BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Katie J. Sieben	Chair
Dan Lipschultz	Commissioner
Valerie Means	Commissioner
Matthew Schuerger	Commissioner
John A. Tuma	Commissioner

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

ISSUE DATE: June 18, 2019

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

ORDER APPROVING NGEP RIDER SURCHARGE WITH MODIFICATIONS

PROCEDURAL HISTORY

On February 28, 2018, Minnesota Energy Resources Corporation (MERC) filed a petition requesting a forecasted 2019 revenue deficiency of approximately $1.3 million, subject to true-up. MERC also proposed a 2019 Natural Gas Extension Project (NGEP) rate factor of $0.00150 per therm applicable to all customer classes to be effective January 1, 2019.

On April 16, 2018, MERC filed a letter regarding its communications with the Destination Medical Center Corporation (DMCC). DMCC stated that MERC projects within the DMCC's district boundaries are not eligible for the limited amount of public funding allocated to the DMCC project.

On May 29, 2018, the Department of Commerce, Division of Energy Services (the Department), filed comments and recommendations about the NGEP filing, including the statutory cap on cost recovery through the NGEP rider, and proposed treatment of Contributions-In-Aid-of-Construction (CIAC).

On June 8, 2018, MERC filed reply comments. MERC agreed with most of the Department's recommendations, but disagreed with the Department's analysis of Minn. Stat. § 216B.1638 (NGEP statute) relating to the statutory cap of cost recovery through the NEGP rider and proposed treatment of CIACs.

On August 24, 2018, the Department filed reply comments. The Department withdrew its proposed adjustment of the CIAC, but continued to oppose MERC's analysis of the NGEP statute's statutory cap on cost recovery.

On August 28, 2019, MERC filed additional reply comments in support of its proposed rider surcharge of $0.00150 per therm.

On May 15, 2019, the Super Large Gas Intervenors (SLGI)[1] filed comments raising concerns regarding the volumetric rate design proposed by MERC and the SLGI's ability to bypass MERC's system to avoid MERC's upcoming rate case as well as MERC's 2020 Gas Utility Infrastructure Docket.[2]

On May 16, 2019, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Summary

In this order, the Commission approves MERC's petition for a NGEP rider surcharge, allowing the Company to recover a forecasted 2019 revenue deficiency of approximately $439,955, subject to true up, using a rider surcharge factor of $0.00050 per therm applicable to all customers. The Commission also construes Minn. Stat. § 216B.1638 to find that the limitation of recovery on NGEP costs in Subdivision 3(c) of the statute will allow MERC to recover 33% of the annual costs of an NGEP rider in any given year.

The Commission also approves the parties' agreements to remove contingency costs from the total cost projection, and to use the agreement reached in MERC's last rate case (Docket No. G-011/GR-17-563) that the 2019 sales forecast from its pre-filed sales forecast data is the appropriate forecast for this rider surcharge. This results in a 2019 sales forecast of 764,518,780 therms.

Finally, the Commission approves the request for MERC to discontinue applying for Destination Medical Center funding for projects within the DMCC boundaries as ordered in Docket No. G-011/M-15-895.

II. The Legal Standard

The NGEP statute, Minn. Stat. § 216B.1638, subd. 2(a) provides that a utility may request recovery of the revenue deficiency from a natural gas extension project through a rider. Revenue deficiency is defined at subd. 1(f) of the NGEP statute as "the deficiency in funds that results when projected revenues . . . fall short of the total revenue requirement of the natural gas extension project."

The NGEP statute also provides that the Commission must not approve a rider under this section that allows a utility to recover more than 33 percent of the costs of a natural gas extension project. *Id*. at subd. 3(c).

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[1] Comprised of ArcelorMittal USA; Hibbing Taconite Company; Northshore Mining Company; United States Steel; Corporation; United Taconite, LLC amd USG Interiors, Inc.

[2] *In the Matter of the Petition of Minnesota Energy Resources Corporation for Approval of 2020 Gas Utility Infrastructure (GUIC) Cost Rider Revenue Requirement and Revised Surcharge Factor*, Docket No. G-011/M-19-282.

III. Relevant Related Dockets

A. Docket No. G-011/M-15-895 – NGEP Rider

In 2015, MERC filed a petition for evaluation and approval of rider recovery for its Rochester NGEP under the NGEP statute. In its filing, MERC claimed that it has lacked sufficient capacity to meet its current and future growth needs for the Rochester area.

In Docket No. G-011/M-15-895 (or the NGEP rider docket), the Company requested recovery of 33% of the revenue deficiency associated with the Project. And on May 5, 2017, the Commission approved the Rochester Project, and allowed MERC to recover a portion of the NGEP costs through a rider (the NGEP rider, or rider), pursuant to Minn. Stat. § 216B.1638. The Commission granted MERC's pre-approval request to recover Phase II costs of up to $44 million through a combination of rider recovery and base rates as well as other action.

