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**IOWA UTILITIES BOARD**  
**Customer Service Section**

Docket No.: RMU-2014-0004  
Utility: Disconnection of Public Utility  
Water Service for Failure to  
Pay Sewer, Wastewater, or  
Storm Drainage Bill  
[199 IAC chapter 21]

File Date/Due Date: N/A-N/A

Memo Date: December 9, 2014

**TO:** The Board

**FROM:** Don Tormey, Cecil Wright

**SUBJECT:** Recommendation to Publish Proposed Amendments to Establish  
Rules to Implement Iowa Code § 476.20(1)(b)

**I. Background**

On August 11, 2014, the Utilities Board (Board) issued an order appointing members of a Stakeholder Group to provide recommendations regarding proposed rules to implement Iowa Code § 476.20(1)(b) passed by the Iowa General Assembly in the 2014 Legislative Session and signed by the Governor. The legislation amends Iowa Code § 476.20(1) by adding a new paragraph 476.20(1)(b) that allows a public water utility to enter into an agreement with a city utility, city enterprise, combined city utility, or combined city enterprise to disconnect water service if a debt is owed for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment. The new legislation requires the Board to adopt rules to implement the new provisions.

The Governor's Office requested that the Board utilize the procedures established in Executive Order 80 in developing proposed rules to implement the new statute and appointment of the Stakeholder Group is required by the Executive Order. Notice of the formation of the Stakeholder Group was published in the Iowa Administrative Bulletin at IAB Vol. XXXVII, No. 1 (7/9/14) p. 25. The notice stated that persons interested in being appointed to the Stakeholder Group should contact the Board.

In the August 11, 2014, order the Board appointed the following members of the Stakeholder Group.

Julie Smith, Iowa Association of Municipal Utilities  
Jeffrey K. Rosencrants, Iowa-American Water Company (Ken  
Jones replaced Rosencrants as the Iowa-American member.)

John Long, Consumer Advocate Division of the Department of Justice  
Jim Odean, city of Davenport, Iowa  
Jessica Kinser, city of Clinton, Iowa  
Kristine Stone, city of Bettendorf, Iowa  
Don Tormey, Iowa Utilities Board

In the August 11, 2014, order, the Board stated that the Stakeholder Group should address the issues listed below, as well as any other issues raised by the Stakeholder Group. The issues listed by the Board are as follows:

- a. Should a written agreement be required between Iowa-American Water Company and a city utility, city combined utility, city enterprise, or city combined enterprise that sets out the specific responsibilities for each party to the agreement? Should the written agreement include provisions that are consistent with the rules adopted by the Board to implement Iowa Code § 476.20(1)(b)?
- b. Should 199 IAC 21.4(7) be amended to include the disconnection of service pursuant to Iowa Code § 476.20(1)(b) in the list of reasons that water service may be disconnected?
- c. Should disconnection of water service pursuant to Iowa Code § 476.20(1)(b) follow the same 12-day notice provisions of 199 IAC 21.4(7)"e"(2)?
- d. If the customer disputes that a debt is owed for sewer or wastewater service, should the customer be allowed to pay any undisputed amounts to avoid disconnection for up to 45 days as provided in 199 IAC 21.4(7)"e"?
- e. Does Iowa Code § 476.20(1)(b) provide the Board with jurisdiction over complaints filed regarding disconnections made pursuant to Iowa Code § 476.20(1)"b"?
- f. How will the city utility, combined city utility, city enterprise, or combined city enterprise ensure that reconnection of water service is promptly restored as required in 199 IAC 21.4(8)?
- g. Will a customer be required to pay a reconnection charge when water service is reconnected after payment of the debt to the city utility, combined city utility, city enterprise, or combined city enterprise?
- h. Should 199 IAC 21.4(9)"c" be amended to create an exception for disconnections made pursuant to Iowa Code § 476.20(1)(b)?

