

April 11, 2016

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

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

IN RE:	:	
	:	
ARTI, LLC and PINNACLE ENGINEERING, LLC,	:	
	:	
COMPLAINANTS,	:	Docket No. FCU-2015-0003
	:	
vs.	:	
	:	
MidAmerican Energy Company,	:	
	:	
RESPONDENT	:	

**MIDAMERICAN’S RESPONSE TO APPLICATION FOR REHEARING AND
RECONSIDERATION**

COMES NOW, MidAmerican Energy Company (“MidAmerican”), and pursuant to 199 Iowa Administrative Code 7.27(3) files its Objection and Answer to the March 28, 2016, Arti, LLC (“Arti”) Application for Rehearing and Reconsideration (“Application”) filed in response to the Iowa Utilities Board’s (“Board”) Order Addressing Complaints (“Order”), issued on March 7, 2016.

In support of its Objection and Answer, MidAmerican states as follows:

I. Introduction

Arti seeks clarification on whether the Board ordered phase-in and equalization factors (“Arti Revised Factors”) apply to Arti’s two substations and whether the Arti Revised Factors should be applied retroactively. Application at ¶ 1-2, 5, p. 2-5. MidAmerican also requested clarification on the same issues. *See* MidAmerican Motion for Clarification (“Motion”). Arti also requested reconsideration and rehearing on the Board’s finding that Arti should receive two bills for each substation. Application at ¶ 4, p. 5. For the reasons set forth below, MidAmerican respectfully requests the Board deny Arti’s request to modify the Order and request for rehearing and reconsideration on the billing issue.

II. Discussion

A. The Board Should Reject Arti’s Proposed Clarifications To The Order Regarding Applying The Arti Revised Factors To Each Substation.

Arti argues that the Board should modify its Order to direct MidAmerican to apply the Arti Revised Factors to each substation. Application at ¶ 1, p. 2. In the Board’s Order, it is clear the Board was correcting what it determined was a “unique circumstance” for Arti. The “unique circumstance” was that one of Arti’s substations began taking service after the test year was approved in RPU-2013-0004, but prior to final rates going into effect. It is an uncontested fact, however, that only one substation was in service prior to the final rates going into effect on July 31, 2014, and that the other substation went into service after the final rates were in effect. *See* Exhibit SMA Direct at 6, ll. 11-22; Exhibit MEB Direct at 6, ll. 29-32 through 7, ll. 1-5; Tr. at 76, ll. 2-12; MidAmerican Initial Brief at 27 and fn. 14. As MidAmerican pointed out in its

Motion, the Arti Revised Factors should not apply to the second substation because the second substation does not qualify as having the “unique circumstances” associated with the first substation. Motion at 8-9. Therefore, the generic factors should apply to the second substation consistent with the provisions of the Board approved tariff in RPU-2013-0004. Based on the record evidence, MidAmerican respectfully requests the Board deny Arti’s request for clarification on this issue.

B. Arti’s Request For Clarification on Retroactive Billing Is Inconsistent With the Iowa Code and Case Law.

Arti urges the Board to direct MidAmerican to rebill Arti the difference between the Pinnacle phase-in and equalization factors and Arti Revised Factors beginning July 31, 2014. This is a request for the Board to engage in retroactive ratemaking. However, Iowa Code and case law require that new rates only be applied prospectively.

As MidAmerican points out in its Motion, the filed-rate doctrine provides that 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); *AT&T Communications of the Midwest, Inc. v. Iowa Utilities Board*, 2003 WL 25278604, 11-12 (March 20, 2003)(“AT&T Appellate Case”); Motion at 3-6, ¶4-9. The filed-rate doctrine requires that approved rates should be held applicable and enforceable until they are found to be unlawful. *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)”d”(1), Issued

January 25, 2002 at 14, (“AT&T Rehearing Order”); *see also* AT&T Appellate Case at 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 MidAmerican “generic” factors are enforceable until the Board sets new rates. The Board set the new Arti Revised Factors on March 7, 2016. Thus, according to the filed-rate doctrine, the “generic” factors were effective until the Arti Revised Factors became effective on March 7, 2016.

As MidAmerican pointed out in its Motion, the Board faced a similar issue in Docket No. FCU-00-3. *See*, AT&T Rehearing Order at 14. In that docket, AT&T argued on rehearing that the lower access charge rate should apply retroactively. AT&T Rehearing Order at 6, 14. The Board disagreed. Despite the fact that the Board found the access charge rate to be unreasonably high and not just and reasonable, the Board ordered revised access charge rate to become effective on a prospective basis pursuant to the filed-rate doctrine. *Id.* at 14; *see also* AT&T Appellate Case at 2, 11.

The Iowa Supreme Court has also found that the logical extension of the filed-rate doctrine is the doctrine against retroactive ratemaking. *ADM v. Iowa Utilities Board*, 485 N.W.2d 465, 467 (Iowa 1992); *see also* Iowa Code § 476.5. In that case, the Iowa Supreme Court held that it is a fundamental rule of utility regulation that retroactive ratemaking is not permitted. *Id.* Arti’s Application disregards the law by requesting the Board apply the Arti Revised Factors retroactively.

