

March 28, 2016

IOWA UTILITIES BOARD

**STATE OF IOWA
BEFORE THE IOWA UTILITIES BOARD**

IN RE:	:	
	:	
ARTI, LLC,	:	
	:	
COMPLAINANT,	:	
	:	
vs.	:	Docket No. FCU-2014-0016
	:	(C-2014-0145)
MIDAMERICAN ENERGY COMPANY,	:	
	:	
RESPONDENT	:	
	:	
	:	

MOTION FOR CLARIFICATION

COMES NOW, MidAmerican Energy Company (“MidAmerican”), and pursuant to 199 IAC 7.12, respectfully requests the Iowa Utilities Board (“Board”) clarify its Order Addressing Complaints (“Order”), issued on March 7, 2016, in the above-captioned proceeding. Clarification will ensure that the parties move forward to implement the Order consistent with the Board’s findings and the law. Without this clarity, MidAmerican is concerned that this dispute will continue without final resolution.

For reasons addressed below, MidAmerican respectfully requests the Board clarify its Order in two respects. First, to make clear that the Order is consistent with the filed-rate doctrine, the prohibition against retroactive ratemaking and the Iowa Code, MidAmerican requests that the Board make clear that the revised Phase-In and Equalizations factors (“Revised Arti Factors”) applicable to Arti, LLC (“Arti”) apply prospectively from the date of the Board’s Order.

Second, to ensure that the phase-in and equalization factors (“PI/E Factors”) are applied consistently with the unique situation that gave rise to this complaint, MidAmerican requests that the Board make clear that the Revised Arti Factors established by the Board in its Order apply to the Arti Pony Creek substation bill and that MidAmerican apply the generic PI/E Factors to the Arti Southland substation bill.

In support of its request, MidAmerican states as follows:

Clarification Request Number One: Prospective Application of the PI/E Factors

1. The Board’s Order does not specifically state when the Revised Arti Factors shall be applied to Arti. The Gold Memorandum produced by the Board staff recommended the Board should order MidAmerican to make a refund to Arti, which suggests the staff proposed a retroactive application of the new factors. However, the Board’s Order contains no conclusion of fact or law or ordering clause on this issue. The Board’s silence on the staff recommendation suggests that the Board intended for the new rate developed in this docket to apply prospectively, a conclusion consistent with well-established case law and the Iowa Code. To ensure clarity on this issue, MidAmerican requests that the Board clarify that the Revised Arti Factors apply prospectively from the date of the decision.

2. In the Order, the Board found that the rates the Board approved in MidAmerican’s last electric rate case “did not specifically address Arti’s unique situation.” Order at 12. The Board also found the appropriate PI/E Factors for “Arti would be generic rates [. . .] which were not developed during the rate case.” *Id.* The Board determined that the more appropriate PI/E Factors were in Arti Cross Exhibit 1, finding that the Arti Revised Factors are more appropriate than the Pinnacle PI/E Factors, which were proposed by Arti, and more appropriate than the generic PI/E

Factors MidAmerican applied to Arti's bill beginning July 31, 2014. Order at 12-13. These findings show that the Arti Revised Factors approved by the Board were not part of MidAmerican's prior rate case, and were identified and approved, for the first time, as part of this complaint proceeding.

3. Based on these findings, MidAmerican seeks clarification that these new Arti Revised Factors apply prospectively. Prospective application would be consistent with the requirements of well-established case law on the filed-rate doctrine, the prohibition against retroactive ratemaking and the Iowa Code that require the Board to apply any new rates prospectively.

4. The principle of the filed-rate doctrine provides that the legal rights and duties are set forth exclusively by the published tariff. *See e.g., AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board*, 687 N.W.2d 554, 562 (2004). The tariff is not a mere contract; it is the law. *Carter v. AT&T Co.*, 365 F.2d 486, 496 (5th Cir. 1966); *see also Woodburn v. N.W. Bell Tel. Co.*, 275 N.W.2d 403, 405 (Iowa 1979); *Coon Valley Gravel Co. v. Chi., R.I. & P.R. Co.*, 241 Iowa 487, 489, 41 N.W.2d 676, 677 (1950).

