

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  SECOND PAYMENT AGREEMENTS [199 IAC 19.4(10)"c", 20.4(11)"c"]	DOCKET NO. RMU-03-12
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**ORDER TERMINATING RULE MAKING**

(Issued April 6, 2004)

**PROCEDURAL HISTORY**

Pursuant to the authority of Iowa Code §§ 17A.4, 17A.4(1)"b," 476.1, 476.2, and 476.20 (2003), the Utilities Board (Board) is terminating the rule making identified as Docket No. RMU-03-12. A "Notice of Termination" is attached to this order and incorporated by reference. The Board commenced the rule making on August 15, 2003, to receive public comment on a petition for rule making filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate). The petition proposed to amend the Board's rule concerning second payment agreements by requiring a utility to offer a second payment agreement to a customer who had defaulted on a first payment agreement. The proposed amendments were published in IAB Vol. XXVI, No. 5 (9/3/03) p. 332, as ARC 2724B.

On August 15, 2003, the provisions concerning second payment agreements were found in an unnumbered paragraph in paragraphs

199 IAC 19.4(10)"c" and 20.4(11)"c." Since the publication of the proposed amendments, the Board has adopted amendments to its rules that place the provisions in subparagraphs 19.4(10)"c"(5) and 20.4(11)"c"(5).

Consumer Advocate states that the Board advised the public that natural gas prices may be very high during the 2003-2004 heating season and customers heating bills could be higher than normal. Consumer Advocate states that low-income customers could be significantly affected by high heating bills and then be subject to disconnection. Consumer Advocate states that the proposed amendments would ensure these low-income customers are offered a second payment agreement before disconnection could occur.

Under the Board's current rules, a utility has discretion in deciding whether to offer a customer a second agreement. If the utility offers the second agreement, the second agreement need not extend beyond the next October 15. Consumer Advocate suggests that the Board adopt the amendments proposed in this rule making for these two paragraphs and that the Board not adopt the proposal to rescind these provisions in Docket No. RMU-03-3. In the order adopting amendments in Docket No. RMU-03-3, Customer Service Revisions; Executive Orders 8 and 9 [199 IAC 6, 19.4, 20.4, and 21.4], the Board decided to retain the existing language

addressing second payment agreements to allow a complete review of Consumer Advocate's proposal in this rule making.

Written comments were filed by Aquila, Inc., d/b/a Aquila Networks (Aquila), MidAmerican Energy Company (MidAmerican), the Iowa Association of Electric Cooperatives (IAEC), the Iowa Association of Municipal Utilities (IAMU), the City of Wayland (Wayland), Consumer Advocate, and Interstate Power and Light Company (IPL). Richard A. Nation and Carol Hoots also filed comments.

An oral presentation was held on November 6, 2003. MidAmerican, IAEC, IPL, the Iowa Community Action Association (ICAA), Consumer Advocate, Aquila, IAMU, and the Division of Community Action Agencies, Bureau of Energy Assistance (BEA), made oral comments. Additional comments and statistics were filed by Aquila. Consumer Advocate filed additional information concerning second payment agreements as requested by the Board.

The Board summarizes the written comments, oral comments, and additional comments below and provides an analysis of the comments and information filed by the participants.

## COMMENTS

### 1. **Aquila**

Aquila states that it generally supports providing protection for low-income customers, but opposes redirecting costs to other ratepayers. Aquila states that this rule will provide minimal additional benefit to low-income customers and it will provide unscrupulous customers another opportunity to postpone payment of utility bills. Aquila contends the proposed amendment would shift substantial costs to other ratepayers.

Aquila points out that few low-income customers are disconnected for non-payment of bills. In the period from November 2002 to March 2003, only about 6 percent (1,216) of Aquila's total payment arrangements (19,228) were made by customers on energy assistance. Aquila suggests that requiring a second payment agreement only postpones the issue into the next heating season. Finally, Aquila states that the proposed amendment does not address the underlying problem of inability to pay. The additional six months will only delay disconnection and shift costs to other customers. Aquila proposes that the Board limit the rule to customers receiving energy assistance, if it decides to adopt the rule.

Aquila also encourages the Board to consider a rule that (1) openly discloses the costs of low-income subsidies; (2) requires local distribution companies to provide gas service for heating to customers with incomes

below a specified level; and (3) provides a mechanism to allow local distribution companies to recover low-income subsidies or bad debts, such as a surcharge.

Aquila states that the costs for adopting the proposed rule making would range from \$25,000 to \$200,000 a year. The variance in Aquila's estimate is due to the different effect of the cost categories in different periods of high gas prices and cold weather and the effect that it would have on bad debts.

