
IOWA UTILITIES BOARD
Policy Section

Docket No.: WRU-2016-0007-0150
Utility: Interstate Power and Light
Company
File Date: March 18, 2016
Memo Date: April 15, 2016

TO: The Board
FROM: Brenda Biddle
SUBJECT: Request for Waiver of 199 IAC 35.6(4)(a)(2)

I. Background

On March 18, 2016, Interstate Power and Light Company (IPL) filed a waiver request of 199 IAC 35.6(4)(a)(2) with respect to its 2015 residential electric spending. IPL stated that the underspending for the 2015 residential electric programs, specifically the Residential Prescriptive Rebates, Change-a-Light, Appliance Recycling and Low-Income Weatherization programs, should not be considered a sustained deviation that necessitates a modification when customer participation could increase in 2016, thus requiring IPL to increase spending. On March 18, 2016, IPL also filed an application for a limited modification¹ of its energy efficiency plan which proposes revised budgets and savings goals for the Nonresidential Prescriptive Rebate; the Residential New Construction; and the Research, Development and Demonstration programs. The modification also proposed to revise only the saving goals for the Low-Income Weatherization program.

On April 7, 2016, the OCA filed a Reply which supports IPL's decision to file a waiver to address the spending variances that are above the thresholds established in 199 IAC 35.6(4) and are caused by circumstances that may not be permanent. However, OCA suggests that if IPL adopts assumptions for the Change-a-Light program that differ substantially from those used to set the approved goals, IPL may need to pursue a plan modification for the lighting program.

¹ The modification was filed under Docket No. EEP-2012-0001.

II. Legal Standards

Energy efficiency cost recovery for investor-owned utilities (IOUs) is governed by the following statute:

Iowa Code §476.6(15)(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.

Iowa Code §476.6(15)(g).

A gas or electric utility required to be rate-regulated under this chapter may recover, through an automatic adjustment mechanism filed pursuant to subsection 8, over a period not to exceed the term of the plan, the costs of an energy efficiency plan approved by the board, including amounts for a plan approved prior to July 1, 1996, in a contested case proceeding conducted pursuant to paragraph "e". The board shall periodically conduct a contested case proceeding to evaluate the reasonableness and prudence of the utility's implementation of an approved energy efficiency plan and budget. If a utility is not taking all reasonable actions to cost-effectively implement an approved energy efficiency plan, the board shall not allow the utility to recover from customers costs in excess of those costs that would be incurred under reasonable and prudent implementation and shall not allow the utility to recover future costs at a level other than what the board determines to be reasonable and prudent. If the result of a contested case proceeding is a judgment against a utility, that utility's future level of cost recovery shall be reduced by the amount by which the programs were found

to be imprudently conducted. The utility shall not represent energy efficiency in customer billings as a separate cost or expense unless the board otherwise approves.

The Board's Administrative Rules contain a chapter (chapter 35) which includes procedures for energy efficiency plan modification and cost recovery by the IOUs.

199 IAC 35.6(4) Modification after implementation.

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;
 - (3) An approved program is eliminated or a new program is added.
- b. All applications to modify shall be filed in the same docket in which the energy efficiency plan was approved. All parties to the docket in which the energy efficiency plan was approved shall be served copies of the application to modify and shall have 14 days to file their objection or agreement. Failure to file timely objection shall be deemed agreement.
- c. Each application to modify an approved energy efficiency plan shall include:
 - (1) A statement of the proposed modification and the party's interest in the modification;
 - (2) An analysis supporting the requested modification;
 - (3) An estimated implementation schedule for the modification; and
 - (4) A statement of the effect of the modification on attainment of the utility's performance standards and on projected results of the utility's implementation of its plan.
- d. If the board finds that reasonable grounds exist to investigate the proposed modification, a procedural schedule shall be set within 30 days after the application is filed.
- e. If an application to modify is filed and the board finds that there is no reason to investigate, then the board shall issue an order

stating the reasons for the board's decision relating to the application.

- f. If the board rejects or modifies a utility's plan, the board may require the utility to file a modified plan and may specify the minimum acceptable contents of the modified plan.

199 IAC 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.

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.

