

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>KINZE MANUFACTURING, INC.,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="text-align:center">v.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. FCU-03-28</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------

**ORDER DISMISSING COMPLAINT AND DENYING REQUEST
FOR FORMAL COMPLAINT PROCEEDINGS**

(Issued September 17, 2003)

On April 9, 2003, Kinze Manufacturing, Inc. (Kinze), filed a complaint and request for formal complaint proceedings with the Utilities Board (Board) against Interstate Power and Light Company (IPL). The complaint alleged, among other things, that IPL violated the provisions of its net metering tariff and Board rules by refusing to interconnect with Kinze on a net metering basis. Kinze stated it planned to construct three or four 1.5-megawatt wind generators in IPL's service territory.

On April 29, 2003, IPL filed a motion to dismiss Kinze's complaint. On May 13, Kinze filed a resistance to IPL's motion to dismiss. The Iowa Joint Utility Management Program, Inc. (IJUMP), intervened in the proceeding and filed a resistance on July 30, 2003. IJUMP supported the positions taken by Kinze in this proceeding. IPL filed a supplemental response on July 31, 2003.

Kinze is a demand-metered Large General Service (LGS) customer receiving service in IPL's IES Northern (IES-N) pricing zone under LGS Rate Code 807-808. Kinze intends to build and operate up to four 1.5 MW AEP wind generators, for a total capacity of 6 MW, and interconnect them with IPL's system in a "net metering" arrangement. Kinze states the net metering arrangement is in accordance with IPL's tariff (IPL Tariff Sheets 101-104) and the Board's alternate energy production (AEP) net metering rule (199 IAC 15.11(5)). Kinze complains that IPL wrongfully refuses to interconnect Kinze's 6 MW wind generation plant under a net metering contract, contrary to IPL's tariff and the Board's rules. In conjunction with its net metering proposal, Kinze also seeks transfer to the General Service (GS) class, to receive net-metered service under IPL's non-demand-metered GS Rate Code 600. This would be based on the GS rate eligibility criteria that were in effect when IPL refused Kinze a net-metering contract, prior to the completion of IPL's last rate case, Docket Nos. RPU-02-3 and RPU-02-8.

Before and during IPL's last rate case, non-residential customers in the IES-N pricing zone were free to choose between GS or LGS service, based on which rate structure best suited their needs. However, in the rate case, IPL proposed to change this policy, establishing specific maximum usage criteria for new customers under GS Rate Code 600 (i.e., average usage of 20,000 kWh or less, and estimated demand of 50 kW or less for at least one month during the year). As an LGS customer, Kinze would be "new" to GS rates. This tariff change was unopposed in the rate case, approved in the Board's final decision and order on April 15, 2003, and approved as part of IPL's compliance tariff on May 28, 2003. In fact, the tariff

change was supported by the Community Coalition for Rate Fairness, an intervenor group that included, among other entities, Kinze. (See, Interstate Power and Light Company, Docket Nos. RPU-02-3 and RPU-02-8, Tr. 2854, 2951).

In its complaint, Kinze states that its “right” to freely transfer to GS Rate Code 600 “is essential to the feasibility” of its AEP project. Kinze links this transfer “right” to GS eligibility criteria that existed at the time IPL refused Kinze net metering, which was before the tariff change occurred. Kinze did not transfer to GS rates before the tariff change. Therefore, Kinze complains that IPL wrongfully imposes a condition on the waiver of its revised GS eligibility criteria – allowing it only if Kinze agrees to interconnect without net metering. Kinze wants a net metering contract with IPL, with free transfer to GS rates upon interconnection.

