IOWA UTILITIES BOARD
Policy Development and Energy Sections

Docket No.: WRU-2015-0014-0150
Utility: Interstate Power and Light Company
File Date: April 18, 2015
Memo Date: April 28, 2015

TO: The Board

FROM: Brenda Biddle

SUBJECT: Request for Waiver of 199 IAC 35.6(4)(a)

I. Background

On January 29 and 30, 2015, Interstate Power and Light Company (IPL) filed with the Iowa Utilities Board (Board) its annual Electric and Natural Gas Energy Efficiency Cost Recovery (EECR) Reports, along with new tariffs to implement revised electric cost recovery factors to be effective April 1, 2015.[1]

On February 18 and 19, 2015, the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice, filed Conditional Objections in both dockets. In its Conditional Objections, the OCA suggested that IPL's nonresidential factors should be investigated to ensure the costs were appropriately allocated and that IPL should evaluate whether it should seek modification of its energy efficiency plan based on its 2014 spending, or request a waiver of 199 Iowa Administrative Code (IAC) 35.6(4). On February 27, 2015, the Board docketed the tariff filings and required IPL to respond to OCA's Conditional Objections.

On March 9, 2015, IPL filed a response to the OCA's Conditional Objections.[2] In the response, IPL argued that based on Board precedent and the rules related to the energy efficiency plans neither a waiver nor a plan modification was appropriate. IPL said that in 2014 the kilowatt hour (kWh) savings exceeded the savings goal for the electric energy efficiency programs and the therm savings was 96 percent of the natural gas energy efficiency program savings goal. IPL acknowledged that it did not spend as much as it had budgeted for both the natural gas and residential electric programs but argued that its spending was not grounds for a modification, especially since 2014 was the first year of a new

[1] Docket Nos. TF-2015-0007 and TF-2015-0008.
[2] IPL's response included information about both the allocation methodology and the need for a waiver, but staff is including only information about the need for a waiver in this memo. The allocation methodology will be discussed in in Docket Nos. TF-2015-0007 and TF-2015-0008.

five-year plan. IPL provided preliminary results that compare the 2014 actual spending and savings by customer class to the planned spending and savings for both the electric and natural gas energy efficiency programs.

On March 16, 2015, the OCA filed a Reply to Response. The OCA explained that the Board's rules (199 IAC 35.6(4)) require IPL to file an application to modify its plan because its residential electric spending was 18 percent below the approved budget, residential natural gas spending was 14 percent below approved budget, nonresidential natural gas spending was less than 50 percent of approved budget, and total natural gas spending was 28 percent below approved budget. The OCA stated that IPL agreed in the Settlement Agreement[3] to seek a program modification concurrently with, or shortly after its EECR filing if the EECR filing demonstrated variances with spending or impact conditions established in the Board's rules.

On April 13, 2015, the Board issued an Order requiring IPL to provide information whether the variances in the spending for energy efficiency programs were expected to continue. On April 17, 2015, IPL filed a request for waiver of 199 IAC 35.6(4)(a) in which it reiterated its position, that the actual spending does not equate to a budget change and that the Settlement Agreement requires a modification only if the circumstances leading to the variance will continue. IPL provided additional information regarding the spending variances and said that additional program level details will be included in the 2014 Annual Report which is due on or before May 1, 2015.

IPL provided some preliminary findings related to its 2014 spending. IPL noted that the spending variations for the residential prescriptive rebate program occurred in some of the heating, ventilation, and air conditioning (HVAC) and programmable thermostats measures. The HVAC measures must be SAVE[4] certified to receive a rebate and part of the SAVE process for air conditioners requires that the outside air temperature be at least 65 degrees to complete the testing. This requirement caused a lag in the first year's reported and rebated savings. IPL expects the results for 2015 to be within the range originally projected with no additional promotion needed. For the programmable thermostats, IPL implemented a promotional campaign in April 2015 that will run through March of 2016. The campaign will educate customers on the benefits of and rebates available for Wi-Fi thermostats.

IPL also explained that the Change-a-Light program had notable spending variation but attributed the variation to an unanticipated decrease in bulb price. IPL, in its Energy Efficiency Plan filing, had assumed an incentive of $2.67 for CFLs and $10.00 for LEDs but actually incented CFL bulbs at $1.44 and LED bulbs at $5.41. IPL plans to increase the allocation of spending for LEDs but has

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[3] Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement Appendix 3, p. 1 (4a), Docket No. EEP-2012-0001, July 26, 2013.
[4] System Adjustment and Verified Efficiency.

not yet completed the analysis to determine the budget impact of the reduced incentives and change in allocation to LEDs.

For the nonresidential natural gas programs, IPL identified insulation and infiltration controls as the measures that caused spending to be less than the budget. IPL is planning a targeted promotion effort for these measures in 2015.

