

July 31, 2020

Will Seuffert  
Executive Secretary  
Minnesota Public Utilities Commission  
121 7<sup>th</sup> Place East, Suite 350  
Saint Paul, Minnesota 55101-2147

RE: **Comments of the Minnesota Department of Commerce, Division of Energy Resources**  
Docket No. G011/M-20-563

Dear Mr. Seuffert:

Attached are the Comments of the Minnesota Department of Commerce, Division of Energy Resources (Department), in the following matter:

Petition of Minnesota Energy Resources Corporation for Approval of Proposed Modifications to Tariffs in Section 9, Extension of Natural Gas Service.

The Petition was filed on July 1, 2020 by:

Joylyn Hoffman Malueg  
Project Specialist 3  
Minnesota Energy Resources Corporation  
231 W. Michigan Street  
Milwaukee, WI 53203  
(414) 221-4208.

The Department recommends that the Minnesota Public Utilities Commission (Commission) **approve the petition with modifications**. The Department is available to answer any questions that the Commission may have in this matter.

Sincerely,

/s/ STEPHEN COLLINS  
Rates Analyst  
SC/ja  
Attachment



## Before the Minnesota Public Utilities Commission

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### Comments of the Minnesota Department of Commerce Division of Energy Resources

Docket No. G011/M-20-563

#### I. INTRODUCTION

On July 1, 2020, Minnesota Energy Resources Corporation (MERC or the Company) filed a petition requesting that the Minnesota Public Utilities Commission (Commission) approve modifications to Section 9, Extension of Natural Gas Service, of MERC's Tariff and Rate Book to regarding (a) customer connection procedures and guidelines, in Subsection 1.A.5., and (b) winter construction charges for extensions of company mains and services, in Subsection 2.D. The proposed modifications are below:

##### 1. CUSTOMER CONNECTION PROCEDURES AND GUIDELINES

###### A. Application and Permits

5. Subject to the other requirements of the tariff, the Company reserves the right to suspend the issuance of permits for gas service on the basis of the Company's sole judgment with respect to present and future connections and factors, including but not limited to the availability of gas supplies and delivery capacity. The Company will authorize connection of qualifying customers based on the time of when both requirements are met: 1) Company has received a complete application from customer and 2) all required certifications have been provided by the customer.

...

##### 2. EXTENSIONS OF COMPANY MAINS AND SERVICES (Continued)

###### D. Winter Construction Charges

When the service or main is installed between December 1 and April 1, inclusive, because of failure to meet all requirements of the Company by ~~November~~ September 30 or because the customer's property, or the streets leading thereto, are not ready to receive the service pipe or gas main by ~~such date~~ September 30, the anticipated winter construction charges will be included in determining the feasibility and any necessary CIAC [contribution in aid of construction]. Such work will be subject to a base winter construction charge on all ditch footages, as an adder, and

applies to any plowing, trenching, boring, or bell holes for construction that takes place from December 1 to April 1. The winter construction cost will be determined individually at current contractor rates.

<b>Winter Construction Charge 2018</b>	<del>\$5.83 per lineal foot (7 county metro)</del> <del>\$5.25 per lineal foot (out state)</del>
<b>Winter Construction Charge 2019</b>	<del>\$6.00 per lineal foot (7 county metro)</del> <del>\$5.41 per lineal foot (out state)</del>
<b>Winter Construction Charge 2020</b>	<del>\$6.12 per lineal foot (7 county metro)</del> <del>\$5.52 per lineal foot (out state)</del>

In addition to the base winter construction charge, when it is necessary to use thawing devices to excavate bell holes or locate other utility crossings, there will be a per burner charge for such devices equal to current contractor rates.

Additionally, a frost charge will be assessed by the Company for those portions of main or service lines where twelve or more inches of frost exists. The frost charge is not included on boring lengths but can apply to open trench and send or receive holes for bores. When twelve inches or more of frost exists outside the Winter Construction period, the frost may be applied as an expense due to abnormal conditions pursuant to Sheet No. 9.04 or Sheet No. 9.05. Frost charges for bell holes will be paid per the perimeter footage of the bell hole (one bell hole per service). The frost charge will be determined individually at current contractor rates.

