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**IOWA UTILITIES BOARD**  
**Customer Service**

Docket No.: NOI-2014-0003  
Utility: INQUIRY INTO BILL  
PAYMENT AGREEMENTS  
FOR ELECTRIC AND  
NATURAL GAS SERVICE

File Date/Due Date: March 20, 2014/N/A

Memo Date: October 28, 2014

**TO:** THE BOARD

**FROM:** Jane Whetstone, Cecil Wright

**SUBJECT:** Final Report on Payment Agreement Notice of Inquiry

**I. Background**

On March 20, 2014, the Utilities Board (Board) issued an order that opened 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 that 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.

In the March 20, 2014, order, the Board directed the Records and Information Center to send the order 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. The responses were due June 1, 2014.

The Board received responses from all municipal, cooperative, and investor-owned utilities as requested. The Iowa Association of Municipal Utilities and the Iowa Association of Electric Cooperatives have provided assistance in contacting the members of their respective organizations and explaining the type of information the Board requested.

On August 6, 2014, the Board issued an order in which it summarized the responses from the utilities and provided interpretations of the Board's payment agreement rules and level payment plans (budget billing rules).

In September 2014, Board Customer Service Coordinator, Jane Whetstone conducted 19 meetings with Community Action Agencies (CAAs) and utilities (known as the Customer Service Fall Meetings) to discuss the Board's rules and recent developments regarding those rules. A major topic at the Fall Meetings was the information obtained through the Notice of Inquiry (NOI) and the interpretation of the Board's payment agreement rules provided by the Board in the August 6, 2014, order. There was also some discussion about level payment plans, as well as other topics of interest to the CAAs and utilities.

On August 19, 2014, Consumer Advocate Division of the Department of Justice (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 Iowa Association of Electric cooperatives 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 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 Iowa Association of Municipal Utilities (IAMU) filed a request for clarification of the Board's August 6, 2014, order. In the request for clarification, IAMU states 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 Section 476.1B or as elsewhere stated in the Iowa Code. IAMU agrees that Section 476.1B gives the Board jurisdiction over "disconnection" issues as provided in Section 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. 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 NOI docket to address further clarification of the payment agreement rules or, in the alternative, requests that the Board open a new NOI docket 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 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 states that Board staff does not consider a written payment agreement as the required written contract that would begin the ten-year period under Iowa Code § 614.1(5). MidAmerican points out that Board staff does consider the facts of each case but staff has taken the general position that a payment agreement is not a written contract for purposes of determining when the statute of limitations has run. MidAmerican points out 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 besides the two parties in the complaint.

On October 20, 2014, Consumer Advocate filed a response to MidAmerican's motion. Consumer Advocate does not support keeping this NOI docket 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 NOI and notice of consideration of this issue has not been made to the public.

Consumer Advocate states that this current NOI was 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 to allow further discussion whether payment agreements are written contracts for purposes of the statute of limitations. IAMU states 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.

## **II. Board Bill Payment Agreement Rules**

The Board rules applicable to bill payment agreements can be summarized as follows:

### **Natural Gas Service 199 IAC 19.4(10) and Electric Service 199 IAC 20.4(11)**

- a. A residential customer who cannot pay a bill for natural gas or electric service and who is not in default of payment agreement with the utility shall be offered an opportunity to enter into a reasonable payment agreement.
- b. The residential customer's current household income, ability to pay, payment history, the size of the bill, the length of time the bill has been outstanding, and any special circumstances creating extreme hardship within the household, are to be considered in determining a reasonable agreement.
- c. Terms of payment agreements.
  - (1) If a residential customer has received a disconnection notice or has been disconnected from service for 120 days or less and the customer is not in default of a payment agreement, the utility is required to offer the customer a minimum of a 12-month payment agreement. If a customer has been disconnected from service for more than 120 days, the utility is required to offer the customer a payment agreement of a minimum of six months. The payment agreement shall also require the payment of the current bill or the utility may require the customer to enter into a level payment plan to pay the current bills.
  - (2) If the customer defaults on the first payment agreement, the utility is required to offer the customer a second payment agreement of at least the same length or longer as the first payment agreement as long as the customer has made two full consecutive payments under the first payment agreement. The customer will be required to pay for current service as part of the second payment agreement and the utility may require the customer to make the first payment under the second payment agreement up-front as a condition of entering into the second payment agreement.

## **III. Issues Raised Concerning Board Payment Agreement Rules**

### **A. Payment Agreements**

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

of 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 as 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 only offer a shorter payment agreement 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 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 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 the default.

There were discussions by some of the smaller utilities that the utility's billing system would not accommodate the payment of more than was required by a 12-month agreement and any recalculation of a customer's debt would have to be done manually in these instances. Staff recognizes that requiring that 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. Staff believes the Board's 12-month payment agreement requirement is the most reasonable balancing of the utility's and customer's interest and believes the Board should confirm the position stated in the August 6, 2014, order in the final order in this docket.

There was also discussion from the utilities regarding the up-front payment requirement from the customer to pay as a condition of entering into a second payment agreement. Utilities wanted 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.

