
IOWA UTILITIES BOARD
Energy Section

Docket No.: NOI-2014-0004

Utility: Application of the Statute of
Limitations to Debts Owed by
Customers for Natural Gas and
Electric Service and Board
Jurisdiction Over Municipal
Level Payment Plans

File Date/Due Date: N/A-N/A

Memo Date: February 10, 2015

TO: THE BOARD

FROM: Jane Whetstone, Cecil Wright

SUBJECT: Comment Summary and Recommendation for Workshop

I. Background

On December 3, 2014, the Utilities Board (Board) issued in an order in Docket No. NOI-2014-0004 opening an inquiry into issues regarding customer service raised by the participants in a previous inquiry. Docket No. NOI-2014-0003, re: Inquiry Into Bill Payment Agreements for Electric and Natural Gas Service, issued November 14, 2014. In the November 14, 2014, order closing Docket No. NOI-2014-0003, the Board described the results of that inquiry and indicated that two issues raised during the inquiry deserved a separate inquiry so that a full consideration of the issues could be provided. One issue raised by MidAmerican Energy Company (MidAmerican) was 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). The second issue raised by the Iowa Association of Municipal Utilities (IAMU) was 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 established a date for filing comments and reply comments. 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).

On February 2, 2015, Consumer Advocate, MidAmerican, and IPL filed reply comments. On February 6, 2015, Iowa Legal Aid filed comments.

II. Legal Standards

Iowa Code § 614.1 Period

Actions may be brought within the times herein limited, respectively, after their causes accrue, and not afterwards, except when otherwise specifically declared:

(5) *Written contracts — judgments of courts not of record — recovery of real property and rent.*

a. Except as provided in paragraph “b”, those founded on written contracts, or on judgments of any courts except those provided for in subsection 6, and those brought for the recovery of real property, within ten years.

Iowa Code § 476.1B Applicability of authority — municipally owned utilities

1. Unless otherwise specifically provided by statute, a municipally owned utility furnishing gas or electricity is not subject to regulation by the board under this chapter, except for regulatory action pertaining to:

e. Disconnection of service, as set forth in section 476.20.

Iowa Code § 476.20

3.a. The board shall establish rules which shall be uniform with respect to all public utilities furnishing gas or electricity relating to disconnection of service. This subsection applies both to regulated utilities and to municipally owned utilities and unincorporated villages which own their own distribution systems, and violations of this subsection subject the utilities to civil penalties under section 476.51.

199 IAC 19.4(11)"e" (20.4(12)"e") Level payment plan.

Utilities shall offer a level payment plan to all residential customers or other customers whose consumption is less than 250 ccf per month (3,000 kWh per month). A level payment plan should be designed to limit the volatility of a customer's bill and maintain reasonable account balances. The level payment plan shall include at least the following:

(1) Be offered to each eligible customer when the customer initially requests service.

(2) Allow for entry into the level payment plan anytime during the calendar year.

(3) Provide that a customer may request termination of the plan at any time. If the customer's account is in arrears at the time of termination, the balance shall be due and payable at the time of termination. If there is a credit balance, the customer shall be allowed the option of obtaining a

refund or applying the credit to future charges. A utility is not required to offer a new level payment plan to a customer for six months after the customer has terminated from a level payment plan.

(4) Use a computation method that produces a reasonable monthly level payment amount, which may take into account forward-looking factors such as fuel price and weather forecasts, and that complies with requirements in 19.4(11)"e"(4) (electric 20.4(12)"e"(4)). The computation method used by the utility shall be described in the utility's tariff and shall be subject to board approval. The utility shall give notice to customers when it changes the type of computation method in the level payment plan.

The amount to be paid each billing interval by a customer on a level payment plan shall be computed at the time of entry into the plan and shall be recomputed at least annually. The level payment amount may be recomputed monthly, quarterly, when requested by a customer, or whenever price, consumption, or a combination of factors results in a new estimate differing by 10 percent or more from that in use.

When the level payment amount is recomputed, the level payment plan account balance shall be divided by 12, and the resulting amount shall be added to the estimated monthly level payment amount. Except when a utility has a level payment plan that recomputes the level payment amount monthly, the customer shall be given the option of applying any credit to payments of subsequent months' level payment amounts due or of obtaining a refund of any credit in excess of \$25.

