MINNESOTA PUBLIC UTILITIES COMMISSION

Staff Briefing Papers

Meeting Date	September 16, 2021	Agenda Item 5**
Company	Minnesota Energy Resources Corporation	
Docket No.	**G-011/M-20-405** **In the Matter of the Petition of Minnesota Energy Resources Corporation [MERC] for Approval of the 2019 Gas Utility Infrastructure Cost [GUIC] Rider True-Up Report, 2021 GUIC Rider Revenue Requirements and Revised Surcharge Factors.**	
Issues	1. Should the Commission approve or modify MERC's proposed 2021 Gas Utility Infrastructure Cost (GUIC) Rider revenue requirement and revised surcharge factors? 2. Should the Commission accept MERC's GUIC Rider 2019 True-up Report?	

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✓ Relevant Documents	Date
Minnesota Energy Resources Corporation – Initial Petition (Non-Public)	April 1, 2020
Minnesota Department of Commerce, Division of Energy Resources – Comments (Non-Public)	October 26, 2020
Minnesota Energy Resources Corporation – Reply Comments (Non-Public)	November 19, 2020

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

Relevant Documents	**Date**
Minnesota Department of Commerce, Division of Energy Resources – Additional Comments (Non-Public)	December 29, 2020
Minnesota Energy Resources Corporation – Additional Reply Comments	January 15, 2021

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I. Statement of the Issues

1. Should the Commission approve or modify MERC's proposed 2021 Gas Utility Infrastructure Cost (GUIC) Rider revenue requirement and revised surcharge factors?
2. Should the Commission accept MERC's GUIC Rider 2019 True-up Report?

II. Introduction and Background

A. Introduction

Minnesota Energy Resources Corporation (MERC or the Company) is seeking approval of its updated Gas Utility Infrastructure Cost (GUIC) Rider to be effective January 1, 2020.[1] The Company requests approval of its forecasted 2021 test-year GUIC revenue requirement of approximately $6.65 million.

The Minnesota Department of Commerce, Division of Energy Resources (Department) is recommending changes or disallowances to several categories of costs, and has made other recommendations for future filings. Contested issues include:

1. Quality of Filing;
2. Internal Capitalized Cost;
3. Geographic Information System (GIS) Service Line Mapping Project Costs;
4. Right-of-Way Work Treated as Expense;
5. Betterment – Rochester County Road 9 Project;
6. Inclusion of Costs for Work Done in Conjunction with GUIC Project – Reported Right-Of-Way Services Costs;
7. Inclusion of Costs for Work Done in Conjunction with GUIC Project – Reported Obsolete Materials Services Costs;
8. Outside Legal Services;
9. Implementation of Rider Recovery Limit

B. Background

Integrity Management Programs were introduced pursuant to the Pipeline Safety Improvement Act, passed by the U.S. Congress in 2002. The law directed the U.S. Department of Transportation to promulgate rules to address integrity programs for gas transmission lines. A Transmission Integrity Management Program (TIMP) is a prescriptive risk-based program with the objective to improve pipeline safety; gas transmission operators are required to assess the health and condition of a utility's gas transmission assets, and evaluate and prioritize repairs to mitigate the risks and threats related to operating these assets. Gas transmission assets are pipelines operated at higher, transmission level pressure.

In 2009, the U.S. Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) published the final Distribution Integrity Management Program (DIMP)

[1] MERC's Petition at 3.

rule establishing integrity management requirements for gas distribution pipeline systems. The DIMP rules are intended to help gas distribution utilities identify, prioritize, and evaluate risks, identify and implement measures to address risk, and validate the integrity of their gas distribution system.

In 2005, the Minnesota Legislature enacted Minnesota (Minn.) Statute (Stat.) section (§) 216B.1635, the Recovery of Gas Utility Infrastructure Costs statute (GUIC statute), permitting gas utilities to file petitions for a rate schedule to recover certain costs of GUIC-defined projects. In 2013, the GUIC statute was amended which, in part, expanded both the definition of projects that qualify as GUIC projects and the eligible GUIC rider-recoverable costs.

The GUIC statute allows utilities to seek rider recovery of gas utility infrastructure costs. Gas utility infrastructure costs are those that are not included in the gas utility's rate base in its most recent general rate case, and that are incurred in projects involving: (1) the replacement of natural gas facilities required by road construction or other public work by or on behalf of a government agency; or, (2) the replacement or modification of existing facilities required by a federal or state agency, including surveys, assessments, reassessment, and other work necessary to determine the need for replacement or modification of existing infrastructure.[2]

MERC first requested and received approval to establish a GUIC Rider under the GUIC statute in Docket No. G-011/M-18-281 for the Company's forecasted 2019 GUIC-eligible projects and costs. The Commission issued an Order Approving Gas Utility Infrastructure Cost Rider with Modifications and Requiring Compliance Filing in that docket on February 5, 2019, finding that MERC's proposed forecasted 2019 GUIC Rider costs were "incremental; required by federal, state or local agencies; and supported by sufficient detail to meet the information requirements of the GUIC statute."[3]

C. MERC's 2021 GUIC, this Docket

On April 21, 2020, in this docket, MERC requested approval from the Minnesota Public Utilities Commission (Commission) to recover capital costs and operations and maintenance (O&M) expenses, forecasted to be incurred in 2021, through a GUIC rider, pursuant to Minn. Stat. § 216B.1635. The GUIC rider seeks to recover costs associated with public right-of-way relocation projects as well as projects undertaken to comply with MERC's DIMP proposal. The Company's proposed 2021 annualized revenue requirement is approximately $6.65 million with a proposed effective date of January 1, 2021. This petition is MERC's third GUIC petition since its last general rate case filed in Docket No. G-011/GR-17-563 (2017 Rate Case) in which final rates were implemented July 1, 2019.

The Commission authorized MERC to establish a GUIC Rider, in its Order of February 5, 2019, in Docket No. G-011/GR-18-281 (2019 GUIC). On April 25, 2019, the Commission approved

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[2] A complete copy of Minn. Stat. § 216B.1635 is attached to these briefing papers.

[3] In the Matter of Minnesota Energy Resources Corporation's Request for Approval of a Gas Utility Infrastructure Cost Rider, Docket No. G-011/M-18-281, Order Approving Gas Utility Infrastructure Cost Rider with Modifications and Requiring Compliance Filing at 6 (February 5, 2019).

MERC's 2019 GUIC Rider compliance filing. MERC began charging its customers the approved 2019 GUIC Rider rate on May 1, 2019.

On October 26, 2020, the Department filed comments.

On November 19, 2020, MERC filed its Reply Comments.

On December 29, 2020, the Department filed Response Comments.

On January 15, 2021, MERC filed Additional Reply Comments.

III. MERC's Initial Petition

In the instant Petition, MERC proposes to recover a 2021 annual revenue requirement of approximately $6.65 million through its GUIC Rider rate effective January 1, 2021. Similar to MERC's 2020 GUIC filing, MERC is requesting approval for GUIC rider recovery related to two categories of work that are eligible for rider recovery under the GUIC Statute: (1) right-of-way relocation projects, and (2) investments and expense to be incurred in the assessment and replacement or modification of existing facilities required by federal and state agencies as part of the Company's compliance with DIMP regulations.

MERC proposes to apportion revenue responsibility across customer groups and rate design consistent to what was approved in MERC's prior GUIC riders. MERC proposes the following surcharges for the recovery of its 2021 GUIC revenue requirements as calculated over its 12 months forecasted sales.

Table 1: Proposed 2021 GUIC Rider Surcharge Rates[4]

Customer Class	Proposed GUIC Rider Surcharge	Average Annual Cost	Total	Percent of 2021 GUIC Revenue Requirement
Residential	$0.02148	$19	$4,154,802	62.5%
Class 1 & 2 Firm (Sales and Transport)	$0.01143	$57	$1,326,777	20.0%
Class 1 & 2 Interruptible (Sales and Transport), Class 1 & 2 Grain Dryer, Class 1 Electric Generation	$0.01143	$459	$235,429	3.5%
Class 3 & 4 Firm (Sales and Transport)	$0.00397	$762	$19,808	0.3%
Class 3 & 4 Interruptible (Sales and Transport); Class 3 Grain Dryer	$0.00397	$7,471	$747,148	11.2%
Class 5, FLEX, Class 2 Electric Generation, Transport-for-Resale	$0.00166	$1,195	$163,720	2.5%
Direct Connect	N/A	N/A	$0	0%
Total			$6,647,684	100%

IV. Discussion of Issues

A. Undisputed Issues

1. Accumulated Deferred Income Tax

a) Background

Accumulated deferred income taxes (ADIT) keeps track of the difference between a utility's actual federal income taxes and the amount of federal income taxes included in rates.[5] This difference in federal income taxes happens because of assumptions about depreciation that utilities are allowed to make in calculating federal income taxes, compared to what they charge ratepayers in rates. Because utilities are allowed to use accelerated depreciation in calculating annual federal income taxes, the amount of federal income taxes they pay has historically been much lower than the amount of income taxes they charge to ratepayers. By contrast, utilities

[4] Petition at 65.

[5] As a rate base item, ADIT affects the amount of a utility's cost of capital that is charged to ratepayers. A higher ADIT balance reduces the amount the utility charges to ratepayers since ADIT credits ratepayers for their prepayment of a utility's federal income taxes; by contrast, a lower ADIT balance increases rates.

charge rates to consumers based on uniform depreciation. Thus, in essence, ADIT keeps track of the amount by which ratepayers are prepaying a utility's federal income taxes.

While there are fewer problems with ADIT in rate cases, a significant issue has developed in riders, whenever the rider is implemented prior to the end of the "test year" used to set rates (in this case, 2021). In 2015, in response to the emergence of riders and formula rates, the Internal Revenue Service (IRS) stated that, when formula or rider rates are implemented before the end of the test year the utility must "prorate" ADIT – essentially not crediting ratepayers for the total amount by which they are prepaying a utility's rates. By contrast, the IRS ruled that no such proration is required if the utility implements the rider or formula rates the day after the test year.