B. Docket No. G-011/GR-17-563 – General Rate Case

In MERC's last rate case, Docket G-011/GR-17-563, MERC and the Department agreed to include $19.4 million of Rochester Phase II proposed capital costs in base rates. The remaining Phase II Rochester costs of $24.58 million are expected to be incurred from 2019 through 2023. MERC has proposed to recover a portion of these costs in this docket.

IV. The Proposed Rider

In its petition, MERC has requested recovery of its 2019 costs related to the Rochester Project. MERC is seeking approval of:

- An ongoing NGEP rider and surcharge to recover a portion of its costs of the Rochester Natural Gas Extension Project (the Rochester Project);[3]
- A 2019 forecasted revenue deficiency of approximately $3.1 million for MERC's projected 2019 investments related to the Rochester Project subject to true up;
- A 2019 per-therm NGEP rate factor of $0.00150 per therm, applicable to all customer classes, to be effective January 1, 2019; and
- Proposed NGEP rider tariff sheets.

V. The Issues

The parties have agreed on how the Commission should resolve several initially-disputed issues:

- MERC should remove contingency costs from MERC's total cost projection;
- MERC should use its 2019 sales forecast from the Company's pre-filed sales forecast data in Docket No. G-011/GR-17-563, resulting in a 2019 sales forecast of 764,518,780 therms;
- MERC should discontinue applying for Destination Medical Center funding for projects within the Destination Medical Center Corporation boundaries; and

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[3] In Docket No. 15-895, the Commission granted preapproval to recover Phase II costs of up to $44 million through a combination of an NGEP rider and base rates.

- The Department agreed to withdraw its recommended adjustment to Contribution-In-Aid-of-Construction (CIAC), acknowledging that as defined by and the context of projects covered by the NGEP statute, CIACs are limited to amounts paid by a developer or a local unit of government, and do not apply to the facts of this matter.

The Commission declines to take action regarding the issues raised by MERC at the hearing. The volumetric rate design proposed by MERC and the SLGI's option to bypass MERCC's system to avoid MERC's upcoming rate case and the 2020 Gas Utility Infrastructure Docket can be better addressed in those proceedings.

The sole issue remaining in dispute in this docket involves the statutory interpretation of the NGEP rider provision, Minn. Stat. § 216B.1638, subd. 3(c), pertaining to recovery of project costs.[4] MERC requests that it be allowed to recover 100% of its 2019 revenue deficiency through the NGEP rider, while the Department argues that MERC should be limited to recovery of 33% of the 2019 NGEP revenue deficiency through the rider.

VI. Parties' Comments

A. MERC

In its petition, MERC proposed to recover the entire incremental revenue deficiency for 2019 through the NGEP rider. MERC calculated an incremental revenue deficiency of $1.3 million, based on the Company's forecasted 13-month average rate base in 2019, excluding the 2018 average rate base of approximately $3.5 million included in the 2018 test year in the MERC rate case (Docket No. 17-563) since those costs are already recovered in base rates.

MERC explained that Minn. Stat. § 216B.1638, subd. 3(c) is unambiguous, and authorizes the Commission to approve rider recovery up to 33% of the overall project costs of a natural gas extension project. The Rochester project's total costs are approximately $44 million. Accordingly, MERC asserted that the NGEP statute would permit NGEP rider recovery of up to $14,522,180. MERC concluded that the amount requested in this matter therefore falls within the 33% statutory limit.

MERC further argued that the Department's interpretation of the NGEP statute in inconsistent with the plain language of the statute, as well as the Commission's interpretation of the language in Docket No. 15-895. MERC reasoned that in that docket, the Commission did not specify how the NGEP would be calculated. MERC argued that the 33% statutory cap applies to the *overall* costs of the natural gas extension project, not the annual revenue requirement recommended by the Department.

The Company also posited that the Department's reading of the NGEP statute would be inconsistent with the legislature's intent in enacting the statute, which MERC argues was to incentivize investments in NGEPs. MERC argued the Department's interpretation would undermine the Company's full recovery of a revenue deficiency related to NGEP monies and would necessitate the Company's filing of more frequent rate cases with concomitant economic harm to ratepayers.

[4] The NGEP statute does not specifically define "costs" for purposes of recovery.

At the Commission meeting, the Company clarified that it is not requesting 33% of total project costs, but instead the 2019 total annual revenue requirement, subject to true-up.

B. The Department

The Department argued that MERC has improperly construed the statutory requirement that the Commission must not approve an NGEP rider that would allow a utility to recover more than 33% of NGEP annual revenue deficiency under the rider, and confuses total project costs with annual revenue requirements. The Department argued that MERC is only eligible to recover 33% of the incremental revenue deficiency, not 100% of the 2019 revenue deficiency for the project.

The Department asserted that the Company's current interpretation about the amount to be recovered through the NGEP rider for the Rochester Project is inconsistent with the record on which the Commission relied to initially approve the rider in Docket No. 15-895.[5] In that docket, MERC calculated the 33% NGEP cap on costs based on the Rochester Project's *annual revenue deficiency,* not the total project costs.

