

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission

On Its Own Motion

Revision of 83 Ill. Adm. Code 280

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Docket No. 06-0703

**Reply Brief of
MidAmerican Energy Company**

Prepared by:

Jennifer S. Moore, Attorney
MidAmerican Energy Company
106 East Second Street
P. O. Box 4350
Davenport, Iowa 52808

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I. Introduction

MidAmerican Energy Company (MidAmerican) respectfully submits its Reply Brief pursuant to the Administrative Law Judge's Ruling issued on September 28, 2011, and the Rules of Practice of the Illinois Commerce Commission (Commission).

MidAmerican's Initial Brief outlined MidAmerican's support for Staff's proposed revisions to Part 280, and also outlined reasonable changes the Commission should adopt to allow utilities more flexibility to communicate with customers and to allow more cost effective operational changes to implement Staff's proposed rules. The rules are intended to be the Commission's guidelines on what they expect from utilities, and it would be up to utilities on how best to implement operational changes to meet those expectations. MidAmerican proposes changes to the proposed rules that prescribe how utilities should operate because the prescriptive rules will not work for all utilities.

However, the Attorney General of the State of Illinois (AG), the Citizens Utility Board (CUB), and the City Chicago (City), collectively referred to as the Government and Consumer Interveners (GCI), contend that utility proposed changes amount to "a subordination of customer interest to the utility convenience and financial self-interest," yet do not cite a specific example of what changes utilities are proposing that subordinate customer interests. GCI Brief at 2. Incongruently, GCI points out that MidAmerican allows the customer to choose "whether he wants a quarterly, semiannual or annual periodic adjustment [to a budget billing plan], and informs the customer of this option at the time the plan is set up." *Id.* at 7. GCI admits that these "operational measures to accommodate customer needs is quite desirable and goes beyond the

minimum consumer protections in the existing Part 280.” *Id.* Yet, GCI also argues that MidAmerican’s objection to GCI’s language limiting the budget billing review to only quarterly reviews subordinates customer interests. MidAmerican highlights this inconsistency in GCI’s arguments to point out that GCI’s arguments are baseless, and that the changes offered by MidAmerican and other utilities are provided so that utilities do have the flexibility to accommodate customer needs and that utilities will have the flexibility to go above and beyond the minimum standard in the rules.

In many cases, however, GCI’s proposed changes attempt to make a one size fits all utilities and GCI’s proposed changes are so prescriptive, a utility will not be able to go above and beyond the minimum standard. Case in point is the fact that GCI’s proposed changes to budget billing only allows for a quarterly review and takes any choice the customer has to opt for other review options away. In this instance, GCI is effectively telling customers that GCI knows best and the only review they need is a quarterly review. As MidAmerican explained in testimony and in its initial brief, this is often not the case.

MidAmerican’s reply brief is intended to highlight areas where the rules eliminate flexibility for the customer to make choices and do not allow utilities other options to go above the required standard. MidAmerican has not responded to every issue addressed by the various interveners,¹ since many of the issues were already addressed in MidAmerican’s initial brief. MidAmerican will also address some new

¹ Other intervenors include: American Association of Retired Persons (AARP), City of Chicago, Government and Consumer Intervenors (GCI), Low-Income Residential Customers (LIRC), International Brotherhood of Electrical Workers, Local 15 (IBEW), Ameren Illinois Company (Ameren), Commonwealth Edison Company (ComEd), Illinois American Water Company (IAWC), Mt. Carmel Public Utility Company (Mt. Carmel), Nicor Gas Company (Nicor), People’s Gas Light and Coke Company and North Shore Gas Company (PGL/NS), Constellation Energy Group, Inc. (CNE), Nicor National (NAE), Retail Gas Suppliers (RGS); Dynegy Inc. (Dynegy).

modifications Staff proposed that attempt to bridge parties' position so that a consensus can be reached. Any issue not addressed should not be construed as MidAmerican agreeing to positions set forth by some interveners. MidAmerican is including an updated Attachment A, and MidAmerican's response to various parties is outlined below.

II. SUBPART A: GENERAL

A. Section 280.05 Policy

1. MidAmerican's Position

MidAmerican does not oppose the addition of a policy section in the Part 280 rules, but the policy statement proposed by GCI and supported by Staff, is overly broad and goes beyond the purpose of presenting the general policies intended for the customer service rules. Therefore, the Commission should reject Section 280.05 as proposed by GCI and supported by Staff and adopt MidAmerican's proposed revisions in Attachment A.

2. Staff and GCI's Position

In their initial briefs, Staff and GCI argue the policy section needs a hierarchy where the rules will trump any tariff. As MidAmerican and Nicor pointed out in their initial briefs, the proper place to establish the "hierarchy" is not in the policy section because the "hierarchy" language becomes an operative part of the rule and is contrary to the law. MidAmerican Brief at 4-5, Nicor Brief at 8. Additionally, IAWC highlighted several practical concerns. IAWC Brief at 5. Specifically, IAWC points out the ambiguous language may actually undermine GCI's intent of providing the minimum

standard of service. See *also* Nicor Brief at 12. IAWC noted that an “inconsistency” could be determined where a utility tariff offers more favorable treatment to customers than what is required by the rules, and therefore nullified by the rule. *Id.* Consequently, GCI’s “hierarchy” language should be rejected by the Commission.

3. *Retail Gas Suppliers Position*

RGS did not address this section in its brief. MidAmerican and Staff both argued that the changes suggested by RGS should be rejected by the Commission since they are beyond the scope of this proceeding.

B. Section 280.10 Exemptions

1. *MidAmerican’s Position*

MidAmerican supports Staff’s proposed exemption section in Section 280.10. Staff’s section is reasonable and consistent with the intent and meaning of the existing Commission rules and should be adopted by the Commission.

2. *GCI’s Position*

GCI proposes adding additional language, which prescribes what a utility must put in an exemption petition and limit the Commission’s approval of the waiver to one year. GCI Ex. 5.1 at 4. In its initial brief, Staff also set forth its reasons for disagreeing with GCI’s proposed changes. Staff Brief at 6. Staff notes the Commission’s vast experience in determining what is in the public interest and should be “handcuffed by an unexplained timeline requirement.” Staff Brief at 6.

Additionally, GCI complains about customers and consumer advocates not knowing where to look for such a waiver. This assertion is equally baseless given that

the consumer advocates such as GCI are savvy in using the e-docket system and are frequent interveners in many cases, including waiver requests. GCI Brief at 12. Accordingly, the Commission should reject GCI's changes and adopt Staff's proposed language.

3. *Ameren's and Nicor's Changes*

MidAmerican does not object to Ameren or Nicor's suggested changes to Section 280.10.

C. Section 280.15 Compliance

1. *MidAmerican's Position*

MidAmerican supports Nicor's inclusion of this section or a Commission order allowing utilities a two year implementation period to comply with the changes to the rules.

2. *Staff and GCI's Position*

Staff and GCI both expressed concerns with Nicor's proposed section; however, both also recognized that "instantaneous compliance may not be possible for all utilities, and where a need for delay is shown, some latitude is appropriate." GCI Brief at 18; see *also* Staff Brief at 7. While MidAmerican does not support GCI's suggestion that utilities seek a waiver for any request in delay, MidAmerican does support some of GCI's conditions for a blanket delay provisions outlined in GCI's brief. GCI Brief at 19-20. MidAmerican already plans to implement as many as the Part 280 provisions as it can without delay, and does not object to filing a report to the Commission on what Part

280 provisions it cannot immediately implement. As MidAmerican noted in its initial brief and testimony, MidAmerican has already outlined the significant system and operational changes necessary to implement the proposed rules. MidAmerican Brief at 8, MidAmerican Ex. 1.0 at 34-35, lines 758-779. If some of the proposed changes offered by MidAmerican and other utilities are adopted by the Commission, MidAmerican anticipates that some of these changes may be implemented faster than anticipated. MidAmerican is willing to provide the Commission with a compliance plan and updates on compliance progress.

Consequently, based on the amount of system and operational changes needed to implement Staff's proposed rules, it is reasonable for the Commission to either adopt Nicor's proposed language or provide a two year implementation date for the new rules in its final order and require utilities to update the Commission on the progress made toward compliance.

D. Section 280.20 Definitions

1. *MidAmerican's Position*

MidAmerican generally supports Staff's definition section, and does not have further comments on the definition section as it relates to Staff's position. The definitions presented in MidAmerican's Attachment A are reasonable and should be adopted by the Commission.

2. *GCI's Position – "Delivery Services"*

In its initial brief, GCI opposed Staff's deletion of delivery services. GCI Brief at 23-24. GCI complains that Staff provided no reason as to why it deleted delivery

services from the definition. *Id.* at 23. In Staff’s initial brief, however, Staff made it clear that with the deletion of a proposed subsection in 280.60, there is no longer a need for the definition of delivery services. Staff Brief at 10. Therefore, the Commission should reject GCI’s assertion that the delivery service definition should be included since the subsection in Staff’s proposed Section 280.60 is no longer a part of Staff’s proposed rules.