In its petition, MERC proposes not only to prorate its ADIT balance for true-up purposes but also to reflect an additional proration of ADIT to reflect the 13-month average of the difference between its forecasted non-prorated ADIT balance and its actual non-prorated ADIT balance. MERC noted that this approach is consistent with MERC's proposal in its previous GUIC Rider filing (Docket No. G-011/M-19-282), which the Department did not oppose.[6]

b) Parties' Comments

In Comments, the Department notes that prorating ADIT is only necessary for forecasted months of the test period. MERC requested an effective date of January 1, 2021 for its 2021 GUIC Rider. However, should the 2021 GUIC Rider rate go into effect later than requested, the Department points out that proration of ADIT would not be required for those months in 2021 preceding the implementation of the 2021 GUIC rate. The Department appreciates MERC's cooperation to limit proration of ADIT to only the months following the effective date of its GUIC rider.[7]

In reply comments, MERC notes that the issue of prorated ADIT for the months preceding the implementation of the forecasted GUIC Rider has not previously been addressed in MERC's GUIC Rider dockets. However, MERC agreed in Docket No. G-011/M-19-608, the Company's 2020 Natural Gas Extension Project Rider docket, to not prorate ADIT for any months prior to the month of final approval of the proposed rates. MERC similarly agrees that it will submit a compliance filing upon approval of 2021 GUIC Rider surcharge rates so that ADIT is not prorated for any months in 2021 that precede the month in which the 2021 GUIC Rider is implemented.[8] In addition, MERC filed a corrected ADIT proration true-up to correct a formula error. The impact of this adjustment amounts to an increase to the 2019 revenue requirement of $488 and an increase to the 2021 revenue requirement by the same amount.[9]

In response to MERC's reply comments, the Department agrees that the corrected calculation for determining the ADIT true-up adjustment has been correctly calculated and the issue is

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[6] Petition at 63.
[7] Department Comments at 27.
[8] MERC Reply Comments at 16.
[9] *See* MERC's revised Exhibit I for the revised ADIT true-up adjustment.

resolved.[10] In addition, the Department agrees with MERC's statement that "prorating ADIT is necessary for only the forecasted months of the test period upon which the tariff rate applies." The Department considers this issue resolved.[11]

c) Decision Options

3. Require MERC to limit proration of ADIT to only the forecasted months following the effective date of its GUIC rider in this and all subsequent GUIC rider petitions. [MERC, Department]

2. Right-of-Way Project Costs Estimate

a) Background

Right-of-way relocations involve projects where MERC is required to replace or relocate gas facilities located in a public right-of-way to accommodate construction or improvement of a highway, road, street, public building, or any other work by the local jurisdiction. In 2020, MERC estimated this work to result in approximately $6.34 million in new investments to meet this requirement. As shown in Table 2, below, MERC's actual 2019 right-of-way project costs were slightly lower than 2018 and, as a result, MERC is proposing to use 2019 actuals as the basis for the Company's 2021 forecasted right-of-way costs.

Table 2: MERC Relocation Projects 2017-2019

Project Year	Number of Relocation Projects	Annual Right-of-Way Relocation Costs
2017	86	$6,257,343
2018	87	$6,589,132
2019	78	$6,340,724
3-Year Average (2017-2019)	84	$6,395,733

As shown in the table above, the three-year (2017-2019) average is very similar to MERC's 2019 actual spend on right-of-way projects. Despite the fact that the three-year average is slightly higher than 2019 actual spend, the Company is requesting recovery of 2021 right-of-way relocation costs based on 2019 actuals.

In its initial Petition, MERC forecasted 2021 right-of-way project costs of $6,340,000, based on 2019 actuals, to be consistent with the approach the Company had proposed in its then pending 2020 GUIC Rider filing to base 2020 right-of-way costs on 2018 actuals.

Subsequent to MERC filing its instant Petition on April 1, 2020, the Commission issued a final order on MERC's 2020 GUIC Rider, Docket No. G-011/M-19-282, requiring MERC to use a three-year cost average, using the most recent three years (2017-2019), to estimate its right-of-way project costs. As set forth in the Commission's Order,

[10] Department Response Comments at 8.
[11] *Id.*

> This is the same approach that the Company recently advocated, and the Commission approved in the Company's 2019 GUIC rider filing. In approving cost recovery under the GUIC statute, the Commission bears in mind the need to balance the Company's right to recover its costs with the public's interest in setting rates as accurately as possible to reduce the significance of subsequent true-ups. . . . [T]here years' worth of the most recent data reflects the fact that costs are consistently increasing but at a reasonably measured rate, with a downward shift in 2019 actual costs. The Commission will therefore require the Company to use the most recent three years of cost data (2017-2019) to estimate its ROW project costs.[12]

b) Parties' Comments

In Comments, the Department notes the Commission has not approved the use of a single historical year in MERC's prior GUIC rider petitions,[13] but rather has approved use of a three-year average.[14]

In response, MERC notes that in its initial Petition, the Company proposed using the lower right-of-way forecast, with actual costs subject to true up. However, given the Company's experience with right-of-way projects to date in 2020 and anticipated trends for 2021, use of a three-year average may more accurately reflect anticipated right-of-way project costs for 2021, thus reducing the need for a large future true-up adjustment. In light of the additional cost information that has become available since the Company submitted its Petition, MERC agrees that use of a 3-year average of actual right-of-way costs would be the best approach and consistent with the Commission's decision on MERC's 2020 GUIC Rider and likely to help avoid the need for a substantial true-up to account for increasing right-of-way costs in 2021.[15]

c) Decision Options

4. Require MERC to use a three-year cost average, using the most recent three years (2017-2019), to estimate its right-of-way project costs. [MERC, Department]

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[12] *In the Matter of the Petition of Minn. Energy Res. Corp. for Approval of 2020 Gas Util. Infrastructure Cost Rider Revenue Requirement and Revised Surcharge Factor*, Docket No. G-011/M-19-282, ORDER AUTHORIZING RIDER RECOVERY AND SETTING REPORTING REQUIREMENTS at 6 (June 18, 2020).

[13] In prior MERC GUIC rider petitions, the Department explained its opposition to the basis used by MERC for the right-of-way forecast because the estimate is not based on specific, identifiable planned utility projects. Docket No. G-011/M-19-282, Department Comments, pp. 12-14 (August 23, 2019); Docket No. G-011/M-18-281, Department Comments, pp. 3-4 (July 25, 2018).

[14] Department Comments at 27.

[15] MERC Reply Comments at 15.

3. Sales Forecast

a) Background

MERC uses a sales forecast to project natural gas consumption for each customer class for the GUIC. The projected sales determine the proposed 2021 GUIC rate for each customer class, given each class' 2021 revenue requirement. The sales forecast needs to be reasonable since a sales forecast that is too low will cause rates to be too high, and the Company will over-recover its revenue requirement. Conversely, if the sales forecast is too high, rates will be set too low, and MERC will under-recover its revenue requirement.

In the instant Petition, MERC forecasted sales of approximately 876 million therms.[16]

b) Parties' Comments

In its Comments, the Department notes in MERC's most recent Commission-approved GUIC docket, the Commission ordered MERC to use is most recent year's actual weather normalized sales for its forecasted GUIC rider.[17] The Department recommends that MERC apply this Commission decision to its 2021 GUIC rider as well. Doing so would maintain consistency between MERC's petitions and alleviate potential disagreements between parties regarding forecasting techniques.

In addition, the Department requested MERC provide additional sales information in its reply comments, both on a total Minnesota jurisdictional basis and this same total net of sales to Direct Connect customers. The Department also requested that MERC include a recalculation of GUIC Rider rates using its most recent year's actual weather normalized sales.

In response, MERC agreed to update its rider surcharge rates based on the most recent year's actual weather-normalized sales. MERC provided the requested information in revised Exhibit D, included with the Company's Reply Comments.

The Department reviewed MERC's Reply Comments agreeing to use its most recent year's actual weather normalized sales for its GUIC rider sales forecast and provided recalculated rider rates. This Department considers this issue is resolved.

c) Decision Option

5. Require MERC to use its most recent year's actual weather normalized sales for MERC's forecasted GUIC rider. [MERC, Department]

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[16] Petition at 67.

[17] *In the Matter of the Petition of Minnesota Energy Resources Corporation for Approval of 2020 Gas Utility Infrastructure Costs Rider Revenue Requirement and Revised Surcharge Factor*, G-011/M-19-282, Order Authorizing Rider Recovery and Setting Reporting Requirements at 10, 12 (June 18, 2020).

B. Disputed Issues

1. Quality of Filing

a) Background

MERC reported that its actual 2019 capitalized costs for Obsolete Materials GUIC services work totaled $1,729,621. The Department tested several invoices for 2019 Obsolete Materials services work activity listed as GUIC project work. During its review, the Department discovered that MERC double/triple counted the same invoiced costs in one of the nine records sampled, thus overstating its actual 2019 GUIC costs, and consequently, its true-up recovery request.

b) Department Comments

The Department noted its review of the instant petition prompted the discovery of several errors within MERC's filed schedules. Even with the corrections to errors the Department was able to identify, the number of errors reduced the Department's level of confidence in the quality of the MERC's information.

The Department cites Minnesota Statute § 216B.03 in relevant part: "**Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable.**" Further, the statute provides guidance to the Commission when there is doubt as to whether any rate is reasonable: "Any doubt as to reasonableness should be resolved in favor of the consumer."[18]

To ensure that MERC's filings comply with the statute, the Department requests the Commission's support to put the Company on notice that:

1) future problematic filings may be rejected upfront, and
2) flawed filing such as this one may result in suspension of GUIC rider charge to all customers, as a consumer protection measure, until a clean filing is achieved and the Commission authorizes the GUIC rider to resume.

The Department recommends that the Commission, at a minimum, require MERC to reduce its 2019 Obsolete Services work plant costs by $130,000 as a reasonable extrapolation of the monetary error related to MERC's double/triple counting same invoiced costs. The following is the Department's explanation of how this recommended adjustment was calculated:

> Regarding the monetary error of the record, as shown in MERC's Exhibit J, MERC reported a total cost for Work Request No. 2854592 as $3,946 (rounded), though actual cost was $1,181. The reported costs overstate actual costs by $2,765. The nine-record sample has a combined reported total cost of $36,737. Applying the overstated amount against the sample's reported total indicates the petition has overstated these work requests by 7.53% ($2,765 ÷ $36,737 = 0.0753). The

[18] Department Comments at 13.

Obsolete Materials Service work cost reported in Exhibit J, page 2, sums to $1,729,621.[19]

Consequently, the Department recommended that the Commission direct MERC to remove from its 2019 GUIC true-up, plant-in-service, a total of $130,000 ($1,729,621 x 7.53%, rounded). The adjustment should be reflected in the 2021 GUIC rider revenue requirement calculation as well.

c) MERC Reply Comments

In response, MERC recognizes the Commission's authority to reject a future filing found to be incomplete or noncompliant with the requirements of the GUIC Statute, as well as the authority for approval of MERC's GUIC filings, in accordance with the GUIC Statute. MERC also recognizes the importance of ensuring accurate and reliable costs and calculations in its filings. MERC states that it takes the accuracy and detail of its filings very seriously and fully recognizes the need for and importance of ensuring reliable and accurate data and calculations.

