

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>BRANDAN BRUCE,</p> <p style="padding-left: 40px;">Petitioner,</p> <p style="text-align:center">v.</p> <p>MIDAMERICAN ENERGY COMPANY,</p> <p style="padding-left: 40px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-03-8 (C-02-287)</p>
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PROPOSED DECISION AND ORDER

(Issued May 15, 2003)

APPEARANCES:

MR. BRANDAN BRUCE, 1876 Polk Street, P.O. Box 124, Milo, Iowa 50166,
appearing pro se.

MS. KAREN HUIZENGA, attorney at law, MidAmerican Energy Company, 106 East
Second Street, P.O. Box 4350, Davenport, Iowa 52808, appearing on behalf
of MidAmerican Energy Company.

MR. JOHN F. DWYER, attorney at law, 310 Maple Street, Des Moines, Iowa 50319,
appearing on behalf of the Consumer Advocate Division of the Department of
Justice.

STATEMENT OF THE CASE

On August 22, 2002, Mr. Brandan Bruce filed an informal complaint with the
Utilities Board (Board) alleging that MidAmerican Energy Company (MidAmerican)
had acted improperly with respect to a service line extension to Mr. Bruce's new
home near Milo, Iowa. The Board assigned the complaint Docket No. C-02-287, and

forwarded it to MidAmerican for response pursuant to the Board's informal complaint procedures. MidAmerican responded on September 10, 2002. On November 15, 2002, the Customer Service Section of the Board issued a proposed resolution that found MidAmerican had followed its tariffs. On December 3, 2002, Mr. Bruce filed an appeal of this proposed resolution. The details of these events are contained in informal complaint file number C-02-287, which is incorporated into the record in this case pursuant to 199 IAC 6.7.

On January 15, 2003, the Board docketed the complaint and assigned it to the undersigned administrative law judge. On January 22, 2003, the undersigned issued a procedural order and notice of hearing.

Mr. Bruce filed prepared direct testimony and exhibits 1 and 2 on February 11, 2003. The Consumer Advocate filed prepared direct testimony of Mr. Brian Turner on February 12, 2003. MidAmerican filed prepared direct testimony of Mr. Lawrence C. Strachota and Mr. William D. Schumacher, and exhibits 200 through 205, on March 5, 2003. On the same date, MidAmerican also filed responses to Board questions. These responses were marked as exhibit 206 during the hearing.

The hearing in this case was held beginning at 10 a.m. on April 3, 2003, in the Board hearing room, 350 Maple Street, Des Moines, Iowa. Mr. Bruce testified on his own behalf. Mr. Strachota and Mr. Schumacher testified on behalf of MidAmerican. Mr. Turner testified on behalf of the Consumer Advocate. All prefiled exhibits were

admitted. In addition, MidAmerican exhibits 206 and 207 were admitted. With the agreement of all parties, the briefing schedule was modified.

The Consumer Advocate filed a brief on May 5, 2003, and MidAmerican filed a brief on May 6, 2003.¹

DISCUSSION OF THE EVIDENCE AND ANALYSIS

In the summer of 2001, Mr. Bruce planned to build a new home south of Milo, Iowa, and requested electric service from MidAmerican. (Informal Complaint File). Mr. Schumacher, a customer technician for MidAmerican, met Mr. Bruce at his property on August 13, 2001, to discuss the proposed electric service. (Informal Complaint File; Tr. 21-22, 24, 166-167; Exhibit 206). During that visit, Mr. Schumacher measured the distance of the line that would be needed to bring service to Mr. Bruce's property, and the two discussed options available to Mr. Bruce. (Informal Complaint File; Tr. 21-22, 167, 170).

Mr. Bruce testified that during the conversation on August 13th, Mr. Schumacher said MidAmerican had a refundable option² when Mr. Bruce asked about it, inferred that the refundable option costs more and it is hard to get a refund

¹ In its brief at pages 1, 4, and 7, MidAmerican cited to a June 25, 2002 email from IUB staff Ms. Tate to MidAmerican. This email is not in the informal complaint file and is therefore not in the record of this case. The undersigned has not seen the email. It appears that MidAmerican was unaware that the email is not in the record. At this late date, the email will not be considered, although it does not appear from MidAmerican's brief that this will make any difference in the decision in this case.

² The parties referred to a refundable and a nonrefundable option. They also referred to an advance for construction costs and a contribution in aid of construction. An advance for construction costs is the refundable option, and the contribution in aid of construction is the nonrefundable option. (Tr. 74). For ease of understanding, the terms refundable option and nonrefundable option will be used in this decision, except when discussing the Board rule below.

from MidAmerican when someone else attaches to the line, and left Mr. Bruce with the impression that, in Mr. Schumacher's opinion, it was not worth the extra cost. (Tr. 21, 24-26, 39-40). Mr. Bruce testified that no costs were ever shared detailing this option, and no rules regarding how a refund is determined were ever explained to him. (Tr. 21, 39).

Mr. Bruce also testified he asked Mr. Schumacher why MidAmerican was charging him for the line, because he knew others in the area with longer line extensions who had not paid for them. (Informal Complaint File; Tr. 21-22, 41-43). Mr. Schumacher told him MidAmerican had changed its policy and now charged for line extensions because with only one home on the line, it would take years to recover the line extension cost, and it wasn't fair for the rest of the customers to subsidize the cost of the line extension when only one customer received the benefit of the line. (Tr. 22, 175). Mr. Schumacher testified the previous policy was that MidAmerican did not charge for distribution line extensions on public right-of-way. (Tr. 174-176; Exhibit 206). He believes MidAmerican changed the policy to start charging for those lines in about 1999. (Tr. 176-177).

