

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

In the Matter of the Complaint Filed by)	
City of North Sioux City and North Sioux)	
City Economic Development Corporation)	
North Sioux City, South Dakota,)	
)	
Complainant)	
)	
vs.)	Docket No. CE19-001
)	
MidAmerican Energy Company,)	
)	
Respondent.)	

ANSWER AND MOTION TO DISMISS

MidAmerican Energy Company (“MidAmerican”) files this “Answer and Motion to Dismiss,” in response to the Complaint filed by the city of North Sioux City and North Sioux City Economic Development Corporation North Sioux City, South Dakota (NSCEDC, or collectively, the “City”) on November 4, 2019. MidAmerican provides formal answers to the allegations in the Complaint below. For ease of reference, MidAmerican restates each paragraph of the Complaint and provides an answer below. To the extent any allegations are not directly addressed in MidAmerican’s Answer, MidAmerican denies the allegations.

I. MidAmerican’s Answers to the Allegations of Complaint (with the Allegations Restated above MidAmerican’s Answers)

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.

MidAmerican's Answer: MidAmerican has no objection to North Sioux City's identification as a municipal corporation and providing its address.

2. The North Sioux City Economic Development Corporation is a South Dakota nonprofit 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.

MidAmerican's Answer: MidAmerican has no objection to North Sioux City's identification of its corporate structure and providing its address.

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

MidAmerican's Answer: MidAmerican admits that it is an Iowa corporation conducting business in South Dakota.

4. Pursuant to SDCL 49-1-11, SDCL 49-34A-4, and ARSD 20:10:01:7.01 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.

MidAmerican's Answer: MidAmerican admits the Commission has the authority under SDCL § 49-1-11 to promulgate rules pursuant to chapter 1-26 concerning procedures and requirements for filing and acting upon complaints; under SDCL § 49-34A-4 the Commission has authority to regulate public utilities. MidAmerican admits the Commission has jurisdiction to hear this complaint.

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

MidAmerican's Answer: MidAmerican admits that it is a public utility under South Dakota law, is regulated by the Commission, provides electric service pursuant to Commission-approved tariffs that set forth the legal rights and duties for the provisions of service, and is subject to applicable rules and regulations promulgated by the Commission.

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

MidAmerican's Answer: MidAmerican admits the City is part of MidAmerican's exclusive service territory and MidAmerican has the exclusive right to provide electric service at retail to each and every present and future customer in its assigned service area, as approved by the Commission, pursuant to SDCL § 49-34A-42.

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.

MidAmerican's Answer: MidAmerican admits the terms and conditions of service and all rates established by MidAmerican and collected or enforced are within the jurisdiction of the Commission. MidAmerican admits the South Dakota Electric Tariffs and schedules include the terms and conditions of service and all rates established by MidAmerican, approved by the Commission.

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

MidAmerican's Answer: MidAmerican admits it is in compliance with and follows its Commission approved Electric Tariffs in accordance with the Commission rules.

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

MidAmerican's Answer: MidAmerican denies the City has been developing a commercial/industrial park called Flynn Business Park for over twenty (20) years. To clarify, Flynn Business Park One was completed in 2013. Flynn Business Park Two, at issue in this complaint, is a separate and distinct project.

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

MidAmerican's Answer: MidAmerican denies in all dealings prior to 2017 MidAmerican paid the expenses and received the revenue without utilizing a refundable advance.

On July 13, 2015 in Docket No. EL14-072, MidAmerican enacted its updated tariff subsequent to its 2014 rate case. Prior to MidAmerican's new tariff going into effect, MidAmerican did not require contributions by developers for most distribution system expansions. The current tariff approved by the Commission requires MidAmerican to implement refundable advances. MidAmerican completed one project for the City since its new tariff went into effect which utilized a refundable advance.

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.

MidAmerican's Answer: MidAmerican admits the City contacted it regarding the Flynn Business Park Two in late 2017. In 2018, MidAmerican provided cost estimates to the City in regards to Flynn Business Park Two. MidAmerican provided the initial contract in 2019.

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.