Except when a utility has a level payment plan that recomputes the level payment amount monthly, the customer shall be notified of the recomputed payment amount not less than one full billing cycle prior to the date of delinquency of the recomputed payment. The notice may accompany the bill prior to the bill that is affected by the recomputed payment amount.

(5) Irrespective of the account balance, a delinquency in payment shall be subject to the same collection and disconnection procedures as other accounts, with the late payment charge applied to the level payment amount. If the account balance is a credit, the level payment plan may be terminated by the utility after 30 days of delinquency.

III. Summary of Initial Comments

The purpose of this new inquiry is to allow the Board to address the two issues raised by MidAmerican and IAMU, and to consider addressing other issues raised by participants. The responses to the two issues presented by the Board in the December 3, 2014, order are summarized below. IAMU raised other issues that are also summarized.

1. 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).

a. 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 2 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.

b. 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.

c. 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.

d. 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.

e. 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.

f. 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).

2. 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.

a. 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, and bill amounts and 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.

b. IPL

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.

c. Black Hills Energy

Black Hills Energy states that the provisions of Iowa Code § 614.1(4) and (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.

d. 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.

e. 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 apply 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, C-87-111 (issued August 25, 1987).

f. 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 the legislature intended to limit collection of past due debt to the provisions of Iowa Code § 614, they 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.

3. 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.

a. MidAmerican

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

b. IPL

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

c. Black Hills Energy

Black Hills Energy has no comments on this issue.

d. 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 in such a way that jurisdiction over the use of said plans by municipal utilities is vested with the Board.

e. 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.

f. 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 to break 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. IAMU argues that the legislature did not intend for the Board to have jurisdiction over municipal utilities except in those circumstances specifically described.

4. Other Issues

a. IAMU

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 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.

IV. Summary of Reply Comments

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. MidAmerican quotes IAMU that requiring payment of a debt before reinstatement of service is a distinctly different action than bringing an action to enforce a debt in civil court. MidAmerican points 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, Docket No. C-87-111, In re: 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 points out that the Board has not changed its rules to limit payment of debt for utility bills. 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 this 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 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 positions 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 states its support for the 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 this balances 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:

1. 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).

Legal Aid agrees with regard to past due utility debts not based on a subsequently entered payment agreement reducing the default to a liquidated sum 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 enforce 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).

2. 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 debt may be collected before reinstatement 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 stability. 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.

V. Staff Analysis

Staff will analyze each of the issues separately. Staff will not make a recommendation in this memorandum since a workshop for further discussion will be scheduled. Staff's analysis will include suggested issues to be discussed at the workshop. Staff recommends that the Board allow participants to offer

suggestions for additional topics and indicate that Board staff will send an agenda out to participants prior to the workshop.

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 comments regarding whether a payment agreement is a written contract for purposes of applying the statute of limitations period in Iowa Code §§ 641.1(4) and 641.1(5) are probably not applicable unless 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 to municipal, cooperative, and rate-regulated utilities. The two possible interpretations of the relationship between the statute of limitations statutes 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. The essential elements that are required in the written document are: (1) the terms of the agreement; (2) the parties to the agreement; and (3) the signature of the 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 of a written contract that should be applied to a payment agreement? 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 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 payment agreement is an oral contract?
3. Does the procedure where 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, meet the requirements of a written contract?

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.

The comments present the Board with two interpretations of the relationship between the provisions of Iowa Code chapter 476 and the Iowa Code §§ 614.1(4) and 614.1(5). One interpretation is that Iowa Code §§ 614.1(4)

and 614.1(5) are not applicable to utility service under the Board's jurisdiction in Iowa Code chapter 476. This argument maintains that Iowa Code § 476.20(5)(b) provides that a utility may require the payment of a past due debt before that customer is allowed to be connected to gas or electric service. The other interpretation is that Iowa Code §§ 614.1(4) and 614.1(5) do apply to past due debt for utility service. The issue of whether a payment agreement is a written contract is discussed separately, in the above section. Each of the interpretations described in this paragraph is discussed below.