III. SUBPART B: APPLICATIONS FOR UTILITY SERVICE

A. Section 280.30 Application

1. *MidAmerican’s Position*

There is general agreement among the parties that Staff’s proposed Section 280.30 brings consistency to the application process and describes the rights and responsibilities of both applicants and utilities under the process. Staff Ex. 1.0 at 7, lines 144-146. MidAmerican proposed additional revisions to subsections 280.30 d), 280.30 i)2), and 280.30 k). MidAmerican set forth its rationale for proposing its changes and will not reiterate its position, but will address a few comments made in Staff’s initial brief by each section below. MidAmerican has also addressed comments made in GCI’s initial brief in the following section.

2. *Staff’s Position*

Subsection 280.30 d)1) and 2) – Application Content

In its initial brief, Staff contends that subsection 280.30 d) 2) requires that identification customers provide must be “valid and accurate,” and this alone should address the utilities’ concern that it be allowed to adequately confirm a customer’s

identity. Staff Brief at 17. Staff's argument is circular and places utilities in a catch-22 situation. A customer is allowed to choose two forms of identification, but presents two forms that cannot be verified. Under Staff's proposed subsection 280.30 d), a utility is left with no choice, but to refuse the application. As Nicor pointed out in its initial brief and testimony, "confusion and frustration will result if utilities must state on one hand that various forms of identification are acceptable, but on the other hand are compelled to reject that same identification because it is difficult or impossible to verify its validity and/or accuracy." Nicor Brief at 30, Nicor Ex. 3.0 at 27-28, lines 630-647. Instead of making the application process less contentious, Staff has unintentionally created a contentious process for those few customers who choose to present easily falsified forms of identification.

As proposed, Section 280.30 d)2) limits a utility's ability to confirm a customer's identity, since it forces the utility to assume that the identification that the applicant chooses to provide belongs to that applicant, is valid and accurate. MidAmerican Ex. 2.0 at 7, lines 138-142. As Nicor pointed out in its initial brief, "identity theft is a national issue confronting customers." Nicor Brief at 28. MidAmerican is not trying to make the rules more difficult for applicants to receive service. In order to strike a balance between the need to verify the identity of an applicant and the need to grant utility service as quickly as possible, it is reasonable to allow an applicant to choose from the list of identification so long as one of those forms includes government issued photo identification. Therefore, it is reasonable for the Commission to adopt MidAmerican's proposed changes outlined in Attachment A.

Subsection 280.30 d)3)

In its initial brief, Staff opposed MidAmerican's recommended striking subsection 280.30 d)3). Staff Brief at 18. Section 280.30 d) 3) requires that if the applicant is non-residential, then the utility shall request information to determine if the applicant is a small business as defined by the number of full time employees being 50 or less. Staff argues that subsection 280.30 d)3) supports subsection 280.40 (i) (1), which is based on the Small Business Utility Deposit Relief Act. 220 ILCS 35/4. MidAmerican agrees with Staff in this regard, but notes that Staff adopted changes to subsection 280.40 (i) (1) that allows utilities to offer budget billing plans to all non-residential customers.

Staff concludes that a utility must know if a customer is a "small business" in order to properly follow the statute. Staff Brief at 18. MidAmerican notes that it is currently in compliance with the Small Business Utility Deposit Relief Act even though it does not track "small business" customers. There is no requirement in the Small Business Utility Deposit Relief Act for utilities to "track" whether a customer is a "small business," a utility must simply comply with the deposit requirements for "small businesses." Consequently, if utility offers budget billing to all non-residential customers, it is not necessary to track the "small business" subset of its non-residential customers. In this instance, MidAmerican is complying with the minimum standard of offering budget billing to "small businesses," but it has also exceeded the minimum standard by offering this benefit to all non-residential customers regardless of size. MidAmerican's suggested deletion of this section is reasonable since "tracking" is not required by the statute, and because it allows utilities to go above and beyond the statutory requirements. The unintended consequences of Staff's proposed subsection 280.30 d) 3) is that MidAmerican will no longer have any incentive to offer all non-

residential customers the same deposit requirements since any economic benefit to expanding the requirements to all customers will be eliminated by the economic cost of creating a system and operational changes that track “small business” customers. This is another example where the proposed rules allow no flexibility to utilities to exceed the standards set forth in the rules.

The deletion of subsection 280.30 d)3) as reflected in Attachment A is reasonable and allows the flexibility for utilities to offer the deposit requirements to all non-residential customers, and not just “small business” customers. For the foregoing reasons, the Commission should adopt MidAmerican’s revisions in the final rule.

Subsection 280.30 d)4)

In its initial brief, Staff seems to misconstrue MidAmerican’s position, and implies that MidAmerican is arguing to strike the language because it is concerned about the telephone number being “optional.” However, MidAmerican testified the use “optional” is confusing since it is not clear that the items listed are optional for the company to request or optional for the customer to provide. Initially, MidAmerican proposed language that indicated that the contact information is optional for the utility to require certain information. MidAmerican Ex. 1.1, Attachment A at 8. However, in rebuttal testimony, Staff indicated that “the removal of “Optional” might lead to the absurd, yet technically correct conclusion that an application could be somehow rejected if one of the “required” contact forms cannot be provided by an applicant (e.g. an applicant who does not have an e-mail account).” Staff Ex. 2.0 at 20, lines 455-458. Based on Staff’s observation that an “absurd” reading of the section may allow for an application to be rejected, MidAmerican suggested the language should be stricken in its rebuttal

testimony. MidAmerican Ex. 2.0 at 8, lines 161-170. If an applicant is not required to provide the utility certain information to obtain service, then it is unnecessary to spell this out in a rule. MidAmerican is not arguing that a telephone number should be required to obtain service, MidAmerican is simply highlighting that the proposed language is confusing and is not necessary to spell out in a rule. Consequently, to avoid customer confusion, it is reasonable for the Commission to adopt MidAmerican's changes as outlined in Attachment A.

Subsection 280.30 i)2) – Timeline for Application Processing

Staff did not address this issue in its initial brief. Therefore, MidAmerican will not repeat the position presented in its initial brief. See MidAmerican Brief at 16-17.

Subsection 280.30 k) – Data Collection

In its initial brief, Staff's argues subsection 280.30 k) is necessary to scrutinize the application process, and implies that the complaint process is sufficient to monitor other sections of the proposed rule. Staff Brief at 22. However, Staff has provided no evidence that the application process is a significant area of dispute, and Staff fails to provide any evidence that suggests that the application process is the underlying cause of a significant amount of complaints before the Commission.

Staff further asserts that the data requirements are not unreasonably burdensome. *Id.* at 21. Staff, however, has not clearly defined the data requirements, and that makes it difficult and costly for utilities to implement. Staff's testimony highlights that the information reporting requirements are not clearly defined and mean something different to each utility. Staff explains that Ameren considers an application as "incomplete" rather than "rejected," yet IAWC considers the same application as

“rejected.” Staff Ex. 2.0 at 25, lines 568-581. Staff, however, disagrees with Ameren’s label as “incomplete,” since the customer has to take affirmative steps to obtain service. *Id.* at lines 576-577 and 582-584. On the other hand, MidAmerican, depending on the circumstances, might consider this example as a customer inquiry about what is required to obtain service and not an “incomplete” or a “rejected” application. MidAmerican Ex. 2.0 at 10, lines 210-219.

Moreover, Staff has not established any benefits to collecting and tracking this data. The end result is that Staff is not going to obtain consistent data from all the utilities due to operational differences, and these inconsistencies will render the data meaningless. Consequently, the purposed data requirements will not allow Staff to “monitor” the application process as intended, and Staff has not established how this information will indicate whether a company is adhering to the application requirements of Part 280.

For the foregoing reasons, it is reasonable for the Commission to reject the data collection requirements in the final rules as outlined in Attachment A.

3. *AARP’s, GCI’s, and LIRC’s position*

GCI proposed several changes to Section 280.30, LIRC and AARP supported some of those changes. In its initial brief, Staff did not accept several of GCI proposed changes. MidAmerican agrees with Staff’s rationale for not including these changes, as discussed below.

Subsection 280.30 a) – deposit disclosure requirements

In its initial brief, GCI proposed a slight modification to subsection 280.30 a). GCI Brief at 27. GCI contends that its revision is “less colloquial.” Staff’s intent in

proposing new rules was to simplify the rules and use plain language. Staff Ex. 1.0 at 4-5, lines 78-100. Staff's "less colloquial" or plain language conveys the section's intent and there is no need for the Commission to adopt GCI's proposed change.

Subsection 280.30 b) – deposit disclosure requirements

GCI proposed several changes seeking additional disclosures to be made to applicants in Section 280.30 b) that Staff did not accept. For example, GCI provided a red-line version seeking additional disclosures made to applications for deposit conditions. GCI Ex. 2.0, at 6, GCI Ex. 1.2 at 7. AARP and LIRC also endorse similar changes. AARP Direct Testimony at 4, and LIRC Ex. 1.3 at 2, AARP Brief at 4-5, LIRC Brief at 3.

