

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES DIVISION  
BEFORE THE IOWA UTILITIES BOARD

FILED WITH  
Executive Secretary  
April 11, 2016  
IOWA UTILITIES BOARD

<p>ARTI, LLC,  Complainant,  v.  MIDAMERICAN ENERGY COMPANY,  Respondent.</p>	<p>DOCKET NO. FCU-2014-0016</p>
<p>ARTI, LLC, and PINNACLE ENGINEERING, LLC,  Complainants.  v.  MIDAMERICAN ENERGY COMPANY,  Respondent.</p>	<p>DOCKET NO. FCU-2015-0003</p>

**RESPONSE TO MOTION FOR CLARIFICATION**

Arti, LLC (“*Arti*”), for its Response to the Motion for Clarification filed by MidAmerican Energy Company (“*MidAmerican*”) on March 28, 2016, states:

1. On March 28, 2016, MidAmerican filed a Motion for Clarification (“*Motion*”) requesting that the Iowa Utilities Board (“*Board*”) clarify the written decision (“*Final Decision*”) issued by the Board on March 7, 2016 in two contested cases identified as Docket Nos. FCU-2014-0016 and FCU-2015-0003. Specifically, the Motion requests that the Board

(1) “clarify” that the Phase-In and Equalization factors applicable to Arti that were approved by the Board in the Final Decision (“**Board-Approved Arti Factors**”) apply only prospectively from the date of the Final Decision and (2) “clarify” that the Board-Approved Arti Factors apply only to electric service provided to Arti through the Pony Creek Substation and not to electric service provided to Arti through the Southland Substation.<sup>1</sup>

2. Based on those proposed clarifications, the Motion further requests that the Board direct Arti to remit to MidAmerican the billed amounts withheld by Arti from July 31, 2015, until March 6, 2016, and direct MidAmerican to apply, on a prospective basis: (a) the Board-Approved Arti Factors to electric service rendered to Arti through the Pony Creek Substation; and (b) the generic rate Phase-In and Equalization factors to service rendered through the Southland Substation. Starting on July 31, 2014, MidAmerican unilaterally imposed these same factors (“**MidAmerican-Imposed Arti Factors**”) on electric service rendered to Arti through the Pony Creek Substation.<sup>2</sup>

**I. THE BOARD SHOULD DENY MIDAMERICAN’S FIRST CLARIFICATION REQUEST ASKING THAT THE BOARD-APPROVED ARTI FACTORS BE APPLIED ONLY PROSPECTIVELY FROM THE DATE OF THE FINAL DECISION.**

3. MidAmerican argues that “retrospective” application of the Board-Approved Arti Factors is barred by (a) the filed-rate doctrine, (b) the “extension” of the filed-rate doctrine referred to by MidAmerican as the “prohibition against retroactive ratemaking,” and (c) Iowa Code § 476.3(3), which provides that a rate determination in a complaint proceeding

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<sup>1</sup> Motion, pp. 1-2, 9.

<sup>2</sup> Motion, p. 9.

that is “based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.” However, MidAmerican’s filed-rate doctrine and retroactive ratemaking arguments fail because no written, published tariff filed with and approved by the Board contains Phase-In and Equalization factors applicable to Arti, and the existence of such a tariff is a prerequisite for the application of both the filed-rate doctrine and prohibition against retroactive ratemaking. Further, MidAmerican’s § 476.3(3) argument fails because the applicable statutes and Board rules provide that the Board has the authority to grant retroactive relief in § 476.3 proceedings in the form of adjustments, credits and refunds of discriminatory overcharges. For these reasons, which are described in further detail in the following paragraphs, MidAmerican’s Motion should be denied.

**A. MidAmerican’s Filed-Rate Doctrine Argument Fails Because the Board-Approved Arti Factors Neither Alter Nor Are at Variance with Any Written, Published Tariff Filed with and Approved by the Board.**

4. In order for the filed-rate doctrine to apply, MidAmerican must demonstrate that the Board-Approved Arti Factors alter the terms and conditions provided for in a written, published tariff filed with and approved by the Board. Because the Board-Approved Arti Factors neither alter nor are at variance with any written, published tariff filed with and approved by the Board, MidAmerican’s filed-rate doctrine argument fails.

