

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. RFU-03-2 (RPU-02-7)
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**ORDER APPROVING REFUND PLAN**

(Issued February 20, 2004)

On June 16, 2003, Interstate Power and Light Company (IPL) filed a refund plan for the disposition of insurance recoveries associated with former manufactured gas plant (FMGP) sites in the former service area of Interstate Power Company (Interstate). The refund plan was filed to comply with the "Final Decision and Order," issued May 15, 2003, in Docket No. RPU-02-7, IPL's most recent gas rate case. IPL proposed that it be allowed to retain the insurance recoveries as reimbursement for FMGP remediation costs it has incurred. The Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a request that the Board docket the refund plan for hearing.

On July 23, 2003, the Board issued an order docketing the refund plan, establishing a procedural schedule for the filing of testimony, and setting a hearing date. On August 19, 2003, the Board granted intervention to MidAmerican Energy Company (MidAmerican) and modified the procedural schedule. A hearing was held on October 29, 2003. Briefs were filed by IPL and Consumer Advocate.

The issue of whether IPL should be required to refund any of the insurance recoveries to ratepayers is the main issue in this case. The other issues raised by the parties are dependent on that decision. Based upon the Board's decision not to require IPL to make a refund, it will not be necessary for the Board to address the remaining issues.

**A. Jurisdiction over insurance recoveries**

In order to place the Board's decision in context, the Board will describe the history of the treatment of FMGP insurance recoveries in Iowa and the Board's jurisdiction over FMGP insurance recoveries in general and those obtained by Interstate specifically. In 1991 the Board, in IES Utilities Inc., Docket No. RPU-90-7, allowed IES to include FMGP remediation costs in its rates. As part of that decision, the Board found that it was reasonable to share at least a portion of any insurance recoveries to offset ratepayer expenses. The Board, therefore, asserted jurisdiction over future insurance recoveries to decide the disposition of any FMGP-associated insurance recoveries that IES received in the future.

In its final order in Midwest Gas, a division of Midwest Power Systems, Inc. (Midwest Gas), Docket No. RPU-91-5, issued May 15, 1992, the Board stated that there was "consistent precedent for allowing remediation costs to be recovered from ratepayers" and allowed a representative level of costs to be included in rates. The Board then stated, "since the Board has determined that it is reasonable for ratepayers to absorb a significant portion of the cost of environmental clean-up through rates, it is also reasonable that a comparable portion of any third-party recovery for the environmental clean-up from insurance companies should offset

ratepayer expenses." The Board, therefore, required Midwest Gas to track remediation costs and any insurance recoveries.

On rehearing of the May 15, 1992, order, the Board emphasized that it had not adopted a method for treatment of FMGP-related insurance recoveries. The Board stated that the requirement to maintain a specific tracking of recoveries would preserve the information for future consideration, but because there had been no actual insurance recoveries as of that date, the actual treatment of the recoveries "has not been considered or established by the Board."

The Board has asserted jurisdiction over FMGP insurance recoveries in other cases since 1992. The Board took jurisdiction over insurance recoveries in subsequent dockets involving Midwest Gas, Docket Nos. RFU-94-2 and DRU-95-3. The Board took jurisdiction over FMGP insurance recoveries in Docket No. RFU-96-1, involving Interstate, and allowed Interstate to retain a \$1 million recovery to offset rate increases for energy efficiency. In 2000 the Board took jurisdiction over FMGP insurance recoveries obtained by MidAmerican and approved a settlement that allowed MidAmerican to retain insurance recoveries based upon an accelerated remediation plan.

In 2001 the Board addressed the issue of the Board's jurisdiction over FMGP insurance recoveries that had been obtained by IES. In that order, the Board cited to its general ratemaking authority pursuant to Iowa Code § 476.2(1) for authority over the insurance recoveries and concluded that "the Board took jurisdiction over the insurance recoveries as an issue in the development of just and reasonable rates in Docket No. RPU-90-7 as part of the decision issued April 30, 1991."

Jurisdiction by the Board over the FMGP insurance recoveries received by Interstate is based upon the same reasoning. The Board approved a settlement in Docket No. RPU-92-11 that included a representative amount to be paid by ratepayers for FMGP site remediation and required compliance by Interstate with the directives in Docket No. RPU-91-5. The directives found in Docket No. RPU-91-5 are discussed above. The settlement stated as follows:

The income statement set forth in Attachment B to this Settlement Agreement recognizes a representative level of annual former manufactured gas plant (FMGP) investigation and remediation costs of \$508,449. Interstate shall maintain records consistent with prior IUB directives issued in Docket No. RPU-91-5 for FMGP expenditures and third-party recoveries.

In addition, IPL witness Hampsher testified that he did not believe that the settlement in Docket No. RPU-92-11 indicated that the Interstate insurance recoveries would be treated consistent with other recoveries. Witness Hampsher did agree that the tracking mechanism required by the directives in Docket No. RPU-91-5 was put in place so that the recoveries could be considered in a future proceeding.