MERC argues that the Department overstates the extent and severity of identified errors and their impact on the Company's filing. For example, MERC argues that a number of the identified errors involved the incorrect classification of projects as either right-of-way relocation projects or DIMP obsolete materials replacement projects, while the detail for those projects, including costs, installation material and quantity, and retirement material and quantity, were accurately represented, resulting in no impact to the overall costs or rider surcharge calculations. As for the identified errors with a cost impact on the requested 2021 revenue requirement, the overall impacts are generally not significant. For example, the correction related to the ADIT proration true-up results in an increase to the 2021 revenue requirement of $488.

MERC states it has taken a number of steps to improve its quality control and review processes to ensure that future calculations and reporting are complete and accurate. These include improvements to the Company's rider model files to ensure correct ADIT proration calculations and to help avoid the possibility of formula errors as the result of future updates; a review process to ensure the accurate classification of eligible GUIC projects; implementation of a process to ensure retirement quantities are accurately recorded in the field during project construction; additional training for field personnel to ensure complete and accurate tracking of project details; and additional quality control and review of service line project contractor invoiced costs to ensure all invoiced costs are reviewed and accurately reported in future true-up filings. Further action to ensure the accuracy of future filings, as suggested by the Department, is not necessary or warranted at this time.

d) Department Additional Comments

The Department notes that its initial comments exposed MERC's invoice tallying problems, in both its right-of-way project and Obsolete Materials project, and offered extrapolated adjustments, due to MERC's then-limited corrective commitment to only those invoices

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[19] Department's Comments at 21.

identified by the Department.[20] The Department also raised general concerns about MERC's processes and procedures used to identify and calculate actual GUIC-eligible costs incurred.

The Department notes its appreciation of MERC's efforts to examine their documents and identify the corrections. At this time, the Department accepts the adjustment amounts offered by MERC and withdraws the Department's extrapolated adjustments which totaled $202,000 ($72,000 + $130,000).

However, the Department still recommends that the Commission consider requiring an independent audit of MERC, at the utility's expense, to examine the Company's systems and its processes used to determine the recoverable GUIC costs. The Department argues that the audit may likely be valuable to both MERC and the Commission. Although the Department's recommendation is to limit the scope of the audit to the GUIC rider, any recommendations from such an audit may be informative with respect to other MERC filings which utilize common systems. The Department notes that MERC's Reply Comments did not appear to address this external audit recommendation; therefore, the Department classified this issue as unresolved.

e) MERC Additional Reply Comments

MERC states that the Company has already proactively taken steps to improve its quality control and review processes to ensure that future calculations and reporting are complete and accurate. MERC argues that given the evaluation and actions already undertaken by the Company, the Department's recommendation of an independent audit is unnecessary. Further, the cost of an independent audit would outweigh any potential benefits; an audit would not be likely to result in additional opportunities for process improvements given the steps already taken by the Company.

[20] The Department recommended two adjustments ($72,000 + $130,000 = $202,000) related to MERC's reported right-of-way and Obsolete Material services installation costs, respectively.

f) Decision Options

6. The Commission adopts the Department's recommendation to put the Company on notice that future problematic GUIC filings may be rejected upfront. Further, future flawed GUIC filings may result in suspension of GUIC rider charge to all customers, until a corrected filing is approved and the Commission authorizes the GUIC rider to resume. [Department]

and,

7. Adjust MERC's proposed 2021 revenue requirement to account for the various corrections to its 2019 GUIC Rider eligible project costs. [MERC, Department]

and, either 8 or 9

8. Require MERC to engage independent auditors, at the utility's expense, to examine the Company's systems and its processes identifying GUIC work, actual and recoverable costs and GUIC petition requests, in more depth. [Department]

or,

9. Determine that the services of an independent auditor to examine MERC's systems and process are not necessary, at this time. [MERC]

2. Internal Capitalized Cost

a) Background

The Department recommends that the Commission direct MERC to remove all internal costs from both its 2019 true-up and its 2021 revenue requirements requests.[21] The Department further recommends that this adjustment be reflected in future GUIC petition true-ups and forecasts.[22] The Department's argument is premised on the conclusion that recovery of internal costs through a rider mechanism may result in double-recovery, claiming these costs are already included in base rates.[23]

b) Department Comments

The Department argues that the Commission has consistently excluded internal costs from rider recovery.[24] The Department notes that allowing recovery of internal costs in a rider amounts to

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[21] Department Comments at 16.
[22] *Id*.
[23] *Id*. at 13-16.
[24] For example, the Commission denied recovery of internal costs in a rider outside of a rate case in:

• Docket No. E-017/M-09-1484. In the Matter of Otter Tail Power Company's Request for Approval of its 2010 Renewable Resource Cost Recovery Adjustment Factor; specifically, DOC comments dated March 17, 2010 and July 9, 2010. In its Order dated August 27, 2010, the Commission denied Otter Tail Power double recovery of costs, first by charging ratepayers a representative amount of costs in base rates and then charging them again for such costs in the rider. The Department states that of these numerous Commission decisions, more recent and comparable to this filing is the Commission's decisions in Xcel Gas' GUIC petitions requiring Xcel Gas to remove its internal capitalized costs, inclusive of labor, overheads, transportation and other costs from the GUIC rider.[25] Since MERC is already recovering a representative amount of these costs in base rates, the Department likewise recommends that the Commission require MERC to remove all internal capitalized costs from both its 2019 reported true-up costs and its 2021 proposed revenue requirement.

Company's request to include capitalized labor and internal costs, subject to future true-up if the Commission determined in Otter Tail's then-pending rate case, Docket No. E-017/GR-10-239, that the amount should be included.

• Docket No. E-002/M-09-1488. In the Matter of Xcel Energy's Petition for Approval of Two Proposed Energy Innovation Corridor Projects in the Central Corridor Utility Zone and Deferred Accounting Treatment for Costs Incurred After January 1, 2010; specifically the Commission decided not to determine cost recovery in the rider, sending those issues to Xcel's then-pending rate case , Docket, No. E002/GR-10-971.

• Docket No. E-015/M-10-799. In the Matter of Minnesota Power's Petition for Approval of its Transmission Cost Recovery Rider; the Commission's May 11, 2011 Order required Minnesota Power to exclude internal costs from the rider.

• Docket No. E-015/M-11-695. In the Matter of Minnesota Power's Petition for Approval of its 2011 Transmission Cost Recovery Rider Factor; the Commission's May 11, 2011 Order required Minnesota Power to exclude internal costs from the rider. The Commission's November 12, 2013 Order required Minnesota Power to "continue to exclude internal capitalized costs" from riders.

• Docket No. E-002/M-12-50. In the Matter of Xcel Energy's Petition for Approval of 2012 Transmission Cost Recovery (TCR), Project Eligibility, TCR Rate Factors, and 2011 True-up; the Commission's February 7, 2014 Order required Xcel to removed capitalized costs from the rider.

• Docket No. E-017/M-13-103. In the Matter of Otter Tail Power Company's Request for Approval of a Transmission Cost Recovery Rider Including the Proposed Transmission Factor for the Recovery Period from May 2, 2013 to April 30, 2014; the Commission's March 10, 2014 Order required Otter Tail Power to exclude internal costs.

• Docket No. G-002/M-17-787. In the Matter of Northern States Power Company d/b/a Xcel Energy's Request for Approval of a Gas Utility Infrastructure Cost Rider True-up Report for 2017, the Forecasted 2018 Revenue Requirements, and Revised Adjustment; the Commission's August 12, 2019 Order required Xcel Gas to exclude internal costs, inclusive of capitalized overhead, transportation and other internal costs.

• Docket No. G-002/M-18-692. In the Matter of Northern States Power Company d/b/a Xcel Energy's Request for Approval of a Gas Utility Infrastructure Cost Rider True-up Report for 2018, the Forecasted 2019 Revenue Requirements, and Revised Adjustment; the Commission's January 9, 2020 Order required Xcel Gas to exclude internal costs, inclusive of capitalized overhead, transportation and other internal costs.

[25] Ibid. Xcel Gas removed capitalized labor costs upfront; however, the Commission also ordered other identified internal capitalized costs to be removed.

Specifically, the Department cited the following Commission order:

> When Xcel employees are involved in the construction of new facilities, the Company treats their salaries as a capital cost rather than an operation and maintenance (O&M) expense. Xcel included approximately $1.5 million of capitalized internal labor costs for recovery in its proposed 2012 TCR rider.
>
> The Department recommends that the Commission exclude these costs from rider recovery because representative amounts are already being recovered from ratepayers through base rates. Xcel argues that none of the capitalized costs being requested for recovery in the 2012 rider were recovered in the base rates established in the Company's 2011 rate case. The Department agrees that the specific costs of projects completed after 2011 were not included in the 2011 test year but maintains that a representative amount of capitalized internal labor costs were included in 2012 base rates.
>
> Xcel has not shown that capitalized labor costs are not being recovered through base rates.[26]

The Department states that its primary concern is that a utility could expense its employee internal labor in a rate case, then later capitalize that same labor in a rider, thus charging ratepayers for those same internal labor costs twice. Specifically, in base rates, the utility would charge its ratepayers for this labor as an operating expense, which is reasonable; however, failure to remove the internal costs in the rider would, in addition, result in the utility charging its ratepayers for a return on equity and depreciation on this same labor via its rate base. The same concern would be true of other internal costs. Thus, the Commission correctly disallowed double-recovery of those costs and should do so in the current proceeding.

c) MERC Reply Comments

MERC argues that the majority of internal labor costs – nearly 80 percent – for MERC's engineers are capitalized in a given year. The rest of these costs – approximately 20 percent – are expensed as O&M and include time unrelated to specific projects, such as vacation and training. The O&M component is included in base rates based on the historic year O&M expense because it is forecasted to continue in the future test year and beyond. MERC appropriately recognized this by excluding all internal labor O&M costs in both the 2019 true-up and 2021 GUIC project budget, thus ensuring no double recovery of such costs through base rates and the GUIC Rider.

