective and that a prospective review process of future procurement decisions would be initiated.

Coal Procurement Procedures
Vectren South submitted a request for proposal in April 2011 regarding coal purchases for a four year period beginning in 2012. After negotiations with bidders, Vectren South has reached an agreement in principle for multi-year purchases with two suppliers, one of which is Vectren Fuels, Inc. Consistent with the IURC direction in the electric rate case, a sub docket proceeding was established to review the Company's prospective coal procurement procedures, and the Company submitted evidence related to its recent request for proposal (RFP) and those coal procurement procedures to the IURC in September 2011. In October 2011, the OUCC filed its testimony which, while suggesting enhancements to the process to be considered, does not challenge the results of the RFP and the resulting new contracts. All hearings were completed in December 2011, and an order is expected in early 2012.

Vectren South Electric Fuel Cost Reduction

On December 5, 2011 within the quarterly Fuel Adjustment Clause (FAC) filing, Vectren South submitted a joint proposal with the OUCC to reduce its fuel costs by accelerating the impact of lower cost coal contracts to be effective after 2012. In the spring of 2011, Vectren secured contracts for lower coal costs through a formal bidding process. This lower-priced coal is expected to start being delivered and used at Vectren's power plants by late 2012 to early 2013 and beyond. The agreement to accelerate savings into early 2012 means that the existing 2012 coal costs that are above the new, lower prices will be deferred to a regulatory asset and recovered over a six-year period without interest beginning in 2014. This deferral also includes a reduction to the coal inventory balance at December 31, 2011 of approximately $17.7 million to reflect existing inventory at the new, lower price. The IURC approved this proposal on January 25, 2012, with an impact to customer's rates effective February 1, 2012.

Vectren South Electric Demand Side Management Program Filing

On August 16, 2010, Vectren South filed a petition with the IURC, seeking approval of its proposed electric Demand Side Management (DSM) Programs, recovery of the costs associated with these programs, recovery of lost margins as a result of implementing these programs for large customers, and recovery of performance incentives linked with specific measurement criteria on all programs. The DSM Programs proposed are consistent with a December 9, 2009 order issued by the IURC, which, among other actions, defined long-term conservation objectives and goals of DSM programs for all Indiana electric utilities under a consistent statewide approach. In order to meet these objectives, the IURC order divided the DSM programs into Core and Core Plus programs. Core programs are joint programs required to be offered by all Indiana electric utilities to all customers, and include some for large industrial customers. Core Plus programs are those programs not required specifically by the IURC, but defined by each utility to meet the overall energy savings targets defined by the IURC.

On August 31, 2011 the IURC issued an order approving an initial three year DSM plan in the Vectren South service territory that complies with the IURC's energy saving targets. Consistent with the Company's proposal, the order approved, among other items, the following: 1) recovery of costs associated with implementing the DSM Plan; 2) the recovery of a performance incentive mechanism based on measured savings related to certain DSM programs; 3) lost margin recovery associated with the implementation of DSM programs for large customers; and 4) deferral of lost margin up to $1 million in 2011 associated with small customer DSM programs for subsequent recovery under a tracking mechanism to be proposed by the Company. This mechanism is an alternative to the electric decoupling proposal that was denied by the IURC in the order received April 27, 2011. On January 26, 2012, the Company filed with the IURC a proposal for a small customer lost margin recovery mechanism within the existing Demand Side Management Adjustment (DSMA). The proposal includes a request for recovery of the $1 million deferred in 2011, and a request for continued deferral of lost margins in 2012 until such point as these lost margins are included in DSMA rates. The procedural schedule has not been set in this filing, but the Company expects an order in 2012.

Vectren South Electric Dense Pack Filing

On September 14, 2011, Vectren South filed a petition with the IURC seeking recovery of and return on the capital investment in dense pack technology to improve the efficiency of its A.B. Brown Generating Station. This investment is expected to be approximately $32 million over the next two years, of which approximately $19 million has been invested to date. This technology is expected to allow the A.B. Brown units to run at least 5 percent more efficient, thereby burning less fuel, and reducing fuel costs and emissions of pollutants. Indiana statute provides for timely recovery of investments, with a return, in instances where the investment increases the efficiency of existing generating plants that are fueled by coal. Several parties have intervened in the case and are requesting that the IURC deny recovery of these project costs outside of a base rate proceeding. The IURC will conduct a hearing in February 2012.

Vectren North Reporting Location Consolidation Proceeding

Vectren North implemented a reporting location consolidation plan in 2011 and closed certain locations throughout the North territory. On May 26, 2011, the International Brotherhood of Electrical Workers Local 1393, United Steel Workers Locals 12213 and 7441 and others filed a formal complaint with the IURC claiming that the consolidation and simultaneous closing by Vectren North of select reporting locations endangers public safety and impairs Vectren North's ability to provide adequate, safe and reliable service. These parties have asked the IURC to require Vectren North to reopen previously consolidated reporting locations and maintain and staff those locations. A hearing in this case was held in February 2012, and the Company expects the IURC to act some time in 2012.

Vectren North & Vectren South Gas Decoupling Extension Filing

On April 14, 2011, the Company's Indiana based gas companies (Vectren North and Vectren South) filed with the IURC a joint settlement agreement with the OUCC on an extension of the offering of conservation programs and the supporting gas decoupling mechanism originally approved in December 2006. On August 18, 2011, the IURC issued an order approving the settlement as filed, granting the extension of the current decoupling mechanism in place at both gas companies and recovery of new conservation program costs through December 2015.

VEDO Gas Rate Design

The rate design approved by the PUCO on January 7, 2009, and initially implemented on February 22, 2009, allowed for the phased movement toward a straight fixed variable rate design, which places substantially all of the fixed cost recovery in the monthly customer service charge. This rate design mitigates most weather risk as well as the effects of declining usage, similar to the company's lost margin recovery mechanism in place in the Indiana natural gas service territories and the mechanism in place in Ohio prior to this rate order. Since the straight fixed variable rate design was fully implemented in February 2010, nearly 90 percent of the combined residential and commercial base rate gas margins were recovered through the customer service charge. As a result, some margin previously recovered during the peak delivery winter months, such as January and the first half of February 2010, is more ratably recognized throughout the year.

In addition in 2010, the Company began recognizing a return on and of investments made to replace distribution risers and bare steel and cast iron infrastructure per a PUCO order.

VEDO Continues the Process to Exit the Merchant Function

On August 20, 2008, the PUCO approved the results of an auction selecting qualified wholesale suppliers to provide the gas commodity to the Company for resale to its customers at auction-determined standard pricing. This standard pricing was comprised of the monthly NYMEX settlement price plus a fixed adder. This standard pricing, which was effective from October 1, 2008 through March 31, 2010, was the initial step in exiting the merchant function in the Company's Ohio service territory. The approach eliminated the need for monthly gas cost recovery (GCR) filings and prospective PUCO GCR audits.

The second phase of the exit process began on April 1, 2010. During this phase, the Company no longer sells natural gas directly to customers. Rather, state-certified Competitive Retail Natural Gas Suppliers, that were successful bidders in a similar regulatory-approved auction, sell the gas commodity to specific customers for a 12-month period at auction-determined standard pricing. The first auction was conducted on January 12, 2010, and the auction results were approved by the PUCO on January 13, 2010. The plan approved by the PUCO required that the Company conduct at least two annual auctions during this phase. As such, the Company conducted another auction on January 18, 2011 in advance of the second 12-month term which commenced on April 1, 2011. The results of that auction were approved by the PUCO on January 19, 2011. Vectren Source, the Company's former wholly owned nonutility retail gas marketer, was a successful bidder in both auctions winning one tranche of customers in the first auction and two tranches of customers in the second auction. Each tranche of customers equates to approximately 28,000 customers. As per the terms of the plan approved by the PUCO, because no application for a full exit of the merchant function was neither sought nor approved by April 1, 2011, VEDO conducted a third retail auction on January 31, 2012 to address the 12-month term beginning April 1, 2012. The results of that auction were approved by the PUCO on February 1, 2012. Consistent with current practice, customers continue to receive a single bill for the commodity as well as the delivery component of natural gas service from VEDO.

The PUCO provided for an Exit Transition Cost rider, which allows the Company to recover costs associated with the transition process. Exiting the merchant function has not had a material impact on earnings or financial condition. It, however, has and will continue to reduce Gas utility revenues and have an equal and offsetting impact to Cost of gas sold and revenue related taxes recorded in Taxes other than income taxes as VEDO no longer purchases gas for resale to these customers.

21. Fair V alue Measur ements

The carrying values and estimated fair values of the Company's other financial instruments follow:

	At December 31,							
	2011				2010			
(In millions)		Carrying Amount		Est. Fair Value		Carrying Amount		Est. Fair Value
Long-term debt	$	1,622.3	$	1,804.4	$	1,715.9	$	1,841.2
Short-term borrowings & notes payable		227.1		227.1		118.3		118.3
Cash & cash equivalents		8.6		8.6		10.4		10.4

For the balance sheet dates presented in these financial statements, the Company had no material assets or liabilities recorded at fair value outstanding.

Certain methods and assumptions must be used to estimate the fair value of financial instruments. The fair value of the Company's long-term debt was estimated based on the quoted market prices for the same or similar issues or on the current rates offered to the Company for instruments with similar characteristics. Because of the maturity dates and variable interest rates of short-term borrowings and cash & cash equivalents, those carrying amounts approximate fair value. Because of the inherent difficulty of estimating interest rate and other market risks, the methods used to estimate fair value may not always be indicative of actual realizable value, and different methodologies could produce different fair value estimates at the reporting date.

Under current regulatory treatment, call premiums on reacquisition of long-term debt are generally recovered in customer rates over the life of the refunding issue or over a 15-year period. Accordingly, any reacquisition would not be expected to have a material effect on the Company's results of operations.

Because of the customized nature of notes receivable investments and lack of a readily available market, it is not practical to estimate the fair value of these financial instruments at specific dates without considerable effort and cost. At December 31, 2011 and 2010, the fair value for these financial instruments was not estimated. The carrying value of notes receivable, inclusive of any accrued interest and net of impairment reserves, was approximately $2.1 million and $10.9 million December 31, 2011 and 2010.

The fair value table in Note 18 of the financial statements in the 2010 Form 10-K excluded the estimated fair value of a long-term debt instrument. The chart above now includes the amount and reflects an increase in the estimated fair value of long-term debt of approximately $73.9 million. This change in the disclosed fair value of long-term debt had no effect on the carrying value of debt included in the consolidated balance sheet.

22. Segment Reporting

The Company segregates its operations into three groups: 1) Utility Group, 2) Nonutility Group, and 3) Corporate and Other.

The Utility Group is comprised of Vectren Utility Holdings, Inc.'s operations, which consist of the Company's regulated operations and other operations that provide information technology and other support services to those regulated operations. The Company segregates its regulated operations between a Gas Utility Services operating segment and an Electric Utility Services operating segment. The Gas Utility Services segment provides natural gas distribution and transportation services to nearly two-thirds of Indiana and to west central Ohio. The Electric Utility Services segment provides electric distribution services primarily to southwestern Indiana, and includes the Company's power generating and wholesale power operations. Regulated operations supply natural gas and/or electricity to over one million customers. In total, the Utility Group is comprised of three operating segments: Gas Utility Services, Electric Utility Services, and Other operations.

The Nonutility Group is comprised of five operating segments: Infrastructure Services, Energy Services, Coal Mining, Energy Marketing, and Other Businesses.

Corporate and Other includes unallocated corporate expenses such as advertising and charitable contributions, among other activities, that benefit the Company's other operating segments. Net income is the measure of profitability used by management for all operations. The acquisition of Minnesota Limited was completed on March 31, 2011 (See Note 5) and is included in the Infrastructure Services nonutility operating segment. Information related to the Company's business segments is summarized as follows:

	Year Ended December 31,		
(In millions)	2011	2010	2009
Revenues			
Utility Group			
Gas Utility Services	$ 819.1	$ 954.1	$ 1,066.0
Electric Utility Services	635.9	608.0	528.6
Other Operations	43.9	44.5	42.8
Eliminations	(41.9)	(42.9)	(41.2)
Total Utility Group	1,457.0	1,563.7	1,596.2
Nonutility Group			
Infrastructure Services	421.3	235.6	202.0
Energy Services	161.8	146.9	121.3
Coal Mining	285.6	209.9	193.4
Energy Marketing	149.9	142.8	157.2
Total Nonutility Group	1,018.6	735.2	673.9
Eliminations	(150.4)	(169.4)	(181.2)
Consolidated Revenues	$ 2,325.2	$ 2,129.5	$ 2,088.9
Profitability Measures - Net Income			
Utility Group Net Income			
Gas Utility Services	$ 52.5	$ 53.7	$ 50.2
Electric Utility Services	65.0	60.9	48.3
Other Operations	5.4	9.3	8.9
Total Utility Group Net Income	122.9	123.9	107.4
Nonutility Group Net Income			
Infrastructure Services	14.9	3.1	2.4
Energy Services	6.7	6.4	8.4
Coal Mining	16.6	11.9	13.4
Energy Marketing	(4.2)	(4.2)	4.1
Other Businesses	(10.2)	(7.4)	(2.5)
Total Nonutility Group Net Income	23.8	9.8	25.8
Corporate & Other Net Loss	(5.1)	-	(0.1)
Consolidated Net Income	$ 141.6	$ 133.7	$ 133.1

	Year Ended December 31,		
(In millions)	2011	2010	2009
Amounts Included in Profitability Measures			
Depreciation & Amortization			
Utility Group			
Gas Utility Services	$ 84.3	$ 80.7	$ 76.9
Electric Utility Services	80.2	80.8	77.5
Other Operations	27.8	26.7	26.5
Total Utility Group	192.3	188.2	180.9
Nonutility Group			
Infrastructure Services	14.9	8.8	8.3
Energy Services	1.5	1.2	1.2
Coal Mining	35.1	30.4	21.0
Energy Marketing	0.5	0.5	0.5
Total Nonutility Group	52.0	40.9	31.0
Consolidated Depreciation & Amortization	$ 244.3	$ 229.1	$ 211.9
Interest Expense			
Utility Group			
Gas Utility Services	$ 37.1	$ 38.8	$ 38.8
Electric Utility Services	36.4	36.4	34.8
Other Operations	6.8	6.2	5.6
Total Utility Group	80.3	81.4	79.2
Nonutility Group			
Infrastructure Services	7.4	3.3	2.6
Energy Services	0.6	0.2	0.6
Coal Mining	11.3	10.1	8.1
Energy Marketing	6.4	8.5	8.3
Other Businesses	1.3	1.5	1.3
Total Nonutility Group	27.0	23.6	20.9
Corporate & Other	(0.8)	(0.4)	(0.1)
Consolidated Interest Expense	$ 106.5	$ 104.6	$ 100.0
Income Taxes			
Utility Group			
Gas Utility Services	$ 34.5	$ 35.1	$ 31.3
Electric Utility Services	45.3	40.8	27.4
Other Operations	3.1	1.2	0.5
Total Utility Group	82.9	77.1	59.2
Nonutility Group			
Infrastructure Services	10.7	2.7	2.1
Energy Services	1.1	2.5	1.6
Coal Mining	3.9	1.9	4.1
Energy Marketing	(2.4)	(2.7)	0.3
Other Businesses	(7.0)	(5.9)	(2.2)
Total Nonutility Group	6.3	(1.5)	5.9
Corporate & Other	(2.8)	(0.9)	(1.0)
Consolidated Income Taxes	$ 86.4	$ 74.7	$ 64.1

	Year Ended December 31,		
(In millions)	2011	2010	2009
Capital Expenditures			
Utility Group			
Gas Utility Services	$ 113.5	$ 88.7	$ 121.1
Electric Utility Services	102.2	120.1	154.1
Other Operations	17.8	22.5	16.7
Non-cash costs & changes in accruals	(0.1)	(6.2)	10.8
Total Utility Group	233.4	225.1	302.7
Nonutility Group			
Infrastructure Services	22.8	12.0	11.0
Energy Services	9.7	1.2	1.9
Coal Mining	55.1	38.7	126.8
Energy Marketing	0.3	0.2	0.6
Other Businesses, net of eliminations	-	-	(11.0)
Total Nonutility Group	87.9	52.1	129.3
Consolidated Capital Expenditures	$ 321.3	$ 277.2	$ 432.0

	At December 31,		
(In millions)	2011	2010	2009
Assets			
Utility Group			
Gas Utility Services	$ 2,125.2	$ 2,161.7	$ 2,102.4
Electric Utility Services	1,656.5	1,666.5	1,592.4
Other Operations, net of eliminations	192.8	96.3	128.3
Total Utility Group	3,974.5	3,924.5	3,823.1
Nonutility Group			
Infrastructure Services	295.0	174.6	141.4
Energy Services	81.2	67.4	54.5
Coal Mining	352.8	362.5	342.8
Energy Marketing	112.5	209.1	229.6
Other Businesses	39.6	57.1	65.7
Eliminations & Reclassifications	7.2	(2.2)	2.0
Total Nonutility Group	888.3	868.5	836.0
Corporate & Other	727.3	706.2	715.9
Eliminations	(711.2)	(735.0)	(703.2)
Consolidated Assets	$ 4,878.9	$ 4,764.2	$ 4,671.8

23. Additional Balance Sheet & Operational Information

Inventories consist of the following:

	At December 31,	
(In millions)	2011	2010
Gas in storage – at LIFO cost	$ 31.8	$ 26.2
Gas in storage – at average cost	-	23.6
Total Gas in storage	31.8	49.8
Coal & Oil for electric generation - at average cost	60.6	70.1
Materials & supplies	54.9	48.8
Nonutility Coal - at LIFO cost	13.0	16.2
Other	1.6	2.2
Total inventories	$ 161.9	$ 187.1

Based on the average cost of gas purchased and coal produced during December, the cost of replacing inventories carried at LIFO cost exceeded that carrying value at December 31, 2011, and 2010, by approximately $12 million and $16 million, respectively.

Prepayments & other current assets in the Consolidated Balance Sheets consist of the following:

	At December 31,	
(In millions)	2011	2010
Prepaid gas delivery service	$ 42.4	$ 40.7
Deferred income taxes	16.0	3.8
Prepaid taxes	5.1	31.5
Other prepayments & current assets	20.8	25.2
Total prepayments & other current assets	$ 84.3	$ 101.2

Investments in unconsolidated affiliates consist of the following:

	At December 31,	
(In millions)	2011	2010
ProLiance Holdings, LLC	$ 85.4	$ 123.2
Haddington Energy Partnerships	3.4	3.4
Other non-utility partnerships & corporations	3.9	8.4
Other utility investments	0.2	0.2
Total investments in unconsolidated affiliates	$ 92.9	$ 135.2

Other utility & corporate Investments in the Consolidated Balance Sheets consist of the following:

	At December 31,	
(In millions)	2011	2010
Cash surrender value of life insurance policies	$ 27.3	$ 27.5
Municipal bond	3.9	4.1
Restricted cash	1.9	1.2
Other investments	1.3	1.3
Other utility & corporate investments	$ 34.4	$ 34.1

Goodwill by operating segment follows:

	At December 31,	
(In millions)	2011	2010
Utility Group		
Gas Utility Services	$ 205.0	$ 205.0
Nonutility Group		
Infrastructure Services	55.2	34.9
Energy Services	2.1	2.1
Consolidated goodwill	$ 262.3	$ 242.0

Accrued liabilities in the Consolidated Balance Sheets consist of the following:

	At December 31,	
(In millions)	2011	2010
Refunds to customers & customer deposits	$ 56.4	$ 54.8
Accrued taxes	33.5	40.9
Accrued interest	21.7	23.8
Accrued retirement	6.5	5.8
Accrued salaries & other	63.0	53.1
Total accrued liabilities	$ 181.1	$ 178.4

Asset retirement obligations included in the Consolidated Balance Sheets roll forward as follows:

(In millions)	2011	2010
Asset retirement obligation, January 1	$ 38.7	$ 36.1
Accretion	2.5	2.1
Increases in estimates, net of cash payments	2.5	0.5
Asset r etir ement obligation, December 31	43.7	38.7
Accrued liabilities	$ 0.2	$ 0.3
Deferred credits & other liabilities	$ 43.5	$ 38.4

Equity in earnings (losses) of unconsolidated affiliates consists of the following:

	Year Ended December 31,		
(In millions)	2011	2010	2009
ProLiance Holdings, LLC	$ (28.6)	$ (2.5)	$ 3.6
Haddington Energy Partners, LP	-	(6.1)	0.9
Other	(3.4)	-	(1.1)
Total equity in earnings (losses) of unconsolidated affiliates	$ (32.0)	$ (8.6)	$ 3.4

Other income (expense) – net in the Consolidated Statements of Income consists of the following:

	Year Ended December 31,		
(In millions)	2011	2010	2009
AFUDC – borrowed funds	$ 2.5	$ 1.4	$ 1.3
AFUDC – equity funds	0.2	0.3	0.7
Nonutility plant capitalized interest	2.1	2.1	6.0
Interest income, net	1.4	1.7	1.4
Other nonutility investment impairment charges	(9.9)	(4.7)	-
Cash surrender value of life insurance policies	0.1	1.9	4.1
All other income	0.1	2.1	0.2
Total other income (expense) – net	$ (3.5)	$ 4.8	$ 13.7

Supplemental Cash Flow Information:

	Year Ended December 31,		
(In millions)	2011	2010	2009
Cash paid (received) for:			
Interest	$ 108.6	$ 104.5	$ 95.5
Income taxes	(9.0)	8.1	(12.2)

As of December 31, 2011 and 2010, the Company has accruals related to utility and nonutility plant purchases totaling approximately $15.9 million and $13.9 million, respectively.

24. Impact of Recently Issued Accounting Guidance

Other Comprehensive Income (OCI)

In June 2011, the FASB issued new accounting guidance regarding the presentation of comprehensive income within financial statements. The new guidance will require entities to report components of comprehensive income in either (1) a continuous statement of comprehensive income or (2) two separate but consecutive statements. Under the two-statement approach, the first statement would include components of net income, which is consistent with the income statement format used today, and the second statement would include components of OCI. The guidance does not change the items that must be reported in OCI. The new guidance is effective for fiscal years, and interim periods within those years, beginning after December 15, 2011 and retrospective application is required. The Company will adopt this guidance for its quarterly reporting period ending March 31, 2012. The adoption of this guidance will have no material impacts to the Company's financial statements.

Goodwill Testing

In September 2011, the FASB issued new accounting guidance regarding testing goodwill for impairment. The new guidance will allow the Company an option to first assess qualitative factors to determine whether it is necessary to perform the two-step quantitative goodwill impairment test. Using the new guidance, the Company no longer would be required to calculate the fair value of a reporting unit unless the Company determines, based on that qualitative assessment, that it is more likely than not that its fair value is less than its carrying amount. The new guidance is effective for annual and interim goodwill impairment tests performed for fiscal years beginning after December 15, 2011. The adoption of this guidance will have no material impact to the Company's financial statements.

Multiemployer Pension Plan Disclosures

In September 2011, the FASB issued new accounting guidance that requires enhanced disclosures regarding an employer's participation in multiemployer pension plans. For plans that are individually significant, these enhanced disclosures include the legal name of the plan, the plan's Employer Identification Number, the employer's contributions made to the plan, the expiration date(s) of the collective-bargaining agreement(s) requiring contributions to the plan, the most recently available certified zone status provided by the plan, and several other disclosures. The Company participates in several multiemployer pension plans and has adopted this guidance for the Company's 2011 financial statements as required.

Fair Value Measurement and Disclosure

In May 2011, the FASB issued accounting guidance to improve the comparability of fair value measurements presented and disclosed in financial statements prepared in accordance with U.S. GAAP and International Financial Reporting Standards (IFRS). The amendments are not intended to change the application of the current fair value requirements, but to clarify the application of existing requirements. The guidance does change particular principles or requirements for measuring fair value or disclosing information about fair value measurements. To improve consistency, language has been changed to ensure that U.S. GAAP and IFRS fair value measurement and disclosure requirements are described in the same way. The guidance will be effective for interim and annual periods beginning after December 15, 2011. The Company will adopt this guidance for its quarterly reporting period ending March 31, 2012. We do not expect the adoption of this guidance to have a material impact on our financial position, results of operations or cash flows.

25. Quarterly Financial Data (Unaudited)

Information in any one quarterly period is not indicative of annual results due to the seasonal variations common to the Company's utility operations. Summarized quarterly financial data for 2011 and 2010 follows:

(In millions, except per share amounts)	Q1	Q2	Q3	Q4
2011				
Operating revenues	$ 682.6	$ 475.8	$ 539.4	$ 627.4
Operating income	103.3	61.6	94.1	111.0
Net income	44.6	15.1	35.3	46.6
Earnings per share:				
Basic	$ 0.55	$ 0.19	$ 0.43	$ 0.56
Diluted	0.55	0.18	0.43	0.56
2010				
Operating revenues	$ 740.3	$ 402.4	$ 422.7	$ 564.1
Operating income	116.2	52.1	58.6	89.9
Net income	63.2	8.7	16.4	45.4
Earnings per share:				
Basic	$ 0.78	$ 0.11	$ 0.20	$ 0.56
Diluted	0.78	0.11	0.20	0.55

ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE

None.

ITEM 9A. CONTROLS AND PROCEDURES

Changes in Internal Controls over Financial Reporting

During the quarter ended December 31, 2011, there have been no changes to the Company’s internal controls over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company’s internal control over financial reporting.

Conclusion Regarding the Effectiveness of Disclosure Controls and Procedures

As of December 31, 2011, the Company conducted an evaluation under the supervision and with the participation of the Chief Executive Officer and Chief Financial Officer of the effectiveness and the design and operation of the Company's disclosure controls and procedures. Based on that evaluation, the Chief Executive Officer and the Chief Financial Officer have concluded that the Company's disclosure controls and procedures are effective as of December 31, 2011, to ensure that information required to be disclosed in reports filed or submitted under the Exchange Act is:

1) recorded, processed, summarized and reported within the time periods specified in the SEC’s rules and forms, and

2) accumulated and communicated to management, including the Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

Management’ s Report on Internal Control over Financial Reporting

Vectren Corporation’s management is responsible for establishing and maintaining adequate internal control over financial reporting. Under the supervision and with the participation of management, including the Chief Executive Officer and Chief Financial Officer, the Company conducted an evaluation of the effectiveness of its internal control over financial reporting based on the framework in Internal Control - Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. Based on that evaluation under the framework in Internal Control — Integrated Framework, the Company concluded that its internal control over financial reporting was effective as of December 31, 2011.

The effectiveness of internal control over financial reporting as of December 31, 2011, has been audited by Deloitte & Touche LLP, an independent registered public accounting firm, as stated in their report which is included in Item 8 of this annual report.

ITEM 9B. OTHER INFORMATION

None.

PART III

ITEM 10. DIRECTORS, EXECUTIVE OFFICERS AND CORPORATE GOVERNANCE

The information required by Part III, Item 10 of this Form 10-K is incorporated by reference herein, and made part of this Form 10-K, from the Company's Proxy Statement for its 2012 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission pursuant to Regulation 14A, within 120 days after the end of the fiscal year. The Company’s executive officers are the same as those named executive officers detailed in the Proxy Statement.

Corporate Code of Conduct

The Company’s Corporate Governance Guidelines, its charters for each of its Audit, Compensation and Benefits and Nominating and Corporate Governance Committees, its Corporate Code of Conduct that covers the Company’s officers and employees, and its Board Code of Ethics & Code of Conduct that covers the Company’s directors are available in the Corporate Governance section of the Company’s website, www.vectren.com. The Corporate Code of Conduct (titled “Corp Code of Conduct”) contains specific codes of ethics pertaining to executive officers. A separate code of conduct (titled “Board Code of Ethics & Code of Conduct”) contains specific codes of ethics pertaining to the Board of Directors. A copy will be mailed upon request to Investor Relations, Attention: Robert L. Goocher, One Vectren Square, Evansville, Indiana 47708. The Company intends to disclose any amendments to the Corporate Code of Conduct/Board Code of Ethics & Code of Conduct or waivers of the Corporate Code of Conduct/ on behalf of the Company’s directors or officers including, but not limited to, the principal executive officer, principal financial officer, principal accounting officer and persons performing similar functions on the Company’s website at the internet address set forth above promptly following the date of such amendment or waiver and such information will also be available by mail upon request to the address listed above.

ITEM 1 1. EXECUTIVE COMPENSA TION

Information required by Part III, Item 11 of this Form 10-K is incorporated by reference herein, and made part of this Form 10-K, from the Company's Proxy Statement for its 2012 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission pursuant to Regulation 14A, within 120 days after the end of the fiscal year.

ITEM 12. SECURITY OWNERSHIP OF CER TAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELA TED STOCKHOLDER MA TTERS

Except with respect to equity compensation plan information of the Registrant, which is included herein, the information required by Part III, Item 12 of this Form 10-K is incorporated by reference herein, and made part of this Form 10-K, from the Company's Proxy Statement for its 2012 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission pursuant to Regulation 14A, within 120 days after the end of the fiscal year.

Shar es Issuable under Shar e-Based Compensation Plans

As of December 31, 2011, the following shares were authorized to be issued under share-based compensation plans:

	A	B	C
Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
Equity compensation plans approved by security holders	407,633[1]	$ 25.74[1]	3,552,563[2]
Equity compensation plans not approved by security holders	-	-	-
Total	407,633	$ 25.74	3,552,563

[1] Under the Vectren At-Risk Compensation Plan, the Company may buy shares on the open market during periods when there are no restrictions on insider transactions to fulfill these obligations.

[2] Effective January 1, 2012, 217,290 restricted units were issued to management by the Compensation and Benefits Committee of the Board of Directors. In addition, participants forfeited 214,827 shares related to awards measured during the three year performance period ending December 31, 2011. The issuance and forfeiture of shares are not included in the above table.

The At-Risk Compensation plan was approved by Vectren Corporation common shareholders after the merger forming Vectren and was most recently amended and reapproved at the 2011 annual meeting of shareholders.

ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS AND DIRECTOR INDEPENDENCE

Information required by Part III, Item 13 of this Form 10-K is incorporated by reference herein, and made part of this Form 10-K, from the Company's Proxy Statement for its 2012 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission pursuant to Regulation 14A, within 120 days after the end of the fiscal year.

ITEM 14. PRINCIPAL ACCOUNTANT FEES AND SERVICES

Information required by Part III, Item 14 of this Form 10-K is incorporated by reference herein, and made part of this Form 10-K, from the Company's Proxy Statement for its 2012 Annual Meeting of Stockholders, which will be filed with the Securities and Exchange Commission pursuant to Regulation 14A, within 120 days after the end of the fiscal year.

PART IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

List of Documents Filed as Part of This Report

Consolidated Financial Statements
The consolidated financial statements and related notes, together with the report of Deloitte & Touche LLP, appear in Part II “Item 8 Financial Statements and Supplementary Data” of this Form 10-K.

Supplemental Schedules
For the years ended December 31, 2011, 2010, and 2009, the Company’s Schedule II -- Valuation and Qualifying Accounts Consolidated Financial Statement Schedules is presented herein. The report of Deloitte & Touche LLP on the schedule may be found in Item 8. All other schedules are omitted as the required information is inapplicable or the information is presented in the Consolidated Financial Statements or related notes in Item 8.

SCHEDULE II
Vectr en Corporation and Subsidiaries
VALUATION AND QUALIFYING ACCOUNTS AND RESER VES

Column A	Column B	Column C		Column D	Column E
		Additions			
Description	Balance at Beginning of Year	Charged to Expenses	Charged to Other Accounts	Deductions from Reserves, Net	Balance at End of Year
(In millions)					
VALUATION AND QUALIFYING ACCOUNTS:					
Year 2011 – Accumulated provision for uncollectible accounts	$ 5.3	$ 11.8	$ -	$ 10.4	$ 6.7
Year 2010 – Accumulated provision for uncollectible accounts	$ 5.2	$ 16.8	$ -	$ 16.7	$ 5.3
Year 2009 – Accumulated provision for uncollectible accounts	$ 5.6	$ 15.1	$ -	$ 15.5	$ 5.2
Year 2011 – Reserve for impaired notes receivable	$ 6.1	$ 9.6	$ -	$ -	$ 15.7
Year 2010 – Reserve for impaired notes receivable	$ 9.2	$ 1.2	$ -	$ 4.3	$ 6.1
Year 2009 – Reserve for impaired notes receivable	$ 6.3	$ 2.9	$ -	$ -	$ 9.2
OTHER RESER VES:					
Year 2011 – Restructuring costs	$ 0.4	$ -	$ -	$ -	$ 0.4
Year 2010 – Restructuring costs	$ 0.5	$ -	$ -	$ 0.1	$ 0.4
Year 2009 – Restructuring costs	$ 0.6	$ -	$ -	$ 0.1	$ 0.5

List of Exhibits

The Company has incorporated by reference herein certain exhibits as specified below pursuant to Rule 12b-32 under the Exchange Act. Exhibits for the Company attached to this filing filed electronically with the SEC are listed below. Exhibits for the Company are listed in the Index to Exhibits.

Vectren Corporation
Form 10-K
Attached Exhibits

The following Exhibits are included in this Annual Report on Form 10-K.

Exhibit Number	Document
31.1	Chief Executive Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
31.2	Chief Financial Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.
32	Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.

The following Exhibits, as well as the Exhibits listed above, were filed electronically with the SEC with this filing.

Exhibit Number	Document
10.1	First Amendment to Credit Agreement, dated September 30, 2010, among Vectren Capital Corp., and each of the financial institutions named therein.
21.1	List of Company's Significant Subsidiaries
23.1	Consent of Independent Registered Public Accounting Firm
101.INS*	XBRL Instance Document
101.SCH*	XBRL Taxonomy Extension Schema
101.CAL*	XBRL Taxonomy Calculation Linkbase
101.DEF*	XBRL Taxonomy Extension Definition Linkbase
101.LAB*	XBRL Taxonomy Extension Labels Linkbase
101.PRE*	XBRL Taxonomy Extension Presentation Linkbase

INDEX TO EXHIBITS

3. Articles of Incorporation and By-Laws

3.1 Amended and Restated Articles of Incorporation of Vectren Corporation effective March 31, 2000. (Filed and designated in Current Report on Form 8-K filed April 14, 2000, File No. 1-15467, as Exhibit 4.1.)

3.2 Code of By-Laws of Vectren Corporation as Most Recently Amended and Restated as of May 11, 2011. (Filed and designated in Current Report on Form 8-K filed May 13, 2011, File No. 1-15467, as Exhibit 3.1.)

4. Instruments Defining the Rights of Security Holders, Including Indentures

4.1 Mortgage and Deed of Trust dated as of April 1, 1932 between Southern Indiana Gas and Electric Company and Bankers Trust Company, as Trustee, and Supplemental Indentures thereto dated August 31, 1936, October 1, 1937, March 22, 1939, July 1, 1948, June 1, 1949, October 1, 1949, January 1, 1951, April 1, 1954, March 1, 1957, October 1, 1965, September 1, 1966, August 1, 1968, May 1, 1970, August 1, 1971, April 1, 1972, October 1, 1973, April 1, 1975, January 15, 1977, April 1, 1978, June 4, 1981, January 20, 1983, November 1, 1983, March 1, 1984, June 1, 1984, November 1, 1984, July 1, 1985, November 1, 1985, June 1, 1986. (Filed and designated in Registration No. 2-2536 as Exhibits B-1 and B-2; in Post-effective Amendment No. 1 to Registration No. 2-62032 as Exhibit (b)(4)(ii), in Registration No. 2-88923 as Exhibit 4(b)(2), in Form 8-K, File No. 1-3553, dated June 1, 1984 as Exhibit (4), File No. 1-3553, dated March 24, 1986 as Exhibit 4-A, in Form 8-K, File No. 1-3553, dated June 3, 1986 as Exhibit (4).) July 1, 1985 and November 1, 1985 (Filed and designated in Form 10-K, for the fiscal year 1985, File No. 1-3553, as Exhibit 4-A.) November 15, 1986 and January 15, 1987. (Filed and designated in Form 10-K, for the fiscal year 1986, File No. 1-3553, as Exhibit 4-A.) December 15, 1987. (Filed and designated in Form 10-K, for the fiscal year 1987, File No. 1-3553, as Exhibit 4-A.) December 13, 1990. (Filed and designated in Form 10-K, for the fiscal year 1990, File No. 1-3553, as Exhibit 4-A.) April 1, 1993. (Filed and designated in Form 8-K, dated April 13, 1993, File No. 1-3553, as Exhibit 4.) June 1, 1993 (Filed and designated in Form 8-K, dated June 14, 1993, File No. 1-3553, as Exhibit 4.) May 1, 1993. (Filed and designated in Form 10-K, for the fiscal year 1993, File No. 1-3553, as Exhibit 4(a).) July 1, 1999. (Filed and designated in Form 10-Q, dated August 16, 1999, File No. 1-3553, as Exhibit 4(a).) March 1, 2000. (Filed and designated in Form 10-K for the year ended December 31, 2001, File No. 1-15467, as Exhibit 4.1.) August 1, 2004. (Filed and designated in Form 10-K for the year ended December 31, 2004, File No. 1-15467, as Exhibit 4.1.) October 1, 2004. (Filed and designated in Form 10-K for the year ended December 31, 2004, File No. 1-15467, as Exhibit 4.2.) April 1, 2005 (Filed and designated in Form 10-K for the year ended December 31, 2007, File No 1-15467, as Exhibit 4.1) March 1, 2006 (Filed and designated in Form 10-K for the year ended December 31, 2007, File No 1-15467, as Exhibit 4.2) December 1, 2007 (Filed and designated in Form 10-K for the year ended December 31, 2007, File No 1-15467, as Exhibit 4.3) August 1, 2009 (Filed and designated in Form 10-K, for the year ended December 31, 2009, File No. 1-15467, as Exhibit 4.1)

4.2 Indenture dated February 1, 1991, between Indiana Gas and U.S. Bank Trust National Association (formerly know as First Trust National Association, which was formerly know as Bank of America Illinois, which was formerly know as Continental Bank, National Association. Inc.'s. (Filed and designated in Current Report on Form 8-K filed February 15, 1991, File No. 1-6494.); First Supplemental Indenture thereto dated as of February 15, 1991. (Filed and designated in Current Report on Form 8-K filed February 15, 1991, File No. 1-6494, as Exhibit 4(b).); Second Supplemental Indenture thereto dated as of September 15, 1991, (Filed and designated in Current Report on Form 8-K filed September 25, 1991, File No. 1-6494, as Exhibit 4(b).); Third supplemental Indenture thereto dated as of September 15, 1991 (Filed and designated in Current Report on Form 8-K filed September 25, 1991, File No. 1-6494, as Exhibit 4(c).); Fourth Supplemental Indenture thereto dated as of December 2, 1992, (Filed and designated in Current Report on Form 8-K filed December 8, 1992, File No. 1-6494, as Exhibit 4(b).); Fifth Supplemental Indenture thereto dated as of December 28, 2000, (Filed and designated in Current Report on Form 8-K filed December 27, 2000, File No. 1-6494, as Exhibit 4.)

4.3 Indenture dated October 19, 2001, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company, Vectren Energy Delivery of Ohio, Inc., and U.S. Bank Trust National Association. (Filed and designated in Form 8-K, dated October 19, 2001, File No. 1-16739, as Exhibit 4.1); First Supplemental Indenture, dated October 19, 2001, between Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company, Vectren Energy Delivery of Ohio, Inc., and U.S. Bank Trust National Association. (Filed and designated in Form 8-K, dated October 19, 2001, File No. 1-16739, as Exhibit 4.2); Second Supplemental Indenture, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company, Vectren Energy Delivery of Ohio, Inc., and U.S. Bank Trust National Association. (Filed and designated in Form 8-K, dated November 29, 2001, File No. 1-16739, as Exhibit 4.1); Third Supplemental Indenture, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company, Vectren Energy Delivery of Ohio, Inc., and U.S. Bank Trust National Association. (Filed and designated in Form 8-K, dated July 24, 2003, File No. 1-16739, as Exhibit 4.1); Fourth Supplemental Indenture, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company, Vectren Energy Delivery of Ohio, Inc., and U.S. Bank Trust National Association. (Filed and designated in Form 8-K, dated November 18, 2005, File No. 1-16739, as Exhibit 4.1). Form of Fifth Supplemental Indenture, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas & Electric Company, Vectren Energy Delivery of Ohio, Inc., and U.S. Bank Trust National Association. (Filed and designated in Form 8-K, dated October 16, 2006, File No. 1-16739, as Exhibit 4.1). Sixth Supplemental Indenture, dated March 10, 2008, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company, Vectren Energy Delivery of Ohio, Inc., and U.S. Bank National Association (Filed and designated in Form 8-K, dated March 10, 2008, File No. 1-16739, as Exhibit 4.1)

4.4 Note purchase agreement, dated October 11, 2005, between Vectren Capital Corp. and each of the purchasers named therein. (Filed designated in Form 10-K for the year ended December 31, 2005, File No. 1-15467, as Exhibit 4.4.) First Amendment, dated March 11, 2009, to Note Purchase Agreement dated October 11, 2005, among Vectren Corporation, Vectren Capital, Corp. and each of the holders named herein. (Filed and designated in Form 8-K dated March 16, 2009 File No. 1-15467, as Exhibit 4.6)

4.5 Note Purchase Agreement, dated March 11, 2009, among Vectren Corporation, Vectren Capital, Corp. and each of the purchasers named therein. (Filed and designated in Form 8-K dated March 16, 2009 File No. 1-15467, as Exhibit 4.5)

4.6 Note Purchase Agreement, dated April 7, 2009, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company and Vectren Energy Delivery of Ohio, Inc. and the purchasers named therein. (Filed and designated in Form 8-K dated April 7, 2009 File No. 1-15467, as Exhibit 4.5)

4.7 Note Purchase Agreement, dated September 9, 2010, among Vectren Capital, Corp. and the purchasers named therein. (Filed and designated in Form 8-K dated September 10, 2010 File No. 1-15467, as Exhibit 4.1)

4.8 Note Purchase Agreement, dated April 5, 2011, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company and Vectren Energy Delivery of Ohio, Inc. and the purchasers named therein. (Filed and designated in Form 8-K dated April 8, 2011 File No. 1-15467, as Exhibit 4.1)

4.9 Note Purchase Agreement, dated November 15, 2011, among Vectren Utility Holdings, Inc., Indiana Gas Company, Inc., Southern Indiana Gas and Electric Company and Vectren Energy Delivery of Ohio, Inc. and the purchasers named therein. (Filed and designated in Form 8-K dated November 17, 2011 File No. 1-15467, as Exhibit 4.1)

10. Material Contracts

10.1 Vectren Corporation At Risk Compensation Plan effective May 1, 2001, (as most recently amended and restated as of May 1, 2011). (Filed and designated in Form 8-K dated May 17, 2011, File No. 1-15467, as Exhibit 10.1.)

10.2 Vectren Corporation Non-Qualified Deferred Compensation Plan, as amended and restated effective January 1, 2001. (Filed and designated in Form 10-K, for the year ended December 31, 2001, File No. 1-15467, as Exhibit 10.32.)

10.3 Vectren Corporation Nonqualified Deferred Compensation Plan, effective January 1, 2005. (Filed and designated in Form 8-K dated September 29, 2008, File No. 1-15467, as Exhibit 10.3.)

10.4 Vectren Corporation Unfunded Supplemental Retirement Plan for a Select Group of Management Employees (As Amended and Restated Effective January 1, 2005).(Filed and designated in Form 8-K dated December 17, 2008, File No. 1-15467, as Exhibit 10.1.)

10.5 Vectren Corporation Nonqualified Defined Benefit Restoration Plan (As Amended and Restated Effective January 1, 2005). (Filed and designated in Form 8-K dated December 17, 2008, File No. 1-15467, as Exhibit 10.2.)

10.6 Vectren Corporation At Risk Compensation Plan specimen unit award agreement for officers, effective January 1, 2010. (Filed and designated in Form 8-K, dated January 7, 2010, File No. 1-15467, as Exhibit 10.1.)

10.7 Vectren Corporation At Risk Compensation Plan specimen unit award agreement for officers, effective January 1, 2009. (Filed and designated in Form 8-K, dated February 17, 2009, File No. 1-15467, as Exhibit 10.1.)

10.8 Vectren Corporation At Risk Compensation Plan specimen restricted stock grant agreement for officers, effective January 1, 2008. (Filed and designated in Form 8-K, dated December 28, 2007, File No. 1-15467, as Exhibit 99.1.)

10.9 Vectren Corporation At Risk Compensation Plan specimen restricted stock units agreement for officers, effective January 1, 2008. (Filed and designated in Form 8-K, dated December 28, 2007, File No. 1-15467, as Exhibit 99.2.)

10.10 Vectren Corporation At Risk Compensation Plan specimen Stock Option Grant Agreement for officers, effective January 1, 2005. (Filed and designated in Form 8-K, dated January 1, 2005, File No. 1-15467, as Exhibit 99.2.)

10.11 Vectren Corporation At Risk Compensation Plan stock unit award agreement for non-employee directors, effective May 1, 2009. (Filed and designation in Form 8-K, dated February 20, 2009, File No. 1-15467, as Exhibit 10.1)

10.12 Vectren Corporation specimen change in control agreement dated December 31, 2011. (Filed and designated in Form 8-K, dated January 5, 2012, File No. 1-15467, as Exhibit 10.1) The specimen agreement significantly differs among the named executive officers only to the extent change in control benefits are provided in the amount of three times base salary and bonus for Mr. Carl L. Chapman and two times base salary and bonus for Messer's Jerome A. Benkert, Jr., Ronald E. Christian, William S. Doty, and John M. Bohls.

10.13 Vectren Corporation specimen severance plan agreement dated December 31, 2011. (Filed and designated in Form 8-K, dated January 5, 2012 File No. 1-15467, as Exhibit 10.2) The severance plan differs among the named executive officers only to the extent where severance benefits are provided in the amount of two times base salary for Mr. Chapman and one and one half times base salary for Messer's Benkert, Christian, Doty, and Bohls.

10.14 Coal Supply Agreement for Warrick 4 Generating Station between Southern Indiana Gas and Electric Company and Vectren Fuels, Inc., effective January 1, 2009. (Filed and designated in Form 8-K dated January 5, 2009, File No. 1-15467, as Exhibit 10.1.)

10.15 Coal Supply Agreement for F.B. Culley Generating Station between Southern Indiana Gas and Electric Company and Vectren Fuels, Inc., effective January 1, 2009. (Filed and designated in Form 8-K dated January 5, 2009, File No. 1-15467, as Exhibit 10.2.)

10.16 Coal Supply Agreement for A.B. Brown Generating Station for 410,000 tons between Southern Indiana Gas and Electric Company and Vectren Fuels, Inc., effective January 1, 2009. (Filed and designated in Form 8-K dated January 5, 2009, File No. 1-15467, as Exhibit 10.3.)

10.17 Coal Supply Agreement for A.B. Brown Generating Station for 1 million tons between Southern Indiana Gas and Electric Company and Vectren Fuels, Inc., effective January 1, 2009. (Filed and designated in Form 8-K dated January 5, 2009, File No. 1-15467, as Exhibit 10.4.)

10.18 Amendment to F.B. Culley and A.B. Brown Coal Supply Agreements dated December 21, 2009. (Filed and designated in Form 10-K, for the year ended December 31, 2009, File No. 1-15467, as Exhibit 10.1)

10.19 Amendment No. 1 to Coal Supply Agreement for Warrick 4 Generating Station between Southern Indiana Gas and Electric Company and Vectren Fuels, Inc., effective October 31, 2011. (Filed and designated in Form 8-K dated November 1, 2011, File No. 1-15467, as Exhibit 10.1.) Portions of the document have been omitted and filed separately pursuant to a request for confidential treatment filed with the Securities and Exchange Commission which was granted.

10.20 Amendment No. 2 to Coal Supply Agreement for F.B. Culley Generating Station between Southern Indiana Gas and Electric Company and Vectren Fuels, Inc., effective October 31, 2011. (Filed and designated in Form 8-K dated November 1, 2011, File No. 1-15467, as Exhibit 10.2.) Portions of the document have been omitted and filed separately pursuant to a request for confidential treatment filed with the Securities and Exchange Commission which was granted.

10.21 Amendment No. 2 to Coal Supply Agreement for A.B. Brown Generating Station between Southern Indiana Gas and Electric Company and Vectren Fuels, Inc., effective October 31, 2011. (Filed and designated in Form 8-K dated November 1, 2011, File No. 1-15467, as Exhibit 10.3.) Portions of the document have been omitted and filed separately pursuant to a request for confidential treatment filed with the Securities and Exchange Commission which was granted.

10.22 Gas Sales and Portfolio Administration Agreement between Indiana Gas Company, Inc. and ProLiance Energy, LLC, effective April 1, 2011. (Filed and designated in Form 8-K, dated November 1, 2011, File No. 1-15467, as Exhibit 10.1.)

10.23 Gas Sales and Portfolio Administration Agreement between Southern Indiana Gas and Electric Company and ProLiance Energy, LLC, effective April 1, 2011. (Filed and designated in Form 8-K, dated November 1, 2011, File No. 1-15467, as Exhibit 10.2.)

10.24 Formation Agreement among Indiana Energy, Inc., Indiana Gas Company, Inc., IGC Energy, Inc., Indiana Energy Services, Inc., Citizens Energy Group, Citizens Energy Services Corporation and ProLiance Energy, LLC, effective March 15, 1996. (Filed and designated in Form 10-Q for the quarterly period ended March 31, 1996, File No. 1-9091, as Exhibit 10-C.)

10.25 Credit Agreement, dated September 30, 2010, among Vectren Utility Holdings, Inc., and each of the financial institutions named therein. (Filed and designated in Form 8-K dated October 5, 2010, File No. 1-15467, as Exhibit 10.1)

10.26 Credit Agreement, dated September 30, 2010, among Vectren Capital Corp., and each of the financial institutions named therein. (Filed and designated in Form 8-K dated October 5, 2010, File No. 1-15467, as Exhibit 10.2)

10.27 First Amendment to Credit Agreement, dated November 10, 2011, among Vectren Utility Holdings, Inc., and each of the financial institutions named therein. (Filed and designated in Form 8-K dated November 14, 2011, File No. 1-15467, as Exhibit 10.1)

10.28 First Amendment to Credit Agreement, dated September 30, 2010, among Vectren Capital Corp., and each of the financial institutions named therein. (Filed herewith as Exhibit 10.1)

10.29 Second Amendment to Credit Agreement, dated November 10, 2011, among Vectren Capital Corp., and each of the financial institutions named therein. (Filed and designated in Form 8-K dated November 14, 2011, File No. 1-15467, as Exhibit 10.2)

21. Subsidiaries of the Company
The list of the Company's significant subsidiaries is attached hereto as Exhibit 21.1. (Filed herewith.)

23. Consents of Experts and Counsel
The consents of Deloitte & Touche LLP are attached hereto as Exhibit 23.1. (Filed herewith.)

31. Certification Pursuant To Section 302 of the Sarbanes-Oxley Act of 2002
Chief Executive Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act Of 2002 is attached hereto as Exhibit 31.1 (Filed herewith.)
Chief Financial Officer Certification Pursuant to Section 302 of the Sarbanes-Oxley Act Of 2002 is attached hereto as Exhibit 31.2 (Filed herewith.)

32. Certification Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002
Certification Pursuant To Section 906 of the Sarbanes-Oxley Act Of 2002 is attached hereto as Exhibit 32 (Filed herewith.)

101 Interactive Data File
101.INS* XBRL Instance Document (Furnished herewith.)

101.SCH* XBRL Taxonomy Extension Schema (Furnished herewith.)

101.CAL* XBRL Taxonomy Extension Calculation Linkbase (Furnished herewith.)

101.DEF* XBRL Taxonomy Extension Definition Linkbase (Furnished herewith.)

101.LAB* XBRL Taxonomy Extension Labels Linkbase (Furnished herewith.)

101.PRE* XBRL Taxonomy Extension Presentation Linkbase (Furnished herewith.)

* Users of the XBRL-related information in Exhibit 101 to this Annual Report on Form 10-K are advised in accordance with Rule 406T of Regulation S-T promulgated by the Securities and Exchange Commission that this Interactive Data File is deemed not filed or part of a registration statement or prospectus for purposes of Sections 11 or 12 of the Securities Act of 1933, is deemed not filed for purposes of Section 18 of the Securities Exchange Act of 1934, and otherwise is not subject to liability under these sections. The financial information contained in the XBRL-related documents is “unaudited” and “unreviewed.”

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized.

VECTREN CORPORATION

Dated February 16, 2012

/s/ Carl L. Chapman
Carl L. Chapman,
Chairman, President, and Chief Executive Officer

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant and in capacities and on the dates indicated.

Signatur e	Title	Date
/s/ Carl L. Chapman Carl L. Chapman	Chairman, President, and Chief Executive Officer (Principal Executive Officer)	February 16, 2012
/s/ Jerome A. Benkert, Jr. Jerome A. Benkert, Jr.	Executive Vice President and Chief Financial Officer (Principal Financial Officer)	February 16, 2012
/s/ M. Susan Hardwick M. Susan Hardwick	Vice President, Controller and Assistant Treasurer (Principal Accounting Officer)	February 16, 2012
/s/ James H. DeGraffenreidt James H. DeGraffenreidt	Director	February 16, 2012
/s/ Niel C. Ellerbrook Niel C. Ellerbrook	Director	February 16, 2012
/s/ John D. Engelbrecht John D. Engelbrecht	Director	February 16, 2012
/s/ Anton H. George Anton H. George	Director	February 16, 2012
/s/ Martin C. Jischke Martin C. Jischke	Director	February 16, 2012

/s/ Robert G. Jones Robert G. Jones	Director	February 16, 2012
/s/ William G. Mays William G. Mays	Director	February 16, 2012
/s/ J. Timothy McGinley J. Timothy McGinley	Director	February 16, 2012
/s/ R. Daniel Sadlier R. Daniel Sadlier	Director	February 16, 2012
/s/ Michael L. Smith Michael L. Smith	Director	February 16, 2012
/s/ Jean L. Wojtowicz Jean L. Wojtowicz	Director	February 16, 2012

Page 1

STATE OF MICHIGAN
COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES CORP., SUCCESSOR-IN-INTEREST TO MINNESOTA LIMITED, INC.,	)	
Plaintiff,	)	Court of Claims No. 17-000107-MT
vs.	)	
MICHIGAN DEPARTMENT OF TREASURY,	)	
Defendant.	)	

The videoconference deposition of BRAD HIRSCH, taken under oath on February 14, 2018, at the hour of 1:09 p.m., at 155 North Wacker Drive, Suite 3100, Chicago, Illinois, before Valerie M. Calabria, CSR, RPR, pursuant to notice.

Page 17

A. Not that I'm aware.

Q. Is this valuation report a true and correct copy that's been marked as Exhibit 1?

A. Can you define true and correct?

Q. Sure. I'm going to restate that.

There's a -- if you look at this report that you've been provided, it has "Draft" on the front of it, correct?

A. That's correct.

Q. And if you turn to -- I don't know, let's turn to the schedules in the back. If you look on the bottom or the left side, you'll see a Bates stamp. And if you turn to 172, at the top of it, it says "Draft - for discussion purposes only."

Do you see that?

A. Yes, I do.

Q. Can you tell me what that means?

A. Sure. This report was never issued as final, and until the client requests to issue final, it stays in draft format.

Q. Has it ever been finalized?

A. No, it has not.

Q. Do you know why it has not been finalized?

Page 20

book value.

Q. And this valuation was prepared for Minnesota Limited; is that correct?

A. No, that is not correct.

Q. Okay. Can you tell me what this report was prepared -- or what was being valued in this report?

A. Yeah. This report was prepared for Vectren Corporation as it relates to their acquisition of Minnesota Limited, Inc.

Q. So what was the -- what entity was being valued in this report?

A. Minnesota Limited, Inc.

Q. Was the entire entity being valued?

A. No. KPMG was hired to value the intangible assets of Minnesota Limited, Inc.

Q. And were the entire intangible assets valued?

A. Yes.

Q. Okay. And was this valuation prepared in order to value the company, the intangible assets on a state-by-state basis?

A. No, it was not.

Q. Well -- and what -- and just to clarify,

Page 21

was this prepared to value the business on each state's taxing jurisdiction?

A. No.

Q. So it was prepared for the entity as a whole, correct?

A. Yes, on a consolidated basis.

Q. When you say consolidated basis, do you mean the -- Minnesota Limited is not the only entity that was valued, but there was other entities valued also?

A. It means -- under ASC 805, an acquisition is a single acquisition representing all of the assets of the company and ignoring the fact that it might be in many different legal entities or many different reporting units. ASC 805 requirements is a single entity.

Q. I see. So it doesn't matter whether there's going to be a subsidiary or a parent company?

A. Correct.

Q. You talked a little about ASC 805. Were there any other standards used in preparing this report?

A. Yes, ASC 820 defines what fair value is,

Page 22

and ASC 805 relies on the definition of fair value.

Q. What key assumptions were used in preparing this report?

A. So is there a specific asset you are referring to or the entire report?

Q. Well, let's start with intangible assets since that's what the valuation was prepared to do.

A. Sure. We have conversations with the acquirer, Vectren Corporation, regarding the intangible assets that they believe they acquired. We submit questions or we question what assets exist, basically walking through the assets identified in ASC 805, to determine what assets are possibly there. Key assumptions used are management's intentions with the assets.

Do you want me to expand into each specific asset and the assumptions associated with each?

Q. Sure. There's only, what, five or six assets?

A. Sure.

Q. Yes, please.

A. Okay. So looking at Exhibit 1 and Schedule 1, the assets we valued are customer

Page 23

relationship, backlog, trade name, and assembled workforce.

Customer relationship looks at where is the future growth of the business going to come from, specifically existing versus new customers, as well as what an attrition rate looks like for existing customers and the charges for all the other assets in the business that help generate those cash flows. And those are the main assumptions of that asset.

Backlog --

Q. Okay.

A. Okay. Backlog is a form of a customer relationship with the key distinction being that it's contractual and it's essentially backlog but is the same type of asset but generally has a different life than a customer relationship. So it's the same assumptions used.

Q. Can you explain backlog to me a little more?

A. Sure. So backlog, there's an intangible benefit to acquiring a company that has contracts in place versus the buyer having the need to go to the customers they've historically done work with

Page 24

and sell new projects. And so you separate backlog, that that's contractual, aside from the noncontractual relationships that the entity has.

Q. So there's a difference between customer relationships and backlog?

A. Correct.

Q. Customer relationships mostly deals with noncontractual engagements whereas backlog is contractual?

A. That is correct.

Q. Okay.

A. Trade name assumption is -- go ahead.

Q. No, I just said, yes, please.

A. Trade name, the key assumptions are intended use of the trade name by the acquirer, as well as the strength and perception of that trade name in the marketplace. And it uses a royalty rate as a key assumption.

Q. Okay. And I'm going to go into a little more detail into these in the future, but is there any other assets that you would like to -- that you provided assumptions for?

A. Provided substance, no.

Q. I'm sorry, provided assumptions or used

Page 25

assumptions.

A. No, these are the only assets that we valued. These are the only assets we've valued.

Q. You did not value the assembled workforce?

A. So assembled workforce is -- it's valued but not recorded separately for financial reporting purposes. It's assumed into goodwill but used as an input into the customer relationship and backlog calculations.

Q. Can you explain, used as an input into customer relationships and backlog?

A. Sure. The methodology used to value a customer-related asset is one called the multi-period excess earnings model. That method, the theory behind that method is that to generate cash flow specific to that asset, there are other assets in the business that are helping generate those profits.

And so after you take charges for all those other assets, one of those assets being workforce, what's left over, or that excess profit, then can be ascribed to the asset you're valuing. So in that instance, the workforce is being used as

Page 26

a charge in that methodology.

Q. And just to be clear, did you value the trade name, customer relationships, and backlog on a state-by-state basis or a state taxation entity -- or excuse me -- a state taxing jurisdiction?

A. No.

Q. Is it possible to value a business on a -- by a state-by-state taxing jurisdiction?

A. It's possible.

Q. Are there standards that provide for this?

A. I'm unaware.

Q. Are there methods that can be employed to do this?

A. Yes.

Q. What are those methods?

A. Let me make sure I understand the question. What are the methods one could use to value intangibles on a state-by-state basis?

Q. Correct.

A. I have not done it. It would be very fact- and circumstance-based. But I think it would require a breakdown of financials at that level.

Page 27

Q. Okay. And would it require an assumption that the customer relationships the business had in the past will be the same customer relationships in the future and that those services will be performed in the same states in the future as they have in the past?

MS. LITT: Do you need to hear that again?

THE WITNESS: No, I understand the question. I don't do it at a state-by-state level. He asked me if it's possible.

MS. LITT: Object to the question; calls for speculation.

MS. GANDHI: Objection; you're asking him to state a hypothetical. He's indicated he doesn't have the experience, he doesn't do it at that level.

BY MR. CALL:

Q. Sir, are you saying that it would be -- you just cannot answer the question?

A. Correct.

Q. Okay. We can turn to Exhibit 1, Bates stamp 148.

A. I am there.

Q. In the second paragraph, second to last

Page 29

Q. Under the heading, same page, "Premise of Value," do you see that?

A. Yes.

Q. Okay. There's a difference between in-use and in-exchange premises of value; is that correct?

A. Yes.

Q. What is the difference?

A. In use is looking at the value of an asset in use, and in exchange is looking at the value of an asset in exchange, and you look at the highest and best use.

Q. I still don't understand. What does it mean, use in exchange?

A. Can I provide an example?

MS. LITT: Sure.

THE WITNESS: The example I would give you, if you are a taxicab driver and it's your business and you're lazy and you decide not to use your car to generate income, if I valued your car on an income-generating basis, it's going to give me a low value because you're not generating its maximum use. So I can't use that as the value. So instead, I look at what's the value of your car in

Page 30

exchange. Can I sell your car in the market and receive a higher price than I'm getting from valuing that asset in use.

BY MR. CALL:

Q. And which premise was used for Vectren in valuating Minnesota Limited?

A. In use.

Q. So you're looking at what the value of Minnesota Limited would be as to the cash or revenue it will earn in the future?

A. Yes. You look at the highest and best use for each asset category. And many times it's the same, but if you're in a situation like my taxicab example, you would then revert to whatever the highest and best use is.

