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MIDAMERICAN
ENERGY COMPANY

BRIEF OF THE IOWA CUSTOMERS FOR ENERGY EFFICIENCY

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INTRODUCTION

The Iowa Customers for Energy Efficiency (ICEE) respectfully files this brief in the proceeding that was docketed to investigate MidAmerican Energy Company's (MidAmerican) request for the Iowa Utilities Board's (Board) approval of its 2014-2018 Energy Efficiency Plan.

The ICEE contends that in order to achieve greater energy efficiency savings for the State of Iowa, the Board should:

(1) approve making available opt-out provisions which would allow customers meeting certain criteria to not participate in or fund utility-sponsored energy efficiency programs and commence a rulemaking proceeding to develop the specific program parameters (Issue Fifteen);

(2) direct MidAmerican to identify the energy efficiency cost recovery factor on its customers' billings (Issue Sixteen).

(3) adopt the partial settlement agreement that MidAmerican will track non-residential energy efficiency expenditures by rate class as well as by program within its systems, and will consider that information in developing future EECR factors (Issue Seventeen).

(4) adopt the partial settlement agreement that the credits from residential load control and interruptible credits will be added together and allocated to classes using the generation demand allocation factor (currently Average and Excess method). MidAmerican will develop a two-part EECR factor with a separate demand factor for recovery of costs associated with direct load control

and interruptible program costs and an energy-based factor for all other eligible energy efficiency costs and MidAmerican will separate charges for Large General Service (LGS) customers, for Very Large General Service Customers (VLGS) and for the other non-residential customers if new rates are approved. If these specific rate designations are not adopted, MidAmerican will place non-residential schedules into three groups so as to achieve similar distinctions. (Issue Eighteen).

STATEMENT OF THE CASE

On February 1, 2013, MidAmerican submitted its 2014-2018 Energy Efficiency Plan (EEP) to the Board for approval, seeking a determination that the proposed EEP met the criteria set forth in Iowa Code Section 476.6(14) and Iowa Admin. Code 199-Chapter 35. In addition to the Office of the Consumer Advocate (OCA), the following parties were granted intervention: Environmental Intervenors (EI), the Winneshiek Energy District (WED), Deere & Company (Deere), the Iowa Policy Project, and the Iowa Customers for Energy Efficiency (ICEE).

The parties filed prepared testimony, exhibits and a joint statement of issues pursuant to the Board's procedural schedule. MidAmerican, the OCA, the ICEE, the Environmental Intervenors, and Deere & Company filed a Non-unanimous Partial Settlement Agreement on August 26, 2013. The Settlement issues are set out in numbered sections and the parties who have agreed upon a specific issue are noted. The partially settled issues in which the ICEE participated are identified as Issues Seventeen and Eighteen. On August 28,

2013, a hearing was held for the purpose of cross-examination of testimony. On August 30, 2013, the Board issued an order stating that the parties could submit comments regarding the Settlement at the time of filing briefs and could provide reply comments on September 25, 2013.

ARGUMENTS

I. SETTLED ISSUES SEVENTEEN AND EIGHTEEN

The ICEE joins in the settlement of Issues Seventeen (tracking non-residential energy efficiency expenditures) and Eighteen (allocation and collection of demand response costs) and does not join in, and does not take a position on, the other issues in the Non-Unanimous Partial Settlement.

Therefore, at this time, the ICEE will not submit comments on the partially settled issues Seventeen and Eighteen, but reserves the right to file reply comments to any objections to the settlement of issues Seventeen and Eighteen filed by other parties to this proceeding.

For the reasons stated in its testimony, the ICEE urges the Board to find that the parties' resolution of Issues Seventeen and Eighteen is reasonable in light of the whole record, consistent with law, and in the public interest. As the ICEE stated in its testimony, if the Board finds the parties' agreement concerning Issue Eighteen does not comply with Iowa Admin. Code 199-35.12(3), the ICEE requests the Board find good cause to grant a waiver pursuant to Iowa Admin. Code 199-1.3 and approve the parties' agreement. (Tr. 907).

II. INDUSTRIAL OPT-OUT

A. In General.

1. The Question Before the Board is Whether it is Reasonable to find that an Industrial Opt-Out Process Supports Iowa's Energy Efficiency Policy.

The ICEE proposes an energy efficiency opt-out process for some of MidAmerican's large industrial customers. The question the Board must decide is whether it is reasonable to conclude that an opt-out process supports the Board's policy and also the priority of encouraging energy efficiency in Iowa.¹

The Board's decision must be based on findings of fact and conclusions of law. Findings of fact must be supported with underlying facts and an explanation of why the relevant evidence in the record supports the finding of fact. Iowa Code 17A.16(1)(2013).