<b>Frost Charge 2018</b>	<del>\$6.41 per lineal foot (7 county metro)</del> <del>\$6.12 per lineal foot (out state)</del>
<b>Frost Charge 2019</b>	<del>\$6.60 per lineal foot (7 county metro)</del> <del>\$6.30 per lineal foot (out state)</del>
<b>Frost Charge 2020</b>	<del>\$6.74 per lineal foot (7 county metro)</del> <del>\$6.43 per lineal foot (out state)</del>

The winter construction charge shall be equal to costs in excess of normal construction costs. Winter construction will not be undertaken by the Company where prohibited by law or where it is not practical to install gas main or gas service pipe during the winter season. The Company may reduce winter construction charges only to the extent the Company incurs a corresponding reduction in costs to install facilities during the winter construction period. The same charge reductions will be offered to all similarly situated customers. The Company may not assess customers more than then actual cost for winter construction.~~tariffed winter construction charge(s).~~

~~**Bell Holes: When it is necessary to use thawing devices in order to excavate the bell hole, or locate other utility crossings, there will be a per burner charge equal to \$296.69 in 2018, \$305.59 in 2019, and \$311.70 in 2020.**~~

Regarding timing, MERC requests as follows:

MERC respectfully requests that the Commission rule on this filing so that new winter construction charges may be implemented beginning in March of 2021 based on actual winter construction costs reflected in MERC's updated construction contract. While MERC has negotiated updated winter construction charges effective March 1, 2021 with its construction contractor, MERC will not begin charging the new winter construction charges until the proposed tariff modifications have been approved by the Commission.

The Minnesota Department of Commerce, Division of Energy Resources (Department) reviews these requests below.

## **II. DEPARTMENT ANALYSIS**

As stated above, MERC requests modifications to Section 9, Subsections 1.A.5. and 2.D., of its tariff. The Department reviews the modifications in that order.

### ***A. SUBSECTION 1.A.5.: CUSTOMER CONNECTION PROCEDURES AND GUIDELINES, APPLICATION AND PERMITS***

Currently, this section gives MERC "the right to suspend the issuance of permits for gas service on the basis of the Company's sole judgment with respect to present and future connections and factors." As the tariff already puts the issuance of permits at MERC's sole discretion, the Department does not object to MERC adding the requested clarifying language, which for ease of reference is again shown, below:

Subject to the other requirements of the tariff, the Company reserves the right to suspend the issuance of permits for gas service on the basis of the Company's sole judgment with respect to present and future connections and factors. **including but not limited to the availability of gas supplies and delivery capacity. The Company will authorize connection of qualifying customers based on the time of when both requirements are met: 1) Company has received a complete application from customer and 2) all required certifications have been provided by the customer.**

The Department notes that MERC's reasoning for adding this language is as follows: "MERC seeks to include this clarifying language to ensure customers are aware that they are required to submit an application and provide appropriate certifications before a request for new service will be processed." The Department supports increasing customer awareness.

*B. SUBSECTION 2.D.: WINTER CONSTRUCTION CHARGES FOR EXTENSION OF COMPANY MAINS AND SERVICES*

MERC proposes two categories of changes for the winter construction charges in subsection 2.D.: (1) revise the deadline for customers to complete all requirements for service or main installation to guarantee avoidance of base winter construction charges assessed for construction occurring between December 1 and April 1, and (2) revise the tariff language regarding all winter construction charges to state that charges will be equal to the rate charged by MERC's construction contractor rather than listing the charges in the tariff. The Department reviews these changes below.

*1. Deadline for Customers to Complete All Requirements for Service or Main Installation in Advance of the Winter Construction Period, to Guarantee Avoidance of Base Winter Construction Charges*

The first part of the proposed change to subsection 2.D. is below:

When the service or main is installed between December 1 and April 1, inclusive, because of failure to meet all requirements of the Company by ~~November~~ September 30 or because the customer's property, or the streets leading thereto, are not ready to receive the service pipe or gas main by ~~such date~~ September 30, the anticipated winter construction charges will be included in determining the feasibility and any necessary CIAC. Such work will be subject to a base winter construction charge on all ditch footages, as an adder, and applies to any plowing, trenching, boring, or bell holes for construction that takes place from December 1 to April 1.