Specifically, MERC states:

> In contrast, capitalized internal labor costs are only recovered from customers in base rates as return on and of specific capital projects that are in service or forecasted to be in service in the rate case test year, and are thus included in rate

[26] Docket No. E-002/M-12-50, Commission's February 7, 2014 *Order Approving 2012 TCR Project Eligibility and Rider, Capping Costs, and Modifying 2011 Tracker Report*, page 5. Footnotes omitted.

> base. Unlike O&M expense, which continues to be recovered at a representative level in base rates based on the approved test year O&M expense, recovery of capital costs for projects placed in service after the test year, like the DIMP and ROW projects included in the GUIC Rider, are not included in base rates. Rather, capitalized internal labor costs are specific to a capital project and only the costs related to projects already in service are being recovered in current base rates. When internal labor costs are capitalized to a particular project, only the costs for the hours worked by the employee or employees who performed work on that project, and associated overheads and benefits for those hours, are charged to the project—not the entire salary of that employee. Thus, the Department's suggestion that MERC is already recovering a "representative amount of costs" in base rates is inaccurate.[27]

MERC recognizes the Commission's prior determinations with respect to the exclusion of internal labor in riders, as discussed in the Department's Comments. However, MERC argues that the circumstances of the internal costs the Company proposes for inclusion in its GUIC Rider are distinguishable, given the fact that the majority of MERC engineering internal labor costs have historically been capitalized and not included as O&M expense, as discussed above. Thus, the concern that "a utility could expense its employee internal labor in a rate case and then later capitalize that same labor in a rider, thus charging ratepayers for those same internal labor costs twice,"[28] is not applicable under the circumstances.

Additionally, MERC argues that inclusion of these costs is consistent with the Commission's determination in its Order Approving Gas Utility Infrastructure Cost Rider with Modifications and Requiring Compliance Filing in Docket No. G-011/M-18-281 that "[b]oth the capital costs and the O&M costs [MERC seeks to recover through its proposed GUIC rider] derive from new projects that are not currently reflected in the Company's base rates or the rates that will flow from the pending rate case; the costs are therefore incremental as required by the GUIC statute."[29]

MERC notes that none of the costs included in the Company's 2019 true-up or 2021 GUIC Rider requests are included in MERC's current rate base or being recovered in base rates. Because these costs are not being recovered in base rates, the capitalization of these internal costs to GUIC Rider recoverable projects would not result in any double recovery. Put another way, these internal labor costs are truly incremental costs because they reflect costs to be incurred for projects that are not currently included in base rates.

Further, MERC notes that the language of the GUIC Statute, Minn. Stat. § 216B.1635, does not prohibit recovery of internal costs through the GUIC Rider; rather, MERC argues the statute contemplates the recovery of project expenses that are incremental to costs already included in

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[27] MERC Reply Comments at 4.
[28] Department Comments at 15.
[29] *In the Matter of Minn. Energy Res. Corp.'s Request for Approval of a Gas Util. Infrastructure Cost Rider*, Docket No. G011/M-18-281, ORDER APPROVING GAS UTILITY INFRASTRUCTURE COST RIDER WITH MODIFICATIONS AND REQUIRING COMPLIANCE FILING at 6 (Feb. 5, 2019).

base rates. Thus, MERC concludes that Internal capitalized costs are, therefore, eligible for GUIC recovery, consistent with the reasons explained above.

d) Department Additional Comments

In response to MERC's statement in its reply comments that inclusion of internal capitalized costs is consistent with the Commission's determination in MERC's first GUIC Docket G-011/M-18-281. The Department disagrees and notes that the issue of internal capitalized costs was not a subject discussed or adjudicated in that particular proceeding.

The Department argues that the Commission has repeatedly and appropriately disallowed the inclusion of internal capitalized costs in rider rate filings, as cited in the Department's initial comments. These Commission's decisions mitigate the potential for double recovery of costs, safeguarding ratepayers from being charged unjust and unreasonable rates. The Department maintains its recommendation that the Commission direct MERC to remove all internal capitalized costs from both its 2019 true-up and its 2021 revenue requirements requests.

e) MERC Additional Reply Comments

In response, MERC argues that the Department fails to recognize the distinguishing circumstances of the internal costs MERC proposes for inclusion in the GUIC Rider, namely that the majority of MERC engineering internal labor costs have historically been capitalized and not included as operations and maintenance (O&M) expense in base rates. As a result, the Department's concern that "a utility could expense its employee internal labor in a rate case and then later capitalize that same labor in a rider, thus charging ratepayers for those same internal labor costs twice,"[30] is not applicable here.

Further, MERC states that it has excluded all O&M expense associated with internal labor, which ensures the Company will not double recover its O&M costs through both base rates and the GUIC Rider.

f) Staff Comment

The GUIC Statute defines GUIC costs as being "costs incurred in gas utility ***projects***" [Staff emphasis]. The applicable Merriam-Webster definition of the word "project" defines a project as being "a planned undertaking."[31] The GUIC Statute does not specifically require or disallow the allocation of overhead, other, and transportation between GUIC and non-GUIC projects, however, the GUIC Statute only specifically provides for an avenue of expedited recovery for incremental expenses as they relate to specific projects as defined in the Statute as opposed to recovering generalized increases in overhead expenses.

Staff notes that recovery of internal capitalized costs in riders has been discussed in previous rider dockets and the Commission has generally not allowed recovery of internal capitalized costs outside of rate cases, to avoid double-recovery of said costs. As discussed above, the

[30] Department Comments at 15.
[31] Merriam-Webster's Collegiate Dictionary, Eleventh Edition (2020)

Commission declined to approve internal capitalized costs in Xcel Energy's 2020 GUIC Rider (Docket No. 19-664).

g) Decision Options

10. Direct MERC to remove all internal costs from both its 2019 true-up and its 2021 revenue requirements requests. The adjustment should also be reflected in the future GUIC petition true-ups and forecasts. [Department]

11. Allow MERC to recover internal costs for both its 2019 true-up and its 2021 revenue requirement request. [MERC]

3. Geographic Information System (GIS) Service Line Mapping Project Costs

a) Background

In MERC's 2021 scope of work in the category of replacement or modification of existing natural gas facilities, including surveys, assessments, reassessment, and other work necessary to determine the need for replacement or modification of existing infrastructure that is required by a federal or state agency, the Company stated that it included an incremental O&M expense to map existing service lines in MERC's geographic information system to more fully understand system design, material characteristics, and operating conditions.

MERC proposes to undertake the next phase of its service line mapping project – a multi-year effort to map the presumed location of service lines to the Company's GIS and verify the mapped location of said lines in order to have a more accessible and accurate system of records regarding service line installations, materials, and maintenance. MERC proposes to include $1 million in annual expense recovery for its GIS Mapping Project.

According to MERC, the proposed GIS service line mapping will allow MERC to more accurately "understand system design and material characteristics, operating conditions and environment, and maintenance and operating history," in accordance with PHMSA's Integrity Management Program for Gas Distribution Pipelines Rule (49 CFR Part 192, subpart P).[32]

b) Department Comments

According to the Department, MERC's base rates include an annual expense recovery allowance of $178,563 for its mapping project.[33] The Department therefore recommends that the Commission require MERC to reflect the $178,563 as an offset to its 2021 GUIC rider revenue requirement to recognize the level of mapping project cost recovery already being charged to

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[32] Petition at 28 – 29.

[33] *In the Matter of the Application of Minnesota Energy Resources Corporation for Authority to Increase Rates for Natural Gas Service in Minnesota, Office of Administrative Law Judge filed Findings of Fact*, Docket No. G-011/GR-17-563, Summary of Public Testimony, Conclusion of Law, and Recommendation (September 21, 2018), paragraphs 220 – 226, adopted by the Commission in its Findings of Fact, Conclusions and Order (December 26, 2018).

ratepayers through its base rates. Per the Department, this is to ensure that just and reasonable rates are charged to ratepayers by charging only for incremental costs and mitigating double recovery.

c) MERC's Reply Comments

In response, MERC argued that the proposed $1 million in O&M expense for the GIS Service Line Mapping Project is separate from and in addition to the authorized expense that continues to be incurred for completion of the Documentation Project.

MERC maintains that both of these projects allow the Company to more accurately document and access its system design, material characteristics, operating conditions and environment, and maintenance and operating history, in accordance with the Pipeline and Hazardous Materials Safety Administration's Integrity Management Program for Gas Distribution Pipelines Rule (49 C.F.R. Part 192, Subpart P), and work on both projects is proposed in 2021. In addition, MERC committed to account for any underspending on the Documentation Project in 2021 as an offset to actual GUIC GIS Service Line Mapping Project costs in the Company's 2021 true-up to be filed in 2022.[34]

d) Department's Additional Comments

The Department, in response to MERC Reply Comments, insisted that MERC's base rates include an annual expense recovery allowance of $178,563 for its mapping project, and recommended that the Commission require MERC to reflect the $178,563 as an offset to its 2021 GUIC rider to recognize the level of mapping project expense recovery already being charged to ratepayers. [35]

e) MERC Additional Reply Comments

MERC continues to maintain that the $1 million in O&M expenses for the GIS Service Line Mapping Project is separate from and in addition to the $178,563 of authorized expense currently being charged to ratepayers. Also, MERC reiterates its commitment to account for any underspending on the Documentation Project in 2021 as an offset to actual GUIC GIS Service Line Mapping Project costs in the Company's 2021 true-up to be filed in 2022.[36]

f) Decision Options

12. Require MERC to reflect $178,563 as an offset to its 2021 GUIC rider revenue requirement in order to recognize the level of GIS mapping project cost recovery included in its base rates. [Department]

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[34] MERC's Reply Comments at 7.

[35] Department's Additional Comments at 5.

[36] MERC's Additional Reply Comments at 7.

13. Require MERC to account for any underspending of the GIS Documentation Project, currently recovered in base rates, as an offset to actual GUIC GIS Service Line Mapping Project costs in the Company's 2021 true-up to be filed in 2022. [MERC]

4. Right-of-Way Work Treated as Expense

a) Background

In MERC's September 17, 2019 Reply Comments filed in Docket No. G-011/M-19-282, the Company stated that "while MERC did not forecast any incremental O&M costs for its 2020 ROW relocation projects or obsolete materials replacement projects, the Company noted that if O&M costs are incurred, the Company would address them in its true-up reconciliation filing.[37]

MERC agreed "that if the Company incurs O&M expense associated with actual ROW relocation and DIMP projects… it will provide details regarding the amount of the expense, the account number to which it is charged, and an explanation of how the expense fits within the GUIC-rider." MERC further agreed "that it will only request recovery of such O&M expense to the extent it is incremental (i.e., not being recovered in existing base rates)."[38]

According to MERC, in 2019, the Company incurred incremental O&M expense for four right-of-way relocation projects, totaling approximately $18,000. In Table 3 below, MERC summarized the amount of the expense and the account number to which it was charged.