Q. And that would be the in-exchange use?

A. Correct. Think of an automotive plant not leveraging their assets. It's not generating an income, but they could sell the assets in the marketplace.

Q. Okay. So the assumption used here in preparing this report is Minnesota Limited is a going concern entity that will have value in the future or will earn income in the future.

Page 38

Q. And you say and it mentioned in the second bullet point "total consideration paid for the acquisition." How is that used in preparation of this report?

A. Sure. On Schedule 1 shows a breakdown of consideration paid to all assets of the business, some of which KPMG did not value, and then those that KPMG valued with the residual falling to goodwill is illustrated in Schedule 1.

Q. So if I understand you, you looked at what they determined as tangible, the value of their tangible assets, and you used -- and then you -- so you added the value of the tangible assets plus the valuation of the intangible assets valued by KPMG to get the goodwill?

A. Yeah, I would say it in reverse. I took purchase price, less the tangible assets that they represented, less the identifiable intangible assets that I valued, and the residual equals goodwill.

Q. All right. Let's go to the next page. I believe it's Bates stamp 150, "Business Overview."

Do you see that?

KPMG Draft Val

/2022 4:43:00 PM

KPMG

cutting through complexity™

Vectren Corporation

Valuation of Certain Identifiable Intangible Assets in Connection with the Acquisition of Minnesota Ltd, Inc. as of March 30, 2011

/2022 4:43:00 PM

Transmittal Letter

August 30, 2011

KPMG LLP
303 E. Wacker Drive
Chicago, IL 60601-5212

Telephone	312 665 1000
Fax	312 665 6000
Internet	www.us.kpmg.com

PRIVATE
Ms. Susan Hardwick
Vice President, Controller & Assistant Treasurer
Vectren Corporation
PO Box 209
Evansville, IN 47702

Dear Ms. Hardwick:

DRAFT

KPMG LLP's (KPMG) Economic and Valuation Services Practice has completed its valuation engagement to assist Vectren Corporation (Vectren or the Company) with the valuation of certain identifiable intangible assets (Subject Assets) arising from the acquisition of Minnesota Ltd, Inc. (MLI). The acquisition closed on March 30, 2011 (the Valuation Date).

Our analysis was performed in accordance with the FASB ASC Topic 805, *Business Combinations* (ASC Topic 805) and other appropriate accounting and valuation guidelines. We understand that the results of this valuation will be used by Vectren management (Management) to assist in its allocation of the transacted purchase price to the Subject Assets acquired in accordance with ASC Topic 805. No other use is intended or implied.

The attached report includes a description of MLI and the Subject Assets and also a review of the industry in which MLI operates, the valuation approaches applied, key assumptions used and our valuation conclusions as of the Valuation Date. This valuation was performed in accordance with our engagement letter dated December 1, 2010 and the Limiting Assumptions presented in Appendix C.

This analysis has been conducted under the standard of fair value, which is defined in FASB ASC Topic 820, *Fair Value Measurements and Disclosures* as:

> *The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.*

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Transmittal Letter

Conclusion of Value

Based on the analysis discussed in this report and presented in the accompanying schedules, KPMG's concluded values, as of the Valuation Date, are:

Minnesota Ltd, Inc.		
Subject Asset	Fair Value ($US thousands)	Schedule Number
Trade Name	4,241	6
Customer Relationships	14,588	7
Backlog	287	8

Vectren and MLI provided KPMG with information and financial data of a historical and prospective nature. KPMG has accepted such information as being complete and accurate in all material aspects. KPMG has not audited, reviewed or examined such information, and accordingly, does not express an opinion or any other form of assurance thereon.

ANY TAX ADVICE IN THIS COMMUNICATION IS NOT INTENDED OR WRITTEN BY KPMG TO BE USED, AND CANNOT BE USED, BY A CLIENT OR ANY OTHER PERSON OR ENTITY FOR THE PURPOSE OF (i) AVIODING PENALTIES THAT MAY BE IMPOSED ON ANY TAXPAYER OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY MATTERS ADDRESSED HEREIN.

This valuation is not supporting a "listed" or "principle purpose transaction."

KPMG has no present or contemplated future interest in MLI or any other interest which might prevent KPMG from performing an unbiased valuation.

We appreciate the opportunity to be of service to you.

DRAFT

Very truly yours,

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Contents

	Page
Valuation Purpose & Scope	4
Business Overview	6
Industry Overview	7
Economic Overview	9
Valuation Approaches	10
Business Enterprise Value	12
Trade Name Valuation	15
Customer Relationships Valuation	17
Backlog Valuation	19
Assembled Workforce Valuation	20
Conclusion of Value	21
Appendix A – Appraisal Certification	22
Appendix B – Sources	23
Appendix C – Limiting Assumptions	24
Appendix D – Schedules	26

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Valuation Purpose & Scope

Overview

On March 30, 2011 (the Valuation Date), Vectren Corporation (Vectren or the Company) acquired Minnesota Ltd, Inc. (MLI) for an aggregate purchase price of $89 million. As part of the acquisition, Vectren acquired certain intangible assets (Subject Assets) of MLI.

KPMG LLP's (KPMG) Economic and Valuation Services Practice was engaged by Vectren management (Management) to assist in its allocation of the transacted purchase price to the Subject Assets acquired in accordance with FASB ASC Topic 805, *Business Combinations* (ASC Topic 805). KPMG understands that this report and conclusions will be utilized for financial reporting requirements and tax regulatory purposes. No other use is intended or implied.

Recognition of Assets and Liabilities

This valuation analysis was prepared in accordance with ASC Topic 805, which requires all identifiable intangible assets be recognized as an asset apart from goodwill if the asset:

- Arises from contractual or other legal rights (regardless of whether those rights are separable), or
- Is separable from the acquired entity (i.e., it is capable of being separated or divided from the acquired entity and sold, transferred, licensed, rented or exchanged, regardless if there is intent to do so).

An intangible asset that cannot be sold, transferred, licensed, rented or exchanged individually meets criterion if it can be sold, transferred, licensed, rented or exchanged in combination with a related contract, asset or liability.

Standard of Value

Fair value (FV) is the standard of value for financial reporting and is defined under FASB ASC Topic 820, *Fair Value Measurements and Disclosures*, as:

> *The price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date.*

Premise of Value

The premise of value used to measure the FV of an asset depends on the highest and best use of the asset by market participants. Specifically:

- **In-use** – The highest and best use of the asset is in-use if the asset would provide maximum value to market participants principally through its use in combination with other assets as a group (as installed or otherwise configured for use).
- **In-exchange** – The highest and best use of the asset is in-exchange if the asset would provide maximum value to market participants on a standalone basis.

For purposes of this analysis, the premise of value was in-use.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Valuation Purpose & Scope

Engagement Scope

During the course of KPMG's valuation study, KPMG was provided with unaudited historical financial statements, as well as forecasted financial and operation data for MLI. Without independent verification, KPMG has relied upon this data as accurately reflecting the results of the operations and financial position of MLI.

In conducting this engagement, KPMG's investigation and analysis included, but was not limited to the following:

- Interviews with Vectren and MLI personnel familiar with the Subject Assets and MLI's operations;
- Analysis of the financial condition and financial statements, including the closing balance sheet as of the Valuation Date and financial summary of the total consideration paid for the acquisition;
- Analysis of business plans, budgets, Board presentation materials and prospective operating information of MLI;
- Discussions with Management regarding the identification of the acquired intangibles;
- Independent research concerning the current economic conditions and outlook of the United States economy and the United States construction and engineering industry; and,
- Other such tests, analyses and inquiries, as deemed necessary by KPMG.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Business Overview

Vectren Corporation[1]

Vectren provides energy delivery services to residential, commercial and industrial customers in Indiana and west central Ohio. The Company provides natural gas distribution and transportation services in Indiana and west central Ohio and electric distribution services primarily in southwestern Indiana. Vectren also owns and operates gas electric generation plants with an installed generating capacity of 1,298 megawatts. Its electric transmission system consists of 932 circuit miles of 138,000 and 69,000 volt lines and 34 substations while its distribution system includes 4,200 pole miles of lower voltage overhead lines and 358 trench miles of conduit containing 2,000 miles of underground distribution cable, 97 distribution substations and 54,000 distribution transformers. In addition, the Company provides gas marketing, gas portfolio optimization and other portfolio and energy management services to municipalities, utilities, industrial operations, schools and healthcare institutions located in the Midwest and Southeast United States. Vectren also invests in energy-related opportunities and services, real estate and leveraged leases. Services include underground construction and repair, performance contracting and renewable energy services.

Vectren serves various industries, including automotive assembly, parts and accessories; feed, flour and grain processing; metal castings; aluminum products; appliance manufacturing; polycarbonate resin and plastic products; gypsum products; electrical equipment; metal specialties; glass; steel finishing; pharmaceutical and nutritional products; gasoline and oil products; and ethanol and coal mining. The Company was founded in 1912 and is headquartered in Evansville, Indiana.

Minnesota Ltd, Inc.[2]

MLI is a specialty contractor focusing on: pipeline construction, pump station, compressor station, terminal and refinery construction; gas distribution; pipeline maintenance; and hydrostatic testing. MLI owns and operates a fleet of new and well-maintained construction equipment, which allows for maximum efficiency and flexibility to meet customer demands. MLI employees a staff of industry professionals including engineers, project managers, superintendents and craftsmen to design cost-efficient solutions for the oil and gas industry. The company has a commitment to environmental health and safety in the construction process and has received numerous safety awards including the 2009 Arthur T. Everham Safety Award Recipient and the National Safety Council Occupational Excellence Achievement Award 2009.

MLI is a family-owned and operated business that was founded in 1966 and is headquartered in Big Lake, Minnesota.

DRAFT

[1] Capital IQ: Business Description
[2] http://www.mnlimited.com/home.htm

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Industry Overview

The outlook for the specific market and competitive environment in which MLI operates has an impact on the financial performance of the business. As such, KPMG considered both when performing this valuation study. The following is an overview of the construction and engineering industry in the United States.

Market Definition[3]

The construction and engineering industry is composed of civil engineering companies and large-scale contractors, but excludes companies involved in home-building. The market value is calculated as the revenues of those companies whose primary activity is the construction of non-residential buildings and non-buildings construction.

Market Analysis

The strong growth of the U.S. construction and engineering industry reversed with a decline in 2009. The U.S. construction and engineering industry generated total revenue of $635.9 billion in 2009, representing a compound annual growth rate (CAGR) of 7.3% for the period spanning 2005 to 2009.

U.S. Construction and Engineering market value: $ billion, 2005 to 2009

Year	$ billion	% Growth
2005	479.3	
2006	540.1	12.7
2007	610.3	13.0
2008	670.9	9.9
2009	635.9	(5.2)
CAGR, 2005 to 2009		**7.3**

Market Segmentation

The non-residential building segment of the construction and engineering industry in the U.S. is the largest, accounting for 52% of the industry's total value. The civil engineering segment accounts for the remaining 48% of the industry.

U.S. Construction and Engineering market segmentation: % share, by value, 2009

Category	% Share
Non-Residential Building	52.0
Civil Engineering	48.0
Total	**100.0**

Competitive Landscape

The construction and engineering industry in the U.S. is characterized by large incumbent firms operating alongside smaller competitors. Rivalry and the threat of new entrants tend to be the strongest drivers behind competition, while the threat of substitutes tends to a weaker factor. With many governments approving construction and engineering projects for capital improvement projects, rivalry amongst the market participants has increased recently.

The prospects of industry growth in the U.S. provides an incentive for new entrants to explore the industry. Barriers to entry in the engineering and construction industry most notably include the costs of entry and the knowledge required to navigate the regulatory landscape. Additionally, construction projects vary in size and complexity, allowing a market participant to garner experience and establish relationships initially with the fulfillment of smaller projects.

DRAFT

[3] Construction & Engineering in the United States – Industry Profile, Datamonitor, July 2010.

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Industry Overview

Buyers in this industry are typically government agencies or private enterprises. A transaction typically begins with a buyer granting several market players the right to bid on the buyer's project. The terms of the project are dictated by the buyer. While the price of the contract is important to the buyer, low price alone does not always secure a contract for a market participant. Long term maintenance and the proposed efficiencies of a project also weigh on the buyer's decision. The buyer's strength in the industry is buoyed by the fact the construction and engineering projects tend to be stand-alone in nature, virtually eliminating switching costs. The power of the buyer, however, is mitigated through the inability for the typical buyer to integrate backwards into project management. Additionally, a buyer will have incurred costs before inviting contractors to submit project bids, mainly through consultation with stakeholders. Overall, buyer power in this industry is moderate.

Suppliers also play an important role in the U.S. construction and engineering industry. There are two forms of suppliers in this industry including distributors of materials and components and the sub-contractors who provide specialized services needed for the completion of the project. Supplier strength is enhanced by the critical nature of the supplies to the market participant's project. Additionally, the raw material providers tend to be highly consolidated within the industry. These threats, however, are mitigated by the largely undifferentiated nature of the raw materials and the supplier's fierce competition on price. Also, there are typically larger numbers of sub-contractors with the necessary skills to compete for the market participants. Overall, the supplier power within the industry is moderate.

The threat of substitutes in the U.S. construction and engineering industry tends to be weak. It is very unlikely that a buyer will find an alternative expenditure for their funds that would meet their needs. Additionally, the market participants tend to be involved in all stages of the project life cycle, whether it may be renovation of an existing structure or project or the initial ground breaking.

Market Forecast

The performance of the U.S. construction and engineering industry is forecasted to grow by 19.9% in total from 2009 to 2014 with an anticipated CAGR of 3.7%. This growth would equate to a market value of $762.7 billion in 2014.

U.S. Construction and Engineering market value forecast: $ billion, 2009 to 2014

Year	$ billion	% Growth
2009 (Actual)	635.9	(5.2)
2010 (Estimated)	619.5	(2.6)
2011	632.9	2.2
2012	658.2	4.0
2013	717.1	9.0
2014	762.7	6.4
CAGR, 2009 to 2014		**3.7**

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Economic Overview

DRAFT

MLI's performance is dependent on the developments of the broader economy it operates within. The following is an overview of the United States' economy.

Economic Growth[3,4]

Real GDP growth in 2011 is expected to approximate 2.9%. This is up from an estimated 2.8% in 2010. Recent economic data suggests that the recovery is continuing and deepening. Real GDP grew by an annualized 2.8% in the fourth quarter of 2010, and in February, manufacturing activity as measured by the Institute for Supply Management's purchasing managers index, rose to its highest level since May 2004. Consumer confidence also improved, reaching its highest level since February 2008. During the rest of 2011, support will be provided by new fiscal stimulus through cuts to employee payroll taxes. The faster write-downs of business investment that will be allowed this year should also encourage some firms to bring forward investment from 2012. Job creation also appears to be accelerating with 212,000 private sector positions being added in February alone. The unemployment rate has declined by almost a full percentage point in the last few months. However, despite the support from fiscal stimulus, the U.S. economy is still growing slowly for this stage of a recovery, when spare capacity in the economy should allow an above-trend expansion.

Monetary Policy

Monetary policy has also provided massive support for the economy, as the Federal Reserve has cut interest rates and made ample use of quantitative easing (QE2) purchasing approximately $600 billion of U.S. Treasuries through the middle of 2011. QE2 appears to have contributed to a rise in stock market prices, which, through wealth effects, has been influential in the improvement of recent economic data. Inflation expectations have also risen since the program was announced.

The prevailing concern regarding QE2 is that the Federal Reserve will not withdraw the liquidity that it has pumped in the financial system quickly enough once the economy starts to recover, resulting in rising inflation.

Labor Market

The U.S. economy's seeming inability to create jobs has been one of its most worrying features during the recovery, but the unemployment rate fell by almost a full percentage point in the three months leading up to February, to 8.9%. However, the unemployment rate is still well above the 5% average in the decade before the financial crisis, meaning that there is plenty of scope for employment creation to help drive economic growth.

Inflation

Rising commodity prices, particularly oil, have caused an increase in headline consumer price inflation in recent months. Inflation in January accelerated to 1.7% year-on-year, up from 1.4% the previous month. Analysts have raised the average inflation forecast for 2011 to 2.1% from 1.9%, which means that inflation will continue to rise over the coming months, but will remain manageable, particularly since the price of oil is likely to fall in the second half of the year. Meanwhile, core inflation has edged up to 1%, from 0.6% in January, but is still well below the 2.6% average for the last two decades. The depressed state of aggregate demand, high unemployment and ample spare capacity within the economy suggest there is little danger of a sudden acceleration in core inflation in 2011 or 2012. This may, however, be a risk in the second half of the forecast period if the Federal Reserve fails to exit its exceptionally loose monetary policy stance in an orderly manner.

[3] USA: Country Outlook, The Economist Intelligence Unit, March 8, 2011.

[4] USA/Canada economy: EIU's latest assumptions, The Economist Intelligence Unit, March 18, 2011.

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Valuation Approaches

Generally accepted valuation practice indicates that various asset classes may be valued using a range of methodologies. These methodologies can be broadly classified into three general approaches: the income, market and cost approaches. In any valuation study, all three approaches are considered, but the approach or approaches deemed most indicative of value are selected.

Market Approach

Under the Market Approach, the FV of an asset reflects the price at which comparable assets are purchased under similar circumstances. Use of the Market Approach requires that comparable transactions be available, which may include:

- The recent sales price of the same or similar assets in an arm's-length transaction; or
- The market price for the license of the same or similar assets to an independent third party.

A major attraction of the Market Approach is its simple application when a truly comparable transaction is available. This situation is most commonly found when the acquired asset is widely marketed to third parties. Under these circumstances, the Market Approach represents the most appropriate approach for determining the FV of the asset. The primary limitation associated with the Market Approach is the availability of comparable transactions occurring as of a recent date upon which to establish FV.

Cost Approach

The Cost Approach determines the FV of an asset as an estimate of the current cost to purchase or replace the asset. This is based upon the principle of substitution. A prudent investor would pay no more for an asset than the amount necessary to replace the asset. Replacement Cost New (RCN) establishes the highest amount that a prudent investor would pay for an asset. To the extent that the asset being valued provides less utility than the new one, the value of that asset is less than RCN. Accordingly, the RCN is adjusted for losses in value due to obsolescence.

Income Approach

The Income Approach is predicated upon the value of the future cash flows that an asset will generate over its economic life. The first step involves a projection of the cash flows that the asset is expected to generate. This involves an analysis of financial data and discussions with marketing, operations and financial personnel to develop the future income stream attributable to the asset.

The second step involves converting these cash flows into their present value equivalents through discounting. This discounting process uses a rate of return that discounts for the relevant risk associated with the asset and the time value of money. The FV of the asset is the sum of the discounted cash flows.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Valuation Approaches

Valuation Approaches Utilized

KPMG has considered all possible intangible assets as provided in Appendix A of ASC Topic 805 (paragraph A14) and identified several intangible assets that were material in nature to the operations of the company. Specifically, KPMG contemplated the following intangible assets:

Intangible Asset Identified	Valued	Discussion/Rationale	Selected Valuation Methodology
Trade Name	✓	Management indicated that Minnesota Limited, Inc. is a well recognized name in its respective industry . The Minnesota Limited, Inc. trade name dates back to MLI's founding in 1966 and is associated with deep industry expertise, safety and client satisfaction. Management expects to phase out the MLI trade name over the next five years.	Income Approach: Relief From Royalty Method
Customer Relationships	✓	Management indicated that MLI has established high quality, long-term relationships with its customer base. These customers are expected to generate a significant portion of future revenues.	Income Approach: Excess Earnings Method
Backlog	✓	Management indicated MLI had entered into contractual agreements with several customers to perform services. These existing contracts were in place as of the Valuation Date.	Income Approach: Excess Earnings Method
Assembled Workforce	✓	KPMG has also valued the MLI's assembled workforces; although these assets are not considered to be identifiable under ASC Topic 805, and are considered to be part of goodwill, KPMG has valued this asset in order to better estimate the value of customer relationships and backlog using the excess earnings method.	Cost Approach: Cost Savings Method
Technology	✗	Technology was considered as part of this analysis, but based upon discussions with Management it was determined that MLI holds no technological know-how or processes that enable MLI to produce superior returns as compared to market participants.	N/A
Non-Compete Agreements	✗	Management indicated that the probability of competition and the potential damage that would occur was de minimis; therefore any associated value would be immaterial.	N/A

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Business Enterprise Value

The next step in the analysis was to perform a business enterprise valuation in order to derive the implied rate of return (IRR) of the MLI acquisition. Using projections provided by Management, KPMG utilized the discounted cash flow method (DCF Method) under the Income Approach.

Discounted Cash Flow Method

Under the DCF Method of the Income Approach, annual future cash flows are estimated, and then individually discounted back to present value. For this analysis, cash flows used in the discounted cash flow method are debt-free net cash flows, which are defined as cash flows free of long-term charges and net of requirements for future working capital and capital expenditures.

If the cash flow stream is expected to continue beyond the discrete forecast period, a stabilized future cash flow attributable to the business is estimated, then capitalized and discounted back to present value, reflecting the terminal or continuing value of the business after the discrete period. This capitalization calculation is based on the Gordon Growth Model for valuing cash flows into perpetuity. The capitalization rate used was the IRR less a 2.5% long term growth rate, which was based on the long-term expectations of the construction and engineering industry and expected nominal growth rates of the U.S. economy.

The summation of the discounted annual cash flows plus the discounted residual value indicates the current value of the operations of a business.

To determine the implied IRR of the transaction, KPMG set the discount rate equal to the appropriate level such that the indicated value of business enterprise value was equal to the net transaction value. Management had indicated that the transaction for MLI was an "asset deal" which means the value of a tax amortization benefit for the step-up in intangible assets and goodwill is included in the indicated business enterprise value.

Please refer to the discussion of the trade name valuation on page 16 for the detailed calculation of the tax amortization benefit.

KPMG also calculated a depreciation overhang to take into account the additional tax benefit due to the increased depreciation from the step-up in basis of the fixed assets that remains after the end of the discrete period projections and not taken into accounting in the terminal period.

As shown on Schedule 5, an IRR of 15.5% for MLI reconciled the forecasted cash flows to the net transaction value of approximately $89 million.

KPMG then tested the reasonableness of the IRR by computing an industry weighted average cost of capital (WACC) for MLI.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Business Enterprise Value

DRAFT

Weighted Average Cost of Capital

Free cash flow projections used in the DCF Method exclude provisions for debt service and reflect the cash flows available to all suppliers of capital (both debt and equity). Accordingly, the discount rate applied to the free cash flow projections reflects the return required by all providers of capital. This discount rate represents the businesses' WACC. The WACC is calculated by weighting the after tax required returns on debt and equity by their respective percentages of total capital.

The return required by each class of investor reflects the rate of return investors would expect to earn on other investments of equivalent risk. The cost of debt reflects the estimated cost to obtain long-term debt financing as of the Valuation Date.

KPMG determined a WACC of 15.5%. Please see Schedule 2 for the detail WACC calculation.

Cost of Equity

The cost of equity capital (Ke) was calculated using the capital asset pricing model (CAPM). The CAPM formula for estimating the cost of equity capital is as follows:

$$Ke = Rf + [\ \beta * (Rm - Rf)\ ] + Sp$$

Ke = Cost of equity

Rf = Risk-free rate of return; based on the current rate on 30-year U.S. Treasury bonds at the Valuation Date.

β = Beta; a measure of the volatility of a stock's return relative to the market, which was based on an analysis of guideline company betas as of the Valuation Date.

Rm-Rf = Market risk premium; based on projected equity risk premiums.

Sp = The specific premium considers non-diversifiable risks including, but not limited to, size, operational and functional risk.

Cost of Debt

The cost of debt capital was estimated by examining the yield on Baa corporate bonds at the Valuation Date. This cost of debt capital was tax-affected in order to apply the rates of return on all capital consistently on an after-tax basis.

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Business Enterprise Value

Weighted Average Return on Assets

The IRR is the return Management expects to earn on its investment in MLI. It is also the total after-tax return that must be earned by the acquired tangible and intangible assets.

The acquired tangible and intangible assets must earn a fair return on the funds invested in them in order to create shareholder value. The assets' required returns increase with their inherent risk. The fixed assets have lower specific asset risk compared to the intangible assets, and therefore have a lower return. The intangible assets and goodwill have higher risk profiles and thus require higher returns than tangible assets. The sum of the assets' weighted returns should approximate the overall rate of return that a market participant expects to earn on its investment in the business. KPMG computed a weighted average return on assets (WARA) of 15.5%. Net working capital was adjusted to represent the amount of net working capital required to operate the business on a normalized level.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Trade Name Valuation

Trade Name Overview

The MLI trade name dates back to its founding in 1966 and is recognized as a leading utility engineering contractor.

Valuation Approach

KPMG valued the MLI trade name by applying the Relief-from-Royalty Method (RFRM) under the Income Approach. This method derives value as a function of the projected revenues attributable to the trade name under analysis, the royalty rate that would hypothetically be charged by a licensor to a licensee of the trade name and an appropriate discount rate to reflect the inherent risk of the projected cash flows attributable to the intangible asset.

Projected Revenues

Projected revenues reflect the future revenues to be generated in conjunction with the respective trade name. Under the RFRM, the FV is equal to the costs avoided by not having to pay an amount equal to the royalty rate times the forecasted revenues for the use of the intangible asset.

For MLI, all revenues were associated with the MLI trade name.

Royalty Rate

In determining the royalty rate to be utilized for the MLI trade name, KPMG considered several factors that affect the intrinsic royalty rate that would hypothetically be paid for the trade name. The most important factors include:

- The overall role and importance of trade name in the particular industry. For example, a trade name tend to be more important in products/services sold directly to consumer than products/services sold to businesses;
- The profitability of the products/services utilizing the intangible asset. Everything else equal, a trade name associated with products/services that achieve higher margins in a given market are more likely to attract higher royalty rates when licensed; and,
- The position of the trade name in a given market segment. Market leaders in a given segment will typically have higher brand recognition due to their relative size.

Based on discussions with Management and market observed royalty rates for similar assets, which indicated a royalty range of 1% to 3%, KPMG estimated a pre-tax royalty rate of 2.5% for the MLI trade name. Management also indicated that the MLI trade name would be phased out over the next 5 years. As such, the selected pre-tax royalty rate was stepped down by 20.0% in each of the projected years.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Trade Name Valuation

Discount Rate

The discount rate applied to the trade name's cash flows must reflect the risk of an investment in the asset. KPMG applied a discount rate of 17.0% for the MLI trade name. The above mentioned discount rate includes a 1.5% premium to the WACC since it was a reasonable expectation that the risk profile of the trade name would be higher than the overall risk profile of the business.

Tax Amortization Benefit

According to Internal Revenue Code section 197, most intangible property may be ratably amortized over 15 years. As such, there is a tax benefit associated with the acquisition of intangible assets. The benefit is the value based on the ability of an owner of an intangible asset to amortize that value over 15 years for tax purposes. By amortizing the asset, the owner is able to reduce taxes in each of the years of amortization. This benefit is fully available to owners who establish a new tax basis in the asset, typically through a "taxable" purchase transaction.

15

The following formula provides a means by which the tax benefits are captured in the overall value of the amortizable intangible asset.

30,000 32,000 15 15 40.5%

Value = PVC + PVC * [RL/(RL-PVF*Tr)-1]

15.5

PVC = Present value of the future economic benefits derived from commercial exploitation excluding 197 benefit

RL = Remaining life period over which the property will generate economic benefits and will be amortized

Tr = Effective tax rate

PVF = Present value factor of a $1 annuity over the amortization period at the discount rate used to value the asset.

Conclusion of Value

Based on the Income Approach described above, the FV of the MLI trade name, as of the Valuation Date, was approximately $4.2 million.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Customer Relationships Valuation

Customer Relationships Overview

MLI has developed an outstanding client base that consists of many natural gas and petroleum utility providers. Many of MLI's customers are recurring customers, which Management indicated MLI would continue to service after the Valuation Date.

Qualification as an Intangible Asset

It is generally accepted that in order for a customer relationship to exist as an identifiable intangible asset, two elements must exist:

- Existence of a relationship between the customer and the vendor; and,
- Documentation regarding the relationship that would be useful to the buyer of the intangible.

Valuation Approach

KPMG valued MLI's customer relationships using the Excess Earnings Method under the Income Approach. This method reflects the present value of the operating cash flows generated by existing customer relationships after taking into account the cost to realize the revenue, and an appropriate discount rate to reflect the time value and risks associated with the invested capital.

Projected Revenues and Operating Cash Flows

The value of the customer relationships were based on projected revenues associated with existing customers, less any revenue associated with the backlog and less an attrition factor to capture expected turnover of the existing customer base.

To project an attrition rate, KPMG examined MLI's historical sales by customer for the fiscal years 2007 through 2010. Due to the buying pattern of Minnesota's customers, a year-over-year attrition rate calculation was not meaningful and more qualitative measures were utilized. Based on discussions with Management and the quantitative measures, an expected attrition rate of 5% was selected. This low attrition rate is consistent with the longevity of the business and the strength of the MLI trade name in the marketplace.

After deducting revenue for the expected attrition, KPMG utilized the overall operating margin adjusted by an add-back of 50% of sales and marketing expenses associated with acquiring new customers, as provided by Management. After adjusting the operating margin, taxes were deducted at a rate of 40.5%.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Customer Relationships Valuation

Contributory Asset Charges

The revenue earned by the customer relationships represent the return on all the assets employed in the generation of those revenues, including tangible and intangible assets. The total return earned by the customer relationships must provide a return on each acquired asset that is consistent with the value and the relative risk of that asset. To value separately the customer relationships, the value and required rate of return for other contributory assets must be determined. The required returns on these other assets are "charged to" (deducted from) the cash flow in the model to determine the returns specially earned by the asset.

As part of KPMG's analysis, KPMG estimated individual rates of return applicable to each acquired asset class and estimated the effective "capital charge" to be applied to the cash flows generated by the acquired customer relationships. The asset classes identified for MLI were: net working capital, fixed assets, MLI trade name and assembled workforce.

Discount Rate

The discount rate applied to the customer relationship cash flows must reflect the risk of an investment in the asset. KPMG applied a discount rate of 17.5% for the customer relationships. The above mentioned discount rate includes a 2.0% premium to the WACC. It was a reasonable expectation that the risk profile of the customer relationships intangible asset would be higher than the business.

Tax Amortization Benefit

As previously discussed, a tax amortization benefit was applied to the after tax cash flows of the customer relationships to arrive at the FV.

Conclusion of Value

Based on the Income Approach described above, the FV of the MLI customer relationships, as of the Valuation Date, were approximately $14.6 million.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Backlog Valuation

Backlog Overview

As of the Valuation Date, MLI had entered into contractual agreements with several contractors to perform engineering and construction services. At the time of acquisition, MLI had a backlog of approximately 16 active contracts.

Valuation Approach

KPMG valued MLI's backlog using the Excess Earnings Method under the Income Approach. This method reflects the present value of the operating cash flows generated by the backlog after taking into account the cost to realize the revenue, and an appropriate discount rate to reflect the time value and risks associated with the invested capital.

Projected Revenues and Operating Cash Flows

Backlog revenue was provided by Management, as well as the expected completion date for each contract.

A key distinction of the valuation of contracts is that certain costs have already been incurred (e.g. sales and marketing expenses), so the realized margins on the contracts may differ from the margins on future projects that have yet to be sold. Given that the contracts were in place as of the Valuation Date, 100% of sales and marketing expenses were added back, as these costs were incurred prior to acquisition. Taxes were then deducted at a rate of 40.5%.

Contributory Asset Charges

As part of KPMG's analysis, KPMG estimated individual rates of return applicable to each acquired asset class and estimated the effective "capital charge" to be applied to the cash flows generated by the acquired customer relationships. The asset classes identified for MLI were: net working capital, fixed assets, MLI trade name and assembled workforce.

Discount Rate

The discount rate applied to the customer relationship cash flows must reflect the risk of an investment in the asset. KPMG applied a discount rate of 17.0% for the backlog. The above mentioned discount rate includes a 1.5% premium to the WACC. It was a reasonable expectation that the risk profile of the backlog intangible asset would be higher than the business.

Tax Amortization Benefit

As previously discussed, a tax amortization benefit was applied to the after tax cash flows of the backlog to arrive at the fair value.

Conclusion of Values

Based on the Income Approach described above, the FV of the MLI backlog, as of the Valuation Date, was approximately $0.3 million.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Assembled Workforce Valuation

DRAFT

Although the assembled workforce was identified and valued for the purposes of determining appropriate contributory asset charges utilized in the Excess Earnings Method to value the customer relationships and backlog, ASC Topic 805 does not require that its value be reported separately from goodwill. As such, KPMG has not segregated the value of the assembled workforce for allocation purposes, but has used the value for contributory asset charge purposes only.

MLI Assembled Workforce Overview

To achieve the revenue expected in the projections, Management indicated that approximately 330 employees would be required on average throughout the year. These employees can be categorized into the following groups:

- Shop Managers
- Shop Labor
- Transportation
- Executive
- Director
- Managers
- Accounting Administration
- Senior Project Manager
- Project Manager
- Project Manager Administration
- Office Administration
- Safety Manager
- Safety Coordinators
- Union Hall
- Foreman

Valuation Approach

KPMG valued the assembled workforces by applying the Cost Savings Method under the Cost Approach. Using this method, the workforce was valued by calculating the costs Vectren would avoid by obtaining a pre-existing, trained and fully efficient team rather than incurring the costs to assemble and train this workforce. The savings realized include the following avoided costs.

Avoided Recruiting Costs

By purchasing an assembled workforce, Vectren avoided costs of identifying, recruiting and interviewing the appropriate staff. KPMG estimated these costs based upon discussions and information provided by Management. These rates were applied to the number of acquired employees in each category to estimate the total recruiting savings realized by Vectren for MLI.

Avoided Training Costs and Loss of Productivity

New employees usually require a formal and on-the-job training, which is an explicit cost of assembling a workforce. In addition, new employees usually require a period of time to reach full productivity and are therefore not as efficient as seasoned employees. This period of lower productivity represents an implicit cost of assembling a workforce.

Tax Amortization Benefit

As previously discussed, a tax amortization benefit was applied to the after tax cash flows of the customer relationships to arrive at the fair value.

Conclusion of Value

Based on the Cost Approach described above, the FV of the MLI assembled workforce, as of the Valuation Date, was approximately $3.7 million.

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Conclusion of Value

The following table summarizes KPMG's estimate of FV for the Subject Assets as of the Valuation Date in connection with Vectren's acquisition of MLI:

Minnesota Ltd, Inc.

Subject Asset	Fair Value ($US thousands)	Schedule Number
Trade Name	4,241	6
Customer Relationships	14,588	7
Backlog	287	8

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Appendix A – Appraisal Certification

We hereby, to our best knowledge and belief, certify the following statements regarding this opinion:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions, and is our personal, impartial, unbiased professional analyses, opinions, and conclusions.
- We have no present or prospective interest in the property that is the subject of this report, and we have no personal interest with respect to the parties involved.
- We have no bias with respect to the subject matter of this report or to the parties involved with this engagement.
- Our compensation for this engagement is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the Company, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this report.
- Our engagement for the provision of services was not contingent upon developing or reporting predetermined results.
- Our analyses, opinions, and conclusions were developed, and this report has been prepared in conformity with, generally accepted standards and are subject to the requirements of the code of professional ethics and standards of professional conduct of the professional appraisal organizations of which we are members.
- We are in compliance with the certification programs of the professional appraisal organizations of which we are members.
- Our analyses, opinions, or conclusions were developed, and this report has been prepared in conformity with the AICPA Statement on Standards for Valuation Services.
- The persons listed below provided significant professional assistance to the persons signing this certification.

DRAFT

DRAFT

____

D. Eric Greenwald
Partner

Assisted By:
Brad Hirsch, Senior Manager
Steven Wise, Senior Associate

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Appendix B – Sources of Information

- Historical and projected financial information provided by Management.
- Discussions with Management.
- Presentations and documents provided by Management.
- Capital IQ.
- Datamonitor.
- Economist Intelligence Unit.
- Bloomberg.
- *Stocks, Bonds, Bills and Inflation 2010 Yearbook*, Ibbotson Associates, Inc., Chicago, Illinois.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Appendix C – Limiting Assumptions

KPMG LLP
Valuation Services Limiting Assumptions

DRAFT

- **Nature of Opinion.** Neither our opinion nor our report are to be construed as a fairness opinion as to the fairness of an actual or proposed transaction, a solvency opinion, or an investment recommendation, but, instead, are the expression of our determination of the fair [market] value of the Subject Assets between a hypothetical willing buyer and a hypothetical willing seller in an assumed transaction on an assumed valuation date. For various reasons, the price at which the Subject Assets might be sold in a specific transaction between specific parties on a specific date might be significantly different from the fair [market] value expressed in our report.

- **Going Concern Assumption, No Undisclosed Contingencies.** Our analysis (i) assumes that as of the Valuation Date the Company and its assets will continue to operate as configured as a going concern; (ii) is based on the past and present financial condition of the Company and its assets as of the Valuation Date; and (iii) assumes that the Company had no undisclosed real or contingent assets or liabilities, no unusual obligations or substantial commitments, other than in the ordinary course of business, nor had any litigation pending or threatened that would have a material effect on our analysis.

- **Reliance on Forecasted Data.** Any use of management's projections or forecasts in our analysis does not constitute an examination or compilation of prospective financial statements in accordance with standards established by the American Institute of Certified Public Accountants ("AICPA"). We do not express an opinion or any other form of assurance on the reasonableness of the underlying assumptions or whether any of the prospective financial statements, if used, are presented in conformity with AICPA presentation guidelines. Further, there will usually be differences between prospective and actual results because events and circumstances frequently do not occur as expected and those differences may be material.

- **Verification of Legal Description or Title.** We have made no investigation of legal description or title and have assumed that owner(s) claims to property are valid. No consideration will be given to liens or encumbrances which may be against the property except as specifically stated as part of the financial statements you provide to us as part of this engagement. Full compliance with all applicable federal, state and local zoning, environmental, and similar laws and regulations is assumed, unless otherwise stated, and responsible ownership and competent management are assumed.

- **Verification of Hazardous Conditions.** We will not investigate the extent of any hazardous substances that may exist as we are not qualified to test for such substances or conditions. If the presence of such substances, such as asbestos, urea formaldehyde foam insulation or other hazardous substances or environmental conditions may effect the value of the property, the value will be estimated predicated on the assumption that there is no such condition on or in the property or in such proximity thereto that it would cause a loss in value. No responsibility will be assumed for any such conditions, or for any expertise or engineering knowledge required to discover them.

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

Appendix C – Limiting Assumptions

- **Condition of Property.** We assume no liability whatsoever with respect to the condition of the subject property for hidden or unapparent conditions, if any, of the subject property, subsoil or structures, and further assume no liability or responsibility whatsoever with respect to the correction of any defects which may now exist or which may develop in the future. Equipment components considered, if any, were assumed to be adequate for the needs of the property's improvements, and in good working condition, unless otherwise reported.

- **Zoning.** It is assumed that all public and private zoning and use restrictions and regulations had been complied with, unless nonconformity was stated, defined and considered in the report.

- **The Americans with Disabilities Act ("ADA").** The ADA became effective January 26, 1992. We will not make a specific compliance survey and analysis of this property to determine whether or not it is in conformity with the various detailed requirements of the ADA. It is possible that a compliance survey of the property, together with a detailed analysis of the requirements of the ADA, could reveal that the property is not in compliance with one or more requirements of the ADA. If so, this fact could have a negative effect upon the value of the property. Since we have no direct evidence relating to this issue, we will not consider possible non-compliance with the requirements of the ADA in estimating the value of the property.

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Appendix D – Schedules

DRAFT

[Intentionally left blank]

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

/2022 4:43:00 PM

Vectren Corporation

DRAFT - For Discussion Purposes Only

Minnesota Ltd, Inc.

Valuation of Certain Identifiable Intangible Assets

List of Schedules

As of March 30, 2011

($US Thousands)

Schedule 1 Purchase Price Allocation Summary

Schedule 2 Weighted-Average Cost of Capital: CAPM Approach

Schedule 3 Guideline Public Company Descriptions

Schedule 4 Fair Value Balance Sheet

Schedule 5 Implied Internal Rate of Return Calculation

Schedule 6 Fair Value of Trade Name

Schedule 7 Fair Value of Customer Relationships

Schedule 8 Fair Value of Backlog

Schedule 9 Fair Value of Assembled Workforce

DRAFT

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

/2022 4:43:00 PM

Vectren Corporation

DRAFT - For Discussion Purposes Only
Schedule 1

Minnesota Ltd, Inc.
Valuation of Certain Identifiable Intangible Assets
Purchase Price Allocation Summary
As of March 30, 2011
($US Thousands)

	Fair Value	% of Fair Value Allocated
[1] **Total Cash Consideration**	**83,877**	
[1] Plus: US Bank Equipment loans	5,176	
[1] **Total Purchase Consideration**	**89,053**	
Allocated as Follows:		
[2] Net Working Capital	15,248	17.12%
[3] Fixed Assets	34,396	38.62%
Customer Relationship	14,588	16.38%
Backlog	287	0.32%
Trade Name	4,241	4.76%
Assembled Workforce	3,670	4.12%
[4] Implied Goodwill (excluding AWF)	16,622	18.67%
	89,053	**100.00%**
Total Implied Goodwill		
Assembled Workforce	3,670	
[4] Implied Goodwill (excluding AWF)	16,622	
	20,292	

DRAFT

Notes:

[1] Provided by Management.

[2] Assumes that fair value equals book value; as provided by Management.

[3] Reflects the fair value of the fixed assets as provided by Management; this value was not independently verified by KPMG.

[4] The implied goodwill balance presented above may not necessarily be equal to the total amount of goodwill implied by the transaction as it excludes the fair value of the assembled workforce, which was separately valued for contributory asset charge purposes only, and may exclude closing accounting adjustments to be made by Vectren Corporation.

[5] Remaining useful economic life does not represent amortizable life. The determination of the amortizable life of each asset is an accounting policy and beyond the scope of this analysis.

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

/2022 4:43:00 PM

Vectren Corporation

DRAFT - For Discussion Purposes Only

Minnesota Ltd, Inc.

Schedule 2

Valuation of Certain Identifiable Intangible Assets

Weighted-Average Cost of Capital: CAPM Approach

As of March 30, 2011

Guideline Company	Country	Observed Beta [1]	Debt Equity	Debt TIC	Effective Tax Rate	Unlevered Beta	Re-Levered Beta
Energy Services of America Corporation	United States	0.45	81.8%	45.0%	40.0%	0.30	0.35
MasTec, Inc.	United States	1.26	25.1%	20.1%	40.0%	1.10	1.26
Matrix Service Co.	United States	1.57	0.2%	0.2%	33.0%	1.56	1.80
Primoris Services Corporation	United States	0.93	20.5%	17.0%	39.6%	0.83	0.95
Willbros Group Inc.	United States	1.86	74.3%	42.6%	40.0%	1.28	1.47
Maximum		1.86	81.8%	45.0%	40.0%	1.56	1.80
Average		1.21	40.4%	25.0%	38.5%	1.02	1.17
Median		1.26	25.1%	20.1%	40.0%	1.10	1.26
Minimum		0.45	0.2%	0.2%	33.0%	0.30	0.35
Selected			**25.0%**	**20.0%**	**40.5%**	**1.10**	**1.26**

DRAFT

Cost of Equity (KE)

Risk Free Rate [2]	+	Beta [3]	x	Equity Risk Premium [4]	+	Specific Premium [5]	=	Cost of Equity
4.52%		**1.26**		**6.0%**		**6.5%**		**18.6%**

After-Tax Cost of Debt (KD)

Pre-Tax Cost of Debt [6]	X	(1 - Tax Rate)	=	After-Tax Cost of Debt
6.06%		**59.5%**		**3.6%**

Weighted Average Cost of Capital

	Capital Structure [7]	Cost of Capital	Contribution
Debt	20.0%	3.6%	0.7%
Equity	80.0%	18.6%	14.9%

WACC (rounded) = 15.5%

Notes:

[1] Observed betas represent two-year weekly betas.

[2] The risk free rate is based on the yield of 30 year treasury bonds on the Valuation Date as published in the Federal Reserve Statistical Release.

[3] Selected beta takes into account differences in leverage between the subject company and the publicly traded guideline companies.

[4] The equity risk premium was selected based on KPMG's review of recently published articles, academic studies and surveys that attempt to quantify the expected equity risk premium for U.S. common stocks.

[5] The specific premium considers non-diversifiable risks including, but not limited to, size, operational and functional risk.

[6] The pretax cost of debt is based on the yield of Baa corporate bonds on the Valuation Date as published in the Federal Reserve Statistical Release.

[7] Capital structure based on levels typical in Minnesota Ltd, Inc.'s industry.

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

/2022 4:43:00 PM

Vectren Corporation
Minnesota Ltd, Inc.
Valuation of Certain Identifiable Intangible Assets
Guideline Public Company Descriptions
As of March 30, 2011

DRAFT - For Discussion Purposes Only
Schedule 3
Page 1 of 2

Energy Services of America Corporation (AMEX:ESA)

Primary Industry: Oil and Gas Equipment and Services

Energy Services of America Corporation, through its subsidiaries, provides contracting services for energy related companies in the United States. It engages in the construction, replacement, and repair of natural gas pipelines and storage facilities for utility companies and private natural gas companies; and construction of interstate and intrastate pipelines. The company also provides various services relating to pipeline, storage facilities, and plant work for the oil industry; and a range of electrical installations and repairs for the electrical industry, including substation and switchyard services, site preparation, packaged buildings, transformers, and other ancillary work. In addition, it offers general electrical services for power companies and other industrial applications. Further, the company involves in liquid pipeline construction, pump station construction, production facility construction, and water and sewer pipeline installations, as well as provides maintenance and repair services related to pipeline construction. Energy Services of America Corporation serves various customers located primarily in West Virginia, Virginia, Ohio, Kentucky, and North Carolina. The company was formerly known as Energy Services Acquisition Corp. Energy Services of America Corporation was incorporated in 2006 and is based in Huntington, West Virginia.

MasTec, Inc. (NYSE:MTZ)

Primary Industry: Construction and Engineering

MasTec, Inc. operates as a specialty contractor in the United States. It involves in the building, installation, maintenance, and upgrade of utility and communications infrastructure. The company builds wind farms, solar farms, and underground and overhead distribution systems, such as trenches, conduits, cable, power lines, and pipelines, which provide wireless and wireline communications, electrical power generation and delivery, and natural gas, crude oil, and refined products transport. It also installs buried and aerial fiber optic cables, coaxial cables, copper lines, electrical and other energy distribution systems, transmission systems, and satellite dishes, as well as deploys and manages network connections. In addition, MasTec offers regular maintenance of distribution facilities and networks, as well as provides emergency services for accidents or storm damage. It serves utility, communications, and government customers. The was founded in 1929 and is headquartered in Coral Gables, Florida.

Matrix Service Co. (NasdaqGS:MTRX)

Primary Industry: Oil and Gas Equipment and Services

Matrix Service Company provides construction, and repair and maintenance services primarily to the energy and energy related industries in the United States and internationally. The company operates in two segments, Construction Services, and Repair and Maintenance Services. The Construction Services segment offers aboveground storage tanks for the bulk storage/terminal industry, capital construction for the downstream petroleum industry, and specialty construction, as well as electrical/instrumentation services, such as civil/structural, mechanical, piping, electrical and instrumentation, millwrighting, and fabrication for various industries. This segment focuses on renovations, retrofits, modifications, and expansions to existing facilities, as well as construction of new facilities. The Repair and Maintenance Services segment provides aboveground storage tank repair and maintenance services, including tank inspection, cleaning, and American Society of Mechanical Engineers code repairs; planned major and routine maintenance for the downstream petroleum industry; specialty repair and maintenance services; and electrical and instrumentation repair and maintenance. Matrix Service Company was founded in 1989 is headquartered in Tulsa, Oklahoma.

Primoris Services Corporation (NasdaqGS:PRIM)

Primary Industry: Construction and Engineering

Primoris Services Corporation, through its subsidiaries, provides construction, fabrication, maintenance, replacement, and engineering services to public utilities, petrochemical companies, energy companies, and municipalities primarily in the United States and Canada. The company operates through two segments, Construction Services and Engineering. The Construction Services segment specializes in a range of services, including designing, building/installing, replacing, repairing/rehabilitating, and providing management services for construction related projects. Its services comprise providing installation of underground pipeline, cable, and conduits; and installation and maintenance of industrial facilities for entities in the petroleum, petrochemical, and water industries. This segment also offers installation of complex commercial and industrial cast-in-place structures; and earthwork and site development, site remediation, and mining support services. In addition, it provides heavy civil construction projects, including highway and bridge construction, concrete paving, levee construction, airport runway and taxiway construction and, marine facility construction. The Engineering segment specializes in designing, supplying, and installing furnaces, heaters, burner management systems, and related combustion and process technologies for clients in the oil refining, petrochemical, and power generation also offers turnkey project management and custom engineering solutions. Primoris Services Corporation was founded in 1946 and is headquartered in Dallas, Texas with an additional office in Lake Forest, California.

DRAFT

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

KPMG

/2022 4:43:00 PM

Willbros Group Inc. (NYSE:WG)

Primary Industry: Oil and Gas Equipment and Services

Willbros Group, Inc. provides engineering, procurement, and construction services to the oil and gas, refinery, petrochemical, and power industries primarily in the United States, Canada, and Oman. It operates through two segments: Upstream Oil and Gas, and Downstream Oil and Gas. The Upstream Oil and Gas segment provides engineering, procurement, and construction (EPC) services to design, build, or replace large-diameter cross-country pipelines; fabricate engineered structures, process modules, and facilities; and build oil and gas production facilities, pump stations, flow stations, gas compressor stations, gas processing facilities, gathering lines, and related facilities. The Downstream Oil and Gas segment provides specialty construction, turnaround, repair, and maintenance services to the downstream energy infrastructure market, which primarily consists of oil companies, independent refineries, product terminals, and petrochemical companies; and to EPC firms, independent power producers, government entities, specialty process facilities, and ammonia and fertilizer manufacturing plants and facilities. This segment offers manufacturing services for process heaters, heater coils, alloy piping, specialty components, and other equipment for installation in oil refineries; heater services, including design, manufacture, and installation of fired heaters in refining and process plants; tank services for the construction, maintenance, or repair of petroleum storage tanks located; safety services for supplementing a refinery's safety personnel, and permitting and providing safety equipment; government services through building and managing fueling and other fueling systems; evaluation, maintenance, and building petroleum, oil, and lubricant facilities; and EPC services through program management and EPC project services. The company was founded in 1908 and is headquartered in Texas.

DRAFT

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

/2022 4:43:00 PM

Vectren Corporation

DRAFT - For Discussion Purposes Only

Schedule 4

Minnesota Ltd, Inc.

Valuation of Certain Identifiable Intangible Assets

Fair Value Balance Sheet

As of March 30, 2011

($US Thousands)

[Unaudited]

Fair Value of Balance Sheet Items		B/S as of 3/30/2011 [1]	Adjustments	Closing Fair Value
Current Assets				
Cash	[2]	445	-	445
Accounts Receivable	[2]	19,102	-	19,102
Retainage Receivable	[2]	1,116	-	1,116
Accrued Job Revenue	[2]	916	-	916
Other Current Assets	[2]	400	-	400
Total Current Assets		**21,978**	-	**21,978**
Long-Term Assets				
Fixed Assets	[3]	34,396	-	34,396
Goodwill		20,232	61	20,292
Intangibles		19,177	(61)	19,116
Total Long-Term Assets		**73,805**	-	**73,805**
Total Assets		**95,783**	-	**95,783**
Current Liabilities				
Accounts Payable	[2]	3,562	-	3,562
Accrued Expenses	[2]	1,503	-	1,503
Other Payables	[2]	421	-	421
Billing in Excess of Costs	[2]	1,244	-	1,244
Total Current Liabilities		**6,730**	-	**6,730**
Long-Term Liabilities				
US Bank Equipment Finance Loans	[2]	5,176	-	5,176
Total Long-Term Liabilities		**5,176**	-	**5,176**
Total Liabilities		**11,906**	-	**11,906**
Implied Equity		**83,877**	-	**83,877**
Total Liabilities & Implied Equity		**95,783**	-	**95,783**

Net Working Capital (Current)	
Current Assets	21,978
Current Liabilities	6,730
Net Working Capital (Current)	**15,248**

DRAFT

Notes:

[1] Balance sheet as provided by Management.

[2] Assumes that fair value equals book value; as provided by Management.

[3] Reflects the fair value of the fixed assets as provided by Management; this value was not independently verified by KPMG.

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

/2022 4:43:00 PM

KPMG Draft Val

Vectren Corporation

DRAFT - For Discussion Purposes Only

Schedule 5

Minnesota Ltd, Inc.

Valuation of Certain Identifiable Intangible Assets

Implied Internal Rate of Return Calculation

As of March 30, 2011

($US Thousands)

DRAFT

	[Unaudited]						
	Actual	Projected [1]					Terminal
	31-Dec-10	31-Dec-11	31-Dec-12	31-Dec-13	31-Dec-14	31-Dec-15	Year [4]
[1] **Revenues**	**100,200**	**105,242**	**110,504**	**116,029**	**121,831**	**127,922**	**131,120**
Revenue Growth %	*n/a*	*5.0%*	*5.0%*	*5.0%*	*5.0%*	*5.0%*	*2.5%*
[1] Cost of Goods	82,022	85,106	89,565	94,228	99,117	104,241	106,847
Gross Margin	**18,178**	**20,136**	**20,939**	**21,802**	**22,714**	**23,682**	**24,274**
Gross Margin %	*18.1%*	*19.1%*	*18.9%*	*18.8%*	*18.6%*	*18.5%*	*18.5%*
[1] Operating Expenses	8,124	7,610	7,973	8,357	8,759	9,181	5,762
Operating Income (EBIT)	**10,054**	**12,526**	**12,966**	**13,445**	**13,955**	**14,501**	**18,512**
Operating Income %	*10.0%*	*11.9%*	*11.7%*	*11.6%*	*11.5%*	*11.3%*	*14.1%*
[1] Income Taxes @ 40.5%	4,074	5,076	5,254	5,448	5,655	5,876	7,502
Net Operating Income	**5,980**	**7,450**	**7,711**	**7,996**	**8,300**	**8,624**	**11,010**
Net Operating Income %	*6.0%*	*7.1%*	*7.0%*	*6.9%*	*6.8%*	*6.7%*	*8.4%*
Free Cash Flow Adjustments:							
[2] Depreciation		4,250	4,750	5,250	5,750	6,250	3,075
[1] Incremental Net Working Capital		5,453	(2,000)	(1,400)	(1,500)	(1,400)	(391)
[2] Capital Expenditures		(3,000)	(3,000)	(3,000)	(3,000)	(3,000)	(3,075)
Debt Free Cash Flow		**14,153**	**7,461**	**8,846**	**9,550**	**10,474**	**10,619**
[3] **Terminal Value**							**81,583**
[4] Partial Period Factor		0.7562	1.0000	1.0000	1.0000	1.0000	1.0000
[5] Discount Period		0.3781	1.2562	2.2562	3.2562	4.2562	4.2562
Discount Factor @ 15.5% IRR		0.9469	0.8343	0.7222	0.6252	0.5412	0.5412
Discounted Cash Flow		**11,393**	**6,225**	**6,389**	**5,971**	**5,669**	**44,155**
Sum of Discounted Cash Flows		35,646					
Present Value of Terminal Value		44,155					
[6] Depreciation Overhang		2,724					
[7] Tax Amortization Benefit		6,528					
[8] **Implied Business Enterprise Value for IRR**		**89,053**					
Implied Internal Rate of Return (IRR)		15.5%					

3750
next 5

Tax Amortization Benefit	
Sum of PV of Cash Flows, Terminal Value and Overhang	82,526
Less: Tangible Net Assets	(49,644)
Intangible Asset and Goodwill Step-Up	32,881
Tax Amortization Benefit	**6,528**
Intangible Assets and Goodwill Stepped-Up to FV	39,409
Add: Tangible Net Assets	49,644
Implied Business Enterprise Value for IRR	**89,053**

/85 22,000 x 40.5 =
→ 8,900
15 yrs
15.5%

Notes:

[1] Provided by Management.

[2] Assumes capital expenditures would equal depreciation and amortization in terminal year.

[3] Calculated using the Gordon Growth Model with a terminal growth rate of 2.5%.

[4] Partial period factor applied to 2011 cash flow.

[5] Assumes mid-period cash flow receipts.

[6] Represents the present value of the remaining depreciation tax shield associated with the step up in fixed assets.

[7] Calculated using an income tax rate of 40.5% and based on the US tax amortization benefit factor.

[8] Implied business enterprise value represents the fair value of the business operations applicable to all owners (debt and equity).

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

KPMG

/2022 4:43:00 PM

KPMG Draft Val

Vectren Corporation

DRAFT - For Discussion Purposes Only
Schedule 6

Minnesota Ltd, Inc.
Valuation of Certain Identifiable Intangible Assets
Fair Value of Trade Name
As of March 30, 2011
($US Thousands)

	Projected [1]				
	31-Dec-11	31-Dec-12	31-Dec-13	31-Dec-14	31-Dec-15
[1] **Total Revenue**	**105,242**	**110,504**	**116,029**	**121,831**	**127,922**
Revenue Growth %		*5.0%*	*5.0%*	*5.0%*	*5.0%*
[2] After-Tax Royalty Rate	1.50%	1.20%	0.90%	0.60%	0.30%
After-Tax Relief-from-Royalty	**1,579**	**1,326**	**1,044**	**731**	**384**
[3] Partial Period	0.7562	1.0000	1.0000	1.0000	1.0000
[4] Discount Period	0.3781	1.2562	2.2562	3.2562	4.2562
Discount Factor @ 17.0%	0.9424	0.8210	0.7017	0.5998	0.5126
Present Value of Cash Flows	**1,125**	**1,089**	**733**	**438**	**197**
Cumulative Present Value %	*31.4%*	*61.8%*	*82.3%*	*94.5%*	*100.0%*
Sum of PV	**3,582**				
[5] Tax Amortization Benefit	660				
Fair Value	**4,241**				

DRAFT

Notes:

[1] Provided by Management.
[2] Royalty rate of 1.5% is stepped down 20.0% per year based upon Management's expected use of the Minnesota Ltd, Inc. trade name.
[3] Partial period factor applied to 2011 cash flow.
[4] Assumes mid-period cash flow receipt.
[5] Calculated using an income tax rate of 40.5% and based on the US tax amortization benefit factor.

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

KPMG

/2022 4:43:00 PM

Vectren Corporation

DRAFT - For Discussion Purposes Only
Schedule 7
Page 1 of 2

Minnesota Ltd, Inc.
Valuation of Certain Identifiable Intangible Assets
Fair Value of Customer Relationships
As of March 30, 2011
($US Thousands)

	Projected [1]											
	31-Dec-11	31-Dec-12	31-Dec-13	31-Dec-14	31-Dec-15	31-Dec-16	31-Dec-17	31-Dec-18	31-Dec-19	31-Dec-20	31-Dec-21	31-Dec-22
[1] **Revenues**	**105,242**	**109,452**	**113,872**	**118,513**	**123,386**	**125,945**	**128,567**	**131,255**	**134,010**	**136,834**	**139,729**	**142,696**
Less: Contract Backlog	8,943	-	-	-	-	-	-	-	-	-	-	-
Net Revenues	**96,299**	**109,452**	**113,872**	**118,513**	**123,386**	**125,945**	**128,567**	**131,255**	**134,010**	**136,834**	**139,729**	**142,696**
[2] Attrition Factor	98.1%	93.8%	89.1%	84.7%	80.4%	76.4%	72.6%	69.0%	65.5%	62.2%	59.1%	56.2%
Net Revenues	**94,479**	**102,681**	**101,486**	**100,341**	**99,244**	**96,237**	**93,328**	**90,516**	**87,795**	**85,163**	**82,616**	**80,152**
Net Revenue Growth %		*8.7%*	*-1.2%*	*-1.1%*	*-1.1%*	*-3.0%*	*-3.0%*	*-3.0%*	*-3.0%*	*-3.0%*	*-3.0%*	*-3.0%*
[3] Cost of Sales	76,402	83,224	82,417	81,634	80,871	78,421	76,051	73,759	71,542	69,397	67,322	65,314
Gross Margin	**18,077**	**19,456**	**19,069**	**18,708**	**18,373**	**17,816**	**17,278**	**16,757**	**16,253**	**15,766**	**15,294**	**14,838**
Gross Margin %	*19.1%*	*18.9%*	*18.8%*	*18.6%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*
[3] Operating Expenses	6,823	7,399	7,301	7,205	7,114	7,041	6,829	6,623	6,424	6,231	3,623	3,515
Operating Income	**11,253**	**12,057**	**11,768**	**11,502**	**11,259**	**10,775**	**10,449**	**10,134**	**9,829**	**9,535**	**11,672**	**11,323**
[4] *Operating Income %*	*11.9%*	*11.7%*	*11.6%*	*11.5%*	*11.3%*	*11.2%*	*11.2%*	*11.2%*	*11.2%*	*11.2%*	*14.1%*	*14.1%*
Less: Taxes @ 40.5%	4,560	4,886	4,769	4,661	4,563	4,366	4,234	4,107	3,983	3,864	4,730	4,589
Net Operating Income	**6,693**	**7,171**	**6,999**	**6,841**	**6,696**	**6,408**	**6,215**	**6,027**	**5,846**	**5,671**	**6,942**	**6,735**
Net Operating Income %	*7.1%*	*7.0%*	*6.9%*	*6.8%*	*6.7%*	*6.7%*	*6.7%*	*6.7%*	*6.7%*	*6.7%*	*8.4%*	*8.4%*
Contributory Asset Charges:												
Net Working Capital @ 0.7%	664	722	713	705	698	677	656	636	617	599	581	563
Fixed Assets @ 2.8%	2,621	2,849	2,815	2,784	2,753	2,670	2,589	2,511	2,436	2,363	2,292	2,224
Assembled Workforce @ 0.5%	511	555	549	542	536	520	504	489	475	460	447	433
Trade Name @ 0.9%	843	916	905	895	885	859	833	808	783	760	737	715
Contributory Asset Charges:	**4,639**	**5,042**	**4,983**	**4,927**	**4,873**	**4,725**	**4,582**	**4,444**	**4,311**	**4,181**	**4,056**	**3,935**
Contributory Asset Charges %	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*
Excess Earnings	**2,054**	**2,129**	**2,016**	**1,914**	**1,823**	**1,683**	**1,632**	**1,583**	**1,535**	**1,489**	**2,885**	**2,799**
Excess Earnings %	*2.2%*	*2.1%*	*2.0%*	*1.9%*	*1.8%*	*1.7%*	*1.7%*	*1.7%*	*1.7%*	*1.7%*	*3.5%*	*3.5%*
[5] Partial Period	0.7562	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
[6] Discount Period	0.3781	1.2562	2.2562	3.2562	4.2562	5.2562	6.2562	7.2562	8.2562	9.2562	10.2562	11.2562
Discount Factor @ 17.5%	0.9408	0.8166	0.6950	0.5915	0.5034	0.4284	0.3646	0.3103	0.2641	0.2248	0.1913	0.1628
Present Value of Cash Flows	**1,461**	**1,739**	**1,401**	**1,132**	**918**	**721**	**595**	**491**	**405**	**335**	**552**	**456**
Cumulative Present Value %	*11.8%*	*25.9%*	*37.2%*	*46.4%*	*53.8%*	*59.6%*	*64.4%*	*68.4%*	*71.7%*	*74.4%*	*78.9%*	*82.6%*

Sum of PV	**12,364**
[7] Tax Amortization Benefit	2,224
Fair Value	**14,588**

DRAFT

Notes:

[1] Revenue growth attributable to existing customers are expected to be approximately 80.0% of total revenue growth, as provided by Management.
[2] Annual attrition rate of 5.0% is based on information provided by Management. The first year was adjusted for average annual attrition and the partial period factor.
[3] Cost structure based on information provided Management. Includes an add-back for cost savings related to servicing an existing versus a future revenue base, as provided by Management.
[4] Assumes constant operating margin after the initial five-year projection period.
[5] Partial period factor applied to 2011 cash flow.
[6] Assumes mid-period cash flow receipt.
[7] Calculated using an income tax rate of 40.5% and based on the US tax amortization benefit factor.

