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**Michigan Renewable Energy Certification System (MIRECS)
MPSC Staff Advisory**

DATE: March 30, 2010
TO: MIRECS Stakeholders
FROM: Paul A. Proudfoot, Director
Electric Reliability Division
SUBJECT: Issues Raised by Multi-State Electric Providers

Staff has been contacted by several electric providers who raised issues which required clarification before they were comfortable proceeding with registration as MIRECS Account Holders. Staff is replying to the inquiries via a general advisory statement as many of the answers will be of interest to all stakeholders. These questions and answers will be posted on the mirecs.org website under "FAQ" and on the michigan.gov/mpsc website under "Renewable Energy."

Q.1. What governing body is responsible for decision making regarding the MIRECS system?

A.1. MIRECS was established by the Michigan Public Service Commission (Commission or MPSC) under authority conferred by 2008 PA 295. MIRECS is administered by APX, Inc., pursuant to a contract with the State of Michigan, Department of Energy, Labor & Economic Growth. The Michigan Public Service Commission is the effective governing body. The Commission has delegated day-to-day administration of the contract to the Electric Reliability Division.

Q.2. What provisions are there for Account Holders or other interested parties to communicate with APX and appropriate Electric Reliability Division staff members regarding MIRECS system operations and any proposed system changes or improvements?

A.2. All interested parties are welcome to subscribe to MIRECS Updates by visiting the MIRECS website and filling out the subscription form there. Entities are encouraged to communicate about any MIRECS issues by contacting APX.¹ APX discusses all MIRECS

¹ For APX Contact: telephone 888-9-MIRECS (888-964-7327) or email mirecs@apx.com.

substantive and policy issues with the Commission Staff. As indicated in the MIRECS Terms of Use, Section 26, Electric Reliability Division Staff is available to assist parties in the informal dispute resolution process, if necessary.² In addition, Account Holders will be invited to participate in a MIRECS Stakeholder Advisory Group, for the purpose of facilitating communications and providing recommendations for system changes and improvements.

Q.3. What are the MIRECS dispute resolution procedures?

A.3. Dispute resolution procedures are described in the MIRECS Terms of Use, Section 26, *Governing Law and Dispute Resolution*. The procedure begins with informal dispute resolution efforts with APX. Commission Staff will assist at the request of either party. If the informal effort is unsuccessful, the process calls for formal mediation, then arbitration, if necessary.

Q.4. What do MIRECS participants have to do by the March 31, 2010 deadline in order to assure their access to Michigan RECs created as far back as January 1, 2009?"

A.4. Projects (generators) that are submitted for approval in MIRECS by March 31, 2010, will have the option preserved to have Credits issued back to January 2009. Delays in processing or the lack of any system capabilities that are the responsibility of APX or the Commission Staff will not result in the loss of opportunity to have RECS issued back as far as January 1, 2009 for those Projects. Account Holders that have made all reasonable efforts to complete Project registrations by the March 31 deadline should not experience problems with respect to the deadline. Staff has directed APX to work with Account Holders to enable the transfer of RECs from other registries as close as possible to the time of the owners' choosing.

Q.5. Some electric providers serving load in Michigan have been participating in M-RETS, GATS, or other registry systems. For Account Holders who register in MIRECS by March 31, 2010, how will MIRECS handle certification and tracking for RECs that are presently registered in another registry?

A.5. APX is contractually obligated to make the import/export functionality available to MIRECS users. APX, in consultation with the Staff, has been working with other REC tracking registries to define requirements for providing a reliable method for credits to be imported or exported between registries, while maintaining REC validity. Due to the complexity of this process, the import/export capabilities will not be available by the March 31, 2010 registration deadline.

This deadline was established to set a baseline for the eligibility of 2009 RECs for 2012 compliance, and will not affect the eligibility of RECs from 2009 that are registered in another REC tracking system. Because these credits are not needed at this time for Michigan compliance, a delay in their transfer from one system to another will not materially affect any Michigan provider's ability to meet the requirements of PA 295.

² For MPSC Electric Reliability Division Contact, telephone 517-241-9798 and ask for a member of the MIRECS team, or email Janet C. Hanneman; hannemanj@michigan.gov.

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Q.5.a. What is the status of developing import/export capability for RECs: (1) Between MIRECS and GATS? (2) Between MIRECS and M-RETS? (3) Between MIRECS and other registries?

A.5.a. (1). Between MIRECS and GATS: A basic agreement has been reached and a memorandum of understanding is being finalized now.

