

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>SPIRIT LAKE COMMUNITY SCHOOLS,</p> <p style="text-align:center">Complainant,</p> <p style="text-align:center">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="text-align:center">Respondent.</p>	<p style="text-align:center">DOCKET NO. C-07-155</p>
--	--

ORDER DENYING REQUEST FOR FORMAL COMPLAINT PROCEEDINGS

(Issued August 22, 2007)

I. INITIAL COMPLAINT AND RESPONSE

On April 3, 2007, Spirit Lake Community Schools (Spirit Lake) filed a written complaint with the Utilities Board (Board) concerning Interstate Power and Light Company's (IPL) Original Tariff Sheet No. 52 and Substitute Original Sheet No. 294 (collectively, AEP tariff), which deal with net metering and general rules and regulations for cogenerators, small power producers, alternate energy producers, and small hydro production. Spirit Lake claimed that the AEP tariff prohibits small government bodies, businesses, and individuals from producing alternative energy using wind turbines.

In particular, Spirit Lake complained about the 500 kW net metering limitation contained in the AEP tariff, arguing that the wind turbine industry has expanded such

that the smallest wind turbine available is 1250 kW. While energy produced in excess of 500 kW can be sold to IPL at avoided cost, Spirit Lake said this makes wind energy cost prohibitive for school districts. Spirit Lake also said it believed IPL's AEP tariff would eliminate two contracts that Spirit Lake currently has with IPL. Spirit Lake asked that the net metering limitation be increased to 3,000 kW.

IPL filed a response to the complaint on April 26, 2007. IPL said the rate in its AEP tariff is available to any customer, group of customers, or class of customers, including school districts. IPL also noted that small wind turbines continue to be manufactured, referring to the Web site of the American Wind Energy Association, which listed ten manufacturers of turbines with a capacity of 500 kW or less. IPL included in its response a brochure for one manufacturer, Entegri Wind, which specifically markets to schools.

IPL disputed Spirit Lake's assertion that IPL's AEP tariff is cost prohibitive for small facilities, noting that seven schools in IPL's service territory have wind turbines and that energy is supplied to Spirit Lake in the range of 5.7 to 8.3 cents per kWh. IPL noted that the issues raised in this complaint by Spirit Lake, including the 500 kW net metering limit, were raised when the Board approved IPL's current AEP rate in Docket Nos. TF-03-180 and TF-03-181.

IPL noted it has two AEP contracts with Spirit Lake. The first was executed in 1993 for a 250 kW wind turbine and Spirit Lake receives a buy-back rate of \$0.0602 for excess generation. IPL stated that the contract is specific to the wind turbine and

any change to the generation facilities listed in the agreement would be a violation of the agreement.

The second AEP contract between IPL and Spirit Lake is for a net metering arrangement. IPL said this contract was executed to settle litigation between one of IPL's predecessors and Spirit Lake. IPL noted that because of the burden and expense of negotiating this contract, it contains a specific arbitration provision for dispute resolution.

IPL disputed the notion that its AEP tariff favors the utility, noting that when buy-back rate from Spirit Lake's net billed facility exceeds IPL's avoided cost, all IPL customers subsidize Spirit Lake's net billed wind generation, which is not dispatchable because wind is not always available when IPL's customers need the power. IPL pointed out that its lost margins associated with Spirit Lake's two contracts were \$90,467 in IPL's last general rate case, Docket No. RPU-04-1; this adjustment is reflected in IPL's base rates and is recovered from all customers.

II. BACKGROUND INFORMATION

In its April 26, 2007, response, IPL provided background information regarding its AEP tariff. IPL filed the tariff in 2003 (Docket Nos. TF-03-180 and TF-03-181). Objections to the proposed tariff were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), the Iowa Joint Utility Management Program (I-Jump), and Kinze Manufacturing (Kinze). I-Jump had an interest in the proceeding because it provided energy services to school districts and one member

of I-Jump was an alternative energy producer. Both Kinze and I-Jump objected to IPL's proposed 500 kW net metering limitation.

After investigation and comments, the Board approved IPL's proposed tariffs on January 20, 2004. IPL quoted from page 5 of that order:

The Board will approve the tariffs with the 500 kW limit, modified to reflect the agreement with Consumer Advocate on the three issues related to applying the 500 kW limit to capacity, length of contract, and meter costs. The 500 kW limit is consistent with that approved for MidAmerican and places Iowa in a leadership position among those states that require net metering. Requiring a larger limit at this time could expose IPL shareholders to significant costs.

