

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>DONALD POLTON, SR.,</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 style="text-align:center">DOCKET NO. FCU-05-60 (C-05-138)</p>
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**ORDER DOCKETING COMPLAINT FOR FORMAL PROCEEDING AND
ESTABLISHING FILING DATES**

(Issued September 20, 2005)

PROCEDURAL HISTORY

On August 8, 2005, the Utilities Board (Board) received a request for formal complaint proceedings from Donald Polton, Sr., against Interstate Power and Light Company (IPL). On June 20, 2005, Mr. Polton filed an informal complaint against IPL alleging that IPL was threatening to disconnect electric service at 905 Third Street SE, Apartment 214, Cedar Rapids, Iowa, unless Mr. Polton paid a deposit of \$220. On July 26, 2005, after receiving and reviewing IPL's response to Mr. Polton's complaint, the Consumer Services Section of Board staff sent a proposed resolution to Mr. Polton, IPL, and the Consumer Advocate Division of the Department of Justice

(Consumer Advocate) finding that Mr. Polton must pay the \$220 deposit as required by IPL to retain electric service.

Subrule 199 IAC 6.5(2) requires a request for formal complaint proceeding be filed within 14 days of the date the proposed resolution is issued. The request by Mr. Polton was timely filed. Based upon a review of the information in the informal complaint and the number of questions raised by utilities concerning when an occupant of a residence, not the customer of record, may be held liable for utility service at the residence, the Board has determined that the request for a formal complaint proceeding should be granted. The Board considers this issue to be of sufficient importance and one that occurs with sufficient frequency to require the Board to provide additional guidance.

The Board addressed the issue of when a utility may hold an occupant, who is not the customer of record liable for utility service in its "Order Adopting Amendments" issued July 30, 2004, in Docket No. RMU-04-2. In that docket the Board adopted 199 IAC 20.4(16)"g," which established that a third party could not be denied utility service if the third party was creditworthy even though a person who owed the utility for service at that premise would continue to occupy the premise. The Board went on to describe an exception to this prohibition based upon what has been characterized as the "classic roommate" situation. The Board stated the exception as follows:

In the proposed rules, the Board used the term "creditworthy" when describing the third party in order to prevent the new paragraph from applying to customers

who move in together, place utility service in the name of only one occupant, intentionally do not pay their utility bills, and then attempt to remain living at the residence and continue utility service by switching the account to another roommate. This is the classic roommate situation, a subject the Board is not addressing in this proceeding. Under most current utility tariffs, none of the roommates would be deemed creditworthy since they all would be liable for the utility bills incurred while they were roommates.

The proposed amendments address those situations where a third party who is creditworthy requests service at a premise where an occupant owes a debt to the utility for service. In this situation the utility will be required to put service in the third party's name. As indicated at the oral presentation, the Board understands that the amendment may not perfectly address all fact situations such as cases where the third party occupied the premise at some time during a period when a debt became delinquent but the third party was not a "roommate" as described above. These unusual fact situations will have to be addressed individually based upon all of the facts known by the utility to Consumer Services Rules, ("Order Adopting Amendments" Docket No. RMU-04-2, issued July 30, 2004.)

As stated in the July 30, 2004, order, the Board did not address what other factors would allow a utility to hold an occupant other than the customer of record liable for utility service. The fact situation presented by Mr. Polton may fall into this area and may allow the Board to provide additional guidance as to when liability can be assessed to occupants who are customers of record.

Based upon a review of the information in the file, it appears that the complaint is largely based upon legal issues and may not require an evidentiary hearing. The Board will set out below the facts it considers necessary and material to resolve the

legal issues and request the parties to either stipulate to these facts, propose additional facts for stipulation, or present material facts that are still in dispute. The Board will also set out what it considers the legal issues involved in the complaint. The Board will allow parties to propose additional relevant legal issues. Once the facts are either stipulated to or found to be material and still in dispute, the Board will either set a hearing to take evidence concerning the disputed material facts or set a briefing schedule.

The Board encourages the parties to stipulate to as many facts as possible. The Board considers the issues involved in this case to be largely legal since they involve the interpretation of Iowa law, Board rules, IPL tariffs, and Board orders. When the Board issued the "Order Adopting Amendments" in Docket No. RMU-04-2, the Board understood that it would be necessary at some point to revisit the issue of when a person who is not the customer of record can be held liable for utility service.

