

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
BEFORE THE IOWA UTILITIES BOARD

**FILED WITH  
Executive Secretary  
March 16, 2015  
IOWA UTILITIES BOARD**

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IN RE:  INTERSTATE POWER AND LIGHT COMPANY	DOCKET NOS. TF-2015-0007 TF-2015-0008 (EEP-2012-0001)
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**REPLY TO RESPONSE**

The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, responds as follows to Interstate Power and Light Company's (IPL) Response filed on March 9, 2015.

**FACTS**

On January 29 and 30, 2015, IPL filed tariffs relating to the annual reconciliation of its electric and natural gas energy efficiency cost (EECR) factors, pursuant to Iowa Code § 476.6(16) and the Energy Efficiency Plan (EEP or Plan) approved in Docket No. EEP-2012-0001. OCA filed a Conditional Objection to TF-2015-0007 on February 18, 2015, and an Objection to TF-2015-0008 on February 19, 2015, pointing out in each case the existence of significant spending variances beyond the thresholds for plan modification established in 199 IAC 35.6(4). OCA's objections also identified issues with IPL's EECR factor development.

OCA asserted in its Objections that IPL's residential electric spending was 18 percent below approved budget, residential gas spending was 14 percent below approved budget, nonresidential gas spending was less than 50 percent of approved budget, and total gas spending was 28 percent below approved budget. IPL's Response filed on March 9, 2015, does not

dispute that its spending on incentives in 2014 was much lower than its approved budget for residential electric and nonresidential gas programs.

IPL agreed in its Settlement with OCA and the Environmental Intervenors that if the EECR filing demonstrates variances with the spending or impact conditions established in 199 IAC 35.6(4), IPL would seek a program modification concurrently with or shortly after its EECR filing.<sup>1</sup> The Board approved the settlement provision in its Final Order. *Interstate Power and Light Co.*, Docket No. EEP-2012-0001, “Final Order,” pp. 56-58, E. Issue 10, (IUB, Dec. 2, 2013). IPL has not complied with its Settlement with the parties or the Board’s Final Order to seek a program modification.

**I. IPL’S ENERGY EFFICIENCY PLAN WAS APPROVED AS PART OF A CONTESTED CASE PROCEEDING AND CANNOT UNILATERALLY BE CHANGED BY IPL**

IPL’s Energy Efficiency Plan was a contested case proceeding, EEP-2012-0001. OCA and several other intervenors participated in the proceeding. The final plan approved by the Iowa Utilities Board (Board) was a combination of settlements between the parties accepted by the Board and Board rulings. *Interstate Power and Light Co.*, Docket No. EEP-2012-0001, “Final Order,” (IUB, Dec. 2, 2013). OCA and the intervenors expect the EEP to be implemented as ordered by the Board. IPL has no authority to substantially modify the plan unilaterally.

**II. BOARD RULE 35.6(4) REQUIRES IPL TO REQUEST A PLAN MODIFICATION**

The Board adopted rules addressing modification of an energy efficiency plan after implementation. Rule 35.6(4) provides, in relevant part, as follows:

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<sup>1</sup> Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement at Attachment A, Non-Unanimous Partial Settlement Agreement, #10, p. 7, and Appendix 3 to the Agreement, p.1 (4a).

An approved energy efficiency plan and budget may be modified during implementation if the modification is approved by the board. The consumer advocate or the utility may file either a separate or joint application for modification. The board, on its own motion, may consider modification of the energy efficiency plan and budget.

- a. The utility shall file an application to modify if any one of the following conditions occurs or is projected to occur during the current or subsequent calendar year of implementation of its plan:
  - 1) The total annual plan budget has changed or will change by a factor of at least plus or minus 5 percent;
  - 2) The budget per customer class or regrouping has changed or will change by a factor of at least plus or minus 10 percent;
  - 3) An approved program is eliminated or a new program is added.

IPL's residential electric spending was 18 percent below approved budget, residential gas spending was 14 percent below approved budget, nonresidential gas spending was less than 50 percent of approved budget, and total gas spending was 28 percent below approved budget. The conditions set forth in Board Rule 35.6(4) required IPL to file an application to modify. IPL filed tariffs in Docket Nos. TF-2015-0007 and TF-2015-0008 without a request to modify its plan or seeking a waiver of the modification requirements.

