

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

IN THE MATTER OF THE COMPLAINT) FILED BY TYLER MCFARLAND, SIOUX) FALLS, SOUTH DAKOTA, AGAINST) MIDAMERICAN ENERGY COMPANY) REGARDING A BILLING DISPUTE)	FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION; NOTICE OF ENTRY CN09-001
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On June 8, 2009, the Public Utilities Commission (Commission) received a complaint filed by Tyler McFarland, Sioux Falls, South Dakota (Complainant), against MidAmerican Energy Company (MidAmerican) regarding a billing dispute. On June 8, 2009, 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 June 29, 2009. On June 23, 2009, the Commission received an Answer from MidAmerican.

On August 20, 2009, the Commission issued and served on the parties an Order for and Notice of Hearing setting this matter for hearing on September 3, 2009, beginning at 1:30 P.M., in Room 282, University Center South, Southeast Technical Institute, 2205 Career Avenue, Sioux Falls, South Dakota. The hearing was held as noticed, and Complainant, MidAmerican and the Commission's staff (Staff) appeared. The Commission voted unanimously to grant in part the relief requested in the Complaint.

Having considered the evidence and the arguments of the parties at the hearing, the Commission makes the following Findings of Fact, Conclusions of Law and Final Decision and Order:

FINDINGS OF FACT

References to the Transcript are by "TR" followed by the page number. References to hearing exhibits are by "Ex" or Exs" followed by the exhibit number or numbers.

1. MidAmerican activated natural gas service to Complainant, Tyler McFarland, on March 21, 2007, at 1210 S. Majestic View Pl., Apt. 10, Sioux Falls, SD (Service Address). Ex MAE 1; TR 8, 50. Prior to activating service to the Service Address in Complainant's name, Complainant's mother had attempted to activate service to the Service Address but activation was denied by MidAmerican due to an outstanding unpaid account in her name at another address. TR 49.
2. Complainant resided with his mother, stepfather and brother, Taylor, and two younger siblings while at the Service Address. TR 9, 39. The lessee of the Service Address was not Complainant, but Complainant's mother. TR 11. Complainant and his family resided at the Service Address from, or prior to, April 1, 2007, until June 8, 2007. Exs MEA 1 and 2; TR 7, 9.
3. Complainant and his family moved out of the Service Address on June 8, 2007. TR 7, 9.
4. MidAmerican issued bills to Complaint for service to the Service Address, and mailed them to Complainant at the Service Address, on April 12, 2007, May 15, 2007 and June 14, 2007. Ex MEA 1, TR 56. The June bill included charges for service through June 12, 2007. Ex MEA 1.

5. Neither Complainant nor any other member of his household at the Service Address made any payments against Complainant's outstanding account with MidAmerican for gas service to the Service Address. Ex MAE 1; TR 10, 57. At the time Complainant moved out of the Service Address, his account with MidAmerican was more than 30 days in arrears and totaled \$76.30.

6. The evidence is conflicting as to whether Complainant called MidAmerican to disconnect service to the Service Address. Complainant testified that he believed he called and spoke with a MidAmerican customer service representative about terminating service around a month or so after he moved out of the Service Address. Ex MAE 4; TR 7, 11, 23-24. Complainant's brother, Taylor McFarland testified that he recalled being present when Complainant made such a call. TR 39-41. MidAmerican's records and testimony supported the fact that Complainant did not call to disconnect service until March 20, 2008. Ex MEA 2; TR 50, 54-55.

7. The Commission finds that the evidence is not sufficient to find that Complainant did in fact call MidAmerican to disconnect service.

8. Following the June 14, 2007, bill mailing, MidAmerican mailed the following documents to Complainant at the last address for Complainant known to MidAmerican: July 12, 2007 – monthly bill; August 13, 2007 – monthly bill; September 11, 2007 – monthly bill; October 9, 2007 – past due reminder; October 10, 2007 – monthly bill; November 7, 2007 – past due reminder; November 8, 2007 – monthly bill; December 6, 2007 – past due reminder; December 12, 2007 – monthly bill; January 9, 2008 – disconnect notice; January 14, 2008 – monthly bill; February 11, 2008 – disconnect notice; February 13, 2008 – monthly bill; February 27, 2008 – 30-day disconnect notice; March 14, 2008 – monthly bill. Ex MAE 1; TR 57-58.

