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DEPARTMENT OF COMMERCE
UTILITIES DIVISION
BEFORE THE UTILITIES BOARD**

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IOWA UTILITIES BOARD**

ARTI, LLC,

vs.

**MIDAMERICAN ENERGY
COMPANY**

DOCKET NO. FCU-2014-0016

**REPLY BRIEF
OF
ARTI, LLC**

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INTRODUCTION

On October 26, 2015, Arti, LLC (“*Arti*”) filed its initial brief in this docket (“*Arti Brief*”). The *Arti Brief* demonstrated that: (1) MidAmerican Energy Company (“*MidAmerican*”) has applied unreasonable, unjust, and discriminatory phase-in and equalization adjustment factors to *Arti*, in violation of applicable legal standards; and (2) MidAmerican has unfairly imposed separate bills on *Arti*’s single premises. MidAmerican and the Office of Consumer Advocate also filed their initial briefs in this docket on the same date.

Pursuant to the procedural schedule established by the Iowa Utilities Board (“*Board*”) on September 17, 2015, *Arti* hereby submits, for the Board’s consideration, this reply brief (“*Reply Brief*”) responding to the key arguments advanced in MidAmerican’s initial brief (“*MidAmerican Brief*”).¹ Other arguments in the MidAmerican Brief were anticipated and addressed in the *Arti Brief*; consequently, this reply brief will not address each and every opposing argument raised by MidAmerican. As a result, the absence of a response in this reply brief to a specific argument in the MidAmerican Brief should not be construed as *Arti*’s agreement with, or acquiescence to, such argument, or as a waiver of the issue.²

¹ *Arti* does not deem it necessary to respond directly to the initial brief submitted by the Office of Consumer Advocate (“*OCA Brief*”).

² See 199 IAC 7.23(8)“c”.

**REPLY TO
MIDAMERICAN’S PROCEDURAL HISTORY AND BACKBROUND**

As a preliminary matter, MidAmerican dedicates seven pages to a recital of the procedural history of Docket No. RPU-2013-0004 (the “*Rate Case*”), which is not at issue in this Complaint and in which Arti was not a party. The importance of cost-based rates and excerpts from the record in the Rate Case are irrelevant to the issues presented in this case because Arti is not attempting to re-try the cost of service, rate design, phase-in or equalization issues addressed in the Rate Case. Furthermore, Arti had no obligation to intervene in the Rate Case and the lack of an intervention does not bar Arti from prosecuting this complaint against MidAmerican.³ Thus, the procedural history for the Rate Case included in the MidAmerican Brief should be used only as background information.

MidAmerican also alleges that the revised tariffs, including updated phase-in factors, equalization factors, and a mitigation plan, that it filed on March 27, 2014 in the Rate Case were “in compliance with” the final decision and order (“*Final Order*”) issued by the Board in the Rate Case on March 17, 2014.⁴ Arti disagrees. Indeed, a separate complaint by Arti against MidAmerican currently pending before the Board (Docket No. FCU-2015-0003) is predicated on the failure of MidAmerican’s so-called “compliance” tariffs to comply with the requirements of the Final Order.

³ The order issued on July 31, 2014, approving MidAmerican’s “compliance tariffs” (“*Approval Order*”) explicitly provides that those tariffs are approved “subject to complaint” (emphasis added).

⁴ MidAmerican Brief, at 8.

MidAmerican closes its procedural history discussion by observing, among other things, that on July 31, 2014, the Board issued another order in the Rate Case approving MidAmerican’s “compliance” tariffs.⁵ MidAmerican neglects to mention, however, that the approval was conditional and the tariffs were approved “subject to complaint or investigation.”⁶

REPLY TO MIDAMERICAN’S ARGUMENT

A. Arti Has Met The Requisite Burden of Proof, Showing That MidAmerican Subjects Arti to Rates and Charges That Are Unfair and Discriminatory and Violate Applicable Legal Standards.

This complaint proceeding was brought pursuant to Iowa Code § 476.3(1), which provides that if the Board finds that MidAmerican’s “rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provisions of law, the board shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.” As explained in the Arti Brief and this brief, Arti has showed that: (1) MidAmerican’s application of generic Rate [REDACTED] phase-in adjustment and equalization adjustment factors to Arti is unfair, discriminatory, unreasonable, inconsistent with MidAmerican’s Iowa electric tariffs, and in violation of applicable legal standards; and (2) MidAmerican’s proposal to bill Arti for electric service provided to Arti’s [REDACTED] (the “*Arti*

⁵ MidAmerican Brief, at 10. This order is referred to in this Reply Brief as the “Approval Order.”

⁶ *In re MidAmerican Energy Company*, Docket Nos. TF-2014-0034, RPU-2013-0004, Order Approving Tariff and Requiring Filings, at 3 (IUB July 31, 2014).

Facility”) located in Council Bluffs, Iowa, through the Southland Substation separately from electric service provided to the same facility through the Pony Creek Substation is unfair, discriminatory, unreasonable, unsupported by MidAmerican’s Iowa electric tariff, and in violation of applicable legal standards.

In the first section of its argument, MidAmerican engages in a misguided effort to derive a standard of proof that Arti must allegedly satisfy in this administrative proceeding on the basis of case law that establishes and interprets standards applicable to judicial review of Board decisions. Specifically, MidAmerican claims that Arti has the burden of proof to establish that an approved rate is unjust and unreasonable “in its consequences.”⁷ The Supreme Court decision cited in support of this claim relates to a presumptive standard governing judicial review of the Board’s decision. The presumptive standard is based on the general principle that courts should “grant considerable deference” to the Board’s decisions due to the Board’s superior expertise in the highly technical field of public utility rate regulation, which expertise is not shared by the reviewing courts.⁸ That presumption, however, is obviously not applicable to an administrative formal complaint proceeding before the Board because MidAmerican cannot be presumed to have expertise in the highly technical field of public utility rate regulation superior to that of the Board and thus is not entitled to any burden-of-proof presumption based on deference.