Table 3. Incremental O&M for 2019 Right-of-Way Relocation Projects

Project	Account Number	Amount of Expense	GUIC-Rider Eligibility
Floodwood (MNDOT) – lowered main for state road project	FERC Account 887.00	$2,247	Modification of existing natural gas facilities by lowering pipe
Elgin –adjust main so as to not interfere with new storm main	FERC Account 887.00	$3,143	Modification of existing natural gas facilities by lowering pipe
Ortonville – lowered main for city road project not originally in conflict	FERC Account 887.00	$10,915	Modification of existing natural gas facilities by lowering pipe
Detroit Lakes – adjust main in conflict with city project	FERC Account 887.00	$1,650	Modification of existing natural as facilities by lowering pipe

MERC asserted that inclusion of these costs in the 2019 true-up is consistent with the GUIC Statute.[39]

b) Department's Comments

The Department notes that MERC classifies most expenditures for right-of-way project work as capitalized costs, it classifies cost for some right-of-way project work, such as elevation

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[37] Petition at 50.
[38] *Id*.
[39] *Id*. at 51.

adjustments of existing infrastructure, as O&M expense. In response to questions from the Department to disclose the amount of right-of-way O&M expense included in its base rates, the Department notes the following Company response:

> MERC cannot isolate the requested amount of expenses that were included in the 2018 test year as-filed or in the 2018 test year as approved that would have been directly attributable to right-of-way relocations.

Given that MERC cannot determine the amount of recovery for right-of-way O&M expense already being charged to ratepayers through its base rates, the Department concludes that MERC cannot support that the $18,000 right-of-way work expense incurred in 2019 was incremental. Consequently, the Department recommends that the Commission deny inclusion of any right-of-way expense work in MERC's GUIC rider recovery, both its 2019 true-up and in its projected 2021 GUIC revenue requirement calculations, to ensure that just and reasonable rates are charged to ratepayers.

c) MERC's Reply Comments

MERC states that the four projects reflect unique circumstances under which a governmental entity requires relocation of natural gas facilities located within the public right-of-way to accommodate a road or other public project. MERC further states that due to the location of the natural gas facilities affected and the proposed project, the Company was able to address the relocation by lowering existing natural gas facilities rather than replacing those facilities at a new location. MERC points out that such projects do not involve the installation of any new pipe or other facilities. As such, MERC concluded that they are appropriately accounted for as O&M expense rather than capitalized.[40]

d) Department's Additional Comments

The Department asserts that MERC was asked to determine the amount of O&M expense recovery for right-of-way activity already being charged to ratepayers through its base rates, but it did not. The Department reiterates that MERC cannot support that the $18,000 right-of-way work expense incurred in 2019 was incremental, and therefore maintained its recommendation that the Commission deny inclusion of any right-of-way expense work in MERC's GUIC rider recovery, both its 2019 true-up and in its projected 2021 GUIC revenue requirement calculations.

e) Decision Option

14. Deny inclusion of any right-of-way expense work in MERC's GUIC rider recovery, both its 2019 true-up and in its projected 2021 GUIC revenue requirement calculations. [Department]

15. Allow MERC to include right-of-way expense work in its GUIC rider recovery, both in its 2019 true-up and in its projected 2021 GUIC revenue requirement calculations. [MERC]

[40] MERC Reply Comments at 6-7.

5. Betterment – Rochester County Road 9 Project

a) Background

For a Rochester right-of-way caused project, MERC stated it had to move infrastructure and in so doing replaced the existing 3-inch diameter pipeline main with a 6-inch diameter pipe. By way of reference, the Department calculated that a change from 3-inch to a 6-inch diameter pipe increases capacity by 300-percent.

Per the Department, MERC included and presented as a 2019 right-of-way driven project designated as "Q-4605-000919", in connection with a Minnesota Department of Transportation, Rochester County Road 9 project, totaling $492,085.[41] The Department noted that the GUIC statute qualifies as eligible for rider recovery those costs incurred to replaced facilities located in the public right-of-way as required by road construction projects.

b) Department Comments

For the Rochester County Road 9 project, the Department noted that invoices showed that MERC replaced the existing 3-inch pipeline main in the right-of-way with a 6-inch pipeline main. Based on the Minnesota Statutes, the Department asserted that the cost differential for the betterment of the pipeline size increase does not qualify for recovery through the GUIC petition.

Based on the Department's information request, MERC provided the replacement cost differential between a 4-inch and 6-inch diameter pipe. MERC stated that "3-inch steel is no longer a common or standard pipe size" and that "due to changes in the Rochester system, system modelling indicated a 6-inch steel main would be necessary."[42] The Department subsequently concluded that a downward adjustment to MERC's plant is required to comply with the statute.

c) MERC's Reply Comments

MERC argued that it has not included any costs for GUIC Rider recovery which constitute a betterment under Minn. Stat. § 216B.1635, subd. 1(b)(3).

The Company noted that in the Commission's Order Approving Rider with Modifications in Docket No. G-002/M-14-336, the Commission addressed the issue of whether an increase in installed pipe diameter constituted a betterment under Minn. Stat. § 216B.1635, subd. 1(b)(3), concluding that Xcel Energy's installation of 20-inch pipe to replace an existing 18-inch pipe did not constitute a betterment that would be ineligible for recovery through the GUIC Rider. The Commission concluded that "[u]sing 20-inch rather than 18-inch pipe is not a betterment because it is the best engineering choice to restore the pipe to its original, safe condition."[43]

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[41] Docket No. G-011/M-20-405; Exhibit E

[42] Public and Non-public responses to DOC IR Nos. 9 and 47 are provided in Public and Trade Secret Department Attachment 10, respectively.

[43] *In the Matter of the Petition of N. States Power Co., d/b/a Xcel Energy, for Approval of a Gas*

The Company also referred to Docket No. G-002/M-17-787, in which it stated that "the Commission rejected the Department's assertion that Xcel Energy's proposal to replace its Langdon Line consisting of 12-inch, 8- inch, and 6-inch pipe with only 12-inch pipe constituted a betterment, as a 12-inch pipe was the better engineering choice not because the line is larger but because it avoids variation in the sizing and segmentation of the pipeline."[44]

Consequently, MERC concluded that this referenced project is analogous and similarly does not constitute a betterment under the Commission's previous interpretations. Specifically, MERC states it:[45]

> designed the replacement project to use the smallest pipe diameter consistent with prudent engineering practices and standards to safely and reliably serve existing customers and demand. MERC designs all of its DIMP and ROW replacement projects based on flow modeling and engineering standards and best practices to safely and reliably meet the existing customer demand. In this instance, the larger diameter pipe was the result of the overall project design based on the Company's distribution system in this area, is the smallest pipe diameter consistent with prudent engineering practices, and does not result in increased system capacity or make other system improvements.

d) Department's Additional Comments

The Department argues that MERC has not adequately demonstrated how replacing the 3-inch with the 4-inch now standard pipe would not serve the existing customer load, given that the previously existing 3-inch pipe being replaced did so prior to the right-of-way work. Additionally, the Department states that MERC has not provided verifiable evidence that this right-of-way reasoned work required the more costly, larger-sized materials. As such, the Department maintains its recommendation that the Commission require MERC to remove the cost differential, between the 4-inch standard pipe cost and the 6-inch diameter pipe cost, from its 2019 true-up and from future GUIC recovery rider rates. The Department observes that the Company may seek recovery of the upgraded pipeline costs in its next general rate case.

e) MERC Additional Reply Comments

MERC continues its argument that the Department's recommendation is contrary to the facts in the record in this proceeding. MERC argues it designed the replacement project to use the smallest pipe diameter consistent with prudent engineering practices and standards to safely and reliably serve existing customers and demand. MERC continues that replacement of the 3-

Util. Infrastructure Cost Rider, Docket No. G-002/M-14-336, ORDER APPROVING RIDER WITH MODIFICATIONS at 10 (Jan. 27, 2015).

[44] *In the Matter of the Petition of N. States Power Co., d/b/a Xcel Energy, for Approval of a Gas Util. Infrastructure Cost Rider True-up Report for 2017, the Forecasted 2018 Revenue Requirements, and Revised Adjustment Factors*, Docket No. G-002/M-17-787, ORDER AUTHORIZING RIDER RECOVERY AND SETTING REPORTING REQUIMENTS (Aug. 12, 2019).

[45] MERC Reply Comments at 11.

inch pipe with 4-inch pipe would not have served the existing demand, explaining that "the larger diameter pipe was the result of the overall project design based on the Company's distribution system in this area, is the smallest pipe diameter consistent with prudent engineering practices, and does not result in increased system capacity or make other system improvements."[46]

In addition, MERC argues the flow modeling the Company undertook in design of the Rochester right-of-way project at issue fully supports the conclusion that installation of 6-inch pipe for this replacement was necessary to serve the existing load and that installation of 4-inch pipe instead would not have been adequate to meet that existing demand. MERC's modeling and analysis appropriately reflects the interconnected nature of the Company's distribution system.

Based on the record, MERC argues that it has demonstrated that the identified project does not constitute a betterment under the GUIC statute and prior Commission decisions interpreting that statute.

f) Staff Analysis

Minn. Stat. § 216B.1635, Subd. 1(b)(3) states:

["Gas utility infrastructure costs" or "GUIC" means costs incurred in gas utility projects that] do not constitute a betterment, unless the betterment is based on requirements by a political subdivision or a federal or state agency, as evidenced by specific documentation, an order, or other similar requirement from the government entity requiring the replacement or modification of infrastructure.

The statute does not define "betterment." However, Black's Law Dictionary contains three definitions of the term:

> 1. An improvement that increases the value of real property; esp., an enhancement in the nature of an alteration or addition that goes beyond repair or restoration to a former condition. . . . 2. An improvement of a highway, railroad, or building that goes beyond repair or restoration. 3. An increase in value, esp. real-estate value, attributable to improvements.[47]

None of Black's definitions perfectly fits the context of utility infrastructure projects. However, the second definition comes the closest. It states that an improvement that goes "beyond repair or restoration" rises to the level of a betterment.

