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March 29, 2021

Will Seuffert
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101-2147

VIA ELECTRONIC FILING

Re: Additional Reply Comments of Minnesota Energy Resources Corporation

In the Matter of the Petition of Minnesota Energy Resources Corporation for Approval of Natural Gas Extension Project (NGEP) Rider True-Up for 2019, Rider Revenue Deficiency for 2021, and Revised Surcharge Factors
Docket No. G011/M-20-420

Dear Mr. Seuffert:

Minnesota Energy Resources Corporation (“MERC” or the “Company”) submits these additional Reply Comments in response to the March 19, 2021, Response Comments filed by the Minnesota Department of Commerce, Division of Energy Resources (the “Department”) on MERC’s Petition for Approval of Natural Gas Extension Project (“NGEP”) Rider True-Up for 2019, Rider Revenue Deficiency for 2021, and Revised Surcharge Factors. MERC thanks the Department for its additional review and comments.

As discussed in the Department’s Response Comments, many issues have now been resolved between the Company and the Department. However, a few areas of disagreement remain. MERC submits these limited additional reply comments to briefly respond to the new issues and recommendations raised by the Department in its March 19 Comments. MERC respectfully requests that the Minnesota Public Utilities Commission (the “Commission”) accept these additional reply comments.

1. 2018 Base Rate Revenue True-Up

In its Response Comments, the Department continues to propose that MERC be required, as part of its compliance with Order Point 13 of the Commission’s Findings of Fact, Conclusions, and Order in Docket No. G011/GR-17-563, to true-up 2018 revenues from its base rates to account for offsetting revenues in the Rochester area.

As MERC explained in its January Reply Comments, this recommendation conflicts with the Commission’s clear and unambiguous order, which limits the required NGEP rider true-up to “any difference between the 2018 actual Rochester Project *capital expenditures* and MERC’s *capital estimates* used in this docket.”¹ Despite this clear language, the Department, in its Response Comments, now argues that it was nevertheless the Commission’s “intention in its 2017 Rate Case order ... for MERC to true-up both actual costs and actual revenues to the

¹ MERC Reply Comments at 19 (Jan. 22, 2021) (emphasis added).

estimates included in the test year in its 2017 Rate Case.”² In support of this interpretation, the Department quotes three paragraphs from the Commission’s discussion of the Rochester true-up from its Findings of Fact, Conclusions, and Order in Docket No. G011/GR-17-563, asserting that this additional discussion evinces the Commission’s intention to require a true-up for base rate recoveries.

But, as shown below, the additional order language the Department cites further supports the conclusion that the Commission clearly did not intend nor order a true-up of base rate revenues associated with the Rochester Project as the Department now suggests. The quoted paragraphs explicitly refer to “capital expenditures” no less than five times; meanwhile, there are zero references to trueing up for revenues or sales.

At issue are the projected test-year **expenses** for the Rochester Project. If the projection overestimates the **expenses** that are actually incurred during the test year, ratepayers would be paying for **plant** that had not been placed in useful service, and the overestimate would be built into MERC’s base rates until the Company’s next rate case. But because a portion of project **expenses** are authorized to be recovered in the NGEP rider, there is an opportunity to ensure that, on net, rates are trueed-up through the rider mechanism if the **capital expenditures** on the project fall below the projected amount in the test year.

...

When calculating rates using a projected rather than a historical test year, projections and forecasts of test year costs are necessary. Where rates are not subject to revision until the next general rate proceeding, the reliability and accuracy of forecasts are critical to ensure that rates are just and reasonable. MERC’s test year includes a projection of one year of **capital expenses** for a significant, multi-year, multi-phase infrastructure project. But MERC is also authorized to recover a portion of those project costs through a rider, a mechanism that allows rate adjustments outside of a rate case.