Mr. Strachota testified his understanding is that one of MidAmerican's predecessor companies did not charge customers for a single-phase line along a public road. (Tr. 106). He thinks MidAmerican changed its policy because of competition and a need to keep rates lower or not increase rates as rapidly. (Tr. 107; Exhibit 206). Mr. Strachota stated that MidAmerican believes its policy reasonably

balances costs chargeable to individual customers versus costs to be borne by all ratepayers. (Tr. 52; Exhibit 206).

Mr. Schumacher does not clearly recall the August 13th conversation. (Tr. 167, 170) He testified his recall is that the two discussed refundable and nonrefundable contracts. (Tr. 167). Mr. Schumacher wrote: "possible 2 more lots refundable" on the rough drawing he made of Mr. Bruce's situation, and both men believe there was a real estate sign by the road and that they discussed possible other lots. (Exhibit 201; Tr. 26, 164, 169-170). Mr. Bruce testified that, at the time, he did not know whether the property would be sold or anyone would build on it. (Tr. 26). Mr. Schumacher testified the discussion on that date regarding a possible refund was "probably really vague, really no explanation because we had no idea what the costs were going to be." (Tr. 170). Mr. Schumacher does not have any memory of what he said to Mr. Bruce regarding the refundable option on August 13, 2001. (Tr. 179).

Mr. Schumacher testified that the refundable option is not something that he would talk about with a customer needing a line extension at the initial meeting unless it was very visible at the time. (Tr. 179-180). He testified the job of the design tech is to gather information such as length, type of service, and transformer location, not to discuss costs, which are unknown at the time. (Tr. 180). The design tech then goes back to the office and gives the information to the customer coordinator, who calculates the costs. (Tr. 180). Mr. Schumacher is currently a customer coordinator.

(Tr. 180). He testified the design tech would give him an indication that more people might be building, and usually the customer volunteers the information. (Tr. 180). Mr. Schumacher might call the customer to ask whether someone else might build nearby, and if the customer responds positively, discuss the possibility of a refundable contract and its cost. (Tr. 181-182).

Mr. Strachota testified that when MidAmerican talks with a customer regarding line extension options, the company makes it clear that there will be a difference in cost between the refundable and nonrefundable options due to the surcharge for tax recovery purposes. (Tr. 123–125). He further testified the nonrefundable option has a lower surcharge and in many cases is probably the most reasonable way to go. (Tr. 124). He also testified that if it's apparent that nothing is going to happen, there probably would not be a lot of reason to go into a discussion about refundable policies. (Tr. 143). He testified he cannot say for sure whether customers are told the refundable option may be by surety bond as well as cash. (Tr. 125).

Consumer Advocate witness Mr. Turner testified it was not clear to him that MidAmerican sufficiently informed Mr. Bruce about the consequences of his decision. (Tr. 188). He also testified MidAmerican did not provide Mr. Bruce with any tariffs or written explanation of the process, and it is unreasonable to expect Mr. Bruce would know and understand the tariff and rules without any written explanation. (Tr. 188).

After Mr. Bruce and Mr. Schumacher met on August 13th, Mr. Schumacher went back to his office and calculated costs of an underground and an overhead

option, both nonrefundable, and sent Mr. Bruce a letter dated August 21, 2001, offering the two proposals for service. (Informal Complaint File; Tr. 22, 27, 170). Both proposals incorrectly assumed Mr. Bruce's house would be heated by gas. (Informal Complaint File; Tr. 21-22). The August 21st letter does not mention the refundable option. (Informal Complaint file).

Mr. Bruce was somewhat shocked by the prices quoted in the letter. (Tr. 27). After receiving the letter, he called Mr. Schumacher, told him his home would be electrically heated, and asked if all the possible electric heat credits had been included in the cost. (Tr. 22, 27-28, 170-171). Mr. Schumacher then recalculated the cost with the electric heat credit and gave Mr. Bruce a new proposal for the underground option that included a credit for electric heat. (Informal Complaint File; Tr. 22, 28-29, 174). During that conversation, Mr. Schumacher recalculated new figures that included an electric heat credit for a refundable and a nonrefundable option. (Exhibit 202; Tr. 170-173). Although he does not recall talking about the refundable option, or saying anything to Mr. Bruce about the figures, Mr. Schumacher believes he gave them to Mr. Bruce. (Tr. 168, 171-174, 183). Mr. Bruce testified he cannot be certain whether the figures were quoted to him at the time. (Tr. 29).

According to the calculations Mr. Schumacher testified he made during the conversation and believes he quoted to Mr. Bruce, the cost of the nonrefundable option was \$2,472.42, and the cost of the refundable option was \$3,576.57. (Exhibit 202; Tr. 164-165). Mr. Schumacher testified the essential difference between these

two calculations is the surcharge (35.73 percent versus 71.14 percent) for the income tax effect of the revenue. (Tr. 165, 155-156; Exhibit 206). However, the amount calculated by Mr. Schumacher for the refundable option is incorrect and should have been \$3,117.43. (Informal Complaint File – letter dated September 9, 2002, from MidAmerican to the Board; Exhibit 206, p. 7).

