STATE OF IOWA

DEPARTMENT OF COMMERCE

UTILITIES BOARD

IN RE: APPLICATION OF THE STATUTE OF LIMITATIONS TO DEBTS OWED BY CUSTOMERS FOR NATURAL GAS AND ELECTRIC SERVICE AND UTILITIES BOARD JURISDICTION OVER MUNICIPAL UTILITY LEVEL PAYMENT PLANS	DOCKET NO. NOI-2014-0004

ORDER SCHEDULING WORKSHOP

(Issued March 5, 2015)

BACKGROUND

On December 3, 2014, the Utilities Board (Board) issued in an order opening this inquiry to address an issue raised by MidAmerican Energy Company (MidAmerican) and an issue raised by the Iowa Association of Municipal Utilities (IAMU) in a previous inquiry. Docket No. NOI-2014-0003, re: Inquiry Into Bill Payment Agreements for Electric and Natural Gas Service. The two issues to be addressed in this inquiry are: (MidAmerican) whether a payment agreement is a written agreement for purposes of application of the ten-year statute of limitations established in Iowa Code § 614.1(5), and (IAMU) the extent of the Board's jurisdiction over municipal natural gas and electric utilities' level payment plans.

In the December 3, 2014, order, the Board requested that interested persons address three questions. The Board also established dates for filing comments and reply comments that addressed the three questions set out in the order.

Initial comments were filed by MidAmerican, IAMU, Consumer Advocate Division of the Department of Justice (Consumer Advocate), Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy (Black Hills Energy), Interstate Power and Light Company (IPL), and the Iowa Association of Electric Cooperatives (IAEC). Reply comments were filed by Consumer Advocate, MidAmerican, and IPL. On February 6, 2015, Iowa Legal Aid filed comments.

SUMMARY OF COMMENTS

The purpose of this inquiry is to allow the Board to address the two issues raised by MidAmerican and IAMU, and to consider addressing other issues related to those two issues and issues raised by participants. The responses to the three questions set out in the Board's December 3, 2014, order are summarized below. IAMU raised other issues that are also summarized.

A. Whether, and under what circumstances, a payment agreement should be considered a written contract for purposes of calculating the ten-year statute of limitations established in Iowa Code § 614.1(5).

1. MidAmerican

MidAmerican states that the statute of limitations should not apply to the collection of past due accounts prior to reinstatement of service. (MidAmerican more fully addresses this issue in response to Issue B below.) MidAmerican states that if

the Board decides that the statute of limitations should be used as a guide for the collection of past due accounts prior to reinstating service, then a written payment agreement is the best written document to consider for applying the ten-year statute of limitations established in Iowa Code § 614.1(5).

MidAmerican points out that Iowa Code chapter 614 applies to the timeframe actions may be brought before an Iowa court for breach of contract. If a contract is breached, but the court action is commenced five years after the breach of an unwritten contract, or ten years after breach of a written contract, the law prohibits enforcement of the contract in a court of law.

MidAmerican states that Iowa Code chapter 476 is the applicable statute that governs the actions of utilities, and not Iowa Code chapter 614. Any contractual relationship between a customer and MidAmerican is prescribed under Board rules and Board-approved MidAmerican tariffs. MidAmerican states that Iowa Code § 476.2 confers on the Board the authority to "establish all needful, just and reasonable rules not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content and filing of reports, documents and other papers necessary to carry out the provisions" of Iowa Code chapter 476.

MidAmerican states that Board rules allow public utilities to offer payment agreements and a payment agreement is a written document that affirms that the customer owes the utility for a past due account. Pursuant to Board rules,

MidAmerican memorializes the terms of the payment agreement in a written letter and the terms of the letter allow the customer ten days to contact MidAmerican if the customer disagrees with the terms in the letter. MidAmerican also allows a customer to sign a payment agreement in a MidAmerican office and the in-person action is followed up with a written letter that allows the customer to contact MidAmerican to change the terms of the payment agreement. MidAmerican states that a payment agreement requires the customer to make payments on the past due amount in addition to paying for current service. In exchange for the payment agreement, MidAmerican agrees not to disconnect service.

MidAmerican asserts that the payment agreement re-affirms that the customer owes a past due debt and suggests that the Board should consider applying a ten-year limitation based on the payment agreement, if the Board decides to impose a time limit to collect an unpaid debt to reinstate service.

2. IPL

IPL states that the courts have not addressed whether a payment agreement entered into pursuant to the provisions of Board rules is subject to Iowa Code § 614.1(5). IPL considers it clear that the ten-year statute of limitations established in that statute applies to the enforceability of payment agreements in Iowa district court. The essential facts establishing liability must be shown in writing for an order to be founded on a written contract and IPL states that payment agreements set forth the customer's required performance in writing and therefore meet the simple definition

of a written contract. Gemini Capital Group v. New, 807 N.W.2d 157 (Table), text available at 2011 Iowa App. Lexis 891, *7 (Iowa Ct. App. Sept. 8, 2011).