⁷ MidAmerican Brief, at 12 (citing *Office of Consumer Advocate v. Iowa Utilities Board*, 454 N.W.2d 883, 886 (Iowa 1990)).

⁸ *Office of Consumer Advocate*, 454 N.W.2d at 885-886.

Also, in deciding whether MidAmerican should be afforded any deference with regard to its interpretation of its own tariff, the Board's rules obligate a rate-regulated electric utility such as MidAmerican to file tariffs that are "definite and so stated as to minimize ambiguity or the possibility of misinterpretation."⁹ Utility tariffs are construed "according to the same rules as contracts," and if a tariff is ambiguous, it must be strictly construed against the utility drafter.¹⁰ Any ambiguity created by the incorporation of seemingly contradictory clauses must be resolved against the utility drafter.¹¹

MidAmerican further claims that "whether a rate is just and reasonable amounts to a question of fact" and cites a 1988 decision by the Iowa Supreme Court in support of its claim.¹² The justness and reasonableness of a tariffed rate (or, indeed, any tariff provision), however, is a legal question rather than a fact question where the tariffed rate (or other tariff provision) is ambiguous and, as the Iowa Supreme Court ruled in 2005, must be strictly construed against the utility drafter and consequently resolved against the utility drafter.

MidAmerican also cites an Iowa Supreme Court decision for the proposition that "[i]n a complaint proceeding before the Board, the party initiating the complaint bears the burden of proving a rate or billing treatment is unjust and unreasonable."¹³ The cited decision, however, involved the revocation of a driver's license by the Iowa Department

⁹ 199 IAC 20.2(2) (emphasis added).

¹⁰ *Estate of Pearson v. Interstate Power and Light Co.*, 700 N.W.2d 333, 343-344 (Iowa 2005) (strictly construing ambiguous utility tariff against utility and rejecting utility's interpretation of tariff).

¹¹ *Id.*

¹² MidAmerican Brief, at 12-13 (citing *Office of Consumer Advocate v. Iowa State Commerce Com'n*, 428 N.W.2d 302, 305 (Iowa 1988)).

¹³ MidAmerican Brief, at 12 (emphasis added) (citing *Gaskey v. Iowa Dept. of Transp.*, 537 N.W.2d 695, 697 (Iowa 1995)).

of Transportation¹⁴ and says absolutely nothing about the burden of proof in a complaint proceeding before the Board.

B. MidAmerican Has Applied Unreasonable, Unjust, And Discriminatory Phase-In Adjustment And Equalization Adjustment Factors To Arti In Violation Of Applicable Legal Standards.

The predecessor rate for both Arti and Pinnacle was Rate [REDACTED] and MidAmerican is applying the same base Rate [REDACTED] tariff charges to Arti as it applies to Pinnacle. Yet, MidAmerican argues that Arti should not be allowed to have the same phase-in adjustment factors¹⁵ and equalization adjustment factors¹⁶ that apply to Pinnacle. And, MidAmerican says Arti cannot have Arti-specific phase-in adjustment and equalization adjustment factors either, but rather must pay generic phase-in adjustment and equalization adjustment factors that are calculated using customer load characteristics that are nothing like Arti's; namely, factors based on Rate [REDACTED], a rate schedule under which Arti never took service. Even while acknowledging that Arti was not a customer during the test year, MidAmerican continues to revert to test year arguments about rate-setting that have no applicability to a customer, like Arti, who came onto the system after the test year. Arti, like all other customers, is entitled to rates and to phase-in adjustment

¹⁴ The additional case decisions cited in the footnote to MidAmerican's citation to the *Gaskey* decision similarly involve driver's license revocation proceedings by the Iowa Department of Transportation. MidAmerican also cites an unpublished decision by the Iowa Court of Appeals (*Tiffany v. Iowa Dept. of Transp.*) in addition to the *Gaskey* decision. This unpublished decision also involves driver's license revocation proceedings by the Iowa Department of Transportation. In addition, Iowa court rules provide that "[u]npublished opinions or decisions shall not constitute controlling legal authority." Iowa R. App. P. 6.904(2)(c).

¹⁵ Clause PI is the section of MidAmerican's Iowa electric tariff relevant to phase-in adjustment factors. Exhibit MEB-2.

¹⁶ Clause E is the section of MidAmerican's Iowa electric tariff relevant to equalization adjustment factors. Exhibit MEB-3.

and equalization adjustment factors that are just and reasonable.

1. MidAmerican distorts the record.

The MidAmerican Brief begins its discussion of the factors issue with an outlandish claim: “The Complainant has highlighted its interests in this docket without recognizing the underlying rate principles established in [the Rate Case].”¹⁷ As will be shown below, not only is MidAmerican incorrect in this assertion, but it completely fails to recognize that the main cause of the problem, and the reason for the complaint in the first place, is MidAmerican’s arbitrary application of the Rate ■ phase-in adjustment and equalization adjustment factors to Arti, when in fact the characteristics of customers that comprise the Rate ■ class are as different from Arti’s characteristics as night is from day.

MidAmerican then goes on to impugn Arti’s motives by insinuating that the Arti-specific phase-in adjustment and equalization adjustment factors were “developed to benefit the Complainant.”¹⁸ The implication here is that Arti’s alternative proposals are unprincipled, not based on factual analysis, and inconsistent with MidAmerican’s derivation of phase-in adjustment and equalization adjustment factors for other customers. However, Arti’s testimony has clearly set forth the principles underlying its alternative recommendations and shows how the approaches are consistent with the methodology MidAmerican has applied to other customers.

MidAmerican’s distortion is made obvious by the very testimony of Arti witness

¹⁷ MidAmerican Brief, at 13.

