

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE COMPLAINT FILED
BY DAN LARSON, MECKLING, SOUTH DAKOTA,
AGAINST MIDAMERICAN ENERGY COMPANY
REGARDING IMPROPER DISCONNECTION AND
REQUIREMENT TO REPLACE FURNACE

CN04-001

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Transcript of Proceedings
August 17, 2004

ORIGINAL

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BEFORE THE PUBLIC UTILITIES COMMISSION,
ROBERT SAHR, CHAIRMAN
GARY HANSON, VICE CHAIRMAN
JIM BURG, COMMISSIONER

COMMISSION STAFF

Rolayne Ailts Wiest
John Smith
Karen Cremer
Greg Rislov
Harlan Best
Keith Senger
Dave Jacobson
Michele Farris
Jim Mehlhaff
Tina Douglas
Heather Forney
Pam Bonrud

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SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

Reported By Cheri McComsey Wittler, RPR

PRECISION REPORTING
L I M I T E D

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2 OF THE STATE OF SOUTH DAKOTA
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4 IN THE MATTER OF THE COMPLAINT FILED
5 BY DAN LARSON, MECKLING, SOUTH DAKOTA, CN04-001
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1 CHAIRMAN SAHR: CN04-001, In the
2 Matter of the Complaint Filed by Dan Larson,
3 Meckling, South Dakota, Against MidAmerican Energy
4 Company Regarding Improper Disconnection and
5 Requirements to Replace Furnace.
6 And the question today is shall the Commission
7 grant MidAmerican Energy Company's Motion to
8 Dismiss.
9 And we have both of the parties on the line.
10 And I am going to ask MidAmerican for their
11 comments first, and then, Mr. Larson, you'll be
12 given the chance to respond to those comments.
13 MidAmerican, if you'd please proceed.
14 MS. HUIZENGA: Thank you,
15 Mr. Chairman. MidAmerican has moved to dismiss the
16 Complaint in that Complainant does not have a good
17 or sufficient reason for making the Complaint in
18 that there is no tariff or rule that MidAmerican
19 has violated in this instance.
20 The Complaint is that MidAmerican was
21 negligent in not taking carbon monoxide tests
22 before turning off the gas. As a matter of fact,
23 MidAmerican checked the heat exchanger, found that
24 the heat exchanger had cracks or holes in it and
25 must be red-tagged at that time. Later our

1 APPEARANCES BY TELEPHONE
2 Rachel Torrence
3 Mark Meierhenry
4 Karen Huizenga
5 Mark Rodvolt
6 Marv Truhe
7 Larry Hettinger
8 Talbot Wiczorek
9 Jeff Carmen
10 Marlene Bennett
11 Mark Ayotte
12 Jim Blundell
13 Doug Eidahl
14 Wendy Harper
15 Chris Clark
16 Mary Lohnes
17 Tom Burns
18 Pat Mastel
19 Gene Ward
20 Jeff Heig
21 Dan Larson
22 James Cremer
23 -----
24 TRANSCRIPT OF PROCEEDINGS, held in the
25 above-entitled matter, at the South Dakota State
Capitol, Room 412, 500 East Capitol Avenue, Pierre,
South Dakota, on the 17th day of August 2004,
commencing at 9:30 a.m.

1 serviceman went within the trailer itself to make
2 sure that the trailer itself was safe for the
3 occupants, checked and got a zero PPM reading for
4 CO, found it was safe but had to maintain the red
5 tag because of the condition of the furnace.
6 And, in fact, our customers are required to
7 keep their appliances to code by reason of our
8 rules and regulations. Turning off the furnace
9 because its condition's determined to be hazardous
10 to the customer is part of the rules and
11 regulations in the tariffs of MidAmerican.
12 Therefore, MidAmerican moves to dismiss.
13 CHAIRMAN SAHR: Thank you very much.
14 Mr. Larson, would you like to respond?
15 MR. LARSON: (Inaudible).
16 CHAIRMAN SAHR: Mr. Larson, I'm
17 having a little trouble hearing you. Please go
18 ahead.
19 MR. LARSON: (Inaudible).
20 CHAIRMAN SAHR: Mr. Larson, please
21 accept my apologies for interrupting. We are not
22 able to hear you in Pierre. We can only hear
23 little blurbs. If you're on a speaker phone, if
24 you could pick up, that would be great. If you're
25 on a cell phone, you may have to call back in. If

1 you'll try again, we'll see if we can hear you in
2 Pierre, but it's very important because we want to
3 hear your side of the story and we also have a
4 court reporter here recording the proceedings so we
5 want to give her the ability to hear what you're
6 saying.