The Board orders cited above clearly indicate tracking was required in order to allow a future Board to consider the proper treatment of the insurance recoveries as part of the ratemaking process. Just as the Board decided in 2001 for IES in Docket No. RPU-90-7, the Board has jurisdiction over the insurance recoveries in this docket. The Board finds the fact that Interstate did not request, and the Board did not approve, a specific representative amount for FMGP remediation in Docket No. RPU-95-8 does not affect the Board's jurisdiction over these insurance recoveries, which was established in Docket No. RPU-92-11.

**B. Disposition of insurance recoveries**

Board precedent, as discussed above, indicates that each filing concerning disposition of FMGP insurance recoveries should be decided based upon the facts of the individual case. The treatment of FMGP insurance recoveries in previous cases involving IES, Midwest Gas, and MidAmerican provides some guidance but is not determinative of the issue in this case. The comparisons and calculations of FMGP remediation costs, ratepayer contributions, and recoveries made by IPL and Consumer Advocate are also informative but are not the determinative factors. The Board's primary concern is that any environmental hazards at the FMGP sites are eliminated as effectively and expeditiously as possible and that neither ratepayers nor shareholders receive a windfall from any insurance recoveries associated with those sites.

Based upon the evidence in this record, there is no real dispute that Interstate incurred a significant increase in FMGP remediation costs at the Clinton FMGP site after the settlement in Docket No. RPU-95-8 and prior to the approval of interim rates in Docket No. RPU-02-7. There is also no dispute that Interstate received \$10,552,000 in insurance recoveries systemwide during this same period. However, IPL and Consumer Advocate disagree regarding the percentage of those insurance recoveries that should be attributed to Iowa.

Further, there is no dispute that representative amounts for FMGP remediation were included in rates in Docket No. RPU-92-11 and in interim rates in Docket No. RPU-95-8. The record indicates a representative amount was not specifically included in the settlement in Docket No. RPU-95-8 because remediation at the

Mason City site was almost complete and Interstate had no obligation at that time to begin remediation at the Clinton site.

Witness Hampsher testified that after the settlement in Docket No. RPU-95-8 Interstate was required to remediate the Clinton site. Witness Hampsher testified that Interstate would have pursued the insurance recoveries to cover any FMGP costs at the Clinton site since a representative amount was not included in rates. If there had been no insurance recoveries, Witness Hampsher testified that Interstate would have had to decide whether to file for a rate increase to cover the remediation costs.

Witness Hampsher also testified that Interstate knew at the time of the rate freeze that was agreed to in Docket No. SPU-96-6 that it would incur significant costs for FMGP remediation at the Clinton site and it knew the approximate amount of the expected insurance recoveries. Rather than file a rate case to include a representative amount or seek Board approval at that time of the disposition of the insurance proceeds, Interstate chose to retain the insurance recoveries to offset FMGP remediation costs and address the issue of the disposition of the insurance recoveries in the next rate case.

The Board finds that Interstate's decision to retain the insurance recoveries and wait until the next rate case to determine the disposition of those recoveries was consistent with the Board's guidance in Docket No. RPU-94-2. In that case, the Board required a 90/10 sharing of the insurance proceeds associated with FMGP remediation. In the rehearing order in Docket No. RFU-94-2, the Board stated that the decision requiring the 90/10 sharing was limited to the facts of that case. The

Board also stated that it could not say, at that time, whether a company should file a refund plan immediately upon receipt of similar proceeds in the future. The Board stated that in each instance, the utility must decide whether to file a refund plan, seek a declaratory order, or raise the refund as an issue in the next rate case. Thus, Interstate's decision to preserve this issue until its next rate case was a reasonable one, under these circumstances.

A review of the calculations made by IPL and Consumer Advocate show that the total cost for remediation from the beginning of Interstate's remediation efforts until the effective date of interim rates in Docket No. RPU-02-7 is approximately equal to the total of the representative FMGP remediation amounts included in rates, plus the FMGP-related insurance recoveries for the same period. The Board has included in its consideration the remediation costs incurred during the rate freeze. The Board is not persuaded by Consumer Advocate's arguments that these amounts should be excluded. The remediation costs were incurred for clean-up of the Clinton site and the fact that the rate freeze was a concurrent event did not remove Interstate's responsibility to expend those amounts or mean that Interstate was recovering these costs from its customers.

As stated above, the Board's primary concern is that the environmental clean-up of FMGP sites should be completed as effectively and expeditiously as possible and that there should be no windfall to either ratepayers or shareholders. Based upon the record in this case, the Board finds that retention of the insurance recoveries by Interstate will satisfy this primary concern. The insurance recoveries were used for remediation during a time period when rates did not include a specific

representation amount for FMGP remediation. The Board finds it would be inequitable to share insurance recoveries for the period with customers when no representative amount was included in the rates paid by customers.

Based upon the foregoing analysis, the Board will approve the refund plan filed by IPL and allow it to retain the FMGP insurance recoveries as proposed.

**IT IS THEREFORE ORDERED:**

The refund plan filed by Interstate Power and Light Company on June 16, 2003, is approved.

**UTILITIES BOARD**

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 20<sup>th</sup> day of February, 2004.