¹⁸ MidAmerican Brief, at 16.

Brubaker quoted in its MidAmerican Brief¹⁹ stating that the specific calculation was based on the objective of having representative data, a fact that is reaffirmed by Mr. Brubaker just two pages later (at Tr. 54): “The purpose was to come up with factors that I felt were fair and reasonable for application to Arti.”

MidAmerican concludes this section of its initial brief with an allegation that Arti’s proposed remedies would reduce Arti’s cost of service further than what was allowed under the approved Rate ■ phase-in adjustment and equalization adjustment factors.²⁰ This, too, is a distortion because phase-in adjustment factors applicable to all customers simply were intended to phase in the rate increase that was given to MidAmerican. The phase-in was evenly applied to all customers, and none of the equalization adjustment factors changes cost of service or alters the ending rate value. Rather, all are intended to be a means of transitioning customers from what they were paying under the rate schedules they were on, and would have continued to be on, in the absence of the rate consolidation and realignment that occurred in the Rate Case.

2. MidAmerican’s test-year arguments are irrelevant.

MidAmerican criticizes Arti’s pro forma (annualized) Arti load data that were used for purposes of calculating Arti-specific factors.²¹ MidAmerican’s criticism is largely based on the premise that “pro forma” adjustments only have meaning in relationship to setting rates in a rate case.²² The record is clear, however, that Arti

¹⁹ MidAmerican Brief, at 16; Tr. 52.

²⁰ MidAmerican Brief, at 18.

²¹ MidAmerican Brief, at 20-24.

²² MidAmerican Brief, at 20-22.

witness Brubaker's use of the term "pro forma" has nothing to do with setting revenue requirements in a rate case, but rather relates to annualizing the customer's load in order to obtain a representative value.²³

- Q. Okay. So then we want to focus on how you developed those, and here you noted the pro-forma basis. What do you mean by that?
- A. Well, the general--the same as the general concept of pro forma, is you take something and you annualize it and you make it into a representative value, so we took the load of Arti in the month before the new tariffs took effect and annualized that across a 12-month period.
- Q. All right. Well, let's touch upon that. So your pro-forma basis or this pro-forma adjustment is based on a general rate-case proposition that you annualize information?
- A. Right, in order to get a representative value, which we had to do in the case of Arti because of its significant load growth over time.
- Q. Well, I understand that, but, then, in terms of when you--you're just using pro forma in a general sense?
- A. Yes, correct.
- Q. And not particularly as it relates to the Board rules on pro-forma adjustments?
- A. Well, the pro-forma adjustments in the Board rules generally relate to revenue requirement issues and accounting adjustments. I'm using, as I said, pro forma in a broad sense that we're saying we're trying to find a representative value.
- Q. Okay. But pro forma under the Board rules is a little different; would you agree?
- A. Well, it's for a different purpose.
- Q. Is it?
- A. So I wouldn't be surprised if it's a little different when you use it specifically in terms of making accounting and revenue requirement adjustments versus when we're dealing with something very unique here like the determination of the appropriate phase-in factors, which

²³ As a result, the entire subsection of the MidAmerican Brief entitled "Pro Forma Ratemaking Principles" (at 20-22) is irrelevant in this complaint proceeding and, for that reason, will not be addressed by Arti in detail in this Reply Brief.

I don't think the Board has got any rules for that because this has never been done before.²⁴

The annualization of the load obviously is not tied to the test year, should not be tied to the test year, and could not be tied to the test year since Arti was not a customer during the test year. Two of the exhibits to MidAmerican witness Rea's rebuttal testimony – Confidential Exhibit CBR-1, Schedule C, and Confidential Exhibit CBR-1, Schedule D – show why annualization is appropriate. Arti's load is unique, has ramped up significantly from the beginning point to July 2014, and has continued to escalate since July 2014. Using data just from the first two months when Arti first came on the system would produce an extremely distorted result because Arti's load in July 2014 (when it was a Rate [REDACTED] customer) bears no resemblance to its load in [REDACTED] [REDACTED] when it first began operations (and was a Rate [REDACTED] customer).²⁵

In responding to questions from Board Member Wagner in regard to the annualization concept and the development of proper phase-in adjustment and equalization adjustment factors, Arti witness Brubaker explained the reason for basing the calculation of the Arti-specific phase-in adjustment and equalization adjustment factors on the [REDACTED] rate:

Because as I look at it, what we're doing is moving from a whole conglomeration of rates that had way different values, and that's the rate Arti would have continued on but for the rate case and the consolidation, so it seemed to me that what you want to do, where you want to get to is what's a representative number of costs that they were paying and would

²⁴ Tr. 32-34 (emphasis added).

²⁵ Appendix 1 to this Reply Brief is a copy of Confidential Exhibit CBR-1, Schedule C, that Arti has marked up to highlight the months when Arti took service under Rate [REDACTED] (Exhibit SMA Direct, at 4) and the months when Arti took service under Rate [REDACTED] (Exhibit SMA Direct, at 4). Appendix 2 to this Reply Brief is a copy of Confidential Exhibit CBR-2, Schedule D, that Arti has marked up in a similar manner.

have paid absent the rate case, because that was the whole idea of the equalization, to take you from where you were to where you need to be over a period of time and not be disruptive, so if we had started out at a number that was way too high, we would have not gotten there.²⁶

For all of these reasons, Arti reasonably annualized Arti's load for the last month (July 2014) that Arti was on Rate [REDACTED] before the moving to Rate [REDACTED] to arrive at a representative starting point for equalization.

The OCA shares Arti's concerns about MidAmerican's test-year arguments, particularly as they relate to the issue of mitigation of rate shock.²⁷ As Arti learned for the first time at the hearing on August 18, 2015,²⁸ in a separate customer complaint docket (Docket No. FCU-2015-0007) the OCA has raised and is litigating those concerns as they specifically relate to the issue of the mitigation of rate shock.²⁹ In light of that fact and because mitigation of rate shock is not a focal issue for Arti in this docket, Arti will not pursue that issue here and thus deems it unnecessary to respond to MidAmerican's arguments³⁰ regarding mitigation of rate shock.