9. MidAmerican did not attempt to contact Complainant by phone until late January, 2008. TR 58. MidAmerican made four attempts to contact Complainant by phone, with the first such attempt made on January 24, 2008. TR 58. MidAmerican received no communications from Complainant in response to these contacts. TR 60.

10. On March 20, 2008, Complainant contacted MidAmerican by phone and requested disconnection of service in his name to the Service Address. TR 58. Service was disconnected the following day on March 21, 2008. TR 58.

11. MidAmerican continued to bill Complainant for service provided to the Service Address through March 21, 2008, when service was switched over to the existing tenant. At that time, the amount due on the bill had risen to \$624.16. Ex MAE 1.

12. MidAmerican has a landlord agreement with the property owner of the Service Address. TR 69. Following Complainant's filing of the Complaint, MidAmerican contacted the property owner who advised MidAmerican that Complainant had vacated the Service Address on June 8, 2007, and that the Service Address had been re-let to a new tenant on August 1, 2007. TR 64. Due to the landlord agreement, the property owner agreed to pay the amount due for the period from June 8, 2007, through August 1, 2007, which MidAmerican calculated to be \$14.12. TR 64-65, 67. MidAmerican agreed to credit this amount against Complainant's bill, reducing the amount owing on the account to \$610.02. TR 67.

13. MidAmerican's policy is that it does not begin the disconnection process until the account is more than two hundred dollars (\$200.00) in arrears. TR 101, 110. This is not a policy specified in MidAmerican's tariff, but is an internal policy. TR 113, 116. The reasons given by MidAmerican for this policy are out of respect for the rights of customers, particularly in the winter months, unless it is clearly necessary and it is costly for MidAmerican to go through the disconnection process with customers. TR 101, 119.

14. MidAmerican updated the Service Address on August 1, 2007, from "Apt 10" to "Unit 10" and provided the property owner with "the budget information" on August 9, 2007. Ex MAE 2. Despite these apparent contacts with the property owner, MidAmerican's witness testified that MidAmerican did not contact the property owner or communicate with the property owner regarding the status of the Services Address until after Complainant filed his Complaint with the Commission. TR 64, 68.

15. On September 11, 2007, MidAmerican received notification from the United States Postal Service (USPS) that Complainant's address had changed. TR 77. This change of address for Complainant was not noted on MidAmerican's account access log. MidAmerican executes customer address changes both electronically and manually depending on what type of notification is received from the post office. Ex MEA 2; TR 77. MidAmerican's witness testified that the reason the September 11, 2007, address change was not noted on the account access log was that it was an electronic notification from USPS that would have automatically updated the customer billing address. TR 77.

16. MidAmerican's policies, procedures and systems do not cause address changes and other changes to a customer's account information to initiate an inquiry into the customer or account status. TR 71-72. MidAmerican's policies, procedures and systems do not initiate disconnection procedures or an inquiry into customer and account status based upon the length of time an account has been in arrears or no payment has been made. TR 116. Although MidAmerican's witness indicated that following some unspecified period of nonpayment, system tolerances could trigger such actions, the witness was not knowledgeable as to what those tolerances are. TR 116.

17. Under its tariff, MidAmerican could have a policy for initiating disconnection procedures or inquiry into the customer and account status when a specified period of nonpayment or account arrearage had occurred. TR 117. If such a policy were in place, the disconnect of Complainant could have been made much sooner. TR 117.

18. Despite the fact that Complainant had paid nothing on his bill with MidAmerican and had had no contact with MidAmerican, MidAmerican did not activate its disconnection procedures until January 9, 2008. TR 57. At this time Complainant's account was approximately eight months in arrears.

19. Although MidAmerican had contact information for the property owner of the Service Address, had a landlord agreement with the property owner and in August, 2007, had updated the Service Address information and provided budget information regarding the Service Address to the property owner, MidAmerican did not contact the property owner to inquire concerning the situation at the Service Address until after Complainant filed his Complaint. TR 65.