In this brief, the ICEE will discuss in detail the evidence the ICEE has provided that supports a finding that it is reasonable to conclude that an opt-out program is equitable, is likely to lead to more energy efficiency in the state, and is consistent with the Board's priorities and policies.

The parties that oppose an opt-out process have offered only generalizations and speculation, and have provided no evidence to support a finding that allowing certain large industrial customers to opt-out of the utility-mandated energy efficiency plan is contrary to the Board's priorities and policies. No party cross-examined Mr. Brubaker regarding the substance of his testimony. No party has addressed the evidence the ICEE has put forth. (Tr, 915).

2. The Process Proposed by the ICEE Does Not "Put the Cart

¹ Although this brief will discuss the evidence provided in this case, the same policy question is raised in Docket No. EEP-2012-0001.

Before the Horse."

OCA Witness Bodine has suggested that the ICEE's proposed procedure for designing the specific criteria for opt-out "puts the cart before the horse." (Tr, 592).

On the contrary, the proper place for the Board to make a finding of fact that an opt-out procedure for large industrial customers should be offered is in the contested case to consider the utilities' energy efficiency plans. A rulemaking - an uncontested case process in which all interested persons can participate - is the better way to design the parameters of an opt-out procedure.

The ICEE did not formulate this procedural recommendation without thought. As Witness Crandall stated in his rebuttal testimony, the ICEE originally set forth proposed criteria in Direct Testimony filed in Docket No. EEP-2012-0001. (Tr. 724-725). The ICEE proposed specific criteria expecting to elicit testimony from the other parties as to what criteria they thought were necessary. However, no other party in Docket No. EEP-2012-0001 proposed criteria or parameters. At that point, the ICEE determined it was necessary to amend its testimony to propose that the Board initiate a rulemaking to consider the parameters of a program.²

Now the parties contend that there is not enough substance in the ICEE's proposal.³

² The ICEE could have subtitled its Amended Direct Testimony as, "a Proposal for Rulemaking," but did not because of the conflicting time requirements for a petition for rulemaking. (See, Iowa Admin. Code 199-3.4(2)).

³ MidAmerican Witness Yoder testified that she believed the ICEE's proposal is undefined and asserted that an order requiring a rulemaking should give

Some of the reasons why parameters and criteria are best determined in a rulemaking are: (1) the Board's expertise should be utilized when designing the parameters of a program that will fulfill its policy priorities; (2) in a rulemaking proceeding, there will be an opportunity to receive input from all interested persons, consider all of the comments, and, designate a starting date that would not unduly interfere with the 2014-2018 plan; (3) a rule finally adopted by the Board would be reviewed by the Iowa Legislature through the Administrative Rules Review Committee.

Witness Brubaker proposed that only customers that satisfied the Board's criteria would be eligible to opt-out and those eligible customers would only be able to apply to opt-out at a time determined at the conclusion of the rulemaking proceeding. (Tr. 904)⁴. In cross-examination, he also clarified when an opt-out process would commence. (Tr. 928). He offered the parameters that he believes should be considered in the Board's rulemaking:

1. The criteria that a customer must meet in order to be eligible to opt-out. For example, the volumetric criteria used to define the different industrial rate classes. (Also see the various criteria summarized on Exhibit MEB-1.)
2. Time window during which an opt-out notice must be provided.
3. How the customer notifies the utility of its decision to opt-out.
4. What information must be included in the opt-out notice.
5. The responsibility of the utility to determine opt-out eligibility and the avenues for resolution if the customer and utility do not agree.
6. Confidentiality of individual customer information.
7. The effective date of the opt-out.
8. How long the opt-out is effective.

direction on specified questions. Witness Brubaker does not disagree that the questions Ms. Yoder posed are relevant to the design of a program. (Tr. 130; 915).

⁴ The ICEE urges the Board to select eligibility criteria that are simple and easily administered.

9. How a customer may revoke an opt-out notice and any participation term requirements after revoking an opt-out.

Tr. 903

Certainly the Board could conduct an investigation or a notice of inquiry to design the parameters of an opt-out process. However, because evidence has been submitted in the contested cases and research has been conducted regarding the parameters used by the other states (See, Exhibit MEB-D2), it is not clear what additional evidence would be elicited by further investigation.

