

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On its Own Motion	:	
vs.	:	Docket No. 11-0672
MidAmerican Energy Company	:	
	:	
Determination of compliance with	:	
Section 8-101 of the Public Utilities Act	:	
	:	

REPLY BRIEF ON EXCEPTIONS
OF
MIDAMERICAN ENERGY COMPANY

MidAmerican Energy Company (“MidAmerican”), pursuant to 83 Ill. Adm. Code Section 200.830, submits its Reply Brief on Exceptions in this proceeding.

1. MidAmerican continues to support the Proposed Order issued in this proceeding on June 17, 2013, without any revisions. The Proposed Order correctly recognizes that the proper focus should be on the goal of providing safe electric service to the public. MidAmerican’s practices and policies achieve that result. Staff continues to focus exclusively on the process; not the results. This approach does not give credence to the extensive and effective efforts that both MidAmerican and its independent contractors have implemented to provide their workers with a safe working environment as demonstrated in this particular case, prior to the proposed requirement.

2. There is only one incident that lies at the heart of Staff’s recommendation that a show cause proceeding be initiated against MidAmerican in this proceeding. On August 9, 2010, a two- man crew consisting of a crew foreman and a second year 4th level apprentice [Cecil

Hoskins] were conducting repairs on MidAmerican electric distribution facilities. While replacing a guy wire, Mr. Hoskins removed one of his protective gloves, made contact with the primary jumper wire, and was injured. Mr. Hoskins made a full recovery and returned to work for his employer, The L.E. Myers Co. No other cases, before or after, have been cited by Staff.

Mr. Hoskins was an experienced, well-trained worker and, as is the case with MidAmerican employees, a member of the International Brotherhood of Electrical Workers. Removing his protective gloves while working in the vicinity of energized electric facilities was a violation of The L.E. Myers Co.'s safety program, as well as being a violation of MidAmerican's safety program. Simply stated, he knew better but a momentary lapse of concentration resulted in an unfortunate accident.

MidAmerican's Vice President-Delivery, Barry Campbell, testified as to MidAmerican's involvement in the investigation of Mr. Hoskins' accident. MidAmerican's involvement was far from passive as implied by Staff. As Mr. Campbell testified, MidAmerican's Safety Supervisor was on-site and determined the circumstances of the accident on MidAmerican's behalf. The L.E. Meyers Co. conducted a review of the accident and issued a Safety Alert which included an investigation report and a list of lessons learned. It was apparent to MidAmerican that the cause of the accident was understood and that the appropriate steps had been taken to minimize the likelihood of a similar accident recurring in the future. Mr. Campbell further testified that, within an hour of the accident, MidAmerican conducted a "stand-down" of all work in progress to ensure that proper work clearances from all energized equipment was being maintained and that the proper protective equipment was being utilized. It is difficult to see what else MidAmerican could have done under the circumstances. Staff has not identified any difficulties or inadequacies in the investigation that was conducted in the Hoskins case, yet continues to insist that a second independent investigation should have been conducted.

3. The proper focus should be on the results of MidAmerican's safety program and policies; not on the step-by-step details of how MidAmerican manages its program. Indeed, Staff has never expressed any discontent with the results of the investigation which was conducted in the Hoskins case. Staff has ignored what was clearly the cause for the Hoskins incident – the momentary lapse of concentration by a well-trained, experienced worker. Staff has not shown how multiple, duplicate investigations would have changed the result of the Hoskins incident, or given any additional assurances that future such accidents would not occur. Staff has not shown there was, or is, any inadequacy in either the safety program of MidAmerican or the safety program of Mr. Hoskins' employer. The results would have been the same whether the investigation was performed by MidAmerican or by The L.E. Myers Co.

4. Staff's concerns expressed throughout this proceeding are speculative and hypothetical. Staff insists that MidAmerican conduct its own separate investigation with all "future OSHA-recordable incidents involving its contractor employees" regardless of whether a full investigation had already been conducted by the independent contractor. MidAmerican has previously detailed its concern about the interference with the legal independent contractor employer-employee relationship and the potential legal liabilities Staff's recommendation would create.

As a practical matter, however, Staff's recommendation is simply not necessary or well advised unless there has been a definitive showing that MidAmerican's current practice is unsound. That showing has not been made in the one case in which the practice has been challenged and there is no factual basis for the Staff or the ICC to conclude that a problem will exist in the future. The Proposed Order correctly recognizes that MidAmerican is expected to see that an appropriate and effective investigation is conducted into incidents involving its employees and independent contractor employees. In those presumably rare cases in which the

independent contractor does not conduct an investigation which meets MidAmerican's standards, MidAmerican would take the steps necessary to see that it is done. MidAmerican does not understand the need for an ICC mandate requiring it to do so and the Proposed Order recognizes that a separate duplicate investigation would not always be required. Staff has not shown that MidAmerican has failed to meet its safety obligations in the past and there is no reason for the ICC to believe it will fail to do so in the future.

5. Staff takes Mr. Campbell's statement out of context. MidAmerican has never agreed with Staff's 4th recommendation and does not agree with it now. Mr. Campbell testified that "MidAmerican already participates in the investigation of accidents involving workers that are injured while working on its facilities or property." [MidAmerican Exhibit 1.0 at 15]. The degree of participation will depend on the facts and circumstances of the specific incident. In the case of the Hoskins accident, that participation included having its Safety Supervisor on site, reviewing the safety report prepared by the L.E. Meyers Co. which included the investigative report and lessons learned, and conducting a stand-down of all work involving both its employees and those of its independent contractors. MidAmerican has never agreed to conduct its own separate investigations into all accidents involving its independent contractor employees. It is misleading and incorrect to equate appropriate and case-specific "participation" with "conducting its own separate investigation."

6. Considering Staff's focus on dictating precisely how MidAmerican should manage its independent contractor workforce, it is easy to lose sight of how little disagreement there actually is between MidAmerican and the Staff in this docket. Staff's proposed changes to the Proposed Order are unnecessary and invade the management prerogatives of MidAmerican. MidAmerican takes the safety of all its workers and the public very seriously. In the absence of a