3. MidAmerican fails to provide any reasonable basis for applying the generic [REDACTED] factors to Arti.

In Section 1(a) of its Initial Brief, beginning on page 13, MidAmerican asserts that application of Rate [REDACTED] phase-in adjustment and equalization adjustment factors to Arti is an equitable balancing of customer interests. This could be true only if the

²⁶ Tr. 51-52 (emphasis added).

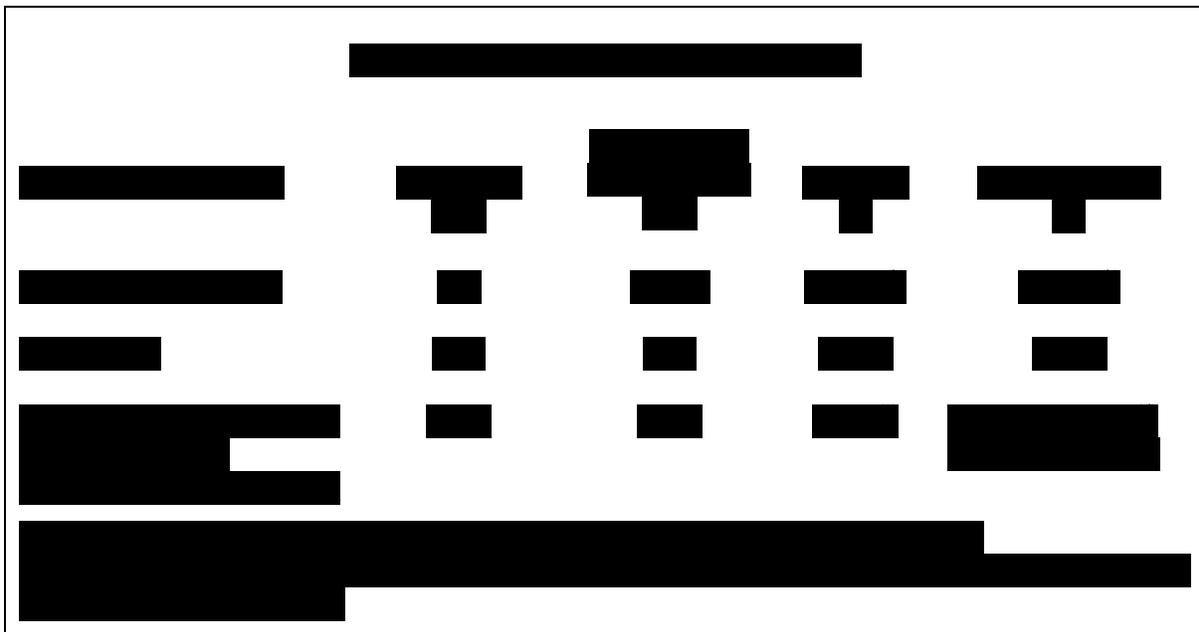
²⁷ OCA Brief, at 2.

²⁸ This occurred when OCA attorney Long asked MidAmerican witness Rea if he was aware that the issue of applicability of mitigation to a customer that did not have full 2012 calendar-year usage had been raised in another matter before the Board. Tr. 101.

²⁹ OCA Brief, at 2.

³⁰ MidAmerican Brief, at 24-26.

relevant characteristics (size, load factor, revenue per kWh, etc.) of the Rate [REDACTED] customers³¹ that were used to develop the Rate [REDACTED] phase-in adjustment and equalization adjustment factors bore some reasonable relationship to customers who, like Arti, were served under former Rate [REDACTED]. But, this obviously is not the case since the Rate [REDACTED] customer characteristics are materially different from those of Rate [REDACTED] customers. In fact, MidAmerican admits that the Rate [REDACTED] phase-in adjustment and equalization adjustment factors were developed without including any Rate [REDACTED] customer characteristics at all! (Rea, Tr. 121-122). The following summary table illustrates the significant differences between the [REDACTED] Group and Rate [REDACTED] customers:



There clearly is no resemblance between [REDACTED] customers, on the one hand, and former [REDACTED] customers (including Pinnacle and Arti), on the other. The only reason that

³¹ The Rate [REDACTED] customers (“[REDACTED] Group”) consists of customers previously served under Rates [REDACTED]. Exhibit MEB Direct, at 6.

MidAmerican could conjure up to justify application of the Rate [REDACTED] phase-in adjustment and equalization adjustment factors to Arti is that Arti was served on one of the predecessor rates to Rate [REDACTED] (namely, Rate [REDACTED]) for a short period of time (Tr. 116) prior to being served on Rate [REDACTED]. However, Arti was served on Rate [REDACTED] only for the first two months ([REDACTED]) that it was a MidAmerican customer.³² Thereafter, for the following [REDACTED] months, until Rate [REDACTED] became effective on July 31, 2014, Arti was served under Rate [REDACTED].

As shown in Appendix 1 to this Reply Brief, MidAmerican witness Rea's Confidential Exhibit CBR-1, Schedule C, which charts the size of Arti's load each month since it came on the system, clearly demonstrates that Arti's load during the first two months that Arti was on the MidAmerican system is unrepresentative of both Arti's load in July 2014 and its May 2015 load. Similarly, as shown in Appendix 2 to this Reply Brief, Mr. Rea's Confidential Exhibit CBR-1, Schedule D, which charts Arti's monthly load factor, plainly demonstrates that Arti's monthly load factor was quite low when Arti first came on the MidAmerican system because of the fast ramp-up of the load.³³ In 2014, and especially by the time that the new Rate [REDACTED] was implemented, Arti's load factor was very similar to Pinnacle's, and much higher than the load factor of the customers composing the [REDACTED] Group.