MidAmerican agrees with Staff and fails to see the need to codify the deposit requirements in this subsection, since Staff has accepted many of GCI's proposed changes regarding deposit disclosures, and the deposit disclosures are already addressed in Section 280.40. Staff Brief at 15. Moreover, Staff's initial brief highlights the need to allow utilities more flexibility to implement the rules. Staff explains that it anticipated that utilities would provide low-income information if the topic came up during an application for service. *Id.* MidAmerican appreciates Staff's flexibility and highlights that this is an instance where a MidAmerican operational processes already cover the issue. Had GCI issued a data request to MidAmerican, GCI would understand that MidAmerican's call center goals are based on first call resolution, and not average handle time. Just as Staff anticipates, if a customer indicated that they are low-income, the MidAmerican Customer Service Associate would provide the customer with information on where the customer would need to go and how to apply for

assistance. Since only a small percentage of MidAmerican's customers qualify as low income, Staff's flexibility and reasonable approach should be adopted by the Commission and GCI's proposed language to Section 280.30 b) should be rejected.

Subsection 280.30 d)1)

In its initial brief, GCI argues that the utilities revisions to subsection 280.30 d)1) restricts the choice of the forms of identification they can use and utilities are dictating to customers. GCI Brief at 31. As noted above in response to Staff's brief on this issue, this is simply not the case. The utilities have explained the need to rely on identification it can verify. GCI witness, Ms. Alexander best summed up the issue when she indicated that she preferred that Mt. Carmel ask for her photo id, rather than call the police to report a possible identity theft. Tr. at 357, lines 5-9 and 17-19, and 358, lines 8-9. The issue is simply about confirming identification and not restricting a customer's use of identification. For the reasons noted here and argued above, the Commission should reject GCI's position.

Subsection 280.30 d)4)

GCI argues that utilities need to know a customer's "preferred method of contact." GCI Brief at 32. GCI also appears too misconstrue MidAmerican's position, and implies that MidAmerican is arguing to strike the language because it is concerned about the telephone number being "optional." *Id.* Staff and GCI's arguments highlight that the language is confusing. MidAmerican is not arguing that customer must be required to offer a telephone number to obtain service, MidAmerican is simply saying that Staff's proposed language is confusing, and if the information is not required, there is no need to include the language in the rules.

Section 280.30 e)2)B)

MidAmerican has adequately addressed this issue in its initial brief. See MidAmerican Brief at 19.

Subsection 280.30 j) – Exemptions

AARP and GCI argue that the timeline for service activation in subsections 280.30 j)1) and)2 should be reduced, and LIRC supports GCI's modifications. LIRC Brief at 3. However, as Ameren pointed out in its initial brief, GCI has not presented any credible evidence that service activation is an issue. Ameren Brief at 12. MidAmerican agrees with Staff that the changes AARP and GCI suggest for service activation are unreasonable. Staff Ex. 2.0 at 24-25, lines 544-557, MidAmerican Brief at 19-20, see *also* Ameren Brief at 12, Nicor at 36. Staff correctly recognized that the standards recommended by both AARP and GCI are unachievable for any activation process that routinely requires a field visit and noted that this is particularly true for natural gas activation where safety requirements dictate an appointment and inside access to customer facilities. *Id.*

AARP and GCI also propose modifying Staff's proposed subsection 280.30 j)7). Subsection 280.30 j)7) allows for a temporary exception to the service application timeframes for unforeseen circumstances. GCI argues that its changes are uncontroversial, but as Ameren points out in its initial brief, GCI's subjective qualifiers add nothing to the rule and should be rejected. Ameren Brief at 14. It is simply unreasonable to think that utilities have unlimited resources to comply with this provision at all times. MidAmerican Ex. 2.0 at 3-4, lines 56-59. The Commission should adopt Staff's proposed language because it strikes a balance, and it is reasonable.

B. Section 280.35 Revert to Landlord/Property Manager Agreements

1. *MidAmerican's Position*

MidAmerican generally supports Staff's proposed Section 280.35 – Revert to Landlord/Property Manager Agreements. MidAmerican, however, maintains Staff's requirement to update the agreement annually is unreasonable and attempts to micromanage the administration of the agreements. While Staff recognized that annual updating can only be done with the proper owner/manager's cooperation, Staff is still requiring an annual update with no rational basis for such a requirement. Staff Brief at 23-24.

Moreover, Staff has not explained how annual updates would contribute to reducing the numbers of disputes between property owners and utilities. Since Staff's proposed rule already prescribes many of the terms and conditions of the landlord agreement, there is no need for an annual update since those conditions will not change. Consequently, it is reasonable for the Commission to adopt MidAmerican's proposed deletion of the annual update requirement as shown in Attachment A.

2. *GCI's Position*

GCI did not address this issue in its brief. MidAmerican maintains the five day requirement proposed by GCI is unreasonable, arbitrary and should be rejected by the Commission.

IV. SUBPART C: DEPOSITS

A. Section 280.40 Deposits

1. MidAmerican's Position

In its initial brief, MidAmerican expressed practical concerns that not only stem from system changes that will need to be made, but also from operational differences.

2. Staff's Position

Subsection 280.40 b)

Staff's proposed language in subsection 280.40 b) requires utilities to make the initial deposit request in writing and disclose prescribed information. As MidAmerican explained in its initial brief, MidAmerican agrees with Staff and some interveners that deposit disclosure is necessary, but the proposed rules are not practical and costly to implement. See MidAmerican Ex. 1.0 at 11-13, lines 239-266, and MidAmerican Initial Brief at 25. Instead, it is reasonable to allow alternative means to disclose deposit requirements.

In its brief, Staff indicated it was doubtful of utility claims that "full disclosure of all the detailed requirements in the proposed rule can be made orally." Staff Brief at 26. Staff, however, has not presented any evidence that supports this assertion. In fact, Staff has ignored the fact that MidAmerican has received no customer complaints regarding Illinois deposits in the past three years. MidAmerican Ex. 1.0 at 12, lines 258-262.

As MidAmerican explained in testimony, when a customer applies for service by phone or in person, a MidAmerican associate explains the reason for the deposit

request during the application process, which allows the customer to ask questions. *Id.* 247-249. Additionally, MidAmerican displays the deposit amount due as a line item on the customer's billing statement. *Id.* at 250-251. Having the total amount due, including the deposit, makes the bill easier to understand. *Id.* at 251-254. In regards to deferred payment arrangements, Staff admits that in its experience, a mailed statement is no longer in the customer's possession once the dispute arises, in contrast to bill statements. Staff Brief at 55. MidAmerican fails to see how this example is any different from printing the deposit amount of the bill statement. If a dispute about the deposit arises, the mailed statement is less likely to be in the customer's possession, whereas the bill statement is more likely to be in the customer's possession.

Consequently, MidAmerican proposes to strike Staff's proposed disclosure requirements because they prescribe customer communication and take away the flexibility to communicate with customers. MidAmerican's suggested changes are reasonable, cost effective and maintain the requirement to disclose deposit requirements to customers. Accordingly, MidAmerican recommends the Commission strike Staff's proposed Section 280.40 b)2) as noted Attachment A.

Subsection 280.40 i)

This subsection sets out different refund criteria for small business customers. As addressed previously, the Small Business Utility Deposit Law does not require a utility to track the size of a business or treat them differently from other non-residential customers as long as the utility is in compliance with 220 ILCS 35. Subsection 280.40 i)3), as proposed by Staff, already requires that a separate payment be issued to any former customer, and the requirement for small business customers in Staff's proposed

subsection 280.40 i)1) is unnecessary. MidAmerican recommends the Commission strike Section 280.40 i)1) as noted in Attachment A.

3. *GCI's Position*

GCI proposed several changes to Section 280.40, but has not addressed any new issues in its initial brief that MidAmerican has not already addressed. See MidAmerican Brief at 27-28.

B. Section 280.45 Deposits for Low Income Customers

1. *MidAmerican's Position*

MidAmerican recommends that the language in subsection 280.45 b) 3) be revised to allow for collection of a deposit for any unpaid final bill. Current language will force the utility to treat customers differently simply based on the time of year they incurred the debt. For example, a two-month winter gas bill left unpaid could easily be greater than 20% of the average annual billing, while a two-month summer gas bill would not. MidAmerican Ex. 1.0 at 13-14, lines 282-290. Therefore, it is reasonable for the Commission adopt changes outlined in Attachment A in the final rule.

2. *Staff's Position*

Staff contends “its more nuanced approach that measures risk by assessing the size of the unpaid bill provides a better balance to the proposed rule.” Staff Brief at 31. However, Staff does not present a rationale basis for the Commission to determine why customers with a higher unpaid bill are treated differently than customers with a lower unpaid bill. The unintended consequence to Staff's proposed language is that

customers are treated differently and Staff has not presented any reasons for why its proposed language does not violate Section 9-241 of the Act.