IPL states that payment agreements represent new agreements that are separate and independent from any original service agreement. IPL states that the customer, by entering into a payment agreement, receives the benefit of paying delinquent amounts over time and the utility's forbearance from any debt collection efforts. IPL states that a payment agreement is similar to a settlement or loan modification agreement both of which are independent of the original obligation. Accordingly, the ten-year statute of limitations for written contracts applies to payment agreements independent of any limitations period that might have applied to the original obligation. Chaplin v. Chaplin, 2003 Iowa App. LEXIS 1118, 4(Iowa Ct. App. Dec. 4, 2003); Corinth Joint Venture v. Lomas & Nettleton Financial Corp., 667 S.W.2d 593, 597 (Tex. App. Dallas 1984). As a separate written contract, the payment agreement can be enforced through a civil action under a ten-year statute of limitations.

3. Black Hills Energy

Black Hills Energy states that a payment agreement, if all necessary legal elements are established, should be considered a written contract for purposes of calculating the ten-year statute of limitations. The essential elements establishing liability must be shown in writing. Materly v. Hanson, 359 N.W.2d 450, 454 (Iowa

1984). The essential elements are the terms of the agreement, the party's name, and signature of the party.

4. IAEC

(IAEC states that the comments made in response to the issues raised by the Board should not be viewed as precluding any individual IAEC member from participating in this docket on the member's own behalf.)

IAEC acknowledges that Iowa law places certain limits on the time period when a person can take action if the person is going to seek redress through the courts. IAEC states that for an action to be founded on a written contract, the essential facts establishing liability must be shown in writing. IAEC states that a payment agreement that properly identifies the customer who owes the bill, clearly sets forth the customer's agreement to pay the debt within the specified time in the agreement, and is executed by the customer should be considered a written contract.

IAEC points out when a proposition is in writing, and the acceptance is verbal, the contract is an oral contract. Hulbert v. Atherton, 12 N.W.2d 780, 781 (Iowa 1882); see also Capital One Bank v. Creed, 220 S.W.3d 874, 878 n. 2 (Mo. Ct. App. 2007). IAEC states that without evidence of the customer's written acceptance of the payment agreement, the action must be construed as one to enforce an oral contract and the five-year limitation would apply.

5. Consumer Advocate

Consumer Advocate understands that Board staff currently applies the ten-year statute of limitations established for written contracts in cases in which there is a written application for service signed by the customer. Consumer Advocate considers this a reasonable approach.

Consumer Advocate states that in cases where there is a written payment agreement, but not a written application for service, the ten-year statute of limitations would only apply to the debt covered by the terms of the payment agreement. Charges or past due amounts not covered by the agreement would be subject to the five-year statute of limitations for oral contracts.

6. IAMU

IAMU cites to Iowa Code § 4.1(39) to define the terms "written" and "in writing" to include any mode of representing words or letters in general use and includes electronic record as defined in Iowa Code § 554D.103. IAMU states that based upon this definition a payment agreement is a written contract, signed by the customer and acknowledging a debt is owed to the utility. IAMU states that signing up for utility service creates a written contract to which the ten year statute of limitations applies. Muscatine Water Works v. Muscatine Lumber Company, 52 N.W. 108 (Iowa 1892).

B. Whether statutes of limitations established in Iowa Code §§ 614.1(4) and 614.1(5) are applicable to debts for natural gas or electric service under Board jurisdiction.

1. MidAmerican

MidAmerican asserts that the statute of limitations established in Iowa Code chapter 614 does not apply to natural gas or electric service under the Board's jurisdiction. Iowa Code § 476.20 allows a utility to require "payment of a customer's past due account with the utility prior to reinstatement of service." MidAmerican points out that this section of the statute does not limit the amount of time for collection of the past due payment in order for service to be reinstated. MidAmerican suggests it is therefore appropriate for a utility to use an outstanding balance on an account to determine whether MidAmerican will extend credit to the customer and offer service.

MidAmerican asserts that Iowa law is clear, the statute of limitations does not extinguish a debt, and the debt still exists even if the statute of limitations tolls. MidAmerican cites an Iowa Supreme Court decision for the proposition that the statute of limitations merely eliminates a plaintiff's right to sue, but does not extinguish the underlying cause of action. Gen. Elec. Co. v Iowa Bd. Of Tax Review, 492 N.W.2d 417, 421-22 (Iowa 1992), see also Schulte v. Wageman, 465 N.W.2d 285, 287 (Iowa 1991); Williams v. Burnside, 222 N.W. 413, 415 (Iowa 1928). MidAmerican states that the statute of limitations only extinguishes the utility's right to enforce the debt in a court of law and the elimination of a legal remedy in Iowa courts can only occur if the court determines a contract existed, the customer raised the statute of limitations as a defense, and the customer did not reaffirm the debt.