Because recovery for the Rochester Project is authorized both in base rates and through the NGEP rider, there is a ready mechanism to ensure just and reasonable rates overall even if base rates turn out to be based on an overestimate of **actual Project costs**. The Commission will therefore require that MERC include any difference between the 2018 actual Rochester Project **capital expenditures** and MERC’s **capital estimates** used in this docket in its upcoming NGEP Rider as a true-up with MERC’s NGEP rider true-up calculation. The true up will ensure that an overestimate of projected costs built into base rates can be corrected-for. This will

² Department Response Comments at 9.

protect ratepayers if the Rochester Project capital expenses do not meet projected test-year amounts.

The Department acknowledges that the Commission's Order does not explicitly require MERC to true-up 2018 actual Rochester Project revenues with the estimates included in the 2018 test year in the 2017 Rate Case.³ However, the Department argues that the "ready mechanism" language and the structure of other riders support the inference that the Commission intended MERC to true up base rate revenues from the forecast approved in the test year in its 2017 rate case in addition to truing up for capital costs. The language cited by the Department not only fails to demonstrate an intent to require a true-up for sales revenues as part of the 2018 true-up, it demonstrates that was clearly *not* the intent of the Commission's order.

The Department had the opportunity to propose alternative language in response to Commission staff's recommended decision alternative in Docket No. G011/GR-17-563 and did not do so.⁴ It is unreasonable to infer such a new and entirely different requirement over two years after the Order was issued.

Further, the Department's suggestion that other riders, such as the transmission cost recovery rider and renewable energy standard rider, true-up for base rate revenues⁵ is simply false. Because the NGEPR rider involves projects for the extension or expansion of natural gas service to currently unserved or underserved areas, the NGEPR rider is unique in that it incorporates offsetting revenues associated with new customer additions that are made possible by the extension or expansion project. Neither the transmission cost rider⁶ nor the renewable energy standard rider⁷ incorporate such a mechanism, because those other riders do not involve the extension or expansion of utility service to unserved or inadequately served areas.

And while all riders account for revenues that have been collected through the applicable rider surcharge rates, that revenue true-up is entirely different than a base rate revenue true-up as the Department is now proposing. Because MERC did not have an NGEPR rider surcharge in 2018, the associated rider revenue true-up for 2018 that would be analogous to the revenue true-ups referenced by the Department in the transmission and renewable riders would be \$0.

As noted above, the Commission's Order is clear and unambiguous, expressly limiting the required NGEPR rider true-up to "any difference between the 2018 actual Rochester Project capital expenditures and MERC's capital estimates used in this docket." Neither the Department, nor any other party, proposed to incorporate a true-up to 2018 Rochester area revenues. Although the Commission could have included such a true-up requirement at the time it approved the Company's rates, it did not do so and cannot now require that a refund based on such difference be included as part of the NGEPR rider true-up.

³ Department Response Comments at 8.

⁴ *In the Matter of the Application of Minn. Energy Res. Corp. for Auth. to Increase Rates for Nat. Gas Serv. in Minn.*, Docket No. G011/GR-17-563, Department PREFERRED DECISION OPTIONS at 6 (Nov. 6, 2018).

⁵ Department Response Comments at 9.

⁶ Minn. Stat. § 216B.16, subd. 7b.

⁷ Minn. Stat. § 216B.1645, subd. 2a.

Consistent with the NGEPS Statute and the Commission's prior orders, MERC has properly trueed up 2019 NGEPS rider surcharge revenues in the 2019 true up. MERC has also trueed up for actual 2019 offsetting revenues based on the approved 2019 forecasted offsetting revenues in Docket No. G011/M-18-182. Finally, as the Department recognizes in its Response Comments, MERC accurately accounted for the difference between the 2018 actual Rochester capital expenditures and MERC's capital estimates used in Docket No. G011/GR-17-563.⁸ The Department's recommendation of an additional true-up for 2018 test year base rate sales revenues is unsupported by either the NGEPS Statute or the plain language of the Commission's orders and should therefore be rejected.

2. Legal Regulatory Costs

In its Response Comments, the Department continues to object to MERC's inclusion of a portion of its actual incremental 2019 outside legal regulatory expense associated with the Rochester Project NGEPS rider in the true-up reconciliation and 2021 forecast.⁹ Because the proposed costs reflect incremental expense that have been incurred for the Rochester NGEPS rider project, the Commission should allow recovery as proposed.

