

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

IN THE MATTER OF THE COMPLAINT FILED)	FINAL DECISION AND
BY ROSLYN BULLION, DELL RAPIDS, SOUTH)	ORDER; NOTICE OF ENTRY
DAKOTA, AGAINST MIDAMERICAN ENERGY)	OF ORDER
COMPANY REGARDING A BILLING DISPUTE)	CN02-001

On February 4, 2002, the Public Utilities Commission (Commission) received a complaint filed by Roslyn Bullion, Dell Rapids, South Dakota (Complainant), against MidAmerican Energy Company (MidAmerican) regarding a billing dispute. On February 4, 2002, the complaint was faxed to MidAmerican. Pursuant to ARSD 20:10:01:09, MidAmerican was notified that it must satisfy the complaint or file an answer in writing with the Commission by February 25, 2002. On February 25, 2002, the Commission received an Answer from MidAmerican. On March 4, 2002, the Commission received a Response to Answer from Complainant. On May 23, 2002, the Commission received a Supplemental Answer and Motion to Dismiss from MidAmerican. On June 6, 2002, the Commission received an Answer to the Supplemental Answer and Motion to Dismiss from Complainant. On June 13, 2002, at a regularly scheduled meeting, the Commission considered the Motion to Dismiss. The Commission voted unanimously to deny the Motion to Dismiss. On September 19, 2002, the Commission served an Order for and Notice of Hearing on the parties setting the matter for hearing. On September 23, 2002, the Commission served an Order for and Notice of Pre-Hearing on the parties, and on October 3, 2002, a Pre-Hearing conference was held by teleconference among Complainant, MidAmerican and Commission Staff to review and confirm the issues in the case, explain the order of evidence presentation and the preparation and marking of exhibits. During the Pre-Hearing conference, Complainant stated that issue number 4. was not at issue.

On October 15, 2002, beginning at 1:30 P.M., in the City Hall Committee Room, 302 4th Street, Dell Rapids, South Dakota, the hearing was held as noticed. Complainant, MidAmerican and Commission Staff appeared. At the conclusion of the evidence, the Commission took the matter under advisement and deferred decision to a date to be determined. The Commission instructed the parties to file any closing arguments within ten days. On October 21, 2002, the Commission received a supplemental filing by fax from Complainant. On October 28, 2002, the Commission received a second supplemental filing by fax from Complainant. On November 7, 2002, the Commission received a third supplemental filing by mail from Complainant. On November 12, 2002, the Commission received by fax MidAmerican Energy Company's Post-Hearing Brief, including Exhibits 1 and 2. On November 15, 2002, the Commission received by fax from MidAmerican a Motion to Strike and Resistance to Motion to Reopen Record.

Following notice to the parties, at its regular meeting on November 20, 2002, the Commission considered (i) the issue of whether to admit into evidence additional documentary evidentiary material included in the parties' post-hearing filings and (ii) its final decision on the issues in the case. Complainant and MidAmerican appeared through counsel via teleconference.

The Commission voted unanimously to: (i) deny admission of Exhibit 2 to MidAmerican's Post-Hearing Brief into evidence; (ii) deny admission into evidence of the evidentiary portions of the documents submitted by Complainant subsequent to the hearing; and (iii) decide for MidAmerican and against Complainant on all issues raised by Complainant's complaint.

Having considered the evidence of record and applicable law, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

I. Issues Relating to 418 East 4th Street, Dell Rapids, SD - Acct. No. 01860-55047

A. General Findings Relative to 418 East 4th Street.

1. MidAmerican's account records show that Complainant's account at 418 East 4th Street, Dell Rapids, Acct. No. 01860-55047 (418 E 4th), was initiated by a call from Complainant on November 28, 2000, and activated by MidAmerican on November 29, 2000. Transcript at 106; Exhibit A at A-3.
2. 418 E 4th was a commercial account. Transcript at 104; Exhibit A at A-3 and A-6 - A-9.

