

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

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Chair
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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

ISSUE DATE: February 8, 2016

DOCKET NO. G-011/M-15-895

DOCKET NO. G-011/GR-15-736

In the Matter of the Application of
Minnesota Energy Resources Corporation for
Authority to Increase Rates for Natural Gas
Service in Minnesota

NOTICE OF AND ORDER FOR HEARING

PROCEDURAL HISTORY

I. Initial Filings

On October 26, 2015, Minnesota Energy Resources Corporation (MERC or the Company) filed a petition for evaluation and approval of rider recovery for its Rochester Natural Gas Extension Project under the natural gas extension project (NGEP) statute.¹

The project is designed to expand the capacity of MERC's natural gas distribution system in and around the City of Rochester to meet anticipated demand. 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.²

MERC supplemented its petition on December 7, 2015.³

II. Party Comments

On November 3, 2015, the Commission issued a notice soliciting comments on how MERC's petition should be handled—whether it should be referred to the Office of Administrative Hearings (OAH) for a contested-case proceeding and, if not, how the Commission should proceed.

¹ Minn. Stat. § 216B.1638 (2015).

² MERC's petition is the first to be filed under the NGEP statute, which was enacted in 2015.

³ See MERC's Reply Procedural Comments at 6. The supplemental information concerned forecasted operating and maintenance expenses, tax-rate assumptions, sales-forecast model input data, and apportionment of responsibility for the project's revenue requirement.

By November 25, the Commission had received initial comments from the following parties:

- The Minnesota Department of Commerce, Division of Energy Resources (the Department);
- The Minnesota Office of the Attorney General – Residential Utilities and Antitrust Division (the OAG);
- Northern Natural Gas Company (NNG), an interstate natural gas transmission company that supplies natural gas to MERC; and
- The Company.

Between December 24 and January 5, the Department and the OAG filed reply comments, and MERC filed a response to the Department’s reply.

The Department and MERC recommended that the Commission hold the Company’s petition in abeyance and direct the parties to address the project’s reasonableness in MERC’s general rate case that is currently before the OAH.⁴ MERC has requested recovery of some Rochester Project costs in the rate case, and the appropriate allocation of those costs among MERC’s customer classes is already an issue in that case.

The OAG recommended that the Commission refer MERC’s petition to the OAH for a separate contested-case proceeding, arguing that referring the Rochester petition to the rate case would not give stakeholders sufficient opportunity to thoroughly evaluate the project.

On January 14, 2016, the Commission met to consider the matter.

FINDINGS AND CONCLUSIONS

I. Background

A. The Natural Gas Extension Project Statute

The NGEP statute allows a public utility to petition the Commission, outside of a general rate case, for a rider to recover the revenue deficiency from a natural gas extension project.⁵ The statute defines “natural gas extension project” as “the construction of new infrastructure or upgrades to existing natural gas facilities necessary to serve currently unserved or inadequately served areas.”⁶

A petition under the NGEP statute must include the following information:

- (1) a description of the natural gas extension project, including the number and location of new customers to be served and the distance over which natural gas will be distributed to serve the unserved or inadequately served area;

⁴ *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota*, Docket No. G-011/GR-15-736.

⁵ Minn. Stat. § 216B.1638, subd. 2.

⁶ *Id.*, subd. 1(e).

- (2) the project's construction schedule;
- (3) the proposed project budget;
- (4) the amount of any contributions in aid of construction;
- (5) a description of efforts made by the public utility to offset the revenue deficiency through contributions in aid to construction;
- (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;
- (8) the proposed termination date of the rider to recover the revenue deficiency; and
- (9) a description of benefits to the public utility's existing natural gas customers that will accrue from the natural gas extension project.⁷

The Commission must approve a petition if it determines that (1) the project is designed to extend natural gas service to an unserved or inadequately served area and (2) the project costs are reasonable and prudently incurred.⁸ The Commission must not approve an NGEP rider that allows a utility to recover more than 33 percent of the costs of a natural gas extension project.⁹

B. The Rochester Project

The Rochester Project will expand the capacity of MERC's natural gas distribution system in the Rochester area. The Company stated that its system is currently at capacity and must be upgraded to meet current demand and forecasted growth in customer demand over the next ten years. MERC anticipates that this growth will be driven in part by efforts to develop the Mayo Clinic as a Destination Medical Center.

