

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  GRH ELECTRONICS, INC.	DOCKET NO. DRU-05-2
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**DECLARATORY ORDER**

(Issued February 8, 2006)

**PROCEDURAL BACKGROUND**

On December 15, 2005, GRH Electronics, Inc. (GRH), filed a petition with the Utilities Board (Board) requesting a declaratory order concerning a service offered by GRH known as the "Compugas System." The Compugas System allocates gas service among tenants of multiple unit premises who receive natural gas service through a master meter. The question presented by GRH is whether the service as provided at the Riverside Apartments in Council Bluffs, Iowa, brings GRH within the definition of a "public utility" pursuant to Iowa Code § 476.1.

On December 20, 2005, the Board issued an order giving notice of the request for declaratory order and establishing dates for intervention and replies. In the order the Board directed that notice be sent to the four rate-regulated natural gas utilities and to the complainants who filed informal complaints about GRH's allocation of natural gas service using its Compugas System at the Riverside Apartments. The

informal complaints are File Nos. C-05-176, C-05-177, C-05-208, C-05-210, and C-05-229.

On December 29, 2005, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an appearance and statement addressing the petition for declaratory order. On January 6, 2006, GRH filed a reply to Consumer Advocate's statement.

On January 9, 2006, Aquila, Inc., d/b/a Aquila Networks (Aquila), filed a petition to intervene and comments. Aquila states that it does not agree to be bound by the declaratory order issued in this docket.

On January 11, 2006, the Board issued an order granting Aquila intervention, setting a date for replies to Aquila's comments, and scheduling an informal meeting of the parties, pursuant to 199 IAC 4.7. On January 18, 2006, GRH filed a reply to Aquila's comments. The meeting was held as scheduled on January 24, 2006. GRH, Aquila, Consumer Advocate, and Board staff appeared and participated in the meeting.

In the December 20, 2005, order, the Board stated that the facts to be considered for this declaratory order are:

- 1) GRH offers a service known as the "Compugas System" which is used to allocate a gas service bill among tenants of multiple unit buildings metered by a master meter;

2) GRH has offered the Compugas System in Iowa for over 20 years;

3) The Board has received informal complaints concerning the Compugas System at the Riverside Apartments in Council Bluffs, Iowa, identified as File Nos. C-05-176, C-05-177, C-05-208, C-05-210, and C-05-229; and

4) On November 16, 2005, Board staff sent a proposed resolution to GRH in which staff indicates, *inter alia*, that charging of a monthly service fee of \$6.61 on each of the tenants' bills appears to be in violation of 199 IAC 19.3(1).

### **PARTIES' POSITIONS**

#### **GRH**

GRH stated that the Compugas System allocates natural gas usage among tenants of multiple unit premises that are metered by a master meter from a public utility. The total amount billed for usage to the tenants equals the amount billed by the local utility to the premise owner, Seldin Company (Seldin), at the master meter. In addition to the allocation of gas usage to the tenants, the Compugas bill includes an administrative fee. GRH contends that it submits the gas bills to the tenant on behalf of Seldin and the inclusion of the administrative fee reflects a charge by GRH to Seldin and does not constitute an action as a public utility.

GRH stated that it does not act in any manner as a public utility and clearly states on its handouts to the tenants that it is not a public utility. GRH stated that its actions comply with guidelines of the National Council on Weights and Measures (NCWM) and the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE). GRH points out that the tenant makes payment to Seldin, not to GRH.

GRH explained that it charges the landlord a fee for monthly processing of usage data, printing, and mailing the individual tenant gas bills. According to GRH, the fees are then passed on to the tenant by the landlord as an administrative fee on the Compugas bill and the aggregate charged to the tenants equals the amount the landlord pays the local utility company for gas service plus the amount of the administrative fee, and never more. The landlord thus receives only the out-of-pocket expenses of the gas used and the administrative fee, without additional compensation.

GRH stated that the service it provides meets the three criteria identified in Board staff's proposed resolutions of the informal complaints for determining whether the Compugas System is a public utility service. The three criteria presented by Board staff were:

1. The landlord and Compugas will not use typical utility bill collection efforts, such as late fees or disconnection of service, to collect gas charges;

2. The landlord will enforce collection of the gas charges only through the provisions of landlord-tenant law, treating the gas charges at all times as a part of the tenant's rent; and

3. The administrative fee will always be less than the residential customer charge of the local gas utility.

GRH states that to the best of its knowledge all of the Compugas administrative fees charged in Iowa are less than the average cost charged by the local utility serving the location. In its reply to Consumer Advocate, GRH states that it will guarantee the administrative fee is not more than the customer charge of the local utility. In addition, GRH argues that the administrative fee is not a charge for gas service, but rather is a recovery by the landlord of the amount paid to GRH for the service of allocating usage and billing for the gas service. GRH contends that the billing of the administrative fee is not a utility function.

