

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>DOUG MORGAN,</p> <p style="padding-left: 100px;">Petitioner,</p> <p style="text-align:center">vs.</p> <p>MIDAMERICAN ENERGY COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p style="text-align:right">DOCKET NO. FCU-08-17 (C-08-64)</p>
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PROCEDURAL ORDER AND NOTICE OF HEARING

(Issued November 13, 2008)

On June 13, 2008, Mr. Doug Morgan (Mr. Morgan) filed a complaint with the Utilities Board (Board), stating that MidAmerican Energy Company (MEC) had overcharged his business for electric service from 1998 through 2006. Mr. Morgan complained that, although MEC had provided a refund for five years of the overcharges (2001-2006), MEC refused to refund the remaining amount. Mr. Morgan stated he had inquired about the bill in 1998 and was told the bill was correct. He further stated the mistake was discovered after an audit in 2006, but he did not receive the refund for the years 2001-2006 from MEC until June 2008. Mr. Morgan stated his business and family had incurred financial hardship because of so much overpayment. Mr. Morgan requested a refund of the overpayments made during

1998, 1999, and 2000, and accrued interest to help offset the interest paid in the refinancing of his hog buildings.

Board staff forwarded the complaint to MEC for response, and MEC filed a response on June 26, 2008. MEC stated that the overcharge was caused when its meter technician incorrectly recorded the meter multiplier as 80 instead of 40 when the meter was installed at Mr. Morgan's property on August 25, 1998. MEC stated it had no record of Mr. Morgan's call in 1998 regarding the high bills. MEC stated the error was discovered after MEC completed a periodic meter change on February 4, 2006. MEC stated the meter technician then correctly recorded the multiplier as 40, and all bills after February 4, 2006, were therefore calculated correctly. MEC further stated that due to its employee error, MEC did not finish its investigation and did not provide Mr. Morgan with a refund until May 20, 2008. At that time, MEC delivered a refund check of \$12,323.13 to Mr. Morgan. MEC stated that the billing adjustment and refund to Mr. Morgan were consistent with its tariff, which provides that the time period for refunds should not exceed five years.

On July 2, 2008, Board staff issued a proposed resolution stating that the Board rule that limits refund overcharges to five years balances the customers' rights in the event of an error with the utilities cost of maintaining accurate, retrievable billing records. Staff stated that the Board could order a refund further back than five years if the facts and circumstances warrant. Staff further stated the Board does not have jurisdiction to award interest. Board staff concluded that since there was not a

direct correlation between the inaccurate charges and Mr. Morgan's financial hardship, staff would not ask MEC to refund more than five years of overcharges.

On July 11, 2008, Mr. Morgan provided copies of his MEC electric bills from 1998, 1999, and 2000 to show the wrong multiplier was used and so MEC would have no cost to retrieve the records. Mr. Morgan provided additional information regarding his telephone call to MEC and his financial harm, and why he believes his case is unique. On July 28, 2008, MEC responded with additional information and stated that its billing adjustments were completed in accordance with Board rule 199 IAC 20.4(14)"e" and MEC's tariff. Therefore, MEC stated, it did not believe that further adjustments were appropriate.

On August 20, 2008, Board staff issued a second proposed resolution that incorporated Mr. Morgan's and MEC's additional information. Staff found that MEC had complied with the Board's rule regarding refunds of overcharges.

On September 3, 2008, Mr. Morgan filed a request for a formal complaint proceeding.

The details of the informal complaint are contained in informal complaint file number C-08-64, which is incorporated into the record in this formal proceeding pursuant to 199 IAC 6.7.

On October 20, 2008, pursuant to Iowa Code § 476.3 (2007), the Board issued an order docketing this case as a formal complaint proceeding and assigning it to the undersigned administrative law judge. The Board stated that subrule 20.4(14)"e" provides that the time period for refunds due to meter errors, such as the

incorrect use of a multiplier, is five years, unless otherwise ordered by the Board. The Board further stated that in adopting the rules, it set a five-year period for refunds to balance each customer's rights in the event of an error with the utility's costs of maintaining accurate, retrievable billing records for a potentially unlimited period. However, the Board stated, it recognized that a different time period could be applied if the facts and circumstances warrant. The Board stated there were reasonable grounds to docket the case as a formal complaint proceeding because there were factual disputes over whether the five-year period should be extended due to the particular facts and circumstances of this case.

On October 21, 2008, the undersigned issued an order setting a prehearing conference. The prehearing conference was held on November 6, 2008. Mr. Morgan was connected to the prehearing conference by telephone conference call. Although Mr. Morgan is represented by his attorney, Mr. Barry Thompson, Mr. Thompson was not on the call. The undersigned directed Mr. Morgan to have his attorney file an appearance with the Board. MEC was represented by its attorney, Ms. Jennifer Moore. The undersigned directed Ms. Moore to file an appearance. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) was represented by its attorney, Mr. John F. Dwyer. The parties agreed that prefiled testimony is not necessary and the hearing should be held on Tuesday, December 2, 2008, unless Mr. Morgan's attorney was not available on that date. Mr. Morgan agreed to notify the undersigned and provide alternate proposed dates if December 2 would not work for his attorney. Mr. Morgan and his attorney were granted

permission to appear at the hearing by telephone conference call. MEC agreed to file an exhibit prior to the hearing setting forth MEC's calculation of the remaining amount of overpayment that is in dispute in this case.