It is unreasonable and unjust to apply factors to Arti that were developed based on characteristics of customers on other rate schedules that bear no resemblance to Arti's

³² Exhibit MEB Direct, at 6-7.

³³ As both Mr. Brubaker (Tr. 38, 51) and Mr. Rea (Tr. 111) testified, the rate of Arti's load ramp-up was exceptionally rapid.

characteristics. The Rate [REDACTED] generic factors materially understate the credits that Arti should justly receive because the average revenue per kWh of the [REDACTED] Group is significantly higher than Arti's (due to their smaller size and lower load factor).

MidAmerican's reliance upon a rate ([REDACTED]) under which Arti was served only during [REDACTED] as justification for using generic Rate [REDACTED] phase-in adjustment and equalization adjustment factors should be rejected for the reasons noted. Moreover, it contradicts the testimony of MidAmerican's own lead witness.

MidAmerican witness Rea conceded that equalization and phase-in factors charged to a customer should be tied to the rate on the date final rates were implemented, and not on a rate that the customer was on years earlier. In responding to questions from Board

Member Jacobs, Mr. Rea testified as follows:

BOARD MEMBER JACOBS: Yes, I have a question. Let's think about a customer that switched rates after the rate case was filed, but before final rates were implemented. Okay?

THE WITNESS: Okay.

BOARD MEMBER JACOBS: Would the equalization and phase-in factors charged to that customer be tied to the rate on the date final rates were implemented?

THE WITNESS: Yes.

BOARD MEMBER JACOBS: And why?

THE WITNESS: Because that's when we have authorization to charge those factors, and it's based on--as I understand it, in the billing system it's based on the rate code that the customer is taking service under at the time the factors are charged, not on the rate code that the customer may have been on a couple of years earlier.³⁴

³⁴ Tr. 125-126.

The situation described by MidAmerican witness Rea is exactly the situation in which Arti finds itself. However, despite this, MidAmerican seeks to apply generic phase-in adjustment and equalization adjustment factors based on a rate that Arti was on █ months before the new rates went into effect rather than on the rate under which Arti was taking service (█) at the time the new rates became effective. MidAmerican is in the untenable position, in contradiction to its own witness's testimony, of refusing to use phase-in adjustment and equalization adjustment factors for Arti that are the same as for Pinnacle, or to use factors that are based on an Arti-specific calculation, while at the same time not having developed generic phase-in adjustment and equalization adjustment factors that are based on █ customer characteristics.

Instead of attempting to show how █ factors were appropriate for Arti, MidAmerican attempts to argue that applying different phase-in adjustment and equalization adjustment factors would reduce Arti's cost of service further than what is allowed under the Board-approved Rate █ factors.³⁵ MidAmerican has conveniently ignored the fact, however, that Arti is not disputing the principle of cost-to-serve. Arti's remedy is fully consistent with the principle of cost-based rates – in fact, under Arti's proposed factors, Arti would be at cost-based rates on the same schedule as every other customer of MidAmerican. Arti's position is simply that it should start from its actual baseline, not a contrived baseline arbitrarily chosen by MidAmerican.

MidAmerican argues that the Board's adoption of Arti's equalization adjustment and phase-in factor proposals in this complaint proceeding would upset an "equitable

³⁵ MidAmerican Brief, at 18.

balancing of customer interests” as described by MidAmerican witness Fehrman in his testimony in the Rate Case.³⁶ This argument is based on a mischaracterization of Arti’s position in this proceeding. Arti is not asking for permanently lower rates that could theoretically drive up costs for other customers in the future. Instead, Arti is asking that it receive fair treatment specifically with respect to the equalization adjustment and phase-in adjustment factors, which is a temporary situation. Moreover, it should be noted that at no point in this complaint proceeding has Arti asked that MidAmerican be required to increase rates to other customers. Since it was MidAmerican’s errors that have caused and will cause Arti to be overcharged, it is only fair that the cost of reversing those overcharges be borne by MidAmerican and not its other ratepayers.

4. The similarities between Arti and Pinnacle compel use of the Pinnacle phase-in adjustment and equalization adjustment factors.

Because of the inappropriateness of applying the ■ factors to Arti, because MidAmerican has already determined that it should charge Arti and Pinnacle the same base rates – including, importantly, the same cost-to-serve-based demand charge – and because Arti and Pinnacle have essentially the same load characteristics, the most logical and appropriate solution is to apply the Pinnacle phase-in adjustment and equalization adjustment factors to Arti.

In fact, MidAmerican witness Rea unequivocally admitted to the similarity of Arti’s and Pinnacle’s operations:

³⁶ MidAmerican Brief, at 13, 17-18.

...We know that the [Arti and Pinnacle] facilities do the same thing. They are expected in the long term to operate approximately the same way in terms of the loads that they put on the system.

If their full operations were -- if the loads associated with their full operations for both sites were known and in the 2012 test year, it is quite likely that their revenue requirement and their resulting rate would have been exactly the same, and so we chose to charge the demand charge for Arti the same as Pinnacle based on those considerations.

We do believe that in the long run, their loads that they put on the system, their load shapes, will be identical.³⁷

If the Board determines that it is unreasonable to apply the Pinnacle factors to Arti, the Board should apply Arti-specific phase-in adjustment and equalization adjustment factors. These Arti-specific factors were developed by Arti witness Brubaker in the same manner that the phase-in adjustment and equalization adjustment factors were developed by MidAmerican for other Rate █████ customers, and are detailed in Exhibit MEB-8.