The Department first argues that "the Company knew in advance of its filing of its 2017 general rate case that there would be annual NGEPS Rider filings per the Commission's Order in 15-895."¹⁰ Even assuming MERC could have reasonably forecasted and proposed a known and measurable adjustment to its O&M expense, though it is not clear what the basis for such forecast would be since MERC had not litigated such a rider at that time; and further assuming the Department would have supported the basis for such forecasted adjustment; the fact remains that MERC's current rates simply do not reflect such an adjustment or include any outside legal regulatory costs associated with the NGEPS rider. As a result, the proposed regulatory legal expense is, in fact, incremental to the costs currently included in MERC's base rates.

The Department also suggests that the 33 percent of legal regulatory costs proposed for recovery are unreasonable or imprudent, because some portion of legal costs incurred were related to MERC's interpretation of the 33 percent cap in Docket No. G011/M-18-182.¹¹ First, the Department's suggestion that the Company took a frivolous position regarding application of the 33 percent cap in the NGEPS Rider statute is unsupported. The Commission's Order expressly provides "[a]fter hearing the arguments of the parties on the rider recovery under the NGEPS statute, the Commission agrees that the NGEPS statute *is* ambiguous."¹² Further, the fact that the Commission did not accept "MERC's argument that the Commission made its decision

⁸ Department Response Comments at 8 ("MERC showed on Table 2 of its reply comments that the actual rate base was reflected in their true-up calculation, which resulted in a \$72,830 revenue requirement reduction. As a result, the Department no longer recommends its rate base adjustment.").

⁹ Department Response Comments at 3-6.

¹⁰ Department Response Comments at 4.

¹¹ Department Response Comments at 4.

¹² *In the Matter of the Petition of Minn. Energy Res. Corp. for Approval of a Nat. Gas Extension Project (NGEP) Cost Rider Surcharge for the Recovery of 2019 Rochester Project Costs*, Docket No. G011/M-18-182, ORDER APPROVING NGEPS RIDER SURCHARGE WITH MODIFICATIONS at 6 (June 18, 2019) (emphasis added).

in Docket No. 15-895 based on the Company's new interpretation of the NGEP statute," does not render the Company's arguments unreasonable or imprudent.

The legal regulatory costs at issue reflect actual costs incurred for MERC's 2019 NGEP rider in Docket No. G011/M-18-182, which are the subject of this true up. Those costs are necessary and have been prudently incurred in the preparation of the NGEP rider filing, responding to discovery, and responding to comments filed by the Department and other interested parties. Just as the expense associated with a general rate case proceeding is recoverable as a necessary expense, so too are the legal regulatory costs a necessary and incremental expense that has been incurred as part of the Rochester NGEP Project.

Moreover, MERC proposes to recover just 33 percent of the actual incremental legal regulatory costs incurred. Because these costs are an O&M expense, to the extent that they are incurred outside of a rate case, the Company will not have any opportunity to recover the remaining 67 percent through future base rates or any other mechanism. Given that fact, it is unclear how MERC could possibly be incentivized to incur unnecessary costs. On the contrary, the Company has every incentive to ensure its legal regulatory costs are contained and are reasonable and prudent.

Finally, the Department questions whether the actual legal regulatory costs incurred with respect to MERC's 2019 NGEP rider in Docket No. G011/M-18-182 are a reasonable forecast for 2021 costs.¹³ As discussed in the Company's Petition and January 22, 2021 Reply Comments, the 2019 true-up reflects a reasonable forecast for 2021 costs based on MERC's experience with the NGEP rider. Docket No. G011/M-18-182, which is the basis for MERC's forecasted costs, did not include a true-up. Based on this docket, the inclusion of a true-up in the rider may result in more issues and complexity. However, such differences can and would appropriately be accounted for through the true-up mechanism to ensure only 33 percent of actual costs are recovered.

