

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: MIDAMERICAN ENERGY COMPANY	DOCKET NO. DRU-06-2
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ORDER DENYING REQUEST FOR STAY AND SETTING COMMENT SCHEDULE

(Issued May 15, 2006)

On April 17, 2006, MidAmerican Energy Company (MidAmerican) filed with the Utilities Board (Board) a petition for a declaratory ruling on whether the Board's jurisdiction over MidAmerican's electric tariff and utility cost recovery and cost allocation is superceded and rendered void by passage of a municipal ordinance specifying the cost recovery and allocation of municipally-mandated overhead-to-underground conversion costs. MidAmerican's proposed answer is that the Board retains jurisdiction over an electric public utility's rates and charges for providing electric service and MidAmerican's electric tariff remains effective. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an appearance and statement on May 2, 2006, supporting the Board's primary jurisdiction over the validity and application of the tariff. Also on May 2, 2006, the city of Coralville, Iowa (Coralville), filed a petition for intervention and request for stay. Pursuant to 199 IAC 4.3(1), both Consumer Advocate and Coralville qualify as intervenors in this proceeding.

In support of its request for stay, Coralville states that Coralville and MidAmerican are parties to litigation now pending in the Iowa District Court for Johnson County. The dispute in that case involves whether MidAmerican can charge residents of Coralville for the cost of relocating overhead electric lines underground as ordered by Coralville. City of Coralville v. MidAmerican Energy Company, Johnson County No. CVCV06692 (Coralville II). Copies of various pleadings were attached to the request for stay. Coralville also attached to its request a copy of a district court decision in 2003 in an earlier case involving MidAmerican and Coralville that was decided in Coralville's favor and upheld the police power of cities to order an electric line to be placed underground. City of Coralville v. MidAmerican Energy Company, Johnson County No. LACV61728 (Coralville I). Coralville says MidAmerican did not appeal the decision in Coralville I.

Coralville argues the Board lacks jurisdiction to enforce, interpret, limit, adjudicate, hinder, or otherwise claim or exercise any control or rights over or concerning administration of public rights of way. Coralville states the district court has already determined Coralville, for these purposes, is not a customer or recipient of MidAmerican services; therefore, Coralville argues MidAmerican cannot come before the Board to make a contrary claim. Coralville contends that MidAmerican's request for declaratory ruling is a collateral attack upon a matter already decided in Coralville I. Coralville urges the Board to allow the district court to determine the questions presented in MidAmerican's petition for declaratory ruling.

On May 3, 2006, MidAmerican filed a resistance to the request for stay. MidAmerican argues the petition for declaratory ruling does not represent a collateral attack on the court's decision in Coralville I. MidAmerican states that case involved only whether Coralville could compel MidAmerican to locate facilities underground in the public right of way and whether Coralville could be compelled to pay for the underground relocation in accordance with MidAmerican's tariff. MidAmerican frames the issue in Coralville II as who must bear the cost of the underground relocation that is being required by Coralville's beautification programs.

The Board, in its initial review, does not see anything in the questions MidAmerican posed in its petition for declaratory ruling that, regardless of how those questions are answered by the Board, would infringe upon or limit Coralville's right to control what goes on or under its public rights of way. Coralville I related to issues of Coralville's police power and home rule; Coralville II involves public utility rates and charges. The standards for establishing collateral estoppel or issue preclusion have not been satisfied in this matter because the issue in Coralville I is not the same as the issue presented in Coralville II. Westegard v. Davis County Community School Dist., 580 N.W.2d 726, 728 (Iowa 1998).

Here, MidAmerican is requesting a ruling on the Board's authority over utility tariffs, utility cost recovery, and cost allocation. These are issues squarely within the Board's Iowa Code chapter 476 jurisdiction. For example, the Iowa Supreme Court has held that the state commerce commission's (predecessor to the Board) ruling

that city of Des Moines franchise fees should be paid only by Des Moines customers of the electric utility did not impair any franchise rights of the city or abridge any other rights of the city. City of Des Moines v. Iowa State Commerce Comm'n, 285 N.W.2d 12 (Iowa 1979).

Coralville I only involved whether Coralville could require that certain electric lines be placed underground; the ruling did not determine who would ultimately pay the additional cost. While Coralville II involves the issue presented by the request for declaratory ruling (who pays for the additional cost of undergrounding), the Board does not believe it should stay the declaratory ruling request pending any resolution by the district court. As the agency charged by statute with utility regulation, the Board is the appropriate body to consider questions such as the one posed by MidAmerican. To decline to consider the declaratory ruling request now, by issuing a stay, would be a breach of the Board's statutory duties and responsibilities.

Pursuant to Iowa Code § 17A.9(5), the Board will set a time for additional comments that will allow the Board to issue, or decline to issue, a declaratory ruling as expeditiously as possible, and certainly within the 60-day time limit provided by Iowa Code § 17A.9(8). All parties have filed initial pleadings with arguments; the Board will allow parties seven days from the date of this order to file any additional comments or arguments.

IT IS THEREFORE ORDERED:

1. The request for stay filed by the city of Coralville on May 2, 2006, is denied.
2. All parties may file additional comments or arguments within seven days from the date of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 15th day of May, 2006.