5. The filed-rate doctrine requires that approved rates should be held applicable and enforceable until they are found to be unlawful. *AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board*, 2003 WL 25278604, 11-12 (March 20, 2003) (citing *Maislin Industries, U.S., Inc v. Primary Steel, Inc.* 497 U.S. 116, 126 (1990) (negative treatment indicated for other reasons). The tariff, therefore, sets out the only lawful charge, and derivation from that charge is not allowed. In *Arkansas Louisiana Gas Company v. Hall*, 453 U.S. 571, 577 (1981), a United States Supreme

Court decision about natural gas rates approved by the Federal Energy Regulatory Commission, the Court held:

Not only do the courts lack authority to impose a different rate than the one approved by the Commission, but also the Commission itself has no power to alter a rate retroactively. When the Commission finds a rate unreasonable, it “shall determine the just and reasonable rate...to be thereafter observed and in force.” See, e.g., *FPC v. Tennessee Gas Co.*, 371 U. S. 145, 152-153 (1962); *FPC v. Sierra Pacific Power Co.*, 350 U. S. 348, 353 (1956). This rule bars “the Commission’s retroactive substitution of an unreasonably high or low rate with a just and reasonable rate.” *City of Piqua v. FERC*, *supra*, at 12, 610 F. 2d, at 954.

Footnote omitted.

6. The Iowa Supreme Court has also recognized that ratemaking is a prospective process by adopting the regulatory principle prohibiting retroactive ratemaking, which is an extension of the filed-rate doctrine. In *ADM v. Iowa Utilities Board*, 485 N.W.2d 465, 467 (Iowa 1992) the Court found:

It is a fundamental rule of utility regulation that retroactive ratemaking is not permitted. *Office of Consumer Advocate v. Iowa State Commerce Comm’n*, 428 N.W.2d 302, 306 (Iowa 1988). 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. *Associated Gas Distribs. v. Federal Energy Regulatory Comm’n*, 898 F.2d 809, 810 (D.C. Cir. 1990); see Iowa Code § 476.5. The prohibition ensures the predictability and stability of utility rates and generally prevents utility companies from recovering losses that stem from “past company mismanagement or improper forecasting.” *Office of Consumer Advocate*, 428 N.W.2d at 306. In other words, regulators “may not disinter the past merely because experience has belied projections, whether the advantage went to customers or the utility; bygones are bygones.” *Associated Gas Distribs.*, 898 F.2d at 810.

7. The Board is familiar with these long-standing principles. In *AT&T of the Midwest v. IUB*, the question before the Board was the reasonableness of access charges charged by competitive telecommunications carriers and whether the filed-rate doctrine required AT&T to pay access charges prior to the date of a Board order

establishing revised, prospective access rates. *AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board*, 2003 WL 25278604, 1-2 (March 20, 2003) (“AT&T Appellate Case”). In this case, AT&T argued, and the Board agreed, AT&T should pay a lower access charge. *Id.*; see also *In Re: Fibercomm, L.C., Forest City Telecom, Inc., Heart of Iowa Communications, Inc., Independent Networks, L.C., and Lost Nation-Elwood Telephone Company, Complainants, vs. AT&T Communications of the Midwest, Inc., Respondents*, Docket Nos. FCU-00-3 and WRU-02-2-290, Order Denying Rehearing, Lifting Stay, and Waiving 199 IAC 22.14(2)“(1), Issued January 25, 2002 at 3-6, (“AT&T Rehearing Order”). The Board ordered that the lower access charge should apply prospectively, and in an Application for Rehearing, AT&T argued it should the pay lower access charge retrospectively. AT&T Rehearing Order at 6, 14. The Board disagreed. Despite the fact that the Board found the charges to be unreasonably high and not just and reasonable, the Board ordered revised rates on a prospective basis pursuant to the filed-rate doctrine. *Id.* at 14; See also AT&T Appellate Case at 2, 11. Specifically, 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.” *Id.* at 12.

8. Applying these principles to the present case makes it clear that the Revised Arti Factors should apply prospectively. When the Board approved MidAmerican’s rates in Docket No. RPU-2013-0004, the Board made those rates applicable and enforceable. In this complaint, the Board identifies that the rates approved in Docket No. RPU-2013-0004 did not specifically address the unique situation presented by Arti. Order at 12. However, the Board did recognize that the

rates approved as part of this complaint were specifically “*not developed during the rate case.*” Order at 12 (emphasis added). Importantly, the Board did not find that MidAmerican’s generic PI/E Factors to be unlawful or unreasonable, but simply that the Revised Arti Factors are “more appropriate” to reflect Arti’s unique situation. Order at 13. 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 generic PI/E Factors that MidAmerican has been applying.

9. This is exactly the type of situation that the filed-rate doctrine and the prohibition against retroactive ratemaking is trying to avoid – the backwards imposition of a new rate that is different than the previously lawful rates. The Board and the Iowa Supreme Court have recognized this in the past and the Board should clarify the Order to ensure consistency with these well-established principles.