MidAmerican states that Iowa Code chapter 476 is the applicable statute that governs actions of utilities, and not Iowa Code chapter 614. Any contractual relationship that might exist between a customer and a public utility is prescribed by Board rules and Board-approved tariffs. MidAmerican suggests that the Board, as a policy matter, should focus on determining what information regarding the past due account a utility must provide the customer prior to the reinstatement of service. MidAmerican believes it is reasonable to allow collection of the debt prior to establishing service if the utility is able to provide information about the past due debt, such as: (1) the service address or addresses where the debt(s) accrued; (2) meter reading dates; and (3) usage and dates of usage, and bill amounts and billing dates.

MidAmerican suggests that without the above information the utility would not be able to require payment of the debt to establish service. This policy should be set by the Board pursuant to Iowa Code chapter 476 and the Board should set guidelines for the collection of past due debt that balance the rights of a customer to obtain service with the utility's right to have the customer pay for the service, whether current or past due.

2. IPL

IPL states that the statute of limitations prohibits recovery of a debt through the courts but does not extinguish the debt. IPL cites to Iowa Code § 614.1 that provides "[a]ctions may be brought within the times herein limited, respectively, after

their causes accrue and not afterwards, except when otherwise specifically declared." Actions pursuant to Iowa Code § 614.1(5) do not circumvent the discretion given to the Board under Iowa Code § 467.20 which states that "this subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service." IPL asserts that a public utility should not be precluded from requesting that the customer pay or enter into a payment agreement to pay prior debts even after the expiration of the applicable limitations period for commencing a civil action.

3. Black Hills Energy

Black Hills Energy states that the provisions of Iowa Code §§ 614.1(4) and 614.1(5) are applicable to debts for natural gas or electric service under Board jurisdiction. In addition, Black Hills Energy asserts that debts for natural gas or electric service are also subject to Iowa Code § 614.5 that provides "When there is a continuous, open, current account, the cause of action shall be deemed to have accrued on the date of the last item therein, as provided on the trial." According to Black Hills Energy, a "continuous, open, current account" is one which is not interrupted or broken, not closed by settlement or otherwise, and is a running, connected series of transactions. Griffith v. Portlock, 7 N.W.2d 199 (Iowa 1942). Black Hills Energy asserts that debts accumulated for natural gas or electric service would qualify as a "continuous, open, current account." According to Black Hills

Energy, the statute of limitations time periods would not run until the date of the last item entered on a customer's account.

4. IAEC

IAEC believes that Iowa Code § 614.1 applies to debts for natural gas or electric service provided by public utilities under the jurisdiction of the Board. The expiration of the time period limits the ability of the public utility to utilize the court system to obtain a judgment for nonpayment. The statute of limitations bars the remedy but not the right; therefore, a public utility that is owed funds from a former customer for electric or natural gas service should not be precluded from requesting the customer pay the amount owed, even after the expiration of the applicable limitations period. IAEC asserts that the public utility should not be precluded from asking that a former customer pay or make arrangements to pay a prior bill amount at the time the former customer requests to be connected, even if the debt is beyond the applicable five or ten year period.

IAEC states that a two-year limitation on a mechanics lien only limits the remedy of foreclosing on the lien and the party who is owed the money and filed the lien may still pursue other remedies after expiration of the two-year limitation period. Accordingly, the statute of limitations for oral and written contracts should not preclude other means of collection.

5. Consumer Advocate

Consumer Advocate states that the statute of limitations time periods in Iowa Code § 614.1 are applicable to debts owed for natural gas or electric service under the Board's jurisdiction pursuant to Iowa Code chapter 476. Consumer Advocate states that the Iowa Supreme Court explained that statutes of limitations protect people "from the need to defend [claims brought] after memories have long since failed, witnesses have died or disappeared, and evidence lost." Schulte v. Wageman, 465 N.W.2d 285,286 (Iowa 1991). Consumer Advocate asserts that this protection is just as necessary and relevant for utility customers. Consumer Advocate states that the Board has already acknowledged that the statute of limitations applies in cases involving written and oral agreements for utility service, and that a utility may not deny service for failure to pay a statute-barred debt. "Order Denying Request to Set Aside Proposed Resolution and Commence Formal Proceedings," Lorenzen v Iowa-Illinois Gas and Electric Company, File No. C-87-111 (issued August 25, 1987).

6. IAMU

IAMU states that the provisions of Iowa Code §§ 614.1(4) and 614.1(5) are not relevant to the determination of whether a debt exists and is owed to a utility. Those statutes are a matter of civil debt collection and the references to "actions" related to action brought for enforcement of the debt owed in a judicial proceeding.