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

/2022 4:43:00 PM

Vectren Corporation

DRAFT - For Discussion Purposes Only
Schedule 7
Page 2 of 2

Minnesota Ltd, Inc.
Valuation of Certain Identifiable Intangible Assets
Fair Value of Customer Relationships
As of March 30, 2011
($US Thousands)

						Projected [1]						
	31-Dec-23	31-Dec-24	31-Dec-25	31-Dec-26	31-Dec-27	31-Dec-28	31-Dec-29	31-Dec-30	31-Dec-31	31-Dec-32	31-Dec-33	31-Dec-34
[1] Revenues	**145,737**	**148,854**	**152,049**	**155,325**	**158,681**	**162,122**	**165,649**	**169,264**	**172,970**	**176,768**	**180,661**	**184,651**
Less: Contract Backlog	-	-	-	-	-	-	-	-	-	-	-	-
Net Revenues	**145,737**	**148,854**	**152,049**	**155,325**	**158,681**	**162,122**	**165,649**	**169,264**	**172,970**	**176,768**	**180,661**	**184,651**
[2] Attrition Factor	53.4%	50.7%	48.2%	45.8%	43.5%	41.3%	39.2%	37.3%	35.4%	33.6%	31.9%	30.4%
Net Revenues	**77,767**	**75,459**	**73,225**	**71,062**	**68,968**	**66,940**	**64,977**	**63,075**	**61,233**	**59,448**	**57,720**	**56,045**
Net Revenue Growth %	*-3.0%*	*-3.0%*	*-3.0%*	*-3.0%*	*-2.9%*	*-2.9%*	*-2.9%*	*-2.9%*	*-2.9%*	*-2.9%*	*-2.9%*	*-2.9%*
[3] Cost of Sales	63,370	61,490	59,669	57,906	56,200	54,548	52,948	51,398	49,897	48,443	47,034	45,670
Gross Margin	**14,397**	**13,969**	**13,556**	**13,155**	**12,768**	**12,392**	**12,029**	**11,677**	**11,336**	**11,005**	**10,685**	**10,375**
Gross Margin %	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*	*18.5%*
[3] Operating Expenses	3,410	3,309	3,211	3,116	3,024	2,935	2,849	2,766	2,685	2,607	2,531	2,458
Operating Income	**10,986**	**10,660**	**10,345**	**10,039**	**9,743**	**9,457**	**9,179**	**8,911**	**8,651**	**8,399**	**8,154**	**7,918**
[4] *Operating Income %*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*	*14.1%*
Less: Taxes @ 40.5%	4,452	4,320	4,192	4,068	3,948	3,832	3,720	3,611	3,506	3,404	3,305	3,209
Net Operating Income	**6,534**	**6,340**	**6,153**	**5,971**	**5,795**	**5,624**	**5,460**	**5,300**	**5,145**	**4,995**	**4,850**	**4,709**
Net Operating Income %	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*	*8.4%*
Contributory Asset Charges:												
Net Working Capital @ 0.7%	547	530	515	500	485	471	457	443	430	418	406	394
Fixed Assets @ 2.8%	2,157	2,093	2,031	1,971	1,913	1,857	1,803	1,750	1,699	1,649	1,601	1,555
Assembled Workforce @ 0.5%	420	408	396	384	373	362	351	341	331	321	312	303
Trade Name @ 0.9%	694	673	653	634	615	597	580	563	546	530	515	500
Contributory Asset Charges:	**3,818**	**3,705**	**3,595**	**3,489**	**3,386**	**3,287**	**3,190**	**3,097**	**3,006**	**2,919**	**2,834**	**2,752**
Contributory Asset Charges %	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*	*4.9%*
Excess Earnings	**2,716**	**2,635**	**2,557**	**2,482**	**2,409**	**2,338**	**2,269**	**2,203**	**2,138**	**2,076**	**2,016**	**1,957**
Excess Earnings %	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*	*3.5%*
[5] Partial Period	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000	1.0000
[6] Discount Period	12.2562	13.2562	14.2562	15.2562	16.2562	17.2562	18.2562	19.2562	20.2562	21.2562	22.2562	23.2562
Discount Factor @ 17.5%	0.1385	0.1179	0.1004	0.0854	0.0727	0.0619	0.0526	0.0448	0.0381	0.0325	0.0276	0.0235
Present Value of Cash Flows	**376**	**311**	**257**	**212**	**175**	**145**	**119**	**99**	**82**	**67**	**56**	**46**
Cumulative Present Value %	*85.6%*	*88.1%*	*90.2%*	*91.9%*	*93.3%*	*94.5%*	*95.4%*	*96.2%*	*96.9%*	*97.5%*	*97.9%*	*98.3%*
											Remainder	**213**

DRAFT

/2022 4:43:00 PM

KPMG Draft Val

Vectren Corporation DRAFT - For Discussion Purposes Only

Minnesota Ltd, Inc. Schedule 8

Valuation of Certain Identifiable Intangible Assets

Fair Value of Backlog

As of March 30, 2011

($US Thousands)

	Projected [1] 31-Dec-11
Revenues	**8,943**
Revenue Growth %	
Cost of Sales	7,232
Gross Margin	**1,711**
Gross Margin %	*19.1%*
[2] Operating Expenses	560
Operating Income	**1,151**
Operating Income %	*12.9%*
Less: Taxes @ 40.5%	466
Net Operating Income	**684**
Net Operating Income %	*7.7%*
Contributory Asset Charges:	
Net Working Capital @ 0.7%	63
Fixed Assets @ 2.8%	248
Assembled Workforce @ 0.5%	48
Trade Name @ 0.9%	80
Contributory Asset Charges:	**439**
Contributory Asset Charges %	*4.9%*
Excess Earnings	**245**
Excess Earnings %	*2.7%*
[3] Period	0.1756
[4] Discount Period	0.0878
Discount Factor @ 17.0%	0.9863
Present Value of Cash Flows	**242**
Cumulative Present Value %	*100.0%*
Sum of PV	**242**
[5] Tax Amortization Benefit	45
Fair Value	**287**

DRAFT

Notes:

[1] Provided by Management.

[2] Cost structure based on information provided Management. Includes only the costs required to achieve the backlog.

[3] Based upon the weighted average completion date of the backlog as of the Valuation Date.

[4] Assumes mid-period cash flow receipt.

[5] Calculated using an income tax rate of 40.5% and based on the US tax amortization benefit factor.

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

/2022 4:43:00 PM

KPMG Draft Val

Vectren Corporation

DRAFT - For Discussion Purposes Only

Minnesota Ltd, Inc.

Schedule 9

Valuation of Certain Identifiable Intangible Assets

Fair Value of Assembled Workforce

As of March 30, 2011

($US)

Position	Number of Employees	Average Salary	Benefit Load per Employee	Hiring Cost per Employee	Training Cost per Employee	Months Until Fully Productive	Starting Productivity	Cost to Replace per Employee	Total Cost to Replace
[1] Shop Manager	5	102,890	30,867	20,578	772	4	75.0%	26,923	134,614
[1] Shop Labor	7	44,072	13,222	441	331	6	70.8%	4,949	34,643
[1] Transportation	7	87,191	43,596	872	654	12	67.9%	22,506	157,543
[1] Executive	1	1,350,000	405,000	405,000	10,125	18	50.0%	1,073,250	1,073,250
[1] Director	2	263,800	79,140	65,950	1,979	18	50.0%	196,531	393,062
[1] Managers	4	108,448	32,534	27,112	813	12	50.0%	63,171	252,684
[1] Accounting Admin.	6	41,661	12,498	8,332	312	8	40.0%	19,477	116,860
[1] Senior Project Manager	3	280,260	84,078	2,803	10,000	12	50.0%	103,887	311,661
[1] Project Manager	3	106,507	31,952	1,065	5,000	8	40.0%	33,757	101,270
[1] Project Manager Admin.	4	42,469	12,741	8,494	2,500	6	30.0%	20,656	82,622
[1] Office Admin.	5	40,730	12,219	8,146	305	4	40.0%	13,746	68,732
[1] Safety Manager	4	90,951	27,285	910	10,000	12	40.0%	46,380	185,522
[1] Safety Coordinators	6	89,136	26,741	891	3,900	6	25.0%	26,518	159,110
[1] Union Hall	222	53,919	16,176	-	-	3	75.0%	2,190	486,285
[1] Foreman	51	107,839	67,938	1,078	809	8	50.0%	31,183	1,590,349
Total	**330**							**1,685,125**	**5,148,207**

DRAFT

	Total Assembly Costs	**5,148,207**
	Less: Income Tax Deduction Benefit @ 40.5%	2,086,311
	After-Tax Cost to Replace	**3,061,896**
[2]	Add: Tax Amortization Benefit	608,353
	Equals: Fair Value of Assembled Workforce (in absolute dollars)	**3,670,249**
	Fair Value of Assembled Workforce ($US Thousands)	**3,670**
	Total Number of Employees	330
	Average Value per Employee ($US Thousands)	**11**

Notes:

[1] Provided by Management.

[2] Calculated using an income tax rate of 40.5% and based on the US tax amortization benefit factor.

Any tax advice in this communication is not intended or written by KPMG to be used, and cannot be used, by a client or any other person or entity for the purpose of (i) avoiding penalties that may be imposed on a taxpayer or (ii) promoting, marketing, or recommending to another party any matters addressed herein.

KPMG

/2022 4:43:00 PM

KPMG

cutting through complexity™

DRAFT

© 2011 KPMG LLP, a Delaware limited liability partnership and the U.S. member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name, logo and "cutting through complexity" are registered trademarks or trademarks of KPMG International.

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Tukel, P.J., and Sawyer and Riordan, JJ.

VECTREN INFRASTRUCTURE SERVICES CORP.,	Supreme Court No. 163742
	Court of Appeals No. 345462
Plaintiff-Appellee,	Court of Claims No. 17-000107-MT
v	
MICHIGAN DEPARTMENT OF TREASURY,	
Defendant-Appellant.	

______________________________________/

APPELLANT MICHIGAN DEPARTMENT OF TREASURY'S APPENDIX

Dana Nessel
Attorney General

Fadwa A. Hammoud (P74185)
Solicitor General
Counsel of Record

David W. Thompson (P75356)
Justin R. Call (P80892)
Assistant Attorneys General
Attorneys for Mich Dep't of Treasury
Defendant-Appellant
Revenue and Tax Division
P.O. Box 30754
Lansing, MI 48909
(517) 335-7584

Dated: May 4, 2022

TABLE OF CONTENTS

Volume I (Pages 1a to 506a)

Description	Volume	Page No.
Court of Claims Docket Entries	I	1a–6a
Court of Appeals Docket Entries	I	7a–12a
Michigan Court of Claims, Opinion and Order issued August 14, 2018	I	13a–26a
Michigan Court of Claims, Order issued September 7, 2018	I	27a
Michigan Court of Appeals, Opinion issued March 12, 2020	I	28a–36a
Michigan Supreme Court, Order issued November 25, 2020	I	37a
Michigan Court of Appeals, Order issued April 19, 2021	I	38a
Michigan Court of Claims, Opinion and Order on Remand issued May 25, 2021	I	39a–48a
Michigan Court of Appeals, Opinion issued September 30, 2021	I	49a–52a
Sidney Frank Importing Co, Inc v Dep't of Treasury, unpublished per curiam opinion of the Court of Appeals, issued December 4, 2012 (Docket No. 306742)	I	53a–59a
Vectren's First Amended Complaint (*without attachments*)	I	60a–78a
Christopher Leines Deposition Transcript (*relevant portions only*)	I	79a–101a
Plaintiff's Response to Treasury's 1st Discovery Request (*without attachments*)	I	102a–121a
Offering Memorandum	I	122a–216a
Consumers 2011 10-K	I	217a–439a
Purchase Agreement	I	440a–506a

Volume II (Pages 507a to 865a)

Description	Volume	Page No.
Purchase Agreement (*continued*)	II	507a–597a
Vectren 2001 10-K	II	598a–665a
Douglas S. Banning, Jr. Deposition Transcript (*relevant portions only*)	II	666a–687a
Vectren 2011 8-K Exhibit 99.1	II	688a–692a
Vectren 2011 10-K	II	693a–812a
Bradley Hirsch Deposition Transcript (*relevant portions only*)	II	813a–825a
KPMG Draft Valuation	II	826a–865a

Volume III (Pages 866a to 1048a)

Description	**Volume**	**Page No.**
Alternative Apportionment Request, June 24, 2016 (*without attachments*)	III	866a–873a
2011 Michigan Business Tax Annual Return	III	874a–883a
Audit Report of Findings	III	884a–892a
2010 Michigan Business Tax Return	III	893a–904a
2010 Federal Forms 4797	III	905a–912a
2011 U.S. Income Tax Return	III	913a–959a
Audit Workbook	III	960a–970a
Intent to Assess	III	971a–972a
Final Assessment	III	973a–974a
Supplement to Alternative Apportionment Request, December 14, 2016 (*without attachments*)	III	975a–982a
Treasury's Denial of Alternative Apportionment Request	III	983a–985a
Hirsch Affidavit (*without attachments*)	III	986a–989a
Vectren's Court of Appeals Brief on Appeal, December 7, 2018 (*without appendices*)	III	990a–1048a

June 2016 Alt Req

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

June Summers Haas

(517) 377-0734
Fax: (517) 364-9534
jhaas@honigman.com

Via Certified Mail
7013 2630 0002 0801 1374

June 24, 2016

Mr. Greg Gursky
Deputy Treasurer
Michigan Department of Treasury
430 W. Allegan Street
Lansing, MI 48922

Re: Request for Alternative Apportionment Formula Under MCL 208.1309
Minnesota Limited, Inc.
FEIN: [redacted]
For Short Tax Year Ending March 31, 2011

Dear Mr. Gursky:

Minnesota Limited, Inc. hereby submits this request for alternative apportionment under MCL 208.1309 for the short tax year ending March 31, 2011, for the reasons more fully stated below. MCL 208.1309 provides:

> (1) If the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the treasurer may require the following, with respect to all or a portion of the taxpayer's business activity, if reasonable:
>
> > (a) Separate accounting.
> >
> > (b) The inclusion of 1 or more additional or alternative factors that will fairly represent the taxpayer's business activity in this state.
> >
> > (c) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.
>
> (2) An alternate method may be used only if it is approved by the department.

Under the Michigan Business Tax Act, MCL 208.1115(1), "sales" is defined as follows:

> (1) "Sale" or "sales" means, except as provided in subdivision (e), the amounts received by the taxpayer as consideration from the following:
>
> (a) The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property.
>
> (b) The performance of services that constitute business activities.
>
> (c) The rental, lease, licensing, or use of tangible or intangible property, including interest, that constitutes business activity.
>
> (d) Any combination of business activities described in subdivisions (a), (b), and (c).
>
> (e) For taxpayers not engaged in any other business activities, sales include interest, dividends, and other income from investment assets and activities and from trading assets and activities.

FACTS

Minnesota Limited, Inc. is a Minnesota S Corporation in the oil and gas pipeline construction, repair and HAZMAT response business. Minnesota Limited has been in business for 52 years. Minnesota Limited's business has been primarily operated in Minnesota and throughout the Midwest, with only occasional and sporadic contracts performed in Michigan. In 2010, Minnesota Limited was engaged by Enbridge Energy ("Enbridge") to respond to a severe oil pipeline rupture that occurred in July 2010 in a tributary of the Kalamazoo River. Enbridge hired Minnesota Limited to commence immediate repairs and provide environmental clean-up services. This contract was Minnesota Limited's single largest contract performed in Michigan in all of its 52 year history. Due to the severe nature of the oil leak, Minnesota Limited's services were rendered at a rapid response. The majority of these services were performed in the nine months from July 2010 through March 2011.

On March 31, 2011, Minnesota Limited sold all of its stock to Vectren Corporation. Minnesota Limited elected to treat the sale of its stock as a sale of its assets under federal Internal Revenue Code (IRC) §338(h)(10) election. The assets that were deemed sold in the stock sales included the company's capital assets and intangible assets of receivables, retainages, cash, prepaid expenses, inventory and goodwill.

Minnesota Limited's Michigan apportionment sales factor for the prior nine years were as follows:

YEAR	APPORTIONMENT
2002	.0000
2003	.0137
2004	.0337
2005	.0222
2006	.0210
2007	.0096
2008	.0002
2009	.1852
2010	.3928

For 2011, Minnesota Limited's sales apportionment factor, due to the Enbridge job, was 14.99% when including the gain from the IRC § 338(h)(10) transaction, but increased to 69.96% if the gain from the IRC § 338(h)(10) transaction was excluded.

For all years up to and including 2011, Minnesota Limited was in the oil and gas pipeline construction, repair and HAZMAT response business and not in the business of selling stock, capital assets or intangible assets.

ANALYSIS

1. Alternative Apportionment is Necessary to Treat the Entire 338(b)(10) Sale Transaction as Generating Receipts and Income from Business Activity.

Minnesota Limited requests alternative apportionment to treat all of the receipts and income resulting from its sale of its stock under IRC § 338(h)(10) (which was treated as a sale of all of its assets both tangible and intangible) as sales under MCL 208.1115(1) that are sourced to the State of Minnesota. Because the gross receipts and income from the sale of the Minnesota Limited's stock is includible in the apportionable tax base, Minnesota Limited, therefore requests that the gross receipts and income must also be reflected in the sales factor in order to effect an equitable apportionment of the taxpayer's base for the following reasons.

First, both gross receipts and business income must derive from a taxpayer's business activity. If the gross receipts and income derived from the sale are classified as derived from business activity of Minnesota Limited, then the sale must be the sale of business assets. Under MCL 208.1115(1), the sales factor includes all sales from either stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business. The S corporation's stock or its assets and intangible property are therefore considered to be business assets and therefore, meet the definition of "sales" under MCL 208.1115 if the sale of the assets generates business receipts and income. In addition, receipts and income from the use of intangible property is also considered a "sale" under MCL 208.1115(1)(c). Here, the S corporation was domiciled in Minnesota and, thus, the stock or its assets, as business assets, would be assigned a place of business in Minnesota. In addition, all insured value and benefit of the S corporation's stock was generated in Minnesota and Minnesota Limited should source the income to the location of the underlying asset, Minnesota Limited. MCL 208.1305(10).

Second, the failure to include the gain from sale of the Minnesota Limited's sale of stock, which again, was treated for federal income tax purposes as a sale of all of the tangible and intangible assets of Minnesota Limited, in the company's sales results in unconstitutional distortion and sources to Michigan "a percentage of income out of all appropriate proportion to the business transacted by appellant in that state." *Hans Rees Sons v North Carolina ex rel Maxwell*, 283 US 123; 51 S Ct 385 (1931); MCL 208.1309(3). The remedy for this distortion is to source the gain to Minnesota where Minnesota Limited's stock appraisal occurred over the corporation's fifty-two year history.

Third, for the income to constitute apportionable receipts and business income, it must be income from an investment that serves an operational rather than investment function under *Allied-Signal, Inc (Successor-in-Interest to Bendix Corp) v Director, [NJ] Div of Tax'n*, 504 US 768; 112 S Ct 2251 (1992). Thus, it is inappropriate to source the receipts income as if it were income from a passive investment under MCL 205.581 Article IV(6)(c).

Finally, apportionment without an adjustment disproportionately attributes long term gain to Michigan out of all appropriate proportion. Minnesota Limited recognized only $25,000 of profit for its Michigan work in 2011, yet the standard apportionment formula would source approximately $50 million in gain to Michigan for the year. The serendipity of the Enbridge environmental disaster, combined with the short tax year in 2011, disproportionality captures gain that is the result of a transaction that began over a year prior. The impact distorts the result. It simply makes no sense to apportion almost 70% of Minnesota Limited's gain on the sale of its company to Michigan based on a limited 3-month apportionment period, in which the Company coincidentally had more work in Michigan than ever before in its history.

2. In the Alternative, Minnesota Limited Should Be Entitled Treat the Entire Transaction as Generating Unapportionable Nonbusiness Receipts and Income that Must Be Excluded from both the Gross Receipts Base and the Business Income Base.

In the alternative, Minnesota Limited requests to treat all of the receipts and income resulting from its sale of its stock under IRC § 338(h)(10), treated as a sale of all of its assets, as unapportioned, non-operational, nonbusiness receipts and income not subject to tax or includible in the apportionable tax bases in Michigan. It is a basic principle of state taxation that a state may not tax value earned outside its borders. *Allied Signal, Inc v Director, Div of Taxation*, 504 US 768; 112 S Ct 2251; 119 L Ed 2d 533 (1992). Under *Allied Signal*, the Court held that income which is either investment income or non-operational is not apportionable business income. Here, Minnesota Limited's receipts and income from the sale of all of its stock is inherently nonbusiness income because the value generated and receipts and income earned was related to the appreciation in value of its enterprise, which is appropriately sourced to Minnesota, its state of domicile and location of its principle activities.

When the owners of Minnesota Limited disposed of their stock, the sale was not in the ordinary course of Minnesota Limited's business and was not a naturally occurring or necessary event of its regular business. It was an unusual, out-of-the-ordinary transaction that qualifies as nonbusiness income. The nature of the value earned and income received was established based upon the business activities occurring over the prior 52 years. The nature of the transaction and the nature of the value earned and the income received is nonbusiness and non-operational income. MCL 208.1309(1)(a) and (c) authorized the use of separate accounting or any other method to effectuate an equitable, constitutional allocation of income. Thus, all of the gain from the sale of the company's stock, which arose from the conduct of business and assets located in Minnesota, should be allocated to Minnesota.

State courts in other jurisdictions have held that the disposition of assets in conjunction with cessation of business activity, including sale of assets used in the business operations of a taxpayer, is not a transaction in the regular course of a taxpayer's business. In this case, Minnesota Limited's disposition of all of its stock ceased its business activities. Under the provisions of the Uniform Division of Income for Tax Purposes Act ("UDITPA"),[1] which has a similar, but not identical, provision to Michigan's casual transaction provision to determine whether income is business income or nonbusiness income.[2] Under UDITPA, "business income" is defined as follows:

[1] Michigan has adopted UDITPA at MCL 205.581 Art IV.

[2] Under UDITPA, the distinction between business and nonbusiness income is relevant to determine whether the income is apportioned among several states (for business income) or allocated (for nonbusiness income) in accordance with the relevant state law.

> *"Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business* and includes income from tangible or intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations. [UDITPA §1(a), emphasis added.]

Courts and Tribunals of other states have interpreted the italicized language above to mean that a one-time sale of assets does not constitute business income arising in the regular course of a taxpayer's business.

In one of the earliest cases to address business cessation transactions, a Kansas Court held that the sale of oil and gas leases held for exploration, and not for resale, was not a sale made in the regular course of business operations. *Western Natural Gas Co v McDonald*, 446 P2d 781 (Kan 1968). The Court found that liquidation of the business asset was a cessation of business and not the operation of business. As such, it was not a regular business activity. In a case nearly identical to the instant case, a disposition by a regional shopping center developer/management corporation of all of its shopping centers in cessation of development activities was not a transaction made in the regular course of business. *Federated Stores Realty, Inc v Huddleston*, 852 SW2d 206 (Tenn 1992), reh den (1993). In that case, the Plaintiff was engaged in the business of developing and operating retail department stores and shopping centers, which operations would necessarily include leasing, management and maintenance of the properties. In 1983, the company decided to cease all shopping center development and management activities and sell all shopping center properties. The Court held that the gain from the sale of the shopping centers was not income from transactions and activity in the regular course of the taxpayer's trade or business, because a transaction must be recurring to be regular. In addition, the Court *rejected the Department's attempt to define the taxpayer's business as buying and selling real estate*. The fact that the assets disposed of were used in the taxpayer's business has been found not to control whether the disposition transaction generates nonbusiness income.

Similarly, the disposition of Minnesota Limited's stock resulted in the *cessation* of all of the owners of the Company's business activity in Minnesota and all other states, as opposed to the *operation* of the business — the oil and gas environmental restoration activities. As such, the stockholder's sale of the S corporation's stock was not Minnesota Limited's regular business activity, nor was it incidental to Minnesota Limited's regular business activity, because it ceased any and all new business activity. *Manske v Dep't of Treasury*, 265 Mich App 455 (2005). In fact, the Michigan Court of Appeals has held that the sale of all of a company's assets constitute "the antithesis of establishing and operating" the business activities. *Id.* at 468. The disposition of all of the stock of Minnesota Limited was, accordingly, a *cessation* of all business activity, rather than the operation of the business.

June 2016 Alt Req

The clear intent of the Legislature in enacting MCL 208.1309(3) was to provide alternative apportionment relief, when, as demonstrated in this case the result would be "that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer."[3] Thus, alternative apportionment is appropriate and required in this case.

We would appreciate the opportunity to meet with you to discuss this request further. Enclosed you will find our Form 151 Power of Attorney. Minnesota Limited has requested an informal conference that includes the short tax year covered by this request. We look forward to hearing from you at your earliest convenience.

Very truly yours,
Honigman Miller Schwartz and Cohn LLP

Lynn A. Gandhi

Lynn Gandhi and June Summers Haas

JSH:jps
Enclosure

[3] MCL 208.1309(3) provides: "The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer."

bc w/o encl: Mr. Bob Baird
Mr. Jeff Starbird

2011 Mich Return

Michigan Department of Treasury
4567 (Rev. 09-11), Page 1

□ Check if this is an amended return. Attach supporting documents.

2011 MICHIGAN Business Tax Annual Return

Issued under authority of Public Act 36 of 2007.

1. Return is for calendar year 2011 or for tax year beginning: (MM-DD-YYYY) 01-01-2011 and ending: (MM-DD-YYYY) 03-31-2011

2. Name (print or type) MINNESOTA LIMITED, INC.

7. Federal Employer Identification Number (FEIN) or TR Number [redacted]

Doing Business As (DBA)

Street Address 18640 200TH STREET □ Check if new address (See instructions)

City BIG LAKE State MN ZIP/Postal Code 55309 Country Code

8. Organization Type (LLC or Trust, see instructions)

□ Individual □ C Corporation/ LLC C Corporation

□ Fiduciary ☒ S Corporation/ LLC S Corporation

□ Partnership/LLC Partnership

3. Principal Business Activity CONSTRUCTION

4. Business Start Date in Michigan 03-21-1959

5. NAICS (North American Industry Classification System) Code 237990

6. If Discontinued, Effective Date 03-31-2011

9. □ Check if Filing Michigan Unitary Business Group Return. (Include Form 4580.)

10. □ Check if you have sales receipts from transportation services.

11. Apportionment Calculation

a. Michigan Sales (if no Michigan sales, enter zero)	14,756,147	00
b. Total Sales	98,465,632	00
c. Apportionment Percentage. Divide line 11a by line 11b	14.9860	%

d. □ Check if Fiscal Filer using the Annual Method (tax years ending in 2012 only) and complete 11e-11g.

e. Months in MBT tax period		
f. Total months		
g. Proration Percentage Divide line 11e by line 11f		%

PART 1: MODIFIED GROSS RECEIPTS TAX

12. Gross Receipts (see instructions)	12.	99,029,125	00

Subtractions from Gross Receipts

13. Inventory acquired during tax year	13.	1,854,708	00
14. Depreciable assets acquired during tax year	14.	7,879	00
15. Materials and supplies not included in inventory or depreciable property	15.	661,915	00
16. Staffing Company: Compensation of personnel supplied to customers	16.		00

If qualified for the Small Business Alternative Credit, skip to line 18.

17. Deduction for contractors in SIC Codes 15, 16 and 17 SIC Code: 16	17.	1,206,160	00
18. Film rental or royalty payments paid by a theater owner to a film distributor and/or film producer	18.		00

19. Qualified Affordable Housing Project (QAHP) Deduction

a. Gross receipts attributable to residential rentals in Michigan	19a.		00
b. Number of residential rent restricted units in Michigan owned by QAHP	19b.		
c. Total number of residential rental units in Michigan owned by QAHP	19c.		
d. Divide line 19b by line 19c and enter as a percentage	19d.		%
e. Multiply line 19a by line 19d	19e.		00
f. Limited dividends or other distributions made to owners of project	19f.		00

g. QAHP Deduction. Subtract line 19f from line 19e	19g.		00
20. Payments made by taxpayers licensed under Article 25 or Article 26 of the Occupational Code to independent contractors licensed under Article 25 or Article 26	20.		00
21. Miscellaneous (see instructions)	21.		00
22. Total Subtractions from Gross Receipts. Add lines 13 through 18 and 19g through 21	22.	3,730,662	00
23a. Modified Gross Receipts. Subtract line 22 from line 12. If less than zero, enter zero	23a.	95,298,463	00
23b. If 11d is checked, multiply line 23a by the percentage on line 11g. All others, enter the amount from line 23a	23b.	95,298,463	00
24. Apportioned Modified Gross Receipts Tax Base. Multiply line 23b by percentage on line 11c	24.	14,281,428	00
25. Multiply line 24 by 0.8% (0.008)	25.	114,251	00
26. Enrichment Prohibition for dealers of personal watercraft or new motor vehicles. Enter amount collected during tax year	26.		00
27. Modified Gross Receipts Tax Before All Credits. Enter the greater of line 25 or line 26	27.	114,251	00

Continue on Page 2

+ 1019 2011 11 01 27 4

4567, Page 2

FEIN or TR Number [redacted]

PART 2: BUSINESS INCOME TAX

28. Business Income. If negative, enter as a negative. (If business activity protected under PL 86-272, complete and attach Form 4586 and/or 4581, as applicable; see instructions)	28.	53,987,992	00

Additions to Income

29. Interest income and dividends derived from obligations or securities of states other than Michigan	29.		00
30. Taxes on or measured by net income	30.	4,394	00
31. Tax imposed under MBT	31.	633,703	00
32. Any carryback or carryover of a federal net operating loss	32.		00
33. Losses attributable to other taxable flow-through entities	33.		00
Account No.			
34. Royalty, interest, and other expenses paid to a related person	34.		00
35. Miscellaneous (see instructions)	35.		00
36. Total Additions to Income. Add lines 29 through 35	36.	638,097	00
37. **Business Income Tax Base After Additions.** Add lines 28 and 36. If negative, enter as a negative	37.	54,626,089	00

Subtractions from Income

38. Dividends and royalties received from persons other than U.S. persons and foreign operating entities	38.		00
39. Income attributable to other taxable flow-through entities	39.		00
Account No.			
40. Interest income derived from United States obligations	40.		00
41. Net earnings from self-employment. If less than zero, enter zero	41.		00
42. Miscellaneous (see instructions)	42.		00
43. Total Subtractions from Income. Add lines 38 through 42	43.		00

44a. **Business Income Tax Base.** Subtract line 43 from line 37. If negative, enter as a negative	44a.	54,626,089	00
44b. If box 11d is checked, multiply line 44a by the percentage on line 11g. All others, enter amount from line 44a	44b.	54,626,089	00
45. Apportioned Business Income Tax Base. Multiply line 44b by percentage on line 11c	45.	8,186,266	00
46. Available MBT business loss carryforward from previous MBT return. Enter as a positive number	46.		00
47. Subtract line 46 from line 45. If negative, enter here as a negative, skip line 48, and enter zero on line 49. A negative number here is the available business loss carryforward to the next filing period (see instructions)	47.	8,186,266	00

48. Qualified Affordable Housing Deduction. If line 47 is positive, complete lines 48a through 48i as follows: (1) If taking the seller's deduction, skip lines 48a through 48h and carry the amount from Form 4579, line 5, to line 48i. (2) If taking the QAHP deduction, complete lines 48a through 48i.

a. Gross rental receipts attributable to residential units in Michigan	48a.		00
b. Rental expenses attributable to residential rental units in Michigan	48b.		00
c. Taxable income attributable to residential rental units. Subtract line 48b from line 48a	48c.		00
d. Number of residential rent restricted units in Michigan owned by the Qualified Affordable Housing Project	48d.		
e. Total number of residential rental units in Michigan owned by the Qualified Affordable Housing Project	48e.		
f. Divide line 48d by line 48e and enter as a percentage	48f.		%
g. Multiply line 48c by line 48f	48g.		00
h. Limited dividends or other distributions made to the owners of the project	48h.		00

i. Qualified Affordable Housing Deduction. Subtract line 48h from line 48g	48i.		00
49. Subtract line 48i from line 47. If less than zero, enter zero	49.	8,186,266	00
50. **Business Income Tax Before All Credits.** Multiply line 49 by 4.95% (0.0495)	50.	405,220	00

Continue and sign on Page 3

4567, Page 3

FEIN or TR Number [redacted]

PART 3: TOTAL MICHIGAN BUSINESS TAX

51. **Total Michigan Business Tax Before Surcharge and Credits.** Add lines 27 and 50	51.	519,471	00
52. Annual Surcharge. Enter the lesser of $6,000,000 or line 51 multiplied by 21.99% (0.2199)	52.	114,232	00
53. **Total Liability Before All Credits.** Add lines 51 and 52	53.	633,703	00
54. Nonrefundable credits from Form 4568, line 40	54.		00
55. **Total Tax After Nonrefundable Credits.** Subtract line 54 from line 53. If less than zero, enter zero	55.	633,703	00
56. Recapture of Certain Business Tax Credits and Deductions from Form 4587, line 12	56.		00
57. **Total Tax Liability.** Add lines 55 and 56	57.	633,703	00

PART 4: PAYMENTS, REFUNDABLE CREDITS AND TAX DUE

58. Overpayment credited from prior MBT return	58.	87,976	00
59. Estimated tax payments	59.		00
60. Tax paid with request for extension	60.		00
61. Refundable credits from Form 4574, line 31	61.		00
62. **Payment and credit total.** Add lines 58 through 61. (If not amending, then skip to line 64.)	62.	87,976	00
63. AMENDED RETURN ONLY a. Payment made with the original return .... 63a. ______ 00			
b. Overpayment received on the original return .... 63b. ______ 00			
c. Add lines 62 and 63a and subtract line 63b from the sum	63c.		00
64. **TAX DUE.** Subtract line 62 (or line 63c, if amending) from line 57. If less than zero, leave blank	64.	545,727	00
65. Underpaid estimate penalty and interest from Form 4582, line 38	65.	0	00
66. Annual return penalty (a) 25.0 % = (b) 136432 00 plus interest (c) 8,705 00 . Total	66d.	145,137	00
67. **PAYMENT DUE.** If line 64 is blank, go to line 68. Otherwise, add lines 64, 65 and 66d	67.	690,864	00

PART 5: REFUND OR CREDIT FORWARD

68. **Overpayment.** Subtract lines 57, 65 and 66d from line 62 (or line 63c, if amending). If less than zero, leave blank (see instructions)	68.		00
69. **CREDIT FORWARD.** Amount on line 68 to be credited forward and used as an estimate for next tax year	69.		00
70. **REFUND.** Amount on line 68 to be refunded	70.		00

Taxpayer Certification. I declare under penalty of perjury that the information in this return and attachments is true and complete to the best of my knowledge.

☒ By checking this box, I authorize Treasury to discuss my return with my preparer.

Authorized Signature for Tax Matters

Authorized Signer's Name (print or type)

Date

Title
OFFICER

Telephone Number
763-262-7000

Preparer Certification. I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

Preparer's PTIN, FEIN or SSN
[redacted]

Preparer's Business Name (print or type)
LURIE BESIKOF LAPIDUS & COMPANY

Preparer's Business Address and Telephone Number (print or type)
2501 WAYZATA BOULEVARD
MINNEAPOLIS, MN 55405-2197
612-377-4404

Return is due April 30 or on or before the last day of the 4th month after the close of the tax year.

WITHOUT PAYMENT. Mail return to:
Michigan Department of Treasury, P.O. Box 30783, Lansing, MI 48909

WITH PAYMENT. Pay amount on line 67. Mail check and return to:
Michigan Department of Treasury, P.O. Box 30113, Lansing, MI 48909

Make check payable to "State of Michigan." Print taxpayer's FEIN or TR Number, the tax year, and "MBT" on the front of the check. Do not staple the check to the return.

Michigan Department of Treasury
4700 (10-11), Page 1

FEIN or TR Number [redacted]
UBG Member FEIN or TR Number

Gross Receipts Worksheet

Complete the appropriate parts below based on the person's organization type. Part 1 is for an Individual or Fiduciary; Part 2 is for a C Corporation (or a person filing federal returns as a C Corporation); and Part 3 is for a Partnership or S Corporation (or a person filing a federal return as a Partnership or an S Corporation). Parts 4 and 5 apply to all filers, independent of their organization type.

Gross receipts is not necessarily derived entirely from the federal return, however, this worksheet will calculate gross receipts as defined by law in most circumstances. Taxpayers and tax professionals are expected to be familiar with uncommon situations within their experience, which produce gross receipts not identified by specific lines on this worksheet, and report that amount on the most appropriate line. The Michigan Department of Treasury may adjust the figure resulting from this worksheet to account properly for such uncommon situations. Complete and attach this worksheet to your return. Unitary Business Groups (UBGs) must complete and attach a worksheet for each member.

Gross receipts, before applying the statutory exceptions, consists solely of positive amounts derived from transactions or events. Therefore, if any of the federal return items utilized in Part 1, Part 2 or Part 3 is a net result of both negative and positive transactions, it must be recalculated for use here by counting only the positive elements represented in that net figure.

INFORMATION DIRECTLY FROM SPECIFIC FEDERAL RETURNS

PART 1: INDIVIDUALS AND FIDUCIARIES

1. U.S. Form *1040, Schedule C* or *C-EZ* gross receipts (net of returns)	1.		00
2. U.S. Form *1040, Schedule C*, other income	2.		00
3. U.S. Form *1040, Schedule D*, short- and long-term sales price*	3.		00
4. U.S. Form *1040, Schedule E*			
a. Part I, total rents received	4a.		00
b. Total royalties received	4b.		00
5. U.S. Form *4797*, gross sales price,* business assets	5.		00
6. **Gross Receipts from Federal Return for Individuals and Fiduciaries.** Add lines 1 through 5. Carry amount to line 19	6.		00

PART 2: C CORPORATIONS

7. U.S. Form *1120*, balance of gross receipts or sales less returns and allowances	7.		00
8. U.S. Form *1120*, sum of dividends, interest, gross rents and gross royalties	8.		00
9. U.S. Form *1120*, other income	9.		00
10. U.S. Form *1120*, Schedule D, short- and long-term sales price*	10.		00
11. U.S. Form *4797*, gross sales price*	11.		00
12. **Gross Receipts from Federal Return for C Corporations.** Add lines 7 through 11. Carry amount to line 19	12.		00

PART 3: PARTNERSHIPS AND S CORPORATIONS

13. U.S. Form *1065*, or U.S. Form *1120S*			
a. Gross receipts (net of returns)	13a.	21,093,137	00
b. Other income/receipts	13b.	10,056	00
14. U.S. Form *8825*, gross income from real estate rentals	14.		00
15. U.S. Form *1065*, or *1120S, Schedule D*, short- and long-term sales price*	15.	37,044,407	00
16. U.S. Form *1065*, or *1120S, Schedule K*			
a. Gross other rental income	16a.		00
b. Interest, dividend, royalty income	16b.		00
c. Other income	16c.		00
17. U.S. Form *4797*, gross sales price*, business assets	17.	40,779,026	00
18. **Gross Receipts from Federal Return for Partnerships and S Corporations.** Add lines 13 through 17. Carry amount to line 19	18.	98,926,626	00

* See the definition of Gross Receipts under MCL § 208.1111.

Continued on Page 2

2011 Mich Return

4700, Page 2

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

ADJUSTMENTS TO FEDERAL GROSS RECEIPTS

19.	Gross Receipts as recorded on line 6, 12 or 18	19.	98,926,626	00

PART 4: ADDITIONS TO GROSS RECEIPTS

To the extent EXCLUDED or DEDUCTED in arriving at the number used in line 19, include the following:

20.	Proceeds from the sale of assets used in a business activity	20.		00
21.	Dividend and interest income	21.		00
22.	Receipts from gratuities stipulated on a bill	22.		00
23.	Receipts from gross commissions earned	23.		00
24.	Receipts from client reimbursed expenses not obtained in an agency capacity	24.		00
25.	Gross proceeds from intercompany sales	25.		00
26.	Rents	26.		00
27.	Royalties	27.		00
28.	Sales of scrap and other similar items	28.		00
29.	Bad Debt amounts deducted for Federal Income Tax	29.	102,499	00
30.	Dividends and royalties received or deemed received from a foreign operating entity or a person other than a U.S. person, including, but not limited to, the amounts determined under IRC § 78, or 951 through 964	30.		00
31.	Sales or use taxes collected from or reimbursed by a consumer or other taxes collected from or reimbursed by a purchaser and remitted to a local, state, or federal tax authority	31.		00
32.	In the case of receipts from the sale of motor fuel by a person with a motor fuel tax license or a retail dealer, the amount equal to federal and state excise taxes paid by any person on such motor fuel under IRC § 4081 or applicable state law	32.		00
33.	In the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license to sell, distribute, or produce those products, the amount equal to federal and state excise taxes paid by any person on or for such products under IRC Subtitle E or applicable state law	33.		00
34.	In the case of receipts from the sale of communication, video, internet access and related services and equipment, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the Michigan Business Tax (MBT)	34.		00
35.	In the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the MBT	35.		00
36.	Any deposit required under the following:			
	a. 1976 IL 1, MCL § 445.571 to 445.576	36a.		00
	b. R 436.1629 of the Michigan administrative code	36b.		00
	c. R 436.1723a of the Michigan administrative code	36c.		00
	d. Any substantially similar beverage container deposit law of another state	36d.		00
37.	Excise tax collected from or reimbursed by a consumer and remitted pursuant to MCL § 207.371 to 207.383	37.		00
38.	Other receipts not included in previous lines	38.		00
39.	Add lines 20 through 38	39.	102,499	00
40.	SUBTOTAL Add line 19 and line 39	40.	99,029,125	00

Continued on Page 3

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

PART 5: EXCLUSIONS FROM GROSS RECEIPTS

To the extent INCLUDED in arriving at line 40, enter the following receipts:

41. Proceeds from sales by a principal collected by the taxpayer in an agency capacity and delivered to the principal 41. 00

42. Amounts received on behalf of a principal that are received and expended by the taxpayer in an agency capacity for the following:

a. Performance of service by third party for the benefit of the principal for service required by law to be performed by a licensed person 42a. 00

b. Performance of service by a third party for the benefit of the principal that the taxpayer has not undertaken a contractual duty to perform 42b. 00

c. Payment of principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal 42c. 00

d. Capital asset that is or will become eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or real property owned or leased by the principal 42d. 00

e. Property not described above that is purchased by taxpayer on behalf of the principal, where taxpayer does not take title to or use in the course of performing its contractual business activities 42e. 00

f. Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity and that are the legal obligation of the principal 42f. 00

43. Amounts excluded from gross income of a foreign corporation engaged in the international operation of aircraft under IRC § 883(a) 43. 00

44. Amounts received by advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person 44. 00

45. Amounts received by a newspaper to acquire advertising space not owned by that newspaper in another newspaper on behalf of another person, excluding any consideration received by taxpayer for acquiring that advertising space 45. 00

46. Amounts received by taxpayer that manages real property owned by a third party that are deposited into a separate account kept in the name of that third party and that are not reimbursements to the taxpayer and are not indirect payments for management services that the taxpayer provides to that third party 46. 00

47. For taxpayers that during tax year do NOT both buy and sell any receivables, proceeds from the taxpayer's transfer of an account receivable, if the sale that generated that receivable was included in Gross Receipts for Federal Income Tax purposes 47. 00

48. Proceeds from original issue of stock or equity instruments or equity issued by a regulated investment company as defined in IRC § 851 .... 48. 00

49. Proceeds from the original issue of debt instruments 49. 00

50. Refunds from returned merchandise 50. 00

51. Cash and in-kind discounts 51. 00

52. Trade discounts 52. 00

53. Federal, state, or local tax refunds 53. 00

54. Security deposits 54. 00

55. Payment of the principal portion of loans 55. 00

56. Value of property received in a like-kind exchange 56. 00

57. Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible or intangible property that are capital assets and IRC § 1231(b) land:

a. Amount from such dispositions of capital assets as defined in IRC §1221(a) or land used in a trade or business as defined in IRC § 1231(b) 57a. 00

b. Combined gains from each disposition in this category that produced a gain that is included in that taxpayer's federal taxable income. (Do not net against dispositions that produced loss.) 57b. 00

c. **Amount excluded from Gross Receipts.** Subtract line 57b from line 57a 57c. 00

58. Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible or intangible property that is a hedging transaction[a]:

a. Amount from such dispositions of property used in a hedging transaction ... 58a. 00

b. Amount of overall net gain from hedging transactions entered into during the tax year 58b. 00

c. **Amount excluded from Gross Receipts.** Subtract line 58b from line 58a 58c. 00

Continued on Page 4

4700, Page 4

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

PART 5: EXCLUSIONS FROM GROSS RECEIPTS (CONT.)

59. Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible or intangible property that is investment and trading assets managed as part of the person's treasury function[b]:

a. Amount from such dispositions of property that is investment and trading assets managed as part of the person's treasury function 59a. 00

b. Amount of overall net gain from treasury function incurred during tax year 59b. 00

c. **Amount excluded from Gross Receipts.** Subtract line 59b from line 59a 59c. 00

60. Proceeds from an insurance policy, a settlement of a claim or a judgment in a civil action, less any proceeds that are included in federal taxable income (as defined for MBT purposes) 60. 00

61. For a sales finance company, as defined in MCL § 492.102 and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under 15 USC § 78c(a)(4) or (5), or a member of the UBG of that broker or dealer that buys and sells contracts subject to 7 USC § 1 to 27f for its own account:

a. Amounts realized from the repayment, maturity, sale, or redemption of the principal of a loan, bond, or mutual fund, certificate of deposit, or similar marketable instrument provided such instruments are not held as inventory 61a. 00

b. Principal amount received under a repurchase agreement or other transaction properly characterized as a loan 61b. 00

62. For a mortgage company[c], proceeds representing the principal balance of loans transferred or sold 62. 00

63. For a professional employer organization[d] (PEO), any amount charged that represents the actual cost of wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the PEO under a professional employer arrangement 63. 00

64. Any invoiced items used to provide more favorable floor plan assistance to a person subject to the MBT than to a person not subject to the MBT and paid by a manufacturer, distributor, or supplier 64. 00

65. For an individual, estate, or other person organized for estate or gift planning purposes:

a. Receipts from investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the taxpayer's trade or business ... 65a. 00

b. Receipts from the disposition of tangible or intangible property held for personal use and enjoyment, such as a personal residence or personal assets 65b. 00

c. Other amounts received that are NOT from transactions, activities, and sources in the regular course of the taxpayer's trade or business 65c. 00

66. Receipts derived from investment activity by a person organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related[e] to that individual, or by a common trust fund established under MCL § 555.101 to 555.113 .... 66. 00

67. Interest and dividends derived from obligations or securities of the United States government, this state, or any governmental unit of this state (as defined under MCL § 141.1053) 67. 00

68. Amounts attributable to an ownership interest in a pass-through entity, regulated investment company, real estate investment trust, or cooperative corporation whose business activities are taxable under the modified gross receipts tax or would be subject to the modified gross receipts tax if the business activities were in this state[f] 68. 00

69. For a regulated investment company as that term is defined under IRC § 851, receipts derived from investment activity by that regulated investment company 69. 00

70. Only Health Maintenance Organizations (HMOs) holding contract with the State for Medicaid services may complete this line: if applicable per MCL § 208.1111(1) (dd), enter amounts received during the period that is both within the tax year and within October 1, 2011, through September 30, 2012, for Medicaid premium or reimbursement of costs associated with service provided to a Medicaid recipient or beneficiary. The State Budget Director has until January 1, 2012 to certify that necessary rates provide explicit adjustment for MBT obligations, in which case NO deduction will be allowed for any HMO holding contract with the State for Medicaid services [g] 70. 00

71. For a taxpayer that provides health care management consulting services, amounts received by the taxpayer after August 1, 2010, as fees from its clients that are expended by the taxpayer to reimburse those clients for labor and nonlabor services that are paid by the client and reimbursed to the client pursuant to a services agreement 71. 00

72. **SUBTOTAL** **Gross Receipts Exclusions that are not phased in.** Add lines 41 through 56, 57c, 58c, 59c, and 60 through 71 .... 72. 00

To the extent **INCLUDED** in arriving at line 40, list the following:

73. Bad Debt amounts deducted for Federal Income Tax that correspond to items included in MGR tax base for current or prior MBT return 73. 00

74. Dividends and royalties received or deemed received from a foreign operating entity or a person other than a U.S. person, including, but not limited to, the amounts determined under IRC § 78, or 951 through 964 ... 74. 00

75. Add lines 73 and 74 .... 75. 00

Continued on Page 5

4700, Page 5

FEIN or TR Number [redacted]
UBG Member FEIN or TR Number

PART 5: EXCLUSIONS FROM GROSS RECEIPTS (CONT.)

To the extent INCLUDED in arriving at line 40, and to the extent NOT deducted as purchases from other firms on the *MBT Annual Return* , Form 4567, lines 13, 14 or 15, (or, for UBG standard members, the *MBT UBG Combined Filing Schedule for Standard Members,* Form 4580, lines 18, 19 or 20) enter:

76.	Sales or use taxes collected from or reimbursed by a consumer or other taxes collected from or reimbursed by a purchaser and remitted to a local, state, or federal tax authority	76.		00
77.	In the case of receipts from the sale of motor fuel by a person with a motor fuel tax license or a retail dealer, the amount equal to federal and state excise taxes paid by any person on such motor fuel under IRC § 4081 or applicable state law	77.		00
78.	In the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license to sell, distribute, or produce those products, the amount equal to federal and state excise taxes paid by any person on or for such products under IRC Subtitle E or applicable state law	78.		00
79.	In the case of receipts from the sale of communication, video, Internet access and related services and equipment, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the MBT	79.		00
80.	In the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the MBT	80.		00
81.	Any deposit required under the following:			
	a. 1976 IL 1, MCL § 445.571 to 445.576	81a.		00
	b. R 436.1629 of the Michigan administrative code	81b.		00
	c. R 436.1723a of the Michigan administrative code	81c.		00
	d. Any substantially similar beverage container deposit law of another state	81d.		00
82.	Excise tax collected from or reimbursed by a consumer and remitted pursuant to MCL § 207.371 to 207.383	82.		00
83.	Add lines 76 through 82	83.		00
84.	Add lines 75 and 83	84.		00
85.	SUBTOTAL Multiply line 84 by 0.6 for tax years ending in 2010, or by 0.75 for tax years ending in 2011	85.		00
86.	In the case of receipts from the sale of cigarettes or tobacco products by a wholesale dealer, retail dealer, distributor, manufacturer, or seller, the amount equal to the federal and state excise taxes paid by any person on or for such products under IRC Subtitle E or applicable state law	86.		00

GROSS RECEIPTS FOR MBT PURPOSES

87.	**Subtract lines 72, 85 and 86 from line 40.** Carry this amount to Form 4567, line 12, or Form 4583, line 9. Standard members of a UBG will carry this amount to Form 4580, Part 2A, line 17	87.	99,029,125	00

a) For purposes of this provision, a hedging transaction is one entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily to manage (i) risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. Transfer of title of real or tangible personal property is not a hedging transaction. "Hedging transaction" means that term as defined under IRC § 1221 regardless of whether the transaction was identified by the taxpayer as a hedge for federal income tax purposes, provided, however, that transactions not identified as a hedge for federal income tax purposes shall be identifiable to the department by the taxpayer as a hedge in its books and records.

b) For purposes of this provision, a person principally engaged in the trade or business of purchasing and selling investment and trading assets is not performing a treasury function. "Treasury function" means the pooling and management of investment and trading assets for the purpose of satisfying cash flow or liquidity needs of the taxpayer's trade or business.

c) "Mortgage company" means a person that is licensed under MCL § 445.1651 to 445.1684, or MCL § 493.51 to 493.81, and has greater than 90 percent of its revenues, in the ordinary course of business, from the origination, sale, or servicing of residential mortgage loans.

d) Professional employer organization is not the same thing as a staffing company, and it means an organization that provides the management and administration of the human resources of another entity by contractually assuming substantial employer rights and responsibilities through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

- Maintaining a right of direction and control of employees' work, although this responsibility may be shared with the other entity.
- Paying wages and employment taxes of the employees out of its own accounts.
- Reporting, collecting, and depositing state and federal employment taxes for the employees.
- Retaining a right to hire and fire employees.

e) For purposes of this provision, a person is related to an individual if that person is a spouse, brother or sister, whether of the whole or half blood or by adoption, ancestor, lineal descendent of that individual or related person, or a trust benefiting that individual or one or more persons related to that individual.

f) For this provision, the following definitions apply: Cooperative Corporation means those organizations described under subchapter T of the IRC; Pass-through entity means a partnership, subchapter S Corporation, or other person, other than an individual, that is not classified for Federal Income Tax purposes as an association taxed as a corporation; Real estate investment trust means the term defined under IRC § 856; and Regulated investment company means the term defined under IRC § 851.

g) A taxpayer with a federal fiscal year ending in 2012 can only claim the amounts received between October 1, 2011, and December 31, 2011, when reporting a Michigan Business Tax short-period ending December 31, 2011.

2011 Mich Return

Michigan Department of Treasury
4746 (09-11), Page 1

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

Business Income Worksheet

Complete the appropriate parts below, based on the person's organization type. Part 1 is for an Individual or Fiduciary; Part 2 is for a C Corporation (or a person filing federal returns as a C Corporation); and Part 3 is for a Partnership or S Corporation (or a person filing a federal return as a Partnership or an S Corporation). This worksheet will calculate business income as defined by law in most circumstances. Taxpayers and tax professionals are expected to be familiar with uncommon situations within their experience, which produce business income not identified by specific lines on this worksheet, and report that amount on the most appropriate line. Include an attachment explaining that line. The Michigan Department of Treasury may adjust the figure resulting from this worksheet to account properly for such uncommon situations. Complete and attach this worksheet to your return. Unitary Business Groups (UBG) must complete and attach a worksheet for each member.

PART 1: INDIVIDUALS AND FIDUCIARIES

1.	U.S. Form *1040, Schedule C* or *C-EZ*, net profit/loss	1.	00
2.	U.S. Form *1040, Schedule D*, gain/loss [a]	2.	00
3.	U.S. Form *1040, Schedule E*, line 26 rent and royalty income/loss	3.	00
4.	U.S. Form *4797* gain/loss not included in Schedule D[a]	4.	00
5.	Domestic Production Activities deduction based on IRC § 199 reported on U.S. Form *8903*, to the extent deducted from federal taxable income	5.	00
6.	Other income. Include an attachment explaining this line.	6.	00
7.	**Total business income before adjustment.** Add lines 1 through 6	7.	00
8.	Adjustments due to decoupling of Michigan depreciation from section 168(k) of IRC. If adjustment is negative, enter as negative:		
	a. Net bonus depreciation adjustment[b]	8a.	00
	b. Gain/loss adjustment on the sale of an eligible depreciable asset [c]	8b.	00
9.	Add lines 8a and 8b. If negative, enter as negative	9.	00
10.	**Total business income after adjustment.** Add lines 7 and 9. Carry amount to Form 4567, line 28, or Form 4583, line 10. For a UBG member, carry amount to Form 4580, Part 2A, line 30	10.	00

PART 2: C CORPORATIONS

11.	Federal taxable income from U.S. Form *1120*	11.	00
12.	Domestic Production Activities deduction based on IRC § 199 reported on U.S. Form *8903*, to the extent deducted from federal taxable income	12.	00
13.	Miscellaneous. Include an attachment explaining this line	13.	00
14.	**Total business income before adjustment.** Add lines 11, 12 and 13	14.	00
15.	Adjustments due to decoupling of Michigan depreciation from section 168(k) of IRC. If adjustment is negative, enter as negative:		
	a. Net bonus depreciation adjustment[b]	15a.	00
	b. Gain/loss adjustment on the sale of an eligible depreciable asset [c]	15b.	00
16.	Add lines 15a and 15b. If negative, enter as negative	16.	00
17.	**Total business income after adjustment.** Add lines 14 and 16. Carry amount to Form 4567, line 28, or Form 4583, line 10. For a UBG member, carry amount to Form 4580, Part 2A, line 30	17.	00

PART 3: PARTNERSHIPS AND S CORPORATIONS

18.	U.S. Form *1065*, or *1120S Schedule K*, income (loss):			
	a. Ordinary income/loss	18a.	17,089,417	00
	b. Net real estate rental income/loss	18b.		00
	c. Net other rental income/loss	18c.		00
	d. Interest, dividend, and royalty income	18d.		00
	e. Net short-term gain/loss	18e.		00
	f. Net long-term gain/loss	18f.	37,044,407	00
	g. Other portfolio income/loss	18g.		00
	h. Guaranteed payments to partners or wages paid to a member of a LLC Partnership	18h.		00
	i. Other net gain/loss under section 1231	18i.		00
	j. Other income. Include an attachment explaining this line	18j.		00
19.	**Total income/loss.** Add lines 18a through 18j	19.	54,133,824	00

1019

Continued on Page 2

4746, Page 2

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

PART 3: PARTNERSHIPS AND S CORPORATIONS (CONT.)

20. U.S. Form *1065* or *1120S, Schedule K,* Deductions:			
a. Charitable contributions	20a.	300	00
b. Section 179 expense	20b.		00
c. Deductions related to portfolio income	20c.		00
d. Other deductions, excluding deductions for domestic production activities (IRC § 199). Include an attachment explaining this line	20d.		00
21. **Total deductions.** Add lines 20a through 20d	21.	300	00
22. **Total business income before adjustments.** Subtract line 21 from line 19	22.	54,133,524	00
23. Adjustments due to decoupling of Michigan depreciation from section 168(k) of IRC (if adjustment is negative, enter as negative):			
a. Net bonus depreciation adjustment[b]	23a.	-145,532	00
b. Gain/loss adjustment on the sale of an eligible depreciable asset[c]	23b.		00
24. Add lines 23a and 23b. If negative, enter as negative	24.	-145,532	00
25. **Total business income after adjustment.** Add lines 22 and 24. Carry amount to Form 4567, line 28, or Form 4583, line 10. For a member of a UBG, carry amount to Form 4580, Part 2A, line 30	25.	53,987,992	00

(a) U.S. Forms *1040D* and *4797*: Report only gains or losses from assets used in a business activity. Do not include personal gains and losses.

(b) For the computation of business income for Michigan Business Tax (MBT) purposes, persons who claimed a federal special depreciation under IRC § 168(k) on property first placed in service in 2008 or later must calculate the net bonus depreciation adjustment on those assets as follows: net bonus depreciation adjustment in tax year equals the total federal depreciation claimed in tax year less the total amount of depreciation that would be claimed in the federal return in the tax year if the person had elected not to utilize the bonus depreciation allowance at IRC § 168(k). A person may not elect IRC § 179 expensing of an asset for MBT purposes if it did not elect to use IRC § 179 for that asset federally.

(c) For the computation of business income for MBT purposes, persons who claimed a federal special depreciation under IRC § 168(k) on property first placed in service in 2008 or later and subsequently disposed of that property in the current tax year must calculate the gain/loss adjustment on the sale of those assets as follows: gain/loss adjustment in tax year equals the total amount of federal depreciation that would be claimed in the federal return over the years (starting the year the asset was placed in service and ending on the current tax year) if the person had elected not to utilize the bonus depreciation allowance at IRC § 168(k) on the property being disposed LESS the total federal depreciation claimed over the years (starting the year asset was placed in service and ending on the current tax year). A person may not elect IRC § 179 expensing of an asset for MBT purposes if it did not elect to use IRC § 179 for that asset federally.

Michigan Department of Treasury
MINNESOTA LIMITED LLC / [redacted]
Michigan Business Tax Audit Report of Findings

AROF

Introduction

A MBT audit was conducted and completed on the above listed taxpayer for the period 1/1/2010 to 3/31/2011. The audit resulted in a determined amount of $2,388,963.00.

Audit Objectives

- Determine any differences between the correct tax and the reported tax liability.
- Affect the collection or refund of those taxes determined reported in error.

Cause of Adjustment

Primary: MBT-Apportionment, MCL 208.1301(1) & (2)
Secondary: MBT-Gross Receipts - Inventory, MCL 208.1111(4)
Third: MBT-Business Income, MCL 208.1105(2)

Audit Procedures and Steps Performed

Tax Specific Pre-Audit Documentation

Pre-Audit Review

The MBT audit period covers 1/1/2010 through 3/31/2011. The initial audit period set was thru 12/31/2011, however, taxpayer was sold 03/31/2011. Auditor noted all audit instructions; taxpayer filed form 4580 as a standard taxpayer.