3. An Industrial Opt-Out Process Would Positively Impact Energy Efficiency in Iowa.

Some parties to this case have stated that an opt-out process would be "the most dramatic change to program delivery in the State of Iowa since energy efficiency program inception" and "a major change to MEC's proposed plan." (Tr. 129; 589). However, the opt-out process the ICEE envisions not only would not have a dramatic effect but would positively impact energy efficiency in Iowa. Iowa Code Section 476.6(16)(a) requires that energy efficiency plans must include programs "tailored to the needs of all customer classes." Offering an opt-out process would recognize the needs of certain large industrial customers while not affecting the offer of energy efficiency programs to the non-residential class.

MidAmerican serves approximately 646,333 electric customers in Iowa. Of those, 557,738 are residential and 88,595 are nonresidential. (Votino, DLV-1, Sch. 1). Of the nonresidential class, MidAmerican reports approximately 1,400 Large General Service customers as of the year ended December 31, 2012.

(MidAmerican 2012 Form IE-1, p. 301). Depending on the criteria for eligibility and individual corporate circumstances, it is unlikely that a significant number of industrial customers would apply to opt-out in any given period.⁵ The Board could require opt-out terms and periods that would allow MidAmerican to manage its energy efficiency budget and projections.

Further, the opt-out would apply only to energy efficiency activities. All customers, including those who have opted out, would continue to pay the nonresidential demand response component of the energy efficiency charge. In addition, it would not be unreasonable for opt-out customers to continue to pay for the energy efficiency programs in which customers are not a direct beneficiary such as Branching Out and Assessments for the Iowa Energy Center and the Center for Global and Regional Environmental Research. It also would not be unreasonable for opt-out customers to pay back a portion of the incentives the customer had previously received if the Board deems that appropriate.

If a relatively small number of industrial customers meet eligibility requirements and decide to apply to opt-out, it would not significantly reduce the amount of energy efficiency projects MidAmerican's industrial customers currently implement since many of the customers that are likely to be eligible are currently not able to use the utility's programs because of administrative

⁵ All of MidAmerican's large industrial customers are not the same. Some corporations have access to more resources than other corporations. Some processes are more dependent on natural gas than electricity. Even under the specific criteria originally proposed by ICEE Witness Brubaker, it is likely that only a relatively small number of industrial customers would qualify and fewer still would elect to exercise the option.

difficulties, budget concerns, process constraints, and the fact that they have completed all of the projects that are offered. The remainder of the non-residential class would likely continue to use MidAmerican energy efficiency programs at the same rate it has in the past.

There has been a downturn in customer participation. Nonresidential customers' participation has dropped and the size of projects has diminished. In its 2012 Annual Report in Docket No. EEP-08-02, MidAmerican reported:

Overall savings achieved by MidAmerican's Iowa energy efficiency programs in 2012 were less than projected, due in part to continued issues in the nonresidential sector with participation and size of projects. The nonresidential equipment program, which delivers the majority of nonresidential savings, improved compared to 2011, but was still significantly lower than 2010 levels. These challenges faced by the nonresidential electric programs contributed to a shift in total program electric savings, with 45 percent of the total savings being achieved through residential electric programs in 2012, up from 30 percent a year ago.

2012 Report at 1.

The energy efficiency portion of the EECR charge paid by industrial customers funds the nonresidential programs. Given the nonresidential energy savings trends and the low economic potential found by Cadmus, MidAmerican would be wise to focus its efforts on the commercial and residential classes and allow certain eligible large industrial companies to attack energy demand independently. Large industrial company projects conducted independently are likely to create a greater impact on energy usage in the state, furthering Iowa's goals.

B. The Evidence

The ICEE has produced evidence that supports a finding that an opt-out plan is consistent with the Board's Energy Efficiency priority and should be approved.

The Iowa Court of Appeals has recently discussed the meaning of substantial evidence in the context of an agency decision.

Substantial evidence is defined as:

[T]he quantity and quality of evidence that would be deemed sufficient by a neutral, detached, and reasonable person, to establish the fact at issue when the consequences resulting from the establishment of that fact are understood to be serious and of great importance.
Iowa Code § 17A.19(10)(f)(1).

When reviewing a finding of fact for substantial evidence, we judge the decision “in light of all the relevant evidence in the record cited by any party that detracts from that finding as well as all of the relevant evidence in the record cited by any party that supports it.” *Id.* § 17A.19(10)(f)(3). We carefully review the facts of the case, and “do not simply rubber stamp” the agency’s decision. *Pease*, 807 N.W.2d at 845. However, evidence is not insubstantial simply because reasonable minds could draw different conclusions. *Id.* Thus, our task is to determine if, viewing the record as a whole, the evidence supports the findings actually made. *Id.*

Mike Brooks, Inc., et. al. v. House, No. 3-624 / 13-0303 Filed August 21, 2013, application for further review pending.

