

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: INQUIRY INTO BILL PAYMENT AGREEMENTS FOR ELECTRIC AND NATURAL GAS SERVICE	DOCKET NO. NOI-2014-0003
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**ORDER ADDRESSING RESULTS OF PAYMENT AGREEMENT INQUIRY
AND CLOSING DOCKET**

(Issued November 14, 2014)

BACKGROUND

On March 20, 2014, the Utilities Board (Board) issued an order opening an inquiry to collect information from electric and natural gas utilities concerning bill payment agreements entered into with residential customers during and after the most recent Winter Moratorium period, specifically from November 1, 2013, through May 1, 2014. In the March 20, 2014, order, the Board stated the extreme weather that occurred during the past winter had placed a strain on the budgets of individual customers and utilities and on the resources of private and government programs designed to help customers with natural gas and electric heating bills. The Board opened the inquiry with two primary goals: (1) to serve as a reminder of the Board's rules regarding payment agreements for residential customers, and (2) to collect data to provide a better understanding of the ability of the Board's rules to address some of the issues raised by extreme winter weather.

The March 20, 2014, order was sent to all municipal, cooperative, and investor-owned electric and natural gas utilities. All utilities were to file responses to the Board's inquiry with information about bill payment agreements entered into between November 1, 2013, and May 1, 2014. With help from the Iowa Association of Municipal Utilities (IAMU) and the Iowa Association of Electric Cooperatives (IAEC), the Board received responses from all municipal, cooperative, and investor-owned utilities.

On August 6, 2014, the Board issued an order in which the Board summarized the responses from the utilities and provided interpretations of the Board's payment agreement rules and level payment (budget billing) plan rules. The August 6, 2014, order was a major topic at the 19 Fall Meetings held by the Board's Customer Service staff throughout the state. The purpose of the Fall Meetings was to bring together the natural gas and electric energy utilities, Community Action Agency caseworkers, the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Iowa Legal Aid, legislative staff, and representatives of other agencies that offer energy assistance, to discuss topics related to energy utility service, low-income assistance, the winter disconnection moratorium, review of Board rules, and current complaint topics. This year the attendance was around 420 participants.

On August 19, 2014, Consumer Advocate filed a response to the August 6, 2014, order. In the response, the Consumer Advocate provided a sample of a

standard payment agreement used by the IAEC with revisions based upon the Board's interpretation of the payment agreement rules in the August 6, 2014, order.

On September 19, 2014, MidAmerican Energy Company (MidAmerican) filed a letter in lieu of a response to the August 6, 2014, order stating that it did not have any additional responses to the order.

On October 8, 2014, the IAMU filed a request for clarification of the Board's August 6, 2014, order. In the request for clarification, IAMU stated that "While IAMU has encouraged its members to follow the Board's rules as a model and has included the substance of the rules in our model gas and electric service tariff's, it is IAMU's contention that municipal gas and electric utilities are not required to do so. Board jurisdiction over municipal gas and electric utilities is limited by Iowa Code § 476.1B or as elsewhere stated in the Iowa Code. IAMU agrees that § 476.1B gives the Board jurisdiction over 'disconnection' issues as provided in § 476.20. However, it has never been IAMU's belief that level payment plan rules fell within that definition." IAMU requests that the Board clarify the issue of Board jurisdiction over level payment plans offered by municipal gas and electric utilities.

On October 16, 2014, Consumer Advocate filed a response to the IAMU request for clarification. Consumer Advocate disagrees with IAMU that the Board does not have jurisdiction over municipal level payment plans. Consumer Advocate states that the Board's level payment plan rules are related to disconnection and therefore are subject to Board jurisdiction. Consumer Advocate cites the Board's decision in Docket No. FCU-2013-0008 where the Board asserted jurisdiction over

deposits and, like deposits, level payment plans are related to disconnections to support its position. Consumer Advocate states that level payments plans are one method to help customers avoid disconnection by limiting the volatility of energy bills. Consumer Advocate states that the Board has established uniform rules that apply to all public utilities furnishing gas and electricity relating to disconnection of service and level payment plans are part of those disconnection rules.

On October 17, 2014, MidAmerican filed a motion to extend this inquiry to address further clarification of the payment agreement rules or, in the alternative, requests that the Board open a new inquiry to address whether payment agreements are written agreements within the definition of Iowa Code § 614.1(5) and whether the application of the statute of limitations to past due customer accounts conflicts with Iowa Code § 476.20(5)(b).

