

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

<p>IN RE:  ARTI, LLC,                      Complainant,            vs.  MIDAMERICAN ENERGY COMPANY,                      Respondent.</p>	<p style="text-align: center;">DOCKET NO. FCU-2014-0016</p>
<p>ARTI, LLC and PINNACLE ENGINEERING, LLC,                      Complainants,            Vs.  MIDAMERICAN ENERGY COMPANY,                      Respondent.</p>	<p style="text-align: center;">DOCKET NO. FCU-2015-0003</p>

**ORDER ADDRESSING COMPLAINTS**

(Issued March 7, 2016)

On July 31, 2014, the final rates approved by the Utilities Board (Board) in Docket No. RPU-2013-0004 for electric service provided by MidAmerican Energy Company (MidAmerican) became effective. The final rates approved by the Board included a three-year phase-in of the overall rate increase which resulted in a Phase-In (PI) factor for customers and a ten-year Equalization (E) factor that was designed

to eliminate the different rates charged by MidAmerican to customers in different Rate Zones. This order addresses two complaints regarding the rates approved by the Board in Docket No. RPU-2013-0004. The complaint in Docket No. FCU-2014-0016 alleges that the PI and E factors charged to Arti, LLC (Arti), are not just and reasonable and that Arti should be issued one bill for electric service at its facility instead of two bills as currently issued by MidAmerican. The complaint in Docket No. FCU-2015-0003 filed by Arti and Pinnacle Engineering, LLC (Pinnacle), alleges that the first year of the equalization period should be a full 12 months rather than the period from July 31, 2014, to December 31, 2014.

On February 5, 2016, the Board held an open meeting at which the issues in the two complaint cases were addressed. This order is the Board's final decision on these issues.

#### **DOCKET NO. FCU-2014-0016**

On November 21, 2014, the Board issued an order opening a formal complaint proceeding, Docket No. FCU-2014-0016, to address the complaint filed by Arti against MidAmerican. On April 13, 2015, the Board issued an order establishing a procedural schedule and setting a hearing for August 18, 2015. Arti filed the prepared direct and reply testimony and exhibits of Maurice Brubaker and Samuel Arons in support of the complaint. MidAmerican filed the prepared rebuttal testimony and exhibits of Naomi Czachura and Charles Rea in support of its position.

The hearing was held as scheduled for August 18, 2015, and was continued to September 15, 2015, for the taking of further evidence. At the conclusion of the

hearing on September 15, 2015, the parties requested the Board establish a briefing schedule. On September 17, 2015, the Board issued an order which, among other things, established a briefing schedule. Initial briefs were filed by MidAmerican, Arti, and the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice. Reply briefs were filed by MidAmerican and Arti. OCA did not file a reply brief.

A portion of the evidence filed in this docket was granted confidential treatment by the Board. In addition, the Board denied confidential treatment of certain information. In an order issued August 12, 2015, the Board stayed the orders denying confidential treatment and allowed the hearing and testimony to be presented as if the requests for confidential treatment had been granted in their entirety. Once the final order is issued regarding the Arti complaint, the Board will issue an order addressing the stay and reconsideration of the denial of confidential treatment.

There is no dispute that Arti owns and operates a facility that receives electric service from MidAmerican and that Pinnacle, an affiliate of Arti, also owns and operates a facility that takes electric service from MidAmerican. The positions of the parties regarding the two issues raised by Arti in Docket No. FCU-2014-0016 are addressed below.

**A. What PI and E Factors Should Be Charged to Arti?**

**1. Arti Initial Brief**

Arti states that it has disputed, and continues to dispute, the reasonableness and fairness of all bills from MidAmerican for electric service received on and after

September 3, 2014. Arti states that it has paid the undisputed portion of these bills during the pendency of this complaint and will continue to do so. In the brief, Arti explains the history of this complaint, which originated when Arti filed an informal complaint with the Board. The complaint was then docketed as a formal complaint proceeding. A procedural schedule was not initially established to allow Arti and MidAmerican the opportunity to negotiate a settlement of the issues raised by Arti. Once it became evident that a settlement could not be reached, the Board established a procedural schedule and set the complaint for hearing.