Pursuant to requests filed by, among others, Consumer Advocate and the Iowa Renewable Energy Association (I-Renew), the Board reopened the record and took additional evidence on such issues as the 500 kW net metering limitation. On July 22, 2004, the Board issued an order clarifying the 500 kW limit; final compliance tariffs were approved on August 20, 2004.

IPL said it dealt with Spirit Lake in good faith and that IPL believes Spirit Lake might be attempting to modify its 2001 agreement with IPL by adding generation and additional metered locations to the net metering contract. IPL also argued that Spirit Lake was attempting to circumvent the contract's arbitration provision.

III. PROPOSED STAFF RESOLUTION

During the investigation of Spirit Lake's complaint by the Board's Customer Service Section, Consumer Advocate asked the Board's staff to require IPL to respond to the following: "Can Spirit Lake Community Schools have separate meters

for one or more individual schools and be eligible to become more than one customer of IPL? If not, fully explain why not and provide a copy of all documentation supporting this response."

On May 17, 2007, IPL responded to Consumer Advocate's inquiry. IPL indicated that the schools in Spirit Lake are not in a single location or on a single electric meter. Prior to 2001, IPL stated it had 12 separate accounts for the different meters for service to different Spirit Lake locations. IPL said these accounts were consolidated in 2001 into one net billed account for seven separate accounts. Prior to October 24, 2001, the seven accounts were considered by IPL as separate, individual customers. IPL said these seven accounts are currently aggregated because of the provisions of the October 2001 net billing agreement with Spirit Lake.

IPL added in its response to Consumer Advocate's inquiry that it believes Spirit Lake is requesting that IPL be required to allow new meters, additional load, and increased wind generating capacity to be included in the 2001 AEP agreement. IPL believes that any new AEP generation would have to be provided service through the AEP tariff and AEP rate, not the terms of the 2001 agreement.

On June 8, 2007, the Customer Service Section issued a proposed resolution finding that IPL's two agreements with Spirit Lake are still in effect and specific to the generation facilities included in the agreements. The proposed resolution also noted the arbitration clause and IPL's position that additional net metered locations would be subject to the current AEP tariff and rate and not the terms of the 2001 agreement. The proposed resolution indicated that IPL continues to receive requests

from various customers, including schools, for net metering and that without the 500 kW net metering limit, IPL customers would subsidize significant amounts of net metered wind generation. The proposed resolution denied Spirit Lake's request to increase the net metering limit to 3,000 kW.

Spirit Lake disagreed with the proposed resolution and filed a timely letter requesting formal complaint proceedings on June 21, 2007; Spirit Lake filed a second letter on June 22, 2007, arguing that IPL's AEP tariffs should be overturned or the net metering limit increased to 3,000 kW. Spirit Lake attached a copy of a document outlining the state of California's policies on various renewable energy issues.

The Board's staff allowed time for responses to the request for formal complaint proceedings. Consumer Advocate filed a response on June 27, 2007. IPL filed a response to Spirit Lake's request on July 6, 2007. IPL filed an additional response to Consumer Advocate's filing on July 23, 2007. Spirit Lake made no additional filings.

IV. CONSUMER ADVOCATE'S POSITION

On June 27, 2007, Consumer Advocate filed its response to Spirit Lake's request for a formal proceeding. Consumer Advocate argued that a formal proceeding is necessary for the following reasons:

1. Spirit Lake's complaint and IPL's response establish that there are fundamental facts in dispute between the two parties, especially the question of raising the 500 kW net metering threshold to 3,000 kW.

2. There are fundamental mixed questions of fact and law, including whether IPL's tariffs should be applicable to Spirit Lake, or whether the parties' existing contracts control.

3. There are questions of law, including whether IPL's tariffs comply with all relevant federal and state statutes, rules, and regulations.

4. This complaint proceeding raises questions similar to those decided by the Board in a prior complaint against IPL, Hobbs v. IES Utilities (n/k/a IPL), Docket No. FCU-01-2. In Hobbs, Consumer Advocate said, the Board found the utility's approved tariff to be in violation of a Board rule and therefore invalid. Consumer Advocate argued that this proceeding might involve a violation of a statute, rule, or regulation as well as public policy issues that have never been addressed, or fully addressed, in the past.