## **2. MidAmerican**

MidAmerican suggests that the proposed amendment is a permanent solution to a short-term problem. MidAmerican states that the Board should retain the rules giving the utility the discretion to decide when to offer a second payment agreement. This would allow the utility to offer the second agreement only to customers who could successfully complete a second agreement. MidAmerican suggests that the current rule appears to have been originally designed to apply to LIHEAP customers. MidAmerican points out if the Board adopts the 32-degree rule in Docket No. RMU-03-10, Temperature Trigger for Cold Weather Protections, a large percentage of customers who have defaulted on payment agreements will retain service between November 1 and April 1.

MidAmerican suggests that low-income customers who have traditionally retained service under the winter moratorium but have defaulted on their original payment agreement would benefit from the proposed amendment only if it is true that Iowa's LIHEAP recipients continue to make winter monthly payments equal to 90+ percent of the winter months bills despite the presence of the winter shutoff moratorium.

MidAmerican states that its low-income weatherization program's annual budget will be increased to over \$2 million beginning in 2004. In addition, MidAmerican states that it encourages customers to donate to the I CARE program and MidAmerican adds 25 cents to every dollar donated by customers. MidAmerican suggests that these measures provide a significant benefit to low-income customers and incurring additional costs may not be reasonable.

MidAmerican states that it is currently carrying almost \$10 million for payment agreements and adoption of the proposed amendment would increase this amount. MidAmerican does not believe that the proposed amendment strikes the appropriate balance between options available to customers and the costs that are shifted to other ratepayers.

### **3. Consumer Advocate**

In comments filed in support of its petition, Consumer Advocate states that ICAA-member agencies serve 295,775 individuals and 117,779

households. Over 50 percent of low-income individuals and households in Iowa are not served by ICAA-member agencies. Of the households served by ICAA, 69,184 have incomes below the national poverty level. The great majority of the individuals served by ICAA are employed, disabled, retired, or minors. Consumer Advocate states that LIHEAP customers simply cannot afford to timely pay for higher winter natural gas bills.

Consumer Advocate states that several conclusions concerning LIHEAP customers have been reached after exhaustive study. These conclusions are:

1. Iowa's LIHEAP recipients do not experience an increase in the number of weighted "bills behind" they incur during the winter shutoff moratorium period. While average arrears increase during the winter, this increase is a reflection of the fact that winter bills are higher, not of the fact that LIHEAP recipients are a larger number of months behind in their payments.
2. Iowa's LIHEAP recipients do not reduce the number of payments made each month resulting in a zero balance during the shutoff moratorium period.
3. Iowa's LIHEAP recipients continue to make payments each month during the winter moratorium period even when such payments do not reduce the account balance to zero. Partial

payments continue to be made both toward bills for current usage and toward arrears.

4. Iowa's LIHEAP recipients do not reduce the total dollars paid each month relative to the total bills for current usage rendered each month during the shutoff moratorium period.

5. Iowa's LIHEAP recipients continue to make winter month payments equal to 90+ percent of the winter month's bills despite the presence of the winter shutoff moratorium.

6. Iowa's LIHEAP recipients do not reduce the number of total payments they make relative to the number of bills they receive during the shutoff moratorium period.

In additional comments, Consumer Advocate suggested the Board revise the proposed amendments to require that second payments extend through October 15 at a minimum. Consumer Advocate states that it supports this revision to the proposed amendments.

#### **4. City of Wayland**

The City of Wayland states that it usually offers a second payment agreement even though the customer has defaulted on the original agreement. Wayland suggests that the language concerning default in the rule is confusing. Wayland estimates that adoption of the proposed amendment would affect between 10 and 12 customers but states that it is

difficult to estimate the costs. Finally, Wayland states that the proposed rule makings, Docket Nos. RMU-03-10 and RMU-03-12, appear to be designed to help the customer, but they may in effect allow the customer to avoid responsibility for their utility bills. These amendments could allow customers to get further behind and to use money necessary for utility bills for some less important purchases.

## **5. IPL**

IPL states that it has been its practice to offer low-income customers a second payment agreement before disconnection if the customer is in default of a first payment agreement. IPL proposes the following revision to the amendment proposed by Consumer Advocate:

Second agreement. If a residential customer has retained service from November 1 through April 1 but is in default of a payment agreement, the utility may offer the customer a second payment agreement that will divide the past-due amount into equal monthly payments with the final payment due by the 15<sup>th</sup> day of the next October. If the utility is informed that the customer qualifies for winter energy assistance or weatherization funds and is not disconnected, the utility shall offer the customer a second payment agreement under the same terms otherwise provided in this provision. The utility may also require the customer to enter into a level payment plan to pay for the current bill.