10. The Board does have limited retroactive authority when it is granting refunds of illegally collected revenue. *Mid-Iowa Community Action Id.* 901; *see also Equal Access Corporation v. Utilities Board*, 510 N.W.2d 147 (Iowa 1993). However, that is not the case in this docket where there has been no finding or even any allegation that MidAmerican illegally collected any revenue. Indeed, there is no finding that MidAmerican’s generic PI/E Factors are actually unreasonable, much less illegal. Any suggestions that this limited exception to the filed-rate doctrine and the prohibition against retroactive ratemaking apply here should be rejected by the Board.

11. In addition to the filed-rate doctrine and the prohibition against retroactive ratemaking, the Iowa Code provides an additional limitation in Iowa Code § 476.3(3). This section states that 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.” Iowa Code § 476.3(3). While there is little case law interpreting this provision, the language makes it clear it is intended to codify the well-established principles of the filed-rate doctrine and the prohibition against retroactive ratemaking to situations where there is a departure from “established regulatory principles.”

12. The Board previously found that rate equalization should be revenue neutral to MidAmerican. *See* Docket No. RPU-04-2 (TF-04-150, APP-96-1, RPU-96-1), Order Approving Settlement with Clarification, issued April 9, 2009, at 4. In this docket, the Board is ordering new phase-in and equalization factors for Arti because of its “unique situation.” Arti’s “unique situation” is that it 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. As a result, there is no evidence to support whether the newly developed equalization factors are revenue neutral. There is no evidence in this docket to test whether the new equalization factors would be revenue neutral when examined in the context of other test year revenue from all customer classes from all three rate zones. Therefore, there is no evidence to support whether the new rate equalization factors developed in this docket are revenue neutral, which was the regulatory principle behind the rate equalization plan. These findings show that this Order is a departure from previously established regulatory principles, which can apply only “prospectively from the date of the decision.” Iowa Code § 476.3(3).

13. For the foregoing reasons, MidAmerican respectfully requests that the Board clarify its Order by making clear that the Revised Arti Factors apply as of March 7, 2016, and shall be applied prospective from that date. This clarification will ensure

consistency with the filed-rate doctrine, the prohibition against retroactive ratemaking and the Iowa Code.

Clarification Request Number Two: Application of The Generic PI/E Factors to the Southland Substation

14. MidAmerican respectfully requests that the Board clarify the Order to make clear that the Revised Arti Factors apply only to the Arti Pony Creek substation. In the Order, the Board determined that the buildings on the Arti premises do not qualify for a single bill, and therefore it is reasonable for MidAmerican to issue Arti separate bills. Order at 18-19. This indicates that the Board intended for the Revised Arti Factors to apply separate from any loads that were not part of the “unique situation” associated with the Pony Creek substation.

15. More specifically, the record in this docket is clear that the Pony Creek substation serves the load that began service before final rates took effect in Docket No. RPU-2013-0003. This is the load that falls in the “unique situation.” On the other hand, the record in this docket is also clear that the Southland substation load did not begin service after the final rates were approved in Docket No. RPU-2013-0004. In applying the generic PI/E Factors, the Arti Southland load represents a new customer who began service after final rates were in effect. For all new customers after the final rates were in effect, those customers are to be applied the generic PI/E Factors associated with the rate zone in which they are located. Tr. at 137, ll.13-19; Exhibit CBR Reply at 15-17, ll. 329-360. This treatment is consistent with the application of Clause PI and Clause E tariffs approved by the Board in Docket No. RPU-2013-0004.

16. Given the facts of this case, and the Board’s finding with respect to the “single bill” issue, MidAmerican respectfully requests that the Order be clarified to

state that the revised PI/E Factors apply only to the load that was part of the “unique situation” that is the foundation for the Board’s Order. This is the load associated with the Arti Pony Creek substation.

WHEREFORE, MidAmerican Energy Company respectfully requests the Board issue an order: (i) clarifying that the Board approved PI/E Factors will be applied prospectively to Arti from March 7, 2016, pursuant to Iowa Code § 476.3(3); (ii) Arti be directed to remit the amount withheld from its bill from July 31, 2014 until March 6, 2016; (iii) and MidAmerican be directed to prospectively apply the Revised Arti Factors to the bill for the Arti Pony Creek substation and the generic PI/E Factors to the Southland substation.

DATED this 28th day of March, 2016.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

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