COMMERCE DEPARTMENT

July 11, 2019

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

RE: **Comments of the Minnesota Department of Commerce – Division of Energy Resources**
Docket Nos. G011/M-18-182 and G011/M-18-281

Dear Mr. Wolf:

Attached are the comments of the Minnesota Department of Commerce (Department) regarding a request by Minnesota Energy Resources Corporation (MERC) to suspend, for some customers, the rates from the following matters:

> In the Matter of the Petition of Minnesota Energy Resources Corporation for Approval of a Natural Gas Extension Project (NGEP) Cost Rider Surcharge for the Recovery of 2019 Rochester Project Costs,
>
> In the Matter of Minnesota Energy Resources Corporation's Request for Approval of a Gas Utility Infrastructure Cost (GUIC) Rider.

The Department offers a preliminary recommendation that the Minnesota Public Utilities Commission (Commission) **suspend** GUIC rider rate recovery for MERC's direct connect customers, depending on MERC's response to the information requested by the Department regarding the potential for intra-class inequities. Given the potential impact of the suspension on non-direct-connect customers, the Department requests that the Commission consider temporarily suspending GUIC rider recovery for all customers at this time to allow for additional analysis of the GUIC rider and its rate impacts to all MERC customers.

The Department recommends that the Commission **deny** MERC's request to suspend the NGEP rider for direct connect customers.

The Department recommends that the Commission **deny** MERC's request to require non-direct-connect customers to provide a refund to direct connect customers.

Finally, the Department requests additional information from MERC as noted in the attached Comments.

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

Sincerely,

/s/ ADAM HEINEN
Rates Analyst

/s/ KATE O'CONNELL
Rates Supervisor

AH/KO/ja
Attachment

85 7th Place East - Suite 280 - Saint Paul, MN 55101 | P: 651-539-1500 | F: 651-539-1547
mn.gov/commerce
An equal opportunity employer

COMMERCE DEPARTMENT

Before the Minnesota Public Utilities Commission

Comments of the Minnesota Department of Commerce
Division of Energy Resources

Docket Nos. G011/M-18-182 and G011/M-18-281

I. BACKGROUND

In Docket No. G011/M-18-281 (18-281 Docket), on February 5, 2019, the Minnesota Public Utilities Commission (Commission) issued its *Order Approving Gas Utility Infrastructure Cost* [GUIC] *Rider with Modifications and Requiring Compliance Filing* (18-281 Order). The Commission required Minnesota Energy Resources Corporation's (MERC) GUIC rider surcharge to be charged to all customer classes on a uniform basis, based on 12 months of sales.

On April 25, 2019, the Commission issued its *Order Approving Compliance Filing*, approving as filed MERC's compliance filing, authorizing MERC to charge a volumetric GUIC surcharge of $0.00413 per therm to all customers.

In Docket No. G011/M-18-182 (18-182 Docket), on June 18, 2019, the Commission issued its *Order Approving* [Natural Gas Extension Project] *NGEP Rider Surcharge with Modifications* (18-182 Order). The NGEP rider surcharge is a volumetric charge and was initially estimated to be $0.00050 per therm applicable to all customer classes. However, on June 28, 2019, MERC submitted a compliance filing recalculating the volumetric charge to be $0.00052 per therm.[1]

On June 28, 2019, MERC submitted a letter in both of the above dockets requesting that the Commission allow the Company to suspend its GUIC and NGEP rider surcharges, only for MERC's direct connect customers, to address a bypass concern raised by the Super Large Gas Intervenors (SLGI) in a letter submitted in the 18-182 Docket on May 15, 2019. MERC requested Commission action by August 1, 2019. In particular, MERC requests the following relief:

1. Authorizing the suspension of the 2019 GUIC rider surcharge from direct connect customers by August 1, 2019;
2. Authorizing the suspension of the 2019 NGEP rider surcharge from direct connect customers by August 1, 2019;
3. Authorizing the refund of all amounts collected from direct connect customers prior to the suspension on both the NGEP and GUIC rider surcharges;
4. Authorizing MERC to recover the resulting under-recovered revenues for both the GUIC rider and NGEP rider through the 2019 rider true-up calculations.

[1] MERC submitted a revision to its compliance filing on July 2, 2019. This revision did not impact the volumetric rate of $0.00052 per therm.

The Commission issued a *Notice of Comment Period* on July 2, 2019, requesting comments by July 11, 2019 on the following questions:

- What action, if any, should the Commission take on MERC's request to suspend its NGEP rider surcharge and its GUIC rider surcharge from the Company's direct connect customers?
- Are there any other issues or concerns related to this matter?

The Minnesota Department of Commerce, Division of Energy Resources (Department) provides its comments below.

II. DEPARTMENT'S ANALYSIS

Because different statutes and facts apply to these two riders, the Department provides its analysis for each rider, GUIC and NGEP, separately. The Department discusses on a combined basis MERC's proposed refund, below.