5. The following two sentences from the Motion constitute the most concise statement of MidAmerican’s filed-rate doctrine argument:

Under the filed-rate doctrine, the only rates that could apply prior to the Order in this case would be the rates that were approved by the Board in

MidAmerican's rate case. In this case, that would be the [MidAmerican-Imposed Arti Factors] that MidAmerican has been applying.<sup>3</sup>

The first sentence inaccurately and incompletely states the filed-rate doctrine; the second is simply false.

6. The first sentence inaccurately and incompletely states the filed-rate doctrine because the vague reference to “rates that were approved by the Board in MidAmerican’s rate case” neither accurately nor completely captures the nature and extent of the filed-rate doctrine.<sup>4</sup> The legal authority cited (and often quoted) by MidAmerican<sup>5</sup> in support of its filed-rate doctrine argument demonstrates that the filed-rate doctrine would only be applicable in the case at hand if the prior rates had been established by a written, published tariff filed with and approved by the Board.<sup>6</sup> Consequently, for the filed-rate doctrine to apply, Phase-In

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<sup>3</sup> Motion, ¶ 9 (emphasis added).

<sup>4</sup> MidAmerican acknowledges that “[t]he principle of the filed-rate doctrine provides that the legal rights and duties are set forth exclusively by the published tariff.” (Motion, ¶ 4) (citations omitted). However, this recognition is obscured by the remainder of MidAmerican’s Motion, which fails to address the fact that there is no written, published tariff that establishes Phase-In or Equalization factors applicable to Art.

<sup>5</sup> Motion, ¶¶ 4, 5, 7.

<sup>6</sup> *AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board*, 678 N.W.2d 554, 562 (Iowa 2004) (“The filed-rate doctrine provides that the legal rights of the utility in the customer are measured exclusively by the published tariff.”) (emphasis added); *Carter v. American Tel. & Tel. Co.*, 354 F.2d 486, 496 (5th Cir. 1966) (“A tariff, required by law to be filed, is not a mere contract.”) (emphasis added); *Coon Valley Gravel Co. v. Chicago, R. I. & P. R. Co.*, 41 N.W.2d 676, 677 (Iowa 1950) (“A tariff schedule must be on file with the Iowa State Commerce Commission before service or transportation may be furnished by the carrier, and then only in accordance with the filed schedule.”) (emphasis added); *AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board*, 2003 WL 2527806, \*11 (Iowa District Court for Polk County, March 20, 2003) (“The Board rejected AT&T’s argument on the basis the filed rate doctrine states that a filed, tariffed rate should normally be held applicable and enforceable until it is found to be unlawful. \* \* \* Once filed, the tariff exclusively controls the rights and liabilities of the parties as a matter of law. The duly filed tariff is the ‘only lawful charge.’ Deviation from it is not permitted upon any pretext.”) (emphasis added; citations omitted); *Maislin Industries, U.S., Inc. v. Primary Steel, Inc.*, 497 U.S. 116, 126 (1990) (“The Act requires a motor common carrier to publish its rates in a tariff with the Commission. This Court has long understood that the filed rate governs the relationship between shipper and carrier.”) (emphasis added; citations omitted); *Arkansas Louisiana Gas Co. v.*

and Equalization factors applicable to Arti must be contained in a written, published tariff filed with and approved by the Board. However, no such Phase-In or Equalization factors applicable to Arti were contained in a written, published tariff filed with and approved by the Board, as explained in the following paragraph.

7. MidAmerican’s Iowa electric tariff is silent on the Phase-In or Equalization factors applicable to Arti, or indeed to any customer in Arti’s rate class.<sup>7</sup> No one disputes the fact that Arti was served under the Rate [REDACTED] section of MidAmerican’s Iowa electric tariff when that section went into effect on July 31, 2014.<sup>8</sup> However, the Rate [REDACTED] section of the tariff does not itself establish Phase-In or Equalization factors; instead, the section incorporates by reference the Phase-In and Equalization factors established by Clause PI and Clause E of MidAmerican’s electric tariff (respectively), both of which also went into effect on July 31, 2014.<sup>9</sup> [REDACTED]

[REDACTED]