The plan modification rules were adopted to prevent unilateral change and to allow interested parties to participate in the modification proceeding. Board Rule 35.6(4) says "The utility **shall** file an application to modify if any one of the following conditions occur ...". The Board addressed the same issue with IPL in Docket No. EEP-08-1, *Interstate Power and Light Co.*, "Order Requiring Additional Information," dated April 3, 2013.

IPL agreed to follow Board Rule 35.6(4) in its Settlement with OCA and the Environmental Intervenors:

4. EECR filing
  - a. Timeframe: Annual. Continue to file end of January for factors effective April 1<sup>st</sup>. If the filing demonstrates spending or impact variances above thresholds established in IUB rule (199 35.6(4)) and the circumstance(s) contributing to such variance is (are) expected to continue, IPL will seek a program modification concurrently with or shortly after its EECR filing. The scope of modification may be limited to the particular factor(s) driving the budget or impact variance.<sup>2</sup>

IPL agreed if the EECR filing demonstrated variances with the spending or impact conditions established in 199 IAC 35.6(4), IPL would seek a program modification concurrently with, or shortly after its EECR filing. The Board approved the settlement provision in its Final Order. *Interstate Power and Light Co.*, Docket No. EEP-2012-0001, “Final Order,” pp. 56-58, E. Issue 10 (IUB, Dec. 2, 2013).

It is not appropriate for IPL to ignore its obligations under Board rules, a settlement with the parties and a Final Order of the Board. It should not be left to interested parties to initiate a proceeding when IPL has an obligation to file. The Board has rules that address modifications of approved energy efficiency plans. The Board has directed IPL to those rules in previous proceedings. IPL has agreed in a settlement filed with the Board to abide by the rules.

IPL’s spending variances triggered the requirements of Rule 35.6(4) and it is incumbent upon IPL to file an application for modification or seek a waiver of the modification requirements.

### **III. ENERGY EFFICIENCY PLAN MODIFICATIONS**

Plan modifications are not to be avoided but should be viewed as a tool to improve the existing processes. Plan modifications can serve utilitarian needs. First, a five year plan because

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<sup>2</sup> Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement at Attachment A, Non-Unanimous Partial Settlement Agreement, #10, p. 7, and Appendix 3 to the Agreement, p.1 (4a).

of its length may require modifications before its term ends. A modification proceeding allows a utility to propose significant alterations to its five year plan (and budget) and provide a review of those major changes through a formal evidentiary process. Second, a modification proceeding may provide the Board or Consumer Advocate with a procedure to require changes in spending to avoid large, repeated deficiencies or over-collections of energy efficiency revenues.<sup>3</sup>

Plan modifications are useful tools to respond to revised expectations of market potential,<sup>4</sup> to adjust to relevant spending benchmarks,<sup>5</sup> to implement new programs,<sup>6</sup> or to adjust incentive levels.<sup>7</sup> A utility's implementation of Board-approved energy efficiency plans or budgets is considered continuous in nature and is subject to investigation at any time by the Board or the OCA. Iowa Code § 476.6(16)(e) (2015). The Board is directed to periodically conduct a contested case to review the prudence of a utility's plan implementation. Iowa Code § 476.6(16)(g) (2015). Thus, even in instances where a plan modification is not required by Rule 35.6(4), a utility may elect to file for a modification to implement appropriate changes and reduce the chance of future prudence issues.

Energy efficiency plan modifications are a valuable part of the plan implementation.

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<sup>3</sup> *In re: Interstate Power and Light Co.*, Docket No. WRU-2013-0011-0150, "Order Granting Petition for Waiver" p. 13 (June 7, 2013).

<sup>4</sup> *In re: IES Utilities Inc. and Interstate Power and Light Co., n/k/a Interstate Power and Light Co.*, "Order Approving Modification to Energy Efficiency Plans" Docket Nos. EEP-95-1 and EEP-94-40 (IUB, June 27, 2002) (modification would better reflect market potential and are more reflective of spending by other investor-owned utilities).