Mr. Bruce chose the underground option, sent a check for \$2,472.42 to MidAmerican, and the line was built and power connected to Mr. Bruce's new home in November 2001. (Tr. 22; Informal Complaint File). Mr. Bruce also paid Warren Water Company for a water line extension to his new house. (Informal Complaint File; Tr. 22).

In 2002, Mr. Falk built a new house just to the west of Mr. Bruce's house. (Informal Complaint File; Tr. 22; Exhibit 207). All power lines and water lines serve Mr. Bruce's house from the east, so he gave MidAmerican and Warren Water Company easements to supply electricity and water to Mr. Falk's house. (Informal Complaint File). MidAmerican did not charge Mr. Falk for the cost of his distribution line extension because the estimated construction cost was less than three times Mr. Falk's estimated annual base revenue. (Tr. 87; Exhibit 206).

The Warren Water Company refunded half the cost of Mr. Bruce's water line extension to Mr. Bruce when Mr. Falk began receiving water service. (Tr. 22; Informal Complaint File). Mr. Bruce asked MidAmerican for a similar refund, which

MidAmerican refused, saying a refund would be contrary to its tariff. (Informal Complaint File; Tr. 22).

Mr. Bruce questions why he was charged for his line extension. (Informal Complaint File; Tr. 21-22, 41-43). In addition, Mr. Bruce's position is that MidAmerican now has two homes generating revenue on the line he paid for, and it is unfair and contrary to the reason MidAmerican charged him for the line for MidAmerican to refuse him a refund. (Informal Complaint File; Tr. 23). He also argues that MidAmerican's position, that he would not be entitled to a refund even had he chosen the refundable option because Mr. Falk's line extension is not attached directly to a point on Mr. Bruce's extension, defies logical sense. (Tr. 23; Informal Complaint File). Mr. Bruce believes MidAmerican's tariff is unfair and a single customer should not have to subsidize the infrastructure MidAmerican uses to make a profit. (Informal Complaint File).

A distribution line extension is the part of the line extension that connects from MidAmerican's existing distribution system and runs to a transformer serving a customer's house. (Tr. 69-70). A service line extension is the part of the line extension that runs from the transformer to the electric meter on or near the customer's house. (Tr. 70-71, 79-80). MidAmerican states that Mr. Bruce was charged for his distribution line extension because the estimated construction cost of his distribution line extension was more than three times his estimated annual base revenue, and it would not be fair for all ratepayers to subsidize a line extension

benefiting one person. (Informal Complaint File; Exhibits 200, 206; Tr. 47-48).

MidAmerican did not charge Mr. Bruce for his service line extension because a customer is entitled to up to 50 feet of free service line extension, and Mr. Bruce's service line was less than 50 feet. (Tr. 82-83).

MidAmerican followed its tariff and the Board rule at 199 IAC 20.3(13)"b" when it charged Mr. Bruce for his distribution line extension and did not charge him for his service line extension. (Informal Complaint File; Exhibits 200, 206; Tr. 47-48, 82-83).

MidAmerican's position is that Mr. Bruce chose the nonrefundable option and therefore is not eligible for a refund. (Informal Complaint File; Exhibit 206; Tr. 49-50, 99). In addition, MidAmerican's position is that even if Mr. Bruce had chosen the refundable option he would not be eligible for a refund, because Mr. Falk's service line extension does not attach directly to Mr. Bruce's distribution line extension. (Tr. 48-49, 58-59, 85-86; Exhibits 205, 206, 207; MidAmerican Brief, pp. 5-7). Instead, MidAmerican constructed an additional distribution line extension that ran from Mr. Bruce's transformer to Mr. Falk's transformer, and Mr. Falk's service line extension connects to Mr. Falk's transformer. (Tr. 48-49, 85-86; Exhibits 205, 206, 207; MidAmerican Brief, pp. 5-7). MidAmerican's position is that even if Mr. Bruce had chosen the refundable option, he would only have been eligible for a refund if Mr. Falk's service line extension had connected directly from Mr. Bruce's transformer to Mr. Falk's house. (Tr. 57-60, 92-95, 157; Exhibits 200, 205, 206; MidAmerican Brief, pp. 5-7). Mr. Strachota testified that although Mr. Falk's service line could have

been attached to Mr. Bruce's transformer, it would not be recommended, because the distance is so far that it would be difficult to have the voltage at Mr. Falk's house remain within utility standards. (Tr. 55-56, 60).

MidAmerican argues that this position is consistent with its tariff and Board rule 199 IAC 20.3(13), and giving Mr. Bruce a refund would not be fair to MidAmerican's other customers. (Exhibits 200, 205, 206; Tr. 50-51, 97-98, 103-105; MidAmerican Brief, pp. 5-7).

In its tariff, sheet no. 49, when discussing the refundable option, MidAmerican states "For a period of ten years from the date of the original advance for construction, the Company will provide a refund to the depositor for each customer who attaches to the line extension." (Exhibit 200). On the same page, MidAmerican defines "attached" as "For purposes of the refund, a new customer will only be considered to have "attached" to a line extension if the electric service connection is attached directly to a point on the extension." (Exhibit 200). MidAmerican's tariff does not define "electric service connection." (Exhibit 200). Mr. Strachota testified that "an electric service connection would be the connection of the electric service line, so if you attach an electric service line to a transformer or to a meter, then that's a connection." (Tr. 116). When asked whether an electric service connection could be a connection of a distribution line he testified that "The word 'service' would indicate to me that we're talking about a service line, a customer's service line, from the house to a transformer, . . . I guess a service line." (Tr. 116). Mr. Strachota

testified the definition of attachment in the tariff is clear to him, and it is clear to him that electric service connection refers only to the customer's electric service line.