IAMU points out that Iowa Code § 476.20(5) specifically allows a utility to require payment of a past due debt prior to reinstating service. IAMU states that if the legislature intended to limit collection of past due debt to the provisions of Iowa Code § 614, the legislature could have done so. Requiring payment of a prior debt before reinstatement of service is a distinctly different action than bringing an action to enforce a debt in court. IAMU is not contending that a utility could bring an action in court to collect a past due debt past the appropriate statute of limitations; however, IAMU argues that it is in the interest of other municipal utility rate payers for a bad debt to be paid prior to reinstatement of service. Otherwise, the remaining ratepayers must bear the burden of the bad debt.

C. Whether level payment plans relate to disconnection of natural gas and electric service under the provisions of Iowa Code § 476.20(3)(a) and other applicable provisions in Iowa Code § 476.20.

1. MidAmerican

MidAmerican does not take a position regarding the applicability of level payment plans to disconnections under Iowa Code § 467.20.

2. IPL

IPL does not take a position regarding the applicability of level payment plans to disconnections under Iowa Code § 467.20.

3. Black Hills Energy

Black Hills Energy has no comments on this issue.

4. IAEC

IAEC states that Iowa Code § 467.20 does not reference level payment plans. IAEC states that a level payment plan may help a customer avoid disconnection; it is not entirely clear that such plans are related to disconnection is such a way that jurisdiction over the use of said plans by municipal utilities is vested with the Board.

5. Consumer Advocate

Consumer Advocate reiterates its response in the previous inquiry that level payment plans are related to disconnections and subject to Board rules. Consumer Advocate cites to the Board's decision in Docket No. FCU-2013-0008 in which the Board found that the Board's jurisdiction over disconnections should be interpreted broadly. (Docket No. FCU-2013-0008, Karen Fenholt Vander Lee v. Rockford Municipal Light Plant, "Order Determining Jurisdiction Over Deposits Required by Municipal Electric and Natural Gas Utilities and Dismissing Complaint" issued September 9, 2013.) Consumer Advocate cites the Board's order as follows:

> In addition, IAMU's interpretation of the specific reference to "disconnection" in Iowa Code § 476.1B(1)(e) is too restrictive and does not take into account the relationship between deposits and disconnections. Disconnection of a customer for not paying a deposit is subject to Board jurisdiction the same as a disconnection for not paying any other debt owed to a municipal utility for electric or natural gas service. If the Board establishes rules that are to apply to all disconnections of electric and natural gas service by a public utility, including a municipal utility, then rules regarding deposits and disconnection for not paying a deposit would come within the Board's jurisdiction. It is not a reasonable interpretation of the statute that the Board would be able to limit disconnection of service by

> a municipal utility that has charged a deposit that exceeds the limits in Iowa Code § 476.20(5), but cannot limit the amount of the deposit initially.

Consumer Advocate asserts that, like deposits, level payment plans are related to disconnection and fit within the Board's statutory authority over disconnections by municipal utilities. Level payment plans relate to disconnection because the Board's rules require level payment plans as a way for a customer to avoid disconnection. The rules provide that level payment plans should be designed to limit the volatility of a customer's bill and maintain reasonable account balances. 199 IAC 19.4(11)"e" and 20.4(12)"e". Level payment plans prevent unnecessary disconnections by helping customers stay current on bills.

6. IAMU

IAMU states that it encourages municipal natural gas and electric utilities to follow the Board's rules on level payment plans; however, IAMU has advised its members that they are not subject to the Board's rules on this particular issue. IAMU argues that level payment plans do not relate to disconnection of service and therefore a municipal utility is not subject to Board jurisdiction for level payment plans.

IAMU states that the Board's jurisdiction over level payment plans relates to the definition of "disconnection" as applied to Iowa Code § 476.20. IAMU points out that words are to be given their plain and ordinary meaning if no definition is provided by statute. "Disconnection" is stopping something or breaking a connection between

two things. According to IAMU, level payment plans are a form of budget billing made available to customers and are not in and of themselves related to disconnection. Customers request level payment plans for several reasons and not only because their payments are not current.

IAMU states if a payment amount due per a level payment plan is not made by the customer and the bill is more than 30 days past due, the utility may proceed to terminate the level payment plan and the customer would be subject to the same collection and disconnection procedures as other delinquent accounts that are not participating in a level payment plan. At that point the disconnection rules would come into play and the customer would be offered a payment agreement.

IAMU responds to the arguments made by Consumer Advocate that level payment plans are related to disconnection as a way to avoid disconnection by staying current on bills. IAMU disagrees with this broad interpretation of what is related to disconnection. Many customers prefer level payment plans for the very reason that it limits volatility in utility bills. IAMU argues that level payment plans are not similar to deposits and the Board's decision that deposits are related to disconnections is not relevant.

