

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE COMPLAINT FILED)	FINDINGS OF FACT;
BY DARRELL SEEMAN, SIOUX FALLS,)	CONCLUSIONS OF LAW;
SOUTH DAKOTA, AGAINST MIDAMERICAN)	ORDER AND NOTICE OF
ENERGY COMPANY REGARDING)	ENTRY OF ORDER
TRANSFERRING UNPAID BALANCES TO HIS)	
ACCOUNT)	NG97-017

On October 10, 1997, the Public Utilities Commission (Commission) received a complaint filed by Darrell Seeman, Sioux Falls, South Dakota (Complainant), against MidAmerican Energy Company (MidAmerican). The complaint concerns billings for natural gas service incurred at three separate residences, two of which are rental properties owned by Mr. Seeman that are located in Sioux Falls, South Dakota. In the Complaint, Mr. Seeman stated: "MidAmerican Energy transferred gas bills over on two rental properties owned by myself and others to myself at my business address then transferred the bills to my home account, 1808 Edgewood Road. On October 9, 1997, the gas was shut off at Edgewood Road." Mr. Seeman requests that the gas be turned back on and that the utility not be allowed to transfer bills to his home account.

At its regularly scheduled October 28, 1997, meeting, the Commission found probable cause of an unlawful or unreasonable act, rate, practice or omission and served the complaint on MidAmerican. MidAmerican filed its response on November 26, 1997.

By order dated January 20, 1998, the Commission set the hearing for January 30, 1998, in the County Commissioners' Meeting Room, 2nd Floor, 415 North Dakota (Old Courthouse), Sioux Falls, South Dakota. The issues at the hearing were whether MidAmerican's actions in transferring the gas bills from the rental properties owned by Mr. Seeman to Mr. Seeman's home account were an unlawful or unreasonable act, rate, practice, or omission; and, whether Mr. Seeman should be held responsible for the gas bills for rental properties owned by him. The hearing was held as scheduled with Commissioners Schoenfelder and Nelson. At the end of the hearing, the Commission took the matter under advisement.

At its March 10, 1998, meeting, the Commission considered this matter. Having read the transcript of the hearing, Chairman Burg participated in the vote. The Commission voted to find that MidAmerican did not commit an unreasonable or unlawful act because the transfer of a residential bill to another residence is allowed under the Commission's rules (Commissioner Nelson, dissenting).

Based on the evidence of record, the Commission enters the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

I

On October 10, 1997, the Commission received a complaint filed by Darrell Seeman, Sioux Falls, South Dakota, against MidAmerican. Exhibit 1. The complaint concerned billings for natural gas service incurred at three separate residences, two of which are rental properties owned by Mr. Seeman located in Sioux Falls, South Dakota. Id. In his Complaint, Mr. Seeman stated: "MidAmerican Energy transferred gas bills over on two rental properties owned by myself and others to myself at my business address then transferred the bills to my home account, 1808 Edgewood Road. On October 9, 1997, the gas was shut off at Edgewood Road." Id. Mr. Seeman requested that the gas be turned back on and that the utility not be allowed to transfer bills to his home account. Id.

II

Mr. Seeman lives at 1808 East Edgewood, Sioux Falls, South Dakota. The two rental properties in question are located at 314½ North Franklin Avenue and 312 North Sherman Avenue in Sioux Falls. Tr. at 46.

III

MidAmerican transferred past due amounts incurred at the North Franklin and North Sherman rental properties to Mr. Seeman's home address. Tr. at 46-47. An amount of \$30.93 was transferred from the North Franklin address on August 21, 1997, and an amount of \$180.62 was transferred from the North Sherman address on September 5, 1997. Tr. at 46. The amount transferred for the North Sherman account had been due since December 30, 1996. Tr. at 39. The amount transferred for the North Franklin account had been due since July 29, 1997. Tr. at 54. However, the transferred amounts were not identified on the bill as coming from the rental properties. Tr. at 8.

IV

A bill was rendered on September 6, 1997, with a due date of September 30, 1997. Tr. at 47. Since the amounts due on the rental properties were past due, a disconnect notice was also sent stating that to avoid disconnection the past due amount of \$212.01 must be paid or payment arrangements made by September 30, 1997. Tr. at 47. MidAmerican received payment on October 9, 1997, but had already disconnected Mr. Seeman's natural gas at his home address at East Edgewood. Exhibit 11. The natural gas was reconnected by the next day. Id.

