

October 7, 2015

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

**RE: Supplemental Letter of the Minnesota Department of Commerce, Division of Energy Resources (Department or DOC)**  
Docket No. G011/GR-13-617

Dear Mr. Wolf:

In its March 18, 2015 Order (Order) in the above-referenced docket, the Minnesota Public Utilities Commission (Commission) authorized Minnesota Energy Resources Corporation (MERC or the Company) to implement its final rates approved by the Commission's October 28, 2014 Order<sup>1</sup> on April 2015. The Commission also approved MERC's refund plan and required the Company to submit a compliance filing that separately shows the actual refunds and interest paid by rate class, including supporting calculations, within 10 days of the completion of the refund for all of its customers.

On July 23, 2015, MERC filed a *Rate Refund Compliance Filing* in compliance with the Order. On July 31, 2015, the Department filed a Letter raising concerns with the Company's interim rate refund and requesting additional information. The Department stated that MERC had not received Commission approval in this proceeding to make a donation to the Minnesota HeatShare Program as part of the Company's refund plan filed January 21, 2015. Moreover, MERC did not make a proposal for unclaimed<sup>2</sup> amounts or any residual amount. Further, the Department stated:<sup>3</sup>

. . . while donations to the Minnesota HeatShare Program have been made under prior interim rate refund plans, it has come to the Department's attention that Minn. Stat. Chapter 345 may govern all unclaimed property held by regulated utilities (not just unclaimed customer deposit amounts which are specifically governed by Minn. Stat. § 345.34). While MERC's proposal may be appropriate, it would be helpful to have clarification that there are no concerns with the Unclaimed Property statutes, particularly given the size of the unrefunded amount.

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<sup>1</sup> *Findings of Fact, Conclusions, and Order* in Docket No. G011/GR-13-617.

<sup>2</sup> In its Supplemental Reply Comments, MERC uses "un-refunded" amounts rather than unclaimed amounts."

<sup>3</sup> DOC's Letter, page 2.

On August 10, 2015, MERC submitted Reply Comments stating that it had identified an error in implementation of the interim refund, which resulted in the large unclaimed balance of \$182,160.54. The Company indicated that it would make a subsequent filing to document resolution of the discrepancy and provide a proposal for the treatment of un-refunded amounts.

*1. MERC's Proposal*

On September 29, 2015, MERC filed Supplemental Reply Comments. The Company stated:<sup>4</sup>

Upon review, MERC realized the initial refund included an error in the refund rate for our transportation customers that resulted in an under-refund for that class. MERC has recalculated the refund due these customers and is in the process of issuing additional refunds. All of the remaining refunds will be complete by month-end.

In total, MERC will refund \$4,669,588,<sup>[5]</sup> including \$115,253 in interest. The \$115,253 of interest includes \$1,317 added as a result of the rate error. The total un-refunded amount is \$10,853.

MERC also stated that the un-refunded amount of \$10,853 consists of two categories of refunds excluding un-cashed refund checks:<sup>6</sup>

- refunds of less than \$2.00 due to customers who have left MERC's system; and
- refunds of more than \$2.00 due to customers who left MERC's system but did not provide forwarding addresses.

MERC proposed to donate the \$10,853 to the Salvation Army, Northern Division, for distribution to clients under the Minnesota HeatShare Program.<sup>7</sup>

Regarding the un-cashed refund checks, MERC stated that the Company will treat these as abandoned property in accordance with the provisions of Minn. Stat. § 345. The Company stated:<sup>8</sup>

MERC considers those amounts to be "unclaimed" and treats them in accordance with the requirements of Minn. Stat. Ch. 345. Those amounts are not included in the calculation of the

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<sup>4</sup> MERC's Supplemental Reply Comments, page 1. The Department notes that there are no page numbers on MERC's Supplemental Reply comments.

<sup>5</sup> On page 2 of MERC's Supplemental Reply Comments, MERC provided a table of initial and final interim refunds and interest issued or in process.

<sup>6</sup> MERC's Supplemental Reply Comments, page 2.

<sup>7</sup>*Id.*

<sup>8</sup> MERC's Supplemental Reply Comments, page 3.

overall un-refunded amount of \$10,853 because a check is actually issued for the refund to the last known address of those customers.

## 2. MERC's Replies to Department Questions

Below, the Department provides MERC's responses to the questions the Department posed in its July 31, 2015 letter. The Department's response to this additional information follows MERC's response to question 6 below.