MERC plans to implement the project in two phases. Phase I, which is already underway, involves modernizing, standardizing, and interconnecting portions of MERC's district regulator stations and piping within the city. MERC expects Phase I to be finished in late 2015 or early 2016 at a cost of \$5.6 million. The Company is seeking recovery of this cost in its pending rate case.¹⁰

Phase II will involve upgrading Rochester's town-border-station system, which receives natural gas from NNG's high-pressure interstate pipeline system and transmits it at a reduced pressure for delivery to the city's low-pressure distribution system. This upgrade will allow MERC to manage an increased supply of natural gas delivered by NNG to meet customer demand. MERC plans to begin Phase II work in 2016 and complete it in 2023.

⁷ *Id.*, subd. 2(b).

⁸ *Id.*, subd. 3(b).

⁹ *Id.*, subd. 3(c).

¹⁰ Docket No. G-011/GR-15-736.

MERC estimates that Phase II construction will cost approximately \$44 million. The Company has included some \$640,000 in its rate case for Phase II costs expected to be incurred in 2016. After 2016, MERC plans to seek recovery of 33 percent of Phase II costs through an NGEP rider, with the balance to be recovered in future rate cases.

In addition to the above-mentioned upgrades by MERC, NNG will be increasing the capacity of its transmission system in southeastern Minnesota pursuant to a new 30-year capacity contract. The contract commits NNG to making the infrastructure upgrades necessary to provide MERC with natural gas at volumes sufficient to meet the projected growth in customer demand over the contract's term.

NNG estimates that the capital costs of expanding its interstate pipeline system in the Rochester area will be approximately \$55 million, which NNG expects to recover from MERC through its contract. MERC would then seek the Commission's approval to recover the costs from ratepayers through its purchased-gas-adjustment rider.

II. Petition Completeness

The Department reviewed MERC's petition and the supplemental information the Company filed on December 7, 2015. Based on its review of MERC's filings and the NGEP statute, the Department concluded that the Company had provided the information required by the statute. The Commission concurs in the Department's analysis and will accept MERC's petition as being substantially complete.

III. Referral for Contested-Case Proceedings

Having found MERC's petition substantially complete, the Commission will refer the petition to the Office of Administrative Hearings (OAH) for contested-case proceedings. For the reasons explained below, the Commission will refer it as a standalone contested case, rather than as part of MERC's pending rate case. Finally, in the interest of efficiency, the Commission will move all Rochester Project Phase II costs and issues from the rate case to this docket.

If a proceeding involves contested material facts and there is a right to a hearing under statute or rule, or if the Commission finds that all significant issues have not been resolved to its satisfaction, the Commission must refer the matter to the OAH for contested-case proceedings.¹¹

The Commission finds that it cannot satisfactorily resolve all questions regarding the Rochester Project on the basis of MERC's filings. Evaluating the reasonableness and prudence of the project will involve factual determinations, policy decisions, and the first interpretation of a new statute. The development of a comprehensive, disciplined record by an administrative law judge will greatly aid the Commission's decision-making in this matter. The Commission will therefore refer MERC's petition to the OAH.

The Commission concurs with the OAG that MERC's petition should be handled separately from the Company's pending rate case. Intervenor direct testimony in the rate case is due on March 18, 2016,¹² and inserting a new issue at this point—particularly one as complex as the Rochester Project—would

¹¹ Minn. R. 7829.1000.

¹² Docket No. G-011/GR-15-736, Amended First Prehearing Order at 3 (December 15, 2015).

likely impair stakeholders' ability to address it thoroughly and divert attention from other important issues in the rate case.

MERC would prefer to include the Rochester Project in the rate case because it would ensure a decision on the project's reasonableness by October 31, 2016. However, MERC stated that if the Commission does not include the Rochester Project in the rate case, the Company would prefer that the Rochester cost-allocation issues that are currently part of the rate case be addressed in the separate proceeding.

The Commission is convinced that the Rochester Project's novelty, complexity, and substantial cost require that it be addressed separately from the rate case. In the interest of efficiency, however, the Commission will move all Phase II costs and issues, including rate design, from the rate case to this docket. And, recognizing that a timely decision on MERC's petition will help ensure a reliable gas supply, the Commission will request that the administrative law judge return a recommendation, to the extent practicable, by November 30, 2016.

IV. Issues to Be Addressed

The Commission requests that the OAH include the following issues in the scope of the contested case:

1. Are the Rochester Project investments prudent, reasonable, and necessary to provide service to MERC's Rochester service area, taking into account the City of Rochester's announced goal of using 100% renewable energy by 2031?
2. Is it reasonable to recover the Rochester Project costs from all of MERC's ratepayers?
 - a. If so, on what basis;
 - b. If not, what other allocation method would be more reasonable?¹³
3. What other funds may be available to cover the project costs?¹⁴

The Commission will defer any decision on the accuracy of MERC's revenue-deficiency calculation until the Company seeks approval of an NGEP rider to recover that revenue deficiency.

