

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>GARY FINHOLT,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>DOCKET NO. C-05-124</p>
--	----------------------------

ORDER DENYING REQUEST FOR FORMAL COMPLAINT PROCEEDINGS

(Issued August 30, 2005)

PROCEDURAL HISTORY

On June 22, 2005, Gary Finholt filed with the Utilities Board (Board) a written complaint against Interstate Power and Light Company (IPL), pursuant to Iowa Code § 476.3 (2005). The complaint is directed at certain charges billed to Mr. Finholt by IPL. Mr. Finholt disputes IPL's charges for temporary service during construction of his new house; a contribution in aid of construction for an underground service line of 134 feet; and a gross-up charge for income taxes on the contribution in aid of construction.

On June 23, 2005, Board staff forwarded the complaint to IPL for written response. Following correspondence with both parties, on July 15, 2005, Board staff

issued a proposed resolution finding that the charges were lawful and that the complaint was without basis.

On July 22, 2005, Mr. Finholt filed a letter stating that he disagrees with the proposed resolution and requesting a formal complaint proceeding. On July 29, 2005, IPL responded to the request, stating that Mr. Finholt had not provided any information to the Board to support the request and that IPL supports the proposed resolution.

APPLICABLE LEGAL STANDARD

Iowa Code § 476.3(1) provides a two-step process for investigating complaints against public utilities that offer service in Iowa. The Board has adopted rules to implement this process, see 199 IAC 6. Pursuant to the statute and rules, when a written complaint is filed, Board staff forwards it to the utility for a response. The utility's response is also provided to the complainant, who may submit further information for staff's consideration. Staff then reviews all of the submissions and issues a proposed resolution.

If any party is dissatisfied with the proposed resolution, that party may file a request for formal complaint proceedings. Pursuant to § 476.3(1), that request "shall be granted if the board determines that there is any reasonable ground for investigating the complaint."

FACTS

On August 24, 2004, Decorah Electric contacted IPL and requested temporary service at a residential construction site at 607 Stanwood Drive, Decorah, Iowa, stating that the billing for temporary service should be sent to Mr. Finholt. IPL sent an application for service to Mr. Finholt, which Mr. Finholt completed and signed on September 4, 2004. The application identifies the electrical contractor as Decorah Electric and specifies the type of service requested as "Electric Underground." (See IPL response letter of July 14, 2005, and attachments.)

The covenants applicable to Mr. Finholt's property in Decorah include a requirement that all telephone, electric, and cable television lines be placed underground. ("Addendum to Plat of Highland Place Subdivision," paragraph (j), attached to IPL's letter of July 14, 2005.)

Temporary service was installed on September 13, 2004, and on November 10, 2004, IPL billed Mr. Finholt \$122 for the temporary service.

Meanwhile, IPL installed 134 feet of underground line on Mr. Finholt's property to provide permanent service to his residence. On December 15, 2004, IPL billed Mr. Finholt \$589.80 as a "contribution in aid of construction" for the line plus \$222.41 for income taxes IPL would have to pay on the contribution in aid of construction.

On June 15, 2005, Mr. Finholt sent a written complaint to the Board, which was received on June 22, 2005. In his complaint, he takes issue with all three of the charges described above. First, he asserts that he did not order temporary service

and, if the contractor ordered the service for his own use, then IPL should bill the contractor.

Second, Mr. Finholt complains that the charge for installation of the underground line is excessive. He says he was never notified of any less expensive options and that he measures the distance from the utility's box to the meter as only 110 feet, not 134. Subtracting 15 feet of underground line that IPL provides at no charge, he concludes he should be charged for no more than 95 feet of line.

Finally, Mr. Finholt objects to the gross-up for federal taxes, arguing that only the Federal Government can impose federal income taxes and the state does not have the power to transfer those taxes to utility customers. Mr. Finholt asks that the Board order IPL to refund \$934.21 to him, along with all expenses he has incurred in pursuing this matter.