<sup>5</sup> *Id.*

<sup>6</sup> *In re: IES Utilities Inc. and Interstate Power and Light Co., n/k/a Interstate Power and Light Co.*, "Order Approving Plans with Modification and Approving Tariff," Docket Nos. EEP-95-1 and EEP-94-40 (IUB, May 22, 1998).

<sup>7</sup> *In re: IES Utilities Inc.*, "Order Approving Plan Modification" (IUB, Dec. 24, 1998) (revised incentive levels to adjust to changing circumstances and to shift dollars to areas where they will have the most impact).

**VI. THE BOARD SHOULD REQUIRE IPL TO FILE INFORMATION INDICATING WHETHER IPL WILL SEEK A PLAN MODIFICATION OR WAIVER**

OCA has several issues appropriate for consideration in a modification proceeding. First, the criteria in Board Rule 35.6(4) has been met. IPL's residential electric spending was 18 percent below approved budget, residential gas spending was 14 percent below approved budget, nonresidential gas spending was less than 50 percent of approved budget, and total gas spending was 28 percent below approved budget.

As OCA pointed out in its Objection in Docket No. TF-2015-0008, IPL over-collected from its gas customers more than it spent on gas energy efficiency programs in 2014. IPL does not dispute this or explain how it is attempting to correct the causes of this situation going forward. OCA also pointed out that IPL's continued development of the EECR factors for the non-residential classes based on cost allocation factors derived from its last general rate case, rather than actual direct-assigned expenditure levels approved for its plan, will make ongoing performance review difficult and likely contribute to an ongoing over and under-recovery situation for the non-residential classes. IPL's Response proposes no solution to these issues. If the factors driving the under-spending are not fully understood or addressed and no modification is sought, there is a good chance that the EECR factors will continue to result in significant cost over-recoveries. Moreover, the fact that IPL can achieve near or above its savings targets while significantly under-spending relative to its approved budget could call into question the underlying plan development assumptions and whether IPL is fully exploiting savings opportunities.

While IPL's Response includes greater detail and impact results for its plan performance, which was not provided as part of its EECR filing, OCA is not be able to assess this data or other performance measures in the short time frame allowed for response. More importantly, IPL has

effectively declined to engage in such a review process by foregoing a waiver or modification filing.

IPL's spending variances and its failure to justify those variances raises unanswered questions. If IPL is falling short of its approved residential electric incentive spending "despite its best efforts" (Response, p. 8), why has it spent much less than its approved advertising and promotion budget? Likewise, with non-residential gas incentive expenditures and presumably participation rates far below its approved levels, why did IPL spend only 32% of its approved advertising and promotion budget in 2014? If a utility falls short of approved spending levels for items over which it has significant control, such as promotion, education, outreach and training, this can give rise to prudence concerns. If a utility is reporting significant spending variances and does not seek a plan modification, the utility should be prepared to fully justify such variances in order to demonstrate prudence.

More than benefit/cost ratios or overall spending, prudence must be determined by evaluating a plan in terms of the primary goals of energy efficiency programs, which are to reduce demand for both capacity and energy, thereby delaying or deferring expensive generation plant construction and reducing ongoing energy costs.<sup>8</sup> Due to the conflict of interest in utility promotion of energy efficiency, situations of utility under-spending relative to approved budget can give rise to greater prudence concerns than situations of over-spending.

The issues raised in OCA's objections deserve further investigation. IPL should be directed to file an application for modification. If IPL believes that a modification is not necessary, IPL may request a waiver of the modification requirement and provide sufficient

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<sup>8</sup> *In re: Interstate Power Company*, Docket Nos. EEP-94-40, TF-99-178, and TF-99-179, "Final Decision and Order" p. 5 (IUB, June 28, 2000).

information for OCA, intervenors, and the Board to determine whether or not a modification proceeding is necessary.

WHEREFORE, OCA has no objection to IPL implementing its proposed EECR factors for gas and electric programs. OCA requests the Board require IPL to file information indicating whether IPL will seek a plan modification or waiver.

Respectfully submitted,

/s/ Mark R. Schuling

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