

BEFORE THE INSURANCE COMMISSIONER OF THE STATE OF IOWA

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IN THE MATTER OF PETITION )  
FOR WAIVER BY: ) **ORDER**  
 ) Waiver of 191-57.5(1)(b)  
MIDAMERICAN ENERGY COMPANY )  
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Now comes the Iowa Insurance Division ("Division") pursuant to the provisions of Iowa Code section 17A.9A (2017) and 191 Iowa Administrative Code ("IAC") Chapter 4 and issues the following ruling on MidAmerican Energy Company's ("MidAmerican") Petition for Waiver.

Course of Proceedings

1. On July 6, 2018, MidAmerican filed a Petition for Waiver of Rule ("Petition"), renewable on an annual basis, of the following administrative rule:

191 IAC 57.5(1) – An applicant for a certificate of relief from insurance shall submit a completed application to the division together with the following.

b. Parental guarantee from the ultimate controlling parent, if applicable.

2. The Division has considered the Petition.

Findings of Fact

3. MidAmerican has filed an application for a certificate of relief of workers' compensation insurance with the Division.

4. MidAmerican is a public utility providing natural gas and electric service to customers in the states of Iowa, Illinois, South Dakota, and Nebraska.

5. MidAmerican's Iowa public utility operations are subject to the regulation of the Iowa Utilities Board.

6. MidAmerican is a wholly-owned subsidiary of MHC Inc. ("MHC"). MHC is a wholly-owned subsidiary of MidAmerican Funding, LLC ("MidAmerican Funding"), which in turn is wholly-owned by Berkshire Hathaway Energy Company ("BHE").

7. BHE is a privately-owned company with publicly-traded fixed income securities. According to the Annual Report on Form 10-K for the period ended December 31, 2017, filed with the U.S. Securities and Exchange Commission, as of February 23, 2018,

Berkshire Hathaway, Inc. ("Berkshire") owned approximately 90% of the outstanding common stock interest in BHE. At page K-52 of its 2017 Annual Report, Berkshire states that it does not intend to guarantee any debt issued by Burlington Northern Santa Fe, LLC ("BNSF"), BHE or their subsidiaries, which would include MidAmerican, and is not committed to provide capital to support BNSF, BHE or any of their subsidiaries.

Below is an abbreviated organizational chart that illustrates the relationships between the parties:

Berkshire Hathaway  
    Berkshire Hathaway Energy Company  
        MidAmerican Funding LLC  
            MHC Inc.  
                MidAmerican Energy Company  
                    (Workers' compensation self-insured/petitioner)

8. MidAmerican requests that the commissioner accept the parental guarantee from MidAmerican Funding in lieu of a guarantee from its ultimate controlling parent Berkshire.

9. MidAmerican's ultimate controlling parent Berkshire and BHE have a long standing practice of not guaranteeing subsidiary obligations.

10. MHC, Inc. does have externally audited financial statements but is not rated by an independent credit agency.

11. MidAmerican Funding has externally audited financial statements and is rated by an independent credit agency. MidAmerican Funding has a net worth of \$6.76 billion as shown by its SEC Form 10Q (for the quarter period ending March 31, 2018).

12. On July 17, 2018, MidAmerican asserted that the information contained in this Order is accurate and reflects the current status of the company.

#### Summary of Law

13. Iowa Code section 87.14A (2017) provides that an employer that desires to be a workers' compensation self-insured may not do business in Iowa without first obtaining relief from insurance as provided in Iowa Code chapter 87.

14. Iowa administrative rule 191-57.5(1)(a)-(e) delineates the items that an applicant shall submit in its application for a certificate of relief from insurance. These items include, but are not limited to, the following provisions for which a waiver has been requested.

191 IAC 57.5(1) – An applicant for a certificate of relief from insurance shall submit a completed application to the division together with the following:

b. Parental guarantee from the ultimate controlling parent, if applicable.

15. The Division may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule only if the Division finds, based upon clear and convincing evidence, all of the following:

- a. Application of the rule would impose an undue hardship on the person for whom the waiver is requested;
- b. Waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
- c. Provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law;
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

191 IAC 4.24(1)

16. The Division's rules provide that "the burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the Division should exercise its discretion to grant a waiver from a Division rule." 191 IAC 4.30(2).

#### Criteria for Waiver

17. Undue Hardship

For the purpose of obtaining a certificate of relief from workers' compensation insurance requirements, MidAmerican has requested permission to accept a guarantee from MidAmerican Funding, in lieu of the ultimate corporate parent Berkshire.

At page K-52 of its 2017 Annual Report, Berkshire states that it does not guarantee the repayment of debt issued by BNSF, BHE or its subsidiaries which would include MidAmerican. In the event that the waiver is not granted, an effective historical practice of self insuring for the purposes of workers' compensation would end.