[REDACTED] Moreover, no other provision of MidAmerican’s

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*Hall*, 453 U.S. 571, 577 (1981) (“These straightforward principles underlie the ‘filed rate doctrine,’ which forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority.”) (emphasis added); *Archer Daniels Midland Co. v. State, Dept. of Commerce*, 485 N.W.2d 465, 467 (Iowa 1992) (The “filed-rate doctrine” provides that “a regulated utility may not charge – nor be forced by the regulatory agency to charge – rates at variance with the filed tariff.”) (emphasis added); *Fibercomm, L.C. et al. v. AT&T Communications of the Midwest, Inc.*, Docket Nos. FCU-00-3, WRU-02-2-290, Order Denying Rehearing, Lifting Stay, and Waiving 199 IAC 22.14(2)“d”(1), at 14 (IUB Jan. 25, 2002) (“AT&T’s argument ignores the filed rate doctrine, which requires that a filed, tariffed rate is normally applicable and enforceable until it is found to be unlawful.”) (emphasis added). For the sake of easy reference, these case decisions are listed in the order in which MidAmerican has presented them in the Motion.

<sup>7</sup> Exhibit MEB-1; Exhibit MEB-2; Exhibit MEB-3; Transcript, p. 133. Unless otherwise indicated, all evidentiary references in this response are to the evidentiary record in Docket No. FCU-2014-0016.

<sup>8</sup> Exhibit SMA Direct, p. 4; see Exhibit SMA-5, Exhibit SMA-7.

<sup>9</sup> Exhibit MEB-1; Exhibit MEB-2; Exhibit MEB-3.

written, published electric tariff filed with and approved by the Board establishes any Phase-In or Equalization factors applicable to Rate [REDACTED] customers. In particular, no provision of MidAmerican’s Iowa electric service tariff – neither the Rate [REDACTED] section, Clause PI, Clause E, nor any other provision of MidAmerican’s written, published electric tariff filed with and approved by the Board – has ever specified the Phase-In or Equalization factors to be applied to Arti, nor has the tariff ever authorized MidAmerican to apply the generic Phase-In or Equalization factors MidAmerican unilaterally imposed on Arti beginning on July 31, 2014 (*i.e.*, the MidAmerican-Imposed Arti Factors). Thus, MidAmerican’s claim that the only Phase-In and Equalization factors that could apply to Arti prior to the issuance of the Final Decision are the MidAmerican-Imposed Arti Factors is demonstrably false.

8. Because MidAmerican’s written, published electric tariff fails to specify the Phase-In or Equalization factors to be applied to Arti, and furthermore clearly does not specify the MidAmerican-Imposed Arti Factors, the filed-rate doctrine does not bar imposition of the Board-Approved Arti Factors to Arti at both of its substations.

**B. MidAmerican’s Retroactive Ratemaking Argument Fails Because the Board Has Statutory Authority to Grant Retroactive Relief to Arti and Is Compelled to Do So by Its Own Rules.**

9. According to MidAmerican, a 1992 decision by the Supreme Court of Iowa<sup>10</sup> adopts a “regulatory principle prohibiting retroactive ratemaking” that “is an extension of the filed-rate doctrine.”<sup>11</sup> MidAmerican quotes a passage from the decision that includes the

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<sup>10</sup> *Archer Daniels Midland Co. v. State, Dept. of Commerce*, 485 N.W.2d 465 (Iowa 1992) (hereinafter cited as “*Archer Daniels Midland*”).

<sup>11</sup> Motion, ¶ 6.

following discussion of the relationship between the regulatory principle and the filed-rate doctrine:

It is a fundamental rule of utility regulation that retroactive ratemaking is not permitted. (citation omitted). The rule is a logical extension of the “filed rate doctrine,” that is, a regulated utility may not charge – nor be forced by the regulatory agency to charge – rates at variance with a filed tariff. (citations omitted).<sup>12</sup>

MidAmerican then cites a 2002 Board decision<sup>13</sup> and a 2003 decision by the Iowa District Court<sup>14</sup> issued upon subsequent judicial review of the Board decision as the basis for asserting that “the Board ordered revised rates on a prospective basis pursuant to the filed-rate-doctrine” and that “in upholding the Board decision, the Polk County District Court found that ‘there is no legal basis upon which the Board can now retroactively find previously approved tariffed rates to be unreasonable and unjust.’”<sup>15</sup> These two decisions<sup>16</sup> confirm the intertwined relationship between the retroactive ratemaking prohibition and the filed-rate doctrine noted in *Archer Daniels Midland*: all three decisions specifically demonstrate that the retroactive ratemaking prohibition, like the filed-rate doctrine, requires that the prior rates (which in the case at hand take the form of Phase-In and Equalization factors) be established by a written, published electric tariff filed with and approved by the Board. As explained in Section I.A. of this response, no provision of MidAmerican’s written, published electric tariff

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<sup>12</sup> *Archer Daniels Midland*, at 467 (emphasis added).