On November 10, 2008, MEC filed an appearance and MEC Exhibit 100, which sets forth the erroneous electric consumption numbers and amounts MEC billed Mr. Morgan from October 1998 through January 2001, MEC's calculation of the corrected amounts for the time period, and the difference, which is MEC's calculation of the remaining amount of overpayment in dispute. As of the date of this order, Mr. Morgan's attorney has not filed an appearance and Mr. Morgan has not indicated the December 2 hearing date will not work.

Pursuant to the Board's order docketing the case for investigation, Iowa Code § 476.3, 199 IAC 6.5, and 199 IAC 7, and the agreement of the parties at the prehearing conference, no prepared testimony will be filed and a hearing date will be set.

The statutes and rules involved or potentially involved in this case include Iowa Code § 476.3 and Board rules at 199 IAC 1.8, 1.9, 20.4(14)"e" and chapters 6 and 7. Links to the Iowa Code and the Board's administrative rules (in the Iowa Administrative Code (IAC)) are contained on the Board's Web site at www.state.ia.us/iub.

THE ISSUES

The issues known to date include: a) whether Mr. Morgan called MEC in 1998 to ask about the amount he was charged for electricity, and whether and how the

answer to this question is relevant; b) whether MEC furnished reasonably adequate service at rates and charges in accordance with tariffs filed with the Board to Mr. Morgan, as required by Iowa Code § 476.3; c) the amount that MEC overcharged Mr. Morgan, and in particular, the remaining amount of overcharge in dispute that has not been refunded to Mr. Morgan; d) whether MEC should be required to refund the remaining amount of overcharge to Mr. Morgan for the years 1998 through January 2001, pursuant to 199 IAC 20.4(14)"e;" e) the facts and circumstances that should be considered by the undersigned in determining whether the additional refund should be ordered; and f) whether an award of interest to Mr. Morgan is allowed by the Board's statutes and rules, and if so, whether such an award should be made in this case and the appropriate amount of the award.

Other issues may be raised during the course of this proceeding.

TESTIMONY AND EXHIBITS

All parties will have the opportunity to present and respond to evidence and make argument on all issues involved in this proceeding. Parties may choose to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision that will be issued in this case must be based on evidence contained in the record and on matters officially noticed. Iowa Code §§ 17A.12(6) and 17A.12(8). Since the facts and issues of the case appear to be relatively straightforward and limited in scope, prepared testimony and exhibits are not needed in this case.

PARTY STATUS AND COMMUNICATION WITH THE BOARD

Mr. Morgan, MEC, and the Consumer Advocate are the parties in this proceeding.

Any party who communicates with the Board must send an original and ten copies of the communication to the Executive Secretary, 350 Maple Street, Des Moines, Iowa, 50319-0069, accompanied by a certificate of service. One copy of the communication must also be sent at the same time to each of the other parties to this proceeding, except that three copies must be served on the Consumer Advocate. 199 IAC 7.4(6)"c."

These procedures are necessary to comply with Iowa Code § 17A.17 and 199 IAC 7.22, which prohibit ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The materials that have been filed in this docket are available for inspection at the Board Records and Information Center, 350 Maple Street, Des Moines, Iowa

50319. Copies may be obtained by calling the Records and Information Center at 515-281-5563. There will be a charge to cover the cost of the copying. Board orders are available on the Board's Web site at www.state.ia.us/iub.

All parties should examine the applicable law listed above for substantive and procedural rules that apply to this case.

IT IS THEREFORE ORDERED:

1. Pursuant to 199 IAC 6.7, the written complaint and all supplemental information and filings from the informal complaint proceeding, identified as informal complaint file C-08-64, are part of the record in this formal complaint proceeding.
2. Due to the short procedural schedule in this case, any person not currently a party who wishes to intervene in this case must meet the requirements for intervention in 199 IAC 7.13 and must file a petition to intervene with the Board no later than seven (7) days following the issuance of this order. 199 IAC 7.13(1).
3. Mr. Morgan's attorney must file an appearance with the Board pursuant to 199 IAC 7.4(7).
4. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa, on Tuesday, December 2, 2008, beginning at 10 a.m. Parties who choose to participate in the hearing by telephone conference call must dial 1-866-685-1580, and enter conference code number 2816326 followed by the pound key, at the time set for the hearing. Parties who choose to participate by telephone conference call must make arrangements to provide any exhibits to the court reporter, the other

parties, and the Board prior to or at the hearing. No prefiled testimony will be used in this case. MEC must provide a copy of its prefiled Exhibit 100 to the court reporter. If he files exhibits, Mr. Morgan should use exhibit numbers one and following. If it files additional exhibits, MEC should use exhibit numbers 101 and following. If it files exhibits, the Consumer Advocate should use exhibit numbers 200 and following. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at 515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

5. A post-hearing briefing schedule will be set at the conclusion of the hearing if deemed necessary.

6. In the absence of objection, all data requests and responses referred to in oral testimony or on cross-examination will become part of the evidentiary record of this proceeding. Pursuant to 199 IAC 7.23(4)"d," the party making reference to the data request must file one original and three copies of the data request and response with the Executive Secretary of the Board at the earliest possible time.

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 13th day of November, 2008.