STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: ELDORA-NEW PROVIDENCE COMMUNITY SCHOOL DISTRICT	DOCKET NOS. C-00-171 WRU-99-38-150 WRU-99-39-151

ORDER REQUIRING INTERCONNECTION AND GRANTING WAIVERS

(Issued August 4, 2000)

On April 20, 2000, Eldora-New Providence Community School District (Eldora) filed with the Utilities Board (Board) a written complaint stating that it desired to install a 250 kWh wind generator at its high school and requested an interconnection agreement with IES Utilities Inc. (IES). Eldora plans to produce wind energy primarily for its own use and states it would purchase any additional electricity needed from IES at IES' retail rates (5.7 to 9.7 cents per kWh). In addition, Eldora states it wants to sell any excess wind energy produced to IES at IES' avoided cost rate (approximately 1.8 to 2 cents per kWh). Eldora is not requesting a net billing arrangement but is proposing an arrangement similar to a standard purchase/sale agreement under the Public Utility Regulatory Policies Act of 1978 (PURPA). Under this type of arrangement, the small power producer determines how much self-generated electricity is kept for self-use and how much is sold to the utility.

The difference between net billing and Eldora's proposal can best be illustrated by example. A customer has a wind generator that on an intermittent basis generates 1000 kWh per month. The customer uses 500 kWh himself and sends the other 500 kWh to the utility. The customer's total usage is 1000 kWh per month. Under single meter net billing, the meter would read zero at the end of the month and no money would be owed in either direction because 500 kWh flowed from the customer to the utility and 500 kWh flowed from the utility to the customer.

Eldora's proposal is different. In the example, the customer would send 500 kWh to the utility and would receive the avoided cost rate for each kWh. The customer would receive 500 kWh from the utility and would pay the utility the retail rate for each kWh.

IES refused to enter into the arrangement proposed by Eldora and instead offered to purchase all energy produced by Eldora at IES' avoided cost rate. Under IES' proposal, Eldora would continue to purchase <u>all</u> of its electricity from IES at current retail rates. In the example used above, Eldora would pay retail rates for 1000 kWh and receive the avoided cost rate for 1000 kWh. IES subsequently modified its position and said it would grant an interconnection agreement if: 1) Eldora transfers from its current small general service kWh energy rate to a large general service back-up rate that bills for both kW demand and kWh energy, or 2) the Board approves an energy adjustment clause (EAC) rule waiver that would allow IES to recover all net lost margin revenues from Eldora's self-use of its generation.

Subrule 199 IAC 15.11(5) contains the Board's rules regarding parallel operations. The rule provides:

> *Parallel operation.* Each electric utility shall offer to operate in parallel (with a single meter monitoring only the net amount of electricity sold or purchased) with a qualifying alternate energy or small hydro facility, provided that the facility complies with any applicable standards established in accordance with these rules.
>
> In the alternative, by choice of the facility, the electric utility and facility shall operate in a simultaneous purchase and sale arrangement whereby all electricity produced by the qualifying facility is sold to the utility at the fixed or negotiated buy-back rate, and all electricity used by the qualifying facility is sold to the facility at the tariffed rate.

The first paragraph of the rule deals with single meter net billing, which is not at issue here. The second paragraph addresses the arrangement sought by Eldora.

IES under its original interconnection proposal argues the second paragraph requires Eldora to sell all its production to the utility by default. This is not the intent of the rule. The rule emphasizes choice for the facility and was not intended to require a producer to sell all of its output to the utility. A producer should be allowed to use some or all of its output. Because the rule was not intended to foreclose self-use, the Board on its own motion will waive the rule in this case and will commence a rulemaking to clarify the rule's intent. Rule 15.1 will also be waived and a rule making commenced to clarify that a qualifying facility under PURPA may or may not be an alternate energy production facility. The rule was not intended to exclude alternate energy facilities under Iowa law from also being PURPA qualifying facilities.