7 MR. LARSON: Can you hear me on this
8 one?

9 CHAIRMAN SAHR: That's quite a bit
10 better. Thank you.

11 MR. LARSON: Thank you. Because
12 I've got a lot to say on this issue. Can you hear
13 me now?

14 CHAIRMAN SAHR: Yes. Please
15 proceed. Thank you.

16 MR. LARSON: When the gas company
17 came that day to shut my furnace off or check for
18 the CO2 reading the man involved lives right in
19 Vermillion from what I understand -- (Inaudible).

20 CHAIRMAN SAHR: We got the man
21 involved lives in Vermillion, but we lost the next
22 part. I think you said somebody's wife, or you
23 made some sort of comment about relations.

24 MR. LARSON: I said the man
25 involved, the gas person now that lives in

1 Vermillion came out here, did not take a reading at
2 all. MidAmerican states that he took a reading
3 while here in the house. He did not.

4 I have two other witnesses present in the
5 house at the time. There was no readings taken at
6 that time. Mid-America (sic) also states that the
7 reason they were called out was because there was
8 holes in the heat exchanger. There was no holes in
9 the heat exchanger. Upon removal of the furnace,
10 no one else had checked the furnace prior
11 to -- Steve Bell and Mid-America Energy supposedly
12 looked in it.

13 When Mid-America Energy personnel shut our
14 furnace off that night he stated to my wife and
15 myself that it's the wrong type of furnace for in a
16 trailer house. It's a house furnace, not a trailer
17 furnace. And if Mr. Bell said there was holes in
18 the heat exchanger, I believe him.

19 Now Mr. Bell is the man that originally put
20 the complaint in, Mid-America. The reason he put
21 the complaint in is because we stopped payment on a
22 check. We stopped payment on a check on a Friday
23 or a Saturday because on Monday he had charged me
24 \$400, 401 to fix my furnace. On Wednesday it was
25 still not operating properly. The blower would not

1 shut down. It was blowing cold air.

2 On Friday he came out to fix my furnace again,
3 at which point he said, well, your heat exchanger
4 has got great big holes in it. It's no good, you
5 need a new furnace. Now that man, when he was
6 there on Monday charged me \$401 and said my furnace
7 was fine and he even said he vacuumed out the heat
8 exchanger. That's on his own writing. Then he
9 turned around, called Mid-America because we had
10 stopped payment on a check, at which point
11 Mid-America came out and the personnel that came
12 was Steve, like I said, Steve Bell from Steve's
13 Comfort Systems. They live in the same town.

14 The fact is they know each other but the gas
15 personnel says to me, Well, I know Mr. Bell but
16 we're not friends, but in the same breath -- or
17 Steve Bell says there's holes in the heat exchanger
18 I believe him. At which point he says, And I'm not
19 going to shut it off for that. He says, I'm going
20 to shut it off because it's the wrong type of
21 furnace in a trailer. You have a house furnace in
22 the trailer. And for that I'm going to shut it
23 off. At which point -- are you there, sir?

24 CHAIRMAN SAHR: Yes, we are. I
25 think someone just entered or left the phone line

1 so please go ahead.

2 MR. LARSON: The whole thing was --
3 at that point I said, Well, you can do whatever
4 you're going to because you're going to do it
5 anyway at this point. So when I went outside with
6 him he made the call back to the company and said
7 the man is angry and dah-dah-dah-dah. Yes, I
8 was angry. I have three small children in my
9 house, and, yes, I was worried about the furnace.

10 What the gas company doesn't say, and there's
11 no record of in the records that they've sent me --
12 but they sent one stating that I called the gas
13 company on that same day that Mr. Bell did. They
14 didn't send any record of Mr. Bell's call to the
15 gas company to me, nor do they refer to any of the
16 conversations that we had with Mid-America, my wife
17 and myself and Mr. Allison whom is the landlord
18 here that I pay the rent to of whom I'm buying the
19 place from.

20 But at that point Mid-America doesn't mention
21 any of these things, nor the phone calls that were
22 made, only the one that I called in and had to give
23 Mid-America the actual address of this place
24 because Mr. Bell couldn't even get that straight
25 when he called them.

1 And the fact is that Mid-America told me the
 2 reason they were coming out was to take the CO2
 3 reading because by law they have to was what they
 4 told me on the phone. I wished the people would
 5 have summoned these records but they haven't done
 6 so.

7 It's quite obvious that at this point
 8 Mid-America wants to say that we're at fault
 9 because whether it was holes or cracks -- according
 10 to their tariff, according to their own tariff,
 11 whether it's holes or cracks it's an unsafe furnace
 12 and they're standing on the ground saying because
 13 it was holes but it's cracks -- that's in addition
 14 to my own statement that I said that.

15 But understand that their paperwork lied. If
 16 you don't believe that -- and I have the heat
 17 exchanger, same furnace sitting in my garage right
 18 now. I think the EPA should come out and take
 19 the -- I wanted a statement from them what was
 20 wrong with the furnace because of all that was
 21 going on with it.