Arti explains that it began taking service under a rate that was based upon the initial usage of electricity at the Arti facility. When Arti's usage increased significantly, MidAmerican switched Arti to the same rate class as Pinnacle, based upon the increased demand for electricity at the Arti facility. When final rates became effective on July 31, 2014, the old rate class was no longer available. Arti was included in the same new rate class as Pinnacle. The evidence shows that Arti and Pinnacle are charged the same base demand and energy rates under the final rates. Arti states that the base demand rate charged to Arti and Pinnacle is a custom rate that MidAmerican developed for Pinnacle based on the cost-of-service for Pinnacle and Arti is charged the same rate. Therefore, Arti should be charged the same PI and E factors as Pinnacle.

Arti states that in the final order in Docket No. RPU-2013-0004, the Board approved a PI factor which is applied to the rate for electric service for the purpose of phasing in MidAmerican's rate increase approved by the Board. The PI factor is billed on a dollar-per-kWh (kilowatt-hour) basis and is a function of a customer's

former rate schedule. In the final order, the Board also approved an equalization factor (E) that is applied to the rate for electric service for the purpose of moving all rates to the cost-of-service over a ten-year period. The E factor is billed on a dollar-per-kWh basis and, according to Arti, is also a function of a customer's former rate schedule.

Arti states that MidAmerican on July 31, 2014, began billing Arti under the same rate schedule as Pinnacle; however, MidAmerican applied generic PI and E factors to Arti that had been developed for a different rate class rather than the PI and E factors charged to Pinnacle. Arti contends that the PI and E factors MidAmerican decided to charge Arti are not the appropriate PI and E factors for Arti since Arti was never a member of that other rate class and these factors are different than the factors applied to Pinnacle. Arti contends that the PI and E factors charged by MidAmerican are unjust and unreasonable and were developed for customers taking service under wholly different rates and with significantly different load and revenue characteristics than Arti or other customers in Arti's current rate class. Arti argues that it is uniquely situated in a position that was not adequately addressed in Docket No. RPU-2013-0004 and that the PI and E factors applied to Arti do not address its unique position.

Arti argues that MidAmerican should have considered three categories of customers rather than the two categories used by MidAmerican to develop the PI and E factors. Arti states that MidAmerican developed PI and E factors for two categories of customers: (1) customers that took service during the entire test year (2012) and met the requirements for a rate class during the test year and (2) new

customers that began taking service during or after the test year or connected to the system after the effective date of the final rates, July 31, 2014. Arti contends MidAmerican should have developed a third category of PI and E factors for customers like Arti that became customers after the 2012 test year but before final rates were implemented on July 31, 2014.

Arti says that MidAmerican addressed the first two categories in setting the current PI and E factors, but did not properly address the third category since it lumps customers in the third category with the second category and applies the second category PI and E factors to customers in the third category. To address the failure of MidAmerican to establish separate PI and E factors for the third category, Arti proposes that the most reasonable solution would be to apply the same PI and E factors that have been applied to Pinnacle. In the alternative, Arti contends that if the Board does not find the evidence sufficient to apply the same PI and E factors to Arti that have been applied to Pinnacle, then custom PI and E factors applicable to Arti should be developed.

## **2. MidAmerican Initial Brief**

MidAmerican states that the final rates approved by the Board include the three-year revenue phase-in factors and equalization factors based on a ten-year equalization period. MidAmerican argues that the burden of proof in a proceeding before the Board falls on the complainant and the complainant must establish that the rate is unjust and unreasonable. MidAmerican contends that Arti has failed to meet its burden of proof in this proceeding and therefore the PI and E factors MidAmerican has chosen to apply to Arti should be upheld.

In support of its argument, MidAmerican states that the underlying principles used in developing rates in the rate case were developed and approved to address any rate shock that might occur because of the approved rate increases.

MidAmerican states that the new rates were designed to represent the cost to serve customers and that the PI and E factors were designed to gradually transition existing customers to the new rates. MidAmerican contends that applying PI and E factors other than those approved by the Board for Arti would undermine the principle of cost-based rates for all customers.