FACTS PROPOSED TO BE STIPULATED

1. Donald Polton and Sonya Polton were husband and wife until their divorce on July 11, 1985.
2. Sonya Polton lived at 905 Third Street SE, Apartment 214, Cedar Rapids, Iowa, and was a customer of IPL for electric service.
3. Donald Polton lived with and cared for Sonya Polton, who suffered from a debilitating condition, the last five years of her life until she died on January 5,

2005. Sonya Polton could not have remained in her home without the assistance of Donald Polton, or some other person, for the last three years of her life.

4. Donald Polton became the leaseholder on Apartment 214, 905 Third Street SE, in Cedar Rapids, Iowa, in June 2004.

5. At the time of her death on January 5, 2005, Sonya Polton had an unpaid debt of \$883.84 for electric service. Sonya Polton had entered into a deferred payment agreement to pay her past due account but made no payments under the agreement.

6. Donald Polton and Sonya Polton made a joint application for energy assistance in the fall of 2004. Donald Polton and Sonya Polton received \$319 in energy assistance on December 10, 2004.

7. On January 10, 2005, Donald Polton contacted IPL and requested electric service be placed in his name as the customer of record at the residence where he had resided with Sonya Polton.

8. On February 2, 2005, Donald Polton was made the customer of record for electric service at 905 Third Street SE, Apartment 214, Cedar Rapids, Iowa. IPL transferred the unpaid balance of \$883.84 to the account of Donald Polton.

9. Donald Polton made no payments on the account until the account was subject to disconnection in May 2005. On April 29, 2005, Donald Polton entered into a deferred payment agreement with IPL to avoid disconnection of service. IPL received an additional \$300 in energy assistance for Donald Polton on April 29, 2005,

which was used to allow Donald Polton to enter into the deferred payment agreement.

10. The first payment on the deferred payment agreement was due on June 1, 2005. IPL was contacted by Iowa Legal Aid on behalf of Donald Polton and was told Donald Polton was disputing the balance on the account. IPL took the position that Donald Polton defaulted on the deferred payment agreement on June 6, 2005.

11. On June 20, 2005, Donald Polton filed an informal complaint with the Board.

PROPOSED LEGAL ISSUES

As indicated above, the Board considers most of the issues raised by Mr. Polton in this complaint to be legal issues. The legal issues that the Board considers necessary to be addressed to resolve this complaint are as follows:

1. Whether subsection 8.02A of IPL's Electric Tariff is consistent with Iowa law, Board rules, and Board orders regarding whether a person who has occupied a premise during the period when a debt for electric service is not paid and is not the customer of record can be held liable for the debt. The tariff section states as follows:

Subsection 8.02A In the case of a customer who has been disconnected or for whom credit action is pending, service will not be reconnected if the customer or any other person liable for payment of the delinquent bill(s) for electric service at the premises continues to occupy the premises,

unless arrangements are made to pay for the unpaid electric service at the premises.

2. Does contract law in Iowa preclude IPL from holding Donald Polton liable for the debt for electric service of Sonya Polton under the facts described above?

3. Are the facts in this case sufficient to create an exception to the prohibition against holding a third party liable for utility service in 199 IAC 20.4(16)"g"?

4. Do Iowa Code §§ 597.14 and 597.17 apply to this fact situation?

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The informal complaint filed June 20, 2005, by Donald Polton, identified as C-05-138, is docketed as a formal complaint proceeding, identified as Docket No. FCU-05-60.

2. Applications to intervene in this docket shall be filed on or before September 23, 2005.

3. Parties shall file a statement of their agreement or disagreement with the proposed facts described in this order on or before September 30, 2005. The parties may also propose additional material facts for stipulation or resolution at that time.

4. Parties shall file proposed additional relevant legal issues necessary to the resolution of this complaint on or before September 30, 2005.

5. If any additional facts or legal issues are proposed by any party, then the other parties may file a response to that proposal on or before October 14, 2005.

6. Pursuant to 199 IAC 6.7, the informal complaint and all supplemental information in the file in File No. C-05-138 is made a part of the record in this case.

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 20th day of September, 2005.