22 The EPA came out upon request out of Yankton,
 23 South Dakota. When they came out here I asked them
 24 to give me a written statement, one that talks
 25 about practices and ethics because that's what

1 there's holes in it. Well, KPH could find no
 2 holes. That day the service personnel says to me
 3 there might be cracks, don't know. But it would be
 4 fine to put it in the garage they said. Well,
 5 that's not the issue. The issue is that Steve Bell
 6 said there was holes in it, Mid-America believed
 7 that there was holes in it, and the fact is when
 8 the next service personnel came out, which was KPH
 9 upon request, they said there might be cracks but
 10 we're not sure.

11 They also did not give me a written statement
 12 that day even though that's what I paid them to
 13 come out and do. Instead I had to go back into
 14 Yankton. Several times I called their office
 15 requesting a statement, even after I paid for one.
 16 They did not send one. I finally had to go in to
 17 Yankton a month later and I can show you the check
 18 of the day that I wrote it and I can show you the
 19 date of which they wrote their statement upon.

20 The fact is that they made me wait a month or
 21 better to get the statement and then only because I
 22 went in and sat in the office and waited for the
 23 boss of KPH to come in. Their statement to me
 24 was -- (Inaudible).

25 CHAIRMAN SAHR: Mr. Larson, we lost

1 we're talking about here. The fact is that KPH
 2 came out and I asked them to give me a written
 3 statement as to what's wrong with my heat
 4 exchanger. He looked for about 45 minutes and
 5 found -- the other personnel that was here said
 6 there might be cracks in it, but we don't know.
 7 There's no holes, but there might be cracks. Well,
 8 might be doesn't get it. The fact is there is no
 9 holes, there is no cracks -- (Inaudible).

10 CHAIRMAN SAHR: I'm sorry,
 11 Mr. Larson. Right after you said there's no holes,
 12 there's no cracks you broke up there. Could you
 13 please repeat what you said.

14 MR. LARSON: Yes, sir. I said
 15 there's no holes. There appears to be no cracks.
 16 KPH came out. I asked them special to come out and
 17 give me a written statement because of what had
 18 went on with the gas company, them saying that
 19 there was holes, Steve Bell saying that there was
 20 holes. I said I would like a written statement
 21 stating what is wrong with my heat exchanger. I
 22 will pay you to come out here and look at the
 23 furnace that's out in my garage.

24 I says you can tip it upside down and look at
 25 it however you got to. So I need to know if

1 you right after I'll ask the court reporter to read
 2 back where her last line was.

3 (Reporter reads back requested portion)

4 CHAIRMAN SAHR: Mr. Larson, are you
 5 still on the line? Is anybody else on the line?

6 MS. TORRENCE: I'm still here. This
 7 is Rachel Torrence.

8 MS. HUIZENGA: MidAmerican Excel is
 9 here.

10 MS. CLARK: Excel is still here.

11 CHAIRMAN SAHR: Thank you. It
 12 sounds like most people are still on. So,
 13 Mr. Larson, are you on the line? Hopefully he can
 14 dial back in.

15 Cheri, let's go off the record until we can
 16 locate Mr. Larson.

17 (Discussion off the record)

18 CHAIRMAN SAHR: I'm going ask the
 19 court reporter to read off your last comments so
 20 that you know where to begin from.

21 (Reporter reads back requested portion)

22 MR. LARSON: Their statement to me
 23 was, and this was from the boss himself, I don't
 24 want to get into a long, lengthy battle with any
 25 court. The fact is I says, I'll tell you what,

1 there's no holes in the heat exchanger. I paid for
 2 your men to come out and to give me a written
 3 statement of what was wrong with the heat
 4 exchanger. They took the \$50 that I paid them to
 5 come out. They did not give me a statement. And
 6 the fact is they said there might be cracks in the
 7 heat exchanger but they're not sure. I says
 8 there's no holes and there is no cracks that I can
 9 see. I says I would like a letter of statement to
 10 that.

11 In return I got the letter that they wrote to
 12 you people and that I have right in front of me
 13 right now that says, "Our servicemen" -- this was
 14 the boss said to the secretary write him up a
 15 statement and when you get it done give it to him.
 16 This was what the boss said to her. Then the
 17 statement when I came back in she hands me -- I
 18 figured it would be what we discussed, but it was
 19 nothing of what I said to him nor what he said to
 20 me.

21 I said to him, There's no holes and there's no
 22 cracks that I can see. I would like a letter of
 23 that statement. I says, I paid for it when they
 24 came out and they didn't even give me one. I've
 25 had to come in here. I called the office umpteen

1 times, the secretary instead said I don't even want
 2 to deal with him. Well, excuse me. I thought
 3 that's what they were there for.

4 The fact is the statement that they gave me is
 5 "Our serviceman placed the furnace on its backside
 6 in order to better inspect the heat exchanger" --
 7 chambers, excuse me. "They used a mirror and
 8 flashlight and located cracks in top of heat
 9 chamber."

