

Monday, November 04, 2019

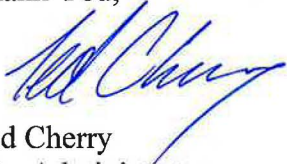
South Dakota Public Utilities Commission
Capitol Building, 1st Floor
500 E. Capitol Ave.
Pierre, SD
57501-5070

To Whom it May Concern,

Please find enclosed the City of North Sioux City and the North Sioux City Economic Development Corporation's official consumer complaint regarding MidAmerican Energy Company and the unresolved complaint concerning the new commercial development in the Flynn Business Park. The complaint is in reference to MidAmerican's current electric tariff and the interpretation of said tariff in regards to reimbursement to the City for costs to build the electrical infrastructure.

If there are any questions regarding the complaint please feel free to contact me at 605-232-4276 or ted.cherry@northsiouxcity-sd.gov. We look forward to any responses to the complaint as well as information on when the formal hearing will be scheduled with the Public Utility Commissioners.

Thank You,



Ted Cherry
City Administrator

Cc: Darrell Jesse, Andrew Nilges

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Complaint and
Petition of North Sioux City, South
Dakota, and North Sioux City
Economic Development Corporation,

Consumer Complaint

MidAmerican Energy Company,
Respondent.

North Sioux City, South Dakota, a South Dakota Municipal Corporation (“City”), and the North Sioux City Economic Development Corporation (“NSCEDC”) (the City and NSCEDC hereinafter referred to collectively as “Consumer” or “Applicant”) state and allege as follows:

1. North Sioux City, South Dakota, is a South Dakota municipal corporation. Its address is 504 River Drive, North Sioux City, SD 57049, and its telephone number is (605) 232-4276.

2. The North Sioux City Economic Development Corporation is a South Dakota non-profit corporation formed for the purpose of furthering economic development in North Sioux City. Its address is 504 River Drive, North Sioux City, SD 57049, and its telephone number is (605) 232-4510.

3. MidAmerican Energy Company (“MidAmerican” or the “Company”) is an Iowa corporation doing business in the State of South Dakota.

4. Pursuant to SDCL 49-1-11, SDCL 49-34A-4, and ARSD 20:10:01:7.01 *et seq.* the South Dakota Public Utilities Commission (“PUC”) has jurisdiction to hear customer and consumer complaints against regulated utility companies and to take action on the complaints.

5. MidAmerican is a public utility, in the business of providing electricity in parts of South Dakota.

6. By virtue of South Dakota law, MidAmerican has a monopoly on the provision of electricity in a geographic area that includes the City.

7. MidAmerican's retail sale of electricity, pursuant to South Dakota law, is regulated by the South Dakota Public Utilities Commission. The retail rates MidAmerican is permitted to charge, and the conditions under which electricity is provided to its customers, are set forth in a written Electric Tariff Schedule (the "Tariff") which is approved by the PUC.

8. MidAmerican is required by law to follow the provisions of the Tariff.

9. For over twenty (20) years, the City and NSCEDC have been developing a commercial/industrial business park called the Flynn Business Park.

10. In all dealings with MidAmerican prior to 2017, MidAmerican paid the expense and received the revenue without utilizing refundable advances.

11. Beginning in 2017, negotiations began between MidAmerican and the NSCEDC regarding a new addition and Expansion of Electric Distribution System in the Flynn Business Park.

12. The City and NSCEDC proceeded with the expansion based on their prior dealings with MidAmerican and with the understanding that the Consumer's contributions for electric lines installed by MidAmerican would be treated as Refundable Advances.

13. Until recently, MidAmerican had informed the prior and current NSCEDC Executive Director that the contributions for gas and electric lines would continue to be Refundable Advances.

14. The City and NSCEDC prepared their budgets for infrastructure based on the past dealings with and representations of MidAmerican.

15. In discussions with Sam Wagner and Alex Karpuk of MidAmerican in early 2019, NSCEDC and City officials were informed that MidAmerican would not consider contributions for the electrical lines to be Refundable Advances unless transformers were placed on the lots to be developed.

16. Historically, this was not a requirement for Refundable Advances, nor is it a requirement found within the Tariff.

17. City and NSCEDC officials exchanged numerous e-mail communications with MidAmerican and conducted several face-to-face meetings in attempts to resolve the dispute regarding the provision of Refundable Advances for the Flynn Business Park Expansion of Electronic Distribution System.

18. In one of the last face-to-face meetings, MidAmerican took the position that a 2015 change to the Tariff no longer permitted Refundable Advances for Electric Distribution System expansions unless transformers were placed.

19. Because the parties could not resolve the differing interpretations of the Tariff, the City and NSCEDC submitted Consumer Informal Complaint to the PUC.

20. The Informal Complaint process did not resolve the dispute.

21. Section 5, Subsection 4.00 *et seq.* of the MidAmerican tariff contains rules and regulations related to the Expansion of Electric Distribution Systems.¹

22. The Flynn Business Park, phase II, project is considered an Electrical Line Extension, and is thus considered a Distribution System Expansion. (*See Sheet 59*).