Audit Confirmation

Auditor sent taxpayer representative pre audit confirmation letter on December 18, 2014 and Audit confirmation letter was sent to taxpayer representative on March 9, 2015.

Taxpayer Responsibility

Taxpayer was advised of their responsibility to identify any credits not covered during the audit.

Business Description

Minnesota Limited, LLC a specialty contractor, provides various construction services to the natural gas and petroleum industries in the United States. The company offers pipeline, pump and compressor stations, and terminal/truck loading rack, refinery, gas distribution systems, and tank farm/refinery piping construction services, as well as pipeline maintenance and hydrostatic testing services. It also provides gas distribution, emergency response, hazmat response-leak repair/clean-up, right-of-way clearing, cathodic/pipe coating repair, concrete construction, hot taps, equipment hauling/transportation, pipe fabrication, road boring/split casings, seeding and mulching, crane, and vacuum truck/drain. Minnesota LLC headquarter is located in Big lake, Minnesota. Taxpayer's Michigan activity consists of property, payroll, and sales and solicitations.
The standard industry code 179 Misc. Special Trade Contractor is deemed adequate, no changes is recommended.

General Scanned Documents

Scanned documents include, Pre Audit Confirmation Letter, Audit Confirmation Letter, Records Request, Waiver Memo to TP, TAQ, and Waiver memo Audit Division.

Audit Instructions

The audit period covers 1/1/2010 through 3/31/2011. Auditor noted all audit instructions; auditor reviewed TAQ and taxpayer website to get information about the company business activities. Chris Keller is the contact for the audit; all questions and information needed for the audit will be directed to Mr. Keller. He can be reached at 763-262-7067.

Account Maintenance

The MBT returns used for the audit review were all processed. A request for account maintenance was not necessary.

Audit Scope

Auditor performed a full standard audit review for each year of the audit period.

Federal Audit

Taxpayer had a Federal audit in audit year 2010, the result was a no change to business income. No Federal Audit for audit year ended 3/31/2011.

Nexus

The taxpayer has nexus in Michigan in accordance with RAB 2007-6. Taxpayer have property and payroll in Michigan.

P.L. 86-272 Protection from the Business Income Portion of Tax

The taxpayer is subject to business income tax in accordance with PL 86-272. Taxpayer have property and payroll in the State.

Apportionment

The taxpayer is subject to apportionment, the taxpayer is a standard filer with multi-state operation.

Michigan sales were obtained from apportionment schedules supplied by the taxpayer. Auditor determined that taxpayer reported the correct amount for each year of the audit period; no adjustment was necessary.

Total sales were obtained from apportionment schedules supplied by the taxpayer. Taxpayer sales report were broken down by States. Reported amounts for total sales, rents, royalties, and miscellaneous income were verified for reasonableness against the US 1120 reported amounts.

Auditor noted that taxpayer reported sales everywhere for audit year 3/2011 was overstated as taxpayer included the gain from Sch. D and proceeds from sale of business property as part of sales apportionment. The 2010 audit year sales everywhere was accepted as taxpayer reported the correct amount. Please refer to SALES EVERYWHERE. MCL 208.130 1(1) & (2).

03/2011; Decrease ($77,372,495)

As a result, auditor made adjustment to the overall sales apportionment factor; please refer to SALES APPORTIONMENT.

03/2011; Increase 54.9711%

Fiscal Filers Initial MBT Return

The taxpayer is calendar year filler.

Gross Receipts

Gross receipts was verified from the US 1120 lines 1c (net sales), 5 (Interest), 6 (Gross Rents), 7 (Royalties), 10 (Other Income), proceeds from Sch D, and gross proceeds from 4797. Auditor determined that taxpayer reported the correct amount for each year of the audit period; no adjustment was necessary.

Inventory Acquired During the Tax Year

Taxpayer reported inventory amounts in each year of the audit period. Auditor determined that taxpayer does not appear to be entitled to take the Inventory Deduction based on NAICS (179). Taxpayer business does not qualifies for the deduction as none of their product is, held for resale in the ordinary course of a retail or wholesale business, and finished goods and goods in process of a manufacturer, including raw materials purchased from another person. Taxpayer is a pipeline contactor in Michigan and does not buy for resale or manufacture product for sales. The inventory amounts reported were disallowed by the auditor, creating and adjustment for each year of the audit period. Adjustments were made for each year of the audit. Please refer to INVENTORY ACQUIRED. MCL 208.1111(4).

2010; Decrease ($10,402,489)
3/2011; Decrease ($1,854,708)

Depreciable Assets Acquired During the Tax Year

Depreciable assets were obtained from the (US 4562) Depreciation and Amortization schedule included with the US 1120 and the taxpayer depreciation schedules for each year of the audit period. Auditor determined that taxpayer reported the correct amounts for the entire audit period. Overall, no adjustment was necessary as taxpayer reported amount was accepted.

Materials and Supplies not Included in Inventory or Depreciable Property

Materials Supplies acquired during the audit period was verified using electronic records supplied by the taxpayer showing summaries of accounts. Taxpayer provided account names that were checked against the taxpayer's detailed chart of accounts offering descriptions. The accounts accepted were, Supplies & consumables, Shop tools & supplies, and Stock supplies/consumables. Auditor accepted taxpayer reported amounts as it had acceptable descriptions related to inventory preservation, maintenance, and depreciable asset maintenance. No adjustment was necessary.

Staffing Company: Compensation of Personnel Supplied to Customers

Staffing Company Compensation did not apply to the taxpayer.

Deduction for Contractors in SIC Codes 15, 16, and 17

Taxpayer reported deductions for contractors under SIC codes 15, 16, or 17 during the course of the examination. Taxpayer and auditor agree to review at the account level deduction for Contractors due to time that will be involved in reviewing in details. The account accepted were cost of Rev- Contractor, the reported amounts were compared to the Trial balance totals; auditor determined that taxpayer reported the correct amounts, no adjustments were necessary.

Miscellaneous Gross Receipts Subtractions

There were no items pertaining to miscellaneous subtractions.

Single Business Tax Business Loss Carryforward

Taxpayer did not have a loss carry forward from the Single Business Tax. Auditor verified the CTC Bridge and determined that there was no SBT loss carry forward.

Enrichment Prohibition for Dealer of New Motor Vehicles and Personal Watercraft

Taxpayer is not a dealer in new motor vehicles or watercraft; therefore, enrichment prohibition does not apply.

Business Income

Business income was verified from the line 30 of the US 1120. Auditor determined that taxpayer reported business income was understated for each year of the audit period. Adjustment was made to report the correct amount for each year of the audit period, please refer to BUSINESS INCOME. MCL 208.1105 (2)

2010; Increase $242,204
3/2011; Increase $145,532

Business Income Additions

There was no evidence of any non-Michigan interest and dividend amounts. Taxes measured by net income were traced to the US 1120 for each year within the audit period. Taxpayer reported Taxes measured by income and tax imposed under MBT in each year of the audit period.

Taxpayer reported amount for additions to business income was accepted as filed for each year within the audit period. There were no other items observed in the review related to other areas of Business Income Additions; no adjustment was necessary.

Business Income Subtractions

Business income subtractions were verified on the US 1120 and from working trial balance detail. The areas examined include line 10-Other Income (to verify flow-through activity), and schedule M-3 (interest income from US obligations). Auditor determined that taxpayer has no activity that relates to Business Income Subtractions for the audit period. Therefore, no adjustment was necessary.

MBT Business Loss Carryforward

The taxpayer reported no loss carry forward for each year of the audit period. Auditor determined that taxpayer has no activity that relates to Business Income loss carry forward in each year of the audit period. Therefore, no adjustment was necessary.

Nonrefundable Credits

The taxpayer did not report any Nonrefundable Credits.

Recapture of Certain Business Tax Credits and Deductions

There were no refundable credits observed within the audit period and taxpayer reported no amount as well. The taxpayer supplied a schedule for all fixed asset disposal transactions for both years of the audit period; auditor verified that taxpayer did not obtain Michigan assets for the audit period that would qualify for MBT recapture upon disposal.

Refundable Credits

The taxpayer did not report any refundable credits during the audit period. No further attention was given to refundable credits.

Inclusion of All Schedules

Auditor confirmed that all schedules have flowed through to the appropriate lead schedules. All SAP amounts have been billed and match the transcripts for all members, and for the 4567.

Computed Interest

Interest has been calculated through January 31, 2016.

Penalty Recommendation

No penalty is recommended as auditor determined that there was no evidence implying intentional disregard or intent to deceive.

Records Examined

Records examined during the course of the audit:

a. US 1120 and all supporting schedules
b. US 1120 and all supporting schedules
b. Federal Tax Grouping
c. Michigan Business tax Returns
d. 1120 Depreciation and fixed assets schedules
e. Detailed listing of Contractor Deductions accounts
f. Detailed listing of materials and supplies accounts
g. Organizational charts
h. Chart of accounts and accounts description
I. Payroll records

Special Circumstances

Taxpayer provided additional information requested to clarify issues concerning audits.

Contested Issues

There are no contested issues.

Tax Specific Scanned Documents

Scanned documents include, Signed Preliminary Audit Determination Letter and Application of Payment.

TEAM MANAGER NOTE:
Auditor did not receive or scan "Signed Preliminary Audit Determination Letter and Application of Payment" into case file.
Auditor Tax Specific Scanned Documents include - Waiver memo Auditor to Treasury; Waiver MBT; Determined Audit Adjustment Letter; Waiver Memo

Treasury to TP; Timeline MBT

Team Manager Scanned Documents - PAD cover letter and Preliminary Audit Determination.

Update Comment Section

All unused schedules have been hidden in the Workbooks. Additional schedules have been imported into the case file. Initial audit package was provided to taxpayer for review. Taxpayer disagrees with audit determination and made no audit prepayment.

Audit Results

Net Tax Due/(Net Credit)/Other adjustment	$	2,388,963.00
Penalty	$	0.00
Interest	$	465,404.00
Amount Due/(Net Refund or Credit)/Other adjustment	$	2,854,367.00

Primary Auditor: Oladunni Oladeji

Michigan Department of Treasury
4567 (Rev. 09-10), Page 1

□ **Check if this is an amended return.**
Attach supporting documents.

2010 MICHIGAN Business Tax Annual Return

Issued under authority of Public Act 36 of 2007.

1. Return is for calendar year 2010 or for tax year beginning: MM-DD-YYYY 01/01/2010 and ending: MM-DD-YYYY 12/31/2010

2. Name (print or type)
MINNESOTA LIMITED INC

Doing Business As (DBA)

Street Address
18640 200TH STREET

□ Check if new address. (See instructions)

City	State	ZIP/Postal Code	Country Code
BIG LAKE	MN	55309	

3. Principal Business Activity
CONSTRUCTION

4. Business Start Date in Michigan
03/21/1959

5. NAICS (North American Industry Classification System) Code
237990

6. If Discontinued, Effective Date

7. Federal Employer Identification Number (FEIN) or TR Number
[redacted]

8. Organization Type (LLC or Trust, see instructions)

□ Individual
□ C Corporation / LLC C Corporation
□ Fiduciary
☒ S Corporation / LLC S Corporation
□ Partnership / LLC Partnership

9. □ Check if Filing Michigan Unitary Business Group Return. (Attach Form 4580.)

10. □ Check if you have sales receipts from transportation services.

11. Apportionment Calculation

a. Michigan Sales (if no Michigan sales, enter zero)	11a.	43,352,830	00
b. Total Sales	11b.	110,365,790	00
c. Apportionment Percentage. Divide line 11a by line 11b	11c.	39.281	%

PART 1: MODIFIED GROSS RECEIPTS TAX

12. Gross Receipts (see instructions)	12.	111,832,405	00

Subtractions from Gross Receipts

13. Inventory acquired during tax year	13.	10,402,489	00
14. Depreciable assets acquired during tax year	14.	844,154	00
15. Materials and supplies not included in inventory or depreciable property	15.	3,250,310	00
16. Staffing Company: Compensation of personnel supplied to customers	16.	0	00

If qualified for the Small Business Alternative Credit, skip to line 18.

17. Deduction for contractors in SIC Codes 15, 16 and 17 SIC Code: 16	17.	18,879,499	00
18. Film rental or royalty payments paid by a theater owner to a film distributor and/or film producer	18.	0	00

19. Qualified Affordable Housing Project (QAHP) Deduction

a. Gross receipts attributable to residential rentals in Michigan	19a.	0	00
b. Number of residential rent restricted units in Michigan owned by QAHP	19b.	0	
c. Total number of residential rental units in Michigan owned by QAHP.	19c.	0	
d. Divide line 19b by line 19c and enter as a percentage	19d.	0	%
e. Multiply line 19a by line 19d	19e.	0	00
f. Limited dividends or other distributions made to owners of project	19f.	0	00

g. QAHP Deduction. Subtract line 19f from line 19e	19g.	0	00
20. Payments made by taxpayers licensed under Article 25 or Article 26 of the Occupational Code to independent contractors licensed under Article 25 or Article 26	20.	0	00
21. Miscellaneous (see instructions)	21.	0	00
22. Total Subtractions from Gross Receipts. Add lines 13 through 18 and 19g through 21	22.	33,376,452	00
23. Modified Gross Receipts. Subtract line 22 from line 12. If less than zero, enter zero	23.	78,455,953	00
24. Apportioned Modified Gross Receipts Tax Base. Multiply line 23 by percentage on line 11c	24.	30,818,283	00
25. Multiply line 24 by 0.8% (0.008)	25.	246,546	00
26. Enrichment Prohibition for dealers of personal watercraft or new motor vehicles. Enter amount collected during tax year	26.	0	00
27. **Modified Gross Receipts Tax Before All Credits.** Enter the greater of line 25 or line 26	27.	246,546	00

Continue on Page 2

FEIN or TR Number [redacted]

PART 2: BUSINESS INCOME TAX

28.	Business Income. If negative, enter as a negative. (If business activity protected under PL 86-272, complete and attach Form 4586 and/or 4581, as applicable; see instructions)	28.	3,983,427	00

Additions to Income

29.	Interest income and dividends derived from obligations or securities of states other than Michigan	29.	0	00
30.	Taxes on or measured by net income	30.	2,195	00
31.	Tax imposed under MBT	31.	404,904	00
32.	Any carryback or carryover of a federal net operating loss	32.	0	00
33.	Losses attributable to other taxable flow-through entities	33.	0	00

Account List

34.	Royalty, interest, and other expenses paid to a related person	34.	0	00
35.	Miscellaneous (see instructions)	35.	0	00
36.	Total Additions to Income. Add lines 29 through 35	36.	407,099	00
37.	**Business Income Tax Base After Additions.** Add lines 28 and 36. If negative, enter as a negative	37.	4,390,526	00

Subtractions from Income

38.	Dividends and royalties received from persons other than U.S. persons and foreign operating entities	38.	0	00
39.	Income attributable to other taxable flow-through entities	39.	0	00

Account List

40.	Interest income derived from United States obligations	40.	0	00
41.	Net earnings from self-employment. If less than zero, enter zero	41.	0	00
42.	Miscellaneous (attach a statement; see instructions)	42.	0	00
43.	Total Subtractions from Income. Add lines 38 through 42	43.	0	00

44.	**Business Income Tax Base.** Subtract line 43 from line 37. If negative, enter as a negative	44.	4,390,526	00
45.	Apportioned Business Income Tax Base. Multiply line 44 by percentage on line 11c	45.	1,724,643	00
46.	Available MBT business loss carryforward from previous MBT return. Enter as a positive number	46.	0	00
47.	Subtract line 46 from line 45. If negative, enter here as a negative, skip line 48, and enter zero on line 49. A negative number here is the available business loss carryforward to the next filing period (see instructions)	47.	1,724,643	00

48. Qualified Affordable Housing Deduction. If line 47 is positive, complete lines 48a through 48i as follows: (1) If taking the seller's deduction, skip lines 48a through 48h and carry the amount from Form 4579, line 5, to line 48i. (2) If taking the QAHP deduction, complete lines 48a through 48i.

a. Gross rental receipts attributable to residential units in Michigan	48a	0	00
b. Rental expenses attributable to residential rental units in Michigan	48b.	0	00
c. Taxable income attributable to residential rental units. Subtract line 48b from line 48a	48c.	0	00
d. Number of residential rent restricted units in Michigan owned by the Qualified Affordable Housing Project	48d.	0	
e. Total number of residential rental units in Michigan owned by the Qualified Affordable Housing Project	48e.	0	
f. Divide line 48d by line 48e and enter as a percentage	48f.	0	%
g. Multiply line 48c by line 48f	48g.	0	00
h. Limited dividends or other distributions made to the owners of the project	48h.	0	00

	i. Qualified Affordable Housing Deduction. Subtract line 48h from line 48g	48i.	0	00
49.	Subtract line 48i from line 47. If less than zero, enter zero	49.	1,724,643	00
50.	**Business Income Tax Before All Credits.** Multiply line 49 by 4.95%(0.0495)	50.	85,370	00

Continue and sign on Page 3

2010 Mich Return

FEIN or TR Number [redacted]

PART 3: TOTAL MICHIGAN BUSINESS TAX

51.	**Total Michigan Business Tax Before Surcharge and Credits.** Add lines 27 and 50	51.	331,916	00
52.	Annual Surcharge. Enter the lesser of $6,000,000 or line 51 multiplied by 21.99% (0.2199)	52.	72,988	00
53.	**Total Liability Before All Credits.** Add lines 51 and 52	53.	404,904	00
54.	Nonrefundable credits from Form 4568, line 40	54.	0	00
55.	**Total Tax After Nonrefundable Credits.** Subtract line 54 from line 53. If less than zero, enter zero	55.	404,904	00
56.	Recapture of Certain Business Tax Credits and Deductions from Form 4587, line 12	56.	0	00
57.	**Total Tax Liability.** Add lines 55 and 56	57.	404,904	00

PART 4: PAYMENTS, REFUNDABLE CREDITS AND TAX DUE

58.	Overpayment credited from prior MBT return	58.	61,378	00
59.	Estimated tax payments	59.	293,502	00
60.	Tax paid with request for extension	60.	138,000	00
61.	Refundable credits from Form 4574, line 24	61.	0	00
62.	Payment and credit total. Add lines 58 through 61. (If not amending, then skip to line 64.)	62.	492,880	00
63.	**AMENDED RETURN ONLY** a. Payment made with the original return	63a.	0	00
	b. Overpayment received on the original return	63b.	0	00
	c. Add lines 62 and 63a and subtract line 63b from the sum	63c.	0	00
64.	**TAX DUE.** Subtract line 62 (or line 63c, if amending) from line 57. If less than zero, leave blank	64.	0	00
65.	Underpaid estimate penalty and interest from Form 4582, line 38	65.	0	00
66.	Annual return penalty (a) 0 % = (b) 0 00 plus interest (c) 0 00. Total	66d.	0	00
67.	**PAYMENT DUE.** If line 64 is blank, go to line 68. Otherwise, add lines 64, 65 and 66d	67.	0	00

PART 5: REFUND OR CREDIT FORWARD

68.	Overpayment. Subtract lines 57, 65 and 66d from line 62 (or line 63c, if amending). If less th an zero, leave blank (see instructions)	68.	87,976	00
69.	**CREDIT FORWARD.** Amount on line 68 to be credited forward and used as an estimate for next MBT tax year	69.	87,976	00
70.	**REFUND.** Amount on line 68 to be refunded	70.	0	00

Taxpayer Certification. *I declare under penalty of perjury that the information in this return and attachments is true and complete to the best of my knowledge.*

☒ By checking this box, I authorize Treasury to discuss my return with my preparer.

Authorized Signature for Tax Matters

Authorized Signer's Name (print or type): CHRISTOPHER LEINES

Date: 08/30/2011

Title: OFFICER

Telephone Number: (763) 262-7000

Preparer Certification. *I declare under penalty of perjury that this return is based on all information of which I have any knowledge.*

Preparer's PTIN, FEIN or SSN: [redacted]

Preparer's Business Name (print or type): LURIE BESIKOF LAPIDUS & COMPANY LLP

Preparer's Business Address and Telephone Number (print or type):
2501 WAYZATA BOULEVARD
MINNEAPOLIS MN 554052197
(612) 377-4404

Return is due April 30 or on or before the last day of the 4th month after the close of the tax year.

WITHOUT PAYMENT. Mail return to:
Michigan Department of Treasury, P.O. Box 30783, Lansing, MI 48909

WITH PAYMENT. Pay amount on line 67. Mail check and return to:
Michigan Department of Treasury, P.O. Box 30113, Lansing, MI 48909

Make check payable to "State of Michigan." Print taxpayer's FEIN or TR Number, the tax year, and "MBT" on the front of the check. Do not staple the check to the return.

Michigan Department of Treasury
4582 (Rev. 08-10), Page 1

Attachment 16

2010 MICHIGAN Business Tax Penalty and Interest Computation for Underpaid Estimated Tax

Issued under authority of Public Act 36 of 2007.

Name	Federal Employer Identification Number (FEIN) or TR Number [redacted]

PART 1: ESTIMATED TAX REQUIRED

1. Annual tax from Form 4567, line 57, or Form 4583, line 21, or Form 4588, line 44, or Form 4590, line 30	1.	0 00
2. Required estimate amount. Enter 85% (0.85) of line 1..	2.	0 00

See MBT instruction booklet for exceptions to penalty and interest computation.

		A	B	C	D
3. **ENTER THE PAYMENT DUE DATES** (MM-DD-YYYY)	3.				
4. Divide amount on line 2 by 4, or by the number of quarterly returns required. If annualizing, enter the amount from Annualization Worksheet, line 69, on page 2 ..	4.	0	0	0	
CAUTION: Complete lines 5 - 13 one column at a time					
5. Prior year overpayment	5.	0			
6. Amount paid on quarterly return or SUW return (see instr.)	6.	0	0	0	0
7. Enter amount, if any, from line 13 of the previous column..	7.		0	0	0
8. Add lines 5, 6 and 7	8.	0	0	0	0
9. Add amounts on lines 11 and 12 of the previous column and enter the result here	9.		0	0	0
10. Subtract line 9 from line 8. If less than zero, enter zero. For column A only, enter the amount from line 8	10.	0	0	0	0
11. Remaining underpayment from previous period. If amount on line 10 is zero, subtract line 8 from line 9 and enter result here. Otherwise, enter zero............................	11.		0	0	0
12. If line 4 is greater than or equal to line 10, subtract line 10 from line 4 and enter it here. Then go to line 6 of the next column. Otherwise, go to line 13.......................................	12.	0	0	0	0
13. If line 10 is larger than line 4, subtract line 4 from line 10 and enter it here. Then go to line 6 of next column	13.	0	0	0	0

PART 2: FIGURING INTEREST

		A	B	C	D
14. TOTAL UNDERPAYMENT. Add lines 11 and 12	14.	0	0	0	0
15. Enter due date for the next quarter or date tax was paid, whichever is earlier. In column D, enter the due date for the annual return or date tax was paid, whichever is earlier	15.				
16. Number of days from the due date of the quarter to the date on line 15	16.	0000	0000	0000	0000
17. No. of days on line 16 after 04-15-10 and before 07-01-10..	17.	0000	0000	0000	0000
18. No. of days on line 16 after 06-30-10 and before 01-01-11...	18.	0000	0000	0000	0000
19. No. of days on line 16 after 12-31-10 and before 07-01-11...	19.	0000	0000	0000	0000
20. No. of days on line 16 after 06-30-11 and before 01-01-12...	20.	0000	0000	0000	0000
21. $\frac{\text{Number of days on line 17}}{365}$ x 4.25% (0.0425) x line 14.........	21.	0	0	0	0
22. $\frac{\text{Number of days on line 18}}{365}$ x 4.25% (0.0425) x line 14.........	22.	0	0	0	0
23. $\frac{\text{Number of days on line 19}}{365}$ x X.XX% (X.XX) x line 14...........	23.	0	0	0	0
24. $\frac{\text{Number of days on line 20}}{365}$ x *% x line 14	24.	0	0	0	0
25. Interest on underpayment. Add lines 21 through 24............	25.	0	0	0	0

26. **Interest Due.** Add line 25 columns A through D and enter the result here...	26.	0 00

*Interest rate will be set at 1% above the adjusted prime rate for this period.

Continue on Page 2

4582, Page 2

FEIN or TR Number [redacted]

PART 3: FIGURING PENALTY

		A	B	C	D
27. Enter the amount from line 12	27.	0	0	0	0
28. Payment due dates from line 3 (MM-DD-YYYY)	28.				
29. Annual return due date or the date payment was made, whichever is earlier	29.				
30. Number of days from date on line 28 to date on line 29	30.	0000	0000	0000	0000
31. If line 30 is greater than 0 but less than 61, multiply line 27 by 5% (0.05)	31.	0	0	0	0
32. If line 30 is greater than 60, but less than 91, multiply line 27 by 10% (0.10)	32.	0	0	0	0
33. If line 30 is greater than 90, but less than 121, multiply line 27 by 15% (0.15).	33.	0	0	0	0
34. If line 30 is greater than 120, but less than 151, multiply line 27 by 20% (0.20)	34.	0	0	0	0
35. If line 30 is greater than 150, multiply line 27 by 25% (0.25)	35.	0	0	0	0
36. Add lines 31 through 35	36.	0	0	0	0

37. Total Penalty. Add line 36, columns A through D	37.	0	00
38. **Total Penalty and Interest.** Add lines 26 and 37. Enter here and on Form 4567, line 65, or Form 4583, line 29, or Form 4588, line 52, or Form 4590, line 38	38.	0	00

PART 4: ANNUALIZATION WORKSHEET FOR MODIFIED GROSS RECEIPTS AND BUSINESS INCOME TAXES

(If filing Form 4588 or Form 4590, see instructions.)

Complete worksheet if liability is not evenly distributed throughout year.

		A First 3 Months	B First 6 Months	C First 9 Months	D Full 12 Months
39. Gross receipts (GR)	39.				
40. Subtractions	40.				
41. Modifed GR. Subtract line 40 from line 30	41.				
42. Apportionment percentage from Form 4567, line 11c	42.	%	%	%	%
43. Apportioned GR Tax Base. Multiply line 41 by line 42	43.				
44. Multiply line 45 by .8% (0.008)	44.				
45. Enrichment Prohibition for dealers of boats/new motor vehicles	45.				
46. GR Tax Before Credits. Enter the greater of lines 44 or 45	46.				
47. Business Income (BI)	47.				
48. Additions	48.				
49. Add lines 47 and 48	49.				
50. Subtractions	50.				
51. BI Tax Base. Subtract line 50 from line 49	51.				
52. Apportioned BI Tax Base. Multiply line 51 by line 42	52.				
53. MBT business loss carryforward	53.				
54. Qualified Affordable Housing Deduction	54.				
55. Subtract line 54 and line 53 from line 52. If less than zero, enter zero	55.				
56. BI Tax Before Credits. Multiply line 55 by 4.95% (0.0495)	56.				
57. Total MBT Before Credits. Add lines 46 and 56	57.				
58. Annual Surcharge. Multiply line 57 by 21.99% (0.2199) (surcharge for the year should not exceed $6,000,000)	58.				
59. MBT (including surcharge) Before Credits. Add lines 57 and 58	59.				
60. Nonrefundable Credits	60.				
61. Subtract line 60 from line 59. If less than zero, enter zero	61.				
62. Recapture of certain MBT credits and deductions	62.				
63. Net Tax Liability. Add lines 61 and 62	63.				
64. Annualization ratios	64.	4	2	1.3333	1
65. Annualized tax. Multiply line 63 by line 64	65.				
66. Applicable percentage	66.	21.25%	42.5%	63.75%	85%
67. Multiply line 65 by line 66	67.				
68. Combined amounts of line 69 from all preceding columns	68.	▨			
69. **ESTIMATE REQUIREMENTS BY QUARTER.** Subtract line 68 from line 67. If less than zero, enter zero. Enter here and on page 1, line 4	69.				

Note: Totals on line 69 must equal 85% of the current year tax liability on page 1, line 1.

Michigan Department of Treasury
4746 (08-10), Page 1

FEIN or TR Number [redacted]
UBG Member FEIN or TR Number

Business Income Worksheet

Complete the appropriate parts below, based on the taxpayer's organization type. Part 1 is for an Individual or Fiduciary; Part 2 is for a C Corporation (or a taxpayer filing federal returns as a C Corporation); and Part 3 is for a Partnership or S Corporation (or a taxpayer filing a federal return as an S Corporation). This worksheet will calculate business income as defined by law in most circumstances. Taxpayers and tax professionals are expected to be familiar with uncommon situations within their experience, which produce business income not identified by specific lines on this worksheet, and report that amount on the most appropriate line. The Michigan Department of Treasury may adjust the figure resulting from this worksheet to account properly for such uncommon situations. Complete and attach this worksheet to your return. Unitary Business Groups (UBG) must complete and attach a worksheet for each member.

PART 1: INDIVIDUALS AND FIDUCIARIES

1. U.S. Form *1040, Schedule* C or *C-EZ,* net profit/loss	1.		00
2. U.S. Form *1040, Schedule D,* gain/loss[(a)]	2.		00
3. U.S. Form *1040, Schedule E,* line 26 rent and royalty income/loss	3.		00
4. U.S. Form *4797* gain/loss not included in Schedule D	4.		00
5. Domestic Production Activities deduction based on IRC § 199 reported on U.S. Form *8903*, to the extent deducted from federal taxable income	5.		00
6. Other Income	6.		00
7. **Total business income before adjustment.** Add lines 1 through 6	7.		00
8. Adjustments due to decoupling of Michigan depreciation from section 168(k) of IRC. If adjustment is negative, enter as negative:			
a. Net bonus depreciation adjustment[(b)]	8a.		00
b. Gain/loss adjustment on the sale of an eligible depreciable asset[(c)]	8b.		00
9. Add lines 8a and 8b. If negative, enter as negative	9.		00
10. **Total business income after adjustment.** Add lines 7 and 9. Carry amount to Form *4567*, line 28. Members of a UBG carry amount to Form 4580, Part 2A, line 30	10.		00

PART 2: C CORPORATIONS

11. Federal taxable income from U.S. Form *1120*	11.		00
12. Domestic Production Activities deduction based on IRC § 199 reported on U.S. Form *8903*, to the extent deducted from federal taxable income	12.		00
13. Miscellaneous	13.		00
14. **Total business income before adjustment.** Add lines 11, 12 and 13	14.		00
15. Adjustments due to decoupling of Michigan depreciation from section 168(k) of IRC. If adjustment is negative, enter as negative:			
a. Net bonus depreciation adjustment[(b)]	15a.		00
b. Gain/loss adjustment on the sale of an eligible depreciable asset[(c)]	15b.		00
16. Add lines 15a and 15b. If negative, enter as negative	16.		00
17. **Total business income after adjustment.** Add lines 14 and 16. Carry amount to Form 4567, line 28. Members of a UBG carry amount to Form 4580, Part 2A, line 30	17.		00

PART 3: PARTNERSHIPS AND S CORPORATIONS

18. U.S. Form *1065*, or *1120S Schedule K*, Income (loss):			
a. Ordinary income/loss	18a.	4,561,488	00
b. Net real estate rental income/loss	18b.		00
c. Net other rental income/loss	18c.		00
d. Interest, dividend, and royalty income	18d.	569	00
e. Net short-term gain/loss	18e.		00
f. Net long-term gain/loss	18f.		00
g. Other portfolio income/loss	18g.		00
h. Guaranteed payments to partners or wages paid to a member of a LLC Partnership	18h.		00
i. Other net gain/loss under section 1231	18i.		00
j. Other income	18j.		00
19. **Total income/loss.** Add lines 18a through 18j	19.	4,562,057	00

Continued on Page 2

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

PART 3: PARTNERSHIPS AND S CORPORATIONS (CONT.)

20. U.S. Form *1065* or *1120S, Schedule K*, Deductions:			
a. Charitable contributions	20a.	9,100	00
b. Section 179 expense	20b.	327,326	00
c. Deductions related to portfolio income	20c.		00
d. Other deductions, excluding deductions for domestic production activities (IRC § 199)	20d.		00
21. **Total deductions.** Add lines 20a through 20d	21.	336,426	00
22. **Total business income before adjustments.** Subtract line 21 from line 19	22.	4,225,631	00
23. Adjustments due to decoupling of Michigan depreciation from section 168(k) of IRC (If adjustment is negative, enter as negative):			
a. Net bonus depreciation adjustment[b]	23a.	-242,204	00
b. Gain/loss adjustment on the sale of an eligible depreciable asset [c]	23b.		00
24. Add lines 23a and 23b. If negative, enter as negative	24.	-242,204	00
25. **Total business income after adjustment.** Add lines 22 and 24. Carry amount to Form 4567, line 28. Members of a UBG carry amount to Form 4580, Part 2A, line 30	25.	3,983,427	00

(a) U.S. Forms *1040D* and *4797*: Report only gains or losses from assets used in a business activity. Do not include personal gains and losses.

(b) For the computation of business income for Michigan Business Tax (MBT) purposes, taxpayers who claimed a federal special depreciation under IRC § 168(k) on property first placed in service in 2008 or later must calculate the net bonus depreciation adjustment on those assets as follows: net bonus depreciation adjustment in tax year equals the total federal depreciation claimed in tax year less the total amount of depreciation that would be claimed in the federal return in the tax year if the taxpayer had elected not to utilize the bonus depreciation allowance at IRC § 168(k). A taxpayer may not elect IRC § 179 depreciation if they did not elect to use this method federally.

(c) For the computation of business income for MBT purposes, taxpayers who claimed a federal special depreciation under IRC § 168(k) on property first placed in service in 2008 or later and subsequently disposed of that property in the current tax year must calculate the gain/loss adjustment on the sale of those assets as follows: gain/loss adjustment in tax year equals the total amount of federal depreciation that would be claimed in the federal return over the years (starting the year the asset was purchased and ending on the current tax year) if the taxpayer had elected not to utilize the bonus depreciation allowance at IRC § 168(k) on the property being disposed LESS the total federal depreciation claimed over the years (starting the year asset was purchased and ending on the current tax year). A taxpayer may not elect IRC § 179 depreciation if they did not elect to use this method federally.

2010 Mich Return

Michigan Department of Treasury
4700 (01-11), Page 1

FEIN or TR Number [redacted]
UBG Member FEIN or TR Number

Gross Receipts Worksheet

INFORMATION DIRECTLY FROM SPECIFIC FEDERAL RETURNS

Complete the appropriate parts below based on the taxpayer organization type. Part 1 is for an Individual or Fiduciary; Part 2 is for a C Corporation (or a taxpayer filing federal returns as a C Corporation); and Part 3 is for a Partnership or S Corporation (or a taxpayer filing a federal return as a Partnership or an S Corporation). Parts 4 and 5 apply to all filers, independent of their organization type. Gross receipts is not necessarily derived from the federal return, however, this worksheet will calculate gross receipts as defined by law in most circumstances. Taxpayers and tax professionals are expected to be familiar with uncommon situations within their experience, which produce gross receipts not identified by specific lines on this worksheet, and report that amount on the most appropriate line. The Michigan Department of Treasury may adjust the figure resulting from this worksheet to account properly for such uncommon situations. Complete and attach this worksheet to your return. Unitary Business Groups (UBGs) must complete and attach a worksheet for each member.

PART 1: INDIVIDUALS AND FIDUCIARIES

1.	U.S. Form *1040, Schedule C* or *C-EZ* gross receipts (net of returns)	1.		00
2.	U.S. Form *1040, Schedule C,* other income	2.		00
3.	U.S. Form *1040, Schedule D,* short- and long-term sales price*	3.		00
4.	U.S. Form *1040, Schedule E*			
	a. Part I, total rents received	4a.		00
	b. Total royalties received	4b.		00
5.	U.S. Form *4797,* gross sales price,* business assets	5.		00
6.	**Gross Receipts from Federal Return for Individuals and Fiduciaries.** Add lines 1 through 5. Carry amount to line 19	6.		00

PART 2: C CORPORATIONS

7.	U.S. Form *1120,* balance of gross receipts or sales less returns and allowances	7.		00
8.	U.S. Form *1120,* sum of dividends, interest, gross rents and gross royalties	8.		00
9.	U.S. Form *1120,* other income	9.		00
10.	U.S. Form *1120,* Schedule D, short- and long-term sales price*	10.		00
11.	U.S. Form *4797,* gross sales price*	11.		00
12.	**Gross Receipts from Federal Return for C Corporations.** Add lines 7 through 11. Carry amount to line 19	12.		00

PART 3: PARTNERSHIPS AND S CORPORATIONS

13.	U.S. Form *1065,* or U.S. Form *1120S*			
	a. Gross receipts (net of returns)	13a.	110,365,790	00
	b. Other income/receipts	13b.	238,638	00
14.	U.S. Form *8825,* gross income from real estate rentals	14.		00
15.	U.S. Form *1065,* or *1120S, Schedule D,* short- and long-term sales price*	15.		00
16.	U.S. Form *1065,* or *1120S, Schedule K*			
	a. Gross other rental income	16a.		00
	b. Interest, dividend, royalty income	16b.	569	00
	c. Other income	16c.		00
17.	U.S. Form *4797,* gross sales price* business assets	17.	37,075	00
18.	**Gross Receipts from Federal Return for Partnerships and S Corporations.** Add lines 13 through 17. Carry amount to line 19	18.	110,642,072	00

* See the definition of Gross Receipts under MCL 208.1111.

Continued on Page 2

FEIN or TR Number [redacted]
UBG Member FEIN or TR Number

ADJUSTMENTS TO FEDERAL GROSS RECEIPTS

19. **Gross Receipts as recorded on line 6, 12 or 18**	19.	110,642,072	00

PART 4: ADDITIONS TO GROSS RECEIPTS

To the extent EXCLUDED or DEDUCTED in arriving at the number used in line 19, include the following:

20. Proceeds from the sale of assets used in a business activity	20.		00
21. Dividend and interest income	21.		00
22. Receipts from gratuities stipulated on a bill	22.		00
23. Receipts from gross commissions earned	23.		00
24. Receipts from client reimbursed expenses not obtained in an agency capacity	24.		00
25. Gross proceeds from intercompany sales	25.		00
26. Rents	26.		00
27. Royalties	27.		00
28. Sales of scrap and other similar items	28.		00
29. Bad Debt amounts deducted for Federal Income Tax	29.	1,190,333	00
30. Dividends and royalties received or deemed received from a foreign operating entity or a person other than a U.S. person, including, but not limited to, the amounts determined under IRC § 78, or 951 through 964	30.		00
31. Sales or use taxes collected from or reimbursed by a consumer or other taxes collected from or reimbursed by a purchaser and remitted to a local, state, or federal tax authority	31.		00
32. In the case of receipts from the sale of motor fuel by a person with a motor fuel tax license or a retail dealer, the amount equal to federal and state excise taxes paid by any person on such motor fuel under IRC 4081 or applicable state law	32.		00
33. In the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license to sell, distribute, or produce those products, the amount equal to federal and state excise taxes paid by any person on or for such products under IRC Subtitle E or applicable state law	33.		00
34. In the case of receipts from the sale of communication, video, internet access and related services and equipment, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the Michigan Business Tax (MBT)	34.		00
35. In the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the MBT	35.		00
36. Any deposit required under the following:			
a. 1976 IL 1, MCL § 445.571 to 445.576	36a.		00
b. R 436.1629 of the Michigan administrative code	36b.		00
c. R 436.1723a of the Michigan administrative code	36c.		00
d. Any substantially similar beverage container deposit law of another state	36d.		00
37. Excise tax collected from or reimbursed by a consumer and remitted pursuant to MCL § 207.371 to 207.383	37.		00
38. Other receipts not included in previous lines	38.		00
39. Add lines 20 through 38	39.	1,190,333	00
40. SUBTOTAL Add line 19 and line 39	40.	111,832,405	00

Continued on Page 3

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

PART 5: EXCLUSIONS TO GROSS RECEIPTS

To the extent INCLUDED in arriving at line 40, enter the following receipts:

41. Proceeds from sales by a principal collected by the taxpayer in an agency capacity and delivered to the principal 41. 00

42. Amounts received on behalf of a principal that are received and expended by the taxpayer in an agency capacity for the following:

a. Performance of service by third party for the benefit of the principal for service required by law to be performed by a licensed person 42a. 00

b. Performance of service by a third party for the benefit of the principal that the taxpayer has not undertaken a contractual duty to perform 42b. 00

c. Payment of principal and interest under a mortgage loan or land contract, lease or rental payments, or taxes, utilities, or insurance premiums relating to real or personal property owned or leased by the principal 42c. 00

d. Capital asset that is or will become eligible for depreciation, amortization, or accelerated cost recovery by the principal for federal income tax purposes, or real property owned or leased by the principal 42d. 00

e. Property not described above that is purchased by taxpayer on behalf of the principal, where taxpayer does not take title to or use in the course of performing its contractual business activities 42e. 00

f. Fees, taxes, assessments, levies, fines, penalties, or other payments established by law that are paid to a governmental entity and that are the legal obligation of the principal 42f. 00

43. Amounts excluded from gross income of a foreign corporation engaged in the international operation of aircraft under IRC § 883(a) 43. 00

44. Amounts received by advertising agency used to acquire advertising media time, space, production, or talent on behalf of another person 44. 00

45. Amounts received by a newspaper to acquire advertising space not owned by that newspaper in another newspaper on behalf of another person, excluding any consideration received by taxpayer for acquiring that advertising space 45. 00

46. Amounts received by taxpayer that manages real property owned by a third party that are deposited into a separate account kept in the name of that third party and that are not reimbursements to the taxpayer and are not indirect payments for management services that the taxpayer provides to that third party 46. 00

47. For taxpayers that during tax year do NOT both buy and sell any receivables, proceeds from the taxpayer's transfer of an account receivable, if the sale that generated that receivable was included in Gross Receipts for Federal Income Tax purposes 47. 00

48. Proceeds from original issue of stock or equity instruments or equity issued by a regulated investment company as defined in IRC § 851 .... 48. 00

49. Proceeds from the original issue of debt instruments 49. 00

50. Refunds from returned merchandise 50. 00

51. Cash and in-kind discounts 51. 00

52. Trade discounts 52. 00

53. Federal, state, or local tax refunds 53. 00

54. Security deposits 54. 00

55. Payment of the principal portion of loans 55. 00

56. Value of property received in a like-kind exchange 56. 00

57. Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible or intangible property that are capital assets and IRC § 1231(b) land:

a. Amount from such dispositions of capital assets as defined in IRC § 1221(a) or land used in a trade or business as defined in IRC § 1231(b) 57a. 00

b. Combined gains from each disposition in this category that produced a gain that is included in that taxpayer's federal taxable income. (Do not net against dispositions that produced loss.) 57b. 00

c. **Amount excluded from Gross Receipts.** Subtract line 57b from line 57a 57c. 00

58. Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible or intangible property that is a hedging transaction[(a)]:

a. Amount from such dispositions of property used in a hedging transaction ... 58a. 00

b. Amount of overall net gain from hedging transactions entered into during the tax year 58b. 00

c. **Amount excluded from Gross Receipts.** Subtract line 58b from line 58a 58c. 00

Continued on Page 4

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

PART 5: EXCLUSIONS TO GROSS RECEIPTS (CONT.)

59. Proceeds from a sale, transaction, exchange, involuntary conversion, maturity, redemption, repurchase, recapitalization, or other disposition or reorganization of tangible or intangible property that is investment and trading assets managed as part of the person's treasury function[b]:

a. Amount from such dispositions of property that is investment and trading assets managed as part of the person's treasury function .... 59a. ____ 00

b. Amount of overall net gain from treasury function incurred during tax year 59b. ____ 00

c. **Amount excluded from Gross Receipts.** Subtract line 59b from line 59a .... 59c. ____ 00

60. Proceeds from an insurance policy, a settlement of a claim or a judgment in a civil action, less any proceeds that are included in federal taxable income (as defined for MBT purposes) .... 60. ____ 00

61. For a sales finance company, as defined in MCL 492.102 and directly or indirectly owned in whole or in part by a motor vehicle manufacturer as of January 1, 2008, and for a person that is a broker or dealer as defined under 15 USC § 78c(a)(4) or (5), or a member of the UBG of that broker or dealer that buys and sells contracts subject to 7 USC § 1 to 27f for its own account:

a. Amounts realized from the repayment, maturity, sale, or redemption of the principal of a loan, bond, or mutual fund, certificate of deposit, or similar marketable instrument provided such instruments are not held as inventory .... 61a. ____ 00

b. Principal amount received under a repurchase agreement or other transaction properly characterized as a loan .... 61b. ____ 00

62. For a mortgage company[c], proceeds representing the principal balance of loans transferred or sold .... 62. ____ 00

63. For a professional employer organization[d] (PEO), any amount charged that represents the actual cost of wages and salaries, benefits, worker's compensation, payroll taxes, withholding, or other assessments paid to or on behalf of a covered employee by the PEO under a professional employer arrangement .... 63. ____ 00

64. Any invoiced items used to provide more favorable floor plan assistance to a person subject to the MBT than to a person not subject to the MBT and paid by a manufacturer, distributor, or supplier .... 64. ____ 00

65. For an individual, estate, or other person organized for estate or gift planning purposes:

a. Receipts from investment activity, including interest, dividends, royalties, and gains from an investment portfolio or retirement account, if the investment activity is not part of the taxpayer's trade or business ... 65a. ____ 00

b. Receipts from the disposition of tangible or intangible property held for personal use and enjoyment, such as a personal residence or personal assets .... 65b. ____ 00

c. Other amounts received that are NOT from transactions, activities, and sources in the regular course of the taxpayer's trade or business .... 65c. ____ 00

66. Receipts derived from investment activity by a person organized exclusively to conduct investment activity and that does not conduct investment activity for any person other than an individual or a person related[e] to that individual, or by a common trust fund established under MCL 555.101 to 555.113 .... 66. ____ 00

67. Interest and dividends derived from obligations or securities of the United States government, this state, or any governmental unit of this state (as defined under MCL § 141.1053) .... 67. ____ 00

68. Amounts attributable to an ownership interest in a pass-through entity, regulated investment company, real estate investment trust, or cooperative corporation whose business activities are taxable under the modified gross receipts tax or would be subject to the modified gross receipts tax if the business activities were in this state[f] .... 68. ____ 00

69. For a regulated investment company as that term is defined under IRC § 851, receipts derived from investment activity by that regulated investment company .... 69. ____ 00

70. Only Health Maintenance Organizations (HMOs) holding contract with the State for Medicaid services may complete this line: If applicable per MCL 208.1111(1) (dd), enter amounts received during the period that is both within the tax year and within October 1, 2010, through September 30, 2011, for Medicaid premium or reimbursement of costs associated with service provided to a Medicaid recipient or beneficiary. The State Budget Director has until January 1, 2011 to certify that necessary rates provide explicit adjustment for MBT obligations, in which case NO deduction will be allowed for any HMO holding contract with the State for Medicaid services .... 70. ____ 00

71. For a taxpayer that provides health care management consulting services, amounts received by the taxpayer after August 1, 2010, as fees from its clients that are expended by the taxpayer to reimburse those clients for labor and nonlabor services that are paid by the client and reimbursed to the client pursuant to a services agreement .... 71. ____ 00

72. **SUBTOTAL** **Gross Receipts Exclusions that are not phased in.** Add lines 41 through 56, 57c, 58c, 59c, and 60 through 71 .... 72. ____ 00

To the extent INCLUDED in arriving at line 40, list the following:

73. Bad Debt amounts deducted for Federal Income Tax that correspond to items included in MGR tax base for current or prior MBT return .... 73. ____ 00

74. Dividends and royalties received or deemed received from a foreign operating entity or a person other than a U.S. person, including, but not limited to, the amounts determined under IRC § 78, or 951 through 964 ... 74. ____ 00

75. Add lines 73 and 74 .... 75. ____ 00

1019

Continued on Page 5

FEIN or TR Number [redacted]

UBG Member FEIN or TR Number

PART 5: EXCLUSIONS TO GROSS RECEIPTS (CONT.)

To the extent INCLUDED in arriving at line 40, and to the extent NOT deducted as purchases from other firms on the MBT Annual Return, Form 4567, lines 13, 14 or 15, (or, for UBG standard members, the MBT UBG Combined Filing Schedule for Standard Members, Form 4580, lines 18, 19 or 20) enter:

76. Sales or use taxes collected from or reimbursed by a consumer or other taxes collected from or reimbursed by a purchaser and remitted to a local, state, or federal tax authority 76. 00

77. In the case of receipts from the sale of motor fuel by a person with a motor fuel tax license or a retail dealer, the amount equal to federal and state excise taxes paid by any person on such motor fuel under IRC § 4081 or applicable state law ... 77. 00

78. In the case of receipts from the sale of beer, wine, or intoxicating liquor by a person holding a license to sell, distribute, or produce those products, the amount equal to federal and state excise taxes paid by any person on or for such products under IRC Subtitle E or applicable state law 78. 00

79. In the case of receipts from the sale of communication, video, internet access and related services and equipment, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the MBT 79. 00

80. In the case of receipts from the sale of electricity, natural gas, or other energy source, any government imposed tax, fee, or other imposition in the nature of a tax or fee required by law, and authorized to be charged on a customer's bill or invoice, but not including net income taxes, net worth taxes, property taxes, or the MBT 80. 00

81. Any deposit required under the following:

a. 1976 IL 1, MCL § 445.571 to 445.576 .... 81a. 00

b. R 436.1629 of the Michigan administrative code 81b. 00

c. R 436.1723a of the Michigan administrative code 81c. 00

d. Any substantially similar beverage container deposit law of another state 81d. 00

82. Excise tax collected from or reimbursed by a consumer and remitted pursuant to MCL § 207.371 to 207.383 82. 00

83. Add lines 76 through 82 .... 83. 00

84. Add lines 75 and 83 .... 84. 00

85. **SUBTOTAL** **Multiply line 84 by 0.6 for tax years ending in 2010. Multiply line 84 by 0.75 for tax years ending in 2011** 85. 00

GROSS RECEIPTS FOR MBT PURPOSES

86. **Subtract lines 72 and 85 from line 40.** Carry this amount to Form 4567, line 12. Standard members of a UBG will carry this amount to Form 4580, Part 2A, line 17 .... 86. 111,832,405 00

a) For purposes of this provision, a hedging transaction is one entered into by the taxpayer in the normal course of the taxpayer's trade or business primarily to manage (i) risk of exposure to foreign currency fluctuations that affect assets, liabilities, profits, losses, equity, or investments in foreign operations; (ii) interest rate fluctuations; or (iii) commodity price fluctuations. Transfer of title of real or tangible personal property is not a hedging transaction. "Hedging transaction" means that term as defined under IRC 1221 regardless of whether the transaction was identified by the taxpayer as a hedge for federal income tax purposes, provided, however, that transactions not identified as a hedge for federal income tax purposes shall be identifiable to the department by the taxpayer as a hedge in its books and records.

b) For purposes of this provision, a person principally engaged in the trade or business of purchasing and selling investment and trading assets is not performing a treasury function. "Treasury function" means the pooling and management of investment and trading assets for the purpose of satisfying cash flow or liquidity needs of the taxpayer's trade or business.

c) "Mortgage company" means a person that is licensed under MCL § 445.1651 to 445.1684, or MCL § 493.51 to 493.81, and has greater than 90 percent of its revenues, in the ordinary course of business, from the origination, sale, or servicing of residential mortgage loans.

d) Professional employer organization is not the same thing as a staffing company, and it means an organization that provides the management and administration of the human resources of another entity by contractually assuming substantial employer rights and responsibilities through a professional employer agreement that establishes an employer relationship with the leased officers or employees assigned to the other entity by doing all of the following:

- Maintaining a right of direction and control of employees' work, although this responsibility may be shared with the other entity.
- Paying wages and employment taxes of the employees out of its own accounts.
- Reporting, collecting, and depositing state and federal employment taxes for the employees.
- Retaining a right to hire and fire employees.

e) For purposes of this provision, a person is related to an individual if that person is a spouse, brother or sister, whether of the whole or half blood or by adoption, ancestor, lineal descendent of that individual or related person, or a trust benefiting that individual or one or more persons related to that individual.

f) For this provision, the following definitions apply: Cooperative Corporation means those organizations described under subchapter T of the IRC; Pass-through entity means a partnership, subchapter S Corporation, or other person, other than an individual, that is not classified for Federal Income Tax purposes as an association taxed as a corporation; Real estate investment trust means the term defined under IRC 856; and Regulated investment company means the term defined under IRC § 851.

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts
Under Sections 179 and 280F(b)(2))
▶ Attach to your tax return.

OMB No. 1545-0184

2010

Attachment
Sequence No. **27**

Name(s) shown on return: MINNESOTA LIMITED, INC.

Identifying number: [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2010 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) 1

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft - Most Property Held More Than 1 Year

	(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
2							

3	Gain, if any, from Form 4684, line 42	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11	Loss, if any, from line 7	11	( )
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	26,303.
14	Net gain or (loss) from Form 4684, lines 34 and 41a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	26,303.

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:

a If the loss on line 11 includes a loss from Form 4684, line 38, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions 18a

b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14 ..... 18b

JWA For **Paperwork Reduction Act Notice, see separate instructions.**

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A VARIOUS ASSETS SOLD	VARIES	VARIES
B		
C		
D		

These columns relate to the properties on lines 19A through 19D.	▶	Property A	Property B	Property C	Property D
20 Gross sales price (**Note:** See line 1 before completing.)	20	37,075.			
21 Cost or other basis plus expense of sale	21	1,078,045.			
22 Depreciation (or depletion) allowed or allowable	22	1,067,273.			
23 Adjusted basis. Subtract line 22 from line 21	23	10,772.			
24 Total gain. Subtract line 23 from line 20	24	26,303.			
25 **If section 1245 property:**					
a Depreciation allowed or allowable from line 22	25a	1,067,273.			
b Enter the **smaller** of line 24 or 25a	25b	26,303.			
26 **If section 1250 property:** If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975	26a				
b Applicable percentage multiplied by the **smaller** of line 24 or line 26a	26b				
c Subtract line 26a from line 24. If residential rental property **or** line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the **smaller** of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 **If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage	27b				
c Enter the **smaller** of line 24 or 27b	27c				
28 **If section 1254 property:**					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion	28a				
b Enter the **smaller** of line 24 or 28a	28b				
29 **If section 1255 property:**					
a Applicable percentage of payments excluded from income under section 126	29a				
b Enter the **smaller** of line 24 or 29a	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	26,303.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	26,303.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 37. Enter the portion from other than casualty or theft on Form 4797, line 6	32	

Part IV **Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less** (see instructions.)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

ALTERNATIVE MINIMUM TAX

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts
Under Sections 179 and 280F(b)(2))
▶ Attach to your tax return.

OMB No. 1545-0184

2010

Attachment
Sequence No. **27**

Name(s) shown on return	Identifying number
MINNESOTA LIMITED, INC.	[redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2010 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions)	1	

Part I **Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft - Most Property Held More Than 1 Year**

(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
2						

3 Gain, if any, from Form 4684, line 42	3	
4 Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6 Gain, if any, from line 32, from other than casualty or theft	6	
7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	
Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below. **Individuals, partners, S corporation shareholders, and all others.** If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8 Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II **Ordinary Gains and Losses**

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

11 Loss, if any, from line 7	11	( )
12 Gain, if any, from line 7 or amount from line 8, if applicable	12	
13 Gain, if any, from line 31	13	21,496.
14 Net gain or (loss) from Form 4684, lines 34 and 41a	14	
15 Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16 Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17 Combine lines 10 through 16	17	21,496.
18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a If the loss on line 11 includes a loss from Form 4684, line 38, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

JWA **For Paperwork Reduction Act Notice, see separate instructions.**

018001
12-22-10

MINNESOTA LIMITED, INC.

2010 Form [redacted]

ALTERNATIVE MINIMUM TAX

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A VARIOUS ASSETS SOLD	VARIES	VARIES
B		
C		
D		

These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
20 Gross sales price (**Note:** See line 1 before completing.)	20	37,075.			
21 Cost or other basis plus expense of sale	21	1,082,852.			
22 Depreciation (or depletion) allowed or allowable	22	1,067,273.			
23 Adjusted basis. Subtract line 22 from line 21	23	15,579.			
24 Total gain. Subtract line 23 from line 20	24	21,496.			
25 **If section 1245 property:**					
a Depreciation allowed or allowable from line 22	25a	1,067,273.			
b Enter the **smaller** of line 24 or 25a	25b	21,496.			
26 **If section 1250 property:** If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975	26a				
b Applicable percentage multiplied by the **smaller** of line 24 or line 26a	26b				
c Subtract line 26a from line 24. If residential rental property **or** line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the **smaller** of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 **If section 1252 property:** Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage	27b				
c Enter the **smaller** of line 24 or 27b	27c				
28 **If section 1254 property:**					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion	28a				
b Enter the **smaller** of line 24 or 28a	28b				
29 **If section 1255 property:**					
a Applicable percentage of payments excluded from income under section 126	29a				
b Enter the **smaller** of line 24 or 29a	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	21,496.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	21,496.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 37. Enter the portion from other than casualty or theft on Form 4797, line 6	32	

Part IV **Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less** (see instructions.)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts
Under Sections 179 and 280F(b)(2))
▶ Attach to your tax return.

OMB No. 1545-0184

2010

Attachment Sequence No. **27**

Name(s) shown on return: MINNESOTA LIMITED, INC.

Identifying number: [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2010 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) 1

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft - Most Property Held More Than 1 Year

	(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
2							

3 Gain, if any, from Form 4684, line 42 3

4 Section 1231 gain from installment sales from Form 6252, line 26 or 37 4

5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824 5

6 Gain, if any, from line 32, from other than casualty or theft 6

7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows: 7

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8 Nonrecaptured net section 1231 losses from prior years (see instructions) 8

9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions) 9

Part II Ordinary Gains and Losses

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

WORKING CAPITAL						
	VARIES	VARIES	21978478.		21,978,478.	0.

11	Loss, if any, from line 7	11	( )
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	17043050.
14	Net gain or (loss) from Form 4684, lines 34 and 41a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	17043050.

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:

a If the loss on line 11 includes a loss from Form 4684, line 38, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions 18a

b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14 .... 18b

JWA **For Paperwork Reduction Act Notice, see separate instructions.**

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A VARIOUS ASSETS SOLD	VARIES	VARIES
B SEE INSTALL SALE NO. 1	010101	033111
C		
D		

These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
20 Gross sales price (Note: See line 1 before completing.)	20	450,938.	18349610.		
21 Cost or other basis plus expense of sale	21	770,147.	28813882.		
22 Depreciation (or depletion) allowed or allowable	22	648,311.	27178220.		
23 Adjusted basis. Subtract line 22 from line 21	23	121,836.	1,635,662.		
24 Total gain. Subtract line 23 from line 20	24	329,102.	16713948.		
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a	648,311.	27178220.		
b Enter the smaller of line 24 or 25a	25b	329,102.	16713948.		
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975	26a				
b Applicable percentage multiplied by the smaller of line 24 or line 26a	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the smaller of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage	27b				
c Enter the smaller of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion	28a				
b Enter the smaller of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126	29a				
b Enter the smaller of line 24 or 29a	29b				

COPY

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	17,043,050.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	17,043,050.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 37. Enter the portion from other than casualty or theft on Form 4797, line 6	32	

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions.)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

ALTERNATIVE MINIMUM TAX

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts
Under Sections 179 and 280F(b)(2))
▶ Attach to your tax return.

OMB No. 1545-0184

2010

Attachment
Sequence No. **27**

Name(s) shown on return: MINNESOTA LIMITED, INC.

Identifying number: [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2010 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) | 1 |

Part I **Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft - Most Property Held More Than 1 Year**

	(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
2							

3	Gain, if any, from Form 4684, line 42	3	
4	Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5	Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6	Gain, if any, from line 32, from other than casualty or theft	6	
7	Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8	Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9	Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II **Ordinary Gains and Losses**

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

WORKING CAPITAL						
	VARIES	VARIES	21978478.		21,978,478.	0.

11	Loss, if any, from line 7	11	( )
12	Gain, if any, from line 7 or amount from line 8, if applicable	12	
13	Gain, if any, from line 31	13	16850893.
14	Net gain or (loss) from Form 4684, lines 34 and 41a	14	
15	Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16	Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17	Combine lines 10 through 16	17	16850893.

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:

a	If the loss on line 11 includes a loss from Form 4684, line 38, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b	Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

JWA **For Paperwork Reduction Act Notice, see separate instructions.**

Form 4797 (2010) ALTERNATIVE MINIMUM TAX Page 2

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A VARIOUS ASSETS SOLD	VARIES	VARIES
B SEE INSTALL SALE NO. 1	010101	033111
C		
D		

These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
20 Gross sales price (Note: See line 1 before completing.)	20	450,938.	18349610.		
21 Cost or other basis plus expense of sale	21	773,528.	28813882.		
22 Depreciation (or depletion) allowed or allowable	22	648,311.	26989444.		
23 Adjusted basis. Subtract line 22 from line 21	23	125,217.	1,824,438.		
24 Total gain. Subtract line 23 from line 20	24	325,721.	16525172.		
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a	648,311.	26989444.		
b Enter the smaller of line 24 or 25a	25b	325,721.	16525172.		
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975	26a				
b Applicable percentage multiplied by the smaller of line 24 or line 26a	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the smaller of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage	27b				
c Enter the smaller of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion	28a				
b Enter the smaller of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126	29a				
b Enter the smaller of line 24 or 29a	29b				

COPY

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	16,850,893.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	16,850,893.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 37. Enter the portion from other than casualty or theft on Form 4797, line 6	32	

Part IV **Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less** (see instructions.)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

2011 Fed Return

2011

Form **1120S** | Department of the Treasury Internal Revenue Service (77)

U.S. Income Tax Return for an S Corporation

▶ Do not file this form unless the corporation has filed or is attaching Form 2553 to elect to be an S corporation.

EXTENSION GRANTED TO 12/15/11

OMB No. 1545-0130

~~2010~~

For calendar year 2010 or tax year beginning JANUARY 1, 2011 , and ending MARCH 31, 2011

A S election effective date 04/01/1996	Name MINNESOTA LIMITED, INC.	D Employer identification number [redacted]
B Business activity code number (see instructions) 237990	TYPE OR PRINT Number, street, and room or suite no. If a P.O. box, see instructions. 18640 200TH STREET	E Date incorporated 03/21/1959
C Check if Sch. M-3 attached ☒	City or town, state, and ZIP code BIG LAKE, MN 55309	F Total assets (see instructions) $ 0.

