FILED WITH
Executive Secretary
January 12, 2015
IOWA UTILITIES BOARD

STATE OF IOWA

DEPARTMENT OF COMMERCE

BEFORE THE IOWA UTILITIES BOARD

In RE: Application of the Statute of Limitations to Debts Owed by Customers for Natural Gas and Electric Service and Utilities Board Jurisdiction over Municipal Utility Level Payment Plans	DOCKET NO. NOI-2014-0004

The Iowa Association of Municipal Utilities (IAMU) appreciates the Iowa Utilities Board (Board) opening this Inquiry for the purposes of addressing issues that are important to all utilities but in particular, municipal electric and gas utilities. The Board asked participants three questions and invited additional issues to be raised for Board consideration.

1. Whether level payment plans relate to disconnection of natural gas and electric service under the provisions of Iowa Code § 476.20(3) (a) and other applicable provisions in Iowa Code § 476.20.

On March 20, 2014, the Board opened an Inquiry to collect information from all utilities concerning bill payment agreements entered into during the most recent winter moratorium period. Responses were due June 1, 2014. IAMU was a full participant in the payment plan agreement inquiry, including utilizing association resources and staff to assist and ensure that members complied with Board questions in a timely manner. IAMU and its members recognized the jurisdiction of the Board over payment plan agreements and agreed that such agreements relate specifically to disconnection of service – as they are required to be offered prior to disconnection.

On October 8, 2014, IAMU filed a request for clarification on the issue of whether municipal gas and electric utilities are subject to Board rules in relation to level payment plans.[1] This request

[1] IAMU Request for Clarification, Docket No. NOI-2014-0003.
https://efs.iowa.gov/cs/groups/external/documents/docket/mdaw/mju5/~edisp/259501.pdf

was precipitated by verbiage in an August 6, 2014 Board order stating that "some utilities are not following the Board's rules with regard to procedures established for level payment plans…"[2]

At that time, IAMU stated and it remains the case that IAMU's members are encouraged to follow the Board's level payment plan rules as a model and to include the provisions of the rule in the utilities' respective service rules. However, IAMU has advised its members that they are not subject to Board regulation on this particular issue.

In the Order creating this docket, the Board specifically asked "[w]hether level payment plans relate to disconnection of natural gas and electric service under the provisions of Iowa Code § 476.20(3) (a) and other applicable provisions in Iowa Code § 476.20." **IAMU asserts that the answer is that level payment plans do NOT relate to disconnection of gas or electric service and therefore, municipal utilities are not subject to Board jurisdiction.**

To determine whether the Board has jurisdiction over level payment plan rules, it is necessary to find that "level payment plans" are related to "disconnection".

Board jurisdiction in relation to rules adopted depends on an interpretation of the term "disconnection." If a statutory definition or an established meaning in the law is not provided, words are to be given their ordinary and common meaning by considering the context within which they are used.[3] Merriam Webster online Dictionary[4] describes the term "disconnection" as a noun – with the verb meaning either to "separate (something) from something else : to break a connection between two or more things" or "to stop or end the supply of electricity, water, gas, etc., to (something, such as a piece of electronic equipment)".

Level payment plans are a form of budget billing available to all customers. Level payment plan rules regulate a separate and distinct payment and billing arrangement and are not in and of themselves related to disconnection. Many customers request level payment plans in the

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[2] IUB Order, Docket No. NOI-2014-0003 at p. 7.
https://efs.iowa.gov/cs/groups/external/documents/docket/mdaw/mjq0/~edisp/244008.pdf
[3] IUB Order, Docket No. FCU-2013-0008, Sept. 9, 2013 at p. 12-13, citing State v. Wiederien, 709 N.W. 2d at 541.
[4] http://www.merriam-webster.com/dictionary/disconnection

ordinary course of their business with the utility and not because their payments are not current. A level payment plan must be offered to "each eligible customer when the customer initially requests service", must "allow for entry into the level payment plan anytime during the calendar year" and must allow a customer to request termination at any time. [5] Clearly, a customer can request a level payment plan arrangement on the first day of service, at any point during the service and can ask to discontinue the same at any time. There is no relation to a customer being "disconnected" for non-payment or anticipation in the rules that the level payment plan provisions would only apply in reference to past due accounts or disconnection. In fact, if a payment amount due per a level payment plan is not made by the customer and the bill is more than 30 days past due, the utility may proceed to terminate the level payment plan and the customer would be subject to the same collection and disconnection procedures as other delinquent accounts that are not participating in a level payment plan. At such a point, disconnection would be at play and then the customer would be allowed to enter into a payment plan agreement to address the past due balance.

