

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. TF-99-94
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**ORDER APPROVING SETTLEMENT, WITH MODIFICATION,
AND REJECTING TARIFF**

(Issued March 14, 2000)

PROCEDURAL HISTORY

On March 26, 1999, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) a proposed electric interruptible replacement rider, identified as TF-99-94. The proposed tariff would initially be implemented in the East system only, but MidAmerican said it intended to later extend the tariff to its entire system. MidAmerican said the proposed tariff fulfilled a commitment made in the settlement in Docket Nos. APP-96-1 and RPU-96-8 to develop an interruptible buy-through tariff.

The Consumer Advocate Division of the Department of Justice (Consumer Advocate) objected to the proposed tariff on April 23, 1999. Consumer Advocate argued interruptible rates provide discounts to customers willing to curtail electric usage during peak periods and that a tariff allowing an interruptible customer to purchase replacement power in effect nullifies the interruptible arrangement, creating revenue loss and cost shifting concerns. The Board docketed the proposed tariff for investigation on April 23, 1999, but did not set a procedural schedule because Consumer Advocate and MidAmerican were engaged in discovery and settlement

negotiations. Consumer Advocate and MidAmerican filed a proposed settlement on May 17, 1999.

On May 13, 1999, the Iowa Industrial Intervenors (III) filed a petition to intervene. Ag Processing Inc (Ag Processing) filed a petition to intervene on May 20, 1999. The Board granted the petitions to intervene by order issued June 25, 1999. The order also set a time frame for filing comments on the proposed settlement. All parties filed initial and/or reply comments.

The proposed settlement addressed the concerns initially raised by Consumer Advocate by limiting the tariff to a pilot period and making it available only to customers taking interruptible power as of April 1, 1999. The settlement, like the original filing, also limited the buy-through option to the eastern pricing zone.

III and Ag Processing argued the settlement was inadequate for a variety of reasons, including the proposed tariff's applicability to East zone customers only and non-compliance with the APP settlement. The Board, by order, scheduled a hearing on the proposed settlement for November 2, 1999. All parties had an opportunity to file prefiled testimony and post-hearing briefs.

DISCUSSION

In evaluating a proposed settlement, whether contested or uncontested, the Board determines whether "the settlement is reasonable in light of the whole record, consistent with law, and in the public interest." 199 IAC 7.2(11). In making this determination, the Board will discuss several issues raised by various parties at hearing.

On June 27, 1997, the Board approved a settlement entered into by most of the parties to Docket No. APP-96-1. In the APP settlement, the signatories agreed to collaborate in the development of a buy-through tariff. MidAmerican forwarded a copy of a draft tariff to all signatories to the settlement and requested comments. Only one signatory provided comments, and MidAmerican took those comments into account before filing the tariff with the Board. (Tr. 74-75). Because the term "collaboration" is not defined and a collaborative process is not set forth in the APP settlement, the process MidAmerican used is sufficient collaboration for purposes of the APP settlement. The Board notes that while Ill intervened in the APP proceeding, it was not a signatory to the settlement.

An argument raised by the intervenors is that the settlement is unreasonably discriminatory in violation of Iowa Code § 476.5, which provides that a tariff may not grant any unreasonable preferences or advantages or subject any person to any unreasonable prejudice or disadvantage. Intervenors argue that there is no reason to limit the availability of the buy-through tariff to eastern zone customers. It should be noted that MidAmerican has three Iowa pricing zones. The existence of three different pricing zones is largely the result of merger activity that has occurred to create the current MidAmerican.

The proposed settlement indicates the buy-through tariff, which is limited to the eastern zone, is a pilot project. Pilot projects by their nature are limited in scope, but because they are experimental in nature any preferences or advantages are not necessarily unreasonable. However, if a pilot is to be limited geographically, the

Board believes there must be clearly articulated reasons for the restriction. No such reasons were presented in this case.

In fact, the evidence clearly indicated that the tariff could be extended to MidAmerican's entire system. MidAmerican dispatches electricity uniformly throughout its system and MidAmerican witnesses testified that there are no Mid-Continent Area Power Pool (MAPP) guidelines that would preclude the buy-through tariff from being extended to the entire MidAmerican system. (Tr. 34, 74). The MAPP system rules that apply to the proposed tariff are not limited to the eastern zone but apply to the entire system. These rules are contained in MAPP Schedule L. Schedule requirements include the ability of the utility to directly control customer's load and a load test showing that the customer's load can be kept at or below required levels. While extending the tariff to the entire system heightens the possibility that MidAmerican will not be able to make power purchases to fill all buy-through requests, interruptible customers have always known that by taking advantage of the favorable interruptible rate they subject themselves to periodic interruptions. In addition, cost shifting concerns, which will be discussed below, are not present, regardless of the size of the area covered, because the settlement limits the tariff to existing interruptible customers.