MidAmerican states that at the Fall Meetings Board staff indicated that Iowa Code §§ 614.1(4) and 614.1(5) are considered when determining whether a debt is uncollectable because of the statute of limitations in those statutory sections. MidAmerican points out that Board staff stated that Iowa Code § 614.1(5) establishes a ten-year statute of limitations when a debt is owed based upon a written contract and Board staff has required there to be an initial written application for service to meet the written contract requirement.

MidAmerican points out that Board staff does not consider a written payment agreement as a written contract that would begin the ten-year period under Iowa Code § 614.1(5). MidAmerican says that Board staff considers each complaint on a

case-by-case basis, but that Board staff takes the general position that a payment agreement is not a written contract for purposes of determining when the statute of limitations time period begins. MidAmerican states that Board staff will continue to take this position in most cases until the Board has issued an order specifically addressing this question. MidAmerican does not consider an individual complaint to be the proper proceeding to address this issue since the resolution of the issue will affect many other parties other than the two parties in an individual complaint proceeding.

On October 20, 2014, Consumer Advocate filed a response to MidAmerican's motion. Consumer Advocate does not support keeping this inquiry open as requested by MidAmerican. Consumer Advocate suggests that the issue of the application of the statute of limitations is beyond the scope of this inquiry and notice of consideration of this issue has not been made to the public.

Consumer Advocate states that this current inquiry was opened to collect information about payment agreements from all public utilities and to remind those utilities of the Board's rules on payment agreements. According to Consumer Advocate, the statute of limitations issue is not related to the Board's inquiry in this docket. Consumer Advocate states that it is up to the Board to determine what type of docket should be opened, if any, to address the issue raised by MidAmerican.

On October 27, 2014, IAMU filed a response to MidAmerican's request that the Board keep this inquiry open. In the response, IAMU stated that recent complaints raise larger issues regarding payment agreements, application of the

statute of limitations, and reinstatement of service in the instance of disconnection versus reinstatement of service at new premises. IAMU supports keeping this inquiry open for further discussion of these issues.

On November 3, 2014, Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills Energy), filed an additional response regarding payments agreements. In the additional comments, Black Hills Energy states that the current payment agreement rules are adequate and increase the probability of collection. Black Hills Energy does not support modification of the current rules.

Black Hills Energy also provided some statistical information regarding payments agreement for the years 2011 and 2012. Black Hills Energy states that it monitors success of payment agreements based upon length of the agreement, among other factors. Black Hills Energy states that the data collected shows that customer choice agreements, generally 60-day agreements, show a repayment rate of around 77 percent while 12-month agreements show a repayment rate of around 9 percent. Black Hills Energy states that budget billing combined with level payment plans is not a solution since customers who fail to complete established payment agreement terms are not eligible for budget billing. Black Hills Energy expresses concern that expanding the use of long term payment agreements will drive up uncollectible expense.

ISSUES RAISED CONCERNING BOARD PAYMENT AGREEMENT RULES

The primary issue raised at the Fall Meetings and in other discussions with utilities concerning the Board's payment agreement rules involves the requirement

that a customer who is not in default of a payment agreement and has not been disconnected from service for more than 120 days must be offered a 12-month payment agreement. In the August 6, 2014, order, the Board stated that the 12-month agreement is required to be offered to the customer "regardless of the customer's willingness to pay off a debt sooner." As described in the order and discussed at the Fall Meetings, some utilities offer shorter payment agreements, or no payment agreements when a customer indicates agreement to pay the debt in less than 12 months.

As stated by the Board in the order, and reiterated at the Fall Meetings, utilities who offer shorter payment agreements run the risk that the customer will not be able to make payments on the shorter agreement. Utilities were informed that complaints from customers with shorter than 12-month payment agreements who had defaulted on those shorter payment agreements could be found to have not complied with the Board's rules and the utility would be told to reconnect the customer and offer a 12-month agreement.

In the past, some utilities had customers sign a waiver when the customer requested a shorter term for the payment agreement to acknowledge their refusal of a 12-month payment agreement and these utilities wanted to continue this practice. Utilities were told that they could encourage the customer to pay the debt in less than 12 months; however, the customer's payment should be calculated as if the payments were made under the 12-month agreement. In other words, if a customer made several payments larger than the monthly payment amount the utility should

determine if the payments made were enough to cover the payments required for a 12-month agreement at the time of a default.