3. *LIRC's Position*

LIRC indicated that it now supports Staff's proposed language. As explained above, MidAmerican proposes amending Staff's proposed rules. See MidAmerican Brief at 28-29. Therefore, it is reasonable for the Commission adopt changes outlined in Attachment A in the final rule.

V. SUBPART D: REGULAR BILLING

A. Section 280.50 Billing

1. *MidAmerican's Position*

In general, MidAmerican agrees with Staff's proposed language in this section. MidAmerican suggests the Commission adopt the following changes to clarify portions of Staff's proposed rule.

2. *Staff's Position*

Subsection 280.50 b) 3)

Subsection b) of Section 280.50 outlines requirements regarding the billing cycle. MidAmerican recommends this rule also allow for more frequent billing. In its initial brief, Staff indicated it did not directly oppose the language, but Staff argued the language would need further clarifications to limit the billing to large commercial customers and specify the goals. Staff Brief at 32. MidAmerican appreciates Staff's willingness to keep an open mind and accept further language modifications. To

address Staff's concerns, MidAmerican proposes the following language and has highlighted the new changes in yellow:

- 3) Bills to large, non-residential customers may be rendered more frequently than monthly when agreed to by the utility and customer. More frequent billing may be offered if the customer is subject to disconnection or payment of a deposit. The more frequent billing shall not extend more than six months, at which time monthly billing shall resume.

MidAmerican's revised language in Section 280.50 b) as outlined above and in Attachment A is reasonable and the Commission should incorporate the change in its final rule.

Subsection 280.50 c) 1) H)

Subsection c) 1) H) of Section 280.50 requires that accumulated interest on the deposit be displayed on the bill. In its brief, Staff expressed concern that the customer may not know that a deposit is being held or how much more deposit money is being required of them. Staff Brief at 34. As MidAmerican indicated in testimony and its brief, MidAmerican is not opposed to a requirement for periodic customer notification regarding deposits that are being held. MidAmerican is advocating that the method of communication should be left up to the utility. MidAmerican Ex. 2.0 at 19-20, lines 422-427. Staff did not make a case as to why providing this information on the bill is the best way to communicate to a customer. MidAmerican maintains that there are many effective ways to provide this information that will not confuse customers and clutter up a bill. Therefore, to make this requirement clear to customers and offer more flexibility in how utilities communicate with customers, the Commission should adopt MidAmerican's changes as noted in Attachment A.

Subsection 280.50 c) 1) I)

Staff's proposed subsection c) 1) I) of Section 280.50 requires gas and electric companies to provide a graphic comparison in a bar or pie chart of the current usage and the customers previous 12 month usage. Staff's proposed rule, however, is inconsistent with Part 410 and 500 and should be stricken. ComEd correctly notes that Staff has changed the current bill content requirements in Parts 410, 500 and 600, and these changes go beyond the scope of the Part 280 rewrite. ComEd Brief at 14. Staff's proposed language is procedurally inappropriate.

Moreover, it is unreasonable for MidAmerican to have to change its bill format since Staff has provided no basis for its recommendation and has offered no evidence that MidAmerican customers will be able to better understand a graph or pie chart compared to the table format currently offered. Since bill format requirements are already outlined in Parts 410, 500 and 600, the Commission should not adopt this requirement in its final rule as noted in Attachment A.

Subsections 280.50 e) 2) and 3)

Subsections e) 2) and 3) of Section 280.50 require different due dates depending on the state where the bill is issued. Extending the due date assumes additional delays if not mailed within Illinois or a bordering state. Staff, however, has provided no evidence that bills mailed in states not bordering Illinois are delayed. In its initial brief, Staff is quick to point out it needs more data establishing that all first class mail delivered within the continental United States typically arrives within two to three days regardless of where the mail originates, but Staff fails to present any evidence that mail

is not delivered within two days. MidAmerican Ex. 1.0 at 15, lines 320-326. The fact remains that without presenting supporting evidence, Staff's requirement is arbitrary.

Therefore, the current due date guidelines provide ample time for a customer to receive and pay a bill regardless of where the bill originates. MidAmerican Ex. 1.0 at 15-16, lines 327-333. Staff did not to refute this evidence in testimony. Consequently, it is reasonable for the Commission to strike subsections e) 2) and 3) of Section 280.50, as the requirements are arbitrary.

Subsection 280.50 f)

Staff's proposed rule requires that transfer balances display the place where the debt originated. In some cases, however, the final amount due may have originated from more than one location. Coding a system to track multiple transfers of the same amount would not be cost-effective, as the number of times a transfer occurs multiple times for the same amount is infrequent. MidAmerican Ex. 2.0 at 18, lines 388-399. Staff, however, contends this is not overly burdensome. Staff Brief at 37.

In light of the costly changes system changes, Staff's proposed rule has the unintended consequences of encouraging utilities to limit a customer's ability to transfer a debt until a customer has paid the final bill at the previous address. To avoid this unintended consequence, it is reasonable for the Commission to adopt MidAmerican's and ComEd's proposed change in its final rule.

VI. SUBPART E: PAYMENT

A. Section 280.60 Payment

1. *MidAmerican's Position*

MidAmerican supports Staff's proposed Section 280.60. The only remaining contested issue in this section is GCI's quest to "socialize" the costs of some payment methods. MidAmerican's addresses GCI's arguments below.

2. *GCI's Position*

GCI contends the issue before the Commission is "whether a utility should be able to charge those customers who use a specified method of payment fees that other customers do not incur even though all payment options reflect increments costs." GCI Brief at 47. To support its position GCI argues that "[a]ny fees or expenses incurred by the utility should be included in a future revenue requirement proposal . . . , rather than shifting that cost of the essential business of paying for the utility bill onto customers through transaction fees." GCI Brief at 48. However, when GCI witness, Ms. Marecelin-Reme was asked on cross-examination whether as a matter of policy she wants customers or MidAmerican's shareholders to pay for these fees, she answered:

. . .my thought would be that it would be absorbed by the company.

Tr. at 723, lines 5-9 and 13-14.

Consequently, it is clear that GCI would rather have shareholders absorb these costs. The impact of GCI's suggested language will force utilities to stop offering alternative payment methods that require a fee and only allow traditional, non-fee related payment methods – especially if shareholders are forced to absorb these costs. GCI's proposal will leave customers with fewer payment options. GCI, however, also recognized at hearing that it did not want to have utilities withdraw the option to pay by credit card. Tr. at 723, lines 21-22. GCI cannot have it both ways. Utilities must be allowed to recover costs of doing business, and third-party processing fees for

payments made by credit cards is a real cost of doing business. Staff summed up the issue best when it pointed out in its brief that customers “have traditionally been responsible for the cost of affixing postage stamps to mailed bill statements or paying for the transportation associated with traveling to a utility’s local office to deliver payment.” Staff Brief at 39. Consequently, it is reasonable for the Commission to reject GCI’s proposed language eliminating third party processing fees.

B. Section 280.65 Late Payment Fee Waiver for Low Income Customers

1. *MidAmerican’s Position*

Staff’s proposed language includes a waiver of late fees to low income customers. Staff Ex. 1.0 at 13, Staff Ex. 2.0 at 47-48, lines 1076-1093. While MidAmerican recognizes that timely payment is often not a matter of choice for some customers, Staff’s proposed rules arbitrarily eliminate the fee to just one group of customers. The inclusion of this section raises a question as to whether the mandatory waiver for low income customers violates Section 9-241 of the Act. 220 ILCS 5/9-241. Staff’s attempt to “balance” the rules must also include a rational basis as to why the proposed section does not violate Section 9-241 of the Act. Staff Brief at 41-42. Staff has not provided a rational basis for the Commission to determine that low-income customers should be treated differently from other customers. Granting a waiver of these charges only to low-income customers could be construed as granting a preference to these customers, while all other customers would incur late charges. Therefore, MidAmerican recommends deleting this section in its entirety, as noted in Attachment A.

C. Section 280.70 Preferred Payment Date

1. *MidAmerican's Position*

MidAmerican does not oppose Staff's proposed requirement to offer preferred payment dates to customers. Staff's proposed language in 280.70 b), however, is prescriptive and makes it a requirement that a customer who makes two late payments must receive notification of a preferred payment date. Staff Ex. 1.0 at 13-14, lines 291-299.

Staff asserts that this requirement is important and outweighs a utility's administrative concern. Staff Brief at 42. MidAmerican's administrative concern is not about not offering the customers a preferred due date, it is about offering a utility flexibility in administering the rules. Staff's proposed rules would be more effective if they required utilities to offer preferred payment dates and allowed utilities to manage how this option will work best to meet customer needs.

MidAmerican proposes striking proposed language in Section 280.70 b) as noted in Attachment A to allow a utility flexibility in how it communicates the availability of a preferred payment date to its customers. Accordingly, it is reasonable for the Commission to omit this language from the final rule.

D. Section 280.80 – Budget Billing Plan

1. *MidAmerican's Position*

MidAmerican supports Staff's proposed Section 280.80. Accordingly, it is reasonable for the Commission to adopt Staff's proposed language as outlined in Attachment A.

