

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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<p>IN RE:</p> <p>ARTI, LLC,</p> <p style="padding-left: 40px;">COMPLAINANT,</p> <p>V.</p> <p>MIDAMERICAN ENERGY COMPANY,</p> <p style="padding-left: 40px;">RESPONDENT.</p>	<p style="text-align:right">DOCKET NO. FCU-2014-0016 (C-2014-0145)</p>
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**ORDER DENYING MOTION FOR CLARIFICATION AND DENYING MOTION FOR REHEARING AND RECONSIDERATION**

(Issued April 26, 2016)

**BACKGROUND**

On October 23, 2014, Arti, LLC (Arti), filed with the Utilities Board (Board) an informal complaint against MidAmerican Energy Company (MidAmerican) identified as File No. C-2014-0145. The complaint concerned the rates for electric service provided by MidAmerican to Arti. 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 August 18 and September 15, 2015, the Board conducted hearings addressing the Arti complaint.

On March 7, 2016, the Board entered its “Order Addressing Complaints” (Order), in which the Board determined that the Phase-In (PI) and Equalization (E)

factors that MidAmerican is to charge Arti are those presented in Arti Cross Exhibit 1, filed September 11, 2015, and that the buildings on the Arti premises are not connected by an electric distribution system and therefore do not qualify for a single bill for electric service from MidAmerican.

On March 28, 2016, MidAmerican filed a Motion for Clarification of the Board's March 7, 2016, order. Also, on March 28, 2016, Arti filed an application for rehearing and reconsideration of the March 7, 2016, order. Arti and MidAmerican filed responses on April 11, 2016.

### **MOTION FOR CLARIFICATION**

In the Motion for Clarification, MidAmerican requests the Board make two clarifications pursuant to its Order: (1) that the Arti PI and E factors apply prospectively from the date of the Order and (2) that the Arti PI and E factors apply only to the Pony Creek substation bill and not to the Southland substation bill.

MidAmerican states the Order does not specifically state when the Arti PI and E factors are to be applied and that the Board staff memorandum suggested a retroactive application. Because the Board did not adopt staff's recommendation, MidAmerican contends that the Board intended for the Arti PI and E factors to apply prospectively. Further, MidAmerican states the Arti PI and E factors were not approved in MidAmerican's prior rate case, and were identified and approved for the first time as a part of this complaint proceeding. Thus, "[p]rospective application would be consistent with the requirements of well-established case law on the filed-

rate doctrine . . . and the Iowa Code that require the Board to apply new rates prospectively.”

MidAmerican states the filed-rate doctrine requires approved rates to be held applicable and enforceable until they are found to be unlawful. MidAmerican states the Board’s retroactive authority is limited to granting refunds of illegally collected revenue. Further, MidAmerican argues Iowa Code § 476.3(3) clearly prohibits the Board from applying the Arti PI and E factors retroactively. Iowa Code § 476.3(3) states a determination of any rate that is “based upon a departure from previously established regulatory principles shall apply prospectively from the date of the decision.”

MidAmerican claims the Board, in the previous rate case, found rate equalization should be revenue neutral to MidAmerican. Because there is no evidence in this complaint proceeding to support whether the Arti PI and E factors are revenue neutral, the Order departs from the previously established regulatory principles and must apply prospectively, the company argues.

Next, MidAmerican requests the Board clarify that the Arti PI and E factors apply only to the Pony Creek substation bill and not the Southland substation bill. Because the Board determined that the buildings on the Arti premises do not qualify for a single bill, MidAmerican argues this indicates the Board intended for the Arti PI and E factors to apply only to the Pony Creek substation bill.

The Pony Creek substation serves the load that began service before final rates took effect in Docket No. RPU-2013-0003, MidAmerican's previous rate case. The Board determined that because Arti began taking service after the test year and before the final rates took effect, Arti's situation was not addressed in the rate case and the Arti PI and E factors developed in this complaint proceeding should apply to Arti. MidAmerican argues this reasoning only applies to the Pony Creek substation because the Southland substation came online after the final rates took effect. Because the Board found that MidAmerican could charge Arti through separate bills, the load served by the Southland substation represents a new customer. Therefore, MidAmerican argues, the Arti PI and E factors should not apply to the bill for the Southland substation load.