The Court also stated in *Quaker Oats Company et.al. v. Larry Farar*, No. 3-654/13-0195, filed August 21, 2013, that when there are different conclusions drawn by expert testimony it is up to the Board to measure the credibility of witnesses, stating, "As the trier of fact, the agency is charged with weighing the evidence and measuring the credibility of witnesses." ⁶.

In this case, the Board should consider the following expert testimony put forth by the ICEE:

⁶ See Tr. 769-771.

1. The industrial community has done a better job than other customer classes of harvesting efficiency opportunities.

The U.S Energy Information Administration published findings in March 2013, indicating what they termed large energy consumption decreases in the manufacturing sector from 2002 to 2010. During that period, manufacturing energy usage decreased by 17%, while manufacturing gross output declined by only 3% over the same period. .

ICEE Witness Brubaker testified:

... since industrial customers obviously have already done a better job of "wringing out" efficiencies, it is obvious that they have implemented a significant percentage of cost-effective measures and should be given greater latitude on funding and spending on EE measures that make sense in the context of their individual operations.

Tr. 897-898

2. There is significantly less opportunity left within the industrial community to achieve cost effective energy efficiency than in other sectors.

The Cadmus Report entitled "Assessment of Energy and Capacity Savings Potential in Iowa, dated February 28, 2012, reflects that as a percent of sales, the remaining economic potential for the industrial class is less than 10% of base sales. (Chart 2, Tr. 897).

In comparison, the economic potential for the residential class is 28% of base sales and the commercial classes is 27% of base sales. (Chart 2, Tr. 897) OCA Witness Bodine and Environmental Intervenor Witness Crandall prefer to view the industrial class's economic potential as an absolute mega-watt hour basis. However, whether the measurement is viewed as a percent of sales or a percent of megawatt hours, the Cadmus report shows that there is significantly

less economic potential in the industrial sector. (Tr. 917).

The conclusion that must be drawn is that industrial customers have implemented a significant number of energy efficiency measures. 71% of the total of the remaining economic potential for energy reduction lies in the 46% of energy sold to residential and commercial customers. (Tr. 898).

3. The evidence provided by Cadmus on remaining efficiencies for the industrial community is overstated because of the use of the very low societal discount rate.

As Witness Brubaker explained in his testimony, the Cadmus Report overstates the amount of energy efficiency that can be practically achieved by industrial customers under real world conditions because it uses the societal cost test as the basis for evaluating economic potential.^{7 8} (Tr. 918) While the ICEE does not disagree that the societal impact test is an important measure, when used to estimate the economic potential of the industrial class it causes an overestimation because an industrial customer's cost of capital is much higher than the discount rate used in the societal test.. (Tr. 919).

Conversely, Environmental Intervenor Witness Crandall contends that the economic potential for industrial customers is understated. His reasoning being that industry demands higher rates of return or shorter payback periods. (Tr. 726). It is correct that industry exists in a globally competitive environment and may, depending on the economic situation at the time, demand shorter payback

⁷ The cost of capital or discount rate used by industrial customers is significantly higher than the social discount rate and the regulated utility's cost of capital. (Tr. 309; 311, 919).

⁸ Environmental Intervenor Witness Crandall was mistaken when he stated that it does not use the societal test.

periods for its investments than the environmental community expects customers to use.

Environmental Intervenor Witness Crandall acknowledged the reality faced by industrial customers when he cited the testimony of John Seryak before the Ohio Senate, Mr Crandall stated:

In recent testimony before the Ohio Senate Public Utilities Committee, Mr. John Seryak testified that of his firm's 300 industrial clients only three have ever done an energy efficiency project that had a simple payback period of more than two years without utility assistance.

Tr. 727

What Mr. Crandall fails to explain is how that reality can be changed by expecting large industrial customers to choose energy efficiency programs with long payback periods. It is unreasonable for parties to expect industry to do something that is against its own economic interest. Industry does not have unlimited funds or unlimited capacity for debt. However, as will be shown in an example later in this brief, when an industrial customer can independently design and implement its own whole plant and process program, it is able to work with projects with longer payback periods.

4. The primary benefits of the energy efficiency programs go to the participants, not to the nonparticipants.

The primary beneficiaries of the utility energy efficiency programs are the customers who participate in the utility energy efficiency programs and have a lower electric bill. (Tr. 899-901). When a customer reduces energy usage, the customer's bill is lower and 100% of the benefit goes directly and immediately to that customer. Both utility-sponsored energy efficiency programs and energy

efficiency efforts funded by customers can reduce peak demand and both efforts provide benefit to all customers. (Tr. 916-917).⁹

Clearly, the primary expected benefit of the utility-run energy efficiency programs is the avoidance of energy costs. MidAmerican's 2012 Annual Report shows that about 67% of the expected benefit of the residential energy efficiency programs is avoided energy costs while only 33% is avoided demand costs. For nonresidential, it is 78% avoided energy costs and 22% demand costs. (Tr. 901).