B. Over-Billing for Gas Service (Notice Issue 1).

3. There is no evidence in the record to indicate that during her service period, Complainant requested MidAmerican to perform a test of MidAmerican's gas meter measuring service at 418 E 4th.
4. MidAmerican's meter reading data for 418 E 4th, including the one meter reading attributable to the previous tenant, demonstrates a consistent, incremental pattern of meter readings that are not suggestive of meter reading errors or anomalies. Transcript at 109; Exhibit A at A-3.
5. MidAmerican's account history for 418 E 4th demonstrates that Complainant's bill grew to the \$1,112.09 closing balance incrementally over a period of months, not as a result of an anomalously large, one-time addition at or near the end of the service period. Exhibit A at A-2; Transcript at 109. The balance on January 22, 2001, was already at \$833.52; the February 20, 2001, balance was \$825.38; and the March 22, 2001, balance was \$1,121.09. The account was in arrears by at least \$825.38 for more than three months prior to disconnection. Plaintiff's testimony that "we don't have a bill that's a thousand and something dollars that we owe MidAmerican," apparently offered to show that Complainant was surprised as to the amount of the outstanding balance when MidAmerican came to disconnect, is not credible in light of this account history. Complainant consistently either failed to make monthly payments during this period, or made payments that were less than the amount of new charges for the month. Exhibit A at A-2. A balance in excess of \$1,000 was consistent with the account history and should have been expected by a reasonable person exercising due diligence.
6. The only evidence introduced by Complainant to contradict MidAmerican's evidence of the account history for service at 418 E 4th was her testimony that a MidAmerican technician who came to disconnect service "was in a quandary at that point because according to his records, his records that he was showing and the records on the meter did not match the meter." Transcript at 8. This hearsay evidence is not sufficiently credible, substantial or unambiguous to overcome the meter reading data for 418 E. 4th contained in MidAmerican's records. Exhibit A at A-3; Transcript at 8.
7. Neither Complainant nor Commission Staff introduced any evidence of the misapplication by MidAmerican of its tariffed rates for gas service to Complainant's usage as shown by the meter readings or other miscalculation or error in the calculation of Complainant's bills. There is no substantial evidence in the record on which to base a finding that MidAmerican over-billed Complainant for her gas consumption. Transcript at 108.
8. There is no credible evidence in the record to support Complainant's suggestion that she was charged for service during November and December that was prior to her activation of service. Transcript at 36 and 107. Complainant's only evidence to support this suggestion is her unsubstantiated testimony that she called to initiate service for 418 E 4th in January, 2001.

MidAmerican's Exhibits A, B, C and D, by contrast, present a coherent and credible account of the events that led to the activation of gas service to 418 E 4th on November 29, 2000. MidAmerican's records show that on the same date, November 28, 2000, Complainant terminated service at 412 E 5th St., her former residence, initiated service at both 418 E 4th and 416 E 4th, and made inquiry concerning the status of her account at 302 E 7th St. Exhibits A, B, C and D at A-2, B-2, C-2 and D-2. We find that Complainant requested MidAmerican to activate service at 418 E 4th on November 28, 2000, and that MidAmerican activated service in Complainant's name on November 29, 2000. We also find that Complainant's first bill in the amount of \$238.51 covered the period from November 29, 2000, the date of service activation, until December 20, 2000. Exhibit A at A-2 and A-3

9. MidAmerican's records do not indicate that Complainant ever contacted MidAmerican to dispute her bills for 418 E 4th. Transcript at 114-115; Exhibit A. Complainant could not recall contacting MidAmerican to dispute the bill. Transcript at 40.

10. MidAmerican's account information for 418 E 4th indicates there was no budget agreement covering 418 E 4th. In the column entitled "Budget Billing," all of the entries state "No," including the first entry for the first billing period ending on December 20, 2000. Exhibit A at A-4. We find that a preponderance of the evidence supports a finding that there was no budget agreement entered into between MidAmerican and Complainant for 418 E 4th.

11. We find that a preponderance of the evidence does not support a finding that Complainant was not sent bills on a monthly basis for 418 E 4th. MidAmerican's account records show that Complainant made three payments of \$100.00 and one payment of \$233.52 on this account. This payment history is not consistent with a finding that Complainant did not receive the regular billings on this account as evidenced by MidAmerican's records. Exhibit A.

12. The preponderance of the evidence does not support a finding that MidAmerican's meter readings were incorrect or that MidAmerican over-billed Complainant for gas service at 418 E 4th.