A. GUIC Rider

As reflected in the per-therm rates, the GUIC is a much more substantial surcharge compared to that of the NGEP. Specifically, the authorized rate of $0.00413 per therm for the GUIC rider is higher by a factor of nearly 10 compared to the $0.00052 per therm for NGEP rider. Thus, the GUIC rate merits careful consideration.

Regarding record development, unlike the NGEP rider, where the direct connect customers participated in both the NGEP rider proceeding and an earlier proceeding,[2] the direct connect customers did not file comments in the GUIC proceeding. Their perspective of the 18-281 Docket was made available only in MERC's June 28, 2019 letter requesting emergency suspension of the GUIC rider only for direct connect customers.

The GUIC rider is permitted under Minn. Stat. §216B.1635 (GUIC Statute), as discussed at length in the Commission's 18-281 Order. Regarding rate design, subdivision 4 (2)(v) of the GUIC Statute merely states that the utility must file "calculations to establish that the rate adjustment is consistent with the terms of the rate schedule, including the proposed rate design and an explanation of why the proposed rate design is in the public interest." Thus, even if the Commission determines that it continues to be reasonable for MERC to charge the GUIC rate as it was approved and filed, it appears that the statute would not prohibit the

[2] *In the Matter of a Petition by Minnesota Energy Resources Corporation for Evaluation and Approval of Rider Recovery for Its Rochester Natural Gas Extension Project*, Docket No. G011/M-15-895.

Commission, on a prospective basis, from exempting the direct connect customers from paying for the GUIC costs authorized by the Commission, assuming the Commission determines that such a new rate design is in the public interest recognizing that such a rate change likely would cause prospective rates to increase for other MERC customers.

Moreover, the Department confirms that the effects of the currently-active GUIC rate on MERC's direct connect customers is material. In its Letter, MERC stated there are 14 direct connect customers on its system. In response to a Department email inquiry, the Company provided annual sales data for these direct connect customers and the current rate schedule for which each such customer receives service.[3] Based on this information, the GUIC rate represents, for most of these direct connect customers, a substantial increase - approximately 86 percent – relative to MERC's non-gas margin of $0.0048 per therm. In other words, the GUIC nearly doubled MERC's recovery of non-gas costs from these direct connect customers. Thus, the GUIC rate already resulted in a significant rate increase to direct connect customers even when such costs are spread across all therms. The significance of this rate increase, especially in light of the price sensitivity of these customers,[4] suggests rate shock and risks further rate increases for other customers if some or all of the direct connect customers choose to bypass MERC's system. The price sensitivity of these customers is also suggested in MERC's most recent rate case[5] where direct connect customer classes did not see an increase in volumetric rates and saw only a minor increase in monthly fixed charges. In its July 1, 2019 Letter, Encore Energy Service (Encore), a direct connect customer representative, voiced support for MERC's proposal to suspend the GUIC rate to direct connect customers. As part of this letter, Encore stated that the only MERC-owned facility used by the direct connect customers is an odorizer.[6] If this statement is accurate, it would support MERC's claim that bypass of the system is inexpensive and that the risk of bypass is real. In the interest of building a complete record, the Department requests that MERC provide an estimate of the costs needed for each direct connect customer to procure, and maintain, an odorizer as well as any other equipment necessary to bypass the Company's system.

In order to further assess the impact of excluding direct connect customers from the GUIC rider surcharge, the Department examines the effects on other customer classes of assigning the entire $3.63 million, which the Commission determined in its GUIC Order to be reasonable to collect from all customers, to be recovered only from non-direct-connect customers. The

[3] Department Attachment 1.
[4] The price sensitivity of these customers is supported by the fact that, based on the sales and customer class data provided by MERC, it appears that some of these direct connect customers are Conservation Improvement Plan (CIP) exempt and not assessed the Conservation Cost Rider Charge (CCRC) or Conservation Cost Recovery Adjustment (CCRA) rate.
[5] Docket No. G011/GR-17-563.
[6] Encore Letter, Page 2.

Department summarizes impacts of assigning the entire $3.63 million revenue deficiency to MERC's non-direct connect customers in Tables 1 and 2, below. Note that these tables reflect MERC's proposal that the Commission require non-direct-connect customers to "refund," or compensate or provide a discount to, direct connect customers for the revenue already collected under the current, Commission-approved GUIC rider rate. As discussed in section II.C below, the Department opposes this aspect of MERC's request; however, the Department provides the 12-month analysis to demonstrate the likely impact of excluding direct connect customers from the GUIC rider rate going forward.

