
IOWA UTILITIES BOARD
Policy Development Section

Docket No.: EEP-2016-0002/
WRU-2016-0004-0222
Utility: Liberty Utilities Corp
File Date: February 17, 2016
Memo Date: March 8, 2016

TO: The Board

FROM: Brenda Biddle

SUBJECT: Energy Efficiency Plan Application and Waiver Requests for 199 IAC 35.4(4), 35.8(2)(d) and 35.10

I. Background

In 2011, Liberty Utilities (Midstates Natural Gas) Corp. (Liberty) acquired all the natural gas assets of Atmos Energy Corporation (Atmos) located in Iowa, Illinois and Missouri. Liberty currently serves approximately 4,000 natural customers in Iowa, primarily in the city of Keokuk, Iowa.

Atmos' most recent energy efficiency plan (Plan)¹ was filed on March 28, 2003, for the five-year period of 2003 through 2008. The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice was the only other party to the proceeding. On May 27, 2003, the OCA filed a response to the plan stating that all issues had been resolved during the collaborative process prior to the plan filing. While a formal settlement was not filed, the fact that the filed plan reflected agreement between Atmos and OCA made the Board's review similar to that of a formal settlement. The Board issued an order approving the Plan on July 21, 2003.

On April 18, 2007, Atmos filed a request for waiver² of 199 Iowa Administrative Code (IAC) 35.4, 35.6, 35.8, and 35.10, which required Atmos to participate in a collaborative study with other rate-regulated utilities for the purpose of assessing the factors associated with the development, filing, and implementation of a new energy efficiency plan. Atmos asked for the waiver of the rules so that it could extend the 2003-2008 Plan. The OCA had no objection to Atmos' waiver request. The Board granted the waiver request on May 14, 2007.

Atmos continued to file annual reports that provided spending and savings results for the energy efficiency programs offered and provided the planned

¹ Docket No. EEP-03-3

² WRU-07-11-222

spending for the next year. On September 17, 2010, Atmos filed a notice of intent to begin a rebate pilot program which offered appliance rebates (furnaces, boilers, and hot water heater) that were similar to those offered by the other investor-owned utilities (IOUs) offered. The pilot was expected to end in 2013. However, due to the transition in ownership from Atmos to Liberty, the pilot and the other energy efficiency programs were continued with no new Plan filing.

Since the appliance rebate pilot program appeared to be successful, Liberty met with OCA and IUB staff in the fourth quarter of 2014 to discuss the development of a new Plan that would include an appliance rebate program that was no longer considered a pilot program. Liberty has worked extensively with OCA staff over the course of the past year to draft a new Plan. On February 17, 2016, Liberty filed an Application for Approval of its four-year Plan and requests for waiver of 199 IAC 35.4(4), 35.8(2)(d) and 35.10.

Liberty's Plan contains a description and additional information about the energy efficiency measures and programs to be offered, a summary of cost-effectiveness completed by The Cadmus Group (Cadmus) for the Company's Missouri operations in 2011, and a high-level budget by year.

The requests for waiver discuss specific Plan filing requirements. First, 199 IAC 35.4(4) requires Liberty to send a notice of its Plan to all affected customers no more than 62 days in advance of filing that Plan. Second, 199 IAC 35.8(2)(d) requires the Plan to cover a five-year period. Finally, 199 IAC 35.10 requires a gas utility's Plan to include information that specifies demand and volume forecasts, capacity surpluses and shortfalls, supply options, and avoided capacity and energy costs.

On March 4, 2016, OCA filed a response to Liberty's waiver requests. OCA concurred with Liberty's rationale for the waiver requests and agreed that the allowance of such requests is consistent with 199 IAC 1.3 and 35.7. The OCA does not object to Liberty's waiver requests.

II. Legal Standards

Iowa Code 476.6(15). Energy efficiency implementation, cost review, and cost recovery.

- a. Gas and electric utilities required to be rate-regulated under this chapter shall file energy efficiency plans with the board. An energy efficiency plan and budget shall include a range of programs, tailored to the needs of all customer classes, including residential, commercial, and industrial customers, for energy efficiency opportunities. The plans shall include programs for qualified low-income persons including a cooperative program with any community action agency within the utility's service area to implement

countywide or communitywide energy efficiency programs for qualified low-income persons. Rate-regulated gas and electric utilities shall utilize Iowa agencies and Iowa contractors to the maximum extent cost-effective in their energy efficiency plans filed with the board.