10 Now that's not what they told me the day they
 11 were here in my garage inspecting it nor is it the
 12 statement that I expected from KPH when the boss
 13 said -- that was Tom said, Well, we'll write you up
 14 a statement. In fact they didn't want to get
 15 involved even.

16 The fact is if it's written on paper I guess
 17 that makes it all right because then it must be
 18 true because seeing is not believing nowadays. And
 19 if seeing is believing, then I'd suggest that I
 20 propose to all of you people I have the furnace
 21 here in my garage yet. And the fact is that I have
 22 been told that I had a bad furnace when in reality
 23 I didn't and the fact is that they stated to me
 24 that by their own tariffs they were -- they told me
 25 over the phone, that is meaning Mid-America Energy

1 stated, by their own rules and federal laws they
 2 had to come out and take a CO2 reading, which they
 3 did not do, even though they say they did. I have
 4 two witnesses that will stand right in front of you
 5 and everybody else and say they didn't take a
 6 reading.

7 Mid-America only has the gas man stating it's
 8 my job, I went out there, I did what was right.
 9 Well, he didn't do what was right. He shut it off
 10 stating it's the wrong type of furnace, and for
 11 that alone I'm going to shut you off. That was his
 12 statement to my wife and myself, at which point he
 13 red-tagged my meter saying I was very angry to the
 14 company. You bet I am. The fact is that they were
 15 wrong for what they did and Mid-America wants to
 16 get away with it because they're a large company
 17 compared to what I am. I'm just a disabled little
 18 veteran out here raising five people on a pension
 19 that isn't very much. But I make it go every month
 20 for five people.

21 Now Mid-America comes in my home because
 22 somebody called them out of vengefulness and says
 23 you got a bad furnace. They come in, they don't
 24 take a reading, according to their own law, which
 25 they tell me on the phone we need to take a reading

1 by law. They come out here, they don't take a
 2 reading. Mid-America says they did. I have two
 3 witnesses that will say they didn't. They were
 4 standing here the night that the man came out.

5 The fact is that KPH, when I asked them for a
 6 statement they wrote something other than what the
 7 serviceman told me a month later. As far as I'm
 8 concerned their records are made to lie and look
 9 good on paper. Now if you people believe all of
 10 this stuff, then I can't stop anybody and I'm not
 11 going to try to because it's pointless.

12 They wrote down on paper something that looked
 13 good for the Commission but in actuality if the
 14 Commission was doing their job and they're supposed
 15 to be there for the people, of which I believe they
 16 are, you people would have been looking at the
 17 furnace, the phone records from Mid-America Energy
 18 from the date that this happened. Because the fact
 19 is that I called Mid-America Energy. They were so
 20 messed up they couldn't even get their address
 21 right on the place who owned the place or anything
 22 else until we finally told them.

23 Mr. Allison called them from my house telling
 24 them to send the bill here, but they wouldn't even
 25 send a bill. This is how messed up they really

1 are. And in actuality if you people want to read
 2 paper and believe that what you read on that paper
 3 is true, then you'll believe anything out there and
 4 I can't help nobody. I don't want to help anybody
 5 that don't want to help themselves. We've been
 6 more patient through this whole ordeal and have
 7 been very honest about what took place.
 8 Now we live in a very small community here,
 9 and everybody knows everybody, except this man here
 10 moved in. They don't know where I came from or
 11 anything about me. They only know that I live on a
 12 pension, and they think they got a right to the
 13 dollar that I don't have along with the dollar that
 14 I do have. If that's all this is about and that's
 15 what your laws and your tariffs and all of this are
 16 made up of, there's something wrong with their
 17 brain because at this point we've been working real
 18 hard here as a family unit to survive for two years
 19 or a little over, almost three, and we've been told
 20 by everybody in the area here or a lot of them
 21 you're wrong, you can't do this, you can't do that.
 22 But it's okay for them to lie on their paperwork
 23 and to say, hey, look here, this is what we wrote,
 24 that must be honesty.
 25 Honesty would be checking the phone records,

1 hearing what was said on them records, and also
 2 coming out and looking at the furnace or I'll bring
 3 it up to you. I'll be more than happy to transport
 4 it because so far I see no cracks even when I look
 5 in it. If there was cracks or holes in the heat
 6 exchanger, you put a little water in it it's going
 7 to get wet where the cracks and holes are. If you
 8 shine a light in it, you should be able to see the
 9 light coming out the cracks or holes but I can do
 10 neither because I seen neither. But yet
 11 Mid-America Energy wants to say there's holes in it
 12 to start with and it's leaking CO2, therefore,
 13 we've got to shut it down.
 14 They also want to state that our tariffs say
 15 that we need to check out the furnace and if it's
 16 unsafe, whether it's holes or cracks we need to
 17 shut it down. Well, they started out saying there
 18 was holes in it. Then it went to cracks by
 19 statement, and the fact is that there is no cracks
 20 even that I can see in it. And because KPH didn't
 21 care enough to give me a honest answer when I paid
 22 them the money --
 23 CHAIRMAN SAHR: Mr. Larson?
 24 (No audible response)
 25 CHAIRMAN SAHR: Let's go off the