There were discussions by some of the smaller utilities that the utility's billing system would not accommodate the payment of a greater amount than was required by a 12-month agreement and any recalculation of a customer's debt would have to be done manually in those instances. The Board recognizes that requiring all first payment agreements be for 12 months may cause some additional work on the part of some utilities; however, the alternative is that customers are not given the benefit of the Board's 12-month payment agreement requirement and when a customer fails to meet the payments for a shorter agreement the customer is left without service or other recourse. The Board considers the 12-month payment agreement requirement to be the most reasonable balancing of the utility's and customer's interests. The August 6, 2014, order expresses the Board's position with regard to this issue; however, individual situations between a customer and a utility will be considered on a case-by-case basis.

There was also discussion from the utilities regarding the use of an up-front payment requirement as a condition of entering into a second payment agreement. Utilities want to be able to require more than the first installment and would prefer an up-front payment requirement on a first payment agreement in addition to the second payment agreement. The Board has considered this discussion; however, the Board is not prepared to propose changes to the payment agreement rules to adopt these changes at this time. The Board considers the current requirement of no up-front

payment for a first payment agreement to be reasonable and the requirement for one up-front payment for a second agreement to also be reasonable.

MidAmerican has requested the Board extend this inquiry to address the issue whether a payment agreement should be considered a written contract for purposes of Iowa Code § 614.1(5). In the alternative, MidAmerican requests the Board open a new inquiry to address the issue. IAMU supports the extension of this inquiry for further discussion of other issues.

The Board agrees with Consumer Advocate that this inquiry should not be extended to address a new issue that was not presented as an issue at the time the inquiry was initiated. There is too great a risk that this important issue might not be fully considered in the comments. The issue of the application of the statute of limitations to signed payment agreements will be addressed in a separate inquiry to allow for a full discussion of that issue.

ISSUES RAISED CONCERNING LEVEL PAYMENT PLANS

In the August 6, 2014, order, the Board addressed level payment plan rules because some utilities had not been complying with the Board's level payment plan rules, especially those rules that establish standards for re-computation of the level payment amount to be paid by the customer. In the order, the Board stated that a level payment plan is a method that allows customers to pay a flat amount that may be greater or lesser than the amount owed for actual usage each month so the customer can budget the cost of utility service. The Board stated that a level payment plan is designed to cover the costs of utility service over a 12-month period

rather than pay for actual usage each month. The Board pointed out that the rules require a utility to offer a level payment plan to all new customers and any eligible customer throughout the year. The rules allow a utility to calculate the monthly payment amount based upon historical as well as projected usage levels.

In the order, the Board pointed out that once the payment amount is set, the utility is required to re-compute the monthly payment amount annually, but may re-compute the monthly payment amount monthly or quarterly, or when the estimated usage differs by more than 10 percent from the monthly payment amount being charged. The method used to calculate the monthly payment amount is required to be described in the utility's tariff and a customer is to be notified at least one billing cycle in advance of a change in the monthly payment amount, unless the utility re-computes the monthly payment amount on a monthly basis. Whatever method the utility uses to recalculate the monthly payment, the balance is to be spread over the subsequent 12-month period.

As is evidenced by IAMU's position on the Board's jurisdiction over level payment plans implemented by municipal utilities, there were questions at the Fall Meetings about the Board's rules and municipal utility compliance with those rules. The discussions showed that municipal utilities offered level payment plans and re-computed a customer's monthly payment amount in a manner different than that required by Board rules. This issue appears to be an important issue for IAMU and the municipals and there was some concern that it was being added to the current

inquiry on payment agreements rather than being addressed as a separate issue in a separate docket.

The Board considers this issue to be of sufficient importance to be addressed in a separate inquiry. A separate inquiry will allow for a full consideration of the issue. Since the Board has also decided to open a new inquiry to address the issue of the statute of limitations discussed above, the Board will include the issue of jurisdiction over municipal level payment plans in the new inquiry. The Board may also address other issues concerning the Board's jurisdiction over municipal utilities in the new docket.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

The inquiry opened by the Utilities Board in Docket No. NOI-2014-0003 has been completed and Docket No. NOI-2014-0003 is closed.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 14th day of November 2014.