**DOC Question 1:** What does "unclaimed amounts" include and what are the amounts for each category (e.g., less than \$2.00, unclaimed checks, etc.)?

**MERC's reply:** MERC's calculation of total un-refunded amounts of \$10,853 includes amounts where the customer:<sup>9</sup>

1. amounts where the customer refund was less than \$2.00 and the customer is no longer a customer of MERC; and
2. amounts where the customer could not be located because no forwarding address was provided upon termination of service.

**DOC Question 2:** What are the unclaimed amounts by customer class?

**MERC's reply:** The total un-refunded amount of \$10,853 is attributable to the following customer classes:<sup>10</sup>

Customer Class	Un-refunded Amount	% of Un-refunded Amount
Residential	\$8,894.43	74.8%
GS-Small Commercial and Industrial	\$2,044.58	17.2%
GS-Large Commercial and Industrial	\$1,883.89	15.8%
Small Volume Interruptible	\$(426.97)	-3.6%
Large Volume Interruptible	\$(117.22)	-1.0%
Transportation	\$(392.68)	-3.3%
<b>Total</b>	<b>\$11,886.03</b>	<b>99.9%</b>

It is unclear why the Company's proposal to donate \$10,583 does not equal the \$11,886 in MERC's table. According to MERC, the difference of \$1,033 (\$11,886 - \$10,583) is due to rounding in the refund program and subsequent rate classification. The un-refunded amount should be equal to the amount in MERC's proposal.

**DOC Question 3:** What does MERC do to locate customers who are owed a refund?

**MERC's reply:**<sup>11</sup>

<sup>9</sup> MERC's Supplemental Reply Comments, pages 2-3.

<sup>10</sup> MERC's Supplemental Reply Comments, page 3.

<sup>11</sup> *Id.*

When a customer terminates natural gas service with MERC, we request a forwarding address as part of that termination. Many customers, however, decline to provide a forwarding address upon termination of service or do not update their forwarding address if they move again.

**DOC Question 4:** How long does MERC intend to search for customers who are owed a refund?

**MERC's reply:**<sup>12</sup>

As noted above, when a customer terminates natural gas service with MERC because they are moving outside of the MERC service area, MERC requests that the customer provide a forwarding address. If a forwarding address is provided, MERC will mail a check to that address for former customers who are owed a refund. If a customer declines to provide a forwarding address, MERC does not take any additional steps to attempt to locate that customer.

**DOC Question 5:** How does MERC's proposal comport with Minn. Stat. Ch. 345?

**MERC's reply:**<sup>13</sup>

Minn. Stat. § 345.34 provides that “[a]ny deposit held or owing by any utility made by a subscriber to secure payment for, or any sum paid in advance for, utility services . . . that has remained unclaimed . . . for more than one year after the termination of the services . . . is presumed abandoned.” Consistent with this provision, MERC plans to treat uncashed refund checks as abandoned property.

MERC does not propose to treat the aggregate of un-refunded money to customers owed less than \$2.00 as abandoned property. This treatment is consistent with Minn. Stat. § 345.34. If the Commission approves this \$2.00 threshold, these customers are not entitled to these funds. Requiring MERC to comply with Chapter 345 for customers owed refunds of less than \$2.00 would defeat the purpose of the \$2.00 threshold, *i.e.*, to reduce administrative expense. MERC also does not propose to treat the un-refunded amount attributable to customers that MERC is unable to locate as abandoned property under Minn. Stat. § 345.34. This treatment is

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<sup>12</sup> MERC's Supplemental Reply Comments, pages 3- 4.

<sup>13</sup> MERC's Supplemental Reply Comments, page 4.

consistent with MERC's overall plan. Because the customers cannot be located, these customers have no opportunity to abandon the property. This fact distinguishes customers who cannot be located from customers who, whether due to neglect or conscience abandonment, fail to deposit refund checks.

**DOC Question 6:** How does MERC's proposal comport with prior Commission Orders?

**MERC's reply:**<sup>14</sup>

In the past, the Commission has approved the same approach as proposed here for addressing un-refunded amounts. In MERC's 2008 rate case proceeding, Docket No. G007,011/GR-08-835, and MERC's 2010 rate case proceeding, Docket No. G007,011/GR-10-977, the Commission approved a refund proposal pursuant to which MERC treated uncashed checks as abandoned property under Minn. Stat. Ch. 345 and donated to Minnesota HeatShare the amounts that were not refunded because they did not meet the \$2.00 threshold or MERC was unable to locate the customer. MERC has not treated the unrefunded amounts as abandoned property because the customers did not have an opportunity to abandon the property.