As noted above, the Commission has addressed the issue of betterment on two previous occasions. First, in its 14-336 Order, the Commission determined that "[u]sing 20-inch rather than 18-inch pipe is not a betterment because it is the best engineering choice to restore the pipe to its original, safe condition." Second, in its 17-787 Order, the Commission rejected the

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[46] MERC Additional Reply Comments at 6.

[47] Black's Law Dictionary 182 (9th ed. 2009).

Department's assertion that Xcel Energy's proposal to replace its Langdon Line consisting of 12-inch, 8- inch, and 6-inch pipe with only 12-inch pipe constituted a betterment, as a 12-inch pipe was the better engineering choice not because the line is larger but because it avoids variation in the sizing and segmentation of the pipeline."

In both instances discussed above, the Commission based its decision on what was the "better engineering choice." In the instant proceeding, MERC stated that "3-inch steel is no longer a common or standard pipe size" and that "replacement of the 3-inch pipe with 4-inch pipe would not have served the existing demand, explaining that "the larger diameter pipe was the result of the overall project design based on the Company's distribution system in this area, is the smallest pipe diameter consistent with prudent engineering practices, and does not result in increased system capacity or make other system improvements."[48] MERC argues that using 6-inch steel main is appropriate in accordance with standards for safety, reliability, and engineering. Whereas, the Department states that MERC has not provided verifiable evidence that this right-of-way reasoned work required the more costly, larger-sized materials and recommends the Commission require MERC to remove the cost differential, between the 4-inch standard pipe cost and the 6-inch diameter pipe cost, from its 2019 true-up and from future GUIC recovery rider rates.

g) Decision Options

16. Remove the cost differential, between the 4-inch standard pipe cost and the 6-inch diameter pipe cost from your 2019 true-up and from future GUIC recovery rider rates. [Department]

17. Determine that a 6-inch line is not a betterment under the GUIC statute and authorize recovery of project costs. [MERC]

6. Inclusion of Costs for Work Done in Conjunction with GUIC Project – Reported Right-Of-Way Services Costs

a) Background

In its Petition, MERC reported its actual 2019 capitalized costs for right-of-way GUIC services work totaled $1,513,298.[49] The Department sampled 25 invoiced work requests related to "inclusion of costs for work done in conjunction with GUIC Project." The Department discovered that 13 of the work orders appear to include the cost of new meters and their installation costs (i.e., invoiced items coded #T120152*, M101, etc.).[50]

[48] MERC Additional Reply Comments at 6.
[49] Petition Exhibit E at 2.

[50] Attachment 6 to the Department's comments includes public response to Department IR No. 8, Parts A, F, G, H, I, J, K, N, Q, R, S, T, V.

b) Department's Comments

The Department inquired about the inclusion of meter replacement costs in Department IR No. 45, Parts E, F, G and H, as follows:

> E. Please explain why meter replacement was incurred for these ROW-based replacement projects.
>
> F. Please explain why these meter replacement costs incurred under the ROW program are included in GUIC recovery.
>
> G. Please identify the total cost for meter replacement (plant and labor) included in the 2019 ROW project costs.
>
> H. Please explain the frequency that the MERC's DIMP programs' service line replacements will include meter replacement installations.

In response, the Company stated that costs for new meters would not be included in GUIC.[51] The Department reviewed the affected invoices and noted that about one-half of the sampled work requests included costs for new meters and their installation. The Department took the cost of the new meter set, accessory materials and labor costs (which is considered trade secret) and multiplied the cost by one-half of the 683 service work requests incurred in 2019. The Department recommends that this extrapolated cost be removed from MERC's 2019 GUIC true-up, plant-in service.[52]

c) MERC's Reply Comments

MERC clarified in its Reply Comments that the invoice entries referencing meter-related materials and labor are not for the cost of new meters. Rather, as discussed in the Company's responses to discovery, the costs of any new meter are not included in the GUIC Rider. To the contrary, according to MERC, the costs that are included for recovery in MERC's overall GUIC Rider, as shown in the invoices provided, are appropriate and legitimate GUIC-eligible costs related to the right-of-way and Obsolete Materials replacement projects, as discussed in MERC's response to Department Information Request No. 45.[53] Specifically, MERC states:

> Any time a service line is replaced, the connected meter is also checked to ensure compliance. The charges included on the referenced invoices are for associated meter repair work that occurs as part of the service line replacement. The meter bar is the most common item replaced to allow[] for refreshed threads for the meter, which mitigates the risk of future leaks. Completing this meter work as part of the obsolete materials service line replacement is consistent with DIMP regulations and involves the identification and mitigation of known risks. This work is necessary to ensure the meter sets along replacement projects are in compliance with current regulations.

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[51] Department's Comments at 23.

[52] The Trade Secret extrapolated amount can be found in the Department Comments at 25.

[53] MERC Reply Comments at 12.

d) Department's Additional Comments

The Department noted that the pricing contract between MERC and its contractor provides codes which describe the work being done.[54] The contract explained that labor code "M101" is used if meter is replaced. Several right-of-way and Obsolete Material project invoices that MERC provided in discovery included the code "M101" along with listed material items coded "T1201521 – Set, Meter, Residential, 30LT, 7" WC, American 1813C." Regulatory accounting requires that the labor and material costs incurred for meter installations be bundled with the cost of meters.[55]

The Department therefore maintains its recommended non-public adjustment amounts to remove the capitalized costs associated with meter replacements from the GUIC Rider.

e) MERC Additional Reply Comments

MERC continues to advocate the costs are appropriately included as part of the GUIC service-line replacement projects and no adjustment to remove such costs is warranted. MERC disagrees that such an adjustment is reasonable or appropriate, given that these costs are appropriate and legitimate GUIC-eligible costs related to right-of-way and obsolete materials replacement projects. Without having undertaken the right-of-way relocation or obsolete materials replacement project, no meter-related work would have been performed.

f) Decision Options

18. Require MERC to reduce its 2019 right-of-way services work plan costs by the extrapolated adjustment necessary to remove ineligible costs for new meter sets and installation that MERC included in the GUIC rider. [Department]

19. Do not require MERC to reduce its 2019 right-of-way services work plan costs by any extrapolated adjustment. [MERC]

7. Inclusion of Costs for Work Done in Conjunction with GUIC Project – Reported Obsolete Materials Services Costs

a) Background

In its Petition, MERC reported its actual 2019 capitalized costs for right-of-way GUIC services work totaled $1,729,621.[56] The Department sampled 9 invoiced work requests related to "inclusion of costs for work done in conjunction with GUIC Project." The Department discovered that 6 of the work orders appear to include the cost of new meters and their installation costs (i.e., invoiced items coded #T120152*, M101, etc.).[57]

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[54] Department Attachment 1-RC includes response to Department Information Request No. 2 and invoice samples for public Department IR Nos. 8 and 15.
[55] FERC Accounts 381 or 382.
[56] Petition Exhibit J at 2.
[57] Attachment 8 to the Department's comments includes public response to Department IR No. 15, Parts A, C, D, F, H, and I.

b) Department Comments

The Department determined that MERC has not appropriately removed non-GUIC eligible costs for work done in conjunction with its right-of-way related activity, so an adjustment is necessary.

As a result, the Department recommends that the Commission require MERC to reduce its 2019 obsolete materials plan costs by the amount extrapolated adjustment necessary to remove ineligible costs for new meter sets and installation that MERC included in the GUIC rider.[58]

The Department reviewed the affected invoices and noted that two-thirds of the sampled work requests included costs for new meters and their installation. The Department took the cost of the new meter set, accessory materials and labor costs (which is considered trade secret) and multiplied the cost by two-thirds of the 727 service work requests incurred in 2019. The Department recommends that this extrapolated cost be removed from MERC's 2019 GUIC true-up, plant-in service.[59]

c) MERC Reply Comments

MERC states that the Department misinterprets the Company's IR responses and reiterates that it did not include any cost of new meters in its GUIC Rider Petition. Specifically, MERC states:

> MERC clarifies that the invoice entries referencing meter-related materials and labor are not for the cost of new meters. Rather, as discussed in the Company's responses to discovery, the costs of any new meter are not included in the GUIC Rider. In contrast, the costs that are included for recovery in MERC's overall GUIC Rider, as shown in the invoices provided, are appropriate and legitimate GUIC-eligible costs related to the ROW and Obsolete Materials replacement projects. As discussed in MERC's response to Department Information Request No. 48:
>
> 'Any time a service line is replaced, the connected meter is also checked to ensure compliance. The charges included on the referenced invoices are for associated meter repair work that occurs as part of the service line replacement. The meter bar is the most common item replaced to allow[] for refreshed threads for the meter, which mitigates the risk of future leaks. Completing this meter work as part of the obsolete materials service line replacement is consistent with DIMP regulations and involves the identification and mitigation of known risks. This work is necessary to ensure the meter sets along replacement projects are in compliance with current regulations.'
>
> Meter-related costs that are reflected in the invoices provided in response to Department discovery requests include the labor costs to verify meter delivery pressure after installation of the new service line; costs to tag a meter to depict if an excess flow valve has been installed on the service line or to designate if a

[58] The Trade Secret extrapolated amount can be found in the Department Comments at 26.
[59] The Trade Secret extrapolated amount can be found in the Department Comments at 26.

> service has been abandoned; connection of the new service line to the meter assembly; replacement of the meter bar and regulator; and the material cost for a sleeve to protect the service riser from corrosion or other damage. MERC continues to believe these costs are appropriately included as part of the GUIC service-line replacement projects and no adjustment to remove such costs is warranted.[60]

d) Department Additional Comments

The Department noted that the pricing contract between MERC and its contractor provides codes which describe the work being done. The contract explained that labor code "M101" is used if meter is replaced. Several right-of-way and Obsolete Material project invoices that MERC provided in discovery included the code "M101" along with listed material items coded "T1201521 – Set, Meter, Residential, 30LT, 7" WC, American 1813C." The Department notes that regulatory accounting requires that the labor and material costs incurred for meter installations be bundled with the cost of meters.[61]

The Department therefore maintains its recommended non-public adjustment amounts to remove the capitalized costs associated with meter replacements from the GUIC Rider.

e) MERC Additional Reply Comments

MERC continues to advocate that all of the costs are appropriately included as part of the GUIC service-line replacement projects and no adjustment to remove such costs is warranted. MERC disagrees that such an adjustment is reasonable or appropriate, given that these costs are appropriate and legitimate GUIC-eligible costs related to right-of-way and obsolete materials replacement projects. Without having undertaken the right-of-way relocation or obsolete materials replacement project, no meter-related work would have been performed. The costs proposed for recovery in the Company's GUIC Rider include:

- labor costs to verify meter delivery pressure after installation of the new service line;
- costs to tag a meter to depict if an excess flow valve has been installed on the service line or to designate if a service has been abandoned;
- connection of the new service line to the meter assembly;
- replacement of the meter bar and regulator, if required; and
- the material cost for a sleeve to protect the service riser from corrosion and other damage.