C. Failure to Provide Records of Past Three (3) Years Gas Usage by Prior Tenant (Notice Issue 2).

13. Complainant testified that she "requested the prior three years' billing because prior to that it was a used furniture store, I think, and I thought if I had the billing what it was for three years I could ascertain what I owed. No one to this day has told me what I owe and the difference and why." Transcript at 9.

14. MidAmerican would not provide Complainant with the billing history for the prior customer at the premises based upon MidAmerican's standard policy not to disclose customer account information to third parties without their consent. Transcript at 108.

15. That portion of Complainant's testimony that "no one to this day has told me what I owe" is contradicted by MidAmerican's evidence. MidAmerican testified and introduced documentary evidence indicating that Complainant was sent monthly bills for her service at 418 E 4th which included the previous month's consumption plus the unpaid account balance. Transcript at 105-106 and 117-118; Exhibit A. We find that MidAmerican sent Complainant monthly bills that included both the prior month's consumption and the unpaid account balance and that Complainant could have determined what she owed by looking at her bill.

16. The previous tenants' bills would not have been determinative of what Complainant owed. Although the usage records of previous tenants might have provided comparative usage data, they

would not indicate what Complainant's usage was in fact. Many factors can affect gas usage, such as the winter, the gas prices and what the service is being used for. Transcript at 109.

17. The only evidence in the record of gas usage at 418 E 4th prior to Complainant's service activation is found in the entry on Exhibit A at A-3 for 11/17/00 to 11/29/00; Transcript at 112-113. The gas volume usage indicated for this 12 day period is consistent with Complainant's usage (i.e. $175 \times 30/12 = 437$).

D. Wrongful Transfer of Charges Attributable to 302 East 7th Street, Dell Rapids, (Acct. No. 86280-53095), a Residential Account, to this Commercial Account (Notice Issue 3).

18. Complainant's only evidence of an alleged account transfer consisted of her testimony of a conversation between Complainant and the MidAmerican technician sent to the property to disconnect the gas service for non-payment on or about April 17, 2000. Based on this conversation, Complainant concluded, "So we couldn't surmise -- I couldn't surmise where the billing was coming from." Transcript at 8; Exhibit A at A-2.

19. As found in Findings 4 - 8, however, MidAmerican's bills for 418 E 4th do not present an erratic billing pattern indicative of an account transfer, but rather demonstrate a consistent, incremental build-up of the account balance over several months as Complainant's payments consistently fell short of monthly charges for gas usage. Exhibit A at A-2; Transcript at 109.

20. MidAmerican's account records for 418 E 4th show that there was no transfer to this account of a balance from any other account. Transcript at 116; Exhibit A. There is no competent evidence in the record from which a reasonable inference might be drawn that Complainant's account for 418 E. 4th included a transfer of billings from another account.

21. A preponderance of the evidence does not support a finding that there was a transfer of the account balance from 302 E 7th St., Apt 2, or any other account to Complainant's account for 418 E 4th.

E. Erroneous Billing of Complainant for a Property Owned by Russ Bullion (Notice Issue 4).

22. Complainant stipulated on the record that she did not wish to proceed with this issue. Transcript at 5.

II. Failure to Terminate Service to 302 East 7th Street, Apt. 2, Dell Rapids, SD - Acct. No. 86280-53095, Following Complainant's Alleged Verbal Request to Terminate in July 2000 (Notice Issue 5).

23. Complainant was the owner of a residential building at 302 East 7th Street, Dell Rapids, SD (302 E 7th). Transcript at 13. 302 E 7th had been divided into two apartments each with its own gas service and meter. At some point, the divider between the two units was removed, and 302 E 7th was a single premises after that. Transcript at 44-45. After the building became a single dwelling unit, however, two gas meters continued to serve the premises, each representing a separate account -- 302 E 7th, Apartment 1 (302 E 7th, Apt 1) and 302 E 7th, Apartment 2, Acct. No. 86280-53095 (302 E 7th, Apt 2). Transcript at 89-90, 96 and 136-137. References herein to 302 E 7th, Apt 2 are to the meter and account so denominated serving the 302 E 7th premises and are not intended to imply that a separate premises for such meter either existed or did not exist.

24. Complainant's complaint involves that gas service to 302 E 7th metered and billed by MidAmerican as 302 E 7th, Apt 2. The gas service to 302 E 7th, Apt 2 was residential class service. Exhibit B at B-9; Transcript at 82.