The "winter construction charges" refer to surcharges applied to all ditch footages for construction that occurs between December 1 and April 1. MERC employs an outside contractor, NPL Construction Company (NPL) for main and service extensions, and their agreement stipulates that NPL will assess a base winter surcharge for construction during that time. MERC has a separate policy with NPL for per-burner charges for thawing devices and per-lineal-foot frost charges (the other charges in subsection 2.D.), which are assessed not according to date of construction but instead based on the conditions at the time. The per-burner charge is assessed when it is necessary to use thawing devices in order to excavate bell holes or locate other utility crossings, and the frost charge is assessed when twelve or more inches of frost exists. These charges are assessed regardless of date. Therefore, MERC's proposed deadline change only applies to base "winter construction charge" assessed for construction

that takes place between December 1 and April 1. The rest of the discussion in this section pertains only to this charge.

With the current November 30 deadline, if a customer meets MERC's requirements by November 30 or earlier, they will avoid the inclusion of anticipated base winter construction charges in their contribution in aid of construction for the service or main extension. The Department confirmed with MERC over the phone that the deadline essentially acts as a guarantee that the customer will not incur the base winter construction charge.

If a customer meets the requirements by November 30, the earliest NPL can begin permitting/construction (at least in theory) is December 1, which would be during the winter period when MERC pays the base winter construction charges to NPL. Even if a customer meets the requirements by an earlier date, say November 15, then MERC may still incur construction during the winter period. To address this issue, MERC is proposing to modify the tariff to ensure customers give MERC at least two months to complete permitting and construction, by moving the requirements deadline to September 30, two months before the winter construction period begins.

Under this new proposal, customers would have until September 30 to guarantee avoidance of the base winter construction charge. However, if a customer met all requirements by, say, October 1, and MERC finished construction before December 1, the customer would still avoid the base winter construction charge. That is, the date would continue to act as a deadline to ensure no winter construction charges are assessed, in the case construction does incur in the December 1 to April 1 period. This policy is clarified in the tariff by the proposed additional language "for construction that takes place from December 1 to April 1."

On a phone call with the Department, MERC stated that a typical maximum permitting and construction time is around six weeks. Therefore, the September 30 deadline gives MERC an additional three weeks cushion to ensure that the Company will not have to pay the base winter construction charge to NPL without being able to pass this charge onto customers. As noted above, customers that don't meet the September 30 deadline will still avoid paying the base winter construction charge if construction is completed before December 1, and MERC does not have an incentive to delay construction as the base winter construction charge is a pass through charge. For these reasons, the Department views the new deadline of September 30 as reasonable and recommends that the Commission approve it.

However, as the new deadline would result in MERC being "on the hook" for base winter construction charges less often, the Department also recommends that the Commission require that MERC continue its current practices, as cited in the petition, of actively negotiating winter construction charges to ensure that they are reasonable and competitive and regularly undertaking a competitive bidding process to ensure that the Company's blanket construction contract and pricing are reasonable.

## 2. Winter Construction Rates

The second aspects of the modifications to subsection 2.D. is the proposed modification of the rates from a listed amount to “current contractor rates,” as shown below:

**The winter construction cost will be determined individually at current contractor rates.**

<b>Winter Construction Charge 2018</b>	<del>\$5.83 per lineal foot (7 county metro)</del> <del>\$5.25 per lineal foot (out state)</del>
<b>Winter Construction Charge 2019</b>	<del>\$6.00 per lineal foot (7 county metro)</del> <del>\$5.41 per lineal foot (out state)</del>
<b>Winter Construction Charge 2020</b>	<del>\$6.12 per lineal foot (7 county metro)</del> <del>\$5.52 per lineal foot (out state)</del>

In addition to the base winter construction charge, **when it is necessary to use thawing devices to excavate bell holes or locate other utility crossings, there will be a per burner charge for such devices equal to current contractor rates.**

**Additionally,** a frost charge will be assessed by the Company for those portions of main or service lines where twelve or more inches of frost exists. The frost charge is not included on boring lengths but can apply to open trench and send or receive holes for bores. When twelve inches or more of frost exists outside the Winter Construction period, the frost may be applied as an expense due to abnormal conditions pursuant to Sheet No. 9.04 or Sheet No. 9.05. Frost charges for bell holes will be paid per the perimeter footage of the bell hole (one bell hole per service). **The frost charge will be determined individually at current contractor rates.**

