

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

<p>IN RE:</p> <p>PIONEER HI-BRED INTERNATIONAL, INC.,</p> <p style="text-align:right">Complainant,</p> <p style="text-align:center">vs.</p> <p>INTERSTATE POWER AND LIGHT COMPANY,</p> <p style="text-align:right">Respondent.</p>	<p style="text-align:right">DOCKET NOS. FCU-07-13 WRU-07-37-150</p>
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**ORDER DISAPPROVING SETTLEMENT AGREEMENT
AND CLOSING DOCKETS**

(Issued March 3, 2008)

PROCEDURAL BACKGROUND

On October 29, 2007, the Utilities Board (Board) issued an order on its own motion docketing as a formal complaint a Settlement Agreement filed by Pioneer Hi-Bred International, Inc. (Pioneer), and Interstate Power and Light Company (IPL) that proposed to resolve the remaining issues in an informal complaint, File No. C-07-174, filed by Pioneer against IPL. The complaint alleged that IPL had incorrectly installed a register on a gas meter at Pioneer's Sheldahl facility that resulted in overbilling of approximately \$900,000 for gas usage over a 12-year period. The Settlement Agreement states that IPL had previously refunded

\$453,913.44 to Pioneer for the period from when the meter multiplier error was discovered back to December 13, 2001. In the informal complaint, Pioneer was seeking an additional \$443,000 (revised in the Settlement Agreement to \$318,394.02) for the period from December 13, 2001, back to the installation of the meter on September 4, 1994.

On October 29, 2007, IPL filed a substitute page 5 for the Settlement Agreement. The substitute page shows that IPL, as part of the settlement, agrees that its shareholders will take responsibility for \$77,849.47 of the \$318,394.02 proposed refund and IPL would, if the settlement is approved, pass the remaining \$240,544.55 through the purchased gas adjustment (PGA) to be recovered from other PGA customers. The Settlement Agreement provides that the settlement will have failed if the Board does not allow IPL to recover the \$240,544.55 from other PGA customers.

On October 30, 2007, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a limited objection to the Settlement Agreement. Consumer Advocate states that it supports the Settlement Agreement except for the provision that would allow IPL to recover the \$240,544.55 from other PGA customers. Consumer Advocate argues that the Board's PGA rules prohibit such a recovery. Consumer Advocate states the PGA rules require that current customers are to be charged only current costs and the recovery of a refund associated with a prior period violates this requirement.

In the October 29, 2007, order, the Board indicated that the proposal to refund overbilling amounts beyond the five-year limitation in 199 IAC 19.4(13)"d" required IPL to file a formal request for waiver of the rule. On November 1, 2007, IPL filed a request for waiver as directed. The waiver request has been identified as Docket No. WRU-07-37-150.

On November 9, 2007, the Board issued an order requesting additional information from IPL and directing the parties to indicate whether this matter should be set for hearing. On November 14, 2007, Consumer Advocate indicated it does not request a hearing. On November 19, 2007, IPL filed the additional information requested by the Board, waived its right to a hearing, and stated that it will allow the Board to consider the issues in this docket on the information presented in the informal complaint file and the formal complaint docket.

On December 21, 2007, the Board issued another order requesting additional information from IPL. On December 27, 2007, IPL filed a request for clarification and requested an extension of time to file its response. On January 2, 2008, the Board issued an order clarifying the December 21, 2007, order and granting IPL an extension of the date to file the additional information. On January 11, 2008, IPL filed the additional information requested in the December 21, 2007, order.

SETTLEMENT AGREEMENT

In the Settlement Agreement, IPL agrees to refund to Pioneer an additional \$318,394.02 for the period from December 13, 2001, back to September 1994 for the

overbilling at the Sheldahl facility. The Settlement Agreement provides that IPL can recover a portion of the refund, \$240,44.55, from other PGA customers or the settlement has failed. The Board will address the recovery of a portion of the refund from other PGA customers first.

Consumer Advocate

Consumer Advocate indicates that it supports the Settlement Agreement between IPL and Pioneer except that Consumer Advocate objects to the recovery of a portion of the refund amount from other PGA customers. Consumer Advocate argues that Board rules prohibit the recovery sought by IPL. Consumer Advocate contends that the definitions of the S (sales) component and the C (commodity) component in the PGA formula found in 199 IAC 19.10(1) make it clear that current customers are to be charged only current costs. Consumer Advocate also cited 199 IAC 19.10(7) to support its position.