Adopting the interpretation that Iowa Code §§ 614.1(4) and 614.1(5) apply to past due debts owed by utility customers does not appear to raise the same type of issues as raised by the interpretation that the two statute of limitations time periods do not apply to a debt owed for utility service. An interpretation that the statute of limitations time periods apply to debts owed by utility customers would provide a bright line for determining whether a utility could deny service to a customer for a past due debt that was older than the applicable statute of limitations. There is the issue raised by IAMU that Iowa Code § 384.84(3)(d)(1) provides a municipal utility the authority to require payment of a debt before the customer has service reinstated. This issue appears to revolve around the definition of an "account holder" and whether that language applies to a person who has been disconnected and is no longer an account holder. Also, whether the language in Iowa Code § 384.84(3)(a) limits the application of the language in 384.84(3)(b)(1). The language in Iowa Code § 384.84(3)(a) states: "Gas 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."

Issues proposed for discussion at the workshop are:

1. Is the language regarding payment of a debt before reinstatement of service in Iowa Code § 384.84(3)(b)(1) overridden by the language in Iowa Code § 384.84(3)(a)?
2. Does the term "account holder" in Iowa Code § 384.84(3)(d)(1) apply to a person, who has been disconnected from service and is therefore, arguably, no longer an "account holder"?
3. Does the language in Iowa Code § 384.84(3)(d)(1) apply only if the "account holder" requests service at a new address?
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. If the Board determines that the statute of limitations statute does not apply to debts owed for natural gas or electric service can the Board set a limit on the time a utility may collect for a past due debt regardless of whether the debt is an unwritten or a written contract?
6. Is the answer to "5" above the same, if the Board determines that Iowa Code § 476.20(5)(b) only applies to Iowa Code § 476.20(5) and is permissive rather than mandatory?
7. Is it a reasonable application of Iowa Code § 476.20 to protect a customer from being disconnected from natural gas or electric service but allows a utility to require payment of a debt, regardless of the age of the debt, before reinstatement of service?
8. 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?

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.

Staff believes that the issue 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 list certain other criteria for a level payment plan which include: (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 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. After these meetings, the issue of whether the plans that did not meet the criteria in the Board's rules was considered an issue that should be addressed by the Board. As described in the summary above, there is disagreement 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.

Staff believes the Board should include this issue 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. Staff proposes the following questions for 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 "a" above is "yes," why then shouldn't 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

Staff believes that most of the issues raised by IAMU as other issues will be discussed with the two primary issues raised by the Board in the December 3, 2014, order. The one issue not addressed in discussions of the Board's December 3, 2014, order is IAMU's suggestion that the Board describe where the Board draws the line that separates what municipal utility operations are considered sufficiently associated with "disconnection" to be subject to Board authority pursuant to Iowa Code § 476.20. Staff believes a general discussion of this question might be helpful; however, there may be several gray areas that do not lend themselves to bright line separation.

With regard to the Board's order in Docket No. FCU-2014-0017, staff considers the Board's decision to be the correct analysis of that fact situation. In the January 20, 2015, order, the Board stated:

Rule 20.4(11)"c" provides, in relevant part, as follows: "The utility shall offer customers who have been disconnected more than 120 days and who are not in default of a payment agreement the option of spreading payments evenly over at least 6 months by paying specific amounts at scheduled times." Mount Pleasant makes two arguments. First, "In this case, the service wasn't merely disconnected for longer than 120 days; it was effectively abandoned by Ms. Melvin, 8 years earlier." (October 24, 2014, Request.) Second, Mount Pleasant argues that Ms. Melvin has not requested service at the same address where she lived when she accrued the prior bill.

Mount Pleasant's first point is not entirely clear. The Board can only assume that Mount Pleasant believes the rule should not apply to eight-year-old debts for some reason. However, there is no language in the rule to support that notion and Mount Pleasant

does not support it with any analysis or explanation. The Board will not read into the rule a time limit that is not there (in the absence of some compelling reason to do so). Mount Pleasant's second argument also tries to read a new requirement into the rule. Mount Pleasant appears to assert that the rule should not apply to a customer who accrued a debt at one location and now seeks service at another location. Again, there is no language in the rule to support such an argument; the rule is silent regarding the customer's location. Moreover, it seems unlikely that a typical customer in the modern world would continue to reside at the original location for over 120 days without electric power. It seems more likely that a customer who was disconnected from electric service at one location for an extended period of time will want to restore service at a new location. Thus, it makes no sense to argue that the rule does not apply if the customer is seeking service at a new location; such a requirement would leave the rule with very little practical application or meaning.