As to Table 1, assigning all costs to non-direct-connect customers would increase the per-therm rate to $0.00851 per therm,[7] presuming a single volumetric rate design is continued, which would be an approximately 89 percent increase in the per-therm GUIC rate. Since the GUIC rider rate is applied as a single per-therm rate, it has the same impact on all customers; however, the relative impact of the rider from an overall rate perspective differs since different rate classes have different base non-gas margin rates. The Department summarizes these rate impacts in Table 1 below.

[7] $3,626,315/426,218,789=$0.00851. This calculation is based on the approved GUIC revenue requirement $3,626,315 (February 7, 2019 Compliance, Attachment A Docket No. G011/M-18-291) and rate case approved Minnesota jurisdictional sales, 764,518,780 therms (June 18, 2019 Order, Docket No. G011/M-18-182), net of 2018 actual use by direct connect customers, 338,321,614 therms (Department Attachment A) [764,518,780-338,321,614 = 426,197,166].

Table 1: Rate Impact of MERC's Proposed GUIC Adjustment on Sales Class Customers

Customer Class	Current Distribution Rate	Approved Distribution Rate[8]	Rate Case Non-Gas Margin Rate Increase	Current GUIC Rate	Current GUIC as Percent of Approved Non-Gas Rate	Modified GUIC Rate	Modified GUIC as Percent of Approved Non-Gas Rate
Residential Sales	$0.24116	$0.24686	2.36%	$0.00413	1.67%	$0.00851	3.45%
Residential Farm Tap	$0.24116	$0.24686	2.36%	$0.00413	1.67%	$0.00851	3.45%
C&I Firm Class 1	$0.22065	$0.22251	0.84%	$0.00413	1.86%	$0.00851	3.82%
Ag Grain Dryer-Class 1 SCI	$0.22065	$0.12953	-41.30%	$0.00413	3.19%	$0.00851	6.57%
C&I Farm Tap SCI	$0.22065	$0.22251	0.84%	$0.00413	1.86%	$0.00851	3.82%
C&I Firm Class 2	$0.16885	$0.16857	-0.17%	$0.00413	2.45%	$0.00851	5.05%
C&I Firm Class 3	$0.16885	$0.12453	-26.25%	$0.00413	3.32%	$0.00851	6.83%
Power Generating Firm--Class 1	$0.16885	$0.09953	-41.05%	$0.00413	4.15%	$0.00851	8.55%
Ag Grain Dryer--Class I LCI	$0.16885	$0.12953	-23.29%	$0.00413	3.19%	$0.00851	6.57%
C&I Farm Tap LCI	$0.16885	$0.16857	-0.17%	$0.00413	2.45%	$0.00851	5.05%
C&I INT Class 2 SVI	$0.09740	$0.10453	7.32%	$0.00413	3.95%	$0.00851	8.14%
C&I INT Class 3 SVI	$0.09740	$0.09453	-2.95%	$0.00413	4.37%	$0.00851	9.00%
Ag Grain Dryer--Class I INT (SVI)	$0.09740	$0.12953	32.99%	$0.00413	3.19%	$0.00851	6.57%
Ag Grain Dryer--Class 2 INT (SVI)	$0.09740	$0.08150	-16.32%	$0.00413	5.07%	$0.00851	10.44%
C&I INT Class 2 LVI	$0.05329	$0.10453	96.15%	$0.00413	3.95%	$0.00851	8.14%
C&I INT Class 3 LVI	$0.05329	$0.09453	77.39%	$0.00413	4.37%	$0.00851	9.00%
Power Generating INT--Class 1	$0.05329	$0.09953	86.77%	$0.00413	4.15%	$0.00851	8.55%
Ag Grain Dryer--Class I INT (LVI)	$0.05329	$0.12953	143.07%	$0.00413	3.19%	$0.00851	6.57%
Ag Grain Dryer--Class 2 INT (LVI)	$0.05329	$0.08150	52.94%	$0.00413	5.07%	$0.00851	10.44%
C&I Joint Class 2	$0.09740	$0.10453	7.32%	$0.00413	3.95%	$0.00851	8.14%

Note: Non-gas margins include MERC's CCRC rate.

[8] Implemented and effective July 1, 2019.

As shown in Table 1, the current GUIC rider rate ranges from approximately 1.65 percent to 5 percent of non-gas margin rates for MERC's sales customers. Under the Company's proposal, the GUIC rider rate would increase to approximately 3.50 percent to 10.45 percent of non-gas margin rates for MERC's sales customers. MERC's proposal would more than double the GUIC rider's share of non-gas margin rates for sales class customers and make the rider a noticeable portion of bills for larger commercial/industrial and interruptible customers. MERC's proposal would have the following impacts on average customer costs per year, as shown in Table 2.