20. The Commission finds that MidAmerican should have made inquiry within four months after its account with Complainant for the Service Address became overdue as to why no payment at all had been received on Complainant's account and why no contact at all had been made by Complainant.

21. MidAmerican Energy Company South Dakota Gas Tariff, Section No. V, Sheet No. 5, Rules and Regulations 3.03 provides:

3.03 Duration - The Company will supply gas service to a customer until notified by the customer to discontinue service or unless the Company is justified to disconnect service as defined in 11.03 of Section V. The customer will be responsible for payment of all service provided to the date of the discontinuance. All service is subject to the rates, rules and regulations stated in this tariff. The Company will terminate service upon reasonable notice. Reasonable notice is deemed to be not less than two working day's notice from the customer, provided the Company is given reasonable access to the Company's facilities on customer premises. If reasonable notice and access are not provided, the customer will be liable for the billings until such time that access is gained. When access is not provided and a final reading cannot be obtained, and the Company is knowledgeable that a new tenant or owner should be responsible for service, the Company reserves the right to render a final bill based on an estimated final reading of the meter at the premises. (emphasis supplied).

MidAmerican Energy Company South Dakota Gas Tariff, Section No. V, Sheet No. 22, Rules and Regulations 11.03 provides:

11.03 Reasons for Disconnection of Service - Utility service may be disconnected for one or more of the following reasons:

- 1) Nonpayment of past due bills as written in S.D. Rule 20:10:20:03.

MidAmerican Energy Company South Dakota Gas Tariff, Section No. V, Sheet No. 24, Rules and Regulations 11.05 provides:

11.05 Termination of Gas Service by Customer - A customer shall give 48 hour's notice to the Company of his intention to discontinue gas service. Failure to give this notice shall make the customer liable for payment for all gas supplied to the premises until gas service has been discontinued by the Company.

22. MidAmerican cites to the first clause of the first sentence of tariff Section V, 3.03 as controlling authority for its having allowed Complainant's account to continue accumulating charges for a year without any payment on the account or contact with Complainant or the property owner. The Commission finds that the reliance by MidAmerican on this sentence under most circumstances would be justified.

23. The Commission further finds, however, that the second clause of the first sentence cannot be read out of the tariff and that under the facts of this case, MidAmerican had a means under its tariff and the Commission's rules, ARSD 20:10:20:03, and at some point an obligation, to avail itself of its right under the tariff to disconnect and to mitigate damages or at least to make inquiry and take appropriate action accordingly when (i) no payment at all had been made on the account for several months, (ii) no usage was being recorded for several months and it was not winter, so no unjustifiable hardship could be presumed to be caused the customer, (iii) no contact whatsoever had been received from the customer and (iv) service to the Service Address had been denied to the lessee mother of the Service Address for past delinquency in payment at another address.

24. The Commission finds that MidAmerican's failure to avail itself of its disconnection rights under its tariff and the Commission's rules or to make inquiry into the status of the account for the

Service Address within a reasonable period of time constituted an unreasonable practice under the particular facts of this case.

25. Pursuant to ARSD 20:10:20:03(2) and (3) and MidAmerican's tariff, disconnection of Complainant's service to the Service Address could technically have been activated as early as May 5, 2007, and achieved as early as May 15, 2007. The Commission finds that a reasonable period of time under the facts and circumstances of this case within which MidAmerican should have achieved the disconnection of the service to the Services Address or a switch over of service to the property owner or subsequent tenant after appropriate inquiry is four months following May 5, 2007, the beginning date on which the account became overdue and MidAmerican's disconnection rights became available to it.

