STATE OF IOWA

DEPARTMENT OF COMMERCE

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

ORDER ADDRESSING ISSUES RAISED IN INQUIRY

(Issued September 4, 2015)

On December 3, 2014, the Utilities Board (Board) issued an order in Docket No. NOI-2014-0004 opening an inquiry into issues regarding customer service raised by the participants in a previous inquiry. Docket No. NOI-2014-0003, re: Inquiry into Bill Payment Agreements for Electric and Natural Gas Service, issued November 14, 2014. One issue, raised by MidAmerican Energy Company (MidAmerican), was whether a payment agreement for a past due debt is a written agreement for purposes of application of the ten-year statute of limitations in Iowa Code § 614.1(5). The second issue, raised by the Iowa Association of Municipal Utilities (IAMU), was the extent of the Board's jurisdiction over municipal natural gas and electric utilities' level payment plans.

In the December 3, 2014, order, the Board established dates for filing initial and reply comments. On January 12, 2015, initial comments were filed by

MidAmerican; IAMU; the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (BHE); Interstate Power and Light Company (IPL); and the Iowa Association of Electric Cooperatives (IAEC).

On February 2, 2015, OCA, MidAmerican, and IPL filed reply comments. On February 6, 2015, Iowa Legal Aid (Legal Aid) filed comments.

On March 5, 2015, the Board issued an order scheduling a workshop for April 8, 2015, to allow for further discussion of the issues raised in this inquiry. On March 30, 2015, the Board issued an order with an agenda for the workshop.

The workshop was held as scheduled. IAEC, IPL, Atlantic Municipal Utilities, Mt. Pleasant Municipal Utilities, IAMU, Muscatine Power & Water, the city of Pella, the city of Waukee, MidAmerican, Legal Aid, Liberty Energy (Midstates) Corp. d/b/a Liberty Utilities (Liberty), Cedar Falls Utilities (CFU), OCA, BHE, and the Iowa Utility Association, attended the first session of the workshop.

OCA, CFU, IAMU, Mt. Pleasant Municipal Utilities, Muscatine Power & Water, Atlantic Municipal Utilities, and the city of Pella attended the second session.

On May 8, 2015, the Board issued an order establishing dates for additional comments. On May 26, 2015, OCA, IAMU, Legal Aid, BHE, and MidAmerican filed additional comments. IPL and IAEC filed letters instead of comments.

On June 11, 2015, MidAmerican, OCA, and Legal Aid filed additional reply comments. IPL filed a letter in lieu of reply comments. In the letter, IPL states it does

not have any additional comments; however, IPL reserves the right to address any new information provided by other comments.

On July 10, 2015, the Board held an open meeting to allow the Board Members to discuss the issues and ask questions of Board staff about some of the issues in this inquiry. In the meeting, the Board indicated that interested persons would be given an opportunity to provide comments to address the issues discussed by the Board during the meeting.

On July 10, 2015, the Board issued an order establishing a date for comments to be filed addressing the Board's discussion at the open meeting. MidAmerican, OCA, IAMU, IAEC, and IPL filed comments in response to the July 10, 2015, order.

In previous orders, the Board has summarized the comments filed by participants. The additional comments filed in response to the open meeting held by the Board on July 10, 2015, were similar to those previously summarized. Rather than include a summary of all of the comments made during this inquiry, the Board will address the issues raised by the participants and include those comments that the Board finds necessary to address to reach the decisions.

LIMITATIONS ON PAYMENT OF PAST DUE DEBT

A. Iowa Code § 476.5

The electric and gas utilities have argued that allowing a person to have service reinstated while owing a past due debt to the utility places a burden on other customers who have paid for service at the approved rate and may also be

discriminatory against those other customers. The utilities argue that this policy issue should be addressed prior to the Board addressing whether a limitation on denial of reinstatement for a past due debt should be established.

Iowa Code § 476.5 states that "No public utility subject to rate regulation shall directly or indirectly charge a greater or less compensation for its services than that prescribed in its tariffs, and no such public utility shall make or grant any unreasonable preferences or advantages as to rates or services to any person or subject any person to any unreasonable prejudice or disadvantage." This provision underlies utility rate regulation since a utility is required to have rates for electric, natural gas, and water utility service approved by the Board and those rates are included in the utility's tariff and available to the public. A utility may establish different classes of service that are charged different rates; however, each of the rates charged must be approved as just and reasonable.

Recognizing that the above provision is the underpinning of rate-regulated utility service, the Board does not consider that the statute prevents the Board from establishing limits on the denial of service for a past due debt. Statutory provisions in a chapter, such as those in Iowa Code chapter 476, must be interpreted so that the provisions in each section can be implemented. Iowa Code § 476.5 may limit a utility's ability to give special treatment that reduces or increases the rates or charges paid by a customer; however, Iowa Code § 476.20 establishes limitations on the

disconnection of utility service, even if the person has not paid for gas or electric service.

The provisions in Iowa Code § 476.20 are a statutorily-created exception to the requirements to pay tariffed rates for service in Iowa Code § 476.5. If interpreted as the utilities suggest, then the provisions in Iowa Code § 476.20 could not be implemented. In addition, the language in Iowa Code § 476.5 prohibits "unreasonable preferences or advantages as to rates or services" and providing for limitations on the period of time within which a utility may collect for a past due debt is not an unreasonable preference or advantage given to the customer who owes the debt. Limitations on the collection of past due debt have received legislative approval in the statute of limitations provisions of Iowa Code § 614.1.