Table 2: Annual Impact of MERC's Proposed GUIC Adjustment on Certain Sales Class Customers

Customer Class[9]	Average Monthly Use	GUIC Rate Change	Monthly Bill Impact	Annual Bill Impact
Residential Sales	72	$0.00438	$0.32	$3.78
C&I Firm Class 1	85	$0.00438	$0.37	$4.47
Ag Grain Dryer-Class 1 SCI	186	$0.00438	$0.81	$9.78
C&I Firm Class 2	507	$0.00438	$2.22	$26.65
C&I Firm Class 3	9,692	$0.00438	$42.45	$509.41
Ag Grain Dryer--Class I LCI	234	$0.00438	$1.02	$12.30
C&I INT Class 2 SVI	4,794	$0.00438	$21.00	$251.97
C&I INT Class 3 SVI	18,838	$0.00438	$82.51	$990.13
Ag Grain Dryer--Class I INT (SVI)	666	$0.00438	$2.92	$35.00
Ag Grain Dryer--Class 2 INT (SVI)	1,726	$0.00438	$7.56	$90.72
C&I INT Class 2 LVI	1,538	$0.00438	$6.74	$80.84
C&I INT Class 3 LVI	58,581	$0.00438	$256.58	$3,079.02
Power Generating INT--Class 1	89,909	$0.00438	$393.80	$4,725.62
C&I Joint Class 2	5,288	$0.00438	$23.16	$277.94

As shown in Table 2, the proposed GUIC rate change would have a noticeable bill impact for MERC's larger customers. Further, although the rate impacts appear relatively small for Residential and Small Commercial customers, the Company's proposal should be considered in light of other recent rate changes, namely, implementation of the GUIC rider and final rates from MERC's most recent rate case. For the residential rate class, on May 1, the Company implemented its GUIC rider rate of $0.00413 and then, on July 1, 2019, MERC implemented the Commission's final rate increase of $0.0057 per therm. Given the size of the GUIC rate, it is

[9] The Department notes that certain rate classes are not included in Table 2 relative to Table 1 (*e.g.,* Residential Farm Tap, Power Generating Firm—Class 1). The rate impacts included in Table 2 correspond to the available bill impact data provided by the Company in its proposed bill inserts included as Attachment C to its Final Rate Case Compliance in Docket No. G011/GR-17-563.

analogous to the magnitude of an increase for residential customers that might be expected in a second general rate case. Further, if MERC's proposed suspension is granted, the Department estimates that the "true-up" amount of approximately $0.00438 per therm, would effectively equate to a residential rate increase of a magnitude that one might expect from a third rate case, all in the span of less than a year.

The Commission may also want to consider impacts to MERC's customers that are in large usage rate classes, including the LVI-Sales rate classes. As shown in Table 1 above, many of these larger customers already experienced significant increases in volumetric rates as a result of MERC's most recent rate case. In terms of the LVI-Sales (C&I INT Class 3), when the proposed combined GUIC rate is considered, MERC's proposal would represent a further increase of approximately 9.0 percent resulting in a nearly 100 percent increase in volumetric rates in one year.[10]

The information and discussion regarding direct connect customers above indicates that the impact of the current GUIC rider rate on direct connect customers has been significant, given that the GUIC increased their rates by approximately 86 percent. The rate increases approved by the Commission in MERC's last rate case, along with many direct connect customers being CIP-exempt, highlight the price sensitive nature of these customers. In addition, despite a lack of specific bypass cost data (meaning there is no data that might show which direct connect customers might bypass and which might not, and at what cost breakpoint), the rate increases and operational characteristics of these customers suggest that the threat of bypass is real.

The Department requests that MERC clarify whether the direct connect customers are in multiple rate classes, and if so, whether they compose the entire rate class(es) to which they belong. If MERC's direct connect customers are a subset of one or more rate classes, suspending the GUIC rider rate for only direct connect customers would result in intra-class inequities.

The Department recommends that, given the significant impact of the GUIC rider rate on direct connect customers, resulting in a real, if unquantified, bypass threat, the Commission suspend the GUIC rate to direct connect customers if it would not result in intra-class inequities.

The information and discussion regarding non-direct connect customers above also suggests that the rate impacts of assigning the direct connect customers' share of the GUIC to non-direct connect customers via the proposed rate change may also be significant. As shown in Table 2

[10] The Department notes that the Commission approved significant decreases in fixed charges for certain customer classes, so the actual impact to customers may be less significant than the volumetric rate changes suggest. However, all of these potential changes may impact the significant rate design change that the Commission approved for these customers in the rate case.

above, average Residential bills over a future 12-month period would increase by $3.78 per year and the proposed GUIC rate would be approximately 3.45 percent of non-gas margins for this rate class. Table 2 also shows that average Commercial and Interruptible customer bills may increase upwards of approximately $510 to $3,080 per year and the proposed GUIC rate would be approximately 6 to 7.5 percent of non-gas margins for these customers. These rate impacts may not be considered significant enough to constitute rate shock, but the impacts of the proposed GUIC rider rate change likely would be noticeable to all classes of non-direct connect ratepayers, including those in the larger commercial and industrial rate classes. Given these potential rate impacts, especially in light of the implementation of final rates from the most recent rate case (discussed above), the Commission may wish to temporarily suspend MERC's GUIC rider rate for all customer classes to enable the Commission to consider generally whether, on a prospective basis, it is in the public interest to maintain MERC's current GUIC rider rate.