MidAmerican further argues that if it does not have the ability to self-insure for workers' compensation claims, it would face higher costs and would lose the ability to directly manage workers' compensation claims. If the company were to obtain commercial workers' compensation insurance, the insurance carrier would typically retain control over the administration of the claims. As a result, the connection between the injured employee and the employer would be lost and a third party unfamiliar with the employee, the work performed and personalities involved would be interjected into the

process. An insurance provider would also require the payment of a premium inclusive of a profit margin and this would be additional overhead now managed internally and cost-effectively at MidAmerican.

Given MidAmerican's history of satisfactorily managing and adjusting its workers' compensation claims and in light of the arguments made, it is reasonable for the Commissioner to accept MidAmerican Funding as the guarantor of MidAmerican's obligations as a workers' compensation self-insured in Iowa.

18. Prejudice of the rights of others

Granting of a waiver enabling MidAmerican to present a guarantee from MidAmerican Funding, pursuant to the Findings of Fact enumerated above, will not substantially prejudice the rights of others.

19. Statutory mandate

The rule from which MidAmerican seeks a waiver is not specifically mandated by statute or any other provision of law and, accordingly, may be waived by the Commissioner.

20. Protection of public health, safety, and welfare

In support of its application, MidAmerican has stated that:

It is a rate-regulated public entity subject to comprehensive regulatory authority of the Iowa Utilities Board. On March 11, 1999, the Iowa Utilities Board issued an Order Terminating Docket approving the proposed merger of CalEnergy Company, Inc. and MidAmerican Energy Holdings Company (Docket No. SPU-98-8). As a condition of the approval, the Iowa Utilities Board required that CalEnergy Company, Inc., MidAmerican Energy Holdings Company, and MidAmerican agree to certain standards and on-going reporting requirements to the Iowa Utilities Board addressing certain financial matters, including the capital structure of MidAmerican and affiliate relationships. The Order entered requires the following to be filed annually:

- All royalty agreements, licensing agreements, or other agreements and contracts entered into between MidAmerican Holdings,<sup>1</sup> and any other affiliate for the purpose of compensating for the use of intangible assets including, but not limited to, trademarks, trade names, and software systems;
- All operating agreements and intercompany administrative service agreements entered into by MidAmerican, MidAmerican Holdings, and any other affiliates;
- All new, revised, modified, or updated agreements related to bullet points numbers 1 and 2 above;
- Quarterly and annual financial statements for the holding companies that will consolidate the financial statements for the holding companies, MidAmerican, and all affiliates. In addition, all filings with the Securities and Exchange Commission, along with individual quarterly and annual financial statements for MidAmerican and all affiliates; and

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<sup>1</sup> MidAmerican Holdings is now Berkshire Hathaway Energy Company.

- MidAmerican annually files on or before March 1 its calculations relevant to the determination of MidAmerican's common equity levels.

Additionally, MidAmerican has stated that it will:

- Annually provide independent audited financial statements of MidAmerican Funding as part of the renewal package;
- Report material decreases in MidAmerican Funding's net worth to the Commissioner within 15 days of the decrease;
- Continue to directly employ MidAmerican employees;
- Remain subject to the regulation and oversight of the Iowa Utilities Board; and
- Provide a surety bond.

These assertions and the on-going commitments, monitored by the Iowa Utilities Board should provide adequate protection against the possibility of abrupt and unanticipated changes in the financial condition of MidAmerican during the course of a year.

Taking into account the assertions and the oversight provided by the Iowa Utilities Board and the fact that MidAmerican has secured a surety bond, the public health, safety, and welfare will not be substantially compromised or placed at risk as a result of the Commissioner granting the waiver requested in this case.

#### Order

IT IS HEREBY ORDERED that the requirement of 191 IAC 57.5(1)(b) is waived for Petitioner. This waiver is valid until the next renewal date of its certificate of relief from workers' compensation self-insurance. The waiver is conditioned upon MidAmerican's compliance with all of the following:

- A. MidAmerican Funding shall provide to the Commissioner annually, independently audited financial statements on or before June 1. These statements shall be submitted as part of the annual renewal package submitted to the Commissioner;
- B. MidAmerican Funding shall report to the Commissioner, material decreases in MidAmerican Funding's net worth within 15 days of the decrease;
- C. MidAmerican shall maintain a surety bond in an amount acceptable to the Commissioner as determined by the Iowa Insurance Division's actuary;
- D. MidAmerican Funding shall simultaneously copy the Commissioner with all notices to the Iowa Utilities Board outlined in paragraph 20; and
- E. The employees of MidAmerican will continue to be directly employed by MidAmerican and MidAmerican shall remain subject to regulation and oversight by the Iowa Utilities Board.

All other provisions of the Division's administrative rules remain applicable to MidAmerican.

Dated this 27<sup>th</sup> day of July, 2018.

Iowa Insurance Division



DOUG OMMEN  
Commissioner of Insurance

Cc:

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