This issue is similar to an issue addressed by the Iowa Court of Appeals regarding back billing for electric use. Interstate Power Company v. Waukon Maner, Inc., 447 N.W.2d 574, 575 (Ct. of App. Iowa 1989). In addressing the language in Iowa Code § 476.5 prohibiting unreasonable preferences, prejudice, or disadvantage, the Court held that "If the statute is read to require the collection of all undercharges regardless of whether a mistake has occurred, or the degree of harm suffered, then the last part of the paragraph is rendered meaningless." Id. The Court went on to state: "We hold that the provisions of Iowa Code section 476.5 that 'no such public utility shall subject any person to any unreasonable prejudice or disadvantage' is an exception to absolute liability and absolute duty to assess the rate in question."

The Court's holding in the Interstate Power Company case is applicable to the arguments made by the utilities. In this case the exceptions to the requirement that a customer pay the tariffed rate are established by statute or are based upon rules adopted by the Board as required by statute. Requiring a customer to always pay the tariffed rate regardless of the age of a past due debt would render the exceptions to that requirement meaningless. Disallowing denial of service for a time-barred debt is not an unreasonable preference.

The Board understands that utilities must recover amounts owed and not paid by some customers from other customers. Rate-regulated utilities are provided a bad debt allowance in rates to cover these unrecovered costs while municipal utilities and cooperatives adjust rates to other customers in similar fashion to recover these costs. Regardless of the effect on the rates paid by other customers, the Legislature has established requirements for the Board to adopt rules that limit the ability of a utility to deny service to a customer in some instances. The Board has adopted rules that balance (a) the statutory provisions that apply to those customers who are unable to pay a past due debt and (b) need gas or electric service and a utility's need to recover the cost of providing that service.

B. Limitations on Collection of Past Due Debt

The utilities have argued that Iowa Code chapter 476, rather than Iowa Code § 614.1, controls the provision of gas and electric service by public utilities and that the Board's authority to place a limit on reinstatement of gas or electric service for a

customer who owes a past due debt is regulated by Iowa Code § 476.20(5)(b). The utilities argue this latter statutory section controls whether a utility may deny service to a person who owes the utility a past due debt and Iowa Code § 614.1 should not apply to past due debt owed for gas or electric service.

Even though the Board has previosly held that the statute of limitations applies to debts owed for electric or gas service in the Lorenzen case, the utilities argue that the Lorenzen decision is not binding precedent and the Board should not follow that decision when addressing this issue in this inquiry. See, Docket No. C-87-11, In re: Lorenzen v. Iowa-Illinois Gas and Electric Company, "Order Denying Request to Set Aside Staff Proposed Resolution and Commence Formal Proceedings" issued August 25, 1987. In informal complaint investigations involving denial of service for a past due debt, Board staff has followed the Lorenzen decision and applied the statute of limitations found in Iowa Code §§ 614.1(4) and 614.1(5) to utility efforts to collect old debts by denying service.

Upon further review of this issue, the Board finds that the Lorenzen decision should not be followed. The language of §§ 614.1(4) and 614.1(5) appears to be limited to legal actions brought to collect a debt. However, Iowa Code chapter 476 provides the Board with the authority to determine if there are limits on debt collection by utilities and how long those limits should be. Iowa Code § 476.2 states that the Board shall have "broad general powers to effect the purposes of this chapter

(chapter 476)" and the Board shall establish "all just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties…"

The Board is then granted specific authority to promulgate rules, pursuant to Iowa Code § 476.20(3)(a), "which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service." This provision applies to regulated utilities, municipal utilities, cooperatives, and unincorporated villages that own their own distribution systems. The Board is also given specific authority to promulgate rules, Iowa Code § 476.20(5), "which shall be uniform with respect to all public utilities furnishing gas or electricity relating to deposits which may be required by the public utility for the initiation or reinstatement of service." (Emphasis added).

The general authority granted the Board in Iowa Code chapter 476 and the specific authority in Iowa Code § 476.20 supports the Board's decision that chapter 476 controls whether a customer can be denied service after a certain time period rather than Iowa Code § 614.1. Public utilities are limited by Iowa Code § 614.1 from collection of past due debt through court action; however, the provisions in Iowa Code chapter 476 control whether the Board may establish a time limit for denial of service for a past due debt.

Since the Board has interpreted chapter 476 to provide the authority over establishment of time limitations on collection of past due debt, the Board will need to address the relationship of Iowa Code §§ 476.20.(5)(b), 476.20(3)(a), and

476.20(5)(a). This relationship is addressed in more detail below. For purposes of the Board's authority pursuant to Iowa Code chapter 476, an interpretation that Iowa Code § 476.20(5)(b) allows a public utility to deny service regardless of the age of a debt for natural gas or electric service would give utilities greater power over collection of debts than any private sector company and could allow a utility to effectively limit a customer's ability to ever live within that utility's service territory. Private sector companies cannot pursue court action for debts past the statute of limitations and denial of service by public utilities should be subject to similar limitations. Limitations on private companies from pursuing past due debt have been established to prevent court action based upon stale incomplete information and faulty memories and similar concerns support limitation of denial of service for past due debt to a public utility.