There is much evidence to support the fact that the primary beneficiaries of MidAmerican's energy efficiency programs are the participants. First, the ratepayer impact (RIM) test is an indicator of rate impact. A RIM test score of greater than 1.0 indicates rates would be decreased if a measure is implemented while a score of less than 1.0 indicates rates would increase if a particular measure is implemented. **Exhibit MEB-1**, which categorizes MidAmerican's programs into demand response programs, energy efficiency programs and other programs, shows that the RIM test for MidAmerican's residential programs is 0.64 for residential and 0.78 for nonresidential programs.

Second, **Exhibit MEB-1** shows overall avoided costs and participant bill savings. For the residential programs, the participant bill savings are equal to 93% of the avoided costs and for the nonresidential programs, the participant bill savings are equal to 88% of the avoided costs. This means that non-participants

⁹ Both Witnesses Bodine and Crandall recommend that the benefit accrues to all customers and all customers should pay for the utility-run energy efficiency programs. This recommendation is unfounded and without merit.

are disadvantaged because they pay higher rates.

5. The EECR charges have a negative impact on the competitive market position of industrial customers.

Industrial customers operating in a competitive environment are harmed by the ratepayer funding of industrial energy efficiency. Witness Brubaker testified:

Industrial customers that have invested substantial resources in efficiency improvement are currently compelled to contribute funds that can be used to improve the efficiency of other industrial customers, some of whom may be direct competitors.

Tr. 898.

The industrial customers that have proactively invested their own funds and achieved efficiencies may be penalized because they are forced to fund their competitors' energy efficiency programs. While this is likely an unintended consequence, it is a real one. Many companies go to great expense to reduce their energy demand and benefit society. Nevertheless, the reality is that they must be able to fulfill their obligation to deliver a competitive return to their stakeholders in order to be in a position to continue to do that. It is unfair to expect them to contribute to funding their competitor's plant improvements. It is not good for Iowa if competition is adversely impacted by the utility-run energy efficiency programs.

6. The efficient use of energy is a priority for industrial customers; the industrial customer is the expert and can better implement energy efficiency internally, resulting in more energy demand reduction for Iowa.

An industrial customer's (particularly one that uses an energy-intensive process) relationship with energy is different from that of residential and commercial customers. A corporation has an obligation to its shareholders, its

customers, and to society. (Tr. 160-161). A corporation provides employment for citizens and revenue and prosperity for the state.¹⁰ A corporation's energy usage affects its obligation to society.

Based on his expert knowledge gained from working with industrial customers for more than forty years, ICEE Witness Brubaker testified:

Electricity is a key input into the production of many industrial products, and industrial customers have long recognized the benefits, indeed the necessity, of pursuing all cost-effective EE investments and practices. Efficient operations are a key to cost reduction and to achieving and maintaining a competitive position in the marketplace where they sell their products. The globalization of many markets has made the achievement of efficiency in the use of all inputs, including the use of energy, of paramount importance to industrial customers who have to compete in nationally and even globally competitive markets.

Closer to home, there is competition among multiple facilities for new investment, production and jobs. The winning location(s) provide economic benefits to their states, while others miss out. While different types of industries and different types of processes exhibit various degrees of energy intensity, it is an important cost customers strive to manage, control and minimize within the constraints of their operations. Since these customers are unable to simply pass along costs to their customers, they must compete in the marketplace with other suppliers on price (as well as quality) and, if they are to be successful, they must sell products and services that customers want at prices they are willing to pay.

Tr. 891-892

Several parties to this proceeding agree with Mr. Brubaker's assertions regarding the industrial customer's competitive position and the fact that efficient energy usage is a priority for large industrial customers. (Tr.160-161; 312; 765).

¹⁰ Iowa ranks as the third highest state in the country in the percentage for which manufacturing accounted for total earnings of the state. In 2010, manufacturing accounted for 17.6% of Iowa's total earnings. U.S. Department of Commerce, Economics and Statistics Administration, "The Geographic Concentration of Manufacturing Across the United States;" www.esa.doc.gov.

The parties also are aware that some industrial customers implement their own energy efficiency projects. (Tr. 162-163: 312; 765).