<sup>13</sup> *Fibercomm, L.C. et al. v. AT&T Communications of the Midwest, Inc.*, Docket Nos. FCU-00-3, WRU-02-2-290, Order Denying Rehearing, Lifting Stay, and Waiving 199 IAC 22.14(2)“d”(1), at 14 (IUB Jan. 25, 2002).

<sup>14</sup> *AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board*, 2003 WL 2527806, at \*11-12 (Iowa District Court for Polk County, March 20, 2003).

<sup>15</sup> Motion, ¶ 7 (emphasis added).

<sup>16</sup> Additional relevant language from both decisions is quoted in footnote 6 above.

filed with and approved by the Board prescribes Phase-In or Equalization factors applicable to Rate █ customers such as Arti. This fact invalidates MidAmerican’s retroactive ratemaking argument just as it does MidAmerican’s filed-rate doctrine argument.

10. Citing a 1988 decision by the Supreme Court of Iowa<sup>17</sup> as authority, MidAmerican concedes that the Board has the power to grant retroactive relief but claims that such power is “limited” to “granting refunds of illegally collected revenue.”<sup>18</sup> MidAmerican’s narrow interpretation of the scope of the Board’s retroactive authority fails to take into account the in-depth analysis of the relevant statutory law and Board rules by the Iowa Supreme Court, which observed that a 1981 legislative amendment removed the word “thereafter” from the phrase “charges . . . to be ~~thereafter~~ observed and enforced” in Iowa Code § 476.3 and found that this demonstrated a legislative intent to grant the Board authority to order retroactive relief as well as prospective relief.<sup>19</sup> The Iowa Supreme Court also discussed a Board rule relating to utility overcharges:

Iowa administrative regulations pertaining to gas and electric service provide:

When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, *incorrect connection of the meter, or similar reasons*, the amount of overcharge shall be adjusted, refunded or credited to the customer.

199 Iowa Admin.Code 19(4)(13)(d); 20(4)(14)(e). Like the district court, we interpret this rule as not only allowing but compelling the board to order the refund of overcharges and illegally collected revenue. Read in harmony with

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<sup>17</sup> *Mid-Iowa Community Action, Inc. v. Iowa State Commerce Commission*, 421 N.W.2d 899 (Iowa 1988) (hereinafter cited as “*Mid-Iowa Community Action*”).

<sup>18</sup> Motion, ¶ 10.

<sup>19</sup> *Mid-Iowa Community Action*, at 901.

section 476.3, we find such a scheme consistent with the broad general power granted the board to effect the regulatory purposes of chapter 476. (citation omitted).<sup>20</sup>

Clearly, *Mid-Iowa Community Action* confers on the Board the authority to grant retroactive relief in a complaint proceedings brought pursuant to Iowa Code § 476.3 (including the instant complaint proceedings) in the form of adjustments and credits as well as refunds of not only illegally collected revenue but also overcharges (including those resulting from incorrect application of a rate schedule or similar reasons).

11. In its discussion of *Mid-Iowa Community Action*, MidAmerican erroneously claims “there is no finding that MidAmerican’s generic [REDACTED] PI/E Factors are actually unreasonable.”<sup>21</sup> Unfortunately, MidAmerican ignores the following Board findings from the Final Decision explaining the precise manner in which the generic [REDACTED]-based MidAmerican-Imposed Arti Factors are unreasonable:

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. \* \* \* Arti was served under the former rate class [REDACTED] 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 [REDACTED], which were not developed during the rate case.<sup>22</sup>

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<sup>20</sup> *Mid-Iowa Community Action*, at 901 (*italicized* emphasis in original; underlined emphasis added). The Board rule quoted by the Iowa Supreme Court that applies to electric service is materially unchanged from the form it took in 1988. 199 IAC 20.4(14)“e”. As a result, the *Mid-Iowa Community Action* analysis and allowance of retroactive relief continues today.