(Tr. 117)

However, the tariff itself does not explicitly restrict the definition of "electric service connection" to refer only to a customer's electric service line. (Tr. 117; Exhibit 200). Had he chosen the refundable option, the tariff does not clearly prohibit Mr. Bruce from receiving a refund when Mr. Falk attached, even though an additional distribution line extension was required. (Exhibit 200).

Board rule 20.3(13)"c" states that a utility must refund a pro-rata share "for each service attachment to the extension." Mr. Strachota testified it is his understanding that the term "service attachment" used in the rule does not include the situation in this case, where MidAmerican extended the distribution line first, before attaching Mr. Falk's service line to the new distribution line extension. (Tr. 119–121). He testified that his interpretation of the rule is that a customer who chose the refundable option would be entitled to a refund only if another customer's service line extension were connected to the first customer's distribution line extension. (Tr. 121). He testified that this is a reasonable position because it is not clear to him how the utility would manage the refunds and determine who would receive refunds, and how refunds would be applied, if refunds were available for distribution line extensions. (Tr. 122). In addition to the practical matter of determining how the dollars are divided and credited, Mr. Strachota testified the

reason the restriction makes sense to him is that each line extension must be paid for by the requesting customer, and MidAmerican keeps track of each of the line extensions as a separate entity. (Tr. 100-101). He testified MidAmerican can measure the line extension and calculate costs and charge the customer based on that. (Tr. 101).

He also testified the distinction is reasonable because of the difference in the way the second customer's three times revenue is credited. (Tr. 158-160). He testified that if the second customer must be served by an additional distribution line extension, then the three times revenue from the new customer is credited to the new distribution line extension, not to the previous distribution line extension. (Tr. 158-160). However, if the second customer's service line extension is connected directly to the first customer's distribution line extension, the second customer's three times revenue has nothing to be credited to besides the first customer's distribution line extension. (Tr. 158-160). He testified this method is reasonable, and he does not know a more reasonable or different method. (Tr. 159). He testified this method allows a customer's revenue to be credited against the amount of line, work, and cost needed to extend the distribution line to get to the customer. (Tr. 160). Mr. Strachota stated that having clear parameters makes it relatively easy to apply the policy in a nondiscriminatory manner. (Exhibit 206, p. 13).

Consumer Advocate witness Mr. Turner testified it is not clear that Mr. Falk's line is not an extension of Mr. Bruce's line, and therefore, it is his opinion that

MidAmerican did not discuss the situation, risks, and costs adequately with Mr. Bruce. (Tr. 188). Mr. Turner further testified that the tariff pages do not clearly explain how MidAmerican determined that Mr. Falk's line extension was not an extension of Mr. Bruce's line. (Tr. 188). He also testified that he believes the extension from Mr. Bruce's transformer to Mr. Falk's transformer is connected to Mr. Bruce's line extension, and as such, any advance for construction paid may be refundable. (Tr. 189).

Mr. Turner interpreted the term "service attachment" as used in Board rule 199 IAC 20.3(13)"c" to mean a secondary line extension on private property that would connect to the distribution extension; that eventually a service line extension would have to be made to Mr. Falk's house. (Tr. 192-194). He acknowledged the term "service attachment" is not defined in the Board's rules. (Tr. 193). He also testified that he did not agree that building a second distribution line extension precludes eligibility for a refund. (Tr. 194). He testified the rules do not state this, and the intent of the rules was to allow refunds to be given if other people attach reasonably close and benefit from the line so one person would not incur the entire burden of paying for the line. (Tr. 194). Mr. Turner testified that in this case, when Mr. Falk did not have to pay for his distribution line extension because three times his revenue was greater than the cost of his extension, if Mr. Bruce had had a refundable option, he would probably deserve a refund. (Tr. 195).

Mr. Turner testified that MidAmerican's interpretation of its tariff and the Board's rules, while not unreasonable as a whole, is unreasonable in this particular instance. (Tr. 195). He also testified that it would be fair to give Mr. Bruce a refund because there is now another source of revenue on the line. (Tr. 196-197).

The Consumer Advocate argues that the purpose of Board rule 20.3(13) is to allow a utility to recover construction costs of a distribution line extension from revenue provided by customers who attach to it and to fairly allocate all or a portion of the costs among those customers. (Consumer Advocate Brief p. 3). It argues that the purpose suggests that the rule was meant to cover any customer who connects to the distribution line extension, regardless of whether the line connecting the attaching customer is made up of both the low voltage service line extension only, or both it and a length of higher voltage distribution line. (Consumer Advocate Brief p. 3). The Consumer Advocate states that the word "connect" is meant to include only lines that run without interruption by other customers from the new customer to the original extension. (Consumer Advocate Brief p. 3). It further argues that there is nothing in the rule that shows an intent to distinguish between attaching customers based on the type of line used for the connection. (Consumer Advocate Brief, pp. 2-3). It argues that regardless of the character of the line by which it attaches, the second customer directly benefits from the first customer's financed extension, and the utility receives the added revenue of the second customer partly as a result of the original extension. (Consumer Advocate Brief pp. 2-5).

