

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

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IN RE:  CONSUMERS ENERGY COOPERATIVE	DOCKET NOS. TF-07-156 WRU-07-28-945
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**ORDER REJECTING TARIFF AND DENYING WAIVER**

(Issued December 26, 2007)

On September 5, 2007, Consumers Energy Cooperative (Consumers Energy) filed with the Utilities Board (Board) an application for approval of an electric service extender program tariff and request for any necessary waivers that would allow Consumers Energy to implement a residential electric service limiter program as an alternative to disconnection. Consumers Energy said it had installed about 75 automatic disconnect/reconnect collars that allow it to disconnect, reconnect, or commence service at a customer's premise from Consumers Energy's office. Consumers Energy said the proposed tariff and waiver request would allow these collars to also be used to limit electric service in some instances as an alternative to disconnection, thereby reducing customers' unpaid bill balances.

On September 12, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed an objection to the proposed tariff and waiver request.

On September 28, 2007, the Board issued an order docketing the tariff, setting a comment period, and requiring additional information. Consumers Energy filed additional information in response to the Board order on October 18, 2007. The Iowa Department of Human Rights, Bureau of Energy Assistance (DHR/BEA), filed an objection to the proposed tariff and waiver on October 29, 2007. Additional comments were filed by Consumer Advocate on October 30, 2007, and by Consumers Energy on November 20, 2007.

### **Consumers Energy's position**

Consumers Energy noted that Board rules contemplate that a utility may have a service limiter program. The first sentence of 199 IAC 20.4(23) provides:

The utility shall have the option of adopting a policy for limiting the service of a residential customer for nonpayment of a bill or deposit, or for noncompliance with the terms of a payment agreement, as a measure to be taken prior to disconnection of the customer.

Consumers Energy said it wanted to use the disconnect/reconnect collars to limit service on accounts or locations that require more than two collections or disconnect trips within each calendar year and which have an outstanding balance of more than \$400. Consumers Energy said any customer who would have service limited would be provided information about when and how the device could be activated, along with a brochure about how to use energy wisely, a copy of which was attached to Consumers Energy's proposed tariff and waiver request.

Consumers Energy wanted the disconnect/reconnect collars utilized for service limitation to remain in place once installed, even if the outstanding bill is brought current and the service limiting function is de-activated. Consumers Energy said this would require a waiver of 199 IAC 20.4(23), which provides the service limiter must be removed within one day after the account is brought current or a payment agreement is executed.

Consumers Energy stated that if a customer whose premise has been equipped with a disconnect/reconnect collar becomes delinquent and the member is eligible for a payment agreement, Consumers Energy will offer the member a payment agreement as required by Board rules. At the same time, Consumers Energy would activate the service extender if its criteria for activation were met (two trips in 12 months and \$400 or greater balance) or the customer voluntarily requests such activation.

Consumers Energy said that the kW limitation for the limiter will be established based upon a customer's needs, but will be set at a high enough level during the winter months to enable the customer to utilize its primary heating source. Once a service limiter is activated, Consumers Energy said it would remain active until the account is brought current.

If a customer exceeds the preset kW limitation, Consumers Energy said, service to the premises would automatically disconnect. Because the service limiter can be activated and de-activated remotely, Consumers Energy noted that service

can be restored immediately or the kW limit modified if the customer calls Consumers Energy on its 24-hour line.

In its response to the order requiring additional information, Consumers Energy specified the rules subject to its waiver request. Consumers Energy said 199 IAC 20.4(23), requiring removal of the service limiter after payment is made or a reasonable payment agreement entered into, should be waived because the equipment is multi-functional and can be used for purposes other than limiting service. Consumers Energy also disagreed with Consumer Advocate's interpretation of 199 IAC 20.4(23), arguing that a service limiter can be used in situations other than when a customer has defaulted on a payment agreement and pointing out that 199 IAC 20.4(11) does not specifically prohibit use of a service limiter in combination with a payment agreement. To the extent the Board interprets these rules otherwise, Consumers Energy asked for a waiver of subrules 20.4(11) and 20.4(23).

Consumers Energy also asked for clarification of 199 IAC 20.4(23), which provides that "electric-heating residential customers shall not have limited service between November 1 and April 1." Consumers Energy stated its belief that the rule allows a service limiter to be used on electric heating customers, so long as the kW limit is high enough to allow the customer to use the heating equipment. For non-electric heating customers with a service limiter, Consumers Energy said they would also have sufficient power to run their heating equipment. While the criteria for activating the service limiter device would be the same for all customers, Consumers

Energy said the kW limit for customers might be variable depending on an individual customer's needs.

In response to a question in the Board's September 28, 2007, order, Consumers Energy said the program would apply to all residential customers. Consumers Energy does not distinguish between residential and farm customers, although the program would not be extended to a farm customer whose residence is not located on the farmstead.

#### **Consumer Advocate's position**

Consumer Advocate objected to the proposed tariff and waiver request, arguing that a service limiter should not be used on a residential customer until that customer has defaulted on at least one payment agreement, citing 199 IAC 20.4(23). Consumer Advocate noted that the rule's language refers to a service limiter being an option for "noncompliance with the terms of a payment agreement." Consumer Advocate also argued that Consumers Energy's proposal might violate Iowa Code § 476.5 (prohibiting unreasonable prejudice or disadvantage) and unlawfully have a disparate impact or discriminate against protected classes such as minorities and women in violation of federal and state civil rights laws. Consumer Advocate argued that Consumers Energy failed to carry its burden of proof concerning unlawful discrimination of its proposed tariff and request for waiver, citing Office of Consumer Advocate v. Commerce Comm'n, 432 N.W.2d 148, 156 (Iowa 1988).