IV. IPL'S POSITION

IPL filed a response on June 27, 2007, that addressed Spirit Lake's request for formal complaint proceedings. IPL said the request for formal complaint proceedings should be denied for several reasons. First, Spirit Lake's request failed to comply with 199 IAC 6.5(2), which requires the party requesting formal proceedings to state why the proposed resolution should be rejected or modified. In its request, Spirit Lake only disagreed with the Board's resolution; this is not sufficient to comply with the rule, according to IPL. Second, Spirit Lake seeks to reverse the Board's orders in Docket Nos. TF-03-180 and TF-03-181, but raises no new issues that were not considered in those dockets. Pursuant to 199 IAC 7.26, Spirit Lake's attempt to

change a prior Board decision is untimely. Third, Spirit Lake is attempting to circumvent the contract's arbitration provisions by seeking to modify the agreement in this proceeding. Fourth, Spirit Lake might be attempting to request an exception from the application of IPL's AEP tariff, which could violate Iowa Code § 476.5. This section prohibits a public utility from granting any unreasonable preference or advantages as to a utility's rates and services.

On July 23, 2007, IPL filed a reply to Consumer Advocate's June 27, 2007, response. IPL addressed each issue or comment raised by Consumer Advocate:

1. The Board's position on the 500 kW threshold for net metering is well established in docketed proceedings. Consumer Advocate's position has been articulated in several proceedings. In Docket Nos. TF-01-293 and WRU-02-8-156 (MidAmerican Energy Company's net metering tariff), as well as Docket Nos. TF-03-180 and TF-03-181 (IPL's net metering tariff), and Docket No. FCU-03-28 (Kinze Manufacturing v. IPL, a complaint that addressed, among other things, net metering), Consumer Advocate agreed with or did not oppose the 500 kW net metering threshold. IPL commented that the request for a formal proceeding should be denied because the issues raised by Spirit Lake have been addressed in prior Board orders, with Consumer Advocate's concurrence.

2. Spirit Lake has not identified any issues as disputes of fact or law in its request for a formal proceeding. It is the customer's responsibility, particularly a customer represented by legal counsel, such as Spirit Lake, to

raise these issues, and not the Consumer Advocate's. Spirit Lake has not requested or submitted an application to interconnect a third wind generator. Since the 2001 AEP contract was signed, the issues under which the contract was permitted were resolved in Docket No. WRU-02-8-156 and through the Federal Energy Regulatory Commission (FERC) in Docket EL-99-3-000. In response to Spirit Lake's suggestion that Iowa study California's net billing policy, IPL notes that California has a restructured electric industry to institute retail wheeling and is the most populous state with the largest electric load in the United States.

3. IPL's current AEP tariff was filed in compliance with the Board's orders of January 20, 2004, and July 22, 2004, in Docket Nos. TF-03-180 and TF-03-181. The January 20, 2004, order approved net metering limits in IPL's AEP tariff similar to the limits approved for MidAmerican. If Consumer Advocate believes there are compliance issues with IPL's tariff, the same issues would exist with MidAmerican's tariff, so a formal complaint proceeding would not be the appropriate venue to address issues that might be applicable to both utilities' net metering tariffs. In addition, to hold an evidentiary hearing to investigate whether there may be compliance issues without stating which federal and state statutes, rules, and regulations are of concern would be counterproductive and contrary to 199 IAC 6.5(2).

IPL added that about a year ago the Board issued an order in response to the Energy Policy Act of 2005. In its August 8, 2006, order in Docket No.

PURPA Standard 11 [199 IAC 15.11(5)], the Board commented that for the two investor-owned rate-regulated Iowa electric utilities, the Board has refined its definition of "eligible on-site generating facilities" by limiting net metering to 500 kW per AEP and has added a carry-forward provision that is consistent with Standard 11's description of net metering service.

4. IPL saw no similarity between Hobbs v. IES Utilities, Inc. (n/k/a IPL), Docket No. FCU-01-2, and Spirit Lake's complaint, except that in each case the customer disagreed with IPL's tariff. In Docket No. FCU-01-2, the request for a formal proceeding stated facts that were in dispute, identified the issues of law that were for the Board to decide, and identified the relief requested, in compliance with 199 IAC 6.5(2). Neither Spirit Lake nor Consumer Advocate has met the requirements that would warrant the Board granting a formal proceeding in this matter.