MidAmerican's refusal to endorse the use of the Pinnacle factors or Arti-specific factors for Arti completely ignores the fact that by the time the █████ rates went into effect on July 31, 2014, Arti's kW demand was almost as large as Pinnacle's, and in fact has subsequently continued to grow to a level approaching █████ the level of Pinnacle's peak demand. Furthermore, by the time the █████ rates went into effect, Arti's monthly load factor was quite comparable to Pinnacle's monthly load factor.

For all of these reasons, the most logical and appropriate approach -- and the approach preferred by Arti -- is to apply the Pinnacle phase-in adjustment and equalization adjustment factors to Arti. If the Board determines that there is no

³⁷ Tr. 103.

reasonable basis for applying the Pinnacle factors to Arti, an alternate approach supported by the evidence is the application of Arti-specific phase-in adjustment and equalization adjustment factors developed by Arti witness Brubaker.³⁸

5. MidAmerican’s argument that applying the Pinnacle phase-in adjustment and equalization adjustment factors to Arti would harm other customers is unsupported by the evidence.

In the MidAmerican Brief, MidAmerican alleges that adopting Arti’s alternative phase-in and equalization factors would harm other customers.³⁹ MidAmerican provides absolutely no evidence to support this contention. Moreover, nothing could be further from the truth. There would be no impact whatsoever on other customers if the Pinnacle factors were applied to Arti. This is because the rates of other customers would not be redesigned as a result of the Board’s ruling in this complaint docket, and there would be no increase in the rates of other customers as a result of adopting Arti’s proposals in this case. The reason is simple: Arti was not on the system as a customer during the test year, and none of the significant revenues associated with Arti’s May 2015 load of approximately ██████████⁴⁰ was included in establishing the rates in the Rate Case. As a

³⁸ If the Board for some reason determines that there is no reasonable basis for applying the Pinnacle factors or the Arti-specific factors and that it is appropriate to apply generic factors to Arti, then the generic Rate ██████ factors set forth in Arti Cross Exhibit 1 should be used rather than the generic Rate ██████ factors MidAmerican has applied to Arti. Both factors are generic but, unlike the generic Rate ██████ factors, the generic Rate ██████ factors were developed using the characteristics of customers who, like Arti, were formerly served on Rate ██████ (and an equivalent rate, Rate ██████). The generic Rate ██████ factors were derived by MidAmerican in response to an Arti data request and are included in the evidentiary record as Arti Cross Exhibit 1. As MidAmerican witness Rea explained at the hearing (Tr. 123-124), Arti Cross Exhibit 1 is a derivation of generic phase-in adjustment and equalization adjustment factors based on former ██████████ customers that were developed in the same way that the phase-in adjustment and equalization adjustment factors were developed for other rates, including Rate ██████.

³⁹ MidAmerican Brief, at 16.

⁴⁰ Confidential Exhibit CBR-1, Schedule C.

result, the only impact on others of adopting Arti's proposal would be to slightly diminish the windfall margin being received by MidAmerican as a result of receiving significant new revenues from Arti that were not included in the Rate Case.

C. MidAmerican Fails To Refute The Fact That Arti Is A Single Premises, Entitled To Receive A Single Bill Across All Of Its Usage.

MidAmerican ignores plain, unequivocal tariff language setting forth the requisite standards for determining when a customer is a single premises and thereby entitled to receive a single bill across all of the customer's usage. MidAmerican's imposition of a fabricated and constantly evolving definition of what is "electrically unified" subjects Arti to unreasonable disadvantage, discrimination and prejudice. In addition, MidAmerican's failure to negotiate with Arti about its intent to charge Arti as two customers shows that MidAmerican is discriminating against Arti. MidAmerican's argument based on the facilities construction agreements is misguided and falsely characterizes those agreements.

1. MidAmerican's ambiguous tariff requires the Board to construe and resolve such ambiguity against MidAmerican.

As already discussed in the Arti Brief,⁴¹ the tariff language clearly and plainly sets forth the definition of the term "Premises" as that term is used in the applicability provision of the Rate [REDACTED] tariff, which plainly provides that the tariff is "Applicable for firm use of the Company's electric service furnished to a single Premises." Also, as more

⁴¹ Arti Brief, at 21-22 (emphasis added).

fully described in the Arti Brief,⁴² Arti qualifies as a “single Premises” – and thus is entitled to a single, totaled bill – because (1) the Arti Facility is a contiguous tract of land that is not separated by more than a highway, street, alley, *etc.* and (2) all electricity is utilized to supply buildings that are components of a unified operation.

Despite the clear language in the tariff, MidAmerican maintains that its “tariffs do not address under what specific conditions it will allow a single customer’s meters to be totaled.”⁴³ This amounts to an admission by MidAmerican that the tariffs are indefinite and ambiguous with respect to the specific conditions under which MidAmerican would allow a single customer’s meters to be totaled. Consequently, as discussed in the burden-of-proof section (Section A) of this Reply Brief, Iowa law requires that the ambiguity freely admitted by MidAmerican be construed strictly against MidAmerican, and therefore that MidAmerican’s interpretation of the tariff, including the assertion that Arti’s facility must be “electrically unified” before receiving a totaled bill, must be rejected.⁴⁴

2. MidAmerican’s imposition of a fabricated and constantly evolving definition of what is “electrically unified” subjects Arti to unreasonable disadvantage, discrimination and prejudice.

Rather than apply the definition of the tariff term “Premises” to determine whether Arti is entitled to a single, combined bill, MidAmerican has imposed the

⁴² Arti Brief, at 22.

⁴³ MidAmerican Brief, at 29.