## **6. IAEC**

IAEC states that the Board's current rule allows for second payment agreements on a discretionary basis and IAEC is unaware of any indication

this provision has not adequately addressed the problems raised by Consumer Advocate. IAEC suggests that no changes need to be made in the rule if problems have not been identified. IAEC suggests that low-income residents have significant protection now under the provisions of Iowa Code § 476.20 and 199 IAC 19.4(15) and 20.4(15).

IAEC points out that the Board had issued an update of the white paper on natural gas volatility and the update indicated that there were positive developments that mitigated the risks of high prices and cold weather for this winter. IAEC points out that Consumer Advocate references the benefits the proposed amendment would have for LIHEAP customers, but the proposed amendment would be for all customers, not just LIHEAP customers. IAEC supports the current rule that allows the utility discretion on whether to offer a second payment agreement.

## **7. IAMU**

IAMU states that it has never had a statutory requirement to offer a second payment agreement and the current Board rule reflects this fact. IAMU states that making a second payment agreement mandatory only serves to provide a customer already in default the absolute right to further delay disconnection and increase the bad debt by the amount of services delivered until the customer defaults on the second payment agreement. This will cause an economic hardship for a municipal utility, including the

possibility that the customer could have service through the next winter moratorium and thus significantly increase the total amount of uncollected bills.

The winter moratorium can allow unpaid balances from before the moratorium and after the moratorium to be accumulated. The unpaid amount could be up to eight months of service, well beyond the five-month moratorium. A municipal utility can then only increase rates to offset the uncollected debts. IAMU contends that this is contrary to the intent of the legislature is and not good public policy. IAMU asserts there is no indication in the statute that a second payment agreement was intended or contemplated by the legislature.

**8. Richard A. Nation**

Mr. Nation objects to the proposed amendment. He states that requiring the offering of second payment agreements would be counterproductive. Mr. Nation suggests that efforts should be made to have family members support those who cannot pay their winter heating bills, rather than other customers.

**9. Carol Hoots**

Ms. Hoots states that MidAmerican has payment plans but MidAmerican should not disconnect customers who miss a payment under a payment plan by one day. Ms. Hoots states that customers who miss a

payment by only a few days should not be disconnected or have the entire amount of the unpaid bill due immediately.

### **BOARD ANALYSIS**

Consumer Advocate proposes to amend the current rule to require the utility to offer a customer a second payment agreement if the customer has defaulted on the first payment agreement. The proposed amendment would establish a mandatory requirement that the utility offer a second agreement by changing the word "may" in the provision to "shall." The proposed amendment is complicated by the arguable ambiguity in the current rule concerning whether the current provision applies to all customers or only to energy assistance customers. This ambiguity complicates consideration of the proposed amendment, since a requirement to offer only energy assistance customers a second agreement affects far fewer customers than a requirement to offer the second agreement to all customers who default on a first payment agreement.

Consideration of the proposed amendment is also complicated by the retention of the language limiting the second agreement to a period ending the next October 15. By retaining this limitation, the second agreement would be spread over a maximum of six and one half months and the customer would have to pay the current bill in addition to the agreed-upon amount. The result would be to compress the arrearage over a 6-month

period when the customer has already been unable to stay current with a 12-month plan with lower payments.

The statistics provided by the utilities show that under the current provisions, energy assistance customers are given many opportunities to retain service. This is accomplished by offering reasonable first agreements, followed by second agreements in cases where the customer is making an effort to make payments. Requiring utilities to provide a second agreement to customers could result in utilities taking a more restrictive approach to first agreements and being less flexible when working out payment arrangements in the initial instance.

It appears that a mandatory second agreement would only provide a benefit to a limited number of customers and could cause some customers to accumulate even bigger debts. The information provided indicates that low-income customers pay a portion of current bills during the winter months. There is no evidence in the record whether the majority of these customers could afford the payments under a second payment agreement over a shorter period, since they would have been unable to make the payments on a first agreement based on a payment period of 12 or more months. The proposal to make October 15 a minimum period for second agreements raises additional issues relating to cost recovery and customer impacts. This record

does not provide enough information to fully analyze these issues as a part of this rule making, so the proposal will not be adopted.

The responses to Consumer Advocate's data requests by IAEC members and IAMU members show that these utilities disconnect very few energy assistance customers. MidAmerican, Aquila, and IPL also show relatively few disconnections of energy assistance customers compared to the total number of customers. The information shows that these utilities enter into many second, third, and even fourth payment agreements, when they believe it is appropriate to do so.

These statistics and the comments of the utilities show that the utilities make an effort to allow customers who attempt to pay their utility bills the opportunity to enter into agreements to retain energy service. The information shows that requiring a second agreement for customers might not be a benefit to low-income customers since it could increase arrearages. If second payment agreements begin after the winter moratorium, they would not expand protection during the winter moratorium to low-income customers who do not become certified for energy assistance.