2. *GCI's Position*

GCI proposes language to Section 280.80 h) that requires utilities to review the budget billing payment plan on a quarterly basis. GCI 5.0 at 79. As MidAmerican noted above, GCI applauded MidAmerican for offering operational measures to accommodate customer needs. GCI Brief at 7. GCI's proposed language, however, restricts MidAmerican's ability to offer semiannual or annual adjustments for budget billing. Staff's language allows flexibility in administering the budget billing payment plan, and it is reasonable for the Commission to adopt Staff's proposed language as outlined in Attachment A.

VII. SUBPART F: IRREGULAR BILLING

A. Section 280.90 Estimated Bills

1. *MidAmerican's Position*

MidAmerican generally supports Staff's proposed language, but expressed two areas of concern regarding Section 280.90 b) and g).

2. *Staff's Position*

Section 280.90 b)

In its initial brief, Staff attempts to address MidAmerican and ComEd's request to not limit the communications channels to written communications regarding failed meter reads. MidAmerican and ComEd expressed concerns because utilities with automated meter reading have different operational concerns. MidAmerican appreciates Staff's willingness to accommodate the operational changes associated with automated meter

reading, and MidAmerican does not object the modification proposed by Staff in its initial brief. Staff Brief at 45. If the Commission accepts MidAmerican's definition of "written" as proposed in its initial brief, then Staff's parenthetical regarding electronic or written communication is unnecessary. MidAmerican Brief at 10-12. MidAmerican has incorporated Staff's new language regarding "flash calls" in Attachment A. It is reasonable for the Commission to adopt MidAmerican's definition of "written" and the revised language in Attachment A.

Section 280.90 g)

Staff did not raise any issues that MidAmerican did not already address in its initial brief. MidAmerican Brief at 39. In surrebuttal testimony, Staff added a new Subsection 280.90 g). MidAmerican supports Staff's proposed subsection 280.90 g), if a trigger is added to allow three or more consecutive estimated bills. Utilities with automated meter reading devices may not be aware the device failed until the first estimate is issued, and then it may take another 30-days to resolve the problem. Therefore, it is reasonable for the Commission to incorporate these changes into the final rule as reflected in Attachment A.

3. GCI's Position

GCI offered alternative language that is identical to the Missouri Code of State Regulations (CSR). Staff, however, did not incorporate the Missouri CSR into its proposed rules, and MidAmerican supports Staff's rejection of GCI's proposal.

In its brief, GCI argues that utilities should not be able to adopt a routine estimated bill practice at their discretion without Commission approval. GCI Brief at 52. However, as MidAmerican stated in testimony, its Commission approved estimation

logic is a very complex calculation. MidAmerican Ex. 2.0 at 46, line 1029. See also Docket No. 01-0541. GCI's position simply reflects a basic misunderstanding of how utilities are already operating in Illinois.

In its brief, GCI highlights that MidAmerican's witness pointed out that GCI's example assumes that the estimation logic was flawed. GCI Brief at 55. MidAmerican raised this point because it has Commission approves billing estimation logic and must consistently apply this logic to be in compliance with Commission rules. GCI's arguments are simply unsupported.² GCI argues that customers are not aware their bills are estimated, or the options available to them to avoid paying large true-up bills, and that it is common utility practice to continually estimate bills – both at beginning and ending of service and for many months or even year in between. *Id.* at 56. GCI, however, offers no specific data to show that is common practice for a utility to estimate service for long periods of time, or that estimated bills cause inequities relating to subsidization, or that it contributes to disconnections.

To the contrary, both current and proposed rules require that an attempt to read the meter be made each month, and that when a reading is not obtained, the bill indicate that the meter has been estimated. Additionally, in response to GCI's cross examination, MidAmerican testified that it reads the meter at the beginning and end of service whenever possible. Tr. at 534, lines 20-21.

GCI also argues that the Missouri rules on billing and payment should be adopted because the rules adequately resolve the "issues and problems associated

² MidAmerican notes that the hypothetical GCI relies upon, the customer agreed to start with an estimated read. *Id.* Therefore, it is disingenuous for GCI to then argue that customer is often unaware their bills are estimated. *Id.* at 56.

with the widespread use of estimating usage of utility service.” GCI Brief at 56. GCI, however, has provided no support that there is widespread use of estimating bills. As noted above, MidAmerican already has Commission approved estimation logic and reads the meter at the beginning and end of service whenever possible. Therefore, the Commission should disregard GCI’s proposed changes.

B. Section 280.100 Previously Unbilled Service

1. *MidAmerican’s Position*

MidAmerican generally supports Staff’s proposed language; however, MidAmerican proposes that the original language of Part 280 be retained. In its initial brief, Staff has not raised any new issues that were not already addressed in MidAmerican’s initial brief. See MidAmerican Brief at 40.

VIII. SUBPART G: REFUNDS AND CREDITS

A. Section 280.110 Refunds and Credits

1. *MidAmerican’s Position*

In general, MidAmerican supports Staff’s changes to Section 280.110. However, Staff’s proposed language in Subsections 280.110 c) 2 and d) is vague.

2. *Staff’s Position*

In its brief, Staff argues that it is appropriate for interest to be paid on amounts being held that are not actually owed to the utility. Staff Brief at 49. Staff has not supported why a utility should not have to pay interest to a customer who intentionally overpays for services rendered or has a credit as a result of a Low Income Home

Energy Assistance Program (LIHEAP) grant or other assistance payment. As ComEd pointed out, it is not aware of any other business that is required to pay interest on voluntary overpayments by their customers. ComEd Brief at 19. Staff argues that it is not trying to transform the utilities into banking institutions, yet its recommended language does just that. Staff has not presented an adequate reason why this requirement is necessary. If Staff's intent is to ensure timely refunds for overpayment, Staff has addressed that in its proposed language in 280.110 c)2), which requires a refund be issued within 10 days of a customer's request. As noted above, utilities should only be required to pay interest if the utility incorrectly overcharged the account, and it is reasonable for the Commission to adopt the changes to 280.110 c) 2 and d) in its final rule as outlined in Attachment A.

3. GCI's Position

In its brief, GCI argues that the Commission requires utilities to use the oldest records to determine refunds or credits. GCI Brief at 59. The Commission should reject this revision because the requirement is arbitrary and contradictions existing record retention requirements and rules.

It is more appropriate to base the refund on the standard record retention requirements in Part 420.90 than on an arbitrary requirement based on an individual company's internal record retention policies. Individual company internal record requirements vary from utility to utility, thus undermining standard refund practices across the state. Therefore, it is unnecessary for the Commission to adopt GCI's proposed language.

IX. SUBPART H: PAYMENT ARRANGEMENTS

A. Section 280.120 Deferred Payment Arrangements (DPAs)

1. MidAmerican's Position

MidAmerican generally supports Staff's revisions, but MidAmerican has concerns with implementing rules as currently proposed. MidAmerican suggests the Commission adopt the changes outlined in Attachment A to improve or clarify portions of Staff's proposed rule.

2. Staff's Position

280.120 e)2)A) and B)

In its initial brief, Staff takes issue with the how MidAmerican would like to communicate with its customers. Staff Brief at 56. Staff's proposed rule prescribes that utilities must send a notice to a customer who has defaulted on a DPA and that the notice must have an "effective date." MidAmerican pointed out the term "effective date" is confusing, since customers are generally accustomed to the term "due date." MidAmerican's proposed changes allow for the flexibility to communicate to a customer that there is a date by which action must be taken to remedy the problem and avoid disconnection. The best way to handle this communication is to talk to the customer directly. While MidAmerican appreciates Staff's cost concern, MidAmerican finds it is more cost effective to manage its call center by issues resolved rather than by hold times. MidAmerican finds that this approach reduces the amount of customer complaints and is the most effective way to communicate with customers. Therefore, to

eliminate customer confusion, MidAmerican recommends the Commission revise its final rules to reflect “due date” instead of “effective date” as reflected in Attachment A.

Section 280.120 f) 1)

MidAmerican proposes deleting Section 280.125 and including the requirements for low-income customers into the DPA Section in 280.120. Staff, however, contends that including low-income requirements for DPAs in this section undermines its organizational intention. Staff Brief at 61. MidAmerican notes that the issue is not what is in the rule, but about where this information should be in the rule. MidAmerican notes that customers may be inclined to search by topic and not be customer group and just offer this approach as a suggestion.

Section 280.120 j) 2)

Section 280.120 j) outlines DPA reinstatement guidelines. Staff has not raised any new issues that were not already addressed in MidAmerican’s initial brief. MidAmerican Brief at 44-45. MidAmerican proposed language requiring a reinstatement to take place prior to the next billing statement being issued. This change would make the rule easier to implement and more clear for a customer to understand. It is reasonable for the Commission to adopt the revisions outlined in Attachment A.

Section 280.120 k) 3)

In response to MidAmerican’s concern regarding the extension of renegotiated agreements, Staff’s proposed additional revisions to Section 280.120 k)3). Staff Brief at 60. MidAmerican appreciates Staff’s willingness to re-examine its proposed language, and it appears both parties agree it is not the intent to extend a DPA beyond that which

was originally agreed upon. Therefore, MidAmerican incorporated Staff's revisions in its Attachment A, and it is reasonable for the Commission to adopt the revisions.