1 record.
 2 (Discussion off the record)
 3 CHAIRMAN SAHR: Mr. Larson, are you
 4 back on?
 5 MR. LARSON: Yes, sir. Again, I
 6 apologize.
 7 CHAIRMAN SAHR: I certainly want to
 8 give you every opportunity to present your case.
 9 MR. LARSON: I hope so because at
 10 this point, like I said, I have records that are
 11 not accurate.
 12 CHAIRMAN SAHR: Thank you. But the
 13 one thing I do want to do is not to repeat what's
 14 been said earlier and the question here today is
 15 whether or not to grant the Motion to Dismiss and I
 16 think we've heard your side of the story and gotten
 17 your arguments pretty well.
 18 Do you have anything to add to those
 19 arguments?
 20 MR. LARSON: Yes, sir. I did make a
 21 list of a couple of things, and the fact is if
 22 we're back on record -- are we?
 23 CHAIRMAN SAHR: Yes, we are and if
 24 you want to go ahead, but if you can, I think
 25 you've made it -- and I just want to follow up with

1 a question. Your contention is that there is no
 2 hole, there is no crack, there is no damage that
 3 makes this an unsafe condition; is that correct?
 4 MR. LARSON: I'm not saying that
 5 there may not be an unsafe condition. I'm not a
 6 furnace person, no, but understand there's no holes
 7 and there's no cracks that I can see.
 8 CHAIRMAN SAHR: Do you know of any
 9 unsafe condition that would give the company
 10 concern that would cause them to believe that it
 11 should be shut off for an unsafe condition?
 12 MR. LARSON: The only reason the
 13 furnace man was out here in the first place
 14 originally -- the only reason that the furnace man,
 15 Mr. Bell, came out here was because my stove would
 16 not stay lit. The electronic ignition was not
 17 working. There was a pilot light in it is what it
 18 was and it would not stay lit. It needed a new
 19 one. He replaced three parts on my furnace then
 20 stated he cleaned the heat exchanger and it was
 21 working fine when he left.
 22 CHAIRMAN SAHR: Do you know of any
 23 damage to the furnace that exists or existed at the
 24 time?
 25 MR. LARSON: To make it an unsafe

1 furnace, no.
 2 CHAIRMAN SAHR: Do you know of any
 3 damage that existed otherwise?
 4 MR. LARSON: No. There's no holes
 5 and there's no cracks that I can see. The only
 6 thing that was a problem was the furnace would not
 7 stay lit because the pilot has a heat sensor in it
 8 and that was what Mr. Bell had told me. The heat
 9 sensor was bad and the pilot unit needed to be
 10 changed.
 11 CHAIRMAN SAHR: Thank you. And
 12 that's my understanding of your dispute, that it
 13 isn't an unsafe condition because you do not know
 14 of any hole or crack or other damage that would
 15 create a problem that would justify shutting off
 16 the gas; is that correct?
 17 MR. LARSON: Yes, sir. That is my
 18 understanding to it also and because there is no
 19 holes or cracks, the only reason that Mid-America
 20 shut it off justly telling us that night was
 21 because it was the wrong type of furnace in a
 22 trailer.
 23 So they went from being an unsafe furnace to
 24 being the wrong type of furnace. If it was the
 25 wrong type of furnace, then my question to the

1 committee is why did Mid-America allow Larry's
 2 Heating & Plumbing to put the same type of furnace
 3 back in and then cut a hole in my outside west wall
 4 for air? I am now heating the outside as well as
 5 the inside and will be all winter long because
 6 Mid-America made that furnace compliable according
 7 to the heating company by cutting a hole in my
 8 outside wall and venting that room where now my
 9 pipes will probably freeze and I don't know what
 10 all.
 11 CHAIRMAN SAHR: Mr. Larson, what I'd
 12 like to do now is ask our PUC staff to comment on
 13 this particular Motion, see what they have to say
 14 and then I'd like to see if any of the
 15 Commissioners or advisers have questions of you or
 16 MidAmerican and then give MidAmerican a chance to
 17 respond and then we can see if you have any
 18 additional comments. But I appreciate your
 19 patience and apologize if any of the technical
 20 problems were on our end and certainly we all want
 21 to give you the opportunity to say your peace and
 22 appreciate you taking the time to appear today.
 23 Why don't we walk through that. If you have
 24 some additional comments afterwards, we'll come
 25 back to you. Thank you.