Based on its review, the Department recommends that the Commission, at a minimum, suspend the GUIC rate to direct connect customers, depending on the information requested by the Department regarding potential intra-class inequities. In addition, given that the GUIC Statute is permissive, not mandatory (subdivision 4 states in part that: "the Commission *may* approve a rate schedule…."), the Department recommends that the Commission consider suspending the GUIC for all customers at this time. The rate impacts discussed above are meaningful and may require additional analysis and consideration. If the Commission suspends the GUIC for all ratepayers, it will allow the parties to investigate revenue recovery methods that may mitigate some of the rate impacts discussed above. As part of this suspension and further analysis, the Commission may also wish to allow MERC to demonstrate as to its proposed rate change 1) what MERC's actual 2019 projects were, 2) that each project qualifies for GUIC recovery, and 3) that the projects are incremental to the costs being recovered in base rates.

B. NGEP Rider

On July 2, 2019, the Company filed a revised compliance filing in the 18-182 Docket. In this revised compliance filing, MERC stated that it delayed implementation of its NGEP rider surcharge until August 1, 2019; as such, the Company has not commenced recovery of this rider. As discussed in the Rochester Proceeding,[11] the NGEP Statute requires cost recovery from all utility customers. In particular, the NGEP Statute states the following:[12]

[11] Docket No. G011/M-15-895. Heinen Direct Testimony, Pages 49-50. Docket No. G011/M-15-895. Peirce Surrebuttal, Pages 1-5.
[12] Minnesota Statute § 216B.1638, subd.2.

> Subd. 2. Filing.
> (a) A public utility may petition the commission outside of a general rate case for a rider that *shall include all of the utility's customers, including transport customers*, to recover the revenue deficiency from a natural gas extension project.
> (b) The petition shall include…
>> (6) the amount of the revenue deficiency, and how recovery of the revenue deficiency will be allocated among industrial, commercial, residential, and transport customers;
>> (7) the proposed method to be used to recover the revenue deficiency from each customer class, such as a flat fee, a volumetric charge, or another form of recovery (emphasis added);

Although MERC requests emergency suspension of the NGEP rider for direct connect customers, it is clear that the NGEP Statute requires recovery of the revenue deficiency from all ratepayers, including the direct connect customers. The Department also notes that the SLGI, of which many of the direct connect customers are members, committed to paying their fair share of costs associated with the Rochester Project and to analyze future NGEP cost recovery proposals.[13] Apart from comments submitted the day before the Commission's Agenda Meeting at which the 18-182 Docket was considered,[14] the SLGI did not analyze or otherwise respond to the Company's proposed cost recovery for the Rochester NGEP rider. The rider cost recovery ultimately approved by the Commission is identical to the proposed cost recovery mechanism presented by MERC in the Rochester Proceeding, which the SLGI did not dispute.

Also, the Department is aware of the concerns raised by the direct connect customers and MERC regarding the NGEP rider, but it is unclear whether suspension of this current rider for this subset of customers is justified regarding effect. The overall impact to these direct connect customers is much smaller than that of the current GUIC Rider; furthermore, the NGEP Statute requires that all customers pay a portion of the rider. It is unclear whether suspension of the rider is allowed and, if so, whether it would be equitable for all other ratepayers to be required to absorb the NGEP rider costs while a new rider recovery proposal is considered. The Department notes that suspension of this current rider to direct connect customers would increase the NGEP rider charges to other ratepayers from $0.00052 per therm to $0.00094 per therm.[15] Given the relative size of the total revenue deficiency ($400,989), the lack of

---

[13] SLGI Initial Brief, Docket No. G011/M-15-895.
[14] May 15, 2019 SLGI Comments, Docket No. G011/M-18-182.
[15] $400,989/426,218,789. This calculation is based on the approved NGEP revenue requirement $400,989 (July 2, 2019 Revised Compliance, Attachment A Docket No. G011/M-18-182) and rate case approved Minnesota jurisdictional sales, 764,518,780 therms (June 18, 2019 Order, Docket No. G011/M-18-182), net of 2018 actual use

information regarding potential threat of bypass for all or some of the direct connect customers based on the impact of the NGEP on its own, and the plain language of the NGEP Statute requiring all MERC customers to pay, the Department recommends that the Commission deny MERC's request to suspend the NGEP rider surcharge for direct connect customers.

The Department understands the sensitivity and complexity of this issue, and the Commission may wish to consider a modification of rider recovery in a future NGEP rider filing.

