



Minnesota Energy Resources Corporation  
2685 145th Street West  
Rosemount, MN 55068  
www.minnesotaenergyresources.com

August 19, 2019

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

**VIA ELECTRONIC FILING**

Re: In the Matter of a Commission Inquiry into the Impact of Severe Weather in  
January and February 2019 on Utility Operations and Service  
Docket No. E,G-999/CI-19-160

**Additional Reply Comments of Minnesota Energy Resources Corporation**

Dear Mr. Wolf:

On July 9, 2019, the Minnesota Public Utilities Commission (the "Commission") issued a Notice of Comment Period in the above-referenced Docket, requesting Response and Reply Comments related to the impact of the cold weather in January and February 2019 on utility operations and service. The Commission's Notice requested comments regarding potential tariff changes related to curtailment and failure to curtail issues; potential tariff changes related to interruptible gas service; utility communication with interruptible customers regarding curtailments, utility communications with the general public during severe weather events; and other issues addressed by the utilities in response to the Department of Commerce, Division of Energy Resources' (the "Department's") May 20, 2019, comments and request for additional information.

The Department and the Minnesota Office of the Attorney General, Residential Utilities and Antitrust Division ("OAG") filed Response Comments on August 9, 2019. Minnesota Energy Resources Corporation ("MERC" or the Company) thanks the OAG and the Department for their analysis, review, comments, and recommendations on the important topics raised in this docket and submits these Reply Comments in response to the Commission's July 9, 2019 Notice and August 9, 2019 Response Comments.

**A. Response to OAG**

In its Response Comments, the OAG reiterates its position that changes are needed to address the failure of a large portion of interruptible customers to appropriately curtail their natural gas usage during the severe weather event in January and February 2019. MERC briefly responds to the OAG's alternative recommendation presented in its Response Comments and clarifies its position with respect to rate design considerations.

First, the OAG states that MERC seems willing to consider the lack of compliance by interruptible customers when apportioning revenue in future rate proceedings.<sup>1</sup> MERC clarifies

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<sup>1</sup> OAG Response Comments at 2 (Aug. 9, 2019).

that it has already proposed and implemented revenue apportionment changes that recognize the risk and value of interruptible versus firm distribution service.<sup>2</sup>

The OAG acknowledges that there is some merit in the position that “adjusting class-wide revenue apportionment would penalize interruptible customers who conform to tariff requirements,” as well as customers who partially comply.<sup>3</sup> As a result, the OAG proposes a new alternative in response comments—to require interruptible tariffs to provide for a doubling of the per-therm penalty for every subsequent failure to curtail.<sup>4</sup>

MERC responds that this proposal does not address customers who partially comply or the varied circumstances of non-compliance or incomplete compliance with called curtailments. Additionally, as discussed in the Company’s June 28, 2019, Reply Comments, tracking customer compliance over multiple years would be difficult as a customer that failed to curtail during one curtailment event may not have an issue for several years and then experience a backup system failure. Some customers also operate multiple facilities and may experience issues at different facilities over time. The administrative and programming effort required to set up the capability to bill customers increasing rates for subsequent non-compliance occurrences would be substantial relative to the impact on further deterring non-compliance. Effective July 1, 2019, MERC modified its tariffs to assess the highest incremental supply cost for the day for unauthorized gas usage in addition to the \$5 per therm charge.<sup>5</sup> MERC’s unauthorized gas charges are significant and should be sufficient to deter economic non-compliance.

MERC believes a more appropriate approach to ensuring interruptible customer compliance is to address situations of non-compliance on a case-by-case basis. The modifications and tariff revisions proposed in the Company’s June 28, 2019, Reply Comments are intended to mitigate non-compliance and provide additional tools to allow customers to firm up a portion of their natural gas service. And to the extent customers demonstrate an inability to comply, MERC has and will continue to take steps to remove those customers from interruptible service. However, as discussed in MERC’s June 28 filing, MERC must fully evaluate the impacts of transitioning a customer to firm service on a case-by-case basis to ensure whether sufficient firm distribution capacity would be available to provide firm service to that customer without negatively affecting MERC’s existing firm service customers. In some cases, depending on the customer’s location, distribution system upgrades may be required to provide firm service, which could necessitate a customer contribution in aid of construction. This may pose a significant economic hardship for some commercial customers depending upon the extent of the necessary upgrades.

As the Department recognized in its August 9, Response Comments, MERC provided a detailed analysis of why individual customers did not curtail and, in the case of MERC, it appears that

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<sup>2</sup> MERC Reply Comments at 3-4 (June 28, 2019).