G Is the corporation electing to be an S corporation beginning with this tax year? □ Yes ☒ No If "Yes," attach Form 2553 if not already filed

H Check if: (1) ☒ Final return (2) □ Name change (3) □ Address change (4) □ Amended return (5) □ S election termination or revocation

I Enter the number of shareholders who were shareholders during any part of the tax year ▶ 2

Caution: *Include only trade or business income and expenses on lines 1a through 21. See the instructions for more information.*

Income	1 a Gross receipts or sales 21,093,137. b Less returns and allowances c Bal ▶	1c	21,093,137.
	2 Cost of goods sold (Schedule A, line 8)	2	17,484,653.
	3 Gross profit. Subtract line 2 from line 1c	3	3,608,484.
	4 Net gain (loss) from Form 4797, Part II, line 17 *(attach Form 4797)*	4	17,043,050.
	5 Other income (loss) *(attach statement)* STATEMENT 1	5	10,056.
	6 **Total income (loss).** Add lines 3 through 5 ▶	6	20,661,590.
Deductions (See instructions for limitations)	7 Compensation of officers	7	200,002.
	8 Salaries and wages (less employment credits)	8	682,885.
	9 Repairs and maintenance	9	10,964.
	10 Bad debts	10	102,499.
	11 Rents	11	167,746.
	12 Taxes and licenses STATEMENT 2	12	884,177.
	13 Interest	13	111,779.
	14 Depreciation not claimed on Schedule A or elsewhere on return *(attach Form 4562)*	14	398,787.
	15 Depletion (Do not deduct oil and gas depletion.)	15	
	16 Advertising	16	
	17 Pension, profit-sharing, etc., plans	17	34,981.
	18 Employee benefit programs	18	147,432.
	19 Other deductions *(attach statement)* STATEMENT 3	19	830,921.
	20 **Total deductions.** Add lines 7 through 19 ▶	20	3,572,173.
	21 **Ordinary business income (loss).** Subtract line 20 from line 6	21	17,089,417.

Tax and Payments	22 a Excess net passive income or LIFO recapture tax *(see instructions)*	22a			
	b Tax from Schedule D (Form 1120S)	22b			
	c Add lines 22a and 22b			22c	
	23 a 2010 estimated tax payments and 2009 overpayment credited to 2010	23a			
	b Tax deposited with Form 7004	23b			
	c Credit for federal tax paid on fuels *(attach Form 4136)*	23c	10,056.		
	d Add lines 23a through 23c			23d	10,056.
	24 Estimated tax penalty (see instructions). Check if Form 2220 is attached ▶ □			24	
	25 **Amount owed.** If line 23d is smaller than the total of lines 22c and 24, enter amount owed			25	
	26 **Overpayment.** If line 23d is larger than the total of lines 22c and 24, enter amount overpaid			26	10,056.
	27 Enter amount from line 26 Credited to 2011 estimated tax ▶	10,056.	Refunded ▶	27	10,056.

Sign Here Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

▶ Signature of officer | Date | ▶ OFFICER Title

May the IRS discuss this return with the preparer shown below (see instr.)? ☒ Yes □ No

Paid Preparer Use Only	Print/Type preparer's name JEFFREY STARBIRD	Preparer's signature	Date	Check if self-employed □	PTIN
	Firm's name ▶ LURIE BESIKOF LAPIDUS & COMPANY, LLP			Firm's EIN ▶ [redacted]	
	Firm's address ▶ 2501 WAYZATA BOULEVARD MINNEAPOLIS, MN 55405-2197			Phone no. 612-377-4404	

JWA 011701 01-17-11 For Paperwork Reduction Act Notice, see separate instructions. Form **1120S** (2010)

STATE COPY

2011

Form 1120S (~~2010~~) MINNESOTA LIMITED, INC. [redacted] Page 2

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	
2	Purchases	2	1,854,708.
3	Cost of labor	3	6,584,143.
4	Additional section 263A costs (attach statement)	4	
5	Other costs (attach statement) SEE STATEMENT 4	5	9,045,802.
6	**Total.** Add lines 1 through 5	6	17,484,653.
7	Inventory at end of year	7	
8	**Cost of goods sold.** Subtract line 7 from line 6. Enter here and on page 1, line 2	8	17,484,653.

9 a Check all methods used for valuing closing inventory: (i) □ Cost as described in Regulations section 1.471-3

(ii) □ Lower of cost or market as described in Regulations section 1.471-4

(iii) □ Other (Specify method used and attach explanation) ▶

b Check if there was a writedown of subnormal goods as described in Regulations section 1.471-2(c) ▶ □

c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ □

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO 9d

e If property is produced or acquired for resale, do the rules of Section 263A apply to the corporation? □ Yes ☒ No

f Was there any change in determining quantities, cost, or valuations between opening and closing inventory? □ Yes ☒ No

If "Yes," attach explanation.

Schedule B Other Information (see instructions)

		Yes	No
1	Check accounting method: (a) □ Cash (b) ☒ Accrual (c) □ Other (specify) ▶		
2	See the instructions and enter the: (a) Business activity ▶ CONSTRUCTION (b) Product or service ▶ PIPELINE		
3	At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) If "Yes," attach a statement showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) if 100% owned, was a qualified subchapter S subsidiary election made?		X
4	Has this corporation filed, or is it required to file, Form 8918, Material Advisor Disclosure Statement, provide information on any reportable transaction?		X
5	Check this box if the corporation issued publicly offered debt instruments with original issue discount ▶ □ If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.		
6	If the corporation: (a) was a C corporation before it elected to be an S corporation or the corporation acquired an asset with a basis determined by reference to its basis of the asset (or the basis of any other property) in the hands of a C corporation and (b) has net unrealized built-in gain in excess of the net recognized built-in gain from prior years, enter the net unrealized built-in gain reduced by net recognized built-in gain from prior years ▶ $		
7	Enter the accumulated earnings and profits of the corporation at the end of the tax year $		
8	Are the corporation's total receipts (see instructions) for the tax year and its total assets at the end of the tax year less than $250,000? If "Yes," the corporation is not required to complete Schedules L and M-1		X
9	During the tax year, was a qualified subchapter S subsidiary election terminated or revoked? If "Yes," see instructions		X

Schedule K Shareholders' Pro Rata Share Items

Income (Loss)

					Total amount
1	Ordinary business income (loss) (page 1, line 21)			1	17,089,417.
2	Net rental real estate income (loss) (attach Form 8825)			2	
3a	Other gross rental income (loss)	3a			
b	Expenses from other rental activities (attach statement)	3b			
c	Other net rental income (loss). Subtract line 3b from line 3a			3c	
4	Interest income			4	
5	Dividends: a Ordinary dividends			5a	
	b Qualified dividends	5b			
6	Royalties			6	
7	Net short-term capital gain (loss) (attach Schedule D (Form 1120S))			7	
8a	Net long-term capital gain (loss) (attach Schedule D (Form 1120S))			8a	37,044,407.
b	Collectibles (28%) gain (loss)	8b			
c	Unrecaptured section 1250 gain (attach statement)	8c			
9	Net section 1231 gain (loss) (attach Form 4797)			9	
10	Other income (loss) (see instructions) ... Type ▶			10	

JWA

2011

Form 1120S (2010) MINNESOTA LIMITED, INC. [redacted] Page 3

	Shareholders' Pro Rata Share Items (continued)		Total amount
Deductions	11 Section 179 deduction (attach Form 4562)	11	
	12a Contributions STATEMENT 5	12a	300.
	b Investment interest expense	12b	
	c Section 59(e)(2) expenditures (1) Type ▶		
	(2) Amount ▶	12c(2)	
	d Other deductions (see instructions) Type ▶	12d	
Credits	13a Low-income housing credit (section 42(j)(5))	13a	
	b Low-income housing credit (other)	13b	
	c Qualified rehabilitation expenditures (rental real estate) (attach Form 3468)	13c	
	d Other rental real estate credits (see instructions) Type ▶	13d	
	e Other rental credits (see instructions) Type ▶	13e	
	f Alcohol and cellulosic biofuel fuels credit (attach Form 6478)	13f	
	g Other credits (see instructions) Type ▶	13g	
Foreign Transactions	14a Name of country or U.S. possession ▶		
	b Gross income from all sources	14b	
	c Gross income sourced at shareholder level	14c	
	Foreign gross income sourced at corporate level		
	d Passive category	14d	
	e General category	14e	
	f Other (attach statement)	14f	
	Deductions allocated and apportioned at shareholder level		
	g Interest expense	14g	
	h Other	14h	
	Deductions allocated and apportioned at corporate level to foreign source income		
	i Passive category	14i	
	j General category	14j	
	k Other (attach statement)	14k	
	Other information		
	l Total foreign taxes (check one): ▶ □ Paid □ Accrued	14l	
	m Reduction in taxes available for credit (attach statement)	14m	
	n Other foreign tax information (attach statement)		
Alternative Minimum Tax (AMT) Items	15a Post-1986 depreciation adjustment	15a	-152,285.
	b Adjusted gain or loss STATEMENT 6	15b	-192,157.
	c Depletion (other than oil and gas)	15c	
	d Oil, gas, and geothermal properties - gross income	15d	
	e Oil, gas, and geothermal properties - deductions	15e	
	f Other AMT items (attach statement)	15f	
Items Affecting Shareholder Basis	16a Tax-exempt interest income	16a	
	b Other tax-exempt income	16b	
	c Nondeductible expenses STATEMENT 7	16c	187,206.
	d Distributions (attach statement if required)	16d	64,992,114.
	e Repayment of loans from shareholders	16e	
Other Information	17a Investment income	17a	
	b Investment expenses	17b	
	c Dividend distributions paid from accumulated earnings and profits STATEMENT 8	17c	3,321,146.
	d Other items and amounts (attach statement) STATEMENT 9		
Recon-ciliation	18 Income/loss reconciliation. Combine the amounts on lines 1 through 10 in the far right column. From the result, subtract the sum of the amounts on lines 11 through 12d and 14l	18	54,133,524.

JWA Form 1120S (2010)

011721
02-15-11

Form 1120S (~~2010~~ 2011) MINNESOTA LIMITED, INC. [redacted]

Schedule L Balance Sheets per Books	Beginning of tax year		End of tax year	
Assets	(a)	(b)	(c)	(d)
1 Cash		140,093.		
2 a Trade notes and accounts receivable	26,782,245.			
b Less allowance for bad debts	100,000.	26,682,245.		
3 Inventories				
4 U.S. government obligations				
5 Tax-exempt securities				
6 Other current assets (att. stmt.)	STATEMENT 12	981,997.		
7 Loans to shareholders				
8 Mortgage and real estate loans				
9 Other investments (att. stmt.)				
10 a Buildings and other depreciable assets	29,261,144.			
b Less accumulated depreciation	24,592,752.	4,668,392.		
11 a Depletable assets				
b Less accumulated depletion				
12 Land (net of any amortization)				
13 a Intangible assets (amortizable only)				
b Less accumulated amortization				
14 Other assets (att. stmt.)				
15 Total assets		32,472,727.		
Liabilities and Shareholders' Equity				
16 Accounts payable		4,717,843.		
17 Mortgages, notes, bonds payable in less than 1 year				
18 Other current liabilities (att. stmt.)	STATEMENT 13	5,030,840.		
19 Loans from shareholders				
20 Mortgages, notes, bonds payable in 1 year or more		11,929,175.		
21 Other liabilities (att. stmt.)				
22 Capital stock		20,550.		
23 Additional paid-in capital		51,554.		
24 Retained earnings	STATEMENT 14	10,722,765.		
25 Adjustments to shareholders' equity (att. stmt.)				
26 Less cost of treasury stock		( )		( )
27 Total liabilities and shareholders' equity		32,472,727.		

Schedule M-1 **Reconciliation of Income (Loss) per Books With Income (Loss) per Return**
Note: Schedule M-3 required instead of Schedule M-1 if total assets are $10 million or more - see instructions

1 Net income (loss) per books		5 Income recorded on books this year not included on Schedule K, lines 1 through 10 (itemize): a Tax-exempt interest $	
2 Income included on Schedule K, lines 1, 2, 3c, 4, 5a, 6, 7, 8a, 9, and 10, not recorded on books this year (itemize):			
3 Expenses recorded on books this year not included on Schedule K, lines 1 through 12 and 14l (itemize): a Depreciation $ b Travel and entertainment $		6 Deductions included on Schedule K, lines 1 through 12 and 14l, not charged against book income this year (itemize): a Depreciation $	
		7 Add lines 5 and 6	
4 Add lines 1 through 3		8 Income (loss) (Schedule K, line 18). Line 4 less line 7	

Schedule M-2 **Analysis of Accumulated Adjustments Account, Other Adjustments Account, and Shareholders' Undistributed Taxable Income Previously Taxed** (see instructions)

	(a) Accumulated adjustments account	(b) Other adjustments account	(c) Shareholders' undistributed taxable income previously taxed
1 Balance at beginning of tax year	5,575,371.	14,730.	
2 Ordinary income from page 1, line 21	17,089,417.		
3 Other additions STATEMENT 10	37,044,407.		
4 Loss from page 1, line 21	( )		
5 Other reductions STATEMENT 11	(187,506.)	( )	
6 Combine lines 1 through 5	59,521,689.	14,730.	
7 Distributions other than dividend distributions	59,521,689.	14,730.	
8 Balance at end of tax year. Subtract line 7 from line 6	0.	0.	

2011 Fed Return

2011

Form **4136**

Department of the Treasury
Internal Revenue Service (99)

Credit for Federal Tax Paid on Fuels

▶ See the separate instructions.

▶ Attach this form to your income tax return.

OMB No. 1545-0162

~~2010~~

Attachment Sequence No. 23

Name (as shown on your income tax return)

MINNESOTA LIMITED, INC.

Taxpayer identification number

[redacted]

Caution. *Claimant has the name and address of the person who sold the fuel to the claimant and the dates of purchase. For claims on lines 1c and 2b (type of use 13 and 14), 3d, 4c, and 5, claimant has not waived the right to make the claim. For claims on lines 1c and 2b (type of use 13 and 14), claimant certifies that a certificate has not been provided to the credit card issuer.*

1 Nontaxable Use of Gasoline **Note.** CRN is credit reference number.

		(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a	Off-highway business use		$ .183	803	$	
b	Use on a farm for farming purposes		.183		147.	362
c	Other nontaxable use (see Caution above line 1)		.183			
d	Exported		.184			411

2 Nontaxable Use of Aviation Gasoline

		(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a	Use in commercial aviation (other than foreign trade)		$ .15*		$	354
b	Other nontaxable use (see Caution above line 1)		.193*			324
c	Exported		.194*			412
d	LUST tax on aviation fuels used in foreign trade		.001			433

* See instructions for possible rate changes.

3 Nontaxable Use of Undyed Diesel Fuel

Claimant certifies that the diesel fuel did not contain visible evidence of dye.
Exception. If any of the diesel fuel included in this claim **did** contain visible evidence of dye, attach an explanation and check here ...... ▶ □

		(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a	Nontaxable use	2	$ .243	40,777	$	
b	Use on a farm for farming purposes		.243		9,909.	360
c	Use in trains		.243			353
d	Use in certain intercity and local buses (see **Caution** above line 1)		.17			350
e	Exported		.244			413

4 Nontaxable Use of Undyed Kerosene (Other Than Kerosene Used in Aviation)

Claimant certifies that the kerosene did not contain visible evidence of dye.
Exception. If any of the kerosene included in this claim did contain visible evidence of dye, attach an explanation and check here ...... ▶ □

		(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a	Nontaxable use taxed at $.244		$ .243		$	346
b	Use on a farm for farming purposes		.243			
c	Use in certain intercity and local buses (see **Caution** above line 1)		.17			347
d	Exported		.244			414
e	Nontaxable use taxed at $.044		.043			377
f	Nontaxable use taxed at $.219		.218			369

LHA **For Paperwork Reduction Act Notice, see the separate instructions.**

2011

5 Kerosene Used in Aviation (see Caution above line 1)

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Kerosene used in commercial aviation (other than foreign trade) taxed at $.244		$ .200		$	417
b Kerosene used in commercial aviation (other than foreign trade) taxed at $.219*		.175*			355
c Nontaxable use (other than use by state or local government) taxed at $.244		.243			346
d Nontaxable use (other than use by state or local government) taxed at $.219*		.218*			369
e LUST tax on aviation fuels used in foreign trade		.001			433

* See instructions for possible rate changes.

6 Sales by Registered Ultimate Vendors of Undyed Diesel Fuel **Registration No. ▶**

Claimant certifies that it sold the diesel fuel at a tax-excluded price, repaid the amount of tax to the buyer, or has obtained the written consent of the buyer to make the claim. Claimant certifies that the diesel fuel did not contain visible evidence of dye.

Exception. If any of the diesel fuel included in this claim did contain visible evidence of dye, attach an explanation and check here ...... ▶ □

	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use by a state or local government	$ .243		$	360
b Use in certain intercity and local buses	.17			350

7 Sales by Registered Ultimate Vendors of Undyed Kerosene (Other Than Kerosene For Use in Aviation) **Registration No. ▶**

Claimant certifies that it sold the kerosene at a tax-excluded price, repaid the amount of tax to the buyer, or has obtained the written consent of the buyer to make the claim. Claimant certifies that the kerosene did not contain visible evidence of dye.

Exception. If any of the kerosene included in this claim did contain visible evidence of dye, attach an explanation and check here ...... ▶ □

	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use by a state or local government	$ .243	}		
b Sales from a blocked pump	.243		$	346
c Use in certain intercity and local buses	.17			347

8 Sales by Registered Ultimate Vendors of Kerosene For Use in Aviation **Registration No. ▶**

Claimant sold the kerosene for use in aviation at a tax-excluded price and has not collected the amount of tax from the buyer, repaid the amount of tax to the buyer, or has obtained the written consent of the buyer to make the claim. See the instructions for additional information to be submitted.

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Use in commercial aviation (other than foreign trade) taxed at $.219*		$ .175*		$	355
b Use in commercial aviation (other than foreign trade) taxed at $.244		.200			417
c Nonexempt use in noncommercial aviation		.025*			418
d Other nontaxable uses taxed at $.244		.243			346
e Other nontaxable uses taxed at $.219*		.218*			369
f LUST tax on aviation fuels used in foreign trade		.001			433

*See instructions for possible rate changes.

2011

Form 4136 (~~2010~~) MINNESOTA LIMITED, INC. [redacted] Page 3

9 Alcohol Fuel Mixture Credit Registration No. ▶

Claimant produced an alcohol fuel mixture by mixing taxable fuel with alcohol. The alcohol fuel mixture was sold by the claimant to any person for use as a fuel or was used as a fuel by the claimant.

		(b) Rate	(c) Gallons of alcohol	(d) Amount of credit	(e) CRN
a	Alcohol fuel mixtures containing ethanol	$ .45		$	393
b	Alcohol fuel mixtures containing alcohol (other than ethanol)	.60			394

10 Biodiesel or Renewable Diesel Mixture Credit Registration No. ▶

Biodiesel mixtures. Claimant produced a mixture by mixing biodiesel with diesel fuel. The biodiesel used to produce the mixture met ASTM D6751 and met EPA's registration requirements for fuels and fuel additives. The mixture was sold by the claimant to any person for use as a fuel or was used as a fuel by the claimant. Claimant has attached the Certificate for Biodiesel and, if applicable, the Statement of Biodiesel Reseller. **Renewable diesel mixtures.** Claimant produced a mixture by mixing renewable diesel with liquid fuel (other than renewable diesel). The renewable diesel used to produce the renewable diesel mixture was derived from biomass process, met EPA's registration requirements for fuels and fuel additives, and met ASTM D975, D396, or other equivalent standard approved by the IRS. The mixture was sold by the claimant to any person for use as a fuel or was used as a fuel by the claimant. Claimant has attached the Certificate for Biodiesel and, if applicable, the Statement of Biodiesel Reseller, both of which have been edited as discussed in the Instructions for Form 4136. See the instructions for line 10 for information about renewable diesel used in aviation.

		(b) Rate	(c) Gallons of biodiesel or renewable diesel	(d) Amount of credit	(e) CRN
a	Biodiesel (other than agri-biodiesel) mixtures	$ 1.00		$	388
b	Agri-biodiesel mixtures	1.00			390
c	Renewable diesel mixtures	1.00			307

11 Nontaxable Use of Alternative Fuel

Caution. There is a reduced credit rate for use in certain intercity and local buses (type of use 5) (see instructions).

		(a) Type of use	(b) Rate	(c) Gallons or gasoline gallon equivalents (GGE)	(d) Amount of credit	(e) CRN
a	Liquefied petroleum gas (LPG)		$ .183		$	419
b	"P Series" fuels		.183			420
c	Compressed natural gas (CNG) (GGE = 126.67 cu. ft.)		.183			421
d	Liquefied hydrogen		.183			422
e	Any liquid fuel derived from coal (including peat) through the Fischer-Tropsch process		.243			423
f	Liquid fuel derived from biomass		.243			424
g	Liquefied natural gas (LNG)		.243			425
h	Liquefied gas derived from biomass		.183			435

12 Alternative Fuel Credit and Alternative Fuel Mixture Credit Registration No. ▶

		(b) Rate	(c) Gallons or gasoline gallon equivalents (GGE)	(d) Amount of credit	(e) CRN
a	Liquefied petroleum gas (LPG)	$ .50		$	426
b	"P Series" fuels	.50			427
c	Compressed natural gas (CNG) (GGE = 121 cu. ft.)	.50			428
d	Liquefied hydrogen	.50			429
e	Any liquid fuel derived from coal (including peat) through the Fischer-Tropsch process	.50			430
f	Liquid fuel derived from biomass	.50			431
g	Liquefied natural gas (LNG)	.50			432
h	Liquefied gas derived from biomass	.50			436
i	Compressed gas derived from biomass (GGE = 121 cu. ft.)	.50			437

2011

Form 4136 (2010) MINNESOTA LIMITED, INC. [redacted] Page 4

13 Registered Credit Card Issuers Registration No. ▶

	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Diesel fuel sold for the exclusive use of a state or local government	$ .243		$	360
b Kerosene sold for the exclusive use of a state or local government	.243			346
c Kerosene for use in aviation sold for the exclusive use of a state or local government taxed at $.219*	.218*			369

*See instructions for possible rate changes.

14 Nontaxable Use of a Diesel-Water Fuel Emulsion

Caution. There is a reduced credit rate for use in intercity and local buses (type of use 5) (see instructions).

	(a) Type of use	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Nontaxable use		$ .197		$	309
b Exported	[redacted]	.198			306

15 Diesel-Water Fuel Emulsion Blending Registration No. ▶

	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
Blender credit	$ .046		$	310

16 Exported Dyed Fuels and Exported Gasoline Blendstocks

	(b) Rate	(c) Gallons	(d) Amount of credit	(e) CRN
a Exported dyed diesel fuel and exported gasoline blendstocks taxed at $ .001	$ .001		$	415
b Exported dyed kerosene	.001			416

17 **Total income tax credit claimed.** Add lines 1 through 16, column (d). Enter here and on Form 1040, line 70; Form 1120, line 32f(2); Form 1120S, line 23c; Form 1041, line 24g; or the proper line of other returns. ▶	17	$ 10,056.	[redacted]

Form **4136** (2010)

2011

SCHEDULE D
(Form 1120S)
Department of the Treasury
Internal Revenue Service

Capital Gains and Losses and Built-In Gains

▶ Attach to Form 1120S.
▶ See separate instructions.

OMB No. 1545-0130

~~2010~~

Name: MINNESOTA LIMITED, INC.

Employer identification number: [redacted]

Part I Short-Term Capital Gains and Losses - Assets Held One Year or Less

(a) Description of property (Example, 100 shares of Z Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see instructions)	(f) Gain or (loss) (Subtract (e) from (d))
1					

2 Short-term capital gain from installment sales from Form 6252, line 26 or 37	2	
3 Short-term capital gain or (loss) from like-kind exchanges from Form 8824	3	
4 Combine lines 1 through 3 in column (f)	4	
5 Tax on short-term capital gain included on line 21 below	5	( )
6 **Net short-term capital gain or (loss).** Combine lines 4 and 5. Enter here and on Form 1120S, Schedule K, line 7 or 10	6	

Part II Long-Term Capital Gains and Losses - Assets Held More Than One Year

(a) Description of property (Example, 100 shares of Z Co.)	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Sales price	(e) Cost or other basis (see instructions)	(f) Gain or (loss) (Subtract (e) from (d))
7					

8 Long-term capital gain from installment sales from Form 6252, line 26 or 37	8	37,044,407.
9 Long-term capital gain or (loss) from like-kind exchanges from Form 8824	9	
10 Capital gain distributions	10	
11 Combine lines 7 through 10 in column (f)	11	37,044,407.
12 Tax on long-term capital gain included on line 21 below	12	( )
13 **Net long-term capital gain or (loss).** Combine lines 11 and 12. Enter here and on Form 1120S, Schedule K, line 8a or 10	13	37,044,407.

Part III Built-In Gains Tax (See instructions before completing this part.)

14 Excess of recognized built-in gains over recognized built-in losses (attach computation schedule)	14	
15 Taxable income (attach computation schedule)	15	
16 Net recognized built-in gain. Enter the smallest of line 14, line 15, or line 6 of Schedule B	16	
17 Section 1374(b)(2) deduction	17	
18 Subtract line 17 from line 16. If zero or less, enter -0- here and on line 21	18	
19 Enter 35% of line 18	19	
20 Section 1374(b)(3) business credit and minimum tax credit carryforwards from C corporation years	20	
21 **Tax.** Subtract line 20 from line 19 (If zero or less, enter -0-). Enter here and on Form 1120S, page 1, line 22b	21	

JWA **For Paperwork Reduction Act Notice, see the Instructions for Form 1120S.** **Schedule D (Form 1120S) 2010**

011771
02-10-11

2011

SCHEDULE M-3 (Form 1120S)

Department of the Treasury Internal Revenue Service

Net Income (Loss) Reconciliation for S Corporations With Total Assets of $10 Million or More

▶ Attach to Form 1120S.
▶ See separate instructions.

OMB No. 1545-0130

~~2010~~

Name of corporation

MINNESOTA LIMITED, INC.

Employer identification number

[redacted]

Part I Financial Information and Net Income (Loss) Reconciliation (see instructions)

1a Did the corporation prepare a certified audited non-tax-basis income statement for the period ending with or within this tax year? (See instructions if multiple non-tax-basis income statements are prepared.)

☒ Yes. Skip line 1b and complete lines 2 through 11 with respect to that income statement.
□ No. Go to line 1b.

b Did the corporation prepare a non-tax-basis income statement for that period?

□ Yes. Complete lines 2 through 11 with respect to that income statement.
□ No. Skip lines 2 through 3b and enter the corporation's net income (loss) per its books and records on line 4a.

2 Enter the income statement period: Beginning 01/01/2011 Ending 03/31/2011

3a Has the corporation's income statement been restated for the income statement period on line 2?

□ Yes. (If "Yes," attach an explanation and the amount of each item restated.)
☒ No.

b Has the corporation's income statement been restated for any of the five income statement periods preceding the period on line 2?

□ Yes. (If "Yes," attach an explanation and the amount of each item restated.)
☒ No.

4a Worldwide consolidated net income (loss) from income statement source identified in Part I, line 1	4a	855,915.
b Indicate accounting standard used for line 4a (see instructions): (1) □ GAAP (2) □ IFRS (3) □ Tax-basis (4) □ Other (specify)	[redacted]	[redacted]
5a Net income from nonincludible foreign entities (attach schedule)	5a	( )
b Net loss from nonincludible foreign entities (attach schedule and enter as a positive amount)	5b	
6a Net income from nonincludible U.S. entities (attach schedule)	6a	( )
b Net loss from nonincludible U.S. entities (attach schedule and enter as a positive amount)	6b	
7a Net income (loss) of other foreign disregarded entities (attach schedule)	7a	
b Net income (loss) of other U.S. disregarded entities (except qualified subchapter S subsidiaries) (attach sch.)	7b	
c Net income (loss) of other qualified subchapter S subsidiaries (QSubs) (attach schedule)	7c	
8 Adjustment to eliminations of transactions between includible entities and nonincludible entities (attach schedule)	8	
9 Adjustment to reconcile income statement period to tax year (attach schedule)	9	
10 Other adjustments to reconcile to amount on line 11 (attach schedule)	10	
11 Net income (loss) per income statement of the corporation. Combine lines 4 through 10	11	855,915.

Note. Part I, line 11, must equal Part II, line 26, column (a).

12 Enter the total amount (not just the corporation's share) of the assets and liabilities of all entities included or removed on the following lines:

	Total Assets	Total Liabilities
a Included on Part I, line 4		
b Removed on Part I, line 5		
c Removed on Part I, line 6		
d Included on Part I, line 7		

For Paperwork Reduction Act Notice, see the instructions for Form 1120S. Schedule M-3 (Form 1120S) 2010

2011

Schedule M-3 (Form 1120S) ~~2010~~ Page 2

Name of corporation	Employer identification number
MINNESOTA LIMITED, INC.	[redacted]

Part II Reconciliation of Net Income (Loss) per Income Statement of the Corporation With Total Income (Loss) per Return (see instructions)

	Income (Loss) Items	(a) Income (Loss) per Income Statement	(b) Temporary Difference	(c) Permanent Difference	(d) Income (Loss) per Tax Return
1	Income (loss) from equity method foreign corporations				[redacted]
2	Gross foreign dividends not previously taxed				
3	Subpart F, QEF, and similar income inclusions	[redacted]			
4	Gross foreign distributions previously taxed				[redacted]
5	Income (loss) from equity method U.S. corporations				[redacted]
6	U.S. dividends not eliminated in tax consolidation				
7	Income (loss) from U.S. partnerships (attach schedule)				
8	Income (loss) from foreign partnerships (attach schedule)				
9	Income (loss) from other pass-through entities (attach schedule)				
10	Items relating to reportable transactions (attach details)				
11	Interest income (attach Form 8916-A)				
12	Total accrual to cash adjustment				
13	Hedging transactions				
14	Mark-to-market income (loss)				
15	Cost of goods sold (attach Form 8916-A)	(16,937,448.)	-547,205.		(17,484,653.)
16	Sale versus lease (for sellers and/or lessors)				
17	Section 481(a) adjustments	[redacted]			
18	Unearned/deferred revenue				
19	Income recognition from long-term contracts				
20	Original issue discount and other imputed interest				
21a	Income statement gain/loss on sale, exchange, abandonment, worthlessness, or other disposition of assets other than inventory and pass-through entities	-78,458.	78,458.		[redacted]
b	Gross capital gains from Schedule D, excluding amounts from pass-through entities	[redacted]	37,044,407.		37,044,407.
c	Gross capital losses from Schedule D, excluding amounts from pass-through entities, abandonment losses, and worthless stock losses	[redacted]			
d	Net gain/loss reported on Form 4797, line 17, excluding amounts from pass-through entities, abandonment losses, and worthless stock losses	[redacted]	17,043,050.		17,043,050.
e	Abandonment losses	[redacted]			
f	Worthless stock losses (attach details)	[redacted]			
g	Other gain/loss on disposition of assets other than inventory	[redacted]			
22	Other income (loss) items with differences (attach schedule) STMT 15	4,442.		5,614.	10,056.
23	Total income (loss) items. Combine lines 1 through 22	-17,011,464.	53,618,710.	5,614.	36,612,860.
24	Total expense/deduction items (from Part III, line 32)	-2,003,666.	-523,865.	177,150.	-2,350,381.
25	Other items with no differences STMT 16	19,871,045.	[redacted]	[redacted]	19,871,045.
26	Reconciliation totals. Combine lines 23 through 25	855,915.	53,094,845.	182,764.	54,133,524.

Note. Line 26, column (a), must equal the amount on Part I, line 11, and column (d) must equal Form 1120S, Schedule K, line 18.

Schedule M-3 (Form 1120S) 2010

011736
01-25-11 JWA

2011

Schedule M-3 (Form 1120S) ~~2010~~ Page 3

Name of corporation MINNESOTA LIMITED, INC.

Employer identification number [redacted]

Part III Reconciliation of Net Income (Loss) per Income Statement of the Corporation With Total Income (Loss) per Return - Expense/Deduction Items (see instructions)

	Expense/Deduction Items	(a) Expense per Income Statement	(b) Temporary Difference	(c) Permanent Difference	(d) Deduction per Tax Return
1	U.S. current income tax expense				
2	U.S. deferred income tax expense				[redacted]
3	State and local current income tax expense	146,907.	496,340.		643,247.
4	State and local deferred income tax expense				[redacted]
5	Foreign current income tax expense (other than foreign withholding taxes)				
6	Foreign deferred income tax expense				[redacted]
7	Equity-based compensation				
8	Meals and entertainment STMT 18	351,802.		-175,901.	175,901.
9	Fines and penalties				
10	Judgments, damages, awards, and similar costs				
11	Pension and profit-sharing	34,981.			34,981.
12	Other post-retirement benefits				
13	Deferred compensation				
14	Charitable contribution of cash and tangible property STMT 19	300.			300.
15	Charitable contribution of intangible property				
16	Current year acquisition or reorganization investment banking fees				
17	Current year acquisition or reorganization legal and accounting fees				
18	Current year acquisition/ reorganization other costs				
19	Amortization/impairment of goodwill				
20	Amortization of acquisition, reorganization, and start-up costs				
21	Other amortization or impairment write-offs				
22	Section 198 environmental remediation costs				
23a	Depletion - Oil & Gas				[redacted]
b	Depletion - Other than Oil & Gas				
24	Depreciation	498,251.	-99,464.		398,787.
25	Bad debt expense STMT 20	2,499.	100,000.		102,499.
26	Interest expense (attach Form 8916-A)	111,779.			111,779.
27	Corporate owned life insurance premiums				
28	Purchase versus lease (for purchasers and/or lessees)				
29	Research and development costs (attach schedule)				
30	Section 118 exclusion (attach schedule)				
31	Other expense/deduction items with differences (attach schedule) STMT 21	857,147.	26,989.	-1,249.	882,887.
32	**Total expense/deduction items.** Combine lines 1 through 31. Enter here and on Part II, line 24, reporting positive amounts as negative and negative amounts as positive	2,003,666.	523,865.	-177,150.	2,350,381.

Schedule M-3 (Form 1120S) 2010

2011

Form **4562**

Department of the Treasury
Internal Revenue Service (99)

Depreciation and Amortization

(Including Information on Listed Property) OTHER

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172

~~2010~~

Attachment Sequence No. 67

Name(s) shown on return	Business or activity to which this form relates	Identifying number
MINNESOTA LIMITED, INC.	OTHER DEPRECIATION	[redacted]

Part I Election To Expense Certain Property Under Section 179 **Note:** *If you have any listed property, complete Part V before you complete Part I.*

1	Maximum amount (see instructions)	1	500,000.
2	Total cost of section 179 property placed in service (see instructions)	2	
3	Threshold cost of section 179 property before reduction in limitation	3	2,000,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	

6 (a) Description of property	(b) Cost (business use only)	(c) Elected cost
7 Listed property. Enter the amount from line 29	7	

8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	
10	Carryover of disallowed deduction from line 13 of your 2009 Form 4562	10	
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5	11	500,000.
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13	Carryover of disallowed deduction to 2011. Add lines 9 and 10, less line 12 ▶ 13		

Note: *Do not use Part II or Part III below for listed property. Instead, use Part V.*

Part II Special Depreciation Allowance and Other Depreciation (**Do not** include listed property.)

14	Special depreciation allowance for qualified property (other than listed property) placed in service during the tax year	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	36,327.

Part III MACRS Depreciation (**Do not** include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2010	17	362,460.
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here ▶ □		

Section B - Assets Placed in Service During 2010 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property	/		27.5 yrs.	MM	S/L	
	/		27.5 yrs.	MM	S/L	
i Nonresidential real property	/		39 yrs.	MM	S/L	
	/			MM	S/L	

Section C - Assets Placed in Service During 2010 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year	/		40 yrs.	MM	S/L	

Part IV Summary (See instructions.)

21	Listed property. Enter amount from line 28	21	
22	**Total.** Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instr.	22	398,787.
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

2011

Form 4562 (2010) MINNESOTA LIMITED, INC. [redacted] Page 2

Part V **Listed Property** (Include automobiles, certain other vehicles, certain computers, and property used for entertainment, recreation, or amusement.)

Note: *For any vehicle for which you are using the standard mileage rate or deducting lease expense, complete* **only** *24a, 24b, columns (a) through (c) of Section A, all of Section B, and Section C if applicable.*

Section A - Depreciation and Other Information (Caution: *See the instructions for limits for passenger automobiles.***)**

24a Do you have evidence to support the business/investment use claimed? ☒ Yes ☐ No 24b If "Yes," is the evidence written? ☒ Yes ☐ No

(a) Type of property (list vehicles first)	(b) Date placed in service	(c) Business/ investment use percentage	(d) Cost or other basis	(e) Basis for depreciation (business/investment use only)	(f) Recovery period	(g) Method/ Convention	(h) Depreciation deduction	(i) Elected section 179 cost
25 Special depreciation allowance for qualified listed property placed in service during the tax year and used more than 50% in a qualified business use						25		
26 Property used more than 50% in a qualified business use:								
2003 CHEVY	051303	100.00 %	33,327.	33,327.	5	200DB/HY	0.	
2003 CHEVY	060903	100.00 %	33,644.	33,644.	5	200DB/HY	0.	
		%						
27 Property used 50% or less in a qualified business use:								
		%				S/L -		
		%				S/L -		
		%				S/L -		
28 Add amounts in column (h), lines 25 through 27. Enter here and on line 21, page 1						28		
29 Add amounts in column (i), line 26. Enter here and on line 7, page 1							29	

Section B - Information on Use of Vehicles

Complete this section for vehicles used by a sole proprietor, partner, or other "more than 5% owner," or related person.

If you provided vehicles to your employees, first answer the questions in Section C to see if you meet an exception to completing this section for those vehicles.

	(a) Vehicle		(b) Vehicle		(c) Vehicle		(d) Vehicle		(e) Vehicle		(f) Vehicle	
30 Total business/investment miles driven during the year (**do not** include commuting miles)												
31 Total commuting miles driven during the year												
32 Total other personal (noncommuting) miles driven												
33 Total miles driven during the year. Add lines 30 through 32												
	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No	Yes	No
34 Was the vehicle available for personal use during off-duty hours?												
35 Was the vehicle used primarily by a more than 5% owner or related person?												
36 Is another vehicle available for personal use?												

Section C - Questions for Employers Who Provide Vehicles for Use by Their Employees

Answer these questions to determine if you meet an exception to completing Section B for vehicles used by employees who are not more than 5% owners or related persons.

	Yes	No
37 Do you maintain a written policy statement that prohibits all personal use of vehicles, including commuting, by your employees?		X
38 Do you maintain a written policy statement that prohibits personal use of vehicles, except commuting, by your employees? See the instructions for vehicles used by corporate officers, directors, or 1% or more owners		X
39 Do you treat all use of vehicles by employees as personal use?		X
40 Do you provide more than five vehicles to your employees, obtain information from your employees about the use of the vehicles, and retain the information received?	X	
41 Do you meet the requirements concerning qualified automobile demonstration use?		X
Note: *If your answer to 37, 38, 39, 40, or 41 is "Yes," do not complete Section B for the covered vehicles.*		

Part VI **Amortization**

(a) Description of costs	(b) Date amortization begins	(c) Amortizable amount	(d) Code section	(e) Amortization period or percentage	(f) Amortization for this year
42 Amortization of costs that begins during your 2010 tax year:					
43 Amortization of costs that began before your 2010 tax year				43	
44 Total. Add amounts in column (f). See the instructions for where to report				44	

2011

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts Under Sections 179 and 280F(b)(2))

▶ Attach to your tax return.

OMB No. 1545-0184

2010

Attachment Sequence No. 27

Name(s) shown on return: MINNESOTA LIMITED, INC.

Identifying number: [redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2010 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) 1

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft - Most Property Held More Than 1 Year

(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
2						

3 Gain, if any, from Form 4684, line 42	3	
4 Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6 Gain, if any, from line 32, from other than casualty or theft	6	
7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	
Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below. **Individuals, partners, S corporation shareholders, and all others.** If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.		
8 Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

WORKING CAPITAL						
	VARIES	VARIES	21978478.		21,978,478.	0.

11 Loss, if any, from line 7	11	( )
12 Gain, if any, from line 7 or amount from line 8, if applicable	12	
13 Gain, if any, from line 31	13	17043050.
14 Net gain or (loss) from Form 4684, lines 34 and 41a	14	
15 Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16 Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17 Combine lines 10 through 16	17	17043050.
18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:		
a If the loss on line 11 includes a loss from Form 4684, line 38, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

JWA For Paperwork Reduction Act Notice, see separate instructions.

[redacted]

MINNESOTA LIMITED, INC.

Form 4797 (~~2010~~) 2011

Page 2

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A VARIOUS ASSETS SOLD	VARIES	VARIES
B SEE INSTALL SALE NO. 1	010101	033111
C		
D		

These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
20 Gross sales price (Note: See line 1 before completing.)	20	450,938.	18349610.		
21 Cost or other basis plus expense of sale	21	770,147.	28813882.		
22 Depreciation (or depletion) allowed or allowable	22	648,311.	27178220.		
23 Adjusted basis. Subtract line 22 from line 21	23	121,836.	1,635,662.		
24 Total gain. Subtract line 23 from line 20	24	329,102.	16713948.		
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a	648,311.	27178220.		
b Enter the smaller of line 24 or 25a	25b	329,102.	16713948.		
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975	26a				
b Applicable percentage multiplied by the smaller of line 24 or line 26a	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the smaller of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage	27b				
c Enter the smaller of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion	28a				
b Enter the smaller of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126	29a				
b Enter the smaller of line 24 or 29a	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	17,043,050.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	17,043,050.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 37. Enter the portion from other than casualty or theft on Form 4797, line 6	32	

Part IV Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less (see instructions.)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

ALTERNATIVE MINIMUM TAX

2011

Form **4797**

Department of the Treasury
Internal Revenue Service (99)

Sales of Business Property

(Also Involuntary Conversions and Recapture Amounts
Under Sections 179 and 280F(b)(2))
▶ Attach to your tax return.

OMB No. 1545-0184

~~2010~~

Attachment
Sequence No. 27

Name(s) shown on return

MINNESOTA LIMITED, INC.

Identifying number

[redacted]

1 Enter the gross proceeds from sales or exchanges reported to you for 2010 on Form(s) 1099-B or 1099-S (or substitute statement) that you are including on line 2, 10, or 20 (see instructions) 1

Part I Sales or Exchanges of Property Used in a Trade or Business and Involuntary Conversions From Other Than Casualty or Theft - Most Property Held More Than 1 Year

(a) Description of property	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)	(d) Gross sales price	(e) Depreciation allowed or allowable since acquisition	(f) Cost or other basis, plus improvements and expense of sale	(g) Gain or (loss) Subtract (f) from the sum of (d) and (e)
2						

3 Gain, if any, from Form 4684, line 42	3	
4 Section 1231 gain from installment sales from Form 6252, line 26 or 37	4	
5 Section 1231 gain or (loss) from like-kind exchanges from Form 8824	5	
6 Gain, if any, from line 32, from other than casualty or theft	6	
7 Combine lines 2 through 6. Enter the gain or (loss) here and on the appropriate line as follows:	7	

Partnerships (except electing large partnerships) and S corporations. Report the gain or (loss) following the instructions for Form 1065, Schedule K, line 10, or Form 1120S, Schedule K, line 9. Skip lines 8, 9, 11, and 12 below.

Individuals, partners, S corporation shareholders, and all others. If line 7 is zero or a loss, enter the amount from line 7 on line 11 below and skip lines 8 and 9. If line 7 is a gain and you did not have any prior year section 1231 losses, or they were recaptured in an earlier year, enter the gain from line 7 as a long-term capital gain on the Schedule D filed with your return and skip lines 8, 9, 11, and 12 below.

8 Nonrecaptured net section 1231 losses from prior years (see instructions)	8	
9 Subtract line 8 from line 7. If zero or less, enter -0-. If line 9 is zero, enter the gain from line 7 on line 12 below. If line 9 is more than zero, enter the amount from line 8 on line 12 below and enter the gain from line 9 as a long-term capital gain on the Schedule D filed with your return (see instructions)	9	

Part II Ordinary Gains and Losses

10 Ordinary gains and losses not included on lines 11 through 16 (include property held 1 year or less):

WORKING CAPITAL						
	VARIES	VARIES	21978478.		21,978,478.	0.

11 Loss, if any, from line 7	11	( )
12 Gain, if any, from line 7 or amount from line 8, if applicable	12	
13 Gain, if any, from line 31	13	16850893.
14 Net gain or (loss) from Form 4684, lines 34 and 41a	14	
15 Ordinary gain from installment sales from Form 6252, line 25 or 36	15	
16 Ordinary gain or (loss) from like-kind exchanges from Form 8824	16	
17 Combine lines 10 through 16	17	16850893.

18 For all except individual returns, enter the amount from line 17 on the appropriate line of your return and skip lines a and b below. For individual returns, complete lines a and b below:

a If the loss on line 11 includes a loss from Form 4684, line 38, column (b)(ii), enter that part of the loss here. Enter the part of the loss from income-producing property on Schedule A (Form 1040), line 28, and the part of the loss from property used as an employee on Schedule A (Form 1040), line 23. Identify as from "Form 4797, line 18a." See instructions	18a	
b Redetermine the gain or (loss) on line 17 excluding the loss, if any, on line 18a. Enter here and on Form 1040, line 14	18b	

JWA For Paperwork Reduction Act Notice, see separate instructions.

[redacted]

MINNESOTA LIMITED, INC.

Form 4797 ~~(2010)~~ 2011 ALTERNATIVE MINIMUM TAX Page 2

Part III Gain From Disposition of Property Under Sections 1245, 1250, 1252, 1254, and 1255

19 (a) Description of section 1245, 1250, 1252, 1254, or 1255 property:	(b) Date acquired (mo., day, yr.)	(c) Date sold (mo., day, yr.)
A VARIOUS ASSETS SOLD	VARIES	VARIES
B SEE INSTALL SALE NO. 1	010101	033111
C		
D		

These columns relate to the properties on lines 19A through 19D. ▶		Property A	Property B	Property C	Property D
20 Gross sales price (Note: See line 1 before completing.)	20	450,938.	18349610.		
21 Cost or other basis plus expense of sale	21	773,528.	28813882.		
22 Depreciation (or depletion) allowed or allowable	22	648,311.	26989444.		
23 Adjusted basis. Subtract line 22 from line 21	23	125,217.	1,824,438.		
24 Total gain. Subtract line 23 from line 20	24	325,721.	16525172.		
25 If section 1245 property:					
a Depreciation allowed or allowable from line 22	25a	648,311.	26989444.		
b Enter the smaller of line 24 or 25a	25b	325,721.	16525172.		
26 If section 1250 property: If straight line depreciation was used, enter -0- on line 26g, except for a corporation subject to section 291.					
a Additional depreciation after 1975	26a				
b Applicable percentage multiplied by the smaller of line 24 or line 26a	26b				
c Subtract line 26a from line 24. If residential rental property or line 24 is not more than line 26a, skip lines 26d and 26e	26c				
d Additional depreciation after 1969 and before 1976	26d				
e Enter the smaller of line 26c or 26d	26e				
f Section 291 amount (corporations only)	26f				
g Add lines 26b, 26e, and 26f	26g				
27 If section 1252 property: Skip this section if you did not dispose of farmland or if this form is being completed for a partnership (other than an electing large partnership).					
a Soil, water, and land clearing expenses	27a				
b Line 27a multiplied by applicable percentage	27b				
c Enter the smaller of line 24 or 27b	27c				
28 If section 1254 property:					
a Intangible drilling and development costs, expenditures for development of mines and other natural deposits, mining exploration costs, and depletion	28a				
b Enter the smaller of line 24 or 28a	28b				
29 If section 1255 property:					
a Applicable percentage of payments excluded from income under section 126	29a				
b Enter the smaller of line 24 or 29a	29b				

Summary of Part III Gains. Complete property columns A through D through line 29b before going to line 30.

30 Total gains for all properties. Add property columns A through D, line 24	30	16,850,893.
31 Add property columns A through D, lines 25b, 26g, 27c, 28b, and 29b. Enter here and on line 13	31	16,850,893.
32 Subtract line 31 from line 30. Enter the portion from casualty or theft on Form 4684, line 37. Enter the portion from other than casualty or theft on Form 4797, line 6	32	

Part IV **Recapture Amounts Under Sections 179 and 280F(b)(2) When Business Use Drops to 50% or Less** (see instructions.)

		(a) Section 179	(b) Section 280F(b)(2)
33 Section 179 expense deduction or depreciation allowable in prior years	33		
34 Recomputed depreciation (see instructions)	34		
35 Recapture amount. Subtract line 34 from line 33. See the instructions for where to report	35		

INSTALLMENT SALE NO. 1

2011

Form **6252**

Department of the Treasury
Internal Revenue Service

Installment Sale Income

▶ Attach to your tax return.

▶ Use a separate form for each sale or other disposition of property on the installment method.

OMB No. 1545-0228

~~2010~~

Attachment Sequence No. 79

Name(s) shown on return: MINNESOTA LIMITED, INC.

Identifying number: [redacted]

1 Description of property ▶ FIXED ASSETS

2a Date acquired (mm/dd/yyyy) ▶ 01/01/01 b Date sold (mm/dd/yyyy) ▶ 03/31/11

3 Was the property sold to a related party after May 14, 1980? If "No," skip line 4 □ Yes ☒ No

4 Was the property you sold to a related party a marketable security? If "Yes," complete Part III. If "No," complete Part III for the year of sale and the 2 years after the year of sale □ Yes □ No

Part I Gross Profit and Contract Price. Complete this part for the year of sale only.

5	Selling price including mortgages and other debts. Do not include interest, whether stated or unstated			5	18,349,610.
6	Mortgages, debts, and other liabilities the buyer assumed or took the property subject to	6	1,548,829.		
7	Subtract line 6 from line 5	7	16,800,781.		
8	Cost or other basis of property sold	8	28,479,203.		
9	Depreciation allowed or allowable	9	27,178,220.		
10	Adjusted basis. Subtract line 9 from line 8	10	1,300,983.		
11	Commissions and other expenses of sale	11	334,679.		
12	Income recapture from Form 4797, Part III	12	16,713,948.		
13	Add lines 10, 11, and 12			13	18,349,610.
14	Subtract line 13 from line 5. If zero or less, do not complete the rest of this form			14	0.
15	If the property described on line 1 above was your main home, enter the amount of your excluded gain. Otherwise, enter -0-			15	
16	Gross profit. Subtract line 15 from line 14			16	
17	Subtract line 13 from line 6. If zero or less, enter -0-			17	0.
18	Contract price. Add line 7 and line 17			18	

Part II Installment Sale Income. Complete this part for the year of sale and any year you receive a payment or have certain debts you must treat as a payment on installment obligations.

19	Gross profit percentage (expressed as a decimal amount). Divide line 16 by line 18. For years after the year of sale, see inst.			19	.0000%
20	If this is the year of sale, enter the amount from line 17. Otherwise, enter -0-			20	0.
21	Payments received during year. Do not include interest, whether stated or unstated			21	16,034,486.
22	Add lines 20 and 21			22	16,034,486.
23	Payments received in prior years. Do not include interest, whether stated or unstated	23			
24	Installment sale income. Multiply line 22 by line 19			24	
25	Enter the part of line 24 that is ordinary income under the recapture rules			25	
26	Subtract line 25 from line 24. Enter here and on Schedule D or Form 4797			26	

Part III Related Party Installment Sale Income. Do not complete if you received the final payment this tax year.

27 Name, address, and taxpayer identifying number of related party

28 Did the related party resell or dispose of the property ("second disposition") during this tax year? □ Yes □ No

29 If the answer to question 28 is "Yes," complete lines 30 through 37 below unless one of the following conditions is met. Check the box that applies.

a □ The second disposition was more than 2 years after the first disposition (other than dispositions of marketable securities). If this box is checked, enter the date of disposition (mm/dd/yyyy) ▶

b □ The first disposition was a sale or exchange of stock to the issuing corporation.

c □ The second disposition was an involuntary conversion and the threat of conversion occurred after the first disposition.

d □ The second disposition occurred after the death of the original seller or buyer.

e □ It can be established to the satisfaction of the Internal Revenue Service that tax avoidance was not a principal purpose for either of the dispositions. If this box is checked, attach an explanation.

30	Selling price of property sold by related party	30	
31	Enter contract price from line 18 for year of first sale	31	
32	Enter the smaller of line 30 or line 31	32	
33	Total payments received by the end of your 2010 tax year	33	
34	Subtract line 33 from line 32. If zero or less, enter -0-	34	
35	Multiply line 34 by the gross profit percentage on line 19 for year of first sale	35	
36	Enter the part of line 35 that is ordinary income under the recapture rules	36	
37	Subtract line 36 from line 35. Enter here and on Schedule D or Form 4797	37	

019491 11-03-10 LHA For Paperwork Reduction Act Notice, see separate instructions.

INSTALLMENT SALE

MINNESOTA LIMITED, INC. [redacted]

SCHEDULE OF RECEIPTS

INSTALLMENT SALE NO. 1

MO. DA. YR.	PRINCIPAL RECEIVED	TOTAL GAIN	ORDINARY GAIN	SEC. 1231/OR CAPITAL GAIN	UNRECAP. SEC. 1250 GAIN
03/31/11	16,034,486.	0.	0.	0.	0.

018492
05-01-10

INSTALLMENT SALE NO. 1
ALTERNATIVE MINIMUM TAX

Form **6252**

Department of the Treasury
Internal Revenue Service

Installment Sale Income

▶ Attach to your tax return.

▶ Use a separate form for each sale or other disposition of property on the installment method.

2011

OMB No. 1545-0228

2010

Attachment
Sequence No. 79

Name(s) shown on return: MINNESOTA LIMITED, INC.

Identifying number: [redacted]

1 Description of property ▶ FIXED ASSETS

2a Date acquired (mm/dd/yyyy) ▶ 01/01/01 b Date sold (mm/dd/yyyy) ▶ 03/31/11

3 Was the property sold to a related party after May 14, 1980? If "No," skip line 4 ☐ Yes ☒ No

4 Was the property you sold to a related party a marketable security? If "Yes," complete Part III. If "No," complete Part III for the year of sale and the 2 years after the year of sale ☐ Yes ☐ No

Part I Gross Profit and Contract Price. Complete this part for the year of sale only.

5	Selling price including mortgages and other debts. Do not include interest, whether stated or unstated			5	18,349,610.
6	Mortgages, debts, and other liabilities the buyer assumed or took the property subject to	6	1,548,829.		
7	Subtract line 6 from line 5	7	16,800,781.		
8	Cost or other basis of property sold	8	28,479,203.		
9	Depreciation allowed or allowable	9	26,989,444.		
10	Adjusted basis. Subtract line 9 from line 8	10	1,489,759.		
11	Commissions and other expenses of sale	11	334,679.		
12	Income recapture from Form 4797, Part III	12	16,525,172.		
13	Add lines 10, 11, and 12			13	18,349,610.
14	Subtract line 13 from line 5. If zero or less, do not complete the rest of this form			14	
15	If the property described on line 1 above was your main home, enter the amount of your excluded gain. Otherwise, enter -0-			15	
16	Gross profit. Subtract line 15 from line 14			16	
17	Subtract line 13 from line 6. If zero or less, enter -0-			17	0.
18	Contract price. Add line 7 and line 17			18	

Part II Installment Sale Income. Complete this part for the year of sale and any year you receive a payment or have certain debts you must treat as a payment on installment obligations.

19	Gross profit percentage (expressed as a decimal amount). Divide line 16 by line 18. For years after the year of sale, see inst.			19	.0000%
20	If this is the year of sale, enter the amount from line 17. Otherwise, enter -0-			20	0.
21	Payments received during year. Do not include interest, whether stated or unstated			21	16,034,486.
22	Add lines 20 and 21			22	16,034,486.
23	Payments received in prior years. Do not include interest, whether stated or unstated	23			
24	Installment sale income. Multiply line 22 by line 19			24	0.
25	Enter the part of line 24 that is ordinary income under the recapture rules			25	
26	Subtract line 25 from line 24. Enter here and on Schedule D or Form 4797			26	0.

Part III Related Party Installment Sale Income. Do not complete if you received the final payment this tax year.

27 Name, address, and taxpayer identifying number of related party

28 Did the related party resell or dispose of the property ("second disposition") during this tax year? ☐ Yes ☐ No

29 **If the answer to question 28 is "Yes," complete lines 30 through 37 below unless one of the following conditions is met. Check the box that applies.**

a ☐ The second disposition was more than 2 years after the first disposition (other than dispositions of marketable securities). If this box is checked, enter the date of disposition (mm/dd/yyyy) ▶

b ☐ The first disposition was a sale or exchange of stock to the issuing corporation.

c ☐ The second disposition was an involuntary conversion and the threat of conversion occurred after the first disposition.

d ☐ The second disposition occurred after the death of the original seller or buyer.

e ☐ It can be established to the satisfaction of the Internal Revenue Service that tax avoidance was not a principal purpose for either of the dispositions. If this box is checked, attach an explanation.

30	Selling price of property sold by related party	30	
31	Enter contract price from line 18 for year of first sale	31	
32	Enter the smaller of line 30 or line 31	32	
33	Total payments received by the end of your 2010 tax year	33	
34	Subtract line 33 from line 32. If zero or less, enter -0-	34	
35	Multiply line 34 by the gross profit percentage on line 19 for year of first sale	35	
36	Enter the part of line 35 that is ordinary income under the recapture rules	36	
37	Subtract line 36 from line 35. Enter here and on Schedule D or Form 4797	37	

019491
11-03-10 LHA For Paperwork Reduction Act Notice, see separate instructions. Form 6252 (2010)

ALTERNATIVE MINIMUM TAX

INSTALLMENT SALE

MINNESOTA LIMITED, INC. [redacted]

SCHEDULE OF RECEIPTS

INSTALLMENT SALE NO. 1

MO. DA. YR.	PRINCIPAL RECEIVED	TOTAL GAIN	ORDINARY GAIN	SEC. 1231/OR CAPITAL GAIN	UNRECAP. SEC. 1250 GAIN
03/31/11	16,034,486.	0.	0.	0.	0.

019492
05-01-10

2011

INSTALLMENT SALE NO. 2

Form **6252**

Department of the Treasury
Internal Revenue Service

Installment Sale Income

▶ Attach to your tax return.

▶ Use a separate form for each sale or other disposition of property on the installment method.

OMB No. 1545-0228

~~2010~~

Attachment Sequence No. 79

Name(s) shown on return: MINNESOTA LIMITED, INC.

Identifying number: [redacted]

1 Description of property ▶ GOODWILL

2a Date acquired (mm/dd/yyyy) ▶ ____ b Date sold (mm/dd/yyyy) ▶ 03/31/11

3 Was the property sold to a related party after May 14, 1980? If "No," skip line 4 □ Yes ☒ No

4 Was the property you sold to a related party a marketable security? If "Yes," complete Part III. If "No," complete Part III for the year of sale and the 2 years after the year of sale □ Yes □ No

Part I Gross Profit and Contract Price. Complete this part for the year of sale only.

5	Selling price including mortgages and other debts. Do not include interest, whether stated or unstated			5	39,408,939.
6	Mortgages, debts, and other liabilities the buyer assumed or took the property subject to	6	3,326,377.		
7	Subtract line 6 from line 5	7	36,082,562.		
8	Cost or other basis of property sold	8			
9	Depreciation allowed or allowable	9			
10	Adjusted basis. Subtract line 9 from line 8	10	0.		
11	Commissions and other expenses of sale	11	718,781.		
12	Income recapture from Form 4797, Part III	12			
13	Add lines 10, 11, and 12			13	718,781.
14	Subtract line 13 from line 5. If zero or less, do not complete the rest of this form			14	38,690,158.
15	If the property described on line 1 above was your main home, enter the amount of your excluded gain. Otherwise, enter -0-			15	
16	Gross profit. Subtract line 15 from line 14			16	38,690,158.
17	Subtract line 13 from line 6. If zero or less, enter -0-			17	2,607,596.
18	Contract price. Add line 7 and line 17			18	38,690,158.

Part II Installment Sale Income. Complete this part for the year of sale and any year you receive a payment or have certain debts you must treat as a payment on installment obligations.

19	Gross profit percentage (expressed as a decimal amount). Divide line 16 by line 18. For years after the year of sale, see inst.			19	100.0000%
20	If this is the year of sale, enter the amount from line 17. Otherwise, enter -0-			20	2,607,596.
21	Payments received during year. Do not include interest, whether stated or unstated			21	34,436,811.
22	Add lines 20 and 21			22	37,044,407.
23	Payments received in prior years. Do not include interest, whether stated or unstated	23			
24	Installment sale income. Multiply line 22 by line 19			24	37,044,407.
25	Enter the part of line 24 that is ordinary income under the recapture rules			25	
26	Subtract line 25 from line 24. Enter here and on Schedule D or Form 4797			26	37,044,407.

Part III Related Party Installment Sale Income. Do not complete if you received the final payment this tax year.

27 Name, address, and taxpayer identifying number of related party ____

28 Did the related party resell or dispose of the property ("second disposition") during this tax year? □ Yes □ No

29 If the answer to question 28 is "Yes," complete lines 30 through 37 below unless one of the following conditions is met. Check the box that applies.

a □ The second disposition was more than 2 years after the first disposition (other than dispositions of marketable securities). If this box is checked, enter the date of disposition (mm/dd/yyyy) ▶ ____

b □ The first disposition was a sale or exchange of stock to the issuing corporation.

c □ The second disposition was an involuntary conversion and the threat of conversion occurred after the first disposition.

d □ The second disposition occurred after the death of the original seller or buyer.

e □ It can be established to the satisfaction of the Internal Revenue Service that tax avoidance was not a principal purpose for either of the dispositions. If this box is checked, attach an explanation.

30	Selling price of property sold by related party	30	
31	Enter contract price from line 18 for year of first sale	31	
32	Enter the smaller of line 30 or line 31	32	
33	Total payments received by the end of your 2010 tax year	33	
34	Subtract line 33 from line 32. If zero or less, enter -0-	34	
35	Multiply line 34 by the gross profit percentage on line 19 for year of first sale	35	
36	Enter the part of line 35 that is ordinary income under the recapture rules	36	
37	Subtract line 36 from line 35. Enter here and on Schedule D or Form 4797	37	

019491 11-03-10 LHA For Paperwork Reduction Act Notice, see separate instructions.