In both MERC's 2008 and 2010 rate cases, its interim rate plan included a portion that required compliance with Minn. Stat. § 345.34. The inclusion of requirements related to Chapter 345 suggests that parties were at least aware of the interplay between Minn. Stat. § 345.34 and MERC's interim rate refund plan when the plan was considered and approved.

It is the Department's understanding that Minn. Stat. § 345 applies to the un-refunded monies related to interim rates and should be turned over to the State (Department of Commerce – Unclaimed Property<sup>15</sup>) as unclaimed property. First, it is debatable whether these amounts fall under Minn. Stat. § 345.34 since the amounts are rate refunds rather than customer deposits paid in advance for utility services to be furnished. However, Minn. Stat. § 345.39 includes, "all intangible personal property, not otherwise covered by sections 345.31 to 345.60" and specifically lists "unrefunded overcharges." Both sections require that the amount be turned over to the State; Minn. Stat. § 345.34 indicates that customer deposits are considered abandoned after one year, and Minn. Stat. § 345.39 indicates that property is considered abandoned after 3 years. The Department notes that Minn. Stat. § 345.41(h) allows the holder of abandoned property to report and deliver the unclaimed amounts early if granted permission to do so by the Commissioner of the Department of Commerce.<sup>16</sup>

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<sup>14</sup> *Id.*

<sup>15</sup> See <http://mn.gov/commerce/consumers/Unclaimed-Property/index.jsp>.

<sup>16</sup> See Attachment A for the text of Minn. Stat. §§ 345.34, 345.39, and 345.41.

Second, all property must be turned over under the *Uniform Disposition of Unclaimed Property Act* regardless of the amount (*i.e.*, there is no threshold). Moreover, the \$10,883 (or \$11,886.03) in unclaimed refunds includes those customers who are owed more than \$2.00 but did not provide a forwarding address. It is unclear to the Department how MERC justifies treating these funds differently from those abandoned by customers who did not cash their refund checks. It may be that MERC associates the different categories of un-refunded amounts by the administrative burden of finding the rightful recipient. However, turning over all unclaimed refund amounts, regardless of reason, to the State in accordance with MN Stat. Chapter 345 involves very little additional administrative burden, especially since MERC already intends to do that for checks not cashed.

While the Department certainly supports donations to the Minnesota HeatShare Program,<sup>17</sup> donating un-refunded interim rate refunds to a charitable cause is inconsistent with Minnesota law. Therefore, the Department recommends that the Commission require MERC to turn over all un-refunded interim rate refunds to the State as required by Minn. Stat. Chapter 345.

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

Sincerely,

/s/ MICHELLE ST. PIERRE  
Financial Analyst

MS/lt

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<sup>17</sup> It is likely that if MERC donated funds to HeatShare, the Company may receive a tax deduction and gain goodwill.

## 2015 Minnesota Statutes

### **345.34 DEPOSITS HELD BY UTILITIES.**

Any deposit held or owing by any utility made by a subscriber to secure payment for, or any sum paid in advance for, utility services to be furnished in this state, excluding any charges that may lawfully be withheld, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after the termination of the services for which the deposit or advance payment was made is presumed abandoned.

**History:** 1969 c 725 s 4; 3Sp1981 c 2 art 1 s 60; 1992 c 513 art 3 s 63

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**345.39 MISCELLANEOUS PERSONAL PROPERTY HELD FOR ANOTHER PERSON.**

Subdivision 1. **Presumed abandonment.** All intangible personal property, not otherwise covered by sections 345.31 to 345.60, including any income or increment thereon, but excluding any charges that may lawfully be withheld, that is held or owing in this state in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned. Property covered by this section includes, but is not limited to: (a) unclaimed worker's compensation; (b) deposits or payments for repair or purchase of goods or services; (c) credit checks or memos, or customer overpayments; (d) unidentified remittances, unrefunded overcharges; (e) unpaid claims, unpaid accounts payable or unpaid commissions; (f) unpaid mineral proceeds, royalties or vendor checks; and (g) credit balances, accounts receivable and miscellaneous outstanding checks. This section does not include money orders. "Intangible property" does not include gift certificates, gift cards, or layaway accounts issued or maintained by any person in the business of selling tangible property or services at retail and such items shall not be subject to this section.

Subd. 2. **Cooperative property.** Notwithstanding subdivision 1, any profit, distribution, or other sum held or owing by a cooperative for or to a participating patron of the cooperative is presumed abandoned only if it has remained unclaimed by the owner for more than seven years after it became payable or distributable.