MidAmerican contends that applying the Pinnacle PI and E factors to Arti is not a reasonable solution because Pinnacle's PI and E factors are based on Pinnacle's load and the average rates that Pinnacle was paying during the test year. The average rates Arti paid during 2013 and 2014 are not comparable to Pinnacle's test year average rates. Thus, because the PI and E factors are designed to gradually transition a customer from the old rates to the new cost-based rates, it is unreasonable to apply factors designed for a load and average rate situation that is different than Arti's. With regard to specific Arti-developed PI and E factors, MidAmerican argues that Arti's proposed annualized load information falls outside the test year making it improper to consider in determining PI and E factors and conflicts with the goals of the rate case since the rates would move Arti's rates further away from its cost-of-service.

MidAmerican then contends that Arti has failed to show that it will be subject to rate shock and Arti has failed to show how a rate mitigation analysis should be calculated for Arti. MidAmerican asserts that Arti does not meet the threshold

requirements under the rate mitigation guidelines adopted by the Board Docket No. RPU-2013-0004 and there is no evidence to support a rate mitigation analysis under the circumstances.

**3. OCA Initial Brief**

OCA takes no position on the factual disputes between the parties. However, OCA expresses concern over MidAmerican's strict adherence to the test year as a base for testing the applicability of rate mitigation principles. OCA states that although MidAmerican's methods of testing for mitigation were set forth by MidAmerican, they were not explicitly accepted by the Board.

**4. Arti Reply Brief**

In its reply brief, Arti states that MidAmerican's argument that Arti has the burden of proof to establish that the approved rate is unjust and unreasonable is not correct. Arti argues that the case cited by MidAmerican is the standard of proof for judicial review of Board decisions and not the standard applied to a formal complaint before an administrative agency. Arti contends that the Board is the expert with regard to utility regulation and MidAmerican is not entitled to any burden of proof presumption. Arti also argues that the tariff approved by the Board is ambiguous and the tariff must therefore be strictly construed against MidAmerican. Arti argues that the justness and reasonableness of a tariffed rate is a legal question and not a question of fact.

Arti asserts that the complaint is to correct the arbitrary application of PI and E factors by MidAmerican and to establish correct PI and E factors consistent with MidAmerican's methodology. Arti asserts that the proposed PI and E factors will not

reduce Arti's cost-of-service further than what was allowed under the approved rate schedule PI and E factors. The PI and E factors are designed to phase in the rate increase approved by the Board. According to Arti, the phase-in was evenly applied to all customers and the equalization factors do not change the cost-of-service or alter the ending rate value.

Arti asserts that the calculation made by its witness Maurice Brubaker was to annualize Arti's load to obtain a representative value. This calculation is not for the same purpose as pro forma adjustments in rate cases regarding revenue requirement issues. Arti explains that the annualization of the load is not tied to the test year in the rate case since Arti was not a customer during the test year. Arti suggests that its load is unique, it has ramped up its load significantly from the beginning, and its load has continued to increase. Using the earlier load to set PI and E factors would produce an extremely distorted result since the current load bears no resemblance to the load when Arti first began operations.

Arti states that it is not asking for permanent lower rates that could theoretically drive up costs for other customers, but is asking that it receive fair treatment specifically with respect to the PI and E factors, which is a temporary situation. Arti considers it appropriate for MidAmerican to charge it the same PI and E factors as Pinnacle since MidAmerican charges Arti the same base rates as Pinnacle. Arti states that if the Board determines that it is unreasonable for MidAmerican to apply the Pinnacle factors to Arti, MidAmerican should be directed to apply Arti-specific factors as developed by Brubaker.

## **5. MidAmerican Reply Brief**

MidAmerican argues that the record supports use of the PI and E factors charged Arti. MidAmerican states that a customer's load characteristics are the defining factor in determining the PI and E factors, especially for determining or estimating test year revenues for purposes of designing rates. The exact size of a customer is a defining factor in the overall average price that a customer would pay and MidAmerican Exhibit CBR-1 shows that Arti and Pinnacle did not have similar load characteristics during the relevant time period.

MidAmerican states that the evidence does not show that the PI and E factors charged Arti are higher than the PI and E factors charged to customers under the same rate class as Arti and Pinnacle. The evidence shows that one customer in that rate class has identical factors and two customers have similar factors. (Arti Cross Exhibit 1, at 2, 4, 5). MidAmerican points out that Exhibit CBR Reply, page 11, line 236 through page 12, line 244, describes how Pinnacle's rate is expected to change through the end of the equalization period and this is the expected effect on rates as a result of the rate equalization process.