<sup>21</sup> Motion, ¶ 10. A similar claim is made earlier MidAmerican’s argument. Motion, ¶ 8.

<sup>22</sup> Final Decision, p. 12.

This clearly constitutes a finding by the Board that the MidAmerican-Imposed Arti Factors are unreasonable because the purpose of equalization is to transition customers from the rates they were actually paying immediately before final rates went into effect in Docket No. RPU-2013-0004, and Arti was not served under rate class [REDACTED] immediately before final rates went into effect; rather, Arti was served under rate class [REDACTED] before final rates went into effect.

MidAmerican also overlooks the fact that the Final Decision is intended to rectify MidAmerican’s discriminatory treatment of Arti when it applied the generic [REDACTED]-based MidAmerican-Imposed Arti Factors:<sup>23</sup>

[B]y applying the generic factors from the former rate class [REDACTED] 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.<sup>24</sup>

Once the Board determined that the MidAmerican-Imposed Arti Factors discriminated against Arti, the Board was required by § 476.3(1) to determine nondiscriminatory factors, which it did by mandating that the Board-Approved Arti Factors be applied on both a prospective and retroactive basis starting with the effective date of the new tariff provisions implementing the factors.

**C. MidAmerican’s Iowa Code § 476.3(3) Argument Fails Because the Board-Approved Arti Factors Do Not Constitute a Departure from Previously Established Regulatory Principles.**

12. Iowa Code § 476.3(3) provides in its entirety:

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<sup>23</sup> Arti’s complaints against MidAmerican were brought pursuant to Iowa Code § 476.3(1), which provides in pertinent part that when the Board “finds a public utility’s rates, charges, schedules, service, or regulations are unjust, unreasonable, discriminatory, or otherwise in violation of any provision of law,” the Board “shall determine just, reasonable, and nondiscriminatory rates, charges, schedules, service, or regulations to be observed and enforced.” (Emphasis added.)

<sup>24</sup> Final Decision, p. 13.

A determination of utility rates by the board pursuant to this section that is based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.

Based on this statutory provision, MidAmerican argues that the Arti Equalization factors<sup>25</sup> approved by the Board in the Final Decision should apply only on a prospective basis from the date of the Final Decision because they represent a departure from the “previously established regulatory principle” that “rate equalization should be revenue[-]neutral to MidAmerican.”<sup>26</sup> This argument fails because, as shown in the following paragraphs, the Arti Equalization factors approved by the Board do not represent a departure from the regulatory principle MidAmerican has identified.

13. MidAmerican curiously cites only a single page of a solitary Board order for what MidAmerican characterizes as an “established regulatory principle,” and the only statement on the cited page that even mentions revenue-neutrality is as follows:

The parties to the settlement believe that, based on customer feedback at the workshops, MidAmerican’s customers might not understand the difference between a revenue requirement case and a revenue-neutral rate equalization proceeding, which would increase rates for many customers but not provide MidAmerican with an overall revenue increase.<sup>27</sup>

This revenue-neutrality principle by its own terms only applies to a “rate equalization proceeding . . . that would increase rates for many customers.” Therefore, it does not apply to a complaint proceeding such as Docket No. FCU-2014-0016 that does not increase rates for any customer but merely results in a temporary rate decrease for a single customer – Arti –

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<sup>25</sup> MidAmerican’s Iowa Code § 476.3(3) argument focuses only on the *Arti Equalization* factors and does not appear to challenge the *Arti Phase-In* factors approved by the Final Decision.

<sup>26</sup> Motion, ¶ 12.

<sup>27</sup> *In re MidAmerican Energy Company*, Docket No. RPU-04-2, Order Approving Settlement with Clarification, at 4 (IUB Apr. 9, 2009) (emphasis added).

resulting from the application of more reasonable and equitable Phase-In and Equalization factors.<sup>28</sup> The former kind of proceeding involves rate-rebalancing; the latter doesn't.

14. MidAmerican's argument gives the impression that changing those transitional rates for Arti in Docket No. FCU-2014-0016 requires an examination of the "context of other test year revenue from all customer classes from all three rate zones," which is clearly intended to imply that rates for those other customers could change as a result of the Final Decision.<sup>29</sup> However, no change in Arti's factors could have any effect on any other customers' rates because, as MidAmerican accurately notes, Arti is a "post-test[-]year customer and its post[-]test-year revenues were not included in the approved revenue requirement in Docket No. RPU-2013-0004."<sup>30</sup> Changes in Arti's transitional rates thus do not result in any changes to the revenue requirement established in Docket No. RPU-2013-0004, which means that no changes to the allocation of that requirement to MidAmerican's customers or customer classes are necessary or appropriate.