IPL also stated that any modification should be based on a thorough analysis of trends with stakeholder input. IPL believes a modification, after the first year of the new plan, would be premature and not be the best use of IPL's, stakeholders', or customers' resources. IPL plans to use insights gained during its ongoing evaluation of 2014 and 2015 partial-year results to determine whether adjustments are needed for the 2016 plan year.

IPL requests a waiver from 199 IAC 35.6(4)(a) because the 2014 spending should not be considered a sustained deviation that necessitates a modification when customer participation could increase, thus requiring IPL to increase spending. Additionally, the 2014 underspending has no detrimental impact on achieving the impact goals of the energy efficiency programs. Requiring a modification based on the preliminary results of the first year of the new plan would be unproductive and cause undue hardship. Granting the waiver will not prejudice the substantial legal rights of any person, and will not impinge upon public health, safety, or welfare.

On April 24, 2015, the OCA filed a Reply to IPL's April 17, 2015, filing. The Reply supports IPL's decision to file a waiver to address the spending variances. However, the OCA interprets 'budget' and 'spending' synonymously and interchangeably and argues that this interpretation better fulfills the purpose of 199 IAC 35.6(4). Furthermore, the 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. The 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, the OCA contends that without proper attention to spending variances the EECR factors, based on approved budgets, will likely differ substantially from actual spending. The OCA mentions that IPL could have addressed some of the key challenges and changes discussed in its waiver at the Fall Operations meeting and stakeholders could have offered feedback on the issues at that time.

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.
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> 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.
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> 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.
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> 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.
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> 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)), the utility shall file an application to modify its energy efficiency plan if any one of the following conditions occurs:

(1) The total annual plan budget has changed or will change by a factor of at least plus or minus 5 percent; and
(2) 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"[5] 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

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

> factor(s) driving the budget or impact variance." (Emphasis Added.)

Staff has reviewed the additional information filed by IPL on April 17, 2015, and notes that although IPL's spending was less than budget, IPL reported that 2014 kWh savings for the electric programs exceeded the goal by 24 percent and 2014 therm savings for the natural gas programs was within 10 percent of the goal. IPL has taken steps to get a full understanding of 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 to prioritize evaluations of the prescriptive rebate and lighting programs. Additionally IPL has said that it will provide quarterly reports on the impacts and spending.

Staff has reviewed both the Settlement Agreement and the Board's rules related to this waiver request. Staff interprets the spending or impact variances referred to in the Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement Appendix 3, p. 1 (4a) as the difference between the actual energy efficiency spending (both total spending and spending per customer class) compared to the budget amount approved in Docket No. EEP-2012-0001. IPL's 2014 spending results in spending variances that may warrant a plan modification based on the Settlement Agreement, if the circumstance(s) contributing to the spending (or impact) variances are expected to continue. Staff believes that the first-year results of the five-year plan are not a definite indicator of whether participation and spending will continue in the same manner. Moreover, IPL has outlined steps it intends to take which will promote prudent management of the budget and refine its program mix for its customers. 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.

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 2014 varied from the budget, IPL has not changed, or asked to change, the energy efficiency plan budget. 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. Modifying budgets based on the spending in the first year of the five-year plan seems to be premature. Additionally, staff agrees that IPL has met the requirements of 199 IAC 1.3; specifically 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. Staff recommends that the Board grant IPL's waiver request of 199 IAC 35.6(4).

IV. Recommendation

Staff recommends the Board direct General Counsel to prepare for the Board's review an order granting the request for waiver to allow IPL's 2014 spending for the residential and nonresidential gas customer classes and the residential electric customer class to vary from the budget amount approved in Docket No. EEP-2012-0001 by more than 10 percent and for the total spending for the natural gas energy efficiency programs to vary from budget by more than 5 percent. The Board should find the waiver has no impact on public health, safety, or welfare and does not prejudice the substantial legal rights of any person, and that the standards for granting a waiver contained in 199 IAC 1.3 have been satisfied. Furthermore, the order should state that IPL has shown good cause for a waiver request pursuant to 199 IAC 35.7.

The order should also direct utilities required to be rate-regulated, which seek a waiver of rules regarding the energy efficiency budget, to file with the waiver request the explanations and justifications that allow the Board and other stakeholders to determine whether the waiver request is appropriate. In the case of IPL, any waiver request based on the Joint Motion for Approval of Non-Unanimous Partial Settlement Agreement Appendix 3, p. 1 (4a), should include information on whether the variances are expected to continue.

RECOMMENDATION APPROVED **IOWA UTILITIES BOARD**

/s/ Elizabeth S. Jacobs 4-30-15
Date

/bkb

/s/ Nick Wagner 4/30/15
Date

/s/ Geri D. Huser 5-5-15
Date