Section 280.120 n)

As noted in Section 280.120 f) 1), MidAmerican proposes to combine Section 280.125 with Section 280.120. Although Staff believes it is better to organize the rules by customer classes, MidAmerican is offering the Commission the option of organizing the rules by topics. Accordingly, it is reasonable for the Commission to consider this edit in its final rule.

3. *GCI Position*

In its initial brief, GCI indicates that it opposes much of Staff's re-write. GCI complains Staff's language is inconsistent with Section 8-207 of the Act and rules adopted in other states.³ GCI Brief at 60. GCI, however, fails to provide any specific example of how Staff's proposed language violates the statute. MidAmerican agrees that Staff's revised language no longer mirrors the exact language the Act. Staff's language, however, is consistent with the Act.

Contrary to GCI's contention, MidAmerican does not have a "standard" DPA for all customers. GCI Brief at 62. Each DPA MidAmerican establishes for its Illinois customers is consistent with the Commission rules and the Act. Moreover, as

³ As MidAmerican noted in its initial brief, GCI originally proposed revised language to the DPA section and indicated the language was modeled after the Iowa rule regarding DPAs. MidAmerican Brief at 47-48. However, GCI's rules did not include the part of the Iowa rules only allowing renegotiation if a customer has made two full payments. See e.g. 199 IAC 19.4(10)c(2); 199 IAC 20.4(10)c(2); *In Re: Revision to Consumer Services Rules [199 IAC 19.4(10), 19.4(13), 19.4(15), 19.4(16), 20.4(11), 20.4(14), 20.4(15), and 20.4(16)]*, IUB Docket No. RMU 04-2 at 13-14, July 30, 2004. GCI Ex. 1.0 at 27, lines 729-750 and footnote 5. GCI's proposed language still does not reflect the requirement that a customer make two full payments before it be allowed to renegotiate a DPA. GCI Ex. 5.1 at 38-39.

MidAmerican previously noted, it does not operate its call center based on call durations, and therefore has no incentive to “standardize” agreements as GCI contends. GCI initially proposed the Iowa rules, but now only argues for the Ohio rules. GCI’s proposed language has become a moving target, and it is unclear what exactly they are now proposing. What is clear is that GCI wants individual circumstances to be considered. However, the Act already sets forth those conditions, and Staff need not regurgitate the statute in the rules since the utilities are already bound by the statute.

Consequently, the Commission should reject GCI’s proposed changes and any new changes proposed in its reply brief, and adopt Staff’s proposed rules as modified by MidAmerican.

B. Section 280.125 Deferred Payment Arrangements for Low-Income Customers

1. *MidAmerican’s Position*

In its initial testimony, MidAmerican recommended combining the low-income DPA section with the DPA section in Section 280.120. Staff Ex. 2.0 at 70, lines 1594-1603. As noted above in Section 280.120 f) and n), Staff and MidAmerican are generally in agreement about the language of the proposed rule; however, they disagree about where the information should be located in the rule. MidAmerican also notes that Staff did not provide a rationale basis for excluding the reinstatement fee waiver clause for low-income customers. MidAmerican would not object to adding this requirement in Subsection j)3) if the Commission makes a specific determination that the reinstatement fee waiver does not violate Section 9-241 of the Act. MidAmerican’s

Attachment A reflects MidAmerican's proposed changes, and it is reasonable for the Commission to consider these changes in its final rule.

X. SUBPART I: DISCONNECTION

A. Section 280.130 Disconnection of Service

1. MidAmerican's Position

In general, MidAmerican supports the intent behind Staff's revisions to Section 280.130 and appreciates Staff's willingness to make further clarifications. Staff made additional changes to Section 280.130 b) 5), and MidAmerican does not object to those changes. Staff Brief at 62. MidAmerican, however, supports additional revisions to further clarify disconnection requirements as explained further the following subsections.

2. Staff's Position

Section 280.130 e) 1) and 2)

Section 280.130 e) sets forth requirements for disconnection notices. MidAmerican proposes revisions that allow the flexibility to use electronic communications to customers, and MidAmerican offers language that specifically requires the customer must indicate electronic communication is the preferred method of delivery. Staff did not address any new issues that MidAmerican did not already address in its initial brief. MidAmerican brief at 49-50. It is reasonable for the Commission to adopt the proposed changes outlined in Attachment A.

Section 280.130 g) 2)

Staff has not raised any new issues that were not already addressed in MidAmerican's initial brief. MidAmerican Brief at 50-51.

Section 280.130 i)

Section 280.130 i) outlines the notification required for a disconnection notice when there is not a customer at the premises. MidAmerican argued for more flexibility in communicating the disconnection notice to customers. MidAmerican suggested changes that included "delivery" of the notice. MidAmerican Revised Attachment A at 76. Staff contends it does not object to utilities making occupants aware of the need to apply for service by means other than a written letter, Staff, however, is uncertain as to what those other means would be. Staff Brief at 65. MidAmerican noted earlier that it obtains a final read of its meters, so it would be effective for MidAmerican to also leave a door tag instead of a notice on its intent to disconnect the property. Consequently, it appears Staff would not have an objection to a door tag, and MidAmerican's revisions to Section 280.130 i) are reasonable and should be adopted by the Commission as reflected in Attachment A.

3. *GCI's position*

In its initial brief, GCI argues to preserve the current Part 280 requirement to conduct a field visit before disconnecting service. GCI Brief at 66. This issue has been thoroughly addressed in testimony and in briefs. GCI, however, contends that there is nothing in this record that documents utility employees will be harmed by the continuation of this practice. *Id.* To the contrary, Staff and many utilities expressed concern regarding the safety of its employees. Staff Ex. 1.0 at 17, lines 1135-1140;

Peoples-North Shore Ex. JR-2.0 at 35-36, lines 781-789; Tr. at 488 line 18 to 489, line 2. GCI has failed to provide any evidence that refutes the utilities' evidence.

GCI also argues that MidAmerican “disagrees with the requirement to send a paper notice to customers, stating that if customers choose electronic billing they should receive disconnection notices electronically as well.” GCI Brief at 67. GCI, however, misrepresents MidAmerican’s position. MidAmerican indicated that it wanted the flexibility to choose the type of communication channels it can offer customers, and MidAmerican noted that some customers would rather have electronic notification rather than paper notification. MidAmerican would let a customer choose the type of communication it receives. Consequently, the choice is left up to the customer and has nothing to do with whether the customer receives an electronic or paper bill.

MidAmerican agrees with Staff that a single phone call prior to disconnection provides a fair compromise between no call and multiple calls and allows customers to make last minute payments or payment arrangements. Therefore, Staff’s proposed language, with MidAmerican’s modifications, should be adopted by the Commission in its final rule.

B. Section 280.140 Disconnection for Lack of Access

1. *MidAmerican’s Position*

MidAmerican agrees with Staff’s proposed language and supports the Commission’s adoption of the Section 280.140 in the final rule. Staff’s language is reflected in Attachment A.

2. *City of Chicago’s and GCI’s Position*

The City of Chicago and GCI propose deleting Section 280.140 in its entirety. In its brief, GCI argues that Section 280.140 should be restricted to situations where the utility has verified that paying tenants in a building may provide access to the meter that would save them from disconnection. GCI Brief at 75-76. GCI has also offered language in subsection 280.140 f) that would allow for the same day reconnection to the premises if access is provided. MidAmerican does not object to this language and has incorporated it into its Attachment A. Since Staff's rules are reasonable and contain customer safeguards, it is reasonable for the Commission to adopt Staff's proposed language.

C. Section 280.150 Disconnection of Master Metered Accounts

1. *MidAmerican's Position – Overview*

Based upon a review of the initial briefs, this section is not contested. Accordingly, the Commission should adopt Section 280.150 in the final rule.

XI. SUBPART J: MEDICAL CERTIFICATION

A. Section 280.160 Medical Certification

1. *MidAmerican's Position*

MidAmerican generally supports Staff's proposed language in Section 280.160, but MidAmerican also supports additional revisions to further clarify disconnection requirements as explained further in the following subsections.

2. *Staff's Position*

Section 280.160 a)

Staff has not raised any new issues that were not already addressed in MidAmerican's initial brief. MidAmerican Brief at 54-55. MidAmerican suggests clarifying the rules so that a customer may set up a medical payment arrangement (MPA) within the 60 day certification period. Accordingly, it is reasonable for the Commission to accept MidAmerican's revisions as outlined in Attachment A.

Section 280.160 h)

Section 280.160 h) sets forth the requirements and timelines for establishing an MPA. MidAmerican suggests minor changes to clarify that customers have more flexibility to make a payment or enter into an MPA within the 60-day certification period. In its initial brief, Staff argues that the process needs greater structure. Staff Brief at 73. MidAmerican does not oppose a structured process, but as noted above, customers should be allowed to enter into an MPA within 60 days and not 30. Accordingly, it is reasonable for the Commission to accept MidAmerican's revisions as outlined in Attachment A.