Level payment plan rules are included within 199 IAC 20.4(12) under "Bill Payment Terms". This is a separate section from payment plan agreements which are provided in 199 IAC 20.4(11). If level payment plan rules were intended to be a subset of the payment plan rules, they should have been included within the specific provisions of the rules that provide for payment plan requirements.

Office of Consumer Advocate Arguments. The OCA argued in its Response to IAMU's Request for Clarification that level payment plans are related to disconnection because the Board requires level payment plans as a way to help customers avoid disconnection by staying current with their bills.[6] The OCA cites as an example of this intent that "level payment plans should be designed to limit the volatility of a customers' bills and maintain reasonable account balances." Indeed, the OCA states that level payment plans are an instrumental part of the disconnection rules. As stated earlier, IAMU disagrees with this very broad interpretation of what is related to "disconnection" and disagrees that level payment plan rules are related to disconnection. In

[5] Pursuant to 199 IAC 20.4(12)(e)
[6] Response of the Office of Consumer Advocate, Docket No. NOI-2014-0003, filed October 16, 2014.

fact, many consumers prefer level payment plans or "budget billing" for the very reason that it limits volatility in utility bills and provides predictability in determining monthly budgets. This has little to do with an after the fact failure to pay the bill.

OCA cites to the Board decision in FCU-2013-0008 whether "deposits" were related to disconnection. In that case, the decision was based upon an interpretation of § 476.20(5) and the term "all public utilities".

Using OCA's logic, a broad definition of disconnection would include ratemaking as clearly the imposition of high rates could lead to a failure to pay and ultimately to disconnection.

The Legislature did not intend that in cases of ambiguity, the Board's presumption would be to regulate municipal utilities. In general, Iowa Code § 476.1B gives the Board jurisdiction over municipal electric and gas utilities in each of the instances listed in that section of the Code and elsewhere in the Code only when specifically stated.[7] Clearly, the Legislature did not intend for

[7] 2014 Iowa Code section 476.1B states as follows:
476.1B Applicability of authority — municipally owned utilities.
1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:
a. Assessment of fees for the support of the division and the office of consumer advocate, as set forth in section 476.10.
b. Safety standards.
c. Assigned areas of service, as set forth in sections 476.22 through 476.26.
d. Enforcement of civil penalties pursuant to section 476.51.
e. Disconnection of service, as set forth in section 476.20.
f. Discrimination against users of renewable energy resources, as set forth in section 476.21.
g. Encouragement of alternate energy production facilities, as set forth in sections 476.41 through 476.45.
h. Enforcement of section 476.56.
i. Enforcement of section 476.66.
j. Enforcement of section 476.62.
k. Assessment of fees for the support of the Iowa energy center created in section 266.39C and the center for global and regional environmental research created by the state board of regents.
l. Filing energy efficiency plans and energy efficiency results with the board. The energy efficiency plans as a whole shall be cost-effective. The board may permit these utilities to file joint plans. The board shall periodically report the energy efficiency results including energy savings of each of these utilities to the general assembly.
m. An electric power agency as defined in chapter 28F and section 390.9 that includes as a member a city or municipally owned utility that builds transmission facilities after July 1, 2001, is subject to applicable transmission reliability rules or standards adopted by the board

municipal utilities to be regulated unless it was clearly otherwise stated in the Code. If the Legislature intended for the Board to err on the side of regulation and have broad authority over municipal utilities, the Code section could have been written to provide for the opposite presumption, i.e., that "municipal utilities are subject to all regulation" and then recite the list of specific regulation .[8] Given this clear legislative intent, in cases of ambiguity, the presumption should be against imposing additional regulation.

2. Whether and under what circumstances, a written payment agreement should be considered a written contract for purposes of calculating the ten-year statute of limitations established in Iowa Code § 614.1(5).

Iowa Code § 4.1(39) defines the term "written" for purposes of interpreting other statutory references in the Code to mean:

> 39. Written — in writing — signature. The words "written" and "in writing" may include any mode of representing words or letters in general use, and include an electronic record as
> defined in section 554D.103. A signature, when required by law, must be made by the writing
> or markings of the person whose signature is required. "Signature" includes an electronic
> signature as defined in section 554D.103. If a person is unable due to a physical disability to
> make a written signature or mark, that person may substitute either of the following in lieu
> of a signature required by law:

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for those facilities.
n. Filing alternate energy purchase program plans with the board, and offering such programs to customers, pursuant to section 476.47.
2. The board may waive all or part of the energy efficiency filing and review requirements for municipally owned utilities which demonstrate superior results with existing energy efficiency efforts.
3. Unless otherwise specifically provided by statute, a municipally owned utility providing local exchange services is not subject to regulation by the board under this chapter except for regulatory action pertaining to the enforcement of sections 476.11, 476.29, 476.95, 476.96, 476.100, 476.101, and 476.102

[8] See as an example, 2014 Iowa Code section 476.1A which subjects electric cooperatives to Board jurisdiction on all issues other than rate regulation. In fact, both Iowa Code sections 476.1A and 476.1B were initially enacted in the same legislative session and included within the 1986 Acts.

a. The name of the person with a disability written by another upon the request and in the
presence of the person with a disability.
b. A rubber stamp reproduction of the name or facsimile of the actual signature when adopted by the person with a disability for all purposes requiring a signature and then only
when affixed by that person or another upon request and in the presence of the person with
a disability.