The interests of customers and utilities need to be balanced so that utilities are able to recover past due debt while customers are not indefinitely denied service. This balancing is especially necessary since gas and electric utilities have monopolies and natural gas and electric service are essential to the quality of life of Iowa residents. Allowing utilities to deny service to a customer no matter the age of a past due debt would give utilities a powerful collection tool not available to any other business and would unfairly prejudice Iowa residents. A reasonable time limit on denial of service for a past due debt will balance the interests of utilities and customers.

As discussed in the section addressing Iowa Code § 476.20(5)(b) below, the Board does not interpret Iowa Code § 476.20(5)(b) to prohibit the Board from establishing limits on the collection of past due debts owed by utility customers. Past due debt for natural gas and electric service suffers from the same infirmities as other private debt and a reasonable limitations is necessary for the same reasons. See Schulte v. Wageman, 465 N.W.2d 285 (Iowa 1991), where the Court stated that the statute of limitations protect persons from the need to defend claims when memories are long since faded, witnesses are no longer available, and evidence is lost. Schulte v. Wageman at 286. The broad authority granted to the Board over disconnections in Iowa Code § 476.20 provides support for the Board to decide that Iowa Code chapter 476 provides the Board with authority over disconnection of service and the authority to set limits on denial of service for past due debts.

Since the Board has interpreted Iowa Code chapter 476 to provide the authority to place time limits on denial of service for past due debts, the Board need not establish separate limitation periods for oral contracts and written contracts. Treating oral and written contracts the same in this context is reasonable based upon Board rules regarding payment agreements, which are discussed in more detail in a later section of this order.

Similar to the statute of limitations for bringing court actions with regard to written contracts pursuant to Iowa Code § 614.1(5), the Board has tentatively concluded that a time limit of ten years is reasonable for denial of service for past due

debt owed to a public utility. Since the Board is adopting a time limit on denial of service for past due debt for natural gas or electric service, the Board will open a rule making to adopt this limitation. Interested persons will have the opportunity in the rule making to address whether the ten-year limitation period is reasonable.

MidAmerican has suggested that regardless of the age of the past due debt the utility may not collect past due debt unless the utility has the following information: (1) the service address or addresses where the debt(s) accrued; (2) meter reading dates; and (3) usage and dates of usage, and bill amounts and billing dates. Although this information is necessary to recover any past due amounts, beyond a certain period of time the utility records will very likely be the only documentation of the debt and the customer may be at a disadvantage if the customer disputes the debt. The customer will very likely not have retained records of payments and the customer's memory will be vague as to the particular debt. This staleness and possible unavailability of the supporting records are reasons the statute of limitations in Iowa Code § 614.1 was adopted and those limitations support the Board's decision to adopt a ten-year limitation period for denial of service for utility past due debt.

C. Iowa Code § 476.20(5)(a)

Utilities argue that the Board's jurisdiction under Iowa Code § 476.20 is limited to disconnection and does not reach reconnection of service. Accordingly, utilities conclude that the Board cannot regulate their actions with respect to reinstating

service to customers who owe a past due debt. A closer look at the statutory language in Iowa Code § 476.20(5) shows that the interpretation by the utilities that there is no time limit on the denial of service for a past due debt and that a utility may deny reinstatement of service until the debt is paid is not supported by the provisions of that section. Specifically, Iowa Code § 476.20(5)(a) states that the Board shall establish uniform rules applicable to all public utilities relating to deposits "which may be required by the public utility for the initiation or reinstatement of service." If the Board lacked jurisdiction over initiation or reinstatement of electric or natural gas service, then it would make no sense for the Legislature to give the Board jurisdiction over the associated deposit requirements. Under the utilities' interpretation, a utility that charged an exorbitant deposit could simply refuse to initiate or reinstate service if the deposit is not paid and the Board would have no jurisdiction of the dispute and therefore no ability to exercise jurisdiction over the deposit. Section 476.20(5)(a) would have been rendered meaningless.

The statute clearly proceeds with the intention that the Board already has jurisdiction, pursuant to Iowa Code § 476.20(3)(a), over the act of reinstatement, so it was only necessary to specify the Board's jurisdiction over associated deposits in Iowa Code § 476.20(5). The language in Iowa Code § 476.20(5)(b) reflects that utilities may require payment of past due debt prior to reinstatement; however, when read in conjunction with the other provisions of Iowa Code § 476.20, the denial of reinstatement is subject to the Board's rules.

In other words, the statute recognizes that connection, disconnection, and reinstatement are no more than different sides of the same coin. If a customer is not connected to electric or gas service, the customer seeks to end his or her disconnected status by having service initiated or reinstated. If the utility refuses to connect service to the customer, the utility's actions continue that customer's disconnected status and the Board has jurisdiction over the matter. A bright line cannot be drawn between connection, or reinstatement, of service and disconnection of service as suggested by the utilities.

The utilities' interpretation of the statute, if adopted, could lead to absurd results. A utility might disconnect a customer in violation of a Board rule and, because the customer is disconnected from service, the Board would not have jurisdiction to order reinstatement of that service because of the violation. The result would be that the utility's wrongful act would insulate it from any corrective action by the Board. The goal of statutory interpretation is to give the language in the statute a reasonable interpretation that best achieves the statutory purpose and considering connection, reinstatement, and disconnection as part of "disconnection" from utility service is the most reasonable interpretation to achieve the goal of Iowa Code § 476.20. Harden v. State, 434 N.W.2d 881, 884 (Iowa 1989).