Section 280.160 i)

Staff's proposed Section 280.160 i) allows for a customer to seek a new medical certificate after previous 60-day certificate expires if they have paid or 12 months has elapsed. In its initial brief, Staff recognizes that allowing a customer to use a new medical certificate after a year has passed since the beginning of a new one has the potential to support chronic payment delinquency. Staff Brief at 73. Staff, however, points to GCI's support as the basis not to support changes proposed by the utilities. *Id.*

Ignoring the issue will not resolve the potential for abuse. To balance a customer's right to obtain a medical certificate and an MPA with a utility's right to collect

debt, it is reasonable to limit recertification only when the customer has paid the amount protected from disconnection under the initial DPA. Accordingly, it is reasonable for the Commission to adopt the revisions outlined in Attachment A in the final rule.

3. *GCI's Position*

Subsection 280.160 b)

GCI complains that Staff's proposed rules do not allow for an "oral" declaration of a medical emergency by customers. GCI Brief at 78. As Staff pointed out, GCI's proposal allows for temporary self-certification. Staff at 70. Staff notes that its revision prevents a utility from disconnecting service for 10 days, instead of 8 days under the current rule. *Id.* Therefore, a customer has a sufficient amount of time to obtain a medical certification from a doctor. Accordingly, it is reasonable for the Commission to reject GCI's proposed change.

Subsection 280.160 h)

As Staff notes, GCI proposes overly complicated changes requiring customers to divulge personal information. Staff Brief at 72. In its brief, GCI argues that MPAs are inflexible. GCI, however, has not established that it is unreasonable to offer an MPA for 12 months. The MPA allows the customer a chance to catch up with past due debt and continue to receive utility services. Absent the offering of an MPA, a customer is likely to become disconnected after the 60-day certification period. Consequently, Staff's rules balance a customer's right to obtain a medical certificate and an MPA with a utility's right to collect debt. GCI's changes are unreasonable, and the Commission should adopt Staff's proposed rules with the modifications proposed by MidAmerican in Attachment A.

XII. SUBPART K: RECONNECTION

A. Section 280.170 Timely Reconnection of Service

1. *MidAmerican's Position*

MidAmerican agrees with Staff's proposed language and supports the Commission's adoption of the Section 280.170 in the final rule. Staff's proposed timelines are fair and achievable and should not be modified. Staff Ex. 1.0 at 22-23, lines 491-510. Staff's language is reflected in Attachment A.

2. *GCI's Position*

In its brief, GCI notes the current Part 280 has no time requirements for reconnecting service. GCI Brief at 84. MidAmerican agrees with Staff that the proposed timelines are fair and achievable and should not be modified. GCI argues Staff's language is much too broad. *Id.* GCI, however, points to language in other states that is also broad, and similar to the intent of Staff's proposed language. Incongruently, GCI contends that a temporary exception should not be granted in Illinois, but then highlights that the Iowa Code requires gas utilities to reconnect service using all reasonable efforts the same day. The Iowa Code allows for a temporary exception if there is a reasonable, unforeseen circumstance preventing service reconnection the same day.

As with renegotiated DPAs, MidAmerican does not object to the adoption of the Iowa Rules into Part 280, however, it is unclear if GCI is arguing for the adoption of the Iowa reconnection rules, and Staff did not initially make the proposal in its testimony.

Staff's proposed timelines and exemptions are fair, achievable and reasonable, and should be adopted by the Commission.

B. Section 280.180 Reconnection of Former Residential Customers for the Heating Season

1. *MidAmerican's Position*

Based upon a review of the initial briefs, this section is not contested. Accordingly, the Commission should adopt Section 280.180 in the final rule.

XIII. SUBPART L: UNAUTHORIZED SERVICE USAGE

A. Section 280.190 Treatment of Illegal Taps

1. *MidAmerican's Position*

Staff has not raised any new issues that were not already addressed in MidAmerican's initial brief. MidAmerican Brief at 57-58. While MidAmerican generally supports Staff's proposed language, in some instances Staff's proposed language goes beyond the requirements prescribed in the Act. MidAmerican offers a revision to Section 280.190 c) that clarifies that a utility is not required to instruct the property owner to remove the tap. Accordingly, the changes reflected in Attachment A are reasonable and should be adopted by the Commission.

2. *GCI's Position*

GCI has not raised any new issues that were not already addressed in MidAmerican's initial brief. MidAmerican Brief at 58.

B. Section 280.200 Tampering

1. *MidAmerican's Position*

In its brief, Staff does not support disconnection for residential customers who tamper with a meter. Staff at 75. Staff, however, recognizes that utilities may disconnect for safety issues as a result of tampering. *Id.* Staff is making a distinction where there are no differences. As MidAmerican pointed out in its initial brief, disconnection of service is appropriate when a customer has tampered with a utilities service, regardless of the class of service. MidAmerican Brief at 59. This is an unsafe and illegal act, and Staff has provided no rationale for leaving service on for a person who has tampered with a utility's property.

Staff has not provided a rationale basis for rejecting MidAmerican's proposed language. MidAmerican's proposed changes treat customer classes equally and are reasonable and should be adopted by the Commission.

C. Section 280.205 Non-Residential Tampering

1. *MidAmerican's Position*

As MidAmerican noted above, it proposes to combine Section 280.205 with Section 280.200. Therefore, MidAmerican's Attachment A shows 280.205 deleted.

D. Section 280.210 Payment Avoidance by Location (PAL)

1. *MidAmerican's Position*

In its initial brief, MidAmerican indicated it is willing to accept the language in Section 280.210 proposed by Staff in its surrebuttal testimony. MidAmerican Brief at

60. GCI indicated in the pre-trial outline that it did not support Staff's new proposed language in Section 280.210, and MidAmerican reserved the right to address GCI's arguments and the right to recommend MidAmerican's original PAL language changes in the alternative in its reply brief. See MidAmerican Ex. 1.0 at 30, lines 648-661; MidAmerican Ex. 2.0 at 44-45, lines 986-1016; MidAmerican Ex. 2.1 at 65-68.

2. *GCI's Position*

GCI construes Staff's new language as adopting the "household rule" the utilities proposed in Docket No. 05-0237. GCI Brief at 91-92. GCI also complains that Staff's new PAL section violates contract law because it does not contain elements of common law fraud. *Id.* At 91. GCI complains that Staff's proposed language erodes consumer protects. GCI, however, fails to make any specific arguments of where specifically in Staff's revised language all these elements occur. In its GCI Exhibit 5.1, GCI supports Staff's original proposed language, and did not propose any revisions containing elements of common law fraud.

GCI's contentions are unfounded. Staff has modified its original language, but the original elements are still present. In its brief and surrebuttal testimony, Staff indicated that its initial proposed language was too complicated and the revision was aimed to simplify the language without involuntarily assigning the debt responsibility from one person to another. Staff Brief at 76. Staff argues that the proper way to look at the issue is to view it as risk assessment rather than shared culpability. MidAmerican agrees with this approach. Staff's revised proposed language simplified the standard of proof, which allows for a single remedy in this occurrence. *Id.* The remedy consists of a refundable deposit that must be paid in full before service is granted to the new

applicant. *Id.* See also Staff Ex. 3.0 at 21-22, lines 477-496. Consequently, the Commission should adopt Staff's revised changes.

XIV. SUBPART M: COMPLAINT PROCEDURES

A. Section 280.220 Utility Complaint Process

1. *MidAmerican's Position*

Section 280.220 sets forth the general steps that a utility should follow when it receives a customer complaint. MidAmerican generally agrees with Staff's proposed language with the exception of Section 280.220 i)1).

2. *Staff's Position*

In its brief, Staff supports its proposed language in Section 280.220 i)1) arguing that the requirement is necessary because not all customers are aware of their right to escalate. Staff Brief at 78. As MidAmerican indicated in its initial brief, MidAmerican agrees with Nicor that this requirement undermines the utility representative's ability to resolve an issue. See Nicor Ex. 2.0 at 6, lines 128-132. While some customers may be unaware they can escalate the issue to a supervisor, escalating the issue to a supervisor will not resolve the customer's issue. In fact, escalation may frustrate the customer when they receive the same response from the supervisor. *Id.* at 6-7, lines 132-135. The ability to escalate a complaint already exists for MidAmerican customers, and prescribing the requirement in a rule will not change this fact. The rule, however, will undermine MidAmerican's existing processes and Customer Service Associate's ability to resolve customer complaints. Based on the foregoing, it is reasonable for the Commission to omit Subsection i)1) in its final rules as outlined in Attachment A.

3. *GCI's Position*

In its brief, GCI urges the Commission to adopt its changes on page 66 of its Exhibit 5.1. GCI Brief at 94-95. GCI contends that Staff has incorporated its suggested change regarding assigning all customer complaints a tracking number. *Id.* MidAmerican does not object to the requirement that complaints be tracked, MidAmerican does object to GCI's proposed changes to subsection 280.220 i). While GCI does not explicitly argue that the Commission should accept this change, this change also is included on page 66 of GCI Ex. 5.1. Staff observed that it is not the inability for customers to express dissatisfaction; it is that sometimes that may be unaware about the escalation options. Staff Brief at 78. Accordingly, GCI's changes are unnecessary and should be rejected by the Commission.