#### **APPLICATION FOR REHEARING AND RECONSIDERATION**

Arti seeks rehearing and reconsideration for the purpose of modifying the Order by: (1) inserting clarifying language into the Order that makes explicit that the Arti PI and E factors are to apply to all electric service provided to Arti by MidAmerican; (2) overrule the Board's previous finding that Arti does not qualify for a single bill; and (3) insert language into the Order that makes explicit that the Arti PI and E factors are to be applied retroactively.

Arti states the Board should clarify its Order to remove any ambiguity with respect to whether the Arti PI and E factors are to be applied to electric service to Arti through both the Pony Creek and Southland substations. Arti states that

MidAmerican, in its compliance filing, did not make explicit how it intended to apply the Arti PI and E factors. Arti asserts that clarification is necessary to eliminate any future misinterpretation. Arti states the Order implicitly finds that MidAmerican is to apply the Arti PI and E factors to all electric service provided to Arti.

Next, Arti requests the Board replace its finding that Arti does not qualify for a single bill with a finding that Arti is entitled to receive a single bill for all electric service provided by MidAmerican to the Arti facility. Arti states “[f]or the reasons discussed in Arti’s briefs, [this finding is] erroneous.”

Last, Arti requests that the Board adopt clarifying language in its Order that makes clear the Arti PI and E factors are to be applied from July 31, 2014, forward, and not prospectively from the Board’s Order. Arti states this clarification is consistent with the Board staff memorandum and the Board’s Order. The Board’s Order states that Arti is to be charged the Arti PI and E factors found in Arti Cross Exhibit 1. The factors found in that exhibit include PI and E factors for year 1, which commenced on July 31, 2014.

#### **RESPONSE TO APPLICATION FOR REHEARING AND RECONSIDERATION**

In its response to Arti’s application for rehearing and reconsideration, MidAmerican argues the Board should reject Arti’s proposed clarifications. First, MidAmerican states the new Arti PI and E factors should only apply to the service from the Pony Creek Substation because the unique circumstances described in the Board’s Order only apply to that service. Next, MidAmerican restates its argument

that the new Arti PI and E factors should be applied prospectively, rather than apply as of July 31, 2014, as Arti requests. MidAmerican's argument is based on its interpretation of the filed-rate doctrine and Iowa Code § 476.3.

MidAmerican also states Arti's application for reconsideration of the Board's determination regarding separate billing for each substation has failed to meet the Board's standard for reconsideration. MidAmerican states Arti has not provided the Board with any additional evidence or new legal arguments regarding the issue. MidAmerican asserts "the Board's [r]ules require that an application for rehearing specify the findings of fact or conclusions of law that are in error and that parties provide a 'brief statement of the alleged grounds of error.'"

### **RESPONSE TO MOTION FOR CLARIFICATION**

In its response to MidAmerican's motion for clarification, Arti requests that the Board deny both clarifications requested by MidAmerican. First, Arti states that Board should deny MidAmerican's request that the new Arti PI and E factors be applied only prospectively from the date of the Order. Arti argues MidAmerican's argument based on the filed-rate doctrine does not withstand scrutiny because the new Arti PI and E factors do not alter any written, published tariff filed with and approved by the Board. This is because MidAmerican's tariff contained no PI and E factors that were applicable to Arti.

Second, Arti states the Board should deny MidAmerican's request that the Board require the new Arti PI and E factors apply only to service provided from the

Pony Creek Substation. Arti argues the Board's Order did not indicate that the Pony Creek and Southland Substations should be treated separately with regard to the PI and E factors to be charged. Further, Arti states the Board's Order in Ordering Paragraph No. 3 requires MidAmerican to file a report setting out the PI and E factors applicable to Arti, LLC, indicating that the Board intended Arti to receive one set of PI and E factors rather than separate factors for each substation.