MidAmerican's Answer: MidAmerican denies that its prior dealings with the City and NSCEDC would have led them to believe the City's contributions would qualify for a refund without service line attachments under MidAmerican's current tariff. MidAmerican affirmatively states its tariffs are applicable to the City and NSCEDC. The tariff that became effective July 13, 2015 and is titled Refundable Advances, is the proper tariff to apply to the City's new project. South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 81; Subsection 4.19 specifically references Refundable Advances. Section 4.19 Refundable Advances is included within and forms a part of Section 4.00 et al., Expansion of Electric Distribution System (herein referred to as "Refundable Advance tariff").

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.

MidAmerican's Answer: MidAmerican denies that only until recently MidAmerican had informed the NSCEDC Executive Director that the contributions for gas and electric lines would continue to be Refundable Advances. MidAmerican admits the project meets the requirements to utilize a "Refundable Advance" contract per MidAmerican's tariff.

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

MidAmerican's Answer: MidAmerican has no knowledge how the City prepared its budget. MidAmerican met with the City on numerous occasions regarding Flynn Business Park Two. MidAmerican informed the City the project will require a Refundable Advance contract.

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.

MidAmerican's Answer: MidAmerican admits in early 2019 it provided the City a Nonrefundable Contract. After further review of the project design MidAmerican determined the project will require a Refundable Advance contract and provided the Refundable Advance Contract to the City, Attached as Exhibit I.

MidAmerican denies that its personnel informed NSCEDC and City officials that MidAmerican would not consider contributions for the electric lines to be Refundable Advance 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.

MidAmerican's Answer: MidAmerican denies the allegations made by the City. To clarify, MidAmerican South Dakota Electric tariff became effective on July 13, 2015, which superseded MidAmerican's prior tariff, which treated electric distribution systems differently.

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.

MidAmerican's Answer: MidAmerican admits it exchanged numerous email communications with the City and conducted at least five face-to-face meetings regarding Flynn Business Park Two.

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.

MidAmerican's Answer: MidAmerican denies that it only took the position during the last face-to-face meeting that the Tariff does not permit refundable advances for Electric Distribution System Expansions unless transformers were placed. MidAmerican informed the City that the 2015 Tariff change requires service line connections in order to qualify for a refund.

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

MidAmerican's Answer: MidAmerican lacks information and knowledge as to why the City and NSCEDC submitted a Consumer Informal Complaint to the PUC. MidAmerican admits it met with the City multiple times to resolve any outstanding issues the City had in regards to the Flynn Business Park Two.

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

MidAmerican's Answer: MidAmerican denies the informal complaint process did not resolve the dispute. MidAmerican provided the City the requested relief during the informal complaint process.

MidAmerican met multiple times with the City and Commission Staff to resolve the City's concerns. Through negotiations with Commission staff it was determined MidAmerican's tariff, which only allows refunds to the extension with service line connections, was an outlier. Commission Staff reviewed all five of the other South Dakota electric utility tariffs and determined refunds are

first applied to the extension with the service line connections, and then, if there is any excess revenue and it is still within the ten year attaching period, excess revenue flows back to the original extension, without service line attachments. Under these terms, the City would be eligible for a refund as the installer of the original feeder extension, however, depending on the size of the customer(s) attaching the service line, little to no refund may be available for the City.

Commission staff requested MidAmerican provide a revised tariff language to allow refunds to flow back to the feeder line extension, which would create consistency between MidAmerican's tariff and South Dakota electric utilities. MidAmerican provided both the City and Commission Staff with a proposed redline tariff allowing refunds to first apply to the extension with the service line attachments, and then any excess revenue within the ten year attaching period flowing back to the original extension. See Exhibit II. The City responded that the proposed tariff change did not resolve their complaint.

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

MidAmerican's Answer: MidAmerican admits that Section 5, Subsection 4.00 et seq. of MidAmerican's tariff is titled Expansion of Electric Distribution System. MidAmerican denies the remainder of the City's allegations. MidAmerican affirmatively states the terms set forth in Section 5 Subsection 4.00 et al. speak for themselves.

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).