B. Section 280.230 Commission Complaint Process

1. *MidAmerican's Position*

MidAmerican agrees with Staff's proposed language and supports the Commission's adoption of the Section 280.230 in the final rule. Staff's language is reflected in Attachment A.

XV. SUBPART N: INFORMATION

A. Section 280.240 Public Notice of Commission Rules

1. *MidAmerican's Position*

In its Initial brief, Staff found Ameren's changes acceptable, and MidAmerican agrees with those changes. MidAmerican has incorporated those changes in Attachment A, and the Commission should adopt Staff's recommended language.

B. Section 280.250 Second Language Requirements

1. *MidAmerican's Position*

Based upon a review of the Initial Briefs, this section is not contested. Accordingly, the Commission should adopt Section 280.250 in its final rules.

C. Section 280.260 Customer Information Packet

1. *MidAmerican's Position*

Staff revised Section 280.260 to outline specific information utilities must provide in Customer Information Packets, and MidAmerican generally agrees with Staff's proposed language and supports the clarifications to this section. MidAmerican, however, suggests a few clarifications be added to Section 280.260 b)2 A) and B), along with modification to Section 280.260 d) as explained further below.

Section 280.260 b) 2) A)

In Staff's direct testimony, it indicated that it was including "standardized consumer information content and distribution requirements." Staff Ex. 1.0 at 30, lines 669-670. However, in its initial brief, Staff notes that it proposed general topics that must be covered and then Staff would work with utilities to ensure that details for each item are appropriate for their customers. Staff Brief at 80. MidAmerican notes that the customer information packet is already required under the current Part 280, and utilities already offer these to customers. The fact remains that Staff's proposed "procedures for billing" and "estimated bill process" requirements are overly broad, and Staff did not provide any explanation of the level of detail they expect. If the rules are being revised to make clarifications, then the expectations should be clear for the customer information packet. It is more efficient to set forth clear standards for the utilities to

follow than to make vague standards that will delay the revised customer packet from going out to customers. Consequently, it is appropriate for the Commission to adopt MidAmerican's proposed revisions that clarifies Staff's intent for the contents of the Customer Information Packet.

Staff has also added a new requirement that adopts GCI's suggestion that Low-income customer rights and the method to qualify for those rights be described in the customer information packet. Staff Brief at 81-82. Staff is presenting a new requirement and has not allowed parties to present testimony regarding this addition. MidAmerican does not support including this requirement in the customer information packet since MidAmerican is already required to send out customer notices with this same information on a yearly basis. The requirements for low income eligibility change from year to year and MidAmerican sends out updates to notify customers of those changes. Including this information in the customer information packet will lead to outdated information in a customer information packet over a year old. Utilities are only required to send a customer information packet when a customer begins service. If the customer then refers back to that customer information packet a year later, the information will have changed, and the customer may then become confused and frustrated. MidAmerican does not dispute that this information is important to communicate to customers. However, utilities are already providing the information to customers in accordance with the contracts they have with the community action agencies who administer the funds.

Section 280.260 d)

Section 280.260 d) requires utilities to provide a copy of the Customer Information Packet to the Commission's Consumer Services Division each time it is revised. MidAmerican agrees with this requirement. Staff's proposed language, however, also places an arbitrary requirement that the revision be provided at least 45-days in advance of a customer being provided a copy. In its initial brief, Staff indicated that they would like an opportunity to review the booklets. As MidAmerican indicated in testimony and in its brief, MidAmerican is not opposed to suggestions and would welcome input. Since this requirement is not new and utilities already distribute the information packet, it is reasonable to shorten Staff's review of the booklets from 45-days to 15-days. The shortened time frame will allow utilities a quicker turn-around time to have the revised and approved booklets to the printer and then out to customers.

Accordingly, it is reasonable for the Commission to adopt MidAmerican's proposed revisions to Section 280.260 d).

2. GCI's Position

GCI proposes adding additional information to Staff's deposit requirements and three new information requirements in the Customer Information Packet. GCI Ex. 5.1 at 70. Not only should utilities have the flexibility to create a Customer Information Packet designed specifically for its customers that is informative and easy to read, MidAmerican agrees with Staff that these issues are covered adequately throughout the rules, and GCI's proposed language adds unnecessary requirements to the Customer Information Packet. See Staff Ex. 2.0 at 94, lines 2154-2162. Since Staff's proposed requirements are sufficient, the Commission should reject GCI's proposed additional requirements.

D. Section 280.APPENDIX A: Disconnection Notice

1. *MidAmerican's Position*

Staff has not raised any new issues that were not already addressed in MidAmerican's initial brief. MidAmerican Brief at 64-65. MidAmerican's proposed changes to Appendix A do not change Staff's objectives in providing relevant information regarding disconnection and merely clarifies the reasons for disconnection. Accordingly, the Commission should incorporate MidAmerican's changes into its final rule.

E. Section 280.APPENDIX B: Customer Rights Insert for Disconnection Notice (Appearing on the reverse side of disconnection notices sent to residential customers)

1. *MidAmerican's Position*

MidAmerican supports Staff's proposed Section 280.APPENDIX B as reflected in Attachment A, and supports the Commission's adoption of 280.APPENDIX B in its final rules.

F. Section 280.APPENDIX C: Public Notice

1. *MidAmerican's Position*

Staff has not raised any new issues that were not already addressed in MidAmerican's initial brief. MidAmerican Brief at 65.

G. Section 280.APPENDIX D: Disconnection Notice Insert for Residential Gas and Electric Customers

1. *MidAmerican's Position*

MidAmerican understands the importance of communicating with customers and currently includes an insert with every disconnection notice. MidAmerican has made minor changes to clarify this Insert as noted in Attachment A.

XVI. GCI's Proposed Subpart O

1. MidAmerican's Position

MidAmerican does not support GCI's proposed data requirements. MidAmerican Initial Brief at 66-67. GCI's proposed data requirements are unreasonable and should not be adopted by the Commission.

2. Staff's Position

Staff did not propose or support a separate and expanded reporting Section, and its proposed rule contains limited data collection and reporting requirements. Staff Brief at 83. Staff noted that GCI's tracking requirements have associated expenses, and that the consumer complaint process already delivers robust monitoring capabilities. *Id.* See *also*, Staff Ex. 2.0 at 96, lines 2197-2208. Staff further notes that its proposed rules have expanded its involvement and Staff anticipates it will have more involvement on more issues. *Id.*

3. GCI's Position

GCI continues to support a list of 21 data requirements, with 13 sub-requirements, and GCI explained that this information would be valuable in formulating utility service access and bill collection policies. GCI Brief at 101-102; see *also* GCI Ex.

1.0 at 16, lines 404-405. GCI argues that it is seeking comparable utility data, but has not established how the data is comparable given the differences in size and operations of Illinois utilities. The end result is that GCI is not going to obtain consistent data from all the utilities, and these differences will render the data meaningless.

Moreover, GCI's data requirements completely ignore the fact that Illinois utilities already work with Staff and the Commission to respond to information requests. As Nicor pointed out in testimony, to the extent any party seeks relevant information in connection with a Commission proceeding, there are procedural processes in place to address the exchange of information. Nicor Ex. 3.0 at 55, lines 1279-1282. Moreover, utilities provide Staff with various data that are rolled up into annual reports and are made available to the public.

Nicor also noted that the National Association of Regulatory Utility Commissioners' (NARUC) Consumer Affairs Subcommittee report recommended the survey as a tool to gather data. *Id.* at 1286-1291. Yet, the information GCI recommends that the Commission collect is much different from the data requirements outlined in the NARUC report. Consequently, GCI has not demonstrated a need for these reporting requirements.

GCI's request is simply unreasonable, overly burdensome and does not provide any customer benefit. GCI did not establish that these requirements are warranted or supported by the evidence. Therefore, it is reasonable for the Commission to reject GCI's proposed data requirement section.

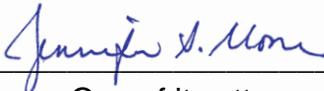
XVII. Conclusion

MidAmerican Energy Company generally supports Staff's proposed rules and has offered several revisions to further clarify the rules and allow more flexibility in implementing the rules. MidAmerican respectfully requests the Illinois Commerce Commission adopt the revised Part 280 rules reflected in Attachment A in its final rules.

DATED this 7th day of October, 2011.

Respectfully submitted,

MIDAMERICAN ENERGY COMPANY

By  _____
One of its attorneys

Jennifer S. Moore
Senior Attorney
MidAmerican Energy Company
106 East Second Street
P.O. Box 4350
Davenport, Iowa 52808
Telephone: 563-333-8006
Facsimile: 563-333-8021
E-mail: jsmoore@midamerican.com