V. Procedural Outline

A. Administrative Law Judge

The administrative law judge assigned to this case is Jeanne M. Cochran. Her address and telephone number are as follows: Office of Administrative Hearings, 600 North Robert Street, Saint Paul, Minnesota 55164, (651) 361-7222.

¹³ This issue bears analysis in light of the frequent practice of imposing customer-specific infrastructure costs on the customers that directly benefit from those costs—e.g., through new-area surcharges and contributions in aid of construction.

¹⁴ One potential source of funds is state aid under Minn. Stat. §§ 469.40–.47 for infrastructure projects that support the development of the Mayo Clinic as a destination medical center.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57–.62; the rules of the Office of Administrative Hearings, Minn. R. 1400.5100–.8400; and, to the extent that they are not superseded by those rules, the Commission’s Rules of Practice and Procedure, Minn. R. 7829.0100–.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, Saint Paul, Minnesota 55155, (651) 297-3000. These rules and statutes also appear on the State of Minnesota’s website at www.revisor.mn.gov/pubs.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. R. 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. R. 1400.6700–.6800 or informal disposition under Minn. R. 1400.5900 should be directed to Robert Harding, Financial Analysis Unit Supervisor, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, Saint Paul, Minnesota 55101-2147, (651) 201-2237.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties. The Commission requests that the Administrative Law Judge hold public hearings in Rochester and other locations in MERC's service area.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this *Notice of and Order for Hearing*.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are MERC, the Department, and the OAG. Other persons wishing to become formal parties shall file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission.¹⁵

The Commission requests that the OAH add the City of Rochester, Mayo Clinic, and the Destination Medical Center governing board to the service list for this case and any future NGEPRider petitions to facilitate their ability to participate in developing Rochester Project issues. MERC should provide contact information, if needed.

D. Prehearing Conference

A prehearing conference will be held at a date, time, and place to be set by the Administrative Law Judge in consultation with Commission staff.

Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the prehearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

In light of the need to complete the Rochester Project in time to meet forecasted demand, the Commission will request that, to the extent practicable, the Administrative Law Judge return a report no later than November 30, 2016.

VI. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01–.51, apply to cases involving rate setting. Persons appearing in this proceeding may be subject to registration,

¹⁵ See Minn. R. 1400.6200.

reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 539-1180, with any questions.

VII. *Ex Parte* Communications

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this order. Those restrictions and reporting requirements are set forth at Minn. R. 7845.7300-.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby accepts MERC's petition as being substantially complete.
2. The Commission refers MERC's petition to the Office of Administrative Hearings (OAH) as a separate, standalone contested case, moving all Rochester Project Phase II costs and issues from MERC's general rate case to this docket.
3. The Commission requests that, to the extent practicable, the Administrative Law Judge return a report no later than November 30, 2016.
4. The Commission requests that the OAH hold public hearings in Rochester and other locations in MERC's service area.
5. The Commission requests that the OAH add the City of Rochester, Mayo Clinic, and the Destination Medical Center governing board to the service list for this case and any future NGEF rider petitions to facilitate their ability to participate in developing Rochester Project issues. MERC will provide contact information, if needed.
6. This order shall become effective immediately.

BY ORDER OF THE COMMISSION

Daniel P. Wolf
Executive Secretary



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OAH Docket Number: 8-2500-33180

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

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

NOTICE OF APPEARANCE

TO: Administrative Law Judge Jeanne M. Cochran, 600 North Robert Street, P.O. Box 64620,
St. Paul, MN 55164

PLEASE TAKE NOTICE that:

1. The party named below will appear at the prehearing conference and subsequent proceedings in the above-entitled matter.

2. By providing its email address below, the party named below hereby acknowledges that it has read and agrees to the terms of the Office of Administrative Hearings' e-Filing policy and chooses to opt into electronic notice from the Office of Administrative Hearings with respect to this matter. **Note: Provision of an email address DOES NOT constitute the party's consent to electronic service from the opposing party/ies in this proceeding.**

3. The party named below agrees to use best efforts to provide the Office of Administrative Hearings with the email address(es) for opposing parties and their legal counsel and to advise the Office of Administrative Hearings of any change in all parties' email address(es).

Party's Name: _____

Email Address: _____ Telephone: _____

Mailing Address: _____

Attorney's Name: _____

Email Address: _____ Telephone: _____

Firm Name: _____

Mailing Address: _____

Opposing Party's Name: _____

Opposing Party's Email Address (if known): _____

Dated: _____

Signature of Party or Attorney

Note: This form must be served upon the opposing party. Counsel may not withdraw from representation without written notice.