Pursuant to the authority in Iowa Code §§ 476.20(3)(a) and 476.20(5)(a), the Board has promulgated rules applicable to both gas and electric service that: (1) requires payment agreements be offered to a customer who owes a debt for service;

(2) establishes a time period for payment of a bill for service; (3) establishes requirements for a level payment plan; (4) provides for adjustments to the customers' bill for meter related problems; (5) establishes procedures for when and how service may be refused or disconnected; (6) establishes a customer's rights and responsibilities when threatened with disconnection; (7) establishes notice requirements for rental property before disconnection may take place; (8) establishes procedures when a customer disputes a bill for service; (9) establishes procedures for reconnection of service; (10) limits disconnections in extremely cold weather; (11) allows for a delay in disconnection for the health of a resident; (12) implements the Winter Moratorium requirements; (13) implements the prohibition against disconnection during deployment of military personnel; and (14) establishes insufficient reasons for denying service. The Board has not adopted rules that establish time limits on the collection of past due debt since the Board in Lorenzen found that the statutory limitations in Iowa Code §§ 614.1(4) and 614.1(5) applied. Since the statute of limitations were found to apply to collection of past due debts owed to public utilties, Board rules adopting those limitations were unnecessary at that time.

The rules described above establish a comprehensive regulatory system for the connection, reinstatement, and disconnection of gas and electric service to public utility customers. Under this system, disconnection of gas or electric service is more than just the physical shutting off of the energy. "Disconnection" or "discontinuance"

of gas or electric service includes the relationship between the customer and the utility from the time the customer requests service to the time the customer no longer receives service, and includes when a customer ceases service and then wishes to become a customer of the utility again.

A strict interpretation limiting the Board's authority to the physical act of disconnecting service would place the customer at the whim or will of a utility that is the only source of gas or electric service for the customer. This interpretation would also result in the Board not being able to require reinstatement if a utility disconnected a customer in violation of Board rules. Rather than a strict interpretation, the Legislature intended to include the entire relationship between the customer and utility related to the request for service, the refusal of service, and ending service. Disconnection of gas or electric service involves this entire relationship and the Board has been given the authority to establish uniform parameters and requirements of this relationship.

The Legislature recognized that more than the physical disconnection of service is involved when it established exceptions for low-income customers during the Winter Moratorium and for military personnel who are deployed. The Legislature also gave the Board jurisdiction over deposits for service. The Legislature considered the Board's authority to be of sufficient importance to provide that violation of the rules could subject the utility to civil penalties pursuant to Iowa Code

§ 476.51. Board rules balance the interests between the customer and the utility as provided for in the statute and implement the provisions of Iowa Code § 476.20.

Electric and gas service is an essential component of the quality of life in Iowa and should only be denied under certain limited conditions. Allowing a utility to deny reinstatement of service for an unlimited amount of time when the customer owes a past due debt is not reasonable. The Board has determined in this inquiry that a time limitation of ten years should be placed on the ability of a public utility offering natural gas or electric service to deny reconnection of service for a past due debt and reinstatement of service for a disconnected customer must comply with the Board's rules.

D. Payment Agreements

There appears to be agreement from the comments that a payment agreement is a written contract if the essential elements of a written agreement are present. The essential elements that are required in the written document are: (1) the terms of the agreement; (2) the parties to the agreement; and (3) the signature of the party, here the customer. However, procedures allowed by the Board's rules may modify the requirement of a written signature and some comments suggest that these payment agreements are still written contracts.

The utilities appear to agree that a customer's electronic acceptance of a payment agreement would make the payment agreement a written contract for purposes of the statute of limitations. IPL suggested that the Board's rules at 199

IAC 19.4(10)(c)(1)(3) and 20.4(11)(c)(1)(3), which allow for the customer to agree to a payment agreement electronically or by telephone, make the agreement a written contract since the rule requires the utility to send a written copy of the agreement to the customer which reflects the terms of the agreement. This rule also provides that the customer can agree to the payment agreement by not objecting within ten days or by making the first payment.

OCA suggested that a payment agreement accepted by the customer by email or telephone was a convenience to both the customer and utility and there is a need to protect both parties to the agreement. OCA suggested that it should not be assumed that an acceptance by email or telephone makes the payment agreement a written contract for purposes of the statute of limitations. The best practice for establishing a written contract is for the customer to sign the contract and then return the signed agreement to the utility. Some of the municipal utilities stated that they require a signed written payment agreement from the customer.

Board rules at 199 IAC 19.4(10)(c)(3) and 20.4(11)(c)(3) offer the customer the option of making a payment agreement over the telephone or through electronic transmission. The rules then require the utility to send the customer a written copy of the agreement and provide that the agreement will be deemed accepted if the customer does not reject the agreement within ten days of being rendered. The rules also provide that by making the first payment pursuant to the agreement, the customer is deemed to have accepted the agreement.

Even though the utility does not have a signed agreement from the customer, the Board has determined that it is reasonable to consider the sending of the written payment agreement and the acceptance of the written payment agreement by the customer, either by non-action or a first payment, as constituting a written agreement for purposes of application of a limitation period. The Board understands that the above discussion will not affect the implementation of the ten-year limitation on past due debt adopted by the Board in this order, since the Board has decided that a ten-year limitation period should apply equally to both oral and written contracts for service and this includes payment agreements.

E. Beginning of Limitation Period

There was some discussion in the comments that any activity in an account should toll any time limitation for denial of service for a past due debt and the period would begin again from that activity. This could include a refund or adjustment to the account by the utility, even though the customer was not receiving service.