One of the primary goals of the proposed amendment is to provide additional protection for low-income customers who do not become certified for energy assistance during the winter moratorium. The Board considers the protection of these same low-income customers who are eligible for

energy assistance but do not become certified to be one of the primary goals of the cold weather rules. However, requiring second agreements would not directly help the Board implement the protections provided in Iowa Code § 476.20 and the proposed amendment raises some of the same issues addressed by the Board in the temperature trigger rule making, Docket No. RMU-03-10.

The problem in providing winter moratorium protection appears to be that less than half of the eligible low-income households become certified for energy assistance and, therefore, are not protected by § 476.20 from disconnection during winter months. These low-income customers may be unable to pay their winter energy bills and are, therefore, subject to disconnection. These customers then enter into payment agreements without the resources to complete the agreements successfully. If these low-income customers were certified, they could not be disconnected during the winter moratorium and this would fulfill the purpose of the Iowa Code § 476.20. Thus, increased certification of eligible customers appears to be the best approach to this situation.

The Board finds that the proposed amendment is an isolated change in the Board's cold weather rules that should be considered as a part of a comprehensive review of all cold weather protections. Therefore, the Board finds that this rule making should be terminated. The Board will propose rule

changes based upon its review with the intent that any changes will be effective by November 1, 2004.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The rule making identified as Docket No. RMU-03-12 is terminated.
2. The Executive Secretary is directed to submit for publication in the Iowa Administrative Bulletin a "Notice of Termination" in the form attached to and incorporated by reference in this order.

### **UTILITIES BOARD**

/s/ Diane Munns

/s/ Elliott Smith

### **DISSENT**

I respectfully dissent from the decision of the Board majority.

I would have adopted the proposed rule with the revisions suggested by Interstate Power and Light; i.e., that a utility must offer a second payment agreement

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to residential customers who qualify for winter energy assistance or weatherization funds and who have not been disconnected.

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 6<sup>th</sup> day of April, 2004.

## **UTILITIES DIVISION [199]**

### **Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)"b," the Utilities Board (Board) gives notice that on April 6, 2004, the Board issued an order in Docket No. RMU-03-12, In re: Second Payment Agreements [199 IAC 19.4(1)"c" and 20.4(11)"c"], "Order Terminating Rule Making." The Board's order terminated the rule making commenced in this docket on August 15, 2003. The rule making was commenced pursuant to Iowa Code sections 17A.4, 17A.7, 476.1, 476.1A, 476.1B, 476.2, and 476.20 and published in IAB Vol. XXVI, No. 5 (9/3/03) p. 332, as ARC 2724B. The Board commenced the rule making to receive public comment on a petition for rule making filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate). The petition proposed to amend the Board's rules by making it mandatory that a utility offer a customer a second payment agreement if the customer defaulted on a first payment agreement.

On August 15, 2003, the provisions concerning second payment agreements were found in an unnumbered paragraph in paragraphs 199 IAC 19.4(10)"c" and 20.4(11)"c." Since the publication of the proposed amendments, the Board has adopted amendments to its rules that place the provisions in subparagraphs 19.4(10)"c"(5) and 20.4(11)"c"(5).

Written comments were filed by Aquila, Inc., d/b/a Aquila Networks (Aquila), MidAmerican Energy Company (MidAmerican), the Iowa Association of Electric Cooperatives (IAEC), the Iowa Association of Municipal Utilities (IAMU), the City of Wayland (Wayland), Consumer Advocate, and Interstate Power and Light Company (IPL). Richard A. Nation and Carol Hoots also filed comments.

An oral presentation was held on November 6, 2003. MidAmerican, IAEC, IPL, the Iowa Community Action Association (ICAA), Consumer Advocate, Aquila, IAMU, and the Division of Community Action Agencies, Bureau of Energy Assistance (BEA), made oral comments. Additional comments and statistics were filed by Aquila. Consumer Advocate filed additional information concerning second payment agreements as requested by the Board.

The Board's order, issued concurrently with this Notice, discusses the comments and the reasons for the Board's decision to terminate the rule making. The order can be found on the Board's Web site at [www.state.ia.us/iub](http://www.state.ia.us/iub). The Board found that the proposed amendment to make offering second payment agreements mandatory did not accomplish the primary goal of protecting low-income customers during the winter moratorium. The Board has determined that any change in the requirements for second payment agreements should be addressed as part of a comprehensive review of all cold weather protections. The Board will undertake such a review and determine if additional amendments need to be made to those rules.

Pursuant to the authority of Iowa Code section 17A.4(1)"b," the Board hereby terminates the proposed rule making published in IAB Vol. XXVI, No. 5 (9/3/03) p. 332, as ARC 2724B.

April 6, 2004

/s/ Diane Munns

Diane Munns

Chairman