MERC argues that the included costs are necessary to ensure the meter sets along replacement projects are safe and in compliance with all current regulations and do not constitute a betterment for which GUIC recovery is not allowed.

[60] MERC Reply Comments at 12.

[61] FERC Accounts 381 or 382.

f) Decision Options

20. Require MERC to reduce its 2019 obsolete materials plan costs by the extrapolated adjustment necessary to remove ineligible costs for new meter sets and installation that MERC included in the GUIC rider. [Department]

21. Do not require MERC to reduce its 2019 obsolete material plan costs by any extrapolated adjustment. [MERC]

8. Outside Legal Services

a) Background

In MERC's reply comments the Company proposes to include $154, 535 in outside legal services in its revised 2019 GUIC Rider true-up and 2021 revenue requirement calculation, involving actual incremental legal regulatory expense incurred in 2019 related to MERC's GUIC Rider. MERC argues that inclusion of these costs for recovery in the 2019 true-up is consistent with the GUIC Statute, which authorizes the inclusion of any incremental O&M costs for recovery through a GUIC rider. Additionally, because MERC has not included such expense in its forecasted GUIC Rider, only actual costs incurred in the 2019 true-up are included for recovery.

MERC argues that inclusion of these outside regulatory legal expense associated with the GUIC Rider proceedings in the true-up reconciliation is reasonable and consistent with the statute, as these costs are incremental, are not currently being recovered in the Company's base rates approved in Docket No. G-011/GR-17-563, and are actual O&M expense incurred related to GUIC.[62] Specifically, MERC states:

> MERC has included costs related to legal expense and agency assessments for routine regulatory filings but has not included any adjustment for unique filings such as the GUIC Rider. In particular, MERC's authorized O&M included for recovery in current base rates was established based on actual 2017 O&M expense in Docket No. G011/GR-17-563. MERC did not have a GUIC Rider, nor any other rider in 2017, and had not petitioned the Commission for authority to establish such a rider in 2017. Therefore, the Commission should authorize inclusion of these costs for true-up as incremental, eligible costs incurred in 2019.[63]

b) Department's Additional Comments

The Department opposes MERC's request for inclusion of outside legal services in the Company's true-up of 2019 GUIC costs because a representative recovery amount for outside legal services is already built into base rates. According to the Department, MERC has not demonstrated that these costs are incremental to the recovery allowance built into base rates. As such, their inclusion in the GUIC Rider would lead to double recovery from ratepayers which

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[62] MERC's Reply Comments at 13.
[63] *Id*. at 14.

would result in unjust and unreasonable rates. The Department also noted that MERC has not provided evidence to support that its total jurisdictional outside legal services has exceeded either the dollar allowance or the activity level included in base rates.

The Department therefore recommends that the Commission deny MERC's request to include an additional recovery amount of $154,535 for outside legal services in the 2019 GUIC true-up.

c) MERC Additional Reply Comments

In response, MERC notes that while expense related to the regulatory work undertaken in 2017 is included in base rates, such base rate recovery does not reflect the incremental GUIC-related legal regulatory costs incurred and now proposed for recovery for 2019. MERC argues that the complexity of GUIC Rider proceedings has been significant relative to other regulatory filings.[64] MERC notes the regulatory expense associated with filing and obtaining approval for the Company's GUIC Rider cost recovery has allowed MERC to implement multi-year pipeline safety and assessment programs that are comprehensive and cost-effective, rather than undertaking work in a reactionary or immediate threat mode, thus providing substantial cost-savings benefits to the Company's customers beyond increased safety and reliability. Based on these considerations, MERC continues to request approval to recover these incremental costs in its 2019 GUIC true-up, with future actual costs to be recovered in future true-up filings.

d) Staff Comment

As noted by the Department, MERC currently recovers a representative amount for legal services in base rates. As part of the rate case process, a representative amount is established for the utility to recover on an annual basis. If the utility keeps its legal costs down in a particular year then it is allowed to keep the excess recovery and if a utility has additional legal costs in a particular year it absorbs the excess costs. The timing of a general rate case is up to the utility's discretion so it determines when a new representative recovery amount needs to be established. However, the remedy for utilities to revisit and adjust base rates is typically a general rate case. Allocating additional recovery for certain, select costs already represented in base rates simply because the Company is not recovering its current expenses based on a rate case that was initiated years ago could distort the process and have the effect of continuing to keep a utility out of a rate case where expenses are more-heavily and holistically scrutinized.

e) Decision Options

22. Deny MERC's request to include an additional recovery amount of $154,535 for outside legal services in the 2019 GUIC true-up. [Department]

23. Authorize MERC's request to include an additional recovery amount of $154,535 for outside legal services in the 2019 GUIC true-up. [MERC]

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[64] For example, MERC notes that the Department issued approximately 50 information requests in the instant docket, many with multiple component parts, as well as multiple rounds of comments.

9. Implementation of Rider Recovery Limit

a) Background

The Department "suggests" that the Commission "entertain consideration of a measurable rider-recovery limit" as a public interest safeguard due to the numerous errors found in MERC's Petition.[65] The Department notes that MERC's GUIC Rider requests are "commensurate to MERC's recent rate cases, which is unlikely to have been understood at the time the statute was passed. Further, unlike a general rate case, there is little-to-no ratepayer awareness of this pending GUIC rider petition rate change because it is not subject to the same publicity requirements associated with general rate cases."[66]

b) Department Comments

The Department argues that while the GUIC Statute does not quantify limitations of permissible customer rate increases through this rider mechanism, given the errors and shortcomings discussed in comments, the Department believes that the Commission could entertain consideration of a measurable rider-recovery limit, potentially as a public interest safeguard.

In addition, the Department notes that besides expected spending increases for existing multi-year GUIC projects, MERC also mentions the possible inclusion of additional project recovery (i.e., farm tap). However, the Department states that MERC does not offer any quantification, relative or ballpark, on either the upcoming years' recovery needs or timing of additional projects and their recovery needs. Therefore, the Department concludes that MERC's petition has not adequately satisfied the statutory requirement to "file sufficient information to satisfy the commission…includ[ing]…the magnitude and timing of any known future gas utility projects that the utility may seek to recover under this section" [Minn. Stat. § 216B.1635, subd. 4(2)(vi)] in this petition.

The Department requests that MERC provide in its reply comments more informative quantification of the revenue requirements outlook for the future near-term years, including the proximate onset of new projects and their projected recovery needs, to better fulfill the statutory requirement.

c) MERC Reply Comments

In response, MERC notes that GUIC Rider recovery allows the Company to implement multi-year programs that are comprehensive and cost effective, thus providing benefits to MERC's customers beyond increased safety and reliability. MERC argues that a proactive approach benefits customers because work undertaken systematically and strategically reduces costs and allows the Company to engage in regional planning to minimize inconvenience to impacted communities. MERC's DIMP projects will necessarily be a multi-year effort and the pace of the work completed can be controlled while balancing the need to mitigate known risks on the distribution system with the associate rate impacts. The Company's planned spending for 2021

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[65] Department Comments at 28.

[66] *Id*.

replacements is based in large part on the need to balance removal of risks against avoiding significant rate impacts. In determining the proposed level of annual spending, MERC evaluated historic DIMP project spending as well as other anticipated spending to understand the level of annual investment under DIMP programs that could be supported in rates.

Regarding the magnitude of future GUIC Rider recovery requests, MERC included information and a discussion regarding the magnitude and timing of any known future gas utility projects that the Company may seek to recover through its GUIC Rider in Section II.D. of the Petition and Exhibit H. Additionally, MERC provided information and discussion regarding the magnitude of GUIC costs in relation to the gas utility's base revenue as approved by the Commission in MERC's most recent general rate case, exclusive of gas purchase costs and transportation charges, and the magnitude of GUIC in relation to the gas utility's capital expenditures since its most recent general rate case. MERC states it plans to continue spending at similar levels in future years.

d) Department Additional Comments

The Department continues its suggestion that the Commission "entertain consideration of a measurable rider-recovery limit, potentially as a public interest safeguard.[67]

Further, the Department noted that it requested MERC to provide in Reply Comments a quantification of the revenue requirements outlook for the future near-term years to allow the Commission to be informed of the anticipated progression and to adequately meet Minn. Stat. § 216B.1635, subd. 4(2)(vi) requirements. MERC's Reply Comments stated that its initial Petition, Section II.D and Exhibit H, satisfy this requirement, in part because they used similar presentations which had not been disputed in prior GUIC filings. The Department found that these referenced sections recap their 2021 projections included in current request, and do not go beyond that period. The Department defers to the Commission to determine whether MERC has adequately satisfied the Commission.

e) MERC Additional Reply Comments

MERC continues to dispute the need for a rider recovery limit as a public interest safeguard arguing that its multi-year approach benefits customers and capping recovery is not reasonable at this time.

Regarding compliance with the GUIC statute filing requirement to address the magnitude and timing of any known future gas utility projects, MERC notes its DIMP projects will necessarily be a multi-year effort and the pace of the work completed can be controlled while balancing the need to mitigate known risks on the distribution system with the associate rate impacts. MERC also included discussion and references to the various alternatives under consideration with respect to its Farm Tap Replacement Project and considerations that are likely to impact the level of right-of-way relocation spending in the near term, noting that, ultimately, the Company does not receive advanced notice regarding right-of-way relocation projects and therefore is not able to provide precise forecasts for future costs.

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[67] Department Additional Comments at 8.

MERC states it fully recognizes the need to ensure that rates continue to be reasonable, and has and will continue to undertake efforts to mitigate the magnitude and timing of its investments in order to help smooth customer rate impacts. MERC argues that continuation of GUIC Rider recovery is critical, however, to allow the Company to implement multi-year pipeline safety and assessment programs and to ensure the continued safety and reliability of its natural gas system.

f) Staff Comment

The Department did not make a specific recommendation regarding the issue of instituting a cost cap. Instead, the Department suggested that the Commission "entertain consideration of a measurable rider-recovery limit" as a public interest safeguard due to the numerous errors found in MERC's Petition. Absent a recommendation in the record, the Commission will need to determine first, if a cost cap is necessary and second, a specific amount should it wish to move forward with its implementation.