On September 4, 2014, the Stakeholder Group held a meeting by teleconference. At the meeting, Don Tormey was elected Chair, Larry Johnson of the Governor's Office discussed the requirements of Executive Order 80, and distribution of information and a date for the next meeting were discussed. The Stakeholder Group decided that information would be distributed to the Stakeholder Group by electronic mail and Don Tormey would be the person responsible for collecting information from the Stakeholder Group and then disseminating information to the Stakeholder Group. The Stakeholder Group decided to have a public meeting in one of the cities served by Iowa-American. After the meeting, a public meeting was scheduled for October 29, 2014, in Davenport, Iowa.

The public meeting was held as scheduled on October 29, 2014, in Davenport. In addition to the Stakeholder Group members, several persons representing the City of Clinton and Iowa-American Water Company attended the meeting and made comments concerning the recommendations discussed by the Stakeholder Group. A summary of responses to the questions listed in the Board's August 11, 2014, order was provided to the Stakeholder Group prior to the meeting.

A summary of the comments at the public meeting was sent to Stakeholder Group members after the meeting. Included in the summary were draft proposed rule recommendations. Based upon the responses to the draft proposed rule changes sent out to the Stakeholder Group after the public meeting, three alternative recommendations were prepared. The Stakeholder Group recommendations with the three alternatives were provided to the Board on December 8, 2014. Documents containing the summaries of comments and Stakeholder Group member positions regarding the Board's questions were attached to the recommendations provided to the Board.

Alternative One recommended by some members of the Stakeholder Group provides that before a city utility, city enterprise, city combined utility, or city combined enterprise to disconnect water service for an outstanding debt for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment the city utility, city enterprise, city combined utility, or city combined enterprise would have to have entered into a written agreement with the regulated water utility, Iowa-American, that includes the provisions established in the Board's rules. The rules adopted would establish the minimum requirements for customer protections that would have to be included in any written agreement. The written agreement would not require Board approval. The focus of the rules would be to make sure that certain of the customer protections established in the Board's rules for regulated water service are included in any agreement.

Alternative Two would require a written agreement; however, no other specific requirements would be included in the rules. This alternative would

require that the written agreement be approved by the Board. This alternative would allow the Board to ensure that the agreement included necessary customer protections as part of the approval process. This alternative would provide some flexibility for cities to negotiate the specific terms of an agreement with IowA-American while requiring that any agreement would have to include any customer protections ordered by the Board.

Alternative Three was proposed by IowA-American and includes provisions that IowA-American has in similar agreements in other states. These provisions would make the city utility, city enterprise, city combined utility, or city combined enterprise responsible for all communications with the customer regarding disconnection, indemnify IowA-American for any damages, and allow the customer to be charged for lost revenue.

### **Alternative One**

#### *199 IAC 21.4(7) Refusal or disconnection of service.*

Service may be refused or disconnected only for the reasons listed below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and holidays, following mailing of notice by mail, telephone, or in person of disconnect in which to take necessary action before service is discontinued.

g. For failure to pay a debt owed to a city utility, city combined utility, city enterprise, or city combined enterprise if a debt is owed for sewer, wastewater, or storm drainage service. Disconnection of water service pursuant to this paragraph shall only be allowed if the city utility, city combined utility, city enterprise, or city combined enterprise have entered into a written agreement with the water utility that includes the following provisions:

(1) Allows the customer 12 days after the notice of disconnection of water service to pay the debt owed to the city utility, city combined utility, city enterprise, or city combined enterprise.

(2) Provides for prompt notice from the city to the water utility that the debt for sewer, wastewater, or storm drainage service has been paid. Once notified of the payment of the debt, the water utility shall reconnect water service as provided for in the water utility's tariff.

(3) Requires the city utility, city combined utility, city enterprise, or city combined enterprise to have completed the disconnection notification procedures established in tariffs or ordinances.

(4) Provides that the customer may be charged a fee for disconnection and reconnection of water service for

failure of the customer to pay a debt owed to the city utility, city combined utility, city enterprise, or city combined enterprise for sewer, wastewater, or storm drainage service no greater than the rates established for reconnection and disconnection of water service in the water utility's tariffs approved by the utilities board.

### **Alternative Two**

g. For failure to pay a debt owed to a city utility, city combined utility, city enterprise, or city combined enterprise if a debt is owed for sewer, wastewater, or storm drainage service. Disconnection of water service pursuant to this paragraph shall only be allowed if the city utility, city combined utility, city enterprise, or city combined enterprise have entered into a written agreement with the water utility. Each agreement between a city utility, city combined utility, city enterprise, and city combined enterprise shall be approved by the Board before the provisions of the written agreement can be implemented.