⁴⁴ *Estate of Pearson v. Interstate Power and Light Co.*, 700 N.W.2d 333, 343-344 (Iowa 2005); see also testimony of Arti witness Arons at Tr. 198-200 (concluding with a statement that his “understanding from Counsel is that any ambiguity in the tariff is construed against the drafter in the State of Iowa.”).

fabricated term “electrically unified” on Arti, to Arti’s detriment. The origin of the term “electrically unified” remains a mystery: MidAmerican admits that neither the term “electrically unified” nor the definition of the term appears anywhere in MidAmerican’s Iowa electric tariff.⁴⁵ MidAmerican also admits that no authoritative references exist for the term “electrically unified,”⁴⁶ and that it has no written documents, policies, or definitions to support the interpretation that “electrically unified means that the electric systems throughout the entire customer operation are integrated.”⁴⁷ Moreover, MidAmerican has no records regarding how this definition was even developed.⁴⁸

The following table shows how MidAmerican’s fabricated definition of “electrically unified” has undergone numerous material changes over the course of this complaint proceeding and that MidAmerican has been changing the definition repeatedly on a *post hoc* basis in order to justify its discriminatory separate-billing treatment of Arti:

⁴⁵ Tr. 207-208.

⁴⁶ Tr. 208.

⁴⁷ Tr. 208.

⁴⁸ Tr. 208.

Date	Document	Definition
1 Effective date of July 31, 2014	Definition of “Premises” in MidAmerican Tariff, Exhibit SMA-8	“Premises means a contiguous tract of land that may be separated by nothing more than a highway, street, alley or railroad right-of-way, <u>where all buildings and/or electricity-consuming devices located thereon are owned or occupied by a single Customer or applicant for electrical service, or where all electricity delivered thereto is utilized to supply one (1) or more buildings and/or electric loads which the Company considers as components of a unified operation.</u> ” (Emphasis added.)
2 Filed June 19, 2015	Exhibit NGC Rebuttal, at 3	“Rate ICR customers that <u>have multiple points of attachment to MidAmerican’s facilities, all of which are connected to a customer operation that is electrically unified</u> are billed as a single account. MidAmerican considers that <u>electrically unified means that the electric systems throughout the entire customer operation are integrated. MidAmerican does not believe this is the case at the Arti site which has multiple buildings, and has therefore determined that it is appropriate to bill the electric service provided at each substation as a separate account.</u> ” (Emphasis added.)
3 Filed July 13, 2015	MidAmerican Cross Exhibit 8	Example of “electrical unification”: “ <u>one customer is fed from two transmission sources feeding into two separate substations that connect to one customer building that is electrically interconnected as one electric system owned by the customer.</u> ” (Emphasis added.)
4 Filed September 8, 2015	Confidential Attachment A to MidAmerican Cross Exhibit 9	“The difference between the Arti Facility and the typical customer configurations is that the customer configurations described below are <u>electrically unified through the customer owned distribution system, which connect each building into one local electrical system through low voltage.</u> ” (Emphasis added.)
5 Filed October 26, 2015	MidAmerican Brief, at 30	“ <u>For a customer operation to be integrated, the energy measured at any customer metering point must serve any load source on the customer owned distribution system.</u> Therefore, the metering configurations read a common load and it is reasonable to totalize the load.” (Emphasis added.)

The Board should reject all of MidAmerican’s attempts to impose these *post hoc* definitions and instead use the plainly stated definition of “Premises” set forth in MidAmerican’s tariff. Satisfaction of the “Premises” definition hinges on whether a customer’s buildings or electricity-consuming devices are owned or occupied by a single customer, or whether the electricity is utilized to supply buildings or electric loads that are part of a unified operation. As described more fully in the Arti Briefs, Arti satisfies

both alternative sub-parts of this definition, and MidAmerican has provided no evidence to the contrary.

That MidAmerican is discriminating against Arti is further demonstrated by comparing Arti to the other Rate [REDACTED] customers discussed in Confidential Attachment A to MidAmerican Cross Exhibit 9. Confidential Attachment A shows that Arti is: (i) the only one of four Rate [REDACTED] customers that have multiple substations not receiving a single bill; (ii) the only one of fifteen Rate [REDACTED] customers that have multiple meters not receiving a single bill; and (iii) the only one of two Rate [REDACTED] customers that have a multiple points of attachment not receiving a single bill.⁴⁹ In fact, there are more commonalities among Arti and the other Rate [REDACTED] customers than differences, which makes it more obvious that MidAmerican has singled out Arti for discriminatory treatment.

3. MidAmerican's failure to negotiate with Arti about its intent to charge Arti as two customers shows that MidAmerican is discriminating against Arti.

MidAmerican acknowledges that it has negotiated with customers regarding billing treatment, including the decision to totalize a customer's bill,⁵⁰ and that it could have negotiated with Arti for such terms in this instance. However, its failure to raise the issue of totalizing Arti's bills across the two substations, even though other Rate [REDACTED]

⁴⁹ MidAmerican observes that Arti considers this other customer a single premises despite the fact that that the other customer receives two bills – one for its operations and one for its administrative building. MidAmerican Brief, at 30, fn. 15. MidAmerican neglects to note, however, that: (i) at the other customer's facility, the administration building is on one rate schedule and the operations are on another, which means that a single bill would be impossible; and (ii) at the Arti Facility, both substations are on the same rate schedule.

⁵⁰ MidAmerican Brief, at 29.

customers receive totalized bills across multiple substations, show that Arti was subjected to discriminatory treatment.

MidAmerican witness Czachura explained that the “assumption would be that that customer is going to be charged for each meter. It is only if during the discussions with the customer it becomes clear that there needs to be an exception made for one of the two basic reasons or some other reason that we will make that exception.”⁵¹ When further questioned about the circumstances under which those exceptions arise, Ms. Czachura admitted that MidAmerican maintains discretion over whether that topic is discussed with a customer – largely because customers would not know to raise the “electrically unified” topic because the term is not documented anywhere:

BOARD MEMBER JACOBS: So then in conversations with the customer, if there’s no discussion about the definition of electrically unified and if MidAmerican Energy doesn’t talk about the opportunity for an exception, how is the customer supposed to know that they could request an exception to the rule?