<b>Frost Charge 2018</b>	<del>\$6.41 per lineal foot (7 county metro)</del> <del>\$6.12 per lineal foot (out state)</del>
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<b>Frost Charge 2020</b>	<del>\$6.74 per lineal foot (7 county metro)</del> <del>\$6.43 per lineal foot (out state)</del>

The winter construction charge shall be equal to costs in excess of normal construction costs. Winter construction will not be undertaken by the Company where prohibited by law or where it is not practical to install gas main or gas service pipe during the winter season. The Company may reduce winter construction charges only to the extent the Company incurs a corresponding reduction in costs to install facilities during the winter

construction period. The same charge reductions will be offered to all similarly situated customers. The Company may not assess customers more than then actual cost for winter construction.~~tariffed winter construction charge(s).~~

~~**Bell Holes: When it is necessary to use thawing devices in order to excavate the bell hole, or locate other utility crossings, there will be a per burner charge equal to \$296.69 in 2018, \$305.59 in 2019, and \$311.70 in 2020.**~~

The current charges, for 2018, 2019, and 2020, were negotiated between MERC and NPL Construction Company (NPL), MERC's construction contractor. MERC and NPL have negotiated new charges for 2021, 2022, and 2023, to be effective March 1, 2021. Both the old and new rates are shown in Attachment B to the petition. As noted above, the petition states that MERC actively negotiates these charges to ensure that they are reasonable and competitive and regularly undertakes a competitive bidding process to ensure its blanket construction contract and pricing are reasonable.

While MERC could simply request approval to update the rates in its tariff to reflect the 2021, 2022, and 2023 negotiated rates, MERC prefers modifying the tariff as requested, for reasons stated in the petition as follows:

Under MERC's existing tariff, the Company is required to routinely file and obtain Commission approval to implement new winter construction charge, frost charge, and bell hole charges, requiring time and expense. In the past, the Commission has routinely approved the negotiated contractor rates for implementation.<sup>1</sup> As MERC continues to utilize the same processes for periodic negotiation and bidding of its construction contract, implementation of those rates without additional regulatory review and approval is reasonable and appropriate. The proposed changes are also consistent with other approved tariffs on file with the Commission which do not specify a per foot cost.<sup>2</sup>

<sup>1</sup> See Docket Nos. G007,001/M-07-1188, G007,011/M-12-362, G011/M-13-722, G011/14-361, and G011/M-18-589. Pursuant to the Commission's January 15, 2008 Order in Docket No. G007,011/M-07-1188, MERC is currently required to submit, for Commission approval, any future proposed changes to the Company's approved Winter Construction Charges tariff. Through this filing, MERC requests that the Commission modify that requirement and allow the Company to revise its tariffs to charge winter construction charges based on current contractor rates.

<sup>2</sup> See Greater Minnesota Gas Tariff, Section VI, Revised Sheet No. 11 ("The Company's winter construction charges will be individually determined."); Xcel Energy Minnesota Gas Rate Book, Section No. 6, Sheet No. 19 (stating that charges for frost depths 18" or greater and for main and service extensions of more than 4" pipe, winter construction costs will be determined individually).

Based on the petition, the Department understands that MERC intends to use the same process to update the winter charges assessed to customers, but would simply not include the exact amounts in



rates, and would not require Commission approval each time MERC negotiates new rates with its contractor.

While the Department understands the Company's desire not to make regulatory filings, it is important for potential customers to have adequate information about the additional costs incurred for construction during the winter, in order to aid in planning. Moreover, Minnesota Rule 7820.4800, Information Available to Customers and Public, requires each utility to "have available for existing customers and applicants for service such information as is needed to obtain and maintain adequate timely and efficient service." Information about the costs of connecting to MERC's system should be made available and transparent as reasonably possible. Therefore, the Department recommends that the Commission continue to require MERC to include the specific winter construction charges in its tariff. The Department also recommends that the Commission authorize MERC to implement the 2021, 2022, and 2023 winter construction charges on March 1, 2021, the date MERC's updated agreement with NPL comes into effect, as the charges were competitively negotiated.