According to this definition, a payment agreement is a written contract, signed by the customer and acknowledging a debt is owed to the utility. Clearly, a payment agreement which is in written form and contains the signature of the customer that a debt is owed is a "written" document for purposes of determining whether a document is a written contract.

In *Muscatine Water Works v. Muscatine Lumber Company* 52 N.W. 108 (Iowa 1892) the court held that a company which signs a document to receive water service, and receives the water service, even though no one for the water works signs the agreement, has a written contract and the company is required to pay for the service. It is manifest that signing up for utility service creates a written contract to which the ten year statute applies.

3. Whether statutes of limitations established in Iowa Code §§ 614.1(4) and 614.1(5) are applicable to debts for natural gas or electric service under Board jurisdiction pursuant to Iowa Code chapter 476.

Provisions of Iowa Code section 614.1(4) and 614.1(5) are not relevant to the IUB's determination as to whether a debt exists and is owed to a utility. These provisions are a matter of civil debt collection and the references to "actions … brought" related to actions brought for enforcement of the debt owed in a judicial proceeding.

Iowa Code §476.20(5) (b) specifically allows a utility to require payment of a past due debt prior to reinstating service. It can be assumed that if the legislature intended to limit the collection of past due debt to the terms used in §614, they could have done so. Requiring payment of a prior debt before reinstatement of service is a distinctly different action than bringing an action to enforce a debt in civil court. IAMU does not contend that a utility could bring "an action" to judicially collect a debt if it were past the appropriate statute of limitations. However, for

municipal utilities it is in the interest of the other ratepayers to assume that a bad debt must be paid prior to reinstatement of service. Otherwise, the remaining ratepayers must bear the burden of the bad debt.

Additional Issues for Board Consideration. IAMU requests that this Notice of Inquiry be expanded to address additional issues in relation to Board jurisdiction over municipal utilities.

1. Over the past two years, some individual complaints have been lodged against municipal gas and electric utilities stating that municipal utilities were not following Board rules in regard to various issues. The Board determined in its proceedings on these complaints that it has jurisdiction over municipal utility deposits and the imposition of late payment fees, with the basis for that authority being an expanded interpretation of "disconnection". IAMU requests that the Board advise IAMU of the parameters of the Board's interpretation of "disconnection". At this point, it appears that the definition of "disconnection" as it is being interpreted in these recent proceedings encompasses or could potentially encompass many of the activities that municipal utilities view as a normal conducting of business and gravely impacts local control over the management of municipal electric and gas utilities. This incremental expansion of Board regulation over municipal gas and electric utilities disrupts 28 years of interpretation of the statutes, and creates confusion as to the appropriate course of action and the legal consequences.[9]

2. On October 27, 2014, IAMU filed and asked that the issue of reinstatement of service be addressed in NOI-2014-0003. The reason for this request was that business practices of municipal utilities as a whole were being implicated in an individual complaint proceeding involving one municipal electric utility. When NOI-2014-0004 was filed on November 4, 2014, that additional issue was not included. However, on December 5, 2014, this particular municipal electric utility received a notification from Board staff denying the utility's request for a formal proceeding on the complaint and instead directing the utility to provide comments in this NOI. The issue is whether the Board can require the

[9] Iowa Code section 476.1B was added to the Iowa Code in the 1986 legislative session. See 71 Iowa Acts ch. 1039.

reinstatement of service and require a payment plan agreement for a customer who has not had service for several years and still has an outstanding debt owed the utility.

Municipal utilities rely on two Iowa Code sections to support the position that service does not have to be provided, let alone a payment agreement for payments on a years old past due bill. Iowa Code section 384.84(3) (d)(1) specifically allows a city to withhold service from an account holder who requests service at a new premise until such time as the delinquent amount owed is paid. As noted earlier, Iowa Code section 476.20(5)(b) provides that a public utility can require payment of a customer's past due account with the utility prior to reinstatement of service. It is in the public interest that debts owed to municipal utilities be paid before service is reinstated. As stated earlier, the remaining ratepayers are responsible for payment of the bad debt created by another customer.

Respectfully Submitted

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