Consumer Advocate maintained that Consumers Energy had not met the standards for granting a waiver contained in 199 IAC 1.3(1), (2) and (4). Consumer Advocate argued that Consumers Energy did not show that it will suffer any undue hardship if any Board rules are not waived and the waiver clearly prejudices each residential customer who is current on a first or second payment agreement by potentially having his or her electric usage limited. Consumer Advocate noted that there is no equal protection of public health, safety, and welfare that will be afforded by any other means if a waiver of Board rules is granted. In addition, Consumer Advocate stated that the program would violate the November 1 to April 1 disconnection moratorium (commonly referred to as the winter moratorium) contained in Iowa Code § 476.20.

**DHR/BEA's position**

DHR/BEA, in its response, opposed Consumers Energy's proposed use of service limiters and waiver request. DHR/BEA disputed Consumers Energy's factual statements, saying there was no support for the allegations that a service limiter program would reduce unpaid balances or the number of disconnections for nonpayment. DHR/BEA cited programs in other states with substantial restrictions on service limiters and noted that many low-income households might not have access to telephone service, rendering them unable to call Consumers Energy to resume service if the limit is exceeded and service is interrupted. DHR/BEA also objected to Consumers Energy's filing based on the winter moratorium (equating

service limiters with disconnection, particularly when the limit is exceeded and service is lost until the limiter is reset) and noted that Consumers Energy had other options for reducing unpaid debt, such as using unclaimed patronage dividends.

### **Consumers Energy's reply comments**

Consumers Energy did not agree with DHR/BEA's argument that use of a service limiter is equivalent to disconnection, noting that the rules provide for use of service limiters prior to disconnection. Also, DHR/BEA's arguments that there are other methods to reduce bad debt does not mean that the use of service limiters is not available to Consumers Energy; Consumers Energy's board of directors should not be second-guessed in their decisions as long as the policies are lawful.

Consumers Energy maintained the use of service limiters is not discriminatory and in fact allows customers who have not paid their bill in a timely manner to have service available for a longer period prior to any disconnection.

### **Board's analysis**

In reviewing the information filed in this docket, it appears it is time to review the Board's rules regarding service limiters in light of new technology. When the rules were adopted in 1983 (Docket No. RMU-83-27), the only service limiters available were mechanical collars with a preset usage limit; if a customer exceeded the limit, service would be discontinued until the customer went to the meter and hit the reset button. It made sense to require those collars to be removed immediately after the bill was paid or a reasonable payment arrangement made because those

collars served only one function, to limit electric service. Today, meter collars have numerous uses, only one of which is limiting service, and the collars are controlled remotely by the utility. Usage limits can be set at any level and reset from a remote location. Consumers Energy's proposed tariff and waiver request contemplate the use of service limiters in a way that was not possible when the Board's rules were adopted.

The Board has several concerns about the service limiter program proposed by Consumers Energy in its tariff and request for waiver. First, Consumers Energy contemplates using the service limiter program for electric heating customers, but the Board's rules clearly provide that electric heating customers shall not have service limited between November 1 and April 1. The Board questions whether service limiters could ever be used (except perhaps on a voluntary basis) for electric heating customers during the winter moratorium without a change in the rules.

Second, there are no standards set forth in the proposed tariff that indicate how Consumers Energy will set service limits, other than a statement that it will be based on the individual customer's needs and will allow them to use their primary heating source. The Board is concerned that the proposed tariff provides customers (and the Board) with no other guidance as to how the limit will be set and what other or how many appliances might be used at the same time as the residence is using its heat source. There is no minimum kW limit in the tariff (for example, 50 percent of

current usage or a kWh floor); a tariff should provide at least some objective information as to how the limit will be set.

Third, no provisions are made for customers without telephone access who may not be able to call Consumers Energy in a timely fashion to have the limiter reset in the event its limits are exceeded and power is automatically shut off; unlike the old mechanical collars, there is apparently no manual reset switch on the collar. This requirement that a customer call in order to have service restored raises questions that should be answered before any new tariff is approved.

Fourth, there are legal issues raised by Consumer Advocate and DHR/BEA that should be addressed in a forum broader than this tariff and waiver filing because the issues affect all customers and all electric utilities, not just Consumers Energy and its customers.

Because of the Board's concerns about the provisions of Consumers Energy proposed tariff and waiver request, the Board will reject the tariff and deny the waiver. The issues that have been raised in this docket should be addressed broadly, rather than on a case-by-case basis in proposed tariffs and waiver requests. Therefore, the Board will, in a subsequent order, commence a notice of inquiry to consider issues surrounding the use of modern service limiters and potential changes to the Board's rules so that all electric utilities and interested persons, including low-income assistance and advocacy groups, may participate. The inquiry will consider, among other things, the scope of available technology, range of applications, and legal and

practical issues surrounding the use of modern service limiters, including whether there are any limits on their use mandated by the winter moratorium.

**IT IS THEREFORE ORDERED:**

1. Tariff filing TF-07-156 is rejected.
2. The request for waiver filed by Consumers Energy Cooperative on September 5, 2007, is denied for the reasons stated in this order and because rejection of TF-07-156 makes the waiver request moot.

**UTILITIES BOARD**

/s/ John R. Norris

/s/ Krista K. Tanner

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

/s/ Darrell Hanson

Dated at Des Moines, Iowa, this 26<sup>th</sup> day of December, 2007.