C. Proposed Discount/Refund

As part of its proposal, MERC also requested that the direct connect customers be discounted or "refunded" the GUIC and NGEP rider charges that have been, or will have been recovered from them under the current rider rates up through the time of suspension, and that the amount of this discount be considered as revenue that would be placed into the true up for future recovery from all other ratepayers. Given that the NEGP rider surcharge has not yet been implemented, the Department's discussion on this topic is focused on the GUIC rider.

The Department opposes MERC's proposal to charge non-direct-connect customer revenues already recovered through existing, Commission-approved rates, and recommends that the Commission reject it. Although the current GUIC rider rate represents a significant rate increase to these direct connect customers, it is unreasonable for MERC to be allowed to change a past approved rate under which GUIC rider costs were recovered from ratepayers.

First, the currently-approved, and filed, GUIC rate is the current lawful rate. The Commission approved the rate as proposed by MERC, and approved MERC's subsequent tariff consistent with its 18-281 Order. In general, any rate changes must be *prospective*, not *retroactive*.[16] Further, under the Commission's investigation authority, Minn. Stat. § 216B.23, subd. 1a states, in relevant part:

> On determining that a public utility has charged a rate in violation of this chapter, a commission rule, or a commission order, the commission, after conducting a proceeding, may require the public utility to refund to its customers, in a manner approved by the commission, any revenue the commission finds were collected as a result of the unlawful conduct.
> …
> (b) This section must not be construed as allowing:
> (1) retroactive ratemaking;

by direct connect customers, 338,321,614 therms (Department Attachment A) [764,518,780-338,321,614 = 426,197,166].

[16] *See* Minn. Stat. § 216B.16, subd. 5 (2018).

> (2) refunds based on claims that prior or current approved rates have been unjust, unreasonable, unreasonably preferential, discriminatory, insufficient, inequitable, or inconsistent in application to a class of customers;

In other words, after investigation, if a utility has correctly charged an approved rate, refunds of all or a portion of the revenues received under that rate are not allowed even if there are claims that the approved rate is unjust or discriminatory. Therefore, it is the Department's understanding that if the Commission approves the Company's proposal to discontinue this rate for direct connect customers, approval must be implemented on a *prospective* basis. Discounting or "refunding" revenues recovered in accordance with a lawful rate and then subsequently charging the sum of the discount to other ratepayers, as if the past and current rate did not exist but instead was the proposed new rate, is inequitable and would constitute retroactive application of a rate change. MERC has not shown that its proposal would be reasonable or lawful.

Second, based on the information provided in the Company's rate change request, none of the direct connect customers have bypassed the system since the GUIC rider rate was implemented on May 1, 2019. The Department does not dispute the significant rate impact to direct connect customers, and that a legitimate bypass threat likely exists, at least for some direct connect customers, but no regulatory harm has occurred at this point. The Department notes that the issue of harm was discussed at length in the recent Otter Tail Power Company rate design reopener request and, in that instance, the Commission approved a limited rate design change on a *prospective* basis and did not authorize a refund to customers impacted by the existing rate design.[17]

Notwithstanding its recommendation regarding the proposed GUIC rider, the Department recommends that Commission reject MERC's request to refund already recovered GUIC rider revenue to its direct connect customers and, subsequently, to place these costs in a true-up for future recovery from other ratepayers. If the GUIC rider rate is suspended for direct connect customers, the Department recommends that the Commission deny MERC's request to return the revenues collected from direct connect customers prior to the suspension.

IV. RECOMMENDATIONS

Based on its review, the Department recommends that the Commission deny MERC's request to suspend the NGEP rider for direct connect customers.

[17] Docket No. E017/GR-15-1033.

The Department also recommends that the Commission deny MERC's request to require non-direct-connect customers to compensate direct connect customers for revenues collected under current, Commission-approved GUIC rates.

The Department offers a preliminary recommendation that the Commission approve MERC's request to suspend GUIC rider rate recovery for MERC's direct connect customers, depending on MERC's response to the information requested by the Department regarding the potential for intra-class inequities. Given the potential impact of the suspension on non-direct-connect customers, the Department requests that the Commission consider temporarily suspending GUIC rider recovery for all customers at this time to allow for additional analysis of the GUIC rider and its rate impacts to all MERC customers. As part of this suspension and further analysis, the Commission may also wish to require MERC to demonstrate what MERC's actual 2019 projects are, that each project qualifies for GUIC recovery, and that the projects are incremental to the costs being recovered in base rates.

The Department also requests that MERC provide an estimate of the costs needed for each customer to procure, and maintain, an odorizer as well as any other equipment necessary to bypass the Company's system.