<sup>3</sup> OAG Response Comments at 3 (Aug. 9, 2019).

<sup>4</sup> OAG Response Comments at 3 (Aug. 9, 2019).

<sup>5</sup> See MERC 8th Revised Tariff Sheet No. 5.10 (effective July 1, 2019) (“If a customer fails to discontinue use of gas within one hour of such request, the customer will be deemed to have taken Unauthorized Gas. Company shall have the right to shut off customer’s supply of gas in the event of failure to discontinue use after such request. The penalty for unauthorized use of gas will be the prevailing delivery charge plus the highest incremental supply cost for the day plus \$5 per therm. Customer will also be responsible for all applicable rates and charges hereunder for unauthorized gas.”).

the majority of unauthorized use was for noneconomic reasons.<sup>6</sup> A compounding curtailment penalty as proposed by the OAG would likely not be successful in addressing noneconomic reasons for noncompliance. The additional tariff modifications MERC proposed in its June 28, 2019, Reply Comments will most appropriately address those situations. For example, as discussed in the Company's filing, in order to encourage interruptible customers to purchase daily firm nominations in cases where adequate distribution capacity exists to support the level of firm nominations, MERC proposes to establish intraday curtailment provisions to allow customers who nominate a portion of their gas deliveries as firm to have a portion of those firm nominations available in the event a curtailment is called mid-day. In particular, if a partial day curtailment is called (i.e., a curtailment that is called any time other than corresponding to the beginning of the gas day, 9am), a customer's daily firm nominations will be prorated by, and applied to, the number of hours remaining in the gas day when the curtailment goes into effect. The tariff modifications proposed by the Company will most appropriately address the specific circumstances of noncompliance that MERC has experienced.

## **B. Response to Department**

In its Comments, the Department makes the following recommendations relevant to MERC:

1. That the utilities report by November 1, 2019 on their progress in implementing various process improvements to address severe weather events;
2. That the Commission approve MERC's proposed tariff changes included in its Reply Comments; and
3. That the Commission require natural gas utilities, when a customer fails to curtail twice, or a single non-compliant event is significant, to fully analyze the circumstances around the non-compliance by the interruptible customer. As part of this analysis, the utility should provide an estimate of the costs and requirements to move the customer to firm service. The utilities should file these analyses annually with the Commission on May 1.

Additionally, the Department recommends that the Commission consider the following proposed tariff language for inclusion in interruptible tariffs for natural gas utilities:

- Customers must maintain three (3) current contacts to receive notice of curtailment. If the customer does not have three qualified contacts, the customer shall provide an annual attestation to the Company that it is unable to have three qualified contacts and the customer understands they are obligated to curtail service when requested. The Company will make an annual request that customers confirm that contact information is current.
- On an annual basis, the customer shall provide an annual attestation to the Company that it has fully functioning back-up equipment and/or the ability to curtail natural gas use when requested. The operational and functionality of the back-up equipment is the sole responsibility of the interruptible customer. Failure to maintain this equipment or failure to curtail represents a breach of the terms of interruptible service and may result in termination of the agreement.

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<sup>6</sup> Department Response Comments at 11 (Aug. 9, 2019).

Finally, the Department concludes that the Commission may wish to convene a workgroup of utilities, state agencies, and other interested parties to create a framework governing communication to the public during severe weather and other high consequence events.

As discussed in its June 28, 2019, Reply Comments, MERC believes timely, complete, and accurate communications with affected customers, regulators, and the public, in situations where severe weather or other events impact utility service are essential. MERC has no objection to the Department's recommendation to convene a workgroup to discuss communications related to severe weather and other high consequence events.

MERC also agrees to provide a discussion of progress toward implementing the identified areas of improvement by November 1, 2019, and agrees with the Department's recommendation that the Commission approve MERC's proposed tariff modifications. MERC responds to the Department's other recommendations below.

#### *Annual Report on Noncompliance*

First, the Department recommends that the gas utilities make an annual filing with the Commission by May 1 each year (1) identifying any customers who fail to curtail twice or any "significant" non-compliance events, (2) analyzing the circumstances of the non-compliance, and (3) estimating the costs and requirements to move the customer to firm service.<sup>7</sup>

As discussed in the Company's June 28, 2019, Reply, tracking customer compliance data over multiple years would be difficult as a customer that failed to curtail during one curtailment event may not have an issue for several years and then experience a backup system failure. Additionally, some customers operate multiple facilities and may experience issues at different facilities over time. It would not be straightforward in all cases to determine and track whether a customer has failed to fully comply with a curtailment twice. Further, the specific circumstances surrounding "significant" customer non-compliance is likely to vary with the circumstances.