GRH states that the only issue before the Board in the declaratory order is whether Seldin and GRH are acting as a public utility under Iowa law. GRH argues that the declaratory order was filed as suggested by Board staff in the proposed resolution of a complaint against Seldin. At the meeting, GRH stated it was not interested in litigating the issue and only wanted to bring its operations into line with Board rules.

### **CONSUMER ADVOCATE**

Consumer Advocate stated that it does not consider the procedures followed by GRH to constitute utility activities. Since GRH only allocates usage and creates and issues the bills, its activities cannot comfortably be described as "furnishing gas to the public." GRH is performing administrative work for another party in relation to the provision of gas to the public. However, Consumer Advocate contends that the activities of Seldin, the owner of the Riverside Apartments, fit fairly well in the definition of a public utility. Seldin acquires the gas, delivers it to tenants over its own pipes, and charges the tenants based on the amount of gas they use. If Seldin were to only pass the cost of gas through to tenants, it would come within the exception established in the Board's rules. Consumer Advocate argues that re-pricing natural gas is the criteria, not whether Seldin earns a profit from allocating gas to its tenants.

### **AQUILA**

In its comments, Aquila suggests that GRH cannot charge the administrative fee if it is not a public utility. Aquila suggests that the Board has grounds to refuse to issue the declaratory order because it would determine the legal rights, duties, or responsibilities of other persons not joined, namely the five complainants. In addition, Aquila suggests the declaratory order appears to constitute an improper attack on the proposed resolution of the five informal complaints. Aquila states that it does not agree to be bound by any declaratory order issued in this docket.

In the meeting, Aquila raised the question of whether the landlords were functioning as competitive natural gas providers (CNGPs) under Iowa Code §§ 476.86 and 476.87 and Board rule 199 IAC 10.14. Aquila asserted that the landlord was functioning in the same manner as an aggregator and should probably be certificated under that statute. Aquila also stated that it did not believe the Board could issue a declaratory order since it had not given notice to all landlords that might be affected by the order.

#### **BOARD DECISION**

Iowa Code § 476.1 provides that a public gas utility subject to the Board's jurisdiction is one that furnishes gas by piped distribution system to the public for compensation. Paragraph 199 IAC 19.3(1)"b" creates an exception to this statute that provides, in pertinent part, that where a multi-occupancy building is master metered, the end-user occupants may be charged for natural gas as an unidentified portion of the rent, condominium fee, or similar payment, or, if some other method of allocating the cost of the gas service is used, the total charge for gas service shall not exceed the total gas bill charged by the utility to the landlord for the same period of time.

The master-metering rule has had a long and contentious existence, as the Board has tried to balance the public benefits of individual responsibility for energy consumption, PURPA requirements, and the needs of owners to use their property efficiently. Historically, the rules have limited master metering to specific exceptions

and have stated that submetering and re-pricing of natural gas service is generally prohibited. The limitations of the earlier rules did not meet the needs of many property owners and the Board has adopted additional exemptions and, more recently, explicit and flexible exceptions.

The Board adopted the most recent amendments to the master-metering rule in Docket No. RMU-02-6. The current rule is designed to provide more clarity and flexibility for an owner who wishes to allocate the cost of gas charged by the utility to tenants behind a master meter. The current language allows the owner to allocate gas usage to tenants using any reasonable method, including submetering, as long as the total amount billed to tenants does not exceed the amount billed to the owner by the utility at the master meter. The current rule allows an owner to use an allocation system, such as the Compugas System, so customers are charged for the gas they use in each unit. In the order adopting the current rule in Docket No. RMU-02-6, the Board stated specifically that an owner can only allocate the cost of gas service to the master-metered building up to the total cost charged by the utility to the owner and any charge above that amount would be a public utility activity.

The Board recognizes that there are public benefits from allocating gas to individual tenants behind a master meter. Through submetering, tenants become responsible for their own consumption and have an incentive to reduce usage. It is also understood that owners do not want to become regulated utilities, but take natural gas service through a master meter for more efficient use of their multi-tenant

buildings and need the flexibility to pass rising natural gas costs through to the tenants. The parties to this docket agree that landlords who take service through a master meter are prohibited from engaging in activities that are reserved for public utilities (unless they become regulated utilities).

A review of the five informal complaints shows that GRH allocated to the tenants the total amount of the gas charged by the utility, including gas used in common areas, and then added an administrative fee of \$6.61 to each monthly bill. GRH admits that the administrative fee is added on above the cost of gas allocated to the tenants and contends that the fee is the cost to the owner of having GRH bill the tenants and is not a utility function.

As stated earlier, the distribution of natural gas and charging for natural gas to tenants over a piped distribution system meets the definition of a public utility in Iowa Code § 476.1. In order to allow some flexibility for owners, the Board has established an exception in 199 IAC 19.3(1)"b" that allows an owner to pass through the costs billed by the public utility at the master meter. The Board does not consider this pass through a utility action since there is no re-pricing of the utility service. Thus, a straight pass-through is permitted under the Board's rules.