THE WITNESS: I guess they would not know unless we discussed it with them. I mean typically folks are instructed to do that and to consider the exceptions that we know about. Quite frankly, I think they do that on a regular basis. I see requests off and on that come through for can’t this be totalized.⁵²

Even though discussions about totalized bills are “typically” held with customers on a “regular basis,” and MidAmerican and Arti agreed to totalize meters within a single substation, MidAmerican never raised with Arti the topic of totalizing bills across the two Arti substations. Instead, MidAmerican first informed Arti that MidAmerican was going

⁵¹ Tr. at 246.

⁵² Tr. at 247.

to charge two separate bills just before Arti amended the initial complaint in March 2015 to include the separate-billing issue. So, although MidAmerican claims that its “standard practice” “to allow certain large customers to receive totalized bills if their operations are electrically unified,”⁵³ it did not communicate such practice to Arti, thereby precluding Arti of any chance that it could satisfy such a definition across the two substations. As pointed out in Arti’s testimony, Arti might have designed its facilities differently if it had known about this criterion.⁵⁴

4. MidAmerican’s argument based on the facilities construction agreements is misguided and falsely characterizes those agreements.

MidAmerican’s reliance on the facilities construction agreements (“*FCAs*”) to dictate the electrical usage or billing of the Arti Facility is misplaced. As MidAmerican itself admits, the purpose of the *FCAs* is “to determine how the construction of new facilities will be financed consistent with Board rules.”⁵⁵ In a similar vein, MidAmerican argues that “there are two separate *FCAs* for each phase and the revenue used to determine the need for a customer contribution to finance the construction of each facility has been, and continues to be, considered separately.”⁵⁶ Clearly, the *FCAs* are solely about construction and customer contribution to construction financing, not about billing for electrical usage, which is governed solely by the Electric Service Agreement (“*ESA*”). There is only one *ESA* and that *ESA* governs all electric service provided to

⁵³ MidAmerican Brief, at 29.

⁵⁴ Tr. at 157.

⁵⁵ MidAmerican Brief, at 27.

⁵⁶ MidAmerican Brief, at 28.

the Arti Facility.⁵⁷ This fact alone warrants a single bill. The FCAs only govern construction and payback for construction costs, not payment for electricity usage.

In addition, MidAmerican misrepresents the FCAs. MidAmerican alleges that Arti “negotiated and entered into two binding agreements which authorize separate billing for the two substations.”⁵⁸ This statement is patently false. Review of the two FCAs⁵⁹ cited by MidAmerican in support of this allegation clearly demonstrates that they do not authorize separate billing for each of the substations. Rather, they provide that the Pony Creek Substation’s meters need to be totalized and that the Southland Substation’s meters need to be totalized; however, they are silent on whether the Pony Creek Substation’s meters and the Southland Substation’s meters need to be totalized in aggregate. Thus, there is no explicit authorization for separate billing in the FCAs.

Moreover, despite MidAmerican’s claim to the contrary,⁶⁰ during the negotiation of the FCAs Arti was not aware that MidAmerican intended to bill through separate accounts for each substation. Indeed, there is nothing in the evidentiary record to indicate that during the negotiation process Arti was aware that it would be billed through two separate accounts; in particular, none of the evidentiary cites offered by MidAmerican in support of its claim⁶¹ supports a finding that during the negotiation process Arti was aware that it would be billed through two separate accounts. As Mr. Arons explains in his testimony, Arti first heard the term “electrically unified” upon review of

⁵⁷ Exhibit SMA Reply, at 7.

⁵⁸ MidAmerican Brief, at 27.

⁵⁹ MidAmerican Cross Exhibit 5; MidAmerican Cross Exhibit 6.

⁶⁰ MidAmerican Brief, at 28.

⁶¹ Tr. 177; MidAmerican Cross Exhibit 5; MidAmerican Cross Exhibit 6.

MidAmerican witness Czachura's rebuttal testimony filed in this proceeding on June 19, 2015.⁶²

CONCLUSION

For the foregoing reasons, Arti respectfully renews its request that the Board reject the equalization and phase-in factors MidAmerican applied to Arti and require MidAmerican to adopt the Pinnacle factors for application to Arti. If the Board decides not to apply the Pinnacle factors, Arti requests that the Board require MidAmerican to apply to Arti the alternate Arti-specific factors developed by Arti witness Brubaker.⁶³ These alternate Arti-specific factors were developed specifically for the Arti load, employing the same methodology MidAmerican used to develop the equalization and phase-in factors applied to Pinnacle and to the other customers who were eligible for Rate █ rate at the time of the Rate Case.⁶⁴

Arti also renews its request that the Board find and determine that the Arti Facility is a single Premises and a unified operation and, based on those findings, require MidAmerican to consolidate power delivered through the Pony Creek Substation and through the Southland Substation, and as a result bill Arti via a single consolidated bill for the two substations.⁶⁵ A single consolidated bill would also require MidAmerican to charge Arti for electric service based on the combined peak demand of the unified Arti

⁶² Tr. 193.

⁶³ Exhibit MEB-8.

⁶⁴ If the Board for some reason were to determine that there is no reasonable basis for applying the Pinnacle factors or the Arti-specific factors and that it is appropriate to apply generic factors to Arti, then the generic Rate █ factors set forth in Arti Cross Exhibit 1 should be used rather than the generic Rate █ factors MidAmerican has applied to Arti, because the generic Rate █ factors are based upon the former rate under which Arti was taking service prior to the Rate Case, whereas the generic Rate █ factors are not.

⁶⁵ As a reminder, Arti is not requesting consolidation of Arti and Pinnacle billings. Tr. 178.

Facility, to charge Arti a single customer charge, and to apply the same rate equalization factor and phase-in factor to the consumption delivered through each substation.

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Respectfully submitted,

/s/ Philip E. Stoffregen

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