IAMU argues that the legislature did not intend for the Board to regulate municipal utilities where there is a statutory ambiguity. The legislature did not intend for the Board to have jurisdiction over municipal utilities except in those circumstances specifically described.

D. Other Issues

IAMU states that over the last couple of years, complaints have been filed against municipal gas and electric utilities and the Board has determined that it has jurisdiction over municipals in the area of deposits and late payment fees. IAMU states that the Board has asserted jurisdiction based upon a broad interpretation of "disconnection" pursuant to Iowa Code § 476.20. IAMU requests that the Board advise IAMU of the parameters of this broad interpretation of "disconnection." IAMU suggests that the Board's broad interpretation could encompass many of the activities that municipal utilities view as normal business operations and could gravely impact local control over management of municipal gas and electric utilities. IAMU describes the Board's interpretation as an "incremental expansion of Board regulation over municipal gas and electric utilities [that] disrupts 28 years of interpretation of the statutes, and creates confusion as to the appropriate course of action and the legal consequences." The 28 years extends from the enactment of Iowa Code § 476.1B that established the Board's current jurisdiction over municipal gas and electric utilities.

IAMU states that it filed and asked that the issue of reinstatement of service be addressed in Docket No. NOI-2014-0003 since this issue was being addressed in an individual complaint that is affecting the business practices of municipal utilities as a whole. IAMU states that this issue was not included as a specific issue to be addressed in this inquiry; however, Board staff directed IAMU to file comments in this

inquiry. IAMU states that the issue is whether the Board can require the utility to reinstate service to a customer who has not had service for several years and still has an outstanding debt.

IAMU states that municipal utilities rely on two Iowa Code sections to support the position that service does not have to be provided, let alone a payment agreement for payments on a years-old past due bill. Iowa Code § 384.84(3)(d)(1) specifically allows a city to withhold service from an account holder who requests service at a new premise until such time as the delinquent amount owed is paid. As noted earlier, Iowa Code § 476.20(5)(b) provides that a public utility can require payment of a customer's past due account with the utility prior to reinstatement of service. It is in the public interest that debts owed to municipal utilities be paid before service is reinstated so that the remaining ratepayers are not required to be responsible for payment of the bad debt.

REPLY COMMENTS SUMMARY

A. Consumer Advocate

Consumer Advocate states that Iowa Code § 384.84(3)(d)(1), cited by IAMU to support the position that 199 IAC 20.4(11)"c" does not apply to municipal utilities, adds nothing new to the discussion of the Board's jurisdiction over municipal natural gas and electric utilities because that section of the statute specifically states that the section is subordinate to the jurisdiction over the Board's jurisdiction under Iowa

Code § 476.20. Consumer Advocate sees no error in the Board's reasoning in the "Order Denying Request for Formal Proceedings" issued January 20, 2015, in Docket No. FCU-2014-0017.

B. MidAmerican

MidAmerican states that those filing comments appear to agree that a payment agreement is a written contract for purposes of which statute of limitations time period is applicable. MidAmerican responds to those comments that consider the statute of limitations time periods in Iowa Code §§ 614.1(4) and 614.1(5) applicable to debts for natural gas and electric service by pointing out that these sections limit when court action may be taken but do not extinguish the underlying debt. MidAmerican then cites to Iowa Code § 476.20 which allows a utility to require "payment of a customer's past due account with the utility prior to reinstatement of service." This statute does not limit the amount of time for collection of the past due payment in order for service to be reinstated. MidAmerican suggests that based upon this statutory provision it is appropriate for a utility to use an outstanding balance on an account to determine whether to extend credit to a customer and offer new service.

MidAmerican then acknowledges that the Board has held that the statute of limitations apply in cases involving written and unwritten contracts, File No. C-87-111, Lorenzen v. Iowa-Illinois Gas and Electric Company, "Order Denying Request To Set Aside Staff Proposed Resolution And Commence Formal Proceedings" issued

August 25, 1987. MidAmerican states that agency decisions in contested cases do not have the binding effect of statutes or rules and the decisions have limited precedential value. Iowa Planners Network v. Iowa State Commerce Commission, 373 N.W.2d 106, 112 (Iowa 1985). MidAmerican argues that the Lorenzen decision is not controlling over any future Board decision.

MidAmerican supports the argument made by IAMU that it is in the interest of all ratepayers that a debt be paid to reinstate service, otherwise the debt is borne by all ratepayers. MidAmerican restated its position that the Board should focus on determining what information regarding a past due account a utility must provide the customer prior to the reinstatement of service. This requirement would alleviate any concern regarding lost evidence or memories fading. MidAmerican states that it is reasonable for the Board to allow collection of the debt prior to establishing service if the utility is able to provide information about the past debt such as: (1) the service address or addresses where the debt(s) accrued; (2) meter readings and dates; (3) usage and dates; and (4) bill amounts and dates.