26. The Commission finds that under the particular facts of this case, MidAmerican's billings to Complainant for gas service after September 4, 2007, are unreasonable and shall be cancelled with respect to Complainant. The Commission finds that MidAmerican is entitled to payment by Complainant (i) for service rendered through September 4, 2007, and due on October 3, 2007, in the amount of \$105.61, which amount includes late fees accrued to that point and associated sales taxes, (ii) plus additional late fees on such amount from October 3, 2007, until the bill is paid in full by Complainant, which fees total \$45.35 if the bill is paid in full on or before November 1, 2009, (iii) plus sales taxes of six percent on the accumulated late fees, which total \$2.72 if the bill is paid in full on or before November 1, 2009, (iv) for a total payment due from Complainant in the amount of \$153.68 if paid on or before November 1, 2009. This calculation does not include a reduction for the \$14.12 paid by the property owner as this decision is predicated on a disconnection occurring on September 4, 2007 due to nonpayment. See Exhibit A for the late fee and tax calculations.

27. The Commission finds that the amount remaining on Complainant's account for the Service Address in excess of the amounts due to MidAmerican from Complainant as set forth in Finding 26 shall not be due from Complainant and not be collectible from Complainant.

28. To the extent that any Conclusion of Law set forth below is more appropriately a finding of fact, that Conclusion of Law is incorporated by reference as a Finding of Fact.

CONCLUSIONS OF LAW

1. The Commission concludes that it has jurisdiction over this matter pursuant to SDCL Chapters 49-34A and 1-26 and ARSD Chapter 20:10:01.

2. Public utility tariffs approved by the Commission have the force and effect of law. SDCL 49-34A-10. The MidAmerican Energy Company South Dakota Gas Tariff, including the provisions thereof cited above in Finding 21, has been filed by MidAmerican and approved by the Commission.

3. ARSD 20:10:20:03 provides inter alia:

20:10:20:03. Nonpayment of past due bills as reason for disconnection. Following is a list of conditions, all of which must be satisfied before a customer may be disconnected for nonpayment of a bill:

(2) The customer has received a payment period of not less than 20 days from billing transmittal date to due date and an additional notice period of not less than 10 days during which the particular bill has been owing. The payment period may be

shortened if the customer has been properly placed on an early payments list. The payment period may also be waived in cases of customer fraud or illegal use or when it is clear that the customer has left or is preparing to leave without paying a past due bill.

(3) The customer has received written notice of the utility's intention to disconnect, which notice has been either mailed or delivered to the address to which bills are customarily sent or the address where the service is provided. In the case of a customer's first disconnection, the utility shall provide personal notice by either telephone, visit, or certificate of mailing. The written notice and personal notice shall contain a statement of the customer's right to appeal and where to appeal the decision to disconnect. The utility shall make every reasonable effort to provide notice of a pending disconnection

4. MidAmerican had the right under its tariff and the Commissions rules to initiate disconnection procedures against Complainant at the Service Address from and after May 5, 2007.

5. MidAmerican's failure to avail itself of its disconnection rights or at least make appropriate inquiry into the status of service to the Service Address within a reasonable period of time constituted an unreasonable practice under the particular facts and circumstances as found by the Commission in the Findings of Fact set forth above.

6. The Commission concludes that under the particular facts and circumstances as found by the Commission in the Findings of Fact set forth above, a reasonable period of time within which MidAmerican should have either disconnected service or made inquiry and achieved a switch over of service to the property owner or subsequent tenant was four months.

7. Complainant shall be responsible for payment to MidAmerican for service provided to the Service Address through September 4, 2007, due on October 3, 2007, and for late fees and sales taxes thereon as provided in Finding 26. Complainant shall not be responsible for payment to MidAmerican for amounts remaining unpaid on his account for the Service Address except for such amount.

8. To the extent that any of the Findings of Fact in this decision are determined to be conclusions of law or mixed findings of fact and conclusions of law, the same are incorporated by this reference as a Conclusion of Law.

It is therefore

ORDERED, that that MidAmerican is entitled to payment by Complainant (i) for service rendered through September 4, 2007, and due on October 4, 2007, in the amount of \$105.61, which amount includes late fees accrued to that point and associated sales taxes (ii) plus additional late fees on such amount from October 3, 2007, until the bill is paid in full by Complainant, which fees total \$45.35 if the bill is paid in full on or before November 1, 2009, (iii) plus sales taxes of six percent on the accumulated late fees, which total \$2.72 if the bill is paid in full on or before November 1, 2009, (iv) for a total payment due from Complainant in the amount of \$153.68 if paid on or before November 1, 2009.

