

Minnesota Public Utilities Commission
Staff Briefing Papers

Meeting Date: December 17, 2015 ****Agenda Item #2**

Company: Minnesota Energy Resources Corporation (MERC or the Company)

Docket Nos. G-011/GR-13-617
In the Matter of a Petition by Minnesota Energy Resources Corporation (MERC) for Authority to Increase Natural Gas Rates in Minnesota, the Interim Rate Period Refund.

Issues: What should Minnesota Energy Resources Corporation (MERC) be directed to do with un-refunded amounts from the interim rate refund?

Staff: Bob Brill 651-201-2242

Relevant Documents

Commission Order (Approving Compliance Filing and Refund Plan)..... Mar. 18, 2015
MERC – Interim Refund Letter Jun. 11, 2015
MERC – Interim Rate Refund Compliance Filing Jul. 23, 2015
Department Letter Jul. 31, 2015
MERC – Interim Rate Refund Reply Comments..... Aug. 10, 2015
MERC – Interim Rate Refund Supplemental Reply Comments..... Sept. 29, 2015
Department Supplemental Letter Oct. 7, 2015
Office of the Attorney General (OAG) Response Letter Oct. 9, 2015
MERC – Interim Rate Refund Additional Supplemental Reply Comments..... Oct. 15, 2015

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Statement of the Issue

What should Minnesota Energy Resources Corporation (MERC) be directed to do with un-refunded amounts from the interim rate refund?

- Is MERC required to treat un-refunded amounts as unclaimed or abandoned property under Minn. Stat. §§345.34 or 345.39?
 - If so, should the Commission require MERC to provide additional information to customers in future interim rate notices?
 - If so, should the Commission direct MERC to provide detailed information to the Department of Commerce and request permission from the Department to waive the three-year holding period under Minn. Stat. §345.39, subd. 1?
- If some or all of the un-refunded amounts are not considered unclaimed or abandoned property, should MERC's proposal to donate these amounts to HeatShare be approved?
- Should MERC be required to provide more information in future rate case refund proposals?

Procedural Background

On September 30, 2013, MERC filed a general rate case.¹

On November 27, 2013, the Commission issued its *Order Setting Interim Rates*.²

On October 28, 2014, the Commission issued its *Findings of Fact, Conclusions, and Order*.³ Order Point 46 required MERC to make its rate case compliance filing within 30 days after the Commission's order was issued, including:

- g. *Because final authorized rates are lower than interim rates, a proposal to make refunds of interim rates, including interest, to affected customers.*

On December 22, 2014, the Commission issued its Order denying MERC's and the OAG's request for reconsideration and clarification.

On January 21, 2015, MERC made its compliance filing required by the Commission's October 28, 2014 Order, including its interim rate period refund proposal.

On February 19, 2015, the Department filed its *Comments* that concluded MERC's interim rate period refund complied with Order Point 46(g), and also recommended that MERC be required to submit a refund compliance report reflecting the actual refunds made and interest paid by rate class with supporting calculations.

¹ MERC requested an annual rate increase of \$14,187,597, or approximately 5.52% percent, over existing rates.

² Authorized MERC to implement an interim rate increase of \$10,755,973, effective on November 29, 2013.

³ Authorized MERC an increase in Minnesota jurisdictional revenues of approximately \$7,580,774 per year to produce jurisdictional total gross revenue of approximately \$267,874,613,³ based on a rate of return on common equity capital of 9.35% for the test-year ending December 31, 2014.

On March 2, 2015, MERC filed its *Reply Comments* to the Department's February 19, 2015 *Comments*, stating that MERC would comply with the Department's interim rate refund recommendations.

On March 18, 2015, the Commission issued an Order on MERC's compliance filing, which included approval of MERC's interim rate period refund plan and the Department's recommendation for a refund compliance report within 10 days of completing the refund.

On June 11, 2015, MERC filed a letter stating that the first 5 billing cycles in June did not include refunds, and that a final compliance filing would be made after the refunds were completed in July.

On July 23, 2015, MERC made its refund compliance filing, which stated that it had distributed refunds of \$4,496,954. MERC proposed to donate \$182,160.54 of un-refunded refund amounts to the Salvation Army HeatShare program.

On July 31, 2015, the Department filed a letter noting that the un-refunded refund amount seemed high. Also, the Department asked MERC to address whether Minn. Stat. Chapter 345, Unclaimed Property, may govern the treatment of these un-refunded amounts and to not donate these monies to HeatShare until that issue was resolved.

On August 10, 2015, MERC filed Reply Comments, stating that the high un-refunded amounts resulted from an error in applying the refund, and the Company was evaluating the matter.

On September 29, 2015, MERC filed Supplemental Reply Comments. MERC stating that it had issued additional refunds to its transportation customers of \$162,576, making the total amount refunded to its customer \$4,675,954. The amount of undistributed refunds proposed to be donated to HeatShare was now \$10,853.⁴ MERC also responded to the Department's questions on the application of Minn. Stat. Ch. 345.