(2). Between MIRECS and M-RETS: Formal talks are now being established. APX will work diligently to try to establish a memorandum of understanding as quickly as possible.

(3). Between MIRECS and other registries: Priority is being given to establishing agreements between MIRECS and the two registries listed above. They are the only registries that the Commission Staff and APX are presently aware of which already house RECs that Michigan electric providers propose to use in complying with 2008 PA 295.

Q.6. Will a REC based on production from January 1, 2009 onward that is imported into MIRECS from M-RETS translate directly into a REC in MIRECS?

A.6. Yes, subject to the qualification that imported RECs must meet the Michigan definition for renewable energy and otherwise comply with the provisions of 2008 PA 295.

Q.7. How will the issuance of Michigan Incentive Credits be handled in the case of RECs imported into MIRECS?

A.7. If RECs originate in M-RETS or GATS, all applicable Michigan incentive credits will be assigned upon importation into MIRECS. The creation of incentive RECs is dependent upon proper documentation and authentication data being supplied by the originating registry. If this data is not transferred with the RECs, it will be the responsibility of the REC owner to provide affidavits and the data necessary to validate the particular Michigan incentive credit(s).

Q.8. Section 5(a) of the MIRECS Terms of Use states that “any and all software used by APX in providing, accessing (other than commercially available third party internet browsers) or using MIRECS is proprietary software of APX.” Does this mean a spreadsheet or other program developed by a MIRECS user may somehow be construed as becoming “proprietary software of APX”?

A.8. No. Users are free to develop their own or utilize third party software that will be used in conjunction with the MIRECS system, MIRECS data, and MIRECS reports. However, such user-developed or third party software used in conjunction with MIRECS shall not, in any way, interfere with, put at risk, corrupt, injure, impair, or degrade the operations of the APX-developed MIRECS system. Staff is working with APX to clarify the language.

Q.9. Under the MIRECS Terms of Use, Section 11, APX may immediately terminate access to MIRECS in the event the Account Holder fails to pay an invoice within five (5) days of its due date. Will there be any provisions for disputed invoices?

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A.9. Yes. The Account Holder will have access to the dispute resolution procedures contained in Section 26 of the Terms of Use. In addition, Staff is exploring with APX the possibility of expanding the time window for payment before the immediate access termination may be triggered.

Q.10. If APX terminates an Account Holder's access to MIRECS, under MIRECS Terms of Use, Section 10(e)(ii), would the Account Holder forfeit any renewable credits held in the Account Holder's account?

A.10. The current language in the Terms of Use provides for the retirement or transfer of RECs to another registry participant's account prior to the termination of access. However, Staff plans to explore with APX the option of holding the RECs in escrow during the pendency of a related dispute resolution procedure.³ This may result in another modification to the Terms of Use.

Q.11. If APX notifies an Account Holder of a pending termination of access, or an Account Holder finds access to their account has been terminated, will the Account Holder have a right to appeal and a right and opportunity to cure any problem that results in access termination?

A.11. Yes. The MIRECS dispute resolution procedures may be used.

Q.12. Because utilities in Michigan are required to use MIRECS to comply with 2008 PA 295, is an unreasonable risk or burden being placed upon them by agreeing to the conditions of the Terms of Use which state that use of the system is acceptance of any changes or modifications to the Terms of Use? Does APX have the unilateral right to change the terms and conditions governing the Registry?

A.12. This requirement is standard operating procedure for online software applications, and is deemed reasonable upon review. It is unrealistic to expect APX to request feedback and approval from users for every change to its Terms of Use or Operating Procedures, however insignificant. This should not be construed to imply any lack of oversight, though. MPSC Staff reviews and approves all proposed substantive changes to these documents. Further, APX agrees to notify users of changes to the Terms of Use or Operating Procedures through the MIRECS update email distribution list and through the use of messages that will appear when Account Holders log onto the system.

Q.13. Why does Section 3(c) of the Terms of Use state that APX is not required to comply with the Operative Documents of MIRECS?

A.13. APX is bound by its contract with the State of Michigan. This contract places limitations on both the application and contractor (APX) and should ensure reasonable outcomes.

³ Please note, there is a difference between terminating access and terminating RECs. If for some reason an account is placed on hold and access is either temporarily or permanently denied the associated RECs will not be 'destroyed'.

Under the State's contract with APX, APX is required to comply with all Operative Documents unless, after consultation with the State of Michigan (Commission Staff), "such compliance would have a material adverse effect on the Registry." APX would be required to report this non-compliance to Account Holders within thirty (30) days. Presumably, if this occurs, it would precipitate a change to one or more of the operative documents.