MidAmerican argues that Arti's overall average rate under the PI and E factors applied by MidAmerican through the end of the equalization period demonstrates that the PI and E factors applied to Arti are based on rates that are similar to the rate Arti actually paid during 2013 and 2014 and that the PI and E factors charged Arti reasonably transition Arti from its old rate to the new rate.

MidAmerican states that the fact that Arti and Pinnacle pay the same energy and demand charges has no correlation to how the PI and E factors were developed

and applied to different customers. MidAmerican applied the same energy and demand rates to Arti and Pinnacle because the two facilities' electric load shapes are similar going forward. MidAmerican points out that the average rate paid by Pinnacle during the 2012 test year is a very low rate. This is the primary driver for the significant negative E factor applied to Pinnacle. The overall average rate Arti paid in 2013 is significantly different. Arti's load grew in 2014 and the average rate paid by Arti was less for that period. This demonstrates that rates paid by customers varied by usage.

MidAmerican argues that use of Arti-specific factors is unreasonable since only test year data is allowed to develop rates. The evidence does not support Arti's position that its rates are not transitioning properly from its former rate to its cost-of-service based rate. Test year data shows that one former customer in the Pinnacle rate class has an E factor identical to the E factors applied to Arti. MidAmerican contends that this evidence supports applying the current PI and E factors to Arti and reflects a reasonable transition from previous industrial rates.

#### **B. Board Analysis and Decision**

Arti claims that the generic PI and E factors applied by MidAmerican are unjust, unreasonable, and discriminatory. To substantiate its claim Arti points out that the generic PI and E factors were developed for customers who have significantly lower load characteristics than Arti. MidAmerican contends that the PI and E factors were approved by the Board in Docket No. RPU-2013-0004 and thus more closely represent the goals of that rate case, transitioning to cost-of-service

based rates. MidAmerican also points out that Arti took service for two months under one of the rates used to develop the generic PI and E factors applied to Arti.

After reviewing the evidence and considering how the PI and E factors for the relevant rate classes were developed, the Board finds that Arti's circumstances are unique and that the order establishing the PI and E factors in Docket No. RPU-2013-0004 did not specifically address Arti's unique situation. The Board understands that the purpose of equalization is to transition customers from the rates they were paying immediately before final rates went into effect in Docket No. RPU-2013-0004 to the fully-equalized rates approved by the Board. For most of MidAmerican's customers, this was straightforward. However, for the new service under which Arti and Pinnacle are receiving service, MidAmerican performed an individual cost-of-service study for each of the customers that received service during the test year to transition each customer to the new rate class. MidAmerican also developed customer-specific PI and E factors for these customers. Since no customer remained in the former rate class, no generic factors were derived for that former rate class. Arti was served under the former rate class immediately prior to the implementation of final rates; therefore, the Board considers the appropriate PI and E factors for Arti would be generic rates associated with that former rate class, which were not developed during the rate case.

Arti Cross Exhibit 1 contains generic PI and E factors which MidAmerican developed based on the customers in the former rate class at the time the new rates became effective. The specific factors identified in that exhibit are confidential and will not be included in this order. The Board considers these generic PI and E

factors to be more appropriate for Arti than either the factors applicable to Pinnacle or the generic factors that MidAmerican has been applying to Arti. MidAmerican is unable to create customer-specific factors for Arti since Arti was not a customer during the test year; however, by applying the generic factors from the former rate class under which Arti was taking service immediately prior to the effective date of the current rates, MidAmerican will be treating Arti the same as it treats its other customers. Generic PI and E factors for Arti's prior rate class will result in rates that are reasonable and better reflect Arti's unique circumstances.

The PI and E factors to be charged Arti are presented in Arti Cross Exhibit 1, filed September 11, 2015, which includes MidAmerican's response to Arti Data Request 27. Arti Cross Exhibit 1 contains MidAmerican's six-page response. Page 1 of the response provides the PI and E factors to be applied to Arti. The factors are listed for the years of the equalization period and the phase-in period.

The Board does not agree with MidAmerican's burden of proof argument for a complaint filed with the Board. The initial burden is on Arti, or any complainant, to present sufficient evidence to support its claim to withstand a motion to dismiss. Upon this initial showing, the complaint is set for hearing and evidence is presented to the Board. The Board is then required to weigh the evidence presented to reach a decision on the allegations made in the complaint.