25. On July 21, 1998, Complainant executed a landlord authorization form with respect to 302 E 7th directing MidAmerican to "Leave meter on yearround (but in my name between tenants)" (Landlord Agreement). The Landlord Agreement stated that the property was a duplex and specifically included a reference to 302 E 7th, Apt 2. Exhibit B at B-7; Transcript at 82-84.

26. When a landlord submits a landlord agreement, MidAmerican programs its computerized accounting and billing system to automatically switch the account over to the landlord upon the tenant's disconnection, unless the disconnection is done by MidAmerican for non-payment. Transcript at 83. MidAmerican will discontinue a landlord agreement by telephone instructions. Transcript at 95.

27. The activation of account 302 E 7th, Apt 2 in Complainant's name occurred by operation of the Landlord Agreement on August 11, 2000, following disconnection of the service by the former tenant, Complainant's son, J. Rustin "Russ" Bullion. Transcript at 13, 33, 84-85, 96-97 and 122; Exhibit B at B-9.

28. The evidence as to whether Complainant had requested the service to be discontinued at 302 E 7th, Apt 2 is conflicting. Complainant testified that she gave notice by telephone to disconnect in July 2000, and followed this verbal instruction with a letter containing the name and address of attorneys named "Olson & Nash" who represented the holder of the mortgage on the property and who had initiated foreclosure proceedings. Transcript at 17-20 and 14-16. Complainant stated she did not retain a copy of this letter. Transcript at 41-42.

29. MidAmerican's records do not indicate that Complainant contacted the company to request disconnection in July 2000. Exhibit E; Transcript at 87-88.

30. Complainant's own testimony as to when she gave notice to disconnect service at 302 E 7th is conflicting. Complainant testified that she gave verbal notice to disconnect in July 2000 because the property had been foreclosed, but she also testified that the foreclosure wasn't complete until December 2000, and that her son, Russ Bullion, lived in 302 E. 7th during the entire period prior to the completion of the foreclosure. Transcript at 15-16.

31. The first contact indicated by MidAmerican's records between Complainant and MidAmerican regarding Complainant's account at 302 E 7th, Apt 2 occurred on November 28, 2000. Exhibit B at B-13. On this date, Complainant also discontinued her service at 412 East 5th Street, Dell Rapids and initiated service at 418 E. 4th and 416 E 4th. Exhibit C at C-8; Exhibit A at A-6; Exhibit D at D-1 and D-2; Transcript at 127-133.

32. MidAmerican's contact records for 302 E 7th, Apt 2 contain the following entry dated November 28, 2000:

Roselyn called to see if the serv was still on here; advsd her there are 2 accts at this address, one for 302 E 7th St and this one for 302 E 7th St - Apt 2; she said it is just one house & when they called to have serv shut off, thought they were calling about ALL service; However, she then decided she wanted the serv left on so pipes won't freeze; . . . Roselyn thinks bills are way too high, advsd when serviceman went out, he saw 3 windows that are half open.

Exhibit B at B-13 - B-15. Complainant also testified that on November 28, 2000, she requested that the service be left on while she checked with a realtor on the prospects for the sale of the property. Transcript at 18-19 and 119.

33. Although Complainant testified that when she requested on November 28, 2000, that service at 302 E 7th, Apt 2 be continued only for a few days to allow her to check the status of sale prospects for the property, she failed to subsequently follow-up and utilize MidAmerican's procedure for disconnection of service. Transcript at 119-120; Exhibit B at B-13 - B-27. Complainant spoke with MidAmerican's billing and collections contractor on several occasions over the next three months. On these occasions, MidAmerican either offered to transfer her to the appropriate call center personnel who handled disconnection or she was instructed to call the call center to discontinue service and was given the number to call. Complainant never followed up by allowing herself to be transferred to, or calling, MidAmerican's call center to disconnect service as she was instructed to do. Transcript at 124-125; B at B-13 - B27.