INSTALLMENT SALE

MINNESOTA LIMITED, INC. [redacted]

SCHEDULE OF RECEIPTS

INSTALLMENT SALE NO. 2

MO. DA. YR.	PRINCIPAL RECEIVED	TOTAL GAIN	ORDINARY GAIN	SEC. 1231/OR CAPITAL GAIN	UNRECAP. SEC. 1250 GAIN
03/31/11	37,044,407.	37,044,407.	0.	37,044,407.	0.

019492
05-01-10

Form **8883**
(December 2008)
Department of the Treasury
Internal Revenue Service

Asset Allocation Statement Under Section 338

▶ Attach to your income tax return.

OMB No. 1545-1806

Part I Filer's Identifying Information

1a Name as shown on return
MINNESOTA LIMITED, INC.

1b Identifying number as shown on return
[redacted]

1c Check applicable box (see instructions): □ Old target ☒ New target

1d Was a valid and timely Form 8023 filed? ☒ Yes □ No
If yes, enter the date filed ▶ 11/17/11

Part II Other Party's Identifying Information

2a Name of other party to the transaction
VECTREN CORPORATION AND SUBSIDIARIES

2b Other party's identifying number
[redacted]

Address (number, street, and room or suite no.)
ONE VECTREN SQUARE

City or town, state, and ZIP code
EVANSVILLE, IN 47708

Part III Target Corporation's Identifying Information

3a Name and address of target corporation
MINNESOTA LIMITED, INC.
18640 200TH STREET
BIG LAKE, MN 55309

3b Employer identification number
[redacted]

3c State or country of incorporation

Part IV General Information

4a Acquisition date
03/31/2011

4b What percentage of target corporation stock was purchased:
(i) During the 12-month acquisition period? 100 %
(ii) On the acquisition date? 100 %

5a Stock price	5b Acquisition costs/Selling costs	5c Target liabilities	5d AGUB/ADSP
$ 67,830,659.	$	$ 11,906,368.	$ 79,737,027.

		Yes	No
6	Was the filer listed in Part I, above, a member of an affiliated group of corporations before the acquisition date?	X	
7	Was the target corporation a member of an affiliated group before the acquisition date?		X
8	Is the target corporation or any target affiliate:		
a	A controlled foreign corporation? If "No," check here if it was a CFC at any time during the preceding 5 years ▶ □		X
b	A foreign corporation with income, gain, or loss effectively connected with the conduct of a trade or business within the United States (including U.S. real property interests)?		X
c	A qualifying foreign target under Regulations section 1.338-2(e)(1)(iii)?		X
d	A corporation electing under section 1504(d) or section 953(d)?		X
e	A domestic international sales corporation (DISC)?		X
f	A passive foreign investment company (PFIC)?		X
g	If the answer to item 8f is "Yes", is the PFIC a pedigreed qualified electing fund?		X

JWA **For Paperwork Reduction Act Notice, see separate instructions.**

[redacted]

MINNESOTA LIMITED, INC.

Part V **Original Statement of Assets Transferred**

9 Assets	Aggregate fair market value (actual amount for Class I)	Allocation of AGUB or ADSP
Class I	$ 445,001.	$ 445,001.
Class II	$	$
Class III	$ 19,102,288.	$ 19,102,288.
Class IV	$	$
Class V	$ 20,780,799.	$ 20,780,799.
Class VI and VII	$ 39,408,939.	$ 39,408,939.
Total	$ 79,737,027.	$ 79,737,027.

Part VI **Supplemental Statement of Assets Transferred** - Complete if amending an original statement or previously filed supplemental statement because of an increase or decrease in AGUB or ADSP.

10 Enter the tax year and tax return form number with which the original Form 8023 or Form 8883 and any supplemental statements were filed.

11 Assets	Allocation of sales price as previously reported	Increase or (decrease)	Redetermined allocation of AGUB or ADSP
Class I	$	$	$
Class II	$	$	$
Class III	$	$	$
Class IV	$	$	$
Class V	$	$	$
Class VI and VII	$	$	$
Total	$		$

12 Reason(s) for increase or decrease. Attach additional sheets if more space is needed.

Form **8916-A**

Department of the Treasury
Internal Revenue Service

Supplemental Attachment to Schedule M-3

▶ Attach to Schedule M-3 for Form 1065, 1120, 1120-L, 1120-PC, or 1120S.

OMB No. 1545-2061

2011 ~~2010~~

Name of common parent: MINNESOTA LIMITED, INC.

Employer identification number: [redacted]

Name of subsidiary:

Employer identification number:

Part II **Cost of Goods Sold**

Cost of Goods Sold Items	(a) Expense per Income Statement	(b) Temporary Difference	(c) Permanent Difference	(d) Deduction per Tax Return
1 Amounts attributable to cost flow assumptions				
2 Amounts attributable to:				
a Stock option expense				
b Other equity based compensation				
c Meals and entertainment				
d Parachute payments				
e Compensation with section 162(m) limitation				
f Pension and profit sharing				
g Other post-retirement benefits				
h Deferred compensation				
i Section 198 environmental remediation costs				
j Amortization				
k Depletion				
l Depreciation				
m Corporate owned life insurance premiums				
n Other section 263A costs				
3 Inventory shrinkage accruals				
4 Excess inventory and obsolescence reserves				
5 Lower of cost or market write-downs				
SEE STATEMENT 24 6 Other items with differences (attach schedule)	658,648.	547,205.		1,205,853.
SEE STATEMENT 23 7 Other items with no differences	16,278,800.			16,278,800.
8 **Total cost of goods sold.** Add lines 1 through 7, in columns a, b, c, and d	16,937,448.	547,205.		17,484,653.

JWA **For Paperwork Reduction Act Notice, see page 4.**

2011

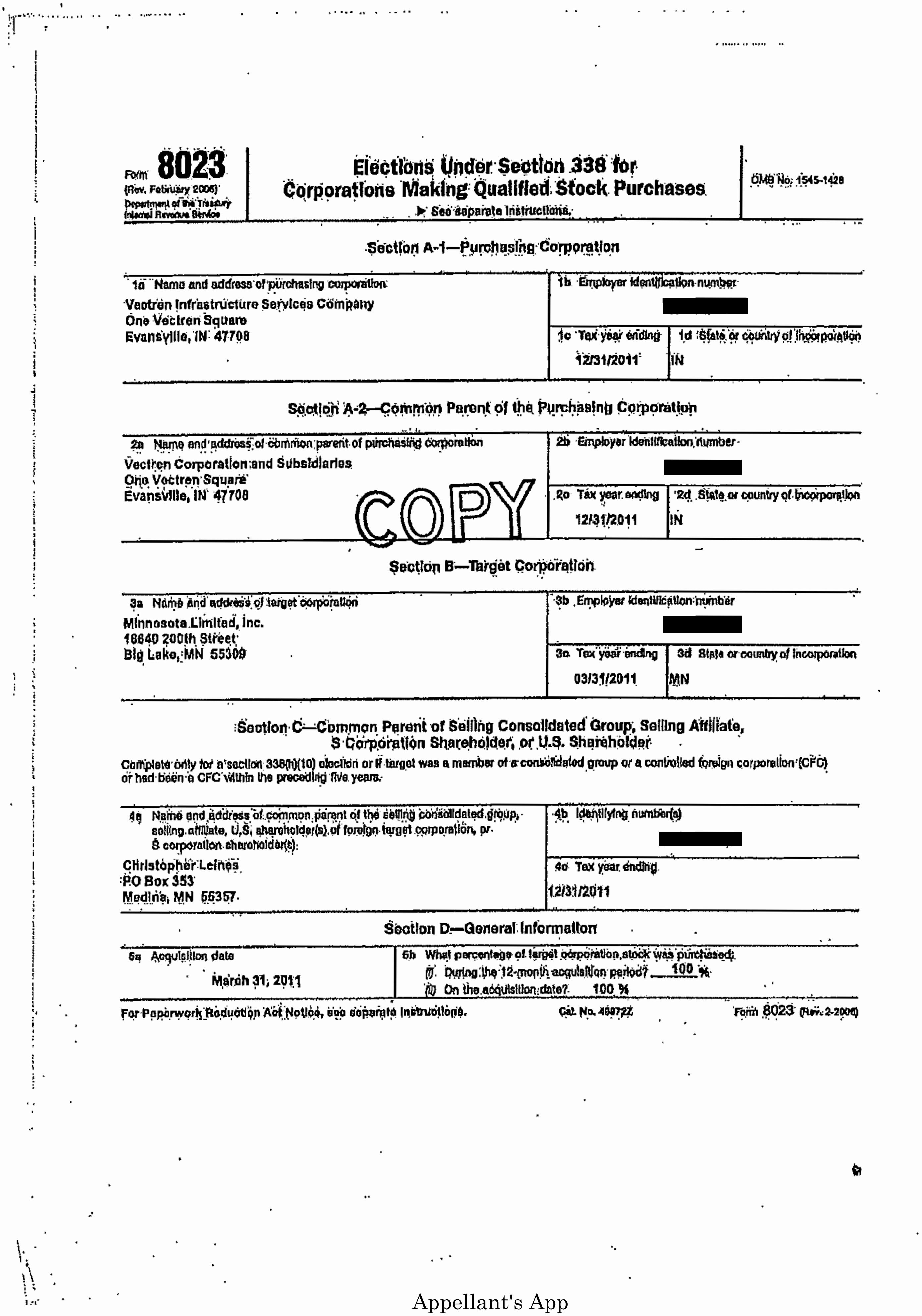
Form 8916-A (~~2010~~) MINNESOTA LIMITED, INC. [redacted] Page 2

Part II Interest Income

	Interest Income Item	(a) Income (Loss) per Income Statement	(b) Temporary Difference	(c) Permanent Difference	(d) Income (Loss) per Tax Return
1	Tax-exempt interest income				[redacted]
2	Interest income from hybrid securities				
3	Sale/lease interest income				
4a	Intercompany interest income - From outside tax affiliated group				
4b	Intercompany interest income - From tax affiliated group				
5	Other interest income				
6	Total interest income. Add lines 1 through 5. Enter total on Schedule M-3 (Forms 1120, 1120-PC, and 1120-L), Part II, line 13 or Schedule M-3 (Forms 1065 and 1120S) Part II, line 11.				

Part III Interest Expense

	Interest Expense Item	(a) Expense per Income Statement	(b) Temporary Difference	(c) Permanent Difference	(d) Deduction per Tax Return
1	Interest expense from hybrid securities				
2	Lease/purchase interest expense				
3a	Intercompany interest expense - Paid to outside tax affiliated group				
3b	Intercompany interest expense - Paid to tax affiliated group				
4	Other interest expense STMT 25	111,779.			111,779.
5	Total interest expense. Add lines 1 through 4. Enter total on Schedule M-3 (Form 1120) Part III, line 8; Schedule M-3 (Forms 1120-PC and 1120-L), Part III, line 36; Schedule M-3 (Form 1065) Part III, line 27; or Schedule M-3 (Form 1120S) Part III, line 26.	111,779.			111,779.



Form **8023**
(Rev. February 2006)
Department of the Treasury
Internal Revenue Service

Elections Under Section 338 for Corporations Making Qualified Stock Purchases

▶ See separate instructions.

OMB No. 1545-1428

Section A-1—Purchasing Corporation

1a Name and address of purchasing corporation Vectren Infrastructure Services Company One Vectren Square Evansville, IN 47708	1b Employer identification number [redacted]
	1c Tax year ending 12/31/2011
	1d State or country of incorporation IN

Section A-2—Common Parent of the Purchasing Corporation

2a Name and address of common parent of purchasing corporation Vectren Corporation and Subsidiaries One Vectren Square Evansville, IN 47708	2b Employer identification number [redacted]
	2c Tax year ending 12/31/2011
	2d State or country of incorporation IN

COPY

Section B—Target Corporation

3a Name and address of target corporation Minnesota Limited, Inc. 18640 200th Street Big Lake, MN 55309	3b Employer identification number [redacted]
	3c Tax year ending 03/31/2011
	3d State or country of incorporation MN

Section C—Common Parent of Selling Consolidated Group, Selling Affiliate, S Corporation Shareholder, or U.S. Shareholder

Complete only for a section 338(h)(10) election or if target was a member of a consolidated group or a controlled foreign corporation (CFC) or had been a CFC within the preceding five years.

4a Name and address of common parent of the selling consolidated group, selling affiliate, U.S. shareholder(s) of foreign target corporation, or S corporation shareholder(s): Christopher Leines PO Box 353 Medina, MN 55357	4b Identifying number(s) [redacted]
	4c Tax year ending 12/31/2011

Section D—General Information

5a Acquisition date March 31, 2011	5b What percentage of target corporation stock was purchased: (i) During the 12-month acquisition period? 100 % (ii) On the acquisition date? 100 %

For Paperwork Reduction Act Notice, see separate instructions. Cat. No. 49972Z Form 8023 (Rev. 2-2006)

Form 8023 (Rev. 2-2006) Page 2

Section E—Elections Under Section 338

6 Check here to make a section 338(h)(10) election for the target corporation listed in Section B on page 1 . . . . ▶ ☑

7 Check here to make a section 338 election (other than a section 338(h)(10) election) for the target corporation listed in Section B on page 1. . . . . ▶ □

8 If the box on line 7 is checked for the target corporation listed in Section B on page 1, check here to make a gain recognition election for that corporation (see instructions) . . . . ▶ □

9 Check here if this form is filed to make a section 338 election for any target corporation in addition to the one listed in Section B on page 1. . . . . ▶ □

Purchasing Corporation(s) Signature(s)

Under penalties of perjury, I state and declare that I am authorized to make the election(s) on lines 6, 7, 8, and 9 on behalf of the purchasing corporation(s).

▶ Signature of authorized person for purchasing corporation(s) Date ▶ Title

Consolidated Selling Group or Selling Affiliate Signature (Section 338(h)(10) Election)

Under penalties of perjury, I state and declare that I am authorized to make the section 338(h)(10) election on line 6 on behalf of the common parent of the selling consolidated group or on behalf of the selling affiliate.

COPY

▶ Signature of authorized person for the common parent or selling affiliate Date ▶ Title

S Corporation Shareholder(s) Signature(s) (Section 338(h)(10) Election)

Under penalties of perjury, I state and declare that I am a shareholder of the S corporation target or that I am authorized to make the section 338(h)(10) election on line 6 on behalf of that shareholder. If more than one shareholder, attach a schedule with other signatures.

See Statement 2 Signature Attachment

▶ Signature of S corporation shareholder Date ▶ Title

Printed on recycled paper

Section C – Continued

Common Parent of Selling Consolidated Group, Selling Affiliate, S Corporation Shareholder, or U.S. Shareholder

1. **Name and address of common parent of the selling consolidated group, selling affiliate, U.S. shareholder(s) of foreign target corporation, or S corporation shareholder(s)**

   Paulette Britzius
   16570 248th Avenue N.W.
   Big Lake, MN 55309

2. **Identifying Number:**

   [redacted]

3. **Tax Year Ending:**

   12/31/2011

COPY

STATEMENT 1

S Corporation Shareholder(s) Signature(s) (Section 338(h)(10) Election)

Under penalties of perjury, I state and declare that I am a shareholder of the S corporation target or that I am authorized to make the section 338(h)(10) election on line 6 on behalf of that shareholder.

Clint T Lewis 9-8-11 President

Signature of S corporation shareholder Date Title

Paulette Britzius 9-10-11 Vice President

Signature of S corporation shareholder Date Title

COPY

STATEMENT 2

SIGNATURE ATTACHMENT

MINNESOTA LIMITED, INC. [redacted]

FORM 1120S — OTHER INCOME — STATEMENT 1

DESCRIPTION	AMOUNT
FEDERAL TAX REFUND TAXABLE INCOME FROM CR-FED TAX ON GAS & SPECIAL FUELS	10,056.
TOTAL TO FORM 1120S, PAGE 1, LINE 5	10,056.

FORM 1120S — TAXES AND LICENSES — STATEMENT 2

DESCRIPTION	AMOUNT
PAYROLL TAXES	168,470.
REAL ESTATE TAX	72,460.
ILLINOIS TAXES - BASED ON INCOME	4,067.
MICHIGAN TAXES - BASED ON INCOME	633,703.
MINNESOTA TAXES - OTHER	5,000.
NEW MEXICO TAXES - OTHER	50.
TENNESSEE TAXES - OTHER	100.
WISCONSIN TAXES - BASED ON INCOME	327.
TOTAL TO FORM 1120S, PAGE 1, LINE 12	884,177.

FORM 1120S — OTHER DEDUCTIONS — STATEMENT 3

DESCRIPTION	AMOUNT
BANK CHARGES	12,261.
CONSULTING	178,956.
CONTRACT SERVICES	13,313.
DRUG TESTING EXPENSE	10,600.
DUES & SUBSCRIPTIONS	8,766.
EDUCATION/TRAINING	44,651.
FUEL AND OIL	17,304.
INSURANCE	8,508.
LEGAL & PROFESSIONAL	77,318.
MEALS AND ENTERTAINMENT	175,901.
MISCELLANEOUS EXPENSE	1,980.
OFFICE SUPPLIES	33,357.
POSTAGE & FREIGHT	13,765.
SAFTEY EQUIPMENT/SUPPLIES	51,464.
SUBSISTENCE	36,533.
TELEPHONE	47,213.
TRAVEL	81,406.
UTILITIES	17,625.
TOTAL TO FORM 1120S, PAGE 1, LINE 19	830,921.

MINNESOTA LIMITED, INC. [redacted]

FORM 1120S COST OF GOODS SOLD - OTHER COSTS STATEMENT 4

DESCRIPTION	AMOUNT
GAS & OIL	38,495.
INSURANCE	77,269.
LABOR RELATED COSTS	3,368,093.
LICENSES, PERMITS & FEES	90,077.
OTHER	1,128,584.
OVERHEAD ALLOCATED	-1,294,228.
RENT	3,124,596.
REPAIRS & MAINTENANCE	522,990.
SUBCONTRACTOR	1,206,060.
SUBSISTENCE	694,132.
SUPPLIES	89,734.
TOTAL TO FORM 1120S, PAGE 2, LINE 5	9,045,802.

SCHEDULE K CHARITABLE CONTRIBUTIONS STATEMENT 5

DESCRIPTION	NO LIMIT	50% / 100% LIMIT	30% LIMIT	20% LIMIT
CASH CONTRIBUTIOINS		300.		
TOTALS TO SCHEDULE K, LINE 12A		300.		

SCHEDULE K	ADJUSTED GAIN OR LOSS	STATEMENT 6

DESCRIPTION	TOTAL AMOUNT	25%/28% RATE AMOUNT
ADJUSTED GAIN OR LOSS ALLOCABLE TO:		
ORDINARY GAIN OR LOSS	-192,157.	
SECTION 1231 GAIN OR LOSS		
SHORT-TERM CAPITAL GAIN OR LOSS		
LONG-TERM CAPITAL GAIN OR LOSS		
UNRECAPTURED SECTION 1250 GAIN - 25% RATE AMOUNT		

SCHEDULE K	NONDEDUCTIBLE EXPENSES	STATEMENT 7

DESCRIPTION	AMOUNT
PENALTIES	1,249.
EXCLUDED MEALS AND ENTERTAINMENT EXPENSES	175,901.
CREDIT ON GAS & SPECIAL FUELS INCLUDED IN INCOME	10,056.
TOTAL TO SCHEDULE K, LINE 16C	187,206.

FORM 1120S	EARNINGS AND PROFITS FROM A PRIOR YEAR C CORPORATION	STATEMENT 8

DESCRIPTION	AMOUNT
EARNINGS AND PROFITS BALANCE BEFORE DIVIDENDS PAID	3,321,146.
TOTAL DIVIDENDS PAID FROM ACCUMULATED EARNINGS AND PROFITS	3,321,146.
ACCUMULATED EARNINGS AND PROFITS - END OF YEAR	0.

SCHEDULE K	OTHER ITEMS, LINE 17D	STATEMENT 9

DESCRIPTION	AMOUNT
HEALTH INSURANCE PAID BY COMPANY - THROUGH 3/31	4,876.
HEALTH INSURANCE PAID BY COMPANY - THROUGH 3/31	5,555.
DISTRIBUTION OF CASH AND INSTALLMENT NOTE RECEIVABLE FROM SALE	61,667,518.

MINNESOTA LIMITED, INC. [redacted]

SCHEDULE M-2 ACCUMULATED ADJUSTMENTS ACCOUNT - OTHER ADDITIONS STATEMENT 10

DESCRIPTION	AMOUNT
PORTFOLIO LONG-TERM CAPITAL GAIN	37,044,407.
TOTAL TO SCHEDULE M-2, LINE 3 - COLUMN (A)	37,044,407.

SCHEDULE M-2 ACCUMULATED ADJUSTMENTS ACCOUNT- OTHER REDUCTIONS STATEMENT 11

DESCRIPTION	AMOUNT
CHARITABLE CONTRIBUTIONS	300.
NONDEDUCTIBLE EXPENSES	187,206.
TOTAL TO SCHEDULE M-2, LINE 5 - COLUMN (A)	187,506.

SCHEDULE L OTHER CURRENT ASSETS STATEMENT 12

DESCRIPTION	BEGINNING OF TAX YEAR	END OF TAX YEAR
COST/PROFIT IN EXCESS OF BILLING	384,977.	
DUE FROM AFFILIATES	8,444.	
EMPLOYEE ADVANCES	12,126.	
OTHER PREPAIDS	4,052.	
OTHER RECEIVABLES	243,141.	
PREPAID INSURANCE	329,248.	
REFUNDABLE INCOME TAXES	9.	
TOTAL TO SCHEDULE L, LINE 6	981,997.	

SCHEDULE L OTHER CURRENT LIABILITIES STATEMENT 13

DESCRIPTION	BEGINNING OF TAX YEAR	END OF TAX YEAR
ACCRUED CLOSED JOB COSTS	570,700.	
ACCRUED FRINGE BENEFITS	867,638.	
ACCRUED INTEREST	0.	
ACCRUED LIAB - OTHER	388,989.	
ACCRUED PAYROLL	1,067,763.	
ACCRUED REAL ESTATE TAXES	244,508.	

MINNESOTA LIMITED, INC. [redacted]

ACCRUED VACATION	26,942.	
BANK OVERDRAFT	351,359.	
BILLINGS IN EXCESS OF COST/PROFIT	1,169,599.	
SALES AND USE TAX PAYABLE	8,763.	
WC INSURANCE PAYABLE	334,579.	
TOTAL TO SCHEDULE L, LINE 18	5,030,840.	

SCHEDULE L ANALYSIS OF TOTAL RETAINED EARNINGS PER BOOKS STATEMENT 14

DESCRIPTION	AMOUNT
BALANCE AT BEGINNING OF YEAR	10,722,765.
NET INCOME PER BOOKS	855,915.
DISTRIBUTIONS	-68,313,260.
OTHER INCREASES (DECREASES)	
BALANCE AT END OF YEAR - SCHEDULE L, LINE 24, COLUMN (D)	-56,734,580.

SCHEDULE M-3 OTHER INCOME (LOSS) ITEMS WITH DIFFERENCES STATEMENT 15

DESCRIPTION	INCOME (LOSS) PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	INCOME (LOSS) PER TAX RETURN
FEDERAL TAX REFUND	4,442.		-4,442.	0.
TAX CREDITS ADJUSTMENT	0.		10,056.	10,056.
TOTAL TO M-3, PART II, LINE 22	4,442.		5,614.	10,056.

SCHEDULE M-3 OTHER INCOME (LOSS) AND EXPENSE / DEDUCTION STATEMENT 16
ITEMS WITH NO DIFFERENCES

DESCRIPTION	PER INCOME STATEMENT	PER TAX RETURN
OTHER INCOME (LOSS)	21,093,137.	21,093,137.
OTHER EXPENSE / DEDUCTION	-1,222,092.	-1,222,092.
TOTAL TO SCHEDULE M-3, PART II, LINE 25	19,871,045.	19,871,045.

SCHEDULE M-3 OTHER INCOME (LOSS) ITEMS WITH NO DIFFERENCES STATEMENT 17

DESCRIPTION	INCOME (LOSS) PER INCOME STATEMENT	INCOME (LOSS) PER TAX RETURN
SALES	21,093,137.	21,093,137.
TOTAL TO SCHEDULE M-3, PART II, LINE 25	21,093,137.	21,093,137.

SCHEDULE M-3 MEALS AND ENTERTAINMENT STATEMENT 18

DESCRIPTION	EXPENSE PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	DEDUCTION PER TAX RETURN
MEALS AND ENTERTAINMENT FROM TRADE OR BUSINESS	351,802.		-175,901.	175,901.
TOTAL	351,802.		-175,901.	175,901.

SCHEDULE M-3 CHARITABLE CONTRIBUTION OF CASH AND TANGIBLE PROPERTY STATEMENT 19

DESCRIPTION	EXPENSE/ DEDUCTION PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	EXPENSE/ DEDUCTION PER TAX RETURN
CASH CONTRIBUTIOINS	300.		0.	300.
TOTAL	300.		0.	300.

MINNESOTA LIMITED, INC. [redacted]

SCHEDULE M-3 BAD DEBT EXPENSE STATEMENT 20

DESCRIPTION	EXPENSE PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	DEDUCTION PER TAX RETURN
BAD DEBTS FROM TRADE OR BUSINESS	2,499.	100,000.	0.	102,499.
TOTAL	2,499.	100,000.	0.	102,499.

SCHEDULE M-3 OTHER EXPENSE/DEDUCTION ITEMS WITH DIFFERENCES STATEMENT 21

DESCRIPTION	EXPENSE/ DEDUCTION PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	EXPENSE/ DEDUCTION PER TAX RETURN
OFFICERS COMPENSATION	184,618.	15,384.	0.	200,002.
PENALTIES	1,249.		-1,249.	0.
SALARIES AND WAGES	671,280.	11,605.	0.	682,885.
TOTAL TO M-3, PART III, LINE 31	857,147.	26,989.	-1,249.	882,887.

SCHEDULE M-3 OTHER EXPENSE/DEDUCTION ITEMS WITH NO DIFFERENCES STATEMENT 22

DESCRIPTION	EXPENSE/ DEDUCTION PER INCOME STATEMENT	EXPENSE/ DEDUCTION PER TAX RETURN
BANK CHARGES	12,261.	12,261.
CONSULTING	178,956.	178,956.
CONTRACT SERVICES	13,313.	13,313.
DRUG TESTING EXPENSE	10,600.	10,600.
DUES & SUBSCRIPTIONS	8,766.	8,766.
EDUCATION/TRAINING	44,651.	44,651.
EMPLOYEE BENEFIT PROGRAMS	147,432.	147,432.
FUEL AND OIL	17,304.	17,304.
INSURANCE	8,508.	8,508.
LEGAL & PROFESSIONAL	77,318.	77,318.
MISCELLANEOUS EXPENSE	1,980.	1,980.
OFFICE SUPPLIES	33,357.	33,357.
PAYROLL TAXES	168,470.	168,470.
POSTAGE & FREIGHT	13,765.	13,765.

MINNESOTA LIMITED, INC.

		[redacted]
REAL ESTATE TAX	72,460.	72,460.
RENT EXPENSE	167,746.	167,746.
REPAIRS	10,964.	10,964.
SAFTEY EQUIPMENT/SUPPLIES	51,464.	51,464.
SUBSISTENCE	36,533.	36,533.
TELEPHONE	47,213.	47,213.
TRAVEL	81,406.	81,406.
UTILITIES	17,625.	17,625.
TOTAL TO SCHEDULE M-3, PART II, LINE 25	1,222,092.	1,222,092.

FORM 8916-A OTHER ITEMS WITH NO DIFFERENCES STATEMENT 23

DESCRIPTION	PER INCOME STATEMENT	PER TAX RETURN
GAS & OIL	38,495.	38,495.
LABOR RELATED COSTS	3,368,093.	3,368,093.
LICENSES, PERMITS & FEES	90,077.	90,077.
OVERHEAD ALLOCATED	-1,294,228.	-1,294,228.
PURCHASES	1,854,708.	1,854,708.
RENT	3,124,596.	3,124,596.
REPAIRS & MAINTENANCE	522,990.	522,990.
SALARIES AND WAGES	6,584,143.	6,584,143.
SUBCONTRACTOR	1,206,060.	1,206,060.
SUBSISTENCE	694,132.	694,132.
SUPPLIES	89,734.	89,734.
TOTAL TO LINE 7	16,278,800.	16,278,800.

FORM 8916-A OTHER ITEMS WITH DIFFERENCES STATEMENT 24

DESCRIPTION	PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	PER TAX RETURN
INSURANCE	100,764.	-23,495.	0.	77,269.
OTHER	557,884.	570,700.	0.	1,128,584.
TOTAL TO LINE 6	658,648.	547,205.	0.	1,205,853.

MINNESOTA LIMITED, INC. [redacted]

FORM 8916-A	OTHER INTEREST EXPENSE			STATEMENT 25
DESCRIPTION	PER INCOME STATEMENT	TEMPORARY DIFFERENCE	PERMANENT DIFFERENCE	PER TAX RETURN
INTEREST EXPENSE	111,779.	0.	0.	111,779.
TOTAL TO PART III, LINE 4	111,779.	0.	0.	111,779.

671110

2011
~~2010~~

☒ Final K-1 □ Amended K-1 OMB No. 1545-0130

Schedule K-1
(Form 1120S)

Department of the Treasury
Internal Revenue Service

For calendar year 2010, or tax year beginning JANUARY 1, 2011
ending MARCH 31, 2011

Shareholder's Share of Income, Deductions, Credits, etc. ▶ See separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number
[redacted]

B Corporation's name, address, city, state, and ZIP code

MINNESOTA LIMITED, INC.
18640 200TH STREET
BIG LAKE, MN 55309

C IRS Center where corporation filed return
OGDEN, UT

Part II Information About the Shareholder

D Shareholder's identifying number
[redacted]

E Shareholder's name, address, city, state and ZIP code

CHRISTOPHER LEINES
PO BOX 353
MEDINA, MN 55357

F Shareholder's percentage of stock ownership for tax year 50.000000%

For IRS Use Only

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss) 8,544,709.	13	Credits
2	Net rental real estate inc (loss)		
3	Other net rental income (loss)		
4	Interest income		
5a	Ordinary dividends		
5b	Qualified dividends	14	Foreign transactions
6	Royalties		
7	Net short-term capital gain (loss)		
8a	Net long-term capital gain (loss) 18,522,204.		
8b	Collectibles (28%) gain (loss)		
8c	Unrecaptured sec 1250 gain		
9	Net section 1231 gain (loss) 0.		
10	Other income (loss)	15 A	Alternative min tax (AMT) items -76,143.
		B	-96,079.
11	Section 179 deduction	16 C*	Items affecting shareholder basis 93,604.
12 A	Other deductions 150.	D	32,496,057.
		17 U*	Other information STMT

*See attached statement for additional information.

MINNESOTA LIMITED, INC. [redacted]

SCHEDULE K-1 FOOTNOTES

K-1 INSTRUCTIONS ARE AVAILABLE FOR VIEWING OR DOWNLOADING FROM OUR WEBSITE, WWW.LBLCO.COM/K-1.

SCHEDULE K-1 NONDEDUCTIBLE EXPENSES, BOX 16, CODE C

DESCRIPTION	AMOUNT	SHAREHOLDER FILING INSTRUCTIONS
PENALTIES	625.	
EXCLUDED MEALS AND ENTERTAINMENT EXPENSES	87,951.	SEE FORM 1040 INSTRUCTIONS
CREDIT ON GAS & SPECIAL FUELS INCLUDED IN INCOME	5,028.	SEE FORM 1040 INSTRUCTIONS
TOTAL	93,604.	

SCHEDULE K-1 OTHER INFORMATION, BOX 17, CODE U

DESCRIPTION	AMOUNT	SHAREHOLDER FILING INSTRUCTIONS
HEALTH INSURANCE PAID BY COMPANY - THROUGH 3/31	4,876.	ALREADY INCLUDED IN W-2
DISTRIBUTION OF CASH AND INSTALLMENT NOTE RECEIVABLE FROM SALE	30,833,759.	

L71110

Schedule K-1
(Form 1120S)

2011
~~2010~~

Department of the Treasury
Internal Revenue Service

For calendar year 2010, or tax year beginning JANUARY 1, 2011
ending MARCH 31, 2011

☒ Final K-1 □ Amended K-1 OMB No. 1545-0130

Shareholder's Share of Income, Deductions, Credits, etc. ▶ See separate instructions.

Part I Information About the Corporation

A Corporation's employer identification number
[redacted]

B Corporation's name, address, city, state, and ZIP code

MINNESOTA LIMITED, INC.
18640 200TH STREET
BIG LAKE, MN 55309

C IRS Center where corporation filed return
OGDEN, UT

Part II Information About the Shareholder

D Shareholder's identifying number
[redacted]

E Shareholder's name, address, city, state and ZIP code

PAULETTE BRITZIUS
16570 248TH AVENUE N.W.
BIG LAKE, MN 55309

F Shareholder's percentage of stock ownership for tax year 50.000000%

For IRS Use Only

Part III Shareholder's Share of Current Year Income, Deductions, Credits, and Other Items

1	Ordinary business income (loss)	8,544,708.	13	Credits	
2	Net rental real estate inc (loss)				
3	Other net rental income (loss)				
4	Interest income				
5a	Ordinary dividends				
5b	Qualified dividends		14	Foreign transactions	
6	Royalties				
7	Net short-term capital gain (loss)				
8a	Net long-term capital gain (loss)	18,522,203.			
8b	Collectibles (28%) gain (loss)				
8c	Unrecaptured sec 1250 gain				
9	Net section 1231 gain (loss)	0.			
10	Other income (loss)		15	Alternative min tax (AMT) items	
			A		-76,142.
			B		-96,078.
11	Section 179 deduction		16	Items affecting shareholder basis	
			C*		93,602.
12	Other deductions				
A		150.	D		32,496,057.
			17	Other information	
			U*		STMT

*See attached statement for additional information.

SCHEDULE K-1 FOOTNOTES

K-1 INSTRUCTIONS ARE AVAILABLE FOR VIEWING OR DOWNLOADING
FROM OUR WEBSITE, WWW.LBLCO.COM/K-1.

SCHEDULE K-1 NONDEDUCTIBLE EXPENSES, BOX 16, CODE C

DESCRIPTION	AMOUNT	SHAREHOLDER FILING INSTRUCTIONS
PENALTIES	624.	
EXCLUDED MEALS AND ENTERTAINMENT EXPENSES	87,950.	SEE FORM 1040 INSTRUCTIONS
CREDIT ON GAS & SPECIAL FUELS INCLUDED IN INCOME	5,028.	SEE FORM 1040 INSTRUCTIONS
TOTAL	93,602.	

SCHEDULE K-1 OTHER INFORMATION, BOX 17, CODE U

DESCRIPTION	AMOUNT	SHAREHOLDER FILING INSTRUCTIONS
HEALTH INSURANCE PAID BY COMPANY - THROUGH 3/31	5,555.	ALREADY INCLUDED IN W-2
DISTRIBUTION OF CASH AND INSTALLMENT NOTE RECEIVABLE FROM SALE	30,833,759.	

058201
01-04-11 *Detach here and mail with your payment. Do not fold or staple the application.*

Michigan Department of Treasury, Form 4 (Rev. 07-10)

Application for Extension of Time to File Michigan Tax Returns

Issued under the authority of Public Acts 281 of 1967 and 36 of 2007.

Make check payable to "State of Michigan." Print your Social Security or account number and "Michigan Extension" on the front of your check.
Mail to: Michigan Department of Treasury, PO Box 30774, Lansing, MI 48909-8274

▶ 1. Extension request is for the following tax Check ONLY ONE □ Income Tax* □ Fiduciary Tax* (includes Composite Filers) ☒ Michigan Business Tax *Do not file this form if a refund will be shown on the return.	▶ 2. Month and Year Your Tax Year Ends (MM-YYYY) 03-2011	▶ 3. Federal Employer Identification or TR No. [redacted]
	4. □ Check if extension is requested for good cause - see instructions.	▶ 5. Filer's Social Security Number
	▶ 6. □ Check if an extension was granted for taxpayer's federal tax return.	▶ 7. Spouse's Social Security Number (if filing jointly)
▶ 8. Business or Trust Name MINNESOTA LIMITED, INC.		9. Tentative Annual Tax 783,500
▶ 10. Taxpayer's Name (first name, middle initial, last name) or Fiduciary/Trustee Name		11. Total Payments Made to Date 98,500
▶ 12. Mailing Address 18640 200TH STREET BIG LAKE, MN 55309		▶ 13. Payment Amount 685,000 .00

1019 *DO NOT WRITE IN THIS SPACE*

20110332 8 2010 000000000 [redacted] 0

Form **7004**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Application for Automatic Extension of Time To File Certain Business Income Tax, Information, and Other Returns

▶ File a separate application for each return.
▶ See separate instructions.

OMB No. 1545-0233

Type or Print

File by the due date for the return for which an extension is requested. See instructions.

Name
MINNESOTA LIMITED, INC.

Identifying number
[redacted]

Number, street, and room or suite no. (If P.O. box, see instructions.)
18640 200TH STREET

City, town, state, and ZIP code (If a foreign address, enter city, province or state, and country (follow the country's practice for entering postal code)).
BIG LAKE, MN 55309

Note. See instructions before completing this form.

Part I Automatic 5-Month Extension Complete if Filing Form 1065, 1041, or 8804

1a Enter the form code for the return that this application is for (see below) .... □

Application Is For:	Form Code	Application Is For:	Form Code
Form 1065	09	Form 1041 (estate)	04
Form 8804	31	Form 1041 (trust)	05

Part II Automatic 6-Month Extension Complete if Filing Other Forms

b Enter the form code for the return that this application is for (see below) 25

Application Is For:	Form Code	Application Is For:	Form Code
Form 706-GS(D)	01	Form 1120-PC	21
Form 706-GS(T)	02	Form 1120-POL	22
Form 1041-N	06	Form 1120-REIT	23
Form 1041-QFT	07	Form 1120-RIC	24
Form 1042	08	Form 1120S	25
Form 1065-B	10	Form 1120-SF	26
Form 1066	11	Form 3520-A	27
Form 1120	12	Form 8612	28
Form 1120-C	34	Form 8613	29
Form 1120-F	15	Form 8725	30
Form 1120-FSC	16	Form 8831	32
Form 1120-H	17	Form 8876	33
Form 1120-L	18	Form 8924	35
Form 1120-ND	19	Form 8928	36
Form 1120-ND (section 4951 taxes)	20		

2 If the organization is a foreign corporation that does not have an office or place of business in the United States, check here .... ▶ □

3 If the organization is a corporation and is the common parent of a group that intends to file a consolidated return, check here .... ▶ □
If checked, attach a schedule, listing the name, address, and Employer Identification Number (EIN) for each member covered by this application.

Part III All Filers Must Complete This Part

4 If the organization is a corporation or partnership that qualifies under Regulations section 1.6081-5, check here .... ▶ □

5a The application is for calendar year ________, or tax year beginning JANUARY 1 2011, and ending MARCH 31 2011

b Short tax year. If this tax year is less than 12 months, check the reason:
□ Initial return ☒ Final return □ Change in accounting period □ Consolidated return to be filed

6	Tentative total tax	6	0.
7	Total payments and credits (see instructions)	7	0.
8	**Balance due.** Subtract line 7 from line 6. **Generally, you must deposit this amount using the Electronic Federal Tax Payment System (EFTPS), a Federal Tax Deposit (FTD) Coupon, or Electronic Funds Withdrawal (EFW)** (see instructions for exceptions)	8	0.

LHA **For Privacy Act and Paperwork Reduction Act Notice, see separate instructions.**

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

Michigan Business Tax Summary of Schedules

Listing of Pertinent Workpapers

Michigan Business Tax Audit Workpapers	Workpaper Reference	MBT Form Reference	Workpaper Page(s)
Audit Summary	A		1
Audit Determination by Year (Standard Filers)	A1	4567	1-2
Interest and Penalty	A2	4582	1
Standard Apportionment	B1	4567	1
Gross Receipts Subtractions (1)	C2	4567	1
Gross Receipts Subtractions (2)	C3	4567	1
Business Income	D1	4700	1
Cite References	Z		1

Audit Workbook

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

Audit Summary

MBT Audit Determination

	WP Ref	MBT Ref	12/31/2010	03/31/2011			All Period Total
Determined Tax Due	A1	4567	45,623	2,343,340	0	0	2,388,963
Less Pre-Interest Offsets							
Sales Tax Offsets			0	0	0	0	0
Use Tax Offsets			0	0	0	0	0
Other Offsets			0	0	0	0	0
Total Credit Offsets			0	0	0	0	0
Tax After Credits			45,623	2,343,340	0	0	2,388,963
Interest Due	A2		9,368	456,036	0	0	465,404
Penalty Due	A2		0	0	0	0	0
Net Payment Due			**54,991**	**2,799,376**	**0**	**0**	**2,854,367**

Audit Payments Received				0
Remaining Payment Due				**2,854,367**

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

MBT Audit Determination by Year

Corresponds to MBT Form 4567

			01/01/2010	to	12/31/2010	
	WP Ref	MBT Ref	Reported	Determined	Adjustment	Cite
Special Computations						
Michigan Sales	B1/B2		43,352,830	43,352,830	0	1
Total Sales	B1/B2		110,365,790	110,365,790	0	1
Apportionment Percentage			39.2810%	39.2810%	0.0000%	1
Number of Months in MBT Period	B3		0	0	0	
Total Months			12	12	0	
Proration Percentage			0.0000%	0.0000%	0.0000%	
PART 1: MODIFIED GROSS RECEIPTS TAX						
Gross Receipts	C1	ws 4700	111,832,405	111,832,405	0	
Subtractions from Gross Receipts						
Inventory Acquired During Tax Year	C2		10,402,489	0	(10,402,489)	2
Depreciable Assets Acquired During Tax Year	C2		844,154	844,154	0	
Materials and Supplies*	C2		3,250,310	3,250,310	0	
Staffing Company: Compensation*	C3		0	0	0	
Deduction for Contractors*	C3		18,879,499	18,879,499	0	
Miscellaneous	C3		0	0	0	
Total Subtractions from Receipts	A5		33,376,452	22,973,963	(10,402,489)	
Modified Gross Receipts			78,455,953	88,858,442	10,402,489	
Prorated Modified Gross Receipts			78,455,953	88,858,442	10,402,489	
Apportioned Modified Gross Receipts Tax Base			30,818,283	34,904,485	4,086,202	
Single Business Tax Loss Carryforward (2008 only)	C4		0	0	0	
Usable Amount of SBT Carryforward (2008 Only)			0	0	0	
Gross Receipts Tax Base After SBT Carryforward			30,818,283	34,904,485	4,086,202	
Tax Rate			0.80%	0.80%	0.00%	
Gross Receipts Tax Before Enrichment Prohibition			246,546	279,236	32,690	
Enrichment Prohibition for Dealer*	C5		0	0	0	
Modified Gross Receipts Tax Before Credits			246,546	279,236	32,690	
PART 2: BUSINESS INCOME TAX						
Business Income	D1	ws 4700	3,983,427	4,225,631	242,204	3
Additions to Income						
Interest Income and Dividends (Non-Michigan)*	D2		0	0	0	
Taxes on or Measured by Net Income	D2		2,195	2,195	0	
Tax Imposed Undar MBT	D2		404,904	404,904	0	
Any Carryback or Carryover of a Federal NOL	D2		0	0	0	
Losses Attributable to Other Taxable Flow-Through	D3		0	0	0	
Royalty, Interest, and Other Expenses*	D3		0	0	0	
Miscellaneous			0	0	0	
Total Additions to Income	A5		407,099	407,099	0	
Business Income Tax Base After Additions			4,390,526	4,632,730	242,204	
Subtractions from Income						
Dividends and Royalties Received*	D4		0	0	0	
Income Attributable to Other Taxable Flow-Through	D4		0	0	0	
Interest Income Derived from U.S. Obligations	D4		0	0	0	
Net Earnings from Self-Employment	D4		0	0	0	
Miscellaneous			0	0	0	
Total Subtractions from Income	A5		0	0	0	
Business Income Tax Base			4,390,526	4,632,730	242,204	
Prorated Business Income Tax Base			4,390,526	4,632,730	242,204	
Apportioned Business Income Tax Base			1,724,643	1,819,783	95,140	
Available MBT Business Loss Carryforward*	D5		0	0	0	
Business Income Tax Base Less Carryforward			1,724,643	1,819,783	95,140	
Qualified Affordable Housing Deduction*	D6/D6.1	4579	0	0	0	
Business Income Tax Base Less Deduction			1,724,643	1,819,783	95,140	
Tax Rate			4.95%	4.95%	0.00%	
Business Income Tax Before Credits			85,370	90,079	4,709	
PART 3: TOTAL MICHIGAN BUSINESS TAX						
Total Tax Before Surcharge and Credits			331,916	369,315	37,399	
Annual Surcharge			72,988	81,212	8,224	
Total Liability Before All Credits			404,904	450,527	45,623	
Nonrefundable Credits from Form 4568	E	4568	0	0	0	
Total Tax After Nonrefundable Credits			404,904	450,527	45,623	
Recapture of Certain Business Tax Credits*	K	4587	0	0	0	
Total Tax			404,904	450,527	45,623	
Interest	A2			9,368	9,368	
Penalty	A2			0	0	
TOTAL TAX, INTEREST, AND PENALTY			404,904	459,895	54,991	

*see MBT return for complete description

07/06/2016

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

Account No: [redacted]

MBT Audit Determination by Year

Corresponds to MBT Form 4567

	WP Ref	MBT Ref	01/01/2011 Reported	to Determined	03/31/2011 Adjustment	Cite
Special Computations						
Michigan Sales	B1/B2		14,756,147	14,756,147	0	1
Total Sales	B1/B2		98,465,632	21,093,137	(77,372,495)	1
Apportionment Percentage			14.9860%	69.9571%	54.9711%	1
Number of Months in MBT Period	B3		0	0	0	
Total Months			12	12	0	
Proration Percentage			0.0000%	0.0000%	0.0000%	
PART 1: MODIFIED GROSS RECEIPTS TAX						
Gross Receipts	C1	ws 4700	99,029,125	99,029,125	0	
Subtractions from Gross Receipts						
Inventory Acquired During Tax Year	C2		1,854,708	0	(1,854,708)	2
Depreciable Assets Acquired During Tax Year	C2		7,879	7,879	0	
Materials and Supplies*	C2		661,915	661,915	0	
Staffing Company: Compensation*	C3		0	0	0	
Deduction for Contractors*	C3		1,206,160	1,206,160	0	
Miscellaneous	C3		0	0	0	
Total Subtractions from Receipts	A5		3,730,662	1,875,954	(1,854,708)	
Modified Gross Receipts			95,298,463	97,153,171	1,854,708	
Prorated Modified Gross Receipts			95,298,463	97,153,171	1,854,708	
Apportioned Modified Gross Receipts Tax Base			14,281,428	67,965,541	53,684,113	
Single Business Tax Loss Carryforward (2008 only)	C4		0	0	0	
Usable Amount of SBT Carryforward (2008 Only)			0	0	0	
Gross Receipts Tax Base After SBT Carryforward			14,281,428	67,965,541	53,684,113	
Tax Rate			0.80%	0.80%	0.00%	
Gross Receipts Tax Before Enrichment Prohibition			114,251	543,724	429,473	
Enrichment Prohibition for Dealer*	C5		0	0	0	
Modified Gross Receipts Tax Before Credits			114,251	543,724	429,473	
PART 2: BUSINESS INCOME TAX						
Business Income	D1	ws 4700	53,987,992	54,133,524	145,532	3
Additions to Income						
Interest Income and Dividends (Non-Michigan)*	D2		0	0	0	
Taxes on or Measured by Net Income	D2		4,394	4,394	0	
Tax Imposed Under MBT	D2		633,703	633,733	30	
Any Carryback or Carryover of a Federal NOL	D2		0	0	0	
Losses Attributable to Other Taxable Flow-Through	D3		0	0	0	
Royalty, Interest, and Other Expenses*	D3		0	0	0	
Miscellaneous			0	0	0	
Total Additions to Income	A5		638,097	638,127	30	
Business Income Tax Base After Additions			54,626,089	54,771,651	145,562	
Subtractions from Income						
Dividends and Royalties Received*	D4		0	0	0	
Income Attributable to Other Taxable Flow-Through	D4		0	0	0	
Interest Income Derived from U.S. Obligations	D4		0	0	0	
Net Earnings from Self-Employment	D4		0	0	0	
Miscellaneous			0	0	0	
Total Subtractions from Income	A5		0	0	0	
Business Income Tax Base			54,626,089	54,771,651	145,562	
Prorated Business Income Tax Base			54,626,089	54,771,651	145,562	
Apportioned Business Income Tax Base			8,186,266	38,316,659	30,130,393	
Available MBT Business Loss Carryforward*	D5		0	0	0	
Business Income Tax Base Less Carryforward			8,186,266	38,316,659	30,130,393	
Qualified Affordable Housing Deduction*	D6/D6.1	4579	0	0	0	
Business Income Tax Base Less Deduction			8,186,266	38,316,659	30,130,393	
Tax Rate			4.95%	4.95%	0.00%	
Business Income Tax Before Credits			405,220	1,896,675	1,491,455	
PART 3: TOTAL MICHIGAN BUSINESS TAX						
Total Tax Before Surcharge and Credits			519,471	2,440,399	1,920,928	
Annual Surcharge			114,232	536,644	422,412	
Total Liability Before All Credits			633,703	2,977,043	2,343,340	
Nonrefundable Credits from Form 4568	E	4568	0	0	0	
Total Tax After Nonrefundable Credits			633,703	2,977,043	2,343,340	
Recapture of Certain Business Tax Credits*	K	4587	0	0	0	
Total Tax			633,703	2,977,043	2,343,340	
Interest	A2			456,036	456,036	
Penalty	A2			0	0	
TOTAL TAX, INTEREST, AND PENALTY			633,703	3,433,079	2,799,376	

*see MBT return for complete description

MBT Audit Determination by Year

Schedule A1
Page 2 of 2

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

Interest and Penalty

Calculated on MBT Form 4582

Interest Calculation	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Interest Calculation Date			02/28/2016	02/28/2016		
Tax Return Due Date			04/30/2011	07/31/2011		
Tax Subject to Interest	A1	4567	45,623	2,343,340	0	0
Total Pre-Interest Reductions of Tax			0	0	0	0
Determined Tax Subject to Interest			45,623	2,343,340	0	0

Interest Periods

Start	End	Daily Rate	Days	Tax	Interest	Tax	Interest
05/01/2011	06/30/2011	0.01164%	61	45,623	324		
07/01/2011	07/31/2011	0.01164%	31	45,623	165		
08/01/2011	12/31/2011	0.01164%	153	45,623	813	2,343,340	41,733
01/01/2012	06/30/2012	0.01161%	182	45,623	964	2,343,340	49,515
07/01/2012	12/31/2012	0.01161%	184	45,623	975	2,343,340	50,059
01/01/2013	06/30/2013	0.01164%	181	45,623	961	2,343,340	49,370
07/01/2013	12/31/2013	0.01164%	184	45,623	977	2,343,340	50,189
01/01/2014	06/30/2014	0.01164%	181	45,623	961	2,343,340	49,370
07/01/2014	12/31/2014	0.01164%	184	45,623	977	2,343,340	50,189
01/01/2015	06/30/2015	0.01164%	181	45,623	961	2,343,340	49,370
07/01/2015	12/31/2015	0.01164%	184	45,623	977	2,343,340	50,189
01/01/2016	02/28/2016	0.01161%	59	45,623	313	2,343,340	16,052

			12/31/2010	03/31/2011		
Total Interest			9,368	456,036	0	0
Total Adjustments to Interest			0	0	0	0
Total Interest Due by Year			9,368	456,036	0	0

Penalty Calculation	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Penalty Code						
Penalty Type			No Penalty	No Penalty	No Penalty	No Penalty
Penalty Rate			0%	0%	0%	0%
Tax Subject to Penalty	A1		45,623	2,343,340	0	0
Total Penalty by Year			0	0	0	0

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

MBT Standard Apportionment

Supports MBT Form 4567

Michigan Sales	WP Ref	MBT Ref	12/31/2010	03/31/2011		
			43,352,830	14,756,147		
Total Michigan Sales			43,352,830	14,756,147	0	0
Contested Michigan Sales	A3		0	0	0	0
Determined Michigan Sales			43,352,830	14,756,147	0	0
Reported Michigan Sales	X		43,352,830	14,756,147	0	0
Difference (Adjustment)			0	0	0	0

Total Sales	WP Ref	MBT Ref	12/31/2010	03/31/2011		
			110,365,790	21,093,137		
Total Sales (Everywhere)			110,365,790	21,093,137	0	0
Contested Total Sales	A3		0	0	0	0
Determined Total Sales			110,365,790	21,093,137	0	0
Reported Total Sales	X		110,365,790	98,465,632	0	0
Difference (Adjustment)			0	(77,372,495)	0	0

Apportionment Percentage	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Determined Apportionment Percentage			39.2810%	69.9571%	0.0000%	0.0000%
Reported Apportionment Percentage	X		39.2810%	14.9860%	0.0000%	0.0000%
Difference (Adjustment)			0.0000%	54.9711%	0.0000%	0.0000%

Determined Gross Receipts (Informational)	C1	4700	111,832,405	99,029,125	0	0
Determined Apportioned Gross Receipts			43,928,887	69,277,904	0	0

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

MBT Gross Receipts Subtractions (1)

Supports MBT Form 4567

Inventory Acquired	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Inventory Acquired During Tax Year						
Other Inventory Acquired:						
Total Inventory Acquired			0	0	0	0
Contested Inventory Acquired	A3		0	0	0	0
Determined Inventory Acquired			0	0	0	0
Reported Inventory Acquired	X		10,402,489	1,854,708	0	0
Difference (Adjustment)			(10,402,489)	(1,854,708)	0	0

Depreciable Assets Acquired	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Depreciable Assets Acquired During Tax Year			844,154	7,879		
Other Depreciable Assets Acquired:						
Total Depreciable Assets Acquired			844,154	7,879	0	0
Contested Depreciable Assets Acquired	A3		0	0	0	0
Determined Depreciable Assets Acquired			844,154	7,879	0	0
Reported Depreciable Assets Acquired	X		844,154	7,879	0	0
Difference (Adjustment)			0	0	0	0

Materials and Supplies	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Materials and Supplies (Not Included Above)			3,250,310	661,915		
Other Materials and Supplies:						
Total Materials and Supplies			3,250,310	661,915	0	0
Contested Materials and Supplies	A3		0	0	0	0
Determined Materials and Supplies			3,250,310	661,915	0	0
Reported Materials and Supplies	X		3,250,310	661,915	0	0
Difference (Adjustment)			0	0	0	0

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

MBT Gross Receipts Subtractions (2)

Supports MBT Form 4567

Staffing Company Compensation	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Compensation of Supplied Personnel						
Other Compensation of Supplied Personnel:						
Total Compensation of Supplied Personnel			0	0	0	0
Contested Compensation of Supplied Personnel	A3		0	0	0	0
Determined Staffing Company Compensation			0	0	0	0
Reported Staffing Company Compensation	X		0	0	0	0
Difference (Adjustment)			0	0	0	0

Deduction for Contractors	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Contractor SIC Code			17	17	17	17
Deduction for Contractors as Allowed			18,879,499	1,206,160		
Other Deductions for Contractors:						
Total Deduction for Contractors			18,879,499	1,206,160	0	0
Contested Deduction for Contractors Items	A3		0	0	0	0
Determined Deduction for Contractors			18,879,499	1,206,160	0	0
Reported Deduction for Contractors	X		18,879,499	1,206,160	0	0
Difference (Adjustment)			0	0	0	0

Miscellaneous Subtractions	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Film Rental or Royalty Payments as Allowed						
Total Film Rental Payments as Allowed			0	0	0	0
Qualified Affordable Housing Project Deduction						
Gross Receipts Attributable to MI Rentals						
No. of Residential Rent Restricted Units in MI						
Total No. of Residential Rental Units in MI						
Percentage of Res. Rent Restricted Units in MI			0.0000%	0.0000%	0.0000%	0.0000%
Gross Receipts Attributed to Restricted Units			0	0	0	0
Limited Dividends or Other Distributions						
Total Qualified Affordable Housing Deduction			0	0	0	0
Qualified Payments to Independent Contractors						
Total Payments to Independent Contractors			0	0	0	0
Other Miscellaneous Subtractions						
Total Miscellaneous Subtractions			0	0	0	0
Contested Miscellaneous Subtractions	A3		0	0	0	0
Determined Miscellaneous Subtractions			0	0	0	0
Difference (Adjustment)			0	0	0	0

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

MBT Business Income

Supports MBT Form 4567 (Based on Form 4700)

Business Income - Partnerships & S Corps	WP Ref	MBT Ref	12/31/2010	03/31/2011		
From U.S. Form 1065 or Form 1120S, Sch K:						
Ordinary Income/Loss	Y		4,561,488	17,089,417	0	0
Net Real Estate Rental Income/Loss	Y		0	0	0	0
Net Other Rental Income/Loss	Y		0	0	0	0
Interest Income	Y		569	0	0	0
Dividend Income	Y		0	0	0	0
Royalty Income	Y		0	0	0	0
Net Short-Term Gain/Loss	Y		0	0	0	0
Net Long-Term Gain/Loss	Y		0	37,044,407	0	0
Other Portfolio Income/Loss						
Guaranteed Payments/Wages to Members	Y		0	0	0	0
Other Net Gain/Loss under Section 1231	Y		0	0	0	0
Net Bonus Depreciation Adjustment						
Gain/Loss Adj. on Sale of Eligible Depr. Assets						
Other Income/Adjustments:						
Total Income/Loss			4,562,057	54,133,824	0	0
Deductions From U.S. Form, Sch K:						
Charitable Contributions	Y		9,100	300	0	0
Section 179 Expense	Y		327,326	0	0	0
Deductions Related to Portfolio Income						
Other Deductions	Y		0	0	0	0
Other Deductions/Adjustments:						
Total Deductions			336,426	300	0	0
Total Business Income (Income Less Deductions)			4,225,631	54,133,524	0	0

Total Business Income			4,225,631	54,133,524	0	0
Contested Business Income	A3		0	0	0	0
Determined Business Income			4,225,631	54,133,524	0	0
Reported Business Income	X		3,983,427	53,987,992	0	0
Difference (Adjustment)			242,204	145,532	0	0

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

Audit Workbook 07/06/2016
Account No: [redacted]

Federal Tax Data

U.S. Return Transcripts

Federal Form 1120S	WP Ref	MBT Ref	12/31/2010	03/31/2011		
Gross Receipts or Sales			110,365,790	21,093,137		
Net Gain or (Loss) from Form 4797			26,303	17,043,050		
Other Income			238,638	10,056		
Compensation of Officers						
Salaries and Wages						
Repairs and Maintenance						
Bad Debts			1,190,333	102,499		
Rents						
Taxes and Licenses						
Interest						
Depreciation from Form 4562						
Depletion						
Advertising						
Pension, Profit Sharing						
Employee Benefit Programs						
Schedule A						
Inventory at Beginning of Year						
Purchases						
Cost of Labor						
Additional Section 263A Costs						
Inventory at End of Year						
Schedule K						
Ordinary Business Income (Loss)			4,561,488	17,089,417		
Net Real Estate Income (Loss)						
Other Gross Rental Income (Loss)						
Other Net Rental Income (Loss)						
Interest Income			569	0		
Dividends						
Royalties						
Net Short-Term Capital Gain (Loss)						
Net Long-Term Capital Gain or (Loss)				37,044,407		
Net Section 1231 Gain (Loss)						
Other Income (Loss)						
Section 179 Deduction			327,326			
Contributions			9,100	300		
Investment Interest Expense						
Other Deductions						
Schedule D						
Short- and Long-Term Sales Price				37,044,407		
Form 4797						
Gross Sales Price			37,075	40,779,026		
Form 8825						
Gross Income from Real Estate Rentals						
Taxes and Licenses Detail						
State Taxes Based on Income			2,195	4,394		
City Taxes Based on Income						
Foreign Taxes Based on Income						
Environmental Tax						
Michigan Business Tax			404,904	633,733		
Other Deductions Detail						
Royalty Expense						
Employee Benefit Expense						
Pension Plan Expense						
Other Compensation Expense						
Depreciation Expense						
Other Costs Detail						
Royalty Expense						
Employee Benefit Expense						
Pension Plan Expense						
Other Compensation Expense						
Depreciation Expense						

State of Michigan - Department of Treasury
Taxpayer Name: MINNESOTA LIMITED LLC

07/06/2016
Account No: [redacted]

Michigan Business Tax Cite References

Supports MBT Determination

Cite Ref #	MBT Cite
1	Apportionment, MCL 208.1301(1) & (2)
2	Gross Receipts - Inventory, MCL 208.1111(4)
3	Business Income, MCL 208.1105(2)

Michigan Department of Treasury
168 (Rev. 04-13)

Bill for Taxes Due

Intent to Assess

Issued under P.A. 122 of 1941, as amended.

** For monthly PENALTY/INTEREST provisions, correspondence, and informal conference information, see page 2 .*

Tax Division BUSINESS TAX	Tax Division Telephone Number 517-636-6925
Assessment Number U071593	Date Issued 04/20/16
Social Security/Account Number [redacted]	
Office of Collections Telephone Number 517-636-5265	

MINNESOTA LIMITED LLC
18640 200TH ST
BIG LAKE MN 55309-0410

BILL SUMMARY

Tax Due	$	2,262,994.00
Penalty	$	678,727.50
Interest	$	465,615.86
Total Due *	$	3,407,337.36

Detail of Tax Liability

Type of Tax	Taxable Period	Tax Due	Penalty	Interest
MICHIGAN BUSINESS TAX	03/11			
RTID100000463869R001		2,262,994.00		
FAIL TO FILE OR PAY			565,748.50	454,192.86
LATE PAYMENT OF TAX			112,979.00	11,423.00

Reason for Tax Bill

RETURN RECEIVED WITH INSUFFICIENT PAYMENT.
RETURN RECEIVED WITH INSUFFICIENT PAYMENT OF TAX, PENALTY AND/OR INTEREST.
PENALTY AND/OR INTEREST DUE FOR LATE FILING OF RETURN AND/OR LATE PAYMENT
OF TAX DUE. FOR ADDITIONAL INFORMATION VISIT WWW.MICHIGAN.GOV/TREASURY.