In the discussion on whether the customer's account is a "continuous, open and current account," there was some disagreement about when the account was closed and no longer an open account. There did not seem to be agreement on whether the issuance of the final bill or the date of disconnection of service should be the starting period for counting any time limit on collection of an unpaid debt. Some utilities suggested that any type of activity, even after service had been disconnected and the final bill had been issued, would toll the time period; however, Legal Aid and

OCA suggested that only activity in the account that was within the control of the customer would toll the time period. According to OCA and Legal Aid, actions such as crediting an account for an interstate pipeline refund, for example, should not be considered for tolling the time period.

The Board in the Lorenzen case stated that the statute of limitations begins to run on the date the final (or most recent) credit or debit is posted. (citing Swartz v. Bly, 183 N.W.2d 733 (Iowa 1976)). In Lorenzen, the Board found that the statute began to run on the date a refund was posted. The Board based the decision on the running of the statute on the Board's determination that an account for utility service is an open account. The Board cited to In re: Ransom's Estate, 258 N.W. 78, 81 (Iowa 1934) to support this decision.

The Board does not consider the Lorenzen analysis to be controlling of this issue. The Board finds that the limitation period should run from the date service is physically disconnected, or date of voluntary payment or promise of payment within the ten-year limitation period, and, regardless of whether the utility decides to keep the account open for other purposes, that is the date when the limitation period will begin to run. Otherwise the utility could use any activity, regardless of whether agreed to by the customer, to toll the time period.

The decision made in the Lorenzen case finds that a refund from an interstate utility will toll the limitation period. Since any refund is outside the control of the customer and the customer, who has been disconnected, is no longer receiving

service, it is not reasonable to allow such activity to control the beginning of the limitation period.

F. Laches, Waiver, or Estoppel

There was also a discussion of the issue of whether a utility that fails to collect or seek a judgment within the time allowed by Iowa Code §§ 614.1(4) and 614.1(5) would be precluded from seeking recovery from the customer based upon the doctrines of laches, waiver, or estoppel. Most of the participants were not sure that these doctrines applied to past due debt owed to a public utility for gas or electric service. OCA suggested that the doctrines could be argued in some instances to prevent a utility from recovering a past due debt.

The doctrines of laches, waiver, or estoppel would be applied to specific fact situations and should be raised in individual complaints. If those doctrines are raised in a specific case, the Board can address the application of those doctrines at that time. The Board will not address the general application of the remedies in this docket.

G. Denial of Service for a Past Due Out-of-State Debt

Another aspect of denial of service that is related to the specific issues raised by the participants is whether a public utility may deny service to a customer who has a past due debt for service from the same public utility in a different state. This issue is also being considered by the Board in separate docket. Docket No. FCU-2015-0006, Bernadino v. MidAmerican.

As part of the issue of the Board's jurisdiction over past due debt owed to a public utility for natural gas or electric service, the Board has considered whether a public utility that provides natural gas or electric service in another state may deny service in Iowa for a debt owed the public utility in another state. After consideration of this issue, the Board has determined that it does not have jurisdiction over the operations, rates, service obligations, or debt collection performed by a public utility in a state other than Iowa. Since the Board does not have jurisdiction over utility activities in other states, the Board has concluded that it does not have jurisdiction to allow the denial of natural gas or electric service for an out-of-state debt.

A public utility in Iowa is granted a monopoly over natural gas and electric service and that monopoly is subject to the statutory provisions in the Iowa Code. The Board also is subject to the statutory provisions of the Iowa Code and has no jurisdiction over how debts are incurred or collected in other states. Even when other states regulatory agencies allow a public utility to deny service for a past due debt from service in Iowa, that does not provide the Board with similar jurisdiction. The Board's jurisdiction pursuant to the Iowa Code is over Iowa operations and the Board will not assert jurisdiction over out-of-state debt.

A public utility owed a debt from another state for natural gas or electric service has the same access to debt collection activities as other businesses, including court action. Those activities do not include denial of natural gas or electric service for a debt owed for service in another state.

In addition, the Board does not consider it good public policy to allow a monopoly to deny service in Iowa for a debt incurred in another state. The public utility has the same avenues for collection of that past due debt as other businesses and should not be allowed to use the very powerful collection tool of denial of service to deny service in Iowa. Natural gas and electric service are essential for an Iowa resident's quality of life and denial of this service for a debt over which the Board does not have jurisdiction is not reasonable or in the public interest.

BOARD JURISDICTION OVER MUNICIPAL NATURAL GAS AND ELECTRIC UTILITIES

A. Iowa Code § 476.20

A review of the legislative history of the statutes at issue in this inquiry shows that much of current statutory language that establishes the Board's jurisdiction over disconnection of natural gas and electric service was enacted into law in 1983. At that time, the Legislature enacted several of the current provisions of Iowa Code § 476.20. Those provisions prohibited disconnection of gas or electric service for qualified customers during the Winter Moratorium, required the Board to establish uniform rules applicable to all public utilities offering natural gas or electric service, including municipal utilities, related to deposits for residential customers.

