

**STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION**

Katie Sieben	Chair
Dan Lipschultz	Vice Chair
Valerie Means	Commissioner
Matt Schuerger	Commissioner
John Tuma	Commissioner

In the Matter of the Petition of Minnesota Energy Resources Corporation for Approval of a Gas Utility Infrastructure Cost Rider

DOCKET NO. G-011 / M-18-281

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

DOCKET NO. G-011 / M-18-182

**COMMENTS OF THE OFFICE OF
THE ATTORNEY GENERAL**

INTRODUCTION

The Office of the Attorney General—Residential Utilities and Antitrust Division (“OAG”) respectfully submits these Comments in response to the Commission’s July 2, 2019 Notice of Comment Period addressing Minnesota Energy Resources Corporation’s (“MERC” or “the Company”) June 28, 2019 request to suspend its Gas Utility Infrastructure (GUIC) and Natural Gas Extension Project (NGEP) riders for its direct connect customers. The purpose of these comments is to recommend that the Commission deny MERC’s request to suspend certain Commission-approved surcharges to its direct connect customers and to recover those costs from other customers because MERC is seeking a remedy inconsistent with the law and standard regulatory practice, has not sufficiently supported its request, and has other existing remedies available to it.

BACKGROUND

The “direct connect” customer class is a subset of MERC’s “transportation” class that includes 14 customers with a combined annual usage of more than 300 million therms. These customers are directly connected to the interstate natural gas pipeline, procure their own gas supply, and require minimal MERC-owned facilities.¹

On February 5, 2019, the Commission authorized MERC to implement a GUIC rider.² This new rider took effect on May 1, 2019. No party sought reconsideration of the Commission’s decision in the GUIC docket. On June 18, 2019, the Commission authorized the Company to increase the per-therm rate of its existing NGEP rider.³ This increase took effect on July 1, 2019.

In MERC’s June 28, 2019 filing, the Company states that its direct connect customers have threatened to leave—or “bypass”—its system since the GUIC rider’s implementation on May 1, 2019. While the Company does not specify which individual customers have made these threats, a group of large gas customers (“Super Large Gas Intervenors” or “SLGI”) filed a letter in the NGEP docket on May 15, 2019 asking the Commission to “remain cognizant of the potential risks of bypass” in allocating rider costs among MERC’s customer classes.⁴

According to MERC, if the direct connect customers bypass its system, “the loss of their contribution to the system’s fixed costs would result in significant and permanent rate increases

¹ See MERC Tariff and Rate Book, Section 6, 3rd Revised Sheet No. 6.50.

² *In the Matter of Minnesota Energy Resources Corporation’s Request for Approval of a Gas Utility Infrastructure Cost Rider*, MPUC Docket No. G-011/M-18-281, ORDER APPROVING GAS UTILITY INFRASTRUCTURE COST RIDER WITH MODIFICATIONS AND REQUIRING COMPLIANCE FILING (Feb. 5, 2019).

³ *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*, MPUC Docket No. G-011/M-18-182, ORDER APPROVING NGEP RIDER SURCHARGE WITH MODIFICATIONS (June 18, 2019).

⁴ SLGI May 15, 2019 Correspondence at 2.

for all remaining customers.”⁵ The Company asserts that “a very real possibility exists that without action, those customers will bypass MERC’s system.”⁶

MERC asks the Commission to allow it to suspend the collection of surcharges from the GUIC and NGEF riders from direct connect customers by August 1, 2019, to refund all previously collected amounts to direct connect customers, and to recover the resulting under-recovered revenues from other customers through the riders’ annual true-up mechanisms.

ANALYSIS

I. MERC’S REQUEST IS CONTRARY TO LAW AND STANDARD REGULATORY PRACTICE.

MERC has not cited any authority allowing it to surcharge residential and other non-direct connect customers to pay Commission-ordered rates that direct connect customers owe simply because the direct connect customers would prefer not to pay those rates. On the contrary, standard legal and regulatory principles support denial of MERC’s request.

First, the NGEF statute clearly requires that an NGEF rider surcharge include transportation customers. That statute provides that an NGEF rider “shall include all of the utility’s customers, including transport customers.” Minn. Stat. § 216B.1638, subd. 2 (2018). MERC acknowledges as much in footnote four of its June 28 request. Accordingly, suspending collection of the NGEF rider surcharge from direct connect transportation customers would violate the clear language of the statute.

Second, with respect to the GUIC rider, MERC’s request is an untimely petition for reconsideration. The Commission ordered MERC to establish a GUIC rider in its order dated February 5, 2019. On April 25, 2019, the Commission approved the Company’s compliance filing required by the February 5, 2019 order and directed the Company to implement the GUIC

⁵ Emergency Request to Suspend Collection of Gas Utility Infrastructure Cost Rider and Natural Gas Extension Project Rider Surcharges for Direct Connect Customers at 2.

⁶ *Id.*

rider on May 1, 2019. Any party or other person aggrieved by either of the Commission's orders was legally entitled to seek reconsideration of those orders. Minn. Stat. § 216B.27, subd. 1 (2018). The Commission should not entertain an untimely petition for reconsideration of its GUIC order simply because it is packaged as an "emergency request."

Finally, to the extent that MERC seeks to track and true-up under-recovered money owed by its direct connect customers, the Company is asking the Commission to engage in retroactive ratemaking. MERC has not even attempted to argue that the direct connect rates were invalid *ab initio*, thus there is no basis for refunding direct connect customers amounts paid pursuant to Commission-approved rates. Even if the Commission determines that direct connect customers must be given rate relief to avoid a harmful bypass, these large customers should not be able to "claw back" money already paid by having the utility retroactively charge smaller customers to recover those funds. The rates and rider surcharges currently in effect have been lawfully ordered by the Commission; it would be inequitable to require other customer classes to foot the bill for money that direct connect customers have already paid under those orders.