Based on the Company's experience and as reflected in Attachment A to MERC's June 28, 2019, Reply Comments, it often requires multiple conversations and back-and-forth to fully understand and evaluate the circumstances of customer non-compliance as well as to identify steps that should be taken to ensure future compliance or whether a change in service should occur. Those steps could include moving to firm service, purchasing a portion of daily firm nominations, upgrading/repairing existing backup systems, or other steps. Moving to fully firm service would not necessarily be the best or most appropriate result in all customer situations.

With respect to the possibility of moving a customer to either full or partial firm service (i.e., a portion of daily firm nominations), MERC would need to undertake a customer-specific engineering analysis in each case to evaluate whether sufficient firm distribution capacity is available to provide firm service or whether upgrades to the distribution system would be required. If upgrades are required to accommodate the firm service, MERC would need to determine the specific upgrades, costs of those upgrades, and calculate any customer contribution in aid of construction that would be required. Similarly, MERC would need to evaluate the availability of additional firm interstate capacity to serve the customer on a firm

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<sup>7</sup> Department Response Comments at 18 (Aug. 9, 2019).

basis. As a result, providing the comprehensive analysis proposed by the Department by May 1 for the preceding heating season likely would not be feasible.

MERC also notes that information regarding curtailments and customer compliance are already provided in the utility Annual Automatic Adjustment (“AAA”) reports in accordance with the Commission’s February 27, 2019, Order Accepting Gas Utilities’ Annual Automatic Adjustment Reports and 2016-2017 True-up Proposals and Setting Further Requirements in Docket Nos. G011/AA-17-654, G011/AA-17-655, and G011/AA-17-656. Additional reporting requirements are unnecessary, and are unlikely to address interruptible customer compliance. If the Commission desires additional information on interruptible customer compliance with curtailments, MERC proposes that specific requests be made a part of the AAA process.

*Tariff Language Requiring Three Customer Contacts*

In its Response Comments, the Department “observed that the natural gas utilities already maintain open communication with interruptible utilities and routinely request that these customers provide contact information as part of their acknowledgement that they receive interruptible service.”<sup>8</sup> Since the utilities already collect this information, the Department concludes that memorializing this process in the tariff would serve to formalize the obligation of interruptible service to both the customer and the utility. In particular, the Department proposes the following tariff language for inclusion in the interruptible schedules for natural gas utilities:

Customers must maintain three (3) current contacts to receive notice of curtailment. If the customer does not have three qualified contacts, the customer shall provide an annual attestation to the Company that it is unable to have three qualified contacts and the customer understands they are obligated to curtail service when requested. The Company will make an annual request that customers confirm that contact information is current.

As discussed in MERC’s June 28, 2019, Reply Comments, it is already the Company’s policy to request three separate contacts for all new interruptible customers; however, some interruptible customers do not have the capability to maintain three available contacts for this purpose. Additionally, some interruptible transport customers have listed their marketer as a contact.

Additionally, as discussed in the Company’s Comments, each fall, MERC mails and emails all customers on an interruptible or joint rate, provides them with the current list of contacts on file, and requests any updates if there are any changes. With this annual communication, MERC also requests that each customer respond to acknowledge receipt and affirm if there are no changes and all of the information provided is accurate. While MERC has undertaken this annual process each year since 2014, many customers do not respond to the initial communication, and further follow up is required. Some customers do not respond even after multiple attempts to follow up.

In addition to the annual request for interruptible customers to provide any updates to contact information, starting with the 2018-2019 heating season, MERC began running test notifications through its curtailment notification system to ensure that the system is operational and to ensure that customers are receiving the notification information. In response to the test notification that

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<sup>8</sup> Department Response Comments at 17 (Aug. 9, 2019).

was sent prior to the 2018-2019 heating season, MERC did receive a number of calls to update contact information for interruptible customers. The Company will continue to run such tests of the notification system in the future.

While the Company makes its best efforts to request any updates to customer contacts in the fall each year, it is the customer's sole responsibility, as a condition of interruptible service, to notify the Company of any changes. MERC proposed additional tariff revisions, included in Attachment B to its June 28, 2019, Reply Comments, to explicitly state that it is the responsibility of the customer to notify the customer in the event the contact information to be utilized for notification of curtailment events has changed.