In this case, the Board must determine the proper PI and E factors to be charged to Arti. The PI and E rates are not the final rates that Arti will pay, but are the rates that Arti will pay going forward under the three-year phase-in of the rate

increase approved for MidAmerican in Docket No. RPU-2013-0004 and the rates Arti will pay over the ten-year equalization period.

**C. Whether Electric Power Delivered to Arti Should be Consolidated for Billing Purposes.**

**1. Arti Position**

Arti contends that it is entitled to a single bill for electric service provided by MidAmerican to its premises, which includes multiple buildings. In support of its contention Arti points to MidAmerican's tariff that states the rate is "[a]pplicable for firm use of the Company's electric service furnished to a single Premises." Arti claims that its facilities meet the criterion in the tariff to qualify as a single premises, and notes that with respect to determining eligibility for this rate MidAmerican admits that Arti's facilities are considered a single premises. Because of its qualification as a single premises, Arti concludes that it should receive a single bill.

Arti states that MidAmerican's justification for charging Arti two separate bills relies on the fact that determining whether a customer with multiple points of attachment will be billed as a single account or multiple accounts depends on whether all of the customer's facilities are "electrically unified." MidAmerican defines electrically unified as meaning that the electric systems throughout the entire customer operation are integrated electrically. Arti claims that this criterion has replaced the one set forth in MidAmerican's tariff, the term "unified operation." Arti objects to the application of this new criterion, noting that the term "integrated" is never defined and that there is no documentation that establishes the use of "electrically unified" as a criterion in the determination for billing purposes or defines

the term "electrically unified." Arti further alleges that it was never put on notice about this specific criterion by MidAmerican.

Further, Arti claims that MidAmerican has continued to adapt the criterion used in determining whether to provide Arti with a single bill. Arti claims that in the course of this contested case MidAmerican introduced a requirement that in order to receive a single bill a customer's system must be electrically unified through a customer-owned distribution system. Arti contends that MidAmerican has created new definitions throughout this proceeding, making it difficult for Arti to plan its operations.

Arti argues that 15 MidAmerican customers in the same rate class as Arti have multiple points of attachment, like Arti, and each of those 15 are billed as a single account. Arti claims that it is sufficiently similar to those 15 customers to warrant similar billing treatment. Arti argues that MidAmerican bills those other customers under a single account regardless of the use of one or multiple substations. Arti also claims that the electric service provided by MidAmerican is governed by a single Electric Service Agreement which requires MidAmerican to provide all electric service to Arti's premises and thus it follows that Arti should be billed under one account.

Arti points out that for each electric bill it will be billed a demand charge that would be based upon the coincident maximum demand measured simultaneously across the transformers in the two substations that serve Arti and the demand charge would be determined by the coincident maximum demand across the transformers in both substations. If the coincident maximum demand of the two

transformers does not occur simultaneously, then the sum of the two demand charges on the two bills would be greater than the demand on the single bill. Issuing two bills to Arti will result in a significant financial impact annually.

Arti states that if load is ever moved between substations because of transformer outages, either forced or planned, the cost difference in the two billing schemes would increase significantly. Arti claims that under this scenario, the load could appear under the monthly maximum demand for both substations, resulting in double counting. Arti claims this could also occur as a result of normal operations and maintenance. Arti claims that for each 10 MW of additional load moved between substations it would incur additional demand charges. In addition to the demand charges, the basic monthly service charge would be charged to Arti twice if separate billing is allowed.

## **2. MidAmerican Position**

MidAmerican contends that Arti should be billed separately for each substation based on freely negotiated facilities construction agreements which address how the meters at each substation will be billed. MidAmerican notes that its tariffs do not address under what conditions it will allow a customer's meters to be totaled, asserting that if the tariffs are silent on the issue, MidAmerican is free to negotiate with a customer regarding billing treatment as long as all customers are treated consistently. MidAmerican concludes that its proposed billing treatment is reasonable.

Further, MidAmerican states that standard practice is to bill each customer meter separately, allowing exceptions for large customers to receive totaled bills if

their operations are electrically unified, essentially creating a single load. In order to be electrically unified the electric systems throughout the entire customer operation have to be integrated. MidAmerican states that for a customer's operation to be integrated the energy measured at any customer metering point must be able to serve any load source on the customer-owned distribution system.