In 1984, the Legislature enacted amendments to Iowa Code § 476.20 that required the Board to establish uniform rules for all public utilities related to disconnection of gas or electric service, current Iowa Code § 476.20(3)(a), and

applied the maximum deposit limitation to residential and commercial customers in Iowa Code § 476.20(5). The 1984 amendments also included the language in current Iowa Code § 476.20(5)(b) that the uniform deposit rules did not prevent a utility from requiring payment of a past due debt before instatement. The legislative history does not provide any guidance on how the statutory provisions enacted related to each other or the other provisions in Iowa Code § 476.20.

In 1985, the Legislature enacted the provisions of current Iowa Code § 476.1B entitled "Applicability of Authority — Municipally Owned Utilities" which limited the Board's jurisdiction over municipal utilities to those statutory provisions specifically listed, including paragraph (e) "Disconnection of service, as set forth in section 476.20." The "Explanation" for the bill provides no additional guidance regarding the legislative purpose of this provision.

In 1994, the Legislature enacted an amendment to Iowa Code § 384.84 that required disconnections of gas or electric service by a municipal utility to comply with Iowa Code § 476.20 and rules adopted by the Board pursuant to Iowa Code § 476.20. The "Explanation" attached to the amendment states that the bill provides for the collection of fees for water, sewer, garbage, and similar services as one account and provides for the disconnection of all of those services if there is a delinquency in payment for one or more services. (The "Explanation" does not mention the requirement that disconnection of gas or electric service is subject to Iowa Code § 476.20 and Board rules.)

In 1999, the Legislature amended Iowa Code § 384.84 by adding the language that provided where a municipal utility service is discontinued to an account because of a delinquent payment, the municipal utility may withhold service from the customer who owes the debt at any new property or premises until the debt is paid. The "Explanation" of the bill states that the bill amends provisions relating to city utility or enterprise services where an account becomes delinquent by providing if a city utility or city enterprise service is discontinued to a property or premises due to a delinquent account, service may be withheld from the same account holder at any new or subsequent property or premises until the delinquent amount has been paid. The "Explanation" does not address the limitations in Iowa Code § 384.84(3)(a) that require municipal utilities to follow Code § 476.20 and Board rules for disconnection of natural gas or electric service.

Based upon the legislative history and the current statutes, there does not appear to be any real issue of whether a municipal utility that provides gas or electric service is subject to Iowa Code § 476.20 and Board rules with regard to disconnection of service. The provisions in Iowa Code § 384.84(3)(d)(1) allowing a municipal utility to deny service for a customer with a past due debt must be interpreted in conjunction with the provisions of Iowa Code § 384.84(3)(a) that make disconnections of gas or electric service by municipal utilities subject to Iowa Code § 476.20 and Board rules. It is a reasonable interpretation of the Iowa Code § 384.84(3)(d)(1) that the limitation on reinstatement of service until a past due debt

has been paid applies to municipal water, sewer, garbage collection, and other similar services and not gas or electric service. In fact, the "Explanation" attached to the final bill addresses those services and not gas or electric service.

The interpretation that Iowa Code § 384.84(3)(d)(1) does not apply to gas or electric service is also supported by the specific authority given the Board over municipal utilities in Iowa Code § 476.1B. This specific authority combined with Iowa Code § 384.84(3)(a) appears to be conclusive that the Legislature intended for gas and electric customers of municipal utilities to have the same protections related to "disconnection" of service as the customers of cooperatives and rate-regulated utilities.

The issue to be addressed then is what services are so related to disconnection of service that they come within the Board's jurisdiction and are subject to Board rules. The municipal utilities have argued that disconnection of service is limited just to the physical disconnection of the service by the utility and all other aspects of service are beyond the jurisdiction of the Board. As discussed in the section addressing Iowa Code § 476.20(5)(a) above, the Board considers that disconnection of electric or gas service involves the reinstatement of service as well as disconnection of service. These activities are all part of a customer's ability to receive electric or gas service from a public utility and all affect a customer's disconnection from service.

The Legislature specifically created instances where a customer could not be disconnected in Iowa Code § 476.20 with exceptions related to the Winter Moratorium, notice to customers of energy assistance programs, the application of civil penalties for failure to comply with disconnection rules, delay of disconnection for military deployment, and deposits. These provisions demonstrate that disconnection means more than the act of stopping the flow of energy and municipal utilities are subject to these other provisions and Board rules that implement those provisions. Following this interpretation of Iowa Code § 467.20, the Board has authority over more than just the physical disconnection of electric or gas service by municipal utilities.

Two specific issues related to the Board's authority over municipal utility operations under Iowa Code § 476.20 that have been raised by the municipal utilities in this inquiry are level payment plans and deposits. Those issues are addressed below.

B. Level Payment Plans

Board rules at 199 IAC 19.4(11)(e) and 20.4(12)(e) establish criteria for level payment plans (also known as budget billing). The rules require that the utility offer a level payment plan to all customers at the initiation of service, allow for the entry into a plan anytime during the calendar year, allow for termination of the plan at any time, and describe how a monthly payment under the plan can be calculated and recalculated.

Some municipal utilities have not followed the Board rules when setting up level payment plans for their customers and, as learned in Docket No. NOI-2014-0003, those level payments plans do not provide the same protections as provided for in the Board's rules. Level payment plans adopted by municipal utilities have sometimes limited the level payment period to less than 12 months, have required any under recovery be paid at the end of the level payment plan period (rather than rolled into the next year's plan), and limited the times when a customer may choose to take service under a level payment plan. Without a Board order that has specifically addressed whether the Board's level payment plan rules apply to the level payment plans established by municipal utilities, Board staff has applied the Board's rules when considering informal complaints about municipal level payment plans.