On October 7, 2015, the Department filed a Supplemental Letter, recommending that all un-refunded amounts be turned over to the State as required by Minn. Stat. Ch. 345.

On October 7, 2015, the OAG filed a Response Letter suggesting conditions the Commission should require if the un-refunded amounts are treated under Minn. Stat. Ch. 345, and that MERC be required to file additional information in future refund plans.

On October 15, 2015, MERC responded to the Department and the OAG. MERC stated that donating the un-refunded amounts to HeatShare comports with the statute and past Commission practice.

⁴ MERC further provided the undistributed refund amount of \$11,886 when providing the amount by customer class. MERC later agreed the refund this amount.

Introduction

In its January 21, 2015 Compliance Filing, MERC asked for approval to implement final rates from the rate case on April 1, 2015 and for approval of its proposed interim rate refund plan. The Department recommended the Commission approve MERC's refund proposal. The Commission's March 18, 2015 Order approved MERC's proposed compliance filing's interim rate refund proposal, including a requirement that MERC make a compliance filing within 10 days of completing the refund.

MERC's January 21 refund "plan" consisted only of tables showing calculations of expected refunds and interest by customer class. There was no description of MERC's proposals for applying the refund amounts, searching for former customers, or handling un-refundable amounts. Thus, these issues were not addressed by parties until after MERC filed its post-refund compliance report.

In its July 23, 2015 refund compliance report, MERC proposed to donate the un-refunded interim rates amounts to the Salvation Army Northern Division HeatShare program. The Department recommended to the Commission that un-refunded interim rate period amounts be submitted to the Department's Unclaimed Property division as un-claimed property under Minn. Stat. §345.34. Subsequently, the OAG filed its *Response Letter*, recommending additional reporting conditions if the Commission agreed with the Department Minn. Stat. §345.34 position and additional information in future refund plans.

As discussed in these briefing papers, the Commission will need to decide on how to distribute the remaining un-refunded interim rate period amounts not distributed to MERC's customers, and possible additional requirements for MERC's reporting and future rate cases.

Relevant 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**. [Emphasis added]

345.39, Subd. 1 Miscellaneous Personal Property Held for another person. - 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: (b) deposits or payments for repair or purchase of goods or services; (c) credit checks or memos, or customer overpayments; and (d) unidentified remittances, un-refunded overcharges. 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.

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 receding, 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. [Emphasis added]**
- (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.

[Emphasis added]

Party Positions

On July 23, 2015, MERC submitted its interim rate period refund compliance filing.⁵ MERC proposed to make a donation to the Salvation Army Northern Division - Minnesota HeatShare Program for its un-refunded interim rate period amount of \$182,160.54.

On September 29, 2015, MERC filed its *Supplemental Reply Comments* in response to issues raised by the Department. MERC revised its original interim rate period refund calculations due to an error in its calculation for its transportation customers. MERC's revision corrected its un-refunded interim rate period amounts from \$182,161 to \$10,853; MERC later agreed to refund \$11,886⁶.

MERC's *Supplemental Reply Comments* provided a response to the Department's July 31, 2015 *Letter* request for information, including:

⁵ On June 11, 2015, MERC submitted its *Letter* informing the Commission that its interim rate period refund was not completed in June 2015 because of a billing error where five (5) of MERC's twenty (20) cycles did not receive a refund as planned. MERC stated that these refunds would be issued in its July business with the appropriate interest calculation. MERC stated that it would file its interim rate refund compliance filing after the July bills were issued.

⁶ The difference appeared to relate to rounding errors in calculating class versus aggregated amounts.

What does “un-refunded amounts” include and what are the amounts for each category?

MERC stated its un-refunded amounts were attributed to 1) refunds of less than \$2.00 for customers that have left MERC’s system, 2) refunds of more than \$2.00 for customers who left MERC’s system but did not provide a forwarding address. MERC further stated that the un-refunded amounts were not a result of un-cashed checks, which MERC agreed to treat as abandoned property in accordance with Minn. Stat. §345.34 provisions. MERC did not provide an amount for each category.

What does MERC do to locate customers who are owed a refund?

If a customer terminates its natural gas service, MERC will request a forwarding address, but this address is not always given by the customer.

How long does MERC intend to search for customers who are owed a refund?

If a customer terminates service and provides a forwarding address, MERC will send that customer a refund check. If a customer terminates service and does not provide a forwarding address, MERC does not take additional steps to locate the customer.

How does MERC’s proposal comport with Minn. Stat. §345.34?

MERC does not believe that un-refunded amounts owed to customer under the \$2.00 threshold and the un-refunded amounts where MERC is unable to locate the customer fall under Minn. Stat. §345.34. MERC’s proposal does not treat these customer categories as un-claimed (or abandoned) property. MERC states that its purpose for requesting Commission approval of the \$2.00 threshold is to reduce its administrative burden and associated expenses. MERC believes that its inability to locate its terminated customers does not qualify as un-claimed (or abandoned) property.

How does MERC’s proposal comport with prior Commission Orders?

