ARC 0237C

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 17A.7, 476.1, 476.2, and 476.6(8), the Utilities Board (Board) gives notice that on July 9, 2012, the Board issued an order in Docket No. RMU-2012-0001, In re: Petition for Rule Making Regarding Recovering Certain Energy Related Costs Through An Automatic Adjustment Clause, "Order Granting Petition and Commencing Rule Making." The Board is noticing for public comment proposed amendments to 199 IAC 20.1(3), 20.9(476), 20.13(476), and 20.17(476). The amendments impact the energy adjustment clause (EAC), contents of a utility's fuel procurement plan, and ratemaking treatment of emission allowances and were proposed by Interstate Power and Light Company (IPL) in a petition for rule making filed with the Board on May 10, 2012.

In its petition, IPL pointed out that 199 IAC 29.9 allows utilities to recover certain energy-related costs through an automatic adjustment clause if those costs meet certain criteria. IPL said that 199 IAC 20 was amended in 1993 to accommodate environmental regulation and the rules were revised again in 2008 to accommodate the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR). IPL said that new environmental requirements are changing the ways utilities must operate their generating units, evolving tax laws affect renewable generation costs, and changing emissions allowance requirements impact the overall cost of providing service. Rather than deal with these regulated areas issue-by-issue through applications for ongoing rule waivers, IPL believes this set of evolving regulatory actions presents an opportune time to evaluate the existing automatic adjustment clause rules to determine what changes may be needed to ensure the rules reflect the current environment in which utilities will operate.

IPL submitted proposed amendments to address four specific items: chemical costs (needed for environmental compliance); allowances (needed for environmental compliance); renewable energy credits (RECs); and production tax credits (reflecting the output of renewable generation). With respect to the changes in the allowance rules, IPL said that the current rules do not address allowances that may be issued pursuant to the Cross-State Air Pollution (CSAPR) rule. While litigation is still pending, IPL said that these allowances could replace allowances issued under CAIR, which are currently covered under the EAC rules.

IPL stated that its proposal for the inclusion of chemical costs within the EAC rules is a logical progression as emission rules evolve and new technologies are deployed at power plants to continue their operation in compliance with various emission regulations. IPL argued that these costs are consistent with the Board's rule on the applicability of the electric automatic adjustment clause (199 IAC 20.9(1)) and are similar to what IPL currently includes within the EAC. IPL said that all of the proposed chemicals are injected into the coal generation process and the amount of chemicals used and allowances purchased have a direct relationship to the output of the plant. IPL maintained that it is incurring these costs in response to environmental regulations that are beyond the direct control of IPL management and that the costs are projected to be significant and can be separated in IPL's system of accounts.

IPL currently has a waiver (issued in Docket No. WRU-05-10-150) of 199 IAC 20.9(2)"2" in order to pass the benefit from the sales of RECs back to customers in a timely fashion. IPL said that it would be appropriate to incorporate this waiver into the rules while other changes to the EAC rules are being considered. With respect to production tax credits (PTCs), IPL currently factors these in its base rates and does not propose an immediate change because it is operating under a revenue freeze. IPL would like the option, however, of including these costs in its EAC after its next rate proceeding.

On May 25, 2012, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) filed a response to IPL's petition for rule making. Consumer Advocate said that the proposed changes would dramatically expand the type of costs, and in some instances revenues, that could be automatically flowed through to customers via a utility's EAC rather than through base rates.

Consumer Advocate noted that IPL's REC revenues are currently flowed through the EAC pursuant to a Board-approved waiver. Consumer Advocate noted that while PTCs have principally been a source of revenues rather than costs for Iowa investor-owned utilities, Consumer Advocate is concerned about expanding the category of environmental compliance costs that the proposed rule making would automatically flow through to customers without further review or determination by the Board. Consumer Advocate also questions whether these costs and revenues meet the criteria contained in 199 IAC 20.9(1). For example, Consumer Advocate noted that chemical costs constitute only a small fraction of IPL's revenue requirement; fuel costs recoverable under the EAC, in contrast, constitute a large percentage of IPL's revenue requirement.

Consumer Advocate said it did not oppose including CSAPR allowance costs in the energy adjustment clause rules as IPL proposed. Consumer Advocate said that assuming CSAPR compliance costs are roughly equal to CAIR compliance costs, including CSAPR costs would be consistent with the current EAC rules.

Consumer Advocate maintained that the overriding issue in the proposed rule making is the appropriateness of increasing the scope of the costs recoverable automatically through the EAC versus through a utility's base rates. Consumer Advocate said this is important because the method of cost recovery can affect the incentives for Iowa's electric utilities to control costs and manage their companies as efficiently as possible for the ultimate benefit of the utilities' shareholders and customers.

Consumer Advocate said that an alternative approach exists that is consistent with IPL's proposal to expand the scope of the energy adjustment rules to include the costs of complying with federal laws and rules that are not yet known. Consumer Advocate stated that approach would be to add language to the proposed rules that would only allow environmental-type costs and revenues to be flowed through the energy adjustment clause after the Board has explicitly approved recovery in a rate case. Consumer Advocate said this would allow any utility seeking cost recovery to present convincing evidence that the item it seeks to flow through the energy adjustment clause meets the criteria established by 199 IAC 20.9(1). Consumer Advocate noted that this alternative approach is similar to IPL's proposal concerning PTCs.