34. Complainant testified that MidAmerican never sent her a bill for 302 E 7th, Apt 2 following activation of her account for the premises on August 11, 2000, under the Landlord Agreement. Transcript at 46. This testimony is contradicted (i) by MidAmerican's records of the billing history on the account which indicate that bills were issued on 8/18/00, 9/20/00, 10/20/00, 11/17/00, 12/20/00, 01/22/01, 02/20/01, 03/22/01, 04/19/01 and 04/30/01; Exhibit B at B-5; Transcript at 146; (ii) by the contact record on the account for November 28, 2000, which states, "Roslyn thinks bills are way too high . . ."; Exhibit B at B-15; (iii) by the copy of Complainant's April 13, 2001 bill for 302 E 7th provided by Complainant to the Commission's Staff; Exhibit F at 2; and (iv) by Complainant's testimony that Complainant "requested that they go out and view the house" in October 2000. Transcript at 159. We find that a preponderance of the evidence supports a finding that Complainant did receive bills for 302 E 7th, Apt 2.

35. Although the evidence is conflicting as to whether a request to disconnect was given in July 2000, on 302 E 7th, Apt 2, the Commission finds that a preponderance of the evidence supports a finding that such notice was not given. Supporting Complainant's position are (i) her testimony concerning her July 2000 call requesting termination and follow-up letter [Transcript at 17-20] and (ii) MidAmerican's contact notes for the telephone call from Complainant on November 28, 2000, which noted that Complainant stated, "[S]he said it is just one house & when they called to have serv shut off, thought they were calling about ALL service; . . ." Exhibit B at B-13 and B-14. Several pieces of evidence, however, support MidAmerican's version of the facts on this issue. First, throughout July 2000, 302 E 7th, Apt 2 was in Complainant's tenant's name, not Complainant's. Exhibit B at B-9; Transcript at 88. The service was not switched from the tenant's account to Complainant's until August 11, 2000. Exhibit B at B-2, B-3 and B-9. Secondly, Complainant was sent her first bill for 302 E 7th, Apt 2, in the amount of \$3.00, on August 18, 2000. Exhibit B at B-2 - B-5. There is no evidence in the record that she made any attempt after receiving this bill to contact MidAmerican to advise the company that she wanted service discontinued. At this point, had Complainant promptly acted to give notice to MidAmerican, the account balance would have been minimal. Thirdly, when Complainant did discuss the situation with MidAmerican on November 28, 2000, she did not request that service be terminated. Instead, she requested that service be continued to keep the pipes from freezing but disputed the amount of the bill. Exhibit B at B13 - B-15. On the occasions thereafter when she contacted MidAmerican, she never followed through with a request to MidAmerican's customer service call center to effect the disconnection. Transcript at 119-120; Exhibit B at B-13 - B-27.

36. We find that Complainant did not provide notice to MidAmerican to terminate service to 302 E 7th, Apt 2 in July 2000, or thereafter. We further find that even if Complainant had provided such notice in July 2000, once she learned that service was continuing, she had an obligation to promptly advise MidAmerican of such fact if she wanted service to be terminated. We find that this obligation

accrued when Complainant received her first bill for 302 E 7th, Apt 2, which occurred within days after August 19, 2000, MidAmerican's first billing date for 302 E 7th, Apt 2. Exhibit B at B-2 and B-3; Transcript at 122. We find that if Complainant had acted at such time to advise MidAmerican to terminate service, the total liability to be absorbed by any party would have been minimal. We further find that Complainant did not so act to advise MidAmerican to terminate service and, to the contrary, when the issue was first discussed with MidAmerican on November 28, 2000, Complainant did not request disconnection even then. Exhibit B at B-13 to B-15.

37. We further find that Complainant failed to take advantage of the numerous instances on which MidAmerican's credit contractor either advised Complainant to call, or offered to transfer Complainant to, the customer service call center to effect a termination of service at 302 E 7th, Apt 2. Transcript at 123-125; Exhibit B.

38. We accordingly find that MidAmerican committed no unlawful or unreasonable act or practice with respect to the continuation of service to 302 E 7th and that Complainant is responsible for the accrued charges, including late fees, in the total amount of \$1,746.73 on account 302 E. 7th St., Apartment 2, Dell Rapids, Acct. No. 86280-53095.

III. Wrongful Transfer of Unpaid Account Balances for 302 E. 7th Street (Acct. No. 86280-53095) and for 412 E. 5th Street (Acct. No. 69690-53031) to 416 East 4th Street, Apt. 1 (Acct. No. 54360-53181) (Notice Issue 6).

