

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  INTERSTATE POWER AND LIGHT COMPANY	DOCKET NO. WRU-2015-0014-0150
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**ORDER GRANTING REQUEST FOR WAIVER**

(Issued May 6, 2015)

On January 29 and 30, 2015, Interstate Power and Light Company (IPL) filed with the Utilities Board (Board) its electric and gas annual energy efficiency cost recovery factor (EECR) reports and proposed tariffs to implement revised EECR factors. The proposed tariffs were identified as Docket Nos. TF-2015-0007 and TF-2015-0008. On February 18 and 19, 2015, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed conditional objections to the proposed tariffs. One of OCA's objections said that IPL should evaluate whether to seek a modification of its energy efficiency plan based on 2014 spending or request a waiver of 199 IAC 35.6(4). The Board docketed IPL's tariffs for further investigation on February 27, 2015.

On March 9, 2015, IPL filed a response to OCA's conditional objection. In its response, IPL argued that the Board's rules do not require either a waiver or plan modification in this instance because IPL said that in 2014 it exceeded its kilowatt hour savings goal and its natural gas savings were 96 percent of its goal. IPL acknowledged it did not spend as much as budgeted for natural gas and electric

residential programs but argued that underspending was not grounds for plan modification, particularly since 2014 was the first year of a new five-year energy efficiency plan.

On March 16, 2015, OCA filed a reply to IPL's response. OCA explained that 199 IAC 35.6(4) required a plan modification because both residential electric and gas spending was more than 10 percent below the budget, nonresidential gas spending was less than 50 percent of the approved budget, and total gas spending was 28 percent below the approved budget. OCA also noted that IPL agreed in a Settlement Agreement filed on July 26, 2013, to seek a program modification if there are demonstrated spending variances that are expected to continue.

On April 13, 2015, the Board issued an order requiring IPL to explain whether the spending variances were expected to continue. IPL provided additional information on April 17, 2015, and also filed a request for waiver of 199 IAC 35.6(4)(a)(1-2), which requires an energy efficiency plan modification when the energy efficiency budget per customer class has changed or will change by a certain percentage. IPL said that calendar year spending does not equate to budget changes and that the Settlement Agreement only requires a modification if the circumstances leading to the spending variances will continue.

IPL provided some preliminary findings related to its 2014 spending. For some of the heating, ventilation, and air conditioning measures, a certification is needed to receive a rebate but the certification process requires the outside temperature to be 65 degrees. Cool temperatures caused a lag with the first year's reported and rebated savings. IPL expects results in 2015 to be close to projections.

For other programs with less than anticipated participation, IPL plans increased marketing efforts or incentives. IPL requested a waiver of 199 IAC 35.6(4)(a) because it does not believe the 2014 results are a sustained deviation and the underspending did not have a detrimental impact on IPL achieving its savings goals. IPL said requiring a program modification of the plan after only one year would be unproductive and cause undue hardship.

On April 24, 2015, OCA filed a reply to IPL's April 17, 2015, filing. The reply supports IPL's decision to request a waiver to address the spending variances. However, OCA interprets "budget" and "spending" synonymously and interchangeably and argues that this interpretation better fulfills the purpose of 199 IAC 35.6(4). Furthermore, OCA believes that IPL's continued efforts to distinguish actual spending from budget change would allow the utility's spending to deviate significantly from approved energy efficiency budgets without any accountability outside of a formal prudence review. OCA notes that although IPL exceeded electric savings goals, it did not address whether additional cost-effective energy efficiency could have been implemented within the approved budgets. Additionally, OCA contends that without proper attention to spending variances the EECR factors, based on approved budgets, will likely differ substantially from actual spending. OCA mentions that IPL could have addressed some of the key challenges and changes discussed in its waiver at the fall operations meeting attended by various stakeholders and stakeholders could have offered feedback on the issues at that time.

Rule 199 IAC 35.6(4)(a) provides:

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 grouping has changed or will change by a factor of at least plus or minus 10 percent;

Rule 199 IAC 35.7 allows the Board to waive any energy efficiency plan requirement, for good cause shown. Also, 199 IAC 1.3 provides that the Board may waive any of its rules if it finds:

- a. The application of the rule would pose an undue hardship on the requesting party;
- b. The waiver would not prejudice the substantial legal rights of any person;
- c. The provisions of the rule are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety and welfare will be afforded by a means other than that prescribed in the rule.