MidAmerican suggests that a utility that is unable to provide this information would not be able to require payment of the debt before service is established. MidAmerican states that the Board should set the policy based upon Iowa Code chapter 476 and set up guidelines for the collection of past due debt that balances the rights of a customer to obtain service, with the utility's right to have the customer pay for the service, whether current or past due.

MidAmerican had no comments on the issue of level payments and municipal utilities.

C. IPL

IPL reiterates its position in the initial comments. Iowa Code §§ 614.1(4) and 614.1(5) apply to civil court remedy for collection of unpaid debt, a utility may still require the payment of a past due debt before the customer has service reinstated. IPL supports the initial comments of IAEC and MidAmerican. IPL suggests that the Lorenzen decision is not applicable to the analysis in this inquiry. IPL suggests that an Iowa court would not uphold the Board's decision in that case.

IPL agrees with the approach suggested by MidAmerican that a utility would be required to provide the information listed by MidAmerican to collect a debt. IPL suggests requiring this information would balance the rights of customers and utilities.

D. Legal Aid

Legal Aid addresses the first two questions presented by the Board in the December 3, 2014, order. Legal Aid's comments are summarized as follows:

A. Whether, and under what circumstances, a payment agreement should be considered a written contract for purposes of calculating the ten-year statute of limitations established in Iowa Code § 614.1(5).

Legal Aid concurs with IAEC that to be considered a written contract; a payment agreement must reasonably set out the terms of the agreement, properly identify the customer, and must be executed by the customer. Legal Aid disagrees

with MidAmerican that the mere presence of an unexecuted writing is sufficient to invoke the longer limitation period. Legal Aid cites to a court decision that holds when a proposition is in writing but the acceptance is oral, the contract is an oral contract. Hulbert v. Atherton, 12 N.W. 780, 781 (1882). Legal Aid suggests that a payment agreement to trigger the ten-year statute of limitations must lay out the terms of the agreement and be executed by the customer.

Legal Aid disagrees with Black Hills Energy that a payment agreement for past debt would accrue under an open account theory. A payment agreement for defaulted utility debt is not "open," but rather a liquidated sum fixed at some past date and not debt continuing to accrue at the time future enforcement is sought. The debt is not current as it deals only with the past default. See Hoag v. Hay, 72 N.W.525 (Iowa 1897).

With regard to past due utility debts not based on a subsequently entered payment agreement reducing the default to a liquidated sum, Legal Aid agrees that an open account theory is applicable. However, Legal Aid states that it has seen several cases where utilities attempt to artificially extend limitation periods by periodically entering small credits on a dormant account, then argue that under an open account theory that these unilateral actions by the party seeking to collect will start the limitation clock running from scratch. Legal Aid states that this position is contrary to Iowa Supreme Court precedent, which bars "such voluntary credits, without knowledge or consent, express or implied, of the other party" from being used

to unilaterally and indefinitely prolong a limitations period. Griffith v. Portlock, 7 N.W.2d 199 (Iowa 1942).

B. Whether statutes of limitations established in Iowa Code §§ 614.1(4) and 614.1(5) are applicable to debts for natural gas or electric service under Board jurisdiction.

Legal Aid states that allowing a utility to collect a time-barred debt would be an unjust outcome that would hurt a significant number of Iowa residents. Legal Aid states that the limitation periods in Iowa Code §§ 614.1(4) and 614.1(5) should apply to utility companies attempting to collect a debt owed by a customer. Legal Aid suggests that while Iowa Code § 476.20(5)(b) does not specifically limit the utility's time to collect a past due debt before reinstating service, the language is permissive and only applies to subsection 476.20(5). Legal Aid states that this language does not override Iowa code chapter 614 by reference, or any other chapter of the Iowa Code.

Legal Aid states that the Board has already determined that the statute of limitations bars a utility from refusing service in order to collect time-barred debt, citing the Lorenzen decision. Legal Aid suggests that the order has the force of law. Legal Aid argues the Board has the authority to extend and strengthen the Lorenzen decision and end the present debate once and for all by enacting rules that bar a utility from denying services for debts that would otherwise be barred by the statute of limitations.

Legal Aid states that the purpose of the statute of limitations statute is to protect a defendant from having to defend a stale debt that they may not remember or where witnesses may have disappeared. Schulte v. Wageman, 465 N.W.2d 285, 286 (Iowa 1991). The utilities' position that a time-barred debt may be collected before reinstatement of service undermines the purpose of the statute of limitations statute.