39. On November 28, 2000, Complainant called MidAmerican to activate service to 416 East 4th Street, Apt. 1, Dell Rapids, SD - Acct. No. 54360-53181 (416 E 4th). On November 29, 2000, MidAmerican initiated service to Complainant at 416 E 4th. The service to 416 E 4th was residential class service. Transcript at 132-133; Exhibit D at D-1 and D-2.

40. On January 19, 2001, the final account balance of \$140.86 remaining on Complainant's account for 412 E. 5th Street, Dell Rapids - Acct. No. 69690-53031 (412 E 5th) was transferred to 416 E 4th. On February 2, 2001, a payment in the amount of \$60.00, made by Complainant against her outstanding balance on 412 E 5th, was transferred and credited to the combined account for 416 E 4th. Transcript at 130-132; Exhibit D at D-1 and D-2.

41. On May 23, 2001, the final account balance of \$1,746.73 remaining on Complainant's account for 302 E 7th, Apt 2 was transferred to 416 E 4th. Transcript at 125-128; Exhibit D at D-1; Exhibit B at B-2.

42. 416 E 4th, 412 E 5th and 302 E 7th, Apt 2 were all residential class accounts. Transcript at 82, 128 and 130; Exhibit D at D-2; Exhibit B at B-9.

43. Although neither Complainant nor MidAmerican introduced copies of the gas bills for the months in which the transfers to 416 E 4th occurred, MidAmerican did testify concerning what the bills would have included based upon the account information retained in MidAmerican's account records. Transcript at 126-128 and 130-131.

44. The account balance transfers from 412 E 5th and 302 E 7th, Apt 2 to 416 E 4th were transfers involving the same account name and the same class of service.

45. We find that MidAmerican's evidence sufficiently demonstrates that Complainant's bills for 416 E 4th contained information that itemized the account balance transfers from both 412 E 5th and 302 E 7th, Apt 2 to 416 E 4th and identified each transfer by account number and address.

46. We find that neither MidAmerican's transfers of the account balances from 412 E 5th and 302 E 7th, Apt 2 nor the information regarding such transfers on Complainant's bills for 416 E 4th constituted an unreasonable or unlawful practice.

IV. Improper Application of Payment and Wrongful Transfer of Account Debt to Collection Agency

A. Improper Application of Payment (Issue Raised in Post-Hearing Filing).

47. Complainant argues in her post-hearing submittal of October 28, 2002, that MidAmerican applied a payment of \$100.00 that she intended to make as final payment on account 412 E 5th to account 418 E 4th.

48. MidAmerican applied a payment made by Complainant in the amount of \$100.00 on January 29, 2001, against her outstanding account balance of \$833.52 on 418 E 4th. Exhibit A at A-2.

49. On January 29, 2001, Complainant owed \$140.86 on account 412 E 5th. On February 16, 2001, Complainant made a payment to account 412 E 5th in the amount of \$60.00. Exhibit C at C-2.

50. Of the four payments applied by MidAmerican to account 418 E 4th, one of which was the January 29, 2001 payment at issue, three were payments in the amount of \$100.00. Exhibit A at A-2.

51. Applying the January 29, 2001 payment to account 412 E 5th would have resulted in an over-payment of the account by \$19.14. Exhibit C at C-2.

52. Complainant's payment history on all of her accounts, including 412 E 5th, was to continuously carry an outstanding balance. At no time from January, 2000 through the present was Complainant ever current on her accounts with MidAmerican. Exhibits A at A-2, B at B-2, C at C-2 and D at D1.

53. Given Complainant's history of making \$100.00 payments on account 418 E 4th and her history of not over-paying, it is more credible that Complainant intended for the \$100.00 payment to be made on account 418 E 4th than on 412 E 5th.

54. We find that MidAmerican did not wrongfully apply Complainant's January 29, 2001 payment in the amount of \$100.00 and that, in any case, if MidAmerican had applied Complainant's January 29, 2001 payment of \$100.00 to account 412 E 5th, the effect of such application would merely have been to increase Complainant's final unpaid account balance on 418 E 4th by the \$100.00 applied to 412 E 5th.

B. Wrongful Transfer of Account Debts to Collection Agency (Notice Issue 7).

55. On April 18, 2001, Complainant's account at 418 E 4th was disconnected for non-payment. Exhibit A at A-2; Transcript at 115. On May 31, 2001, Complainant made a payment of \$100.00. Exhibit A at A-2. Complainant had carried a negative balance on account 418 E 4th since her first bill, and the arrearage had remained in excess of \$500.00 since January 22, 2001. Exhibit A at A-2.