### **Alternative Three**

199 IAC 21.4(7) *Refusal or disconnection of service.*  
Service may be refused or disconnected only for the reasons listed below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and holidays, following mailing of notice of disconnect in which to take necessary action before service is discontinued.

g. For failure to pay a debt owed to a city utility, city combined utility, city enterprise, or city combined enterprise if a debt is owed for sewer, wastewater, or storm drainage service. Disconnection of water service pursuant to this paragraph shall only be allowed if the city utility, city combined utility, city enterprise, or city combined enterprise have entered into a written agreement with the water utility that includes at least the following provisions:

(1) Allows the customer 12 days after the notice of disconnection of water service to pay the debt owed to the city utility, city combined utility, city enterprise, or city combined enterprise.

(2) Provides for prompt notice from the city to the water utility that the debt for sewer, wastewater, or storm drainage service has been paid. Once notified of the

payment of the debt, the water utility shall reconnect water service as provided for in the water utility's tariff.

(3) Requires the city utility, city combined utility, city enterprise, or city combined enterprise to have completed the disconnection notification procedures established in tariffs or ordinances.

(4) Provides that the customer may be charged city utility, city combined utility, city enterprise, or city combined enterprise may charge the customer a fee for disconnection and reconnection of water service for failure of the customer to pay a debt owed to the city utility, city combined utility, city enterprise, or city combined enterprise for sewer, wastewater, or storm drainage service no greater than the rates established for reconnection and disconnection of water service in the water utility's tariffs approved by the utilities board.

(5) Provides that the city utility, city combined utility, city enterprise, or city combined enterprise shall pay the water utility a fee for disconnection and reconnection of water service, and a fee for recoupment of lost revenues arising from disconnection of water service to the customer, in amounts agreed upon between the water utility and the city utility, city combined utility, city enterprise, or city combined enterprise.

(6) Provides that the city utility, city combined utility, city enterprise, or city combined enterprise shall indemnify the water utility for damages related to the discontinuance of water service.

(7) Provides that the utility, city combined utility, city enterprise, or city combined enterprise shall be responsible for all communications with customers related to the disconnection of water service.

## **II. Staff Analysis**

Staff generally supports Alternative One, with certain modification, since that alternative provides for the establishment of specific customer protections in the rules and then allows the cities and Iowa-American to negotiate the other terms of the agreement. Staff believes, if this alternative is adopted, that the proposed rules should specifically state that Iowa-American will not be allowed to recover lost revenue. Staff does not consider the statutes and agreements adopted in other states to be reasonable or consistent with Iowa law that says a customer should only pay for water service at the rates approved by the Board.

Staff believes Alternative Two would be an acceptable method of providing for agreements between the cities and Iowa-American; however, this would involve the Board in the negotiations and would require that the Board open dockets to address each agreement. On the plus side, this alternative would allow each city to negotiate separate terms with Iowa-American that fit the city's procedures for disconnection while still giving the Board the final decision on customer protections.

Staff does not believe Alternative Three is an acceptable alternative. Making the city the entity that communicates with the customer regarding disconnection ignores the customer protections in the Board's water service disconnection rules and leaves the customer subject to whatever terms of an agreement that the city and Iowa-American negotiate. Staff believes the Board has the responsibility to ensure that any agreement includes the proper customer protections while still allowing the city to collect for bad debt.

Staff has drafted proposed rules for the Board's consideration based upon a review of the recommendations from the Stakeholder Group. The draft proposed rules include the customer protections that staff believes are important to insure customers are not charged an excessive amount for disconnection and reconnection of water service because of a debt to a city. The proposed rules require a written agreement, but not that the Board approve the agreement. The proposed rules require the standard 12-day notice after the water utility is notified by the city of the past due debt. Staff believes the water utility should be responsible for the notice of disconnection rather than acting only as an agent for the city. Staff does not believe that the Board has jurisdiction over the city's disconnection procedures and staff does not consider it reasonable to have the Board review those procedures. Rather, staff has proposed that the city be required to follow the city's disconnection procedures before the city contacts the water utility to have water service disconnected. Iowa-American would give the notice and disconnect service pursuant to Board rules.