Schedule L's restrictions will limit pilot participation because not all eligible interruptible customers will be able to meet those requirements. No evidence was presented which articulated questions to be asked or potential lessons to be learned from further limiting the tariff to eastern zone customers only. Based on the lack of evidence justifying restriction of the pilot tariff to the eastern zone, the Board will

modify the proposed settlement to make the pilot tariff available in all of MidAmerican's pricing zones.

The intervenors argued there could be a buy-through tariff without Schedule L. The Board agrees. MidAmerican's proposed tariff is only one way to do a buy-through option. There are others, such as the Board approved buy-through option for IES Utilities Inc. (IES) and Interstate Power Company (Interstate) that does not reference Schedule L.

The evidence presented at hearing does not persuade the Board, however, that the proposed tariff is unreasonable or that the Board can simply eliminate the Schedule L requirements. The Schedule L requirements provide certainty both for customers and MidAmerican and make the buy-through available to all current interruptible customers on the same terms. While the Board will not eliminate the Schedule L requirements, the Board does encourage MidAmerican to explore other buy-through options that would be available to existing interruptible customers that cannot comply with Schedule L.

Consumer Advocate raised concerns regarding the potential for revenue loss or cost shifting if the tariff is extended beyond the terms of the settlement. However, both MidAmerican's and Consumer Advocate's witnesses agreed that limiting the buy-through tariff to existing interruptible customers eliminates any revenue loss or cost shifting directly associated with the buy-through tariff. (Tr. 69, 148). If any such revenue loss or cost shifting is identified later, it can be addressed in a future rate proceeding.

The Board believes that MidAmerican's buy-through tariff, if extended to the entire system, will provide insight on the practical workings and popularity of such tariffs. This is particularly true because the Board and others can compare and contrast the results of MidAmerican's pilot with that of IES and Interstate. By comparing the two programs, one with the Schedule L restrictions and the other without, lessons should be learned that will assist utilities and other stakeholders to develop innovative offerings that will serve the needs of customers while at the same time preventing inappropriate cost shifting and revenue loss. The Board notes that the testimony at hearing from both MidAmerican and Consumer Advocate witnesses indicates there is no substantive objection by the settlement signatories to extending the pilot to MidAmerican's entire system, so long as the pilot continues to be limited to current interruptible customers as defined in the settlement.

A final issue to be addressed is a motion to strike filed by MidAmerican. Subsequent to final reply briefs being filed, III filed a letter on December 29, 1999, alleging that certain statements in MidAmerican's reply brief were inconsistent with statements made by a MidAmerican witness at hearing. The letter quoted from the brief and transcript. MidAmerican filed a motion to strike the letter on January 18, 2000, and attached to the motion an affidavit from the witness stating there were no inconsistencies between the statements in brief and at hearing. III responded on January 20, 2000, stating that MidAmerican was attempting to supplement the record by post-hearing affidavit.

The letter filed by III simply quoted from transcript and brief and did not supplement to the record. The letter instead supplemented III's reply brief. Because

the letter did not raise new issues not presented at hearing, the motion to strike filed by MidAmerican will be denied. However, the Board will strike the affidavit attached to MidAmerican's motion because this affidavit would supplement the record with additional testimony.

FINDINGS OF FACT

Based on a thorough review of the entire record in these proceedings, the Board makes the following finding of fact:

1. The proposed settlement, modified to extend the buy-through tariff geographically to all of MidAmerican Energy Company's Iowa pricing zones, is reasonable in light of the whole record, consistent with law, and in the public interest.

CONCLUSIONS OF LAW

The Board has jurisdiction of the parties and the subject matter in this proceeding, pursuant to Iowa Code chapter 476 (1999).

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The settlement filed by MidAmerican Energy Company and the Consumer Advocate Division of the Department of Justice on May 17, 1999, is approved with one modification, extension of the buy-through tariff geographically to all of MidAmerican's Iowa pricing zones.

2. Tariff filing TF-99-94, which limits the buy-through option to the eastern pricing zone only, is rejected. MidAmerican shall file tariffs in compliance with the settlement, as modified, within 15 days from the date of this order.

3. The motion to strike filed by MidAmerican on January 18, 2000, is denied. The affidavit attached to MidAmerican's motion is stricken from the record.

4. Motions and objections not previously granted or sustained are denied or overruled. Any argument in the briefs not specifically addressed in this order is rejected either as not supported by the evidence or as not being of sufficient persuasiveness to warrant comments.

UTILITIES BOARD

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 14th day of March, 2000.