### **III. RECOMMENDATION**

The Department recommends that the Commission:

- Approve MERC's proposal to change the deadline for customers to complete all requirements for service or main installation to guarantee avoidance of base winter construction charges assessed for construction occurring between December 1 and April 1;
- Require that MERC continue to include the specific winter construction charges in its tariff;
- Authorize MERC to implement the 2021, 2022, and 2023 winter construction charges effective March 1, 2021; and
- Require that MERC continue to actively negotiate winter construction charges to ensure that they are reasonable and competitive and regularly undertake a competitive bidding process to ensure that its blanket construction contract and pricing are reasonable.

## **CERTIFICATE OF SERVICE**

I, Sharon Ferguson, hereby certify that I have this day, served copies of the following document on the attached list of persons by electronic filing, certified mail, e-mail, or by depositing a true and correct copy thereof properly enveloped with postage paid in the United States Mail at St. Paul, Minnesota.

**Minnesota Department of Commerce**  
**Comments**

**Docket No. G011/M-20-563**

Dated this **31<sup>st</sup>** day of **July 2020**

**/s/Sharon Ferguson**

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Michael	Ahern	ahern.michael@dorsey.com	Dorsey & Whitney, LLP	50 S 6th St Ste 1500  Minneapolis, MN 554021498	Electronic Service	No	OFF_SL_20-563_M-20-563
Generic Notice	Commerce Attorneys	commerce.attorneys@ag.state.mn.us	Office of the Attorney General-DOC	445 Minnesota Street Suite 1400  St. Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-563_M-20-563
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_20-563_M-20-563
Daryll	Fuentes	dfuentes@usg.com	USG Corporation	550 W Adams St  Chicago, IL 60661	Electronic Service	No	OFF_SL_20-563_M-20-563
Joylyn C	Hoffman Malueg	Joylyn.hoffmanmalueg@wecenergygroup.com	Minnesota Energy Resources	2685 145th St W  Rosemount, MN 55068	Electronic Service	Yes	OFF_SL_20-563_M-20-563
Brian	Meloy	brian.meloy@stinson.com	STINSON LLP	50 S 6th St Ste 2600  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-563_M-20-563
Andrew	Moratzka	andrew.moratzka@stoel.com	Stoel Rives LLP	33 South Sixth St Ste 4200  Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-563_M-20-563
Catherine	Phillips	Catherine.Phillips@wecenergygroup.com	Minnesota Energy Resources	231 West Michigan St  Milwaukee, WI 53203	Electronic Service	Yes	OFF_SL_20-563_M-20-563
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_20-563_M-20-563
Elizabeth	Schmiesing	eschmiesing@winthrop.com	Winthrop & Weinstine, P.A.	225 South Sixth Street Suite 3500 Minneapolis, MN 55402	Electronic Service	No	OFF_SL_20-563_M-20-563

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
Will	Seuffert	Will.Seuffert@state.mn.us	Public Utilities Commission	121 7th PI E Ste 350  Saint Paul, MN 55101	Electronic Service	Yes	OFF_SL_20-563_M-20-563
Colleen	Sipiorski	Colleen.Sipiorski@wecenergygroup.com	Minnesota Energy Resources Corporation	700 North Adams St  Green Bay, WI 54307	Electronic Service	Yes	OFF_SL_20-563_M-20-563
Kristin	Stastny	kstastny@taftlaw.com	Taft Stettinius & Hollister LLP	2200 IDS Center 80 South 8th St Minneapolis, MN 55402	Electronic Service	Yes	OFF_SL_20-563_M-20-563
Eric	Swanson	eswanson@winthrop.com	Winthrop & Weinstine	225 S 6th St Ste 3500 Capella Tower Minneapolis, MN 554024629	Electronic Service	No	OFF_SL_20-563_M-20-563
Mary	Wolter	mary.wolter@wecenergygroup.com	Minnesota Energy Resources Corporation (HOLDING)	231 West Michigan St  Milwaukee, WI 53203	Electronic Service	Yes	OFF_SL_20-563_M-20-563
Tina E	Wuyts	tina.wuyts@wecenergygroup.com	Minnesota Energy Resources Corporation	PO Box 19001 700 N Adams St Green Bay, WI 54307-9001	Electronic Service	Yes	OFF_SL_20-563_M-20-563