Based upon its experience in this regard, MERC does not believe the resources required to attempt to administer and track compliance with contact information requirements would result in improvements to customer compliance with interruptible service that would justify such efforts.

#### *Tariff Language Requiring Annual Attestation*

Finally, regarding the requirement that utilities verify back-up equipment, the Department clarified that it was not recommending that the utility test the equipment to verify its operational status. The Department agreed that such testing is the responsibility of the customer. Instead, the Department recommended an annual attestation that interruptible customers have fully functioning back-up equipment and/or the ability to curtail natural gas use when requested.<sup>9</sup> In particular, the Department proposes the following tariff language:

On an annual basis, the customer shall provide an annual attestation to the Company that it has fully functioning back-up equipment and/or the ability to curtail natural gas use when requested. The operational and functionality of the back-up equipment is the sole responsibility of the interruptible customer. Failure to maintain this equipment or failure to curtail represents a breach of the terms of interruptible service and may result in termination of the agreement.

As discussed in MERC's June 28, 2019, Reply Comments, MERC does not mandate that interruptible customers *have* back-up systems, so long as they commit to fully curtail the use of interruptible gas upon request within one hour.<sup>10</sup> MERC already proposed additional tariff revisions, included in Attachment B to its June 28, 2019, Reply Comments, to clarify that it is the responsibility of the interruptible customer to ensure their back-up system is fully functioning and that the customer has adequate alternative fuel supplies available in the event they are called upon to curtail. MERC also proposed additional communications to interruptible customers regarding the obligations of interruptible service, including the customer's responsibility to

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<sup>9</sup> Department Response Comments at 17 (Aug. 9, 2019).

<sup>10</sup> This is true with the exception of human needs customers, who are required to sign an affidavit that they have and will maintain capability and adequate fuel supplies to use alternate fuel if MERC's service to such customer is interrupted. See Tarff Sheet No. 5.10. Human needs customers include schools, churches, hospitals, day care facilities, nursing homes, or other facilities that must maintain energy service in order to protect the health and welfare of its inhabitants.

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appropriately check and maintain their back-up systems and ensure an adequate alternative fuel supply.<sup>11</sup>

MERC does not believe the time and resources required to administer and track annual attestations for customers regarding the functionality of their backup system and/or ability to curtail their natural gas usage when requested would result in improvements to customer compliance with interruptible service that would justify such efforts. Even if a customer backup system is in good working order one day, many factors could cause that system to malfunction.

Please contact me at (414) 221-2374 if you have any questions regarding the information in this filing. Thank you for your attention to this matter.

Sincerely,

/s/ Mary L. Wolter

Mary L. Wolter

Director – Gas Regulatory Planning & Policy

Enclosure  
cc: Service List

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<sup>11</sup> MERC Reply Comments at Attachment D (June 28, 2019).

In the Matter of a Commission Inquiry into  
the Impact of Severe Weather in January  
and February 2019 on Utility Operations  
and Service

Docket No. E,G999/CI-19-160

CERTIFICATE OF SERVICE

I, Kristin M. Stastny, hereby certify that on the 19th day of August, 2019, on behalf of Minnesota Energy Resources Corporation (MERC), I electronically filed a true and correct copy of the enclosed Additional Reply Comments on [www.edockets.state.mn.us](http://www.edockets.state.mn.us). Said documents were also served via U.S. mail and electronic service as designated on the attached service list.

Dated this 19th day of August, 2019.