II. THE COMPANY HAS NOT MET ITS BURDEN OF PROOF.

"Every rate . . . received by any public utility" must be "just and reasonable," and "[a]ny doubt as to reasonableness" must be "resolved in favor of the consumer." Minn. Stat. § 216B.03 (2018). When setting rates, it is within the Commission's authority to consider, among other factors, the bypass threat posed by certain customer classes. Focusing, however, solely on that one factor for implementing a rate change (as the Company requests here), would not result in just and reasonable rates. This is especially true because the Company has not provided any support for its unsubstantiated assertion that the direct connect customers pose a significant bypass threat. Effectively, MERC is asking the Commission to implement a change in rates outside the normal regulatory process based on the argument that the Company knows that direct

connect customers are a bypass threat simply because those customers say so. This falls well short of meeting the burden necessary to justify a rate change.

As explained below, MERC alleges a bypass threat without any attempt to quantify it—neither in terms of the probability of its occurrence, nor in terms of the magnitude of the potential harm should bypass occur. At a minimum, the Company must provide detailed information establishing the risk of bypass posed by direct connect customers through sworn affidavits. Without some evidence beyond the bare assertions in MERC’s filing, the Commission can have no reasonable assurance that the threat is real or that the potential impact is significant.

III. MERC HAS NOT ESTABLISHED THE PROBABILITY OR MAGNITUDE OF THE ALLEGED BYPASS THREAT.

Large customers routinely make bypass threats to justify requests for more favorable rates. Indeed, SLGI successfully argued for more favorable terms in MERC’s most recent rate case by pointing to the threat of bypass.⁷

Clearly, MERC’s direct connect customers derive some benefit from being connected to the Company’s system, because those customers have remained connected to the system. Any analysis of the potential bypass threat needs to begin with a quantification of the benefits conferred upon direct connect customers compared to the costs of bypassing MERC’s system. Such an analysis would allow the Commission to understand and assess the viability of any bypass threat.

In addition to having failed to provide a quantitative cost-benefit analysis, MERC has not explained which customers are most likely to leave its system, or if all direct connect customers

⁷ *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota*, MPUC Docket No. G-011/GR-17-563, FINDINGS OF FACT, CONCLUSIONS, AND ORDER at 38–42 (Dec. 26, 2018).

are equally likely to leave. Based on the existing record, the Commission cannot know that *any* of the Company's direct connect customers actually pose a viable bypass threat. Even if MERC could convince the Commission that some portion of its direct connect customers posed such a threat, any such potential threat would not justify a class-wide remedy without a quantitative showing that the magnitude and likelihood of the bypass threat outweighs the increased costs that MERC's proposal seeks to impose on its other customer classes. Such an analysis should include the average residential bill impact of both the proposed rate change and the hypothetical bypass.

MERC bears the burden to demonstrate the reasonableness of the change of rates it proposes here; the OAG has no obligation to prove the unreasonableness of the request. Nevertheless, the OAG has issued information requests to the Company seeking to further quantify the potential risks and costs at issue in this docket. The expedited schedule of this proceeding precluded the OAG from receiving responses in time to include that information in these Comments. Thus, if the responses to these information requests change or clarify any of the recommendations contained herein, or would otherwise be helpful to the Commission, the OAG will file Reply Comments including that information.

IV. OTHER REGULATORY REMEDIES EXIST TO ADDRESS MERC'S CONCERNS.

While MERC has failed to establish a bypass threat sufficient to justify a change of rates in its filing, if the Company truly believes such a change is necessary, it is not without a remedy. The NGEP and GUIC statutes both allow the Company to argue for a rate design that it deems appropriate.⁸ Alternatively, the Company could file a general rate case. Such a proceeding would include one or more class cost-of-service studies to provide a detailed economic analysis

⁸ Minn. Stat. § 216B.1635, subd. 4(2)(v) (2018); Minn. Stat. § 1638, subd. 2(b)(6) (2018).

of the costs of serving each of its customer classes. Furthermore, the parties could argue that non-cost factors (including bypass threat) justify deviations from cost-of-service in setting the interclass revenue apportionment. While a rate case is an onerous undertaking, changes such as those requested here cannot be made by focusing on a single qualitative concern to the exclusion of all other factors. Whether it be through future rider filings or a general rate case, the Commission and other intervenors deserve the benefit of a full and comprehensive analysis prior to making the type of change that MERC requests here.

CONCLUSION

MERC's emergency request is contrary to the legal standards governing ratemaking in Minnesota, is not supported by analysis sufficient to meet the Company's burden of proof, and can be addressed by existing ratemaking tools. Accordingly, the Commission should deny MERC's request.

Dated: July 11, 2019

Respectfully submitted,

KEITH ELLISON
Attorney General
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s/ **Joseph C. Meyer**

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July 11, 2019

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Re: *In the Matter of the Petition of Minnesota Energy Resources Corporation for Approval of a Gas Utility Infrastructure Cost Rider*
Docket No. G-011 / M-18-281

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
Docket No. G-011 / M-18-182

Dear Mr. Wolf:

Enclosed and e-filed in the above-referenced matters please find Comments of the Office of the Attorney General - Residential Utilities and Antitrust Division.

By copy of this letter all parties have been served. An affidavit of service is enclosed.

Sincerely,

s/ Joseph C. Meyer
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