15. In point of fact, MidAmerican's exclusion of Arti's revenues from the approved revenue requirement means that any revenues MidAmerican has and continues to receive from Arti for new usage are a pure "windfall" for MidAmerican. The Board-Approved Arti Factors may reduce the amount of that windfall somewhat, but they do not

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<sup>28</sup> This temporary rate decrease for Arti is limited to the transitional period during which the Phase-In and Equalization factors are in effect, at the end of which period Arti, like all other MidAmerican customers, will ultimately arrive at cost-based rates. *See* Rea Exhibit CBR Reply, p. 16 ("Phase-in and rate equalization factors are not cost[-]based rates. They are mechanisms that move customers from old rates to cost-based rates over a period of time . . .").

<sup>29</sup> Motion, ¶ 12.

<sup>30</sup> *Id.*

require any make-whole rate increases to other customers for the purpose of allowing MidAmerican to earn its established revenue requirement.

16. MidAmerican’s Iowa Code § 476.3 argument is tantamount to arguing that, say, a football player should be penalized for violating one of the rules of baseball. Baseball and football are different games, and the rules of baseball are not applicable in a game of football. Similarly, a revenue-neutrality principle that by its own terms is applicable in a “rate equalization proceeding . . . that would increase rates for many customers” (*i.e.*, a rate-rebalancing proceeding) is not applicable in a complaint proceeding such as Docket No. FCU-2014-0016 that does not involve rate-rebalancing at all because it does not increase rates for any customer and merely decreases rates for a single customer – Arti – during a transitional period at the end of which Arti, like all other MidAmerican customers, will ultimately arrive at cost-based rates. Therefore, the Arti Equalization factors approved by the Board in Docket No. FCU-2014-0016 do not represent a departure from the previous regulatory principle MidAmerican has identified in its Motion, and consequently Iowa Code § 476.3(3) does not require that those factors be applied strictly on a prospective basis dating from the issuance of the Final Decision.

**II. THE BOARD SHOULD DENY MIDAMERICAN’S SECOND CLARIFICATION REQUEST SEEKING THE APPLICATION OF THE BOARD-APPROVED ARTI FACTORS SOLELY TO THE PONY CREEK SUBSTATION.**

17. The Board-Approved Arti Factors should be applied to electric service rendered through both the Pony Creek Substation and the Southland Substation. MidAmerican believes otherwise, however, and argues in its Motion that the Board-Approved Arti Factors should apply only to the Pony Creek Substation but not to the Southland

Substation.<sup>31</sup> Specifically, MidAmerican argues that the “Southland Substation load represents a new customer who began service after the final rates were in effect” and therefore should be subject to the MidAmerican-Imposed Arti Factors.<sup>32</sup> MidAmerican also argues that the Board’s finding that the Arti premises do not qualify for a single bill and that it is reasonable for MidAmerican to issue Arti separate bills indicates that the Board intended for the Board-Approved Arti Factors “to apply separate from any loads that were not part of the ‘unique situation’ associated with the Pony Creek substation.”<sup>33</sup> These arguments must be rejected because the Final Decision treats Arti as the recipient of Board-Approved Arti Factors on a single-entity basis and nowhere mentions applying different Phase-In and Equalization factors on a substation basis.

18. As already discussed in detail in Arti’s Application for Rehearing and Reconsideration (“***Rehearing Application***”),<sup>34</sup> the language of the Final Decision speaks in terms of the “PI and E factors to be charged Arti,” and Ordering Paragraph No. 3 of the Final Decision requires MidAmerican to file a report “setting out the revised Phase-In and Equalization factors that will be applicable to Arti, LLC.”<sup>35</sup> The Final Decision is replete with similar references,<sup>36</sup> all of which indicate that electric service provided by MidAmerican to Arti, regardless of whether Arti is served through one or the other substation, is subject to

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<sup>31</sup> Motion, ¶¶ 14-16.

<sup>32</sup> Motion, ¶ 15 (emphasis added).

<sup>33</sup> Motion, ¶ 14.