The Board recognizes 199 IAC 15.11(5) is the subject of pending litigation. The Polk County District Court found the first paragraph of the rule, which concerns net billing, to be preempted by federal law. The Board and the Consumer Advocate Division of the Department of Justice appealed this ruling to the Iowa Supreme Court. MidAmerican Energy Company v. Iowa Utilities Board, S.Ct. No. 99-1529. However, the Board notes that its interpretation of the second paragraph of the rule is consistent with the District Court's discussion. MidAmerican Energy Company v. Iowa Utilities Board, Nos. AA 3173, AA 3195, AA 3196 (8/26/99, Polk County District Court). The Board does not believe the District Court's decision invalidated the second paragraph of the rule.

IES proposed two alternatives to its initial proposal. The first, which would require Eldora to transfer to a large-general service back-up rate, is not acceptable. Applying large general service back-up rates to a small general service customer has at least the appearance of discriminatory treatment. IES currently has no back-up rates for small general service customers.

IES' second alternative is identical to the one it proposed in Docket Nos. WRU-99-38-150 and WRU-99-39-151. In those dockets, IES proposed a waiver of 199 IAC 20.9(2)"b"(6) to allow full recovery through the EAC of all lost revenue margins, both from net billing and customer self-use of alternate energy generation. The Board in an order issued December 29, 1999, granted the waiver with respect to net billing but not for customer self-use. IES has chosen not to implement the limited waiver.

Iowa Code § 476.41 provides that it is the "policy of this state to encourage the development of alternative energy production facilities and small hydro facilities in order to conserve our finite and expensive resources and to provide for their most efficient use." The Board has continually pursued policies to implement this legislative goal.

The court challenge to the first paragraph of 199 IAC 15.11(5) has put a chill on all alternative energy development that is primarily for self-use, whether through net billing arrangements or through arrangements such as the one proposed here. While the Board continues to believe these arrangements are valid and that the rule will ultimately be upheld, the delay caused by litigation may cause some worthwhile projects to be cancelled. Therefore, to encourage continued development of alternate energy pending the outcome of litigation, the Board will grant the waiver as originally proposed by IES in the waiver dockets. The Board will also grant a waiver to Interstate Power Company, which filed an identical waiver request in the same dockets. Both utilities have the same parent, Alliant Energy.

The waiver will apply both to net billing and self-use. The waiver, however, will be limited in duration and the issue may be revisited pending final resolution of the court proceeding or passage of any federal or state restructuring legislation. Because customers such as Eldora would produce energy primarily for their own use, granting the waivers should have minimal rate impact on IES customers.

IT IS THEREFORE ORDERED:

1. The Utilities Board on its own motion waives the requirements of 199 IAC 15.1 and 15.11(5), to the extent discussed in this order, and orders IES Utilities Inc. to enter into an interconnection agreement with Eldora-New Providence Community School District consistent with this order.

2. The Board grants limited waivers of 199 IAC 20.9(2)"b"(6) as proposed by IES Utilities Inc. and Interstate Power Company on September 22, 1999, in Docket Nos. WRU-99-38-150 and WRU-99-39-151, effective upon approval of tariffs to implement the waivers.

UTILITIES BOARD

/s/ Susan J. Frye

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Diane Munns

Dated at Des Moines, Iowa, this 4th day of August, 2000.

DISSENT

While I agree with my colleagues that the requirements of 199 IAC 15.1 and 15.11(5) should be waived, I would limit the waiver of the EAC rules. Under the waivers granted by my colleagues, IES will receive full recovery through EAC of all lost revenue margins, both from net billing and customer use of self-generation. I do not support the waiver for customer use of self-generation.

A small power producer should not be required to sell all his output to the utility but should be able to determine how much self-generated electricity is kept for self-use. I do not view the amount of self-generated electricity retained by the producer as a "loss" to the utility that should be reimbursed by ratepayers through the EAC. This is simply a cost or risk of doing business.

Customers may move, go out of business, or reduce electric demand for a variety of reasons. These "losses" are not absorbed by ratepayers through the EAC. Similarly, increases in revenue resulting from increased electric usage because of new customers, a plant addition, or other reasons are not credited to ratepayers through the EAC. Because I do not view the utility as suffering any loss, I would deny the waiver of the EAC rules with respect to customer use of self-generation.

/s/ Allan T. Thoms

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

Dated at Des Moines, Iowa, this 4th day of August, 2000.