IPL responds that its refusal to offer net metering for Kinze’s 6 MW facility is consistent with the Board’s earlier waiver allowing a 500 kW net billing capacity limit for MidAmerican Energy Company (MidAmerican) and with the Board’s stated intent that “net billing was designed for small customers” rather than “large customers or commercial applications.” MidAmerican Energy Company, “Order Granting Waiver and Approving, with Clarifications, Tariff,” Docket Nos. TF-01-293, WRU-02-8-156 (3/8/02), p.5. Thus, IPL argues it is not violating 199 IAC 15.11(5), or its tariff which is based on 199 IAC 15.11(5). IPL also argues that while 199 IAC 15.11(1) requires utilities to contract for purchases from AEPs, 199 IAC 15.11(5) describes a metering arrangement and does not require utilities to enter into contracts for net metering. IPL’s stated intent is to deny Kinze net metering, but IPL has not yet actually refused Kinze a net metering interconnection because Kinze has not yet constructed its

facilities. Regarding its offer to waive current GS tariff eligibility requirements, IPL denies that the waiver is conditioned on Kinze agreeing to forgo net metering. IPL clarifies that its waiver offer was unconditionally open until August 15, 2003, and argues that IPL should not be required to extend the offer for an indefinite period.

In reply, Kinze argues that the Board's capacity limit waiver applies only to MidAmerican, not IPL, and argues that, in granting the waiver, the Board clearly acknowledged there is no capacity limit for net metering under 199 IAC 15.11(5). Regarding contracts, Kinze notes that the Board previously recognized the need for purchase contracts before AEP construction and required utilities to enter into purchase contracts before actual construction (or even siting) of AEP facilities in Docket Nos. RPU-95-1, et al. Overall, Kinze argues IPL has not shown sufficient grounds for dismissing Kinze's complaint. According to Kinze, a complaint under 199 IAC 7.5(2) can only be dismissed if no "breach of legal duty or grounds for relief" can be shown, assuming that all the stated facts in the complaint are true. Kinze asks for a formal proceeding on these issues.

It appears that the critical element in Kinze's complaint is its attempt to link IPL's refusal to offer net metering with Kinze's "right" to GS rates under previous tariff eligibility criteria. This linkage is critical because Kinze claims that both net metering and GS rates are necessary to make its AEP project viable. (Kinze complaint, pp. 4-5). Kinze does not qualify for GS rates under IPL's current tariff criteria. The Board does not find the arguments attempting to link net metering and GS eligibility to be convincing because they are separate, unrelated issues.

Revised GS tariff eligibility criteria were approved by the Board in IPL's recent electric case, Docket Nos. RPU-02-3 and RPU-02-8, and went into effect on May 28, 2003. It is undisputed that Kinze does not qualify for GS rates under the revised eligibility criteria. In fact, IPL would be prohibited by Iowa Code § 476.5 from now offering Kinze GS service under the previous tariff criteria because these criteria conflict with the current Board-approved tariff. IPL's offer to "waive" current GS eligibility requirements if Kinze wanted to make the switch by August 15, 2003, is contrary to the statute and was an offer that IPL did not have Board authority to make. There is no recognized legal basis for an argument that IPL's refusal to offer net metering extended the GS election deadline. While the then-existing GS customers who met the old GS criteria were grandfathered in by the new tariff, there is no provision in the tariff that allows customers like Kinze, who do not meet the new eligibility criteria, to join the GS class after May 28, 2003.

Kinze has alleged its transfer to GS rates under previous GS eligibility criteria "is essential to the feasibility of Kinze's proposed alternate energy production facility." (Kinze complaint, pp. 4-5). Because these criteria are no longer open to Kinze, dismissal of the complaint and denying Kinze's request for a formal complaint proceeding is appropriate, because the Board cannot grant the relief Kinze seeks.

While it is not necessary for the Board to address other arguments supporting and opposing the motion to dismiss, it should be noted that even though the Board's rules do not contain a specific limit on net metering, the Board reiterated in the March 8, 2002, MidAmerican order cited by IPL in its motion to dismiss that "net billing was designed for small customers installing renewable generation for their

own use, rather than for large customers or commercial applications.” In orders and during the pendency of proceedings before the Federal Energy Regulatory Commission regarding the net metering rules, the Board has consistently stated and followed this policy. While the rules do not contain specific limits on net-metered facilities, the Board does not envision that a 6 MW commercial facility would qualify for net metering arrangements under the Board’s rules.

IT IS THEREFORE ORDERED:

1. The request for formal complaint proceedings filed by Kinze Manufacturing, Inc., on April 9, 2003, is denied.
2. The complaint filed by Kinze Manufacturing, Inc., on April 9, 2003, is dismissed.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Sharon Mayer
Executive Secretary, Assistant to

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 17th day of September, 2003.