The Consumer Advocate argues that the result might be unreasonable without certain limits on various charges and refunds, but that there are limits. (Consumer Advocate Brief p. 3). If the second customer's cost of construction exceeds a certain amount, that customer will have to make an advance payment, just as the first customer did. (Consumer Advocate Brief p. 3). Also, the first customer may only receive refunds to the extent of its advance payment, and only to the extent that the utility has new customers contributing revenue to replace the refunds. (Consumer Advocate Brief pp. 3-4).

The Consumer Advocate argues that if the intent of the rule was to deny refunds when a distribution line extension is required, the rule could have been drafted to make this clear. (Consumer Advocate Brief p. 4). It argues that the only operative language in the rule requiring refunds is in subparagraph "c," which states that refunds shall be granted "for each service attachment to the extension." (Consumer Advocate Brief p. 5; 199 IAC 20.3(13)"c") The Consumer Advocate's understanding is that MidAmerican contends the word "service" in the phrase should be interpreted as having the same meaning as "service line extension," thus limiting refunds to a particular type of line. (Consumer Advocate Brief p. 5). The Consumer Advocate argues that the word "service" is commonly used when discussing the provision of electricity to users, it is appropriate in many different contexts, and in this context, it is perfectly consistent with a broader reading. (Consumer Advocate Brief p. 5). It argues that the logical and straightforward reading of the rule is that it covers

any attachment to the line that serves a customer, and should not be given a restrictive reading unless that is clearly called for. (Consumer Advocate Brief p. 5).

The Consumer Advocate's interpretation of the rule conforms to the language of the rule and is more reasonably consistent with the purpose of the rule. The Consumer Advocate is correct that there is nothing in the rule indicating an intent to limit refunds to the situation where a second customer's service line extension attaches to the first customer's distribution line extension. Rather, the rule uses broad language when referring to possible refunds. The definition of advance for construction states that portions of the advance may be refunded for "any subsequent connections made to the extension." 199 IAC 20.3(13)"a." Subparagraph "b"(1) refers to "advance funds which are subject to refund as additional customers are attached." Paragraph "c" states that the utility shall refund "a pro-rata share for each service attachment to the extension." Although the term "service attachment" is not defined in the rules, there is nothing to indicate it is synonymous with "service line extension." When describing how the refunds are to be calculated, subparagraphs "c"(1) and (2) refer to "each customer who has attached to the extension." Although the rule in paragraph "a" defines "extension" as "a distribution or secondary line extension other than a service line extension," and "service line extension" as "any secondary line extension on private property serving a single customer or point of attachment of electric service," the rule does not use these terms when discussing when a refund is due.

The rule states that "[t]he utility will provide all electric plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served," 199 IAC 20.3(13)"b"(1). The purposes of the rule are to define the "unusual" circumstances in which the utility may charge an individual customer or developer for electric plant, and to state if and when that customer or developer is entitled to a full or partial refund. The rule recognizes that at a certain point, when the estimated construction cost of a line extension is greater than three times the customer's estimated base revenue, the customer receives a greater benefit than the usual situation and it is likely the utility will not recover the construction costs for several years, and it is therefore fair to require the customer to contribute toward the cost of the extension. However, the rule also recognizes that, assuming the customer has chosen the refundable option, it is fair for the customer to receive a full or partial refund if additional customer(s) directly attach to the line the customer paid for and will thus provide an additional source of revenue to the utility. Whether the distribution line must be extended before the new customer's service line attaches is not relevant, because the attaching customer will provide an additional source of revenue to the utility regardless of the type of line. In this situation, it is fair and consistent with the rule for the first customer to receive a full or partial refund, if the customer chose the refundable option.

Mr. Strachota testified he did not know how MidAmerican would manage and apply refunds if refunds were available for distribution line extensions. (Tr. 122). The rule sets forth the criteria for determining whether each customer (or developer) must pay for his or her distribution line extension in paragraph "b." If a customer (or developer) has had to pay for a distribution line extension according to paragraph "b," and if the customer (or developer) has chosen the refundable option, paragraph "c" describes how to calculate the refund due when another customer (or developer) attaches. According to paragraph "c," the first and second customers' three times base revenues are added together, the first and second customers' distribution line extension construction costs are added together, the two are compared, and either subparagraph (1) or (2) is followed. It is noted that in subparagraphs "c"(1) and "c"(2), the second "extension" is singular, rather than plural as would be expected if the second customer also had a distribution line extension. This should not be interpreted to mean that only the cost of the first customer's distribution line extension should be considered and compared with the three times base revenues for the two customers, as the Consumer Advocate did at page 9 of its brief. This would not be consistent with the intent of the rule, which is to compare revenues and costs of the two customers. The rule merely reflects the fact that in many cases, there will be only one distribution line extension.

