

Staff Briefing Papers

Meeting Date	April 1, 2019	Agenda Item 3**	
Company	Minnesota Energy Resources Corporation		
Docket No.	G-011/M-18-281		
	In the Matter of Minnesota Energy Resources Corporation's Request for Approval of a Gas Utility Infrastructure Cost Rider		
Issues	Should the Commission approve Minnesota Energy Resources Corporation's compliance filing?		
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 Relevant Documents	Date
PUC – Order Approving Gas Utility Infrastructure Cost Rider with Modification and Requiring Compliance Filing	February 5, 2019
MERC – Compliance Filing	February 7, 2019
Department of Commerce – Comments	February 20, 2019
MERC – Reply Comments	March 1, 2019

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The attached materials are work papers of the Commission Staff. They are intended for use by the Public Utilities Commission and are based upon information already in the record unless noted otherwise.

I. Statement of the Issues

Should the Commission approve Minnesota Energy Resources Corporation's compliance filing?

II. Background

On April 13, 2018, Minnesota Energy Resources Corporation (MERC or the Company) filed a petition seeking approval to establish a Gas Utility Infrastructure Cost Rider (GUIC) beginning in 2019. The GUIC rider seeks to recover costs associated with public right-of-way relocation projects as well as projects undertaken to comply with MERC's Distribution Integrity Management Plan (DIMP). MERC's proposed rider's annual revenue requirement for the first year is approximately \$3.64 million per year.

On February 5, 2019, the Minnesota Public Utilities Commission (PUC or the Commission) issued its order authorizing MERC to establish a GUIC rider and begin cost recovery in 2019 of project costs related to relocating natural gas facilities for public works and right-of-way projects (\$5.3 million), the replacement of obsolete materials (\$7 million), stop-valve surveys (\$2 million), and sewer cross-bore surveys (\$1 million). The rate of return embedded in the annual revenue requirement for its GUIC rider is equal to the rate of return established in the Company's most recent rate case, in docket 17-563.

On February 7, 2019, MERC filed its compliance filing as required by the Commission's order. On February 20, 2019, the Department of Commerce, Division of Energy Resources (Department) filed comments stating that it cannot recommend approval of MERC's compliance filing due to it (i.e. MERC's GUIC rider and compliance filing) not meeting the requirements of Minn. Stat. § 216B.1635 (GUIC Statute).

On March 1, 2019, MERC filed its response, requesting that the Commission reject the Department comments as being untimely, and noting that the Department did not formally seek reconsideration.

III. Parties' Comments

A. Department of Commerce – Comments

The Department stated that it cannot recommend approval of MERC's compliance filing since it does not meet the GUIC Statute requirements. Minn. Stat. §216B.1635 states:

A gas utility's petition for approval of a rate schedule to recover gas utility infrastructure costs outside of a general rate case under section 216B.16 is subject to the following:

- (1) a gas utility may submit a filing under this section no more than once per year; and

(2) a gas utility must file sufficient information to satisfy the commission regarding the proposed GUIC. *The information includes, but is not limited to:*

- (i) the information required to be included in the gas infrastructure project plan report under subdivision 3;
- (ii) the government entity ordering or requiring the gas utility project and the purpose for which the project is undertaken;
- (iii) a description of the estimated costs and salvage value, if any, associated with the existing infrastructure replaced or modified as a result of the project;
- (iv) a comparison of the utility's estimated costs included in the gas infrastructure project plan and the actual costs incurred, including a description of the utility's efforts to ensure the costs of the facilities are reasonable and prudently incurred...

(Department emphasis added)

The Department maintains its overall recommendation that MERC be allowed to establish a GUIC rider but recommends delaying cost recovery until after the Company provides the information required by statute.

B. MERC – Reply Comments

MERC's reply comments focused on two primary issues – that the Department procedurally mishandled its response and that the Department's recommendation to reject the compliance filing places unnecessary regulatory uncertainty on the Company.

The Department filed its comments on February 20, 2019, several days beyond the 10 day comment period established in the Commission's February 5, 2019 Order. Additionally, the Department did not ask for reconsideration pursuant to Minn. Stat. § 216B.27, yet the comments filed appear to MERC to be exclusively focused on rearguing the points that were considered by the Commission in its initial decision. The Department did not specifically comment on the tariff language or MERC's calculations, which should have been the purpose of filing comments on the compliance filing.

With the Department recommending the compliance filing be rejected, MERC is concerned about projects planned for 2019. The Company has already submitted a request for proposal and selected contractors to perform the stop-valve and sewer cross-bore surveys. The \$3 million planned for these projects is significant, which means MERC cannot move forward with hiring contractors until the issue of regulatory certainty is resolved. Further, the contractors selected to do this work would be required to acquire equipment and recruit and train personnel to complete the projects in 2019.

For these reasons, MERC requests that the Commission affirm its decision that the projects proposed in the Company's GUIC rider are incremental; required by federal, state, or local agencies; and supported by sufficient detail to meet the information requirements of the GUIC statute. MERC requests that the Commission promptly reject the Department's comments and allow the Company to move forward with the projects.

IV. Staff Analysis

Ordering Point 6 of the Commission's Order¹ states:

Comments on MERC's compliance filing shall be due within ten days of the date of the compliance filing.

The Compliance filing was made on February 7, 2019. The Department's comments were filed February 20, 2019. Therefore, the comments were filed beyond the deadline.

Additionally, Minn. Stat. § 216B.27 and Minn. Rules 7829.3000, subpart 1, require that requests for reconsideration be made within 20 days of the order.

A party or a person aggrieved and directly affected by a commission decision or order may file a petition for rehearing, amendment, vacation, reconsideration, or reargument within 20 days of the date the decision or order is served by the executive secretary. This subpart does not affect any statutory limit on the time allowed for a petition for judicial review that may run concurrently. (Minn. Rules 7829.3000, subpart 1)

The Department ultimately elected to file comments recommending the Commission reject MERC's compliance filing instead of requesting reconsideration of the February 5, 2019 Order, despite the Department's comments being filed within the window for reconsideration requests.

MERC argues that this is relevant because the Department's comments appear to be more aligned with a reconsideration request as opposed to comments on the compliance filing particularly because the Department does not specifically comment on MERC's tariff language or rider calculations.

However, Staff's review of the Department's comments reaches a different conclusion. The Department states that it "...cannot recommend approval of the compliance tariff"² which is notably not recommending disapproval. The Department is reiterating its position that MERC has not met the GUIC Statutory guidelines, however, the Department also did not formally seek reconsideration.

¹ PUC Order Approving Gas Utility Infrastructure Cost Rider with Modification and Requiring Compliance Filing, issued February 5, 2019

² Department Comments, filed February 20, page 3

This suggests that the Department merely disagrees with the outcome of the proceeding but is not making a specific recommendation asking the Commission to reconsider its decision and reject or modify MERC's tariff. It is implied, however, that the Department would support a decision alternative that rejects MERC's compliance filing, which would leave MERC without an approved tariff, but the Department does not seem to be explicitly advocating for that outcome.

V. Decision Alternatives

1. Approve Minnesota Energy Resource Corporation's compliance filing. (MERC)
2. Reject Minnesota Energy Resource Corporation's compliance filing. (Department - implied)