In the end, Mount Pleasant has not offered any real argument in support of its position that rule 20.4(11)"c" should not apply in this situation. There are no reasonable grounds for further investigation of this issue. Mount Pleasant's second and third issues, concerning (a) the Board's jurisdiction over municipal utilities and (b) the interplay among Iowa Code § 384.84(3)(a), statutes of limitation, and the Board's authority over disconnection, are issues that are more appropriate for consideration in the Board's ongoing notice of inquiry proceeding, "Application of the Statute of Limitations to Debts Owed by Customers for Natural Gas and Electric Service and Board Jurisdiction Over Municipal Level Payment Plans," Docket No. NOI-2014-0004. It would not be reasonable to consider these issues here, in the context of a single customer complaint, when broader industry input is readily available in the already-open inquiry docket.

Moreover, these issues are largely moot in this case, since the revised proposed resolution allows Mount Pleasant to collect the eight-year-old debt as a condition of reconnecting electric service in Ms. Melvin's name. It is difficult to see how Mount Pleasant is adversely affected by the revised proposed resolution (and Mount Pleasant has not offered any argument or explanation on that point).

Docket No. FCU-2014-0017, In re: Jessica Melvin and Sarah Cone v. Mount Pleasant Municipal Utilities, "Order Denying Request For Formal Proceedings" issued January 20, 2015.

VI. Recommendation

Staff recommends that the Board direct General Counsel to prepare for Board review an order that schedules a workshop for interested persons to discuss the issues addressed by the participants in this inquiry. Staff recommends the Board attach to the order the questions described in this memorandum which are attached hereto for reference.

RECOMMENDATION APPROVED

IOWA UTILITIES BOARD

/ciw

/s/ Elizabeth S. Jacobs 2-13-15

/s/ Nick Wagner 2/23/15

/s/ Sheila K. Tipton 2/25/2015

ISSUES TO BE DISCUSSED AT WORKSHOP

The following issues are scheduled to be discussed at the workshop scheduled for April 8, 2015. Additional issues may be suggested by participants by contacting Jane Whetstone at Jane.Whetstone@iub.iowa.gov, or by telephone at 515-725-7358. Board staff will send an agenda to participants prior to the workshop.

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. Is there agreement about the essential elements of a written contract that should be applied to a payment agreement? 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 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 payment agreement is an oral contract?
3. Does the procedure where 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, meet the requirements of a written contract?

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. Is the language regarding payment of a debt before reinstatement of service in Iowa Code § 384.84(3)(a) overridden by the language in Iowa Code § 384.84(3)(a)?
2. Does the term "account holder" in Iowa Code § 384.84(3)(d)(1) apply to a person who has been disconnected from service and is therefore, arguably, no longer an "account holder?"
3. Does the language in Iowa Code § 384.84(3)(d)(1) apply only if the "account holder" requests service at a new address?
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. If the Board determines that the statute of limitations statute does not apply to debts owed for natural gas or electric service can the Board set a

limit on the time a utility may collect for a past due debt regardless of whether the debt is an unwritten or a written contract?

6. Is the answer to "5" above the same, if the Board determines that Iowa Code § 476.20(5)(b) only applies to Iowa Code § 476.20(5) and is permissive rather than mandatory?

7. Is it a reasonable application of Iowa Code § 476.20 that protects a customer from being disconnected from natural gas or electric service but allows a utility to require payment of a debt, regardless of the age of the debt, before reinstatement of service?

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

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. 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 "yes," why then shouldn't 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

There will be a general discussion of the line that should be drawn between the Board's jurisdiction pursuant to Iowa Code § 476.20 and the operations of municipal utilities. If there are specific issues regarding municipal utility operations that should be discussed, please send those to Jane Whetstone prior to the workshop.