3. Weather Normalization

Finally, in its Response Comments, the Department states that it reviewed the Company's January 22, 2021 response regarding its weather normalization process and "concludes that the updates undertaken by MERC appear reasonable and it appears that normal weather was applied appropriately in this rider filing."¹⁴ The Department also does not oppose MERC's use of the ratio method to weather normalize actual sales. However, the Department notes that "since the forecast period is based on a regression analysis, there is a possibility that a disconnect can exist between the historic weather normalization and the weather normalization used in the forecasting period."¹⁵ The Department concludes that this potential issue requires further investigation but that no modifications are needed to this 2021 NGEP rider or 2019 NGEP rider true-up.

¹³ Department Response Comments at 4.

¹⁴ Department Response Comments at 7.

¹⁵ Department Response Comments at 7.

With respect to the need for further investigation, the Department recommends that MERC provide the following in its next NGEF rider filing to allow for further analysis of the Company's weather normalization process and sales estimates:

- Any, and all, data necessary to verify the normal and actual weather used to calculate weather normalized sales in the Company's current NGEF Rider and prior NGEF Rider filings; and
- Historic annual customer count data since 2014, by customer class, for the Rochester Area. The customer count data is necessary to verify MERC's weather normalized sales estimates for the rider because certain rate class sales figures were estimated using use per customer regressions in the Rochester docket.¹⁶

MERC agrees to provide the requested information either with its next NGEF rider filing petition or as a supplement to its next NGEF rider petition filing and to work with the Department to address the Department's additional questions regarding the weather normalization process.

Given the resolution of open issues pertaining to this pending 2021 NGEF rider with respect to weather normalization, MERC requests that the Commission approve the Company's rider. As noted in the Department's Response Comments, MERC has agreed to calculate 2021 NGEF rider surcharge rates based on 2020 actual weather normalized sales, and will provide those sales and calculations in its compliance filing in this docket.

4. Property Tax Expense

With respect to property taxes, the Department concludes that MERC complied with the Commission's Order in Docket No. G011/M-19-608 with respect to property tax expense through its response to Department Information Request No. 1. The Department requests that the Company provide the project-area specific property tax data similar to what it included in Attachment B to its Reply Comments in future NGEF rider true-up filings. MERC agrees to provide the requested information in its future NGEF rider true-up reports.

CONCLUSION

Based on the foregoing, MERC respectfully requests that the Commission approve its 2021 NGEF Rider-eligible revenue deficiency of \$1,184,928, which incorporates the 2019 NGEF true-up and differences between the 2018 actual Rochester Project capital expenditures and MERC's capital estimates used in Docket No. G011/GR-17-563 in accordance with the Commission's order in that docket, as reflected in Attachment A to MERC's January 22, 2021, Reply Comments. Additionally, MERC requests that the Commission approve its proposed NGEF surcharge rate design by customer class based on 2020 actual weather normalized sales and the removal of ADIT proration in the months that proceed implementation of the surcharge rates. The Company proposes to submit a compliance filing reflecting final surcharge rates to be effective on the first of the month after the Commission's final order in this proceeding and to

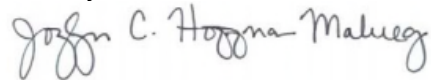
¹⁶ Department Response Comments at 7.

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continue until the Commission approves revised surcharge rates or implementation of interim rates in a future rate case proceeding.

Please contact me at (414) 221-4208 or Joylyn.HoffmanMalueg@wecenergygroup.com if you have any questions regarding the information in this filing. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink that reads "Joylyn C. Hoffman-Malueg". The signature is written in a cursive style with a large initial 'J' and 'M'.

Joylyn Hoffman Malueg
Project Specialist 3
Minnesota Energy Resources Corporation

cc: Service List

In the Matter of the Petition of Minnesota Energy Resources Corporation for Approval of Natural Gas Extension Project (NGEP) Rider True-Up for 2019, Rider Revenue Deficiency for 2021, and Revised Surcharge Factors

Docket No. G011/M-20-420

CERTIFICATE OF SERVICE

I, Kristin M. Stastny, hereby certify that on the 29th day of March, 2021, 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. Said documents were also served via U.S. mail and electronic service as designated on the attached service list.

Dated this 29th day of March, 2021.

/s/ Kristin M. Stastny

Kristin M. Stastny

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