Upon reviewing this issue in this inquiry, the Board has determined that the rates charged a customer under a municipal utility level payment plan are not sufficiently related to disconnection of service to come within the Board's jurisdiction. These are rates charged by the municipal utility and are removed from the Board's jurisdiction pursuant to Iowa Code § 476.1B. However, if a municipal natural gas or electric utility threatens to disconnect a customer's service pursuant to a level payment plan that does not comply with Board rules, that disconnection is within the Board's jurisdiction. In this latter instance, the Board would compare the municipal level payment plan with the Board's rules and, if the Board determines that the

municipal level payment plan is not reasonably consistent with Board rules, the Board may find that the customer should not be disconnected. The burden will be on the municipal utility to establish that its levelized payment plan was reasonable.

It appears from comments submitted by IAMU, that IAMU agrees that irrespective of the account balance or other provisions of a municipal level payment plan, a delinquency in payment by a customer making payments based upon the municipal's plan shall be subject to the same collection and disconnection procedures as other accounts, with the late payment charge applied to the level payment amount. IAMU agrees that when the municipal utility begins disconnection procedures the municipal gas and electric utilities would be subject to Board jurisdiction as it relates to disconnection of service. Disconnection procedures include billing notice requirements and physical disconnection notice requirements. As discussed above, the Board will also weigh the reasonableness of the municipal level payment plan, in comparison with Board rules, as part of a review of a disconnection complaint involving the municipal's level payment plan.

C. Deposits

The Legislature considered deposits for gas and electric service to be sufficiently related to a customer's continued receipt of gas or electric service to include provisions in Iowa Code § 476.20 addressing deposits and requiring the Board to adopt uniform rules, applicable to all public utilities including municipal electric and natural gas utilities, related to deposits for initiation and reinstatement of

service. The language in this section of the statute is clear that the legislative intent was for the Board to establish rules that applied uniform standards to cooperatives, rate-regulated utilities and municipal utilities.

The Board's deposit rules at 199 IAC 19.4(2)(7) and 20.4(3)(8): (1) implement the provision in Iowa Code § 476.20(5) that limits the amount of a deposit; (2) allow for an additional deposit when the initial deposit is found to be inadequate; (3) requires the utility to establish criteria for requiring a deposit; (4) establishes the interest rate to be paid on deposits; (5) establishes record keeping requirements for deposits; (6) establishes refund requirements for deposits; and (7) addresses unclaimed deposits. Staff has uniformly applied these rules to issues raised involving deposits in informal complaint investigations for all utilities.

In addition, the Board has addressed its jurisdiction over deposits charged by municipal utilities in the formal complaint of Karen Fenholt Vander Lee v. Rockford Municipal Light Plant, Docket No. FCU-2013-0008. On September 9, 2013, the Board issued an "Order Determining Jurisdiction Over Deposits Required By Municipal Electric and Natural Gas Utilities And Dismissing Complaint" in which the Board addressed arguments similar to those made by IAMU and the municipals in this inquiry.

In that docket, IAMU argued that the Board lacked jurisdiction over the deposits charged by municipal utilities because Iowa Code § 476.1B limits the Board's jurisdiction to disconnection of service. IAMU argued that the Legislature did

not reference deposits but only disconnections in 476.1B. IAMU also argued that Iowa Code § 476.20(3)(a) specifically includes municipal utilities while Iowa Code § 476.20(5) does not list municipal utilities and that distinction means that the deposit statute does not apply to municipal utilities.

In the September 9, 2013, order the Board concluded that IAMU's interpretation of the specific authority granted over disconnections in Iowa Code § 476.1B(1)(e) was too restrictive and does not take into account the relationship between deposits and disconnections, as well as initiation and reinstatement of service. The Board stated that disconnection of a customer for not paying a deposit is subject to Board jurisdiction the same as a disconnection for not paying any other debt owed to a municipal utility for electric or natural gas service. Since the Board has uniform rules that apply to disconnection of service for all utilities, the Board concluded that it is not a reasonable interpretation of the statute that the Board would be able to limit disconnection of service by a municipal utility that has charged a deposit that exceeds the limits in Iowa Code § 476.20(5), but cannot limit the amount of the deposit initially. The Board went on to state that it did not agree with IAMU's argument about the provisions in Iowa Code § 476.20 are separate and distinct and the Board did not agree that the lack of specific language in Iowa Code § 476.20(5) including municipals limits the Board's jurisdiction over deposits required by municipal utilities.

The Board stated that this latter IAMU argument fails to recognize that the Board's jurisdiction over disconnections is addressed in both Iowa Code §§ 476.20(2) and 476.20(3) and Iowa Code § 476.20(2) establishes certain criteria for disconnections by regulated public utilities which are not specifically described in Iowa Code § 476.20(3). The Board pointed out that the Legislature then grants the Board the authority to establish uniform rules related to disconnections for all public utilities in Iowa Code § 476.20(3) and includes the second sentence in that subsection to ensure that there is no question that municipal utilities are covered by any rules promulgated by the Board. Since the Board's jurisdiction over deposits required by all public utilities is only found in Iowa Code § 476.20(5), the Legislature did not need to include the additional language in that subsection to ensure it was understood that municipal utilities would be subject to any rules promulgated by the Board. "All public utilities" includes municipals.