## **B. Level Payment Plan Issues**

In the August 6, 2014, order, the Board rules regarding level payment plan rules have not been followed correctly by some utilities, especially those rules that establish standards for re-computation of the level payment amount required to be paid by the customer. In the order, the Board stated that a level payment plan, or budget billing, is a method that allows customers to pay a flat amount that may be greater or lesser than the amount owed for actual usage in any particular 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 recompute 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 recomputes the monthly payment amount on a monthly basis. Whatever method the utility uses to recalculate the monthly payment, the balance is to 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 recomputed a customer's monthly payment amount differently than 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 added to the NOI on payment agreements rather than being addressed as a separate issue.

Staff believes the issue of the Board's jurisdiction over the level payment plans offered by municipal utilities and the proper calculation of monthly payments under a level payment plan should be addressed more fully in a separate NOI. Staff recommends the Board open an NOI on this question. In addition, the Board may want to include a fuller discussion in the NOI addressing the extent of the Board's jurisdiction under the provisions of Iowa Code § 476.1B.

If the Board agrees that an NOI should be opened to address whether the Board's level payment plan rules apply to municipal utilities, staff will prepare a

separate memorandum to open that docket. Staff will in that memorandum suggest other issues that the Board may want to address with regard to jurisdiction over municipal utilities.

#### **IV. Fall Meetings**

This year the Fall Meetings were held at 19 various venues around the state. The purpose of the Fall Meetings are to bring together the energy utilities, Community Action Agency (CAA) caseworkers, OCA, Iowa Legal Aid, legislative staff members, and other various agencies that offer energy assistance, and to discuss topics related to energy service, low-income assistance, the winter disconnection moratorium, review of Board rules, and current complaint topics. This year the attendance was approximately 420 participants.

In addition to the discussion on payment agreements, level payment plans, and statute of limitations, other topics brought up by the participants included

- Utility scams
  - Several utilities shared current situations and what to watch out for to avoid scams.
- 30-day medical stay
  - Utilities continue requesting a list of acceptable medical issues.
- Weatherization process explained in detail and how renters are able to quality.
- Online billing and if utilities will have the ability to send disconnect notices through electronic mail.
- Clarification on leaving disconnect attempt messages on answering machines or with parties other than the customer of record.
- General information on advance metering infrastructure (AMI) and prepaid meters.
- Concerns on how some utilities transfer service without talking to both the old and new parties. Community Action Agencies received complaints about this practice.
- Discussion between Community Action Agencies and utilities on some of their processes.
  - Outsourcing of Low Income Home Energy Assistance Program (LIHEAP) applications.
  - How crisis funds and LIHEAP payments are applied to accounts.
  - Delays in receiving LIHEAP payments.
- General discussion on the state offset program available to municipal utilities.
- General discussion on deposit calculations and interest amounts.

## **V. IAMU Request**

IAMU requests clarification of the Board's August 6, 2014, order in which the Board addressed level payment plans. IAMU contends that the Board's rules establishing requirements for level payment plans do not apply to municipal utilities because level payment plans are not related to the disconnection of natural gas or electric utility service. IAMU asserts that Board jurisdiction over municipal gas and electric utilities is limited by Iowa Code Section 476.1B or as elsewhere stated in the Iowa Code. IAMU agrees that Section 476.1B gives the Board jurisdiction over "disconnection" issues as provided in Section 476.20; however, IAMU expresses the opinion that level payment plan rules do not fall within the definition of "disconnection."

Consumer Advocate disagrees that level payment plans are not part of the definition of "disconnection" and therefore subject to Board jurisdiction.

Staff believes that any further discussion of the Board's jurisdiction over level payment plans provided by municipal utilities should be considered in a separate NOI. The Board's discussion of level payment plan rules in the August 6, 2014, order was for clarification purposes and was not related to the central purpose of the NOI. Rather than extend the current NOI for a purpose beyond the original scope of the inquiry, staff believes the Board should open a separate NOI to address the issue of the Board's jurisdiction over level payment plans offered by municipal natural gas and electric utilities.

## **VI. MidAmerican Request**

MidAmerican has requested the Board extend this NOI 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 NOI to address the issue. IAMU supports the extension of this inquiry for further discussion of other issues.

Staff agrees with Consumer Advocate that this NOI should not be extended to address a new issue that was not presented as an issue at the time the NOI was initiated. Staff believes the issue of the application of the statute of limitations to signed payment agreements should be addressed in a separate docket. If the Board agrees, staff believes the Board can open a new NOI for the purpose of addressing the statute of limitations issue, the jurisdiction over level payment plans offered by municipal utilities, and other issues related to jurisdiction over municipal utilities.



## Recommendation

Board staff recommends the Board directs General Counsel to prepare for Board review an order that discusses the issues described in this order, closes Docket No. NOI-2014-0003, and directs staff to prepare a separate memorandum opening an NOI addressing level payment plans and municipal utilities, the statute of limitations issue, and other issues related to jurisdiction over municipal utilities.

### RECOMMENDATION APPROVED IOWA UTILITIES BOARD

### IOWA UTILITIES BOARD

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| <u>/s/ Elizabeth S. Jacobs</u> | <u>11-4-14</u> |
|                                | Date           |

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|------------------------|----------------|
| <u>/s/ Nick Wagner</u> | <u>11/4/14</u> |
|                        | Date           |

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| <u>/s/ Sheila K. Tipton</u> | <u>11/4/2014</u> |
|                             | Date             |