/ja

Heinen, Adam (COMM)

From:	Wolter, Mary L <mary.wolter@wecenergygroup.com>
Sent:	Tuesday, July 09, 2019 10:26 AM
To:	Heinen, Adam (COMM)
Cc:	'Stastny, Kristin'; Phillips, Catherine A
Subject:	Direct Connect Customers for Emergency Request (M-18-281)

Adam:

Welcome back from the holiday!

I have the data on one other direct connect customer that was missing from my initial list. I'm referring to them as "Large Volume Interruptible #2". I also found that Super Large customers #3 and #4 are actually one customer with two different services, so I am combining them into one. My revised list is as follows:

Super Large Interruptible #1	17,569,111
Super Large Interruptible #2	32,067,519
Super Large Interruptible #3	106,987,005
Super Large Interruptible #4	28,968,554
Super Large Interruptible #5	28,497,288
Super Large Interruptible #6	34,037,032
Large Volume Interruptible #1	84,638,410
Large Volume Interruptible #2	21,623
Large Volume Joint #1	5,535,073
Total (therms)	338,321,614

Mary L. Wolter, CPA
Director - Gas Regulatory Planning & Policy
WEC Energy Group - Business Services
office: 414-221-2374
mobile: 262-930-4900
mary.wolter@wecenergygroup.com

Serving WEC Energy Group, We Energies, Wisconsin Public Service, Michigan Gas Utilities, Minnesota Energy Resources, Peoples Gas, North Shore Gas and Upper Michigan Energy Resources

---

Below is the information that you requested re: our direct connect customers.

Note: in my letter I referenced 14 customers. There are actually 14 direct connect *services*. If I were to count customers, not services, there are really only nine that were included in the sales estimate. (There may be two other customers that should have been included as direct connects, but I'm still tracking down information on those.)

The classes (per our "old" tariffs) and their 2018 usage were as follows. All are transportation customers.

Super Large Interruptible #1	17,569,111 therms
Super Large Interruptible #2	32,067,519 therms
Super Large Interruptible #3	106,538,120 therms
Super Large Interruptible #4	448,885 therms
Super Large Interruptible #5	28,968,554 therms
Super Large Interruptible #6	28,497,288 therms
Super Large Interruptible #7	34,037,032 therms
Large Volume Interruptible	84,638,410 therms
Large Volume Joint #1	5,535,073 therms
Total	338,299,991 therms

I see that we have some official IRs now in the docket – I'll start working on those right away.

And I'm still looking into your question re: the Gas Jurisdictional Report.

I apologize for the somewhat disjointed information. I'm still learning my way around the MERC data since Seth moved on. Thanks for your patience!

Mary L. Wolter, CPA
Director - Gas Regulatory Planning & Policy
WEC Energy Group - Business Services
office: 414-221-2374
mobile: 262-930-4900
mary.wolter@wecenergygroup.com

Serving WEC Energy Group, We Energies, Wisconsin Public Service, Michigan Gas Utilities, Minnesota Energy Resources, Peoples Gas, North Shore Gas and Upper Michigan Energy Resources

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
Comments

Docket No. G011/M-18-182 and G011/M-18-281

Dated this 11th day of July 2019

/s/Sharon Ferguson

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michael	Ahern	ahern.michael@dorsey.com	Dorsey & Whitney, LLP	50 S 6th St Ste 1500 Minneapolis, MN 554021498	Electronic Service	No	OFF_SL_18-182_M-18-182
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-182_M-18-182
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_18-182_M-18-182
Bret	Feller	bret.feller@encorenergy.com	Encore Energy	12120 Port Grace Blvd Ste 200 Las Vista, NE 68128	Electronic Service	No	OFF_SL_18-182_M-18-182
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_18-182_M-18-182
Daryll	Fuentes	dfuentes@usg.com	USG Corporation	550 W Adams St Chicago, IL 60661	Electronic Service	No	OFF_SL_18-182_M-18-182
Allen	Gleckner	gleckner@fresh-energy.org	Fresh Energy	408 St. Peter Street Ste 220 Saint Paul, Minnesota 55102	Electronic Service	No	OFF_SL_18-182_M-18-182
Amber	Lee	Amber.Lee@centerpointenergy.com	CenterPoint Energy	505 Nicollet Mall Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-182_M-18-182
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Electronic Service	No	OFF_SL_18-182_M-18-182
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-182_M-18-182