1 Ms. Cremer.
 2 MS. CREMER: Thank you. This is
 3 Karen Cremer of staff. It is staff's determination
 4 that the Motion to Dismiss should be granted. Two
 5 professionals looked at this, Mr. Bell and the man
 6 from MidAmerican, and determined that an unsafe
 7 condition existed, and based on their tariffs that
 8 were filed with the Commission and effective
 9 November 15 of 1995 the company may disconnect
 10 service if it determines an unsafe condition exists
 11 on the customer's premise.
 12 Therefore, and subsequent to that, the letter
 13 that Mr. Larson has submitted from KPH, they do
 14 state that, as he said, they located cracks in the
 15 top of the heat chamber. So I think based on that
 16 there is probable cause -- there is good reason to
 17 find that an unsafe condition existed and better to
 18 have red-tagged the furnace than to have the
 19 consequences of people being injured in a home
 20 where there was an unsafe condition.
 21 CHAIRMAN SAHR: Thank you. And I do
 22 have a follow-up question to those comments, and I
 23 certainly would not -- if those are the facts, I
 24 certainly would not fault MidAmerican for taking
 25 appropriate steps, and I think even Mr. Larson's

1 acknowledged the importance of safety in these type
 2 of issues.
 3 I do have a question from a legal standpoint.
 4 If we have Mr. Larson stating that no cracks exist,
 5 no holes exist, no damage existed, do we not have
 6 an issue of material fact? And if he came in and
 7 said I agree with KPH that there was damage, then I
 8 believe that under the tariff MidAmerican probably
 9 would -- I think we would no longer have a dispute.
 10 It does sound like Mr. Larson, though, is flat
 11 out disputing that there was any damage whatsoever.
 12 So how do we when looking at a Motion to Dismiss or
 13 even if we treat it as Motion for Summary Judgment
 14 how do we deal with that dispute between Mr. Larson
 15 and MidAmerican and perhaps even some contractors
 16 as to whether or not there was damage?
 17 MS. CREMER: Well, when I talked to
 18 Mr. Larson the other day he acknowledged that there
 19 probably were cracks in it. You know, other than
 20 that -- and, like I said, his own witnesses -- I'm
 21 not sure who he could bring in on a factual
 22 determination that's going to say there aren't
 23 cracks in it, but we can certainly go to hearing on
 24 it.
 25 CHAIRMAN SAHR: Thank you. I'm

1 going to ask -- unless you have questions of
2 Ms. Cremer, I'd like to give Mid-American a chance
3 to respond. Why don't we give MidAmerican the
4 opportunity to respond to Mr. Larson's comments.
5 So MidAmerican please go ahead.

6 MS. HUIZENGA: Thank you, Your
7 Honor. MidAmerican red-tagged at the time and when
8 we red-tagged we noted that there was holes in the
9 heat exchanger. That is the reason that's on the
10 red tag that is contemporaneous with our servicemen
11 being out there.

12 MidAmerican understands that at that time it
13 was a requirement that he get a service person out
14 there to look at the furnace, to determine the
15 condition if there was a replacement needed. I
16 understand that the person that came out and
17 replaced the furnace did not inspect that. That is
18 not MidAmerican's responsibility to require that
19 the person who is actually doing the work who is --
20 would do the inspection to make sure that it needed
21 it -- I assume they either did the inspection and
22 required it, or for whatever reason Mr. Larson did
23 not request that the furnace be inspected at that
24 time.

25 I would also add that the KPH statement that

1 the cracks in the heat exchanger were there is
2 something that Mr. Larson himself brought to the
3 attention of the Commission. That was not from
4 MidAmerican. That was from Mr. Larson. He also
5 attached that in his earlier Complaint to the
6 Attorney General's Office on the same matter.

7 The actual Complaint he had is that we did not
8 do a CO test that he seems to feel we are required
9 to do. I do not believe there is anything in the
10 Commission rules or in our tariffs that would
11 require us to do a CO test. In fact, we did,
12 however -- I think that's neither here nor there
13 for the legal determination. The legal
14 determination is that Steve's, KPH, MidAmerican all
15 found a hazardous condition. MidAmerican
16 red-tagged the hazardous condition. Thank you,
17 Your Honor.

18 CHAIRMAN SAHR: Thank you. Any
19 questions for MidAmerican?

20 COMMISSIONER BURG: Yes. I have
21 one. How did you first become aware that you even
22 needed to look at the furnace, and what was the
23 basis for the red tag again?

24 MS. HUIZENGA: MidAmerican received
25 a call from Steve's Heating & Cooling on a Tuesday

1 and said that there was a potential for CO. Also
2 Mr. Larson called in, and as he stated in his
3 Complaint to the Attorney General, he said I called
4 the gas company to see if they could come and check
5 my furnace. And so we had two calls requesting us
6 to come out that evening.

7 COMMISSIONER BURG: And then what
8 kind of examination does your staff do when they do
9 go on a call like that?

10 MS. HUIZENGA: In order to check the
11 furnace you have to use a heat exchanger. You have
12 to use a mirror to do the check to look within the
13 heat exchanger to make sure there are no cracks or
14 problems.