Legal Aid points out that utilities are state-authorized monopolies, and a customer does not have an option other than to take service from the utility. This puts the utility at a total advantage over the customer when it comes to bargaining power, and a refusal to reconnect service is a far more effective collection tool than a judgment. Legal Aid states that requiring a utility to comply with the statute of limitations does not burden the utility any more than any other business. There is nothing preventing the utility from attempting to collect the debt prior to the running of the limitation period.

Legal Aid points out that private sector companies are limited on how long the company may pursue a remedy and the Fair Credit Reporting Act limits to seven and one half years the time within which a debt not reduced to judgment can be reported to a credit reporting agency. 15 U.S.C. 1681(c). Even debts owed the IRS are only collectable for ten years. 26 U.S.C. 6501. The utility companies would have the Board recognize that a remedy for a past due debt may be pursued indefinitely.

Legal Aid points out that bad debt is eventually written off utilities' books and for rate-regulated utilities bad debt is already recovered through Board-approved rates. Legal Aid suggests that governing bodies of municipal utilities very likely consider bad debt when setting rates for natural gas and electric service. According to Legal Aid, this means that allowing utilities to collect for debts beyond the applicable statute of limitations would provide recovery of debts that have already been recovered in the sense that these amounts were subsumed in the rates already paid. This would allow double recovery.

Legal Aid states that the Board should consider the larger social issues that are created when utility service is denied. In Legal Aid's experience, the lack of access to utility service is a major contributing factor to housing and income instability. This instability costs all Iowans in the form of increased social services to those households without service and generally lowers the quality of life for all.

BOARD DISCUSSION

The Board will address each of the issues separately below. The Board is not making any decisions regarding these issues in this order. This order will schedule a workshop to allow for additional discussion of these issues. The Board will provide questions or points of discussion in this order to be addressed at a workshop and will allow participants to recommend other questions or points of discussion. The Board will send an agenda of the workshop to participants once it has received any additional questions or points for discussion from the participants.

A. Whether, and under what circumstances, a payment agreement should be considered a written contract for purposes of calculating the ten-year statute of limitations established in Iowa Code § 614.1(5).

The question of whether a payment agreement is a written contract is only relevant if the Board adopts the interpretation that the statute of limitations time periods in Iowa Code §§ 614.1(4) and 614.1(5) are applicable to debts owed by customers of municipal, cooperative, and rate-regulated utilities. The two possible interpretations of the relationship between the statute of limitations statute and Iowa Code chapter 476 are discussed in the next section below.

It appears that regardless of the interpretation of the relationship between Iowa Code §§ 614.1(4) and 614.1(5) and Iowa Code chapter 476, there is agreement that a payment agreement is a written contract if the essential elements of a written agreement are present. It further appears that the essential elements are: (1) the terms of the agreement; (2) the parties to the agreement; and (3) the signature of the accepting party, here the customer. Several questions regarding this issue should be discussed at the workshop. Those questions are:

1. Is there agreement about the essential elements that must be present for a payment agreement to be considered a written contract? The essential elements that have been suggested are: (1) the terms of the agreement; (2) the parties to the agreement; and (3) the signature of the accepting party, here the customer.

2. Does the payment agreement have to be signed by the customer to be a written contract and therefore an unsigned, but accepted, payment agreement is an oral contract?

3. When there is an agreement between the utility and the customer for a payment agreement, the payment agreement is sent either by mail or electronically to the customer, and the customer then makes the first payment, does that meet the requirements of a written contract?

B. Issues regarding the Board's jurisdiction related to Iowa Code §§ 384.84(3), 46.20(5), and 614.1.

The interplay among the three statutes, Iowa Code § 384.84(3), § 476.20(5), and § 614.1, presents several issues for discussion at the workshop. One issue is whether the language in Iowa Code § 614.1, which applies certain time period limitations to actions in court, also applies to civil debt proceedings such as past due debts for utility service. If it does not apply on its own terms, can and should the Board apply those same time limits to a debt for natural gas or electric service when determining whether a public utility may require payment of the debt prior to reinstatement of service?

A second issue is interpretation of Iowa Code § 476.20(5)(b), which provides that "[t]his subsection does not prohibit a public utility from requiring payment of a customer's past due account with the utility prior to reinstatement of service." Does this language mean that utilities have a permanent right to deny reinstatement, such that no statute of limitations can be applied, or can the Board adopt a reasonable

time limitation applicable to these circumstances? If the Board has the authority to establish a reasonable time limitation in this context, should the Board adopt criteria for when such a limitation would apply?

A third issue is presented by the statutory provisions in Iowa Code § 384.84(3). Subparagraph (d)(1) of that section provides that a municipal utility may withhold service from an account holder at any new property until the account holder pays any delinquent amount owed for service at a prior property. In conjunction with the language quoted above from Iowa Code § 476.20(5)(b), IAMU asserts that the municipal utility may withhold service from a previous customer with a delinquent account until the customer pays the delinquent amount, apparently regardless of the age of the debt. The two statutes should be considered together because of the language in Iowa Code § 384.84(3)(a) that provides that "[g]as or electric service provided by a city utility or enterprise shall be discontinued only as provided by section 476.20, and discontinuance of those services are subject to rules adopted by the utilities board of the department of commerce."