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Joseph	Meyer	joseph.meyer@ag.state.mn.us	Office of the Attorney General-RUD	Bremer Tower, Suite 1400 445 Minnesota Street St Paul, MN 55101-2131	Electronic Service	No	OFF_SL_18-182_M-18-182
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-182_M-18-182
Joseph	Pereira	josephp@cubminnesota.org	Citizen's Utility Board of Minnesota	332 Minnesota St Ste W1360 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_18-182_M-18-182
Catherine	Phillips	catherine.phillips@we-energies.com	We Energies	231 West Michigan St Milwaukee, WI 53203	Electronic Service	No	OFF_SL_18-182_M-18-182
Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	332 Minnesota Street Ste W2750 St. Paul, MN 55101	Electronic Service	No	OFF_SL_18-182_M-18-182
Elizabeth	Schmiesing	eschmiesing@winthrop.com	Winthrop & Weinstine, P.A.	225 South Sixth Street Suite 3500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-182_M-18-182
Colleen	Sipiorski	Colleen.Sipiorski@wecenergygroup.com	Minnesota Energy Resources Corporation	700 North Adams St Green Bay, WI 54307	Electronic Service	No	OFF_SL_18-182_M-18-182
Kristin	Stastny	kstastny@briggs.com	Briggs and Morgan, P.A.	2200 IDS Center 80 South 8th Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-182_M-18-182
James M	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	200 S 6th St Ste 470 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-182_M-18-182

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_18-182_M-18-182
Casey	Whelan	cwhelan@kinectenergy.com	Kinect Energy Group	605 Highway 169 N Ste 1200 Plymouth, MN 55441	Electronic Service	No	OFF_SL_18-182_M-18-182
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_18-182_M-18-182
Mary	Wolter	mary.wolter@wecenergygroup.com	Minnesota Energy Resources Corporation (HOLDING)	231 West Michigan St Milwaukee, WI 53203	Electronic Service	No	OFF_SL_18-182_M-18-182

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michael	Ahern	ahern.michael@dorsey.com	Dorsey & Whitney, LLP	50 S 6th St Ste 1500 Minneapolis, MN 554021498	Electronic Service	No	OFF_SL_18-281_M-18-281
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1800 St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_18-281_M-18-281
Ian	Dobson	residential.utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012131	Electronic Service	Yes	OFF_SL_18-281_M-18-281
Bret	Feller	bret.feller@encorenergy.com	Encore Energy	12120 Port Grace Blvd Ste 200 Las Vista, NE 68128	Electronic Service	No	OFF_SL_18-281_M-18-281
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_18-281_M-18-281
Daryll	Fuentes	dfuentes@usg.com	USG Corporation	550 W Adams St Chicago, IL 60661	Electronic Service	No	OFF_SL_18-281_M-18-281
Allen	Gleckner	gleckner@fresh-energy.org	Fresh Energy	408 St. Peter Street Ste 220 Saint Paul, Minnesota 55102	Electronic Service	No	OFF_SL_18-281_M-18-281
Amber	Lee	Amber.Lee@centerpointenergy.com	CenterPoint Energy	505 Nicollet Mall Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-281_M-18-281
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E St. Paul, MN 55106	Electronic Service	No	OFF_SL_18-281_M-18-281
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-281_M-18-281

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Joseph	Meyer	joseph.meyer@ag.state.mn.us	Office of the Attorney General-RUD	Bremer Tower, Suite 1400 445 Minnesota Street St Paul, MN 55101-2131	Electronic Service	No	OFF_SL_18-281_M-18-281
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-281_M-18-281
Joseph	Pereira	josephp@cubminnesota.org	Citizen's Utility Board of Minnesota	332 Minnesota St Ste W1360 Saint Paul, MN 55101	Electronic Service	No	OFF_SL_18-281_M-18-281
Catherine	Phillips	catherine.phillips@we-energies.com	We Energies	231 West Michigan St Milwaukee, WI 53203	Electronic Service	No	OFF_SL_18-281_M-18-281
Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	332 Minnesota Street Ste W2750 St. Paul, MN 55101	Electronic Service	No	OFF_SL_18-281_M-18-281
Elizabeth	Schmiesing	eschmiesing@winthrop.com	Winthrop & Weinstine, P.A.	225 South Sixth Street Suite 3500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-281_M-18-281
Colleen	Sipiorski	Colleen.Sipiorski@wecenergygroup.com	Minnesota Energy Resources Corporation	700 North Adams St Green Bay, WI 54307	Electronic Service	No	OFF_SL_18-281_M-18-281
Kristin	Stastny	kstastny@briggs.com	Briggs and Morgan, P.A.	2200 IDS Center 80 South 8th Street Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-281_M-18-281
James M	Strommen	jstrommen@kennedy-graven.com	Kennedy & Graven, Chartered	200 S 6th St Ste 470 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_18-281_M-18-281

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_18-281_M-18-281
Casey	Whelan	cwhelan@kinectenergy.com	Kinect Energy Group	605 Highway 169 N Ste 1200 Plymouth, MN 55441	Electronic Service	No	OFF_SL_18-281_M-18-281
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_18-281_M-18-281
Mary	Wolter	mary.wolter@wecenergygroup.com	Minnesota Energy Resources Corporation (HOLDING)	231 West Michigan St Milwaukee, WI 53203	Electronic Service	No	OFF_SL_18-281_M-18-281