✂ 168 (Rev. 04-13) *Detach and mail the payment voucher with your payment. Do not staple.*

Bill for Taxes Due

Payment due within 30 days (see penalty and interest provisions on page 2). Make your check payable to "State of Michigan-OC." Write your Social Security/Account No. and Assessment No. on all checks and correspondence. Allow up to 14 days for mailing and processing. A return envelope is enclosed for your convenience. Mail payment and this voucher to:

489097699002

MICHIGAN DEPARTMENT OF TREASURY
OFFICE OF COLLECTIONS
PO BOX 30199
LANSING MI 48909-7699

Assessment Number U071593	Date Issued 04/20/16
Taxpayer Name MINNESOTA LIMITED LLC	
Social Security/Account Number [redacted]	
Write Payment Amount Here ☞	

Notify the Office of Collections in writing if your address above is incorrect.

▼ DO NOT WRITE IN THIS SPACE ▼

003407337369 684715936 000000000009 2[redacted]08 1

Intent to Assess

GENERAL INFORMATION

If you don't understand why you received this bill, call the Tax Division whose telephone number is printed on the front of this form. If you have questions about payment, call the Office of Collections telephone number printed in the upper right corner on the front of this form. Any correspondence about original or amended returns or questions about payment should be mailed to Michigan Department of Treasury, Office of Collections, P.O. Box 30199, Lansing, MI 48909-7699.

INFORMAL CONFERENCE REQUEST INFORMATION

You may contest all or part of this Bill for Taxes Due by requesting an informal conference. The uncontested portion must be paid immediately. If you want a conference, your written request must be made to the Michigan Department of Treasury, Office of Hearings, Lansing, MI 48922, within 60 days of the date of this bill. When filing your request for a conference, provide a copy of the Bill for Taxes Due or the following information: full name, account number, assessment number and the specific tax involved. Include in your letter a statement of the reason you are requesting a conference.

*PENALTY AND INTEREST CHARGES

(Effective March 1, 2003 under P.A. 122 of 1941, as amended.)

*Penalty and interest will be applied to your account at the beginning of each month. If your payment will not be received by the last day of the month, call Treasury for a current balance. Interest is computed at 1 percent above the prime rate adjusted July 1 and January 1 each year.

REASON FOR BILL	PENALTY CHARGE
Failure to file or pay tax for Notices of Intent to Assess/Assessments issued on or before 2/28/03.	Each month or part of month 5% of tax, to a maximum of 50%. Minimum $10. Interest applies.*
Failure to file and pay tax for Notices of Intent to Assess/Assessments issued after 2/28/03.	A penalty of 5% of the tax if the failure is for not more than 2 months, with an additional 5% penalty for each additional month to a maximum of 25%. Interest applies.*
Negligence in filing tax.	10% of tax. Minimum $10. Interest applies.*
Intentional disregard in filing taxes.	25% of tax. Minimum $10. Interest applies.*
Fraudulent evasion of tax.	100% of tax. Minimum $10. Interest applies.*
Bad check for Notices of Intent to Assess/Assessments issued on or before 2/28/03.	25% of tax paid by check.
Bad check for Notices of Intent to Assess/Assessments issued after 2/28/03.	$50 penalty.
Frivolous protest of tax due.	25% of tax.
Failure to file information return or report.	$10 each day to maximum $400 each return.
Control or possession of untaxed tobacco products for periods on or before 12/27/04.	100% of tax.
Control or possession of untaxed tobacco products for periods after 12/27/04.	500% of tax.

Final Assessment

Michigan Department of Treasury
169 (Rev. 10-16) FINAL-C

Final Bill for Taxes Due
Final Assessment

Issued under P.A. 122 of 1941, as amended.
For monthly PENALTY/INTEREST provisions, correspondence, and appeal information, see page 2.

Tax Division AUDIT-TAX COMPLIANCE	Tax Division Telephone Number (517)636-4120
Assessment Number UO71593	Date Issued 03/23/2017
Account Number [redacted]	
Office of Collections Telephone Number (517)636-5265	

MINNESOTA LIMITED LLC
18640 200TH ST
BIG LAKE MN 55309-0410

BILL SUMMARY

Tax Due	$2,262,994.00
Penalty	$112,979.00
Interest	$550,792.07
Total Due	$2,926,765.07

Detail of Tax Liability

Type of Tax	Taxable Period	Tax Due	Penalty	Interest
MICHIGAN BUSINESS TAX	03/11	$2,262,994.00	$112,979.00	$550,792.07

Reason for Tax Bill

RETURN RECEIVED WITH INSUFFICIENT PAYMENT.
RETURN RECEIVED WITH INSUFFICIENT PAYMENT OF TAX, PENALTY AND/OR INTEREST.
PENALTY AND/OR INTEREST DUE FOR LATE FILING OF RETURN AND/OR LATE PAYMENT OF TAX DUE. FOR ADDITIONAL INFORMATION VISIT WWW.MICHIGAN.GOV/TREASURY.

THE DEFICIENCY IS BASED ON AN AUDIT CONDUCTED BY THE MICHIGAN DEPARTMENT OF TREASURY.

✂ -

169 (Rev. 10-16) *Detach and mail the payment voucher with your payment. Do not staple.*

Final Bill for Taxes Due

Payment due within 35 days. Make your check payable to "State of Michigan-OC." Write your Account No. and Assessment No. on all checks and correspondence. Allow up to 14 days for mailing and processing. A return envelope is enclosed for your convenience.
Mail payment and this voucher to:

MICHIGAN DEPARTMENT OF TREASURY
OFFICE OF COLLECTIONS
PO BOX 30199
LANSING MI 48909-7699

Assessment Number UO71593	Date Issued 03/23/2017
Taxpayer Name MINNESOTA LIMITED LLC	
Account Number [redacted]	
Write Payment Amount Here ☞	

Notify the Office of Collections in writing if your address above is incorrect.

▼ DO NOT WRITE IN THIS SPACE ▼

002926765073 684715936 000000000009 2[redacted]08 9

GENERAL INFORMATION

If you don't understand why you received this bill, call the Tax Division whose telephone number is printed on the front of this form. If you have questions about payment, call the Office of Collections telephone number printed in the upper right corner on the front of this form. Any correspondence about original or amended returns or questions about payment should be mailed to Michigan Department of Treasury, Office of Collections, P.O. Box 30199, Lansing, MI 48909-7699.

Michigan law allows the state to file liens on real and personal property for delinquent taxes. Treasury usually files liens 60 days after the date on this bill. Tax liens are public record and the recording is often reported by private credit services. These notes in individual's credit records may remain for some years after full payment of tax and release of the lien. If payment is not received within 60 days, your account may be referred for other enforcement actions, such as seizing your wages, bank accounts, or other financial assets.

This Final Assessment is made based on available information without regard to other claims made by you or Treasury. This does not clear you of liability for the period in question.

APPEALS INFORMATION

Under the Revenue Act, Section 22, you may appeal all or part of this assessment directly to the Tax Tribunal within 60 days or the Court of Claims within 90 days of the date on this bill. The uncontested portion must be paid before you appeal.

You can appeal to the Tax Tribunal by filing a petition with the Tax Tribunal. Attach a copy of this Final Assessment to your petition. You can learn more about appealing to the Tax Tribunal at **www.michigan.gov/taxtrib**. You can contact the Tax Tribunal at P.O. Box 30232, Lansing, MI 48909.

You can appeal to the Court of Claims by filing a complaint with the Court of Claims at any of its district offices. For contact information for the Court of Claims District Offices see **http://courts.mi.gov/courts/coc**.

*PENALTY AND INTEREST CHARGES

(Effective March 1, 2003 under P.A. 122 of 1941, as amended.)

*Penalty and interest will be applied to your account on the beginning of each month. If your payment will not be received by the last day of the month, call Treasury for a current balance. Interest is computed at 1 percent above the prime rate adjusted July 1 and January 1 each year.

REASON FOR BILL	PENALTY CHARGE
Failure to file and pay tax for Notices of Intent to Assess/Assessments.	A penalty of 5% of the tax if the failure is for not more than 2 months, with an additional 5% penalty for each additional month to a maximum of 25%. Interest applies.*
Negligence in filing tax.	10% of tax. Minimum $10. Interest applies.*
Intentional disregard in filing taxes.	25% of tax. Minimum $10. Interest applies.*
Fraudulent evasion of tax.	100% of tax. Minimum $10. Interest applies.*
Bad check for Notices of Intent to Assess/Assessments.	$50 penalty.
Frivolous protest of tax due.	25% of tax.
Failure to file information return or report.	$10 each day to maximum $400 each return.
Control or possession of untaxed tobacco products for periods on or before 12/27/04.	100% of tax.
Control or possession of untaxed tobacco products for periods after 12/27/04.	500% of tax.

PAYMENT INFORMATION

We offer the following payment options:

- Visit **www.michigan.gov/collectionseservice** to view account information and pay using a checking account, savings account or credit card.
- Pay by mail using the attached payment voucher and return envelope.

*Note – Credit cards are only accepted on the web and cannot be used over the phone.

HONIGMAN

Honigman Miller Schwartz and Cohn LLP
Attorneys and Counselors

June Summers Haas

(517) 377-0734
Fax: (517) 364-9534
jhaas@honigman.com

Via Hand Delivery

December 14, 2016

Mr. Greg Gursky
Deputy Treasurer
Michigan Department of Treasury
430 W. Allegan Street
Lansing, MI 48922

Re: ***Minnesota Limited, Inc.***
FEIN: [redacted]
Supplement to June 6, 2016 Request for Alternative Apportionment Formula Pursuant to MCL 208.1309
For Short Period Tax Year Ending March 31, 2011

Dear Mr. Gursky:

Thank you for accepting our supplement to the information previously provided to you on June 6, 2016. This submission is intended to provide more definitive factual information, as well as a more detailed analysis to support the request by Minnesota Limited, Inc. ("Minnesota Limited" or "Company") for alternative apportionment under MCL 208.1309 for the short tax year ending March 31, 2011. We are providing the following proposals for appropriate alternative apportionment formulas.

Background

As discussed at our meeting on September 9, 2016, Minnesota Limited, a Minnesota S Corporation, is engaged in the business of oil and gas pipeline construction, station/terminal construction, and pipeline integrity and maintenance. Minnesota Limited is seeking alternative apportionment because the use of a three month sales factor to apportion the gain on the sale of the Company is distortive and does not fairly represent the company's business activity in Michigan for the short period from January 1, 2011 through March 31, 2011.

Minnesota Limited was engaged by Enbridge Energy ("Enbridge") to respond to a severe oil pipeline rupture that occurred in July 2010 in a tributary of the Kalamazoo River. This was the Company's largest single contract ever performed in Michigan. The work began in July 2010 and ended in May 2012. During that time, on March 31, 2011, Minnesota Limited sold all of its stock to Vectren Corporation. As explained in our June 6, 2016 letter, the inclusion of the gain on sale of a business that operated for 52 years in the tax base without representation in the sales factor in a short year (when more operational income was generated in Michigan than in any prior year in the company's history), distorts the apportionment of the tax base, resulting in the taxation of the gain on the sale of the company out of all appropriate proportion. At our meeting, you requested additional detail regarding the sale and valuation of the Company along with proposals for alternative apportionment formula for the Department to evaluate. This information is included below.

Sale and Valuation of Minnesota Limited

While the sale of Minnesota Limited was completed on March 31, 2011, preparations for the sale began in March 2010, when the owners of Minnesota Limited engaged several investment advisors. In particular, Minnesota Limited engaged Green Holcomb & Fisher, investment bankers, in April of 2010[1], to provide a Confidential Offering Memorandum ("Memorandum") that could be used as a preliminary introduction to the Company and to assist potential purchasers in evaluating a potential acquisition of the Company. In addition, Vectren Corporation, the Purchaser of Minnesota Limited, engaged KPMG to provide a valuation of certain assets in connection with their acquisition in March of 2011 ("Valuation Report"). Copies of these confidential reports are attached at Tabs 1 and 2, respectively.

The Valuation Report noted that Minnesota Limited was engaged in three business segments: Pipeline construction, station/terminal construction and integrity/maintenance. The percentage of business revenue of Minnesota Limited for the prior two years was noted as a percentage of each business segment:

Revenue by Business Segment	2008	2009	2010 (Estimated)
New Pipeline	75%	49%	40%
Station/Terminal	12%	34%	20%
Pipeline Integrity/Maintenance	13%	17%	40%

The Valuation Report focused on certain intangible assets, in addition to tangible assets, in determining the current fair market value of Minnesota Limited. The three primary intangible assets evaluated were Trade Name, Customer Relationships and Project Backlog. The Valuation Report's conclusion for each of these assets was as follows:

Trade Name

- Vectren expected to phase out the Minnesota Limited trade name over the next five years.
- The Enbridge project was not incorporated in KPMG's analysis of the Company, as the services provided on the Enbridge project (a response action to an

[1] Note that the beginning of the sale process of Minnesota Limited occurred well before the commencement of the Enbridge work in Michigan.

environmental accident) fell outside the Company's core competencies of pipeline construction.

- Based on the above, little allocation of value was allocated to the trade name.

Customer Relationships

- Historical sales were used to project the attrition rate.
- While most customers were recurring, KPMG projected a high attrition rate for the period 2011-2014, due to the existing business climate in the oil industry at that time.
- Realization that the Enbridge project was unique and not expected to be recurring due, and thus was too tenuous to allocate value to this particular customer relationship (first engagement to handle an environmental spill).

Backlog

- At the time of acquisition, there were approximately16 active contracts, including the Enbridge contract.
- The retainage due on the Enbridge project was $1,115,532. Applying the Valuation Report's discount rate to reflect risk of 17% equated to a value of $925,892 being assigned to the remainder due on the Enbridge project.

Assembled Workforce

- ASC 805 does not require value assigned to an assembled workforce to be reported separately from Goodwill.
- Additionally, none of the workforce was permanently located in Michigan.

The below chart summaries the value assigned to these intangible assets as a percentage of total value of the sale.

Intangible Asset	**Value Assigned**	**Value Assigned As a Percentage of Total Value**
Trade Name	4,241,000	18.5878
Customer Relationship	14,588,000	63.9376
Backlog	287,000	1.2579
Assembled Workforce	3,700,000	16.2167
Total Valuation	22,816,000	100.00

The total sale price was $80,000,000. A portion of the purchase price, $16,578,700 was allocated to assets belonging to a separate affiliate that was in the design service industry. Thus, approximately $63,421,300 of the purchase price was allocated to the business of Minnesota Limited.

Proposed Alternative Apportionment Alternatives

1. Calculate the sales factor treating gain on the sale of the business assets as "sales" includable in the sales factor as reported.

This alternative apportionment method requests to treat all of the receipts and income resulting from the sale of the Company's stock consistent with the election made by the Company under IRC § 338(h)(10) (stock sales treated as a sale of all of its assets, both tangible and intangible). Under this alternative, gain on the sale would constitute "sales" under MCL 208.1115(1) that are sourced to the State of Minnesota. In addition to the reasons discussed in our prior letter, at a minimum the business assets sold should treated as "sales" as Minnesota Limited has a history of selling its business assets. For each year since 2004, Minnesota Limited has filed Form 4797, *Sales of Business Property*, with its federal income tax return reporting gain on the sale of its business assets. Conforming to the federal income tax treatment, these business assets should be treated as assets that are stock in trade or other property of a kind which is held for sale to customers in the ordinary course of its trade or business. MCL 208.1115(1)(a).

Attached at Tab 3 is the documentation regarding prior assets sales by Minnesota Limited. Because the 338(h)(10) deemed asset sale is one sale in a series of sales by Minnesota Limited, this transaction is not a casual or isolated sale under Michigan law, but rather, a recurrence of a regular business disposition of the company's assets. Accordingly, this sale falls under the definition of "sales" under the plain language of the Michigan Business Tax Act, and supports the company's sales factor as originally reported of 0.1499.

2. Source operational income by the statutory sales factor and source gain on the sale of business assets by a factor determined by the location of the business assets.

An alternative would be to apportion the Company's income in two layers. The first layer would represent the tax base from operational receipts, to which the statutory sales factor generated from operational receipts (as determined by the Michigan auditor) of 0.6996 would apply. The second layer would apportion the Company's gain on the sale of the business assets, both tangible and intangible, to which an apportionment factor comprise of asset value, and reflecting the location of the assets as discussed below. As noted, Minnesota Limited historically had a very limited Michigan footprint. It did not have any permanent business location in the state, no storage facilities or storage yard in the state, and did not have any employees permanently assigned to the state.

Tangible Assets – There were minimal assets in the state at the time of the sale.

- Approximately 1,382 pieces of equipment (contractor, transportation, facility and general office) with a net book value of $3,429,239 existed at the time of sale. Of these, 513 pieces were held by Nordic. A purchase price allocation of

$18,354,285 was allocated to the assets acquired by Buyer that were held by Minnesota Limited.

Intangible Assets – gain on the sale of intangible assets would be apportioned in proportion to the valuation of intangible assets as evaluated by the KPMG Report; such gain would be sourced to Michigan to the extent the intangible is associated with Michigan activities.

3. Source operational gain by the statutory sales factor and source gain on the sale of business assets by the ten year average of the Michigan sales factor.

This alternative is similar to alternative two in regards to the first layer, where operational gain is apportioned to the state under the statutory regime. As discussed in our prior correspondence, the gain on the sale of the business assets was generated and accumulated over the 50-year history of the company. Accordingly, to appropriately reflect the income and receipts of Minnesota Limited, the tax base from operational receipts would be apportioned by the sales factor generated from operational receipts as determined by the Michigan auditor of 0.6996. However, tt would not be appropriate to use this factor to apportion the tax base resulting from the gain on sale of the business assets, which rationally should reflect the historical operations of the Company. Accordingly we propose that the State use a ten-year average sales factor of 0.06782, as computed below, to reflect the historical percentage of the capital gain that is rationally reflected in these assets.

YEAR	MICHIGAN SALES	EVERYWHERE SALES	APPORTIONMENT	TEN YEAR AVERAGE
2001	0	$19,577,034	0.0000	
2002	0	$25,255,248	0.0000	
2003	$522,713	$38,328,523	0.0137	
2004	$1,428,969	$42,391,279	0.0337	
2005	$1,101,714	$46,556,704	0.0222	
2006	$1,011,461	$48,270,114	0.0210	
2007	$957,516	$99,876,379	0.0096	
2008	$3,341	$155,164,472	0.00002	
2009	$3,136,684	$121,058,709	0.1852	
2010	$43,352,830	$110,365,790	0.3928	**.06782**

Post Acquisition:				
2012	$10,059,487	$353,475,836	0.0285	
2013	$4,984,667	$465,037,475	0.0107	
2014	$5,544,211	$417,270,474	0.0133	

Summary of Proposed Alternatives

Based on the above analysis, we have provided the following alternative sales factors for your reflection:

Alternative One

- A sales factor of .1499 to reflect the inclusion of capital sales assets in the denominator based on prior asset sales.

Alternative Two

- A sales factor of .6999 to apportion operational receipts, with an allocation of gain on sales of assets based on asset location.

Alternative Three

- A sales factor of .6999 to apportion operational receipts, with a sales factor of .06782 to apportion receipts from the gain on the sale of the Company.

The clear intent of the Legislature in enacting MCL 208.1309(3) was to ensure that alternative apportionment relief would be available, when, as demonstrated in this instance, the result of using the standard statutory formula would be "that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer." Thus, alternative apportionment is appropriate and required in this case.

We appreciate the opportunity to submit this additional information for your review and consideration, and would welcome the opportunity to discuss this matter with you. Once you have reviewed this submission, please let us know your availability to meet. We look forward to meeting with you to discuss this request further.

Very truly yours,
Honigman Miller Schwartz and Cohn LLP

Lynn Gandhi and June Summers Haas

JSH:jps
Enclosures

bc w/ encl:	Mr. Bob Baird Mr. Jeff Starbird Ms. Lynn Gandhi

22528870.12

Alt Req Denial

STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

NICK A. KHOURI
STATE TREASURER

February 8, 2017

Ms. Lynn Gandhi
Ms. June Summers Haas
Honigman Miller Schwartz and Cohn LLP
222 North Washington Sq., Suite 400
Lansing, MI 48933-1800

Dear Ms. Gandhi and Ms. Haas:

Thank you for your letter dated June 24, 2016, requesting alternative apportionment under MCL 208.1309 and the supplemental information provided with your letter dated December 14, 2016. Your client, Minnesota Limited, Inc. ("MN Ltd."), requests alternative apportionment under the Michigan Business Tax ("MBT") for the short tax year ending March 31, 2011. Specifically, you have requested that the Michigan Department of Treasury ("Department") provide you with a decision on the apportionment of MN Ltd.'s tax base that includes income from the environmental clean-up of an oil leak on the Kalamazoo River and the sale of MN Ltd. stock to Vectren Corporation on March 31, 2011. The stock sale was treated as the sale of assets under IRC 338(h)(10). Please note that your request did not met the requirements for a Letter Ruling or Technical Advice Letter under RAB 2016-20.

Although the facts you assert will not be restated in whole, the more relevant assertions are noted below:

> MN Ltd., Inc. is a Minnesota S Corporation operating in the oil and gas pipeline construction, repair and HAZMAT response business. MN Ltd. operates in Minnesota and throughout the Midwest. In 2010, Enbridge Energy contracted with MN Ltd. to commence repairs and provide environmental clean-up services related to the rupture of a pipeline that occurred in a tributary of the Kalamazoo River.
>
> On March 31, 2011, MN Ltd. sold its stock to Vectren Corporation. The stock sale was treated as the sale of assets under the IRC 338(h)(10) election. The assets that were deemed sold under the election included the company's current assets, capital assets, and intangible assets including receivables, retainages and goodwill, as well as inventory.

You suggest that the apportionment of the tax base is distorted when the gain from the sale is included in the tax base but is without representation in the sales factor. In that regard, you provided a valuation report that used historical revenue from 2008 and 2009 and focused on a breakdown of intangible and tangible asset valuations to derive a selling price. Of the

$80,000,000 sales price, approximately $63,421,300 was allocated to MN Ltd. (the remainder belonging to a separate affiliate).

Your client, MN Ltd., requests alternative apportionment under the MBT Act for the tax year ending March 31, 2011. You propose three alternative apportionment methods. The first alternative method would include the gain in the denominator as a sale. The second alternative method would apportion income in two categories. The first would apportion operational receipts based on the statutory sales formula percentage. The gain on sale of business assets would be apportioned based on asset value and location of the asset. Gain associated with intangibles would be sourced to Michigan to the extent the intangible is associated with Michigan activities. Details on how this would be determined were not provided. The third alternative method is a modification of the second proposed method. The operational sales would be apportioned by the statutory formula and the gain on the sale of business assets would be apportioned on a ten year average of sales under the statutory formula.

Taxpayers requesting to deviate from the statutory apportionment formula must prove by clear and cogent evidence that the formula does not fairly represent the taxpayer's business activity in this state and leads to a grossly distorted result. The proposed alternative method must reflect a reasonable approximation of the taxpayer's activities in the state. While you have provided detail on how the selling price was derived, you have not provided any evidence to the Department that the business activities in Michigan did not contribute to the gain realized or that the formula does not provide Michigan with an equitable allocation of income. Further, including gain in the tax base is not an unusual fact situation or one that necessarily demonstrates that application of the statutory apportionment formula does not reflect MN Ltd.'s business activity in Michigan.

The fact that a different formula can be developed for apportioning income does not prove the statutory formula unfairly apportions income. When viewed as a whole, you have not demonstrated that the statutory sales formula is not a reasonable reflection of MN Ltd.'s business activity in Michigan. Consequently, we conclude that you have not established that the resulting tax base apportioned to Michigan is out of all appropriate proportion to Michigan business activity or results in a grossly distorted apportioned amount.

Taxpayers who wish to use an alternative method of apportionment are required to file a petition with the Department. The filing of a return or an amended return is not considered a petition for alternate apportionment.[1] Contrary to the statutory definition of sales, MN Ltd. included the gain in the denominator of the sales factor on its originally filed return effectively reporting to the Department the very apportionment relief it now requests. That reporting was disallowed by the Department.

Because the apportionment formula is presumed and appears, based on the information provided, to fairly reflect the business activity of the taxpayer, it would be improper to apply an alternative apportionment factor to the short tax year ended March 31, 2011.

[1] MCL 208.1309(4).

Accordingly, the facts presented do not overcome the presumption that the apportionment provisions of the MBT fairly represent the business activity attributed to the taxpayer in this state. Your request for alternative apportionment is denied.

If I can be of further assistance, please feel free to contact me at (517) 373-3200.

Sincerely,

Gregory Gursky
Deputy Treasurer

STATE OF MICHIGAN

COURT OF CLAIMS

VECTREN INFRASTRUCTURE SERVICES CORP.,
Successor-in-interest to MINNESOTA LIMITED, INC.

Plaintiff,

Docket No. 17-107-MT

Hon. Michael J. Talbot

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

June Summers Haas (P59009)
Lynn A. Gandhi (P60466)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiff
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

David W. Thompson (P75356)
Justin R. Call (P80892)
Assistant Attorneys General
Michigan Department of Attorney General
Revenue & Tax Division
Attorneys for Defendant
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

AFFIDAVIT OF BRADLEY A. HIRSCH

Brad Hirsch, being first duly sworn on oath, deposes and states as follows:

1. I am a resident of the State of Illinois.

2. I am of sound mind and body and have no infirmities that would prevent me from competently testifying as to the contents of this affidavit.

3. I received a Bachelor's in Accountancy at Western Michigan University, and an MBA from the University of Illinois at Chicago, with a concentration in finance.

4. I am a Certified Senior Appraiser with the American Society of Appraisers. I am a business valuation professional with a focus on valuating intangible assets of a business.

5. I am currently employed by KPMG LLP, an international public accounting firm, as a principal with KPMG's economic and valuation services practice, in Chicago. I have been at KPMG for almost 16 years.

6. I joined KPMG in 2012. Prior to KPMG, I began my career at Arthur Andersen.

7. I prepared the report titled *Vectren Corporation, Valuation of Certain Identifiable Assets in Connection with the Acquisition of Minnesota Ltd, Inc. as of March 30, 2011*, issued in draft format on August 30, 2011. Copy attached as Exhibit A.

8. I worked on this project about six months, from early 2011 to August 2011. Since the report was issued, I have not been involved with the report.

9. The purpose of the report was to comply with financial accounting standards, specifically Accounting Standards Codification 805, Business Combinations. A copy of ASC 805 is attached as Exhibit B.

10. ASC 805 requires a company acquiring another company to fair value the assets that are being purchased. "Fair value" is defined as the price that would be received to sell an asset or paid to transfer a liability in an orderly transaction between market participants at the measurement date. I performed the valuation work of the assets to permit the client to comply with the standards of ASC 805.

11. Compliance with ASC 805 is mandated for United States GAAP Financial Reporting, which is required for publicly traded companies, such as Vectren.

12. In preparing the report, KPMG investigated and analyzed Minnesota Ltd, Inc.'s intangible assets, operations, financial condition and financial statements and conducted interviews with personnel familiar with Minnesota Ltd, Inc.

13. In preparing the report, KPMG reviewed the identifiable intangible assets and their relative contribution to the business.

14. The intangible assets of Minnesota Ltd, Inc. that KPMG reviewed included 1) customer relationships, 2) backlog of work, 3) trade name, and 4) assembled workforce.

15. Customer relationship value is determined by analyzing the future growth of the business and identifying the cash flows specifically related to existing customers (the asset of value) versus new customers, as well as an attrition rate for existing customers and the contributory charges for other assets in the business that help generate cash flow.

16. Backlog is a contract form of a customer relationship that has a different life. Backlog represents the intangible benefit of acquiring a company that has contracts in place. As backlog is contractual, you separate it out from the non-contractual relationships the entity has.

17. Trade name looks to the intended use of the trade name by the acquirer, as well as the strength and perception of that trade name in the marketplace.

18. The assembled workforce is also valued, but is not reported separately. It is included in residual goodwill, which represents the intangible value of the company that is not assigned to any specific intangible, and has inured over the life of the company. See Schedule 1 to Exhibit A attached.

19. Stated another way, purchase price, less the tangible assets, less the identifiable intangible assets, equals goodwill.

20. To perform valuations, certain accepted methodologies are utilized. For this report, an "in-use" premise of value was used, which looked to Minnesota Ltd, Inc. as a going concern that will have value in the future or will earn income in the future, and use the assets in the business at its highest and best use.

21. It is not necessary to determine the location of customers in valuing the intangible assets of a company.

22. ASC 805 does not require a knowledge of where customers are located.

Respectfully submitted,

Bradley A. Hirsch

Bradley A. Hirsch

SUBSCRIBED and SWORN TO
before me this 11 day of June, 2018

Notary Public

KATHRYN LOCKWOOD
Official Seal
Notary Public - State of Illinois
My Commission Expires Apr 13, 2020

STATE OF MICHIGAN
COURT OF APPEALS

VECTREN INFRASTRUCTURE SERVICES CORP.,
SUCCESSOR-IN-INTEREST TO
MINNESOTA LIMITED, INC.,

Plaintiff/Appellant

Court of Appeals No. 345462

Court of Claims No. 17-107-MT

V

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant/Appellee.

JUNE SUMMERS HAAS (P59009)
LYNN A. GANDHI (P60466)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiff/Appellant
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

DAVID W. THOMPSON (P75356)
JUSTIN R. CALL (P80892)
Assistant Attorney General
Michigan Department of Attorney General
Revenue & Collections Division
Attorneys for Defendant/Appellee
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

APPELLANT'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

RECEIVED by MCOA 12/7/2018 5:43:07 PM

TABLE OF CONTENTS

TABLE OF AUTHORITIES ... iv

STATEMENT OF BASIS OF JURISDICTION ... viii

STATEMENT OF QUESTIONS PRESENTED ... ix

I. INTRODUCTION ... 1

II. LEGAL STANDARDS ... 3

A. Legal Standards. ... 3

B. Rules of Construction. ... 5

III. STATEMENT OF FACTS AND LEGAL BACKGROUND ... 5

A. Facts. ... 5

B. The Sale of the Company. ... 8

C. Tax Reporting and the Department’s Audit. ... 10

D. The Taxpayer’s Request for Alternative Apportionment. ... 12

E. The Department’s Denial of the Taxpayer’s Request. ... 13

F. Proceedings at the Court of Claims. ... 13

G. Applicable Provisions of the Michigan Business Tax Act. ... 15

1. The MBT Base ... 15

2. The Sales Factor. ... 15

3. Request for Alternative Apportionment. ... 16

IV. ARGUMENT ... 17

A. The Court of Claims Erred When it Failed to Rule on Count I of Appellant’s First Amended Complaint. ... 17

1. Appellant’s Count I Properly Pled Unlawful Exclusion of Receipts From the Sale of Business Assets From the Calculation of the Sales Factor Under MCL 208.1115(1). ... 17

RECEIVED by MCOA 12/7/2018 5:43:07 PM

2. Appellant's Count I Properly Pled That the Exclusion of Sale Receipts From the Calculation of the Sales Factor Results in Unlawful Statutory and Constitutional Violations. 20

3. The Court of Claim's Failure to Address Arguments Which Were Properly Pled is Plain Error and Requires Reversal or Remand. 20

B. The Sale of Stock by the Individual Shareholders is Business Activity of the Shareholders, Does not Constitute Business Activity of the S-Corporation, and is not Subject to Tax at the S-Corporation Level. 21

1. The Receipts Paid to the Siblings are Taxable Receipts of the Siblings, and not Taxable Receipts of the S-Corporation Under MCL 208.1105(2). 21

2. The Federal Income Tax Election Made by the Siblings and the Purchasing Corporation is not Business Activity of the S-Corporation. 23

C. In the Alternative, Consistent Application of the Court of Claim's Determination That the Sale of Stock was the Sale of Business Assets (and Business Activity of) the S-Corporation Requires Inclusion of the Sale Receipts in the Sales Factor. 25

D. The Department Unlawfully Denied the Company's Request for Alternative Apportionment Under MCL 208.1309 When the Company Proved That the Statutory Apportionment Formula Distorted the Business Activity Actually Conducted in Michigan. 26

1. The Statutory Requirements to use an Alternative Apportionment Method. 26

2. What is Distortion? 28

3. The Evidence Proved Distortion Resulted When Using Three Months of Sales Activity to Apportion not Only the Gain From Services During Those Three Months, but Also the Long Term Capital Gain From the Sale of Stock of the Family Business. 30

4. The Evidence Proved the Statutory Formula Resulted in Extraterritorial Taxation. 33

E. The Company's Proposed Alternative Apportionment Methods Were Reasonable, Constitutionally Correct and Should Have Been Permitted. 34

1. The Proposed Alternatives. 34

RECEIVED by MCOA 12/7/2018 5:43:07 PM

2. Each Proposed Alternative is Reasonable and the Use of a Proposed Alternative Should be Permitted. 35

F. The Failure to Include Sales of Business Assets in the Sales Factor When the Sales are Included in the Tax Base Grossly Distorts the Income Apportioned to Michigan in a Manner That is Unconstitutional Under the Due Process and Commerce Clause of the United States Constitution. 38

1. The Constitutional Requirement of Fair Apportionment. 38

2. Michigan's Statutory Sales Factor as Applied to the Facts Unconstitutionally Distorts Income Attributable to Michigan all out of Appropriate Proportion. 39

G. Alternatively, the Record Demonstrates Unconstitutional Distortion Exists by the Failure to Exclude the Receipts From Intangible Assets From the Tax Base. 43

H. The Company Proved Reasonable Cause and Penalty Relief is Warranted. 45

V. CONCLUSION 47

RECEIVED by MCOA 12/7/2018 5:43:07 PM

TABLE OF AUTHORITIES

Cases

Allied-Signal, Inc v Director, 504 US 768; 112 S Ct 2251; 119 L Ed 2d 533 (1992).......... 33, 44

ASARCO Inc v Idaho State Tax Com, 458 US 307; 102 S Ct 3103; 73 L Ed 2d 787 (1982) 33, 43

Bank of Am, NA v First Am Title Ins Co, 499 Mich 74; 878 NW2d 816 (2016)........................ 17

Book-Gilbert v Greenleaf, 302 Mich App 538; 840 NW2d 743 (2013)..................................... 23

Container Corp v Franchise Tax Bd, 463 US 159; 103 S Ct 2933; 77 L Ed 2d 545 (1983) 26, 38, 41, 45

Corn Products Refining Co v Commissioner, 350 US 46, 50; 76 S Ct 20; 100 L Ed 29 (1955). 45

Donajkowski v Alpena Power Co, 460 Mich 243; 596 NW2d 574 (1999)................................... 4

Du Mont Ventilation Co v Dep't of Revenue, 99 Ill App 3d 263; 425 NE2d 606 (1981)........... 45

Dussia v Merman, 386 Mich 244; 191 NW2d 307 (1971) 21

Exxon Corp v Wisconsin Dep't of Revenue, 447 US 207; 100 S Ct 2109; 65 L Ed 2d 66 (1980) 44

Ford Motor Co v Dep't of Treasury, 496 Mich 382; 852 NW2d 786 (2014).......................... 5, 22

FW Woolworth Co v Tax'n and Rev Dep't of New Mexico, 459 US 961; 103 S Ct 274; 73 L Ed 213 (1982)... 38

Genex/London, Inc v Kentucky Bd of Tax Appeals, 622 SW2d 499 (Ky, 1981) 45

Gillette Co v Dep't of Treasury, 198 Mich App 303; 497 NW2d 595 (1993)............................ 46

Gillette Co v Dep't of Treasury, 5 MTT 839 (1989) 46, 47

Hannay v Transp Dep't, 497 Mich 45; 860 NW2d 67 (2014).. 28

Hans Rees' Sons, Inc v North Carolina, 283 US 123; 51 S Ct 385; 75 L Ed 879 (1931).... passim

Hillenmeyer v Cleveland Bd of Review, 144 Ohio St 3d 165; 41 NE3d 1164 (2015) 43

In re Bradley Estate, 494 Mich 367; 835 NW2d 545 (2013), ... 19

In re Dodge Bros, 241 Mich 665; 217 NW 777 (1928)... 5

Int'l Business Machines v Dep't of Treasury, 220 Mich App 83; 558 NW2d 456 (1996)...... 5, 23

RECEIVED by MCOA 12/7/2018 5:43:07 PM

Maiden v Rozwood, 461 Mich 109; 597 NW2d 817 (1999) 4, 20

Maskery v Univ of Mich Bd of Regents, 468 Mich 609; 664 NW2d 165 (2003) 4

McAuley v General Motors Corp, 457 Mich 513; 578 NW2d 282 (1998) 4

McCart v J Walter Thompson, 437 Mich 109; 469 NW2d 284 (1991) 4

McCormic v Auto Club Ins Ass'n, 202 Mich App 233; 507 NW2d 741 (1993) 4

MeadWestvaco Corp v Illinois, 553 US 16; 128 S Ct 1449; 170 L Ed 2d 404 (2008) 33, 39

Mobil Oil Corp v Vermont Comm'r of Taxes, 445 US 425; 100 S Ct 1223; 63 L Ed 2d 510 (1980) 44

Moorman Mtg Co v Bair, 437 US 267; 98 S Ct 2340; 57 L Ed 2d 197 (1978) 27

Neubacher v Globe Furniture Rentals, 205 Mich App 418; 522 NW2d 335 (1994) 4

Norfolk & Western Ry Co v Missouri State Tax Comm'n, 390 US 317; 88 S Ct 995; 19 L Ed 2d 1201 (1968) 29, 43

Peterman v Dep't of Natural Resources, 446 Mich 177; 521 NW2d 499 (1994) 17

Putkamer v Transamerica Ins Corp of America, 454 Mich 626; 563 NW2d 683 (1997) 4

Shaffer v Carber, 252 US 37; 40 S Ct 221; 64 L Ed 445 (1920) 44

Skinner v Square D Co, 445 Mich 153; 516 NW2d 475 (1994). 5

Smith v Globe Life Ins Co, 460 Mich 446; 597 NW2d 28 (1999) 4

Underwood Typewriter Co v Chamberlain, 254 US 113; 41 S Ct 45; 65 L Ed 165 (1920) 26

Vectren v Dep't of Treasury, unpublished opinion of the Court of Claims, issued August 14, 2018 (Docket No. 17-107-MT) .... passim

Vectren v Dep't of Treasury, unpublished order of the Court of Claims, issued September 7, 2018 (Docket No. 17-107-MT) .... viii, 14

West v General Motors Corp, 469 Mich 177; 665 NW2d 468 (2003) 5

WMS Gaming, Inc v Dep't of Treasury, 274 Mich App 440; 733 NW2d 97 (2007) 19

Statutes

IRC 338(a)(1) 24

IRC 338(a)(2) 24

RECEIVED by MCOA 12/7/2018 5:43:07 PM

IRC 338(h)(10) 10, 12, 44

IRC 1031 8

MCL 205.22 13

MCL 205.23 45

MCL 205.24 45

MCL 205.24(2) 45

MCL 208.69 27

MCL 208.1105(1) 2, 15, 22

MCL 208.1105(2) 21, 24, 47

MCL 208.1111(1) 15, 22

MCL 208.1115 .... 18, 25, 35, 36

MCL 208.1115(1) .... ix, 15, 17

MCL 208.1115(1)(c) 18, 37

MCL 208.1303 .... 15, 33

MCL 208.1305(1) 34, 35

MCL 208.1305(10) 37

MCL 208.1309 .... passim

MCL 208.1309(1) 37

MCL 208.1309(3) 34

MCL 208.1311 37

MCL 600.308(1)(a) viii

Uniform Division of Income for Tax Purposes Act (UDITPA), § 6(a) 33

Other Authorities

Revenue Admin Bull 2005-3 46

Revenue Admin Bull 2018-XX 34, 36, 37, 40

RECEIVED by MCOA 12/7/2018 5:43:07 PM

Rules

MCR 2.116(C)(10) 3, 4, 17

MCR 2.116(G)(4) 4

MCR 2.116(G)(5) 4

MCR 7.203(A) viii

Mich Admin Code, R 205.1012 46

Mich Admin Code, R 205.1013 46

Mich Admin Code, R 205.1013(8) 46

Treatises

Hellerstein & Hellerstein, State Taxation (3rd ed) 42

Regulations

Treas Reg 1.338(h)(10)-1(d) 10, 24

Treas Reg 1.388(h)(10)-1(d)(9) 10, 24

RECEIVED by MCOA 12/7/2018 5:43:07 PM

STATEMENT OF BASIS OF JURISDICTION

Plaintiff-Appellant, Vectren Infrastructure Services Corp., Inc., successor-in-interest to Minnesota Limited, Inc., timely appealed the September 7, 2018 Order denying Plaintiff's Motion for Reconsideration (Appellant's App. No. 2 hereto) upholding the August 14, 2018 Order granting Defendant-Appellee's motion for summary disposition (Appellant's App. No. 1 hereto). The September 7, 2018 Order is a final judgment and this Court has jurisdiction over Plaintiff-Appellant's appeal under MCR 7.203(A) and MCL 600.308(1)(a).

RECEIVED by MCOA 12/7/2018 5:43:07 PM

RECEIVED by MCOA 12/7/2018 5:43:07 PM

STATEMENT OF QUESTIONS PRESENTED

1. Did the Court err in granting Defendant's Motion for Summary Disposition when it failed to address the statutory and constitutional issues raised in Count I of Plaintiff's First Amended Complaint and argued in Plaintiff's Motion for Summary Disposition regarding the calculation of the sales factor?

Plaintiff-Appellant answers "Yes."

Defendant-Appellee answers "No."

The Court of Claims did not address.

2. Did the Court err in determining that income from individual shareholders' sale of stock is attributable to the in-state business activity of the S Corporation, rather than properly attributing the income to the individual shareholders under the definition of business income?

Plaintiff-Appellant answers "Yes."

Defendant-Appellee answers "No."

The Court of Claims answered "No."

3. Whether the definition of "sales" in MCL 208.1115(1), requires Appellant's receipts from regular and systematic sales of business assets sold in the ordinary course be included in Appellant's sales factor?

Plaintiff-Appellant answers "Yes."

Defendant-Appellee answers "No."

The Court of Claims did not address.

4. Whether Appellant has demonstrated that the statutory apportionment formula as applied to the facts apportions income out of all appropriate proportion to the business activity conducted in Michigan for the tax period and results in distortion under the statutory standard of MCL 208.1309?

Plaintiff-Appellant answers "Yes."

Defendant-Appellee answers "No."

The Court of Claims did not address.

5. Whether the alternative methods proposed by Appellant were reasonable and result in the apportionment of gain to Michigan in a manner that is reasonable under MCL 208.1309 and constitutional under the Commerce Clause and Due Process Clause of the United States Constitution?

Plaintiff-Appellant answers “Yes.”

Defendant-Appellee answers “No.”

The Court of Claims did not address.

6. Whether Appellant has demonstrated that the statutory apportionment formula as applied to the facts grossly distorts the gain subject to tax in violation of the constitutional standards under the Commerce Clause and Due Process Clause of the United States Constitution?

Plaintiff-Appellant answers “Yes.”

Defendant-Appellee answers “No.”

The Court of Claims answered “No.”

7. In the alternative, whether the alternative methods proposed by Appellant’s were reasonable and result in a tax base that is consistent with the statute and constitutional standards under the Commerce Clause and Due Process Clause of the United States Constitution??

Plaintiff-Appellant answers “Yes.”

Defendant-Appellee answers “No.”

The Court of Claims did not address.

8. Whether Appellant established it exercised due care and not willful neglect in paying tax on its tax returns and met the standard for abatement of penalty?

Plaintiff-Appellant answers “Yes.”

Defendant-Appellee answers “No.”

The Court of Claims answered “No.”

RECEIVED by MCOA 12/7/2018 5:43:07 PM

I. INTRODUCTION

The question before this Court is to what extent the State of Michigan may lawfully tax the gain on a sale of stock in a Minnesota family business. Before addressing this question, the Court must first address the procedural error committed by the Court of Claims when it failed to address issues properly raised in pleadings Count I and argued by both parties before the court.

The Court of Claims granted summary disposition to the Michigan Department of Treasury (the "Department") on all four Counts of Appellant, Vectren Infrastructure Services Corp., as successor in interest to Minnesota Limited, Inc. (hereinafter the "Appellant" or the "Company") Motion for Summary Disposition, but failed to address Count I of Appellant's Complaint that alleged the improper calculation of the sales factor and its unconstitutionally distortive effect. The Court misread Appellant's pleadings, despite both parties' responsive briefings on the issue. Because issues raised in pleadings and argued before the court are properly preserved and must be ruled on, this Court must either rule on the unaddressed issues of law or remand this matter back to the Court of Claims.

The tax issues to be addressed by this Court are succinct: First, did the gain on the shareholders' sale of stock constitute business income of the entity that was sold, or gain to the shareholders? Second, did the application of the statutory apportionment formula, as applied to the facts and circumstances at hand, result in distortion and the taxation of extraterritorial income? Third, if distortion and extraterritorial taxation existed, was it error to deny Appellant the use of an alternative method of apportionment?

RECEIVED by MCOA 12/7/2018 5:43:07 PM

Appellant argued that the Department's interpretation of the Michigan statutes, which taxed the individual shareholders' gain attributable to their sale of stock of the S-Corporation (the "Sale") as business income of the Company was improper, as such gain was gain to the siblings, not gain of the Company. The Michigan Business Tax Act ("MBTA") excludes from a businesses' taxable income any portion of federal taxable gain that is not attributable to the S-Corporation's business activity. MCL 208.1105(1). Here, the shareholders paid federal and state income taxes on the gain from their Sale. The Company was not a party to the Sale Agreement, did not transfer or sell any tangible or intangible assets, did not receive any proceeds from the Sale and continued its business activities unabated. Under the plain language of the statute, the gain from the Sale is not business income of the company, but gain to the shareholders, and not taxable to the Company under the MBTA.

If such taxation is allowed, the next question to be addressed is whether the application of the statutory apportionment formula (i.e., 100% sales factor) was correctly computed when the Department excluded sales of assets regularly sold in the ordinary course of business (i.e., construction, transportation and office equipment regularly used in the business) from the sales factor. As a matter of law, these sales of business assets must be reflected in the calculation of the sales factor based on their location at the time of sale.

Next, even if the sales factor was correctly computed, this Court must address whether the statutory apportionment formula, as applied to the specific facts and circumstances in this case, creates unlawful statutory or constitutional distortion by taxing extraterritorial values under MCL 208.1309 and the Due Process and Commerce Clauses of United States Constitution. The record demonstrated that distortion and taxation of extraterritorial values existed, as under the facts in this case, the statutory formula apportioned to Michigan a disproportionate amount of income (over 69.96% of the gain on the Sale) because of an atypical project performed in Michigan during the off-season period of a seasonal business.

The opinion below ignored the limited activities conducted during the abbreviated three-month tax-year that was used to calculate the statutory apportionment formula. The United States

RECEIVED by MCOA 12/7/2018 5:43:07 PM

RECEIVED by MCOA 12/7/2018 5:43:07 PM

Supreme Court has held that states may only tax income fairly attributed to the business activity conducted within the state and that "[e]vidence may always be received and reviewed to determine whether the State has applied a method of apportionment '. . . which, albeit fair on its face, operates so as to reach profits which are in no just sense attributable to transactions within its jurisdiction'" in the case before the Court. *Hans Rees' Sons, Inc v North Carolina*, 283 US 123, 129, 134; 51 S Ct 385; 75 L Ed 879 (1931). The Court of Claims failed to examine the Appellant's evidence of both (1) quantitative distortion through attribution of more than $38 million of long-term capital gain based on pipeline service activities that only generated $25,000 profit, increasing the sales factor from 14.99% to 69.96% , and resulted in an increase of more than 1000% from the Company's historic average sales factor of 6.782%; and (2) qualitative distortion evident by the nature of the Enbridge Project and the use of solely three off-season month sales to apportion gain on 52 years of appreciation in tangible and intangible assets of the Company. For any seasonal business, the use of off-season months as a measure of annual business activity is distortive and does not fairly represent the extent of the business's annual market activity.

Lastly, the Court of Claim's failure to properly apply the statutory and constitutional standards of review to the evidence of distortion presented constitutes clear error and this Court should reverse and hold the application of the statutory apportionment method as applied to the facts in this case is unconstitutionally distortive, and remand the case back to the Court of Claims for further review.

II. LEGAL STANDARDS

A. Legal Standards.

Both parties filed motions for summary disposition. The Court of Claims below granted summary disposition to the Department pursuant to MCR 2.116(C)(10). See Appellant's App. No. 1. This Court reviews a grant of summary disposition de novo and also reviews de novo questions

RECEIVED by MCOA 12/7/2018 5:43:07 PM

regarding statutory interpretation. See *Maskery v Univ of Mich Bd of Regents*, 468 Mich 609, 613; 664 NW2d 165 (2003); *Donajkowski v Alpena Power Co*, 460 Mich 243, 248; 596 NW2d 574 (1999); *McAuley v General Motors Corp*, 457 Mich 513, 518; 578 NW2d 282 (1998); *Putkamer v Transamerica Ins Corp of America*, 454 Mich 626, 631; 563 NW2d 683 (1997).

The appropriate legal standard for granting summary disposition under MCR 2.116(C)(10) was succinctly summarized by the Michigan Supreme Court in *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999), as follows:

> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420, 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115, 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237, 507 NW2d 741 (1993).

The reviewing court should evaluate a motion for summary disposition by considering only admissible evidence actually provided to the Court. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999). The opposing party must set forth specific facts. *Id*. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id*. "A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ." *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). A Court may not make findings of fact or weigh credibility when deciding a motion for summary disposition. *Skinner v Square D Co*, 445 Mich 153, 161; 516 NW2d 475 (1994).

B. Rules of Construction.

Clear and unambiguous language in a tax statute should be interpreted and enforced as written. *Ford Motor Co v Dep't of Treasury*, 496 Mich 382, 389; 852 NW2d 786 (2014). When tax imposition statutes are construed, however, any ambiguities are resolved in favor of the taxpayer. *Int'l Business Machines v Dep't of Treasury*, 220 Mich App 83, 86; 558 NW2d 456 (1996). Moreover, the Michigan Supreme Court has held that "[t]ax collectors must be able to point to such express authority so that it may be read when it is questioned in court." *In re Dodge Bros*, 241 Mich 665, 669; 217 NW 777 (1928).

III. STATEMENT OF FACTS AND LEGAL BACKGROUND

A. Facts.

Minnesota Limited's brief is supported by (1) the affidavit of Christopher Leines, former shareholder, President and CEO of Minnesota Limited ("Leines Aff"), attached as Appellant's App. No. 4; (2) the affidavit of Bradley A. Hirsch, ("Hirsch Aff"), attached as Appellant's App. No. 5; (3) the deposition testimony[1] of Christopher Leines, attached as Appellant's App. No. 6 ("Leines Dep"); (4) the deposition testimony of Bradley A. Hirsch, attached as Appellant's App.

[1] Deposition testimony is cited as page:line or page:line to page:line.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

No. 7 ("Hirsch Dep"); (5) the deposition testimony of Lance Wilkinson, attached as Appellant's App. No. 8 ("Wilkinson Dep"); as well as other documentary evidence.

Minnesota Limited, an S-corporation, was a family owned Minnesota business with its headquarters in Big Lake, Minnesota. The Company was started in 1966 by Reuben Leines, the father of Christopher Leines and Paulette Britzius. Leines Dep 59:1-60:14. The Company constructed oil and gas pipelines and performed maintenance activities on the pipelines. *Id*. The pipelines were constructed for the Company's customers primarily for the transportation of natural gas, crude oil and refined petroleum products. First Amended Complaint ¶4; Appellant's App. No. 12. The Company also constructed pumping stations and tank farms for its pipeline customers. These services constituted the bulk of the Company's activities.

Reuben Leines was a hard worker who worked every day of the week. Leines Dep 59-:1-60:14. As a family business, all seven of the Leines siblings, including Chris and Paulette, had the opportunity to work in the family business. *Id*. Chris Leines began working for the company cleaning equipment when he was 14 years old. Leines Dep 7:23-8:12. Once he obtained his driver's license, he worked summers as a parts runner, delivering parts to work sites. *Id*. When Chris was 18, he worked during the summers as a laborer on the field construction crews. *Id*. In the early years, the Company had 20 to 30 employees. Leines Dep 59:8-23. By the time Chris and Paulette sold their shares in the Company, it had 500 to 700 employees. From the late 1970's to March 31, 2011 (when the Company was acquired by Vectren Infrastructure Services, Inc. ("Vectren")), the Company primarily performed its services in Minnesota and the upper Midwest (Wisconsin, Iowa, North and South Dakota). Leines Dep 59:8-21. Activities in these states constituted 50% - 70% of operations. Leines Dep 7:18-9:5. As the Company's customers expanded, the Company's operations also expanded, as it followed its customers and performed

RECEIVED by MCOA 12/7/2018 5:43:07 PM

its services in other states as needed. See, Appellant's App. No. 9, Offering Memorandum VEC000048-000143; Leines Dep 14:9-11. The company rarely performed work in Illinois or Michigan. *Id.*; Plaintiff's Response to Treasury's First Discovery Request, Appellant's App. No. 9, Response 7.

Chris obtained a degree in Civil Engineering. Leines Dep 7:9-17. After college, he worked for the company in various roles from Project Manager overseeing field work; to field engineer; and Supervisor of field crews. Leines Dep 7:18-9:5. Much of the Company's business is seasonal, as the excavation work necessary for pipeline construction and repair work cannot be performed when the ground is frozen. *Id.* In the winter months, when operations of the Company are minimal, Chris worked in the office where he prepared estimations for project bids. *Id.* In the mid-1990's, Chris became Vice President of Operations. His responsibilities included the day-to-day running of office operations, bid estimating, organizing resources, labor and equipment, dealing with clients, etc. *Id.* In 1998, Chris became President when Reuben retired. *Id.* At this point in time, the Company was equally owned by Chris and his sister, Paulette.

While the Company's headquarters and most of its facilities were in Minnesota, the Company had minor facilities in Wisconsin and Illinois. Plaintiff's Response to Treasury's Third Discovery Requests, Appellant's App. No. 10, Response 7. The Company did not have any facilities in Michigan. Appellant's App. No. 9, Response 5.

In July 2010, the Company was selected to work on a hazardous material clean-up project for Enbridge Inc., which operated a crude oil pipeline transportation system in Michigan. First Amended Complaint ¶8-9. The work was needed to clean up a crude oil spill that had occurred in the Kalamazoo River from a pipeline owned by Enbridge. *Id.* Enbridge hired a number of pipeline repair companies to work on the crude oil spill, including the Company. The Company brought

RECEIVED by MCOA 12/7/2018 5:43:07 PM

ten employees and five pieces of equipment into the state for the project. *Id*. The rest of the equipment needed was temporarily rented, and additional labor needs were temporary hires from the local union shop. *Id*. Appellant's App. No. 10, Response 7. At the end of the two-year project, the Company returned the rental equipment and the temporary employees were released. This contract it represented the largest contract the Company had ever performed in Michigan and the work was performed during the Company's off-season months. *Id*. Fortuitously, the project afforded the Company to earn revenue during the off-season. At the time of the Sale, the only Michigan work outstanding was the remainder of the Enbridge contract.

In the regular course of its business, the Company would sell its used and surplus business equipment, usually on an annual basis. From 2004 through 2010, the Company sold construction, transportation and office equipment it used in its business. Plaintiffs Supplemental Response to Treasury's First Discovery Requests, Appellant's App. No. 11, Response 5, VEC000379 to 000818. The number of assets sold during any given year ranged from ten to 346.[2] The Company regularly used an auction house to facilitate these sales. The Company also utilized the federal treatment afforded under IRC 1031, which allowed businesses and individuals to defer gain on the sale of equipment if they purchased replacement equipment.[3]

B. The Sale of the Company.

In early 2010, Chris and Paulette began to explore the sale of the Company. Leines Dep 16:12-23. Paulette, 14 years older than Chris, was experiencing significant health issues and

[2] Asset disposals were as follows: 2004 – 10 assets (VEC000431-000432); 2005 – 16 assets (VEC000435); 2006 – 27 assets (VEC000437); 2007 – 58 assets (VEC000499-000501); 2008 – 96 assets (VEC000536, 000570-000571); 2009 – 10 assets (VEC000607); and 2010 – 396 assets (VEC000641-000647). Appellant's App. No. 11, Tab H.

[3] Under IRC 1031, a taxpayer may defer tax on the gain from sales of certain assets, if the proceeds from such sales are used to purchase similar type assets.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

desired to leave the business. *Id*. Appellant's App. No. 10, Response 3. Together, the siblings determined that the best option for the family and the employees was to sell the Company. *Id*. The Company engaged a third party consultant, Greene, Holcomb and Fisher, to prepare an Offering Memorandum to help sell the business and solicit interest from prospective buyers. Offering Memorandum, Appellant's App. No. 9, VEC000048-000143; Leines Dep 19:4-20:10. As noted in the Offering Memorandum, the Company was recognized as one of the premier firms in the pipeline construction and services market and has built a strong reputation based on quality and safety since its founding in 1966. Appellant's App. No. 9 (Offering memo, p 1).

In response to circulation of the Offering Memorandum, the Company received several inquiries of interest, which led to two bids. Leines Dep 27:1-25. In March 2010, Chris and Paulette reached an agreement in principle to sell their shares to Vectren. *Id*. The sale of the Company represented thousands of hours of their family's hard work and perseverance over several decades. The value inherent in the Company represented the development of the employee work force, the high safety rating the company had obtained in a hazardous profession and the monetary worth the Company had created with their family legacy.

The sales transaction closed on March 31, 2011 (the "Sale"). Leines Dep 11:9-22; Appellant's App. No. 9; Purchase Agreement[4] at VEC000221-000378.

When Vectren acquired the Company it allocated the purchase price as follows: approximately $34.4 million was attributed to tangible assets (construction, transportation, and office equipment and certain buildings), approximately $22.8 million was attributed to intangible

[4] Under the terms of the Purchase Agreement, the sale transaction is governed by Minnesota law. The closing took place in Minneapolis, MN. Appellant's App. No. 9.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

RECEIVED by MCOA 12/7/2018 5:43:07 PM

assets[5], and approximately $16.6 million was attributed to goodwill that existed at the time of the Sale. Appellant's App. No. 9, KPMG Study, Schedule 1, VEC000172; Purchase Agreement VEC000221-000378.

C. Tax Reporting and the Department's Audit.

Chris and Paulette reported their gain on sale of their Company stock and paid federal and state income taxes due on the full amount of the gain. At Vectren's request, the siblings executed an IRC 338(h)(10) election to calculate their gain on the stock sale for federal tax income tax purposes as a deemed asset sale. Under this election, the entity whose stock is sold is "treated as transferring all of its assets" in a "deemed sale." Treas Reg 1.338(h)(10)-1(d). Both the governing IRC statutes and regulations clarify that the treatment is for a fictional asset sale. Treas Reg 1.388(h)(10)-1(d)(9).

The Company was required to file a short-period return from January 1 to the date of sale. The federal election did not impact the federal taxation of the S-Corporation because S-Corporations are not taxed at the federal level. For its MBTA filing, the Company included all of the income from the Sale in the tax base apportionable to Michigan (consistent with the federal treatment under IRC 338(h)(10) as a deemed sale of assets) and included all of the income from Sale of the Company's assets in the sales factor. The sales factor was determined by sourcing the assets based on their location at the time of the Sale. At that time, almost all of the assets were located outside of Michigan, except for approximately $268,000 in rental property. Appellant's App. No. 11, VEC000910-000913. Under the statute, this resulted in a sales factor of 14.99%.

[5] The intangible assets were valued as follows: $14,588,000 for customer relationship, $287,000 in backlog (work in process and/or committed to), $4,241,000 for the trade name, and $3,670,000 for the assembled workforce. Appellant's App. No. 9, KPMG Study, Sch 1, VEC 000172.

The Department audited the Company for the calendar tax year ending December 31, 2010 and the Short Year. Based on the audit, the Department adjusted the computation of the sales factor for the Short Year. The sales factor is generally expressed as a fraction, the numerator of which is sales in the state, and the denominator is sales everywhere.[6] The Department excluded all the revenue from the Sale from the sales factor. Appellant's App. No. 9, VEC000001-8. The removal of the Sale revenue from the sales factor increased the sales factor from 14.99% to 69.96% as depicted below. *Id*. While the Department characterized this adjustment as increasing the sales factor by 54.9711%, such increase was almost a 400% increase.

	As Reported	After Adjustment
Business Income Tax Base	54,626,089	54,771,651
Sales Factor Numerator	14,756,147	14,756,147
Sales Factor Denominator	98,465,632	21,093,137
Sales Factor	14.9860%	69.9571%
Apportioned Tax Base	8,186,266	38,316,659

As noted, the Department did not remove the gain from the Sale from the tax base apportionable to Michigan. *Id*. Instead, the Department apportioned the gain on the Sale to Michigan using the increased sales factor. *Id*. The Department did not assess any penalty at the conclusion of the audit. *Id*.

On April 20, 2016, the Department issued a Bill for Taxes Due (Intent to Assess) No. UO71593 assessing tax in the amount of $2,262,994, interest in the amount of $465,615.86. The Bill for Taxes Due added a penalty in the amount of $678,727.50 for a total purported amount due of $3,407,337.36.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[6] This fraction may also be expressed as a percentage, by dividing the numerator by the denominator.

D. The Taxpayer's Request for Alternative Apportionment.

On June 16, 2016, the Company timely requested penalty relief based on reasonable cause. Appellant's App. No. 9, VEC000029-38. On June 24, 2016, the Company timely requested the use of an alternative apportionment method under MCL 208.1309 for the Short Year ("the Letter Request"), Appellant's App. No. 12, Ex A to Plaintiff's First Amended Complaint. At the same time, the Company also requested an informal conference contesting all assessed amounts.