IPL maintained that the issue of the increase in net metering limits in Iowa is a public policy issue and because it potentially affects all Iowans, the issue is best addressed by the Iowa Legislature. In the most recent legislative session, Senate File 285, which would have codified an increase in the net metering limits, did not pass out of committee.

Finally, if the Board determines it will address the issue of AEP net billing limits, IPL suggests it should be done by notice of inquiry or rule making so that all affected utilities can comment.

V. DISCUSSION

Iowa Code § 476.3(1) (2007) provides, in part, that following informal complaint proceedings, "[t]he complainant or the public utility also may petition the board to initiate a formal proceeding which petition shall be granted if the board determines that there is any reasonable ground for investigating the complaint." This is the standard the Board applies to requests for formal complaint proceedings.

All documents contained in the file of an informal complaint proceeding are part of the record. 199 IAC 6.7. Thus, in determining whether there is any reasonable ground for instituting formal complaint proceedings, the Board reviews the entire file.

The issue raised in the request for formal complaint proceedings is whether the net metering limit contained in IPL's AEP tariff should be increased from 500 kW to 3,000 kW. The Board is not persuaded that the net metering issue should be revisited by the Board at this time or that this complaint proceeding is the proper forum, if the issue were to be addressed. IPL provided documentation that small wind turbines continue to be manufactured and marketed, contrary to Spirit Lake's claim that the smallest size available is 1,250 kW. Spirit Lake's argument that the net metering limit of 500 kW makes wind generation cost prohibitive to schools is rebutted by IPL's evidence of continued interest in interconnection agreements by small producers, including schools, that own and operate wind generators with a capacity of 500 kW or less. Also, it appears that Spirit Lake's 2001 contract with IPL contains an arbitration clause for dispute resolution and that further action by the

Board raises the possibility that IPL could void the contract. IPL's responses to other arguments raised by Spirit Lake or Consumer Advocate were also persuasive.

The current net metering limit of 500 kW is not based on Iowa statutes or contained in the Board's rules, but is based on limits set in IPL's and MidAmerican's tariffs. These limits were set, in part, to resolve previous litigation on the net metering issue and several intervenors in the prior proceedings commented on the proposed 500 kW limit. Thus, the overall issue of whether the 500 kW limit is appropriate has been considered and decided. Spirit Lake has not raised any new arguments that were not considered in those prior tariff dockets and has not requested current interconnection with IPL.

A complaint proceeding involving only IPL is not the best forum for the Board to consider tariff changes that would affect IPL and MidAmerican and their customers. There are other Board dockets available, such as notice of inquiry or rule making dockets, where participation by both utilities and many other interested persons could be expected.

However, the Board believes the proper forum for resolution of issues raised by Spirit Lake's complaint is at the Legislature. Several bills that contained provisions impacting net metering were introduced or discussed at the General Assembly last session; none of these proposals passed. Net metering is part of a broader public policy debate on how to encourage renewable energy production and how the costs of those incentives should be allocated to taxpayers or utility customers. As can be seen in Spirit Lake's current contracts with IPL, net metering

results in lost revenues to the utility; in IPL's case, these revenues are recovered from all of IPL's other customers through an adjustment to base rates. The revenue adjustment today is relatively small, but increasing the net metering limitation to 3,000 kW could significantly increase the amount of lost revenue to the utility, resulting in a matching increase in costs to the customers. The Board will not undertake such a dramatic change in net billing limits without either, (a) guidance from the General Assembly as to the appropriate amount of any additional incentive to net metered customers and the allocation of any increased cost to all utility customers or (b) some change in circumstances that makes it appropriate to reconsider the Board's prior decisions.

VI. ORDERING CLAUSE

IT IS THEREFORE ORDERED:

The request for formal complaint proceedings filed by Spirit Lake Community Schools on June 21, 2007, and supplemented on June 22, 2007, is denied.

UTILITIES BOARD

/s/ John R. Norris

/s/ Curtis W. Stamp

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Krista K. Tanner

Dated at Des Moines, Iowa, this 22nd day of August, 2007.