Consumer Advocate points out that the refund will be for past overbillings from a period farther back than 2001 and IPL proposes to assess current customers for these past amounts, which would result in current customers paying for gas used by prior customers. Consumer Advocate contends that the only adjustments expressly allowed by the PGA rules for past billings are refunds received from interstate pipelines related to gas costs charged through the PGA in a prior period.

IPL

IPL argues that Consumer Advocate only cites to the definitions of the S and C components of the PGA formula and does not account for the non-time restrictive definition of the E (previous year's reconciliation) component. IPL states that the E component is defined as the per unit overcollection or undercollection adjustment as calculated under subrule 19.10(7). IPL points out that the refund recovery presented by the Settlement Agreement would be calculated through the E component that, IPL contends, has no time restriction.

The E factor, as described by IPL, is calculated once each year and compares total PGA expenses, namely gas costs, to the total PGA revenues collected. The resulting monthly factor is either added to or subtracted from the monthly PGA factor for the remainder of the PGA year. Under the Settlement Agreement, IPL would be able to recover from current PGA customers the PGA revenue lost through payment of the refund to Pioneer.

IPL argues that the reference made by Consumer Advocate to subrule 19.10(3), periodic PGA adjustments, is not relevant to the refund. IPL contends that even if subrule 19.10(3) applies, Consumer Advocate has interpreted the language in the subrule incorrectly. The relevant language in subrule 19.10(3), according to IPL, is as follows:

Unless otherwise ordered by the Board, a rate-regulated utility's purchased gas adjustment rate factors shall be adjusted as purchased gas costs change and shall recover from the customers only the actual costs of

purchased gas and other currently incurred charges associated with the delivery, inventory, or reservation of natural gas.

IPL argues that the term "currently," relied on by Consumer Advocate, modifies "incurred charges associated with delivery, inventory, or reservation of natural gas" rather than the preceding phrase "only the actual costs of purchased gas." IPL contends that subrule 19.10(7), on the other hand, does not specifically preclude adjustment of the PGA factor for amounts that were overcollected or undercollected prior to the PGA year.

Subrule 19.10(7) states as follows:

The utility shall file with the board on or before October 1 of each year a purchased gas adjustment reconciliation for the 12-month period which began on September 1 of the previous year. This reconciliation shall be the actual net invoiced costs of purchased gas and appropriate financial hedging tools costs less the actual revenue billed through its purchased adjustment clause net of the prior year's reconciliation dollars for each customer classification or grouping. Actual costs for purchased gas shall be the applicable invoice costs from all appropriate sources associated with the time period of usage.

IPL contends that the Board indicated in the most recent rule making addressing the PGA rules that collections should be done timely and accurately, but not that they must be done instantaneously, particularly if the error was not discovered during the relevant time period. Docket No. RMU-04-3, In re: Revisions to Purchased Gas Adjustment and Reserve Margin Rules [199 IAC 19.10(476) and 19.16(476)], "Order Commencing Rule Making" (May 21, 2004).

IPL argues that in the same rule making the Board addressed the Rb factor, a reconciliation adjustment allowed during the PGA year, and IPL suggests that the Board stated that any overcollection or undercollection not recovered through the Rb factor would be recovered through the annual reconciliation. According to IPL, this indicates the Board considered allowing the Rb factor to be expanded beyond the current PGA period, with the non-PGA year reconciliations recovered through the E factor.

Board Analysis

The information provided by IPL in this docket and the informal complaint shows that there have been two meter multiplier errors at Pioneer facilities which have resulted in significant overbillings. The errors occurred at the Dysart and Sheldahl facilities. IPL refunded \$468,288.93 on May 20, 2004, to Pioneer for the meter multiplier error at the Dysart facility. The refund was for the period from August 1999 to April 2004. IPL included a portion of the refund in the annual PGA reconciliation filed for 2004 and that amount was recovered from PGA customers without specific Board approval.

The refund for the overbilling at the Sheldahl facility has been separated into two refunds. IPL has already refunded \$453,913.44 to Pioneer for the period from the discovery of the meter multiplier error back to December 13, 2001. IPL filed for recovery of \$353,312.42 of this previous refund in the annual reconciliation filing for the period ending August 31, 2007, which was identified by the Board as Docket No.

PGA-07-42. On December 24, 2007, the Board issued an order approving a revised annual reconciliation filing that did not include the portion of the earlier refund to Pioneer.

The second refund for the overbilling at the Sheldahl facility is presented for the Board's approval through the Settlement Agreement. The refund is for the period from 1994 to December 13, 2001. The Settlement Agreement ties this second refund to a Board decision that allows IPL to recover a portion of the refund from other PGA customers. IPL was required to seek Board approval of the refund for the time beyond the five-year period if it wanted to recover a portion of the refund from other PGA customers since paragraph 19.4(13)"d" limits the requirement for a refund to a customer for overbilling to five years, unless otherwise approved by the Board.

It appears that the billing error at the Sheldahl facility continued for more than 12 years. The information presented indicates that the meter multiplier error was probably made by IPL at the time of installation. The information in the informal complaint file and the information filed in this formal complaint docket do not provide a clear answer as to why the meter error was not found sooner. Several attempts were made to reduce the cost of gas at the Sheldahl facility before the error was found.

In the additional information filed January 11, 2008, IPL provided a description of its procedures for testing and inspecting meters and admits that it had procedures in place prior to April 2003, but "they were not consistently implemented prior to that

time." It is clear that paragraph 19.4(13)"d" provides a period beyond which the utility cannot be required to make a refund without specific approval by the Board. The utility could voluntarily make the refund, but it is not required to make a refund beyond the five years without a specific Board order and, without that authority, it could not seek recovery from other PGA customers for these past gas costs.

Based upon the additional information provided by IPL, it appears that the two meter multiplier errors at the Pioneer facilities are the only errors on IPL's system that resulted in significant overbillings. The meter multiplier errors at the Dysart and Sheldahl facilities have resulted in IPL overbilling Pioneer more than \$1 million. Other refund amounts for meter errors appear to fall within a range of reasonableness that can be expected from an ongoing operation. Those other errors seem to have been detected and corrected in a reasonable amount of time in the normal course of business.

The error at the Dysart facility resulted in a significant overbilling and appears to have been detected within the five-year window provided in 19.4(13)"d" for refunds and a refund was made for that period. That meter multiplier error was detected in an energy audit on April 7, 2003. The information in the informal complaint concerning the Sheldahl facility indicates that IPL did not test the meter for error at the Sheldahl facility until December 2006. The meter was tested at that time because of concerns raised by Pioneer. It is not clear from the information in the informal complaint why it took so long for Pioneer and IPL to discover the meter multiplier error at the Sheldahl

facility. Pioneer had an energy auditing staff and IPL had procedures for testing and inspecting meters. Neither discovered the error for 12 years.

IPL's recovery of a portion of the refund for the Dysart facility in 2004 and filing to recover a portion of the first refund at the Sheldahl facility, as well as the proposed recovery in the Settlement Agreement, raise serious issues about the procedures followed by IPL for recovery of refunds through the PGA. None of the refunds fit within the normal operating procedures of the Board's PGA rules. The rules are designed to allow the utility to recover the actual cost of gas from customers during a 12-month period outside of a general rate case proceeding. A utility is allowed to charge a monthly PGA factor that includes actual and estimated gas purchases for the current PGA year and includes an E factor based upon an annual reconciliation filing that reconciles any overbillings or underbillings from the previous PGA year.

The PGA formula, found in 199 IAC 19.10(1), is as follows:

$$\text{PGA} = \frac{\text{Commodity} + \text{Reservation} + \text{Storage Cost}}{\text{Sales}} + (\text{forecasted cost adjustment}) + (\text{previous years reconciliation})$$

Subrule 19.10(2) provides for the filing of an annual PGA factor that will recover the cost of gas from customers over the next 12-month period beginning on September 1 based upon the calculation of a monthly PGA factor made up of actual and estimated gas costs. Subrule 19.10(3) allows a utility to make periodic changes, usually monthly, to the PGA factor based upon an estimate of the actual cost of gas and current charges. The calculation of these periodic, usually monthly, changes in the PGA factor is limited to changes in commodity prices (Rc factor), entitlement

reservation charges (Rd factor), and storage service rates (Rz factor). The rules also allow periodic adjustments for certain changes in total volume of entitlement reservation charges (D factor) and the total quantity of applicable storage service (Z factor) under certain conditions provided in subrule 19.10(6). All of these components, or factors, refer to September 1 of the affected year as the operative date for determining their calculation and rely on current costs.

Since the monthly PGA factors include estimates, the utility usually experiences either an overcollection or an undercollection during the 12-month PGA period. Subrule 19.10(7) requires the utility to file an annual reconciliation of the costs and revenues at the end of the 12-month PGA period to reconcile the "actual net invoiced costs" and "actual revenue" for that period and provides for the refunding or recovery of any overcollection or undercollection from that previous PGA year during the current PGA year. The actual costs are to be based upon "the applicable invoice costs from all appropriate sources associated with the time period of usage."

Subrule 19.10(7) establishes the period of usage that the annual reconciliation will reflect as the 12-month period that began on September 1 of the previous year. The rule requires the annual reconciliation to reflect actual gas costs based upon invoices for gas purchased during the previous 12-month period and actual revenue generated for that period. An E factor is calculated based upon this actual data and the monthly PGA factor is adjusted by the E factor for recovery during the remainder

of the current PGA year. Although out-of-period costs are not specifically prohibited in the rule, there is no specific provision that allows out-of-period costs to be recovered through the annual reconciliation and the actual costs recovered are referenced to the period beginning September 1 of the previous PGA year.

IPL relies on the discussion by the Board concerning an amendment to the Rb factor provision in Docket No. RMU-04-3 to support its position that out-of-period gas purchases can be recovered through the annual reconciliation. This discussion is not on point and is not a statement by the Board that recovery of costs outside the PGA year is allowed. In the rule making, the Board adopted amendments to the Rb factor to address an accounting problem that MidAmerican Energy Company (MidAmerican) was having with the Internal Revenue Service regarding how to account for the cost of storage. The amendment adopted by the Board allowed a utility to file an Rb factor to adjust the monthly PGA to zero in an attempt to prevent significant overcollections or undercollections during the PGA year. The adopted amendment allowed a utility to recover gas costs through the Rb factor over one or more months remaining in the PGA year. The Board indicated that calculating the Rb factor by dividing the amounts by 11 months, which was the practice prior to the amendment, might result in the balance not being recovered. Adopting the amendment did not indicate that costs from outside the period could be recovered.

Subrules 19.10(3) and 19.10(7) provide a mechanism for the utility to recover the actual cost of gas from PGA customers based upon invoices for the current and

previous PGA periods. There appears to be no provision in these rules that specifically addresses the recovery from customers of costs associated with usage in prior periods, such as the refunds from IPL to Pioneer. The reconciliation is to allow recovery of actual costs for purchased gas based upon invoices associated with the time period of usage. The time period of usage is the 12-month period beginning September 1 of the previous PGA year.

The Board understands that the cost of gas from purchases outside the prior PGA year may be included in the reconciliation on a limited basis as the PGA year does not always coincide with accounting or purchasing practices; however, recovery of the cost of gas from purchases from periods well before the 12-month period is beyond any cost recovery anticipated under the PGA provisions. The refunds made to Pioneer were for purchases that occurred from two to twelve years prior to the 12-month period used to calculate the E factor.

The Board recognizes that it must reconcile the fact that its PGA rules do not allow recovery of prior period gas costs from current customers with the refund provisions in paragraph 19.4(13)"d" that require refunds to customers for a five-year period and with the general proposition in utility regulation that the customers who use the gas should pay for that usage. Since paragraph 19.4(13)"d" requires IPL to refund overbillings back five years, the Board considers it reasonable to allow IPL to recover refunds made for overbillings for that five-year period through the PGA, to the extent those refunds represent gas consumed, but not paid for, by other customers.

The Board will allow IPL to recover the refunds made for purchases during the five-year period established by paragraph 19.4(13)"d" at the Dysart facility and the Sheldahl facility. This will in effect approve the recovery of the portion of the Dysart refund that has already been flowed through the PGA in 2004 and will allow IPL to recover the portion of the refund already made to Pioneer for the Sheldahl overbilling. IPL may file to recover the first refund for the overbilling at the Sheldahl facility in the March PGA filing as part of the Rb factor adjustment or in the annual reconciliation for the current PGA year.

The Board finds that in this instance it is not reasonable for IPL to be allowed to recover the refund amounts associated with the period beyond five years related to the Sheldahl facility, as proposed in the Settlement Agreement. It appears from the information in this docket and the informal complaint file that the billing error occurred at the time of installation and neither IPL nor Pioneer found the error for 12 years. IPL states that it had procedures in place prior to April 2003 designed to find these types of errors, but was not consistent in following these procedures. The failure to discover these types of billing errors may indicate that IPL was not testing and inspecting its meters and billing of customers within a reasonable time or did not have proper procedures in place to find and correct these types of billing errors. The Board does not consider it reasonable to allow IPL to recover a portion of a refund associated with the Sheldahl facility farther back than December 13, 2001, since these errors should have been discovered before that time.

In addition, the recovery of these amounts is so far removed from the cost of gas used by current customers that any recovery would result in an unreasonable case of intergenerational inequity. Many of the customers who used the gas during the earlier time period will no longer be on the system and many of the current customers were not customers at that time. While this is always true of refunds that involve differing time periods for collection and disbursement, it becomes more extreme as the time difference increases. The time period here is too long to allow these refunds to be collected from today's customers.

Rule 199 IAC 7.18(17A,476) provides the Board will not approve a settlement unless it finds the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. The Board finds that the Settlement Agreement filed by IPL and Pioneer on October 22, 2007, is not reasonable in light of the whole record and is not in the public interest. The provision of the settlement that ties the refund to recovery from other PGA customers is not reasonable and therefore the Settlement Agreement is considered failed by its own terms.

WAIVER OF 199 IAC 19.4(13)"d"

Subrule 199 IAC 1.3 establishes four criteria that must be met by clear and convincing evidence for the Board to grant a waiver of a provision in the Board's rules. The criteria are: (1) the application of the rule would pose an undue hardship on the person for whom the waiver is requested, (2) the waiver would not prejudice the substantial legal rights of any person, (3) the provisions of the rule are not

specifically mandated by statute or another provision of law, and (4) substantial equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule. In addition to meeting the four criteria described above, the Board must decide if allowing recovery of a refund for a period beyond the five years allowed by paragraph 19.4(13)"d" is reasonable.

Based upon its decision regarding the recovery of a portion of the refund as proposed in the Settlement Agreement, the Board finds it is not necessary to address the four criteria or the waiver request. The waiver of paragraph 19.4(13)"d" is dependant on the recovery of a portion of the amount refunded through the PGA. Denial of recovery does not prevent IPL from making the refund voluntarily, but it limits IPL's ability to recover a portion of the refund from other PGA customers. Since the waiver will not be addressed, Docket No. WRU-07-37-150 will be closed.

FORMAL COMPLAINT

The Board opened Docket No. FCU-07-13 to allow for a full consideration of the Settlement Agreement submitted by Pioneer and IPL as a resolution of the informal complaint made by Pioneer against IPL for the overbilling at the Sheldahl facility and for the Board to formally consider the recovery of overbilling refunds from PGA customers. The Board's decision concerning recovery of overbilling refunds is set out above and based upon the responses of IPL to the requests for additional information, no additional action is required by the Board in this docket. There appear to have been only the two significant overbillings by IPL at Pioneer facilities

and no significant overbillings occurred at other facilities. It also appears from the responses that IPL has improved its inspection and testing of meters since the two overbillings were discovered.

However, to allow the Board to track significant refunds in the future that are made because of overbillings, the Board will require IPL to include a separate line item in future annual reconciliations when it is seeking recovery of a refund that exceeds \$50,000. IPL will be required to provide an explanation for the refund in the annual reconciliation filing. Smaller amounts for refunds within the five-year period will be considered as part of the ordinary course of business and IPL may recover these smaller refunds without specific notice to the Board.

Based upon the Board's decision regarding the Settlement Agreement and the information regarding IPL's current testing and inspection procedures, the Board will close Docket No. FCU-07-13.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. The Settlement Agreement filed by Interstate Power and Light Company and Pioneer Hi-Bred International Inc., on October 22, 2007, and as amended on October 29, 2007, is not approved.
2. The Board approves the past recovery of a portion of the refund made to Pioneer Hi-Bred International, Inc., by Interstate Power and Light Company for overbilling at the Dysart facility in the 2004 annual reconciliation.

3. Interstate Power and Light Company may recover \$353,312.42 of the refund made to Pioneer Hi-Bred International, Inc., in January 2007 for overbilling at the Sheldahl facility back to December 13, 2001, in the current PGA year or in the annual reconciliation filing.

4. Interstate Power and Light Company shall include in future annual reconciliation filings a separate line item for refunds in excess of \$50,000 made to customers where recovery is sought through the PGA.

5. The waiver request filed on November 1, 2007, and identified as Docket No. WRU-07-37-150 will not be considered and the docket is closed.

6. Docket No. FCU-07-13 is closed.

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 3rd day of March, 2008.