ORDERED, that the amount remaining on Complainant's account for the Service Address in excess of the amounts due to MidAmerican from Complainant as set forth in Finding 26 and in the

above ordering clause shall not be due from Complainant, shall not be collectible by MidAmerican from Complainant and shall be cancelled with respect to Complainant. Upon payment in full by Complainant, MidAmerican shall make such notification to credit reporting agencies as is required by law.

NOTICE OF DECISION

PLEASE TAKE NOTICE that this Final Decision and Order (Decision) constitutes a final decision and order in this case. Pursuant to SDCL 1-26-32, this Decision will take effect 10 days after the date of receipt or failure to accept delivery of the decision by the parties. Pursuant to ARSD 20:10:01:29 and 20:10:01:30.01, an application for a rehearing or reconsideration may be made by filing a written petition for such relief with the Commission within 30 days from the date of issuance of this Decision. Pursuant to SDCL 1-26-31, the parties have the right to appeal this Decision to the appropriate Circuit Court by serving and a notice of appeal of this Decision upon the adverse party(ies) and filing the original with proof of such service in the office of the clerk of courts of the circuit court in which venue is set within thirty (30) days **after the date of service of this Notice of Decision** or if rehearing or reconsideration is requested, within thirty (30) days after notice has been served of the decision on such request.

Dated at Pierre, South Dakota, this 8th day of October, 2009.

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, electronically.
By: <u><i>Deldine Kolbo</i></u>
Date: <u>10/8/09</u>
(OFFICIAL SEAL)

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman *dk*

Steve Kolbeck
STEVE KOLBECK, Commissioner

Gary Hanson
GARY HANSON, Commissioner

EXHIBIT A

CN09-001

Date	Transaction Description	Transaction Amount	Amount Due
10/03/2007	Gas Service Bill	105.61	105.61
11/03/2007	Late Payment Charge - 1.5%	1.58	107.19
12/03/2007	Late Payment Charge - 1.5%	1.61	108.80
01/03/2008	Late Payment Charge - 1.5%	1.63	110.43
02/03/2008	Late Payment Charge - 1.5%	1.66	112.09
03/03/2008	Late Payment Charge - 1.5%	1.68	113.77
04/03/2008	Late Payment Charge - 1.5%	1.71	115.48
05/03/2008	Late Payment Charge - 1.5%	1.73	117.21
06/03/2008	Late Payment Charge - 1.5%	1.76	118.97
07/03/2008	Late Payment Charge - 1.5%	1.78	120.75
08/03/2008	Late Payment Charge - 1.5%	1.81	122.56
09/03/2008	Late Payment Charge - 1.5%	1.84	124.40
10/03/2008	Late Payment Charge - 1.5%	1.87	126.27
11/03/2008	Late Payment Charge - 1.5%	1.89	128.16
12/03/2008	Late Payment Charge - 1.5%	1.92	130.08
01/03/2009	Late Payment Charge - 1.5%	1.95	132.03
02/03/2009	Late Payment Charge - 1.5%	1.98	134.01
03/03/2009	Late Payment Charge - 1.5%	2.01	136.02
04/03/2009	Late Payment Charge - 1.5%	2.04	138.06
05/03/2009	Late Payment Charge - 1.5%	2.07	140.13
06/03/2009	Late Payment Charge - 1.5%	2.10	142.23
07/03/2009	Late Payment Charge - 1.5%	2.13	144.36
08/03/2009	Late Payment Charge - 1.5%	2.17	146.53
09/03/2009	Late Payment Charge - 1.5%	2.20	148.73
10/03/2009	Late Payment Charge - 1.5%	2.23	150.96
	Total Late Payment Charges (\$150.96 - 105.61)		45.35
	Tax Rate		6.00%
	Tax on Late Payment Charges		2.72
	Total Amount Due		153.68

Note - Order date is 10/8/2009. We did not calculate a late payment from 10/3/2009 through 11/01/2009 since late fees accrue in monthly increments.