MidAmerican states that Arti is served by two substations and the energy measured from either substation will not connect to a common unified electrical load on Arti's premises. MidAmerican claims that the Arti-owned distribution does not tie or integrate its electrical load sources such that any single electrical load source can be served from either of the separately metered substations. Because not all of the load on Arti's premise can flow through either substation, MidAmerican concludes that it is unreasonable to aggregate the energy and demand at the two substations for billing purposes.

#### **D. Board Analysis and Decision**

Arti contends that under MidAmerican's tariffs there are two ways to qualify a premises to receive a single bill for electric service, even if the customer has more than one building or facility at a location. Arti states that one way is as a contiguous tract of land where all buildings and/or electricity-consuming devices are owned or occupied by a single customer. A second way is a site at which electricity is utilized to supply one or more buildings and/or electrical loads that MidAmerican considers to be components of a unified operation.

Arti contends that it meets the first criterion since the Arti facility is on a contiguous tract of land that is not separated by more than a highway, street, alley,

railroad right-of-way, or similar obstructions, and all of the buildings and electricity-consuming devices located on the site are owned or occupied by Arti. Arti contends it meets the second criterion since all electricity delivered to Arti is utilized to supply buildings that are components of a unified operation. The Arti facility consists of several buildings which carry out the functions of the operations and the buildings are inter-networked. According to Arti, it would not be possible to separate the functions of the facilities and the two substations serving the Arti facility are interconnected to function as a single unit. This means there is unified supply of electricity provided to a unified operation.

Arti argues that MidAmerican is not treating Arti the same as similar customers taking service under the same rate as Arti. According to Arti, these similar customers have multiple points of attachment to the MidAmerican system but are billed through a single bill. Arti argues that MidAmerican's rationale for single billing a customer with multiple meters at the same premises should also apply to Arti's facilities that receive service from two substations.

The Board has reviewed the evidence regarding this issue and does not consider the testimony of MidAmerican's witness Naomi Czachura regarding the criterion for being billed a single bill to be inconsistent. Czachura testified that MidAmerican looks at whether a customer has a single distribution system through the customer's facility and whether MidAmerican is measuring a single load. (Tr. 222). According to Czachura's testimony, MidAmerican looks at each facility on a case-by-case basis. The criterion, regardless of how it is characterized, requires that the facilities be connected on the customer's side of the meter, or meters, through a

distribution system that makes the facilities "electrically unified" or a "unified operation." Arti's evidence shows that the Arti buildings that are located on Arti's premises are not connected by an electric distribution system. Regardless of whether Arti is served by one or two substations, or whether one substation can supply the load required by the Arti facility, the buildings on the Arti premises are not connected by an electric distribution system and therefore do not qualify for a single bill.

In addition, if Arti's facilities met the criterion for a premises that would not weigh toward how Arti is billed. The other arguments raised by Arti are not relevant to the issue of whether Arti should be charged a single bill. To receive a single bill, Arti will need to connect its buildings with an electrical distribution system.

#### **DOCKET NO. FCU-2015-0003**

On March 19, 2015, Arti and Pinnacle filed with the Board a formal complaint proceeding to investigate MidAmerican's implementation of the Clause E factors from Docket No. RPU-2013-0004, alleging that MidAmerican failed to comply with the final decision issued by the Board. Arti and Pinnacle claim that Clause E does not impose rate equalization over ten years (120 months) as ordered by the Board, but rather the first year of equalization is based on the remainder of the calendar year after the rate case was concluded and compliance tariffs were approved. As applied, the first year of equalization is from July 31, 2014, through December 31, 2014, rather than a full 12-month period.

On March 26, 2015, MidAmerican filed an answer to the complaint and motion to dismiss. The Board denied the motion to dismiss by order issued April 29, 2015. The parties agreed that a hearing was not necessary to address the issue raised by the complaint and agreed to file an appendix containing stipulated facts or exhibits with any additional items being appended to their respective briefs. The Board set a procedural schedule by order issued July 29, 2015, based on the timelines agreed to by the parties.