56. On August 17, 2001 -- four months after disconnection for non-payment and two and a half months after Complainant's last payment -- MidAmerican sent the outstanding balance in the amount of \$1,112.09 on account 418 E 4th to a collection agency. Exhibit A at A-2; Transcript at 117. In late August 2001, Complainant received a letter dated August 22, 2001, from a collection agency known

as I.C. System, Inc. advising her that her account debt on account 418 E 4th was "seriously overdue and requires your immediate attention." Exhibit B1.

57. The Commission finds that MidAmerican had given Complainant ample time in which to pay her outstanding account balance at 418 E 5th and that sending the balance to collection was not an unreasonable act or practice.

58. On July 17, 2001, Complainant's account at 416 E 4th was disconnected for non-payment. At this time, MidAmerican sent Complainant a final bill with a due date of August 8, 2001, in the amount of the unpaid account balance in the amount of \$2,050.85. Exhibit A at A-2; Transcript at 134.

59. In November, 2001, Complainant received a letter dated November 21, 2001, from a collection agency known as I.C. System, Inc. advising Complainant that her account debt on 416 E 4th in the amount of \$2,050.85 "is still owing" and that "one of the next steps our office will take is to submit to national credit reporting agencies that this balance has been placed with I.C. System, Inc., for collection." Exhibit B2. Transcript at 135.

60. The Commission finds that MidAmerican had given Complainant ample time in which to pay her outstanding account balance on 416 E 4th and that sending the balance to a collection agency was not an unreasonable act or practice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-34A, specifically 49-34A-2, 49-34A-2.1, 49-34A-3, 49-34A-4, 49-34A-9, 49-34A-10, 49-34A-26, 49-34A-27, 49-34A-39, 49-34A-40, and 49-34A-58.

2. Complainant failed to make an adequate showing of the connection between her offered Exhibits A, B, C and DA1., involving her proposed Red Rocks Junction Project and the potential financing for such proposed project, and MidAmerican's billings for Complainant's gas usage, to justify a conclusion that such evidence was relevant to the issues stated in the complaint and within the Commission's jurisdiction. Complainant in fact did not offer any evidence whatsoever of a connection between her proposed project and MidAmerican's gas billings to her, and Complainant's offered evidence was therefore properly excluded from evidence in the case.

3. ARSD 20:10:17:04 requires that "the utility shall retain a record showing the data contained on each monthly bill." Although it would have been helpful in this case to have had copies of all relevant bills, MidAmerican's records did contain the data contained on Complainant's bills and MidAmerican did not engage in an unreasonable practice by not retaining copies of all actual customer bills.

4. With respect to Notice Issue 1 (Findings I.B., 3-12), Complainant failed to carry her burden of proof that MidAmerican improperly billed or overcharged Complainant for gas service at 418 East 4th Street, Dell Rapids. The preponderance of the evidence does not support a finding that MidAmerican either improperly billed or overcharged Complainant for gas service at 418 E 4th, and the complaint is accordingly denied as to Complaint Issue 1.

5. With respect to Notice Issue 2 (Findings I.C., 13-17), we conclude that MidAmerican did not commit an unlawful or unreasonable practice by failing to provide Complainant with the usage or billing records of previous customers.

6. With respect to Notice Issue 3 (Findings 1.D., 18-21), we conclude that Complainant failed to meet her burden of proof that MidAmerican transferred a balance from another account onto this account.

7. Complainant stated at the pre-hearing conference and confirmed on the record at the hearing (Finding I.E., 22) that she did not wish to proceed with complaint item 4., and this issue is therefore dismissed with prejudice.