MidAmerican's Answer: MidAmerican admits under the "Expansion of Electric Distribution System" section of its tariff defines Distribution System Expansions, and affirmatively states South Dakota Electric Tariff Schedule No. 2, Section 5, Sheet No. 59 speaks for itself.

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 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.

MidAmerican's Answer: MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 64, "Notify the Company of the Expansion Before Starting Work" provides:

The Applicant shall contact the Company to a make the necessary arraignments with respect to Distribution System Expansion before proceeding with the design and construction of the facilities for which electricity service is required. If an expansion of the Company's Distribution System is necessary in order to serve an Applicant, the Company shall make the Distribution System Expansion in accordance with the provisions in this subsection 'Expansion of Electronic Distribution System.' The Applicant must agree to the provisions of this subsection before the Distribution System Expansion is made.

MidAmerican denies that this provision means "in other words" that MidAmerican is bound to follow the Tariff. MidAmerican admits it follows its South Dakota Electric Tariff and all applicable provisions which speak for themselves.

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).

MidAmerican's Answer: MidAmerican admits it drafted a Nonrefundable Contribution contract. Subsequently, MidAmerican provided a Refundable Advance contract.

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).

MidAmerican's Answer: MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 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. See 'Refundable

Advances’ within this subsection ‘Expansion of Electric Distribution System.’”

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.

MidAmerican’s Answer: MidAmerican admits the South Dakota Electric Tariff requires that if the estimated Construction Costs for the requested expansion exceed the Applicant’s Revenue credit, a Refundable Advance is required. MidAmerican admits 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).

MidAmerican’s Answer: MidAmerican admits Sheet No. 67 provides the quoted definition of Revenue Credit as stated by the City. MidAmerican admits Revenue Credit extends to Sheet No. 68, which provides, “The Revenue Credit is set at three (3) times the estimated annual revenue, less both fuel expenses and energy efficiency cost recovery charges, that the Company expects to receive from the Applicant.” MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 61, defines, “Revenue Credit is the amount of Customer revenue used to offset the Construction Costs for Distribution System Expansion in determining if a customer must pay a Refundable Advance or, in limited cases, a Nonrefundable Contribution.”

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).

MidAmerican's Answer: MidAmerican admits the South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 68, provides "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."

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.

MidAmerican's Answer: MidAmerican denies its South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 68, automatically provides the consumer reimbursement. Rather, the Applicant must pay the total cost of the Distribution System Expansion at the time of construction and then after one (1) year, the Company will apply a credit of three (3) times the Customer's actual annual revenue. Thus, if the Customer does not have any annual revenue, the Customer does not receive a reimbursement.

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).

MidAmerican's Answer: MidAmerican admits the South Dakota Electric Tariff Schedule No. 2, Section No. 5, requires Nonrefundable Contributions in the following situations: (i) in connection with a Temporary

Electric Service (Sheet No. 75); (ii) Should the Applicant fail to attach within the Attachment period, a Refundable Advance or Nonrefundable Contribution equal to the Construction Costs of the Distribution System Expansion and/or Service Line will be required; (Sheet No. 76). MidAmerican denies the remainder of the allegations for the reasons that the allegations do not set forth the entirety of the tariffs which speak for themselves.

MidAmerican denies (iii) the installation of Service Lines (Sheet Nos. 76, 78) is paid as a Nonrefundable Contributions. MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 76 provides “An Applicant, either Residential or Non-Residential, requiring a Service Line will be provided the Standard Equivalent Service Cost at no charge to the Applicant. Any costs that exceed the Standard Equivalent Service Cost will be paid by the Applicant as a Nonrefundable Contribution and shall not be offset by Revenue Credit.”

MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 79, Section 4.17 provides a “Summary of Customer Payments that may be Applicable” including a table defining when Nonrefundable Contributions and Refundable Advances are required including (iv) relocation of Company facilities after the start of construction (Sheet No. 79).

MidAmerican denies (v) permit fees (Sheet Nos. 65, 69) are provided as a Nonrefundable Contribution. MidAmerican admits South Dakota Electric Tariff, Section 5, Sheet No. 69 provides, “Permit Fees: The Applicant shall pay actual Permit Fees. Permit Fees may not be offset by Revenue Credit and are to be paid regardless of whether the Applicant is required to pay a Refundable Advance or a Nonrefundable Contribution.”