Each of the issues described above, as well as other issues raised in the comments, will be included for discussion at the workshop. The specific questions that will be addressed are:

1. Are the statutes of limitations in Iowa Code §§ 614.1(4) and 614.1(5) applicable only to actions in court?

2. If the answer to Question 1 is affirmative, can, or should, the Board adopt similar time limitations that would limit a public utility's authority to require payment of a past due debt prior to reinstatement of service?

3. If the Board were to adopt time limits, would those time limits be applicable to municipal utilities or would Iowa Code § 384.84(3)(d)(1) prevent the Board from applying those time limits to municipal utilities?

4. If a utility account is considered a "continuous, open, current account," when is the account no longer continuous, open, and current? When a final bill is issued?

5. Is the requirement for a customer to pay a past due debt after the utility has written off the debt or adjusted rates to account for unpaid debts allowing the utility to recover for the past due debt twice?

6. Does the language in Iowa Code § 384.84(3)(d)(1) only apply to those circumstances where a current customer attempts to move from a current residence where the customer owes a debt for utility service to a new address where the customer requests utility service?

C. Whether level payment plans relate to disconnection of natural gas and electric service under the provisions of Iowa Code § 476.20(3)(a) and other applicable provisions in Iowa Code § 476.20.

The Board considers the issue of whether a level payment plan is sufficiently related to disconnection of service to come within the Board's jurisdiction is a straight forward question. The Board's level payment plan rules require a utility to offer a

level payment plan to all residential customers and the plan should be designed to limit volatility of a customer's bill and maintain reasonable account balances. The rules then require that a level payment plan: (1) be offered to customers at the time service is connected; (2) allow entry into the plan anytime during the calendar year; (3) provide that a customer may terminate the plan at any time; and (4) use a computation method that produces a monthly level payment amount which is recomputed annually, or at shorter intervals and if requested by the customer.

During the Board's Customer Service Fall meetings with community action agencies and utilities, some municipal utilities described what they considered to be level payment plans, but some of these plans did not meet the criteria established in the Board's rules. As described in the summary above, there is disagreement about whether the provisions regarding disconnection in Iowa Code § 476.20 include Board rules regarding level payment plans. This issue revolves mainly around how broadly the term "disconnection" in Iowa Code § 476.20 should be interpreted.

This issue will be included on the list of topics for discussion at the workshop to allow participants the opportunity to address the issue, even though utilities other than municipal utilities, did not take a position regarding this question. The Board will ask the participants to address the following questions at the workshop:

1. Should a payment plan established by a municipal utility that does not include the provisions of a level payment plan in the Board's rules be considered a level payment plan?

2. If the answer to question 1 above is affirmative, should those level payment plans be required to comply with the Board's rules and therefore a customer could not be disconnected for failure to comply with a plan that did not meet the Board's requirements?

D. Other Issues

Most of the issues raised by IAMU as "Other Issues" will be addressed during the discussion of the three questions raised by the Board in the December 3, 2014, order. The one issue that may not be separately addressed in that discussion is IAMU's suggestion that the Board describe which municipal operations are considered sufficiently associated with "disconnection" to be subject to Board authority pursuant to Iowa Code § 476.20. A general discussion of this question might be useful for municipal utilities; however, there may be gray areas that do not lend themselves to bright line separation. This issue will be included as a point of discussion at the workshop.

WORKSHOP AGENDA

The Board will establish a date for participants to file suggested additional questions or points of discussion for the workshop. Board staff will then prepare an agenda for the workshop that includes the questions and points of discussion to be considered at the workshop. The Board anticipates that after the conclusion of the workshop a date for filing additional comments will be provided. Information about

the workshop may be obtained from the Inquiry Manager, Jane Whetstone, at Jane.Whetstone@iub.iowa.gov, or 515-725-7358.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. A workshop to address the questions and points of discussion described in this order is scheduled for 9:30 a.m. on April 8, 2015. The workshop will be held at the offices of the Utilities Board, 1375 E. Court Avenue, Des Moines, Iowa. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Board at (515) 725-7300 five days in advance of the scheduled date to request that appropriate arrangements be made.

2. Suggestions for additional agenda questions or points of discussion shall be filed on or before March 17, 2015.

UTILITIES BOARD

/s/ Elizabeth S. Jacobs

/s/ Nick Wagner

ATTEST:

/s/ Joan Conrad
Executive Secretary

/s/ Sheila K. Tipton

Dated at Des Moines, Iowa, this 5th day of March 2015.