The Board believes it is appropriate in light of changes to federal law to notice IPL's proposed rules for comment to reexamine the types of costs that are appropriate for recovery pursuant to the EAC and to determine whether the costs IPL seeks to recover meet the criteria contained in 199 IAC 20.9(1). Commenters are invited to comment not only on IPL's proposal but also on Consumer Advocate's alternative that would allow EAC recovery only after specific types of costs are approved in a rate proceeding, similar to IPL's proposal for PTCs.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before August 28, 2012. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at http://efs.iowa.gov.

Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on September 25, 2012, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the

Board at (515)725-7334 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these amendments.

After analysis and review of this rule making, the Board believes that if the proposed amendments are adopted, they may have a beneficial impact on job creation in Iowa by ensuring timely and accurate recovery of certain environmental compliance costs. The costs that IPL seeks to recover through the EAC generally are costs that, if found to be prudently incurred, historically have been recoverable either through a utility's EAC or base rates.

These amendments are intended to implement Iowa Code section 476.6(8).

The following amendments are proposed.

ITEM 1. Amend subrule **20.1(3)**, definitions of "Affected unit" and "Allowance," as follows:

"Affected unit" means a unit or source that is subject to any emission reduction requirement or limitation under the Clean Air Act (CAA) and its amendments including but not limited to the Acid Rain Program, the U.S. Environmental Protection Agency's (EPA) Clean Air Interstate Rule (CAIR), Cross-State Air Pollution Rule (CSAPR) ~~or the Clean Air Mercury Rule (CAMR)~~, Mercury and Air Toxic Standards (MATS) Rule, Maximum Achievable Control Technology (MACT) standards for hazardous air pollutants (HAPs), or New Source Performance Standards (NSPS) for federal air emissions and greenhouse gases (GHGs), also including newly issued rules or any successors to these federal rules under CAA Sections 110, 111 or 112, or a unit or source that opts in under 40 CFR Part 74.

"Allowance" means an authorization, allocated by the United States Environmental Protection Agency (EPA) ~~under the Acid Rain Program~~, issued in a rule or regulation promulgated under the authorities of the Clean Air Act (CAA) or its amendments, to emit air emissions including but not limited to sulfur dioxide (SO_2), ~~any SO_2 and~~ nitrogen oxide (NO_X) ~~emissions subject to the Clean Air Interstate Rule (CAIR), or mercury (Hg) emissions subject to the Clean Air Mercury Rule (CAMR)~~, mercury, particulate matter, carbon dioxide, or other regulated greenhouse gases (GHGs) during or after a specified calendar year.

ITEM 2. Adopt the following **new** definitions in subrule **20.1(3)**:

"Chemical costs" means consumable liquids or materials used in association with the operation of emission control equipment at electric generating facilities.

"Cross-State Air Pollution Rule" or *"CSAPR"* means the requirements EPA published in the Federal Register (76 Fed. Reg. 48208) on August 8, 2011.

"Maximum Achievable Control Technology" or *"MACT"* means rules for emissions sources that are issued pursuant to Section 112 of the Clean Air Act to reduce emissions of federal hazardous air pollutants (HAPs).

"Mercury and Air Toxic Standards Rule" or *"MATS"* means the requirements EPA published in the Federal Register (77 Fed. Reg. 9304) on February 16, 2012.

"New Source Performance Standards" or *"NSPS"* means rules for emissions sources that are issued pursuant to Section 111 of the Clean Air Act to reduce federal air emissions and greenhouse gases.

"Production tax credits" or *"PTCs"* means federal income tax credits associated with the generation output of renewable energy resources.

"Renewable energy credits" or *"RECs"* means tradable units formed by unbundling the environmental attributes of a unit of renewable energy from the underlying electricity.

ITEM 3. Adopt the following **new** subparagraphs **20.9(2)"b"(10)** to **(12)**:

(10) Chemical costs consumed in the operation of emission control equipment in the utility's own plants and the utility's share of similar costs in jointly owned or leased plants.

(11) Production tax credits associated with the energy production from renewable energy resources as entered into account 411.4 of the Uniform System of Accounts, to the extent explicitly granted such inclusion by the board in a rate case proceeding.

(12) Renewable energy credits associated with the energy production from renewable energy resources as entered into account 456 of the Uniform System of Accounts.

ITEM 4. Renumber subparagraphs **20.13(1)"b"(4)** to **(7)** as **20.13(1)"b"(5)** to **(8)**.

ITEM 5. Adopt the following **new** subparagraph **20.13(1)"b"(4)**:

(4) All contracts and arrangements for purchasing emission control chemicals;

ITEM 6. Amend paragraph **20.13(1)"f,"** introductory paragraph, as follows:

f. Actual and projected costs. The procurement plan shall include an accounting of the actual costs incurred in the purchase and transportation of fuel, chemical costs used in emission control equipment, and the purchase of allowances for use in generating electricity associated with each contract or arrangement filed in accordance with paragraph 20.13(1)*"b"* for the previous 12-month period.

ITEM 7. Amend subrule 20.17(1) as follows:

20.17(1) *Applicability and purpose.* This rule applies to all rate-regulated utilities providing electric service in Iowa. Under Title IV of the Clean Air Act Amendments of 1990, or under the Cross-State Air Pollution Rule, or both, each electric utility is required to hold sufficient emission allowances to offset emissions at all affected and new units. The acquisition and disposition of emission allowances will be treated for ratemaking purposes as defined in this rule.