/s/ Kristin M. Stastny  
Kristin M. Stastny



First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Tamie A.	Aberle	tamie.aberle@mdu.com	Great Plains Natural Gas Co.	400 North Fourth Street  Bismarck, ND 585014092	Electronic Service	No	OFF_SL_19-160_Official
Kristine	Anderson	kanderson@greatermngas.com	Greater Minnesota Gas, Inc.	202 S. Main Street  Le Sueur, MN 56058	Electronic Service	No	OFF_SL_19-160_Official
Alison C	Archer	aarcher@misoenergy.org	MISO	2985 Ames Crossing Rd  Eagan, MN 55121	Electronic Service	No	OFF_SL_19-160_Official
Brenda A.	Bjorklund	brenda.bjorklund@centerpointenergy.com	CenterPoint Energy	505 Nicollet Mall  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-160_Official
Joe	Brophy	jbrophy@efgroupplc.com	Centra Pipelines Minnesota Inc.	Energy Fundamentals Group LP 2324 Main Street London, ON N6P1A9  CANADA	Electronic Service	No	OFF_SL_19-160_Official
Greg	Chamberlain	greg.chamberlain@xcelenergy.com	Xcel Energy	414 Nicollet Mall  Minneapolis, MN 55401	Paper Service	No	OFF_SL_19-160_Official
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_19-160_Official
Laura	Demman	laura.demman@nngco.com	Northern Natural Gas Company	1111 S. 103rd Street  Omaha, NE 68125	Electronic Service	No	OFF_SL_19-160_Official
Linda A.	Farquhar	linda_farquhar@transcanada.com	Great Lakes Gas Transmission Company	700 Louisiana Street, Suite 700  Houston, TX 77002-2700	Electronic Service	No	OFF_SL_19-160_Official
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_19-160_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Bruce	Gerhardson	bgerhardson@otpc.com	Otter Tail Power Company	PO Box 496 215 S Cascade St Fergus Falls, MN 565380496	Electronic Service	No	OFF_SL_19-160_Official
Bryce	Haugen	bhaugen@otpc.com	Otter Tail Power Company	215 S Cascade St P.O. Box 496 Fergus Falls, MN 56538	Electronic Service	No	OFF_SL_19-160_Official
Allen	Krug	allen.krug@xcelenergy.com	Xcel Energy	414 Nicollet Mall-7th fl  Minneapolis, MN 55401	Electronic Service	No	OFF_SL_19-160_Official
Douglas	Larson	dlarson@dakotaelectric.com	Dakota Electric Association	4300 220th St W  Farmington, MN 55024	Electronic Service	No	OFF_SL_19-160_Official
Amber	Lee	Amber.Lee@centerpointenergy.com	CenterPoint Energy	505 Nicollet Mall  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-160_Official
Annie	Levenson Falk	annief@cupminnesota.org	Citizens Utility Board of Minnesota	332 Minnesota Street, Suite W1360  St. Paul, MN 55101	Electronic Service	No	OFF_SL_19-160_Official
Michael	Loeffler	mike.loeffler@nngco.com	Northern Natural Gas Co.	CORP HQ, 714 1111 So. 103rd Street Omaha, NE 681241000	Electronic Service	No	OFF_SL_19-160_Official
Pam	Marshall	pam@energycents.org	Energy CENTS Coalition	823 7th St E  St. Paul, MN 55106	Electronic Service	No	OFF_SL_19-160_Official
Mike	McMullen	mmcmullen@misoenergy.org	MISO	2985 Ames Crossing Rd  Eagan, MN 55121	Electronic Service	No	OFF_SL_19-160_Official
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-160_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
David	Moeller	dmoeller@allte.com	Minnesota Power	30 W Superior St  Duluth, MN 558022093	Electronic Service	No	OFF_SL_19-160_Official
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_19-160_Official
Kate	O'Connell	kate.oconnell@state.mn.us	Department of Commerce	Suite 50085 Seventh Place East  St. Paul, MN 551012198	Electronic Service	No	OFF_SL_19-160_Official
Greg	Palmer	gpalmer@gretermngas.com	Greater Minnesota Gas, Inc.	PO Box 68 202 South Main Street Le Sueur, MN 56058	Electronic Service	No	OFF_SL_19-160_Official
Jennifer	Peterson	jjpeterson@mnpower.com	Minnesota Power	30 West Superior Street  Duluth, MN 55802	Electronic Service	No	OFF_SL_19-160_Official
Generic Notice	Residential Utilities Division	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_19-160_Official
Richard	Savelkoul	rsavelkoul@martinsquires.com	Martin & Squires, P.A.	332 Minnesota Street Ste W2750  St. Paul, MN 55101	Electronic Service	No	OFF_SL_19-160_Official
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_19-160_Official
Joseph K	Sullivan	joseph.k.sullivan@state.mn.us	Department of Commerce	85 7th Place East Ste 500  Saint. Paul, MN 55101-2198	Electronic Service	No	OFF_SL_19-160_Official

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Lynnette	Sweet	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	OFF_SL_19-160_Official
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_19-160_Official
Mary	Wolter	mary.wolter@wecenergygroup.com	Minnesota Energy Resources Corporation (HOLDING)	231 West Michigan St Milwaukee, WI 53203	Electronic Service	No	OFF_SL_19-160_Official
Aaron W.	Wright	N/A	Viking Gas Transmission Company	ONEOK, Inc. 100 W. Fifth Street, MD 12- 2 Tulsa, OK 74103	Paper Service	No	OFF_SL_19-160_Official