The factors that motivate industrial customers to achieve energy reduction are different from those that may motivate residential and commercial customers. It is not necessary for the utility to find a way to motivate industrial customers; they are motivated by their need to survive in a competitive environment. The only motivation industrial customers need is to be given the freedom to reduce their energy usage on their own.

Based on his experience with industrial customers, ICEE Witness Brubaker testified:

Large industrial facilities are very complex operations where EE improvements are intertwined with complex industrial processes and the facility's often unique operational characteristics. The personnel who work at these facilities have the most knowledge about their operation, and are in the best position to identify and evaluate processes and other changes that can cost-effectively improve the efficiency of their operations. In other words, they are more attuned to what can be done and what must be done to achieve economies in the utilization of energy. Because of the complexity and diversity of industrial uses of energy, third parties are not nearly as capable of identifying the viable opportunities available in such operations.

Tr. 892

Environmental Intervenor Witness Crandall testified:

... I think a large, very complicated business that uses an energy manager that has on-site expertise, they have a good knowledge of their operations. However, those are the type of people that probably know where to get some additional help in very unique aspects of their operation, and some of this is extremely complicated.

Tr. 764

Because in-house or specialized expertise is often necessary to conduct a large energy reduction project, a large industrial customer often cannot use the utility-run energy-efficiency programs. Much of the work to reduce energy demand involves large and expensive projects that cannot be repeated annually. Much of this work is embedded in the every day projects that take place at a plant. An industrial customer is more likely to conduct the larger and more effective energy efficiency projects on its own, using its own expert staff. Similarly, there is little disagreement that the utility structure sometimes results in time lags that make it difficult for the utility to react to the industrial customer's needs in a timely manner. (Tr. 160-161; 312; 895). There is also little disagreement that the program design often does not fit the industrial customer's plant or process. (Tr . 160-161; 312; 895).

It is important to keep in mind that the money paid by industrial customers who are not able to use MidAmerican's energy efficiency programs through the EECR could be put to use to implement various productivity improvement initiatives including those that reduce their energy usage. This EECR capital expenditure could be used instead to implement large energy reduction projects internally and a resulting greater energy savings would benefit the state. It is reasonable to expect that more independent projects would be conducted.

The following are examples to illustrate these points:

BEGIN CONFIDENTIAL

Example A.

During the period 2009-2012, one globally competitive ICEE member

reports **CONFIDENTIAL FILED UNDER SEAL**

Environmental Intervenors Confidential Hearing Exhibit 218

Example B.

During the period 2009-2012, another globally competitive ICEE

member **CONFIDENTIAL FILED UNDER SEAL**

Environmental Intervenors Confidential Hearing Exhibit 223; Attach. A-E.

END CONFIDENTIAL

7. Opt-out will not reduce the degree of energy efficiency attainment in Iowa.

As these examples illustrate, many industrial customers are doing all they can to achieve greater energy efficiency in their plant operations. It is not likely that industrial customers who are allowed to opt-out would stop doing implementing energy efficiency projects. In fact, if some customers are allowed to opt-out of the utility-run energy efficiency program, that money could be invested in the kinds of energy efficiency projects that work for their plants. When asked whether he thought industrial companies would stop doing energy efficiency if they were allowed to opt-out, Environmental Intervenor Witness Crandall was asked to read from his testimony in Docket No. EEP-2012-0001:

I would think not. I mean I would think a well-run company is obviously always trying to lower their operating costs So, yes, they should be doing that right along, yes, on their own.

Tr. 770-771

Industrial customers will work to keep their plants running in an energy efficient manner. More energy efficiency can be attained in Iowa by allowing some customers to complete projects on their own.

8. Opt-out programs are being implemented or considered by other states.

Exhibit MEB-2, attached to Witness Brubaker's Direct Testimony, lists the states that currently have an opt-out program in place for their industrial customers. Witness Brubaker's Workpapers 1-7 include the states' rules and statutes showing the parameters of the programs and the criteria that those states use to determine whether an industrial customer qualifies for the program. (Brubaker Workpapers 1-7).

Minnesota has adopted an opt-out plan for its industrial customers and is ranked 9th in the country in the 2012 State Energy Efficiency Scorecard. Two of the other states that have implemented opt-out plans for their industrial customers, Oklahoma and South Carolina, are ranked as Most Improved in the 2012 State Energy Efficiency Scorecard.

These examples could serve as a starting point for the Board's consideration of an opt-out process.

C. Legal Jurisdiction.

An Opt-Out Program is Consistent with Iowa's Legal Framework.