- b. A gas and electric utility required to be rate-regulated under this chapter shall assess potential energy and capacity savings available from actual and projected customer usage by applying commercially available technology and improved operating practices to energy-using equipment and buildings. The utility shall submit the assessment to the board. Upon receipt of the assessment, the board shall consult with the economic development authority to develop specific capacity and energy savings performance standards for each utility. The utility shall submit an energy efficiency plan which shall include economically achievable programs designed to attain these energy and capacity performance standards. The board shall periodically report the energy efficiency results including energy savings of each utility to the general assembly.
- e. The board shall conduct contested case proceedings for review of energy efficiency plans and budgets filed by gas and electric utilities required to be rate-regulated under this chapter. The board may approve, reject, or modify the plans and budgets. Notwithstanding the provisions of section 17A.19, subsection 5, in an application for judicial review of the board's decision concerning a utility's energy efficiency plan or budget, the reviewing court shall not order a stay. Whenever a request to modify an approved plan or budget is filed subsequently by the office of consumer advocate or a gas or electric utility required to be rate-regulated under this chapter, the board shall promptly initiate a formal proceeding if the board determines that any reasonable ground exists for investigating the request. The formal proceeding may be initiated at any time by the board on its own motion. Implementation of board-approved plans or budgets shall be considered continuous in nature and shall be subject to investigation at any time by the board or the office of the consumer advocate.

Pursuant to 199 IAC 1.3, the Board may waive any of its rules if it finds that:

- 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.

199—35.7(476) Waivers. Upon request and for good cause shown, the board may waive any energy efficiency plan requirement. If the waiver request is granted, a copy of the board order shall be filed with the energy efficiency plan.

III. Analysis

Waiver Requests

Summary of Liberty's comments related to 199 IAC 35.4(4)

Liberty requested a waiver of 199 IAC 35.4(4)³ which requires Liberty to notify all affected customers no more than 62 days prior to filing its Plan. This rule is not mandated by statute or another provision of law. Liberty said the new Plan does not propose a substantial change in the budget and will have little impact on the customer's bills or rates. Additionally, Liberty argued that the notice may confuse customers since the new Plan budget is similar to the current budget (\$90,539 in new Plan compared to \$103,255 per year in current Plan).

Liberty noted that the cost of compiling and mailing the notice would be high given its small Iowa customer base and would pose a hardship for Liberty. Furthermore, the new Plan contains only a few changes from the current Plan so the waiver would not prejudice the substantial legal rights of any person and would provide substantially equal protection of public health, safety and welfare prescribed in the rule.

Summary of Liberty's comments related to 199 IAC 35.8(2)(d)

Rule 35.8(2)(d)⁴ requires that a budget for each of the five years be included in the Plan. Liberty asked to be allowed to submit a four-year Plan which would

³ 35.4(4) Written notice of assessment of potential and energy efficiency plan. No more than 62 days prior to and prior to filing its assessment of potential and energy efficiency plan, a utility shall mail or deliver a written notice of its filing to all affected customers. The notice shall be submitted to the board for approval not less than 30 days prior to proposed notification of customers. The notice shall, at a minimum, include the following elements:

- a. A statement that the utility will be filing an assessment of potential and energy efficiency plan with the board;
- b. A brief identification of the proposed energy efficiency programs and the estimated annual cost of the proposed energy efficiency programs during the five-year budget time frame;
- c. The estimated annual rate and bills impacts of the proposed energy efficiency programs on each class of customer; and the estimated annual jurisdictional rate impact for each major customer grouping in dollars and as a percent, with the proposed actual increases to be filed at the time of notice to customers;
- d. A statement that the board will be conducting a contested case proceeding to review the application and that a customer may file a written objection and request a consumer comment hearing; and
- e. The telephone numbers and addresses of utility personnel, the board and the consumer advocate, for the customer to contact with questions."

⁴ 35.8(2)(d) The budget for the plan and for each program for each year of implementation or for each of the next five years of implementation, whichever is less, itemized by proposed costs. The budget shall be consistent with the accounting plan required pursuant to subrule 35.12(1). The budget may include the amount of the remittance to the Iowa energy center and the center for global and regional environmental research and the alternative energy revolving loan fund. The plan and program budgets shall be categorized into: ...

help align its next plan with the other IOUs' energy efficiency planning process and may ease the regulatory burden by allowing Liberty to participate with the IOUs in future energy efficiency studies. Liberty reasoned that its submission of a four-year plan will not prejudice the rights of Liberty's customers since there will be no lapse in energy efficiency programming. Additionally, Liberty stated that 199 IAC 35.8(2)(d) is not required by statute and substantially equal protection of public health, safety, and welfare will be afforded by Liberty's filing of this four-year plan.

Summary of Liberty's comments related to 199 IAC 35.10

A gas utility's Plan is to include the following information outlined in 199 IAC 35.10: demand and transportation volume forecasts; projected capacity surpluses and shortfalls over the five-year planning horizon; new supply options identified by the utility as the most efficient means of satisfying any capacity shortfalls; and avoided capacity and energy costs. Liberty claimed that the application of 199 IAC 35.10 would pose undue hardship because compliance would add expense not supported by Liberty's Iowa customer base.

Furthermore, Liberty stated that 199 IAC 35.10 is not mandated by statute or other provision of law and a waiver of this rule would not prejudice the substantial legal rights of any person. The proposed Plan does not include any material changes that would affect the demand and volume forecasts. Application of this rule would provide little new or additional information to Liberty's rate payers. Therefore, Liberty maintained that substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in 199 IAC 35.10.