On October 19, 2015, Cloverleaf Cold Storage, CF Industries, Gelita USA, Inc., Nor-Am Cold Storage, and Zoetis (collectively, NIE) filed for permission to file an amicus brief. The brief accompanied the request. The brief was generally supportive of the positions taken by Arti and Pinnacle. NIE filed an amendment to the brief on October 19, 2015. On October 27, 2015, MidAmerican responded to NIE's request to file an amicus brief and requested an opportunity to respond to the brief if it was accepted by the Board. On November 5, 2015, Arti filed a request that the Board deny MidAmerican's request to respond to NIE's amicus brief. On November 10, 2015, NIE withdrew its amicus brief. The Board accepted the withdrawal of the amicus brief by order issued November 17, 2015.

**A. Arti and Pinnacle Initial Brief**

Arti and Pinnacle operate facilities that are located in the same MidAmerican rate zone. MidAmerican provides service to both companies pursuant to a rate schedule that first became effective on July 31, 2014. PI and E factors are applied to the rates that became effective on July 31, 2014. The allegation in this complaint is that the compliance tariff approved by the Board on July 31, 2014, at the conclusion

of Docket No. RPU-2013-0004 does not comply with the order approving rates issued March 17, 2014. Arti and Pinnacle contend that the order established a ten-year equalization period and the first year established in the approved tariffs was shortened to five months, July 31 through December 31, 2014.

Arti and Pinnacle point out that the Board stated that the purpose of the ten-year equalization period was to mitigate rate shock and balance the interests of customers who need to have time to adjust to the new rates. The complainants also point out that MidAmerican witness Rea's testimony in the rate case showed that the equalization period would last a full 10 years, or 120 months. (Tr. 1131-1132). Arti and Pinnacle state that the Board never referred to a "calendar year" in its March 17, 2014, order and the term does not appear in the settlement agreement approved in that order.

Arti and Pinnacle state that despite all the references in MidAmerican's testimony and exhibits to a ten-year mitigation plan, Clause E of the compliance tariff shortens the first year of rate equalization to five months. Arti and Pinnacle argue that this shorter period does not further the Board's goals of limiting the impacts to the hardest-hit customer groups and to mitigate rate shock. Arti and Pinnacle do not dispute the timing related to the phase-in factor.

**B. MidAmerican Brief**

MidAmerican states in its reply brief that MidAmerican applied Clause E to electric bills beginning July 31, 2014, and began billing year two equalization factors on January 1, 2015, consistent with the timeline contained in Clause E in MidAmerican's tariff. MidAmerican said that Arti and Pinnacle believe the 9.4 year

equalization period is not “just and reasonable,” but have not carried their burden of proof on this issue.

MidAmerican argued that the Board allowed Clause E to go into effect on July 31, 2014, establishing the equalization period as a calendar year, not a full ten-year period, 120 months. MidAmerican stated that it never presented testimony that the equalization factors would apply every month of every year for 10 years; in fact, customers would be transitioned to the final rate by the beginning of year 10 when the equalization factor becomes zero. Also, MidAmerican noted it was clear that Clause E would begin the date final rates were approved by the Board.

MidAmerican pointed out that Arti and Pinnacle are being charged less than the cost to serve them and the fact that Clause E is not applied for a full ten-year period is not indicative of an “overcharge” but rather reflects a reasonable term for a discount designed to transition customers paying rates that are below the cost-of-service to rates that are based on the cost-of-service approved by the Board. According to MidAmerican, if Arti’s and Pinnacle’s arguments were adopted, other customers would have to pay above cost-of-service rates for a longer period of time in order to achieve revenue neutrality.

While MidAmerican prepared many rate impact calculations for each cost-of-service alternative presented in the rate case, these calculations, done on a 12-month basis, are not evidence that Clause E was meant to be implemented on a 12-month basis. MidAmerican stated that the rate impact analysis was performed using a full twelve months because there are seasonal differences in electric rates.

MidAmerican stated if rate impact analyses are not provided on an annual basis, the effects of proposed rate changes will not reflect the seasonal differences.

MidAmerican points out that the Board thoroughly reviewed its compliance tariffs, pointing out that some data correction was necessary. However, MidAmerican states that the Board did not require MidAmerican to refile Clause E to reflect annualized equalization factors. MidAmerican says the complaint is simply a collateral attack on the Board's March 17, 2014, order and approved tariff.

MidAmerican argues that Arti and Pinnacle are requesting the Board change a rate outside of a general rate case.