The Board concluded that the intent of the provisions related to deposits in Iowa Code § 476.20(5) is to create a uniform standard for all public utilities that will provide some protection to the utility for non-payment for electric or natural gas service but limits the utility's ability to charge a customer an unreasonable deposit to initiate or reinstate service. The Board pointed out if the IAMU interpretation is correct, then the Legislature has established protections for customer deposits charged by rate-regulated public utilities and electric cooperatives, but not municipal utilities. The Board stated that this interpretation is not reasonable in light of the

intent of this section of the statute to establish uniform standards related to disconnections of utility service for all utilities. The Board went on to state that the language in this provision is clear that the Legislature intended for the provisions establishing a limit on what a utility may charge for a deposit is to be the same regardless of whether the utility is municipally owned, cooperatively owned, or a rate-regulated utility.

The Board considers the decision in Docket No. FCU-2013-0008 to be the correct interpretation of the Board's jurisdiction over deposits. Deposits are closely related to the provision of gas and electric service to Iowa residents and the Board does not consider it reasonable that the Legislature would have given the Board jurisdiction over "all utilities" in Iowa Code § 476.20(5)(a) and not included municipal gas and electric utilities. Iowa Code § 476.20 is a comprehensive pronouncement by the Legislature to establish protections for Iowa residents from unreasonable and inconsistent standards related to gas and electric service and those uniform standards apply to municipal gas and electric utilities.

This is especially true in light of the fact that Iowa Code § 476.1B, which removed the Board's jurisdiction over other aspects of utility regulation by municipal utilities, specifically requires municipal gas and electric utilities to comply with Iowa Code § 476.20 and Board rules adopted pursuant to that statute. This legislative intent is also evidenced by the language in Iowa Code § 476.384.84(3)(a) that makes municipal gas and electric utilities subject to Iowa Code § 476.20 and Board rules.

D. Late Payment Charges

Another issue that has been raised by municipals is whether the Board's late payment charge rules apply to municipal utilities. The rules in 199 IAC 19.4(11)(b) and 20.4(12)(b) provide that a utility's late payment charge may not exceed 1.5 percent per month of the past due account and no collection fee may be levied in addition to the late payment charge. Board rules also provide for one late payment forgiveness each year.

The Board does not believe that a previous Board has addressed this issue of jurisdiction over municipal natural gas and electric utility late payment charges. Upon reviewing this issue, the Board has come to the same decision with regard to late payment charges by municipal utilities as the decision regarding level payment plans addressed earlier in this order. Similar to the above decision, the Board concludes that it does not have jurisdiction over a late payment charge established by a municipal utility; however, if a customer is threatened with disconnection for non-payment of that charge, the Board will use its late payment charge rules as one consideration when determining if the municipal late payment charge is reasonable. Depending on a determination as to reasonableness of the late payment charge, the Board may decide the customer should not be disconnected.

E. Other Municipal Procedures

The decisions in this order should provide some additional guidance for municipal natural gas and electric utilities of the Board's interpretation of the Board's

jurisdiction over municipal utility operations in those areas addressed. The Board has not attempted to draw a bright line on all issues that might arise with regard to conflicts between municipal utility operations and Board rules. Many of those issues are case-specific and cannot be addressed on a generic basis.

As discussed in this order, the Board considers the proper interpretation of "disconnection" is that the term in the statute is not limited to just the physical separation of a customer from natural gas or electric service. Disconnection of service involves all initiation, disconnection, and reinstatement of service.

Gas and electric service are essential elements for the health and welfare of Iowa residents and the Legislature has established through the provisions of Iowa Code § 476.20 protections that are to be uniform for all Iowa residents regardless of whether the service is provided by a rate regulated utility, a cooperative, or a municipal utility. This inquiry should give additional guidance regarding the Board's interpretation of its jurisdiction over initiation, reinstatement, and disconnection by municipal gas and electric utilities although staff does not believe it is possible in this inquiry to provide a bright line for all fact situations that may arise.

IT IS THEREFORE ORDERED:

1. The decisions made in this order regarding the issues addressed in this inquiry are the Board's decisions based upon the Board's interpretation of the applicable statutes and the Board's rules.

2. Requests for clarification or reconsideration of the decisions in this order shall be filed on or before September 21, 2015.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Trisha M. Quijano */s/ Nick Wagner*
Executive Secretary, Designee

Dated at Des Moines, Iowa, this 4th day of September 2015.

DISSENT

It is my understanding that one of the reasons for this inquiry was to provide more certainty in regard to the issues that were raised in the Notice of Inquiry. For the most part, I believe that the Board has achieved that goal. However, I dissent from the majority opinion in two areas. The first is over the jurisdictional authority granted to the board on disconnection of service. I do not believe that we have provided more clarity and believe that the Board should define "disconnection" and set a clear identifiable line for the Boards' jurisdictional authority. I am unclear as to the regulatory authority of the Board as it relates to municipal home rule and the statutory language for jurisdiction over disconnection and what is included in the same. The Board should either define the jurisdictional authority as we have it or we don't and if we can't clearly identify it, at least we give the legislature guidance on our interpretation or lack thereof within the current statutory authority.

In addition, I dissent from Section G as I believe the Board has statutory authority to allow MidAmerican to collect on an out of state debt as part of a payment agreement.

/s/ Geri D. Huser

ATTEST:

/s/ Trisha M. Quijano
Executive Secretary, Designee

Dated at Des Moines, Iowa, this 4th day of September 2015.