III. Analysis

According to the Board's rules (199 IAC 35.6(4)(a)(2)), the utility shall file an application to modify its energy efficiency plan if, "The budget per customer class or grouping has changed or will change by a factor of at least plus or minus 10 percent."

Additionally, in the "Collaboration Plan for IPL and 2014-2018 Energy Efficiency Plan (EEP) Stakeholders – Appendix 3 of Settlement"² IPL agreed:

"...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.)

² Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement Appendix 3, p. 1 (4a), July 26, 2013.

Staff has reviewed the information filed by IPL on March 18, 2016, and its response to OCA's Data Request No. 1. IPL's actual spending for the residential electric programs³ was approximately \$11.4 million, or nearly 73 percent of budget. IPL explained that the underspending⁴ for the residential electric program was related to lower than expected participation which has a direct correlation to IPL's ability to spend the corresponding incentive budget. Although IPL underspent relative to budget, IPL expects to achieve or exceed the savings goal for the residential electric program.

IPL has developed a plan to increase participation for the residential electric programs which in turn will increase spending for the program in 2016. First, IPL plans to launch a Residential Behavioral pilot program mid-2016 which will likely increase participation in the cross-promoted residential programs. Second, IPL said that in 2016 the Residential Prescriptive Rebate program will be strongly marketed to individual customers which should also increase participation, especially in the residential electric program. IPL does not believe that the 2015 residential electric underspending, as compared to budget, should be considered a sustained deviation necessitating a modification. Staff believes IPL has outlined a plan that will increase participation and address the underspending experienced in the 2015 residential electric program.

Staff has also reviewed the Board's rules (199 IAC 35.6(4)) which 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. Staff believes that the budget referred to in 199 IAC 35.6(4) should not be confused with the utility's actual expenditures. The energy efficiency budget is approved by the Board as part of the energy efficiency plan proceeding and is the level of spending that the utility has forecasted it would spend to implement its programs.

Staff maintains that the Board's rule is intended to require a formal filing of a plan modification when a utility, the OCA, or the Board, intentionally seeks to alter its Board-approved plan, with particular attention to the ongoing or long-term budget in the energy efficiency plan. The long-term budget 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 probably should not occur unless there is an opportunity for substantial scrutiny by the Board, the OCA, and parties to the proceeding.

Staff notes that although IPL's actual spending for 2015 varied from the budget, IPL has not changed, or asked to change, the energy efficiency plan budget for

³ This does not include the Residential Direct Load Control program.

⁴ The underspending occurred primarily in the Residential Prescriptive Rebate program, the Change-a-Light program, the Appliance Recycling program and the Low-Income Weatherization program.

the residential electric program. Accordingly, a modification is not required based on the Board's rules. Furthermore, since IPL has explained that it is not certain whether the spending variances will continue, a modification based on the terms of the Settlement Agreement is not necessary. Staff believes that IPL's annual energy efficiency report, due by May 1 of each year, will provide additional information regarding the spending variances. If, after reviewing the annual report, the Board or the OCA determine that a plan modification is justified, either party can initiate a modification.

Staff believes IPL has provided sufficient information supporting its request for waiver, allowing staff to conclude IPL has shown good cause for granting the waiver request as required under 199 IAC 35.7.

Staff recommends the Board grant the waiver because IPL has satisfied the conditions for granting a waiver outlined in 199 IAC 1.3. Staff concludes 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 based on Iowa Code §476.6(15)(e). Because IPL's underspending in 2015 is a direct result of lower customer participation in IPL's energy efficiency programs in 2015, staff finds that granting IPL's waiver request would not prejudice the substantial legal rights of any person. Furthermore, staff notes that 199 IAC 35.6(4)(a)(2) is not specifically mandated statute or another provision of law. Finally, staff also notes that participants had an opportunity to file comments in this waiver proceeding and that opportunity provided an alternate means to challenge the waiver and seek plan modification. OCA filed comments and supported granting the waiver. Also, IPL's underspending is reconciled in its annual energy efficiency cost recovery filing; and this specific underspending is because of the lower customer participation; hence there are no adverse impacts on public health, safety, and welfare because of granting this waiver.

IV. Recommendation

Staff recommends that the Board issue the attached order granting IPL's waiver request of 199 IAC 35.6(4)(a)(2).