Staff Analysis of Waiver Requests

Staff acknowledges the provisions of the rules referenced in the waiver request are not specifically mandated by statute or another provision of law. Staff also recognizes that application of these rules may pose undue hardship to Liberty due to its small service territory in Iowa. Staff believes the waiver requests for 199 IAC 35.4(4), 35.8(2)(d) and 35.10 have no impact on public health, safety, or welfare and do not prejudice the substantial legal rights of any person, and that the standards for granting a waiver contained in 199 IAC 1.3 and 35.7 have been satisfied. Furthermore, staff believes Liberty has shown good cause for the waiver requests. The OCA does not object to Liberty's waiver requests.

Energy Efficiency Plan Filing

Staff notes that in Liberty's Plan, some of the Board's filing requirements are only partially fulfilled, or not addressed at all.⁵ However, Liberty provides basic information on elements essential to a decision to approve or reject the plan. Liberty provides information about its energy efficiency programs on its Web site, through an annual bill insert, or through its call center.

Summary of Liberty's comments related to its Energy Efficiency Plan

The Plan filing provides thorough descriptions of Liberty's energy efficiency programs which include low-income weatherization, appliance rebate and school-based energy education. The estimated budget is \$90,539 per year for the four years, or \$362,156 in total.

Liberty has included some new features in its Plan. Liberty has agreed to partner with Green Iowa AmeriCorps (GIAC) to provide energy evaluations to its low-income residential customers at no cost. GIAC will work with the Community Action Agency that provides the low-income weatherization program in Liberty's service territory. Additionally, the school-based education program will be supplemented by partnering with EarthWays Center of the Missouri Botanical Garden to provide three professional development workshops for the teachers delivering the education program. The appliance rebate program has been revised so the rebates are more consistent with those offered by the other IOU gas utilities and allows both residential and small commercial customers to apply for rebates. Liberty plans to eliminate the small commercial audit program since there has been no participation in the program since its inception in 2004.

Liberty provided a benefit-cost analysis that was performed by Cadmus in 2011 for Liberty's Missouri operations. Although the report from Cadmus does not include a societal benefit cost test that is required by 199 IAC 35.8(1)(e)(1),⁶ it does provide the Total Resource Cost (TRC) test. The Societal Cost test is

⁵ Liberty does not provide or reference an assessment of potential as required by 199 IAC 35.8. However, the other IOUs filed a Joint Assessment of Potential in their most recent energy efficiency plan filings (EEP-2012-0001 (Interstate Power & Light Company, EEP-2012-0002 (MidAmerican Energy Company) and EEP-2013-0001 (Black Hills Energy Company)). The findings in that study are likely applicable to Liberty's service territory in Iowa. Staff does not believe it is necessary for Liberty to conduct a separate Assessment of Potential for its service territory.

⁶ Cost-effectiveness tests. The utility shall analyze for cost-effectiveness proposed programs, using the societal, utility, ratepayer impact and participant tests. The utility's analyses shall use inputs or factors realistically expected to influence cost-effective implementation of programs, including the avoided costs filed pursuant to rules 35.9(476) and 35.10(476) or avoided costs determined by the utility's alternative method. If the utility uses a test other than the societal test as the criterion for determining the cost-effectiveness of utility implementation of energy efficiency programs and plans, the utility shall describe and justify its use of the alternative test or combination of tests and compare the resulting impacts with the impacts resulting from the societal test.

similar to the TRC except that it attempts to capture the larger benefit to society that isn't captured in energy savings alone. Liberty argued that because its service territories in Missouri and Iowa are similar (both rural), the benefit-cost results would be similar. Additionally, Liberty claimed that a separate analysis for the Iowa operations would be cost-prohibitive given the small customer base. The table below summarizes elements of Liberty's Plan.

Program	Budget	Plan Savings (MMBTU)	Benefit –Cost (TRC)
Appliance Rebates	\$22,750	10,885	1.45
Low-Income Weatherization	\$52,000	2,210	N/A*
Supplemental Low-Income Weatherization with GIAC	\$1,625	24	N/A*
Energy Efficiency Education	\$4,804	3,128**	N/A
Energy Efficiency Education through EarthWays Center	\$4,360	N/A	N/A
Iowa Energy Center and Center for Global & Regional Environmental Research	\$5,000	N/A	N/A
Total	\$90,539	16,247	

*Per 199 IAC 35.8(2) This program is not subject to cost-effectiveness tests.

**The savings related to energy efficiency education are from energy education kits which include direct install measures such as compact fluorescent lamps (CFLs), low-flow showerhead and faucet aerator, and other energy efficiency information.

Staff Analysis

Considering the past history and size of Liberty's operation in Iowa, staff suggests docketing the plan without requiring additional information at this time. If the parties appear unable to avoid litigating the plan, staff may recommend the Board direct Liberty to provide additional information. If the parties reach a settlement, additional information may not be necessary.

IV. Recommendation:

Staff recommends that the Board issue the attached order docketing Liberty's energy efficiency plan, establishing a procedural schedule, and granting a waiver of 199 IAC 35.4(4), 35.8(2)(d) and 35.10.