8. The Commission has concluded in prior cases, e.g. *Complaint of Adam Headrick*, Docket NG97-006, "that a customer is responsible for notifying MidAmerican when that customer wants to discontinue service at a certain address." We further conclude that this notice obligation is not automatically discharged in a situation where the customer abandons the property without notice to the utility. With respect to MidAmerican's failure to disconnect at 302 E 7th, Apt 2 in July 2000, Notice Issue 5 (Findings II, 23-38), we conclude (i) that Complainant did not sufficiently demonstrate that she gave notice to MidAmerican to disconnect, (ii) that a tenant account was still open at this address at such time, (iii) that following her receipt of billings under the Landlord Agreement for 302 E 7th, Apt 2, Complainant had a duty to give notice to MidAmerican that she wanted service terminated and that she did not do so, and (iv) that when Complainant did discuss the situation with MidAmerican, she did not then take the steps to have the service disconnected. We therefore conclude that a preponderance of the evidence does not support a conclusion that MidAmerican wrongfully or unreasonably continued service at 302 E 5th following a notice to disconnect and that Complainant is responsible for the charges for gas service to 302 E 5th.

9. With respect to Notice Issue 6 (Findings III., 39-46), in *Complaint of Darrell Seeman*, Docket NG97-017, we concluded that "The rental properties and Mr. Seeman's home were all classified as residential small volume, firm service. . . . In addition, the accounts for all three properties were in his name at the time the bills were incurred. Thus, MidAmerican was allowed to transfer the rental property past due amounts to Mr. Seeman's account for his home." The service classifications for 412 E 5th, 302 E 7th, Apt 2 and 416 E 4th were all residential class service and all of these accounts were in the name of Complainant's husband. We conclude that MidAmerican's transfers of the account balances from 412 E 5th and 302 E 7th, Apt 2 to 416 E 4th were not improper, unreasonable or in violation of any statute, rule or Commission order.

10. Also, with respect to Notice Issue 6 (Findings III., 39-46), in *Complaint of Arnold Murray Construction*, Docket NG97-012, we concluded that "although MidAmerican may transfer bills involving the same name and same class of service, its failure to itemize each transfer and identify each transfer by account number on the bill the transfers are added to is an unreasonable practice." Complainant did not meet her burden of proof that MidAmerican failed to itemize each of the transfers from 412 E 5th and 302 E 7th, Apt 2 to 416 E 4th by account number. Rather, the preponderance of the evidence supports a conclusion that MidAmerican did include the account number and address for each of the accounts that was transferred to account 416 E 4th. We conclude that MidAmerican's transfers of overdue balances from 412 E 5th and 302 E 7th, Apt 2 were not an unlawful or unreasonable practice.

11. We conclude that MidAmerican's application of Complainant's January 29, 2001 payment of \$100.00 to account 418 E 4th was not unreasonable and that given the status of Complainant's various accounts, such application was not prejudicial to Complainant in any case (Findings IV.A., 47-54).

12. With respect to Notice Issue 7 (Findings IV.B., 55-60), we conclude that the transfer of outstanding unpaid account balances for gas utility service to a collection agency after affording the customer a reasonable time to pay the outstanding balances is not an unreasonable practice and

that MidAmerican did not commit an unlawful or unreasonable act or practice in this case when it sent the outstanding balances on accounts 418 E 4th and 416 E 4th to a collection agency.

13. The Commission does not have jurisdiction to adjudicate claims arising under the Fair Credit Reporting Act, including a claim that inaccurate or disputed credit information was provided to a credit reporting agency. 15 U.S.C. Sec. 618, 621(c) and 624(b)(1)(F).

14. MidAmerican was not shown to have committed any unlawful or unreasonable act, rate, practice or omission, and relief under the complaint is accordingly denied.

It is therefore

ORDERED, that the complaint of Roslyn Bullion is denied as to all issues and that the Complainant shall be awarded no relief under her complaint.

PLEASE TAKE NOTICE that this Final Decision and Order was duly entered on the 10th day of December, 2002. Pursuant to SDCL 1-26-32, this Final Decision and Order will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition therefor and ten copies with the Commission within 30 days from the date of issuance of this Final Decision and Order. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Final Decision and Order to the appropriate Circuit Court by serving notice of appeal of this decision to the circuit court within thirty (30) days after the date of service of this Notice of Decision.

Dated at Pierre, South Dakota, this 10th day of December, 2002.

CERTIFICATE OF SERVICE	
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.	
By:	<u>Melaine Kolbo</u>
Date:	<u>12/10/02</u>
(OFFICIAL SEAL)	

BY ORDER OF THE COMMISSION:

James A. Burg
JAMES A. BURG, Chairman

Pam Nelson
PAM NELSON, Commissioner

Robert K. Sahr
ROBERT K. SAHR, Commissioner