The Consumer Advocate suggests that rule 20.3(13) may not permit non-refundable payments for distribution line extensions. (Consumer Advocate Brief,

p. 6). It states that the only language explicitly permitting utilities to require customers to pay for distribution line extensions is in subparagraph "b," which says the utility may require customers to advance funds, which are subject to a refund, and there is no mention of contributions in aid of construction (the nonrefundable option) in relation to distribution line extensions. (Consumer Advocate Brief, p. 6). The Consumer Advocate therefore assumes that when a utility allows a customer to make a payment that is not subject to a refund, it is pursuant to subparagraph "e," which allows a utility to make a different contract with a customer if it is more favorable to the customer. (Consumer Advocate Brief, p. 6). The Consumer Advocate then questions how it can be determined which contract is more favorable to the customer until the ten-year period for refunds expires, and therefore suggests that the most logical reading of the rule appears to be that it does not permit a utility to accept a nonrefundable contribution in aid of construction for a distribution line extension. (Consumer Advocate Brief, pp. 6-7).

MidAmerican states that its decision to allow customers to make the less expensive contribution in aid of construction if they desire rather than the advance for construction, "which is the only option set forth in the rules," generally benefits rural customers and is allowed by subparagraph "e." (MidAmerican Brief, p. 7).

The parties are correct that when the rule discusses distribution line extensions in subparagraphs "b" (1) – (3), it refers only to advance funds subject to refund and advances for construction costs, the refundable option.

199 IAC 20.3(13)"b"(1)–(3). It is also true that the rule discusses contribution in aid of construction, the nonrefundable option, with respect to service line extensions in subparagraph "b"(4). However, the parties' interpretation is a more narrow reading than necessary. The definitions of "advances for construction costs" and "contribution in aid of construction" in subparagraph "a" both state the payments are for "an extension," which is defined as "a distribution or secondary line extension other than a service line extension." The definition clearly contemplates that a contribution in aid of construction may be used in distribution line extension situations. It is noted that MidAmerican's tariff sheet no. 39 defines "contribution in aid of construction" as "a non-refundable payment by a customer to cover the cost of construction of a line or service extension," and a line extension is defined on tariff sheet no. 40 as "a primary or secondary distribution line extension other than a service extension." Considering that the definition of "contribution in aid of construction" in the rule refers to distribution line extensions, that the rule does not prohibit it, and that there does not appear to be any reason contributions in aid of construction should not apply to distribution line extensions, the better interpretation of the rule is that it allows the customer to choose whether to make an advance for construction (the refundable option) or a contribution in aid of construction (the nonrefundable option) when payment for a distribution line extension is required. Paragraph "e" is not the only provision in the rule that would allow the customer to choose between the options.

MidAmerican finds support for letting the customer make the choice in paragraph "e," which provides that a utility may make a different contract with a customer, so long as it is more favorable to the customer and the company does not discriminate among customers. 199 IAC 20.3(13)"e." The Consumer Advocate takes the position that this is prohibited because whether the contract is more favorable cannot be determined until the end of the ten-year period. The Consumer Advocate's position is not reasonable, and is not in conformance with the rule. In this situation, it is up to the customer to decide which option he or she believes is more favorable, based on the circumstances at the time of the selection. If it is later shown that the customer would have been better off financially having chosen the other option, this does not mean the original choice is rendered invalid. Nor does it mean the customer should be able to change his or her mind and make a new contract based on later-acquired information. Therefore, paragraph "e" does not prohibit a utility from allowing the customer to choose the advance for construction costs or the contribution in aid of construction.

The Consumer Advocate states that it cannot find any provision in the rule that authorizes a utility to require a customer to pay a higher amount for the refundable option than the nonrefundable option. (Consumer Advocate Brief, p. 7). The Consumer Advocate argues that there is no mention of a surcharge in subparagraph "b"(2)(2), and that therefore, Mr. Bruce paid an advance that qualifies as refundable. (Consumer Advocate Brief, p. 7)

The authority to charge the differing surcharges is contained in the definitions of "advances for construction costs" and "contributions in aid of construction" in paragraph "a" of the rule. 199 IAC 20.3(13)"a." The definition of "advances for construction costs" states that they are cash payments, or surety bonds, or an equivalent surety, and that "[c]ash payments, surety bonds, or equivalent sureties shall include a grossed-up amount for the income tax effect of such revenues." Thus, when the term "advances for construction costs" is used in the rule, it includes the grossed-up amount for the income tax effect of the revenue, in this case, the surcharge of 71.14 percent. Similarly, the definition of "contribution in aid of construction" states it is a "nonrefundable cash payment grossed-up for the income tax effect of such revenue," and that "[t]he amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability." Therefore, when the term is used in the rule, it includes the surcharge, and the contribution in aid of construction amount calculated by MidAmerican in this case included the lower surcharge of 35.73 percent. (Exhibit 206)

Although it appears the refundable and nonrefundable options were not explained to Mr. Bruce in any detail, and if an amount for the refundable option was provided to him, it was an erroneous amount, Mr. Bruce chose the nonrefundable option. The evidence in the record shows that Mr. Bruce was interested in the lowest cost option, and did not know whether other customers would be building houses

near him. There is nothing to indicate that even if offered the correct amount, and with a complete explanation, Mr. Bruce would have chosen the refundable option. Therefore, he is not entitled to a refund in this case. In his closing argument, Mr. Bruce stated that his argument is not about getting a refund at this point, but that MidAmerican is incorrectly interpreting its tariff, and MidAmerican's position that even had he chosen the refundable option, he would not be entitled to a refund, does not make sense. (Tr. 203-204)