MidAmerican admits (v) permit fees (Sheet No. 79) is listed as a Nonrefundable Contribution in MidAmerican’s table. MidAmerican admits permit fees will never qualify for a refund.

MidAmerican denies Nonrefundable Contributions as provided for (vi) facility conversion (Sheet Nos. 84, 86) has any applicability to the case at hand. MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 84, provides, “The provisions of this subsection, “Existing System Modifications,” pertain to any changes to the Company’s existing electric facilities caused or necessitated by others.” As the Flynn Business Park Two is a prospective build, this section has no application.

MidAmerican denies Nonrefundable Contribution as provided for in (vii) enlargement of Company facilities (Sheet No. 88) has any applicability to the case at hand. MidAmerican South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 88, applies to Non-Residential Customer or Applicant that requests or causes an upgrade of the Company’s existing facilities.

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

MidAmerican's Answer: MidAmerican admits the Nonrefundable Contribution tariff provisions do not apply the Flynn Business Park Two project.

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

MidAmerican's Answer: MidAmerican admits that the provisions of MidAmerican's Refundable Advance tariff apply and that the City's contribution for a Distribution System Expansion requires a Refundable Advance contract.

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

MidAmerican's Answer: MidAmerican denies that refundability dependent on transformer placement 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).

MidAmerican's Answer: MidAmerican denies the allegations for the reason that it does not set forth the entirety of the tariff provision. MidAmerican admits the South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 66 provides "A Refundable Advance shall be made for the estimated Construction Cost exceeding the Revenue Credit as outlined in 'Refundable Advances' within this subsection 'Expansion of Electric Distribution System.'" MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 67 provides, "Construction costs may include labor, materials and equipment. . . including: Padmount transformers less the Equivalent Overhead Transformer Cost." The provision goes on to state, "Should the Applicant wish or require a more expensive . . . Electrical

Line Extension design than the Company proposed based on good engineering practice, the Applicant must pay as a Refundable Advance, the difference between the higher cost design and the Company's design of facilities normally provided. . . . Costs for Service Lines shall not be included in the Construction Costs for Distribution System Expansion and shall not be offset by Applicant's Revenue Credit." South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 67.

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.

MidAmerican's Answer: MidAmerican admits that the transformer will be considered as part of the Construction Costs in determination of whether a Refundable Advance will be required. MidAmerican affirmatively states inclusion of the transformer cost does not result in the City 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."

MidAmerican's Answer: MidAmerican denies the allegations for the reason they are overly broad and argumentative, and do not set forth the entirety of the tariffs which speak for themselves. MidAmerican affirmatively states the South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 72 provides, "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." MidAmerican denies the only other provision found in Section 5, subsection 4, related to the City's obligation associated with transformers is

found on Sheet 72. MidAmerican admits South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet Nos. 59, 64, 67, and 72 address Transformers.

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

MidAmerican's Answer: MidAmerican denies the refundability of the Flynn Business Park Two Distribution System Expansion is not dependent on the placement of transformers.

38. 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.

MidAmerican's Answer: MidAmerican admits that the Tariff does not require a Nonrefundable Contribution for the Flynn Business Park Two expansion. MidAmerican denies refundability under the tariff is not dependent on transformer placement. MidAmerican admits it has already provided to the City a Refundable Advance contract for the Expansion of Electric Distribution System in Flynn Business Park Two.

II. Affirmative Defenses

By way of further and affirmative defense to the complaint set forth by the City, MidAmerican states:

First Defense

Upon information and belief, the City's claims are barred, in whole or in part, because all decisions made with regard to the City were at all times in compliance with MidAmerican's Commission-approved tariff, applicable state and federal law, and Commission rules.

Second Defense

Upon information and belief, the City's claims are barred, in whole or in part, based upon the doctrines of accord and satisfaction, release, waiver, and estoppel.

Third Defense

The City fails to state a claim against MidAmerican upon which relief may be granted.