Subd. 3. **Unpaid compensation.** Notwithstanding subdivision 1, unpaid compensation for personal services or wages, including wages represented by un-presented payroll checks, owing in the ordinary course of the holder's business that remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned.

**History:** 1969 c 725 s 9; 1977 c 137 s 7; 3Sp1981 c 2 art 1 s 63; 1982 c 495 s 3; 1987 c 336 s 42; 1992 c 513 art 3 s 68; 2000 c 488 art 2 s 24



**345.41 REPORT OF ABANDONED PROPERTY.**

(a) Every person holding funds or other property, tangible or intangible, presumed abandoned under sections 345.31 to 345.60 shall report annually to the commissioner with respect to the property as hereinafter provided.

(b) The report shall be verified and shall include:

(1) except with respect to traveler's checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of the value of \$100 or more presumed abandoned under sections 345.31 to 345.60;

(2) in case of unclaimed funds of life insurance corporations, the full name of the policyholder, insured or annuitant and that person's last known address according to the life insurance corporation's records;

(3) the nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, except that items of value under \$100 each may be reported in aggregate;

(4) the date when the property became payable, demandable or returnable, and the date of the last transaction with the owner with respect to the property; and

(5) other information which the commissioner prescribes by rule as necessary for the administration of sections 345.31 to 345.60.

(c) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner, or if the holder has changed a name while holding the property, the holder shall file with the report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1 of each year as of June 30 next preceding, but the report of life insurance corporations shall be filed before October 1 of each year as of December 31 next preceding. The commissioner may postpone the reporting date upon written request by any person required to file a report.

(e) Not more than 120 days before filing the report required by this section, the holder in possession of property abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the presumed owner at that owner's last known address informing the owner that the holder is in possession of property subject to this chapter and advising the owner of the steps necessary to prevent abandonment if:

(1) the holder has in its records an address for the presumed owner that the holder's records do not disclose to be inaccurate;

(2) the claim of the apparent owner is not barred by the statute of limitations; and

(3) the property has a value of \$100 or more.

(f) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer, and if made by a public corporation, by its chief fiscal officer.

(g) Holders of property described in section 345.32 shall not impose any charges against property which is described in section 345.32, clause (a), (b) or (c).

(h) Any person who has possession of property which the person has reason to believe will be reportable in the future as unclaimed property may, with the permission of the commissioner, report and deliver such property prior to the date required for reporting in accordance with this section.

(i) Before the last day of each calendar year, the commissioner of revenue shall report to the commissioner as unclaimed property under this section any uncashed checks or warrants for overpayments of taxes that were issued more than two years preceding the date of the report.

**History:** 1969 c 725 s 11; 1977 c 137 s 8; 1983 c 301 s 193; 1985 c 251 s 11; 1986 c 444; 1993 c 31 s 1; 1996 c 439 art 1 s 18; 1Sp2001 c 5 art 20 s 16

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce  
Supplemental Letter**

**Docket No. G011/GR-13-617**

**Dated this 7<sup>th</sup> day of October 2015**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michael	Auger	mauger@usenergyservices.com	U S Energy Services, Inc.	Suite 1200 605 Highway 169 N Minneapolis, MN 554416531	Electronic Service	No	OFF_SL_13-617_Official List
Darcy	Fabrizius	N/A	Constellation Energy	N21 W23340 Ridgeview Pkwy  Waukesha, WI 53188	Paper Service	No	OFF_SL_13-617_Official List
Emma	Fazio	emma.fazio@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-617_Official List
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 500  Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_13-617_Official List
Amber	Lee	ASLee@minnesotaenergyresources.com	Minnesota Energy Resources Corporation	2665 145th St W  Rosemount, MN 55068	Electronic Service	No	OFF_SL_13-617_Official List
John	Lindell	agorud.ecf@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	OFF_SL_13-617_Official List
Andrew	Moratzka	apmoratzka@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_13-617_Official List
Barbara	Nick	banick@integrysgroup.com	Minnesota Energy Resources Corporation	2665 145th Street PO Box 455 Rosemount, MN 55068-0455	Electronic Service	No	OFF_SL_13-617_Official List
Casey	Whelan		U.S. Energy Services, Inc.	Suite 1200 605 Highway 169 North Minneapolis, MN 554416531	Paper Service	No	OFF_SL_13-617_Official List
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	No	OFF_SL_13-617_Official List