23. Sheet 64 states: "If an expansion of the Company's Distribution System is necessary to serve an Applicant, the Company *shall make* the Distribution System Expansion in

¹ All references to Sheet Numbers are to the sheets contained in Section 5, Subsection 4.00 *et seq.* unless otherwise noted.

accordance with the provisions in this subsection ‘Expansion of Electronic Distribution System.’” (Emphasis added). In other words, in making an Expansion of Electric Distribution System, MidAmerican is bound to follow the Tariff.

24. MidAmerican drafted a contract for the Flynn Business Park expansion which would require a Nonrefundable Contribution, defined as “an amount paid by a Customer and/or Applicant to the Company *that is not subject to refund.*” (Sheet 60, emphasis added).

25. Sheet 65 provides: “An Applicant requesting a Distribution System Expansion *will be required to pay a Refundable Advance* to the extent the estimated Construction Costs for the requested expansion exceed the Applicant’s Revenue Credit.” (Emphasis added).

26. That is, the Tariff if the estimated Construction Costs for the requested expansion exceed the Applicant’s Revenue credit, a Refundable Advance is required; but if the estimated Construction Costs do not exceed the Applicant’s Revenue credit, then no Refundable Advance is required.

27. “Revenue Credit is the amount of estimated Applicant revenue that may be used to offset the estimated Construction Costs for a requested Distribution System Expansion. The Applicant must reimburse the Company for any remaining amount after offset as a Refundable Advance.” (Sheet 67).

28. Even where “estimates of the Applicant’s annual revenues are in dispute or are, in the Company’s sole discretion, not able to be calculated: the Applicant must pay the total cost of the Distribution System Expansion at the time of construction. After one (1) year, the Company will apply a credit of three (3) times the Customer’s actual annual revenue, less both fuel expenses and energy efficiency cost recover charges.” (Sheet 68).

29. Thus, even when MidAmerican, in its sole discretion, decides the Consumer's annual revenues are in dispute or cannot be calculated, the Consumer *still* receives reimbursement, assuming the Consumer generates revenue in the first year.

30. According to the Tariff, Nonrefundable Contributions are only paid: (i) in connection with a Temporary Electric Service (Sheet 75); (ii) where the City fails to attach within the Attachment period (Sheet 76); (iii) the installation of Service Lines (Sheets 76, 78); (iv) relocation of Company facilities after the start of construction (Sheet 79); (v) permit fees (Sheets 65, 69, 79); (vi) facility conversion (Sheets 84, 86); and (vii) enlargement of Company facilities (Sheet 88).

31. The Flynn Business Park, phase II, project does not fit into any of those seven enumerated categories requiring Nonrefundable Contributions.

32. Based on the foregoing, the Tariff unambiguously provides that the Consumer's contribution for a Distribution System Expansion is a Refundable Advance.

33. MidAmerican's assertion that refundability is dependent on the placement of transformers is contrary to the Tariff.

34. Sheet 67 provides that standard "Construction costs *may include* labor, materials and equipment . . . including: Padmount transformers less the Equivalent Overhead Transformer Cost." (Emphasis added).

35. Thus, even if the cost of transformers is considered as part of the Construction Costs, this is all included in the determination of whether a Refundable Advance will be required – it does not result in the Consumer providing a Nonrefundable Contribution for the Electric Distribution System expansion.

36. The only other provision found in Section 5, subsection 4, related to the Consumer's obligations associated with transformers is found on Sheet 72: "The Applicant may be responsible for duct and transformer pads. If the Company determines responsibility, depending upon type of service, the Applicant is responsible for the costs of . . . Construction and maintenance of transformer pads for multiphase service in accordance with Company specifications."

37. Based on the foregoing, the refundability of the Flynn Business Park Distribution System Expansion is not dependent on the placement of transformers.

REQUEST FOR RELIEF

Wherefore, the City and NSCEDC pray the Public Utilities Commission interpret the Tariff, find that the Tariff does not require a Nonrefundable Contribution for the Flynn Business Park expansion, and that refundability under the Tariff is not dependent on the placement of transformers. The City and NSCEDC pray the Public Utilities Commission direct MidAmerican to prepare a new contract for the Expansion of Electric Distribution System in Flynn Business Park to provide for Refundable Advances, proceed with the expansion in accordance with the Tariff, and for any other and further relief the PUC deems adequate under the circumstances.

Dated this ____ day of November, 2019.

NORTH SIOUX CITY, SD

By: 
Randy Fredericksen, Mayor

NORTH SIOUX CITY ECONOMIC
DEVELOPMENT CORPORATION

By: 
Andrew Nilges, Executive Director

ATTEST


By: Mike Hamm
Its: Finance Officer



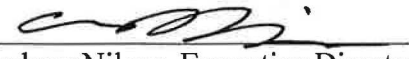
Attestation:

The City of North Sioux City, South Dakota, and the North Sioux City Economic Development corporation, but the signatures of authorized persons hereon, affirm that the statement of facts incorporated into the foregoing Consumer Complaint are true and accurate to the best of the parties' knowledge.

NORTH SIOUX CITY, SD

By: 
Randy Fredericksen, Mayor

NORTH SIOUX CITY ECONOMIC
DEVELOPMENT CORPORATION

By: 
Andrew Nilges, Executive Director

ATTEST


By: Mike Hamm
Its: Finance Officer