Under the broad authority delegated to the regulatory agency in Iowa Code Sections 476.1, 476.2 and 476.15, the Board was given the authority to regulate the rates and services of public utilities. The legislature specifically

included efforts designed to promote the use of energy efficiency strategies within that delegation of authority to the Board. Iowa Code Section 476.1(2013). The Board's powers and jurisdiction of utility business extends to the full extent permitted by the Constitution and the laws of the United States. Iowa Code Section 476.4(15) (2013). The Iowa legislature has made energy efficiency strategies a part of the utility business.

The Iowa legislature has given the Board the broad authority to promote the use of energy efficiency strategies. This includes exercising its expertise and informed discretion and deciding an energy efficiency program that allows industrial customers to opt-out of the utility designed energy efficiency plans and implement their own energy efficiency projects is a strategy that promotes energy efficiency. Considerable deference is given to the agency's expertise, especially when the decision involves the highly technical area of public utility regulation. *S.E. Iowa Coop. Elec. v. Iowa Utils. Bd.*, 633 N.W.2d 814, 818 (Iowa 2001). The rules an agency promulgates represent the agency's interpretation of the statutes the agency is assigned to administer. *Office of Consumer Advocate v. Iowa Utils. Bd.*, 744 N.W.2d 640, 643 (Iowa 2008). The Iowa Supreme Court has stated:

.... administrative regulations can be an important part of a broader statutory scheme to advance legislative goals. They can reflect the objectives and goals of the legislature in the same way as a statute.

Jasper v. Nizman 764 N.W.2d 751 (Iowa 2009).

Iowa Code 476.6(16)(a) requires that the energy efficiency plans submitted for approval to the Board must include a range of programs tailored to the needs of all customer classes. By continuing to offer programs for all

customer classes while recognizing the particular capabilities and challenges of some members of the industrial class and creating an opt-out program, the Board would be fulfilling that legislative mandate. Beyond the specifications of the statute, what will be allowed in the plan is left to the Board's discretion. *Iowa-Illinois Gas and Electric Co. v. Iowa State Commerce Commission*, 334 N.W.2d at 754. An opt-out procedure would be an option offered to customers meeting qualifications ordered by the Board. This would not affect a rate-regulated utility's duty to include programs for all customer classes within its energy efficiency plan and budget as required by Iowa Code 476.6(16)(a) since the utilities would continue to offer programs to all customer classes.

An opt-out program fits within Iowa's legislative policy of reducing energy usage through the development of policies and programs that promote energy efficiency because allowing certain customers to opt-out and fund and implement independent programs is likely to increase energy efficiency and reduce energy demand. Iowa Code 473.3 (2013). The ICEE is asking the Board to adopt rules to create an opt-out program for industrial customers. The Board has the authority to do this as a means of advancing Iowa's goal of reducing energy usage. In fact, such an opt-out program represents just the sort of "tailoring" contemplated by the Iowa code

III. RATE IMPACT

The Board Should Consider Rate Impact.

Environmental Intervenor Witness Crandall recommends that the Board increase MidAmerican's energy efficiency budget by 80% and not consider the

rate impacts of this increase. (657; 661). His reasoning is that rates will go up in the short term but be lower in the long run (Tr. 660-661). He indicated that he believes his approach will achieve maximum energy efficiency

MidAmerican Witness Rea explained that if the energy efficiency budget increases as proposed by the Environmental Intervenors, there would be an increase of between \$105 million and \$116 million per year in the energy efficiency budget which would more than double the amounts customers pay. (Tr. 303-304).

It is important to consider that Mr. Crandall's assumptions about achieving maximum energy efficiency depends upon customer participation. The Board reported to the Iowa Legislature in its January 1, 2009 Report to the General Assembly that Iowa ranked third in the nation in per capita spending for energy efficiency. Table 111-2, p. 11, "Energy Efficiency in Iowa's Electric and Natural Gas Sector," Report to the General Assembly, January 1, 2009.

As customers sensitive to the impact of rates on our ability to compete, the ICEE urges the Board to consider rate impacts when reviewing MidAmerican's energy efficiency plan as well as any other proposals that impact rates.

IV. EECR CHARGE

All Customers Should Know their EECR Charge.

ICEE Witness Brubaker testified that MidAmerican does not set out the EECR charge on its customers' bills. (Tr. 908-909). He explained that the only way a customer would know how much he pays is by going to the website, finding the EECR tariff, and multiplying those values times the kWh

consumption. (Id.). If the customer does not do that, the customer has no idea of the charge.

The ICEE believes it is inappropriate to hide these charges from customers. Price is an effective communication and may lead to more energy efficiency participation. If necessary, customer education may be appropriate. (Tr. 908-909). Customers should be informed.