V

The customer of record for all three accounts (North Sherman, North Franklin, and East Edgewood) was Mr. Seeman. Tr. at 53-54. The class of service for all three accounts was SVF which stands for small volume, firm. Tr. at 48, 54.

CONCLUSIONS OF LAW

I

The Commission has jurisdiction over this matter pursuant to SDCL 1-26-18, 1-26-19, 1-26-25, 49-34A-4, and ARSD 20:10:01:15, 20:10:01:15.01, 20:10:20:03, and 20:10:20:08.

II

Pursuant to ARSD 20:10:20:03(1), a gas utility may only disconnect service for nonpayment of a bill if it is for the same class of service.

III

The rental properties and Mr. Seeman's home were all classified as residential small volume, firm service. Tr. at 48, 54. In addition, the accounts for all three properties were in his name at the time the bills were incurred. Tr. at 53-54. Thus, MidAmerican was allowed to transfer the rental property past due amounts to Mr. Seeman's account for his home.

IV

The Commission recognizes that Mr. Seeman was understandably confused when these appeared on his home account without identifying the account numbers for the transferred amounts. See Defendant Exhibit 14. However, the Commission points out that MidAmerican is now required to itemize any transfers and clearly identify the accounts that are being transferred in order to alleviate customer confusion. See NG97-012. This should help to alleviate future problems and confusion that can result when accounts are transferred.

V

The Commission concludes that it was not an unreasonable or unlawful act, rate, practice, or omission for MidAmerican to transfer the past due amounts to Mr. Seeman's home account.

It is therefore

ORDERED, that MidAmerican did not commit an unreasonable or unlawful act, rate, practice, or omission when it transferred past due amounts to Mr. Seeman's home account.

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that this Order was duly entered on the 27th day of March, 1998. Pursuant to SDCL 1-26-32, this Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties.

Dated at Pierre, South Dakota, this 27th day of March, 1998.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: <u>Alaine Kalko</u></p> <p>Date: <u>4/1/98</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

PAM NELSON, Commissioner, dissenting

Laska Schoenfelder
LASKA SCHOENFELDER, Commissioner

March 27, 1998

DISSENT OF COMMISSIONER NELSON
DOCKET NG97-017.

MidAmerican and the Commission Order cite ARSD 20:10:01:03(1), the rule that allows disconnection for nonpayment of a bill if it is the same class of service, as justification for shutting off Mr. Seeman's residential gas. It is true that Mr. Seeman owned three residential properties. It is also true that he lives in only one. Which means, of course, the other two were rentals, or from Mr. Seeman's point of view, businesses or commercial property.

MidAmerican's Small Volume Firm (SVF) rate applies to residential, commercial, and industrial customers if their peak day requirements are less than 500 therms. A home, a shoe shop, or a shoemaker could all be on this rate; a circumstance that helps obscure the facts of this case.

If a homeowner owned and leased a building to a shoe shop operator, and the shoe shop operator failed to pay the gas bill, the homeowner/landlord would not be cut off from service. The shoe shop is in the commercial class, while the home is considered residential. Both are on the SVF rate.

Yet if the same homeowner owns and leases a house and the renter failed to pay the gas bill, the homeowner/landlord can be shut off. Both are on the SVF rate.

In both cases the homeowner/landlord is engaging in a commercial enterprise.

The two examples clearly show why this rule needs further clarification, or maybe just more careful reading. The distinction between commercial and residential must be made from the point of view of the owner, not the renter. This rule was designed to keep business separate from residential. No one wanted a home shut off because the homeowner's business was having trouble making payments.

The purpose of this rule is to protect the health and welfare of the family. Businesses were made to stand on their own. The majority decision ignores the spirit of this rule. A residence should not be denied service because of business nonpayment. In this case MidAmerican should not have disconnected Mr. Seeman's residence. The majority ruling will unfortunately allow this practice to continue.

I believe, as stated above, the accounts should have never been transferred. But they were, and with no notification to Mr. Seeman. Mr. Seeman becomes aware when threatened with service disconnection at his home. There is a problem when utilities can transfer payment responsibility until they find someone with an interest of any kind, and then hold the bill over that person's head. Yes, businesses like getting paid, and they should be paid. But payment should come in a businesslike manner, from the appropriate party, with appropriate notice. A threat "out-of-the-blue" to shut down utility service, when responsibility is at best uncertain, is an intimidation tactic. It is undoubtedly effective. It is not fair. It should not be condoned.