15 As I understand, the furnace was not on at the
16 time our service person arrived. It had not been
17 on. Therefore, there was no immediate need to
18 check for CO. There would not be CO.

19 COMMISSIONER BURG: But your
20 employees, do they sign some kind of a statement
21 saying they found an unsafe condition or they found
22 cracks, or what kind of statement did your employee
23 make after the examination?

24 MS. HUIZENGA: Yes. MidAmerican did
25 leave the red tag that said that they found the

1 hole. It says in our record, "Furnace has large
2 holes and heat exchanger is not mobile home
3 approved. There is no shut off for furnace. Shut
4 gas off to trailer. Steve's Comfort System was
5 here to repair furnace. According to customer,
6 charged \$401 as previous call but did not tell them
7 of hole in heat exchanger. Our next call is inform
8 customer furnace was not safe to use due to holes
9 in heat exchanger."

10 COMMISSIONER BURG: Okay. That
11 answers my question.

12 MS. HUIZENGA: And if you want to
13 know about the furnace, it is not approved for use
14 in a trailer. The fact is our later discussions
15 with the heating and cooling contractor were that
16 the furnace was not in the trailer. Apparently
17 there is a wooden structure attached to the trailer
18 where the furnace physically was, and because it
19 was not in the trailer per se, we agreed with the
20 heating and cooling contractor that they would be
21 allowed to put that same type of furnace back in.

22 COMMISSIONER BURG: Okay.

23 VICE CHAIR HANSON: Mr. Chairman.

24 CHAIRMAN SAHR: Yes. Please go
25 ahead.

1 VICE CHAIR HANSON: This is
2 Gary Hanson. I just want to make sure I have the
3 facts correct. Karen, was it Mr. Larson -- well,
4 who called KPH? Who contacted them and requested
5 the service?

6 MS. CREMER: My understanding is
7 Mr. Larson did after everything that had occurred,
8 and he was still convinced that this may not
9 necessarily have holes in it so he called an
10 independent third party to come out and check it.

11 VICE CHAIR HANSON: All right. So
12 it was Mr. Larson's witness then?

13 MS. CREMER: Yes.

14 VICE CHAIR HANSON: Thank you.

15 CHAIRMAN SAHR: Any other questions
16 of MidAmerican?

17 Mr. Larson, I'll give you the opportunity to
18 respond, but I would ask that you confine your
19 comments to what staff has alleged or what
20 MidAmerican has alleged and again not repeat
21 anything that was said earlier except as needed to
22 respond to those allegations.

23 So if you'd please proceed. Thank you.

24 MR. LARSON: Okay. When Karen
25 stated that -- was it Karen, I believe?

1 No, it was not an unsafe condition because I
2 don't believe there's cracks in it. I don't
3 believe that there's even -- I know there's no
4 holes, and I don't believe that there's cracks
5 because KPH when they came here that day said there
6 might be holes or cracks because we can't tell.
7 And they looked for 45 minutes. But when I asked
8 for a written statement from them they didn't want
9 to get involved.

10 CHAIRMAN SAHR: Thank you,
11 Mr. Larson. I do have a follow-up question for
12 MidAmerican, just a short one. Do you know, I'm
13 looking through your pleading and you're not -- at
14 this point you haven't filed anything contending we
15 don't have jurisdiction, you're just stating
16 there's no issue of material fact; is that correct?

17 MS. HUIZENGA: That's correct.

18 CHAIRMAN SAHR: Okay. Thank you. I
19 would move that we go into executive session to
20 discuss this further.

21 VICE CHAIR HANSON: Second.

22 CHAIRMAN SAHR: Mr. Larson, we'll be
23 back in just a couple of minutes so please just
24 stay on the line, and I'm going to ask the court
25 reporter to go off the record.

1 CHAIRMAN SAHR: Yes. She was the
2 person speaking on behalf of our staff. And I
3 should say, just so you know, our PUC staff
4 operates independently from the Commissioners so
5 she was not speaking on behalf of the three
6 Commissioners here. She was taking an independent
7 view of this.

8 So with that in mind, please go ahead.

9 MR. LARSON: Yes. I understand she
10 said I said there was cracks. Now I'm stating this
11 is what the KPH heating and cooling wrote after a
12 month of me trying to get a statement from them.
13 The fact is that Mid-America, like I said, did not
14 take a reading whatsoever. They knew that the
15 furnace existed in an outside structure because the
16 gas personnel himself was here that night. He was
17 the one that shut it off.

18 The fact that I called KPH should be noted
19 because I went there hoping that somebody else
20 could take an outside look at this to see that
21 there was no holes in the furnace. Now because KPH
22 says in their statement a month later that there's
23 cracks in it maybe, because they state that there
24 might be cracks, they want to state that it's still
25 an unsafe condition.