IPL's letter of July 14, 2005, responds to each of Mr. Finholt's complaints. Regarding the charge for temporary service, IPL notes that its tariff permits customers to obtain temporary electric service, provided the customer pays the construction and removal costs (less salvage). (IPL Electric Tariff § 11.08.) IPL also notes that when Decorah Electric requested temporary service at the site, the contractor indicated the bill should be sent to the property owner, Mr. Finholt, and that when it sent Mr. Finholt an application for service, he completed it showing Decorah Electric as the electrical contractor. Further, the application provides that the parties who sign the application are liable for utility charges at the service address shown; Mr. Finholt signed the application on September 4, 2004. IPL

concludes that Mr. Finholt signed the application for service and is responsible for the utility charges. Further, IPL asserts that if Mr. Finholt disputes authorizing Decorah Electric to request temporary service and bill Mr. Finholt for it, then that is an issue between Mr. Finholt and his electrical contractor.

With respect to the second issue, the charge for installation of an underground service line, IPL identifies and responds to several sub-issues. The first is the question of whether Mr. Finholt was notified of lower cost alternatives. IPL notes that underground service (which is typically more expensive than overhead service) was required by the covenants applicable to Mr. Finholt's property, so it was not required to (or even able to) offer him an overhead service option. This requirement was established by the developer of the subdivision, not by IPL.

The second sub-issue is the length of the service line. IPL says that it has measured the length of the service line at least four times and is confident that the length is 134 feet. IPL suggests that the difference between its measurements and Mr. Finholt's may be the result of certain limitations that Mr. Finholt may not have considered, such as minimum radius requirements for underground cable bends.

The third sub-issue concerns the application of 199 IAC 20.3(13)"c," which specifies the methodology for determining the cost of a service line. In essence, the rule provides that a new customer is entitled to up to 50 feet of overhead service line (or underground equivalent) at no charge, after which the customer must provide a contribution in aid of construction to cover the excess cost. In this case, IPL calculates that the cost of installing 50 feet of overhead service line is approximately

equal to the cost of installing 13 feet of underground service line; this is the basis of Mr. Finholt's statement that he is entitled to 15 feet of underground line for free. IPL says that its overall charge for installing Mr. Finholt's service was reasonable and consistent with the requirements of paragraph 20.3(13)"c."

Finally, the third issue concerns the effect of income taxes on the contribution in aid of construction. IPL states that after enactment of the Tax Reform Act of 1986, it is required to pay income taxes on contributions in aid of construction. Accordingly, the Board's rules authorize utilities to gross-up the contributions to reflect the effect of this income tax liability. It is not taxation of the customer; instead, it is recovery of the costs associated with a customer's choice to request a utility service extension that is in excess of the 50-foot allowance required by the Board's rules.

In conclusion, IPL argues that the Board's rules and IPL's tariff set reasonable allowances for installation of new service lines and the amount of new construction that is to be provided at no additional charge to the customer. These allowances balance the needs of all customers and avoid making existing customers pay for the choices made by a new customer, such as underground construction or longer service lines. According to IPL, these excess costs are appropriately charged to the new customer, who receives the direct benefit of his or her choices.

ANALYSIS

1. Temporary service.

The facts relevant to this issue are not subject to dispute. Mr. Finholt's electrician called IPL to request temporary electrical service for construction

purposes. Mr. Finholt then completed and submitted to IPL an application for service that identified the same electrician, by name. The application form provides that "the parties signed below are jointly and separately liable for utility charges at the service address above." Mr. and Mrs. Finholt signed the application. Thus, they agreed to accept responsibility for utility charges at their new address.

The Board notes that the application form includes separate spaces for specifying when temporary and permanent electric service is needed. On the Finholts' application, both spaces are blank, so this is only evidence that the Finholts were notified of the existence of the two services, not that they ordered both of them. However, in light of the undisputed fact that the customer submitted the application as a result of the electrician's request for temporary service, it is only reasonable to conclude that Mr. Finholt knew the application was for the purpose of ordering both temporary and permanent service. Further, this is the only conclusion that is consistent with common sense; it is clear that Mr. Finholt was having a new house constructed on his property and it is not unusual to use temporary electrical service to do so. The Board finds that there are no reasonable grounds for further investigation of this issue.