In the Letter Request, the Company explained its filing methodology and requested the use of an alternative apportionment methodology on the basis that the standard method was distortive and taxed extraterritorial values. The Company proposed several alternative apportionment methods for the Department's review and consideration. These included:

> 1. Include the gain from the Sale in both the taxable base and the apportionment formula, or
>
> 2. Consistent with the IRC 338(h)(10) election, treat the gain on the Sale as a sale of assets and apportion the gain based on the location of tangible assets, or
>
> 3. Report the gain on the Sale attributable to goodwill as allocable to the shareholder's state of residence and location of the Company's headquarters and adopt the audit adjustment for the gain attributable to other identifiable intangibles and tangible assets; or
>
> 4. Report the gain on the Sale using a historical 10-year average sales factor average; or
>
> 5. A combination or variation of any of the above as the Department deemed reasonable.

The Company proposed that income from pipeline activities for the Short Year should be taxed in accordance with the statutory formula; it was only the gain on the Sale that the Company proposed qualified for an alternative apportionment method. Appellant's App. No. 9, VEC000039.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

E. The Department's Denial of the Taxpayer's Request.

On December 14, 2016, Appellant provided additional supplemental information to support its request for alternative apportionment in response to the Department's request. Appellant's App. No. 9, VEC000039-000211. On July 8, 2017, the Department rejected the Company's request for alternative apportionment, improperly concluding that Appellant had not met the first part of the statutory test (existence of distortion). Based on this improper conclusion, the Department declined to review the proposed alternatives for reasonableness (the "Gursky Letter"), Appellant's App. No. 12, Ex B. to Plaintiff's First Amended Complaint. Under MCL 205.22 a taxpayer may appeal the decision of the Department to deny the alternative apportionment request.

On March 23, 2017, the Department issued a Bill for Taxes Due (Final Assessment) No. UO71593 (the "Final Assessment") assessing tax in the amount of $2,262,994, interest in the amount of $550,792.07 and penalty in the amount of $112,979.00 for a total purported amount due of $2,926,765.07. Appellant's App. No. 12, Ex C to Plaintiff's First Amended Complaint. Appellant filed this suit.

F. Proceedings at the Court of Claims.

The parties filed competing motions for summary disposition. The Court of Claims disagreed with Appellant's argument that the sale of stock in the Company was the business activity of the shareholders, and found that the gain was business activity of the Company. However, the Court of Claims failed to consistently apply this holding. The Court of Claims noted that the "sale was expressly reported to the shareholders as a sale of the S-Corp's assets," *Vectren v Dep't of Treasury*, unpublished opinion of the Court of Claims, issued August 14, 2018 (Docket No. 17-107-MT), p 5, Appellant's App. No. 1 and that "the §338(h)(1) election controls the

RECEIVED by MCOA 12/7/2018 5:43:07 PM

outcome of this case." *Id.* at 7. However, the Court of Claims failed to consistency apply this finding to both the determination of the tax base and the sales factor.

Further, the Court of Claims disregarded Count 1 of Plaintiff's First Amended Complaint, Appellant's App. No. 12, and failed to rule on the appropriate calculation of the sales factor while stating "while plaintiff generally frames its argument in this manner [that the apportionment formula as applied to the sale was out of all appropriate proportion to the business and activities conducted in Michigan], the crux of plaintiff's contention is really with the computation of its tax base." This misconstruction of Appellant's pleadings is further emphasized by the Court of Claims when it summarized ". . . this type of argument is not concerned with the result or constitutionality of the apportionment formula, but it is simply a disagreement with the computation of [Plaintiff's] tax base." *Id.* Appellant's request for alternative apportionment was summarily dismissed. *Id.* at 8.

Lastly, the Court of Claims found penalty abatement was not warranted, holding that Appellant had not satisfied its burden by a clear and convincing standard to demonstrate the Appellant exercised reasonable care and not willful neglect.[7]

Appellant filed a Motion for Reconsideration on September 4, 2018. The Court of Claims issued an Order denying Plaintiff's Motion for Reconsideration on September 7, 2018. *Vectren v Dep't of Treasury*, unpublished order of the Court of Claims, issued September 7, 2018 (Docket No. 17-107-MT); Appellant's App. No. 2.

[7] The Company's tax returns had been prepared by Lurie, LLP, a certified public accounting firm.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

G. Applicable Provisions of the Michigan Business Tax Act.

1. The MBT Base

Under the Michigan Business Tax (MBT) taxpayers are taxed on business income and gross receipts. MCL 208.1105(1) defines business income as:

> "Business income" means that part of federal taxable income derived from business activity. For a partnership or S corporation, business income includes payments and items of income and expense that are attributable to business activity of the partnership or S corporation and separately reported to the partners or shareholders.

Gross receipts are defined as "the entire amount received by the taxpayer as determined by using the taxpayer's method of accounting used for federal income tax purposes . . ." MCL 208.1111(1).

2. The Sales Factor.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in the state during the tax year and the denominator of which is the total sales of the taxpayer everywhere during the tax year. MCL 208.1303. Under MCL 208.1115(1) "Sale" or "sales" means, the amounts received by the taxpayer as consideration from the following:

> (a) The transfer of title to, or possession of, property that is stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily *for sale to customers in the ordinary course of the taxpayer's trade or business*. For intangible property, the amounts received shall be limited to any gain received from the disposition of that property.
>
> (b) The performance of services that constitute business activities.
>
> (c) The rental, lease, licensing, or use of tangible or intangible property, including interest, that constitutes business activity.
>
> (d) Any combination of business activities described in subdivisions (a), (b), and (c).

RECEIVED by MCOA 12/7/2018 5:43:07 PM

RECEIVED by MCOA 12/7/2018 5:43:07 PM

> (e) For taxpayers not engaged in any other business activities, sales include interest, dividends, and other income from investment assets and activities and from trading assets and activities. [Emphasis added.]

3. Request for Alternative Apportionment

The MBT contains an alternative apportionment provision to provide for relief from the statutory formula when such would result in gross distortion or result in unconstitutional taxation. MCL 208.1309 provides for alternative apportionment as follows:

> (1) If the apportionment provisions of this act do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the treasurer may require the following, with respect to all or a portion of the taxpayer's business activity, if reasonable:
>
> (a) Separate accounting.
>
> (b) The inclusion of 1 or more additional or alternative factors that will fairly represent the taxpayer's business activity in this state.
>
> (c) The use of any other method to effectuate an equitable allocation and apportionment of the taxpayer's tax base.
>
> (2) An alternate method may be used only if it is approved by the department.
>
> (3) The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer.

IV. ARGUMENT

A. The Court of Claims Erred When it Failed to Rule on Count I of Appellant's First Amended Complaint.

1. Appellant's Count I Properly Pled Unlawful Exclusion of Receipts From the Sale of Business Assets From the Calculation of the Sales Factor Under MCL 208.1115(1).

The Court of Claims erred by failing to address Appellant's properly pled, argued and supported position that the Department's calculation of Appellant's sales factor incorrectly excluded receipts from the sale of its business assets from the denominator of the sales factor. Appellant's App. No. 12, First Amended Complaint Count I. Issues raised in pleadings and argued before the court are properly preserved. *Peterman v Dep't of Natural Resources*, 446 Mich 177; 521 NW2d 499 (1994). A court considering a motion for summary disposition must fully and correctly address the relevant law and facts. *Bank of Am, NA v First Am Title Ins Co*, 499 Mich 74, 110; 878 NW2d 816 (2016) (reversing Court of Appeals judgment and remanding to the trial court for reconsideration of whether summary disposition under MCR 2.116(C)(10) where court misinterpreted the law and facts germane to plaintiffs' claim).

In Count I of the First Amended Complaint, Appellant properly alleged that the receipts from the sale of its business assets should be included in the calculation of the sales factor. Specifically, Appellant alleged:

> 36. If the gross receipts and income from the Sale are properly classified as derived from business activities of Plaintiff, then the Sale must be the sale of business assets.
>
> 37. Under MCL 208.1115(1), the sales factor includes all sales from either stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

> 38. Plaintiff's assets and intangible property are therefore considered to be business assets and therefore meet the definition of "sales" under MCL 208.1115 if the sale of the assets generates business receipts and income.
>
> 39. Receipts and income from the use of intangible property is also considered a "sale" under MCL 208.1115(1)(c).
>
> 40. Plaintiff's accrued value in the tangible and intangible property realized in the Sale occurred over its 52 year business history conducted from its headquarters in Minnesota. Accordingly, all receipts should be sourced to Minnesota. [First Amended Complaint ¶¶ 36-40].

Additionally, Appellant's prayer for relief requested that the court find that the Department's exclusion of the receipts from the sale of the business assets from the calculation of the MBT sales factor was improper. Appellant's App. No. 12, First Amended Complaint at 9. Both parties argued these claims in their briefs to the Court of Claims. 06/12/2018 Plaintiff's Brief at 25-26 (arguing for the inclusion of the receipts from sales of the business assets in the sales factor); 07/3/2018 Plaintiff's Opposition to Department's Motion for Summary Disposition at 12-13 (same); 07/10/2018 Plaintiff's Reply to Department's Brief in Opposition to Plaintiff's Motion for Summary Disposition at 5-6 (same); 06/12/2018 Department's Brief at 15-16 ("Plaintiff seeks to treat the sale of MLI to Vectren as a "sale" for purposes of the sales factor denominator"); 07/3/2018 Department's Opposition to Plaintiff's Motion for Summary Disposition at 7-9 (same); 07/10/2018 Department's Reply to Plaintiff's Brief in Opposition to Plaintiff's Motion for Summary Disposition at 4-5 (same).

The Court of Claims erred by failing to address Appellant's properly pled, argued and supported position that the Department's calculation of sales for the sales factor incorrectly excluded receipts from the sale of its business assets. Appellant's App. No. 12, First Amended Complaint Count I. In stark contrast to Appellant's pleadings and argument, the Court erred when

RECEIVED by MCOA 12/7/2018 5:43:07 PM

it stated that "Plaintiff does not challenge the decision of the auditor to remove the gains on the sale from the sales factor denominator." Appellant's App. No. 1, *Vectren*, unpub op at 2 fn 1.

In addition, the Opinion acknowledges that Appellant contends that the apportionment formula (comprised solely of the sales factor) is incorrectly calculated by the Department but then stated "while plaintiff generally frames its argument in this manner, the crux of the plaintiff's contention is really with the computation of its tax base." *Id.* at 8. This statement is incorrect[8], and underscores the Court's misunderstanding of Count I, requiring reversal of its decision. See *WMS Gaming, Inc v Dep't of Treasury*, 274 Mich App 440, 442; 733 NW2d 97 (2007) (reversing trial court's decision granting Department's motion for summary disposition where the court "fundamentally misunder[stood] the nature of the use tax and its application . . . "). The additional tax assessed by the Department is a product of the tax base multiplied by the sales factor. Appellant's Count I properly pled a challenge to the calculation of sales and the sales factor, not the tax base. As the court must consider a claim in its entirety, see *In re Bradley Estate*, 494 Mich 367; 835 NW2d 545 (2013), the Court of Claims erred by failing to address Appellant's properly pled, argued and supported position that the Department's calculation of sales for the sales factor incorrectly excluded receipts from the sale of its business assets. Appellant's App. No. 12, First Amended Complaint Count I.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[8] Indeed, as shown in the Audit Report of Findings p 5, Appellant's App. No. 9, VEC000005 the adjustment to the Business Income Tax Base was merely for $145,532. The assessed increase in tax of $2,388,963 was due to the elimination of $77,372,495 of sales revenue from the sales factor denominator. *Id.* at p 3.

2. Appellant's Count I Properly Pled That the Exclusion of Sale Receipts From the Calculation of the Sales Factor Results in Unlawful Statutory and Constitutional Violations.

In Count I of the First Amended Complaint, Appellant alleged that alternative apportionment was appropriate under MCL 208.1309 and that the use of the state's statutory formula results in the taxation of value earned, and activity conducted, outside of the state's borders in violation of the Commerce and Due Process Clauses. First Amended Complaint ¶¶ 31-35; 51-55. Both parties argued this issue (see, e.g. 06/12/2018 Plaintiff's Brief at 25-26; and 06/12/2018 Department's Brief at 18-19; 20-23). Thus, the statutory and constitutional challenges to the calculation of the sales factor have been preserved and should have been ruled on by the Court below. Instead, the Court mischaracterized Appellant's argument as a merely a disagreement with the Department's tax base even though both parties argued and presented facts on the calculation of the sales factor and the constitutional limitations as applied to Minnesota Limited. Appellant's App. No. 1, *Vectren*, unpub op at 9. By failing to consider Appellant's pleadings, argument presented and other evidence, including affidavits and deposition testimony, the Court of Claims actions constitute clear error.

3. The Court of Claim's Failure to Address Arguments Which Were Properly Pled is Plain Error and Requires Reversal or Remand.

When ruling on a motion for summary disposition, the Court must address all properly pled arguments and must view the pleadings, affidavits and evidence submitted by the parties, including inferences arising therefrom, in the light most favorable to the party opposing the motion. *Maiden*, 461 Mich at 120. The Court of Claim's grant of summary judgement on all counts constitutes clear error in the face of its failure to address both parties' arguments on Count I issues of whether the calculation of Appellant's sales should include receipts from the sale of its business assets, whether alternative apportionment was appropriate under MCL 208.1309 and whether the use of

RECEIVED by MCOA 12/7/2018 5:43:07 PM

RECEIVED by MCOA 12/7/2018 5:43:07 PM

the state's statutory formula results in the taxation of value earned, and activity conducted, outside of the state's borders in violation of the Commerce and Due Process Clauses. This Court should address these issues or remand the issue to the Court of Claims.

B. The Sale of Stock by the Individual Shareholders is Business Activity of the Shareholders, Does not Constitute Business Activity of the S-Corporation, and is not Subject to Tax at the S-Corporation Level.

1. The Receipts Paid to the Siblings are Taxable Receipts of the Siblings, and not Taxable Receipts of the S-Corporation Under MCL 208.1105(2).

When interpreting a statute, effect must be given, if possible, to every word, sentence, and section. *Dussia v Merman*, 386 Mich 244; 191 NW2d 307 (1971). Under the MBTA, an S-Corporation's business income is only the portion of federal taxable income that is derived from the business activity of the S-Corporation. Income not originating from the S-Corporation's business activity, even if a part of federal taxable income, is excluded. Specifically, MCL 208.1105(2) states:

> "Business income" means *that part of federal taxable income* derived from business activity. For a partnership or S corporation, business income includes payments and items of income and expense that are *attributable to business activity of* the partnership or *S corporation* and separately reported to the partners or shareholders. [MCL 208.1105(2), emphasis added].

The plain language of the statute recognizes that taxable business income is limited to only a portion of federal taxable income and specifically, *only that portion that derives from the S-Corporation's business activity*. The Court below failed to apply this statutory limitations, treated all federal taxable income as from business activity of the S-corporation, which rendered the statutory limitation nugatory.

The sale of stock by the Leines siblings' was not the business activity of the Company nor is it attributable to business activity of the Company. "Business activity" is defined as a "transfer of legal or equitable title". MCL 208.1105(1). There is no dispute that Minnesota Limited did not sell its own stock and was not a party to the sale transaction. Even under the broad definition of "business activity" in MCL 208.1105(1), the sale of stock by the siblings is not a sale by, nor the business activity of, the actual S-Corporation.

Nor can the stock sale be "attributable" to the business activity of the Company. The Department acknowledges that the stock sale was conducted due to Paulette's health issues. 6/12/18 Department's Brief at 3. These health issues are not "attributable to" or "resulting from" or "originating in" any business activity of the Company. In fact, the business activity of the Company continued uninterrupted after the siblings' stock sale. There is no reasonable basis to find that a sale of stock by the shareholders, in a transaction that the S-Corporation was not a party to and received no proceeds from, somehow "results from" the S-Corporation's participation in the transaction.

The Legislature could have included a requirement for an S-Corporation to follow the federal tax accounting fiction of treating Chris and Paulette's sale of stock as an asset sale in the definition of business income, (as it did for the definition of gross receipts under MCL 208.1111(1), but it did not. The definition of "gross receipts" requires a taxpayer to determine gross receipts "by using the taxpayer's method of accounting used for federal income tax purposes." MCL 208.1111(1). The definition of "Business Income" in the MBTA does not contain similar language. Clear and unambiguous language in a tax statute should be interpreted and enforced as written. *Ford Motor Co*, 496 Mich at 389. When the Legislature has expressly included language in one part of a statute and omitted this same language elsewhere in the statute, this inclusion and omission should be construed as intentional. *Book-Gilbert v Greenleaf*, 302

RECEIVED by MCOA 12/7/2018 5:43:07 PM

Mich App 538, 541-542; 840 NW2d 743 (2013). The business income of the Company is only the portion of federal taxable income arising from the Company's service activities.

Recently, this Court has held that the Legislature's inclusion of a requirement to use the federal method of accounting to determine taxable income in one provision but the absence of similar language in another part of the statute must be viewed as intentional, so that a federal method of accounting is not applicable where omitted. *Id.* at 541-42. The omission of the requirement to determine items of income and expense under the taxpayer's federal method of accounting requires that only those items of income and expense that derive from the S-Corporation's business activity are includible. Construing the definition of business income in favor of the taxpayer[9] requires that any income and expense from the shareholders' sale of stock is income and expense from the shareholders' business activity, and is not includible in the business income of the S-Corporation. The business income of the Company for the Short Year must exclude items of income and expense relating to the Sale.

2. The Federal Income Tax Election Made by the Siblings and the Purchasing Corporation is not Business Activity of the S-Corporation.

The federal tax election to pertaining to the federal calculation of gain on the siblings' sale of stock does not transform the siblings' stock sale into the business activity of the S-Corporation. Under the Stock Purchase Agreement, the payment for the stock was sent to accounts of the siblings, not to Minnesota Limited. 6/12/18 Plaintiffs' Brief Ex 6, p.2, at VEC 000227. The federal election does not change the fact that the monies were paid by Vectren directly to the siblings.

[9] When tax imposition statutes are construed, any ambiguities are resolved in favor of the taxpayer. *Int'l Bus Machines*, 220 Mich App at 86.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

The gain on the Sale did not escape taxation. The siblings paid Federal and state taxes as required.[10] While federal gain is calculated based on "the deemed sale" not an actual sale, both the governing IRC statutes and regulations make it clear that the federal tax accounting is for a fictional asset sale when utilizing words such as "treated as having sold" and "treated as having purchased" (IRC 338(a)(1) and (2)) and the S-Corporation whose stock is sold is "treated as transferring all of its assets" in a "deemed sale." Treas Reg 1.338(h)(10)-1(d). Indeed, the regulations further provide, "No provision in section 338(h)(10) or this section shall produce a Federal income tax result under subtitle A of the Internal Revenue Code that would not occur if the parties had actually engaged in the transactions deemed to occur because of this section." Treas Reg 1.388(h)(10)-1(d)(9). Thus, a federal tax election cannot change the essence of the transaction. None of these federal provisions control to supersede the definition of business activity under the MBTA, nor transform the siblings' stock sale into an actual asset sale and business activity by the S-Corporation.

While business activities may not have to occur in the regular course of a taxpayer's activities to constitute business income, they must still be the activities *of the taxpayer*. The S-Corporation was not a party to the Sale, did not receive income from the Sale, did not transfer any assets in the Sale, and thus, the Sale was not its business activity. None of the income or expenses from the siblings' stock Sale are includible in the business income of the S-Corporation under the plain language of MCL 208.1105(2).

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[10] Minnesota Limited also filed state returns in Minnesota and in twenty other states for the Short Year in 2011.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

C. In the Alternative, Consistent Application of the Court of Claim's Determination That the Sale of Stock was the Sale of Business Assets (and Business Activity of) the S-Corporation Requires Inclusion of the Sale Receipts in the Sales Factor.

Accepting arguendo, the Court of Claims' holding that the Sale was a sale of the Company's business assets, a consistent application then requires inclusion of the receipts from the Sale be included in computing the sales factor. "Sales" are defined to include property held by the taxpayer primarily *for sale to customers in the ordinary course of the taxpayer's trade or business*. MCL 208.1115. The record demonstrates the Company regularly sold its construction, transportation, and office equipment on an annual basis as a routine part of its business activities. See fn 2 herein and accompanying text; Appellant's App. No. 1, *Vectren*, unpub op at 7. The Court of Claims held the "sale was expressly reported to the shareholders as a sale of the S-Corp's assets" Appellant's App. No. 1 at 5, and "the §338(h)(1) election controls the outcome of this case." *Id.* at 7. Consistent application of this holding *to both the tax base and the sales factor* requires that the sales factor include the receipts from the Sale attributable to the Company's sale of assets. The Court erred when it failed to consistently apply its holding to the calculation of the sales factor.

The record establishes the location of the assets at the time of the Sale. The Company's approximately $34.4 million of tangible assets were located in multiple states[11] with $268,000 of personal property in Michigan at the time of the sale. Appellant's App. No. 11, VEC000910-000913. The Department acknowledged that the Company had sales of business property, yet eliminated such sales from the sales factor in the Short Year. Audit Report of Findings, p3, Appellant's App. No. 9, VEC000003. The Company's intangible assets and goodwill were located primarily Minnesota, its state of corporate domicile. Accordingly, the sales factor calculation of

[11] Appellant's App. No. 10, Response 7; Appellant's App. No. 4 ¶¶27 and 28.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

14.99% reported by the Company which included the receipts from the Sale in the sales factor based on the location of the assets at the time of the sale is proper and should have been upheld by court below. Failure by the Court of Claims to consistently apply its holding to all the properly pled counts constitutes error, and treating the Sale as an asset sale solely for purposes of the tax base, and not for purposes of the sales factor, is inconsistent, results in an unharmonious result and is unlawful.

D. The Department Unlawfully Denied the Company's Request for Alternative Apportionment Under MCL 208.1309 When the Company Proved That the Statutory Apportionment Formula Distorted the Business Activity Actually Conducted in Michigan.

1. The Statutory Requirements to use an Alternative Apportionment Method.

The MBTA, similar to alternative apportionment provisions codified by 45 other states that impose a corporate income tax, provides for relief from the statutory formula when such formula *as applied to a set of particular facts and circumstances* would result in gross distortion or unconstitutional taxation. MCL 208.1309. The need to permit an alternative formula is necessary to satisfy the U. S. Supreme Court constitutional requirements that an apportionment formula must be fair, cannot be inherently[12] or intrinsically[13] arbitrary, and that the "factor or factors used in the apportionment must actually reflect a reasonable sense of how income is generated."[14] See Section F herein.

In order to use an alternative apportionment method, a taxpayer must prove:

> (3) The apportionment provisions of this act shall be rebuttably presumed to fairly represent the business activity attributed to the

[12] *Underwood Typewriter Co v Chamberlain*, 254 US 113, 121; 41 S Ct 45; 65 L Ed 165 (1920).

[13] *Hans Rees'*, 283 US at 133.

[14] *Container Corp v Franchise Tax Bd*, 463 US 159, 169; 103 S Ct 2933; 77 L Ed 2d 545 (1983).

> taxpayer in this state, taken as a whole and without a separate examination of the specific elements of either tax base unless it can be demonstrated that the business activity attributed to the taxpayer in this state is out of all appropriate proportion to the actual business activity transacted in this state and leads to a grossly distorted result or would operate unconstitutionally to tax the extraterritorial activity of the taxpayer. [MCL 208.1309].

Thus, the Michigan statute contains a two-part test. First, the taxpayer must show that the use of the statutory formula does not fairly represent the extent of the taxpayer's business activity in the state. This burden may be met by showing that the business activity attributed to the state by the use of the statutory formula is "out of all appropriate proportion to the actual activity transacted in the state" or, by showing the use of the statutory formula would "operate unconstitutionally" to tax activity of the taxpayer conducted outside of the state.[15] Once the taxpayer has demonstrated gross distortion or extraterritorial taxation, the second part of the test requires that the alternative method proposed by the taxpayer be reasonable. The Department is obligated to review the alternative formula for reasonableness. If the alternative is reasonable, the alternative method is permitted under the statute.[16] Despite the statutory mandated, the Department never approved a request for alternative apportionment. Appellant's App. No. 15, Request for Admission No 5.

The Michigan Legislature included the use of alternative apportionment in the MBTA with the acknowledgment and intent that there would be circumstances when the statutory formula as applied to a taxpayer's specific facts and circumstances resulted in either gross distortion by taxing

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[15] The evidentiary standard used for requests for alternative apportionment is "by clear and cogent evidence". See, *Moorman Mtg Co v Bair*, 437 US 267, 274; 98 S Ct 2340; 57 L Ed 2d 197 (1978); Appellant's App. No. 8, Wilkinson Dep 34:25-35:2.

[16] Although the use of alternative apportionment has been codified in Michigan since 1976 (under the Single Business Tax at MCL 208.69), in identically the same verbiage as that contained at MCL 208.1309, the Department has never established any written metrics to evaluate requests under this provision. See, Appellant's App. No. 15, Request for Admission No 5; Appellant's App. No. 8, Wilkinson Dep 15:4-23.

income out of all appropriate proportion, or when such formula operated unconstitutionally to tax extraterritorial income.[17] This is one of those rare circumstances.

2. What is Distortion?

The standard for "gross distortion" was explained by the U. S. Supreme Court in *Hans Rees'*, 283 US 123 where the taxpayer was engaged in tanning, manufacturing and selling leather products. The manufacturing plant was located in North Carolina, while sales and leather finishing was performed in New York. The North Carolina statutory formula yielded an apportionment percentage ranging between 66% - 85% during the years at issue.[18] The company offered evidence that its income was derived from three distinct sources: (1) profit on the purchases of skins, (2) profit from manufacturing operations, and (3) profit on its sales. The only activities conducted in North Carolina were manufacturing and wholesale sales. The company substantiated that only 17% of the profit was from the activities which were properly sourced to North Carolina.

The Court recognized that the taxing methodology employed by a state may generally be appropriate but can operate "unreasonably and arbitrarily, in attributing to [a State] a percentage of income out of all appropriate proportion to the business transacted . . . in that state" in certain factual circumstances. *Id.* at 135. The Court concluded that distortion may be identified by "a percentage of income out of all appropriate proportion to the business transacted by the appellant in that state." *Id*. at 135. The Court declared:

> But the fact that the corporate enterprise is a unitary one . . . does not mean that for the purpose of taxation the activities which are conducted in different jurisdictions are to be regarded as

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[17] *Hannay v Transp Dep't*, 497 Mich 45, 57; 860 NW2d 67 (2014) ("[C]ourts must give effect to every word, phrase, and clause in a statute and avoid an interpretation that renders nugatory or surplusage any part of a statute.")

[18] At the time, North Carolina's statutory apportionment formula was a single factor based on real and personal property located in the state. *Id.* at 129.

> "component parts of a single unit" so that the entire net income may be taxed in one state regardless of the extent to which it may be derived from the conduct of the enterprise in another state. [*Id.* at 133.]

The Court held that North Carolina's statutory apportionment method operated on the facts before it to "reach profits which are in no just sense attributable to the transaction within its jurisdiction" *Id.* at 134, and invalidated the application of North Carolina's single-factor apportionment formula on the basis of the taxpayer's evidence that the income attributed to the state by the formula was grossly in excess of that derived from within the state.[19]

In *Norfolk & Western Ry Co v Missouri State Tax Comm'n,* 390 US 317; 88 S Ct 995; 19 L Ed 2d 1201 (1968)*,* the U.S. Supreme Court again addressed what constitutes gross distortion. Missouri's statutory formula required that railroad rolling stock be apportioned to the state based on the proportion of the taxpayer's railroad track miles in Missouri relative to the taxpayer's railroad track miles everywhere. *Id.* at 323. The taxpayer maintained most of its equipment in Virginia, West Virginia and Kentucky, while it leased the equipment of another railroad company that engaged in a substantial amount of business in Missouri. *Id.* Using the statutory apportionment formula, the state determined the taxpayer owed tax on approximately 8.2824% of all its rolling stock. *Id*. at 327. The taxpayer submitted evidence that the rolling stock in Missouri on the assessment date amounted to only 2.71% of all the taxpayer's rolling stock, and that the statutory method produced a distortion of 165%. *Id.* The Court agreed and found the statutory apportionment formula yielded "a grossly distorted result" and that the state was required to "make the accommodations necessary to assure that its taxing power is confined to its constitutional

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[19] The Court held that the statutory formula resulted in a distortion of 250% based on the difference between the statutory method of apportionment and the taxpayer's proposed alternative method.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

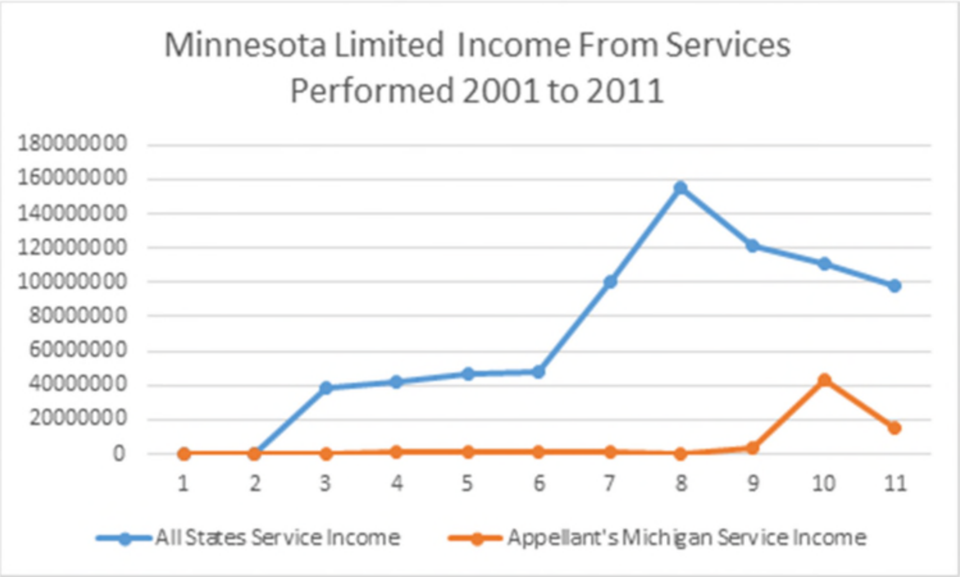
limits." *Id.* at 329. The Court further held that when a taxpayer comes forward with strong evidence proving the formula yields a grossly distorted result, the state cannot ignore the distortion. *Id*.

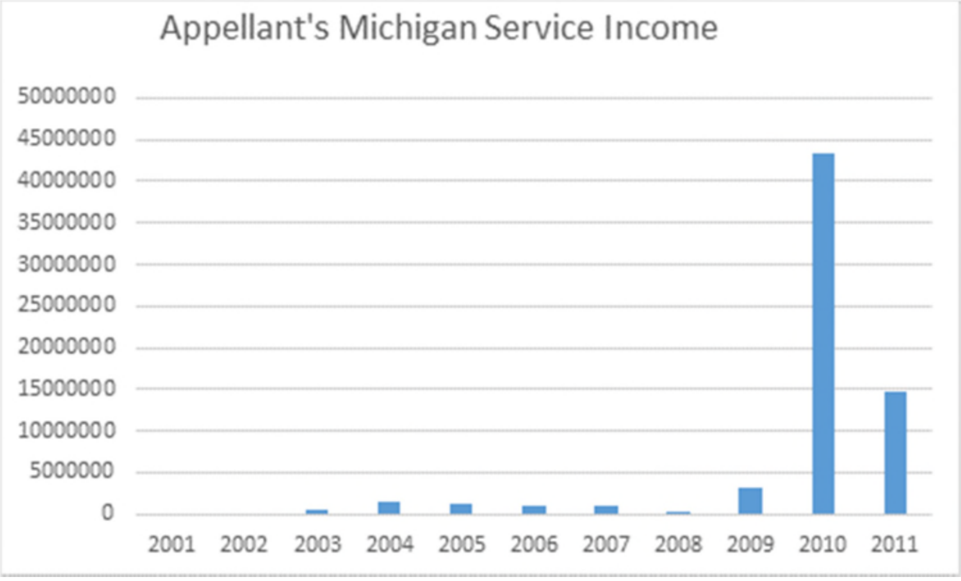
3. The Evidence Proved Distortion Resulted When Using Three Months of Sales Activity to Apportion not Only the Gain From Services During Those Three Months, but Also the Long Term Capital Gain From the Sale of Stock of the Family Business.

The Department's exclusion of 100% of the receipts of Chris and Paulette's Sale from the calculation of the sales factor while including such receipts in the apportionable tax base results in both statutory and unconstitutional distortion by attributing to Michigan a percentage of gain on the Sale "out of all appropriate proportion to the actual business" transacted by the Company in the state. While the statutory formula may validly be applied to income from services performed by the Company during the Short Year, the application of the statutory formula *to apportion the entire gain on the Sale* is grossly distortive, as demonstrated by comparing the statutory sales factor calculation to the statutory sales factor with a consistent inclusion of sales of business assets in the sales factor.

Such distortion is also evidenced by the historical activity in Michigan in comparison to Minnesota and other states. What did the Company do in Michigan during the first three months of 2011? The record evidences that from January 1, 2011 - March 31, 2011, the Company performed environmental clean-up activities on the Enbridge spill. These activities, while conducted in the ordinary course of its business, were not of the nature that the Company historically engaged in. Leines Aff 29; Leines Dep 39:9-12 and 51:14-21. Particularly as such activities were being conducted during the coldest winter months, when the Company's regular activities could not be conducted. Leines Aff 24; Leines Dep 8:22 to 9:5.

The chart below graphically depicts the resulting distortion when relying on three months of sales to apportion the gain on the sale.[20]





Under the statutory formula, the Department computed the sales factor to be 69.96% (14,756,147/21,093,137). The sales factor increased dramatically as the Company could not

[20] Sales data from Appellant's App. No. 9, Responses Nos. 7 and 19.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

perform its regular pipeline activities in other states during the cold winter months, and thus, the proportion of activity in Michigan to activity everywhere was skewed. The activities performed in the state during these three month in comparison to 12 months of activity, was only a minor portion of the Company's operations. Leines Dep 59:8-21. Using 69.96% to apportion not only the revenue from the performance of services, but also to apportion the gain from the Sale of the Company which was primarily derived from goodwill and other intangibles developed over the history of the Company, resulted in apportioning income out of all appropriate proportion to the actual activity conducted in the state during the Short Year.[21]

Simply, the Company recognized only $25,000 of profit from the pipeline services performed in Michigan during the Short Year, yet the application of the statutory formula *apportioned more than $38 million of the gain on the Sale to the state, $30 million of which was acknowledged by both Buyer and Seller as attributable to intangible assets and goodwill which had arisen over the 52-year history of the Company*. This level of distortion due to the application of a 69.96% sales factor overcomes the statutory presumption contained in the statute as acknowledge by the seminal U.S. Supreme Court cases, and Appellant should have been permitted to use an alternative method of apportionment. [22]

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[21] Or any other year of the Company's history. Indeed, a 10-year review of the Company's Michigan sales factor indicates the factor never exceeded 18.52%, See Appellant's App. No. 9, Response No 7, and on average was 6.782% of its sales.

[22] This distortion is further acerbated as the statutory formula does not provide for inclusion of the Sale proceeds in the sales factor. Appellant's App. No. 14, ¶9.15, p 9-165.

4. The Evidence Proved the Statutory Formula Resulted in Extraterritorial Taxation.

The statutory formula, which used only three months of service activity to apportion not only the income from services performed in the state, but also the long term capital gain from the sale of the stock in the family business, resulted in extraterritorial taxation.

A basic principle of state taxation is that a state may not tax value earned outside its borders. *Allied-Signal, Inc v Director*, 504 US 768; 112 S Ct 2251; 119 L Ed 2d 533 (1992).[23] The Due Process Clause demands that there be "'some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax,' as well as a rational relationship between the tax and the 'values connected with the taxing State.'" *MeadWestvaco Corp v Illinois*, 553 US 16; 128 S Ct 1449; 170 L Ed 2d 404 (2008) (citations omitted). The Commerce Clause "forbids the States to levy taxes that discriminate against interstate commerce or that burden it by subjecting activities to multiple or unfairly apportioned taxation." *Id*. The "broad inquiry" under both requirements is "whether the taxing power exerted by the state bears fiscal relation to protection, opportunities and benefits given by the state." *Id*. at 25.

The use of the statutory formula resulted in extraterritorial taxation. As noted supra, the gain on the Sale was derived from the disposition of tangible assets, intangible assets and goodwill, the majority of which was created from the efforts of the Leines family over the life of the Company. Offering Memorandum, Appellant App. No. 6, Uniform Division of Income for Tax Purposes Act (UDITPA), § 6(a), 7. Under MCL 208.1303, sale revenue from contracts performed in other states and in retained earnings is apportioned to the state where the contract was

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[23] The Due Process Clause of the Fourteenth Amendment and the Commerce Clause of the U.S. Constitution mandate that a state may not "tax value earned outside its borders". *ASARCO Inc v Idaho State Tax Com*, 458 US 307; 102 S Ct 3103; 73 L Ed 2d 787 (1982).

performed. MCL 208.1303. Gain on the sale of business assets is sourced to location of the asset at the time of the sale. MCL 208.1305(1). The Company had been in business for over 52 years at the time of the Sale, and the gain from the tangible and intangible assets and accumulated goodwill was generated over these 52 years. Hirsch Dep 20:5 to 23:2 (KPMG valuation report values the goodwill, which is comprised of customer relationships, backlog, trade name and assembled workforce); Appellant's App. No. 9, Offering Memorandum (Economic report attributing economic value of S-Corporation primarily to Minnesota) VEC000046-000142.

Gain on goodwill is normally allocated to a company's headquarters where the activities that create goodwill are performed.[24] Use of the statutory formula to apportion 69.96% of the goodwill developed over the 52 year history of the Company to Michigan is out of all appropriate proportion to the actual business activity conducted in the state. MCL 208.1309(3); *Hans Rees'*. None of gain represented by these attributes is subject to tax by the State of Michigan, and, as proven by the Company and supported by the record, the blind application of the statutory formula result in extraterritorial taxation.

E. The Company's Proposed Alternative Apportionment Methods Were Reasonable, Constitutionally Correct and Should Have Been Permitted.

1. The Proposed Alternatives.

In its Request, the Company proposed three different alternatives, all of which were reasonable and constitutionally correct, either individually, or in a combination thereof.[25] The

[24] Appellant's App. No. 5, Hirsch Aff¶19, Ex A, Proposed Revenue Admin Bull 2018-XX, *Income from Sale of a Business Under Part 1 of the Michigan Income Tax Act*, Appellant's App. No. 13, p 4.

[25] Appellant's App. No. 12, Plaintiff's First Amended Complaint Ex A; Appellant's App. No. 9 at VEC 000039-000045.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

Court of Claims failed to address the proposed alternatives and this Court should find such alternatives to be reasonable, or remand back to the Court of Claims for a factual determination.

The alternatives presented were:

1.) Include the tangible assets in the sales factor which would result in a sales factor of 14.99%. This aligns to the treatment of the Sale as a "deemed asset sale" for federal income tax purposes, and is also consistent with the Company's annual sales of business assets; or,

2.) Use the statutory formula to apportion receipts from services performed in the state during the Short Year (a sales factor of 69.96%), and allocate the gain on the Sale based on the location of the intangible and tangible assets at the time of sale; or,

3.) Use the statutory formula to apportion receipts from services performed in the state during the Short Year (a sales factor of 69.96%), and use the prior 10-year average to apportion the gain on the Sale (a sales factor of 6.782%).

2. Each Proposed Alternative is Reasonable and the Use of a Proposed Alternative Should be Permitted.

Each of the proposed alternatives are reasonable, and meet the statutory requirements. Starting with the first alternative, if, as the Court of Claims held, the receipts from the Sale are sales from business activity of the S-Corporation, then such receipts must arise from the sale of business assets as property "held for sale in the ordinary course of business" pursuant to MCL 208.1115. The asset sales fall squarely within the definition of "sales" and should be included in the sales factor and sourced to the location of the asset when sold. MCL 208.1305(1).

The sales factor includes all sales from:

> "stock in trade or other property of a kind that would properly be included in the inventory of the taxpayer if on hand at the close of the tax period or property held by the taxpayer primarily for sale to customers in the ordinary course of the taxpayer's trade or business." [MCL 208.1115].

The record evidences that the Company regularly sold its tangible assets for each year since 2004, and reported these sales for federal income tax purposes. See fn 2 herein and accompanying text; Appellant's App. No. 11, Response, No. 5, VEC000001-000008; 00185-00211; 000379-000818.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

These were not infrequent or isolated casual transactions that were excludible from business income. As these business assets were regularly sold in the ordinary course of business, these assets are property "held for sale in the ordinary course of business," fall within the definition of "sales" under MCL 208.1115, and should be sourced to the location of the asset when sold. MCL 208.1305(1). If sales of the assets of the business constitute business income includible in the base, then inclusion of these assets in the apportionment factor is reasonable, and reasonably apportions the gain on the Sale assets to the State of Michigan based on the proportion of the assets located in Michigan at the date of the Sale.

The second alternative is also reasonable. This alternative would apportion Short Year receipts from pipeline services using the statutory formula, while apportioning gain from the Sale to the location of the tangible and intangible assets. Tangible assets would be apportioned based on their location at the date of the Sale, while intangible assets, such as goodwill, would be sourced to the state of corporate domicile (which is also Chris and Paulette's state of residence).

Indeed, recent draft guidance issued by the Department acknowledges that goodwill should be allocated to the state of corporate headquarters. Revenue Admin Bull 2018-XX, circulated by the Department for practitioner review and comment, notes: "The sale of the business may include goodwill, which is the value in excess of the intrinsic income-producing value of the other business assets that are part of sale. Goodwill is an intangible asset . . . Because it is difficult to identify the income-producing activity in each state and because the company headquarters tends to be where the company's brand is created, developed, monitored and protected, the greater proposition of the

RECEIVED by MCOA 12/7/2018 5:43:07 PM

cost of performance is generally in the state where the company is domiciled." *Id.* at p 4.[26] Goodwill was a significant asset held by Minnesota Limited, and, as discussed herein at p 21, is properly allocated to the location of the corporate headquarters. Additionally, as the Sale was a sale of shares held by the siblings, it is also reasonable to source the gain attributable to goodwill to the state of residence of Chris and Paulette, which was Minnesota. Indeed, this is how such gain was reported on the tax returns of the Company, and the shareholders.[27]

The third alternative is also reasonable. This alternative would apportion the Short Year receipts from services using the statutory formula, while apportioning gain from the Sale based on a 10-year average. This average is a reasonable estimation of what a full year's sales factor would have been, had there not been a Short Year. This proposal is also reasonable as it apportions the gain on the Sale to the state in a manner consistent with the Company's presence in the state over the past decade prior to the Sale.

The Company met its burden of demonstrating that the statutory formula as applied to these particular facts and circumstances results in distortion. An alternative method is therefore warranted under MCL 208.1309(1) and is necessary to effectuate an equitable, constitutional allocation of income. Each of the alternative methods are reasonable because (1) they recognize

RECEIVED by MCOA 12/7/2018 5:43:07 PM

[26] Revenue Admin Bull 2018-XX, attached as Appellant's App. No. 13. *Id.* at p 4. While the context of this guidance discusses the use of the cost-of-performance method of sourcing, the acknowledgement of what is goodwill and how it is earned is applicable here.

[27] Additionally, if gain on goodwill is treated as gain of the Company, income from a business' sales of intangible property would also be considered a "sale" under MCL 208.1115(1)(c). As the Company had its corporate domicile in Minnesota and the purchaser, Vectren, was located in Indiana, it would also be reasonable to treat the sales of intangible assets, including goodwill, to either Indiana (the location of the customer, pursuant to MCL 208.1305(10)), or to the location of the Company's corporate domicile (pursuant to MCL 208.1311).

that net income from operational activity is properly apportioned under the statutory formula, while intangible gain earned over decades is not properly taxed under the statutory formula; (2) the activities associated with the creation of goodwill over decades primarily occurred outside of the state at the Company's corporate domicile, and (3) they acknowledge that the State is permitted to tax *a reasonable portion* of the gain on the Sale, but not an extraordinary amount.

As all of the alternative proposed were reasonable, the Company met the second part of the alternative apportionment test and alternative apportionment should be ordered by this Court, or should be remanded back to the lower court for review.

F. The Failure to Include Sales of Business Assets in the Sales Factor When the Sales are Included in the Tax Base Grossly Distorts the Income Apportioned to Michigan in a Manner That is Unconstitutional Under the Due Process and Commerce Clause of the United States Constitution.

Even if this Court finds the statutory formula not to be distortive under the statute, this Court must address the constitutional violations cause by the application of the sales factor calculation method to these particular facts and circumstances.

1. The Constitutional Requirement of Fair Apportionment.

The Due Process and Commerce Clause of the United States Constitution require a Michigan's tax on interstate commerce to be apportioned in a manner that reasonably reflects how income is earned in the state. *Container Corp*, 463 US 159. The U.S. Supreme Court has held that states must limit their taxation to the appropriate share of income derived from the conduct of business activities within the state. *FW Woolworth Co v Tax'n and Rev Dep't of New Mexico*, 459 US 961; 103 S Ct 274; 73 L Ed 213 (1982). Under the Commerce Clause, the test is whether the state's tax "is applied to an activity with a substantial nexus with the taxing State, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State." *Id.*, at 279. Apportionment must be fair. *Id.* The Due Process Clause

RECEIVED by MCOA 12/7/2018 5:43:07 PM

demands that there be "'some definite link, some minimum connection, between a state and the person, property or transaction it seeks to tax,' as well as a rational relationship between the tax and the 'values connected with the taxing State.'" *MeadWestvaco Corp*, 553 US at 24 (citations omitted). The Commerce Clause "forbids the States to levy taxes that discriminate against interstate commerce or that burden it by subjecting activities to multiple or unfairly apportioned taxation." *Id.*

2. Michigan's Statutory Sales Factor as Applied to the Facts Unconstitutionally Distorts Income Attributable to Michigan all out of Appropriate Proportion.

The U. S. Supreme Court has held that a state's method of apportionment of the receipts of a foreign corporation, such as Minnesota Limited, works on unconstitutional result if, *in the particular case*, the part of the income attributed to the state is out of all appropriate proportion to the business done by the business in the state. *Hans Rees'* at 135. The Court recognized that statutory apportionment may not be constitutional in all circumstances, stating "the fact that the corporate enterprise is a unitary one, in the sense that the ultimate gain is derived from the entire business, does not mean that for the purpose of taxation the activities which are conducted in different jurisdictions are to be regarded as 'component parts of a single unit' so that the entire net income may be taxed in one state regardless of the extent to which it may be derived from the conduct of the enterprise in another state." *Id.* at 133. Evidence may always be received and reviewed to determine whether the State has applied a method of apportionment ". . . which, albeit fair on its face, operates so as to reach profits which are in no just sense attributable to transactions within its jurisdiction" in the case before the Court. *Id.* at 134.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

RECEIVED by MCOA 12/7/2018 5:43:07 PM

Whether a state's apportionment of a taxpayer's income to the State is fair or distortive is a facts and circumstances test.[28] As noted in *Hans Rees'*, the Court held that the difference between the North Carolina manufacturing profit (17%) to the amount apportioned under the state's statutory apportionment (66% - 85%) was unreasonable and arbitrary and attributed to North Carolina a percentage of income out of all appropriate proportion to the business located in that State. *Id.* at 135. The Court held that the distortion of 250% based on the difference between the statutory method of apportionment and the taxpayer's proposed alternative method was unconstitutional, accepting a quantitative level of distortion of more than 250% as creating unconstitutional distortion.

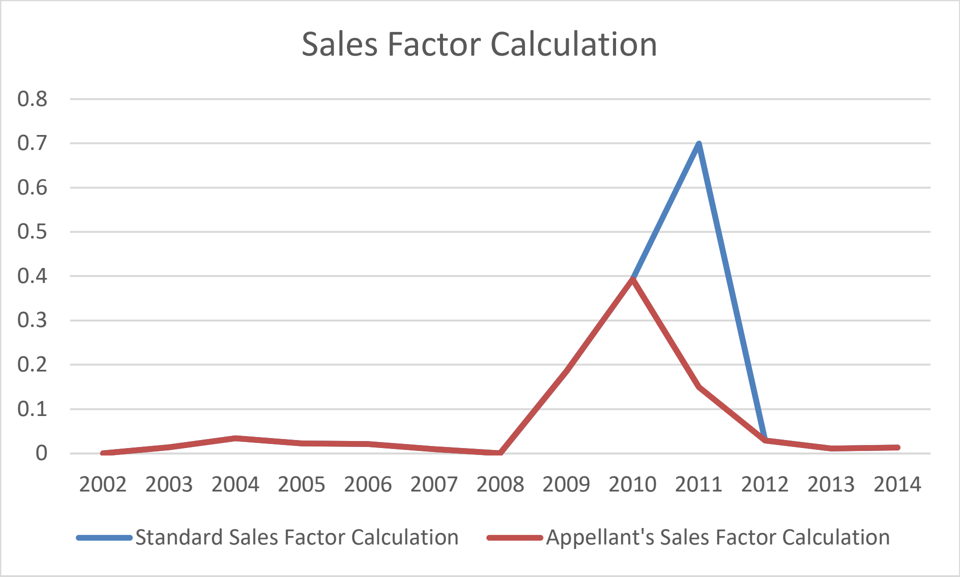
The Company has demonstrated similar quantitative distortion of income attributable to Michigan in this case. Uncontroverted evidence was presented that the Company's income was denied from two sources: (1) the stock sale by its shareholders which was treated as a deemed asset sale, and (2) performance of services within multiple states. The Company recognized only $25,000 of profit from its performance of services in Michigan in the Short Year. In contrast, the stock sale, which took place in Minnesota, was deemed a sale of tangible and intangible assets located outside of Michigan.[29] The application of the statutory formula would apportion more than $38 million of the purchase price paid by the Buyer to Michigan's apportionable tax base – a more than 250% unconstitutional distortion from the actual amount of revenue from activities conducted in the state during the Short Year. Similar to the facts in *Hans Rees*, the income

[28] Michigan Department of Treasury recognizes the facts and circumstances test. See Appellant's App. No. 13, Draft Revenue Admin Bull 2018-XX, *Alternative Apportionment for the Michigan Business and Income Taxes*.

[29] In fact, only $268,000 of assets were located in Michigan at the time of the Sale.

attributed to the state by the statutory formula, as applied, does not reflect how income was earned in the state. Rather, it grossly distorts and over attributes income to Michigan.

The Company also demonstrated quantitative distortion through the more than 250% increase in the sales factor. When the deemed sales of all business assets are properly included in the sales factor, the sales factor is 14.99%. It is only *by excluding the sales of business assets, and including only income generated by service income*, can the Department compute a sales factor of 69.96%.[30]



This exclusion generated quantitative distortion and violates the constitutional requirement that *the factors that are employed to apportion income among the states should reflect the factors that produce the income being apportioned*. *Container Corp,* 463 US at 169 (holding that the "factor or factors used in the apportionment formula must actually reflect a reasonable

[30] See Appellant's App. No. 12, Plaintiff's First Amended Complaint Ex A, 6/24/2016 Letter to Deputy Treasurer Gursky.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

sense of how income is generated.") Professor Hellerstein, the leading authority on state taxation, states:

> The factors that are employed to apportion income among the states should reflect the factors that produce the income being apportioned. This virtually axiomatic proposition is also a principle of constitutional law. [Appellant's App. No. 14, Hellerstein & Hellerstein, State Taxation (3rd ed), ¶9.15[1], p 9-165.]

As in *Hans Rees'*, the statutory formula as applied to the facts in this case operates to "reach profits which are in no just sense attributable to the transaction[s] within its jurisdiction" *Id.* at 134.

In addition, the Company demonstrated quantitative distortion of income from reviewing its historic activities in Michigan. There is no dispute that the Company primarily conducted its operations in the Midwest. Appellant's App. No. 6, Leines Dep 59:8-21. The Company's sales in Michigan in the ten years prior to the Sale averaged 6.782% (ranging from a low of 0% to a high of 39.28% when the Enbridge work began in 2010). These figures substantiate that only 6.782% of the accumulated historical appreciation of the Company's tangible and intangible assets and accumulated goodwill was due to the Company's business activities conducted outside of Michigan. Taxing almost 70% of the Sale gain based on the serendipity of the Company engaging in its largest contract in the state during the Short Year results in extraterritorial taxation and is distortive, as much of the Sale gain was earned over the prior decades and primarily outside of the state.

The Company further provided qualitative evidence of distortion as the statutory formula used three off season months of a seasonal business as the basis for measuring taxable income. For any seasonal business, use of off-season months as a measure of business performed is distortive and using such a limited time period – three months – is also distortive. Using a period with an extraordinary transaction not generally represented in the measure of how income was

RECEIVED by MCOA 12/7/2018 5:43:07 PM

earned fails to represent the historic business to apportion the gain from historic appreciation, logically must lead to distortion.

The Company has alleged and demonstrated unconstitutional distortion both quantitatively and qualitatively by clear and cogent evidence in accordance with the U. S. Supreme Court's standard. As that Court has held, when a taxpayer comes forward with strong evidence proving the formula yields a grossly distorted result, the state cannot ignore the distortion. *Norfolk & Western Ry Co.* The Court below failed to review the evidence of distortion presented. The Court's failure to address Appellant's clear and concise allegation that the application of the statutory formula worked to unconstitutionally excluded receipts from the sale of its business assets from the denominator of the sales factor constitutes plain error. The Department's assessment and application of the statutory formula to the facts at issue taxes extraterritorial value, violates constitutional principles and is void, and is a sufficient basis for this Court to reverse or remand the case back to the Court of Claims for further review.

G. Alternatively, the Record Demonstrates Unconstitutional Distortion Exists by the Failure to Exclude the Receipts From Intangible Assets From the Tax Base.

The U. S. Constitution limits the income that may be included in the tax base to be apportioned. The Due Process Clause of the Fourteenth Amendment and the Commerce Clause of the U.S. Constitution mandate that a state may not "tax value earned outside its borders." *ASARCO Inc*, 458 US at 315. Both the Due Process Clause and the Commerce Clause require that a taxing state have nexus with either the person or business receiving income and the activity or transaction being taxed. A state's taxing jurisdiction may be exercised over all of a resident's income based upon the state's in personam jurisdiction over that person. *Hillenmeyer v Cleveland Bd of Review*, 144 Ohio St 3d 165, 175; 41 NE3d 1164 (2015), citing *Shaffer v Carter*, 252 US 37,

RECEIVED by MCOA 12/7/2018 5:43:07 PM

52; 40 S Ct 221; 64 L Ed 445 (1920). By contrast, the power to tax nonresidents reflects the state's in rem jurisdiction over the income-producing activities conducted within the state:

> [J]ust as a State may impose general income taxes upon its own citizens and residents whose persons are subject to its control it may, as a necessary consequence, levy a duty of like character, and not more onerous in its effect, upon incomes accruing to non-residents from their property or business within the State, or their occupations carried on therein. [(Emphasis deleted.) *Hillenmeyer* at 176, quoting *Shaffer* at 52.]

Inherent in the Supreme Court's pronouncement in *Shaffer* is the need for a link between the state and the activity or transaction being taxed, "in the case of a tax on an activity, there must be a connection to the activity itself, rather than a connection only to the actor the State seeks to tax." *Allied-Signal*, 504 US at 778. In *Allied-Signal*, New Jersey attempted to tax one corporation's gain from selling its shares in another corporation. The court clarified that the mere fact that the taxpayer performed some of its business within the taxing state did not by itself permit the taxation of that taxpayer's gain from the sale of shares of another corporation. Instead, the high court enforced its earlier pronouncement that "[a] State may not tax a nondomiciliary corporation's income . . . if it is 'derived from "unrelated business activity" which constitutes a "discrete business enterprise."'" *Id*. at 773, quoting *Exxon Corp v Wisconsin Dep't of Revenue*, 447 US 207, 224; 100 S Ct 2109; 65 L Ed 2d 66 (1980), quoting *Mobil Oil Corp v Vermont Comm'r of Taxes*, 445 US 425, 442, 439; 100 S Ct 1223; 63 L Ed 2d 510 (1980). Here, using revenue from Michigan activities during the Short Year to tax the long-term gain from a Minnesota stock transaction, which was a sale of intangible property by nonresidents, is improper. The selling of shares by Minnesota residents does not involve the purposeful availment of the Michigan market, and the sale transaction occurred completely outside of Michigan.

Accepting the "deemed" sale of assets under IRC 338(h)(10) in lieu of acknowledging the sale of the ownership interests does not create a constitutional foundation for the State of Michigan

RECEIVED by MCOA 12/7/2018 5:43:07 PM

to tax the gain in the absence of a connection between the sale transaction and the state. There is no Due Process connection to the state and absent a Due Process connection with the Sale transaction, the state must exclude the transaction from the taxable base. This same point was made in *Container Corp*, where the Court noted that "capital transactions can serve either an investment function or an operational function." *Id.* at 180, n 19; cf *Corn Products Refining Co v Commissioner*, 350 US 46, 50; 76 S Ct 20; 100 L Ed 29 (1955) (concluding that corn futures contracts in the hands of a corn refiner seeking to hedge itself against increases in corn prices are operational rather than capital assets), cited in *Container Corp*, at 180, n 19. Here, the transaction is on return of an investment in stock for two longtime owners. Michigan's attempt to tax the gain violates Due Process and is void.

H. The Company Proved Reasonable Cause and Penalty Relief is Warranted.

When there is no tax due, then there is no penalty due (as a percentage of tax due) under MCL 205.23 and MCL 205.24. Thus, if this Court reverses the amount below, no penalty is due. Even if penalty were due, the alleged late payment of tax penalty under MCL 205.24(2) is inappropriate in this instance. The Company did not fail to file its 2011 return. Nor did the Company fail to pay the tax that was shown to be due on its 2011 return. Additionally, the Company was not negligent in paying what it believed to be the correct amount of tax due, and made a good faith effort to correctly compute the tax due relying on professional accountants. Penalty shall be waived for reasonable cause.

In interpreting penalty statutes that permit waiver of penalty for reasonable cause, courts have construed "reasonable cause" liberally in favor of the taxpayer claiming relief from the penalty exaction. See, e.g., *Genex/London, Inc v Kentucky Bd of Tax Appeals*, 622 SW2d 499 (Ky, 1981); *Du Mont Ventilation Co v Dep't of Revenue*, 99 Ill App 3d 263; 425 NE2d 606 (1981). Similarly, the Michigan Tax Tribunal has held that reasonable cause for not paying tax exists in

RECEIVED by MCOA 12/7/2018 5:43:07 PM

situations in which the position advocated by the taxpayer represents "an honest difference of opinion" relative to the effect or application of law. *Gillette Co v Dep't of Treasury*, 5 MTT 839, 851 (1989) (emphasis added).[31]

In this case, the penalty is imposed because the Department disagrees with the Company's calculation of the sales factor and the resulting tax. This disagreement results from the Company relying upon the advice of its tax advisors which constitutes reasonable cause for purposes of waiving the negligence penalty pursuant to Mich Admin Code, R 205.1012 and 205.1013, as well as Revenue Admin Bull 2005-3. Revenue Admin Bull 2005-3 provides, in part, that "[i]n determining whether a taxpayer was unable to file a return or pay a tax in spite of the exercise of ordinary business care and prudence, the department will consider all facts and circumstances surrounding the taxpayer, the nature of the tax, and the like." Further, "[i]f a taxpayer subject to the negligence penalty demonstrates to the department's satisfaction that the deficiency or excess claim for credit was due to reasonable cause, the department shall waive the negligence penalty."

Under Mich Admin Code, R 205.1013(8), the following factors may constitute reasonable cause:

> (a) compliance history of the taxpayer.
>
> (b) the nature of the tax.
>
> . . .
>
> (d) the taxpayer was incorrectly advised by a tax advisor who is competent in Michigan state tax matters after furnishing the advisor with all necessary and relevant information and the taxpayer acted reasonably in not securing further advice.

[31] Although *Gillette* was appealed to the Michigan Court of Appeals on the substantive issue of the state's jurisdiction to impose single business tax, see *Gillette Co v Dep't of Treasury*, 198 Mich App 303; 497 NW2d 595 (1993), the Tax Tribunal's determination to modify the assessments to reflect waiver of the penalty was not appealed.

RECEIVED by MCOA 12/7/2018 5:43:07 PM

RECEIVED by MCOA 12/7/2018 5:43:07 PM

. . .

> (h) a taxpayer's reliance on an employee or agent to file the return and make the payment.

The Company has always had a good compliance history, had in place reasonable, prudent business procedures to ensure that its taxes were timely filed and paid, and, did indeed, file and pay its 2011 Michigan Business Tax. The Company relied upon outside accountants, experienced in tax compliance, to prepare its returns. It was only upon audit when the Department adjusted the sales factor to remove the receipts from the Sale that the purported underpayment arose. The Company believed what it computed and paid was the correct amount; the Department believes more is due. This is not the correct basis for the imposition of the penalty for the failure to pay the tax shown to be due on a return. The Court of Claims failed to acknowledge the disagreement over the calculation of the sales factor and erroneously denied penalty relief on the basis that the Company only disagreed on the inclusion of the Sale proceeds in the apportionable tax base after audit. *Vectren,* unpub op at 13.

As noted in *Gillette Co*, 5 MTT 839 reasonable cause exists in situations in which the position advocated by the taxpayer represents "an honest difference of opinion" relative to the effect or application of law. In this matter, any non-payment was not knowingly done. The Appellant demonstrated reasonable cause for the purpose of waiving the penalties for the 2011 tax year.

V. CONCLUSION

For the reasons stated above, this Court should find that (1) income and expenses from the former shareholders' Sale of stock of the Company in the Short Year is not the business income of Appellant under MCL 208.1105(2) and must be removed from the apportionable tax base; or (2) Appellant's sale of business assets included in the Sale were sold in the ordinary course of business and must be included in the calculation of the sales factor; or (3) the Department's denial of alternative apportionment relief was unlawful, (4) application of the statutory formula as applied to the facts in this case violates the Commerce Clause and the Due Process Clause of the United States and Michigan, (5) Appellant's apportionment for the Short Year was correct as reported, and (6) Appellant is entitled to cancellation of all tax, interest and penalty assessed for Short Year plus costs and attorney fees. In the alternative, this Court should remand the case to the Court of Claims to address and rule on Count I of Appellant's First Amended Complaint.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorney for Plaintiff/Appellant

Dated: December 7, 2018

By: /s/ Lynn A. Gandhi
Lynn A. Gandhi (P60466)

RECEIVED by MCOA 12/7/2018 5:43:07 PM