1 (A short break is taken at which time the
2 Commission meets in executive session)

3 CHAIRMAN SAHR: All right. We'll go
4 back on the record, and we've come out of executive
5 session. And at this point in time based on the
6 filing made by MidAmerican, which is a Motion to
7 Dismiss, there needs to be no question of material
8 fact and this morning Mr. Larson certainly has
9 consistently raised the issue that he feels there's
10 no crack, hole, or damage otherwise. And that does
11 present in my opinion an issue of material fact.

12 Now it certainly doesn't say potentially
13 MidAmerican did the right thing if it felt
14 otherwise, but at this point in time the question
15 is does the case get dismissed because of no issue
16 of material fact and with that in mind I am going
17 to move that we grant -- excuse me, that we deny
18 MidAmerican Energy Company's Motion to Dismiss.

19 VICE CHAIR HANSON: Hanson seconds.

20 COMMISSIONER BURG: I'm going to
21 concur. And just a quick statement because the
22 burden of proof I think is upon Mr. Larson to prove
23 that they did not have a reason to red tag it or to
24 remove the furnace and if he really feels that he
25 has what it's going to take to prove that --

1 because I do know that if they had not removed that
2 furnace when they were made aware there was a
3 problem and something would have happened, I know
4 what kind of a situation we'd be in then.

5 So the burden is upon Mr. Larson to prove that
6 they did that unjustly, and I'm willing to give him
7 that opportunity to prove that.

8 CHAIRMAN SAHR: Mr. Larson, are you
9 on the line?

10 MR. LARSON: Yes, sir, I am.

11 CHAIRMAN SAHR: So to give you the
12 short version, we've denied MidAmerican's Motion to
13 Dismiss, and the case will proceed forward.

14 MR. LARSON: Yes, sir.

15 CHAIRMAN SAHR: Thank you. Do you
16 have any questions?

17 MR. LARSON: Only that I'm wondering
18 exactly what I need to do to prove this at this
19 point. I know that I still have the furnace. I
20 truly believe that there's no holes or cracks.

21 CHAIRMAN SAHR: Right.

22 MR. LARSON: I also believe that I'm
23 willing to go pursue this because at this point --
24 I'm not angry anymore. I'm upset with the fact
25 that I'm paying for a furnace that I truly don't

1 of the day but if she's not available, you can
2 leave a message for her and she'll call you back
3 and you can discuss how this will go forward. And
4 I should note we try to be very helpful as much as
5 we can with people who aren't represented by
6 attorneys on letting them know what to expect and
7 if you have any questions at all, don't hesitate
8 contacting her.

9 MR. LARSON: I appreciate that very
10 much and I appreciate the time of the committee and
11 I'm sorry this even had to happen.

12 CHAIRMAN SAHR: Well, we appreciate
13 your involvement, and thank you for your time.

14 MR. LARSON: Okay, sir. Have a good
15 day, and, thanks, everybody there.

16 CHAIRMAN SAHR: Okay. Since your
17 matter is resolved, Mr. Larson, and we still have a
18 issue with phone lines, if you don't mind dropping
19 off, we'd appreciate that.
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21
22
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25

1 believe I needed.

2 CHAIRMAN SAHR: Mr. Larson, since
3 you do have some questions about how the case will
4 go forward, our staff can help you with that. If
5 you would, call Karen Cremer at 1(800)332-1782.
6 Call that number. That's the PUC number. Ask for
7 Karen Cremer. And realize that she's going to be
8 in meetings and hearings most of this day, but she
9 can call you back and talk to you about how the
10 case will proceed.

11 MR. LARSON: One second will you,
12 please, sir. I lost my pencil. I need to have
13 that number again.

14 CHAIRMAN SAHR: Let me know when you
15 have your pencil.

16 MR. LARSON: The one I had the lead
17 broke.

18 CHAIRMAN SAHR: I've had those days
19 before.

20 MR. LARSON: All right. I have the
21 pen now.

22 CHAIRMAN SAHR: 1(800)332-1782.

23 MR. LARSON: Okay. Karen Cremer?

24 CHAIRMAN SAHR: Karen Cremer and
25 today she'll be in meetings and hearings for most

1 STATE OF SOUTH DAKOTA)
2 :SS CERTIFICATE
3 COUNTY OF HUGHES)
4

5 I, CHERI MCCOMSEY WITTLER, a Registered
6 Professional Reporter and Notary Public in and for the
7 State of South Dakota:

8 DO HEREBY CERTIFY that as the duly-appointed
9 shorthand reporter, I took in shorthand the proceedings
10 had in the above-entitled matter on the 17th day of
11 August 2004, and that the attached is a true and
12 correct transcription of the proceedings so taken.

13 Dated at Pierre, South Dakota this 8th day
14 of September 2004.
15
16

17 
18 Cheri McComsey Wittler,
19 Notary Public and
20 Registered Professional Reporter
21
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23
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25