2. The underground line installation charge.

Again, it appears the facts are not subject to material dispute. Mr. Finholt complains that he was not notified of less expensive options, but does not identify what those options might have been. Moreover, it is undisputed that the subdivision in which his new house is located requires the use of underground service lines, so it

appears from the record that no less expensive options were available for his consideration.

There is a minor dispute regarding the length of the service line required; IPL says it has measured the required line at 134 feet, while Mr. Finholt says it is only 110 feet. While this is a factual issue, it is not a material issue, in the sense that resolution of the issue would not affect the overall outcome to any significant degree. This disagreement involves only a few feet of line, at most, and the cost of the actual line is only a small part of the overall cost of the installation.

Moreover, IPL has provided a reasonable explanation for the discrepancy. If Mr. Finholt is measuring in a straight line from the utility box to the meter, but the actual underground line has to be installed with gentle curves, then it is no surprise that Mr. Finholt's measurement would be somewhat shorter than the actual line length.

Based on the lack of materiality and the explanation provided by IPL, the Board finds that this measurement dispute does not provide reasonable grounds for further investigation of this complaint.

3. The income tax gross-up.

Mr. Finholt accuses the Board of improperly imposing income taxes on him. However, this is not the effect of the Board's rule 20.3(13)"a," which defines "contribution in aid of construction" in a manner that requires that income tax effects be factored into the calculation of the cost of a service extension. The rule is based on the principle that customers whose installation costs exceed a standard amount

should pay those excess costs. This is necessary to prevent a situation in which all customers subsidize a few with higher-than-usual installation costs.

Generally speaking, standard electric service rates are designed to recover the cost of providing electric service to most customers. Part of that overall cost is the cost of a typical service line to connect the customer to the utility's distribution system. Under the Board's rules, that typical service line is defined as 50 feet of overhead service line. The cost of that overhead line is equivalent to about 15 feet of underground service line.

Customers who require more than 50 feet of overhead service line, or more than about 15 feet of underground service line, are required to pay the excess cost of establishing their connection to the system. Otherwise, the cost of making that more expensive connection would be spread to all of the utility's other customers, meaning that those customers would be unfairly subsidizing service to the customers who have unusually high connection costs. In order to avoid that result, the Board's rules provide that when the cost of a service extension exceeds the estimated cost of constructing an overhead service line of up to 50 feet, the customer shall be required to provide a contribution in aid of construction equal to the excess cost.

199 IAC 20.3(13)"a."

The revenue authorities of the federal and state governments consider the contribution in aid of construction to be income to the utility and, therefore, subject to income tax. Thus, the cost of paying these income taxes is part of the utility's overall cost of providing service to the new customer and should be recovered from the

customer who will receive the benefit of the new service line. This is why the contribution in aid of construction must be grossed up for taxes.

A simplified example may help illustrate the situation.¹ Assume that installing 50 feet of overhead service line would cost \$50 and that installing a new customer's longer service line is estimated to cost \$150. The excess cost for that customer's service extension is $(\$150 - \$50)$ \$100. This would be the amount of the required contribution in aid of construction, before tax effects are considered.

If the combined state and federal income tax rate was 10 percent, then the total income tax due on that \$100 contribution would be \$10. Once these taxes are paid, however, the utility would be left with only \$90 to pay for the service extension, which is not enough to cover the full cost of connecting the customer to the system. In order to make up this shortfall, the utility must collect more than just \$100 from the customer; the excess cost must be "grossed-up" for this income tax effect.

This example should make it clear that the Board is not levying any income taxes on the customer; instead, the Board's rule simply recognizes the effect of already-existing income tax laws on the transaction in question. Because there is no tax being levied by the Board, the Board finds that Mr. Finholt's complaint regarding the income tax gross-up does not provide reasonable grounds for further investigation of this matter.

¹ This example is very simplified and merely for illustration. The numbers used are not representative of this or any other case.

4. Conclusion

In conclusion, the Board has carefully considered Mr. Finholt's complaint and his request for formal proceedings. The Board finds that there are no reasonable grounds for further investigation of this complaint. The request for formal complaint proceedings will be denied.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

The request for formal complaint proceedings filed in this matter by Gary Finholt on July 22, 2005, is denied for the reasons given in the body of this order.

UTILITIES BOARD

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 30th day of August, 2005.