Fourth Defense

Upon information and belief, the City's claims are barred, in whole or in part, because the City's claims are unjust, unreasonable, arbitrary and capricious.

Fifth Defense

MidAmerican reserves the right to assert additional affirmative defenses to the City's Complaint at Law as they may be warranted by facts ascertained during the proceeding.

III. MidAmerican's Motion to Dismiss

MidAmerican, by and through its undersigned attorney, moves the Commission to dismiss the formal complaint filed by the City on November 4, 2019 in accordance with ARSD 20:10:01:10.¹ MidAmerican has already provided the requested relief to the City, therefore the Complaint is without merit and should be dismissed.

¹ The respondent is required to "satisfy the complaint by . . . correcting the wrong complained of . . . [I]f a respondent satisfies a complaint before or after answering, a written acknowledgment showing the character and extent of the satisfaction must be filed by the complainant, and a statement of the facts and

Pursuant to ARSD 20:10:07.01, “A consumer complaint shall be in writing and filed with the Commission. A consumer complaint shall contain: . . . (3) A full, clear, and reasonably certain statement of the facts giving rise to the complaint, with reference where practicable to the law, statute, order, or rules of which a violation is claimed; . . . (4) The remedy requested by the complainant.” ARSD 20:10:07.01 (2019).

A. Argument

The City fails to state a law, statute, order, or rule which MidAmerican has violated. MidAmerican has acted, and continues to act, in accordance with its Commission-approved Tariff, and all applicable South Dakota Rules and statutes.

i. MidAmerican has provided the City its requested relief.

MidAmerican has already provided the City its requested relief. The City fails to request a remedy for the complaint which MidAmerican has not already provided and, as such, this complaint has been satisfied.

The City’s “Request for Relief” prays the Public Utilities Commission interpret MidAmerican’s South Dakota Electric Tariff to not require a Nonrefundable Contribution for the Flynn business Park expansion.

MidAmerican, as stated above, agrees that the South Dakota Electric Tariff does not require a Nonrefundable Contribution for the Flynn Business Park Two expansion. MidAmerican provided the City a Refundable Advance contract for the Flynn Business Park Two project, as shown in Exhibit I.

ii. Under MidAmerican’s Tariff the project requires a Refundable Advance Contract but the City will not receive a refund.

manner of satisfaction may be filed as an answer. Upon approval of the commission, the complaint shall be dismissed.” ARSD 20:10:01:10.

The City's "Request for Relief" requests the commission determine refundability under the Tariff is not dependent on the placement of transformers.

The City's Flynn Business Park One was completed in 2013, under MidAmerican's prior tariff. Under MidAmerican's prior tariff, electric distribution system expansions were treated differently than under MidAmerican's current tariff.

On July 13, 2015, in Docket No. EL14-072, MidAmerican enacted a new tariff pursuant to its 2014 rate case. The newly enacted tariff is still in effect today. The City informed MidAmerican of Flynn Business Park Two in 2017, after the effective date of MidAmerican's new tariff. Thus, MidAmerican's tariff subsequent to the 2014 rate case, applies to Flynn Business Park Two.

MidAmerican explained to the City, Flynn Business Park One had been completed under MidAmerican's superseded tariff. MidAmerican's tariff that went into effect on July 13, 2015 provides, "**[r]efunds will be made for each new Service Line attachment to the Distribution System Expansion.** Refunds will be made annually on or about the anniversary date the Refundable Advance was made. **The refund will have a cash value equal to the Revenue Credit for the attaching Service Line(s) or new load.** The total refund shall not exceed the amount of the original Refundable Advance. Refunds will only be made to the original contributor unless assigned in a form acceptable to the Company by such original contributor." South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 81. (*Emphasis added*)

MidAmerican's superseded tariff, enacted prior to July 13, 2015 provided for underground extensions within corporate limits of cities, "For newly platted

subdivisions, the Company will install an electric underground distribution system, including primaries, secondaries, pad-mounted transformers, and service pedestals at no cost to the developer. In areas outside of newly platted residential subdivisions, commercial and industrial developments, the Company will require a non-refundable contribution based on the difference between overhead and underground distribution costs. If the customer requests submersible transformers as opposed to pad-mount transformers, he will be required to make a non-refundable contribution of \$150.00 per lot.” South Dakota Superseded Electric Tariff Schedule No. 1, Section No. 5, Sheet No. 15.