**C. Arti and Pinnacle Reply Brief**

Arti and Pinnacle argue they have met their burden in showing MidAmerican's rates are unjust and unreasonable by showing that the equalization period violates the Board's March 17, 2014, order. Arti and Pinnacle stated that MidAmerican is citing burden of proof cases for judicial review proceedings in an attempt to show that they have not met their burden. Arti and Pinnacle noted the cases cited relate to presumptive standards for judicial review of the Board's decisions, not the standards that apply to Board decisions in complaint cases.

Arti and Pinnacle repeat the argument that the Board's decision was based upon a full ten-year, or 120-month, equalization period and that the Board's approval of the compliance filing was conditional since the tariff was approved subject to complaint or investigation. Arti and Pinnacle argued the complaint is not a collateral attack on the Board's order since they are alleging that the compliance tariffs do not comply with the Board's March 17, 2014, order.

**D. Board Analysis and Decision**

The Board does not consider the allegations made by Arti and Pinnacle in this complaint to be a collateral attack on the Board's March 17, 2014, order. Arti and Pinnacle are not attacking the validity of the Board's order, but are alleging that the order has been interpreted incorrectly with regard to implementation of the Clause E factors and the rates approved effective July 31, 2014, are not consistent with the order.

The Board does not agree with the allegations regarding the interpretation of the ten-year period established for the equalization period. The Board reviewed and approved the compliance tariff to be effective July 31, 2014, which implemented year one of the equalization period over five months. Clause E of the compliance filing clearly showed the first year's equalization period would be from July 31, 2014, through December 31, 2014. None of the parties in Docket No. RPU-2013-0004 challenged the compliance tariffs reflecting the shortened year-one period.

In the March 17, 2014, order, the Board did not define the exact period described as a ten-year equalization period for moving the rates in the different zones to cost-of-service rates. Since compliance tariffs could have been effective in an earlier month, such as April or May, the first equalization period could have been for eight or nine months instead of five. This was understood by the Board and the parties. Because rehearing was requested, compliance tariffs were delayed until the Board addressed the issues raised on rehearing. The Board in approving compliance tariffs effectively determined that five months was a sufficient period for the first year's equalization.

Arti and Pinnacle argue that the compliance tariffs were approved subject to complaint or investigation. This is true with all tariff approvals; however, allowing customers to file a complaint regarding approved rates does not mean that the allegation that the rates are not just and reasonable is correct. Arti and Pinnacle also have not shown that the compliance rates approved by the Board are not just and reasonable or that they are inconsistent with the Board's March 17, 2014, order. In addition, there is no evidence that there has been a change in circumstances, such as an intervening rate case, that would justify revisiting the equalization period approved by the Board.

Arti and Pinnacle are paying electric rates that are below the cost-of-service and over the ten years Arti and Pinnacle will be subsidized by customers who are paying more than the cost to serve those customers. The Board used the equalization period to mitigate rate shock, but this equalization period should be completed as quickly as possible to eliminate the rate subsidies. The ten-year equalization period ordered by the Board, with the first year shortened to five months, is a reasonable balance between the interests of customers whose rates are increasing over the equalization period and those customers whose rates are decreasing over the equalization period.

In addition, while Arti and Pinnacle only ask for relief for themselves, granting relief only to these two customers would result in rates for other customers that are not just and reasonable. There is nothing about Arti's and Pinnacle's complaint that is based on circumstances particular to these customers. Regardless of the application of the ten-year equalization period in this complaint, the interpretation

should be applied to all customers. If the equalization period is extended for Arti and Pinnacle, the equalization period would have to be extended for all customers; thus lengthening the amount of time customers whose rates are decreasing over the equalization period will be paying higher rates in order to allow MidAmerican a reasonable opportunity to recover the revenue increase approved by the Board.

**IT IS THEREFORE ORDERED:**

1. The complaint filed by Arti, LLC, in Docket No. FCU-2014-0016 is granted in part and dismissed in part as described in this order.
2. The complaint filed by Arti, LLC, and Pinnacle Engineering, LLC, identified as Docket No. FCU-2015-0003 is dismissed.
3. MidAmerican Energy Company shall file a report on or before March 15, 2016, setting out the revised Phase-In and Equalization factors that will be applicable to Arti, LLC, as approved by the Board in this order.

**UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano  
Executive Secretary, Designee

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 7<sup>th</sup> day of March 2016.