The Consumer Advocate contends that Mr. Bruce is due a full refund of the amount he paid, and that the correct method to calculate Mr. Bruce's refund is contained in subparagraph "c"(1). (Consumer Advocate Brief, pp. 8-9; 199 IAC 20.3(13)"c"(1)). Subparagraph "c"(1) provides that "If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor." The Consumer Advocate correctly calculates the combined three times estimated base revenue for Mr. Bruce and Mr. Falk as \$5,196. (Consumer Advocate Brief, p. 9). It then states that this amount exceeds the estimated construction cost of Mr. Bruce's extension, which was either \$4,793 or \$5,125, depending on whether the pad mount transformer differential is included in the construction cost. (Consumer Advocate Brief, p. 9; Tr. 50, 114; Exhibit 206, pp. 2-3, 6-7, 11-12). The Consumer Advocate then states that since the combined

three times estimated base revenue exceeds the estimated construction cost, according to subparagraph "c"(1), the entire amount paid by Mr. Bruce should be refunded to him. (Consumer Advocate Brief, p. 9). The Consumer Advocate argues that MidAmerican's calculation of the refund at pages 11 and 12 of Exhibit 206 does not comport with the provisions of paragraph "c" of the rule, that the calculation of refunds is an important point, and hopes that this proceeding determines the appropriate method. (Consumer Advocate Brief, p. 9).

The Consumer Advocate is correct that MidAmerican's calculation of the refund at pages 11 and 12 of Exhibit 206 is incorrect and not in conformance with the rule. In particular, MidAmerican's calculation of the "refundable balance towards Mr. Bruce's extension" from Mr. Falk has no basis in the rule. However, the Consumer Advocate's calculation is also incorrect, because it compares three times estimated base revenues from both Mr. Bruce and Mr. Falk with the estimated construction cost of only Mr. Bruce's extension. As discussed above, this is contrary to the purpose of this subparagraph, which is to compare estimated revenues with estimated construction costs.

If Mr. Bruce had chosen the refundable option, which he did not, the correct calculation of the refund due him according to paragraph "c" is as follows. First, the three times estimated base revenue for Mr. Bruce and Mr. Falk must be added together. This results in a figure of \$5,196. (Exhibit 206, pp. 7, 11-12). Next, the estimated construction costs for Mr. Bruce's extension and Mr. Falk's extension must

be added together. Although there are differences in MidAmerican's calculation of estimated construction costs, sometimes including the pad mount transformer differential and sometimes not, the rule contemplates that estimated construction costs includes the pad mount transformer differential. See the definition of "estimated construction costs," which states that the equivalent overhead transformer cost is not to be included. 199 IAC 20.3(13)"a." Therefore, when the estimated construction cost of Mr. Bruce's distribution line extension of \$5,125 is added to the estimated construction cost of Mr. Falk's distribution line extension of \$1,474, this results in a total estimated construction cost of \$6,599. (Exhibit 206, pp. 11-12). Therefore, since the combined total of three times estimated base revenue is less than the total estimated construction cost, the refund that would be due is calculated under subparagraph "c"(2), and the amount which would have been refunded to Mr. Bruce is three times estimated base revenue of Mr. Falk, or \$1,892. 199 IAC 20.3(13)"c"(2).

However, as stated above, there is no indication in the record that Mr. Bruce would have chosen anything other than the least-cost option even if he had been fully and correctly informed, he did choose the nonrefundable option, and he therefore is not entitled to a refund.

MidAmerican witness Mr. Strachota testified it would not be unreasonable in line extension situations to require MidAmerican to obtain written verification from a customer showing that MidAmerican had explained all the options to the customer

and showing how MidAmerican calculated the cost of each option, although he testified he thought most customers would not understand the cost breakdown and would chose the cheapest option. (Tr. 101-102) He also testified it would not be a hardship for MidAmerican to provide this and it is something the company could do. (Tr. 102). In its brief, MidAmerican stated that although current statute, rules, and MidAmerican tariffs do not require a written verification explaining the refundable and nonrefundable options, MidAmerican does not object to all gas and electric utilities providing a written verification, it would not be unreasonable on a going forward basis for utilities to provide such notice for gas main extensions and electric line extensions, and MidAmerican would agree to do so. (MidAmerican Brief pp. 7-10). MidAmerican suggests that this step be included in the Board's rulemaking Docket No. RMU-03-1. (MidAmerican Brief, p. 10). Consumer Advocate witness Mr. Turner testified it would not be unreasonable to require MidAmerican to obtain written verification from a customer needing a line extension that showed MidAmerican had explained all the options to the customer and showed MidAmerican's calculation of the cost of each option. (Tr. 190).

It is unclear whether MidAmerican's suggestion that the verification step be included in rulemaking Docket No. RMU-03-1 can be followed, because the proposed rule changes do not include this. In order to add this substantive amendment at this point, the rule may have to be re-noticed. However, it is clear that requiring a written verification that explains each option and how the utility calculated each option would

have been helpful in this case. Therefore, the undersigned recommends that the Board consider including such a requirement in either Docket No. RMU-03-1, if it is possible at this point, or in a future rulemaking docket regarding rule 20.3(13). In addition, since Mr. Strachota testified it would not be a hardship for MidAmerican to provide such written verification, and the record strongly supports it, MidAmerican should consider voluntarily following this step prior to the rule requiring it. As suggested by MidAmerican in its brief at page 8, the notice should include a utility telephone number the customer could call for answers to questions about the notice.

