

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	
MidAmerican Energy Company	:	04-0392
	:	
Investigation to determine	:	
appropriate remedy concerning	:	
competitive gas contracts.	:	

INITIATING ORDER

By the Commission:

On October 22, 2003, MidAmerican Energy Company (“MEC”) filed with the Illinois Commerce Commission (“Commission”) a verified petition for a declaratory ruling pursuant to 83 Ill. Adm. Code 200.220. The Commission assigned Docket No. 03-0659 to this petition. In its petition, MEC sought answers to questions concerning its competitive natural gas commodity sales. Specifically, MEC requested that the Commission determine whether any provision of the Public Utilities Act (“Act”), 220 ILCS 5/1 -101 et seq., precludes a division of MEC from selling natural gas commodity at competitive rates both within and outside of MEC’s service area. Additionally, if such gas sales are made, MEC sought a Commission determination on the applicability of 83 Ill. Adm. Code 525, “Purchased Gas Adjustment Clause” (“Part 525”), to various costs and revenues associated with such sales.

The Commission resolved Docket No. 03-0659 based on the written pleadings of MEC, Commission Staff (“Staff”), and interveners Citizens Utility Board and the Attorney General of the State of Illinois, on behalf of the People of the State of Illinois. On May 11, 2004, the Commission entered an Order finding that MEC is precluded by the Act from selling gas at competitive prices within its Illinois service territory without prior Commission approval. The Commission determined further that MEC is also precluded by the Act from selling gas at competitive prices in that portion of Illinois where it has not traditionally provided service. The Commission declined to answer MEC’s inquiry regarding the applicability of Part 525 and deferred resolution of the issues raised in this question to MEC’s pending purchased gas adjustment (“PGA”) clause reconciliation proceedings.

In concluding that MEC is prohibited from selling gas at competitive prices, the Commission found that the appropriate remedies and/or sanctions within the Commission’s authority to implement, including the treatment of MEC’s existing competitive customers, should be determined in another docketed proceeding. The Commission initiates this docket for that purpose. In doing so, however, the Commission emphasizes that MEC, Staff, and any other intervening parties shall not be allowed to relitigate any of the conclusions in Docket No. 03-0659. Nor should any of the participants assume that potential remedies are limited to those raised in Docket No.

03-0659. Participants are advised, however, that remedies more appropriately determined in MEC's PGA clause reconciliation proceedings will be deferred to those proceedings.

The Commission, being fully advised in the premises, is of the opinion and finds that:

- (1) MEC is a public utility within the meaning of Section 3-105 of the Act;
- (2) the Commission has jurisdiction over MEC and the subject matter of this proceeding;
- (3) the Commission should take administrative notice of the record in Docket No. 03-0659;
- (4) the recitals of fact reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact; and
- (5) the Commission should initiate a proceeding to determine the appropriate remedies and/or sanctions within the Commission's authority to implement and consistent with the Commission's findings in Docket No. 03-0659.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that a proceeding be initiated to determine the appropriate remedies and/or sanctions to impose with regard to MidAmerican Energy Company's unsanctioned competitive sales of gas, as described in Docket No. 03-0659.

IT IS FURTHER ORDERED that MidAmerican Energy Company is made a respondent to this proceeding and that said respondent appear at a time and place established by the Administrative Law Judge appointed in this proceeding.

IT IS FURTHER ORDERED that the Chief Clerk of the Commission serve a copy of this Order on the designated agent of MidAmerican Energy Company.

IT IS FURTHER ORDERED that the failure of MidAmerican Energy Company to appear may result in the imposition of civil penalties pursuant to Section 5-202 of the Public Utilities Act.

IT IS FURTHER ORDERED that this Order is not final; it is not subject to the Administrative Review Law.

By order of the Commission this 11th day of May, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman