

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

---

|   |   |
|---|---|
| <p>IN RE:</p> <p>DOUG MORGAN,<br/><br/>                    Petitioner,<br/><br/>          vs.<br/><br/>MIDAMERICAN ENERGY COMPANY,<br/><br/>                    Respondent.</p> | <p>DOCKET NO. FCU-08-17<br/>                    (C-08-64)</p> |
|---|---|

---

**ORDER GRANTING PETITIONS TO INTERVENE, LIMITING PARTICIPATION,  
AND SETTING HEARING DATE**

(Issued December 16, 2008)

On June 13, 2008, Mr. Doug Morgan filed a complaint with the Utilities Board (Board), stating that MidAmerican Energy Company (MEC) had overcharged his business for electric service from 1998 through 2006 and refused to refund more than five years of the overcharged amount. The details of the informal complaint are contained in informal complaint file number C-08-64, which is incorporated into the record in this formal proceeding pursuant to 199 IAC 6.7.

On October 20, 2008, pursuant to Iowa Code § 476.3 (2007), the Board issued an order docketing this case as a formal complaint proceeding and assigning it to the undersigned administrative law judge. The Board stated that subrule 20.4(14)"e" provides that the time period for refunds due to meter errors, such as the

incorrect use of a multiplier, is five years, unless otherwise ordered by the Board. The Board further stated that in adopting the rules, it set a five-year period for refunds to balance each customer's rights in the event of an error with the utility's costs of maintaining accurate, retrievable billing records for a potentially unlimited period. However, the Board stated, it recognized that a different time period could be applied if the facts and circumstances warrant. The Board stated there were reasonable grounds to docket the case as a formal complaint proceeding because there were factual disputes over whether the five-year period should be extended due to the particular facts and circumstances of this case.

A prehearing conference was held on November 6, 2008. The parties agreed that prefiled testimony is not necessary and the hearing should be held on Tuesday, December 2, 2008. On November 10, 2008, MEC filed Exhibit 100, which sets forth the erroneous electric consumption numbers and amounts MEC billed Mr. Morgan from October 1998 through January 2001, MEC's calculation of the corrected amounts for the time period, and the difference, which is MEC's calculation of the remaining amount of overpayment in dispute.

The undersigned issued a "Procedural Order and Notice of Hearing" (Order) on November 13, 2008, setting the hearing for December 2, 2008.

The issues in the case as stated in the Order include: a) whether Mr. Morgan called MEC in 1998 to ask about the amount he was charged for electricity, and whether and how the answer to this question is relevant; b) whether MEC furnished

reasonably adequate service at rates and charges in accordance with tariffs filed with the Board to Mr. Morgan, as required by Iowa Code § 476.3; c) the amount that MEC overcharged Mr. Morgan, and in particular, the remaining amount of overcharge in dispute that has not been refunded to Mr. Morgan; d) whether MEC should be required to refund the remaining amount of overcharge to Mr. Morgan for the years 1998 through January 2001, pursuant to 199 IAC 20.4(14)"e;" e) the facts and circumstances that should be considered by the undersigned in determining whether the additional refund should be ordered; and f) whether an award of interest to Mr. Morgan is allowed by the Board's statutes and rules, and if so, whether such an award should be made in this case and the appropriate amount of the award. The Order found that since the facts and issues of the case appeared to be relatively straightforward and limited in scope, prepared testimony and exhibits were not needed.

On November 19, 2008, Pioneer Hi-Bred International, Inc. (Pioneer), filed a petition to intervene in this proceeding. Pioneer argues its intervention is warranted pursuant to 199 IAC 7.13(3)"a" because it has an interest in the subject matter of this proceeding. Pioneer states that it has an ongoing informal complaint against Interstate Power and Light Company (IPL) "regarding a meter multiplier error that resulted in overcharges for over ten years." Pioneer states that the Board docketed the informal complaint as a formal complaint proceeding on its own motion in Board Docket No. FCU-07-13. Pioneer further states that it and IPL filed a proposed

settlement, in which IPL proposed to refund to Pioneer an additional amount for the overcharges incurred prior to the five-year limitations period set in the Board's rules, and to recover a portion of the cost of the refund through the purchased gas adjustment (PGA), to be recovered from other PGA customers. Pioneer further states that the Board disapproved the proposed settlement on March 3, 2008, and closed the formal docket. However, Pioneer states, the underlying informal complaint proceeding, C-07-174, remains open and Pioneer's complaint remains unresolved. Pioneer states it is engaged in further discussions with IPL, but if those discussions do not resolve Pioneer's complaint to Pioneer's satisfaction, Pioneer reserves the right to pursue a resolution in C-07-174 or take some other appropriate action before the Board. Pioneer argues that its interest in the subject matter of this proceeding is clear and material.

Pioneer further argues that its intervention is also warranted pursuant to 199 IAC 7.13(3)"b," because the decision in this proceeding could have a material effect on Pioneer's interest in its ongoing unresolved complaint against IPL. Pioneer argues that the precedents set by the resolution of the issues in this docket could have a material effect on Pioneer's position in its ongoing complaint against IPL. Pioneer argues that the resolution of the issues in this case could materially affect the ultimate outcome of Pioneer's complaint against IPL.

Pioneer argues that its intervention is also justified under 199 IAC 7.13(3)"c" and 7.13(3)"d," because its interests are not adequately protected by the other

parties to this proceeding, and Pioneer's participation would assist in the development of a sound record. Pioneer argues that, as a large consumer of energy, it has specific interests in the scope of this complaint proceeding that may not be adequately represented by the petitioner. In addition, Pioneer argues, it has already developed a strong case and set of arguments related to the issues in this proceeding, which will contribute to a sound record.

On November 20, 2008, the undersigned administrative law judge issued an order setting the deadline for response to the petition to intervene as November 24, 2008.

On November 24, 2008, IPL filed a conditional application to intervene. IPL argues that if Pioneer is allowed to intervene, IPL should also be granted intervention, since it is the other party to Pioneer's complaint case. IPL argues that any issue in this proceeding that affects Pioneer would have a correlating effect on IPL. IPL argues that its interests would not be sufficiently represented by MEC because of the unique set of facts and circumstances that exist in the matter between IPL and Pioneer. IPL argues that if Pioneer's participation could assist in the development of a sound record, IPL's participation would have the same effect, given its involvement in Docket No. FCU-07-13. IPL states that it is only conditionally requesting intervention if Pioneer is allowed to intervene. If Pioneer is not allowed to intervene, IPL states that it does not feel any need to participate in this proceeding.

IPL also argues that neither Docket No. FCU-07-13 nor informal complaint C-07-174 are "ongoing" as asserted by Pioneer. IPL argues that Pioneer's assertion that its informal complaint survived the closing of Docket No. FCU-07-13 is inaccurate. IPL argues that the Board's "Order Docketing Complaint," issued on October 29, 2007, specifically ordered that the informal complaint was docketed as a formal complaint proceeding, and made the informal complaint and subsequent documents a part of the record in the formal proceeding. Subsequently, IPL states, the Board closed the formal proceeding by unopposed order issued on March 3, 2008. Therefore, argues IPL, it is procedurally apparent that no informal complaint survives. IPL acquiesced that it has continued discussions with Pioneer, but argues it has conducted these discussions "in the spirit of fostering continued relationships and good will with its customer" outside the purview of any Board proceeding.

On November 24, 2008, MEC filed a response to Pioneer's petition to intervene and IPL's conditional petition. MEC argues that intervention is generally granted to a petitioner upon a showing that the potential intervenor has a cognizable interest in the proceeding. MEC argues that the factors relevant to this showing include the nature and extent of the petitioner's interest, the effect of a decision that may be rendered upon the prospective intervenor's interest, the availability of other means to protect the petitioner's interest, and the extent to which the prospective intervenor's participation may reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument, among

other things. MEC argues that the nature of this proceeding is fact specific to Mr. Morgan's electric usage and billing and the events that led up to an incorrect billing of his electric usage. MEC argues that while Pioneer may be interested in the subject matter of this proceeding, Pioneer does not establish that it has an interest in the outcome of this proceeding. MEC argues that Pioneer has failed to establish a nexus between its particular facts and circumstances to Mr. Morgan's particular circumstances, other than the same Board rule regarding overcharging applies to both parties. Specifically, MEC argues, the determination of whether MEC's service rates and charges were reasonable will have no discernable impact on Pioneer, as Pioneer was charged a different rate under an IPL tariff and the circumstances of its over billing are different from Mr. Morgan's circumstances. Consequently, MEC argues, the issues in this proceeding have no relevance to Pioneer's ongoing complaint against IPL.

MEC argues that Pioneer retains the ability to protect its interest in the current case with IPL. MEC further argues that Pioneer admits it has already developed a strong case and arguments related to the issues in this proceeding.

MEC argues that Mr. Morgan's case is a separate docketed proceeding and the disputed issues are fact specific to Mr. Morgan and MEC. MEC argues that Pioneer's rights and interests will remain unchanged and Pioneer will retain its right to pursue its remedies against IPL.

Furthermore, MEC argues, Pioneer will not be able to assist in the development of a sound record, since it does not have any knowledge about the facts and circumstances that led to the over billing of Mr. Morgan's account. MEC argues that Pioneer's arguments as to why the Board should waive its rule and allow recovery of overcharges past five years will not assist the Board in developing a sound record upon which the Board can make a decision regarding Mr. Morgan's particular case. MEC argues that the undersigned administrative law judge narrowly defined the factual issues that were not resolved in Mr. Morgan's informal complaint proceeding and Pioneer has not established that it has any knowledge that would assist the Board in resolving these issues.

MEC argues that the issues for the Board to resolve in this proceeding involve applying Mr. Morgan's factual circumstances and applying the Board's rule in 199 IAC 20.4(14)"e." Therefore, MEC requests the Board deny Pioneer's request to intervene and deny IPL's conditional request to intervene.

On November 24, 2008, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a statement that said it did not oppose the petitions to intervene filed by Pioneer and IPL.

On November 25, 2008, Mr. Morgan, through his attorney, Mr. Chad Thompson, requested a continuance of the hearing to allow time for hearing preparation and an extension of the time to file a response to the petitions to intervene.

On November 26, 2008, the undersigned issued an order granting the motion for a continuance of the hearing date and time to file a response to the petitions to intervene. The order required Mr. Morgan to file his response to the petitions on or before December 15, 2008. The order also required Mr. Morgan, MEC, and the Consumer Advocate to propose several mutually agreeable hearing dates.

On December 2, 2008, Mr. Morgan filed a written motion to continue the hearing date and an appearance of counsel. On December 15, 2008, Mr. Morgan filed a motion for extension of time to file his response and a response to the motions to intervene. Mr. Morgan does not resist the motions to intervene and is in favor of the undersigned sustaining both motions. The parties proposed hearing dates by electronic mail on December 15, 2008.

The Board's intervention rule is at 199 IAC 7.13. Subrule 7.13(3) provides that: "any person having an interest in the subject matter of a proceeding may be permitted to intervene at the discretion of the board or presiding officer." In deciding whether to grant intervention, the undersigned is to consider: a) the prospective intervenor's interest in the subject matter of the proceeding; b) the effect of the decision on the prospective intervenor's interest; c) the extent to which the prospective intervenor's interest will be represented by the other parties; d) the availability of other means by which the prospective intervenor's interest may be protected; e) the extent to which the prospective intervenor's participation may

reasonably be expected to assist in the development of a sound record through presentation of relevant evidence and argument; and f) any other relevant factors.

Board subrule 7.13(5) states that the Board or presiding officer may limit a person's intervention to particular issues or to a particular stage of the proceeding, or may otherwise condition the intervenor's participation. The same subrule states that the Board or presiding officer shall generally grant leave to intervene to any person with a cognizable interest in the proceeding. Subrule 7.13(7) states that the intervenor is bound by any agreement, arrangement, or order previously made or issued in the case.

Pioneer and IPL have no interest in the particular facts and circumstances of Mr. Morgan's complaint against MEC. Pioneer's case is completely separate from Mr. Morgan's, has nothing to do with Mr. Morgan's case, and even involves a different utility. MEC is correct that the only nexus between the two cases is that the same Board rule regarding overcharging applies to both cases.

However, it is conceivable that the decision on two legal issues in this case may have some influence on the decision that may be reached in Pioneer's case, if the case is still open, an issue which the undersigned does not need to decide in this case, and if a decision is ever issued. These two legal issues are: a) which facts and circumstances in Mr. Morgan's case should be considered in determining whether an additional refund should be ordered pursuant to 199 IAC 20.4(14)"e;" and b) whether an award of interest to Mr. Morgan is allowed by the Board's statutes and

rules. However, this is not a rulemaking proceeding. This is a contested case, in which the task of the undersigned is to determine the facts of this case, apply the relevant law to the facts of this case, and reach a decision as to this particular set of facts. Iowa Code §§ 17A.2(5), 17A.12, 17A.15, 17A.16. The only facts that will be considered are those that relate to Mr. Morgan's case, not Pioneer's.

Therefore, since the decision in this case may have an effect on a future decision that may be reached in Pioneer's case, Pioneer's petition to intervene will be granted. However, Pioneer's participation will be limited to briefing the above two legal issues. Pioneer may attend the hearing as an observer. During the hearing, if Pioneer believes it is necessary to participate in the proceeding in some limited way in support of its briefing of the two legal issues, it may request to participate. In such circumstance, the other parties will be given the opportunity to object, and a ruling will be made. In addition, if it chooses, Pioneer may make a closing argument regarding the two legal issues. At the conclusion of the hearing, a post-hearing briefing schedule will be set. Pioneer may file briefs on the two legal issues in conformance with the briefing schedule.

IPL's conditional petition to intervene is similarly granted for the same reasons as Pioneer's petition. IPL's participation in the case will be limited to the same degree as Pioneer's.

**IT IS THEREFORE ORDERED:**

1. The "Petition to Intervene" filed by Pioneer Hi-Bred International, Inc., on November 19, 2008, is hereby granted and Pioneer's participation in the case is limited as discussed in the body of this order.
2. The "Conditional Application to Intervene" filed by Interstate Power and Light Company on November 24, 2008, is hereby granted and IPL's participation in the case is limited as discussed in the body of this order.
3. A hearing for the presentation of evidence and the cross-examination of witnesses will be held in Board Conference Room 3, 350 Maple Street, Des Moines, Iowa, on Tuesday, January 27, 2009, beginning at 10 a.m. Parties who choose to participate in the hearing by telephone conference call must dial 1-866-685-1580, and enter conference code number 2816326 followed by the pound key, at the time set for the hearing. Parties who choose to participate by telephone conference call must make arrangements to provide any exhibits to the court reporter, the other parties, and the Board prior to or at the hearing. No prefiled testimony will be used in this case. MEC must provide a copy of its prefiled Exhibit 100 to the court reporter. If he files exhibits, Mr. Morgan should use exhibit numbers one and following. If it files additional exhibits, MEC should use exhibit numbers 101 and following. If it files exhibits, the Consumer Advocate should use exhibit numbers 200 and following. Persons with disabilities requiring assistive services or devices to observe or

participate should contact the Board at 515-281-5256 no later than five business days prior to the hearing to request that appropriate arrangements be made.

4. All provisions of the "Procedural Order and Notice of Hearing" issued on November 13, 2008, remain in effect unless specifically modified by this order.

**UTILITIES BOARD**

/s/ Amy L. Christensen  
Amy L. Christensen  
Administrative Law Judge

ATTEST:

/s/ Judi K. Cooper  
Executive Secretary

Dated at Des Moines, Iowa, this 16<sup>th</sup> day of December, 2008.