FINDINGS OF FACT

1. When Mr. Bruce planned to build a new home in the summer of 2001, he requested electric service from MidAmerican. (Informal Complaint File). MidAmerican charged Mr. Bruce for his distribution line extension and did not charge him for his service line extension. (Informal Complaint File; Exhibits 200, 206; Tr. 47-48, 82-83).

2. Although the refundable and nonrefundable options were not clearly explained to him, and if a price for the refundable option was provided to him, it was an incorrect amount, Mr. Bruce chose the nonrefundable option, and paid MidAmerican \$2,472.43 for the cost of his distribution line extension. (Tr. 21-26, 29, 39-40, 155-156, 164-165, 167, 170-174, 179, 183; Informal Complaint File; Exhibits 202, 206). Mr. Bruce was concerned about costs, and there is nothing in the record

to indicate Mr. Bruce would have chosen the refundable option if the correct price had been quoted to him and the options had been clearly explained.

3. In 2002, Mr. Falk built a new house just to the west of Mr. Bruce's house. (Informal Complaint File; Tr. 22; Exhibit 207). All power lines and water lines serve Mr. Bruce's house from the east, so he gave MidAmerican and Warren Water Company easements to supply electricity and water to Mr. Falk's house. (Informal Complaint File).

4. A distribution line extension is the part of the line extension that connects from MidAmerican's existing distribution system, and runs to a transformer serving a customer's house. (Tr. 69-70). A service line extension is the part of the line extension that runs from the transformer to the electric meter on or near the customer's house. (Tr. 70-71, 79-80). MidAmerican constructed an additional distribution line extension that ran from Mr. Bruce's transformer to Mr. Falk's transformer, and Mr. Falk's service line extension connects to Mr. Falk's transformer. (Tr. 48-49, 85-86; Exhibits 205, 206, 207; MidAmerican Brief, pp. 5-7).

5. Although Mr. Bruce requested one, MidAmerican refused to give Mr. Bruce a refund when Mr. Falk's line was built. (Informal Complaint File; Tr. 22).

6. MidAmerican's position is that Mr. Bruce chose the nonrefundable option and therefore is not eligible for a refund. (Informal Complaint File; Exhibit 206; Tr. 49-50, 99). In addition, MidAmerican's position is that even if Mr. Bruce had chosen the refundable option, he would not be eligible for a refund, because

Mr. Falk's service line extension does not attach directly to Mr. Bruce's distribution line extension. (Tr. 48-49, 58-59, 85-86; Exhibits 205, 206, 207; MidAmerican Brief, pp. 5-7). Instead, MidAmerican constructed an additional distribution line extension that ran from Mr. Bruce's transformer to Mr. Falk's transformer, and Mr. Falk's service line extension connects to Mr. Falk's transformer. (Tr. 48-49, 85-86; Exhibits 205, 206, 207; MidAmerican Brief, pp. 5-7). MidAmerican's position is that even if Mr. Bruce had chosen the refundable option, he would only have been eligible for a refund if Mr. Falk's service line extension had connected directly from Mr. Bruce's transformer to Mr. Falk's house. (Tr. 57-60, 92-95, 157; Exhibits 200, 205, 206; MidAmerican Brief, pp. 5-7).

CONCLUSIONS OF LAW

1. MidAmerican followed its tariff and the Board rule at 199 IAC 20.3(13)"b" when it charged Mr. Bruce for his distribution line extension and did not charge him for his service line extension. (Informal Complaint File; Exhibits 200, 206; Tr. 47-48, 82-83).

2. If Mr. Bruce had chosen the refundable option, MidAmerican's tariff does not clearly prohibit Mr. Bruce from receiving a refund when Mr. Falk attached, even though an additional distribution line extension was required. (Tr. 116-117; Exhibit 200).

3. MidAmerican's interpretation of the Board rule is incorrect. 199 IAC 20.3(13) does not limit refunds to the situation where a second customer's

service line extension attaches to the first customer's distribution line extension. If the second customer's distribution line extension attaches directly³ to the first customer's distribution line extension as was done in this case, the rule requires a refund to be given according to paragraph "c." If Mr. Bruce had chosen the refundable option and paid the additional charge, he would have been entitled to a refund. 199 IAC 20.3(13)"c." However, Mr. Bruce chose the nonrefundable option, there is no indication his choice would have been different if the options had been explained correctly to him, and he is therefore not entitled to a refund.

4. 199 IAC 20.3(13) does not prohibit nonrefundable payments for distribution line extensions. Rather, the rule allows the customer to choose whether to make an advance for construction, the refundable option, or a contribution in aid of construction, the nonrefundable option, when payment for a distribution line extension is required. 199 IAC 20.3(13)"a" and "b." It is up to the customer to decide which option he or she believes is more favorable at the time the decision is made, and later facts which show the contrary do not invalidate the choice nor require a new contract to be made. 199 IAC 20.3(13)"e."

5. The definitions of "advance for construction costs" and "contribution in aid of construction" include provisions that allow MidAmerican to include the differing surcharges for the tax effects of the payments. 199 IAC 20.3(13)"a."

³ Directly means without any intervening customers.

6. When a customer has chosen the refundable option, calculation of the refund must be done pursuant to paragraph "c" as discussed in the body of this decision. 199 IAC 20.3(13)"c."

IT IS THEREFORE ORDERED:

MidAmerican shall follow the requirements of 199 IAC 20.3(13) as interpreted in this proposed decision and order.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 15th day of May, 2003.