MidAmerican Witness Yoder testified that she does not necessarily agree. (Tr. 130). ¹¹ She testified that allowing the EECR to be on customers' bills could be confusing to customers as it would appear to be a new charge. (Tr. 131).

Ms. Yoder also stated that, pursuant to a settlement agreement in Docket No. EEP-2008-0002, MidAmerican has been informing some of their "key accounts" through the "Industrial Education Pilot Program" via an "Energy Efficiency Report Card.". ¹²

First, the ICEE believes the energy efficiency report card is a useful means of informing some of MidAmerican's customers but there are several questions as to how this program operates. The effort is called the Industrial Education Pilot Program. It is unclear whether MidAmerican plans to make this a regular program rather than a pilot program; whether it plans to continue to send it to customers or wait until the customers ask for it; how "key accounts" are

¹¹ Although the Environmental Intervenors contested this issue in testimony, the Proposed Non-Unanimous Partial Settlement indicates that only MidAmerican now contests this issue. See, Non-Unanimous Partial Settlement, Issue No. 16 at p.16.

¹² At the Board's request, MidAmerican provided a sample of the Energy Efficiency Report Card. (MidAmerican Late-Filed Exhibit 1).

identified or selected; and whether it will expand the program to include more customers.

A review of MidAmerican's Annual Reports in Docket No. EEP-2008-0002 shows that in 2010, MidAmerican reported that the development of a report card as agreed to in the settlement agreement "is in progress." (MidAmerican Energy Efficiency Plan 2010 Annual Report at 88.); in 2011, a report card was first hand-delivered by the assigned "key account manager" to some customers and then mailed to approximately 248 key account customers (MidAmerican Energy Efficiency Plan 2011 Annual Report at 92-93);¹³; in its 2012 report, MidAmerican stated that as of December 31, 2012, report cards were created and mailed to 850 key accounts. (MidAmerican Energy Efficiency Plan 2012 Annual Report, at 96).

Second, while MidAmerican's energy efficiency report card efforts indicate its recognition that customers should be informed of the EECR charge, MidAmerican is not informing the customers who most need to know. Residential customers and smaller Commercial and Industrial customers have much more energy efficiency potential. Communicating with them is of particular importance. (Tr, 920).

The EECR charge is different from any other utility charges. It is a charge for a service that is directed and "marketed," in a sense, to customers. It is not a component of charges for energy. The cost should be transparent to customers.

¹³ MidAmerican indicated that additional report cards "can be developed as requested by the key account manager or the customers." (MidAmerican Energy Efficiency Plan 2011 Annual Report at 93.) Apparently, MidAmerican does not plan to make the report cards regular reports.

MidAmerican and the Environmental Intervenors sell customers short when they say they would be confused if they knew about the charge. (Tr. 131; 732). On the contrary, if customers are aware of an energy efficiency charge, this may prompt them to contact MidAmerican and inquire about how they can effectively take advantage of the energy efficiency programs they are paying for. This is an initial contact that should lead to customers using the energy efficiency opportunities MidAmerican offers and pressing MidAmerican to offer more, which, in turn, would lead to more energy efficiency attainment and reduced energy usage for Iowa.

MidAmerican's customers deserve to know and to understand exactly what they are paying for. MidAmerican's programs provide the opportunity to reduce the amount of energy purchased and decrease electric bills. Customers who do not participate do not receive the energy reduction benefit. Electric rates provide price signals. Billings communicate with customers and energy efficiency should be one of the topics.

Transparency can lead to greater awareness and increase participation in energy efficiency. The Board should trust Iowans and direct MidAmerican to inform its customers and encourage these customer inquiries.

CONCLUSION

For the reasons described in this brief, the ICEE urges the Board to approve an opt-out process for large industrial customers and within three months commence a rulemaking process pursuant to Iowa Admin. Code 199-3.4(1) to create the parameters of an energy efficiency program that allows

qualified industrial customers to apply to opt-out of the energy efficiency portion of MidAmerican's energy efficiency plan. The ICEE has shown that many industrial customers consistently implement their own energy efficiency projects, are in some cases unable to access the utility's energy efficiency programs, and have in the aggregate already implemented 90% of the identified economic potential. An opt-out program supports Iowa's goal to achieve energy efficiency.

The ICEE urges the Board to reject the increase to MidAmerican's energy efficiency budget proposed by the Environmental Intervenors, recognizing its responsibility to set just and reasonable rates. The ICEE urges the Board to direct MidAmerican to include the EECR charge on its customers' bills.

The ICEE urges the Board to adopt terms Seventeen and Eighteen of the Non-unanimous Partial Settlement.

Respectfully Submitted,

/s/

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