Under MidAmerican’s prior tariff, the development would have been paid for by MidAmerican. However, under MidAmerican’s current tariff on file with and approved by the South Dakota Public Utilities Commission, MidAmerican no longer provides funds to developers for distribution system expansions. Now developers are required to pay either a refundable advance under a Refundable Advance contract or a nonrefundable contribution.

Flynn Business Park Two requires the City to pay a refundable advance under a Refundable Advance contract. The above identified tariff provisions state how a project receives a refund under a refundable advance contract. MidAmerican explained to the City although the contract is a Refundable Advance contract, the project will never qualify for a refund under MidAmerican’s current South Dakota Electric Tariff.² The Flynn Business Park Two project is only a feeder line extension and does not have the

² MidAmerican’s South Dakota Electric tariff in pertinent part states, “[r]efunds will be made for each new Service Line attachment to the Distribution System Expansion. . . The refund will have a cash value equal to the Revenue Credit for the attaching Service Line(s) or new load.” South Dakota Electric Tariff Schedule No. 2, Section No. 5, Sheet No. 81.

capability of service line attachments. In order for an extension to qualify for a refund, it must have service line attachments. Without service line attachments, no revenue will be generated, and no refund will be generated. Transformers are required equipment to connect service line attachments to extensions. Without a transformer a service line cannot connect to an extension.

iii. MidAmerican proposed a pathway to refundability.

MidAmerican has not only provided the City its requested relief but provided a pathway to refundability for the City's distribution system expansion project not currently provided for under MidAmerican's tariff.

MidAmerican's tariff is clear in stating refunds are only provided to extensions with service line attachments notwithstanding the distribution system expansion is provided a Refundable Advance contract. However, through negotiations with Commission staff it was determined MidAmerican's tariff, which only allows refunds to the extension with service line connections, is not the current practice for electric companies in South Dakota. Commission Staff reviewed all five of the other South Dakota electric utility tariffs and determined refunds are first applied to the extension with the service line connections, and then, if there is any excess revenue and it is still within the ten year attaching period, excess revenue flows back to the original extension, without service line attachments. Under these terms, the City would be eligible for a refund as the installer of the original feeder extension, however, depending on the size of the customer(s) attaching the service line, little to no refund may be available for the City.

Commission staff requested MidAmerican provide a revised tariff language to allow refunds to flow back to the feeder line extension, which would make MidAmerican's tariff consistent with other South Dakota electric utilities. MidAmerican provided both the City and Commission Staff with a proposed redline tariff allowing refunds to first apply to the extension with the service line attachments, and then any excess revenue within the ten year attaching period flowing back to the original extension. See Exhibit II. The City responded that the proposed tariff change did not resolve their complaint.

WHEREFORE, MidAmerican Energy Company has satisfied this complaint by providing the requested relief to North Sioux City, South Dakota, a South Dakota Municipal Corporation, and the North Sioux City Economic Development Corporation, and therefore MidAmerican Energy Company moves to dismiss the Complaint. MidAmerican Energy Company respectfully requests the South Dakota Public Utilities Commission give this Answer and Motion to Dismiss due consideration, dismiss the Complaint, and provide any and all other relief the South Dakota Public Utilities Commission deems just and equitable.

Dated this 25th day of November, 2019.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

By: /s/ Katelyn M. Lynch-Butcher
Katelyn M. Lynch-Butcher, Attorney
MidAmerican Energy Company
666 Grand Avenue, Suite 500
P.O. Box 657
Des Moines, IA 50306-0657
Telephone: 515-252-6547
Email: kmlynch-butcher@midamerican.com

By: /s/ Terry R. Fox
Terry R. Fox, Managing Senior Attorney
MidAmerican Energy Company
666 Grand Avenue, Suite 500
P.O. Box 657
Des Moines, IA 50306-0657
Telephone: 515-281-2197
Email: trfox@midamerican.com