

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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| IN RE:<br><br>IOWA LAKES ELECTRIC COOPERATIVE | DOCKET NO. WRU-06-19-978 |
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**ORDER DENYING WAIVER REQUEST**

(Issued September 5, 2006)

On June 7, 2006, Iowa Lakes Electric Cooperative (Iowa Lakes) filed a request with the Utilities Board (Board) requesting a waiver of the maximum dollar amount contained in 199 IAC 20.6(5) and 20.6(6). Subrule 20.6(5) provides that a customer may be charged a maximum of \$25 for a meter test if the test shows the meter is accurate within the limits set by the utility. Subrule 20.6(6) provides that an electric customer must deposit \$30 with the Board for a meter test performed by the Board and the \$30 is returned to the customer if the meter is more than 2 percent fast or 2 percent slow.

Iowa Lakes states that the dollar amounts in the two subrules are outdated and have not been adjusted since the Board adopted the rules in Docket No. RMU-87-2, effective March 1, 1989. Iowa Lakes states that the fees are inadequate and do not reflect the actual costs to perform the meter tests. Iowa Lakes states further that the costs to perform the tests are as follows:

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| A. | Single Phase Meter                      | \$87.29  |
| B. | Three Phase Meter                       | \$115.49 |
| C. | Three Phase with CT Meter               | \$132.49 |
| D. | Three Phase with CT S/M or EDEM         | \$137.34 |
| E. | Three Phase with CT WVT <480 Am or EDEM | \$162.29 |
| F. | Single Phase with CT V/DEM              | \$105.89 |

These costs reflect increases in the cost of labor, labor overheads, fuel, transportation, and third-party testing costs. Iowa Lakes argues that as a non-rate-regulated utility it has the right to charge different fees than those permitted by Board rules. Iowa Lakes is seeking to charge \$50 plus applicable tax for tests performed under subrule 20.6(5) and at least \$50 plus applicable tax for tests performed under 20.6(6).

On June 13, 2006, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a motion to dismiss the waiver request filed by Iowa Lakes. Consumer Advocate argues that the waiver request involves a substantial increase in meter testing fees for a most important and fundamental customer protection. Consumer Advocate argues that the waiver request should be dismissed because Iowa Lakes did not comply with the provisions of 199 IAC 1.3, which establishes four criteria that must be met before a waiver can be granted.

Rule 1.3 requires the Board to find, based upon clear and convincing evidence, that four conditions are met before a waiver can be granted: a) the application of the rule would pose an undue hardship, b) the waiver would not prejudice the substantial legal rights of any person, c) the provisions to be waived are not specifically mandated by statute or other provision of law, and d) substantially equal protection of public health, safety, and welfare will be afforded after the waiver.

Consumer Advocate argues that Iowa Lakes has failed to provide clear and convincing evidence to meet these four criteria.

Specifically, Consumer Advocate contends that Iowa Lakes has failed to show that low-income customers will not be unreasonably deterred from exercising their right to a meter test if the charges for the tests are doubled. Consumer Advocate argues that Iowa Lakes has not established that it will suffer undue hardship if the waiver is not granted since it did not provide the total number of customers compared to the number of customers who request meter tests and the total revenue compared to the amount of revenue expended on meter testing annually. Finally, Consumer Advocate argues that granting the request will prejudice the substantial legal rights of Iowa Lakes' customers.

On August 2, 2006, Iowa Lakes filed a resistance to Consumer Advocate's motion. In the resistance, Iowa Lakes does not address the four criteria in 199 IAC 1.3 for granting a waiver. Iowa Lakes suggests if additional evidence and testimony in support of the waiver request is needed, the Board should set the matter for hearing. Iowa Lakes argues that the Board does not have rate regulatory authority over it as an electric cooperative and suggests that the Board should decide if the fees are rates set by the Board that do not apply to electric cooperatives.

On August 3, 2006, Consumer Advocate filed a response to the resistance. Consumer Advocate states that Iowa Lakes in its resistance did not even try to address the jurisdictional defects in the waiver request. Consumer Advocate states further that there are no issues of fact in dispute and it will stipulate that the current

fees do not meet the costs incurred by Iowa Lakes to do the meter testing.

Consumer Advocate argues that the Board's rules reflect the fundamental customer right to a meter test and a referee test at specified charges for all electric customers in Iowa, and the Board is not setting rates for an electric cooperative.