### **BOARD DECISION**

The Board will address MidAmerican's motion for clarification and Arti's application for rehearing and reconsideration concurrently. With respect to Arti's request that the Board reconsider its decision that MidAmerican may bill Arti separately for electric service provided through its Pony Creek and Southland substations, the Board will deny that request for the reasons provided in the Order. In the March 7, 2016, order, the Board determined that to receive a single bill for premises with more than one building or facility, the buildings or facilities are required to be connected by a distribution system behind the meter. The evidence in the record shows that the Arti facilities are not connected by a distribution system.

With respect to the date upon which MidAmerican is to begin applying the Arti PI and E factors, the Board finds that these factors should be applied as of July 31, 2014. In the Board's "Order Approving Tariff and Requiring Filings" in Docket No. RPU-2013-0004, the Board ordered that MidAmerican's tariff filing is approved, subject to complaint or investigation. This language is included in all orders

approving tariffs and allows for the Board to retain jurisdiction over the rates approved in case a complaint is filed alleging that the rates are not just and reasonable in certain circumstances or are not applied properly to a specific customer. Arti's complaint is filed based upon this language. By retaining jurisdiction the Board can decide whether rates charged to a specific customer are just and reasonable and compliant with the Board's Order. Complaints concerning rates do not violate the filed-rate doctrine since the issue is whether the rates charged are consistent with an order of the Board.

In the Order the Board found that Arti's situation was unique in that it was not addressed in the previous rate case or in MidAmerican's filed tariffs. Therefore, the Board never approved rates for customers in Arti's situation. In its order the Board found that the appropriate PI and E factors for Arti were the Arti PI and E factors established in Arti Cross Exhibit 1 and those were the rates that MidAmerican should have charged Arti from July 31, 2014. In addition, the evidence shows that Arti paid the undisputed portion of the rates during the pendency of the complaint and MidAmerican may now recover any of the amounts not paid based upon the PI and E factors approved by the Board in the March 7, 2014, order. The Board affirms its previous finding that the PI and E factors in Arti Cross Exhibit 1, as evidenced by MidAmerican's compliance filing, are the appropriate factors to be applied to Arti, and they should be applied starting July 31, 2014.

With respect to whether the Arti PI and E factors are to apply to the bills for electric service provided from the Pony Creek substation and the Southland substation, the Board finds that the Arti PI and E factors should be applied to all electric service provided to Arti by MidAmerican at the premises addressed in this complaint. When determining which PI and E factors to apply to Arti the Board considered Arti's facility as a whole, not just the portion of the facility being provided service by the Pony Creek substation.

MidAmerican argues the electric service provided to Arti via the Southland substation should be considered a separate customer from the electric service provided via the Pony Creek substation, therefore, only the Pony Creek service fits into the unique situation described in the Order. However, the Board found that the Arti premises as a whole presents unique circumstances and should be charged for electric service based upon the circumstances concerning the timing in which the Arti premises began to take service. That finding applies regardless of the fact the Southland substation was not in service on July 31, 2014.

The Board finds it is not necessary to adopt the language provided in Arti's application for rehearing and reconsideration to clarify its Order. Thus, the Board denies MidAmerican's motion for clarification and Arti's application for rehearing and reconsideration. MidAmerican is to apply the Arti PI and E factors in a manner that is consistent with this order and the "Order Addressing Complaints" issued on March 7, 2016.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

1. The "Motion for Clarification" filed by MidAmerican Energy Company on March 28, 2016, is denied.
2. The "Application for Rehearing and Reconsideration" filed by Arti, LLC, on March 28, 2016, is denied.
3. MidAmerican Energy Company will charge the Phase-In and Equalization factors presented in Arti Cross Exhibit 1, to the Arti, LLC, premises as of July 31, 2014.
4. MidAmerican Energy Company will charge the Phase-In and Equalization factors presented in Arti Cross Exhibit 1 to electric service provided to Arti, LLC, through both the Pony Creek substation and the Southland Substation.

**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 26<sup>th</sup> day of April 2016.