With regard to MERC's compliance with Minnesota Statutes requiring the reporting of the magnitude and timing of any known future gas utility projects. Staff notes that Minn. Stat. § 216B.1635, subd. 4(2)(vi)-(viii) requires that a petition for approval to recover GUIC costs through a rider include information regarding (1) the magnitude and timing of any known future gas utility projects that the utility may seek to recover through the GUIC Rider; (2) the magnitude of GUIC in relation to the gas utility's base revenue as approved by the Commission in the gas utility's most recent general rate case, exclusive of gas purchase costs and transportation charges; and (3) the magnitude of GUIC in relation to the gas utility's capital expenditures since its most recent general rate case. This information is provided in Exhibit H of the Petition.

g) Decision Options

24. Require the establishment of a rider recovery limit. [Department]

25. Direct that a GUIC rider recovery limit be addressed in the next MERC GUIC filing. Require MERC to discuss how such a limit could be set in its initial filing, and request that the Department address the issue in its comments. [Staff]

26. Determine that the establishment of a rider recovery limit is not necessary, at this time. [MERC]

V. Decision Options

MERC's 2021 GUIC Rider revenue requirement and adjustment factors

1. Accept and approve MERC's proposed 2021 GUIC Rider revenue requirement and adjustment factors as filed except as modified herein. [Staff]

MERC's GUIC Rider 2019 True-up Report

2. Accept MERC's GUIC Rider True-up Report. [Staff]

<u>Undisputed Issues</u>

Accumulated Deferred Income Tax

3. Require MERC to limit proration of ADIT to only the forecasted months following the effective date of its GUIC rider in this and all subsequent GUIC rider petitions. [MERC, Department]

Right-of-Way Project Costs Estimate

4. Require MERC to use a three-year cost average, using the most recent three years (2017-2019), to estimate its right-of-way project costs. [MERC, Department]

Sales Forecast

5. Require MERC to use its most recent year's actual weather normalized sales for MERC's forecasted GUIC rider. [MERC, Department]

Disputed Issues

Quality of Filing

6. The Commission adopts the Department's recommendation to put the Company on notice that future problematic GUIC filings may be rejected upfront. Further, future flawed GUIC filings may result in suspension of GUIC rider charge to all customers, until a corrected filing is approved and the Commission authorizes the GUIC rider to resume. [Department]

and,

7. Adjust MERC's proposed 2021 revenue requirement to account for the various corrections to its 2019 GUIC Rider eligible project costs. [MERC, Department]

and either 8 or 9:

8. Require MERC to engage independent auditors, at the utility's expense, to examine the Company's systems and its processes identifying GUIC work, actual and recoverable costs and GUIC petition requests, in more depth. [Department]

or,

9. Determine that the services of an independent auditor to examine MERC's systems and process are not necessary, at this time. [MERC]

Internal Capitalized Cost

10. Direct MERC to remove all internal costs from both its 2019 true-up and its 2021 revenue requirements requests. The adjustment should also be reflected in the future GUIC petition true-ups and forecasts. [Department]

11. Allow MERC to recover internal costs for both its 2019 true-up and its 2021 revenue requirement request. [MERC]

Geographic Information System (GIS) Service Line Mapping Project Costs

12. Require MERC to reflect $178,563 as an offset to its 2021 GUIC rider revenue requirement in order to recognize the level of GIS mapping project cost recovery included in its base rates. [Department]

13. Require MERC to account for any underspending of the GIS Documentation Project, currently recovered in base rates, as an offset to actual GUIC GIS Service Line Mapping Project costs in the Company's 2021 true-up to be filed in 2022. [MERC]

Right-of-Way Work Treated as Expense

14. Deny inclusion of any right-of-way expense work in MERC's GUIC rider recovery, both its 2019 true-up and in its projected 2021 GUIC revenue requirement calculations. [Department]

15. Allow MERC to include right-of-way expense work in its GUIC rider recovery, both in its 2019 true-up and in its projected 2021 GUIC revenue requirement calculations. [MERC]

Betterment – Rochester County Road 9 Project

16. Remove the cost differential, between the 4-inch standard pipe cost and the 6-inch diameter pipe cost from your 2019 true-up and from future GUIC recovery rider rates. [Department]

17. Determine that a 6-inch line is not a betterment under the GUIC statute and authorize recovery of project costs. [MERC]

Inclusion of Costs for Work Done in Conjunction with GUIC Project – Reported Right-Of-Way Services Costs

18. Require MERC to reduce its 2019 right-of-way services work plan costs by the extrapolated adjustment necessary to remove ineligible costs for new meter sets and installation that MERC included in the GUIC rider. [Department]

19. Do not require MERC to reduce its 2019 right-of-way services work plan costs by any extrapolated adjustment. [MERC]

Inclusion of Costs for Work Done in Conjunction with GUIC Project – Reported Obsolete Materials Services Costs

20. Require MERC to reduce its 2019 obsolete materials plan costs by the extrapolated adjustment necessary to remove ineligible costs for new meter sets and installation that MERC included in the GUIC rider. [Department]

21. Do not require MERC to reduce its 2019 obsolete material plan costs by any extrapolated adjustment. [MERC]

Outside Legal Services

22. Deny MERC's request to include an additional recovery amount of $154,535 for outside legal services in the 2019 GUIC true-up. [Department]

23. Authorize MERC's request to include an additional recovery amount of $154,535 for outside legal services in the 2019 GUIC true-up. [MERC]

Implementation of Rider Recovery Limit

24. Require the establishment of a rider recovery limit. [Department]

25. Direct that a GUIC rider recovery limit be addressed in the next MERC GUIC filing. Require MERC to discuss how such a limit could be set in its initial filing, and request that the Department address the issue in its comments. [Staff]

26. Determine that the establishment of a rider recovery limit is not necessary, at this time. [MERC]

Compliance Filings

27. Require MERC to submit a compliance filing within ten days of the date of this order showing the final rate adjustment factors, and all related tariff changes. [Staff]

216B.1635 RECOVERY OF GAS UTILITY INFRASTRUCTURE COSTS.

Subdivision 1. **Definitions.** (a) "Gas utility" means a public utility as defined in section 216B.02, subdivision 4, that furnishes natural gas service to retail customers.

(b) "Gas utility infrastructure costs" or "GUIC" means costs incurred in gas utility projects that:

(1) do not serve to increase revenues by directly connecting the infrastructure replacement to new customers;

(2) are in service but were not included in the gas utility's rate base in its most recent general rate case, or are planned to be in service during the period covered by the report submitted under subdivision 2, but in no case longer than the one-year forecast period in the report; and

(3) do not constitute a betterment, unless the betterment is based on requirements by a political subdivision or a federal or state agency, as evidenced by specific documentation, an order, or other similar requirement from the government entity requiring the replacement or modification of infrastructure.

(c) "Gas utility projects" means:

(1) replacement of natural gas facilities located in the public right-of-way required by the construction or improvement of a highway, road, street, public building, or other public work by or on behalf of the United States, the state of Minnesota, or a political subdivision; and

(2) replacement or modification of existing natural gas facilities, including surveys, assessments, reassessment, and other work necessary to determine the need for replacement or modification of existing infrastructure that is required by a federal or state agency.

Subd. 2. **Gas infrastructure filing.** A public utility submitting a petition to recover gas infrastructure costs under this section must submit to the commission, the department, and interested parties a gas infrastructure project plan report and a petition for rate recovery of only incremental costs associated with projects under subdivision 1, paragraph (c). The report and petition must be made at least 150 days in advance of implementation of the rate schedule, provided that the rate schedule will not be implemented until the petition is approved by the commission pursuant to subdivision 5. The report must be for a forecast period of one year.

Subd. 3. **Gas infrastructure project plan report.** The gas infrastructure project plan report required to be filed under subdivision 2 shall include all pertinent information and supporting data on each proposed project including, but not limited to, project description and scope, estimated project costs, and project in-service date.

Subd. 4. **Cost recovery petition for utility's facilities.** Notwithstanding any other provision of this chapter, the commission may approve a rate schedule for the automatic annual adjustment of charges for gas utility infrastructure costs net of revenues under this section, including a rate of return, income taxes on the rate of return, incremental property taxes, incremental depreciation expense, and any incremental operation and maintenance costs. A gas utility's petition for approval of a rate schedule to recover gas utility infrastructure costs outside of a general rate case under section 216B.16 is subject to the following:

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

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

(i) the information required to be included in the gas infrastructure project plan report under subdivision 3;

(ii) the government entity ordering or requiring the gas utility project and the purpose for which the project is undertaken;

(iii) a description of the estimated costs and salvage value, if any, associated with the existing infrastructure replaced or modified as a result of the project;

(iv) a comparison of the utility's estimated costs included in the gas infrastructure project plan and the actual costs incurred, including a description of the utility's efforts to ensure the costs of the facilities are reasonable and prudently incurred;

(v) calculations to establish that the rate adjustment is consistent with the terms of the rate schedule, including the proposed rate design and an explanation of why the proposed rate design is in the public interest;

(vi) the magnitude and timing of any known future gas utility projects that the utility may seek to recover under this section;

(vii) the magnitude of GUIC in relation to the gas utility's base revenue as approved by the commission in the gas utility's most recent general rate case, exclusive of gas purchase costs and transportation charges;

(viii) the magnitude of GUIC in relation to the gas utility's capital expenditures since its most recent general rate case; and

(ix) the amount of time since the utility last filed a general rate case and the utility's reasons for seeking recovery outside of a general rate case.

Subd. 5. **Commission action.** Upon receiving a gas utility report and petition for cost recovery under subdivision 2 and assessment and verification under subdivision 4, the commission may approve the annual GUIC rate adjustments provided that, after notice and comment, the costs included for recovery through the rate schedule are prudently incurred and achieve gas facility improvements at the lowest reasonable and prudent cost to ratepayers.

Subd. 6. **Rate of return.** The return on investment for the rate adjustment shall be at the level approved by the commission in the public utility's last general rate case, unless the commission determines that a different rate of return is in the public interest.

Subd. 7. **Commission authority; rules.** The commission may issue orders and adopt rules necessary to implement and administer this section.

History: *2005 c 97 art 10 s 1,3; 2013 c 85 art 7 s 2,9*

NOTE: This section expires June 30, 2023. Laws 2005, chapter 97, article 10, section 3, as amended by Laws 2013, chapter 85, article 7, section 9.