<sup>34</sup> Rehearing Application, ¶¶ 2-3.

<sup>35</sup> Rehearing Application, ¶ 2(b) (quoting Final Decision; emphasis added).

<sup>36</sup> Examples of these references are listed at Rehearing Application, fn. 7.

the Board-Approved Arti Factors. As discussed at length in Arti's briefs filed in Docket No. FCU-2014-0016,<sup>37</sup> the application of Phase-In and Equalization factors to Arti as a single entity is warranted by MidAmerican's Iowa electric tariff, which establishes Arti as a single customer / Premises. To treat Arti otherwise by applying Phase-In and Equalization factors to electric service provided to Arti through the Southland Substation that are different from the Phase-In and Equalization factors applied to electric service provided to Arti through the Pony Creek Substation lacks any support in MidAmerican's tariff or the Final Decision, is discriminatory, is inconsistent with the manner in which MidAmerican treats other customers, and would cause significant harm to Arti.<sup>38</sup>

19. Furthermore, the Board should reject MidAmerican's argument that the Board's finding with respect to the "single bill" militates in favor of applying the Board-Approved Arti Factors only to the Pony Creek Substation. The Board's "single bill" decision specifically did not rely on the definition of "Premises" or the number of substations, but instead relied upon MidAmerican witness Naomi Czachura's undocumented, constantly shifting criterion for receiving a single bill; namely, whether a single distribution system runs through the customer's facility.<sup>39</sup> The Board explicitly notes that the number of substations is irrelevant to the billing determination,<sup>40</sup> and thus could not have intended that the single

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<sup>37</sup> Arti Initial Brief, pp. 21-30; Arti Reply Brief, pp. 19-27.

<sup>38</sup> *Id.*

<sup>39</sup> Final Decision, p. 18.

<sup>40</sup> *Id.* at 19 ("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.")

billing issue would dictate that the Phase-In and Equalization factors be applicable to only one of the substations, as MidAmerican now argues.

20. For these reasons and those set forth in the Rehearing Application, the Board-Approved Arti Factors should be applied to electric service rendered through both the Pony Creek and Southland Substations, and MidAmerican's argument to the contrary should be rejected.

**WHEREFORE**, Arti respectfully requests that the Board deny MidAmerican's Motion for Clarification filed on March 28, 2016, and reject each and every of MidAmerican's requests for clarification and modification of the Final Decision set forth in the Motion. In addition, Arti renews the following requests for clarification and modification of the Final Decision set forth in Arti's Application for Rehearing and Reconsideration filed on March 28, 2016:

A. A key finding on page 13 of the Final Decision should be clarified by including the additional language highlighted (by underlining) in the following restatement of the finding:

The PI and E factors to be charged Arti for all electric service provided by MidAmerican from each substation used to serve Arti's facility 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 for all electric service provided by MidAmerican from each substation used to serve Arti's facility. The factors are listed for the years of the equalization period and the phase-in period.<sup>41</sup>

B. Ordering Clause No. 3 on page 26 of the Final Decision should be clarified by including the additional language highlighted (by underlining) in the following:

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<sup>41</sup> Rehearing Application, ¶ 2.

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, for all electric service provided by MidAmerican from each substation used to serve Arti's facility, as approved by the Board in this order.<sup>42</sup>

C. The findings on page 19 of the Final Decision that “the buildings on the Arti premises are not connected by an electric distribution system and therefore do not qualify for a single bill” and that “[t]o receive a single bill, Arti will need to connect its buildings with an electrical distribution system” should be replaced by a finding that Arti is entitled to receive a single bill for all electric service provided by MidAmerican to the Arti facility, for the reasons set forth in the Rehearing Application.<sup>43</sup>

D. Ordering Clause No. 3 of the Final Decision should be clarified by adding the following language:

MidAmerican Energy Company shall rebill Arti, LLC, based on recalculated bills from July 31, 2014 forward using the revised Phase-In and Equalization factors applicable to Arti as approved by the Board in this order, taking into account all payments already made by Arti.<sup>44</sup>

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<sup>42</sup> Rehearing Application, ¶ 3.

<sup>43</sup> Rehearing Application, ¶ 4.

<sup>44</sup> Rehearing Application, ¶ 5.

Dated April 11, 2016.

Respectfully submitted,

*/s/ Philip E. Stoffregen*

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