MERC stated that the Commission has approved similar donation treatment of un-refunded amounts in MERC’s last general rate cases, Docket Nos. 08-835 and 10-977. The Commission further treated un-cashed checks as abandoned property in accordance with Minn. Stat. §345.34.

In its October 7, 2015 *Supplemental Letter*, the Department stated that MERC’s re-calculated un-refunded interim rate period amount was reasonable when compared to previous general rate cases. The Department recommended that the un-refunded interim rate period amounts fall under Minn. Stat. §345.34 as un-claimed (or abandoned) property and should be turned over to the Department of Commerce’s un-claimed property division.

In its October 9, 2015 *Response Letter* the OAG was generally in agreement with the Department’s recommendation to require MERC to turn over its un-refunded interim rate period amounts to the State of Minnesota under Minn. Stat. 345. In addition, the OAG stated that the Commission should require MERC to:

- include in its future interim rate period notice, a statement informing customers of the Department’s website for unclaimed property; and
- require MERC to provide customer names, last-known addresses, and refund amounts when sent to the Department’s Unclaimed Property division; and

- require MERC to provide more detail in its future interim rate refund proposal, including:
 - a. a brief narrative that describes the data; and
 - b. steps taken to return amounts to inactive customers; and
 - c. a description of the steps MERC has taken, or is planning to take to prevent the types of errors that have plagued MERC's interim rate refund process in this case; and
- request permission for the Department to waive the three-year holding period, Minn. Stat. §345.39, Subd. 1.

PUC Staff Comment

The major issue for the Commission to consider is whether the un-refunded amounts should be distributed:

1. Through a Salvation Army's - Minnesota HeatShare Program donation (MERC's proposal); or
2. Subject to Minn. Stat. Ch. 345 requirements, requiring MERC to deposit the funds into the Department of Commerce's – Unclaimed Property account (Department proposal).

The Commission has allowed MERC to make donations of un-refunded amounts in its past two rate cases, and has allowed similar treatment for some un-refunded amounts in past Minnesota Power rate cases. However, many utilities have simply proposed to handle un-refunded amounts under Minn. Stat. Ch. 345, and the Commission has approved the plans.

While it has not raised the issue in the past to the best of staff's knowledge, the Department is now stating that all un-refunded amounts should be handled under the Unclaimed Property Act, Minn. Stat. Ch. 345. The Department of Commerce is the agency that administers this Act, and its opinion should be given weight. If there is room for a different interpretation of the statute, then donating the money to HeatShare appears to be a reasonable option.

The OAG recommended that if the Commission finds that Minn. Stat. Ch. 345 should be applied, then MERC should be required to provide customer names, last-known addresses, and refund amounts for all un-refunded amounts when it sends the refund amounts to the Department's Unclaimed Property division. MERC objects to this requirement. Staff believes that Minn. Stat. §345.41, subd. (b)(1) and (3) excludes MERC from being required to provide such information when the un-refunded amount is less than \$100 and that these un-refunded amounts under \$100 can be aggregated when sent to the Department's un-claimed property account.

The OAG also recommended that MERC be directed to request permission from the Commissioner of the Department of Commerce to waive the one-year and three-year holding periods under Minn. Stat. § 345.39 and to include a mention of the Department's website for un-claimed property, www.missingmoney.com in future interim rate period notices. MERC did not object to these recommendations. Staff agrees this is reasonable.

Additionally, the OAG recommended that MERC be required to file more detailed information in future refund plans, including a narrative description of the data, steps taken to locate customers no longer on the system, and what steps it is taking to avoid the types of errors that have occurred in refunds. Staff agrees with this recommendation.

Decision Alternatives

Distribution of un-refunded amounts

1. Allow MERC to make a donation of \$11,886, the un-refunded interim rate period amount, to the Salvation Army's - Minnesota HeatShare Program. (MERC)
2. Require MERC to treat its un-refunded interim rate period amount as un-claimed property under Minn. Stat. Chapter 345 and turn the funds over to the State of Minnesota. (Department)
3. If the Commission adopts Decision Alternative 2, consider the following:
 - a. Require MERC to include in future interim rate notices, a statement informing customers of the Department's website for unclaimed property. (OAG, MERC agrees)
 - b. Require MERC to provide customer names, last-known addresses, and refund amounts for all un-refunded amounts when it sends the refund amounts to the Department's Unclaimed Property division. (OAG)
 - c. Require MERC to aggregate the un-refunded amounts under \$100 (MERC)
 - d. Require that MERC request permission from the Department to waive the three-year holding period under Minn. Stat. §345.39, Subd. 1. (OAG, MERC agrees)

Information to be Provided in Future Refund Plans

4. Require MERC to provide more detail in its future interim rate refund proposal, including:
 - a. a brief narrative that describes the refunding process and data; and
 - b. steps taken to return amounts to inactive customers; and
 - c. a description of the steps MERC has taken, or is planning to take to prevent the types of errors that have plagued MERC's interim rate refund process in this case. (OAG with minor staff edit, MERC agrees)