Staff believes that a customer whose water service may be disconnected pursuant to Iowa Code § 476.20(1)(b) should have the same customer protections as a customer whose water service is being disconnected under Iowa-American tariffs and Board rules. Staff believes that requiring Iowa-American to follow Board rules for notice and disconnection of water service gives the Board jurisdiction to hear complaints about such disconnections.

Finally, staff proposes that the water utility be allowed to charge for disconnection and reconnection under these rules in accordance with Board approved tariffs. This provides the water utility payment for the disconnection and reconnection, but does not allow for recovery of lost revenue. Iowa Code § 476.20(1)(b) states that "the customer shall be responsible for all costs associated with discontinuing and reestablishing water service disconnected pursuant to the new paragraph; however, staff does not believe that payment for

lost revenue is a cost of disconnection required to be paid by the customer. In addition to the customer protections, staff is recommending the Board propose an amendment to 199 IAC 21.4(9)"e" to exempt disconnection of water service pursuant to Iowa Code § 476.20(1)(b) from the reasons that service may not be denied.

Staff recommends the Board propose revisions to its water service rules to implement Iowa Code § 476.20(1)(b) as shown in the "Notice of Intended Action" attached to this memorandum and incorporated herein by reference. The proposed amendments are also set out below as follows:

**199 IAC 21.4(7) *Refusal or disconnection of service.***

Service may be refused or disconnected only for the reasons listed below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and holidays, following mailing of notice of disconnect in which to take necessary action before service is discontinued.

g. For failure to pay a debt owed to a city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment.

Disconnection of water service pursuant to this paragraph shall only be allowed if the city utility, city combined utility, city enterprise, or city combined enterprise has entered into a written agreement with the water utility that includes the following provisions:

(1) Notice of disconnection of water service shall be made by the water utility and shall allow the customer 12 days after the notice of disconnection of water service to pay the debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise.

(2) Provides for prompt notice from the city utility, city enterprise, combined city utility, or combined city enterprise to the water utility that the debt for wastewater service or services for sewer systems, storm water drainage systems, or sewage treatment has been satisfied. Once notified of the payment of the debt, the water utility shall reconnect water service as provided for in the water utility's tariff.

(3) Requires the city utility, city enterprise, combined city utility, or combined city enterprise to have completed the disconnection notification procedures established in the city utility, city enterprise, combined city utility, or combined city enterprise's tariffs or ordinances prior to contacting the

water utility to send the disconnection of water utility service notice.

(4) Provides that the customer may be charged a fee for disconnection and reconnection of water service by the water utility for failure of the customer to pay a debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services for sewer systems, storm water drainage systems, or sewage treatment no greater than the rates established for reconnection and disconnection of water service in the water utility's tariffs approved by the utilities board. Recovery of lost revenue by the public water utility as a result of disconnection of water service pursuant this paragraph is not authorized by these rules.

**199 IAC 21.4(9) *Insufficient reasons for denying service.***

The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

c. Failure to pay for a different type or class of public utility service. Disconnection of water service pursuant to the provisions of 199—21.4(7)"g" is not considered a different type or class of public utility service for purposes of this subrule.

**III. Recommendation**

Direct General Counsel to prepare an order proposing amendments to the Board's water service rules consistent with the rules proposed by Board staff in this memorandum. The order will also direct the Executive Secretary to have a "Notice of Intended Action" consistent with the decision by the Board published in the Iowa Administrative Bulletin.

**RECOMMENDATION APPROVED**

**IOWA UTILITIES BOARD**

/s/ Elizabeth S. Jacobs

12-17-14

Date

/s/ Nick Wagner

12/17/14

Date

/s/ Sheila K. Tipton

12/11/2014

Date

/cw

*I would like for the order proposing rules to recognize the issue of lost revenue caused by the statutory obligation to disconnect and state that we consider the question of the ability to recoup lost revenue to be more appropriate for consideration in a rate case. SKT*

*I agree with Sheila's comments. LSJ*