IPL agreed in the "Collaboration Plan for IPL and 2014-2018 Energy Efficiency Plan (EEP) Stakeholders – Appendix 3 of Settlement" to the following provision:

...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.

(Emphasis added.)

The additional information provided by IPL showed that although energy efficiency spending was less than budgeted, IPL exceeded its 2014 kilowatt hour savings goal by 24 percent and was within 10 percent of its natural gas savings goal. IPL has taken steps to more fully understand the 2014 results by asking its prescriptive rebate program vendor to compare the 2014 participation results (at the measure level) with the participation expectations in the energy efficiency plan and requesting that the Evaluation, Measurement, and Verification vendor prioritize evaluations of the prescriptive rebate and lighting programs. IPL says it will provide quarterly reports on the impacts and spending. IPL also intends to meet with interested parties to update them on the progress of Settlement issues and ensure that parties are interpreting the Settlement in a similar manner.

IPL believes it is premature to determine if spending plans will remain the same for the duration of the new plan. The Board agrees that it is difficult to determine whether the budgets for the customer classes need to be modified based on only the first year of spending in the new plan. That being said, it is important for IPL, or any other utility requesting a similar waiver, to provide information that will allow the Board and others to determine whether the budget(s) should be modified. This type of information should be in the annual reports that are due on May 1, 2015.

As IPL noted in its filings, the Board's rules (199 IAC 35.6(4)) require the utility to file an application to modify its plan if the total annual plan **budget** has changed or will change by a factor of at least plus or minus 5 percent or if the **budget** per customer class or grouping has changed or will change by a factor of at least plus or minus 10 percent. The Board's rule is intended to require a formal filing of a plan modification when a utility intentionally seeks to alter its Board-approved plan, with particular attention to the ongoing or long-term budget in the plan. The long-term budget in a plan is one of the basic inputs for determining the amount of the utility's cost recovery factor. A change to the budget equates to a change in rates and such alterations of a plan generally should not occur unless there is an opportunity for substantial scrutiny by the Board, OCA, and parties to the proceeding. Actual spending should not be confused with the budget, because the two amounts can vary from each other.

At the time the rules were adopted, the Board believed the plan modification rules were needed to serve two purposes: (1) to allow a utility to propose major alterations to its plan (and budget) and review those major changes through a formal evidentiary process; and (2) to provide the Board and OCA with a method of compelling a utility to justify changes in spending to avoid large, repeated over- or under-collections of energy efficiency revenues.

The Board recognizes that a number of similar waivers of the Board's rules have previously been granted to IPL and others in the belief that over or underspending required the utility to seek waivers of 199 IAC 35.6(4). The Board understands that an investor-owned utility in a situation of overspending might seek

assurances it was still within the rules, because the Board's approval of a utility's energy efficiency plan does not include a guarantee that overspending related to overachievement will automatically be approved. In these instances, investor-owned utilities should request a waiver because they are not asking to modify their energy efficiency budgets.

IPL has provided sufficient information supporting its request for waiver and the Board finds that there is good cause for granting the waiver. 199 IAC 35.7. Modifying budgets based on the spending in the first year of the five-year plan appears in this instance be premature. Additionally, the Board finds that IPL has met the requirements of 199 IAC 1.3; specifically, that a plan modification would pose undue hardship on IPL given the amount of time and effort that would be required to prepare and litigate a plan modification proceeding so recently after the plan was approved and based upon such preliminary results.

Utilities are reminded that any future filings for waiver of 199 IAC 35.6(4), based on spending variations, must be accompanied by information that addresses whether the spending variances are expected to continue and whether the plan budget should be changed. The Board is also mindful that settlements entered into by various parties and approved by the Board may impact when a waiver is appropriate and any future IPL waiver request must address whether the spending variances are expected to continue. See, Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement Appendix 3, p. 1 (4a).

**IT IS THEREFORE ORDERED:**

The request for waiver filed by Interstate Power and Light Company on April 17, 2015, is granted.

**UTILITIES BOARD**

/s/ Geri D. Huser

/s/ Elizabeth S. Jacobs

ATTEST:

/s/ Joan Conrad  
Executive Secretary

/s/ Nick Wagner

Dated at Des Moines, Iowa, this 6<sup>th</sup> day of May 2015.