Arti’s request that the Board direct MidAmerican to apply the Arti Revised Factors from July 31, 2014, to present also violates Iowa Code § 476.3(3). Iowa Code § 476.3(3) specifically requires the Board apply any new rates created pursuant to Iowa

Code § 476.3(1) prospectively, if those new rates depart from previously established regulatory principles. As MidAmerican pointed out in its Motion, the Board established the Arti Revised Factors by departing from previously established regulatory principles. Motion at 2-8. Accordingly, MidAmerican respectfully requests the Board reject Arti's request that the Arti Revised Factors should be applied retroactively.

C. Arti's Application Requesting Separate Billing For Each Substation Has Not Met The Board's Standard For Reconsideration.

In addition to the request to modify the Order, Arti also urges the Board to reconsider its decision regarding each substation receiving a separate bill. Application ¶4, p. 5. Arti does not provide the Board with additional evidence to consider any new legal arguments regarding the billing issue. Arti simply refers the Board to its briefs and does not provide the Board with any alleged grounds of error. Application ¶4, p. 5, fn 8.

Specifically, the Board's Rules 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." 199 Iowa Administrative Code 7.27(2). Moreover, the Board has previously found that rehearing is appropriate in order to: (i) hear new or additional evidence, if there is good reason for the failure to present the evidence at the regular hearing, or (ii) consider new or additional legal argument or to correct legal error. *See In Re: Sprint Communications Company L.P. v. Iowa Telecommunications Services, Inc. d/b/a Iowa Telecom*, Docket No. FCU-2010-001, Order Denying Application For Reconsideration and Motion For Stay issued

March 25, 2011 at 21 (“Sprint Communications Denial Order”).¹ Conversely, the Board has also found rehearing is not appropriate when the new or additional evidence or argument supports the original decision. *Id.*

The record in this case demonstrates that Arti is served by two separate substations, and the substations are not electrically unified so that the entire load could be served from one substation. Exhibit NGC-1 Reply at 3, ll. 53-54 and at 4-5, ll. 77-92; Tr. at 164, ll. 204; MidAmerican Cross Exhibit 7; *confirming operations are unified through fiber optic lines; see also* Tr. at 165, l. 19 through 166, l. 7; Tr. at 267, ll. 17-25; Tr. at 269, l. 21 through 270, l. 8; *see also* MidAmerican Initial Brief at 26-31 and Reply Brief at 12-19; Order at 18-19. The Order provides a summary of Arti’s position and the Order explains what evidence the Board considered to make its determination. Order at 14-19. Arti has not, however, provided the Board with any new evidence, legal arguments, or legal errors. Consequently, the Board should reject Arti’s request for rehearing and reconsideration on whether it is reasonable to bill Arti for each substation.

III. Conclusion

Based on the record in this docket and the reasons outlined above, the Board should deny Arti’s request for clarification and suggested modifications to the Order. Arti’s request that the Board modify the Order to direct MidAmerican to apply the Arti Revised Factors to each substation ignores the Board’s finding that it is reasonable for

¹ *See also* Sprint Communications Denial Order at 21 *citing, Shaaf v. Iowa Board of Medicine*, 2009 WL 5126252, 3 (Iowa App. 2009); *Windway Technology, Inc. v. Midland Power Coop.*, 696 N.W.2d 303, 305 (Iowa 2005)(Iowa Supreme Court indicating review of case is for correction of errors of law citing Iowa R.App. P. 6.4.); *S.E. Iowa Coop. Elec. Assoc. v. Iowa Utilities Board*, 633 N.W.2d 814, 822 (Iowa 2001) (Iowa Supreme Court noting the “new evidence” supported the Board’s rationale in its decision and the rehearing application was appropriately denied).

each substation to receive one bill. The request also ignores the different in-service dates of each substation.

Additionally, Arti's requested modification that MidAmerican apply the Arti Revised Factors retroactively is inconsistent with the filed-rate doctrine and constitutes retroactive ratemaking. Applying the rates retroactively departs from these established regulatory principles and Iowa Code § 476.3(3) specifically requires any new rates be applied prospectively, if those new rates depart from previously established regulatory principles. Accordingly, the Board should reject Arti's proposed modifications.

Moreover, Arti's Application does not present any new or additional facts or new or additional legal arguments regarding why it is unreasonable to issue two separate bills to Arti. The Board's Order thoroughly reviewed the record and examined whether Arti's operations were electrically unified and the Board concluded that they were not. Consequently, the request for rehearing should be denied.

WHEREFORE, MidAmerican Energy Company respectfully requests the Board reject Arti's Application for Rehearing and Reconsideration and instead issue an order to: (i) clarify that the Board approved phase-in and equalization factors will be applied prospectively to Arti from March 7, 2016, pursuant to Iowa Code § 476.3(3); (ii) direct Arti to remit the amount withheld from its bill from July 31, 2014 until March 6, 2016; (iii) and direct MidAmerican to prospectively apply the Revised Arti Factors to the bill for the Arti Pony Creek substation and the generic phase-in and equalization factors to the Southland substation.

DATED this 11th day of April, 2016.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

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