The Board will consider the request for waiver even though Iowa Lakes has not provided information that directly addresses the four criteria in rule 1.3. Granting the motion to dismiss on the basis of Iowa Lakes' failure to provide the required information would only delay a decision on the merits. Iowa Lakes has raised the issue of the Board's jurisdiction for applying the fees in subrules 20.6(5) and 20.6(6) to electric cooperatives and the resolution of that issue will resolve the request for waiver. Iowa Lakes has also requested a hearing. However, since there appear to be no material issues of fact to be determined (since Consumer Advocate indicates it will stipulate that the cost of meter testing and the referee test are greater than the fees allowed by the two subrules), an evidentiary hearing is not warranted or required.

Iowa Lakes as an electric cooperative is a public utility as defined in Iowa Code § 476.1. Pursuant to Iowa Code § 476.1A, the Board does not have rate regulatory authority over electric cooperatives, but such utilities are subject to all other regulation and enforcement activities of the Board. Iowa Code § 476.8 requires each public utility to furnish reasonable, safe, and adequate service and facilities. Iowa Lakes as a public utility is subject to this requirement.

Meter testing is a primary component of safe and adequate service and the testing of meters on a reasonable, nondiscriminatory basis by the utility is required in order to provide adequate service. Accurate measurement of customer usage is a key component of service required of a public utility, since a customer is only required to pay for the energy the customer uses and it would be almost impossible for a customer to determine the accuracy of the meter that measures usage without the help of qualified professionals. The meter is owned by the utility, is sealed in place to prevent theft, and meter testing is a complicated procedure requiring specific expertise and equipment. Safety during the testing of the meter is an important concern, as testing can require removing the meter. Further, even if a customer were able to test the meter, a utility could reasonably be expected to require that its personnel verify the safe and proper reinstallation and recalibration of the meter.

As a primary component of safe and adequate service, meter testing is a service that a utility is required to provide through general rates charged to the customer. A specific charge for meter testing tied to the cost of testing could be an impediment preventing a customer from seeking to have the meter tested. It could also encourage customers to try to test meters on their own, raising serious safety concerns. The Board has not established a separate charge or rate for the service for rate-regulated utilities and the Board would be within its authority to not allow electric cooperatives to establish a separate charge for this service. A customer has a right to ensure that the equipment measuring energy usage is performing within the

required standards and a customer should not be dissuaded from seeking to have a meter tested by excessive charges for that service.

The Iowa Association of Electric Cooperatives (IAEC), in Docket No. RMU-87-2, supported the Board's jurisdiction over charges for meter testing. In that docket, IAEC stated, "it is a statewide association comprised, among others, of 51 distribution cooperative members which are subject to the jurisdiction of the Utilities Division, Iowa Department of Commerce (Board) for purposes of the subject matter of this proceeding." Public utilities, including electric cooperatives, have operated under the Board's meter testing rules at least since the time of that docket.

Even though the Board considers meter testing to be a component of safe and adequate service for which there should not be a separate rate or charge, the Board understands that this service could be abused by some customers. Frivolous or repetitive requests for meter testing by customers could become a financial burden on utilities. The Board adopted the fee limits in subrules 20.6(5) and 20.6(6) to discourage frivolous or repetitive requests for meter testing. The subrules also provide that the utility is not required to test the meter more than once every 18 months. The fees combined with the prohibition from requesting a meter test more than once in an 18-month period prevent the meter-testing requirement from being abused by customers.

Iowa Lakes has requested a waiver of the fees so that it can charge a customer more for meter testing. The Board will deny that request. As explained above, the fees are not designed to compensate the utility for the cost of meter

testing and these fees have been in place for many years without any complaint or problem. Granting a waiver to one public utility would require the Board to grant waivers to any public utility who made the request, since it is conceded that the cost of testing is greater than the fees allowed. The Board does not consider a piecemeal waiver of the subrules to be in the public interest. The Board recognizes that the fees may not provide the same prophylactic effect after this many years and will have Board staff review the subrules to determine whether the fees need to be increased.

Since the Board is denying the request for waiver, it is not necessary to rule on the motion to dismiss.

**IT IS THEREFORE ORDERED:**

1. The request for waiver of 199 IAC 20.6(5) and 20.6(6) filed by Iowa Lakes Electric Cooperative on June 7, 2006, is denied.
2. The motion to dismiss filed by the Consumer Advocate Division of the Department of Justice on June 13, 2006, is moot and will not be ruled on.

**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 5<sup>th</sup> day of September, 2006.