Under the facts presented in this declaratory order, however, Seldin is not only allocating the total gas bill to tenants, it is also charging an administrative fee to each tenant, in addition to the gas bill. The Board considers this to be a utility activity since this is the same service that would be provided to the tenants by the public utility if

the public utility provided service directly to the tenants. Allowing an owner to charge each tenant for individual usage where only the amount billed to the owner is passed through is reasonable because the owner is not re-pricing the service but merely recovering the gas cost for the premises. Once the owner engages in other activities related to billing for gas service, such as recovering administrative costs, it engages in the same activities as a regulated natural gas utility and comes within the jurisdiction of the statute.

The Board agrees with Consumer Advocate that GRH is only acting as the agent for Seldin in billing the tenants and is not performing a utility function. The Board also agrees with Consumer Advocate that the billing of the administrative fee by the owner is a utility function since the total cost, including the administrative fee, paid by tenants is more than the total amount paid by Seldin to the utility and this activity is therefore in violation of 199 IAC 19.3(1)"b."

The Board recognizes that Board staff in the Proposed Resolutions in the five informal complaints suggested that the administrative fee might be acceptable if it was not more than the customer charge of the local natural gas utility, but that GRH would need a waiver to continue to charge each tenant the administrative fee. However, after considering the issue, the Board finds that the administrative fee charged by GRH at the Riverside Apartments is a utility function and violates the exception in 199 IAC 19.3(1)"b."

Whether the administrative fee charged by the owner is more or less than the customer charge of the local utility is not relevant. An owner of a multi-tenant building that charges for natural gas service more than the cost billed by the local utility through the master meter is engaging in public utility activity. Iowa law considers these activities to be those of a regulated utility and subject to the jurisdiction of the Board.

The gas bill rendered by GRH looks like a utility bill and the administrative fee on each bill looks like a charge for gas service, which in fact it is. A public utility has a customer charge that collects the administrative costs of billing and other gas services, but these costs are filed in tariffs, audited, and approved by the Board as just and reasonable. The Board could not find that the administrative fee charged by the owner is just and reasonable, since the owner is not a certificated utility and the Board has not audited the owner's costs of providing the service.

Seldin can recover the costs of allocating usage and billing tenants as an undefined part of the rental payment but not as a separate charge for utility service. Because the service provided by Seldin (and GRH) at the Riverside Apartments includes a service charge, it is not within the exception provided by 199 IAC 19.3(1). If it continues, Seldin will be considered to be operating a public utility in violation of Iowa Code chapter 476 and the Board will take appropriate steps to have the violation stopped.

The Board considers it necessary to issue this declaratory order to provide guidance to GRH, Seldin, and other landlords who are or may be considering allocating gas costs to tenants. The Board does not agree with Aquila that the Board should decline to issue a declaratory order. The declaratory order will resolve the issues in the five informal complaints and the Board understands that the declaratory order will not bind those persons who did not have notice. However, the declaratory order will provide needed guidance in this area of utility regulation.

In addition, the Board does not agree with Aquila that Iowa Code §§ 476.86 and 476.87 and Board rule 199 IAC 10.14 apply to the circumstances where a owner has a master-metered, multi-tenant building and allocates the cost of gas to the tenants. A CNGP or an aggregator under Iowa Code § 476.86(1) is "a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services." The landlord takes title to natural gas when the gas is purchased at the master meter and the landlord is not arranging for acquisition of competitive natural gas services for the tenants. The actions taken by the landlord after the landlord takes title to the gas at the master meter come within the provisions of Iowa Code § 476.1, not Iowa Code §§ 476.86 and 476.87.

As stated earlier, the issuance of the declaratory order will resolve the five informal complaints. However, this declaratory order will only be effective prospectively. GRH acted in good faith in including the administrative fee on the bill

to the tenants and in seeking the declaratory order. Making the declaratory order effective retroactively would create a financial hardship on the landlord and is not reasonable.

### **DECLARATORY ORDER**

The Board concludes that including an administrative fee on a bill for natural gas service allocated to tenants using the Compugas System at the Riverside Apartments in Council Bluffs, Iowa, above the total amount billed by the local utility, violates 199 IAC 19.3(1)"b" and is a utility function under Iowa Code § 476.1. This declaratory order applies only to actions that occur after the effective date of this order.

### **ORDERING CLAUSES**

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

1. A declaratory order as described in the paragraph above is issued in response to the petition filed by GRH Electronics, Inc., on December 15, 2005.
2. GRH Electronics, Inc., and Seldin Company shall discontinue the practice of including an administrative fee on the Compugas System bill above the total cost of gas billed to Seldin Company at the Riverside Apartments.
3. The Records and Information Center shall send a copy of this order to the complainants in File Nos. C-05-176, C-05-177, C-05-208, C-05-210, and C-05-229.

4. This declaratory order is effective prospectively from the date of this order.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Diane Munns

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Curtis W. Stamp

Dated at Des Moines, Iowa, this 8<sup>th</sup> day of February, 2006.