Further, the Department argued that in Docket No. 15-895, MERC calculated the rider-eligible deficiency for each calendar year, consistent with the Department's interpretation of the statute.[6] The Department asserted that those calculations, on which the Commission relied in making its decision to approve initial rider recovery in Docket No. 15-895, actually support the Department's interpretation of the NGEP statute in this matter, rather than MERC's new interpretation.

Finally, the Department argued that accepting the Company's proposal would potentially allow MERC to collect more in rider recovery than allowed under the statute.

VII. Commission Action

The Commission accepts the agreements of the parties on the following issues as reasonable and consistent with the facts presented in this matter:

- MERC agrees to remove contingency costs from MERC's total cost projection;
- MERC agrees to use its 2019 sales forecast from the Company's pre-filed sales forecast data in Docket No. G-011/GR-17-563, resulting in a 2019 sales forecast of 764,518,780 therms;
- MERC may discontinue applying for Destination Medical Center funding for projects within the Destination Medical Center Corporation boundaries as previously required in Docket No. G-011/M-15-895; and

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[5] MERC'.s Initial Filing, Docket No. 15-895, at Section 1.6, page 4, MERC explained in its petition that:

> Phase II construction costs are estimated to be approximately $44 million. Pursuant to the NGEP statute, MERC requests recovery of 33 percent of the *revenue deficiency* associated with MERC's Phase II costs through the rate rider, with the balance of Phase II costs recovered in future rate cases.

[6] *Id*., at 31.

- The Department agrees to withdraw its recommended adjustment to CIAC, acknowledging that as defined by and the context of projects covered by the NGEP statute, CIACs are limited to amounts paid by a developer or a local unit of government, and do not apply to the facts of this matter.

After hearing the arguments of the parties on rider recovery under the NGEP statute, the Commission agrees that the NGEP statute is ambiguous. However, after weighing the two interpretations of the statute, the Commission concludes that the Department's legal interpretation of the NGEP statute is more reasonable, and will result in more just and reasonable rates for ratepayers.

As the Department argued, there can be no real question that the Commission understood MERC's petition to establish the NGEP rider in Docket No. 15-895 to pertain to allowing the recovery of one third of the annual revenue deficiency. This is consistent with normal ratemaking. And as the Commission stated in its May 5, 2017 order in Docket No. 15-895:

> MERC seeks to recover a portion of the project's costs under the NGEP statute, which allows rider recovery of *one third of the revenue deficiency* from an eligible natural gas extension project. The remaining costs would be recovered through base rates or the Company's purchased-gas-adjustment rider.[7]

Further, the Commission's May 5 order refers to base rate recovery for the remaining 66 percent of project costs. This shows that the Commission envisioned the standard ratemaking process through which the remaining project costs are to be converted to revenue requirements. Thus, the Commission does not accept MERC's argument that the Commission made its decision in Docket No. 15-895 based on the Company's *new* interpretation of the NGEP statute.

Finally, use of MERC's theory of rider recovery would allow collection of 33% of total project costs up front, as opposed to recovery of 33% of the annual revenue deficiency over the course of the life of the facility. Adopting MERC's interpretation of the statute could potentially result in more total rider recovery than allowed by the statute, and would be applicable to the wrong group of ratepayers.

Therefore, the Commission finds that the 33% figure in the NGEP statute should apply to the annual incremental revenue requirement or revenue deficiency.

Accordingly, the Commission will allow MERC to recover its forecasted 2019 revenue deficiency of approximately $439,955, subject to a true-up filing, using a rider surcharge factor of $0.00050 per therm applicable to all customer classes, as recommended by the Department. The Commission will also require MERC to make a compliance filing within 10 days with updated tariff sheets and supporting schedules.

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[7] May 5, 2017 Order, Docket No. G-011/M-15-895 at 1.

ORDER

1. MERC's petition for a NGEP rider surcharge with modifications and clarifications is approved.

2. MERC is allowed to recover its forecasted 2019 revenue deficiency of approximately $439,955, subject to a true-up filing, using a rider surcharge factor of $0.00050 per therm applicable to all customer classes.

3. MERC shall remove contingency costs from its total cost projection.

4. MERC shall use the Company's 2019 sales forecast from its pre-filed sales forecast data, in Docket No. G-011/GR-17-563, resulting in a 2019 sales forecast of 764,518,780 therms.

5. MERC may discontinue applying for Destination Medical Center funding for projects within the DMCC boundaries as previously ordered in Docket No. G-011/M-15-895.

6. Within 10 days of the Commission's order, MERC shall make a compliance filing with updated tariff sheets and supporting schedules based on the Commission's decision.

7. This order shall become effective immediately

BY ORDER OF THE COMMISSION

Daniel P. Wolf

Daniel P. Wolf
Executive Secretary

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